EDITORIAL

1 Economic Sanctions as the Fifth Front

Economic sanctions are weapons often deployed by states during peacetime or during armed conflicts. Economic sanctions often open up another front during an armed conflict when sanctions are imposed against the aggressor state or her allies and that front is not on the battlefield but rather a 'fifth front' which concerns all five major continents. The fifth front becomes visible when a major currency is the default payment in international financial transactions such as the US dollar. In that regard, the US, for example, is often in a position to open up a fifth front through secondary sanctions even if financial transactions do not involve the US dollar. The powerful department in the US Treasury – Office of Foreign Assets Control (OFAC) – sits on the frontline of US secondary sanctions and wages a battle of its own on compliance. Often time, OFAC finds itself waging different battles on compliance that may involve humanitarian and related services; the need to access communication and technology while at the same time ensuring that the purposes of secondary sanctions are complied with. On the five major continents, one may find a country that is subject to US secondary sanctions: Venezuela in the Americas; North Korea in Asia; Russia and Belarus (in Europe); and Iran (in Middle East and North Africa).

In all instances of secondary sanctions – two immediate problems often highlight how economic sanctions operates as a fifth front especially through OFAC. First, secondary sanctions are extraterritorial in that they violate international law and requires sovereign states to comply with US secondary sanctions. Secondly, US secondary sanctions will often involve financial institutions that carries out payments and other financial transactions in US dollars. In this latter concern – OFAC and the Treasury in general will employ all extraterritorial methods to guard the integrity of the dollar but also to ensure that US financial institutions are not party to payments that include transactions involving sanctioned countries or individuals. However, the broader impact is the extent to which the US use secondary sanctions to target assets and other economic relations outside of the US that touches and concerns the US. In times of armed conflict, this becomes more apparent if an aggressor state and individuals who support the regime of the aggressor state have substantial financial assets worldwide and within the grasp of OFAC. If countries and economic operators fall foul of US secondary sanctions then the repercussions can be severe given that the US still has one of the most advanced economy in the world and the dollar remains the de facto global currency. In terms of compliance, OFAC will often find itself in the position of judge and executioner given that there will sometimes be the need for humanitarian exceptions to US secondary sanctions but at the same time, a country or economic operator must not knowingly circumvent US secondary sanctions.

The European Union is an economic block with sovereign nations whose economies are tightly integrated in the world trading system. The EU's single currency, the Euro, is the nearest competitor as a form of payment in international financial transactions that can match or compete with the dollar. When the US reimposed secondary sanctions on Iran in 2018, the EU sought to circumvent US dollar payment by continuing trading with Iran and created what is in effect an alternative dollar mechanism – The Instrument in Support of Trade Exchanges (INSTEX) to settle financial transactions in Europe that took place in Iran. It was a development that the US has not been happy with, and at the present time, INSTEX is effectively a still–born special purpose vehicle. Yet, the novelty of INSTEX has raised the concern that special purpose vehicles can be pursued to circumvent economic sanctions during peace time and/or during armed conflicts. There are several questions that a Special Purpose Vehicle (SPV) like INSTEX raise, not least among them, could there be a possibility that during an armed conflict an aggressor state circumvent economic sanctions by creating a similar SPV with her allies or a coalition of willing to trade states? This is a fascinating question that may only sit at the border of utopia but should neither be ruled out. Nevertheless, the more realistic questions include to what extent are economic sanctions effective in modern times? Do aggressor states for example find other means of circumventing secondary sanctions and rendering their imposition useless? What about the form of payment – do nations necessarily have to pay for international financial transactions in US dollars or the Euro? What about block chain and digital currencies – could they be an alternative mechanism? How lawful are actually US secondary sanctions, and, in light of instruments such as INSTEX, should the US and in particular OFAC be judge and executioner when it comes to US sanctions or take an alternative route such as setting up a complementary system such as INSTEX? Do countermeasures matter when it comes to secondary sanctions, and, how can non-US courts interpret compliance with secondary sanctions as 'justified' under international law or under a regional legal system such as EU law?

These are some of the questions that this special issue addresses with the hope of teasing out some answers both at the practical and policy level. Our purpose is not to go too academically in-depth in the discussions. We want to address a brief question or issue in relation to economic sanctions and the special purpose vehicle of INSTEX and then provide a short answer with commentary to the brief issues raised. We are all too aware that even in light of a fifth front as a result of economic sanctions, powerful nations, when confronted by legal actions may seek to terminate international legal instruments under which they have legal obligations. Thus, when Iran sought reprieve at the International Court of Justice (ICJ) for US breach of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the US and Iran (ICJ Judgment of 3 Febuary 2021), the US announced that it would terminate the treaty. Because economic sanctions have a wide-ranging impact not only on the sanctioned state but also spill over on other nations they will continue to wreak havoc on the global economy, create opportunities for other (scrupulous) actors and permanently maintain a fifth front during war and peace.

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