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LEGAL DIMENSIONS OF THE RESPONSIBILITY OF COMPANIES THAT VIOLATE ECONOMIC SANCTIONS FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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Abstract

Sanctions are a weapon in the hands of some countries that are used against other countries, and this has led some companies to circumvent sanctions by being considered violators and the burden of civil liability and sometimes Criminal responsibility should be on them. The subject of contracts and economic activities of companies in the period when economic sanctions prevail, assuming the conclusion of the contract, is void and it is not possible to remove the responsibility by resorting to civil and criminal liability factors such as emergency, coercion, force majeure, etc. For example, joint stock, manufacturing, industrial, etc. companies cannot enter into a contract because the country's economic situation in a state of emergency requires a specific commodity. In this regard, no executive guarantee is provided in domestic regulations, but in this regard, special regulations can be cited in international regulations, although in the author's opinion, force majeure conditions, if they have all the conditions, are among the factors that relieve responsibility. Consequently, in the present article, we will discuss the legal aspects of the liability of companies violating economic sanctions from the perspective of international law through the library method and the study of existing domestic and international laws and regulations.

Keywords: Liability, Corporate, Economics, International, Force Majeure.

Introduction

Aggressive economic measures against one or more countries to change the policies of that country or countries, or at least reflect the opinion of a country about such policies (Behrouzi Far; Kokabi, 2006: 137). Based on this definition, economic sanctions in the international field can create different dimensions of responsibilities, one of these issues is the responsibility of commercial companies, which includes different legal dimensions. The subject debated in the current article is how commercial companies are responsible for the sanctions that exist in the

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international arena. And can factors such as emergency, coercion, and force majeure justify their illegal behavior? And in which international regulations guarantee the implementation of this issue has been legislated and taken into account. Sanctioning commercial companies in the international arena is considered a legal matter according to the UN Security Council resolution, and this issue is not prohibited in Article 41 of the UN Charter. So, the sanctions in the aforementioned regulations are justified to establish peace. But, companies that operate despite the sanctions, their actions are considered against international peace, and this action is considered as a guarantee. However, in this article, the legal aspects of this issue will be discussed more.

Conceptology

Studying and checking in any science requires understanding the concepts around it; so, in this article, we will discuss two widely used concepts of responsibility and economic sanctions.

Concept of responsibility

The term responsibility is divided into several types, each of which has independent definitions. Civil liability is one of the types of responsibilities that may be compared to other types of responsibilities such as criminal liability. Civil liability in a broad sense comprises responsibilities resulting from contract defects and non-contractual responsibilities, that is, liability resulting from harmful behavior, and this issue can be caused by the violation of sanctions by companies. Irrespective of the similar and common bases in both types of responsibility, their nature can also be considered the same. But in a special sense, civil liability refers to non-contractual liability. Nonetheless, the question is whether the responsibility at the international level regarding the violations of the companies at the time of the sanction is civil or criminal. Civil responsibility in its general sense is the "responsibility to compensate damages caused by harmful behaviors." (Rah Peyk, 2009: 22) this responsibility can be carried out by the offending companies during the sanctions. The term civil liability (Responsabilite Civile), which has also been called "obligations ex delicto", "non-contractual obligations" and "non-contractual liability", is a translation of the French term. Despite this, sometimes the term civil liability is used in a broader sense, in which case it includes both contractual civil liability and non-contractual civil liability. Civil liability in the general sense of the word includes all responsibilities that the cause of the loss is required to compensate; regardless of whether the origin of the responsibility is the contract or the law. However, the term civil responsibility is usually used in its specific meaning. In this case, the civil liability does not include the contract. Consequently, if the contractual obligee causes damage to another due to a breach of contractual obligations, s/he is required to compensate for the damage. In this case, the obligation to compensate is not called civil liability in the specific sense of the word. However, if a person causes damage to another outside of the contractual relationship, s/he is required to compensate for the damage according to the law. In this case, the obligation of the damage agent to compensate is called civil liability in its special sense (Hayati, 2013: 18). However, it can be stated that the term "responsibility" is an Arabic word and its Persian equivalent is the term "accountability" whose meaning, from a lexical point of view, is somewhat clear and unambiguous. In legal terminology, this phrase is not far from its literal meaning.

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Responsibility is a person's responsibility for the actions that are usually attributed to him, the guarantee of the legal implementation of which is different according to the type of responsibility, for example, responsibility in criminal matters means bearing the legal punishment resulting from the crime, however, liability in legal or private matters, which is interpreted as obligations ex delicto in the civil law, is the obligation of a person to compensate for the damage caused by the act attributed to him or her according to the law. Consequently, civil responsibility is: "The legal obligation of a person to compensate for the losses that have been caused to another person as a result of his/her documented act." (Bariklo, 2014: 24). In a clear and comprehensive definition, civil liability has been interpreted as an obligation to compensate damages (Hekmatnia, 2007: 27). In simpler words, when damage is caused to the life, property, honor and credit of another person due to an act or word of a person, the conditions and possibility of compensation for this damage is known as civil liability. Though civil responsibility is similar to words such as moral responsibility and criminal responsibility in terms of similarity in the word responsibility, the fact is that there are key differences between them. Humans have duties and obligations towards themselves and others in their social and individual lives. In a place where these duties have a moral face, there is no guarantee of their execution, and only the fear of others' shame and divine punishment is the obstacle to disobeying these dos and don'ts, moral responsibility is raised. But in the place where this moral obligation takes on a mandatory sense and the violation of it causes the obligation to compensate for the damage, it is the turn of civil responsibility. Due to this fact, it can be said that moral responsibility is the root of civil responsibility, and if the answer to the duty and moral obligation is met with punishment, it is the turn of criminal responsibility. Certainly, the imposition of punishment does not mean the impossibility of compensating for the damage caused, and perhaps the response to an improper act may lead to both criminal and civil liability (Abdollahi, 2012: 17 and 18). Civil responsibility brings to mind concepts such as damage, repair of damage, and compensation of the victims (Jourdan, 2012: 31). Consequently, the purpose of the concept of responsibility is the responsibility of companies that violate economic sanctions, including civil, criminal, and moral responsibility, the concepts of which were explained. However, in the field of international law, civil liability can be studied more than other types of responsibilities.

Concept of economic sanction

Various definitions have been provided regarding the word sanction; some believe that "trade sanctions established by a government prohibit the entry of certain goods or all export products of the sanctioned country" (Halsti, 1994: 379). Nowadays, the term sanctions only refer to international restrictions against a government or the deprivation of a government from its rights (Arthur, Culvahouse, 2010: 589). Generally, sanctions are used to show dissatisfaction with the actions of a government or to force it to change some policies and actions or even change the government structure (Barry, 1987: 1166). One of the measures that the Security Council adopts to maintain international peace and security based on the seventh chapter of the charter, is economic sanctions which will be able to make decisions, including economic sanctions, when it recognizes a situation as a threat to peace, a breach of peace or an act of aggression. In

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contemporary international relations, the application of these sanctions as tools to ensure the implementation of the rules of international law and maintain international peace and security has become very important, of course, it is possible to apply these sanctions in addition to the Security Council, by some countries, especially powerful countries also apply (Zeratkar Moghani, 2015: 1).

Legal dimensions

Below, the legal dimensions of the responsibility of companies that violate economic sanctions will be mentioned, including the conditions, effects, and factors that mitigate the responsibility, which have seen different legal dimensions in international law.

Liability condition of the offending companies

Entry of loss

One of the significant conditions for the responsibility of companies that violate economic sanctions can be called loss**.** However, the question is, does the violation of not paying attention to the sanctions bring loss? And is it considered a violation for the member states of the United Nations? Or for a country that is under economic sanction, the activities of companies such as airlines, etc. will cause harm to the sanctioned country? So, the entry of loss and the responsibility of governments is raised at the international level, and it is necessary to examine its legal aspects.

Generally, the use of economic sanctions against commercial and non-commercial companies by some governments, without the prior permission of the Security Council and outside of the collective security system of the Charter, has caused the legitimacy of these measures to be doubtful in terms of their compliance with international legal standards. Sanctioners of commercial and non-commercial companies in justifying their actions refer to the principle of freedom of governments in establishing or terminating their commercial relations with other governments. In some cases, unilateral sanctions have been used as a tool to advance the national policy goals of powerful governments. However, the ultimate objective of implementing unilateral economic sanctions against companies, whatever it may be, should be in accordance with the international obligations of governments based on international human rights treaties. Not paying attention to the harmful effects of sanctions against commercial and non-commercial companies, on the general situation of human rights in the target country, not only destroys the legitimacy of these actions but also increases the responsibility of the sanctioning government or governments according to international law (Ehsan, 2014: 105). Consequently, sanctions against companies at the international level can be studied based on the damage caused. First, the sanctions imposed on the companies were illegal and caused damage, which involves the responsibility of international law, and the sanctioning country will be the guarantor of the damage. Secondly, if the companies of the sanctioned country act against the decisions of international law and violate the prohibitions, the presumption of loss will not be raised. Because there is no loss in any of the countries and what happened is a violation. Therefore, the first assumption will be realized with a loss.

Consequently, international laws are laws that create responsibilities for the parties in case of violations by governments, Violations of human rights or the United Nations that lead to international responsibility (such as civil liability against states) any violation of human rights and humanitarian rights that is the result of an international wrongful act or an international crime,

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leads to International responsibility or civil responsibility. Factors such as satisfaction, force majeure, urgency, and necessity, by removing the definition of illegitimacy from the government's action, prevent the creation of international responsibility of the government based on fault, however, risk-based responsibility for damages caused by the government's actions without fault or error is a matter of discussion and reflection. So the sanctions of the United Nations and some countries against the people and the activities of commercial and non-commercial companies can also be considered as cases of force majeure and emergency. The responsibility resulting from the violation of international law due to the different nature of the aforementioned obligations from other international obligations means proving the universal nature of human rights norms and reaching the mandatory stage of some of them, as well as eliminating the description of confrontation in these obligations, a responsibility that is different from the international responsibility of governments in line with the violation of other obligations of international law. This means that the universality of these obligations means that all members of the international community are considered to be beneficiaries in their preservation and protection and that by violating them, all countries will have the right to invoke the responsibility of the wrongful government, and this right is not just an individual and exclusive right. So that governments can negotiate and compromise on it in any way they want. Rather, it is a right that comes from the moral duty of all human beings to support the fundamental human rights, which is institutionalized in legal form, and governments have the duty and obligation to enforce the said right, and this can guarantee the rights of people who, in the current state of international law, have no way to reach an international trial except for limited regional arrangements such as the European Court of Human Rights or political protection. The effects of the international responsibility of governments for violations of international law appear in the first place in the creation of secondary obligations of the violating government to stop human rights violations and compensate damages in the form of restoring the previous situation, paying compensation, and obtaining satisfaction. In gross and severe violations, in addition to the mentioned secondary obligations, there are also obligations for the international community to not recognize the situation caused by the violation, not to help the violating government, and to try to end the violation with cooperation. So, violation of the norms of international law by the governments provides them with international responsibility and obligates them to answer to all the countries of the world and undertake new obligations to compensate for their actions (Shariat, 2002: 1). Consequently, sanctions against a specific country can be considered a violation of human rights, and the activity of sanctioned companies is also considered a violation of international law. Generally, companies that operate despite the sanctions, if they are viewed from the point of view of force majeure and emergency, will not have any international responsibility.

Predictability of loss

Another important condition for the responsibility of the offending companies in international law and most Western countries can be called the predictability of the loss. Sanctioned commercial and non-commercial companies in a particular country will be considered responsible when the damage caused by them is foreseeable.

Judicial practice in international law, in cases where the damage is the result of a harmful

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act (damage), considers the predictability of the type of damage as a condition for claiming damage. It is possible that if an indirect harm is inflicted on a person, this type of harm should be predictable. In Iranian law, this is in accordance with the opinion that in no-fault liability (direct loss) the predictability of the loss is a condition for realizing compensable loss (Khayyati Gargari, 2016: 80). Accordingly, the loss in international law is based on the predictability of the loss, and when this condition is not certain, the loss will be compensable. For instance, in English law as a country of the United Nations, in the case of Borhil v. Jung (1943), the plaintiff heard an accident caused by the defendant's negligent riding on a motorcycle but did not see the scene of the accident. Sometime later, the petitioner saw the effects of the accident and suffered a nervous shock. The court ruled against him with the argument that the damage caused to the petitioner was not predictable (Birmingham, 2009: 44). Considering this issue, when the sanctioned companies of a country act against the international resolution, they have committed an international violation and this issue can be compensated considering that it has been foreseen. In international law, foreseeability of loss is compensable in line with the liability of penalized companies, whether direct or indirect.

Generally, if we state that the sanction is a force majeure measure regarding the activities of the companies during the sanction, it should be stated that this measure was unexpected. The companies violating the sanctions will be exempted from responsibility when they prove that they did not foresee the incident and could not also predict. Some have said that because the contractual responsibility arises from the consent of the parties to the contract, then if an event was foreseeable, it means that the parties have consented to it, and when an obstacle occurs, a party cannot deny the burden of what it has already accepted. Unpredictability does not mean that the probability of an accident is zero; in other words, it can be said that every incident has happened even once and is somehow probable. It has been said that an accident in which the defendant did not commit any fault in not foreseeing is considered unforeseeable. In another interpretation, it is said that a conventionally unpredictable incident is an incident that at the moment it occurs, no specific reason for its occurrence comes to mind. On the other hand, French jurisprudence is strict in recognizing unpredictability, so it did not consider the ricocheting of a lead bullet due to predictability in the case of force majeure. In the laws of this country, it is considered an incident of force majeure that caused non-performance for everyone, not only for the obligee. Therefore, in this situation, the existing criterion is a kind of personal criterion**.** This means that the personal situation of the victim should be taken into account in his decision. In English law, the necessary condition for the nullification of the contract is the unforeseeability of the event based on custom. The same point of view has been accepted in American jurisprudence. Some domestic jurists also consider customary arbitration as the standard of practice in this field. The condition of unpredictability regarding sanctions is facing many challenges because sanctions are predictable for many countries that are sanctioned. It can be said that the predictability or unpredictability of a sanction is something that the judge evaluates by examining the conditions and subject matter of the sanction, and sanctions may be predictable in one area of trade for a country and unpredictable in another area. In other words, regarding the predictability of sanctions, one can comment on the political situation at the time of concluding the contract and the negotiations

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leading to the contract. Of course, it is possible that the sanction itself does not create a ban, and from the point of view of the nationals of the sanctioned country, the important issue is the conditions caused by the sanction. In other words, if the sanction and ban itself are caused by the force majeure, the foreseeability of the sanction itself should be checked, but if the conditions are caused by the sanction of force majeure, it should be seen that despite the predictability of the sanctions, whether these conditions were also predictable or not. It is necessary to mention that if the parties have signed the contract knowing that it is not possible to bypass the sanction, they do not have the will to fulfill the contract (Bahador, Rastgooyemashhoor, 2018: 56-56).

Effects of the responsibility of the offending companies

Violating companies due to sanctions can be held responsible if they operate. Article 31 of the International Law Commission, concerning the repair of damage, which can also include the companies contradicting sanctions, states: "1- The responsible government is required to fully repair the damage caused by the international violation. 2- The damage includes any damage, whether material or moral, that is caused by the international violation of the government." So, according to the aforementioned article, it can be said that if we consider the circumvention of sanctions by companies as a violation of international law, the sanctioned company will be required to compensate for the damage according to the principle of restoration.

The obligation to fully repair the damage is the second general obligation of the responsible state that is assumed after committing an international violation. This violation can be done by the companies of a government at the time of sanctions. The general principle governing the consequences of international violations was stated by the Permanent Court of International Justice in the Chorzów factory case: "It is a principle of international law that the breach of an obligation requires the obligation to adequately repair the damage. This is why repairing damage is an inseparable and irreplaceable element of negligence in the implementation of a contract, and it is not necessary to mention it in the contract itself. The result is that the disputes regarding the repair of the damage that must be done due to negligence in the implementation of the agreement are considered among the disputes regarding the implementation of the agreement.[1]" Consequently, repairing the damage can be considered as a form of compensation from the sanctioned company.

In the above statements, which have been cited and applied in many cases, the court has used the word "repair" in its most general sense. In this case, the court rejected the argument of Poland, which claimed that the competence to interpret and implement the treaty does not necessarily include the competence to deal with the dispute regarding the manner and amount of damage repair. At that stage of the dispute, Germany no longer wanted to return the factory in question or the confiscated property with it to its nationals. In the next stage of the same case, the Court specified the limits of the obligation to repair the damage in more detail and declared: "The principle of necessity implicit in the true meaning of an illegal act - the principle that appears through international practice and especially in opinions the arbitral tribunals have established - it is that the restoration of damage should, as much as possible, erase all the consequences of the illegal act and re-establish the situation that would have existed as much as possible if that act had

[1] The case of the Chorzów factory.

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not been committed. Return in kind, or if it is not possible, pay an amount equivalent to the value of return in kind; or, if necessary, the order to pay damages for a loss for which restitution or the payment of an amount is not responsible - these are the principles that should be used in determining the amount of restitution due to an act that is contrary to international law[2].” In the first sentence, the court provided a general definition of damage repair, emphasizing its role in restoring the situation affected by the breach of obligation. In the second term, it deals with that aspect of damage repair that is exclusive to the “damage” of an illegal act - i.e. its restoration or value, plus damages for the damage that occurred as a result of the violation. The obligation of the responsible government according to Article 31 is “complete restoration” in the sense used in the Chorzów factory case. In other words, the responsible government should try to provide one or more of the types of damages specified in the second chapter of this section “remove all traces of the illegal act and re-establish the situation that would have existed if that act had not been committed” (Helm, 2011: 249-247)

The general obligation to repair the damage in Article 31 is expressed as a direct and immediate result of the government's responsibility, that is, it is defined more as the duty of the responsible government due to the violation of its obligation than the right of the injured government or governments. This method of rulemaking avoids possible problems in cases where the obligation in question exists towards several governments, many or all governments, and only a few of them are particularly affected by the violation of the obligation. Though, apart from the issues that arise when more than one government is entitled to claim responsibility[3], as soon as an international violation is committed, the general obligation to repair the damage is realized automatically and without being deferred to the demand or objection of any government. Although the way to repair the damage in the situation under discussion depends on the reaction of the injured government or governments (Helm, 2011: 247-249). The obligation of the responsible government to fully repair the damage is related to “damage caused by an international violation”. The concept of “damage”, defined in paragraph 2, includes any damage caused as a result of that action. Especially, based on paragraph 2, “damage” includes any material or moral damage caused by a violation. The purpose of this method of rulemaking is to comply with comprehensiveness, which includes material and spiritual damages in their broad sense, and also prevent hypothetical concerns or general views of the government that are not individually affected by the violation of the obligation to be excluded from it[4].

Here, material “damage” means any damage to property or other interests of the government and its citizens that can be calculated financially. “Moral” damages include such things as

[2] Chorzów factory case, in essence, 1928, Permanent Court of International Justice, Collections A

[3] Regarding countries that have the right to invoke responsibility, refer to articles 42 and 48 of the United Nations Law Commission

[4] Such states, while not individually injured, may enjoy the right to invoke responsibility for the breach of certain types of obligations in which the public interest is at stake in accordance with Article 48 of the UN Law Commission.

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individual suffering and pain, loss of loved ones, or dishonor through invasion of privacy or personal life. In the second chapter of this section, the issues related to the compensation of this type of damages are given in more detail[5].

The issue of the need to claim damages for a protected benefit as an essential element of establishing an international violation has been discussed[6]. Generally, there is no such requirement; this issue is further determined according to the relevant primary rule. In some cases, the starting point of the violation is the same stage as the real damage to another government (Helm, 2011: 250-249).

In some cases, what is significant is failure to take necessary precautions to prevent damage, even though no damage was caused as a result of the incident. Sometimes there is a direct obligation to perform a certain act, such as implying certain uniform rules within domestic laws, in any case, it is the primary obligation that determines what is required. So, in Article 12, violation of an international obligation is defined as failure to behave in accordance with the obligation.

In the same way, concerning the fact that any government must have suffered material damage or harm before demanding restoration for a violation of an obligation, there is no other general condition other than the conditions stipulated in the relevant primary obligation. In line with determining the method and amount of restoration, the existence of real damage is of primary significance. However, for a government to have the right to demand some kind of restoration, there is no general restriction regarding material damage or harm. In the arbitration of the Rainbow Warrior case, it was initially claimed that "according to the theory of international responsibility, to offer a basis for the obligation to repair the damage, it is necessary to claim damages", but the parties subsequently agreed that "illegal action against immaterial interests, such as actions affecting the dignity, or reputation of a government, even if the said actions did not lead to a financial or material loss for the requesting government, the damaged government will receive sufficient compensation[7]". The arbitral tribunal determined that France's violation of the obligation "has provoked public hatred and indignation in New Zealand and has caused a new and additional non-material damage... which has a moral, political and legal aspect and is caused by an insult not only to the dignity and reputation of New Zealand in this way but also to its highest judicial and executive authorities." (Helm, 2011: 250).

Whenever two governments have agreed to perform a certain action, the default of one of them in fulfilling the obligation is necessarily related to the other government. A promise has been violated, and as a result, the right of the other government to demand the fulfillment of the obligation has been lost. At this stage, it would be unnecessary to interfere with the secondary rules of state responsibility and prescribe that because no specific harm or damage has been caused, there is no liability. If the parties wanted to adjust their commitment in that way, they would act accordingly. In many cases, damage caused by the violation of obligations (such as

[5] Refer especially to Article 36 of the United Nations Legal Commission.

[6] Refer to Article 2 of the United Nations Legal Commission.

[7] Rainbow Warrior Case (New Zealand v. France), United Nations International Arbitral Awards Reports.

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damage to fisheries stocks due to fishing in the prohibited season, damage to the environment due to the discharge of gases beyond the permissible limit, or excessive water withdrawal from a river) is unlikely, probable or uncertain. Despite this, governments can enter into unconditional and immediate commitments with each other for their long-term interests in these fields. For this reason, Article 31 defines "damage" in a comprehensive sense and leaves the determination of the requirements of each case to its primary obligations. Paragraph 2 to the next topic, that is, it deals with the causal relationship between the international violation and the damage caused. It is only "injury . . . caused by a State's international wrongdoing" for which full reparation must be made. The said phrase is used for this purpose so that it is clear that the issue of reparation of damage, everywhere in the world, is the damage that is caused by a violation and is attributable to it, and not any consequence or all consequences that arise from a violation and can be attributed to it and not every consequence or all the consequences that originated from an international violation. Relating damage or loss to the violation, in principle, is not only a matter of the time of occurrence or the process of causation but also a legal matter. Various words have been used to describe the relationship that must exist between the violation and the damage to fulfill the duty of repairing the damage. Among other things, we can refer to the losses "attributable (to the violation) as a proximate cause"[8], or the damage that is "very indirect, unlikely and uncertain in terms of evaluation[9]" or to "any direct loss, damage, including environmental damage and loss of natural resources, or damage to foreign governments, nationals, and companies as a result of "international violation[10]" (Helm, 2011: 251). In this way, the relationship of causality is considered a necessary condition for repairing the damage by the sanctioned companies, but it is not a sufficient condition.

There is another element that is related to hindrance, that is, an injury whose connection with the violation is so "unlikely" or "subsequent" that it cannot be the subject of damage repair by the companies. In some cases, the rule of "immediateness" can be used, in other cases "predictability", or "proximity". But other factors may also be involved: for example, whether the state bodies intentionally caused the harm in question, or whether the harm occurred within the scope of the violated rule, taking into account its purpose. In other words, the causation requirement is not necessarily the same as that applied to any other breach of international obligation. In international law, like national law, the issue of exclusion of damage "is not that part of the law that can be solved in a good way by searching for a single and clear rule". The concept of sufficient causation

[8] See US-German Mixed Claims Commission, Administrative Decision No. 2, Reports of UN International Arbitral Awards.

[9] Refer to the arbitration of the Trail Smelter case, reports of international arbitration awards of the United Nations.

[10] Security Council Resolution 687 (1991), paragraph 16. It was a resolution under Chapter VII of the Charter, but it expressly reflected Iraq's responsibility "under international law ... as a result of that State's illegal seizure and occupation of Kuwait." The United Nations Compensation Commission and the Governing Council have given some guidelines on the interpretation of the conditions of immediacy and causation according to paragraph 16 above.

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relationship, which is not too unlikely, is manifested in the general condition contained in Article 31 that the damage must have been caused as a result of the violation, without adding any specific descriptive words (Helm, 2010: 247-249).

Another element that is effective in repairing the damage from the sanctioned companies is the issue of reducing the damage. Although the said expectation is often referred to as a "duty to reduce damages", this is not a legal obligation that automatically establishes liability. Failure of the other party to reduce the damage can exclude the claim for compensation to the same extent[11]. The International Court of Justice has clearly stated this meaning in the case of the Gabcikovo-Nagymaros project: "Slovakia also claims that during the implementation of the project (Variant C), it acted in accordance with the duty it had to minimize the damage. That government says that "it is a general principle of international law that the party injured by the other party's refusal to perform the contract should try to minimize the damage caused to him".

It is inferred from this principle that the injured government, which was unable to take the necessary measures to minimize the damage, will not be entitled to claim avoidable damage. Although the aforementioned principle can be a basis for calculating the amount of damages, on the other hand, it cannot justify an action that is otherwise considered a violation[12]." Consequently, the sanctioned companies will be required to compensate the damages in case of violation of the international resolution in line with the violation of the sanction.

Despite the progress made by the Security Council to guarantee the rights of individuals, it cannot be said that effective judicial compensation has been provided concerning compensating the companies that violated the sanctions. This court has followed the theory of legal dualism in the conflict between the resolutions of the Security Council and the principles of human rights accepted by England (Stevens, 2012: 9). The conflict between the Security Council's obligation to sanction natural and legal persons and companies with the right to access to justice in other cases, such as the case of Kadi and Al-Barakat in the European Court of Justice and Sayadi in the Belgian court, has also been resolved in favor of human rights. For this reason, the European Court of Justice believes in the Kadi case that "the Security Council has not yet been able to create an independent and impartial institution that will take responsibility for dealing with the actions of sanctions committees against individuals and companies.[13]" In traditional international law, sanctions have been considered as a form of guaranteeing the implementation of international responsibility against the government, and the international violations of individuals were only

[11] Regarding the claim of ell blowout control w, a panel of the United Nations Compensation Commission stated in its report that "according to the general principles of international law regarding the minimization of damages... the claimant was not only allowed, but actually obliged to take reasonable measures in order to ... reduce the loss, damage or harm caused": Report dated 15 November 1996 (5/1994/26 S/AC).

[12] Gabcikovo project file.

[13] Case T-85/09, Yassin Abdullah Kadi v. European Commission, General Court of the European Union, 30 September 2010.

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entrusted to international criminal courts. In the new generation of sanctions against companies, for the first time, the natural persons of the companies will be punished for their actions somewhere outside the international criminal courts. Sanctioning of natural persons by the United Nations or member states of this organization is a type of international enforcement guarantee against natural persons that is applied directly by these political institutions. This mechanism can mean weakening the position of judicial institutions, both national and international courts, which are established for international violations of individuals (Barati, 2002: 160).

Factors that remove the responsibility of the offending companies

Companies that violate economic sanctions sometimes act out of compulsion, urgency, and other factors, which raises the question of whether their actions are responsible. And what guarantee of international implementation is intended for it? Regarding whether sanctions can be considered force majeure or not, it should be said that the answer is different in legal systems, and there are also differences in different situations. If at the time of the conclusion of the contract, there were no sanctions conditions and there was no possibility that the country would be caught in such conditions shortly, the initiation of such sanctions that face the project with a fundamental problem can be considered as a force majeure, but if during the activities of the companies, the country is under relative sanctions and the possibility of tougher and comprehensive sanctions is given, these sanctions cannot be considered as force majeure and the obligee can be exempted from fulfilling the obligation. Legal regimes have different opinions regarding the exemption of companies from performing obligations and activities due to force majeure. Most of the legal regimes believe that force majeure conditions exempt a person from fulfilling the obligation, and the opinion that is in the minority among the legal regimes is that with the occurrence of force majeure conditions, the obligated person is exempted from fulfilling the obligation. However, due to the impossibility of fulfilling the obligation, the latter person will not be responsible for compensating the obligee (Ebrahimi, Oyar Hossein, 2012: 7).

It seems that the sanctioning of companies is not one of the examples of force majeure, but it is considered a contractual risk (danger) and the distribution of this risk is fair and equitable to the parties. So that none of the parties are victims. So, in the assumption that the sanction is not part of force majeure, in the “Civil Law” system, since in the case of uncontrollable events and the assumption of lack of alternative, the possibility of being required to perform the obligation is removed due to the unbearable obligation, therefore citing the breach of contract, will not be possible. Then, we must find a legal solution through the sterility of corporate contracts, the impossibility of implementation, or the difficulty or fundamental change of circumstances. The key difference between force majeure and other excuses, except for “sterility of contract execution or the impossibility of contract execution”, is that force majeure makes the execution of the obligation completely impossible, while the basic assumption in other excuses is difficulty and impossibility in fulfillment of commitment. On the other hand, sanctions can affect the companies' contracts from two aspects: one is on the validity of the companies' contracts and the other is on the implementation of the companies' contracts. Regarding the validity of the corporate contract, sanctions are effective on two pillars: first) the subject of the transaction and second) its direction and its effect on the competence and intention of the parties is doubtful. Although these effects are

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intended only at the stage of contract implementation and fulfillment of obligations according to Article 240 of the Civil Code and do not have an effect at the stage of force majeure (Ebrahimi, Oyar Hossein, 2012: 16). So, the case of force majeure cannot absolve the responsibility of the companies for the imposed sanctions. So, force majeure factors concerning the activities of the offending companies during the sanction period are not recognized in international law as factors that relieve responsibility.

Conclusion

International laws are regulations that generate responsibilities for the parties in case of violations by governments, and one of these responsibilities can be the civil liability of governments for the violations of their companies. Every case of violation of human rights and humanitarian rights that is the result of an international wrongful act or an international crime, leads to international responsibility. As a result, if we state that the sanction is a force majeure measure regarding the activities of the companies during the sanction period, it should be stated that this measure was unforeseeable. Companies violating the sanctions will be exempted from responsibility when they prove that they did not foresee the incident and could not have foreseen it. Some have alleged that because the contractual responsibility arises from the consent of the parties to the contract, then if an event was foreseeable, it means that the parties have consented to it, and when an obstacle occurs, a party cannot deny the burden of what it has already accepted. Unpredictability does not mean that the probability of an accident is zero. In other words, it can be said that every incident has happened even once and is somehow probable. Violating companies can be held responsible if they operate during the sanction period. Article 31 of the International Law Commission, concerning the repair of damage, which can also include the companies contradicting sanctions, states: “1- The responsible government is required to fully repair the damage caused by the international violation. 2- The damage includes any damage, whether material or moral, that is caused by the international violation of the government.” Another issue that is effective in repairing the damage from the sanctioned companies is the issue of reducing the damage. Although the said expectation is often referred to as “duty to reduce damages”, this is not a legal obligation that automatically establishes liability. Failure of the other party to reduce the damage can exclude the claim for compensation to the same extent. Consequently, it can be said that the responsibility of the offending companies during the sanctions period does not have a precise guarantee of implementation in the international regulations and this issue has caused that there is no single procedure in the international law. So, the violation of companies in the international arena, although it is against international regulations, the appropriate solution for compensation has not been provided, so the case of force majeure and the removal of the responsibility of companies has not been well explained in international law.

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