

The Dilemma of US Economic Sanctions on Iran: An Iranian Perspective

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Abstract: This article deals with the issue of economic sanctions and in particular, the US sanctions against Iran. The question is whether the US economic sanctions against Iran are legitimate and credible from the international point of view. The purpose is to investigate the intriguing aspect of the D'Amato Act which raises a number of questions relating to jurisdiction over disputes between the US and foreign corporations. I will try to answer that whether a justification for the exercise of US extraterritorial jurisdiction can be found in public international law and whether international law imposes limitations on a unilateral enforcement attempt by the United States. The US policy with regard to economic sanctions against Iran is inconsistent with the evolution of trading system in international fora and based on international law, its enforcement is illegitimate.

Introduction

On November 4, 1979 the US Embassy in Tehran was occupied by the Muslim Students Following the Imam's Line, taking American

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personnel hostage. In response to this action, President Jimmy Carter imposed a comprehensive sanction against Iran on November 1979. The action had the effect of implementing both a plenary trade embargo against Iran and the seizure of all property of the Iranian government subject to the jurisdiction of the United States. Shortly thereafter US broke its diplomatic and commercial ties with Iran.

In January 1984, a new set of trade sanctions was placed when Iran was named by the US administration as a state sponsor of terrorism. A subsequent embargo was imposed on October 27, 1987 by President Reagan prohibiting all imports of goods and services of Iranian origin, while tightening restrictions on US exports of high technology to Iran. The rationale was to impede the ability of Iran to support international terrorism. As a result, US direct trade fell, but indirect American sales went to Iran through American subsidiaries in Western Europe and Dubai. The exceptions to the general ban were:

- 1) Petroleum products refined from Iranian crude in a third country;
- 2) Articles imported from Iran into the US that were exported from Iran prior to the effective date of this orders;
- 3) Iranian-origin publications and materials imported for news publications or news broadcasts;
- 4) Iranian goods in connection with awards of the Iran-US Claims Tribunal at The Hague or related settlements¹

To strengthen the legal authority underlying the new action, President Clinton announced a complete trade embargo against Iran on May 5, 1995 prohibiting US firms and their foreign subsidiaries from investing and from undertaking any involvement in petroleum development in Iran. The action was based on allegations of Iran's continued support for international terrorism and the US accusations that Iran was engaged in the production of weapons of mass destruction. Finally, on August 5, 1996 President Clinton signed the Iran-Libya Sanctions Act imposing sanctions on persons who aid the development of oil resources in Iran and Libya. These sanctions albeit misdirected, are still in effect and there is no substantive sign of being removed by the United States. The bill's primary justification is rooted

in the national security and foreign policy interests of the United States and those countries sharing common strategies and foreign policy objectives.

1. General Review of Economic Sanctions

1.1. Political Ingredient in the Creation and Implementation of Sanctions

Trade embargo is the main type of economic sanction intended to change a country's behaviour for various reasons. Economic sanctions are usually used as instruments in the pursuit of foreign policy. It has been argued that "the aim of economic sanction is to damage the economy of the target state". Doxey considered economic sanctions as "negative measures which seek to influence conduct by threatening and, if necessary, imposing penalties for non-conformity with law". (Doxey, 1972: 528)

Generally speaking, in any particular case, the application of sanctions involves both political and economical decisions within a legal framework. Schreiber points out that regardless of its concrete impact on the target country, economic sanctions may be considered by a government useful if they serve to declare its position to internal and external public, or help to win support at home and abroad. (Schreiber, 1973: 413) One of the most important features of the recent history is the emergence of the United States as the country most willing to apply economic sanctions as the foreign policy objectives. This is particularly true when we consider that between 1993 and 1996, the United States adopted 61 new unilateral sanctions. These sanctions, 23 separate new acts targeted 35 countries that altogether account for 42 percent of the world's population. (Janson, 1997:16)

In addition to the most common uses of economic sanctions for foreign policy and national security reasons, the United States has also resorted to trade sanctions as an instrument of commercial policy to achieve its strategic trade policy. In the case of Iran, the goal of the US policy is to exert pressure on the Islamic Republic with a view to producing a significant negative impact on the economy by depriving it from obtaining the needed import goods and by reducing its export earnings. Some scholars distinguish between the effectiveness and

success of economic sanctions. According to Van Bergeijk (Van Bergeijk, 1997: 21) "effective sanctions may fail although the economic hardship that they impose on the target is substantial". He pointed out that "the threat of a sanction may be successful even when no economic damage is done". In this regard, sanctions may be effective if the target country is deprived of a certain economic value resulting in a deterioration of its terms of trade. Therefore, the sanctions must be comprehensive rather than unilateral in order to make trade sanctions effective and further produce substantial economic damage in the target state. On the contrary, success of economic sanctions is largely dependent on the change in political behaviour of the target country. Clearly, there should be an important prerequisite for the application of successful sanctions, that is to say, a perceived violation of legal norms threatening international peace and security.

What is the United States to make of the economic sanctions? Broadly speaking, the US sanctions have been motivated by domestic political agenda. Any analysis of US sanctions demonstrates a substantial and overwhelming influence of domestic interest group politics. The fact that President Clinton chose to announce his trade embargo on Iran at a meeting of the World Jewish Congress gives credence to the criticism of American foreign policy elite that US policy towards Iran is influenced by external powers. (Tarock, 1996:150) It is strongly evident that the American Israel Affairs Committee (AIPAC) was instrumental in drafting and lobbying for passage of the Iran-Libya Sanctions Act of 1996.

This evidence as Staufer and Morse pointed out is an example of how the local Zionist lobby has had an adverse impact on world trade and on Iran-US relations. In addition, the main consideration for the US sanctions has been its contribution to the stable high price level the United States wished to maintain. He argues that sanctions terminated 25 year period (from 1971) uncertainty over the supply and price of oil and re-established the US hegemony over the international oil system and further enabled it to manipulate the oil market to secure American interests. (Janson, 1997:16)

1.2. Sanctions Should Be Based On Genuine, Moral, Legitimate and Credible Authority

As the circumstances have changed in Iran after the revolution of 1979, the US rationale for the use of economic sanctions seemed to become a proof of its hostility rather than rationale in forcing the Islamic Republic to comply with international norms of behaviour. The question, however, remains whether the motive is to punish the so-called rogue states, to enforce compliance, or to promote social and cultural changes. One important factor for the support of sanctions within the target country is the value of global norms for evaluating whether a sanction should be imposed or not. If the emphatic answer in the affirmative is suggested, which criteria in the decision to impose sanctions should be measured and justified? Should the sanctions be adopted where basic norms of human rights are at stake? If the economic sanctions lead to human suffering it should not be justified (Tohidi Fard n.d:280) because sanctions will cause overwhelming hardships among the innocent people. This also calls for the applicability of international humanitarian law in order to protect civilians and limit the scope of sanctions which violate fundamental human rights. According to Damrosch "[even in the case of serious violations as to which serious sanctions are presumptively justifiable, it may be necessary or desirable to constrain the application of countermeasures in the interests of avoiding undue harm to the population of the target State".(Damrosch, 1997:60) To be effective, sanctions should be based on moral, legitimate and credible authority. The sanctions must also be proportionate to the severity of the situation and therefore must not themselves result in human rights violation.

1.3. Are Economic Sanctions Likely to Succeed?

To find whether the economic sanctions inflicted serious economic loss on Iran, it is necessary to establish the effect of such measures on the economy of the country. Despite the tendency by the States to utilize economic sanctions, their actual efficacy has been questioned by the economists as they do not impose significant

economic damage on the target country. The study by Hufbauer, Schott and Elliot demonstrates that only one out of three economic sanctions since World War II succeeded in achieving their anticipated political results. (Hufbauer, 1994:23) Of 103 post-war sanctions described by the authors, 69 cases or 67 percent are deemed unsuccessful meaning that they had minimal or no impact on the behaviour of the sanctioned target. (Jempa & Rhoen, 1996:200)

In practice, US sanctions did not prove to be effective. Shortly after the American sanctions, many companies in the West supplied the banned goods to Iran through third countries. However, the estimate shows that imports into Iran became about thirty percent more expensive as compared with the period prior to the trade embargo. (Islamic Consultative Assembly 1981:13) According to Leyton-Brown (Leyton-Brown, n.d:307) many sources of supply or channels of access are beyond total contract, meaning that trade sanctions are often porous and alternate suppliers can often be found to replace those abiding by economic sanctions. Economic sanctions are less effective in bringing about the intended political objectives if the target country can easily circumvent the restrictions. The result of the US unilateral sanctions was to force Iran to pay higher prices to procure its important goods. Meanwhile, many transactions took place through intermediary countries with a view to producing Iran's essential goods. Evasion is a significant way of adjusting to economic sanctions by developing alternative sources of supply, diversifying the country's trading partners and by adopting a policy of economic mobilization and self-sufficiency.

The question is raised as why US unilateral sanctions have not worked. A study by Iran's economist Amuzegar (Amuzegar, 1997:31) demonstrates that the economic, psychological, and political impact of the US sanctions has not created the stated political goal. According to him, Iran's economy under US sanctions is in certain respects even healthier and also more stable than many developing economies the United States has assisted. Generally speaking, from the earliest stages it was obvious that the US trade sanctions would not disturb Iran's economy unless United States allies would join the embargo.

The European Community and Japan have been reluctant to lose the potential trade opportunities and a large market for their

companies dealing with Iran. The US sanctions did not affect the operations of foreign companies in Iran. This is obvious when we consider that a number of these companies were involved in bidding for contracts in the oil and gas sectors with the National Iranian Oil Company (NIOC). Iran's relations with the effective petroleum exploration and marketing companies competing with US companies have gradually reduced the effect of the American trade sanctions. The United States lacks any comprehensive support requiring cooperation among a group of countries. So long as the demand for Iranian crude oil is sufficiently elastic, little hardship will be brought about within the country. The net effect of the US trade embargo on Iran has been minor but costly. Immediately after the announcement of a complete trade embargo, the value of Iranian Rial fell by about one-third. The ban cut Iran's hard currency forcing it to reduce its imports bill. As Amuzegar pointed out "finding non-U.S. buyers for Iranian oil and non-Americans to invest in Iran's offshore oil and gas fields has not been cost free" (Amuzegar, 1997:32). Iran paid higher prices to replace imports from the United States or substituted for the banned imports from lower-quality sources.

The indirect negative impact of the US economic sanctions also included bilateral rescheduling of Iranian short-term debts with individual creditors under less favourable terms. Undoubtedly, US economic and political pressures have hurt the Iranian economy, but have not inflicted irreparable damage. In fact, American sanctions have also changed the international climate for Iranian business by adversely affecting the terms of trade and raising the cost of foreign investment for development financing. (Petrossian, 1995:25) Iran's access to foreign technology and investment has also been withheld, while some foreign potential investors opted not to investigate investment opportunities in Iran. The sanctions have also forced Iran to abandon parts of its policy for economic structural adjustment.

2. The Iran-Libya Sanctions Act (D'Amato Act) Constitutes A Secondary Boycott

On August 5, 1996 President Clinton signed into law the controversial bill, "The Iran- Libya Sanctions Act of 1996" aimed at

penalising foreign nationals or corporations whose investments in Iran or Libya contribute directly and significantly to the ability of these two countries to develop their petroleum resources. Why does the D'Amato Act target the Iranian oil industry? The rationale is that the petroleum industry is the major economic activity in Iran and its role has remained significant in the country's economic structure. This is the part of Iran's economy which is very vulnerable and upon which the United States exerted its pressure. The Act's bans on non-US companies from investing in the Iranian oil industry is to prevent these companies from participation in the development schemes of Iran's oil industry, because such development will reduce Iran's technological dependency on US oil companies. The sanctions are to be imposed if companies make investment of more than \$ 40,000, 000 or more in any 12-month in Iran's oil fields. As to the reason why the Act set the figure of \$ 40 million, the oil experts contend that \$ 40 million is the lowest level of investment needed for the development of oil and related industries. (Taeb, 1997:43, 46, 48) After August 1997, the threshold of investments triggering sanctions has been reduced to \$ 20 million over one year period.

The underlying premise of the sanctions is that both Iran and Libya pose a threat to the United States national security interests by attempting to acquire weapons of mass destruction and supporting the acts of international terrorism. The target of the Act is neither terrorism nor its sponsors, but the imposition of sanctions on persons who aid the development of oil industries of Iran and Libya in order to compel them to comply with the US foreign policy. In other words, the controversy surrounding the Act stem from its growing challenge to the rules of international law.

The statute as a subcategory of economic sanctions constitutes a secondary boycott seeking to discourage third-party nationals from doing business with the target country by binding persons beyond the US borders to its legislation. Secondary boycott is based on extraterritorial jurisdiction and therefore considered to be in violation of the rules of international law. In fact, resorting to a secondary boycott represents the lack of international consensus regarding the boycotted nation. As an unpalatable course of action, the secondary boycott not only influences legal acts of foreign firms in their own

countries for trading with Iran or Libya, but also creates an unreasonable instrument of economic coercion.

The question is whether the D'Amato Act provides a useful paradigm of violating the GATT by departing from the principle of free trade. To answer this question, we know that the multilateral trading system is based on acceptance of the rules and principles that exclude barriers to trade. The goal of a free trading system is to maximize world welfare and to minimize the amount of interference of governments that impinge the flow of trade. The distortions and impediments to international trade not only reduce the conduct of business operations on a world-wide basis, but also weaken the world trading system which aims at reinforcing and strengthening multilateral trade rules, principles and disciplines. Therefore, the main task of a state is to support a free commercial policy with the view of preventing market imperfections.

Under the GATT, the signatory states should not interfere with the free flow of trade of other States in any manner. Given the fact that the GATT provisions specifically apply to any action of member states that restricts the flow of trade of another member State, the US secondary boycott violates the GATT principles by restricting the free flow of world trade. Yet, the free trade doctrine advocated by the United States in the post-Cold War era conflicts with the restrictive trade practices of the United States to obstruct the liberal standards of world trade. The provisions of the D'Amato Act are also contrary to the Agreement on Trade Related Investment Measures (TRIMs) as the legislation restricts third country investors conducting business in Iran and Libya. The rationale is that the agreement is designed to ensure that member states do not apply investment measures that create restrictions in trade. US secondary boycott has been universally denounced as a violation of the principles and norms of international law, the United Nations Charter and those of the World Trade Organization (WTO).

2.1. Extraterritorial Application of D'Amato Act under International Law

Today, the United States government assertion's of extraterritorial jurisdiction creating serious conflicts between the USA

and foreign laws. When considering extraterritoriality, the primary inquiry is whether its effects are acceptable under international law. Gibney's thorough and compelling study demonstrates that extraterritoriality is anti-democratic in nature. (Gibney, 1996:308) While it is clear in international law that states have the right to take measures in order to regulate activity within their territory, it is still a hotly debated issue whether they are entitled to enforce national laws outside their territory. So far as the law of present time is concerned, there is a presumption against the extraterritorial application of the law of the United States. In *EEOC v. Arabian American Oil Co. (Aramco)* (1991) the US supreme court held that it is a "longstanding principle of American law that legislation of Congress, is meant to apply only within the territorial jurisdiction of the United States". (Gibney, 1996: 301)

Whatever the purpose of the Act would be, it is designed to compel persons outside the United States' jurisdiction to comply with the penalties against Iran and Libya. Whereas the Act is regarded as an infringement of the sovereignty of states, it is an extension of the US jurisdiction to actions that are legal under the laws of their home countries. It is the use of extraterritorial trade sanctions to enforce the American policy which makes the act an anomaly under general international law. There seems to be no attempt to demonstrate the respect for the established legal principles of public international law. Under the D'Amato Act the President is not instructed to act as to keep US business in line with US foreign policy: he is instructed to act as a world policeman, imposing US law upon every person and every place on the planet. It does little to reassure those who think that many members of the US Congress do not understand international law at all, but see the world as one great federal State with the United States filling the role of the federal government. (Lowe, 1997:386)

The question that remains is that to what extent the courts of other sovereigns should recognize the extraterritorial reach of the D'Amato Act. Indeed, there is no obligation for states and their courts to recognize the effects of legislation which itself is unlawful and contrary to the rules of international law. This view is reflected in Article 4 of the Council Regulation (EC).² It provides for the member states of the European Union not to recognize the judgment of any

court, tribunal or administrative authority outside the EU enforcing the US legislation. In cases where a state violates international law by applying its own law to a given situation, such legislation is contrary to the political independence of states and impinges their sovereignty.

2-2 Can the United States exercise Jurisdiction over the Territory of another State?

The main point which requires clarification relates to the question of whether, as a matter of international law, the United States can compel persons outside the US jurisdiction to comply with US sanctions. In attempting to answer this question, it is fundamental to start with the concept of jurisdiction which has given rise to an interminable controversy under international law.

There is an agreement among the scholars and jurists that jurisdiction is an aspect or a consequence of sovereignty. The exercise of territorial jurisdiction of states over persons within their territories is a well established concept under customary international law. Since states are independent and legally equal under international law, no state may exercise jurisdiction over the territory of another state without the latter's consent. (Malanczuk, 1997:118) It follows that states must abstain from expanding their sovereignty within the territory of another states. Under international law, the excess of jurisdiction will result to nullity. The International Court of Justice in the *Lotus case* established the basic principles of jurisdiction in public international law by holding that: "Now the first and foremost restriction imposed by international law upon a State is that-failing the existence of a permissive rule of the contrary-it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention".³

The question is whether the extraterritorial jurisdiction of the US law can be justified under public international rules of prescriptive jurisdiction. Section 403 of the Restatement (Third) of the Law of Foreign Relations provides that "a State may not exercise jurisdiction to prescribe law with respect to a person or activity having

connections with another state when the exercise of such jurisdiction is unreasonable".⁴ This would mean that a state that has a basis for exercising jurisdiction within another state, nevertheless must abstain from extraterritorial jurisdiction. In fact, the principle of *rationale* forbids a state to control the conduct of entities of other states without their consent.

According to Brownlie (Brownlie, 1990:310), extraterritorial acts can only be admissible if the following principles are respected that:

- There is a substantial and *bona fide* connection between the subject-matter and the source of jurisdiction;
- The principles of non-intervention in the internal affairs of another States be observed; and
- Elements of accommodation, mutuality, and proportionality be applied.

The general trend in state practice is to recognize that public international law places restrictions on the states to override the foreign territorial sovereign. In the *Barcelona Traction case*,⁵ it was held that international law:

(b) Involve[s] for every State an obligation to exercise moderation and restraint as to the extend of the jurisdiction assumed by the courts in cases having a foreign element, and to avoid undue encroachment on a jurisdiction more properly appertaining to, or more appropriately exercisable by another State.

2.3. Substantial effects and the United States' extraterritorial jurisdiction

The Iran-Libya Sanctions Act provides that sanctions may be imposed on parents or subsidiaries of persons breaching the Act, if that parent or subsidiary, with actual knowledge engaged in the investments that contribute to Iran's development of petroleum resources. An affiliate of the sanctioned person may also be subject to US sanctions if the affiliate, with a conscious consent engaged in unacceptable activities then that affiliate is in fact controlled by the sanctioned entity. The problem with the Act is not about the US sanctions against American subjects trading with Iran and Libya, but over the imposition of liabilities against non-US entities trading with

either country. In other words, the Act sanctions the behaviour of foreign companies with no connection to US territory. This is indeed the most radical expansion of extraterritorial jurisdiction that has ever been attempted by the United States. According to Mann, (Mann, 1990: 62) in the absence of an imposed contract, any export restrictions and trade embargoes which the states purport to impose on the foreign purchaser of goods and foreign subsidiaries plainly constitute an excess of international jurisdiction.

The US nationality of the exporter or the US origin neither of the goods or technology, nor other accepted tests of corporation's nationality could justify the US claim of jurisdiction over foreign subsidiaries and foreign corporations. (Alikhani, 2001:306) Not only these corporations are not incorporated under the US laws, but also they are not nationals of the United States to claim jurisdiction over them. In *Compagnie Européenne des Pétroles S.A. v. Sensor Netherlands B.V.* the principle of nationality was rejected as a ground for the jurisdiction of the United States over a foreign subsidiary. It was held that Sensor "has Dutch nationality, having been organized in the Netherlands under Dutch law and both its recognized office and its headquarters being located within the Netherlands".⁶

The main jurisdictional premise of the D'Amato Act is the doctrine of substantial effects according to which the United States can assert jurisdiction over conduct occurring abroad, but have substantial effects within the country. The issue of effects theory raised for the first time in the case of *United States v. Aluminium and others (ALCOA)* decided in 1945, states that "it is settled law-as Limited [the main defendant] itself agrees that any state may impose liabilities, even upon persons not within its allegiance, for conduct within its borders that has consequences within the borders which the state reprehends and other states will naturally recognize these liabilities." (Akehurst, 1972-73) The necessity to preserve the sovereign rights of the other states would require due regard to the legal principles of jurisdiction in a manner consistent with international law. The basic question remains whether the legal acts of foreign companies have substantial effects within the United States. What may be understood from the D'Amato Act is that foreign investment

in the Iranian and Libyan petroleum industries does not have a substantial, direct and foreseeable effect upon US-owned property.

In the alternative, it might be argued that Iran and Libya are considered a potential source of terrorist acts within the United States. Again, the Act could not be justified because when the US interest is balanced against the interests of other states, it does not justify a reasonable assertion of extraterritoriality. In the landmark case *Timberlane Lumber Co. v. Bank of America* (1976), the United States Court of Appeals recognized that "over and above the requirement of substantial effect, there had to be a more comprehensive balancing of interests, including that of comity, thus recognizing the international implications of the assertion of jurisdiction over foreign corporations or acts committed abroad". (Bowet, 1982: 20) This line of reasoning may be supported by the arguments that the Act's principal effects are on foreign entities rather than sponsors of international terrorism. It is difficult to presume that investments in the Iranian or Libyan oil industries have a substantial effect within the United States, because terrorism directly or indirectly cannot be viewed as an effect attributable to profit-seeking investors like multinational oil companies.

For American unilateral interpretation of jurisdiction, events take place in the world intended to have an impact within its borders and accordingly justify its extraterritorial jurisdiction. This is of course in line with extensive interpretation of the national link adopted by the United States which permits it to impose obligations on foreign subjects contrary to international law. But can the jurisdiction of states be kept within reasonable bounds? Due to the fact that the activities of multinational corporations will have consequences all over the world, it would therefore be absurd to allow an extraterritorial jurisdiction in such circumstances. Even where the conduct outside the United States has only indirect effects on its territory it could not be subject to American law, unless there is proof of specific intent to that effect. (Akehurst, 1972-73:195- 200)

2.4. Extraterritoriality Goes Deeply Against the Grain of Sovereign Equality of States

The sovereignty and equality of states, Brownlie argues, “represent the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having a uniform personality”. (Brownlie, 1990:287) If it can be argued that there exists certain inalienable rights which are the essential elements of a state sovereignty, the other states should not exercise jurisdiction if doing so would be unreasonable. Under international law, sovereign equality of states is the cornerstone of the international legal system. As one of the defining ideas of 20th century, the principle of sovereign equality of states gained its supreme recognition in Article 2 (1) of the UN Charter under which “the Organization is based on the principle of sovereign equality of all its members.” The equality of states means that the dignity, personality and independence of a state as well as its territorial integrity are respected. In the *Norwegian Shipowners’ Claim* (1922), the Permanent Court of Arbitration concluded that “international law and justice are based upon the principle of equality between States”. On the notion of sovereign equality professor Magarasevic writes: “The conception of the equal rights of states, determined generally as equality before international law and equality in rights and duties, is an essential political and legal prerequisite for the maintenance of international peace and stability in international law and international political, economic, social, humanitarian and cultural relations”. (Magarasevic, 1972:188-189)

While international law guarantees the right of self-determination, it carries with it limitations upon the outside interference of each state. United Nations Declaration on the Granting of Independence to Colonial Territories and Peoples states: “All people have the right to self-determination; by virtue of that right, they determine their political status and freely pursue their economic, social and cultural development”⁷.

It is now recognized that one of the essential elements of sovereignty is that it is to be exercised within territorial limits.⁸ Sovereignty demands respect for the primacy of the principle of non-interference in the domestic jurisdiction of other states. Increasingly

enough the use of economic sanctions by the United States constitute a flagrant violation of the sovereignty of other states and the legitimate interests of companies and subjects under their jurisdiction as well as freedom of trade by limiting the rights of sovereigns to pursue a truly independent trade policy. In *the Austro-German Customs Union Case (1931)*, it was held that “[in] the absence of treaty restrictions, states have complete freedom in their economic activities. Economic independence is therefore an essential part of the sovereignty and any threat to such economic independence is a threat to sovereignty as such”. (Glossop, 1997:221) The question is whether cooperation can ever come about under the D’Amato Act? There seems to be no respect under the Act for the rules of international law concerning the reciprocity and co-operation in international law. As a matter of fact, reciprocity as an appropriate standard of behaviour carries with itself an obligation for the sovereign states to co-operate for a long-term relationship. Although reciprocity is not itself a principle of law, it can permit cooperation under international law.

The D’Amato Act is in violation of Article 1 of the United Nations Charter concerning the promotion of international cooperation in solving problems of an economic, social, cultural or humanitarian character; Article 2 (1) relating to the necessity of sovereign equality of states; and Article 2 (4) regarding the protection of the territorial integrity and political independence of any state. The forgoing arguments tend to support the fact that the so-called doctrine of extraterritoriality not only violates the norms and standards of international trade law relating to the sovereign equality of states, but also undermines the homogeneous and identical treatment of the states in their mutual relations based on the liberal concepts of perfect equality, reciprocity, and friendly relations.

2.5. Economic Coercion Constitutes a Violation of the Rule of Non-Intervention into the Domestic Affairs of another Sovereign State

Today, economic sovereignty of a state prohibits deliberate attempts from intervening directly or indirectly in internal or external affairs of other states. It is submitted that customary international law

recognizes the rights of states to choose freely their foreign commercial policy as they wish. International law prohibits the use of economic coercion or threat thereof against any state, unless coercive measures are adopted by the competent organs of the United Nations. It may generally be observed that a serious economic coercion is to be accepted in a manner consistent with purposes of the internationally authorized measures such as decisions that are taken by the United States. In the judgement on the merits of the *case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*⁹ the International Court of Justice (ICJ) stated that “the principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference”. The legal concept of non-intervention derives from both respect for the political integrity and territorial sovereignty of states encompassing the right of every sovereign to conduct its affairs without outside coercion.

The first manifestation of the idea of non-intervention might be seen in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (1965) which states:

1. Armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned.
2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.
3. Every State has an inalienable right to choose its political, economic, social, and cultural systems, without interference in any form by another State. (Elagab, 1988: 204)

In the case concerning Military and Paramilitary Activities in and against Nicaragua (merits)¹⁰ the international Court of Justice (ICJ) observed that the intervention is wrongful when it uses the methods of coercion in respect to the choices of a political, economic, social and cultural system, and the formulation of foreign policy which are matters that each state is permitted, by the principle of state sovereignty, to decide for its own development. In its judgment on

jurisdiction and admissibility of the *case of Nicaragua v. United States*, the ICJ stated that:

"Principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and the freedom of navigation, continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated."¹¹

Following the signature of an agreement in 1981 (the Algiers Accords) on the settlement of claims between Iran and the United States, the latter undertook "not to intervene directly or indirectly, politically or military in Iran's internal affairs".¹² It would seem that the provisions of the D'Amato Act violate the United States undertaking under the Algiers Accords not to intervene in the domestic Affairs of Iran. What may be deduced from this is that the D'Amato Act's primary target of deterring Iran and Libya from supporting the acts of international terrorism or acquiring weapons of mass destruction is clearly an instrument of economic coercion. Under international law, a state has to refrain from intervention in the affairs of other states in order to prevent the free and full exercise of its sovereignty.

The question is whether the economic sanctions are illegal. What criteria should be applied to determine whether the unilateral acts of economic coercion violate the norms of international law? Theoretical writings support the view that the intention of a state and the coercive nature of its act may qualify a state's action as illegal intervention. Regardless of whether the economic sanctions were adopted for economic or non-economic reasons, it must be demonstrated that such measures intended to impair the internal or external policies of the target state. Economic sanctions are unlawful when they violate an essential foundation of international relations: the principle of non-intervention. Economic conduct might be viewed as interventionary under international law if a state imposes economic measures on the target state intended to impair its property or economic interests.

In the *case of Nicaragua v. United States (merits)* on the legality of coercive measures the International Court of Justice (ICJ) concluded that "it is unable to regard such action on the economic plane as is

here complained of as a breach of the customary principles of non-intervention". While expressing no need for a careful weighing of competing political and economic interests the Court further stated that a State "is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation ..."¹³ There is considerable evidence that the true position of customary international law on the question of the legality of economic sanctions is rather less categorical than this brief statement by the International Court of Justice (ICJ). Neff rightly pointed out that:

"If the International Court had endorsed the Western liberal strategy for promoting world peace in its fullest sense, instead of concentrating on narrower issues such as intervention and the use of force, it would have reached a different conclusion on the legality of the trade boycott. It would have recognized the existence of a general principle that States should keep their economic relations insulated as carefully as possible from their political ones—a general principle whose specific form is a duty of non-intervention in economic relations on political grounds, and whose clear implication is that economic warfare is, at least in principle, impermissible." (Neff, 1988:113,129)

Is the US economic coercion against Iran consistent with Article 2 (3) of the United Nations Charter? Shouldn't the United States pursue a peaceful means of settlement as the preliminary step toward Iran? It might be argued that since the D'Amato Act is not a peaceful and appropriate means for the solution of disputes between Iran and the United States, it constitutes a violation of the US obligations under Article 2 (3) of the UN Charter under which all members pledge themselves to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". Likewise, the Act's provisions are also unquestionably incompatible with the principle of non-intervention into the domestic affairs of Iran in an unjustifiable and impermissible manner.

Conclusion

The subjects examined in this article lead to the conclusion that the D'Amato Act is an anomaly under public international law. US unilateral coercive measures against Iran contravene the norms of co-existence among states which require respect for the fundamental principles of international law including the legal equality of states, non-intervention, co-operation and friendship, respect for independence and territorial integrity of states among all members of the international community. Extraterritorial application of US legislation is counterproductive and damages US long-term economic interests and hurt US companies.

I believe that while economic sanctions form part of an enforcement system, they should not be enforced unilaterally. Indeed, the international community must find a more common ground and to secure a workable system of universal sanctions to apply these standards by taking into account a widely shared objectives. The underlying norm relating to economic sanctions is to show the steady stream of consensus by the United Nations resolutions and the acceptability of the measures by the international society. It follows that, if UN resolutions are adopted in a high level of abstraction, not only the consensus would be unhelpful, but it also renders the resolutions meaningless. In other words, if significant elements of the contemporary international community oppose economic coercion against a particular country for purposes of foreign policy, then sanctions will unlikely to provide a basis for effective and legitimate multinational action under international law.

To understand the impulses motivating the United States to impose unilateral enforcement measures against Iran, it is to be determined whether Iran has violated any norm of the international community binding upon it. What would be the norm-enforcement justification for the unilateral enforcement measures? To what extent could be such measures placed within a structure of community-wide norms? These questions might be acute with respect to the legal content of the norms in the international legal community in general and in the collective enforcement of such norms by all states against any violator of international law in particular.

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Note

¹ See *Doing Business With Iran: Guide for U.S. Companies*, 15 MEER 7 July 1992, p 15.

² See Council Regulation (EC) No.2271, 96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom, O.J. No.L 30/91-29.11.96.

³ The case of *S.S. Lotus (France v. Turkey)* of 1927, P.C.I.J. Series A, No. 10, cited in R.Y. Jennings, *General Course on Principles of Public International Law*, Hauge Recueil des Cours (1967 II) 121, p 516.

⁴ See *Restatement (Third) of Foreign Relations of the United States* # 403 (1986).

⁵ *Case concerning Barcelona Traction, Light and Power Co. Ltd.*, ICJ Reports

(1970), at p 105, cited in F.A. Mann, *The Doctrine of International Jurisdiction Revisited After 20 Years*, op.cit., p 10

⁶ Judgment of September 17, 1982, District Court of The Hague, reprinted in 22 ILM 66 (1983), cited by Griffin & Calabrese, op.cit., p 18.

⁷ General Assembly Resolution 1514 (XV), 14th December 1960.

⁸ See the award in the *North Atlantic Coast Fisheries Case*, 11 UNRIAA 167.

⁹ ILR 349 (1987) para.205.

¹⁰ (1986) I.C.J.Rep.para 205, cited in Gillian White, *Principles of International Economic Law : an Attempt to Map the Territory*, in *International Economic Law and Developing Countries: Some Aspects*, Hazel Fox (ed.), London, 1988,p 11; See also 76 ILR 349 (1987), para 205.

¹¹ (1984) I.C.J.Rep.para.73, Cited in Sir Ian Sinclair, *The Significance of the Friendly Relations Declaration*, in *The United Nations and the Principles of International Law, Essays in Memory of Michael Akehurst*, Vaughan Lowe & Colin Warbrick (eds.), London/New York, 1994, pp 20-21.

¹² (1981) 20 ILM 224.

¹³ 76 ILR 349 (1987), Paras.245,276.