

Immorality and Illegality of Sanctions and Iranian Response

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Abstract

Undertaking research on the political economy of sanctions in Iran covers a wide area of study. In a research project, relevant data and key questions can be collected in order to organize them methodologically and write a book on this issue. In this article, within the conceptual framework of political economy, interactions of a few variables involved in the sanctions on Iran are studied. First, the article explores the immoral aspect and consequently illegal aspect of sanctions as an American policy tool to coerce Iran's behavior regarding its legal right of nuclear enrichment. Then the article sheds light on economic impacts of the sanctions through examples. It also discusses political impacts of the sanctions and practical experience of how Iranians tackle these restrictions. It finally proposes an alternative way to change this hostility dominated environment of the Iran-US relations. This article concludes that As sanctions remain over a prolonged period they tend to become even less effective in achieving their political objectives; the sanctioning countries consequently tend to impose additional, more extensive sanctions, which only promotes further radicalization in both the sanctioned and sanctioning countries. The only way to stop this vicious cycle is for both sides to negotiate in good faith and with open minds.

Keywords: Sanctions, Iran's Nuclear Program, Immorality, Illegality

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Introduction

Conceptual studies have a crucial role in promoting existing knowledge. Political economy as a concept or an approach most commonly refers to interdisciplinary studies focusing on economics, law and political science in explaining how political institutions, the political environment and economic systems influence each other. Although sanctions are not a new phenomenon in international relations, the imposition of harsh multilateral sanctions on Iran is unprecedented, so it can be accounted as a unique case study in contemporary international relations. As a matter of fact, undertaking research on the political economy of sanctions in Iran covers a wide area of study. In a research project, relevant data and key questions can be collected in order to organize them methodologically and write a book on this issue. Here, it is not possible to do that. In this article, within the conceptual framework of political economy, interactions of a few variables involved in the sanctions on Iran are studied. First, the article explores the immoral aspect and consequently illegal aspect of sanctions as an American policy tool to coerce Iran's behavior regarding its legal right of nuclear enrichment. Then the article sheds light on economic impacts of the sanctions through examples. It also discusses political impacts of the sanctions and practical experience of how Iranians tackle these restrictions. It finally proposes an alternative way to change this hostility dominated environment of the Iran-US relations. This article concludes that removing sanctions at this juncture should not be seen as giving a concession to Iran, but rather as a pre-requisite for the realization of its legal rights.

I. Immorality of Sanctions

As Oliver Boyd-Barrett says, political economy is committed to moral philosophy, having an interest in social values and moral principles (Barret, 1995). Traditionally, *Political economy* originated in moral philosophy. Adam Smith, a pioneer of political economy established his economic analysis thoroughly on a humanistic ethical perspective. His concern for fairness was greater than his desire for economic efficiency. Justice was thus central to Smith's critique of the crony capitalism of his time. Smith saw economics as a branch of moral philosophy. Within this conceptual definition, in studying the political economics of sanctions, morality would be the main concern. Sanctions refer to coercive economic measures taken against one or more countries to attempt to force a change in policies or at least to demonstrate the sanctioning country's opinion of the other's policies. The academic literature on sanctions has predominantly focused on their efficacy in achieving foreign policy objectives, rather than the moral dilemmas posed by their use. But there are scholars who have addressed sanctions from a moral perspective.

David A Baldwin argued that economic statecraft could and indeed should be evaluated not only by political and economic criteria but by moral and ethical standards as well. Lori Fisler Damrosch wrote "the choice of means is not merely a policy question bearing on effectiveness of sanctions. It is also an issue entailing moral dimensions (Pierce, 1995: 100)". Indeed such moral scrutiny of economic sanctions in particular is becoming increasingly common among scholars. Statesmen including Boutros Boutros-Ghali have also looked at the ethical legitimacy of employing economic sanctions. Albert C. Pierce in his article "*just war principles and economic sanctions*", 1996, stated that sanctions like wars have moral consequences. His first premise is that economic sanctions are intended to inflict great human suffering. Pain, harm and even death and thus should be subject to the same kind of moral and ethical scrutiny given to the use

of military forces before sanctions are chosen as a mean to achieve national political objectives. One potential way to frame the moral dilemmas posed by sanctions that is grounded in recognized principles of international conflict is provided by the laws of just war (Pierce, 1996). The just war tradition is a longstanding moral framework for analyzing the intentional infliction of harm by one state upon the citizens of another. In light of its broad acceptance and long history, this body of laws, codified in international treaties and established by the practice of states, offers more fertile soil for international agreement than personal moral intuition. By taking the principles underlying the laws of just war seriously, it is possible to devise strategies for economic sanctions founded on existing international ethical norms (Winkler, 1999).

While Damrosch has offered a framework for the moral evaluation of economic sanctions that focused on norms, consistency and attitudes of civilian populations and their leaders, Albert C. Pierce has proposed a framework that uses a modified application of the traditional just war principles. Just war theory is probably the most influential perspective on the ethics of war and peace. Just war needs just reason, this can include repelling an invasion is a just cause. He used two Latin concepts *Jus ad bellum* (the right to go to war) and *Jus in bello* (the right to conduct within the war) as moral principles of just war theory to identify the immorality of economic sanctions (Ibid: 100).

In Just war theory aggressive war is always wrong and forbidden (Pierce, 1996). In *jus in Bello* there is a principle of discrimination, to discriminate between combatant and non-combatant, not all classes of human being are combatants. In traditional just war terms, directly intended attacks on noncombatants and nonmilitary targets, is forbidden (Winkler, 1999: 6). Michael Walzer, in his book “Just and Unjust Wars”, examines the moral issues surrounding military theory, war crimes, and the spoils of war. He studies a variety of conflicts over the course of history, as well as the testimony of those who have

been most directly involved - participants, decision makers, and victims. Walzer specifically addresses the moral issues surrounding the war against occupation of Iraq, reminding us once again that "the argument about war and justice is still a political and moral necessity." (Walzer, 1977)

Walzer states "there are good reasons why the development of just war theory preceded the development of the international laws of war. Legal texts may only imperfectly and incompletely embody our moral ideas, but without moral ideas, we would not be able to write legal texts." Such reasoning is perfectly sensible, and appears to add to our understanding of international law (Ibid). Show more Show less Walzer believes that at the heart of the legalist paradigm and war convention is a theory of human rights which is echoing the basic values of the western liberalism. All persons have right to life and liberty. "Innocent people" in war are those who "have done nothing, and are doing nothing, that entail the loss of their rights", including the right not to be attacked (Pierce, 1996: 102). Whether or not they support it in their hearts, the "innocent" bears no responsibility for actual waging of war; unlike the political authorities, they did not order it, and unlike the soldiers, they do not prosecute it. They are "innocent" and must be differentiated from the others, and thus they should not be deliberately and directly attacked.

If we move from the case of war to the case of economic sanctions, who is "innocent" and who is not? Who are the functional equivalent of "combatants" and "noncombatants"? The functional equivalent of "aggressive war" is the policy of an imposer of sanctions who is trying to persuade and/or force the target nation's leadership to change (Ibid: 109). But why should the innocent people suffer and pay the price for this change?

The US and the EU under the pretext of 'smart sanctions' have enforced new sanctions on Iran since 2006. Although the sanctioners promised the world that the sanctions would be "smart" and "targeted" and would not hurt millions of ordinary Iranians who

go about their daily lives, in fact, they expanded the sanctions to all areas, even the Iranian banks. They have hurt the same people who were not meant to be their target. These measures have in fact created a case of damage being inflicted by the sanction imposers towards ordinary people. The principle of double effect of sanctions should not be neglected. Even if sanctions are not directly intended to harm innocent people, the pain, suffering and physical harm inflicted on them are foreseen, and turn the innocents into a means to an end. More specifically, in this case, the objectives are to be achieved (persuading or focusing the target government to change its policy) by inflicting this harm (the pain and suffering of the population). The use of sanctions in this way is not morally acceptable.

Sanctions against Iran and blocking its financial transactions have harmed ordinary Iranian people. One impact has been lack of medicines for patients. In July 2012, the Hemophilia Society wrote to the World Health Organization, stating sanctions had “seriously endangered the lives of tens of thousands of patients, particularly children, suffering from special diseases.” Likewise, the U.N. Secretary General Ban Ki-moon in August 2012 report to the United Nations General Assembly: “The sanctions imposed on the Islamic Republic of Iran have had significant effects on the general population, including an escalation in inflation, a rise in commodities and energy costs, an increase in the rate of unemployment and a shortage of necessary items, including medicine.”

The *New York Times* in November 2012 reported that “Iranians suffering from cancer, hemophilia, thalassemia, kidney problems and other diseases are increasingly facing shortage of medicine”. A report in the Guardian UK at that time noted that “millions of lives are at risk in Iran because western economic sanctions are hitting the importing of medicines and hospital equipment (The Guardian 2012)”. Such reports clearly show the immoral aspects of the sanctions on Iran.

According to the US Catholic bishops, based on principles of

just war “proportionality in *jus ad bellum* means that the damage to be inflicted and the costs incurred must be proportionate to the good expected by taking up arms (National Conference of Catholic Bishops, 1983: 18).” For James Turner Johnson, the aim of the idea of proportionality is to ensure that the overall damage to human values that will result from the resort to force will be at least balanced evenly by the degree to which the same or other important values are preserved or protected (Pierce, 1996: 105).

In the case of sanctions against Iran, the principle of *Just ad bellum* has not been considered. While Iran has not inflicted any damage to those countries which impose sanctions, the imposing of sanctions on Iran is against the proportionality principle of just war. This constitutes unilateral damage to Iran’s economy inflicted by the US and its allies. It means the principle of proportionality in just war has been ignored. As mentioned, sanctions have resulted in shortage of drugs which has caused a human catastrophe. According to recent estimates as many as 6 million patients are currently being affected by the impact of sanctions on the importation and manufacturing of medications inside Iran (Aljazeera, 2012). Taking into account this huge amount of human catastrophe is it a proportional response to the Iranian legal nuclear enrichment?

As the US Catholic bishops said, the probability of success criterion is difficult to assess. Its purpose is to prevent irrational resorting to force when the outcome would be disproportionate or futile (Ibid: 14). The aim of this criterion seems to ensure that great costs are not inflicted without reasonable hope for achieving the presumably worthy goals for which one is fighting. The bottom line question is how likely is it that the goals one seeks will be achieved? For economic sanctions as an instrument of statecraft, the overall picture is not optimistic (Pierce, 1996). In their major study of more than one hundred cases of economic sanctions, Gary Clyde Hufbauer and associates concluded that “although it is not true that sanctions never work, they are of limited utility in achieving foreign policy

goals; the rate of utility depends on compelling the target country to take actions or how it strongly resists". They found an overall success rate for sanctions of only 34 percent, but sanctions [involving destabilization of the target government] succeeded in half the cases, usually against small and shaky countries (Pierce, 1996: 110)". The review of the literature on the relationship between Iran's nuclear negotiations and the sanctions clearly demonstrates that intensifying sanctions pressures has not stopped Iran's nuclear enrichment yet, as Iran insists enrichment complies with the legal framework of the International Atomic Energy Agency (IAEA). Sanctions have been designed to increase economic pressure on people with a hope of destabilizing the Iranian political system, but in fact sanctions have not been able to destabilize the Islamic system in Iran. The US and EU originally expected that the stronger political and economic pressure they imposed, the more likely Iran would be to compromise on the nuclear issues. 15 rounds of negotiations between Iran and the West have taken place during past 10 years, but no compromise has been achieved because the Iranians did not relinquish their legal right to nuclear enrichment.

In the Iranian presidential election in June 2013 the Iranian people voted for Hassan Rouhani with the expectation that he could better negotiate with the P5+1 countries than the other candidates. Practical experience indicates that the severe sanctions that have been imposed on Iran had affected people's lives negatively, despite not impacting the stability of the system nor having changed Iran's political position on nuclear enrichment. Iranian officials have always been ready for negotiation. The negotiations which took place at the time of Ahmadinejad have continued under the Rouhani government. However, the insistence on the right of nuclear enrichment remains unchanged. Therefore one needs to address this question: how much longer can the US and the EU justify imposing sanctions while their goals are not achievable?

Within these definitions, sanctions are viewed as war on

innocent people. When a state - or a group of states- refuses to trade with another country, it is the civilian population in the targeted country who suffer the most. Inevitably, and in many cases imposing sanctions violates international humanitarian law (IHL). First and foremost, "human rights" means allowing people to have the basic needs that are necessary for their survival or allowing people to live in dignity. Sanctions are obstructive for having such rights. Historically speaking, nuclear enrichment seems to have been predestined for Iran as a continuation of the program which was initiated before the revolution, with the full assistance of high ranking US politicians (Kholopkov, 2013: 39-62). Iranians before the Islamic revolution and after the revolution have been aware of the country's overdependence on oil, and they have tried to minimize this dependency. Before the revolution Iran planned to build 23 nuclear plants with US assistance. The Islamic Republic endeavors to continue this uncompleted project. While there is no threat posed by this nuclear enrichment project, imposing sanctions is immoral and illegal. Iran clearly believes that it has not committed any violations of its International Atomic Energy Agency (IAEA) safeguards obligations. Based on this logic, it seems Iran will not stop the nuclear enrichment, as it feels it is its legal right. Within this context there is no probability of success by imposing sanction on Iran.

Impartiality is part of a moral rule. It is characteristic of modern moral thought to see impartiality as a requirement of morality. However, the precise nature of this connection remains disputed. It is generally agreed that some sort of close connection exists between morality and impartiality. Indeed, the phrases 'moral point of view' and 'impartial (or 'impersonal') point of view' are sometimes used interchangeable (Jollimore, 2011). The moral importance of the impartial point of view is that from it, every moral agent counts equally any nation, and any nation must receive equal treatment at a universal level, since moral judgments are universalized. They are universal in the sense that they entail identical judgments about all

cases identical in their universal properties. Impartiality means that equality and equal rights should not be ignored (Pickin).

In a comparative approach in the field of Middle East studies it is obvious that Western societies willfully ignoring the fact that another country in the Middle East, Israel possesses 200 – 600 nuclear bombs. Israel has not signed the Non-Proliferation Treaty and does not allow IAEA inspections, yet sanctions have yet to be imposed. Iran is a member of the Non-Proliferation Treaty; it does not possess a nuclear bomb, and has on numerous occasions called for a Middle East nuclear free zone. Yet it is Iran that is faced with these immoral and illegal sanctions. In other words Iran is under sanction pressures while not possessing a nuclear bomb, as compared to Israel which has more than 200 nuclear bombs and faces no scrutiny. This partial treatment or discrimination in judgments can't be justified.

If Obama wants to take the lead in creating peace and security in the Middle East, he should take steps to impose restrictive actions for nuclear disarmament against Israel, not to continue or intensify sanctions on Iran which does not have any intention of making a nuclear weapon. What Iran wants from the international community is impartiality and recognition of its legal right on civilian nuclear enrichment.

II. Illegality of Sanctions

Imposing sanctions on Iran with United Nations Security Council resolutions 1737(2006), 1747(2007), 1803(2008) and 1929(2010) from a legal point of view has been controversial. According to Article 39 of the UN Charter, the Security Council is allowed to take measures (including sanctions) if there is a threat to peace and security, in order to maintain or restore international peace and security. The threat may not be determined on the basis of subjective political motives. There must be genuine “international concerns” or real threat, which does not exist in the case of Iran's nuclear enrichment.

Judge Koroma believes “Security Council resolutions on sanctioning Iran do not abide by international law. Essentially the validity of these resolutions is under question. The world should be vigilant about this issue that Iran has not violated any international law. In this case the right of self-defense is not licensed”.¹ The IAEA decision of sending the Iran’s nuclear case to the United Nations Security Council (UNSC) in February 2006 was an illegal action, because the IAEA never could prove “non-compliance” (diversion toward military purposes). Therefore, the four UNSC resolutions 1737(2006), 1747(2007), 1803(2008) and 1929(2010) seems to be irrelevant and illegal.

Professor James H. Fetzer (2013) says “US has imposed sanctions or collective punishment on a country for an alleged offence its own intelligence agencies claim is not taking place. It is a disgrace for America”. He believes a complete transformation of US policy toward Iran is warranted, just as the Nixon administration brought about a complete transformation of its policy toward China (Iran Review).

According to Article 39 of UN Charter, the Security Council is allowed to impose sanctions only to maintain or restore international peace and security. Importantly the threat may not be determined on the basis of subjective political motives. There must be genuine “international concerns” or real threat.

Seymour Hersh, in his research on US intelligent assessments of Iran nuclear activities, reports that there is no conclusive evidence that Iran has made any effort to build the bomb since 2003. He wrote in the June 6, 2011 edition of the *New Yorker*: “Despite years of covert operations inside Iran, extensive satellite imagery and the recruitment of many Iranian assets, the US and its allies, including Israel, have been unable to find irrefutable evidence of an ongoing hidden nuclear–weapon program in Iran”. On February 24, 2012, the *New York Times* reinforced Hersh’s analysis, noting that all 16 major US intelligence agencies were in agreement that Iran did what it said.

It does not have any plan to produce nuclear weapons. In US Senate testimony on January 31, 2012, James R. Clapper Jr, Director of National Intelligence, clarified that there was no evidence Iran was pursuing a military nuclear program. He told the committee “We do not believe they have actually made decision to go ahead with nuclear weapon”. While there is no threat to international peace and security, the UNSC resolutions on sanctioning Iran are illegal (New Yorker, 2011).

These American intelligence reports are supporting over 4000 man-days of international inspections made by the IAEA that "there is no conclusive evidence that Iran has made any effort to build a nuclear bomb since 2003; and that the Iranian leadership does not have any intention to decide to build a nuclear weapon (Ibid)". This means Iran has not breached its international commitments on nuclear issues. These reports indicate the collective measures taken by member states of the Security Council can be challenged. There is no court for the Security Council and obligations of the Security Council are vague. The actions of the Council are the joint responsibility of the member states. It is the member states that are responsible for the conduct of the international organization. Even the secretariat has stated that the way member states implement Security Council economic sanctions is their responsibility and not that of the UN. There are all kind of conditions like direction and control of decisions, and whether the member state plays a dominant role in the council (Gowlland, 2013).

Imposing these illegal sanctions provides a precedent which would be harmful for cultivation of sound international legal culture. It means in the future, all nations will suffer for this deviation. It is not possible to promote justice by discriminatory punishment of a state, an entire nation, which has not committed any illegal action. The case of Iran demonstrates how international law is underdeveloped and how the rule of law is ignored.

The most illegal case of the sanctions is unilateral sanctions,

including US and EU sanctions which are imposed beyond UN sanctions. Unilateral sanctions are usually imposed by an individual state based on the theory of retaliation. Unilateral sanctions revolve around the role of powerful nations like the United States, which has resorted to unilateral sanctions more than any other country as a primary tool of advancing its foreign policy (Rahmat Mohammad, 2013). Under International Law Commission (ILC) articles, the US and EU must demonstrate that they are injured states. A state can be considered so if it is directly affected by the unlawful act. That is the basis of countermeasure (Gowlland, 2013).

The basic principle in international law is that all national legislations are territorial in character. State practice and doctrinal evolution in international law reflects that there is a unanimous rejection to extraterritorial application of national legislation for the purpose of creating obligations for other states (Rahmat Mohammad, 2013). The unilateral and extra territorial application of national legislation violates the legal equality of states and the principle of respects for and dignity of national sovereignty and non- intervention in the international affairs of the state (Ibid).

Within this structure of international law, it becomes evident that unilateral sanctions violate certain core principles of the Charter of the United Nations, like principles of non-intervention, and duty to cooperate. They also violate the core principles of sovereign equality of states, non-use of force, self-determination of peoples, non-intervention into the internal and external affairs of states, peaceful settlement of international disputes, cooperation among states and fulfilling in good faith of obligations assumed under international law. The unilateral sanctions imposed against third parties by virtue of application of one's own national legislation extra-territorially also breach certain basic tenets of general principles of international law. These include principles of self-determination, right to development (declaration of Right to Development, 1986) of citizens and individuals residing in the targeted territory, Countermeasures and

dispute settlement, freedom of trade and navigation (Rahmat Mohammad, 2013).

The 1993 Vienna Declaration and Program of Action clearly stipulates that states should refrain from any unilateral measures that create obstacles to trade relations among nations and impede the rights of everyone to a standard of living adequate for their health and wellbeing, including food and medical care, housing and necessary social services. (Xi A/CONF.157/23 of 12 July 1993 par 31) The 1997 general comment of the Committee of Economic Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights emphasized that states and international community must do everything possible to protect at least the core content of the economic, social and cultural rights of affected peoples of that state. (E/C.12/1997/8 of 12 December 1997, par.7; see also General Comments 3(1990), par.10 on The Nature of State parties Obligations (Art 2 par.1 of the covenant) (De Waart, 2013).

From a humanitarian point of view, International Humanitarian Law restricts the scope and pressure of economic sanctions. Article 33 of the Fourth Geneva Convention (on the protection of civilians in wartime), for example, prohibits "collective penalties". The International Committee of the Red Cross (ICRC) interprets this provision as prohibiting "penalties of any kind inflicted on persons or entire groups of persons in defiance of the most elementary principles of humanity, for acts that these persons have not committed."

In September 2013 The Asian-African Legal Consultative Organization (AALCO) in its fifty-second session issued a resolution "on extraterritorial application of national legislation: sanctions imposed against third parties". In this resolution the AALCO expresses its profound concern regarding the imposition of unilateral sanctions on third parties stating that it is a violation of the United Nations Charter and in contradiction to the general principles of international law, particularly state immunity, non-interference in

internal affairs, sovereign equality, the right to development, and freedom of trade and peaceful settlement of disputes. The resolution also condemns the imposition of restrictions against the Islamic Republic of Iran by the Government of the United States of America. It also condemns the adoption of restrictive measures against states, especially in cases where the functional organs of a sovereign State, like Central Banks, are subjected to sanctions which violate immunity of State and its properties (AALCO, 2013).

Most legal experts have questioned the consistency of these sanctions with international law. They have concluded that the sanctions stand on shaky ground or illegal basis (Ruediger, 2006: 5-36). Even the conservative US Heritage Foundation cautions against the excessive utilization of sanctions as a tool of foreign policy and points to adverse effects they can have on all involved parties (Quinn 1997). Pierre Emmanuel DuPont in his article "Countermeasures and Collective Security: The Case of the EU Sanctions against Iran" has stated: "The European sanctions against Iran are inconsistent with any international obligation. Measures of those enacted by the EU in January 2012 go beyond mere expressions of disapproval and involve the suspension of the performance of the international legal obligations otherwise owed to Iran (DuPont, 2012). Indeed in this case the EU measures actually imply non-performance of various international legal obligations owed to Iran. It may also be considered that the oil embargo and particularly the mandatory termination of existing contracts related to import, purchase and transport of petrochemical product raises *prima facie* an issue of compliance with a customary standard of investment protection (Ibid)".

"In regard to the measure taken against the Iranian central bank, they may be deemed to be in conflict with rules governing immunities and privileges of foreign states under international law, and in particular of the 2004 UN convention on Jurisdictional immunities of states and their property, which is widely considered as reflecting customary international law and provides immunity of property of a

central bank or other monetary authority from execution (Ibid). It may also be considered that this measure violate the rules of IMF. Article 8(2) of the IMF agreement provides indeed that no IMF member “shall” without the approval of the fund; impose restrictions on the making of payments and transfers for current international transactions (Papers.ssrn.com)”. “Such measures taken by EU undermine the coherence of charter- based collective security system (Ibid).”

There is a potential responsibility of EU for imposing countermeasures in violation of general international law. When the EU imposes unilateral sanctions on a third state, it is violating its international obligations, whether stemming from a treaty or from general international law. This requires justification or it will violate the union’s international responsibility (Tzanakopoulos, 2013).

For the EU to impose unilateral sanctions against a third state without shirking its international responsibility, it must determine that the third state has violated international law (i.e. has perpetuated an internationally wrongful act), it must determine that the EU itself is somehow injured by the breach and it must call upon the third state to cease the violation as well as to comply with conditions for taking countermeasures. If the EU does not comply with these international law requirements for lawful resort to countermeasures, it will not be able to justify its breach of international law against the third State and it will accordingly become internationally responsible itself (Tzanakopoulos, 2013).

In 2012 the EU toughened its measures against Iran far beyond those defined by the Security Council. It is not justifiable under international law, whether as treaty reaction, countermeasures, or under some other circumstances precluding internationally wrongful conduct (Tzanakopoulos, 2013). This act is a breach of the EU’s international obligation. Meanwhile none of the EU member states has been injured or affected by Iranian nuclear enrichment. Proportionality of the counter measures is another issue. The

measures taken by US and EU against Iran must be commensurate with the alleged injury suffered by the two actors on account of Iran's alleged violations of international law. The EU should answer for these violations of international law (Ibid: 35).

Article 53 of chapter 8 of the UN Charter provides that the Security Council can utilize "regional arrangement or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council" (Orakhelashvili, 2013). Therefore, under the Charter, the European Union can be utilized to provide further effect to coercive measures that the UN Security Council has adopted under chapter 7, but it is not allowed and resort on its own initiative, to impose coercive measures which are qualitatively different (Ibid). The conclusion that follows is that the EU treaties do not provide a legal basis of the EU economic, trade and financial measures against Iran (Ibid). A possible alternative basis on which one may defend EU measures against Iran may be the law governing countermeasures as part of State responsibility. The International Law commission (ILC) has observed that "A fundamental prerequisite for any lawful countermeasure is the existence of internationally wrongful act which an injured state taking the countermeasure". But there is no international legal obligation that Iran has breached in relation to the EU that could possibly justify the EU's coercive measures (Ibid).

It is unclear on what basis the EU could have any legal justification for its actions, for it is difficult to find the initial wrongful act committed by Iran against the EU. Nor could the EU be seen as an injured party in relation to Iran's alleged breach of the Safeguards Agreement (agreement between Iran and IAEA for application of safeguard in connection with the treaty on the Non- Proliferation of Nuclear Weapons) (INFCIRC/214. 13 December 1974) because these are operative between Iran and the IAEA, Thus, general international law provides no legitimating basis for the EU measures

and the Council of the EU has no authority to make decisions it made in these matters (Ibid).

III. The Ineffectiveness of Sanctions

Sanction as a foreign policy tool attempts to weaken economic and military capabilities of a target country beyond a certain point in order to change its policy or behavior. Generally speaking, the effectiveness of sanction as a foreign policy tool has been questioned by many theorists in modern history. Robert A. Pape in his article “*Why Economic Sanctions do not work*” in 1997 challenged the optimism on the effectiveness of economic sanctions which had been raised by Gary Hufbauer, Jeffery Schott and Kinberry Ann Elliot (HSE) in their study, published in 1983 and updated in 1990 . The HSE database became a bedrock study on effectiveness of economic sanctions. That data played a key role in the US foreign policy decision making regarding whether to rely on sanctions instead of force against Iraq in 1991. Historical experience in Iraq helped academic optimism of HSE vanish in late 1990s, because historical facts implied that Saddam was not defeated by sanctions, but by military invasion.

Based on Pape’s argument, effectiveness of sanctions can be assessed by persuading the target government that the issues at stake are not worth the price, or indirectly by inducing popular pressure to force the government to concede or by inducing popular revolt that overthrows the government, resulting in establishment of a government that will make concessions.

Evaluating the record of economic sanctions requires a standard of success (Pape: 1997: 90-136). Given their coercive purpose economic sanctions should be credited with success if they meet three criteria 1- target state concedes to significant part of the coercer’s demand 2- economic sanctions are actually applied before the target changes its behavior 3- no more credible explanation exists for the target’s change of behavior. The most common alternative explanations involve the use of force or threat of military force.

Pape concludes that the deductive case, that we should expect sanctions to be more effective in future, is flawed because it relies on the expectation that economic punishment can overwhelm a state's commitment to pursue important policy goals. Most modern states however resist external pressure. Persuasive nationalism often makes states and societies willing to endure considerable punishment rather than abandon what are seen as the interests of the nation. In addition, states that have modern administrative capabilities can usually mitigate the economic damage of sanctions through substitution and other techniques. Finally even when such capabilities are lacking and ruling elites are unpopular they can still often protect themselves and their supporters by shifting the economic burden onto their opponents or disenfranchised groups (Pape, 1997)

Military conquest, when it occurs, is always a more credible explanation than economic sanctions. Because the state failure to concede before military defeat is in itself evidence of the failure of economic coercion (Ibid). Economic sanctions cannot achieve their goal alone. Distinguishing coercion by military threat from economic coercion is the most difficult task. This is a methodological error in the study of sanction by controlling the role of sanction force or military intervention. This method of analysis is an over simplification of this complex process. Sanctions and their effectiveness is not a linear system equation. Excessively loose operationalization of dependent variables such as military force in this case not only hinders theory building but departs from science altogether (Ibid).

Within the study of 40 cases of sanctions by HSE there are only 5 instances in which economic sanctions were clearly successful. Pape's study shows that sanctions have been successful in less than 5 percent of cases, not 34 percent of the time as HSE claims (Ibid: 105). The key reason why sanctions fail is not related to the cooperation of sanctioning states, but to the nature of the target. Iraq for example had been subjected to the most extreme sanctions in history – 48 percent of its GNP eliminated by sanctions over five

years, but it was not defeated by sanctions. The key reason that sanctions failed is that modern states are not fragile (Ibid: 106). Nationalism often makes states and societies willing to endure considerable punishment rather than abandon their national interests. States involved in coercive dispute often pay high costs including civilian suffering to achieve their objective. Even in weakest and most frustrated states external pressure is more likely to enhance the national legitimacy of ruler than to undermine it (Pape-1997). Even more severe punishment than economic sanctions can rarely coerce the desired results. Strategic bombing badly damaged economies of North Korea, North Vietnam and Iraq without causing their population to rise up against their regimes. If modern states can withstand that they are unlikely to surrender to threats of partial or even total trade disruption (Ibid). Modern states can adjust by reducing their vulnerability to economic sanctions, because administrative capabilities allow them to mitigate the economic sanctions through substitution and other policies in order to increase the ability to compensate. As the pressure of sanction on a target country grows, the ability to compensate of the target country grows as well (Ibid).

Pape's study indicates that there is no statistically significant relationship between target state GNP loss and sanction success. But economic sanctions often inflict significant human costs on population of target states regardless of whether they ultimately succeed or fail. Economic sanctions may also be effective on vulnerable economies or highly dependent on the sanctions imposing states. Economic sanction may be more effective against societies with extremely uneven income distribution than against those with more income equality. At the end of the study Pape concludes economic sanctions are effective in disputes involving 1) minor issues that do not affect the target country's territory, security or wealth; 2) if the trade of target country is dependent on the sanctions imposing country (Ibid); 3) if the target country is land locked. A study by Cliff

Morgan, Navin Bapat, and Valentin Krustev (2006) analyzed 888 cases of threatened and imposed sanctions from 1971 to 2000. Their study indicates a 39.5 percent success rate when sanctions are imposed unilaterally and a 54.8 percent success rate when imposed multilaterally (Fair Observer). The data, collected in the Threat and Imposition of Sanctions (TIES) database, shows that total embargoes are far less likely to succeed than limited sanctions. Based on this analysis, in the Iranian case of sanctions, the shift from limited sanctions to total embargo, which US officials insist on, is not an approach that has been successful in the past.

Several scholars have argued that a sanctioner's bargaining leverage, or its ability to impose costs on the target, depends on the extent of pre-sanctions trade linkages between the two countries [Miyagawa (1992), Dashti-Gibson et al. (1997), Bonetti (1998), Drury (1998), Hart (2000)]. Van Bergeijk (1994, pp. 77–87) found that the sanctioner's trade flow to the target as a percentage of the target's GNP is an important determinant of the success of sanctions. In 1976, before the Islamic Revolution the Iranian volume of imports from America was only 16 percent of its total imports. After the Islamic revolution this volume reduced to the lowest level because of the US sanctions against Iran which had been imposed from the early days of revolution. Within this context the new round of US trade sanctions after Iranian nuclear enrichment has not inflicted significant damage to the Iran economy. What has a negative impact on the Iranian economy, in fact, is the US led multilateral sanctions.

Although these new US led sanctions are devastating and have negative impacts on the Iranian economy, and affect the standard of living of ordinary people, they may bring about positive results for the Iranian economy in the long term. Sanctions have their greatest impact in short term, as their effects tend to be mitigated in the longer term by structural economic adjustments. Devaluation of the Rial, the Iranian currency, as a result of limitation of oil exports and reduction of government revenues in 2012 and 2013 has been hard

on the Iranian economy and has negatively impacted trade, but this devaluation can boost internal production in all sectors in coming years. It causes the Iranian commodities to be more competitive in the world market. No Iranian politician would dare to implement such a harsh devaluation of the local currency for the purpose of creating a comparative advantage to increase local production and boost non-oil exports. By reducing of oil exports, the chronic disease of the national budget dependency on oil revenues can be mitigated, if it is managed properly. Reduction of crude oil exports and subsequently reduction of the share of oil revenues in the national budget are among the historical wishes of Iranian intellectuals and nationalist economists.

The oil-dependent Iranian economy suffers chronic diseases like government overspending, high rates of inflation and low rates of productivity. The sanctions which have targeted Iran's oil export for the past two years have reduced the national income and government revenues. But, looking backward, the huge amounts of petro-dollars and limitless imports of luxury finished goods could never create jobs for people or increase productivity in the Iranian economy which faced the "Dutch disease". Old policies of selling more and more crude oil in the international market and importation of finished goods did not assist the diversification of the economy or sustainable development. The imposed sanctions, which limit trade, can induce local production of new materials and commodities in the industrial sector which were not profitable before. The Rouhani government economic policy is focused on boosting domestic production and limit importation of finished goods. Within the socio economic adjustments, in response to sanction pressures, if the government succeeds to implement a comprehensive economic strategy there is a possibility of creating more jobs and wealth.

In order to mitigate negative impacts of the sanctions, Iran is trying to introduce the concept of 'resistance economy'. This program includes 1) correction of the mistakes of previous policy makers; 2)

wean the governmental budget off of oil revenue by reforming tax system and tax rules 3) to invest in knowledge and scientific research in order to reduce dependency on foreign market commodities and motivate local economic development. The more Iranians produce domestically, the more wealth there is in the economy. Sanctions in essence lower the production cost of local products and raise the import cost of foreign goods. Sanctions can result in increases of local content of industrial products. Iran's geopolitical location, its geographical feature, huge natural resources, and its new generation of young and highly educated population support this optimistic view of generating a self-sustainable economy under the sanction regime.

Sanctions, means cutting trade and exchange. When you impose deprivation of trade on the other side, you impose deprivation on yourself too. The bigger the economy of the target country means the more loss for the sanction-imposer. This is a kind of "self-punishment". Iran's economy with a GDP (PPP) of around one trillion USD is not a small economy, like Cuba or North Korea. It means the American and European industries are losing ground and invariably mean contributing to the impoverishment of American or European people. They punish their own business sector. In 2012 when Peugeot decided to stop trade with Iran, the decision pushed Peugeot to close some factories in France and the company faced problems of unemployment and labor strikes.

It is obvious that sanctions create various types of economic rents which induce other nations to bypass the sanctions and supply the target country with insufficient commodities. As they supply the target country these rents are dissipated and the previous harm is reduced (Seigle, 2014). These sanctions have shifted Iran's trade market from the West to the East. So the losers are the Western countries and the East Asian countries are benefiteres of this dimension. Four years ago European diplomats at a seminar in Tehran were anxious as to why the total value of trade between Iran and Europe had been reduced and why East Asian countries had

been the beneficiaries of this. Now the Europeans have realized that it is in their benefit to lift sanctions on Iranian banks. For instance the EU's General Court recently announced that the EU had failed to provide sufficient evidence that Bank Saderat was involved in Iran's nuclear program when the Union targeted it with sanctions starting in July 2010. Earlier the court issued a similar ruling about the Bank Mellat, the biggest private sector lender in Iran (Reuters, 2013). Based on the IMF report of April 2013, Iran's economy will recover from recession caused by sanctions by 2014. The report says sanctions cannot have the crippling effect on Iran's economy that US leaders intended (Economic Times, 2013). Economic growth in Iran depends dominantly on sound local economic policy making. A national system of political economy is the main factor of socio-economic development even at the time of globalization and the growth of international trade. Meanwhile these sanctions and blockades make the Iranian economy less vulnerable to the international volatile speculative financial market. In fact, the assessment of the sanction's impact on the Iranian economy in the long term in the context of international trade and capital flow is not an easy job. Many variables are involved. It is not a linear equation, and more research is needed to clarify this issue.

Gallup surveys conducted in Iran in December 2012 and February 2013 reveal that the majority of Iranians say that sanctions have hurt their livelihood. The surveys reported despite the effects of sanctions, the majority of Iranians support their national nuclear program (Gallup 2013). The fact is that the Iranian nuclear program is a matter of national pride. Most Iranians support this national peaceful program, whoever the country's president. It has become a part of the Iranian value system, political culture or an ingredient of Iranian nationalism. Reinforcing sanction pressures can't change this sort of nationalism. The history of sanctions all around the world since 1914 indicates that the assumption of a relationship between sanctions and political systems is false. Sanctions do not have any

relation to change of political systems (Katzman, 2013). Sanctions also rarely can change the policy of a target country (Katzman, 2013). The imposed sanctions on Iran show they have not had any influence on the Islamic Republic political system or the Iranian policies toward its civil nuclear program, its policies on the Middle East or elsewhere (Congressional research service report for congress, Oct.2013).

Galtung, as one of the earlier sanction scholars, noted in 1967 that sanctions are often followed by an increased level of political integration in the target country. Mayall(1984p:631) wrote sanctions “frequently have perverse effects, creating out of the siege of mentality, a sense of national cohesion and determination to triumph adversary that was previously lacking”. In such a situation it is not uncommon that sanctions increase popular support for the ruling class in the target country (Mark and Khan 2000).Selden (1999) notes that in the long run, sanctions often foster the development of domestic industries and reduce the target’s dependency on the outside world, therefore reducing the ability of sanction-imposers to influence the target’s behavior through economic coercion (Kaempfer and Lowenberg, 2007).

Sanctions will not result in economic collapse or political change in Iran (Pape, 2013), as the US sanctions did not result to economic collapse or political change in Cuba or North Korea. It is needed to be considered that both Cuba and North Korea have smaller and more vulnerable economies than Iran. The fundamentals of Iran’s economy are strong enough to resist such tough sanctions. Iran’s highly educated population, human capital, and various natural resources, as natural capital are available locally for socio-economic development. All these factors assist economic self-sufficiency. Meanwhile, sanctions have backfired. They have hardened the Iranian position so that they can block reaching a compromise with Iran. So these sanctions cannot support diplomatic negotiations.

Conclusion

Most international legal experts argue that sanctions specifically unilateral sanctions imposed on Iran are immoral and illegal. AALCO resolution “on extraterritorial application of national legislation: sanctions imposed against third parties”, issued 12 September 2013, clearly stipulates the illegality of the US and EU sanctions and their legal responsibility for damages which they have inflicted on Iran by imposing sanctions. Neither the US nor the EU member states has been injured or affected by Iranian nuclear enrichment. They should answer to these violations of the international law.

It is clear that the basics of human rights cannot grow in this world when in some places like Iran, people do not have adequate access to the medicine that they need. Sanctions against Iran by blocking its international financial transactions has harmed its trade and caused lack of medicine for patients. Iran has not inflicted any damages on the sanctioners, It is against the principle of proportionality and morality. Sanctions in some areas have damaged the Iranian economy but these sanctions have not been able to change policies of the Iranian government to stop nuclear enrichment. It proves that sanctions against Iran have failed and been ineffective.

A glance to the history of sanctions on Iran indicates the sanction regime has been constructed politically, not legally. As discussed above, a decade of harsh sanctions regime imposed by the US and enhanced by the EU was successful in the sense that it impacted heavily on the people’s livelihood. The impact of unilateral sanctions have been ignoring basic human rights of Iranian citizens, notably the right to life, right to health, access to medicine and the right to development. Dialogue between Iran and the West is the only way for confidence building. As clearly and thoroughly defined, in international law the imposed sanctions are illegal. So removing sanctions at this juncture should not be considered giving a concession to Iran, It is indeed a pre-requisite for the realization of her legal rights.

Realism advises US policy makers to deal with Iran. They cannot change the Islamic system or its foreign policy, or its role the most powerful players of the region. It is important to side with what is right. While the US as the owner of thousands of nuclear weapons has used them twice on civilian populations, it is ironic that this country wants to dictate what Iran can or cannot do. Meanwhile wrong doing by US policy makers have brought the US to the verge of losing its strategic position in the Middle East with the potential of disastrous consequence for its global standing. The only way to forestall such an outcome is rapprochement with Iran as the main regional power.

The realist thinker Stephen M. Walt believes that states (and people) tend to resist blackmailers, because once you pay them off the first time, they can keep making more and more demands. In international politics; giving in to one state's threats might convey weakness and invites demands by others. By contrast, states (and people) routinely engage in bilateral transactional agreements where favors are exchanged and agreements are made. Bilateral or multilateral agreements, as the essence of trade agreements, commercial transactions and many other types of cooperation, establish a valuable precedent. Negotiations will not reach an agreement while the approach being taken is consistently confrontational. The failed nuclear fuel swap contract for the Tehran research reactor in 2009, is a notable example. The proposed plan was near success through the mediation efforts of officials from Brazil and Turkey, US officials did not agree. It means the persistent confrontational approach of the US has brought about consistent failure for more than three decades (Walt, 2013).

The Obama administration as the key player in "P5+1" negotiations, well understands that negotiations under the cloud of UNSC sanctions resolutions which are imposed illegally on Iran as well as other non UN sanctions cannot reach an agreement. Iran as a large regional player can take a decisive role in peace building in the

Middle East. The Obama administration should trust Iranians and adopt the Nuclear Fatwa as a base of confidence building, as many American writers have suggested (CNCNEWS).

The Fatwa which was issued in 2005 by the Supreme Leader of Iran Ayatollah Ali Khamenei says that the production, stockpiling and use of nuclear weapon is forbidden under Islam.² This Fatwa is the fundamental principle in Iran nuclear proliferation strategy. It is a religious bond doctrine. Based on this Fatwa, as the Iranian supreme leader has told, possession of nuclear weapons is a sin and having such weapons is absolutely prohibited, since they are a danger to the existence of humanity, they are forbidden by God. He has spoken about this Fatwa many times. The nuclear Fatwa is a critical principal, since the existence of human is at stake; it is hard to alter, annul or abandon it. This Fatwa is also not dependent on time and circumstances. It has set forth a precedent that future religious leaders can't discard it. This Fatwa should be taken as an assurance that Iran has no intention of building such weapons. It can be adopted as an official UN document as a way of building confidence. Based on this Fatwa Iran has called for a world free of nuclear weapons.

The Nuclear Fatwa is the same as the Ayatollah Khomeini's Fatwa on chemical weapons during the Saddam imposed war which banned use of chemical weapons. Iran never used such weapons against Iraqi military even at times when it faced harsh Iraq pressures and lack of conventional weapons. But the humanitarian aspect of that Fatwa had a greater priority than military victory against Iraqi aggressors at that time.

Iran has the unalienable right of uranium enrichment in the framework of the non-proliferation treaty. For these reasons US authorities should trust Iran, remove these illegal sanctions and reach an agreement with Tehran. Diplomacy and negotiations are the only tools to reach a compromise.

As sanctions remain over a prolonged period they tend to become even less effective in achieving their political objectives; the

sanctioning countries consequently tend to impose additional, more extensive sanctions, which only promotes further radicalization in both the sanctioned and sanctioning countries. The only way to stop this vicious cycle is for both sides to negotiate in good faith and with open minds. The recently elected Iranian President Hassan Rouhani who is sincerely seeking a diplomatic solution has provided a good opportunity for the West to resolve this debacle.

A historic telephone call took place between the Iranian President and the US president, which was the first since the Islamic revolution, paving the way for a new round of nuclear negotiations. The flexibility of the Rouhani government in nuclear negotiations resulted in an interim agreement between Iran and the P5+1 countries in November 2013. Within the framework of this agreement Iran has taken some steps towards confidence building and has agreed to full inspections of its nuclear sites. But the Obama administration still insists that tough sanctions remain in place, which results in pressures for ordinary Iranian people. Sustaining sanctions as pressure leverage does not have any impact on Iran's policy on nuclear issues, but they have a negative impact on people's lives. Because of humanitarian points of view, sanctions are principally immoral and illegal. They should be removed unconditionally, without taking to account processes or results of the ongoing or future negotiations.

Notes

1. Judge Abdolghader Koroma's speech at the IPIS seminar in Tehran, June 12, 2013
2. An official Iranian statement released on August 9, 2005 at the Vienna meeting of the International Atomic Energy Agency (IAEA) announced that Ayatollah Ali Khamenei had issued a fatwa forbidding the production, stockpiling and use of nuclear weapons. <http://www.ww4report.com/node/929>

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