

# UNILATERAL SANCTIONS: A VIOLATION OF ARTICLE 2 OF THE UNITED NATIONS CHARTER?

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## *I. Introduction*

Unilateral sanctions are often coercive in nature and are applicable to States, non-State actors and individuals who pose threats against international peace and security. Therefore, they often stand against the established principles of international law regarding jurisdiction, raising pertinent questions about the violation of legal equality of States, and the principles of respect, dignity of national sovereignty, and non-intervention under Article 2 of the Charter of the United Nations (“UN”). Several practices and judicial precedents show that irrespective of the theoretical impact, the arbitrary imposition of sanctions on States and entities may severely affect the fundamental human rights of the residents of the sanctioned regions.<sup>1</sup> Evaluating the legality of imposing sanctions, therefore, requires the assessment of the impact and effectiveness of the sanctions under the relevant provisions of international law. In light of that, the author explores the provisions of Article 2 of the UN Charter to explore the alignment of imposing unilateral sanctions with the principles of (a) sovereign equality and (b) non-use of force and non-intervention.

## *II. Unilateral sanctions and relevant provisions of Article 2*

### *(a) Question of the principle of sovereign equality*

One of the oldest arguments about whether the imposition of unilateral sanctions is a violation of international law concerns the principle of sovereign equality. Inarguably, developing friendly relations among nations based on respect for the principle of equal rights and self-determination is a primary objective of the United Nations.<sup>2</sup> The principle of sovereign equality is recognized in Article 2 of the UN Charter, which enunciates that the UN and its members shall uphold the principle in their conduct with other state in order to maintain international peace and security.<sup>3</sup> Opponents of unilateral sanctions argue that the arbitrariness of imposing sanctions on sovereign States is a violation of the principle of sovereign equality and, hence, contravenes one of the core principles of international law and the UN Charter. On the contrary, proponents of unilateral sanctions respond that such sanctions do not amount to the violation of the principle per se, since there are no general rules in international law prohibiting it.<sup>4</sup>

“Sovereign equality” connotes a broad meaning in international law, extending beyond simply traditional concepts of “equality of States” and “sovereignty of States.”<sup>5</sup> The premise of the principle is that a State is supreme and ultimate, and is independent of the will of any other, or higher authority.<sup>6</sup> A broader explanation of the principle includes the right of every State to enjoy their inherent rights in full sovereignty and the duty to respect the prerogatives of other states.<sup>7</sup> It further encompasses the right to freely “choose and develop its political, social, economic and cultural systems.”<sup>8</sup> It also requires States to comply in good faith with their international obligations. However, sovereignty may not be used by governments as a shield to defend mass violence against the population.<sup>9</sup>

### *(b) Question of non-use of force and non-intervention*

Article 2(4) of the UN Charter prohibits the use of “threat or use of force against the territorial integrity or political independence of any State.”<sup>10</sup> This principle, considered the cornerstone of modern international law, is also universally accepted as a customary international legal norm.<sup>11</sup> This prohibition stretches to the mere threat of force.<sup>12</sup>

Although there is a scarcity in explaining the scope of the fundamental notion of “force” under the Charter, a broader interpretation of the terms “threat” and “force” can be drawn to include economic and political coercion.<sup>13</sup> It is often difficult to ascertain which acts of a State fall under the prohibited threat of force because the causal link between the threat and the behaviour of the target State often remains indeterminable.<sup>14</sup> Here, the Friendly Relations Declaration provides that no State may be allowed to use economic, political or any other type of measures to coerce another State. Hence, the economic coercion of sanctions may largely be covered by the general principle of non-intervention under Article 2(7) of the UN Charter.<sup>15</sup>

### *III. Do sanctions violate these principles?*

Although there is no blanket prohibition on coercive economic sanctions under the UN Charter, unilateral sanctions do, in some cases, violate the principles of international law.<sup>16</sup> For instance, the sanctions imposed and reimposed by the United States on Iran in 2018 raised the question of proportionality and reasonableness of sanctions which obstruct the supply of basic necessities, such as medicines, medical services, foodstuff, agricultural commodities, etc.<sup>17</sup> Again, despite its wide use as a foreign policy tool, its effectiveness has also been questioned many times.<sup>18</sup> An example can be drawn from the sanctions the United States imposed on Cuba since 1962, which remained ineffective largely due to Cuba’s relationship with Russia.<sup>19</sup> Sanctions imposed on one State may lead to extra effects and cause secondary sanctions on unrelated States due to the latter’s bilateral policies with the sanctioned State. This was seen when the sanctions imposed on the Central Bank of Iran affected other countries and foreign companies with economic transactions and flows with Iran.<sup>20</sup> Hence, unregulated unilateral sanctions cause violation of the right to economic and social developments as recognized in the common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup>

In 2002, the UN General Assembly passed a resolution calling upon all States to refrain from acknowledging “unilateral extraterritorial coercive economic” measures.<sup>22</sup> Similarly, the International Law Commission’s (ILC) Draft Articles on Responsibility of State for Internationally Wrongful Act 2001 (ARSIWA) lists circumstances in which countermeasures in the form of economic coercion, such as unilateral sanctions imposed by States, may be allowed.<sup>23</sup> Furthermore, the test of proportionality must also be applied while imposing sanctions on a State or entity, as held by the International Court of Justice.<sup>24</sup>

### *IV. Conclusion*

Although unilateral sanctions are a widely used foreign policy tool, the effectiveness and legality of such extraterritorial measures have raised questions as to their lawfulness under international law, which has been made

further difficult due to the lack of customary recognition. It is also difficult to determine whether such sanctions meet the threshold of violating the principles of the United Nations and international law in general. Hence, any sanction imposed on a State must undergo the test of proportionality and reasonableness in order to best uphold the principles and purposes of the UN. Finally, concerned authorities should make an effort to strengthen international cooperation and promote dialogues to reach diplomatic solutions and alternative mechanisms to resolve problems in line with the UN Charter and other relevant frameworks in order to reduce the necessity to impose sanctions.

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