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# **Economic Sanctions: Violation of Human Rights and the Obligation to Settle Disputes Peacefully**

BACHELOR THESIS

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## DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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## **Abstract**

The thesis examines the complexities surrounding economic sanctions, the violation of human rights, and the international obligation to settle disputes peacefully. The author explores controversies between the efficacy of economic sanctions as a tool of foreign policy and their potential negative impact on fundamental human rights. The research combines the legal analysis, case studies, as well as relevant international legal instruments to explore the legal and ethical implications of economic sanctions. Furthermore, it addresses the potential human rights violations resulting from economic sanctions, which tend to inflict a disproportionate suffering on the most vulnerable in a target state. These coercive measures tend to restrict access to basic necessities – food, water, and healthcare, thus violating fundamental human rights. Moreover, the thesis analyzes the obligation to settle disputes peacefully under international law.

Key words: economic sanctions, human rights, obligation to settle disputes peacefully, economic statecraft.

## Summary

The obligation to settle disputes peacefully is central to the system of the United Nations (UN). It is enshrined in Article 2(3) of the UN Charter and presupposes that all members should settle their international disputes by peaceful means and in such a manner that international peace is not endangered. Furthermore, Article 33 of the UN Charter provides states with various disputes settlement procedures, including negotiation, enquiry, mediation, arbitration, judicial settlement and others. There also exist particular principles of customary international law, which similarly supports the idea of peaceful dispute settlement, adding that international disputes should be negotiated in good faith and parties should attempt to reach a settlement. The duty to cooperate in the sake of solving a dispute is mentioned in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, as well as similar wording of the same obligation appears in several other international legal instruments, such as the Manila Declaration on the Peaceful Settlement of International Disputes and the European Convention on the Peaceful Settlement of Disputes. International disputes could be solved by diplomatic, as well as by judicial means. Nonetheless, even if parties resorted to judicial means, diplomacy outside of courtroom is a rather crucial component of reaching a settlement, which both sides find satisfying. It can be argued that imposition of economic sanctions is contrary to the notion of peaceful dispute settlement.

Economic sanctions are a tool of foreign policy, which are employed by international actors with the incentive to reach a particular goal or outcome, including potential regime or policy change of a target country. This kind of restrictive measures could be either comprehensive or targeted, seeking to solely impact particular individuals or entities. However, recent practice in the field of sanctions raises some serious concerns in regards their legality and impact on human rights. The Security Council is entitled to take actions in order to maintain or restore international peace and security in accordance with Article 41 of the UN Charter. However, all of the actions taken must comply with provisions relating to human rights described in the same legal document. The Preamble of the UN Charter explicitly provides that the UN and all of its members are determined to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be contained, as well as the UN is determined to promote social progress and better standards of living. It is important to mention that continuous economic sanctions which sometimes remain in place for decades are in the contrary with the aim prescribed in the Preamble of the UN. There is a reason to believe that the UN sanctions regimes desperately require reforms, taking into consideration the fact that economic sanctions fail to achieve the initial aim of the imposition, as well as quite substantially violate the rights of innocent individuals.

Internationally recognized human rights represent the modern embodiment of the traditional concept of the rule of law. The Universal Declaration of Human Rights (UDHR) was one of the first international legal documents, which acknowledged the supremacy of individual as a human being and all the rights attributed to him. Additionally, there have been adopted other two significant legal instruments – the Covenant on Civil and Political Rights and the Covenant

on Economic, Social and Cultural Rights (ICESCR). Furthermore, the provisions of the latter must be taken into account when deploying economic sanctions, nonetheless, these coercive measures will almost always have negative effect on the rights prescribed in the ICESCR. Economic sanctions tend to cause disruption in the food distribution, affect supplies of pharmaceuticals and medicaments, as well as greatly interfere with the functioning of health and education systems, thus affecting the enjoyment of economic, social and cultural rights. It appears that economic sanctions are imposed to address violations of civil and political rights of a target state, but end up undermining the economic and social rights of the general population. The most vivid examples of the previously mentioned occurrence are cases of Iraq, Iran and Cuba. In Iraq, economic sanctions killed hundreds of thousands of people due to the fact they millions of Iraqi people were cut-off from deliveries of medicaments and food supplies, which were crucial for their survival. The Iran was subject to the similar situation – economic sanctions resulted in unavailability of necessities of a standard life, such as nutritious food, healthcare and medicine. Finally, the Cuba embargo administered by the United States deprived individuals of the benefits of trade, of travel – economic sanctions lowered the standard of living of Cubans.

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## Introduction

Economic sanctions could be defined as restrictive policy measures that one or more countries apply in order to limit their relations with a target country, so they can persuade that country to change its policies or to address possible violations of international norms and conventions. The intent behind the economic sanctions is to achieve global order and compliance with international norms, however, very often this kind of restrictive measures go beyond and above the initial purpose of imposition. Unfortunately, economic sanctions tend to hit the wrong targets – the population at large and the weakest in society. Consequently, various humanitarian considerations must be taken into account, since the restrictive measures are likely to cause hardship for the individuals of a target country. More importantly, the continuous imposition of sanctions might be inappropriate under international law and potentially constitute a breach. At this point, the international law of human rights comes into play in order to provide for some basic standards to be respected in all circumstances, as individuals are important actors in an international arena and should enjoy a protection against any arbitrary measure, such as extensive economic sanctions which are usually legitimized by Article 41 of the UN Charter.<sup>1</sup>

The sanctions have a negative effect on civil, political, economic, social and cultural rights, as well as the right to life and the right to development, thus international bodies might need to incorporate certain changes in the existing system of imposition of economic sanctions to ensure that fundamental human rights are protected. Violations of human rights are one of the main reasons for imposition of sanctions, nonetheless, the imposed sanctions disregard the same human rights principles they sought to protect and cause even further deterioration of existing situation. Furthermore, it is of crucial importance to guarantee that the restrictive measures imposed are not out of proportion to the initial cause of imposition. Moreover, the legality of an imposition of economic sanctions can be linked to dispute settlement procedures, as all of them should be exhausted before a state decides to use countermeasures. With the objective of decreasing adverse effects economic sanctions inflict on a population of a target state, there could be explored particular diplomatic strategies or international cooperation mechanisms that can help to protect human rights of affected individuals, and simultaneously benefit the aim of inflicted economic pressure. In an effort to mitigate human suffering, there could be proposed certain policy recommendations which would ensure access to essential goods and services for individuals in a target state, as well as implemented exemptions that prioritize human rights considerations.

The author applies doctrinal research method to analyze how various economic sanctions affect human rights in heavily sanctioned states, thus disregarding the principles enshrined in numerous international legal instruments. The analysis of human rights violations by means of economic sanctions includes cases of Iraq, Iran and Cuba. Additionally, the obligation to settle disputes peacefully is addressed by analyzing legal materials on given topic, as well as some examples, such as the Oslo Accords and the Iran Nuclear Deal. Do states have an obligation to settle their disputes peacefully before imposing economic sanctions? Do economic sanctions

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<sup>1</sup> United Nations. United Nations Charter. Available on: <https://www.un.org/en/about-us/un-charter> Accessed May 5, 2023.

violate human rights of individuals in target state more often than they achieve the policy aim behind the imposition?

The aim of the thesis is to analyze the international obligation to settle disputes peacefully, which could be regarded to cases when economic sanctions are imposed, as well as to analyze the instances when economic sanctions violate human rights of a target state without achieving any substantial policy goal, which was sought by applying the restrictive measures. In order to achieve the aim of the thesis, the author examines various legal instruments, including the UN Charter, the International Covenant on Civil and Political Rights<sup>2</sup>, the Covenant on Economic, Social and Cultural Rights<sup>3</sup>, and the Universal Declaration of Human Rights<sup>4</sup>.

The limitations of the research may include the limited availability of comprehensive case studies on international disputes that were settled by peaceful means before states resorted to the imposition of sanctions, therefore it could be challenging to find a sufficient number of documented cases that would help to provide an elaborate answer to the research question. Moreover, it can be challenging to establish a link between the use of peaceful dispute settlement procedures and the avoidance of economic sanctions – it can be only presumed that in a particular case economic sanctions would be the resort parties to a dispute would choose, if the conflict is not resolved. Additionally, the decision to impose economic sanctions is often influenced by various political considerations, geopolitical aspects and national interests.

The thesis consists of several parts. In the first section, the author addresses the principle of peaceful settlement of international disputes, which is enshrined in Article 2(3) of the UN Charter. The various dispute settlement procedures, such as negotiation, mediation, conciliation and enquiry, are addressed too. The author touches upon the customary international law and the idea that international disputes must be negotiated in good faith, as well as parties must try their best to reach a settlement and find common ground through chosen dispute settlement procedure. The obligation to settle disputes peacefully and the duty to cooperate goes in line with the guiding principle of the United Nations – the international cooperation. In addition, in the sections are mentioned various legal instruments concerning peaceful dispute settlement, including the Manila Declaration on the Peaceful Settlement of International Disputes, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and the European Convention on the Peaceful Settlement of Disputes. All of the legal documents reaffirm the significance of the obligation to settle disputes by peaceful means.

The following sections analyze the most recent tendencies of economic sanctions, a tool of foreign policy. The author addresses the evolution of the coercive measures, which has comprehensive sanctions at its start and develops to targeted or ‘smart’ ones. More importantly,

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<sup>2</sup> International Covenant on Civil and Political Rights. Human Rights Instruments. General Assembly resolution 2200A (XXI), 16 December 1996. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> Accessed April 10, 2023.

<sup>3</sup> International Covenant of Economic, Social and Cultural Rights. Human Rights Instruments. General Assembly resolution 2200A (XXI), 16 December 1996. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> Accessed April 10, 2023.

<sup>4</sup> United Nations. Universal Declarations of Human Rights. Available on: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> Accessed April 17, 2023.

the many years of practice discloses an evidence of significant violations of fundamental human rights by continuous imposition and re-imposition of economic measures, thus suggesting an idea that economic sanctions can be deemed illegal. Furthermore, very often sanctions fail to achieve the intended aim behind the imposition, thus making this tool of foreign policy not only controversial in regards to the negative effect they have on people of a target state, but their overall ineffectiveness too.

The third section addresses the numerous legal instruments of international human rights law, including the parts of UN Charter, the UDHR, the ICESCR, and the International Covenant on Civil and Political Rights. The ICESCR is of particular importance, because it contains the rights in relation to such areas of individuals' lives as minimum standard of living, education and cultural participation, as well as physical and mental health – all of the enumerated rights usually are heavily affected by economic sanctions, which could be observed in the cases of Iraq, Iran and Cuba. Furthermore, the provisions of the ICESCR must be taken into account when imposing sanctions, because these coercive measures almost always cause disruption in the distribution of food, affect supplies of pharmaceuticals and medicaments, and interfere with the existing functioning of health and education systems. The cases of Iraq, Iran and Cuba are addressed in detail. Finally, the last parts of the thesis touches upon the notion of accountability and aspects of international humanitarian law.

## The obligation to settle disputes peacefully

The principle of peaceful settlement of disputes is fundamental to the system of the UN. It is set out in numerous conventions and is a customary law principle. At any moment there are occurring numerous disputes at different levels of social interaction all over the world, and states are not an exception. Each nation pursues its own interests and values, and because of the fact that nations coexist in a common international framework, it is likely that at a certain point some of these interests may become a reason for a conflict. In the *Mavrommatis* case, the Permanent Court of Justice defined a “dispute” as a disagreement on a point of law or fact, a conflict of legal views or interests between two persons.<sup>5</sup> While Article 2(3) of the UN Charter states that “all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered[.]”<sup>6</sup> Article 33 of the UN Charter explicitly provides that the parties to any dispute, which could potentially endanger the maintenance of international peace and security, shall seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.<sup>7</sup> All of the enumerated means of dispute settlement are put on an equal footing, thus providing parties with a variety of alternatives, as well as freedom of choice.

Moreover, there is also certain principles of customary international law, which presuppose that significant international disputes must be negotiated in good faith and parties must attempt to reach a settlement. In the obligation to settle disputes peacefully is inherent a duty of cooperation with a view to settlement, also comprising a duty to negotiate. After all, international cooperation is the guiding principle of the United States. A general duty to cooperate in all fields is apparent in the *Friendly Relations Declaration*<sup>8</sup>, as well as mentioned in some international treaties and documents. Additionally, there exists the principle of free choice which purports that states are not obliged to choose one particular method of dispute settlement, quite contrary, they are free to choose any means available to them. Another principle is the principle of good faith which is considered to be an inherent element of international cooperation in general.<sup>9</sup>

Additionally, there has been adopted the *Manila Declaration on the Peaceful Settlement of International Disputes* in 1982. The context in which the *Manila Declaration* was negotiated and adopted is of crucial importance, as it found its basis on the difficult relations between the East and West, and provided clarification of existing international law.<sup>10</sup> The Declaration is known to

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<sup>5</sup> Anne Peters, “International dispute settlement: a network of cooperation duties”, *European Journal of International Law* 14, no. 1 (2003), available on: Westlaw International. Accessed March 3, 2023.

<sup>6</sup> United Nations. United Nations Charter. Chapter I: Purposes and Principles, Article 2(3). Available on: <https://www.un.org/en/about-us/un-charter/full-text#:~:text=Article%20equality%20of%20all%20its%20Members>. Accessed March 10, 2023.

<sup>7</sup> United Nations. United Nations Charter, Chapter VI: Pacific Settlement of Disputes. Article 33. Available on: <https://www.un.org/en/about-us/un-charter/chapter-6> Accessed March 11, 2023.

<sup>8</sup> United Nations. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. Available on: <https://digitallibrary.un.org/record/202170> Accessed March 11, 2023.

<sup>9</sup> Peters, “International dispute settlement: a network of cooperation duties”.

<sup>10</sup> United Nations. *Manila Declaration on the Peaceful Settlement of International Disputes*. New York, 15 November 1982. Available on: <https://legal.un.org/avl/ha/mdpsid/mdpsid.html> Accessed March 11, 2023.

develop a comprehensive plan and a consolidation of the legal framework of peaceful settlement of international disputes – no other legal instrument have provided something alike before. More importantly, this legal document was intended to promote general international law, the Charter of the United Nations, specifically Article 33, as well as other international instruments, few of these being the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter (1970), the American Treaty on Pacific Settlement (1948) and the European Convention on the Peaceful Settlement of Disputes (1957).<sup>11</sup> Furthermore, there has been developed the Handbook on the Peaceful Settlement of Disputes Between States<sup>12</sup> – this particular document provides a variety of ways, techniques and institutions by which state can settle their disputes without resorting to force. However, it is not a legal instrument and does not commit States in any way. The document includes following paragraphs: ‘Principle of the peaceful settlement of disputes between states’, ‘Means of settlement’, ‘Procedures envisaged in the Charter of the United Nations and Procedures envisaged in other international instruments’.

Since the UN Charter was adopted, the settlement of international disputes has been one of the most researched fields of international law, thus it ensures an abundance of an information available on the topic. International disputes can be solved by diplomatic, as well as by judicial means. However, even if parties to a conflict decide to employ judicial means and resort to court proceedings, diplomacy outside the courtroom is rather necessary to achieve the peaceful settlement of a dispute.<sup>13</sup> Furthermore, the practice shows that the combination of the diplomatic and judicial means is, possibly, the best way to solve international disputes peacefully. As a great illustration may serve the North Sea Continental Shelf case<sup>14</sup>. In this particular case, the Court had to indicate only the applicable rules of international law, leaving the subsequent settlement of the dispute to be reached through a negotiation. The Court noted that negotiation is the normal means for resolving conflicts of this kind, while emphasizing that peaceful dispute settlement by mutual agreement is a fundamental principle of international law. Furthermore, the Court decided that negotiations are more than a simple formality; negotiations must be pursued with an intention to resolve the dispute, thus they must be meaningful, even though there is no duty to reach an agreement.<sup>15</sup> All details described above confirm that the North Sea Continental Shelf case is, in fact, a significant precedent which established a substantive content to the norm of the obligation of states to settle disputes peacefully. There is another perspective to a settlement through judicial means, which could be illustrated by the Nicaragua case<sup>16</sup>. This case was the reason the United

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<sup>11</sup> Ibid.

<sup>12</sup> United Nations. Office of Legal Affairs. Handbook on the Peaceful Settlement of Disputes between States. Mediation, p. 40. Available on: <https://legal.un.org/cod/books/HandbookOnPSD.pdf> Accessed March 15, 2023.

<sup>13</sup> Laurence Boisson de Chazournes, Marcelo Kohen, and Jorge E. Viñuales, *Diplomatic and Judicial Means of Dispute Settlement* (BRILL, 2012), p. 9. Available on: ProQuest Ebook Central database. Accessed March 3, 2023.

<sup>14</sup> International Court of Justice. North Sea Continental Shelf cases. Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands. Judgment of 20 February 1969. Available on: <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf> Accessed March 20, 2023.

<sup>15</sup> Cornelius F. Murphy, “The Obligation of States to Settle Disputes by Peaceful Means,” *Virginia Journal of International Law* 14 (1973): p. 58.

<sup>16</sup> International Court of Justice. Case concerning military and paramilitary activities in and against Nicaragua. Nicaragua v. United States of America. Judgment of 27 June 1986. Available on: <https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> Accessed March 17, 2023.

States had terminated its Declaration of August 26, 1946, by which the country was submitting to the compulsory jurisdiction of the International Court of Justice. Even though, the Court has survived this unprecedented move, the act itself showed the world that international law and international customary law is not applicable to each and every state, as well as it is not applicable to each and every circumstance; the United States could completely disregard the world order if it does not recognize the verdict of the Court as necessary to comply with.

It is recognized by norms of public international law that even disputes, which in a long term cannot be said to endanger international peace, should be settled as smoothly and harmoniously as possible. Additionally, if the parties to a certain dispute desire to start a litigation at the International Court of Justice, it should be established that the dispute in question meets particular requirements and, indeed, can be regarded as an international dispute. There has been a lot of debates about the methods of peaceful settlement. The debates touch upon various aspects, including whether the methods are appealing enough or whether there is enough room for maneuver when in the process of settling. It is significant to provide states with techniques, institutions and procedures that not only encourages them to engage in a dispute settlement, but makes the process straightforward and attractive. In spite of the variety of settlement methods available, negotiation has always been a starting point. Moreover, many multilateral treaties contain the requirement of continuous exchanges and consultations between parties, even after a dispute has emerged.<sup>17</sup> To illustrate, the Antarctica Treaty (1959) and the United Nations Convention on the Law of the Sea (1982) oblige states to engage in some kind of a negotiation in case of a controversy or conflict between them<sup>18</sup> – the latter deploys various techniques in a rather innovative way to deal with different types of disputes that may occur.<sup>19</sup> Also, it is a common instance that communication and exchanges between states is a precondition before both can continue with third party means of settlement.

There are certain approaches to conflict resolution that have been institutionalized and these include negotiation, mediation, enquiry, arbitration, as well as judicial settlement – all of these have been endorsed by the UN Charter. It is important to note that in most cases disputes are resolved by a combination of the mentioned methods; it is very unlikely that parties will use exclusively one of them. Negotiation is the most commonly used approach to solving conflicts, as states tend to incorporate it in regular diplomatic channels. Also, negotiation is a significant counterpart of international relations, which sustain a necessary interaction between international actors. The process of negotiation could be characterized by explicit proposals put forward for the purpose of reaching agreement when conflicting interests are present but the purpose is to reach a common ground. Specific resolutions released by the Security Council and the General Assembly provide with the belief that if there is a possibility to resolve a dispute without an intervention of these to organs it should be done so.<sup>20</sup> Additionally, the Council and the Assembly tend to monitor

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<sup>17</sup> Rosalyn Higgins, “Peaceful Settlement of Disputes,” *Proceedings of the Annual Meeting (American Society of International Law)* 89 (1995): p. 293.

<sup>18</sup> Higgins, “Peaceful Settlement of Disputes,” p. 294.

<sup>19</sup> Junwu Pan, *Toward a New Framework for Peaceful Settlement of China’s Territorial and Boundary Disputes* (BRILL: 2009), p. 65. Available on: ProQuest Ebook Central database. Accessed April 29, 2023.

<sup>20</sup> K. Savitri, “The United Nations Charter Framework for Conflict Resolution: Procedures and Practices of Pacific Settlement of Disputes,” *India Quarterly* 53 (1997): p. 76.

the progress of certain negotiations. Parties to a dispute might be asked to submit report to the Council about the progress made. It is emphasized that if the efforts at negotiations fail, parties should employ other methods.<sup>21</sup> Mediation could be another method by which parties decide to solve their dispute. This approach includes a third party which intervenes in order to reconcile the claims of disputing parties and provides his own proposals aimed to find a compromise acceptable for both sides.<sup>22</sup> There have been adopted the United Nations Guidance for Effective Mediation, which states that mediators and their terms provide kind of a buffer for conflicting parties and serve as a source of confidence that a peaceful resolution is achievable.<sup>23</sup> During enquiry and conciliation, parties to a dispute agree to the intervention of a third party for the purpose of indicating certain facts or conducting an impartial examination of the dispute. The third party may attempt to suggest or define the terms of an agreed settlement too.<sup>24</sup> Another method of a dispute settlement is arbitration. In this case, the dispute is referenced to an *ad hoc* tribunal for a binding decision. It is usually conducted on the basis of international law. Despite of the common practice of a binding arbitration, parties are free to state that the tribunal's opinion will be only advisory. Finally, a judicial settlement includes a reference of the dispute to the International Court of Justice or some other permanent judicial body for a binding decision, which in most cases is based on international law.<sup>25</sup>

No doubt, the Security Council, being the central organ of the United Nations responsible for security, plays an immense role in peaceful dispute settlement. According to the UN Charter, a dispute or controversial situation may be submitted to the Security Council. More specifically, Article 11 of the UN Charter states that the General Assembly is enabled to discuss any questions relating to the maintenance of international peace and security brought before it either by a Member State of the UN, or by the Security Council.<sup>26</sup> This organ of the UN is also entitled to make recommendations regarding any such questions to the certain state or states concerned or to the Security Council. If it is concluded that in a specific case action is necessary, the question must be referred to the Security Council before or after discussion takes place. Additionally, Article 35 of the Charter permits states which are not members of the United Nations to bring to the attention of the Security Council disputes they are involved in. When the Council decides that a dispute is of great significance or pose a substantial threat to peace, it places the dispute on its agenda; invitations are issued to the states concerned and a hearing is scheduled. Moreover, before the hearing takes place and the Security Council decides to put an issue on its agenda, parties to a dispute must indicate the ways in which they have attempted to resolve the dispute, as well as how they fulfilled the obligation dictated in Article 33(1). Attempting to settle a dispute before resorting to the Security Council is a UN Charter obligation. The powers that the Security Council possesses

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<sup>21</sup> Savitri, "Procedures and Practices of Pacific Settlement of Disputes," p. 77.

<sup>22</sup> United Nations. Office of Legal Affairs. Handbook on the Peaceful Settlement of Disputes between States. Mediation, p. 40. Available on: <https://legal.un.org/cod/books/HandbookOnPSD.pdf> Accessed March 15, 2023.

<sup>23</sup> United Nations. Guidance for Effective Mediation, p. 4. Available on: [https://unrcca.unmissions.org/sites/default/files/dpa\\_msu\\_guidance\\_english\\_web.pdf](https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf) Accessed March 20, 2023.

<sup>24</sup> Richard B. Bilder, "An Overview of International Dispute Settlement," *Emory Journal of International Dispute Resolution* 1 (1986): p. 24.

<sup>25</sup> Bilder, "An Overview of International Dispute Settlement," p. 25.

<sup>26</sup> United Nations. United Nations Charter, Chapter IV: The General Assembly. Article 11. Available on: <https://www.un.org/en/about-us/un-charter/chapter-4> Accessed April 18, 2023.

are intended to supplement, rather than replace general international law and its norms concerning pacific dispute settlement.<sup>27</sup> As a result, the Security Council may provide recommendations, however, an acceptance of these recommendations is not part of the obligations of pacific dispute settlement. Unfortunately, preceding international practice shows that most often states are reluctant to resort to peaceful means of dispute settlement. On certain occasions, such as Nicaragua case, they even may disregard a binding decision of an international judicial body, the International Court of Justice.

Article 2(3) of the UN Charter imposes an obligation upon all of the member states of the UN to settle their disputes peacefully. Consequently, it may be concluded that sanctions do not fall within the scope of Article 2(3) and, clearly, do not constitute a peaceful means for dispute settlement. There are various examples which prove ineffectiveness of sanctions, one of these being the case of Iran – the massive package of sanctions imposed on the country by the US and the UN to seek the ultimate goal of nonproliferation did not achieve it, but made the existing situation worse for the general Iranian population. Thus, it draws to a conclusion that, most of the times, sanctions do not resolve international conflicts, they make matters even more complicated and cannot be regarded as the means of peaceful dispute settlement. Similarly, the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States emphasizes that “[e]very state shall settle its international disputes with other states by peaceful means, in such a manner that international peace and security and justice are not endangered”<sup>28</sup>. It also suggests that states should cooperate in the economic, social and cultural fields, as well as they should cooperate in the promotion of economic growth throughout the world<sup>29</sup> – simultaneous fulfillment of this obligation and imposition of sanctions seems incompatible.

Additionally, Article 36(1) of the ICJ’s Statute states that “the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force”<sup>30</sup>. Furthermore, in the same article is mentioned that the parties to the Statute may declare that they recognize, in relation to any other state that is a party to the Statute and accepts the same obligation, the jurisdiction of the Court in all legal disputes relating to “a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the extent of the reparation to be made for the breach of an international obligation”<sup>31</sup>. While this provision does not explicitly mention the obligation to settle disputes peacefully, the very existence of the ICJ is based on the premise that disputes between states should be resolved by peaceful means. The ICJ is a judicial body that hears cases between states and provides legally binding decisions on disputes they submit to the Court. Also, it encourages states to seek peaceful settlement of their disputes before resorting to litigation before the Court. Overall, the ICJ Statute reflects the international

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<sup>27</sup> Murphy, “The Obligation of States to Settle Disputes by Peaceful Means,” p. 60.

<sup>28</sup> “United Nations General Assembly: Resolution 2625 (XXV) Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations,” *The American Journal of International Law* 65 (1971): p. 247. Available on: JSTOR.

<sup>29</sup> Declaration on Principles Concerning Friendly Relations Among States, p. 249.

<sup>30</sup> International Court of Justice. Statute of the International Court of Justice. Available on: [https://legal.un.org/avl/pdf/ha/sicj/icj\\_statute\\_e.pdf](https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf) Accessed April 18, 2023.

<sup>31</sup> Ibid.

community's commitment to the peaceful settlement of disputes, and the Court serves as an important mechanism for promoting and upholding this obligation.

Nevertheless, there were some instances when states chose to resort to peaceful dispute settlement, one of these being the Iran Nuclear Deal, also known as the Joint Comprehensive Plan of Action. It was signed in 2015 by Iran and several other world powers, amongst them the United States. The agreement was intended to place restrictions on Iran's nuclear program, which would result in sanctions relief.<sup>32</sup> It was assumed that, over time, the deal will help avoid improved development of Iran's nuclear weapons program, at the same time reducing the possibility of conflicts between Iran and neighboring or regional countries, such as Israel and Saudi Arabia.<sup>33</sup> The agreement was welcomed by the international community and supported by a resolution of the UN Security Council. However, this particular case was greatly affected by outside factors, such as a change of leadership in each country, as well as a shifting geopolitical context. The turning point was willingness of the US to change its preconditions from no nuclear enrichment to no nuclear bomb.<sup>34</sup> Unfortunately, the success did not prove to be long-lasting – the United States withdrew from the deal in 2018 and Iran stopped complying with the limitations placed by the deal on its nuclear program.

The South China Sea Dispute is another instance when states chose to settle their dispute in a peaceful manner. The Philippines initiated a case against China in 2013, when the government confirmed that it is eager to bring China before the Permanent Court of Arbitration (PCA) under Article 287 of the 1982 UNCLOS to establish and preserve the sovereign rights and jurisdiction of the Philippines over its maritime entitlements in the West Philippine Sea.<sup>35</sup> The case was initiated because of the China's continuing assertive moves in the South China Sea.<sup>36</sup> While China claims that the Philippines failed in trying to resolve this dispute through proper channels, the Philippines state that China desires to acquire hegemonic control over the South China Sea. The Philippines requested that the PCA address four main points, including resolution of a dispute concerning the source of maritime rights and entitlements in the South China Sea and the lawfulness of China's actions in the South China Sea.<sup>37</sup> Furthermore, the claim was submitted to the UNCLOS, which assists its contracting states in establishing boundaries that border oceans and seas. This organization was established in 1982, and the Philippines became a member of the UNCLOS in 1984, while China joined in 2006.<sup>38</sup> The PCA's ruling was favorable to the Philippines position, at the same time declaring several China's claims in the South China Sea unlawful. Main findings of the ruling confirmed that China violated the Philippines' sovereign

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<sup>32</sup> Council on Foreign Relations. What Is the Iran Nuclear Deal? Available on: <https://www.cfr.org/backgrounder/what-iran-nuclear-deal> Accessed April 20, 2023.

<sup>33</sup> Ibid.

<sup>34</sup> Sayed Hossein Mousavian and Mohammad Mehdi Mousavian, "Building on the Iran Nuclear Deal for International Peace and Security", *Journal for Peace and Nuclear Disarmament* 1, no. 1 (January 2018), available on: tandfonline. Accessed April 5, 2023.

<sup>35</sup> Laura Southgate, "The South China Sea Dispute," in *ASEAN Resistance to Sovereignty Violation: Interests, Balancing and the Role of the Vanguard State*, (Bristol University Press, 2019), p. 176.

<sup>36</sup> Shelton Woods, "The Sino-Philippine South China Sea Dispute," *American Journal of Chinese Studies* 23 (2016): p. 159.

<sup>37</sup> Southgate, "The South China Sea Dispute," p. 176.

<sup>38</sup> Woods, "The Sino-Philippine South China Sea Dispute," p. 162.

rights by precluding the country's oil exploration activities, not allowing Philippine fishing vessels to operate in the area, and conducting land reclamation in areas where the Philippines have sovereign rights to explore, as well as exploit its natural resources.<sup>39</sup> Even though the final PCA's ruling overwhelmingly favored the Philippines' position, the China's position was not deemed totally absurd and was not presented emphasizing the seemingly bad intentions behind it, which is visible in the following paragraph of the PCA's issued Award:

The root of the disputes presented by the Philippines in this arbitration lies not in any intention on the part of China or the Philippines to infringe on the legal rights of the other, but rather—as has been apparent throughout these proceedings—in fundamentally different understandings of their respective rights under the Convention in the waters of the South China Sea. In such circumstances, the purpose of dispute resolution proceedings is to clarify the Parties' respective rights and obligations and thereby to facilitate their future relations in accordance with the general obligations of good faith that both governments unequivocally recognize.<sup>40</sup>

Yet another illustration of peaceful dispute settlement is the Oslo Accords. Despite the fact that this settlement was only temporary and clashes between Israel and Palestine reappeared not long after, it shows that dispute settlement could be reached in a peaceful manner even in such peculiar circumstances as these both countries find themselves. The 1993 Oslo Accords were negotiated in Oslo and afterwards signed by the parties in Washington.<sup>41</sup> The main points of the Oslo Accords included the establishment of Palestinian interim self-government in the West Bank, the withdrawal of Israeli forces from the Gaza Strip, as well as transfer of authority to the Palestinian Council in such spheres as education, culture, health and social welfare. Quite possibly, the Oslo Accords were deemed to fail because they left many aspects of existing situation unresolved. Few of these being the status of Jerusalem and the future borders of a Palestinian state.<sup>42</sup> At the time, the Oslo Accords were marketed as an initiation of economic prosperity it will ultimately bring, but it was far from the truth. After this settlement, Palestinians found themselves in the situation much graver than they were before. The World Bank provides that “the only country in the Middle East and North African region that has lower average income than the [West Bank and Gaza strip is Yemen]”.<sup>43</sup>

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<sup>39</sup> U.S.-China Economic and Security Review Commission. Issue Brief of July 12, 2016. “South China Sea Arbitration Ruling: What Happened and What's Next?” p. 3. Available on: [https://www.uscc.gov/sites/default/files/Research/Issue%20Brief\\_South%20China%20Sea%20Arbitration%20Ruling%20What%20Happened%20and%20What%27s%20Next071216.pdf](https://www.uscc.gov/sites/default/files/Research/Issue%20Brief_South%20China%20Sea%20Arbitration%20Ruling%20What%20Happened%20and%20What%27s%20Next071216.pdf) Accessed April 19, 2023.

<sup>40</sup> Permanent Court of Arbitration. Cases. The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), p. 468. Available on: <https://pcacases.com/web/sendAttach/2086> Accessed April 19, 2023.

<sup>41</sup> Iffat Malik, “ANALYSIS OF OSLO ACCORDS,” *Strategic Studies* 21 (2001): p. 134.

<sup>42</sup> Malik, “ANALYSIS OF OSLO ACCORDS,” p. 138.

<sup>43</sup> Shamir Hassan, “Oslo Accords: The Genesis and Consequences for Palestine,” *Social Scientist* 39 (2001): p. 71.

## Economic sanctions

It is evident that, in recent years, sanctions have become a popular tool of foreign policy, not only at the UN level, but also unilaterally and regionally. The very nature of the coercive measures has changed too; starting with comprehensive sanctions regimes at the very beginning and shifting towards ‘targeted’ or ‘smart’ sanctions, which are aimed at certain individuals or entities. However, recent practice of imposition of sanctions raise many questions about their legality and their impact on human rights. Furthermore, sanctions are defined as restrictive policy measures that one or more countries implement in order to restrict their relations with a target country, seeking to persuade that country to alter its policies or to address potential violations of international norms and conventions.<sup>44</sup> These restrictive policy measures can be used to promote democracy, safeguard human rights, fight terrorism and nuclear proliferation, destabilize certain threatening regimes, and put an end to military conflicts. Sanctions may also restrict travel, freeze assets, and deny specific individuals or groups access to financial institutions. Additionally, economic sanctions are closely intertwined with economic statecraft, which refers to an attempt to influence a target state to do something it would not do in other circumstances or to abandon an action that the target state plans to engage in. One of the main aims behind the economic statecraft is to manipulate the market in a manner that would provide economic benefits to those states that comply, while imposing economic penalties on those who do not.<sup>45</sup>

Comprehensive sanctions are known to be a general prohibition of all direct or indirect imports and exports, financing or facilitating against most goods, technology and services.<sup>46</sup> However, there have been a lot of efforts to end comprehensive sanctions, as they are considered to bring around severe humanitarian implications and negatively affect human rights. The UN Committee on Economic, Social and Cultural Rights and the UN Commission on Human Rights have also voiced its concerns, whether the humanitarian exemptions of so-called blanket sanctions are in accordance with the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration on Human Rights.<sup>47</sup> Additionally, the humanitarian considerations of comprehensive sanctions have shown that this kind of coercive measures, after all, are not a nonviolent alternative to armed force. All UN sanctions regimes exempt food and medicines, nevertheless, comprehensive sanctions can result in death and suffering. As an example may serve the case of Iraq. The epidemiological study conducted by Columbia University indicated that at

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<sup>44</sup> T. Clifton Morgan, Constantinos Syropoulos and Yoto V. Yotov, “Economic Sanctions,” *The Journal of Economic Perspectives* 37 (2023): p. 3.

<sup>45</sup> Jean-Marc F. Blanchard and Norrin M. Ripsman, *Economic Statecraft and Foreign Policy: Sanctions, Incentives, and Target State Calculations* (Taylor & Francis Group: 2013), p. 5. Available on: ProQuest Ebook Central database. Accessed April 29, 2023.

<sup>46</sup> University of Central Florida. Office of Export Compliance. Office of Foreign Assets Control (OFAC). Types of Sanctions. Available on: <https://www.research.ucf.edu/exportcontrol/ofac.html> Accessed March 15, 2023.

<sup>47</sup> Darren Hawkins and Joshua Lloyd, “Questioning comprehensive sanctions: the birth of a norm,” *Journal of Human Rights* 2 (2003): p. 444.

least 100,000 to 200,000 children below the age of five died between August 1991 and March 1998. The most part of these deaths were attributable to sanctions.<sup>48</sup>

Targeted or smart sanctions have been introduced with an intention to substitute comprehensive sanctions and reduce the adverse effect they leave on general population of a particular country. In other words, targeted sanctions are designed to inflict hardship on elite supporters of the targeted regime, while inflicting less or minimal hardship on the mass public.<sup>49</sup> Comprehensive sanctions can cause the total economic collapse of a target state, while smart sanctions are designed to avoid such an outcome. As was mentioned above, the case of Iraq taught the world that economic sanctions are not necessarily the best solution; the country experienced food shortages and malnutrition that affected the most vulnerable, at the same time making the United Nations and the United States appear as evils which inflicted this immense suffering. Starting with 1994, so-called ‘smart’ sanctions became the dominant sanction policy of the UN.<sup>50</sup> The purpose of targeted sanctions can be divided into three main categories, which include coercion, constraint, and signaling. By deploying coercion, the governments of sanctioned countries are expected to change their behavior – this is considered to be the most difficult goal of all three. In order for coercion to be successful, it is necessary to define the goals of behavior change as narrowly as possible. Constraint is deployed to limit access to resources or transportation, which in turn can reduce particular country’s ability to engage in certain behaviors. Finally, the purpose of signaling sanctions is to mark the countries that disregard international norms and standards.<sup>51</sup> Targeted sanctions can appear in a variety of different ways – they can be targeted at an individual, at a corporate entity, such as a firm or political party, at a sector of an economy, for example, an arms embargo, a ban on the trade in high-value commodities like diamonds, oil, or timber, etc.<sup>52</sup> In comparison with indiscriminate comprehensive sanctions, targeted sanctions offer many advantages.

The Security Council may take actions to maintain or restore international peace and security, and is entitled to do so by Chapter VII of the UN Charter. In particular, Article 41 states

[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decision, and it may call upon Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.<sup>53</sup>

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<sup>48</sup> Andrew Mack and Asif Khan, “The Efficacy of UN Sanctions,” *Security Dialogue* 31 (2000): p. 284.

<sup>49</sup> Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review* 13 (2011): p. 96.

<sup>50</sup> Laura Kanji, “Moving Targets: The Evolution and Future of Smart Sanctions,” *Harvard International Review* 37 (2016): p. 39.

<sup>51</sup> Kanji, “The Evolution and Future of Smart Sanctions,” p. 40.

<sup>52</sup> Thomas J. Biersteker, “Targeted Sanctions and Individual Human Rights,” *International Journal* 65 (2009-2010): p. 100.

<sup>53</sup> United Nations. Charter of the United Nations. Chapter VII – Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression. Article 41. Available on: <https://legal.un.org/repertory/art41.shtml> Accessed March 10, 2023.

Since 1966, the Security Council has established 30 sanctions regimes against such countries as Iraq, Iran, Libya, Haiti, Rwanda, Sierra Leone, South Africa and many more.<sup>54</sup> As of now, there are 14 ongoing sanctions regimes which focus on promoting political settlement of conflicts, as well as nuclear non-proliferation, and counter-terrorism. Each of the regimes is monitored by a sanctions committee chaired by a non-permanent member of the Security Council. Additionally, the Security Council imposes sanctions concerning such issues as armed conflict, interstate and intrastate wars, when international peace and security is threatened.<sup>55</sup> The restrictive measures have ranged from comprehensive economic and trade sanctions to targeted or smart sanctions, including arm embargoes, financial or commodity restrictions. It is important to note that the Security Council developed particular methods to target the initiators of conflict rather than mass public. Moreover, there are two strategies the Security Council has adopted when imposing sanctions in cases of intrastate conflict. To start, intrastate targeted sanctions focus on certain geographical regions, commodities, or sectors of the economy. To continue, sanctions are imposed after the negotiation of a comprehensive peace agreement.<sup>56</sup>

Nonetheless, the very idea of imposition of collective sanctions seems to go contrary to the UN's own Charter. The Preamble of the UN Charter states that the peoples of the UN are determined

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights [...] of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.<sup>57</sup>

Moreover, Article 1 of the UN Charter states that the purpose of the UN is “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all [...]”<sup>58</sup> The elaborated version of the same objective is found in the wording of Article 55 of the UN Charter, which falls under the Chapter IX: International Economic and Social Cooperation. It can be argued that by imposing collective sanctions, the UN deprives people of the same rights it declares in its Charter – the human right to an adequate standard of living, the right to health, and even the right to life. However, various interpretations of the UN Charter must be taken into account too. To exemplify, it can be argued that the main purpose of the Charter, as well as of the UN as a whole, is focused of the maintenance of peace around the world, thus sanctions may be employed as means of reaching this goal. Furthermore, Article 41 of the Charter enables the UN to impose collective sanctions if a particular situation requires it. At the same time, even if ‘preserving peace’ could be assumed as the central purpose of the UN, the organization cannot

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<sup>54</sup> United Nations. United Nations Security Council. Sanctions. Available on: <https://www.un.org/securitycouncil/sanctions/information> Accessed March 12, 2023.

<sup>55</sup> Kristen E. Boon, “Applying Targeted Sanctions”, *International Peace Institute* (2014), p. 4. Available on: JSTOR. Accessed March 10, 2023.

<sup>56</sup> Ibid.

<sup>57</sup> United Nations. United Nations Charter: Preamble. Available on: <https://www.un.org/en/about-us/un-charter/preamble> Accessed April 15, 2023.

<sup>58</sup> United Nations. United Nations Charter. Article 1. Available on: <https://www.un.org/en/about-us/un-charter/full-text> Accessed April 18, 2023.

completely disregard other purposes mentioned in its Charter, as this would deem the existence of it completely senseless.

In addition, there exists a debate about the effectiveness of UN sanctions regimes. Many scholars agree that the UN sanctions do, indeed, require urgent reforms.<sup>59</sup> As the first argument in favor of reforms could serve the fact that economic sanctions very often violate the rights of innocent citizens and do not achieve the aim of the initial imposition very quickly or, in particular cases, not at all. The UN sanctions cannot be regarded as an effective conflict management tool, because to this day these coercive measures fail to exclusively target the wrongdoers. However, there are a few counterarguments too, which imply that after the imposition of sanctions the leaders of targeted states become more vulnerable and thus more prone to compromise and ready to negotiate – it is assumed that without the imposed coercive measures it would not happen.<sup>60</sup> Despite the positive and negative opinions regarding economic sanctions, there are taking place some developments that could potentially benefit the existing UN system. To illustrate, the High-Level Panel was setup by the Secretary-General to review UN operations and structures. The Panel made the suggestions as

the UN Security Council should establish regular monitoring mechanisms for every new sanctions regime and also grant them the necessary authority, capacity, and resources to carry out high-quality, in-depth investigations; [...] the Secretary-General should appoint a senior official to conduct analysis on how to effectively target sanctions and coordinate their implementation; [...] the Secretary-General should ensure auditing of the sanctions administration[.]<sup>61</sup>

Furthermore, the UN establishes sanctions committees, which constitute the main instrument for monitoring and administering sanctions regimes. All of the interstate conflicts that caused an imposition of sanctions had a corresponding sanctions committee.<sup>62</sup> Some of the committees were known for their passivity, while others proved to be quite productive.

At the same time, unilateral sanctions, or sanctions which are imposed by states or international organizations on their own initiative, are considered to be incompatible with international law, as well as in breach of the rights of the sanctioned state. It is acknowledged that sanctions are lawful only if they are employed as countermeasures – in this case they must be subjected to the criteria codified in the International Law Commission's Articles on State Responsibility and its Draft Articles on the Responsibility of International Organizations.<sup>63</sup> One can argue that there is no such obligation which would bound states to maintain an economic relations with other states, thus they are allowed to do as they please while it is not unlawful or does not constitute a breach of international law.

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<sup>59</sup> George Hikah Benson, "Reforming the Current United Nations Sanctions System: A Necessary Exercise in the 21<sup>st</sup> Century," *SOAS Law Journal* 7, (2020): p. 279.

<sup>60</sup> Benson, "Reforming the Current United Nations Sanctions System," p. 282.

<sup>61</sup> *Ibid.* p. 285.

<sup>62</sup> Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (Taylor & Francis Group: 2011), p. 37. Available on: ProQuest Ebook Central database. Accessed April 30, 2023.

<sup>63</sup> Matthew Happold and Paul Eden, *Economic Sanctions and International Law: Law and Practice* (Bloomsbury Publishing Plc, 2016), p. 3. Available on: ProQuest Ebook Central database. Accessed March 20, 2023.

Another very debated topic within the sphere of economic sanctions is their effectiveness. The success rate of sanctions varies depending on different sanctions cases. As a successful example of economic sanctions reaching their incentive is considered the comprehensive financial sanctions against Iran during the Obama administration. As a result, these measures forced Iran to comply with restrictions to its nuclear program in 2014. Nevertheless, the examples which prove that economic sanctions are rather ineffective policy tool are spotted much more frequently. One of the most vivid cases is the case of North Korea. To illustrate, Pyongyang has been subjected to quite comprehensive measures, such as “financial restrictions, aid cuts, trade embargoes, and travel sanctions by the US since the Cold War and by the UN-led coalitions in the post-Cold War era.”<sup>64</sup> The evidence shows that these sanctions failed to bring about any kind of favorable policy changes on the part of North Korea. It is presumed that one of the main components which has to be present in order for sanctions to result in success is international cooperation, in other words, it implies multilateral sanctions. At the same time, this suggestions forces to conclude that unilateral sanctions, which are employed by the US more than any other country in the world, are less effective. Consequently, it stems that unilateral sanctions in certain circumstances are perceived as not only a breach of international law, but as an ineffective tool of foreign policy which tend to hurt innocent people of a target state. Another argument suggests that targeted sanctions are more effective than conventional sanctions as they put direct pressure on key actors, such as governmental officials and their support coalitions.<sup>65</sup> However, this argument proves to be some sort of a false too. The most part of ongoing sanctions regimes primarily involves targeted sanctions, and there is no enough evidence that this kind of restrictive measures are more effective than conventional sanctions, which were often used in the 20<sup>th</sup> century.<sup>66</sup>

Economic sanctions are a popular tool of foreign policy, however, there could be made some reforms that would potentially make them more ethical and effective. In the best case scenario, economic sanctions should always be targeted, without unintended negative consequences for vulnerable populations of targeted countries. Also, there should always be humanitarian exemptions, which include exemptions for such basic necessities as food, medicine, and fuel. Furthermore, sanctions always should be proportional to the undesirable behavior of a target country – unfortunately, in certain cases economic sanctions are used to achieve particular political goals, which do not have anything in common with the reason why sanctions are imposed in the first place. Finally, this kind of coercive measures should always be transparent, reviewed and reevaluated, in order to ensure that economic sanctions do not have any unintended negative consequences.

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<sup>64</sup> Dursun Peksen, “When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature”, *Defence and Peace Economics* 30, no. 6 (2019), available on: tandfonline. Accessed April 8, 2023.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

## Impact on human rights

International human rights law brings positive change in the lives of individuals and communities throughout the world. It is legally binding on states – some rights and freedoms are binding on all states, while other are only binding on those states which gave consent and accept their applicability.<sup>67</sup> Nowadays, human rights represent the modern interpretation of the traditional concept of the rule of law. After the establishment of the UN in 1945, the UN Charter was signed by the participating nations and it declared that the Member States must combine their efforts to “[...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [...] to promote social progress and better standards of life in larger freedom [...] and for these ends [...] to employ international machinery for the promotion of the economic and social advancement of all peoples [...]”<sup>68</sup> Additionally, there have been established various Specialized Agencies with certain human rights competence, including the World Health Organization (WHO) relating to the right to health, the Food and Agriculture Organization (FAO) in relation to the right to food, and the United Nations Development Programme (UNDP) relating to the right to development.<sup>69</sup> Important to mention that all of the rights listed above are almost always restricted by imposition of economic sanctions.

The UDHR was one of the first international documents, which emphasized the supremacy of the human being and the rights entitled to him. The UDHR was adopted in 1948 and it is called a milestone document in the history of human rights. It sets out fundamental human rights to be universally protected, which has never been done before to such an extent. Additionally, the Declaration paved the way for the adoption of numerous human rights treaties that are being applied globally to this very day. The Preamble of the UDHR contains the following wording:

[...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [...] it is essential to promote the development of friendly relations between nations, [...] the peoples of the [UN] have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and [...] have determined to promote social progress and better standards of life, [and] have pledged themselves to achieve, in co-operation with the [UN], the promotion of universal respect for and observance of human rights and fundamental freedoms[.]<sup>70</sup>

The Declaration is a comprehensive document, which, much like the UN Charter, includes civil, political, economic, social and cultural rights. It includes the freedom of peaceful assembly and association, the freedom of movement and residence within the borders of each state, as well as

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<sup>67</sup> Rhona K. M. Smith, *International Human Rights Law* (Oxford University Press, 2022), p. 2.

<sup>68</sup> United Nations. United Nations Charter: Preamble. Available on: <https://www.un.org/en/about-us/un-charter/preamble> Accessed April 16, 2023.

<sup>69</sup> Nigel D. White, “The Applicability of Economic and Social Rights to the UN Security Council,” in *Economic, Social, and Cultural Rights in Action*, ed. Mashood Baderin, Robert McCorquodale (Oxford: Oxford University Press, 2007), available on: Oxford Academic. Accessed April 30, 2023.

<sup>70</sup> Ibid.

the individual's freedom to leave any country including his own, and to return to his country.<sup>71</sup> There are ongoing debates, whether the UN Charter and the Declaration is binding on the Member States, nonetheless, many academics concluded that the Declaration is a legally binding instrument – if not in whole, at least in part.<sup>72</sup> It also observed that the legal developments in domestic and international spheres suggest that many regard the Declaration as a statement of customary international law, even though at the time of drafting it was perceived as more like a simple encouragement to respect the rights and freedoms contained in it.<sup>73</sup> Based on the UDHR, several other declarations, conventions and covenants have been developed to further elaborate on different aspects of international human rights law. There are the two Covenants adopted in 1966 – the Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights. Both of the Covenants together with the UDHR and the two Optional Protocols to the Covenant on Civil and Political Rights constitute the International Bill of Rights.

Another significant achievement of the international human rights system is the increasing recognition as well as acceptance of economic, social and cultural rights. Even though, these rights do not enjoy the same status as civil and political rights, their significance is appreciated more and more. Besides, various legal standards at the regional and international levels, which have been extended by interpretive texts from the UN human rights treaty bodies. Also, non-governmental organizations have partaken a tremendous role in enhancing international community's understanding of economic, social, and cultural rights. The International Covenant of Economic, Social and Cultural Rights (ICESCR) and the rights contained in it, relating to such areas of peoples' lives as physical and mental health, a minimum standard of living, education and cultural participation, capture the most basic needs in any kind of society. Moreover, international responsibility for Covenant on Economic, Social and Cultural Rights violations could be attached for breach of the "duty to cooperate", which was inserted into the design of Covenant obligations.<sup>74</sup> To illustrate, there was only one breach of the Covenant, which have been analyzed in the 2004 Advisory Opinion on Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory. In this case, the Court stated that the construction of the wall "impedes the exercise by the persons concerned of the right to work, to health, to education, and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights."<sup>75</sup>

More importantly, no matter the circumstances – when imposing economic sanctions, the provisions of the ICESCR must be taken into account. Furthermore, the Committee of the ICESCR does not question the necessity of the imposition of economic sanctions in cases when certain events require to in accordance with Chapter VII of the UN Charter, as well as other applicable international law. However, even if particular situation calls for the use of coercive measures, the

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<sup>71</sup> United Nations. Universal Declaration of Human Rights. Article 13. Available on: <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2013,to%20return%20to%20his%20country>. Accessed April 17, 2023.

<sup>72</sup> Berta Esperanza Hernandez-Truyol, "Embargo or Blockade – The Legal and Moral Dimensions of the U.S. Economic Sanctions on Cuba," *Intercultural Human Rights Law Review* 4 (2009): p. 60.

<sup>73</sup> Ibid.

<sup>74</sup> Diane A. Desierto and Colin E. Gillespie, "A modern integrated paradigm for international responsibility arising from violations of economic, social, and cultural rights", *Cambridge Journal of International and Comparative Law* 3, no. 2 (2014), available on: Westlaw International. Accessed April 20, 2023.

<sup>75</sup> Ibid.

provisions of the UN Charter that concerns human rights must be fully applied and complied with. Those provisions include Article 1, 55 and 56, and Article 55 explicitly states that the UN shall promote “higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problem; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction [..].”<sup>76</sup> It can be concluded that economic sanctions almost always will have a highly negative impact on the rights recognized in the ICESCR.

The impact of sanctions varies from case to case, but these measures always have a significant impact on the rights recognized in the ICESCR. To illustrate, economic sanctions almost always cause serious disruption in the distribution of food, affect supplies of pharmaceuticals and medicaments. They affect the quality of food and drinking water, interfere with the functioning of health and education systems, as well as undermine the right to work.<sup>77</sup> Furthermore, economic sanctions can cause the opposite effect of what was initially intended and reinforce the power of oppressive government, as well as inevitable emergence of a black market. Thus coercive measures cause not only political implications, but a negative impact on the enjoyment of economic, social and cultural rights too.

As economic sanctions have gained considerable popularity in years following the Cold War, it quickly became a common feature of international politics. The matters that cause imposition of sanctions vary from preventing bloody civil wars and fighting terrorism to democratization and ending human rights violations, as well as possible repression by the government. Nevertheless, despite justifiable reason for the imposition, restrictive measures tend to inflict significant socio-economic and political damage in target countries.<sup>78</sup> The UN imposes collective economic sanctions in response to violations of international human rights, however, usually these coercive measures not only punish or alter the behavior of a target state, they contravene the organization’s own Charter. It does not matter, whether the sanctions are targeted or not, when a nation’s economy is paralyzed, everyone feel the effect and no one is exempted. Despite the use of so-called smart sanctions, in most cases economic sanctions end up affecting the entire population of a country, thus restricting the enjoyment of certain human rights. While in some instances the aftermath of economic sanctions is less damaging and harmful for the general population, in other instances it deprives people of basic human rights.<sup>79</sup> Nevertheless, collective economic sanctions cannot disregard the principle of proportionality and the respect for human rights – both of these are found within the UN collective security system. Most of the times, when the UN imposes economic sanctions on a particular country, they are meant to lead to an outcome which general population do not have the ability to influence. Clearly, only a few members of the population are able to comply with the requirements, in order for the sanctions to be lifted – usually

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<sup>76</sup> Charter of the United Nations. Chapter IX – International Economic and Social Co-operation. Article 55. Available on: <https://legal.un.org/repertory/art55.shtml> Accessed April 18, 2022.

<sup>77</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights, 12 December 1997, E/C. 12/1997/8, available on: <https://www.refworld.org/docid/47a7079e0.html> Accessed April 15, 2023.

<sup>78</sup> Dursun Peksen, “Better or Worse? The Effect of Economic Sanctions on Human Rights,” *Journal of Peace Research* 46 (2009): p. 59.

<sup>79</sup> Joy K. Fausey, “Does the United Nations’ Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards,” *Connecticut Journal of International Law* 10 (1994): pp. 6–8.

they are residing in an authoritarian government and are able to endure and preserve the existing regime even with difficulties caused by imposed sanctions.

Coercive measures, such as economic sanctions, are denying many people around the world the right to personal development, which is regarded to as “an alienable human right” and which is recognized by a variety of multilateral human rights declarations. It is acknowledged that “[s]anctions hold countries back from development, they hold back people as well, and in a globalizing world, that hurts everyone”<sup>80</sup>. Most of the times, economic sanctions are designed to address violations of civil and political rights of the target state, but instead tend to undermine the economic and social rights of the general population. In certain cases, the right to health, the right to food and the right to life are violated too.

Nevertheless, not only comprehensive sanctions tend to violate human rights of general population the most. Targeted sanctions also pose some significant issues, such as violations of individual human rights. Even though, the intention behind introduction of targeted sanctions was to relieve a larger population from the burden inflicted upon them, targeted sanctions proved to violate individual human rights too, thus making it a shift from one evil to another. Moreover, the Security Council targets sanctions against individuals and other non-state actors, while such measures were not considered during the adoption of the UN Charter. Recently, hundreds of individuals have been labeled by the Security Council as suspected terrorists.<sup>81</sup> Most of the times, restrictive measures include the freezing of assets and restrictions on travel. This kind of measures adopted by the Security Council might threaten the right to life, the right to health, the right to respect for private and family life, as well as procedural rights.<sup>82</sup>

## **Iraq**

Iraq is one of the most vivid examples which showcase how severely economic sanctions can affect the civilian population and kill hundreds of thousands people, thus completely disregarding basic human rights. Initially, the UN imposed sanctions against Iraq, following the Iraq’s invasion of Kuwait. The legality of sanctions cannot be disputed, as Iraq did, indeed, illegally invade Kuwait, thus calling for the UN’s response. The imposed sanctions restricted the import of all the products produced in Iraq, as well as the export of all products to Iraq. The UN Security Council sanctions imposed on Iraq in 1990 lead to gross violation of international humanitarian law and cut-off millions of Iraqi people from deliveries of medicaments and food supplies on which they were depended on. Imposed economic sanctions manifested themselves in the

agonizing death of millions of starved babies and children who died in large numbers from preventable diseases such as diarrhea – with live-saving drugs being blocked on hollow pretexts such as “dual (military) use”. [...] While the death toll of children under-five was

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<sup>80</sup> United Nations. UN News. Punishment of ‘innocent civilians’ through government sanctions must end: UN experts. Available on: <https://news.un.org/en/story/2021/08/1097562> Accessed April 12, 2023.

<sup>81</sup> Sanctions against individuals and entities belonging to or associated with the Taliban and Al-Qaida organization, SC Res. 1267, 15 October 1999; SC Res. 1333, 19 December 2000; SC Res. 1390, 16 January 2002.

<sup>82</sup> Noah Birkhäuser, “Sanctions of the Security Council Against Individuals – Some Human Rights Problems”, (2005): p. 1, available on: [esil-sedi.eu](http://esil-sedi.eu). Accessed April 25, 2023.

closely monitored by several UN organizations, those of the children over-five, the poor classes, especially women, the elderly and the sick, were not monitored and did not enter the statistics of horror.<sup>83</sup>

Consequently, it could be said that the UN disregard the very nature of its own charter. While the Charter proclaims the protection of the innocent, the United Nations is responsible for major human rights violations and economic destruction. Moreover, the UN has been imposing economic sanctions through the Security Council, which is considered to be the organization's instrument for peace and security. Also, the effect economic sanctions had left on Iraqi mass population has been often regarded to as a genocide. It could be argued that such sanctions are incompatible with various provisions of the United Nations Charter, as well as similar instruments of international humanitarian law.<sup>84</sup> Furthermore, in 1999 the Security Council panel appointed to monitor the humanitarian situation in Iraq concluded that, in comparison with the situation prior to the events that took place in 1990, after the imposition of multilateral sanctions the infant mortality rates in Iraq were among the highest in the world, chronic malnutrition affected every fourth child under five years of age. The UN Development Programme stated that it would take approximately 7 billion of dollars to rehabilitate the country's power sector to the capacity it had prior 1990.<sup>85</sup>

Additionally, it can be concluded that international obligation to settle conflicts peacefully have been disregarded too. It is known that there was absence of a continuous dialogue between the officials, which may have had even deepened the existing misunderstanding between authorities in Iraq and representatives of the UN Security Council.<sup>86</sup> With time, the contact became more and more rare. Furthermore, available information points to fact that the US and UK authorities discouraged contact between Iraqi government and the UN Security Council, which is evident in the following occurrences –

Secretary General Annan's visit to Baghdad in February 1998, which did lead to an improved climate between Baghdad and New York and benefited the welfare of the Iraqi population, was not welcomed by US Secretary of State Madeleine Albright. The submission of an Iraqi dossier outlining all the issues [...] was dismissed as "containing nothing new" [...]. The UN Security Council was "seized of the matter", a phrase well known in UN circles, which indicated that the Council did not want the Secretary General to proactively engage in conflict resolution.<sup>87</sup>

In 2003, the UN Security Council called off the most comprehensive sanctions ever imposed on a state. In fact, these economic sanctions covered and affected every aspect of individual life.

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<sup>83</sup> Christian P. Scherrer, *Iraq: Genocide by Sanctions* (Penerbit USM, 2011), p. 61. Available on: ProQuest Ebook Central database. Accessed March 22, 2023.

<sup>84</sup> Denis J. Halliday, "The Deadly and Illegal Consequences of Economic Sanctions on the People of Iraq," *The Brown Journal of World Affairs* 7 (2000): p. 229.

<sup>85</sup> Matthew Craven, "Humanitarianism and the quest for smarter sanctions," *European Journal of International Law* 13, no. 1 (2002), available on: Westlaw International. Accessed March 21, 2023.

<sup>86</sup> Hans-Christof von Sponeck, "Iraq: Burden of UN Sanctions," *Economic and Political Weekly* 40 (2005): p. 4904.

<sup>87</sup> Ibid.

## Iran

Iran is another country, which experiences a heavy weight of economic sanctions on human rights of general population. This country has been subjected to sanctions for more than three decades, the initial reason being the incident occurring in 1979 – the seizure and hostage crisis in the US embassy located in Tehran. The US was the first sanctioning actor, later on joined by the EU and the UN in the year of 2006.<sup>88</sup> The sanctions imposed lead to numerous troubling effects, such as devaluation of national currency, increase of inflation and unemployment. Mentioned occurrences resulted in deterioration of Iranians' overall welfare, as well as lowered their ability to access the necessities of a standard life – nutritious food, healthcare and medicine.<sup>89</sup> Fearing the consequence of violating the US sanctions, many international companies have stopping trading with Iran, even on products that are not amongst sanctioned. Consequently, Iran experiences lack of essential humanitarian goods, critical medicines and medical devices to this very day, and more than 42% of Iran's 82 million population are living below the poverty line.<sup>90</sup>

The Iranian pharmaceutical industry is also heavily affected by sanctions, which resulted in an interruption in the market, as well as in shortage of various drugs and medical supplies. As a consequence, drug companies were forced to turn to much less reliable sources, thus drugs circulating in the market possess a high risk of toxicity and decreased efficacy. Moreover, the shortage of particular medicines forced patients and clinics to resort to the black market, which in certain instances had led to tragic side effects, including blindness.<sup>91</sup>

Moreover, the imposed sanctions on Iran have been closely interlinked with the nuclear proliferation of this country. So, since 2006, diplomatic efforts between China, France, Germany, Russia, the UK, the US, and Iran on the other side, led to the conclusion of nuclear agreement – Joint Comprehensive Plan of Action (JCPOA).<sup>92</sup> This development shows that particular issues could be, potentially, resolved by diplomatic cooperation, conducted thorough negotiations which constitute a peaceful dispute settlement. On one hand, the nuclear agreement was designed to provide for the comprehensive lifting of UN, EU and US nuclear-related sanctions, thus sanctions imposed in view of the human rights situation and support for terrorism would remain in place. On the other hand, if the conclusion of one kind of agreements proved itself to be possible and all of the actors are willing to cooperate, it seems that a similar agreement could be concluded in respect to other issues, such as economic sanctions concerning remaining crucial areas of Iranians' lives. Unfortunately, there is political aspect present too – the JCPOA was short-lived and, even though the International Atomic Energy (IAEA) had over time confirmed that Iran was compliant with the agreement, the US decided to unilaterally withdraw from the joint commission in 2018,

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<sup>88</sup> Global Policy Forum. UN Sanctions Against Iran. Available on: <https://archive.globalpolicy.org/security/sanction/indxiran.htm> Accessed April 17, 2023.

<sup>89</sup> Fatemeh Kokabisaghi, "Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review," *International Journal of Health Policy and Management* 7 (2018): pp. 374–393.

<sup>90</sup> Hossein Akbarialiabadi, Asghar Rastegar, Bahar Bastani, "How Sanctions Have Impacted Iranian Healthcare Sector: A Brief Review," *Archives of Iranian Medicine* 24 (2021): p. 59.

<sup>91</sup> Ibid.

<sup>92</sup> European Union External Action. The Joint Comprehensive Plan of Action (JCPOA) and its implementation, Nuclear Agreement with Iran. Available on: [https://www.eeas.europa.eu/eeas/nuclear-agreement-%E2%80%93-jcpoa\\_en](https://www.eeas.europa.eu/eeas/nuclear-agreement-%E2%80%93-jcpoa_en) Accessed April 15, 2023.

which leads to a conclusion that political interests are more prevailing than international norms in regards of dispute resolution.

Furthermore, the Draft Articles on Responsibility of States for Internationally Wrongful Acts developed a legal framework for cases when a state could be held liable for breaching an international obligation and the adoption of countermeasures between states. More precisely, Article 50(1)(b) of the Draft states that countermeasures shall not affect obligations for the protection of fundamental human rights.<sup>93</sup> Iran brought another issue to attention of the International Court of Justice relating to the 1955 Treaty of Amity, Economic Relation, and Consular Rights.

## Cuba

Cuba historically has been linked commercially and politically to the United States, which was the largest investor in Cuba prior to 1960.<sup>94</sup> However, different political ideologies of both countries proved to be a deal breaker. The main initiator of economic sanctions was Cuba's strengthening of commercial and political relations with the Soviet Union. This compelled the United States to impose a devastating economic embargo on Cuba. Furthermore, Cuba is one of the vivid examples of how economic sanctions affect nations as a whole, as well as how this kind on coercive measures fail to bring about sought policy changes. It is a known fact that the US embargo and the restrictions imposed on Cuba by the Bush administration did not achieve its main goal – to trigger the regime change in Havana.<sup>95</sup> Also, it is claimed that economic sanctions resulted in total loss of 90 billion dollars and around 120 million dollars annually since the collapse of the Soviet Union in 1991, as the formed was Cuba's most important ally. Thus, it can be very well argued that economic sanctions of the US affect negatively Cuba's economic and social development, at the same time causing harm to the general population and greatly impairing basic human rights of Cuban people.<sup>96</sup>

The embargo and economic sanctions imposed on Cuba affect health, hunger, education and nutrition. Furthermore, they affect the right to travel and the right to family life of Cubans in the US who cannot visit their family members regularly. No doubt, economic sanctions could be perceived as a valuable tool for protecting human rights, however, there is another aspect too – economic sanctions may cause even greater deterioration of human rights in particular state in comparisons with the situation that was present before the imposition. The Cuba embargo resulted in quite harmful effects on civil society by depriving individuals of the benefits of trade, of travel, of family life; sanctions lowered people's standard of living, thus can be regarded as a moral or even legal failure.<sup>97</sup> The embargo has limited Cuba's ability to trade with other countries, which

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<sup>93</sup> United Nations. Responsibility of States for Internationally Wrongful Acts (2001). Available on: [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf) Accessed April 20, 2023.

<sup>94</sup> Hossein G. Askari, John Forrer, Hildy Teegen, Jiawen Yang, *Case Studies of U.S. Economic Sanctions: The Chinese, Cuban, and Iranian Experience* (Westport, Connecticut London: Greenwood Publishing Group, 2003), p. 111.

<sup>95</sup> Sven Kuhn von Burgsdorff, "The Effectiveness of Economic Sanctions: The Case of Cuba," *Intercultural Human Rights Law Review* 4 (2009): p. 45.

<sup>96</sup> *Ibid*, p. 46.

<sup>97</sup> Hernandez-Truyol, "Embargo or Blockade," p. 85.

resulted in shortages of essential goods and services, such as food, medicine, and fuel. This has a direct impact on the availability and quality of healthcare in the country, leading to increased rates of disease and mortality and thus interfering with the individuals' enjoyment of certain human rights.

Moreover, the US acceded to the International Covenant on Civil and Political Rights, but did it with reservations, which were beneficial to its own legal system, as the prohibition of capital punishment for persons under the age of eighteen would require substantial changes in the law of thirty US states.<sup>98</sup> As a consequence, it can be concluded that the US is unwilling to bring about changes to its national law, so it would conform with international standards, while expects from countries like Cuba to comply with the US standards, which at the same time are not applicable to the Americans themselves. Furthermore, the idea of sovereign self-determination is called the basis for all human rights. Even though the right to self-determination could only be safeguarded when human rights are protected and ensured, the UN declares a policy of non-intervention in matters which are exclusively within the domestic jurisdiction of particular state.<sup>99</sup>

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<sup>98</sup> Christopher Wall, "Human Rights and Economic Sanctions: The New Imperialism," *Fordham International Law Journal* 22 (1998): p. 601.

<sup>99</sup> *Ibid.* p. 604.

## Accountability

The UN is an intergovernmental organization that plays a critical role in maintaining international peace and security, promoting economic development, and protecting human rights. One area where the UN's accountability has been called into question is the use of economic sanctions. Economic sanctions are a tool used by the UN to put pressure on governments and individuals to comply with international law or to address threats to international peace and security. However, there have been cases where sanctions have been used disproportionately, resulting in significant harm to the civilian population, without necessarily achieving the intended outcome. Various non-governmental organizations voiced their concerns about the negative effect economic sanctions inflict on civilians of targeted states. Those organizations include human rights groups, human rights activists, human rights scholars, UN organs, as well as UN-related agencies.<sup>100</sup>

On the one hand, the United Nations is not a party to any human rights treaties, therefore it is not bound by any humanitarian law or human rights obligations as concerning treaty law, nonetheless it is assumed that the UN is bound by general international law. On the other hand, it can be argued that the UN has a duty to respect humanitarian law and human rights law because the norms contained in the Geneva Conventions are regarded as customary international law, which directly binds the UN. Also, "the European Court of Justice elaborated upon the idea that the human rights guarantees of the European Convention are basically an expression of the common constitutional traditions of the EC member states and thus are binding on the EC organs as general principles of law."<sup>101</sup> In accordance with Article 39 of the UN Charter, the Security Council itself determines whether there is any threat to the peace, breach of the peace, or act of aggression and, consequently, decides what kind of measures should be taken in order to maintain international peace. The wording of this article and the whole purpose of the UN and its Security Council can be interpreted in a way that their main task is to maintain or restore peace, which sometimes is not identical with the law.<sup>102</sup> Nonetheless, in certain cases the current UN sanctions regime infringes human rights guaranteed in various international instruments.

At the same time, the UN perceives itself to be a promoter of human rights and it has no other way rather than respect its constituent document – the UN Charter. Moreover, in the document it is emphasized that the main purpose of the UN is to promote human rights. As a result, by imposing economic sanctions which violate human rights, the UN and the Security Council would disregard the main purpose of the organization's existence. Also, in accordance with Article 103 of the UN Charter, member states must comply with resolutions made by the Security Council under Chapter VII of the UN Charter. It can be concluded that member states are being expected to comply irrespective of their human rights obligations, which are prescribed in numerous human rights treaties.

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<sup>100</sup> Ved P. Nanda, "Accountability of International Organizations: Some Observations," *Denver Journal of International Law and Policy* 33 (2005): p. 384.

<sup>101</sup> August Reinisch, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions," *The American Journal of International Law* 95 (2001): p. 855.

<sup>102</sup> *Ibid.* p. 856.

Moreover, there exists a belief that making the Security Council of the UN more accountable will make it more productive too. The UN is an organization based on a treaty, therefore its mission consists of establishing “conditions under which justice and respect for the obligations arising from treaties and other sources on international law can be maintained”.<sup>103</sup> Furthermore, the Security Council is challenged to address some of the most complex issues of international law and international politics.<sup>104</sup> Legal accountability of the Security Council remains significant because its decisions are far-reaching and the world may greatly benefit if the Council operates productively. At the same time, the world would suffer if the Council abuses or disrespects the powers granted to it by the Charter.<sup>105</sup>

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<sup>103</sup> United Nations. Charter of the United Nations. Preamble. Available on: <https://www.un.org/en/about-us/un-charter/preamble> Accessed April 30, 2023.

<sup>104</sup> Carolyn M. Evans, *Towards a More Accountable United Nations Security Council* (BRILL: 2021), p. 16. Available on: ProQuest Ebook Central database. Accessed April 30, 2023.

<sup>105</sup> *Ibid.* p. 26.

## Aspects of Humanitarian Law

Economic sanctions can have significant effects on humanitarian law because they impact the ability of states to provide assistance to civilians during armed conflict, which causes even greater suffering amongst the most vulnerable citizens. While some sanctions include exemptions for humanitarian aid, their implementation can still cause unintended and negative consequences, such as limiting the ability of aid organizations to operate in affected countries, thus undermining the very aim of humanitarian exemptions. It is a known fact that economic sanctions are closely intertwined with humanitarian law, as international community recognizes that even during the harshest sanctions regimes humanitarian exemptions are of a high significance. International humanitarian law aims at protecting individuals during ongoing conflicts, and in the aftermath, thus humanitarian law is the last resort on which individuals of sanctioned countries can rely upon. The humanitarian law is comprised of two sets:

the law of war as currently codified by the Hague Conventions, [...] and the Geneva Conventions, which strive to safeguard the basic rights of non-combatants and civilians. In all circumstances, international humanitarian law represents a balance between the exigencies of combat situations and the generally accepted laws of humanity.<sup>106</sup>

The data collected by the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported how UN sanctions regimes vitally undermined the capacity of humanitarian actors to operate in countries such as the former Yugoslavia, Haiti, Iraq, Burundi, and Sierra Leone.<sup>107</sup> In order to lessen the negative impact of economic sanctions, assessments should be made to evaluate humanitarian conditions, to identify whether sanctions will cause harm, as well as to anticipate possible undesirable consequences.

The generally accepted purpose of economic sanctions lies in altering behavior of a target state, not in punishment, in which they unfortunately often result. These coercive measures have various shortcomings and problems, including possible violations of humanitarian law. Important to note that even though economic sanctions are imposed with an idea that economic pressure on civilians will motivate them to pressure the government for change, authoritarian or totalitarian leaders manage to stay in power and to continue pursue their policies. Oftentimes, the leaders of sanctioned countries tend to convince their nations that imposed sanctions are punishment, which is directed against country thus people are more inclined to support existing sanctioned regime, not the other way around. Unsurprisingly, there are some cases when economic sanctions resulted in full-scale humanitarian disaster. To illustrate, sanctions against Iraq are recognized as such disaster by many health scientists, human rights activists, nongovernmental organizations (NGOs), and even some UN institutions.<sup>108</sup>

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<sup>106</sup> Rhona K. M. Smith, *International Human Rights Law* (Oxford University Press, 2022), p. 16.

<sup>107</sup> Alice Debarre, "Making Sanctions Smarter: Safeguarding Humanitarian Action," *International Peace Institute* (2019): p. 17.

<sup>108</sup> August Reinisch, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions", *American Journal of International Law* 95 (October 2001), available on: Westlaw International. Accessed March 21, 2023.

Moreover, the main bodies of the UN are perfectly aware of unintended negative impact of sanctions, thus are considering efforts that would mitigate this impact, as well as put a stop on unilateral coercive measures that continuously violate human rights law and humanitarian law, greatly affecting populations they are meant to protect. It is suggested that the burden of economic sanctions could be minimized by additional due diligence and reporting requirements on humanitarian actors. Other crucial actions that must be preserved are continuous monitoring by the Security Council's sanctions committees and increasing cooperation with humanitarian actors and the private sector.<sup>109</sup> Not to mention the Security Council resolution 2615 (2021),<sup>110</sup> which explicitly provided a humanitarian exemption to the sanctions regime imposed on Afghanistan. The resolution could serve as a promising start to the similar future measures that would safeguard the fundamental rights of people living in the target state. Sanctions often restrict the enjoyment of economic, social and cultural right, among these are right to food, water, shelter and health. In order to avoid the violations of mentioned rights, the imposed sanctions should always include comprehensive humanitarian exemptions.

Overall, the impact of economic sanctions on humanitarian law can be quite significant, and there is no guarantee that states will always comply with humanitarian exemptions. However, there are certain efforts that have been made to address these concerns, such as the inclusion of more explicit language around humanitarian exemptions in sanctions regimes and increased monitoring and enforcement of sanctions implementation. Consequently, it could be said that the future of sanctions lies in them being targeted, smart and infused with required humanitarian exemptions.

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<sup>109</sup> United Nations. Meetings Coverage and Press Releases. Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Need Are Met, February 7, 2022. Available on: <https://press.un.org/en/2022/sc14788.doc.htm> Accessed April 30, 2023.

<sup>110</sup> United Nations. Digital Library. Resolution 2615 (2021) / adopted by the Security Council at its 8941<sup>st</sup> meeting, on 22 December 2021. Available on: <https://digitallibrary.un.org/record/3952024?ln=en> Accessed April 30, 2023.

## Conclusion

The obligation to settle disputes is one of the central principles of the United Nations, which is enshrined in Article 2(3) of the UN Charter. Every member of international community must respect this obligation and ensure that international peace, security and justice are not endangered. While Article 2(3) provides a straightforward legal norm of international law, Article 33 of the UN Charter explicitly lists a number of peaceful dispute settlement procedures, such as negotiation, mediation, conciliation, arbitration, judicial settlement and more. Various legal documents reaffirm the obligation, among these being the Manila Declaration on the Peaceful Settlement of Disputes and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter. Additionally, it is observed that the combination of the diplomatic and judicial means of peaceful dispute settlement quite often serves as the best way to solve international disputes without endangering peace. One of the most outstanding precedents, which established a substantive content to the norm is the North Sea Continental Shelf case. In the proceeding of the case, the International Court of Justice only indicated the applicable rules on international law, leaving the subsequent settlement to be reached through other means – a negotiation. Moreover, the Court emphasized that dispute settlement by mutual agreement is a fundamental principle of international law, and negotiations are more than a formality – both parties must have an intention to resolve a dispute, attributing a meaning to the procedure. It can be stated that coercive measures, such as economic sanctions, do not fall within the scope of Article 2(3) of the UN Charter and do not constitute a peaceful means of dispute settlement. Additionally, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States emphasizes that states should not only resolve their disputes peacefully, but should cooperate in the economic, social and cultural fields, as well as promote economic growth throughout the world. Simultaneous fulfilment of mentioned norm and continuous sanctioning of specific states for decades seems hardly compatible.

There are several examples, which raise serious doubts about the effectiveness of economic sanctions, and one of these is a case of Iran. The massive package of sanctions imposed on the country was a way of seeking the goal of nonproliferation – the goal was not achieved and sanctions remain in place to this day. Therefore, it impels to conclude that sanctions do not resolve international conflicts and leaves one questioning the effectiveness and, in certain cases, morality of this foreign policy tool. Nevertheless, there were some instances when states did, indeed, choose the path of peaceful dispute settlement, which manifested in the Iran Nuclear Deal, the South China Sea Dispute between China and the Philippines, and the Oslo Accords. The Iran Nuclear Deal was supposed to place restrictions on Iran's nuclear program, granting sanctions relief in turn. Even though, both parties attempted to reach an agreement through a peaceful procedure, the success of the deal was not long-lasting due to the political considerations and changing geopolitical context. In the case of the South China Sea Dispute involving China and the Philippines, the Philippines resorted to the Permanent Court of Arbitration, which produced the ruling in the latter's favor. However, China refused to comply with it and maintained its claims over the disputed territories in the South China Sea, continuing its construction and militarization activities in the region. Lastly, the Oslo Accords obeys the same pattern of being strictly temporary and did not improve

the overall relations between Israel and Palestine. Subsequently, it could be concluded that peaceful dispute settlement mechanisms do not produce successful long-term outcomes because of various complex reasons, which could comprise lack of willingness to engage, power imbalances, national interests and domestic politics, legal enforceability and compliance.

Economic sanctions, as a coercive tool of foreign policy, can be utilized to promote democracy, safeguard human rights, fight terrorism and nuclear proliferation, as well as destabilize certain threatening political regimes. This kind of coercive measures could seem very appealing, as they provide a nonviolent alternative to the use of armed force, however, the attribution of 'nonviolent' should be strongly reconsidered. To illustrate, all of the UN sanctions regimes exempt food and medicines, nevertheless, very often result in death and suffering. The case of Iraq is the most vivid example of an assumption that economic sanctions is a blunt and, very often, an immoral tool of foreign policy, which was able to kill hundreds of thousands innocent individuals within the country. Cuba and Iran are another illustration of how economic sanctions tend to violate fundamental human rights without being able to achieve the sought outcome, such as regime or policy change. Furthermore, the continuous imposition of economic sanctions is contrary to the very Preamble of the UN Charter, which states that the peoples of the UN are determined to promote social progress and better standards of life in larger freedom, as well as to reaffirm faith in fundamental human rights, while the Preamble of the UDHR provides that it is essential to promote the development of friendly relations between nations in order to ensure the promotion of universal respect for and observance of human rights and fundamental freedoms.

In addition, the necessity of the imposition of economic sanctions in cases when certain events require it in accordance with Chapter VII of the UN Charter, is not question, however, the provisions of the UN Charter concerning human rights, such as Article 1, Article 55 and Article 56, must be respected and applied. These provisions remind that the UN shall promote higher standards of living, solutions of international economic, social and health problems, as well as observance of human rights and fundamental freedoms. Nonetheless, the UN is able to impose the most comprehensive sanctions possible, because of the member states' obligation to comply with the decisions of the Security Council, thus has a potential of collectively violating human rights of target state's population and restricting the enjoyment of economic, social and cultural rights. To continue, Iraq is one of the gravest examples of the negative effects economic sanctions can inflict on general population of a country. In order to avoid such consequences, economic sanctions should always be as targeted as possible, they should always incorporate all of the necessary humanitarian exemptions and implementing authorities should ensure that humanitarian aid and essential goods are always available to the civilian population. Furthermore, even after the sanctions are imposed, states must fulfil their obligation to settle disputes peacefully and attempt to form a dialogue and engage with each other, in order to address the existing situation, find common grounds and encourage compliance with international norms. Monitoring and regional cooperation is of utmost significance too, while the former could ensure that the measures taken do not disproportionately harm the most vulnerable part of the country or violate human rights, the latter could help to lessen the humanitarian impact on the population and favor the notion of collective responsibility.

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