



Degree program in Politics: Philosophy and Economics

Department of Political Science

Chair of International Law

***The Legality of EU Sanctions Against Russia: Third-Party Countermeasures and International Law***

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*Academic year: 2024/2025*

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## **Introduction**

Russia's invasion of Ukraine in February 2022 triggered Europe's most serious armed conflict since World War II. Other geostrategic areas of the world have also witnessed a fundamental discussion questioning international legal principles on how to respond to grave violations of international law. In response, the European Union imposed tough and complex sanctions on Russia, along with other Western players. Among these steps are politically motivated, targeted sanctions against individuals of Russia's elite, the military-industrial complex, and key sectors of the economy, such as finance and energy. Unlike previous EU sanctions agreed upon by the UN Security Council, these legally unprecedented consequences stem from a lack of a UN Security Council mandate, which is hampered primarily by Russia's veto power as a permanent member.

Their introduction has spurred renewed debate over whether nations or regional bodies that are not immediately harmed by an internationally illegal act have the authority to adopt coercive measures in response to such law violations. The creation of this extremely complex legal problem is the result of state sovereignty, the use of force, the authority of the United Nations Security Council over international peace and security, and the most fundamental elements of the world's legal order: aggression, human rights, and the supreme rule of international law. The concept of "third-party countermeasures" exacerbates the conflict. Countermeasures can only be taken by countries that have been directly harmed, according to customary international law; however, some experts believe that if a global obligation is violated, other countries or regional organizations can also take countermeasures even if they haven't been directly harmed.

In light of this new understanding, the European Union justifies its sanctions strategy against Russia. The EU has adopted these measures in response to Russia's violations of Ukraine's sovereignty and territorial integrity, which constitute *erga omnes* breaches of international law. Furthermore, these sanctions serve not only as acts of solidarity with Ukraine but also as a collective effort within the EU to uphold an international order centered on respect for Ukraine's territorial integrity, aiming to reduce the tolerance for aggressor states and thereby preserve global peace and stability. However, from a strictly legal standpoint, this position remains relatively weak, despite its strong moral and political appeal to public opinion. International law currently lacks clear and explicit

provisions authorizing unilateral state action in such contexts. Consequently, countermeasures taken by states not directly injured—based on their erga omnes obligations—operate in a legal grey area, often relying on an assumed, though unwritten, sovereign authority.

This thesis looks at whether the European Union's trade restrictions on Russia are allowed based on legal rules about third-party responses and international law regarding state responsibility. It aims to find out if the EU's sanctions are acceptable under certain conditions and if they are a common practice in international law regarding the sanctions placed on Russia. The main question of this research is whether the EU's sanctions against Russia, which were applied without the EU being directly harmed and without approval from the Security Council, are considered valid international responses according to current legal standards. The thesis aims to determine the circumstances under which the EU's sanctions are permissible, if at all, and whether they constitute a usual practice in international law regarding the sanctions imposed on Russia.

In response to the question, the thesis outlines numerous closely related objectives. First, the paper examines EU and international law to establish internal and external legal foundations for the execution of the EU's limited sanctions against Russia. Second, it focuses on the purpose of the Articles on States' Responsibility for Internationally Wrongful Acts (ARSIWA), especially Article 54, to study the reasons and key debated ideas about countermeasures in international law. Third, it looks into how states and international organizations behave in similar situations, such as apartheid in South Africa or human rights violations in Iran, Venezuela, and North Korea. Finally, it looks at the current EU sanctions against Russia and their potential role in developing a customary permissive rule of collective countermeasures for significant infractions of erga omnes standards. The thesis's organization reflects these goals.

Chapter 1 examines the political and legal context of the EU's sanctions policy. It begins by recounting the antecedents of the most recent conflict, from the 2014 annexation of Crimea to the 2022 full-scale invasion, and then moves on to the EU's response—describing the type and scope of the sanctions, as well as their objectives—and closely examines the legal basis of such acts under EU and international law. The execution of

Article 215 of the Treaty on the Functioning of the European Union (TFEU) and the Common Foreign and Security Policy (CFSP) are of particular importance.

Chapter 2 delves into the theoretical foundations of countermeasures in international law. It begins by defining the problem of countermeasures and their most typical applications within the legal system of state responsibility. The chapter continues to distinguish between contentious collective or third-party responses and bilateral countermeasures (taken by directly aggrieved states). ARSIWA sections, particularly Articles 49 to 54, are under scrutiny, as are the doctrinal issues surrounding their interpretation. Significant jurisprudence opinions from the International Court of Justice (ICJ) have been examined to determine the scope of third-party interference in the performance of erga omnes responsibilities. Two examples include the Gabčíkovo-Nagymaros Project and Barcelona Traction.

The third chapter explores the empirical and philosophical aspects of state practice. First, it examines previous cases of exogenous sanctions, such as those imposed on South Africa in the 1980s, and evaluates their legal reasons and acceptance in international forums. It then examines the EU's sanctions on Russia as an example of shifting collective countermeasure legal principles. The actions of other states, especially those in the Global South, and some legal conflicts in international institutions like the WTO are closely monitored. The chapter ends by looking at whether more countries are starting to accept unilateral state third-party countermeasures as legal responses to violations of obligations that affect everyone. The international legal system is always being tested, and with escalating geopolitical conflicts and weakening multilateralism, strategically aggressive actions become crucial.

This thesis seeks to provide a solution to the legitimacy of third-party countermeasures by examining how political legal practices interact. The thesis aims to explain current legal practices and investigate if global actions are moving towards creating a new standard that helps respond to serious violations of important international responsibilities. Therefore, the European Union's sanctions against Russia provide the framework for the solution.

# **The Political and Legal Framework of EU Sanctions Against Russia**

## **1.1 The Context: The War in Ukraine and the EU's Response**

In February 2014, Ukraine became the epicentre of a geopolitical crisis that would shape the security landscape of Eastern Europe for the following decade. The crisis emerged from the Euromaidan protests, a mass movement advocating closer integration with the European Union (EU) and denouncing government corruption<sup>1</sup>. These demonstrations culminated in the ousting of Ukraine's pro-Russian President, Viktor Yanukovich<sup>2</sup>. In the ensuing power vacuum, Russia exploited the political instability to orchestrate a covert military intervention in Crimea. Unidentified armed personnel—later confirmed to be Russian forces—took control of key strategic sites, including airports, government institutions, and military bases. This operation led to a controversial referendum on March 16, 2014, held under substantial Russian military presence, in which an overwhelming majority allegedly voted in favour of Crimea's annexation to Russia<sup>3</sup>. On March 18, 2014, Russia formally incorporated Crimea, a move that was widely condemned by the international community as a violation of international law and Ukraine's territorial sovereignty.

The annexation of Crimea marked a turning point in Russia's relations with the West, setting the stage for a prolonged confrontation. The crisis soon extended to Eastern Ukraine, where pro-Russian separatist movements—reportedly supported and armed by Moscow—declared independence in the Donetsk and Luhansk regions<sup>4</sup>. This led to an armed conflict that persisted despite multiple diplomatic initiatives, including the Minsk

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<sup>1</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022).

<sup>2</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>3</sup> Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008).

<sup>4</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

Agreements, aimed at de-escalation. However, these agreements failed to bring lasting stability, and sporadic clashes continued to destabilize the region.

The situation escalated dramatically on February 24, 2022, when Russia launched a full-scale military invasion of Ukraine, transforming an already volatile situation into the most significant armed conflict in Europe since World War II. In a televised address, Russian President Vladimir Putin announced the initiation of what he termed a "special military operation," citing the need to protect Russian-speaking populations and to "denazify" Ukraine—claims that have been widely challenged by international analysts as strategic justifications for military expansion<sup>5</sup>. Russian forces advanced from multiple fronts, including Belarus in the north, the occupied eastern territories, and Crimea in the south<sup>6</sup>. The initial objective appeared to be the rapid seizure of Kyiv and the removal of President Volodymyr Zelenskyy's government.

However, the invasion did not proceed as anticipated. Fierce Ukrainian resistance, bolstered by extensive civilian mobilization and immediate international support, thwarted Russia's advance on Kyiv, forcing its forces to withdraw from the northern front by April 2022. Nevertheless, in the east and south, Russian troops consolidated their control over significant portions of Ukrainian territory. By 2024, estimates suggested that approximately 20% of Ukraine remained under Russian occupation, encompassing substantial areas of the Donbas region and the land corridor linking Crimea to mainland Russia<sup>7</sup>.

Russia's actions were not isolated incidents of territorial expansion but rather manifestations of broader geopolitical objectives. The Russian leadership has consistently regarded Ukraine as part of its historical sphere of influence, and the country's increasing alignment with the EU and its aspirations toward NATO membership were perceived in Moscow as direct challenges to Russian strategic interests<sup>8</sup>. The annexation of Crimea

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<sup>5</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>6</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>7</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>8</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

and the subsequent invasion reflected a combination of expansionist policy, efforts to reassert dominance over former Soviet territories, and an overarching ambition to reshape the post-Cold War European security order. These actions have significantly undermined international law, with repercussions extending beyond Ukraine's borders, posing serious implications for global security and stability.

### **The EU's Response: Sanctions and Diplomatic Pressure**

In reaction to Russia's aggression, the EU emerged as a central actor in coordinating the international response. Recognizing both the legal imperative and strategic necessity of countering Russian expansionism, the EU implemented a comprehensive sanctions regime aimed at exerting economic and political pressure on Moscow. The first wave of sanctions was imposed in 2014 following the annexation of Crimea and was significantly expanded in response to the 2022 invasion. The measures taken against Russia constitute the most extensive set of sanctions the EU has ever enacted against a third country<sup>9</sup>.

The EU's sanctions policy is underpinned by several strategic objectives. Primarily, sanctions serve as a deterrent, designed to impose significant economic and political costs on Russia to discourage further military aggression and destabilizing activities not only in Ukraine but across Eastern Europe. They also reinforce the principle that violations of international law, particularly breaches of territorial sovereignty, will incur tangible repercussions.

Another fundamental objective is the restoration of Ukrainian sovereignty. The sanctions aim to pressure Russia into respecting Ukraine's internationally recognized borders and reversing its unlawful territorial acquisitions. Given the ongoing occupation of Crimea and parts of Eastern Ukraine, the EU seeks to leverage economic and diplomatic isolation as tools to bring Moscow to the negotiating table under terms that align with international legal norms<sup>10</sup>.

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<sup>9</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* (2020).

<sup>10</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

Equally significant is the EU's broader commitment to upholding the rules-based international order. The post-World War II framework has been largely predicated on the principles of state sovereignty and non-aggression. By adopting a firm stance against Russia's actions, the EU reinforces its role as a key defender of these principles, sending a clear signal that similar acts of expansionism will not go unchallenged. Furthermore, this approach conveys a warning to other potential aggressors that violations of international law will be met with unified and robust countermeasure.

Beyond geopolitical considerations, the EU's sanctions strategy is closely tied to the imperative of maintaining European security and stability. The destabilization of Ukraine has direct consequences for the broader European continent, raising concerns about wider conflict, energy security, migration flows, and economic disruptions. By countering Russian aggression, the EU seeks to mitigate these risks and ensure the protection of its member states<sup>11</sup>.

### **International Coordination: The Role of Global Institutions**

The EU's response to the invasion of Ukraine has been part of a broader, multilateral effort involving key international organizations. The United Nations (UN) has served as a primary forum for global diplomatic efforts to address the crisis. In March 2022, during an emergency special session, the UN General Assembly passed a resolution demanding that Russia cease its military actions and withdraw its forces from Ukraine. Although the resolution was non-binding, it received support from 141 member states, reflecting a strong international consensus in condemning Russian aggression<sup>12</sup>.

Simultaneously, the Group of Seven (G7) nations played a critical role in shaping the economic response. Coordinated sanctions targeted key sectors of the Russian economy, including finance, energy, and defence industries. These measures included freezing Russian assets, restricting major banks' access to the SWIFT payment system, and imposing embargoes on energy exports. In parallel, the G7 pledged substantial financial

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<sup>11</sup> José García Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28 (2023).

<sup>12</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

assistance to Ukraine, aimed at stabilizing its economy, rebuilding infrastructure, and strengthening its defence capabilities<sup>13</sup>.

The North Atlantic Treaty Organization (NATO) also reinforced its role in ensuring European security. Although NATO did not engage directly in the conflict, it significantly enhanced its military presence along its eastern flank. Member states bordering Ukraine and Russia witnessed increased deployments of NATO troops and military equipment, bolstering deterrence and collective security measures. Moreover, NATO facilitated the transfer of military aid from member states to Ukraine, including advanced weaponry, intelligence support, and logistical assistance<sup>14</sup>.

Taken together, these actions form a comprehensive strategy combining economic sanctions, military support, and diplomatic initiatives. This coordinated international response aims not only to deter further Russian aggression but also to uphold the sovereignty of Ukraine and reinforce the foundational principles of international law. In doing so, global institutions seek to contain the conflict and prevent its escalation into a broader regional or global crisis<sup>15</sup>.

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## 1.2 EU Sanctions: Nature, Scope, and Objectives

The European Union (EU) has played a pivotal role in coordinating international sanctions against Russia following its annexation of Crimea in 2014 and, later, its full-scale invasion of Ukraine in 2022. These sanctions, unprecedented in both scale and scope, were designed to impose sustained economic and political pressure on Russia with the objectives of deterring further military aggression, upholding Ukraine's sovereignty, and reinforcing the principles of international law<sup>16</sup>. While previous EU sanction regimes had primarily targeted specific individuals or economic activities, the response to Russia's

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<sup>13</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>14</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>15</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>16</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

war in Ukraine has been significantly broader and more structured. This shift reflects a coordinated effort among Western allies to curtail the Kremlin's ability to finance and sustain its military operations.

The EU's measures, implemented in alignment with those of the United States, the United Kingdom, Canada, Japan, and other G7 nations, have evolved through a series of progressively expanded sanctions packages. These restrictive measures constitute one of the most extensive sanctions regimes ever imposed on a major global economy. Their primary focus is to disrupt Russia's war economy, limit its access to financial and technological resources, and degrade its capacity to sustain prolonged military engagements. The sanctions are structured across three main dimensions: targeted restrictive measures against individuals and entities, economic and trade restrictions, and financial and sectoral sanctions, particularly affecting key industries such as energy, banking, and technology <sup>17</sup>.

A central component of the EU's sanctions framework is the imposition of targeted restrictive measures, commonly referred to as individual sanctions<sup>18</sup>. These are specifically aimed at individuals and organizations deemed responsible for actions undermining Ukraine's sovereignty, territorial integrity, and political independence. As of February 2025, the EU had sanctioned over 1,700 individuals and 400 entities, including high-ranking political figures, oligarchs, military officials, and major state-controlled companies that contribute to Russia's war efforts. The sanctions primarily consist of asset freezes and travel bans. Asset freezes prohibit designated individuals and entities from accessing financial resources, real estate, and other economic holdings within EU jurisdictions, restricting their ability to transfer wealth or engage in transactions<sup>19</sup>. Travel bans, in parallel, prevent sanctioned individuals from entering or transiting through EU territory, further isolating them both politically and diplomatically. Among the most prominent figures subjected to these sanctions are President Vladimir Putin, Foreign Minister Sergei Lavrov, and leading oligarchs such as Alisher Usmanov. Furthermore,

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<sup>17</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

<sup>18</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022).

<sup>19</sup> *European Commission. Sanctions Adopted Following Russia's Military Aggression Against Ukraine.*

executives from state-owned corporations like Gazprom and Rosneft have been targeted, demonstrating the EU's strategy of restricting key enablers of Russian state policies<sup>20</sup>.

Beyond individual sanctions, the EU has implemented extensive economic and trade restrictions intended to erode Russia's industrial and military capacity. A primary focus has been on limiting the export of critical goods and technologies essential to Russia's defence and industrial sectors<sup>21</sup>. Since February 2022, the EU has banned over €48 billion worth of exports that would have otherwise been directed to Russia. A significant portion of these restrictions targets dual-use goods—items that have both civilian and military applications—including semiconductors, microchips, and advanced machinery essential for weapons production and aerospace technologies. Additionally, the EU has prohibited the export of aviation components, significantly restricting Russia's ability to maintain and modernize its civilian and military aircraft fleet.

Simultaneously, the EU has imposed import bans on various Russian commodities to weaken the country's primary revenue streams. These measures include a complete ban on Russian coal imports since August 2022 and a prohibition on the import of Russian crude oil and refined petroleum products transported by sea since December 2022. This policy has had a substantial impact on Russia's economy, as fossil fuel exports traditionally account for approximately 45% of its federal budget. The EU has also pursued a gradual reduction of Russian natural gas imports, aiming to decrease European dependency on Russian energy supplies<sup>22</sup>. While these sanctions have substantially reduced Russian energy revenues, Moscow has sought alternative markets, particularly in Asia, where countries such as China and India have increased their purchases of discounted Russian crude.

Another cornerstone of the EU's response has been financial restrictions, which have severely constrained Russia's access to global capital markets. These measures have included the exclusion of major Russian banks from the SWIFT payment system, effectively severing them from the international financial network. Further actions have

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<sup>20</sup> Council of the European Union. *Timeline of EU Sanctions Against Russia*.

<sup>21</sup> José García Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28 (2023).

<sup>22</sup> Chatham House. *Legal Challenges and the Future of EU Sanctions Policy*.

targeted Russian sovereign wealth funds and state-controlled financial institutions, preventing them from conducting transactions within EU jurisdictions. In February 2025, the EU expanded these measures by restricting foreign institutions that utilize Russia's alternative financial messaging system (SPFS) to process transactions, further limiting Moscow's ability to circumvent existing sanctions. Collectively, these efforts seek to impede Russia's ability to secure external funding for its military and strategic initiatives<sup>23</sup>.

Sanctions have also directly targeted key industrial and technological sectors vital to Russia's economic and military sustainability. Given the centrality of fossil fuel exports to the Russian economy, energy sanctions have been among the most severe. The EU's gradual ban on Russian oil and gas has disrupted a major source of revenue for the Kremlin, forcing Moscow to redirect exports to alternative buyers, often at reduced prices. To counteract Russia's attempts to evade these restrictions—particularly through the use of a clandestine fleet of tankers, known as the “shadow fleet”, which transports oil outside of official tracking mechanisms—the EU has introduced specific sanctions on illicit maritime operations, blacklisting over 50 vessels involved in unauthorized crude oil transport<sup>24</sup>. These measures are intended to enhance enforcement and prevent the circumvention of energy-related restrictions.

The EU has also imposed restrictions on European financial and investment services to further constrain Russia's economic resilience. European firms have been barred from providing loans, investment capital, and financial advisory services to Russian state-owned enterprises, particularly those in the defence and technology sectors. Moreover, the EU has extended export bans on high-tech components, software, and telecommunications equipment, restricting Russian access to critical technologies used in artificial intelligence, cyber warfare, and defence intelligence systems<sup>25</sup>. By limiting the supply of these strategic technologies, the EU aims to degrade Russia's military

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<sup>23</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>24</sup> Royal United Services Institute (RUSI). *The Impact of Sanctions on Russia's Military Capabilities*.

<sup>25</sup> Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge: Cambridge University Press, 2014).

capabilities over the long term, impeding its ability to develop advanced weaponry and sustain technological innovations in the defence sector.

Diplomatic measures have also reinforced the EU's sanctions framework. The suspension of high-level EU-Russia diplomatic engagements, including the freezing of EU-Russia summits, signals the EU's firm opposition to Russian actions and contributes to Moscow's international isolation. Additionally, visa restrictions have been imposed on individuals linked to the destabilization of Ukraine, preventing them from traveling within EU territories. These travel bans serve both a practical and symbolic purpose, reinforcing the EU's commitment to defending international legal principles<sup>26</sup>.

### **Effectiveness and Challenges of the Sanctions Regime**

Despite the extensive scope of EU sanctions, challenges remain in ensuring their full effectiveness. Russia has actively sought to mitigate their impact by deepening economic and trade ties with countries such as China, India, and Turkey, leveraging alternative financial mechanisms and parallel trade networks to bypass restrictions<sup>27</sup>. These adaptive strategies have allowed Russia to partially offset economic losses, particularly in energy exports. Nevertheless, the cumulative impact of the EU's sanctions has been substantial. Russia's GDP contracted by 2.1% in 2022, with long-term projections indicating prolonged economic stagnation due to underinvestment, sluggish productivity growth, and capital flight<sup>28</sup>. Inflation has remained high, reaching 9.5% by early 2025, while access to critical technologies has been significantly curtailed.

Although Russia has demonstrated resilience in adjusting to the sanctions, the EU's restrictive measures continue to erode its economic stability and military capacity. The long-term effectiveness of these sanctions will depend on their enforcement, the ability to close loopholes, and the willingness of third-party states to adhere to international restrictions. Ultimately, the EU's sanctions regime underscores Europe's commitment to

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<sup>26</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>27</sup> *European Council on Foreign Relations (ECFR). Measuring the Effectiveness of Sanctions Against Russia.*

<sup>28</sup> *Council on Foreign Relations (CFR). Global Conflict Tracker: War in Ukraine. CFR Global Conflict Tracker*

countering Russian aggression, supporting Ukraine, and upholding the principles of international law<sup>29</sup>.

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### 1.3 Legal Basis of EU Sanctions Under EU Law

The European Union has established a sophisticated legal framework that provides the basis for imposing sanctions as a core instrument of its Common Foreign and Security Policy. Unlike unilateral sanctions imposed by individual states, the EU's restrictive measures derive their legitimacy from the Union's founding treaties, ensuring a structured decision-making process that aligns with both EU law and broader international legal norms<sup>30</sup>. The authority to enact such measures is primarily based on Article 215 of the Treaty on the Functioning of the European Union, which grants the Council of the EU the power to adopt restrictive measures against third countries, individuals, and entities<sup>31</sup>. These sanctions can take various forms, including economic embargoes, travel bans, and asset freezes, and must be implemented in a manner that respects fundamental rights principles such as proportionality and due process<sup>32</sup>.

In addition to the TFEU, the Treaty on European Union outlines the broader policy framework governing the formulation and execution of sanctions through the CFSP<sup>33</sup>. The European Council, together with the High Representative of the Union for Foreign Affairs and Security Policy, plays a central role in shaping the EU's sanctions strategy, ensuring that measures are not only legally sound but also reflect political consensus among Member States. The decision-making process requires unanimity at the European Council level, followed by implementing measures adopted by the European Commission. Given their significant legal and economic impact, EU sanctions have often been subject to legal scrutiny before the Court of Justice of the European Union,

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<sup>29</sup> Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008).

<sup>30</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>31</sup> *Treaty on the Functioning of the European Union (TFEU) – Article 215*.

<sup>32</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>33</sup> *Treaty on European Union (TEU) – Article 21*.

particularly concerning their compatibility with the EU Charter of Fundamental Rights<sup>34</sup>. Legal challenges frequently revolve around issues of proportionality, procedural fairness, and whether the individuals or entities targeted by sanctions have sufficient legal recourse. These judicial assessments underscore the necessity for EU sanctions to balance foreign policy objectives with legal safeguards to ensure their legitimacy under both EU and international law<sup>35</sup>.

### **The EU's Authority to Impose Sanctions Under the Treaty on the Functioning of the European Union (TFEU)**

The EU's power to impose sanctions is primarily rooted in Article 215 of the TFEU, which provides the legal foundation for adopting restrictive measures as a means of implementing decisions made under the CFSP. This article establishes a direct link between the EU's external policy goals and its legal framework, ensuring that sanctions adopted for geopolitical or security reasons are enforceable across all Member States. Once the European Council reaches a political decision to introduce sanctions, the Council of the EU, acting on a joint proposal from the High Representative for Foreign Affairs and Security Policy and the European Commission, adopts the necessary regulations to bring these measures into effect<sup>36</sup>. While the adoption of CFSP decisions requires unanimity among Member States, the subsequent legal instruments implementing sanctions under Article 215 are adopted through qualified majority voting. This procedural distinction reflects the dual nature of EU sanctions: their political foundation is embedded within the CFSP, while their enforcement relies on the legislative mechanisms of EU law.

Sanctions adopted under Article 215 have direct effect within the EU legal order, meaning that they are binding on all Member States, their national authorities, and private economic operators. This ensures a uniform and cohesive approach across the Union, preventing Member States from diverging in their application of restrictive measures. The range of sanctions covered by this provision is broad, encompassing asset freezes, trade

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<sup>34</sup> *European Court of Justice (ECJ). (2017). Rosneft v. HM Treasury and Others.*

<sup>35</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>36</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

restrictions, financial prohibitions, and travel bans. Moreover, the EU's sanctioning power is not limited to state actors but extends to individuals, corporate entities, and even non-state organizations, including terrorist groups<sup>37</sup>.

A distinctive feature of Article 215 is its role in bridging EU law with international law. While the EU frequently aligns its sanctions with resolutions adopted by the United Nations Security Council, it retains the capacity to impose autonomous restrictive measures when necessary. This ability is particularly significant in cases where the EU seeks to act swiftly in response to human rights violations, breaches of international law, or security threats that have not been addressed by the UN<sup>38</sup>. The legal authority conferred by Article 215 thus enables the EU to assert its role as a global actor in foreign policy while ensuring that sanctions remain legally enforceable within its jurisdiction<sup>39</sup>.

Despite its broad scope, Article 215 is subject to judicial oversight by the Court of Justice of the European Union, which ensures that the sanctions adopted under this framework comply with fundamental legal principles<sup>40</sup>. Individuals and entities subject to EU sanctions have the right to challenge these measures before the CJEU, particularly on grounds of proportionality, due process, and respect for fundamental rights. The judicial review process underscores the necessity for EU sanctions to strike a balance between their intended foreign policy objectives and the protection of individual rights, reinforcing the legal accountability of the Union's restrictive measures<sup>41</sup>.

### **The Role of the Common Foreign and Security Policy (CFSP) in the Adoption of Sanctions**

The adoption of EU sanctions takes place within the framework of the Common Foreign and Security Policy, which serves as the primary mechanism for formulating and implementing the Union's external relations strategy<sup>42</sup>. Unlike other areas of EU law,

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<sup>37</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* (2020).

<sup>38</sup> *United Nations Charter – Article 2(4) and Chapter VII*.

<sup>39</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>40</sup> European Court of Justice (ECJ), *Rosneft v. HM Treasury and Others*, C-72/15, (2017).

<sup>41</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>42</sup> *Treaty on European Union (TEU) – Article 21*

which are characterized by supranational decision-making, the CFSP remains largely intergovernmental, requiring Member States to reach a consensus before any restrictive measures can be introduced. The European Council plays a decisive role in this process, setting the strategic direction of the CFSP and determining when sanctions should be imposed in response to serious violations of international law, human rights abuses, or threats to European and global security. Given that CFSP decisions require unanimity, negotiations among Member States can be complex, particularly when economic and geopolitical interests are at stake<sup>43</sup>.

Once a CFSP decision establishing the need for sanctions is adopted, the High Representative for Foreign Affairs and Security Policy, in coordination with the European Commission, drafts the legal instruments required for their implementation. These measures are enacted as either Council Regulations, which establish the legal framework for economic and financial restrictions, or Council Decisions, which set out broader foreign policy objectives such as arms embargoes and diplomatic sanctions<sup>44</sup><sup>45</sup>. If the sanctions involve economic or trade-related measures, they must be adopted under Article 215 of the TFEU to ensure consistency between the CFSP and the EU's internal market rules<sup>46</sup>.

The nature of EU sanctions varies depending on the geopolitical context and the objectives pursued. In recent years, the EU has increasingly relied on so-called “smart sanctions,” which target specific individuals, organizations, and economic sectors rather than imposing blanket trade restrictions. This approach reflects the EU's commitment to minimizing humanitarian consequences while maximizing political pressure on targeted regimes. However, despite the legal and strategic sophistication of EU sanctions, challenges persist in ensuring their effectiveness. The requirement for unanimity within the CFSP can lead to delays in the adoption of restrictive measures, particularly when

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<sup>43</sup> Marco Gestri, “Sanctions, Collective Countermeasures, and the EU,” *Italian Yearbook of International Law* 32 (2022).

<sup>44</sup> *Treaty on the Functioning of the European Union (TFEU) – Article 215*.

<sup>45</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>46</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

Member States have diverging national interests<sup>47</sup>. Additionally, the legal complexities associated with sanctions mean that they must be carefully crafted to withstand judicial scrutiny, as affected individuals and businesses may challenge them before the CJEU. The balance between foreign policy imperatives and legal safeguards thus remains a central consideration in the EU's approach to sanctions, shaping their design, implementation, and enforcement<sup>48</sup>.

The legal framework governing EU sanctions is built upon a combination of treaty provisions, institutional mechanisms, and judicial oversight that ensures both their effectiveness as a foreign policy tool and their compliance with fundamental legal principles. The authority conferred by Article 215 of the TFEU establishes the legal enforceability of sanctions, while the CFSP provides the political and strategic rationale for their adoption. However, the implementation of sanctions is not without challenges, as their legal validity is subject to judicial review before the CJEU, which ensures that restrictive measures do not infringe upon fundamental rights or exceed the principle of proportionality<sup>49</sup>. As the EU continues to expand its sanctions regimes in response to global crises, it must navigate the delicate balance between upholding the rule of law and maintaining the effectiveness of its foreign policy instruments, adapting its legal framework to evolving geopolitical realities<sup>50</sup>.

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#### **1.4 The Legal Basis of EU Sanctions Under International Law**

Sanctions have become one of the most widely used instruments of international diplomacy, serving as a means of addressing violations of international law, threats to peace and security, and human rights abuses. While the European Union has developed a well-defined internal legal framework for imposing restrictive measures, the legitimacy of these sanctions under international law remains a complex and debated issue. Unlike

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<sup>47</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

<sup>48</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>49</sup> José Garcia Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28 (2023).

<sup>50</sup> Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008).

the United Nations Security Council, which possesses universal authority to impose binding sanctions under Chapter VII of the UN Charter, the EU, as a regional organization, operates on a more limited legal basis when enacting such measures<sup>51</sup>.

The legality of EU sanctions under international law has been a subject of considerable debate, particularly concerning their compatibility with principles such as state sovereignty, non-intervention, and international economic law<sup>52</sup>. Some legal scholars argue that unilateral or regional sanctions, such as those imposed by the EU, could potentially violate established international norms if they are not explicitly authorized by the UN Security Council. According to this perspective, the imposition of sanctions outside the UN framework risks undermining the global legal order by allowing individual states or regional organizations to act unilaterally in ways that could be inconsistent with multilateral decision-making processes<sup>53</sup>.

Conversely, others maintain that the EU's measures are justified under customary international law, particularly in cases involving serious breaches of peremptory norms (*jus cogens*) and obligations *erga omnes*. These include acts of aggression, genocide, and grave human rights violations, where the responsibility to uphold international law extends beyond the directly affected states to the entire international community. This position argues that the EU, as a collective entity committed to international law and human rights, has the right—and arguably the obligation—to respond to such breaches through targeted sanctions<sup>54</sup>.

In situations where the EU is not directly injured by a violation of international law, its legal authority to impose sanctions is often justified under the doctrine of third-party countermeasures (Dawidowicz, 2006). This principle, which remains an area of legal uncertainty, suggests that states and international organizations may adopt countermeasures against a wrongdoer, even when they are not directly harmed, if the wrongful act affects the international community as a whole. This reasoning has been

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<sup>51</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>52</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022).

<sup>53</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

<sup>54</sup> Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008).

particularly relevant in the EU's sanctions against Russia, where the measures have been framed as a response to violations of Ukraine's sovereignty and territorial integrity, as well as broader breaches of fundamental international norms<sup>55</sup>.

While the EU maintains that its sanctions serve as legitimate enforcement mechanisms for upholding global legal standards, the question of whether regional organizations can autonomously impose sanctions without UN Security Council authorization continues to be contested. The extent to which such measures conform to international law depends on interpretations of state responsibility, the applicability of jus cogens norms, and the evolving role of international organizations in the enforcement of global legal norms<sup>56</sup>.

### **The EU's Justification for Sanctions as a Response to Breaches of Erga Omnes Obligations**

The European Union justifies its sanctions under international law by invoking violations of erga omnes obligations, which are legal duties owed by all states to the international community as a whole<sup>57</sup>. These obligations, recognized under customary international law and codified in key international treaties, include the prohibition of aggression, respect for territorial integrity and sovereignty, the prevention of genocide, and the protection of fundamental human rights<sup>58</sup>.

A fundamental legal foundation for this argument is that acts of aggression and serious human rights violations trigger obligations erga omnes, meaning they concern the entire international community rather than only the states directly affected. This principle was notably recognized by the International Court of Justice in the *Barcelona Traction* case (1970), where the Court affirmed that certain fundamental legal obligations—such as the prohibition of acts that shock the conscience of humanity—must be protected

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<sup>55</sup> United Nations General Assembly. (2022). *Emergency Special Session Resolutions on Ukraine* (March 2022).

<sup>56</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>57</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* (2020).

<sup>58</sup> International Court of Justice (ICJ). (1970). *Barcelona Traction, Light and Power Company, Limited*.

universally<sup>59</sup>. This principle has since been reaffirmed in multiple legal settings, including cases related to human rights violations, war crimes, and the prohibition of aggression.

In the specific case of EU sanctions against Russia, the primary legal justification centres on Russia's violation of Ukraine's sovereignty and territorial integrity, which constitutes an act of aggression under international law. The United Nations General Assembly (UNGA) has repeatedly condemned Russia's actions, most notably in Resolution ES-11/1 (2022), which reaffirmed that Ukraine's territorial integrity must be respected and called for the immediate withdrawal of Russian troops<sup>60</sup>.

While the UN Security Council has not imposed binding sanctions against Russia due to Russia's use of its veto power, the EU and its allies maintain that the Security Council's inaction does not preclude other states or regional organizations from taking legitimate countermeasures<sup>61</sup>. According to the EU's legal reasoning, when a gross violation of international law occurs—particularly involving aggression or large-scale human rights abuses—third parties have both a legal and moral obligation to respond, even in the absence of immediate UN authorization.

Another central legal justification invoked by the EU is the protection of fundamental human rights, particularly in response to war crimes, crimes against humanity, and other grave breaches of international humanitarian law<sup>62</sup>. Reports from leading human rights organizations, including Amnesty International and Human Rights Watch, have documented widespread targeting of civilians, forced deportations, and summary executions committed by Russian forces in Ukraine. These acts may constitute crimes against humanity, triggering obligations under jus cogens norms, which are peremptory rules of international law that permit no derogation<sup>63</sup>. Since the prohibition of war crimes and crimes against humanity falls into this category, states and international organizations are not only entitled but arguably required to respond.

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<sup>59</sup> *International Court of Justice (ICJ). (1970). Barcelona Traction, Light and Power Company, Limited.*

<sup>60</sup> *United Nations General Assembly. (2022). Emergency Special Session Resolutions on Ukraine (March 2022).*

<sup>61</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>62</sup> *Council of the European Union. Timeline of EU Sanctions Against Russia.*

<sup>63</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* (2020).

The EU's approach to sanctions has remained consistent across different geopolitical crises. Beyond Russia, it has justified restrictive measures against the Syrian government, Myanmar's military junta, and Iranian officials accused of human rights abuses, citing violations of erga omnes obligations. A key example is the EU Global Human Rights Sanctions Regime (EU Magnitsky Act), adopted in 2020, which explicitly references erga omnes obligations as a basis for imposing targeted measures against individuals and entities responsible for serious human rights violations.

Despite these legal arguments, critics contend that unilateral sanctions based on erga omnes obligations remain controversial<sup>64</sup>. One of the key debates is whether regional organizations, such as the EU, have the legal authority to impose sanctions without a UN Security Council mandate. While the EU maintains that its actions are consistent with international law, some states and scholars challenge the legality of unilateral sanctions, arguing that they risk violating principles of state sovereignty and non-intervention.

Although the EU continues to assert that its sanctions uphold the principles of international law, the broader debate surrounding unilateral sanctions without explicit UN authorization remains unsettled. As the role of regional organizations in global governance evolves, the question of whether EU sanctions represent a legitimate enforcement mechanism or an overreach of authority will likely remain at the forefront of international legal discourse<sup>65</sup>.

### **Challenges to the Legality of EU Sanctions Without UN Security Council Authorization**

One of the most contentious legal debates surrounding EU sanctions concerns whether unilateral or regional sanctions—those imposed without explicit authorization from the United Nations Security Council—comply with international law<sup>66</sup>. While the EU maintains that its restrictive measures against Russia and other states are consistent with customary international law, critics argue that, in the absence of a UN Security Council

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<sup>64</sup> Martin Dawidowicz, "Third-Party Countermeasures: A Progressive Development of International Law?" *Leiden Journal of International Law* (2006).

<sup>65</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

<sup>66</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022).

mandate, such sanctions may infringe upon state sovereignty, contravene the principle of non-intervention, and violate established norms of international economic law. The fundamental issue at stake is whether regional organizations such as the EU possess the legal authority to impose sanctions autonomously or whether binding international sanctions require multilateral approval from the UN Security Council<sup>67</sup>.

Under Chapter VII of the UN Charter, the Security Council holds primary responsibility for maintaining international peace and security and has the authority to impose binding sanctions on states deemed to pose a threat to global stability<sup>68</sup>. Article 41 of the UN Charter explicitly grants the Security Council the power to mandate economic sanctions, trade embargoes, and financial restrictions as enforcement measures against states that violate international law. Once such sanctions are adopted, all UN member states are obligated to comply, ensuring that restrictive measures are applied uniformly and remain legally binding within the framework of international law<sup>69</sup>.

However, the effectiveness of the UN Security Council as a sanctioning authority is often compromised by the veto power held by its five permanent members (P5): the United States, the United Kingdom, France, Russia, and China. In cases where one of these states is the subject of international scrutiny, the veto mechanism enables them to block any attempt to impose UN-mandated sanctions against themselves or their allies. This has been particularly evident in the case of Russia's invasion of Ukraine, where Russia has systematically used its veto power to prevent the adoption of Security Council resolutions addressing its aggression. As a result, the EU and other Western states have justified their unilateral sanctions as a necessary response to the Security Council's inaction, arguing that the paralysis of the UN's primary enforcement mechanism does not preclude the international community from acting independently to uphold international law<sup>70</sup>.

Despite this justification, the legal basis for autonomous EU sanctions remains heavily contested. Critics emphasize that under international law, state sovereignty is a

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<sup>67</sup> Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>68</sup> United Nations, *Charter of the United Nations*, arts. 39–41

<sup>69</sup> Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008).

<sup>70</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

fundamental principle codified in Article 2(1) of the UN Charter, which establishes that all states are equal and possess exclusive jurisdiction over their domestic affairs<sup>71</sup>. This principle is reinforced by Article 2(4), which prohibits the use of force or coercive measures against the political independence of any state except in cases of self-defence or Security Council authorization under Chapter VII<sup>72</sup>. Opponents of unilateral sanctions argue that broad economic restrictions imposed outside the UN framework could be interpreted as coercive actions that infringe upon the sovereignty of targeted states.

Furthermore, some legal scholars argue that economic sanctions, particularly those that restrict financial markets and trade, may constitute a form of economic warfare that, while non-military, exerts pressure on a state's political and economic system in ways that parallel traditional coercive measures<sup>73</sup>. This concern is particularly relevant in cases where sanctions target entire economic sectors rather than specific individuals or organizations linked to human rights violations or security threats.

In addition to legal concerns, there are practical challenges associated with the enforcement of unilateral sanctions. Humanitarian organizations, including the International Committee of the Red Cross (ICRC), have raised concerns that broad economic sanctions can disproportionately impact civilian populations, leading to supply shortages, inflation, and restricted access to essential goods and services. While the EU has sought to mitigate these effects by designing targeted or "smart" sanctions, critics argue that even these measures can have unintended consequences that exacerbate economic hardship in sanctioned states<sup>74</sup>.

The World Trade Organization (WTO) has also emerged as a forum for challenging the legality of unilateral sanctions. Several states have filed complaints against EU and US sanctions, arguing that such measures constitute illegal trade restrictions under international economic law. Russia, for example, has challenged EU financial sanctions at the WTO, contending that the restrictions violate international trade agreements by

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<sup>71</sup> United Nations, *Charter of the United Nations*, art. 2(1).

<sup>72</sup> United Nations, *Charter of the United Nations*, art. 2(4).

<sup>73</sup> Martin Dawidowicz, "Third-Party Countermeasures: A Progressive Development of International Law?" *Leiden Journal of International Law* (2006).

<sup>74</sup> Martino Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique* (2022).

discriminating against Russian businesses and financial institutions<sup>75</sup>. However, the EU has defended its actions by invoking national security exemptions under Article XXI of the General Agreement on Tariffs and Trade (GATT), which allows states to impose trade restrictions for security reasons. The outcome of these WTO disputes could set important precedents regarding the legality of unilateral sanctions under international trade law.

While the International Court of Justice (ICJ) has not issued a definitive ruling on whether regional organizations like the EU may impose sanctions without UN Security Council authorization, past decisions suggest that the issue remains open to legal interpretation. In *Nicaragua v. United States* (1986), the ICJ ruled that economic coercion could, in certain circumstances, constitute unlawful intervention, but it also acknowledged that states have the right to take measures in response to violations of international law through non-military means<sup>76</sup>. Given the evolving nature of international legal norms, the legitimacy of unilateral EU sanctions will likely continue to be a matter of legal dispute and political contention.

### **Third-Party Countermeasures: Theoretical Justification for Sanctions by Non-Injured States**

One of the most complex legal questions surrounding EU sanctions is whether the Union, as a non-directly injured party, has the right to impose restrictive measures against a state such as Russia under international law (Dawidowicz, 2006). While the EU and its allies contend that third-party countermeasures are legitimate responses to serious breaches of international law, critics argue that such measures lack a clear legal foundation and could set a precedent for arbitrary economic coercion in global affairs<sup>77</sup>.

The doctrine of countermeasures is a well-established principle in international law, defined by the International Law Commission (ILC) Draft Articles on State Responsibility (2001)<sup>78</sup>. Under customary international law, a state that is directly injured

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<sup>75</sup> World Trade Organization (WTO), *Russia — Measures Concerning the Importation of Certain Products*, DS512.

<sup>76</sup> International Court of Justice (ICJ), *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America) (1986).

<sup>77</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>78</sup> International Law Commission (ILC), *Articles on Responsibility of States for Internationally Wrongful Acts* (2001).

by an internationally wrongful act may adopt countermeasures—retaliatory actions designed to induce the violating state to comply with its obligations. However, the central question remains whether states or international organizations that are not directly harmed may impose countermeasures in defence of international law.

Traditional interpretations of countermeasures suggest that they are limited to "injured states", meaning that only states directly affected by a wrongful act have the right to adopt such measures. However, some legal scholars argue that countermeasures can also be lawfully imposed by third parties when fundamental international norms—such as the prohibition of aggression, war crimes, or genocide—are violated<sup>79</sup>. The International Court of Justice has acknowledged the concept of erga omnes obligations, which implies that all states have a legal interest in ensuring compliance with norms that protect the international community as a whole<sup>80</sup>.

The EU has framed its sanctions against Russia as a lawful response to violations of obligations erga omnes, particularly regarding Russia's aggression against Ukraine and human rights abuses. Since such violations undermine global stability and the fundamental principles of international law, the EU argues that all states and regional organizations have a legal interest in responding, even if they are not directly harmed. The Treaty on European Union (Article 21 TEU) reinforces this argument by mandating that the EU act in accordance with international law and human rights standards<sup>81</sup>.

Despite these justifications, the legal status of third-party countermeasures remains ambiguous. The ILC Articles on State Responsibility do not explicitly recognize third-party countermeasures as lawful, and no definitive ICJ ruling has established their legality. Some critics warn that if third-party countermeasures become widely accepted, they could lead to a fragmented international legal order in which powerful states and regional organizations impose sanctions based on political interests rather than legal principles<sup>82</sup>. Others argue that the selective application of EU sanctions raises concerns

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<sup>79</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* (2020).

<sup>80</sup> International Court of Justice (ICJ), *Barcelona Traction, Light and Power Company, Limited* (1970)

<sup>81</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022).

<sup>82</sup> Martin Dawidowicz, "Third-Party Countermeasures: A Progressive Development of International Law?" *Leiden Journal of International Law* (2006).

about inconsistencies in international enforcement, particularly when the EU takes strong measures against Russia but adopts a more cautious approach toward human rights violations in other regions.

Given the growing use of economic sanctions as a tool of international diplomacy, the debate over third-party countermeasures is likely to intensify in future legal and geopolitical discussions. While state practice suggests increasing acceptance of such measures, significant legal uncertainties remain, and future ICJ rulings or international legal developments may further shape the legitimacy of EU sanctions within the broader framework of international law<sup>83</sup>

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<sup>83</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

## Countermeasures in International Law: Legal Doctrine and Theoretical Foundations

### 2.1. The Definition and Function of Countermeasures in State Responsibility

Countermeasures are steps taken by a state after an internationally wrongful conduct has been perpetrated against it in order to compel the defaulting state to meet its obligations under international law<sup>84</sup>. State relations are not lawless; quite the contrary. Countermeasures have been a major focus of legal studies, particularly in international law. Countermeasures are "self-help" measures that states can use when their rights are violated in places where no other means (diplomatic or judicial) appear to exist or are likely to fail. As with penal sanctions, these actions are intended not just to safeguard the rights of the wounded, but also to persuade the perpetrator to discontinue the illegal conduct, so establishing compliance with international laws<sup>85</sup>.

The International Law Commission addresses the legitimacy of countermeasures in its Articles on States' Responsibility for Internationally Wrongful Acts (ARSIWA). According to Article 49 of ARSIWA, countermeasures are steps that an aggrieved state has the right to take in response to a state's breach of its rights, but only under particular situations<sup>86</sup>. These actions must be proportionate to the level of injury sustained. They should be reasonably expected to lead the other state to comply with international treaties and laws, as well as to fulfil its international legal duties. What is crucial is that these efforts are not retaliatory; countermeasures are implemented largely to encourage compliance rather than to enforce punishment<sup>87</sup>.

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<sup>84</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>85</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>86</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

<sup>87</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

One of the most significant characteristics of countermeasures is proportionality, or the fairness of the response in relation to the transgression. Article 51 of ARSIWA states that countermeasures must not exceed what is reasonable in relation to the harm inflicted. This is intended to discourage governments from taking overly severe actions that could exacerbate conflict or unnecessarily harm the offending state or third parties. The ILC took such moves in 2001. Crawford's 2013 discussion of proportionality emphasizes the objective behind remedies designed to halt legal action in response to international tensions, asserting the principal law sought to be implemented in interstate relations<sup>88</sup>.

Aside from proportionality, the other underlying premise of countermeasures is need. Article 50 of ARSIWA states that the errant state must be given the opportunity to perform its international commitments before implementing any countermeasures. In other words, the damaged state must tell the violation of its proposed countermeasures. The objective is to give the offending party some time to correct the issue before imposing unilateral steps. These countermeasure processes create a paradox since they guarantee a distinctly legal ordered structure that is subject to arbitrary activity.

Countermeasures are equally limited in other respects. According to Article 53 of ARSIWA, countermeasures shall end after the state in question has fulfilled its commitments. This provision prevents countermeasures from becoming punitive responses that are permanent rather than corrective. This lack of punishment distinguishes a countermeasure from retribution or revenge, while also aligning it with the broader scope of international law—violations governing the peaceful coexistence of states<sup>89</sup>.

Without getting into disproportionality, the role of countermeasures in the larger context of governmental obligations is possibly the most crucial. At the very least, there are certain limitations. They provide a legal pathway—however limited and simple—for states to force acquiescence when other options have failed or are unavailable<sup>90</sup>. In this context, the term 'judiciary' in international law is used to prevent governments from

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<sup>88</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>89</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>90</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

acting unilaterally and to resolve violations. Without these instruments, international law provides no appeal against judicially imposed measures. Countermeasures allow for fast, unreserved action in response to violations of international law, allowing nations to use self-help mechanisms to maintain order and safeguard their rights within it. According to Tzanakopoulos, countermeasures prevent governments from acting as politicians who defend international and unilateral law by ensuring that complaints are unreserved, uninvoked, and answered promptly<sup>91</sup>.

Another important aspect of countermeasures is assisting with deterrence. Countermeasures, as a legal remedy, seek to dissuade governments from committing similar violations of international law by punishing the wrongdoing. Countermeasures are especially important in cases where there is no obvious method of enforcement, such as a global government or military force capable of enforcing mandatory punishments. Crawford contends that countermeasures help to balance international relations by punishing states in an ordered manner, hence increasing the security and predictability of the international framework<sup>92</sup>.

This section solicits a valid reaction from the international community while maintaining within international law. However, they must be protected from excessive freedom of action, which could lead to abuse. States that are not directly affected by the wrongful act, known as third parties, are often not permitted to take countermeasures unless they are protecting erga omnes commitments. These situations will be addressed in the final sections of this chapter, which will discuss the definition of state responsibility and the basis for collective counteraction.

To summarize, countermeasures remain a key idea in international law because they allow governments to protect their rights and uphold the rule of law in the face of transgressions. Countermeasures include proportionality, necessity, temporary suspension until compliance, and so on; they are responding, mitigating, and healing in nature to international unjust acts. According to Tams, countermeasures help to preserve

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<sup>91</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>92</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

international legal order by dealing with infractions in a timely, efficient, and lawful manner<sup>93</sup>.

### **The Difference Between Bilateral and Collective Countermeasures**

The distinction between unilateral and collective countermeasures serves as a guideline in the legal system for state accountability and the application of a specific international rule. Although both function as responses to violations of international law, their scope, logic, and parties involved differ significantly, demonstrating how international law has evolved its enforcement mechanisms<sup>94</sup>.

### **Bilateral Countermeasures: A Traditional Approach**

Bilateral countermeasures are the most conventional type of response in international law, and they comprise actions taken by the directly damaged state against the offending party. This type of countermeasure is intended to repay the hurt inflicted on the injured state in order to force the violating state to change its ways. According to Article 49 of the ARSIWA, these countermeasures are a sort of self-help action in which the damaged state can act independently without waiting for a judicial decision<sup>95</sup>. Such rights, however, can only be exercised within certain constraints, in this case proportionality and necessity, which ensure that no more than the bare minimum of violating measures are taken to enforce conformity with international law.

The legal order is restored when the breaching state is forced to cease its unlawful behaviour; this is the primary goal of bilateral countermeasures. According to Crawford, countermeasures strive to offer temporary relief to the breach while emphasizing that they are not intended to exacerbate the issue but rather to return the offending party to compliance with duties. Bilateral countermeasures commonly include economic

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<sup>93</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>94</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>95</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

sanctions, trade embargoes, treaty suspension, and withdrawal of diplomatic privileges, all of which are intended to force the offending party to correct the breach<sup>96</sup>.

According to Tzanakopoulos, while bilateral countermeasures can be effective when the damaged state has sufficient pushing force, they have several drawbacks. The victim state, for example, may lack the political or economic resources required to coerce the offender, particularly if the latter is more powerful. Furthermore, the unilateral nature of these responses can exacerbate tension and conflict, particularly if the response is disproportionate or has an impact on neutral third parties who were not involved in the breach<sup>97</sup>.

### **Collective Countermeasures: Different Geographical Contexts for Enforcement**

Collective countermeasures allow for a higher threshold of enforcement in international law. Unlike bilateral countermeasures, which only apply to the damaged and guilty governments, collective countermeasures include participation from third-party states (or international organizations). These outside third parties, who have not been directly harmed by the infringement, take action to enforce international law and norms. In most circumstances, the basis for collective countermeasures stems from the fundamental concept of *erga omnes*, which asserts that all states owe obligations to the international community collectively.

*Erga omnes* responsibilities are critical to understanding the legal rationale for collective countermeasures. These commitments do not apply to specific governments, but rather to the entire world community. In the *Barcelona Traction* case (1970), the International Court of Justice acknowledged such obligations in terms of fundamental standards, including the fundamental rejection of genocide, as well as respect for human rights<sup>98</sup>. This decision established the principle that, if international rules are violated, third-party governments have a legitimate interest in responding, even if no direct injury is caused

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<sup>96</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>97</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>98</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

by the illegal act. The *Gabčíkovo-Nagymaros Project* (1997) emphasizes third-party governments' responsibilities to uphold world law<sup>99</sup>.

De facto conditions suggest that nations or regional groups, such as the European Union (EU), take or implement collective countermeasures in the event that breaches of international order law occur. According to this classification, EU sanctions against Russia for the annexation of Crimea in 2014 and Russia's invasion of Ukraine in 2022 are collective countermeasures<sup>100</sup>. The EU has not been directly impacted by Russia; however, the sanctions allow international law to be followed, Ukraine's territorial integrity to be maintained, and new violations to be prevented. The sanctions target erga omnes violations that destabilize the international system and signal support for the international community's consideration of such breaches<sup>101</sup>.

### **The Legal and Practical Issues Around Collective Countermeasures**

Collective countermeasures are increasingly being used; yet, their legal and practical implications remain a difficulty. Legally, the most pressing issue is whether third-party nations or organizations have the authority to take such action in the absence of the offending state's consent or express authorization from the Security Council. While bilateral remedies are legally recognized in international law as responses to inflicted harm, collective countermeasures have a less clear legal footing<sup>102</sup>. Some argue that the lack of international treaties or agreements on collective measures justifies inaction, citing a lack of third-party endorsement.

Tams and Tzanakopoulos, on the other hand, say that expanding global interdependence and vulnerability to conflict make the argument for global governance, which is aided by

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<sup>99</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

<sup>100</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>101</sup> Jorge G. Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28, no. 2 (2023): 187–205.

<sup>102</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

moral support for the adoption of collective measures<sup>103</sup><sup>104</sup>. Another challenge is political and practical in terms of mobilizing collective action. The issue of EU sanctions against Russia serves as an illustration. The EU's actions are always accompanied with political turmoil. Russia sanctions required unanimous support from all union members, as well as consultation with other international participants.

The EU has been able to apply sanctions, but this raises concerns about their effectiveness because individual countries have their own political interests and may wish to maintain economic or diplomatic relations with the sanctioned country<sup>105</sup>. The UN Security Council, the primary constituent instrument responsible for collectively authorizing acts under Chapter VII of the UN Charter, faces operational challenges as a result of the permanent members' veto power<sup>106</sup>. This leads to stasis, with no concerted action from the international community.

In any event, such issues persist; collective actions remain critical in countering violations of erga omnes responsibilities. That is an attempt to convey to the world that national unity exists, albeit in the face of assault that breaches internationally accepted principles. The system operates as it should once multilateralism—in the face of any concerted action of international actors who resolve to face the same direction for the welfare of the world—takes precedence<sup>107</sup>. Collaborative steps are often taken as a step toward peace, while gestures are made to avoid igniting violence and to protect international stability.

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## 2.2 ARSIWA framework and ILC's contribution

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<sup>103</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>104</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>105</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>106</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>107</sup> UN General Assembly, *Territorial Integrity of Ukraine*, GA Res. ES-11/1, UN Doc. A/RES/ES-11/1 (2 March 2022).

The International Law Commission (ILC) has contributed significantly to the advancement of international law. Their work is particularly focused on state responsibilities. The ILC's Articles on State Responsibility for Internationally Wrongful behaviour (ARSIWA) serve as a vital guide for understanding the legal ramifications of states' wrongful behaviour. These articles reflect decades of ILC work and are today regarded as essential for the practice and study of international law. It is clear that the ILC performs crucial, prolonged work in methodically developing the foundation for the situations under which governments are responsible for violations of international law, as well as the scope of such liabilities<sup>108</sup>.

### **The ILC's Contribution to Forming the ARSIWA Structure**

Starting in 1947, the ILC's primary goal was to further the creation and codification of international law. The ARSIWA is one of the most noteworthy contributions to the subject, serving as a set of guiding principles for analysing the legal repercussions of governments' globally unlawful behaviour. These articles describe what the state is required to do when these activities are taken, as well as what counteractions, reparations, or remedies are legally justified in the event of a violation of international law<sup>109</sup>.

Although the ARSIWA are not self-enforcing documents, they have been included into the operations of empires as well as the International Court of Justice due to their widespread adoption by governments around the world. The ILC's efforts have had a significant impact on customary international law because there are no international systems in place to deal with problems that arise when countries cross their borders, which helps define the rules of customary law in a system that frequently exceeds its boundaries<sup>110</sup>. Articles, unlike mandates, do not provide any jurisdictional oversight, but they serve as the foundation for the evolution of international legislation.

The ILC is important in the evolution of ARSIWA because it demonstrates a multifaceted understanding of state responsibility in regard to human rights violations, breaches of

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<sup>108</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>109</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

<sup>110</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

territorial integrity, and countermeasures. The ILC has clearly defined the limitations and established norms governing how nations should conduct in accordance with international law, ensuring that these rules are followed while also allowing for the option of giving solutions when things go wrong. The ILC's architecture of state responsibility ensures that a state can be held accountable for its acts while adhering to the core values of sovereignty and non-intervention<sup>111</sup>.

### **Countermeasures and ARSIWA's Legal Framework**

The provisions on countermeasures are likely one of the most essential aspects of the ARSIWA text, particularly articles 49–54, which outline the situations under which the wounded state may adopt countermeasures in response to an internationally illegal act. In the instance of ARSIWA, Article 49 defines a countermeasure as an action taken by an injured state in reaction to another state's disregard for one of its international duties. In this setting, various reasons justify the use of countermeasures. These include the need for the action, the claimed need for proportionality between countermeasures and the damage suffered, and the guarantee that the measures would be discontinued once the adopting state has complied with international responsibilities.

The ARSIWA framework for countermeasures connects self-help measures to legal processes in a more complex manner than one may expect. According to Tams (2005), countermeasures are an important solution when there are no available or effective judicial systems for implementing international obligations. This type of countermeasure allows states to act promptly and efficiently when infractions occur, regardless of the presence of courts or other official enforcement processes. However, the ARSIWA restricts the flexibility of countermeasures, emphasizing their provisional, proportionate, and restorative nature<sup>112</sup>.

### **The Impact of ILC's Work and ARSIWA Provisions on Practice and International Courts**

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<sup>111</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>112</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

Although the ARSIWA were not legally enforceable at the time, they had a considerable impact on state practice and international legal jurisprudence—particularly arbitral and judicial courts having international jurisdiction, most notably the International Court of Justice (ICJ). These bodies have repeatedly referred to the ARSIWA in situations involving state responsibility and countermeasures. For example, in the *Gabčíkovo-Nagymaros Project* (1997), the ICJ used ARSIWA principles to address countermeasures and environmental state responsibility. Similarly, in *Nicaragua v. United States* (1986), the ICJ used the ARSIWA to determine whether the United States' actions in support of counter-rebel troops in Nicaragua might be considered (self-)countermeasures.

The addition of the ARSIWA to international jurisprudence demonstrates the system's validity in terms of state rights and obligations. According to Pauwelyn (2005), the ARSIWA not only provides a normative framework but also a relatively distinctive and adjustable structure for state accountability in the context of violations of international legal standards. Such dependability is especially important in allowing the international legal system to confront emerging challenges, such as violations of human rights or breaches of peace and security, without affording excessive discretion and leniency to state accountability<sup>113</sup>.

In addition, the ARSIWA has made contributions to other areas of international law, including human rights law and international economic law. The ARSIWA are the primary legal instruments that define the parameters of state responsibility; thus, these legal regimes, which rely on state obligations, will exist in principle alongside the assumption that positive international law will apply equally to all states regardless of their interests<sup>114</sup>.

#### **Article 54: Collective Countermeasures Are Not Specifically Approved or Prohibited in ARSIWA**

Among the state obligation sections, Article 54 of ARSIWA is remarkable for including countermeasure methods and conditions as one of the requirements. At the same time, it

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<sup>113</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>114</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

is noticeable how the piece reflects a lack of support for collective countermeasures. In this regard, the article neither supports nor opposes collective measures, but it does specify several important factors that determine whether the measures are unilateral or multilateral. This feature of Article 54 has sparked a considerable deal of scholarly and legal debate since it raises the question of whether other states that are not directly affected by the wrongful act can take action on behalf of the community of nations<sup>115</sup>.

### **Article 54 ARSIWA and Its Implications**

Article 54 of the ARSIWA states:

*“This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.”*

This section highlights the fundamental guiding standards of need and proportionality in relation to countermeasures. However, Article 54 is silent on whether a state that is not directly participating in the dispute is permitted to respond with countermeasures to a violation of international law, and it is unclear whether such responses can be joint. It does, however, explain that counteractions are to be conducted only after giving the violating state the opportunity to control the situation—that is, counteractions can only occur after the offending state has been given the opportunity to halt the violation and correct the situation<sup>116</sup>.

One of the most significant challenges in interpreting Article 54 is the lack of clear terminology relating to third parties. According to Pauwelyn (2005), the article violates the implementation of countermeasures, particularly in cases when the violation of international law involves global norms that are not limited to a connection between two

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<sup>115</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>116</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

nations<sup>117</sup>. Tzanakopoulos (2011) goes on to say that the absence of explanation reflects the ILC's cautious attitude to the lawfulness of collective action<sup>118</sup>.

### **Debate: The Legitimacy of Third-Party Countermeasures**

As it is, the absence of express authorization for collective countermeasures in Article 54 is contentious in international legal literature. Some argue that the omission of text is an attempt to limit the employment of countermeasures to the damaged condition, which falls under the category of misinformed thinking. This viewpoint, which is based on obsolete and problematic approaches to legal relations inside and between nations, contends that direct, incurable harm confers the right to retaliation. This traditional method operates within the framework of bilateral state accountability, which can only support corrective action that stems from the bond between the injured and guilty states.<sup>119</sup>

This view has been challenged over the last decade or so by the growing relevance of erga omnes obligations and the recognition that some breaches of international law, such as violations of territorial integrity, human rights, or even a nation's peace and security, are intrinsically international in nature. According to Tams and Tzanakopoulos (2010), more contextualized readings of Article 54 imply that the community as a whole is permitted to retaliate as long as the community as a whole is harmed by the infringement. They emphasize that the ARSIWA assumes that the reference to the cessation of the wrongful act and the remedy for the injury does not exclude other third-party nations from taking action, particularly where the breach threatens society's legal order<sup>120</sup>.

On this point, the International Court of Justice's (ICJ) concern in *Barcelona Traction* (1970) has been significant. They acknowledged that certain obligations, such as those relating to human rights or aggression, are legitimate as erga omnes to all nations,

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<sup>117</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>118</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>119</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>120</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* 23, no. 3 (2010): 781–800.

justifying the possibility of third-party involvement<sup>121</sup>. Although the court never addressed the topic of countermeasures, it did acknowledge the erga omnes nature of certain international norms, which has been critical in advancing claims to the right to collective countermeasures.

### **The principle of "proportionality" in collective countermeasures**

A fundamental concern in talks on Article 54 is proportionality in the deployment of countermeasures, which means that the response and previous action are balanced. Tams (2005) emphasizes that proportionality serves as a pillar in the context of ARSIWA because it ensures that remedies to violations of the law are not overly severe or retaliatory. This idea also guides self-help methods in terms of communal response, which promotes moderation and control while preventing the escalation of violence<sup>122</sup>.

However, the involvement of third-party states makes proportionality more difficult to achieve. While dealing with proportionality in unilateral situations is relatively straightforward because an injury and a solution exist, proportionality fails in multilateral responses owing to the presence of too many competing interests. This may make it difficult to define what a proportional response is in circumstances where a breach has global ramifications, such as the EU's sanctions on Russia for its actions toward Ukraine. The EU took these steps despite the fact that it had not directly experienced any injury, claiming that the breach of Ukraine's sovereignty was an attempt to violate an erga omnes requirement<sup>123</sup>.

### **Practical Application of Collective Countermeasures: The Case of the EU**

The execution of collective countermeasures within the international law environment has evolved, with the European Union playing a leadership role in collective reactions to international law breaches. The EU sanctions regime against Russia serves as an example of countermeasures. In reaction to Russia's annexation of Crimea and military activity in Ukraine in 2014, the EU acted collectively by placing economic sanctions on Russia's

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<sup>121</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

<sup>122</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>123</sup> Jorge G. Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28, no. 2 (2023): 187–205.

financial, energy, and defence industries. Their rationale was that they were breaking international law and committing aggression, which undermined world peace and security and, in essence, violated the erga omnes duty to respect territorial integrity and sovereignty<sup>124</sup>.

Although Article 54 of ARSIWA does not provide a comprehensive discussion of the validity of such collective acts, the European Union's legal right to impose sanctions on Russia is based on its own legal order, albeit in accordance with international law. The EU's response to Russia's aggression demonstrates periphery states' ability to take collective action in the absence of clearly defined UN Security Council orders to combat breaches of international normative order<sup>125</sup>. This has expanded our knowledge of the law of collective countermeasures, taking into account the reality of a world where the UN Security Council is constrained by veto power.

### **Key ICJ Cases Related to Countermeasures**

The International Court of Justice (ICJ) has played a key role in defining the legal idea of countermeasures under international law. The court's decisions have elaborated on various topics surrounding state accountability and the employment of countermeasures, which serve as key examples of how international law is practiced. Barcelona Traction (1970) and the Gabčíkovo-Nagymaros Project (1997) were significant incidents that influenced countermeasure development. These examples contribute to a better understanding of the scope and limits of countermeasures, notably for erga omnes infractions<sup>126127</sup>.

### **Barcelona Traction (1970): The Concept of Erga Omnes Obligations**

Barcelona Traction, Light and Power Company, Limited (1970) is a highly contentious subject in the field of countermeasures and state accountability. In this case, the International Court of Justice hears a dispute between Belgium and Spain, in which

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<sup>124</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>125</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

<sup>126</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

<sup>127</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

Belgium sought legal action on behalf of its residents who were affected by Spain's discrimination against a corporation in which they owned stock. It focused on the concept of erga omnes responsibilities, or obligations owed by governments to the entire globe.

Even though the ICJ did not rule on countermeasures, the court's acknowledgment of erga omnes responsibilities has been extremely important in terms of other states' ability to respond and safeguard international legal order. In its decision, the ICJ stated that certain legal responsibilities, such as the prohibition of genocide and the defence of basic human rights, are so fundamental that any state may have a legitimate interest in complying, regardless of whether or not it has been personally damaged. According to the court, these commitments are of such a nature that their infringement affects not just the aggrieved state, but the entire world.

The recognition of erga omnes responsibilities lends credence to the idea that third-party governments have the capacity to defend international standards in certain circumstances. According to Tzanakopoulos (2011), this case laid the groundwork for the understanding that the international legal order allows, or even requires, actions to be taken that are not limited to the injured party, as long as the breach at hand involves fundamental issues of global concern, such as peace, territorial integrity, or human rights<sup>128</sup>. This reasoning has been supported in later instances and practices reviewed relating countermeasures, demonstrating that it remains critical to the legal foundation for collective countermeasures<sup>129</sup>.

### **Gabčíkovo-Nagymaros Project (1997): The ICJ's Countermeasure Case**

The Gabčíkovo-Nagymaros Project (1997) is a significant case that has influenced international discussions on countermeasures. This case concerns a dispute between Hungary and Slovakia over the construction and operation of a dam in the Danube River. The case concerned Hungary's unilateral assertion that Slovakia had committed expressivist treaty violations in relation to their unilateral activities under the joint treaty, and that Hungary was required to take countermeasures as a reaction.

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<sup>128</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>129</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* 23, no. 3 (2010): 781–800.

In the Gabčíkovo-Nagymaros Project case, the ICJ applied proportionality to the doctrine of countermeasures, including prior notification obligations and warnings before taking actions. Articles 52 and 54 of ARSIWA provide for previous consultation and notice, allowing governments to act within procedural boundaries. The ICJ emphasized that countermeasures must neither worsen the conflict or violate other international duties. In this regard, the court highlighted that countermeasures must always remain non-punitive.

In Gabčíkovo-Nagymaros, jurisdiction included revising the position of countermeasures as intermediate and self-enforcing acts to fulfil legal treaty stipulations and avoid increasing conflict. Countermeasures must also be discontinued whenever an accused state begins to comply with its commitments, reaffirming Article 51 ARSIWA's limitation on proportionality. Hungary's actions were deemed disproportionate in this case because the state failed to provide enough provisions for discussions and violated the ARSIWA system's procedural requirements. In any event, Hungary's suspension of the project was found to be an international unlawful conduct, and the countermeasures implemented as a result were inappropriate. This stresses the significance of due process in countermeasures and procedural limbs of authority in international law<sup>130</sup>.

### **The Impact of International Court of Justice Jurisprudence on Collective Countermeasures**

Despite being bilateral in nature, Barcelona Traction and Gabčíkovo-Nagymaros made significant contributions to understanding collective countermeasures. These instances support the concept that some infractions, particularly those of erga omnes character, may necessitate intervention from a third party since they affect the world as a whole. Crawford (2013) notes that the evolution of this principle has steadily increased awareness for state and regional institutions, such as the EU's role in protecting international law if such norms are in danger of being violated<sup>131</sup>.

The ICJ's decisions in these cases help to define the circumstances under which other governments can take action, even if no direct injury has occurred to them. Although the

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<sup>130</sup> Christian J. Tams, *The Role of Countermeasures in International Law* (Oxford: Oxford University Press, 2005).

<sup>131</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

court has not established a clear rule for when collective countermeasures are appropriate, its decisions on erga omnes responsibilities provide a solid foundation for discussing how much other countries can participate in supporting violations of international law. These initiatives provide these states with critical assistance in understanding how cursorily collective remedies can be used, particularly in response to transgressions of core international norms such as aggression and human rights<sup>132</sup>.

### **The ICJ's Revolutionary Approach to Countermeasures**

The International Court of Justice's decisions on *Barcelona Traction* and *Gabčíkovo-Nagymaros* are linked to the evolution of international law and countermeasures based on the 'Barcelona Traction' principle. These instances emphasized the framework of erga omnes responsibilities, the legal relevance of action for states beyond coalitions, and the importance of striking a balance between action and response, as well as fairness in legal proceedings.

Though the ICJ has not specifically addressed the issue of collective countermeasures, its jurisprudence suggests a broader interpretation of state responsibility that allows for some level of intervention by outsiders when a violation of international law harms the global community's collective interests. This increasing understanding is critical in defending the workings of the international legal system, particularly when member states and regional organizations confront more complex issues such as international peace and security and human rights<sup>133134</sup>.

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### **2.3. Do Collective Countermeasures Violate International Law? Arguments Against Legality**

The legal debate is around the topic of collective countermeasures that violate international law. Countermeasures are defined as steps made by one state in response to another's illegal act. The concept of third-party states—those who are not directly harmed

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<sup>132</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>133</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>134</sup> Jorge G. Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28, no. 2 (2023): 187–205.

by the act—taking collective action on behalf of the global community raises even more complex legal issues. This section will examine main arguments against the legitimacy of collective countermeasures and emphasize the fact that counteraction measures necessitate a primordial damage, state violation, non-interference, and the possibility of overreaction.

### **The traditional view holds that countermeasures require direct injury**

One of the standard concepts of countermeasures in international law advanced by the ILC's Articles on State Responsibility (ARSIWA) is that countermeasures (in international relations) can only be carried out by states that have suffered direct injury and harm as a result of another state's wrongful act<sup>135</sup>. This principle originates from the prevalent perspective of sovereignty, which holds that governments can only act in defence of their interests if they have suffered damage. Countermeasures, in this context, are defined as self-help measures taken by an injured state to force a violating state to comply with its international commitments.

This direct injury requirement allows for the concentrated application of countermeasures, addressing specific breaches affecting the state that has suffered harm. Crawford and Pauwelyn contend that this two-sided approach to countermeasures decreases the possibility of abuse by allowing intervention in another state's internal affairs only when there is a valid and reasonable basis<sup>136137</sup>. The idea that only the affected state can take action exemplifies the balance that international law strives to strike between ensuring sovereign equality and limiting disproportionate or unjust interventions by unaffected states.

Traditionalists also argue that countermeasures taken by third-party governments damage the stability of the international system. According to Tzanakopoulos, allowing non-injured players to take action might result in unnecessary escalation of conflict because

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<sup>135</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

<sup>136</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>137</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

governments may be motivated by political, economic, or strategic interests rather than legal entitlements<sup>138</sup>.

### **Violations of state sovereignty and non-intervention**

One of the major concerns about collective countermeasures is their potential violation of the non-intervention and sovereignty norms. Sovereignty is one of the fundamental guiding pillars in international law, as stated in the UN Charter, and it allows states to manage their internal and external relations without interference from outside sources. The countermeasure option offered to third countries may be interpreted as a violation of this essential principle, especially if such actions are employed in an ostensibly coercive manner.

Furthermore, the non-intervention principle, as outlined in Article 2(4) of the UN Charter, requires that no forcible action be imposed or done in relation to any state's sovereignty unless the Security Council approves permission<sup>139</sup> (UN Charter 1945, art. 2(4)). Such critics argue that collective countermeasures, particularly when economic sanctions or diplomatic actions are involved, violate this principle by using force to compel a state to change its policies or actions in response to an unsolicited intervention.

Pauwelyn puts it succinctly: any self-help approach outside the context of SC censure may be interpreted as coercive diplomacy, in which powerful states or blocs engage in forceful interference with the targeted state's sovereign rights<sup>140</sup>.

### **Possible Exploitation of Collective Countermeasures**

The most serious issue with countermeasure policies is abuse, which raises legal concerns. A lot of detractors join the debate due to the possibility of third-party states or institutions taking countermeasures. Law, in this scenario, may function as a political tool rather than a legal remedy. Rather than dealing with violations of international law, a powerful nation or group of nations may use countermeasures to achieve specific political or geostrategic goals. According to Pauwelyn, this may result in partial bias in the

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<sup>138</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>139</sup> Charter of the United Nations, 26 June 1945, 1 UNTS XVI, arts. 2(1) and 2(4).

<sup>140</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

implementation of widely agreed standards and countermeasures, with weaker states serving as players in geopolitical manoeuvres rather than genuine efforts to execute legal commitments.

The implementation of collective countermeasures raises concerns that they may disproportionately damage civilians. Economic sanctions are the most common type of countermeasure, and they are widely acknowledged to do irreversible harm to the economy and have an impact on the country's civilian population. Amnesty International and Human Rights Watch have also opposed the use of broad sanctions, which typically harm people more than the targeted government. It is also suggested that counter-sanctions, particularly punishments in the form of sanctions, do not discriminate and hence become a form of collective punishment, causing unnecessary harm to disadvantaged communities<sup>141</sup>.

### **Limitations of International Law in Collective Countermeasures**

The absence of defined legal grounds for third-party nations to apply collective countermeasures adds to the legality difficulty. Despite the fact that ARSIWA Article 54 specifies the procedures to be followed when implementing countermeasures, it does not explain the status of third-party governments taking action for violations of international law<sup>142</sup>. The ILC has been extremely cautious in allowing the expansion of countermeasures to third-party nations, and Article 54 is silent on the legality of collective action, leaving such action legally murky.

As Tzanakopoulos points out, ARSIWA's reticence on the permissive character of collective responses reflects the ILC's concern about overextending the concept of state accountability. This lack of clarity has resulted in varying perspectives on the ability of certain third-party states or regional groups, such as the EU, to act collectively in violation of international law for actions that violate fundamental international values. In the absence of specific rules, collective countermeasures remain a source of legal ambiguity, exacerbated by the fact that the UN Security Council is traditionally viewed as the only

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<sup>141</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>142</sup> International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, part 2.

body with the authority to sanction coercive action aimed at restoring peace and security<sup>143</sup>.

### **UN Security Council and Why the World Lacks Consensus**

Under Chapter VII of the UN Charter, the UN Security Council has the exclusive authority to bind sanctions or take collective actions such as imposing sanctions to correct breaches of peace or violations of international law. The ability of regional organizations or individual states to enforce collective countermeasures outside the framework of the Security Council raises concerns about circumventing the multi-state agreed-upon strategy. Unrestricted action or regional initiative without specific UN authority is considered as weakening the global legal order and, in the worst-case scenario, cleaving the system of international relations, further dividing them.

As we conclude, defences against the legality of collective responses rely on the traditional approach to state responsibility, sovereignty, and non-intervention, as well as the risks of exploitation by dominant states. The absence of legal recognition of third-party countermeasures under ARSIWA, along with the lack of a defined and authoritative structure within which such measures could operate, creates a plethora of legal issues that must be addressed in future legal considerations. These gaps raise the question of whether it is possible to establish limitations that sanction collective countermeasures while also ensuring that such restrictions do not lead to capricious and irresponsible use, all while adhering to inflexible international law<sup>144</sup>.

### **Do Collective Countermeasures Violate International Law? Arguments in Support of Legality**

The legality of a collective countermeasure is determined by its action: can a third state or organization move to respond to a malicious act committed by another state for which they bear no direct injury? Existing counterarguments may be enough to rule out such moves. However, there are compelling arguments that collective countermeasures can stay within the scope of international law, particularly when they attempt to safeguard responsibilities and objectives, *erga omnes*, or the international system. In this paragraph,

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<sup>143</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>144</sup> Charter of the United Nations, 26 June 1945, 1 UNTS XVI, arts. 2(1) and 2(4).

I will discuss numerous arguments in favour of collective countermeasures, with a focus on the defence of communitarian values, the progress of responsibilities erga omnes, and the rising convergence of various international law practices.

### **Defence of Communitarian Norms: Protecting Global Interests**

The argument for collective countermeasures is based on the idea that certain transgressions of international law, in some way related to peace, security, and human rights, affect the entire international order, not just the damaged state. Such transgressions weaken crucial communitarian standards that are the responsibility of international society rather than nations. According to Tams and Tzanakopoulos, international norm protection supports third-party involvement since these violations affect every state and, as a result, every state has an incentive to respond<sup>145</sup>.

For example, breaches of the prohibition on genocide, aggression, or violations of territorial integrity (Russia's actions in Ukraine) concern the entire international community, not just the injured state. According to Pauwelyn, when there is a violation of an erga omnes responsibility, the international community is concerned with fully enforcing international law in order to maintain global peace, security, and human rights. Such crimes undermine the fundamental norms of the international legal order and jeopardize the principles that allow for the peaceful coexistence of states. As a result, international and supranational bodies such as the European Union have the authority to intervene and alleviate offenses against these values that have degraded over time<sup>146</sup>.

### **Erga Omnes Obligations: The Legitimacy of Third-Party Action**

The legal idea of erga omnes responsibilities, or obligations owed to the community of states, serves as rationale for collective countermeasures. The International Court of Justice (ICJ) has held that certain basic commitments, such as the prohibition of genocide and the defence of human rights, are universally common to the entire international community, not just particular nations. The set of international law principles governing

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<sup>145</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* 23, no. 3 (2010): 781–800.

<sup>146</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

the protection of foreign investments takes this into account by recognizing that nations are bound by commitments that go beyond the interests of the injured party<sup>147</sup>.

The notion has been supported by other cases, such as the *Gabčíkovo-Nagymaros Project* (1997), where the ICJ confirmed that third-party states have a justifiable interest in ensuring essential international laws are observed, even if they are not directly injured by the illegal act<sup>148</sup>. Such an approach underpins the claim that collective countermeasures in the event of *erga omnes* violations are not only lawful but also judged necessary to maintain the order of international law.

The premise for collective responses arises from the reality that transgressions of some fundamental international norms, such as peace and security and paramount human rights, are concerns that all states are concerned about. Thus, all states have the right to respond to such violations. Tzanakopoulos observes that the rising recognition of responsibilities *erga omnes* increases the argument for using countermeasures to enforce international<sup>149</sup>.

### **Developing international law practice trends that support collective countermeasures**

Over the last few years, there has been a trend in international practice that promotes the validity of collective countermeasures, particularly where infractions of the law affect global standards and international peace and security. The sanctions implemented by the European Union on Russia in reaction to its activities in Crimea (2014) and Ukraine (2022) show how certain states or institutions outside the conflict can work together to politically enforce international law. The EU's actions are described as collective countermeasures aimed at protecting Ukraine's sovereignty and territorial integrity, which are *erga omnes* duties. Even if the EU was not directly affected by Russia's infractions, the EU penalties are intended to strengthen the international legal system and prevent future violations.

As Gestri points out, the sanctions imposed on Russia demonstrate the continued development of regional organizations' roles in international governance as a result of the

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<sup>147</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

<sup>148</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

<sup>149</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

UN Security Council's inaction owing to internal politics or the veto of its permanent members. The European Union has contributed to international equilibrium by implementing necessary countermeasures and sending a clear message that violations of fundamental international responsibilities, such as respect for territorial integrity, will not go unnoticed<sup>150151</sup>.

Furthermore, the UN General Assembly has shown increased support for non-directly harmed governments acting on behalf of injured states. Resolution ES-11/1 (2022), which condemns Russia's invasion of Ukraine and affirms its territorial integrity, represents a broader consensus among states that global rules require collective action to be implemented<sup>152</sup>. This is a significant shift in international law, with the international community more willing to respond collectively to transgressions affecting all states, regardless of direct injury.

### **Collective Countermeasures: Considerations of Law and Politics**

Collective countermeasures are a formidable legal tool, but their practical execution presents significant political problems. The challenges associated with multilateral cooperation among governments and international organizations pose a significant obstacle to the implementation of collective countermeasures. According to Van den Herik, achieving agreement among her member states for taking action is not easy, especially when political and economic factors are at stake. Consider the implementation of sanctions: their execution necessitates a high level of coordination among members, which is inevitably hindered by member states' diverse priorities<sup>153</sup>.

There is also the practical challenge of enforcement, especially when actions such as sanctions are designed to target a state's economic or political interests. Third-party states or organizations may face difficulties in enforcing compliance with their policies, especially if the target state develops means to circumvent these limits. The creation of

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<sup>150</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>151</sup> Jorge G. Olmedo, "The Legality of EU Sanctions under International Investment Agreements," *European Foreign Affairs Review* 28, no. 2 (2023): 187–205.

<sup>152</sup> UN General Assembly, *Territorial Integrity of Ukraine*, GA Res. ES-11/1, UN Doc. A/RES/ES-11/1 (2 March 2022).

<sup>153</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

parallel trade networks and alternative banking systems, as shown in Russia's efforts to avoid EU sanctions by strengthening relations with China and India, underscores the challenges of ensuring that collective remedies have the desired effect<sup>154</sup>.

Despite these problems, the growing understanding of the relevance of global standards, as well as the growing readiness to handle infractions collectively, suggest that collective countermeasures will continue to play an important role in international law enforcement.

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<sup>154</sup> Jorge G. Olmedo, “The Legality of EU Sanctions under International Investment Agreements,” *European Foreign Affairs Review* 28, no. 2 (2023): 187–205.

## The Practice of Collective Sanctions: From Apartheid to Ukraine

### 3.1 Past State Practice for Third-Party Countermeasures

The global practice of imposing punitive measures or sanctions, particularly in cases of severe violations of international law, provides a foundation for comprehending third-party countermeasures in the current context of international relations. The sanctions imposed on South Africa during its apartheid regime are widely regarded as one of the first and most notable examples of third-party action to uphold international law and standards, particularly in connection to human rights and apartheid. These efforts, performed by the UN and several other states, demonstrated the international community's collective responsibility to uphold humanitarian norms that cross borders<sup>155</sup>.

In 1963, the United Nations Security Council passed Resolution 181 and imposed international sanctions on South Africa, including a weapons embargo. These acts established a precedent for the employment of third-party countermeasures in situations when direct injury to the sanctioning states was not present<sup>156</sup>. The apartheid regime isolated non-white South Africans and violated fundamental human rights that were recognized globally. Even if these acts had little direct impact on the sanctioning governments, the South African government's actions were viewed on a global scale as an assault on peace and security. As a result, the response was not a bilateral disagreement, but an attempt to defend erga omnes commitments, which are duties owed to all members of the world community.

The principle of erga omnes responsibilities was critical in proving a third-party claim. This concept was clearly stated by the International Court of Justice (ICJ) in its decision in *Barcelona Traction* (1970), which emphasized that some international standards, such as the prohibition of discrimination on the basis of race, were due to all States and thus of interest to any State, even if it had not suffered damages. The arms embargo against South Africa was not enforced by everyone, but it was implemented as a collective

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<sup>155</sup> *United Nations Sanctions South Africa for Apartheid*. EBSCOhost.

<sup>156</sup> United Nations Security Council. *Resolution 181 (1963): Arms Embargo Against South Africa*.

response to South African policy. The majority of member nations, as well as some international organizations, preceded policy enforcement with their own political motivations, demonstrating the complexities of third-party countermeasures<sup>157</sup><sup>158</sup>.

In reaction to a lack of diplomatic attempts and to increase pressure on the apartheid system, sanctions were expanded in the 1970s and 1980s to encompass trade and financial restrictions. The United Nations, through the General Assembly and Security Council, actively encouraged these restrictions, along with further attempts by the United States and certain EEC members who imposed extra sanctions unilaterally<sup>159</sup>. The goal was to decisively isolate South Africa politically and economically in order to remove apartheid's practices of segregation and racial injustice.

The situation of South Africa exemplifies the application of an international punitive sanction, in which not all acts of aggression necessitate retaliation, as certain acts are intended to preserve international law and promote human rights. The imposition of sanctions veered greatly from the sovereign authority of the state, yet it served the need for worldwide cooperation to address an obvious legal and moral violation. The efforts taken to impose such sanctions reflected attempts to maintain peace and security at the price of the country's economy.

The effectiveness of these sanctions is still debated. Certain academics, such as Pauwelyn (2005), argue that the sanctions as economic and political policies contributed to the end of apartheid since they had a substantial impact on the South African government. Other academics concentrate on the internal resistance and talks that resulted in the peaceful transition of administration in 1994<sup>160</sup>. Regardless, the South African case with sanctions during apartheid established a legal and political framework for the South African community's right to take collective action in cases of international law violations,

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<sup>157</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

<sup>158</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>159</sup> *Sanctioning Apartheid: A Historical Analysis of Sanctions Imposed on South Africa During Apartheid*. Oxford Academic.

<sup>160</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

regardless of whether the benefactor state directly harms the state or organizations imposing the sanctions.

Examples of these precedents may be seen in the sanctions policies implemented against Iran, North Korea, and Venezuela. In all of these cases, international entities such as the United States and the European Union impose penalties on other states accused of violating core non-proliferation, democratic, or humanitarian values<sup>161</sup>. For example, the United States and the European Union violated international law's 'harm' concept by imposing sanctions on Iran in order to force it to abandon its pursuit of nuclear weapons. The motivation for these sanctions was not only the potential disruption of the regional equilibrium, but also widely acknowledged justifications for the supporting states support for the Non-Proliferation Treaty (NPT) and worldwide non-proliferation standards.

Similarly, the sanctions imposed on North Korea in response to their nuclear tests have been presented as a collective effort to safeguard the international legal order. The United States and the European Union, among others, imposed such sanctions, which encompass trade, finance, and military cooperation, even though North Korea's nuclear activities caused no direct damage to these countries. The purported justification for these restrictions was to prevent the spread of weapons of mass destruction while also protecting world peace and security<sup>162</sup>.

These cases demonstrate a rising trend of adopting third-party countermeasures, particularly in the realm of international standards that influence the global community. The United States' sanctions against Venezuela, imposed in response to the dictatorial government's erosion of democratic ideals and human rights crimes, have comprehensively explained the situation.

There are several legal and political concerns supporting and opposing these sanctions, demonstrating the multifaceted character of third-party actions. Some supporters say that these sanctions are within the limits claimed under *erga omnes*, and that there is an international obligation to interfere when governments violate fundamental legal

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<sup>161</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>162</sup> Larissa van den Herik, *EU Sanctions and the Limits of International Law Enforcement* (Oxford: Oxford University Press, 2021).

standards. Some legal scholars, as well as states sympathetic to the sanctions' targets, believe that such measures violate the idea of state sovereignty and sovereignty over territory. The lack of UN Security Council permission for a number of these sanctions, particularly those imposed unilaterally by the United States, has heightened debate about whether these actions are legal under international law<sup>163</sup>.

To summarize, the historically accepted state practice of third-party countermeasures, such as those imposed on South Africa under apartheid, Iran, North Korea, and Venezuela, has had a significant impact on international legal standards regarding the legitimacy and extent of countermeasures. These examples demonstrate the international community's growing recognition of the importance of defending certain universal legal values and principles, particularly those relating to human rights, peace, and security, regardless of whether the sanctioning states have been directly affected. Thus, they contribute to our understanding of the evolution of legal principles on third-party countermeasures, which I shall examine in regard to EU sanctions on Russia in the next chapters.

### **The Legal and Political Debate Over Third-Party Countermeasures**

The contentious legal and political concerns raised by sanctions during South Africa's apartheid years continue to be significant in international law today, particularly the question of the legitimacy of third-party remedies. These debates strike a careful balance between the goals of international law, state sovereignty, international erga omnes responsibilities, and extraterritoriality. The South African case exemplifies the emergence of third-party countermeasures to gross violations of international law.

The legal framework for third-party countermeasures has been the subject of much controversy, particularly in South Africa. Sovereignty of a state typically prevents other territorial jurisdictions from interfering with other states' domestic affairs. Nonetheless, as Pauwelyn (2005) points out, there was a legal justification for such incursions in the form of erga omnes obligations, which hold that some fundamental norms, such as racial discrimination, are so fundamental that they are owed to the global community, and thus any state is empowered to act to uphold those norms even if it is not directly harmed by the offending state's actions. This was notably captured by the International Court of

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<sup>163</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* 23, no. 3 (2010): 781–800.

Justice (ICJ) in its 1970 decision in *Barcelona Traction*, which stated that certain obligations, such as the protection of human rights, transcend borders and are so important that every country has an interest in enforcing them<sup>164</sup>.

The UN Security Council's arms embargo in Resolution 181 (1963), together with other sanctions imposed on South Africa's apartheid state in the 1960s, established a precedent in international law for third-party countermeasures. While these worldwide measures had no direct impact on UN members, they aimed to free South Africa from racial segregation and oppressive practices. Even though South Africa's apartheid regime had little direct impact on the sanctioned countries, it was viewed as a blatant violation of the world legal and moral order. The global community took action to maintain international peace and security by urging sovereign governments to uphold universal human rights even when they were violated within the territorial jurisdiction of another independent country.

In the South African context, critics of third-party responses claim that the sanctions, particularly those imposed by single-out countries such as the United States and several European countries, violated South Africa's sovereignty. Some claim that these acts violated the non-intervention principle, which is a key tenet of international law that prohibits unlawful meddling with a state's domestic affairs. Simma et al. (2012) address the focus of the UN Charter and its article 2(4) on the idea of not forcibly participating in other countries' affairs with weaponry and only allowing acts of force in international relations on instructions from the UN Security Council<sup>165</sup>.

On the other side, authors advocating the sanctions argue that South Africa's apartheid state, which promoted racism and severe human rights violations, was a compelling basis for action. Tzanakopoulos (2011) agrees with this viewpoint, arguing that when states violate fundamental human rights, the state's obligation *erga omnes* becomes more important than sovereignty. This argument contends that global society, whether

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<sup>164</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>165</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

organized through the UN or individual nations, had the authority to interfere in such matters.

The political atmosphere around the sanctions in question demonstrated the junction between legal abstraction and world-cantered politics. During the Cold War, punishing South Africa was more than just an exercise in human rights advocacy; it was heavily influenced by the politics of the period. EBSCO (2022) examines the split UN Security Council apartheid dynamics, focusing on the political manoeuvring of the permanent members, which eked out sanctions implementation in some cases<sup>166</sup>. For example, the United States and the European Economic Community (EEC) supported the implementation of sanctions, but other countries, notably those with business ties to South Africa, actively attempted to resist more punitive measures. This is political discord, which demonstrates the selective use of legal enforcement. It raises the question, "Are sanctions imposed universally and without discrimination on inverse international offenses?"

Additionally, the sanctions imposed on South Africa prompted serious concerns about the impact of third-party retaliation. Some historians, such as Pauwelyn (2005), feel that the sanctions were essential in bringing down the apartheid system by damaging South Africa's economy, particularly its mining and commerce industries. However, while the penalties had some economic implications, the conclusion was the result of far more complex dynamics than simply external forces. Apartheid's final demise was largely the result of internal opposition led by anti-apartheid movement constituents and ANC activists, with monetary and moral assistance from throughout the world.

Furthermore, the political ramifications of sanctions highlight the difficulties associated with adopting address-based responses to enforce international standards in the context of international relations. Although sanctions helped to put the apartheid state to an end, they also produced a unique imbalance between global, national, and regional interests during the application process. The Global South strongly supported the imposition of the sanctions, seeing them as a watershed moment in the end of a regime characterized by colonial and imperial rule. On the other hand, certain Western countries with close economic ties to South Africa were more hesitant to impose complete sanctions,

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<sup>166</sup> *United Nations Sanctions South Africa for Apartheid*. EBSCOhost.

highlighting the difficulty of maintaining universal human rights in a geopolitically divided globe<sup>167</sup>.

More lately, questions concerning third-party countermeasures have resurfaced with relation to Iran, North Korea, and Venezuela. In all of these cases, third-party countries, namely the United States and the European Union, imposed sanctions in an attempt to halt activities that were deemed to harm world peace and security<sup>168</sup>. The Iranian nuclear program, as well as North Korea's nuclear tests, have resulted in the adoption of several sanctions in an attempt to restrict nuclear proliferation. Venezuela is yet another example of the deployment of third-party countermeasures, with sanctions imposed to prevent the collapse of democracy and egregious human rights violations under Nicolas Maduro's dictatorship.

These more recent situations, such as the South African example, highlight the appropriate environment for third-party countermeasures to disrupt system equilibrium and protect the lawful order. However, detractors argue that economic sanctions, like those imposed in South Africa, violate the non-intervention principle, particularly when they target specific people or political organizations within the state of focus. Legal debates over the constitutionality of these punishments are further complicated by their extraterritorial reach, particularly in relation to third-party states. Tzanakopoulos (2011) discusses how powerful states' imposing sanctions on weaker ones crosses borders and increases jurisdictional control, threatening their sovereignty and the international legal order, while also creating potential jurisprudential risks for future collective countermeasures<sup>169</sup>.

To summarize, the application of sanctions on South Africa during the apartheid era remains a cornerstone in the legal and political issues concerning third-party responses in international law. These sanctions emphasized the balance between state sovereignty and the international community's joint commitment to uphold fundamental human rights standards. While the punishments were legally justified by erga omnes commitments, the

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<sup>167</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>168</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>169</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

political issues underlying their implementation continue to influence current debates regarding the legality and efficacy of third-party countermeasures. As global politics evolves, these questions remain critical to understanding the role of third-party nations in upholding international laws.

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### **3.2 Examination of the European Union's Particular Legal Claims Regarding the Legality of Its Sanctions on Russia**

The European Union (EU) has imposed a number of sanctions on Russia, primarily in response to Russia's annexation of Crimea in 2014 and its ongoing involvement in the Ukrainian war. Economic sanctions, asset freezes, travel bans, and trade restrictions, as the EU has referred to them, raise doubts about their validity under international law due to their harsh character. The EU imposed sanctions to defend Ukraine's territorial integrity while maintaining international peace and security. These concerns, notably those about conformity with World Trade Organization (WTO) standards, as well as governments' reservations about sovereignty violations, have significantly tempered the legal debate around the imposition of these fines<sup>170</sup>.

#### **Legal Justification for Sanctions**

The EU's basis for the imposed sanctions has been based on a variety of legal considerations, some of which include international law. One of the most important NATO-allied defence law holidays considers us estrangements to apply - individual state (or collectively through international organizations) immigration - is the protection of international territorial integrity, which is cantered on Article 2 (4) of the United Nations charter, the cessation of hostile aggression against any country's borders or independence<sup>171</sup>. The EU has framed the sanctions verbatim as a response to Russia's claim of control over Ukraine, which is regarded a global violation of national law - particularly, not participating in a nation's civil situation. The EU's position is that

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<sup>170</sup> Mirko Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique*, 2022.

<sup>171</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

Ukraine's sovereign authority over its eastern territory did not allow Russia to influence, hence the EU had grounds to reciprocate by taking serious action<sup>172</sup>.

Along with the UN Charter, the EU particularly mentions the European Convention on Human Rights and other related regional instruments that emphasize the protection of human rights and democracy. The EU's restrictive measures are characterized as an attempt not just to persuade Russia to follow international law, but also to defend democratic principles in Europe and around the world. The legal basis for the sanctions arises from the EU's aim of maintaining international harmony and safety by responding to what they regard as a flagrant violation of the established international order<sup>173</sup>.

The WTO system also plays an essential role in the EU's legal position. The European Union has highlighted that the sanctions are designed to have a minimal impact on global trade and are consistent with WTO principles. While EU legislation is subject to WTO regulations, it must also adhere to international trade law principles designed to minimize unjustified trade restrictions and ensure non-discrimination. This is especially essential in light of the WTO's Most-Favoured-Nation (MFN) treatment clause, which ensures that all WTO members have equal access to other members' markets (SSRN). The EU has defended these measures, arguing that Russia's actions were hostile, and that the penalties imposed were proportionate to international law<sup>174</sup>.

### **Concerns about the legality of EU sanctions**

While the legal basis within the EU is sound, Russia, among other global powers, has questioned the validity of the sanctions, saying that state sovereignty and non-intervention principles are violated. Russia, in particular, has criticized the EU's imposition of such measures, claiming that they are an unjustified intervention into Russia's domestic affairs and infringe its sovereign rights. This disagreement is part of a larger international law debate about whether unilateral sanctions imposed by a powerful state or regional bloc,

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<sup>172</sup> *The Lawfulness of EU Restrictive Measures Against Russia*, Diva-Portal

<sup>173</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>174</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

such as the EU, violate the target country's sovereignty and ability to conduct foreign relations without external intervention<sup>175</sup>.

Aside from sovereignty issues, Russia has raised concerns about the EU's sanctions' extraterritorial reach. The EU sanctioned not only Russian state entities, but also individuals and government officials, including leading business executives, the majority of whom own assets in Europe. These steps have resulted in substantial litigation concerning the confiscation or freezing of foreign assets under international law. One of the more contentious problems is the expropriation of Russian central bank assets, which Russia claims violates the country's sovereign immunity and the lawful status of its sovereign assets under international law. According to Reuters, Russia claims that the US's suspension of such assets is a flagrant violation of international law<sup>176</sup>.

Furthermore, the EU's penalties have been litigated at the WTO on the basis of their compliance with WTO regulations. The EU insists that all of its international responsibilities are being honoured; nonetheless, several legal scholars and trade experts have expressed concerns about the so-called "negative compliance" concentration on Contracts, notably the Non-Discrimination and National Treatment principles. SSRN explores the legal consistency of the EU's trade sanctions on Russia in respect to the WTO, focusing on whether Russia's prohibition on the provision of products and services may be justified under the WTO's exceptions for security measures. Explanatory commentators argue that the sanctions in question violate WTO principles due to their disproportional impact on Russia's economy, whereas others argue that the sanctions were properly justified under the GATT's Security Exceptions provision, which allows certain restrictions on trade of goods to be imposed if there is a threat to national security<sup>177</sup>.

### **Global Responses and Russian Legal Issues**

Aside from Russia's legal issues, the argument over EU sanctions has become increasingly heated on a global scale. A number of Global South countries, as well as rising economies, have expressed worry about the penalties' extraterritorial reach,

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<sup>175</sup> Reuters, *Legal Challenges of Confiscating Russian Central Bank Assets to Support Ukraine*

<sup>176</sup> *Countermeasures and the Confiscation of Russian Central Bank Assets*, Lawfare

<sup>177</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

especially if implemented unilaterally by regional blocs such as the EU. Such states argue that geopolitical sanctions have the potential to set a dangerous international precedent, undermining the multilateral system of international governance represented by the United Nations and other international organizations, particularly if sanctions are imposed without a clearly defined Security Council mandate<sup>178</sup>. Aside from that, there are serious worries about the economic and humanitarian repercussions of the sanctions, particularly for ordinary inhabitants of the sanctioned countries. Even while the EU has stated that sanctions are intended to target the Russian leadership and critical sectors of the economy, critics argue that the restrictions have an impact on the majority of people and aggravate the economic situation.

Some claim that the sanctions will strengthen authoritarian regimes because they will allow the regime to exploit patriotic fervour by blaming foreign forces for the sanctions and using it as a justification to rally public support. Regarding these political and legal difficulties, the European Union has defended its sanctions as a necessary step for the preservation of international law and peace. The EU has consistently stated that the sanctions are targeted and designed to be limited in scope in order to urge Russia to respect Ukraine's territorial integrity, international law, and the basic principles of the UN Charter. The EU claims that these measures are a reasonable response to Russian aggression in Ukraine and are consistent with the EU's commitment to law enforcement, dealing with abuses of legal order, and eroding state rights<sup>179</sup>.

The legal justifications for the EU's sanctions against Russia are complicated, requiring a delicate balance between defending state sovereignty and maintaining international peace and security. While the EU has presented its sanctions as a legal and necessary response to Russia's breach of Ukraine's territorial integrity, Russia and other international players have strongly opposed these actions. The extraterritorial scope of the penalties, as well as their compatibility with WTO rules, remains a major topic of debate, highlighting the difficulties of employing sanctions as an instrument of international diplomacy and conflict resolution in the current period.

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<sup>178</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>179</sup> *The Lawfulness of EU Restrictive Measures Against Russia*, Diva-Portal

## **Russia's Objections and International Reaction**

Russia's legal concerns about the European Union's sanctions regime, as well as the global response to these measures, highlight the complexities and controversy surrounding third-party responses under international law. As harsh punitive measures taken by the EU are referred to as 'sanctions' and positioned as a counter-response "to Russia's illegal annexation of Crimea in 2014 and its continuous participation in the conflict in Ukraine," Russia consistently disputes the legality of these sanctions for a variety of legal and political reasons. These concerns about constitutional issues, sovereignty, extraterritoriality, and the influence on global trade have sparked international debate over the unilateral implementation of penalties.

## **Russia's Legal Arguments**

Some of Russia's most serious legal arguments include the sovereignty of the Russian state and the policy of non-interference in the internal affairs of sovereign territories. Russia has stated that the sanctions imposed by the EU and other countries violate their sovereign rights by limiting the policies that a country can pursue both domestically and globally due to foreign meddling. Russia claims that the EU is exercising unilateral power dominance over their policies, and that uncharged penalties violate the rule of state sovereignty, as defined in the UN Charter and other elements of international law. The rule of non-intervention (policing), which prohibits European nations from interfering in territorial matters, has been a guiding norm of international law since the UN's inception. Russia claims that these sanctions, particularly those imposed on specific Russian politicians and businesses, violate the principle of non-intervention by interfering with the politics and economy of another sovereign country<sup>180</sup>.

According to Russia, these methods serve no purpose other than subversion, particularly when they seek to shift power over a state, its borders, or its political possibilities. Along with sovereignty, Russia has raised the issue of extraterritoriality, specifically the freezing of assets owned by Russian persons and corporations within EU jurisdiction. Russia claims that this not only violates the sovereign immunity of these assets, but also represents a territorial violation of Russian law, which grants citizens the right to possess

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<sup>180</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

and control property. Furthermore, the Reuters piece focuses on the legal issues involved in the confiscation of Russian central bank assets held in Western countries. Russia claims that this conduct violates its sovereign immunity and constitutes unjustified seizure of state assets<sup>181</sup>.

Another major Russia-related claim is a lack of appropriate authorization to impose these penalties under international law. Russia has argued that these sanctions were imposed without the presence of an enabling UN Security Council, which is the only body authorized to take measures against a state under Chapter VII of the UN Charter. The UN Charter tries to establish an order in which collective action may be taken in defence of or to restore international peace and security, and Russia contends that punitive actions implemented outside of this order lack legal justification.

### **Political and Diplomatic Responses**

Aside from legal considerations, Russia's attempts to appeal EU sanctions have political and diplomatic motivations as well. Russia has sharply criticized the sanctions as politically motivated and meant to increase Russia's dominance while reducing its standing in global affairs. Russia viewed the sanctions as more than just revenge for its activities in Ukraine, but as part of a larger effort to erode Russia's influence in Eastern Europe and further exploit the region geopolitically. More precisely, Russia claims that the West's pretext for imposing sanctions is nothing more than a method to achieve the goal of reducing Russia's worldwide influence, particularly Moscow's interests in the post-Soviet region. To alleviate the constraints imposed on it, Russia has attempted to rally support among its allies, particularly those in the Global South and other non-Western countries, to oppose the EU's activities. These friends, particularly China, India, and several Middle Eastern countries, have openly condemned the penalties for their extraterritorial scope and the likelihood of imposing similar measures on other countries. These countries, in particular, condemn the European sanctions imposed on Russia for setting a hazardous precedent for unilateral penalties without concern for international business, as well as the reliance on global trade required for any nation's economic health.

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<sup>181</sup> Reuters, *Legal Challenges of Confiscating Russian Central Bank Assets to Support Ukraine*

Tzanakopoulos investigates how otherwise friendly trade relations can become strained as a result of sanctions, emphasizing that they have a greater impact on the global economy than most people realize. Russia has also portrayed itself as the victim of a politically motivated double standard for the application of international law. Russia maintains that there is a disconnect between law enforcement and *realpolitik*, and that the Western response to Russia's conduct is hypocritical in light of similar behaviour by the United States in 2003. According to Diva-Portal, the US invasion of Iraq violated international law and was carried out without UN consent. Russia's political response aims to back up the notion that Western sanctions are part of a more complex ideological fight than a genuine effort to uphold international law<sup>182</sup>.

### **Global reactions to the introduction of EU sanctions on Russia**

The introduction of EU sanctions on Russia has elicited various responses from throughout the world. The EU, the United States, Canada, and several Western allies mostly concur and justify the sanctions as an essential step toward upholding international law and territorial integrity. However, some non-Western countries have expressed opposing views. A excellent example is China, which has been noted protesting about the unilateral nature of the sanctions, implying that a more global strategy to resolving the Ukraine conflict is required. Although China does not publicly support Russia's claims over Crimea, it consistently opposes the use of unilateral sanctions, claiming that the matter should be handled diplomatically through international bodies such as the UN<sup>183184</sup>. India, as one of the world's major powers, is now concerned about the region's 'sanctioning nature' and the troubling precedent it may set for foreign relations. Traditionally, India has remained neutral, stating that while it does not favour Russia, it opposes unilateral sanctions on trade and diplomatic relations. This side of the argument from non-Western states exemplifies the developing schism in the global division over the use of sanctions as a policy enforcement tool.

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<sup>182</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>183</sup> *Sanctions, Collective Countermeasures and the EU* (Leiden: Brill Academic Publishers, n.d.).

<sup>184</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

To summarize, Russia's legal arguments and reactions to EU sanctions have highlighted concerns about geopolitical tensions and the legal complexities of executing third-party countermeasures. Russia's objections about sovereignty, extraterritoriality, and the lack of UN backing all revolve around one issue: the severe and ineffective character of unilateral sanctions imposed 'supposedly' to guarantee world peace and security<sup>185</sup>. Such arguments indicate a lack of consensus on the amount of state sovereignty vs the international community's commitment to uphold the rule of law and fundamental freedoms in a politically divided globe.

### **Legal Challenges at the WTO and Other International Forums**

The European Russian Federation sanctions have been legally challenged in Russia, in the World Trade Organization (WTO), and in other legal forums around the world for allegedly violating trade laws in international sanctions provisions. These challenges were filed because the execution of WTO norms in international law is inconsistent with EU sanctions. Furthermore, the issues presented against the European Union provide insight into third-party countermeasures that undermine the power of an international entity to interfere<sup>186</sup>. Even defend policies that are not legally binding on a stance.

### **Legal Enforcement Issues in the WTO**

The largest gap in legal provisioning for the Sanctions has been posed by Russia within the économies circonscriptions du commerce dispute carried out by the European Union on violating GATT in terms of Vienna sanctions and tariffs progressed under the agreement. Russia has defended its claim to WTO-imposed fines on import barriers, stating that potential breaches of the economic order and the GATT review balance impose obligations on members.

Russia contends that EU sanctions include clauses that restrict the free movement of products, services, and capital, which they believe violate WTO non-discrimination rules. As part of the Most Favoured Nation (MFN) provision, the WTO expects its members to refrain from trade discrimination. MFN requires members to provide equal treatment in international commerce to all other members of the organization and bans preferential

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<sup>185</sup> *The Emergence of Collective Countermeasures*, Lieber Institute, West Point

<sup>186</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

treatment to one member while imposing discriminatory barriers on others. In this sense, Russia claims that EU sanctions violate the MFN principle by intentionally targeting Russia's economy, limiting its access to the European market, and disrupting regular commercial relations between the two countries <sup>187</sup>.

Furthermore, Russia says that the EU-imposed sanctions violate National Treatment, which mandates equal treatment of foreign and local goods and services in the host country's market. According to Russia, the restriction on Russian imports and services constitutes a negative trade barrier that essentially cuts off Russia's access to major markets. This is especially concerning in the energy sector, where Russia is one of the world's largest exporters of natural gas and oil. Russia believes that the EU's measures, which include limiting access to the EU market, directly contradict the fundamental principles of fair trade that WTO legislation should provide.

Outside of these specific issues, Russia claims that the EU's sanctions are politically motivated and go outside of what is permissible under WTO rules. Although the WTO allows for certain exceptional measures to be taken on security grounds, such as Article XXI of GATT, which allows the use of sanctions for national security, trade protective barriers, and security trade measures, Russia believes that the EU's trade suspensions cannot be justified under this clause. According to Russia, the continuation of such sanctions stems from a political motivation to further erode Russian dominance in Ukraine and Eastern Europe, rather than a security threat<sup>188</sup>.

The truth is that, within the framework of the Russian account of events, there is essentially no foundation for the notion that such sanctions may be applied while adhering to EU law obligations. The European Union does not have the authority to impose such measures. The WTO Dispute Settlement Body (DSB) has yet to rule on this dispute. This is undeniably true given the issue's complexities and political implications. According Tzanakopoulos (2011), who specialize on security bangs, there is no particular framework

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<sup>187</sup> *Are EU Trade Sanctions on Russia WTO Compatible?*, SSRN

<sup>188</sup> Mirko Sossai, "Sanctioning Russia: Questions on the Legality and Legitimacy of the Measures," *Revue de la Recherche Juridique*, 2022.

outside international law that restricts nations' ability to impose conditional limitations on other states<sup>189</sup>.

### **Legal disputes before the International Court of Justice**

Aside from the WTO, Russia has attempted to legally challenge EU sanctions at the International Court of Justice (ICJ) and other forums. Russia's conflicts with the ICJ are mostly over sovereignty issues involving Russian assets and the extraterritorial effects of EU sanctions. One of the most famous legal battles has been Russia's freezing of public assets, including the Central Bank of Russia's assets in EU sanctions-hit countries.

Russia has contended that freezing such assets, particularly those controlled by the Russian state in foreign jurisdictions, violates sovereign immunity and property rights under international law. Russia invoked sovereign immunity in this case, which indicates that the state should not be exposed to legal procedures in a foreign court without the ability to consent to such action. According to Russia, it violates immunity and undermines a basic international legal principle that state property must be free from seizure or expropriation by other governments<sup>190</sup>.

These challenges are exacerbated by the fact that, until recently, the ICJ focused on inter-state disputes involving violations of international treaties and customary norms. The ICJ rarely deals with problems of sanctions imposed by regional groups such as the EU, especially when those penalties are justified in terms of international peace and security. As Pauwelyn (2005) points out, the Court's position in such cases is typically weakened because it is not permitted to regulate choices taken by regional entities or the EU unless such activities clearly violate international legal obligations<sup>191</sup>.

Because of the underlying political and diplomatic environment, the ICJ may refrain from thoroughly reviewing the EU sanctions in relation to Russia. Furthermore, the UN Security Council has yet to vote on any collective legal measures circulating on an

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<sup>189</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>190</sup> Reuters, *Legal Challenges of Confiscating Russian Central Bank Assets to Support Ukraine*

<sup>191</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

international level to counter Russia's actions in Ukraine, limiting the ICJ's authority to engage in the issue.

### **Possible Future Impact and Legal Considerations**

The conflicts involving EU sanctions, particularly those brought before the WTO and the International Court of Justice, may have an impact on future ones dealing with third-party countermeasures. A victory for Russia at the WTO or the ICJ might set a hazardous precedent for future sanctions regimes, undermining the ability of nations and regional bodies to respond to violations of international peace and territorial integrity<sup>192</sup>. This could jeopardize the legal foundation for imposing sanctions to maintain international order and enforce human rights in situations where the sanctioning governments suffer no immediate harm.

In contrast, if the verdict supports the EU, it would reinforce the validity of third-party countermeasures as part of the global legal order. It would reaffirm the notion that the international community has the authority and responsibility to enforce universal principles such as territorial integrity and the maintenance of peace and order. Such an outcome may enable the development of international custom law governing the participation of regional organizations and individual states in sanctioning and condemning abusive international law.

Overall, the legal challenges over the EU's sanctions, particularly those raised by Russia in the WTO and ICJ, highlight the phenomena of countermeasures in international law, which is continuously evolving. The EU views these penalties as a measure of countering Russia's violations, whereas Russia sees the issue as one of international relations characterized by sovereignty, extraterritoriality, and the unilateral imposition of illegitimate control. The legal procedure is a never-ending circle for diplomatic and law enforcement contacts.

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### **3.3 Did EU Sanctions Help Crystallize a Customary Rule?**

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<sup>192</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

The European Union's (EU) sanctions against Russia following the annexation of Crimea in 2014 and the invasion of Ukraine in 2022 have sparked heated debate about the legitimacy and function of third-party countermeasures in international law. According to European Union legislation, these penalties are justifiable because Russia violated Ukraine's territorial integrity, undermining one of the pillars of international law. The question is, do these sanctions intend to shape a conventional norm of countermeasures in international law? There is a need to examine the legal frameworks as well as the practical realities of sanctions in the context of international responsibility within this international relationship.

### **The Function of Collective Countermeasures in International Law**

In international law, a countermeasure is a specific legal action taken by one nation against another in response to the latter's wrongful act. Countermeasures attempt to resolve situations without resorting to violence, including force, punishment, or any form of aggressiveness. Indeed, at their most fundamental, they are punitive measures done against one another in response to hostile activities. However, the phenomenon of countermeasures is becoming more widespread. External countermeasures, including social and economic sanctions, have developed considerably. This phenomenon prompted many scholars and practitioners to reconsider the limits of countermeasures' applicability outside the circle of nations immediately harmed by a wrongful act<sup>193</sup>.

In this sense, the EU's sanctions on Russia serve as an important example. The EU imposed these measures just as Russia began its invasion of Ukraine. Although billed as punishment for violating Ukraine's sovereignty, the EU and other third-party governments implemented these actions in order to enhance world peace and security. In this regard, it is necessary to evaluate if such policies result in international legislation governing third-party sanctions and collective countermeasures<sup>194</sup>.

### **The formation of customary international law on collective countermeasures**

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<sup>193</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

<sup>194</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

A key consideration in collective countermeasures is the extent to which such measures can be implemented within the context of international responsibility and state behaviour. The International Law Commission's 2001 Draft Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA) gives countermeasure rationales. According to ARSIWA, countermeasures must meet many criteria: they must be proportionate to the hurt inflicted, temporary, and intended to induce the international obligation neglecter to "fulfil" an international responsibility. Although ARSIWA has a bilateral framework for countermeasures, the use of third-party countermeasures raises concerns about the framework, particularly when those third-party actions are not focused at punishing states.

The spirit of the erga omnes responsibilities, as established by the Barcelona Traction, is to provide grounds for third-party countermeasures. Erga omnes refers to obligations owed to the entire society, such as the prohibition of genocide, racial discrimination, and the maintenance of territorial integrity<sup>195</sup>. In this scenario, the EU sanctions on Russia could be viewed as acts of social norm enforcement, in which the community, represented by third-party governments, strives to impose the basic international standards that all states must follow. According to Tzanakopoulos, such steps contribute to the formation of an unconsolidated norm in which states or regional organizations, such as the EU, assume the authority to enforce erga omnes duties<sup>196</sup>.

Furthermore, the EU sanctions are considered to be vital for the maintenance of international peace and security, which is one of the primary goals of the United Nations Charter. In the context of implementing EU sanctions against Russia, border violations in Ukraine are simply one of several factors that, along with Russia's expansionist objectives, justify the actions in terms of European security. The EU intends to strengthen its position as a consolidating force in world affairs by portraying the sanctions as a necessary response to restore global order<sup>197</sup>.

## **EU sanctions and the evolution of customary international law**

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<sup>195</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

<sup>196</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>197</sup> *Sanctions, Collective Countermeasures and the EU* (Leiden: Brill Academic Publishers, n.d.).

Customary international law involving collective countermeasures is primarily impacted by international sanctions, with the EU playing an equal part in countermeasure collective block. EU sanctions have progressively exceeded traditional bilateral remedy measures, demonstrating the EU's expanding position as a third-party enforcer of global norms, particularly those protecting human rights and territorial integrity. Simma et al. (2012) investigate the legal implications of this situation, claiming that the EU's sanctions represent a watershed moment in international law, in which regional organizations are no longer passive actors but actively pursue the implementation of cross-border legal standards<sup>198</sup>.

The scope and depth of the EU sanctions on Russia are clear, as they cover a wide range of areas, including finance, energy, trade, and defence. These sanctions are one obvious example in history of a collaborative effort to restore peace and uphold international rules. The EU's implementation of such penalties not only proves its commitment to international legality but also contributes to the creation of a legal order in which external states and regional political entities can work together to enforce public international law.

### **Legal obstacles and political issues**

Regardless of the justifications, EU sanctions on Russia have resulted in considerable legal issues, particularly regarding their compliance with WTO norms, violations of state sovereignty, and the EU's self-imposed restrictive measures<sup>199</sup>. The conflicts centre on the contentious nature of third-party obligations, while also furthering the issue of establishing international customary law on such rules and non-treaty-based lawmaking governance. EU penalties pose serious concerns about legal consistency and the misuse of sanctioning authorities.

At any rate, the EU's actions are important steps toward the advancement of international law, particularly in terms of the application of *erga omnes* commitments. The EU contributes to the creation of a legal foundation for the international community to use

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<sup>198</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

<sup>199</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

collective countermeasures by imposing sanctions for grounds of preserving a state's territorial integrity and maintaining international peace.

The EU sanctions against Russia are critical to the continued development of a legal customary rule for international law based on collective countermeasures. By enforcing *erga omnes* commitments, the EU contributes to the development of a legal framework that allows nations and regional organizations to act when international law is infringed, regardless of the repercussions. The legal concerns raised by the sanctions in the framework of WTO dispute resolution and the legality of state sovereignty make a lot of sense, but they also demonstrate that the EU is increasingly adopting the concept of collective measure counteraction against illegal border control. Thus, EU sanctions against Russia should be viewed as a watershed moment in anticipating the establishment of a custom rule for countermeasures in international law of the parties, which is bound to define the essence of countermeasures in international law.

### **Do EU Sanctions Indicate an Emerging Tolerance for Third-Party Countermeasures in International Law?**

The EU's sanctions against Russia for the annexation of Crimea and the latter's ongoing aggressive activities in Ukraine are a significant event in the development of third-party countermeasures in international law. These are penalties that the EU and its partners agreed to politically, even in the absence of actual harm to the sanctioning states. They have posed a crucial legal and political question: do such efforts demonstrate a growing acceptance of third-party countermeasures as an international law enforcement mechanism? This inquiry examines the global architecture of countermeasures, the history of their growth in the context of humanitarian disasters, and the impact of European Union sanctions on the future advancement of international law.

### **Legal Principle for Third-Party Countermeasures**

Legal measures for counteractions, taken to a new level, are not aligned with the charges and treatment of violations affecting international society. These measures are known as third-party countermeasures. The scope of third-party countermeasures is connected to the idea of *erga omnes* obligations, which the International Court of Justice addressed in its 1970 case, *Barcelona Traction*. *Erga omnes* obligations refer to those duties owed to

all states, not solely to the states that have been wronged. These obligations include prohibitions against acts such as genocide, slavery, racial discrimination, and the denial of a state's territorial integrity.

The enforcement of laws related to these obligations must be relentless in their application. The imposition of sanctions creates a framework for addressing violations, aiming to prevent and remedy violations of international norms. Tzanakopoulos (2011) argues that third-party countermeasures can be undertaken through obligations, especially when violations are defined as threats to peace and international security<sup>200</sup>. These violations, as exemplified by Russia's actions in Ukraine, challenge collective goals and the framework of international law. The European Union, in this context, elevates these norms, asserting that violations of international order must be addressed not only by the victim state but by the international community as a whole<sup>201</sup>.

### **EU Sanctions and the Rise of Third-Party Countermeasures**

The EU's sanctions on Russia represent another significant step toward accepting third-party countermeasures in international law. To maintain international order, the EU implemented a number of sanctions against Russia, including asset freezes, commercial relations, and travel bans. These acts were not retaliatory because no direct harm was done to the EU. Rather, they were established in the hopes that Russia would adhere to international standards such as territorial integrity, fundamental human rights, and the rule of law.

The legal discipline would consider EU sanctions to be a step forward in global governance. As regional blocs and governments act on behalf of the world community, there is a greater collective implementation of global legal sanctions, known as the international mandate. Gestri (2022) investigates how the EU's sanctions against Russia, while primarily motivated by political considerations, remain based on legal reasoning regarding comparable world peace and territorial integrity. The imposition of such

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<sup>200</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>201</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

measures demonstrates, once again, a growing interconnectedness awareness of responses in reaction to international law violations harming collective global society<sup>202</sup>.

Furthermore, the EU sanctions are not stand-alone measures; rather, they are part of a well-coordinated global reaction designed to limit Russia's breaches. Simma et al. (2012) analyse the efficacy of unilateral measures and their significance in upholding international law. The EU implemented these measures in coordination with other Western nations, notably the United States, Canada, and Australia, demonstrating a shared commitment to upholding international standards in response to Russia's actions in Ukraine. This type of alliance demonstrates a more unified form of responsive action, approaching the system of penalties from a more progressive and integrative perspective, presuming that outside reactions assist to maintain legal order in global society<sup>203</sup>.

### **Third-Party Countermeasures: Legal and Political Legitimacy**

The EU sanctions have sparked legal and political debate for and against third-party retaliation. Most notably, Russia's concerns about the sanctions, particularly its so-called sovereignty and extraterritoriality claims, highlight the long-debated legitimacy of third-party action. Russia claims that the EU penalties violate its sovereign rights and constitute an illegitimate intrusion into its internal affairs. These arguments ignore the distinction between nations' territorial sovereignty and the international community's need to intervene when any one state's behaviour threatens global stability.

The strategy of imposing sanctions as third-party countermeasures is gaining international acceptance, particularly in situations that openly violate international peace and security. To demonstrate, the EU's sanctions against Russia are not framed as an attack on Russian sovereignty; rather, they are portrayed as a result of Russia's violation of international law, notably the UN Charter. The sanctions also demonstrate a collective move toward accepting that the international community has an interest in fundamental transgressions such as territorial integrity and human rights, even when no direct harm has been done to the community by the illegal action.

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<sup>202</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

<sup>203</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

The WTO and other legal components of EU sanctions must be understood as presenting a distinct story than questioning the legitimacy of third-party remedies. These legal issues address a different aspect of the use of sanctions in international affairs. According to Pauwelyn (2005), the WTO's trade barrier regulations aim to promote international peace and security, yet they frequently contradict one another. Nonetheless, he observes that the absence of security-related WTO standards may give justification for such remedies in instances such as Russia's aggression against Ukraine<sup>204</sup>.

### **Political Aspects of Third-Party Countermeasures**

Sanctions imposed by the European Union (EU) are legally binding acts taken against Russian entities in response to armed aggression against Ukraine. Furthermore, these are punitive actions designed to express dissatisfaction and anger at noteworthy transgressions of international law, similar to how sanctions are politically justified. Tzanakopoulos (2011) proposed the view that almost all sanctions seek some form of sociopolitical rationale, indicating a shift in diplomatic inclinations. Within the presented context, the EU sanctions represent an attempt to counter further violations of peace and territorial integrity, particularly Russia's continuing operations in Ukraine.

This point is critical when it comes to justifying and gaining support for the concept of third-party countermeasures. Sanctions are both legal instruments of politics and, more importantly, a manifestation of the community's political commitment to oppose international legal norm degradation<sup>205</sup>. In this context, Simma and colleagues (2012) highlight the availability of political justifications for imposing sanctions, particularly when they focus on violations of universal ideals<sup>206</sup>.

The EU's sanctions on Russia are a significant step towards accepting countermeasures under international law. These sanctions implemented by the EU and its allies reflect a rising acknowledgment of irresponsible behaviour within the international community, which must be addressed as a rule of automatic respect of sovereignty. Although there are

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<sup>204</sup> Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules are Rules—Toward a More Collective Approach," *American Journal of International Law* 99, no. 4 (2005): 871–905.

<sup>205</sup> Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

<sup>206</sup> Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012).

legal and political arguments against the legitimacy of these sanctions, particularly in terms of state sovereignty and extraterritoriality, the increasing use of sanctions as a collective enforcement mechanism suggests that countermeasures, as a legal concept, are becoming more mainstream in international law. The Russian case demonstrates how regional organizations, supranational bodies, or combinations thereof can enforce international law and maintain international peace and security "in order to give effect to the civilized community of states," regardless of whether the sanctioning states suffer direct harm<sup>207</sup>.

### **Possible Future ICJ or International Tribunal Decisions on Collective Countermeasures**

The European Union's sanctions against Russia, particularly in light of its actions in Ukraine, have sparked widespread debate and legal challenges about the validity of third-party countermeasures. As noted in previous sections, Russia is legally challenging these sanctions on a variety of grounds, including sovereignty, extraterritoriality, and the freezing of Russian central bank assets. These disagreements, together with the developing trend of collective countermeasures in international law, generate the notion that some international tribunals or the ICJ would eventually issue judgments that will crystallize norms impacted by such choices.

### **Seizure of assets owned by the Russian Central Bank**

The EU sanctions have sparked heated disputes over the expropriation or freezing of state Russian assets, including the central bank's holdings in foreign nations. After Russia invaded Ukraine in 2022, Western nations, led by the EU and the US, put sanctions on key sectors of the Russian economy, particularly its finances. One of these steps was the freeze of large central bank reserves, which drew severe judicial scrutiny.

Russia claims that the freezing and potential seizure of these assets violates its sovereign immunity under international law. This is the idea that protects state assets from seizure or taking by other nations. According to Russia, the restrictions imposed on the bank's

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<sup>207</sup> Marco Gestri, "Sanctions, Collective Countermeasures, and the EU," *Italian Yearbook of International Law* 32 (2022): 3–27.

assets constitute an illegal act of property expropriation that undermines national sovereignty<sup>208</sup>.

The Lawfare piece looks at how these legal issues may effect future ICJ verdicts. It argues that the legal question of whether a state's assets can be taken or frozen without its agreement could have far-reaching implications for the formation of international law governing sovereign immunity and collective countermeasures. If the ICJ finds in Russia's favour, the idea of sovereign immunity is likely to be strengthened, establishing a precedent for the protection of state assets in future disputes. On the other hand, a decision against Russia may pave the way for permissive sovereign immunity based on the negative characterization of the state as a threat to international peace and security.

### **Legal Status of Collective Countermeasures**

How the ICJ and other international tribunals handle sanctions imposed by regional blocs, such as the EU, will most certainly decide the future role of collective countermeasures in international law. In relation to Russia, EU sanctions have been justified as not only a response to violations of Ukraine's territorial integrity, but also as a measure to maintain world peace and security. Because there is no UN Security Council penalty, the area is set up to legitimately implement third-party countermeasures in such cases.

Tams and Tzanakopoulos' study examines the impact the ICJ is expected to have on the future of third-party countermeasures consideration, particularly in relation to actions taken by regional organizations like as the EU<sup>209</sup>. This study examines the Barcelona Traction case, which influenced the concept of erga omnes and states' legal responsibility to uphold these duties. In terms of EU sanctions, the court may still use this case to determine the principle execution of awards based on universal principles such as territorial integrity and fundamental rights legislation.

According to the article, the ICJ may consider whether regional entities such as the EU are involved in meeting such duties. This could entail acknowledging that interpretive actions have an important role in enforcing international order, especially when the UN

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<sup>208</sup> Reuters, *Legal Challenges of Confiscating Russian Central Bank Assets to Support Ukraine*

<sup>209</sup> Christian J. Tams and Antonios Tzanakopoulos, "Barcelona Traction at 50: The ICJ as an Agent of Legal Development," *Leiden Journal of International Law* 23, no. 3 (2010): 781–800.

Security Council is stalled by domestic politics. A finding in favour of the penalties would add to the growing view that regional institutions are becoming dominant players in the implementation of international rules<sup>210</sup>.

### **Future Authority of the International Court of Justice in Sanctions and Collective Countermeasures Relations**

The problem of third-party countermeasures is most likely related to how the ICJ will define collective enforcement in international law. According to James Crawford (2013) in *State Responsibility: The General Part*, countermeasures have legal prerequisites, and under the ARSIWA framework, a countermeasure must be proportional to the injury suffered. Regarding the EU's sanctions against Russia, the question is whether there is sufficient direct injury to the punishing states to justify collective measures. Given the politics of sanctions, their impact on global trade and commerce, and the sanctions regime, future ICJ decisions may alter the scope of collective action in international law<sup>211</sup>.

Furthermore, the legal foundation for third-party sanctions may be determined by the International Court of Justice's assessment of Russia's threat to global peace and security. If the ICJ finds Russia's actions in Ukraine to be a threat, it may strengthen the legality of third-party countermeasures for maintaining global peace. This may encourage regional bodies to impose sanctions, particularly if the Security Council is paralyzed by the permanent members' veto authority.

### **Potential outcomes in global politics**

The potential effects of the ICJ ruling on collective countermeasures may extend beyond the scope of EU sanctions on Russia in terms of changes in international relations, as diplomacy and the legitimacy of regional interventions through sanctions for international law violations is interdisciplinary. If the ICJ or other international tribunals approve these types of punishments, it may signal a trend toward accepting regional bodies as active actors in global norm enforcement. A finding that restricts the extent of third-party countermeasures, on the other hand, would signal a return to classic state responsibility

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<sup>210</sup> *The Lawfulness of EU Restrictive Measures Against Russia*, Diva-Portal

<sup>211</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013).

and sovereignty conceptions, putting international organization sanctioning powers on hold in the absence of explicit UN Security Council approval.

In international law, future decisions by the International Court of Justice and other tribunals will be important in defining the contours of the legal framework on third-party countermeasures. The legal implications of the European Union's sanctions against Russia, particularly the seizure of assets from the Russian central bank and the legitimacy of collective countermeasures, highlight the contradictions between sovereignty, international peace, and state accountability<sup>212</sup>. These disputes also reflect the European Union's increased interest in enforcing international legal orders. As tensions develop inside and between states, resolving these conflicts will be critical to the future use of third-party countermeasures and the implementation of erga omnes responsibilities under the law.

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<sup>212</sup> *Countermeasures and the Confiscation of Russian Central Bank Assets*, Lawfare

## Conclusion

This thesis investigated the legitimacy of the European Union's sanctions placed against Russia in response to her invasion of Ukraine, with a particular focus on the contentious issue of third-party countermeasures under international law. Aside from providing a political and strategic response to one of the most serious violations of international law, the EU's sanctions policy serves as an important test case for the developing normative framework governing state responsibility and the permissible scope of countermeasures carried out by entities that are not directly harmed by an internationally unlawful act. The intricacy of this subject is defined by the intersection of multiple fundamental notions of international law—sovereignty, non-intervention, collective security, and the implementation of peremptory norms (*jus cogens*), which can present contradictory imperatives without obvious hierarchical resolution.

The EU sanctions call into question the common legal wisdom that only governments directly damaged by a wrongful act have the authority to implement countermeasures, sometimes known as *erga omnes* responsibilities. The critical assessment of relevant legal instruments, particularly the International Law Commission's Articles on State Responsibility (ARSIWA), has shown the purposeful confusion surrounding the concept of third-party countermeasures throughout this research. Article 54 of ARSIWA, reflecting the sensitive and unclear nature of this legal issue, is notable for its silence on whether governments or international organisations not directly damaged may legitimately take countermeasures. This lack of unambiguous codification allows for many interpretations, which are frequently influenced by political reasons, and runs the risk of jeopardising the predictability and consistency required by the international legal order. The International Court of Justice's jurisprudence, particularly in landmark cases like *Barcelona Traction* and *Gabčíkovo-Nagymaros*, provides useful but restricted guidance.

These decisions demonstrate the existence and significance of *erga omnes* obligations by recognising that some basic responsibilities are owed to the entire international community and that their violation affects all states collectively. The ICJ has not, however, issued an unequivocal ruling on the permissibility of collective countermeasures, leaving the issue open and subject to changing state practice and

doctrinal discussion. In evaluating the EU's sanctions, this thesis demonstrates how the Union's legal justification is based on the notion that Russia's actions violate *erga omnes* obligations—specifically, the principles of territorial integrity and sovereignty, as well as prohibitions against aggression and grave human rights violations. The EU's stance asserts a moral and legal obligation to respond not just as a demonstration of political solidarity with Ukraine, but also as a collective application of international law standards required to maintain global peace and security. Nonetheless, this approach is vehemently opposed based on the UN Charter's non-interventionism and sovereignty principles, particularly Article 2(4), which prohibits the employment of aggressive or coercive actions without Security Council approval or in self-defence.

Critics argue that unilateral or regional sanctions applied without unambiguous UN Security Council backing risk breaking these fundamental ideals, eroding the UN system's authority and allowing selective and politicised economic coercion. This talk demonstrates a simple conflict-efficient implementation of global norms. The practical component of this struggle may be observed in the UN Security Council's paralysed function, where veto capabilities preclude robust collective action in many well-known crises, including the Ukraine crisis. Regional organisations and coalitions of like-minded governments will cover the enforcement gap. The EU's sanctions on Russia demonstrate this pragmatic adaptation, as well as the fragility and challenge to the legal foundation that supports such policies.

The empirical analysis of state practice addressed in this thesis reveals an increasing frequency and acceptance of collective countermeasures implemented by states and regional authorities, particularly in response to severe transgressions from peremptory norms. Historical examples include anti-apartheid sanctions against South Africa and more current sanctions regimes aimed at Syria, Myanmar, and Iran. Still, this trend is irregular and controversial, with governments prioritising sovereignty and strongly opposing non-intervention. Customary international law appears to be evolving in this area towards a more flexible understanding of countermeasures, one that reflects the realities of multipolar power relations and the growing importance of regional bodies. However, the absence of defined, legally enforced laws governing outside actions creates significant gaps and inconsistencies that may exacerbate geopolitical tensions and undermine the validity of international law. Although the EU's sanctions against Russia

have sparked legal dispute, this thesis maintains that they are an important first step in the gradual adaptation of international law to modern geopolitical issues. The EU's approach demonstrates an attempt to balance the implementation of core rules with considerations of proportionality, necessity, and respect for fundamental rights by reconciling legal principles and political need. Any appropriate punishment system must constantly focus on these values in order to prevent abuses and maintain global legal stability.

The International Law Commission and court authorities emphasise that the proportionality requirement is an important safeguard, ensuring that countermeasures are limited in their impact and duration, and are primarily intended to encourage compliance rather than punish or worsen conflicts. The EU's sanctions reflect this by targeting specific individuals, corporations, and sectors. Still, enforcement creates challenges, such as avoiding penalties through other markets, the financial impact on civilian populations, and competing interests among states that may jeopardise collective efficiency. The future legal position of third-party countermeasures is likely to remain a source of heated scholarly and diplomatic debate. Resolving these issues may require additional judicial explanation by foreign courts, revisions in international treaty law, or improved normative guidance from multilateral bodies.

Furthermore, the international community must urgently build more inclusive and coherent procedures to address the tensions between sovereignty, collective security, and the implementation of international law in a geopolitically complex and divided situation. This thesis contributes to the discourse by providing a detailed and critical evaluation of the EU sanctions system as a key case study in the growth of state accountability and the role of regional players in enforcing global standards. It highlights how customary law is constantly evolving and how law, politics, and power interact dynamically to determine global reactions to significant violations of peace and security. Finally, even if their legality is dubious, the EU's sanctions against Russia show a growing recognition that, in some situations, third-party collective action is vitally required to protect the international legal order.

To ensure the credibility and efficacy of international law in the twenty-first century, such activities must be based on unambiguous legal authority, guided by principles of fairness and proportionality, and subject to strict accountability. Thus, via dialogue, legal

innovation, and increased multilateralism, the international community must strive to balance the competing needs of sovereignty and collective responsibility. Only by acting in this manner will it be able to adequately and equitably handle the challenges posed by acts of aggression and abuses of human rights, thereby safeguarding a rules-based order that benefits all people and governments.

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