

Sanctions Vis-à-Vis Corruption

Personal Analytical Review

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Introduction

Unilateral Coercive Measures have a serious negative impact on international cooperation for sustainable developments.

Economic sanctions imposed by one state against another state create corruption since normal and legal channels of procurement and financial transactions are interrupted and even blocked, therefore, inevitably the producers and recipients in both states have to circumvent the sanctions by choosing illegal channels. In this process, the intermediaries play roles which may get involved in money laundry.

Economic sanctions are a clear violation of the United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 on 31 October 2003.

The sanctions not only create corruption but prevent effective global fight against corruption. A short glance at some pertinent provisions of the convention proves my assertion.

Review of the relevant articles of the Convention against Corruption

A-Preamble:

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering.

B-Article 5. Preventive anti-corruption policies and practices

Para1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the

principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Para 4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption

C- Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

D- Article 14. Measures to prevent money-laundering

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures

may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain;

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

E- Article 16. Bribery of foreign public officials and officials of public international organizations

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

F- Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

G- Article 21. Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Conclusion

As stipulated in the above articles of the Convention, the sanctions have following direct negative consequences: they

- ❖ Contradict the fundamental principles of legal system as well as principles of the rule of law,
- ❖ Jeopardize the collaboration of states parties in promoting and developing the measures referred to combating corruption,
- ❖ Impede the establishment of an effective systems of procurement, based on transparency, competition and objective criteria in decision-making,
- ❖ Impede to regulate matters regarding the personnel responsible for procurement,
- ❖ Create obstacles on implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders and money laundering,
- ❖ Encourage bribery of foreign public officials, officials of public international organizations, and private sectors,
- ❖ Corrupt individuals by trading in influence and prevention of criminal offences, when committed intentionally due to involvement of foreign players,
- ❖ Prevent adoption of legislative and other measures to establish a criminal offence, when committed intentionally,

- ❖ Have serious humanitarian impact on the population especially the poor sector of the society of a targeted country, while proved of having negligible consequence for the rulers.

Recommendations:

I highly recommend prompt collective measures by all countries concerned, specifically those parties to this Convention on:

a-Public awareness on the consequence of violation of this Convention by sanctions and the fact that as envisaged in the preambular paragraph of this Convention, related to economic crime, sanctions are economic terrorism against nations.

b-Submission of a draft resolution at the next Conference of State Parties on non-compliance of state parties imposing unilateral coercive measures specifically sanctions on other state parties.

c-The United Nations General Assembly to adopt a resolution asking the Secretary General to submit a comprehensive report on “Humanitarian consequences of sanctions and coercive measures as well as violations of the United Nations Convention against Corruption in affected Member States.”