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The Paradox of Unilateral Economic Sanctions: Instruments of Protection or Violation of Human Rights?

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TABLE OF CONTENTS

INTRODUCTION

Unilateral sanctions are currently the subject of significant debate in international law, their legality and effectiveness being often questioned when it comes to human rights. This thesis analyses the application of these sanctions by states and/or international actors when they are justified by the aim of protecting and promoting human rights. The focus here is on the paradoxical situation in which the stated objectives are not in line with the actual outcomes achieved. This paradox inevitably raises crucial doubts about the legitimacy and effectiveness of sanctions, as it leads us to ask whether, in practice, unilateral sanctions are instruments of protection or rather violations of human rights.

In order to answer this question, the first of four chapters begins by introducing unilateral measures. First, it defines and classifies them by economic type and objectives. It distinguishes between unilateral and multilateral sanctions, comparing their institutional, political, and legal differences. In addition, the main theoretical frameworks of international relations are included to better understand motivations and effectiveness. The chapter then discusses the historical evolution of sanctions, using a historical-analytical and, above all, descriptive approach. The aim here is to show how these sanctions have evolved from military and coercive instruments in times of conflict to instruments of international politics and diplomacy in the post-war context. Finally, the chapter concludes with a section focusing on the analysis of the legality of unilateral economic sanctions under international law, through a rather normative and interpretative approach to the main instruments of international law, such as the UN Charter and WTO rules. The aim is to provide a comprehensive overview of such sanctions and then specifically analyze how they affect human rights.

In fact, the second chapter examines the relationship between unilateral economic sanctions and human rights. The first section focuses on the use of sanctions to promote fundamental human rights enshrined in the UDHR, ICCPR, and ICESCR, which often suffer from ambiguous and relative protection. To support this argument, several examples are presented: US sanctions against Zimbabwe in 2002; Magnitsky-style sanctions; and the naive theory of economic sanctions. The chapter then discusses the negative effects that these sanctions can have on civilian populations, reversing the previous discussion and highlighting the paradox under examination. Once economic, social, cultural, political, and civil rights have been framed, the connection between international norms and national constitutions is examined. This is followed by the discussion on the effects of unilateral sanctions, supported by concrete examples such as Venezuela, Iraq, Haiti, and Sudan. Particular importance is given to vulnerable groups that are disproportionately affected. Finally, the last section of this chapter aims to explain how international and regional law seeks to protect these

rights, highlighting the tension between political practice and legal obligations. Without first showing the concrete issues, the regulatory framework would risk appearing abstract and disconnected from reality and the following argument. Then, it is explained in more practical terms the way these rights are monitored and protected, showing such activities carried out through treaty-based bodies and charter-based bodies such as Special Procedures, Universal Periodic Review, and the UNHRC. The goal of this chapter is to highlight the tension between formal objectives and collateral damage.

The third chapter delves into the legal and constitutional limits of unilateral sanctions, focusing on fundamental principles and safeguards of international and constitutional law. The chapter uses a doctrinal and comparative jurisprudential approach to understand how constitutional systems and international law regulate restrictive measures affecting citizen's rights. The principles of proportionality and necessity are explained using historical and legal examples from countries like Germany, UK, Ireland, and the EU, and concrete cases like *Internationale Handelsgesellschaft*, *R. v. Oakes*, and *Heaney v. Ireland*. This after having reconstructed their origins and codification in modern constitutional systems. These cases are very important as they show the evolution of these principles from European doctrine to international law, showing how national systems have adopted different approaches to balance national security and fundamental rights. The chapter also examines the principle of state sovereignty, non-interference, and national security exceptions, based on international legal sources such as the UN Charter, the jurisprudence of the ICJ (e.g., *Corfu Channel Case, Nicaragua v. United States*), and regional norms (OAS, AU, ASEAN), highlighting the need for a balance between national security and fundamental rights. The last section of the chapter deals with the role and limits of judicial review and procedural safeguards; sanctions often fail to provide the necessary remedies for civilians, making these measures necessary. These activities are analyzed at both international and national level, in particular through a comparison between the EU, the US and Germany, with the support of well-known cases such as *Kadi*. The aim is to provide, through an analytical-comparative approach, an explanation of the role of these guarantees in protecting the human rights of those subject to unilateral economic sanctions.

Finally, the last chapter provides a case study on Venezuela, with the aim of applying the analyses developed in the previous chapters in a practical way. After specifying the historical, political, and economic context that has been the main focus of the justifications for the sanctions imposed on Venezuela, there is a concrete observation of the effects of these sanctions on the civilian population, in particular on economic, social, cultural, civil, and political rights. This highlights the paradox of unilateral sanctions. The choice of this case study from a methodological point of view stems from the consideration of Venezuela today as an emblematic case of sanctions imposed on humanitarian and political grounds, in a context characterised by a serious economic and institutional

crisis. This analysis will be complemented by a comparison with the Iranian case, with the aim of highlighting similarities and differences in the effectiveness of sanctions and their socio-economic and political impacts. The case of Iran, therefore, allows for a useful comparison from a legal and political point of view, since although it has different characteristics from Venezuela, such as a more diversified economic context and a more stable political system, it is also subject to unilateral sanctions motivated by alleged human rights violations and international security concerns. Furthermore, the fact that these two cases are current without being excessively recent favours the availability of data, legal sources, and consolidated academic literature. This gives greater value to the analysis carried out around the research question, as the cases can be studied within the contemporary context and debates. Finally, their combination provides a more comprehensive view of unilateral sanctions and their contextual correlation with the situation of the sanctioned country, allowing for more generalizable conclusions to be drawn about the tension between international law, security and the protection of human rights.

In summary, the aim of this thesis is to provide an analysis of the legal bases and practices of states that adopt unilateral sanctions with the aim of protecting and promoting human rights, to then understand the real consequences of these measures on the lives of civilian populations and their scope, with the support of concrete cases, demonstrating that, although sanctions may be formally justified by international law, their effects are often contrary to their stated objectives. Therefore, the focus delves into questioning the legality of unilateral sanctions which lacks today of a definitive answer, attempting to clarify the extent to which such measures can be considered lawful tool for the protection of human rights. This research is based on a doctrinal and documentary analysis of various types of sources, such as primary legal sources supported by important international treaties, UN resolutions, reports, and judicial decisions. In addition, great importance is given to secondary sources such as academic articles and studies by leading authors in this field, not only in the legal sphere but also in the fields of history, international relations, and political science. Finally, the work focuses on case studies, adopting a qualitative, quantitative, and comparative analysis of the sources used, moving from theory to practice.

CHAPTER 1: Unilateral Economic Sanctions in International Law

1.1 Definitions and Classifications

1.1.1 Conceptual Frameworks and Legal Foundations

Economic sanctions are generally defined as non-military coercive measures adopted by a state or an organisation to influence the behaviour of another state, a group of states, or non-state entities. The state or organisation that adopts the sanctions is often referred to as the sanctioning state, the source, or the initiator of the sanctions, while the state or entity that is the subject of the sanction is called the sanctioned state or the target.[1] From a legal point of view, sanctions *stricto sensu* in international law can be defined as coercive measures taken in response to a violation of international law by the decision of a competent social body, i.e., a body legally authorised to act on behalf of the society or community. Accordingly, sanctions *stricto sensu* do not initially include measures undertaken in response to unfriendly or threatening acts that are still per se lawful[2]. Moreover, they exclude sanctions adopted autonomously by a state or group of states, without a decision by a competent international legal body such as the United Nations Security Council (UNSC). This narrower definition is rooted in international legal instruments, such as under Article 41 of the Charter of the United Nations, which authorises the UNSC to impose non-military measures in cases of threats to global peace and security[3]. However, in practice, the term "sanction" is used more broadly in both legal and political discourses to refer to any non-military coercive measure taken against a state or entity, even without a formal violation of international law. Economic sanctions are a form of diplomatic pressure that can be used in parallel with or as a substitute for military intervention. Their distinguishing feature is that they do not involve the use of armed force; rather, they rely on economic

[1] C. BEAUCILLON, *An Introduction to unilateral and extraterritorial sanctions: definitions, state of practice and contemporary challenges*, in BEAUCILLON C. (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions*, *Elgar*, UK, 2021, p. 2.

[2] M. ASADA, *Definition and Legal Justification of Sanctions*, in M. ASADA (ed.), *Economic sanctions in International Law and Practice*, *Routledge*, London and New York, 2020, p. 4.

[3] Art. 41 UN Charter: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".

power to achieve political objectives, as a tool of foreign policy[4]. Providing a universally accepted definition of economic sanctions can be difficult given the diversity of existing sanctions measures and their different legal and political contexts. For instance, Margaret Doxey defines international sanctions as penalties threatened or imposed as a consequence of the target's failure to observe international standards or international obligations, and Barry E. Carter describes economic sanctions as coercive measures adopted against one or more countries to impose a change in policies, or at least to demonstrate the sanctioning country's opinion of another's policies[5]. These definitions reflect the difficulty that lies in the ambiguity of the concept of sanctions, especially in this case, regarding whether they serve primarily as instruments of legal enforcement or as instruments of political influence. Furthermore**,** to better understand the motivations behind the use of economic sanctions, it is essential to consider the main theoretical frameworks of international relations: realism, liberalism, and constructivism. In accordance with the precepts of realist theory, the world is anarchic; therefore, the international economic system is characterised by an absence of fixed rules, and each state is sovereign and acts alone to defend its interests. The primary objective is the accumulation of power and wealth. The relationships between states can be considered a zero-sum game, in which the success of one state implies the failure of another. The use of economic sanctions reflects this anarchic nature of the international system; these sanctions are not employed to enforce international laws; rather, they function as foreign policy tools used to coerce other states to comply with the interests of the sanctioning state. Conversely, liberalism posits that the international economy is grounded in the principles of free trade and free markets. States benefit most from cooperation and the mutual exchange of goods and services. In light of these considerations, it can be deduced that there are no fundamental economic reasons why free trade would generate conflict or war. Consequently, the relationships between states should be harmonious, characterised by the establishment of a set of shared rules, norms, and standards that ensure fair trade practices and prevent unfair competition. Sanctions are not, indeed, an instrument of pure arbitrary coercion; rather, they are to be based on common standards, rules, and rights[6]. Finally, within the theoretical framework of economic sanctions, we also find the constructivist perspective, which focuses on the social and cultural aspects of power[7]. States interact through shared ideas and norms; the identity and interests of states are

[4] M. OBIDZINSKI, *Les sanctions économiques: à quoi servent-elles?*, 2023, available at: https://www.vie-publique.fr/parole-dexpert/288406-sanctions-economiques-quelle-efficacite-par-marie-obidzinski.

[5] E. DAVIDSSON, *Towards a definition of economic sanctions*, in *Academia.edu*, 2004, p. 1.

[6] A. FILIPENKO, O. BAZHENOVA, R. STAKANOV, *Economic sanctions: Theory, policy, mechanisms*, in *Baltic Journal of Economic Studies*, 6, 2, Kyiv, 2020, pp. 71-72.

[7] A. WENDT, *Anarchy is what States Make of it: The Social Construction of Power Politics*, in *International Organization*, 46, 2, Cambridge, 1992, pp. 391-392.

socially constructed. The efficacy of sanctions depends upon the cultural, historical, and strategic proximity between the recipient nation and the imposing state, given the necessity of a shared conception of legitimate behaviour. For instance, sanctions imposed by the EU are more effective against democratic countries that share a similar political regime than against authoritarian states. Essentially, the constructivist approach focuses on the diffusion of norms and the social construction of international relations[8]. In conclusion, the complexity of economic sanctions, in terms of both definition and theoretical justification, reflects their dual nature as legal and political instruments. This conceptual ambiguity makes in-depth research into the various types and objectives of these measures necessary.

1.1.2 Unilateral vs Multilateral Sanctions

A preliminary distinction between unilateral and multilateral sanctions is to be made. Unilateral coercive measures are defined as economic measures implemented by one state to compel another to change its policies[9]. In contrast to multilateral sanctions, they are adopted outside the scope of measures decided by the UNSC under Chapter VII of the UN Charter or go beyond what has been decided by the Council. Specifically, Article 41 of the UN Charter, as noted above, authorizes the UNSC to adopt non-military enforcement measures such as economic sanctions. In this context, multilateral sanctions, also known as collective sanctions, are issued collectively by multiple countries or international organisations, such as the UN, in order to achieve a common foreign policy, national, or human rights objective[10]. The first key difference between these two types of sanctions is the institutional setting in which they are adopted. Unilateral sanctions are adopted by a single state, whereas multilateral sanctions are adopted within the framework of an international organisation or an informal group of states[11]. Another key difference lies in their political nature: the UNSC, the primary international body responsible for adopting multilateral sanctions, aims to maintain international peace and security by reacting to "any threat to the peace, breach of the peace, or act of aggression" *(*Chapter VII of the UN Charter). In contrast, unilateral sanctions pursue a much wider

[8] C. PORTELA, *European Union Sanctions and Foreign Policy: When and Why do they Work?*, *Routledge*, London, 2010, p. 83.

[9] I. JAZAIRY, *Unilateral Economic Sanctions, International Law, and Human Rights*, in *Cambridge University Press*, Cambridge, 2019, p. 295.

[10] *Multilateral sanctions*, in Avallone.io., s.d., available at: https://www.avallone.io/dictionary/multilateral-sanctions#:~:text=A%20multilateral%20sanction%20describes%20a,security%20or%20human%20rights%20objectiv.

[11] C. BEAUCILLON, *An Introduction to unilateral and extraterritorial sanctions: definitions, state of pratice and contemporary challenges*, cit., pp. 3-4.

range of goals and objectives, primarily to promote the foreign policy interests and values of the sanctioning country or regional organisation. For example, US sanctions generally focus on national security, while EU sanctions focus on EU values and interests. Consequently, although multilateral sanctions appear to cause greater economic harm to the target nation, they are often less effective in achieving political change than unilateral sanctions[12], as they require multi-state coordination and shared responsibility, reducing pressure on the sanctioned regime and weakening the political message. Finally, from a legal standpoint, unilateral economic sanctions do not fall under a single, precise legal category in international law, unlike multilateral measures. To classify and interpret them, it is necessary to refer to various legal instruments that have similar, but distinct, characteristics and purposes. The first category is that of retorsion, which refers to acts that do not violate international law but only political or moral norms, such as suspending aid or terminating treaties. These are legitimate acts of political retaliation. A different notion is that of reprisals, which are measures taken to force a state to comply with its legal obligations, in response to previous violations of international law. Although these were originally denoted as coercive and often armed measures, contemporary legal doctrine interprets them as non-violent forms of countermeasures. By contrast, countermeasures are central in modern debates as they are the most frequently invoked category for unilateral economic sanctions, consisting of unilateral measures taken in response to violations of international law by a state, with the purpose of inducing the responsible state to cease violations or provide reparation. Such measures are subject to strict conditions as they must be proportionate and may not violate fundamental obligations such as the prohibition of the use of force or the protection of human rights. Finally, an additional distinction includes third-party countermeasures; unlike traditional countermeasures, these are imposed by a state or group of states that are not directly harmed by the violation, but act in their collective interest. Their legitimacy is more controversial and subject to limitations.[13]

[12] W.H. KAEMPFER, A.D. LOWENBERG, *Unilateral Versus Multilateral International Sanctions: A Public Choice Perspective,* in *International Studies Quarterly*, 43, 1, Northridge, 1999, pp. 40-41.

[13] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, *Brill*, Leiden, 2022, pp. 60-68.

1.1.3 Types of Sanctions and Objectives

In addition to this significant differentiation between unilateral and multilateral sanctions, further distinctions must be made when referring to economic sanctions. According to Lowenfeld, economic sanctions range on a spectrum from mild economic activities, such as the failure to renew certain benefits, to more comprehensive measures such as a trade embargo or seizure of assets[14]. A first general distinction can be made between positive and negative sanctions. The former involves existing or promised economic gains to encourage a behaviour change, while the latter consists of existing or threatening penalties to deter or punish undesirable actions. The following table illustrates the types of economic sanctions that fall into these two categories.

Positive sanctions	Negative sanction
Existing or promised gains	Existing or threatening penalties
Trade sanctions: – Tariff reduction – Tariff elimination	– Partial embargo – Absolute embargo
Investment or financial sanctions: – Financial or investment assistance from various institutions such as the IMF, the WB or from countries	– Reduction of capital flows (*lending reduction or suspension*) – Forced disinvestment – Reduction in international payments – Assets freezing
Targeted sanctions: – Humanitarian aid	– Transport and communications ban – Travel ban – technology transfer ban, IPR transfer ban

Table 1- Types of Economic Sanctions[15].

Furthermore, to make a more precise distinction, penalties must be categorised according to the type of economic activity affected. These activities can be classified into five main categories:

a) Bilateral government programs, such as foreign assistance, fishing rights, and aircraft landing rights.
b) Exports from the sender state.
c) Imports from the target country or other target entities.
d) Private financial transactions, such as bank deposits and loans.

[14] B.E. CARTER, *Economic sanctions*, in *Max Planck Encyclopedia of Public International Law, Oxford University Press*, 2011, pp. 2-3.

[15] A. FILIPENKO, O. BAZHENOVA, R. STAKANOV, *Economic sanctions: Theory, policy, mechanisms,* cit., p. 72.

e) Economic activities of international financial institutions such as the World Bank or the IMF[16].

In addition to these categories, sanctions can be classified based on the targets they are intended to affect. Primary sanctions prohibit or limit economic transactions between a sanctioning state and a targeted state, while secondary sanctions penalise economic relations between the targeted state and a third-party state. The latter category concerns the extraterritorial application of sanctions, which often raises significant concerns under international law[17]. Finally, economic sanctions can be imposed for multiple reasons as instruments of international diplomacy, aimed at influencing the internal and external behaviour of other sovereign nations without resorting to military interventions[18]. Barry Carter argues that the aim of imposing economic sanctions is to influence, punish, or demonstrate opposition to another country's policies. Kern Alexander identifies different objectives: behaviour modification, punishment, and sending a signal to a targeted country or a third country. David Baldwin affirms that there are three justifications for the use of economic sanctions. First, the cognitive explanation affirms that the decision to impose economic sanctions flows from ignorance or bad judgment, because such measures do not always bring positive results. Secondly, the expressive explanation considers economic sanctions as an end in themselves, used only to release the internal tensions of the state that imposes them. Thirdly, the instrumental approach posits that such measures are purposive in nature, with the objective of exerting economic coercion upon the logic of choice[19]. Therefore, it can be deduced that it is wrong to assume that sanctions are in any case a direct and justified reaction to the misbehaviour of a state, they can also only be discretionary measures. After these considerations, we can examine the most widely recognised purposes of economic sanctions: (i) to coerce, aimed at changing the behaviour of a state or non-state actor by increasing the cost of continuing the undesirable behaviour to the point of making it unsustainable. An example is Iran before the nuclear deal (JCPoA), where sanctions crippled the economy and forced the government to negotiate; (ii) to constrain, preventing the affected party from accessing critical resources (technologies, weapons, sensitive materials), recognising that behavioural change may not result from coercion alone. For example, UN sanctions against North Korea to stop its nuclear development; (iii) to signal and stigmatize, giving signals of disapproval of a country or person's

[16] B.E. CARTER, *Economic sanctions*, cit., p. 4.

[17] O. NIHREIEVA, *Legality of Economic Sanctions as a Means of International Obligations Enforcement, in DPCE Online*, 63, 1, Pescara, 2024, p. 407.

[18] G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT, B. OEGG, *Economic Sanctions Reconsidered*, in *Peterson Institute for International Economics*, Washington, 2009, p. 5.

[19] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 45-46.

behaviour, isolating and stigmatizing the sanctioned party, to reinforce shared international norms. The imposition of sanctions can be seen as an escalation: starting with disapproval signals, moving on to harsher coercive measures and finally to severe restrictions, these can also overlap[20]. Moreover, the actual motives may differ from the stated ones, such as governments declaring ethical motives but pursuing geopolitical or economic interests. For example, allegations have been raised about the hidden agenda of various sanctions regimes, including the Western-imposed Coordination Committee for Multilateral Export Controls (COCOM) regime against the socialist bloc, the US trade embargo against Cuba, and the UN-imposed global economic sanctions against Iraq. Additionally, economic sanctions are not merely technical instruments of economic coercion but are, in many cases, directly aimed at creating economic hardship by causing severe deprivation to the civilian population to induce political change, and such negative consequences cannot be considered as undesirable side effects but rather part of the coercive intent by using civilian populations as instruments of political pressure[21]. From a theoretical point of view, we can notice that the mechanism through which economic sanctions achieve their objectives is about the reversal of the international trade theories, mostly associated with the Swedish economists Ohlin and Heckscher. The Heckscher-Ohlin theory argues that world economic welfare is maximized when there is free trade between countries, each specialize in the production of goods that are used intensively, exports the goods for which it has a comparative advantage and imports those that require scarce inputs. When trade restrictions such as high tariffs or import quotas are introduced, an obstacle to free trade is created, and thus, overall welfare is reduced. Hence, the imposition of the sanction can lower the income and welfare of the target country to such a low level that it is forced to accept the required conditions. The weaker country will suffer a worsening of the terms of trade and will be pushed to comply to avoid further damage. However, this theory is highly simplified as it does not consider today's complex global trade networks, so that, affected countries can circumvent sanctions by trading with third parties and adapt[22].

[20] I. K. BOLTON, *Deterrence and the use of Sanctions*, in *NATO Science and Technology Organization System Analysis and Studies Panel*, London, 2019, p. 1-2.

[21] E. DAVIDSSON, *Towards a definition of economic sanctions*, cit., pp. 2-5.

[22] M. SMEETS, *Can economic sanctions be effective?*, in *WTO Economic Research and Statistics Division,* Geneva, 2018, p. 5.

1.2 The Evolution of Economic Sanctions in International Relations

1.2.1 Early Applications of Sanctions

International economic sanctions are not a recent tool in international relations. Although they have never been used as intensively as they have been since the 1990s, this practice is rooted in ancient times[23]. The first recorded example dates to ancient Greece and the Megarian Decree, which was enacted around 432 BC. Through this decree, Athens imposed trade restrictions on Megara, blocking Megarians' access to Athenian ports[24]. This was a diplomatic measure taken against the Megarians, who had cultivated Athenian lands and killed an Athenian herald. The Megarian Decree demonstrates the ambiguity of sanctions' political effects. On the one hand, the decree was aimed at making Megara pay a price without resorting to war. However, it also demonstrated how sanctions can fail to achieve their intended purpose, as many believed it triggered the Peloponnesian War. On the other hand, some believed that Pericles, the Athenian leader, had convinced the Athenians to issue the decree with the goal of provoking war[25]. The main difference in sanctions between ancient Greece and the post-World Wars I and II periods is that, before World War I, economic sanctions foreshadowed or accompanied warfare. It was only after World War I that economic sanctions were considered a substitute for armed hostilities[26]. In general, scholars tend to consider economic sanctions to have emerged as an independent policy tool only after World War I, and even more so after World War II[27], that is, to influence or coerce another state without resorting to military conflict. Before the 20th century, economic coercion was a secondary instrument with direct military objectives, and states employed blockades and trade restrictions predominantly during wartime[28]. One early example is that of the American colonies in the 1760s, which adopted economic sanctions in the form of boycotts against English merchants. The aim was to force England to change the tax

[23] J.M. THOUVENIN, *History of implementation of sanctions*, in M. ASADA (ed.), *Economic Sanctions in International Law and Practice*, *Routledge*, London and New-York, 2020, p. 83.

[24] B. BEGOVIC, *History of Economic Sanctions: Key Research Questions (with some answers for 2022 sanctions against Russia*), in *Annals of the Faculty of Law in Belgrade*, 72, 2, Belgrade, 2024, p. 254.

[25] T.C. MORGAN, C. SYROPOULOS, Y.V. YOTOV, *Economic Sanctions: Evolution, Consequences, and Challenges*, in *Journal of Economic Perspectives*, 37, 2023, p. 6.

[26] G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT, B. OEGG, *Economic Sanctions Reconsidered,* cit., p. 9.

[27] I. BOGDANOVA, *Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship*, in P. CZECH, L. HESCHL, K. LUKAS, M. NOWAK, G. OBERLEITNED (eds.), *European Yearbook on Human Rights*, *Intersentia*, Vienna, 2023, pp. 174-175.

[28] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., p. 16-18.

and trade rules applied to the colonies under the "Townshend Acts". Similarly, a few years later, in 1806, Napoleon imposed a continental blockade, i.e., a trade embargo on a larger scale, extending to an entire geographical area, to weaken England economically during the Napoleonic Wars. Between 1807 and 1813, the US adopted an embargo to block all foreign trade and avoid involvement in European wars, exercising pressure on European powers[29]. Between the 16th and 19th centuries, naval pacific blockades were a frequent example of sanctions. These blockades involved the deployment of a naval force by a country or coalition of countries to interrupt the commercial intercourse with specific ports or coasts of a state with which these countries were not at war. Therefore, blockades were considered a coercive but peaceful tool, aimed at pushing a state to act without resorting to armed conflict, and often also used as an instrument of "international policing" to enforce the international order. Moreover, they were primarily implemented by powers that were militarily much stronger than the target state. The first documented example dates to 1827, during the Greek War of Independence against the Ottoman Empire: Great Britain, France, and Russia blockaded the Greek coastline, preventing supplies to the Turks and Egyptians in Greece. Although this was a peaceful measure, it resulted in the Battle of Navarino. From 1827 until the outbreak of the First World War, 21 peaceful blockades were implemented, generally imposed by powerful European states against smaller European nations and emerging states such as those in Latin America and Asia[30]. Despite these precedents, modern sanctions as economic weapons formally originated during the First World War and were introduced into international law with the League of Nations Covenant in 1919[31]. The "inter-allied blockade" led by Britain, France and eventually the United States aimed to control access to international trade and finance, relying on non-military methods of enforcement to disrupt Germany's commercial connections in overseas markets and, more generally, in Central Europe and the Middle East. The British began this blockade in 1914 and intensified it by involving their allies, developing into an official collaboration between Paris and London. This strategy aimed to wage war without direct military action. At the Paris Peace Conference that ended the war, the main leaders included economic warfare in the founding document of the League of Nations. Indeed, to promote peace between countries, the Pact provided for automatic and universal economic sanctions against nations that may have violated the peace[32]. This approach reflected the thinking of

[29] J.M. THOUVENIN, *History of implementation of sanctions*, cit., pp. 19-22.

[30] L. DAVIS, S. ENGERMAN, *Sanctions: Neither War nor Peace*, in *Journal of Economic Perspectives*, 17, 2, 2003, pp. 188-189.

[31] B. BEGOVIC, *History of Economic Sanctions: Key Research Questions (with some answers for 2022 sanctions against Russia)*, cit., p. 245.

[32] P. DEHNE, *How World War I transformed economic warfare*, in *The Washington Post*, 2019, available at: https://www.washingtonpost.com/outlook/2019/06/28/how-world-war-i-transformed-economic-warfare/.

key figures such as the President Wilson, who considered economic sanctions as an effective alternative to war and defined them as a "peaceful, silent and deadly remedy" and "a hand around the throat of the offending nation"[33]. The experience of the war and the effectiveness of economic warfare reinforced confidence in this instrument as a means of maintaining post-war peace and enforcing the rules of a new world order. However, during the interwar period, the practical application of sanctions was limited and problematic: Article 16 of the Covenant of the League of Nations[34] authorised the imposition of economic sanctions, but only against member states guilty of resorting to war, and the necessary procedural steps for the imposition of such measures remained undefined. The legal nature of economic sanctions also remained unclear: whether they were to be considered war measures or instruments of peaceful pressure[35]. Two main examples of sanctions imposed in this period that demonstrate these limitations are those imposed on Italy and Japan. In 1935, the League of Nations imposed sanctions on Fascist Italy in response to its invasion of Ethiopia (Abyssinia). However, Italy was seen as a counterweight to Nazi expansion in Germany and, therefore, powers such as Britain and France did not fully enforce the sanctions, leading to the failure of these measures undermining the credibility of the League of Nations. This was the first time that the League applied Article 16, which allows for sanctions to be imposed on a member country. Similarly, the US imposed sanctions on Japan to counter its military conquests in East Asia. However, these measures did not curb Japanese expansion, instead helping Japan to escalate the conflict, culminating in the attack on Pearl Harbor in 1941. This was mainly due to the reluctance of key nations to enforce the sanctions[36]. Finally, the collapse of the global political and economic order in 1930s and the outbreak of the Second World War dismissed the League as a utopian enterprise and incapable of unifying the states[37].

[33]I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., p. 20.

[34] Art. 16 Covenant LN: "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war […] which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State", in *Ivi*., p. 21.

[35] *Ibidem*.

[36] T.C. MORGAN, C. SYROPOULOS, Y.V. YOTOV, *Economic Sanctions: Evolution, Consequences, and Challenges*, cit, p. 6.

[37] N. MULDER, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War*, in *Yale University Press,* London*, 2*022, pp. 1-2.

1.2.2 Cold War Era Sanctions

Following the outbreak of World War II, allies such as the US and the UK started to impose economic sanctions to weaken the enemy. These sanctions included bans on the re-export of strategic goods, the blacklisting of neutral commercial entities doing business with the adversary, and the freezing of enemy assets[38]. The widespread and increasing use of sanctions during the Second World War highlighted their potential as instruments of geopolitical influence, prompting a re-evaluation of such measures as economic coercion within a broader legal and institutional framework. In the aftermath of the war, many states recognised the urgent need to prevent future armed conflicts by establishing legal limits on the use of force to maintain international peace and security. This urgency led to the foundation of the United Nations and the adoption of the UN Charter in 1945, which formally recognised sanctions as a foreign policy tool. Within this framework, Article 2(4) of the UN Charter prohibits the threat or use of force, except in cases of self-defense. As Elizabeth Zoller concludes, the aim was to allow for milder forms of coercion, such as economic sanctions[39]. During the Cold War, governments began to impose sanctions more frequently, with the US, one of the two superpowers, playing a crucial role by imposing significant sanctions more than any other country. The Cold War was an ideological struggle between Western capitalist democracies, led by the US, and Eastern communist regimes, led by the Soviet Union. Economic relations were subordinate to political and ideological concerns. In the early 1950s, sanctions mostly took the form of trade and arms embargoes imposed by Western states against the Soviet countries, and vice versa. These sanctions aimed to destabilize political regimes or influence the direction of military conflicts in the context of Cold War tensions between the Soviet Union and the US. A prominent example of Cold War sanctions was the US embargo against Cuba[40]. As Kennedy stated in his 1962 proclamation, which formally imposed the embargo, the Final Act of the Eighth Consultative Meeting of Foreign Ministers established that the Cuban government was incompatible with the principles and objectives of the inter-American system, due to its alliance with Sino-Soviet communism. Therefore, the aim was to isolate the Government of Cuba to reduce the threat posed by its alignment with the communist powers[41]. The Soviet Union itself also became the target of economic sanctions imposed by the US and its allies, as for example the grain embargo imposed by the US President Carter in 1980 in

[38] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., p. 23.

[39] *Ibidem*.

[40] T.C. MORGAN, C. SYROPOULOS, Y.V. YOTOV, *Economic Sanctions: Evolution, Consequences, and Challenges*, cit, pp. 6-9.

[41] J.F. KENNEDY, *Proclamation 3447: Embargo on All Trade with Cuba,* 3 February 1962.

response to Soviet Union's invasion of Afghanistan[42]. Similarly, the Soviet Union also imposed restrictive measures on other communist states whose policies were less aligned with its own, including Yugoslavia, Albania, and China[43]. In this dual context of the Cold War, the United Nations, responsible for collective sanctions under Article 41 of the UN Charter, found its hands tied, as the UNSC, in which both the Soviet Union and the US held veto power, could hardly agree on the measures to be taken. Consequently, unilateral sanctions became the dominant form of economic coercion, marking a shift away from the post-World War II vision of multilateralism[44]. However, the effectiveness of sanctions during the Cold War was limited leading to the reinforcement of the search for multilateral measures with the end of the Cold War. This limited effectiveness is mainly due to a lack of multilateral cooperation and may be motivated by too ambitious goals and weak instruments, allowing the target country to find alternative trading partners or evade sanctions. Indeed, in many cases, the population and government unite in the face of sanctions, developing strong nationalism and seeking new trading partners. Strong allies of the sanctioned country can offset economic losses. During the Cold War, for example, the Soviet Union and the US often supported their allies despite sanctions[45]. The end of the Cold War favoured a more cooperative context, making the use of multilateral sanctions more frequent and effective, aimed at overcoming the evident limits of unilateral sanctions.

1.2.3 Post-Cold War Developments and the 21st Century Trends

In the post-Cold War era, the rationale for imposing sanctions has expanded, aimed at promoting democracy and human rights, avoiding the proliferation of weapons of mass destruction, fighting illicit drug trafficking and international terrorism, and promoting the resolution of internal conflicts[46]. Moreover, the end of the Cold War in 1991 marked a significant increase in the use of economic sanctions, especially by the UNSC. This period is called the "sanctions decade", characterized by the return to sanctions as instruments of collective enforcement. This revival of multilateralism was made possible by the end of bipolarity and the strengthening of the UN's role. Despite these developments, the Security Council has been criticized on several occasions for going too far in defining a threat to international security in some cases (e.g., after Iraq's invasion of Kuwait) and not doing enough in

[42] R.L. PAARLBERG, *Lessons of the Grain Embargo*, in *Foreign Affairs*, 59, 1, 1980, p. 144.

[43] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 24-25.

[44] I.V. YAKOVIYK, Y. A. NOVIKOV, *International Economic Sanctions: Part.1. History and Theory*, in *Theory and Practice of jurisprudence*, 1, 25, *Yaroslav Mudryi National Law University*, Kharkiv, 2024, pp. 158-163.

[45] G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT, B. OEGG, *Economic Sanctions Reconsidered,* cit., pp. 7-9.

[46] I.V. YAKOVIYK, Y. A. NOVIKOV, *International Economic Sanctions: Part.1. History and Theory*, cit., p. 156.

others (e.g., during the crisis in Bosnia/Kosovo). The Security Council has imposed global economic sanctions on many occasions, such as against Iraq, the Federal Republic of Yugoslavia, and Haiti. These sanctions have had a significant negative impact on the civilian populations of the sanctioned states, creating opportunities for non-democratic regimes to benefit from them.[47]. A prominent example is the UNSC Resolution 841 (1993), which imposed economic sanctions on Haiti to prevent threats to peace, stability, and security in the region, having a major impact on the human rights situation in the country. These sanctions included the blocking of oil and arms imports, the freezing of Haitian government's assets, and the obligation for all states to strictly adhere to the resolution. However, these measures had a negative impact on human rights, as seen in the reduction of access to education and healthcare, and the hindrance to the democratic process[48]. The humanitarian repercussions of these sanctions have led to growing international concern about their compatibility with international human rights standards. In response, the concept of "smart" or "targeted" sanctions against specific individuals, groups, or entities and non-state actors, have emerged after the September 11, 2001, terrorist attacks in the US, with the aim of protecting the most vulnerable groups[49]. However, even the UN's targeted sanctions in the war against terrorism have raised strong criticism for being inconsistent with minimum human rights standards, mainly due to a lack of procedural fairness. Consequently, the UN Office of Legal Affairs started a study to examine violations of due process rights by sanctions-authorization procedures, while the UN Commission on Human Rights (UNCHR) appointed a Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism. Bardo Fassbender, studied the legitimacy of targeted sanctions and identified the main problems related to due process, which are as follow:

1. Targeted individuals were not informed before being listed and were deprived of the right to challenge their listing;
2. Listed individuals were deprived of the right to request de-listing directly from the sanctions committee;
3. Listed individuals were not granted a hearing after a de-listing request was filed;

[47] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 30-33.

[48] E. INGOLD, *The Impact of Economic Sanctions on Respect for Human Rights after the End of the Cold War*, in *APSA Annual Meeting Paper,* Warwick, 2013, p. 2.

[49] I.V. YAKOVIYK, Y. A. NOVIKOV, *International Economic Sanctions: Part.1. History and Theory* cit., p. 163.

4. There was a lack of legal rules obliging the sanctions committee to approve a de-listing request if specific conditions were met [50].

Finally, several factors have contributed to this post-Cold War evolution, especially in the way economic sanctions are applied. First, new studies have found targeted sanctions to be more effective and less harmful to civilians. Second, the US has amended its domestic legislation to facilitate the imposition and enforcement of sanctions. For example, extraterritorial jurisdiction has been established, requiring foreign companies to comply with sanctions if they use US dollars or pass-through US banks. Key pieces of legislation in this regard include the International Emergency Economic Powers Act (IEEPA) of 1977, which provides the US President with broad authority to regulate various economic transactions following a declaration of national emergency, and the Office of Foreign Assets Control (OFAC), a US Treasury agency that administers and enforces sanctions. Third, great advances in technology have enabled a greater number of transactions to be monitored every day, facilitating the enforcement of targeted sanctions[51]

1.3 Assessing the Legality of Unilateral Economic Sanctions under International Law

1.3.1 The UN Charter and the Legal Boundaries of Economic Sanctions

Unilateral sanctions are adopted by individual states, outside the framework of the United Nations, and are not based on a UNSC resolution. By contrast, multilateral sanctions adopted by the Security Council under Chapter VII of the UN Charter reflect the collective will of the UN member states[52]. Article 41 of the UN Charter provides, *inter alia*, for the "complete or partial interruption of economic relations" as a means to give effect to UNSC decisions aimed at "maintaining or restoring international peace and security"[53]. Before adopting such measures, the Security Council must first determine the existence of a threat or breach of the peace, or an act of aggression, in accordance with Article 39 of the Charter. After that, the Council has the discretion to adopt provisional measures,

[50] B. FASSBENDER, *Targeted Sanctions and Due Process*, UN, 2006, cit., in I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 34-35.

[51] T.C. MORGAN, C. SYROPOULOS, Y.V. YOTOV, *Economic Sanctions: Evolution, Consequences, and Challenges*, cit, p. 11.

[52] J. SCHMIDT, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, in *Journal of Conflict and Security Law*, 27, 1, *Oxford University Press*, 27, 1, 2022, p. 58.

[53] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*, *Springer*, The Hague, 2015, p. 74.

authorize the use of military force or impose non-military measures as sanctions to maintain international peace and security. Article 41 provides a non-exhaustive list of such sanctions, stating that they "may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations". Therefore, the UNSC has the authority to create binding legal obligations on other international actors, without their consent, without violating the sovereign powers of the states that must implement its sanctions, or of the states that are their targets. The implementation of UN sanctions requires states to incorporate them into domestic law, if a state circumvents or obstructs these sanctions, it may be subject to secondary sanctions[54]. In contrast, unilateral sanctions are adopted based on the subjective foreign policy choices of individual states or international organisations, and they pursue various purposes. These sanctions are extraterritorial in nature as they consist of measures taken by one state to compel policy changes in another state, as well as to regulate the conduct of non-nationals of the imposing state. This extraterritorial nature has led to a strong debate concerning their legality. From a legal point of view, such sanctions can be problematic, as they extend a state's regulatory authority beyond its borders and potentially violate the principles of sovereign equality among states and non-intervention in the internal affairs of other states. Furthermore, they can have similar effects to mandatory UNSC sanctions, even though they do not have the authorization required by Chapter VII of the UN Charter[55]. The controversial legality of unilateral sanctions is evident in the report of the Special Rapporteur on Unilateral Coercive Measures (A/HRC/45/7), the first thematic report presented to the UN Human Rights Council (UNHRC) by the Special Rapporteur Alena Douhan on the negative impact of unilateral coercive measures on the enjoyment of human rights, such as hindering access to essential goods and medical resources. In essence, it is highlighted that unilateral sanctions do not have a clear legal status in international law due to a lack of shared definitions, poor cooperation between international bodies, and an absence of consensus between states. This generates uncertainty and serious complications for international cooperation. In light of these shortcomings, the report primarily addresses the negative impact of sanctions on human rights, emphasizing the urgent need to develop strategies that ensure sanctions do not violate these fundamental rights.[56]. The illegality of unilateral economic sanctions can be primarily analyzed through two principles: the prohibition of the use of force in international

[54] J. SCHMIDT, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, cit., pp. 58-60.

[55] *Ivi*, pp. 60-61.

[56] A. DOUHAN, *Negative impact of unilateral coercive measures: priorities and road map. Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights,* A/HRC/45/7, UNHRC, 21 July 2020.

relations, and the principle of sovereignty and non-intervention in internal affairs. The former is a fundamental pillar of modern international law validated by the UN Charter in Article 2(4)[57]. Unlike the League of Nations Covenant or the Kellogg-Briand Pact (1928), which prohibited war but not all forms of force, the UN Charter prohibits any use of force or threat of force[58]. Traditional international law doctrines in the context of the UN Charter interpret "force" as referring only to armed military force. This restrictive interpretation is supported by the *travaux préparatoire* of the UN Charter, when at the San Francisco Conference a proposal to extend the prohibition to encompass also economic coercion was rejected. Also, the international practice of states and international organisations, as the Declaration on Friendly Relations (1970) of the UN General Assembly (UNGA), considers only military force as falling under the prohibition on the use of force confirming this restrictive interpretation. Therefore, political, or economic means of coercion do not violate the prohibition of the use of force under this interpretation. Moreover, at a closer reading, this prohibition can be interpreted more broadly. Although, it states that the use of force must be directed "against the territorial integrity or the political independence of any state", it also mentions "any other means that is incompatible with the purposes of the UN". This third variant of the threat or use of force takes a character of a "catch-all phrase", demonstrating that the term force can also refer to the indirect use of force. Therefore, the prohibition concerns not only the direct use of military force but also indirect actions such as other forms of pressure that, while not military, opposes to the UN's peace and security goals, such as financing of armed groups[59]. Unilateral sanctions do not fall into either category of direct or indirect use of military force, therefore generally speaking it seems that they cannot be considered a violation of the prohibition of the use of force. However, this consideration changes when dealing with extreme forms of economic coercion, that violates the principle of prohibiting the use of force, as a form of imposition that undermines international peace and security, coerce a change in a state's political regime and cause serious human rights harm to the population.

[57] Art. 2(4) UN Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.", in A. Al-KHSEILAT, A.Y. AL-REFOU, S.M.S. AL-HMALAN, *Unilateral Economic Sanctions*, in *Journal of Law, Policy and Globalization*, *IISTE*, 49, 2020, p. 132.

[58] *Ibidem*.

[59] O. DORR, *Use of Force, Prohibition of*, in *Max Planck Encyclopedias of International Law*, *Oxford University Press*, 2019, pp. 4-6.

Moreover, they can violate also the principle enshrined in Article 2(7) of the UN Charter[60], which states that the UN and its members may not intervene in matters within the domestic jurisdiction of a state. Intervention is generally defined as a form of authoritarian pressure exerted by a state or an international organisation to compel another state to perform or refrain from performing certain actions. Unilateral sanctions violate this principle because they constitute coercive interference in the internal affairs of a state, contradicting the principle of state sovereignty and not being legitimized by a competent international authority[61]. In light of these significant issues concerning unilateral sanctions, it is very important to clarify under which circumstances such measures may be considered legitimate. Once a state imposes unilateral sanctions, it does so by applying its own national law to foreign entities, this is only possible if it believes it has jurisdiction over those entities. A state's jurisdiction may extend beyond its national borders when the following principles of jurisdiction apply:

1. Nationality Principle: a State may prescribe laws governing the conduct of its citizens, wherever they may be;
2. Passive Personality Principle: a state can claim jurisdiction over a crime committed abroad if the victim is its citizens;
3. The Effect Principle: a state may extend the reach of its laws over activities conduceted abroad affecting its interests;
4. Universal Jurisdiction Principle: a state may prosecute offenses that are recognised by the international community as crimes, such as piracy[62].

Therefore, the legitimacy of unilateral sanctions depends on their legal basis and purpose: they are considered legitimate when they are taken by a state to respond to violations of international law by another state to force them to adhere to internationally acceptable patterns of behaviour. Therefore, the UN Commission on International Law established the rules of international responsibility for

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[60] Art. 2(7) UN Charter: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.", in A. Al-KHSEILAT, A. Y. AL-REFOU, S. M. S. AL-HMALAN, *Unilateral Economic Sanctions,* cit., p. 133.

[61] *Ivi.,* pp. 133-135.

[62] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences,* cit., pp. 77-78.

retaliation against unlawful international action and emphasized that a country's action becomes legitimate whenever this action is a response or countermeasure in accordance with the rules of international law, following the unlawful action of the sanctioned country. However, the International Law Commission has established several limitations to the application of such sanctions, in that they must not develop to the point of excessive political and economic coercion, which threatens the territorial integrity and political independence of the country committing the illegal action, as well as limitations relating to human rights. Such sanctions must also be commensurate with the action taken to counteract it, so as not to be arbitrary in their application[63].

1.3.2 The World Trade Organisation and Sanctions under International Trade Law

Although unilateral economic sanctions may be considered unlawful under general international law, they can still be justified under a *lex specialis*, such as international trade law. While the World Trade Organisation (WTO) law generally prohibits various forms of restrictive trade measures, it also provides exceptions under which some of such measures can be considered consistent with the General Agreement on Tariffs and Trade (GATT); General Agreement on Trade in Services (GATS) and other WTO agreements[64]. This focus on international trade law is mainly due to the fact that the main sanction measures currently implemented by a country or group of countries are trade sanctions, asset freezes, financial transactions restrictions, etc. Indeed, it can be said that WTO trade rules are the international treaties most closely related to unilateral sanctions and most likely to impose limitations or prohibitions on them[65]. According to Article XI of the GATT: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party"[66]. This means that WTO members cannot impose or maintain any quantitative restrictions as quotas or licenses on imports and exports, except through duties, taxes, or similar charges. This is a general prohibition on quantitative restrictions. The only exceptions to this prohibition of quantitative restrictions include:

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[63] A. Al-KHSEILAT, A.Y. AL-REFOU, S.M.S. AL-HMALAN, *Unilateral Economic Sanctions*, cit, pp. 135-136.

[64] O. NIHREIEVA, *Legality of Economic Sanctions as a Means of International Obligations Enforcement*, cit., p. 409.

[65] T. XINYUE, *Analysis of the Legality of Unilateral Sanction*s, in *Academic Journal of Humanities & Social Sciences*, 6, Shangai, 2023, p. 103.

[66] Art. XI (1) GATT, in *Ibidem.*

a. "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;"

b. "Import and export prohibitions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;"

c. "Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of government measures"[67]

Therefore, when a sanctioning country refuses to export goods to, or prohibits imports from, the sanctioned country, such a measure restricts the free flow of goods between countries, violating Article XI of the GATT[68]. In general, unilateral economic sanctions are inconsistent with these provisions of the treaty, as the WTO's free trade regime aims primarily to preserve a multilateral trading system based on nondiscrimination, openness, predictability, transparency, and competitiveness[69]. In line with that, the GATT and GATS, provide the non-discrimination and most-favoured-nation treatment principles, in Article I, stating that member countries should unconditionally give all contracting parties the most-favoured nation treatment for the import and export of "like" goods and services. In cases of sanctions, only one country is targeted, and its goods/services are treated less favourably. Indeed, sanctions are by nature inconsistent with the principles of non-discrimination and most-favoured-nation treatment, which are at the core of the rule of the GATT regime. Despite these limitations of WTO law on sanctions, there are also important exceptions. A first example is the "security exception" contained in Article XXI of the GATT and Article XIV bis of the GATS[70]. The former article provides that GATT does not prevent Members "from taking any action which it considers necessary for the protection of its essential security interests", e.g., when "taken in time of war or other emergency in international relations"[71]. The wording of this paragraph is broad and ambiguous, leaving the contracting parties with the discretion to interpret such situations on their own. In fact, these provisions have, in many cases, been used by states to justify economic measures for mere national interests, exploiting the vague and imprecise way in which they have been formulated, allowing states to decide in a self-judging manner whether the conditions for an exception are met or not. Consequently, this lack of scrutiny over this exception not only opened the door to potential abuses but also risked undermining the credibility and

[67] Art. XI (2) GATT.

[68] T. XINYUE, *Analysis of the Legality of Unilateral Sanction*s, cit., p. 103.

[69] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*, cit., p. 136.

[70] T. XINYUE, *Analysis of the Legality of Unilateral Sanction*s, cit., pp. 103-104.

[71] Art. XXI (b) GATT.

effectiveness of the WTO's free trade system[72]. The case of Sweden in 1975, when it tried to invoke Article XXI to justify protectionist measures in favour of its shoe industry, showed that this article can under no circumstances be used to justify measures that have no real connection with security or foreign policy[73]. However, in 2019, the situation changed when, in the *Russia - Traffic in Transit case,* for the first time a WTO panel interpreted Article XXI, limiting the discretion of states to use it, an interpretation confirmed in 2020 in the *Saudi Arabia - Intellectual Property Rights*. From this point on, justifying trade sanctions through Article XXI became significantly more difficult, as the provision could no longer be considered entirely self-judging and was subject to legal scrutiny under the WTO dispute settlement system[74]. Furthermore, another example of exceptions from free trade rules concerns cases where states act under their obligations from the UN Charter. This applies especially when it comes to resolutions adopted by the Security Council within the framework of Chapter VII of the Charter, which deals with matters of international peace and security. In these cases, all member states are obliged to comply with these resolutions based on Article 24(1) of the Charter and the decisions of the Council overrule free trade regulations of other intergovernmental organisations and treaties. This exception is also provided in Article XXI(c) of GATT, stating that no contracting party may be prevented "from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security." Unlike the other exceptions under GATT, Article XXI(b) is clear and unambiguous[75]. In essence, unilateral economic sanctions remain a contentious issue in international trade law, reflecting tensions between national interests and multilateral trade commitments.

1.3.3 Unilateral Sanctions as Countermeasures against Internationally Wrongful Acts

Countermeasures are instruments of international law aimed at reacting to the unlawful behaviour of a State; allowing the adoption of measures that, although otherwise considered illegal, may be justified as proportionate, temporary, and reversible reactions[76]. The term refers to unilateral measures adopted by a State in response to the breach of its rights or international obligations by the

[72] H. KOCHLER, *Sanctions and International Law*, in *I.P.O Research Papers*, 3, Vienna, 2019, pp. 9-11.

[73] T. RUYS, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, in L. Van-den-Herik (ed.) *Rsearch Handbook on UN Sanctions and International Law*, *Elgar*, Ghent, 2016, p. 10.

[74] O. NIHREIEVA, *Legality of Economic Sanctions as a Means of International Obligations Enforcement*, cit., pp. 409-412.

[75] H. KOCHLER, *Sanctions and International Law*, cit., pp. 11-12.

[76] N.D. WHITE, A. ABASS, *Countermeasures and Sanctions*, in M. EVANS (ed.), *International Law*, *Oxford University Pess*, Oxford, 2025, p. 537.

wrongful act of another State. These actions temporarily affect the rights of the responsible State and serve to induce it to stop the offending behaviour or to repair the damage caused. The concept of countermeasures emerged in the 20th century and gained popularity from its use in the *Air Services Agreement* case between France and the US, by the arbitral tribunal in the late 1970s establishing the legitimacy of unilateral measures taken in response to internationally wrongful acts. It was then adopted by the International Law Commission (ILC), using it in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) of 2001[77]. According to the ILC, countermeasures can be considered under the heading of "Circumstances Precluding Wrongfulness", meaning that an act which would otherwise be wrongful toward another State is not considered unlawful when taken in response to a prior internationally wrongful act of that State, with the aim of inducing it to comply with its own obligations. However, for this action to be lawful, it must comply with the limits and conditions on countermeasures set out in the ILC Articles[78]. A very important article in this context is Article 2, which specifies the "Elements of an internationally wrongful act of a State", stating that:

"There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) Is attributable to the State under international law; and

(b) Constitutes a breach of an international obligation of the State"[79]

Furthermore, alongside the crucial precondition of the actual existence of a wrongful act, there are substantive and procedural requirements for countermeasures. From a substantive perspective, an important condition for the justification of such measures is the question of "standing" as the author of countermeasures, that is, who is entitled to take them. Article 49, paragraph 1, of the ASR provides that "An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act" and Article 42 defines an "injured State" as follows:

"A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

(a) that State individually; or

(b) a group of States including that State, or the international community as a whole, and the breach of the obligation:

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[77] F.I. PADDEU, *Countermeasures*, in *Max Planck Encyclopedia of Public International Law*, *Oxford Univserity Press*, 2015, p. 2.

[78] L.F. DAMROSCH, *The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts*, *Berkeley J. Int'l L. 249*, 37, 2019, p. 103.

[79] Art. 2 ARSIWA, in *Ivi*., p. 104.

(i) specially affects that State; or

(ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation"[80].

Thus, there are three different types of obligations/situations in which countermeasures and other measures can be taken for the "standing" of a state to take countermeasures. The first situation (Article 42(a)) may occur when an obligation of one state towards another state is violated. In this case, the latter State is the injured State and only it can take countermeasures. This is a violation of obligations of a bilateral nature, such as those provided for in bilateral treaties or found in multilateral treaties or customary law. The second situation (Article 42(b)(i)) may occur when a collective obligation is violated and a State of the group or the international community is "specially affected" by the violation. In this case, the "specially affected" state is the violated state. A typical example is the violation of the prohibition of aggression. This prohibition is owed to the international community as a whole, and its violation necessarily involves a specially affected state that is considered the aggrieved state. The third situation (Article 42(b)(ii)) also includes similar cases of breach of a collective obligation but is further specified by the condition that the breach of the obligation is "of such a character as to radically alter the position of all the other States to whom the obligation is owed with respect to the further performance of the obligation". This type of obligation is often called an "interdependent obligation". It is so-called because the performance of each party is effectively conditioned by the performance of each of the others[81]. Finally, another substantive requirement is found in Article 50, which specifies, as follows, certain obligations that cannot be violated by a State while adopting countermeasures[82]:

"1. Countermeasures shall not affect:

(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) obligations for the protection of fundamental human rights;

(c) obligations of a humanitarian character prohibiting reprisals;

(d) other obligations under peremptory norms of general international law.

2. A State taking countermeasures is not relieved from fulfilling its obligations:

(a) under any dispute settlement procedure applicable between it and the responsible State;

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[80] Art. 42, 49 ARSIWA, in M. ASADA, *Definition and Legal Justification of Sanctions,* cit., p. 12.

[81] *Ivi*., pp. 12-13.

[82] Art. 50 ARSIWA, in F.I. PADDEU, *Countermeasures*, cit., p. 5.

(b) to respect the inviolability of diplomatic or consular agents, premises, archives and documents."

In addition to these substantive requirements, there are also important procedural requirements for countermeasures. According to Article 52, paragraph 1, a country should, before taking countermeasures (a) call upon the state responsible for the unlawful act to continue to fulfill its international obligations, cease its unlawful activities, and fulfill its obligation to provide reparations; (b) notify the responsible state of its decision to take countermeasures and offer to negotiate with it. These procedural obligations are very important as countermeasures can have serious consequences for the target country, which must therefore be given the opportunity to reconsider its position before the adoption of countermeasures[83]. It is also important to emphasize that these procedural requirements are not absolute. Article 52(2) identifies emergency situations in which the injured state may take urgent countermeasures. Such countermeasures are taken without the obligation to wait for the completion of the ordinary procedure to protect its rights promptly, since these are measures that may lose their effectiveness if not taken immediately. Such situations often arise in cases of national security concerns, for example. Accordingly, unilateral sanctions can only be regarded as legitimate countermeasures under international law if they comply with the substantive and procedural requirements or if they are adopted in exceptional situations and fall under the conditions of urgency set out in Article 52(2)[84]. Finally, if a countermeasure meets these requirements and respects the principles of proportionality and temporality, then it can be considered legitimate. This means that, to be lawful, a countermeasure must be necessary to protect an injured right and proportionate to the harm suffered. The principle of temporality is about the timing of the implementation of countermeasures, their temporariness, the possible suspension, and termination:

(i) Implementation: countermeasures may not be taken immediately upon the commission of a wrongful act, as certain procedural conditions must first be met, apart from exceptional circumstances.

(ii) Temporariness: countermeasures are temporary, lasting only as long as the target State violates its obligations of cessation and/or reparation. They must also be reversible, i.e they must not create permanent and irreparable situations to allow the affected obligations to be resumed.

(iii) Suspension: injured state must suspend countermeasures where dispute settlement mechanisms are activated, without undue delay, but some flexibility is permitted to allow the state to adapt.

[83] Art. 52 ARSIWA, in T. XINYUE, *Analysis of the Legality of Unilateral Sanction*s, cit., p. 106.

[84] *Ibidem*.

(iv) Termination: countermeasures must cease immediately when the responsible state ceases the offence and/or provides redress[85].

In summary, unilateral economic sanctions are a very complex instrument in international law. While they can be justified as countermeasures to the unlawful conduct of other states, they must always balance the protection of state sovereignty with respect for fundamental international norms, including human rights. This legal overview forms the basis for analyzing, in the following chapters, the implications of sanctions in relation to the protection of human rights and the resulting constitutional challenges.

[85] F.I. PADDEU, *Countermeasures*, cit., pp. 6-7.

CHAPTER 2: Between Human Rights Enforcement and Unilateral Sanctions

2.1 Economic Sanctions as an Instrument to Promote Human Rights

Human rights, generally known as basic rights and freedoms, are grounded in the Universal Declaration of Human Rights (UDHR), adopted by the UN in 1948. Although this declaration was not formally binding, it was intended to promote human rights norms and standards in international relations. While the protection and promotion of human rights remain a primary concern for the international community, it seems to be increasingly difficult to collectively address human rights issues[86]. Moreover, apart from treaty law, certain fundamental human rights gained a special status in international law as *jus cogens* norms (peremptory rules) and *erga omnes* obligations (obligations every state has towards the international community). In theory, such recognition should entail enhanced protection of these norms by making them more difficult to violate. However, in practice, the categories of *jus cogens* and obligations *erga omnes* have remained ambiguous and often not properly enforced. In response to these deficiencies, some individual states have decided to act on their own in response to severe and continuous human rights violations by adopting unilateral measures such as coercive economic sanctions[87]. Indeed, the use of economic sanctions with the aim of promoting human rights is a very important, but also controversial, aspect of international relations today. Historically, sanctions were mainly used to punish violators of international law, to enforce multilateral agreements or to defend the national interests of a state. Today, however, sanctions are increasingly used based on a moral discourse aimed at protecting and promoting people's fundamental rights. In line with such development, an increasing number of individual states are adopting laws and regulations that allow them to sanction foreign nationals for human rights violations occurring anywhere in the world. They impose unilateral economic sanctions to redress human rights violations abroad, under the label of country-based sanctions which are economic sanctions enacted based on the country-specific legal frameworks introduced in response to various

[86] M.K. KERMANI, *Human rights and sanction. A paradox in international relations*, in *Consulate general of the Islamic Republic of Iran*, Kazan, 2, 6, 2016, p. 104.

[87] I. BOGDANOVA, *Reshaping the Law of Economic Sanctions for Human Rights Enforcement: The Potential of Common Concern of Humankind*, in T. COTTIER (ed.), *The Prospects of Common Concern of Humankind in International Law*, *Cambridge University,* 2021, p. 251.

crises[88]. Liberal democracies are in fact concerned about the welfare of their own citizens and foreigners, based on the idea that regimes that systematically violate human rights also tend to generate international instability. These regimes are often involved in conflicts, provoke refugee flows, offer refuge to terrorist groups or fuel regional crises. Therefore, even when the purpose of the action is not purely humanitarian, democracies may decide to impose sanctions to contain the negative consequences of such violations, such as regional insecurity and threats to the international order[89]. For example, following the 2002 presidential elections in Zimbabwe, which were considered irregular, and the established regime's serious violations of human rights and democracy, the US imposed unilateral sanctions through the Zimbabwe Democracy and Economic Recovery Act (2001) and further executive orders, as these violations were considered a threat to US foreign policy and international security[90]. The EU, the US, Canada, Australia, and a number of other states have traditionally been among the main supporters of unilateral human rights sanctions, a term that lacks a universally agreed definition but is generally understood as economic restrictions imposed in order to promote human rights abroad and to punish grave human rights violations, or for other reasons related to an unsatisfactory human rights situation in other countries[91]. A major development in this area has been the emergence of so-called "Magnitsky-style sanctions". These sanctions belong to the category of thematic or horizontal sanctions, meaning that they are not directed against a specific state, but target individuals or entities involved in certain violations, in particular serious human rights violations. The main attribute of these sanctions is that they are based on thematic objectives, such as the fight against torture, extrajudicial killing, gross corruption, etc. The persons or entities responsible are identified and placed on blacklists, and then subject to restrictive measures such as asset freezes or travel bans[92]. The name comes from Sergei Magnitsky, a Russian lawyer who uncovered a huge tax fraud and was imprisoned, tortured, and left to die in prison in 2009. In 2012, the US Congress passed the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Magnitsky Act), imposing sanctions on the Russian officials involved in Sergei Magnitsky death. Then, in 2016, the US extended the model globally: any foreign national can be sanctioned if responsible for extrajudicial

[88] I. BOGDANOVA, *Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship,* cit., p. 181.

[89] I. BOGDANOVA, *Reshaping the Law of Economic Sanctions for Human Rights Enforcement: The Potential of Common Concern of Humankind*, cit., p. 254.

[90] N. COOK, *Zimbabwe: Current Issues and U.S Policy*, in *US Congressional Research Services Reports,* R44633, Washington, 2016, pp. 1-2.

[91] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 223-224.

[92] I. BOGDANOVA, *Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship,* cit., p. 181.

killings, torture, or other serious human rights violations, or if involved in significant acts of corruption. Following the US initiative, other countries adopted similar legislation. Canada, in 2017, introduced a sanctions regime against systematic human rights abusers. The United Kingdom, in 2020, with the Global Human Rights Sanctions Regime imposed sanctions against 25 Russians for the Magnitsky case. The European Union, in 2020, adopted its own "Magnitsky-style" regime to sanction: genocide, crimes against humanity, torture, slavery, extrajudicial killings, enforced disappearances, and arbitrary arrests[93]. Therefore, these sanctions are important because they represent a turning point in the logic of unilateral sanctions, since they move from collective measures that are highly concerning for the respect of human rights to more personalized measures, which can reduce collateral effects. However, they remain unilateral instruments that can continue to have disproportionate effects on the population, even if designed to overcome this problem, causing a strong paradox. Finally, to better understand the effects of such sanctions, it is useful to consider the so-called "naïve theory of economic sanctions". Economic coercion aims to weaken the target regime by denying it the economic, military, and other resources necessary for political elites to maintain stability and order. Once these regimes are denied access to such resources, the theory suggests that sanctions will harm the coercive capacity of repressive regimes, subsequently lessening governmental repression. This results in a loss of support among influential groups, which further diminishes the repressiveness of the regimes. Consequently, when political leaders lose both coercive power and elite support, opposition movements are more likely to emerge and challenge the regime. These anti-regime groups may then gain public support and work to remove the oppressive government, leading to improvements in human rights and political freedoms[94]. However, in opposition to the "naïve theory of economic sanctions", such sanctions may not improve human rights conditions and can even worsen the situation. This seems to be mainly caused by indiscriminately harming the citizens of the affected country and damaging its economy, severely impacting civilians. This impact appears to be more significant than that experienced by repressive regimes. Furthermore, unilateral sanctions raise doubts about respect for state sovereignty and the principle of non-intervention in international law, making it difficult to consider these measures as legitimate or effective[95].

[93] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 227-233.

[94] D. PEKSEN, *Better or Worse? The Effect of Economic Sanctions on Human Rights*, in *Journal of Peace Research, Sage Publications*, 46, 1, Los Angeles, London, New Delhi, Singapore and Washington, 2009, p. 61.

[95] D. PEKSEN, *The human rights effect of economic sanctions*, Devpolicyblog, *East Asia Forum*, 2023, available at: https://devpolicy.org/the-human-rights-effect-of-economic-sanctions-20230804/.

2.2. Human Rights Consequences of Sanctions

2.2.1 Economic, Social, and Cultural Rights

Although unilateral sanctions, especially targeted sanctions, were introduced with the aim of avoiding the negative effects of multilateral sanctions, over time it has been noted that they too can have serious side effects on populations. Economic sanctions are often criticized for failing to achieve their stated goals and for generating destructive consequences such as poverty, human rights violations, healthcare inefficiency, and deprivation of essential living standards[96]. Their most documented effects concern economic, social and cultural rights, but also civil and political rights, especially when they disproportionately affect the most vulnerable groups. It is therefore important to analyze not only the obligations of states under international law but also how these obligations intersect with domestic constitutional frameworks and political realities. With regard to economic, social and cultural rights, it is useful to consider the General Comment No.8 on the relationship between economic sanctions and respect for economic, social and cultural rights, issued by the Committee on Economic, Social and Cultural Rights (CESCR). This general comment aims to demonstrate that sanctions must always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[97], this means that states have the responsibility to conduct an analysis of the impacts of these provisions on human rights as they cannot be adopted as merely instruments of foreign policy and security. The ICESCR was adopted by the UNGA on 16 December 1966 and entered into force on 3 January 1976, following the ratification by 35 States parties. This Covenant, together with the Covenant on Civil and Political Rights (CCPR), builds on the rights enshrined in the Universal Declaration of Human Rights[98]. Indeed, as highlighted in General Comment No.8, sanctions often cause disruptive consequences, such as on "the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work." Moreover, alongside the undesirable effects on

[96] F.A. HALAWANI, *The Impacts of Unilateral Economic Sanctions*, in *Access to Justice in Eastern Europe*, 6, 5, 2023, p. 2.

[97] UNCESCR, *General Comment No.8: The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8, UNESCR, 12 December 1997, pp. 1-5.

[98] OHCHR, *Background to the Covenant: Committee on Economic, Social and Cultural Rights*, available at: https://www.ohchr.org/en/treaty-bodies/cescr/background-covenant

population's conditions, they can strengthen oppressive regimes instead of weakening them[99]. All consequences that will be further analyzed in the cases of Venezuela and Iran. These destructive effects that sanctions can have highlight the tension between international human rights obligations and the domestic policy choices of States with the consequent need for a balance between them, meaning that a State must find ways to protect fundamental human rights without compromising its ability to operate effectively within its own political and constitutional system. On 12 March 2021, the UNHRC adopted a significant resolution concerning the negative impact of unilateral coercive measures on the exercise of human rights. This resolution urged member states not to adopt, maintain or apply unilateral sanctions that are incompatible with international law, humanitarian law, the UN Charter and the principles of peaceful relations among States. In addition, States and UN agencies should do their utmost to mitigate the effects of unilateral coercive measures and provide compensation to the affected countries. Since no person should be deprived of their livelihood, the resolution prescribesthat essential goods, such as food and medicine, must not be instruments of pressure[100]. This call for responsibility aligns with a broader debate on whether states imposing unilateral sanctions may also bear obligations towards populations beyond their own borders. The ICESCR, in fact, does not limit its obligations to the national territory only. This has led to interpretations suggesting that the Covenant may have extraterritorial application, i.e. obliging states to respect rights even outside their borders, especially when they exert influence on other countries, as in the case of unilateral sanctions.[101]. At the same time, domestic constitutions determine how these obligations are implemented in practice. It is indeed necessary a balance between international law demands for respect of socio-economic rights abroad and national authorities' activity in framing these obligations within their constitutional systems. For example, in Germany, the Federal Constitutional Court emphasize that international obligations must be implemented in conformity with the Basic Law. This means that while the government is bound by EU or UN measures, their application at the domestic level is subject to constitutional safeguards. Article 19 of Basic Law states that in case the law wants to limit a fundamental right, it must clearly state which right is being limited and such limitation cannot destroy the essential core of that right[102]. This demonstrates how national constitutions act as a balance, as states must respect their international obligations, even beyond their

[99] UNCESCR, *General Comment No.8: The relationship between economic sanctions and respect for economic, social and cultural rights,* cit., p. 2.

[100] A.D. GUERCIO, *Le Misure Coercitive Unilaterali Violano i Diritti Umani*, in *Osservatorio su Nuovi Autoritarismi e Democrazie (NAD)*, 2021, available at: https://nad.unimi.it/le-misure-coercitive-unilaterali-violano-i-diritti-umani/.

[101] S.M. ROWHANI, *Rights-Based Boundaries of Unilateral Sanctions*, in *Washington International Law Journal*, 32, 2, Washington, 2023, pp. 146-148.

[102] Art. 19 Basic Law.

own borders, but must do so in a manner compatible with their constitutional framework. The main consequences of unilateral sanctions affecting social, economic, and cultural rights are as follows:

a. Poverty:

Poverty is defined as insufficient income to cover basic expenses such as housing, clothing, and food[103]. The poverty rate tends to increase in sanctioned countries due to a lack of access to resources and the exploitation of specific social groups, primarily through economic isolation. Unilateral economic sanctions deprive citizens of access to basic human needs, such as nutrition, shelter, and healthcare. Above all, they deprive citizens of the financial means required to achieve a decent standard of living. Moreover, sanctions decrease job opportunities for the working class due to the deteriorating economic conditions of sanctioned countries[104]. A prominent example is that the embargo on Haitian exports by the OAS in 1991 and lifted partially by the US in 1992, which had a severe impact on employment and income, generating increasing levels of poverty. Sanctions indeed led to a loss of millions of jobs, especially for women, it caused industry collapse, reducing earnings. At the same time, import prices rose and access to essential goods decreased. Overall, between 1991 and 1994, income per capita fell by 30% and conversion reached 138%, deepening poverty[105]. Therefore, the economic, social and cultural rights that are clearly violated in this context include the right to an adequate standard of living (Article 11(1) ICESCR), the right to work (Article 6 ICESCR), the right to social security (Article 9 ICESCR), and the right to be free from hunger (Article 11(2) ICESCR)[106]

b. Economic inequality:

Unilateral sanctions can severely damage income equality by preventing developing countries from trading their national natural resources, restricting the circulation of currencies within their economies. Furthermore, sanctioned states are often exploited for their natural resources, which are often obtained through exploitative means such as child labor or smuggling. The consequences of these sanctions deprive sanctioned states of revenues that could enable them to compete with other economies in the international community. As a result, they remain in a deteriorating economic condition, unable to provide their citizens with a comparable standard of living. Consequently, elites in the states imposing sanctions accumulate the wealth gained from the illegally obtained resources to strengthen their economies and increase their businesses' wealth. This wealth accumulation is seen

[103] F.A. HALAWANI, *The Impacts of Unilateral Economic Sanctions*, cit., pp. 4-10.

[104] *Ibidem*.

[105] E. GIBBONS, *The Impact of Economic Sanctions on Health and Human Rights in Haiti*, 1991-1994, in *American journal of public health*, 89, 10, 1999, pp. 1499-1500.

[106] Art. 6, 9, 11(1)(2) ICESCR.

throughout the imposition of sanctions in Iraq, DRC, and Syria[107]. This situation violates several economic, social, and cultural rights, including the right to the enjoyment of just and favourable conditions of work (Article 7 ICESCR), the right to an adequate standard of living (Article 11(1) ICESCR), and the right to social security (Article 9 ICESCR)[108].

c. Healthcare:

Unilateral economic sanctions can also lead to serious damage to the health systems of sanctioned states, limiting access to medicines, medical equipment, and essential services, and thus violating the fundamental right to health. Sanctions can cause nutritional problems and obstruct access to basic needs such as water, as was the case in Iraq, where infant mortality increased dramatically during the embargo. The increase in mortality and decrease in life expectancy are mainly due to the damage caused to the ability of sanctioned states to maintain and develop an efficient healthcare system. Furthermore, the deterioration of economic conditions in these countries often prevents sufficient resources from being allocated to healthcare, as governments, especially authoritarian ones, often reserve only a small portion of GDP to this sector. This violates several economic, social, and cultural rights, primarily the right to health enshrined in Article 12 of the ICESCR, which recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"[109].

d. Access to Education:

Unilateral economic sanctions can harm and affect the educational system of a sanctioned state. This can be considered a direct consequence of the economic impact of sanctions. The crash of economies resulting from sanctions causes high unemployment rates and hyperinflation. Consequently, children drop out of school to support their families financially. Sanctions affect not only the traditional education system but also prevent access to digital resources and online databases, which are crucial for scientific research and technological development in universities and other higher education institutions. This hinders individual and collective progress within society and the entire education system. One example is the US sanctions against Sudan, which have closed access to online educational platforms. This has led to serious deficits in personal and professional development, poor scholarly output in Sudanese universities and a deterioration of the educational infrastructure as a whole[110]. These consequences violate economic, social, and cultural rights, particularly the right to education as enshrined in Article 13 of the ICESCR, as well as related rights to benefit from scientific

[107] F.A. HALAWANI, *The Impacts of Unilateral Economic Sanctions*, cit., pp. 5-6.

[108] Art. 7, 9, 11(1) ICESCR.

[109] Art. 12 ICESCR.

[110] F.A. HALAWANI, *The Impacts of Unilateral Economic Sanctions*, cit., pp. 9-10.

progress and cultural participation as enshrined in Article 15[111]. In essence, such negative consequences of unilateral sanctions on economic, social and cultural rights are a very common and well-documented argument. In parallel, however, it is also very important to examine how such measures can also violate civil and political rights, particularly when they exacerbate repression, restrict fundamental freedoms or strengthen authoritarian governments.

2.2.2 Civil and Political Rights

The International Covenant on Civil and Political Right*s* (ICCPR), entered into force in 1976, is a treaty that sets out negative rights, which are actions that states cannot take against their own citizens. The main rights to be preserved are the right to life, the right to be free from slavery and forced labor, the right to liberty and freedom of expression and thought[112]. Article 2(1) of the ICCPR states that: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[113]" This article can be read either under a conjunctive interpretation by considering that the Covenant precludes the extraterritorial application of its rights and that states are only responsible within their own territory, with no obligation to protect civil and political rights beyond their borders. If, on the other hand, the Covenant is read disjunctively distinguishing between those within the territory of a state and those outside it, but under the jurisdiction of that state, both these groups are entitled to the rights enshrined in the ICCPR. According to the Human Rights Committee, adopting the disjunctive interpretation, ICCPR's states parties are required to respect and to ensure the Covenant's rights to all persons who are within their territory and to all persons subject to their jurisdiction[114]. This interpretation was also adopted by the International Court of Justice (ICJ) in its Advisory Opinion to the UNGA on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, stating that Israel, although a State outside the occupied Palestinian territory, has a legal responsibility towards the people under its control and therefore under its jurisdiction, and consequently has an obligation to

[111] Art. 13, 15 ICESCR.

[112] S.M. ROWHANI, *Rights-Based Boundaries of Unilateral Sanctions,* cit., p. 144.

[113] Art. 2(1) ICCPR.

[114] S.M. ROWHANI, *Rights-Based Boundaries of Unilateral Sanctions,* cit., p. 146.

respect the human rights guaranteed by the ICCPR within that territory[115]. Thus, according to the disjunctive reading, a member state is not obliged to guarantee extraterritorial civil and political rights unless it has previously claimed jurisdiction by effective control in that state[116]. When discussing ICCPR violations, the focus often shifts towards two key rights. The first is the right to life, which is considered the most vulnerable right, and no one should ever be deprived of its own means of subsistence because of governmental wrongdoings.[117] Article 6(1) of ICCPR affirms "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life[118]". However, unilateral sanctions limiting access to food, medicine, and important health services, as noted above, can compromise the right to life and health of the civilian population. In many cases those sanctions have provoked a rise of infant mortality and preventable diseases. Children's right to life has been directly affected in several contexts, such as in Iran, where shortages of essential medicines caused by sanctions led to high mortality among children suffering from chronic diseases, and when sanctions in Venezuela exacerbated food shortages, leading to severe malnutrition that caused the deaths of several children. The second right frequently affected is the right to a fair trial and due process. Effective access to justice, due process and a fair trial are essential for the protection, promotion, and enjoyment of all human rights. Article 14(1) of the ICCPR states: "All persons shall be equal before the court and tribunals [...] everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law"[119]. However, states targeted by unilateral sanctions often do not have access to a court or other independent mechanism to challenge such sanctions. This is mainly because unilateral sanctions are essentially executive/administrative measures decided and enforced by non-judicial institutions of the sanctioning parties. Therefore, they rarely provide for impartial judicial review or safeguards to ensure due process and fairness. In addition, fundamental principles of justice are undermined by long delays in reviewing sanction-related cases, limited access to evidence used to justify sanction designations, and the reported use of practices such as the presumption of wrongdoing and the reversal of the burden of proof to the sanctioned parties[120]. The lack of such

[115] UNGA, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* ICJ AO, A/ES-10/273, 13 July 2004, in S.M. ROWHANI, *Rights-Based Boundaries of Unilateral Sanctions,* cit., p. 145.

[116] *Ivi*., p. 146.

[117] *Ivi.*, p. 135.

[118] Art. 6(1) ICCPR.

[119] Art. 14(1) ICCPR.

[120] OHCHR, *Sanctions and Access to Justice: Special Rapporteur on Unilateral Coercive Measures*, n.d. available at: https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/sanctions-and-access-justice

judicial mechanisms to challenge sanctions is crucial, as it can make such measures appear arbitrary and discriminatory. Fundamental rights, such as the right to a fair trial, are guaranteed by constitutions. If sanctions circumvent these guarantees, a serious conflict can arise between foreign policy objectives and the state's duty to respect human rights. If the state fails to provide access to these guarantees it appears to be an indirect violation of constitutional procedures restricting fundamental rights. When constitutional procedures are bypassed or ignored it became difficult to balance foreign policy and human rights as judicial safeguards are removed. In addition to these, other civil and political rights commonly affected include:

- The right of self-determination (Article 1)
- The right not to be subjected to cruel and inhuman treatment or punishment (Article 7)
- Freedom of movement and association (Article 12 and Article 22)
- Prohibition of discrimination (Article 26)

Finally, in some cases restrictions on civil and political rights are a direct action by the affected government due to national security concerns arising as a direct consequence of the chaos provoked by sanctions aimed at imposing an external political-economic model that violates the principle of self-determination. In such cases, therefore, the aim has never been to promote human rights, but to cause suffering in the hope that chaos will lead to a regime change. A concrete example is the case of Venezuela, which we will explore further later. The US and EU imposed sanctions aimed at forcing political change, and these sanctions generated a severe crisis. This crisis prompted the Venezuelan government to respond with a severe crackdown on its citizens' civil and political rights, along with intense surveillance and repression. However, restrictions on civil and political rights resulting from external sanctions can fall within the exemptions provided for in Article 4 of the ICCPR only if they meet the requirements of proportionality, necessity, and non-discrimination, and above all only in situations of real national emergency that represents a serious threat to the life of the nation, which was not the case in Venezuela. Article 4 of the ICCPR, indeed, authorises temporary derogations in times of emergency stating: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin[121]". In conclusion, unilateral sanctions are introduced with the intention of protecting human rights or encouraging policy change. However, they often have

[121] A.D. ZAYAS, *Unilateral Coercive Measures and Human Rights*, in *NicaNotes Newsletter*, *Alliance for Global Justice*, 2024, available at: https://afgj.org/nicanotes-unilateral-coercive-measures-and-human-rights.

the opposite effect, worsening the situation rather than improving it. These measures have serious humanitarian consequences that affect various aspects of the lives of different population groups, especially the most vulnerable.

2.2.3 Disproportionate Impact on Vulnerable Groups

Unilateral sanctions can have a greater negative effect on the human rights of women, children and other vulnerable groups, such as the chronically ill, the elderly and other groups who are marginalized and excluded for economic, social or political reasons[122]. These severe and unintended consequences of sanctions impact innocent populations who are not directly responsible for the decisions and actions that triggered the implementation of the sanctions and who are not responsible for or involved in the violations that brought about the penalty. Such penalties reduce the resources available to innocent populations, e.g., by reducing the amount of money available for public services, infrastructure and education[123]. Women are among the most affected vulnerable groups. Economic sanctions have disruptive effects on export-oriented sectors, such as textiles, which disrupts women's economic well-being by raising unemployment among the female labor force. Women workers comprise of 60-80% of employees in most of the export-oriented industries. Moreover, economic sanctions may also increase gender-based violence and violations of women's human rights due to economic frustration. The growing frustration and the feeling of injustice are important drivers of violent acts at both the social and individual levels. This makes women targets for assault, harassment, rape and other forms of attacks, as they are already among society's most vulnerable groups[124]. The consequences of US sanctions in Haiti are an important example in this case as women, who made up to 80% of the assembly industry workers and at least 1/3 of whom were heads of households, have been the hardest hit. Moreover, women, especially those with children, were more likely to continue living with abusive partners, lacking the economic resources to live and raise their children alone[125]. In addition, another heavily affected vulnerable group are children, as sanctions may deprive them of their fundamental rights including the right to life, the right to food, the right to health and medical

[122] K.M. RUSTAMOVICH, *The Impact of Economic Sanctions on Well-Being of Vulnerable Populations of Target Countries*, in *International Journal on Economics, Finance and Sustainable Development* (IJEFSD), 1, 1, 2019, p. 18.

[123] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, in *Journal of African Interdisciplinary Studies*, 7, 7, 2023, pp. 85-90.

[124] K.M. RUSTAMOVICH, *The Impact of Economic Sanctions on Well-Being of Vulnerable Populations of Target Countries*, cit., p. 19.

[125] E. GIBBONS, *The Impact of Economic Sanctions on Health and Human Rights in Haiti*, cit., pp. 1499-1500.

care, the right to education, and the right to an adequate standard of living. These rights are outlined in the UN Convention on the Rights of the Child, which was adopted in 1989 following the 1959 Declaration of the Rights of the Child. The protection and promotion of children's rights is very important because, as stated by one of the earliest advocates of children's rights and founder of the organisation Save the Children in the UK, children are disproportionately victims of bad economic policies, political mistakes and wars. The disproportionate impact of unilateral sanctions on children's rights can be witnessed for example in the violations of fundamental articles of the Convention such as Article 6 about every child's inherent right to life or Article 24 recognising every child's right to the highest standard of health and access to necessary treatment and rehabilitation facilities. Moreover, another critical impact of sanctions on children's rights is the increased reliance on child labor, bypassing labor laws, aimed at mitigating the higher production costs caused by sanctions[126]. A UNICEF assessment from 1990 to 2014 in 66 countries found that sanctions increased hunger and malnutrition among children under five. Furthermore, a cross-national analysis of the impact of economic sanctions on unborn children in 33 countries found that newborns exposed throughout pregnancy to sanctions imposed from 1914 to 2006 were more likely to be born with a lower-than-average birth weight, a factor that increases the risk of infant mortality and therefore undermines these children's right to life[127]. In essence the key problem here is that states often resort to unilateral rather than multilateral sanctions to respond to serious human rights violations in an effective, rapid and autonomous manner. This decision is motivated in most cases by the fact that multilateral mechanisms are often blocked by geopolitical vetoes. However, as there is no central authority, numerous legal problems of the legitimacy of such actions at the international legal level can arise, especially in the face of disproportionate negative effects on civilian populations, which in turn violate human rights. These measures contribute to poverty, weaken health and education systems, restrict access to basic services and exacerbate repression within the targeted states. Underlying this fragility is the fact that international human rights law, treaties such as the ICESCR or the ICCPR, do not provide for legally binding coercive mechanisms against third states, i.e. although they are binding, there are no legal mechanisms to directly punish a state that does not respect them, such as countermeasures or sanctions. Faced with the lack of an international body with strong enforcement powers, states feel free to impose unilateral sanctions, but these are often decided without a full assessment of the humanitarian consequences.

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[126] H. NAEIMIE, M. SADEGHI, S.B.M. ABASSI, *The Role of Economic Sanctions in Violating Children's Rights*, in *Interdisciplinary Studies in Society, Law, and Politics*, 3, 4, Iran, 2024, pp. 71-75.

[127] Z. PELTER, C. TEIXEIRA, E. MORET, *Sanctions and their impact on children*, *UNICEF*, *The Office of Global Insight and Policy*, 2022, pp. 22-24.

2.3 International Legal Frameworks Protecting Human Rights

2.3.1 Core International Human Rights Instruments

In analyzing the negative impact of unilateral sanctions on civil and political rights, social, economic and cultural rights, as well as on vulnerable populations, it is essential to delve into the international legal framework aimed to protect human rights and prevent such violations. International human rights instruments represent a collective commitment by the international community to protect and promote the dignity and rights of all individuals, regardless of their nationality, race, religion or other characteristics. They also provide mechanisms for accountability and enforcement, to ensure that governments and individuals respect these essential principles. The origin of modern international human rights instruments stems from the aftermath of World War II as a response to the horrors of the Holocaust and the extensive violations of human rights. Based on this purpose to promote and protect human rights, in 1945 was established the United Nations (UN), followed by the adoption, in 1948, by the UNGA, of the Universal Declaration of Human Rights (UDHR), a milestone document in the history of human rights[128]. This Declaration was part of a greater effort by the UNCHR in the creation of an International Bill of Rights consisting of the UDHR and the two Covenants. The Declaration, drafted and recommended by the Commission to the Assembly, listed almost all important rights (civil and political and economic, social and cultural) which were not defined in the UN Charter but internationally recognised. Although not a treaty, it is today considered as having legal and moral status, with many of its articles recognised as customary law at the international level. Indeed, it was proclaimed as "a common standard of achievement for all peoples and all nations", accepted as a unanimous interpretation of the Charter by the most authoritative UN organ, which is the General Assembly[129]. A report drafted by the General Assembly in 1998, submitted in accordance with the resolution 52/120 of 1997, expresses the concerns about the imposition of unilateral coercive measures and their impact on human rights. In the context of the UDHR, the report affirms that all States must refrain from adopting or implementing unilateral measures which are inconsistent with international law and the Charter of the United Nations, hindering the full realization of the rights set in the UDHR and other human rights instruments[130].

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[128] J. PURI, *International Human Rights Instruments: Global Justice and Equality Frameworks*, in J. CHAUDHARY, N. ANAND (eds.) *Handbook of Human Rights, Widsom Press*, New Delhi, 2022, p. 9.

[129] A. P. VIJAPUR, K. SAVITRI, *The International Covenant on Human Rights: An Overview,* in *India Quarterly: A journal of International Affairs,* 62, 1, 2006, pp. 4-5.

[130] UNGA, *Human Rights and Unilateral Coercive Measures*, A/53/293, 28 August 1998.

The Declaration is entirely, in its thirty articles, relevant for sanctions, and the provisions of articles specifically relevant for sanctions are:

- Article 3: "Everyone has the right to life, liberty and security of person."
- Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".
- Article 25: "1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."[131]

Following the adoption of the UDHR, the UNCHR continued its efforts to create a legally binding international human rights treaty, as part of its mandate to draft the International Bill of Rights. This process required nearly 20 years of discussion and disagreement, particularly over whether civil and political rights should be included alongside economic, social and cultural rights in a single document. Ultimately, it was decided to create two separate, binding covenants. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966 and entered into force in 1976[132]. The ICCPR covers civil and political rights, such as the right to life, freedom of expression, and the prohibition of torture, while the ICESCR covers economic, social and cultural rights such as the right to education, work and an adequate standard of living[133]. In addition to these foundational documents, international human rights instruments address a wide range of issues and concerns, including the rights of women, children and refugees, and the prohibition of torture, discrimination, and genocide. Specific examples of treaties that address human rights challenges include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[134]. Focusing on the ICCPR and ICESCR, while the UDHR was drafted in just over 18 months, the Covenants took around 18 years. This delay could be attributed first and foremost

[131] M. T. ISLAM, *Economic Sanctions under International Law: An Overview*, in *Sri Lanka Journal of International Law,* 28, Bangladesh, 2023, p. 16.

[132] M. A. BADERIN, M. SSENYONJO, *International Human Rights Law: Six Decades after the UDHR and Beyond*, *Routledge*, London, 2010, p. 11.

[133] J. PURI, *International Human Rights Instruments: Global Justice and Equality Frameworks*, cit., p. 11.

[134] A. P. VIJAPUR, K. SAVITRI, *The International Covenant on Human Rights: An Overview*, cit., p. 9.

to the fact that the two covenants represent the most comprehensive human rights treaties ever drafted by the international community. They contain not only almost all fundamental human rights, but they also include concrete mechanisms for their implementation. Furthermore, during the drafting of the Covenants, the number of UN member states grew rapidly, especially with decolonization, making discussions more complex due to divergent interests. Finally, in those years, the General Assembly and other UN bodies were heavily engaged in managing serious international crises and peacekeeping operations, priorities that slowed down the work on drafting the covenants[135]. Finally, today every state has ratified at least one of these international human rights treaties, reflecting the increased acceptance of human rights in the international legal system[136].

2.3.2 Global Monitoring, Reporting, and Enforcement Mechanisms

Human rights can and should be protected at the national level through national human rights mechanisms or judicial systems where they are enshrined in national law. However, in some cases, national judicial processes fail to address human rights violations, and such mechanisms are available at the regional and international levels[137]. For instances, where a state violates its citizens' human rights by implementing unilateral sanctions, these rights are safeguarded internationally in two ways: firstly, globally through the actions of United Nations bodies, and secondly, regionally through alternative legal systems distinct from the international legal system that take greater account of the region's specific needs and characteristics. At the international level, the UN is central by establishing several bodies dedicated to the monitoring and enforcement of human rights globally. There are two types of human rights monitoring mechanisms within the UN system: charter-based bodies and treaty-based bodies. The former includes the two non-treaty mechanisms established under the UNHRC: the Special Procedures and the Universal Periodic Review (UPR)[138]. The UNHRC, established in 2006 as the successor of the UNCHR, is a Charter-based body responsible for promoting and protecting the universal application of all human rights. Indeed, it oversees the Universal Periodic Reviews (UPR) process, which examines the human rights records of UN member states and provides

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[135] A. P. VIJAPUR, K. SAVITRI, *The International Covenant on Human Rights: An Overview*, cit., pp. 15-16.

[136] M. A. BADERIN, M. SSENYONJO, *International Human Rights Law: Six Decades after the UDHR and Beyond,* cit., p. 11.

[137] C. CARAZZONE, S. MAZZARELLI, *United Nations Human Rights Mechanisms,* in C. BENEDETTO, L. POLI (eds.), *Advocating for Girl's and Women's Health and Human Rights,* in *FIGO Committee of Women's Health and Human Ri*ghts, 2019, p. 5.

[138] UN OHCHR, *Instruments & mechanisms,* n.d., available at: https://www.ohchr.org/en/instruments-and-mechanisms.

recommendations for improvement. In addition, the UNHRC appoints Special Rapporteurs and Working Groups to address specific human rights issues[139]. The Universal Periodic Review is one of the Council's most innovative achievements. It is a process involving the review of the human rights records of all UN member states, which takes place once every five and a half years. Each year, 42 states are reviewed and receive an average of 150 recommendations. States must then indicate which recommendations they support and communicate the measures they intend to take to implement them. This process also enables states to request technical assistance from other states to help them address human rights challenges more effectively. Another important practice mandated by the Human Rights Council, originally established earlier by the Commission on Human Rights, is the Special Procedures (SP), mandated by independent human rights experts; they can be Special Rapporteurs or an Independent Expert, or a working group composed of five members[140]. Experts investigate, report, and advise on human rights from a thematic or country-specific perspective by undertaking country visits; acting on individual cases of reported violations and concerns by sending communications to States, or non-state actors; developing human rights standards and guidelines; conducting annual thematic studies and engaging in advocacy, raising public awareness, and providing advice for technical cooperation.[141] Although these two mechanisms share the same objective of promoting and protecting human rights, it is important to note their differences. The UPR considers all human rights and all countries, while the SP monitors the human rights situation in a specific country or specific human rights topics within a general overview, taking into account individual cases or problematic legislation. Furthermore, the frequency differs; in the UPR process, each state is reviewed every 5.5 years, with voluntary mid-term reporting in between. In contrast, the SP process is ongoing, with an annual report on countries or topics, unless communications are published during the year in the event of serious violations in a country. As regard recommendations, the UPR's recommendations are political as states review each other and make recommendations to each other. These recommendations are non-binding, states choose to accept them or simply note them. If a state accepts a recommendation, it accepts a political commitment that can also be used to exert diplomatic pressure. Conversely, recommendations in the SP process are made by independent experts, which lends them greater authority and provides stronger incentives for implementation, although they

[139] G.O. ANTAI, T. MULEGI, E, K. BARONGO, E. KISUBI, *Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges,* in *NIU Journal of Legal Studies*, 10, 1, Kampala, 2024, p. 63.

[140] OHCHR, *Human Rights Council,* in *HR Booklet, UN,* Geneva, 2018.

[141] UPR INFO, *The UPR and other Human Rights Mechanisms: The UPR and Special Procedures,* Geneva, available at: https://upr-info.org/en/upr-process/upr-and-other-human-rights-mechanisms/upr-and-special-procedures.

remain non-binding[142]. Focusing on Special Procedures, when we discuss cases of human rights violations caused by unilateral sanctions, a well-known report is that by Professor Alena Douhan published in 2021, on the negative impact of unilateral coercive measures on the enjoyment of human rights. In this report, the Special Rapporteur highlights the significant impact of unilateral sanctions on the Zimbabwe population, under Zimbabwe Government request. The report is published using a specific structure, beginning with an introduction and a presentation of the context of the country visited. It then focuses on the impact of sanctions on public institutions, the economy, and the humanitarian situation. This is followed by a part on international cooperation and humanitarian aid, as well as an assessment of the legal basis for the imposition of sanctions. The report concludes with a set of key findings and recommendations[143]. Drafted by the UN Special Rapporteur is of great importance to the debate on the paradox of unilateral sanctions, as it offers a clear and authoritative overview of their negative impacts on human rights, including civil and political rights, as well as social, economic, and cultural rights, as discussed above. Finally, as part of the UN's charter-based human rights mechanisms, such Special Procedures complement and reinforce the work carried out by treaty-based bodies established under international human rights treaties. Treaty-based bodies are established by provisions contained in a specific legal instrument and their decision-making depends on consensus. They hold a narrower mandate and address concerns only in countries that have ratified the legal instrument[144]. Indeed, the ICCPR and the ICESCR are the foundational treaties of the international human rights regime, followed by additional binding treaties. These treaties require the ratification by enough states to enter into force and are legally binding only on the signatory countries. Each of them provides for a monitoring mechanism under the control of a committee of independent experts, responsible for monitoring state compliance by examining reports that each state is required to submit commenting on their own human rights practices[145]. Such treaty-based bodies are for example:

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[142] ISHR ACADEMY, *What are the key differences between the UN bodies that monitor human rights?,* 2025, available at: https://academy.ishr.ch/un_bodies_comparison_table.

[143] A. DOUHAN, Special Rapporteur, *Unilateral coercive measures: notions, types and qualifications,* in *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights,* A/HRC/48/59, UNHRC, 8 July 2021.

[144] OHCHR REGIONAL OFFICE FOR EUROPE, *Human Rights Mechanism, n.d., available at: https://europe.ohchr.org/human-rights/human-rights-mechanism#:~:text=The%20UN%20Human%20Rights%20Regional,the%20regional%20and%20national%20levels.*

[145] Y.M. DUTTON, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms,* in *University of Pennsylvania Journal of International Law,* 34, 1, 2012, pp. 11-12.

- The Committee on Economic, Social and Cultural Rights (CESCR), which monitors the respect of the ICESCR, and several times has expressed concerns that unilateral sanctions often hinder the ability of targeted states to provide basic economic and social rights such as health, food, and education, particularly in times of crisis.
- The Human Rights Committee (CCPR), which monitors the implementation of the ICCPR, examines whether sanctions violate civil and political rights as the right to life.
- The Committee on the Elimination of Racial Discrimination (CERD), which monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), shows whether sanctions could have a disproportionate impact on specific ethnic or social groups.[146]

The primary mandate, for each treaty body, is to monitor the implementation of the treaty by reviewing the reports submitted periodically by State parties, with the support from the Office of the High Commissioner for Human Rights (OHCHR). Then, on the basis of the State report, the Committee prepares a "list of issues" to which the State must respond. Afterwards, a dialogue takes place that leads the Committee to make its final observations and recommendations for the State on how to improve the situation. Civil society (associations, NGOs) can participate at all stages, submitting additional information and attending meetings to help the Committee better understand the situation[147].

2.3.3 Regional Human Rights Institutions and Oversight

In addition to the global framework for the protection of human rights, at the regional level several regional organisations have developed their own human rights instruments for more localized enforcement and monitoring mechanisms. Among the most significant are the European Convention on Human Rights (1950), adopted under the auspices of the Council of Europe; the American Convention on Human Rights (1969), promoted by the Organisation of American States; and the African Charter on Human and Peoples' Rights (1981), adopted by the Organisation of African Unity[148]. Within these frameworks, the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and People's Rights are prominent regional judicial bodies engaged in the resolution of disputes involving alleged violations of the state's human

[146] OHCHR, *Treaty Bodies,* n.d., available at: https://www.ohchr.org/en/treaty-bodies.

[147] C. CARAZZONE, S. MAZZARELLI, *United Nations Human Rights Mechanisms,* cit., p. 13.

[148] M. A. BADERIN, M. SSENYONJO, *International Human Rights Law: Six Decades after the UDHR and Beyond,* cit., p. 12.

rights obligations[149]. Over the years, these regional mechanisms, particularly in Europe and the Americas, have acted as intermediaries between the national institutions of states that violate or fail to enforce human rights and the global human rights system. Without the support of these regional systems, the global system would struggle to provide redress to victims of human rights violations. This is mainly because permanent and binding human rights courts have not yet been established at the global level. Europe was indeed the first region to enable individuals to bring complaints against their own governments for human rights violations before a court[150]. The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted by the Council of Europe in 1950 and entered into force in 1953. The Convention created both a European Commission and a European Court of Human Rights (ECHR), the latter with Protocol No.11 1998, became the first permanent human rights court sitting on a full-time basis, with all allegations to be referred directly to the Court in Strasbourg[151]. In the Americas, the Inter-American Commission on Human Rights was established in 1959 as one of the principal organs of the Organisation of American States (OAS) with the objective to draft an American Convention on Human Rights, which became effective in 1978. The Convention, which parallels the structure of the European Convention, provided an expanded Inter-American Commission on Human Rights and an Inter-American Court of Human Rights[152]. In Africa, the African Charter on Human and People's Rights was adopted in 1981 by the Organisation of African Unity (OAU). The OAU Charter is weaker than the European Convention or the American Convention, it established a commission but not a regional court[153]. Finally, although there is some protection against human rights violations in Europe, the Americas, and Africa, it appears to be too limited. Moreover, citizens of the Middle East, Asia, the Soviet Union, and Eastern Europe currently find themselves in an even more difficult position, without regional human rights courts to protect them. The existing courts must resolve the procedural difficulties and overcome the fear of political repercussions that limit their effectiveness, so that every major region of the world is

[149] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights,* cit., p. 162.

[150] G. W. MUGWANYA, *Realizing Universal Human Rights Norms Through Regional Human Rights Mechanisms: Reinvigorating the African System,* in *Indiana International & Comparative Law Review*, 10, 1, 1999, p. 41.

[151] OHCHR in coop. with INTERNATIONAL BAR ASSOCIATION, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, in *Professional Training Series*, 9, New York and Geneva, 2003, p. 95.

[152] N. DUMAS, *Enforcement of Human Rights Standards: An International Human Rights Court and Other Proposals,* in *UC Law SF International Law Review*, 13, 3, 1990, pp. 604-605.

[153] *Ivi*., p. 606.

encouraged to establish its own regional human rights court[154]. This gap in regional judicial protection is particularly problematic in the context of unilateral sanctions, the three judicial systems have not yet examined the broader humanitarian consequences of unilateral coercive measures imposed by third states, despite having already issued some statements and recommendations regarding the protection of fundamental rights in the context of the imposition of economic sanctions and despite the clear impacts observed in countries such as Venezuela, Cuba and Zimbabwe. Given the limited jurisdictional reach of regional systems, we will not focus on a detailed analysis of their role. Instead, we will focus on the global human rights framework and the interaction between unilateral economic sanctions and the broader international system for the protection of human rights, in order to assess whether such measures serve to protect or, paradoxically, contribute to the erosion of the rights they claim to protect. After examining the human rights impacts of unilateral sanctions and the international mechanisms established to protect those rights, the analysis now will focus on the constitutional and domestic dimensions of sanctions implementation, analyzing how states balance security concerns with the protection of fundamental rights.

[154] N. DUMAS, *Enforcement of Human Rights Standards: An International Human Rights Court and Other Proposals,* cit., p. 607.

CHAPTER 3: Balancing National Security and Fundamental Rights: A Constitutional Challenge

3.1 The Principles of Proportionality and Necessity

3.1.1 Proportionality in Restrictive Measures

While at the international level, unilateral sanctions are assessed based on their compliance with treaties and humanitarian rights standards, at the national level, constitutional principles and judicial review ensure that they are applied in accordance with proportionality, necessity, and other fundamental rights protections. This is because, when a State imposes sanctions, it acts at the international level but must do so without violating domestic rules that protect constitutional rights and powers. Constitutional doctrine recognises that, in emergency situations or for the protection of national security, fundamental rights may be restricted, for example through unilateral sanctions, as long as these measures comply with strict criteria. Such sanctions are imposed without the consent or authorization of multilateral organisations and, for this reason, must comply with these criteria. Among these, we first find the principle of proportionality. This principle is found in different areas of both international and domestic law, including the law of the sea, the use of force, international humanitarian law, human rights law and regional or domestic law[155]. It is one of the most important and widely used doctrines in Global Constitutional Law, namely key international and domestic legal norms that shape principles, institutions, and procedures with effects that extend beyond a single State. Horizontally, as in the case of proportionality, these are similar legal norms found in many national legal systems. Vertically, it concerns the interaction between international law and domestic constitutional norms that have taken on a global character[156]. This principle is applied through a test, the so-called proportionality test, aimed at balancing the objective of the sender state and the targeted state's rights and interests, particularly considering the negative effects on the civilian population[157]. State action must be a rational and reasonable means to a permissible end, without invalidating

[155] A. HOFER, *The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?*, in *Nordic Journal of International Law*, 89, *Brill*, 2020, pp. 401-402.

[156] A. PETERS, *Proportionality as a Global Constitutional Principle*, in *Max Planck Institute for Comparative Public Law and International Law* (MPIL), 2016, p. 12.

[157] A. HOFER, *The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?*, cit., p. 405.

fundamental human rights[158]. The test is made up of four components, also called sub-tests: (1) legitimacy of the pursued aim; (2) rational connection between the aim pursued and the measure adopted, also known as suitability; (3) necessity of the adopted measure, i.e. whether the act impairs the right as little as possible, and (4) proportionality *stricto sensu*, i.e. whether the end justifies the means in that specific case[159]. The concept of proportionality emerged in Classical Greece through the notions of corrective and distributive justice and was recognised in Roman law from ancient times. The Magna Carta (1215) established that penalties should not deprive individuals of their livelihood in a manner that is disproportionate to the crime committed. St Thomas Aquinas and the medieval doctrine of just war further developed this idea, arguing that disproportion between means and ends was unjustifiable. Furthermore, during the Enlightenment, the concept became associated with the social contract, whereby the power of the state is limited by its citizens for the common good. The Prussian jurist Carl Bottlieb Svarez, the principal drafter of the Prussian Civil Code of 1794, first introduced this principle as a public-law standard, affirming that the state may only restrict individual freedom if the collective good amply justifies the individual sacrifice. However, he never explicitly used the term "proportionality", but clearly formulated this principle as a political and moral ideal[160]. It was not until the second half of the 19th century that this proportionality began to appear as a positive legal concept in Prussian administrative law, as opposed to Svarez's ideal social notion. In other words, proportionality became a concrete legal norm applicable in court and incorporated into case law, mainly developed by the Supreme Administrative Court of Prussia. After 1945, the principle of proportionality became a fundamental pillar of German constitutional law, even though it is not expressly mentioned in the Basic Law (Grundgesetz). All fundamental rights guaranteed by the Basic Law, except for human dignity, which is absolute and untouchable, are relative rights, meaning they can be restricted, but only in accordance with the principle of proportionality. Consequently, the Federal Constitutional Court has applied a strict proportionality test whenever a law restricts a fundamental right[161]. The migration of the principle of proportionality from one constitution to the other was made possible by the vehicle of international law, migrating first and foremost from German law to the law of the EU and the ECHR, and from there other flows occurred and continue to occur into other national legal orders[162]. Although the term "proportionality" was not initially

[158] E. ENGLE, *The History of the General Principle of Proportionality: An Overview*, in *10 Dartmouth Law Journal*, 1, 11, 2012, p. 2.

[159] A. BARAK, *The nature and function of proportionality*, in A. BARAK (ed.), *Proportionality: Constitutional Rights and their Limitations*, *Cambridge University Press*, 2012, p. 131.

[160] A. BARAK, *The historical origins of proportionality*, in *Ivi*., pp. 175-178.

[161] *Ivi*., pp. 178-181.

[162] A. PETERS, *Proportionality as a Global Constitutional Principle,* cit*.,* p. 2.

included in the founding treaties of the EU, it was developed early on by the Court of Justice of the European Union (CJEU) as one of the general principles of EU law. The concept was heavily influenced by German constitutional law, where proportionality had long served as a central standard for reviewing state interference with individual rights. Through this legal migration, proportionality became a judicially enforceable standard within EU law. The CJEU first addressed it in the 1950s and 1960s, but the principle was fully articulated in *Internationale Handelsgesellschaft* (1970), the first important case where the Court affirmed that fundamental rights form part of the general principles of EU law and that any restriction must comply with the principle of proportionality[163]. Today, the Lisbon Treaty explicitly codifies the principle in Article 5(4) of the Treaty on European Union (TEU, 1993) stating that: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaty"[164]. In parallel, Article 52(1) of the Charter of Fundamental Rights of the European Union (CFREU, 2009) affirms that: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others"[165]. When discussing the principle of proportionality in the context of unilateral sanctions, it is important to regulate this principle within the EU system, as it is the most active organisation in the implementation of these measures. In fact, the principle has also found expression in the EU Sanctions Guidelines stating that restrictive measures "must always be proportionate to their objective"[166]. Moreover, the principle gained traction in the laws of Western Europe states such as Spain, Portugal, France, Italy, Belgium, Greece and Switzerland. In some of these countries proportionality is included as part of a constitutional limitation clause[167]. From European law, the migration of this principle then reached Canada, Ireland, and the United Kingdom. In Canada, until 1982, the human rights law did not recognise the principle of proportionality. This changed with the 1982 Charter of Rights and Freedoms, which became part of the Canadian Constitution. Alongside the recognition of several human rights, Article 1 of the Charter includes a general limitation clause stating that: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such

[163] A. BARAK, *The historical origins of proportionality,* cit., pp. 180-186.

[164] Art. 5(4) TEU.

[165] Art. 52(1) CFREU.

[166] L. MAY, *The Principle of Necessity*, in L. MAY (ed.), *War Crimes and Just War*, *Cambridge University Press*, 2007, p. 12.

[167] A. BARAK, *The historical origins of proportionality,* cit., p. 187.

reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society"[168]. For the application of this principle, in particular of a "reasonable" limit, reasoning similar to that of the European Court of Human Rights is followed, as exemplified by the case *Sunday Times v. United Kingdom* (1979)[169]. The Canadian Supreme Court (SCC) consolidated this approach in the case of *R. v. Oakes*[170], where the Oakes Test was established by applying Article 1, i.e., a proportionality test involving three steps: (1) the aim must be sufficiently important, (2) the means must be rationally connected to the aim and minimally invasive of rights, and (3) finally there must be a proportional balance between the negative effects of the measure and the importance of the aim pursued. Therefore, the formal introduction of proportionality into Canadian constitutional law clearly drew inspiration from European case law. Thanks to this codification and clear formulation of the proportionality test with the establishment of the Oakes Test, the Canadian system appears to offer the most structured and robust protection of fundamental rights compared to the following systems. Drawing inspiration from the Canadian and European models, in Ireland proportionality was implicitly accepted in the early 1990s by the Irish courts and then explicitly recognised by the Irish Supreme Court in the case of *Heaney v. Ireland* (1994). Finally, in the United Kingdom, proportionality was introduced into English law with the Human Rights Act of 1998, which gave effect in the UK to rights provided in the ECHR. This act enabled British courts to declare whether British laws were incompatible with ECHR rights, thus introducing proportionality into English law as a standard for assessing interference with human rights. Indeed, in the case of the UK as well, the relationship with the European concept of proportionality is clear and well established[171]. This further illustrates the reason why the Canadian system seems to offer a more robust protection, because proportionality in these last two cases was adopted later, gradually and in a less structural way. Finally, these national examples are very important to consider as they demonstrate how the principle of proportionality, born in European law, has reached different constitutional contexts, influencing the way courts assess limitations on fundamental rights. The principle of proportionality, we can

[168] Art. 1 Canadian Charted, in A. BARAK, *The historical origins of proportionality,* cit., p. 189.

[169] ECHR, 26 April 1979, 6538/74, *The Sunday Times v. The United Kingdom*: In this case the European Court of Human Rights confirmed in its judgment that the publication ban imposed by the British Government to the Sunday Times article on relating the Thalidomide affair was not necessary and was disproportionate to the objective pursued of not influencing ongoing legal proceedings, in *Ibidem*

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[170] SCC, 28 February 1985, 17550, *R. v. Oakes*: David Oakes challenged a law that presumed intent to traffic of anyone in possession of drugs. The Court found the law unconstitutional for violating the presumption of innocence and introduced the Oakes test to assess whether a limitation of rights is justifiable under section 1, in *Ibidem*.

[171] *Ivi*., pp. 188-194.

conclude, has a direct impact on the balance between national security and fundamental rights, as it allows us to assess whether restrictions imposed for security reasons are proportionate to the objectives, limiting arbitrary actions by states.

3.1.2 Necessity of Sanctions

The principle of necessity is a sub-element of the principle of proportionality, but it deserves specific analysis due to its central role in the assessment of restrictive measures adopted in the name of national security. This principle, as the proportionality principle, has its roots in Just War theory, where necessity means that in situations where the only way to achieve a victory in a Just War is the employment of military action, using this tactic is then considered justified regardless of other normative considerations that normally would consider it problematic or undesirable[172]. The justification of an action as necessary comes from a necessity test, also known as the "less restrictive alternative test", which verifies whether the measure adopted by the State is indispensable for achieving the legitimate aim pursued and represents the least harmful option compared to its alternatives[173]. The principle of necessity is always closely linked to the principle of proportionality; when it is established that there are no less harmful alternative means, it must also be demonstrated that the cost of the action does not exceed the benefit sought. Considering, for example, the ticking time bomb scenario: if the threat is not imminent, there is time to explore other, less harmful options for obtaining the necessary information. In such cases, relying on extreme measures risks overlooking these alternatives. For this reason, the principle of proportionality must always be considered relevant. It is not enough to say that an action is necessary to justify it; it is also important to assess whether the damage caused is proportionate to the benefit obtained. An action is necessary only if there are no less harmful alternatives to achieve the same result; therefore, for an action to be considered necessary, it must also be proportionate. Conversely, an action may be proportionate even if it is not the only possible option, because the damage is acceptable in relation to the benefit. If an action is not necessary, it means that other actions can achieve the set objective in a less harmful way and, consequently, are also more proportionate because they cause fewer costs[174]. In the context of unilateral sanctions, if a sanctioning state wishes to invoke general exceptions as legal basis for its sanctions, it must pass the necessity test. Here, necessity mainly concerns the assessment of whether

[172] L. MAY, *The Principle of Necessity*, cit., p. 190.

[173] A. STEINBACH, J. GUTMANN, M. NEUENKIRCH, F. NEUMEIER, *Economic Sanctions and Human Rights: Quantifying Proportionality*, in *Harvard Human Rights Journal*, 36, 2018, p. 12.

[174] L. MAY, *The Principle of Necessity*, cit., pp. 209-210.

a sanction will effectively achieve its objective, e.g., respect for human rights[175], therefore, the goal of imposing sanctions must be compared to their actual impact. Article XX GATT and Article XIV GATS provide several general exceptions that authorises member states to adopt such measures. Both state that member states have the right to take necessary measures for the protection of public morals, and for the protection of human, animal, or plant life or health in specific circumstances[176]. In international law, the exception is provided by the ILC under Article 25: " Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act: (a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and (b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if: (a) the international obligation in question excludes the possibility of invoking necessity; or (b) the State has contributed to the situation of necessity."[177] Moreover, this principle is applied in a more specific and articulated manner through the doctrine of necessity, which is considered as one of the general theories in constitutional and legal jurisprudence. This doctrine is understood as a state of legal exception: a constitutional legal system designed to deal with extraordinary situations, meaning that certain laws, regulations, and systems that may be considered illegitimate under normal circumstances become temporarily legitimate under exceptional circumstances[178]. Therefore, the principle of necessity is a general legal concept applicable across various areas of law, while the doctrine of necessity represents its specific application in the field of constitutional law. Thus, governments or public institutions invoke this doctrine in times of crisis or emergency to justify acts or decisions that would normally be unlawful under the Constitution. The application of this doctrine, in accordance with the constitutional systems that adopt it, must be subject to a series of conditions or controls that limit its use: (a) there must be a serious threat to the existence of the State, (b) the impossibility of applying ordinary provisions and rules in the face of a state of necessity, and (c) the peril must threaten the public interest in the States[179]. In the case of Germany, as discussed above, the principle of necessity is integrated into the proportionality test, "necessity" constitutes the second stage of the analysis of the legitimacy of restrictions on

[175] Y. C. CHANG, *The Proportionality and Necessity of Unilateral Sanctions*, in *Journal of East Asia and International Law*, 15, 2, 2022, p. 416.

[176] T. XINYUE, *Analysis of the Legality of Unilateral Sanction*s, cit., p. 104.

[177] Art. 25 ARSIWA

[178] T. H. AL-ATIYAT, *Applicability of the Doctrine of Necessity in Constitutional Law (A Comparative Study (Jordan, Egypt, France)),* in *International Journal on Humanities and Social Sciences*, 59, Jordan, 2024, p. 158.

[179] *Ivi*., pp. 162-163.

fundamental rights. Given that the German model has significantly influenced proportionality analysis in the EU, the Court of Justice similarly applies the necessity requirement as an intermediate step in the proportionality test, also known as the assessment of inevitability. The difference is that in Germany, the principle of proportionality is considered "fully developed" and clearly structured[180]. Furthermore, opposing to the German test, in the UK, the Supreme Court applies a version of proportionality divided into three stages, concluding with an inquiry into necessity. Rather than balancing the benefits and disadvantages of a measure, this approach focuses primarily on the necessity of the measure taken[181]. Therefore, the principle of necessity is given considerable weight, as it is the final and decisive step in determining proportionality. Finally, even among jurisdictions that apply the full four-stage inquiry, there are variations compared to the German system, with Canada being a prominent example. The difference mainly lies in the fact that, in Canada, the weight of the analysis, i.e., the most important step, is that of the minimal impairment test, equivalent to the necessity test, rather than on the final balancing step, which carries the most weight in Germany[182]. Therefore, essentially, the systems with a greater focus on the necessity of measures are those of Canada and the UK, and consequently, they better protect fundamental rights. In fact, both countries have constitutional histories where the protection of rights depends heavily on concrete judicial control following both common law traditions. Meanwhile, in Germany, with a more flexible final balance, there may be greater consideration for national security over fundamental rights, as the Constitution is considered as already providing a rigid framework. Germany, following a civil law tradition, provides a weaker judicial enforcement, with the Basic Law providing the Federal Government broader powers over foreign policy and national security. Finally, this discussion on the necessity of sanctions is directly linked to the following argument on state sovereignty, as the imposition of unilateral measures can conflict with the right of states to freely govern their own internal affairs. It could be based on this argument that the principles of proportionality and necessity may become fundamental tools for assessing the legitimacy of sanctions.

[180] T. STEINER, L. NETZER, R. SULITZEANU-KENAN, *Necessity or balancing: The protection of rights under different proportionality tests- Experimental evidence*, in *International Journal of Constitutional* Law, 20, 2, 2022, p. 646.

[181] *Ibidem*.

[182] *Ivi*., p. 647.

3.2 Sovereignty, Non-Intervention, and Security Exceptions

3.2.1 The Principle of State Sovereignty

State sovereignty is the supreme authority of a State over its internal and international affairs, without external interference, and it retains a fundamental place in international law and relations[183]. The first well-known definition of sovereignty appears in Justinian's Digest: "Liberi populus extremus is qui nullius alterius populi protestatis est subiectus" meaning "A free people are those who are not subject to the power of another people." Then, in Romanian literature, the emergence of sovereignty is considered alongside the emergence of states. Sovereignty is defined as an institution that emerges from the moment states begin to exist. The concept of sovereignty then developed in the Middle Ages, mainly influenced by Bodin's conception that sovereignty is absolute, perpetual, indivisible, inalienable and imprescriptible[184]. In line with that, following the Peace Treaties of Westphalia, which were intended to ensure lasting peace in Europe, it was established that the primary international actor was the nation-state, endowed with absolute sovereignty. This defined the concept of sovereignty in relation to the principle of sovereign equality, which recognises an equal right for all these international actors to non-interference in the internal policies of other states and to territorial independence. In the 20th century, however, the concept evolved towards relative sovereignty, as states were required to respect the constraints of international law. Sovereignty was no longer arbitrary but became limited by international obligations, through treaties and international organisations such as the UN[185]. Indeed, one of the first judges of the IJC to explicitly state that sovereignty can no longer be understood as absolute was Judge Alvarez. In his Separate Opinion in the *Corfu Channel* case, he affirmed that the traditional idea of sovereignty "has evolved, and we must now adopt a conception of it which will be in harmony with the new conditions of social life. We can no longer regard sovereignty as an absolute and individual right of every State, as used to be done under the old law founded on the individualist régime, according to which States were only bound by the rules which they had accepted. Today, owing to social interdependence and to the predominance of the general interest, the States are bound by many rules which have not been ordered by their will. The sovereignty of States has now become an institution, an international social function of a psychological character, which must be exercised in accordance with the new international

[183] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences,* cit., p. 167.

[184] J. MAFTEI, *Sovereignty in International Law*, in *Acta Universitatis Danubius.Juridica Journal*, 11, 1, 2015, pp. 56-57.

[185] *Ivi.*, pp. 57-58.

law"[186] In modern international law, sovereign equality remains a key principle of sovereignty. This principle is enshrined in Article 2(1) of the UN Charter, which states: "The Organisation is based on the principle of the sovereign equality of all its Members"[187] Furthermore, the 1970 UNGA Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration) explains that States: "have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature"[188]. This principle of sovereign equality, as explained in the Helsinki Final Act, signed at a meeting of the Conference on Security and Co-operation in Europe (CSCE) in 1975, encompasses: "the right of every State to juridical equality, to territorial integrity and to freedom and political independence" as well as the respect of "each other's right freely to choose and develop its political, social, economic, and cultural systems as well as its right to determine its laws and regulations"[189]. This concept of sovereign equality is closely linked to the concepts of internal and external sovereignty, which together ensure that each state has the internal authority and international independence necessary to participate fairly and effectively in the international community. Internal sovereignty is the oldest concept, representing the state's monopoly on the use of force and its overall responsibility for the peace and security of its citizens within its borders. According to Bodin and Hobbes, the principle of internal sovereignty essentially served to overcome the civil wars that broke out in France and England because of religious divisions, concentrating power in the hands of the monarch. Conversely, external sovereignty represents the independence of the state on the international stage, enabling it to conduct foreign affairs and relations with other states without external interference. It is generally considered to be a consequence of internal sovereignty because, without autonomy in foreign relations, a state cannot guarantee internal peace and security if other sovereign states or supranational bodies can intervene[190]. Consequently, to exercise external sovereignty, a state must be a subject of international law, a principle that finds one of its most important expressions in the 1933 Montevideo Convention on the Rights and Duties of States. Article 1 of this Convention affirms that: "The state

[186] ICJ, SO Judge Alvarez, Corfu Channel (United Kingdom of Great Britain and Nothern Ireland v. Albania), 9 April 1949, in A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences,* cit., p. 167.

[187] Art. 2(1) UN Charter.

[188] UN, Friendly Relations Declaration, 1970, in J. KOKOTT, L. MALKSOO, *States, Sovereign Equality*, in *Max Planck Encyclopedias of International Law* (MPIL), *Oxford University Press*, 2023.

[189] *Helsinki Final Act,* OSCE, 1 August 1975, in N. RONZITTI, *Respect for Sovereignty, Use of Force and the Principle of Nonintervention in the Internal Affairs of Other States*, *European Leadership Network*, 2015, p. 1.

[190] J. KOKOTT, L. MALKSOO, *States, Sovereign Equality*, cit., pp. 7-8.

as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[191] These criteria correspond to key legal principles: the territoriality principle reflecting territory, the nationality principle reflecting population, and the protective principle reflecting the existence of a government and its capacity to effectively enter into relations with other states[192]. Another key principle codified in the UN Charter is that of the prohibition of the threat or use of force enshrined in Article 2(4) of the UN Charter which urges member states to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state"[193]. As already explained in the first chapter, the term "force" within the meaning of Article 2(4) does not include economic coercion, except to the extent that such measures are applied in a manner comparable to war or military blockade. The humanitarian consequences of unilateral sanctions, triggering several vulnerable rights including the right to life, may indeed be included in the definition of force. In these situations, sanctions could be considered in violation of Article 2(4)[194]. This article is important to consider here because it protects the sovereignty of states, meaning that each state has the right to manage its own affairs without external interference. When discussing state sovereignty, particularly in the context of unilateral sanctions, it is important to address the challenge to this traditional notion caused by the development of human rights or international human rights movements aimed at protecting individuals globally by introducing limits to this sovereignty, and transcending national borders, such as international human rights instruments like the Universal Declaration of Human Rights or the UN Charter[195]. The tension between sovereignty and human rights is often evident when governments prioritize their perceived security interests over individual rights of citizens of targeted state, justifying restrictive measures as unilateral sanctions under the pretext of safeguarding national security or preserving political stability. However, sovereignty must be exercised according to the rule of law, preventing abuses of power and guaranteeing legal protection for individuals[196].

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[191] Art. 1 Montevideo Convention, in A. S. Nagel, *Unilateral Extraterritorial Sanctions: The Search for a Jurisdictional Justification under International Law*, in *LSE Law Review*, 8, 3, 2023, p. 388.

[192] *Ibidem.*

[193] Art. 2(4) UN Charter.

[194] S.M. ROWHANI, *Rights-Based Boundaries of Unilateral Sanctions,* cit., pp. 135-138.

[195] G.O. ANTAI, T. MULEGI, E, K. BARONGO, E. KISUBI, *Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges,* cit., p. 62.

[196] *Ibidem*.

3.2.2 Non-Intervention and Limits on Extraterritorial Measures

The principle of non-intervention is a practical consequence of external sovereignty, considered a "corollary of every state's right to sovereignty, territorial integrity and political independence"[197]. It prohibits States from intervening in the internal or external affairs of other States and encompasses the prohibition of the threat or use of force enshrined in Article 2(4) of the UN Charter[198]. The principle was first clearly formulated by Vattel in *Droit des gens ou principes de la loi naturelle* (1758, vol. 1, para. 37)[199]. However, until the 19th century, it remained unclear whether it was consistently reflected in the practice of states. Early treaty formulations, including Article 15(8) of the Covenant of the League of Nations, the 1933 Montevideo Convention on the Rights and Duties of States, and the 1936 Additional Protocol on Non-Interference, contributed to its strengthening[200]. The decades following the Second World War were characterized by a growing tendency towards multilateralism and international governance, leading to the conclusion of several treaties establishing international organisations aimed at maintaining international peace and security. These instruments not only reiterated the prohibition of the threat or use of force but also often made explicit reference to the principle of non-intervention[201]. Moreover, the aftermath of the World Wars brought a growing awareness that intervention could take forms beyond military force, prompting the doctrine of non-intervention to expand and include non-forcible forms of interference as well[202]. The primary source codifying the principle of non-intervention is the United Nations Charter, with Article 2(4) being the most important provision protecting this principle: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[203]. Alongside, Article 2(7) of the Charter reinforces the principle by limiting the UN's involvement in state's internal affairs: "Nothing contained in the present Charter shall authorize the United Nations to intervene in

[197] R. JENNING, A. WATTS, *Oppenheim's international law*, 1, 2008, p. 428, in C. Y. WU, *Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World*, in *Harvard International Law Journal*, 65, 1, 2023, p. 258.

[198] *Non-Intervention (Non-interference in domestic affairs)*, in *The Princeton Encyclopedia of Self-Determination*, *Princeton University*, 2023.

[199] *Ibidem.*

[200] *Ibidem.*

[201] M. ROSCINI, *The Principle of Non-Intervention in the Framework of the Sources of Contemporary International Law and in the Current Scholarly Debate,* in M. ROSCINI*, International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 100.

[202] C. Y. WU, *Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World*, cit., p. 259.

[203] Art. 2(4) UN Charter.

matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."[204]. Beyond the UN Charter, the principle of non-intervention finds its main source in customary international law, which consists of rules of international law deriving from general state practice accompanied by *opinio juris*. From the 1960s, several UNGA resolutions reinforced the principle as customary international law. The three most significant are the 1965 Declaration on the Inadmissibility of Intervention, the 1970 Friendly Relations Declaration, and the 1981 Declaration on the Inadmissibility of Intervention and Interference[205]. The 1965 Declaration, promoted mainly by Asian, African and Latin American states and adopted almost unanimously, derived significantly from the OAS Charter and contained broad language prohibiting any type of coercive measures[206]. Much of its wording was incorporated into the 1970 Friendly Relations Declaration, considered the most important resolution as it explicitly affirmed that it reflected existing international law[207]. Moreover, the ICJ in 1984 issued its first opinion directly addressing the principle of non-intervention in *Military and Paramilitary Activities and Against Nicaragua*, reaffirming that the principle is "part and parcel of customary international law", supported by strong *opinio juris* and substantial state practice[208]. In this case, Nicaragua filed a motion to institute proceedings against the US for military and paramilitary activities in and against Nicaragua, as well as unlawful economic activities such as trade embargoes. The Court rejected the US claim of self-defense and upheld that violated its obligations under customary international law not to intervene in the affairs of another State, not to use force against another State, not to violate another State's sovereignty, and not to disrupt peaceful maritime trade[209]. Additionally, the ICJ also established that US trade embargo did not violate the principle of non intervention affirming: "the Court has merely to say that it is unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention"[210]. This case is very important in the debate on the legality of unilateral sanctions because it demonstrates that, from the

[204] Art. 2(7) UN Charter.

[205] M. JAMNEJAD, M. WOOD, *The Principle of Non-intervention*, in *Leiden Journal of International Law*, 22, 2, 2009, p. 351.

[206] C. Y. WU, *Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World*, cit., p. 260.

[207] M. JAMNEJAD, M. WOOD, *The Principle of Non-intervention,* cit., p. 353.

[208] C. Y. WU, *Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World*, cit., p. 262.

[209] ICJ, 26 November 1984, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*.

[210] I. BOGDANOVA, *Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship*, cit., p. 196.

perspective of the principle of non-intervention, such economic measures are not always automatically illegal. Indeed, the Court drew a distinction between unlawful coercion and legitimate economic interference, stating that unilateral economic measures, such as a trade embargo, do not necessarily constitute a violation of the principle of non-intervention unless they reach the level of coercion that forces a state to modify its sovereignty or policy unlawfully, named the coercion threshold. Consequently, it remains unclear to what extent the principle of non-intervention prohibits certain economic sanctions[211]. There is no consensus in the international community on this issue, and for this reason the Court has remained very cautious in considering sanctions as a violation of international law. The consensus that has emerged so far concerns only particularly serious unilateral sanctions[212]. Finally, the UN Charter encouraged the conclusion of regional agreements for the maintenance of international peace and security, and these regional treaties contains important elements of the principle of non-intervention[213]. One of the earliest instruments reflecting this broader conception of non-intervention was the 1948 Charter of the OAS, which prohibits: "not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements" and "[n]o State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind"[214]. This explicit prohibition was a precondition for Latin American cooperation against communism. Moreover, the OAS Charter was the first treaty to explicitly prohibit economic coercion[215]. In the 1960, the principle of non-intervention also became well-known among the newly independent African states, serving as a safeguard against neo-colonialist policies, the interference of the US and Soviet Union, and the subversive activities of neighboring states. Article 3 of the 1963 Charter of the Organisation of African Unity (OAU) included the concept of non-interference in the internal affairs of states as a foundational principle of the Organisation, alongside respect for sovereignty and territorial integrity. These principles were incorporated into the Constitutive Act of the African Union (AU) in 2000, although it nevertheless allows for intervention in a state in extreme cases such as genocide, war

[211] T. RUYS, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, cit., p. 7.

[212] F. KRIENER*, Intervention, Prohibition of*, in *Max Planck Encyclopedias of International Law (MPIL), Oxford University Press,* 2023, p. 6.

[213] M. ROSCINI, *The Principle of Non-Intervention in the Framework of the Sources of Contemporary International Law and in the Current Scholarly Debate,* cit., p. 102.

[214] C. Y. WU, *Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World*, cit., p. 259.

[215] M. ROSCINI, *The Principle of Non-Intervention in the Framework of the Sources of Contemporary International Law and in the Current Scholarly Debate,* cit., p. 102.

crimes and crimes against humanity, under the principle of non-indifference[216]. In parallel, regional treaties concluded between Asian countries also use the term "non-interference" instead of "non-intervention", for example in the 2008 Charter of the Organiation of Islamic Cooperation. This principle is reaffirmed in Article 2(2) of the 2007 Charter of the Association of Southeast Asian nations (ASEAN). In Asia there is a tendency to emphasize absolute non-interference, even in case of humanitarian crises. The use of such language reflects the broader conception of the prohibition of intervention, encompassing non-coercive acts as well[217]. Finally, most European regional treaties do not explicitly mention the principle of non-intervention, except for Article 8 of the Warsaw Pact (1955) and Article 1(2) of the COMECON Charter (1959), signed between Eastern European states during the Cold War. Furthermore, during the period of détente, all European states signed the Helsinki Final Act (CSCE, 1975), a non-binding document that includes non-interference among the ten principles of mutual relations and condemns both armed intervention and economic/political coercion and subversion. The ICJ recognised the Act as reflecting a customary principle of universal application, and it was reaffirmed in the Charter of Paris for a New Europe in 1990[218]. Finally, the principle of non-intervention appears to be strongest in Asia, as this is almost absolute. For many decades after its inception in 1967, the main objective of ASEAN has been to promote, establish, and preserve peace and stability in Southeast Asia and consequently member states always tend to respect the internal sovereignty of others. The case of Myanmar shows that in Asia this principle is very strong as even in the face of serious human rights violations ASEAN avoids direct coercive measures such as sanctions or forced isolation[219].

3.2.3 National Security Exceptions

National security exceptions are measures adopted by states to temporarily waive or limit certain fundamental rights when they believe there is a significant threat to the integrity of the state, political stability, or economic security. In the context of unilateral sanctions, these exceptions are often invoked to justify interventions in or against other states. Under customary international law,

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[216] M. ROSCINI, *The Principle of Non-Intervention in the Framework of the Sources of Contemporary International Law and in the Current Scholarly Debate,* cit., p. 105.

[217] *Ivi.*, pp. 106-107.

[218] *Ivi.,* p. 108-109.

[219] R. M. M. TENE, *ASEAN and The Principle of Non-Intervention*, in *RSiS Commentary,* 172, 2024, available at: https://rsis.edu.sg/rsis-publication/rsis/asean-and-the-principle-of-non-intervention/#:~:text=ASEAN's%20adherence%20to%20the%20non,stability%2C%20and%20prosperity%20among%20them.

however, there is not implicit and open-ended national security exception applicable to all treaties. Neither the Vienna Convention nor the ILC Articles recognise such a general exception. Instead, customary law provides more specific exceptions that can apply to all treaties, even if not explicitly mentioned, such as the *clausola rebus sic stantibus*, the law of reprisal, self-defense, and the doctrine of necessity. The first concerns situation where a treaty becomes inapplicable due to a fundamental change of circumstances. The existence of these and other customary law exceptions highlights the lack of a general national security exception. When a state justifies an action by invoking one of these exceptions, its action is subject to review[220]. In addition to customary exceptions, many treaties provide explicit exceptions. The WTO is the most debated example in this area, providing justifications for sanctions that would otherwise be qualified as unlawful measures, through recourse to a *lex specialis.* As already mentioned, these justifications are based on general exceptions under Article XX of GATT and Article XIV of GATS, or Security Exceptions under Article XXI of GATT and Article XIV bis of GATS. The focus here is primarily on Article XXI GATT, as it is the most prevalent and discussed security exception, acknowledging the right of members to defend their essential security[221]. Available to GATT Contracting Parties since 1948, this clause was rarely invoked to avoid legal conflicts. This was until 2016, when Ukraine requested consultations with Russia regarding alleged restrictions on transit traffic from Ukraine through Russia to Kazakhstan and other countries. In 2017, a panel was established in *Russia - Traffic in Transit* (DS512). This was the first panel report examining the nature and scope of the national security exception of Article XXI[222]. Before 2019, the provisions of Article XXI were considered as self-judging and non-justiciable, meaning that states could impose measures they considered necessary to protect their essential security interests, and the WTO Dispute Settlement Body (DSB) could not challenge or evaluate them. In 2019, this situation changed when, in the *Russia-Traffic in Transit* case the DSB panel for the first time interpreted the provision in a way that limited state discretion in the application of trade measures justified by national security[223]. The panel concluded that the security exception must be balanced with a combination of objective and subjective elements. Article XXI(b)(iii) allows

[220] S. R. ACKERMAN, B. S. BILLA, *Treaties and National Security,* in *New York University Journal of International Law and Politics (JILP)*, 40, 437, New York, 2007, pp. 443-451.

[221] M. PINCHIS-PAULSEN, K. SAGGI, P. MAVROIDIS, *The National Security Exception at the WTO: Should It Just Be a Matter of When Members Can Avail of It? What About How*?, in W. ALSCHNER, M. ELSIG, J. FRANCOIS, M. MANCHIN (eds.), *World Trade Review*, 1, 25, 2024, p. 2.

[222] P. VAN DEN BOSSCHE, S. AKPOFURE, *The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994*, in *World Trade Institute*, 3, 2020, p. 4.

[223] O. NIHREIEVA, *Legality of Economic Sanctions as a Means of International Obligations Enforcement,* cit., pp. 409-410.

a State to take measures necessary to protect its security in times of war or other emergencies in international relations. Russia argued that this prerequisite required a subjective assessment by a WTO member and therefore could not be questioned or reassessed by any other party or judicial body. Ukraine, on the other hand, argued that the phrase must have an objective meaning, verifiable by a WTO panel, and not left to the sole determination of the State. The WTO panel determined that the elements of war and emergency are objective facts capable of objective determination; otherwise, it would violate the principle of effective interpretation. Furthermore, the panel also added that a subjective interpretation would undermine the security and predictability of the multilateral trading system. Therefore, the wording "if such party deems" of the article is considered as a margin of appreciation, but still subject to review[224]. Such scrutiny of the WTO is increasingly important, especially given the fear of serious abuses of the exceptions, which have increased since 2016. Such abuses are not intended to protect national security, but rather to defend domestic industries or gain trade advantages[225]. In this context, national security exceptions could potentially justify unilateral human rights sanctions if the human rights violations in question constitute a situation of "emergency in international relations" giving rise to a threat or instability "engulfing or surrounding a state"[226]. Indeed, it is essential to meet two conditions: the existence of a credible security threat, and a minimum degree of proportionality between the threatened individual security interest and the impact of the adopted measure, without exceeding what it is necessary[227]. Consequently, the principles of necessity and proportionality are also very important in appeals to national security, as they make it not unlimited. In this context, many human rights treaties also include national security provisions, such as the ICCPR[228] and the ECHR, both highlighting the importance of the measures adopted. However, regarding the subjective elements of the national security clause, especially the plausibility requirement, it seems implausible for a state to argue that human rights violations occurring in a distant state could jeopardize its security interests and cause serious national security concerns[229]. Furthermore, broad sanctions targeting entire populations and violating their fundamental human rights, while justified as national security measures, may be entirely unnecessary and

[224] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 261-266.

[225] P. VAN DEN BOSSCHE, S. AKPOFURE, *The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994,* cit., pp. 5-6.

[226] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., p. 268.

[227] J. SCHMIDT, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, cit., pp. 73-74.

[228] S. R. ACKERMAN, B. S. BILLA, *Treaties and National Security,* cit., p. 453.

[229] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 268-269.

disproportionate. The experience of countries like Venezuela has highlighted the strong humanitarian impact of sanctions motivated by security or political reasons, clearly demonstrating the tension between protecting security interests and fundamental rights.

3.3 Judicial Review and Procedural Safeguards

3.3.1 Court's Role in Reviewing Sanctions Measures

Economic sanctions very often leave civilians without remedies or meaningful forums in which they can seek the lifting of individual sanctions or obtain compensation and reparation for the harm unjustly suffered as human rights violations. Therefore, measures such as judicial review are in place to ensure adequate protections and remedies[230]. Judicial review is a court proceeding in which a judge examines the lawfulness of a decision or action made by a public body[231], assessing its substantive and procedural legality. In the case of unilateral sanctions imposed by a state or regional organisation, the aim is to ensure that such actions comply with both domestic legal standards and broader international obligations, especially the principle of proportionality. However, these forums and mechanisms are often non-existent in practice, which is equivalent to a denial of justice[232]. In the case of unilateral sanctions, these are mainly executive or administrative measures decided and applied by non-judicial institutions of the sanctioning parties. Therefore, they rarely offer opportunities for impartial judicial review. The 2024 report "Access to justice in the face of unilateral sanctions and overcompliance" highlights this lack of effective judicial review mechanisms against unilateral sanctions[233]. The report identifies several obstacles to meaningful judicial review. First, there is regulatory ambiguity and vagueness: many sanctions are defined in general or broad terms, making it difficult for courts to assess their legitimacy. Furthermore, the high cost of litigation restricts access to judicial review, which is usually available only to individuals with significant economic resources. Finally, the lack of transparency of decisions impedes full judicial review: the reasons and evidence on which sanctions are based are not transparent, making it difficult for those subject to sanctions to access the information necessary to have the opportunity to challenge them

[230] I. JAZAIRY, *Unilateral Economic Sanctions, International Law, and Human Rights,* cit., p. 296.

[231] *Judical Review*, *Judiciary of England and Wales*, 2025, Available at: https://www.judiciary.uk/how-the-law-works/judicial-review/.

[232] I. JAZAIRY, *Unilateral Economic Sanctions, International Law, and Human Rights,* cit., p. 297.

[233] OHCHR, *Sanctions and access to justice: Special Rapporteur on unilateral coercive measures*, cit., available at: https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/sanctions-and-access-justice

before a judge or an independent authority[234]. At the international level, the ICJ has a very limited role in the judicial review of sanctions, facing several difficulties. Under Article 35 of the ICJ Statute, the Court can hear a dispute only when the states concerned have recognised its jurisdiction. Furthermore, the ICJ does not have jurisdiction over disputes between a state and an international organisation; as international organisations, other collective bodies, and natural persons do not have the right to initiate proceedings before the Court. In the European context, as a general rule, under Article 275(1) TFEU, the CJEU does not have jurisdiction over provisions relating to the common foreign and security policy, nor over acts adopted on the basis of those provisions. However, there is a certain exemption for natural and legal persons. There are three fundamental grounds for annulling legal acts adopting sanctions: a) Manifest error of assessment; b) Procedural grounds; and c) Human rights and proportionality. Despite these difficulties, the CJEU has developed the most extensive jurisprudence on sanctions. In the *Kadi* ruling, the Court held that EU law cannot authorize derogations from the principles of freedom, democracy, and respect for human rights enshrined in Article 2(1) TEU. The EU is based on the principle of the rule of law, so neither member states nor EU institutions may evade judicial review. Therefore, anyone affected by a unilateral sanction has the right to a judicial remedy before the CJEU and can challenge its legality if it violates fundamental rights. The *Kadi* case concerns the adoption of multilateral sanctions through EU regulations, but its findings are also relevant for unilateral sanctions, as they establish that every measure must respect fundamental principles and human rights[235]. Conversely, while there is a wealth of literature on multilateral sanctions, specifically from the UN and the EU, few scholars have analyzed unilateral sanctions. In particular, the possibility of subjecting these sanctions to judicial review at the national level remains a relatively underexplored area. The US Constitution does not contain a specific provision for the power of judicial review, this practice was established in the landmark decision of *Marbury v. Madison* by the Supreme Court, to ensure that laws respect constitutional rights. In this case, the Supreme Court for the first time declared an act of Congress unconstitutional. However, judicial review must respect the principle of separation of powers, meaning that the Court cannot replace Congress in making laws or the President in implementing policies; it can only evaluate

[234] A. DOUHAN, *Access to justice in the face of unilateral sanctions and overcompliance*. *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, A/79/183, UNHRC, 18 July 2024, pp. 6-7.

[235] D. KULIKOV, V. SLEPAK, V. ZHBANKOV, *Unilateral Sanctions in a Multipolar World: Legal Challenges*, in *Kutafin University Law Review*, 2, 4, 2015, pp. 346-350.

whether laws or actions are constitutional[236].When it comes to judicial review of unilateral sanctions, the US is particularly important as it is the most active user of unilateral measures. US sanctions are primarily based on the IEEPA (1977) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The IEEPA grants the President broad authority to take extensive economic measures in response to an "unusual and exceptional" threat with a foreign element that affects the national security, foreign policy, or economy of the US, if he declares a state of emergency with respect to that threat. Indeed, the President has broad power in foreign policy and national security, and sanctions fall within this scope. Courts generally defer to executive authority in matters of foreign policy under the "political question" doctrine. The US Supreme Court has never directly considered IEEPA or FTO designations. Lower courts have heard a few cases, nearly all related to terrorism or drugs, and have often ruled in favour of the government. Judicial review of sanctions imposed under the IEEPA is governed by the Administrative Procedure Act (APA), which provides that a designation may be rescinded if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with law". Therefore, US targeted sanctions practices are primarily administered domestically, and judicial review is limited, especially for foreign entities with no ties to the US. Consequently, broad discretion and limited legal protections increase the risk that sanctions will disproportionately affect innocent citizens or vulnerable groups[237]. Considering these difficulties, there is a need for greater procedural guarantees and effective remedies for the rights of individuals affected by unilateral sanctions, which will be examined in the next section.

3.3.2 Procedural Guarantees and Remedies for Affected Parties

Procedural guarantees and remedies are essential tools for ensuring that justice is accessible and effective, both in theory and in practice. These include fundamental principles such as due process, the right to a fair trial, the presumption of innocence, non-discrimination and legal representation. These protections are central for the protection, promotion, and enjoyment of all human rights. However, in the context of unilateral sanctions, these guarantees are often undermined. At the universal level, procedural safeguards are codified in key human rights instruments. For instance, Article 10 of the UDHR states that: "Everyone is entitled in full equality to a fair and public

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[236] *Judicial Review*, in *Cornell Law School, Legal Information Institute*, available at: https://www.law.cornell.edu/wex/judicial_review#:~:text=Judicial%20review%20allows%20the%20Supreme,the%20power%20of%20judicial%20review.

[237] E. CHACHKO, *Due Process is in the Details: U.S. Targeted Economic Sanctions and International Human Rights Law*, in *American Journal of International Law Unbound*, 113, 2019, pp. 159-162.

hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." This principle is further elaborated on Article 14(1) of the ICCPR, which states that: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"[238] . The Human Rights Council recognised access to justice as a prerequisite for the enjoyment of all human rights in Resolution 55/7 (2024), as well as an important safeguard ensuring fundamental fairness, equality, and integrity, even in the face of unilateral coercive measures and overcompliance. The resolution also emphasized the need for an impartial and independent UN human rights mechanism to provide remedies and redress for victims of such measures, with the aim of promoting accountability and ensuring legal, equitable, timely and effective remedies and reparations[239]. The Special Rapporteur Alena Douhan's report on the negative impact of unilateral sanctions highlights the challenges of access to justice in this context and emphasizes the importance of procedural safeguards. Furthermore, the report notes that states often justify the use of unilateral sanctions by classifying them as a foreign policy instrument rather than a criminal or judicial measure. This allows them to avoid the application of fundamental legal guarantees typical of criminal law, such as due process, the presumption of innocence, and guarantees of a fair trial. Finally, it confirms that procedural guarantees are inalienable; their violation, even in times of war, is considered a serious breach of international humanitarian law[240]. Due process and the right to a fair trial are central among these procedural guarantees, as they provide the legal framework within which all other rights can be effectively protected. Due process concerns the state's obligation to respect all legal rights that a person is entitled to under the law. While this principle primarily ensures substantive legal guarantees for individuals, meaning that their fundamental rights must be respected, it may also lead to the establishment of certain procedural requirements to protect those rights[241]. This principle has deep constitutional roots. It first appeared in Article 39 of the Magna Carta (1215) and was codified in the Fifth Amendment to the US Constitution (1791), which states that "No person shall…be deprived of life, liberty, or property, without due process of law"[242].

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[238] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences,* cit., p. 22.

[239] OHCHR, *Sanctions and access to justice: Special Rapporteur on unilateral coercive measures*, cit., available at: https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/sanctions-and-access-justice

[240] A. DOUHAN, *Access to justice in the face of unilateral sanctions and overcompliance*, cit., pp. 3-5.

[241] C. MOMSEN, M. WILLUMAT, *Due Process and Fair Trial*, in *Elgar Encyclopedia of Crime and Criminal J*ustice, Cheltenham, 2025, p. 102.

[242] *Fourteenth Amendment*, in *Encyclopaedia Britannica*, 2025, available at: https://www.britannica.com/topic/Fourteenth-Amendment.

Similarly, the right to a fair trial is enshrined in the US Constitution, specifically in the Sixth Amendment, which outlines fundamental rights stemming from the broader right to a fair trial[243]. This concerns the right of a person charged with a crime, or involved in legal disputes, to a fair and public hearing within a reasonable time and before an independent and impartial court[244]. In *Herring v. New York*, the Supreme Court noted that the US's adversarial trial model ensures that the guilty are convicted and the innocent go free, and that the right to a fair trial is connected to the aim of finding the truth through criminal procedure. This also explains why, among the specific structural requirements that any criminal trial must meet under constitutional law and which are provided for in the Sixth Amendment, the first is the right to an "impartial jury of the State and district where the crime was committed, which district shall have been previously ascertained by law"[245]. The concepts of due process and fair trial are also enshrined in the German Constitution. According to the Federal Constitutional Court, the principle of due process generally prohibits the state from violating statutory law; indeed, it is set out in the principle of the rule of law as defined in Article 20(3) of the German Constitution. This article therefore establishes that no one can be deprived of their rights without a fair and lawful legal procedure, which is equivalent to the Anglo-Saxon concept of due process of law. Moreover, unlike the US, Germany has an inquisitorial model, whereby the truth arises not from a confrontation between the parties, but from a court-led investigation. The goal of the German criminal process is to find the material truth, rather than a "version of reality" constructed through compromise between the prosecution and defense. Furthermore, every action of the state must respect human dignity (Article 1, par. 1 of the Basic Law), meaning that the state cannot treat individuals as mere objects. Another major difference compared to the US is that the right to a fair trial does not derive from an explicit constitutional provision, but rather from the procedural guarantees set out in the Code of Criminal Procedure and, above all, in Article 6 of the European Convention on Human Rights (ECHR), which is formally an integral part of German federal law. Article 6 is comparable to the Sixth Amendment to the US Constitution in that it guarantees that the defendant is "entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"[246] This right to a fair trial is arguably the most important provision of the ECHR, ensuring the smooth functioning of power, alongside access to justice and effective judicial review. Over time,

[243] C. MOMSEN, M. WILLUMAT, *Due Process and Fair Trial*, cit., pp. 102-103.

[244] Council of Europe, *Right to a fair trial – Impact of the Convention on Human Rights*, available at: https://www.coe.int/en/web/impact-convention-human-rights/right-to-a-fair-trial#:~:text=When%20a%20person%20is%20charged,an%20independent%20and%20impartial%20court.

[245] C. MOMSEN, M. WILLUMAT, *Due Process and Fair Trial*, cit., p. 103.

[246] *Ivi*., pp. 106-108.

the ECtHR's jurisprudence has increasingly influenced national legislations. An important turning point was the *Guincho v. Portugal* judgment (1984), in which the Court noted that member states had the obligation of organising their legal systems to ensure compliance with the provisions of Article 6 of the ECHR, including the right to a fair trial within a reasonable time. This has become one of the areas in which the Court has had the greatest influence[247]. Finally, Article 47 of the Charter of Fundamental Rights of the EU is closely related to Article 6 ECHR and further consolidates the right to a fair trial within the EU legal order. Its second paragraph directly mirrors the guarantees of Article 6. What makes Article 47 stronger in the EU context is that Article 6 only concerns disputes over civil rights and obligations or criminal proceedings, while Article 47 is not subject to such limitations and is binding on both EU institutions and member states[248]. In short, procedural guarantees, such as the right to a fair trial and due process, are essential tools for enforcing and protecting human rights, which are often challenged by unilateral sanctions due to their disproportionate and indirect effects.

[247] C. TELEKI, *Due Process and Fair Trial in EU Competition Law. The Impact of Article 6 of the European Convention on Human Rights*, in *Nijhoff Studies in European Union Law*, 18, *Brill*, 2021, pp. 92-95.

[248] European Union Agency for Fundamental Rights (FRA), *Article 47 – Right to an Effective Remedy and to a Fair Trial*, available at: https://fra.europa.eu/en/eu-charter/article/47-right-effective-remedy-and-fair-trial#:~:text=All%20persons%20have%20the%20right,be%20a%20lack%20of%20defense.

CHAPTER 4: CASE STUDY – VENEZUELA

4.1 Historical and Legal Background of Sanctions against Venezuela

4.1.1 Political and Economic Crisis in Venezuela

Venezuela is witnessing the largest economic contraction ever recorded in Latin America economic history. This coincides with the sixth largest contraction in world history and the second largest contraction in the world outside of war[249]. Tensions in Venezuela are at boiling point when the government-controlled electoral authority declared Nicolás Maduro the winner of the presidential election following Chávez's death[250]. Maduro has taken the reins of a country that was already entering a deep crisis, a combination of several crises that feed off each other. Venezuela is a South American country bordering the Caribbean Sea, with a population of 30 million and immense natural resources. Its economy has always been based almost exclusively on the sale of oil, which has been the country's fundamental pillar. Indeed, the country holds the world's largest oil reserves, with 296.5 billion barrels, and the fourth-largest reserves of natural gas, being the leading oil producer and exporter. However, its economy was entirely dependent on oil exports, which financed an economic system centered on subsidies and government intervention and was consequently overly dependent on the volatility of the oil market[251]. Oil accounted for over 90% of Venezuela's exports and oil sales financed the government budget. Oil exports provided the country with the foreign currency needed to import consumer goods. After years of economic mismanagement under Chávez, Venezuela saw a sharp drop in oil prices in 201, and the government was unable to address this severe blow to the Venezuelan economy. This is because, unlike many other major commodity producers, the Chávez's government did not use the boom years to build up foreign exchange reserves or sovereign wealth funds to mitigate the risks of sharp price fluctuations. Thus, it did not create a stabilization fund to protect itself from a potential future decline in oil prices. Instead, it borrowed in the expectation that oil prices would remain high. This collapse in oil prices then led to a sharp decline in public revenues. Instead of addressing this situation by adjusting fiscal policies through tax increases and spending

[249] F. RODRIGUEZ, *Sanctions, Economic Statecraft, and Venezuela's Crisis,* in *The Fourth Freedom Forum, Sactions & Security Rsearch Project, Goshen,* 2022, p. 3.

[250] V. BUSCHSCHLUTER, *Venezuela crisis in brief,* in *BBC News Online,* 2024, available at: https://www.bbc.com/news/world-latin-america-48121148.

[251] G. AGOSTINIS, *Venezuela, radiografia di una crisi,* in *Il Mulino, Rivista trimestrale di cultura e di politica,* 6, 10, 2016, pp. 1021-1022.

cuts, the Maduro government is attempting to address it by printing money, which has led to higher inflation[252]. With this sharp appreciation of the national currency, the population has suffered severe impoverishment, forced to face a level of poverty they were unaccustomed to. Furthermore, Venezuela's imports of goods have decreased from $62.9 billion in 2013 to $21.4 billion in 2016. This is highly problematic as Venezuela relies heavily on imports for most consumer goods, and the import cuts have led to severe shortages of food and medicine, generating a humanitarian crisis[253]. Initially, there was a shortage of intermediate goods needed to produce other goods; then, as the crisis worsened, even basic foodstuffs, personal hygiene products, and essential medicines became scarce[254]. The humanitarian crisis has led to a regional migration crisis: in March 2019, the UN estimated that over 3 million Venezuelans had left the country[255]. According to a UN report, 5,000 people leave Venezuela every day, and 65,000 have applied for asylum. However, most Venezuelans lack the necessary documentation to legally reside in neighboring or other countries. This lack of refugee status limits foreign assistance and the ability to enforce basic human rights. These people consequently face serious problems of exploitation, human trafficking, violence, and discrimination[256]. The socio-economic and humanitarian crisis has exacerbated the country's already marked political polarization, leading to a political and institutional conflict[257]. This political and institutional crisis has primarily revolved around the debate over the legitimacy of the elections. Maduro's election has been described as "undemocratic", with the EU, the US and Latin American nations refusing to recognise the results, asking the CNE (National Electoral Council), Venezuela's electoral authority, to publish detailed data from each polling station. According to the opposition, these data demonstrated that their candidate, Edmundo González, won the elections by a wide margin. However, the ruling party has progressively consolidated its influence over key institutions, including the CNE, the Supreme Court, and much of the judiciary. As a result, the president has become much more powerful, and the system of checks and balances has been severely weakened[258]. Maduro has

[252] R. M. NELSON, *Venezuela's Economic Crisis: Issues for Congress*, in *US Congressional Research Service Reports*, R45072, Washington, 2018, p. 3.

[253] *Ivi*., p. 4.

[254] G. AGOSTINIS, *Venezuela, radiografia di una crisi,* cit., p. 1926.

[255] THIRD WAY, *Country Brief: Venezuela*, in *Third Way,* 2019, p. 2.

[256] I. KLESZCZYNSKA, The *humanitarian crisis of Venezuela and international response to its regional migration implications*, in *Public Policy Studies*, *GESIS*, 7, 4, 2020, pp. 37-38.

[257] G. AGOSTINIS, *Venezuela, radiografia di una crisi*, cit., p. 1021.

[258] V. BUSCHSCHLUTER, *Venezuela crisis in brief*, cit., available at: https://www.bbc.com/news/world-latin-america-48121148.

largely maintained control over the state with the support of Russia, China, and Cuba[259], while the EU and the US administration have recognised the president of Venezuelan National Assembly, Guaido, as Venezuela's interim president[260]. The Maduro government's antidemocratic nature is further highlighted by the perceived increase in authoritarian practices since his election, as demonstrated by the anti-government demonstrations in 2014 and 2017, in response to inflation and shortages of basic goods, forcefully repressed resulting in numerous civilians killed, injured, and arrested[261]. The measures adopted by the Maduro regime have demonstrated its determination to maintain power at all costs, even violating Venezuela's constitutional order, making a democratic solution to the country's political and economic crisis increasingly difficult. Key actions in this regard include ambiguous rulings by the pro-Maduro National Electoral Council and the Venezuelan Supreme Court, revealing how institutions undermined democratic checks and balances. Although the opposition obtained the majority in the December 2015 elections, they have blocked three opposition deputies, ensuring that pro-Maduro forces retained the two-thirds majority in the legislature. Moreover, they blocked a constitutionally referendum to recall the president, stripped the opposition-dominated parliament of budget control and other important powers, declared several laws passed by the opposition unconstitutional, postponed state and local elections and eliminated key opposition leader, to further hinder democratic accountability by neutralizing the role of the opposition and consolidate the executive power[262]. During this period and still today, many Latin American governments and international organisations such as the EU and the OAS are trying to improve Venezuela's socio-economic situation[263], with the US and the EU being the most active in imposing sanctions on the Venezuelan economy, its government, and some top officials[264].

4.1.2 Sanctions Measures and Policy Objectives

In response to this crisis in Venezuela, numerous unilateral sanctions have been imposed by individual states or organisations, thus without a UN mandate. The lack of such a mandate, and

[259] THIRD WAY, *Country Brief: Venezuela*, cit., p. 1.

[260] I. KLESZCZYNSKA, *The humanitarian crisis of Venezuela and international response to its regional migration implications*, cit., p. 35.

[261] P. DUDDY, *Political Crisis in Venezuela,* in *Council of Foreign Relations Center for Preventive Action*, New York, 2015, p. 2.

[262] R. E. ELLIS, *The Collapse of Venezuela and Its Impact on the Region,* in *Army University Press*, 2017, p. 24.

[263] I. KLESZCZYNSKA, The *humanitarian crisis of Venezuela and international response to its regional migration implications*, cit., p. 35.

[264] F. RODRIGUEZ, *Sanctions, Economic Statecraft, and Venezuela's Crisis,* cit., p. 3.

therefore approval, is due to the failure of major global players such as Russia and China, which support the Maduro government, to approve sanctions against Venezuela. These sanctions are imposed primarily by the US, but also from the EU and, to a lesser extent, other countries. The economic sanctions imposed by the US and the EU are primarily aimed at pressuring the government to change its political governance and end actions that violate human rights, democracy, freedom of expression and transparency[265]. In the US, the system of unilateral coercive measures against Venezuela is based on the Venezuelan Human Rights and Civil Society Defense Act (Public Law 113-278) of December 18, 2014, and Executive Order 13692 (Obama Decree) of March 8, 2015. The former authorizes the President to act against any official, former official, or representative of the Venezuelan government implicated, directly or indirectly, in human rights violations. Such individuals are subject to an asset freeze and a ban on entry to the US. The Executive Order expand this framework by granting the President the power to adopt all necessary licenses, orders, and regulations to implement the law. It is grounded on the IEEPA and the National Emergencies Act. Based on these, Obama declared a "state of national emergency" to address the "unusual and extraordinary threat to the national security and foreign policy of the US" posed by Venezuela[266]. The first sanction imposed by the US under Public Law 113-278 was Executive Order 13692 of March 8, 2015. This order blocked assets, transfers, or payments related to the ownership, possession, or control of assets, including any donations, and prohibited entry into the US to members of the government in question, unless authorized by the State Department, as well as anyone who participated, directly or indirectly, in political actions that undermine democratic processes, commit human rights violations, or restrict freedom of expression. This suggests that the initial sanctions were more targeted, targeting specific individuals or entities, with the intent of protecting human rights without harming the general population. However, this situation has changed over time[267]. Then, in 2017, Donald Trump assumed the US presidency, continuing Obama's stance by imposing further sanctions. The second Executive Order, 13808 of 2017, prohibited transactions between US individuals or companies and the state-owned oil company PDVSA, including the purchase of bonds and the payment of profits or dividends to the Venezuelan government. A year later, in 2018, the third Executive Order, 13827, reacted to the Venezuelan government's creation of cryptocurrency, considering it as an attempt to circumvent previous sanctions. The final Executive Order, 13884 of

[265] Y. A. MONTENEGRO, *Sanciones impuestas por Estados Unidos a Venezuela: consecuencias regionales*, in *Revista de Relaciones Internacionales Estrategia y Seguridad*, 16, 2, 2021, p. 126.

[266] F. C. PEREZ, *Breve analisis del sistema de medidas coerciivas unilaterales impuestas por Estados Unidos sobre Venezuela. Sus implicaciones*., in *Instituto Superior De Relaciones Internacionales*, 5, 4, La Habana, 2023, pp. 80-81.

[267] Y. A. MONTENEGRO, *Sanciones impuestas por Estados Unidos a Venezuela: consecuencias regionales*, cit., p. 125.

2019, ordered the freezing of all Venezuelan government assets and interests in the US, prohibiting any future transactions with them[268]. In essence, this system of unilateral coercive measures by the US against the Bolivarian Republic of Venezuela constitutes an escalation of its aggressive policy aimed at overthrowing the Bolivarian Executive; the most severe presidential decisions were issued during Trump's "maximum pressure" strategy[269]. Furthermore, since 2017, Venezuela has experienced an increasingly tense relationship with the EU. The EU treaties provide the legal basis for authorizing the EU to impose sanctions on third-country governments, with the aim of changing their policies or activities. These restrictive measures fall under the Common Foreign and Security Policy (CFSP) and generally include[270]:

- A ban on the export of weapons and equipment that could be used for internal repression;
- A ban on the export of surveillance equipment;
- A freeze on funds and economic resources;
- Restrictions on the admission of individuals into EU countries.

In November 2017, the EU imposed sanctions on Venezuela in response to ongoing human rights abuses, growing autocratic and anti-democratic behaviours, and worrying regional instability. The goal was to force Maduro to change his behaviour and prevent the Venezuelan Government from engaging in undesirable activities[271]. Subsequently, in 2019, the EU renewed sanctions targeting 25 individuals in official positions deemed responsible for human rights violations and the undermining of democracy and the rule of law in Venezuela[272]. Therefore, unlike the US, the EU decided to take a more targeted approach, primarily targeting officials, rather than targeting the global oil trade. Moreover, other international actors, such as Switzerland and the Lima Group, have followed similar approaches, albeit in a more limited and cautious manner. Switzerland, for example, as part of the Schengen Area, aligns itself with the measures adopted by the EU and in 2018 imposed sanctions on Venezuela in line with the EU sanctions, including restrictions on government officials responsible for serious human rights violations[273]. Finally, the Lima Group is a regional multilateral body

[268] Y. A. MONTENEGRO, *Sanciones impuestas por Estados Unidos a Venezuela: consecuencias regionales*, cit., pp. 125-127.

[269] F. C. PEREZ, *Breve analisis del sistema de medidas coercitiva unilaterales impresta por Estados Unidos sobre Venezuela. Sus implicaciones*., cit., p. 85.

[270] EUR-Lex, *Imposizione di sanzioni UE per risolvere la situazione in Venezuela)*, in *Publications Office of the European Union,* available at: https://eur-lex.europa.eu/IT/legal-content/summary/imposition-of-eu-sanctions-to-address-the-situation-in-venezuela.html

[271] I. K. BOLTON, *Deterrence and the use of Sanctions*, cit., p. 13.

[272] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., p. 239.

[273] *Ibidem*.

established in 2017, formed by 12 countries of the Latin America and Caribbean region: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Paraguay, Peru, and Panama. This group, among other measures, has adopted travel bans and sanctions against Maduro officials and associates. Like the EU, the Lima Group opposes any military intervention[274] and targets officials rather than the national economy, like the US.

4.1.3 Legal Basis for Unilateral Measures

The legal justifications for unilateral sanctions imposed on Venezuela are debated in international law. Although some states, such as the US, support their legitimacy, the international community, including the UN, has raised concerns about their compliance with international law. As mentioned above, the President of the US imposes unilateral sanctions through executive orders that derive their statutory authority from the IEEPA[275]. The IEEPA, which entered into force in 1977, grants the President the power to impose economic sanctions on individuals and entities after determining whether there is an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."[276] Indeed, IEEPA sanctions are issued when the President implements an executive order declaring a national emergency under the National Emergency Act (NEA, 1976), invoking the IEEPA, and specifying the "unusual and extraordinary threat" the sanctions are intended to address. Although Congress viewed the IEEPA as a rare and temporary instrument, in practice it has often been invoked to justify sanctions with long-term foreign policy objectives. The 2015 executive order declaring Venezuela a national security threat is a prime example, as the threat was not military, and the country did not pose an immediate threat[277]. From a domestic perspective, therefore, the legitimacy of the sanction depends on this broad interpretation of presidential powers, supported by American jurisprudence. In the EU, in 2023, in the case *Venezuela v. Council*, the Grand Chamber of the General Court of the EU issued a judgment dismissing Venezuela's appeal to annul the restrictive measures imposed on it in 2017. This judgment is very important because it addresses for the first time questions relating to the legitimacy of EU sanctions against third states under international law. The Court rejected Venezuela's appeal, stating that the EU has autonomous sanctioning powers

[274] I. KLESZCZYNSKA, *The humanitarian crisis of Venezuela and international response to its regional migration implications,* cit., p. 44.

[275] J. BRASLOW, *U.S. Economic Intervention Abroad: Lift Sanctions to Relieve Migratory Pressure*, in *Georgetown Immigration Law Journal*, 36, 2, Georgetown, 2022, p. 862.

[276] A. BOYLE, *Checking the President's Sanctions Powers*, in *Brennan Center for Justice,* New York, 2021, p. 3.

[277] *Ivi.*, pp. 8-16.

within the Common Foreign and Security Policy (CFSP) to ensure the compliance with the *erga omnes* obligations to respect the fundamental principles of international law, in line with the objectives and values of the Union, as set out in Article 3(5) and 21 TEU[278]. Indeed, within the EU's CFSP, Article 29 of the TEU allows the Council of the EU to adopt a decision to impose sanctions, often also called restrictive measures, against third countries, non-state entities, or individuals. These measures are not punitive in nature but are imposed to induce a change in the policies and activities of the country affected. They apply, for example, in cases of violations of international law, human rights, the rule of law, or democratic principles. They must also be consistent with the objectives of the EU's external action, as set out in Article 21 of the TEU. The imposition of these sanctions can be divided into two categories: first, as actions implementing measures adopted by the UN; and second, as actions undertaken autonomously, at the Union's own initiative. Finally, Article 215 TFEU provides the legal basis for implementing the aforementioned decisions through the adoption of regulations binding on all member states. The application of these regulations by member states is subject to a monitoring process conducted by the European Commission[279]. The measures adopted against Venezuela since 2017 have therefore been justified precisely as an application of this mechanism at the political and legal levels. However, domestic regulations alone are not sufficient to justify such sanctions under international law, as it is necessary to demonstrate that they constitute legitimate foreign policy actions and not arbitrary. First, the legality of such sanctions can be assessed based on the doctrine of collective countermeasures, provided for in Article 54 of the Articles on State Responsibility of the ILC. This doctrine allows States other than the directly affected one to adopt countermeasures in the event of a violation of obligations *erga omnes*, that is, against the entire international community. Thus, for example, EU sanctions against Venezuela are justified as legitimate because they are considered countermeasures in response to violations of norms applicable to all. On this basis, sanctions imposed on Venezuela, motivated by the protection of human rights and democracy, appear justified as exceptions to the principle of non-intervention because they constitute collective countermeasures[280]. Furthermore, Venezuela argued that, to be legitimate, sanctions must be imposed by a competent international body, such as the UNSC. Unilateral sanctions or those adopted by groups of states outside this mandate would be illegitimate. However,

[278] E. KASSOTI, *Beyond Collective Countermeasures and Towards an Autonomous External Sanctioning Power? The General Court's Judgment in Case T-65/18 RENV, Venezuela v Council*, in *European Papers*, 9, 2024, pp. 257-248.

[279] EUR-Lex, *Sanzioni (misure restrittive)*, in *Publications Office of the European Union,* available at: https://eur-lex.europa.eu/IT/legal-content/glossary/sanctions-restrictive-measures.html.

[280] E. KASSOTI, *Beyond Collective Countermeasures and Towards an Autonomous External Sanctioning Power? The General Court's Judgment in Case T-65/18 RENV, Venezuela v Council*, cit., pp. 257-259.

international law recognises the right of states to adopt unilateral measures against other states, individually or jointly, in response to unlawful or simply hostile conduct, to induce the other state to change its behaviour[281]. Such measures therefore do not constitute a violation of the principle of sovereignty, but rather a legitimate exercise of political and economic pressure in the context of international relations. It is important to emphasize that this right is not unlimited. States must, however, respect the fundamental norms of international law and not use sanctions arbitrarily or excessively. In practice, however, international law appears to grant states considerable freedom to adopt unilateral measures. If sanctions are not permitted by international law, it must be demonstrated that they constitute a direct attack against a civilian population. This creates a stark paradox: sanctions can be considered legitimate and justified, with the aim of pressuring states to ensure they respect human rights or to discourage them from engaging in behaviours considered a threat to peace and security. However, they can also lead to serious violations of fundamental rights and, in extreme cases, even constitute crimes against humanity[282]. In other words, sanctions can become an ambivalent instrument, both protecting and undermining fundamental values, including rights guaranteed by instruments such as the ICESCR and the ICCPR.

4.2 Humanitarian Impact and the Sanctions Paradox

4.2.1 Economic and Social Consequences on Venezuelan Population

The implementation of unilateral sanctions against Venezuela, primarily led by the US, has had serious consequences for the population. These measures have paralyzed the economy by blocking global oil exports, and freezing financial assets abroad, denying access to international financial systems. As a result, Venezuela has faced a deficit of billions of US dollars, cutting off access to essential and life-saving products[283]. The sanctions have directly disrupted the delivery of essential medicines and medical supplies, limited access to health care services, and reduced the availability of food, water, and other resources necessary for a healthy lifestyle[284]. Venezuela, as

[281] D. AKANDE, P. AKHAVAN, E. BJORGE, *Economic Sanctions, International Law, and Crimes against Humanity: Venezuela's Referral to the International Criminal Court*, in *American Journal of International Law*, 115, 3, *Cambridge University press*, 2021, p. 11.

[282] *Ivi*., pp. 24-25.

[283] T. L. ZAKRISON, C. MUNTANER, *US sanctions in Venezuela: help, hindrance, or violation of human rights?*, in *The Lancet*, 393, 10191, London, 2019, p. 2586.

[284] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 95.

noted above, possessed the world's largest oil reserves, relying heavily on the foreign currency generated by these reserves to import the aforementioned goods. Therefore, restrictions on trade in Venezuela's oil reserves have necessarily translated into restrictions on the import of essential, life-saving goods[285], and led to a dramatic decline in GDP and GDP per capita, contributing to a deterioration in individual economic conditions on different scales, with the working class suffering the direct consequences[286]. One of the most direct consequences of these sanctions is the growth of inflation rates and the consequent loss of the national currency's value. This is particularly true in situations where sanctions impact already deteriorating economies, pushing them into a state of hyperinflation. Venezuela is a prominent example, as unilateral sanctions appear to have exacerbated the Venezuelan crisis, contributing to the deterioration of the country's economy. The main issue with this correlation is that it disproportionately penalises citizens[287]. In 2019, researchers at the University of California, made an analysis of the impact of US sanctions on Venezuela's poor and vulnerable populations, focusing on poverty levels before and after the sanctions. The study found a significant increase in extreme poverty, primarily due to limited access to food, medicine, fuel and other essential goods[288]. Throughout 2023, poverty continued to affect the population. Of the approximately 28.8 million people living in Venezuela, 94.4% lived in poverty, without enough disposable income to purchase a basic basket of goods and services, for an average of three people per household. Within this total population, in 2023, 69.6% lived in multidimensional poverty, having to cope with urgent economic needs due to lack of income and essential social needs[289]. Faced with this severe poverty, the basic education system for children and adolescents (0-17 years) has deteriorated significantly. Families' economic conditions compound the difficulties of the education system, with a lack of teaching materials and access to transportation. School dropouts and non-enrollment are on the rise: after 2022 and 2023, the number of children out of school reached 26.7%, mainly due to economic reasons, distance from schools, and special needs[290]. Furthermore, access to public healthcare is also hindered by economic sanctions. In extreme cases, such as Venezuela,

[285] F.A. HALAWANI, *The Impacts of Unilateral Economic Sanctions*, cit., p. 15.

[286] *Ivi*., p. 12.

[287] *Ibidem.*

[288] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 93.

[289] S. GONZALEZ, *Informe de Seguimiento a la Emergencia Humanitaria Compleja en Venezuela*, in *HumVenezuela*, 2023, p. 19.

[290] *Ivi*., pp. 40-44.

sanctions have led to the complete collapse of healthcare systems[291]. In 2019, over 300,000 Venezuelans were at risk due to the lack of vital medications and treatments, and an estimated 80,000 HIV patients have not received antiretroviral therapy since 2017. Access to essential medications such as insulin is limited due to the refusal of US banks to process Venezuelan payments for them. Thousands, if not millions, of people do not have access to dialysis, cancer treatment, or treatment for hypertension and diabetes. Many funding for healthcare programs remains frozen. The extremely serious threat to public health and the loss of life related to these sanctions are estimated to have contributed to over 40,000 deaths in 2017-18 alone[292]. A 2017 UNICEF report on the impact of unilateral sanctions on Venezuela highlighted that nearly 3 million of children lack access to basic necessities such as food and medicines, resulting in increased malnutrition. In 2018 alone, over 1.3 million more children became malnourished than the previous year. This lack of access to healthcare has also led to a dramatic increase of maternal mortality[293]. Finally, a very serious socio-economic consequence for Venezuela, which remains a major challenge in the face of the ongoing crisis, is migration. As of August 2023, 7.7 million people had been forced to migrate since 2015. The intention to emigrate increased from 8% to 13.4% between 2022 and 2023, equivalent to approximately 3.9 million people in total, of which 2.8 million intend to move to another country (9.8%) and over 1 million to other states or municipalities within the same state (3.6%). Most people associate the reasons for migration with the need to improve their income (71.5%) and/or obtain a better job (45.7%), but family reunification needs (25.6%), access to health services and medicines (13.7%), and access to fuel (10.7%) also stand out. However, 92.2% of people reported difficulties in migrating: 77.7% due to economic constraints, 37.5% due to lack of documentation, and over 12% due to lack of transportation or safe accommodation in destination countries or locations[294]. Despite hyperinflation falling from 337% in 2023 to 59.6% in 2024, according to the IMF, income levels remain insufficient for most families to purchase basic necessities. A national survey conducted by a Venezuelan university in 2023 reported that 82,8% of the population, out of 26.5 million people, lived in income poverty in 2023[295]. In conclusion, despite a modest economic recovery in recent years,

[291] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 96.

[292] T. L. ZAKRISON, C. MUNTANER, *US sanctions in Venezuela: help, hindrance, or violation of human rights?*, cit., p. 2586.

[293] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 95.

[294] S. GONZALEZ, *Informe de Seguimiento a la Emergencia Humanitaria Compleja en Venezuela*, cit., p. 25.

[295] C. R. SEELKE, *Venezuela: Political Crisis and U.S Policy*, in *US Congressional Research Service Reports*, Washington, 2023, p. 1.

Venezuela continues to face a severe socio-economic crisis, and the population remains severely challenged by the direct impact on their daily lives and not only on the country's political and social institutions.

4.2.2 Political and Institutional Strains

Unilateral sanctions have further aggravated the internal political and institutional fracture in Venezuela. Democracy is the first topic, as one of the primary objectives of implementing these collective measures is the restoration of democratic principles. For this reason, the Democratic Charter is being applied by the OAS as a manifestation of member states' disagreement with Venezuela. The Democratic Charter is a soft, non-binding legal declaration, issued within the OAS and aimed at promoting and consolidating representative democracy, with a particular focus on its defense. Therefore, it seeks to protect and prevent any action that violates the democratic principle. According to the Democratic Charter, this democratic principle includes respect for human rights and fundamental freedoms, access to power and its exercise in accordance with the rule of law, transparency in government activities, respect for social rights, and freedom of expression and the press[296]. This political crisis in Venezuela had already begun with Chávez and the Bolivarian Revolution he initiated. This revolution initially largely upheld the principles of liberal representative democracy. While strengthening some aspects of presidential powers, the Constitution maintained the principles of checks and balances and the autonomy of branches, obliging the state to respect multilateral human rights commitments. However, since 2006, the primary responsibility for the deterioration of the constitutional order has fallen on the government, which has silenced dissent in the media, punished opponents through judicial proceedings, and weakened the autonomy of institutions to establish a personalistic form of government. Electoral irregularities have become more common, undermining the basic principles of democracy[297]. In 2013, when Chavez died, Maduro assumed the presidency as his successor. Since 2014, the country has been experiencing a severe economic and social crisis, exacerbated by the collapse of oil prices, hyperinflation, and shortages of essential goods. In 2015, the opposition obtained a qualified majority in the National Assembly, but the Maduro government gradually weakened its powers through the Supreme Court and the creation of the Constituent Assembly in 2017, which was not recognised by much of the international

[296] Y. A. MONTENEGRO, *Sanciones impuestas por Estados Unidos a Venezuela: consecuencias regionales*, cit., p. 128.
[297] B. BULL, A. ROSALES, *The crisis in Venezuela: Drivers, transitions, and pathways*, in *European Review of Latin American and Caribbean Studies*, 109, 2020, pp. 3-4.

community[298]. In 2018, Maduro was elected in elections considered irregular by external observers, as they were not recognised as free and fair[299]. Clashes between the Maduro government and opposition groups preceded Maduro's second inauguration in 2019 and continued afterwards with many protests in the streets, strongly repressed by the Government. In 2019, National Assembly President Guaidò declared himself the legitimate leader of Venezuela and interim president, with the support of the US, the EU and several Latin American countries. However, Maduro has retained effective control of the armed forces and state institutions, with the support of China, Russia, Cuba, and other Venezuela allies. Since then, the country has been in a political situation with two parallel governments[300]. In this context of institutional disorder, access to justice and basic public services, such as healthcare, has often been perceived as limited and influenced by an authoritarian government that over the past twenty years has also tightened its control over the media, limiting freedom of press and expression[301]. Indeed, the authoritarian consolidation under Chavez and Maduro has already weakened democratic institutions, eroded the rule of law, and undermined checks and balances. However, the imposition of unilateral sanctions has further exacerbated the already fragile and polarized system of governance, making a return to democracy always more difficult. By limiting access to financial and oil resources, institutions such as the judiciary and the National Assembly have been further weakened. Furthermore, with these sanctions, Maduro regularly accuses his country of complicity in an economic war against Venezuela, reinforcing his narrative of growing centralization[302]. In 2025, Maduro began a third term, maintaining the support of Venezuelan security forces, illicit actors, and allies such as China, Cuba, Iran, and Russia. Maduro has relied heavily on security forces and the corrupt influence of the court to repress dissent[303], increasingly consolidating an apparatus of political persecutions and social control, that the Inter-American Commission on Human Rights (IACHR) defines as practices of state terrorism. The 2025 elections are deemed to have failed to meet the minimum requirements of transparency, fairness, and legality. The Venezuelan government has continued to exploit electoral processes to consolidate its power, divide the opposition, impose unverifiable results, and ignore constitutional mandates and international

[298] B. BULL, A. ROSALES, *The crisis in Venezuela: Drivers, transitions, and pathways*, cit., p. 5.

[299] G. GUARINO, *Tra embargo di armi e violazioni dei diritti umani: gli impatti delle sanzioni dell'UE contro il Venezuela*, in A. COZZOLINO (ed.), *Futuri 20 – Policrisis: Europa, Mediterranean e Scenari Globali*, 2023, p. 186.

[300] THIRD WAY, *Country Brief: Venezuela*, cit., p. 4.

[301] G. GUARINO, *Tra embargo di armi e violazioni dei diritti umani: gli impatti delle sanzioni dell'UE contro il Venezuela*, cit., p. 186.

[302] P. DUDDY, *Political Crisis in Venezuela,* cit., p. 2.

[303] C. R. SEELKE, *Venezuela: Political Crisis and U.S Policy*, cit., p. 1.

recommendations[304]. Finally, although sanctions are not the primary cause, they have caused collateral damages to the internal political situation, increasing polarization between government and opposition supporters and intensifying the deterioration of democratic guarantees for the civilian population[305].

4.2.3 Human Rights Deterioration and the Sanctions Paradox

Considering these socio-economic and political-institutional consequences, it is important to assess whether these unilateral sanctions against Venezuela are exacerbating the country's humanitarian crisis. Certainly, the sanctions did not provoke the economic and humanitarian crisis in Venezuela, as these conditions were already present before their implementation. However, the unavoidable consequences of the restrictions created by these measures appear to have played a role in the deterioration of the civilian population's living conditions. A CEPR report from April 2019, states that 40,000 people have died as result of these sanctions[306]. The UN High Commissioner for Human Rights (UNHCHR) report "Situation of human rights in the Bolivar Republic of Venezuela", provide a comprehensive assessment of the human rights situation in the Bolivarian Republic of Venezuela for the period from 1 May 2022 to 30 April 2023. The report confirms that, although the origins of the economic crisis in the Bolivarian Republic of Venezuela predate the imposition of economic sanctions, they represent one of the factors that continue to hinder the country's economic recovery and negatively impact the enjoyment of economic and social rights, as the devaluation of the bolivar has undermined the conditions necessary for the enjoyment of the right to an adequate standard of living[307]. The High Commissioner also calls on UN member states and the international community to encourage support for the national dialogue process and the implementation of the agreements reached, as well as to lift sectoral sanctions that exacerbate pre-existing challenges and negatively impact the enjoyment of human rights[308]. As mentioned in Chapter 2, Section 2.2, unilateral sanctions often end up undermining the very rights enshrined in the ICESCR and the ICCPR. Indeed, in Venezuela, as previously noted, there has been a significant increase in resource

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[304] L. C. DIB, *Venezuela's Crisis: On Year After the Presidential Election – Main Takeaways from WOLA's Report*, in *WOLA,* available at: https://www.wola.org/analysis/venezuelas-crisis-one-year-after-the-presidential-election-essential-takeaways-from-wolas-report/.

[305] Y. A. MONTENEGRO, *Sanciones impuestas por Estados Unidos a Venezuela: consecuencias regionales*, cit., p. 135.

[306] M. RENDON, M. PRICE, *Are Sanctions Working in Venezuela?*, in *Center for Strategic and International Studies*, Washington, 2019, pp. 3-4.

[307] UNHCHR, 17 November 2023, A/HRC/53/54: *Situation of human rights in the Bolivar Republic of Venezuela*, p. 2.

[308] *Ivi.,* p. 18.

scarcity due to sanctions reducing the state's ability to import essential medicines and food products, targeting the country's primary economic sector. This consequently causes an apparent violation of the right to food (Article 11 ICESCR) and to health (Article 12 ICESCR)[309]. Likewise, a further consequence of the economic situation aggravated by sanctions is the violation of the right to work (Article 6 ICESCR) and to decent living conditions (Article 7 ICESCR)[310]. Finally, even important civil and political rights appear to be ignored by the Venezuelan government, such as freedom of expression (Article 19 ICCPR), freedom of association (Article 21 ICCPR), and political participation (Article 25)[311]. These consequences disproportionately impact vulnerable groups such as women, children and chronically ill. Moreover, the sanctions have contributed to limiting these rights because political repression in the country has increased dramatically in this context of strong external pressure, providing the government with a pretext to increase internal control and, consequently, strengthen authoritarianism. The UNHCHR, Volker Turk, affirmed that "While the roots of Venezuela's economic crisis predate the imposition of economic sanctions (…) it is clear that the sectoral sanctions imposed since August 2017 have exacerbated the economic crisis and hindered human rights" [312]. Faced with such consequences, it is difficult to consider these sanctions consistent with the principle of proportionality analyzed in the previous chapter, as the damage caused to the civilian population appears disproportionate to the stated objective. The Venezuelan government has invoked the principle of non-intervention in the internal and foreign affairs of states to challenge these sanctions and their effects. However, a clear and specific prohibition on unilateral sanctions as contrary to the principle of non-intervention has not yet been established through practice and *opinio juris*. Indeed, to be considered illegitimate, sanctions must meet the general requirement of coercion, and this threshold does not appear to have been met in the case of Venezuela. Furthermore, it has not been demonstrated that the sanctions have altered the normal course of its political action, either within the country or in its international relations with other states[313]. Finally, in essence, the US, the EU and several other countries have imposed unilateral sanctions on Venezuela for human rights violations, to pressure Maduro to restore democracy and improve human rights for the Venezuelan population. However, in practice, these sanctions have had a paradoxical effect, exacerbating humanitarian suffering and the growth of an authoritarian government. Despite doubts raised about

[309] Art. 11, 12 ICESCR.

[310] Art. 6,7 ICESCR.

[311] Art. 19, 21, 25 ICCPR.

[312] A. HOFER, *Unilateral Sanctions as a Challenge to the International Legal Order*, in F. GIUMELLI, C. PORTELA, A. BULTRIMI (eds.), *International Sanctions in Practice*, *Routledge*, London, 2024, p. 71.

[313] G. PUMA, *The principle of non-intervention in the face of the Venezuelan crisis,* in *Questions of International Law* (QIL), 5, 26, 2021, p. 21.

the legitimacy of these sanctions, they have not yet been officially declared illegitimate by an international body like the UN.

4.3 Comparative Analysis: Venezuela and Iran

4.3.1 Objective and Legal Basis of Sanctions

Unilateral sanctions against Venezuela, particularly those imposed by the US, were officially justified by the aim of protecting human rights and fighting corruption. In practice, however, these measures aimed to exert political pressure on the Maduro government, influence domestic political activities, and compel changes in governance. Similarly, unilateral sanctions against Iran were justified on grounds of national security and the protection of fundamental rights. The US is the central player in sanctions against Iran. After the USSR vetoed the adoption of a resolution calling for a military attack against Iran, the US unilaterally adopted sanctions and punitive measures against Iran. These measures began in 1979, following the Islamic Revolution and the hostage crisis at the US Embassy in Tehran, with the capture of 53 US diplomats. The US justified these sanctions by the goal of protecting national security, countering terrorism, and preventing the use of nuclear weapons. Economic, commercial, financial, and technological measures were adopted, implemented both through congressional acts such as the 1996 D'Amato Act, which provided a more robust legislative framework than sanctions in Venezuela, and through presidential executive orders. It is noteworthy, however, that for Iran, the initial objective was related to geopolitical events and international security rather than internal political changes, as in the case of Venezuela[314]. These US sanctions objectives evolved over time: in the mid-1980s, they aimed to compel Iran to cease supporting acts of terrorism and limit its strategic power in the Middle East; in the mid-1990s, they focused on persuading or compelling Iran to limit the scope of its nuclear program to ensure its purely civilian use ; and since 2006, the international community has joined US sanctions in the pursuit of this goal[315]. Indeed, other countries such as the UK, Canada, Japan, Australia, Switzerland, New Zealand, and the Netherlands have adopted sanctions against Iran, but often in accordance with UN resolutions and EU sanctions, offering a multilateral approach that Venezuela lacks. These sanctions were mainly aimed at countering Iran's nuclear program. Some of these countries imposed autonomous sanctions, which,

[314] M. RAHIMI, A. M. MOTLAGH, E. SHEYBAN, *Unilateral Economic Sanctions in the light of International law: Unilateral Sanctions on Islamic Republic of Iran*, in *Management and Administrative Sciences Review*, 3, 4, 2014, pp. 4-5.

[315] K. KATZMAN, *Iran Sanctions*, in *US Congressional Research Service Reports*, RS20871, Washington, 2013, p. 1.

while in line with UN resolutions, were unilateral as UN consent was not required[316]. As for the sanctions adopted by the EU, these were initially linked to the UNSC action. Since 2006, the UNSC has treated the issue of Iranian nuclear enrichment as falling under Chapter VII of the UN Charter, which deals with actions related to threats and breaches of international peace and security. This led to the imposition of Chapter VII sanctions on Iran, under Resolutions 1737(2006), 1747(2007), 1803(2008), and 1929(2010), which provide for targeted sanctions against individuals involved in the nuclear enrichment program and the arms embargo. After the adoption of Resolution 1929, political pressure on Iran continued, but this did not lead to the adoption of further sanctions at the UNSC level. In 2007, the EU Council affirmed its intention to follow the sanctions policy enshrined in UNSC Resolution 1737(2006), and the EU adopted implementing measures to that resolution. However, in 2010, the EU Council introduced sanctions against Iran that go beyond those adopted within the UN System, focusing more on overall trade and economic relations between Iran and the EU rather than on the nuclear enrichment effort[317]. This is a marked difference from the EU sanctions against Venezuela, which demonstrate a predominantly unilateral approach unrelated to UN resolutions. The legal justification for these EU sanctions was therefore not based on multilateral obligations to implement binding UN decisions under the Charter, but rather on regulations invoking the general principles of human rights, the rule of law, and democracy, justifying such measures by leveraging its competence under the CFSP. Finally, the objectives and justifications for the sanctions in both cases appear to be framed as instruments aimed at enforcing human rights in one case, and nuclear non-proliferation in the other, but their practical motivations are broader and encompass political, strategic, and economic objectives. It is these broader objectives that lead sanctioning states to impose sanctions on entire economies, not just on responsible state institutions and individuals, thus causing severe consequences for citizens, creating the paradoxical situation in which sanctions worsen the conditions of citizens and strengthen the sanctioned governments.

4.3.2 Humanitarian, Political and Socio-Economic Outcomes

The consequences of the sanctions against Venezuela and Iran present significant similarities, despite the different legal justifications on which they are based. The impact of sanctions imposed by the US and international actors on the Iranian economy had far-reaching consequences on the lives

[316] M. RAHIMI, A. M. MOTLAGH, E. SHEYBAN, *Unilateral Economic Sanctions in the light of International law: Unilateral Sanctions on Islamic Republic of Iran*, cit., pp. 5-6.

[317] A.Z. MAROSSI, M.R. BASSETT, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*, cit., pp. 4-6.

of Iranian civilians. These measures have restricted the import and export of goods, currency transactions, and access to banking services[318]. The inability to attract international investment and access loans has slowed projects and reduced oil export revenues, with a knock-on effect on all macroeconomic variables: rising inflation, currency devaluation, rising unemployment, and a collapse in domestic and foreign investment[319]. This is particularly true for the most vulnerable populations, such as those living in rural or poor communities[320]. It is clear that the sanctions imposed on Venezuela mirror in many aspects those imposed on Iran, as they have led to a dramatic devaluation, hyperinflation, and a collapse in purchasing power. The main aspect that Iran and Venezuela have in common is that oil is the primary cause of numerous political and economic fluctuations, being one of the most important factors determining the country's unbalanced development. The sanctions regime has used oil and oil revenues as an effective lever to exert pressure on the respective economies[321]. Indeed, Iran recorded a 47,9% drop in its daily oil production, while Venezuela witnessed a more substantial drop of 76,9%. In exports and imports, Iran saw a decline of 47.5% and 15.3%. Similarly, Venezuela recorded a 48.5% and 44.7% decline. In terms of attracting foreign investment, Iran recorded a 53.86% drop, while Venezuela saw a more significant decline of 60.67%. Furthermore, the inflation rate in Iran had a significant surge of 277%, while in Venezuela it increased by 114,000% compared to the pre-sanctions period. In fact, Venezuela is experiencing the highest inflation rate in the Western Hemisphere[322]. Moreover, in relations to the subjects of sanctions, in Venezuela they have primarily focused on industrial sectors, such as oil, mining, shipping, certain financial institutions, and government officials. Their impact has intensified due to internal factors, including mismanagement, systemic corruption, and the country's enormous dependence on oil revenues. In contrast, in Iran, in addition to these sectors, the entire financial system has been affected, as have the nuclear and military sectors, resulting in broader restrictions[323]. A Human Rights Watch report analyzed how US sanctions have affected Iranian's access to healthcare,

[318] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 92.

[319] A. F. MAJIDI, Z. ZAROUNI, *The Impact of Sanctions on the Economy of Iran*, in *The Open Access Journal of Resistive Economics,* 10, 1, 2022, p. 8.

[320] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 92.

[321] A. F. MAJIDI, Z. ZAROUNI, *The Impact of Sanctions on the Economy of Iran*, cit., p. 7.

[322] M. AVARIDE, A. B. DOLATABADI, S. A. HOSEINI, R. DEHBANIPOUR, *Comparing Effects of US Sanctions against Iran and Venezuela during Donald Trump's Presidency and Analyzing Economic Impacts*, in *International Political Economy Studies,* 6, 1, 2023, p. 2.

[323] *Ibidem.*

education, and other human rights. Human Rights Watch is an independent international organisation that works as part of a vibrant movement to uphold human dignity worldwide and advance the cause of human rights for all. Indeed, in the case of US sanctions against Iran, the organisation recognised that, despite humanitarian exemptions, these measures are causing unnecessary suffering to Iranian citizens, especially those afflicted with a range of diseases and medical conditions having a limited access to essential medicines[324]. Therefore, Iran, like Venezuela, represents a perfect example of how sanctions can impact human rights. In Iran, as in Venezuela, US and international sanctions have had a severe impact on economic and social rights. Unlike Venezuela, where declining oil revenues immediately led to food and medicine shortages, primarily due to state mismanagement, in Iran the difficulties arise primarily from financial and logistical complications. The right to healthcare in Iran is particularly compromised, due to limited access to treatments for chronic diseases, rare drugs, and advanced medical devices[325]. Furthermore, another strong difference is that, prior to the imposition of sanctions, Iran, unlike Venezuela, was not facing a serious crisis; the country was relatively stable. Indeed, poverty alleviation and social and health equity were prioritized in the Constitution and development plans of Iran, moreover, after the Revolution 1979, a welfare system was established in Iran to focus on healthcare, education and social aid. This demonstrates that, unlike Venezuela, the economic difficulties following the sanctions arose from the effects of external restrictions, and not from a structural internal crisis[326]. Finally, sanctions have also had a serious impact on civil and political rights. The Iranian government has exploited the situation to justify repressive measures and limit political dissent, similar to what is happening in Venezuela under Maduro. Iran is not a democratic state, it can be classified as a competitive authoritarian regime due to extensive rule violations, electoral manipulations, and restricted competition[327]. In such an authoritarian state, economic sanctions can lead to the so-called "rally around the flag effect", meaning that during a crises or external attack, citizens tend to show greater support fort the government. This because these non-violent foreign policy tools can exacerbate conflicts and increase human rights violations in target states, as economic grievances lead to protests that are brutally repressed by authoritarian regimes. The repression of these protests is often cited as the reason for the failure of economic

[324] HUMAN RIGHTS WATCH, "*Maximum Pressure": US Economic Sanctions Harm Iranian's Right to Health*, in *HR Watch*, New York, 2019, pp. 1-3.

[325] *Ivi*., pp. 3-4.

[326] F. KOKABISAGHI, *Assessment of the Effects of Economic Sanctions on Iranian's Right to Health by Using Human Righs Impact Assessment Tool: A Systematic Review,* in *International Journal of Health Policy and Management*, 7, 5, 2018, p. 376.

[327] B. R. DARYAKENARI, V. GHAFOURI, N. KASAP, *Who Rallies Round the Flag? The Impact of the US Sanctions on Iranian's Attitude toward the Government,* in *Foreign Policy Analysis*, 21, 1, 2025, p. 8.

sanctions, paradoxically strengthening support for the government[328]. In conclusion, the comparative cases of Venezuela and Iran clearly demonstrate how sanctions, even when legally justified, can have profound impact on the economy, society, politics, and human rights, exacerbating vulnerabilities.

4.3.3 The Sanctions Paradox: Lessons Learned from Venezuela and Iran

Unilateral economic sanctions have long been used as a nonviolent foreign policy tool with the aim to influence the behaviour and policies of targeted states. Although often effective in bringing policy changes in democratic countries, they frequently fail to change the behaviour of authoritarian regimes. Indeed, in authoritarian regimes, such measures aim to generate economic grievances among citizens and elites who support the regime, inciting popular unrest and reducing support for the incumbent government. The case of Iran and Venezuela are prominent example of this mechanism, as the sanctions were intended to put pressure on the government and elites, but ordinary citizens are those bearing the costs. The concept of "rallying around the flag" describes the phenomenon whereby, in situations of crisis, external threats or pressure from other states, the population tends to rally around their leaders and strengthen national sentiment. Originally coined by John Mueller in the context of US presidential support, this effect has also been observed in authoritarian contexts, as seen in the two case studies analyzed above[329]. The paradox is most evident when examining the implications of unilateral sanctions on human rights. While these measures are justified as tools to promote and protect human rights, in practice they ultimately undermine those rights. This is because unilateral sanctions often operate in legal gray areas, making it difficult to monitor their humanitarian costs. Principles such as proportionality, necessity, and non-intervention, which are central to constitutional and international law, are often disregarded, as sanctions tend to cause more harm to populations than benefit in terms of political change[330]. For policymakers, these insights highlight the importance of a tailored approach accounting for the local political landscape, to avoid the situation of rallying behind the flag and the intensification of repression in non-democratic contexts. To be effective against non-democratic countries, sanctions must be designed so that the economic burden falls on political and economic elites, who have the real power to influence or change government

[328] B. R. DARYAKENARI, V. GHAFOURI, N. KASAP, *Who Rallies Round the Flag? The Impact of the US Sanctions on Iranian's Attitude toward the Government*, cit., pp. 18-19.

[329] B. REZAEEDARYAKENARI, *The Paradox of Economic Sanctions Against Non-Democratic Regimes*, in *Australian Institute of International Affairs,* 2024, available at: https://www.internationalaffairs.org.au/australianoutlook/the-paradox-of-economic-sanctions-against-non-democratic-regimes/.

[330] I. BOGDANOVA, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, cit., pp. 308-309.

decisions. If, on the other hand, the burden falls mainly on the population, they will tend to see the enemy externally, not within their own government, thus strengthening the regime. Indeed, if sanctions are general or poorly designed, they risk producing the opposite effect by strengthening nationalism, support for the regime and the tightening of repression. Moreover, it is essential that the population have the space to express their discontent, and that this discontent can connect with and strengthen the action of internal political actors[331]. Finally, the case studies analyzed teach us that unilateral sanctions, if not accompanied by adequate protection and proportionality mechanisms, risk being counterproductive. The apparent contradiction between the need to punish states that violate human rights and the obligation to protect these fundamental rights highlights the need to adopt these instruments with a more multilateral, proportionate, and rights-centered approach. The Special Rapporteur on unilateral coercive measures addressed overcompliance, i.e., excessive compliance with sanctions that go beyond what is required by law. In this context, the Rapporteur has presented several recommendations to banks and other financial service providers[332] First, he focused on the phenomenon of overcompliance, i.e., the tendency to apply restrictions that go beyond what is strictly required by sanctions. This can produce disproportionate consequences and pose significant risks. In this context, the Rapporteur calls on financial actors to adjust their compliance policies and verify whether the restrictions are broader than those required by law. Furthermore, he emphasizes the urgency to assess whether excessive compliance with unilateral sanctions has a detrimental impact on individuals' enjoyment of human rights. When adverse effects are identified, prompt corrective measures should be taken to eliminate or mitigate the harm. Finally, the Rapporteur draws attention to a key principle: the free flow of payments for goods essential to the survival of the populations of countries subject to sanctions. It follows, therefore, that the need to balance sanctions measures and the protection of the civilian population is not merely a matter of political effectiveness but also, above all, of protection of human rights. Indeed, the Rapporteur also addressed States, stating that they must ensure that banks and other financial service providers under their jurisdiction comply with the UN Guiding Principles, to avoid any negative impact on human rights. They must also assess the elements of their financial sector regulations that may encourage banks to over comply and reconsider such elements to remove this encouragement and finally monitor how financial sector

[331] B. REZAEEDARYAKENARI, *The Paradox of Economic Sanctions Against Non-Democratic Regimes*, cit., available at: https://www.internationalaffairs.org.au/australianoutlook/the-paradox-of-economic-sanctions-against-non-democratic-regimes/ .

[332] UNOHCHR, *Guidance Note on Overcompliance with Unilateral Sanctions and its Harmful Effects on Human Rights: Special Rapporteur on unilateral coercive measures*, available at: https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/resources-unilateral-coercive-measures/guidance-note-overcompliance-unilateral-sanctions-and-its-harmful-effects-human-rights.

overcompliance with sanctions affects critical infrastructures in sanctioned states[333]. In conclusion, the apparent discrepancy between the practical effects of unilateral sanctions and their stated objectives, especially in authoritarian contexts such as Venezuela and Iran, demonstrates that without adequate protection and oversight mechanisms, sanctions risk becoming counterproductive tools. Today, the need to strengthen and establish specific mechanisms seems obvious, such as humanitarian exemption systems for essential goods, continuous monitoring of the humanitarian effects of such sanctions, the involvement of international bodies and external experts, transparency and accountability, and multilateral coordination. These are the tools that can reduce the negative effects and enforce international obligations, thus maintaining unilateral sanctions as an effective and legitimate instrument of political pressure.

[333] UNOHCHR, *Guidance Note on Overcompliance with Unilateral Sanctions and its Harmful Effects on Human Rights*, cit., available at: https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/resources-unilateral-coercive-measures/guidance-note-overcompliance-unilateral-sanctions-and-its-harmful-effects-human-rights .

CONCLUSION

The aim of this thesis has been to shed light on the complex relationship between unilateral economic sanctions and the promotion and protection of human rights, with a particular focus on the Venezuelan case. Several objectives were pursued in this context. The first objective was to define and classify unilateral economic sanctions to clarify this concept and its use in state practice from historical, legal and practical perspectives. This classification was necessary because the term "economic sanction" takes on different connotations depending on the international, political and economic context, and because understanding their legal nature is crucial to assess the legitimacy of the measures taken. From these findings, it follows that without a clear conceptual framework, it would have been difficult to understand the implications of sanctions, as different actors often interpret their purpose and legality in different ways. Unilateral sanctions, in fact, are placed in a legal and normative grey area, unlike multilateral measures taken within the UN framework, they are often based on interpretations, such as of countermeasures or national security exceptions, that are not universally recognised in international law, rather than having a broad and clear legitimacy. This legal ambiguity has important consequences for both the states imposing sanctions and the populations affected, as it complicates accountability and transparency in their application. This demonstrates clearly that their legitimacy must be actively justified in each case. The second objective, therefore, was to explore the actual role of these unilateral sanctions in the context of international human rights protection and their legality. In fact, sanctions originated primarily as a non-violent instrument to enforce respect for human rights and resolve disputes between states without resorting to arms. Indeed, they represent an alternative to military conflict, based on economic and diplomatic pressure, with the aim of changing the behaviour of states deemed responsible for violations of fundamental rights principles. The third and final objective was to reverse the previous consideration and present the limits of such sanctions, highlighting their negative effects on the civilians of the targeted states. Over time, sanctions became a more complex tool, and economic, social, cultural, political and civil rights are strongly affected by restrictions limiting access to essential goods, exacerbating poverty, weakening public services and disrupting livelihoods. This finding confirms the central paradox of the thesis: whether unilateral sanctions are instruments of protection or violation of human rights. Hence, whether sanctions today still reflect their original purpose or are an instrument for achieving broader objectives that may conflict with human rights standards. The questions raised can only be answered through case-by-case analysis, which is why two important case studies were used for comparison, Venezuela, and Iran, providing concrete examples and highlighting their differences and similarities. Such a comparative approach enables a better understanding of the way sanctions interact

with domestic conditions, and it highlights the extent to which some human rights violations after sanctions are directly caused by the sanctions themselves or by pre-existing domestic conditions of the sanctioned country. The overall conclusion of the analysis is that sanctions, to be effective in the effort to protect and promote human rights, must be based on multilateral processes and rigorously evaluated according to fundamental principles such as proportionality, necessity and accompanied by effective measures to protect the civilian population. This leads to the implication that sanctions must be applied in a manner that minimizes the impact on civilians while targeting specific individuals or entities, thus ensuring that their application is justifiable. However, even when sanctions are justified on national security or legal grounds, their implementation often lacks such robust oversight, leaving affected population exposed to severe consequences that undermine the very objective they were intended to achieve. Hence, some recommendations can be identified whereby such sanctions can be recognised as both legitimate and effective. Firstly, their application must be transparent, establishing specific criteria that identify the objectives and specifying the evidence supporting their imposition, which must be rigorously underlined and verifiable. This is to prevent actions from being arbitrary and unfair, aimed solely at pursuing one's own interests, whether political or economic. It also helps to project the humanitarian costs of sanctions in advance, so that they can be mitigated, and appropriate remedial measures can be implemented. For example, humanitarian exemptions in this context could be an effective tool to ensure that sanctions policies do not restrict the movement of essential goods and services to affected civilians[334]. In practice, however, these humanitarian exemptions have often not worked effectively due to bureaucratic complexity, legal uncertainty, and limited scope. This implies that to improve their effectiveness, procedures need to be simplified, e.g., by reducing bureaucratic barrier to sending relief goods, providing more precise guidelines and legal safeguards for humanitarian organisations in the interference of such sanctions. Diplomacy is also very important in this context, to ensure that countries and entities are able to dialogue and engage in meaningful discussions on contentious issues[335]. It follows that only through a balanced, multilateral and rights-centered approach it will be possible to make sanctions an effective instrument consistent with the fundamental values of international law. The paradox is a reminder that legitimacy and effectiveness of human rights protection depend not only on intentions but also on the effective consequences of the instruments employed. Sanctions indeed cannot be considered as inherently

[334] M.S. HARED, P. MALUKI, S. HANDA, *The Human Cost of Sanctions: How Economic Penalties Affect Innocent Populations*, cit., p. 99.

[335] *Ibidem*.

protective of human rights, and its legitimacy depends on the type of measure and the legal elements that characterize it.

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