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Unilateral Sanctions on Russia over Its Invasion of Ukraine: A Brief Assessment

By
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Russia's invasion of Ukraine has brought to the forefront the ubiquity of sanctions as a foreign policy tool. A raft of astonishing sanctions have been imposed on Russia by the United States, in concert with several other countries, to coerce Kremlin into ceasing its unprovoked and unjustified aggression against its neighbor. These economic measures, targeting Russian financial institutions, oligarchs as well as energy and high-tech sectors, are tailored to cripple the Russian economy, thereby curtailing its ability to sustain its war in Ukraine.

While the extraordinary sanctions have given cause to optimism that economic pressure could yet play a part in preventing the rewriting of international order, they have only received a mixed response from most of the world, though many of the countries voted in favor of the UN General Assembly resolution condemning Russia for its military actions in Ukraine. Within Asia, only a few countries have supported the sanctions regime, while several others have expressed their opposition. Malaysia, as many other developing countries, has instead abided by its policy of only recognizing sanctions imposed by the UN Security Council under Article 41 of the UN Charter, known as multilateral sanctions, and not unilateral or autonomous sanctions, which are those imposed by States without the authorization of the Security Council.

The ambivalence of much of the world towards the United States-led sanctions on Russia can be partly attributed to the apprehension of their pernicious effects apart from their controversial status in international law. In fact, developing countries have long considered unilateral economic measures as illegal, for they have often been employed by powerful States, devoid of any legally justifiable cause, as a means to illicitly intervene into the affairs of weaker States beyond the boundaries of permissible statecraft. Accordingly, the UN General Assembly has adopted a number of resolutions proscribing the use of unilateral economic sanctions, one of which is concerned with the six-decade old sanctions imposed by the United States on Cuba, purportedly to promote respect for human rights and advance democracy there, but in reality, according to a Cuban Foreign Minister, are aimed at "imposing a political system and government of its own design."

Even though unilateral sanctions are generally forbidden, a plausible argument can be made for the legality of the current sanctions against Russia because they can be classified as measures of collective self-defense employed pursuant to Article 51 of the UN Charter, which provides that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”

The right stipulated in Article 51 entitles any State to come to the defense of another, and there is no requirement for the parties in the United States-led sanctions coalition to have their substantive rights affected by Russia’s aggressive act for the applicability of the said article. Nor is the requirement for any pre-existing treaty with Ukraine, as there are only two conditions to trigger the right to collective self-defense; first, the injured State must be the subject of an armed attack, and second, it must request the assistance of the other States.

In this connection, it may be recalled that the ongoing armed attack against Ukraine began on February 21, when Russian military formations entered the Donbas following President Putin’s televised recognition of the independence of the regions of Luhansk and Donetsk. This incursion was no mere frontier incident, but a deliberate act that violated Ukraine’s territorial integrity, sufficient to satisfy the first condition, and call Article 51 into play. The second condition, that triggered the right of the United States-led coalition to collective self-defense, was fulfilled when Ukraine pleaded for the assistance of the US, NATO and the international community immediately after the event in the Donbas.

Moreover, the sanctions imposed are proving to be necessary and proportionate, meeting the two criteria governing actions taken in self-defense. President Putin’s intransigence, in the face of global condemnation, necessitated those economic measures to stop Russia’s massive military machine, then too formidable to be forcibly repelled by the Ukrainians. Furthermore, it is now apparent that those sanctions are not disproportionate to Russia’s wrongful conduct considering that they have not exceeded the injury suffered by the victim State, which includes territorial losses, property destruction, economic disruption, loss of lives and untold sufferings of its population.

It is also worthy of note that Russia’s use of force amounts to a blatant violation of a jus cogens norm, a peremptory norm that “holds the highest hierarchical position among all other norms.” The sanctions imposed thus comport with the stand taken by the UN Secretary General’s 1997 Expert Group on Economic Measures as a Means of Political and Economic Coercion Against Developing Countries that unilateral coercive measures employed in response to a clear violation of universally accepted norms, standards or obligations could be exempted from the rules proscribing such measures, provided the States imposing them “are not seeking advantages for themselves but are pursuing an international community interest.”

What is more, the sanctions imposed on Russia could also qualify as third party countermeasures taken in accordance with the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) endorsed by the UN General Assembly in 2001. Based on Article 48 of ARSIWA, the United States and its allies, although not injured by the Russian hostilities, are entitled to intervene as a means of inducing cessation of the wrongful act, since Russia’s violation of the earlier mentioned peremptory norm has concomitantly occasioned a breach of obligations erga omnes - obligations of a State owed to the international community as a whole.

It is, however, admitted that the position of third party countermeasures is still uncertain, as they are yet to crystallize into customary international law while the Draft Articles have not been accepted as binding by all States. Still, the few instances of unilateral sanctions in the recent past indicate that States have not completely renounced the notion of third party countermeasures, and the instant case will thus provide an opportunity to determine whether it can gain wider acceptance as a rule of custom.

It therefore would appear that the unilateral sanctions on Russia over its invasion of Ukraine are not necessarily exceptionable, as there are reasonable arguments to support their legitimacy. Indeed, they are justified, inevitable and necessary measures, in light of the failure of multilateralism, to save Ukraine from the war it does not deserve, and the world from the economic ramifications of the conflict as well as from States attempting conquest in the future.

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