



Course program and reading list

Semester 2 Year 2024

School: Harry Radzyner Law School LL.B.

Legal Dimensions of U.S. National Security Based Economic and Trade

Lecturer:

Adv. Joel Slawotsky jslawotsky@runi.ac.il

Course No.:	Course Type :	Weekly Hours :	Credit:
4420	Elective	1	1

Course Requirements :	Group Code :	Language:
Final Paper	241442000	English



Course Description

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Economic and trade sanctions have been increasingly invoked by the United States and endeavor to block access to U.S. banks or capital markets; global payments; freeze assets; or impose trade restrictions. This course will explore the mechanisms and legal issues surrounding the imposition of U.S. sanctions which include: the justification of national security as a basis for imposing sanctions; U.S. Presidential Executive Orders; ramifications on international economic law arising from the expansion of defining national security; the legality of sanctions under U.S. law/domestic legal challenges; and international law issues. This course will provide students will deep knowledge about economic and trade sanctions as well as the mechanisms used to levy the sanctions. Students will also gain an understanding of forces and trends impacting sanctions imposition including the China-U.S. competition, rising economic nationalism, and re-routing supply chains/potential de-globalization. This course will be of interest to individuals interested in law, geo-economics, international economic law, and digitalization.



Course Goals

Learning Outcomes

By the end of the course, students will: (1) have a firm understanding of the current global economic governance architecture and the global role of the U.S. Dollar which enables U.S. Dollar weaponization and sanctions imposition; (2) learn how the U.S. sanctions regime works in practice – sanctions empowered by the International Emergency Economic Powers Act (“IEEPA”) and the SDN List, Entity List, and export controls; (3) analyze the connection of sanctions to national security and how the conceptualization of national security has expanded; (4) analyze exemplars of sanctions imposition employed in recent years; (5) be able to identify potential international legal issues and domestic U.S. legal objections to sanctions; and (6) comprehend the potential significance of Central Bank Digital Currencies on future economic and trade sanctions.



Grading

100% Essay



Teaching Assistant

Ria Gilboa - ria.gilboa@runi.ac.il



Reading List

Dear Students,

Here is the syllabus. Please note that the articles do not need to be read in their entirety, I have written the specific pages in each article to be read. There are articles that are either freely available on the internet (links provided below) or available on the Library databases (Oxford Journals, Taylor/Francis, HeinOnline) if there is any difficulty in locating an article just let me know. There is also a paper I wrote forthcoming in a few months in the Journal of Corporation Law and I will send a draft copy before class starts along with the pages to read.

Joel

Legal Dimensions of U.S. National Security Based Economic and Trade Sanctions Reichman University, Spring 2024 Joel Slawotsky

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Teaching methods

Each lecture will be based on the readings and supplemented by any current developments either shown in class or sent to the course site. The readings will form the basis of knowledge to understand the topics for each class and will consist mostly of journal articles published in peer-reviewed CSCI, SSCI, or ESCI journals, as well as highly ranked U.S. student-edited journals. New relevant current events developments may also be assigned and/or discussed. While I will provide the salient points in the lecture, it is my teaching philosophy to encourage vigorous classroom participation. This helps ensure students comprehended the reading material and allows them to raise questions and engage in exchanging and defending their views with classmates. Doing so helps strengthen critical thinking and skills that are crucial in representing clients (i.e., analyzing legal claims and defenses).

Questions

I will be available to answer all questions during class and will remain available after class as well.

You can also email me at jslawotsky@runi.ac.il and I will be happy to answer questions. You can ask me before the course as well if you have any questions.

Prerequisites

None

Final Exam

The final exam will consist of an essay question and you will have 4 weeks from the last class to upload. The exam should be an essay of approximately 1000 words but there is no exact minimum or maximum.

Detailed Course Schedule

This syllabus is ambitious and is subject to modification based on the flow of the course.

Class One May 5

Topics: The Current Global Financial and Economic Architecture

How Do U.S. Sanctions Work?

Examples of IEEPA Sanctions

Introduction to the existing U.S. Dollar centric global financial and economic architecture that encompasses international economic and trade governance institutions. By dominating international payments, wielding the largest economy, and possessing the principal global reserve currency, the U.S. Dollar system vests superlative benefits to the U.S. and is the key to understanding the "exorbitant privilege" to employ U.S. Dollar sanctions (and exercise extraterritorial jurisdiction). We will focus and discuss the following sub-topics: Bretton-Woods; International Monetary Fund; World Bank; World Trade Organization; U.S. Dollar Centric Order; trade conducted primarily in U.S. Dollars; extraterritorial jurisdiction based on accessing U.S. financial institutions; SWIFT; and Central Bank Reserves. This serves to provide the overall context of the mechanics of sanctions deployment.

Sanctions can be imposed unilaterally (one nation imposing), or multilaterally (more than one nation imposing), and endeavor to punish (or change the conduct of) a sovereign, businesses or entity, or person for its (their) conduct by diminishing access to the international financial system or imposing trade restrictions. We will focus on unilateral U.S. economic and trade sanctions and learn about U.S. Presidential Executive Orders and the International Emergency Economic Powers Act ("IEEPA") and how various parts of the Executive Branch then implement the Executive Order. We will learn about the U.S. Treasury's SDN List, export controls, etc. We will also go beyond the mechanics and look at some of the ideological (or geo-political) basis such as the U.S. attempt to use sanctions as a replacement for war.

Readings for this Session

Joel Slawotsky, [US Financial Hegemony: The Digital Yuan and Risks of Dollar De-Weaponization](https://ir.lawnet.fordham.edu/ilj/vol44/iss1/4/), <https://ir.lawnet.fordham.edu/ilj/vol44/iss1/4/>

Click on PDF option, pages 53-81 (Part II of the article).

Joel Slawotsky, Digital currencies and great power rivalry: China as a disseminator in the

digital age, 30 Asia Pacific Law Review 242 (2022) (SSCI) (available on Taylor/Francis database, pages 246–249 (Part II A and B)).

Executive Order on Imposing Sanctions on Certain Persons with Respect to the Humanitarian and Human Rights Crisis in Ethiopia, at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/17/executive-order-on-imposing-sanctions-on-certain-persons-with-respect-to-the-humanitarian-and-humanrights-crisis-in-ethiopia/> (September 17, 2021).

Executive Order 13936, The President's Executive Order on Hong Kong Normalization, at <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kongnormalization> (July 14, 2020).

Class Two May 8

Topics: The Classic Understanding of National Security in International Economic Law
Re-Conceptualizing National Security in an Age of Great Power Competition and Emerging Technologies: The U.S. Expansion

Sanctions are often grounded on responses to national security threats; understanding how security is conceptualized is therefore important. Classically, in the post-World War Two era, national security in investment and trade was conceptualized in terms of defense against military invasion or attack, terrorism, threats to territorial integrity, international emergencies, and possibly extendable to catastrophic economic crisis if sufficiently severe that potentially the crisis could cause a breakdown in State authority. The exception was generally understood as a somewhat sensitive concept requiring balance – vesting sovereigns with their inherent right of self-defense but also understood as potentially abusive if weaponized, which would potentially impede investment and trade. Procedurally, invoking the security exception was framed as legitimate if “necessary” to defend security often drawing on customary international law’s understanding of self-defense. However, emerging technologies arguably expand the specter of threats beyond the military context and furthermore, render “necessity” obsolete. Until recently, the security exception was relatively rarely invoked or litigated (the Argentinian rulings being an exception). Yet, recent rulings have corroborated the framing of security as an international emergency, or manifestation of military defense, or a severe instability engulfing or surrounding the invoking State, as opposed to other types of general threats or crisis. We will explore these rulings and the historic conceptualization of national security in international economic law.

The understanding of U.S. national security has expanded to encompass a broad array of economic, technological, and ideological threats. There is currently an intensive economic (and technological as well as ideological) competition between China and the U.S. The nominal GDP of the U.S. remains the biggest but China is catching-up. Indeed, on a Purchasing Power Parity basis, China’s GDP is already the largest. China’s military build-up, increasing nuclear and hypersonic capabilities, and the potential use of civil-military fusion is part of U.S. security concerns. China is also endeavoring to internationalize the use of the Yuan to erode the U.S. Dollar’s role in the global economy. Reports of a Chinese military base in Cuba also contribute to U.S. concern over China.

How does the intensive competition affect national security based economic and trade sanctions? U.S. expansion in understanding security reflects three developments. One, defending security is now understood far beyond the classical notion of territorial integrity or military conflict and encompasses economic, technological, and ideological power spheres. Two, security is also now understood as retaining dominance or superiority in those spheres of power. Three, most recently, security is ostensibly conceptualized as eliminating a competitor's capabilities to compete. Linking human rights, domestic governance, and advanced chip capacity to security threats reflect the expansion. We will focus on recent sanctions based on the new conceptualization of national security and compare sanctions based upon the IEEPA with the classic definition of security. The impact of emerging technologies on "necessary measures" will also be explored.

In addition, the introduction of CBDCs is transformative – data collection, the possibility of freezing wallets, targeted spending, and the possibility of direct accounts with central banks are all potential outcomes of CBDCs. Moreover, CBDCs might make sanctions either easier or harder to impose if for example a Chinese CBDC is successful and accepted for payments globally or regionally. Students will learn about and discuss the following: what are CBDCs (differences between CBDCs, Stable Coins, and other virtual coins); digitalization of economies (AI and data); and the potential impacts on economic and trade sanctions. The U.S. perceives a successful Chinese CBDC that is used outside of China as a threat since the centrality of the U.S. Dollar would be eroded reducing the U.S. (a) ability to impose sanctions and (b) the reach of U.S. enforcement agencies (i.e., extraterritorial jurisdiction).

Readings for this Session

Joel Slawotsky, Crossing the Rubicon: Conceptualizing National Security to Vanquish Competition, 2023(2) Law Science (CSSCI) (available on Hein Online) pages 70–74, page 78 starting from Part II to page 93 Part III.

Joel Slawotsky, The National Security Exception: Lessons from Delaware Corporate Law, 6 Chinese Journal of Comparative Law 228 (2018) (ESCI) (open access on journal site) (Editor's Choice) <https://academic.oup.com/cjcl/article/6/2/228/5265145> Click on PDF option, pages 229–235.

Joel Slawotsky, The Fusion of Ideology, Technology and Economic Power: Implications of the Emerging New United States National Security Conceptualization, (SSCI) <https://academic.oup.com/chinesejil/article/20/1/3/6277710?login=true>

(Editor's Choice) <https://academic.oup.com/chinesejil/article/20/1/3/6277710> Click on PDF option, pages 3–49

Joel Slawotsky, The Weaponization of Human Rights in Global Trade, 56 Journal of World Trade 547 (2022) (SSCI) (available on Kluwer or copy will be provided), pages 549–560.

Joel Slawotsky, Digital currencies and great power rivalry: China as a disseminator in the digital age, 30 Asia Pacific Law Review 242 (2022) (SSCI) (available on Taylor/Francis database) pages 250–263.

Class Three May 12

Topic A: International Law and Unilateral Sanctions

This week's topic will explore potential international legal issues linked to unilateral sanctions.

Reading Material:

A Unilateral sanctions violate international law

Sienho Yee, Unilateral Sanctions: Kind and Degree; Long-arm and Strong-arm Jurisdiction; Real Intent and "Could-be" Intent, 20 Chinese Journal of International Law 817 (2021) <https://academic.oup.com/chinesejil/article/20/4/817/6513414>

B Unilateral sanctions do not violate international law

One, multilateral sanctions have been "approved"; the United Nations Charter authorizes the Security Council to impose *multilateral* economic sanctions in order to preserve the peace and security of the international system. See art. 41 ("The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.") (emphasis added); see also art. 39 ("The Security Council shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 43 to maintain or restore international peace and security.").

Two, customary international law does not bar the United States from using economic coercion to promote human rights. Customary international law does not place any restrictions on a state's right to trade with another state. See Sarah H. Cleveland, Norm Internalization and U.S. Economic Sanctions, 26 YALE J. INT'L L. 1, 52–56 (2001) (documenting arguments that unilateral sanctions are consistent with customary international law).

Three, the customary international law principle of nonintervention does not apply because economic coercion falls short of the forcible or dictatorial standard. While the United Nations Charter recognizes the principle of state sovereignty, Article 2(7) is limited to actions by the United Nations—not by its individual member states. Likewise, Article 2(4) bars the unilateral "threat or use of force," not the unilateral imposition of non-forcible economic sanctions.

See, e.g., Sarah H. Cleveland, Norm Internalization and U.S. Economic Sanctions, 26 YALE J.

INT'L L. 1, 53 (2001)("[E]very nation has a right to choose whether she will or will not trade with another, and on what conditions she is willing to do it; if one nation has for a time permitted another to come and trade in the country, she is at liberty, whenever she thinks proper, to prohibit that commerce—to restrain it—to subject it to certain regulations; and the people who before carried it on cannot complain of injustice." (citing EMER DE VATTEL, THE LAW OF NATIONS, bk. I, ch. VIII, § 94 (Chitty ed., 1866) (1758))).

Topic B: Are U.S. corporations national security assets? Do U.S. corporations have a role to play in sanctions enforcement?

Joel Slawotsky, National Security and U.S. Corporate Director Oversight Obligations 49 *Journal of Corporation Law* ___ (2024) (copy will be provided)

Class Four May 15

Topic: Potential legal issues in litigating national security based measures and sanctions: harm to good faith, economic disparagement, and U.S. domestic challenges

What is "national security" in an age of competition? Is economic *superiority* the same as economic security? Are tariffs imposed by the U.S. against allies really about national security? Are sanctions just an excuse for economic nationalism? The emerging re-conceptualization of security in international economic law is a slippery slope. Taking the new conceptualization of security to its logical conclusion, any exports from China, or any commercial relations with her, any activity potentially advantageous to China, can be understood as potential national security threats. Excessive expansion of national security risks harm to the principle of good faith which comprises a critical core principle of international law and order, as well as economic disparagement, i.e., interfering with China's commercial relations.

For example, is TikTok a threat to U.S. national security? How does a restriction comport with Free Speech? Another area of potential challenge (both at the domestic level and international context) is the Western response to the Russian invasion of Ukraine. The U.S. has frozen Russian sovereign assets and various nations are contemplating expropriating Russian assets to help pay for Ukrainian re-construction. To the extent that domestic law is involved, questions regarding the confiscation of assets owned by aliens raise potential Fifth Amendment Takings and Due Process Clauses issues. We will explore these issues and responses to such arguments.

Readings for this Session

Joel Slawotsky, Crossing The Rubicon: Conceptualizing National Security To Vanquish Competition, 2023(2) *Law Science* 69 (CSSCI) (available on Hein Online) page 93 starting with Part III to page 107

Governor Gianforte Bans TikTok in Montana, https://news.mt.gov/Governors-Office/Governor_Gianforte_Bans_TikTok_in_Montana May 17, 2023 ("To protect Montanans' personal, private, and sensitive data and information from intelligence gathering by the Chinese Communist Party.").

[https://storage.courtlistener.com/recap/gov.uscourts.mtd.73544/
gov.uscourts.mtd.73544.115.0_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mtd.73544/gov.uscourts.mtd.73544.115.0_1.pdf)

[https://www.state.gov/wp-content/uploads/2023/10/HOW-THE-PEOPLES-REPUBLIC-OF-
CHINA-SEEKS-TO-RESHAPE-THE-GLOBAL-INFORMATION-ENVIRONMENT_508.pdf](https://www.state.gov/wp-content/uploads/2023/10/HOW-THE-PEOPLES-REPUBLIC-OF-CHINA-SEEKS-TO-RESHAPE-THE-GLOBAL-INFORMATION-ENVIRONMENT_508.pdf)