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An examination of the justification of economic sanctions as a dispute settlement mechanism under International Human Rights Law: A case of Zimbabwe.

A dissertation submitted in partial fulfillment of the requirements of a Master of Laws in International Law. (LMIL)

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DECLARATION

I, CHARLOTTE CHIEDZA CHIKOORE, certify that this dissertation is my original work; it is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else before for any other thesis

Signed

Date

This dissertation was submitted for examination with my approval as the University Supervisor

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DEDICATIONS

This one is for myself. It has been a while without a challenge and this is both the challenge and validation I needed. I dedicate this work to myself and other go and glow getters alike. We are capable.

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I acknowledge the Lord Almighty, my ever present aid. There is nothing that I have done successfully without His grace.

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TABLE OF CONTENTS

<u>DECLARATION.....</u>	<u>- 2 -</u>
<u>DEDICATIONS</u>	<u>- 3 -</u>
<u>ACKNOWLEDGEMENTS</u>	<u>- 4 -</u>
<u>TABLE OF CONTENTS.....</u>	<u>- 5 -</u>
<u>Chapter One</u>	<u>- 7 -</u>
<u>Background and introduction</u>	<u>- 7 -</u>
<u>Statement of the problem</u>	<u>- 10 -</u>
<u>Research Questions</u>	<u>- 10 -</u>
<u>Methodology</u>	<u>- 11 -</u>
<u>Literature review.....</u>	<u>- 11 -</u>
<u>Chapter Synopsis.....</u>	<u>- 13 -</u>
<u>Chapter Two- The History, purpose and implementation of economic sanctions - 15</u>	
<u>=</u>	
<u>The History and purpose of economic sanctions.</u>	<u>- 15 -</u>
<u>The purpose of economic sanctions</u>	<u>- 16 -</u>
<u>The Legal Justification for Economic Sanctions.....</u>	<u>- 18 -</u>
<u>The United Nations Sanctions Regime.....</u>	<u>- 19 -</u>
<u>The European Union Sanctions Regimes</u>	<u>- 21 -</u>
<u>The United States Sanctions Regime.....</u>	<u>- 23 -</u>
<u>The justification: Legal necessity and proportionality.....</u>	<u>- 25 -</u>
<u>The history of Economic Sanctions in Zimbabwe.....</u>	<u>- 26 -</u>
<u>Chapter Three - The Impact of Economic Sanctions.....</u>	<u>- 30 -</u>
<u>The general impact of economic sanctions on targeted States.</u>	<u>- 30 -</u>
<u>The impact of economic sanctions in Zimbabwe</u>	<u>- 33 -</u>
<u>Assessing the effectiveness of economic sanctions.....</u>	<u>- 40 -</u>
<u>CHAPTER FOUR- ARE ECONOMIC SANCTIONS JUSTIFIABLE UNDER INTERNATIONAL</u>	
<u>HUMAN RIGHTS LAW.....</u>	<u>- 43 -</u>
<u>The international obligations of States when adopting economic sanctions</u>	<u>- 43 -</u>
<u>Economic Sanctions vis-à-vis Human Rights.....</u>	<u>- 45 -</u>
<u>Chapter five- The Solution Chapter.....</u>	<u>- 50 -</u>
<u>Summary of findings</u>	<u>- 50 -</u>
<u>Recommendations</u>	<u>- 51 -</u>

Judicial means	- 52 -
Non-judicial means	- 53 -
Solutions in the event that sanctions are employed	- 56 -
BIBLIOGRAPHY	- 62 -

Chapter One

Background and introduction

Economic sanctions are defined as the withdrawal or cessation of trade and financial relations for foreign and security-policy purposes¹. Sanctions are usually targeted towards self-governing States, prohibiting commercial activity with regard to an entire country, however, with increased concern over the suffering innocent civilians, they have shifted to even targeting blocking transactions with particular groups or individuals. Governments and multinational bodies impose economic sanctions to try and coerce States into altering their decisions which threaten their interests or violate international norms, their main objective is to ensure government compliance with the interests of the imposer,² and have been justified as better than military intervention, in that the cost on the imposer and the target is lower and do not target the killing of innocent civilians.. There are several types of sanctions, diplomatic sanctions,

The history of sanctions can be traced back to 432 B.C when the Athenian Empire banned traders from Megara from its marketplaces and crippling the economy through the Megarian Decree³. This came after the Megarians' trespass on land sacred to Demeter, who in Ancient Greek religion and mythology was a goddess of the harvest and agriculture, the killing of an Athenian herald sent to reproach them and the housing of slaves who had fled from Athens⁴. The Megarian decree crippled the Megarian economy. The use of economic sanctions however became more popular in the 20th Century. Economic sanctions became more prominent in the 20th century, becoming a mechanism used even by international bodies such as the League of Nations and United Nations on countries they wanted to pressure into complying with foreign policy objectives. Countries such as Cuba, Iran, Libya, North Korea, Syria and Vietnam have had country-based sanctions imposed upon them for different reasons. Country based sanctions limit the country's trade and economic relations often with crippling effects on the economic and humanitarian wellbeing of the country.

It is noteworthy however, that sanctions are not without effects on other aspects of a State's structure. Economic sanctions are questionable as they have disproportionate harm on the humanitarian wellbeing of the targeted state. The former UN Secretary

¹ J. Masters, "What are economic sanctions?" Council on Foreign relations. Accessed May 5, 2022. www.cfr.org

² W. H. Kaempfer, & A. D. Lowenberg *The Political economy of economic sanctions*, Chapter 27, Handbook of Defense Economics, 2007

³ N. Abghris, "A Brief History of Economic Sanctions". Accessed on 7 May 2022. www.carter-ruck.com

⁴ n 3 above

General, Koffi Annan, in his 1997 report to the UN⁵ observed that sanctions tend to inflict the most harm on vulnerable civilian groups and can cause great collateral damage to third states. Economic sanctions cause disturbances in the distribution of food, pharmaceutical supplies, basically it interferes with the proper functioning of basic health and education systems⁶. It is the concern over adverse or unintended consequences of sanctions that led to targeted sanctions or “smart” sanctions. Inspired by the Pinochet case⁷ and the Bosnian Crime trials, targeted sanctions are meant to reduce collateral damage to third parties by targeting specific individuals or organizations believed to be responsible for the offending behavior and to ensure individual accountability for those in power and commonly the perpetrators of unlawful acts of States. However, the impact on humanitarian well-being remains as it is hard to separate the economy of a State and individual trade relations especially on nations that rely on foreign direct investment as one of its economic pillars.⁸ The European Court of Human Rights questioned the legality of targeted UN Sanctions and found them to breach of key procedural rights enshrined in the European Convention of Human Rights,⁹ such as the right to a fair trial or the right to an effective remedy as seen in the cases of *Nada v Switzerland*¹⁰ and *Al-Dulimi and Montana Management Inc. v Switzerland*¹¹. The UN High Commissioner for Human Rights highlighted the severe impact that economic sanctions targeting a country or a specific sector can have an impact on innocent civilians who have not participated in perpetrating crimes at the 48th session of the Human Rights Council on 16 September 2021¹². She further explained that punitive restrictions on banks and financial institutions led to over-compliance which created obstacles in importing basic food and medical supplies leading to more deaths and suffering and wider contagion in the world. There remains a gap in between fostering accountability and securing respect for human rights in the imposition of sanctions.

⁵ “Secretary General calls United Nations Action in Human Rights Field Inherent part of preventive diplomacy”. United Nations - Meetings, Coverage and Press Releases. Accessed 20 July 2022.

<https://press.un.org/en/1997/199704410.sgsm6201.html>

⁶ T Nyoni., *The curse is real in Zimbabwe: Economic Sanctions must go!*, 7 November 2019, University of Zimbabwe.

⁷ S. Choi & S. Luo. *Economic sanctions, Poverty and International Terrorism: An Empirical analysis*. 2013. Vol 39 No 2. International Interactions. 217

⁸ M. Chifamba. “Zimbabwe’s economic woes: Sanctions or poor governance?” Accessed on 3 June, 2022.

www.theafricareport.com

^{9 9} M. Ndakaripa. *Zimbabwe’s economic meltdown: are sanctions really to blame?* 2021. In Volume 44. The Washington Quarterly

¹⁰ *Nada v Switzerland* [GC] ECHR (12 September 2012). 10593/08

¹¹ *AL-Dulimi and Montana Management Inc. v. Switzerland* ECHR (21 June 2016). 5809/08

¹² “48th Regular Session of the Human Rights Council (13 September to 11 October 2021)”. United Nations Human Rights Council. Accessed on 17 May, 2022. <http://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session48/regular-session>

Zimbabwe has been sanctioned by several countries, such as the United States of America, the United Kingdom, Australia, Canada and the European Union. Sanctions are usually based on a State's conduct that are against international norms, such as human rights violations, political policies that do not adhere to standards expected in international communities, abuse of power such as corruption from State leaders. Although the United States was the first country to open an embassy in the newly independent Zimbabwe in 1980 as well as pledge assistance towards economic development, the United States department of Treasury imposed sanctions on certain individuals, entities and organizations until Zimbabwe made specific economic and political reforms¹³. These sanctions are rooted in the Zimbabwean Democracy and Economic Recovery Act, which was passed in 2001 and later amended in 2018 which purported to restrict U.S support for multilateral financing in Zimbabwe until Zimbabwe made the reforms called for. The sanctions were in response to alleged electoral rigging and human rights abuses and the land reform programme that had introduced by the government¹⁴. According to the US government¹⁵, the justification behind the sanctions is that the U.S wants for Zimbabwe and its citizens a peaceful, democratic Zimbabwe, hence making sure those in power do not benefit from their conduct. The United Kingdom and Australia are some of the countries which have imposed sanctions on Zimbabwe. Australia imposed sanctions on Zimbabwe reflecting concerns about political violence and human rights violations¹⁶. Some of the sanctions include prohibitions on arms embargo, restrictions on dealing with assets of designated persons and travel bans on certain targeted persons. The European Union joined the sanctioning of Zimbabwe with the targeted measures on pro-ruling party entities including politicians, business figures and military personnel¹⁷. Although this was meant to target certain groups, their effect can be felt beyond the targeted groups.

Zimbabwe is one of the countries that have experienced the negative effects of sanctions, such as constraints of the country's economic potential. The ruling party in Zimbabwe, ZANU PF blames sanctions for the economic meltdown that the country has faced in the past decades¹⁸ and this is true to an extent as has been seen The UN

¹³ "Bilateral Relations Fact Sheet Bureau of African Affairs". U.S Department of State. Accessed on 15 June, 2022. www.state.gov/u-s-relations-with-zimbabwe/

¹⁴ H. Chingono, Zimbabwe sanctions: An analysis of the "Lingo" guiding the perceptions of the sanctioners and sanctionees, 2010, Volume 4, Number 2, *African Journal of Political Sciences and International Relations*, Page 66

¹⁵ Chingono (n 14 above)

¹⁶ T Nyoni., *The curse is real in Zimbabwe: Economic Sanctions must go!* , 7 November 2019, University of Zimbabwe

¹⁷ Council Regulation (EC) No. 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe

¹⁸ M. Ndakaripa. *Zimbabwe's economic meltdown: are sanctions really to blame?* 2021. In Volume 44. The Washington Quarterly

Special Rapporteur stated that sanctions have worsened Zimbabwe's social and economic problems¹⁹ and called for “meaningful and structured” dialogue to replace targeted sanctions to promote political reforms. One may say sanctions have a ripple effect as their consequences spread beyond the targeted individuals and may go as far as affecting the economy.

Statement of the problem

While sanctions are used to achieve political objectives, they are rarely effective in achieving these objectives as little, if any reforms have been done in Zimbabwe for example as a result of sanctions from both the European Union and United States²⁰ and instead turnout to have unintended consequences such as economic meltdown which affects the livelihoods of ordinary citizens affecting who have no contribution to the policies that would have led to the imposition of sanctions and consequently affecting human rights. The problem that arises is the question whether or not economic sanctions against an offending are justifiable under International Human Rights Law, given that ironically, they ultimately affect the same citizens whose interests they are meant to guard, . Even where economic sanctions have compelled targeted States to institute political and social reforms, the unintended consequences still affect the citizens of the country and this brings one to the question that are the reforms, however small, worth the turmoil on the innocent citizens. This work seeks to interrogate the justification of economic sanctions and weigh it against the unintended consequences with the intention to determine whether or not economic sanctions are worth the sacrifice of various human rights that are affected in the process.

Research Questions

The research will take a three-pronged approach, that is, the necessity, the efficiency and the justification of economic sanctions using the following questions

1. What is the history behind and the purpose of economic sanctions?
2. When and how are sanctions adopted and implemented?
3. Where and have economic sanctions been adopted?
4. Why were economic sanctions adopted against Zimbabwe?
5. What are the consequences of economic sanctions?

¹⁹S. Mabuza *UN sanctions envoy calls for “meaningful dialogue”, nudges Zimbabwe on reforms*. Accessed on 23 May, 2022, www.zimLive.com.

²⁰ J. Grebe *And they are still targeting: Assessing the effectiveness of targeted sanctions against Zimbabwe*, 2010, Vol. 45, No. 1 *Africa Spectrum*

6. What consequences do economic sanctions have on the humanitarian wellbeing of the citizens of the affected state and human rights?
7. In light of the consequences of economic sanctions are they necessary?
8. Are sanctions efficient in achieving their intended goal?
9. Are sanctions justifiable as a dispute settlement mechanism under International Human Rights Law?
10. What are the alternatives for settling disputes under international law in the case that sanctions do not work?
11. What can be done to improve the implementation of economic sanctions to align them with International Human Rights Law standards?

Methodology

This research will be compiled with the aid of both primary and secondary sources in order to get investigate into the problem extensively. Under primary sources, data will be collected from legislation on sanctions, such as the Zimbabwe Democracy and Economic Recovery Act²¹. The research will also be aided by treaties and agreements on sanctions. Secondary sources will include United Nations Reports and articles on economic sanctions and human rights, books, judgments and most importantly case studies. In this research, a comparative approach will be employed to compare the case of Zimbabwe and other cases where other countries have been subjected to economic sanctions. I also intend to note a few examples as case studies, where sanctions have directly impacted the enjoyment of human rights in other countries such as Myanmar, Sudan, Iran, in comparison with the impact in Zimbabwe. The criterion to be used in selecting literature and sources is the relevance of the topic and the geographical area of the studies.

Literature review

There have been debates around the justification of economic sanctions, given their impact on the humanitarian well-being of the targeted states and their limitations on the enjoyment of human rights. There are different schools of thought, one that asserts that economic sanctions are justified as long as they meet the necessity test as they are motivated by the need see a democratic and human rights observant society. Another school of thought asserts that the effects of economic sanctions on the enjoyment of socio-economic rights by ordinary civillians of the targeted state

²¹ Zimbabwe Democracy and Economic Recovery Act [2001]

which is disproportionate to the policies sought to be implemented or the results to be implemented renders them unjustified.

Weiss asserts that theoretically, sanctions are justifiable as they are implemented from a humane perspective, although their implementation wrecks great havoc and civilian suffering²².

Garfield was of the view that although sanctions are intended to punish states to pressure them to change into changing policies, it leads to predictable economic inefficiency, inequitable distribution of goods, civil conflicts and population movements²³ which is disproportionate to the intended outcomes

Damsroch wrote that sanctions are an immoral foreign policy tool that indiscriminately and unjustly target poor and innocent elements of society²⁴, hence there is no justification to their imposition.

According to **Nyoni**, while economic sanctions may be an attractive foreign policy for countries which seek to express discontent with a country's behavior, it is arguable from an economics perspective that they can achieve the change that is often envisaged through the punitive measures taken, they also deprive Zimbabwe from economic gains that the country stands to obtain through trade, thereby frustration the economy of Zimbabwe which is riddled with poverty, inequality, chronic and recurrent phases of economic stagnation as well as high rates of unemployment²⁵ which is a clear miss of the targeted groups and thus unjustified.

Woodrow Wilson²⁶ described sanctions as something more tremendous than war, an absolute isolation that brings a nation to its senses just as suffocation removes in an individual all inclination to fight. Apply this economic peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy.

²² G. T. Weiss, C. David, A. George, and M. Larry *Political Gain and Civilian Pain: Humanitarian impact of Economic Sanctions*, McGraw Hill Publishers, 1997

²³ R. Garfield, J. Devin, & J. Fausey, *The Health Impact of Economic Sanctions*, New York Academy of Medicine, 1995.

²⁴ L. F. Damsrosch, *The civilian impact of economic sanctions*. Council on Foreign Relations Press, 1993 Page 274

²⁵ T Nyoni., *The curse is real in Zimbabwe: Economic Sanctions must go!* , 7 November 2019, University of Zimbabwe

²⁶ W. Wilson, *Woodrow Wilson's Case for the League of Nations*, Princeton University Press, 1923, pages 67 and 69

Similarly, **Brosche** is of the view that economic sanctions or coercion or trade embargos are not part of pacific measures of dispute settlement²⁷, as they include the use of force, albeit it is unarmed force, it is economic force and therefore a dispute settlement means *ultra vires* the visions of the United Nations Charter

According to **Kurebwa**, when targeted sanctions are directed against political leaders and government of a particular country, it is usually the vulnerable groups of society who suffer and not the targeted group

With special reference to Zimbabwe, the author will try to come to a conclusion on the justifiability of economic sanctions, putting into consideration the effects they have on human rights against their intended objectives as well as the time frame they have taken in trying to achieve the objectives.

With the aid of the mentioned and other scholarly views, the research questions raised above will be used as guidelines into an in-depth examination of the necessity, efficiency and justification of economic sanctions with special attention to Zimbabwe. In the end, the research will reach an informed conclusion, weighing the impact of economic sanctions against the policies sought to be achieved to conclude whether or not they are justified under human rights law.

Chapter Synopsis

- **Chapter1-** An introduction to the area of research, setting out the structure of the research, how it will be carried out and what it seeks to address.
- **Chapter 2-** An in-depth discussion on the history, purpose of and motivation behind economic sanctions, the qualifications of necessity according to the United Nations standards where they have been imposed and the reasons behind it
- **Chapter 3-** The impact of economic sanctions on the various sectors of the targeted country, including case studies of sanctioned countries and the challenges the countries have faced as a result of the sanctions. The chapter will also look at the prospects of success in the achievement of desired results, that is, policy changes in the targeted country in response to the imposition of economic sanctions.
- **Chapter 4-** This chapter will weigh the effects of economic sanctions against the intentions of the imposers or their desired outcome and the reason for the

²⁷ H. Brosche, "The Arab Oil Embargo and US Pressure against Chile: Economic and Political Coercion and the Charter of the UN", 1974, Volume 7, Issue 1 *Case Western Reserve Journal of International Law*

imposition of the sanctions. In this chapter, the researcher will aim to strike a balance between the two.

- **Chapter 5-** This is the “solution chapter”, where the objectives of the research will be met. This chapter will be comprised of informed conclusions from the writer on the various questions that the research has probed. The chapter will also include recommendations and possible solutions to the problem that economic sanctions have brought about. The writer will draw up recommendations which she thinks may be of aid in the development of international law with regards to the rights of citizens of a targeted country and the international interests of the imposers of the sanctions.

Chapter Two- The History, purpose and implementation of economic sanctions

This Chapter focuses on the understanding of economic sanctions. This chapter will give a breakdown on the history of economic sanctions, their purpose and their legal justification. I will also look at the implementation of sanction regimes, circumstances under which sanctions are to be implemented and how they are to be implemented including examples of where they have been implemented globally. This work is mainly focused on sanctions in Zimbabwe; hence I will look at the history of economic sanctions in Zimbabwe, when and why they were introduced against Zimbabwe. At the end of the chapter, the sanctions regime that have been implemented against Zimbabwe should be well established as well as the time frame within which they have been running.

The History and purpose of economic sanctions.

States, being a part of an international community and as signatories of international treaties, naturally have international obligations, such as the protection, respecting and fulfilling of human rights, the maintenance of international peace and security and international cooperation towards the fulfillment of the main objectives of the international organizations that form the international communities. These are referred to as international obligations. The obligations however are not limited to an international level, States are under an obligation to enact domestic measures compatible with their international obligations. Where States are found to be in breach of their international obligations or where their domestic policies, for example, curtail the enjoyment of human rights, a punitive and deterrent measure is needed to force compliance. Unlike in the ancient times, where the solution would be taking up arms against the State, more diplomatic measures are being sought as war has been abolished and the international community seeks to protect international peace and security. However, where diplomatic protests do not work, States have resorted to economic sanctions against the erring State. These are restrictions on economic relations with the targeted state as long as the policies that the imposers of the sanctions do not agree with have not been changed. These sanctions are imposed in efforts to compel the targeted State to compliance with its international obligations. Sanctions cripple the economy of the targeted State and are meant to remain in place until the State makes significant changes to its policies.

Although more prominent in the 20th Century, economic sanctions are not a new concept in international diplomacy. They may be traced back to 432 B.C when the

Athenian empire banned trade from Megara thereby strangling its economy²⁸, a policy called the Megarian Decree. The policy came after the inhabitants of Megara had cultivated land that was consecrated and had killed an Athenian herald, hence their merchants were banned from the market in Athens and the port in its empire²⁹. What was remarkable about this was that the transgression of farmers led to the banning of merchants, much like the modern day sanctions, the impacts of efforts to punish transgressors had ripple effects that went beyond the transgressors. Sanctions were a brain child of blockades during wartimes, however, the incorporation of economic blockade into Article 16 of the Covenant of the League of Nations shifted them from being a wartime practice to a peacetime practice³⁰. It was not until the 20th century when the use of economic sanctions became prominent with the advent of international organisations such as the League of Nations and the United Nations whose primary aims were the prevention of war, maintenance of international peace and security, settlement of disputes between countries through settlement and diplomacy, global welfare and international cooperation to these ends. These are the organizations that made use of country based sanctions, in efforts to compel countries into complying with certain foreign policies. Country based sanctions often come as restrictive measures imposed by one country on another with the aim of limiting the country's trade and business and thus crippling the country's economy. However, crippling the country's economy is not without consequences on unintended victims, hence the advent of targeted sanctions which target specific individuals or organisations believed to be responsible for offensive behavior. The rationale behind targeted is the international law emphasis on individual accountability of those in power for unlawful acts within the targeted States. Although the main focus of this work is on economic sanctions on a state, targeted sanctions on individuals may also have extended impact on third parties as shall be discussed later.

The purpose of economic sanctions

The aim of sanctions is not always made explicit. Some commentators have asserted that different sanctions have different purpose, depending on a particular sanctions regime and the member States driving forward the necessary decision making³¹. A sanctions regime is described as a particular package of sanctions measures adopted in relation to particular state or situation³². However, it would appear that one of the

²⁸ N. Abghris, "A Brief History of Economic Sanctions". Accessed on 7 May 2022. www.carter-ruck.com

²⁹ "Megarian Decree" Livius.org, Accessed 19 May 2022 <https://www.livius.org/articles/concept/megarian-decree/>

³⁰ N. Mulder, *Economic Weapon: The Rise of Sanctions as a Tool of Modern War*, Yale University Press, 2017

³¹ F. Giumelli, *Coercing, Constraining and Signaling, 2011, European Consortium for Political Research (ECPR, 2011)* Page 19-23

³² R, Gordon, M. Smyth, T. Cornell, *Sanctions Law*, Hart Publishing, 2019

principal objectives is to bring some form of pressure on political regimes or non-state actors without using force. According to Security Council Report³³, the objectives pursued by UN Sanctions can be divided into conflict resolution, non-proliferation, counter-terrorism, democratization and the protection of civilians.

Just like the purposes of criminal law, economic sanctions are meant to punish, to deter and rehabilitate. Sanctions are a foreign policy tool used to express displeasure against a transgressor country's policies and to campaign for reform. An example is the U.S, European and British Commonwealth sanctions against South Africa from 1985 to 1991 that were meant to influence domestic policies and to make moral and historical statements which then played a role in the ending of apartheid. Sanctions came with the need to deal with international conflicts, a need for a solution that would not be too extreme such as military action which had proven to bring about suffering or too subtle like diplomatic protest. Sanctions provided a good enough solution that would achieve the intended results of weakening and hence deterring the transgressing State, yet avoiding the high costs of war.

Economic sanctions were intended to be a form of deterrent measure against a State that fails to meet its international obligations. They are generally considered an alternative to war³⁴. After the outbreak of the Second World War, which may be interpreted as a failure by the League of Nations to preserve international peace, which was its primary purpose³⁵, the founders of the League believed they had an alternative coercive method for the modern world which was sanctions. In 1919, President Woodrow Wilson described sanctions as

*"...something more tremendous than war...an absolute isolation...that brings a nation to its senses just as suffocation removes in an individual all inclination to fight...Apply this economic peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside the nation boycotted but it brings pressure upon that nation which, in my judgment, no nation would resist"*³⁶.

The definition of sanctions as a weapon owed to the wartime practice of blockade that had inspired it such as the blockade imposed upon the German, Austro-Hungarian and Ottoman empires by the Allied and Associated Powers³⁷. While the blockade came with consequences such as hunger, disease and dislocation, it was an effective weapon. The initial purpose of economic sanctions was to create deterrence, that is,

³³ 'Special Research Report on UN Sanctions' Security Council Report, (November 2013), Accessed on 3 June, 2022 www.securitycouncilreport.org/research-reports/un-sanctions.php

³⁴ Mulder (n 28 above)

³⁵ Mulder (above)

³⁶ W. Wilson, *Woodrow Wilson's Case for the League of Nations*, Princeton University Press, 1923), pages 67 and 69

³⁷ Wilson (n 34 above) page 71

to raise a frightening concept for the targeted nation that it would face both economic and social collapse. Because of the economic and social consequences that come with economic sanctions on civilians of targeted States, they are not without regulation.

Two types of theoretical approaches exist, which are the naïve and targeted sanctions theories³⁸. The naïve theory relies on the assumption that the imposition of sanctions will result in deterioration economic performance, directly affecting the ordinary citizen, which will ultimately lead to rebellion on the failing government and eventually regime change. The targeted sanctions theory aims to cure the shortcomings of the naïve theory which often does not produce the desired change. It targets specific individuals, the elite at decision making level that is value deprivation which leads to economic hardships to coerce leadership change³⁹.

The Legal Justification for Economic Sanctions.

The question of the legality of sanctions is as complex as its definition. There is no legal framework which regulates the adoption or implementation of sanctions. Each State or intergovernmental body adopts a legal framework that provides for legal basis of conduct in respect of which sanctions may be employed to enforce compliance with agreed values and principles. International Law gives room to individual States to impose sanctions on another State whose conduct adversely affects its affairs, through what is called “the self-help regime”⁴⁰ where a State may adopt unilateral action against another for a specific outcome beneficial to itself. The UN does not authorize, endorse or denounce sanctions imposed on another State unless such sanctions undermine its values and principles where upon it acts to invoke intervention through proper procedures in accordance with the UN Charter. The legality of sanctions therefore is an area subject to debate.

International law consists of a body of rules governing the conduct of States, which has developed through custom, treaties, general principles and judicial decisions and teaching of publicists⁴¹. There is no legislative body that has the power to enact rules that are binding on every State, or an executive body that is responsible for enforcing

³⁸ T. Mutangi, University of Zimbabwe, “The impact of Sanctions in Zimbabwe: The Legal Framework, A contribution to Study on the Economic Impact of Western Imposed Sanctions on Zimbabwe”, submitted to The Ministry of Higher and Tertiary Education, Science and Technology Development

³⁹ Mutangi (*n 36 above*)

⁴⁰ ‘Study on the Economic Impact of Western Imposed Sanctions on Zimbabwe’, 2019, submitted to The Ministry of Higher and Tertiary Education, Science and Technology Development, *The University of Zimbabwe*

⁴¹ Article 38 of the Statute of the International Court of Justice

the rules and while there is a judicial system capable of ruling disputes between states such as the International Court of Justice and the European Court of Human Rights, these courts may only invoke jurisdiction over those states which have consented to their jurisdiction. International judiciary is incapable of adjudicating serious political disputes between states and many of them evade the consent to the jurisdiction of the ICJ which make it challenging to determine the legal basis on which any of the policies rest and even more challenging to enforce. In the absence of a sovereign body that governs and enforces international law, States have to rely on common interest for adherence to international law as States are largely interdependent. However since rules of international law do not bind all states at all times, States may rely on intergovernmental bodies or international organizations to construct international laws that govern relations among States.

The United Nations Sanctions Regime

The United Nations, being the largest intergovernmental organization, with a total of 193 in membership, is governed by the United Nations Charter⁴². Its purpose is the maintenance of International Peace and Security⁴³ and international cooperation towards such. The preamble to the Charter states that a central goal of the UN is to “*establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”⁴⁴. The Charter also provides pursuant to Article 103, that a UN member State’s obligations under the Charter take precedence above other obligations under separate international treaties. Where there is reason to believe there has been a breach of peace or threat to such, the United Nations Security Council may employ measures under Chapter VII of the Charter, that will cause the erring State to comply with its decisions, which, do not involve the use of armed force which may include “*...complete or partial interruption of economic relations...*”⁴⁵ and these are economic sanctions. The Security Council may also call upon other States to apply such measures in terms of article 41 that obliges member states to agree to carry out all decisions of the Security Council. The binding nature of the decisions of the Security Council was confirmed by the ICJ in its advisory opinion ⁴⁶, where it was held that the decisions of the Security Council are consequently binding on all Member States of the United Nations, which are thus under the obligation to accept and carry them out. This is the

⁴² Charter of The United Nations ,October 24, 1945

⁴³ Article 1(1) of the United Nations Charter.

⁴⁴ UN Charter Preamble, para graph3

⁴⁵ Charter of the United Nations (*n 40 above*) Article 41

⁴⁶ *Legal Consequences for States of the continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* (Advisory Opinion) [1971] ICJ Rep 16, 50, paragraph 115

legal basis on which economic sanctions regimes at the UN level may be imposed and implemented by member States, through Security Council resolutions. The legality of the decisions of the Security Council may be challenged where the decisions are *ultra vires* the Charter that is the purpose and principles of the UN, if the decision is in breach of recognized human rights or the *jus cogens* norms of customary international law, this was emphasized in the Kadi case⁴⁷ where the EU court reasoned that UN Sanctions imposed by the Security Council may not supersede peremptory norms of international law. However, notwithstanding the obligations of member States, they often have a margin of discretion as to how the measure will be implemented in their domestic jurisdictions. The obligations are set out in the operative provisions of the Security Council Resolutions governing the specific regime. Each UN Sanctions regime is managed by a regime specific committee, whose composition mirrors the composition of the Security Council. It derives its powers from the Security Council Resolution creating the sanctions regime and its mandate includes, assisting member States with the implementation of Sanctions Measures and overseeing the implementations and listing on the sanctions lists which are regime specific lists and a consolidated sanctions list. The fundamental objective for sanctions in interstate relations is to make it impossible for the target state to refrain from doing what the imposing state requires them to do.⁴⁸ The principle of sovereignty affords a state the right to choose its own trading partners, however, this principle does not place States above international law, which requires States not to conduct foreign trade with impunity as States' external economic policies affect other States and are subject to international law. At this point, it would appear as if there is a fragile balance between the principle of State's sovereignty and international responsibility.

Action taken under Chapter VII requires the prior determination by the Security Council of the existence of a 'breach of peace', therefore the interpretation of Security Council Resolutions should ensure that the obligation for member States is created. According to Michael Wood⁴⁹ the interpretation should ensure that it is evidence of a breach of peace and security which is a determination under Article 39⁵⁰, evidence that the Security Council is acting under Chapter VII and evidence that the Security Council has taken a decision within Article 25 of the Charter, which binds all Member States as agreeing to carry out the decisions of the Security Council. On

⁴⁷ Kadi v Council and Commission, Court of First Instance, Case T-215/01, 21 September 2005

⁴⁸ A. D'Amato, "The Moral and Legal Basis For Sanctions", 1995, Volume 19, *Fletcher Forum*

⁴⁹ C. De Andrade L. Carniero, "Economic Sanctions and Human Rights : An analysis of Competing Enforcement Strategies in Latin America", Accessed 30 May, 2022, <http://dx.doi.org/10.1590/0034-73292014001111>

⁵⁰ UN Charter (*n 40 above*) Article 39, (The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.)

the other hand, Article 2(4) of the UN Charter⁵¹ prohibits the use of force as it encourages the peaceful settlement of disputes. It is not clear which scope of force is being referred to in Article 2(4), whether or not it encompasses non-military force, that is inclusive of economic or political force. Brosche is of the view that economic sanctions or coercion or trade embargos are not part of pacific measures of dispute settlement⁵² as Article 33 specifically enumerates the means to be used by States in dispute settlement by pacific means such as mediation, enquiry, arbitration and negotiation. However, the article goes on to include “other or other peaceful means of their own choice”, it is debatable whether this may include sanctions considering that peaceful means may be taken to mean unarmed means since the United Nations objective is the maintenance of peace and security which basically meant the prevention of war, one may be correct to say peaceful means refers to any means that is not armed force or war. Several commentators have interpreted this article to include economic coercion. However, this author is of the view that Article 2(4) should be interpreted narrowly to mean use of military force as the inclusion of economic force would render it inconsistent with Article 51 which justifies acts of self-defense in response to military attack as target state would not be able to take action under Article 51 against an aggressor State that has illegally imposed economic force and this would amount to a compromise of a State’s inherent right to recourse in response to illegal action which is contrary to the basic principles of sovereignty and self-defense. This would also be inconsistent with Article 41(1) that calls for measures that may be taken by the Security Council in the event that there has been a breach of peace or threat thereof. One may interpret this to refer to non-military measures. While the legal justification of economic sanctions rests on provisions of the law, it also depends on the legal necessity of the imposed measures.

The European Union Sanctions Regimes

On the other hand, sanctions originating from the European Union (The EU) are also multilateral sanctions as they are imposed for implementation by Member States. EU Sanctions policy falls within the framework of EU’s overall foreign policy and is known as the Common Foreign and Security Policy (CFSP) which serves as the mechanism for the adoption of Foreign Policy Sanctions.. The CFSP is governed by Chapter 2 of Title V of the Treaty of the European Union⁵³ (TEU). CFSP decisions are adopted by the

⁵¹ United Nations Charter (*n 40 above*) Article 2(4)

⁵² H. Brosche, “The Arab Oil Embargo and US Pressure against Chile: Economic and Political Coercion and the Charter of the UN”, 1974, Volume 7, Issue 1 *Case Western Reserve Journal of International Law*

⁵³ The Treaty of the European Union (commonly known as the Maastricht Treaty) , 7 February 1992

European Union Council⁵⁴ under Article 29⁵⁵ of the TEU and must be made unanimously unless otherwise provided by the treaties and once made are binding on all member States of the EU. The implementations of sanctions at the EU level are for the promotion of CFSP objectives which are peace, democracy and the rule of law and they always begin with a CFSP decision. The EU's competencies in relation to foreign policy expanded with the entry into force of the Lisbon Treaty in 2009 and now cover the imposition of EU's sanctions. However, not all sanctions fall within these competencies and some, notably travel bans must be left to EU member States to implement themselves. The two EU courts, the General Court and the Court of Justice of the European Union are responsible for the interpretation of the EU law, including sanctions law. The EU distinguishes between autonomous sanctions that they adopted unilaterally as the EU and those adopted multilaterally at the UN level. In relation to those adopted at the UN level, the EU is responsible for the implementation of the sanctions policies across EU member States, who are required to enact domestic policies for the implementation of restrictive measures. Article 21(2) of the TEU sets out the objectives of the EU foreign policy, which are the preservation of international security and the consolidation of democracy⁵⁶, which is clearly intended to fit within the broader framework of international cooperation at the UN level. The EU keeps a list of the various EU sanctions regimes in force at any given time, divided according to the State or issue in relation to which sanctions are imposed, the lists sets out the legal basis for each regime including council decisions and further legislative instruments⁵⁷

Sanctions measures at the EU level are generally imposed to influence change in policy or conduct by the country, government or the individuals or entities targeted. However, Francisco Giumelli is of the view that this is a simplistic view and argues that their objectives should be viewed in three ways, namely coercive, constraining and signaling⁵⁸. In any event, the sanctions must be proportional to the objective pursued, this is the proportionality test on the legality of sanctions as shall be discussed later and must adhere to the EU principles of respect for fundamental human rights under Article 6(3) of the TEU. Once the relevant CFSP decision has been passed, the sanctions may be implemented at the EU level by further secondary legislation or implemented directly by member states at the domestic level,

⁵⁴ The Council of the European Union is the third of seven institutions of the European Union, it is made up of head of States of all EU countries and the European Commission President

⁵⁵ The Treaty of the European Union (n 55 above) Article 29.

⁵⁶ The Treaty of the European Union (n 55 above) Article 29.

⁵⁷ For example, EU Sanctions regime include the following (among others): "Al-Qaeda and ISIL(Daesh)", "Democratic Republic of Congo", "Haiti" And "Terrorist Groups (Foreign Terrorist Organizations)"

⁵⁸ F. Giumelli, "How EU Sanctions work: A New Narrative". 2013, Paper No. 129, EU Institute for Security Studies) 18-20

depending on the type of measure and whether the measure falls within EU's exclusive legislative competence. Regulations implementing sanctions measures are binding throughout EU member States pursuant to the EU law principle of direct effect and they take precedence over any conflicting domestic legislation. In terms of jurisdiction, restrictive measures passed cover the territory of the EU, aircraft or vessels of Member States, nationals of Member States, companies and other entities constituted under the law of any member States or with any business done in whole or in part within the EU⁵⁹. In relation to autonomous sanctions, proposals for imposition of measures are put forward by individual member States with the support of the European Commission, which is announced at the FAC. The CFSP decision must be adopted by the council unanimously which comes into force on the day of its publication in the *Official Journal of the European Union*⁶⁰. The amendment of the restrictive measures and updating of list of designated persons is done by the Council by way of implementing act under the power granted by Article 291 of the TFEU⁶¹.

The United States Sanctions Regime

The United States was not the first country to use sanctions as a foreign policy tool but remains the main user of economic sanctions as endorsed by President Woodrow Wilson as an alternative to military force⁶². The legal framework for the imposition of sanctions in the United States is complex and sophisticated. The Office of Foreign Assets Control (OFAC) which oversees the implementation and civil enforcement of sanctions was established in 1950 before multilateral sanctions at the UN level was enforced, as such, the domestic system in the US leans more on unilateral than multilateral sanctions, however, recent decades have seen the imposition of multilateral sanctions at the UN level often instigated by the US and mostly incorporated into the UN system⁶³. The OFAC forms part of the US Department of Treasury states as follows in relation to its role as the main enforcer of US Sanctions *"OFAC administers and enforces economic sanctions programs primarily against countries, groups of individuals such as terrorists and narcotics traffickers. The sanctions can either be comprehensive or selective, using blocking of assets and trade restrictions to accomplish foreign policy and national security goals"*. The US

⁵⁹ The Treaty of the European Union (n 55 above) Article 288, (Direct effect principle of EU Law whereby individuals and entities in EU Member States can rely on certain EU legislative instruments before domestic courts, subject to certain conditions)

⁶⁰ The Official Journal of the European Union, *The publications office of the EU*

⁶¹ The Treaty of the European Union (n 55 above) Article 291, (Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Article 24 and 16 TEU, on the council)

⁶² Wilson (n 34 above)

⁶³ R, Gordon, M. Smyth, T. Cornell, (n 30 above)

sanctions orders are usually imposed by the Executive Order of the President, which is a signed, written and published directive by the US president that manages operations of the federal government. Once issued, Executive Orders are binding in law, albeit that they do not require congressional approval and do not therefore constitute legislation.⁶⁴ The immediate decision to impose sanctions is a function of the executive branch, although the legislature may choose to supplement or limit existing powers by passing a separate statute dealing with a particular situation or country. The congress also has the power to create new sanctions regimes itself⁶⁵. US Sanctions are organized into specific regimes or programs, broadly divisive into programs targeting a country or region specific situation and programs targeting a particular issue, group or activity. The Sanctions programs are implemented and enforced by the OFAC which also publishes “sanctions guides” known as sanctions brochures for certain sanctions programs in use setting out legislative background and prohibitive measures to them, these are however not available for all sanctions programs. The OFAC also maintains a list of individuals and entities subject to financial sanctions known as the “Specially Designated Nationals List”. Executive Orders which give birth to sanctions may be traced back to congressional pieces of legislation such as Trading with the Enemy Act (TWEA) and International Economic Emergency Powers Act (IEEPA), the later from which most sanctions measures derive from⁶⁶. Executive Orders authorize the Secretary of the treasury to pass any regulations that may be necessary to implement the sanctions regime in question.

The implementation of US sanctions is as per the dualist approach of the United States to international law, that is the need to implement measures domestically in order for them to have effect in the US. In December 1945, Congress passed the United Nations Participation Act (UNPA) which deals with the practicalities of the US membership of the UN by, among other things, giving the president the authority to implement measures passed by the Security Council under Article 41 of the Charter. The President relies on Article 5(a) of the UNPA in issuing Executive Orders implementing sanctions decided at the UN Level, thus the authority of the UNPA is secondary to broad executive powers that exist in relation to national emergencies and which the US may use to impose far reaching unilateral sanctions in the absence of consensus at the UN level, meaning the US Sanctions framework is more geared towards unilateral sanctions. The US maintains the power to vet UN sanctions as a permanent member of the Security Council. The US has however not put every

⁶⁴American Bar Association, “What is an executive order?” (2016) 17 *Insights on Law and Society*

⁶⁵ In 2012, the Congress passed the Magnitsky Act (The Sergei Magnitsky Rule of Law and Accountability), which originally targeted 18 government officials and businessmen linked to the imprisonment and subsequent death in custody of Russian lawyer, Sergei Magnitsky

⁶⁶ Executive Order 13466 of June 26, 2008 Continuing certain restrictions With Respect To North Korea and North Korean Nationals, Accessed on 8 June 2022, <https://www.govinfo.gov/app/details/CFR-2009-title3-vol1-e013466>

individual or entity sanctioned by the UN on the SDN list. It should be noted that in the US, no law is higher than the Constitution, therefore, international obligations, even when imposed under Chapter VII of the UN Charter must yield to the primacy of the constitutionally guaranteed rights. Noteworthy is the similarity in this to the approach taken by the EU courts in relation to international obligations and the EU has seen successful challenging of the UN Sanctions.

The justification: Legal necessity and proportionality

The theory or idea behind economic sanctions is that economic pressure on civilians translates to pressure on government, hence influencing a change in policies⁶⁷. Sanctions are deemed to be justified if they pass the proportionality and necessity test. The proportionality and necessity test probes the connection between the sanction and the human rights issue in the targeted country as well as the effects. Some scholars like Gutmann⁶⁸ find that economic sanctions do not pass the legal necessity test where they seek to improve the human rights situations as they actually lead to a deterioration of human rights. In some instances, economic sanctions fail to achieve the desired outcome yet unintended consequences on third parties, hence the need for the test on whether the measure is well-suited to achieve the sanctions' objective, especially on sanctions specifically aiming for a change in human rights situations. More often than not, sanctions are accompanied by collateral damage and in such cases, international humanitarian law principles of proportionality apply. These constitute legal yardsticks for determining the extent of permissible collateral damage⁶⁹ and these are determined according to goals, costs and alternative consequences.

The principle of necessity on the other hand, requires the imposing States to stick only to those measures that are necessary to achieve the desired outcome and nothing beyond. Under this principle, States do not possess unconditional discretion as to the choice of measures, the measures to be implemented are subject to tests whether they will meet the objectives as compared to other alternatives such as diplomatic lobbying and armed force. According to Kern (2009)⁷⁰, sanctions are considered necessary if they have economic impact on the targeted country's

⁶⁷ Hafner-Burton, M. Emile, "A Social Science of Human Rights", 51(2) *Journal of Peace Research* page 273

⁶⁸ J. Gutmann, N. Matthias, F. Neumier and A. Steinbach, "Economic Sanctions and Human Rights: Quantifying the legal proportionality principle" 2018, Vol.18 No 2, *Research Papers in Economics*.

⁶⁹ Owen, Mallory, "The Limits of Economic Sanctions under International Humanitarian Law: The Case of the Congo", 2013 Vol.48, *Texas International Law Journal* page 103- 123

⁷⁰ K. Alexander, *Economic Sanctions. Law and Public Policy*, MacMillan, 2009.

economy which in turn could have an effect on political groups thereby inducing change in policies. This author is of the view that this approach is rather skewed, as it is practically impossible to predict the outcome of the works of sanctions in a State. Indeed, the economic impact of certain sanctions may be predicted and foreseen, but how much a government is willing to take before they can comply cannot be predicted, for example, a government may be willing to take economic sanctions than change its regime and perhaps when the imposers of the sanctions realize that the imposed sanctions have not brought much change, more sanctions may be imposed, even to the continued detriment of third parties such as civilians. An example is the situation in Haiti, where sanctions benefitted a few wealthy individuals while a large part of the society was suffering⁷¹, a clear case of miscalculated results. In such situations, sanctions may not be deemed necessary, or rather, after it has been proven that the desired outcome has not been achieved, the continued use of sanctions is not justified by necessity.

The proportionality test, prescribes a limit on damages to be effected by sanctions, however necessary. The main aim is to keep measures from spiraling out of control and to ensure the wellbeing of the international community. The International Court of Justice has specified proportionality in terms of armed force which can also imply judgments in respect of collateral damage that comes with sanctions on civilians as sanctions may be considered a form of force. Proportionality prohibits unnecessary suffering on combatants, that is greater harm than is necessary to achieve the desired outcome. The necessary to achieve the targeting State's objectives would mean the unavoidable harm that is necessary to subdue the targeted country into compliance, so as to minimize losses on those not responsible for wrongful acts. The amount of permissible damage would require the imposing State to assess the economic, political and social impact of the sanctions on the sanctioned State. This, in this author's opinion is better predictable than the outcome or the sanctioned government's response to the sanctions. The main hurdle for legality is the necessity test, which is harder to pass than the proportionality test.

[The history of Economic Sanctions in Zimbabwe](#)

Sanctions in Zimbabwe may be traced back to the pre-independence era, when it was still Rhodesia under Ian Smith. Following the Unilateral Declaration of Independence by Rhodesia's Prime Minister Ian Smith, Zimbabwe, then known as Rhodesia had its first sanctions imposed upon it. The US government condemned the Rhodesian

⁷¹ Tsagourias,

Nikolace, N. White, *Collective Security: Theory, Law and Practice*, Cambridge University Press, 2013.

government on November 11 1965 and imposed Diplomatic Sanctions on it⁷². The Canadian government refused to recognize the Rhodesian Government on November 11, 1965. The governments of India and Ceylon also imposed diplomatic sanctions (non-recognition) against the Rhodesian Government in 1965 on November 12 alongside with the governments of West Germany, Norway, Sweden, Japan, Australia and Turkey. The UN Security Council also imposed military and economic sanctions against the government of Rhodesia in 1966, which was the first time the UN had taken that action against a State⁷³. The sanctions imposed upon Rhodesia were as a result of the disapproval of the Smith Government's policies and in an attempt to influence the change in policies. The British government was especially disapproving of the Rhodesian government's aspirations for independence from it, the UDI was considered illegal and unacceptable. The sanctions were meant to generate dissent, disaffection among the white population who it was hoped would force a return to legality and progress towards a mutually acceptable for of independence. It is thus clear that Zimbabwe is no stranger to the sanctions policies and measures, however, the main focus is on the contemporary sanctions.

Zimbabwe gained its independence in April 1980 from Britain. Prior to that, negotiations were held on the terms on which Zimbabwe was to gain its total independence. The Lancaster House conference of 1979 which lasted three months⁷⁴ eventually led to the signing of the Lancaster House Agreement on December 21 of the same year, ushering in the independence of Zimbabwe in April 1980. One of the reasons for the delay was the issue of land, with the Zimbabwean Nationalist leaders seeking recourse on issues of land reform that would address the colonial imbalances of the previous 90 years. They wanted Britain to commit to the compensation of white farmers as there was going to be redistribution of land to black Zimbabweans by the new government. The land issue was an important one as land is the most valuable resource for Zimbabwe, one of the main pillars of the economy and after all land was the main reason for the liberation struggle. Britain had initially refused to pay for the compensation, which stalled the conference until the United States played the guarantor and the United Kingdom agreed to compensate for land sold on a willing seller willing buyer basis. Britain granted Zimbabwe its independence and the Zimbabwean government put the Land Reform on abeyance for an agreed period of ten years and even beyond. During this period, the compensation agreement was not met by Britain and any hopes for it were lost when the British government changed to Anthony Blair's Labour Party from John Major of the Conservative Party when Major

⁷² <https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/rhodesia-zimbabwe-1964-present/>

⁷³ "Rhodesia and the UDI", Britannica, accessed on 28 May 2022, www.britannica.com/place/Zimbabwe/Rhodesia-and-the-UDI

⁷⁴ N. Runyanga , 'Zimbabwe: The Origins, Reasons for the Sanctions Scourge', The Herald, 16 October 2020.

became Prime Minister. Although Margaret Thatcher had agreed on the compensation on behalf of the country, Blair made it a party issue⁷⁵. Zimbabwe convened the International Donors' Conference on Land Reform and Settlement in September 1998, which was meant to inform donors on the land reform issues and to mobilize support on the Land Reform and Settlement Programme, but did not however produce any meaningful results and the United Kingdom and the United States did not commit to fund the land reform programme. Frustrated by this, people under Chief Svosve in Marondera occupied some farms in 1998⁷⁶, who were eventually convinced to leave, but this marked the end of Zimbabwe's tolerance to being landless in their own home. In January 2000, Zimbabwean war veterans led the occupation of the farms. In response, the United States enacted the Zimbabwe Democracy and Economic Recovery Act (ZIDERA Act) of 2001 to provide for a transition to democracy and promote economic recovery. The ZIDERA Act was later amended in 2018 to a nine paged document from a four paged one. It restricts U.S support for multilateral financing in Zimbabwe until Zimbabwe made the reforms called for. According to the US government⁷⁷, the justification behind the sanctions is that the U.S wants for Zimbabwe and its citizens a peaceful, democratic Zimbabwe, hence making sure those in power do not benefit from their conduct. The EU sanctions regime in Zimbabwe was adopted as **Council Regulation (EC) of No 310/2002**⁷⁸, which were a ban on technical assistance, financing and financial assistance related to military activities, a ban on export of equipment which might be used for internal repression and the freezing of funds, financial assets and economic resources of members of the Government of Zimbabwe and any natural or legal persons, entities or bodies associated with them⁷⁹. The rationale behind the sanctions was *"concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press....the Council deems it necessary to introduce restrictive measures against the Government of Zimbabwe and those who bear a wide responsibility for such violations"*⁸⁰ This is how sanctions against Zimbabwe were born.

In a nutshell, this chapter has explored the rationale behind the imposition of economic sanctions as well as the legal grounds under which sanctions are permissible. Noteworthy are the reasons compelling the imposition of sanctions such

⁷⁵ Runyanga, (n 76 above)

⁷⁶ Runyanga, (n 76 above)

⁷⁷ H. Chingono, Zimbabwe sanctions: An analysis of the "Lingo" guiding the perceptions of the sanctioners and sanctionees. 2010, Vol.4, No.2 *African Journal of Political Sciences and International Relations*, 66-74.

⁷⁸ Council of the European Union, 'Council Regulation (EC) No. 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe', OJ L 50, 21.2.2002.p. 4-12

⁷⁹ Council regulation (n 80 above) Paragraph 4

⁸⁰ Council regulation (n 80 above)

as the breach of peace and security or the violation of fundamental human rights. The justification of sanctions may be measured against the reasons compelling their imposition, the length of the time within which they may be expected to achieve their intended outcome, the proportionality of the measures in relation to the alleged violations which would have necessitated the measures and the necessity of the measures in achieving the desired changes. Sanctions against Zimbabwe were necessitated mainly by the abrupt land reform programme and subsequently by the alleged violations of the rights of political opponents and the press as well as citizens. It is interesting that the legality or justification of economic sanctions may be probed through the proportionality and necessity principles before one even looks at the effects of economic sanctions as we shall in the next chapter.

Chapter Three - The Impact of Economic Sanctions

In the previous chapter, the history, purpose and implementation of economic sanctions were discussed. Now that a brief understanding on the background and motive behind the adoption of economic sanctions, in this chapter, the writer seeks to unpack the effects of economic sanctions both intended, and unintended. While economic sanctions have become a popular tool in International Politics used to compel the targeted State into compliance with the imposer's demands, they are not without ripple effects on other aspects of the State's arms and especially on the average citizen. These are the unintended consequences which are not part of the imposing State's plan but are inevitable. Economic sanctions have a negative effect on human rights, democracy, healthcare, basic living conditions among other things. In this Chapter, the writer will look at the unintended effects of economic sanctions in the course of their implementation worldwide, with particular attention to the effects they have had on Zimbabwe. Of much concern in this work, is their effect on human rights, whether directly or indirectly as a secondary effect after they have affected a different area.

The general impact of economic sanctions on targeted States.

Economic sanctions have been criticized for their failure to achieve the intended outcome, yet achieving unintended results, which if considering the suffering they bring on the general population are the same as armed intervention. Mack and Khan⁸¹ summarize this as follows *"The only real disagreement in the contemporary sanctions literature relates to the degree to which sanctions fail as an instrument for coercing changes in the behavior of targeted states. No study argues that sanctions are in general an effective means of coercion, although individual sanction regimes can and sometimes do succeed."* Sanctions tend to increase the poverty gap between the elites and the general population as supported by a study of US Sanctions between 1982 and 2011 by Neuenkirch and Neumeier⁸² which found that US sanctions adversely affect the poor and lead to an average 3.8 percentage point increase in the poverty gap (the average shortfall from the poverty line of USD 1.25 PPP a day) in comparison to a controlled group where the dynamics were as similar as possible to the countries being sanctioned. Due to the already impoverished economies of the sanctioned countries, sanctions run the risk of leading to an increased economic collapse which leads to greater impoverishment. Through the economic damage of the sanctions, a significant impact is felt by the public: GDP per capita decreases at an

⁸¹ A. Mack, A. Khan *The Efficacy of UN Sanctions. Security Dialogue*, 2000, 31(3), Accessed on 6 June 2022 <https://doi.org/10.1177/0967010600031003003>

⁸² M. Neuenkirch, F. Neumeier. 'The impact of UN and US economic sanctions on GDP growth'. 2015, 40, *European Journal of Political Economy*

increased rate, exports and imports decrease, international capital decreases, and inflation increases. The increased poverty in sanctioned countries in conjunction with the pressure on resources that sanctions create magnifies the poverty, as the wealthy have more access to resources such as medicine, quality education, in turn leading to an increase in the disparity of the living standards⁸³.

An example of the effects of economic sanctions on poverty is Iraq, one of the most studied cases, where sanctions had a significant impact on the economy, government ceased to provide social services to low income groups. Iraq was under sanctions for over six years. A report in December 1995 in the *Lancet*, drawing from a study of the food and nutritional situation by Food and Agriculture Organization, claimed that sanctions against Baghdad were responsible for the deaths of 567 000 Iraqi children since the end of the Gulf War⁸⁴. This generated much publicity which led to criticism of sanctions as massive violation of human rights which killed more children than the combined effects of two atomic bombs on Japan and the ethnic cleansing in the former Yugoslavia⁸⁵. In as much as the sanctions against Iraq worked to some extent in restricting its weapons programs, the government managed to direct the pain of the sanctions onto the most vulnerable and human rights were violated by the sanctions on Iraq. The country saw a decline in life expectancy and a loss of more than two thirds of the country's GDP, unemployment, increase in school dropouts and a rise in exorbitant prices. Albeit all these impacts, economic sanctions did not achieve the change to a more democratic government or regime change and military intervention had to be used to remove Saddam Hussein from power⁸⁶.

According to Oechslin⁸⁷ the economic meltdown as a result of sanctions is also caused by the regime's response to the sanctions. He asserts that targeted regimes instead of countering sanctions policies, most times than not, the regime strengthens the policies that magnify the sanctions' negative effect on the economy to hinder the citizens from revolting as any revolution would be costly. Oechslin argues that the targeted elites will look for ways to escape the policies such as exile opportunity or carry on with its strategy until sanctions are lifted due to prolonged suffering on the general population. In some cases, the regime may even get the suffering population

⁸³ K. Sen, W. Al-Faisal, Y. AlSaleh. 'Syria: effects of conflict and sanctions on public health'. 2013 Vol. 35 No.2, *Journal of Public Health*

⁸⁴ B. Crosette, 'Iraq Sanctions Kill Children', UN Reports, New York Times, 1 December-1995

⁸⁵ 'UN Sanctioned Suffering: A Human Rights Assessment of United Nations Sanctions on Iraq', New York: Center for Economic and Social Rights, May 1996

⁸⁶ A. Alnasrawi, 'Iraq: economic sanctions and consequences', 2001, 22(2). *Third World Quarterly*, Accessed on 17 June 2022, <https://doi.org/10.1080/01436590120037036>

⁸⁷ M. Oechslin, 'Targeting autocrats: Economic sanctions and regime change'. 2014, 36 *European Journal of Political Economy*, 24-40

to campaign towards the removal of the sanctions. This leads to increased repression as an effect of sanctions policies. In these cases repression is used to prevent the defection of core supporters and to stifle dissent in the face of declining economic conditions or growing opposition support. . Mueller and Mueller⁸⁸ (1999) argue that military and arms sanctions are more effective than economic sanctions, as they cause the population no harm. This inevitably leads to effects in democracy as sanctions become an incentive to leaders to strain political liberties and the worsening economic conditions may be used to weaken the opposition which has lesser access to resources.

Although the goal of sanctions was to improve human rights situations and foster democratization, sanctions have been found to play a major role in the deterioration of the same. In rights-abusive countries, leaders of the sanctioned state may in fact increase their repression of opponents as a justifiable action in light of the economic challenges that the country may be facing as a result of the sanctions. Sanctions indirectly affect the “second order” rights of the ordinary citizen of the targeted country, like economic and social rights. Sanctions may disturb the provision of humanitarian assistance by organizations to those in most need⁸⁹. Furthermore, it is the case that political and civil rights are more protected in societies with stable economies whereas rights are more restricted in economic crisis⁹⁰. The humanitarian consequences of sanctions remains a concern, as it was in 1993 in a message from the UN Secretary General from the Under Secretary General for Humanitarian affairs⁹¹ where the secretary General noted that a sanctions regime is a blunt instrument that inflicts suffering n vulnerable groups, complicates the work of humanitarian agencies, causes long-term damage to the productive capacity of target nations and generates severe effects on neighboring countries. However, Boutros-Ghali did not reject sanctions but made a strong plea for reforms in their implementation and additional means to minimize human suffering as well as assistance to vulnerable groups most likely to be affected by the sanctions. The humanitarian assistance and sanctions issue creates a divide into two different schools of thought, one that believe that because the United Nations carries the dual charge of peace enforcement via sanctions and human rights, multilateral sanctions imposed by the security council should unfold in such a manner that they have minimal or negligible humanitarian

⁸⁸ J. Mueller, K. Mueller, ‘Sanctions of mass destruction’. 2010, *Foreign Affairs*, May-June Issue, 43-53. Accessed on 9 May , <https://www.foreignaffairs.com/articles/iraq/1999-05-01/sanctions-mass-destruction>

⁸⁹ G.A. Lopez, & D. Cortright , ‘Economic Sanctions and Human Rights: Part of the Problem or Part of the Solution?’ Vol.1, No.2 *The International Journal of Human Rights*

⁹⁰ R. E. Howard, ‘The full belly thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa’, 1983, *Human Rights Quarterly*

⁹¹ Claudia von Braunmuhl and Manfred Kulesa ‘The Impact of UN Sanctions on Humanitarian Assistance Activities’, 1995, *The United Nations Department of Humanitarian Affairs* Page 2

impact, while others hold the view that sanctions should, in fact, cause so much inconvenience, discomfort or even serious economic and social impact such that the population experiences considerable humanitarian need thus compelling leaders to implement the necessary policy changes.

The impact of economic sanctions in Zimbabwe

Economic sanctions imposed against Zimbabwe by the United States of America the ZIDERA in 2001 and the EU have affected various economic and social sectors negatively, inclusive of trade and finance, manufacturing, tourism, agriculture, environment, climate and water services, the energy sector, mining sector and human capital and migration. The negative impacts of these sanctions on the various sectors have had secondary effects on human rights. With regards to trade and finance, international finance institutions (IFIS), that is IMF and the World Bank stopped financial support to Zimbabwe around the 2000s, with the reasons that Zimbabwe had arrears and failed to meet its obligations hence the withdrawal of financial support. However, research has shown that most of economic challenges that trade firms and financial institutions have suffered and the economy at large was a result of sanctions⁹². Sanctions have also impacted the manufacturing sector which has seen the sector's contribution to the Gross Domestic Product decline significantly. It is trite that when a country faces economic challenges, it is the lower class citizens who suffer the most. The people whose survival and living depend on a stable economy are affected the most as they have no supplementary means to earn a living, like the elite would. As mentioned above, the implementation of economic sanctions are once again seen in increasing poverty with the deteriorating economic conditions in Zimbabwe, as was the case in Iran⁹³.

Sanctions have had an impact on the energy sector in Zimbabwe as well. Between 2000 and 2016 some ordinary citizens have complained about energy deficiency in Zimbabwe which has been attributed to economic sanctions⁹⁴. Again, it is the ordinary citizen who is affected the most by the energy deficiency. Economic sanctions have led Zimbabwe to turn to China for imports of ICT equipment. Some ICT equipment were not allowed to import into Zimbabwe, hence the procurement through small business at a higher cost and making Zimbabwe a dumping ground for low quality ICT gadgets and the loss of ICT skills to neighboring countries such as South Africa and

⁹² The University of Zimbabwe, (*n 38 above*)

⁹³ 'UN Sanctioned Suffering: A Human Rights Assessment of United Nations Sanctions on Iraq', New York: Center for Economic and Social Rights, May 1996

⁹⁴ The University of Zimbabwe study, (*n 38 above*)

Botswana⁹⁵. This is also supported by the fact that mobile or internet penetration increased during the period 2008 to 2013 which was the period of the Government of National Unity (GNU) ⁹⁶and decreased post 2013 and this may be attributed to sanctions, which were less stringent during the GNU and have caused suppressed international trade, usage or uptake of ICTs which has resulted more in social impact than the economic. In terms of human capital and migration, sanctions have led to loss of qualified and skilled staff to migration due to poor working conditions (brain drain), inadequate infrastructure and facilities for academic and administrative activities, inadequate support for research and development, lack of funding for the majority of students who cannot afford requisite fees. The most important human right affected by this is the right to education, which is a basic right for every child according to the Universal Declaration of Human Rights and the Convention on the Rights of the Child⁹⁷. Article 28 of the Convention on the Rights of the Child not only stipulates that the right to education is a right for every child, but that wealthy countries should help poorer countries to achieve this right. This would mean that Western countries should not only assist in realizing this right for every child, but to desist from any actions that would jeopardize the realization of this right. Whereas the ordinary citizen may afford basic education, this is in as far as the inadequate infrastructure and support for research and development can go, which again is a problem mainly affecting the lower class citizens as the elite may afford to send their children abroad for better be a result of the governance of the same elite, but the effects of the sanctions is felt by the innocent at the bottom of the food chain. There is the other section of the population who cannot afford even the basic education, as of May 2022, 75% of parents in Zimbabwe have been said to not afford school fees as a result of financial constraints⁹⁸. In 2009, about 94% of public schools in the rural areas in Zimbabwe were closed⁹⁹ due to the inability to fund public schools by government because of financial constraints. This translates to lack of access to education at all, a basic human right, as a result of economic sanctions. The same issue was noted in s preliminary research based on human rights and unilateral coercive measures ¹⁰⁰ that Sanctions adopted against Iran before the nuclear deal of 2015 where the decrease of access of Iranian women to higher education as a

⁹⁵ *Ibid*

⁹⁶ The Government of National Unity refers to Zimbabwe's coalition government formed on 13 February 2009.

⁹⁷ UN General Assembly, 'Universal Declaration of Human Rights', 10 December 1948, UN General Assembly , Article 26 & United Nations, Convention on the Rights of the Child, 1990, UN Commission on Human Rights, Article 28

⁹⁸ ZimStat survey conducted by telephone interviews in partnership with the World Bank and UNICEF, based on poverty, income, consumption and expenditure surveys (PICES) Accessed 5 June 2022, <https://bulawayo24.com/index-id-news-sc-national-byo-219537.html>

⁹⁹ M. Hove, 'The debates and impact of sanctions: The Zimbabwean experience'. 2012, Vol.3. No.5, *International Journal of Business and Social Sciences* page72-84

¹⁰⁰ UN.Doc.A/HRC/AC/13/CRP.2 (July 30, 2014) Paragraph 29

consequence of economic sanctions was witnessed on a report issued by the advisory committee of the Human Rights Council.

Studies have shown that the relationship between sanctions and livelihoods is quadratic¹⁰¹. Sanctions haven been shown to have reduced formal employment in the initial stages of implementation, although the negative relationship however changed over time. It was the introduction of indigenization that magnified the negative effects of sanctions as it reduced formal employment significantly. This is in line with Prendergrast and Brooks-Rubin¹⁰² and Oeschlin who argue that governments in sanctioned states magnify the impacts of economic sanctions as the government of Sudan did in order to control the population while the elite circumvented the sanctions impact through the sale of oil to their allies, likewise the indigenization policy magnified the effects of sanctions. Sanctions however, deepened women's poverty and disadvantage which has been the pre-existing status quo for a long time. Women have always been an economically disadvantaged group and this worsened with sanctions, although women fought hard to challenge the situation. Such privileges as formal employment which naturally favoured men, in its decrease, it was worse for women as one would imagine. Even in other countries, a study by Drury and Peksen¹⁰³ demonstrate that sanctions have a negative impact on women's access to economic and social status as well as on the traditional patriarchal norms which lead to greater violations of women's rights. They also demonstrated that sanctions have negative gender-specific consequences and that women bear the burden of economic sanctions at a higher level. Children's rights are also affected by the sanctions in Zimbabwe, whereas resources for children have always been a challenge, it was worsened by economic sanctions, where children's education is affected by the flight of teachers, their socio-economic rights are affected by economic disadvantage of their parents and those whose welfare is in the hands of the State, the struggling economy makes it difficult for the State to provide adequate social services. Further, it has shown that the girl child was affected with some falling into sex work. Sanctions tend to affect the most; it is the common person on the street who has withstood the worst of sanctions.

Zimbabwe has lost well over US\$42 Billion in revenue over the past nineteen years including a lot of bilateral donor support estimated at US\$4.5 Billion annually since 2001, US\$ Billion in loans from the International Monetary Fund, the World Bank and

¹⁰¹ The University of Zimbabwe (*n 38 above*)

¹⁰² Prendergast, J. & Brooks-Rubin, B. (2016), *Modernized Sanctions for Sudan*, The Enough Project, Sudan; M. Oeschlin, "Targeting Autocrats: Economic Sanctions and Regime Change", 2014, Vol.36, *European Journal of Political Economy*,

¹⁰³ D. Perksen, A. Drury, 'Economic Sanctions And Political Repression :Assessing the impact of Coercive Measures', 2019, Vol.10, *Human Rights Review*

African Development Bank and a GDP reduction of US\$21 Billion¹⁰⁴. Expectedly, this led to setbacks in the development the country has been making in terms of the economy and infrastructure, health, education or any other social service delivery. The negative effects of economic sanctions on the economy and consequently on the increase in poverty in Zimbabwe is an indirect infringement on the right to life. Being the most basic human right, the right to life is the most likely to be affected by economic sanctions. It is well established that this right not only encompasses a protection against deprivation of life but also extends to socio-economic rights and incorporates a positive obligation on States to take measures to secure the realization of this right¹⁰⁵. The same sentiments were aired in the case of *Villagaran Morales and Others v Guatemala* (The case of the street children)¹⁰⁶ in a joint concurring opinion of Judges AA Concado Trindale and A Abreu Burelli where they held that the right to life implies not only the negative obligation not to deprive anyone of life arbitrarily but also the positive obligation to take all necessary measures to secure that that basic right is not being violated. The right to life is not limited to domestic setups, but operates even in international setups and imposes obligations on States to respect and protect this right which includes refraining from actions that may affect the right even in other jurisdictions other than their own. Impliedly, this requires States implementing Economic Sanctions to refrain from measures that deliberately would lead to the deprivation of food or subjection to hunger and starvation as these have the potential to take away life. With regards to children, the Convention on the Rights of the Child corroborates this in conferring children with an absolute right to life. It has been noted with regards to UN Sanctions that these should at the very least not result in denying children access to basic goods and services “essential to sustain life”¹⁰⁷. The poverty situation in Zimbabwe as a result of Economic Sanctions leading to the inaccessibility of socio-economic necessities such as food and adequate health care is an encroachment on the right to life.

The right to development, embodied in international instruments and resolutions¹⁰⁸, is a right that is vulnerable to economic sanctions. It has been affirmed that unilateral sanctions are an obstacle in the implementation of the Declaration on the Right to Development¹⁰⁹. The adverse effects of unilateral sanctions on the right to

¹⁰⁴ SADC Permanent Missions in Geneva, ‘Impact on Zimbabwe and the Region of the Unilateral Sanctions Imposed by the United States of America and the European Union’, 19 October 2020 Accessed on 7 June 2022, www.ohchr.org/sites/default/files/Documents/Issues/UCM/ReportHCRC48/States/sub,ission-zimbabwe.docx

¹⁰⁵ J. Schultz, S. Joseph, M. Castan, ‘*The international Covenant on Civil and Political Rights, Cases, Material and Commentary*’, Oxford University Press, 2000.

¹⁰⁶ *Villagaran Morales and Others v Guatemala* Case (19 November, 1999)

¹⁰⁷ E. De Wet, *The Chapter VII Powers of the UN Security Council*, Hart Publishing, 2004 page 219.

¹⁰⁸ Declaration on the right to development, U.N. Doc. A/RES/41/128 (December 4, 1986)

¹⁰⁹ U.N Doc. A/HRC/RES/27/21, preamble. Paragraphs 1, 4, 6, 10 and 15 of the same resolution.

development have been seen in Zimbabwe. The UN High Commissioner for Human Rights has stressed their impact in Zimbabwe in the following terms, *“there seems little doubt that the existence of the sanctions regimes has, at the very least, acted as a stigma of sanctions has limited certain imports and exports. Taken together, these and other unintended side effects will in turn inevitably have had a negative impact on the economy at large, with possibly quite serious ramifications for the country’s poorest and most vulnerable populations”*¹¹⁰. The right to development is deprived to the citizens of the sanctioned country, in this case, Zimbabwe. It is noteworthy that the deprivation of socio-economic rights has sort of a ripple effect that ripples to the infringements of other rights as well. Perhaps this is an indication on the importance of socio-economic rights, that their guarantee is closely connected to the guarantee of other rights. This also shows that human rights are inter-dependable.

The right to health is one of the most affected by economic sanctions. The right to health is a basic human right, afforded to every human being under socio-economic rights. As discussed above, the effect of sanction on the economy have led to setbacks in the development of the health sector, through a number of ways, which include the effects of a struggling economy and the import restrictions and bans on select medical supplies, the migration of health professionals due to economic difficulties. In a country where the government struggles to provide the most basic health facilities, the majority of citizens also struggle to afford basic health care that may not be found in government institutions. The impact on the health sector was felt the most during the COVID-19 pandemic where efforts by the government of Zimbabwe to contain the spread of the virus were adversely affected by measures which have hampered its ability to import the necessary medical equipment, medicines and food from global markets¹¹¹. The same difficulties were faced by the government in efforts to curb the HIV/AIDS pandemic with Zimbabwe being denied its grant application for funding its HIV/AIDS programmes being denied for political reasons¹¹². Sanctions also affected healthcare support projects and initiatives by donor agencies, for example the Swedish Government Health initiative founded in 1997 sought to improve water, sanitation and education was suspended by the Swedish government following EU Sanctions together with the Danish International Development Agency which suspended its health sector programme in Zimbabwe. These programmes were funded not because of lack of interest from the donor

¹¹⁰ Opening remarks by UN High Commissioner for Human Rights Navi Pillay, Harare, May 25, 2012, available at <www.ohchr.org/EN/NewsEvents/Pages/Display/News.aspx?NewsID=1219&LANGid=#stash,48RBvc2r.dpuf>

¹¹¹ SADC Permanent Missions in Geneva (*n 105 above*)

¹¹² C. Ogbonna Chidiebere, ‘Targeted or Restrictive: Impact of U.S and E.U Sanctions on Education and Healthcare of Zimbabweans’ 2017, Vol. 11 (3), *African Research Review*

countries but as adherence to EU sanctions directives which urged member States to desist from making funds available to the government of Zimbabwe. While no State is under any obligation to provide developmental support to another and while it is the responsibility of every State to provide services to its citizens, history shows that States depend on one another for development and sanctions have denied the Zimbabwean population of the health benefits and support they once got. The Committee on Economic Social and Cultural Rights in its general comment pointed out that every human being has the right to the highest attainable standard of health¹¹³ The inaccessibility of adequate healthcare is a direct consequence of an ailing economy, where the government is unable to provide quality healthcare services to its citizens and where the poor cannot afford basic health care services. The Sub Commission on Human Rights cited in 2000 “deteriorating humanitarian conditions in countries which have been affected by heavy sanctions, including embargoes, particularly as evidenced in increasing rates of child malnutrition and mortality and deteriorating health indicators¹¹⁴. The damage to the health infrastructure, as well as the shortage of health supplies are the malfunctions of basic health systems that are a result of economic sanctions, thus the CESCR in its General Comment 8 urged State parties to the Covenant to *“refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure.”* In this context, States are obligated to respect the right to health, this is a positive obligation on States to take reasonable measures to ensure that the consequences of their actions are not harmful to the health or enjoyment of the right to health of persons in other jurisdictions, in addition to their own and also a negative obligation to refrain from imposing any measures that may encroach on these rights. The ICJ in *The Alleged violations of the 1955 Treaty of Amity (Iran v USA)*¹¹⁵ found that restrictions on the importation of goods required for humanitarian needs such as foodstuffs and medicines including life-saving medicines for chronic disease or preventive care and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran. The UN Special Rapporteur on the Right to Health also indicated that international cooperation and assistance require that all States in a position to assist should first refrain from acts that make it difficult for the poor to realize their right to health. This renders any sanctions regime that undermines the

¹¹³ General Comment No. 14: The Right to highest attainable standard of health (Article 12), July 4, 2000, U.N. Doc. E/C.12.2000/4, para 41.

¹¹⁴ Sub-commission on Human Rights, Resolution 2000/1, Human Rights and Humanitarian Consequences of Sanctions, including Embargoes, U.N Doc. E/CN.4/Sub.2/Res/2000/1 (August 11, 2000)

¹¹⁵ *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, “*Provisional Measures Order* (October 3, 2018), para. 91

availability and accessibility of basic health care, inconsistent with the international obligation of States and ultimately, a violation of human rights.

Other than the impact on human rights, sanctions have affected the smooth running of regional groupings such as the SADC whose macroeconomic convergence targets of low inflation, sustainable budget deficits, minimal public debt, equitable current account balances as well as the formation of a regional monetary union and the movement towards attaining the region's industrialization agenda are being compromised by Zimbabwe's inability to meet most of the targets¹¹⁶. This goes to show that sanctions may not only affect the targeted country negatively but the impact goes beyond the country itself, even to affecting neighboring countries and even the region. While some scholars may argue that the whole point of sanctions would be to bring so much suffering on the target country's population as to push for a regime change, the justifiability of sanctions becomes a far-fetched theory as its effects are felt beyond the target country's jurisdiction, affecting third party countries and its citizens in the course.

Unilateral sanctions, secondary sanctions and over-compliance have worsened the pre-existing economic challenges and humanitarian crisis and crippled the building of essential infrastructure and cooperation necessary for the achievement of Sustainable Development Goals. Sanctions have also hindered the Zimbabwean government from using resources to develop and maintain essential infrastructure and for social support programs thereby supporting the whole population of Zimbabwe especially those in poverty dependent on the government for sustenance. Sanctions have also added to corruption in that, over-compliance have led the government, banks, public institutions, private companies and individuals to look for alternatives in participating in international trade like using third parties, using informal non-transparent mechanisms of trade and payments¹¹⁷. This also limits the participation of Zimbabwe and its citizens in international cooperation, which affects the right to development, education and possibility of professional growth. As sanctions affect the ability of the government to provide and develop social services and infrastructure, this affects the quality of public service delivery including investigations and court hearings, thereby affecting the right to due process and also giving rise to corruption.

Sanctioned States like Zimbabwe tend to suffer from what Nyoni¹¹⁸ termed "the-devil-may-care" syndrome, whereby the government tends to omit the implementation of

¹¹⁶ SADC Permanent Missions in Geneva (*n 105 above*)

¹¹⁷ C. Zenda *Good Governance- Zimbabweans Reel Under Unintended Effects of Western Sanctions*, November 19, 2021. UN Special Rapporteur

¹¹⁸ T Nyoni., *The curse is real in Zimbabwe: Economic Sanctions must go!*, 7 November 2019,

the best or standard economic policies and shift the blame to an ailing economy. Although much of the economic problems faced by the Zimbabwean economy are somehow an effect of economic sanctions, but not every socio-economic ill is caused by sanctions. It is unfortunate that where a country faces an ailing economy, it is once again the lower class citizens who suffer the most. The situation is even worse where government does not implement good policies to alleviate the general populace from poverty and to save the economy, with the excuse that it is the effects of economic sanctions that are negatively affecting the economy. In an opinion piece published in the run up to the anti-sanctions day, Janet Zhou, Executive Director of the Zimbabwe Coalition On Debt and Development (ZIMCODD), a socio-economic justice movement insisted that Zimbabwe's problems have nothing to do with sanctions, but with corruption and misrule¹¹⁹Where a government takes advantage of economic sanctions to behave irresponsibly towards the economic wellbeing of citizens, it is tantamount to a deprivation or abuse of socio-economic rights.

Assessing the effectiveness of economic sanctions.

The question of the effectiveness of sanctions in the improvement of human rights situations remains. Given the effects that sanctions may have on the ordinary citizen and their socio-economic wellbeing, the debate on whether or not sanctions can be effective in the effort in improving human rights is a standing one, given the ironic fact that the very tool used to fight for human rights observations is the same that eventually brings a degree of suffering to the ordinary citizen and often without positive results as to the improvement of the situation. This author is of the view that sanctions may be effective in a country where the brutal treatment of citizens by their own government has sparked international concern, in as far as the reduction of the brutality is concerned, for example, where the leaders are deprived of the resources, mainly arms that they use in the brutality towards citizens or as far as changing the strategies or calculus of the repressive leaders when they realize that sanctions have fewer gains and perhaps negotiate their removal by changed policies. In countries where the repression of citizen's rights reigns, a changes in policies as well as the structural conditions in the political order such as the police and military, an independent judiciary and electoral system that are guided by civilian interests more than anything and are governed by the rule of law. The case of South Africa, prior to the independence of South Africa, sanctions in that country were judged as ineffective after more than two decades of economic pressure and diplomatic isolation had failed to end apartheid. However, financial pressure on the Pretorian

University of Zimbabwe

¹¹⁹ Zenda (*n 118 above*)

government eventually had an impact on economic and political issues and contributed to the political transformation that brought the African National Congress into power. From this perspective, sanctions against the apartheid regime were a partial success in terms of the preservation of human rights as compared to what civil war would have done to end Apartheid.

A common view is that sanctions are ineffective and incapable of achieving tangible results. Margaret Doxey¹²⁰ is of the view that sanctions will not succeed in altering the foreign and military policy of the target state. Some scholars argue that the intended goal of sanctions is the most difficult to achieve¹²¹. Economic sanctions have been criticized for their failure to compel the targeted government to change their policies to meet the demands of the sanctioning State. The Institute for International Economics (IIE) study on the effectiveness of economic sanctions examined 116 episodes of sanctions between 1914 and 1990 to determine their effectiveness in achieving their stated purpose and found that the overall success rate was 34 percent¹²², that means sanctions only achieved their purpose in 30 percent of the countries they were imposed on, which is a very low rate for sanctions to be such a popular tool in international politics as they are today. In recent decades sanctions have also been found to require nearly three years to achieve their goals¹²³ with the greatest economic impact being felt in the first year, which may, although rarely, compel change, after which the effectiveness declines with the targeted state adapting to new conditions. However, practically, it has been proven that even beyond three years, sanctions may not achieve the change desired. The case of Zimbabwe, for example, where sanctions have been in force for over two decades, but without any significant change in policies or the government, yet the impact on human rights does not await the achievement of desired goals before the ordinary citizen endures the suffering. Ordinary citizens continue to feel the impact of economic sanctions for as long as they are in force, sometimes which is decades. Economic sanctions appear to add on to the suffering of citizens of targeted countries, if not worse, a total opposite of the intended goals of the same. In 1992, the UN High Commissioner for Refugees at the time, Mrs Sadako Agata, stated at a UNICEF meeting that sanctions should operate without making the disadvantaged even more disadvantaged¹²⁴ , perhaps this is the threshold that should be used in

¹²⁰ M. P. Doxey, *International Sanctions and Contemporary Perspective* , Palgrave MacMillan, New York, 1987, p92

¹²¹ US General Accounting Office, *Economic Sanctions: Effectiveness as tools of Foreign Policy*, (Report prepared for the Chairman, Committee on Foreign Relations, U.S Senate, 102nd Congress.) St. Martins' Press 1987,

¹²² G. C. Hufbauer, J.J Schott, K. A Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, *Institute For International Economics*, 1990

¹²³ G. A Lopez, D. Cortright, 'Economic Sanctions and Human Rights: Part of the Problem or Part of the Solution?' 2002, Vol.1, No.2, *The International Journal of Human Rights*,

¹²⁴ Braunmhul, Kullessa (n 93 above)

determining the necessity of economic sanctions in any given in any given jurisdiction. These statistics leave a lot to be desired in the necessity and justification of economic sanctions given their impact on human rights vis-à-vis their effectiveness in achieving the purported goals given not only the suffering that ordinary citizens go through, but also the lengthy period in which the suffering continues.

Targeted sanctions were introduced to avoid the ripple effects that come with sanctions affecting the innocent civilians. However, it has been proven that sanctions in fact continue to affect ordinary citizens that have no hand in the implementation of policies that have caused the imposition of sanctions, usually missing their targets, the effect of sanctions have no regards as to political affiliation, they affect everyone. Sanctions have caused the closure of companies In Zimbabwe as a result of economic distress which has led to lack of investments and difficulties in running companies, which in turn would affect the livelihood of many people who depended on companies for employment and even affecting ordinary vendors who then depend on those income-earning people to buy from them. Sanctions create a stream of unintended consequences¹²⁵. While sanctions eat away at the humanitarian wellbeing of a targeted country, sanctions fatigue settles in, international compliance diminishes as the issue that led to the imposition of sanctions loses its emotional impact and the targeted state works its way around sanctions through import substitution and adaptation to living standards, all of these factors eroding the impact of sanctions, both intended and unintended. At the end of the day, sanctions become ineffective as far as their intended purpose were and looking at the damage they cause, it becomes difficult to justify them as an effective tool for dispute settlement at the cost of humanitarian wellbeing of a nation while also achieving little to no results.

¹²⁵ Mavaza M, 'Zimbabwe: Sanctions have affected All Citizens' The Herald , 23 October 2020, available at <https://allafrica.com/stories/202010230201.html>

CHAPTER FOUR- ARE ECONOMIC SANCTIONS JUSTIFIABLE UNDER INTERNATIONAL HUMAN RIGHTS LAW.

It has been established in the previous chapter that economic sanctions have a bearing on the enjoyment of human rights by the ordinary citizen. Such rights as socio-economic rights and to an extent, civil and political rights are directly or indirectly affected by the implementation and the continued existence of economic sanctions. There are however, rules that apply in the implementation of economic sanctions such as extraterritorial obligations, international obligations, the principle of non-intervention , non-discrimination and most importantly justifiability of the reasons for the imposition of economic sanctions. In this chapter, economic sanctions are juxtaposed with the principles governing their imposition as well as human rights principles in order to find a balance and to cement the justifiability of economic sanction sin light of international human rights law.

The international obligations of States when adopting economic sanctions

It is debatable whether or not States and international organizations have extraterritorial obligations in respect of sanctions, to the extent that any State imposing sanctions may be held responsible for any consequential human rights infringements such as deprivation of the right to food or healthcare even where the sanctioning State exercised no formal jurisdiction over the sanctioned population. One school of thought suggests that it has been widely agreed that human rights treaties impose on State parties obligations not only when they adopt measures applicable on their own territory, but also extraterritorial measures which may include positive obligations going insofar as the State can influence situations located abroad¹²⁶. Sanctions unarguably fall within the category of situations where States can influence situations located abroad. As such, it is implied that the effective realization of human rights encompasses the existence of extraterritorial obligations of States when enacting unilateral coercive measures. The Human Rights Committee in the case of *Sergio Euben Lopez Burgos v. Uruguay*¹²⁷ found that it would be unconscionable to so interpret the responsibility under article 2 of the Covenant on Civil and Political Rights as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory. Whereas human rights instruments do not contain any express clauses on jurisdiction and territory limitations in terms of their application, the ICPR

¹²⁶ O.DeSchutter, 'A Human Rights Approach to Trade and Investment Policies', accessed on 1 June 2022, www.iatp.org/sites/default/files/451_2_104504.pdf>

¹²⁷ Communication No. R.12/52 Sergio Euben Lopez Burgos v. Uruguay, 1981, U.N Doc. Supplement No. 40 (A/36/40) (1981)

in Article 2(1) sets out the obligation of State parties to respect and ensure the rights “*of all individuals within its territory and subject to its jurisdiction*”¹²⁸. The ICESR on the other hand, imposes an obligation upon all States to “*Take steps individually and through international assistance and cooperation*”¹²⁹ in the realization of the rights, which bestows obligations of an external and international nature on state parties, thus , the ICESR sets forth certain extraterritorial obligations for State parties in respect of individuals in third States. Further, the extraterritorial human rights obligations of States is consistent with the Customary International Law rule that prohibits a State from allowing its territory to be used to cause damage on the territory of another State, particularly in International Environmental Law¹³⁰ and may be relevant in the field of protection of human rights. The international or extraterritorial obligation is also consistent with General Comment 8¹³¹, which sets out certain obligations on “parties responsible for the imposition, maintenance or implementation of sanctions”, which obligations emanate from the recognition of economic, social and cultural rights, where the Committee identified an obligation to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country¹³². This means that a State imposing sanctions, in so far as it assumes even partial responsibility for the situation within the targeted country, is also *ipso facto* under an obligation to protect the economic, social and cultural rights of the affected population. Sanctioning States are thus responsible over the safeguarding of the rights of the citizens of the targeted nation and should ensure that the sanctions regimes to be imposed are well compliant with the said obligations, for them to be legal under Human Rights Law. However, as far as human rights created under optional protocols of the ICCPR and the ICESCR, a jurisdictional issue may arise, since the Optional Protocols require that the author of a communication be under the jurisdiction of the State responsible for the violation of the human right in question, which State must have ratified both the covenant and the Optional Protocol, it is unclear if this is a bar to the filing of communications against States which may have violated human rights outside their jurisdiction.

The Human Rights Council defines Unilateral Coercive Measures as including, but not limited to “economic or political measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it,

¹²⁸ International Covenant on Civil and Political Rights (Article 2(1))

¹²⁹ See U.N Doc. A/HRC/36/44, para, 34

¹³⁰ Draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of Business Activities (October 17, 2016), E/C.12/60/R.1. para 32.

¹³¹ General Comment No. 8 : The Relationship between economic sanctions and respect for economic and social rights, December 4, 1997, U.N. Doc. E/C.12/1997/8

¹³² General Comment No. 8 : The Relationship between economic sanctions and respect for economic and social rights, December 4, 1997, U.N. Doc. E/C.12/1997/8, para.11

advantages of any kind”¹³³. In light of States’ obligations in the international arena, they are expected to act consistently with customary international law principles and the Charter of the United Nations. Every State has a duty to conduct itself in a way that advances the respect and realization of fundamental human rights. The High Commissioner for Human Rights reminded States that they should refrain from adopting coercive measures that breach their human rights obligations under treaty law and customary international law¹³⁴. In this light, it means that international obligations of States extend to guarding the human rights interests of the targeted populace, even beyond their jurisdictions. The Human Rights Council called for States to stop using unilateral coercive measures stressing that they are contrary to international law, international humanitarian law and the norms and principles governing peaceful relations among States¹³⁵. This is unsurprising as unilateral coercive measures may have far reaching consequences on fundamental human rights as has been seen in the Zimbabwean case, where economic sanctions have affected the smooth realization of the right to health, development and education among other rights. The concern on the negative impact of economic sanctions is also seen in the creation of the office of The Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the enjoyment of Human Rights¹³⁶ whose occupiers have been working to draw the attention of the world to economic sanctions as a weapon as much as other means of warfare. Russia, China and India denounced economic sanctions in a joint communication in 2016¹³⁷ citing their inconsistency with international law principles, the sovereign equality of States and the prerogatives of the United Nations Security Council as set forth in the UN Charter. This goes to show that economic sanctions have to comply with certain international and human rights standards for them to be legally justifiable. It can be

Economic Sanctions vis-à-vis Human Rights

The United Nations Charter obligates the members of the UN to promote “*universal respect for, and the observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion*”¹³⁸. Member states are

¹³³ UNHCR Res 27/21 (2014) (n 13)

¹³⁴ OHCHR (n9) paras 39-40

¹³⁵ UNHRC Res 27/21 (2014)(n 13) preamble

¹³⁶ ‘Report on the targets of unilateral coercive measures: notion, categories and vulnerable groups’. UN Human Rights, Office of The High Commissioner , accessed on 2 May 2022, www.ohchr.org/EN/Issues/UCM/Pages/SRCoerciveMeasures.aspx.

¹³⁷ Joint Communiqué of the 14th Meeting of the Foreign Ministers of the Russian Federation, the Republic of India and the People’s Republic of China (19 April 2016), para 6, available at www.fmprc.gov.cn/mfa_eng/2jdt_665385/2649_665393/t1356652.shtml.

¹³⁸ Article 55 (c) of the United Nations Charter.

mandated to foster the promotion of human rights both in their respective States and internationally. While this is so, States are also required to refrain from the threat or use of force against the territorial integrity or political independence of another state in Article 2(4), this was also restated in the Friendly Relations Declaration of 1970¹³⁹. The principle of non-intervention is intertwined with the principle of self-determination, which is integral to basic human rights. The International Law Commission (ILC) considered in the Draft Code of Offences against the Peace and Security of Mankind¹⁴⁰, it was proposed to add as a species of offence, against peace or security the fact of a State applying measures of psychological or economic coercion in respect of another State and to which some members advocated the inclusion of a reference to economic coercion as a discrete international crime of States. The question that arises is whether or not the imposition of economic sanctions on Zimbabwe as a result of dissatisfaction with its internal affairs amounts to an encroachment of its sovereignty. It is the view of this writer that if a State is in breach of its international law obligations, then it is the duty of other international players to intervene, moderately, however.. However, the crippling of the Zimbabwean economy as a result of economic sanctions is definitely an encroachment on the political independence and sovereignty of the country. An attack on the economic independence of a State is tantamount to an attack on its political independence as the economic dependence of a State on another would mean that it is compelled to implement policies that are politically expedient to the other State in order to gain economic favor. Once a state it has lost its sovereignty and the right to self-determination. Economic sanctions against Zimbabwe are an attempt to take away the State's inherent right to self-determination.

As discussed above, economic sanctions encroach on the right to life, which is mostly a secondary consequence emanating from the infringement of socio-economic rights and other rights alike. The right to life has been established to be the most basic human right and one that is absolute. Socio-economic rights are important in the realization of the right to life, as food, water, sanitation and basic healthcare are anchors to the enjoyment of the right to life. States were urged by the CESCR in its General Comment 8 to *"refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure."*¹⁴¹ What this means is that States are obligated to

¹³⁹ U.N. Doc. A/RES/25/2625, ANNEX: Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations

¹⁴⁰ "Documents of the second session including the report of the Commission to the General Assembly", 1950, Volume 2, *Yearbook of the International Commission*, p. 130, PARA 5a

¹⁴¹ General Comment 8, (n 133 above)

respect the right to life and the anchoring rights needed for its progressive realization, that is, to take reasonable measures to ensure that the consequences of their actions are not harmful to the health or enjoyment of the right to health of persons in other jurisdictions, in addition to their own and also a negative obligation to refrain from imposing any measures that may encroach on these rights. Economic sanctions against Zimbabwe which have crippled the healthcare system are an indirect failure by the United States of America to honor its international obligations under the Convention on Economic, Social and Cultural Rights. States are under an obligation to cooperate and assist in refraining from acts that make it difficult for the poor to realize their right to health. This renders any sanctions regime that undermines the availability and accessibility of basic health care, inconsistent with the international obligation of States and ultimately, a violation of human rights.

There are legal arguments that sanctions have a discriminating effect on the basis of race, nationality and residence of targeted populations. Economic sanctions against Zimbabwe are mostly imposed by powerful States or organizations such as the United States, the United Nations, the United Kingdom and the European Union which are big players in the world economy. The sanctioning entities are those that Zimbabwe being a developing country would naturally rely on for economic support which places them at an economic and political advantage from where they can easily coerce a State into compliance with their demands. Although the reasons for imposing the economic sanctions may seem legitimate, that is to restore the promotion and respect for human rights where there would be violations in the targeted State, but the question remains, who would hold the same countries accountable in the same way where they are in violation of international obligations, given that there are no countries with the same economic advantage that would warrant economic sanctions against the same countries. This is almost tantamount to discrimination against the economically disadvantaged countries and using that disadvantage to subdue them into compliance with the big powers' political demands. The State of Qatar instituted proceedings before the International Court of Justice based on allegations of violations of the International Convention on the Elimination of All Forms of Racial Discrimination through the imposition of unilateral forms of coercion against Qatar by several countries¹⁴², which has brought the issue of economic sanctions amounting to discrimination to the limelight. Economic sanctions may easily violate the international rule of non-discrimination wherein States may not receive the equal treatment due to their economic and political differences.

¹⁴²*Qatar v United Arab Emirates* (11 June, 2018) ICJ Reports

Article 41 of the United Nations Charter states that Sanctions can only be decided on by the UN Security Council¹⁴³. Cognizant of this, the UN Security Council, in its Resolution 39/210 of 18 December 1984, the UN General Assembly called on developed countries to *“refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions incompatible with the provisions of the Charter of the United Nations and in violation of undertaking contracted multilaterally or bilaterally, against developing countries as a form of political and economic coercion which affects their economic, political and social development”*. In light of this, the US and EU sanctions against Zimbabwe may be seen as illegal as they violate the Charter of the United Nations as they were imposed unilaterally and not by the Security Council. Economic sanctions’ effects in Zimbabwe as discussed above have been seen to affect economic and social development and as such, may also be illegal as they infringe on the right to development. The Vienna Declaration and Programme of Action which was adopted by the world conference on Human Rights on 25 June 1993 was more specific, calling on States to *“refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food, and medical care, housing and the necessary social services”*¹⁴⁴. Given that economic sanctions have been seen to violate certain human rights instruments and principles of international law and international humanitarian law and the resolutions calling upon the lifting of such sanctions¹⁴⁵, economic sanctions, especially unilateral measures, are not justified under Human Rights Law.

Other than human rights, economic sanctions are liable to undermine so many international law norms, such as the rules of the sea, principle of non-intervention, sovereign equality of States, peaceful co-existence, the right of communications, human rights and international environmental law. According to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation

¹⁴³ Article 41 of the United Nations Charter (states that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions and it may call upon the 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.)

¹⁴⁴ The World Conference on Human Rights ‘Vienna Declaration and Programme of Action’, adopted 25 June 1993

¹⁴⁵ Human Rights Council Resolution, Res 27/21 adopted September 2014; the resolution stressed that unilateral coercive measures are contrary to the UN Charter and principles governing the peaceful relations among States, that the measures cause socio-economic problems in targeted States.

Among States¹⁴⁶, which is widely regarded as an authoritative interpretation of the Charter of the UN, the use of coercive economic and other measures in order to obtain from a State the subordination of the exercise of its sovereign rights and to secure from it, advantages of any kind violates the principle of non-intervention. One would say that any unilateral sanctions not compliant with the principles of a *jus cogens* character or the principles of the Charter of the United Nations or the principles of International Law, would be unlawful. The imposition of such sanctions violates several provisions of the Charter such Articles 2(1), 2(3), 2(7) and 33; The Articles talk about the sovereign equality of its members, the settlement of international disputes by peaceful means, the principle of non-intervention in the domestic affairs of a State, respectively as and other well established principles of international law.

Juxtaposing the reasons for the imposition of economic sanctions on Zimbabwe with the undeniable effects the economic sanctions have on human rights and other sectors of the targeted States, it is hard to strike a balance between the two. The reasons for the imposition of economic sanctions by the United States and by the European Union are quite reasonable and appear to be for the greater good of the whole population of Zimbabwe. At face value, it would appear as if the measures taken to achieve the objectives of the sanctioning country are justifiable, considering that it is for the benefits of Zimbabweans. However, after careful consideration of the predictable outcome on the rights and wellbeing of the civilian population it becomes questionable whether or not it is rational to compromise ethical values, human rights values to advance democracy and whether it is acceptable to sacrifice the human rights well-being of an entire population in order to force a minority ruling group to comply with the demands of the sanctioning State. The weakness of the US and EU economic sanctions is at their inability to compel change in the targeted country as they are unlikely to achieve their intended goals which is to compel the violators of human rights to retreat their steps even after more than a decade and also in their inability to protect the inalienable human rights of the population. The inalienable nature of human rights suggests that nothing is worth the sacrifice or violation of these rights and perhaps economic sanctions are contrary to the principles of international human rights law, which cancels them as a solution in international diplomacy and as a dispute settlement mechanism.

¹⁴⁶ UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October, 1970. A/RES/2625(XXV) accessed on 23 June 2022, <https://www.refworld.org/docid/3dda1f104.html>

Chapter five- The Solution Chapter

From the previous chapters, it has been laid out that economic sanctions as a dispute settlement mechanism are contrary to the principles governing international human rights law and to an extent international humanitarian law with the inevitable unintended consequences that they have on the humanitarian wellbeing of the citizens of the targeted nation. It has also been discussed how ineffective sanctions may be as a dispute settlement mechanism as it has been noted that many a times, economic sanctions have not necessitated the changes that were sought in adopting economic sanctions. As such, this chapter looks at other dispute settlement mechanisms which are in line with human rights principles that may be adopted in the place of economic sanctions. International law disputes are inevitable in an international community with the co-existence of States. A dispute may be described as a disagreement between two parties on either a point of law or fact, on which parties show opposing views¹⁴⁷. Disputes may either be legal or political grounds and may be settled by either a judicial or extra judicial means as long as they are peaceful means of settling the dispute, that is, not armed conflict.

Summary of findings

This study has established that economic sanctions are adopted as an alternative to armed conflict with the advent of international organizations that call for civilization and the maintenance of international peace and security. Economic sanctions are adopted against States which have failed to honor their international law obligations or alleged to have violated human rights within their own jurisdiction against its own citizens. Although economic sanctions are classified as a peaceful means of dispute settlement as opposed to armed conflict, it has been noted that some scholars have classified sanctions as economic warfare considering the strain and effects they have on the targeted State. Not all sanctions regimes have been implemented in a way that complies with the legal requirements for imposition of sanctions, especially unilateral sanctions such as the United States sanctions against Zimbabwe. However, because of the lack of an international judicial mechanism that governs the implementation of sanctions, it is difficult for these sanctions to be challenged and duly declared illegal.

Further, economic sanctions or even targeted sanctions themselves are rarely effective in achieving the desired outcome given the effects they have on the general populace in the targeted country, which usually worsens rather than mitigates the

¹⁴⁷ A. Khan, *Settlements of Disputes in International Law* Accessed 2 July 2022 on <https://blog.ipleaders.in/settlement-of-disputes-in-international-law/>)

situation. Sanctions against Zimbabwe have resulted in the infringements of various human rights which include the right to the highest attainable standards of health, the right to development, the right to education, the right to food and even the sanctified right to life itself. Economic sanctions against Zimbabwe have crippled the economy so much that it has been difficult to foster the realisation and enjoyment of certain human rights, which are ripple effects of the sanctions, extending even to innocent citizens which are not the main targets of the sanctions. The bone of contention is whether or not sanctions are justifiable in light of International Human Rights Law given the unintended consequences that come with each sanctions regime.

It is my finding that any economic sanctions are not necessarily a peaceful means of settlement of disputes as they have indirect consequences which are more or less the same as armed conflict. In light of the violations of human rights that are a result of economic sanctions on ordinary citizens of a targeted State, economic sanctions are not justifiable under international human rights law. Any sanctions regime that encroaches on the enjoyment of various human rights law cannot by any means be justified as they work against the principles and norms of human rights law. Human rights are sacrosanct and should not be sacrificed for the political or economic gain of any country at any cost. Economic sanctions tend to harm the very people that they seek to protect initially at their imposition. They also harm third party citizens who are not responsible for the conducted that merited the imposition of sanctions, almost like the harming of non-combatants during armed conflict. By virtue of this, economic sanctions are unjustifiable under International Human Rights Law and may need to be replaced by other dispute settlement mechanisms that are more protective of citizens of a targeted State.

Recommendations

The main problem and challenge that emanates from the use of economic sanctions as a dispute settlement mechanism is their encroachment on human rights and the humanitarian wellbeing of the population of the targeted State. Human rights are a sensitive area that need not be compromised at the cost of the population of the affected State, hence the need for viable solutions that ensure that either sanctions are exercised in a way that does not have an effect on human rights or that economic sanctions are lifted altogether. The first solution would be the disregard of economic sanctions altogether whenever there are disputing States. There are several methods of dispute resolution in international law which include judicial and non-judicial mean as shall be discussed. The other solution would be for sanctions to be exercised in a manner that is human rights conscious, implementing sanctions in the legally

prescribed manner, applying humanitarian law principles in the imposition of sanctions and employing sanctions that do not affect human rights. This part of the research offers solutions as per the findings of the writer.

Judicial means

The ICJ is the principal judicial organ of the UN; its function is to decide in accordance with international law, disputes that are submitted to it. UN member States are not under any obligation to submit their disputes to the ICJ however; they are obliged under Art.33¹⁴⁸ to resolve their disputes by peaceful means, of which the ICJ is one. It succeeded the 1920 the Permanent Court of Justice which was created with the intention to prevent violent outbreaks by enabling easily accessible methods of dispute settlement in the legal and organizational framework. Unlike domestic Courts, the jurisdiction of the ICJ in contentious cases is based on the consent of the parties to the dispute to submit their dispute to the ICJ for adjudication, for this reason, some consider the ICJ as an ineffective dispute settlement mechanism. States are reluctant to consent to the adjudication of conflicts by the ICJ *ex ante*, considering the important political issues that may be at stake. The original jurisdiction of the Court can be exercised under two main grounds: (a) contentious jurisdiction and (b) advisory jurisdiction. In the exercise of its jurisdiction, only the ICJ'S decisions in contentious cases are binding and only on the parties to each particular case. The consent of the state parties may be explicit or implicit, and is derived from several areas: (i) by special agreement; (ii) in treaties or conventions; (iii) by compulsory jurisdiction; (iv) via forum prorogatum; (v) by the Court's own determination of its jurisdiction; (vi) from interpretation of a judgment; and (vii) from the revision of a judgment Therefore, they can create *res judicata* with respect to the parties, advisory opinions however do not create *res judicata*, despite this fact, the authority of the Court is such that both its judgments and advisory opinions effectively carry equal authority as indications of international law. As such, where there is a dispute or an alleged violation of international obligations by a state, the dispute may be submitted to the ICJ where parties consent to its jurisdiction and the matter may be heard by the court whose decision may be binding on the parties and thus settled. In 2018, in a case brought by Iran against the US (Iran vs United States, (Nuclear Sanctions Case)) Judges at the International Court Of Justice handed a victory to Tehran, which had argued that sanctions imposed since May by the administration of President Donald Trump violate the terms of a 1955 Treaty of Amity between the two countries. The enforcement of the decisions of the ICJ is another

¹⁴⁸ United Nations, Statute of the International Court of Justice, 18 April 1946, Accessed 19 June 2022, <https://www.refworld.org/docid/3deb4b9c0.html> (Article 33)

matter altogether which may pose challenges, but States would be a step closer to settling the dispute in a peaceful manner if the matter is decided by the ICJ.

On the other hand, the matter may be submitted for an advisory opinion on the alleged offence of the targeted State or on the legality of a particular sanctions regime that is intended to be adopted. Advisory opinions are non-binding opinions of the Court that nevertheless carry great weight in the realm of international law and have the ability to strengthen “peaceful relations between States.” The advisory jurisdiction of the Court is guaranteed under Chapter IV of the ICJ Statute. A request for an advisory opinion may also be submitted in relation to a sanctions regime that has already been adopted in terms of its implications and whether or not it is in line with international human rights law and the law surrounding the peaceful settlements of disputes. The court may hand down its advisory opinion which the parties may rely on in making a decision on whether to adopt the sanctions regime or to maintain an already existing regime. The ICJ could be an effective alternative in the settlement of international disputes that would otherwise lead to the imposition of economic sanctions.

Non-judicial means

There are other means of dispute settlement which are non-judicial that may be considered by States in place of sanctions. One such way is negotiation, which essentially entails discussions between interested parties, without third parties. The interested parties would decide among themselves how best to solve the dispute and would be directly engaged. Negotiation may be initiated by parties themselves or may be directed by tribunals with indications on areas to focus on and this is called judicially directed negotiation. Negotiations require good faith¹⁴⁹ and must be distinct from mere protests or disputations¹⁵⁰, but genuine discussion that seeks to come to a viable solution. Negotiation plays an important role in three stages of international adjudication that is pre-adjudication stage, adjudication stage and post-adjudication stage. However, there is no obligation for States to negotiate as States have free recourse to an appropriate remedy of their own choice as was stated in the *Cameroonian/Nigerian case*¹⁵¹.

¹⁴⁹ Germany v Denmark and the Netherlands ICJ Reports 1969,

¹⁵⁰ Y. Tanaka, *The Peaceful settlement of International Disputes*, Cambridge University Press, 2018

¹⁵¹ Cameroon v Nigeria ICJ Reports 1988, 275. (Land and Maritime Boundary between Cameroon and Nigeria, where it was held that “Neither the Charter nor otherwise in international law is any general rule to be found to the

Good offices and mediation is the use of a third party, either an individual, State or a group of States to come to a settlement or agreement. The third party attempts to influence the opposing sides to enter into negotiations whereas mediation implies the active involvement of in the negotiating process of a third party. The U.S President for example, assisted peaceful settlement of India-Pakistan Dispute in 1965 through good offices¹⁵². A mediator has an active role in seeking to bring disputing parties into agreeing to what are often his own proposals. The United Nations plays a good role in in good offices and mediation. When successful, mediation is likely to result in a compromised solution which offers something to each party in the dispute.

Another peaceful method of settling disputes is through an inquiry, a diplomatic means of settlement, through which an enquiry commission of observers who aim to ascertain the facts in contention. It is usually limited to cases where there is a disagreement of fact. It was used in the Dagger Bank Incident of 1904¹⁵³ and the Goldstone inquiry of 2009 which reported that the Israel and Palestinian armed groups had breached International law. Inquiry as a separate mechanism however have fallen out of favour and replaced by enquiries in the sense of fact finding within the context of various UN Organs.

Conciliation is a third party investigation of the basis of the dispute and submission of a report embodying suggestions for a settlement which are not binding to any party but merely proposals. It usually involves, five parties, two from disputing States and three from third party States. The rules of conciliation were elaborated in the 1928 General Act on the Pacific Settlement of International Disputes¹⁵⁴. A number of multilateral treaties provide for conciliation for example, the Vienna Convention on the Law of Treaties.

International disputes may also be settled through the United Nations. The procedure is set out in Chapter VI of the UN Charter. It can be divided into three stages, which are submission of a dispute, adoption of an agenda and discussion and the determination of specific measures. Parties are required by Article 37(1) of the Charter to submit disputes that are likely to endanger international peace and security and which they have failed to settle using peaceful means and request that the Security Council make recommendations to the parties with a view to a pacific settlement. The dispute may be submitted by a third State, the General Assembly or

effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the court") //

¹⁵² Indo-Pakistani Relations 1947-1965

¹⁵³ Great Britain v Russia, The Hague Court Reports, 403

¹⁵⁴ 1928 General Act on the Pacific Settlement of International Disputes, Resolution 268 A (III), Official Records of the General Assembly, Third Session, Part III (A/900)

the Secretary General, non-members may also bring to the attention of the Security Council or the General Assembly any dispute to which it is party if it accepts in advance the pacific settlement and its obligations as provided in Article 35(2) of the Charter. Such obligations include the peaceful settlement of international disputes as set out in Article 2(4). The Security Council may make recommendations on the settlement of disputes despite their being pending before the UN General Assembly and the ICJ. Disputes may also be dealt with by the General Assembly. Regional arrangements may be made for the settlement of international disputes. The key factor to be noted in these means of dispute settlement is the peaceful nature of the disputes, that is without armed conflict and most of them without unintended implications on the humanitarian wellbeing of ordinary citizens. These methods of dispute settlement would certainly be better under International Human Rights Law as they do not interfere with or infringe the rights of the ordinary citizens of affected countries.

Instead of imposing economic sanctions, if the targeted State is party to a human rights treaty, then the mechanisms stipulated in the treaty like the interstate complaints mechanism should be used against the delinquent State. . Any violations of human rights violations may be referred to a human rights treaty body or the Human Rights Council where the erring State is not a party to the treaty in question. Where the State is not a party to the relevant human rights treaty, human rights enshrined in the Universal Declaration of Human Rights would still have been violated and in this case, other States may bring the matter to the attention of the UN Security Council or the Human Rights Council which would hold the State accountable for any human rights violations. The Security Council could take any action of its choice or refer matters relating to crimes against humanity to the International Criminal Court¹⁵⁵. The Universal Periodic Review may also be made use of to make States accountable for human rights violations. The UN Human Rights System does not envisage the adoption of unilateral sanctions against a State which violates human rights by other States, only if neither the Security Council nor the Human Rights Councils able to take any measures can unilateral sanctions be taken against the erring State provided that the decision as to whether there has been any violation of human rights is duly made by based on reports of special rapporteurs for human rights, independent commissions of enquiry established by the UN Security Council or through the Human Rights System. This would be a decision by UN member States to protect human rights globally as the violation would be an internationally wrongful act. Sanctions are only justifiable if there relevant procedures have been followed.

¹⁵⁵ Rome Statute of the International Court of Justice (*n 152 above*) Article 13(b) and Article 15 (which empower the Security Council to refer matters to the International Criminal Court)

Solutions in the event that sanctions are employed

In the event that a State has proceeded with unilateral coercive measures or economic sanctions, perhaps certain principles should guide the imposition of the sanctions. There are fundamental human rights that should not be compromised at any cost, such as the right to health. States must stay away from any measures that interfere with the right to health and the enjoyment of this right. If any economic sanctions affect the targeted State's ability to deliver an adequate standard of healthcare to its citizens, they should be considered as contrary to human rights principles and therefore illegal. Michelle Bachelet, United Nations High Commissioner for Human Rights said in March 2021 when the Covid-19 had just been declared a global pandemic¹⁵⁶ that sanctions that could affect the health sector were to be suspended or eased to ensure that millions of people in countries being targeted by sanctions could access essential medical equipment and treatment. She called on sanctioning countries to reassess re-evaluate their use of unilateral coercive measures to avoid adverse human rights impacts. Where States impose sanctions because of human rights violations and the measures result in the violation of human rights, the imposing States themselves would have committed an internationally wrongful act. Therefore, there should be a balance between the rights of the imposing State and the rights of the people in the targeted nation is needed when invoking the right to protect human rights globally to justify unilateral sanctions. The same goes for other fundamental human rights, where sanctions affect the enjoyment of human rights or where they miss the intended target and have even more effect on the innocent citizens of a targeted State, they should be rethought and perhaps be lifted for want of unintended consequences.

Principles of international humanitarian law may be used to guide against sanctions measures that affect the humanitarian wellbeing of citizens in a targeted country. Although it may be difficult to qualify economic sanctions within the prisms of International Humanitarian Law as the normative understanding of International Humanitarian Law is that it only governs State conduct during armed conflict. However, economic sanctions may not be armed conflict in the literal sense but they are definitely a result of conflict or disputes between sanctioning States and the targeted State, which one may even classify as a method of warfare or weapon, economic weapon. It has been argued that International Humanitarian Law is the most

suitable paradigm through which economic sanctions are to be governed¹⁵⁷. The UN Special Rapporteur on Unilateral Coercive Measures expressed views that notwithstanding the legal technicalities related to the scope of Geneva Convention and related instruments, legal right holders in sanctioned States where the negative impact of such measures is acute could be considered as in a “war zone”¹⁵⁸. This would mean that principles of International Humanitarian Law are applicable and these would render economic sanctions unjustifiable in light of the principles of International Humanitarian Law such as proportionality, necessity, distinction between, prohibition on causing unnecessary suffering and superfluous injury and the principle of neutrality. For example, with regards to the principle governing distinction, International Humanitarian Law requires conflicting States to distinguish between combatants and non-combatants so as to exempt non-combatants from the scathes of war. In light of sanctions law, this would require that economic sanctions adopted avoid as much as possible affecting ordinary citizens who are not in any way involved in the governance of the country. Where economic sanctions foreseeably have effect on the humanitarian wellbeing of ordinary citizens, they should be refrained from.

Sanctions legitimacy and legality may be measured through a juxtaposition of parties involved. Countries are not supposed to abuse their homogeneity or power over other countries in order to coerce them into compliance. Where an economically or otherwise powerful country uses the unfair disadvantage to impose sanctions on another State, the sanctions should be questioned. According to Zhang Wanhong, Professor of Jurisprudence at Wuhan University School of Law¹⁵⁹, the international community generally didn't recognize the legitimacy of unilateral coercive measures. He further indicated that the United States and other countries had abused their hegemonic parties which they have turned into punishment against innocent populations and particularly devastated vulnerable groups. Perhaps the negative effect of sanctions against human rights may be corrected by the stronger States desisting from abusing their positions to compel weaker States into submission, sanctions should be adopted genuinely to advance international interests at no cost to human rights or the sovereignty of a State.

¹⁵⁷ N. Milaninia , ‘Jus Ad Bellum Economicum and Jus In Bello Economico; The limits of Economic Sanctions under the Paradigm of International Law Standards to United Nations Economic Sanctions Programmes’, 1998, Vol 9, *European Journal of International Law*.

¹⁵⁸ I. Jazairy, ‘Report on the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human right’, United Nations Human Rights, Office of the High Commissioner, accessed on 17 June 2022, UN.Doc.A/HRC/30/45, para 42

¹⁵⁹ High Commissioner to Human Rights Council, ‘Sanctions can create Severe and Undue Suffering For Individuals who Have Neither Perpetrated Crimes Nor Otherwise Borne Responsibility for Improper Conduct’, accessed on 10 July 2022 www.ohchr.org

Another solution to the encroachment of economic sanctions on human rights would perhaps be to adopt sanctions only within the United Nations System. According to the United Nations Charter¹⁶⁰, only the Security Council shall determine if there has been a breach of peace and what measures may be take, including interruption of economic relations. Under these provisions, economic sanctions are legal if imposed in accordance with the United Nations Charter and duly authorised by the Security Council. This way, stringent measures with potential foreseeable harm on the humanitarian wellbeing of the targeted nation would be avoided as the UN is the guardian of human rights and anything contrary to the principles of the organization would be nullified. International Law should formally illegalize unilateral coercive measures and stringent measures that only allow the UN to impose economic sanctions, that way weaker countries are guarded from punitive or coercive sanctions that are meant to compel them into compliance.

Mitigating the humanitarian impact of sanctions requires the international community to continue reviewing the way sanctions are designed and implemented. Rosemary DiCarlo, Under Secretary General for Political and Peace building Affairs pointed out the continued difficulty in reviving the banking channel for humanitarian transfers to the Democratic Republic of Korea since its collapse in 2017¹⁶¹ as an example of the concerns that come from the unintended consequences of economic sanctions. She also suggested monitoring by the Council's sanctions committees for possible negative consequences and increasing cooperation with humanitarian actors. Unintended humanitarian consequences could be prevented if the Council and imposing States could include comprehensive humanitarian carve outs from the onset. If there was a strict sanctions framework that each sanctions regime is supposed to adhere to that are avoidant of adverse humanitarian consequences.

In addition, the adoption of “smart sanctions” has been proposed in order to avoid humanitarian consequences of sanctions. These sanctions are conceived of as directly affecting the targeted parties on a personal level and avoiding the general populace. They may target the personal foreign assets of the targeted people such as government officials or the ruling elite whose assets may be frozen and investments in their businesses prohibited. Although this avenue has proven to be fruitless as it may still produce the unintended consequences that are meant to be avoided, for example through lack of employment of ordinary citizens who may have been benefiting from the businesses of targeted individuals, consequently causing unintended

¹⁶⁰ UN Charter (*n 40 above*)

¹⁶¹ United Nations Security Council, ‘Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met’, 8962nd Meeting (AM) SC/14788 7 February 2022, Meetings Coverage and Press Releases, Accessed on <https://press.un.org/en/2022/sc14788.doc.htm>

consequences, it is a better avenue to take as in this case, sanctions will be directly imposed on targeted individuals, thereby mitigating the humanitarian impact of economic sanctions.

In the event that for any justifiable reason, a State has resorted to sanctions of an economic nature against another State, they would be permissible if they pertain to areas not regulated by International Law, such as unfriendly measures such as the withdrawal of voluntary aid programmes or severance of diplomatic relations. Although ethical in terms of international conduct of States, a State may not be forced to provide its humanitarian aid to another State. Thus the lawfulness of sanctions may be determined on the basis of limitations on the freedom of action by assessing the general principles of international law and the UN Charter affected in the course of the implementation. If the sanctions do not affect any of these, they may be permissible.

Lastly, another solution to economic sanctions that affect the humanitarian wellbeing of the citizens of targeted State would be the reconsideration or lifting of the economic sanctions in question. This is a nearly impossible solution as has been seen with the prolonged sanctions against Zimbabwe despite the sanctioning States being constantly urged to reconsider by offices like the UN High Commissioner for Refugees at the time, which called at a UNICEF meeting for the reconsideration of economic sanctions that have a negative humanitarian impact on the targeted State that as they should operate without making the disadvantaged even more disadvantaged¹⁶². Where economic sanctions inflict more pain than is necessary to compel the sanctioned government to change its policies, they are in breach of international humanitarian law principles and would deserve to be lifted. However, it is difficult to convince a State to lift its sanctions regime against another State as has been seen with the US sanctions against Zimbabwe that have been in force for over a decade. Perhaps if sanctions were a judicially enforceable or challengeable issue, this would work better, as an order of a judicial body to have a sanctions regime declared illegal and to be lifted. The first step would be having sanctions as a judicially enforceable matter since it affects human rights like other human rights matters.

Finally, States which have been subjected to unilateral sanctions, which are unlawful, may adopt several remedies that are available to them. The ILC in its commentary to the Draft Articles on State Responsibility¹⁶³ stated that international obligations may be established by a customary rule of international law by a treaty or by a general principle applicable within the legal order, therefore an international obligation may

¹⁶² Braunmhul, Kulessa (*n 93 above*)

¹⁶³ International Law Commission, 'Articles on State Responsibility', International Law Commission Report A/56/10 August, 2001

arise from a violation of rule of customary international law. However, the difficulty is that the injured State cannot find a judicial recourse as there is no international adjudicatory body that has jurisdiction to deal with such matters unless States voluntarily consent to it. States may however resort to the ICJ in cases where States have consented to its jurisdiction or if it's a violation of an existing human rights or bilateral treaty due to the imposition of such sanctions to which the imposing State and the targeted States are both parties. An example is the case instituted by Qatar against the UAE in 2018 alleging the violation of provisions of the provisions of the Convention of the Elimination of All Forms of Racial Discrimination due to the economic blockade against Qatar by the UAE and other Arab States¹⁶⁴. Individuals living in the affected State also have several remedies such as applying for judicial review of the measures to the national courts of the targeting State itself. This would however be subject to meeting a number of conditions pertaining to the jurisdiction of the courts in the targeting State. Another solution is petitioning to various UN human rights committees, in regional human rights courts or commissions a case may be filed against the targeting State for violating the rights of individuals in the targeted State if the rights in question are protected by regional human rights treaties. The *Kadi*¹⁶⁵ case is an example, where *Kadi* challenged smart sanctions against him before the EU courts. The CJEU in its judgement on appeal found that the protection of fundamental human rights forms part of the foundations of the Union legal order. Further there is also the interstates complaints which allow States whose citizens have suffered from human rights violations due to unilateral sanctions to refer the matter to UN Human Rights committees as did Qatar against the UAE and Saudi Arabia before the Committee on the Elimination of all forms of Racial Discriminations under the same convention.¹⁶⁶

In conclusion, this work has unfolded the fragile balance between the imposition of economic sanctions with the aim to achieve positive policy changes in adherence to international law standards and their unintended consequences on human rights particularly in the targeted States. In light of the negative effect of economic sanctions on the humanitarian wellbeing of innocent citizens and the low likelihood of their effectiveness in achieving the desired change, economic sanctions may be found to be unjustifiable under international human rights law. In the place of sanctions, other dispute settlement mechanisms may be preferred although the methods may also prove to achieve minimum results, they are without the cost of human rights. On

¹⁶⁴ Alleged violations of the CERD through economic measures against Qatar by the UAE, Bahrain, Egypt and Saudi Arabia on 5 June 2017.

¹⁶⁵ *Kadi v Council of the European Union and Commission of the European Communities*, C-402/05 P AND c-415/05 P, Court of Justice of the European Union, 3 September 2008, Accessed on 14 July 2022, <http://www.refworld.org/cases>, ECJ, 5151e6bbbe4.html

¹⁶⁶ The Qatar case against Arab countries, (n 173 above)

the other hand, if economic sanctions are preferred, perhaps sanctions to be adopted within the UN framework as provided for by the charter smart sanctions targeted at individuals would be more appropriate alongside a guiding framework within which economic sanctions should fall which monitors and carves out the negative effects on human rights for each sanction regime to be legal and justifiable under International Human Rights Law. Perhaps the time has come to conclude an international treaty under the auspices of the UN governing sanctions which may include provisions for judicial settlement arising out of the use of unilateral sanctions.

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