

**ECONOMIC SANCTIONS AND THEIR LEGAL IMPLICATIONS TO
THIRD PARTY COUNTRIES: A CASE STUDY OF TANZANIA**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF MASTER DEGREE OF LAWS**

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CERTIFICATION

The undersigned certifies that he has read and here by recommends for acceptance by the Open University of Tanzania, a dissertation entitled, **Economic Sanctions and their Legal Implications to Third Party Countries: A Case Study of Tanzania**. In partial fulfilment of the Requirements for the award of Degree of Master of Laws (LLM)

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Signature

Date

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ABSTRACT

The increased use of economic sanctions by the United Nations Security Council and other United Nations member states as a means of enforcing policy change in the targeted state has increasingly confronted the international community with the problem of the indirect effect of such measures on third States. This study has dealt with assessing the lawfulness of the Unilateral Economic Sanctions to third party states where Tanzania was used as a case study. The study was guided by three main objectives including: to assess the legal justification for unilateral and secondary economic sanctions; to evaluate and analyze the legal impacts of unilateral and secondary economic sanctions to third party countries like Tanzania; and to suggest new way to the relevant organs on how to deal with unilateral and secondary economic sanctions towards protection of third party countries. The study employed doctrinal research method which was supplemented by quantitative data analysis. Both Primary and secondary sources of data were collected where, a number of relevant treaties, conventions, laws, regulations and other scholarly works were analyzed. The study was mainly library based, although online sources were also consulted. The findings show, among other things, that unilateral economic sanction between one state and another is not justifiable under the UN Charter. Moreover, its impacts to third party countries extent into violation of human rights and violation of international norms and standards on state sovereignty. The study also revealed that there are no clear rules governing how to handle economic sanctions to third party states. The study recommends for United Nations to develop clear rules to guide the application of “smart” economic sanctions towards the targeted state(s).

Key words: *Sanctions, Economic, Unilateral, Sovereignty.*

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INTERNATIONAL LEGAL INSTRUMENTS

The Charter of the United Nations, San Francisco 1945

*International Covenant on Economic, Social and Cultural Rights, 16 December 1966
entry into force 3 January 1976*

*Optional Protocol to the International Covenant on Economic, Social and Cultural
Rights, GA Res 63/117, UNGAOR, 63d Sess, Supp No 49, UN Doc A/RES/63/117,
(2008) (Optional Protocol)*

*The African Charter on Human and Peoples' Rights, 1981 by the Organization of
African Unity Entered into force in 1986*

*The treaty for the establishment of the East African Community was signed on 30
November 1999 and entered into force on 7 July 2000*

The Constitutive Act of the African Union of 2000

The Treaty of the Southern African Development Community, 1992

Fourth Geneva Convention Related to the Treatment of Prisoners of War, 1949

*Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the
Protection of Victims of International Armed Conflicts, 1977*

*Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the
protection of Victims on Non-International Armed Conflicts, 1977.*

LIST OF CASES

Admission of a State to the United Nations (Charter, Art.4), Advisory Opinion, ICJ Reports 1948, 57

Advisory Opinion, ICJ Reports 1980,

Ayugi v Ayugi and Others (CIVIL REVISION NO.184 OF 2002) [2005] TZHC 27; (09 May 2005)

East African Development Bank v Blueline Enterprises Ltd (CIVIL APPEAL NO. 110 OF 2009) [2011] TZCA 1; (22 December 2011)

Corfu Channel Case Judgment of April 9th 1949, ICJ Reports 1949,

Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt,

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, 226

Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986,

Prosecutor v. Tadic, Appeal on Jurisdiction, 1995. IT-94-1-ART72

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, ICJ Reports 1992,

Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949,

ABBREVIATIONS AND ACRONYMS

AU:	African Unity
JCPOA:	Joint Comprehensive Plan of Action
JPOA:	Joint Plan of Action
LDC:	Least-Developed Countries
MFI:	Multilateral Financial Institutions
NATO:	North Atlantic Treaty Organization
NGO:	Non-Governmental Organization
OHCHR:	Office of the High Commissioner for Human Rights
SADC:	Southern African Development Community
STERP:	The Short Term Emergency Recovery Programme
UANC:	United African National Council
UDHR:	Universal Declaration of Human Rights,
UDI:	Unilateral Declaration of Independence
UN:	United Nations
UNAIDS:	Joint United Nations Programme on HIV/AIDS
UNGA:	United Nations General Assembly
UNICEF:	United Nations International Children's Emergency Fund
UNSC:	United Nations Security Council
US:	United States
USSR:	Union of Soviet Socialist Republics
WB:	World Bank
WFP:	World Food Programme

WHO: World Health Organization

WMD: Weapon of Mass Destruction

CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND INFORMATION

1.1 INTRODUCTION

Economic Sanction has been contextualized so much that at least most of political groups or professional disciplines have explained economic sanctions basing on their line of profession. Normally imposition of Economic Sanction towards certain countries or states is much influenced by political, social, cultural or economical reasons. That is why Economic Sanction generates divergent views due to its wide coverage.

The term “Economic Sanctions” has been defined as 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 towards another country’s policy.¹

Also, “economic sanction” has been defined to mean penalties threatened or imposed as a declared result of the target’s states failure to observe international standards or international obligations.² Also, Economic Sanction can be defined as actions taken by a country or organization against the economy of another country, such as refusing to trade with it, in order to enforce it to obey a law or set of rules.³

It is a fact that Economical Sanction is now comprehensive world phenomenon, manifesting itself to hinder not only the development, morality, culture, and political struggles of the countries sanctioned but also the third party countries which are

¹ Barry E. Carter, “International Economic Sanctions: Improving the Haphazard U.S. Legal Regime”, 75 Cal. L. Rev. 1162, 1166.

² Margaret P. Doxey, *International Sanctions in Contemporary Perspective*, 2d edition, (1996), at pp 9

³ The Cambridge Advanced Learner's Dictionary & Thesaurus

directly connected with the targeted state(s) through neighbourhood /bilateral trade agreement or multilateral trade agreements.

In recent years, economic sanction has been used as a tool of influence of one country' policy towards other countries' policies. Also they have been used as an instrument for conflict-resolution which allows countries to exert pressure on other countries through the use of economic penalties. Their increased popularity on economic sanctions in recent years raises the question of its effectiveness towards achieving their intended goals and the resulting consequences to third party countries.

1.2 Prevalence of Use of Economic Sanctions

The use of economic sanctions and embargoes as tools of foreign policy or tool of economic warfare⁴ has been more prevalent in recent years. At present, there are 14 United Nations sanctions regime;⁵ which focus on supporting political settlement of conflicts, nuclear non-proliferation, and counter-terrorism. Again, 37 European Union sanctions regimes are in force, along with various others imposed by states acting unilaterally or under the umbrella of other international organizations. The unilateral or autonomous sanctions are imposed by states and international organizations without the Security Council's consent, like the recent economic sanctions of the United State of America towards Iran.⁶

⁴V Lowe and A Tzanakopoulos, 'Economic Warfare' in *Max Planck Encyclopedia of Public International Law* online edn (last updated March 2013).Pg 71.

⁵ United Nations Security Council Subsidiary Organs. *Fact sheet 23 February, 2022*, Retrieved from <https://www.un.org/securitycouncil/sanctions/information>, last accessed on 9th June2022.

⁶ David, J, & Deirdre, S., *USA economic sanction to Iran*, Retrieved from <https://www.rgj.com/story/news/politics/2020/01/10/trump-administration-announce-new-economic-sanctions-iran/4429935002/> accessed on 15th January, 2020

These unilateral economic sanctions or secondary sanctions are normally criticized as being contrary to international law and in breach of the rights of the states targeted by such measures. The economic sanctions normally results to interruption of financial and investment flows between sender and target countries which in reality do not only affect the targeted state but rather all other third part states connected with the targeted state. Still, there is no concrete legal mechanism to protect the economy of third party countries, especially those which are directly connected with the targeted states.

This study aimed at exploring the legal implications of economic sanctions towards protection of the third party countries' political, economic and social development. This chapter specifically analyzes the general introduction to the topic by providing historical background of the research topic; discusses the literature of other authors from different sources that are relevant to the topic; state the problem statement of the research; provide methodology which was employed; and purpose as well as importance of the study.

1.3 Background to the Study:

Since the end of the cold war, economic sanctions have become one of the primary foreign policy tools employed by governments to force change in a regime's policies and practices, particularly as the governments seek to avoid the high cost of military conflict. Sanctions are now commonly used to prevent or punish human rights

violations, terrorism-related activities, proliferation of nuclear weapons and the narcotics trade.⁷

Tanzania has ratified several international instruments which are concerned with economic sanction.⁸ On the other hand, Article 63 (3) (e) of the Constitution of the United Republic of Tanzania⁹, allows for ratification of agreements or conventions (International Instruments) to form part of our laws.

Tanzania has continued to face unilateral economic sanctions from a number of countries;¹⁰ the recent case scenario is the economic sanction that was posed by the Denmark and European Union in 2019.¹¹

Tanzania has faced both primary and secondary sanctions. Primary sanctions are those that are imposed on nations or residents of a sanctioning country prohibiting them from engaging in any sort of trading activity with an entity that is the subject of the sanctions (that is, a target entity). Secondary sanctions apply to third parties (that is, entities which are not nations or residents of a sanctioning country) from engaging in economic activities with the target entity.¹² A good example of the secondary economic sanction that has touched Tanzania directly is the sanctions that were

⁷ Rachael Gosnell, *Economic Sanctions: A Political, Economic, and Normative Analysis*, David Publishing (International Relations and Diplomacy), March 2018, Vol. 6, No. 3, 152-170

⁸ Article 41 of the United Nations Charter, (Chapter VII)

⁹ The Constitution of the United Republic of Tanzania, Cap 2 of 1977 as amended time to time

¹⁰ The Global Sanctions Data Base: Drexel Economics Working Paper Series, WP 2021-10, Drexel University, pg 27.

¹¹ *Idem*,

¹² Cécile Fabre, *Secondary economic sanctions*, Current Legal Problems, Oxford University Press (2016), pp. 1–30, pg 2.

imposed to South Africa as a result of apartheid policy implementations,¹³ and Economic Sanction to Zimbabwe.¹⁴

The continued imposition of unilateral and secondary sanctions prompted the Tanzanian fifth president, the late Dr. John Pombe Magufuli on the 39th SADC Summit of Heads of State and Government which was held in Dar es Salaam, United Republic of Tanzania to urge other heads of states to express solidarity with Zimbabwe. He called for the immediate lifting of the sanctions to facilitate socio-economic recovery in the country and other neighbouring countries.¹⁵

The use of secondary economic sanctions has raised the question of its legality in the context of the international law, investment laws (trade law), principle of international humanitarian law, and human rights law. This research aimed at evaluating compatibility of unilateral and secondary sanctions in the context of international trade law agreements and bilateral trade agreements and its impact on third countries which has trade relations with the target country taking the case study of Tanzania as one of the third party countries.

It is contended that unilateral and secondary sanctions is against international rule of law and promotes self-interest, which is opposed to the idea of multilateral sanctions. Unilateral sanctions affect trade relations of the target country as well as its trading partners. It also affects the economic and banking system of the targeted country and other third party countries. These sanctions disrupt international trade may lead to

¹³ Richard A. Gibb, The Effect on the Countries of SADCC of economic Sanctions against the Republic of South Africa, Vol.12 No. 4 1987, Pg 198-412,

¹⁴Dr. Stergomena L. T., *SADC statement on economic sanctions*, retrieved from, https://www.nl.tzembassy.go.tz/uploads/STATEMENT_BY_SADC_CALLING_FOR_IMMEDIATE_REMOVAL_OF_SANCTIONS_IMPOSED_ON_ZIMBABWE.pdf

¹⁵Idem

violation of human rights and collective punishment of human societies. It will also affect the fundamental rights of human societies not only of the targeted states but also the third party and the entire international community.

1.4 Statement of the Problem

The lawfulness of economic sanctions is frequently discussed in relation to secondary sanctions which touch third party countries. The justification of economic sanctions towards one state must take into account how these relate to general public international law. Generally speaking, countries have traditionally justified their economic sanctions as retorsions, enforcement sanctions or as counter measures. However, when economic sanctions are taken unilaterally by one country towards the targeted country; it tends to significantly affect the surrounding countries to the targeted states in a number of ways including: investments, banking systems, human rights, and political stability causing consequential breach of international trade law agreements and bilateral trade agreements to such third party countries.

Tanzania being a member of a number of regional groupings such as East African Community (EAC) and SADC; has been experiencing legal, economic and political impacts from economic sanctions that are imposed on other member states such as Zimbabwe and South Africa, despite the fact that those sanctions were not directly imposed to Tanzania.¹⁶

The problem with the present justification of economic sanctions under United Nations Charter is that they cannot produce an effective analysis regarding the

¹⁶Dr. Stergomena L. T., *SADC statement on economic sanctions*, retrieved from, https://www.nl.tzembassy.go.tz/uploads/STATEMENT_BY_SADC_CALLING_FOR_IMMEDIATE_REMOVAL_OF_SANCTIONS_IMPOSED_ON_ZIMBABWE.pdf , last accessed on 9th Junen2022

lawfulness of unilateral and secondary economic sanctions towards the third party countries. Therefore, it is difficult to pinpoint the exact lawfulness of unilateral and secondary economic sanctions under international law towards third party countries. This study aimed at analyzing the present legal frame work of economic sanctions to the third party countries. It also suggests approaches that can be undertaken to cover the gap.

1.5 Literature Review

In recent years, economic sanction has been used as a tool for influencing some countries' policy towards other countries' policies. Also they have been used as an instrument for conflict-resolution which allows countries to exert pressure on other countries through the use of economic penalties. Their increased popularity on economic sanctions in recent years raises the question of its effectiveness towards achieving their intended goals and the resulting consequences to the third party countries.

Hufbauer, Schott, Elliott and Oegg ("Hufbauer") in *Economic Sanctions Reconsidered*, he tried to analyze the effectiveness of economic sanctions to the targeted country and other third party countries. In his analysis, the researcher considered two factors including: (i) the extent to which the policy results sought by the sender country was achieved and (ii) the contribution (of what) to success made by sanctions.¹⁷ According to the analysis, it has been found that the economic sanctions have succeeded for only 24 percent on the intended goals, and that, the

¹⁷ Gary Clyde Hufbauer & 3 others, *Economic Sanctions Reconsidered* 3rd Edt., Peterson Institute, Washington DC, 2007, 49.

sanctions had adverse impact on the third party countries around the targeted country.¹⁸

This literature is very useful to the study at hand as it gives analysis of the concept of economic sanctions and it gives generally analysis of the impact of economic sanctions. The research gap in this literature was that the author focused on the effectiveness of economic sanctions to the target state, where concentration was on measuring the objectives vis-à-vis results of such economic sanctions. But the author did not analyze the legal impacts of economic sanctions to the third party countries. This study therefore, tried to assess the legal impacts of economic sanctions to the third party countries.

Kenneth Rodman,¹⁹ has explained that, economic sanctions are actions implemented directly by the government of the sender state. However, due to the evolving international economic environment which is interconnected and interdependent; production networks have made Multinational Corporations to become the lead actors in economic sanctions implementation. This in turn, has led economic sanctions to be transformed from simple “instruments of foreign policy” to “autonomous actors whose self-interstate behaviour could undercut strategies of economic statecraft” including the economy of the countries connected to the targeted country.²⁰ Put it in other words, an economic sanction to one state affects a lot of countries that are connected with the targeted country.

The author has further pointed out that as the “notion that the state is the leading actor in sanctions’ implementation is slowly changing; there is a need to address the

¹⁸Ibid, 158.

¹⁹ Kenneth A. Rodman, *Sanctions Beyond Borders*, Rowman & Little field Publishers, 2001, 97.

²⁰ Ibid, 102

impact of the rise of these transnational actors” especially when the economic sanctions are taken unilaterally by one country.

The research gap in this literature is that the author has made analysis of the sender and main actors (implementers) of economic sanctions. The analysis based on looking at the role of each actor in economic sanction with the aim of suggesting the effective ways to include all actors for effective economic sanction. However, the author did not put much of the attention to the third party countries who are actually actors or parties being adversely affected by the acts of the sender country to the target state. This study went a step further to analyze the impacts that the third party countries are likely to encounter when economic sanctions are imposed to the target state. This literature is very usefully in the current study as it has explained the general concept of economic sanctions and their impacts to third party countries.

According to Morgan, C. and Bapat, N.,²¹the exchange halted as a result of sanctions frequently does not occur between states” and instead occurs between “firms and the individuals of the sender and target state.” These actors are forced to comply with the sanctions and take the costs of sanctions, taking into account that normally the interests of the sender state and the firm often diverge. While the interest of the sender state is to seek maximum impact from the sanctions; the interest of the firms is to seek profit maximization. The “domestic actors of the sender” usually attempt to illegally continue economic exchanges with the target country through various means

²¹T.Clifton Morgan &N.A.Bapat, Imposing Sanctions : State, Firms, and Economic Coercion, International studies Review (2003) 5(4), (65-79),

of circumvention such as “moving their operations to countries that allow exchange with the target state, or using offshore locations.”²²

The research gap in this literature is that the author did not focus specifically on Tanzania which the author of this study intended to cover that gap.

Dursun Peksen,²³ explaining on the possible consequences of economic sanctions, pointed out that sanctions might undermine the economy of non-sanctioning country.

The author goes on explaining that the immediate economic impact of economic sanctions such as imposing trade embargo on the target’s products or withholding its financial assets; might reduce the target’s economic and financial ability to trade with third-party countries, especially the surrounding countries. More unrest and instability in the targeted country caused by economic sanctions would also pose a greater threat to the political stability of neighbouring countries (third party countries), and consequently, causing more inter-state and civil wars. It is noted that such effects are normally unintended to the third party countries and they are specifically affecting the third party economy illegally.

The research gap in this literature which is to be covered by the current study is that the author did not focus specifically on Tanzania, despite the gap analysed yet his work is usefully in the current study as it is very relevant to the study at hand.

²²*Africa: Devastating Impact Of The U.S. Sanctions On Zimbabwe*, Retrieved from <https://www.atqnews.com/ng/devastating-impact-of-the-u-s-sanctions-on-zimbabwe/> accessed on 15 January, 2020

²³ D. Peksen, *Socio-Economic and Political Consequences of Economic Sanctions for Target and Third-Party Countries*, University of Memphis publishers, 2016, 19.

According to Happold, M.,²⁴ unilateral economic sanctions are generally unlawful and that such act contravenes the state freedom including liberty to revise its relationship with other states as it pleases. It is argued that a state's freedom includes the liberty to revise its relations with other states as it pleases provided that no specific legal obligations are breached by doing so, and that, as there are no customary obligations to maintain any particular economic relations with other states; including restriction or interrupting trade relationships. He further pointed out that the state is entitled to take any economic measures against other states provided that such measures do not contravene any applicable treaties in the region (a regional free trade agreement; a treaty of friendship, commerce and navigation; or a bilateral investment treaty or other WTO-covered agreement, *inter alia*) or customary rules.

However, despite its usefulness in this work, there is a gap in the literature that fails to explain how economic sanctions in the target country influence the economy of third party countries (surrounding countries to the targeted country) especially when the economic sanction is taken unilaterally by sender country. Moreover, the literature did not explain the behaviour of multinational cooperation as main actors of economic sanctions when deciding whether or not to comply with sanctions. This knowledge gap necessitated for the study at hand to be carried out in order to fill that gap. . Focusing on this gap could allow sender states to better utilize the various tools at their disposals when they enact economic sanctions without affecting third party countries' economies. The findings of this study have tried to cover the gap

²⁴ Matthew Happold, *Economic Sanctions and International Law: An Introduction*, Hart Publishing, 2013, 3.

1.6 Objectives of the Study

The study had a number of objectives ranging from the general to specific objectives as introduced below:

1.6.1 General Objective

The study aimed to point out the legality of unilateral and secondary economic sanctions and their impacts towards third party countries where Tanzania was used as a case study.

1.6.2 Specific Objectives

- a) To assess the legal justification for unilateral and secondary economic sanctions to the third party countries;
- b) To evaluate and analyze the legal impacts of unilateral and secondary economic sanctions to the third party countries such as Tanzania; and
- c) To suggest to the relevant organs, new ways of dealing with unilateral and secondary economic sanctions towards protection of the third party countries.

1.7 Research Questions

This study aimed to provide answers to the following research questions:

- a) What is legality of unilateral and secondary economic sanctions to the third party countries? OR: What are the legal justifications for unilateral and secondary economic sanctions to the third party countries?
- b) What are the legal impacts of unilateral and secondary economic sanctions to third party countries such as Tanzania?

- c) What are the new ways to deal with unilateral and secondary economic sanctions towards protection of the third party countries?

1.8 Significance of the Study

This research is very important as it calls upon the international community through different organs such as United Nations and the African Union or sub regional groupings like SADC and EAC to develop a comprehensive legal framework that will protect the third party countries when there are unilateral economic sanctions or secondary sanctions towards any of their members. This attempt will strengthen protection of the economic, political and social interests of their partner states within the region and beyond.

On the side of individual states like Tanzania; the study has fundamentally instigated for the definite observation of the bilateral trade agreements, laws and policy towards protection of its investments in case such economic sanctions is directed towards any country to which Tanzania is directly connected in terms of regional groupings and bilateral trade agreements. To the academicians and the society, the study will be a helpful stepping stone over accessing detailed knowledge on the impacts of economic sanctions towards the third party countries.

Therefore, this work brings about the legal solution specifically the key factors that are to be considered when economic sanctions are preferred towards a certain country. Moreover, this work provides for the new schemes that are of relevant to most of sub-regional groupings that normally aim at creating single monetary

territory, since economic sanction to one member would mean affecting the entire community.

1.9 Research Methodology

This study is based on qualitative/doctrinal legal research method. The study analyses the relevant legal texts to interpret what law exists regarding economic sanctions.²⁵ The study also is supplemented by quantitative data analysis on the study topic. The researcher's principal or even sole aim was to describe a body of law on the topic and how it applies. In doing so, the researcher also provided an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment. In other words, the study was conducted by analyzing the available documentations (library), primary and secondary literature. The primary sources are the conventions, treaties, bilateral agreements, and international regulations related to economic sanctions and domestic regulations / policies concerning economic sanctions. The secondary sources are books, journal articles, newspaper reports, and electronic texts.

As stated by Prof. Ranbir Singh

“Doctrinal research is possible only where relevant and sufficient information exists and available on research topic and the information coming from credible source is assumed true, unless he has reason or scope of doubt as to the truthiness.”²⁶

The opted methodology was pursued since there were available instruments that touch the topic of the study. The available resources enabled the researcher to make a

²⁵ , E. Clare and A. Liebling, (1997) Monitoring and Evaluation of Wolds Remand Prison and Comparisons with Public-sector Prisons, in Particular HMP Woodhill (London: Home Office Research and Statistics Directorate

²⁶Prof.Ranbir Singh, et all, RESEARCH METHODOLOGY, Methods of Data Collection, National Law University, Delhi, 2016 pg.3.

critical analysis of the law, policies and practices on economic sanctions towards third party countries. The methodology enabled easy analysis of the current status of the law on the topic.

1.9.1 Collection of Primary Data

Primary legal sources are the actual law in the form of treaties, constitutions, court cases, statutes, and administrative rules and regulations.²⁷ In this study, the primary data used were collected through review of the available international instruments and domestic instruments on the study topic including; laws, conventions, treaties, policies, case laws and regulations. The data were collected from the available treaties and conventions found online from library. This method was opted based on the nature of the research which was an analysis of the existing legal framework on economic sanctions which therefore needed necessary and relevant materials of this nature.

1.9.2 Collection of Secondary Data

Secondary legal sources restate the law, but they also discuss, analyze, describe, explain, or give critique of the law as well.²⁸ Secondary sources were used to help the researcher in locating primary sources of law, defining legal words and phrases, or helping in legal research.²⁹ With regard to the secondary sources or authorities; the researcher consulted relevant text books, academic articles, journals, and various reports related to the topic. The researcher strived to use more current authorities on

²⁷Highline College, *Introduction to Law: Primary and Secondary Sources*; Retrieved from <https://library.highline.edu/c.php?g=344547&p=2320319>, accessed on 09 July2021.

²⁸Prof.Ranbir Singh, et all, RESEARCH METHODOLOGY, Methods of Data Collection, National Law University, Delhi, 2016 pg.3.

²⁹ Idem,

economic sanctions so as to capture the current understanding of the topic. The researcher also used the available library facilities at and Open University of Tanzania (Dodoma centre), University of Dodoma Library, and the library of the Local Government Training Institute. Apart from the mentioned libraries, the researcher also used the accessible on-line sources.

1.10 Scope and Limitations of the Study

The overall research intended to pay a critical analysis over the regulations governing economic sanctions and their legal implications to the third party countries, specifically Tanzania. The legal impacts discussed in this study in confined at looking on the impacts of economic sanctions towards implementations of bilateral and multilateral treaties to which Tanzania is a party. Upon its completion, this research has exposed out a number of legal issues pertaining to unilateral and secondary economic sanctions to the third party countries. Finally, the research has come up with suggestive measures that, if adopted, will cover the existing gap towards protection of the third party countries with regard to the economic sanctions as posed by the UN's security council and other organs.

The study was categorically carried out on the impact of economic sanctions to countries which are members of sub-regional groupings specifically Tanzania. Tanzania is a member of SADC, other countries being Zimbabwe and South Africa. These two countries (Zimbabwe and South Africa) once experienced economic sanctions from the UN's organs. Therefore, the study tried to assess the legal impacts of economic sanctions to the third party country (Tanzania) due to such economic sanctions.

Nevertheless, several limitations were found to be on the way towards attaining very sufficient, credible and reliable information relating to this study. Among the limitations available was availability of a comprehensive library services that could help to easily obtain relevant materials needed. The researcher overcame this limitation by using online sources of materials relevant to the topic. The last limitation (not in the least) was on the area of literature review of the study itself. This limitation emerged due to the fact that most of the authors who wrote on economic sanctions did not cover the aspect of protection of third party countries and its legal basis. They concentrated on economic, political or social view to the targeted country only. Therefore, the researcher could not get adequate readings that could provide for enough literature on the topic. This limitation was overcome by critical analysis of the primary sources available rather than secondary sources of data.

1.11 Chapterization

The entire research work is divided into five chapters. The first one is about general introduction which entail conceptual framework of the study, legal problem, significance of the study, and states its objectives and hypotheses. It also includes methodology as well as limitations of the study. Chapter two contains legal and institutional framework of economic sanctions and a quick look at the Tanzanian legal system. Chapter three deals with legal impacts of economic sanctions to Tanzania as a third party country. Analysis of research findings is done in chapter four. The last chapter is five where conclusions about the study are made and

recommendations for further research are presented, followed by bibliography and references.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF ECONOMIC SANCTIONS

2.1 Introduction

As we have seen in the first chapter that, this study has adopted a doctrinal research methodology; the methodology chosen requires a systematic description of the law governing a particular legal topic, analysis of the relationship between rules, and further to explain the areas of difficulty and lastly to predicts future developments or to suggest what the law is supposed to be in future.³⁰ Therefore it is important to have a conceptual framework of the study at hand.

The topic of the study “*Economic Sanctions and Their Legal Implications to Third Party Countries: a Case study of Tanzania*”, this topic has a number of concepts that require in-depth understanding of them to enable systematic description of the law regarding the topic, therefore this chapter covers the explanations of concepts regarding to the Economic Sanctions.

2.2 Definition of Economic Sanctions.

“Sanctions” in the context of a legal study are negative measures which seek to control the conduct of a target by imposing penalties for non-conformity with rule or policy.³¹ Sanctions are generally used as an instrument of influencing conformity. Sanctions generally can be economic, political or social.³²

³⁰Rhuks A., & Damilola S. O., *Methodology, Theoretical Framework And Scholarly Significance: An Overview Of International Best Practices In Legal Research*, AFE Babalola University: J. Of Sust. Dev. Law & Policy Vol. 8: 2: 2017 PG 225-241.

³¹ Doxey, *Economic Sanctions and International Enforcement* (Oxford: Oxford University Press, 1971) p. 1

³² idem

On the other hand, “Economic Sanctions” they relate with coercive economic measures including, trade barriers, tariffs or restrictions on financial transactions, taken against one or more countries to attempt to force a change in policies.³³

Economic sanctions is one of the international economic policy, it is normally implemented through a number of theories including; the public (rational) choice which demonstrates that the decisions made by individual actors will collectively produce aggregated social behaviour.³⁴ Decision-making theory which suggests that decision-making means the adoption and application of rational choice for the management of a private, business, or governmental organization in an efficient manner.³⁵ Other theories includes; the theory of coordination and cooperative games, this theory assumes that groups of players (coalitions), are the key units of decision-making, and may enforce cooperative behavior.³⁶ Therefore, application of economic sanctions by one country towards another country demonstrates how the individual countries, regional and international organizations react on other countries policies.

2.3 Kinds of economic sanctions

Economic sanctions can be mainly categorized into two kinds including trade sanctions and financial sanctions.

³³ Barry E. Carter, “International Economic Sanctions: Improving the Haphazard U.S. Legal Regime”, 75 Cal. L. Rev. 1162, 1166.

³⁴ Michael. I. O., Rational choice theory: Assumptions, strengths, and Greatest weakness in application outside the western milieu context, Arabian Journal of business and management review (Nigerian Chapter) Vol.1, No.3, 2013, pg 90.

³⁵ **Dr. Antonius. A.**, Risk Management and Decision-Making Theory, Retrieved from: <https://irmapa.org/risk-management-and-decision-making-theory/#:~:text=Decision%20making%20theory%20is%20a,organization%20in%20an%20efficient%20manner>. Accessed on 11June2022.

³⁶ idem

(a) Trade Sanctions

Trade sanctions deal with restricting imports and exports to and from the targeted state. These restrictions can be general, that is restrictions to all kinds of goods (for example US's economic sanctions to Iraq), or they can be selective, only putting restriction on importation or exportation of certain goods often connected with a trade dispute.³⁷ General trade sanctions normally results into humanitarian crises since civilian populations are denied to assess all kinds of goods to be exported or imported. Sometimes restrictions may deteriorate health services and other important humanitarian needs and lead to violating a number of human rights, and such kind of sanctions are always criticized.

(b) Financial Sanctions

Financial sanctions deal with monetary issues. They include, “blocking government assets held abroad, limiting access to financial markets and restricting loans and credits, restricting international transfer payments, and restricting the sale and trade of property abroad.”³⁸ All kinds of freezing of aid or threatening to stop supporting target states budget in developing countries also fall into this category of sanctions.

2.3.1 Other Types of Sanctions

(a) Travel Sanctions

Travel sanctions include sanctions against the travel of certain individuals or groups of persons from the targeted country.³⁹ Normally lists of persons who are targeted by

³⁷https://www.international.gc.ca/world-monde/international_relationsrelations_internationales/sanctions/types.aspx?lang=eng accessed on 18th January, 2020

³⁸ Interlaken Expert Seminars I and II on Targeting United Nations Financial Sanctions, 17-19 March 1998 and 29-31 March 1999.

³⁹Marc. B., *The adverse consequences of economic sanctions on the enjoyment of human rights* , Retrieved from; <https://www.guidetoaction.org/parker/sanctions.pdf>

the sanctions are known /published restricting them to leave their countries or enter the sender state. Example of this kind of sanctions include, travel sanctions to leaders of the National Union for the Total Independence of Angola (UNITA) in 1997.⁴⁰ This kind of sanctions may also include restrictions to certain kinds of air transportation like Bans on “taking off or landing of any aircraft owned, leased or operated by or on behalf of the Taliban” which was established by the United Nations Security Council in its resolution 1267 (1999).⁴¹

(b) Military Sanctions

Military sanctions may include sanctions on importation or exportation of arms or termination of military assistance or training by the sender state to the targeted state.⁴² This kind of sanctions is regarded as "targeted", since they involve only one kind of goods.

(c) Diplomatic sanctions

A diplomatic sanction targets the diplomatic relations between the sender state and the targeted state, normally targeting leaders /agents of a sanctioned state. Diplomats or political leaders may have their diplomatic privileges revoked including visas; and may be forbidden to participate in international bodies and organizations. An example of this kind of sanction was applied by the United Nations when it refused

⁴⁰UNITED NATIONS SECURITY COUNCIL COMMITTEE ON ANGOLA LIST OF UNITA OFFICIALS, FAMILY MEMBERS AFFECTED BY SANCTIONS, Retrieved from: <https://www.un.org/press/en/1998/19980223.SC6479.html> accessed on 18th January,2020

⁴¹ There may also be internal travel restrictions that keep journalists or aid workers out of conflict zones or other areas. While not strictly sanctions, these travel bans also have a negative effect on human rights and can violate humanitarian law.

⁴²*Adverse Consequences of Economic sanctions*; retrieved from; <https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html> accessed on 16th January 2020

to allow South African government to participate in its operations due to apartheid policy that existed in South Africa by then.

2.4 Concept of Economic Sanctions in Relation to Third Party Countries

The use of economic sanctions is considered as bad instrument of foreign policy,⁴³ since its application normally affects the target state and the neighbouring countries economy.⁴⁴ Economic sanctions raise a challenge to the efforts of the international community to create an “equitable multilateral, non-discriminatory, rule-based trading system and challenge the very basis of the primacy of international law.”⁴⁵

However, if economic sanctions are taken by international community or organisations, it is regarded that, both countries who are member of such communities or organisations have consented to the consequences of such sanctions under the theory of coordination and cooperative games.⁴⁶ Therefore, the question of impacts of economic sanctions to third party countries under this circumstance is settled since it is regarded that they have consented to the impacts to be faced.

The United Nations charter has also dealt with the impact of economic sanctions to third party countries when those impacts have resulted from the actions taken by United Nations Security Council imposing broad economic sanctions; for example those imposed on Southern Rhodesia; neighbouring states that were especially

⁴³ Rahmat. M., *Unilateral Sanctions in International Law: A Quest for Legality* Retrieved from; <https://lawexplores.com/unilateral-sanctions-in-international-law-a-quest-for-legality/> accessed on 17th January, 2020

⁴⁴idem

⁴⁵Paul. S., *Law of Economic Sanctions*; International Law studies Volume 71, page 455-481, Retrieved from; <https://core.ac.uk/download/pdf/236321157.pdf>

⁴⁶ **Dr. Antonius. A.**, *Risk Management and Decision-Making Theory*, Retrieved from: <https://irmapa.org/risk-management-and-decision-making-theory/#:~:text=Decision%2Dmaking%20theory%20is%20a,organization%20in%20an%20efficient%20manner>. Accessed on 11 June 2022.

affected, have sought to resort to Article 50 of the United Nations Charter, 1945, which provides that;

“If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems”⁴⁷

In practice, the United Nations Security Council has generally referred these states to the respective sanctions committee, charging these by giving the complainant states a hearing but not authorizing the committees to grant any specific relief. In no instance has a sanctions committee recommended the exemption under Article 48 (1) of a complainant state from the obligation to participate in the sanctions regime.⁴⁸ Further more in no instance has consideration been given to compensating directly such a State from the UN budget. Instead, the Committees, or the Council on their recommendation, have issued general appeals to the international community, that is to other states and competent international organizations or organs, to assist particular states or the affected states in general.

2.5 Unilateral Economic Sanctions.

On the other hand, when economic sanctions are taken unilateral; they lack consensus from other countries and therefore they tend to uphold self-interest of the

⁴⁷ Article 50 of the United Nations Charter, 1945.

⁴⁸ Fortunately, there have been few instances in which a State has openly and formally breached sanctions imposed by the Security Council under Charter Chapter VII, such as the 1971 U.S. "Byrd Amendment" (P.L. 92-156, 50 U.S.C. 98h-4) defying the embargo on Southern Rhodesia's sale of chrome; that provision was adopted by Congress in spite of the special appeal in NRES/2765(XXVI) of 17 November 1971

sender state which is against the international idea of multilateral sanctions. Article 1(3) of the United Nations Charter, 1945 asserts:

“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and.”⁴⁹

In relation to the cited Article, Unilateral Economic Sanctions are against the purpose for the establishment of the United Nations of achieving international co-operation in solving international economic, social, cultural or political problems.

2.6 The Concept of Secondary Economic Sanction

The term “secondary sanctions” entails a class of economic sanctions that could be added to the original, “primary,” sanctions. Secondary Economic sanctions involves introduction of additional measures to intensify the impact on the target country.⁵⁰ Secondary economic sanctions may involve; expanding the scope of targets where the sender state can increase economic sanctions’ effects by banning additional products from importation or exportation; or increasing the list of individuals facing travel restrictions; or freezing additional assets.⁵¹ This kind of sanctions has no difference with the primary unilateral economic sanctions since they don’t involve third parties.

Secondary economic sanctions also includes: increasing multilateral participation of countries, firms or individuals that are either persuaded or forced to participate in the

⁴⁹ Article 1(3) of the United Nations Charter 1945.

⁵⁰ JOHN J. FORRER, *Secondary Economic Sanctions: Effective Policy or Risky Business?*, Retrieved from; https://www.atlanticcouncil.org/wp-content/uploads/2018/05/Secondary_Sanctions_WEB.pdfpg 3.

⁵¹Idem.

economic sanctions with the targeted country⁵². The sender country can solicit additional countries to participate in the economic sanctions regime. Sometimes sender state may develop new economic sanctions to third parties who seem to engage in economic transaction with the targeted state.

Secondary economic sanction may also take a form of imposing extra territorial economic sanctions. “The sender country can extend its economic sanctions policy to apply to foreign based firms out-side of its jurisdiction.”⁵³ The example is the United States of America’s Helms-Burton Act which provided penalties on foreign owned companies (Non-USA based) that engaged in the trade or made investment in Cuba.⁵⁴ Another example of secondary economic sanctions of this character is the secondary sanctions that the United States of America has placed on Chinese companies and individuals for undertaking financial transactions with North Korea. On June 19, 2017, the United States imposed sanctions on a Chinese bank (Bank of Dandong), from conducting any banking activities with USA based firms.

Secondary economic sanctions are generally regarded as unlawful under international law because they impose extra territorial application of the sender state to the third party countries/ companies. Secondary economic sanctions have also being regarded in violation of the World Trade Organization (WTO) rules, since they impose domestic regulations to apply beyond the territory of the sender state.⁵⁵

⁵²Idem.

⁵³ Ibid, pg. 5

⁵⁴ US Congress, “An Act to Seek International Sanctions Against the Castro Government in Cuba, to Plan for Support of a Transition Government Leading to a Democratically Elected Government in Cuba, and for Other Purposes,” March 12, 1996, <https://www.gpo.gov/fdsys/pkg/PLAW-104publ114/html/PLAW-104publ114.htm>.

⁵⁵ In 1996, the European Union initiated a WTO proceeding against the United States over extraterritorial aspects of the Helms-Burton Act

The central legal question pertaining to secondary economic sanctions is whether or not there are any grounds if any, which may entitle a sovereign state justifiably, interfere in the economic and financial affairs of other state/ firms/ agents or individuals who are not subject to its political and territorial jurisdiction. Secondary economic sanctions are not different from primary sanctions, when it comes to grounds of justification on their application to other states including the third party countries.⁵⁶

The general principle of international law on the applicability of domestic law/ policies to other sovereign territory is based on the following principles: i) Nationality principle with respect to persons, whereby a state's laws govern the conduct of a national of that state, wherever she lives within or outside its boundaries; ii) Protection principle, whereby a state's laws aim to protect that state's interests irrespective of the nationality or residence of the agents to whom the laws applies; iii) Passive personality principle, whereby a state's laws aim to protect its nations wherever those nations are under threat irrespective of the nationality of the threatens; and iv) Universal jurisdiction, whereby a state's laws aim to protect anyone in the world from the commission of international crimes such as war crimes, piracy, and so on.⁵⁷ Looking at the principles narrated above; secondary economic sanctions do not fit to any of the principles so as to justify their applicability to third party countries.

⁵⁶Cécile Fabre, Secondary economic sanctions, Current Legal Problems, (2016), pp. 1–30 doi:10.1093/clp/cuw003 pdf, pg 12. Downloaded from <http://clp.oxfordjournals.org/> at Bodleian Law Library on November 17, 2016

⁵⁷ Ibid pg. 15

2.7 Analysis of Increased Use of Economic Sanctions

In recent years, various types of economic sanctions have been used by a number of countries to advance a wide range of international policy objectives. Both individual country economic sanctions and multilateral sanctions have been adopted. In this study, sanctions which were mostly based on the United Nations Security Council (UNSC) resolutions were collected from publicly available UN documents⁵⁸.

In the cases of the United States (US) and the European Union (EU); policy orders and corresponding national sources were screened. Other data of individual country sanctions were obtained from Global Sanction Data Base (GSDB) reports.

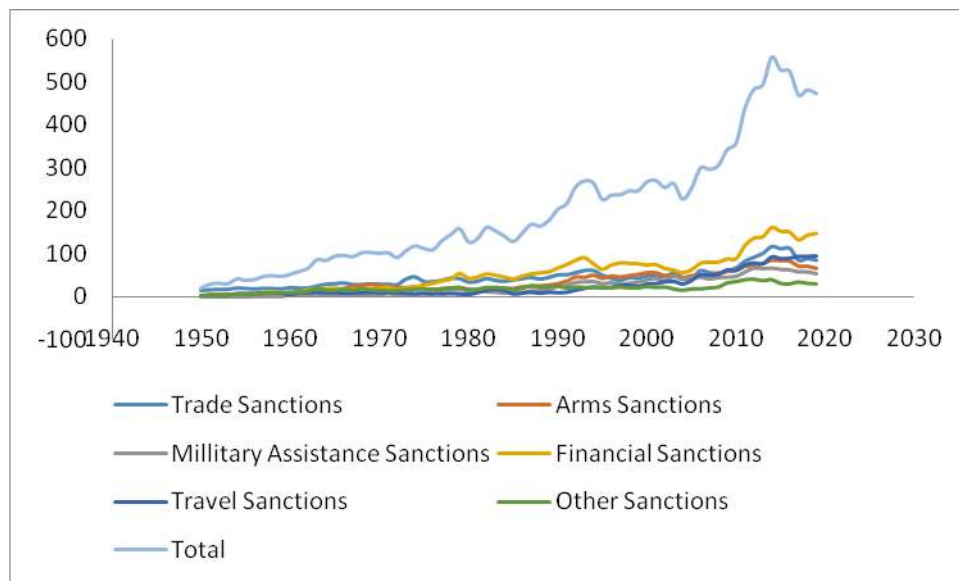


Figure 2.1: Evolution of Sanctions, 1950-2019

Source: The Global Sanctions Data Base: Drexel Economics Working Paper Series, WP 2021-10, Drexel University, pg 27.

From Figure 2.1 above, it has shown that there is increased use of different types of economic sanctions since 1950 until 2020. The mostly used economic sanctions are

⁵⁸We note that most multilateral sanctions, and UN sanctions in particular, require countries to implement local legislation to comply with them, and it is the responsibility of the countries to comply with UN sanctions.

related to trade sanctions followed by financial sanctions, travel sanctions, armed sanctions, military assistance sanctions and other kinds of sanctions respectively. Most of the developed countries have enacted laws relating to use of economic sanctions as a tool of influencing their foreign policies on other states such as United State of America and the United Kingdom.

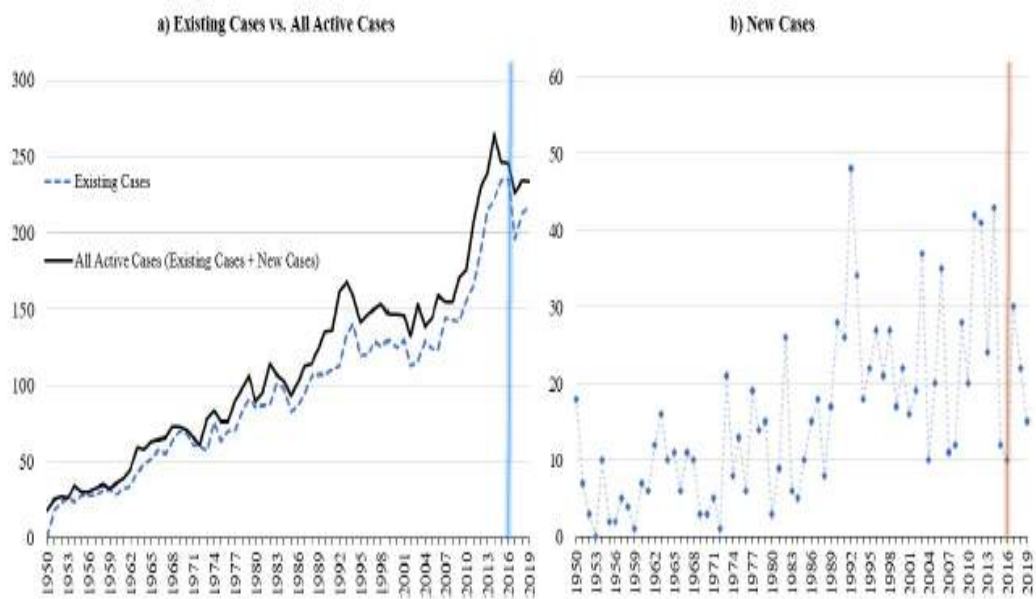


Figure 2.2: Existing cases, All active cases and New cases

Source: The Global Sanctions Data Base: Drexel Economics Working Paper Series, WP 2021-10, Drexel University, pg 27.

This figure illustrates: (a) the number of all active sanctions (solid line) and the number of all existing sanctions (i.e., previously imposed and still active) (dashed line) in each year of the sample coverage (1950-2019), and (b) the yearly number of new economic sanctions impositions over the period between 1950 and 2019.

First, Panel (a) of Figure 2.2 shows the evolution of all identified economic sanctions between 1950 and 2019. Overall, the number of economic sanctions has increased continuously since 1950 and this increase has accelerated since 2018. This trend

evidence the rising popularity of use of sanctions as a tool of coercive diplomacy. Panel (b) of Figure 2.2 displays the number of new sanctions in each year for the period 1950-2019. This panel captures two patterns: First, the number of new sanction cases has, on average, increased over time. Second, while the number of new sanction impositions fluctuated in the 2000s, their number has on the average raised.

With regard to Tanzania, the available data on economic sanctions were narrowed down to capture Unilateral, Bilateral and Multilateral economic sanction from 2014 to 2019.

Table 2.1: Economic Sanction Cases to Tanzania from 2014 to 2019

Case No. Recorded by GSDB	Country	Sanctioning state	Start Year	End Year
347	Tanzania	Canada, EU, Japan, Norway	2014	2015
348	Tanzania	Denmark	2018	2019
349	Tanzania	US	2016	2016
350	Tanzania	EU	2018	2019

Source: The Global Sanctions Data Base: Drexel Economics Working Paper Series, WP 2021-10, Drexel University, pg 27.

2.8 Economic Sanctions in Human Rights Perspectives

Economic sanctions theory claims that “economic pressure on civilians translates into pressure on the government for policy change”⁵⁹. This concept, however, has a widely received criticism that; economic sanctions normally fail to achieve desired

⁵⁹Hafner-Burton 2014, Emilie M. (2014), A Social Science of Human Rights, Journal of Peace Research 51 (2), 273 – 286.

policy change, while still harming the civilian population.⁶⁰ In many instances, the continuation of economic sanctions has led to a humanitarian disaster, making legality of economic sanctions a subject of discussion especially when it is viewed on human rights perspective.⁶¹ The illegality claim is based on two grounds: the violation of human rights and the non-compliance with the principle of proportionality.⁶²

It has also been argued that, economic sanctions may lead to discrimination against marginalized groups in society (Peksen, 2016a) and wide-spread infringements of human rights (Peksen/Drury, 2009; Escriba-Folch, 2012).

Under human right perspective, economic sanctions can be allowed only if they pass the legal test of “necessity”; which requires that the imposing state limits itself to those measures that can reasonably be expected to achieve its objective.⁶³ The principle of necessity thus involves a weighing and balancing of the economic sanction’s measure in question and whether it is likely to achieve the sanction’s objective (e.g., changing the target country’s policies). The necessity test does not give unrestricted discretion to the sender state as to the choice of the measure it considers necessary to attain the objectives. Rather, the sender state has to consider whether intended measure will have unnecessary adverse effects to the receiving

⁶⁰ De Waart, Paul (2015), Economic Sanctions Infringing Human Rights: Is There a Limit? In: Marossi, Ali Z. and Marisa R. Bassett (eds), *Economic Sanctions under International Law*, T.M.C. Asser Press, The Hague, 125 – 144.

⁶¹O’Connell, Mary Ellen (2002), *Debating the Law of Sanctions*, *European Journal of International Law* 13 (1), 69.

⁶²Reisman, W. Michael and Douglas L. Stevick (1998), *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes*, *European Journal of International Law* 9 (1),126.

⁶³ *Ibid*, Owen (2013) pg 175

state and the third part states.⁶⁴ Therefore, it is the requirement of the law that; there should be an initial comparative test, assessing the proposed economic sanctions measure regarding its effects in comparison to all other alternatives.⁶⁵

Economic sanctions are likely to pass the necessity test only if they reasonably generate economic impact on the target country's economy, which in turn could have some effect on political groups that could induce a policy change by the regime.⁶⁶ The question of this study was whether effects of economic sanctions to third party countries can induce a policy change in a targeted state. For example, sanctions imposed on the Zimbabwe government by the US affected other SADC countries including Tanzania, under human right perspective the question is whether the impacts to third party countries has contributed in any way, the change of policy of Zimbabwean government. More analysis on this case study will be discussed later in the next chapters of this research.

Thus, while a compromise regarding the impact of sanctions on human rights is deficient, the legal necessity test contributed to this study by offering a more sophisticated approach that; necessity test limits the analysis to those cases in which the sanctioning party explicitly seeks to improve the human rights situation only and it should be able to touch only the targeted country, and the necessity test precludes sanctions aimed at other goals (e.g. suppression of dictators or ending wars).

This study suggest that, in such cases, where the effect of economic sanctions are likely to impact third part states; the sending country should abandon sanctions and

⁶⁴Kern, Alexander (2009), Economic Sanctions. Law and Public Policy, Palgrave Macmillan.pg 65

⁶⁵ Ibid Reisman (1998) pg 130

⁶⁶ Ibid Kern (2009), Pg 65.

adopt other means instead. The rules of application of sanctions under the United Nations should be set to protect third part states.

2.9 Economic Sanctions under International Customary Law perspective

The applicable legal scope for state parties to UN to impose economic sanctions does not rest solely in the legal framework of the UN Chapter VII as well discussed in the next chapter of this study. State parties enjoy freedom under the rules of state responsibility in customary international law to impose unilateral economic sanctions.⁶⁷ However, this freedom granted under international law does not release the sender state from legal restrictions, as the implementation of sanctions is bound by fundamental norms of international humanitarian law and international law of human rights.⁶⁸ The sender state has to consider at least the following standards: necessity, proportionality, and discrimination for them to avoid unnecessary suffering to civilians.⁶⁹

In the particular case when economic sanctions are coupled with collateral damages impacting non-dispute parties; the international humanitarian law principles of necessity and proportionality constitute the legal standard for determining the extent of permissible collateral damage.⁷⁰ Thus, the principles of necessity and proportionality determine the legality and the scope of application of economic sanctions on the basis of social goals, costs, and alternative consequences,

⁶⁷Kern, Alexander (2009), *Economic Sanctions. Law and Public Policy*, Palgrave Macmillan.pg 57.

⁶⁸Reisman, W. Michael and Douglas L. Stevick (1998), *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes*, *European Journal of International Law* 9 (1), 86 – 141.

⁶⁹ idem

⁷⁰Owen, Mallory (2013), *The Limits of Economic Sanctions under International Humanitarian Law: The Case of the Congo*, *Texas International Law Journal* 48, 117.

irrespective of the applicable substantive law (international humanitarian law or Counter measure law).⁷¹

2.10 Conclusion

This chapter has generally dealt with analysing the conceptual framework of the study by defining key terms and looking at different perspectives under which economic sanctions is being viewed. It has also explained some of the theories that underline the concept of economic sanctions. The next chapter will be dedicated on analysing the legal and institutional frame work of economic sanctions.

⁷¹Reisman, W. Michael and Douglas L. Stevick (1998), The Applicability of International Law Standards to United Nations Economic Sanctions Programmes, *European Journal of International Law* 9 (1), 129.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAME WORK OF ECONOMIC SANCTION

3.1 Introduction

Economic sanctions normally involve international relations of states, therefore more of rules and regulations to be discussed are based on international norms that regulate economic sanctions. On the other hand regional groupings and sub-regional groupings have powers to impose economic sanctions, therefore the legal frame work of economic sanctions under regional and sub-regional settings will also be discussed accordingly in this chapter. Because economic sanctions deals with the sovereignty of states this part will also examine the domestic laws in relation to economic sanctions. Tanzania has signed several international instruments and ratified several conventions, some of those conventions create institutions that regulate economic sanctions, and therefore this party will also analyze different institutions (Institutional frame work) that regulate economic sanctions.

3.2 International Legal Framework

Over the years, various international organs, and particularly the UN General Assembly have adopted a series of solemn resolutions that, *inter alia*, are designed to delegitimize the use of economic force by individual states. One of the first resolutions were the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and

Sovereignty,⁷² which declared that no state may use or encourage the use of economic, political or other types or measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.⁷³

The General Assembly adopted a resolution on Economic Measures as a Means of Political and Economic Coercion against Developing Countries.⁷⁴ In it, the Assembly expressed grave concern "that the use of coercive economic measures adversely affects the economy and development efforts of the developing countries and has a general negative impact on international economic cooperation."⁷⁵ The assembly further urged the international community to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral coercive measures against developing countries which are not authorized by relevant organs of the United Nations or are inconsistent with the principles contained in the Charter of the United Nations, as a means of forcibly imposing the will of one State on another.⁷⁶

The allowable exceptions the group recognized from this general prohibition include: multilateral economic sanctions mandated by the Security Council; other situations where the Security Council has determined the existence of a threat to the peace, breach of the peace, or act of aggression; where the Security Council has merely

⁷² Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, 1965

⁷³ U.N. Doc. NRES/2131 (XX) (1965), at annex, para. 2

⁷⁴ Economic Measures as a Means of Political and Economic Coercion against Developing Countries, 1995

⁷⁵ The report of the expert group is summarized in part IV (paras. 53-94) of U.N. Doc. N52/459 (1997)

⁷⁶ *ibid*

recommended economic sanctions provided that any limits specified by the Council are observed.⁷⁷ This is the basis of the foregoing study.

3.2.1 The United Nations Charter, 1945

Tanzania is a member of the United Nations. It acceded to the United Nations Charter on 14th December 1961.⁷⁸ The United Nations Charter provides for the procedure on how economic sanctions can be applied against a state. The United Nations Charter insists on the collective measures to be adopted by the UN Security Council on behalf of its members. It provides that, the UN Security Council may decide what measures, not involving the use of armed force, are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.⁷⁹

In contrast to the general prohibition against states imposing unilateral economic sanctions against other states; when economic sanctions are decreed by the UN Security Council⁸⁰ all members, (except any that might be exempted by the Charter⁸¹) are required to participate in such collective measures. This obligation flows from the UN Charter itself, by which all members are bound.⁸² As for non-

⁷⁷U.N. Docs. NRES/47/19 (1992), 48/16 (1993), 49/9 (1994), 50/10 (1995), 51/17 (1996), and 52/10 (1997)

⁷⁸Membership of Tanzania to United Nations; <https://www.un.org/en/about-us/member-states/United-republic-of-tanzania>

⁷⁹Article 41 of the UN Charter, *supra*

⁸⁰ Pursuant to Article 41 of Chapter VII of the UN Charter,

⁸¹Pursuant to Charter Article 48(1), *Ibid*

⁸²Articles 2(5), 25, and 48(1) of the UN Charter, *Ibid*

members, these too shall be required to cooperate, and in practice the few non-members.⁸³

While other international organizations cannot be commanded directly by the United Nations though at least the "specialized agencies" and certain others have undertaken (through relationship agreements to give serious consideration to UN recommendations); their members are required by Charter to ensure their cooperation.⁸⁴

Private persons (natural or juridical), as well as NGOs which are established and operate under some nation's law, must be required by their respective countries to conform to sanctions imposed by the security council. It should be noted that the Charter generally allows no exception or excuse for non-cooperation with sanctions-except that the security council can in effect exempt one or more member States.⁸⁵ Unless the Council does so, a state cannot raise the argument that compliance with a particular measure ordered by the council would violate a prior treaty or contractual obligation-for under Charter a member's obligations under the Charter must prevail over those under any other international agreement.⁸⁶

The Charter's dispositions shouldn't be considered as separate mandates, but as complementary and equally relevant. In the same way that maintenance of international peace and security is a must for ordered and pacific relations among states; respect and enforcement of human rights and humanitarian issues constitute a safeguard for the individual as the international community's centre of concern.

⁸³Article 2(6), Ibid

⁸⁴Article 48(2), ibid

⁸⁵Article 48(1), Ibid

⁸⁶ Article 103, Ibid

Hence, when producing resolutions, the security council is bound to the UN Charter.⁸⁷ Provided that the main intention to establish limits to the action of the council is the protection of civilians; three different provisions of the Charter contain relevant dispositions which could be seen as restrictions when imposing economic sanctions:

The Preamble of the UNN Charter mentions as common aspirations to the United Nations the "faith in fundamental human rights, in the dignity and worth to human person" as well as the intention to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". Beyond its legal value, the Preamble is relevant whether it represents a political tendency -the way the organization in conceived-, in order to influence all the legal provisions of such legal Instrument.

There is a paramount aspiration of "solving international problems of an economic, social, cultural or humanitarian character as well as promoting and encouraging respect for human rights."⁸⁸ The UN Charter also highlights the promotion of "higher standards of living", as well as the "universal respect for, and observance of human rights and fundamental freedom for all without distinction."⁸⁹

Thus, although the language used in these legal provisions does not explicitly require the organization to observe human rights⁹⁰ or specifically impose obligations; it might not be consistent that one of its principal organs act in such a way to

⁸⁷ Chapter VII, of the Charter, *supra*

⁸⁸ Article 1(3) of the Charter, *ibid*

⁸⁹ Article 55, *Ibid*

⁹⁰Reinisch, A. (2001) "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions". *American Journal of International Law*, p. 857.

discourage one of its objectives in order to favour another i.e. the performance of political functions as the maintenance of international peace and security. That is to say, it doesn't have unfettered discretion as a political organ.⁹¹

However, one should ask whether such legal provisions are sufficient to limit the action of the council, and more relevant, to bring real protections for civilians. The formulation of the above mentioned rules is vague and could be interpreted widely. That being the case, transition to relevant rules of international law has to be done in order to establish if more concrete standards or obligations can be linked.

3.2.2 Institution Responsible for Economic Sanction under United Nations

The United Nations through its Charter established two organs responsible for managing economic sanctions one is United Nations Security council and the second is the United Nations Sanctions Committee.

(a) United Nations Security Council

The Security Council as an organ responsible for maintenance of international peace and security between state members, as the Charter states that, in order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.⁹² All the state members are obliged to respect, accept and carry out the decision of the Security Council.⁹³ When there is any

⁹¹Reinisch, A. Ibid

⁹² Article 24, the Charter of the United Nations of 1945.

⁹³ Article 25 the Charter of the United Nations of 1945.

existence of threat to the peace, breach of the peace, or act of aggression the Security Council shall make recommendations or decide what measures shall be taken⁹⁴.

The measures which can be applied by the Security Council are those measures which do not involving the use of force, these may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations,⁹⁵ but before the Council decided to use this measure, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Those provisional measures shall be without prejudice to the rights, claims or position of the parties concerned.⁹⁶

The United Nation through its Charter does acknowledge the use of Economic Sanction as one of the peaceful measures to maintain peace between state members, not only that, the Charter provides for the procedures on how to impose and execute those measures.⁹⁷ This means that for there to be any sanction to include Economic Sanction there must be the collective agreement between state members and not a decision of a single state member to impose unilateral sanctions to another state member.

Tanzania as a member of United Nations since 1961⁹⁸ has the obligations to respect, accept and carry out the decision of the Security Council, and not to intervene with the sovereign of other state members. Tanzania in some point is affected by the decision of some of state members who impose Economic Sanction to its neighbour

⁹⁴ Article 39 the Charter of the United Nations of 1945.

⁹⁵ Article 41 the Charter of the United Nations of 1945.

⁹⁶ Article 40 the Charter of the United Nations of 1945.

⁹⁷ Ibid, Article 39.

⁹⁸ From the list of signatory members of United Nations, in the Charter of United Nations, of 1945

nations, and at this point Tanzania found itself as a third part not involving directly to the dispute between its neighbour state and the other state but when the Economic Sanctions are imposed then that act affects Tanzania Economy policy.

(b) Security Council Sanction Committees

In connection with almost every sanctions regime, the Security Council has established a Sanction Committee as a subsidiary organ of the council. The structures of all these bodies are essentially identical: all fifteen members of the council are represented, which means that each year five of the non-permanent members are replaced. The actual participants are lower, ranking members of the respective delegations.

Each Sanction Committee receives special assignments in the council's resolution which established it; subsequent resolutions often expand these assignments. In general, the tasks are the following:

To monitor the implementation of sanctions by reviewing the compliance reports submitted by states and considering information received from other states about violations, and by reporting violations to the council;⁹⁹ To consider applications for exceptions and exemptions provided for by the council, mostly for humanitarian purposes;¹⁰⁰ To consult, on behalf of the council, with states alleging special economic problems arising out of their compliance with sanctions;¹⁰¹

In recent years, the council has also required the committees to promulgate guidelines to inform those concerned about the application procedures and the

⁹⁹ U.N. Doc. S/RES/1132 (1997), para. 10(a)-(d), in respect of sanctions on Sierra Leone

¹⁰⁰ U.N. Doc. S/RES/1132 (1997), para. 10(d)-(e), in respect of sanctions on Sierra Leone

¹⁰¹ U.N. Doc. S/RES/669 (1991) in respect of sanctions on Iraq

circumstances in which these and other types of relief are apt to be granted. A General Assembly resolution has called on the council to make the mandates of the committees more precise, to take account of what can be fulfilled in practical terms, and to specify standard approaches to be followed by the committees.¹⁰²

3.3 Regional Instrument on the Economic Sanctions

3.3.1 African Union (AU)

African Union is the regional intergovernmental organization,¹⁰³ as far as Economic Sanction is concerned, the Union through its Constitutive Act which was adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government on 11th July, 2000 at Lome, TOGO¹⁰⁴, established different principles and procedures for the imposition and execution of Sanctions.

The Constructive Act established that, the Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the manner that denial of the right to speak at meetings, to vote, to present candidates activity or commitments, there from¹⁰⁵. Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly¹⁰⁶. Lastly but not the least the Act also concerns with the governments that have come to power

¹⁰²U.N.Docs. S/1995/234, S/1995/438, S/1996/54

¹⁰³ <https://au.int/> accessed on 17th January 2020

¹⁰⁴ The Constitutive Act of the African Union of 2000

¹⁰⁵ Article 23(1) of the Constitutive Act of the African Union of 2000

¹⁰⁶ Article 23(2) of the Constitutive Act of the African Union of 2000

through unconstitutional means and stipulates that such governments 'shall not be allowed to participate in the activities of the Union'¹⁰⁷.

Sanctions, including economic sanctions under AU can only be imposed on a member state upon breach of any conditions as explained above. The organ responsible for the imposition of those sanctions is the Assembly which was established by the Act¹⁰⁸. However no enforcement action can be taken under regional arrangements without prior authorization by the Security Council.¹⁰⁹ This is to say that the matter have to be referred to the Council by the regional parties requesting an authorization for the implementation of regional sanctions.

Both United Nations and African Union do support the imposition of Sanctions towards state members and they provide the procedures to be followed when imposing those sanctions, on the other hand they are all against unilateral sanction imposed by single state member to another for its own benefits.

3.4 Sub Regional Instrument

3.4.1 East African Community (EAC)

East African Community is an intergovernmental organization which was established by the Treaty for the Establishment of the East African Community, 1999. Tanzania is one of the founders of EAC, the Community provides for the obligations among nations and it is the duty of every partner state to respect and to fulfill their obligations in good faith. The Treaty establishes that the Partner States shall honour their commitments in respect of other multinational and international organizations

¹⁰⁷ Article 30 of the Constitutive Act of the African Union of 2000

¹⁰⁸ Article 6 of the Constitutive Act of the African Union of 2000

¹⁰⁹ Article 53 of the Charter of the United Nations of 1945.

of which they are members.¹¹⁰ And that the Treaty acknowledged the co-operation with the Organization of African Unity, United Nations Organization and its agencies, and other international organizations, bilateral and multi-lateral development partners interested in the objectives of the Community¹¹¹.

Further the Treaty insists each of the Partner States undertakes to accord to the Community and its officers the privileges and immunities accorded to similar international organizations in its territory¹¹², this means that Partner States are bound by the agreements entered by each Partner State and therefore any sanction which will be imposed by those International Instruments then the Community (EAC) will uphold the said decision from those International Instruments.

The Community (EAC), set out the factors that may amount to sanctions between the Partner States within the Community (EAC), the Treaty establish that a Partner State which defaults in meeting its financial and other obligations under this Treaty shall be subject to such action as the Summit may on the recommendation of the Council, determine¹¹³.

The organ established by the Treaty to maintain peace and security within the Community is the Summit, further the Summit has been vested with powers to determine which measures to be imposed to the Partner State, as the Treaty provides that the Summit shall review the state of peace, security and good governance within

¹¹⁰ Article 130 (1) of the Treaty for the Establishment of the East African Community, 1999

¹¹¹ Article 130 (4) of the Treaty for the Establishment of the East African Community, 1999

¹¹² Article 138 (3) of the Treaty for the Establishment of the East African Community, 1999

¹¹³ Article 143 of the Treaty for the Establishment of the East African Community, 1999

the Community and the progress achieved towards the establishment of a Political Federation of the Partner States¹¹⁴.

The Community (EAC), is not far from the United Nations, and African Union as they both requires that the imposition of sanction is not a horrific thing if and only if it is imposed by mutual agreements among Partner States or any of the International Instruments and not otherwise. Therefore is no enforcement of any action without prior authorization by the Security Council¹¹⁵, and if no authorization offered then it is simply means that no legal effect to that action and only political support by Community members, this might end with different argument respectively in favour of or against the legality of the sanction imposed.

3.4.2 Southern African Development Community (SADC)

This is another sub-regional instrument which Tanzania is a member state therein; this intergovernmental organization was established by the Treaty of the Southern African Development Community, 1992. Just like the above mentioned International Instruments the Treaty established SADC also covers the issue regarding sanctions between member states within the Community.

The Treaty established SADC provides for the conditions that a member state can be sanctioned by the community, it provides that sanctions may be imposed against any Member State that persistently fails, without good reason, to fulfill obligations assumed under the Treaty, when a member state implements policies which undermine the principles and objectives of SADC, or when a state member is in arrears for more than one year in the payment of contributions to SADC, for reasons

¹¹⁴ Article 11 of the Treaty for the Establishment of the East African Community, 1999

¹¹⁵ Article 53 of the Charter of the United Nations of 1945.

other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit¹¹⁶.

The Treaty established Southern African Development Community, provides also for the Organ which is responsible to maintain peace and security of SADC¹¹⁷, the organ established is also vested with the powers to impose sanctions to the member states, that any sanction imposed to the member states shall be determined by the Summit on a case-by-case basis¹¹⁸.

3.5 Local or Domestic Instruments

The United Republic of Tanzania is a sovereign state¹¹⁹, its sovereignty resides in its people and from the people is where the Government derives its power and authority¹²⁰. The Constitution of United Republic of Tanzania is a grand norm that referred as a mother of all laws, which its power comes from the will of people, anything obtained under it is referred as the will of people and its power regarded as given by the people themselves. The URT constitution expresses that in exercise of its power the URT has vested its power in its Constitutions¹²¹. The Constitution provides that there shall be two Organs with executive powers, two organs vested with judicial powers and two organs vested with legislative and supervisory powers over the conduct of the public affairs¹²².

¹¹⁶ Article 33 (1) of the Treaty of the Southern African Development Community, 1992

¹¹⁷ Article 10 of the Treaty of the Southern African Development Community, 1992

¹¹⁸ Article 33 (2) of the Treaty of the Southern African Development Community, 1992

¹¹⁹ Article 1 of the Constitution of the United Republic of Tanzania, Cap 2 of 1977, as amended time to time

¹²⁰ Article 8 (a) of the Constitution of the United Republic of Tanzania, Cap 2 of 1977, as amended time to time

¹²¹ Article 4 of the Constitution of the United Republic of Tanzania, Cap 2 of 1977, as amended time to time

¹²² *ibid*

The United Republic of Tanzania just like other nations engaged itself to different International Instruments to include United Nations, African Union, East African Community and Southern African Development Community, and that they have the obligation to respect and fulfill in good faith all the International agreements as such. This means that apart from it being sovereign the URT government may also be influenced by the mutual agreement from the International Instruments which they are party thereto.

3.5.1 Applicability of International Instruments in Tanzania

Tanzania follows dualist system of international law. “International instruments requires enabling legislation in order for them to be applied domestically (create rights and liabilities actionable in domestic law)”.¹²³ International treaty provisions do not take precedence over national laws. The rules of international law and municipal law exist separately and cannot purport to have an effect on, or overrule the other. Being separate systems; international law does not as such form part of the municipal law of a state. When they are in particular instances, rules of international law may be applicable within a state. They do so by virtue of their adoption by the internal law of the state, and apply as part of that internal law as per the provisions of Article 63 (3) (e) of the Constitution of the United Republic of Tanzania.¹²⁴ The position has been reiterated by the courts of Tanzania in many cases, the example being *East African Development Bank v Blueline Enterprises Ltd (CIVIL APPEAL NO. 110 OF 2009) [2011] TZCA 1; (22 December 2011) Ayugi v Ayugi and Others (CIVIL REVISION NO.184 OF 2002) [2005] TZHC 27; (09 May 2005)*, where the

¹²³<https://issafrica.org/chapter-7-country-study-iv-tanzania-jolyon-ford> accessed on 08th July 2021

¹²⁴ The Constitution of the United Republic of Tanzania, Cap 2 of 1977 as amended time to time

Court of Appeal of Tanzania stated that any international instrument must be ratified and domesticated for it to be applicable in Tanzanian context.

However, with respect to human right issues, the constitution of the United Republic of Tanzania of 1977 through Article 9(f), obliges state authorities and its organs to comply fully with the Provisions of the Universal Declaration of Human Rights in all its policies and business towards securing the maintenance and upholding of the dignity of man. Among of the conventions ratified by Tanzania for example the United Nations charter allows the imposition of economic sanctions to a member state in some circumstances like humanitarian reasons.

The Constitution of the URT does acknowledge the International Instrument whereby it expressly provides that the National Assembly may deliberate upon and ratify all treaties and agreements to which the United Republic is party and the provisions of which ratification¹²⁵. This implies that when decisions or sanctions are set by United Nations (UN), African Union (AU), Southern African Development Community (SADC), or even the East African Community (EAC) are upheld by the United Republic of Tanzania by enacts implementing legislation. Unlike the United Nations resolutions which do not have direct effect, until incorporated into Tanzania legislation through orders and regulations, other International Instruments, the African Union (AU), Southern African Development Community (SADC), and the East African Community (EAC) regulations have direct effect in Tanzania and penalties under them are determined by the government of Tanzania.

¹²⁵ Article 63 (3) (e) of the Constitution of the United Republic of Tanzania, Cap 2 of 1977, as amended time to time

When there are penalties or Economic Sanctions imposed to its neighbor state by any International Instruments mentioned herein above then the United Republic of Tanzania regardless of it being sovereign has to accept and carry out those decisions of the International Instruments, unless there are no specific legal obligations are breached, as to say there are no customary obligations to maintain any particular economic relations with other States.

3.5.2 Tanzania's Policy towards Economic Sanctions

Through its foreign policy, Tanzania advocates for strengthening of multilateral democracy, and it aims at pursuing common actions that may be taken by the international communities in ensuring that there are collective actions on issues of collective concerns by the international community.

“Support the reform and reinforcement of the UN and its Agencies as the primary forum of multilateralism as well as the international system particularly WTO and the Bretton Woods Institutions
Target critical areas to influence the agenda especially in the conduct of the new global economic interaction
Strengthen its position as part of the cohesive group of countries, which collectively seek to achieve a common objective”¹²⁶

According to its foreign policy as cited above; Tanzania endeavours to implement collective measures, including sanction(s) to other states. This has been seen also under the Article 143 of the treaty for the establishment of East African community, 1999, where state parties to EAC have agreed to collective sanction measures against the defaulting member states. Also EAC treaty allows application of uniform/collective measures against non state parties to EAC.

¹²⁶ Tanzania foreign Policy statement C, 30 (e), 2001, found at: <https://www.foreign.go.tz/index.php/about/category/foreign-policy>, accessed on 08July2021

In 1996, Tanzania and Kenya exercised economic sanctions towards Burundi for its continued violation of human rights in the country.¹²⁷ The then East African leaders reacted by agreeing to apply what they called "maximum pressure" on the military to reinstate the constitution, political parties, and the elected national assembly.

The most frequently applied measures under Tanzanian legislation are arms embargoes, financial sanctions, travel bans and import/export bans – as provided by the Tanzania Bureau of Standards

Generally, Tanzania has not enacted specific law that addresses issues of economic sanctions. It relies on the provisions of its foreign affairs' policy, and the international instruments like the East African Community treaty and the United Nations Charter.

3.6 Enforcement of Economic sanctions

The enforcement of economic sanctions is categorized in three main categories including; domestic enforcement, Bilateral and Multilateral enforcement and the last one is institutional or supranational enforcement.¹²⁸ Before proceeding to analyze how each category works it is also important to generally look at enforcement of international law.

¹²⁷SCOTT, S., *EMBARGO AGAINST THE NEW MILITARY GOVERNMENT OF BURUNDI*, Retrieved from: <https://reliefweb.int/report/burundi/kenya-has-joined-tanzania-imposing-economic-sanctions-against-burundi>, accessed on 08 July 2021

¹²⁸Alexandros, C. B, *Economic sanctions in International Investment Arbitration*, City, University of London, available at <https://jusmundi.com/en/document/wiki/en-economic-sanctions-in-international-investment-arbitration> accessed on 12 July, 2022.

(a) Enforcement of Economic Sanctions at International level

There is no compulsory judicial system or coercive penal system to address breaches of the provisions set out in treaties or to settle disputes.¹²⁹ However, there are tribunals in the international legal system; For example, the Charter of the United Nations established the International Court of Justice, the principal judicial organ of the United Nations, as a means by which Member States may settle their disputes peacefully, in accordance with international law.¹³⁰

The Court can also give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.¹³¹ Member States of the United Nations, in cases to which they are parties, are obliged to abide by the Court's decisions.¹³² However, before a case can go before the Court, a State must have accepted the jurisdiction of the Court, either in general or in relation to a specific case.

A State that has not accepted the Court's jurisdiction cannot be forced to appear before the International Court of Justice. States may also entrust the settlement of specific disagreements to other international dispute resolution mechanisms established by treaties such as the International Tribunal for the Law of the Sea, the Permanent Court of Arbitration and the dispute settlement bodies of the World Trade Organization, among others. Different treaties may also create different treaty body regimes to encourage the parties to abide by their obligations and undertake actions required for compliance. For instance, The Security Council can also adopt, under

¹²⁹ *Idem*,

¹³⁰ Article 7 of the United Nations Charter, 1945.

¹³¹ *Ibid*, Article 24

¹³² *Ibid*, Article 25

Chapter VII, measures to enforce its decisions regarding threats to international peace and security, breaches of the peace or acts of aggression. Such measures may include sanctions or authorizing the use of force.

All nations agree that they are bound by the treaties which they ratify, and most agree that they are also bound by the decisions of international organizations in which they participate. Some nations and international organizations also assert that nations are bound by the principles of customary international law, which is the disputed idea that certain customs bind all states even if they do not acknowledge them and are not party to any treaties establishing them. Each of these sources of international law are enforced in different ways.

(i) Institutional, Supranational Enforcement

The Security Council of the United Nations is empowered to broadly enforce international law. They can do this through sanctions, peace-keeping operations, or formal censures. While censures have no direct, negative impact, they serve as a symbol of the potential reputational harm that comes with violating international law. However, when the Security Council imposes sanctions or organizes peace-keeping operations, it can have significant impacts given that all of the permanent members of the Security Council will generally engage supportively and all member-states will have to at least appear to abide by them.

Under General Assembly Resolution 377, the General Assembly can act when the Security Council has failed to although these actions will be non-binding. Generally, this has been used to circumvent opposition from veto powers, such as its uses to

initiate the United Nations intervention in the Korean War and to address Israel's actions in the disputed territories it controls.

The International Court of Justice also decides disputes between individual nations; however, it has limited scope and does not have any direct power to enforce its decisions. Both the Security Council and I.C.J. determine for themselves what sources of international law apply in individual cases. Finally, the International Criminal Court enforces certain aspects of international law, primarily human rights law, customarily and as established by the U.N. in treaties, and issues referred directly to it by the Security Council, against private individuals where national courts fail to act. While it can't effectively require participation without the cooperation from nations, it does directly punish the individuals appearing before it with imprisonment and requirements to pay reparations.

(b) Domestic Enforcement of Economic Sanctions

Because states are sovereign and cannot be coerced in the same manner as natural persons, the primary way in which international law is enforced is when states simply enforce it internally. Most obviously, this occurs when treaties are enforced by domestic courts. Most nations have some doctrine that treaties are either self-enforcing as part of domestic law upon ratification or are enacted into statute by the legislature alongside the ratification. As a result, they are enforced by domestic courts as other domestic laws would be. More commonly yet subtly, this occurs when nations simply choose not to act because they fear the consequences of violating international law. These consequences can be concrete, as the enforcement mechanisms discussed below, or general, as nations who do not live up to their

obligations will become less credible and therefore less able to effectively engage with the international community and pursue their interests. While this form of enforcement is nearly invisible, it is widely accepted as the most important factor in enforcing international law.

(i) Bilateral and Multilateral Enforcement

All nations must interact with other states in some way. As a result, other nations can influence their actions by applying pressure, in the form of trade sanctions, travel restrictions, breaking diplomatic relations, or refusing to honor their own treaty obligations. Often, for particularly egregious violations, a state will also organize a bloc of aligned states to implement the punitive measures collectively and diminish any opportunity cost to the punishing states. In some instances, these punitive measures may even be automatic and included in the initial agreement, such as the Iran nuclear deal, which included automatic punishments for breach of the agreement by Iran and release from the agreement for breach of the agreement by the other nations. However, at other times, it may be less specific and result from violations of implicit norms.

(ii) Unilateral Enforcement

Nations may use their national court systems to enforce international legal obligations against private citizens of other nations under the doctrine of universal jurisdiction. This originally arose from laws regarding piracy and has been extended to include crimes against humanity and, in some cases, terrorism. However, this usage is heavily disputed and inconsistent because the individuals accused often hold government positions, which may be protected from prosecution or extradition.

The foreign economic policies of a state, therefore, are subject to the limitations of international law. Treaty commitments can constitute significant limitations upon the economic conduct of states that have entered into agreements pertaining to transnational economic relations¹³³

The U.N. Charter does not expressly address the area of economic coercion, Article 2(4) of the U.N. Charter forbids the threat or use of force against any nation in any manner that is not consistent with the purposes of the U.N. Charter. 5¹³⁴

3.7 Conclusion

This chapter has dealt with analysing the legal and institutional framework of economic sanctions, including analysing the available legal instruments at International, regional, sub-regional and domestic level. Further, in this chapter the researcher analyzed the institutional frame work of economic sanctions. In analyzing the institutional frame work the researcher has tried to give legal basis of the institutions that has been vested with power to deal with sanctions at both levels to wit, international, regional, sub-regional and national (domestic) level. The next chapter will give analysis of the findings of the research.

¹³³ M. Sornarajah & P. Muchlinski, UNITED NATIONS PUBLICATION, Sales No. E.05.II.D.5 ISBN 92-1-1112659-2, 2004, p33.

¹³⁴ Article 2(4) of the U.N. Charter 1945.

CHAPTER FOUR

ANALYSIS OF RESEARCH FINDINGS

4.1 Introduction

This study discusses about the legality of economic sanctions against third party countries especially towards violation of international trade law agreements and bilateral trade agreements to third party countries such as Tanzania. This qualitative research intended to answer the following research questions: What is legality of unilateral and secondary economic sanctions to the third party countries? OR: What are the legal justifications for unilateral and secondary economic sanctions to the third party countries? , What are the legal impacts of unilateral and secondary economic sanctions to third party countries such as Tanzania? And finally, what are the new ways to deal with unilateral and secondary economic sanctions towards protection of the third party countries?

The Interpretation of the research findings was based on the research questions used in this study, therefore the chapter is arranged to answer mainly the first two research questions in chronological order, and the last research question will be answered in the next chapter on conclusion and recommendations.

4.2 Legal Justification for the Economic Sanctions against Individual State such as Tanzania?

The aim of this study was to examine the legal basis of unilateral and secondary economic sanctions to third party countries, among others. The study has revealed that unilateral and secondary economic sanctions are not legally allowed under

international law as well as the UN Charter itself.¹³⁵ Unilateral and secondary economic sanctions have caused several disputes regarding their legality and rationale by many nations where imposed. The main reason is that it is the spirit and objective of the United Nations to prohibit states from the use of force against any independent state, as discussed in this study. This has been supported by several conventions and resolutions passed by the General Assembly as discussed in the previous chapters.

The unilateral and secondary economic sanctions imposed by states against other states have been subjected to sustained challenge: to begin with, because they reduced those subject to them to conditions of poverty; and, more generally, because they are based on undisclosed evidence and are not subject to judicial review. So-called unilateral or autonomous sanctions that is, those imposed by states and international organizations without the security council's authorization are criticized as being contrary to international law and in breach of the rights of the states targeted by such measures, including by the UN General Assembly and the Human Rights Council.

This study has also established that, economic sanctions applied by the United Nations have traditionally had a special status, as they benefit from the combined effects of Charter Articles 25 requiring member states to accept and carry out decisions of the security council and providing that member states obligations under the Charter shall prevail in cases of conflict with any other of their treaty obligations.

¹³⁵Article 2(4) of the UN Charter, 1945

Although it is sometimes argued that the wording of Article 103 means that only member states' treaty obligations, and not their obligations under general international law, are trumped; application of the unilateral and secondary economic sanctions would seem to argue the contrary to be absent a customary rule having *jus cogens* status.¹³⁶ What this means is that discussions about whether the Security Council has acted lawfully in establishing particular sanction regimes, tend to focus on whether the council has acted within its powers as set out in the Charter.

Some measures such as embargoes on the export of arms and materiel are occasionally argued as necessary to prevent the state or states imposing them breaching their own legal obligations or being complicit in another state's illegal conduct under international human rights or humanitarian law or the Arms Trade Treaty.¹³⁷ If so, then properly speaking, they are not economic sanctions but rather something else.

Meanwhile, sanctions imposed by an international organization on one of its member states such as those imposed by the African Union and threatened in the Organization of American States in reaction to unconstitutional changes of member states' governments can be justified on the basis of consent. The targeted member state, as a member of the organization, has agreed to be bound by its rules.¹³⁸

¹³⁶ International Law Commission (ILC), 'Report of the Study Group of the International Law Commission on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (13 April 2006) UN Doc A/CN.4/L.682 (13 April 2006) 175–78.

¹³⁷ Albeit that States' human rights obligations seem to have limited impact on arms exports: see *Tugar v Italy* App no 22869/93,

¹³⁸ See Eriksson, M. (2010) 'Supporting Democracy in Africa: The African Union's Use of Targeted Sanctions to Deal with Unconstitutional Changes of Government

Economic Sanctions can also be justified as retorsion rather than reprisals (counter measures), as they breach no obligation owed to the target state. This is an act perpetrated by one nation upon another in retaliation for a similar act perpetrated by the other nation. A typical example of retorsion is the use of comparably severe measures against citizens of the foreign nation found within the borders of the retaliating nation after the foreign nation has engaged in similar acts.¹³⁹

It is different from a reprisal in that the retorsion is always an action in conformity with international law, though unmistakably an unfriendly one. Examples include international trade, where disputes within the World Trade Organization are typically tackled in this manner, if dispute settlement does not reach its goal. Should any such obligation exist, however, then unilateral or autonomous sanctions can only be lawful if they are counter measures, meaning they are subjected to the stringent criteria codified in the ILC Articles on State Responsibility and its Draft Articles on the Responsibility of International Organizations.¹⁴⁰

This finding appears to be the root of the dispute concerning the lawfulness of unilateral or autonomous sanctions. On one side, it is argued that a state's freedom includes the liberty to revise its relations with other states as it pleases providing no specific legal obligations are breached doing so, and that, as there are no customary obligations to maintain any particular economic relations with other states, this includes the restriction or interruption of trade relationships.

¹³⁹Owen J. R., *Law Ribrary* retrieved from; <https://law.jrank.org/pages/9850/Retorsion.html>

¹⁴⁰ ILC, Articles on the Responsibility of States for Internationally Wrongful Acts, Annex, GA Res 56/83 (12 December 2001) (ASR)

On this reading, providing sanctions do not breach any applicable treaty (the GATT or other WTO covered agreement; a regional free trade agreement; a treaty of friendship, commerce and navigation; or a bilateral investment treaty) or customary rules (such as those relating to the treatment of foreign nations and their property present on the territory of the state), they are lawful. Certainly, this seems to have been the position taken by the International Court of Justice in the Nicaragua case,¹⁴¹ when, discussing the legality of the trade embargo imposed by the USA on Nicaragua; the Court stated that ‘state is not bound to continue particular trade relations longer than it sees fit to do so in the absence of a treaty commitment or other specific legal obligation.

At this juncture, it is fair to argue that all ‘coercive measures’ are unlawful. Say in other words, measures which are coercive in the sense of seeking to require the target state to change its policies on any matter within its domestic jurisdiction, in particular with regard to its political, economic and social system. The most recent of such, resolution 68/180, is clear; stating in its preamble the conviction that ‘unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among states’.

4.3 Analysis of legal impacts of unilateral and secondary economic sanctions to third party countries such as Tanzania.

Regional groupings and sub-regional groupings like The African Union (AU) and SADC, were all established as post-colonial projects with the aim of protecting state

¹⁴¹ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA) (Merits) [1986] ICJ Rep 14

borders and safeguard sovereign governments from external interference.¹⁴² Other sub-regional groupings as well, have been established to create friendly economic environment and harmonize external economic policies towards sustainable development of the member states. East African Community, for example, aimed among others, at creating single currency territory (monetary union).¹⁴³ Indeed for regional groupings and sub-regional grouping with such connected economy (monetary union); including free movement of goods, labour and capital.¹⁴⁴ Economic sanctions to one member state entail sanction to the whole region or sub-region. The late president Dr. John Pombe Magufuli (The chairman of SADC by then) ever commented that: sanctions to Zimbabwe is a sanction to the whole of SADC, therefore members should unite to urge international community's remove economic sanctions placed to Zimbabwe, since they affect the whole region.¹⁴⁵

“It is like a human body: when you chop one of its parts, it affects the whole body. Therefore, I would like to seize this opportunity to urge the international community to lift up sanctions it imposed on Zimbabwe. This brotherly country, after all, has now opened a new chapter and it is ready to engage with the rest of the world. It is, therefore, I believe, in the interest of all parties concerned to see these sanctions removed. In this respect, I wish also to urge all SADC member states to continue to speak with one voice on the issue of Zimbabwe.”¹⁴⁶

¹⁴²Elin H., *Regional Organizations and Sanctions Against Members* Retrieved from; http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG_59.pdf pg 3

¹⁴³ East Africa Community, *What is the Monetary Union?* Retrieved from <https://www.eac.int/integration-pillars/monetary-union> accessed on 18th January, 2020

¹⁴⁴ Idem

¹⁴⁵Dr. John, P. M., *Lifting of economic sanctions to Zimbabwe*, Retrieved from; <https://www.bbc.com/swahili/habari-49381288> accessed on 18th January, 2020

¹⁴⁶ President Dr. John Pombe Magufuli (Chairman of SADC) statement while addressing SADC members on 39th Southern African Development Community (SADC) summit, found on <https://www.insideover.com/politics/southern-africa-urges-international-community-to-remove-economic-sanctions-on-zimbabwe.html> accessed on 18th January 2020.

In other words, economic sanctions normally do not affect only the targeted country but rather affects all the third party countries which are directly connected with the targeted country; affecting the economic/investment and banking system of the neighbouring countries; increase in smuggling of goods; increase of illegal immigrant to third party countries; and inflicting suffering on innocent citizens of the third party country.¹⁴⁷ In general, economic sanctions to the target state tend to disrupt the economic and political system of the neighbouring countries.¹⁴⁸

This part is intended to analyse the legal and economic impacts of economic sanctions towards third party countries, especially in the region and sub-regional groupings and also to assess the present mechanism employed by regional and sub-regional groupings towards dealing with economic sanctions targeted to one of their members.

Despite concerns by members of regional groupings or sub-regional groupings on the impact of economic sanctions directed to one member towards third party countries; still there is mechanism employed by such regional groupings to handle the situation. Under SADC and EAC, for example, the establishing instruments do not have legal framework to protect their member states (third party) upon the impact of economic sanctions directed to one of their members. Taking into account the fact that the purposes of these regional groupings are to create a single monetary territory; it is inevitable for the groupings to create a concrete mechanism on how to handle such unintended impacts to their economy.

¹⁴⁷ *idem*

¹⁴⁸ Geiss, Robin. "Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow-Up Assessment of Long-Term Effects". *The Harvard Human Rights Journal* 18 (2005), p. 167.

Tanzania is a sovereign state and a member to many regional and sub-regional groupings including; East Africa Community and SADC as said before.¹⁴⁹ Although no economic sanctions have been directed to Tanzania as a country; some countries that are directly connected with Tanzania have once experienced economic sanctions including Burundi,¹⁵⁰ Zimbabwe¹⁵¹ and South Africa.¹⁵²

The unpredictable moves on economic sanctions directed to many countries by United State of America and other international bodies, make many investors/companies concerned to such unpredictable threats of economic sanctions from developed nations.¹⁵³ Normally, the sender states find their own reasons to impose economic sanctions including violations of human rights, undemocratic governments etc.

Many investors and companies operating in Tanzania also depends on the promising markets available in many countries who are directly connected by Tanzania like the SADC's market or EAC's market.¹⁵⁴

In order to better understand the challenge that Tanzania might encounter; one must understand the difference between primary and secondary sanctions. Primary sanctions, include asset freezing and trade embargoes, and prohibiting

¹⁴⁹EAC Partner States; retrieved from: <https://www.eac.int/eac-partner-states> accessed on 18th January 2020

¹⁵⁰Sanctions Programs and Country Information; <https://www.treasury.gov/resource-center/sanctions/Programs/pages/burundi.aspx> accessed on 18th January, 2020

¹⁵¹ Office of Foreign Assets Control ("OFAC") Retrieved from; <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/zimb.pdf>

¹⁵² Ch. Hefti, E. Staehelin-Witt., *Economic Sanctions against South Africa and the Importance of Switzerland* Retrieved from; http://www.snf.ch/SiteCollectionDocuments/nfp/nfp42p/nfp42p_staehelin-e.pdf

¹⁵³Terzidis Nikolaos, The Impact of Economic and Political Sanctions on Economic Growth. A panel Data Analysis, Wageningen University, 2015, downloaded at <https://edepot.wur.nl/343392>.

¹⁵⁴The Bank of Tanzania (BoT), *Tanzania exports to SADC rise*, Retrieved from; <https://www.thecitizen.co.tz/news/Tanzania-exports-to-Sadc-rise/1840340-4920964-33wynb/index.html> accessed on 17th January 2020

citizens/investors and companies of the sanctioning country from engaging in business transactions with their counterparts from the targeted country.¹⁵⁵ This is currently not a major concern in Tanzanian trade as Tanzania is not a sanctioned country. In turn, secondary economic sanctions can hit any person irrespective of nationality or residence. Secondary economic sanctions involve putting pressure on third parties to stop their business activities with the targeted country or person by “threatening to cut off the third party’s access to the sanctioning country”.¹⁵⁶ For example if U.S.A decide to apply secondary economic sanctions to Zimbabwe by requiring Tanzania not to trade with Zimbabwe, it means Tanzanian investments will be directly affected by such economic sanctions. This is more effective to companies/ investors who have invested in Tanzania but they are citizens of the sanctioning states or they enjoy credit facilities from the sanctioning states.

Such application of unilateral economic sanctions or secondary economic sanctions may result to extra territorial application of the foreign laws, hence interfering with the sovereignty of the state.

(a) Disruption of Bilateral Investment Treaties between Zimbabwe and Tanzania (2003)

Tanzania signed a bilateral agreement on investment with Zimbabwe in 2003. This agreement intended to harmonize economic policy and promote trade. Their underlying motivation seems to have been mostly political rather than economic. This was the commitment to the process of regional integration and is pursuing closer ties with neighbouring African nations.

¹⁵⁵ Trade sanctions and its effects to China; <http://asiaperspective.net/2018/07/12/how-trade-sanctions-affect-china-business/> accessed on 17th January 2020

¹⁵⁶ Idem

Since 2001, International Financing Institutions (IFIs) such as the World Bank, International Monetary Fund and the African Development Bank are barred from extending financial support to Zimbabwe and have instituted a number of suspensions on balance of payments and technical assistance support, including declaring Zimbabwe as ineligible to access fund resources.¹⁵⁷

The economic sanctions have made Zimbabwe fail to honour its commitment to the Southern African Development Community (SADC) Free Trade Area (FTA) to which Tanzania is a party in a number of aspects. The sanction accelerated termination of bilateral trade agreement between Zimbabwe and South Africa in 2018.¹⁵⁸

On the other hand, the implosion of the Zimbabwean economy has added a burden to the social services of neighbouring countries due to mass emigration. There is a number of Zimbabweans who migrated to Tanzania to run away from economic, social and political hardship in their country.

On the other hand lack of financial support for infrastructure development has led to the destruction of critical rail and road networks in Zimbabwe, which were traditionally utilized by neighbouring countries as transit networks in support of regional trade.

¹⁵⁷Dr. Stergomena L. T., *STATEMENT BY THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY CALLING FOR THE IMMEDIATE REMOVAL OF SANCTIONS IMPOSED ON THE REPUBLIC OF ZIMBABWE*, Retrieved from; https://www.nl.tzembassy.go.tz/uploads/STATEMENT_BY_SADC_CALLING_FOR_IMMEDIATE_REMOVAL_OF_SANCTIONS_IMPOSED_ON_ZIMBABWE.pdf

¹⁵⁸Elisha T., *Termination of the South Africa-Zimbabwe bilateral trade agreement: What does it mean for South Africa-Zimbabwe trade?* Retrieved from; <https://www.tralac.org/blog/article/13711-termination-of-the-south-africa-zimbabwe-bilateral-trade-agreement-what-does-it-mean-for-south-africa-zimbabwe-trade.html> accessed on 10th July 2021

Regional economic integration targets such as SADC macroeconomic convergence have been retarded as Zimbabwe has failed to meet some of its targets owing to the adverse effects of the sanctions. This has great impact to Tanzanian trade and investment by virtue of being a SADC member.

Sanctions have reduced Zimbabwe's capacity to take part in regional programmes that are supported by International Cooperating Partners, thus impacting negatively the SADC development and integration agenda. This does not spare Tanzania from such a disruption caused by economic sanctions.

Sanctions have resulted in the under-performance of the agricultural sector, as a result of, among others, continued lack of finance for agricultural technologies thereby posing threats to regional food and nutrition security as Zimbabwe was once considered a bread basket of the region. This has much impact to Tanzania where some farmers gained training and agricultural support on how to manage plantations. Consequently, unilateral economic sanctions have direct impact on trade relations of the targeted state as well as its trading partners normally third party countries which are directly connected, affecting the economic/ investment and banking system of the targeted country and the neighbouring countries, and inflicting suffering on innocent citizens of targeted states.¹⁵⁹ Unilateral economic sanctions mostly affect the innocent population by increasing the unevenly distribution of income; and generating illegal and unethical business practices.¹⁶⁰

¹⁵⁹ Ibid

¹⁶⁰Geiss, Robin. "Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow-Up Assessment of Long-Term Effects". The Harvard Human Rights Journal 18 (2005), p. 167.

The unintended impacts of unilateral economic sanctions to third party countries and the general public raises the question of how the international regulations instruments have dealt with the situation especially in relation to third party countries. But before that we will also have to look on whether secondary economic sanctions which directly touches third party countries are permitted under the international law or not.

(b) **Disruption of Multilateral Trade Agreement (SADC) with South Africa**

Economic sanctions against South Africa made the relationship between Tanzania and South African Apartheid regime go much tense because Tanzania provided invaluable support to the South African liberation movements by hosting key high-level meetings and conferences, and providing crucial international diplomatic and logistical support.¹⁶¹ It also sheltered an African National Congress (ANC) training centre, the Solomon Mahlangu Freedom College (SOMAFCO), on its national territory. This 'showpiece of the liberation struggle', which was launched in Morogoro, Tanzania's district in 1978 and continued training exiled South Africans until Nelson Mandela called for their return in 1992; was perhaps one of the more enduring symbols of the long standing bond between the ANC and the Tanzanian people.¹⁶²

Tanzanians were repeatedly exhorted by their government in the 1980s to remain alert to the possibility of a South African incursion into Tanzanian national territory. Speculation was rife that the South African Defence Force would invade Tanzania from across the Mozambican border in the South, that SOMAFCO would be bombed

¹⁶¹ Schroeder, R. (2008) South African Capital in the Land of Ujamaa: Contested Terrain in Tanzania, CODESRIA, p. 22

¹⁶²Morrow, S., B. Maaba and L. Pulumani, 2004, Education in Exile. SOMAFCO, the ANC School in Tanzania, 1978 to 1992. Cape Town: HSRC Press.

from the air, or that key pieces of Tanzania's infrastructure such as the bridge that linked the core business district of Dar es Salaam to its Northern suburbs would be blown up by South African commando units.¹⁶³

The opposition of Western governments to apartheid prompted the Commonwealth Eminent Persons Group to call for the imposition of economic sanctions as the most suitable means of inducing South Africa to abandon its apartheid policy. Set against this background of mounting pressure for sanctions; some countries in Africa suffered much in various aspect based on the prior relationship with these states. Tanzania and South Africa, apart from both being SADC members, had a long time bond relationship with one another. Tanzania has been in economic ties with South Africa for a long time in history.

An analysis of trading patterns reveals the limited level of economic transactions involved. In 1983, South Africa was neither a major source of imports, nor was it a major destination of exports for Tanzania, among other states. In addition, few Tanzanians participate in the foreign migrant labour system. The number of Tanzanians working in South Africa has increased up to the year 1995. Tanzania banned recruitment in 1962. The Tanzanian transport networks are also independent of the South African transport infrastructure.

SATS has no formal contact with Tanzania. Thus, as far as transport, trade and migrant labour are concerned, Tanzania is the most economically independent states within the SADCC region. Although Tanzania, along with Zambia and Botswana,

¹⁶³ Schroeder, R. (2008), *ibid*

was a founding member of the frontline states; has remained exempt from direct South African backed destabilization or military attack.

4.3.1 Other possible Implications of Unilateral Economic Sanctions to Third Party Countries

The study has found that there are a number of impacts directed to third party countries to the unilateral economic sanctions that are imposed to a particular nation. The researcher presents them below as follows:

(a) Violation of Human Rights to Civilians of Third Party Countries:

Although it is a practical argument being stressed that economic sanctions are capable to modify the behaviour of authoritarian regimes, since they are an effective way to achieve the desired result while avoiding the costs and risks of military engagement; it soon became evident that sanctions had a number of unintended effects, predominantly a devastating impact on the civilian population of the third party nations.¹⁶⁴ Economic sanctions results to violations of economic, social, and cultural human rights.¹⁶⁵ In 1999, economic sanctions imposed against Burundi were suspended for violating human rights as reported by the Commission on Human Rights that “*the sanctions were having a disastrous effect on the general population in Burundi (E/CN.4/1998/72, §§80-83)*”.¹⁶⁶ The sanctions were suspended on 23 January, 1999.

¹⁶⁴Prof. Dr. Marc B., THE ADVERSE CONSEQUENCES OF ECONOMIC SANCTIONS ON THE ENJOYMENT OF HUMAN RIGHTS, Retrieved from https://www.ohchr.org/Documents/Events/WCM/MarcBossuyt_WorkshopUnilateralCoerciveSeminar.pdf accessed on 3rd August, 2021.

¹⁶⁵Marks, S.P., *Economic sanctions as human rights violations: reconciling political and public health imperatives*, Retrieved from; <https://pubmed.ncbi.nlm.nih.gov/10511832/> accessed on 3rd August, 2021

¹⁶⁶Prof. Dr. Marc B., THE ADVERSE CONSEQUENCES OF ECONOMIC SANCTIONS ON THE ENJOYMENT OF HUMAN RIGHTS, Retrieved from;

On the other hand, economic sanctions imposed to South Africa had great impact on member states of SADC in Africa. Thus, such sanctions affected the innocent population, especially the most vulnerable; aggravate imbalances in income distribution; and generate illegal and unethical business practices in most of the SADC member states.

Although the theory maintains that economic pressure on civilians will translate into pressure on the Government to change the targeted leaders; they have managed to continue pursuing their policies and stay in power. In the same vein, the traditional calculation of balancing civilian suffering against the desired political effects is giving way to the realization that the efficacy of a sanctioned regime is in inversely proportion to its impact on civilians. For example, the Security Council's economic sanctions against Iran has great impact on all poor African states which depended much on oil business to boost their home economy.

(b) Easy Target Consideration

As seen in previous chapters that; use of force by one state against another state to enforce its foreign policies is prohibited under international law;¹⁶⁷ and since economic sanctions have greater potential to cause more damage to the target; they will lead potential aggressors to perceive that the sanctioned state is weaker and therefore easier target, increasing their likelihood to initiate aggressive action toward the sanctioned state. The target state could and would divert its resources toward the

https://www.ohchr.org/Documents/Events/WCM/MarcBossuyt_WorkshopUnilateralCoerciveSeminar.pdf

¹⁶⁷ Article 2 (4) of the UN Charter, 1945

military if attacked, but will bear a drop in GDP similar to a rather strong recession, thus reducing the resources available to fight over time.

According to Kandoch, (2002)¹⁶⁸ economic sanctions have, for long time, been used as a form of economic warfare and attempt to soften the target state prior to military engagement. If an attacker with its sights on the target perceives that the target will be weakened by the sanctions or has the potential to lose significantly from the sanctions; then an attack will be more likely. The perception that the target's economy will gradually erode from the sanctions certainly makes the prospect of winning a military confrontation more likely, but a weak economy is not the only factor at play what the target has available to it also matters.

It is in the same argument learn from various literatures that, sanctions from a large country can mean not only more severe sanctions but also the end of help from a major country in terms of arm sales, military aid, loans, and so on. Thus, the sanctions themselves do not have to cause an extreme economic downturn in the target state for the potential aggressor to perceive that the target is significantly weaker than it was before the sanctions were imposed. Instead, sanctions from a major power signify that the target state will probably have more difficulty gaining access to weapons and credit that will be sorely needed if a conflict breaks out. Thus, the target's deterrent threat diminishes.

Further interpretation to the above findings indicates that, sanctions lower resistance to violence against the sanction target and more specifically show that only some sanctioning states have the ability to increase the likelihood that the target will be

¹⁶⁸Kandoch, B. (2002) "The Limits of Economic Sanctions under International Law: the Case of Irak". International Peacekeeping Vol.7, pp. 267-294.

attacked. This conclusion carries important implications for the study of economic sanctions. That force is likely to follow the imposition of sanctions, whereas the literature often argues that sanctions are used when senders are unwilling or unable to use military force.

Democratic senders may tie their hands, thereby increasing the likelihood later attack their targets, major power democracies make the sanctioned country a more attractive target to violence by third-party states. Thus, sanctions (by major power democracies) have a very great potential to lead to military conflict from either the sanctioning state itself or from a third-party state. Sanctions are simply not the peaceful alternative to coercion that they are often characterized as.

It is curious that several sanctions are not more effective in sanctioning violence because multilateral sanctions tend to be more costly to the target. One would then expect that the more costly many sanctions would make the target state easier to be attacked. The results, however, suggest that this is not the case.¹⁶⁹ This finding hints that the signalling aspect of the sanctions is far more important than the actual economic cost that they incur.

4.4 Efforts Taken by International Community to Mitigate Impact of Economic Sanctions to Third party countries

Generally, the impact of economic sanctions to third party countries is not legally protected by law because it is an automatic situation caused by that third party state being attached to the sanctioned state. Therefore, its effect can hardly be avoided or

¹⁶⁹Kozal, P. (2000) "Is the Continued Use of Sanctions as Implemented Against Iraq a Violation of International Human Rights?" Denver Journal of International Law, pp. 383-400.

escaped by third state parties. There have been efforts to consider the minimization of loss and inconvenience resulting from such economic measures especially to states and people not directly targeted by the sanctions. This move was not considered by the member of the United Nations.¹⁷⁰

South Africa presented a proposal at the UN General Meeting that a state suffering economic damage from sanctions not directed against it should be able to charge the target state, through the Security Council, to pay compensation.¹⁷¹ This proposal was not considered by members of the General Assembly. This could have provided a solution to the affected third country to the sanctions are suffering, even the innocent citizens who are not targeted by the sanctions.

Venezuela was another country which presented another proposal at the Assembly clarifying that if approached by a state that had suffered damage, the Council would be obliged to take corrective measures.¹⁷² This was geared towards creating a legal responsibility of sanctioned states to get compensation to ordinary people affected by the imposed economic sanctions.

From the text adopted by the Assembly; it appears clear that the state concerned had no "right" except to consult the Council. Incidentally, what pertains to economic difficulties arising directly from a state's application of sanctions, applies even more

¹⁷⁰ A particularly valuable report on the Yugoslav sanctions experience was prepared by the Organization for Security and Cooperation in Europe (OSCE) on the basis of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia, 24-25 June 1996 (U.N. Doc. S/1996/776). The Yugoslav Sanctions Committee submitted its third and final report on 15 November 1996 (U.N. Doc. S/1996/946).

¹⁷¹ N U.N.C.I.O. 668-69, from <https://core.ac.uk/download/pdf/236321157.pdf>

¹⁷² N U.N.C.I.O. 263. From <https://core.ac.uk/download/pdf/236321157.pdf>

strongly to those that merely suffer from the general economic distortions resulting from the sanctions regime.

This study has found however, that, the Security Council could excuse a state from participating in the imposition of the sanctions.¹⁷³ In the World Court's advisory opinion in the *Certain Expenses* case; it is suggested that the council could provide for the United Nations to pay compensation to such a state, the costs of which would then be assessed on all members as expenses of the organization.¹⁷⁴

It has been found that from the very first time that the Security Council imposed broad economic sanctions; i.e., those on Southern Rhodesia, neighbouring states that were especially affected have sought to resort to Article 50. Indeed, this has been the case in respect of all such broad sanctions although not in those instances when the embargo was merely on the sale of arms or on communications, or on cultural or diplomatic intercourse. The Council, in turn, has generally referred these states to the respective Sanctions Committee, charging them by giving the complainant states a hearing but not authorizing the committees to grant any specific relief.

In no instance has a Sanctions Committee recommended the exemption under 48 (1) of a complainant state from the obligation to participate in the sanctions regime.¹⁷⁵ Further, there is no instance has consideration been given to compensating directly such a state from the UN budget. Instead, the Security Council Sanction Committees, or the Council on their recommendation, have issued general appeals to the

¹⁷³ Article 48(1) of the UN Charter, *Ibid*

¹⁷⁴ *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. 151, 167. This suggestion was discussed in an opinion by the UN Legal Counsel (1976 UN JURIDICAL Y.B. 203)

¹⁷⁵ The only instance appears to be the informal exception granted to Jordan by the Iraq Sanctions Committee from the obligation to discontinue all oil imports from Iraq-in practice its only source

international community, that is to other states and competent International Organizations or organs, to assist particular States or the affected states in general.

Though there has been some response to these appeals and assistance has been provided to the most severely affected states, in general the relief provided has been in no degree commensurate with the damage caused or at least claimed.¹⁷⁶ The result has been that the burden of sanctions has remained distributed most unevenly among member states, generally with the target's neighbours or its traditional trading partners affected much more severely than others, especially the permanent members of the Security Council.¹⁷⁷

It is also found that, for some years, affected states have been taking their complaints to the General Assembly, which has launched several studies and considerations on this subject.¹⁷⁸ Some of the Assembly's latest recommendations are set out in its above, mentioned resolution on sanctions, which in this respect merely recommends that the Assembly itself and other relevant organs "should intensify their efforts to address the special economic problems of third countries affected by sanctions regimes" and that the subject be studied more intensely in the near future.¹⁷⁹

Another appeal was reported in the 1997 resolution on "Implementation of the Law of Economic Sanctions Provisions of the Charter of the United Nations Relating to

¹⁷⁶ It would appear that one of the most effective relief operations was that mounted, largely on the initiative of the United States, by the Gulf Crisis Financial Coordination Group, persuading financially able States to assist some of those most directly affected by the Iraqi action or by the measures taken against Iraq; however, all this happened essentially outside the UN framework.

¹⁷⁷The UN Secretary-General on "Economic Assistance to States Affected by the Implementation of the Security Council Resolutions Imposing Sanctions on the Federal Republic of Yugoslavia," U.N. Docs. N48/573, N49/356, N50/423, N51/356, N52/535

¹⁷⁸Sub-paras. (a)-(h) of the fourth preamble para. of U.N. Doc. A/RES/52/162 (1997)

¹⁷⁹ A /RES/51/242 (1997)

Assistance to Third States Affected by the Application of Sanctions."¹⁸⁰ The Secretary General had already suggested in 1992, An Agenda for Peace that the Security Council devise a set of measures involving financial institutions and the UN system "to insulate states from such difficulties."¹⁸¹

4.5 Conclusion

This chapter has presented and discussed several findings on legal issues related to the legal justification of the imposition of unilateral and secondary economic sanctions but also its impact to the third party states. The discussion has demonstrated that there is no legal justification of unilateral and secondary economic sanctions to a targeted state and that the observed impacts to third party countries are caused by economic, political and diplomatic interactions that exist between a sanctioned country and the third state. The next chapter will give conclusion of the study and further suggest recommendations to the respective organs.

¹⁸⁰ . A/RES/52/162 (1997)

¹⁸¹ . U.N. Doc. N471277-S/24111, para. 41

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

It has been observed in this study that, economic sanctions have become a critical tool of economic statecraft and as a means of influencing change of policy in the targeted state. They are designed to exert pressure on other countries without adopting the use of military actions (war) which are more costly. However, there is a growing understanding that economic sanctions' effectiveness is somewhat limited despite their increasing applicability in international politics. The challenge of sanctions' applicability to the large extent depends on the nature of economic sanctions adopted. For example, unilateral economic sanction, secondary economic sanction, or general economic sanctions have adverse impact to unintended targets, mostly civilian population and third party countries. The study has revealed that:

- i) The use of economic sanctions has led to violation of a number of Human rights to third party states;
- ii) The use of economic sanctions to countries that have economic ties (regional groupings) lead to disruption of bilateral or multilateral treaties with such third part states; and
- iii) Close analysis of the present legal framework has revealed that there is no clear mechanism that is in place to safeguard the interest of the third party countries once economic sanctions have been applied towards a certain country.

These findings allow the researcher to make the following conclusions as far as the area of research questions is concerned: Unilateral and secondary economic sanctions to third party states are unlawfulness. Regarding the question on whether unilateral economic sanctions are justifiable under international law; the study has confirmed that, there is no automatic justification for one state imposing economic sanction against another state. Article 2(4) of the United Nations' Charter prohibits all UN members from resorting to the threat or use of force against the territorial integrity or political independence of any state.

Furthermore, the study has established that the only economic sanction that is allowed under international law is that one provided under decree of the Security Council. This is a collective measure to be conducted by all member states under Article 41 of Chapter VII of the UN Charter against a particular state.

On the question of Legal impacts of unilateral and secondary economic sanctions to third party countries; the study has shown that third party states are vulnerable to the impacts of economic sanction mounted against targeted country and they have no legal remedies against the unintended impacts of economic sanctions.

Tanzania as a third party state has been inflicted with several impacts of economic sanctions especially with target countries which has certain economic, social, political and diplomatic relations and dealings with. The study has also established that, economic sanctions to Zimbabwe and South Africa had legal impact on disruption of bilateral and multilateral treaties with Tanzania.

5.2 Recommendations

The study presents recommendations to both the case study country (Tanzania), the United Nations and the sender states.

(a) Recommendation to the United Republic of Tanzania

The impact of economic sanctions against a third party state always depends on the international political interests that exist between the third party and targeted state. Taking example of economic sanctions imposed to Zimbabwe and South Africa; the recommended way of eliminating the impact of economic sanctions is to adopt legislations that will help to neutralize the situation of the third party state. The adoption of the new legislations may be applicable in the following aspects:

i) Adopt Change on Political Similarity between the Third Party and the Target State:

The similarity of international political interests between the third party and the target state is likely to cause impact on the third party state because of likelihood of legal framework and policy. The third party states should change their foreign policies and adopt legislations that will absorb and create neutrality from the impact of the sanctions.

ii) Adopt Change on Defence Pacts between Third Party and Target State:

The third party state must adopt change on any bilateral defence agreement with the target state. This will allow protection on third party state from the impact of economic sanctions directed on the targeted state.

iii) Joint Democracy between Third Party and Target:

In a situation where the third part nation is in joint democracy with the targeted state, the impact of the economic sanction on the targeted state will always impose a significant impact on the third state. The only solution in this aspect is to mobilize a diplomatic dialogue with the sender state calling for lifting of the sanctions. For example, the East African Community member states have adopted several protocols that create various joint activities among members. Any economic sanction towards any member of the community will affect every member of the particular community.

(b) Recommendations to the United Nations

This study presents the following recommendations to United Nations:

- i) United Nations should develop more comprehensive mechanism on the applicability of economic sanctions to avoid violation of state sovereignty of the targeted state and other third party country especially on the applicability of secondary economic sanctions. United Nations Security Council is an important organ to protect international community from the abusive use of force; individual states power to impose economic sanctions against other state should be limited/more controlled. Since economic sanctions are directly connected with civilian right and when they are applied without control they result to adverse effects to the vulnerable population inside the targeted country and third party country;, although such measures were initially established to influence the behavior of the government who is acting contrary to

international peace and security, this instrument normally affect the population that is intended to be protected.

- ii) The United Nations should consider, on a priority basis and in an appropriate substantive manner and framework; the question of implementing the Charter's provisions related to assistance to third states affected by the application of sanctions. This call should go hand by hand to keep on its agenda the question of the "peaceful settlement of disputes between states"; and, among other things, consider, as appropriate, any Charter-related proposals referred to it by the world leaders.
 - iii) Establishment of working groups to monitor impact of economic sanctions to third part states: Since the Security Council was charged with the maintenance of international peace and security; it should take the lead in monitoring the impact, negative or otherwise, of sanctions. This must be accompanied by the establishment of a working group in the Security Council Committee to examine the impact of sanctions on third states, especially the underdeveloped countries like Tanzania.
- (c) **Recommendations to Sender States;**
- i) Adoption of smart designed economic sanctions; to avoid economic impact of the sanctions to third party states. The sanction imposing state should adopt designed "smart" economic sanctions, towards the targeted state and not just general economic sanctions which have always unavoidable consequences to the third party state. "Smart" sanctions should be applied directly to political

leaders of the target state, or those responsible for the breach of peace. Smart targeting sanctions, will eliminate unintended impact to third party country and civilian suffering while putting significant pressure on the government itself, thus bringing sanctions regimes into compliance with human rights and humanitarian law and increasing their chances of success.

- ii) The institution sending economic sanctions against a particular state need to take into account the governance in the target state as they design economic sanctions regime. When economic sanctions are applied to a country which is a party to sub-regional groupings, the sender state should consider economic sanctions that will not affect the economy of the third part states and if possible economic sanctions targeted to a country that is a party in sub-regional groupings, other member states of the particular region should be involved in the decision to apply economic sanctions to such targeted country.

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