


Examining Iran's foreign investment embargo with respect to unilateral US sanctions (A legal review from an international perspective)

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Abstract

American sanctions against Iran are one of the most extensive in terms of variety and extent. The most approved sanctions are unilateral against a country. While unilateral economic sanctions in an extraterritorial manner are considered a violation of the sovereignty of other countries in this regard. This research is done through analytical-descriptive method. Giri has studied the legal analysis of Iran's foreign investment embargo by the United States of America based on reliable research documents and international law jurisprudence. The findings of the research show that the restrictions caused by the unilateral US sanctions against Iran and the increase in investment costs can be considered as a serious obstacle to foreign investment in Iran. However, in 1991, the United Nations General Assembly strongly urged governments to end unilateral pressures. Also in the another one in 1996 called for the removal of such practices under the title "Elimination of economic pressure measures as a means of political and economic coercion". The American side in sanctioning Iran violates the principle of peaceful coexistence among governments, which requires respect for the political principles of international law, i.e. the legal equality of governments, non-interference, cooperation and friendship, respect for the independence and territorial integrity of governments among the members of the international community. This type of actions lacks legal and international validity due to the lack of legitimacy.

Keywords: Sanctions, foreign investment, international law, Iran, US.

Introduction

The importance of the issue of foreign investment and the effort to remove its legal obstacles is considered one of the most important issues for the economic and scientific growth and improvement of any country. Foreign investment is one of the most extensive and controversial legal topics. But today, many of the legal foundations of foreign investment have undergone fundamental changes, especially foreign investment is considered an international necessity. With the victory of the Iranian Islamic Revolution, in the winter of 1979, the United States of America has used this tool against Iran many times. Iran including seizure of property and assets of Iranian individuals and organizations abroad, trade sanctions on export, import and investment, knowledge and technology sanctions, oil sanctions, financial sanctions and commercial banks and the central bank, sanctions on interactions and transactions with individuals, organizations and Iranian organizations by the European Union and international organizations.

Observing the international scene reveals the fact that a certain range of countries in the Middle East faced the challenge of this have faced such sanctions, but their interaction with the phenomenon of sanctions and its impact on the process of internal learning and innovation has not been the same.

1. Research records

Furtland (2017) In a research, it has shown the destructive effects of sanctions on issues related to human rights in the target countries. The interesting thing to note in this study is that the excuse of sanctions does not have an effect on its disastrous results.

Zainli (2016) in a research entitled "Research and analysis of the human rights situation in Iran and the reasons for sanctions by the European Union against the Islamic Republic of Iran" writes: Sanctions are contrary to human rights and have had no result other than punishing the public.

In an article titled "Capital circulation in international law and the assessment of Iran's foreign investment embargo", Yaser Ziyai and colleagues have discussed the free flow of capital in line with the liberalization of world trade. This research has focused on the limitation and free circulation of capital in the international economy, the limitation and free circulation of capital in the economy in international law, foreign investment in international law: from encouragement to sanctions.

Although a lot of research has been written about the American sanctions against Iran, a comprehensive research has not yet been done on the violation of human rights due to unilateral American sanctions regarding foreign investment and its impact on Iranian citizens.

2. Research Methodology

This research intends to use analytical-descriptive methods. Obtaining reliable researches based on reliable and authentic documents of the library and the legal procedures of international law to prove whether there is a logical connection between the category of economic sanctions and the legal elements related to it in international law. In this analysis with Relying on international teachings and insisting on legal arguments of banning foreign investment in Iran and a general picture of them is presented.

3. Research literature

3-1. Boycott

Various views and definitions of sanctions are presented by different social scientists. Done, but nothing. Sometimes it happens. There is no comment. In the dictionary and political terms, the word (Sanction is equivalent to sanctioning, allowing and approving, punishment, fine and executive guarantee. Elsewhere, it has been said about this word: It means guarantee of execution or punishment, political, economic or military punitive measures that are applied through collective security system against violators of international law. It is important to mention that although there is an element of punishment in sanctions, it is not only for the purpose of creating difficult conditions for the people of the sanctioned country. In fact, its purpose is to make changes in the political behavior of the government of this country. Some people consider the most important function of sanctions to be deterrence (Zarif and Mirzaei, 1376). In order to provide a definition of the word embargo, we must separate the technical and descriptive definitions of this term. Trade regulations are restrictions imposed by national governments on international trade that appear to have the same effect as economic sanctions, but serve different purposes. Such commercial restrictions are the purposes of the definition are the commercial policy of a government, while sanctions economic, to They are used as a tool to achieve foreign policy goals. For this reason, the American government in advancing its foreign policy to economic sanctions is increasingly resorted to ((Carter, 1992).In

fact, economic sanctions mean coercive economic measures against one or more countries to change the policies of that country, or at least reflect the opinion of a country about such policies. To this Order, the term economic sanctions means civil measures that affect the transfer of goods, services or capital to a specific country. It leaves an undesirable effect and the purpose of establishing it is to punish or to force that country to adapt to the political goals of the embargoing government or to express the displeasure of the embargoing country with the actions and behaviors of that country..

In the past years, one of the main issues that different governments have emphasized on are, the need to attract capital new investors, a priority that seems to be still facing uncertainties in order to reach the implementation stage

3-2. Reasons and objectives of sanctions

Many reasons are mentioned in the justification of sanctions, which include the desire to influence the policies or even change the system of a country. Regardless of these reasons, in some cases, sanctions are established because the sanctioning country feels that it must take action and these sanctions can be less controversial. be provocative In this case, it seems like a political action If it is not effective enough, at the same time resorting to military force is considered an extreme measure. the reasons and objectives of the embargo can be provided the following form (Alikhani, 1380).

The desire to influence policies or even change the political system of a country.

Creating instability in the target country, mostly to The intention of making changes in the political system of that country. The sanctioned country should be shown that the sanctioning country condemns the actions of that country.

Warning the sanctioned country from pursuing some unpleasant policies in the future (deterrence) Reducing the military power of the target country.

3-3. Factors affecting the business environment work

Effective factors in business space Work can be divided into major categories: Legal and judicial system.

4. Discussion and review

4-1. US sanctions against Iran

From the historical point of view, the subject of unilateralism is one of the basic and underlying policies of the foreign policy of the

United States of America. In this context, George Washington, the first president of the United States in 1796, warned against the permanent alliance of the United States with other countries, based on this thinking, the United States is an exceptional country in the international arena, and this exceptionalism should be present in all aspects of its foreign policy. This supremacy thinking allows America to sell superiority over other countries and create the illusion of totalitarianism. The set of these self-made thoughts and beliefs makes the American country give itself the right to take unilateral coercive measures, such as unilateral sanctions, the military threat, high terror commanders, rank implemented military intervention and disregard for international treaties without hindrance, which definitely violates the principle of the rule of law. The formation and process of the relationship between Iran and the United States, and the influence of the United States in Iran before the Islamic Revolution, were comprehensive and had various cultural, political, economic, military, and security dimensions. For example, some companies whose majority shares are owned by American companies or investors have also been forced to comply with American sanctions. Also, many foreign countries and companies are afraid of American retaliatory measures, including limiting their access to American financial and commercial facilities. They have complied with these sanctions to different degrees (Chopani Najafabadi, 2011: 5). The first US sanctions against the Islamic Republic of Iran began after the embassy case. In recent years, the United States, behind the agenda of issues such as Iranophobia and Islamophobia, has been monitoring the creation of new sanctions against Iran. Therefore, after the introduction of Israeli Prime Minister Netanyahu, he unveiled a new series of economic and political sanctions and officially sanctioned the Islamic Republic of Iran. These sanctions are in the fields of foreign investment, energy, banking relations, transportation and shipbuilding industries, etc.

In fact, the United States to prevent and block To prevent Iran from achieving its goals, it has taken the tool of sanctions to isolate Iran, and every day that passes, these pressures are added to block Iran's way to achieve its goals (Simber, 5933: 551), although the sanctions They are considered as evidence of human rights violations, but America has kept this tool against Iran. In this area as well, Israel, which pursues its own policies.

4-2. American unilateralism and violation of the rule of law

According to Martin Login, the rule of law is one of the key words of the modern era and has an inseparable relationship with the government, which is also a modern phenomenon..) Login 2013: 176) Sovereignty, like the government, has been examined from different perspectives. The principles of governance discussion are among the basic topics of political science, relations between International, international law and other fields Legal, political and even philosophy Lagbut its most important manifestation is the rule of law. In fact, the legislative bodies of the countries only have the right to enact laws within the framework of the constitution and they cannot act beyond that and issue and implement orders in a selfish manner (Bashiriyah 2016: 23). The power and supervision of the people over the executives and rulers through the renewal of elections is one of the important political consequences of the rule of law. The United States of America seeks its supremacy over world management through psychological war, soft power (military war), hard power, and unilateralism, while some countries, such as the European Union, try to get out from under This is the umbrella of American hegemony. According to Article 24 of the United Nations Charter, the United Nations Security Council is responsible, trustee and responsible for maintaining peace and security between It is international and this institution is between International law is allowed to consider punitive and sanctions measures with the aim of changing political behavior against the aggressor country if a country endangers world peace by aggression. Even the UN itself cannot perform actions outside of its legal duties as provided in the charter. We saw an example of this at the beginning of the sanctions against Iran, when America's allies in Europe, Japan, Canada, and the countries of the Persian Gulf did not support Iran's sanctions policy. Therefore, the legitimacy of sanctions has requirements without which any sanctions are not allowed and are contrary to the rule of law at the international level. It is also international.

By examining the global standards of human rights contained in the United Nations Charter (1945), excellent The Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989) and other relevant documents which are accepted international principles, it can be claimed that if sanctions lead to human suffering and hardship, they have no justification from the point of view of international law. This issue is significant even in the case that the economic sanctions imposed by the United Nations under the terms of the organization's charter have

international consensus" (Mafi, Hodayun, 2017), The shocking report of organizations such as UNICEF and the World Red Cross regarding the endangerment of the health of the people of different regions as a result of the sanctions adopted by the Security Council and other powerful and sometimes oppressive countries depicts the depth of such disasters. On this basis, humanitarian ideas and observance of basic human rights and preservation of human dignity should be strengthened in the way of preventing harm to innocent people so that powerful and rich countries cannot cause economic damage to countries for political purposes.

4-3. Economic coercion and the principle of non-intervention

Customary international law is based on the premise that countries have the right to manage their commercial relations as they wish. It can be seen in the judgment of the International Court of Justice in the case of Nicaragua's complaint against the United States in 1986, according to which the court ruled: "In the absence of a Treaty or some kind of clear and specific legal obligation, none "A country is not obliged to continue special trade relations more than it deems expedient" (261-260).

The International Court of Justice declared that "the alleged right to intervene and economic sanctions can be nothing but the manifestation of a It is a forceful policy, a policy that has led to the most severe abuses in the past and cannot have any place in international law" (Bigzadeh, 91: 76). It has also been stated that the principle of non-intervention implies the right of every independent state to conduct its internal affairs without interference According to the Court, respect for territorial sovereignty between independent governments is one of the basic principles in international relations. The legal concept of the principle of non-interference comes from respect for the political independence of governments and their principle , which implies the free right of the people to choose their own economic system without coercion from other governments (Archaga, 1978: 112). The first manifestation of the principle of non-interference can be seen in the "Declaration on Prohibiting Interference in the Internal Affairs of Governments and Supporting Their Independence and Sovereignty" approved on December 21, 1965, which stipulates:

- No government can use or encourage the use of economic, political or any other type of these measures to coerce another government in order to subjugate it in exercising its sovereignty or guarantee any other privilege.

-Armed intervention and kidney Other forms of interference or threats made against the identity of the government or against its political, economic and cultural elements are condemned.

Professor Stern believes that economic sanctions are illegitimate only when they result in the violation of the principle of non-intervention or when they are applied without regard to the competence of the target government (p. 6) Archaga also states that it is the nature of the act of intervention that he calls it as an act of intervention. He describes inquiringly. According to international law, an economic behavior is considered as an act of intervention It is widely known that a government implements an economic strategy in order to force another government to accept its demand (Henderson, 1988: 193). Following the signing of the Declaration of Algeria in 1981 between Iran and the United States, according to Article 1 of the Declaration, the United States pledged that the policy of this country "is and will be from now on, directly and indirectly, politically or militarily in internal affairs. Iran should not interfere" (Mohbi, 1378: 288). The adverb of the phrase "from now on" is indicative of the fact that America has accepted that it has interfered in Iran's internal affairs in the past (Alikhani, 117). Also, paragraph 10 of the statement on the cancellation of trade sanctions against Iran after November 1979 does not allow the reimposition of US sanctions against Iran (Zarif and Mirzaei, 101).

4-4. Obligation to respect international laws

In human rights literature, the closest expression that describes the true meaning of the word unilateralism is "unilateral coercive measures"; This expression shows both the negative quality of one-sidedness and its harsh and force-based nature. This concept is in Resolution No. 152 issued by the Trade and Development Conference(UNCTAD) on July 2, 1983 took a more meaningful combination under the title of coercive economic measures and over time it covered not only the economic field, but also the political field. It was on this basis that in Resolution No. 197 of the 38th session of the General Assembly in 1983, the fact was explicitly recognized that some developed governments are increasingly resorting to the threat or implementation of coercive and limited measures. with the aim of exerting political pressure on developing governments. In the same resolution, it is acknowledged that coercive measures have a negative impact on the economy of developing countries and distort the process of creating peace and atmosphere of friendship between governments.

In the text of this resolution, developed governments are also requested from any limited action avoid such as blockade, ban or embargo against developing countries. This resolution until 1995 under the title "Economic measures to The title of a tool for political and economic coercion against developing countries was presented in the General Assembly, and after that, with more attention to the negative effects of such actions on human rights, the title of "Human Rights and Unilateral Coercive Measures" was proposed in the General Assembly. The important point is that simultaneously with this change of approach, resolutions from 1994 entitled "Human rights and unilateral coercive measures" were proposed in the Human Rights Commission, which were approved with 23 positive votes against 18 negative votes. In paragraph 5 of this resolution, it was clearly emphasized that basic goods, especially food and medicine, should not be used as a tool to exert political pressure. In fact, it is from this date that, in parallel with the negative economic effects of unilateral sanctions on the economy of the target countries, the harmful and negative human rights effects of the sanctions on ordinary people are also given special attention (Golshan Pajoh, 2018: 2). These sanctions in themselves violate human rights and can cause irreparable damage to the people of the countries. Some human rights such as the right to life, the right to health, the right to access information and business are denied from the embargoed countries. According to the Charter of the United Nations, governments are asked to take the necessary care in order to respect the human rights of citizens, such as raising the standard of living, creating employment, expanding economic and social affairs, public health, and respecting and observing human rights. should be taken into consideration by governments. According to Article 24 of the Charter, the Security Council must take steps to achieve the goals of the Charter. In this way, the required documents Avari like, agreement between International civil and political rights, covenant between International economic-social and cultural rights, convention between International children's rights and Geneva humanitarian conventions must also be observed. The resolutions of the UN General Assembly, although mostly not mandatory, but because of LamThe opinion of most countries of the world has considerable value. Since most of the income sources of Iran's economy are oil sales and about 80% of the cost of the country through the export of bad oil set (Seyd Mashhodi, 1390: 15) the destructive effects of sanctions can be predicted he nosed Meanwhile, patients, especially special patients who urgently need

imported drugs, are the most affected, also in Article 28 of the Universal Declaration of Human Rights stipulates: "Every person has the right to demand order and be able to fulfill them. Real and sustainable development requires infrastructure and capital investments are appropriate and sanctions are a deterrent and deadly poison for this field. The assumption is that governments, incomes and facilities are limited and the purpose and work have many. One of the special tasks of governments' desired goals, appropriate allocation of capital and facilities of the country between the areas different and needed by the society, including in the development sector. Sanctions weaken development goals of a country, as a result, the welfare of the people will decrease, which may be faced by the people's reaction and the national security of the country is endangered from within. (Hajji Wasfi: 1383, 28 (In this regard, the seventh chapter of the United Nations Charter gives the Security Council, as an organ of collective security, the task of recognizing threats against peace or acts of aggression based on Article 39 and adopting the appropriate enforcement mechanism based on Article 41 (non-recourse to armed force) and 42 (recourse to armed force) of the Charter. The sanctions imposed by the Security Council, which are adopted based on the provisions of the seventh chapter of the Charter, are mandatory for all members of the United Nations based on Article 25 of the Charter, which is considered the basis of the international security system. In addition to paragraph 2 of article 48 of the charter, the members of the organization are committed to implementing the resolutions adopted by the Security Council. The duty of implementing the decisions of the security council is also reflected in paragraph 1 of article 24 of the charter, according to which the members of the organization, in order to ensure quick and effective action, are responsible. They entrust the maintenance of international peace and security to the Security Council and agree that the Council will act on their behalf. Undoubtedly, the sanctions of one side are contrary to guaranteeing peace and consolidating global security, social solidarity of nations, recognizing the right to free self-determination and not resorting to force in international relations in the light of the United Nations Charter. Also, contradicting the establishment of international cooperation under fair and just conditions based on the international covenant related to economic, social and cultural rights (approved in 1966), violating the right of economic development of countries according to the Charter of Economic Rights and Duties of

Governments (approved, 1974: 105; Momtaz, 1376: 17-27) and is against the regulations of the World Trade Organization (approved, 1995), which The expansion and development of the multilateral free trade system orientation is at the international level.

5. Anti-sanction foreign investment support plan in Iran

In order to provide a context for the realization of foreign investment and support for real investors, especially companies and governments that have cooperated more with the Islamic Republic of Iran during the sanctions, the conclusion of a commercial and commercial contract between all executive bodies subject to Article (5) of the Law on the Management of State Services and Institutions and their subsidiaries with foreign companies and parties, in addition to general rules and regulations, are subject to compliance with the following rules:

- 1- Foreign natural and legal persons who have continued their commercial interaction with Iran despite foreign sanctions (including unilateral US sanctions), will be subject to certain exemptions and incentives, according to the executive regulations of this law.
- 2- Foreign natural and legal persons who for the first time enter into business and commercial interaction with Iranian natural and legal persons, in case of unilateral termination of the contract as a result of foreign sanctions (including unilateral sanctions America), will be obliged to pay a fine.
- 3- Foreign natural and legal persons who have so far unilaterally terminated the contract with the Iranian party due to foreign sanctions (including unilateral US sanctions), if they wish to re-establish business relations, the following must be observed in their case:
 - Payment of all financial, equipment and service losses incurred by Iranian natural and legal entities as a result of the unilateral withdrawal of the foreign party from the contract to the Iranian economy and companies (as a percentage of the company's total future contract)
 - The obligation of a foreign natural or legal person to provide a guarantee and pay a penalty in case of a decision to unilaterally terminate the contract as a result of foreign sanctions (including unilateral US sanctions).

Note-The failure to conclude a new contract does not negate the previous commitments of foreign parties to the Islamic Republic of Iran (including the release of blocked assets and compensation

for all damages and losses incurred).

4- Contracts or cooperation with the persons subject to parts 1 and 2 of this paragraph are given priority over the persons subject to part 3dflour.

5- Monitoring compliance with the requirements and good implementation of this law will be the responsibility of the Trade Development Organization. In necessary cases, upon the proposal of the highest executive authority of the relevant body in the contract with foreign parties and with the approval of the Supreme National Security Council, it is permissible to enter into a commercial contract with foreign parties without complying with the requirements set forth in this paragraph.

6- The executive regulations of this plan (including the amount and method of payment of the said exemptions, incentives and fines) were approved by the Ministry of Industry, Mining and Trade in cooperation with the Ministry of Foreign Affairs and the Ministry of Economy and Finance within a maximum period of one month after the promulgation of this law.. The government is obliged to submit the report on the implementation of this law every three months to the economic, energy and national security and foreign policy commissions of the Islamic Parliament. (Taken from the website of the Research Center of the Islamic Council, news number: 1657556)

Conclusion

Based on research findingsRestrictions caused by unilateral US sanctions against Iran and rising costs capital Due to these sanctions, investment can be a serious obstacle to capital He said foreign investment. Unilateral economic sanctions in an extraterritorial manner are considered a violation of the sovereignty of other countries. United Nations Resolution No. 2625, which was approved in 1970, refers to the issue of countries not interfering in each other's affairs. Based on this, the member states cannot use economic pressure tools or any other pressure to force another country to comply with the sovereignty of the opposite country. In 1991, the United Nations General Assembly strongly urged governments to end unilateral pressures against each other. Also in the resolutionAnother one in 1996, under the title "Elimination of economic pressure measures as a means of political and economic coercion", called for the elimination of such practices. Paragraph 3 of this resolution requests all governments not to recognize unilateral economic measures with extraterritorial features. Actions

one America's side in sanctioning Iran violates the principle of peaceful coexistence. It requires respect for the political principles of international law, i.e. legal equality of states, non-interference, cooperation and friendship, respect for the independence and territorial integrity of states among the members of the international community. This type of actions lacks legal and international validity due to the lack of legitimacy. For this reason, in the process of international sanctions, special attention should be paid to aspects such as their legitimacy, necessity and appropriateness, as well as the impact of these sanctions on the economy of countries. Linking moral considerations and values with the idea of applying international law through sanctions and effectively monitoring them in the use of economic sanctions is essential. The current international system, due to the lack of a global authority and authority and the supervision of national governments, requires mutual respect and politeness in order to cooperate between governments. It will be a moment. While economic sanctions can be considered a part of the international enforcement system, these sanctions should not be used in isolation. The international community should be looking for a common framework to provide a universally applicable punishment system with common goals.

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