

Unilateral Coercive Measures: A Guarantee for or Violation of Human Rights



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Abstract

The question of this paper is “are unilateral coercive measures taken to guarantee implementation of human rights, when peremptory norms of human rights are violated, a real guarantee for the implementation of human rights or amount to violation of those rights?”

To answer this question, the legal fundaments of unilateral coercive measures as well as their impact on countries have been studied on the basis of the United Nations’ documents.

Of course, use of unilateral coercive measures or sanctions as a guarantee for the implementation of human rights has its roots in international law, but study of the UN documents on the effect of these sanctions on human rights violations will prove their inefficiency as a tool.

Therefore, one can conclude that unilateral coercive measures, one of the most important of which is imposition of sanctions, have not only failed to promote human rights through forcing countries to observe those rights, but should be considered as a means of violating human rights. Subsequently, there seems to be a need to review use of such unilateral coercive measures as a tool to guarantee implementation of human rights within framework of international law.

Human rights supervisory mechanisms

At the present time, a very complicated and huge mechanism is at work at international level to supervise implementation of human rights. It aims to assess situation of human rights in various countries and to evaluate supervision on human rights and how human rights grievances are being dealt with. This mechanism takes advantage of a 70-year legacy since the Charter of the United Nations was adopted, which includes the United Nations’ supervisory mechanisms, regional human rights mechanisms, and the mechanism of unilateral measures taken by countries.

UN supervisory mechanisms

1. Mechanisms based on the Charter of the United Nations

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taking into account that the UN is the main body supervising implementation of human rights and its output, including resolutions, decisions, and recommendations, play a part in facilitating implementation of human rights.

The General Assembly and its Third Committee, the UN Economic and Social Council, the Human Rights Council, the Commission on the Status of Women (CSW), and the Office of the UN High Commissioner for Human Rights are among major UN bodies supervising human rights. Also, a number of human rights treaties include provisions according to which any dispute between two parties can be

heard at the International Court of Justice. Some of those treaties include the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention Relating to the Status of Refugees, and the Convention on the Political Rights of Women.

2. Treaty-based mechanisms

On the whole, there are 18 human rights documents in this regard, including the Universal Declaration of Human Rights, two international covenants, the Convention on the Prevention and Punishment of the Crime of Genocide, as well as 14 treaties on the rights of refugees, women, children, nationality, slavery, torture, racial discrimination, and so forth. Supervision over and follow-up on these human rights treaties have been entrusted to special committees, whose experts are chosen by state members of these documents or by the UN Economic and Social Council. This mechanism helps guarantee implementation of human rights by obliging member states to present reports on the fulfillment of their commitments and take part in the committee meetings, while being accountable with regard to their human rights obligations.

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An example is the UN Human Rights Committee, which supervises correct implementation of the two international covenants on human rights. Some of the Committee's duties are preparing a report and sending it to the General Assembly through the UN Economic and Social Council and also to hear

complaints filed by people and ask the respective governments to answer.

Mechanism for country measures Reciprocal unilateral measures by countries

Reciprocal measures are among the most important tools made available to governments by international law in order to support human rights.

Such measures are equally available to all governments regardless of whether they are or are not members of a specific organization or treaty and can be used to protect those human rights commitments, which have turned into peremptory norms of international law.



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Grounds for using reciprocal unilateral measures

A review of treaty-based and other mechanisms devised to guarantee human rights implementation will reveal extensive limitations that are intrinsic to these tools for guaranteeing implementation of human rights.

Non-treaty-based mechanisms, which are based on the Charter of the United Nations, are also bugged with shortcomings for guaranteeing implementation of human rights. They suffer from major limitations, because they are restricted to recommendations and it is almost impossible to take effective measures through these mechanisms due to conventional political exchanges. On the other hand, treaty-based mechanisms, including committees that supervise a specific treaty, are only limited to that treaty and can supervise implementation of commitments enshrined in the treaty only when the state in question is a member to the treaty.

The absence of guarantees for the implementation of human rights commitments and weakness of the existing mechanisms – both treaty-based and others – for supporting human rights, have tempted international authorities to find guarantees within the common international law. An example of those guarantees is reciprocal measures taken by governments in the face of violation of peremptory and universal norms of human rights.

Legal basis for reciprocal unilateral measures in international law

The International Court of Justice first recognized universal commitments in the case of Barcelona Traction. According to the court's verdict in that case, commitments that exist with regard to basic human rights are among the most fundamental examples of universal commitments. Of course, they cannot be categorically considered as part of legal norms, but one can say

that these commitments aim to support the interests of the international community, both when a state has been harmed and when no state has been harmed. As a result, they serve as a guarantee for the implementation of human rights. According to the aforesaid verdict, unlike commitments that are related to a specific harmed state, universal commitments are related to the entire international community. Therefore, all states are entitled to them with no need to physical proof. According to the court's verdict in that case, human rights norms are part of such commitments.

Peremptory norms

Peremptory norms are those norms of international law, which cannot be violated under any circumstances. They can overrule those norms of international law, which are not peremptory or are in conflict with them. On the other hand, erga omnes are those norms, which if violated, everybody will have the right to take legal action. This right applies to all states that are subject to those norms.

Implementation of international responsibility of states through recourse to reciprocal unilateral measures is possible when the state that plans to use such measures has the right to raise the issue on the basis of the responsibility of the state that has violated its commitment. The state in question must also prove that it has been harmed by the action of the latter state, which has violated its commitment.

After the International Law Commission adopted its plan on the international responsibility of states in 2001, these complexities were somehow reduced. According to that plan, a state found in violation of international law shoulders civic responsibility and must make up for the damage done to other states or their nationals.

When it comes to international responsibility, the International Law Commission has gone beyond reciprocity enshrined in international law by differentiating between the state that has been directly harmed and the third state. The third state is a state, which has not been directly harmed by a human rights violation, but is still a stakeholder due to the importance of those norms, which have been violated. Such violations are usually committed with regard to human rights norms.

Meanwhile, based on the verdicts of the International Court of Justice and opinion of the International Law Commission in its 2001 plan, the approach taken by countries to reciprocal unilateral measures indicates that a customary law has been created in this regard.

Incompatibility of unilateral sanctions with human rights ¹

Unilateral economic sanctions, including unilateral sanctions imposed by the United States against Iran, are at odds with the first generation of human rights, that is, civil and political rights, because the right to free trade is among civil rights of humans. Unilateral sanctions are also incompatible

with the second generation of human rights, that is, economic, social and cultural rights. This is true because principal goals of these rights include promotion of economic, cultural and social relations; equitable access to job opportunities; and advancement of science and technology. Unilateral sanctions are incompatible with the third generation of human rights as well, because they violate the right to peace, the right to self-determination and the right to development as they are usually imposed in line with political and foreign policy goals of sanctioning country.

The right to peace

Unilateral sanctions take aim at a state and its policies, especially economic policies, and as such, pose a threat to peace. Threat and pressure from a state against another state can be used as a pretext to wage war.

The right to self-determination

Paragraphs 1 and 3, Article 21 of the Universal Declaration of Human Rights have specified that the “will of the people shall be the basis of the authority of government” and the right to self-determination. The Charter of the United Nations, in Paragraph 2 of its Article 1, has also said that development of friendly relations among nations should be based on respect for the principle of equal rights and self-determination of peoples. Therefore, unilateral sanctions against a country’s state institutions outside the framework of the United Nations Security Council, which is responsible for safeguarding global peace and security, would be incompatible with “self-determination of peoples” as is enshrined in the Charter of the United Nations.

The right to economic activity

Paragraph 1, Article 23, and Paragraph 1, Article 25 of the Universal Declaration of Human Rights assert that “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,” and “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.” In addition, articles 7, 11, 12, 13, 14, 15, and 18 of the International Covenant on Economic, Social and Cultural Rights have described “the enjoyment of just and favorable conditions of work” as a requisite for the realization of the right to work.

The right to development

Unilateral sanctions and unilateral coercive measures are totally incompatible with the right of nations to development. For example, the first seven articles of the Universal Declaration of Human Rights clearly show why unilateral sanctions are incompatible with the right to development.

In general, violation of human rights as a result of unilateral sanctions can

be viewed from two angles:

1. Impact of unilateral sanctions on nations

According to information included in various reports, including reports by the UN Special Rapporteur on unilateral coercive measures, innocent people living under sanctioned governments suffer the most from unnecessary bans, which are not even aimed at the target state. ²

In many cases, mounting pressure on government and other officials to make them change their behavior is mentioned as the main goal of sanctions, but in practice, the citizens and civilians bear the brunt of sanctions and have no way to ask for remuneration for the damaged done to them.

For example, with regard to US sanctions against Iran, although the United

States of America and the European Union claim that the sanctions do not apply to humanitarian items, in actual fact they have deeply affected the delivery and availability of medical supplies. The import of medicines containing antibiotics (of types not produced inside the country) has decreased by 20.7 per cent, and prices have increased by more than 300 per cent. The estimated 20,000 persons suffering from thalassaemia in the country receive only a few days of their monthly medicinal needs. Survivors of chemical weapons used during the war with Iraq in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers,

similarly suffer from a shortage or lack of medical supplies. ³

According to a non-profit organization based in the United States, smart sanctions imposed on the banking, gas and insurance sectors have wreaked havoc with the lives of many Iranian citizens, as price hikes have led to the high cost of food (increases by 1,500 per cent in the period 2010–2012). Besides strengthening the black cash economy and increasing criminalization, women's access to higher education has decreased. Women are being pushed out of the job market. Furthermore, the sanctions have triggered a collapse in industry, skyrocketing inflation and massive unemployment. The country's middle class has disappeared, and even access to food and medicine has been compromised. ⁴

Although such measures may be selective and to a large extent affected by unilateral interests of governments or may even be the result of double standards that the sanctioning government applies to human rights, nobody can deny that this course of action has become prevalent in international law.

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Another point is that as put by economists, foreign trade plays an important role in any country's economy, both with regard to imports and exports and with respect to banking and financial services. However, a large part of industries in countries exposed to sanctions are dependent on raw materials, parts and equipment, and rapid and efficient banking relations.⁵ Therefore, sanctions will inevitably lead to economic recession in any country on which they are imposed.⁶

In other cases, unilateral measures have violated financial and economic rights of people in a country and have practically made way for the sanctioning country to seize property and assets of another country. Such assets may sometimes even be among historical heritage of that nation.

Therefore, in many cases, unilateral sanctions not only target economy of sanctioned countries in general, but are also imposed for very hostile reasons. For example, heavy punishments considered for companies that breach unilateral sanctions cause such a fear among international trade community that many companies avoid doing trade with the sanctioned country even with regard to those goods, which are not covered by sanctions and are even essential for people in the sanctioned country.

In other words, such punishments are not simply applied to companies that support those governments which are subject to sanctions, and a large part of these strict measures are not even related to worrisome security issues. This is true because sometimes institutions in the sanctioning country impose punishments on companies simply for unintentional violation of sanctions when they do small and daily transactions with the sanctioned country.

¶. Governments pursue political goals through sanctions instead of guaranteeing human rights

Some sanctioning governments simply hide their political goals under the cover of such terms as international concerns, threats against human rights and international security. This causes doubts about goodwill of those governments, taking into account that goodwill is one of the most important principles of international law.

Therefore, there is serious need to explore real intentions of sanctioning governments and adopt solutions to reduce destructive impact of sanctions on ordinary people. This goal can be achieved through attention to international regulations related to unilateral coercive measures.

Conclusion

Unlike domestic laws, there have never been powerful guarantees for the implementation of international laws and this is why they have been always open to criticism. The same is true about human rights supervisory mechanisms, both those mechanisms, which are based on the Charter of the United Nations, and those, which are based on treaties. In both cases they are marked with many shortcomings, including absence of effective guarantees for their implementation. This setback has left governments in charge of

implementing international law. Therefore, in those cases when dispute settlement mechanisms, both international and intergovernmental one, are insufficient, the governments are in charge to decide when and how to deal with human rights violations. Reciprocal measures are among major tools used by governments under such conditions to deal with the violating government and forcing it to comply with human rights norms and make up for any possible losses.

A very important point here is that although reciprocal unilateral measures, of which sanctions are a prominent example, have been designed to guarantee implementation of human rights, they themselves lead to violation of human rights. Of course, it must be admitted that regulating reciprocal measures through adoption of UN resolutions on reciprocal measures taken by governments, will be an important step toward restricting the scope of such measures and preventing their abuse by governments.

Sources

١. Mir-Abbasi, Seyyed Baqer; Mir-Abbasi, Razi, 2017, The Global System for Assessment and Support of Human Rights; Jangal Press
٢. Anabestani, Abolhassan, 2016, Economic sanctions and Basic Human Rights, Institute for Legal Research and Studies
٣. Golshanpazhouh, Mahmoud Reza, 2008, A Guide to Human rights at International Organizations; Abrar Moaser Tehran International Studies and Research Institute
٤. Abdollahi, Mohsen, Roshanfekar, Parisa and Dabiri, Zahra, Fall 2015 & Winter 2016, Efficiency of Reciprocal Measures as a Guarantee for Implementation of Human Rights; International Law Magazine; No. 53
٥. Nowrouzi, Nour-Mohammad, Hosseinzadeh, Hossein, Mo'meni, Mohammad Ali, 2013, Exploring US Unilateral Economic Sanctions against Iran from the Viewpoint of the Universal Declaration of Human Rights; International Conference on Economy under Sanctions Conditions
٦. Mehrpour, Hossein, Winter 2010, International Journal on Foreign Relations, 1st year, No. 4
٧. Lee J. Alston, Edwyna Harris, Bernardo Mueller, (June 2012), The Development of Property Rights on Frontiers: Endowments, Norms and Politics, Forthcoming Journal of Economic History
٨. Eric A. Posner, (2009), Erga Omnes Norms, Institutionalization and Constitutionalism in International Law, Journal of Institutional and Theoretical Economics, JITE, 165.
٩. Lagerwall, Anne, 2017, Jus Cogens, Oxford Bibliographies

١ - es-and-human-rights.pdf

٢ - ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_27_L2.doc

4 -International Civil Society Network, "What the Women Say: Killing Them Softly: the Stark Impact of Sanctions on the Lives of Ordinary Iranians", Brief 3, July 2012.

٥ - <https://www.criticalthreats.org/analysis/sanctions-on-iran-reactions-and-impact>

٦ - <http://www.worldbank.org/en/country/iran/publication/lifting-economic-sanctions-on-iran>

٧ - <https://www.cfr.org/interview/how-sanctions-affect-irans-economy>