Extraterritorial human rights obligations in the context of economic sanctions

Joseph Schechla

Introduction

Economic sanctions are a time-honoured feature of international relations governed by international law (IL). While various tools and iterations of economic sanctions are optional and discretionary in nature, they have been used as much for enforcing IL as they have been means of unilateral punitive action that may contravene international agreements, including human rights treaties and principles. Thus, economic sanctions can be a double-edged sword and, therefore, the subject of much-deserved critical inquiry to determine not only their effectiveness, but also their legality and legitimacy in practice, because of their human rights and other IL consequences.

This chapter explores sanctions and sanction regimes under human rights law. In particular, it presents the relevant human rights norms to be applied not only as states undergoing sanctions (i.e., the domestic and individual dimensions of human rights obligations), but particularly also as states and other parties carrying out sanctions (collective and extraterritorial dimensions of human rights obligations).

Definitions and scope

Generally, a sanction in IL is a penalty or punishment for disobeying a law or other established norm. The purpose of sanctions can be synonymous with terms such as threat, deterrent, penalty, disciplinary action/punishment, penalization, coercively corrective measure, retribution and may take the form of an embargo, a ban, prohibition, boycott, barrier, restriction or tariff.

More specifically, economic sanctions considered here are measures taken by a state, or states, and/or their corresponding organs to coerce another state to conform to an international agreement or norm of conduct, typically in the form of restrictions on trade, access to finance or other goods and services.

The purposes and degrees of economic sanctions may vary in their application, whether as a tool of political pressure, as an alternative to exacting enforcement or judicial action, or other coercive measure. The scope of economic sanctions also may range widely from international, as exercised by the UN Security Council (SC) or General Assembly (GA), as in the case of boycott,
divestment and sanction (BDS) applied against the practice of apartheid in southern Africa. Alternatively, the actual source, scope and practice of economic sanctions could be regional, imposed by a regional organization of states, another groups of states or unilaterally.

Economic sanctions can also be used by central or local spheres of government and their corresponding organs (Schechla 2015) in the fields of trade, finance or public procurement, or could even be applied in civil initiatives with cross-border implications, as in the case of popular BDS movements against illegal situations, including systematic human rights violations. Economic sanctions could be applied against a particular state (or states), or even against subnational regions or groups within an affected state’s jurisdiction or territory of effective control, as practiced by occupying Powers in administered territories in the case of India’s internet blackout, movement restrictions and trade sanctions applied in Kashmir, or Israel’s various closures, revenue seizures, travel bans and blockades in occupied Palestine.

Within the realm of economic sanction, two types are most common: financial sanctions and trade sanctions. Financial sanctions involve monetary issues and transactions. More specifically, financial sanctions could take the form of blocking government assets held abroad; limiting access to financial markets; and restricting loans and credits, international money transfers, the sale and trade of property abroad; and/or freezing development aid (SFOFEA, 1998). Trade sanctions restrict imports and exports to and from the target country. These restrictions can be comprehensive, as was the case with sanctions against Iraq (1990–2003), or selective, restricting only certain commodities connected with a more-specific trade dispute.

Financial and trade sanctions may overlap significantly, especially in the case of comprehensive sanctions. For example, where foreign assets may be frozen and access to new funds blocked, governments would be unable to pay for imports, thus affecting trade, including imports of goods essential for the enjoyment of the human rights to health and/or adequate food. Coinciding, too, may be other types such as travel sanctions; military sanctions, affecting military activities and trade in matériel;1 diplomatic sanctions; and cultural sanctions, encompassing artistic, education and athletic exchanges. These may form ancillaries or subcategories of economic sanctions when applied simultaneously with trade and financial sanctions.

Legality and legitimacy of economic sanctions

The United Nations Security Council

The SC holds the UN Charter-based mandate and ‘primary responsibility for the maintenance of international peace and security’ (UN Charter (UNC), art. 24). Within its authority, the SC has several remedial measures at its disposal, in addition to the binding authority of its resolutions, to call on UN Members and other states to take effective measures, either individually or jointly, to bring an end to an illegal situation, including by the imposition of sanctions. As of 2021, the SC maintains 14 sanctions regimes, while all but 2 of them coincide with other overt diplomatic initiatives, including direct negotiations (UNDPPA 2021).

The basis for UN sanctions under IL derives from Chapter VII of the UNC. Its Article 41 covers enforcement measures not involving armed force. The SC may decide which measures are to be taken to give effect to its decisions, and it may call upon the Members of the UN to apply such measures.

Although it does not explicitly refer to ‘sanctions’, Article 41 contains an illustrative list of specific sanctioning measures, namely ‘complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the
severance of diplomatic relations’. The same article allows for other non-sanction measures, such as establishing a remedial compensation fund, such as the UN Compensation Commission following Iraq’s invasion of Kuwait, which effectively was funded by an economic sanction (seizure) of Iraq’s oil revenues.

The SC sanctions regimes have become well institutionalized, diversified and targeted through more than 55 years of operation. In doing so, the SC has grounded effective measures in the domestic, individual, collective and extraterritorial obligations of states under IL, IHL, criminal law and peremptory norms, including the duty of non-recognition of a situation created by the illegal use of force or other serious breaches of *jus cogens* (Crawford et al. 2010; Dawidowicz 2010; ILC 2019, pp. 141–207; Kohen 2011; Meng 1982; Milano 2009; Talmon 2005; Tomuschat and Thouvenin 2005).

States and their constituent organs bear positive extraterritorial obligations to ‘bring an end to illegal situations’ under IL, including ‘to ensure respect’ for IHL (G4, art. 1), uphold *erga omnes* obligations and under IHRL treaties. The ICJ, in its 2004 Advisory Opinion on the construction of a wall in the occupied Palestinian territory, reiterated that the illegal situation has resulted in ‘an obligation not to render aid or assistance in maintaining the situation created by such construction’. The ICJ reminded that, in the context of war and occupation, The Hague Convention and the four Geneva Conventions ‘incorporate obligations essentially of an *erga omnes* character’ (ICJ 2004). The ETO duty of non-recognition, non-cooperation or non-transaction with parties to the illegal situation is self-executing, in the sense that such *erga omnes* requirements are axiomatic and do not require specific SC resolutions for states to exercise this extraterritorial obligation (Crawford et al. 2010; ILC 2019). In such a case, the sanctions imposed in response to a breach of peremptory norms would not be optional and discretionary. However, the SC is specially mandated to articulate, operationalize and monitor these obligations as the UN body with ‘primary responsibility for the maintenance of international peace and security’ (UNC, art. 24). Nonetheless, neither is the SC the sole organ with that responsibility, nor are its actions and inactions in maintaining universal standards in the conduct of sanctions immune to the test of institutional and legal integrity.

The UN sanctions regimes involve countermeasures that generally seek at least one of five purposeful objectives: conflict resolution, democratization, nonproliferation, counterterrorism and the protection of civilians (including human rights). The SC has evolved to apply targeted sanctions, rather than comprehensive sanctions, the latter of which had proved to cause adverse humanitarian impacts.

Amid the proliferation of sanction regimes, the UN Secretary-General saw the need in 1995 to assess the potential impact of sanctions before they are imposed, and to enhance arrangements for the provision of humanitarian assistance to vulnerable groups (A/RES/50/60-S/RES/1995/1). In the following year, a major UN study found that:

humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently. Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages...these effects...inevitably fall most heavily on the poor (A/51/306; IASCWG, 2000).

A subsequent study for the UN Office for the Coordination of Humanitarian Affairs (OCHA) also found that the review procedures established under the various SC sanctions committees remain cumbersome and aid agencies still encounter difficulties in obtaining approval for exempted supplies...[and] neglect larger problems of commercial and governmental violations in the form of black-marketing, illicit trade, and corruption’ (Minear et al. 1998).
Other sanctioning authorities

The SC is not the only actor in the field of international relations ostensibly to uphold universal human rights. The European Commission (EC) and the High Representative of the Union for Foreign Affairs and Security Policy have issued a joint proposal for an EU policy on restrictive measures against serious human rights violations and abuses worldwide committed by entities and persons (EU press release 2020). The new horizontal EU Global Human Rights Sanctions Regime provides for such measures as asset freezes, with EC oversight of travel bans. However, the new policy would not replace geographic sanctions regimes, some of which already address human rights violations and abuses, peace, security, and support democracy and international law. They target persons and entities whose actions endanger these values, and intend to reduce as much as possible any adverse consequences on civilian populations.

It is notable that communities, through their local authorities, may act conscientiously on their *erga omnes* obligations as organs of the legally bound state, by taking it upon themselves to impose restrictive economic measures within their power that seek to prevent, mitigate or remedy human rights abuses perpetrated extraterritorially. Such actions are typically grounded in international law arguments, moral indignation and/or national interest. These actions often take the form of boycott or ‘selective-procurement resolutions’, implementing the self-executing duty of non-recognition, non-cooperation or non-transaction with parties to illegal situations, even when their central government organs fail to do so (Schechla 2015). To wit, a local authorities’ forum in Canoas RS, Brazil in 2012 declared that ‘…Brazilian local governments…commit to responsible investment by avoiding contracting with parties that support or benefit from occupation, or violate related prohibitions under international law’ (LAF 2012). In December 2014, another gathering of local governments reiterated their pledge to fulfil that same *erga omnes* obligation: ‘Local governments…commit to responsible investment by not contracting with parties and not twinning with cities that support or benefit from occupation, or violate related prohibitions under international law’ (FAMSI 2014).

The proliferation of such examples, including the citizens’ boycott, divestment and sanctions initiatives, promise to form a critical mass or movement that raises the grassroots call to the ‘primarily responsible’ parties (states and IOs) to apply effective measures to enforce the IL that they are supposed to uphold.

Unilateral sanction regimes

Nothing in the UNC can be read as authorizing unilateral coercive measures, including economic sanctions. Such measures are incompatible with general principles of IL and may violate the prohibition of interference in the internal affairs of other states and violate their sovereignty when they fail the human rights and IL tests outlined here (Beaucillon 2016; Emmenegger 2016; Jazairy 2017; Jennings and Watts 2008; de Zayas 2018). For example, the GA has condemned the US embargo against Cuba (A/RES/73/8). In this reaffirmation of the existing law on unilateral sanctions, it has explicitly cited US legislation, namely the 1996 ‘Helms-Burton Act’, whose extraterritorial consequences ‘affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation’ (ibid, preamble). Also, in 2018, the UN Human Rights Council (UNHRC) overwhelmingly condemned unilateral coercive measures, recalling that economic sanctions demonstrably cause death, aggravate economic crises, disrupt the production and distribution of food and medicine, constitute a push factor generating emigration and lead to violations of human rights (A/HRC/
Prima facie, unilateral sanctions are incompatible with ETOs under IL and potentially harmful to the human rights of the affected persons in the target country/ies. The Vienna Declaration and Programme of Action, cautions states 'to refrain from any unilateral measures… that create obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights (UDHR) and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services… [and] affirms that food should not be used as a tool for political pressure’ (A/CONF.157/23).

Application of unilateral sanctions may also invoke ETOs to avoid an adverse impact on the enjoyment of human rights in third countries, which are not targeted directly, but are prevented by the operation of the (extraterritorial) foreign law from engaging in economic relations with the target country.

**Extraterritorial obligations**

States bear the principal duty to maintain: (1) international peace and security, (2) progressive (i.e., sustainable) development and (3) human rights ‘in larger freedom’ (UNC, arts. 1 and 55–56; A/59/2005). Extraterritorial obligations also invoke this indivisible bundle of simultaneous duties in the context of sanction regimes. Notably, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has no territorial or jurisdictional limitations on the scope of its application (Sepulveda and Courtis 2009; Milanovic 2011). Whereas the International Covenant on Civil and Political Rights (ICCPR, art. 2.1) sets out the obligation of states parties to respect and ensure the rights of all individuals within its territory and subject to its jurisdiction, the equivalent provision in Article 2.1 of ICESCR avoids any reference to ‘jurisdiction’ or ‘territory’. Moreover, ICESCR imposes an explicit obligation upon all states parties to take steps, individually and through international assistance and cooperation, with a view to achieving the full and progressive realization of the guaranteed economic, social and cultural human rights (ESCHR) on a progressive basis (ICESCR, arts. 11(2), 15(4) and 23). This means that states parties assume certain obligations of an external or international nature, setting forth certain extraterritorial obligations to individuals in other states parties within the scope of their conduct (CESCR, General Comment no. 8 and General Comment no. 14; Coomans 2011; De Schutter 2008; Gondek 2009; Jazairy 2017).

In addition, an argument can be made that such position would be consonant with the rule of customary IL that prohibits a state from allowing its territory to be used to cause damage on the territory of another state, a requirement that has gained particular relevance in international environmental law (CESCR, General Comment no. 24) and may be considered relevant also to the field of protection of human rights (Bartels 2014; De Schutter et al. 2012; Vennemann 2006).

The issue of extraterritorial obligations raises the question whether states, or international organizations (IOs) implementing the sanctions, are subject to extraterritorial obligations under human rights instruments in relation to the application and effects of the sanctions they impose (Jazairy 2017). Other authors have addressed the need to prevent a violation of primary (human rights) norms in the case of economic sanctions (Bartels 2014; Beaucillon 2016; Cosnard 1995; Emmenegger 2016; Minear et al. 1998, Rathbone et al. 2013), while little jurisprudence exists from adjudication of a breach of human rights in the course of imposing economic sanctions (Beaulieu 2008; ECHR 2014; Lamrani 2013; Sachs and Weisbrot 2019; Wintour 2020). (For discussion of the attribution of extraterritorial responsibility, see Erdem Türkelli in this volume.)
The *Maastricht Principles* on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (MP) channel the relevant IL guidance that applies to dilemmas of extraterritorial behaviour of states and IOs across the spectrum of indivisible and interdependent human rights, despite the ESCHR-specific title. With specific reference to ETOs in the context of sanction regimes, ‘Sanctions and equivalent measures’ (para. 22) advises that:

States must refrain from adopting measures, such as embargoes or other economic sanctions, which would result in nullifying or impairing the enjoyment of economic, social and cultural rights. Where sanctions are undertaken to fulfil other international legal obligations, states must ensure that human rights obligations are fully respected in the design, implementation and termination of any sanction regime. States must refrain in all circumstances from embargoes and equivalent measures on goods and services essential to meet core obligations.

This may be seen as providing needed specificity to Principle III. Obligations to respect (MP, paras. 19–21; De Schutter et al. 2012, p. 1131); however, the same guidance relates to the obligations also to protect (MP, IV, paras. 23–26) and fulfil (MP, V, paras. 28–29), as well as general obligations to engage in international cooperation (MP, paras. 27 and 30). While para. 22 aligns with ARSIWA (para. 50), it also exemplifies the preventive dimension of human rights application in the acts related to refraining from harm and the design of economic sanction measures. Corresponding guidance related to the remedial dimensions of human rights application is addressed also under VI. Accountability and Remedies (MP, paras. 36–41).

As already noted with specific regard to ESCHRs, ICESCR is a binding normative instrument that readily provides for the extraterritorial dimensions of state obligations, having no territorial or jurisdictional limitations on the scope of its application. The relationship between economic sanctions and a participating state’s obligations to respect and protect economic, social and cultural human rights (ESCHR) rose on the agenda of the UN Committee on Economic, Social and Cultural Rights (CESCR) in the 1990s, resulting in the adoption of a General Comment (GC) on the obligations of states party to ICESCR in the context of sanctions (CESCR, General Comment no. 8). The GC noted the increasing frequency of economic sanctions imposed internationally, regionally and unilaterally. Without calling into question the necessity for sanctions in appropriate cases in accordance with Chapter VII of the Charter or other applicable IL, the GC sought to give specificity to the above-cited provisions of the UNC related to human rights (arts. 1, 55 and 56) and, particularly, rights under ICESCR.

CESCR has observed through its periodic reviews of states parties that economic sanctions ‘often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work’ (CESCR, General Comment no. 8, para. 3). As in other crisis situations, the Committee also has warned of accompanying hazards and unintended consequences such as the reinforcement of the power of oppressive elites, the almost-invariable emergence of a black market and the generation of huge windfall profits for the privileged classes that manage it, enhancement of the control of governing parties over the population at large and restriction of opportunities to seek asylum or to manifest political opposition. While these phenomena may be political in origin and nature, CESCR focused on their impact on ESCHR (ibid).

While SC-imposed sanctions include certain humanitarian exemptions, those do not address, for example, the impediments to access primary education, nor provide for repairs and maintenance to vital infrastructures essential to ensure the enjoyment of clean water, sanitation,
adequate housing, health care, social security, protection of the family, decent work, participation in culture or other ESCHRs, especially for at-risk groups. Despite numerous UN studies and assessments, CESCR found it apparent that ‘in most, if not all, cases, those consequences have either not been taken into account at all or not given the serious consideration they deserve’ (ibid, para. 6).

With regard to the common and simultaneous individual, collective, domestic and extraterritorial human rights obligations of states, CESCR has stated: ‘Just as the international community insists that any targeted State must respect the civil and political rights of its citizens, so too must that State and the international community itself do everything possible to protect at least the core content of the economic, social and cultural rights of the affected peoples of that State’ (ibid, para. 7). This comment aligns with ICESCR obliging states parties to ‘take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means….’ (ICESCR, art. 2.1).

This obligation, as with IHRL generally, applies under all circumstances—including states of emergency, conflict, occupation and war—and, while economic sanctions must not prevent the duty-bound state or sub-national authorities from meeting their core ESCHR obligations, nor must any responsible party impede the over-riding implementation principles of applying the maximum available resources or progressive realization of ESCHR. While achieving that formula under sanctions may prove difficult, both the imposition of economic sanctions and responses to them must ensure that duty-bearers avoid harm to the civilian population, including collective punishment prohibited under IHL (G4, arts. 33, 53 and 68) and/or violation of non-derogable human rights (ICCPR, arts. 4–6).

Subsequent GCs have given specificity to ETOs under ICESCR related to sanctions. Notably, GC14 on the right to health advises that states parties ‘should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure’ (CESCR, General Comment no. 14, para. 41). GC24 provides guidance for imposing sanctions on business operations that violate covenanted human rights (CESCR, General Comment no. 24, paras. 15, 50, 53–54).

CESCR also urges states parties to prioritize vulnerable groups when imposing sanctions on states that are not parties to ICESCR, given the status of the ESCHR of vulnerable groups as part of general IL, as evidenced, for example, by the near-universal ratification of the Convention on the Rights of the Child (CRC) and the customary-law status of UDHR. In this context, the reader should note, however, that the United States, the world’s leader at imposing unilateral sanctions, remains the only permanent SC member that remains outside ICESCR and the only UN Member state that has not yet ratified CRC.

Under human rights treaties, two sets of obligations flow from these considerations: one set lies with the sanction-affected state, whereas sanctions in no way nullify or diminish the relevant obligations of that state party. Rather, they take on greater practical importance in times of hardship such as those under sanctions. Those obligations call for the affected state to assess its fulfilment of individual and domestic Covenant obligations to apply ‘the maximum of its available resources’ for the greatest possible respect, protection and fulfilment of ESCHRs of each individual living within its jurisdiction and territory of effective control. That means that, while sanctions inevitably diminish the affected state’s capacity to fund or support some of the necessary measures, it still remains under an obligation to eliminate discrimination in the enjoyment of ESCHRs and to take all possible measures, including cooperation with the international community to minimize the negative impact upon the human rights of vulnerable social groups.
Another set of obligations relates to the party or parties responsible for imposing, implement-
ing and maintaining the sanctions, whether it be the international community, an international
or regional organization, or a state, a group of states and/or, by extension, any of their organs.
CESCR has identified three conclusions that logically follow from ESCHRs in the context of
economic sanctions:

1. ESCHRs must be taken fully into account when designing an appropriate sanctions
regime. Without endorsing any particular measures, CESCR notes proposals within the
UN System to create a mechanism for anticipating and tracking the impacts of sanctions
throughout the period they are in force, the elaboration of a more-transparent set of agreed
principles and procedures respecting human rights, widening the range of exempt goods
and services, authorizing technical agencies to determine necessary exemptions, better
resourcing sanctions committees to ensure respect, protection and fulfilment of ESCHRs,
more precise targeting of the vulnerabilities of those whose behaviour the international
community wishes to change, and introducing greater overall flexibility.

2. The Committee interpreted that, when an external party assumes even partial responsibil-
ity for the situation within a country (under Chapter VII, or otherwise), it also unavoidably
assumes a responsibility to do all within its power to respect, protect and fulfil the affected
population’s ESCHR. Although CESCR does not elaborate further, this logically means
that any state, state organ or multilateral party formed of ICESCR states parties, or whose
economic sanctions extend to an ICESCR state party, that state, organ or multilateral party
likewise assumes all obligations arising from ICESCR in the affected territory.

3. CESCR also invoked the over-riding ICESCR implementation principle and obligation
‘to take steps, individually and through international assistance and cooperation, especially
economic and technical’, in order to prevent and/or remedy any disproportionate suffer-
ing experienced by vulnerable groups within the sanctioned country (Minear et al. 1998).

Amid a paucity of cases asserting ETOs in the context of sanctions, the ICJ did issue a 2018
judgment, in which Iran argued that, by the re-imposition of unilateral sanctions lifted by
Executive Order 13716 of 16 January 2016, the USA was strangling the country ‘through naked
economic aggression’ (Simons and Cowell 2018) and, thus, was violating the Treaty of Amity
signed in 1955. The ICJ issued an interim order to the United States to lift sanctions linked to
humanitarian goods and civil aviation imposed against Iran.2 The USA responded by withdraw-
ing from the Treaty of Amity (Wong and Sanger 2018), while 11 US senators urged the US
Administration to temporarily ease unilateral sanctions on Iran and Venezuela (USIP 2020), fol-
lowed by a similar joint letter of 34 Congresspersons and 14 endorsing organizations reiterated
the humanitarian call to ease sanctions (CotUS 2020). Despite these and other pleas by human
rights organizations and even the urging of allied states (Wintour 2020), the US Administration
reportedly did not respond (Borger 2020; Calderon 2020).

However, the ICJ interim order was equivocal and did not explicitly assert the ETOs of the
sanctioning state. At some future date, the ICJ still may demonstrate the integrity to affirm such
a finding in a contentious case or an advisory opinion requested by the GA under Article 96 of
the UNC, or even in an opinion expressed as an obiter dictum.

Smarter sanctions

The now defunct UN Sub-Commission on prevention of Discrimination and Protection of
Minorities interrogated the continuing dilemmas and human rights consequences of economic

262
sanctions. A dedicated study concluded with a preliminary six-prong test to determine whether economic sanctions be ‘smart’, (E/CN.4/Sub.2/2000/33, pp. 11–12), namely that:

1. **They should always be limited in time**: sanctions should be subject to periodic (annual) review and evaluation before extension;
2. **They must not affect the innocent population, especially the most vulnerable**: implementing the humanitarian law prohibition against collective punishment;
3. **They must not aggravate imbalances in income distribution**: minimizing discrimination and exacerbation of prior violations;
4. **They must not generate illegal and unethical business practices**. Benchmark questions to evaluate sanctions include:
   (i) *Are the sanctions imposed for valid reasons?* Sanctions under the United Nations system must be imposed only when there is a threat of, or actual breach of, international peace and security. While unilateral sanctions are, *prima facie*, incompatible with this criterion, sanctions should not be imposed for invalid political reasons and should not arise from, or produce an economic benefit for one state or group of states at the expense of the sanctioned state or other states.
   (ii) *Do the sanctions target the relevant parties?* Sanctions should not target civilians who are not involved with the threat to peace or international security, nor should they target, or result in collateral damage to ‘third party’ states or peoples.
   (iii) *Do the sanctions target the relevant goods or objects?* Sanctions should not interfere with the free flow of humanitarian goods or target goods required to ensure the basic subsistence of the civilian population, nor impede essential medical provisions or educational materials of any kind. The target must have a reasonable relationship to the threat of or actual breach of peace and international security.
   (iv) *Are the sanctions reasonably time-limited?* Legal sanctions may become illegal when they have been applied for too long without meaningful results. Sanctions that continue for too long can have a negative effect long after the wrongdoing ceases.
5. **They should be effective**: sanctions must be reasonably capable of achieving the desired result in terms of threat or actual breach of international peace and security. Sanctions that are targeted in ways that would not affect the wrongdoing, may be viewed as ineffective. Poorly enforced sanctions can result in continuing and escalating abuses of human rights, as exemplified in the case of Libya (Sautter 2020).
6. **They should not violate the ‘principles of humanity and the dictates of the public conscience’**: while this final test may appear ambiguous or subjective, it relates to codified IL such as the Martens Clause (eighth preambular paragraph, re-stated in the Geneva Conventions of 1949, arts. 63–68, 142 and 158 and Additional Protocol I thereto, art. 1, para. 2) mandates that all situations arising from war be governed by principles of law of civilized nations, principles of humanity and the dictates of the public conscience. The Hague Regulations further provide: ‘No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible’ (art. 50).

To meet these criteria, the impact of sanctions on the enjoyment of human rights by the affected populations should be regularly evaluated from the perspective of all parties’ ETOs. That exercise, related to one above, would clarify whether or not the desired results are being attained within a reasonable time period. If not, the measures should be revised or suspended. Otherwise,
the sanctions may not only lose their presumed legitimacy, but may also become counterproductive. Added to these criteria are the other applicable public international law regimes, not least of which are international criminal law and IHL, with its necessity and proportionality requirements.

**Conclusion**

While the law of international responsibility constitutes an element of law and order and a foundation of international legality, it is difficult to imagine the existence of IL without the rules of responsibility (Doussis and Economides 2007, pp. 19–20). Both the strength of the theory of ETOs and the dearth of jurisprudence rather should form incentives for further inquiry and litigation.

Moreover, the inquiry into ETOs as they apply to the practice of economic sanctions opens several possibilities to expand the understanding and application of ETOs more generally. Examples from this review indicates not only the relevance of ETOs to the indivisibility of all human rights, including civil and political rights that may be eroded with the accompanying hazards and unintended consequences of sanctions. The further development of ETOs in the context of economic sanctions also arises from their application in relation to other IL regimes, especially trade and investment, peremptory norms and *jus cogens*, as well as IHL (e.g., prohibition against collective punishment and enabling the fulfilment of core IHL obligations), with consequences also for refugee law provisions for protection and assistance for those affected.

The evolving practice of economic sanctions calls for more legal research, monitoring, evaluation and analysis of ETOs shared among international organizations, implementing agencies, regional bodies, all states and their constituent organs. That inquiry extends also commonly, but differentially to Special Procedures, business enterprises, nongovernmental institutions, National Human Rights Institutions and civil society organizations. Each is potentially concerned with the way that economic sanctions are applied.

The purpose of critically reviewing the practice of economic sanctions is not to give aid or comfort to violators, nor is it to undermine the legitimate interests of the international community in enforcing IL in pursuit of conflict resolution, democratization, nonproliferation, counterterrorism, bringing an end to an illegal situation or upholding human rights, including the protection of civilians. The higher purpose is to insist upon and contribute to ensuring that lawlessness of one kind not give way to lawlessness of another. Rather, their task is to be guardians of respect for, protection and fulfilment of human rights that any collective or unilateral action such as economic sanctions be sufficiently legitimate insofar as they remain consistent with participating states’ ETOs.

**Notes**

1. This term, in English usage, refers to military supplies only.
2. The Court ruled that the US lift sanctions on ‘the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft’ paras. 70, 90 and 98; and ‘The Court further considers that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including
ETOs in economic sanctions

life-saving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran’. para. 91. ‘The Court considers that the United States, in accordance with its obligations under the 1955 Treaty, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of Iran of goods required for humanitarian needs...’ para. 98. Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v United States of America), Request for the Indication of Provisional Measures, Order of 3 October 2018, available at: https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf.

References


European Court of Human Rights (ECtHR) (2014) Jaloud v The Netherlands, Application no. 47708/08, Judgment.


