

ACADEMY OF ECONOMIC STUDIES OF BUCURESTI
Council for Doctoral Studies Doctoral School of Law

LEGAL SANCTION IN INTERNATIONAL LAW

ADRIAN A. COROBANĂ

PhD supervisor: PhD Prof. MIHAI BĂDESCU

Bucharest, 2025

SUMMARY

KEYWORDS: *legal sanction, international sanctions, retaliation, reprisals, countermeasures, non-recognition, nullity of treaties, termination or suspension of treaty, suspension of voting rights in the UN General Assembly, suspension of rights and privileges of UN members, exclusion from UN membership, sanctions for failure to comply with the judgments of the International Court of Justice, sanctions for failure to register treaties with the UN Secretariat, measures without the use of force under Article 41 of the UN Charter, unilateral international sanctions, multilateral international sanctions, sanctions in international criminal law.*

Starting from the observation of the existence of a doctrine that deals disparately with legal sanctions in public international law, this doctoral thesis aimed to carry out an integrative scientific research on legal sanctions in public international law, which would highlight and analyze the multitude of legal sanctions existing in this branch of law, thus distinguishing itself from most of the works in the specialized doctrine that mainly analyzes only restrictive measures adopted by the UN Security Council or unilaterally by states. Thus, in our opinion, there are many more legal sanctions in the system of public international law than those we find obsessively, perhaps, analyzed in the doctrine.

Throughout this paper, we have endeavored to demonstrate and find arguments in favor of the idea of a system of legal sanctions in public international law.

The work presents original elements, on the one hand, from the perspective of the integrative approach to legal sanctions, in this work being realized for the first time in the doctrine of public international law a systematic and detailed research of each type of legal sanction existing in the vast field of public international law, and on the other hand, from the perspective of the proposals of *lege ferenda* on the improvement of the system of international sanctions and the implementation of international sanctions in Romania, especially in terms of respect for fundamental human rights in the implementation of international sanctions.

CONTENTS

ABBREVIATIONS	9
INTRODUCTION.....	11
1. Motivation for choosing the theme.....	11
2. Research methodology	14
2.1. Research questions	15
2.2. Research methods.....	16
2.3. Research status	22
2.4. Results	27
I. THEORY OF LEGAL SANCTION.....	32
1.1. Legal sanction - terminology	32
1.2. Delimiting legal sanctions from other types of sanctions (moral, religious, social).....	38
1.3. The difference between legal sanction and punishment	42
1.4. The difference between legal sanction and coercion	46
1.5. The link between "social responsibility" - "legal liability" - "legal sanction"	47
1.6. Conclusions.....	50
II. LEGAL SANCTION IN INTERNATIONAL LAW	53
2.1. The particularities of international law as opposed to domestic law	53
2.2. Concept of legal liability in international law	58
2.2.1. Historical development of the legal concept of international liability.....	58
2.2.2. Acceptance of the concept of international legal responsibility in the current state of international law	69
2.2.3. Elements of international liability.....	73
2.3. Concept of international sanction.....	85
2.4. Classification of legal sanctions in international law	90
2.5. Conclusions.....	93
III. SANCTIONS SPECIFIC TO INTERNATIONAL LAW.....	96
3.1. Nullity of treaties	96
3.1.1. The sanctioning nature of the nullity of treaties	96
3.1.2. Seat of the case on nullity of treaties.....	98
3.1.3. Grounds for invalidity of treaties.....	100
3.1.3.1. Infringement of national law relating to the competence to conclude treaties	102
3.1.3.2. Infringement of a restriction on the competence to consent	106
3.1.3.3. Error.....	109

3.1.3.4.	Dolul	115
3.1.3.5.	Bribery of a state representative.....	118
3.1.3.6.	Coercion of a State representative	122
3.1.3.7.	Coercing the state by threat of force or use of force its.....	129
3.1.3.8.	Infringement of a rule of <i>jus cogens</i>	133
3.2.	Treaty termination or suspension.....	140
3.2.1.	Sanction character of termination or suspension of the treaty.....	140
3.2.2.	Seat of matter	142
3.2.3.	Conditions for applying the sanction.....	143
3.2.4.	The distinction between the termination or suspension of a treaty as a consequence of its breach and the refusal to perform a treaty.....	144
3.3.	Non-recognition (states, governments or other situations)	145
3.3.1.	<i>Ex factis jus oritur</i> - principle of international law.....	145
3.3.2.	Recognition - an institution of public international law.....	146
3.3.3.	Non-recognition - sanction for breach of rules of international law.....	150
3.3.4.	Infringement of <i>jus cogens</i> rules in the creation of the situation in respect of which recognition is sought obliges non-recognition as a sanction	153
3.4.	Sanctions in international organizations	154
3.5.	Conclusions.....	155
IV.	SANCTIONS UNDER THE CHARTER OF THE UNITED NATIONS	158
4.1.	Suspension of voting rights in the UN General Assembly	159
4.2.	Suspension of the rights and privileges of UN members.....	163
4.3.	Exclusion of UN members.....	167
4.4.	Sanctions for non-compliance with judgments of the International Court of Justice	170
4.5.	Sanctions for failure to register treaties with the UN Secretariat.....	172
4.6.	Measures without the use of force	175
4.6.1.	Measures based on Article 41 of the United Nations Charter	177
4.6.2.	Evolution of measures under Article 41 of the United Nations Charter.....	178
4.6.3.	Purpose of the sanctions adopted by the UN Security Council.....	188
4.6.4.	Content of measures subject to international sanctions UN.....	190
4.6.4.1.	Sanctions on individuals or entities	192
4.6.4.2.	Diplomatic sanctions.....	201
4.6.5.3.	Trade restrictions	219

4.6.5.4.	Transportation restrictions	228
4.6.5.5.	Sanctions on economic sectors	238
4.7.	Use of force under Art. 42 of the UN Charter	242
4.8.	Conclusions.....	243
V.	UNILATERAL AND MULTILATERAL SANCTIONS.....	248
5.1.	The twist	249
5.2.	Reprisals.....	251
5.3.	Countermeasures.....	260
5.4.	Characteristics of unilateral sanctions.....	273
5.5.	Multilateral sanctions	274
5.6.	Legality of unilateral and multilateral sanctions	277
5.7.	Case study: sanctions against the Russian Federation.....	285
5.8.	Conclusions.....	291
VI.	SANCTIONS IN INTERNATIONAL CRIMINAL LAW.....	293
6.1.	The individual - subject of liability under international law	295
6.2.	International crime	298
6.3.	Penalties under international criminal law	307
6.4.	Conclusions.....	314
VII.	IMPLEMENTATION OF INTERNATIONAL SANCTIONS IN ROMANIA	316
7.1.	Seat of the subject matter - main normative acts	317
7.2.	Categories of international sanctions	319
7.3.	Public authorities competent to impose international sanctions.....	324
7.4.	Legal acts issued to implement international sanctions	328
7.5.	Conclusions.....	329
	CONCLUSIONS AND PROPOSALS FOR LEGE FERENDA	340
	BIBLIOGRAPHY	369

Summary of the paper

All the research questions of this paper are answered in the course of this paper, organized in **eight chapters**: 1. Theory of legal sanction; 2. The concept of legal sanction in public international law; 3. Legal sanctions specific to public international law not provided for in the United Nations Charter; 4. Legal sanctions provided for in the Charter of the United Nations; 5. Unilateral and multilateral international sanctions; 6. Legal sanctions in international criminal law; 7. The legal regime of international sanctions in Romania; 8. Conclusions and lege ferenda proposals.

Since this paper deals with the subject of legal sanction in public international law, we considered it necessary, in the **first chapter of the paper**, to identify in the specialized literature and to outline **a general theory of legal sanction**, and in the subsequent chapters to investigate the particularities of this legal institution in the field of public international law. Thus, we consider that in order to be able to define and research the concept of sanction in public international law in a judicious manner, our entire research must start from the way in which this legal institution of colossal importance, the legal sanction, is described by the general theory of law.

Thus, in the first chapter, starting from the terminological aspects, we sought to answer the question *"What is legal sanction?"*, investigating how legal sanction is distinguished from other types of sanctions (moral, religious, social), the differences between legal sanction and punishment, between coercion and legal sanction, as well as the link between the concepts of social responsibility, legal responsibility and legal sanction.

Starting from this theory of legal sanction that we have outlined from the perspective of the general theory of law, in the **second chapter** we tried to analyze how the legal institution of legal sanction metamorphoses according to the particularities of international law in relation to domestic law. Thus, our analysis in the second chapter sought answer questions, such as *"What is international legal sanction?"*, *"What are the rules of international responsibility?"*, *"Is there international responsibility of States?"*, *"Is there international responsibility of States?"*, *"Is there international liability of international organizations?"*, *"Is there international liability of individuals?"*, *"Do the characteristics of public international law allow the existence of legal sanctions specific to the field of international law?"*, *"What are the*

The particularities of legal sanctions in public international law", "Are there other legal sanctions than so-called international economic sanctions?".

Starting from an analysis of the particularities of public international law in relation to domestic law, through a survey of the concept of international responsibility, the **second chapter provides a definition of international legal sanction**, as well as **a classification of international legal sanctions** from our perspective.

This categorization of international legal sanctions into sanctions specific to public international law not provided for in the UN Charter, sanctions provided for in the United Nations Charter, unilateral and multilateral sanctions, and sanctions under international criminal law, will constitute the framework on which we will build the following chapters of the paper, developing in each chapter one of the four categories of international sanctions that we have identified.

Thus, in the **third chapter of the paper** we will deal with **sanctions specific to public international law not provided for in the United Nations Charter**. These are international legal sanctions which, because of the specific features of public international law, are to be found only in this area of law, which is governed by sources of international law other than the United Nations Charter. They include the nullity of treaties, the termination or suspension of treaties, non-recognition (of states, governments or other situations) and sanctions in international organizations provided for in their founding documents. Throughout the chapter, we have analyzed each of these international sanctions, which legal doctrine treats separately, as distinct subjects of research, with no obvious connection to the field of legal sanction. Therefore, it has been our task to identify those **features of the legal sanction that are applicable to each of them**, so that we can prove their character of international legal sanction, this being **one of the main personal contributions to the research of legal sanction in public international law**.

In the **fourth chapter**, we have identified and analyzed the **international legal sanctions** that have their seat of matter in the **main international document, the United Nations Charter**. Thus, our research in this chapter focused on the conditions for the adoption of these legal sanctions: the suspension of voting rights in the UN General Assembly (Art. 19 of the UN Charter), the suspension of the rights and privileges of UN members (Art. 5 of the UN Charter), the expulsion of members (Art. 6 of the UN Charter), sanctions for non-compliance with the judgments of the International Court of Justice (Art. 94 of the Charter),

sanctions for failure to register treaties with the UN Secretariat (Article 102 of the UN Charter), measures without the use of force (Article 41 of the UN Charter).

A good part of the third chapter is the analysis of non-force measures, i.e. what legal doctrine calls "international sanctions". Thus, international sanctions adopted by the UN SC under Article 41 of the UN Charter constitute a category of legal sanction in public international law. As we have shown in the chapeau of the chapter, although the term sanction is not mentioned in the UN Charter, we cannot conclude that these measures are not considered to be international sanctions, as long as the UNSC expressly uses the notion of sanctions in its resolutions, and as long as in accordance Art. 30 of the UN Charter, the Security Council has established its own rules of procedure entitled "*UN Security Council Provisional Rules of Procedure*" adopted and last amended in 1983.

Our research on the international sanctions adopted by the UN SC under Art. 41 of the UN Charter starts by analyzing the evolution of the measures adopted over time, identifying the stages and stages transformation of these sanctions, and then a good part of the chapter focuses on the content of the measures subject to UN international sanctions. The chapter then analyzes the content of the measures covered by each category of UN international sanctions (sanctions on individuals or entities, diplomatic sanctions, arms embargoes, trade restrictions, transport restrictions, sanctions on basic economic sectors).

The fifth chapter deals with **unilateral and multilateral sanctions**. Whereas the literature operates with a multitude of notions that to some extent circumscribe the modern idea of international sanction: international restrictive measures, retaliation, reprisals, countermeasures, unilateral sanctions, embargo, economic blockade, boycott, economic war, economic weapon, economic coercion, aggression, targeted sanctions, smart sanctions, blocking of funds and economic resources, trade restrictions, travel restrictions, transportation restrictions, diplomatic sanctions, cultural sanctions, sports sanctions, sanctions in technical and scientific fields, etc.a., we felt that it was necessary to clarify the terminology relating to unilateral or multilateral sanctions.

Unilateral sanctions are those measures taken by a single state, in accordance with its own foreign policy strategies, without being imposed by the UN or another international organization. They differ from multilateral sanctions in terms of the number of states joining in the adoption and implementation of measures taken against another subject of public international law. As can easily be guessed, unilateral sanctions are taken by a single State, whereas multilateral sanctions are adopted by a group of several States.

Despite the above easy definitions, there are quite a number of terminological issues in the literature that require some clarification. Therefore, in this chapter, we have tried to clarify whether unilateral or multilateral sanctions are retaliation, countermeasures, coercive or restrictive measures.

The main personal contribution to this chapter **is the definition** provided **countermeasures** by incorporating all their features.

The fifth chapter also examines the extent to which retaliation, reprisals or countermeasures are consistent with public international law.

The sixth chapter of the book offers an insight into **the newest type of legal sanction** to emerge in the doctrine and practice of public international law: **punishments under international criminal law**, as a branch of public international law.

After 1945, the transformations of the international community inevitably gave rise to the transformation of public international law, in particular its development and specialization through the phenomenon of the division of international legal norms into various branches of public international law. Each of these fields has its own legal institutions and its own specialized legal rules, as is the case of international criminal law, which operates with a particular species of legal sanction, namely punishment in the criminal field.

Therefore, in this chapter, we have considered it necessary that our analysis should take as its starting point **the investigation of how the natural person can be subject to liability under international law**. What is also important to note in this section of the research is that states, as an abstract legal construct, express their will and carry out activities through individuals who represent them and act on their behalf, even though for a long time, until the beginning of the twentieth century, it was considered that the individual bears no liability for acts performed on behalf of the state.

Gradually, however, the international responsibility of individuals gained ground as the acts they committed in the name of states became increasingly heinous, culminating in the 1946 judgment of the International Military Tribunal at Nuremberg.

we have shown at length Chapter Six, the international liability of the individual is a criminal liability, which will entail a certain type of legal sanctions on the individual.

Once the possibility of international liability of the individual was established, our research continued with the analysis of the notion of international crime, in order to identify what type of conduct may entail international criminal liability of the individual.

As expected, the sixth chapter finally analyzes the sanctions provided for by international criminal law and the conditions under which they apply, identifying as the main sanction imprisonment, which, depending on the gravity of the crime and the personal circumstances of the convicted person, can be for up to 30 years or life imprisonment. The other measures under international criminal law are fines, but these can only accompany imprisonment.

Since in order to ensure the efficiency and effectiveness of international sanctions, they must be implemented by states, we considered that our analysis cannot bypass the legal regime of the implementation of international sanctions in Romania. Therefore, the **seventh chapter of the paper** analyzes the main normative acts in Romania regarding the implementation of international sanctions in Romania.

This chapter represents one of our **most important personal contributions** on the subject, as it provides a critical analysis of the provisions of the Government Ordinance 202/2008, the main normative act regulating the field of implementation of international sanctions in Romania.

A good part of the problems identified in this normative act will be solved in the last part of the paper, where we will present the **conclusions of the research** and we will contribute with ***lege ferenda* proposals** to improve the system of international sanctions and the implementation of international sanctions in Romania, especially from the perspective of respect for fundamental human rights in the implementation of international sanctions.