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Secondary Sanctions as Breaches of Jus Cogens and the Issue of Non-recognition*

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Abstract

This article examines the legality of unilateral secondary sanctions under international law, focusing on their potential characterization as breaches of peremptory norms (*jus cogens*) and the resulting duty of non-recognition. Unlike primary sanctions, which are typically grounded in territorial or nationality-based jurisdiction, secondary sanctions operate extraterritorially by targeting third-state actors that maintain lawful relations with a sanctioned state. Their expanding use raises serious concerns regarding state sovereignty, non-intervention, and the limits of jurisdiction. Drawing on the jurisprudence of the ICJ and the ILC's Draft Articles on State Responsibility, the article argues that secondary sanctions are structurally prone to conflicting with fundamental principles of international law. In certain circumstances, particularly where they produce grave and systematic humanitarian consequences, such measures may implicate obligations *erga omnes* and even amount to serious breaches of peremptory norms, including the prohibition of unlawful intervention or crimes against humanity. In such cases, Article 41 of the ILC Articles gives rise to an obligation of non-recognition by third states. The article distinguishes between domestic blocking statutes and the international legal duty of non-recognition, contending that the latter derives from the hierarchical structure of the international legal order. It concludes that clearer normative frameworks are required to reconcile foreign policy objectives with *jus cogens* and the protection of fundamental rights.

Keywords

Secondary sanctions; Jus cogens; Non-recognition; Non-intervention; Erga omnes obligations; State responsibility.

* This article reflects the author's personal views.

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1- Introduction

Since the end of the Cold War, sanctions have become a prominent instrument of statecraft, employed both multilaterally and unilaterally (Weber & Schneider, 2020: 105). In the twenty-first century, unilateral sanctions outside the UN framework have proliferated. For instance, the first administration of Donald Trump imposed 188 rounds of sanctions on Iran, designating 1,507 individuals, entities, aircraft, and vessels. More recently, since February 2022, the European Union has implemented sanctions on Russia, banning exports worth over €48 billion and imports valued at €91.2 billion (Council of the European Union, 2025). Such measures demonstrate the broad humanitarian, economic, and diplomatic consequences sanctions may have, not only on the targeted state but also on third-parties.

The humanitarian consequences of sanctions have long been a concern. In response to the widespread civilian suffering in the 1990s, the international community adopted "smart" or "targeted" sanctions aimed at minimizing harm to civilian populations (Douhan, 2022: 3). Yet, the cumulative effect of multiple targeted measures often mirrors that of comprehensive sanctions, raising renewed humanitarian and legal concerns. From an international law perspective, unilateral sanctions—particularly when enforced extraterritorially—raise complex questions regarding state sovereignty, the limits of jurisdiction, and compliance with human rights obligations. As observed by the former President of the International Court of Justice, unilateral sanctions warrant careful scrutiny and debate within the international legal community (Yusuf, 2019: 3).

States adopting unilateral sanctions have increasingly sought to extend the scope of these measures to address perceived attempts to evade existing sanctions.[1] This development has given rise to so-called "secondary" or "extraterritorial" sanctions, which reach beyond the immediate interactions between the sanctioning and sanctioned states. In fact, secondary sanctions aim to overcome the limitation of autonomous sanctions; by threatening to penalize foreign private entities and even states, for continuing to do business with the state that was subjected to the primary sanctions (Silvestre, 2025: 185).

A proper understanding of the operation of secondary sanctions—including their economic, commercial, and financial effects (International Court of Justice, 2023: paras. 220–222)[2] —is indispensable for evaluating their impact on private contractual relations and their consistency with international law. Such analysis also illuminates questions of non-

[1]. For instance, in February 2026, the US Treasury Department sanctioned multiple entities, individuals, and vessels for circumventing sanctions: https://www.state.gov/releases/office-of-the-spokesperson/2026/02/sanctions-to-combat-illicit-traders-of-iranian-oil-and-the-shadow-fleet

[2]. In the case concerning *Certain Iranian Assets,* the International Court of Justice assessed the financial implication of a sanction.

recognition and non-compliance by third states, as well as issues of attribution and the identification of the applicable law.

In proceedings before the International Court of Justice concerning the 1955 Treaty of Amity between Iran and the United States, the Court held that whether such measures engage treaty obligations requires substantive examination at the merits stage, rather than at the jurisdictional phase (International Court of Justice, 2021: paras. 81–82).

These matters were considered by the International Court of Justice in the *Case Concerning the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States*. The United States contested the Court's jurisdiction, arguing that the measures at issue constituted "third-country measures." The Court rejected this objection, holding that only a detailed assessment of the scope and effects of the measures could determine whether treaty obligations were engaged—an inquiry appropriately reserved for the merits stage of the proceedings (International Court of Justice, 2021: paras. 81–82).

The central issue addressed in this article concerns the significance of international law for the non-recognition of secondary sanctions with extraterritorial effects, as distinct from non-recognition or non-compliance under domestic/regional legal frameworks (so-called blocking statutes). From an international legal perspective, secondary sanctions may implicate a range of fundamental principles, including state sovereignty, non-intervention, and the freedom of states to conduct lawful trade relations. Moreover, they may raise concerns under international human rights law, particularly when sanctions impact the economic, social, and civil rights of populations in third states. Where secondary sanctions contravene peremptory norms of international law (*jus cogens*)—including prohibitions on the use of force, gross human rights violations, or unlawful interference in the internal affairs of other states—they may trigger a corresponding duty of non-recognition under the law of state responsibility, as reflected in the 2001 ILC Articles on State Responsibility. Viewed through this lens, secondary sanctions are not merely instruments of foreign policy but potential violations of binding international legal obligations, raising complex questions regarding jurisdiction, accountability, and the reconciliation of national security objectives with the rights of other states and affected populations.

2- Qualification of Secondary Sanctions under International Law

There is no universally accepted definition of "secondary sanctions" in either domestic or international law. They are generally distinguished from "primary sanctions," which are traditionally understood to rest upon territorial jurisdiction or nationality-based links between the sanctioning state and the targeted conduct. The absence of a uniform definition further permits divergent classifications across domestic legal systems. Certain sanctions regimes of the United States, for example, extend to non-US persons established and

operating under foreign law (Code of Federal Regulations, 2026: §560.314) or attribute liability to parent companies for the conduct of non-US subsidiaries abroad.[1] Such features underscore the difficulty of maintaining a rigid primary/secondary dichotomy and suggest that some sanctions frameworks are more accurately described as hybrid in character.

US primary sanctions extend extraterritorially, covering foreign goods and services that incorporate US-origin components or technology. Quantitative thresholds, like the 10% rule under the Iran sanctions regime (Code of Federal Regulations, 2026: §560.314), act as jurisdictional triggers, requiring US authorization for the export of otherwise foreign products.

The legality of unilateral sanctions, including secondary sanctions, has been repeatedly contested under international law on multiple grounds (Yee, 2022: 826). Challenges arise both within specific subfields—such as World Trade Organization, human rights law, and international investment law—and under general international law, particularly regarding the principles of sovereign equality and non-intervention.[2]

The International Court of Justice's judgment in the famous *Case Concerning Military and Paramilitary Activities in and against Nicaragua* provides, on the merits, that while a State is generally free to terminate trade relations absent a treaty or other legal obligation, where such a commitment exists, an abrupt termination may constitute a violation of the obligation not to frustrate the object and purpose of the treaty (International Court of Justice, 1986: para. 276).

It should be emphasized that the ICJ's statement in the *Nicaragua* Case concerned bilateral treaty relations and was limited to unilateral primary sanctions. At that time, secondary sanctions were relatively uncommon. Drawing on the principle established in the *Lotus* case (Permanent Court of International Justice, 1927: para. 19), one might argue that unilateral primary sanctions are generally permissible under international law, provided they do not conflict with a specific international obligation limiting the sovereign rights of the sanctioning state. The same reasoning, however, does not appear to extend to secondary sanctions. By their nature, secondary sanctions exert effects on third states and foreign nationals, often encroaching on the sovereignty of other states. Accordingly, there is a strong

[1]. For example, Stanley Black & Decker, Inc. Settles Potential Civil Liability for Violations of the Iranian Transactions and Sanctions Regulations Committed by its Chinese-Based Subsidiary Jiangsu Guoqiang Tools Co. Ltd. https://ofac.treasury.gov/media/9321/download?inline

[2]. Cf. Ruys, T., Ryngaert, C., & Rodríguez Silvestre, F. (Eds.). (2024). The Cambridge Handbook of Secondary Sanctions and International Law. Cambridge: Cambridge University Press; Schmidt, J. (2022). The legality of unilateral extra-territorial sanctions under international law. Journal of Conflict and Security Law, 27(1), 53–81. https://doi.org/10.1093/jcsl/krac005

basis to contend that unilateral secondary sanctions are inherently susceptible to violating multiple rules and principles of international law.[1]

While such sanctions are often defended on grounds of national security, human rights protection, or non-proliferation, in the absence of a United Nations-mandated sanction regime, the burden lies with the sanctioning state to demonstrate that the measures are justified under special defenses or general principles of international law precluding wrongfulness (Dupont, 2012: 9). Secondary sanctions may also contravene specific conventional obligations under bilateral or multilateral treaties. For example, the WTO agreements generally prohibit discriminatory trade measures favoring domestic over foreign products, except where specific exceptions apply (Mitchell, 2017: 299-302). Similarly, as reflected in the International Court of Justice's judgment in the *Certain Iranian Assets* case, sanctions may violate obligations under bilateral friendship, commerce, and navigation (FCN) treaties (International Court of Justice, 2021: para. 223). Moreover, if deemed lawful, powerful players such as the US, can turn secondary sanctions from the defense of a community interest, into tools for the realization of political strategies (Silingardi, 2025: 236). The international community has generally regarded unilateral secondary sanctions as acts that, *prima facie*, violate international law, even without precisely identifying the specific legal obligations breached.

In practice, affected states respond primarily in two ways: (1) by adopting countermeasures or other retaliatory actions against the sanctioning state, or (2) by refusing to recognize or comply with secondary sanctions insofar as they impact the nationals or entities of the third state.

Counter-sanctions has increased in recent years, contributing to cycles of reciprocal sanctions in international relations.[2] The UN Special Rapporteur on Unilateral Coercive Measures has observed that the use of "counter-sanctions" is expanding in contemporary State practice (Douhan, 2021: para. 55). For example, in 2022–2023, Russia listed many U.S. officials in response to U.S. measures (Reuters, 2022), while China imposed fines and

[1]. Cf. Ruys, T., & Ryngaert, C. (2020). Secondary sanctions: A weapon out of control? The international legality of, and European responses to, US secondary sanctions. British Yearbook of International Law. https://doi.org/10.1093/bybil/braa007

[2]. See CTV News. (2023, April 7). China sanctions groups, Taiwan official in U.S. as retaliation. CTV News. Retrieved February 20, 2026, from https://www.ctvnews.ca/world/article/china-sanctions-groups-taiwan-official-in-us-as-retaliation; Bloomberg Law. (2023, February 16). China hits back at US with sanctions on Lockheed, Raytheon. Bloomberg Law. Retrieved February 20, 2026, from https://news.bloomberglaw.com/international-trade/china-hits-back-at-us-with-sanctions-on-lockheed-raytheon; and Politico. (2022, April 27). Russia sanctions 287 British MPs in retaliation for Ukraine curbs. Politico. Retrieved February 20, 2026, from https://www.politico.eu/article/russia-sanction-287-uk-mp-counter-retaliatory-move/

sanctions against two U.S. defense companies (Reuters, 2023). Similarly, Iran sanctioned ten U.S. individuals and four American entities (Ministry of Foreign Affairs of the Islamic Republic of Iran, 2022), and in a reciprocal move, imposed sanctions on nine Canadian individuals and institutions (Ministry of Foreign Affairs of the Islamic Republic of Iran, 2022).

A second form of response by certain third states and regional entities involves the adoption of legal frameworks, commonly referred to as "blocking statutes," designed to prevent the recognition or enforcement of extraterritorial sanctions.[1] Recently, both the scope and legal implications of such regimes have been subject to judicial scrutiny at the European Union level, highlighting ongoing tensions between unilateral sanctions and the regulatory autonomy of third states.[2]

3- Secondary Sanctions and Jus Cogens Norms of International Law

3-1- The duty not to recognize breaches of peremptory norms

In light of their extraterritorial nature and presumptive illegality, the question arises whether there exists an obligation under international law for third states to neither recognize nor comply with such sanctions. Refusing to recognize sanctions imposed by a state can serve as a significant means of upholding fundamental principles of international law and may advance several objectives. First, it protects affected populations from undue harm. Second, it communicates to the sanctioning state that its measures are not accepted, thereby challenging their legitimacy. Third, it may function as a deterrent, discouraging other states from adopting similar measures.

Several states have enacted domestic measures to prevent recognition and compliance with secondary sanctions that possess extraterritorial effects over their territories, nationals, or entities operating within their jurisdiction. These acts of non-recognition are primarily grounded in domestic or regional law—most notably within the European Union—rather than in public international law. A prominent example is the EU Blocking Statute, Article 4

[1]. See South Africa Protection of Business Act of 1978, Canada Foreign Extraterritorial Measures Act (FEMA) of 1985; Mexico Law for The Protection of Trade and Investment of Foreign Regulations That Contravene International Law of 1996; Argentina Act No. 24871 Establish the Regulatory Framework Referring to The Scope of Foreign Laws in The National Territory of 1997; Russian Federation Law of 2018; and China Laws adopted in 2020 and 2021.

[2]. See Court of Justice of the European Union. (2021, December 21). Bank Melli Iran v. Telekom Deutschland GmbH (Case C-124/20). Official Journal of the European Union. Retrieved February 20, 2026, from https://op.europa.eu/en/publication-detail/-/publication/aa28bccb-9317-11ec-b4e4-01aa75ed71a1; Rechtbank Den Haag [District Court of The Hague]. (2019, June 25). PAM International N.V. v. Exact Software Nederland B.V. (ECLI:NL:RBDHA:2019:6301). Retrieved February 20, 2026, from https://semantius.nl/uitspraken/ECLI%3ANL%3ARBDHA%3A2019%3A6301

of which prohibits EU operators from complying with foreign laws deemed unlawful due to their extraterritorial reach.

Domestically, non-recognition of foreign sanctions depends on the state's legal system and enforcement capacity. At the international level, non-recognition of sanctions is grounded in breaches of fundamental principles of international law, including violations of jus cogens norms, *erga omnes* obligations, or other binding international legal duties. While domestic laws and regulations can shield businesses and individuals from compliance with foreign sanctions, the international context is more complex and often lacks robust enforcement mechanisms. Non-recognition at the international level can serve as a means for states to assert their sovereignty, but at the same time, it may strain diplomatic relations, exacerbate geopolitical tensions, and complicate efforts to resolve the underlying disputes that prompted the sanctions.

The question of non-recognition of unlawful acts under international law has received limited attention and remains largely unsettled. A general obligation exists for states not to recognize situations arising from serious violations of peremptory norms (jus cogens). This duty is grounded in the fundamental principle that illegal acts cannot generate legal rights (*ex injuria jus non oritur*). This principle extends beyond the narrow obligation of non-recognition. Some scholars contend that its primary purpose is to prevent the validation of unlawful situations by ensuring that a ***fait accompli*** resulting from serious breaches does not become legitimized over time within the international legal order (Crawford et al., 2010: 677-686). Moreover, the rationale underpinning this obligation may be broader, potentially applying to other unlawful circumstances beyond jus cogens violations.

The obligation of non-recognition in international law primarily derives from the concept of a "serious breach of peremptory norms of general international law." This principle has been formally recognized by the International Law Commission (ILC) in Article 41(2) of the Draft Articles on Responsibility of States for Internationally Wrongful Acts. The ILC's approach in framing the obligation of non-recognition may be viewed as cautious, seeking to avoid overburdening states with subsidiary obligations under secondary rules of international law. Yet, this approach has potential shortcomings. It presumes that international law is primarily non-reciprocal, thereby downplaying numerous rules with an *erga omnes* character. It also arguably underestimates the rationale for peremptory norms (*jus cogens*), which are inherently fundamental to the international legal order. Limiting the consequences of non-recognition solely to "serious breaches" risks weakening the already fragile enforcement and authority of peremptory norms.

The general obligation of non-recognition is affirmed in UN Security Council and General Assembly resolutions, as well as in the jurisprudence of international courts. Several UNSCRs—including 216, 217, 277, 288, 328, 423, 445, 448, and 662—explicitly codify the

duty of collective non-recognition. A prominent example is the case of the racist regime in Southern Rhodesia, where numerous UNSCRs called on states not to recognize the regime. In practice, almost all states complied, reinforcing the effectiveness of the non-recognition rule. Its robustness was further supported by coordinated sanctions in which the majority of states participated (Bird, 2010: 888).

While state practice on non-recognition has traditionally focused on unlawful situations arising from forcible territorial acquisition, apartheid and racial discrimination, denial of the right to self-determination, and violations of fundamental principles of international humanitarian law, this does not preclude the possibility that secondary sanctions could create or be linked to similar unlawful situations.

The ILC Draft Conclusions on peremptory norms of general international law (*jus cogens*) emphasize that a *jus cogens* norm embodies and protects the "fundamental values of the international community," enjoys hierarchical superiority over other rules of international law, and is universally applicable (International Law Commission, 2022: Conclusion 2). To qualify as *jus cogens*, a norm must be both a rule of general international law and recognized and accepted by the international community of states as a whole (International Law Commission, 2022: Conclusion 3). Accordingly, demonstrating widespread state acceptance and grounding the norm in state practice is essential (International Law Commission, 2022: Conclusion 7).

3-2- The duty of non-intervention

Secondary sanctions may, in certain circumstances, violate the principle of non-intervention—a principle regarded by some as a peremptory norm. As such, a serious breach of this principle through the implementation of secondary sanctions could trigger the obligation of non-recognition under international law.

The principle of non-intervention is firmly rooted in customary international law and is complemented by two closely related principles concerning the rights of sovereign states. First, the principle of territorial integrity and inviolability prohibits the use of force against a state and affirms its exclusive authority to conduct operational and security activities within its borders. Second, the principle of non-intervention derives from the state's political independence and the free exercise of sovereignty, prohibiting any external action that may undermine its autonomy or constitute unlawful interference in its internal affairs. Together, these principles form the foundation of the obligation of non-intervention and enjoy *erga omnes* status, binding all states to comply (Guerreiro, 2022: 19).

The extraterritorial enforcement of unilateral sanctions is widely viewed as an infringement on the sovereignty of other states, contravening the principles of jurisdiction and non-intervention in the internal affairs of states (Schmidt, 2022: 60). The principle of non-intervention is not only fundamental to the international legal order but also constitutes a peremptory norm (*jus cogens*), meaning that it cannot be altered or derogated from merely

through the consent of two or more states, whether by treaty or customary practice (Shen, 2001: 7).

In his separate opinion in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, Judge Sérgio Vieira de Mello Sette-Camara emphasized that "the non-use of force as well as non-intervention—the latter as a corollary of equality of States and self-determination—are not only cardinal principles of customary international law but could in addition be recognized as peremptory rules of customary international law which impose obligations on all States." (Sette-Camara, 1986: 189).

Cassese has asserted that "[t]he importance of this principle... for states, leads one to believe that it has now become part and parcel of *jus cogens*." (Cassese, 1986: 147). Similarly, a legal commentator notes that "[t]he strength and duration of support for the principle of non-intervention in state practice must surely qualify the principle for this status, reinforced as it is by the proscription on the use of force (itself a main exemplar of *jus cogens*) contained in the United Nations Charter." (Kritsiotis, 1998: 1042-1043). Numerous scholars have reached the same conclusion, identifying the principle of non-intervention as one of the norms of international law that attains *jus cogens* status (Shen, 2001: 7).

The principle of non-intervention may be regarded as a peremptory norm of international law. In its Declaration of 9 December 1981, the United Nations General Assembly affirmed that states must "refrain from entering into agreements with other States with a view to intervening or interfering in internal or external affairs of other States." (United Nations General Assembly, 1981: para. II(h)). While the Declaration is not legally binding, it reflects the general legal conviction of states and, to a large extent, restates existing law. As noted by Cassese, "no objections or misgivings were voiced when the resolution was passed, nor was its purport challenged—not even by States that voted against it or abstained." (Cassese, 1986: 148). The prevailing state practice—that no agreement may validly be concluded in violation of the non-intervention principle—further supports the view that this principle has attained jus cogens status (Cassese, 1986: 148).

More recently, the principle of non-intervention was suggested to be expressly recognized as *jus cogens* norm by some members of the UN (Grossman Guiloff, 2019: 19), and even though the ILC decided to limit the list of *jus cogens* to certain norms of general international law, not only did it not deny that the principle of non-intervention holds the status of *jus cogens* norm, but it rather left open the possibility for its recognition as such by recalling its draft Conclusion 23 to allow the recognition of "other possible peremptory norms of general international law (International Law Commission, 2022: Conclusion 23).

The prohibition of intervention is fundamentally aimed at protecting the sovereign and inalienable right of every state to freely determine its political, economic, social, and cultural systems, to conduct its foreign relations, and to exercise sovereignty over its natural

resources. In the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, the International Court of Justice affirmed that the principle of non-intervention encompasses the right of every sovereign state to conduct its affairs free from outside interference and recognized it as a rule of customary international law (International Court of Justice, 1986: para. 202).

3-3- Other pertinent *jus cogen*s norms

The imposition of unilateral secondary sanctions raises complex questions regarding other rights and duties of states under international law.[1] Firstly, in certain circumstances, secondary sanctions have even been framed as conduct capable of being qualified as *crimes against humanity*, a category of atrocity crimes recognized by the ILC as a *jus cogens* norm (Akande et al., 2021: 494-495).

This debate has prominently arisen in the context of sanctions imposed by the United States against the Bolivarian Republic of Venezuela. Pursuant to Article 14 of the Rome Statute, on 27 September 2018, a group of six states parties referred the situation in Venezuela to the International Criminal Court Prosecutor, alleging crimes against humanity in Venezuela arising from the internal conduct of Venezuelan state actors (*Referral I*).[2]

Subsequently, on 13 February 2020, the Venezuelan government submitted a second referral to the ICC Prosecutor,[3] asserting that economic and unilateral coercive measures adopted by the United States, among others, have resulted in widespread human suffering amounting to crimes against humanity under Article 7 of the Rome Statute.[4] The referral

[1]. See Thouvenin, J.-M. (2013). Sanctions économiques et droit international. Droits, 57, 161–185. https://doi.org/10.3917/droit.057.0161; and Tzanakopoulos, A. (2015). The right to be free from economic coercion. Cambridge Journal of International and Comparative Law, 4(3), 616–633. https://doi.org/10.7574/cjicl.04.03.616

[2]. See International Criminal Court. (2018, September 26). Situation in the Bolivarian Republic of Venezuela I: Referral of the situation in Venezuela under Article 14 of the Rome Statute submitted by the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru (ICC-02/18-OTP-Referral). Retrieved February 21, 2026, from https://www.icc-cpi.int/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf

[3]. See International Criminal Court. (2020, March 4). Situation in the Bolivarian Republic of Venezuela II, ICC-01/20: Referral pursuant to Article 14 of the Rome Statute to the Prosecutor of the International Criminal Court by the Bolivarian Republic of Venezuela with respect to unilateral coercive measures (Referral II). Retrieved February 20, 2026, from https://www.icc-cpi.int/RelatedRecords/CR2020_00802.PDF

[4]. Referrals I and II were, on February 19, 2020, assigned to ICC Pre-Trial Chamber III on the grounds that "the two referrals appear to overlap geographically and temporally and may warrant assignment to the same PreTrial Chamber." International Criminal Court. (2020, February 19). Decision assigning the Situation in the Bolivarian Republic of Venezuela II and reassigning the Situation in the Bolivarian Republic of

alleges that these measures have significantly increased mortality and adversely affected fundamental human rights, including the rights to food, health, and education, and could amount to a systematic attack on the civilian population.

The Preamble to the ILC Articles on State Responsibility emphasizes that "the prohibition of crimes against humanity is a peremptory norm of general international law (jus cogens)." Some commentators argue that economic sanctions could, in principle, constitute crimes against humanity under international criminal law where they result in widespread or systematic violations of fundamental human rights recognized under general international law (Akande et al., 2021: 509-510). Moreover, some scholars contend that, in extreme cases, sanctions may also amount to genocide (Bisharat, 2001: 379), acts of aggression (Mitro, 2022: 15), or violations of the right to self-determination (Schmidt, 2022: 75)—other norms recognized as *jus cogens*.

However, other scholars caution that there is no automatic basis for concluding that the mere imposition of sanctions amounts to crimes against humanity. Even where sanctions may be unlawful under international law, liability requires proof that the measures constitute an attack directed primarily against a civilian population. Nevertheless, they note that in extreme circumstances—such as deliberately causing starvation or denying access to essential resources—sanctions can produce violations of fundamental human rights and, in exceptional cases, rise to the level of crimes against humanity.

In specific circumstances, the implementation and enforcement of certain sanctions can be so severe that they effectively constitute economic warfare. Policies such as the "maximum pressure" campaign against Iran exemplify this approach, encompassing economic embargoes or boycotts, reductions or withdrawals of economic aid, trade restrictions including quota reductions, and the freezing of financial assets. The effects of such measures, in many respects, are comparable to the use of military force, with legal instruments employed to achieve objectives akin to those of armed conflict.

The growing reliance on comprehensive sanctions, often accompanied by secondary sanctions, is highly contested and raises serious human rights concerns. In some instances, these measures function effectively as blockades, potentially infringing upon fundamental principles of international humanitarian law and human rights law (United Nations, 2018: para. 25). The prohibition of blockades causing starvation or collective punishment is a well-established principle of international humanitarian law, reflected in Article 33 of the Fourth Geneva Convention. While these safeguards traditionally apply during wartime, many commentators and UN experts argue that similar protections should extend to economic sanctions imposed in peacetime, particularly when such measures function as

Venezuela I to Pre-Trial Chamber III (ICC-01/20-1; ICC-02/18-2). The Presidency. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00598.PDF

comprehensive blockades (Human Rights Council, 2018: para. 26).

Statements by officials, including the former US Ambassador to Venezuela, acknowledge that sanctions can significantly harm civilian populations by restricting access to food, medicine, and other essential goods (Human Rights Council, 2019: para. 35). Analogies are drawn between sanctions and the obligations of an occupying power under international humanitarian law, suggesting that sanctioning states have a duty to ensure access to necessities of life, and failure to do so may constitute inhuman treatment for which states could bear responsibility (Zakerhossein, 2021: 589-590).

Secondly, in certain circumstances, the non-recognition of a secondary sanction may arise from obligations under a specialized regime with an *erga omnes* or collective character. In such regimes, states have shared rights and responsibilities (*erga omnes partes*) to uphold the integrity of the obligations recognized under the regime. The International Court of Justice, in the *Case Concerning Questions Relating to the Obligation to Prosecute or Extradite*, clarified that obligations *erga omnes partes* are those "that each State party has an interest in complying with in any given case." (International Court of Justice, 2012: para. 68).

When these sanctions are implemented or enforced within the territories of states party to the regime, they can potentially violate its provisions. Consequently, all parties to the regime bear an obligation to take appropriate measures—including blocking the sanctions—if their implementation or enforcement would result in a breach of *erga omnes* obligations. For example, if the execution of a secondary sanction could contribute to acts of torture or apartheid, states bound by the relevant conventions are required to act to prevent the enforcement of such measures.

A fact-finding mission by Amnesty International to Cuba found that the US embargo significantly contributed to malnutrition, particularly among women and children, restricted access to safe water, limited the availability of medicines and medical supplies, and impeded the exchange of medical and scientific information due to travel restrictions and currency controls (Amnesty International, 2009: 16-19).

Sanctions imposed on the Bolivarian Republic of Venezuela have been linked to significant adverse impacts on public health and living conditions. According to a report by the Center for Economic and Policy Research, measures implemented since August 2017 reduced the public's access to adequate caloric intake, increased disease and mortality among adults and infants, and contributed to the displacement of millions of Venezuelans amid deepening economic contraction and hyperinflation. Estimates based on the National Survey on Living Conditions (ENCOVI) suggest a 31 percent increase in general mortality between 2017 and 2018—implying more than 40,000 excess deaths during that period attributable in part to sanctions-related factors such as diminished oil revenue and

constrained imports of food and medicines (Sachs & Weisbrot, 2019: 1).

The Special Rapporteur of the United Nations Human Rights Council has reported that the re-imposition of unilateral sanctions by the United States against Iran in 2018 has had profoundly detrimental effects on the country's food security. According to the Rapporteur's findings, these sanctions disrupted the supply of approximately 10 million tonnes of agricultural imports, undermining the availability and adequacy of food and contributing to a sustained rise in prices and food insecurity. Official data indicate that food prices increased by 64 percent between 2017 and 2019, leading to altered dietary patterns, reduced food consumption, and food insecurity rates of up to 60 percent in certain regions. The COVID-19 pandemic exacerbated these trends, with households in 2020 spending an estimated 41.4 percent more on the same food products than in 2019. Humanitarian organizations have further documented that the cost of a basic food basket more than tripled between 2018 and 2022 (Douhan, 2022: 6–11).

Thirdly, non-recognition of secondary sanctions may be invoked at the request of an international organization, thereby obliging all members of the organization not to recognize such measures. As established in the context of "serious breaches of peremptory norms," the approval of the United Nations is not a prerequisite for this obligation, which is considered *self-executing*.[1] This principle similarly applies to breaches arising from the adoption or implementation of secondary sanctions.

A number of resolutions by the UN General Assembly and the Human Rights Council underscore this point.[2] In repeated "Human Rights and Unilateral Coercive Measures" resolutions, Member States have been urged neither to recognize nor to implement unilateral coercive measures and to adopt effective administrative or legislative measures to counteract their extraterritorial application or effects.[3] For example, the Human Rights Council's March 2022 resolution called upon "all States neither to recognize these sanctions nor to apply

[1]. See Dawidowicz, M. (2010). The obligation of non-recognition of an unlawful situation. In J. Crawford, A. Pellet, & S. Olleson (Eds.), The law of international responsibility, 677-686. Oxford University Press. https://doi.org/10.1093/law/9780199296972.003.0059; and Singh, S. (2013). Review of The law of international responsibility (J. Crawford, A. Pellet, & S. Olleson, Eds.). Austrian Review of International and European Law Online, 15, 529–530. https://doi.org/10.1163/15736512-90000079

[2]. See *Human Rights And Unilateral Coercive Measures Resolutions* 76/161 of 16 December 2021; 75/181 of 16 December 2020; 24/14 of 27 September 2013; 27/21 of 26 September 2014; 30/2 of 1 October 2015; 36/10 of 28 September 2017; 37/21 of 23 March 2018; 46/5 of 23 March 2021;*The negative impact of unilateral coercive measures on the enjoyment of human rights Resolutions* 49/6 Of 12 April 2022; 43/15 of 22 June 2020; 40/3 of 21 March 2019; *Elimination of Coercive Economic Measures as a Means of Political and Economic Compulsion resolutions* 51/22, 1996; 10/53, 1998; 6/55, 2000; and 5/57, 2002.

[3]. See Human Rights Council resolutions 15/24; 19/32; 24/14; 30/2; 34/13; 37/21; and 49/6 of 12 April 2022; General Assembly resolutions 69/180; 70/151; 71/193; 72/168; 73/167; 74/154; and 75/181

them, and to take effective administrative or legislative measures, as appropriate, to counteract the extraterritorial application or effects" of such sanctions (Human Rights Council, 2022: 4–5).

4- Concluding observations

This article has demonstrated that secondary sanctions occupy a uniquely problematic position within the contemporary international legal order. Unlike primary sanctions, which may in certain circumstances fall within a state's territorial or nationality-based jurisdiction, secondary sanctions are structurally extraterritorial. By design, they seek to regulate the conduct of third states, foreign corporations, and individuals operating entirely outside the sanctioning state's jurisdiction. As such, they pose acute challenges to the foundational principles of sovereign equality and non-intervention.

The analysis confirms that secondary sanctions are not merely controversial policy tools; they are measures that are inherently susceptible to breaching general international law. Their coercive character, particularly when directed at compelling third states to alter lawful economic relations, aligns closely with the type of pressure prohibited under the customary principle of non-intervention. Where such interference reaches a level of severity that undermines the political or economic autonomy of another state, it may constitute a serious breach of a peremptory norm. In these circumstances, the legal consequences are not discretionary but obligatory: third states are required not to recognize as lawful situations created by such breaches.

The humanitarian record further reinforces this conclusion. Empirical evidence from sanctions regimes imposed on states such as Iran, Venezuela, and Cuba demonstrates that comprehensive and secondary measures can produce widespread socioeconomic harm, including disruptions to food security, access to medicine, and essential public services. While not every sanction regime amounts to a violation of *jus cogens*, the article has shown that in extreme cases—particularly where measures contribute to widespread or systematic deprivation—they may implicate peremptory prohibitions such as crimes against humanity, collective punishment, or violations of the right to self-determination. The gravity of these risks demands a stricter legal appraisal than is often afforded in political discourse.

Importantly, the duty of non-recognition must be understood as a rule of international law, not merely a matter of domestic regulatory choice. Although blocking statutes adopted by certain states and regional organizations serve an important protective function, they do not exhaust the normative framework. Where secondary sanctions are linked to serious breaches of peremptory norms, Article 41 of the ILC's Articles on State Responsibility imposes an obligation on all states not to recognize or assist in maintaining the unlawful situation. This obligation flows from the hierarchical nature of *jus cogens* and the *erga*

omnes character of the protected interests.

The article also highlights the systemic consequences of normalizing secondary sanctions. If powerful states may unilaterally project economic coercion across borders without meaningful legal constraint, the predictability and equality that underpin the international legal system are eroded. Such practices risk transforming instruments purportedly justified by national security or human rights concerns into mechanisms of geopolitical leverage, thereby weakening the authority of the very norms they claim to defend.

A coherent response requires the articulation of clearer international standards governing the design, implementation, and recognition of sanctions. Greater doctrinal clarity regarding the interaction between secondary sanctions, peremptory norms, and obligations *erga omnes* would strengthen legal certainty and reduce the space for selective or inconsistent application. Ultimately, safeguarding the integrity of the international legal order demands that states reconcile foreign policy objectives with the limits imposed by jus cogens, sovereign equality, and fundamental human rights. Secondary sanctions that transgress these limits cannot be insulated by political justification; they engage the responsibility of states and activate corresponding duties within the international community.

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