

INTERNATIONAL SANCTIONS AT THE CROSSROADS OF DIPLOMACY AND LAW: A CRITICAL EXAMINATION

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Abstract: This article provides a thorough and comprehensive analysis of the sanctions currently being applied by states to international diplomatic relations and the legal basis for the application of sanctions in international law.

Keywords: The concept of "restraint" deterrence in modern international law, the Council of Europe, the United States, sanctions diplomacy, Economic sanctions, political sanctions, counter-sanctions, embargo.

Introduction

Since the end of the period of absolutism in Europe and the subsequent collapse of the “concert” of great powers as a result of the First World War, international law has reoriented itself towards ensuring cooperation on the basis of the sovereign equality of states. The imperial interpretation of the concept of “sovereignty” – the unlimited use of power by a ruler who is not accountable to either internal or external forces – has been transformed into the concept of the common responsibility of equal actors¹.

The “right to wage war” as an indispensable attribute of sovereignty (*jus ad bellum*) was abolished by the Kellogg-Briand Pact of 1928². After the Second World War, the ban on the use of force in relations between states was enshrined in paragraph 4 of Article 2 of the UN Charter³. Affirming the “importance of the progressive development and codification of the principles of international law” for the maintenance of international peace, in 1970 the UN

¹ This principle is enshrined in Article 2, paragraphs 1 and 2, of the UN Charter.

² <https://docs.cntd.ru/document/901786550>

The Treaty between the United States and other States renouncing war as an instrument of national policy was signed in Paris on August 27, 1928, and entered into force on July 24, 1929. Article 1: “The High Contracting Parties solemnly declare, in the name of their peoples, that they condemn the resort to war as an instrument of national policy in their relations with one another. Article 2: “The High Contracting Parties recognize the necessity of always settling or resolving all disputes, of whatever nature or origin, which may arise between them.”

³ <https://www.un.org/ru/about-us/un-charter/full-text>

General Assembly adopted the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” [UN, 1970]. By this resolution, the international community recalled the duty of states “in their international relations to refrain from military, political, economic or any other form of pressure directed against the political independence or territorial integrity of any state”. The Declaration expressly affirms as a principle of international law “the duty not to interfere in the affairs within the domestic jurisdiction of any state”, which is also supported by paragraph 7 of Article 2 of the UN Charter⁴.

"Sanctions diplomacy" or "coercive diplomacy" is a special form of official relations between the United States and other countries and/or associations that practice the use of unilateral sanctions with the objects of sanctions pressure, implemented in the form of strict unilateral restrictions. The term came into circulation at the instigation of American researchers in the 1980s and is widely used, including at the level of official authorities, to characterize the state of modern relations between individual countries. Nevertheless, sanctions cannot be considered an instrument of diplomacy, since they hinder the development of friendly relations between states and create difficulties in the work of diplomatic missions. In this regard, in this report, the term is given in quotation marks.

Materials and Methods

This article uses qualitative research methods, in particular, deep-rooted theoretical analyses, to examine sanctions and their impact on diplomacy around the world. The methodology of this article includes an in-depth study of relevant foreign legal literature on the basis of sanctions and their impact, as well as rigorous strategies for strengthening practical approaches to the application of sanctions and the procedures for their implementation.

By comprehensively studying and analyzing the existing legal literature, this study aims to improve the full understanding of the risks associated with sanctions imposed by developed countries, their significance, and the methods that can be used to strengthen political relations. Such an approach on the scene allows for in-depth study of the topic, provides valuable information on understanding the acute consequences of actions related to the mutual application of sanctions, and helps to gain a deeper understanding of the issues of assessing, identifying, and eliminating the risks associated with these actions in the relations between states.

⁴ <https://www.un.org/ru/about-us/un-charter/full-text>

Research results

Unilateral sanctions are deliberate actions of individual states ("initiator countries") and their coalitions aimed at reducing or terminating economic relations with the "target country", restricting its access to international markets and hindering the business activities of its subjects. They are illegitimate from the point of view of international law, since they are implemented without the authority of the United Nations Security Council⁵.

Sanctions policy is the policy of individual states and/or their coalitions to implement sanctions against various types of subjects (including governments, commercial and non-commercial structures, etc.).

Retaliatory restrictive measures are deliberate actions of individual states ("target countries" of unilateral sanctions), taken in response to unilateral sanctions by "initiator countries" in accordance with the principle of reciprocity provided for in Article 47 of the Vienna Convention on Diplomatic Relations of 1961.

The 21st century has marked an era of expansion and intensification of the use of unilateral economic sanctions (without approval by decisions of the United Nations Security Council) as a method of exerting political pressure to achieve the interests of individual powers or groups of countries. In the case of unilateral influence, sanctions become a powerful instrument of pressure by countries with strong economic potential on their political opponents and economic competitors. The use of sanctions to impose their "rules of the game" is not a new phenomenon. The flagship and pioneer of the use of sanctions as a foreign policy instrument was and remains the United States, which has built up a powerful economic potential since the end of World War II, the collapse of the Bretton Woods system and the consolidation of the principles of the Washington Consensus, giving them the opportunity to monitor and influence the settlements of other states and the movement of their accumulated assets. The practice of applying, institutionalizing, legalizing, and globally replicating sanctions as instruments of coercion has contributed to the conceptualization of the so-called "coercive diplomacy" – a concept that has long been part of scientific discourse and practical use.

The initiating countries position sanctions as a tool of "crisis management", "a humane alternative to the armed resolution of contentious political issues", and "coercive diplomacy"

⁵ <https://mgimo.ru/about/news/departments/sanctions-diplomacy/>

as a holistic strategy of "carrot and stick" crisis management, allowing politicians to resolve crises through mutually acceptable compromises, avoiding military confrontation⁶.

However, the last decades of using sanctions as coercive measures have revealed two conceptual paradoxes.

The first is that, despite the proven and confirmed ineffectiveness of sanctions in influencing the political behavior of the target country⁷, the use of sanctions regimes is growing, and the circle of initiating countries is expanding.

The second paradox is the colossal gap between the conditions and factors that can ensure the success of "sanctions diplomacy" (which are recognized by Western politicians, diplomats and experts themselves) and the actual practice of the behavior of the initiators of sanctions, their negotiating position and the principles of sanctions policy. "Coercive diplomacy" is a difficult-to-use, risky strategy with a low success rate, especially in resolving crises without the use of force.

Success depends on a favorable context, skillful diplomacy, and psychological factors beyond the control of the coercer⁸.

Successful sanctions policy requires several components: clearly articulated threats, cost-benefit calculations, trust, and assurances⁹. Experts identify several factors that contribute to successful coercion, such as power, interests¹⁰, reputation¹¹, trust, resolve, and the ability to signal¹².

⁶Jakobsen P.V. 2020. Coercive Diplomacy as Crisis Management. Politics. <https://doi.org/10.1093/acrefore/9780190228637.013.162>. Available at:

<https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1624;jsessionid=87DE0C9939C9281BE37F5B1C03FCB324>.

⁷ Hufbauer G., Shott J., Elliott K., Oegg B. 2009. Economic Sanctions Reconsidered. Third Edition. Washington DC: Peterson Institute for International Economics; Pape R. A. 1997. Why Economic Sanctions Do Not Work. International Security. Vol. 22. No. 2 (Fall, 1997). P. 90–136; Drezner D. 2011. Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice // International Studies Review. Vol. 13. No. 1. P. 96–108.

⁸ Jakobsen P.V. 2020. Coercive Diplomacy as Crisis Management. Politics. Doi: 9780190228637.013.1624. Available at: <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1624;jsessionid=87DE0C9939C9281BE37F5B1C03FCB324>.

⁹ Borghard E.D, Lonergan S.W. 2017. The Logic of Coercion in Cyberspace. Security Studies. Vol. 26. No. 3. P. 452–481. Doi:10.1080/09636412.2017.1306396.

¹⁰ Press D.G. 2007. Calculating Credibility: How Leaders Assess Military Threats. Cornell University Press.

¹¹ Weisiger A. and Yarhi-Milo Keren. 2015. Revisiting Reputation: How Past Actions Matter in International Politics. International Organization. Vol. 69. No. 2. P. 473–495. Doi: 10.1017/S0020818314000393.

¹² Peterson T. M. 2013. Sending a Message: The Reputation Effect of US Sanction Threat Behavior. International Studies Quarterly. Vol. 57. No. 4 P. 672–682. doi: 10.1111/isqu.12017.

According to Western experts, “coercive diplomacy” and deterrence are political and psychological strategies that must be directed by political leaders, coordinated with diplomacy, and take into account the political constraints, worldviews, and perceptions of the adversary¹³.

This form of foreign policy implementation involves going through three stages¹⁴:

1. Coercive — involves threats of harm (political, economic, or military) and actions that may harm the adversary in order to influence its behavior. Damage may include political, economic, and military measures, but the actual use of force should be limited and serve only signaling and influence purposes, facilitating the transition to negotiations.

2. Conciliatory and accommodating — involves the use of positive incentives to comply with the demands of the coercer. Their goal is to reduce the cost of compliance and thereby increase the prospects for finding a mutually acceptable solution to the crisis.

3. Using assurances to convince the adversary that the subject of sanctions pressure will fulfill three promises:

a) will stop harming the adversary if the demands of the coercer are met;

(b) the promised compensation for compliance will be provided in accordance with the agreements reached;

(c) compliance with the agreements will not lead to new demands in the future.

However, the paradox of the global sanctions practice of recent years, promoted by the United States and its Western allies, is the actual absence of the second and third components.

At the same time, the coercive component does not have signaling goals, but is aimed at causing maximum damage to the target party. The second obstacle to achieving at least some officially declared goals is the complete undermining of the reputation of the initiators of the sanctions regimes and the trust of other participants in international relations.

In these conditions, the target party does not see and cannot see objective grounds for resolving the situation, establishing a dialogue, and the effectiveness of traditional diplomatic instruments is sharply reduced, driving the parties exclusively into the trap of mutual exchange of sanctions measures.

Analysis of research results

¹³ Fearon J.D. 1997. Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs. *Journal of Conflict Resolution*. Vol. 41. No. 1. P. 68–90. doi: 10.1177/0022002797041001004.

¹⁴ Levy J.S. 2008. Deterrence and Coercive Diplomacy: The Contributions of Alexander George. *Political Psychology*, Vol. 29. No. 4. P. 537–552. Available at: <https://fas-polisci.rutgers.edu/levy/articles/Levy%20Deterrence%20&%20Coercive%20Diplomacy.pdf>.

As a result, the rhetoric of goal-setting itself changes when introducing sanctions regimes. Until recently, the officially recognized goals of sanctions policy were considered to be:

1) a change in the political course of the country-object of sanctions (by weakening and limiting military potential, a change in the political regime or without a change in the political regime due to high economic losses from restrictive measures)¹⁵;

2) "punishment" for "unlawful" (from the point of view of the countries-initiators of sanctions) political behavior of the country-object;

3) preventive signaling to the world about the risks of economic and political damage in the event of a similar policy.

Today, the goal-setting of sanctions is acquiring a new interpretation, which was most clearly articulated in the report on sanctions by the International Crisis Group, containing recommendations to US authorities¹⁶. The report attributes to the functions of sanctions policy: restricting access to the resources of the country-object of sanctions pressure, increasing the cost of the policy pursued by the country-object of sanctions, as well as ensuring a more advantageous negotiating position for the initiating party. It is becoming increasingly obvious that sanctions are used as a tool for unfair competition.

Thus, building foreign policy from a position of coercion through the increasingly active use of sanctions instruments cannot be classified as a new form of diplomacy. This is exclusively one of the means of implementing foreign policy that does not contribute to maintaining international peace and security, but aggravates the crisis of trust in the initiators of sanctions and hinders the achievement of mutually acceptable agreements, while diplomacy, according to the Vienna Convention on Diplomatic Relations of 1961, is called upon to serve the goals of "the sovereign equality of states, the maintenance of international peace and security and the promotion of friendly relations among states."

Conclusion

In summary, except in cases of genuine need to defend security interests or direct impact of illegal actions of another state, sanctions are instruments of international policy that violate the principles of diplomacy and peaceful coexistence between states. According to Chapter VII

¹⁵ Jakobsen P.V. 2020. Coercive Diplomacy as Crisis Management. Politics. <https://doi.org/10.1093/acrefore/9780190228637.013.1624> Available at: <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1624;jsessionid=87DE0C9939C9281BE37F5B1C03FCB324>.

¹⁶ Hufbauer G., Shott J., Elliott K., Oegg B. 2009. Op. cit.

of the UN Charter¹⁷, multilateral sanctions are coercive measures that bring the situation to a level close to the open use of armed force. From a moral point of view, such measures are instruments of war. US President Woodrow Wilson did not mince words in his speech delivered in 1919, shortly after the end of World War I: “A boycotted nation is one step away from capitulation. No war is needed when such instruments, invisible and deadly, are available. It is a terrible retaliation. Such measures do not lead to casualties, but the pressure they exert is so great that, in my opinion, no modern state is capable of withstanding it”¹⁸.

Multilateral sanctions imposed by the UN are an instrument for ensuring collective security. From this perspective, they are not only considered legitimate, but also morally justified¹⁹, since they are imposed by the Security Council on behalf of the international community in the interests of security. Ultimately, they are justified by their “applicability” on an international scale, that is, they are intended to ensure compliance with the rule on the non-use of force and, therefore, serve as an instrument for ensuring peace between states. Obviously, the legitimacy of multilateral sanctions depends on the observance by the permanent members of the UN Security Council of the Purposes and Principles of the UN, as specified in paragraph 2 of Article 24 of the UN Charter.

If sanctions are imposed unilaterally by a single state or a group or alliance of states, then, due to their incompatibility with the principle of sovereign equality of states, such measures should be considered the “law of the jungle” rather than an element of international law. Such sanctions are a relic of the previous system of international relations, which is best described by the term “Souveränitätsanarchie”²⁰, within the framework of which relations between states are based on the priority of protecting their own interests rather than upholding the principle of the rule of law.

In this context, the right to wage war (*jus ad bellum*) is considered a right of a sovereign state and an integral part of the law of nations²¹. This understanding of the international status of a state, including its right to use coercive measures, was eradicated by the signing of the Kellogg-Briand Pact at the end of the First World War and the adoption of the UN Charter after the Second World War.

¹⁷ Articles 41 and 42 of the UN Charter

¹⁸ Original quote from [Padover, 1942, p. 108].

¹⁹ Unless, of course, they violate the fundamental human rights of the population of the country that is the target of the sanctions. See: [Bossuyt, 2000; Köchler, 1995b, pp. 1–4].

²⁰ “Anarchy in relations between sovereign states.”

²¹ On the development of international law in relation to *jus ad bellum*, see: [Köchler, 2006, p. 13].

However, due to the lack of a reliable deterrence system in the post-bipolar world, unilateral sanctions have become the most frequently used instrument of power projection. “Power politics” not only undermines, but in some cases even replaces the principle of the rule of international law, which became the basis of the United Nations. It should be noted that in one of its latest reports, the UN Human Rights Council classified unilateral sanctions as a method of waging economic warfare: “It can be argued with a reasonable degree of plausibility that the establishment of a comprehensive regime of unilateral coercive measures, including the application of national sanctions legislation to third parties, the effects of which are practically equivalent to the effects of a blockade of a foreign state, can be equated with waging economic warfare” [Idriss, 2018, p.8]. The Special Rapporteur drew the attention of the Council to the need to strengthen the rule of law “in order to eradicate economic coercion as an instrument of international diplomacy²²”.

In the absence of tried and tested legal procedures, especially given the internal inconsistencies that characterize even the basic provisions of the UN Charter and the different interpretations of the concept of “state sovereignty” by individual member states²³, the only alternative instrument to counter arbitrary (and therefore inherently unlawful) unilateral sanctions are counter-sanctions by the affected states – measures that are equally unlawful²⁴, although not directly prohibited by international law²⁵. In the context of “secondary sanctions” (applied extraterritorially), joint action by affected third countries may be the only effective way to protect national sovereignty. In the harsh conditions of “power politics”, such elements of realpolitik will persist as long as legal mechanisms remain insufficiently effective. The only hope lies in the gradual establishment of a multipolar balance of power. The creation of new mechanisms of international cooperation at the regional and global levels, which make it possible to neutralize the trade and monetary monopoly of states that apply sanctions, can over time significantly weaken the impact of unilateral measures of individual states or international organizations (with the exception of the UN) - and, consequently, gradually create conditions for the full implementation of the principle of sovereign equality of states.²⁶ In any political

²² See: [Köchler, 2006], Chapter VI “Conclusions and Recommendations”, paragraph 51. See also “Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law” in the appendix to the Report.

²³ On the contemporary interpretation of sovereignty and normative inconsistencies between other norms and practices in the contemporary system of international law, see: [Köchler, 2017, pp. 175–190].

²⁴ This means abandoning legal procedures that are not credible or ineffective.

²⁵ Such countermeasures are also permissible in exceptional cases, taking into account Article 49 of General Assembly resolution 56/83 “Responsibility of States for internationally wrongful acts”.

²⁶ Democratization of the UN would be an important step in this direction. See: [Köchler, 2014, p. 63–90].

structure, legitimacy can only be ensured by a system of checks and balances, which at the international level requires a stable balance of power.

References:

1. Borghard E.D., Lonergan S.W. 2017. The Logic of Coercion in Cyberspace. Security Studies. Vol. 26. No. 3. P. 452–481. Doi: 10.1080/09636412.2017.1306396.
2. Köchler H. (1995b) Ethical Aspects of Sanctions in International Law // Review of International Affairs. Belgrade. Vol. XLVI.
3. Köchler H. (2006) The Precarious Nature of International Law in the Absence of a Balance of Power. The Use of Force in International Relations: Challenges to Collective Security / H. Köchler (ed.). Vienna: International Progress Organization.
4. Köchler H. (2014) The Democratization of the United Nations Organization: Ideal versus Real. Human Rights, Human Security, and State Security: The Intersection / S. Takahashi (ed.). Santa Barbara, Denver, Oxford: Praeger.
5. Köchler H. (2017) Normative Inconsistencies in the State System With Special Emphasis on International Law. The Global Community: Yearbook of International Law and Jurisprudence 2016 / G.Z. Capaido (ed.). Oxford: Oxford University Press.
6. Padover S.K. (ed.) (1942) Wilson's Ideals. Washington DC: American Council on Public Affairs.
7. Fearon J.D. 1997. Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs. Journal of Conflict Resolution. Vol. 41. No. 1. P. 68–90. doi: 10.1177/0022002797041001004.
8. Hufbauer G., Shott J., Elliott K., Oegg B. 2009. Economic Sanctions Reconsidered. Third Edition. Washington DC: Peterson Institute for International Economics.
9. Jakobsen P.V. 2020. Coercive Diplomacy as Crisis Management. Politics. // URL: <https://doi.org/10.1093/acrefore/9780190228637.013.162>. Available at: // URL: <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1624;jsessionid=87DE0C9939C9281BE37F5B1C03FCB324>.
10. Weisiger A. and Yarhi-Milo Keren. 2015. Revisiting Reputation: How Past Actions Matter in International Politics. International Organization. Vol. 69. No. 2. P. 473–495. Doi: 10.1017/S0020818314000393.
11. Press D.G. 2007. Calculating Credibility: How Leaders Assess Military Threats. Cornell University Press.

12. Levy J.S. 2008. Deterrence and Coercive Diplomacy: The Contributions of Alexander George. *Political Psychology*. Vol. 29. No. 4. P. 537–552. // URL: [https://fas-polisci.rutgers.edu/levy/articles/Levy%20-20Deterrence%20&%20Coercive%20Diplomacy.pdf](https://fas-polisci.rutgers.edu/levy/articles/Levy%20-%20Deterrence%20&%20Coercive%20Diplomacy.pdf).

