Assessment of legal aspects of sanctions by America against officials and political personalities of the Islamic Republic of Iran

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Abstract

The option of sanction is used as a mechanism and tool to prosecute foreign policy goals. Sanction is enforced usually by countries with stable structure within international system. According to current signs and evidences of diplomatic behavior of stable countries, imposition of sanction is the more effective option than the other punitive options to prosecute foreign policy goals. The mentioned signs can be observed in foreign policies of powerful countries such as America against Islamic Republic of Iran.

In one type of sanction, the focus is on legal persons, groups and personalities instead of governments that are traditional targets in sanctions. Although these sanctions are enforced due to the international crimes and violations, but they might also be along with violation of some principles of international law.

Some of Iranian natural persons have been sanctioned due to various reasons such as their involvement in nuclear program and human rights violations while it can be against some principles including the principle of inviolability of state property, the principle of diplomatic and consular inviolability, host government commitments under the Headquarters Agreement, the right of movement, the right to private property and the right to access to justice. National and regional judicial procedure indicates that these principles might lead to discredit of UN Security Council resolutions and any option considered by Sanctions Committee.

Keywords: sanction, smart sanction, sanctions against individuals (natural persons), sanctions against Iranian nationals, international law.
Introduction

Economic sanctions are more appropriate, intangible and cheapest measurement than military action to apply the considered policy or goal. United State of America has been the beginner of economic sanction around the world using this policy to achieve its goals. Some of sanctions would bring high costs for people of country under the sanction. However, sanctions might be desired if they have basic interests of strategy.

Sanctions are usually applied along with other measurements such as military threat and political isolation and it might last for several years. The important political and economic changes occur independently during the sanction time so that the consequences are not simple separable from the effect of economic sanction. Some of sanctions would bring high costs for people of country under the sanction. However, sanctions might be desired if they have basic interests of strategy preventing from high costs.

Some of Iranian natural persons have been sanctioned due to various reasons such as their involvement in nuclear program and human rights violations while it can be against some principles including the principle of inviolability of public property, the principle of diplomatic and consular inviolability, host government commitments under the Headquarters Agreement, the right of movement, the right to private property and the right to access to justice. National and regional judicial procedure indicates that these principles might lead to discredit of UN Security Council resolutions and any option considered by Sanctions Committee.

Effects of sanctions on human rights
The effect of sanction on right to life

Right to life is the most important right that is the base of other rights in accordance with Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the other international documents. The negative effects of anti-Iranian sanctions of Security Council against the right to life of Iranian citizen are undeniable because of poverty, lack of social services and shortage of medicine that has increased mortality rate due to sanctions. According to reports, tens of Iranian people have dead due to deficit of medicine and expansion of poverty.

According to the Article 4 clause 1 of Covenant on Civil and Political Rights, in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. However, the derogation from some of the mentioned rights of Covenant is not included in some Articles in accordance with Clause 2 of the mentioned Article; these cases include the fundamental rights that are not deniable and States are not permitted violating them even if there is a situation threatening the existence of nation. Some rights such as
right to life and judicial guarantees should be respected in any situation; on the other hand, prohibition of torture and slavery and civil war is a clear sample of a situation in which, existence of the nation is threatened. Therefore, it is not permitted to violate fundamental rights such as right to life in order to protect mental and physical aspects of persons.

Existence of dual-purpose Articles listed in sanctions of Security Council have deprived many of Iranian citizens of right to use medical equipment and causing them to death. The negative economic effects of sanctions have increased the price of food staff and inflation rate and decreased access to food that is a vital need of human being.

The effect of sanction on living standards

According to Universal Declaration of Human Rights every person has right to have a standard level of life providing health and welfare of him and his family in terms of food, housing, medical care and required services. The imposed sanctions have led to low economic yield, income level, and social gap through negative effects on production, employment and national income so that the living standards of Iranian citizens have decreased.

According to the Resolution 1929 of Security Council, the enforced restrictions in field of financial and insurance services against shipping and bank system have led to an increase in transit prices and cost of products as well as high inflation rate and high unemployment rate decreasing living standards.

The effect of sanction on right to health

Right to health and access to medical facilities and services is a right considered in documents of human right.

Right to health is a vital human right recognized by international law of human rights. Governments are responsible for their nationals through a commitment to meet these needs and rights. Although governments are not responsible for other citizens of other states and countries, they do not allow violating their rights through their measurements. In addition to various negative effects on policies and macro governmental plans, sanctions can directly and indirectly effect on the rights of Iranian citizens to health and this issue is against universal and general principles and values of human rights. The right to health has been indexed in this study and the effect of enforced sanctions on each of these indices has been described.

Sanctions would destroy the required infrastructures to provide medical and health services, would prevent from import of required medicine for incurable diseases so that mortality rate increases. Moreover, increasing price of food staff due to the hard situations of sanctions has led to reduction inper capita consumption of meat, dairy products and other food staff as well as

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1 Momtaz, J., Ranjbarian, A. H., 2013, international humanitarian law, MIZAN Pub., P. 62
2 Al Kajbaf, H., Ansarian, M., 2014, the impact of unilateral and multilateral sanctions on Iran from the perspective of the right to health of citizens, Journal of Medical Law, P. 11
malnutrition; therefore, the negative effects of these factors on health of society can be seen at long term.

**The effect of sanction on education**

Covenant on economic, social and cultural rights has recognized the right of every person to access to education. According to Resolution 1737 of Security Council, Iranian nationals are not allowed educating in relevant majors to nuclear matters. This action would transfer sanctions to Iranian Citizens who are not interfering with political issues of Iranian government. For instance, government of Norway has prevented some Iranian students from educating in several technical majors in Norwegian universities complying with Security Council sanctions.

It should be mentioned that Iran has been asked to stop research and development activities related to nuclear science in accordance with Resolution 1803 of Security Council of United Nation Organization while this Clause violates the right of development of nations.

**The effect of sanction on right to legitimate defense**

According to Article 51 of Charter, right to legitimate defense is an inherent right with a superior value within Common International Law. It seems that listing conventional weapons (non-nuclear) in sanctions of Security Council against Iran violates this inherent right to defense the country so that military force of Iran might be weaken through vulnerability toward possible future attacks.

**United States sanctions agreed with erga omnes (inclusive) obligations of US**

The other proposed reason to opponents of sanction is that originated sanctions from Kennedy D'Amato Act are not against US obligations adopted from universal conventions. In this step, proponents of sanctions point to obligations of World Trade Organization (WTO) because this organization would ban countries from interruption of commercial transactions. It should be mentioned that international trade law has three main branches including products transfer, capital transfer and labor force transfer. The relevant regulations to product transfer such as commercial transactions, Tariffs of countries on products, export, import, Most-Favored clause etc. have been considered in Statute of WTO. In fact, WTO does not consider the matter of capital transfer until countries have commitment in this field.

**No disagreement between the principle of trade freedom and general principles of international law**

Proponents of sanctions believe that principle of trade freedom is not adopted from behavior and acceptance of followers of international law but a principle originated from similar behavior of businesspersons and commercial companies in different countries. Therefore, this principle is not considered as a principle of international law because it is a principle of nationalities and transnational companies not related to governing countries. Hence, the principle of “trade freedom” is a principle of transnational law not international law; hence, it is not possible to force
countries follow the principle that is not related to the function of government. A principle can be international if it is coordinated with the international law in terms of the subject and nature of that principle. Accordingly, it seems that this principle is not able to enter to international law.

**Arguments of opponents of US unilateral sanctions against Iran**

**Conflict between sanctioning of Iranian individuals and principle of non-interference**

International Court of Justice has confirmed this principle in case of paramilitary activities against Nicaragua “in accordance with a publicly accepted rule, this principle would prevent every country or group from direct or indirect interfering with domestic or foreign issues of other governments”.

According to International Court of Justice, domestic jurisdiction of countries is accepted if they are not entered into international commitments of them. In other words, countries can make a part of issues under their jurisdiction coordinated with international discipline using different legal mechanisms so that the mentioned issue can no longer considered as domestic issue or under an exclusive jurisdiction.

The principle of non-interference indicates a legal consensus between states confirmed by them. The mentioned principle includes in other treaties such as Article 15 of the Charter of the Organization of American States (1948), Article 8 of the Charter of the Arab League (1945) and Article 3 of the African Unity Charter (1963). According to the vote of International Court of Justice, this principle has several aspects. The Court has emphasized on some aspects of this principle such as being direct or indirect, inference with domestic or foreign issues of the country and illegibility of governments and dependent groups. The mentioned issue indicates the importance of this matter as well as accuracy of the Court\(^3\).

According to the mentioned points about US sanction against Iran, it should be stated that those sanctions that are out of the frame of Resolutions 1737 and 1747 would lead to indirect inference of America with domestic and foreign issues of Iran since activities of a military institute (Sepah) and banks are the inseparable part of domestic affairs.

Not only Iran has no participation with other countries or organizations in terms of adjustment of its financial and military relationships through international mechanisms of authority, but also many treaties and resolutions have emphasized on this authority and freedom.

For instance, United Nations Conference on Trade and Development (UNCTAD) issued a Resolution under the title of “rejection of coercive economic measures” pointing that countries have no right to enforce limitation, blocking or prohibiting transactions and or other economic punishments as a form of political force effecting social, political and economic development of countries. In addition, Article 1 of Covenant on cultural, social and economic rights considers such interferences as violation of principle of “right to access to natural resources” and states that all countries can freely consume their natural resources and wealth to achieve their goals without

\(^3\)Torabi, Y., 2003, investigation of economic and military relations between Iran and the US, Tehran, Orooj Pub., first edition, P. 121
harming commitments originated from economic cooperation based on common interests and international law.

It should be mentioned that imposed pressures by America against military force and banks of Iran would interfere with both domestic and foreign affairs of the country in accordance with said and unsaid goals. America is about to increase economic problems and destroy the regime causing many problems for Iran in terms of international trade relationships. The mentioned problems include high costs of military equipment and change dollar to other currencies, relevant costs to mediators, and incentive policies for foreign investment that impose extra costs for Iran compare to the time of sanction lifting.

Hence, Iran has opened a lawsuit against America in Court of arbitration between Iran and America in the past that all the documents of Iran are based on the principle of non-interference while there is no doubt of a formed legal belief in this field in accordance with different votes and resolutions. This vote is prosecuting now.

Sanctioning the officials of government instead of responsible government

Many of individuals who are sanctioned by other organizations or countries are official authorities. In some cases, this sanction includes violations of some principles of public international law.

The mismatch between sanction against Iranian individuals and principle of inviolability of state properties

Some of sanctions against natural persons are enforced with the aim of seizure of state assets and properties. For instance, it has been ordered by resolutions of Security Council against Iran to seize financial accounts and other economic sources under the authority of officials. The difference between terms of “sanction” and “seizure” should be considered. Sanction is violation of ownership while seizure is related to dispossession of government of individuals. Both forms of seizure and sanction of state properties are against the principle of inviolability of state properties.

According to Article 103 of Charter, it seems that violation of principle of inviolability of state properties by Security Council is permitted in frame of seventh chapter of United Nations Charter. In fact, Article 42 has clearly mentioned the authority of Security Council to enforce sanctions so that any other principle of international law will be less preferred. Although it seems that jurisdiction of Security Council in reliance of seventh chapter of UN Charter is related to respecting mandatory rules and principles of UN Charter, but the principle of inviolability of state properties is not included in mandatory rules and principles of UN Charter. However, it can be stated that the principle of inviolability of state properties is out of the scope of obligations of

\[4\text{In case of Bosnia, Judge Lauterpacht stated in his separate idea about Articol 103 of Chater “Article 103 might help Security Council in cases that include conflicts between decisions and executive commitments of a treaty while it will not help to decide between decisions and mandatory rules”}.\]
resolutions of Security Council if this principle is considered as a principle of common international law because of Article 103 of UN Charter that only points to the priority of adopted obligations from Charter to other contractual obligations as the International Law Commission has pointed to the probability of conventionality of other forms of inviolability (except diplomatic inviolability) when describing the Article 3 of the draft of Convention on jurisdictional immunity of government and its property dated 19915.

Unilateral sanction on state properties is apparently against the regulations of Article 19 of draft of this Convention in which, seizure of state properties is banned. The mentioned examples of state properties include some cases that are not under the authority of individuals. These cases include bank properties for diplomatic affairs, assets of central bank, military assets and cultural assets. However, bank properties for diplomatic affairs and military properties can be owned by a natural person with a governmental post. For instance, some of the financial sanctions by America against commanders of Islamic Iranian Revolutionary Guards have been imposed with the aim of preventing from military transactions that are in conflict with Clause 2 of Article 19. However, this convention has not been enforceable and signed by many of states. On the other hand, some countries such as US, Canada, England and Austria has approved a law under the title of immunity of foreign states in which, jurisdiction over properties of foreign states is banned6. However, government of United States has introduced organizations and people who are proponents of terrorism as exceptions in terms of judicial immunity. Anyway, financial sanction against some Iranian officials is not based on their support of international terrorism but based on their nuclear activities that are not justifiable in frame of domestic law of America.

In traditional international law, sanction was as the guarantee for implementation of international responsibility against government and prosecution of international conflicts between individuals was just under the jurisdiction of international criminal courts. It is for first time that Iranian individuals are punished in a place out of international criminal courts within the current generation of sanctions against Iranian individual. Sanction against Iranian individuals imposed by UN Organization or state parties of this organization is a kind of international implementation guarantee against Iranian individuals directly enforced by these political institutes. This trend can weaken the situation of judicial institutes such as national or international courts established to prosecute international crimes of individuals so that this trend is not legitimate within international praxis and Vienna Convention 1961. The accuracy of the hypothesis of this study will be accepted through assessment of Convention and other international documents.

Sanction against Iranian individuals was first enforced with the aim of fighting against terrorism but many of officials of Islamic republic of Iran have been involved in these sanctions because of their activities of peaceful nuclear technology or violation of human rights. However, sanctioning of individuals due to the violation of a part of international law is not a permission to violate the

5Ziaee, S. Y., Mohammadi Motlagh, A., former, P. 91
6An international convention has been forming during recent years in which, diplomatic and consular inviolability in relation with international crime does not exist. Hence, seizure of properties and sanction against criminals of international terrorism is implemented in accordance with this trend. Of course, there is disagreement on this issue whether international terrorism is an international crime or not.
other part of international law. However, current authors have no doubt about restrictions of Security Council in field of mandatory rules (such as diplomatic immunity) and goals of Charter of UN (such as respect for human rights). It should be considered that objection against implementation of these sanctions in regional and national institutes on human rights such as European Court on human rights and European Court of Justice will be possible for those who have directly suffered from decisions made by state parties.

Conclusion

Changing unilateral economic sanctions of America to multilateral sanctions of UN Organization has made the issue important in terms of political, diplomacy and economic aspects so that it would be important to consider seriously the economic effects of the issue in order to face it. In traditional international law, sanction was as the guarantee for implementation of international responsibility against government and prosecution of international conflicts between individuals was just under the jurisdiction of international criminal courts. It is for first time that Iranian individuals are punished in a place out of international criminal courts within the current generation of sanctions against Iranian individual. Sanction against Iranian individuals imposed by UN Organization or state parties of this organization is a kind of international implementation guarantee against Iranian individuals directly enforced by these political institutes. This trend can weaken the situation of judicial institutes such as national or international courts established to prosecute international crimes of individuals so that this trend is not legitimate within international praxis and Vienna Convention 1961. The accuracy of the hypothesis of this study will be accepted through assessment of Convention and other international documents.

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