

# Examining unilateral economic sanctions from the perspective of international law: With an emphasis on human rights instruments

<sup>1</sup>Ahmad Khosravi <sup>2</sup> Seyyed Mohammad Razavi <sup>3</sup> Atefeh Ajori Ayask  
<sup>4</sup> Qassem Nakhaipour

<sup>1</sup>Assistant Professor, Department of Law, University of Birjand, Birjand, Iran  
Corresponding Author: [a.khosravi@birjand.ac.ir](mailto:a.khosravi@birjand.ac.ir)

<sup>2</sup>Assistant Professor, Department of Law, University of Birjand, Birjand, Iran  
[razavi1213@birjand.ac.ir](mailto:razavi1213@birjand.ac.ir)

<sup>3</sup>Assistant Professor, Department of Law, University of Birjand, Birjand, Iran  
[ajori@birjand.ac.ir](mailto:ajori@birjand.ac.ir)

<sup>4</sup>Assistant Professor, Department of Law, University of Birjand, Birjand, Iran  
[ghnakhaipour@birjand.ac.ir](mailto:ghnakhaipour@birjand.ac.ir)

## Abstract

Following the ban on the principle of non-use of force, governments turned their attention to sanctions (economic coercive measures) as the main means of achieving their foreign policy goals. The desirability of countries using unilateral sanctions now stems from the idea that; it is the middle ground between diplomacy and the use of force and is also a simple and peaceful tool to change the behavior of governments. Recent developments in international law and relations reinforce this argument about the reasons for unilateral sanctions. Illegal extraterritorial sanctions against third countries have also sparked further controversy as well as an international outrage. This article examines unilateral sanctions in contemporary international law, which concludes as follows: (1) Unilateral sanctions are a violation of contractual, customary international law, as well as a violation of the rule of international law; (2) Although in some cases the doctrine of international law in retaliation is invoked to legitimize unilateral sanctions, these sanctions cannot be considered reciprocity according to the theory of international responsibility of the government. Therefore, it must be argued that; unilateral sanctions are completely contrary to international law.

**Keywords:** Unilateral Sanctions, International Government Liability, Compensation, International Documents, Human Rights

sanctions have been widely seen by the major powers as a more appropriate and effective alternative to war. In practice, however, sanctions are seen as winning tools that do not seem to be controlled by international law (Owen, 2012, pp: 103-123) because sanctions are a violation of treaties, customs, and norms that have severe consequences for the government targeted by sanctions.

Multilateral sanctions are approved by international organizations and are often aimed at forcing the sanctioned government to comply with international

## Introduction

In international law, a sanction is a means of pressuring governments to change their undesirable behavior or policies and is now frequently used in international law and relations. Sanctions against a country may be multilateral or unilateral. Multilateral sanctions are imposed by governments that operate in the United Nations, often with the support of international organizations, such as the United Nations. While unilateral sanctions are imposed by one government and unilaterally. Since the 1990s, unilateral

or a threat to withdraw from a normal trade or trade relationship (Hufbauer et al. 2007, p: 3.).

One of the authors describes the sanctions as "coercive economic action against one or more countries to force policy changes, or at least show that country other alternative policies." (Carter, 1988, p. 4). Sanctions are used as part and parcel of international diplomacy and as a tool for (governments' coercive goals) to respond to specific possible (Hufbauer et al., 2007 p: 5). Unilateral sanctions are generally seen as a low-cost solution to the contrary behavior of foreign governments, companies or individuals. Its situation is in some cases between diplomacy and military conflict (The Legality and Effectiveness of Unilateral Sanctions, 2014). Other amendments such as (unilateral coercive measures), economic sanctions (short-term coercive measures) are also used to mean unilateral economic sanctions. By using sanctions as an economic, peaceful, effective, and covert solution, there is no need for the sanctions government to use force. Sanctions do not result in casualties outside the sanctioned government, but it puts so much pressure on the embargoed country that it cannot resist it (Padover 1942 p: 108). There are many examples of secondary sanctions. For example, the United States imposed secondary sanctions on Iran and Libya through the law (Iran-Libya Sanctions Bill)<sup>1</sup>. The law was a congressional bill that imposed economic sanctions on companies doing business with Iran and Libya. On September 30, 2006, the bill has renamed the Iran or ISA<sup>2</sup> Sanctions Bill. Recent US sanctions against Iran, apparently aimed at ending Iran's nuclear program, are examples of secondary sanctions. Iran's claims are fully in line with the rights enshrined in the Nuclear Non-Proliferation Treaty<sup>3</sup>.

<sup>1</sup> Iran and Libya Sanctions

<sup>2</sup> ISA

<sup>3</sup> Article 9 of the 1970 Nuclear Non-Proliferation Treaty grants the right to respect for the right to develop research, production and use of nuclear energy for peaceful purposes.

law (Lopez-Jacoiste, 2010, pp: 273-335; Szasz, 1998 pp: 455-481). The rationale for unilateral sanctions is that; the severe economic difficulties caused by the economic sanctions force the political opponents in the target government to stand up against their leaders and demand changes and force the target government to change the protested behavior. (Askari et al., 2003 pp: 68-69). Economic sanctions have also raised human rights concerns. Because the harmful and destructive effects of these sanctions on the living conditions of the citizens of the country increase the possibility of violating basic human rights such as the right to adequate food, access to basic medicines, the right to health, etc. (Javed, 2014: 107).

In this regard, the basic question arises; what is the status of the use of unilateral and multilateral sanctions by superpowers in terms of international instruments, especially international human rights instruments? The reason for the necessity of this discussion in human rights documents is that; Economic sanctions typically have far-reaching human rights consequences, such as a serious threat to the right to life of the citizens of the sanctioned state. In the first part, the meaning of economic sanctions, their history is discussed. The second section discusses the legitimacy of economic sanctions in treaty law, custom, and international jurisprudence. The third section discusses the doctrine of international responsibility of governments and the difference between retaliatory measures and economic sanctions.

### **The concept and history of economic sanctions**

Unilateral sanctions are typically imposed by a government as the main tool of its foreign policy to correct the conduct of the sanctions government ((Unilateral Sanctions and International Law: Views on Legitimacy and Consequences 2013, p. 9). Some authors define unilateral sanctions as a deliberate withdrawal by a government

Lillich, 1976; Paust and Blaustein, 1977; Brownlie, 1963).

The Declaration on the Prohibition of Interference in the Internal Affairs of Governments states that<sup>5</sup>: (No State shall be compelled to compel another State to adopt or encourage the exercise of economic, political or any other measure to obtain compliance with that State's right to exercise its sovereign rights or to enjoy any privilege or advantage)<sup>6</sup>. Paragraph 1 of the Declaration stipulates that; "Armed intervention and all other forms of intervention, or the beginning of threats against the character of the state or its political, economic and cultural elements, violate international law." Five years after the Declaration, General Assembly Resolution 2625 was issued, entitled "Declaration of the Principles of International Law on Friendly Relations and Cooperation between States under the Charter of the United Nations"<sup>7</sup>. The text of paragraph 1 above has been explicitly endorsed in the text of the above-mentioned resolution, which has been widely accepted as the competent text for the interpretation of the Charter of the United Nations. (Rosenstock, 1971, p: 713). The International Covenant on Economic, Social, and Cultural Rights freely states the right of all nations to self-determination and economic, social, and cultural development<sup>8</sup>. The UN General Assembly has also emphasized the principle of non-interference through unilateral economic action in the Charter of Economic Rights and Duties of States, adopted by the 1974 UN General Assembly<sup>9</sup>. Over the years, the UN General Assembly has adopted several resolutions declaring the use of economic

## **Unilateral sanctions and treaty rights Charter of the United Nations**

Because the Charter of the United Nations imposes multilateral sanctions only through the United Nations collective security mechanism, Unilateral sanctions imposed outside the mechanism are illegal under the Charter of the United Nations. According to Article 39 of the Charter, the Security Council will make recommendations and recommendations on the existence of any threat to peace, breach of peace, or act of aggression. Article 41 of the Charter, therefore, provides a set of measures that can be imposed by the United Nations Security Council. Accordingly, the Council may request member States to implement the measures adopted by the Council. Both of the above-mentioned articles do not contain explicit or implicit provisions by which member states alone can impose unilateral sanctions.

Opponents, however, argue that; Unilateral sanctions are not in conflict with the Charter, as Article 4 4 4 of the Charter prohibits only (threat or use of force) unilaterally. Therefore, the prohibition in the Charter cannot include unilateral economic sanctions of states against each other. Because these sanctions do not involve any force or even threat of use of force, Article 4 4 4 of the UN Charter prohibits members from threatening to use force against the territorial integrity or political independence of any State (Cleveland, 2001, pp. 50-52). The question that arises here is; does the word "force" in paragraph 4 of Article 2 of the Charter include economic pressure? In other words, are unilateral sanctions legitimate under Article 2 4 4 of the Charter? Most international law writers recognize the illegitimacy of economic sanctions under the UN Charter <sup>4</sup>(Simma, 2002 p: 118;

<sup>5</sup> The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States.

<sup>6</sup> Paragraph 2 of Declaration 2131 adopted 1965.

<sup>7</sup> the Declaration on Principles of International Law Concerning Friendly Relations

<sup>8</sup> Article 1, paragraph 1, of the Covenant on Economic, Social and Cultural Rights.

<sup>9</sup> Charter of Economic Rights and Duties of States, 3281, 1974.

<sup>4</sup> Despite the Brazilian government's efforts to include economic pressure in Article 4, paragraph 2, of the UN Charter, the proposal was rejected at the San Francisco Conference.

in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, the obligations under the Charter shall prevail. Sanctions imposed by the United Nations are therefore justified, even if the breach of an obligation under a treaty is justified unless it is considered a violation of an internationally mandated rule (Thematic Study of the Office of the United Nations High Commissioner for Human Rights, 2012, p. 8). Unilateral actions violate the rights and obligations of governments in many unilateral and multilateral international agreements. However, according to the traditional interpretation, the most important goal of classical international law was to regulate military action and the use of the armed forces, not foreign trade policies (Queguiner, 2006, p. 793). Therefore, according to this interpretation, countries are completely free in their economic policies towards other governments, including economic sanctions, and do not contradict the UN Charter. But this narrow interpretation of international law ignores the oppressive nature of economic sanctions and their destructive effects on the people of the target government (Reisman and Stevick, 1998, pp: 98–105, 110–111.).

According to human rights instruments, four categories of human rights can be distinguished: Fundamental human rights (eg political imprisonment and torture), economic rights (eg property rights, freedom of trade), liberating rights (such as women's economic and political rights), and political rights and civil liberties (eg freedom of assembly and speech). For example, the right to life is endangered through death threats, disappearances, and torture (Gutmann, j. Ant et. Al, 2018: 4). The right to life<sup>13</sup> and adequate living

force by governments illegal<sup>10</sup> and urgent and effective measures were taken by developed countries against developing countries to stop the application of unilateral sanctions imposed without the permission of the United Nations or contrary to the principles of the Charter<sup>11</sup>. While it is accepted that UN General Assembly resolutions are not binding, it should be noted that these resolutions play a major role in the proclamation of existing customary law as well as the emergence of customary rules. (O. Asamoah, 1967, pp. 46-62)<sup>12</sup>. Therefore, the use of unilateral economic pressure by governments violates the prohibition on the use of force provided for in paragraph 4 of Article 2 of the UN Charter. This prohibition is also stated in international legal documents and resolutions.

Unilateral sanctions are also inconsistent with Article 7 7 7 of the Charter because the prohibition in this article refers to the intervention of the United Nations, not the unilateral intervention of governments (Jennings and Watts 1992 pp. 447-449). Overall, paragraphs 7 and 4 of Article 2 of the Charter implicitly prohibit all forms of civilian intervention, including economic pressure and coercion against other countries. Finally, paragraph 3 of Article 2 and Article 33 of the Charter of the United Nations oblige member states to settle their disputes by peaceful means. However, unilateral sanctions are not one of the peaceful means of resolving international disputes. As a result, its application in international relations is contrary to the obligations outlined in the said articles (Brosche, 1974, p: 32).

### Other international treaties

Sanctions imposed by the United Nations are covered by Article 103 of the Charter,

<sup>13</sup> Article 3 of the Universal Declaration of Human Rights 1948 and paragraph 1 of Article 6 of the Covenant on Economic, Social and Cultural Rights.

<sup>10</sup> For example, the 1980 Declaration of Inadmissibility of Interference in the Internal Affairs of Other Governments, 1980, <sup>11</sup> Resolution "Unilateral economic measures as a tool of political and economic pressure against developing countries" 1995.

<sup>12</sup> *Legality of the Threat or Use of Nuclear Weapons*, (Advisory Opinion), ICJ Reports (1996), p. 226, paras. 70 71

bans against civilian hunger as a war tactic are grossly violated by unilateral sanctions, which impose widespread restrictions on food and agricultural production. Diplomatic sanctions Violations of the Vienna Convention on Consular and Diplomatic Relations 1961 and 1963 also occur were diplomats or consular agents of the government influence the purpose of the sanctions. Unilateral travel bans are a violation of the right of free movement, as recognized in Article 12 of the 1966 Covenant on Civil and Political Rights. Unilateral sanctions are also a kind of disregard for the Convention on the Law of Treaties (1969), which stipulates; States should refrain from actions that harm the purpose of a treaty when it has signed the treaty subject to ratification, acceptance, or approval. Or have exchanged the documents constituting the treaty, or have expressed their consent to be bound by the treaty<sup>18</sup>. Based on the principle of the necessity of the contract<sup>19</sup>, any binding treaty is binding on its parties and must be performed by them in good faith<sup>20</sup>. US sanctions against Iran and Cuba also violate the World Trade Organization's 1947 General Agreement on Tariffs and Trade (GATT)<sup>21</sup>.

## International custom

### Customary International Law

The imposition of economic sanctions is also in conflict with international custom for some reasons, including:

### Sovereignty and competence

The legitimacy of the principle of sovereignty is recognized in paragraph 1 of Article 2 of the Charter of the United

standards<sup>14</sup>, freedom from hunger<sup>15</sup>, health<sup>16</sup>, and other economic, social, and cultural rights are violated through the imposition of unilateral coercive sanctions. (The concept of the right to life is at the heart of the debate over the death penalty, easy death, legitimate defense, abortion, and war.) (Qari Seyed Fatemi, 2000 p. 87). Where economic sanctions are so severe that the sanctioned government is unable to export to generate revenue for its public spending, or imports its basic goods, food, medicine, and medical equipment, the right to proper living standards, health, and, finally, the right to life is endangered. Where economic sanctions are so severe that the sanctioned government is unable to export to generate revenue for its public spending, or imports its basic goods, food, medicine, and medical equipment, the right to proper living standards, health, and, finally, the right to life is endangered. Such conditions inevitably lead to inflation, unemployment, malnutrition, and the spread of deadly diseases. Syria, for example, has been barred from US humanitarian aid since 2004 due to severe US sanctions, and bilateral trade has been restricted; the cost of living is rising and at the same time living standards are falling, and the country's economy is still on the brink of collapse as a result of aid from friendly countries alone (Masters, 2014, p 42). Pervasive poverty, interruptions in the provision of social services, and a shortage of food and shelter, and the spread of deaths are the result of unilateral economic sanctions (Zanganeh Shahraki and Zamani, 2013: 38)<sup>17</sup>. In addition, humanitarian law

<sup>18</sup> Article 18 of the 1969 Vienna Convention on the Law of Treaties.

<sup>19</sup> *pacta sunt servanda* principle

<sup>20</sup> Article 21 Same.

<sup>21</sup> Article 11 (1) and Article 12 (1) of the GATT Agreement. Article 2 of the Agreement on Trade-Related Investment Measures (Trim Agreement), which provides that: No Member State shall impose trade-related investment measures contrary to its national obligations or conduct and the general removal of the quantitative restrictions provided for in Article 3 (4) and Article 11 (1).

<sup>14</sup> Paragraph 1 of Article 25 of the Universal Declaration of Human Rights and paragraph (1) of Article 11 of the Covenant on Economic, Social and Cultural Rights.

<sup>15</sup> Article 11, paragraph 2, of the Covenant on Economic, Social and Cultural Rights.

<sup>16</sup> Ibid., Paragraph 1 of Article 12 of the Covenant on Economic, Social and Cultural Rights and paragraph 3, Theory No. 8 (1997 Committee on Economic, Social and Cultural Rights) on the relationship between economic sanctions and respect for economic, social and cultural rights.

<sup>17</sup> Article 54 of the Protocol to the Geneva Conventions, 1949, concerning the Protection of Victims of Armed Conflict (Protocol I); Article 14 Protocol to the Geneva Conventions, 1949, concerning the Protection of Victims of Non-International Armed Conflict (Protocol II).

completed outside the country and according to the principle of objective territorial jurisdiction, where the crime started outside the territory of a country but was completed in the territory of that country, the investigation is within the jurisdiction of that state (Umozurike, 2005, p. 86; Kern, 2009, pp. 70-71; Shaw, 2008, pp. 652-654).

Although the jurisdiction of countries is largely based on territorial jurisdiction, it is not limited to that.

According to the principle of personal jurisdiction (citizenship-based jurisdiction)<sup>23</sup>, states can prosecute their nationals for committing a crime anywhere. The citizenship of the perpetrator is the basis of this type of competence. This competence is divided into two types, active and passive. According to the principle of active personal jurisdiction<sup>24</sup>, if a citizen of a country outside the territory of that country commits a crime, the courts of that country have the right to prosecute and punish the perpetrator if he finds himself in their territory. Another type of personal competence is competence based on the nationality of the victim<sup>25</sup>. This type of competence is translated as "passive personal competence" in Persian. Of course, some writers have used other terms for this type of competence; For example, some have translated it as the "principle of passive citizenship" (Mir Mohammad Sadeghi, 2007, p. 22). Some have referred to it as the "principle of negative personal competence" (Hosseininejad 2004, p. 65). Some have also chosen the "principle of static personality" for it (Taghizadeh Ansari, 2004, p. 313).

The principle of universal jurisdiction allows any country to prosecute criminals who; have not committed a crime in the realm of their sovereignty, they are not their citizens, they have not violated their vital and fundamental interests, and they

Nations, which provides that; The United Nations is based on equal sovereignty of states. One of the basic features of governance is the issue of competence (Kern, 2009, p. 65). Jurisdiction is the authority exercised by the government over persons, property, or events (Poor Bafarani, 2002, p. 163). Thus, sovereignty relates to the rights of the state to exercise its authority over the people, property, and events within its territory. The rationale for the theory of jurisdiction of national states in international law is to limit the influence of international law on national legal systems (Shaw, 2008, p: 645). For this reason, Article 7 7 7 of the UN Charter prohibits the UN from interfering in matters which are inherently within the internal competence of any State. However, changes in the principles of international law, especially in the field of human rights, have greatly affected the scope of this prohibition. So that domestic issues with international consequences are in the field of international law, which has led to interference in the internal affairs of countries. However, the concept of competence plays an important role in identifying the national sovereignty of the state within its territorial territory, which is one of the undeniable foundations of international law (shaw, 2008: pp 647-649).

International law gives states the power to exercise their authority under certain principles, called the principle of territorial jurisdiction<sup>22</sup>. According to this principle, any state in the exercise of its sovereignty can only prosecute and punish those who violate the penal code of that country within its jurisdiction, including within its land, sea, and air borders (Sanei, 1995, p. 141). The principle of territorial jurisdiction may be subjective or objective. About subjective territorial jurisdiction, the government can exercise its jurisdiction over a crime that has occurred within its territorial territory but has been

<sup>23</sup> nationality principle

<sup>24</sup> active personality principle,

<sup>25</sup> passive Personality principle

<sup>22</sup> territoriality principle

inherently territorial, and therefore the impediment to the principle of national sovereignty is the prohibition of interference and the principle of jurisdiction. (Unilateral Sanctions and International Law: Views on Legitimacy and Consequences, 2013, p: 9).

### **The principle of non-interference**

The principle of non-interference is part of customary international law, which is based on the concept of respect for the sovereignty of states<sup>27</sup>. To preserve the sovereignty of states, customary international law has historically prohibited coercive interference in the internal affairs of states (Jennings and Watts, 1992, pp: 129). However, due to increasing economic interdependence between governments, a non-coercive economic pressure has the same consequences as a coercive intervention in practice and ultimately leads to the fact that; a strong government can impose its domestic policies on weak governments. Hence, the economic pressure exerted by the sanctioning government forces the sanctioned government to change its policies within its territory. This situation, whether with or without the use of force, is in practice equivalent to intervention (Nyun, 2008, p: 499). Hence, in contemporary international law, the principle of prohibition of intervention by force can also be extended to economic and cultural interventions (Schoroder, 1999, pp. 620–621). The interpretation of the International Court of Justice in this regard is clear:

(This principle prohibits all governments or groups from interfering directly or indirectly in the internal and external affairs of other governments. Prohibited interference should be about issues that any government is allowed to decide freely because of the principle of sovereignty. These include the choice of the political, economic, social, cultural system, and

have not committed a crime against their citizens. The only criterion for exercising jurisdiction, in this case, is the "place of the arrest of the offender." (Mir Mohammad Sadeghi 2003, pp. 61-76).

U.S. courts interpret the principle of the local jurisdiction in a way that includes the "the effects doctrine."<sup>26</sup>. According to this doctrine, the US Congress is allowed to; pass laws that; Regulate activities outside the territory of the United States of America, if such activities are found to affect the internal territory of the United States of America. The United States relies on the doctrine of influence and the application of the principle of citizenship based on nationality (principle of personal competence) in imposing its extensive transnational sanctions (kern, 2009, pp: 74.79-80). Secondary sanctions by the United States have been strongly criticized by some governments for violating international law. These countries generally believe that; transnational jurisdiction applies only to conduct that violates the fundamental norms of international law. The United States' argument for exercising its extraterritorial jurisdiction is related to the imposition of secondary sanctions, the globalization of markets, and the advancement of technology that have made these countries vulnerable to the actions of other governments (kern, 2009, pp: 56, 91). It should be noted that; The doctrine of influence is neither part of customary international law nor acceptable based on the rules of international jurisdiction of States (Evans, 1997, pp: 216, 226). On the contrary, the practice of governments and the views of international law jurists are a reflection of the fact that; unanimously reject the exercise of extraterritorial jurisdiction over national laws to create obligations for third States (Mohamad, 2013, p: 4). Secondary sanctions conflict with this fundamental principle in international law that all national laws are

<sup>27</sup> See the *Corfu Channel Case*, ICJ Reports, (1949), pp. 4, 35.

<sup>26</sup> the effects doctrine

Given the universally accepted right to development, the United States remains hostile to this right and has often voted against resolutions promoting or upholding it<sup>30</sup>. However, the US position cannot meet its international obligations in this regard. Regardless of how a state deals with an international treaty (For example, a state not signing or exercising a reservation right to a treaty), If the provisions of a treaty are in the form of the provisions of customary international law, the government is also bound by it<sup>31</sup>.

Therefore, the United States is not exempt from its dual liability under the law of treaty and customary international law about the right to development (Chodosh, 1995 pp. 991–992). All of the above arguments reinforce the view that; Sanctions are a violation of international human rights because they impair the two countries' right to development. These sanctions are also undoubtedly a violation of humanitarian law because of their destructive effects. In general, the imposition of unilateral coercive economic sanctions, especially against developing countries, is contrary to their right to development.

### Rule of Jus Cogens

According to the Vienna Convention, the law of treaties is void if a treaty conflicts with a rule of Jus Cogens<sup>32</sup> at the time of its conclusion. The rule of Jus Cogens international law is a rule that has been accepted and recognized by the consensus of the international community as an inviolable rule, which can only be modified by a subsequent rule of general international law with the same character<sup>33</sup>. The fundamental feature of the rule of Jus Cogens lies in its non-

foreign policy formulation. Interference is illegal when; Things that should be done freely should be done by force)<sup>28</sup>.

Secondary US sanctions are considered an intervention in the sovereignty of a third state because these sanctions affect the national sovereignty of that country (Meyer, 2009, pp. 905-968). Unilateral economic pressure is considered interventionist if a government implements economic policies that, in turn, force a sanctioned government to take a set of measures that are in the best interests of the coercive government (Thomas and Thomas, 1956, pp. 409-414). The principle of non-interference, as enshrined in the Charter of the United Nations, is a reflection of the principle of state sovereignty.

### The right to development

The right to development is one of the inalienable human rights that are inherently related to the sovereignty of the people (manchak, 2010, pp: 417-451). The right of states to develop has a high status in international law and is protected in fundamental documents<sup>29</sup>. In addition to the legitimacy of the right to development as a principle of international law, Article 1 and paragraph B of Article 55 of the Charter of the United Nations, obliges member states to develop friendly relations between nations based on respect for the sovereignty of nations, to raise living standards, and to provide employment for economic and social development. Article 3 The Declaration of the Right to Development obliges member states to act following the Charter of the United Nations and to establish the national and international conditions conducive to the realization of the right to development.

<sup>30</sup> The most obvious example of the United States' protest against the right to development occurred in 1986, when it was the only government to vote against the right to declare a right to development.

<sup>31</sup> See Articles 18 and 28 of the Vienna Convention on the Law of Treaties.

<sup>32</sup> Jus Cogens

<sup>33</sup> Article 53 of the 1969 Vienna Convention on the Law of Treaties.

<sup>28</sup> *Certain Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua V USA) Merits, ICJ Reports (1986), pp.14, 106-109, paras. 202-207.

<sup>29</sup> Articles 55 and 56 of the Charter of the United Nations; Articles 22 and 28 of the Universal Declaration of Human Rights, Article 1 of the Covenant on Civil and Political Rights; Article 1 and paragraph 1 of Article 2 of the Covenant on Economic, Social and Cultural Rights and Articles 1, 6 and 8 of the Declaration of the Right to Development.



development (Umozurike, 2005, p: 208). The right to self-determination not only obliges states to respect and promote this right but also obliges them to refrain from any coercive action that deprives people of this right (Umozurike). , 2005, p: 208). The right to self-determination is an important fundamental right for developing countries; this right is recognized by the citizens of States which have their own political, economic, and social order; without other governments having the right to interfere with this right by imposing certain forms of government or incurring costs in the exercise of sovereignty. Unilateral sanctions, therefore, restrict the right of such states to take such approaches, and this is a violation of that right (umozurike, 2005, p: 208). A closer look at US sanctions against Burma (Myanmar) shows the irrational efforts of the United States to impose a democratic transition in the country without an overall assessment of Myanmar's historical, political, social, economic, and cultural situation (Preeg, 1999, pp. 111-146.). Likewise, most governments view the imposition of unilateral sanctions as an attempt by the United States to impose its will in violation of its right to self-determination (Weil, 1994, p: 6). Unfortunately, US sanctions target mainly developing countries in Asia and Africa, which feel discriminated against, especially in international trade and economic relations (Extraterritorial Application of National Legislation, "p. 23).

### **Prohibition of genocide**

Unilateral sanctions, especially US sanctions, as the history of these sanctions show, are designed to do maximum harm to the target government and the hostile governments to allow regime change. The United States has urged the Security Council to adopt resolutions against Iraq that violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Simons, 2000,

suspension. The rule of Jus Cogens includes the prohibition of genocide, aggression, torture, apartheid, the slave trade and slavery, racial discrimination, autonomy, war crimes, and crimes against humanity (Crawford, 2002, pp. 246-247). Unilateral sanctions can also be considered a violation of the authoritarian rule of Jus Cogens international law.

### **The right to self-determination**

The international obligations of the state arising from the right to self-determination<sup>34</sup> have been recognized by the International Court of Justice as a mandatory rule of international law<sup>35</sup>. Authors of international law have also argued that; this principle has taken the place of the rule of Jus Cogens at the international level. The idea of the right to self-determination is one of the fundamental foundations of all forms of human rights (Pomerance, 1982, p. 41). The Charter of the United Nations explicitly states the right to self-determination and one of its goals is "the development of friendly relations between nations based on respect for the principle of equality of rights and autonomy of nations ..." <sup>36</sup>. The United Nations General Assembly adopted Resolution 1514 (XV) on 14 December 1960, entitled the Declaration of Independence of States and Peoples<sup>37</sup>. This decree stipulates: "All people have the right to self-determination; "Using this right, they determine their political status and freely pursue their economic, social and political development." (Extraterritorial Application of National Legislation, "p: 11). The result of the right to self-determination is that all people have the inherent right to choose their preferred government as the basis for political, economic, and social

<sup>34</sup> the right to self-determination

<sup>35</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports (2004).

<sup>36</sup> Paragraph 2 of Article 1 and Article 55 of the Charter of the United Nations.

<sup>37</sup> The UN Declaration on the Granting of Independence to Colonial Territories and Peoples

unilateral sanctions. However, the practice of governments shows that unilateral sanctions have neither the legal basis for reciprocity nor the necessary criteria.

While the idea of using unilateral sanctions to address human rights abuses, fight terrorism and prevent the spread of nuclear weapons on paper is commendable, But it has often been abused in practice. Therefore, sanctions should be imposed only multilaterally with the support and permission of the UN Security Council. Unilateral sanctions, such as those imposed by the United States on Cuba, Iran, and other governments, are politically inefficient and morally controversial and have no basis in international law. Multilateral action is more stable, mainly because there is more rationality in the decision-making process and it has more legitimacy than unilateral action. The spirit of the UN Charter is an example of multilateral cooperation between governments because coercive economic action against a government can have the same destructive effects as military action. Of course, this does not mean that multilateral sanctions under the UN Charter have significant fair results compared to unilateral sanctions in all their dimensions. On the contrary, the UN collective security mechanism, although it may have structural and operational shortcomings, it is and more valid solution in current international law.

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- p: 119). The humanitarian suffering caused by these sanctions is very significant and those who have suffered the most from these sanctions are the very lower strata of society (Duffy, 2000, p. 121). For example, the unilateral US sanctions against Burma have exacerbated the miserable living conditions of its people, who were previously deprived of liberty, human rights, and the rule of law (Nyun, 2008, p: 496). There is no level of legitimate harm in international human rights. Individuals are protected based on human rights principles because of their humanity and the intentions of governments can in no way legitimize the violation of the rights of individuals (Schefer, 2007).

## Conclusion

The International Court of Justice has described the ban on the use of force as a cornerstone of the UN Charter. Unilateral sanctions have violated the ban because the developments of the Charter since 1945 and the research in this field clearly show the fact that; Paragraph 4 of Article 2 of the Charter, in addition to the use of force in the military sense, also includes economic force. Economic sanctions, both unilaterally and multilaterally, violate human rights treaties. Secondary sanctions also conflict with some of the fundamental principles of customary international law concerning sovereignty, jurisdiction, and the prohibition of interference, and violate Jus Cogens rules and many international treaties and instruments, including the Charter of the United Nations. These sanctions have imposed suffering and deprivation on the innocent citizens of the target country and deprived them of the right of governments to develop and determine their destiny. Secondary sanctions affect states other than the sanctioned state and create hostility and tension instead of resolving disputes. Some have cited the theory of "reciprocity" in international law regarding the responsibility of states to legitimize

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