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Review
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ECONOMIC SANCTIONS IN INTERNATIONAL LAW

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Abstract

Economic sanctions are a very important topic in the present international relations but also very common headlines in the daily news. At the present time, they become an increasingly prevalent measure for disciplining states' unacceptable behaviour by a ban on trade and disruption of financial relations for political purposes. Economic sanctions can be imposed by an international organization, being there multilateral (UN) or regional (such as EU) but also can appear in form of unilateral (autonomous) act of a state. The latter is broadly criticized as being contrary to international law hence these unilateral sanctions face lack of support by the international lawyers. On the other hand, there exists no universally accepted mechanism (authoritative international body) in international law to determine if one economic sanction is lawful or not thus this issue remains one of the least developed area therein. Economic sanctions 'effectiveness is another opened question that requires prompt reaction. Therefore, the existing relationship between economic sanction and international law is controversial and opens perspectives for different approaches and tensions in the international arena.

Keywords: economic sanctions, states, international law, UN, EU, Russia.

Jel Classification: K33; F51

INTRODUCTION

Since the end of the Cold War, sanctions have become a popular tool for states (the United States in particular) to press authoritarian regimes to democratize and to respect human rights (Walldorf 2014). The term "sanctions" under international law generally refers to coercive measures, taken by one State or in concert by several States, which are intended to convince or compel another State to desist from engaging in acts violating international law (Joyner 1995).

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Indeed, in international relations the concept of “sanctions” refers to a certain type of measures, but which can serve a variety of purposes, namely: (i) to coerce or change behavior; (ii) to constrain access to resources needed to engage in certain activities; or (iii) to signal and stigmatize (van den Herik 2017). Sanctions are related to defining and demarcation of international responsibility for those actions that are likely to endanger international peace and security, to create a tense climate that determines the use of force or to generate military conflicts and confrontations (Florea and Chirtoaca 2013). It should be noted that from the definition of international law, a number of features in the formation of rules and sanctions of international law can be extracted, namely: international law is a coordinator law, as its rules arise from the agreement of the states, in particular, but also from other subjects of public international law, according to their interests, gaining legal force and general or universal character, by reaching a consensus on the issue, the enforcement of international legal norms, when they are not met, is done by the same entities that have adopted them by individual or collective measures, directed against the ones guilty of violating international norms, based on the provisions contained in the bilateral or multilateral international agreements or in the international organizations (Ibid). However, not all sanctions are imposed for the reason of breaking the international law, in practice, they may be imposed in case of “a threat to the peace, a breach of the peace or an act of aggression” (article 19 of the UN Charter). One such example is the USA sanction against Cuba according to the Helms-Burton act in situation when preliminary breach of international law was missing.

Relying on sanctions instead of alternative means of coercion may raise hopes that international military conflicts can be avoided (Gutmann et al. 2017) however sanctions are hugely criticized nowadays for the “side effects” they have on the civil population.

Sanctions can be military (manifested as use of armed force), political or diplomatic (such as recall of diplomatic representative or interruption of diplomatic relations), cultural (restrictions to participate in cultural and sport manifestations and competitions) and may also involve economic coercion, such as: embargoes, boycotts, travel, transport or financial restrictions on the flow of currencies, etc. Imposition of sanctions is very costly and difficult process whose effectiveness and worthwhileness is often uncertain and questionable. In this light, it may be entirely possible that sanctions could be effective in terms of breaking commercial relations, imposing economic costs, and fulfilling a punitive role, yet ultimately not be successful in achieving their stated political objective (Joyner 1995).

The practice of economic sanctions is hardly new in international relations, but the twentieth century is especially rich in sanction episodes (Delevic 1998).

International economic sanctions appear to be a common and recurring feature in political interactions between states (Caruso 2003) and vital instrument in the international governance. They can be defined broadly to include “measures of an economic—as contrasted with diplomatic or military—character taken to express disapproval of the acts of the target or to induce that [target] to change some policy or practices or even its governmental structure” (Lowenfeld 2002). The basic logic behind all international economic sanctions, and economic statecraft in general is that altering the welfare of people in the targeted society—whether many with comprehensive sanctions, or few with targeted measures—will somehow generate political changes desired by the “senders” (Jones 2015). However, not rarely these sanction serve to discredit the target and gain the support of world public opinion, the aim being to bring

to bear on the target the concerted pressure of international public opinion, even to call on other nations to form a unified front against the target. (Miyagawa 2016). Economic sanctions may be imposed collectively at a global or regional level, or by a state or like-minded states acting unilaterally (Murphy 2012).

1. LEGAL FRAMEWORK OF ECONOMIC SANCTIONS

When speaking about collective imposition of (economic) sanctions under international law, the starting point is from within the UN as an option for preventing the use of armed force. The basis for these sanctions derives from Chapter VII of the UN Charter, and more specifically, article 41, which stipulates “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” Article 41 does not delineate under which situations sanctions may be applied, and it merely provides guidelines as to the types of measures that may be implemented, while decision-making authority resides centrally within the Council (Charron 2011).

Since the first imposed mandatory sanctions against Rhodesia in 1966, the Security Council has established 26 sanctions regimes, in Southern Rhodesia, South Africa, the former Yugoslavia, Haiti, Iraq, Angola, Sierra Leone, Somalia, Eritrea, Liberia, DRC, Côte d’Ivoire, Sudan (2), Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, CAR, Yemen, South Sudan and Mali, as well as against ISIL (Da’esh) and Al-Qaida and the Taliban (2) (Cf. <https://www.un.org/sc/suborg/en/sanctions/information>).

Sanctions may be imposed on regional level too. Indeed, the past several decades have witnessed a proliferation of such sanctions applied by regional and sub-regional organizations especially in Europe and Africa. (Herik 2017). According to the UN Sanction Background Report², such sanctions or restrictive measures were imposed by EU in 48 situations, whereas by the African Union in 11 cases. With the 1993 Maastricht Treaty, the European Union member states entitled the Council of the EU to impose sanctions or restrictive measures. The EU defines in detail its understanding of a sanctions in three key documents “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy”, “Basic Principles on the Use of Restrictive Measures (Sanctions)” and “The EU Best Practices for the Effective Implementation of Restrictive Measures” (Horbelt 2017).

EU implies sanctions as a normal foreign policy instrument to accomplish the goals set with the EU Common Foreign and Security Policy. Thus, the EU uses sanction regimes as an economic power tool to enforce a European coherent and sustained foreign policy (Smith 2013) and this statement goes in line with the established UN argumentation on imposing sanctions. However, the EU sanctions are not necessarily connected with the UN sanctions: sometimes the EU imposes its own sanctions (for ex.

² For details see: <http://www.hlr-unsanctions.org/main/background>. In the same Report was identified the risk that the proliferation of sanctions by these regional bodies could undermine UN sanctions implementation.

Sanctions imposed to Egypt or Belarus) and sometimes it expands the UN's already imposed ones. Unlike the UN, the EU has never adopted complete trade embargoes but it limits itself to targeted sanctions such as arms embargoes and bans on trade in specific goods, as well as financial, travel and diplomatic sanctions (Heupel and Zurn 2017).

Regional organizations are being called over for not having enough power to force their member states to adhere to the imposed sanctions. Hence, while implementation is comparatively satisfactory, the EU member States have availed of opportunities to undermine the application of EU sanctions regimes at various levels. (Borzyskowski and Portela 2016). Once such example is the France's resistance to EU sanctions on Africa largely rooted in its desire to maintain political influence in the region (Ibid)

Among the critics for this regional system of sanctions is that they remain effective only within the imposing region. For example, although the Organization of American States (OAS) recommended a trade embargo towards Haiti in form of cut off oil exports from USA, Mexico, Venezuela and Columbia, a Liberian-registered and Swiss-owned tanker succeeded to provide Haiti with oil, as none of the parties involved was from a country member of OAS.

Apart from the abovementioned sanctions, international law leaves rooms for unilateral measures by States which are subject to controversy regarding their lawfulness, in particular if they are imposed extra-territorially. It is about the sanctions applied by a country acting alone, or almost alone. Unilateral sanctions, are widely criticized as violating the principle of state sovereignty and the rule of law and holding the risk of breaking other principles of international law. Accordingly, unilateral sanctions could be considered as a challenge to the existing international legal order which is anchored in the UN Charter, according to which sanctions are to be imposed by the UNSC, following a determination that there is a threat to or a breach of international peace and security (Marossi and Bassett 2015). Or, in other words, UN member States are not entitled to impose economic sanctions upon another Member or any Sovereign State.

Some argues that in this age of globalization, unilateral sanctions seldom succeed—multilateral support and cooperation are essential to the success of sanctions i.e. when international (United Nations), regional (such as the European Union), and national authorities coordinate their actions to effectively monitor and enforce sanctions, target compliance increases significantly (Lopez 2007). In words of Prof. Szasz “it may thus be concluded that, as the twentieth century reaches its close, at least *de lege ferenda* no State may any longer claim a general legal right to impose economic sanctions against other States, except perhaps in situations where the coercion is exercised in the interest of the international community and the latter supports or at least does not strongly oppose the measures in question” (Szasz 1998). Nevertheless, the USA remain the world-champion in imposing sanctions to targeted countries from various reasons. They often imposed unilateral sanctions, or participated in multilateral sanctions, to promote a range of foreign policy objectives, including the disruption of military adventures, the impairment of military potential, and the destabilization of foreign governments. (Nyun 2008). Such state power has been prescribed by several authorizing laws granting sanction power to the President. For example, Trading with the Enemy Act of 1917 authorizes the President in case of national emergency, to organize a wide spectrum of commercial and financial transactions with other countries in order to preserve the national security, economy or foreign policy.

Sometimes, sub-state entities (governmental or non-governmental organizations or higher education institutions) can impose sanctions. Examples can be found in the US practice in form of ban of transactions with foreign governments, such as with South Africa or Myanmar (Burma) (Murphy 2012).

Finally, sanctions may be imposed on individuals as well. In 2014, the USA has imposed sanctions on many Russian officials and businesspeople with ties to the Kremlin. Designed to change behavior of the Russian government by putting pressure on the Russian economy, sanctions include asset freezes for specific Russian individuals and entities; restrictions on financial transactions with Russian firms operating in key sectors; restrictions on U.S. exports, services, and technology for specific Russian oil exploration or production projects; and tighter restrictions on U.S. exports of dual-use and military items to Russia (Nelson 2017). However, this was not the only case of such nature by USA. Not long before, in 2009, the USA has made the same move by imposing sanctions to many Russian officials for their involvement in the death of the Russian lawyer who was very loud about the corruption of the Russian Government.

2. ECONOMIC SANCTIONS AGAINST THE RUSSIAN FEDERATION

As already mentioned, sanctions are expected to be useful tool for disciplining the targeted subject (State, group, individual) to comply with the international legal norms. In expecting to achieve this goal, one may find many examples of imposed economic sanctions, such as for example, the 1996 EU sanctions imposed on Burma (Myanmar), the United Nations sanctions against Iraq (1990–2003), the United States embargo against Cuba in 1958. Widely criticized as being illegal and as such, being interesting for many international authors and lawyers, are the international sanctions imposed to Russia during the Ukrainian crisis. The question of whether to use sanctions as a response towards Russia has attracted numerous critics among European leaders, as well as among the European population (Onderco 2017).

In response to the Russian Federation's purported "annexation" of Crimea and the conflict between separatists in the Donbass region and the central government of Ukraine, the United States, the European Union, Japan, and Australia, the principal countries, have imposed economic sanctions upon Russian officials, firms, and private individuals (Burke 2015). The most notable sanctions regimes in this case are the ones imposed by the EU and the US. EU regime targeted the following:

- Individuals and legal entities that have been involved in actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine may be listed and have their assets in the EU area frozen. This regime is linked to the annexation of Crimea and Russia's actions in eastern Ukraine;
- Restrictions and later a total ban on the import into the EU of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol. This regime is linked to Russia's illegal annexation of Crimea and Sevastopol;
- Economic sanctions against Russia restricting the use of EU financial markets and prohibiting the export of armaments and dual-use goods and of equipment and services to the oil industry. This regime is linked to Russia's actions in eastern Ukraine (Oxenstierna and Olsson 2015).

On the other hand, the US sanction regime referred to:

- Asset freezes for specific individuals (close to the President Vladimir Putin) and prohibition of US natural and legal persons to engage in financial transactions with the sanctioned;
- Asset freezes and prohibition to conduct economic transactions with specific entities, particularly state-owned banks, defense and energy companies;
- Restrictions on financial transactions with Russian key sector firms (such as in defense, energy, financial services);
- Restrictions on exports of oil-related and dual-use technology;
- Restrictions on specific exports (such as on military items and dual-use).

Not surprisingly, the Russian government responded with reciprocal sanctions finally ending in form of total ban on food imports from the United States, Canada, Norway and Australia extending the list in 2015 with new states such as Japan, Switzerland, Albania, Iceland, Liechtenstein and Montenegro.

The sanctions and reciprocal sanctions contributed to economic losses and damages to all involved countries and their economies. The loudest voices for opposing the sanctions and calling for their review came from the majority of EU countries³ but also, from a number of EU business figures. The consequences and effects of this sanction / reciprocal sanction regime shall be observed further in this text.

Finally, one must mention the legality of these sanctions which is of exceptional importance for today's international economic but also political relations. It is considered that the economic sanctions imposed against the Russian Federation by third party states violate public international law on three grounds: 1) lack of authorization under the United Nations Charter; 2) inapplicability of Art. XXI GATT ('Security Exceptions'); and 3) lack of legal authority based on the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (Burke 2015). Put in other words, these sanctions are imposed without UN Security Council Decision, are against the UN acknowledged principle of sovereign equality of States and meant interference in the internal affairs of a country (Russia).

As such, they call for immediate withdrawal, otherwise, the butterfly effect that may appear as a result, will pose additional chaos in the already chaotic international settlement.

3. DO ECONOMIC SANCTIONS WORK?

Economic sanctions have been referred to as a blunt instrument that the international community has often wielded without full consideration of the impact that these measures will have on the population of the targeted countries, particularly the weakest elements of society (Allen and Lektzian 2013). A prevalent view among both scholars and policymakers is that economic sanctions stigmatize and isolate their targets (Early and Jadoon 2016). For most of them, past experiences suggest that such sanctions are often ineffective; moreover, quite paradoxically, targeted regimes tend to respond with policies that amplify the sanctions' harmful effects (Oechslein 2014). Evenmore, not

³ For example, Mr. Viktor Orban, the Hungarian Prime Minister stated that by introducing economic sanctions to Russia, Europe "shot itself in the foot".

rarely, sanctions exacerbate human rights conditions, yet influential policymakers, human rights advocates and some scholars continue to call for economic sanctions to mitigate ongoing atrocities (Krain 2017).

However, one may not ignore the severe damage caused to the sanctioned country's economy. Wideranging economic encirclement of Japan by the United States, Britain and others was effective enough to bring Japan's trade almost to a standstill, and seriously aggravated her financial position. (Miyagawa 2016). Similar consequences suffered Iran due to the 1951 British sanctions and Rhodesia in 1966 due to the same country sanctions. Regardless of whether sanctions are effective in achieving concessions, sanctions restrict international trade flows, creating rents for import-competing producers, who are protected from international competition (Pond 2017). As was previously mentioned, there are significant concerns whether the sanctions, that are often arbitrary and punitive in nature, are worth restricting the flow of international trade. Not only are these sanctions often arbitrary, but they also frequently punish the general populace for actions that can only be attributed to the political elite of a particular country. Such actions are perhaps acceptable if we accept the logic of Ciraki (1996) and the public choice theory. By pertaining to this logic, we believe that political actors are rational, accountable to the general public and acting in their own political self-interests, which is usually defined by winning re-election (Ciraki 1996). Almost none of these parameters, as they are currently defined, are applicable to the scenario of the Russian Federation. Economic sanctions in such a case are a punitive measure that, while may inconvenience some in Putin's nearest circle, are simply not effective in influencing government policy. From a political and social viewpoint, there is no feasible rationale that would suggest that the Russian electorate is prepared to remove Vladimir Putin from power. As was argued by Shinar, the Russian Federation is prepared to take broad actions in order to restore the influence, including breaching norms of international law and the sovereignty of other nation-states (Shinar 2017). This does not mean that the international community should take steps that are punitive towards a population that is not able to remove Putin from power nor is there a logical political opposition that could presumably take power.

More significantly, the presumption of the effectiveness of these sanctions is based on the concept that sanctions can significantly impact the competence of these economies to function in modern international relations. With respect to the example of Russia and the recent crisis it is currently engulfed in, there is very little evidence in practice that its economic downturn is caused by the economic sanctions. As emphasized by Ashford (2016), the economic predicament of the Russian Federation has very little to do with U.S. sanctions. It is caused primarily by the significant decrease of oil prices which have significantly impacted the Russian economy far more than the economic sanctions (Ashford 2016). In order for economic sanctions to be effective, especially in a country where the political elite has such positive media coverage as Vladimir Putin and his circle have in the Russian Federation, there needs to be a clear transmission mechanism of how these sanctions can feasibly force the Russian electorate to opt for an alternative solution. No form of economic sanctions that the Western countries are prepared to enact can be sufficiently effective to cripple the Russian economy, especially since it has managed to reasonably mitigate the impacts of the sanctions. This can be proven in a quick empiric exercise that employs a version of the breakpoint test initially developed by Chow (1960). In order to do so, we consider the export of Russia to China, France, the US, the

UK and Germany. The data was extracted from the World Bank (2018) for the period of 1996–2016. Visual representation of the data can be found in Chart 1.

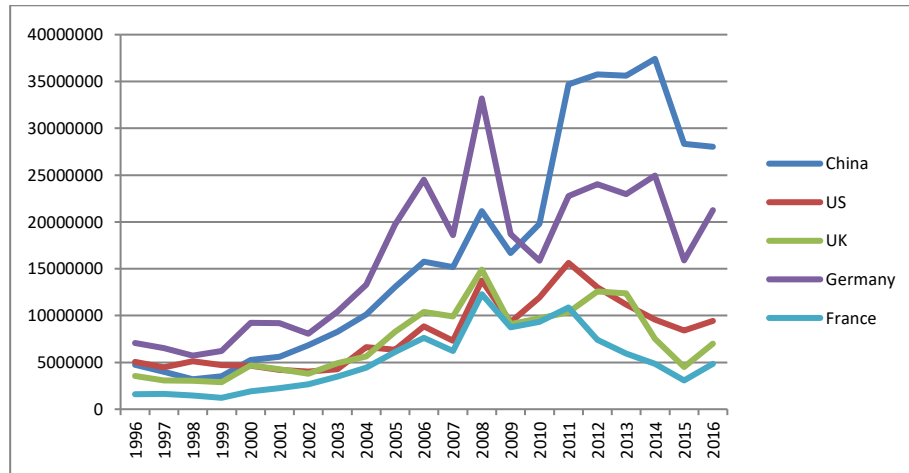


Figure 1. Visual representation of data considered in breakpoint test

The data in Figure 1 clearly shows us that there are significant oscillations in German – Russian trade relations. This will contribute to one of the drawbacks of our methodological approach, as the breakpoint test can be characterized as slightly arbitrary due to the fact that we are trying to determine whether there is a structural break based on a time point that we identified through our qualitative analysis. The sample of 5 countries, all of which are relevant trading partners or countries that led the effort to implement sanctions is rather small and future research should be focused on a larger sample of countries. Another issue that future research should address is implementing an approach that views not only trade, but the influence of the sanctions on any variables that might have been impacted by the sanctions. The final methodological difficulty of the breakpoint test is that, even if we determine that there is a structural break, it is up to the authors to determine the cause of the break and provide a rationale behind it. The mere presence of a structural break does not indicate that sanctions caused difficulties in the Russian economy, although the interpretation of these results can be questioned. The descriptive statistics for the value of exports, in inflation corrected US dollars, is presented in Table 1.

Table 1. Variables considered by the breakpoint test

Name of the variable	Russian export to China	Russian exports to the US	Russian exports to the UK	Russian exports to Germany	Russian exports to France
Mean	16806000	79940030	7255300	16106000	5139400
Median	15167000	7311800	6996900	15906000	4839200
Minimum	31996000	4020000	2885700	5720600	1218000
Maximum	37415000	15626000	14905000	1218000	1282000
Standard deviation	12063000	3531200	3611900	7831500	3276700
C.V.	0.7178	0.4417	0.4978	0.4863	0.6376
Skewness	0.5065	0.6113	0.4608	0.2684	0.6064
Ex. kurtosis	-1.1756	-0.7443	-0.9267	-0.8866	-0.6394

As we can see from the data present in Table 1, China is one of the key trading partner of the Russian Federation and it is further evident that there is significant evidence that both political and geographical relations have influence in Russian trade policy. A basic overview of the descriptive statistics points out that there is significant evidence for the gravity model of trade, due to the fact that China and the Russian Federation are the least distant countries out of those observed for the breakpoint tests. The fact that Germany is a close second in regards to Russian exports also conforms to the general hypotheses of the gravity model. One should note that most of Russian exports to Europe are crude oil and gas that are commodities that are significantly more difficult to export if there is a large distance between two countries (World Bank 2018). Political cooperation is also a requirement for the construction of infrastructure required in order to transport such commodities. After applying the log transformations, the results of the Chow breakpoint tests are presented in Table 2, where we observe whether there are any structural differences in 2014 – the year the sanctions against the Russian Federation were implemented for the invasion of Crimea.

Table 2. Results of the Chow breakpoint test

Name of the variable	Russian export to China	Russian exports to the US	Russian exports to the UK	Russian exports to Germany	Russian exports to France
F-statistic	0.9019	0.2372	3.532*	58.632***	1.763
P-value	0.42	0.7915	0.0536	0.0000	0.2043

Note: *, ** and *** indicates significance at the respected 0.1, 0.05 and 0.01 levels of statistical significance

We have included 4 countries that have implemented sanctions in the breakpoint tests in Table 2 and China as a country that has not included sanctions. At the 5% significance level, there is no evidence of a structural break for none of the observed countries with the exception of Germany. This can be attributed to the declining prices of oil and other difficulties the Russian Federation encountered in 2014 and is most likely not caused by sanctions, as was previously stated by Ashford (2016). Through this quick empirical examination, we can see that there is not any significant proof that economic sanctions have a direct impact on the Russian economy. Even on the element where economic sanctions should have been most effective – exports, there is no empiric evidence that they were effective. Thus, we can clearly see that while sanctions are a way for the international community to act without significantly escalating a conflict, there is very little proof that they are effective against large developed or developing economies.

CONCLUSION

Economic sanctions are attractive tools for “bringing to reason” a State (including its government or group within the State or certain individuals) for unlawful act of international standpoint, mostly because they are non-military tools and provide immediate responses towards changing the unlawful behaviour.

The legality and effectiveness of economic sanctions is a very hot topic in the international legal arena as there is a strong divide within the academic community for the mentioned attributes. This question has dominated in literature for many years and yet, it is not crystal clear when the imposition of an economic sanction is lawful and

justified and when it is appropriate to achieve the goals of promoting democracy, peace and observance of human rights. These debates are carried with the loud statement from many scholars that the economic sanctions are ineffective instruments of foreign politics and rarely achieve their purpose. One such example are the economic sanctions imposed to Russia for the Crimea independence case, which, did not snap back the first problem (Crimea) but imposed new problems with respect to the economic damages suffered by all involved states as elaborated above. Perhaps it's the major reason why large majority of the UN member countries do not support the US/EU sanctions against the Russia.

As for the mentioned lawfulness of the economic sanctions, it must be pointed that nowadays there exist no international body or universally accepted mechanism authorized to govern the legality of these sanctions. Nor there is a definition of economic sanctions in international law hence the lawfulness of these sanctions is frequently discussed among different legal figures. In such international legal settlement, a door is open for wide criticism to the (powerful) countries for abusing their power while imposing economic sanctions. Especially this refers to the unilateral sanctions which interfere with the sovereign rights of the sanctioned states given their extra-territorial nature and lack of UN authorization. This statement goes in line with the interpreted meaning of article 2(4) of the UN Charter Member States meaning that UN member states do not have a right to impose economic sanctions among themselves.

Finally, imposition of economic sanctions is a very costly process. Beside the targeted country, the economic sanctions may cause collateral damage on innocent third parties such as the country's neighbours by losing the market access, preferred trade routes, etc. As prof. Szasz concluded in his paper cited herein "the hardship caused by these regimes is thus most arbitrarily and unevenly distributed, sometimes burdening the weakest and often uninvolved States rather than those more responsible for their imposition and better able to bear the burden."

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