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Unilateral Sanctions in International Law

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Unilateral Sanctions in International Law

By Hannah Kiel

The Security Council adopted resolution 2216 (2015), imposing sanctions on individuals it said were undermining the stability of Yemen, April 14, 2015 (UN photo by Devra Berkowitz).

The legal assessment of sanctions is a complex endeavour. It combines many different areas of general international law with specific legal areas such as human rights or trade law, which apply only to certain domains. Furthermore, the question of whether or under which circumstances sanctions are lawful touches upon the foundations of international law. Unlike national law, international law lacks centralized enforcement mechanisms, making sanctions one of the few means of enforcing legal norms. As a result, sanctions can serve a legitimate legal claim, but their effectiveness is inseparably linked to the power of a state. Consequently, some states view them as leverage when enforcing international law, while others fear abuse of power and interference. Accordingly, states and the literature present very contradictory positions on the assessment of sanctions.

The legality of sanctions has been discussed with particular intensity over the last 30 years. Since the 1990s, the imposition of sanctions by the UN Security Council, which had previously rarely been effective due to the conditions of the Cold War, has increased exponentially.[1] At the same time, individual states and groups of states have also used sanctions significantly more often than before, with the United States and the European Union being particularly frequent users of this instrument.[2]

However, these sanction regimes, which often involved a comprehensive disruption of economic and financial relations, have proven to be ineffective. Moreover, comprehensive sanctions regularly led to devastating humanitarian crises. This was particularly evident in the context of the sanctions imposed on Iraq from 1990 to 2003 under a UN mandate.[3] Ineffectiveness and humanitarian crises then led to the belief that comprehensive sanctions should be replaced by so-called targeted or smart sanctions, which focus solely on key industries or selected individuals.[4]

The sanctions imposed in connection with the Russian war in Ukraine are currently at the centre of debate. As the Security Council is paralysed by Russia's veto power, a number of actors have taken this step. Among the key players have been the EU, a number of EU member states implementing EU sanction packages, and other states acting unilaterally, such as the United States. This current example, in the continuity of decades-long sanction practices by states, repeatedly raises questions about the legality of sanctions outside the mandate of the UN Security Council (hereinafter referred to as unilateral sanctions). As will be discussed in more detail in the next section, this paper understands unilateral sanctions not only as sanctions imposed by one state against another but also as sanctions imposed by groups of states such as the EU when such a mandate is lacking.[5]

In matters of military intervention, the Security Council clearly has a monopoly position. However, this is controversial with regard to non-military measures. If a state is injured by the violation of the law by another state, it is in principle undisputed that the latter may enact reciprocal sanctions. In such

1 Alain Pellet and Alina Miron, "Sanctions", in Max Planck Encyclopedia of Public International Law (August 2013), marginal no. 26.
2 Tom Ruys, "Immunity, Inviolability and Countermeasures – A Closer Look at Non-UN Targeted Sanctions", in Tom Ruys and Nicolas Angelet (eds.), The Cambridge Handbook of Immunities and International Law (Cambridge University Press, 2019), p. 670.
3 See SC Res S/RES/661 (6 August 1990).
4 Matthew Happold, "Targeted Sanctions and Human Rights", in Matthew Happold and Paul Eden (eds.), Economic Sanctions and International Law (Bloomsbury, 2016), p. 88.
5 However, the terminology in the literature is not consistent at this point. In some cases, EU sanctions are referred to as multilateral, see e g. Alexander Orakhelashvili, "The Impact of Unilateral EU Economic Sanctions on the UN Collective Security Framework: The Cases of Iran and Syria", in Ali Z. Marossi and Marisa R. Bassett (eds.), Economic Sanctions under International Law (Springer, 2015).

a case, one speaks of a state's right to self-help.[6] Often, however, a situation presents itself in which the imposition of sanctions by the injured state itself is not possible, or has little prospect of success. Moreover, there are situations in which no state is itself injured because the victim of the breach of law is the civilian population. The question of whether, or under what conditions, other states (so-called third states) can also react to the violation of the law by means of sanctions is a legal grey area.[7] However, as will be discussed in more detail in the following sections, the overwhelming opinion in the literature is that no general rule exists that prohibits unilateral sanctions per se.[8] Therefore, states may impose sanctions, provided that there is no specific rule of international law to the contrary.

The latter holds true even in light of a significant number of UN General Assembly resolutions condemning unilateral coercive measures. Since the 1990s, unilateral coercive measures have faced, and continue to face, continuous criticism from the General Assembly for their illegality under international law and their negative impact on human rights and the economies of developing countries.[9] Reflecting on this, the question was raised by the then UN Special Rapporteur Idriss Jazairy in his report as to whether this signalled the emergence of a new prohibition under customary international law.[10] While this is widely rejected in legal scholarship,[11] significant political value must be attached to the strong rejection by the UN General Assembly. In contrast, legal value can arise from this rejection only if the conditions for the emergence of customary international law were met: an ongoing and general state practice (read: states would thus have to actually refrain from sanctions), which is based on a state's legal conviction (read: states

6 Such sanctions are legally classified as countermeasures; for more on this see sections 1 and 2 of this study.

7 Iryna Bogdanova, Unilateral Sanctions in International Law and the Enforcement of Human Rights (Brill, 2022), p. 309; Tom Ruys, "Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework", in Larissa van den Herik (ed.), Research Handbook on UN Sanctions and International Law (Edward Elgar Publishing, 2016), p. 27; Nema Milaninia, "Jus ad bellum economicum and jus in bello economico: The Limits of Economic Sanctions under the Paradigm of International Humanitarian Law", in Marossi/Bassett, fn. 5, pp. 96–97.

8 Barry Carter, "Economic Sanctions", in Max Planck Encyclopedia of International Law (April 2011), para. 30; Alexandra Hofer, "The Developed/ Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?" 16 Chinese Journal of International Law 175 (2017), p. 212; Paul de Waart, "Economic Sanctions Infringing Human Rights: Is There a Limit?", in Marossi/Bassett, fn. 5, pp. 137–38; Daniel Joyner, "International Legal Limits on the Ability of States to Lawfully Impose International Economic/Financial Sanctions", in Marossi/Bassett, fn. 5, p. 86; cf. Rahmat Mohamad, "Unilateral Sanctions in International Law: A Quest for Legality", in Marossi/Bassett, fn. 5; for further discussion on this question see Section 2.1.1.1 of this study.

9 "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States", GA Res 2131 (XX) (21 December 1965); "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States", GA Res 26/25 (24 October 1970); "Charter on the Economic Rights and Duties of States", GA Res 3281 (XXIX) (12 December 1974); "Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States", GA Res 36/103 (9 December 1981); "Economic Measures as a Means of Political and Economic Coercion against Developing Countries", GA Res 46/210 (20 December 1991), as well as resolutions with the same title from the following years; "Human Rights and Unilateral Coercive Measures", GA Res 51/103 (12 December 1996), as well as resolutions with the same title from the following years, the most recent of which being GA Res A/RES/76/161 (7 January 2022); GA Res 46/5 (23 March 2021); GA Res 43/15 (22 June 2020); GA Res 40/3 (21 March 2019).

10 HRC, "Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights", Idriss Jazairy, A/HRC/30/45 (10 August 2015), para. 47.

11 For more on this, see Section 2.1.1.1 of this study.

would have to express that they refrain from sanctions, because they are unlawful).[12]

Since the emergence of such a general prohibition on sanctions is rejected, their legality must be determined in each concrete individual case in conjunction with a multitude of rules of international law.[13] Only if a sanction in its concrete shape meets the requirements of the relevant norms would it be lawful. It should be noted that the concept of sanctions is very broad, and that its various shapes are subject to very different legal rules. This will be discussed further in Section 1 below. Sections 2 and 3 will then set out in two steps which rules of law are relevant to the various sanctions. The international legality of a sanction can only be determined if it has first been established which obligations the acting state has in the first place, and whether these contradict the specific sanction. There may also be sanctions that do not affect any obligation under international law from any point of view; one example often cited of this is the termination of voluntary aid programmes.[14]

First of all, every state — irrespective of any international treaty obligation — is bound by those rules that apply under customary international law. Customary international law relevant to sanctions is, in particular, the prohibition of intervention, as well as some human rights obligations. Apart from that, the legality of a sanction is determined by the bilateral or multilateral treaties to which a state has committed itself. Therefore, it is quite possible that the sanction imposed by state A on state B is illegal, even though the same sanction would be legal between states B and C.[15] Consequently, a state that is party to few international treaties has more leeway to impose sanctions than one that is bound by many obligations. The term primary obligation will hereinafter be used for this question — i.e. the question of whether a state has an obligation under international law to refrain from taking a measure.

If, after an examination of a state's primary obligations, it is determined that these contradict the imposition of a sanction, this does not necessarily mean that the sanction is unlawful. Rather, it must be further asked whether there is a justification under international law for this possible violation. Section 3 therefore discusses the question of justifications such as a state's right to

12 Tullio Treves, "Customary International Law", in Max Planck Encyclopedia of Public International Law (November 2006), para. 10.
13 D. Joyner, fn. 8. p. 86.
14 Such measures are referred to as retortions, see International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries 2001", Yearbook of the International Law Commission, 2001, vol. II (Part Two) (ILC Commentary), p. 128 (introduction to Articles 49–54 of the Articles on Responsibility [ASRIWA]); Ruys, fn. 7, p. 24.
15 See Ruys, fn. 7, pp. 24–25.

self-help, the right to individual or collective self-defence, and the question of whether groups of states such as the EU have a privileged position compared to individual states.

1. The Concept of a Unilateral Sanction

There is no internationally accepted definition of the term sanction. Under a broad understanding, it may encompass all non-military measures aimed at inducing an actor to behave in a norm-compliant manner.[16] Under this understanding, reactions by the UN Security Council, by associations of states, or by individual states to a state's violation of the law can therefore be described as sanctions. They can be directed against states or non-state actors and involve restrictions on trade, finance, investment, or travel.[17] In most cases, states impose not just one measure but a sanctions regime, i.e. a bundle of different interrelated measures. The restrictions may be comprehensive, or they may apply to specific sectors alone. These are referred to as comprehensive or sectoral sanctions respectively.

The term sanction is legally imprecise.[18] It is not used directly in any international law instrument. The United Nations International Law Commission (ILC) does refer to this term in its commentary on the Draft Articles on the Responsibility of States for Actions in Violation of International Law.[19] However, it understands it to mean only those measures that are both in response to a violation of international law and imposed by an international organization, in particular the Security Council.[20] This is in line with a growing trend in international discourse to understand the term sanction only in the context of protecting community interests and the institutionalization of organizations with a certain guardian role.[21]

In this thesis, the term is not understood in such a narrow way. Yet, for a thorough understanding of the literature on the legitimacy of sanctions, it is important to be aware of two different modes of sanctions: on the one hand, measures taken in the pursuit of community interests; and on the other

16 Pellet/Miron, fn. 1, para. 4.
17 In this context, trade sanctions often take the form of restrictions on exports (embargoes) and imports (boycotts); financial sanctions take the form of, for example, freezing state assets held abroad, restricting access to financial markets, and placing restrictions on loans and credit, international money transfers, selling and trading real estate abroad, or freezing development assistance; see Joseph Schechla, "Extraterritorial Human Rights Obligations in the Context of Economic Sanctions", in Mark Gibney, Gamze Erdem Türkelli, Markus Krajewski, Wouter Vandenhole (eds.), Routledge Handbook on Extraterritorial Human Rights Obligations (Routledge, 2022), p. 256; Tom Ruys and Cedric Ryngaert, "Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions", *British Yearbook of International Law 1 (2020), p. 7.*
18 ILC Commentary, fn. 14, p. 128.
19 Ibid.
20 Ibid.
21 Pellet/Miron, fn. 1, paras. 6–8; This linguistic reduction of the concept of sanctions, however, does not mean that its proponents always affirm the legality of measures taken by regional organizations.

hand, measures taken in self-help. A state is in a self-help situation when another state behaves unlawfully toward it. A state may defend itself against this by taking measures to induce the other state to act in conformity with the law. If this self-help measure unavoidably consists of a breach of the state's own obligations under international law, it is legally referred to as a countermeasure.[22] If such a countermeasure meets certain requirements (in particular, if it is proportionate to the original violation of the law), it is covered by the justification of self-help and is thus legal.[23] Countermeasures are thus recognized as a form of sanction that is lawful. What is very controversial, however, is the question of whether this justification is also available to other states (i.e. those that are not themselves directly violated by the original breach of law).[24]

This study focuses exclusively on the legal questions relating to unilateral sanctions.[25] As outlined above, sanctions are unilateral if they are not based on a resolution of the UN Security Council or if a resolution exists but the unilateral measure goes beyond its scope. On the basis of Art. 41 of the UN Charter, the UN Security Council can decide on measures to be implemented by the UN member states. A precondition for this is that it has previously determined a threat or breach of the peace or an act of aggression in accordance with Art. 39 of the UN Charter. These can then be enforced by member states, but must remain within the scope of the mandate. Action by the UN General Assembly cannot replace such a mandate, because the General Assembly can only adopt recommendations that have no direct legally binding effect — and therefore no permissive effect.[26] Questions that arise with regard to the legality of sanctions with a UN Security mandate will not be addressed in the following sections.[27]

2. On the Question of Relevant

22 The concept of countermeasure must be distinguished from retorsion, i.e. a measure that is taken in self-help but would be lawful even without a self-help situation, because it is lawful per se, even if it is considered an "unfriendly" measure, see ILC Commentary, para. 14, p. 128, which suggests that retorsion can encompass a variety of actions: "Acts of retorsion may include the prohibition of or limitations upon normal diplomatic relations or other contacts, embargoes of various kinds or withdrawal of voluntary aid programmes".

23 See ILC Commentary, fn. 14, p. 128; for more on this see Section 3.1 of this study.

24 For more on this see Section 3.2 of this study.

25 Sometimes also called autonomous sanctions or non-UN sanctions, see e.g. Tom Ruys, "Immunity, Inviolability and Countermeasures", fn. 2, p. 670.

26 A binding effect may arise indirectly, because recommendations of the General Assembly may have special significance for the formation of customary international law. However, the identification of customary international law is not based on this alone, but on a synopsis of the general practice of states, as well as their legal convictions, see Christian Tomuschat, "United Nations, General Assembly", in Max Planck Encyclopedia of Public International Law (April 2019), para. 22; however, this type of binding effect has no relevance to the legal assessment of sanctions in a specific conflict. Rather, it is only relevant to the question of whether, in the longer term, a prohibition under customary law arises when states permanently criticize the illegality of such sanctions in the General Assembly.

27 This concerns, for example, the question of the Security Council's commitment to human rights standards or the question of whether the UN Security Council has a carte blanche in assessing the requirements of Articles 39 and 41 of the UN Charter, see e.g. Ruys, fn. 7, pp. 36–41.

Primary Obligations: What Legal Rules Potentially Limit a State's Freedom to Impose Unilateral Sanctions?

This section discusses positions on the compatibility of sanctions with a number of legal rules. There is broad agreement that the withdrawal of exclusively voluntary aid programmes and the severance of diplomatic relations are legal per se.[28] A little less unanimous, but still accurate, is the view that arms embargoes are also legal per se.[29]

By contrast, there is little agreement as regards other sanctions. These must in particular be reviewed for their compatibility with the (2.1) prohibition of intervention,[30] (2.2) human rights treaties and international humanitarian law, and (2.3) WTO law. Other primary obligations of the state may also result, for example, from immunity law,[31] bilateral or regional free trade agreements, provisions of the International Monetary Fund,[32] multilateral or bilateral rules of investment protection agreements,[33] and customary rules on the treatment of foreign nationals.[34] A sanction that does not contradict any of these rules is lawful per se; a sanction that contradicts these rules may be justified under the conditions set out in Section 3 and may therefore be lawful in the final analysis.

2.1 Principle of Non-Intervention

It is recognized in international law that state coercion, economic or otherwise, must not extend to illegal interference in the internal affairs of another state. It is known as the principle of non-intervention and has reached

28 Ruys, fn. 7, p. 24.
29 See Kirsten Schmalenbach, "International Organizations or Institutions, Supervision and Sanctions", in Max Planck Encyclopedia of Public International Law (November 2020), para. 25; the ILC speaks of "embargoes of various kinds", see ILC Commentary, fn. 14, p. 128.
30 In some cases, it is also argued that the prohibition of the use of force under Article 2(4) of the UN Charter could run counter to sanctions. However, this view must be rejected, since the prohibition of the use of force relates solely to military force, see e.g. Vaughan Lowe and Antonios Tzanakopoulos, "Economic Warfare", in Max Planck Encyclopedia of Public International Law (March 2013), para. 29; Bogdanova, fn. 7, p. 309.
31 In particular, with regard to targeted sanctions against state institutions and senior representatives of a state (e.g. travel restrictions or freezing the assets of a state-owned bank), one will have to deal with the legality of such measures under immunity law. Some voices in the literature argue that this would violate the prohibition on interference with the exercise of diplomatic functions, which also applies to sanctions, see e.g. Jean-Marc Thouvenin and Victor Grandaubert, "The Material Scope of State Immunity from Execution", in Tom Ruys and Nicolas Angelet (eds.), The Cambridge Handbook of Immunities and International Law (Cambridge University Press, 2019), pp. 247–50; Bogdanova, fn. 7, p. 240; see also Rosanne van Alebeek, "Immunity, Diplomatic", in Max Planck Encyclopedia of Public International Law (May 2009), para. 52. Nevertheless, there are good reasons to apply the law of immunity solely in the contexts of judicial decisions (and thus not to sanctions), see Tom Ruys, "Immunity, Inviolability and Countermeasures – A Closer Look at Non-UN Targeted Sanctions", in Ruys/Angelet, fn. 31, p. 673.
32 Which provides in Article VIII(2)(a) that no IMF member "shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions".
33 See e.g. Anne van Aaken, "International Investment Law and Decentralized Targeted Sanctions: An Uneasy Relationship", Columbia FDI Perspectives no. 164, 4 January 2016.
34 See Ruys, fn. 7, p. 31.

customary international law status and therefore is binding for all states.[35] However, the distinction between legal action in economic freedom and illegal coercion is highly controversial.[36] One of the most famous definitions of the scope of the prohibition on intervention is found in the International Court of Justice (ICJ) decision on Nicaragua. There, the ICJ found that US economic measures against Nicaragua did not violate the prohibition. Nevertheless, there is debate in the literature as to whether, regardless of the ICJ decision, a rule of international law has emerged — or is emerging — according to which all unilateral sanctions are illegal interventions. However, since this is rejected by the majority, the literature further discusses which factors are decisive in order to clearly demarcate the difference between legal economic measures and illegal intervention. The judgement, as well as the two strands of discussion mentioned above, are outlined below.

2.1.1. The Prohibition of Intervention in the Nicaragua Judgement

The ICJ defined the prohibition of intervention in its Nicaragua judgement as follows: "the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely".[37] The prohibition is characterized by two elements: 1) an intervention in the internal affairs (so-called "domaine réservé") of a state, which 2) is carried out by means of coercion. The ICJ stated that the element of coercion is evident when a state intervenes militarily.[38] However, with respect to specific economic measures taken by the US against Nicaragua[39] the ICJ held 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".[40]
The ruling represents a fundamental decision on the understanding of the prohibition of intervention. At the same time, however, it remains vague with regard to its application to economic coercion. Although it can be inferred that the court did not assume a violation of the prohibition in the case at hand, explanations on the reasons for this assumption are missing at the decisive points. Thus, it can be said that the ICJ does not consider economic measures such as trade embargoes to be in violation of the prohibition of intervention per se. Nevertheless, it may be that in other cases a violation

35 See e.g. Philip Kunig, "Intervention, Prohibition of", in Max Planck Encyclopedia of Public International Law (April 2008), para. 2; Hofer, fn. 8, p. 180.
36 Kunig, fn. 35, para. 25; Paul de Waart, fn. 8, p. 136.
37 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (Merits) (Judgement) [1986] ICJ Rep 14, marginal no. 205.
38 Ibid.
39 These measures consisted of the suspension of economic aid to Nicaragua, a 90 percent cut in the sugar quota for US imports from Nicaragua, and ultimately a trade embargo.
40 Military and Paramilitary Activities in and Against Nicaragua, paras. 244–45.

would exist.[41]

Is There a Customary Prohibition on All Unilateral Sanctions?
A number of states express the view that all economic sanctions are illegal interventions, with this discourse driven primarily by China, India, and Russia.[42] A considerable number of UN General Assembly resolutions point in the same direction.[43] There is considerable opposition to unilateral coercive measures; the accusation is that this is intervention in the affairs of a state. Despite this, there is widespread agreement in the literature that no all-encompassing prohibition has emerged.[44] The requirements for customary law have not been met: neither general recognition of the prohibition by states in their practice, nor a shared corresponding legal belief. Two aspects in particular impede the assumption that a legal prohibition of sanctions can be established on the basis of these resolutions.

First, while the number of supporters of a prohibition is considerable, it is offset by an equally considerable number of opposing states and organizations.[45] The debate persists in a dispute between states of the Global South, Russia, and China on the one hand, and countries of the Global North on the other.[46] According to the rules of international law, this dichotomy of positions is simply not sufficient to give rise to a new prohibition under customary law.

Second, the behaviour of the opponents of unilateral sanctions is contradictory. This can be seen, for example, in the fact that the most active opponents of unilateral sanctions, i.e. Russia and China, regularly resort to this very means themselves in their practice.[47] Moreover, this is also reflected in the behaviour of states in their votes to the General Assembly: an overall view of resolutions condemning sanctions, with those favouring them, is puzzling. In particular, from the 1960s to the 1980s, a number of coercive measures were explicitly recommended by the General Assembly.[48] This is

41 Maziar Jamnejad and Michael Wood, "The Principle of Non-intervention", Leiden Journal of International Law 345, 22(2) (2009), p. 371; Julia Schmidt, "The Legality of Unilateral Extra-territorial Sanctions under International Law", *Journal of Conflict and Security Law 53, 27(1) (2020), p.* 79.
42 See e. g. Joint Communiqué of the 14th Meeting of the Foreign Ministers of the Russian Federation, the Republic of India, and the People's Republic of China, 19 April 2016, para. 6, available at: http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1356652.shtml; see also "The Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law", 26 June 2016, Ministry of Foreign Affairs of the PRC, available at: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201608/t20160801_679466.html#:~:text=The%20People's%20Republic%20of%20China%20and%20the%20Russian%20Federation%20reiterate,States%20in%20accordance%20with%20the; Hofer, fn. 8; Carter, fn. 8, para. 29.
43 See citations in fn. 9.
44 Hofer, fn. 8, p. 178; Antonios Tzanakopoulos, "The Right to Be Free From Economic Coercion", Cambridge Journal of International and Comparative Law 616 (2015), no. 4; Bogdanova, fn. 7, p. 71.
45 In particular, the US, the EU, as well as other industrialized countries, see Hofer, fn. 8.
46 Hofer, fn. 8.
47 With further references, see Bogdanova, fn. 7, p. 68 and p. 309.
48 Regarding the struggles for self-determination and independence in Africa, see e.g. GA Res 2107 (XX) (21 December 1965) regarding Portuguese territory, see GA Res 2383 (XXIII) (7 November 1968) regarding South Rhodesia, see GA Res 1899 (XVIII) (13 November 1963) on the South African apartheid regime, see GA Res 36/172

particularly evident in the fact that resolutions condemning sanctions and those recommending them in a specific case were adopted only a few days apart from one another.[49] This suggests that the states that generally oppose unilateral sanctions in the General Assembly do not believe this to be an impermeable legal rule that should not be deviated from for the sake of other principles. It is consistent with these contradictions that the language in resolutions condemning sanctions remains too vague to draw legal conclusions from on this basis.[50]

As a result, since no prohibitive rule has emerged with respect to unilateral sanctions, the principle of international law applies, according to which states are free to impose sanctions unless prohibited by other specific norms.[51]

2.1.1.2 Differentiating between Legal Economic Coercion and Illegal Intervention on the Basis of Various Factors

Despite the absence of a general prohibition, sanctions may be prohibited in cases of extreme interference. As Tom Ruys summarized in 2016, "It remains altogether unclear to what extent exactly the principle of non-intervention prohibits certain economic sanctions".[52] What is clear, however, is that the scope of the intervention prohibition has for the most part become narrower in recent decades. The reason for this is that the "domaine réservé" of a state, which may not be intervened in by means of coercive measures, is being pushed back increasingly. The domaine réservé is the core area of state sovereignty. It consists of those domestic matters which are not affected by international regulation. Traditionally, this has been understood to include the choice and design of a political, economic, social, and cultural system, as well as the formulation of foreign policy.[53] However, increasingly fewer areas are "purely domestic", as these are increasingly subject to international treaties. The reason for this is advancing globalization, growing interconnectedness between states, and the rise of common challenges (such as in the environmental sphere and cybersecurity).[54]

D (17 December 1981); GA Res 41/35 A-B (10 November 1986); with regard to the Israel–Palestine conflict, see GA Res 36/27 (13 November 1981); GA Res 42/209 B (11 December 1987); GA Res 46/82 A (16 December 1991); see Rebecca Barber, "An exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions", International and Comparative Law Quarterly 343 (2021), no. 70(2), p. 345.

49 E.g. the 1981 Declaration on the Inadmissibility of Intervention was adopted by a majority of 120 votes to 22, with 6 abstentions (GA Res 2131 (XX), 21 December 1965) while only a few days before the adoption of a resolution on Israel, in which the Assembly, by a majority of 94 to 16, with 28 abstentions, called on states to cease providing Israel with military, economic, and financial resources that would encourage it to continue its aggressive policy towards Arab countries (UNGA Res 36/226 A (17 December 1981); for this and for further examples see Barber, fn. 48, pp. 355–56.

50 Hofer, fn. 8, p. 178.

51 This corresponds to the Lotus principle of international law, going back to the Case of the S.S. Lotus (France v. Turkey), Judgement, PCIJ 1927, p. 18; see also Hofer, fn. 8, p. 180.

52 Ruys, fn. 7, p. 27.

53 Kunig, fn. 35, para. 3.

54 Ibid.; Katja S. Ziegler, "Domaine Réservé", in Max Planck Encyclopedia of Public International Law (April 2013), para. 2; it is sometimes deduced from this that a state de facto no longer has any inviolable area at all, see

Given these unclear boundaries, the literature is very hesitant to specify sanctions regimes in which the principle of non-intervention has been violated. While some of the literature does not name any examples of this, a considerable part classifies the sanctions regime of the US against Cuba in 1996 (the so-called Helms–Burton Act)[55] as a violation of the principle of non-intervention.[56] This is argued on the basis of its particularly constraining design: Prior to 1996, the US had already enacted sanctions that were effective against Cuba, but the Helms–Burton Act significantly escalated them. Not only did it impose the US embargo on Cuba, but it also imposed a boycott on foreign companies that engaged in trade with Cuba.[57] The direct embargo against Cuba is referred to as a primary sanction, while sanctions against other actors are referred to as secondary sanctions. The latter are enacted to enhance the effectiveness of the primary sanctions; they act against uninvolved actors to induce them to contribute to the economic and financial isolation of the primary sanctioned state.[58]

This indicates that a measure taken by a state A against a state B is more likely to violate the principle of non-intervention where state B is highly dependent on trade with state A. Such a criterion of dependence is closely related to the criterion of a sanction's intensity: the more dependent a state is, the more intense the effect of a sanction and the more likely it is to be classified as contrary to international law. In this context, special importance must be given to the question of whether the intensity of the sanction poses a threat to the right of self-determination of the state concerned.[59]

Sometimes it is also referred to as a criterion whether the respective sanction pursues an undue purpose,[60] or whether its intensity is proportionate

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Tzanakopoulos, fn. 44.

55 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. §§ 6021-6091 (1996).

56 Ruys, fn. 7, p. 27; Schmidt, fn. 41, p. 75; Nigel D. White and Ademola Abass, "Countermeasures and Sanctions", in Malcom D. Evans (ed.), International Law (Oxford University Press, 5th ed., 2018), p. 536; Matthias Valta, "Wirtschaftssanktionen gegen Russland und ihre rechtlichen Grenzen", 28 February 2022, Verfassungsblog, available at: https://verfassungsblog.de/wirtschaftssanktionen-gegen-russland-und-ihre-rechtlichen-grenzen/; see also Jamnejad/Wood, fn. 41, p. 370.

57 Ruys/Ryngaert, fn. 17, p. 23;

58 See Schmidt, fn. 41, p. 60; in addition, such secondary sanctions are legally problematic not only with regard to the primary sanctioned country (here Cuba), but also with regard to their effect on third countries or economic actors in these third countries. Irrespective of the question of intervention in the affairs of the primary sanctioned state, the question arises here whether the prohibition of intervention is violated in relation to the third states, see Schmidt, fn. 41, pp. 77–80. In this context, it is discussed in particular whether the sanctioning state lacks the necessary jurisdiction to regulate the subject matter in the case of secondary sanctions (see Ruys/Ryngaert, fn. 17), because this would have the consequence that an intervention would have to be affirmed (see Jamnejad/Wood, fn. 41, pp. 372–73). It is also argued that such sanctions are unlawful because they constitute an abuse of law (see Schmidt, fn. 41, p. 81). The US also imposed secondary sanctions in other cases, such as on Iran (see Comprehensive Iran Sanctions, Accountability, and Divestment Act [Public Law 111–195 — 1 July 2010]). These, too, are often criticized, but less frequently cited than the Cuban sanctions as a clear violation of the non-intervention principle.

59 Thomas Giegerich, "Retorsion", in Max Planck Encyclopedia of Public International Law (September 2020), para. 24; Julia Schmidt, fn. 41, p. 75; White/Abass, fn. 56, p. 536.

60 Richard B. Lillich, "Economic Coercion and the International Legal Order", International Affairs 358 (1975), no. 51(3), p. 366.

to this purpose.[61] However, caution is required when assessing the purpose of a measure, as this represents a very subjective criterion and is therefore exposed to a high risk of legal uncertainty and the danger of abuse.[62] Moreover, this cannot be derived on the basis of the classic elements of the prohibition of intervention — an "intervention in the internal affairs of a state" that is carried out "by means of coercion". It should be recalled that the ICJ stated flatly that the coercive element of the prohibition of intervention is evident if a state intervention is carried out by military means.[63] A restriction regarding the purpose of such interventions was specifically not made.

As a result of these considerations, the question of the coerciveness of a sanction within the meaning of the non-intervention principle is determined by the criteria of the dependence of the sanctioned state on the sanctioning state; the intensity of the sanction, and in particular the degree of danger it poses to the right of self-determination of peoples. The objection may be given that this leads to a somewhat paradoxical result: the more coercive and thus the more effective a sanction is, the greater the potential for it to violate the non-intervention principle.[64] However, paradoxical results are neither unknown to international law[65] nor does it constitute a peculiarity of sanctions that a state may use its effective means only up to the limit of illegality. The literature is not clear as to which cases violate the threshold of unlawful intervention, but only in extreme cases (such as the US sanctions regime against Cuba) is a violation clearly established.

Ultimately, one must accept that opponents of a sanctions policy will always argue that it is unlawful in view of the ambiguities outlined above. At the same time, supporters can argue that it is precisely because of this ambiguity that this question must be resolved in favour of the freedom of a state. For the latter corresponds to the principle of international law, according to which a state maintains its freedom until and unless a restrictive prohibition is established.

2.2 Human Rights and International Humanitarian Law

Sanctions often have a detrimental effect on the living conditions of the population of a targeted state.[66] This is particularly the case when they are

61 Kunig, fn. 35, para. 25; similarly, Christopher Joyner, "Boycott", in Max Planck Encyclopedia of Public International Law (March 2009), para. 9; see also Valta, fn. 56.
62 Ruys, fn. 7, p. 27.
63 Nicaragua v United States of America, fn. 37, para. 205.
64 Ruys, fn. 7, p. 27.
65 Ruys, "Immunity", fn. 2, p. 708.
66 Katariina Simonen, "Economic Sanctions Leading to Human Rights Violations: Constructing Legal Argument", in Economic Sanctions under International Law – Unilateralism, Multilateralism, Legitimacy, and Consequences (Springer, 2015), p. 180.

used by powerful states against weaker states, as in these cases there is a risk of massively affecting the entire infrastructure of a state.[67] The effects on living conditions are dealt with by international humanitarian law (which, however, is exclusively applicable in times of armed conflict), and human rights law (which sets the standard primarily in peacetime).[68] Neither human rights law nor international humanitarian law establishes a general prohibition on sanctions. They do, however, provide criteria that must be met in order for a sanction to be lawful. The lawfulness can therefore — once again — only be determined on the basis of the circumstances of the individual case.

2.2.1 International Humanitarian Law

International humanitarian law sets a standard that reflects the absolute minimum for humane standards in situations of armed conflict.[69] Sanctions must therefore never contradict these minimum requirements.[70] Above all, the protection of the civilian population is paramount. International humanitarian law includes provisions that prohibit the starvation of civilians as a method of warfare.[71] In addition, civilians have a right to humanitarian assistance under the Geneva Conventions.[72] These rights must be guaranteed in two ways: first, sanctions must include provisions that require states to allow the movement of aid; second, sanctions must be designed to allow humanitarian organizations to provide humanitarian assistance.[73]

These rights of civilians are clearly violated when sanctions regimes do not include appropriate humanitarian exemptions for food and medical supplies. In considering the impact and design of exemptions, states must pay particular attention to those most affected by sanctions (e.g. to minimize impacts on children and the elderly).[74] It must also be ensured that the import of food and medical supplies is not delayed by complex or time-consuming administrative requirements.[75] International humanitarian law thus contains

67 Simonen, fn. 66, p. 180; see also D. Joyner, fn. 8, p. 91.
68 Moreover, the core aspects of human rights remain applicable also in armed conflicts.
69 See Hans-Peter Gasser, "Collective Economic Sanctions and International Humanitarian Law – An Enforcement Measure under the United Nations Charter and the Right of Civilians to Immunity: An Unavoidable Clash of Policy Goals?" Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 871 (1996), no. 56, p. 873.
70 This also means that none of the potential justifications listed in Section 3 cover a breach of international humanitarian law.
71 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Articles 54, 69, and 70; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, Article 14.
72 For international conflicts, for example, this is enshrined in Article 23 of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (Convention IV); for non-international conflicts in Article 18.2, Protocol II; for more on this see Anna Segall, "Economic Sanctions: Legal and Policy Constraints", (1999) (836) 81 International Review of the Red Cross 763, pp. 767–69.
73 Segall, fn. 72, p. 767–68; this claim is conditional on the consent of the warring parties. However, the parties in turn have an obligation under international humanitarian law to provide this consent.
74 Segall, fn. 72, p. 776.
75 Segall, fn. 72, p. 777.

requirements for both comprehensive and sectoral sanctions regimes. Moreover, the right to humanitarian assistance may also be affected by sanctions that interfere with the infrastructure of humanitarian work.[76]

International humanitarian law also affects how sanctions against individual persons must be designed and formulated. Individual sanctions, such as the freezing of accounts or travel restrictions, are often not only directed against specific individuals, but instead are linked to abstract criteria. For example, in connection with the imposition of counterterrorism sanctions, they were linked to whether a person supported terrorist groups. Here, it is not only problematic that there is no internationally-recognized definition of terrorism. Rather, criminalizing acts of support for terrorist groups risks criminalizing humanitarian aid workers as well. For such a criterion could also be affirmed when humanitarian aid workers provide medical care. However, a person's right to humanitarian assistance is independent of the person's classification as a terrorist. Therefore, international humanitarian law requires that sanctions be formulated more narrowly so as not to restrict humanitarian assistance. In the above example, therefore, the sanction must not be based on support for a terrorist group, but only on whether a person knowingly supports a terrorist act.[77]

2.2.2 Human Rights

Human rights exist as rights in various forms. They are contained in a number of UN Conventions, in particular the International Covenant on Civil and Political Rights (ICCPR)[78] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[79] In addition, human rights treaties have been concluded within the UN framework providing special protection for certain groups, such as the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities.[80] In addition, regional organizations have created their own human rights treaties, such as the European Convention on Human Rights or the African Charter

76 This includes, for example, that humanitarian work can only be guaranteed if humanitarian personnel are not hindered in their movement or communication. In this sense, fuel embargoes, for example, also violate international humanitarian law if they do not include exceptions for humanitarian work. The same may be the case for sanctions that restrict the work of telephone providers if this makes it impossible for humanitarian personnel to communicate.

77 Such a problem arose, for example, in the context of the implementation of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) and the implementation of UN Res. 1373/2001 (28 September 2001). Although both the Convention and the Resolution were more narrowly worded, some states created their own regulations to implement them and expanded the connecting criterion to include support for terrorist groups.

78 International Covenant on Civil and Political Rights (16 December 1966, entered into force 23 March 1976), 999 UNTS 171.

79 International Covenant on Economic, Social and Cultural Rights (16 December 1966, entered into force 3 January 1976), UNTS 993.

80 Convention on the Rights of the Child (20 November 1989, entered into force 2 September 1990), UNTS 1577; Convention on the Rights of Persons with Disabilities (30 March 2007, entered into force 3 August 2008), UNTS 2515.

on Human Rights. However, the situation is different with the Universal Declaration of Human Rights. While it was adopted by the UN General Assembly without any dissenting votes, it was not recognized by those states as legally binding. Legal obligations therefore cannot be derived directly from it. Nevertheless, some of its provisions are recognized as customary law.[81]

In determining whether a state is bound by a human right enshrined in a Convention, it must first be ascertained whether that state is party to the relevant Convention. Naturally, in the case of regional treaties, this is only the case for those states belonging to the respective regional international organization. However, by no means have all states acceded to the UN Conventions either. For example, of the UN Conventions mentioned, the US has only ratified the ICCPR. If a state is not party to the Convention, there is still the possibility that the corresponding human right also applies under customary international law, or that a customary international law has a wider application than that which is explicitly included in a treaty.
In the case of individual sanctions aimed at targeting specific individuals, human rights particularly affected may include the right to property, and the rights to privacy and to reputation.[82] In addition, procedural human rights provisions may also be violated, such as the right to be heard in court and the right to effective judicial protection.[83]Human rights provisions that are affected by comprehensive or sectoral sanctions in particular include: the right to life, to health, and to an adequate standard of living. The latter includes the right to food, clothing, medical care, and freedom from hunger.[84] States have an obligation to work toward the realization of these rights.[85] Since sanctions by their very nature aim to harm a state economically, in the vast majority of cases they will have an adverse effect — directly or indirectly — on human rights.[86] On this basis, it is sometimes argued that sanctions are inherently contrary to human rights.[87] However, the relationship between sanctions and human rights is more complex, and there are conflicting views as to whether a state violates its human rights obligations when it imposes sanctions, and if so, at what point this occurs.

2.2.2.1 The Extraterritorial Application of Human Rights

The uncertainty in this area has its roots in the conception of human rights

81 Thomas Buergenthal, "Human Rights", in Max Planck Encyclopedia of Public International Law (March 2007), para. 9.
82 S. Ghasem Zamani and Jamshid Mazaheri, "The Need for International Judicial Review of UN Economic Sanctions", in Marossi/Bassett, fn. 5, pp. 220–21.
83 Happold, fn. 4, p. 99.
84 D. Joyner, fn. 8, p. 91.
85 Segall, fn. 72, p. 771.
86 Milaninia, fn. 7, p. 99, with reference to UN, Committee on Economic and Social Rights, General Comment No. 8, the Covenant on Economic and Cultural Rights: The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights, E/C.12/1997/8 (12 December 1997), para. 3.
87 Mohamad, fn. 8, p. 80.

treaties: they were primarily designed to oblige a state to respect and guarantee the human rights of its own population.[88] However, when it comes to sanctions, the human rights of the population of another state are at stake. This means that, first and foremost, the state affected by sanctions has the duty to ensure and protect the human rights of its population. However, by imposing sanctions, a state can deprive another state of the material basis for fulfilling its human rights obligations. Human rights obligations would then run into the void if the sanctioning state did not also have human rights obligations. Whether such human rights obligations exist outside the state's own territory, (i.e. "extraterritorially"), and if so, to what extent, has long been the subject of discussion. Today, there is broad consensus in the literature that extraterritorial obligations exist, at least in principle. Yet, this shifts the uncertainty from the question of whether obligations exist to the question of how extensive these obligations are. In the literature, a distinction is usually made between whether a state directly negatively affects human rights through an action or whether it fails to take protective measures to ensure human rights. In the first case, a state is fully bound by human rights; in the second case, it has a wide margin of discretion as to which protective measures it considers sufficient.[89]

In many cases of extraterritorial circumstances, this distinction makes sense: from a human rights perspective, a state must refrain from going into its neighbouring state to harm its citizens. However, a state is not obliged to take any protective measures to prevent the harm of one person by another actor in its neighbouring country. However, the distinction between an active deed and the failure to take protective measures leads to absurd results in other cases. The following consideration shows that in many cases of sanctions (e.g. an embargo or a boycott) the distinction between an active deed and an omission already causes problems:[90] Is the human right to food violated by state A by actively imposing an embargo leading to people's starvation in state B? Or by state A refraining from export and not taking protective measures to prevent starvation? Or is it violated by the fact that state B is no longer able to feed its population as a result of the sanctions and state A does not take protective measures in favour of the population?

In such cases, the distinction between actively imposing the embargo or

88 The scope of application for most human rights treaties is directed at guaranteeing rights to persons "in its territory and subject to its jurisdiction", see ICCPR, fn. 78, Art. 2 (1). Note, however, that some human rights treaties do not contain such a restriction, including, for example, the ICESCR, fn. 79; see also Nicola Wenzel, "Human Rights, Treaties, Extraterritorial Application and Effects", in Max Planck Encyclopedia of Public International Law (May 2008), para. 3.

89 This distinction is based on the idea that a state can only protect human rights where it exercises effective control — which is usually in its own territory alone; see Marko Milanovic, Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy (Oxford University Press, 2011), pp. 209–21; David Kretzmer, "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?" The European Journal of International Law 171, (2015) 16 (2), p. 185.

90 On the same issue of human rights obligations relating to arms transfers, see Hannah Kiel, Arms Transfers to Non-State Actors: Norm Erosion in International Law (Edward Elgar Publishing, forthcoming).

merely ceasing to export goods cannot justify a different legal assessment. This is because, from both perspectives, the impact on human rights arises from the conduct of the state enacting sanctions. It is not a matter of fact that is in principle independent of the conduct of the state enacting sanctions. Given such a linear link between the state's conduct and the impairment of human rights, a very broad scope of discretion, which is usually given in the case of obligations to protect, is not appropriate. Moreover, it is not a purely extraterritorial matter, but a decision on the territory of the state, the effect of which occurs in another state (a so-called human rights obligation with extraterritorial effect). In contrast, a broad discretionary margin, which a state has in principle when it comes to implementing protective measures, is justified when a state takes action in order to protect human rights as a preventive measure against a multitude of potential dangers posed by other actors. The view that the sanctioning state must take protective measures because another state cannot feed its population is not a suitable starting point, because it is precisely the sanctioning state that has created this situation. The connecting factor for determining the human rights obligation must therefore be that the sanctioning state effectively has an impact on human rights through its conduct (whether by action or omission).[91] It therefore has a due diligence obligation to examine whether its conduct affects human rights in a direct and foreseeable way and to ensure that they are not violated.[92]

2.2.2.2 Individual Sanctions and Human Rights

Individual sanctions usually take the form of asset freezes or travel restrictions. There is no human right prohibiting this per se.[93] However, these sanctions must be designed in accordance with human rights standards. Financial sanctions such as asset freezes may, depending on the individual case, violate for example the right to property, or an individual's rights to privacy and reputation.[94] In extreme cases, they could also violate the prohibition of inhumane treatment.[95] It then depends on whether an absolute or a relative human right is affected. This can be inferred from the wording of the relevant human rights provision.[96] E.g. the prohibition of inhumane treat-

91 See Martin Scheinin, "Extraterritorial Effect of the International Covenant on Civil and Political Rights", in Fons Coomans and Menno T. Kamminga (eds.), Extraterritorial Application of Human Rights Treaties (Intersentia, 2004), pp. 73–77.
92 In relation to the right to life, see UN, Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: the right to life, CCPR/C/GC/36 (30 October 2018), para. 63.
93 Matthew Happold, "Economic Sanctions and International Law: An Introduction", in Happold/Eden, fn. 4, p. 93.
94 Zamani/Mazaheri, fn. 82, pp. 220–21.
95 Happold, fn. 93, p. 93.
96 For example, Art. 6 (1) of the ICCPR, fn. 78, states that everyone has the right to life; no one shall be arbitrarily deprived of life. Accordingly, a non-arbitrary killing does not violate the human right to life. One may think, for example, of a final gunshot during a rescue that saves the lives of other people.

ment is absolutely guaranteed, so a sanction that interferes with the prohibition would always be unlawful. For this reason, individual sanctions must be designed in such a way that affected persons have access to basic essentials at all times. In contrast, for example, the human right to property is only guaranteed to a lesser extent, so it can be restricted by sanctions if this is done in the public interest.[97] With regard to travel restrictions, it is primarily the human right of freedom of movement that is affected.[98]

The biggest problem with the legality of individual sanctions, however, lies with another question, namely whether the affected individuals have a legal remedy against their imposition. Whether the above-mentioned human rights have actually been violated depends on the precise facts of the case; in particular, with regard to the question of whether there were in fact reasonable grounds for imposing a targeted sanction. In the event of a dispute, this can only be clarified in court.[99] In this regard, for example, the European Court of Human Rights (ECHR) ruled in favour of the plaintiffs in one case. The applicants had not been given any evidence to prove that there were reasons to put them on the sanctions list. This, according to the ECHR, violated the right to be heard in court and to effective legal protection.[100] The decisive question in individual sanctions is therefore: has the sanctioned person been given the opportunity to judicially review the factual basis that led the acting state to impose the sanction? This becomes particularly relevant when it comes to distinguishing whether a sanctioned person is themselves accused of a crime or whether the sanctioned person is merely related to, or in contact with, an accused person.[101]

2.2.2.3 Sectoral and Comprehensive Sanctions and Human Rights

The issues that arise with sectoral and comprehensive sanctions are different from those with individual sanctions. Here, a state does not act in order to interfere with a person's rights. Rather, this is a side-effect of its action. States then have the obligation to comprehensively assess the short-term as well as long-term effects of the sanctions on human rights. After the sanction has been imposed, it must be evaluated further. This poses two challenges: First, there are no clear boundaries as to the point at which

97 Note however that the ICCPR, fn. 78 and the ICESCR, fn. 79 do not guarantee the right to property. However, the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950, entered into force 3 September 1953), ETS 5 does guarantee this right; see Happold, fn. 93, p. 95, note, however, that Happold is not talking about unilateral sanctions in this context, but those with a Security Council mandate.
98 For more on which other human rights — such as the rights to life and health — may be affected by travel restrictions, including examples, see Zamani/Mazaheri, fn. 82, pp. 220–21; see also Happold, fn. 4, pp. 96–98.
99 Zamani/Mazaheri, fn. 82, pp. 220–22; Happold, fn. 4, p. 99.
100 Joined cases, C-402/05 P and C-415/05, Kadi and Al Barakaat International Foundation v Council and Commission (2008) ECR I-6351, paras. 332–53.
101 Happold, fn. 4, p. 99; see also judgment of the General Court of 8 March 2023, Case T-212/22, Prigozhina v Council.

a violation of the obligation is considered to have occurred.[102] Second, in crisis situations it will often not be clearly attributable which negative consequences are specifically due to the sanctions and which are due to other factors.

As an abstract standard, a violation of a human rights obligation must be established if human rights are violated in a direct and foreseeable manner. Depending on how serious the danger to human rights is in the sanctioned state, a legal obligation arises which is directly proportionate to the danger incurred.[103] As has just been outlined, the interference with a human rights violation only means a violation in the case of absolute human rights (e.g. prohibition of inhumane treatment). Interference with relative human rights is subject to consideration, but must never contradict the core of those rights. For example, many sanctions will, in the short or long term, result in a decrease in the level of services and care provided to citizens in a sanctioned state. This will have to be classified as contrary to the full realization of human rights, but not necessarily as a human rights violation. However, it is clear that a state which, through its actions, deprives people of necessary food and causes hunger or starvation is acting in violation of human rights.[104]

Accordingly, it is hardly conceivable that a full economic embargo (at least in the relationship of a powerful state against a dependent weaker state) will not violate human rights, because these have the greatest potential to affect civilians.[105] The closer and the more directly sanctions are related to the provision of basic goods, the stronger the focus of the examination must be on human rights impacts. At the other end of the spectrum, a violation of human rights cannot be assumed in the case of an embargo on the export of arms.[106]

Among these fairly clear-cut cases, decisions must be made on a case-by-case basis. Access to mechanisms for judicial review of sanctions must always be guaranteed, with compensation granted where appropriate.

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102 See Simonen, fn. 66, p. 192, which compares these questions with the debate on military, so-called "humanitarian" interventions. In both debates, the question would always have to be asked how many people would have to suffer for a measure to be considered unlawful: "where to draw the line in numbers for acceptable damage on the civilian population? 500 casualties — 5000 contaminated (lack of medicines/clean water, etc.) — 50% civilian population malnutrition? Or, are we even capable of knowing the quantified amount of human distress — do we have access to such information?".

103 See Barbara Frey, "Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons", in Mark Gibney and Sigrun Skogly (eds.), Universal Human Rights and Extraterritorial Obligations (University of Pennsylvania Press, 2010), p. 50.

104 Segall, fn. 72, p. 773.

105 Segall, fn. 72, p. 776.

106 Arms embargoes are therefore sometimes also classified as a per se lawful measure (retorsion), see the Schmalenbach text cited in fn. 29. The argument that weapons might be used in defence does not challenge this, because the right to life does not include the right to obtain weapons for self-defence.

Sanctions must also always include a humanitarian exception.[107]

2.3 WTO Law

Another area of law that sets limits on sanctions are the treaties which exist under the framework of the World Trade Organization (WTO), including in particular the General Agreement on Tariffs and Trade (GATT 1994),[108] which regulates trade in goods, and the General Agreement on Trade in Services (GATS).[109] However, these only apply to those countries that have joined the WTO system.[110] The main WTO treaties are all based on the so-called most-favoured-nation principle. According to this principle, the granting of trade advantages to one state obliges every other contracting state to grant the same trade advantages.[111] Another principle of the treaties is the so-called national treatment principle. It requires that foreign suppliers not be treated less favourably than domestic suppliers. The two principles are often summarized under the principle of non-discrimination and are incompatible with the nature of the vast majority of sanctions.[112] The GATT 1994 primarily contradicts the imposition of economic sanctions,[113] while the GATS regularly contradicts financial sanctions.[114] Even if sanctions do not affect an entire economic sector, but only target specific companies, this is usually contrary to WTO law.[115]

However, the WTO agreements all have a "security exception" in favour of the national security of states; if an exception is applicable, a state can suspend its WTO obligations.[116] Relevant exceptions relate on the one hand to trade in certain dangerous goods (fissionable materials, arms, and other

107 However, such a minimum level of human rights protection is not currently provided in the case of unilateral sanctions, see Pierre-Emmanuel Dupont, "Human Rights Implications of Sanctions", in Masahiko Asada (ed.), Economic Sanctions in International Law and Practice (Routledge Advances in International Relations and Global Politics, 2019), p. 54.

108 General Agreement on Tariffs and Trade 1994 (15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

109 General Agreement on Trade in Services (15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).

110 Although these are the overwhelming number of states, 35 states are non-members or only have observer status; a special aspect here is that a state cannot accede to individual WTO treaties. Rather, accession to the WTO is linked to agreement to all WTO treaties.

111 This is enshrined in all three of the main agreements on which the WTO is based: Art. 1:I of GATT 1994, fn. 108, Art. II GATS, fn. 109, and Art. 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) (TRIPS).

112 See Andrew Mitchell, "Sanctions and the World Trade Organization" in Van den Herik, fn. 7; Ruys, fn. 7, p. 30.

113 Ruys, fn. 7, p. 30.

114 See Art. XI GATS, fn. 109; On the incompatibility of sanctions and non-discrimination in principle, see Sarah Cleveland, "Human Rights Sanctions and International Trade: A Theory of Compatibility", Journal of International Economic Law 5(1) (2002); see also the in-depth analysis by Bogdanova, fn. 7, pp. 134–37.

115 Iryna Bogdanova, "Targeted Economic Sanctions and WTO Law: Examining the Adequacy of the National Security Exception", Legal Issues of Economic Integration 109, 48(2) (2021), pp. 176–93; note that these principles can be superseded in favour of other objectives enshrined in the WTO agreements themselves, e.g. preferential treatment can be given to developing countries under the Generalized System of Preferences (GSP); moreover, derogations are possible to the extent that states conclude a regional free trade agreement under Art. XXIV of the GATT 1994, fn. 108.

116 See Art. XXI GATT 1994, fn. 108; Art. XIV bis GATS, fn. 109 and Art. 73 of TRIPS, fn. 111.

materials intended directly or indirectly for the purpose of supplying a military establishment). Second, they refer to actions " taken in times of war" or "other emergency in international relations". Accordingly, sanctions do not violate WTO law if they consist solely of restrictions on the specified products, as in the case of arms embargoes. They also do not violate WTO law if there occurs a war situation, or also a situation whose effects have similar consequences for international relations as a war.[117] This applies not only to the states that are directly involved in the respective war or serious crisis, but to all states that maintain trade relations with one of the parties involved.[118] Accordingly, in the current situation involving the aggression against Ukraine, for example, third countries may also suspend their trade obligations toward Russia.

However, it has long been disputed as to whose view matters in assessing whether national security is affected: the US, in particular, has taken the view that the security exceptions are self-judging; the US therefore holds that it has the authority to suspend trade obligations if it itself believes that there is an emergency in international relations. However, this has been rejected by several so-called dispute settlement panels of the WTO. According to these panels, the question of whether an emergency exists should not be assessed subjectively by the state in question. Rather, it would be the role of the panel, as the dispute settlement body of the WTO, to assess this on the basis of the objective factual situation.[119]

3. On the Question of the Justification of Unilateral Sanctions under International Law

As discussed in the previous section, various primary obligations of a state determine the lawfulness of sanctions. However, even if a sanction conflicts with one of these rules, it may still be lawful in the end if a justification for this exists. However, it must be noted that not every such reason can also justify the contradiction with every primary obligation.[120] Therefore, it

117 Panel Report US – Certain Measures on Steel and Aluminium Products (China) (9 December 2022) WT/DS544/R, para. 7.139.

118 See e.g. the Panel Report, US – Origin Marking Requirements (21 December 2022) WT/DS597/R, para. 7.322 –7.359, which examines the situation between mainland China and Hong Kong as a potential justification for US measures.

119 Panel Report, Russia – Traffic in Transit, para. 7.54 – 7.102; Panel Report, US – Steel and Aluminium Products (China), fn. 117, para. 7.125; Panel Report, US – Certain Measures on Steel and Aluminium Products (Turkey) (9 December 2022) WT/DS564/R, para. 7.143; Panel Report, US – Certain Measures on Steel and Aluminium Products (Switzerland), (9 December 2022), WT/DS556/R, para. 7.146; Panel Report, US – Certain Measures on Steel and Aluminium Products (Norway) (9 December 2022) WT/DS552/R; para. 7.116; Panel Report, US – Origin Marking Requirements, fn. 118, para. 7.185.

120 One debate that is not further addressed here concerns whether, in cases where a lex specialis regime already provides its own specific justifications (such as the aforementioned security exception in the WTO treaties),

is necessary to discuss not only the prerequisites of justifications, but also their scope.

3.1 Countermeasures as Legitimate Self-Help by Injured States

In principle, it is undisputed that if a state acts in violation of international law, the injured state has the right to take countermeasures. In other words, the injured state has the right not to fulfil an international obligation. A state is considered to have been injured if its direct interests are affected (e.g. material damage to state property or non-material damage in the form of violation of the territorial integrity of the state or in the case of violation of its diplomatic missions), or if its indirect interests are violated (e.g. in the case of ill-treatment of nationals abroad or the unlawful expropriation of a multinational company).[121]

Sanctions can only be justified as countermeasures if they meet certain requirements. They must be directed exclusively against the state acting unlawfully,[122] pursue the purpose of inducing it to act lawfully, and be proportionate to the original violation.[123] In addition, they must not, for example, impair obligations to protect fundamental human rights, violate so-called peremptory international law,[124] or be carried out by military means.[125] A number of procedural requirements must also be observed. These include, for example, that the state against which the sanction is to be imposed must first be requested to cease its violating behaviour.[126]

3.2 Countermeasures Regarding the Enforcement of Community Interests by Third States

The legal situation, on the other hand, is highly controversial with regard to the question of whether third states (i.e. those that are not themselves directly injured) can also resort to the legal justification of self-help.[127] This question is the counterpart to the more well-known debate on military

general justifications (as discussed in this section) can be relied upon in addition; in support of this proposition, see Elena Katselli Proukaki, The Problem of Enforcement in International Law – Countermeasures, the Non-Injured State and the Idea of International Community (Routledge, 2010), p. 247; in contrast, other authors hold that this question must be treated differently according to the respective lex specialis regime, cf. Ruys, fn. 7, p. 44.

121 Ruys, fn. 7, p. 33.

122 This means that states must only act with the intention of affecting the state that previously acted unlawfully. Such lawful self-help does not become unlawful if it has side-effects for other states, as long as these are only indirect and unintentional. The state taking countermeasures is, however, obliged to avoid such effects as far as possible, see ILC Commentary, fn. 14, p. 76.

123 See Articles 49 and 51 of the ASRIWA.

124 Peremptory international law, also referred to as "jus cogens", is a set of fundamental norms that prevail over other international law and may not be waived by states. Examples of this are the prohibition of the use of force in the UN Charter, or the prohibition of torture.

125 For more limitations, see Article 50 of the ASRIWA.

126 For more on this, see Article 52 of the ASRIWA.

127 For further references, see Marco Gestri, "Sanctions Imposed by the European Union: Legal and Institutional Aspects", in Natalino Ronzitti (ed.), Coercive Diplomacy, Sanctions and International Law (Brill, 2016), p. 75.

"humanitarian" interventions. While a third state need not necessarily intervene in the name of human rights, a large proportion of sanctions in the past have been imposed by states or organizations with the aim of inducing another state to respect its human rights obligations.[128] While this on the one hand enhances the importance of human rights in international law,[129] in many cases it worsened the living conditions of people in the sanctioned state.[130] The relationship between sanctions on the one hand and human rights on the other hand is thus extremely complex.[131]

For example, there is controversy over whether sanctions are legal in response to particularly serious breaches of international law under the justification of countermeasures in the community interest. In 2001, the ILC commented that the status of such measures in intentional law was unclear; to date, there has been no clear mandate for states to take countermeasures in the interest of the community of states.[132] For this reason, the ILC explicitly left this question open in its commentary.[133] A large part of the literature, however, considers this statement to be too hesitant; according to them, every state is entitled to react with countermeasures to particularly serious violations of international law.[134] This view is in line with a trend in international law that focuses more and more on community interests. To this end, the ICJ has famously held that particularly important obligations of states exist not only vis-à-vis individual states, but also vis-à-vis the community of states as a whole (so-called erga omnes obligations).[135] Accepting this view, all states can be considered "injured" and thus meet the requirements to justify countermeasures. Erga omnes obligations are, for example, related to the crime of aggression and genocide, fundamental human rights,[136] the right of self-determination of peoples, and basic provisions of international humanitarian law.[137]

As with the parallel debate on whether serious violations of law justify

128 Bogdanova, fn. 7, pp. 223–69.
129 In specific freedom rights under the ICCPR, fn. 78, such as the prohibition of torture and slavery, the right to protection of private life, the right to freedom of expression, the right to freedom of religion and freedom of assembly.
130 This practice of sanctions is therefore to the detriment of social human rights, which give a right to equality, to non-discriminatory access to all rights, especially to an adequate standard of living, to healthcare, to the education system, to housing and the labour market, and to other essentials for life, see ICESCR, fn. 79; this leads to freedom rights and social rights being played off against each other; for the respective practice of the US, see Amy Howlett, "Getting 'Smart': Crafting Economic Sanctions that Respect all Human Rights", Fordham Law Review 73 (2004).
131 Howlett speaks in this context of a "schizophrenic" role of economic sanctions, fn. 130, p. 1201.
132 ILC Commentary, fn. 14, p. 139.
133 ILC Commentary, fn. 14, p. 129; see also article 54 of ASRIWA.
134 Christian Tams, Enforcing Obligations Erga Omnes in International Law (Oxford University Press, 2009), p. 250; Proukaki, fn. 120, p. 209.
135 ICJ, Barcelona Traction, Light and Power Co Ltd (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3; see also Jochen Frowein, "Obligations erga omnes", in Max Planck Encyclopedia of Public International Law (December 2008), para. 14.
136 ICJ, Barcelona Traction, Light and Power Co Ltd, fn. 135, para. 34.
137 ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, paras. 155–59.

military "humanitarian" interventions, this goes hand in hand with the risk that states will dishonestly invoke an erga omnes violation by another state and take measures under this pretext.[138] However, one significant difference separates the two debates: according to article 2 (4) of the UN Charter, military interventions are prohibited unless there is a corresponding UN Security Council resolution. In contrast, it is true that non-military sanctions can also be mandated under article 41 of the UN Charter, but the UN Charter does not include a general prohibition. This is not tantamount to concluding that sanctions in response to the breach of erga omnes norms are permitted, whereas this does not apply to military interventions. Yet, it can be deduced that the UN Charter is much more sceptical of unilateral military behaviour than it is of non-military action.

In line with this, the literature rejects the existence of a justification for so-called "humanitarian" military interventions.[139] Such a justification could only be based on customary law, but a considerable part of the community of states objects to this.[140] In contrast, many analyses on sanctions conclude that the potential for abuse of unilateral action is accepted in order to be able to react to particularly serious violations of international law in return.[141] Nevertheless, there are considerable uncertainties in this regard not least in view of the aforementioned General Assembly resolutions opposing the use of unilateral sanctions.[142] At any rate, the favourable opinions in the literature are that such countermeasures are only possible for third states under the same requirements that apply to states that have themselves been violated: in particular, they must be aimed solely at ending the violation and, in terms of their intensity, must be proportionate to this goal.[143] Furthermore, they are only possible if the original violation is particularly serious and must be considered to have been committed against the international community as a whole.[144]

138 Proukaki, fn. 120, p. 208.
139 Vaughan Lowe and Antonios Tzanakopoulos, "Humanitarian Intervention", in Max Planck Encyclopedia of Public International Law (May 2011), para. 47.
140 See e.g. the statement of 133 states, Group of 77, "Declaration of the South Summit" (Havana, Cuba 10–14 April 2000), para. 54.
141 Christian Tams, fn. 134, p. 250; Martin Dawidowicz, Third-Party Countermeasures in International Law (Cambridge University Press, 2017), p. 383; Proukaki, fn. 120, p. 208; Valta, fn. 56; Andreas Paulus, "Whether Universal Values Can Prevail over Bilateralism and Reciprocity", in Antonio Cassese (ed.), Realizing Utopia: The Future of International Law (Oxford University Press, 2012), p. 101.
142 Pointing out the various ambiguities, Ruys, fn. 7, pp. 44–47; rejecting a justification see Gestri, fn. 127, p. 75.
143 See Articles 49 and 51 of the ASRIWA, as well as ILC Commentary, fn. 14, p. 130 and pp. 134–35.
144 Milaninia, fn. 7, p. 101; it is also occasionally argued that no separate justification is required. Opponents of this view argue that, in the case of unilateral sanctions directed against human rights violations in another state, the security exceptions in WTO law, for example, should be interpreted in the light of human rights, see Cleveland, fn. 114; the question was also raised — but rejected in the end — as to whether states (within the meaning of Article 41 of the ARISWA) actually have a duty to cooperate in the implementation of sanctions if these are directed against particularly serious human rights violations; with regard to the sanctions against Russia, see Rana Mustafa Essawy, "Is There a Legal Duty to Cooperate in Implementing Western Sanctions on Russia?" EJIL Talk! 25 April 2022, available at https://www.ejiltalk.org/is-there-a-legal-duty-to-cooperate-in-implementing-western-sanctions-on-russia/.

3.3 Sanctions by Groups of States

Closely related to the last justification discussed is the question of whether groups of states, in particular regional or sub-regional organizations such as the African Union, the Economic Community of West African States (ECOWAS), the Organization of American States (OAS), the Arab League, or the EU, can impose sanctions in the community interest. First, it is indisputable that an international organization can also invoke the justification of countermeasures if it is itself violated by a breach of law by another state.[145] In this case, the same principles apply as discussed in Section 3.1. Moreover, a distinction must be made between internal sanctions — i.e. those imposed by an organization on its own member states — and external sanctions, which are imposed on non-member states.[146] The possibility of imposing internal sanctions is often regulated in the founding instrument (i.e. a Charter or a Convention) of an international organization.[147] Even in cases where these instruments do not explicitly allow sanctions,[148] these can be based on the legitimacy of regional organizations. For example, the role of regional organizations recognized by the UN Charter for the peaceful settlement of conflicts within their scope is referred to in this regard.[149] This justification for sanctions against member states is not available to an organization in the case of external sanctions.[150] The establishment of an international organization creates a legal relationship between the participating states. Such an internal relationship cannot, by any means, extend the powers of that organization externally; there is no mandate for international organizations to sanction violations of law outside of their own reach.[151] It is true that, at first glance, a sanction imposed, for example, by an association of states comprising 55 member states (such as the African Union) would appear to have more legitimacy than a sanction imposed by a single state. However, on the one hand, legitimacy is not to be equated with legality; on the other hand, as a consequence, associations of countries comprising only a small number of states (such as the association of the three Benelux countries — the Netherlands, Belgium and Luxembourg — to form an economic

145 See Articles 22 and 51–56 of the Draft Articles on the Responsibility of International Organizations (DARIO), ILC, Draft Articles on the responsibility of International Organizations, with Commentaries, (2011) Yearbook of the ILC Vol. II, Part Two; and Ruys, fn. 7, p. 39.

146 Kirsten Schmalenbach, fn. 29, para 21; the same distinction also applies to the imposition of sanctions on companies or nationals of member states or non-member states.

147 Happold, fn. 93, p. 2; Ruys, fn. 7, p. 40, arguing that the legality of such sanctions can be based either on state consent or on the fact that the law of the respective organization constitutes a special legal regime for the member states.

148 Founding instruments regularly give the organization only certain possibilities for action, e.g. the exclusion of a member state from the organization or the suspension of voting rights (with some exceptions allowing for further sanctions, e.g. the African Union Charter allows in Art. 23 [2]). However, organizations sometimes go beyond this, e.g. by imposing embargoes against member states.

149 See Chapter VIII of the UN Charter; see also Ruys, fn. 7, p. 48.

150 However, in view of the considerable number of unilateral sanctions imposed by the EU, this is sometimes argued. Regarding aspects of this topic, see Schmalenbach, fn. 29, para. 25.

151 Pellet/Miron, fn. 1, para. 64; Tom Ruys speaks of this being "counterintuitive and perhaps even arbitrary", see Ruys, fn. 7, p. 48.

community, which together has fewer than 30 million inhabitants) would also have more powers than a single country (in the case of India, for example, with 1.4 billion inhabitants).[152] This comparison also shows that the legality of unilateral sanctions of international organizations must be assessed in the same way as unilateral sanctions of individual states.

3.4 Self-Defence

A state has the right to defend itself militarily against an armed attack. This is undisputed and explicitly guaranteed in Article 51 of the UN Charter. However, this self-defence need not consist of military force. In the same way, a state may resort to non-military means, i.e. also to sanctions.[153] Thus, a sanction that would in principle violate the prohibition of intervention, for example, is in effect lawful if it is taken in response to an armed attack.[154] However, the fact that a measure is taken in self-defence does not preclude it from being a violation of other rules of international law.[155] The breach of an obligation is always justified by the right of self-defence if it follows from the respective obligation that the states did not want to bind themselves to this obligation in times of military conflict.[156] This is the case, for example, with WTO treaties: here it is expressly stipulated that states do not want to bind themselves to commercial law in times of war and serious crises in international relations.[157] However, human rights obligations in particular, as well as international humanitarian law, remain applicable.[158]

4. Concluding Remarks

The legal situation outlined can only provide clear statements on the legality of sanctions in some peripheral areas. The grey area in which there are great variances of opinion is significant. Yet, the prevailing opinion in the literature rejects a general prohibition of unilateral sanctions. As discussed in Section 2, however, comprehensive sanctions regimes generally violate specific rules of international law. In this respect, a breach of the non-intervention principle, or, in particular, a breach of the associated human rights obligations, is extremely likely.

152 Ruys, fn. 7, p. 48.
153 ILC Commentary, fn. 14, p. 74.
154 However, the sanction must be aimed at inducing the offending state to end its armed attack. It must also be necessary and proportionate, see C. Joyner, fn. 61, para. 10; an action in execution of a right to self-defence must also be reported to the Security Council, see Article 51 of the UN Charter; Christopher Greenwood, "Self-Defence", in Max Planck Encyclopedia of Public International Law (April 2011), para. 8.
155 Ibid., para. 4.
156 ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 242, para. 30; ILC Commentary, fn. 14, pp. 74–75.
157 This arises from the respective security exceptions in Art. XXI GATT, fn. 108; Art. XIV bis GATS, fn. 109 and 73 TRIPS, fn. 111.
158 The ICJ spoke of international humanitarian law as constituting intransgressible principles of international customary law, see ICJ, Legality of the Threat or Use of Nuclear Weapons, fn. 156, p. 257, marginal no. 79; see also Greenwood, fn. 164, para. 4; ILC Commentary, fn. 14, p. 74.

In the case of so-called targeted sanctions, a distinction must be made between sectoral sanctions and individual sanctions. Neither human rights nor international humanitarian law are in conflict with targeted sanctions per se, but they do impose limits on their design. In the case of individual sanctions, their compatibility with procedural human rights is particularly problematic. Sectoral sanctions must be carefully designed to be consistent with human rights or international humanitarian law. Moreover, a contradiction between sectoral sanctions and WTO law exists in most cases. However, WTO law provides specific justifications under which its obligations can be suspended.
The uncertainties discussed in Section 2 regarding the scope of state obligations regularly lead to the question of whether a justification for a potential violation is available and what the scope of this justification is. In this context, a distinction between the legitimacy of sanctions by states on the one hand and groups of states on the other hand must be rejected. It is true that, for reasons of legitimacy, this appears appealing at first glance; however, on this basis, justification can only arise for internal sanctions, while all sanctions against non-member states of the respective organization are subject to the same rules of international law as apply to states acting alone.[159]

Of little concern is the finding that sanctions may be imposed instead of military measures to the extent that the requirements of the right of self-defence are met. However, sanctions must continue to be measured against the standard of human rights and international humanitarian law. Violations of these are not justified by the right of self-defence as defined in Article 51 of the UN Charter. Not only the attacked state itself, but also third states, whose assistance has been requested by the attacked state, can do so within the framework of collective self-defence. For example, in the current context of Russian aggression, third states could also impose sanctions against Russia within the framework of collective self-defence. However, the sanctions imposed by the EU and other states cannot be included under this justification, as no state has in fact invoked it — this is not surprising, however, as this could bring the states closer to belligerent status, i.e. the status of being at war with Russia.[160]

Sanctions imposed by an injured state against a state that has previously committed a violation of law are justified as countermeasures. They must be proportionate and in accordance with the requirements of customary law.[161] However, the question of whether the same right can also be exercised by

159 For more on this, see Section 3.3 of this study.
160 At any rate, this would be the case with arms deliveries invoking a collective right to self-defence, see Stefan Talmon, "Waffenlieferungen an die Ukraine als Ausdruck eines wertebasierten Völkerrechts", Verfassungsblog, 9 March 2022, available at https://verfassungsblog.de/waffenlieferungen-an-die-ukraine-als-ausdruck-eines-wertebasierten-volkerrechts/; while supplying arms in support of an individual right to self-defence does not make a state a belligerent party per se.
161 For more on this, see Section 3.1 of this study.

third states causes significant difficulties. Here, the community of states and the literature are fundamentally divided. In any case, such a justification can at best refer to those sanctions by third states that respond to a particularly serious original violation of law.[162] It is also essential that such sanctions have a limited timeframe and are imposed with the clear goal of inducing the other state to behave lawfully.

This reflects the core of a large number of debates in international law: it concerns the relationship between state sovereignty and its breach for the sake of protecting particularly important community interests. In this context, sanctions by third states could strengthen the enforcement of important community interests; an example of this is, most notably, the situation in which a state commits systematic crimes against its own population. This is because in such cases there is no directly injured state that could take countermeasures.[163]

At the same time, allowing sanctions to be imposed by third states runs the risk of encouraging power politics; only powerful states and organizations are and will be in a position to impose sanctions (purportedly) in the interests of the community (it should be recalled that it is mainly the US and the EU that impose such sanctions). As a result, there is a danger that weaker states will remain incapable of acting while individual actors enforce interests on the basis of their own perceptions of legality.[164] This is all the more true since many states (especially in the Global South), in fact advocate the illegality of all unilateral sanctions. While this view cannot be sustained from a purely legal perspective, it is likely that unilateral sanctions — in a context that goes beyond the individual conflict — will exacerbate bloc formation and resistance.[165]

Despite these political concerns, the literature is increasingly resolving the tension outlined above in favour of particularly important community interests. This is, however, only possible with an associated risk of abuse.[166] The alternative, according to which directly injured states can impose sanctions on the basis of breaches of the terms of simple bilateral agreements, but in which third states cannot respond to the most serious internal human rights violations, extending all the way to genocide, seems unacceptable to many in the contemporary world.[167]

The legal situation outlined above and its political parameters call for action. A

162 For more on this, see Section 3.2 of this study.
163 Ruys, fn. 7, p. 47; Dawidowicz, fn. 141, p. 383.
164 Ruys, fn. 7, p. 47; Dawidowicz, fn. 141, p. 383; Paulus, fn. 141, p. 101.
165 Hofer, fn. 8, pp. 211–14.
166 For more on this, see the text and footnotes in Section 3.2 of this study.
167 See e.g. Paulus, fn. 141, pp. 90–91.

democratized UN Security Council and the repeal of the supremacy of veto powers could lead to joint multilateral decisions being taken. However, this idea remains unrealistic precisely due to the veto power of the "big five" i.e. the five permanent members of the Security Council. The worst solution would appear to be to continue to impose sanctions with no legal basis, thereby further exacerbating the conflict lines. In addition to clear disclosure of the legal basis on which sanctions are based, the goal should be to establish binding rules in dialogue with the international community. This is because, as long as the use of sanctions remains in a legal grey area, this legal vacuum can be filled at the discretion of powerful states.

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