

EXTRATERRITORIAL SANCTIONS, TRANSNATIONAL CORPORATE ACTIVITY, AND STATE'S DUTY TO PROTECT*

Abstract

Unilateral (extraterritorial) economic sanctions, that are often imposed on states and non-state actors by another state, are incompatible with international human rights law. Major powers use their dominant positions in the global economy to attempt influence the political behaviour of states by imposing economic measures against them. Nevertheless, the principal Business and Human Rights instruments as well as other International Law instruments do not address extraterritorial sanctions and their negative impacts on the operation of foreign business entities and the consequent human rights violations. These sanctions threaten a wide range of rights and freedoms enshrined in international human rights law and cause irreparable collateral damage. This paper is a critical inquiry into the relationship between extraterritorial sanctions, their negative impacts on the operation of the business entities in sanctioned state, and sender state's extraterritorial human rights obligations. In order to answer this question, the paper will explore state's duty to protect in more details in the context of imposition of extraterritorial sanctions.

Keywords: International law, state duty to protect, extraterritorial sanctions, corporate business activity

Résumé

Les sanctions économiques extraterritoriales unilatérales, souvent imposées aux États et aux acteurs non étatiques, sont incompatibles avec le droit international des droits de la personne. Les grandes puissances utilisent leur position dominante dans l'économie mondiale pour tenter d'influencer le comportement politique des États en imposant des sanctions économiques à leur encontre. Néanmoins, plusieurs

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instruments relatifs aux entreprises, aux droits de la personne ainsi qu'à d'autres aspects du droit international ne traitent pas des sanctions extraterritoriales, de leurs effets négatifs sur le fonctionnement des entités commerciales étrangères, ni des violations des droits de la personne qui en découlent. Ces sanctions menacent un large éventail de droits et libertés consacrés par le droit international des droits de la personne et causent des dommages collatéraux irréparables. Cet article est une enquête critique sur la relation entre les sanctions extraterritoriales, leurs impacts négatifs sur le fonctionnement des entités commerciales de l'État sanctionné et les obligations extraterritoriales des États en matière de droits de la personne. Afin d'approfondir ces considérations, l'article explore plus en détail le devoir de protection de l'État dans le contexte de l'imposition de sanctions extraterritoriales.

Mots-clés : Droit international, devoir de protection de l'État, sanctions extraterritoriales, activité commerciale des entreprises

INTRODUCTION

A highly disputed type of coercive measures is called *extraterritorial* or *unilateral* sanctions, and arises when a state uses or encourages the use of economic or political measures to “coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights”.¹ The United Nations (UN) General Assembly has adopted many resolutions which condemn the use of unilateral coercive measures, and consider them to be contrary to “international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among state”.²

¹ Charter of Economic Rights and Duties of States (adopted 6 November 1974) UNGA Res A/RES/3281, art 32.

² UNGA Res 69/180 (18 December 2014) UN Doc A/RES/69/180 [1].

Furthermore, the extraterritorial reach of unilateral sanctions has been constantly discussed by *the Special Rapporteur on Negative Impacts of Unilateral Coercive Measures on Human Rights*, who has warned against major powers resorting to their dominant positions in the international financial arena in order to bring about economic hardship to the economy of other sovereign states.³ These unilateral measures have implications as catastrophic as a wartime blockade without enjoying the imperatives of *necessity*, *proportionality* and *discrimination* conforming to international protection under international humanitarian law, which are basically disregarded in peace time blockades.⁴ A wide range of human rights are impacted by the imposition of sanctions, including various economic, social and cultural rights, predominantly through discouraging of trade and investment in the target state.⁵

Nonetheless, the arbitrary use of *economic starvation* has become the new normal; the blockades that clearly ignore the target state's sovereignty and the human rights of its citizens, as well as the rights of third countries trading with sanctioned states. Therefore, these measures are not only directed at states, but also at foreign business entities and investors operating within sanctioned countries, and so this could lead to a conflict between target state's obligations under

³ The Office of the United Nations High Commissioner for Human Rights, 'US Sanctions Violate Human Rights and International Code of Conduct, UN expert Says' (6 May 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24566&LangID=E>> accessed 4 May 2021.

⁴ UNHRC 'Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights' (30 August 2018) 39th Session UN Doc A/HRC/39/54 [25].

⁵ Gary Clyde Hufbauer, Jeffrey Schott and Kimberly Ann Elliott, *Economic sanctions reconsidered*. (3rd edn, Expanded edn, Peterson Institute for International Economics 2007).

international law, and their unlawful unilateral acts in using economic coercion that results in violation of human rights.⁶

There are many academic articles and books that discuss various aspects of sanctions law, whether multilateral or unilateral sanctions.⁷ Nevertheless, despite the prominent economic aspect of coercive measures, an important concern that has rarely been examined is the impact of sanctions on non-state actors. In other words, the analysis of extraterritorial sanctions through the lens of Business and Human Rights (BHR) has been mostly untouched by sanctions scholars. In this paper, I engage in an in-depth analysis of the manifestations of the sender state's extraterritorial human rights obligations in the context of extraterritorial sanctions, as discussed by international law instruments that has perpetuated this practice and the power imbalances between the sanctioned and the sanctioning state. To achieve the purpose of this paper, I will remain focused on the state duty to protect.

As a starting point, I briefly explain extraterritorial sanctions and their negative impacts on the civilians and the operation of the foreign business entities in the sanctioned state, as discussed by sanction scholars and United Nations documents. I then consider states duty to protect under international law, to realize whether sender states are acting against their international human rights obligations by imposing unilateral sanctions. I conclude this part by

⁶ Nigel D White, 'UN Sanctions: Where Public Law Meets Public International Law' (2011) 74 *Modern L Rev* 3, 457.

⁷ For example, see Susan Hannah Allen and David J Lektzian 'Economic Sanctions: A Blunt Instrument?' (2013) 50 *J Peace Research* 121; Ali Z Marossi and others, *Economic Sanctions under International Law Unilateralism, Multilateralism, Legitimacy, and Consequences* (T.M.C. Asser Press 2015); and, Jeremy Matam Farrall and Kim Rubenstein, *Sanctions, Accountability and Governance in a Globalised World* (Cambridge University Press 2009).

arguing that the practice of extraterritorial sanctions is in contrast with sender state's human rights obligations, given that states' human rights obligations should be understood as extending transnationally and therefore, acting otherwise is disregarding such duty.

PART 1. EXTRATERRITORIAL SANCTIONS AND HUMAN RIGHTS VIOLATION

The effectiveness and humanitarian aspects of coercive measures have been extensively discussed by some scholars.⁸ What has not been discussed is how imposition of unilateral sanctions prevent foreign business enterprises to either get involved in any business relationships with sanctioned states and to take serious precautions to avoid violating the unilateral sanctions regimes, or how they end up exiting the sanctioned state because of the pressure of sanctions.⁹

The root causes of this issue, which is the power imbalances between sender and receiver state (sanctioning and sanctioned state, respectively), as well as the sender state's transnational human rights obligations are important issues which merit greater analysis. Many scholars have argued that state duty to protect is not territorially limited.¹⁰ In addition, extraterritorial

⁸ See Stanislav Mraz and others, 'Economic Sanctions Against Iran and Their Effectiveness' (2016) 182 *Aktual'ni Problemy Ekonomiky = Actual Problems in Economics* 22.

⁹ See International Crisis Group (ICG), 'Spider Web: The Making and Unmaking of Iran Sanctions' (25 February 2013) *Middle East Report N°138* <<https://www.refworld.org/docid/512c78bf2.html>> 15, accessed 23 April 2021.

¹⁰ For example see Robert McCorquodale and Penelope Simons, 'Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) 70 *The Modern Law Review* 598; Markus Krajewski, 'The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities' (2018) 23 *Deakin L Rev* 13, 39; and Claire Methven O'Brien, 'The Home State Duty to Regulate the Human Rights Impacts of TNCs Abroad: A Rebuttal' (2018) 3 *Bus & Human Rts J* 47. Also, the Maastricht Principles address this issue in detail, see Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, (2011) 29 *Netherlands Q Human Rights* 578.

sanctions are incompatible with international human rights law due to their adverse impacts on human rights of the target state's civilians, while they spare the political leaders.¹¹ Similarly, they are vastly criticized as being “contrary to international law” as well as “in breach of the rights of the states targeted by such measures” by the UN General Assembly and the Human Rights Council.¹² The office of the High Commissioner on Human Rights, also, refers to the numerous UN studies that have been carried out and have discussed the issue of legality of such measures from a human rights perspective.¹³ Furthermore, humanitarian exemptions are also usually insufficient and major studies have showed that the impact of unilateral measures fall most heavily on the poor.¹⁴

The devastating unintended effects on third parties including neighbors and major trading partners is also a major issue.¹⁵ The important point with regard to coercive measures is that they “are not simply directed at states but at corporations and individuals within countries”.¹⁶ This could lead to a conflict, as *White* explains, between “the obligations of the implementing state on

¹¹ See UN Committee on Economic, Social and Cultural Rights (CESCR), ‘*General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*’ (12 December 1997) UN Doc E/C.12/1997/8. For further information see Jerg Gutmann and others, ‘Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle’ (2018) *IDEAS Working Paper Series from RePEc*.

¹² Matthew Happold and Paul Eden (eds), *Economic Sanctions and International Law*, (Hart 2016) 1.

¹³ See UNGA ‘Workshop on the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected populations, in particular their socioeconomic impact on women and children, in the States targeted’ (23 May 2014) UN Doc A/HRC/24/14.

¹⁴ See Dursun Peksen, ‘Better or Worse? The Effect of Economic Sanctions on Human Rights’ (2009) 49 *J Peace Research* 59. Also see Cristiane Lucena Carneiro and Laerte Apolinário, ‘Targeted Versus Conventional Economic Sanctions: What Is at Stake for Human Rights?’ (2016) 42 *Intl Interactions* 565.

¹⁵ See Boris Kondoch, ‘The Limits of Economic Sanctions under International Law: The Case of Iraq’ (2001) 7 *J Intl Peacekeeping* 267, 273-74.

¹⁶ White (n 7) 457.

the international plane and those found in the national legal order (including existing human rights protections which may or may not be a product of international obligations).”¹⁷

In 1997, General Comment No. 8 was drafted to draw attention to the economic, social and cultural rights of inhabitants of sanctioned countries that should not be disregarded by virtue of any determination that their leaders have violated norms relating to international peace and security. The provisions of the UN Charter and the General Principles of International Law must be respected by international community in any situation, and this includes respecting the rights of civilians in sanctioned countries:

...it is to insist that lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action.¹⁸

PART 2. FIGHTING ECONOMIC COERCION: STEPS TAKEN UNDER INTERNATIONAL LAW

In his many reports, the former *Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* who was mandated to fight the use of economic coercion as a tool of international diplomacy by promoting the rule of law, had identified an increasing and systematic trend in using extraterritorial sanctions as a foreign policy tool by certain countries.¹⁹ *The Special Rapporteur* had also described the implications of unilateral

¹⁷ Ibid.

¹⁸ CESCR ‘*General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*’ (12 December 1997) E/C.12/1997/8 [16].

¹⁹ UNGA ‘*Human rights and unilateral coercive measures*’ (18 September 2014) 27th Session UN Doc A/HRC/27/L.2.

sanctions as catastrophic as a wartime blockade except for the fact that “the imperatives of necessity, proportionality and discrimination” corresponding to international protection under international humanitarian law will be disregarded in peace time blockades.²⁰ He had also highlighted the general understanding surrounding extraterritorial sanctions and their unlawful nature that “disregard commonly accepted rules governing the jurisdiction of states under international law”.²¹ As will be discussed, unilateral sanctions involves unlawful assertion of jurisdiction by sender state over target state as well as third states, and so to fight this, UN has worked to renew the work of the International Law Commission on extraterritorial jurisdiction, which was originally initiated in 2006.²²

A number of measures have been suggested by *the Special Rapporteur* to decrease and ultimately termination the use of unilateral economic sanctions by states. Among those, is requiring the sender states to conduct a transparent human rights impact assessment before sanction are applied, during the transition period and monitor the effects of the implementations of the sanctions.²³ Apart from the UN, the EU has also taken some measures to fight the chilling effects of economic sanctions on its business entities; for instance, in November 1996, the EU adopted regulation No. 2271/96 in response to US implemented restrictive measures concerning Cuba, Lybia and Iran. The scope of this regulation was later expanded by the EU in 2018, to mitigate the impacts of some recently imposed sanctioned of the US against Iran, on EU operators doing legitimate business in and with Iran. The ultimate goal was to provide protection against

²⁰ UNHRC (N 5) [34]- [18].

²¹ *ibid* [18]-[34].

²² *ibid* [51].

²³ UNHRC (N 5) [14].

the extraterritorial application of the sanctions where they negatively affect “the interests of persons... engaging in international trade and /or the movement of capital and related commercial activities between the Community and third countries. by adopting blocking legislations.²⁴

Nevertheless, the risk of being exposed to onerous penalties by the targeting state, leads to the devastating practice of “over-compliance by third parties” as a result of their unwillingness to entertain relations with the targeted state.²⁵ This is mainly due to the strategic importance of having access to major economies’ markets, such as the US market, for most businesses, which makes the Transnational Corporations unwilling to risk continuing or initiating their business with the sanctioned country.

PART 3. STATE’S EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS

In this section, *human rights* and *extraterritorial human rights obligations of states* will be discussed, to realize whether states are acting according to their human rights obligations when imposing unilateral sanctions. In the context of states’ transnational human rights obligations, when discussing this issue, *Skogly* quotes *Henry Shue* from his prominent book, *Basic rights*: “A

²⁴ The chilling effects of sanctions on trade relations and business entities of third states is vastly discussed here: UNGA ‘Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights’ (29 August 2017) 72nd Session UN Doc A/72/370, [33]-[59]. Also see, Council Regulation ‘protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom’ (22 November 1996) (EC) No 2271/96.

²⁵ UNGA (n 25) [59].

proclamation of a right is not the fulfillment of a right, any more than an airplane schedule is a flight.”²⁶

Universality, inalienability and indivisibility of human rights are their most prominent characteristics.²⁷ Nevertheless, *Skogly* suggests that the proposed *universal enjoyment of human rights* doesn't necessarily create any *accepted universal obligations of human rights*.²⁸ He further argues that: “The proposition here is obviously that if we are advocating universal enjoyment of human rights, it does not make sense to limit the protection of human rights to national borders.”²⁹

Evidently, the recent interpretations of the human rights regime consider extraterritorial obligations “an integral part of states’ human rights obligations.”³⁰ Likewise, most states seem to have accepted this notion, which is also reinstated by the emerging jurisprudence of international courts and UN treaty bodies. Nonetheless, it appears that most nations-states primarily consider their extraterritorial human rights obligations as negative ones, rather than positive obligations, which refer to measures that states must take to contribute to the full realization of the human

²⁶ Sigrun i. Skogly and Mark Gibney, ‘Economic Rights and Extraterritorial Obligations’ in *Economic Rights: Conceptual, Measurement, and Policy Issues*, ed (Cambridge: Cambridge University Press, 2007) 276.

²⁷ See John Omanique, ‘Universal and Inalienable Rights: A Search for Foundations’ (1990) 12 Human Rights Q 465.

²⁸ Sigrun Skogly, ‘Extraterritoriality: Universal Human Rights Without Universal Obligations?’ in Sarah Joseph and others (eds), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing Limited, 2010) 96.

²⁹ *Ibid.*

³⁰ Larissa Ramina, ‘TWAAIL – ‘Third World Approaches to International Law’ and Human Rights: Some Considerations’ (2018) 5 *Revista de Investigações Constitucionais* 261, 265.

rights.³¹ This perception is not in line with studies that suggest “*control over territory*” is no longer perceived by most states as the trigger for their extraterritorial obligations, and *factual control* would suffice to generate extraterritorial human rights obligations.³²

Negative obligations are of universal nature and require every individual and every state to avoid causing harm to others. It is well argued that the place where the harm takes place is of no importance, and so this obligation is definitely not territorially limited.³³ However, while human rights are defined to be all-encompassing, the curious issue is that some case law may have pointed to the wrong direction. An example for this is the *Nicaragua v. United States* case, which is one of the leading cases in extraterritorial obligations. Following this case, the US was held accountable for its internationally wrongful acts committed in Nicaragua by agents of US citizenships, but wasn't held responsible for the human rights violations committed by “a counter-revolutionary group, heavily armed and equipped by the United States” because of the US's lack of control in every aspect of their actions.³⁴

Hence, these inconsistencies and conflicts between the obligations and expectations on the one hand, and realities and jurisprudence of international law on the other hand, makes one wonder if states have any transnational human rights obligations, and if so, if there are limitation on these obligations. *Skogly* and *Gibney* regard rights without obligations an illusion.³⁵ They argue that:

³¹ Monika Heupel, ‘How Do States Perceive Extraterritorial Human Rights Obligations? Insights from the Universal Periodic Review’ (2018) 40 *Human rights quarterly* 521, 545.

³² *Ibid.*

³³ *Skogly and Gibney* (n 27) 275.

³⁴ *Ibid.*

³⁵ *ibid* 276.

...although we proclaim the universality of human rights, we have created a system in which human rights protection has come to be severely limited by territorial considerations. In essence, “universality” is only applied to the enjoyment of rights, not to the corresponding obligations.³⁶

Nevertheless, considering the realities of the modern world, what seems evident is that globalization as well as “the tremendous inequality in terms of state power” internationally, call for state’s increased domestic and transnational accountability.³⁷

PART 4. STATE’S EXTRATERRITORIAL OBLIGATIONS IN THE CONTEXT OF EXTRATERRITORIAL SANCTIONS

In this section, an attempt will be made to realize whether sender states are in fact acting against their human rights obligations by imposing coercive measures unilaterally. In doing this, state’s positive and negative obligations will be analysed in more details to shed light on the issue of treaty obligations.

In his book, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*, Marko Milanovic suggests that in the most important human rights treaties, the scope of application is determined by the jurisdiction clauses.³⁸ He also notes that in most cases, such

³⁶ibid. To clarify the problem, authors exemplify the right to food. They argue that each state is prohibited from depriving its residents from their rights to food. In this example, states are only required to respect this right territorially. Nevertheless, they ask whether the same state has an obligation (a negative obligation) to refrain from closing their borders for food export in case their action result in food deprivation and starvation in another state? See Skogly and Gibney (n 27) 275.

³⁷ Sigrun I Skogly and Mark Gibney, ‘Transnational Human Rights Obligations’ (2002) 24 *Human Rights Quarterly* 781, 798.

³⁸ Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles and Policy* (Oxford University Press, 2011) 17-18.

clauses differentiate between state's negative obligations and positive obligations.³⁹ As discussed earlier, the negative obligations require contracting parties to respect human rights and “refrain from acts capable of violating the rights of individuals”, while the positive obligation involves taking various steps to “fulfill and protect the rights of individuals”.⁴⁰

In the context of extraterritorial sanctions, the importance and relevance of this distinction in extraterritorial application of human rights treaties is considerable. In the aforementioned definition, state's ability to comply with its human rights obligations also depends on the determining factor of *control*; meaning, states must have “an effective control over a territory of population in order to be able to fulfil its positive obligations”.⁴¹

In the context of unilateral sanctions, the sender state might not have an apparent *control* over the sanctioned state's territory, and yet its actions negatively affect the human rights of the sanctioned state's people by depriving them from conducting normal business with third parties, or having access to medical equipment or technology (which would directly impact their right to development). Accordingly, the questions that comes to mind is whether the sanctioning state is violating its human rights treaty obligations; more importantly, why international law and human rights treaties have failed to address the positive measures that states take, to allegedly protect their interests, while violating third state's rights and sovereignty? How can creators of the human rights treaties be brought to the “logical, legal, and moral” conclusion that they are in fact

³⁹ *ibid* 18.

⁴⁰ *Ibid*.

⁴¹ *Ibid*.

mandated by the treaties and their normative underpinnings to respect and enforce human rights provisions, in a more logical manner.⁴² In this regard, *Milanovic* argues that:

...while the state's overarching positive obligation to secure or ensure human rights even from violations by private actors should be conditioned by a spatial notion of jurisdiction as control of an area, since in the overwhelming majority of cases the state would need such control to effectively comply with its obligations, its negative obligations – e.g. not to kill an individual without sufficient justification – should be territorially unlimited, since the state can always refrain from a specific act.⁴³

I believe in the context of extraterritorial sanctions, where socio-economic rights are at stake, this could well be the case. While obligation to secure and ensure should be limited to territories under “*state's effective overall control*”, many scholars argue in favour of state's extraterritorial obligation to respect human rights, that is state's negative obligation, even where they don't exercise *control*. For, the reality is that their superior position in international arena and their economic power enable and equip them to exercise their power beyond their jurisdictions, and so the state obligation to respect human rights should not be considered limited territorially.⁴⁴

⁴² *ibid* 260.

⁴³ Marco Milanovic, *Extraterritorial Application of Human Rights Treaties: an Overview* (2011), <<https://www.ejiltalk.org/extraterritorial-application-of-human-rights-treaties-an-overview/>> .

⁴⁴ Milanovic (n 39) 264. This issue is vastly discussed by many scholars: for instance, see Robert McCorquodale and Penelope Simons, ‘Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law’ (2007) 70 *The Modern Law Review* 598, 624. Also see D. Augenstein and D. Kinley, ‘When human rights ‘responsibilities’ become ‘duties’: the extraterritorial obligations of states that bind corporations’, Ch. 11 in S. Deva and D. Bilchitz (eds.), *Human Rights Obligations of Business* (2013, CUP) 271. Sara L Seck, ‘Conceptualizing the Home State Duty to

Recent jurisprudence of the international human rights supervisory bodies confirms this, by indicating that states also have extraterritorial human rights obligations “where they *exercise power, authority* or *effective control* over individuals, or where they exercise effective control of an area of territory within another state.”⁴⁵ Therefore, limiting extraterritorial obligations to have *effective control* is no longer the case, and a broader definition has been emerged which also encompass exercising *power* and *authority*. Under this interpretation, by imposition of unilateral economic sanctions, the sanctioning state is in fact acting against its international obligations.

In overall, there are numerous scholars who believe extraterritorial obligation to protect is explicitly laid down by international human rights law and in its instruments, although there are a few who oppose this view.⁴⁶ Nevertheless, it is definitely logical to assume extraterritorial obligations for all states according to the growing trend in the ruling of ECtHR and other human rights courts and institutions, especially in a world where powerful states keep asserting their power abroad in ways that affect the rights of individuals beyond their national borders.⁴⁷

In addition, the majority of states are at least party to one binding international instrument, and when they ratify human rights treaties, they must uphold to their human rights

Protect' in Karin Buhmann, Lynn Roseberry and Mette Morsing (eds), *Corporate Social and Human Rights Responsibilities. Global, Legal and Management Perspectives* (Palgrave Macmillan 2011).

⁴⁵ Penelope Simons and Audrey Macklin, *The governance gap : extractive industries, human rights, and the home state advantage* (Routledge 2014) 182.

⁴⁶ See Claire Methven O'Brien, 'The Home State Duty to Regulate the Human Rights Impacts of TNCs Abroad: A Rebuttal' (2018) 3 BHRJ 47. *O'Brien* questions the responsibility of home states under human rights treaties (although she considers this in the context of transnational business activities, and human rights violations resulted from their operations abroad), and argue against any positive legal basis for such duty.

⁴⁷ Beth Van Schaak, 'The United States' Position on the Extraterritorial Application of Human Rights Obligations: Now is the Time for Change' (2014) 90 Int'l L Studies 20, 20.

obligations recognized under the treaty. For instance, the 1966 International Covenant on Civil and Political Rights (ICCPR), is a binding multilateral human rights treaty, under which all parties have an obligation to protect individuals within their territory and jurisdiction.⁴⁸ This could entail both positive and negative obligations.⁴⁹ Therefore, as recalled by many scholars, any measure that states take in international arena must fully comply with human rights standards and states obligations under international law including the relevant international treaties and protocols.⁵⁰ It therefore can be argued that by imposing extraterritorial sanctions, sanctioning states are not in fact complying with their treaty obligations. For instance, freedom of association, which covers formation of association (including business entities) as well as their functioning and pursuit of their objective -which entails engagement in economic activity and making profit- is protected under Art. 22(1) of ICCPR: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”⁵¹

⁴⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2(1) reads: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind ...”.

⁴⁹ Van Schaak (n 48) 28. alternatively, *Van Schaak* refers to a different approach to article 2(1) whereby positive obligation is limited to individual in State’s territory while negative obligation should be obliged without territorial limitation. See Van Schaak (n 48) 29.

⁵⁰ Monica Lugato, ‘Sanctions and Individual Rights’ in *Coercive Diplomacy, Sanctions and International Law*, Natalino Ronzitti, eds (Brill 2016) 171, 179-180. For instance, in the context of counterterrorism, the US department of state has pledged to fight terrorism while respecting the rule of law and human rights standards. One can simply argue that the same must be applied to the context of sanctions.

⁵¹ Stoll and others, *Study: Extraterritorial sanctions on trade and investments and European responses*, (European Union, Belgium: 2020) 102, <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf)> 60.

Likewise, Art. 22(2) reiterates that no restrictions should be placed on the exercise of this right, unless authorized lawfully,⁵² while setting a proportionality test for any measure that would potentially violate this right in order to attain the goals enumerated in the covenant.⁵³

It is also critical to mention that rights and freedoms enshrined in international treaties are closely interrelated, which signifies the “importance attached to each of the respective rights”, and so it is of great importance to respect each individually and fully.⁵⁴ As a result, prohibiting third parties (states and business entities) to refrain from engaging in business activities with a sanctioned state, interfere with state’s treaty obligations.⁵⁵

Furthermore, it is well argued that unilateral sanctions violate third state’s sovereignty under public international law. *The sovereign equality of States* is addressed by Art. 2(1) of the Charter of the United Nations.⁵⁶ Comparably, Art. 2(4) requires member states to refrain from utilization of force or threats in their international relations, against the territorial integrity and independence of other states.⁵⁷ Hence, extraterritorial sanctions, also contradict these principles by affecting the target states and third states sovereignty. Related to the *sovereignty doctrine*,

⁵² ICCPR (n 49) art 2(2) reads as follow: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

⁵³ Stoll and others (n 52) 60.

⁵⁴ Paul M Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights* (Cambridge University Press 2020), 628.

⁵⁵ Stoll et al (n 52) 60.

⁵⁶ Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI, art 2(1): “The Organization is based on the principle of the sovereign equality of all its Members.”

⁵⁷ UN Charter, *supra* note 132, Art. 2(4): “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

intervention in the domestic affairs of other states is prohibited under customary international law, and economic coercion could well violate this prohibition of intervention.⁵⁸ This is because the sanctions not only impact the receiver state, but also foreign governments and entities that are operating or investing in the targeted state.

CONCLUDING REMARKS

Unilateral sanctions are modern form of domination, extraterritorial effects of which affects the sovereignty of other states, the legitimate interests of entities or individuals under their jurisdiction and the freedom of trade and investment. They also negatively impact a wide range of human rights including various economic, social and cultural rights. This practice, in other words, ignore the target state's sovereignty and the human rights of its citizens, as well as the rights of third countries trading with sanctioned states. Therefore, these measures are not only directed at states, but also at foreign business entities and investors operating within sanctioned countries, and so this could lead to a conflict between target state's obligations under international law, and their unlawful unilateral acts in using economic coercion that results in violation of human rights.

In this paper, while investigating the negative impacts of unilateral sanctions on business entities, and states' extraterritorial human rights obligations in the context of unilateral sanctions, I argued that sanctions imposed unilaterally can interfere with a number of substantive human rights guarantees and particularly those enshrined in the human rights treaties, to which sender states are parties. In addition, I argued that the practice of extraterritorial sanctions is in contrast

⁵⁸ Stoll et al (n 52) 54.

with sender states human rights obligations, as the state duty to protect is not territorially limited, and so should be understood as extending transnationally and therefore, acting otherwise is disregarding such duty.

Furthermore, I referred to the newly emerging international jurisprudence which assume extraterritorial human rights obligations for any state or business entity, wherever a *de facto authority or control* over territory/individuals is being exercised; imposition of unilateral sanctions is manifestation of exercising both power and control over sanctioned states and third states/entities, and creates human rights obligations for the targeting state. If a state is capable to cause harm, then it is well capable of respecting rights in question, and nothing can justify doing otherwise.

Having in mind *Chimni's* warning about making criticisms without offering any helpful suggestions for reform,⁵⁹ I realize that revealing the current gaps in international law in the context of extraterritorial sanctions and sender state's human rights obligations is just the first step, and proposing suggestions and an alternative interpretation of international law is equally important. For this reason, I recommend an interpretation of state duty to protect that considers imbalances between sanctioned and sanctioning states; a broader interpretation that also clarify the scope and limits of state's positive and negative obligations, in order to ensure the effective enjoyment of human rights extraterritorially.

The use of economic coercion unilaterally, which also undermines the *sovereign equality* of states, reveals a crucial need for creating binding or normative guidelines for states and

⁵⁹ B.S Chimni, 'Critical theory and international economic law: a third world approach to international law (TWAAIL) perspective' in John Linarelli (ed.), *Research Handbook on Global Justice and International Economic Law* (Edward Elgar Publishing 2013) 251.

businesses to respect their extraterritorial human rights obligations. After all, the de facto difference between *the proposed universal enjoyment of human rights* and *the accepted universal obligations of human rights* must be taken into account; specially, in the context of unilateral sanctions where the sanctioned states are not as strong economically, and so can easily be coerced and pressured by more powerful countries.