

EUROPEAN YEARBOOK ON HUMAN RIGHTS

2023

Philip Czech, Lisa Heschl, Karin Lukas,
Manfred Nowak and Gerd Oberleitner (eds.)



INTERSENTIA



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INTERSENTIA

Cambridge – Antwerp – Chicago



Vienna

HUMAN RIGHTS AND UNILATERAL ECONOMIC SANCTIONS

A New Perspective on a Twisted Relationship

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ABSTRACT

Literature and practice outlining the relationship between human rights and unilateral economic sanctions veer in two opposite directions. One strand of

literature advocates for sanctions to redress grave human rights violations. This position has been epitomised in the legislation allowing the imposition of economic sanctions for human rights violations occurring abroad (Magnitsky-style sanctions). The opposing voice criticises unilateral economic sanctions irrespective of their objectives and forms, mainly by emphasising their negative repercussions on the enjoyment of human rights. This position is officially adopted by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, and is reflected in numerous reports on the matter, which are traditionally supported by the most-sanctioned countries.

This contribution aims to explore perplexing and multifaceted relations between human rights and unilateral economic sanctions, an issue that is politically tainted, and which has been insufficiently analysed from a legal standpoint. Retreating from the clashes between these prevailing old, unworkable dichotomies, this contribution argues for a more nuanced portrayal of the subject matter.

1. INTRODUCTION

The debate surrounding the legality of unilateral economic sanctions has intensified over the past few years, especially in recent months. This has been a recurring theme, carrying along strong political overtones. Against the background of these discussions, this contribution focuses on the twisted relationship between unilateral economic sanctions and human rights. It aims to explore perplexing and multifaceted relations between human rights and unilateral economic sanctions, an issue that is politically charged, and which has been insufficiently analysed from a legal standpoint.

The term ‘economic sanction’ can be used to denote any one of a broad range of diverse restrictions. These can be classified based on the actors that employ them (collective, regional, unilateral and private),¹ depending on their scope (comprehensive and targeted), according to the reasons for their imposition (to counter terrorism, to oppose unconstitutional changes of government, to limit the proliferation of nuclear weapons, to remedy grave human rights violations, etc.).

Discussion of the economic sanctions’ legality is closely intertwined with the actors who impose these restrictions. Sanctions authorised by the United Nations Security Council (UNSC) according to Chapter VII of the Charter of the United Nations (UN Charter), i.e. collective economic sanctions, are presumed to be

¹ The term ‘private sanctions’ has evolved in the context of the unprovoked war of aggression waged by the Russian Federation against Ukraine, in order to denote sanctions decided on, and taken by, private companies, in addition to the sanctions taken by individual states, in the absence of the UN-authorised sanctions: O.D. HART, D. THESMAR and L. ZINGALES, ‘Private Sanctions, National Bureau of Economic Research’, Working Paper 30728, December 2022, available at https://www.nber.org/system/files/working_papers/w30728/w30728.pdf, last accessed 13.07.2023.

legal under international law.² Regional organisations can impose economic sanctions against their members if their constituent instruments allow them to do so.³ Sanctions targeting organisations' members are less prone to allegations of illegality, owing to their contractual nature, presumed impartiality, and consideration of the regional context.⁴ Restrictive economic measures imposed by a state or a group of states, for example the European Union (EU), against foreign state, its apparatus (for example, public bodies or government officials), legal entities and individuals, which fall outside the aforementioned categories, and are based only on the adopting states' domestic laws, belong to the category of unilateral economic sanctions.⁵ In the public international law domain, different concepts are used to describe unilateral economic sanctions, i.e. retorsions, reprisals, countermeasures, third-party countermeasures (countermeasures in collective interest), unilateral coercive measures, and unilateral non-forcible measures.⁶ This diversity of concepts and their potential overlap,⁷ as well as the unsettled legality of some of them,⁸ illustrate how obfuscated international law in this area is. Despite the long history of their application and questioning of

² According to Art. 39 of the UN Charter, the Security Council 'shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'. Art. 41 of the UN Charter allows the Security Council to call upon the members of the UN to apply such measures as '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'. Arts. 25, 48 and 103 of the UN Charter make any such decision binding upon the members of the UN.

³ E.g. the African Union (AU), the League of Arab States, the Economic Community of West African States (ECOWAS), and the Organization of American States (OAS) all have the possibility to use autonomous punitive measures of political (suspension of membership) or economic (embargoes) character, in response to violations of certain rules or principles of these organisations.

⁴ E. HELLQUIST, 'Regional Organizations and Sanctions against Members: Explaining the Different Trajectories of the African Union, the League of Arab States, and the Association of Southeast Asian Nations', (2014) *KFG Working Paper Series* 59.

⁵ I. BOGDANOVA, 'Targeted Economic Sanctions and WTO Law: Examining the Adequacy of the National Security Exception', (2021) 48(2) *Legal Issues of Economic Integration*, pp. 171–200.

⁶ T. RUYS, 'Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework', in L. VAN DEN HERIK (ed.), *Research Handbook on UN Sanctions and International Law*, Edward Elgar Publishing, Cheltenham 2017; I. BOGDANOVA, *Unilateral Economic Sanctions in International Law and the Enforcement of Human Rights: The Impact of the Principle of Common Concern of Humankind*, Brill/Nijhoff, Leiden/Boston 2022, pp. 60–68.

⁷ Ibid.

⁸ A narrow definition of what actions might constitute lawful countermeasures, according to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), results in a situation where only a part of what are defined here as unilateral economic sanctions can be labelled as countermeasures. The outcome caused by the narrow definition of countermeasures endorsed by the International Law Commission (ILC) has been accurately described as follows: 'while the ILC purports to define and constrain countermeasures, in so doing it leaves question marks hanging over the legality of a large segment of State practice on wider non-forcible measures': N.D. WHITE and A. ABASS, 'Countermeasures and Sanctions', in M.D. EVANS (ed.), *International Law*, 5th ed., Oxford University Press, Oxford 2018, p. 524.

their effectiveness, the legality of unilateral economic sanctions under public international law remains unsettled.

It is against the backdrop of unilateral sanctions' questioned legality that their relations with human rights are explored. These relationships have already gained some attention in the literature. For example, Jean-Marc Thouvenin observed that human rights may play a double role – they might be a cause for economic sanctions and, concurrently, function as a legal constraint on their use.⁹ Echoing the latter aspect, Natalino Ronzitti noted that, '[a] contentious point is still how to limit sanctions and countermeasures from the perspective of human rights/humanitarian law.'¹⁰ Taking this as a starting point, this contribution aims at providing an in-depth analysis of the complex interrelations between unilateral economic sanctions – unilateral coercive measures, as they are labelled in the UN documents – and human rights.

Towards this end, the rest of this contribution focuses on finding an answer to the question, 'how do unilateral economic sanctions relate to human rights?'. There are two angles in this debate that stand in sharp contrast to one another, and the subsequent sections will explore both.

The rest of this contribution is divided into five sections. [Section 2](#) sets the stage by providing a historical account of the instances in which economic sanctions have been imposed on human rights grounds. Following this, [section 3](#) is devoted to the discussion of Magnitsky-style sanctions, their implementation, and their potential to violate the human rights of targeted individuals. In [section 4](#), the discussion revolves around the debate on unilateral economic sanctions' illegality, including the matter of their negative repercussions on the enjoyment of human rights. The following section, [section 5](#), discusses the possibility of shifting the angle of the debate to a discussion of substantive and procedural preconditions, fulfilment of which may potentially uphold the legality of unilateral economic sanctions imposed on human rights grounds. [Section 6](#) summarises the main conclusions of this chapter.

2. ECONOMIC SANCTIONS AND HUMAN RIGHTS: A HISTORICAL ACCOUNT

The historical record of the early practice of politically induced economic coercion lacks a consistent narrative. This being said, scholars in general tend

⁹ J.-M. THOUVENIN, 'International Economic Sanctions and Fundamental Rights: Friend or Foe?' in N. WEISS and J.-M. THOUVENIN (eds.), *The Influence of Human Rights on International Law*, Springer, Berlin/Heidelberg 2015. pp. 113–129.

¹⁰ N. RONZITTI, 'Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective', in N. RONZITTI (ed.), *Coercive Diplomacy, Sanctions and International Law*, Brill/Nijhoff, Leiden 2016, at p. 1.

to agree that economic sanctions emerged as an independent policy tool after World War I,¹¹ and even more so after World War II.¹²

The use of economic sanctions to promote compliance with human rights is a recent development, although some earlier historical accounts are also known. Given the later course of events, it is ironic to note that the 20th century started with the 1905 Chinese boycott against the United States, fuelled by the mistreatment of Chinese immigrants in the United States, and the enactment of exclusionary laws preventing Chinese immigration.¹³ This historical account stands in sharp contrast to the People's Republic of China's (China) contemporary view on the use of economic coercion for human rights causes, which the country vehemently opposes.¹⁴

Starting from the 1970s, individual states occasionally employed economic sanctions to respond to instances of grave human rights violations. For example, human rights entered the US foreign policy agenda under the presidency of Jimmy Carter.¹⁵ In response to human rights violations in Paraguay, Guatemala, Argentina, Nicaragua, El Salvador and Brazil, US laws were amended to prohibit the provision of security and economic assistance, as well as favourable voting to grant multilateral loans from the international financial institutions, to these countries¹⁶ – although some of these efforts were half-hearted.¹⁷

The Jewish emigration – specifically the restrictions on such emigration enacted by the Soviet Union – facilitated a continued institutionalisation of

¹¹ P.A. DEHNE, *After the Great War: Economic Warfare and the Promise of Peace in Paris 1919*, Bloomsbury Academic, London 2019.

¹² G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al., *Economic Sanctions Reconsidered*, 3rd ed., Peterson Institute for International Economics, Washington DC, 2007.

¹³ J. CARTER, 'China's anti-American boycott of 1905', *The China Project*, 12.05.2021, available at thechinaproject.com/2021/05/12/chinas-anti-american-boycott-of-1905/, last accessed 11.04.2023.

¹⁴ China customarily votes against the UNSC resolutions authorising collective sanctions on human rights grounds: UN, 'Russia, China Block Security Council Action on Use of Chemical Weapons in Syria', *UN News*, 28.02.2017, available at [news.un.org/en/story/2017/02/552362-russia-china-block-security-council-acti](https://news.un.org/en/story/2017/02/552362-russia-china-block-security-council-action-on-use-chemical-weapons-syria) on-use-chemical-weapons-syria, last accessed 10.04.2023.

¹⁵ 'In the late 1970s, following a series of congressionally inspired initiatives and under the leadership of President Carter, human rights became a cause célèbre and priority goal of US sanctions policy.' See G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al. (2007), *Economic Sanctions*, *supra* note 12, p. 13; 'Congress has, since the mid-1970s, pressured presidents to place more weight on human rights in modulating U.S. relations with foreign governments.' See D. SKIDMORE and W. GATES, 'After Tiananmen: The Struggle over U.S. Policy toward China in the Bush Administration', (1997) 27 (3) *Presidential Studies Quarterly*, p. 518.

¹⁶ G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al. (2007), *Economic Sanctions*, *supra* note 12, p. 149; L.L. MARTIN, *Coercive Cooperation: Explaining Multilateral Economic Sanctions*, Princeton University Press, Princeton 1992, pp. 101–111.

¹⁷ '[The] United States was reluctant to enforce human rights sanctions vigorously against El Salvador and Guatemala, for fear of weakening their regimes and abetting leftist rebel victories that would benefit the Soviet Union.': G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al. (2007), *Economic Sanctions*, *supra* note 12, p. 128.

human rights concerns in US foreign policy.¹⁸ The issue had become increasingly salient, and was the main cause of enactment of the Jackson–Vanik Amendment to the Trade Act of 1974,¹⁹ which allowed suspension of the most-favoured nation (MFN) status granted to non-market economies, if they restricted free emigration or did not respect other human rights.²⁰

Other states followed the US example and sanctioned states engaged in severe human rights violations. A case in point is sanctions imposed by the United Kingdom against Uganda in the 1970s that called for changes in the ruling regime’s human rights record.²¹ These sanctions followed US sanctions enacted against Idi Amin’s regime, which was responsible for a consistent pattern of egregious human rights violations.²²

The EU’s practice of imposing unilateral sanctions, i.e. not UN-led sanctions, dates back to the early 1980s,²³ with the withdrawal of the MFN treatment in trade relations with Poland, for arrests and detention of political opponents, being the first example.²⁴ This was an early example of the EU’s unilateralism aimed at human rights protection, although the relevant regulations and implementing mechanisms were developed much later.²⁵ Analysing the EU’s sanctioning policy during the period 1981–2004, Joakim Kreutz observed that sanctions imposed to promote human rights and democracy dominated the Union’s sanctions record.²⁶ Later, this conclusion was confirmed by the first programmatic document on the EU’s sanctions policy – ‘Basic Principles on the Use of Restrictive Measures (Sanctions)’ – adopted in 2004, which declared that, ‘the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance.’²⁷ Thus, at least since 2004, the EU has been committed to using instruments of economic pressure to promote compliance with human rights globally.

Following the Tiananmen Square bloodshed in 1989, protection of human rights in China became a point of contention in the relationship between China

¹⁸ R.S. SØNDERGAARD, *Reagan, Congress, and Human Rights: Contesting Morality in US Foreign Policy*, Cambridge University Press, Cambridge 2020, pp. 118–163.

¹⁹ *Ibid.*, p. 121.

²⁰ Trade Act of 1974, Public Law 93-618, 03.01.1975, Title IV, s. 402.

²¹ G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al. (2007), *Economic Sanctions*, *supra* note 12, Case 72-1.

²² R.D. NURNBERGER, ‘The United States and Idi Amin: Congress to the Rescue’, (1982) 25 *African Studies Review*, p. 49.

²³ J. KREUTZ, ‘Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981–2004’, (2005) 45 *BICC Paper*, p. 7.

²⁴ *Ibid.*, pp. 21–22.

²⁵ *Ibid.*

²⁶ *Ibid.*, pp. 20–21.

²⁷ COUNCIL OF THE EUROPEAN UNION, ‘Basic Principles on the Use of Restrictive Measures (Sanctions)’, 10198/1/04 REV1, 07.06.2004.

and other states. This antagonism was also reflected in unilateral sanctions that were introduced after the massacre. In response to these tragic events, the European Economic Community (EEC), the forerunner of the EU, introduced an arms embargo.²⁸ Among other actions introduced by the EEC were the postponement of new cooperation projects with China, a call on the World Bank to postpone examination of new credits, and suspension of high-level contacts with China.²⁹ The US responded with sanctions: arms sales to China were suspended and technology transfers were restricted.³⁰ Later, more severe restrictions were announced.³¹ Despite the laudable efforts of Congress, the MFN status was not denied to Chinese imports.³²

In 1992, three years after the Tiananmen Square events, the State Council of the People's Republic of China characterised the US response to these events as an interference in China's domestic affairs: '[the US is just] using human rights [issues] to interfere in Chinese domestic politics and promote hegemonism and power politics'.³³ This view echoes China's current opposition to unilateral economic sanctions imposed on human rights grounds.

The use of force against demonstrators in Myanmar (Burma) in the late 1980s, as well as the refusal of the military government to honour election results in 1990, engendered not only the harsh critique of the international community, but also economic sanctions levied by individual states.³⁴ Regrettably, despite the countless efforts of the international community and human rights advocates to exert pressure on the military government, the human rights situation has deteriorated significantly since then, and numerous reports have revealed the true depth of human suffering in Myanmar.³⁵ Those revelations culminated in sweeping economic sanctions, imposed by the US,³⁶ the EU³⁷ and Japan.³⁸

²⁸ EUROPEAN COUNCIL, 'Declaration on China, Presidency Conclusions, Annex II', SN 254/2/89, 26-27.06.1989.

²⁹ Ibid.

³⁰ R.C. BUSH, '30 years after Tiananmen Square, a look back on Congress' forceful response', *Brookings*, 29.05.2019, available at www.brookings.edu/blog/order-from-chaos/2019/05/29/30-years-after-tiananmen-square-a-look-back-on-congress-forceful-response/, last accessed 11.04.2023.

³¹ D. SKIDMORE and W. GATES (1997), 'After Tiananmen', *supra* note 15.

³² R.C. BUSH (2019), '30 years after Tiananmen Square', *supra* note 30.

³³ A. POH, *Sanctions with Chinese Characteristics: Rhetoric and Restraint in China's Diplomacy*, Amsterdam University Press, Amsterdam 2021, p. 73.

³⁴ M. EWING-CHOW, 'First Do No Harm: Myanmar Trade Sanctions and Human Rights', (2007) 5(2) *Northwestern Journal of International Human Rights*, pp. 156-157; J. KREUTZ (2005), 'Hard Measures by a Soft Power?', *supra* note 23, pp. 27-28.

³⁵ M. EWING-CHOW (2007), 'First Do No Harm', *supra* note 34, p. 155.

³⁶ Ibid.

³⁷ R.L. HOWSE and J.M. GENSER, 'Are EU Trade Sanctions on Burma Compatible with WTO Law' (2008) 29(2) *Michigan Journal of International Law*, p. 165.

³⁸ G.C. HUFBAUER, J.J. SCHOTT, K.A. ELLIOTT et al. (2007), *Economic Sanctions*, *supra* note 12, Case 88-1.

Recent events, such as alleged genocide against the Rohingya minority group,³⁹ and the military *coup d'état*, provoked new waves of economic sanctions,⁴⁰ including targeted sanctions against individuals implicated in grave human rights violations.⁴¹

The end of the Cold War, and significantly increased use of the UN-authorized economic sanctions signalled a new era of economic statecraft.⁴² This shift symbolised not only proliferation of economic sanctions, but also expansion of the policy goals which such measures pursued.⁴³ Notwithstanding these developments, collective economic sanctions redressing human rights violations were authorised by the UNSC less often than one would expect.⁴⁴ Every now and then, the UNSC is confronted with a need to decide whether egregious human

³⁹ M. SPETALNICK and D. BRUNNSTROM, 'U.S. imposes sanctions on Myanmar military over Rohingya crackdown', *Reuters*, 17.08.2018, available at www.reuters.com/article/us-myanmar-rohingya-usa-idUSKBN1L21KL, last accessed 11.04.2023; S. MARKS, 'EU weighs new sanctions against Myanmar over Rohingya', *Politico*, 08.09.2018, available at www.politico.eu/article/eu-weighs-new-sanctions-against-myanmar-over-rohingya/, last accessed 11.04.2023.

⁴⁰ GLOBAL AFFAIRS CANADA, 'Canada imposes sanctions in relation to the 2021 coup d'état in Myanmar', News release, 31.01.2023, available at www.canada.ca/en/global-affairs/news/2023/01/canada-imposes-sanctions-in-relation-to-the-2021-coup-detat-in-myanmar.html, last accessed 10.04.2023; COUNCIL OF THE EUROPEAN UNION, 'Myanmar/Burma: EU imposes sixth round of sanctions against 9 individuals and 7 entities', Press release, 20.02.2023, available at www.consilium.europa.eu/en/press/press-releases/2023/02/20/myanmar-burma-eu-imposes-sixth-round-of-sanctions-against-9-individuals-and-7-entities/, last accessed 10.04.2023.

⁴¹ In February 2023, Australia joined these efforts, and implemented targeted financial sanctions and travel bans on individuals responsible for egregious human rights abuses in Myanmar, and on legal entities that enable this: MINISTER FOR FOREIGN AFFAIRS, 'Targeted sanctions in response to human rights violations in Myanmar and Iran', Press release, 01.02.2023, available at www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violations-myanmar-and-iran, last accessed 10.04.2023.

⁴² D. CORTRIGHT, G.A. LOPEZ and R.W. CONROY, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, Lynne Rienner, Boulder 2000.

⁴³ *Ibid.*

⁴⁴ As Matthew Happold argues: 'The existence of an internal armed conflict therefore justifies Council [UNSC] action against violations of human rights and humanitarian law accompanying it. Nonetheless, it does not yet seem established that the Security Council can exercise its Chapter VII powers to protect human rights outside of situations of armed conflict.' See M. HAPPOLD, 'UN Sanctions as Human Rights and Humanitarian Law Devices', in L. VAN DEN HERIK (ed.), *Research Handbook on UN Sanctions and International Law*, Edward Elgar, Cheltenham 2017, pp. 125–146, p. 128. This finding is further corroborated by empirical studies: analysing the UNSC use of targeted sanctions, Thomas Biersteker, Marcos Tourinho, and Sue Eckert conclude that '[h]uman rights concerns are routinely invoked, though never as the primary objective', and mostly in the context of armed conflicts: T.J. BIERSTEKER, M. TOURINHO and S.E. ECKERT, 'Thinking about United Nations Targeted Sanctions', in T.J. BIERSTEKER, M. TOURINHO and S.E. ECKERT (eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Cambridge University Press, Cambridge 2016, pp. 11–37.

rights violations may constitute a threat to international peace and security. Analysis of the UNSC practice on this matter reveals that it is inconclusive, and that it reflects the political nature of its decision-making process: among the UNSC permanent members, the Russian Federation (Russia) and China routinely shy away from supporting UN-led sanctions imposed on human rights grounds.⁴⁵

This state of play compelled individual states to continue to respond to instances of flagrant human rights violations with unilateral actions, which also included various economic restrictions. A recent study analysed economic sanctions imposed between 1950 and 2016, and concluded that: 'By a wide margin, the policy objective stated most often relates to human rights issues, followed by objectives related to democracy.'⁴⁶

Recently, human rights sanctions have been imposed on Belarus for fraudulent presidential elections and the oppression of political opposition,⁴⁷ and on Russia for the poisoning and imprisonment of regime's political opponents.⁴⁸ Some previously enacted sanctions against countries that consistently violate human rights, including the rights of women, were also tightened, by sanctioning

⁴⁵ Angela Poh analysed China's voting patterns at the UNSC, and concluded that China considers protection of human rights to be an internal matter, and thus it opposes collective economic sanctions imposed on human rights grounds: A. POH (2021), *Sanctions with Chinese Characteristics*, *supra* note 33. 'UN action on human rights tends to run into opposition from permanent (and therefore veto-holding) Security Council members Russia and China, which regard such issues as an internal matter', M. RUSSELL, 'Global Human Rights Sanctions Mapping Magnitsky Laws: The US, Canadian, UK and EU Approach', *European Parliamentary Research Service*, November 2021, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS_BRI\(2021\)698791_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS_BRI(2021)698791_EN.pdf), last accessed 13.07.2023.

⁴⁶ G. FELBERMAYR, C. SYROPOULOS, E. YALCIN et al., 'The Global Sanctions Data Base', *VoxEU Blog*, 04.08.2020, available at voxeu.org/article/global-sanctions-data-base, last accessed 11.04.2023.

⁴⁷ M. VOLKOV, 'United States, European Union, United Kingdom and Canada Coordinate Further Sanctions Against Belarus', *JD Supra*, 21.12.2021, available at www.jdsupra.com/legalnews/united-states-european-union-united-2693437/, last accessed 11.04.2023.

⁴⁸ GLOBAL AFFAIRS CANADA, 'Canada imposes new sanctions in response to deteriorating human rights situation in Russia', News release, 24.03.2021, available at www.canada.ca/en/global-affairs/news/2021/03/canada-imposes-new-sanctions-in-response-to-deteriorating-human-rights-situation-in-russia.html, last accessed 10.04.2023; M. STRAUSS, 'EU imposes sanctions on four Russians over Navalny Jailing', *Reuters*, 02.03.2021, available at www.reuters.com/article/us-russia-politics-navalny-eu-idUSKCN2AU1TW, last accessed 10.04.2023. As recently as June 2023, the EU sanctioned nine Russian nationals for their involvement in the sentencing of the Russian opposition politician Vladimir Kara-Murza to 25 years in prison, on 'politically motivated charges and false allegations': COUNCIL OF THE EU, 'Human rights violations in Russia: EU lists individuals responsible for Vladimir Kara-Murza's sentencing and degrading treatment', Press release, 5 June 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/06/05/human-rights-violations-in-russia-eu-lists-individuals-responsible-for-vladimir-kara-murza-s-sentencing-and-degrading-treatment/>, last accessed 13.07.2023.

government officials and legal entities responsible for, or enabling, the abuse of women's rights.⁴⁹

A number of states sanctioned China for the mistreatment of its Muslim minority – Uyghurs in the Xinjiang Uyghur Autonomous Region (XUAR) – which also includes allegations of using forced labour.⁵⁰ For example, the EU sanctioned China⁵¹ pursuant to its new human rights sanctions' framework, adopted in December 2020.⁵² After China retaliated,⁵³ the European Parliament declared that consideration of the EU–China Comprehensive Agreement on Investment 'has justifiably been frozen because of the Chinese sanctions in place.'⁵⁴ History tends to repeat itself: it was the European Parliament, back in March 1988, that refused to ratify three protocols with Israel, signalling, among other things, its condemnation of human rights violations occurring in the occupied territories.⁵⁵

The above-mentioned examples illustrate that states habitually rely upon unilateral economic sanctions in circumstances of egregious human rights violations. This is the reality of state practice, which situates the debate on the relationship between unilateral economic sanctions and human rights in a factual context.

⁴⁹ US DEPARTMENT OF THE TREASURY, 'Marking International Women's Day, Treasury Sanctions Iranian Officials and Entities for Serious Human Rights Abuses', Press release, 08.03.2023, available at home.treasury.gov/news/press-releases/jy1327, last accessed 10.04.2023; FOREIGN, COMMONWEALTH & DEVELOPMENT OFFICE, 'UK announces sanctions against global violators of women's rights', Press release, 08.03.2023, available at www.gov.uk/government/news/uk-announces-sanctions-against-global-violators-of-womens-rights, last accessed 10.04.2023.

⁵⁰ GLOBAL AFFAIRS CANADA, 'Canada joins international partners in imposing new sanctions in response to human rights violations in Xinjiang', News release, 22.03.2021, available at www.canada.ca/en/global-affairs/news/2021/03/canada-joins-international-partners-in-imposing-new-sanctions-in-response-to-human-rights-violations-in-xinjiang.html, last accessed 10.04.2023; FOREIGN, COMMONWEALTH & DEVELOPMENT OFFICE, 'UK sanctions perpetrators of gross human rights violations in Xinjiang, alongside EU, Canada and US', Press release, 22.03.2021, available at www.gov.uk/government/news/uk-sanctions-perpetrators-of-gross-human-rights-violations-in-xinjiang-alongside-eu-canada-and-us, last accessed 10.04.2023.

⁵¹ Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses; Council Decision (CFSP) 2021/481 of 22 March 2021 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses.

⁵² Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses; Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.

⁵³ S. LAU, 'China slaps retaliatory sanctions on EU officials', *Politico*, 22.03.2021, available at www.politico.eu/article/china-slaps-retaliatory-sanctions-on-eu-officials/, last accessed 11.04.2023.

⁵⁴ European Parliament Resolution of 20 May 2021 on Chinese countersanctions on EU entities and MEPs and MPs (2021/2644(RSP)), OJ C 15, 12.01.2022.

⁵⁵ I. GREILSAMMER, 'The Non-Ratification of the EEC-Israel Protocols by the European Parliament (1988)', (1991) 27(2) *Middle Eastern Studies*, pp. 303–321.

3. ECONOMIC SANCTIONS AS AN INSTRUMENT TO PROMOTE HUMAN RIGHTS AND THEIR ENFORCEMENT

Despite the relentless efforts of individual states, and groups of states, to generate strong headwinds against unilateral economic sanctions, it appears that the tide has begun to turn, and unilateral sanctions are used more often than before.⁵⁶ In line with this development, individual states are increasingly adopting laws and regulations allowing them to sanction foreigners for human rights violations occurring anywhere in the world. These new human rights sanctions are dubbed ‘Magnitsky-style sanctions’, after the Russian lawyer Sergei Magnitsky, who uncovered a major corruption scheme in Russia, and was arrested, tortured and denied sufficient medical assistance, and who died in pre-trial detention.⁵⁷ This section summarises the relevant laws and practices of the states that have implemented Magnitsky-style sanctions. Before doing so, a few clarifications are warranted.

As the previous section of this contribution demonstrated, individual states were imposing unilateral economic sanctions to redress human rights violations abroad, even before the Magnitsky-style sanctions were adopted. The former type of sanctions belong to the category of country-based sanctions, i.e. economic sanctions enacted based on country-specific legal frameworks that were, as a rule, introduced in response to various crises. Magnitsky-style sanctions belong to the category of thematic or horizontal sanctions, implying that ‘targeting focuses on individuals or entities related to specific objectives’, i.e. perpetrators of grave human rights violations; and such targeting ‘rest[s] on the establishment of blacklists’.⁵⁸ As of the time of writing, both country-based sanctions and thematic or horizontal sanctions have been used to sanction perpetrators of human rights violations.⁵⁹ However, the subsequent discussion focuses on Magnitsky-style sanctions.

⁵⁶ Erica Moret, in her witness statement before the Standing Senate Committee on Foreign Affairs and International Trade of the Parliament of Canada, testified that a growing number of countries ‘are employing autonomous or unilateral sanctions outside the UN framework in an increasing variety of contexts for an ever-greater assortment of objectives and against a mounting range of targets’: STANDING COMMITTEE OF THE SENATE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE, ‘Strengthening Canada’s Autonomous Sanctions Architecture: Five-Year Legislative Review of the Sergei Magnitsky Law and the Special Economic Measures Act – Report’, May 2023, available at https://sencanada.ca/content/sen/committee/441/AEFA/reports/SEMAandMagnitsky_Final_10report_e.pdf, last accessed 13.07.2023.

⁵⁷ ECtHR, *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, 27.08.2019.

⁵⁸ C. BEAUCILLON, ‘An Introduction to Unilateral and Extraterritorial Sanctions: Definitions, State of Practice and Contemporary Challenges’, in C. BEAUCILLON (ed.), *Research Handbook on Unilateral and Extraterritorial Sanctions*, Edward Elgar Publishing, Cheltenham 2021, p. 5.

⁵⁹ Martin Russell compared Magnitsky laws in the US, Canada, UK and EU, and concluded that: ‘In all four jurisdictions, targeted geographical sanctions (i.e. visa bans and asset freezes

Another clarification relates to the economic sanctions' effectiveness, the discussion of which goes beyond the scope of this contribution. Yet, it is worth quoting here an observation of a distinguished human rights activist, Aryeh Neier:

many examples could be cited to show that sanctions do not work and that, in some instances, they are counterproductive. Yet when used strictly for purposes of promoting human rights and applied steadily over sustained periods, with adjustments that reflect changes in human rights practices, the record for economic sanctions seems to be generally positive.⁶⁰

Talking about the positive impact of human rights sanctions, Clara Portela provides an example of the EU sanctions against Belarus, to illustrate how the intensity of such sanctions may be leveraged to gain better treatment for political prisoners or other mistreated groups of population in a targeted country.⁶¹

3.1. THE UNITED STATES

The United States secured its position of economic sanctions standard-setter by being the first country to enact Magnitsky-style sanctions. In 2012, the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Magnitsky Act) was passed.⁶² Ironically, the Magnitsky Act is a part of the statute that repealed application of the Jackson–Vanik Amendment to Russia, and thus guaranteed normal trade relations, *inter alia* unconditional MFN treatment, because of the country's accession to the WTO.⁶³ As of the time of writing, the previously granted MFN treatment has been withdrawn from Russia, for its unprovoked war against Ukraine.⁶⁴

The following categories of Russian nationals have been targeted by the initial US Magnitsky-style sanctions: (1) persons responsible for Sergei Magnitsky's

applied to individuals and organisations linked to a particular country) still account for the majority of human rights-related designations.' See M. RUSSELL (2021), 'Global Human Rights Sanctions Mapping Magnitsky Laws', *supra* note 45, p. 10.

⁶⁰ A. NEIER, 'Sanctions and Human Rights', (2015) 82(4) *Social Research*, p. 877.

⁶¹ C. PORTELA, 'Targeted Sanctions against Individuals on Grounds of Grave Human Rights Violations – Impact, Trends and Prospects at EU Level', Study requested by the European Parliament's Subcommittee of Human Rights, 26.04.2018, p. 10, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU\(2018\)603869_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU(2018)603869_EN.pdf), last accessed 13.07.2023.

⁶² Sergei Magnitsky Rule of Law Accountability Act of 2012, Public Law 112–208, 126 Stat. 1502, 2012.

⁶³ Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012.

⁶⁴ Suspending Normal Trade Relations with Russia and Belarus Act, Public Law 117–110.

mistreatment, and those who were involved in the criminal conspiracy uncovered by Sergei Magnitsky;⁶⁵ (2) persons responsible for extrajudicial killings, torture or other gross violations of internationally recognised human rights, committed either against individuals seeking to expose illegal activity carried out by Russian government officials,⁶⁶ or against human rights activists in Russia;⁶⁷ (3) persons who acted as an agent of, or on behalf of, a person in a matter relating to an activity described in the two preceding paragraphs.⁶⁸ The US Magnitsky-style sanctions include the following restrictions: restrictions on issuing visas; revocation of issued visas; and asset freezes, as well as a complete prohibition on engaging in any transaction regarding ‘property and interests in property’ of the sanctioned persons, if ‘such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.’⁶⁹

In late 2016, the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act) extended the application of US human rights sanctions. According to this Act, sanctions may be levied upon any foreign person responsible for extrajudicial killings, torture or other gross violations of internationally recognised human rights committed against individuals in any foreign country, if such individuals seek either to expose illegal activity carried out by government officials, or to obtain, exercise, defend or promote internationally recognised human rights and freedoms, such as the freedoms of religion, expression, association and assembly, and the rights to a fair trial and democratic elections.⁷⁰

In December 2017, President Trump issued Executive Order 13818, wherein it was declared that ‘serious human rights abuse and corruption around the world constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States’ and thus, allowing imposition of economic sanctions.⁷¹ Human rights advocates praised Executive Order 13818 for using more permissive language – sanctions can redress ‘serious human rights abuse’, and not only ‘gross violations of internationally recognized human rights’ as they are defined in the above-mentioned statutes – and hence, this broadens the scope of US human rights sanctions.⁷²

⁶⁵ Sergei Magnitsky Rule of Law Accountability Act of 2012, *supra* note 62, s. 404, para. 1.

⁶⁶ *Ibid.*, s. 404, para. 2A.

⁶⁷ *Ibid.*, s. 404, para. 2B.

⁶⁸ *Ibid.*, s. 404, para. 3.

⁶⁹ *Ibid.*, ss. 405 and 406.

⁷⁰ The Global Magnitsky Human Rights Accountability Act, Public Law 114–328, Title XII, Subtitle F.

⁷¹ Executive Order 13818 of December 20, 2017 Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption.

⁷² R. BERSCHINSKI, ‘Trump Administration Notches a Serious Human Rights Win. No, really’, *Just Security*, 10.01.2018, available at www.justsecurity.org/50846/trump-administration-notches-human-rights-win-no-really/, last accessed 11.04.2023.

In March 2021, the United States,⁷³ Canada,⁷⁴ the EU⁷⁵ and the UK⁷⁶ demonstrated a concerted effort, and sanctioned Chinese government officials for their involvement in egregious human rights violations committed against the Uyghur people. The US sanctions were directed against two senior government officials – Wang Junzheng, the Secretary of the Party Committee of the Xinjiang Production and Construction Corps, and Chen Mingguo, Director of the Xinjiang Public Security Bureau – and were enacted pursuant to the Global Magnitsky sanctions framework.⁷⁷

3.2. CANADA

Canada followed suit, and enacted the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) in 2017.⁷⁸ In the same vein as the US Global Magnitsky Act, the Sergei Magnitsky Law identifies the sanctionable conduct as follows: a foreign national may be sanctioned if he/she is responsible for, or complicit in ‘extrajudicial killings, torture or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek (i) to expose illegal activity carried out by foreign public officials, or (ii) to obtain, exercise, defend or promote internationally recognized human rights and freedoms, such as freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association, and the right to a fair trial and democratic elections.’⁷⁹ Furthermore, a foreign national who acted as an agent of, or on behalf of, a foreign state, in a matter relating to an activity constituting sanctionable conduct, might be sanctioned.⁸⁰ Canadian human

⁷³ US DEPARTMENT OF THE TREASURY, ‘Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang’, Press release, 22.03.2021, available at home.treasury.gov/news/press-releases/jy0070, last accessed 10.04.2023.

⁷⁴ GLOBAL AFFAIRS CANADA (2021), ‘Canada joins international partners in imposing new sanctions’, *supra* note 50.

⁷⁵ COUNCIL OF THE EUROPEAN UNION, ‘EU imposes further sanctions over serious violations of human rights around the world’, Press release, 22.03.2021, available at www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/, last accessed 10.04.2023.

⁷⁶ FOREIGN, COMMONWEALTH & DEVELOPMENT OFFICE (2021), ‘UK Sanctions Perpetrators of Gross Human Rights Violations in Xinjiang’, *supra* note 50.

⁷⁷ These individuals were designated pursuant to the Executive Order 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act: US DEPARTMENT OF THE TREASURY (2021), ‘Treasury Sanctions Chinese Government Officials’, *supra* note 73.

⁷⁸ The provisions of the Justice for Victims of Corrupt Foreign Officials Act make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act, and are implemented by the Justice for Victims of Corrupt Foreign Officials Regulations, SOR/2017-233.

⁷⁹ Justice for Victims of Corrupt Foreign Officials Act, Orders and Regulations, circumstances 2(a).

⁸⁰ *Ibid.*, circumstances 2(b).

rights sanctions comprehend a number of prohibitions that apply to any person – an individual or an entity – in Canada, and to Canadian natural and legal persons outside of Canada. In particular, the following actions are prohibited: (i) the dealing, directly or indirectly, in any property of the foreign sanctioned national wherever it is situated;⁸¹ (ii) the entering into or facilitating, directly or indirectly, of any financial transaction related to a dealing referred to in paragraph (i);⁸² (iii) the provision of financial services or any other services to, for the benefit of or on the direction or order of the foreign sanctioned national;⁸³ (iv) the acquisition of financial services or any other services for the benefit of or on the direction or order of the foreign sanctioned national;⁸⁴ (v) the making available of any property, wherever situated, to the foreign sanctioned national or to a person acting on behalf of the foreign sanctioned national.⁸⁵

Michael Nesbitt described Canada's decision to introduce the Magnitsky-style sanctions as follows: 'Including the power to sanction for gross and systematic human rights abuses is a more honest explanation of what Canada has done in the past – and arguably for what it will want to do in the future.'⁸⁶

In March 2021, Canada sanctioned nine Russian officials for 'gross and systematic violations of human rights in Russia.'⁸⁷ Those sanctions were enacted against the background of the attempted murder of Russia's opposition leader Alexey Navalny, and his subsequent prosecution, as well as for the mistreatment of other Russian citizens who had expressed their disagreement with the brutal treatment of the opposition.⁸⁸ Russia retaliated in kind, and sanctioned nine Canadian officials by prohibiting them from entering Russia for an indefinite period of time.⁸⁹

3.3. THE EUROPEAN UNION

After several years of consultations and negotiations, in December 2020 the EU introduced a legal framework allowing imposition of targeted restrictive

⁸¹ Ibid., restricted or prohibited activities 3(a).

⁸² Ibid., restricted or prohibited activities 3(b).

⁸³ Ibid., restricted or prohibited activities 3(c).

⁸⁴ Ibid., restricted or prohibited activities 3(d).

⁸⁵ Ibid., restricted or prohibited activities 3(e).

⁸⁶ M. NESBITT, 'Canada's Unilateral Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act', (2016) 48(2) *Ottawa Law Review*, pp. 565–566.

⁸⁷ GLOBAL AFFAIRS CANADA (2021), 'Canada Imposes New Sanctions', *supra* note 48.

⁸⁸ Ibid.

⁸⁹ THE MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION, 'Comment by Foreign Ministry Spokeswoman Maria Zakharova on retaliatory measures against Canadian officials and individuals involved in shaping and pursuing anti-Russian policy', 07.06.2021, available at www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4777207, last accessed 10.04.2023.

measures to address serious human rights violations worldwide.⁹⁰ The EU framework prescribes a detailed list of human rights violations engendering sanctions. According to the pertinent legislation, serious human rights violations and abuses encompass: ‘(a) genocide; (b) crimes against humanity; and (c) the following serious human rights violations or abuses: (i) torture and other cruel, inhuman or degrading treatment or punishment, (ii) slavery, (iii) extrajudicial, summary or arbitrary executions and killings, (iv) enforced disappearance of persons, [and] (v) arbitrary arrests or detentions.’⁹¹ Provided that human rights violations are widespread, systematic or are otherwise of serious concern as regards the objectives of the EU’s Common Foreign and Security Policy, the following types of violations may trigger imposition of human rights sanctions: ‘(i) trafficking in human beings, as well as abuses of human rights by migrant smugglers, (ii) sexual and gender-based violence, (iii) violations or abuses of freedom of peaceful assembly and of association, (iv) violations or abuses of freedom of opinion and expression, [and] (v) violations or abuses of freedom of religion or belief.’⁹² As can be seen, the EU list of human rights violations enabling the imposition of sanctions is much longer than the relevant US and Canadian lists’.

Sanctioned individuals are prohibited from entering into, or transiting through, the territory of the EU Member States;⁹³ assets of the sanctioned individuals, legal persons, entities or bodies and their accomplices should be frozen;⁹⁴ and ‘[n]o funds or economic resources shall be made available directly or indirectly to or for the benefit of’ such sanctioned persons.⁹⁵

While, in the past, the EU sanctioned the perpetrators of human rights violations under other sanctions regimes,⁹⁶ the new human rights sanctions regime offers additional flexibility, as explained by the EU High Representative for Foreign Affairs, Josep Borrell:

We need a global regime to gain more flexibility to go after the perpetrators regardless of where they are and [which] dispenses us from having to set up a specific legal framework each time for each specific case. With the new sanctions regime, we will be able to proceed quicker and to be more efficient.⁹⁷

⁹⁰ Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses; Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. *Supra* note 52.

⁹¹ Council Decision (CFSP) 2020/1999, *supra* note 52, Art. 1(a)–1(c).

⁹² *Ibid.*, Art. 1(d).

⁹³ *Ibid.*, Art. 2.

⁹⁴ *Ibid.*, Art. 3(1).

⁹⁵ *Ibid.*, Art. 3(2).

⁹⁶ C. PORTELA (2018), ‘Targeted Sanctions against Individuals’, *supra* note 61.

⁹⁷ J. BORRELL, ‘The long and complex road towards an EU Global Human Rights Sanctions Regime’, *HRVP Blog*, 31.10.2020, available at www.eeas.europa.eu/eeas/long-and-complex-road-towards-eu-global-human-rights-sanctions-regime_en, last accessed 11.04.2023.

3.4. THE UNITED KINGDOM

In the UK, the Global Human Rights Sanctions Regulations came into force in July 2020, preceding the EU's human rights sanctions framework.⁹⁸ To adopt this regulation, the government used powers granted under the Sanctions and Anti-Money Laundering Act 2018, which created a domestic legal framework to impose, update and lift economic sanctions, after the end of the Brexit transition period.⁹⁹ Sanctionable conduct includes violations – through 'activity' or 'omission' – of the following rights: '(a) right to life, (b) right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or (c) right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour, whether or not the activity is carried out by or on behalf of a State'.¹⁰⁰

The first wave of human rights sanctions targeted 25 Russian nationals involved in the mistreatment and death of Sergei Magnitsky, 20 Saudi nationals involved in the death of journalist Jamal Khashoggi, two high-ranking Burmese/Myanmar military generals involved in the systematic and brutal violence against the Rohingya people, and two organisations involved in the forced labour, torture and murder taking place in North Korea's gulags.¹⁰¹ In the years that followed, individuals and legal entities from the Chechen Republic (Russia), Xinjiang (China), Myanmar and Belarus, as well as former officials from the Gambia, Pakistan, Venezuela and Ukraine, have been sanctioned under the UK human rights sanctions regime.¹⁰²

3.5. AUSTRALIA

Starting from 2019, the Australian Parliament considered the use of targeted sanctions to address human rights abuses. To explore the use of this foreign policy instrument, the Joint Standing Committee on Foreign Affairs, Defence and Trade conducted, among other things, public consultations regarding the

⁹⁸ The Global Human Rights Sanctions Regulations 2020, SI 2020/ 680, <https://www.legislation.gov.uk/uksi/2020/680/made>.

⁹⁹ N. NEWSON, 'Magnitsky sanctions', *House of Lords Library: In Focus*, 18.06.2021, available at lordslibrary.parliament.uk/magnitsky-sanctions/, last accessed 11.04.2023.

¹⁰⁰ The Global Human Rights Sanctions Regulations (2020), *supra* note 98, s. 4(2).

¹⁰¹ FOREIGN & COMMONWEALTH OFFICE, 'UK announces first sanctions under new global human rights regime', Press release, 06.07.2020, available at www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime, last accessed 10.04.2023.

¹⁰² N. NEWSON (2021), 'Magnitsky Sanctions', *supra* note 99.

possibility of enacting Magnitsky-style sanctions.¹⁰³ The final report prepared by the Joint Standing Committee recommended the introduction of legislation that would allow the imposition of targeted human rights sanctions.¹⁰⁴

On 2 December 2021, the Australian Parliament passed the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021.¹⁰⁵ This Act allows thematic sanctions regimes, including, *inter alia*, human rights sanctions, to be established without any linkage to a particular country or jurisdiction.¹⁰⁶

3.6. OTHER STATES

A number of non-EU states routinely align themselves with the EU sanctions.¹⁰⁷ The official website of the EU announces that the candidate countries Montenegro, North Macedonia, Albania and Ukraine, as well as the European Free Trade Association countries Iceland, Liechtenstein and Norway, decided to align with the EU Magnitsky sanctions, and ‘will ensure that their national policies conform to this decision.’¹⁰⁸ The Republic of Moldova is considering the adoption of a Magnitsky Act; the relevant draft law has already been prepared, and was announced in December 2022.¹⁰⁹

Other states have followed different strategies when it comes to Magnitsky-type sanctions. Norway, which decided to align itself with the EU Magnitsky sanctions, introduced a new law in 2021,¹¹⁰ which, although does not explicitly endorse Magnitsky-type sanctions, allows implementation of the EU sanctions, and other sanctions whose aim is ‘to ensure respect for democracy and the rule

¹⁰³ PARLIAMENT OF AUSTRALIA, Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Inquiry into whether Australia should examine the use of targeted sanctions to address human rights Abuses’, 2019, available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct, last accessed 11.04.2023.

¹⁰⁴ PARLIAMENT OF AUSTRALIA, Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Criminality, Corruption and Impunity: Should Australia join the Global Magnitsky Movement?’, Report, 07.12.2020, available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Report, last accessed 11.04.2023.

¹⁰⁵ Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021.

¹⁰⁶ Ibid.

¹⁰⁷ C. PORTELA (2018), ‘Targeted Sanctions against Individuals’, *supra* note 61, p. 17.

¹⁰⁸ EUROPEAN UNION, ‘Restrictive measures against serious human rights violations and abuses’, available at <https://eur-lex.europa.eu/EN/legal-content/summary/restrictive-measures-against-serious-human-rights-violations-and-abuses.html>, last accessed 13.07.2023.

¹⁰⁹ ‘Moldova likely to have Magnitsky Act’, *Moldpres State News Agency*, 09.12.2022, <https://www.moldpres.md/en/news/2022/12/09/22009477>, last accessed 30.07.23.

¹¹⁰ Act on the Implementation of International Sanctions, 16.04.2021, available at <https://lovdata.no/dokument/NL/lov/2021-04-16-18>, last accessed 13.07.2023.

of law, human rights, or international law in general'.¹¹¹ New Zealand set up an expert group to advise its government on human rights enforcement, and the use of economic sanctions for this purpose.¹¹² The Swiss Confederation decided that there is no need to adopt specialised legislation enabling the introduction of Magnitsky-type sanctions.¹¹³ However, it should be mentioned that the existing law allows Switzerland to align its sanctions policy with the policy of its most significant trading partners.¹¹⁴ In practice, it means that Switzerland often implements EU sanctions, as was the case in 2018, when Switzerland imposed sanctions on Venezuela, in alignment with EU sanctions, including restrictions on the government officials responsible for grave human rights violations.¹¹⁵

As of this writing, 39 countries have Magnitsky-style or similar statutes that allow them to sanction perpetrators of grave human rights violations, and at least two more countries are considering the adoption of such laws. Furthermore, the idea that Magnitsky sanctions could benefit from enhanced cooperation between states, i.e. that states should be multilateralising their sanctioning efforts, has gained traction.¹¹⁶ This demonstrates an observable trend of sanctioning government officials, including high-level government officials and military leaders, for grave human rights violations for which they bear responsibility.

3.7. MAGNITSKY-STYLE SANCTIONS AND HUMAN RIGHTS OF THEIR TARGETS

Human rights concerns triggered the shift from comprehensive towards targeted sanctions, but, subsequently, targeted measures were called into question

¹¹¹ NORWEGIAN HELSINKI COMMITTEE, 'Unfinished Business: Implementing Norway's Sanctions Act', 16.11.2021, available at <https://www.nhc.no/en/unfinished-business-implementing-norways-sanctions-act/>, last accessed 11.04.2023.

¹¹² S. SACHDEVA, 'Experts to Advise Govt on Autonomous Sanctions Regime', *Newsroom*, 27.01.2023, available at www.newsroom.co.nz/experts-to-advise-govt-on-autonomous-sanctions-regime, last accessed 11.04.2023.

¹¹³ Parlamentarische Initiative (19.501), 'Einführung einer Rechtsgrundlage für gezielte Sanktionen bei schweren Menschenrechtsverletzungen und Korruption durch hochrangige Politiker und Politikerinnen', available at www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20190501, last accessed 11.04.2023; Geschäft des Bundesrates (19.085), 'Embargogesetz. Änderung', available at www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20190085, accessed 11.04.2023.

¹¹⁴ Bundesgesetz vom 22. März 2002 über die Durchsetzung von internationalen Sanktionen (Embargogesetz, EmbG), SR 946.231, available at www.fedlex.admin.ch/eli/cc/2002/564/de, last accessed 11.04.2023.

¹¹⁵ SECO – STAATSSSEKRETARIAT FÜR WIRTSCHAFT, 'Sanktionen Gegenüber Venezuela', Medienmitteilungen, 28.03.2018, available at www.seco.admin.ch/seco/de/home/seco/nsb-news.msg-id-70265.html, last accessed 10.04.2023.

¹¹⁶ Enhanced cooperation was discussed by the Parliament of Canada's Senate Standing Committee on Foreign Affairs and International Trade, and this resulted in the following recommendation: 'The Government of Canada should work with its allies to establish a

for their lack of procedural fairness.¹¹⁷ In this regard, Clara Portela observes: ‘A most serious challenge to the individualisation of sanctions emanates from the incompatibility between opaque blacklisting and due process guarantees.’¹¹⁸ In the case of the EU, the most controversial parts of the blacklisting relate to the collection of evidence, evidentiary standards used for designations, and the relevant standard of proof required by the EU courts to prove that a designation is sufficiently substantiated, as well as the targeted persons’ ability to freely access such evidence.¹¹⁹ This view is supported by the existing court practice: the Charter of Fundamental Rights of the EU guarantees the right to good administration, and to an effective remedy, and a fair trial,¹²⁰ and these guarantees are frequently invoked in disputes before the EU courts over economic sanctions.¹²¹ Arnoud Willems and Alessandra Moroni name the following four pleas as the most frequently argued by individuals and entities targeted by the EU unilateral sanctions:

1. The EU institutions fail to state reasons and breach their right of defence by failing to support factual and legal allegations with adequate evidence;
2. The EU institutions make manifest errors of assessment in determining whether listing criteria are satisfied;
3. The EU institutions disproportionately restrict fundamental rights, including rights to property and reputation and the freedom to conduct a business;
- and 4. The EU institutions breach their right to an effective remedy.¹²²

Paradoxically, unilateral economic sanctions imposed on human rights grounds – both country-based and Magnitsky-style – might, in some instances, impede the human rights of their targets, irrespective of the fact that these targets might themselves be responsible for egregious human rights violations. To offset the negative repercussions of blacklisting on due process guarantees, some states, for example the UK and the Member States of the EU, notify sanctioned individuals of their placement on a sanctions list,¹²³ while Canada

formal mechanism for the coordination and implementation of autonomous sanctions and for the sharing of best practices on how to maximize sanctions effectiveness.’ See STANDING COMMITTEE OF THE SENATE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE (2023), ‘Strengthening Canada’s Autonomous Sanctions Architecture’, *supra* note 56.

¹¹⁷ I. BOGDANOVA (2022), *Unilateral Economic Sanctions in International Law*, *supra* note 6, pp. 33–36.

¹¹⁸ C. PORTELA (2018), ‘Targeted Sanctions against Individuals’, *supra* note 61, p. 11.

¹¹⁹ *Ibid.*

¹²⁰ CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, 2012/C 326/02, Arts. 41 and 47.

¹²¹ M. HAPPOLD, ‘Targeted Sanctions and Human Rights’, in M. HAPPOLD and P. EDEN (eds.), *Economic Sanctions and International Law*, Hart Publishing, Oxford 2016, p. 87.

¹²² A. WILLEMS and A. MORONI, ‘Defeating Economic Sanctions in the EU: A Strategic Analysis of Litigation Options’, (2020) 1 *International Trade Law and Regulation Journal*, p. 39.

¹²³ M. RUSSELL (2021), ‘Global Human Rights Sanctions Mapping Magnitsky Laws’, *supra* note 45.

only considers such a move;¹²⁴ states also introduce procedures for de-listing,¹²⁵ and establish exceptions to their sanctions regimes. Regarding the latter aspect, some Magnitsky-style sanctions prescribe that sanctioned individuals could be de-listed if they are prosecuted for the actions which are the reason for their designation.¹²⁶ Judicial review plays a significant role in ensuring procedural fairness as well: for example, EU sanctions are often questioned before the EU courts,¹²⁷ and this has led to major improvements.¹²⁸

Targeted sanctions – asset freezes and travel bans – might violate substantive human rights only in exceptional circumstances: the right to property is not an absolute right, and temporary restrictions might be justified, with the only exception being confiscation of the frozen assets; and, regarding travel bans, international human rights law does not constrain states’ right ‘to decide who to admit into their territories.’¹²⁹ Only in very rare and exceptional circumstances might travel bans impede the right to a private and family life,¹³⁰ but they might interfere with immunity entitlements guaranteed to heads of states and other senior government officials under international law.¹³¹ Being mindful of this, countries have introduced exemptions to allow sanctioned officials to participate in international events and meetings.¹³²

4. ECONOMIC SANCTIONS AS A VIOLATION OF HUMAN RIGHTS

While individual states, and groups of states, enact domestic laws and regulations allowing them to sanction government officials and other individuals responsible

¹²⁴ STANDING COMMITTEE OF THE SENATE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE (2023), ‘Strengthening Canada’s Autonomous Sanctions Architecture’, *supra* note 56, pp. 41–44.

¹²⁵ *Ibid.*; M. RUSSELL (2021), ‘Global Human Rights Sanctions Mapping Magnitsky Laws’, *supra* note 45.

¹²⁶ Sergei Magnitsky Rule of Law Accountability Act of 2012, *supra* note 62.

¹²⁷ ‘In the period from 2010 to 2014, cases concerning sanctions became the third most recurrent issue area among the cases heard by EU Courts, placing it only after intellectual property rights and competition quarrels. By 2017, cases regarding restrictive measures had displaced competition cases, becoming the second most frequent issue heard by the Court.’ See C. PORTELA (2018), ‘Targeted Sanctions against Individuals’, *supra* note 61, p. 12.

¹²⁸ *Ibid.*

¹²⁹ M. HAPPOLD (2016), ‘Targeted Sanctions and Human Rights’, *supra* note 121.

¹³⁰ *Ibid.*

¹³¹ ‘[T]ravel bans that prohibit the minister of foreign affairs, as well as acting head of state, from entering a territory of any other state, violate immunities guaranteed under international law.’ See I. BOGDANOVA (2022), *Unilateral Economic Sanctions in International Law*, *supra* note 6, p. 131.

¹³² E.g. Art. 2(3) of the Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, *supra* note 52.

for human rights violations abroad, the UN General Assembly (UNGA), Human Rights Council (HRC) and the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (Special Rapporteur) condemn unilateral economic sanctions as illegal coercive instruments. The various documents issued by these UN bodies demonstrate that two legal arguments are advanced to delegitimise unilateral economic sanctions: firstly, it is argued that they are coercive measures, and, as a result, that they violate the principle of non-intervention; secondly, that they breach the human rights obligations of the states imposing them. Thus, human rights have been conceptualised as a constraint on states' right to impose unilateral economic sanctions. This section is dedicated to the analysis of these arguments, but before proceeding with the analysis, the use of different terms is clarified.

4.1. TERMINOLOGICAL CONFUSION: UNILATERAL ECONOMIC SANCTIONS v. UNILATERAL COERCIVE MEASURES

UN official documents use the term 'unilateral coercive measures', although most of these documents do not provide any precise and unambiguous definition of what types of restrictive measures are covered by it. The report of the HRC Advisory Committee (Advisory Committee), prepared in 2015, describes this terminological confusion as follows:

The term 'unilateral coercive measures' is a recent one. It has been used broadly to include measures such as 'unilateral economic sanctions', 'unilateral economic measures' and 'coercive economic measures' in various studies on the subject, as well as in United Nations documents and resolutions. To date, the term 'unilateral coercive measures' does not seem to have a commonly agreed-upon definition.¹³³

Acknowledging the diversity of terms, the Advisory Committee concluded that the term 'unilateral coercive measures' covers all types of economic sanctions that are not authorised by the UNSC.¹³⁴ In the same year, the Special Rapporteur defined 'unilateral coercive measures' as economic sanctions not authorised by the UNSC or regional organisations, yet the proposed definition focused on the coercive nature of such measures.¹³⁵ In other words, the objective of such

¹³³ HRC, 'Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability', UN Doc A/HRC/28/74, 10.02.2015, p. 4.

¹³⁴ Ibid, pp. 4–5.

¹³⁵ HRC, 'Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy', UN Doc A/HRC/30/45, 10.08.2015.

measures was described as ‘to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights with a view to securing some specific change in its policy.’¹³⁶

The new Special Rapporteur observed that

given the absence of a universally recognized definition of unilateral coercive measures and their illegal character as referred to in a number of resolutions of the Human Rights Council and the General Assembly, States prefer to present their unilateral activities as not constituting unilateral coercive measures and therefore to use other terms, including “sanctions”, “restrictive measures”, and many others.¹³⁷

In view of this, it is prudent to conclude that UN documents equate the notion of unilateral coercive measures with unilateral economic sanctions as they are defined in this contribution, with the only distinction that, in the present author’s opinion, the inherently coercive nature of unilateral economic sanctions does not make them *per se* illegal under international law. The latter view is further corroborated in the existing legal scholarship and court practice discussed below.

4.2. UNGA RESOLUTIONS CONDEMNING UNILATERAL ECONOMIC SANCTIONS

Remarkably, the UNGA’s decades-long history of recommending the imposition of unilateral economic sanctions in response to major crises in international relations contradicts its current stance on the legality of such measures.¹³⁸ From 1983 until 1987, the UNGA adopted annual resolutions on economic measures as a means of political and economic coercion against developing countries.¹³⁹ These resolutions acknowledged that ‘coercive measures have a negative effect on the economies of the developing countries’, and that their use

¹³⁶ Ibid., p. 4.

¹³⁷ SPECIAL RAPPORTEUR ON THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF HUMAN RIGHTS, ‘Unilateral Coercive Measures: Notion, Types and Qualification. Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/HRC/48/59, 08.07.2021, p. 4.

¹³⁸ R. BARBER, ‘An Exploration of the General Assembly’s Troubled Relationship with Unilateral Sanctions’, (2021) 70(2) *International and Comparative Law Quarterly*, pp. 355–356.

¹³⁹ UNGA, ‘Resolution 38/197 Economic Measures as a Means of Political and Economic Coercion Against Developing Countries’, 20.12.1983; UNGA, ‘Resolution 39/210 Economic Measures as a Means of Political and Economic Coercion Against Developing Countries’, 18.12.1984; UNGA, ‘Resolution 40/185 Economic Measures as a Means of Political and Economic Coercion Against Developing Countries’, 17.12.1985; UNGA, ‘Resolution 41/165 Economic Measures as a Means of Political and Economic Coercion Against Developing Countries’, 05.12.1986; UNGA, ‘Resolution 42/173 Economic Measures as a Means of Political and Economic Coercion Against Developing Countries’, 11.12.1987.

‘adversely affects ... development efforts of developing countries’, thus urging developed countries to refrain from ‘applying trade restrictions, blockades, embargoes and other economic sanctions, incompatible with the provisions of the Charter of the United Nations and in violation of undertakings contracted multilaterally or bilaterally’.¹⁴⁰ Starting from 1987, the UNGA has been adopting such resolutions biannually.¹⁴¹ Concurrently, resolutions titled ‘Human rights and unilateral coercive measures’ have regularly been adopted by the UNGA, since 1996.¹⁴²

The voting pattern in favour of, or against, such resolutions was later labelled by Alexandra Hofer as a ‘developed/developing divide on unilateral coercive measures’.¹⁴³ This assessment reflects the perpetual divide that exists between different groups of countries when it comes to the legality of unilateral economic sanctions. Traditionally, the fierce opposition to unilateral economic sanctions has come from China and Russia, although both states frequently employ such measures to advance their political agenda abroad.¹⁴⁴ Recently, this opposition led to the UNSC meeting being organised under the theme ‘End unilateral coercive measures now’.¹⁴⁵

4.3. HUMAN RIGHTS COUNCILS AND THE SPECIAL RAPPORTEUR’S OPPOSITION TO UNILATERAL ECONOMIC SANCTIONS

In 2010, the HRC requested the preparation of a thematic study on the impact of unilateral coercive measures on the enjoyment of human rights.¹⁴⁶ The

¹⁴⁰ Ibid.

¹⁴¹ A. HOFER, ‘The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?’, (2017) 16 *Chinese Journal of International Law*, FN 64.

¹⁴² UNGA, ‘Resolution 51/103 Human rights and unilateral coercive measures’, UN Doc A/RES/51/103, 12.12.1996, and subsequent resolutions.

¹⁴³ A. HOFER (2017), ‘The Developed/Developing Divide on Unilateral Coercive Measures’, *supra* note 141.

¹⁴⁴ M. DORAEV, ‘The “Memory Effect” of Economic Sanctions against Russia: Opposing Approaches to the Legality of Unilateral Sanctions Clash Again’, (2015) 37 *University of Pennsylvania Journal of International Law* p. 355–417; V. MACIKENAITE, ‘China’s Economic Statecraft: The Use of Economic Power in an Interdependent World’, (2020) 9(2) *Journal of Contemporary East Asia Studies*, p. 119.

¹⁴⁵ ‘Letter dated 4 December 2020 from the Permanent Representative of China to the United Nations addressed to the President of the Security Council’, UN Doc S/2020/1172, 07.12.2020, available at https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_1172.pdf, last accessed 11.04.2022.

¹⁴⁶ HRC, ‘Resolution 15/24 Human rights and unilateral coercive measures’, UN Doc A/HRC/RES/15/24, 06.10.2010.

requested study, released in January 2012, emphasised the undefined legal status of such measures, and provided vaguely formulated conclusions on possible incompatibility between unilateral coercive measures and human rights; however, it did not answer the question of how to measure the negative impact of unilateral coercive measures on human rights, i.e. using what tools, and based on what data.¹⁴⁷

Following this, the HRC requested the Advisory Committee to prepare a research-based report containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights.¹⁴⁸ The resulting report does not distinguish between the impact of collective and unilateral economic sanctions, and merely repeats conclusions, made earlier, that economic sanctions might potentially impede the right to life; the right to an adequate standard of living, including food, clothing, housing and medical care; and the right to health.¹⁴⁹ Some of the evidence presented looks more like a mockery: for example, the report contends that the EU's sanctions targeting the Zimbabwean leadership for its land expropriation and violence against opposition, which took form of targeted travel bans and asset freezes, caused significant negative effects for the whole population.¹⁵⁰ Specifically, the report identified the following as an outcome of the targeted sanctions against the Zimbabwean leadership:

Poverty and unemployment rates are high, while infrastructure is sorely lacking. Diseases such as HIV/AIDS, typhoid and malaria give the country an average life expectancy of between 53 to 55 years. ... Zimbabwe has one of the highest rates of orphaned children in the world (25 per cent of all children), and experience of violence and abuse is widespread. At least 21 per cent of the first sexual encounter experienced by girls is forced, and the perception that family violence is acceptable is shared by both women and men (48 and 37 per cent, respectively).¹⁵¹

The causal links between the imposed sanctions and the observed effects are completely lacking in this case study, as well as in most of the other case studies presented in the report.¹⁵²

¹⁴⁷ HRC, 'Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures', UN Doc A/HRC/19/33, 11.01.2012.

¹⁴⁸ HRC, 'Resolution 24/14 Human Rights and Unilateral Coercive Measures', UN Doc A/HRC/RES/24/14, 08.10.2013.

¹⁴⁹ HRC (2015), 'Research-based Progress Report of the Human Rights Council Advisory Committee', *supra* note 133, p. 7.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, p. 10.

¹⁵² *Ibid.*

In 2014, the mandate of the Special Rapporteur was established,¹⁵³ and this was later extended, with the most recent extension agreed in October 2020.¹⁵⁴ In his first report, the Special Rapporteur, Idriss Jazairy, declared the illegality of unilateral economic sanctions, irrespective of their objectives and effectiveness, and outlined possible solutions.¹⁵⁵ The proposed options included a complete prohibition on using unilateral coercive measures, and/or application of the legal regime prescribed by the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).¹⁵⁶ The latter proposition was further clarified by reference to Article 50 of the ARSIWA, which stipulates that '[c]ountermeasures shall not affect: ... (b) obligations for the protection of fundamental human rights.'¹⁵⁷ Considering that, in the view of the Special Rapporteur, all unilateral economic sanctions violate human rights, application of the ARSIWA rules results in a complete prohibition on the use of such measures.

In his next report, prepared the same year, the Special Rapporteur listed those human rights which, from his point of view, were the most affected by unilateral coercive measures.¹⁵⁸ These rights were: the right to life; the right to self-determination; the right to development; the right to an adequate standard of living, including food, clothing, housing and medical care; the right to health; right to education; and, potentially, other rights.¹⁵⁹ On many occasions, the evidence used to establish a causal link between economic sanctions and their negative repercussions for human rights was taken from the instances of collective sanctions, i.e. UN-authorized sanctions.¹⁶⁰

In his subsequent reports, the Special Rapporteur covered the following topics: remedies available to the states, legal entities, and individuals affected by unilateral coercive measures;¹⁶¹ extraterritoriality and international sanctions;¹⁶² options for the establishment of specialised compensation commissions for victims of unilateral coercive measures;¹⁶³ recent developments regarding the

¹⁵³ HRC, 'Resolution 27/21 Human Rights and Unilateral Coercive Measures', UN Doc A/HRC/RES/27/21, 03.10.2014.

¹⁵⁴ HRC, 'Resolution 45/5 Human Rights and Unilateral Coercive Measures', UN Doc A/HRC/RES/45/5, 12.10.2020.

¹⁵⁵ HRC (2015), 'Report of the Special Rapporteur', *supra* note 135.

¹⁵⁶ *Ibid.*, pp. 9–11.

¹⁵⁷ INTERNATIONAL LAW COMMISSION, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), ch. IV.E.1.

¹⁵⁸ UNGA, 'Human Rights and Unilateral Coercive Measures', UN Doc A/70/345, 28.08.2015.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ HRC, 'Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights', UN Doc A/HRC/33/48, 02.08.2016.

¹⁶² HRC, 'Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights', UN Doc A/HRC/36/44, 26.07.2017.

¹⁶³ *Ibid.*

use of unilateral sanctions;¹⁶⁴ guidelines on sanctions and human rights;¹⁶⁵ recent developments regarding the use of unilateral sanctions;¹⁶⁶ and the claim that a consensus to condemn and resist the extraterritorial application of unilateral sanctions had emerged.¹⁶⁷ From 2015 to 2019, the Special Rapporteur also submitted annual reports to the UNGA on the negative impact of unilateral coercive measures on the enjoyment of human rights.¹⁶⁸

In March 2020, Alena Douhan was appointed as the new Special Rapporteur. In a 2021 report to the HRC, the new Special Rapporteur, while acknowledging that ‘few studies have been conducted on the humanitarian impact of unilateral sanctions’,¹⁶⁹ stated that unilateral economic sanctions ‘result in the violation of all categories of economic, social and cultural rights, including the right to life and health, the right to food, the right to an adequate standard of living, the right to education, the right to development and the right to a healthy environment.’¹⁷⁰ The latter statement was not substantiated by any qualitative or quantitative study or analysis; furthermore, even theoretical causal links were not provided, thus making it a purely political declaration.

4.4. UNILATERAL ECONOMIC SANCTIONS AS INSTRUMENTS OF ILLEGAL COERCION

It is a well-established view in the international legal scholarship that there is no right to be free from economic coercion in international relations.¹⁷¹ From this

¹⁶⁴ HRC, ‘Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/HRC/39/54, 30.08.2018.

¹⁶⁵ Ibid.

¹⁶⁶ Economic sanctions imposed against the following countries were analysed: Islamic Republic of Iran, Cuba, Bolivarian Republic of Venezuela, Russian Federation, Qatar, State of Palestine, Syrian Arab Republic and Yemen: HRC, ‘Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/HRC/42/46, 05.07.2019.

¹⁶⁷ Ibid.

¹⁶⁸ UNGA (2015), ‘Human Rights and Unilateral Coercive Measures’, *supra* note 158; UNGA, ‘Human Rights and Unilateral Coercive Measures’, UN Doc A/71/287, 04.08.2016; UNGA, ‘Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/72/370, 29.08.2017; UNGA, ‘Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/73/175, 17.07.2018; UNGA, ‘Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Doc A/74/165, 15.07.2019.

¹⁶⁹ SPECIAL RAPPORTEUR ON THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF HUMAN RIGHTS (2021), ‘Unilateral Coercive Measures’, *supra* note 137, p. 14.

¹⁷⁰ Ibid., p. 15.

¹⁷¹ ‘There are no rules of international law which categorically pronounce either on the prima-facie legality or prima-facie illegality of economic coercion.’ See O.Y. ELAGAB, *The Legality of Non-Forcible Counter-Measures in International Law*, Clarendon Press, Oxford 1988, pp. 212–213; A. TZANAKOPOULOS, ‘The Right to Be Free from Economic Coercion’, (2015) 4 *Cambridge International Law Journal*, pp. 616–633.

it flows logically that not every type and form of economic coercion is illegal, contrary to what the UNGA, HRC and the Special Rapporteur are asserting. What is noteworthy, in this regard, is that, in the 1993 note prepared by the UN Secretary-General, the following conclusion was reached: ‘There is no clear consensus in international law as to when coercive economic measures are improper, despite relevant treaties, declarations and resolutions adopted in international organizations which try to develop norms limiting the use of such measures.’¹⁷²

Economic coercion might be illegal if it encroaches on the principle of non-intervention, which has been described as ‘[o]ne of the most potent and elusive of all international principles.’¹⁷³ But it should be noted that economic coercion does not simply equal intervention, and this conclusion was confirmed by the International Court of Justice (ICJ) in *Military and Paramilitary Activities in and against Nicaragua*.¹⁷⁴ Building upon the ICJ decision, Antonios Tzanakopoulos distinguishes coercion from intervention in the following way:

Seeking to coerce a state within its sphere of freedom is wrongful; it constitutes intervention. Merely interfering with a state’s choices within its sphere of freedom and applying relevant pressure without breaching any obligations is lawful, as long as it does not amount to coercion and, thus, intervention.¹⁷⁵

Thus, it is hard – if not impossible – to establish a general prohibition on employing unilateral coercive measures (also known as unilateral economic sanctions), even if they are imposed unilaterally.¹⁷⁶

4.5. UNILATERAL ECONOMIC SANCTIONS AS A VIOLATION OF HUMAN RIGHTS

In the work of the Special Rapporteur, human rights obligations are formulated very broadly, and imply various extraterritorial obligations of states, thus making

¹⁷² Note by the Secretary-General, ‘Economic Measures as a Means of Political and Economic Coercion against Developing Countries’, UN Doc A/48/535, 1993.

¹⁷³ M. JAMNEJAD and M. WOOD, ‘The Principle of Non-Intervention’, (2009) 22 *Leiden Journal of International Law*, p. 345.

¹⁷⁴ The International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua* decided that a trade embargo imposed by the US against Nicaragua did not violate the principle of non-intervention: ‘the Court has merely to say that it is unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention’. See International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua*, Judgment, para. 245.

¹⁷⁵ A. TZANAKOPOULOS (2015), ‘The Right to Be Free from Economic Coercion’, *supra* note 171, p. 620.

¹⁷⁶ For a similar view, see A. HOFER (2017), ‘The Developed/Developing Divide on Unilateral Coercive Measures’, *supra* note 141.

it easy to argue that almost any type of economic restriction that applies to a state or its actors inevitably constitutes a violation of numerous human rights obligations. What is particularly striking in this regard is that the behaviour, towards their own nationals, of the states targeted by economic sanctions – such as Zimbabwe, Iran or Belarus, for example – are completely disregarded as irrelevant, despite the fact that the research of political scientists and economists has long acknowledged that governmental responses to economic sanctions have a significant bearing on which groups of the population will suffer the most as the result of such measures.¹⁷⁷

The predominant majority of the allegations that unilateral economic sanctions violate internationally acknowledged human rights are based on flawed evidence, and a complete lack of causal links between the measures taken and their negative impact on human rights (cause-effect linkage), and mostly serve the political goals of the states opposing unilateral economic sanctions' legality. For example, in a 2019 report prepared for the HRC, the Special Rapporteur highlighted the negative impact of economic sanctions on the company RUSAL, which was owned by sanctioned Russian oligarch Oleg Deripaska.¹⁷⁸ At the same time, the Special Rapporteur completely disregarded the fact of Oleg Deripaska's affiliations with the Russian government, and Russia's actions in the annexed Crimea, where ethnic Tatars were tortured and subjected to other forms of inhuman and degrading treatment, as well as Russia's actions in the occupied regions of eastern Ukraine, where thousands of Ukrainians became victims of the worst forms of human rights violations.¹⁷⁹

Another noteworthy example is the assertion that the blocking of the social media account of the Chechen leader Kadyrov, as a part of Magnitsky sanctions regime, undermines his human rights;¹⁸⁰ yet the Special Rapporteur seems to be unaware of human rights atrocities committed by the Chechen leader Kadyrov and his subordinates, which, among other things, include torture and

¹⁷⁷ I. BOGDANOVA (2022), *Unilateral Economic Sanctions in International Law*, *supra* note 6, pp. 44–57.

¹⁷⁸ HRC (2019), 'Report of the Special Rapporteur on Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights', *supra* note 166, p. 11.

¹⁷⁹ In January 2017, Ukraine initiated proceedings against the Russian Federation, before the International Court of Justice. Among other allegations, Ukraine claimed that 'Russian authorities are pursuing on the Crimean Peninsula a policy of cultural erasure through a pattern of discriminatory actions, treating groups that are not ethnic Russian as threats to the regime whose identity and culture must be suppressed': International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Application Instituting Proceedings, 16 January 2017.

¹⁸⁰ SPECIAL RAPPORTEUR ON THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF HUMAN RIGHTS, 'Negative Impact of Unilateral Coercive Measures: Priorities and Road Map', UN Doc. A/HRC/45/7, 21.07.2020, p. 10.

extrajudicial killings.¹⁸¹ This selective ‘blindness’ of the Special Rapporteur raises serious questions regarding the impartiality and objectivity of such reports.

The above-mentioned UN documents have completely overlooked matters such as the reasons why economic sanctions were imposed; whether these measures have achieved their results; and the nature of the actions of the governments and governmental officials responsible for the protection of human rights in targeted states. It should be remembered that these actors – governments and governmental officials – are the main, although not the only, duty-bearers, when it comes to the protection of human rights, including economic and social rights.¹⁸²

5. ECONOMIC SANCTIONS AND HUMAN RIGHTS: A NEW PERSPECTIVE ON A TWISTED RELATIONSHIP

While uncertainty regarding the legality of unilateral economic sanctions persists, a twisted relationship between unilateral economic sanctions and human rights also continues to exist. In other words, human rights became instrumentalised as a tool to argue for, or against, unilateral economic sanctions. State practice, as reflected in the proliferation of specialised human rights sanctions regimes, corroborates the view that unilateral economic sanctions are viewed as an instrument to promote human rights.¹⁸³ Meanwhile, adoption of the UNGA resolutions, and the work of the Special Rapporteur, aspire to contribute to the creation of customary international law that prohibits the use of unilateral economic sanctions, based on allegations that such measures violate human rights.¹⁸⁴ In light of the above, the discussion of a new perspective

¹⁸¹ J. HANSLER and N. GAOUETTE, ‘US sanctions Chechen leader for major human rights violations’, *CNN*, 20.07.2020, available at edition.cnn.com/2020/07/20/politics/us-sanctions-chechen-leader/index.html, last accessed 10.04.2023.

¹⁸² For more details on the allocation of the duties that relate to human rights protection, see S. BESSON, ‘The Bearers of Human Rights’ Duties and Responsibilities for Human Rights: A Quiet (R)Evolution?’ (2015) 32 *Social Philosophy and Policy*, p. 244.

¹⁸³ See [section 3](#) of this contribution.

¹⁸⁴ In 2015, the Special Rapporteur, Idriss Jazairy, had already tried to argue that the multiplicity of UN resolutions in which the use of unilateral coercive measures was harshly criticised might signal that an emerging customary international law or peremptory norm calling into question the legality of such measures had emerged: HRC (2015), ‘Report of the Special Rapporteur’, *supra* note 135. The possibility that new rules of customary international law might emerge has been already discussed in the ICJ Advisory Opinion, ‘Legality of the Threat or Use of Nuclear Weapons’, 1996, paras. 70–71. Yet, Alexandra Hofer, who conducted a thorough analysis of the issue, concluded that: ‘In spite of frequent calls for the cessation of such practice, a prohibition of UCM [unilateral coercive measures] has not crystalized.’ See A. HOFER (2017), ‘The Developed/Developing Divide on Unilateral Coercive Measures’, *supra* note 141, p. 212.

on this twisted relationship, driven by the desire to prevent human rights from being weaponised in the sanctions debate, is warranted.

The starting point of our inquiry should be historical record and existing state practice, as well as the state of international law. Recent empirical studies of economic sanctions not only acknowledge that their popularity over recent decades has increased significantly, but also that the countries that impose economic sanctions have become more diverse.¹⁸⁵ In other words, a growing number of states rely upon measures of economic coercion, for a variety of reasons. Against this backdrop, the prevailing majority of international legal scholars agree that customary international law does not prohibit states from employing unilateral economic sanctions, irrespective of the fact that some of these measures might be incompatible with the bilateral or multilateral obligations of states.¹⁸⁶ Given this prevailing view, it is prudent to contend that states have a right to impose unilateral economic sanctions, although this right is not unconstrained, and should be the subject of various limitations.

This contribution started from a presumption that unilateral economic sanctions are not *per se* illegal, and it thus acknowledged the right of individual states to employ such measures, but with certain constraints. As at the time of writing, the literature has abounded in claims of the legality or illegality of unilateral sanctions, and only a few contributions have proposed procedural and/or substantive preconditions, fulfilment of which may legitimise unilateral sanctions. For example, previously the present author has discussed the theoretical framework of the doctrine of common concern, and its potential to discipline the use of unilateral economic sanctions imposed on human rights grounds.¹⁸⁷ The analysis therein focused, in particular, on finding a threshold of human rights violations that can justify the imposition of economic sanctions, and agreeing on procedural prerequisites that should precede imposition of any such measures.¹⁸⁸ Similarly, Michael Nesbitt has called for ‘responsible engagement’ strategies, in situations of grave human rights violations, combining thoughtful engagement with economic sanctions, as an enforcement instrument.¹⁸⁹ The existing

¹⁸⁵ G. FELBERMAYR, C. SYROPOULOS, E. YALCIN et al. (2020), ‘The Global Sanctions Data Base’, *supra* note 46.

¹⁸⁶ O.Y. ELAGAB (1988), *The Legality of Non-Forcible Counter-Measures in International Law*, *supra* note 171; S. CLEVELAND, ‘Norm Internalization and U.S. Economic Sanctions’, (2001) 26 *Yale Journal of International Law*, p.1–102; A. TZANAKOPOULOS (2015), ‘The Right to Be Free from Economic Coercion’, *supra* note 171; R. BARBER (2021), ‘An Exploration of the General Assembly’s Troubled Relationship’, *supra* note 138.

¹⁸⁷ I. BOGDANOVA, ‘Reshaping the Law of Economic Sanctions for Human Rights Enforcement: The Potential of Common Concern of Humankind’, in T. COTTIER and Z. AHMAD (eds.), *The Prospects of Common Concern of Humankind in International Law*, Cambridge University Press, Cambridge 2021, pp. 247–291.

¹⁸⁸ *Ibid.*

¹⁸⁹ M. NESBITT (2016), ‘Canada’s Unilateral Sanctions Regime under Review’, *supra* note 86, pp. 560–561.

literature has already drawn attention to the ‘whether to sanction or to engage’ dilemma, in situations of grave human rights violations.¹⁹⁰ Michael Ewing-Chow illustrates this dilemma through the example of Myanmar/Burma, known for its appalling human rights record, and the opposing approaches pursued by states, i.e. the United States and the EU sanctioned the country, whereas countries from Myanmar’s own region favoured an engagement strategy.¹⁹¹ In turn, Michael Nesbitt focuses more on the sequence of the approaches than on their antagonism.¹⁹²

Perhaps the time is ripe to shift the angle of the debate to a discussion of substantial and procedural preconditions, fulfilment of which may potentially uphold the legality of unilateral economic sanctions, including sanctions imposed to redress situations of grave human rights violations.

Discussion of the general right of states to sanction other states for their non-compliance with human rights obligations might take the path of revision of the ARSIWA. In particular, acknowledgement of the legality of the third-party countermeasures (countermeasures in collective interests) could be the first step in this direction. As a part of this discussion, the types of human rights violations allowing the imposition of unilateral economic sanctions – as well as procedural preconditions: an obligation to engage with a state, or to offer assistance to improve human rights protection – could be a prerequisite for any subsequent imposition of unilateral sanctions.

Another possible, but very unlikely, avenue to discuss the imposition of unilateral sanctions, and human rights, could be specialised committees established by the core human rights treaties. The core human rights conventions establish specialised committees that are authorised to oversee the implementation of these treaties through consideration of the submitted states’ reports, and adjudication of inter-state and individual complaints. These specialised committees might be given the power to engage in mediation efforts between the states, before or even after human rights economic sanctions have been put in place. Any such engagement should be aimed at finding an amicable solution for both sides.

In general, as was mentioned above, human rights could function as constraints on states’ right to resort to unilateral economic sanctions. While the exact ambit of the human rights’ ‘power’ in this regard remains unclear, a few observations could be made.

One of the possible limitations on the use of unilateral economic sanctions is a humanitarian exception, which can be made an inherent part of any sanctions regime. At the UN level, the UNSC adopted, on 9 December 2022, Resolution 2664

¹⁹⁰ M. EWING-CHOW (2007), ‘First Do No Harm’, *supra* note 34, pp. 153–180; M. NESBITT (2016), ‘Canada’s Unilateral Sanctions Regime under Review’, *supra* note 86.

¹⁹¹ M. EWING-CHOW (2007), ‘First Do No Harm’, *supra* note 34.

¹⁹² M. NESBITT (2016), ‘Canada’s Unilateral Sanctions Regime under Review’, *supra* note 86.

(2022), according to which the following humanitarian exception is binding for collective sanctions: ‘the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs ... are permitted and are not a violation of the asset freezes imposed by this Council or its Sanctions Committees.’¹⁹³ Following this recent decision, some states have already implemented humanitarian exceptions in the existing sanctions regimes: for example, the EU did this.¹⁹⁴ In the case of the EU, the humanitarian exemption also applies to autonomous EU listings that complement UN designations.¹⁹⁵ In the present author’s view, humanitarian exceptions should be made a compulsory element of all sanctions regimes, including unilateral sanctions regimes, although suitable supervision should accompany all such exceptions.

Another possibility to reduce the negative impact of unilateral economic sanctions on human rights is coordination between states, aimed at sharing the best practices on unilateral sanctions and human rights. For example, due to the frequent litigation before the EU courts, a balance between human rights considerations and other policy objectives pursued by economic sanctions has been developed. This expertise might be shared with other states.

6. CONCLUDING REMARKS

As this contribution demonstrates, some states conceptualise the protection of human rights as providing a ground for unilateral economic sanctions, with Magnitsky-style sanctions being the most recent example, while other states oppose unilateral economic sanctions as measures impeding the enjoyment of human rights. These developments are evolving against the background of the perennial debates on unilateral economic sanctions’ legality, and their effectiveness in achieving their declared goals. This contribution explored the perplexing and multifaceted relations between human rights and unilateral economic sanctions, an issue that is, traditionally, politically charged. Retreating from the clashes between these prevailing old, unworkable dichotomies, this contribution argues for a more nuanced portrayal of the subject matter, and establishment of procedural and substantive preconditions, fulfilment of which is necessary if states intend to impose unilateral economic sanctions on human rights grounds.

¹⁹³ UNSC, ‘Resolution 2664 (2022) adopted by the Security Council at its 9214th meeting’, UN Doc S/RES/2664 (2022), 09.12.2022.

¹⁹⁴ M. O’KANE, ‘EU implements UN sanctions humanitarian exemption for 8 sanctions regimes’, *Sanctions*, 04.04.2023, available at www.europeansanctions.com/2023/04/eu-implements-un-sanctions-humanitarian-exemption-for-8-sanctions-regimes/, last accessed 11.04.2023.

¹⁹⁵ Ibid.

