Tailored Sanctions in International Law

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Abstract

Tailored sanctions involves a set of sanctions that are related to the manufactured goods or services and the origin of their production. The function of tailored sanctions is to prevent human rights abuses and to maintain those values, as supported by peremptory norms of general international law (*jus cogens*). These sanctions, for example, are imposed on importing the goods for the production of which child labor has been used. These sanctions also prohibit the importation of goods or services from an illegally occupied territory. States as well as the UN Security Council may impose tailored sanctions as (unilateral or collective) a countermeasure. The present study is an attempt to explore the foundations and legality under international law of tailored sanctions. The special character of these sanctions is their obligatory nature. In contrast with general sanctions, tailored sanctions are considered not only states' right but also their obligation.

Keywords: tailored sanctions, semi-tailored sanctions, Security Council, countermeasures.

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Introduction

Under international law, the term "sanction" is frequently used to refer to a state's attempt to change the behavior of another state or non-state actors without using force. The primary objective of imposing sanctions is to force the respondent state to stop its actions or at least agree to enter negotiations for the purpose of ending its unacceptable behavior,[1] although some believe the most important function of sanctions, besides this goal, is their deterrent nature.[2] Economic sanctions are categorized as non-coercive economic measures against one or more states in order to change the policies of the state targeted by the sanctions or at least to reflect the views of the sanctioning state vis-à-vis the sanctioned.[3]

However, there has always been a great deal of concern that imposing sanctions may have a negative impact on the citizens of target states alongside the citizens of other states. Given this, attempts have been made to include certain strategies[4] as more appropriate alternatives than sanctions with lower negative effects on the vulnerable classes, ordinary people who have not, in fact, violated international law.

Today, some states impose sanctions on other states to further their own interests. These types of sanctions are not aimed at protecting human rights and the values of the international community. Rather, they are imposed to change the policies of the target state, with a view

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[1] Aliakbar AGHABAKHSHI, Minoo AFSHADIRAAD, the Culture of Political Sciences [Persian] (Tehran: Adineh Book Publications, 1995), pp 150- 152.

[2] Mohamad Javad ZARIF, Saeed REZAIEI, "The US Unilateral Sanctions against Iran" (1997) Foreign Policy Journal, vol. 41, p 10.

[3] Nicholas BARRY, "Force Majeure and Frustration" (1988) American Journal of Comparative law, Vol. 27, No. 23, p 240.

[4] Tailored Sanctions.

to supporting their own national interests and domineering policies. However, as will be examined in more detail, sanctions are considered lawful only when they are imposed by the Security Council under Chapter VII of the Security Council or by states as a countermeasure to prevent human rights and humanitarian law violations.[5]

In certain circumstances, the commission by one State of an internationally wrongful act may justify another State injured by that act in taking non-forcible countermeasures in order to procure its cessation and to achieve reparation for the injury.[6] There is no doubt that resort to countermeasure is not limited to the sphere of human rights violations.[7] For example, the injured party is entitled to invoke the breach of a commercial treaty as a ground for taking reasonable countermeasures. Needless to say, tailored sanctions are essentially limited to the realm of human rights or humanitarian law violations.

In light of the foregoing, tailored sanctions are defined as countermeasures that are imposed to preserve the values upheld by the international community; these types of sanctions are lawful if they meet the conditions set out in the framework of countermeasures.

These types of sanctions are placed on the goods that are directly manufactured or produced due to human rights violations. In fact, states and international organizations, as the main international actors, are bound to apply tailored sanctions in some cases particularly when the situation involves violations of human rights and humanitarian law. The most important feature of this type of sanctions is their

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[5] Seyed Ghasem ZAMANI, Kazem GHARIB ABADI, "Legality of Unilateral Economic Sanctions in International Law" (2016) Judicial Law Perspectives Vol. 20, Issue. 72, p 93.

[6] The Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, para 1 of Article 22.

[7] Denis ALLAND, "The Definition of Countermeasure", in James CRAWFORD, Alain PELLET and Simon ALLESON, eds., The Law of International Responsibility, (England: Oxford University Press, 2010), pp 1127-1136.

obligatory nature. As against general sanctions, tailored sanctions are not only states' right but also their obligation.

The present study attempts to explore the foundations and lawfulness of tailored sanctions from the perspective of international law. In doing so, it will first examine the concepts of tailored sanctions and semi-tailored sanctions. It will then analyze the notion of general sanctions followed by an assessment of different types of tailored sanctions.

I. The Concept of Sanctions and their Different Types

Sanction is a measure or restriction taken by some international actors against one or some countries to make them unable to perform some transactions, and to force them to accept certain norms that are important to the executors of sanctions[8]. Human rights sanctions are imposed for different reasons. They may be used as a form of punishment for the anti-human rights behaviors of a responsible state or non-state actors, or to deprive the state responsible for the internationally wrongful act of its needed goods and the international community's outrage at the human rights atrocities. Therefore, these sanctions can be classified into three main groups: tailored sanctions, semi-tailored sanctions and general sanctions.

a) Tailored Sanctions

Tailored sanctions are placed on the goods that are directly produced or used due to human rights violations. In fact, states and international organizations, as the main international actors, are bound

[8] David A. BALDWIN, "The Power of Positive Sanctions" (1971) *World Politics*, Vol. 24, No. 1 pp 19, 38.

to employ tailored sanctions in some cases, particularly in the case of human rights violations. Accordingly, when, for example, producing certain types of the goods violates workers' rights, or these goods are used to commit human rights atrocities, this will be subject to tailored sanctions.

Tailored sanctions are beneficial when laborers human rights are violated due to the production of goods for export. In these cases, the injured persons may be supported by imposing buying and selling restrictions on the goods for the production of which human rights have been violated.

Tailored sanctions are related to the production of the goods that have been directly produced as a result of human rights violations and the goods that are likely to be produced for using the weapons of mass destruction.

It must be noted that tailored sanctions are unlikely to be effective where target products are intended for domestic use and they are of no use in non-commercial areas. For example, in cases where the Myanmar army uses forced labor in national infrastructural projects such as building roads, tailored sanctions often prove to be ineffective. This is because no goods are supposed to be exported as a result of these types of national projects, so that its purchase cannot be sanctioned.

When the Myanmar army attacked the rural Muslims using weapons, imposing general economic sanctions could force it to stop these killings. Therefore, exporting a particular good is not an issue in such cases and tailored sanctions cannot be used to stop exporting this good. Furthermore, sometimes imposing tailored sanctions may not be expedient (in terms of policymaking) and effective in dealing with the human rights violations related to labor law in manufacturing goods.

If we prevent exporting the goods the production of which has constituted a violation of children's rights, then it may be argued that children may be used in illegal activities such as sex trafficking. In

these cases, semi-tailored sanctions or general sanctions might be more effective and appropriate for addressing these concerns. Nevertheless, when it comes to the issues of sanctions and products that amount to a violation of human rights, the most effective countermeasures appear to be tailored sanctions, because they rule out the advantage of exporting these goods for its manufacturers.

b) Semi-Tailored Sanctions

Semi-tailored sanctions are imposed on the goods that, when produced, would amount to a violation of human rights. However, in relation to semi-tailored sanctions, an attempt is made to deprive a government or non-state actors of an important source of income to stop human rights violations. These types of sanctions do not target the whole economy of a country. For example, insurgent groups in Angola and Sierra Leone financed their expenditure by selling diamond. In such cases, imposing sanctions on buying and selling diamond deprived them of the income required for continuing their human rights and humanitarian law breaches. Therefore, it is obvious that there is a relationship between selling and purchasing diamond and preventing human rights violation.

Another example concerns the Myanmar state, which covers a large portion of its military expenses by exporting its petrochemical products. In such cases, placing sanctions on petrochemical products causes the loss of the revenues required for meeting military expenses of this government. Imposing semi-tailored sanctions is likely to be effective in countering insurgent groups particularly when they gain control over a part of a country; because of these types of sanctions, these groups will not be able to use the mineral resources of the region under their control to fund their terrorist or otherwise illegal operations. In this way, depriving the insurgent group of the related

resources will affect its ability to continue its terrorist activities, without the need to imposing sanctions on the whole economy of that particular country or harming the state economy or other non-state sectors that are not involved in those unlawful activities. For example, in 2000, the Security Council adopted Resolution 1306, asking all the states to impose a ban on importing diamond from Sierra Leone to deprive the insurgent groups of trading diamond. However, in order to prevent the negative effects of this semi-tailored sanction on the central government's economy, it also defined a mechanism that allowed the central government to obtain the required licenses for exporting the diamonds produced in the areas under the control of that government. Based on the resolution put forward by the UK, any type of diamond trade with Sierra Leone is prohibited as long as this country does not prepare an organized system for diamond trades and these mines are under the control of the Revolutionary United Front rebels. Accordingly, exporting diamond by the central government by obtaining a license from the Security Council Sanctions Committee is not prohibited; there is only a ban on exporting diamond from the regions controlled by the rebels.[9] Another example of semi-tailored sanctions was the sanctions imposed against Cambodia in 1992, when the Security Council adopted Resolution 792, asking the neighboring countries to stop importing round logs from Cambodia, which are used to finance non-international armed conflicts.[10]

[9] The situation in Sierra Leone, UN Doc. S/ RES/1306 (2000), para 5

[10] Cambodia, UN Doc. S/ RES/792 (1992), para 13.

c) General Sanctions

General sanctions, which are regarded as the most important sanctions for the purpose of countering human rights violations, are not directly linked to targeted goods or services. In fact, these forms of sanctions target human rights violations that are not directly linked to international trade. It is worth clarifying that some recent cases, where there has been a violation of human rights, do not concern international trade. Examples includes recent genocides in Rwanda, Kosovo and Uganda, using forced labor in Myanmar to carry out infrastructure projects and the 1991 Haitian coup d'etat,

Indeed, it is unlikely that tailored sanctions in these cases can be taken as a useful measure to suppress human rights violations. General sanctions are imposed when smart sanctions are not effective against specific state officials or entities. In these circumstances, in order to exert more pressure on the target state, both tailored sanctions and general sanctions are used against that state.

II .Classification of Tailored Sanctions Based on the Targeted Goods:

In this section, we will discuss the various types of tailored sanctions.

a) Goods Produced Due to Human Rights Violations

These types of goods have been produced using forced or contracted child labor or their production has amounted to a violation of workers' human right. In this section, we will explain each of these cases.

1. Goods Produced Due to Child rights Violations

Child labor is a clear example of human rights violation. In the early 20th century, the international community and particularly the International Labor Organization (ILO), as the custodian of labor and laborers at the international level, took the first serious steps to suppress child labor. However, these faltering steps, in line with the industrial and trade growth and development in the first half of the past century, did not stop the huge and pitiable increase in exploiting children. For this reason and due to the importance of human rights and observing children's rights, fighting to abolish child labor was more seriously pursued during the recent decades.

The adoption of the UN Convention on the Rights of the Child in 1989 was a turning point in this respect. According to Article 32 of this Convention, state parties share the view that the right of the child must be "protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". Despite this, considering its mission and regardless of the numerous conventions related to the minimum age to start working, ILO sought a larger share in fighting child labor. Therefore, in ILO Declaration on Fundamental Principles and Rights at Work, it emphasized the effective elimination of child labor.

The importance of this declaration stems from the fact that it binds ILO members, including Iran, to observe, promote, and realize the principles related to the following four rights even if these members have not joined the conventions related to them. These four rights include 1) freedom to form a union and effective recognition of the right to collective bargaining, 2) elimination of all forms of forced

labor, 3) elimination of discrimination in employment, and 4) effective elimination of child labor.

Mentioning effective elimination of child labor, as one of the fundamental rights, is in itself indicative of its importance to the ILO. Nevertheless, there was still a need for a particular convention. Accordingly, having approved the Declaration on Fundamental Principles and Rights at Work, the ILO allocated its first conference to examine the possibility of adopting a separate convention in this respect. [11] The goal of that convention was to eliminate the worst forms of child labor across the world. So far, 162 countries have ratified this Convention, while it has become binding since 19[t] November, 2000. It is worth mentioning that Iran signed the Convention on 13 October 2001.

Paragraph A of Article 3 of the Convention refers to forced labor as another manifestation and method of slavery. According to recent UNICEF statistics, 5.7 million children suffer from forced labor accounting for half of the people inflicted by this toil.[12] In 1957, the ILO approved the Convention on the Abolition of Forced Labor to accomplish the tasks referred to by the above-mentioned convention and require the relevant states to make further attempts to eliminate this method of slavery. Along with these, Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution, and child pornography has made the ratifying states committed to criminalize using children in forced labor.

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[11] Convention on the Worst Forms of Child Labor, 17 June 1999 (Entered into force 19 November 2000)

[12] UNICEF child labor May, 2006, p 1.

2. Goods Produced Due to Violations of laborers' rights

Labor rights were initially born in the form of support for some vulnerable groups such as children, and only included some basic support.[13]. Yet, after World War I, it attracted some further attention. With the ILO Secretary General raising the concept of decent work in 1999, labor rights entered a new era, an arena with two features of continuity and innovation; this reflected the Organization's persistence in the minimum requirements in labor rights. Decent work was the center and common ground of four strategic goals; a) promoting fundamental labor rights including 1) elimination of forced labor, 2) freedom of associations and supporting the right to establish an organization, 3) wage equality and non-discrimination, and 4) minimum working age and elimination of the worst forms of child labor; b) employment; c) social support; and d) social dialogue, which is a new dialogue for the labor rights model. The term decent work was used by Juan Somavia, Director-General of the ILO, who presented his report to Convention N. 87 of the organization in 1999, suggesting that the primary objective of the organization in the contemporary age was to "provide decent work for men and women everywhere".[14]

However, given the mentioned background and inspired by the intention of the creator of this term, a brief definition of decent work can be presented as a productive activity or employment that not only covers such components as fundamental rights, but includes social support and desirable conditions of social dialogue in the society by respecting the basic human rights including freedom, equality, and security based on respect for human dignity. In order to fight forced

[13] Seyed Ezatollah ARAGHI, Labor Law [Persian] (Tehran: Samt Press, 2008),p100.
[14] Behnam GHAFAARI FARSANI, "A Glance Over the Convention on the Worst Forms of Child Labour" (2008) Private Law Studies, Vol: 38, No: 2, p 241.

labor, some states have put sanctions on the goods produced by these laborers and have banned importing these goods into their country. For example, the US Senate approved the bill on prohibiting the importation of goods and services from Xinjiang in China for their use of forced labor in this region. Before that, the US had imposed tailored sanctions on nine Chinese companies due to their human rights violations in the Uygur Autonomous Region (Xinjiang).

b) Goods Giving Rise to Human Rights Violations

Using some types of goods give rise to human rights violations. An example includes the sale of weapons by the United Kingdom to Saudi Arabia, as this violates the right to life of Yemenis civilian population.

As a strategic concept, the right to life plays a significant role in framing the conceptual geometry of international human rights documents such as the Universal Declaration of Human Rights. This is because it facilitates access to other rights by retaining and safeguarding this right in the national and international transactions.[15] On this basis, the United Nations Human Rights Committee has described this right the 'superior right'.[16]

Likewise, modern human rights advocates have regarded the right to life as an absolute, fundamental right and the basis of other rights. According to Article 3 of the Universal Declaration of Human Rights:

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[15] Shahla BAGHERI, Arezoo MALEKSHAH "A Comparative study of Women's right to life from the perspective of Islam and the West" (2011), Journal of Women, vol. 4, No. 21, p 19.

[16] Kimia MAZAHERI "Analysis the Relationship between Terrorism and Violation of the Right to Life" (Tehran: human rights Master Thesis in Law, Tehran University, 2005), p 44.

"Everyone has the right to life, liberty and security of person".[17] The International Covenant on Civil and Political Rights also characterizes the right to life as one of the inherent rights of human beings, which should be protected by the law. Besides emphasizing the intrinsic human dignity, this Covenant binds states to respect human rights and ensure the inherent right to life (Article 1). With regard to countries where the death penalty has not been abolished, the Covenant states that "the death penalty is not permitted except in the most serious crimes required by law, which must not be in conflict with the provisions of this Covenant and the conventions on prevention and punishment of Genocide". [18]

Referring to the right to life and the need to respect this right, Article 2 of the European Convention on Human Rights states that depriving someone of his/her life must be based on the law and the execution of a sentence passed by a court following his/her conviction of a crime. However, in accordance with Protocol 6 to the Convention, the governments acceding to it are committed not to sentence someone to death penalty during peacetime. Furthermore, Article 4 of the American Convention on Human Rights states that the right to life must be protected in general, from the moment of conception. In addition, according to this article, death penalty is prohibited for those under the age of 18 and over the age of 70.[19]

In general, according to the relevant principles of international human rights, fundamental human rights are inalienable. Individuals cannot eliminate the possibility of using other rights by alienating

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[17] Hossein MEHRPOOR, International Human Rights System [Persian], (Tehran: Etelaat publication, 2011), p 432.

[18] International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR], para 2, Art 6.

[19] Ibid., p 186.

from a fundamental right because in that case the prospect of human society will be nothing more than destruction. Therefore, despite accepting the principle of freedom in human rights, one cannot alienate oneself from a fundamental right such as the right to life, on which depends one's use of other rights and one is even bound to safeguard one's right to life as much as possible.[20]

States are also obliged to take certain measures to protect this right by cultural, social, legal, health, medical, and developmental strategies. Considering the importance of the right to life, any goods that are used to kill illegally should be banned; thus if a state knows that the receiving state would be using the weapon in violation of human rights, including the right to life, it should refrain from exporting it to that state. Similarly, if a state gives another state wiretapping equipment or tear gas and batons knowing that the receiving state would use it to suppress peaceful assemblies, it should refrain from exporting it to that state.[21]

c) Goods Produced in the Occupied Territories

Another type of tailored sanctions involves putting sanctions on the goods that are produced in occupied territories. Neither producing these types of goods nor their use violates human rights. Indeed, the reason why this type of sanctions is imposed reflected in the failure to recognize the occupation of the territory, which was done by force. In other words, these types of sanctions are imposed when a government, which is regarded as an occupying power in another state's territory rather than a ruling government, produces these goods. It thus follows

[20]Amir MAGHAMI, "Euthanasia and the Right on yourself, a Challenge to the Nature of Human Rights" (2008) Iranian Journal of Medical Ethics and History, Vol: 1, No. 2, p 24.

[21] International Covenant on Civil and Political Rights Supra note 18, Art 21.

that the imposition of these type of sanctions stem from the violation of one of the fundamental principles of international law.

For instance, the French Ministry of Economy and Finance issued a note on 24 November 2016, requiring that the exact location of food products in Palestinian lands occupied by Israel after June 1967, be written on these products. In response, on 28 December 2017, two Israeli companies made an official complaint to the State Council in an attempt to cancel the note. The Council concluded that this issue concerns the European Union law. Asking for a preliminary verdict from the Court of Justice of the European Union, they decided to keep the issue pending until the Court made a decision in this respect.

In its judgment of 12 November 2019, , the Court held that the good, as produced in Israeli settlements located in Palestinian territories occupied after June 1967, cannot be exported to the European Union with the label "Made in Israel", and that the exact location of production must be inserted on them.[22]

The Court also clarified that these food were produced in Israeli settlements in occupied territories of Palestine — particularly in the West Bank, Jerusalem, and Golan Heights — while under the relevant principles of international humanitarian law, these lands are under limited jurisdiction of Israel, as an occupying power and not a ruling government, and thus have a distinct international status from the Israeli lands. The Court therefore held that writing the word "Israel" or "Israeli settlements" on these products, as their place of production, means that the Israeli producers will be held responsible for misleading their customers.[23] Likewise, according to the Court, allowing the sale of these products with the label "Made in Israel"

[22] Court of Justice, judgment of 12 November 2019, case C-363/18, Organisation juive européenne and Vignoble Psagot, paras 48-56.
[23]- Ibid., paras 57-58.

would suggest that the European Union recognizes Israel's control over these lands.

Further, in order to prevent misleading customers, it is essential to inform them that these products are not manufactured in Israel. In other words, the fact that these food products come from the Israel settlements where international humanitarian rights have been violated can influence customers' decision; thus they may decide not to buy these products particularly given that some of the violated rights in this respect are fundamental principles of international law.[24] As the ICJ pointed out in the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Israeli settlements that have been built after June 1967 in the occupied territories of Palestine violated international humanitarian rights and some fundamental principles of international law, including the right to self-determination.[25]

III. The Foundations and Legality of Tailored Sanctions

Sanctions are imposed and enforced to achieve particular goals. According to Article 41 of the UN Charter, which concerns international peace and security, the Security Council can take certain measures (e.g., impose sanctions) in line with execution of its resolutions. On the other hand, countries also unilaterally impose sanctions against other countries.

It is clear that states are prohibited from imposing unilateral coercive measures against one another beyond the UN Charter

[24] Ibid., paras 32, 37, 52, and 56.
[25] Ibid.

framework; only the Security Council is responsible for imposing sanctions according to the UN Charter. Thus, according to the Draft Articles on Responsibility of states (2001), a distinction must be drawn between countries' measures against one another beyond the UN Charter and the sanctions, which are referred to as countermeasures.

In this section, we will assess the lawfulness of tailored sanctions in the Security Council. We will then examine the permissibility under international law of tailored sanctions that are beyond those imposed by the Security Council.

a) The Legality of Tailored Sanctions in the Security Council

According to Chapter VII of the UN Charter, the Security Council has the right to impose sanctions on states in line with the enforcement of its resolutions or restoring international peace and security. Some believe that no legal principle limits the Security Council in relation to its responsibility for maintaining international peace and security. Thus, according to them, in order to guarantee the continued existence of humanity, it is essential to give unlimited rights and authority to an entity to deal with any perceived threats against international peace and security. From this perspective, removing legal constraints against such an entity puts them in a weaker position especially in cases where the actor in question has undermined all the legal principles and posed serious threats to international peace and security.[26]

Since Council's resolutions are made at its own discretion, these decisions are political in nature. Kelsen points out that the Security Council was founded to maintain peace and not to enforce the law.

[26] Elias DAVIDSSON, "Legal Boundaries to UN Sanctions" (2003) International Journal of Human Rights, vol. 7, No. 4, p 2.

However, this raises an important question whether this political organization is free from any legal restraints. When adopting UN Security Council resolution 1483 (2003), which confirmed the position of occupying powers in Iraq, the Presidency of the UN Security Council emphasized that powers of the Council are not unlimited and unconditional. These powers must be enforced in a way that is in conformity with the justice principles and international law (Article 1 of the Charter) and particularly the Geneva Conventions, The Hague Regulations, and the UN Charter.[27]

In "Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) Case", Judge Shahabuddin and Judge Weeramantry raised some important questions: is there no restraint on the powers of the Security Council? What are these limitations and what entity, except for the Security Council, has the expediency to determine and announce these limitations? Does the Security Council perform its duties and exercise its power without limitations? The majority responded that there are some limitations and the Security Council is not exclusively responsible for their interpretation. The Legality of the actions of every element of the UN must be judged by referring to the UN Charter as the constitution of the international community.

In fact, the legality of Security Council sanctions has been increasingly questioned. It faces limitations in imposing sanctions, which originates from the provisions of the UN Charter. Paragraph 2 of Article 24 of the UN Charter limits the unlimited powers of the

[27] Enzo CANNIZZARO "The Role of Proportionality in the Law of International Countermeasures" (2011) European Journal of International Law, Vol. 12, Issue. 5, p 8.

Council in taking executive measures.[28] This paragraph specifies that "The Security Council shall act in accordance with the Purposes and Principles of the United Nations".

Chapter 1 of the Charter deals with the purposes and principles of the UN. The first goal is to preserve international peace and security. Some experts observe that this goal has priority over other goals, while others take the view that the goals of the UN are of an equal value and priority. From this perspective, the third goal of the UN, as recognized in Article 1 of Chapter 1 of the Charter, is equally important to the UN: "Achieving international cooperation in resolving international problems of an economic, social, cultural or humanitarian nature and promoting and encouraging respect for human rights".[29] According to this approach, imposing any economic sanctions that does not encourage or promote respect for human rights is in conflict with the UN Charter.

The Security Council has been also limited according to Article 25 of the UN Charter, which states, "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Different provisions of the Charter, which guarantee the promotion of high standards of living, complete employment and socio-economic development conditions and respect the relevant principles of human rights.

UN member states should not examine whether their measures meet these requirements even if obligatory sanctions are imposed. In its general comments No.8 in (1997) on the relationship between economic sanctions and respect for economic, cultural, and social

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[28] Dan SAROOSHI, The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers, (London: Clarendon Press, 1999), pp 311-316.

[29] Charter of the United Nations, 1945, Art 1.

rights, the Committee on Economic, Social and Cultural Rights (CESCR) emphasized that "the terms of sanctions and the manner in which they are implemented become appropriate matters for concern for the Committee".[30] The measures taken by the Security Council in the framework of security and peace must be consistent with the goals of the sanctions, preserve, and protect the human rights in the target country.[31] Given this, it is questionable whether the Security Council is allowed to limit human rights when exercising its power under Article 41 of the UN Charter.

Before answering this question, it must be recalled that Paragraph 2 of Article 4 of the International Covenant on Civil and Political Rights includes non-negotiable human rights as well, which must be respected in all circumstances. Some examples include the right to life and the prohibition of torture and slavery. These rights are now regarded as "peremptory norms". Therefore, although some member states have not become party to the Covenant, it is clear that the Security Council cannot lawfully ignore the rights concerned. Additionally, it may be argued that the Security Council sanctions also have numerous shortcomings from the perspective of the rule of law:

The problem of transparency: the main deliberations leading to the sanctions-related decisions occur behind the doors in the Security Council, while the Council's decisions rarely present a clear picture in justification of the goals and reasons behind the sanctions.

Veto and the problem of equality: in the framework of the Security Council sanctions, equality requires that, if sanctions are imposed

[30] General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights UN Doc, E/C.12/1997/8 (1997), para 9.

[31]-Oscar SCHACTER "The United Nations Charter" (2003), Encyclopedia of Public International Law,
Bernhardt, R., (Elsevier Science LTD), Vol. 5, p 290.

against a country under certain conditions, the same sanctions be used against other members as well under similar conditions. Nevertheless, in practice, it is obvious that the right to veto weakens the principle of equality.

Full trial procedural problems: a country against which there is a forced action including sanctions must be given the opportunity to completely express its views on the likely decision and must be entitled to guarantees of a fair hearing. On the other hand, the decisions made by the Council particularly against individuals cannot be reconsidered.

Third states and civilian population: The principle of proportionality requires that the effect of sanctions on ordinary civilians and third states be prevented.

b) The Legality of Tailored Sanctions Out of the Security Council

Any sanctions beyond those imposed by the Security Council are considered unilateral. Tailored sanctions are known as unilateral sanctions that are imposed beyond the UN framework, and are lawful only when states or international organizations employ them as a countermeasure to prevent gross human rights violations.[32]

States must employ tailored sanctions in the case of a serious breach of a peremptory norm as enshrined in Article 41 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Article 41 (1) of the ARSIWA) provides that"[s]tates shall cooperate to bring to an end through lawful means any serious

[32] The draft articles on Responsibility of States for Internationally Wrongful Acts, Supra note 6, Paras 1 -2 of Article 41.

breach of (an obligation arising under a peremptory norm of general international law) within the meaning of Article 40".

It seems that the obligation to cooperate to end serious breaches of peremptory norms has become part of existing international law.[33] Article 41 (2) of the ARSIWA obliges states not to recognize as lawful a situation created by a serious breach of a peremptory norm, nor render aid or assistance in maintaining that situation. The duties of non-recognition and non-assistance are called "duties of isolation".[34]

Starting with the duty of non-recognition, this obligation entails a prohibition of formal recognition of situations created by the breach of a peremptory norm[35]. An example of this includes the imposition of embargo on goods and services that result from an unlawful situation. In this sense, sanctions on the import of goods from the occupied territories are applied in order to isolate the occupying state.

Today, human rights no longer concern the "Domaine Réservé" of states and all members of the international community show special sensitivity toward respecting and preserving these rights. Since the Universal Declaration of Human Rights was ratified in 1948, major steps have been taken toward the adoption of human rights treaties. This can be illustrated by a large number of human rights conventions and a large number of states that have adopted many human right conventions since 1948. Despite that, the system for enforcing these rights has some problems:

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[33] - Report of the International Law Commission Seventy-first session (29 April–7 June and 8 July–9 August 2019) UN Doc. A/74/10 (2019), p 194, para 4.
[34] - Andria GATTINI, "A Return Ticket to 'Communitarisme" (2002) European Journal of International Law, vol. 13, No. 5, p 1188.
[35] - Rana Moustafa ESSAWY, "Is There a Legal Duty to Cooperate in Implementing Western Sanctions on Russia?" Available at: https://www.ejiltalk.org/is-there-a-legal-duty-to-cooperate-in-implementing-western-sanctions-on-russia/

Examining treaty-based and non-treaty mechanisms taken into account for ensuring the enforcement of human rights indicates the existence of broad limitations in this area. The committees overseeing human rights treaties are limited to a particular treaty and obviously, the chance for overseeing the commitments included in the treaty is provided only when the states have accepted the jurisdiction of the relevant treaty body to hear complaints.

Non-treaty mechanisms are also constrained by certain limitations in guaranteeing human rights and dealing with the violators. Their advisory nature and the impossibility of effective treatment is one of the problems of many of these mechanisms. The Security Council, which is the strongest non-treaty mechanism in this area, is also unable to fulfill its duties in some cases due to the difficulty of achieving an agreement between the permanent members on how to suppress the wrongfully acts of states. Further, the UN Charter considers the main duty of the Security Council to be safeguarding international peace and security. In addition, the relationship between human rights violations within the territories of a state and the issue of peace and security is not always easy to deal with.

However, it should be noted that the developments in international law and moving away from absolute bilateralism has provided an opportunity to enforce and oversee the relevant principles of human rights. The common obligations raised by the judgments of the International Court of Justice[36] helped to perpetuate the idea that, in general, there are some obligations toward the international community although, apparently, they are not related to any particular state. The international community is therefore the beneficiary of respecting these obligations. Accordingly, there seems to be a need to

[36] Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Order of 24 July 1964, [1964], I.C.J, REP, p 58.

search for instruments in general international law to fill the gaps, so as to ensure the implementation of treaties or judicial review mechanisms in relation to human rights obligations.

Countermeasure is one of the most important tools that general international law provides to the states for preventing human rights violations. The most important feature of these measures is that they do not have the many limitations associated with other methods. Countermeasures are not limited to reacting against a certain number of serious or flagrant violations or the obligations included in a particular treaty. On the other hand, optional membership in a particular treaty or organization is the precondition for the adoption of these measures and this instrument is equally available to the states.[37]

An assessment of state practice reveals that the main form of countermeasures against human rights violations is in the form of sanctions. These sanctions are usually imposed by one or more states against the wrongful state when the Security Council fails to take action against that state or no agreement is reached between the permanent members.[38]

According to draft Articles 40 and 41 on Responsibility of States for Internationally Wrongful Acts, states are obliged to apply tailored sanctions, otherwise importing the related goods points to an unlawful condition whereby certain products have amounted a violation of children's and workers' rights. Further, if a state allows goods to be imported from an unlawfully occupied territory, it recognizes an unlawful condition. Therefore, states are bound to implement the tailored sanctions.

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[37] Mohsen ABDOLLAHI, "Effectiveness of counter-measure as a Human Rights Safeguard", [Persian], International Law Magazine, (2018).
[38] Bird ANNIE, "Third State Responsibility for Human Rights Violations" (2010) European Journal of International Law, vol. 21, No. 4, p 887.

These types of sanctions are mainly limited to commercial and trade relationships between states. According to Paragraphs 1 and 2 of draft Article 40 on Responsibility of States for Internationally Wrongful Acts, these types of sanctions can be imposed both as a collective and unilateral countermeasure against the wrongful state violating the relevant principles of human rights. It is therefore reasonable to conclude that tailored sanctions are permissible according to international law.

IV. Legal Boundaries on the Imposition of Tailored Sanctions

One of the important issues of interest in imposing international sanctions is that imposing sanctions, even when they have legal and international legality, is subject to observing respective restrictions, which should be respected for the purpose of applying the countermeasures.[39]

a) Restrictions and Barriers to Tailored Sanctions under Peremptory Norms of International Law (Jus Cogens)

In accordance with Article 53 of the Vienna Convention on the Law of Treaties, a peremptory norm of general international law is one which is "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".[40] Tailored sanctions, whether imposed by the Security Council or by states, do not create

[39] Ibid., arts 49-54.

[40] Vienna Convention on the Law of Treaties, Article 53.

obligations under international law if and to the extent that they conflict with a *jus cogens* norm.[41]

Likewise, the plea of necessity or countermeasure cannot excuse the breach of a peremptory norm.[42] Thus, for example, the perpetrators of tailored sanctions must respect the right to life, which is regarded as a peremptory norm of international law (*jus cogens*). A non-exhaustive list of norms that the International Law Commission has previously referred to as having that status includes the prohibition of aggression, the prohibition of genocide, the prohibition of crimes against humanity, the basic rules of international humanitarian law, the prohibition of racial discrimination and apartheid, the prohibition of slavery, the prohibition of torture and the right of self-determination. It is thus clear that tailored sanctions must not be an obstacle to people's access to basic goods and services required for a stable life. Therefore, the imposition of these types of sanctions must not conflict with preemptory rules of international law.

b) Limitations on Tailored Sanctions

The imposition of tailored sanctions must comply with the principles of humanity, necessity, and proportionality.

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[41] Report of the International Law Commission Seventy-first session (29 April–7 June and 8 July–9 August 2019), UN Doc, A/74/10 (2019), Chapter V "Peremptory norms of general international law (jus cogens)", Conclusion 16, Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law (jus cogens), p 145.

[42] Ibid., p 145.

1. The Principle of Humanity

The principle of humanity requires that different aspects of humanity must be respected when imposing tailored sanctions. It must be recalled that the principle of humanity differs from the principle of respecting the standards of general international law in that the former includes many of the rights that are included in humanitarian law. The principle of humanity as a general legal principle indicates that such measures (sanctions) must not expose humans to non-human living conditions and the risk of diseases and death.[43]

2. The Principle of Necessity

The principle of necessity applies to cases where a public authority has discretionary powers. This authority must demonstrate that the actions taken have been necessary for their main objective: achieving the fundamental and important goals. The principle of necessity is applied in different fields including International Human Rights Law, Environmental Law and International Humanitarian Law. As the UN is committed to general principles of international law, the Security Council is also required to respect the principle of necessity as one of the principles of general international law.

The principle of necessity is also connected to the issue of effectiveness of the sanctions. For this principle to be realized, the sanctions program must be designed in a way that can be expected to achieve the intended goals. In other words, they must change the behavior of the sanctioned and cause it to abide by the relevant

[43] Supra note 26, p 10.

principles of international law.[44] Since the necessity criterion is measured by the possibility of achieving the goals of imposing sanctions, respecting this principle requires that the sanctions must be effective in changing the violating behavior. Another important point to consider is that the principle of good faith, as a general legal principle, requires that the principle of necessity must be respected, meaning that the sanction-imposing authority or perpetrator of sanctions must not go beyond necessity.

3. The Principle of Proportionality

According to the principle of proportionality, launching attacks that lead to higher casualties than the value of the military target is prohibited. This results from the two principles of military necessity and humanity. The principle of proportionality confirms that the losses incurred by military operations must be proportionate to the predicted military benefits and, in fact, the losses must not exceed the military benefits resulting from the relevant military operations.

This principle is definitely connected to the necessity criterion, mainly because the level of any limitation must be exactly proportionate to this criterion or the higher benefit by which the limitation is supported. The principle of proportionality can be invoked only in connection with lawful and necessary measures.[45] On this basis, if a particular measure is not permitted according to the relevant rules of international law, invoking the proportionality criterion to pass this measure off is not justified. Tailored sanctions as

[44] George ABI-SAB, "The Concept of Sanctions in International Law" in Mariano Garcia RUBIO, Hassiba HADJ-SAHRAOUI eds., United Nations Sanctions and International Law (Boston: Kluwer Law International, 2001), pp 29-39.

[45] Supra note 26, p 12.

countermeasures and sanctions imposed by Security Council resolutions under Chapter VII of the UN Charter are regarded as being lawful partly because these sanctions satisfy the principle of proportionality.

The principle of proportionality requires that the benefits obtained from the sanctions program must not exceed the losses incurred. Proportionality has two internal and external concepts; in its internal sense, it means that the sanction is proportionate to the goal the perpetrator of sanctions has in mind. In other words, a sanction is regarded as proportionate as long as it realizes the intended goal. Since the goal is a conceptual issue and related to a spiritual element, proportionality in this sense has been known as internal proportionality. In contrast, external proportionality means that sanctions are considered proportionate in light of the importance of the desired legal benefit and the seriousness of violating the rule as well as the consequences of violating that rule.

Conclusion

As a form of economic sanctions, tailored sanctions are known as the most common types of countermeasures. These types of sanctions are applied to the goods that amount to a violation of human rights when they are directly produced or used. Semi-tailored sanctions, on the other hand, deprive the target state or sanctioning state and sanctioning non-state entities of financial resources. As a result, insurgent or terrorist groups will be unable to reach revenue to commit terrorist acts or violate human rights or humanitarian law principles.

Both tailored sanctions and semi-tailored sanctions differ from general sanctions, as they do not target the whole economic system of the target state. In other words, states and international institutions are obliged to apply tailored and semi-tailored sanctions particularly when it is established that human rights or humanitarian law principles were

violated. The most important feature of these types of sanctions is their obligatory nature. Tailored Sanctions, as opposed to general sanctions, not only concerns the right of states and international organizations, including the Security Council, but also relates to their duty.

According to Articles 40 and 41on Responsibility of States for internationally wrongful acts, states are obliged to enforce tailored sanctions, otherwise importing the sanctioned goods means recognizing the unlawful consequences resulting from the production of goods due to violations of children's and laborers' rights. In addition, if a state allows goods to be imported from a territory that has been unlawfully occupied, it has recognized that unlawful situation.

Therefore, whether through the UN Security Council or using collective or unilateral measures in the form of countermeasures, this paper argued that states are *obliged* to apply tailored sanctions to preserve the relevant human rights norms and values.