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SECONDARY SANCTIONS: LEGALITY, IMPACT ON GLOBAL TRADE, FINANCIAL INSTITUTIONS, AND ITS HUMANITARIAN RAMIFICATIONS

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PREFACE

The idea for this dissertation took shape while I was reading the United States' 2022 National Defense Strategy (NDS), which frames China as the "most comprehensive and serious challenge" to U.S. national security, while Russia is described as an "acute threat." These characterisations are not merely rhetorical—they reflect an intensifying global rivalry where geoeconomics is being weaponised as a tool of statecraft. What particularly captured my attention was how this evolving security posture has begun to reshape trade policy, with secondary sanctions increasingly employed as a strategic lever to enforce foreign policy objectives, often beyond the sanctioning state's jurisdiction.

As someone deeply interested in international trade law, I began to explore how these extraterritorial sanctions, imposed not only on target states but also on third-party states and companies, may derail the very foundations of the global trade order. Their expansion comes at a time when the World Trade Organization's (WTO) Appellate Body is effectively non-functional, weakening the enforcement of core legal principles like non-discrimination (MFN), national treatment, and the prohibition on quantitative restrictions (Article XI of GATT). Simultaneously, international investment law—through Bilateral Investment Treaties (BITs) and Friendship, Commerce, and Navigation (FCN) treaties—is being tested, as investors face unfair treatment, uncertainty, and even de facto expropriation due to compliance pressures from secondary sanctions.

This dissertation examines these issues through a multidisciplinary legal lens, analysing how secondary sanctions challenge international law, disrupt global trade and financial institutions, and undermine human rights and development goals in sanctioned jurisdictions. It also evaluates existing legal responses, such as the EU Blocking Statute and China's Anti-Foreign Sanctions Law, and proposes a framework for reform based on multilateral treaty revision, institutional restoration, and international cooperation.

In an era where unilateralism increasingly substitutes diplomacy, this work is a humble attempt to explore how law, when clearly defined, collectively enforced, and grounded in principles of fairness, can still preserve balance in the shifting landscape of global power.

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LIST OF ABBREVIATIONS

- AFS – Anti-Foreign Sanctions Law
- BIT / BITs – Bilateral Investment Treaty / Treaties
- BMI – Bank Melli Iran
- BRICS – Brazil, Russia, India, China, South Africa (recently expanded to include Iran, Egypt, Ethiopia, UAE)
- CAATSA – Countering America's Adversaries Through Sanctions Act
- CHIPS – Clearing House Interbank Payments System
- CIPS – Cross-Border Interbank Payment System
- DSB – Dispute Settlement Body
- DSU – Dispute Settlement Understanding
- DSM – Dispute Settlement Mechanism
- EC – European Commission / European Community (depending on context)
- EU – European Union
- FDI – Foreign Direct Investment
- FET – Fair and Equitable Treatment
- FPS – Full Protection and Security (Clauses)
- FTA – Free Trade Agreement
- GATT – General Agreement on Tariffs and Trade
- GATS – General Agreement on Trade in Services
- GPA – Agreement on Government Procurement / Government Procurement Agreement
- HBA – Helms-Burton Act
- HKAA – Hong Kong Autonomy Act
- ICJ – International Court of Justice
- ICSID – International Centre for Settlement of Investment Disputes
- IHL – International Humanitarian Law
- ILSA – Iran and Libya Sanctions Act
- IMF – International Monetary Fund
- INSTEX – Instrument in Support of Trade Exchanges
- ISDS – Investor-State Dispute Settlement
- IUSCT – Iran–United States Claims Tribunal

- JCPOA – Joint Comprehensive Plan of Action
- KSA – Kingdom of Saudi Arabia
- MAI – Multilateral Agreement on Investment
- MFN – Most-Favoured Nation
- MIT – Multilateral Investment Treaty
- MMPA – Marine Mammal Protection Act
- NAFTA – North American Free Trade Agreement
- NATO – North Atlantic Treaty Organization
- OECD – Organisation for Economic Co-operation and Development
- REE – Rare Earth Elements
- RMB – Renminbi (Chinese currency)
- SDN – Specially Designated Nationals and Blocked Persons List
- SPV – Special Purpose Vehicle
- STS – Ship-to-Ship Transfer
- SWIFT – Society for Worldwide Interbank Financial Telecommunication
- TRIA – Terrorism Risk Insurance Act
- TRIPS – Trade-Related Aspects of Intellectual Property Rights
- UEL – Unreliable Entities List
- UK – United Kingdom
- UN – United Nations
- UNGA – United Nations General Assembly
- UNHRC – United Nations Human Rights Council
- UNSC – United Nations Security Council
- U.S. – United States
- VLCC – Very Large Crude Carriers
- WTO – World Trade Organization

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3. *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Merits, 2005 I.C.J. 168, 161–65 (Dec. 19).*
4. *Bank Melli Iran & Bank Saderat Iran v. Kingdom of Bahrain, PCA Case No. 2017–25, Award, 390 (Nov. 9, 2021).*
5. *Bank Melli Iran v. Telekom Deutschland GmbH, Case C-124/20, EU:C:2021:1035.*
6. *Breard v. Greene, 523 U.S. 371, 376 (1998).*
7. *Costa Rica v. Nicaragua, Judgment, 2009 I.C.J. 213, 113 (July 13).*
8. *Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000).*
9. *How Did the 2018 U.S.-China Trade War Affect China's Exporters?, Stan. Ctr. on China's Econ. & Institutions (Apr. 15, 2023).*
10. *Islamic Republic of Iran v. United States of America, Judgment, 2023 I.C.J. (Mar. 30, 2023).*
11. *Islamic Republic of Iran v. United States of America, Provisional Measures, Order, 91 (Oct. 3, 2018).*
12. *Jesner v. Arab Bank, 200 L. Ed. 2d 612 (2018).*
13. *Kadi v. Council & Comm'n, Case T-315/01, Judgment of the General Court, 183–84 (Sept. 21, 2005).*
14. *Libyan Arab Jamahiriya v. United Kingdom, Order, 1992 I.C.J. 15, 39 (Apr. 14).*
15. *Libyan Arab Jamahiriya v. United States of America, Order, 1992 I.C.J. 126, 42 (Apr. 14).*
16. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits, 1986 I.C.J. 14, 202 (June 27).*
17. *Morrison v. Nat'l Austl. Bank, 561 U.S. 247 (2010).*
18. *Murray v. The Charming Betsy, 6 U.S. (2 Cranch) 64 (1804).*
19. *Trump v. Hawaii, 201 L. Ed. 2d 775 (2018).*
20. *United States v. Budovsky, No. 15-CR-00031, 2015 WL 5602853 (S.D.N.Y. 2015).*
21. *United States v. ZTE Corp., No. 3:17-CR-0120-K (N.D. Tex. 2017).*

22. *Yassin Abdullah Kadi & Al Barakaat Int'l Found. v. Council & Comm'n, Joined Cases C-402/05 P & C-415/05 P, Judgment of the Court (Grand Chamber) (Sept. 3, 2008).*

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CHAPTER 1

INTRODUCTION

I. Introduction

It can be said simply by looking at the rubric of sanctions that the work is nothing but the reinventing of the wheel. The concept of sanctions, even if unilateral, i.e. beyond the aegis of the UN, is no longer res integra. Primary sanctions have been discussed and extrapolated by umpteen acclaimed scholars wherein only two parties are at play, sanctioning and the other one is the sanctioned state, although accepted as a tool to coerce the party harming the rule-based order, yet not recognised as legal. This work will extrapolate and find the legality of secondary sanctions, which have been tested on the issues that they violate customary international laws and several trade rules that can destroy the global trade order.

Countries have increasingly resorted to the use of secondary sanctions as a tool to bring about the culmination of their foreign policy and the goals it embodies. Unlike primary sanctions, which target a country directly, secondary sanctions aim to pressure third parties—foreign governments, businesses, and financial institutions—into cutting ties with the original sanctions target. The idea is simple but powerful: cooperate with the sanctioned country, and you risk losing access to the market of the sanctioning country or being penalised through hefty fines and restrictions.

However, primary sanctions are definitely illegal, unless authorised by the United Nations Security Council (UNSC) in accordance with Chapter VII of the UN Charter. The same rule, by logical extension, applies when the secondary sanctions are being imposed on the third party; it shall be as per UNSC authorisation, given that the authorisation in question is in line with the provisions of Chapter VII of the UN Charter.[1]

This strategy of using secondary sanctions which has been considered as second phase of secondary sanctions has become more aggressive in recent years is misuse of dominant role of the US dollar and its central position in the global US financial system,

[1] Johan Holst, *The Legality of Unilateral Economic Sanctions—An Analysis of International Law on the Lawfulness of Unilateral Economic Restrictive Measures* (2023) (unpublished LL.M. thesis, Lund Univ., Faculty of Law), https://lup.lub.lu.se/student-papers/search/publication/9116074.

the targeting effectively forces international actors to choose between doing business with countries target of sanctions[2] on both the countries the sanctions has been reimposed which were suspended—or maintaining access to the economy of the nation imposing such sanctions. The demand is simple capitulation by falling in line with the sanctioning state's policy, or face the consequences.[3]

It is conceivable and cannot be ruled out that an economic weapon is invariably used by competing states jousting in a power struggle.[4] To put it simply, geoeconomics and its impact on global trade cannot be appreciated comprehensively without understanding the discipline of geopolitics or foreign policy, which is part and parcel of any decision made in this extensively and deeply intertwined globalised economy. [5]

These legally questionable and unwarranted measures are ordinarily applied on the grounds of general exceptions provided under Articles XX and XXI of the GATT, which have raised serious concerns about the extraterritorial reach of US law and its impact on global commerce and sovereignty. As secondary sanctions continue to expand, the debate over their legality, legitimacy, and humanitarian implications grows more urgent than ever.

These sanctions does not only cover the economic transactions between the targeting and the target state which is in simple terms primary sanctions in contrast, it also interferes and governs the transactions between the target and the third state party making this incidence as secondary sanctions, making these sanctions even more controversial, aggressive and intrusive as the sanctioning state is coercing not only the target state but also the third state to change its political course through the means of economic aggression, violating as essential element of self-determination and right to development.[6]

Therefore, secondary sanctions undermine third states' economic autonomy, infringing a vast body of trade rules, and sovereignty raises deep and vehement questions about

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[2] J. Gabilondo, No Oligarch Left Behind: Trump's Title III Cuba Policy, JUST SEC. (June 3, 2019), https://www.justsecurity.org/64376/no-oligarch-left-behind-trumps-title-iii-cuba-policy/.
[3] Tom Ruys & Cedric Ryngaert, Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions, 89 *Brit. Y.B. Int'l L.* 1, 4 (2020).
[4] Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale Univ. Press 2022). https://doi.org/10.2307/j.ctv240df1m
[5] Teoman M. Hagemeyer-Witzleb, *The International Law of Economic Warfare* (Springer 2021)
[6] A. Tzanakopoulos, The Right to Be Free from Economic Coercion, 4 *Cambridge J. Int'l & Comp. L.* 616 (2015).

its legitimacy. They also raise the question as to how third states could respond to mitigate, or even neutralise, the impact of secondary sanctions.

II. Statement of the Problem

Secondary sanctions violates the core principles of international law, undermine the integrity of the global trade order, and violate fundamental norms such as non-interference and state sovereignty. They inflict major disruptions to international trade and financial systems, threatening the stability of multilateral cooperation and weakening institutions like the WTO.[7]

There's an essential difference between what we might call "direct" sanctions (primary sanctions) and "indirect" sanctions (secondary sanctions). Primary sanctions work like this: They essentially say, "Our country won't do business with X country, and neither will our companies or citizens."[8] For example, suppose Country A imposes primary sanctions on Country B. In that case, it means: Country A's government can't trade with Country B, Companies based in Country A can't do business there, and even if you're a citizen of Country A, you're barred from commercial dealings with Country B.

The compatibility of US secondary sanctions with international law is not a new topic in legal scholarship, however in this dissertation we will carry out a fine-grained legal analysis by reviewing their international legality in light of international norms drawn primarily ranging from the law of jurisdiction, WTO trade rules, other multilateral and bilateral investment conventions and international financial laws. Simply put, the entire explanation of this motif will be on the focal point of trade laws.

The novelty of this contribution also resides in its multifaceted view of possible remedies to challenge US secondary sanctions having the potential to violate trade laws and bringing the global trade order to the grinding halt therefore this scholarly analyses exist regarding discrete judicial and non-judicial remedies, such as the EU Blocking

[7] Mario Larch, Serge Shikher, Constantinos Syropoulos & Yoto V. Yotov, Quantifying the Impact of Economic Sanctions on International Trade in the Energy and Mining Sectors (2022), https://doi.org/10.2139/ssrn.3784389 (last visited June 12, 2024).
[8] Council Regulation 267/2012, art. 49, of Mar. 23, 2012, concerning restrictive measures against Iran and repealing Regulation (EU) No. 961/2010, 2012 O.J. (L 88) 1.

Statute and Chinese Blocking Statutes or the security exception under the law of the World Trade Organisation (WTO).[9]

This contribution focuses on economic relations between various countries, especially regarding investment laws and other general economic interactions. It will also focus on the great economies that have become ever more interdependent, wherein the buyer will be restricted to purchase from those who impose secondary sanctions with an intent to browbeat, to single out only the sanctioning state as export, and for purchase.. The EU and India have become uniquely vulnerable to the imposition of US secondary sanctions, which restrict trade between the EU and third states. For instance, after the reinstatement of secondary sanctions against some states in 2018.[10]

Likewise, some countries had to change their sources of energy after the second phase of secondary sanctions came into existence.[11] It was also suggested that secondary sanctions can be imposed if the law imposed by the US was violated, which has no territorial nexus with the US or any other third party. Accordingly, the analysis has wider geographic application.[12]

Secondary sanctions, on the other hand, go beyond regulating a country's economic dealings—they seek to control transactions between third-party states and the sanctioned entity. In other words, they attempt to dictate how foreign companies, banks, or even governments interact with the sanctions target, even when those interactions have no direct connection to the sanctioning country.

For the first time secondary sanctions was used in 1996 and that was tackled especially by EU through a blocking statute, which this paper will analyse as a measure for the third countries to adopt in order to prevent itself from being coerced by the targeting

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[9] C. Van Haute, S. Nordin & G. Forwood, *The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place*, 13 Glob. Trade & Customs J. 496 (2018).
[10]Exec. Order No. 13,846, *Reimposing Certain Sanctions With Respect to Iran*, 83 Fed. Reg. 38,939 (Aug. 6, 2018).
[11] Kabir Taneja, Did India Need to Stop Buying Oil from Iran?, *Observer Res. Found.* (Feb. 27, 2023), https://www.orfonline.org/expert-speak/did-india-need-to-stop-buying-oil-from-iran/.
[12] Kashish Parpiani, India's Purchase of the S-400: Understanding the CAATSA Conundrum, *Observer Res. Found.* (Feb. 25, 2021), https://www.orfonline.org/expert-speak/indias-purchase-of-the-s-400-understanding-the-caatsa-conundrum/.

state or from ugly compromises by the government in power, through Regulation 2271/96.[13]

Secondary sanctions often disrupt humanitarian efforts[14] and vital economic activities, deepening existing global inequalities. As their use grows as a tool of political pressure,[15] serious concerns arise about the fairness and legitimacy of such unilateral economic coercion in our interconnected world.

Methodologically, we will resort to an essentially doctrinal approach, studying the states' conventional practices and legal texts such as legal instruments like treaties, conventions, case law, and legal literature. At the same time, we also engage in a critical evaluation of relevant rules and modalities, laying down implementation difficulties, procedural or jurisdictional obstacles, and consequences. For that purpose, we will go through the previous case studies carried out by scholars to find out the possible measures they introduced to mitigate the aggravation or extract the efficiency out of secondary sanctions.

III. Research objectives

1. To analyse the legality of secondary sanctions under international law.

2. To analyse how far secondary sanctions conform to international trade law.

3. To examine the potential economic and humanitarian consequences.

4. To explore state and institutional responses to counteract the effects of secondary sanctions.

5. To explore and adopt a measure like that of the EU blocking statute to ward off the effects of secondary sanctions.

IV. Research Questions

1. Are secondary sanctions compatible with international law?

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[13] Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton Act), 22 U.S.C. §§ 6021–6091 (1996); Iran and Libya Sanctions Act of 1996, 50 U.S.C. §§ 1701 et seq. (1996).

[14] Masahiko Asada (ed.), *Economic Sanctions in International Law and Practice* (Routledge, Taylor & Francis Group 2018).; UN Human Rights Council (UNHRC), Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, U.N. Doc. A/HRC/37/54 (2018).

[15] Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 (2017).

2. Do secondary sanctions violate WTO regulations and the principle of sovereignty?
3. How do secondary sanctions affect international trade law and the operation of global financial systems?
4. What are the humanitarian implications of these sanctions on affected populations?
5. What legal, political, and economic measures can states and institutions potentially take to mitigate the effects of secondary sanctions?

V. Hypothesis

Secondary sanctions have the potential to adversely affect the development of public international law and international trade law, with economic and humanitarian ramifications.

VI. Literature Review

The rise of secondary sanctions, particularly their growing use by the United States. These sanctions target third-party countries or entities dealing with the sanctioned, economically unrelated to the targeting state in any manner, extending the reach of sanctions beyond national borders, exploring the legal and political perils, and especially economically undermining international law[16], disrupting global trade, and creating tensions in diplomatic relations. It highlights concerns over sovereignty, extraterritoriality[17], and the destabilising effects on multilateralism, especially in regions like Europe, which faces increasing pressure to comply.[18]

In an article by Tom Ruys and Cedric Ryngaert[19] The International Legality of, and European Responses to, US Secondary Sanctions" examines the growing use of secondary sanctions by the United States, which target third-party countries and entities doing business with sanctioned states. The authors examine the legality of secondary

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[17] C. Ryngaert, Extraterritorial Export Controls (Secondary Boycotts), 7 *Chinese J. Int'l L.* 625 (2008), https://doi.org/10.1093/chinesejil/jmn032.; P.S. Bechky, Sanctions and the Blurred Boundaries of International Economic Law, 83 *Mo. L. Rev.* 1 (2018).

[18] *Charlotte Beaucillon (ed.), Research Handbook on Unilateral and Extraterritorial Sanctions (Edward Elgar 2021).*

[19] Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre (eds.), *The Cambridge Handbook of Secondary Sanctions and International Law* (2024).

sanctions, raising questions whether they truly confirm the legal ground under international law. They argue that these measures most often run counter to fundamental principles like sovereignty, non-interference, and the rejection of extraterritorial application of domestic laws. In doing so, such sanctions chip away at the foundations of the global trade system and weaken institutions like the WTO. The piece also considers how Europe has responded—not just through legal channels, but diplomatically and economically—trying to shield its interests while holding on to the idea of a cooperative, multilateral order.

A recent article published by Brill Publications enunciates legal challenges and business risks that come with economic sanctions. It expounds as to how sanctions—especially those imposed unilaterally or with extraterritorial reach—can cause legal clashes between countries and disrupt everyday business operations.[20] Dacko highlights the difficult balance between national security priorities and a country's obligations under international law. She also points out how multinational companies often find themselves caught in the middle, trying to follow one set of rules without breaking another, particularly when sanctions reach beyond borders.[21]

VII. Chapterization

1. Introduction

This chapter will provide an overview of the conceptual framework of secondary sanctions and how it is again being used by the economic powers after the brief use in the late 1990s, which differs from primary sanctions, as well as the methodology that will be employed in the research.

2. Legality of secondary sanctions under International Law

This chapter will delve deeper into the concept and the history of secondary sanctions. In this chapter, we will only extrapolate and discuss the kind of sanctions that are secondary, which are supplementary to primary sanctions targeting third parties or states, compartmentalizing in two phases– the first and second generation, and why the second phase of secondary sanctions is more destructive to the global

[20] Abhinayan Basu Bal (ed.), *Regulation of Risk — Transport, Trade and Environment in Perspective* (Brill 2023), https://brill.com/edcollbook-oa/title/62958.
[21] Carolina Dacko, *When Economic Sanctions Lead to Conflict of Laws and Real Risks for Businesses* (Brill 2021).

trade order. The intention is to find its lawfulness in view of international jurisprudential principles such as customary international law, international trade laws, and other trade treaties entered into under the auspices of the World Trade Organisation.

3. **The Impact on Global Economy, Trade, and Financial Institutions**

This chapter will discuss the effects this measure has on international trade, financial systems, and the role of the WTO and the analysis of how sanctions undermine state sovereignty and international norms by posing risks to the global economic system.

4. **Human Rights and Essential Services — The Humanitarian Fallout of Secondary Sanctions**

This chapter examines the consequences of secondary sanctions on the humanitarian aspects such as basic amenities, health care, education, right to self-development et. al. taking into account the impact it had previously by economic sanctions on the common populace. It will be discussed as to what the effects are on the access to medicines, food, and education, which disproportionately affect the vulnerable, women and children in particular and innocents in general.

5. **Responses: Challenging Secondary Sanctions through Judicial and Non-Judicial Means**

This chapter looks at how countries and companies have tried to push back against the widening use of secondary sanctions. As these sanctions increasingly interfere with global trade, investment, and access to essential goods, affected parties have turned to both legal challenges and practical workarounds. Some have gone to international courts or arbitration panels; others have created new payment systems or passed domestic laws to protect their interests. This chapter explores these efforts, asking what has worked, what hasn't, and what more might be done.

6. **Conclusion and Recommendations**

The research will conclude by listing some suggestions drawing on some of the exhaustive and scholarly work produced by various scholars and experts mainly focusing on secondary sanctions, and its harmful effects on current trade system, if any,

and providing the overall big picture within which the economic sanctions were raised or intended to be raised as an effective instrument to maintain international peace.

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CHAPTER 2

LAWS GOVERNING SECONDARY SANCTIONS AND LEGALITY

VIII.

2.1. Introduction

Secondary sanctions are defined as the instrument that exposes third parties to sanctions when they have a transaction or conduct business with individuals, entities or countries with the targeted party, which is subject to the primary sanctions regime.[22] It is equivalent to the scenario of extraterritorial measures when the State enacts a law intending to control and regulate the behaviour of entities or individuals that are not within its territory, disregarding the rule of territorial sovereignty[23].

The sanctions are like a political tool. They are used with a focused intention to manipulate and compel target states to fall in line with the values, ideas, and geopolitical strategy of targeting states, relating to, e.g., disarmament, human rights compliance, or even choice of the regime.[24]

Secondary sanctions are enforced by economic measures. In this contribution, however, we adopt a broader notion of secondary sanctions that includes all measures that aim to regulate economic transactions between a third state and a target state.[25]

2.2. Defining Secondary Sanctions

In international law, sanctions can be defined *strictly* as "*coercive measures taken in execution of a decision of a competent social organ, i.e. an organ legally empowered to act in the name of the society or community that is governed by the legal system*."[26]

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[22] Tom Ruys, Sanctions, Retortions and Countermeasures: Concepts and International Legal Framework, in *supra note 12,* at 19, 28.
[23] Bernard H. Oxman, Jurisdiction of States, in *Max Planck Encyclopedia of Public International Law* vol. VI, Rudiger Wolfrum ed. 546 (2012)
[24] P.S. Bechky, *Sanctions and the Blurred Boundaries of International Economic Law*, 83 Mo. L. Rev. 1, 2 (2018). https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=4311&context=mlr.
[25] Ibid pg 11; A.F. Lowenfeld, Trade Controls for Political Ends: Four Perspectives, 4 Chi. J. Int'l L. 355 (2003)
[26] Georges Abi-Saab, The Concept of Sanction in International Law, in *United Nations Sanctions and International Law* 29, 32–33, 39 (Vera Gowlland-Debbas ed., 2001); and Alain Pellet & Alina Miron, Sanctions, in *The Max Planck Encyclopedia of Public International Law* vol. IX, Rüdiger Wolfrum ed. 1, 2 (2012) pp. 1-2

This means that, per se, sanctions are coercive, and they enforce the common will and deliberation of the international community, which is thereafter enforced by a legally competent organ.

Under the strict definition, sanctions must be imposed by a competent social organ and do not include unilateral or group measures taken outside this framework. Such independent actions are sometimes called "autonomous sanctions," but this term may seem contradictory since, by definition, sanctions require institutional authorisation.[27]

According to McGillivray & Stam (2004), economic sanctions are "...an example of coercive [and cohesive] diplomacy designed to induce a target country to change some policy it would not otherwise…"[28]

However, according to some scholars, sanctions are one of the most significant and imperative instruments to maintain or restore international peace and security.[29] Sanctions are the measures taken as a reaction or repercussion to any act hostile or caustic, which makes them perfectly legal. Still, the question remains to be answered on what grounds and which entity confirms the legality of such sanctions.

The factor which is common in both the concepts is that both are unilateral (mention laws) sanctions under UN Charter must be confirmed by the state parties of the UN. The significant distinction between the two is that in the former, the third is threatened or rather restricted to work with the sanctioned or targeted state, which may be justifiable based on moral or legal explanations, or simply grounded on caprice and political interests of a particular targeting or sanctioning state.

In general, secondary sanctions are coercive, and there is a consensus among all legal players that these are political tools. From a legal perspective, examining whether such

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[27] Masahiko Asada, Definition and Legal Justification of Sanctions, in *Economic Sanctions and International Law*, page 3 (Tom Ruys & Sebastiaan Van den Bogaert eds., Routledge 2021), https://doi.org/10.4324/9780429052989-2. Pg 4

[28] Mararike, M. Zimbabwe. "*Economic Sanctions and Post-Colonial Hangover: A Critique of Zimbabwe Democracy Economic Recovery Act (ZDERA)–2001 to 2018*." 7 Int'l J. Soc. Sci. Stud. 201 (2018). https://doi.org/10.11114/ijsss.v7i1.389 .(last visited on 13.06.2024).

[29] Masahiko Asada, Definition and Legal Justification of Sanctions, in *Economic Sanctions and International Law*, page 3 (Tom Ruys & Sebastiaan Van den Bogaert eds., Routledge 2021), https://doi.org/10.4324/9780429052989-2. Pg 3

measures are legally justifiable is imperative, as sanctions may sometimes involve otherwise unlawful measures.[30]

Moreover, as regards autonomous or unilateral or rather non-UN sanctions, the term "sanctions" is being used by the US and is called sanctions in the title of the relevant legislations enacted in order to punish Iran, which is the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 or The Countering America's Adversaries Through Sanctions Act is a law that imposed sanctions on Iran, North Korea, and Russia, by implication this law makes any other country or entity makes them the adversary of the US if they in any manner have economic intercourse with any of the chosen targets of the US.

At the same time, according to other experts in the legal literature produced by the US, secondary sanctions have been dubbed or rather defined, as "retaliatory" sanctions. A measure represents a more subtle form of economic coercion that doesn't rely directly on financial penalties.[31]

Instead it systematically excludes non-compliant foreign entities from participating in the lucrative U.S. marketplace. The mechanism denies access to critical American financial infrastructure - including dollar clearing systems, investment opportunities, and commercial partnerships - when foreign parties engage in activities that conflict with Washington's geopolitical objectives.

Succinctly put, if the broader interpretation of secondary sanctions is to be adopted, it implies that all measures which aim to regulate economic transactions between a third state and a target state.[32]

An important point to be taken is that, generally, the terms "secondary sanctions" and "extraterritorial sanctions" are synonymous in this analysis, so it's important to note an important legal distinction.[33] Secondary sanctions don't always constitute a pure exercise of extraterritorial jurisdiction in the strictest sense. This is because sanctioning states often attempt to establish a territorial justification for these measures, for

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[30] *Putin Says US, EU Sanctions Violate WTO*, Deutsche Welle (Sept. 18, 2014), https://www.dw.com/en/putin-says-us-eu-sanctions-violate-wto/a-17932934.

[31] M. Rathbone, P. Jeydel & A. Lentz, Sanctions, Sanctions Everywhere: Forging a Path through Complex Transnational Sanctions Laws, 44 Georgetown Journal of International Law. 1055, 1112–13 (2013)

[32] A. Rej & A. Tirkey, Beyond JCPOA – Secondary Sanctions, Projects and Investments, Observer Research Foundation (India) (July 20, 2018), https://www.orfonline.org/expert-speak/42641-jcpoa-secondary-sanctions-projects-investments/

[33] Supra note24, pg.9

instance, by citing the use of their national currency, financial systems, or technology in the prohibited transactions.

However, what fundamentally matters for our current examination isn't whether these sanctions are formally tied to some territorial connection, but rather whether their practical effect is to regulate foreign conduct, specifically, economic interactions between third countries and the sanctioned entity.

The central issue at hand is whether sanctions are being used to control actions that lie beyond the sanctioning state's rightful legal authority, particularly when there's no genuine territorial link to justify such control. What makes this troubling is the way these measures spill over into the affairs of third countries, interfering with their external trade and political choices.[34] This overreach is not just a legal technicality—it strikes at the heart of international sovereignty and fairness, eventually undermining the economic freedom of the third party to deal with things as it needs.

2.3. History of Secondary Sanctions

It became increasingly prominent when the US withdrew from the Joint Comprehensive Plan of Action (JCPOA) – the landmark nuclear agreement signed in July 2015. It was unheard of and against the rules under resolution 2231, which called for coordinated lifting of nuclear sanctions. The EU, however, declared its intent to remain committed to the deal and implement the nuclear deal as long as Iran plays by the rules laid down in the agreement.

The Trump administration imposed "primary and secondary" sanctions, which will come into effect in category-wise tranches in two phases. In return, the EU came prepared with its measures or countermeasures to deal with the blocking regulations, dubbing that extraterritorial sanctions were illegal.[35] The EU's refusal to recognise this unilateral extraterritorial sanction is not new. It dealt with the same kind of law through blocking regulation, which was initially authorised in 1996[36] to circumvent the effect

[34] Carolina Dacko, *When Economic Sanctions Lead to Conflict of Laws and Real Risks for Businesses* (Brill 2021).
[35] Commission Delegated Regulation 2018/1100, 2018 O.J. (L 199 I) 1 (EU).
[36] Council Regulation 2271/96, 1996 O.J. (L 309) 1 (EC).

of the laws passed by the US regarding Cuba, Libya, and Iran. And this countervailing measure was adopted by Canada and Mexico right after.[37]

An expert tracing the history of secondary sanctions tends to categorise them as "different generations".[38] Simultaneously, analysing the efficacy of the blocking statutes adopted by the various countries to ward off the effects of this unilateral measure.

Secondary sanctions are supplementary to the primary sanctions. While primary sanctions directly prevent a country's people and businesses from dealing with a target country, secondary sanctions go further — they try to punish other countries or foreign companies that still do business with the target, especially if their governments haven't imposed similar sanctions.[39]

Another important factor to make it legal is the requirement of proportionality, as many academics and policymakers alike suggest that Countermeasures (like sanctions) must match the seriousness of the harm done and the wrongful act that caused it. When looking at UN sanctions, we should judge them based on what they are meant to achieve, while also thinking about how they might disproportionally wreak havoc on the ordinary people.[40]

Since the 1980s, the US has adopted the policy of completely isolating the target state financially and economically beyond its jurisdiction, which eventually affects third states, reducing their liberty and sovereignty in exercising their foreign policy.

A. The First Phase of Secondary Sanctions

In the 1980s and 1990s, countries—especially the United States—started using extraterritorial measures, meaning they tried to apply their laws beyond their borders. These early measures were sufficiently clear about what they were trying to do

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[37] Harry L. Clark, Dealing with US Extraterritorial Sanctions and Foreign Countermeasures, 20, University of Pennsylvania Journal of International Law. 61 (1999)

[38] Mirko Sossai, *Legality of Extraterritorial Sanctions*, in Research Handbook on Unilateral and Extraterritorial Sanctions 62 (Charlotte Beaucillon ed., Edward Elgar 2021), https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9780429052989-5/legality-extraterritorial-sanctions-mirko-sossai

[39] Jeffrey A. Meyer, Second Thoughts on Secondary Sanctions, 30, University of Pennsylvania Journal of International Law. 905 (2009).

[40] Natalino Ronzitti, *Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective*, in Coercive Diplomacy, Sanctions and International Law 1, 26–27 (Natalino Ronzitti ed., Brill Nijhoff 2016).

and how they would be enforced.[41] A primary boycott means a country (like the U.S.) stops trading with another country it disagrees with. However, the boycott will be less effective if other countries keep trading with the target. So, the U.S. tried to go further by using secondary boycotts—threatening or punishing companies from other countries if they traded with the boycotted country.[42]

The first such instance was witnessed in 1982 when the US imposed an embargo on Soviet Pipelines to prevent the USSR from intruding in Poland. It was specifically criticised as the Soviet Pipeline Regulation (SPR) sought to curtail economic transactions of foreign subsidiaries of US companies with the USSR.[43]

Another instance of this secondary boycott was seen, in contemporary nomenclature, it is called secondary sanctions, with the passing of the Helms-Burton Act (HBA)[44] and the Iran and Libya Sanctions Act (ILSA) of 1996.[45] By virtue of HBA, US Secretary of State to deny visas to any corporate officer or controlling shareholder of a company that has trafficked in a US national's property confiscated by the Cuban government.[46]

B. The Second Phase of Secondary Sanctions

The focal point of this phase is the misuse of the financial sector. The paramount example of this is US sanctions against Iran of 2017, which not only sanctioned curtailing Iran's capability to sell oil to foreign or domestic persons and entities but also imposed severe restrictions on foreign financial institutions' access to the US financial system if they trade or have any transaction with Iran. [47]

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[41] Joy Gordon, *Extraterritoriality: Issues of Overbreadth and the Chilling Effect in the Cases of Cuba and Iran*, 57 Harv. Int'l L.J. Online 1 (2016), https://sanctionsplatform.ohchr.org/record/4472/files/Gordon--HILJ.pdf.
[42] Cedric Ryngaert, Extraterritorial Export Controls (Secondary Boycotts), 7, Chinese Journal of International Law. 625, 626 (2008).
[43] Vaughan Lowe, The Problems of Extraterritorial Jurisdiction: Economic Sovereignty and the Search for a Solution, 34, International and Comparative Law Quarterly. 724 (1985).
[44] Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104–114, 110 Stat. 785, (March 12, 1996)
[45] Pub. L. No. 104–172, 110 Stat. 1541 (Aug. 5, 1996) (codified at 50 U.S.C. § 1701).
[46] Nigel D. White, *The Cuban Embargo Under International Law* 105 (2015).
[47] Developments in the Law—Extraterritoriality, 124 Harv. L. Rev. 1246, 1255–56 (2011), https://harvardlawreview.org/print/vol-124/developments-in-the-law-ae-extraterritoriality/.

The passing of the Countering America's Adversaries Through Sanctions Act (CAATSA) by the U.S. Congress in July 2017, which imposed sanctions on Russia, North Korea, and Iran, signified a new stage in developing U.S. sanctions policy. [48]

Regarding their extraterritorial scope, non-U.S. individuals or entities may be exposed to the risk of secondary sanctions if they engage in or assist with "significant" transactions involving persons or organisations under sanctions.

What distinguishes this phase of secondary sanction of the former generation is that the US can block the assets and interests in the US jurisdiction this time. It can block such targets from access to the US financial system, which includes limiting or prohibiting transactions involving US individuals and businesses. In this regard, there are many cases wherein third parties and states were accused of violating US secondary sanctions and were forced to pay penalties. For example, a French bank acknowledged the violations and agreed to pay $8.97 bn. [49]

2.4. Relevant laws of GATT and the WTO

Secondary sanctions has increasingly become a complex and most contentious issue lately as it is now joint at the hip with trade, which not only raises a question of its legality not only as to general international law especially concerning state jurisdiction and principle of non-intervention, which will be dealt with in depth later in this chapter, as the issue is directly related with the trade there it is expedient to examine the legality of the matter in issue firstly in the light of trade laws including bilateral and multilateral investment treaties, and then eventually in general international law.

A. National treatment and most-favoured nation (MFN) treatment

The MFN rule in Article I of GATT states that goods from one contracting party must be treated no less favourably than products originating in or destined for the territories of all other contracting parties. Article II(1) GATS provides this for 'like' services and service suppliers. The same principle, however, is found in Article III of the GATT,

[48] Congress Enacts Sanctions Legislation Targeting Russia, 111, American Journal of International. 1015 (2017).
[49] Marija Đorđeska, From Targeted Sanctions to Targeted Settlements: International Law-Making Through Effective Means, EJIL:Talk! (July 22, 2014), https://www.ejiltalk.org/from-targeted-sanctions-to-targeted-settlements-international-law-making-through-effective-means/.

national treatment - this prohibits internal taxes and other internal charges or regulations that discriminate between imported products and 'like domestic products'.

To a lesser extent, Article XVII GATS offers some expanded prohibition on discrimination against services and service suppliers of other WTO members and "its own like services and service suppliers" for those sectors inscribed into a member's Schedule of Commitments.

Therefore, when a member of WTO restricts or bars companies incorporated in a specific third country from importing goods into its territory or prohibits businesses in its jurisdiction to sell out or export goods or services to that particular country but not to others it can be said to be in breach of MFN principle, expecting that the security exception does not apply, especially when the target of primary sanction is a WTO member.[50]

Cuba has been a part of the WTO for some time now. On the other hand, Iran is currently not a part of it. Suppose there is a possibility that this type of infringement can be contested before the WTO Dispute Settlement Body, not only by the primary victim but also by other members of the WTO. In that case, this raises another issue concerning the precondition of standing.

Another pertinent question to be asked is whether the secondary sanctions regime by which the imposing state intends to derail the logistical routes and trade inter vivos targeted state by the primary sanction, and the third state could also breach the above principles of MFN and national treatment. Some scholars answered positively, stating that even the primary sanction, which devastates the targeted country and third state, violates the abovementioned principles.[51]

B. Other WTO rules—Prohibition of quantitative restriction

It has been observed that denial-of-access measures are generally not likely to be considered an unlawful use of jurisdiction under customary international law. In

[50] Tom Ruys & Cedric Ryngaert, Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, U.S. Secondary Sanctions, 11 Int'l J. Hum. Rts. & Int'l Legal Discourse 5 (2021).
[51] Shailja Singh, *WTO Compatibility of United States' Secondary Sanctions Relating to Petroleum Transactions with Iran*, CWS/WP/200/1, Centre for WTO Studies, Indian Institute of Foreign Trade (2012), https://wtocentre.iift.ac.in/workingpaper/Iran%20Sanctions.pdf.

addition to the breach of Article XI (I) of GATT, it can be argued that there are other provisions in WTO rules that secondary sanctions may infringe.

In 1994, some WTO member states signed an Agreement on Government Procurement (GPA), an agreement signed by many parties, making it a plurilateral agreement within the World Trade Organisation (WTO) framework, meaning not all WTO members are part of it. India is not a party to that agreement. According to which, open, fair, and transparent conditions in government procurement, covering goods, services, and construction work, are mandatory. It is to be noted that article VIII(1) of the revised GPA decrees that *'[a] procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement'*[52]

A vital precedent worth analysing here is that when the US passed a law forbidding the State agencies, State authorities and other State entities from procuring goods and services from any person currently doing business with Myanmar on the ground of human rights violation, that law was challenged in the WTO on the ground that it is inconsistent with the GPA by the EC and Japan.[53]

The WTO panel was again suspended in the same way as the one when HBA was challenged by the EC, which prohibits its dealings with Cuba, as the law was challenged in the domestic courts of the US and was eventually held invalid by the US Supreme Court in a landmark case.[54] The question of the legality of secondary sanctions again remained inconclusive and undecided.

The scholars have argued that certain secondary sanctions run afoul of Article XI(1) GATT, especially those involving a ban on acquiring licences within the US or a ban on imports in the US as regards certain companies that conduct business with the primary sanctions target. [55]

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[52] Agreement on Government Procurement, Apr. 15, 1994, as amended by Protocol Amending the Agreement on Government Procurement, Mar. 30, 2012, WTO Doc. GPA/113 (entered into force Apr. 6, 2014).

[53] United States – Measure Affecting Government Procurement, WT/DS88/3 (July 2, 1997); United States – Measure Affecting Government Procurement, Request to Join Consultations: Communication from Japan, WT/DS88/2 (July 2, 1997).

[54] Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000).

[55] Supra note 52, pg. 29

C. Security Exception Clause

There are many provisions, including article XXI GATT, article XIVbis GATS, article 73[56] and article III(1) of the revised GPA.

It has long been part of WTO agreements. In addition to this, the treaty itself contains a security exception clause in Article XXI(b)(iii), which is prominent, that states that there is nothing is this agreement which prevents the parties from taking any action which is expedient for the protection and its national security interests. taken in war or *other emergency in international relations.*

Nonetheless, many legal scholars have argued against the lawful use of secondary sanctions even when Article XXI (b) of the GATT has been invoked; according to them, such a measure could not be introduced to take effect against the parties with whom they have a very indirect and remote economic relation.[57]

This elastic and open worded setting creates multiple problems simultaneously rendering this clause to the abuse by the actors who has no grounded and warranted reason whatsoever to impose sanctions excepts geopolitics and political interests of that single particular country, there is every conceivable idea that ground put forth by them under the garb of security will not provide enough substance to be in accordance with chapter VII of UN Charter, accordingly this unilateral coercive sanctions has been resorted to extract whatever they seek and demand.[58]

Throughout the history of GATT, the security exception in subparagraph (iii) has indeed been relied on several times, and it remains an essentially self-judging provision. Lately, this clause has been in vogue, as it has been imposed and justifies trade restrictions that destroy the WTO regime and essential trade rules. The sanctity of which has never been decided by the WTO DSB. [59]

Recently, in 2020, a WTO panel dealt with this question in depth, wherein the examination of Article XXI(b) of GATT was conducted.[60] The panel confirmed that the

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[56] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[57] Brigitte Stern, *Can the United States Set Rules for the World? – A French View,* 31 J. World Trade 5 (1997).

[58] D Akande and S Williams, 'International Adjudication on National Security Issues: What Role for the WTO' (2002) 43 Virginia Journal of International Law 365;

[60] Tania Voon, Russia–Measures Concerning Traffic in Transit, 114 Am. J. Int'l L. 96 (2020).

existence of one of the circumstances listed in subparagraph (iii) is a matter for objective determination. An emergency in international relations would therefore refer to armed conflict or general instability engulfing or surrounding a state.[61]

The panel in the end stated that it is within the power of every WTO member to declare when a national emergency arises or what essential security interests are simultaneously exercising good faith, eschewing the mere protectionist trade measures. The reasoned resolution has to be in the public domain, articulated in unambiguous terms, and be enough to display the sincerity and veracity of facts on the ground.

Besides the framework of GATT and WTO, bilateral and multilateral trade agreements and other treaties entail legal duties for the parties who enter into the contract, including treaties or conventions for regional settings and the violations of these obligations may result in economic sanctions, which are deemed lawful based on the parties' consent to the agreement.

Consequently, it can be safely inferred, as the best possible explanation is that legal locus standi to impose economic sanction can incur if the stipulations of laws of UN Charter or the stipulations enjoined in such bilateral or multilateral trade agreements are infringed, provided that the rules are duly followed and observed and collectively deliberated upon, agreed upon and hence enforced.[62]

In sum, treaties in international economic law, like the GATT can place legal limits on the use of economic sanctions, especially when those sanctions are imposed unilaterally without the consent of the targeted state. However, GATT's security exceptions remains controversial for allowing countries to bypass these rules under the broad banner of national security. In other multilateral or regional agreements, sanctions are generally allowed only when they are part of a collective enforcement process—and even then, they must respect the UN's central role in maintaining international peace and security.[63]

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[61] ibid,para7.76.
[62] Matthew Happold, *Economic Sanctions and International Law: An Introduction*, in *Economic Sanctions and International Law* 2, 2ff (Matthew Happold & Paul Eden eds., vol. 62, 2016).
[63] Id

D. OECD Code of Liberalisation of Capital

One of the relevant laws in this regard is the OECD Code of Liberalisation of Capital Movements 2019. The object is to reduce as much restrictions as possible in the movement of capital. Nonetheless, it is to be noted that the OECD Code contains a security exception in Article 3, which provides that the Code shall not prevent a Member from taking action that is considered necessary to protect its essential security interests. It is to be taken into account that this instrument is not legally binding.[64]

There are, however, other laws that are more comprehensive and legally binding. Such as multilateral instruments, in which countries like the US, the EU, and India are state parties. Only the EU–one of the poles in a multipolar world–has repeatedly called out vehemently this act of secondary sanctions by the US as a transgression by the US under the WTO agreements..

In 1996, when the US adopted the Helms-Burton Act, the object was to expand U.S. secondary sanctions against Cuba. Its primary purpose was to strengthen the U.S. embargo on Cuba and deter foreign investment in Cuban properties, the European Commission EC asked for the creation of WTO panel to examine the legality of this tranche of sanctions adopted by the US, which effectively prevented the EC to enter into any agreement to do business and precluded the EC to invest in the Cuban business violating the WTO rules and economic autonomy in general under the customary international law stating that General Agreement on Tariffs and Trade (GATT) Articles I, III, V, XI and XIII, and General Agreement on Trade in Services (GATS) Articles I, III, VI, XVI and XVII has been violated by this law mentioned above.[65]

The EC alleged that even if this law may not be violating the provision above, it stifles the welfare benefits under the GATT 1994 and GATS and may create impediments in achieving the objectives of GATT 1994. Ultimately, the US agreed to give in and not enforce the Act against the EC person, persuading them to withdraw the complaint. So in effect, this was the historical evidence of introducing an anti-blocking statute or a complaint to the WTO panel to form the Dispute Settlement Body DSB against the secondary sanction imposed by the US against a third state. However, it can be said that

[64] Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions*, 89 Brit. Y.B. Int'l L. 1, 29 (2020).
[65] Establishment of a Panel by the European Communities, WT/DS38/2 (Oct. 8, 1996).

despite the suspension of the complaint by the EC, the legality of secondary sanctions remains res integra. When adopting the Helms-Burton Act, there were popular opinions among legal scholars, notably regarding trade linked with secondary sanctions, that these measures violate some significant laws, including basic WTO rules.[66]

A similar feeling is prevalent that the current regime of secondary sanctions by the US against Iran is highly questionable[67] and lacks basic legal backing, of which India is a victim, as it was threatened by the US with sanctions if it buys oil from Iran as a third state.[68]

In the same vein it is to be noted during that period Canada and Mexico reserved their right to move to WTO to establish panel against that Helms-Burton Act in 1996 by chapter 20 of the NAFTA while both Canada and Mexico states that they will implead themselves when they think the time is fit and expedient demanding their presence in the WTO proceedings initiated by the EC.[69]

E. International Monetary Law

Another instrument or the multilateral remedy which can be invoked against this unilateral extraterritorial sanctions are the restrictions especially article VIII (2)(a) of International Monetary Fund' (IMF) Articles of Agreement which provides that party state is not allowed, without the proper approval of the Fund, to restrict the making of payments and creating unnecessary hurdles in the transfers of current international transactions.[70]

The General Agreement on Tariffs and Trade (GATT) is one of the basic conventions or rules delineating criteria to be confirmed while imposing sanctions of any kind. It is one of the initial frameworks to be established as international economic law. Later in

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[66] J.A. Spanogle Jr., Can Helms-Burton Be Challenged under WTO?, 27 Stetson L. Rev. 1313 (1998).
[67] D. Perben et al., *The American Withdrawal from the Vienna Agreement on the Iran Nuclear Programme: A Contrasting Legal Situation*, Report of the Club des Juristes Ad Hoc Commission 55–57 (July 2018), https://think-tank.leclubdesjuristes.com/wp-content/uploads/2018/07/CDJ_Report_The-american-withdrawal-from-the-Vienna-Agreement-on-the-Iran-Nuclear-Programme_July-2018_UK.pdf
[68] Sanjay Singh, *WTO Compatibility of United States' Secondary Sanctions Relating to Petroleum Transactions with Iran*, Working Paper CWS/WP/200/1, Centre for WTO Studies, Indian Institute of Foreign Trade, page 7-8 (July 2020), https://wtocentre.iift.ac.in/workingpaper/Iran%20Sanctions.pdf.
[69] H. Oyer, The Extraterritorial Effects of U.S. Unilateral Trade Sanctions and Their Impact on U.S. Obligations under NAFTA, 11 Florida Journal of International. 429, 456–57 (1997).

[70] A. Nussbaum, Exchange Control and the International Monetary Fund, 59, Yale L.J. 421 (1950).

1995, it was adopted by the global legal community when the framework of the World Trade Organisation (WTO) was established, laying out the basic legal principles of world trade and international economic relations.

The two fundamental principles of WTO law, the *golden rule* of the treaty– non-discrimination and most-favoured-nation treatment – are enshrined in Article I, and apply to restraints to import and export, as does the prohibition of quantitative restrictions in Article XI.

The General Agreement on Tariffs and Trade (GATT) and other WTO, regional, or bilateral agreements have not significantly restricted such measures nor established a clear legal foundation for deeming them unlawful under international law.[71]

The reasons for the relative insignificance of the GATT regarding economic sanctions range from the unwillingness of the WTO to involve itself in matters of political sensitivity to the

The question now arises whether, when a state imposes secondary sanctions restricting third-country trade with a primary target (like Russia, Iran or Cuba), this automatically breaches international law by unlawfully interfering in other states' affairs or by exceeding permissible jurisdictional boundaries?

The strategy weaponises access to the world's largest economy, making continued engagement with sanctioned entities or nations commercially untenable for most global businesses. This creates a de facto enforcement mechanism that extends U.S. policy influence far beyond its territorial jurisdiction, as foreign firms must choose between maintaining relationships with the targeted parties or preserving their ability to operate within the U.S.-led global financial architecture.[72]

2.5. UN Charter

Economic sanctions are considered enforcement measures under the aegis of the UN charter. These enforcement measures are usually taken in response to quell restiveness and lawlessness, which pose a threat to the peace, or acts of aggression[73], which are traditionally an internationally wrongful act, but not always and the legal characterisation of such acts may sometimes be ambiguous.

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[71] Andreas F. Lowenfeld, *International Economic Law* 755, 1st edition, (Oxford Univ. Press 2002).
[72] Id
[73] Art. 39 of the UN Charter

The nomenclature “sanctions” has nowhere to be seen in the charter of the UN, notwithstanding that when the UNSC resolution is passed against any recalcitrant state, they choose the relevant measures as “sanctions”.

For instance A and B entered into bilateral international agreements incurring some mutual rights and duties, now if C nation along with collective UN imposed sanction on B all the stipulations under the bilateral treaty will become non est and instead obligations under legally binding sanction resolutions of the Security Council must prevail over any other conflicting international legal rights and responsibilities.

A. Customary International Law

From a geo-economics perspective, secondary sanctions may benefit third-party nations when these countries share the sanctioning state's policy objectives (such as nuclear non-proliferation), even if their private sector actors are reluctant to comply. In such cases, the coercive pressure exerted by secondary sanctions could help achieve outcomes that align with the third states' broader strategic interests, despite imposing short-term economic costs on their businesses.[74]

On the contrary when the third states do not consider secondary sanctions by the sanctioning country which facilitates its welfare consequently they are inclined to adhere and comply with such sanctions, and the third country or its companies perceives those sanctions impinging its sovereignty and their right to trade with the target as they might disagree with the parameters or the ground determined by the sanctioning country to be unwarranted and unamenable.[75]

Secondary sanctions tend to breach core principles of international law—most notably, the prohibition on interference in the internal affairs of other states, especially violating economic independence affecting trade order and the established limits on extraterritorial jurisdiction. By targeting the conduct of foreign entities that engage with sanctioned states, these measures can amount to unlawful intervention and also scuttling the free trade and restricting markets..[76]

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[74] Bing Han, The Role and Welfare Rationale of Secondary Sanctions: A Theory and a Case Study of the US Sanctions Targeting Iran, 35 Conflict Mgmt. & Peace Sci. 474 (2018).
[75] Id
[76] Alexandros Tzanakopoulos, The Right to Be Free from Economic Coercion, 32 Eur. J. Int’l L. 633 (2021).

However, as regards customary international law regulating its own markets fall withing its own jurisdiction, also in one of watershed verdict rendered by the ICJ stating an intervention is lawful if it is bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely.[77]

But the proponents of secondary sanctions raises a remarkable and complex question, does a denial of access to US markets for non-US companies violate these companies home states right to decide freely on sovereign matters?

Now to answer these questions scholars have divided these questions about the legality of secondary sanctions in two major categories, maintaining that there are two types of secondary sanctions that are being employed to restrict economic activities: first, restrictions of access to the US and to US markets and Second, those measures that go beyond such restrictions that involve various penalties for engaging in transactions economically with target state.

Now we have to examine the legality of secondary sanctions in regard to customary international law as to which of the position is legally valid of the two or both are non est. And according to many experts of international law, these sanctions can be legally sustainable and attractive enforcement as against the latter one and these can be immediately applied without any contentious debates of its validity as it is preventing the transgressors from reaching its markets of which they can assume jurisdiction as that won't be indulging in any extraterritorial act. [78]

To further substantiate this position another expert Jeffery Meyer argues that, "when secondary sanctions are terrinationally restricted to the regulation of U.S. nationals with respect to their non-governmental acts within the United States, then these sanctions should be viewed as presumptively permissible as a matter of customary jurisdictional law'.[79]

Succinctly put, non-US actors often perceive these restrictions not as outright bans, but rather as the revocation of special advantages - particularly the ability to participate in America's banking networks, trade markets, or visa programs.

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[77] Nicaragua v. United States (Merits), 1986 I.C.J. Rep. 14, ¶ 205
[78] Sarah Sultoon & James Walker, Secondary Sanctions: Implications and the Transatlantic Relationship, Atlantic Council Issue Brief 3 (Sept. 2019).
[79] Kellen Meyer, Second Thoughts on Secondary Sanctions, 53 Vand. J. Transnat'l L. 967 (2020).

Yet in another judgment by the ICJ in 2009, a state's authority to regulate entry to its territory - including access to domestic economic infrastructure and markets - stems from its fundamental sovereign right to control cross-border flows. This prerogative grants nations wide latitude in determining who and what may access their jurisdiction.[80]

For instance, travel ban by trump administration was upheld by the US Supreme Court[81], refusing travel from some countries, same was done by some Arab states for those who have Israeli passports.

By implication, states or corporations operating in that state has no inherent entitlement to operate in overseas markets—whether to raise foreign capital, compete for contracts, or purchase property abroad—unless expressly granted such privileges through bilateral or multilateral agreements.[82]

There are many other states which applies many restrictions and conditions to get access to their markets for the foreign operators, making the less open economy, of course that become part of their treaty arrangement which is perfectly legal. For instance, Like the EU's environmental regulations, such terms may apply extraterritorially—regulating conduct abroad as a condition for domestic market access.[83]

Since 1948, the Arab League has maintained an official economic boycott against Israel that extends to third parties conducting business with Israel. This policy bars member states and their citizens from engaging in trade with blacklisted companies tied to Israel. The boycott operates by restricting economic privileges—an exercise of sovereign authority. This practice confirms that states retain full sovereign authority to restrict access to their territory and economic systems as they see fit.

These penal provisions do not deprive the sanctioned state the privileges provided by the targeting state including the access to its market rather what it does is that is that these secondary sanctions are intrusive and whimsical as they go beyond the denial of

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[80] *Costa Rica v. Nicaragua*, Judgment, 2009 I.C.J. 213, ¶ 113.
[81] *Trump v. Hawaii*, 201 L. Ed. 2d 775 (2018)
[82] John J. Forrer, *Secondary Economic Sanctions: Effective Policy or Risky Business?*, Atlantic Council Issue Brief, 5, (May 2018), https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/secondary-economic-sanctions-effective-policy-or-risky-business/
[83] N. Dobson, *Extraterritorial Climate Protection Under International Law: A Jurisdictional Analysis of EU Unilateralism*ch. 2.3 (Ph.D. thesis, Utrecht Univ. 2018).

access to the market and may attach the assets and even incarcerate the sanctioned persons. [84]

2.6. Bilateral and Multilateral Investment Treaties

In order to verify whether, and to what extent, secondary sanctions entail breaches of conventional law, especially bilateral instruments, reference must not only be made to multilateral instruments, such as the WTO Agreements, but also to bilateral treaties binding upon the sanctioning state. In particular, the BITs and FCN treaties concluded between the sanctioning and individual sanctioned countries contain a range of obligations that are potentially affected.

Secondary sanctions can seriously undermine the commitments made under Bilateral Investment Treaties (BITs) and Friendship, Commerce, and Navigation (FCN) treaties. By placing foreign investors at a disadvantage—whether through discriminatory treatment, forced withdrawal, or legal uncertainty—these sanctions can violate core treaty protections. Investors may face unfair treatment, suffer losses without compensation akin to indirect expropriation, and be denied the benefits of most-favoured-nation (MFN) and national treatment clauses.[85]

A. Friendship, Commerce, and Navigation treaties (FCN)

Some germane clauses overlap with those found in the multilateral instruments discussed above. For instance, the national treatment and MFN principles are featured in the WTO Agreements and surface—in various shapes and forms—in FCN treaties and BITs to which the US is a party.

For example, numerous provisions of the 1961 US-Belgium Treaty of Friendship, Establishment and Navigation give expression to the principle of national treatment by stating that the parties should not discriminate between their own nationals and the nationals of the other Party, e.g., in tax matters or about access to the court. It also provides for a right of vessels of one Party to enter the ports of the other Party on equal footing as the ships of the other Party and on equal terms with vessels of any third country, referring expressly to ‘national treatment’ and ‘most-favoured-nation

[84] David Collins, *An Introduction to International Investment Law* (Cambridge Univ. Press 2016).
[85] P-E Dupont, ‘The Arbitration of Disputes related to Foreign Investments affected by Unilateral Sanctions’ in AZ Marossi and MR Bassett (eds), Economic Sanctions in International Law (TMC Asser Press 2015) 197; EJ Criddle, ‘Humanitarian Financial Intervention’ (2013) 24 EJIL 583,592.

treatment'. References to the national treatment and MFN principles can similarly be found in BITs.[86]

Friendship, Commerce, and Navigation (FCN) treaties are developed on twin principles of mutual respect and mutual cooperation. They often promise rights such as fair access to markets, the ability to enter and reside for business purposes, protection from arbitrary interference, and equal treatment before the law. Yet, when secondary sanctions are imposed, these commitments can be seriously compromised.[87]

For example, individuals and companies may find themselves locked out of courts or banks simply because of their nationality or lawful business ties. Private firms may be pressured to abandon legitimate partnerships, and affected nationals can be left without any real avenue for remedy. These actions not only erode the trust behind FCN treaties but also undermine the rule of law and the principles of equal treatment they were meant to uphold.[88]

According to Professor Nico Krisch, Charter obligations, if passed through consensus under UN authorisation, are deemed to be as special law as against customary international law, which includes sovereignty and the principle of non-interference.[89]

Nonetheless, the primacy of Charter obligations over those derived from customary international law can be affirmed through other principles of international law. Some scholars invoke the lex specialis rule in this context. For example, Professor Nico Krisch explains that Article 103 addresses conflicts only with "any other international agreement" because the Charter's provisions were understood to override general international law as lex specialis, making a specific conflict clause necessary only in relation to treaty obligations.. He goes on to maintain that "[i]n effect, thus, [Security Council] resolutions take precedence over all conflicting rules of international law."[90]

However, this view cannot be entirely concussive and shas been refuted by many scholars. Wherein they discussed about lex posterior rule wherein an established

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[86] supra note 85, at 144.
[87] supra note 85, at 292.
[88] Philip Morris Brands Sàrl v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Award, ¶ 298 (July 8, 2016).
[89] Nico Krisch, Introduction to Chapter VII, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 1262 (Bruno Simma et al. eds., 3d ed. 2012).
[90] Vera Gowland-Debbas, "The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance," *European Journal of International Law*, Vol. 11, No. 2 (2000), p. 370.

customary rule as a lex posterior prevails over a prior treaty rule, unless a contrary intention appears from the treaty. Nancy Kontou suggests that when a new rule of customary international law emerges—one that directly conflicts with an existing bilateral treaty—it may serve as a legitimate basis to either end or revise that treaty. However, this only holds if the new rule binds all parties to the original agreement. An important exception can still be stipulated in the treaty stating, irrespective of new custom, it is agreed upon that the treaty will still survive. This principle highlights the dynamic nature of international law and the balance between evolving norms and existing commitments.. [91]

For example, it appears conceivable that a new customary norm permitting the use of force for humanitarian purposes—commonly referred to as humanitarian intervention—could develop over time, despite the existing prohibition on the use of force as articulated in Article 2, paragraph 4, of the UN Charter.[92] Should such a customary rule gain widespread acceptance and crystallize into binding international law, the legal framework would be better understood through the application of the lex posterior principle, which gives precedence to newer legal norms over older ones, rather than relying on the lex specialis doctrine, which prioritizes more specific rules over general ones.

2.7. Conclusion

To ascertain the legality of secondary sanctions under international law requires specific context, form and application. At its core, the issue pivots on a distinction often overlooked in public discourse. When a targeting state restricts access to its own markets or financial systems, it acts within its sovereign rights. Such measures can be politically loaded but can be generally lawful under customary international law. After all, states retain control over who may trade or invest within their borders.

However, the real challenge emerges when states go further, imposing civil or criminal penalties on individuals or businesses from third countries simply for engaging with sanctioned entities that are beyond their territorial jurisdiction as it has extraterritorial applications which rely on legal connections that are often flimsy at best. In view of

[91] Nancy Kontou, *The Termination and Revision of Treaties in the Light of New Customary International Law* 146–48 (1994).
[92] Ian Brownlie & C.J. Apperley, *Kosovo Crisis Inquiry*, 49 Int'l & Comp. L.Q. 894 (2000).

customary international law of jurisdiction, such weak links fall short of what is required to assert enforcement power beyond one's borders. This overreach disrupts the principle of sovereign equality and invites resistance from allies and rivals alike.

Ultimately, the lawfulness of secondary sanctions cannot be answered in the abstract. It depends on the specific measure, its effects, and the legal justification provided. But where enforcement reaches beyond borders without strong legal footing, it risks crossing into illegality under international norms long held sacred.

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CHAPTER 3

THE IMPACT ON GLOBAL TRADE, AND FINANCIAL INSTITUTIONS

3.1. Introduction

There is an accepted axiom in the contemporary world that the world is a global village wherein everything is well-connected, and everybody knows everyone. The global economy is considered a community centre wherein each person or the state can visit or even remotely and purchase whatever commodities and services they like for the well-being of that person and the advancement of any given society.

Therefore in this well-entrenched, intertwined and interdependent global economy consequently any sanctions which includes various tariffs, embargos and certain boycotts, if and when imposed can have agonising and far-reaching effects which is generally followed with repercussions like countermeasures can seriously and profoundly impact multiple sectors if the sanctions are targeted even such carefully designed wreak costly toll on global trade and easily destabilise the trade.

Moreover, the impacts that emerge from these measures not only derail industrial supply chains, investment domain, throttle technological advance, and the interests of a range of stakeholders in multiple economic sectors, which include private actors, corporate entities and in general, states at large.

And these sanctions generally have the components of embargoes, capital withdrawal and the situation wherein multinational corporations and foreign direct investment voluntarily ejects from the targeted country in case of primary sanctions and when the scenario is concerned with secondary sanctions even the third party or third state becomes the potential targets of these threats, which can be catastrophic like the telling comprehensive sanctions on Iraq in 1990s although through UNSC Resolution 661. That was by many quarters and humanitarian agencies that concluded such a regime as

illegitimate and invalid, resulting in a horrendously negative impact, especially on food, educational equipment, medicine, etc.[93]

Another significant impact concerning which secondary sanctions rest on primary sanctions that can be questioned is the intentional or unwitting destruction of global market competition. Every corporate behemoth tends to hog the world's market, and these policies are formulated in tandem with the governments.[94]

These accusations have been levelled many times against the targeting member State, in this context, the US, as the sanctions are more often than not being invoked on exception rules, for instance, 'security exception', as contended by the imposing state.[95]

To put it simply, these questionable measures crush competition, which eventually is exploited by the powerful conglomerates co-opting with the state, intending to export their foreign policy agenda, hence this helps the formation of monopolies and oligarchies, abruptly hiking the prices of the trade.

A. Globalization and the Chilling effect of businesses

Globalisation and international trade were widely seen as forces for peace and economic well-being for about thirty years. They played a key role in reducing extreme poverty worldwide, and global trade activity reached highs not seen since the early 20th century. Yet recent events—such as Russia's invasion of Ukraine and the United States' 2018 withdrawal from the 2015 Iran nuclear agreement (JCPOA), Washington declared its intention to contain China, a geopolitical move which led to sanctions first and then a trade war—have marked a shift. These developments signal the end of that optimistic era, as trade is increasingly being used not just for mutual economic gain but as an instrument of geopolitical strategy.[96]

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[93] J. Matsukuma, *The Legitimacy of Economic Sanctions: An Analysis of Humanitarian Exemptions of Sanctions Regimes and the Right to Minimum Sustenance*, in *Fault Lines of International Legitimacy* 360, 360–88 (Hilary Charlesworth & Jean-Marc Coicaud eds., Cambridge Univ. Press 2010)

[94] Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions*, 89 Brit. Y.B. Int'l L. 1, 1 (2020).

[95] Akhil Raina, *What Is a Safeguard Measure Under WTO Law?*, Working Paper No. 208, Leuven Centre for Global Governance Studies (Jan. 2019), https://ghum.kuleuven.be/ggs/publications/working_papers/2018/wp208-rainax.pdf.

[96] Felipe Rodríguez Silvestre, *Secondary Sanctions and the Principle of Non-Intervention*, in *The Cambridge Handbook of Secondary Sanctions and International Law* 242, 242–[end page] (Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre eds., Cambridge Univ. Press 2024), https://doi.org/10.1017/9781009365840.

A groundbreaking and well-detailed study argues, providing some factual evidence based on empirical studies from the 1960s to 2009, that the effects and impact of sanctions threatened but not still in effect differ qualitatively and quantitatively from the sanctions imposed.[97] It has been analysed how the threat of sanctions also undermines the efficiency of sanctions and can positively affect trade. In contrast, the imposition of sanctions is laden with adverse effects.

The same dissertation or theory can be extended to secondary sanctions, and it might probably be substantiated by the historical evidence when India stopped buying oil from Iran in mid-2019, due to the continuous warning from the US that India might be imposed with secondary sanctions if it continues purchasing oil from Iran. Thereafter, India started buying from Russia as the crude oil was cheap during the Ukraine war, owing to European markets starting to avoid any trade from Russia on account of Russian aggression on Ukraine.

However, India had no choice but to purchase cheap oil by trade autonomy and accordingly purchased record oil from Russia surpassing even China[98]—largest purchaser of oil in the world—as there was no secondary sanctions on Russian oil but only primary sanctions throttling Russian energy sale, the apprehensions still loom large that Russia may be hit with secondary sanctions prohibiting private actors and third parties from purchasing oil from Russia.[99]

So the threat of sanctions before actual sanctions can be beneficial as it gives the advantage of time to the target states, and in case of secondary sanctions to the third states to stockpile the commodities and essential medicines. Stockpiling is commonplace in international trade regarding crude oil when actors predict adverse challenges such as price rise, shortages, or a threat of sanctions.

And when Trump took office in January 2025, he did precisely the same by explicitly threatening Russia to impose sanctions on oil, which may compel countries like India

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[97] Sylvanus Kwaku Afesorgbor, *The Impact of Economic Sanctions on International Trade: How Do Threatened Sanctions Compare with Imposed Sanctions?*, EUI Working Paper MWP 2016/15, Max Weber Programme, European University Institute (2016), https://cadmus.eui.eu/handle/1814/41854.

[98] India Surpasses China to Become Biggest Importer of Russian Oil in July, *Bus. Standard* (Aug. 22, 2024).

[99] Reuters, *India Surpasses China to Become Russia's Top Oil Buyer in July*, *The Economic Times* (Aug. 22, 2024), https://m.economictimes.com/industry/energy/oil-gas/india-surpasses-china-to-become-russias-top-oil-buyer-in-july/articleshow/112706383.cms

to find alternative sources for oil, which may push the sale of oil to the ceiling.[100] Also, analysts believe tightening fleet capacity will likely increase freight costs.

Endless and indiscriminate use of sanctions without substantiating reasons as per WTO trade rules eroding the entrenched trade laws and global economy and also threatens the investments in foreign economy especially when the climate commitments demands diversity in the energy abandoning or phasing out fossil fuels in order to reach the tall order of decarbonisation.[101]

There are several aspects that secondary sanctions have assailed, some of them, such as the law of State responsibility and human rights, as most of the earlier sanctions were deprecated and inveighed predominantly because they wreaked a heavy and extensive affliction on the human rights of the common populace of the targeted state.

3.2. Disintegrating Multilateral Trade System

The most relevant and affected topic being discussed is the current multilateral trade system set up through the institution of the WTO, which was established through a range of international conventions. Therefore, we will examine the measures the WTO has in its repository to discipline economic sanctions and their impact on the institution of the WTO.[102]

When the US imposed tariffs, which were not sanctions, they will come later in 2020. China immediately answered such sanctions with retaliatory tariffs. The US imposed tariffs, accusing China of intellectual property theft and forcing technology transfers under section 301 of the Trade Act of 1974.[103]

This conflict had all the indications that these contentious exchanges would turn into a complete economic conflagration, which has all the essentials to disrupt the liberal

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[100] Iryna Bogdanova, *Unilateral Sanctions in International Law and the Enforcement of Human Rights* 89-94 (Brill | Nijhoff 2022), https://www.researchgate.net/publication/362067663_Unilateral_Sanctions_in_International_Law_and_the_Enforcement_of_Human_Rights.

[101] Raul Caruso, *The Impact of International Economic Sanctions on Trade: An Empirical Analysis*, Int'l Trade Working Paper No. 0306001, Univ. Library of Munich, Germany, 9(2), (2003), https://ideas.repec.org/p/wpa/wuwpit/0306001.html.

[102] Ibid 1, pg 248

[103] How Did the 2018 U.S.-China Trade War Affect China's Exporters?, *Stan. Ctr. on China's Econ. & Institutions* (Apr. 15, 2023).

trading order, not because they were fighting for its existence or, as the US alleges, China's unfair trade practices or infringing WTO trade rules.[104]

In recent years, the United States and China have increasingly moved away from cooperative trade through multilateral institutions, ushering in an era of protectionism because of sanctions, opting for a more forceful, unilateral approach in their dealings with other countries. This flagrant violation for established trade rules is forcing other underdeveloped and developing countries to align themselves with one power or the world that has pushed the WTO into a deep crisis, and it now stands indicates the catastrophic danger to the integrity of the global trade system.[105]

Again in 2018 till 2025 belittling the proper channel of global trade rules i.e. WTO and UN Charter, the US again imposed a huge trance of primary sanctions on China' action in Hong Kong via Hong Kong Autonomy Act (HKAA)[106] and Executive Order 13936[107] that, to the dislike and dismay of private actors and third parties dealing with the businesses in Hong Kong and mainland China, has some elements of secondary sanctions. Resultantly, these sanctions—secondary in nature—conferred power to the US impose secondary sanctions if the financial institutions like EU or Asian bank engages with economic entities in Hong Kong and some in mainland China and even asset freeze which is included within the broad spectrum of second generation of secondary sanctions as we have discussed in chapter 2. The most extreme instrument the US can deploy, against China, invoking "security exceptions", is to freeze Chinese international reserves estimated to the tune of $2 trillion in US freezeable Treasury securities, and Foreign Direct Investment (FDI).[108] In return, China does have equal and even more ability to the same, with US$ $3.1 trillion invested in China.[109]

As a result, the inordinate deployment of sanctions to settle political scores or to contain economic competition or if there are genuine reasons as alleged by the US, should be through the UNSC or UNGA; in short, it must be authorised through a proper

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[104] ibid
[105] Gregory Shaffer, *Beyond U.S.-China Rivalry: Rule Breaking, Economic Coercion, and the Weaponization of Trade* 58–63 (Cambridge Univ. Press 2022).
[106] Hong Kong Autonomy Act, Pub. L. No. 116-149, 134 Stat. 669 (2020)
[107] Exec. Order No. 13,936, 85 Fed. Reg. 43,413 (July 17, 2020).
[108] Joshua Andresen, *The Lawfulness of Unilateral Sanctions in the Wake of a US–China "Sanctions War"*, East Asia (July 11, 2024), https://doi.org/10.1007/s12140-024-09429-9
[109] Hung Tran, *Wargaming a Western Freeze of China's Foreign Reserves*, Atlantic Council (Apr. 29, 2022), https://www.atlanticcouncil.org/blogs/econographics/wargaming-a-western-freeze-of-chinas-foreign-reserves/.

organisation. The use and legality of every secondary sanction imposed on the grounds of "security exception" shall be checked thoroughly to ensure that it conforms to the framework of WTO and GATT and, in general, the UN Charter. Otherwise, the sanctions imposed by the US, China, the EU, and other individual states will destroy bilateral and multilateral trade treaty regimes such as the GATT and the WTO.[110]

3.3. Private Contractual Obligations: A Spillover

Chapter 2 shows that primary sanctions have been accepted as lawful measures. However, the legality of that is also not sure as to whether that primary sanctions are legal or not, to adopt to coerce the actor who has harming surreptitiously, to the assets and national security of the targeting state, therefore the scholars argues that the primary sanctions are of more benefit and an expedient measure to the international global trade order. So it cannot be concluded with certainty that primary sanctions per se are unlawful. The legality of secondary sanctions has been questioned worldwide as they heavily violate international general and global trade rules.[111]

Yet, it cannot be ruled out that in the current scenario of back-to-back sanctions by the US and China, vice versa in the ongoing trade between them does not make inroads in the global trade and the WTO rules regime. Hence, when the two giant elephants fight, it is the grass that suffers, which is the apt analogy that can be used to enunciate the crossroads in which international developing nations are grappling with arbitrary unilateral extraterritorial sanctions, especially in the backdrop of the dwindling influence of the WTO.

As state earlier in Chapter 2 defining the essentials of second phase of secondary sanctions one of which among them is that includes using international financial system and the targeting state can also freeze the assets of the targeted state as well of the private actor or third party who is penalised for having economic intercourse with the target state.

This is what China had done in response to the sanctions, imposed by the US, which China calls "countermeasures" by introduced some laws like export controls,

[110] Supra note 110, at 22,
[111] Id. at 15.

investment restrictions, a novel tool like Unreliable Entities List (UEL) and Anti-Foreign Sanctions Law, Exports Control Law and Foreign Investment Law.[112]

There was an apprehension among scholars in the US that China's Export Control Law, which corresponds to the law in the US, wherein the nation can restrict the export of certain listed items. Therefore, when this law was enacted, the prognosis was made by some legal experts that China might strategically limit its export of rare earth elements, including some other strategic chemicals used in green energies and batteries and semiconductors, that is highly critical to computing technology in general and which can be used in military hardware.[113]

China is home to some other heavy REEs, which are rarely possessed by other countries under the restriction net, excluding the light REEs, which can be found in different regions. These REEs are critical to some of the military projects underway in the US, which are said to be essential and critical for US national security, which will increasingly widen the gap and provide an edge to China to strengthen its military clout more quickly than the US.[114]

Succinctly put, great emphasis has been placed upon the diplomatic robustness and political synergy between state actors to sustain trade flows and promote the global economy. The political relationship between international economic powers is indispensable for the growth and stability of global trade. By implication, if the political equation is strained, it will no doubt have an inevitable consequence harming bilateral and, in general, international trade.[115]

Nevertheless, experts state that these sanctions by both countries are targeted in nature, leaving a leeway for both of them to trade and to find common global issues, ensuring that they are not throwing the entire trade system into complete chaos.[116]

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[112] Sarah Tzinieris, *Better Late Than Never: China's Development of a Formalized Sanctions Regime*, in *Decoding the Chessboard of Asian Geopolitics* 209, 209–229 (Debasish Nandy & Monojit Das eds., Palgrave Macmillan 2025), https://doi.org/10.1007/978-981-96-3073-8_11.

[113] China launched a review into US chip manufacturer Micron Technology on "national security" grounds, Financial Times, April, 1, 2023.

[114] Gracelin Baskaran & Meredith Schwartz, *The Consequences of China's New Rare Earths Export Restrictions*, Center for Strategic and International Studies (Apr. 14, 2025), https://www.csis.org/analysis/consequences-chinas-new-rare-earths-export-restrictions

[115] Klaus Heilmann, *Does Political Conflict Hurt Trade? Evidence from Consumer Boycotts*, 99 *J. Int'l Econ.* 179, 179–91 (2016), https://doi.org/10.1016/j.jinteco.2015.05.003

[116] Supra note 110 pg 9.

In an altogether different region of Eurasia, when the US and EU imposed sanctions on Russia on its oil preventing its western bloc and others from buying crude oil and gas to isolate and prevent Moscow of buyers, it is to be noted that some of the EU Member states like Hungary, Slovakia and Czech, kept on buying the oil owing to fact that it was cheap and efficient than the US oil as the entire EU started costly crude from the US. Also the sanctions act as a catalyst, the chief object of these sanctions imposed in 2014 was to alienate and contain Russia from the global markets on the contrary, per contra it bolstered Russia' worth as regards energy sector in China, which became even more lethal for global financial system for Russia being ousted of SWIFT system had no choice but to adopt yuan for international trade which raised from 54% pre-sanction era to 99.6% by May 2024.[117]

In 2023, China quickly capitalised on this juncture and sought a deal from Russia, which Russians and Chinese alike considered a 'no limits' partnership that implies a military alliance. China-Russia trade reached an unprecedented $240 billion, surpassing their bilateral target ahead of schedule. This represents a 29% increase from the previous year.[118] This shows the downside of sanctions in general and secondary sanctions in particular, that political agendas can be strengthened if the sanctions are imposed unilaterally, which eventually can be misused against the original intention and objectives of the imposed sanctions. Simply put, trade between China and Russia by November 2024 will grow by 2.1% year-on-year, totalling $222.77 billion, with projections estimating a record $243 billion by year-end.

This strong political and economic ties established between Russia and China in the wake of US and EU sanctioned promoted the relationship, on the contrary the relations between the EU and Russia were utter came close to nil, this series of events demonstrates that secondary sanctions tests the political will of nations as well as economic power to undermine the effectiveness of secondary sanctions.

3.4. China-India: Tariffs have some components of Secondary Sanctions

[117] Rajoli Siddharth Jayaprakash, *A Decadal Review of Russia-China Economic Relations*, Observer Research Foundation (Feb. 3, 2025), https://www.orfonline.org/research/a-decadal-review-of-russia-china-economic-relations.
[118] Id

China has been flexing on its dominance of REEs since as late as 2010, when China began weaponizing REEs in a contentious dispute between Japan and China over a fishing trawler dispute. And since July 2023[119], China has started an export ban on technology that processes REEs, including magnets and graphite, which is critical for EV batteries[120], invoking security concerns.[121]

The question of China banning export restriction on REEs and other raw material such as bauxite and coke et al citing environmental protection and resource conservation invoking Article XX clauses (a) (g) general exceptions, was raised by Japan, the US and the Eu in 2012 before WTO panel that it violates China's obligation under the General Agreement on Tariffs and Trade (GATT) and China Accession Protocol some of them are as follows: article XI:1 violates quantitative measures, these exports lacked transparency and uniformity violating Articles VII, VIII, X of GATT and several other clauses of Accession Protocol.[122]

The WTO panel found that China failed to prove that the measures adopted were temporary or introduced due to a shortage and to conserve resources. Later in the appeal, the Appellate body upheld the finding that the measures did not fit the limited scope of XI:2 (a).

In short, from the findings of the China-Raw material case[123], the WTO distinguished between environmental protection and trade-distorting measures disguised as such. Therefore, the burden of proof to prove Article XX is on the one who invoked such articles, which should be proved up to the hilt.

A consequence which ensued from this sanction or tariffs on the US commonly known as trade war began in 2018, intending to contain China and bring majority of investment out if not all from China, is that China imposed export restriction of these significant

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[119] The United States Takes Actions to Secure Supply Chains for Critical Minerals, 119 *Am. J. Int'l L.* 168 (2025), https://resolve.cambridge.org/core/journals/american-journal-of-international-law/article/united-states-takes-actions-to-secure-supply-chains-for-critical-minerals/2263D6B11130CAD62DB04FA33F3BDDB4

[120] James T. Areddy & Sha Hua, *China Restricts Exports of Two Metals Used in High-Performance Chips*, *Wall St. J.*, July 3, 2023, https://www.wsj.com/articles/china-restricts-exports-of-two-metals-used-in-high-performance-chips-a649402b.

[121] Keith Bradsher, *China Tightens Grip on Critical Minerals, Raising Global Supply Chain Concerns*, *N.Y. Times*, (Dec. 9, 2024), https://www.nytimes.com/2024/12/09/business/china-critical-minerals.html.

[122] Ruth Jebe, Don Mayer & Yong-Shik Lee, *China's Export Restrictions of Raw Materials and Rare Earths: A New Balance Between Free Trade and Environmental Protection?*, 44 *Geo. Wash. Int'l L. Rev.* 579-642 (2012), https://ssrn.com/abstract=3730772.

[123] Id

REEs on India' industries—most importantly gallium and germanium— which is critical for India's renewable energy projects and infrastructure development, creating ripple effects across multiple industries.[124] Since 2017, Apple has started manufacturing its iPhone in India. In January 2025 just before Trump was about to take oath, China had barred Chinese employees from travelling to Foxconn's iPhone factories in India, it was done to coerce the US and its MNCs in this case Apple, to reconsider its gradual transfer of operations away from China, particularly to India which was congruently functioning since its inception in 2017.[125]

India's solar energy sector is heavily dependent on imported components, and limited access to these resources puts the country's clean energy goals at risk. At the same time, infrastructure projects requiring sophisticated machinery encounter obstacles, further straining the construction and energy industries.

Re-routing was the measure that the businesses and corporations in India adopted to circumvent export restrictions, wherein shipments are being redirected via Dubai's Jebel Ali port, where traders source machinery and minerals from China before re-exporting them to India. Although this route enables Indian companies to access crucial supplies, it also brings added challenges and expenses. However, re-routing increases the cost by up to 10%, which strains the budget and raises the price for ordinary people, with the delay of shipment being delivered from 15 days to three months.[126]

As it is common knowledge that the effectiveness of international economic restrictions is of no productive value unless the world demonstrates its will to take concrete steps to implement the sanctions initially imposed on targeted countries which is based on international cooperation, that is seldom to be seen, and this is the primary loophole sought to be filled by the US through secondary sanction, the legality of which has been vehemently challenged through various measures. The same can be said of countermeasures adopted by the countries hit by secondary sanctions that the success of Blocking Statutes is also rests on the consensus and cooperation among the private parties, third parties and the nation reeling under primary sanctions, which will be

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[124] Natarajan, *China's Export Restrictions Impact on India's Industries*, Glottis Limited (Nov. 16, 2024), https://glottis.global/2024/11/16/chinas-export-restrictions-impact-on-indias-industries/.
[125] Atul Kumar, *China's Export Denial Strategy Against India: A National Security Challenge*, Observer Research Foundation (Feb.11, 2024), https://www.orfonline.org/expert-speak/china-s-export-denial-strategy-against-india-a-national-security-challenge
[126] Id at34

discussed in chapter 5 with illustrations showing that even in EU member States there is lack of congruity and harmony when it comes to upholding Blocking Statutes due to the various reasons is that either they lack tenacity or they are interests driven when they refuse to oblige to the rules of Blocking Statutes.[127]

3.5.Ship-to-Ship Transfer–a measure to dodge Secondary Sanctions

The countries like China and Russia have devised a method to ensure that the private actors should not bear the brunt of secondary sanctions. In order to do that, China is purchasing Russian oil coming from Arctic oil grade, which may rise exponentially, through ship-to-ship transfers to eschew sanctions and the cargoes are loaded on to Very Large Crude Carriers VLCC that are beyond the impact or list of secondary sanctions. The purchasers are facing extraordinary difficulties, yet they have devised ways to evade secondary sanctions.[128]

In the context of strained relations or apprehension of secondary sanctions, India, which had bought an unprecedented amount of Arctic oil from Russia, has shown reluctance to buy Russian oil due to sanctions. India had also recently barred a Russian tanker from conducting an STS operation in its waters near Mumbai port.[129]

In retaliation for all the sanctions in general, China—the world's biggest importer of crude– turned to Canada for oil, and this purchase is considered enormous in amount as China was compelled to not buy from the US, which it said is wreaking havoc on economic autonomy amid the ongoing trade war. Data from Vortexa, which tracks oil and natural-gas shipments, shows that Chinese imports of U.S. crude oil fell to three million barrels a month from a peak of 29 million barrels in June 2024.[130]

3.6. Bilateral and Multilateral Investment Treaties

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[127] Alina Shcherbakova, *The Consequences of Anti-Russian Sanctions for Russian and International Trade Law*, EUI LAW Working Paper No. 2023/13, European Univ. Inst. (2023), https://cadmus.eui.eu/handle/1814/77294

[128] *Russian Arctic Oil Exports to China Jump Helped by STS Transfers, Sources Say*, Reuters (Apr. 17, 2025), https://www.reuters.com/business/energy/exports-sanctioned-russian-arctic-oil-china-set-rise-april-sources-say-2025-04-17/

[129] *Exports of Sanctioned Russian Arctic Oil to China Set to Rise in April, Sources Say*, Hindustan Times (Apr. 17, 2025), https://www.hindustantimes.com.

[130] *China Pivots From US to Canada for More Oil as Trade War Worsens*, Bloomberg (Apr. 16, 2025), https://www.bloomberg.com/news/articles/2025-04-16/china-pivots-from-us-to-canada-for-more-oil-as-trade-war-worsens.

International investment law is a body of rules developed with the intention to protect and promote the interests of foreign investors abroad from unlawful interventions, abuse by the host States, which may have a negative impact on their investments. For that purpose, a plethora of bilateral and multilateral investment instruments have been adopted over a long course, drawing on earlier bilateral treaties of 'friendship, commerce and navigation', contemporarily in force.[131]

Wherein it is enshrined for the advantage of foreign investors providing them remedial recourse if and when they are aggrieved by an mistreatment and violation of such treaties. For instance, the standards of treatment of their investments by the State where the investment is being made, a procedural mechanism to institute an arbitration claim in case of transgression against the host state, in the event of breach of substantive standards of protection.[132]

Under this head, we will attempt to understand the legality and impact of secondary sanctions from the standpoint of international investment law. As of late, it has been employed by the US against many countries and over the head of many Damocles sword hangs. Where third-country parties are being targeted for transactions with no US proximity at all, essentially forcing a third party to choose between doing business with the US or with the targeted entity.[133]

The conundrum that the third state will be witnessing when the targeting state hits the targeted state, and the third party state is forced to not enter into any transactions (also a host State under a BIT or MIT) with the targeted State. Now the applicable Bilateral Investment Treaty (BIT) grants foreign investors from either contracting state, who hold investments in the territory of the other state, the right to initiate international arbitration directly against the host state for alleged violations of the substantive investment protection standards established under the BIT. In this context, the foreign investor under any of these instruments is a protected investor.[134]

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[131] *Research Handbook on Unilateral and Extraterritorial Sanctions* (Charlotte Beaucillon ed., Edward Elgar Publ'g 2021), https://doi.org/10.4337/9781839107856.
[132] J. W. Salacuse, *The Law of Investment Treaties* 2d ed. 141–ff (Oxford Univ. Press 2015), https://files.pca-cpa.org/pcadocs/bi-c/1.%20Investors/4.%20Legal%20Authorities/CA115.pdf.
[133] *Secondary Sanctions Against Chinese Institutions: Assessing Their Utility for Constraining North Korea*, S. Hrg. 115-50 (May 10, 2017), https://www.govinfo.gov/content/pkg/CHRG-115shrg26242/html/CHRG-115shrg26242.htm.
[134] Ibid pg 134

A. Full Protection and Security Clauses (FPS)

Another important question that arises alongside the previous one is whether investment protection instruments can be invoked in cases where a company with investments in the United States chooses not to pursue certain transactions out of fear of secondary sanctions. Put differently, can the mere deterrent effect of secondary sanctions be considered a violation of any applicable standard of investment protection?[135]

The deterrent effect of secondary sanctions is particularly strong for investors who are heavily exposed to U.S. markets, especially since these sanctions can directly threaten their ability to access those markets.[136]

Generally, the BITs contain these clauses conferring power to foreign investor, in case of any riots against the facilities of foreign investment or any other kind of force by the private actors even the state, obliges the host to provide protection.[137] This can also be enforce through the assistance of domestic courts.

Therefore according to some experts when such scenarios of force or coercion occurs especially when a BIT has been signed and being in effect, One could argue that by imposing secondary sanctions, the targeting state effectively creates a legal environment that allows the company's business partners to terminate the contracts supporting its investment.[138]

It's difficult to imagine a foreign investor being obliged to comply with secondary sanctions, just as it would be unreasonable to treat them as bound by US sanctions when they are operating in a third country.[139]

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[135] *The Cambridge Handbook of Secondary Sanctions and International Law* (Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre eds., Cambridge Univ. Press 2024), https://doi.org/10.1017/9781009365840.
[136] Ibid at 267
[137] P-E Dupont, *The Arbitration of Disputes Related to Foreign Investments Affected by Unilateral Sanctions*, in *Economic Sanctions in International Law* 205 (AZ Marossi & MR Bassett eds., TMC Asser Press 2015).
[138] *The Cambridge Handbook of Secondary Sanctions and International Law*, 276, (Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre eds., Cambridge Univ. Press 2024), https://doi.org/10.1017/9781009365840
[139] *Bank Melli Iran and Bank Saderat Iran v. Bahrain*, PCA Case No. 2017-25, Award (Nov. 9, 2021), https://www.italaw.com/cases/5168.

In this scenario, it is highly necessary to adduce the negotiation and suggestion posited at the Multilateral Agreement on Investment (MAI) (1995–1998), by a delegation in a draft article on 'secondary investment boycotts', worded as follows:

No Contracting Party may take measures that: i) either impose or may be used to impose liability on investors or investments of investors of another Contracting Party; ii) or prohibit, or impose sanctions for, dealing with investors or investment of investors of another Contracting Party; because of investments an investor of another Contracting Party makes, owns or controls, directly or indirectly, in a third country in accordance with [international law and] regulations of such third country.[140]

B. Violation of International Investment Law

Succinctly put, it can be concluded plausibly that in the presence of BIT and its prominent features like fair and equitable treatment (FET) and full protection and security clauses (FPS) and in case of breach of both conditions or deprivation of market access, can accrue the remedy of compensation on the ground of failure of compliance of treaties and breach of essential standards.

The only possible exception which the host state found in breach or the State which has wrong the other in contrary to BIT standards of investment protection, can invoke is security exception provided that it is justified and certain and not open-ended and tested by the arbitral tribunal after taking into account the provisions of BIT, international conventional law and other relevant laws subscribed to by the parties in the BIT, however some legal professional felt that secondary sanctions especially in terms of BIT and affected investor need not take into consideration of customary international law.[141]

In contrary to this viewpoint of excluding customary international law while examining the remedies to the investor in view of BIT under the auspices of WTO has been negatived by the Iran–United States Claims Tribunal (IUSCT), stating that even in

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[140] *Multilateral Agreement on Investment: Draft Negotiating Text as of 24 April 1998*, 125-126, OECD, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2813/download.
[141] Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon out of Control? Part III: Looking Beyond the WTO – Possible Avenues to Raise a Judicial Challenge Against Secondary Sanctions*, *EJIL: Talk!* (Dec. 4, 2018), https://www.ejiltalk.org/secondary-sanctions-a-weapon-out-of-control-part-iii-looking-beyond-the-wto-possible-avenues-to-raise-a-judicial-challenge-against-secondary-sanctions/.

presence of a BIT as *lex specialis*, customary international law thus remains of relevance.[142]

An arbitral tribunal, depending on the terms of the dispute settlement clause in the relevant BIT, remains free to consider applicable customary rules — whether they concern jurisdiction or broader principles of international law like the prohibition of intervention or the doctrine of abuse of rights — when interpreting and applying the treaty.[143]

Moreover in the same Article 42(1) of ICSID when the arbitration is before ICSID arbitration, it states and expects the tribunal established within that the disputes emerging should be decided after taking into account such rules or terms agreed upon by the parties and also such rules of international as is applicable and necessary for the proper conduct.[144]

In the end, recalling the treaty of Vienna Convention on Succession of States codified in 1978, which is prominently considered by the arbitral tribunals, which removes almost all the hesitations and reluctance from making an inference that there is nothing that prevents investment tribunals to check unlawful interference of States, in this case secondary sanctions.

Moreover, the effectiveness of the sanctions can be achieved as expected by the US only if the EU and Asia-Pacific allies cooperate with the US. Nevertheless, the trump card which the US has and that it used while imposing sanctions on Russia is the leverage of the US financial system and the predominant use of US Dollars in international reserves, which has sent shock waves in the entire global trade when the US ejected Russia from the SWIFT transaction system. It has already been related in chapter 4 as to how SWIFT has also been threatened with sanctions if it intends to bypass the secondary sanctions imposed by the US. In effect, even the transactions

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[142] *Amoco Int'l Fin. Corp. v. Gov't of the Islamic Republic of Iran*, Partial Award, No. 310-56-3, 27 I.L.M. 1320, 1343 ¶ 112 (1987), https://jusmundi.com/en/document/decision/en-amoco-international-finance-corporation-v-the-government-of-the-islamic-republic-of-iran-national-iranian-oil-company-national-petrochemical-company-and-kharg-chemical-company-limited-partial-award-award-no-310-56-3-tuesday-14th-july-1987

[143] Ruys and Ryngaert (n. 2), 10.

[144] *ADC Affiliate Ltd. & ADC & ADMC Mgmt. Ltd. v. Republic of Hungary*, supra note 15, ¶ 290. ICSID Case No. ARB/03/16, Award (Oct. 2, 2006), https://www.italaw.com/cases/41.

effected by the third states are at risk, in consequence blocs like BRICS and other actors in their bilateral payment began using national currencies, ousting the high-handedness of the US, misusing and intercepting economic deals by exploiting its financial system.

Blocs like the EU[145] and China came up with their own alternative financial messaging system called CIPS. China's Cross-Border Interbank Payment System (CIPS) is a key effort to promote the global use of the renminbi (RMB) while decreasing reliance on the U.S.-led financial network, especially the SWIFT system and dollar-based clearing mechanisms. In the ultimate expression, the US and the world economy would have to consume some destructive waves that could derail global trade as it exists now. The US would also suffer because its economy largely subsists on the manufacturing that China does for the US.

3.7. WTO in Crises: The Threat to the Trade Regime

For the very first time, this time-tested organisation is facing the existential crisis, which has proved its worth in managing world trade since January 1995 due to the increasing tension that led to the full-blown trade war between two of the most powerful Member States of the WTO starting from July 6, 2018.

It is critical to acknowledge and see whether the institution of the WTO, which has laid down current global trade rules and economic framework, includes exceptions that may legitimise measures like secondary sanctions otherwise found to be in breach of its laws. To properly scrutinise the WTO's position concerning secondary sanctions, one must also examine whether such sanctions are subject to challenge through the WTO dispute settlement mechanism, and whether members, especially third states impacted by these measures, have grounds to seek compensatory benefits within the multilateral trading system.

The WTO came into existence as the successor of GATT, which lost its significance due to multiple reasons, most importantly among them was the absence of explicit and specific rules to settle matters or disputes among Member States of GATT. There was no legal framework to resolve issues, as there was no mechanism, and there was an absence of a forum like the Dispute Settlement Body DSB provided by the WTO. This

[145] *Joint Statement by Germany, France and the United Kingdom (E3) on INSTEX*, Auswärtiges Amt (Mar. 9, 2023), https://www.auswaertiges-amt.de/en/newsroom/news/instex-2586730

was one of the primary reasons for the creation of the WTO; chief among them was establishing and enforcing global rules for trade, promoting economic growth, implementing trade agreements entered into by the Member States, and especially resolving trade disputes.[146] Simply put, the distinctive feature that makes the WTO prominent and extraordinarily efficient is its Dispute Settlement Mechanism (DSM).[147]

The organisation and its rules are indeed nearly universal; the relevance of the WTO regarding secondary sanctions is based on almost universal existence and huge membership, including those imposing sanctions one after the other, as well as those potentially hit by the secondary sanctions. However, it cannot be said that the WTO is the panacea and possesses all the remedies in this context of secondary sanctions. Therefore, predominantly it covers trade in goods, in services— as defined in Article 1(2) of General Agreement on Trade in Services (GATS), and trade-related aspects of intellectual property rights (TRIPS).[148]

A. Prohibition on Quantitative Restriction

The two core and almost indispensable elements of the international trade system are market access and non-discrimination, which are relevant when discussing the concept of sanctions. Liberalisation of the global economy is one of the utmost significant functions of WTO, and Member States are forbidden to impose restrictions on trumped-up or without warranted charges, like exception clauses such as Article XXI of the GATT and Article XIV bis of the security clause or on unwarranted pretext or the other known as quantitative restrictions.

Article XI(1) of the GATT prohibits quantitative restrictions, which includes imports and exports now if we analyse this dictum in terms of secondary sanction which prohibits importation of commodities from third party, who is a Member State of WTO, to the targeted State, hence this prohibitions runs afoul to the explicit provisions which is significant in derailing the world economy.[149]

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[146] *The WTO in Brief*, World Trade Org., https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm.
[147] Pascal Lamy, *The Place of the WTO and its Law in the International Legal Order*, 17 *Eur. J. Int'l L.* 969-984 (2006), https://doi.org/10.1093/ejil/chl035.
[148] Ibid 1, pg. 250
[149] Ibid 1, at 251

Another necessary thing that is expected of the WTO is to ensure that Member States adhere to the tariff reduction convention stipulated in the list of concessions of Article II of GATT. This is one of the most violated provisions lately by the Member States, especially by the US and China, and the pari-materia provision regarding services is Article XVI (1) of GATS, which the members of the WTO are trampling. [150]

B. Desideratum of Non-discrimination

Another component of the two indispensable components of the multilateral trading order set forth by the WTO is Non-discrimination, which is less significant in the stability and synergy of global trade rules and utterly relevant to secondary sanctions, making such sanctions unwarranted and unfair.[151]

Another two standards of International trade law are, firstly, Most–Favoured Nation– defined in Art. I(1) of the GAAT and the corresponding provision is enshrined in Art. II(1) of the GATS, that provides that, "'advantage, favour, privilege or immunity granted … to any product originating in … any other country shall be accorded immediately and unconditionally to the like product … of all other contracting parties", considered as uncompromising essential of multilateral trading system, which in the given context is consistently and wantonly violated with impunity.[152] Therefore, if the targeting state blocks imports only from one targeted WTO Member and another third State in economic dealings with that State, the given provision is categorically trampled upon.[153]

The second principle is the National Treatment Principle, which is enunciated in Art. III(2) and Art. 4 of the GATT, dealing with taxes and regulation, respectively. Therefore, this principle is germane when the ban is imposed on goods, restricting the markets for certain goods. Wherefore Art. III(2) states, "'products … imported …shall be accorded treatment no less favourable than that accorded to like products of national origin'.

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[150] Sarah Anne Aarup & Barbara Moens, *Removing Russia's Trade Privileges: What You Need to Know*, Politico (Mar. 11, 2022), https://www.politico.eu/article/remove-russia-trade-privilege-what-need-know/.
[151] Ibid1, at 252
[152] Bogdanova (n. 2), p. 134……..cambrige book
[153] Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon out of Control? Part III: Looking Beyond the WTO – Possible Avenues to Raise a Judicial Challenge Against Secondary Sanctions*, *EJIL: Talk!*, 43, (Dec. 4, 2018), https://www.ejiltalk.org/secondary-sanctions-a-weapon-out-of-control-part-iii-looking-beyond-the-wto-possible-avenues-to-raise-a-judicial-challenge-against-secondary-sanctions/

Based on the above examination, it seems plain that the primary sanction is forthrightly discriminatory and violates explicit WTO trade rules. Indeed, sanctions on a party dealing with goods and services restricted by the state can be entertained. However, the sanctions discussed here are often directed against a particular individual or third state, which has nothing to do with the goods or services targeted at the state on which it was being imposed. By a perspicuous implication, "secondary sanctions are deemed discriminatory as they hit the bystander in the same way as the target. They treat equally the actors or things which are, by nature, nothing short of discrimination."[154]

These measures are no less than catastrophic for the existence of WTO rules, which can largely be considered as one of the few organisations established and functioning under the auspices of the UN. In sum, the naked and wanton transgression of these trade rules sends a dangerous message about the ability of the WTO to put things in order, such as sanctions in general, let alone the secondary aspect of the notion.[155]

3.8. Tuna-Dolphin case vis-à-vis Secondary Sanctions

This case does not directly relate to the primary or secondary sanction; however, it had strong undertones that manifested similar features to those of secondary sanctions. The factual matrix of the case was that the US banned the imports of tuna from Mexico on the grounds that the fishing methods Mexico is employing thereby harming dolphins and therefore in violation of the US Marine Mammal Protection Act (MMPA) criterion.

An issue was thereafter brought about by Mexico invoking GATT violation, a legal battle then ensued before the DSM in the 1990s that the 'intermediary nations embargo' is extraterritorial and hence unilateral and runs counter to the necessary GATT consensus, raising concerns that it might erode the significance and confidence in the WTO rule-based trade order.[156] This measure had all the similarities of secondary sanctions. The WTO panel in the given case, rather than examining 'intermediary nations embargo', discussed about the legality of 'primary embargo' that the WTO found lacked merit, rendering it non-est and lacking justification within the meaning of

[154] Ibid 1, at. 255
[155] Ibid 1, at 255
[156] GATT, United States – Restrictions on Imports of Tuna, Panel Report, 16 June 1994, GATT-Doc. DS29/R, paras. 5.26, 5.37.

the exception clauses of Article XX(g) and (b) of the GATT.[157] Hence, it is sufficiently perspicuous that the legality of primary measures, such as embargoes or sanctions, is a condition precedent for secondary sanctions to survive.

3.9. Multi-party Interim Appeal Arbitration

Given the current trade system, which has been there for approximately three decades now, which has been overseen by the rules enshrined in the WTO legal framework, including trade-related measures, which in our context contain the measures of sanctions and, consequently, secondary sanctions. WTO DSM is a paradigm shift in the settlement of trade disputes, which was the drawback GATT faced, which proved to be one of the factors that led to GATT becoming defunct.[158]

In this regard, WTO trade rules can efficiently deal with sanctions and restrict their abusive use, and other trade restrictions can be done away with in line with free trade rules. It has been stated by some scholars that WTO rules have been conferred with regard to addressing the primary sanctions and do not contain any complex provision, therefore failing to respond to the specific issue of secondary sanctions.[159]

Owing to the fact that ordinarily primary sanctions and secondary sanctions, which essentially rest on the former, are imposed mainly on the ground invoking security exceptions, as has been seen in the previous heading, are very broad and uncertain and provide untrammelled powers to the actor imposing the sanctions, rendering the entire trade system moribund. In sum, this particular clause of 'security exceptions' shall be interpreted in clear and plain terms, which will determine the future of WTO as on those terms WTO Panel or DSB could find itself with an anchor–a substantive law–to examine the sanctions and secondary sanctions specifically.[160]

If a Member State perceive an act to be in contravention of WTO rules, a complaint can be filed before WTO DSB, whereby the actor who is in contravention will be sought to change its actions in accordance with WTO rules, even after, if the contravening state

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[157] *The Cambridge Handbook of Secondary Sanctions and International Law* ,257, (Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre eds., Cambridge Univ. Press 2024), https://doi.org/10.1017/9781009365840.Lawcat+5
[158] Garima Deepak, *WTO Dispute Settlement – The Road Ahead*, NYU Sch. L. (2019), at 981–97.
[159] Tom Ruys, Cedric Ryngaert & Felipe Rodríguez Silvestre, *The Cambridge Handbook of Secondary Sanctions and International Law* 260 (Cambridge Univ. Press 2024).
[160] Id

does not put its action right, the complainant can enforce trade sanctions and suspension under Art. 22 of the DSU, in case of both primary and secondary sanctions.

As already pointed out, the WTO dispute settlement system, especially the Appellate Body, has come to a grinding halt owing to the US veto on appointing new members to the Appellate Body. Therefore, it is no longer functional. However, it cannot be said that complaints cannot be dealt with, and panels make decisions. They can and should contribute to further clarification of WTO rules.[161]

To overcome all these uncertain and dysfunctional Appellate system of WTO, a sizeable number of Member States have, as of late, established a multi-party interim appeal arbitration, wherein they agree to forego the appeal provision; they will resort to settle the dispute based on the arbitration clause of Article 25 of DSU.[162]

3.10. Conclusion

Sanctions are being used more frequently for various reasons: to coerce, firstly, those who have been accused of violating the WTO trade rules or infringing rules-based order, especially when the US imposed sanctions on Russia and China or for that matter, on Iran. In other instances, sanctioning states use tariffs, embargoes, or duties that significantly affect the well-established and well-tested international trade system. It has been generally agreed upon by a large number of experts in the field of economics and politics alike that sanctions can be used to make good of the violations made by the wrongdoers, it's a better option than the use of hard power and complete conflagration of militaries. These measures and counter-measures have now frequently been used as a strategy to accomplish geopolitical goals, making the WTO and UN absolutely irrelevant and completely useless.

However, other corridors perceive sanctions, especially secondary sanctions, as an utter nuisance, which can erupt into full-scale warfare as well. Inordinate sanctions can surge inflation, leading to a zero-sum game and making conventional or proxy warfare inevitable.

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[161] Id at 261

[162] WTO Dispute Settlement Body, *Statement on a Mechanism for Developing, Documenting and Sharing Information on Arbitrators* (Add.12), JOB/DSB/1/Add.12 (Apr. 30, 2020), https://www.worldtradelaw.net/document.php?id=misc/DSB1A12.pdf.

The impact and chasm which these secondary sanctions–that has become a contentious issue among larger academia, challenging its legality–leave inflict a heavy toll, as has been discussed in this chapter, for instance, on WTO as a whole: its existence and trade rules which stipulate.

There are enough provisions in the body of laws formulated by the WTO to address secondary sanctions. The WTO provides substantial procedures and regulations on the anvil of which unilateral sanctions can be questioned, for it violates the non-discrimination standard, treating targeted members and third parties alike, which is unfair and unjust. The primary and chief argument against secondary sanction, given the rule of prohibition on quantitative measures, is that the imposition of unauthorised sanctions infringes it.

Another issue is using security exception clauses without justification, arbitrarily, capriciously, and maliciously. It has to be proved by the party that imposes secondary sanctions that the invocation of security has some substance, and there are justiciable reasons to adopt exception clauses. And lastly, the dispute settlement mechanism should be used, whatever works; for instance, the WTO panel and Article 25 of the DSM can also be signed for arbitration under the umbrella of the WTO.

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CHAPTER 4

HUMAN RIGHTS AND ESSENTIAL SERVICES — THE HUMANITARIAN FALLOUT OF SECONDARY SANCTIONS

4.1. Introduction

Secondary Sanctions, as we have seen, are a regenerated phenomenon used by the US against many third states when it introduced the Libya and Syria Act or Helms-Burton Act. By doing that, the inexplicable and wanton harm was caused to the common populace, especially older people, women and children. Ordinarily, these sanctions are launched to project political power and export foreign policy objectives to other nations by hook or crook. No hegemon tolerates neutral power; they tend to browbeat or coerce them into their alliance.

The intention of imposing the secondary sanctions may be to completely cut off all the supplies and logistics of a rogue state. The ground or cause may be legitimate, but the proportionality and the intensity of such measures shall be measured, targeted and precise, so that it does not inflict irreparable and disproportionate harm, as it impends the availability of the delivery of necessities, eventually violating the International Humanitarian Law (IHL).[163]

In 2018, the United Nations General Assembly UNGA called on Member States to restrain themselves from using unwarranted and unauthorised "unilateral coercive measures" which are not in line with international law, international humanitarian law, and the UN Charter in a coercive nature that has all the features of extraterritoriality.[164]

The reason provided for abstaining from doing that was that it creates hurdles in international trade among states, making the developing—needy or in this case, innocent states doing nothing wrong— to lag behind the tall objectives and sacrosanct rights provided in Universal Declaration of Human Rights (UDHR)[165] and several other

[163] Masahiko Asada ed., *Economic Sanctions in International Law and Practice* 44 (Routledge, Taylor & Francis Grp. 2020).
[164] Ministry of Foreign Affairs & Trade (N.Z.), *United Nations Handbook 2023–24*,¶ 8¶ 11 (2023), https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/09/auto-draft/UN-Handbook-2023-24.pdf
[165] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).https://www.un.org/en/about-us/universal-declaration-of-human-rights

international human rights instruments particularly the development and individual rights.[166]

This chapter will examine the link between secondary sanctions and human rights and their impact on other essential services. Following the denunciation statement of the UNGA, a host of resolutions have been adopted appreciating the risks and dangers these sanctions entail. Among them were the Human Rights Council[167] and other regional organisations.[168]

This practice of adopting resolutions rebuking the blanket sanction endlessly raising the predicaments of the already hapless populace demonstrates that there might be an element of consensus among the international community that has established a new norm in customary international law, making those sanctions regimes unlawful and illegal under international which does not integrate minimal fundamental human rights as well the mandatory requirements of proportionality and discrimination.[169]

It does not mean that the said sanctions will be upheld only on the country's statement that imposes them. Such sanctions can be questioned on the ground that they violate human rights, and an integration of mechanisms is also necessary, which redresses the victims of human rights violations occurring due to the imposition.

Another reason following which this consensus can be emitted is that of towering goals and salutary agenda of Sustainable Development Goals of 2030, adopted by the UNGA for the world to integrate and implement in the policymaking and other legal instruments like BITs, etc. that makes a clear message of chastisement to anyone who circumvents the UN authorisation of economic sanctions, that these coercive measure, "impede the full achievement of economic and social development, particularly in developing countries".[170]

This exhortation in the context of secondary sanction is more relevant and intriguing than that of primary sanction, wherein the party imposed with economic sanction is the

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[166] G.A. Res. A/C.3/73/L.32, Human Rights and Unilateral Coercive Measures, U.N. Doc. A/C.3/73/L.32 (Nov. 13, 2018).
[167] HRC Resolutions 27/21 (2014), 30/2 (2015), 36/10 (2017) and 37/21 (2018).
[168] Supra note 3 at 40
[169] Supra note 3 at 39
[170] U.N. Doc. A/RES/70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, ¶ 30 (Sept. 25, 2015), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf.

transgressor of the rule-based order. Whereas, in the case of secondary sanctions, the third party is nowhere involved in any infringement of international law.

This chapter will explore how human rights are most susceptible to harm as a result of unilateral coercive measures. It reflects on past and present examples where economic sanctions—whether imposed by the United Nations Security Council or enacted unilaterally by individual states, regional bodies, or coalitions—have directly or indirectly impacted the enjoyment of fundamental human rights. These instances manifest as to how such measures, although adopted to enforce international norms or just feigning to enforce or intending to correct unlawful conduct, can lead to unimaginable and horrendous consequences for civilians, especially when restrictions to food, medicine and other basic needs have been put on.

4.2.Conceptual Link between Secondary Sanctions and Humanitarian Law

There are several rules and treaties related to humanitarian law that can be examined on the ground of their violation in the imposition of sanctions. The foundation of all multilateral human rights instruments is the Charter of the United Nations, which might be violated.

A. The UN Charter

The United Nations Charter affirms a fundamental commitment to human rights in Article 55(c), where Member States become a signatory promising to promote the respect for human rights, without prejudice and free from discrimination."[171] This emphasis on human dignity and equality is also reflected in the Charter's preamble, underscoring its central place in the objectives of the international legal order established in 1945.

It is very significant to note that human rights commitment is closely tied to the Charter's Article 2(4), which obliges States to refrain from the threat or use of force threatening to curtail the territorial integrity, economic autonomy and political independence of any State, or in any other manner run counter to with the purposes of the United Nations.

[171] U.N. Charter, Chapter I, https://www.un.org/en/about-us/un-charter/chapter-1 (last visited May 20, 2025).

The principle of non-intervention, as articulated in Article 2(4) and reaffirmed in instruments [172]that serves to preserve peace and uphold peoples' right to self-determination.[173] This right has been extensively recognised as one of the most vital components of human rights in international law, implying that interference in the internal or external affairs of States undermines sovereignty and peoples' collective rights to determine their own political, economic, and social systems.[174]

Thus, the prohibition of intervention, this case via secondary sanction in the policy and autonomous decision of economic transactions, and the promotion of human rights are not merely parallel aims of the UN system but are legally and normatively interlinked. Violations of the non-intervention principle may therefore implicate human rights violations, particularly when such acts infringe upon the self-determination of peoples.

B. Economic coercion: A discrete "international crime".

Section 2(4), in particular, has been discussed extensively, as many believe that the use of economic sanctions can be categorised as "economic crime". For example in 1950, during the one of the deliberations regarding the coercion that can be exercised,[175] it was suggested that a new category of offence should be introduced which can be committed through the means of economy, that the states–as there will always be asymmetry in the global economies—might use measures to batter another states psychologically and economically.

Later on, in another ILC in 1976, many distinguished scholars in unison suggested making economic coercion a heinous crime, which can control food and energy, leading to mass massacre. In Iraq alone, at least half a million casualties had been seen as a consequence of disproportional, discriminatory and ill-designed economic sanctions. The number of deaths, although it varies with perceptions and narratives, some scholars

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[172] U.N. Gen. Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV), 25th Sess., U.N. Doc. A/RES/2625(XXV) (Oct. 24, 1970),https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf.

[173] *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.),* Judgment, Separate Opinion of Judge Sette-Camara, I.C.J. Reports 1986, 192, 199 (June 27, 1986).

[174] Daniel Thürer & Thomas Burri, Self-Determination, in Max Planck Encyclopedia of Public International Law, vol. IX (Rüdiger Wolfrum ed., 2012) ¶ 10.

[175] Int'l Law Comm'n, Yearbook of the International Law Commission, 1950, vol. I, at 130, ¶ 5(a), https://legal.un.org/ilc/publications/yearbooks/english/ilc_1950_v1.pdf.

claim that the number of people dying was three lakhs, which in no case can be said to be trivial.[176]

A reference was put forth regarding economic coercion that the states should be prohibited from using threat or resort to the use of force in the territorial integrity or the political independence of another, but also and highly relevant here, is that "they shall not deprive any third state of economic independence".[177] It was thought that economic threats are real and can take a heavier toll on human rights than armed aggression, but the consensus on this reference was never attained.[178] Whereas, other perceives this economic aggression or coercion to be of utmost importance as a necessary measure to prevent the disputing parties from reaching to a conflagration point, and they maintain that a new custom which prohibits the use of economic coercion lacks the requirement of international jurisprudence and doctrine.[179]

4.3. Core Principles of Human Rights

In this section, we will extrapolate the consequences of economic sanctions, which can be damaging and in total violation of human rights and all the connected and relevant legal instruments, treaties, etc such as life, self-determination, development, minimum standard of living that includes food, clothing, housing, and medical care.

A very remarkable and critical observation,[180] has explicitly declared with an intention to thwart the indiscriminate use of economic sanction — authorised or unilateral—that the inhabitants of a sanctioned country or in case of secondary sanctions any third country, do not waive or forfeit their economic, social, and cultural rights merely because their their leaders have violated international norms and rules and determined

[176] Richard Garfield, Morbidity and Mortality Among Iraqi Children from 1990 through 1998: Assessing the Impact of the Gulf War and Economic Sanctions, 171 W. J. Med. 247, 247–52 (1999)
[177] 1372nd mtg. of the Int'l Law Comm'n (May 19, 1976) (statement of Mr. Tabibi), in Yearbook of the International Law Commission, 1976, vol. I, at 62, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1976_v1.pdf
[178] Antonio Tanca, The Prohibition of Force in the UN Declaration on Friendly Relations of 1970, in *The Current Legal Regulation of the Use of Force* 397, 397–412 (Antonio Cassese ed., 1986).
[179] Alexandra Hofer, The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?, 16 Chinese J. Int'l L. 175, 175–214 (2017).
[180] Comm. on Econ., Soc. & Cultural Rights, Gen. Comment No. 8, The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights, ¶ 16, U.N. Doc. E/C.12/1997/8 (1997).

by international community as transgressors harming international peace and security.[181]

A. Prohibition of Collective Punishment and Right to Life

It is the case that any country, for example, the U.S., has imposed secondary sanctions targeting Iran, Cuba, or North Korea, where European or Asian companies risk penalties simply for engaging in lawful trade under their own national or international laws, in the consequence of which these already economically tattered countries, lacking in medicines and medicinal equipment, essential food and clothing might suffer in terms of innocent lives.

The life of a human being is a sacred thing, the most basic human right attached to their person, the right to live. Lately, it has become an accepted or heroic practice to even kill millions of civilians under the zealous call of the fight against evil, which creates more evil than good.[182] It has been enunciated on multiple august and academic occasions that the right to life not only forbids the capricious deprivation of life but sincerely extends the scope of this right, including socioeconomic aspects of life, meaning thereby- food, medicine and clothing.[183]

Most importantly, it obligates the states to put in all necessary and possible endeavours to secure these socio-economic rights, which are surely trampled by the whimsical unilateral imposition of sanctions on the destitute and hapless civilian populations.[184] This obligation subsumes the obligation of another state not to inflict loss on humans beyond its territory or other jurisdiction.

Consequently, based on this principle, states—both the foreign, that its actions does not curtail the rights of people in other jurisdictions, and the domestic, which faces the

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[181] Human Rights Council Advisory Committee, U.N. Doc. A/HRC/28/74, ¶ 15 (Feb. 10, 2015), https://undocs.org/A/HRC/28/74

[182] Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* 219 (Hart Publ'g 2004), https://www.bloomsbury.com/uk/chapter-vii-powers-of-the-united-nations-security-council-9781841134222/

[183] Sarah Joseph & Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 203 (3d ed. 2013), https://global.oup.com/academic/product/the-international-covenant-on-civil-and-political-rights-9780199641949.

[184] Villagrán Morales et al. ("Street Children") v. Guatemala, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 2 (Nov. 19, 1999) (joint concurring opinion of Cançado Trindade & Abreu Burelli), https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf.

consequences of sanctions to come up with countermeasures or other judicial measures to protect the rights of its common populace—are under obligation to ensure that sanctions are not discriminatory and disproportionate which leads to the denial of food to the needy and hungry or worse, their subjection to hunger of starvation.[185]

Another significant legal instrument undermined by economic sanctions is when Article 6 and 24 (2) of the law concerning children's rights and life may be violated.[186] Also, it has been argued by the UNSC that children should not be denied the basic goods and services essential to sustain life, which, in light of evidence from the previous use of sanctions, is very difficult, even if the sanctions are said to be precisely targeted.[187]

When the US withdrew from the JCPOA 2015, in 2018, Iran challenged the economic sanctions, wherein the US prohibited Iran from acquiring the spare parts of civil airliners. Iran claimed that it violated its right to life, violating several legal treaties and the UN Charter, while at the same time adducing the finding of the ICJ. It also violates the 1955 Treaty of Amity, Economic Relations, and Consular Rights, which the Court held that acquiring spare parts and assessing associated services of vital importance for the civil aircraft is part of the right to life.[188]

B. Self-Determination, Development Rights and Education.

Article 1(1) common to the International Covenant on Civil and Political Rights (ICCPR)[189] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[190] confers the right to the people globally that they have a right to self-determination. To that effect, they can freely and independently determine their political ideals, values, and goals in order to reach and accomplish their aspirations and achieve economic, social, and cultural development.

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[185] Supra note 184 at 221

[186] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

[187] Comm'n on Hum. Rts., The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights, Working Paper prepared by Mr. Marc Bossuyt, U.N. Doc. E/CN.4/Sub.2/2000/33, ¶ 63, (June 21, 2000), ¶ 63,https://digitallibrary.un.org/record/419880.

[188] I Islamic Republic of Iran v. United States of America, Provisional Measures, Order (Oct. 3, 2018), ¶ 91.

[189] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[190] International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

Article 1(2) of both the conventions provides that people can never be stripped of their means of subsistence.[191] They cannot be deprived of their means of subsistence, and in the scenario of imposition of economic sanctions on a State, it will end up hurting their means of subsistence.[192]

In the same line of argumentation, it has been argued by many scholars that in most cases throughout the history of universally imposed sanctions regimes, the sanctions regime are insufficient and ill-tailored, absolutely lacking in terms of humanitarian exemptions, having a cumulative effect of depriving innocent civilians of their means of substance and compounding the damage and harm of already developing countries.[193]

Another argument raised against unauthorised sanction in the absence of the fulfilment of the conditions of Chapter VII of the UN Charter itself is non est., yet if a unilateral economic sanction regime has been launched by one state on the other essentially compelling to fix its policies, political and economical and ordinarily seeking from the targeted state and in case of secondary sanctions- also from the third party state- and to align with the targeting state, undermining the sacred right of self-determination and should be prohibited in clear terms.[194]

Another critical right that is violated is the right to development, now even more prominent and prestigious, as development in terms of technology, intellect, knowledge, and so on, is inevitably intertwined with the rights of life and self-determination, which is impossible with development in every walk of life.[195]

The consequences of this unlawful measure in the target country can be a probable loss of jobs, higher consumer prices, impoverishment, and epidemics. And it can also lead to trade wars, a common phenomenon of this decade. It will likely go on in the foreseeable future, wherein the developing countries face the danger of secondary

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[191] Supra note 191 and 192

[192] Ben Saul, David Kinley & Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* 117 (2014) https://www.abuseincare.org.nz/assets/Evidence-library/Part-1/Saul-B-Kinley-D-Mowbray-J-The-International-Covenant-on-Economic-Social-and-Cultural-Rights-Commentary-Cases-and-Materials-1st-edition-Oxford-University-Press-2014.pdf

[193] Ibid at 118

[194] Ibid at 107

[195] Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

sanctions in the geopolitical conflict, which is now interlinked with geoeconomics in totality. This ecosystem may further exacerbate precarious international trade and stability, disrupting commercial relations and decreasing foreign investments. All this can irreparably impact the realisation of the right to development.[196]

The adverse impacts emerging from the economic sanctions have been examined and published in multiple peer-reviewed articles, especially as regards Cuba[197] and Myanmar[198], and a common theme that was present in both the studies was the grievous impact on banks and investors which saturates and halt the export and import having direct effect on the economy at large inevitably crushing and extracting the potential of growth and development specially for the poorest and the most vulnerable populations.

General Comment 8 of CESCR stated, while making a caveat, that economic sanctions can severely disintegrate the education system, leading to illiteracy, derailing the legal system and might also lead to lawlessness and volatility and might also cause the younger generation to commit heinous crimes. The economic sanctions also curtail Article 13 of the ICESCR.[199]

The impact of economic sanctions on education has been studied extensively in Iraq's sanctions, which had catastrophic effects on the education of Iraq. It can be said that it was ruined and pushed the youth to extremism and terrorism, leaving a deep wound on the conscience of Iraqis. It possessed far-reaching, torrential ramifications from the terrorism emanating from Iraq and adjacent enclaves.[200]

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[196] Isabella D. Bunn, *The Right to Development and International Economic Law: Legal and Moral Dimensions* 225 (2012).
[197] B. Manchak, Comprehensive Economic Sanctions, the Right to Development, and Constitutionally Impermissible Violations of International Law, 30 Bos. Coll. Third World L.J. 417, 433–34 (2010
[198] Thihan Myo Nyun, *Feeling Good or Doing Good: Inefficacy of the U.S. Unilateral Sanctions Against the Military Government of Burma/Myanmar*, 7 Wash. U. Global Stud. L. Rev. 455-518 (2008), https://openscholarship.wustl.edu/law_globalstudies/vol7/iss3/3/.
[199] Klaus Dieter Beiter, *The Protection of the Right to Education by International Law* 367 (2006).
[200] U.N. Doc. S/1999/356, supra note 55, ¶¶ 19–20.

C. Health, Basic Amenities and Medical Care

This component has been hit the hardest and mercilessly, with the most reports from various international organisations like UN Reports[201], UNGA[202], HRC[203], and the target state government, arguing that health deterioration is the most common consequence of indiscriminate sanctions. The exponential rise in the death rate of children due to malnutrition and starvation has been recorded most often.

Economic sanctions have been widely reported, difficult to replicate, and have been intensely documented, almost all concluding that the right to health has been violated with impunity, virtually all the time, having a considerable impact on mortality. For instance, in Iran, currently thousands of cancer patients are at risk of death due to the need for chemotherapy urgently.[204] Consequently, Iran could not source necessary equipment as the US has already threatened even SWIFT with secondary sanctions if it allows its system for the payment; therefore, the country is not allowed to use the international payment systems as a result of sanctions and threatened sanctions respectively.[205]

Recently, examining the actions of the US given the alleged violations of the 1955 Treaty of Amity, the ICJ held, in its order of 2018 that, complete moratorium on the import and export of necessities, health care and food, and the medicines which is required critically and urgently which treats chronic disease, including critical equipment may have a profound deteriorating and degenerative impact on the health institution and the lives of innocent civilians unless a general condemnation has been signed and they are all condemned to death.[206]

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[201] U.N. Doc. A/HRC/28/74, supra note 26, ¶¶ 14–19.
[202] G.A. Res. 66/156, U.N. Doc. A/RES/66/156 (2011); G.A. Res. 68/162, U.N. Doc. A/RES/68/162 (2013).
[203] H.R.C. Res. 15/24, U.N. Doc. A/HRC/RES/15/24 (2011); H.R.C. Res. 27/21, U.N. Doc. A/HRC/RES/27/21 (2014).
[204] Tarazi Mohammed Sheikh, The Effectiveness of Sanctions as a Tool for Resolving Armed Conflicts: An Analysis of Syria and Yemen, *Contemporary Challenges: The Global Crime Justice and Security Journal* (Oct. 2023), https://journals.ed.ac.uk/Contemporary-Challenges/article/view/9113.
[205] P. Pinto Soares, UN Sanctions That Safeguard, Undermine, or Both, Human Rights, in J.P. Bohoslavsky & J.L. Cernic, eds., *Making Sovereign Financing and Human Rights Work* 33, 38–40 (2014).
[206]Islamic Republic of Iran v. United States of America, Provisional Measures, Order, ¶ 91 (Oct. 3, 2018).

4.4. Reforms sought by the UN and the EU

A. The United Nations System

For the very first time, the exhaustive overhauling of economic sanctions was called out, which was blanket in nature, wreaking indiscriminate damage to the vulnerable society of the targeted countries. It was thought proper, and deliberation was invited to mitigate the humanitarian consequences of sanctions. The conclusion was that the sanction design program should be framed in which some basic standards should be laid down, which are inviolable, making it binding to observe humanitarian limits in the applications of sanctions.[207]

In the case of a violation of rights, some of the remedial provisions were also posited in the UN forum, which must be stipulated in MITs and BITs, allowing individuals to invoke the provisions for the grievance of violations of Human Rights caused by the actions of either the state or any individual entity.[208]

B. The European Union

The primary reform to mitigate the intensity of the sanctions on the innocent civilians was to integrate into its legal framework of Common Foreign and Security Policy (CFSP) appropriate and effective humanitarian exemptions and judicial forums for those negatively impacted, to seek redress. Another critical point that the EU thought must be added to the framework is the mandatory condition of proportionality and exclusion of discrimination in tailoring sanctions.[209]

[207] Mary Ellen O'Connell, *Debating the Law of Sanctions*, 13 Eur. J. Int'l L. 63-74 (2002).

[208] U.N. Doc. E/CN.4/2005/WG.23/2 (Nov. 22, 2005).

[209] J. Kuijper et al., *The Law of EU External Relations: Cases, Materials, and Commentary on the EU as an International Legal Actor* 215 (2015).

As far as remedies are concerned, the EU sanction regime is under continuous monitoring of the judiciary via judicial review before the EU General Court and on appeal before the European Court of Justice.[210]

4.5. Conclusion

The analysis of the chapter demonstrates that the economic sanctions, which are usually illegal for being imposed outside the authorisation of the UNSC and are most in discordance with Chapter VII of the UN Charter, are unilateral, hence illegal. Initially, it was deliberated to use them as an efficient tool, firstly to prevent war and coerce wrongdoing states to comply with international norms, often inflict disproportionate harm on civilian populations and infringe upon core principles of international law. As they are unilateral coercive measures with extraterritorial reach, secondary sanctions challenge the fundamental tenets of the UN Charter, and other legal instruments international human rights framework and also international trade rules.

From a legal standpoint, secondary sanctions undermine the prohibition of economic coercion, the principle of non-intervention, and the sovereignty of states as enshrined in Article 2 of the UN Charter. They also erode the right of people to self-determination by coercively shaping the economic and political choices of sovereign states, often to align with the foreign policy interests of the sanctioning country. The use of such sanctions—particularly by powerful states like the United States—constitutes a hegemonic assertion of jurisdiction beyond national borders, pressuring third-party states and corporations to disengage from lawful trade with sanctioned nations, regardless of humanitarian consequences.

The humanitarian implications of secondary sanctions are profound. These arbitrary and unlawful measures often result in the indiscriminate suffering of civilian populations, violating the IHL principles of proportionality, distinction, and non-discrimination. As shown in the cases of Iran, Iraq, Cuba, and Syria, sanctions have led to widespread shortages of essential goods, as well as the deterioration of healthcare and education systems. Vulnerable groups—such as children, women, the elderly, and persons with chronic illnesses—bear the brunt of these consequences. These impacts

[210] Yassin Abdullah Kadi & Al Barakaat Int'l Found. v. Council of the Eur. Union & Comm'n of the Eur. Cmtys., Joined Cases C-402/05 P & C-415/05 P, Judgment of the Court (Grand Chamber) (Sept. 3, 2008), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0402.

amount to collective punishment, which is a severe crime and explicitly prohibited under both IHL and international human rights law.

Moreover, secondary sanctions impede the realisation of economic, social, and cultural rights guaranteed under instruments like the ICESCR. The right to life, health, education, and development are not merely aspirational ideals but binding obligations upon states. General Comments issued by UN treaty bodies, as well as jurisprudence from the ICJ and pronouncements by the UN Human Rights Council, have consistently affirmed that humanitarian rights must not be sacrificed to achieve political or strategic objectives. The 2018 ICJ provisional measures in *Iran v. United States* underscore the binding character of obligations to ensure humanitarian exemptions in the enforcement of economic sanctions.

The cumulative effect of secondary sanctions is to weaken not only the institutional capacity of the targeted states but also the very international legal order that these measures purport to uphold. The use of unilateral sanctions by nature and by design harming and utterly undermining multilateralism with a clear intention to lead the world one power with utmost high-handedness overlooking all autonomy and rights of Global South and developing world. The sanctions no doubt harbingers dangerous and rigorous phases for the global trade and with that comes all evils sweeping especially the rights of the poor, vulnerable and innocent disregarded for the political gains and geopolitical upper hand, foster a climate of fear among businesses and humanitarian actors, leading to overcompliance and widespread chilling effects.

Therefore, in order to prevent the demise of present global trade rules and the WTO which is already defunct and dysfunctional, the international community must urgently revisit the legality and legitimacy of secondary sanctions. A rules-based international order must not permit the weaponisation of economic interdependence to the detriment of fundamental human rights. Plain, perspicuous and moral legal standards, robust humanitarian exceptions, and greater accountability mechanisms are essential to ensure that measures intended to enforce international law do not, paradoxically, violate it.

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CHAPTER 5

COUNTERMEASURES AND RETALIATORY MEASURES

5.1.Introduction

Aside from the EU, which revived its 1996 Blocking Statute in response to the Helms-Burton Act, other countries, most notably China, have also introduced similar legal tools under their domestic laws. These measures are primarily aimed at shielding private actors or third parties from the harmful effects, rather than states from the adverse impacts of extraterritorial sanctions. However, as we've already seen, this goal remains unfulfilled mainly due to practical and legal challenges. Nevertheless, it's worth examining China's specific countermeasures to understand their scope and implications better. It has been criticised on the ground by the legal scholars of international law that it does not take the interests of private actors into account conscientiously.[211]

In 1947, the Province of Ontario in Canada passed the world's first blocking statute, the Business Records Protection Act.[212] This law was introduced to counteract U.S. antitrust investigations targeting Canadian paper companies. Later in the 1970s, many Western countries, including the United Kingdom[213], Canada[214], and Australia[215], adopted similar blocking statutes in response to the extraterritorial application of U.S. antitrust laws.

By the 1990s, the focus of these statutes shifted towards addressing the negative impacts of U.S. sanctions laws applied outside of its borders. In 1996, the European Union introduced Council Regulation (EC) No 2271/96, known as the EU Blocking Regulation. This regulation was designed to protect EU businesses from the effects of U.S. sanctions imposed on countries like Cuba, Iran, and Libya.

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[211] Tamás Szabados, *Building Castles in the Air? The EU Blocking Regulation and the Protection of the Interests of Private Parties*, 2023 Cambridge Yearbook of European Legal Studies 1, 4.
[212] Business Records Protection Act, [1947]
[213] Protection of Trading Interests Act 1980, c 11 (UK).
[214] Foreign Extraterritorial Measures Act, RSC 1985, c F-29 (Can).
[215] Foreign Proceedings (Prohibition of Certain Evidence) Act 1976

However, after the EU and the U.S. reached an understanding in 1997, the EU Blocking Regulation was largely dormant, as it was not thoroughly tested in practice. However, on August 7, 2018, following the U.S. withdrawal from the JCPOA and the re-imposition of sanctions on Iran, the EU Commission revived the Blocking Regulation to safeguard the business interests of EU companies operating in Iran.

Now that we have examined the legality of secondary sanctions in the light of international customary law and trade rules like WTO and GATT, bilateral and multilateral investment treaties, etc. Although the line of inquiry generally suggests that this examination remains res integra, the measure has not been considered at length by any international legal forum like the WTO Panel, the DSB, or any international arbitration forum. However, it has been forthrightly stated and therefore concluded that any unilateral sanction beyond UN authorisation– without going into any subtle rules or any legal nuances–sanctions unless it confirms Chapter VII of the UN Charter is unlawful and hence illegal.

5.2. EU's Blocking Statute

When the US enacted the Helms-Burton Act which prohibited every third state from dealing with Cuba and restricted every kind of investment in Cuba by every third state making the then secondary boycotts controversial and challenged by the then EC in WTO the laws were however struck by the Supreme Court of the US as illegal and invalid making the EC withdraw the complaint, therefore, keeping the question of the legality of secondary sanctions inconclusive. This panel was established on the complaint that the EC was consequently suspended.[216]

Moreover, the EC labelled that law extraterritorial and in contravention of substantial provisions of GATT and GPA and came up with laws described as Blocking Statutes that later became unnecessary when the US decided to suspend the HBA.

Again in 2015, the United States pulled out of the nuclear agreement with Iran in further reimposing secondary sanctions like CAATSA. The European Union chose to respond within the bounds of international law, displaying the intention that it would remain in the JCPOA and fulfil the terms and prescribe and adopt the tool to circumvent this coercive secondary sanction imposed on other countries simultaneously with primary

[216] Supra note 212 at 11

sanctions on Iran. It declared that some U.S. sanctions, which had been reimposed, were unlawful. As a legal response, the EU revised its 1996 Blocking Regulation to act as a countermeasure under international law.[217]

In an effort to push back against the extraterritorial impact of U.S. secondary sanctions, the European Union brought a case against the United States at the WTO, arguing that the reach of the sanctions violated America's obligations under both GATT 1994 and the GATS. The dispute was put on hold in April 1997, when the U.S. and EU reached a series of informal agreements to shield European companies from the effects of the Helms-Burton Act. Since then, every U.S. president has consistently suspended Title III of the Act—not only in response to international criticism, but also out of concern that activating it would unleash a wave of lawsuits, overwhelming the U.S. court system.

This "transatlantic confrontation" between the EU and the US on the imposition of secondary sanctions is worth analysing as the then EC and now the EU have girded up their loins with legal intention and political will to confront these measures adopted by the US.[218] To fulfil the political wishes and foreign policy, the US has now and then resorted to these unilateral extraterritorial sanctions, which make inroads into the sovereignty of a third state that has done nothing wrong except that it refuses to be browbeaten and wants to uphold its trade and economic and, by extension, financial autonomy.

Nevertheless, it is worthwhile to bear in mind that, as we have seen earlier in Chapter 2, there is consensus among scholars in Europe and in the US alike, that secondary sanctions can be allowed by imposing on the third states those who are in trade with the state on whom primary sanction has been imposed exclusively on, exclusively on 'terrinational' grounds, on the combined basis of territorial and nationality jurisdiction."[219] This means they can be prevented from accessing the markets of the sanctioning state.

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[217] Government of Gibraltar, Further Mutual Legal Assistance Requests from the United States of America (Apr. 6, 2019), https://www.gibraltar.gov.gi/press-releases/further-mutual-legal-assistance-requests-from-the-united-states-of-america-6042019-5198.

[218] *Economic Sanctions in International Law and Practice* 72 (Masahiko Asada ed., Routledge 2019).

[219] Jeffrey A. Meyer, Second Thoughts on Secondary Sanctions, 30 *U. Pa. J. Int'l L.* 909 (2009).

Originally, blocking statutes were introduced to counter the negative impact of the extraterritorial enforcement of U.S. antitrust laws. Over time, however, their use expanded to address the challenges posed by U.S. secondary sanctions as well.[220]

It is also essential to assess the effectiveness of the EU's initiatives as countermeasures to neutralise the effects of US extraterritorial jurisdiction.

Like the EU, other third parties who are reeling under secondary sanctions, like India, Turkey, et. al, can consider adopting these measures to circumvent the effects of such sanctions, including challenging the legality of this arbitrary tool through legal statutes, as was done by the EU and also through legal forums.

Accordingly, we will first discuss the formulation, substance, and efficiency of legal enactments, such as the blocking statutes adopted by the EU in this era and the previous one of 1996. There are very few practical examples to consider in this area, with the main one being the European Union's response in 1996. At that time, the EU introduced the Blocking Statute as a countermeasure, understood in line with Article 49 of the Draft Articles on State Responsibility, to push back against U.S. sanctions laws that applied beyond its borders, especially targeting Cuba, Iran, and Libya. Therefore there is a prevalent opinion among the EU actors, when the previous trump administration stated that would not be suspending this time the effect of HBA which was going on since it originally came into effect, that HBA will reactivate in tandem with CAATSA, being extraterritorial, erodes the principle of non-intervention and runs counter of WTO rules, affects the interests of countries and corporates specifically the trade rights and commercial activities between Iran and the EU that strangulates the objectives and autonomy of the EU in particular and the other states affected by secondary sanction in general, for instance, India was directed by the US to stop its trade of oil purchase from Iran, which was cheap and expedient and in the interests of India.[221]

5.3. The Cornerstone of the EU's Blocking Statute

[220] *The Protection of Trading Interests (U.S. Cuban Assets Control Regulations) Order 1992*, SI 1992/2449 (UK); *The Extraterritorial U.S. Legislation (Sanctions Against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996*(UK).
[221] European Commission*, Explanatory Memorandum: Commission Delegated Regulation of 6.6.2018 Amending the Annex to Council Regulation No. 2271/96 of 22 November 1996.*

Now the critical questions should be considered holistically as to what constitutes blocking statues, some enumerating four actions under the general term are as follows:[222]

1. Any law passed through domestic parliament which explicitly and strictly prohibits the government in power to comply with secondary sanctions in order to ensure that there are no ugly compromises that hurt the economy and trade of the nation or any policy is made under the threat of any action taken by the sanctioning state against such third state. Those affected by the secondary sanctions must inform the government, which is the EC, in this context.[223]

   This means that individuals and companies in the EU are legally prohibited from following U.S. sanctions laws, even if refusing to do so puts them at risk of being targeted by U.S. sanctions.
2. The clauses should be expressly made part of that law that requires the government of the time not to recognise judgments and administrative actions that give effect to the sanctions. That means every member state of the EU or any third party that has enforced the Blocking Statute will not comply with the direction of the sanctioning state imposing secondary sanctions demanding extradition of an individual or private person employed by an entity reeling under the sanctions, who is accused of violating secondary sanctions. However, such a Blocking Statute will not be invoked within the EU. If an EU Member State makes the request, then the provisions of such statutes will not be invoked.[224]

   These measures, like that of the Blocking Statute, are not as effective as the first phase discussed in Chapter 2, as this generation of secondary sanctions, as this phase confers the US a carte blanche to confiscate or freeze the assets of the EU or any third party violating secondary sanctions that are situated in the US.

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[222] Charlotte Van Haute, Sara Nordin, and Genevra Forwood, "The Reincarnation of the EU Blocking Regulation: Putting Euro- pean Companies Between a Rock and a Hard Place," *Global Trade and Customs Journal*, Vol. 13, Nos. 11-12 (2018), p. 496.

[223] Art. 2 EU Blocking Statute 1996

[224] Baker McKenzie, Dutch Supreme Court Confirms That EU Blocking Regulation Does Not Prevent Extradition of Iranian National to the United States, *Global Sanctions and Export Controls Blog* (Apr. 22, 2020), https://sanctionsnews.bakermckenzie.com/dutch-supreme-court-confirms-that-eu-blocking-regulation-does-not-prevent-extradition-of-iranian-national-to-the-united-states.

3. Establish a "clawback"[225] cause of action to recover damages incurred for sanctions violations. This type of private enforcement, often called a 'clawback' right, is modelled after a similar provision in the UK's 1980 Protection of Trading Interests Act.[226] That law allowed a UK individual or company to recover any amount beyond actual compensation from the party who benefited from a U.S. court judgment. The aim was to push back against the extraterritorial reach of U.S. antitrust laws, especially when UK businesses were hit with excessive penalties like punitive or triple damages in American courts. Consequently, if those assets are located within the EU, this recovery could involve taking and selling off assets belonging to the individuals or companies concerned, or even those acting on their behalf. This might include shares in businesses established within the EU. The purpose of this clawback right was primarily seen as a counter to Title III of the Helms-Burton Act, which allows U.S. nationals to file lawsuits against anyone who is considered to be dealing in property that the Cuban government seized following the Cuban Revolution.

   However, for the clawback right to work in practice, the person making the claim must clearly show that the harm they suffered was directly caused by someone else following U.S. sanctions. Even then, this legal tool is far from a perfect solution. While an EU individual or business might be able to claim compensation, if they continue doing business with a country targeted by U.S. sanctions, they could still face penalties under those same U.S. rules.

   Despite the availability of the clawback clause, private actors have shown little interest in using it, and so far, no related cases have been publicly reported. There are several reasons behind this hesitation. For smaller and mid-sized companies, the high costs and time involved in pursuing legal action can be overwhelming.[227] Others may fear that taking such steps could damage valuable business relationships. Another key obstacle is that clawback claims are only practical if the defendant has assets within China; otherwise, enforcing a judgment abroad becomes extremely difficult. Any legal victory could be purely symbolic without the ability to enforce such rulings.[228]

[225] Art. 6 of EU Blocking Statute 1996
[226] ProtectionofTradingInterestsAct1980,s6.
[227] European Commission, Summary of the Results of the Open Public Consultation, ¶ 61, at 4.
[228] Kern Alexander, Economic Sanctions: Law and Public Policy 250 (Macmillan Palgrave 2009).

Therefore, when the US reinstituted secondary sanctions on Iran via CAATSA, when the US Administration chose to stop suspending Title III of the 1996 Helms-Burton Act, the European Union responded by saying it would explore every possible way to defend its legitimate interests. One of the key tools it turned to was the Blocking Statute. This law prevents judgments made by U.S. courts under the Helms-Burton Act from being enforced within the EU. It also gives EU companies targeted in U.S. lawsuits the right to seek compensation by taking legal action against the American claimants in EU courts.

5.4.The Global Financial Conundrum, which stymies Blocking Statutes

There is another factor that is the financial aspect, related to the sanctions which the we can use as leverage against any third state that displays the political will to sustain trade and commerce with the state under primary sanctions, in the scenario where the US can coerce SWIFT, a Belgian company used a financial messaging providers, although part of EU, from depriving messaging system in the transfer of money. An instance can be examined when a UNSC resolution number substantiates this argument. 1929 in 2010[229] was adopted when the EU agreed to acquiesce to the sanctions of the US on Iran, consequently EU raised the pressure in tandem with US through restrictive measures against Iran in 2012 as through regulation 267/2012 the EU proscribed SWIFT to provide its services to any third party who has any commercial transactions with Iran.[230]

The Trump Administration made it clear that SWIFT could face U.S. sanctions if it continued to offer financial messaging services to specific Iranian banks that had been blocked. As the most recent and impactful round of sanctions on Iran was implemented, SWIFT ultimately disconnected several Iranian banks from its network. The EC showed with the decision, calling it "regrettable."

Uncharacteristically of the EU, as it is the only bloc that has been vociferously criticised for this unilateral action of the US through countermeasures, it has continuously eschewed challenging the arbitrary measures imposed on the country by primary sanctions. The case in point is when the French raised this matter through diplomatic

[229] S.C. Res. 1929, U.N. Doc. S/RES/1929 (2010).
[230] Regulation (EU) No. 267/2012 of Mar. 23, 2012, repealing Regulation (EU) No. 961/2010, 2012 O.J. (L 88) 1 (EU).

channels when the US fined a French bank over $8bn.[231] They do not want a specific precedent as the EU employs these restrictive measures to enforce and materialise its politics through foreign policy. However, the EU decided to restrict EU-sanctioned Iranian banks in 2012 because those sanctions were UN-authorised, of which the US unilaterally withdrew, making it secondary sanctions.[232]

What makes the second phase of secondary sanctions more severe and costly is that in this new era of secondary sanctions, the existing financial system is used to cripple the trade of third states as the entire world trade is based in US dollars which the US can leverage by exploiting SWIFT messaging system, Which responsible for enabling international cross-border payments, found itself in a difficult position. It had to choose between following U.S. sanctions or respecting the rules laid out in the EU's Blocking Regulation. [233]

The pertinent question that the non-EU members and all those of the Asian region raised is why Belgium, an EU member, complies with the whimsical and impulsive acts of the US, wantonly demanding from those states who have done nothing wrong according to international law.

5.5. Nature of Blocking Statutes or Regulations

In legal terms, these blocking statutes come under the category of retorsions, i.e., unfriendly measures that cannot be said to be contrary to international rules or against countermeasures.[234] However, some scholars maintain that secondary sanctions meet all the essentials of countermeasures, as stated in Article 49 of the Draft Articles on State Responsibility.[235] Nonetheless, it is writ large and can be confidently concluded that blocking statutes or regulations are employed to negate the effects of secondary sanctions; therefore, their provisions cannot be said to be as internationally wrongful acts. Essentially, Blocking Statutes have the underlying object of persuading the

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[231] Ibid at 36

[232] *Council of the European Union, Council Conclusions on Iran, 3142d Foreign Affairs Council Meeting, ¶ 2 (Jan. 23, 2012).*

[233] EU Says SWIFT Decision on Iran Banks Regrettable, *Reuters* (Nov. 7, 2018), https://www.reuters.com/article/us-usa-iran-swift-commission/eu-says-swift-decision-on-iran-banks-regrettable-idUSKCN1NC1I1.

[234] Tom Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, in Research Handbook on UN Sanctions and International Law 11 (Larissa van den Herik ed., Edward Elgar 2017).

[235] Marta Sossai, *Legality of Extraterritorial Sanctions*, in Economic Sanctions in International Law and Practice 62, 69 (Masahiko Asada ed., Routledge 2019).

targeting state to change its course, or it is incumbent on the third state by sovereignty and economic autonomy to lawfully ward off its adverse effects, which are harmful for the commercial activities of that state.[236]

5.6. Reasons Which Make Blocking Statutes Ineffective

It always applies to the individuals who resides in third states hit by secondary sanctions and citizens of that state, in this particular context who are nationals of the EU Member State including corporate entities established or incorporated in the EU. [237] its application can be extended to the subsidiaries of such parent companies incorporated in the sanctioning state. It does not apply to local entities in partnership with such subsidiaries of parent companies, but strangely applies to EU nationals working for such affiliates.[238]

In effect the effectiveness of blocking statues of has been raised by many administrators in the EU and that of China as well,[239] stating that measures that were adopted during 1996 has become obsolete and needs to overhauled keeping the pace and demands of contemporary times especially the exploitative and arbitrary nature and misuse of that financial system wherein the US can abruptly stop any transaction or fine exorbitantly any bank flouting the secondary sanctions like it with the French bank.[240]

In 2021, the EU held a public consultation to hear from a range of stakeholders about how well the EU Blocking Regulation was working. One of the key takeaways from this process was that the regulation had largely failed to meet its primary goal—protecting EU businesses from sanctions imposed by countries beyond their borders and on third parties that have nothing to do with the sanctioning state.[241]

It is difficult to overlook the problems created by these Blocking Statutes for the private factors, and they are exposed to more trying predicaments. Most blocking statutes

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[236] Supra note 3 at 83
[237] Art. 11 of EU Blocking Statute 1996
[238] Genevra Forwood, Sara Nordin & Charlotte Van Haute, *The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place*, 13 Global Trade & Cust. J. 496, 499 (2018).
[239] Qingxiu Bu, *China's Blocking Mechanism: The Unreliable Entity List*, 19 J. Int'l Trade L. & Pol'y 159, 172 (2020).
[240] EU Says Block on U.S. Sanctions on Iran of Limited Use for EU Banks, *Reuters* (May 17, 2018), https://www.reuters.com.
[241] European Commission, *Amendment of the Blocking Statute – Summary of the Results of the Open Public Consultation on the Review of the Blocking Statute* 3 (Eur. Union 2021).

worldwide include rules that explicitly forbid companies and individuals from going along with U.S. sanctions that apply beyond American borders.[242] However, these rules have drawn criticism because they put businesses in a tough spot—if they follow the blocking statute, they risk breaking U.S. law, and if they follow U.S. sanctions, they could be violating local laws. This legal tug-of-war creates a real compliance dilemma for private actors caught in the middle.[243]

A prime example that can bring home the crossroads for private actors was witnessed in a case[244] wherein Bank Melli Iran (BMI), an Iranian bank operating a branch in Germany, had entered into a service agreement with Telekom Deutschland GmbH, under which Telekom agreed to provide various telecommunications services. However 2018, shortly after BMI was added to the U.S. Specially Designated Nationals and Blocked Persons (SDN) List, Telekom abruptly informed the bank that it was ending the contract immediately. In response, BMI took legal action, arguing that Telekom's decision to cut ties breached Article 5 of the EU Blocking Regulation, which prohibits EU companies from complying with certain foreign sanctions.[245]

5.7. Assailing secondary sanctions in judicial forums

Having examined the effectiveness of blocking statutes of the EU, we will now investigate what anti-tool can be resorted to by third parties if they are affected by, or restricted by the US to deal with, for the time being, under CAATSA or HBA, secondary sanctions. The EU scholars and policy makers argue that it is expedient and beneficial that the third parties hit by secondary sanctions initiate proceedings challenging the propriety of sanctions in US Courts given the fact that when the US forbade state entities to purchase goods and commodities from Myanmar that practices with which such goods were manufactured violated human rights, this law was held invalid by the US Supreme Court.[246]

In a well-reasoned verdict the Supreme Court referred to international dispute in which the US was embroiled in consequence of such Act, alluding that international actors

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[242] Supra note 240 at 166–7;
[243] Daniel Meagher, *Caught in the Economic Crossfires: Secondary Sanctions, Blocking Regulations, and the American Sanctions Regime*, 89 Fordham L. Rev. 999, 1016–17 (2020).
[244] Bank Melli Iran v. Telekom Deutschland GmbH, Case C-124/20, EU:C:2021:1035 (CJEU Dec. 16, 2021).
[245] Ibid 50 pg 166
[246] Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000).

like EC and Japan had dragged the US in the DSB of WTO via formal complaint on the ground that state act violated the GPA as the we sign GPA, hence this was based on the obligation which US has incurred due to treaties or under WTO trade rules and not because of the breach of international customary law.[247]

There are however many impediments which needs to be delve into to make sure that such unilateral actions of the US is challenged adequately under various proper laws and on concrete grounds, for instance it is no longer res integra that treaties consists of part of supreme law of the land therefore it is not mechanically enforceable in US courts.[248]

Another hurdle that the third parties like states or its corporate entities or individuals in commercial intercourse with targeted state of primary sanctions aggrieved by secondary sanctions has no locus standi to initiate proceedings in US courts stating that such autonomous act by federal government or its agencies violates WTO agreements, rules or for that matter general international law. Only a US citizen can assail that act.[249]

Yet another obstacle worth analysing is that a later-in-time rule or a subsequent law passed by the federal government will prevail over an earlier treaty, even if the treaty stipulates self-executing provisions.[250] The position of law in this regard is categorical wherein the US sanctioned a bank of Iran through Terrorism Risk Insurance Act (TRIA) in the judgement the court of New York unambiguously held that 'to the extent that [Terrorism Risk Insurance Act (TRIA)] § 201(a) may conflict with Article III(1) of the [Iran-US] Treaty of Amity', the TRIA would 'trump' the Treaty of Amity.[251]

The piquant question which arises now after examining all these scenarios creating myriad of impediments to a sanction challenged in US domestic courts yet the administrators encouraged to take the issue to the US judiciary is nothing but a misgiving that something positive would come of it or are there any other distinctive factors which can be resorted to in an expectation that the effects of secondary sanctions can be neutralised ensuring global trade order.

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[247] Supra note 3 at 66
[248] C.A. Bradley, International Law and the U.S. Legal System 41 (2d ed. Oxford Univ. Press 2015).
[249] J.C. Barcelo III, *The Status of WTO Rules in U.S. Law,* Cornell Law Sch. Research Paper No. 06-004, at 3–5 (2006).
[250] Bradley, International Law and the U.S. Legal System,52–54
[251] Breard v. Greene, 523US 371, 376(1998)

Conceivably, there are two precepts laid down by US courts which induces aggrieved parties to the US courts—in the hope that it or they secures justice and helps them maintaining commercial activities with targeted states as they have not infringed any rule or law of neither international law nor WTO trade rules—are Charming Betsy presumption and Presumption against extraterritoriality.

The *Charming Betsy* principle holds that, wherever possible, U.S. laws should be interpreted in a way that does not conflict with international law.[252] In the context at hand, this canon could support reading American statutes in a manner that respects the established limits on jurisdiction recognized under customary international law, as explored in Part III.[253] Similarly, the presumption against extraterritoriality provides that, unless Congress clearly states otherwise, a law is presumed to apply only within the United States and not beyond its borders.[254]

Following the Morrison ruling, there has been commentary suggesting that U.S. laws with extraterritorial reach are increasingly losing their bite—amounting, in some views, to little more than symbolic gestures without real enforcement power.[255]

In the unusual case of United States v. Reza Zarrab[256], a private individual challenged the reach of U.S. secondary sanctions, arguing they should not apply extraterritorially based on the legal presumption against such application. However, U.S. courts often sidestep this issue by interpreting "territoriality" broadly. Notably, there is a substantial body of case law supporting the idea that intentionally and repeatedly routing U.S. dollars through American bank accounts—even via correspondent banks—creates a strong enough connection to justify U.S. jurisdiction. Courts have also consistently held that asserting personal jurisdiction on these grounds does not violate constitutional due process protections.[257]

As established in the U.S. Supreme Court's Paquete Habana decision[258], American courts will enforce a statute that Congress has explicitly intended to apply beyond U.S.

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[252] Michael Jacobson & Stephen Finan, The Charming Betsy Canon: Time to Ride the Tide of Loper Bright, *Harv. L. Rev.* (Mar. 28, 2025).
[253] Supra note 250 at 18
[254] Morrison v. Nat'l Australia Bank, 561 U.S. 247, 6 (2010).
[255] S.B. Burbank, 'International Civil Litigation in U.S. Courts: Becoming a Paper Tiger?' 33 *U. Pa. J. Int'l L.* 663 (2012).
[256] 3d 118 (2d Cir. 2020).
[257] United States v Budovsky2015WL5602853(SDNY2015)
[258] 175 US 677 (1900)

borders—even if doing so goes against customary international law. When Congress's intent is clear, it takes precedence, even at the expense of international norms.[259] The same holds true if an Executive Order were to be in tension with customary international law.[260] To put it simply after analysing the legislation, case studies and Executive order, that there are multi-fold impediments which is created by the US congress for those who wants to seek justice from US domestic courts, even if the US domestic courts favours the third party caught in crossfire between sanctioning and sanctioned state, no law prevent the legislative or executive branch of the US state from amending the instrument in order to keep the fiat of unilateral extra-territorial sanctions intact beyond its jurisdiction. In the end, the above considerations suggest that recourse to the US judicial system is unlikely to result in a major overhaul of US secondary sanctions.

That's not to suggest that challenging jurisdiction in U.S. courts is a futile exercise. In fact, there's a glimmer of hope in the U.S. Supreme Court's 2018 decision in Jesner v. Arab Bank.[261]

In that case, the Court considered a lawsuit tried on the alleged violation of Alien Tort Statute (ATS) against a Jordanian bank. The plaintiffs alleged that the bank had facilitated financial transactions benefiting terrorists by using its New York branch to process dollar-denominated payments through the Clearing House Interbank Payments System (CHIPS). In Jesner, the Supreme Court examined how far private individuals can rely on the Alien Tort Statute to seek compensation in U.S. courts for breaches of international law. In contrast, U.S. secondary sanctions are closely tied to the country's foreign policy objectives. Because of this connection, courts may be more inclined to show deference, especially when national security or diplomatic interests are at stake.

5.8. Challenging Secondary Sanctions at International Forums; ICJ

As we have tried to analyse and made a case that secondary sanctions may be violating multifarious laws like WTO rules or agreements, bilateral or multilateral treaties to which any nation imposing secondary sanctions is a party. Like we have discussed the provisions of Article XXVI (2) of the IMF articles of agreement , which provides if a

[259] Supra note 250 at 188
[260] Supra note 250 at 167
[261] Jesner v. Arab Bank, PLC, 138 S. Ct. 1386, 200 L. Ed. 2d 612 (2018).

party fails to meet out the conditions laid down in the Agreement will be declared ineligible to use the general sources of the IMF. But again this law remains emaciated without any sanction as there is no binding DSB to enforce this provision.

If a dispute occurs in multilateral setting, the aggrieved party can made reference to the Dispute Settlement Mechanism (DSM) provided for in the WTO Dispute Settlement Understanding. [262]

Any secondary sanction invoked on the ground of security exceptions if mala-fide and bogus can be challenged through an advisory procedure from the ICJ pursuant to article 96 of the UN Charter and article 65 of the ICJ Statute.[263]

5.9. China's Blocking Statutes–with special reference to Private Parties

Apart from EU that has rejuvenated its Blocking Statute which was originally introduced in 1996 as a counteraction of HBA, there are other states like China that has come with various measures like that of Blocking Statutes of their own under domestic law, the chief purpose of these Statutes are to protect and preserve the interests of private actors as opposed to that of states, that objective as we have already discussed seems to be far-off goal owing to multiple reason. Yet it is advisable to take a look of these countermeasures adopted by the Chinese.

China's blocking statutes may have been introduced as a response to rising tensions with the United States, but in practice, they focus less on state-level confrontation and more on regulating the conduct of private individuals and businesses. In effect, private actors have found themselves caught in the middle of geopolitical disputes they didn't choose to be part of. As a result, it's these businesses and individuals—not governments—who bear the brunt of the legal and practical consequences when these laws are enforced. However like EU Blocking Statutes it is again categorised as nothing but a paper tiger brought about for the benefits of the targeted country which may leave the private businesses in the lurch.[264]

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[262] WTO Secretariat, A Handbook on the WTO Dispute Settlement System (CUP 2017).
[263] 'Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba, G.A. Res. 73/8, U.N. Doc. A/RES/73/8 (Nov. 1, 2018).
[264] Mathias Audit & Jürgen Basedow, 'Blocking Statutes,' in *Encyclopedia of Private International Law* 209, 214 (Jürgen Basedow et al. eds., Edward Elgar Publ'g 2017).

In a most recent development the National People's Congress of China has enforced three Blocking statutes—that has always relied on diplomatic protests relied on an unheard-of domestic legal mechanisms— enacted Anti-Foreign Sanctions Law (AFS). U.S. secondary sanctions often reach far beyond American borders. They can affect individuals and companies outside the U.S. simply for doing business with entities or countries that Washington has placed under sanctions. Lately, more and more Chinese firms have come under sanctions due to their business ties with countries like Russia, Iran, and North Korea. Case in point is when Zhongxing Telecommunications Equipment Corporation (ZTE), one of China's major tech firms, faced a historic penalty of $1.19 billion after it was found to have violated U.S. sanctions by conducting business with Iran. The fine, one of the largest ever imposed in such a case, underscored the serious consequences of breaching U.S. export controls and highlighted the growing reach of American sanctions enforcement on global companies.[265]

The pertinent strategy which China has adopted is to be taken into account to protect the interests of individuals or private actors in commercial activities with the sanctioned state firstly is to screen the discovery of evidence which can adduced by the US in domestic courts against such private actors who are allegedly flouting the operation of secondary sanctions to that effect China has made amendments in some laws like State Secrets Law, the Data Security Law, and the Personal Information Privacy Law.[266] Therefore forcing China to take its tack and methodology to make the Blocking Statutes more robust and effective.

5.10. Other Measures which can be adopted

After discussing the failure of desired result to be achieved by the implementation of Blocking Statutes which was to hamper the effects of secondary sanctions. it felt like using swords in close quarters. Having discussed many cases in which private actors within EU and China may be more affected as they always have the apprehension not all the EU members will be risking the wrath of the US. To put it simply the Blocking Statutes though a great measure adopted during the first leg of 1990s has largely proved to be lacking in effectiveness to curtail the affects of US secondary sanctions.[267]

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[265] USA v. ZTE Corp., No. 3:17-CR-0120-K (N.D. Tex. 2017).
[266] Guiqiang Liu, A Critical Appraisal on China's Blocking Statutes from a Private Actor's Perspective, 1 *Chi. J. Transnat'l L.* 154, 156 (2024).
[267] Supra note 3 at 99

In the wake of failure of the only remedy which was devised by the EU later followed by every other bloc which has a huge market of manufacturing so that they are deprived of potential buyers in this case third sates or private actors living in them or businesses other non-judicial responses to US secondary sanctions may have to be explored.

One such measure was possible for anyone forced to disengage their trade from the sanctioned state so that EU Member States could take a firmer position within the International Monetary Fund (IMF), pushing back against the use of secondary sanctions that disrupt international payment systems.

Given the fact that the Appellate Body of the WTO is staring at its eventual demise[268], other legal responses are almost futile and unproductive. There is a growing view that all the possible reactions to the menace of secondary sanctions are political.

These political measures generally come with a zero-sum game, which can be harsher in the face of which secondary sanction seems trivial. For instance countries deliberated a move to swap the dollar based trade into another currency in internationals transactions like once EU thought of changing it with Euros, there was a discussion of transitioning it with yuan or more recently BRICS were deliberating on changing it with some others currency but due to political apprehensions or lack of political each time this idea has been dropped. This wave of changing dollars for another currency to be used for international trade is christened as the de-dollarisation campaign as nations feel that the US use this US financial system unduly to its interests, harming other innocent buyers for its political interests or to browbeat neutral nations to win them as allies.[269]

5.11. De-Dollarisation: Swapping the Dollar for Another Currency

This suggestion is oft-repeated especially in the second phase of secondary sanctions remarkably this leg of sanctions are more lethal and wreaking havoc on unprecedented degrees, owing to the fact that dollars and the global financial system is being exploited to further the political aspirations of the US disregarding global trade rules and international customary laws, worldwide industry and supply chains if not given undivided focus might result in humanitarian crisis and health services.[270]

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[268] Garima Deepak, WTO Dispute Settlement – The Road Ahead, 54 *N.Y.U. J. Int'l L. & Pol.* 981 (2022).
[269] Id
[270] Id

Euro Prodded Up

The call for unseating the dollar as a global reserve currency and adopting Euros or Yuan to save the economy that used to serve the interests of the US in order to keep its hegemonic interests intact has been reverberating for a long time now.[271]

The euro has already become the world's second most important currency. Recent consultations by the European Commission highlight that it's the only real contender with all the key qualities needed to serve as a global currency, and a credible alternative to the US dollar in the eyes of market participants.[272]

Despite all these promising factors, the Euro faces weaknesses in many regards, especially in the energy sector, where the position of the dollar is unparalleled. The reality is that even EU member states buy almost all of their oil in dollars.[273]

India-Rial Set Up

Therefore this dissatisfaction is not only among those powerful poles like US-China or US-Russian but also among the quarters of those significant developing countries powers like India, when Ambassador of Iran to India expressed the willingness to supply oil and gas for rupees- rial trade, herein it is necessary to contemplate these kind of discussion in line irrespective of the fact whether it materialises or falls with whimper.[274] It is pretty plain that there is a general dislike of this tampering of the global financial system, as there are no rules and laws to this effect. This is sheer power politics with impunity, without any lawful remedy.

Another instance with regard to India buying oil from Iran was stopped due to the revival of secondary sanctions on Iran following the withdrawal of the US from the JCPOA.[275] As the US declined to extend the waiver for buying any more oil from Iran and was threatened with sanctions if it purchased more oi from oil.[276] Just a couple of

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[271] Drashti Patwa & Anirud Chathanath, The U.S. Dollar: A Declining Currency?, 4 *Int'l J. Legal Sci. & Innovation* 3 (2022).
[272] European Commission, *Commission Staff Working Document – Strengthening the International Role of the Euro: Results of the Consultations,* Doc. No. SWD(2019) 600 final (June 12, 2019).
[273] Geranmayeh and Lafont Rapnouil, 'Meeting the Challenge of Secondary Sanctions', 79
[274] Iran ready to launch rupee-rial trade to supply oil and gas to India, says envoy <https://www.deccanherald.com/world/iran-ready-to-launch-rupee-rial-trade-to-supply-oil-and-gas-to-india-says-envoy-1092463.html>
[275] Kabir Taneja, *Did India Need to Stop Buying Oil from Iran?* (Observer Research Foundation, Feb. 27, 2023), https://www.orfonline.org/expert-speak/did-india-need-to-stop-buying-oil-from-iran.
[276] id

days ago as the author is writing this piece down the US has sanctioned four Indian firms accusing them of buying oil from Iran.[277] Again, when India began to purchase oil from Russia, including Saudi Arabia and Iran, after it was coerced to stop purchasing it from Iran, it is to be noted India was buying oil in Indian Rupees.

China-KSA Yuan Oil Deal

There is another instance which needs a consideration in order to ponder the dislike of US tactics tinkering with global financial system which is forcing countries one after another to start having commercial transaction in another currency as they know their transactions can be halted at the single message given by the SWIFT to the US or their assets can be frozen if they have in the US.

In November 2023, the banks in China and KSA signed a local currency swap agreement worth 50 billion yuan (approximately US$7 billion), valid for three years. This arrangement aims to strengthen financial cooperation and promote the use of local currencies in trade and investment between the two nations. [278]

India-Rouble set up

The Russian initially asked India to keep the trade going on in national currencies however a certain point it declined to take Rupee as currency stating that Russia has accumulated billions of rupees in Indian banks which it can't use, as Russians was not buying much commodities from India and rupee is not convertible.[279]

Cryptocurrencies

One of the prominent reasons for which the countries started using their own national currencies was to stay away[280] from dollars exploitation has now displayed interests in adopting crypto as a means for international trade which is almost impossible to

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[277] US sanctions UAE-based Indian national, his four firms for over alleged involvement in Iran's oil trade, the Indian Express, 13 April 2025

[278] China and Saudi Arabia Sign Currency Swap Worth $7 Billion https://www.bloomberg.com/news/articles/2023-11-20/chinese-saudi-central-banks-sign-currency-swap-worth-7-billion?utm_source=chatgpt.com

[279] Russia says it has billions of Indian rupees that it can't use Read more at: https://economictimes.indiatimes.com/news/international/world-news/russia-says-it-has-billions-of-indian-rupees-that-it-cant use/articleshow/100016953.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[280] M Lester, 'Venezuela Converts Airport Taxes into Bitcoin to Evade US Sanctions' (EU Sanctions, 30 July 2019) <www.europeansanctions.com/2019/07/venezuela-converts-airport-taxes-into-bitcoin-to-evade-us-sanctions/>.

discover and easy to escape the secondary sanctions.[281] in view of this spite towards US dollar exploitation some economist and legal experts gave a caveat that inordinate use of secondary sanctions is harm inflicted by the US itself upon its future in the long run. US Department of the Treasury, Secretary Lew argue that, "…*If foreign jurisdictions and companies feel that we will deploy sanctions without sufficient justification or for inappropriate reasons—secondary sanctions in particular—we should not be surprised if they look for ways to avoid doing business in the United States or in U.S. dollars*".[282]

5.12. Special Purpose Vehicle (SPV)—INSTEX

An SPV is a legal or financial entity created for a specific, narrow purpose—often to isolate financial risk. It facilitates financial transactions and maintain trade between third countries and US sanctions targets.

In 2019, three EU Member States, UK, France and Germany created a special SPV wherein the third state party and sanctioned state can trade through bartering of commodities between Iran EU corporations without direct financial transactions being detected by the US or without using US dollars. The mechanism which is employed in the INSTEX is that the business corporation will receive for the good gave to Iranian from the EU funds in the EU and same kind of payment will be conducted for the Iran businesses in Iran.

However, the success of INSTEX was gauged by the scholars as nothing but zilch[283]. It cannot be overlooked that these measures are political in nature and resorted to by the third states persevering to sustain in financial and economic autonomy in the face of arbitrary unilateral sanctions. So the measure worked properly initially but the EU slackened in political will because of geo-politics. Another apprehension which looms large with EU business corporations is that the US may prevent the access to such

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[281] Summer Wright, *The Evolution of Sanctions Evasion: How Cryptocurrency Is the New Game in Evading Sanctions and How to Stop It*, 19 Int'l J.L., Ethics & Tech. 11 ([2025]), https://www.ijlet.org/wp-content/uploads/2025/01/3.1.1.pdf.

[282] U.S. Treasury Secretary Jacob J. Lew on the Evolution of Sanctions and Lessons for the Future, Carnegie Endowment for International Peace (Mar. 2016), https://carnegieendowment.org/events/2016/03/us-treasury-secretary-jacob-j-lew-on-the-evolution-of-sanctions-and-lessons-for-the-future?lang=en.

[283] Riccardo Alcaro, *Weathering the Geopolitical Storms: The Ever-Elusive Success of EU Policy towards Iran*, 98–119 (Nov. 6, 2023) (Taylor & Francis Online).

corporations or private actors and EU Members states on the ground that they are in facilitating activities with Iran bypassing the sanctions on Iran.[284]

Following the lead China has devised its own system to circumvent the impact of secondary sanctions, it cannot be said to be exact specimen. China created the Cross-Border Interbank Payment System (CIPS) , which was launched in 2015 and it is China's alternative to the SWIFT payment system. It facilitates the clearing and settlement of cross-border RMB transactions, thereby reducing dependence on Western-dominated financial messaging systems.

5.13. Conclusion

The compartmentalisation made by the scholars between phases or generations within the secondary sanctions was owing to the fact, especially to check the effectiveness of retorsion, as in this case is Blocking Statutes or Regulations to neutralise or stymy the effects of harm or damage suffered by third states in the wake of secondary sanctions. the second phase is essentially considered as more severe, wanton and destructive as it allows the US to exploit global financial system due to the reason primarily that everything is being sold in the US Dollars making the US connected with each single transaction. Moreover companied like SWIFT, a messaging entity gave in to the coercion of the US if they fail to intimate the US about the transactions being entered into by the country imposed by the primary sanctions and the third state or any private player dealing with such state.[285] Therefore, rendering the Blocking Statute more like an emaciated skeleton or stillborn child.

So far, authorities in EU Member States haven't launched any public enforcement actions under the Blocking Statute. One major obstacle is the challenge of proving causation—specifically, whether a company pulled out of a business relationship because of U.S. secondary sanctions or simply for commercial reasons. This grey area makes enforcement tricky. Like EU China has also introduced three blocking statutes between 2019 and 2021 as it is under primary sanctions showing the will to protect third parties or private who is in trade relations with China which is in itself currently under

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[284] Eliot Geranmayeh & Esfandyar Batmanghelidj, *Bankless Task: Can Europe Stay Connected to Iran?* (European Council on Foreign Relations Oct. 10, 2018)

[285] Marcel Gernert, *Blocking Statutes: Private Individuals Entangled in Interstate Conflicts*, in Blurry Boundaries of Public and Private International Law: Towards Convergence or Divergent Still? 197, 213 (Poomintr Sooksripaisarnkit & Dharmita Prasad eds., Springer 2022).

primary sanctions manifested sincerity to protect the interests of private actors. The effectiveness of blocking regime has to be seen as to how these laws would fair in the protect of trade autonomy of individuals. China's blocking statutes share many similarities with the EU Blocking Regulation. The additional mechanism which becomes part of these statutes seems to be problematic and cumbersome as per scholars which will lead to legal uncertainty, risk of exposure to conflicting legal obligations, and increased complexity in private dispute resolution.

Even if EU governments were to step up enforcement efforts, that alone might not be enough to change corporate behavior. Many businesses still see U.S. sanctions as the greater risk, given how severe the consequences can be for non-compliance with American law. In contrast, the penalties under the EU's Blocking Statute are often viewed as less threatening.

The EU member states in order to address the shortcomings could bolster their enforcement mechanisms by dedicating more resources to their regulatory bodies and increasing the financial penalties for violations.

The case of discussed in this chapter in the Netherlands highlights how courts can enforce the Blocking Statute's prohibiting member states and allies on complying with U.S. sanctions. In this instance, the court ordered parties to uphold their contractual obligations, even though doing so could potentially lead to exposure to U.S. secondary sanctions.

Also third parties can create financial workarounds— such as INSTEX, the special payment system Europe designed to keep trading with Iran. Nonetheless the note is to be taken is that these alternatives exist, their real-world effectiveness remains questionable and largely inefficacious. Legal battles can drag on for years, workarounds often lack muscle, and at the end of the day, many businesses still choose compliance over confrontation when faced with the might of the U.S. financial system.

When we talk about de-dollarisation, it's easy to assume the U.S. dollar will always reign supreme—after all, the U.S. is still the world's largest economy. But history tells us that dominant currencies don't last forever. The Dutch guilder was the global standard during 17th and 18th centuries prior to the use of Spanish dollar. Later, the British pound sterling held the top spot from about 1860 until the early 20th century. In each of these transitions, the leading country's grip on international banking and

investment was a major factor. But just as important were the ways financial systems were used—or misused—on the global stage.

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CHAPTER 6

CONCLUSIONS, SHORTCOMINGS, AND SUGGESTIONS

6.1. Introduction

The increasing use of secondary sanctions started again after a brief period in 1996, which was also suspended by the US when the EU took the issue to the Dispute Settlement Body of the WTO, making the issue undecided about its legality. Therefore, the issue of the legality of secondary sanctions has never been given a quietus. Indubitably, it is a political tool of economic coercion that has become a prominent feature of global geopolitics, marking a significant shift in the international legal and economic order. The original intention of the economic sanctions was salutary, which was to coerce wrongful actions of the state in a consensual manner, and also to eschew military conflagration. Historically, states have used sanctions to express disapproval or induce behavioural change in other states. However, the post–Cold War era, and more sharply the 21st century, has witnessed the rise of secondary sanctions—a form of extraterritorial enforcement by which states, mighty ones like the United States, penalise third-party actors for engaging with sanctioned jurisdictions.

The distinguishing feature between primary and secondary sanctions is that the former engages only two parties the sanctioning and the sanctioned state, while the latter, which is why it is problematic, no longer are sanctions solely directed at their primary targets; now, companies, banks, and even humanitarian organisations in entirely unrelated countries are implicated. The endless use of secondary sanctions has raised the alarm bells regarding the legality of secondary sanctions and the structural stability of the international trade and legal systems.

In earlier chapters, this dissertation has discussed at length the normative and legal tensions that secondary sanctions generate. At the heart of the critique lies the issue of legality under customary international law, wherein it was discussed that the principle of non-intervention[286], and reaffirmed by the ICJ in multiple decisions,

[286] Article 2(7) of the UN Charter

directly contradicts the unilateral imposition of economic constraints on entities outside the sanctioning state's jurisdiction.[287]

Secondary sanctions infringe on equality by undermining the economic autonomy of third-party states and undermining the international legal order, which is founded on consensus and equal treatment among states.[288]

Moreover, these sanctions have created a parallel regime to multilateral trade rules**.** Under World Trade Organisation (WTO) law, the use of coercive economic measures outside the agreed exceptions of Articles XX and XXI of the GATT raises fundamental questions. Secondary sanctions violate core WTO principles such as non-discrimination (MFN treatment) **,** market access**,** freedom of transit, and Article X:1 (transparency). In services, Mode 4 commitments and market access under GATS Article XVI may also be affected, and the exceptions for national security are being invoked in ways that stretch the letter and spirit of the agreements. Even where bilateral or regional trade agreements are in place, secondary sanctions often override treaty obligations, putting states in the impossible position of choosing between breaching international commitments or facing punitive consequences from a dominant power.[289]

The economic disruption caused by such measures extends well beyond sanctioned states. Secondary sanctions have had a chilling effect on global trade and financial institutions, particularly by fostering over-compliance and risk aversion among banks, insurers, and logistics firms. This has had the unintended (or perhaps, quietly intended) effect of fragmenting global supply chains, distorting investment flows, and eroding the neutrality of financial platforms such as SWIFT**,** which has been used not just as an infrastructure but as a weapon of policy. The IMF has long advocated for a stable and predictable financial architecture—yet it lacks the authority and mandate to discipline or counteract such unilateral extraterritorial measures, even when they produce destabilising macroeconomic consequences for entire regions.

The humanitarian consequences of secondary sanctions are perhaps the most disturbing aspect, particularly in fragile states already beset by conflict or poverty. As explored through the case studies of Iran, Iraq, Cuba, and Myanmar, the indirect targeting of

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[287] *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits*, 1986 I.C.J. 14, ¶ 202 (June 27).

[288] *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Merits*, 2005 I.C.J. 168, ¶¶ 161–165 (Dec. 19).

[289] Supra note 3 at 6

civilian populations—by impeding access to medicines, electricity, food imports, or financial transactions related to humanitarian aid—creates a dual-layer of harm. First, it deepens the suffering of those already at risk. Second, it discourages humanitarian actors from intervening due to the fear of legal or financial penalties. These effects arguably violate not only international human rights obligations, such as those enshrined in the ICESCR, but also international humanitarian law (IHL) in situations of conflict or occupation.

The international response to secondary sanctions has been fragmented and cautious, though increasingly vocal. A growing number of states, especially within the Global South, have protested the extraterritorial nature of such sanctions as a form of economic coercion. Instruments like the EU Blocking Statute, bilateral countermeasures, and third-party treaty-based claims represent non-judicial avenues through which states attempt to resist compliance. However, their success has been limited by the global dominance of US-based financial systems and the difficulty of establishing effective legal remedies in international tribunals.

Judicial avenues remain largely underexplored but potentially significant. There is growing debate about whether affected states could challenge secondary sanctions before the International Court of Justice (ICJ) on the grounds of unlawful coercion or violation of sovereign equality.

The WTO dispute settlement system, even though it's facing serious challenges right now, has still set some important examples of how to tell the difference between genuine trade regulations and those that are really just disguised barriers. That said, political realities often hold countries back from taking action—especially when the target is a powerful state with significant influence both legally and economically. Many hesitate to challenge these major players, knowing the risks and pressures involved.

6.2. Findings

A. Finding 1: Legality of Secondary Sanctions under International Law

Secondary sanctions are completely different from primary sanctions in both their legal basis and extraterritorial reach. Primary sanctions are imposed directly against a target state or its nationals, typically restricting access to the sanctioning state's own markets, financial systems, or jurisdiction. These are generally regarded as lawful exercises of a state's sovereign rights under customary international law, provided they remain within

its jurisdictional boundaries. States are free, under international law, to control trade, investment, and financial interactions within their territory.

By contrast, secondary sanctions seek to penalise third-country entities for engaging with a primary sanctions target, even where those activities lack a substantial territorial nexus to the sanctioning state. This extraterritorial application raises serious legal concerns. While denying access to the sanctioning state's domestic economy does not violate international law per se, the coercive targeting of foreign companies for actions taken entirely outside the sanctioning state's jurisdiction—such as engaging in lawful trade with a sanctioned state—may violate several treaty-based obligations.

Secondary sanctions may contravene WTO law, particularly Article XI:1 of the GATT, which prohibits quantitative restrictions, and commitments under GATS Mode 4. They may also breach Bilateral Investment Treaties (BITs) and Friendship, Commerce and Navigation (FCN) Treaties, where protected investments are affected. While many of these treaties contain security exceptions, recent[290] WTO and ICJ jurisprudence has clarified that such exceptions are subject to judicial review and must meet necessity and good faith standards.

Notably, sanctions adopted under Chapter VII of the UN Charter—typically via Security Council resolutions—are considered lawful and binding on all UN member states. These differ categorically from unilateral secondary sanctions, as they derive their legitimacy from the collective security mechanism under international law. Hence, secondary sanctions lacking UN mandate remain controversial and are often challenged as unlawful exercises of extraterritorial jurisdiction.

B. Finding 2: Secondary Sanctions and International Investment Law — Security Exceptions

Secondary sanctions pose complex challenges under international investment law, discouraging investors from investments and also to WTO agreements, notably when states invoke security exceptions to justify extraterritorial coercion. The groundbreaking WTO case Russia—Measures Concerning Traffic in Transit, arising from the Ukraine conflict, providing extraordinary curtailment and guidance to such exceptions. This case was launched by Ukraine against the Russian Federation, marked

[290] *Panel Report, Russia—Measures Concerning Traffic in Transit, WTO Doc. WT/DS512/R (adopted Apr. 26, 2019).*

the first instance where a WTO panel examined the justiciability of the security exception clause.

In this dispute, Russia restricted transit of goods citing Article XXI(b)(iii) of the GATT 1994—the security exception—to protect its essential security interests. The WTO Panel rejected a purely self-judging approach and *held that the invocation of security exceptions is subject to judicial review under a "good faith" standard,* requiring a genuine nexus to a time of war or emergency in international relations.

In effect, this reasoning shackles the indiscriminate and unwarranted use of security exceptions to justify secondary sanctions, which often affect foreign investors with no connections to the sanctioning state whatsoever. Such sanctions may violate substantive obligations under Bilateral Investment Treaties (BITs), including the principles of fair and equitable treatment, non-discrimination, and protection against unlawful or indirect expropriation. Likewise, they may contravene WTO rules beyond the security exception as discussed above.

Legal remedies for aggrieved investors and states exist through Investor-State Dispute Settlement (ISDS) under BITs and dispute settlement mechanisms within the WTO framework. However, invoking the security exception is a common defense, though—as the Russia Transit case confirms—this defense must be exercised transparently and in good faith and must be examined on the ground of malice and bad faith.

In conclusion, secondary sanctions that misuse security exceptions risk breaching international investment and trade law, exposing sanctioning states to arbitration claims and WTO disputes. This irresponsible and arbitrary course of action will eventually derail the time-tested trade system; therefore, effective legal challenges require careful judicial scrutiny of the security rationale, reaffirming that unilateral sanctions cannot override established treaty protections without legitimate, verifiable security concerns.

C. Finding 3: Responses that the Affected States can Adopt

Judicial Remedies

States targeted by secondary sanctions can pursue remedies under trade, investment, and monetary legal regimes. Under the WTO framework, secondary sanctions may breach GATT and commitments under GATS, particularly regarding cross-border services and financial transactions. While the WTO allows invocation of the security

exception, its justiciability is subject to good faith review. Additionally, investors affected by such sanctions may bring claims under Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) containing investment chapters, invoking unlawful expropriation, denial of fair and equitable treatment, or discriminatory restrictions. Furthermore, IMF Articles of Agreement permit certain payment restrictions for security reasons provided that is properly notified and not opposed. Yet the IMF's tacit approval often undermines scrutiny, *that is something to remedy, suggesting a gap in enforceability* under international monetary law.

Non-Judicial Measures

Apart from judicial action, affected states have adopted non-judicial responses with varying success. The EU's Blocking Statute, intended to counteract U.S. extraterritorial enforcement, remains weak due to fragmented enforcement and fear of retaliatory sanctions. The INSTEX mechanism, developed to bypass the U.S. financial system in Iran-related trade, collapsed due to overcompliance, fear of U.S. reprisals, and its limitation to humanitarian trade. Similarly, China's Cross-Border Interbank Payment System (CIPS) and digital yuan initiatives aim to decouple from U.S. dollar-based clearing systems but are still underdeveloped. A more cohesive response could involve creating a multilateral investment and monetary coordination body, promoting lawful countermeasures, and advocating institutional reform at the WTO, IMF, and ICSID levels.

D. Finding 4- Need for Modification

The legality of secondary sanctions remains unresolved within the WTO framework. A definitive ruling is needed to assess whether such sanctions breach GATT, WTO Trade rules, investment laws like BITs et al. or other WTO agreements or monetary laws.

The EU challenged the Helms-Burton Act (DS38) in 1996, asserting that it imposed extraterritorial restrictions incompatible with WTO law. The EU, nevertheless, left the issue in between by withdrawing the complaint following political negotiations with the United States. The absence of judicial resolution bolsters the member states' use of them with impunity, wreaking havoc on world trade, the international monetary system, and the humanitarian aspects connected to it.

Non-judicial responses like INSTEX attempted to facilitate trade with Iran outside U.S. financial channels. However, INSTEX failed due to limited participation by the EU mebers itself, overcompliance by European firms fearing U.S.sanctions, for instance when the US threatened SWIFT—a firm based in Beligium— with sanctions if it works with any of the state targeted with sanctioned in result it gave in by disconnecting all contacts from target state.

Similarly, China's CIPS and digital yuan projects aim to reduce reliance on U.S. dollar clearing systems but remain regionally limited and under development.

Given the impasse, reforms are essential. First, WTO Members should revive dispute resolution by appointing Appellate Body judges and clarifying the interpretation of Article XXI. Second, a collective WTO challenge against a specific secondary sanctions regime, such as Helms-Burton, should be pursued. Third, plurilateral mechanisms should be developed to legally safeguard trade and investment flows from extraterritorial sanctions, integrating norms of sovereign equality and jurisdictional restraint.

Only a combination of legal and institutional reforms can ensure discipline over secondary sanctions while preserving the integrity of multilateral trade.

6.3. Shortcomings

There is no clear consensus in international law that unilateral extraterritorial sanctions i.e., secondary sanctions or for that matter primary sanctions i.e., sanctions imposed by a state on its own nationals or territory, without UN Security Council authorization have become customary international law. However, some forms of primary sanctions are widely tolerated and viewed as within the sovereign rights of states, especially when they remain within their jurisdiction.

By the same logical explanation that can be said about the secondary sanctions, they cannot be held illegal if they restrict their market to the third party along with the target state, as it has the power to regulate its own market. This tolerance does not equate to legal acceptance as customary international law.

Nonetheless, it has a profound effect, usually harmful to international trade and investment, especially in a time when the economies are intricately intertwined.

The current international legal framework exhibits several critical shortcomings:

A. Lack of Specificity in Legal Norms

Neither the UN Charter, the WTO Agreements, nor BITs contain clear prohibitions or regulatory standards explicitly addressing secondary sanctions. This laxity in the laws provides leeway to states imposing secondary sanctions beyond their jurisdiction , depriving them of economic autonomy, derailing the international economy, particularly the United States, to argue legality under domestic law while avoiding accountability under international law. Therefore, the framework of economic sanctions in International Law presents several loopholes, including cases of unilateral economic sanctions, which are often criticized for violating International Law and need a universally accepted mechanism for determining their lawfulness.[291]

B. Overbroad Security Exceptions

The widespread and often unilateral invocation of the security exception clauses e.g., Article XXI of GATT and BIT security clauses undermines judicial scrutiny. Although *Russia—Traffic in Transit* confirmed the reviewability of Article XXI, it did not resolve the permissibility of extraterritorial coercion, leaving secondary sanctions in a grey area.

C. WTO's Enforcement Deficit

The Dispute Settlement Body (DSB) is currently impaired, especially with the paralysis of the Appellate Body, which curtails the ability to obtain binding resolutions on contested sanctions. The EU's 1996 challenge to the Helms-Burton Act was ultimately withdrawn, illustrating a lack of enforcement confidence. There are not many precedents to look into in view of which the legality of secondary sanctions can be examined, as essentially it stems from primary sanctions. The only difference is that the primary sanctions have jurisdictional nexus with the targeting state, whereas secondary sanctions have no connection at all. However, in a recent verdict by the ICJ[292], which can be used as a base to at least preserve the sanctity of BITs, wherein it was categorically held discussing as to whether US has violated

[291] *Unilateral Sanctions in the Context of Modern International Law*." Međdunarodnoe pravo, No. 3 (2023), https://doi.org/10.25136/2644-5514.2023.3.38737.
[292] *Islamic Republic of Iran v. United States of America*, Judgment of Mar. 30, 2023, I.C.J. Reports 2023.

‘Treaty of Amity, Economic Relations, and Consular Rights (1955)’ by taking specific measures against Iranian assets, including those held by the Central Bank of Iran. The US pleaded security exceptions stating that in the face of such an invocation, the treaty is rendered ineffective; the argument fell flat and was negatived by the ICJ, which awarded compensation.

D. Weaknesses in the IMF Framework

While the IMF Articles of Agreement (Article VIII) allow for capital controls in security contexts, the Fund’s tacit approval of U.S. measures and its reluctance to challenge dominant economies reduces its effectiveness as a check on politically motivated financial restrictions.

E. Non-Judicial Mechanisms Lack Authority

Instruments like the EU Blocking Statute and INSTEX have largely failed due to poor enforcement, lack of uptake by private actors, and vulnerability to U.S. retaliation. Meanwhile, alternative payment systems like CIPS and barter mechanisms remain underdeveloped and fragmented.

F. Market Distortion, Investor-State Disputes, and Unlawful Expropriation

Secondary sanctions erode the international trade order and the free flow of investment chain, introducing uncertainty, risk aversion, and compliance burdens for multinational corporations. Corporations and concerns from third countries deliberately deterred and stay away from engaging in legitimate trade or investment with targeted states, not because of international legal obligations, but due to fear of U.S. penalties. This chilling effect creates market distortions that disproportionately affect foreign investors, supply chains, and even humanitarian sectors.

In turn, affected target states have, on occasion, responded with retaliatory expropriation, asset freezes, or discriminatory regulatory measures targeting corporations from sanctioning countries or their allies. These retaliatory acts may breach fair and equitable treatment (FET) or non-discrimination provisions under BITs and regional investment treaties, prompting costly international arbitration disputes.

6.4.Testing the Hypothesis

The hypothesis of this research states that

"Secondary sanctions have the potential to adversely affect the development of public international law and international trade law with economic and humanitarian ramifications".

Thus, the research validates the hypothesis using a doctrinal method, showing that while secondary sanctions may not strictly violate customary international law, they often exceed jurisdictional norms and conflict with trade and investment rules, causing economic and humanitarian harm and undermining legal certainty and the development of coherent international law.

6.5 Suggestions

A. Multilateral Treaty Revisions

States must sincerely deliberate and start the revisions to key multilateral instruments most notably the WTO Agreements, GATT 1994, and Bilateral Investment Treaties (BITs) and make amendments accordingly. These revisions should aim to explicitly prohibit the extraterritorial enforcement of sanctions unless authorised under Chapter VII of the UN Charter. They must also codify the requirement of a substantial territorial nexus as a prerequisite for any lawful economic coercion. Another object should be to curtail the broadness of security exceptions with which it has been imposed in every situation, whether the circumstances really demand it, by incorporating objective criteria, good faith standards, and interpretive limits grounded in WTO jurisprudence, such as in the Russia–Traffic in Transit (DS512) decision. Additionally, provisions in BITs and Friendship, Commerce and Navigation Treaties (FCNs) must be amended to prevent the withdrawal of MFN or national treatment rights based on unilaterally imposed extraterritorial sanctions.

These reforms would help clarify treaty interpretation, reduce the scope for abuse, and curb the imposition of coercive economic measures that violate international legal norms. In addition to that, the needed clarity would increase the confidence of investors and third parties, ensuring their legal defences, dealing with a state that might be hit by secondary sanctions, and facilitating the stability of the world trade order.

B. Institutional Reform and Embracing Multi-Party Interim Appeal Arbitration

The WTO's Dispute Settlement Mechanism has long stood as a key foundation of the global trading system, providing a clear and rules-based way to resolve disputes between member states. However, lately the Appellate Body came to a grinding halt largely because some members have blocked new appointments. This has created a huge enforcement gap that brittles the capacity and authority of WTO's authority and undermines the consistency and influence of its rulings, including those related to how secondary sanctions affect trade and investment.

In response to this challenge, over fifty WTO members came together to form the MPIA under Article 25 of the Dispute Settlement Understanding. This interim arrangement provides remedy by allowing members to retain a two-stage dispute settlement process through binding arbitration.

It is important for WTO members to expand participation in the MPIA and consider broadening its scope. Arbitration panels under this system could also take on a more active role in clarifying complex trade issues, such as the extraterritorial reach of secondary sanctions. At the same time, members should recommit to fully reforming the Appellate Body, focusing on transparent appointment processes, clear timelines, and more efficient procedures.

If the permanent and interim dispute mechanisms has been strengthened gradually but persistently, the WTO can restore its previous capacity to enforce trade rules ensuring the safety of global trade order and uphold the credibility of the multilateral trading system.

C. Strengthen Blocking Regulations

Blocking regulations—such as the EU's Regulation 2271/96—have thus far been underutilised and suffer from inconsistent enforcement across jurisdictions. States affected by secondary sanctions should work to revise and expand these statutes to cover all forms of extraterritorial penalties that undermine their domestic economic sovereignty. This includes incorporating clear legal protections, compensation mechanisms, and potentially public insurance schemesto support companies that resist compliance with unlawful foreign sanctions. Furthermore, affected states should promote the creation of regional or plurilateral coordination platforms—for instance,

under BRICS, ASEAN, or the African Union—to develop a collective enforcement strategy and to consider proportionate countermeasures grounded in Articles 49–54 of the ILC Draft Articles on State Responsibility, while remaining consistent with international legal principles of proportionality, necessity, and due process.

Domestic courts should also be mobilised to assert jurisdiction over sanction-related disputes, as exemplified in Bank Melli Iran v. Telekom Deutschland GmbH (CJEU, 2021), reinforcing the principle that foreign economic coercion must not override domestic legal autonomy or commercial rights. A bit more rigorous and assertive approach to blocking regulations would not only deter overcompliance but also empower states to reassert their jurisdictional integrity in the face of rising extraterritorial measures.

D. Promote an International Agreement on Unilateral Sanctions

Given the growing reliance on secondary sanctions as instruments of economic coercion, there is an urgent need for a comprehensive multilateral treaty that clearly defines the legal limits and procedural safeguards surrounding the imposition of unilateral sanctions. Such a treaty, ideally developed under the auspices of the United Nations or a coalition of Global South states, should distinguish between lawful state responses and impermissible extraterritorial coercion. The agreement must prohibit the application of sanctions—particularly secondary sanctions—where there is no substantial territorial nexus or UN Security Council authorisation. It should also require that any such measures comply with core obligations under international human rights law, international humanitarian law, and investment protection standards, thereby safeguarding access to basic services and economic rights for affected populations and businesses. The treaty should further mandate humanitarian exemptions in line with existing UN guidance and require that sanctions be transparent, time-bound, and subject to regular review.

In addition to setting out clear substantive rules, the treaty should establish an institutional mechanism—such as a Sanctions Review Panel or a Monitoring and Compliance Committee—responsible for assessing both the legality and humanitarian consequences of sanctions. This body could issue advisory opinions, carry out impact assessments, and offer a forum where affected states or even private parties can voice their concerns and seek redress. By including reporting obligations and peer-review

procedures, the framework would promote accountability and deter the abuse of sanctions as tools of economic domination.

Moreover, it would help bring coherence to the currently fragmented approach to unilateral coercive measures, restore a fair balance between the principles of sovereign equality and collective security, and offer smaller and developing countries a much-needed legal safeguard against the overreach of more powerful economies. Such a treaty would mark a significant step toward preserving the integrity of the multilateral trade and investment system and upholding the rule of law in international economic relations.

6.6 Conclusion

Sanctions, when applied lawfully, may serve a salutary purpose, as tools to further international peace, mitigate aggression, and promote human rights without resorting to force. The sanctions shall be authorised by the UN, supported by multilateral consensus, and imposed to achieve legitimate global objectives.

However, unilateral sanctions, especially secondary sanctions, are often devoid of legitimacy and are mostly applied without broad agreement or legal backing; they undermine sovereignty, economic stability, and humanitarian access. Their growing, unchecked use enables powerful states to exert extraterritorial control, distorting trade and penalising third parties, with limited avenues for redress. Thus, while sanctions remain essential in principle, their misuse—particularly in unilateral forms—poses serious legal and ethical challenges.

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