

The use of penalty in public international law

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Abstract

This study is based on assumption that embargo has been one of the measures taken to prevent threats to international peace and security. However, it has been proven that these measures have not been effective in preventing international conflicts. In contrast to the Charter of the United Nations, such measures have been aimed at achieving political goals that serve interests of the international great powers.

Key words: embargo, sanction, coercive, intervention, international law

Introduction

Since the last century started, international embargo measures have taken a prominent role in the field of international relations. These measures differed in their application according to the different circumstances and the prevailing international situation. These measures vary in intensity depending on the imposing state force and the extent of its capability of imposing and extending such embargo. The success of the embargo also depends on the extent to which the state under its control can follow means of its failure. *(David Cortright., 2018)*

The conceptual framework of the international embargo

According to the conventional meaning, an international embargo means that a State prevents ships anchored in its ports and goods from leaving these ports. It takes a form of deterrent acts aimed at the settlement of diplomatic disputes by force, or during preparation for a war against the embargoed State. *(Andreas Peter, 2005)*

The historical development of international embargo

Economic sanctions, especially embargo, are the legacy of the international community. Economy has always been a major support in people's renaissance. It is an influential factor in the course of international events. International trade occupies a central role in the international economy. **(AMRI, Thibault, 2013)** Hence the importance of economic sanctions in the past emerged when sanctions targeted commercial convoys and fleets as an ideal tool to punish the violating state by cutting off trade lines from and to it, thus preventing the exit and entry of any goods from and to it. This prevented the exit and entry of any goods to and from it. At the time, international economic sanctions had taken certain forms such as peaceful and military embargoes. **(Adnan Abu Odeh, 1995)** Military force had been used for the arrest, seizure and confiscation of ships belonging to the violating State. Examples of the imposition of embargoes were Britain's imposition of a ban on South Africa between 1899-1902 and Russia's ban on Japan - including rice, fuel and cotton - between 1904 and 1905. Examination of embargo during the "pre-organized international community" phase achieves certain characteristics: the economic embargo was a supplementary accessory punishment aimed at making war operations more effective and imposed in accordance with the unilateral will of States. There was no international co-ordination in imposition of that penalty. Individuals were taken into consideration as it was possible to stop and detain private ships in order to press on their state. **(Jeff Simmons, 1998)**

Regardless the extent to which embargo was legitimate and the effectiveness of such measures, these sanctions undoubtedly played a fundamental role in the respect of international obligations and the organization of relations between States. One thing that has been recognized in the past in the "stage of traditional international law" was the States right to take self-help measures in the face of their legal disputes if they fail to reach a satisfactory solution to all parties through negotiation or settlement by a neutral third party. States deliberately take within the frame of that right what is known as deterrent defense, which includes embargo and siege. **(Adnan Abu Odeh, 1995)**

With the development of the international community, the stability of war prohibition and the non-use of force as a mean of settling dispute. With the development of international relations and the continuous increase in the diversity of international conventions, it is imperative to review international economic sanctions, especially embargoes and to re-evaluate the strength of relations that oblige states today to observe international rules and obligations

in order to reach high level of security and prosperity. In view of these changes, international prohibitions in general have received the same level of development. **(AMRI, Thibault, 2013)** Military force has declined as a tool to implement these measures. The implementation of the embargo measures has become an end in itself and is no longer a complement to the military operations. It takes a form of freezing relations, preventing the target state from benefits of these relations and from its membership in the international organization, putting restrictions on practicing their economic activities. The administration of such measures has been carried out within international organizations and is being followed up by international observer. **(Mohamed Mansour El Sawy, 1984)**

The 20th century witnessed the emergence of various forms of international embargo, including its imposition by individual states or by collaborative action of a group of States in order to limit increasing access of war supplies and equipment to a state likely to carry out aggression acts. This means that in the event of conflict, the neutral states may stop the export of war materials to both parties, by imposing an embargo on those exports. **(Andreas Peter, 2005)** For example, the United Nations General Assembly in 1951 issued a recommendation to Member States Including arms embargo and a number of strategic items to areas under the control of the People's Republic of China and North Korea. The embargo is also used to prevent the export of arms and ammunition to states with civil wars. **(Suhail Hussein Al-Fatlawi, 1985)**

Recently, the international embargo has been taken as a "means of pressure" aimed at forcing countries that violate international law to remove the violation. For example, the 1921 Geneva Convention on Narcotic Drugs calls for joint interdiction by States to export narcotic substances to the state or region that is found to contain extraordinary amounts of narcotics. In 1962, the UN General Assembly imposed an international trade embargo on South Africa, plus a ban on granting any facilities to that state at airports and ports of Member States. **(Mohamed Abdel Wahab Saket, 2003)**

The concept of international embargo

International embargo is one of the main forms of international economic sanctions that individual countries or group of them, through a collective action, impose on countries that violate the international law provisions. It is a coercive means in settling international disputes to punish the violating state and force it to stop violation and remove its effects and pay appropriate compensation for damages caused by it. **(Jean Pictet, 1984)** The

term "Embargo or detention of ships in the port" is technically defined as preventing the ships of the State imposed under international embargo from leaving the port of a State that is affected by violation of the international law provisions. **(Hassan Abdullah, 1982)**

There is another narrow concept which is "prohibition" that is imposed by a state on the departure of ships or certain types of goods from its ports to the violating State, to refrain selling the goods or products which the violating State needs to purchase. **(Shu Guang Zhang, 2001)** Another type of embargo is called "*Arret de prince*", which means that foreign ships are detained and prevented from leaving ports in order to prevent the spread of politically significant news. A third type of ban is called in Latin "*Jus Angariae*" which means the right of the State in war to seize funds owned by a neutral State and to benefit of such funds only in case of necessity, thereby requiring the State that seizes the funds of the neutral State to pay compensation to this State. **(Hassan Abdullah, 1982)**

In all cases, the previous types should not be confused with the so-called Civil Embargo, which is applied in England. It means that the British government orders all ships not to leave the English ports. **(Siraj Jamil Zamzmi, 1981)** The deterrent defense actions practiced by states, during peace time, which is used to stop the repeated violation of international law, should not be confused with the deterrent defense actions practiced by states in wartime as acts of revenge, used to force the guilty enemy who committed unlawful acts of "war crimes" to comply with the laws of war and to be obliged to it. **(W. Michael Reisman, 2003)**

The legal nature of the international embargo

International embargo as an international sanction

The term "sanction" in its broader meaning means any action or measure to promote and support the stability of a system. The primary purpose of the sanction is to make Deviant behavior in conformity with general standards, to put an end to such behavior to ensure that it will not recur. International law contains less effective sanctions than those found in domestic law. The process of organizing sanctions aimed at strengthening of the international legal system is faced with special difficulties, which are reflected in the imposition and application of these standards to organized groups in the international community, such as States. **(Hassan Chalabi, 1964)**

The international embargo contains "*Economic Boycott*", which is a form of international economic sanctions. It means suspending economic and trade dealings with a state, banning the establishment of production factors on its

territory. International organizations invite member states or their nationals to implement the economic boycott against the state violating the law provisions. The economic boycott has a significant impact on the economic balance of the state. In the modern era, the state is linked to other states through large and interrelated economic relations, which makes it in continuous dependence on economic cooperation, either through the need for foreign goods to satisfy their domestic needs or to market their products externally, or to obtain assistance and facilities and other relations between countries. **(J. Curtis Henderson, 1986)** If the state is committed to Economic Boycott, it would lead to imbalance in its economy that may not be easily addressed. The boycott has great effect on international disputes as it has a significant impact on the will of the violating state, despite the damage it causes to other states dealing with that violating state. It also undermines states freedom to practice their sovereign rights and international obligations. The most important example of application of economic boycott is noted when the General Assembly and the Security Council have issued several resolutions requiring previous South African government to cease its racist practices and its racial discrimination policy. When South African Government does not comply with these resolutions, international sanctions had been imposed on it, starting with military embargo in 1963, and were developed to include all commercial and economic transactions. **(Andreas Peter, 2005)** These measures were accepted by most countries in the world, which ensured a great success until the completion of the full economic boycott that lasted about 30 years and achieved all its objectives. The government was compelled to hold free elections and to abandon racism policies. **(John Marie Henkerts, 2007)**

The international embargo also includes another sanction, which is the non-contribution and is achieved when the international organization issues administrative resolutions that involve the non-use of rights by the violating state within the international organization, and deprives the state from privileges granted to its members. The validity of this sanction is dependent on the importance of the organization and the role it plays in the framework of international economic relations. For example, the size and role of the International Bank for Reconstruction and Development is different from that of FAO. **(J. Curtis Henderson, 1986)**

The non- participation sanction can be observed in many areas related to monetary, technical and banking transactions, the movement of imports and exports, movement of capital, investments, customs procedures, international rights, and cooperation agreements. Non-participation may also take various forms, including deprivation of voting or participation in the economic activities of the organization, as well as prevention or freezing of

international cooperation between the members of the organization and the violating State, and suspension or termination of the membership itself. **(Reisman, W. Michael, 2009)** The issue is clear if non- participation sanction is implemented to international economic organization as contribution of States in their activities is of great importance to support the economy of these countries and their financial and commercial stability. In 1948, the International Monetary Fund (IMF) applied this sanction against France because of its monetary policy turmoil. In 1968, the International Bank for Reconstruction and Development (IBRD) deprived Peru from benefits of its membership in the Bank and prevented any loans because of its unfair nationalization policy towards a US oil company. **(Lina Tabal, 2010)**

Thus, the international embargo is an international sanction that falls within the scope of coercive measures used by States or international organizations to deter and compel a State that has violated the provisions of international law. The best example of such punitive measures is the provisions of Articles 4, 39 and 42 of the Charter of the United Nations. Examples of these measures include Security Council: Resolution No. 232, obliged states to refrain from importing nine Rhodesian products. **(Mohamed Ismail Ali, 1980)**

The economic sanction in particular carries great harm, some of which is humane. Therefore, when imposing an international embargo on a violating state, its measures should take into account the violation of international law. The state should not be harmed in a way that does not fit the purpose of imposing this embargo. The adverse effects of the state against which it was issued extend to states with which it has economic ties. **(Andreas Peter, 2005)** In order to deter the violating state by imposing economic sanctions such as the international embargo, it is inevitable that the economies of other states will be harmed. The United Nations Charter predicts that economic embargoes measures could harm other states as a result of their obligations to those measures imposed on the violating state. For example, the economic damage to Portugal caused by the imposition of trade embargo against Rhodesia in 1967, estimated at 28,000,000 million dollars. Thus, Article 50 of the Charter gives such States the opportunity to consult with the Security Council in order to solve their problems as a result of their obligations to the United Nations. **(Kazem Hashim Naama, 1979)**

International embargo as a coercive means of dispute settlement

The international embargo can also be adapted as one of the means of coercion used to settle international disputes. It is one of the "means of self-

coercion" used in the event of inability of peaceful means to settle international disputes. The conflicting countries do not resort to military force to end the conflict, but after the failure of the peaceful means known to settle international disputes, such as, negotiation, mediation, arbitration and conciliation to take other non-military coercive measures against the other side to press them and end the current conflict peacefully. **(Sohn Louis B., 1981)** It is worth mentioning that these coercive means constitute a violation of the international law rules and the peaceful settlement of international disputes, whether they are legitimate in their objectives or whether they include elements of aggression. These means, at the same time, harm international relations in general, because the state's reliance on itself to achieve its legitimate goals in pursuing such means in settling its disputes with other countries represent a distinctive reflection and a new situation witnessed by the international community in the twentieth century. Self-reliance remains part of international relations even though the UN Charter has prohibited the use of force or pressure to settle international disputes . **(Suhail Hussein Al-Fatlawi, 1985)**

The peaceful means of settling international disputes are defined as "those means which include the settlement of international disputes through diplomatic bodies, either directly such as international negotiations between two conflicting States or by indirect means, such as good offices, mediation, investigation, and conciliation by various committees. **(Sohn Louis B., 1981)** Coercive means include embargo as one of the means of economic coercion used by a state to settle disputes with another state. The way of "international economic embargo" is resorted to in order to make changes in the Governmental actions of the target state according to the purpose of the settlement process. **(Mohamed Abdel Wahab Saket, 2003)**

Therefore, international embargo is used as one of these coercive means against the state in violation of international law provisions with the aim of pressuring this state to reconsider its violation and to remove the effects of the violation and to pay adequate compensation for the damage caused by violation. The international embargo here represents one of the coercive means used by states in diplomatic relations where diplomatic relations are cut off "prohibition of diplomatic dealing" with the initially violating state. **(Barston, 2007)** Next, the influence on the economic relations of the violating state comes through imposing an international embargo on the violating state in order to compel it to remove its violation and to correct what it has done towards a state or the international community as a whole. The best example of these means is what was permitted by Article 41 of the Charter of the United Nations which was applied on China in 1951 due to its

support to North Korea in its attack on South Korea. (*Gir Hard van Gullan, 1999*)

Therefore, economic coercion is primarily an attempt to achieve political purposes by means of economic means such as international embargo. It is resorted to these means with the aim of achieving different goals by the countries that take them. What is worth noting is that during the period in which these means are used, including the "international embargo" the purposes of the States imposing such a ban may change from one destination to another. (*Paul A. Shneyer, 1981*) Although the efficacy of such means cannot be easily assessed, there is a consensus that these measures are not fully effective and successful in achieving their specific objective. What is known for them is weakening of target states resistance more than other coercive means. The keys for achieving the desired goal by embargo are the agreement problems between the states that are bound to implement the embargo, the lack of appreciation of the reactions within the violating state "target state", as well as relying on the theoretical belief that economic pressure leads to the occurrence political disintegration in the target state. (*Mohamed Abdel Wahab Saket, 2003*)

International embargo as a collective intervention

Intervention is Intrusive authoritarian of a state, with or without the right to do, in the foreign or internal affairs of another state in order to change the existing conditions or to maintain or force it to do a certain action or abstain from using it. To do this, the state uses its influence or power and the means of pressure. This interferes with the external independence and both territorial and individual sovereignty of the state concerned. (*Hin-Yan Liu, 2011*) Intervention in general is not recognized by international law. The draft Declaration on the Rights and Duties of States adopted by the United Nations states that every State must refrain from intervention in the internal or external affairs of another State. However, there are cases in which intervention is permitted, such as intervention in the affairs of a state that is constitutionally or colonially protected, intervention due to a discrepancy or overlap in one of the foreign affairs of a state with the other state and then one state treats this matter unilaterally, intervention against intervention, intervention in the event of a governmental form change guaranteed by the intervening State under an international treaty, intervention of the State to protect its nationals and their funds abroad, intervention for individual or collective self-defense, intervention to protect vital interests, intervention for

financial reasons and lastly intervention for humanitarian purposes. **(Thomas C. Wingfield, 2000)**

The intervention that concerns us here is the "penal intervention" applied by a State or the international community by imposing international sanctions such as the international embargo against the violating State that has violated the international law provisions. The penal intervention must be a "legal intervention" by a collective action carried out by an international body on behalf of the international community to implement the international law provisions and principles. **(Nowrot K, 1999)** This is confirmed in the area of preventive measures or measures aimed at putting an end to the international violations committed by agencies of bodies such as the United Nations. The international community represented by international bodies and organizations impose economic sanctions, including the sanction of an international embargo against a state that has violated the international law provisions for the purpose of deterring it and removing the effects of its violation. Examples of collective intervention occurred in 1862 when Britain, the Netherlands, France, Russia and the United States agreed to a joint intervention In order to force it to refrain from attacking foreign ships in the Shimonoseki Strait. **(D. Murphy, 2002)** International embargoes can also be adapted as economic intervention, since the prominent character of this type of intervention is to press on the economic aspect of the interfered state. Economic aggression occurs when a State takes economic measures that endanger an economy of the State against which such measures are taken. This also occurs when the intervening State takes economic measures affecting the sovereignty of the target State by preventing it from using its sovereignty over its resources and national wealth or when the economic embargo is imposed on it. **(Douglas A. Borer, 2007)**

Economic intervention may be direct through the adoption of direct economic measures, whether by States or international organizations. Article 41 of the Charter of the United Nations provides that the Security Council may decide measures that do not require the use of armed forces to implement its resolutions. The council may request from the Members of the United Nations to apply such measures, including, inter alia, the cessation of economic links and this is international economic embargo. Economic intervention may be indirect through the provision of conditional loans. **(Peter Andreas, 2005)** Colonial countries have accustomed in pursuing this method in order to exert their influence on the countries they wish to colonize. This type of intervention in the American continent is known as the dollar policy. Another way for indirect intervention is providing economic assistance in the form of military equipment or monetary aid. In fact, regardless of the types of intervention and

its rationale, the intervention is a violation of the state rights and constitutes an act of hostility. (*Boutros-Ghali, 1967*)

Conclusion

Achieving and sustaining international peace and security is a fundamental objective pursued by all the good powers in the world. In our time, development of deterrence and oppression and multiplicity of violence and sabotage in addition to emergence of destruction means and the frightening war, the interest of the international community and the world's peace specialists has increased toward looking for an alternative solution to the situations of violence repression and international conflict away from the use of force, while emphasizing the need for the rule of international law and its dominance on national laws. The role of the United Nations in charting the peace road is difficult. The application of international legal norms on the international sanctions regime, represented by international embargoes, is subject to the wishes and wills of certain States, as was the case in Iraq. Even if there is a strong will on the part of the international community to impose such measures against an ally of one of the major Powers, these forces, despite their approval of the adoption of the embargoes, do not obligate themselves or their nationals to implement such measures as in case if the measures imposed against Rhodesia. Major Powers are a major threat to peace and security in the world.

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