Faculté de droit et de criminologie

# Unilateral extraterritorial sanctions: between legal justification and jurisdictional overreach

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# INTRODUCTION

***Par in parem non habet imperium.***

*Equals do not have authority over one another.*[1]

The international legal order is based on the principle of **sovereign equality among States**, as enshrined in article 2(1) of the Charter of the United Nations. From this core principle arise principles such as non-intervention, respect for territorial integrity and the prohibition on the use of force outlined in article 2(4) of the Charter of the United Nations. These regulations were established to promote peaceful coexistence and to restrict any single State from imposing its will on another. However, the ongoing increase in unilateral extraterritorial sanctions, in other words, measures by which one State seeks to regulate the conduct of persons, companies or transactions between its own borders, has created significant legal and political challenges.

This trend illustrates a wider evolution in how States exert influence internationally. While conventional diplomacy and collective actions depended on negotiation or multilateral agreement, unilateral extraterritorial sanctions represent a claim of unilateral power over international economic and commercial systems. In a time where financial frameworks, supply chains and digital transactions are intricately linked, these actions can produce consequences that extend well beyond their intended political aims, affecting markets, hindering humanitarian aid and reshaping strategic alliances.

Sanctions themselves are not a new concept. They have historically been employed both **collectively** via the United Nationals Security Council and **unilaterally** as tools of foreign policy. What sets the current situation apart is their extraterritorial scope, meaning they apply to conduct outside of the territory of the sanctioning State, frequently impacting third-State nationals who have no direct connection to the territory or nationality of that State. These "secondary" sanctions force compliance with the policies of the sanctioning State under the threat or economic or legal repercussions.

[1] Oxford Reference, "Par in parem non habet imperium", Oxford University Press, (online)https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100306400 (last accessed 16 August 2025).

The legality of such sanctions under international law remains highly contentious. Some argue that these measures represent a valid exercise of jurisdiction, supported by principles like nationality, protection of essential security interests or even as lawful responses to significant violations of international law. On the other hand, critics assert that they constitute a form of coercion that contradicts the United Nations Charter and infringe on the sovereignty of other nations or even fundamental human rights or obligations owed to the international community.

This thesis explores the fundamental legal issue central to the discussion: **"Are unilateral extraterritorial sanctions compatible with contemporary international law?"**

To address this question, the analysis starts with foundational principles in order to investigate:

- The sources and boundaries of jurisdiction within international law;
- the connection between the United Nations Charter and unilateral coercive measures;
- the extent and implementation of essential jurisdictional principles such as territoriality, active and passive nationality, universality, the protective principle and the effects doctrine;
- the influence of constraining principles like proportionality, non-discrimination and necessity.

In this regard, **Chapter 1** establishes the legal foundation. It begins with the UN Charter framework, elucidating the circumstances under which sanctions serve as legitimate instruments of collective security and when unilateral actions may violate obligations based on the Charter. It then surveys the primary jurisdictional bases acknowledged in customary law, differentiating those that support extraterritorial actions from those that are disputed. This chapter also investigates how human rights commitments, *erga omnes* responsibilities and specific regimes such as diplomatic immunity can restrict a State's ability to extend its laws internationally.

**Chapter 2** shifts from theoretical principles to practical applications, applying the legal framework to concrete case studies. In this part, a comparison will be made between the United States' and the European Union's sanctions regime, emphasizing their extraterritorial aspects concerning Iran and Russia. The U.S. sanctions against Iran exemplify the most extensive form of extraterritoriality with secondary sanctions that remain highly contested. Conversely, the European Union's sanctions demonstrate that it will legislate extraterritorially when defending its economic sovereignty.

**Chapter 3** distils the legal issues encountered in these regimes: the fragmentation of legal justifications across different States, the limited mechanisms for accountability and review of the unilateral sanctions and the lack of effective remedies for targeted States and potentially third States.

Methodologically, this study adopts a **doctrinal legal analysis** based on the primary sources of international law as outlined in article 38(1) of the Statute of the International Court of Justice, treaties, customary international law, general principles, judicial rulings and the writings of legal scholars.

The research extensively references ICJ case law (including *Lotus, Nottebohm, Barcelona Traction*, the Wall advisory opinion and *Arrest Warrant*), relevant arbitral awards such as the Air Services Agreement, regional court decision (European Court of Human rights and Court of Justice of the European Union) as well as state practice as reflected in official statements and national legislation.

Ultimately, this research speaks to two fundamental issues in contemporary international law.

Firstly, it tackles a pressing practical concern as unilateral extraterritorial sanctions have become integral to the foreign policy strategies of major powers resulting in direct impacts on global trade, finance and diplomacy. Their legality, or lack thereof, affects not only the targeted States but also the numerous allied States whose citizens find themselves caught in the crossfire.

Secondly, it tests the resilience of traditional jurisdictional principles in a time of economic interdependence and geopolitical tension. For international law to maintain its coherence, it must be able to accommodate legitimate State interests in security and law enforcement while upholding the core principles of sovereignty and equality.

In sum, this thesis is based on the understanding that unilateral extraterritorial sanctions exist in a grey area between lawful self-defence and unlawful coercion. By thoroughly examining their alignment with the United Nations Charter, doctrines and general legal principles it aims to delineate the limits of acceptable action.

# CHAPTER 1: LEGAL FRAMEWORK

## SECTION 1: THE UNITED NATIONS' LEGISLATION ON THE LIMITS OF UNILATERAL SANCTIONS

In order to determine and fully comprehend whether states can unilaterally impose sanctions on another state's territory, it is crucial to first look at the source of international law, the Charter of the United Nations. This charter lays down fundamental principles that are essential to understand how states interact, but also the limitations that are imposed on them in terms of actions they can undertake. Among these principles, we can find the principles of sovereignty, territorial integrity and non-intervention, that serve as limitations on a state's capacity to unliterally impose sanctions that have extraterritorial consequences.

Article 2 of the UN Charter provides that: "The Organization is based on the principle of **sovereign equality** of all its Members". [2] This principle of sovereignty imposes that no State can force its will on another State unilaterally, so without an agreement. Accordingly, unilateral sanctions that affect other states are usually viewed as breaches of this sovereign equality because they undermine the authority of the other state.

Another principle can be found in article 2(4) of the same Charter. This provision prohibits United Nations Member States from **using force** against the "territorial integrity of political independence of any state. [3] This articulates the idea that states must, before any other actions, try to resolve disputes in a peaceful manner without resorting to aggression.

This is further reinforced in the Declaration on Principles of International Law concerning Friendly Relations, where the General Assembly, which is the "main policy-making organ" [4] of the United Nations, reaffirmed the inviolability of territorial integrity and political independence of any State party.[5] If this is such a fundamental principle, it is because it can

[2] *Charter of the United Nations*, June 26 1945, Art. 2, para. 1.
[3] *Charter of the United Nations*, June 26 1945, Art. 2, para. 4.
[4] *United Nations*, *Workings of the General* Assembly, online: https://www.un.org/en/ga/ (accessed : 15 April 2025)
[5] United Nations General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), The Principle of Sovereign Equality of States, U.N. Doc. A/RES/2625(XXV) 24 October 1970.

prevent territorial wars from erupting. The mere fact of using force could endanger "international peace, security, and justice" [6] and thus constitute a violation of international law.

Closely linked to the prohibition is the principle of **non-intervention in domestic affairs** of others states that can be found in article 2(7) of the UN Charter. [7] This article established that no State may intervene in another State's domestic jurisdiction, thus making sure that the latter always remains sovereign over their own internal matters.

However, one important exception exists. The United Nations is an international cooperation organization [8] and not a State. This implies that it is possible for the United Nations to intervene in cases of situations threatening international peace and security [9], provided that the U.N. Security Council, which is the peacekeeping decision-body of the UN [10], deems it necessary.

In that regard, article 41 of the same Charter grants this Security Council the power to make recommendations on "what measures shall be taken" [11] to then "call upon the Members of the United Nations to apply such measures".[12] To illustrate, some of these measures can 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". [13]

If the United Nations can legitimately impose sanctions on States, it is because these sanctions are established through a process of collective decision-making, which makes them binding on all UN Member States. [14] Nevertheless, the validity of UN sanctions can be influenced by how the Security Council makes decisions, particularly because of the veto power possessed by its five permanent Member (China, France, the Russian Federation, the United Kingdom and the United States).[15] Any of these Member States has the authority to block proposed sanctions, even if the majority supports their implementation, as the decision needs to be made unanimously. [16] This veto power is used relatively frequently, especially in recent years and by

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[6] *Charter of the United Nations*, June 26 1945, Art. 2, para. 3.
[7] *Charter of the United Nations*, June 26 1945, Art. 2, para. 7.
[8] *United Nations*, *About Us*, online : https://www.un.org/en/about-us (accessed 16 April 2025).
[9] *Charter of the United Nations*, June 26 1945, Art. 24, para. 1.
[10] *United Nations*, *Role of the Security Council*, online : https://peacekeeping.un.org/en/role-of-security-council (accessed June 21 2025).
[11] Charter of the United Nations, *op. cit.*, Art. 39.
[12] *Ibid.*, Art. 41.
[13] *Ibid*.
[14] *Charter of the United Nations*, June 26 1945, Art. 25, 41 and 48, para. 1.
[15] United Nations Security Council, *Current Members*, online : https://main.un.org/securitycouncil/en/content/current-members (accessed 21 June 2025)
[16] *Treaty on European Union*, Art. 31.

certain permanent Members like the Russian Federation and the United States for political and strategic reasons that will be analysed later on.[17]

While these provisions strive to regulate sanctions, some exceptions such as the preservation of international peace and security, as well as the use of the veto power do exist and can sometimes create tensions in international law or serve the strategic interests of specific permanent Members. [18]

## SECTION 2: LEGAL PRINCIPLES RELATED TO SANCTIONS

### SUBSECTION 1: THE PRINCIPLE OF TERRITORIALITY

#### §1: PRINCIPLE

As the title suggest, the principle of territoriality, which is an essential principle rooted in the notion of state sovereignty [19], establishes that a state has jurisdiction over conduct that occurs "within territorial borders" [20] "including their land, internal waters, territorial sea and airspace". [21] According to international law, the State in question has full authority to make, interpret and enforce without interference from external factors like other States. This aligns with the principle of non-interference in the domestic affairs of other States that can be found in article 2(7) of the United Nations Charter.

As a result, the State in question is entitled to exercise three main forms of jurisdiction: prescriptive, adjudicate and enforcement jurisdiction. Each one of these has a specific role, working together to ensure territorial sovereignty is fully respected.

A State's **prescriptive jurisdiction** refers to a State's power to adopt laws that can be enforced on its own territory. These laws will apply to all persons and activities, irrespective of their

[17] United Nations Security Council, *Meetings & Outcomes Tables (Veto List)*, online : https://research.un.org/en/docs/sc/quick (accessed 21 June 2025)
[18] United Nations Security Council, *Working Methods (The Veto)*, 13 February 2024, online : https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php (accessed 21 June 2025).
[19] Alejandro Chehtman, *The philosophical Foundations of Extraterritorial Punishment,* (Oxford : Oxford University Press, 2010), p. 56.
[20] Danielle Ireland-Piper, Accountability in Extraterritoriality : A Comparative and International Law Perspective, Cheltenham, UK, Edward Elgar Publishing, 2017, p. 23.
[21] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *International Law*, 8th ed., Aspen Publishing, 2023, p. 583.

nationality, because even if they are only temporarily present on that State's territory, the jurisdiction is based exactly on that criterion of territorial presence. [22]

The state also exercises another form of jurisdiction through its national courts. These courts have the power to **adjudicate** on the interpretation and application of the laws prescribed by the State and thus resolve disputes in a way that complies with their domestic law. [23] Nevertheless, if a violation is observed, the State's courts have the power to **enforce** the laws and impose the sanctions they deem necessary, proportionally to the violation. [24]

## §2: LIMITS AND EXCEPTIONS

However, while territorial jurisdiction is fundamental, there are some limits to this principle that are governed mostly by international treaties and customary international law.

**International treaties and agreements** are the first way to provide exceptions to this principle of territoriality. A notable example that occurred in the last decades is the creation of extradition agreements like the European Extradition Convention of 1957. This Convention compels the States party to the treaty to hand over any individual "who is wanted in the requesting State for prosecution". [25] The idea is to respect the territoriality principle but, in some cases, the State has no choice but to extradite. Nevertheless, in article 3 of that Convention there are some mandatory grounds for refusal and in article 4 some optional grounds.

In contrast, a Council Framework Decision on the European Arrest Warrant of 2002 [26] encourages more of a mutual recognition in terms of surrender procedures between Member States. The European Union believes that Member States should always execute arrest warrants issued by other Member States, except in in very exceptional cases and subject to a number of conditions. [27] This development shows that the European Union's objective is to go beyond the

[22] Daniel Chow C.K, "Rethinking the Act of State Doctrine: An Analysis in Terms of Jurisdiction to Prescribe", *Washington Law Review*, July 1987, p. 447.
[23] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 636.
[24] *Ibid.*, p. 581.
[25] United Nations, Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters, Art. 1 and 4.
[26] Council Framework Decision 2002/584/JHA on the European arrest warrant, 2002.
[27] Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, 2002/584/JHA, Art. 4.

sovereignty-based restrictions of the 1957 Convention in order to promote cooperation and cross-border justice within the EU.

A second way of limiting territorial sovereignty is a principle that closely aligns with the idea of respecting cross-border justice. This principle that is called ***erga omnes*** limits territorial sovereignty in the way that it is an obligation owed by all States towards all States.[28] These obligations are universal and go above bilateral treaties or relations.

The *Island of Palmas case* of 1928 made it evident that territorial sovereignty was not absolute. In the arbitral award that issued by Max Huber at the time, he stated that sovereignty had to be exercised within the limits imposed by international law. [29]

Later, in the *Barcelona Traction Case* of 1970 [30], the International Court of Justice expanded on this notion and introduced the concept of an *erga omnes* obligation. The Court distinguished between obligations owed to individual States and those owed to the international community as a whole. It acknowledged that certain fundamental rights, like the prohibition of genocide, aggression and slavery among others are owed to all States, and this regardless of where the violations occur.[31] Moreover, for an obligation to be universally owed it must meet two criteria: general state practice and *opinio juris*. The practice of the States must be widespread and consistent [32] and the practice widely accepted among the states, which shows *opinio juris*. [33]

Another important exception to the territoriality principle arises not from cooperation but from international legal protections. The **Vienna Convention on Diplomatic Relations of 1961** grants specific immunities to diplomats. [34] This means that even if they are located in the State that hosts them, that hosting State cannot adjudicate or enforce its laws against this group of people, except if specific exceptions apply. [35]

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[28] International Court of Justice, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain),* Second Phase, Judgment, 1970 I.C.J. Rep. 3 para 33.
[29] *Island of Palmas Case* (Netherlands v. United States of America), Award of 4 April 1928, 2 Reports of International Arbitral Awards, pp. 829-871.
[30] International Court of Justice, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain),* Second Phase, Judgment, 1970 I.C.J. Rep. 3 para 33.
[31] International Court of Justice, Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, 1970 I.C.J. Rep. 3 para 34.
[32] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *International Law*, 8th ed., Aspen Publishing, 2023, p. 137.
[33] *Ibid.*, p. 139.
[34] Vienna Convention on Diplomatic Relations, 18 April 1961, Articles 22, 24, 27, 29 and 31.
[35] *Ibid.*, Art. 31(1).

Even though diplomatic and consular immunity is generally respected, it does not mean that they are entirely immune from prosecution. The diplomat or consul's sending State can decide to waive their immunity, allowing them to be tried in the host State. [36] In addition, they remain subject to prosecution in the sending State.[37]

The European Court of Human Rights (ECHR) reaffirmed this limited scope of jurisdiction in the *Banković v. Belgium case* of 2001, where it held that a State's right is territorial and that extraterritorial application must remain exceptional and must be justified by a "jurisdictional link".[38]

Another exception that can be raised is in the application **of Human Rights law** within a State's jurisdiction. Article 1 of the European Convention on Human Rights states that parties must "secure (…) the rights and freedoms" enumerated in the Convention for all individuals "within their jurisdiction". [39] So, even if an individual is not a national of that State, the latter is still responsible for the protection of fundamental rights such as the right to life, prohibition of torture and the right to a fair trial [40], as long as they are within the State's territory. This is yet another example of how the State is limited in the enforcement of their laws.

**Self-determination and the process of decolonisation** are two further human rights-related restrictions. [41] One of the United Nation's goals is to "develop friendly relations among nations" by respecting peoples' right to self-determination. [42] Article 1(1) of the International Covenant on Civil and Political Rights also restates this idea. [43]

Since self-determination grants people the freedom to "freely determine their political status and freely pursue their economic, social and cultural development" [44], it fundamentally goes against the idea of state sovereignty, this is because it directly challenges a State's authority

[36] *Ibid.*, Art. 32(1).
[37] *Ibid.*, Art. 31(4).
[38] *Bancovic and others v. Belgium and others (Decision as to Admissability*), no.52207/99, 12 December 2001, European Court of Human Rights (Grand Chamber), para. 82.
[39] European Convention on Human Rights, 4 November 1950, Art. 1.
[40] *Ibid.*, Art. 2, 3, 6 and 10.
[41] United Nations General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV), 14 December 1960, para. 2.
[42] *Charter of the United Nations*, 26 June 1945, Art. 1(2) and 55.
[43] United Nations General Assembly, International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16 December 1966, Art. 1.
[44] *Ibid.*

and thereby interferes with the principle of non-intervention. [45] Nevertheless, the International Court of Justice (ICJ) affirmed in its 2004 *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [46] that this principle is *erga omnes*, so as we have seen, owed towards the entire international community.

When it comes to occupation, another limit to territoriality exists in **military occupations**. The occupied State's legal jurisdiction is limited by specific agreements known as SOFA's (status of forces agreements), which specify how the military can act in a legal way on the occupied territory and thus legally limit the occupied State's jurisdiction. [47] As demonstrated, in the 2007 case of *Behrami and Behrami v. France*, international organizations such as the United Nations have the authority to regulate the military. The Behramis argued that France, one of NATO's major powers, was to blame for the deaths of civilians in Kosovo as they neglected to remove unexploded NATO bombs from the country. However, the European Court of Human Rights ruled that France could not be held personally liable as a State because the United States exercised an effective control [48] on the actions of the military. This is yet another example of how State sovereignty can be limited, not only by other States, but also by international organisations.

It is now evident that complete territorial sovereignty has many limitations. The idea that it is an inviolable principle must of course be upheld when possible, yet in today's world, significant limitations exist such as international treaties, human rights and *erga omnes* principles. This is proof that it is crucial to have the flexibility to change things that were once set in stone.

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[45] Matthew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?", *Human Rights Law* Review, 2011, p. 629.

[46] In this case, the ICJ held that Israel's construction of a wall in the West Bank violated international law, particularly the Palestinians' right to self-determination, and called on Israel to cease construction and make reparations.

[47] R. Chuck Mason, Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?, Congressional research service, 18 June 2009, p. 1.

[48] *Loizidou v. Turkey* (App. No. 15318/89), Judgment (Merits), 18 December 1996, European Court of Human Rights, para 56.

## SUBSECTION 2: THE PRINCIPLE OF EXTRATERRITORIALITY

### §1: PRINCIPLE

Extraterritoriality refers to the power of a State to exercise its jurisdiction beyond its own national borders. [49]

It can be defined as "the situation in which the State that originated the rule purports to apply it to a person, individual or company of foreign nationality in order to punish acts committed outside the territory of that State". [50]

Unlike the principle of territoriality, extraterritorial jurisdiction is often justified based on specific legal principles, such as nationality universality, the protective principle, passive personality and others. However, its application remains widely controversial because it usually affects the sovereignty of other States. [51]

### §2: LEGAL BASISES

#### A) ACTIVE NATIONALITY PRINCIPLE

##### I. PRINCIPLE

Unlike the territoriality principle where a State regulates the conduct of all persons and companies within that State's territory, the nationality principle governs the conduct of its nationals and companies but regardless of their location. This principle is based on the idea that the State can hold these groups accountable for their actions just because they are nationals from that State. [52]

Civil-law systems tend to apply this principle broadly and without differentiation, while common-law jurisdictions often limit its application to serious offenses. [53] Despite the lack of uniform application, the nationality served as a widely recognized foundation for extraterritorial jurisdiction.

[49] Menno T. Kamminga, "Extraterritoriality" in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2020, p. 4.

[50] Laurent Cohen-Tanugi, "L'extraterritorialité, nouvel horizon du droit", *Commentaire*, vol. 182, no. 2, 2023, pp. 375-379.

[51] Menno T. Kamminga, *op. cit.*, para. 3.

[52] Cedric Ryngaert, "The Concept of Jurisdiction in International Law", Utrecht University, 2014, pp. 1-2.

[53] Ian Brownlie, *Principles of Public International Law*, 5th ed., Oxford University Press, 1998, p. 306.

The justification for this principle is frequently rooted in the fact that States do not want to extradite their own citizens. [54] Therefore, by establishing jurisdiction over crimes committed by their nationals abroad, they can still prosecute them to ensure justice can be served.

When discussing diplomatic and economic sanctions, the principle of nationality is commonly brought up. For instance, even when they are outside of the EU, EU corporations and individuals are required to comply with the European Union' sanctions. This is codified in article 29 of the Treaty on European Union, which states that Member States have to "ensure that their national policies conform to the Union positions". [55]

Furthermore, article 215 of the Treaty on the Functioning of the European Union states that the EU, through its Council, is permitted to adopt restrictive measures such as economic or financial sanctions[56], but that they must always be accompanied by "legal safeguards' to prevent an abusive use of this mechanism. [57] These legal safeguards can, for instance, be a judicial review before the Court of Justice of the European Union (CJEU) to ensure that the restrictive measure is compliant with EU law [58]. Moreover, the sanctions must always be reasoned, proportionate and fair [59] on top of being justified and necessary [60].

## II. LIMITS

The nationality principle often time overlaps with the principle of State sovereignty. This inevitably creates tensions and difficulties among States, especially when there is a violation of another State's sovereignty.

A first issue that can arise can be found in the Hague Convention of 1930 [61]. Article 4 says that individuals with dual nationality cannot enjoy diplomatic protection from one State while present in another State. Essentially, if someone has citizenship of both States, the sending

[54] Bert Swart, "Human Rights and the Abolition of Traditional Principles" in *Principles and Procedures for a New Transnational Criminal Law,* Albin Eser and Otto Lagodny eds., 1991, pp. 505, 531-532.
[55] Consolidated version of the Treaty on European Union, 7 June 2016, Art. 29.
[56] Consolidated version of the Treaty on the Functioning of the European Union, 7 June 2016, Art. 215.
[57] *Ibid.*, Art. 215(3).
[58] Council of the European Union, *How the EU adopts and reviews sanction*s, online : https://www.consilium.europa.eu/en/policies/sanctions-adoption-review-procedure/#Review%20process (last accessed 10 August 2025).
[59] European Union, *Principle of* proportionality, online : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:proportionality (last accessed 10 August 2025).
[60] European Union, *General framework for EU* sanctions, online : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:25_1 (last accessed 10 August 2025).
[61] *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, Art. 4.

State cannot intervene, even if the individual is treated unfairly. This prevents the State from abusing of its extraterritorial power.

A second limit can be derived from the 1955 case of *Liechtenstein v. Guatemala* known as the *Nottebohm case*. The ICJ established a requirement for establishing nationality that must be "real and effective" and that there must exist a "genuine connection" between the person seeking nationality of the State. In this case, Nottebohm's nationality was rejected because he had no legitimate ties to Liechtenstein. This decision limits extraterritoriality in the way that theoretical citizenship is not always enough to justify a State's intervention or jurisdiction in another State. [62]

Another significant limitation to the active nationality principle emerges in the scenario of dual nationality, in other words, when an individual has citizenship in two separate States. In such circumstances, both States may want to apply their laws extraterritorially based on nationality which could lead to legal uncertainty but also diplomatic tensions. [63]

## B) PASSIVE NATIONALITY/PERSONALITY PRINCIPLE

### I. PRINCIPLE

The principle of passive personality enables a State to assert jurisdiction over nationals of another State who commit crimes outside of the claiming State, as long as the victim is a national of the State asserting jurisdiction. The jurisdiction is determined by the nationality of the victim, not of the offender. [64]

This jurisdiction based on passive personality is more controversial compared to territorial or active nationality jurisdiction as it allows for States to assert jurisdiction over conduct with little relation to its territory. [65]

[62] International Court of Justice, *Nottebohm (Liechtenstein v. Guatemala)*, Second Phase, Judgment, 1955, para. 23.

[63] Roberto Cordova, *Report on Multiple* Nationality, U.N. Doc. A/CN.4/83, paras. 6 and 8.

[64] Respicio, "Passive Personality Principle", 10 October 2024, online : https://www.respicio.ph/bar/2025/political-law-and-public-international-law/public-international-law/jurisdiction-of-states/basis-of-jurisdiction/passive-personality-principle (last accessed 7 April 2025).

[65] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 604.

Nevertheless, States are progressively resorting to passive personality jurisdiction, especially to tackle criminal offenses targeting a State's national because they are a national of that State, like terrorism where victims are chosen because of their nationality specifically. [66]

### II. LIMITS

The passive personality principle is the least supported doctrine in customary international law when compared to other doctrines to assert extraterritorial jurisdiction. [67]

One reason for this is that the offender may be unaware of the victim's nationality and therefore cannot foresee that the laws of a specific State will regulate his actions. [68]

Moreover, some legal systems like Germany only allow the application of this principle if double criminality [69] is fulfilled. [70]

This demonstrates that States remain cautious in applying this principle, as there is no universal sense of legal obligation yet. [71]

## C) UNIVERSALITY PRINCIPLE

### I. PRINCIPLE

The universality principle allows any State to claim jurisdiction over certain crimes that are qualified as "of universal concern" [72] due to their severity. It makes no difference where they were committed, what the nationality of the perpetrator is or any other connection. Some of these widely recognized crimes include genocide, war crimes, crimes against humanity and others, which are violations of *jus cogens* norms [73], peremptory norms of international law that cannot be derogated from. If a State can assert jurisdiction, it is because it affects the whole international community. [74]

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[66] Kevin Li, "B. Prescriptive Jurisdiction in Public International Law" *in Reconceiving Extraterritorial Jurisdiction,* 2002 p. 47.
[67] *Ibid.*
[68] *Ibid.*
[69] "Double criminality : when the offense is an alleged crime in both States", *Encyclopedia Britannica*, online : https://www.britannica.com/topic/double-criminality (last accessed 6 May 2025).
[70] German Criminal Code (Strafgesetzbuch), § 7.
[71] Human Rights Watch, The Legal Framework for Universal Jurisdiction in Germany, 2014, p. 2.
[72] *Restatement (Fourth) of The Foreign Relations Law of the United States*, §413 "Universal Jurisdiction".
[73] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 107.
[74] Roger O'Keefe, "Universal Jurisdiction: Clarifying the Basic Concept" in *Journal of International Criminal Justice,* 2004, p. 735 and 742.

This concept is embedded in several international documents like the Geneva Conventions and the Convention Against Torture, but it is also recognized in customary international law. [75] In reality, this principle enables States to conduct criminal investigations and prosecutions against foreign nationals for crimes committed abroad, even when they don't have territorial or national jurisdiction.

One of the most notable cases was when former Chilean dictator *Pinochet* was arrested in London on a Spanish arrest warrant that invoked universal jurisdiction for the torture that was perpetrated in Chile. [76]

Beyond criminal prosecution, this principle allows States to justify the implementation of travel bans, asset freezes and trade restrictions on individuals and organizations engaging in serious international crimes. These tactics are commonly used in international sanctions regimes as part of a larger strategy to combat impunity. [77]

## II. LIMITS

Nevertheless, like every other principle, it remains contentious in international law as some States have sovereignty concerns. Some scholars also claim that the boundaries of this principle are not clear, which leads to selective enforcement and legal uncertainty. [78]

Some well-known cases that demonstrate the limits of universal jurisdiction include the *Arrest Warrant Case* of 2002 [79], where the ICJ ruled that Belgium's attempt to issue an arrest warrant against the foreign minister of the Democratic Republic of Congo violated his diplomatic immunity, demonstrating that universal jurisdiction does not override immunities for high-ranking officials. [80]

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[75] Human Rights Watch, *Basic Facts on Universal Jurisdiction*, 19 October 2009, online : https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction (last accessed 20 May 2025).

[76] R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet (No. 3), House of Lords, Judgment, 25 November 1998.

[77] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 614.

[78] United Nations, Security Council Press Release : Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn, 10 October 2018, online : https://press.un.org/en/2018/gal3571.doc.htm (last accessed 21 May 2025).

[79] International Court of Justice, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment (Merits), 2002.

[80] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 726.

Another noteworthy case is the *Jurisdictional Immunities of the State case* of 2012 between Germany and Italy. [81] In this case, the ICJ ruled that Italy's decision to allow claims for wartime reparations to be brought before Italian courts, despite the facts that they were against Germany, was unlawful. The ICJ stated that even though the claims were based on human rights violations that would normally be of universal concern, Germany as a State was entitled to immunity because acts committed during times of war by a State's armed forces make that State immune under customary international law. [82]

As a result, universal jurisdiction remains powerful but is still limited because of the difficulty of balancing the fight against impunity with respect for State sovereignty and also the established immunities under international law.

## D) PROTECTIVE PRINCIPLE

### I. PRINCIPLE

The protective principle is a concept that refers to a doctrine in international law that permits a State to assert jurisdiction over acts committed in another State's territory, but that pose a threat to its own national security or other fundamental interests. [83] This can apply to its own nationals but also to non-nationals of the State, which is the difference with the territorial principle. [84]

This principle is more limited in scope than the other principles and is typically reserved for serious offenses like espionage, counterfeiting of currency, perjury in relation to official documents or even attacks against embassies and consulates abroad. [85] The notion is based on the idea that certain crimes, even if they are committed outside of a State's borders can justify extraterritorial jurisdiction because it has an impact on the prosecuting State.

[81] International Court of Justice, *Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment, 3 February 2012.

[82] Herbert Smith Freehills, "The ICJ firmly upholds principles of sovereign immunity in its recent judgment in the case of Germany v Italy", blog post, 9 March 2012, online : https://www.herbertsmithfreehills.com/notes/arbitration/2012-03/the-icj-firmly-upholds-principles-of-sovereign-immunity-in-its-recent-judgment-in-the-case-of-germany-v-italy (last accessed 27 May 2025).

[83] Allen S. Weiner, Duncan B. Hollis, Chimène Keitner, *op cit.*, p. 611.

[84] Respicio, "Protective Principle in Public International Law", 6 October 2024, online : https://www.respicio.ph/bar/2025/political-law-and-public-international-law/public-international-law/jurisdiction-of-states/basis-of-jurisdiction/protective-principle (last accessed 1 June 2025).

[85] American Society of International Law., "Jurisdictional, Preliminary, and Procedural Concerns," in *Benchbook on International Law*, Diane Marie Amann ed., 2014, II.A, online : https://www.asil.org/sites/default/files/benchbook/jurisdiction.pdf (last accessed 3 June 2025).

Nevertheless, even though this principle is widely accepted, States know that an abusive use could lead to a jurisdictional overreach and potentially diplomatic tensions. This does not prevent the protective principle from being widely recognised in international law and many national legal systems, especially when there is an issue of transnational crimes with no specific geographic or nationality link. [86]

To illustrate, we can cite the *Lotus case*, which is arguably the most well-known case of international law. The Permanent Court of International Justice (PCIJ), which is the predecessor of the International Court of Justice we know nowadays, ruled on an issue that took place in international waters, waters that belong to all States. [87] In 1927, a French ship collided with a Turkish ship resulting in the deaths of Turkish citizens. Turkey then filed legal action against the French captain for the fatalities. France did not agree with Turkey's action and stated that because the accident happened in international waters and involved a French ship, only France had the power to take legal action. However, the PCIJ rejected this argument and emphasized that under international law, States can exercise jurisdiction unless there is a specific rule prohibiting this. [88]

The case established that this jurisdiction is primarily permissive rather than restrictive but also laid the groundwork for understanding how and when States can exercise extraterritorial jurisdiction.

We can also look at another facet of the *Arrest Warrant case*. [89] As discussed, the ICJ acknowledged that Belgium's claim of universal jurisdiction over serious international offenses was not inherently unlawful. [90] Nevertheless, the ICJ determined that Belgium had acted contrary to international law by issuing an arrest warrant for the Foreign Minister without respecting his immunity. Notably, in the second part of the judgment, the Court recognized that

[86] United Nations, Press Release : Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins, 15 October 2014, online : https://press.un.org/en/2014/gal3481.doc.htm (last accessed 3 June 2025).

[87] Cambridge University Press, *Cambridge Dictionary*, "International waters", online : https://dictionary.cambridge.org/dictionary/english/international-waters (last accessed 2 June 2025).

[88] *S.S. Lotus (France v. Turkey)*, Judgment, 7 September 1927, P.C.I.J., No. 10.

[89] See *Arrest Warrant case of 11 April* 2000 under universality principle.

[90] Pieter H.F. Bekker Date, "World Court Orders Belgium to Cancel an Arrest Warrant Issued Against the Congolese Foreign Minister", in *ASIL* Insights, Issue 2, Volume 7, 11 February 2002, online : https://www.asil.org/insights/volume/7/issue/2/world-court-orders-belgium-cancel-arrest-warrant-issued-against-congoles-0#:~:text=unlawful%20under%20international%20law%3F%20Thus%2C,issue%20and%20circulate%20the%20warrant (last accessed 10 June 2025).

a State can still claim jurisdiction over foreign individuals as long as they don't benefit from immunity when their actions pose a threat to the State's interests or security. [91]

## II. LIMITS

While the protective principle allows States to assert jurisdiction extraterritorially over acts threatening their national interests, its application is not without limits.

First of all, as we already mentioned, the jurisdiction can only apply in case the act constitutes a direct and serious threat to the State. [92]

Second, it cannot infringe on another State's sovereignty as it has to respect the principle of non-intervention we analysed in chapter 1. As we know, sovereignty means exclusivity over acts that happened in that State's territory. So, in case of abuse of this protective principle, it can violate international law. [93]

Third, while this principle is widely accepted, courts use it with caution in order to protect comity. Comity is an American-based method of recognising and accepting a foreign court's judgement as valid. [94] It nevertheless remains a somewhat confusing principle in international law as there is no clear definition for it. [95]

Fourth, this principle frequently conflicts with other bases for extraterritorial jurisdiction, such as the universality principle and the passive personality, because both principles may apply to the same conduct thus creating uncertainty over which is more suitable.

Fifth, not all States recognise or use this principle to the same extent. The State practice differs as some legal systems restrict its use to specific types of acts, while other use it more generally.[96]

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[91] See *Arrest Warrant case of 11 April* 2000 under universality principle.

[92] Alyssa Resar, « Self-Protection in World Society : Reformulating the Protective Principle in International Law » in *The Yale Law Journal* No. 134, 2025, p. 1839.

[93] See Territoriality Principle *supra*.

[94] *Banco Nacional de Cuba v. Sabbatino*, 1964, 376, 398, 421.

[95] J.*P. Morgan Chase Bank v. Altos Hornos de Mexico*, *S.A. de C.V.*, 412 F, 423 (2d Cir. 2005).

[96] Alyssa Resar, *op. cit.*, p. 1839.

## E) EFFECTS PRINCIPLE

### I. PRINCIPLE

While the effects doctrine is similar to the protective principle, the scope differs. Both allow States to exercise extraterritorial jurisdiction, but the protective principle is grounded in protecting a State's national security while the effects doctrine is based on the impact of foreign conduct on that State's territory. [97]

This principle that originally emerges in the United States is less commonly used in Europe, even though it is starting to gain more notoriety, especially in Germany, France and the European Union as a whole. Its growing relevance is especially noticeable in commercial matters rather than in criminal contexts. [98]

The protective principle lets a State claim jurisdiction over actions taken outside its borders if those actions threaten the State's core interests. Similarly, the effects doctrine enables a State to seek jurisdiction over activities outside of its borders if those actions have major consequences in other domains like competition law, environmental issues or cybercrime, but not for national security, unlike the protective principle. [99]

Originating from the *Lotus case*, this effects principle was later developed in American competition law, especially after the *United States v. Alcoa case* of 1945. [100] In this case the court asserted jurisdiction over foreign conduct that impacted the United States' markets.

The dispute was between the United States government suing Alcoa and Aluminium Limited for controlling the aluminium market and limiting trade in the United States and other countries. The main issue the court tackled was to know whether Alcoa's control of the market violated American antitrust laws. In its decision, the court concluded that these laws can be enforced, even against foreign corporations as long as they have a major impact on the State in question. [101]

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[97] Menno Kamminga, "Extraterritoriality" In R. Wolfrum (Ed.), *The Max Planck Encyclopaedia of Public International Law* (Oxford: Oxford University Press), 2020, para. 15, online : https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1040?print=pdf (last accessed 5 June 2025)

[98] *Ibid*.

[99] *Ibid.*

[100] Zerk, Jennifer A. 2010. "Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas", Working paper, Harvard Kennedy School, 2011, p. 19.

[101] *United States v. Aluminum Co. of America*, 148 F.2d 416 (2nd Cir. 1945), 12 March 1945.

## II. LIMITS

It is argued that asserting jurisdiction based on this principle defies the conventional understanding of internation jurisdiction. There are concerns that by increasing the jurisdiction of the regulating State, the interests of third States can be impacted. In fact, if a State applies its laws extraterritorially by using the effects principle, that could interfere with the sovereignty of other States. For instance, if an American court applies its antitrust laws to a Belgian company operating in Germany, that could affect the economic interest of that Germany, even if it did not consent to such interference. [102]

The biggest concern is that because the scope is not clearly defined, there is a risk of abuse of this principle. Almost every action has some sort of effect on a State, so it is important to stay cautious when resorting to this principle as a base for extraterritorial jurisdiction. [103]

## SUBSECTION 3: PRINCIPLES OF PROPORTIONALITY, NON-DISCRIMINATION AND NECESSITY

The principles of proportionality, non-discrimination and necessity are very important principles in international law. That is also why the international community frequently relies on them to try to analyse whether a State's extraterritorial assertion of jurisdiction is justified and does not infringe one another State's sovereignty. Moreover, these principles help put constraints on the extraterritorial application of unilateral sanctions.

### §1: PRINCIPLE OF PROPORTIONALITY

The principle of proportionality guarantees that any action taken by a State is not excessive and is proportionate to its legitimate objective. In the context of the extraterritorial application of unilateral sanctions it is especially relevant because the harm inflicted on individuals, companies or even third States can never exceed the goal sought by the sanctioning State. [104]

[102] Cedric Ryngaert, *op. cit.*, pp. 2.
[103] Danielle Ireland-Piper, "Extraterritorial Criminal Jurisdiction: Does the Long Arm of the Law Undermine the Rule of Law" in *Melbourne Journal of International Law*, 2012, III, E.
[104] Daniëlla Dam-de Jong, "Who Is Targeted by the Council's Sanctions? The UN Security Council and the Principle of Proportionality" in *Nordic Journal of International Law*, vol. 89, 2020, p. 384.

While proportionality is not yet widely accepted as a general principle of customary international law [105] [106], legal practice is significantly becoming more accepting of the use of this principle. In fact, State practice shows that States are resorting to the use of proportionality, especially in sectors involving extraterritorial consequences.[107]

Within the European Union, the principle is fundamental. Article 5(4) of the Treaty on the European Union clearly stipulates that: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."[108] This requirement is particularly important when EU sanctions have extraterritorial effects such as penalizing non-EU entities for trading with sanctioned States.

The balancing function of proportionality has been emphasized in the ICJ *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Essentially, the ICJ emphasized that when a problem of national security is raised, any measure adopted must respect the principle of proportionality, stating that the measures they cannot be excessive and must remain necessary for the legitimate aim that is pursued. [109]

This demonstrates that proportionality serves as a limit to unilateral State actions, particularly those with extraterritorial consequences, so that the harm does not outweigh the benefits.

### §2: PRINCIPLE OF NON-DISCRIMINATION

The principle of non-discrimination in international law requires that States cannot treat similar situations differently without good reason and justification. [110] When it comes to the extraterritorial application of unilateral sanctions, this principle becomes crucial to ensure that such measures do not target specific individuals, companies or States and thus serves as a safeguard against selective targeting.

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[105] Thomas Cottier, Roberto Echandi, Rafael Leal-Arcas, Rachel Liechti, Tetyana Payosova, Charlotte Sieber-Gasser, *The Principle of Proportionality in International Law*, Working Paper No. 2012/38, December 2012, p. 4.

[106] George Washington University Law School, "Proportionality in International Law" in *Research Guide*, online : https://law.gwu.libguides.com/c.php?g=515695&p=3525705 (last accessed 5 June 2025).

[107] Elizabeth Crawford, "Proportionality" in: R. Wolfrum (ed.), *The Max Planck Encyclopaedia of Public, International Law*, vol. VIII, 2012, p. 533.

[108] Treaty on European Union, Art. 5(4).

[109] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, ICJ Rep 136, para. 135.

[110] *Marckx v. Belgium* (Application no. 6833/74), Judgment, European Court of Human Rights, 13 June 1979, para. 33.

This idea is supported by a number of legal instruments. Notably, the EU Blocking Statute "protects EU operators from the extra-territorial application of third country laws"[111] and sanctions. This Statute makes sure that European companies are protected from being forced to comply with sanctions imposed by other countries. In the event the EU does want EU companies to comply with those foreign sanctions, it must do so fairly and consistently to avoid discrimination. [112]

A specific case further clarified the application of non-discrimination. In fact, the European Court of Justice in its *Cassis de Dijon case* of 1979 established that comparable products or situations must be treated equally unless there is a legitimate justification for the discrimination. [113]

As we can see, the principle of non-discrimination is crucial to ensure that unilateral sanctions are applied fairly and consistently.

### §3: PRINCIPLE OF NECESSITY

The principle of necessity requires that when a State takes a measure, especially one that affects the rights of another State, that State has to have a legitimate aim such as protecting its national security, maintaining international peace of protecting public order. If this is not the case, the extraterritorial sanction cannot be considered lawful. [114]

In the context of unilateral sanctions, necessity serves as a limit, because the State has to demonstrate that enforcing the sanction is necessary and the only available way of achieving its legitimate aim without delay due to its urgency.

The legal basis for this principle can be found in Article 25 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).

[111] European Commission, *Extraterritoriality (Blocking statute)*, online : https://finance.ec.europa.eu/eu-and-world/open-strategic-autonomy/extraterritoriality-blocking-statute_en (last accessed 6 June 2025).
[112] *Ibid*.
[113] Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), Case 120/78, Judgment, 20 February 1979, para. 8.
[114] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 25.

This provision states that necessity can only be invoked if it: "(a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; (b) does not seriously impair an essential interest of the State or States towards which the obligation exists (…)". [115]

The ICJ, in its decision in the *Oil Platforms case* confirmed this restrictive definition of necessity. In fact, the ICJ ruled that even when a State invokes a national security interest to justify its actions, this high threshold of necessity must be met. The Court also added that if there is a less harmful way to achieve the same objective, a more sever action like an extraterritorial sanction cannot be justified. [116]

So, the principle of necessity always requires a sanctioning State to prove that there is a legitimate objective and that there is no alternative means available to achieve the same outcome.

### SUBSECTION 4: COUNTERMEASURES

The principle of countermeasures is fundamental in international law, allowing a State that has been wronged by another State's wrongful act to "remedy" this violation unilaterally. However, because this decision is made without consulting the international community, there is a risk that countermeasures could be abused. [117]

The primary goal of countermeasures is not to punish the offending State, but rather to encourage it to comply with international law and rectify the wrongful situation. For example, in the *Air Services Agreement Case*, the arbitral tribunal confirmed that countermeasures must be proportionate and have to induce compliance, but never punishment. [118]

Countermeasures will always be governed by customary international law, as the objective is to avoid escalation into armed conflict. The International Law Commission (ILC) in its Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) codified what measures States are legally allowed to take.

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[115] *Ibid*.
[116] International Court of Justice, Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, 2003, ICJ, para. 51.
[117] Oona A. Hathaway, Maggie M. Mills, Thomas M. Poston, "War Reparations: The Case for Countermeasures" in *Stanford Law Review*, Volume 76, May 2024, p. 442.
[118] Case concerning the Air Services Agreement of 27 March 1946 (United States of America v. France), Award of 9 December 1978, Reports on International Arbitral Awards, p. 439.

Article 49 of ARSIWA states that: “An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations (…)”. [119]

Economic sanctions are among the most common forms of countermeasures and are often used in response to breaches of international treaties such as human right abuses. [120]

Because countermeasures are unilateral, they are subject to strict limitations to prevent abuse. For instance, articles 52(1) and (3) of ARSIWA” require the injured State to “first call upon the responsible State to fulfil its obligations” [121] and to suspend countermeasures if the dispute is “pending before a court or tribunal”. [122] So, although countermeasures are a recognized right, it is limited by procedural safeguards.

Moreover, countermeasures must always be proportionate to the original wrongful act, otherwise it is at risk of being considered unlawful. [123] They must also respect *jus cogens* norms, which are norms that are so fundamental that they can never be violated, such as the prohibition of torture and other human rights obligations. [124]

Lastly, countermeasures must always be non-violent and exclude the use of military power as their purpose is to resolve disputes peacefully and not initiate armed conflict. [125]

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[119] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 40.
[120] Carlos Manuel Vázquez, “Trade Sanctions and Human Rights–Past, Present, and Future
Trade Sanctions and Human Rights–Past, Present, and Future” in *Georgetown Law Faculty Publications*, 2003, p. 822.
[121] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *op. cit*., Art. 52(1)(a)
[122] *Ibid.*, Art. 52(3)(b)
[123] *Ibid.*, Art. 51
[124] *Ibid.*, Art. 50(1)(d)
[125] *Ibid.*, Art. 50(1)(a)

# CHAPTER 2: EXTRATERRITORIAL SANCTIONS REGIMES

## SECTION 1: INFLUENCES OF PAST SANCTIONS ON CURRENT PRACTICES: HELMS-BURTON ACT

The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, commonly known as the Helms-Burton Act, considerably reinforced the United States' embargo[126] on Cuba, which makes it a key component in the U.S.' sanctions regime against Cuba. In fact, even though the Act was not the first instance of extraterritorial U.S. sanctions, it enforced these measures in such an aggressive and far-reaching way, that is sparked worldwide debate. [127]

Title III of the Act allows U.S. nationals, also encompassing naturalized Cuban-Americans, to initiate legal action against foreign companies that engage in the "trafficking" of property seized by the Cuban government after the revolution of 1959 that overthrew the government.[128] Trafficking was broadly defined as "any commercial activity".[129] Nevertheless, this provision was on hold from 1996 till May of 2019. When the Trump administration allowed all of these lawsuits to move forward again, it caused a lot of turmoil and tension on the international scene.[130]

The European Union took decisive action by updating its Blocking Statute [131] in order to protect EU entities from the repercussions of the Helms-Burton Act. This Blocking Statute

[126] "A ban on all commerce" in *Encyclopedia Britannica*, "Embargo", online : https://www.britannica.com/money/embargo-international-law (last 4 May 2025).

[127] Tim Bearden, "Helms-Burton Act: Resurrecting The Iron Curtain – Analysis" in *Eurasia Review*, 13 June 2011, online : https://www.eurasiareview.com/13062011-helms-burton-act-resurrecting-the-iron-curtain-analysis/ (last accessed 5 May 2025).

[128] *Encyclopedia Britannica*, "Cuban Revolution", 26 July 2025, online : https://www.britannica.com/event/Cuban-Revolution (last accessed 5 August 2025).

[129] Steven K. Davidson, Michael J. Baratz, Molly Bruder Fox, Michael G. Scavelli, Sabra Messer, B. Gammon Fain, "New Helms-Burton Act Decisions" in *Steptoe*, 6 May 2025, p.1, online : https://www.steptoe.com/en/news-publications/new-helms-burton-act-decisions.html (last accessed 5 August 2025).

[130] Quinn Emanuel, "Title III Suits Under The Helms-BurtonAct : A Primer", online : https://www.quinnemanuel.com/the-firm/publications/title-iii-suits-under-the-helms-burton-act-a-primer/ (last accessed 17 June 2025).

[131] European Commission, Extraterritoriality (Blocking Statute), *op. cit.*

allows for the recovery of damages through EU courts and prohibits compliance with the provisions found in the Act. [132]

This has led many scholars to conclude that the Helms-Burton Act is a violation of the principle of territorial jurisdiction. [133]

## SECTION 2: SANCTIONS RELEVANT TO THE ANALYSIS OF CONTEMPORARY CHALLENGES

### SUBSECTION 1: UNITED STATES SANCTIONS AGAINST IRAN

#### §1: FACTS AND SANCTIONS

Since the 1979 hostage crisis where Iranian militants seized 66 American nationals from the United States' embassy in Tehran and kept 52 of them captive for over a year [134], The United States has pursued an expansive sanctions regime against Iran.

**In 1979**, the U.S. set forth some executive orders to freeze Iranian government assets totalling billions of dollars as well as financial restrictions. [135] The United States wanted to safeguard their national interests, so the measures were primarily territorial as they stayed confined within U.S. borders.

Later, **in 1984,** Iran was designated as a State sponsor of terrorism [136] which triggered some new sanctions like an arms embargo and "export control for dual-use items".[137]

**Between 1995 and 1997**, the United States expanded its sanctions regime against Iran through executive orders and the passage of the Iran and Libya Sanctions Act (ILSA). [138] This was a

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[132] Saqib Alam, John Carlin, Michael Dobson, Felix Helmstädter, David Newman, Kristofer Readling, John Smith, Nicholas Spiliotes, Jennifer Talbert, "Back to the Future: Helms-Burton Versus the Blocking Statutes. Who Will Prevail?" in *JD Supra*, 21 August 2019, online : https://www.jdsupra.com/legalnews/back-to-the-future-helms-burton-versus-46590/ (last accessed 5 August 2025).

[133] Brice M. Clagett, "Title III of the Helms-Burton Act Is Consistent with International Law" in *American Journal of International* Law, 27 February 2017, online : https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/title-iii-of-the-helmsburton-act-is-consistent-with-international-law/2D524B4DDA435CE5901C9E8822F05D0C (last accessed (17 June 2025) .

[134] *Encyclopedia Britannica*, "Iran hostage crisis", online : https://www.britannica.com/event/Iran-hostage-crisis (last accessed 16 June 2025).

[135] Executive orders 12170 (Blocking Iranian Government Property), 12205 (Prohibiting certain transactions with Iran), 12211 (Further prohibitions on transactions with Iran).

[136] U.S. Department of State, *State Sponsors of* Terrorism, online : https://www.state.gov/state-sponsors-of-terrorism/ (last accessed 18 June 2025).

[137] Zachary Laub, "International Sanctions on Iran" in *Council on Foreign Relations*, 15 July 2015, online : https://www.cfr.org/backgrounder/international-sanctions-iran (last accessed 18 June 2025).

[138] Office of Foreign Assets Control, *Iran Sanctions Act of 1996*, online : https://ofac.treasury.gov/media/5751/download?inline (last accessed 18 June 2025).

shift towards an extraterritorial application as one executive order prohibited United States entities from supporting Iran's petroleum development in order to limit its ability to fund terrorism. [139] Another executive order extended this to a trade and investment embargo.[140] Nevertheless, the most significant extraterritorial application of sanctions occurred with the passage of the ILSA in 1996 as this Act not only authorised sanctions against U.S. individuals but also against foreign companies. [141]

**In 2001**, further executive orders labelled several other Iranian entities as global terrorists, particularly those linked to the IRGC [142] which affected foreign financial institutions and individuals. [143]

Following the events of 11 September 2001, as the United States had increasing concerns over Iran's nuclear program, it significantly increased its sanctions regimes against Iran shifting towards a more aggressive and extraterritorial approach. In fact, **in 2005,** President Bush issued an executive order that targeted individuals and entities involved in the proliferation of weapons of mass destruction. [144]

In fact, **in 2005,** President Bush issued an executive order that targeted blocked the property of weapons of mass destruction for their proliferators and their supporters. This order authorised asset freezes of not only Iranian nationals but also of foreign banks that were linked to Iran's military sector, which is an extraterritorial application of sanctions. [145]

This extraterritorial application deepened even further **in 2010** with the passage of the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) by President Obama. This Act strengthened U.S. sanctions on the Iranian energy industry and added the

[139] President of the United States, *Executive Order 12957*, 15 March 1995, online : https://www.govinfo.gov/content/pkg/WCPD-1995-03-20/pdf/WCPD-1995-03-20-Pg424.pdf) (last accessed 18 June 2025).

[140] President of the United States, *Executive Order 12959*, 7 May 1995, online : https://www.govinfo.gov/content/pkg/WCPD-1995-05-15/pdf/WCPD-1995-05-15-Pg784.pdf (last accessed 18 June 2025).

[141] Office of Foreign Assets Control, *Iran Sanctions Act of 1996*, *op. cit.*

[142] "The most powerful branch of the Iranuan armed forces", *Encyclopedia Britannica*, online : https://www.britannica.com/topic/Islamic-Revolutionary-Guard-Corps (last accessed 18 June 2025).

[143] President of the United States, *Executive Order 13224* (21 September 2001) and *Executive Order 13382* (28 June 2005).,

[144] President of the United States, *Executive Order 13382*, 28 June 2005, online : https://ofac.treasury.gov/media/8581/download?inline (last accessed 18 June 2025).

[145] *Ibid.*

"potential for the imposition of serious limits on foreign financial institutions' access to the U.S. financial system". [146]

Moreover, in **2009**, Iran held a presidential election that many believed was rigged which led to a large protest in Iran known as the Green Movement.[147] However, the Iranian government responded with violence and arrest which led to the adoption of another American executive order in **2010**, this time targeting Iranian officials responsible for these human rights abuses.[148]

**Between 2011 and 2013**, a series of executive orders expanded sanctions to numerous other sectors like the Central Bank of Iran, suspending entry of certain Iranian individuals[149] as well as Iranian oil exports and those supporting the IRGC. [150]

Moreover, in 2011, Iran was labelled a "jurisdiction of primary money laundering concern"[151] according to section 311 of the USA Patriot Act. This indirectly forced foreign banks to avoid ties to Iranian financial institutions or running the risk of being shut off from the American financial system which is yet another example of extraterritorial enforcement. [152]

The scope of the sanctions expanded considerably again **in 2016** when the Trump administration pulled out of the Joint Comprehensive Plan of Action (JCPOA) and initiated the "maximum pressure campaign". [153] This campaign included restricting Iran's access to oil revenue, cutting exports, disconnecting banks from SWIFT, and sanctioning over 970 entities causing serious inflation. Simultaneously, the United States and its allies intensified diplomatic

[146] The Department of Treasury, *CISADA : The New U.S. Sanctions on Iran*, 1 July 2010, online : https://ofac.treasury.gov/media/7871/download?inline (last accessed 18 June 2025).

[147] Hamid Dabash, "What happened to the Green Movement in Iran?" in *Al Jazeera*, 12 June 2013, online : https://www.aljazeera.com/opinions/2013/6/12/what-happened-to-the-green-movement-in-iran (last accessed 18 June 2025).

[148] President of the United States, *Executive Order 13553*, 28 September 2010, online : https://www.govinfo.gov/content/pkg/DCPD-201000809/pdf/DCPD-201000809.pdf (last accessed 18 June 2025).

[149] President of the United States, *Executive Order 13606*, 22 April 2012, online : https://www.govinfo.gov/content/pkg/DCPD-201200294/pdf/DCPD-201200294.pdf (last accessed 18 June 2025).

[150] President of the United States, Executive Orders 13590, 13622 and 13628.

[151] United States Government, Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering, Combating the Financing of Terrorism, and Counter-Proliferation Deficiencies , 29 February 2024, online : https://www.fincen.gov/news/news-releases/financial-action-task-force-identifies-jurisdictions-anti-money-laundering (last accessed 18 June 2025).

[152] *ABA Banking Journal*, "FinCEN Designates Iran as 'Primary Money Laundering Concern'", 25 October 2019, online : https://bankingjournal.aba.com/2019/10/fincen-designates-iran-as-primary-money-laundering-concern/ (last accessed 18 June 2025).

[153] U.S. Depaartment of State, *Maximum Pressure Campaign on the Regime in Iran*, Fact Sheet, 4 April 2019, online : https://2017-2021.state.gov/maximum-pressure-campaign-on-the-regime-in-iran/ (last accessed 18 June 2025).

and security efforts, exposing Iranian terrorism plots and sanctioning military actors as well as disrupting weapons shipment. [154]

Later, **between 2019 and 2020,** the U.S. targeted Iran's metal sector with two new executive orders especially focusing on its construction, mining and manufacturing industries. [155] These orders also applied extraterritorially, which means anyone who engaged in this trade related to these Iranian sectors could be sanctioned.

**In 2022**, in retaliation to cyberattacks on Albanian infrastructure, the U.S. placed cyber-related penalties on Iran Ministry of Intelligence and its minister under executive order 13694. [156]

Recent events have dramatically escalated the U.S. sanctions regime on Iran.

In **February 2025**, President Trump reinstated his "maximum pressure" campaign through a National Security Presidential Memorandum. His administration reactivated secondary sanctions against Iran aiming to deny it nuclear weapons as well as dismantle its terrorist networks and counter its missile and military capabilities. The Memorandum also directs the Treasury to impose economic sanctions, including on foreign sectors like shipping and insurance. The Administration also targeted Iranian oil exports wanting to bring them to zero.[157]

By **May 2025**, multiple rounds of sanctions were introduced, targeting especially oil-smuggling networks [158], individuals and firms supplying ballistic missile components, necessary for Iran's missile production. [159]

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[154] *Ibid*.
[155] President of the United States, *Executive Orders 13871 and 13902*.
[156] President of the United States, *Executive Order 13694* (as amended), online : https://www.whitehouse.gov/presidential-actions/2025/06/sustaining-select-efforts-to-strengthen-the-nations-cybersecurity-and-amending-executive-order-13694-and-executive-order-14144/ (last accessed 19 June 2025).
[156] *Ibid.*
[157] The White House, *Fact Sheet: President Donald J. Trump Restores Maximum Pressure on Iran* , 4 February 2025, online : https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-maximum-pressure-on-iran/ (last accessed 19 June 2025).
[158] U.S. Department of the Treasury, *Treasury Targets Global Netwovvrk Shipping Iranian Oil, Funding Iran's Military and Terrorist Activities,* 13 May 2025, online : https://home.treasury.gov/news/press-releases/sb0139 (last accessed 19 June 2025).
[159] U.S. Department of State, *Imposing Sanctions on China- and Iran-based Entities and Individuals that Support Iran's Ballistic Missile Program*, 14 May 2025, online : https://www.state.gov/releases/office-of-the-spokesperson/2025/05/imposing-sanctions-on-china-and-iran-based-entities-and-individuals-that-support-irans-ballistic-missile-program/ (last accessed 19 June 2025).

Nevertheless, the situation deteriorated radically by **June 13, 2025**, when Iranian forces launched over 150 ballistic missiles and 100 drones at Israel in response to prior Israeli strikes.[160] In reaction, the United States rapidly condemned the Iranian assault and reaffirmed its support for Isreal. [161]

Moreover, as a part of its response, the United States made a decisive move on **June 21 and 22 of 2025** as it conducted its first direct military strikes on Iranian soils since 2018. The U.S. called the strike "Operation Midnight Hammer" and described it as a targeted effort to completely degrade Iran's missile and nuclear power.[162] President Trump claimed that these strikes "completely obliterated' Iran key nuclear sites, even though it was later assessed that it was delaying it rather than destroying it. President Trump also added that the strikes were defensive and intended to prevent further escalation. [163]

Shortly thereafter, on **June 24, 2025**, Trump announced on Truth Social, a social media platform owned by Trump Media, that China can continue purchasing Iranian oil, while nevertheless specifying that the sanctions will remain in place. [164]

This overview of sanctions illustrates how the United States have gradually expanded their sanctions regime on Iran, evolving from limited territorial measures to a very extraterritorial range of sanctions that impacts not only United States and Iran individuals and entities. These sanctions nevertheless raise important legal questions regarding its compliance with international law.

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[160] David Daoud, Ahmad Sharawi, "Iranian drone and missile attacks against Israel: June 13–16" in *FDD's Long War Journal*, 2025, FDD's Long War Journal, 16 June 2025, online : https://www.longwarjournal.org/archives/2025/06/iranian-drone-and-missile-attacks-against-israel-june-13-16-2025.php (last accessed 19 June 2025).

[161] Jerrusalem Post Staff, "US military intercepts Iranian missiles, drones aimed at Israel" in *The Jerusalem Post*, 15 June 2025, online : https://www.jpost.com/middle-east/iran-news/article-857725 (last accessed 19 June 2025).

[162] Howard Altman, Tyler Rogoway, Joseph Trevithick, "B-2 Strikes On Iran: What We Know About Operation Midnight Hammer (Updated)" in *The War Zone*, 22 June 2025, online : https://www.twz.com/air/b-2-strikes-on-iran-what-we-know-about-operation-midnight-hammer (last accessed 2 July 2025).

[163] Warren P. Strobel, John Hudson, Dan Lamothe, Karen DeYoung and Theodoric Meyer, "U.S. initial damage report: Iran nuclear program set back by months, not obliterated" in *The Washington Post*, 25 June 2025, online : https://www.washingtonpost.com/national-security/2025/06/24/us-iran-bomb-assessment-nuclear-sites-not-destroyed/ (last accessed 2 July 2025).

[164] Times of India Business Desk, "Hopefully will purchase plenty from US…: Donald Trump says China can get Iran oil, but wants it to buy from America; will it listen?" in *Times of India*, 25 June 2025, online : https://timesofindia.indiatimes.com/business/international-business/hopefully-will-purchase-plenty-from-us-donald-trump-says-china-can-buy-iran-oil-but-wants-it-to-purchase-from-america-will-it-listen/articleshow/122068884.cms (last accessed 2 July 2025).

## §2: ANALYSIS OF THE LEGALITY OF THE EXTRATERRITORIAL SANCTIONS

Since the adoption of sanctions against Iran, the legality of these measures has been widely questioned. The problem seems to be the conflict between State sovereignty, the principle of non-intervention and the ability of States to unilaterally exercise jurisdiction in some extraterritorial cases. The analysis will evaluate whether these sanctions are legal according to international law.

### A. ACCORDING TO THE UNITED NATIONS CHARTER

The United Nations prohibits the "threat or use of force against the territorial integrity or political independence of any State" [165] unless authorized by the security Council[166] or if justified by self-defence.[167] Nevertheless, the "Operation Midnight Hammer" where the United States conducted military strikes on Iranian soil without Security Council authorization, clearly violates the Charter's prohibition on the use of force which undermines international peace and security.

Additionally, The 1996 ILSA and 2010 CISADA as well as the 2025 National Security Presidential Memorandum reactivating the "maximum pressure campaign", imposed sanctions that all target foreign companies and financial institutions dealing with Iran. This is another clear violation of article 2(7) of the UN Charter that prohibits the intervention in domestic affairs of States because these sanctions interfere directly with Iran's sovereign control over its economic sector and trade relations.

Moreover, with the United States's withdrawal of the Joint Comprehensive Plan of Action (JCPOA) that was endorsed by the Security Council[168] and its new unilateral "maximum pressure campaign", it disregarded the multilateral process of the United Nations which undermined the principle of collective security of the United Nations. [169]

[165] *Charter of the United Nations*, June 26 1945, Art. 2, para. 4.
[166] *Ibid*., Art. 39.
[167] *Ibid*., Art. 51.
[168] United Nations Security Council, *Resolution 2231 on Iran Nuclear Issue*, 2015, online : https://main.un.org/securitycouncil/en/content/2231/background (last accessed 2 July 2025).
[169] *Charter of the United Nations*, June 26 1945, Art. 2, para. 6.

Finally, the Charter encourages peaceful dispute resolution. [170] Instead, the United States resorted to military strikes and extensive sanctions designed to shut down Iran's economy and military power without trying to solve the dispute peacefully through dialogue.

## B. ACCORDING TO THE PRINCIPLES OF TERRITORIALITY AND EXTRATERRITORIALITY

Under customary international law, a State has limited jurisdiction based on the principle of territoriality, allowing it to regulate only conduct within its own borders. [171] As a result, the sanctions that consisted of Iranian asset freezes in the United States are lawful based on this principle and the active nationality principle.

However, many of the other American sanctions, especially those targeting foreign companies and individuals based on the effects doctrine, is controversial, as we have seen. In fact, a third State conducting business with Iran, even outside of the United States does not necessarily have substantial effects on the United States which make those sanctions not automatically lawful.

For instance, the European Union rejects the extraterritorial enforcement of American sanctions. In order to take a stance, the EU reactivated its Blocking Statute in 2018 to render U.S. secondary sanctions, so sanctions on third States engaging with the sanctioned State, unenforceable within the EU.[172] Additionally, the European Union, created the Instrument in Support of Trade Exchanges (INSTEX) to bypass U.S. financial restrictions in terms of trade with Iran. The EU's goal is to conduct trade indirectly to still comply with the JCPOA but still avoiding U.S. sanctions. [173] This illustrates that U.S. sanctions are perceived as unlawful.

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[170] *Ibid.*, Art. 33.

[171] See principle of territoriality.

[172] Sarah Krulikowski, *Economic Sanctions: An* Overview, U.S. International Trade Commission, March 2024, online: https://www.usitc.gov/publications/332/executive_briefings/ebot_economic_sanctions_overview.pdf (last accessed 2 July 2025).

[173] Jean-Yves Le Drian, Heiko Maas, Jeremy Hunt, Joint statement on the creation of INSTEX, the special purpose vehicle aimed at facilitating legitimate trade with Iran in the framework of the efforts to preserve the Joint Comprehensive Plan of Action (JCPOA),31 January 2019, online : https://www.diplomatie.gouv.fr/IMG/pdf/19_01_31_joint_statement_e3_cle0d129c.pdf (last accessed 2 July 2025).

## C. ACCORDING TO TREATY OBLIGATIONS AND ICJ PROCEEDINGS

In 2018, Iran went before the ICJ and claimed that U.S. sanctions violated the Treaty of Amity of 1955 between the two States. The ICJ ordered provisional measures[174] asking the United States to stop obstructing humanitarian aid and civil aviation safety thus implicitly recognizing that these sanctions violate the Treaty but also international law as a whole.

## D. ACCORDING TO THE PRINCIPLES OF PROPORTIONALITY, NECESSITY AND NON-DISCRIMINATION

In the case of U.S sanction against Iran there is substantial evidence pointing to serious human consequences. Human Rights Watch indicated that the "maximum pressure campaign" has "drastically constrained the ability of Iranian entities to finance humanitarian imports, including vital medicines and medical equipment" [175], which was not necessary. More than 6 million Iranian citizens suffer from this unproportional shortage of medicine as an indirect result of American sanctions [176], which were meant to be targeted against the Iranian government and not civilians, which makes it discriminatory.

This is contrary to the International Covenant on Economic, Social and Cultural Rights, which Iran has ratified and which requires the protection of the right to health, including access to essential medicines. [177] Given the sanctions' effect, it arguably violates the principles of proportionality, necessity and non-discrimination.

## E. ACCORDING TO THE PRINCIPLE OF COUNTERMEASURES

Under the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), a State can only adopt countermeasures to a induce the other State to comply with its international obligations, provided certain conditions are met. [178] In this case, the International Atomic Energy Agency found Iran compliant with the JCPOA until the U.S.

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[174] International Court of Justice, Alleged violations of the A955 Treaty of Amity, economic relations, and consular rights, Order, Reports of Judgments, Advisory Opinions and Orders, 3 October 2018, para. 70, online: https://www.icj-cij.org/sites/default/files/case-related/175/175-20181003-ORD-01-00-EN.pdf (last accessed 2 July 2025).

[175] Human Rights Watch, "Maximum Pressure", 29 October 2019, online : https://www.hrw.org/report/2019/10/29/maximum-pressure/us-economic-sanctions-harm-iranians-right-health (last accessed 2 July 2025).

[176] Ali Gorji, "Sanctions against Iran: The Impact on Health Services" in *Iranian Journal of Public Health*, March 2014, online : https://pmc.ncbi.nlm.nih.gov/articles/PMC4419179/ (last accessed 2 July 2025).

[177] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Art. 12.

[178] Responsibility of States for Internationally Wrongful Acts, 3 August 2001, Art. 52.

withdrew from the Agreement in 2018 [179], which raises questions about the occurrence of any wrongful act at that time.

Moreover, ARSIWA does not allow countermeasures that undermine the rights of third States directly [180] or those that breach fundamental human rights.[181] Yet, U.S. sanctions apply extraterritorially and thus infringe on those third States' sovereignty.

Finally, the United States failed to comply with ARSIWA's procedural requirements as it did not provide prior notification, did not seek to settle the issue through negotiation[182] and acted unilaterally without consulting the U.N. Security Council.[183] These actions imply that these are not countermeasures but an unlawful use of economic coercion.

## §3: FINAL ANALYSIS

While certain aspect of the United States' sanctions regime, such as targeting U.S. nationals or conduct within U.S. territory, can be considered lawful under the principles of territoriality and nationality, the broader framework raises serious legal concerns.

In particular, the secondary sanctions imposed on non-U.S. companies, solely for engaging in lawful business with Iran, clearly violates international law, especially the territorial sovereignty and non-intervention principles. As we have seen, these sanctions have resulted in pushback from the international community, as evidenced by the EU's Blocking Statute as well as its INSTEX mechanism to permit trade with Iran.

Moreover, the attempts to defend these sanctions using the effects doctrine, protective principle or countermeasures are ineffective given their humanitarian consequences and impact on third States' rights.

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179 Arms Control Association, "IAEA Report Confirms Iran's Compliance with the JCPOA", https://www.armscontrol.org/blog/2018-06-08/iaea-report-confirms-irans-compliance-jcpoa (last accessed 2 July 2025).

180 Nathanael Tilahun, Obiora Okafor, "Humanizing" Economic Sanctions? Lessons from International Humanitarian Law" in *Yale Journal of International Law*, 14 June 2024, online : https://yjil.yale.edu/posts/2024-06-14-humanizing-economic-sanctions-lessons-from-international-humanitarian-law (last accessed 2 July 2025).

181 Responsibility of States for Internationally Wrongful Acts, 3 August 2001, Art. 50, 1, a).

182 *Ibid.*, Art. 52 (1) (b).

183 *Charter of the United Nations*, June 26 1945, Art. 39 UN.

As a result, while some of the U.S.' sanctions may be technically lawful, their extraterritorial and disproportionate reach undermines their legitimacy under international law.

## SUBSECTION 2: EUROPEAN UNION SANCTIONS AGAINST IRAN

### §1: FACTS AND SANCTIONS

The European Union initiated sanctions against Iran in **2007** due to the Iranian government's noncompliance with U.N. Security Council resolutions regarding its nuclear program. These initial sanctions were specifically aimed at limiting the export of materials and technology that could facilitate uranium enrichment and the development or nuclear weapons. In particular, the EU banned sale, supply and transfer of nuclear related goods and dual-use items to Iran, while also implementing travel bans and asset freezes on individuals associated with the nuclear program. [184]

As Iran persisted in its uranium enrichment activities, the EU notably broadened its restrictive measures. In **July 2010**, the EU Council enacted Decision 2010/413/CFSP which established extensive financial, trade and transport restrictions. This encompassed freezing the assets of key Iranian banks and enforcing limitations on financial transactions between European and Iranian entities.[185]

In **January 2012**, the European Union implemented some of its most significant sanctions by enforcing an embargo on Iranian crude oil and petroleum products. Additionally, the EU prohibited the provision of insurance to Iranian oil transportation, thus targeting Iran's primary source of revenue. At the same time, the assets of the Central Bank of Iran got frozen and Iranian banks were disconnected from the SWIFT banking system. [186]

In the wake of the 2015 Joint Comprehensive Plan of Action (JCPOA) which Iran signed with the P5+1 (U.S., U.K., France, Russia, China, Germany) [187] and the EU, this international group

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[184] Stockholm International Peace Research Institute," EU arms embargo on Iran", 4 June 2025, online : https://www.sipri.org/databases/embargoes/eu_arms_embargoes/iran (last accessed 2 July 2025).

[185] European Union Commission, *Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP,* online : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010D0413 (last accessed 2 July 2025).

[186] European Union Commission , Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010, online : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0267 (last accessed 2 July 2025).

[187] Library Fiveable, "P5+1", online : https://library.fiveable.me/key-terms/united-states-history-since-1945/p51 (last accessed 2 July 2025).

consented to lift the majority of nuclear-related sanctions. On the **16th of January 2016**, referred to as Implementation Day, the EU officially lifted several restrictions concerning financial transactions, energy, insurance industries, shipping and transport. Nevertheless, arms embargoes and sanctions related to proliferation continued to be enforced. [188]

As we have seen, following the U.S.' unilateral withdrawal from the JCPOA in **May 2018** and their reimposition of sanctions, the EU took action by revising its Blocking Statute to safeguard EU operators against the extraterritorial impacts of U.S. sanctions.[189]

Despite this position, the EU reinstated and broadened its targeted sanctions due to increasing worries regarding Iran's missile operations, drone exports and regional destabilization. In **October of 2024**, the EU enacted sanctions against Iranian entities and individuals engaged in providing drones to Russia for its conflict in Ukraine, along with those associated to ballistic missile development.[190]

Violations of human rights also triggered supplementary sanctions. In **April 2025**, the EU implemented restrictive measures against seven Iranian officials and two organizations associated with the unlawful detention of EU citizens in Iran. These measures were enacted under the EU's Global Human Rights Sanctions Regime. [191]

Today, the European Union's sanctions on Iran encompass a combination of nuclear non-proliferation efforts, ballistic missile regulation and accountability for human rights violations.

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[188] The Diplomatic Service of the European Union, *Nuclear Agreement – JCPOA*, 18 August 2021, https://www.eeas.europa.eu/eeas/nuclear-agreement-—-jcpoa_en (last accessed 2 July 2025).

[189] European Union Commission, Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, online : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1100 (last accessed 2 July 2025).

[190] Philippe Jacqué, "L'Union européenne annonce de nouvelles sanctions contre l'Iran" in *Le Monde*, 14 October 2024, online : https://www.lemonde.fr/international/article/2024/10/14/l-union-europeenne-annonce-de-nouvelles-sanctions-contre-l-iran_6351792_3210.html (last accessed 2 July 2025).

[191] Reuters, "EU ministers adopt Iran sanctions over citizen detentions", 14 April 2025, online : https://www.reuters.com/world/eu-ministers-adopt-iran-sanctions-over-citizen-detentions-2025-04-14/ (last accessed 2 July 2025).

## §2: ANALYSIS OF THE LEGALITY OF THE EXTRATERRITORIAL SANCTIONS

### A. ACCORDING TO THE UNITED NATIONS CHARTER

The sanctions imposed by the EU on Iran are intended to tackle threats to international peace and security, which include nuclear proliferation, missile delivery systems and violations of human rights.

Although these sanctions are not established under Chapter VII of the UN Charter, the EU asserts that they align with article 2(4) on the prohibition of threat or use of force as these sanctions are non-forcible, peaceful means to address serious violations of international law.[192]

Nonetheless, the legality of the EU sanctions might be challenged under article 2(7) which forbids interference in internal matters of sovereign nations.[193] Although the sanctions mainly focus on Iran's government and its nuclear activities, critics argue that they might infringe upon Iran's sovereignty as it affects its internal economic operations. Additionally, after the U.S.' withdrawal from the JCPOA's, tensions have given rise to uncertainty regarding the EU's unilateral reinstatement of sanctions that potentially goes against the framework promoted by the United Nations. [194]

### B. ACCORDING TO THE PRINCIPLES OF TERRITORIALITY AND EXTRATERRITORIALITY

EU sanctions largely respect the territoriality principle as the sanctions only directly affect companies and citizens based in the EU. These measures only impose limitations on EU individuals or entities conducting business with Iran such as freezing certain assets of banning trade with Iran. In this regard, the EU only exerts direct jurisdictional authority over actors based in the EU. [195]

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[192] *Charter of the United Nations*, June 26 1945, Art. 2, para. 4.

[193] Marko Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law" in *American Journal of International Law*, Volume 117, Issue 4, Cambridge University Press, 30 October 2023, online:https://www.cambridge.org/core/journals/american-journal-of-international-law/article/revisiting-coercion-as-an-element-of-prohibited-intervention-in-international-law/CF9ED44C35C14E00D3B3AC6685861338 (last accessed 2 July 2025).

[194] Zachary Goldman, Hans-Georg Kamann, Frédéric Louis, Ronald I. Meltzer, Georgia Tzifa, "Top EU Court Rules on the EU Blocking Regulation Against US Sanctions for the First Time", 31 January 2022, online : https://www.wilmerhale.com/en/insights/client-alerts/20220124-top-eu-court-rules-on-the-eu-blocking-regulation-against-us-sanctions-for-the-first-time (last accessed 2 July 2025).

[195] See territoriality principle *supra.*

Nevertheless, when the EU takes steps to protect its nationals from the extraterritorial impacts of U.S. sanctions, it stretches the limits of extraterritorial jurisdiction. The effects doctrine, which allows States to extend their jurisdiction over foreign activities plays its role here. By enforcing the Blocking Statute, the EU claims jurisdiction over third-state companies that comply with U.S. sanctions on Iran, even if those companies are not located within the EU.[196] This situation raises concerns regarding sovereign equality as non-EU countries may face pressure to conform to EU regulations which could infringe upon their sovereignty. Critics argue that this might be an overreach, especially when they are coerced into complying with EU sanctions. [197]

### C. ACCORDING TO TREATY OBLIGATIONS AND ICJ PROCEEDINGS

Although the JCPOA is a political agreement rather than a conventional treaty, it established clear exceptions for sanctions relief. The EU met its obligations by lifting the majority of nuclear-related sanctions in 2016. Nevertheless, the later reintroduction of targeted measures could lead to serious questions about consistency and predictability within international law.[198]

Regarding WTO obligations, Iran is not a member of the WTO which means that standard WTO dispute resolution mechanisms are unavailable. However, EU sanctions impacting trade in goods or services, particularly those related to dual-use technologies or humanitarian exemptions, may still raise concerns under the principles of non-discrimination and fair treatment.[199] The lack of ICJ decisions specifically addressing EU sanctions against Iran creates a gap in legal clarity, but treaty obligations regarding human rights (for example ICCPR obligations) reinforce the EU's right to act against serious human rights violations. [200]

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[196] Georgina Wright, Louise Chetcuti, Cecilia Vidotto Labastie, *Extraterritoriality: a Blind Spot in the EU's Economic Security Strategy*, January 2024, p. 43.

[197] Adrian Hemler, "Deconstructing blocking statutes: why extraterritorial legislation cannot violate the sovereignty of other states" in *Journal of Private International Law,* 16 April 2025, p.131, online : https://doi.org/10.1080/17441048.2025.2479276 (last accessed 2 July 2025).

[198] The Diplomatic Service of the European Union, *Nuclear Agreement – JCPOA*, *op. cit.*, 18 August 2021.

[199] Ilaria Anna Colussi, "International Trade Sanctions related to Dual-Use Goods and Technologies" in *Athens Journal of Law*, Volume 2, Issue 4, p. 237, online : https://www.athensjournals.gr/law/2016-2-4-3-Colussi.pdf (last accessed 2 July 2025).

[200] Council of the European Union, "Iran: seven individuals and two entities targeted by EU's sanctions over serious human rights violations", Press Release, 14 April 2025, online: https://www.consilium.europa.eu/en/press/press-releases/2025/04/14/iran-seven-individuals-and-two-entities-targeted-by-eu-s-sanctions-over-serious-human-rights-violations/ (last accessed 2 July 2025).

## D. ACCORDING TO THE PRINCIPLES OF PROPORTIONALITY, NECESSITY AND NON-DISCRIMINATION

The EU has sought to implement its sanctions in a measured and proportional manner. The initial measures were focused on nuclear issues and were narrowly defined. More recent measures have expanded to include partial missile activities, drone proliferation and violations of human rights. This gradual increase in sanctions demonstrates an attempt to align the severity of the sanctions to match the severity of the violations. [201]

The necessity of these measures is reinforced by the provision of humanitarian exceptions, general licenses and exemptions for food and medicine, all designated to prevent unnecessary harm to civilians. The possibility of reversing these measures further emphasizes the effort to remain within lawful bounds. [202]

Nonetheless, the principle of non-discrimination may be challenged when similar actions by other States does not lead to equivalent sanctions. Nevertheless, the EU defends its targeted measures against specific Iranian individuals and entities by directly associating them with internationally condemned conduct such as terrorism and proliferation. This focus on individual accountability helps limit accusations of discriminatory practices. [203]

## E. ACCORDING TO THE PRINCIPLE OF COUNTERMEASURES

The European Union has not clearly defined its actions against Iran as countermeasures, yet many of its sanctions embody the principles outlined in the ILC Articles of State Responsibility (articles 49 to 54). These measures are non-forcible, temporary and aimed at inducing compliance to international obligations. [204]

[201] Iran Watch, "Drones and Human Rights Now Dominate Sanctions Against Iran", 26 June 2023, online : https://www.iranwatch.org/our-publications/articles-reports/drones-human-rights-now-dominate-sanctions-against-iran (last accessed 2 July 2025).

[202] Sophie Huvé, Guillemette Moulin, Tristan Ferraro, "Unblocking aid: the EU's 2023 shift in sanctions policy to safeguard humanitarian efforts" in Humanitarian Law and Policy, 23 January 2024, online: https://blogs.icrc.org/law-and-policy/2024/01/23/unblocking-aid-eu-2023-sanctions-policy-humanitarian-efforts/ (last accessed 2 July 2025).

[203] Clara Portela, October 2016, "Are European Union sanctions "targeted"?", Research Collection School of Social Sciences, October 2016, online: https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?params=/context/soss_research/article/3380/&path_info=Are_European_Union_sanctions_targeted_av.pdf (last accessed 2 July 2025).

[204] Lori Fisler Damrosch, "The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts", Columbia Law School, 2019, online : https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3932&context=faculty_scholarship (last accessed 2 July 2025).

They also primarily target the responsible State and its agents rather than third parties. This makes them more compatible with the countermeasure doctrine than, for example, the extensive secondary sanctions implemented by the United States. Nevertheless, should any EU measures significantly infringe upon the rights of third States not linked to Iran's violations, it would raise questions about the legality of such countermeasures. [205]

### §3: FINAL ANALYSIS

Th EU's sanctions against Iran generally align with international legal principles, particularly in their targeted, reversible and non-forcible nature. While they are not grounded in Security Council mandates, they are framed as responses to serious international violations. However, legal ambiguity persists regarding their extraterritorial effects and consistency with the JCPOA. The use of the Blocking Statute raises sovereignty concerns. Overall, while more restrained that U.S. sanctions, certain aspects remain debatable.

## SUBSECTION 3: UNITED STATES SANCTIONS AGAINST RUSSIA

### §1: FACTS AND SANCTIONS

Since the end of the Cold War, the United States has been sanctioning Russia for multiple reasons. However, as a reaction to Russia's unlawful annexation of Crimea in 2014, the United States decided to enact several economic sanctions targeting Russian individuals as well as specific sectors. Since then, the European Union along with other countries have also followed this American trend.

In order to evaluate the legality of the United States sanctions against Russia, it is necessary to inspect Russia's actions, especially in Ukraine, as well as how the imposed sanctions are implemented and who is targeted.

Prior to the Russia-Ukraine conflict, the United States had already expressed some concern regarding the corruption in Russia as well as its enforcement of the law. Nevertheless, what really triggered the United States' determination to start threatening Russia is the death of Sergei Magnitsky in **2009**. Magnitsky, who was a Russian tax advisor, had the courage to

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[205] Nathanael Tilahun, Obiora Okafor, "Humanizing Economic Sanctions? Lessons from International Humanitarian Law" in *Yale Journal of International Law*, 14 june 2024, online: https://yjil.yale.edu/posts/2024-06-14-humanizing-economic-sanctions-lessons-from-international-humanitarian-law (last accessed 2 July 2025).

testify against “corrupt police and government officials” [206] that stole millions of dollars from the Russian government. Sadly, his act cost him his life because in the pre-detention centre where he was kept, he was tortured and denied medical care. [207] This event led to the adoption of the Magnitsky Act in 2012.

The **Magnitsky Act [208]** is a law passed by Congress to ensure that individuals that are responsible for human rights violations are held accountable. Concretely, what this law entails is that the United States can perform asset freezes (as long as the assets are within the United States’ jurisdiction) [209], the US can also deny entry into the country to Russian individuals by the hand of visa or travel bans [210]. This way of targeting sanctions on specific individuals is beneficial in the way that it does not harm the whole Russian population.

Initially, this act was aimed at Russian officials involved in the death of Sergei Magnitsky but since **2016** this Act has been globalised and is now called the Global Magnitsky Act. [211] This act also allows for a public listing of individuals that are sanctioned by the US. [212]

What really escalated the United States’ sanctioning policy is the annexation of Crimea in **2014**. Russia annexed Crimea while the latter was under military occupation. Of course, the international community, among which the United States, said it was a case of violation of international law, especially of article 2(4) of the UN Charter that prohibits “threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” [213] On top of the invasion, Russia supported and gave arms to the separatist groups in Ukraine [214].

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[206] William Browder, *The Torture and Murder of Sergei Magnitsky in Russia*, Statement at the OSCE Review Conference, Working Session 3, 4 October 2010, online: https://www.osce.org/files/f/documents/4/2/71640.pdf (last accessed 2 July 2025).
[207] *Ibid*.
[208] Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, §3, 126 Stat. 1490, 2012.
[209] Human Rights Watch, *The US Global Magnitsky* Act, 13 September 2017, online : https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act (last accessed 2 July 2025).
[210] *Ibid*.
[211] Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, §3, 126 Stat. 1490, 2012.
[212] Accessible through the site of OFAC : https://ofac.treasury.gov/sanctions-programs-and-country-information.
[213] *Charter of the United Nations*, June 26 1945, Art. 2, para. 4.
[214] U.S. Department of State, Rus*sia's Continuing Support for Armed Separatists in Ukraine and Ukraine's Efforts Toward Peace, Unity, and Stability,* Fact Sheet, 14 July 2014, online : https://2009-2017.state.gov/r/pa/prs/ps/2014/07/229270.htm (last accessed 2 July 2025).

In **2014**, the Obama Administration was governing the United States and wanted to isolate Russia's political power.[215] Consequently, the United States enacted a series of sanctions like executive orders on "Blocking Property of Certain Persons Contributing to the Situation in Ukraine" [216] as well as two acts to support Ukraine.

The first act is the "Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act", which specifically allocates 1-billion-dollar loan guarantees to Ukraine so they can acquire some economic stability. Besides financial aid, the act also allowed for specific sanctions on individuals and entities that were threatening Ukraine's sovereignty[217]. Some of these sanctions include: "asset blocking and U.S. exclusion sanctions" against anyone that was involved in "significant acts of violence or gross human rights abuses against persons associated with the anti-governments protests in Ukraine" [218], as well as those who attempted to disrupt Ukraine's territorial integrity and Russian officials linked to corruption in Ukraine or anyone who assisted these activities.[219]

The second act that was adopted is the "Ukraine Freedom Support Act". Its goal was to further implement sanctions and allow military and economic intervention to help Ukraine. Section 4 and 5 of this act further details the sanctions against Russia that consist mainly of targeting Russian defence firms, like Rosoboronexport, but also individuals and entities that support them. Moreover, the act targets global companies that invested significantly in crude oil energy projects and persons that are investing in substantial quantities of Gazprom[220]. Additionally, the President can restrict foreign banks from operating with American banks if they have supported Russia's defence or energy industries. [221]

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[215] The White House, *Statement by the President on New Sanctions Related to Russia*, Office of the Press Secretary, 11 September 2014, online : https://obamawhitehouse.archives.gov/the-press-office/2014/09/11/statement-president-new-sanctions-related-russia (last accessed 2 July 2025).
[216] President of the United States, *Executive Order 13660*, 6 March 2014, online : https://www.federalregister.gov/documents/2014/03/10/2014-05323/blocking-property-of-certain-persons-contributing-to-the-situation-in-ukraine (last accessed 2 July 2025).
[217] U.S. Congress, Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act.
[218] *Ibid*., Section 8.
[219] *Ibid*.
[220] "Gazprom is the largest joint stock company in Russia. The Russian government controls over 50 per cent of the company shares", online : https://www.gazprom.com/investors/stock/#:~:text=Gazprom%20is%20the%20largest%20joint,cent%20of%20the%20Company's%20shares (last accessed 2 July 2025).
"Gazprom is the dominant gas supplier in a number of Central and Eastern European countries.", online : https://ec.europa.eu/commission/presscorner/detail/el/memo_15_4829) (last accessed 2 July 2025).
[221] U.S. Congress, Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act, Section 5.

A third event that triggered the United States' wish to sanction Russia is the interference of Russia in the **2016** US presidential election. Multiple e-mail accounts that belonged to individuals associated to the Clinton campaign were hacked by the Russian Federation's Main Intelligence Directorate of the General Staff. [222] Furthermore, Russia used cyber-attacks as a "hybrid strategy warfare" [223] by giving disinformation, a tactic used in the Soviet era that is called "dezinformatsiya" [224]. Among these disinformation tactics, Russia's Internet Research Agency (IRA) set up fake social media profiles pretending to be American citizens that supported Donald Trump and criticized Hillary Clinton. These fake profiles also sparked debates on sensitive issues like race and gun rights. [225]

As a response, Barack Obama's Administration ordered an executive order "Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities" [226]. The goal of this executive order is to block "all property and interests in property that are in the United States" [227] so that they cannot be "transferred, paid, exported, withdrawn, or (…) dealt" [228] in order to avoid "tampering with, altering, or causing a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions " for example. [229] This specifically applies to individuals listed in the Annex of this Executive Order [230] consisting of Russian entities and individuals like the Main Intelligence Directorate as well as Russia's Federal Security Service, amongst others.[231]

The United States did not stop there as the President also signed the Countering America's Adversaries Through Sanctions Act (CAATSA) into law in **2017**. They decided to enact this law because Russia's intrusion was deeper than initially understood. However, the Trump administration was instantly opposed to the Act as they thought it would put pressure on

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[222] Robert Mueller, Report on the Investigation into Russian Interference in the 2016 Presidential *Election*, March 2019, online: https://www.justice.gov/archives/sco/file/1373816/dl?inline= (last accessed 2 July 2025).

[223] Charles E. Ziegler, *International dimensions of electoral processes: Russia, the USA, and the 2016 elections*, Ó Macmillan Publishers Ltd, 26 October 2017, p. 566.

[224] Great Soviet Encyclopaedia "False information with the intention to deceive public opinion".

[225] Office of the Director of National Intelligence of the U.S., *Background to Assessing Russian Activities and Intentions in Recent US Elections,* report, ICA 2017-01D, 6 January 2017, online : https://www.dni.gov/files/documents/ICA_2017_01.pdf (last accessed 4 July 2025).

[226] President of the United States, *Executive Order 13757*, 28 December 2016.

[227] *Ibid.*, Section 1, (a).

[228] *Ibid.*

[229] *Ibid.*, Section 1, (a), ii, E.

[230] *Ibid.,* Section 1, (a), i.

[231] *Ibid.*, annex.

diplomatic relations between the two countries. [232] Nevertheless, Trump decided to pass the law even though he released a statement saying he could personally make "far better deals with foreign countries than Congress".[233] The ultimate goal of this Act was to expand the sanctions on Russia by codifying the sanctions that were already in place. It ensures that any decision to lift a sanction requires a presidential notification or report, thereby always having the Congress' approval.[234]

Despite all of these U.S. efforts to hold Russia accountable for its acts, Russia's full-scale invasion of Ukraine in **2022** accelerated and intensified the sanctions against Russia. A well-known turning point was 24 February 2022, when Russian forces launched a full-scale military invasion of Ukraine, especially in Belarus and the annexed region of Crimea.[235] The Kremlin justified this invasion with the pretext that Ukraine needed to be "demilitarised and de-Nazified". [236] This act of aggression qualified as a "serious breach of international peace and security" [237] and constituted a clear violation of the article 2(4) of the UN Charter, which prohibits the "threat or use of force against the territorial integrity or political independence of any state" [238].

Of course, the United States, as a response, has implemented a remarkable set of economic measures against Russia.

First of all, the US' goal was to undermine Russian military activities but also to discourage the people or organizations offering "financial or logistical support" to Russia's ongoing aggression against Ukraine. [239] Accordingly, the US' initial response, between **February and March of 2022** involved the freezing of approximately 350 billion dollars in Russian foreign

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[232] *Ibid*.

[233] The White House, "Statement by President Donald J. Trump on Signing the 'Countering America's Adversaries Through Sanctions Act,", 2 August 2017, online: https://www.whitehouse.gov/the-press-office/2017/08/o2/statement-president-donald-j-trump-signing-countering-americas (last accessed 4 July 2025).

[234] Office of Foreign Assets Control, *Countering America's Adversaries Through Sanctions Act-Related Sanctions*, Subtitle C, Section 333, (a) and (b).

[235] Michael Ray, "Russia-Ukraine War" in *Britannica*, 15 August 2025, online : https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine (last accessed 15 August 2025).

[236] BBC, "Ukraine conflict: What we know about the invasion", 24 February 2022, online : https://www.bbc.com/news/world-europe-60504334 (last accessed 15 August 2025).

[237] Charter of the United Nations, June 26 1945, Art. 39.

[238] *Ibid.*, Art. 2, para. 4.

[239] U.S. Department of the Treasury, *Remarks by Deputy Secretary of the Treasury Wally Adeyemo at the Council on Foreign Relations*, 23 February 2024, online : https://home.treasury.gov/news/press-releases/jy2119 (last accessed 15 August 2025).

reserves that were located abroad.[240] This action was part of a coordinated strategy with the G7 allies [241] aimed at undermining the Russian Central Bank's capacity to stabilize the Russian Ruble.[242] In addition, the US excluded several major Russian banks from using SWIFT [243], which is an international payment system.[244]

Moreover, over the course of the two following years (**2022-2024**), the US continued to broaden its sanctions regime against Russia. On an individual level, more than 1500 individual sanctions were implemented, targeting entities and individuals linked to Russia's military operations. [245]

Financial measures against Russian banks were also taken under a U.S. directive. [246] This restriction prohibited American banks from engaging in transactions with Russia's leading banks by limiting Russia's banks access to the Correspondent Account or Payable Through Account (CAPTA).[247]

Furthermore, the United States also targeted Russian oligarchs. These elite experienced asset seizures on their luxury property as well as the freeing of their assets. "KleptoCapture" which was a special task force created to enforce these sanctions has since been disbanded but their goal was to liquidate the "funds and assets belonging to sanctioned Russian individuals" in

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[240] Trading Economics, "Russia Foreign Exchange Reserves", online : https://tradingeconomics.com/russia/foreign-exchange-reserves (last accessed 15 August 2025).

[241] Council on Foreign Relations, « What Does the G7 Do ? », 8 July 2025, online : https://www.cfr.org/backgrounder/what-does-g7-do (last accessed 15 August 2025).

[242] The White House, "Background Press Call by a Senior Administration Official on Imposing Additional Severe Costs on
Russia", 27 February 2022, online : https://bidenwhitehouse.archives.gov/briefing-room/press-briefings/2022/02/27/background-press-call-by-a-senior-administration-official-on-imposing-additional-severe-costs-on-russia/ (last accessed 15 August 2025).

[243] SWIFT : "the communication platform that facilitates financial transactions between 11,000 banks and institutions in more than 200 countries" in *Globsec*, 28 February 2022, bulletpoint 7), online : https://www.globsec.org/what-we-do/press-releases/ukraine-costs-war-russia-faces-crippling-sanctions-conflict-expenses (last accessed 12 March 2025).

[244] Office of Foreign Assets Control, *Executive Order 14024*, 15 April 2021, Directive 2.

[245] *Ibid*.

[246] *Ibid*.

[247] *31 U.S. Code* § 5318A, (e), (1), (B) and (C)) : "The term "correspondent account" means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution." And "The term "payable-through account" means an account, including a transaction account (…), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States."

order to “provide the proceeds to Ukraine”.[248] Additionally, the Office of Foreign Assets Control (OFAC) has added almost 300 individuals and even more entities to a list called the Specially Designated Nationals (SDN) list that targets the people that are involved in “mass destruction and other threats to national security, foreign policy or economy of the United States”. [249]

**Since 2024,** the United States has continued strengthening its sanctions policy against Russia. New sanctions have been implemented and export controls have been added aimed at further limiting support for Russia’s military actions in Ukraine. Some of these sanctions include a prohibition on specific IT services to Russia. [250]

Moreover, the U.S. has also broadened secondary sanctions like issuing penalties to foreign banks for assisting individuals or entities previously sanctioned under Executive Order 14024, which focuses on Russia’s military sector, as we have seen. [251]

Likewise, even more individuals and entities have been added to the SDN list. Furthermore, United States citizens have since also been prohibited from engaging in business with Russian financial institutions and companies that support Russia. In case of violation, their assets will be frozen as well. [252]

Lastly, the Commerce Department introduced new license requirements for specific types of business software to Russia. [253]

Overall, it is clear that the United States has established an extensive sanctions framework aimed at Russia for its ongoing violations against international law.

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[248] Baker Hostetler, “Requiem for Task Force KleptoCapture: The Future of Russia Sanctions Enforcement”, 11 February 2025, online : https://www.bakerlaw.com/insights/requiem-for-task-force-kleptocapture-the-future-of-russia-sanctions-enforcement/ (last accessed 15 August 2025).
[249] Office of Foreign Assets Control, *Mission*, online : https://ofac.treasury.gov (last accessed 15 August 2025).
[250] Taylor Parker, Sylwia Lis, Lise S. Test, “US Government Issues New Sanctions Targeting the Russian War Economy and Expanding Export Controls Against Russia and Belarus” in *Baker McKenzie*, 17 June 2024, online : https://sanctionsnews.bakermckenzie.com/us-government-issues-new-sanctions-targeting-the-russian-war-economy-and-expanding-export-controls-against-russia-and-belarus/ (last accessed 15 August 2025).
[251] *Ibid.*
[252] *Ibid.*
[253] *Ibid.*

## §2: ANALYSIS OF THE LEGALITY OF THE EXTRATERRITORIAL SANCTIONS

### A. ACCORDING TO THE UNITED NATIONS CHARTER

The United has justified its sanctions regime, particularly since 2014 as a peaceful reaction to grave breaches of international peace and security, especially the violation of article 2(4) of the UN Charter which prohibits the threat or use of force.

As U.S sanctions against Russia are not approved by the Security Council [254], its actions must adhere to the boundaries of non-violent coercion. This means that measures such as targeted financial restrictions, asset freezes, trade bans and the designation of Russian individuals and entities on the SDN list are usually considered lawful as they are non-violent and reversible. Moreover, they target violations of peremptory norms such as the prohibition of aggression or serious breaches of international law.

However, the legality becomes more complex when these sanctions reach beyond American borders. For instance, secondary sanctions that target non-U.S. actors, especially those in neutral third countries raise issues under the principles of sovereign equality and non-intervention in internal affairs of States. Consequently, when exercised, these sanctions may be viewed as an illegal exercise of jurisdiction or coercion against third States.[255]

### B. ACCORDING TO THE PRINCIPLES OF TERRITORIALITY AND EXTRATERRITORIALITY

The sanctions regime is significantly based on extraterritorial application, particularly though secondary sanctions that affect non-U.S. entities. This approach is rooted in the effects doctrine.[256] Although U.S. courts typically support this doctrine within the country, its validity under international is still contested as numerous States contend that this extraterritorial

[254] UNSW, *What are sanctions, do they ever work – and could they stop Russia's invasion of Ukraine?*, online : https://www.humanrights.unsw.edu.au/research/commentary/what-are-sanctions-do-they-ever-work-and-could-they-stop-russias-invasion-ukraine (last accessed 15 August 2025).

[255] Tom Ruys, Cedric Ryngaert, "Secondary Sanctions: A Weapon Out of Control? Part I: Permissibility of the sanctions under the law of jurisdiction" in *Blog of the European Journal of International Law*, 30 September 2020, online : https://www.ejiltalk.org/secondary-sanctions-a-weapon-out-of-control-part-i-permissibility-of-the-sanctions-under-the-law-of-jurisdiction/ (last accessed 15 August 2025).

[256] Patrick C. R. Terry, "Secondary Sanctions, Access Restrictions and Customary International Law" in *The Cambridge Handbook of Secondary Sanctions and General Public International Law*, 14 December 2024, online: https://www.cambridge.org/core/books/abs/cambridge-handbook-of-secondary-sanctions-and-international-law/secondary-sanctions-access-restrictions-and-customary-international-law/95F48670FAE2716AD7243C1CA042DD97 (last accessed 15 August 2025).

application infringes upon their sovereign authority to manage commerce according to their own regulations. So, this tension becomes especially pronounces in cases where adhering to U.S. sanctions would contravene local or international obligations. [257]

### C. ACCORDING TO TREATY OBLIGATIONS AND ICJ PROCEEDINGS

At this time U.S. sanctions have not yet been analysed by the ICJ or a WTO panel ruling. However, the sanctions' compatibility with WTO rules, especially article I and XI of the GATT on the most-favoured nation and the quantitative restrictions is questionable.

The U.S. also frequently cites the security exception under article XXI of the GATT, asserting that these sanctions are essential for national security. Although this provision was examined in Russia (traffic in transit DS512) [258], the WTO determined that such claims cannot unilaterally and that they are subject to review.[259] Consequently, the legal certainty surrounding the invocation of articles of the GATT remains ambiguous and could be perceived as inconsistent with WTO rules.

### D. ACCORDING TO THE PRINCIPLES OF PROPORTIONALITY, NECESSITY AND NON-DISCRIMINATION

The extent of U.S. sanctions has intensified in response to Russia's actions, from the Magnitsky Act in 2012 to the extensive restrictions imposed after 2022. The U.S. has focused on targeting military and industrial entities, banks, oligarchs and technology sectors with the goal of limiting Russia's capacity to finance the war and maintain its military operations. These measures demonstrate an attempt to adhere to the principle of proportionality as they are directly associated with the magnitude of Russia's violations. [260]

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[257] Ntina Tzouvala, « Sanctions, Dollar Hegemony, and the Unraveling of Third World Sovereignty » in *Yale Journal of International Law*, 10 June 2024, online : https://yjil.yale.edu/posts/2024-06-10-sanctions-dollar-hegemony-and-the-unraveling-of-third-world-sovereignty (last accessed 15 August 2025).

[258] World Trade Organization, Russia – *Measures Concerning Traffic in Transit*, Panel Report WT/DS512/R, 26 April 2019, online : https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm (last accessed 15 August 2025).

[259] Fujio Kawashima, "Trade Sanctions against Russia and their WTO Consistency: Focusing on Justification under National Security Exceptions" in *International Community Law Review* 26, 2024, p.126-127.

[260] Nathanael Tilahun, Obiora Okafor, "Humanizing" Economic Sanctions? Lessons from International Humanitarian Law" in *Yale Journal of International Law*, 14 June 2024, online : https://yjil.yale.edu/posts/2024-06-14-humanizing-economic-sanctions-lessons-from-international-humanitarian-law (last accessed 2 July 2025).

Additionally, the U.S. provides general licenses and humanitarian exceptions, indicating a sense of necessity of the sanctions and the possibility of reversal.[261] Nevertheless, when third-State entities face penalties under secondary sanctions despite lacking direct involvement in the conflict, issues of non-discrimination emerge, which raises concerns under customary international law.

### E. ACCORDING TO THE PRINCIPLE OF COUNTERMEASURES

The U.S. positions many of its unilateral sanctions as legitimate countermeasures, referencing the ILC's draft articles on State Responsibility. These articles allow for a temporary, proportionate and non-violent actions in response to an internationally wrongful act. Sanctions directed at Russian officials, State enterprises and government-linked actors are largely consistent with these criteria.[262]

However, when measures extend to non-Russian actors, the legality becomes less clear. Under the ILC framework, countermeasures are only lawful if directed at the responsible State, not unrelated third States. When secondary sanctions are applied extraterritorially, the legal basis of countermeasures becomes uncertain. While the U.S. views this as necessary to enforce its sanctions regime, critics argue it stretches the notion of lawful countermeasures under current international law. [263]

## §3: FINAL ANALYSIS

The sanctions imposed by the U.S. on Russia generally align with international law when they are restricted to non-violent, targeted actions that address significant violations. Nevertheless, the extraterritorial enforcement of these actions, particularly secondary sanctions, gives rise to legal issues. Such measures challenge the principles of sovereign equality and non-intervention and the rationale for their use as countermeasures is subject to discussion. Although they are proportionate in their extent, the legality becomes ambiguous when third States are impacted.

[261] Office of Foreign Assets Control, *Basic Information on OFAC and Sanctions*, 21 August 2024, 4., https://ofac.treasury.gov/faqs/topic/1501 (last accessed 15 August 2025).

[262] Patrick Butchard, *Sanctions, Countermeasures, and Responding to Russia's Invasion of Ukraine*, Edge Hill University, 1 February 2025, online : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5181467 (last accessed 15 August 2025).

[263] Tom Ruys, Cedric Ryngaert, *op. cit.*, online : https://www.ejiltalk.org/secondary-sanctions-a-weapon-out-of-control-part-i-permissibility-of-the-sanctions-under-the-law-of-jurisdiction/ (last accessed 15 August 2025).

## SUBSECTION 4: EUROPEAN SANCTIONS AGAINST RUSSIA

### §1: FACTS AND SANCTIONS

The European Union has been implementing sanctions against Russia for some time now, and especially since 2014, primarily in response to Russia's unlawful annexation of Crimea. Over time, these sanctions have considerably expanded, in particular following Russia's full-scale invasion of Ukraine in February 2022. Since then, the European has extended their sanctions to other fields like trade, energy, defence and finance [264] with the eventual goal to pressure Russia's government to comply with international law.

The EU's initial sanctions **in 2014** were aimed at protecting the European Union's security interests. [265] Imposing sanctions was the EU's way of condemning Russia's invasion of the sovereign country of Ukraine, which the EU deems illegal. [266]

Following Russia's annexation of Crimea in 2014, the EU imposed targeted sanctions against individuals and entities that were responsible for violating Ukraine's sovereignty. Some of these sanctions contained asset freezes and travel bans on Russian individuals. [267]

In addition to these individual measures, the EU also introduced broader sanctions on entire sectors. In **July 2014**, restrictive measures were adopted targeting special sectors of the Russian economy. These included limits on Russian state-owned banks but also companies' access to EU markets and a weapons embargo.[268]

**From 2014 onward**, the EU progressively started targeting the financial flows to Russia, especially for matters like acquiring military technology or dual-use goods. Their goal was to undermine Russia's defence and industrial sector. In that way, the EU imposed restrictions on

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[264] European Council, "Timeline - EU sanctions against Russia", 24 February 2025, online : https://www.consilium.europa.eu/en/policies/sanctions-against-russia/timeline-sanctions-against-russia/ (last accessed 12 March 2025)

[265] Council Decision (CFSP) 2022/351 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, 1 March 2022, Rec 8, online : https://eur-lex.europa.eu/eli/dec/2022/351/oj/eng (last accessed 15 August 2025).

[266] Council of the European Union, Council of the European Union, *Joint statement by the members of the European Council,* Press Release, 24 February 2022, online : https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/joint-statement-by-the-members-of-the-european-council/ (last accessed 15 August 2025).

[267] Council of the European Union, *Timeline – EU sanctions against Russia*, online : https://www.consilium.europa.eu/en/policies/sanctions-against-russia/timeline-sanctions-against-russia/ (last accessed 15 August 2025).

[268] *Ibid*.

the export of goods and technologies used to produce oil, as well as aviation and space industry equipment.[269]

In the years **between 2014 and early 2022**, the EU strengthened and renewed its sanctions regime in response to Russia's continuous destabilisation of Ukraine. It continued to expand its list of sanctions individuals and entities, now also including military officials and some economic actors.[270] Beyond the individual measures, the EU also banned the imports of goods originated from the illegally annexed Crimea and Sevastopol regions. [271]

**In 2021**, the Global Human Rights Sanctions Regime has been triggered for the first time in reaction to the poisoning, "arrest, prosecution and sentencing" of Alexei Navalny [272], a "Russian anti-corruption activist". [273] The EU imposed "asset freezes and travel bans" on these four high-ranking Russian officials that were considered responsible for this serious human right violation. [274]

**In February 2022**, after Russia's full-scale invasion of Ukraine, the EU decided it was necessary to sanction Russia in an unprecedented way, marking what is regarded as the largest unilateral sanction to this day. [275] Major Russian banks were banned from using the SWIFT system and central bank reserves had been frozen in the West. [276] Moreover, severe sanctions

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[269] *Ibid*.

[270] Council of the European Union, *EU sanctions against Russia*, online : https://www.consilium.europa.eu/en/policies/sanctions-against-russia/ (last accessed 15 August 2025).

[271] Council of the European Union, *Crimea and the city of Sevastopol: EU extends sanctions over Russia's illegal annexation by one year*, Press Release, 20 June 2022, online : https://www.consilium.europa.eu/en/press/press-releases/2022/06/20/crimea-and-the-city-of-sevastopol-eu-extends-sanctions-over-russia-s-illegal-annexation-by-one-year (last accessed 15 August 2025).

[272] Council of the European Union, *Global Human Rights Sanctions Regime: EU sanctions four people responsible for serious human rights violations in Russia*, Press Release, 2 March 2021, online : https://www.consilium.europa.eu/en/press/press-releases/2021/03/02/global-human-rights-sanctions-regime-eu-sanctions-four-people-responsible-for-serious-human-rights-violations-in-russia/ (last accessed 15 August 2025).

[273] Britannica, "Aleksey Navalny", online : https://www.britannica.com/biography/Aleksey-Navalny (last accessed 15 August 2025).

[274] Council of the European Union, *Global Human Rights Sanctions Regime: EU sanctions four people responsible for serious human rights violations in Russia*, Press Release, 2 March 2021, online : https://www.consilium.europa.eu/en/press/press-releases/2021/03/02/global-human-rights-sanctions-regime-eu-sanctions-four-people-responsible-for-serious-human-rights-violations-in-russia/ (last accessed 15 August 2025).

[275] Raf Casert, Foster Klug, "Lamenting 'dark hours,' EU promises harshest sanctions ever against Moscow" in *The Times of Israel*, 24 February 2022, online : https://www.timesofisrael.com/lamenting-dark-hours-eu-promises-harshest-sanctions-ever-against-moscow/ (last accessed 15 August 2025).

[276] Around $300 billion of sovereign Russian assets have been blocked in the West (confirmed by the central bank).

had been imposed on Russian State-owned enterprises [277] and the European airspace became closed to aircrafts operated by or linked to the Kremlin. Furthermore, Sputnik, a Russian news agency got banned from spreading "lies to justify Putin's war and to sow division" in the European Union. [278]

In **May 2022,** what is called the "sixth package of sanctions" was presented, introducing an almost complete embargo on Russian oil with 90% of all imports being progressively banned. The REPowerEU plan was also introduced to accelerate the green transition to stop depending on Russian oil as quickly as possible. [279]

As the war continued, the EU also decided to sanction individuals and companies that have a link to the Russian government, whether they support them or provide them with financial means.[280] This means that over time, a countless number of individuals faced asset freezes and travel bans. [281]

The EU adopted its fifteenth package in **December 2023**, which for the first time included extraterritorial measures targeting non-Russian companies, primarily from China, the United Arab Emirates and other Middle eastern countries. The reason was that they were supplying sensitive items like drone components, semiconductors and other dual-use goods to Russia.[282]

In parallel, Russia's "shadow fleet" was targeted. This fleet encompassed "all vessels lacking Western insurance and belonging to non-EU/G7+ companies" used to "circumvent

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[277] European Commission, *Sanctions adopted following Russia's military aggression against Ukraine*, https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en (last accessed 15 August 2025).

[278] European Commission, Statem*ent by President von der Leyen on further measures to respond to the Russian invasion of Ukraine,* 27 February 2022, online : https://enlargement.ec.europa.eu/news/statement-president-von-der-leyen-further-measures-respond-russian-invasion-ukraine-2022-02-27_en (last accessed 15 August 2025).

[279] European Commission, "REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition", 18 May 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3131, (last accessed 15 August 2025).

[280] S. Poli and F. Finelli, "Context Specific and Structural Changes in EU Restrictive Measures Adopted in Reaction to Russia's Aggression on Ukraine", 2023, *Eurojus* 19, p. 23.

[281] European Commission, *Sanctions against individuals, companies and organisations*, online : https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine/sanctions-against-individuals-companies-and-organisations_en (last accessed 15 August 2025).

[282] Julia Payne, *EU adopts new Russia sanctions targeting China, shadow fleet*, Reuters, 17 December 2024, online : https://www.reuters.com/world/europe/eu-adopts-new-russia-sanctions-targeting-china-shadow-fleet-2024-12-16/ (last accessed 15 August 2025).

sanctions".[283] By banning these ships from accessing EU ports, the goal is to disrupt clandestine oil exports thereby limiting Russia's energy income.[284]

Finally, in **May 2025**, the EU adopts its seventeenth package of sanctions, with the aim to further fragilize Russia's already "strained economy".[285] This latest package further tightens Russia's access to battlefield technologies and significantly reduces income from energy exports by focusing on a record number of ships from Russia's "shadow fleet". The EU's goal is to further hinder clandestine oil exports and continue enforcing the oil price cap, a mechanism allowing Russian oil to be purchased as long as it stays under a certain "cap" to ensure that global energy markets remain stable.[286]

In addition to expanding asset freezes and travel bans on individuals, these sanctions add 31 companies, based in Russia but also third States such as Turkey and Vietnam, to continue sanctioning those that don't participate to global efforts. This underscores the continuing extraterritorial reach of the EU's measures.[287]

All of these sanctions, some with extraterritorial reach, combined with a tight collaboration with G7 allies, have resulted in a signification reduction in Russia's oil and gas income. This reduction significantly isolates Russia from international markets, which is the ongoing goal of the European Union who only wishes to further maximise the efficacy of the sanctions.

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[283] European Parliament, *Russia's 'shadow fleet': Bringing the threat to light*, Briefing, 2024, online : https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/766242/EPRS_BRI(2024)766242_EN.pdf (last accessed 15 August 2025).

[284] *Ibid*.

[285] European Commission, *EU adopts 17th package of sanctions against Russia*, 20 May 2025, online : https://finance.ec.europa.eu/news/eu-adopts-17th-package-sanctions-against-russia-2025-05-20_en(last accessed 15 August 2025).

[286] European Commission, *G7 agrees oil price cap: reducing Russia's revenues, while keeping global energy markets stable*, 3 December 2022, online : https://ec.europa.eu/commission/presscorner/detail/it/ip_22_7468 (last accessed 15 August 2025).

[287] *Ibid*.

## §2: ANALYSIS OF THE LEGALITY OF THE EXTRATERRITORIAL SANCTIONS

### A. ACCORDING TO THE UNITED NATIONS CHARTER

In accordance with the U.N. Charter, EU sanctions have to adhere to article 2(1), 2(4) and 2(7). Nevertheless, the prohibition of use of force outlined in article 2(4) does not prevent the implementation of economic sanctions, provided there are non-violent and reversible. Actions such as denying port access to Russian vessels associated with the "shadow fleet" do not constitute a prohibited use of force as the goal is to prevent passage of a State which is not innocent, in this case Russia. [288]

Moreover, the principle of sovereign equality as outlined in article 2(1) and the prohibition of intervention stated in article 2(7) require that extraterritorial sanctions are based on jurisdictional grounds that are recognized internationally. It is widely recognized that the EU's measures are to be accepted as legitimate responses to violations of international law.

Nevertheless, in the absence of explicit U.N. authorizations or lawful countermeasures, the legality of the sanctions remains a subject of debate. [289]

### B. ACCORDING TO THE PRINCIPLES OF TERRITORIALITY AND EXTRATERRITORIALITY

International law typically restricts a State's jurisdiction to its own territory. Nevertheless, the EU justifies its extraterritorial sanctions "on the basis of an extensive understanding of the territorial principle. [290]

Expanding on this perspective, the EU argues that sanctions impacting activities abroad can be warranted when there is a significant connection, such as business registered, or trade carried out through EU territory. However, the EU has recognized the limitations of such extraterritorial authority as in its 2018 revision of its Blocking Statute, the Commission

[288] *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 U.N.T.S. 3, Art. 25 (1).
[289] *Ibid*.
[290] Régis Bismuth. "The European Union experience of extraterritoriality: when a (willing) victim has become a (soft) perpetrator" in *Research Handbook on Extraterritoriality in International Law*, Edward Elgar Publishing, 2023, p. 1, online : https://sciencespo.hal.science/hal-04314524v1/document (last accessed 15 August 2025).

specifically labelled certain extraterritorial laws as violations of international law, indicating an awareness of sovereignty issues.[291]

This perspective indicates that while the EU asserts territorial justification for its sanctions in Russia, it simultaneously maintains that the scope of these measure may not violate the sovereignty of third States.

## C. ACCORDING TO TREATY OBLIGATIONS AND ICJ PROCEEDINGS

In 2014, Russia contested the EU's trade restrictions under World Trade Organization (WTO) rules asserting that they breached the General Agreement on Tariffs and Trade (GATT). The EU invoked article XXI on the security exception, which permits trade restrictions for reasons of national security. While this principle is generally accepted, it remains a topic of discussion and has not been definitely clarified in WTO jurisprudence. [292]

Additionally, while the ICJ has not explicitly ruled on the sanctions imposed by the EU yet, it is currently overseeing the *Ukraine v. Russian Federation case* under the Genocide Convention. So, while the ICJ has not examined the EU's sanctions themselves, the provisional order requiring Russia to "immediately suspend its military operations" [293]supports the EU's positions that Russia committed a serious violation of international law.

## D. ACCORDING TO THE PRINCIPLES OF PROPORTIONALITY, NECESSITY AND NON-DISCRIMINATION

In terms of proportionality the extent of EU's sanctions, currently at its 17th sanctions package corresponds to Russia's ongoing violations, notably the invasion of Ukraine. The gradual focus

[291] Joaquin Terceño, Kaori Yamada, *Sanctions & Extraterritorial Effect – Why multiple restrictive measures may apply to your business dealings*, Freshfields, 10 November 2022, online : https://riskandcompliance.freshfields.com/post/102i0ui/sanctions-extraterritorial-effect-why-multiple-restrictive-measures-may-apply (last accessed 15 August 2025).

[292] *WTO Analytical Index 1994 – Article XXI (DS reports)*, pp. 3-4, online : https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art21_jur.pdf (last accessed 15 August 2025).

[293] International Court of Justice, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, Provisional measures, para. 5, (a), online : https://www.icj-cij.org/node/106135 (last accessed 15 August 2025).

on sectors like finance, defence and energy indicate that the measures are designed to restrict Russia's military capacity without causing excessive harm to civilians. [294]

As to necessity, the EU's sanctions are a peaceful alternative to force. The measures are specifically targeted and can be reversed with initiatives like REPowerEU and the oil price cap demonstrative an effort to use the least coercive measures as possible. [295]

Regarding non-discrimination, the EU justifies the inclusion of companies from third countries on the basis that they are actively involved in circumventing sanctions against Russia. From the EU's perspective this participation provides sufficient grounds to impose restrictive measures. Nevertheless, these sanctions continue to raise legal concerns in terms of non-discrimination. [296]

### E. ACCORDING TO THE PRINCIPLE OF COUNTERMEASURES

The EU positions its sanctions against Russia as lawful countermeasures in reaction to Russia's significant violations of international law. These sanctions are also temporary with the explicit aim to reinstate adherence to international norms, which is consistent with the ILC's criteria for lawful countermeasures.[297]

A crucial aspect of countermeasures is that it only allows sanctions on the State that is responsible, not against unrelated third parties. Nevertheless, the EU has broadened its sanctions to third States' companies. While the EU contends that these actions are effectively

[294] Alexandra Hofer, "The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms" in *Cambridge Yearbook of European Legal Studies*, Cambridge University Press, 11 December 2023, p. 24, online : https://www.cambridge.org/core/journals/cambridge-yearbook-of-european-legal-studies/article/eus-massive-and-targeted-sanctions-in-response-to-russian-aggression-a-contradiction-in-terms/9BC060810A86D05A97201DCE58B17CB7 (last accessed 15 August 2025).

[295] European Commission, Communication from the Commission to the European Parliament, the European Cuyncil, the Council, the European Economic and Social Committee and the Committee of the Regions, online: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52022DC0230 (last accessed 15 August 2025).

[296] Edouard Gergondet, Paulette Vander Schueren, Nikolay Mizulin, Dylan Geraerts, Sarah Bakchi, "EU Commission adopt guidance clarifying 'best efforts' obligations under EU sanctions targeting Belarus and Russia", Mayer Brown, 25 November 2024, online: https://www.mayerbrown.com/en/insights/publications/2024/11/eu-commission-adopts-guidance-clarifying-best-efforts-obligations-under-eu-sanctions-targeting-belarus-and-russia (last accessed 15 August 2025).

[297] Marie Terlinden, "The Uncertain Limits Of European Union Sanctions And The Role Of Proportionality" in *Review of European Administrative Law*, 21 February 2025, online : https://realaw.blog/2025/02/21/the-uncertain-limits-of-european-union-sanctions-and-the-role-of-proportionality-by-marie-terlinden/ (last accessed 15 August 2025).

part of enforcing lawful countermeasures, the extraterritorial aspect continues to spark debate, which can ultimately lead to legal examination.

### §3: FINAL ANALYSIS

The EU frames its sanctions on Russia as lawful, non-violent and proportionate responses to significant violations of international law, consistent with the U.N. Charter and ILC principles.

Nevertheless, this approach can bring up issues of sovereignty and jurisdiction. WTO and ICJ proceedings provide some legal backing, but they do not explicitly affirm the legality of these sanctions. The inclusion of third States remains the most contested aspect due to the limitations on countermeasures.

# CHAPTER 3: LEGAL PROBLEMS ARISING FROM EXTRATERRITORIAL SANCTIONS REGIMES

## SECTION 1: FRAGMENTATION AND INCOHERENCE IN LEGAL JUSTIFICATIONS

The enforcement of unilateral sanctions beyond national borders is supported by various legal justifications that differ among sanctioning States and entities, especially the United States and the European Union. These differences result in a fragmentation of international legal practices, complicating the ability to depend on clear and consistent regulations among States. [298]

The U.S. primarily grounds its extraterritorial sanctions framework on the effects doctrine, which enables it to claim jurisdiction over actions taking place beyond its borders when those actions have significant repercussions within U.S. territory. Although this doctrine is acknowledged to a limited degree in specific areas like competition law, it remains contentious when applied to justify secondary sanctions impacting entities that lack a territorial connection

[298] Harlan G. Cohen, "Finding International Law , P art II: Our Fragmenting Legal Community" in *NYU J. Int'l L. & Pol. 1049,* 2012, online : https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2395&context=faculty_scholarship (last accessed 15 August 2025).

to the U.S. [299] Furthermore, the U.S. characterizes many of its sanctions as countermeasures in accordance with customary international law, specifically citing the ILC's Articles on State Responsibility. Under this theory, measures that would otherwise be deemed unlawful can be justified if they respond to internationally wrongful acts as long as they are proportionate, non-forcible and temporary. [300]

In contrast, the European Union adopts a more prudent approach regarding its sanctions. It generally refrains from implementing extensive secondary sanctions and instead prioritizes targeted sanctions that are justified. The EU seldom applies the effects doctrine and does not consistently label its actions as countermeasures, even when numerous sanctions conform to the countermeasure criteria. Instead, EU practices tend to defend existing international norms, especially in reaction to violations such as nuclear proliferation, breaches of the UN Charter or severe human right abuses. [301]

Third States and entities thus encounter legal uncertainty as they have to deal with conflicting regulations, especially when U.S. and EU obligations differ. This situation can lead to inconsistent enforcement and legal fragmentation, which ultimately undermines trust in the international legal system. [302]

## SECTION 2: ACCOUNTABLITY AND REVIEW OF THE SANCTIONS

The extraterritorial application of unilateral sanctions presents major issues related to the responsibility of the sanctioning State and the presence of independent review processes. The concept of accountability is based on the obligation of States to adhere to their international

[299] Patrick C.R., "Enforcing U.S. Foreign Policy by Imposing Unilateral Secondary Sanctions: Is Might Right in Public International Law?" in *Washington International Law Journal*, Volume 30, Number 1, Terry University of Public Administration, 28 December 2020, , online : https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1854&context=wilj (last accessed 15 August 2025).

[300] Lori Fisler Damrosch, *The Legitimacy of Economic Sanctions as Countermeasures Wrongful Acts*, Columbia Law School, 2019, Online : https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3932&context=faculty_scholarship (last accessed 15 August 2025).

[301] European Parliament, *EU sanctions: A key foreign and security policy instrument*, Briefing, 2024, online : https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760416/EPRS_BRI%282024%29760416_EN.pdf (last accessed 15 August 2025).

[302] Erik de Bie, Kara M. Bombach, Hans Urlus, Robert Hardy, C*onflicting EU, US Economic Sanctions Regimes: Implications for Multinational Companies*, Greenberh Traurig, 4 February 2022, online : https://www.gtlaw.com/en/insights/2022/2/conflicting-eu-us-economic-sanctions-regimes-implications-for-multinational-companies (last accessed 15 August 2025).

obligations, which encompass those outlined in the UN Charter, customary international law and treaty obligations.

From an institutional perspective, the lack of a centralized international forum with mandatory jurisdiction over all States restricts the ability to examine the legality of unilateral sanctions. Although the International Court of Justice serves as the main judicial entity for resolving disputes between States, its jurisdiction relies on the agreement of the involved parties, which is frequently denied by significant sanctioning powers. [303] Likewise, while specializes bodies like the WTO Dispute Settlement Body can tackle specific trade-related elements of sanctions, their authority is confined to measures that fall within the relevant treaty framework and their decisions are not binding on non-members. [304]

Within the sanctions State's domestic legal system, the judicial review of extraterritorial measures is inconsistent. In the U.S., court typically show deference to the political branches regarding issues related to foreign policy and national security, often citing doctrines like the "political question" [305] and "act of state" [306]. This deference limits the ability of foreign entities to contest sanctions based on substantive international law principles.

In contrast, in the EU, the CJEU has taken on the role of reviewing restrictive measures to ensure they comply with EU primary law, which includes obligations related to fundamental rights. The CJEU has invalidated specific names on the EU's sanctions annexes that designated individuals or entities subject to restrictive measures where there was not enough evidence to justify the designation. Nevertheless, this review is restricted to measures enacted within the EU legal framework and does not cover the legality of third-State sanctions.

[303] Swiss Confederation, *Handbook on accepting the jurisdiction of the International Court of Justice*, July 2014, p. 3, online : https://legal.un.org/avl/pdf/rs/other_resources/Manual%20sobre%20la%20aceptacion%20jurisdiccion%20CIJ-ingles.pdf (last accessed 15 August 2025).

[304] Seyed Mohsen Rowhani, "Rights-Based Boundaries of Unilateral Sanctions" in Was*hington International Law Journal,* Volume 32 Number 2, 22 May 2023, online : https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1914&context=wilj (last accessed 15 August 2025).

[305] Katherine Yon Ebright, Leah Tulin, *Courts Can Check the Executive Branch's Military Judgment*, Brennan Center for justice, 10 July 2025, online : https://www.brennancenter.org/our-work/analysis-opinion/courts-can-check-executive-branchs-military-judgment (last accessed 15 August 2025).

[306] SM Morrison, *The Act of State Doctrine and the Demise of International Comity*, Ind. Int'l & Comp. L. Rev., Vol. 1:311, online : https://mckinneylaw.iu.edu/practice/law-reviews/iiclr/pdf/vol2p311.pdf (last accessed 15 August 2025).

The absence of unified accountability systems results in legal disparities, hindering the capacity of impacted States and individuals to contest sanctions that violate international law.

## SECTION 3: LEGAL REMEDIES FOR SANCTIONED STATES

States subjected to extraterritorial unilateral sanctions encounter significant legal and practical obstacles when attempting to seek remedies under international law. While legal options are theoretically available, the actual mechanisms are frequently inaccessible or insufficient. [307]

One possible remedy involves the use of **State responsibility mechanisms**, allowing the sanctioned State to initiate diplomatic protection or take countermeasures in response to another State's wrongful act. As outlined in the ARSIWA, injured States can implement proportionate, non-forcible measures if specific conditions are fulfilled. Nevertheless, this approach carries the risk of escalation and may be impractical for weaker States facing sanctions from more powerful States. [308]

Another solution can be found in **institutional dispute resolution**, which includes filing a claim with the ICJ, WTO or UN bodies. For instance, injured States have the option to file complaints within the WTO framework if the sanctions breach trade obligations. [309] Additionally, regional human rights courts like the European Court of Human Rights may also serve as a venue for injured individuals or entities if the sanctions infringe upon their protected rights. [310]

In practice, achieving such remedies encounters significant procedural and political challenges. In order to litigate before the ICJ, the consent of the respondent State is needed, which is often withheld in cases involving unilateral sanctions. Even when jurisdiction is established, the

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[307] Brishna Gehani, *Extraterritorial unilateral sanctions, third states and collateral damage*, 27 August 2023, online : https://rsilpak.org/2023/extraterritorial-unilateral-sanctions-third-states-and-collateral-damage/ (last accessed 17 June 2025).

[308] James Crawford, *State Responsibility: The General Part*, Cambridge University Press, 2013, p. 703.

[309] Henrik Horn and Petros C. Mavroidis, *Remedies in the WTO Dispute Settlement System*, 11 April 1999, online : https://www.iatp.org/sites/default/files/Remedies_in_the_WTO_Dispute_Settlement_System_.htm (last accessed 18 June 2025).

[310] European Court of Human Rights, *Extra-territorial jurisdiction of States Parties to the European Convention on Human Rights*, Factsheet, July 2018, online : https://www.echr.coe.int/documents/d/echr/fs_extra-territorial_jurisdiction_eng (last accessed 18 June 2025).

extend of adjudication may be restricted to violations of particular obligations instead of the overall legality of the sanction's framework. [311]

Moreover, UN bodies such as the **Human Rights Council or Special Rapporteurs** can investigate the effects of unilateral coercive measures on fundamental rights. [312] While these mechanisms do not provide binding decisions, they act as platforms for international condemnation and can contribute to the development of norms. [313]

In recent years, some States have enacted blocking statutes or similar counter-legislation to protect their nationals and companies from the extraterritorial application of sanctions. For instance, the EU's Blocking Statute forbids compliance with specific U.S. sanctions and enables injured entities to seek damages. Nevertheless, these statutes have limited practical impact in discouraging compliance due to the prevailing influence of U.S. financial markets.[314]

Finally, non-judicial remedies, including recourse to the United Nationals General Assembly or specialized agencies can help strengthen both political and legal support for the sanctioned State's position, even without binding enforcement mechanisms. These mechanisms can help clarify the applicable legal norms, promoting *opinio juris* and influencing the development of customary international law regarding the boundaries of extraterritorial sanctions. [315]

In sum, although international law presents theoretical avenues for redress against extraterritorial sanctions, the power imbalance between sanctioning and sanctioned States along with institutional constraints hinders effective enforcement or compensation.

[311] Josef Ostransky, *The ICJ decides on the content of international protection standards: A lost opportunity?*, 1 July 2023, online : https://www.iisd.org/itn/2023/07/01/the-icj-decides-on-the-content-of-international-protection-standards-a-lost-opportunity/ (last accessed 18 June 2025).

[312] United Nations, *Special Rapporteur on unilateral coercive measures*, online : https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures (last accessed 19 June 2025).

[313] United Nations, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, GE.18-14322(E), August 2018, Para. 37., online : https://www.right-docs.org/doc/a-hrc-39-54/ (last accessed 19 June 2025).

[314] Erik de Bie, Kara M. Bombach, Hans Urlus, Robert Hard, *Conflicting EU, US Economic Sanctions Regimes: Implications for Multinational Companies*, 4 February 2022, online : https://www.gtlaw.com/en/insights/2022/2/conflicting-eu-us-economic-sanctions-regimes%20implications-for-multinational-companies (last accessed 20 June 2025).

[315] Rebecca Barber, *An exploration of the General Assembly's troubled relationship with unilateral sanctions*, Cambridge University Press, 26 February 2021, online : https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/an-exploration-of-the-general-assemblys-troubled-relationship-with-unilateral-sanctions/B5BD937CE4BFB6D7CC22278AC88271CD (last accessed 20 June 2025).

# CONCLUSION

This thesis aimed to address a seemingly straightforward question: **“Are unilateral extraterritorial sanctions compatible with contemporary international law?”**

We started with investigating the fundamental norms of the UN Charter that are sovereign equality, territorial integrity and non-intervention, alongside the recognition that coercive measures are in principle designated for collective decision-making through the Security Council. From there we explored the customary law foundations of jurisdiction, and the limitations set by general principles such as proportionality, necessity and non-discrimination. Ultimately, we evaluated these legal criteria against actual sanctions regimes, concentrating on the practices of the United States and the European Union.

We came to different conclusions.

**Firstly**, the legal justification for unilateral sanctions with extraterritorial implications is fundamentally constrained as measures based on territorial jurisdiction are well within the established legal framework. Even the more exceptional protective principle and effects doctrine can, under narrowly defined conditions, sometimes validate extraterritorial actions when a substantial and direct link to the sanctioning State’s vital interest is present.

Nevertheless, secondary sanctions or in other words, sanctions that require third state nationals to comply with the policies of the sanctioning state under the threat of penalties obviously lacks a definitive jurisdictional basis. These sanctions intrude upon the regulatory autonomy of other states as they frequently regulate behaviour without any legitimate territorial or personal connection to the sanctioning state, which poses a risk of breaching the principle of non-intervention. This analysis is consistent with a significant number of legal scholars and the concerns consistently expressed by affected states as evidenced by instruments such as the EU Blocking Statute.

**Secondly**, while certain sanctioning states attempt to categorize extraterritorial measures as countermeasures as a response to a wrongful act, it is subject to strict limits. According to the ILC’s Articles on State Responsibility, countermeasures must be directed at the responsible state on top of being proportional, reversible and reversible once compliance is restored.

A sanction becomes problematic once it undermines obligations owed to third states or peremptory norms. This is the reason why secondary sanctions, in other words sanctions that penalize actors from third states are highly contested. An open question remains whether collective actions in response to violations of obligations *erga omnes*, like acts of aggression or genocide can allow non-injured States to implement countermeasures. While the EU has adopted this perspective in relation to Russia's aggression against Ukraine, the debate is not done yet.

**Thirdly**, the principles of proportionality, necessity and non-discrimination serve as crucial checks on all sanctions, whether they are territorial or extraterritorial. The case studies demonstrates that broad and economy-wide sanctions can lead to significant humanitarian consequences especially regarding access to food, medicine as well as essential services in a sanctioned State. In those cases, such actions are difficult to reconcile with those principles that ultimately stipulate that the measures only serve as protections against essential interests of the State, without harming the interests of the others. Proportionality requires that the damage that is inflicted does not exceed what is necessary to achieve a legitimate objective. Moreover, under the principle of non-discrimination, no arbitrary distinctions between similar situation may be made. Based on these criteria, many current sanctions regimes are very contested, especially the United States's "maximum pressure" campaign against Iran.

**Fourthly**, when comparing the different regimes, a clear divergence between the United States and the European Union can be distinguished. The U.S. has adopted broad secondary sanctions as a standard instrument of foreign policy, whereas the EU, while nevertheless become more assertive in its sanctions approach has typically limited its measures to entities within its jurisdiction and has actively opposed the enforcement of foreign extraterritorial sanctions on its nationals. This divergence between these two actors does not only illustrate the different legal interpretations but also generates tensions in transatlantic relations while further complicating efforts to present a unified stance in tacking global security challenges.

**Fifthly and finally**, we have discovered some wider systemic issues. The fragmentation of legal justifications, from arguments based on the UN Charter to countermeasures and human right claims clearly compromises predictability.

Moreover, there are few mechanisms for accountability and review of unilateral sanctions. Judicial oversight, when it exists, is often limited in scope. This means that for states targeted by these sanctions, the remedies are not numerous and when they exist, they often encounter procedural obstacles that do not allow for the enforcement of possible favourable rulings for the injured States.

**In light of these findings, the main conclusion is that unilateral extraterritorial sanctions, especially in their secondary form are challenging to reconcile with the existing framework of international law**. Even though some unilateral actions may be lawful when based on recognized jurisdictional principles, the current trend of extensive secondary sanctions does not align with the boundaries of lawful state behaviour.

This does not imply that international law lacks the capacity to address the damages that sanctions claim to resolve as collective sanctions under the UN Charter continue to represent the highest standard of legitimacy, even though political circumstances frequently hinder their implementation. Where unilateral action is necessary, following strict jurisdictional bases and applying the constraining principles rigorously can help in reducing legal risks.

Looking ahead, the future regulation of unilateral extraterritorial sanctions will likely depend on two factors. First of all, state practice and *opinio juris* will either solidify or challenge the acceptability of such sanctions. Ongoing objections from injured states along with the emergence of alternative legal protections indication a potential gradual delegitimization of expansive secondary sanctions. Secondly, judicial or quasi-judicial decisions, whether from the ICJ, WTO or regional courts could offer clarification on the limits of extraterritorial jurisdiction and further define the scope of lawful countermeasures.

Until such clarification emerges, the lawfulness of unilateral sanctions will remain contested and influenced as much by power and diplomacy as by legal principles.

Ultimately, the issue of unilateral extraterritorial sanctions does go beyond a simple legal challenge as it represents the international community's vision of the international order. For law to truly limit power, its principles need to be understood and enforced in ways that uphold the sovereignty and equality it aims to safeguard. However, international law cannot ignore the existence of significant violations that require actions when collective mechanisms fall short. Bridging this gap between principle and practice is perhaps the greatest challenge for States, courts and scholars in the years ahead.

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