

INGEER at Caen University

EU's Autonomous Sanctions against Iran as Countermeasures under International Law?

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IV. Conclusions

I-1. Possible Justification for *Per Se* Illegal Sanctions

Sanctions may be *per se* illegal, but may be justified based on or as:

1. UN Sanctions Resolutions
2. Countermeasures
3. Prior Consent by the Target State

I-2. EU's Autonomous Sanctions against Iran (2012)

1. Freeze of Funds of the Central Bank of Iran

2. Embargo of Iranian Oil

(Council Regulation (EU) No 267/2012, Arts. 11, 13, 23).

I-3. UN Sanctions Resolution: SCR 1929 (2010)

PP 17

Recognizing that access to diverse, reliable energy is critical for sustainable growth and development, while noting the potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities,

OP 21

Calls upon all States, in addition to implementing their obligations pursuant to resolutions 1737 (2006), 1747 (2007), 1803 (2008) and this resolution, to prevent the provision of financial services, ..., of any financial or other assets or resources if they have information that provides reasonable grounds to believe that such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities,... including by freezing any financial or other assets or resources on their territories ...

II-1. Eligibility for Taking Countermeasures under ASR

Art. 49 (*Object and limits of countermeasures*)

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.

Then, what is “injured State”?

II-2. Definition of “Injured State” as Eligible Author of Countermeasures

Art. 42 (*Invocation of responsibility by an injured State*)

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) that State individually; or [Bilateral obligations]
- (b) a group of States including that State, or the international community as a whole, and the breach of the obligation: [Collective obligations]
 - (i) specially affects that State; or [Ordinary collective obligations]
 - (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation. [Interdependent obligations]

• In the case of a breach of an **interdependent obligation**, **all the other States** are regarded as “injured States.”

II-3. Special Character of Interdependent Obligations (Art. 42(b)(ii))

ILC Commentary on Art. 42

“... performance of the obligation by the responsible State is a necessary condition of its performance by all the other States (subparagraph (b) (ii)); this is the so-called ... ‘interdependent’ obligation.” (para. 5)

“[S]ubparagraph (b) (ii) deals with a special category of obligations, breach of which must be considered as affecting *per se* every other State to which the obligation is owed. Examples include a disarmament treaty, a nuclear free zone treaty, or any other treaty where each parties’ performance is effectively conditioned upon and requires the performance of each of the others.” (para. 13)

III-1. Obligations Breached by Iran

- Report of the DG of the IAEA (GOV/2003/75)

“Based on all information currently available to the Agency, it is clear that Iran has failed in a number of instances over an extended period of time to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material and its processing and use, as well as the declaration of facilities where such material has been processed and stored.” (para. 47)

- US, *Adherence to and Compliance with Arms Control Agreements*, May 2015

“Iran’s failure to abide by the obligations of its Safeguards Agreement constitutes a violation of its NPT Article III obligations, which require safeguards to verify that its nuclear activities serve only peaceful purposes.”

III-2. Whether NPT Obligations Are Interdependent

1.NPT is a representative non-proliferation and disarmament treaty

2.Preamble of the NPT provides:

“Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war ...”

III-3. Art.42 (b)(ii) of ASR and the NPT

Art. 42 (b)(ii)

“A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to ... a group of States including that State ..., and the breach of the obligation ... is of such a character as *radically to change the position* of all the other States to which the obligation is owed with respect to the further performance of the obligation.”

The “obligation” breached and the “obligation” with respect to whose further performance the breach would radically change the position of all the other States, must be the same.

The obligation breached by Iran is non-production related obligations of the NPT; the nuclear-weapon States have not assumed the same obligations.

III-4. Three Possible Conclusions on the Relationship between Art. 42 (b)(ii) and the NPT

1. Only non-nuclear-weapon States Party to the NPT can justify *per se* illegal autonomous sanctions against Iran as countermeasures.
2. NPT is not a treaty providing for interdependent obligations.
3. Art. 42 (b)(ii) may have been drafted without taking into account the existence of treaties providing different obligations for different parties, such as the NPT.

IV. Conclusions

1. Understanding No. 1 would only justify autonomous sanctions (countermeasures) taken by non-nuclear-weapon EU members.
2. Understanding No. 2 would not justify any autonomous sanctions (countermeasures) taken by any EU members, because there is no injured States in the EU.
3. Understanding No. 3 would justify all autonomous sanctions (countermeasures) taken by EU members as injured States under Art. 42 (b)(ii).

NB

This study have not addressed other issues relating to lawful countermeasures, such as the requirement of proportionality.

Thank you

Reasons for requiring the two obligations (one breached and the other for further performance) are the same

Professor Giorgio Gaja (Chairman of the Drafting Committee for the ASR 2001)

“At issue in both texts is the radical modification of a situation. However, the envisaged modification does not have the same character in respect of both text. For the [Articles on State Responsibility], at issue is a modification which affects the future performance of the specific obligation in question. The Vienna Convention, on the other hand, concerns a modification which affects the totality of obligations deriving from the treaty. This difference in focus can be explained by the fact that the obligation at issue for the [Articles on State Responsibility] can be customary in nature; the notion of interdependent obligations can be difficult to expound in respect of customary obligations [unlike those in a treaty]. Hence for the [Articles on State Responsibility], it is only the specific obligation breached which is taken into account.”