

## NON-MILITARY INTERVENTION THROUGH SANCTIONS

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**Abstract:** *Humanitarian intervention has been perceived as one of the most debatable points between diplomats, jurists and scientists for a long time. It is also a very complex and multifaceted issue, which incorporates a number of ethical, international and military aspects. At the present time the topic of humanitarian intervention is seen primarily in terms of the application of military forces in order to achieve a specific aim, which may only in certain cases be humanitarian. However, the relevant non-military intervention, expressed in a variety of sanctions, should also be considered.*

**Keywords:** Humanitarian intervention, non-military intervention, sanctions, United Nations

### 1. Introduction

At the present time the humanitarian intervention issue [1] is seen primarily in terms of the application of military forces in order a specific aim, which may only in certain cases be humanitarian, to be achieved. However, the relevant non-military intervention, expressed in a variety of sanctions should, also be considered.

Sanctions are a tool of a diplomatic or economic character that seeks to induce changes in actions or policies that can be breaches of human rights, of international law, or policies which do not respect the rule of law or democratic principles.

International economic and political sanctions in the form of various embargoes were spread in the 1990s. They are an essential part of so called "non-military" intervention and have the purpose to force a conduct course, which includes a change of policy, to a country by prohibiting or limiting the relations regarding economics, army or politics of this country with other countries in the international community. Sanctions are punitive countermeasures

against acts, perceived as illegal, whether they are criminal, such as the alleged acts of aggression, or civil considered as breach of international obligations.

According to Chapter VII of the Charter of the United Nations, the Security Council may take enforcement measures in order to keep or restore international peace and security in the form of sanctions. The instrument of coercion is used in cases where diplomatic efforts have failed, with the aim of putting pressure on a country. In the 1990s sanctions were imposed on Iraq, the former Yugoslavia, Liberia, Rwanda, Somalia, Libya, Afghanistan, Haiti and others.[2]

Economic sanctions include trade relations restrictions and sometimes an embargo on import and export, shipping, cargo flight, investment and also confiscation of property of the country bearing embargo in another state. Sanctions concerned with politics are related to arms embargoes, refusal of training or military assistance, actions against illegal act being committed by state, restrictions on admission of listed

persons, freezing of assets belonging to listed persons or entities, etc.[3]

## **2. Major trends in the analysis of sanctions**

Three major trends in the analysis of the sanctions used and supported by the United Nations in the period of and after the Cold War can be outlined. The first one is related with the period between 1945 and 1990. During this period some individual countries and the United Nations take different combinations of unilateral or collective sanctions. Most clearly it can be observed during the process of decolonization [4] (Chapter XI - XIII of the United Nations Charter): 1) against Portugal concerning Angola and Mozambique before 1975; 2) during the announcement of the Unilateral Declaration of Independence of Rhodesia in 1965; 3) in connection with the illegal presence of South Africa in Namibia [5], including the period of apartheid (1975 - 1979).[6] Just in the clear cases it there was a possibility for the Security Council to decide upon the collective use of sanctions. Subsequently, the General Assembly passed a lot of "non-binding" resolutions imposing sanctions during the debates related to the decolonization process.

The second trend is related with the period after 1990s. There is an increasing use of unilateral or collective sanctions in the context of enforcement measures under the Chapter VII of the UN Charter. The consent with the sanctions regime is in many cases voluntary in the beginning to achieve an agreement. Later, as the case may be, the imposed sanctions may be compulsory according to Chapter VII.

Another (third) important point is the usage of sanctions as a means of intervention in support of democracy. This is by the UN and the Commonwealth as well as the European Union (EU), the Organisation of American States (OAS), including other regional organisations. Haiti's case is

significant, therefore, that OAS and the General Assembly condemned the military coup d'etat in 1991 which overthrew the government that was elected. Subsequently, the Security Council banned certain cargo and passenger flights to Haiti and limited the access of the political elite to the territories of the United Nations' Member States. The Security Council imposed an embargo on supplies of arms and oil of the National Union for the Total Independence of Angola (UNITA), militant organisation that fought with the government of Angola due to the failure of the peace deal signed in Lusaka (November, 1994).[7] The Economic Community of West African countries have also started "economic blockade" against the junta in Sierra Leone in 1997.

An interesting example is the intervention of the British Commonwealth. Under Harare Declaration [8] signed in 1991 it imposed economic and political sanctions against the military governments that in some way hinder the development of democracy or cause the overthrow of democratically elected governments in Fiji, Nigeria and Pakistan.

With regard to the sanctions undertaken it should be noted that the assessment of their influence and efficiency in relation to the purposes they were imposed for poses a serious difficulty.[9] Therefore the United Nations Security Council established a Sanctions Committee [10] whose aim is to ensure the effective implementation of the measures imposed. In this regard, the EU adopted a Regulation [11] connected with restrictive measures regarding the current state in the Central African Republic. The types of sanctions that Member States may establish and also are applicable to ensure their implementation are listed there. According to that Regulation the sanctions provided for have to be effective, proportionate and dissuasive.[12]

According to the UN Charter, the Security Council has the power to take decisions

which are binding on all member states of the Organisation concerning all restrictive measures necessary to keep or restore international peace and security where there is a threat to peace, violation of the peace or any act of aggression. In this regard, under Article 41 of the Charter such measures might include complete/partial interruption of economic relations, of rail, sea, air, postal, radio, telegraphic as well as other means of communication, including the severance of diplomatic relations.

Very often sanctions in the form of embargo, economic restrictions [13], etc. damage the economic and social welfare of the people as a whole than the political leadership against which the coercive measures have been imposed. What is particularly interesting in this context are so called "smart sanctions" [14] that target the ruling elite. They can be applied through measures such as freezing of foreign assets, a ban on the direct or indirect provision of economic resources and limiting access for travel in the countries imposing this sanction, such as the ban on senior officials to travel to EU countries and the USA. [15] Under certain conditions related to the provision of humanitarian aid, food and medical assistance to the civilian population in a particular country, some exceptions are possible, but only after a United Nations Security Council approval.

It should be noted that the notion of smart sanctions as an alternative to broad economic ones is comparatively modern. Chronologically reviewed, travel and asset restrictions have been imposed in the context of wider measures taken against certain leaders. In this regard, a survey of the sanctions applied during the 20th century was made by the Institute for International Economics (IIE), which showed that only in 20 of the cases smart sanctions were imposed (such as arms embargoes, travel and asset restrictions) beyond the overall embargo. [16] Even in these 20 cases (nine of which are in the

period after 1990) sanctions are directed towards individuals or groups and most often were imposed along with export or assistance restrictions. A good example of the above mentioned fact is North Korea. The UN Security Council sanctions were directed towards the head of the country Kim Chen Ir. Instead of imposing general sanctions the UN Security Council bans the selling of luxury goods to North Korea and freezes some assets abroad in response to nuclear tests conducted in the country in October 2006 (restored in 2007 as a part of the American carrot-and-stick diplomacy towards North Korea).

Another attempt for the implementation of smart sanctions is the UN Security Council list of measures adopted in March 2007 on the regime of the former Iranian President Mahmoud Ahmadinejad. [17] The measures taken are intended to strike Iranian rulers through restrictions on the oil and gas exports. To a considerable extent sanctions succeed in achieving this goal. In November 2013 a compromise in the nuclear dispute was achieved. An agreement was signed in Geneva under which Tehran should freeze part of its nuclear program and the West should ease the restrictions imposed. However, the results for the population are more severe than expected.

Consequences, negative for civilians rather than for the regime, suggest that economic sanctions and embargo are unlikely to be the preferred instrument for intervention in the future, although at the present moment they are imposed on the Russian Federation after the outbreak of the conflict in Ukraine and after the Crimea referendum. In this regard, former UN Secretary General Boutros-Ghali determined the sanctions as a special tool presented in the Supplement to an Agenda for Peace in 1995. [18] According to him, their imposition is a legitimate means of putting pressure on political leaders whose behavior is not likely to be affected by the plight of the

citizens. Furthermore, he noted that sanctions, as it has always been, have unintended or unwanted effects, as they cause greater suffering among vulnerable groups, can make the work of humanitarian agencies more complicated by denying them particular categories of supplies, can damage the productive capacity of the target state and could also create serious consequences for the relations with neighboring countries and trading partners. On the other hand, sanctions could cause backfire by provoking population rallying and support of leaders whose behavior the sanctions aim to change.

### **3. International criminal prosecutions**

International criminal prosecution could also be considered as a form of unarmed intervention. In the 1990s, almost half a century after the war crimes tribunals in Nuremberg and Tokyo after the Second World War, this type of sanction begins to apply again. Changes in the international environment also cause changes in international criminal law regarding this type of intervention. In fact, using this tool is important for humanitarian activities, which were planned to be undertaken.

Mass breaches of the international law in the former Yugoslavia and Rwanda provoke the Security Council to establish two international tribunals in order to prosecute those responsible for these violations. The two tribunals were created under Chapter VII of the UN Charter that describes the coercive measures and subsidiary bodies of the Security Council.

The Special Court for Sierra Leone was set up as an independent legal body in January 2000 under an agreement between the Government of Sierra Leone and the United Nations. It aims to pursue persons who bear the greatest responsibility for crimes against humanity, war crimes, and crimes against the laws of Sierra Leonean law committed in the country after 30<sup>th</sup> November, 1996.

The creation of special war crimes tribunals [19] for the former Yugoslavia (1993) as well as Rwanda (1994) is a main innovation. In spite of the initial skepticism and significant critics on the successful work of these bodies, a lot of senior officials were convicted there and also a progress has been made in clarifying various cases. Furthermore, they contribute to the development of international criminal jurisprudence. As a result of their activities it was made clear that there is a criminal responsibility for crimes of war in the internal armed conflicts as well as for the crimes against humanity after the end of the armed conflict.

Some scientists believe that there are significant gaps in the rules related to the Heads of State inviolability. They try to turn our attention to the rule, perceived until recently, which is: leading officials, which includes retired ones, cannot be tried in courts in a foreign country for acts committed in their own state in the period in which they hold the position. [20] In 1989 the former Panamanian General Manuel Noriega was caught and subsequently convicted by the United States, which can be considered as the first major crack in the international law on these matters. The House of Lords (United Kingdom Supreme Court after 30 July 2009), which acts as the highest court of the United Kingdom, in the third case against former Chilean dictator Augusto Pinochet [21], created a strong precedent related to cessation of the practice senior officials to be protected from charges of crimes committed during their rule, stating that he does not have immunity from arrest and judicial investigation.

The arrest and trial of the ex-President of Chad Hissène Habré in Senegal is a proof that this practice began to apply almost worldwide. Similar legal grounds were accepted in the practice of the Tribunal Arusha [22] who convicted the former Prime Minister Jean Kambanda of Rwanda

for genocide and crimes against humanity. Biljana Plavsic, ex-President of Republika Srpska, surrendered voluntarily to the Hague tribunal after an accusation of genocide and complicity in genocide in March 2001. The indictment for war crimes against the President of the Federal Republic of Yugoslavia Slobodan Milosevic on Kosovo is another precedent. International criminal prosecution is not directed only to heads of state. An interesting example is the trial against the former Rwanda Minister of Women's Development and Family Welfare Paulina Nyiramasuhuko, who has been sentenced to life imprisonment for genocide and crimes against humanity. She was the first woman convicted of genocide by the UN Tribunal in Rwanda after a 10-year judicial process. Moreover, in 2001 in Belgium there began a trial against two Rwandan Catholic nuns accused of complicity in genocide in the country in 1994. [23] The process was brought under a law allowing Belgian courts to judge every inhabitant of the country, who is accused of war crimes, regardless of where they are committed. Such examples raise the question of the establishment of a universal jurisdiction for grave violations of human rights. Non-interference in the internal affairs of other states is left behind in favor of the concept of universal humanitarian intervention or universal jurisdiction.

#### **4. Universal jurisdiction**

The concept of universal jurisdiction [24] is not a universally accepted idea. According to Henry Kissinger there is a strong possibility the International Criminal Court (ICC) to degenerate into "tyranny of judges". [25] In this sense, the representatives of African and Arab countries define the ICC as a court against their leaders. On behalf of the African countries at the initiative of Tanzania there began a discussion within the UN on the implementation of the principle of universal

jurisdiction. In this regard it could be concluded that the application of universal jurisdiction remains dependent in each case on the favorable political context.

The issue of the future framework of universal jurisdiction is the subject of a wide discussion in the Sixth Committee of the UN. The International Committee of the Red Cross also emphasizes the importance of universal jurisdiction to prevent and deter the most serious breaches of international humanitarian law.

It is therefore reasonable to draw a conclusion that the universal jurisdiction is not the only way to tackle with the impunity of international crimes, which is why it should not be considered in isolation. The idea that is receiving more and more support is that the universal jurisdiction should be exercised as a last measure when courts that can take action based on the territorial principle or active or passive personal responsibility have no capacity to do so or decide not to do so for some other reason.

#### **5. Conclusion**

It should be noted that the threat to international peace and security is becoming increasingly widespread, which requires the emergence of clearer grounds for an international response for humanitarian reasons.

Attention should always be increased during the discussions devoted to the usage of force in the international relations.

The new realities related to the issues of international peace and security require the creation of clear criteria for the conduction of armed interventions in conformity with the international law and the UN Charter.

The sanctions imposed by the UN Security Council till now as a whole have not achieved their goals. Their failure is not due to their own shortcomings as a tool of impact but to a lack of consistency in their implementation. The imposition of sanctions takes place despite the criticism of most politicians and researchers about

their political inefficiency and humanitarian consequences. Discussions on so-called intelligent sanctions, intended to exert pressure on particular leaders and ruling forces, rather than on the general public,

and the preventive use of force continue. Issues related to the legality of humanitarian intervention are relevant to non-military intervention.

### References

- [1] Стоилова, В., Хуманитарна интервенция: право на интервенция или практика, Сборник от Годишна научна конференция „Европейското бъдеще на България. Правни аспекти”, София, 2013 г.
- [2] Белова, Г., Конфликтите – международноправни аспекти, Сиела, С., 2007, стр. 79; *See*: United Nations, Office of the Spokesman for the Secretary-General. "Use of Sanctions under Chapter VII of the UN Charter"
- [3] Александров, Е., Речник по международни отношения, Тракия-М, С., 2001, стр. 356
- [4] UN Declaration on the Granting of Independence to Colonial Countries and Peoples. Adopted by General Assembly resolution 1514 (XV) of 14 December 1960
- [5] International Court of Justice Pleadings, Oral arguments, Documents legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) Volume 1 Request for Advisory Opinion, Documents, Written Statements, The Hague, 1971 <http://www.icj-cij.org/docket/files/53/9361.pdf>
- [6] United Nations General Assembly Resolution 204 (XX) of 11 November 1965; UN Security Council, Security Council resolution 216 (1965) [Southern Rhodesia], 12 November 1965, S/RES/216 (1965)
- [7] The first United Nations Angola Verification Mission (UNAVEM) was established in 1988 and was transformed in 1991 into UNAVEM-2
- [8] The Harare Commonwealth Declaration, 1991 (Issued by Heads of Government in Harare, Zimbabwe). *See*: <http://thecommonwealth.org/sites/default/files/history-items/documents/Harare%20Commonwealth%20Declaration%201991.pdf>
- [9] Simons, G. L., Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?, Pluto Press, London, 1999; *See*: Gary Clyde Hufbauer, Jeffrey J. Schott, Kimberly Ann Elliott, Barbara Oegg, Economic Sanctions Reconsidered, 3d ed., PPeter G. Peterson Institute for International Economic, 2007
- [10] The Security Council Sanctions Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (CAR) was created on 5 December 2013 to oversee the relevant sanctions measure (arms embargo) and to undertake the tasks set out by the Security Council in paragraph 57 of the same resolution. *See*: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2127%282013%29](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127%282013%29)
- [11] Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic. *See*: <http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=CELEX:32014R0224>
- [12] In recent years, the EU has often imposed sanctions (restrictive measures) either on its own or in compliance with binding UN Security Council resolutions. Restrictive measures imposed by the EU may target third country governments or non-state entities and individuals (such as terrorist groups and terrorists). These may include arms embargoes, other specific or general trade restrictions (import and export bans), financial restrictions, access restrictions (visas or travel bans) or other appropriate measures.

- [13] Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions Results of the 'Bonn-Berlin Process 'Bonn International Center for Conversion in cooperation with the Auswärtiges Amt (German Foreign Office) and the United Nations Secretariat, Bonn 2001
- [14] Smart sanctions are a new scheme for the implementation of an economic embargo introduced by the United States in 2001 and directed against the regime of Saddam Hussein. They were legalized on May 14, 2002, when Iraq officially became part of the "axis of evil" announced by George Bush. *See*: Kostov, V., The Wars of Saddam, Trud, S., 2010, p. 257
- [15] Eyler, R., Economic Sanctions. International Policy and Political Economy at Work, Palgrave Macmillan, 2007, pp. 60 – 62
- [16] Kerr, W. A., Gaisford, J. D., Handbook on International Trade Policy, Edward Elgar Publishing, 2007, p. 516; *See*: Hufbauer, G. C., Oegg, B., Targeted Sanctions: A Policy Alternative? Paper for a symposium on "Sanctions Reform? Evaluating the Economic Weapon in Asia and the World": *Available* at: <https://piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative>
- [17] Gary Clyde Hufbauer, Jeffrey J. Schott, Kimberly Ann Elliott, Barbara Oegg, Economic Sanctions Reconsidered, 3d ed., Peter G. Peterson, Institute for International Economics, Washington, 2007, pp. 138 - 139
- [18] Boutros Boutros-Ghali, Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, 3.01.1995, paras. 66–76. *See*: [www.un.org/documents/ga/docs/50/plenary/a50-60.htm](http://www.un.org/documents/ga/docs/50/plenary/a50-60.htm)
- [19] The term "war crimes" and its criminal-law characteristics are regulated in the Statute of the International Military Court in Nuremberg. By virtue of this Statute, war crimes are: "a violation of laws or customs of war". These include: murders and torture of prisoners of war or hostages; Pillage of public or private property, etc.
- [20] United Nations Convention on Jurisdictional Immunities of States and Their Property General Assembly resolution 59/38 of 2 December 2004. *See*: [http://legal.un.org/ilc/texts/instruments/english/conventions/4\\_1\\_2004\\_resolution.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004_resolution.pdf)
- [21] Geoffrey Robertson, Crimes against Humanity: The Struggle for Global Justice (London: Penguin, 1999), p. 398.
- [22] UN Security Council, Security Council resolution 955 (1994) [Establishment of the International Criminal Tribunal for Rwanda], 8 November 1994, S/RES/955 (1994), available at: <http://www.refworld.org/docid/3b00f2742c.html> [accessed 21 April 2017]
- [23] Max L. Rettig, Transnational Trials as Transitional Justice: Lessons from the Trial of Two Rwandan Nuns in Belgium, 11 Wash. U. GlobalStud. L. Rev. 365 (2012)
- [24] Каменова, Ц., Универсална юрисдикция. Сравнително правно изследване, Научни трудове на ИПН, том IV, 2009 г.; *See*: Каменова, Ц., Относно Резолюцията за универсална юрисдикция на Института по международно право, Сп. „Правна мисъл”, бр. 3/2009 г., с. 54 – 62.
- [25] Solis, Gary D., The Law of Armed Conflict: International Humanitarian Law in War, Cambridge University Press, 2010, pp. 306; *See*: Henry A. Kissinger, "The Pitfalls of Universal Jurisdiction," Foreign Affairs 80, no. 4 (July-August 2001), pp. 86–87.