

Sanctions as Rescue: Should there be an Obligation to Impose Trade Sanctions for Serious Violations of International Law?*

Background

- I. General International Law on the Use of Economic Sanctions
 - The Use of Force is prohibited by international law
 - o The prohibition of the Use of Force is limited to the use of military force
 - o The concept of a prohibition on uses of “economic force” have not crystallized into recognized law
 - Economic sanctions are one form of economic force
 - Trade sanctions are one form of economic sanctions
 - Economic sanctions are legal in general international law, as long as
 - o They do not violate humanitarian principles
 - o They do not violate human rights
 - Unilateral trade sanctions will rarely be capable of violating humanitarian principles or human rights

- II. World Trade Organization Law on the Use of Economic Sanctions
 - World Trade Organization law prohibits the use of trade sanctions by its Members if other Members are the target
 - o Members’ obligations under the GATT, GATS, and TRIPs Agreement prohibit unexcused increases in market access barriers (tariffs, quantitative restrictions, administrative scrutiny, regulatory processes or standards)
 - o The general exceptions of the GATT and GATS are exclusive and narrowly interpreted; no disputed measure has as of yet passed the three-part test of GATT Art. XX (general exceptions)
 - WTO Members refrain from imposing trade-restricting measures on most other Members to avoid being found in violation of their obligations under WTO law

Background Thesis: The Development of an International Community requires states to Develop a Norm of Obligation Positive Protection of Human Rights

Paper Thesis: The Paper investigates whether there is an emerging duty to protect in international law, and if so, what that would mean for the WTO.

- The concept of a Responsibility to Protect requires the “international community” to assist each other in protecting populations from serious violations of human rights and humanitarian principles.
- R2P also requires the international community “through the United Nations” to use “diplomatic, humanitarian and other peaceful means” to protect populations from serious violations of human rights and humanitarian principles.

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Question to Examine: if there is a responsibility to protect, what can be done to enforce this responsibility?

I Analogy to Private Law Duty to Rescue

- Moral principle of beneficence as similar to a legal duty to rescue
- Legal duty to rescue is well-established (in theory) in many civil law jurisdictions
 - o Duties found in both civil and criminal codes
 - o Application of the duty is limited in practice
- Legal duty to rescue is generally rejected in common law jurisdictions
 - o Exceptions for special relationships found in tort law, contract law, statutes

Lesson from Private Law: the rejection of legal duty to rescue is mainly an issue of perception of the proper relationship between morals and law rather than being a practical application issue.

II Evidence of Obligations to Protect in International Law

- Law of Military Alliances
 - o NATO
- Environmental Law
 - o Precautionary Principle?
 - o Prior Informed Consent requirements
- Humanitarian Law
- Human Rights Law

III. Evidence of Obligations to Punish Non-Rescuers in International Law

- Law of Military Alliances
 - o UN Charter Article 48 (in cases of threats to peace and security)
- Environmental Law
 - o Intentional, long-term and severe environmental damage as within jurisdiction of ICC
 - o Exclusion from treaty regime for non-compliance in Basel Convention on Transboundary Movements of Hazardous Waste
- Human Rights
 - o Articles on State Responsibility, Art. 41 requiring states to cooperate to end violations of jus cogens

Trade Sanctions and Obligations to Rescue/Duties to Protect

- Obligations to Protect need to be enforceable
- Trade Sanctions provide a non-military means of enforcement
- If there is an obligation to punish, there may be an obligation to impose trade sanctions

Conclusion: *WTO needs to subject its rules on the use of trade sanctions to the needs of the international community to enforce duties of protection.*