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Economic Sanctions Against Human Rights Violations

Buhm Suk Baek

J.S.D. candidate, Cornell Law School, bb247@cornell.edu

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ECONOMIC SANCTIONS AGAINST HUMAN RIGHTS VIOLATIONS

By
Buhm-Suk Baek*

March 2008

* Candidate for J.S.D., Cornell Law School; I am deeply grateful to Professor Muna Ndulo. Without his sincere advice and comments, I could not complete this paper. I would like to extend my thanks to Professor David Wippman for his valuable advices. My deepest appreciation also goes to Kornelia Tancheva for her valuable instructions on this paper. Foremost, I would like to thank my father, KwangSun Baek, to whom I dedicate this paper.

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Buhm-Suk Baek

ABSTRACT

The idea of human rights protection, historically, has been considered as a domestic matter, to be realized by individual states within their domestic law and national institutions. The protection and promotion of human rights, however, have become one of the most important issues for the international community as a whole. Yet, with time, it has become increasingly difficult for the international community to address human rights problems collectively. Despite a significant development in the human rights norms, effective protection of fundamental human rights and their legal enforcement has a long way to go.

This paper will argue that economic sanctions can contribute to a decrease in individual states' human rights violations and can be an effective enforcement tool for international law. The international community, including the U.N., should impose effective economic sanctions against states where gross human rights violators are.

Economic sanctions have been widely used by the U.N. since the end of the Cold War. Their purpose is generally not to punish the individual state but to modify its behavior. However, such sanctions conflict with other fundamental principles of international law, namely the principle of non-intervention and state sovereignty. Economic sanctions can also conflict with the WTO's first agenda: free trade. Even worse, economic sanctions are criticized because these sanctions are, arguably, targeted at the people at large, not to the regime, a violator of international norms.

This paper will review the role of economic sanctions in international human rights law. Chapter II examines the principle of non-intervention and whether its exceptions are in international human rights law. Chapter III reviews the doctrines and practices of economic sanctions for human rights protection by the U.N. Security Council, the U.S., and the E.U. Chapter IV examines the legality of the economic sanctions against human rights violations under the WTO system and reviews the possibility of the harmonization of international

economic law with international human rights law. Lastly, Chapter V concludes by emphasizing the importance of economic sanctions against human rights violations.

Based on the research outlined above, this paper concludes as follows:

Chapter II maintains that the relationship between human rights and state sovereignty should and can be complementary. The protection and promotion of human rights can be enhanced with a respect for state sovereignty. In other words, each individual state has a responsibility to protect and promote the human rights of its own nationals based upon the principle of sovereignty. State sovereignty and independence should serve not as a hurdle to, but as a guarantee for the realization of the fundamental human rights of the state's nationals. Chapter II also concludes that the concept of human rights has been expanded and the core human rights are inalienable and legally enforceable ones. The evolution of international human rights law is one of the most remarkable innovations in modern international law. If gross human rights violations, especially those established by the status of *Jus Cogens* or obligations *Erga Omnes*, are not solved by a state itself, it is no longer solely the problem of the state concerned. Fundamental human rights have acquired a status of universality and the international community should accept this.

Chapter III reviews the doctrines and practices of economic sanctions for human rights protection by the U.N. Security Council, the U.S., and the E.U. All cases of economic sanctions against gross human rights violations discussed, ten by the Security Council, five by the U.S. and seven by the E.U., were provided as samples to illustrate the idea that economic sanctions by the international community as a whole bolster fundamental human rights. This paper concludes that the sanctions by the Security Council, the U.S. and the E.U. have at least some positive effects on international human rights law. They build international human rights norms. This development also leads to the growing willingness of the international community to impose economic sanctions for human rights protection.

Undeniably, economic sanctions have had some negative effects on the targeted states. In numerous reports and articles, scholars and human rights advocates have constantly argued that economic sanctions hurt large numbers of innocent civilians in the targeted states. Economic sanctions, however, cannot be the sole cause of civilian suffering in the targeted states. The targeted states should bear the heavy burden of responsibility for this suffering. It is undeniable that economic sanctions have inherent flaws. But, this paper disagrees with arguments for

opposing the use of economic sanctions because of such flaws and negative effects. The problem is not in the sanctions themselves, but in their effect. Therefore, the criticism on economic sanctions should focus on finding a way to decrease their negative effects, rather than arguing for not imposing them without providing a better alternative. Overall, this chapter concludes that economic sanctions have become part of a collective effort by the international community to develop current human rights norms and to protect and promote fundamental human rights in the targeted states.

Chapter IV concludes that while economic sanctions are inherently against the free trade provisions of the GATT, economic sanctions against gross human rights violations are allowed under the exceptional provisions of the GATT in the WTO system. This paper also argues that the GATT should be interpreted consistently with international law. That is, trade restriction measures against gross human rights violations are compatible with the GATT. As discussed in Chapter II and III, fundamental human rights violations are no longer just the domestic concern of each individual state. The evolvement of international human rights law demonstrates that, first, international human rights norms recognized as *Jus Cogens* provide the legality for the international community's intervention in offending states; and second, the *Erga Omnes* status of international human rights norms shows that every state has an interest in other states observing these human rights norms. Overall, while some economic sanctions may conflict with the main goal of the WTO, i.e. free trade, economic sanctions against human rights violations do not undermine the WTO system itself. Rather, they can be adapted to the WTO's free trade framework under international law.

Since the adoption of the Universal Declaration of Human Rights in 1948, there has been a significant evolution toward the universality of human rights. However, international legal enforcement systems for human rights norms are still underdeveloped despite the considerable progress in international human rights law. This paper concludes that economic sanctions can contribute to a decrease in individual states' human rights violations and can be an effective enforcement tool for international law.

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I. INTRODUCTION

Since the end of the Second World War and the subsequent adoption of the Universal Declaration of Human Rights by the United Nations (U.N.), individual states have recognized the necessity for human rights protection.¹ The idea of human rights protection, historically, has been considered as a domestic one, to be realized by individual states within their domestic law and national institutions.² However, the protection and promotion of human rights have become one of the most important issues for the international community as a whole.³ Yet, with time, it has become increasingly difficult for the international community to address human rights problems collectively.⁴

International law is a “horizontal legal system,” which can be characterized as lacking a supreme authority, the centralization of the use of force and law enforcement generally entrusted to central organs.⁵ In terms of international law being a *law*, researchers focus on the absence of a legislature⁶ and on the matters of sanctions and compliance between the domestic legal systems and the international legal system.⁷ However, international law as a horizontal legal system operates in a different way from a centralized legal system and is based upon “principles of reciprocity and consensus” rather than on obedience and enforcement.⁸ International law is a useful and necessary tool for the international community because it enables states to fulfill their

¹ Louis Henkin, at. el., *Human Rights* (Foundation Press, 1999) pp.73-79; Cheong-Kyun Kim, Jae-Ho Sung, *International Law*, 5th ed., (Seoul, Pakyoungsa Publishing Co., 2003) pp.528-529.

² Lori F. Damrosch, at el., *Basic Documents Supplement to International Law, Cases and Materials*, 4th ed., (West Group, 2001), p.586.

³ Frank Newman & David Weisbrodt, *International Human Rights: Law, Policy, and Process* (1990) pp.1-17 cited in Rett R. Ludwikowski, “Supreme Law or Basic Law? The Decline of the Concept of Constitutional Supremacy”, 9 *Cardoza J. Int’l & Comp. L.* 253, (2001)

⁴ See Jean-Marc Coicaud, at el. ed. *The Globalization of Human Rights*, (United Nations University Press, 2003), pp.4-10.

⁵ Peter Malanczuk, *Akehurst’s Modern Introduction to International Law*, 7th ed. (Routledge, 1998), p.3.

⁶ *Ibid*, p.6.

⁷ Lori F. Damrosch, *supra note 2*, p.23.

⁸ Peter Malanczuk, *supra note 5*, p.6.

obligations, which they have chosen and agreed upon themselves, along orderly and predictable lines.⁹

Since the adoption of the Universal Declaration of Human Rights in 1948, there has been a significant evolution toward the universality of human rights.¹⁰ An increasing number of human rights conventions have been adopted to incorporate various areas of human rights: social and economic rights, civil and political rights, the rights of children, women, refugees and minorities.¹¹ More importantly, most states in the international community have ratified a majority of these conventions.¹²

While there has been considerable development in international human rights law, enforcement systems for the human rights norms are still underdeveloped. The limited jurisdiction and ineffective long-delayed justice of the International Court of Justice (ICJ) and other international tribunals, as well as the refusal of the U.S. to join a majority of human rights treaties show that the international legal enforcement mechanisms for the protection of fundamental human rights against gross violations may have a long way to go.¹³

This paper will argue that economic sanctions can contribute to a decrease in individual states' human rights violations and can be an effective enforcement tool for international law. The international community, including the U.N., should impose effective economic sanctions against states with gross human rights violations like the Sudan in the Darfur crisis and Burma.

Economic sanctions have been widely used by the U.N. since the end of the Cold War.¹⁴

⁹ J.L. Brierly, *The Law of Nations; an Introduction to the International Law of Peace*, 6th ed., Sir Humphrey Waldock ed. (Oxford, 1963) pp.4-5.

¹⁰ Seok-Yong Lee, *International Law: Theory and Practice*, 3rd ed., (Seoul, Sechang Publishing Co., 2003) p.475.

¹¹ Richard Clayton, at. el., *Law of Human Rights*, (Oxford, 2001) pp.3-4.

¹² Sarah H. Cleveland, "Norm Internalization and U.S. Economic Sanctions," 26 *Yale J. Int'l L.* 1 (2001) p.3.

¹³ *Ibid*, p.3.

¹⁴ August Reinisch, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions" 95 *Am. J. Int'l L.* 851, (2001) p.851.

Their purpose is generally not to punish the individual state but to modify its behavior.¹⁵ However, such sanctions imposed by individual states conflict with other fundamental principles of international law, namely the principle of non-intervention and state sovereignty. Economic sanctions can also conflict with the WTO's first agenda: free trade.¹⁶ Even worse, economic sanctions are criticized because they target the people at large, not the regime, a violator of international norms. It is possible to argue that even though the U.N. imposes its sanctions to protect human rights, these sanctions disregard the same human rights principles themselves.¹⁷

Therefore, this paper will review the role of economic sanctions in international human rights law. Chapter II examines the principle of non-intervention and its exceptions in international human rights law. Chapter III reviews the doctrines and practices of economic sanctions for human rights protection by the U.N. Security Council, the U.S., and the E.U. Chapter IV examines the legality of the economic sanctions against human rights violations under the WTO system and reviews the possibility of the harmonization of international economic law with international human rights law. Lastly, Chapter V concludes by emphasizing the importance of economic sanctions against human rights violations.

¹⁵ *Ibid.*

¹⁶ Sarah H. Cleveland, *supra note 12*, p3.

¹⁷ See Joy K. Fausey, "Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?" 10 Conn. J. Int'l L. 193 (1994)

II. SERIOUS HUMAN RIGHTS VIOLATIONS: A DOMESTIC OR INTERNATIONAL ISSUE?

The world is still mired in widespread violations of human rights. Genocide has repeatedly occurred in several regions since the Second World War.¹⁸ Floods of refugees and ethnic conflicts continually challenge the international community's capacity to respond; and gross forms of torture and execution remain commonplace.¹⁹ The most recent example involves the Darfur crisis in the Sudan.²⁰ In such gross human rights violation cases, can one state (or states) intervene in another state's affairs on the grounds of human rights violations? Traditional international law does not allow intervention in other state's affairs. This chapter will examine the principle of non-intervention and whether or not there is exception for serious human rights violation.

2.1. The Principle of Non-Intervention and Its Exception

Oppenheim defined intervention as "forcible or dictatorial interference by a state in the affairs of another state, calculated to impose certain conduct or consequence on that other state."²¹ In the 19th century, it was often associated with the armed intervention, on humanitarian

¹⁸ See U.N. High Commissioner on Human Rights, Commission on the Elimination of Racial Discrimination, Summary Record of the Second Part of the 1665th Meeting, Dialogue with Juan Mendez, Special Adviser on the Prevention of Genocide, U.N. Doc. CERD/C/SR.1665/Add.1 (Aug. 20, 2004) (Committee Member Shahi observing that "regrettably, the United Nations itself had been ineffective in preventing genocide. There had been at least fifty-five genocides since the Organization's founding, in which approximately 75 million people had died.") See also Douglas Donoho, "Human Rights Enforcement in the Twenty-First Century" 35 Ga. J. Int'l & Comp. L. 1. (2006)

¹⁹ Douglas Donoho, *Ibid*, p.3.

²⁰ See U.N. High Commissioner on Human Rights, Report of the International Commission of Inquiry on Darfur to the U.N. Secretary-General, available at http://www.un.org/News/dh/sudan/com_inq_darfur.pdf and (its updated version) Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, U.N. Doc. A/HRC/4/80.

²¹ D.J. Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet & Maxwell, 1998), p.890.

or other grounds by powerful European states in the affairs of other state.²² As the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty²³ indicated, it also includes other forms of influence or control. For example, intervention in the *external affairs* of another state may include a case in which state A sought to persuade state B to take a certain course of action by threats or by other measures amounting to economic coercion. Article 2(4) of the U.N. Charter and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations²⁴ also clearly

²² Cheong-Kyun Kim, Jae-Ho Sung, *supra note 1*, p.188.

²³ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (21 December 1965), U.N. Doc. A/RES/2131 (XX).

The General Assembly.....solemnly declares:

1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.
2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.
3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.
4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.
5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.
6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.
7. For the purpose of the present Declaration, the term "State" covers both individual States and groups of States.
8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII.

(The Resolution was adopted by 109 to 0, with one abstention. The one absenting state was the U.K., which accepted the "fundamental propositions set out in the resolution" but objected to the manner in which that resolution had been evolved and the imprecision of some of its language." See 1976 B.P.I.L. 35,36.)

²⁴ Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (24 October 1970) U.N. Doc. A/RES/2625 (XXV).

.....*The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal

state the principle of non-intervention in international law. Article 2(4) of U.N. Charter is stated as below.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The International Court of Justice (ICJ) has recognized the principle of non-intervention.²⁵ Numerous General Assembly Resolutions have repeatedly emphasized the importance of the principle of state sovereignty and non-intervention. Nowadays this principle tends to be extended to other means of intervention, namely economic and cultural.²⁶ Concerning “economic interference,” the principle of non-intervention reflects the nature of international law in

or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

..... To this end:

- (a) States shall co-operate with other States in the maintenance of international peace and security;
- (b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
- (c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;
- (d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

²⁵ See, for example, Case of Certain Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits. I.C.J. Reports 1986, pp.106-109, para.202-207.

²⁶ Meinhard Schoroder, “Principle of Non-intervention” in R. Bernhardt ed. *Encyclopedia of Public International Law*, Vol. II, (Elsevier, 1999) p.620.

general.²⁷

However, there exist exceptions to the principle of non-intervention that can be accepted in traditional international law.

2.1.1. Types of Interventions

2.1.1.1. U.N. Intervention

In his *Agenda for Peace*,²⁸ Boutros Ghali, the former U.N. Secretary General, stated the strong commitment of the U.N. to achieve the great objectives of the U.N. Charter: U.N.'s capacity to maintain international peace and security, to secure justice and human rights and to promote "social progress and better standards of life in larger freedom."²⁹ Under Article 41, the Security Council has the power to call for non-military actions, including "complete or partial interruption of economic relations" in order to prevent any threat to the peace, breach of the peace or act of aggression under Article 39.³⁰

The U.N. has engaged in resolving regional and national conflicts through direct and indirect intervention by carrying out various operations including peacekeeping and humanitarian assistance.³¹ The U.N. has played an active role in helping countries solve their internal disputes

²⁷ *Ibid*, p.621.

²⁸ Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, "An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping" (17 June 1992) U.N. Doc. A/47/277. S/24111., available at <http://www.un.org/Docs/SG/agpeace.html>

²⁹ U.N. Charter, Preamble.

³⁰ Article 41 of the U.N. Charter:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

See also Nigel White and Ademola Abass, "Countermeasures and Sanctions" in Malcolm D. Evans ed. *International Law*, 2nd ed., (Oxford, 2006) pp.509-524.

"The U.N. clearly has the competence to override the domestic jurisdiction limitation in article 2(7) when acting under Chapter VII of the U.N. Charter."

³¹ *See*, in general, Website of Security Council Sanctions Committees, <http://www.un.org/sc/committees/> *See also*

in order to facilitate peace agreement.³² The U.N. has also performed an effective role as mediator in resolving disputes, and preserving peace through its strong commitment.³³ It indicates that ‘domestic matters’ within a certain state, as well as bilateral and multilateral concerns between and among states, cannot be isolated from the external intervention of the U.N. With a mandate to preserve peace, the U.N. is bound to do whatever is necessary and to take proper measures within the limits of the U.N. Charter.³⁴

2.1.1.2. Unilateral Intervention

While multilateral measures are explicitly provided for by the U.N. Charter, the Charter does not block unilateral measures to advance its purposes. While Article 2(4) of the U.N. Charter prohibits unilateral measures involving the use of force, the Charter does not expressly prohibit unilateral non-military actions such as economic sanctions by U.N. members.³⁵ However, some states argue that Articles 2(4) and 2(7), together, implicitly ban any non-military interference including an economic one.³⁶ On the contrary, some eminent legal scholars like Oppenheim maintain that Article 2(4) is limited to the threat or use of force, and Article 2(7) is only applied to action by the United Nations, not by the individual member states.³⁷ Presently,

Sarah H. Cleveland, *supra note 12*, pp.51-52; Myres S. McDougal & W. Michael Riesman, “Rhodesia and the United Nations: The Lawfulness of International Concern,” 62 Am. J. Int’l L. 1 (1968)

³² Security Council Sanctions Committees, *Ibid.*

³³ Security Council Sanctions Committees, *Ibid.*

³⁴ See Agenda for Peace, *supra note 28*.

³⁵ Sarah H. Cleveland, *supra note 12*, p.51.

³⁶ See, for example, U.N. Doc. A/RES/39/210 (1984) In its 39 session in 1984, the U.N. General Assembly adopted the resolution under the GATT:

“Developed countries should refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions, incompatible with the Charter of the United Nations and in violation of undertakings contracted, multilaterally or bilaterally, against developing countries as a form of political and economic coercion which affects their economic, political and social development.”

³⁷ Robert Jennings & Arthur Watts, *Oppenheim’s International Law*, 9th ed., (1992) § 132, pp.447-449.

no international consensus exists around any of these two positions.³⁸ However, this paper argues that since unilateral intervention presents many opportunities for abuse,³⁹ this kind of intervention should be carried out only after due consideration.

2.1.2. Humanitarian Intervention

Humanitarian intervention is based upon the doctrine that there are limits to the freedoms states have in dealing with their own nationals.⁴⁰ It should be distinguished from actions to protect a state's own nationals abroad.⁴¹ When this doctrine was defined by Dutch international scholar Hugo Grotius and other 17th century legal scholars, it allowed one or more states to use force to prevent another state from mistreating its own nationals in circumstances so brutal and widespread that they shocked the conscience of the international community.⁴² Such interference in a state's domestic affairs is defended by the argument that if certain practices continue to take place in a state despite protest and objections by neighboring states, then humanitarian considerations outweigh the prohibition of intervention and justify a decision to interfere.⁴³ Overall, the arguments for humanitarian intervention can be summarized as follows: "ultimately, peace is more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the holiness of human personality."⁴⁴

In the 19th century, the doctrine of humanitarian intervention was widely abused by states

³⁸ Nigel White and Ademola Abass, *supra note 30*.

³⁹ *Ibid.*

⁴⁰ Ray August, *Public International Law*, (Prentice Hall, 1995), pp.251-252.

⁴¹ U.K. Foreign Office Policy Document No. 148, 57 BYIL 614 (1986) II.18; Dae-Soon Kim, *International Law*, 11th ed. (Seoul: Samyoungsa, 2006), pp.1075-1078.

⁴² Ray August, *supra note 40*.

⁴³ Gerhard Von Glahn, *Law among Nations: an introduction to public international law*, 7th ed., (Longman, 1996) p.582.

⁴⁴ U.K. Foreign Office Policy Document No. 148, *supra note 41*, II.20.

which intervened to advance their own interests.⁴⁵ For example, in 1860 and 1861 France occupied parts of Syria and policed its coast by warships based upon the doctrine of humanitarian intervention in order to stop the massacre of Maronite Christians.⁴⁶ The motives behind France's action, however, have been criticized in the context of the historical record.⁴⁷

It is hard to reconcile a state's sovereignty with fundamental human rights⁴⁸ and there was little express support from states for the doctrine of humanitarian intervention by individual states, other than from the U.K.⁴⁹. The Non-Aligned Movement (NAM) also rejects humanitarian intervention as having no legal basis in the U.N. Charter.⁵⁰

This paper argues that the time is not yet ripe for recognizing humanitarian intervention as an established exception to the principle of non-intervention. The reasons are as follows: first, the U.N. Charter and the current international treaties do not seem to incorporate such a doctrine specifically. Second, in the last two centuries, and especially since the end of the Second World War, only very few cases can be considered a genuine humanitarian intervention, if any at all. Last, the scope for abuse of humanitarian intervention overshadows its usefulness.

However, it is certain that there is increasing international interest in the development of a

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Istvan Pogany, "Humanitarian Intervention in International Law: The French Intervention in Syria Re-Examined" 35 *Int'l & Comp. L.Q.* 182 (1986) pp.182-190.

⁴⁸ Ray August, *supra note 40*.

⁴⁹ See Christine Gray, "The Use of Force and the International Legal Order" in Malcolm D. Evans ed. *International Law*, 2nd ed., (Oxford, 2006) pp.594-597.

⁵⁰ Declaration of the Group of 77 South Summit held in Havana from 10 to 14 April 2000, para.54. available at www.nam.gov.za/documentation/southdecl.htm

54. We stress the need to maintain a clear distinction between humanitarian assistance and other activities of the United Nations. We reject the so-called "right" of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law... We further stress the need for scrupulously respecting the guiding principles of humanitarian assistance, adopted by the General Assembly in its resolution 46/182, and emphasize that these principles are valid, time-tested and must continue to be fully observed. Furthermore, we stress that humanitarian assistance should be conducted in full respect of the sovereignty, territorial integrity, and political independence of host countries, and should be initiated in response to a request or with the approval of these States.

detailed framework for humanitarian intervention⁵¹ and that at least in cases like Darfur, there should be a duty to intervene.

2.1.3. The Nicaragua Case

The 1986 Nicaragua v. the United States case heard by the International Court of Justice (ICJ) is important in terms of the principle of non-intervention.⁵² In addition to considering arguments on the use of force and collective self-defense, the ICJ addressed the international law relating to intervention and the right of third states to take countermeasures in response to intervention which does not amount to an armed attack. The ICJ considered the argument that the U.S. action was a legitimate response to Nicaragua's action in support of the insurgents in El Salvador, although Nicaragua's action did not amount to an armed attack. The Court first defined the principle of non-intervention as follows:

*205... the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State...*⁵³

The ICJ concluded that the principle of non-intervention was established as a matter of customary international law. The court found that there was no exception in favor of a right to

⁵¹ Christine Gray, *supra note 49*, p.596.

⁵² T. Modibo Ocran, "The Doctrine of Humanitarian Intervention in light of Robust Peacekeeping" 25 B.C. Int'l & Comp. L. Rev. 1. (2002) p.15.

⁵³ Case of Certain Military and Paramilitary Activities in and against Nicaragua, *supra note 25*.

intervention to support “an internal opposition in another state, whose cause appears particularly worthy by reason of the political and moral values with which it was identified.”⁵⁴ Applying the principle of non-intervention to the facts of the case, the court concluded that the U.S. support for “the military and paramilitary activities of the contras in Nicaragua by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention.”⁵⁵

However, on the issue of the accordance of economic coercion with international law, when reviewing the U.S. economic coercion toward Nicaragua, the ICJ concluded that it was “unable to regard such action on the economic plane as is here complained of as a breach of the customary law principle of non-intervention.”⁵⁶ Therefore, this paper argues that at this point, it appears that nothing forbids the use of economic sanctions in customary international law.

2.2. The International Human Rights Law

The international human rights law has been developed through the general treaties, declarations of international institutions like the United Nations, and customary international law.⁵⁷ The issue of human rights has also advanced through conventions, state practices, and the endeavors of NGOs and private entities.⁵⁸

⁵⁴ *Ibid*, para.206.

⁵⁵ *Ibid*, para.242.

⁵⁶ *Ibid*, para.245.

⁵⁷ Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 2nd ed. (Oxford, 2000) p.561.

⁵⁸ For example, Restatement of the Law on Foreign Relations Law of the United States (REST 3d FOREL § 701, 702) stated that:

§ 701. Obligation To Respect Human Rights

A state is obligated to respect the human rights of persons subject to its jurisdiction

(a) that it has undertaken to respect by international agreement;

(b) that states generally are bound to respect as a matter of customary international law (§ 702); and

(c) that it is required to respect under general principles of law common to the major legal systems of the world.

§ 702. Customary International Law Of Human Rights

2.2.1. *Jus Cogens* and Obligations *Erga Omnes*

Normally in classic international law, there is no hierarchy of sources or rules of international law, at least such as between the two primary laws, custom and treaty.⁵⁹ However, since the late 1960s, there has been an argument that “certain norms governing relations between states should be given a higher rank than ordinary rules deriving from treaties and custom.”⁶⁰ Finally, the Vienna Convention on the Law of Treaties of 1969 (as well as that of 1986) provided, in Article 53: Treaties Conflicting with a Peremptory Norm of General International Law (*Jus Cogens*), the following:

*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*⁶¹

On the other hand, there are certain international obligations that have achieved the position of customary international law in the sense that they are binding to all states without exception.⁶² These obligations are defined in two paragraphs from the ICJ judgment in the *Barcelona Traction* case in 1970. The complete text of these paragraphs follows below:

33. When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

- (a) genocide,
- (b) slavery or slave trade,
- (c) the murder or causing the disappearance of individuals,
- (d) torture or other cruel, inhuman, or degrading treatment or punishment,
- (e) prolonged arbitrary detention,
- (f) systematic racial discrimination, or
- (g) a consistent pattern of gross violations of internationally recognized human rights.

⁵⁹ Antonio Cassese, *International Law*, 2nd ed. (Oxford, 2005) pp.198-199.

⁶⁰ *Ibid*, p.199

⁶¹ Art.53 of the Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf.39/27.

⁶² See Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes*, (Oxford, 1997) pp.1-17.

concerning the treatment to be afforded them. These obligations, however, are neither absolute nor unqualified. In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; **they are obligations erga omnes.**

34. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23*); others are conferred by international instruments of a universal or quasi-universal character.⁶³ (emphasis added.)

Similarly, it is widely accepted that fundamental human rights violations no longer belong to the domestic jurisdiction of individual states. As stated above in regard to the *Barcelona Traction* case, the ICJ considered certain “basic rights of the human person” such as protection from slavery, racial discrimination, or genocide as obligations *Erga Omnes*. The ICJ judgment shows that the court has clearly accepted that the obligation to respect fundamental human rights is an obligation of international law. Professor Antonio Cassese argues that, “the principle on human rights entitles all members of the international community to demand compliance and, in case of gross and large-scale infringements, to request their cessation.”⁶⁴

However, identifying the international human rights that constitute *Jus Cogens* or obligations *Erga Omnes* still remains an open question. At least, prohibition and protection from slavery, racial discrimination, genocide, and torture are generally accepted by the international community as *basic* human rights. Indeed, a consensus has been reached regarding certain core

⁶³ Case concerning the *Barcelona Traction, Light and Power Company, Limited (Second Phase) (Belgium v. Spain)*. Judgment, I.C.J. Reports 1970, p32, para.33-34.

⁶⁴ Antonio Cassese, *supra note 59*, p.65.

human rights principles, including the ones above.⁶⁵

2.2.2. International Human Rights Law and the Limitation on State Sovereignty

As international law has been developed basically from the *consent* of individual states, it can be argued that such *consent* puts certain limits on state sovereignty. Article 24 of the Vienna Convention on the Law of Treaties, also provides this underlying principle:

- 1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.*
- 2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.*
- 3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.*
- 4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.*

The U.N. Charter also imposes certain restrictions on member states' sovereignty by giving the Security Council the power to intervene or permit intervention where there is a threat to or breach of international peace. Article 24 (1) and (2) of the U.N. Charter clearly state this principle:

- 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.*
- 2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the*

⁶⁵ See Maurizio Ragazzi, *supra* note 62, pp.132-163.

discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

In the same manner, when states agree to bilateral, multilateral or customary human rights norms through human rights treaties or customary human rights law, their sovereignty will be limited by such norms.⁶⁶

The first effort to protect and promote human rights on a global level was the 1948 Universal Declaration of Human Rights (the Declaration).⁶⁷ Even though the Declaration has no legal binding force, the basic human rights principles which are expressed in the Declaration are generally considered universal.⁶⁸ The Declaration itself was the basis of two foundational international human rights conventions: the International Covenant on Civil and Political Rights (ICCPR)⁶⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷⁰. Both covenants successfully transfer the Declaration into a binding treaty law. Based upon the Declaration, a number of additional treaties which address specific categories of fundamental human rights have been widely ratified. They are the four Geneva Conventions in Time of War⁷¹ and the subsequent 1977 Additional Protocols,⁷² the Genocide Convention,⁷³ the Torture

⁶⁶ Jianming Shen, "National Sovereignty and Human Rights in a Positive Law Context" 26 *Brook. J. Int'l L.* 417 (2000) pp.428-429.

⁶⁷ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

⁶⁸ Elizabeth Shaver Duquette, "Human Rights in the European Union: Internal Versus External Objectives", 34 *Cornell Int'l L.J.* 363 (2001) pp.375-376.

⁶⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), *entered into force* Mar. 23, 1976.

⁷⁰ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), *entered into force* Jan. 3, 1976.

⁷¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31, *entered into force* Oct. 21, 1950.; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85, *entered into force* Oct. 21, 1950.; Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, *entered into force* Oct. 21, 1950.; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, *entered into force* Oct. 21, 1950.

⁷² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, *entered into force* Dec. 7, 1978.; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, *entered into force* Dec. 7, 1978.

⁷³ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *entered into force* Jan.

Convention,⁷⁴ the Convention to Eliminate All Forms of Racial Discrimination,⁷⁵ the Convention to Eliminate All Forms of Discrimination against Women,⁷⁶ and the Convention on the Rights of the Child.⁷⁷ Regional agreements that substantially incorporate the core principles of the Declaration include the European Convention on Human Rights,⁷⁸ the American Convention on Human Rights,⁷⁹ and the African Charter on Human and People's Rights.⁸⁰

These evolving human rights treaties suggest that human rights issues should not be overlooked and at least, gross violations of human rights are no longer the *exclusive concerns* of each individual state's domestic jurisdiction. Furthermore, they suggest that the protection and promotion of human rights should be achieved through international law which includes the principle of state sovereignty.⁸¹

It is undeniable that protection of human rights and respect for state sovereignty are both important items in current international law. The problem is how to protect and promote human rights without impairing the principle of state sovereignty under the existing international legal system. That is, whether there is potentiality to limit the principle of state sovereignty used to protect a state from international responses to its serious violations of obligations under the

12, 1951.

⁷⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987.

⁷⁵ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), *entered into force* Jan. 4, 1969.

⁷⁶ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

⁷⁷ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990.

⁷⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended* by Protocols Nos 3, 5, 8, and 11 which *entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*.

⁷⁹ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁸⁰ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986

⁸¹ Jianming Shen, *supra note* 66, p.434.

evolving international human rights law.

The view that sovereign rights of states should be defied in the case of certain human rights violations because gross human rights violations can give legal grounds for defying the principle of state sovereignty, has been gaining momentum.⁸² On the other hand, developing and least-developed countries stress the importance of “the inviolability of national sovereignty, political independence and territorial integrity” while also admitting “the need for international cooperation to address problems of massive and systematic violations of human rights.”⁸³

This paper argues that the relationship between human rights and state sovereignty should and can be complementary.

The protection and promotion of human rights can be enhanced by the respect for a state’s sovereignty. States should be viewed not as deniers of human rights, but as protectors and promoters of the human rights of their nationals. Respect for state sovereignty can be realized by protecting the fundamental rights of a state’s nationals through the national law. In other words, this paper argues that each individual state has a responsibility to protect and promote the human rights of its own nationals based upon the principle of sovereignty. State sovereignty and independence should serve not as a hurdle to, but as a guarantee for the realization of the fundamental human rights of the state’s nationals. Each individual state, then, should cooperate with other states in order to carry out their obligations under state sovereignty and international

⁸² See generally, Jarat Chopra & Thomas G. Weiss, “Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention,” 6 *ETHICS & INT’L AFF.* 95 (1992); Anne Bodley, “Weakening the Principle of Sovereignty in International Law: The International Criminal Tribunal for the Former Yugoslavia,” 31 *N.Y.U. J. INT’L L. & POL.* 417 (1999); Jianming Shen, *supra* note 66.

⁸³ See, for example, Press Release, U.N. GA/9606, “Questions of Sovereignty, the State System, the Future of the Organization Raised by General Debate Speakers,” (Sept. 24, 1999) (including Singapore, Iraq, Dominican Republic, Kazakhstan, and Iran); Press Release, U.N. GA/9627, “General Assembly Begins Discussion on Secretary-General’s Annual Report on Work of Organization” (Oct. 6, 1999) (including Colombia, Kuwait, Mongolia, China, Bangladesh, India, Venezuela); Press Release, U.N. GA/9633, “Importance of State Sovereignty, Need to Address Human Rights Violations, Council Reform, Discussed in Assembly” (Oct. 8, 1999) (including Cuba, Algeria, Oman, Pakistan, Peru, the Philippines, Senegal, and the Sudan).

human rights law.

2.3. Conclusion

It seems that state sovereignty and the protection of human rights are mutually challenged in international law. The principle of non-intervention in the domestic affairs of other states has been considered as a vital tool in ensuring peace and harmony among states.

However, evolving international human rights law now requires a re-examination of this principle. Now, an individual state's domestic concerns frequently pose a serious threat to the peace and stability of the region and the international community. Admittedly, humanitarian intervention had been abused in the past by strong states to pursue other political, economic or military objectives.⁸⁴ Further, the legitimacy of the right to intervention under the U.N. Charter is debatable under the well-established principle of non-intervention codified in Article 2(4) and 2(7) of the Charter. This paper, however, believes that to a certain extent, as Sir Hartley Shawcross confidently declared at the Nuremberg Trials, “[t]he right of humanitarian intervention on behalf of the rights of man, trampled upon by a state in a manner shocking the sense of mankind, has long been considered to form part of the recognized law of nations.”⁸⁵

The concept of human rights today has been expanded and the core human rights are considered inalienable and legally enforceable. The concept of sovereignty also has been developed further and one of its main elements is the protection of a state's nationals' fundamental rights from state interference and the abuse of power by the government. The evolution of international human rights law is one of the most remarkable innovations in

⁸⁴ Peter Malanczuk, *supra note 5*, p.221.

⁸⁵ The Avalon Project at Yale Law School, *Nuremberg Trial Proceedings Volume 3*, Tuesday, 4 December 1945, available at <http://www.yale.edu/lawweb/avalon/imt/proc/12-04-45.htm>

modern international law.⁸⁶ If gross human rights violations, especially those that rise to the level of *Jus Cogens* or obligations *Erga Omnes*, are not solved by the state itself, they are no longer the sole problem of this state. Therefore, this paper argues that the fundamental human rights have risen to a position of ‘universality’ and the international community should accept this.

⁸⁶ Peter Malanczuk, *supra note 5*, p.211.

III. ECONOMIC SANCTIONS AGAINST HUMAN RIGHTS VIOLATIONS

With increasing frequency since the 1990s, we have been witnessing the gradual emergence of a modern version of humanitarian intervention in cases of gross human rights violations, especially through economic sanctions.⁸⁷ Economic sanctions are generally imposed in two ways: by the U.N. Security Council and by individual states, mostly the U.S. and the E.U. countries. This chapter will review the use of economic sanctions first internationally and then domestically.

3.1. The Use of Economic Sanctions

International economic law is based upon treaties regarding “the reciprocal liberalization of market access and the protection of economic freedom and private property rights,”⁸⁸ even though they are not mentioned in either the International Covenant on Civil and Political Rights (ICCPR)⁸⁹ or the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁰ However, it is clear that international economic law has continued to affect positively the scope of human rights protection. For example, a post-Uruguay round inventory of potential agenda items for the world trading system includes such important questions on human rights as “competition policy, environmental controls and policies, the link between economic sanctions and human rights, the problems of arms control, and the general question of international economic sanctions and their relation to world order.”⁹¹

Upon reviewing the customary international law concerning economic measures, no

⁸⁷ Thomas Buergenthal, “The evolving International Human Rights System”, 100 Am. J. Int’l L. 783 (2006) p.790.

⁸⁸ Ernst-Ulrich Petersmann, “Constitutionalism and International Adjudication: How to constitutionalize the U.N. Dispute Settlement System?” 31 N.Y.U. J. Int’l L. & Pol. 753 (1999) p.771.

⁸⁹ International Covenant on Civil and Political Rights, *supra note* 69.

⁹⁰ International Covenant on Economic, Social and Cultural Rights, *supra note* 70.

⁹¹ John H. Jackson, “International Economic Law” in R. Bernhardt ed., *Encyclopedia of Public International Law*, Vol. II, (ELSEVIER, 1999), p.32.

important norms are to be found except those related to expropriations and nationalizations. However, international norms on human rights have been increasingly incorporated into discussions and negotiations on economic matters since the end of the Cold War.⁹²

Economic sanctions are “highly controversial foreign policy tools” that have drawn a fair amount of criticism.⁹³ It is difficult to name a term of public international law, whose definition is vaguer than that of *economic sanction*. As stated in Chapter II, this is partly because of the relationship between economic sanctions and the prohibition of intervention which itself lacks a clear definition.⁹⁴ Economic sanctions can be defined as “coercive foreign policy action[s] [that] intentionally suspend customary economic relations such as trade and/or financial exchanges in order to prompt the targeted state to change its policy or behavior.”⁹⁵ The U.N. General Assembly emphasized the principle of non-intervention by economic measures in the Charter of Economic Rights and Duties of States of December 12, 1974.⁹⁶ Economic sanctions generally center on trade embargoes, financial (loan and transfer) restrictions, and transportation (land, sea, air) prohibitions, as well as restrictions on arms shipments.⁹⁷

⁹² John H. Jackson, et al., *Legal Problems of International Economic Relations*, 4th ed., (West Group, 2002), pp.194-195.

⁹³ Sarah P. Schuette “U.S. Economic Sanctions regarding the proliferation of Nuclear Weapons: A Call for Reform of the Arms Export Control Act Sanctions” 35 *Cornell Int’l L.J.* 231 (2002), p.233.

⁹⁴ D.C. Dicke, “Economic Coercion” in R. Bernhardt, *supra note* 91, p.13.

⁹⁵ David Cortright and George A. Lopez ed. *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?* (1995) p.15. n.3. recited in Sarah P. Schuette, *supra note* 93, p.234.

⁹⁶ Charter of Economic Rights and Duties of States GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) U.N. Doc. A/RES/29/3281

Chapter 1 (Fundamentals of International Economic Relations)

Economic as well as political and other relations among States shall be governed, *inter alia*, by the following principles:

d. Non-intervention;

k. Respect for human rights and international obligations

⁹⁷ Gerhard Von Glahn, *supra note* 43, p.542.

3.1.1. Countermeasures

Countermeasures against an offending state for violation of an international law may be taken by the offended through joint or parallel actions.⁹⁸ Such actions have generally involved severance of diplomatic relations, trade boycotts and in some cases, cessation of air or sea traffic.⁹⁹ These measures, if not contrary to treaty obligation, fall within the discretion of each individual state. Where these measures are contrary to treaty obligations or customary international norms, they may be legally justified as reprisals.¹⁰⁰ In certain cases, states which have not been directly injured can join in collective countermeasures on the basis that the violation has an impact on “a common concern of the international community.”¹⁰¹ As discussed in Chapter II, an emphasis on the common concern of states in struggling with such acts as aggression, terrorism or serious violations of human rights is in accord with the concept of duties *Erga Omnes*.

In the past, states could even go to war to enforce their legal rights. However, this is no more lawful except in certain exceptions like self-defence against armed attack.¹⁰² The remaining forms of self-help are countermeasures like retorsion and reprisals.¹⁰³ Retorsion is a lawful act which is meant to punish the violating state by, for example cutting off economic aid.¹⁰⁴ Reprisal is an act which would usually be illegal but which is rendered legal by a prior illegal act

⁹⁸ Dae-Soon Kim, *supra note 41*, pp.518-519.

⁹⁹ Seung-Hwan Choi, *International Economic Law*, 2nd ed., (Seoul, Bub Young sa, 2001), pp.124-125.

¹⁰⁰ *Ibid.*

¹⁰¹ Lori F. Damrosch, *supra note 2*, p.726.

¹⁰² Article 51 of U.N. Charter

Nothing in the present Charter shall impair **the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations**, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. (emphasis added.)

¹⁰³ See Nigel White and Ademola Abass, *supra note 30*, pp.513-515.

¹⁰⁴ This is lawful because there is no obligation to support economic aid.

committed by the other state.¹⁰⁵ One disadvantage of retorsion and reprisal is that the state imposing these measures may injure itself as much as the state against which they are designed.¹⁰⁶ Specifically, this can happen when one state cuts off trade with the violating state. A more serious disadvantage of self-help is that it works effectively only if the injured state is more powerful than the violating state.¹⁰⁷

Therefore, sanctions are increasingly imposed by large groups of states, working through international organizations such as the U.N. Security Council. However, the U.N. Security Council has imposed sanctions only in limited circumstances¹⁰⁸ because the veto power of the five permanent members often has paralyzed the imposition of sanctions. Though the U.N. General Assembly is not subject to the veto, its resolutions are not legally binding. The decisions of both the Security Council and the General Assembly are generally based upon political considerations.¹⁰⁹

It is undeniable that sanctions work less effectively in international law than in domestic law. There are more than 190 states and as only few states have strong political and economic power, the other states are too weak to impose sanctions against them.

This paper, however, argues that this does not mean that international law as a whole works less effectively than domestic law. International law just works in a different way.¹¹⁰

3.1.2. Legality of Economic Sanctions under the International Law

States targeted by economic sanctions claim that states imposing economic sanctions violate

¹⁰⁵ See Nigel White and Ademola Abass, *supra note* 30, pp.513-515.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ This will be discussed in Chapter III. 2. (Economic Sanctions by the U.N. Security Council) in depth.

¹⁰⁹ Peter Malanczuk, *supra note* 5, p.4.

¹¹⁰ *Ibid.*, p.5.

the principle of non-intervention and state sovereignty under the Article 2(7) of the U.N. Charter.¹¹¹ That is, economic sanctions intervene with the target state's domestic jurisdiction and state sovereignty. However, in 1999 the U.N. issued a report of the Secretary-General according to which states may use economic sanctions on other states for affirming existing international norms.

Reaffirming that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights,

1. Calls upon the international community to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral economic coercive measures against developing countries that are not authorized by relevant organs of the United Nations or are inconsistent with the principles contained in the Charter of the United Nations, as a means of forcibly imposing the will of one State on another;”¹¹²

By analogy, in other circumstances, especially when it is a matter of upholding concrete international principles, economic sanctions may be allowed under the international law.

Similarly, in 1984 the U.N. General Assembly adopted a resolution on Economic Measures as a Means of Political and Economic Coercion Against Developing Countries.

2. Reaffirms that developed countries should refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions, incompatible with the provisions of the Charter of the United Nations and in violation of undertakings contracted multilaterally or bilaterally, against developing countries as a form of political and economic coercion which affects their economic, political and social development;”¹¹³

This resolution should also be interpreted to mean that the individual state's use of economic sanctions may not be a violation against the U.N. Charter automatically, while certain sanctions

¹¹¹ Sarah H. Cleveland, *supra* note 12, p.49.

¹¹² Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries: Report of the Secretary-General, U.N. GAOR, 54th Sess., Agenda Item 97(c), at 4, U.N. Doc. A/54/486 (1999).

¹¹³ Economic Measures as a Means of Political and Economic Coercion Against Developing Countries, G.A. Res. 39/210, U.N. GAOR, 39th Sess., Supp. No. 51, 104th plen. mtg. at 160, U.N. Doc. A/RES/39/210 (1984).

which meet the conditions of the resolution should be considered illegal under international law.¹¹⁴

Furthermore, there are no clear customary international norms against the use of economic sanctions, even if economic sanctions may be considered an intervention into another state's sovereignty.¹¹⁵ The end of the Cold War has allowed the Security Council to use economic sanctions more widely ever since the 1990s.¹¹⁶ Because of the firm principle of prohibition of use of force under the U.N. Charter, individual states have used various forms of economic sanctions to settle disputes.¹¹⁷ The International Court of Justice (ICJ) also found that economic sanctions do not violate the customary international norm of non-intervention.¹¹⁸

Overall, the international community has been increasingly willing to recognize gross human rights violations as a matter which threatens regional and international peace and to endorse economic sanctions and sometimes even military interventions, in places like Somalia, Rwanda, Bosnia, Haiti, Kosovo, East Timor, Sierra Leone, Liberia, Congo, Cote d'Ivoire, the Sudan, and the Democratic People's Republic of Korea (DPRK). In light of the increasing use of economic sanctions, this paper argues that the use of economic sanctions has become an accepted customary international norm.¹¹⁹

As discussed in Chapter II, one of the most significant developments in international law in the last decades has been the wide recognition of human rights. Gross human rights violations have been increasingly accepted as matters of international concern that warrant multilateral and sometimes unilateral intervention by states. Therefore, this paper maintains that economic

¹¹⁴ Sarah H. Cleveland, *supra* note 12, p.49.

¹¹⁵ *Ibid*, p.53.

¹¹⁶ *Ibid*, p.51.

¹¹⁷ Jeong Hwa Pires, "North Korean Time Bomb: Can Sanctions Defuse It? A Review of International Economic Sanctions as an Option," 24 *Ga. J. Int'l & Comp. L.* 307, (1994) p.313.

¹¹⁸ *See* more details in Chapter II.1.C (Nicaragua Case)

¹¹⁹ Sarah H. Cleveland, *supra* note 12, p.53.

sanctions against human rights violations are fully consistent with international law including the U.N. Charter to protect and promote fundamental human rights.

3.2. Economic Sanctions by the U.N. Security Council

When the U.N. Security Council decides that there is “the existence of any threat to the peace, breach of the peace, or act of aggression,” its actions fall in one of following categories.¹²⁰ It may call upon the member states to apply “measures not involving the use of armed forces” like the closure of economic relations or the severance of diplomatic relations,¹²¹ or may call for the use of armed forces which is “necessary to maintain or restore international peace and security.”¹²² Several cases of economic sanctions by the Security Council, applied, at least partially, for human rights violations, are discussed below.

3.2.1. Sanctions against Southern Rhodesia

The first major instance of economic sanctions specifically or at least ostensibly in an effort to vindicate human rights was the case of Southern Rhodesia. The U.N. Security Council authorized sanctions against Rhodesia for the first time in 1965;¹²³ they lasted until the

¹²⁰ Article 39 of the U.N. Charter.

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

¹²¹ Article 41 of the U.N. Charter.

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

¹²² Article 42 of the U.N. Charter.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

¹²³ Question concerning the situation in Southern Rhodesia, U.N. Security Council (SC) Resolution 216 (Nov. 12.

restoration of British rule in December 1979.¹²⁴ It was mainly against the Unilateral Declaration of Independence (UDI) by the white minority government of the Southern Rhodesia territory in 1965.¹²⁵ Based upon the two resolutions in 1965,¹²⁶ the Security Council called on member states of the U.N. not to recognize or assist the illegal regime and in particular to break all economic and arms relations with it. In 1966¹²⁷ and 1968,¹²⁸ the Security Council went further by imposing selective mandatory economic sanctions on Rhodesia. However, the sanctions were not universally adhered to. South Africa, Portugal, Israel, Iran and some Arab states helped Rhodesia in various ways. In 1970,¹²⁹ 1972,¹³⁰ and 1973,¹³¹ finally the Security Council rendered comprehensive economic sanctions. They were terminated in 1979 as a result of the agreement leading to the independence of Zimbabwe.¹³² The white minority government consented in the agreement mainly out of economic concern, namely, they needed to preserve their economic stability and capital from sanctions.

3.2.2. Sanctions against Iraq

The sanctions against Iraq were one of the most comprehensive ranges of economic

1965) UN. Doc. S/RES/216; U.N. SC Resolution 217 (Nov. 20. 1965) UN. Doc. S/RES/217.

¹²⁴ Southern Rhodesia, U.N. SC Resolution 460 (Dec. 21. 1979) UN Doc. S/RES/460.

¹²⁵ Question concerning the situation in Southern Rhodesia, *supra note* 123.

¹²⁶ *Ibid.*

¹²⁷ Question concerning the situation in Southern Rhodesia, U.N. SC Resolution 232 (Dec. 16. 1966) UN Doc. S/RES/232 (sanctions); U.N. SC Resolution 221 (Apr. 9. 1966) UN Doc. S/RES/221 (condemning Portugal's support)

¹²⁸ Question concerning the situation in Southern Rhodesia, U.N. SC Resolution 253 (May. 29. 1968) UN Doc. S/RES/253 (sanctions)

¹²⁹ Question concerning the situation in Southern Rhodesia, U.N. SC Resolution 277 (May. 15. 1970) UN Doc. S/RES/277 (sanctions); U.N. SC Resolution 288 (Nov. 17. 1970) UN Doc. S/RES/288. (reaffirming)

¹³⁰ Question concerning the situation in Southern Rhodesia, U.N. SC Resolution 314 (Feb. 28. 1972) UN Doc. S/RES/314; U.N. SC Resolution 318 (Jul. 28. 1972) UN Doc. S/RES/318; U.N. SC Resolution 320 (Sep. 29. 1972) UN Doc. S/RES/320.

¹³¹ Provocation by Southern Rhodesia, U.N. SC Resolution 326 (Feb. 2. 1973) UN Doc. S/RES/326; Southern Rhodesia, U.N. SC Resolution 328 (Mar. 10. 1973) UN Doc. S/RES/328; U.N. SC Resolution 333 (May. 22. 1973) UN Doc. S/RES/333.

¹³² Southern Rhodesia, *supra note* 124.

sanctions imposed by the Security Council. They were adopted in the wake of Iraq's invasion of Kuwait (the Gulf War) in 1990.¹³³ Based upon Chapter VII of the U.N. Charter, Security Council Resolution 661 affirmed the inherent right of individual and collective self-defence and also expressed concern about further loss of human life.¹³⁴ This resolution imposed a wide range of economic sanctions on Iraq, including the prohibition of all imports from and exports to Iraq and the occupied Kuwait, and the transfer of funds to Iraq and Kuwait.¹³⁵ Furthermore, the Security Council decided that "all states shall not make available to the government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories.....from remitting any other funds to persons or bodies within Iraq or Kuwait....."¹³⁶

Subsequently, the Security Council established a committee composed of all members of the Council to control the implementation of economic sanctions under Security Council Resolution 666.¹³⁷ The committee was instructed to keep the situation regarding food in Iraq and Kuwait under constant review.¹³⁸ This committee was also directed to remember that food supplies should be supported through the U.N. in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision.¹³⁹

Condemning the gross human rights violation by Iraq, for example, "the treatment by Iraqi forces of Kuwait nationals, including measures to force them to leave their own country and mistreatment of persons and property....[and] its holding of third-state nationals against their

¹³³ Iraq-Kuwait, U.N. SC Resolution 660 (Aug. 2. 1990) UN Doc. S/RES/660.

¹³⁴ Iraq-Kuwait, U.N. SC Resolution 661 (Aug. 6. 1990) UN Doc. S/RES/661.

¹³⁵ *Ibid.* para.3.

¹³⁶ *Ibid.* para.4.

¹³⁷ Iraq-Kuwait, U.N. SC Resolution 666 (Sep. 13. 1990) UN Doc. S/RES/666.

¹³⁸ *Ibid.*, para.1.

¹³⁹ *Ibid.*, para.5, 6, 7.

will,” Security Council Resolution 670¹⁴⁰ tightened the binding economic sanctions imposed on Iraq. Through this Resolution, the Council decided that all states, irrespective of any international agreements or contracts, licenses or permits in existence, were to refuse permission to any aircraft to take off from their territory, if the aircraft was carrying cargo to or from Iraq or Kuwait.¹⁴¹ In addition, states were to refuse permission to any aircraft destined to land in Iraq or Kuwait to overfly their territory.¹⁴²

After the end of the 1991 Gulf War, these economic sanctions against Iraq were linked to the removal of the weapons of mass destruction by Security Council Resolution 687.¹⁴³ Based upon this Resolution, Iraq was called upon to accept the destruction or removal of all chemical and biological weapons and all ballistic missiles with a range greater than 150 kilometers.¹⁴⁴

Since the Council did not lift the sanctions, they were increasingly criticized for inflicting humanitarian suffering on innocent civilians, lack of clear criteria for termination, and the failure to put direct pressure on Iraq's leader.¹⁴⁵ In response to the criticism for the sanctions' humanitarian impact, several Security Council resolutions were introduced that allowed the sale of Iraqi oil in exchange for food and medicine. The earliest of these resolutions were introduced in 1991. Security Council Resolution 706 was adopted to allow the sale of Iraqi oil in exchange for food and medicine.¹⁴⁶ Security Council Resolution 712 confirmed that Iraq could sell oil to fund a U.N. “Oil-for-Food Program.”¹⁴⁷ In 1995, under Security Council Resolution 986, Iraq

¹⁴⁰ Iraq-Kuwait, U.N. SC Resolution 670 (Sep. 25. 1990) UN Doc. S/RES/670.

¹⁴¹ *Ibid*, para.3.

¹⁴² *Ibid*, para.4.

¹⁴³ Iraq-Kuwait, U.N. SC Resolution 687 (Apr. 3. 1990) UN Doc. S/RES/687.

¹⁴⁴ *Ibid*, para.7, 8, 9.

¹⁴⁵ *See*, Global Policy Forum, “Iraq Sanctions: Humanitarian Implications and Options for the Future” (2002) available at <http://www.globalpolicy.org/security/sanction/iraq1/2002/paper.htm>; David Rieff, “Were Sanctions Right?” N.Y. Times, July 27, 2003.

¹⁴⁶ Iraq-Kuwait, U.N. SC Resolution 706 (Aug. 15. 1991) UN Doc. S/RES/706. para.2.

¹⁴⁷ Iraq, U.N. SC Resolution 712 (Sep. 19. 1991) UN Doc. S/RES/712. para.2.

was allowed to export more oil with which to purchase items needed to sustain the civilian population.¹⁴⁸ The first Iraqi oil under “the Oil-for-Food Program” was exported in December 1996 and the first shipments of food arrived in March 1997.¹⁴⁹ The sanctions were finally lifted on May 22, 2003 by Security Council Resolution 1483.¹⁵⁰ Overall, sanctions on Iraq were proven unsuccessful because they were neither designed for immediate implementation nor well-planned with a more long term approach. Furthermore, the role of various agencies in the implementation and monitoring of the sanctions were unclear.

3.2.3. Sanctions against the Federal Republic of Yugoslavia

Under Security Council Resolution 757, the Council imposed a wide range of economic sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro) on May, 1992.¹⁵¹ These sanctions are also related to the protection of human rights as the Council announced its concern for the continued expulsion of non-Serb civilians¹⁵² and noted the “urgent need for humanitarian assistance and the various appeals made in this connection” under the former Resolution 752.¹⁵³

Resolution 757 prohibited the import of goods from the Federal Republic of Yugoslavia and the export or trans-shipment of such goods by states or their nationals and the sale or supply of any commodities or products to any person or body in the Federal Republic of Yugoslavia or to

¹⁴⁸ On authorization to permit the import of petroleum and petroleum products originating in Iraq, as a temporary measure to provide for humanitarian needs of the Iraqi people, U.N. SC Resolution 986 (Apr. 14. 1995) UN Doc. S/RES/986. para.2.

¹⁴⁹ See Office of the Iraq Programme Oil-for-Food website <http://www.un.org/Depts/oip/index.html>; See also <http://www.un.org/Depts/oip/background/index.html>

¹⁵⁰ The situation between Iraq and Kuwait, U.N. SC Resolution 1483 (May. 22. 2003) UN Doc. S/RES/1483. para.10.

¹⁵¹ Bosnia and Herzegovina, U.N. SC Resolution 757 (May. 30. 1992) UN Doc. S/RES/757.

¹⁵² *Ibid.*

¹⁵³ Bosnia and Herzegovina, U.N. SC Resolution 752 (May. 15. 1992) UN Doc. S/RES/752.

any person or body for the purposes of any business carried on in or operated from it.¹⁵⁴ This resolution also prohibited all states from making available to the authorities in the Federal Republic of Yugoslavia or to any commercial, industrial or public utility undertaking there, any funds or any other financial or economic resources.¹⁵⁵ In addition, it posited that all states should prevent their nationals and any persons within their territories from providing any funds or resource at all to anyone within the Federal Republic of Yugoslavia, except for payments exclusively for strictly medical or humanitarian purposes and foodstuffs.¹⁵⁶

The sanctions against the Federal Republic of Yugoslavia were tightened under Security Council Resolution 787.¹⁵⁷ Through this resolution, the Council decided that “any vessel in which a majority or a controlling interest was held by a person or undertaking in or operating from the Federal Republic of Yugoslavia shall be considered, for the purpose of implementation of the relevant resolutions of the Security Council, a vessel of the Federal Republic of Yugoslavia regardless of the flag under which the vessel sails.”¹⁵⁸ Extensive maritime control measures were also adopted under this resolution.

The scope of these sanctions was extended by Security Council Resolution 820¹⁵⁹ on the U.N. protected areas in the Republic of Croatia and the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.¹⁶⁰ Security Council Resolution 942¹⁶¹ extended the sanctions to include “economic activities carried on within their territories by any entity which is owned or controlled, directly or indirectly, by any person or any entity in those areas of the

¹⁵⁴ Bosnia and Herzegovina, *supra note* 151, para.4.

¹⁵⁵ *Ibid*, para.5.

¹⁵⁶ *Ibid*.

¹⁵⁷ Bosnia and Herzegovina, U.N. SC Resolution 787 (Nov. 16. 1992) UN Doc. S/RES/787.

¹⁵⁸ *Ibid*, para.10.

¹⁵⁹ Bosnia and Herzegovina, U.N. SC Resolution 820 (Apr. 17. 1993) UN Doc. S/RES/820.

¹⁶⁰ *Ibid*, para.12.

¹⁶¹ Bosnia and Herzegovina, U.N. SC Resolution 942 (Sep. 23. 1994) UN Doc. S/RES/942.

Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.”¹⁶²

As peace negotiations progressed, the sanctions against the Federal Republic of Yugoslavia were gradually eased. After the Dayton Peace Agreement was initiated, most sanctions were suspended indefinitely by Security Council Resolution 1022,¹⁶³ except for the measures imposed on the Bosnian Serb forces.¹⁶⁴ This resolution also released the frozen assets with the decision that “all funds and assets previously frozen or impounded pursuant to resolutions 757 (1992) and 820 (1993) may be released by States in accordance with law, provided that any such funds and assets that are subject to any claims, liens, judgments, or encumbrances, or which are the funds or assets of any person, partnership, corporation, or other entity found or deemed insolvent under law or the accounting principles prevailing in such State, shall remain frozen or impounded until released in accordance with applicable law, and decides further that obligations of States.”¹⁶⁵ All sanctions were fully lifted by Security Council Resolution 1074¹⁶⁶ after the elections in Bosnia and Herzegovina which satisfied the requirements of the Peace Agreement.¹⁶⁷ Overall, sanctions played significant role to establish the Peace Agreement because they were well designed and applied limited measures with understanding the requirements for effective enforcement.

3.2.4. Sanctions against Somalia

Concerned about “the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country,” under Chapter VII of the U.N. Charter, the Security Council first imposed a general and complete arms

¹⁶² *Ibid*, para.7.

¹⁶³ On suspension of measures imposed by or reaffirmed in Security Council resolutions related to the situation in the former Yugoslavia, U.N. SC Resolution 1022 (Nov. 22. 1995) UN Doc. S/RES/1022.

¹⁶⁴ *Ibid*, para.2.

¹⁶⁵ *Ibid*, para.5.

¹⁶⁶ The situation in the former Yugoslavia, U.N. SC Resolution 1074 (Oct. 1. 1996) UN Doc. S/RES/1074.

¹⁶⁷ *Ibid*, para.1.

embargo on Somalia in 1992 with the adoption of Resolution 733.¹⁶⁸ It demanded that all states implement immediately a general and complete arms embargo on all deliveries of weapons and military equipment to Somalia.¹⁶⁹

With time, the Council adopted certain exceptions to the arms embargo to meet the changes of the political and economic situation in Somalia.

Under Resolution 1356,¹⁷⁰ protective clothing for humanitarian and development workers and non-lethal military equipment solely for humanitarian or protective use were excluded from the arms embargo.¹⁷¹ In 2006, through Resolution 1726,¹⁷² weapons and military equipment and technical training and assistance intended solely for the support of or use by the force of ‘the Transitional Federal Institutions’ of Somalia became exceptions to the arms embargo, as well.¹⁷³

Overall, in Somalia, sanctions did not contribute to pressure the parties to negotiate a peaceful agreement or to constrain the military capabilities of the rebel movements, because of the useless monitoring system and enforcement procedures, namely applying ineffective arms embargoes without providing meaningful solutions.

3.2.5. Sanctions against Rwanda

The Security Council resolution concerning Rwanda is one of the distinct examples of economic sanctions against gross human rights violations. In Resolution 918,¹⁷⁴ the Council strongly condemned the genocide which took place in Rwanda and the impunity of armed

¹⁶⁸ Somalia, U.N. SC Resolution 733 (Jan. 23. 1992) UN Doc. S/RES/733.

¹⁶⁹ *Ibid*, para.5.

¹⁷⁰ On the situation in Somalia, U.N. SC Resolution 1356 (June. 19. 2001) UN Doc. S/RES/1356.

¹⁷¹ *Ibid*, para.2, 3.

¹⁷² The situation in Somalia, U.N. SC Resolution 1725 (Dec. 6. 2006) UN Doc. S/RES/1725.

¹⁷³ *Ibid*, para.5.

¹⁷⁴ On the expansion of the mandate of the UN Assistance Mission for Rwanda and imposition of an arms embargo on Rwanda, U.N. SC Resolution 918 (May. 17. 1994) UN Doc. S/RES/918.

individuals. The Council was also concerned that “the situation in Rwanda, which has resulted in the death of many thousands of innocent civilians, including women and children, the internal displacement of a significant percentage of the Rwandan population, and the massive exodus of refugees to neighbouring countries, constitutes a humanitarian crisis of enormous proportions.” As a result, under this resolution, a complete arms embargo on Rwanda was imposed by the Security Council.¹⁷⁵ It terminated on September 1996, pursuant to paragraph 8 of Resolution 1011.¹⁷⁶ However, in this resolution, the Security Council prohibits the sale or supply of all types of arms and related materials to Rwanda, other than to the government of Rwanda.¹⁷⁷ It also prevents the sale or supply of any arms to persons in the neighboring states of Rwanda for the purpose of the use of such arms or related materials within Rwanda.¹⁷⁸ These exceptional measures are still in effect because of the concern that anti-government forces might use such arms or related materials.¹⁷⁹

3.2.6. Sanctions against Sierra Leone

Deeply concerned about the continued violence, the loss of life and the aggravated human rights conditions in Sierra Leone following the military coup on 25 May 1997, the Security

¹⁷⁵ *Ibid*, para.13.

13. Decides that all States shall prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts.

¹⁷⁶ On lifting of restrictions imposed by paragraph 13 of resolution 918 (1994) on the sale or supply of arms and matériel to the Government of Rwanda, U.N. SC Resolution 1011 (Aug. 16. 1995) UN Doc. S/RES/1011.

¹⁷⁷ *Ibid*, para.9.

9. Further decides, with a view to prohibiting the sale and supply of arms and related matériel to non-governmental forces for use in Rwanda, that all States shall continue to prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts, to Rwanda, or to persons in the States neighbouring Rwanda if such sale or supply is for the purpose of the use of such arms or matériel within Rwanda, other than to the Government of Rwanda as specified in paragraphs 7 and 8 above.

¹⁷⁸ *Ibid*.

¹⁷⁹ U.N. Press Release, “Commission of Inquiry to investigate reports of Military Training and Arms Transfer to Rwanda will visit five African Countries,” (Nov. 3. 1995) UN Doc. SC/6119.

Council has issued several resolutions since the adoption of Resolution 1132¹⁸⁰ in 1997. The economic sanctions, including an arms embargo on non-state actors and a travel ban are still in effect in Sierra Leone.

Security Council Resolution 1171 is the most notable one in this respect. In paragraphs 2, 4, and 5, the Council prohibited all states from the sale and supply of all types of arms or related materials to Sierra Leone except to the government of Sierra Leone, and from allowing the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front (RUF).¹⁸¹

In Resolution 1171, the Security Council also indicated that all sanctions will expire “once the control of the Government of Sierra Leone has been fully re-established over all its territory, and when all non-governmental forces have been disarmed and demobilized.”¹⁸²

However, the sanctions on the import of all rough diamonds from Sierra Leone, imposed by Resolution 1306¹⁸³ and renewed by Resolution 1446¹⁸⁴, were terminated in 2003 by the decision of the Security Council.¹⁸⁵ This was the result of the increasing efforts of the government of Sierra Leone to control and manage its diamond industry and to ensure proper control over diamond mining areas.¹⁸⁶

3.2.7. Sanctions against Liberia

To establish peace and stability in Liberia and its regions, the Security Council has adopted

¹⁸⁰ The situation in Sierra Leone, U.N. SC Resolution 1132 (Oct. 8. 1997) UN Doc. S/RES/1132.

¹⁸¹ On the situation in Sierra Leone, U.N. SC Resolution 1171 (June. 5. 1998) UN Doc. S/RES/1171. para.2, 4, 5.

¹⁸² *Ibid*, para.7.

¹⁸³ On the situation in Sierra Leone, U.N. SC Resolution 1306 (Jul. 5. 2000) UN Doc. S/RES/1306. para.1.

¹⁸⁴ On the situation in Sierra Leone, U.N. SC Resolution 1446 (Dec. 4. 2002) UN Doc. S/RES/1446. para.2.

¹⁸⁵ U.N. Press Release, “Press Statement on Sierra Leone Diamond Embargo by Security Council President,” (May. 6, 2003) UN Doc. SC/7778.

¹⁸⁶ *Ibid*.

several resolutions to impose sanctions since 1995. These include Security Council Resolution 985¹⁸⁷ from 1995 and Security Council Resolution 1343¹⁸⁸ from 2001. The most recent sanctions are based upon Resolution 1521¹⁸⁹ from 2003. The sanctions have been modified by subsequent resolutions like Security Council Resolutions 1532¹⁹⁰ and 1683.¹⁹¹ In 2006, the Security Council extended the sanctions against Liberia by Resolution 1731.¹⁹²

The sanctions include an arm embargo, a travel ban, and an assets freeze. Concerning the arms embargo, the Security Council decided that “all States shall take the necessary measures to prevent the supply to Liberia of arms and related materiel of all types and also of technical training and assistance.”¹⁹³ Concerning the travel ban, the Council prevented all States from the entry into or transit through their territories of individuals on the Travel Ban List.¹⁹⁴ Lastly, concerning the assets freeze, the Council decided that “all States shall freeze without delay funds, other financial assets and economic resources owned or controlled by individuals and entities” on the Assets Freeze List.¹⁹⁵ The Travel Ban List and the Assets Freeze List are maintained and regularly updated by the Security Council.¹⁹⁶

With time, some of the items in the sanctions were excluded. In 2006, the Security Council decided to allow the timber sanctions¹⁹⁷ to expire based upon the government of Liberia’s

¹⁸⁷ On extension of the mandate of the UN Observer Mission in Liberia and establishment of the Security Council Committee on arms embargo against Liberia, U.N. SC Resolution 985 (Apr. 13. 1995) UN Doc. S/RES/985.

¹⁸⁸ On the situation in Liberia, U.N. SC Resolution 1343 (Mar. 7. 2001) UN Doc. S/RES/1343.

¹⁸⁹ The situation in Liberia, U.N. SC Resolution 1521 (Dec. 22. 2003) UN Doc. S/RES/1521.

¹⁹⁰ The situation in Liberia, U.N. SC Resolution 1532 (Mar. 12. 2004) UN Doc. S/RES/1532.

¹⁹¹ The situation in Liberia, U.N. SC Resolution 1683 (June. 13. 2006) UN Doc. S/RES/1683.

¹⁹² The situation in Liberia, U.N. SC Resolution 1731 (Dec. 20. 2006) UN Doc. S/RES/1731.

¹⁹³ The situation in Liberia, *supra note* 189, para.2.

¹⁹⁴ *Ibid*, para.4.

¹⁹⁵ The situation in Liberia, *supra note* 190, para.1, 2.

¹⁹⁶ The situation in Liberia, *supra note* 189, para.4 (a); The situation in Liberia, *supra note* 190, para.1.

¹⁹⁷ The sanctions, once, included prohibitions on the import of all round logs and timber products from Liberia. *See* The situation in Liberia, *supra note* 189, para.10.

commitment to transparent management of the country's forestry resources.¹⁹⁸ In 2007, the Security Council decided to terminate the diamond sanctions¹⁹⁹ under Resolution 1753.²⁰⁰

3.2.8. Sanctions against the Democratic Republic of the Congo (DRC)

To establish peace in the DRC and prevent the illegal exploitation of natural resources from financing armed groups in the Eastern part of the DRC, the Security Council has adopted several resolutions since 2003.

The Council first imposed an arms embargo on “all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri, and on groups not party to the Global and All-inclusive agreement in the Democratic Republic of the Congo” with the adoption of Resolution 1493²⁰¹ in 2003.

The sanctions were modified and strengthened with the successive adoption of Resolutions 1533,²⁰² 1596,²⁰³ 1649,²⁰⁴ and 1698.²⁰⁵ Under these resolutions, the Security Council expanded the scope of the arms embargo and imposed additional sanctions, including a travel ban and an assets freeze. The U.N. Security Council Sanctions Committee which was established based

¹⁹⁸ The situation in Liberia, U.N. SC Resolution 1689 (June. 20. 2006) UN Doc. S/RES/1689, para.1; U.N. Press Release, “Security Council Press Statement on Review of Liberia Sanctions,” (Oct. 20. 2006) UN Doc. SC/8856.

¹⁹⁹ The previous sanctions against Liberia also included prohibitions on the import of rough diamonds from Liberia. These measures on diamonds were imposed by Resolution 1521 and renewed by Resolution 1731. *See* The situation in Liberia, *supra note* 189, para.6; The situation in Liberia, *supra note* 192, para.1.

²⁰⁰ The situation in Liberia, U.N. SC Resolution 1753 (Apr. 27. 2007) UN Doc. S/RES/1753. para.1.

²⁰¹ The situation concerning the Democratic Republic of the Congo, U.N. SC Resolution 1493 (Jul. 28. 2003) UN Doc. S/RES/1493.

²⁰² The situation concerning the Democratic Republic of the Congo, U.N. SC Resolution 1533 (Mar. 12. 2004) UN Doc. S/RES/1533.

²⁰³ The situation concerning the Democratic Republic of the Congo, U.N. SC Resolution 1596 (Apr. 18. 2005) UN Doc. S/RES/1596.

²⁰⁴ The situation concerning the Democratic Republic of the Congo, U.N. SC Resolution 1649 (Dec. 21. 2005) UN Doc. S/RES/1649.

²⁰⁵ The situation concerning the Democratic Republic of the Congo, U.N. SC Resolution 1698 (Jul. 31. 2006) UN Doc. S/RES/1698.

upon Resolution 1533²⁰⁶ maintains and regularly updates both the Travel Ban List and the Assets Freeze List.²⁰⁷

3.2.9. Sanctions against Côte d'Ivoire

Deeply concerned about the human rights situation in Côte d'Ivoire, "in particular in the northern part of the country, and [about] the use of the media, in particular radio and television broadcasts, to incite hatred and violence against foreigners in Côte d'Ivoire," in 2004 the Security Council imposed sanctions against Côte d'Ivoire under Resolution 1572.²⁰⁸ The sanctions include an arms embargo,²⁰⁹ a travel ban,²¹⁰ an assets freeze,²¹¹ and diamond sanctions.²¹²

The Security Council has modified and renewed the sanctions by subsequent resolutions like Resolutions 1584²¹³ and 1643.²¹⁴ Most recently, the Council extended the sanctions under Resolution 1727²¹⁵ from 2006. The Security Council is scheduled to review the sanctions in light of the progress achieved in the peace and national reconciliation process in Côte d'Ivoire by 31 October 2007.²¹⁶

Based upon paragraph 8 of Resolution 1572, the arms embargo does not apply to supplies and technical assistance for the support of or use by the United Nations Operation in Côte

²⁰⁶ The situation concerning the Democratic Republic of the Congo, *supra note* 202.

²⁰⁷ See Consolidated Travel Ban and Assets Freeze Lists available at http://www.un.org/sc/committees/1533/pdf/1533_list.pdf

²⁰⁸ The situation in Côte d'Ivoire, U.N. SC Resolution 1572 (Nov. 15. 2004) UN Doc. S/RES/1572.

²⁰⁹ *Ibid*, para.8.

²¹⁰ *Ibid*, para.10.

²¹¹ *Ibid*, para.12.

²¹² The situation in Côte d'Ivoire, U.N. SC Resolution 1643 (Dec. 15. 2005) UN Doc. S/RES/1643, para.8.

²¹³ The situation in Côte d'Ivoire, U.N. SC Resolution 1584 (Feb. 1. 2005) UN Doc. S/RES/1584.

²¹⁴ The situation in Côte d'Ivoire, *supra note* 212.

²¹⁵ The situation in Côte d'Ivoire, U.N. SC Resolution 1727 (Dec. 15. 2006) UN Doc. S/RES/1727.

²¹⁶ *Ibid*.

d'Ivoire (UNOCI) and the French forces,²¹⁷ as well as to supplies of protective clothing exported to Côte d'Ivoire by UN personnel, media representatives, humanitarian and development workers, for their personal use.²¹⁸

In addition, in paragraph 12 of Resolution 1727, the Security Council emphasized that it is fully prepared to impose targeted measures against persons who are responsible for serious violations of human rights and international humanitarian law, for inciting public hatred and violating the arms embargo, as well as for attacking or obstructing the actions of UNOCI, the French forces, the High Representative for the Elections, the International Working Group, or the Mediators.²¹⁹

3.2.10. Sanctions against the Sudan

The most recent case of the Security Council imposing economic sanctions against gross human rights violations is the one against the Sudan.

By imposing sanctions, including an arms embargo on all non-governmental entities and individuals, including the Janjaweed militias, under Resolution 1556 in 2004, the Security Council clearly showed its concern. It justified its actions against human rights violation as follows:

*Reiterating its grave concern at **the ongoing humanitarian crisis and widespread human rights violations**, including continued attacks on civilians that are placing the lives of hundreds of thousands at risk,*

*Condemning **all acts of violence and violations of human rights and international humanitarian law** by all parties to the crisis, in particular by the Janjaweed, including indiscriminate attacks on civilians, rapes, forced displacements, and acts of violence especially those with an ethnic*

²¹⁷ The situation in Côte d'Ivoire, *supra* note 208, para.8 (a).

²¹⁸ *Ibid*, para.8 (c).

²¹⁹ The situation in Côte d'Ivoire, *supra* note 215, para.12.

*dimension, and expressing its utmost concern at the consequences of the conflict in Darfur on the civilian population, including women, children, internally displaced persons, and refugees, Recalling in this regard that the Government of Sudan bears the primary responsibility to respect human rights while maintaining law and order and protecting its population within its territory and that all parties are obliged to respect international humanitarian law, Urging all the parties to take the necessary steps to prevent and put an end to violations of human rights and international humanitarian law and underlining that there will be no impunity for violators, Expressing its determination to do everything possible to halt a humanitarian catastrophe, including by taking further action if required...*²²⁰ (emphasis added)

The sanctions were modified and strengthened with the adoption of Resolution 1591²²¹ in 2005, which expanded the scope of the arms embargo²²² and imposed additional measures including a travel ban²²³ and an assets freeze²²⁴ on individuals designated by the Security Council Sanctions Committee.

However, the list of individuals who are subject to the sanctions imposed by these resolutions is too limited. Currently, there are only four persons listed.²²⁵

The Security Council clearly expressed its intention to consider taking strong and effective measures against “any individual or group that violates or attempts to block the implementation of the Darfur Peace Agreement” in paragraph 1 of Resolution 1679,²²⁶ though any further measures have not been enforced yet.

Human Rights Watch has also asked the Security Council, especially China, to seriously consider “the important step of supporting through the UN the imposition of targeted sanctions

²²⁰ Reports of the Secretary-General on the Sudan, U.N. SC Resolution 1556 (Jul. 30. 2004) UN Doc. S/RES/1556.

²²¹ Reports of the Secretary-General on the Sudan, U.N. SC Resolution 1591 (Mar. 29. 2005) UN Doc. S/RES/1591.

²²² *Ibid*, para.7.

²²³ *Ibid*, para.3 (f).

²²⁴ *Ibid*, para.3 (g).

²²⁵ See Consolidated Travel Ban and Assets Freeze Lists available at http://www.un.org/sc/committees/1591/pdf/Sudan_list.pdf

²²⁶ Reports of the Secretary-General on the Sudan, U.N. SC Resolution 1679 (May. 16. 2006) UN Doc. S/RES/1679.

on key Sudanese officials responsible for Darfur policy.”²²⁷

3.2.11. Effects of the U.N. Security Council Economic Sanctions

All ten cases discussed above were provided as samples to illustrate the idea that the Security Council economic sanctions bolster fundamental human rights. In each case, it was quite clear that the sanctions mentioned in the text of the resolutions are against the gross human rights violations codified in international law including the U.N. Charter. If all Security Council resolutions which imposed the sanctions against human rights violations were examined, they would also support this conclusion.

Therefore, this paper argues that the sanctions by the Security Council have at least some positive effects on international human rights law and that they build international human rights norms.

However, it is also undeniable that for many years, the Security Council, while having the power under Chapter VII of the U.N. Charter to adopt legally binding resolutions and to order enforcement measures including economic sanctions, has rarely agreed to take such measures in the past. That situation changed to a large extent with the end of the Cold War. As discussed above, with increasing frequency, the Security Council has since exercised its powers under Chapter VII of the U.N. Charter in cases of gross human rights violations.

This development has led to the growing willingness of the international community and

²²⁷ See Human Rights Watch, “Letter to China on the Crisis in Darfur” available at <http://hrw.org/english/docs/2007/01/29/sudan15189.htm>

“.....China has recently publicly supported sanctions against Iran and imposed lesser restrictions on North Korea for their nuclear activities. The crisis in Sudan is no less critical, either for its victims in Darfur or for the millions of civilians living in the region who now face threats to their lives and livelihoods because of the regional instability caused by Darfur’s conflict. Millions of civilians face this nightmare because of the Sudanese government’s policies of supporting abusive armed groups both within Sudan and across Sudan’s borders. China can demonstrate its support for regional peace and security by publicly calling for an end to abusive domestic and foreign policies.”

individual states to deal with gross human rights violations by one effective tool of modern international law, economic sanctions.

3.3. Economic Sanctions by the U.S.

The United States has applied economic sanctions against target countries for various purposes. To protect and promote human rights, the United States imposed economic sanctions against China after the Tiananmen Square massacre in 1989.²²⁸ In 2007, President Bush announced that the U.S. government was ready to impose sanctions, including economic ones, against the Sudan for failing to cooperate with international efforts to end what he described as the "genocide" in the Darfur region. However, the U.S. postponed its sanctions to give the U.N. Secretary General time to seek diplomatic solutions to the crisis.²²⁹

In response to various nationalization movements, the U.S. has actively applied economic sanctions since the 1950s.²³⁰ By 1976, the U.S. had imposed such sanctions on Brazil, Chile, Cuba, Ethiopia, and Iran.²³¹

To keep the non-proliferation of weapons of mass destruction (WMD), especially nuclear weapons, the U.S. imposed numerous sanctions including economic measures on countries attempting to acquire WMD and related materials.²³² Most notably, the U.S. applied financial measures on North Korea to prevent the construction of a nuclear fuel reprocessing plant without

²²⁸ See Robert P. O'Quinn, "A User's Guide To Economic Sanctions," The Heritage Foundation (1997) available at <http://www.heritage.org/Research/PoliticalPhilosophy/BG1126.cfm>

²²⁹ See Michael Abramowitz and Glenn Kessler, "Bush Unveils and Delays Sanctions for Sudan: Deferral Made Upon U.N. Chief's Request" Washington Post, Apr. 19. 2007, at A23.

²³⁰ See Adam Smith, "A High Price to Pay: The Costs of the U.S. Economic Sanctions Policy and the Need for Process Oriented Reform," 4 U.C.L.A. J. Int'l L & For. Aff. 325, (1999) p.333 n.26.

²³¹ *Ibid.*

²³² *Ibid.*

the supervision of IAEA.²³³ In addition, the U.S. imposed restrictions on shipments of nuclear fuel to Argentina, Brazil, India, Pakistan, South Africa, and Taiwan throughout the 1970s and 1980s.²³⁴

The U.S. has used economic sanctions to protect the environment, as well. In the 1990s, the U.S. government included environmental conservation in its list of foreign policy priorities by including environmental protection in the definition of *national security*.²³⁵ As a result, the U.S. has enacted various sanctions, including economic measures that prohibit Ex-Im Bank export financing on products to be used in the construction of China's controversial Three Gorges Dam Project, or measures that prohibit the import of shrimp from countries that fail to protect sea turtle in their shrimp nets.²³⁶ The U.S. has also banned the importation of various fish and wildlife from Taiwan.²³⁷

Lastly, to prevent terrorism, since the early 1980s the U.S. has imposed sanctions on countries that are suspected of having terror links. For example, in the case of Libya, the U.S. banned imports of Libyan oil and a number of exports to Libya, following the deterioration in bilateral relations in 1982. In 1992, after the bombing of the Pan Am Flight 103 over Lockerbie, the U.S. government imposed unilateral sanctions on Libya. It lifted most of its economic sanctions and restored its diplomatic ties after Libya publicly turned its back on weapons of mass destruction. However, Libya still remains on the list of state sponsors of terrorism and as a result, arms exports are still banned by the U.S. government.²³⁸

There are broadly three rationales underpinning economic sanctions for the achievement of

²³³ See Global Policy Forum, "Sanctions against North Korea" available at <http://globalpolicy.igc.org/security/sanction/indexkor.htm>

²³⁴ Adam Smith, *supra note* 230.

²³⁵ *Ibid*, p.334. n.35.

²³⁶ *Ibid*.

²³⁷ *Ibid*.

²³⁸ See BBC News, "Timeline: Libya sanctions" available at <http://news.bbc.co.uk/1/hi/world/africa/3336423.stm>

these purposes.²³⁹ First, imposing economic sanctions seeks to influence a targeted state to change its policies or even its government actions.²⁴⁰ Second, it publicly expresses an opposition against the targeted state's policies to the people in the targeted state as well as the international community including other potential target states.²⁴¹ Third, it aims to punish the targeted state for its policies.²⁴²

Generally, the U.S. can impose economic sanctions on other countries on the following three grounds. First, under the federal statutes or executive orders by the President, the Executive can have the power to impose economic sanctions.²⁴³ Second, the Legislative can impose sanctions by legislation.²⁴⁴ Third, following a U.N. Security Council resolution, the U.S. can take sanctions including economic measures to meet the requirements of the resolution.²⁴⁵

3.3.1. U.S. Statutes on Sanctions against Human Rights Violations

The U.S. Congress has adopted a number of statutes in an effort to assimilate U.S. foreign policy into the protection and promotion of international human rights norms.²⁴⁶ The most notable federal statute which became the foundation of these legislative efforts is Section 502B of the Foreign Assistance Act (FAA) of 1961.²⁴⁷ It states:

(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental

²³⁹ See Barry E. Carter, "International Economic Sanctions: Improving the Haphazard U.S. Legal Regime," 75 Cal. L. Rev. 1159 (1987) pp.1170-1171.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ Sarah P. Schuette, *supra note* 93, p.235.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ Sarah H. Cleveland, *supra note* 12, p.32.

²⁴⁷ 22 U.S.C.A. § 2304 (2002) (Human rights and security assistance)

freedoms throughout the world without distinction as to race, sex, language, or religion.

*Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.*²⁴⁸

*(2) [n]o security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.*²⁴⁹

Concerning development assistance, the U.S. implemented this policy under Section 116 of FAA of 1961:²⁵⁰

(a) Violations barring assistance; assistance for needy people

*No assistance may be provided [t]o the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.*²⁵¹

Section 502 of the Trade Act of 1974²⁵² also authorized the withholding of development assistance and trade benefits from states violating the following policy:

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account:

*(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.*²⁵³

Section 701 of the International Financial Institutions Act of 1977²⁵⁴ was adopted to direct the U.S. government to use its “voice and vote” in numerous international financial institutions

²⁴⁸ *Ibid*, (a) (1)

²⁴⁹ *Ibid*, (a) (2)

²⁵⁰ 22 U.S.C.A. § 2151n (2002) (Human rights and development assistance)

²⁵¹ *Ibid*, (a)

²⁵² 19 U.S.C.A. § 2462 (2002) (Designation of beneficiary developing countries)

²⁵³ *Ibid*, (c) (7)

²⁵⁴ 22 U.S.C. § 262d (2000) (Human rights and United States Assistance policies with international financial institutions)

including the International Monetary Fund (IMF) pursuant to the policy as stated below:

(a) Policy goals

The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, and the International Monetary Fund, shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in:

(1) a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or

(2) provide refuge to individuals committing acts of international terrorism by hijacking aircraft.²⁵⁵

While the human rights protected by U.S. sanctions vary from statute to statute, these rights are generally in accord with the fundamental human rights recognized by international law.²⁵⁶ Therefore, Section 116 of the FAA of 1961,²⁵⁷ one of the foundational statutes preventing development assistance to states with human rights violations, defines recognized human rights as follows:

.....torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person.....²⁵⁸

In 1990, this act was amended in paragraph (b) to protect the rights of children from exploitation. It states:

(b) Protection of children from exploitation

No assistance may be provided to any government failing to take appropriate and adequate

²⁵⁵ *Ibid*, (a)

²⁵⁶ Sarah H. Cleveland, *supra note* 12, p.33.

²⁵⁷ *supra note* 250.

²⁵⁸ *Ibid*, (a)

*measures, within their means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services.*²⁵⁹

In addition, in 1998, this Act was amended in paragraph (c) to protect the right of religious freedom, as well:

(c) Factors considered

In determining whether or not a government falls within the provisions of subsection (a) of this section..... the Administrator shall consider.....

3) whether the government

*(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 6402²⁶⁰ of this title;*²⁶¹

Though the listed rights in Section 116 of FAA did not explicitly include such generally recognized *Jus Cogens* norms as genocide or crimes against humanity, it seems that the U.S. Congress did not intend to exclude them.²⁶²

It is very difficult to compile and categorize all U.S. statutes and regulations including annexed options for imposing economic sanctions against gross human rights violations. However, this paper believes that the U.S. has made an effort to adopt and amend a series of statutes that incorporate the protection of international human rights into U.S. foreign policy including imposing economic sanctions. The followings are cases of economic sanctions by the U.S. government at least partially imposed for human rights violations.

²⁵⁹ *Ibid*, (b)

²⁶⁰ 22 U.S.C.A. § 6402 (1998) (Definitions) (11)

(11) Particularly severe violations of religious freedom

The term "particularly severe violations of religious freedom" means systematic, ongoing, egregious violations of religious freedom, including violations such as:

(A) torture or cruel, inhuman, or degrading treatment or punishment;

(B) prolonged detention without charges;

(C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or

(D) other flagrant denial of the right to life, liberty, or the security of persons.

²⁶¹ *supra note* 250. (c)

²⁶² Sarah H. Cleveland, *supra note* 12, p.34.

3.3.2. Sanctions against Poland

In December 1981, the Polish government declared martial law, under which the army and the special police arrested or detained all Solidarity Labor Union leaders and many affiliated intellectuals.²⁶³ The United States and other Western countries responded to the martial law by imposing economic sanctions against the Polish government.

President Ronald Reagan stated that the purpose of imposing economic sanction is to persuade the Polish leaders to “free those in arbitrary detention, to lift martial law, and to restore the internationally recognized rights of the Polish people to free speech and association.”²⁶⁴ Though it was not mentioned in the U.S. sanctions legislation, the Polish government also violated the fundamental economic rights of the Polish people “to form free trade unions and to strike” by the illegalization of the Solidarity Labor Union.²⁶⁵

These human rights are in accordance with the rights protected by international human rights law. For example, Article 9 of the International Covenant on Civil and Political Rights (ICCPR)²⁶⁶ states: “No one shall be subjected to arbitrary arrest or detention.” Article 22 of ICCPR states: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

Overall, these economic sanctions against Poland reinforced international human rights norms. Based upon the sanctions, the U.S. government denied providing 765 million dollars in agricultural assistance to Poland and also withdrew its most-favored-nation status.²⁶⁷ It was a tough sanction considering the fact that the Polish foreign debt was more than \$20 billion in

²⁶³ Bureau of European and Eurasian Affairs, “Background Note: Poland” U.S. Department of State (Mar. 2007) available at <http://www.state.gov/r/pa/ei/bgn/2875.htm#foreign>

²⁶⁴ Ronald Reagan, “Address to the Nation About Christmas and the Situation in Poland” (Dec. 23, 1981) available at <http://www.reagan.utexas.edu/archives/speeches/1981/122381e.htm>

²⁶⁵ *Ibid.*

²⁶⁶ International Covenant on Civil and Political Rights, *supra note* 69.

²⁶⁷ Background Note: Poland, *supra note* 263.

1980.²⁶⁸ However, these sanctions were gradually terminated in return for various positive steps by the Polish government from the release of political prisoners to the formal abolition of martial law in 1981.²⁶⁹

3.3.3. Sanctions against South Africa

In 1985 the administration of Ronald Reagan imposed limited sanctions against South Africa for its government's racial restrictions and apartheid.²⁷⁰ In 1986, Congress, after overriding a presidential veto, imposed more comprehensive economic sanctions to ban the import of South African goods and investments in South Africa²⁷¹ through the Comprehensive Anti-Apartheid Act (CAAA) of 1986.²⁷² Under Section 311 of the CAAA, the U.S. stipulated the conditions for termination of the sanctions as follows:

(a) This title and sections shall terminate if the Government of South Africa:

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black

²⁶⁸ *Ibid.*

²⁶⁹ Kenneth Roth, "The role of U.S. sanctions policies in promoting human rights," (Sep, 8, 1998) (Excerpts from testimony of Kenneth Roth, Executive Director, Human Rights Watch before the Senate Task Force on Economic Sanctions, 8 September 1998) available at <http://www.hartford-hwp.com/archives/27c/index-ae.html>

²⁷⁰ International Information Program, "Sanctions against South Africa (1986)," U.S. Department of State available at <http://usinfo.state.gov/usa/infousa/facts/democrac/56.htm>

²⁷¹ *Ibid.*

²⁷² The Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, October 2, 1986, 100 Stat. 1086. (1986)

*majority without preconditions.*²⁷³

The release of all political prisoners and those detained without trial is addressed mainly in Article 9 of the ICCPR.²⁷⁴ The right to express political opinions is found in Article 19(2) of the ICCPR.²⁷⁵ The repeal of all discriminatory measures is in Article 2(1) of the ICCPR.²⁷⁶ Overall, the rights protected by this Act through the imposition of sanctions against South Africa correspond to the international human rights norms.

The effects of economic sanctions are, however, subject to criticism. The sanctions against South Africa allegedly caused the loss of more than 100,000 jobs.²⁷⁷ Economic sanctions are also criticized for pushing “already vulnerable populations..... over the edge into deeper suffering.”²⁷⁸ Despite some criticisms, economic sanctions remained firmly in place.

In 1990, Nelson Mandela was, finally, released after twenty-seven years of imprisonment, and the South African government amended most of the apartheid laws and extended political rights to black people. The U.S. government lifted the economic sanctions, concluding that South Africa has met the five conditions in the CAAA²⁷⁹ and the purpose of the sanctions was

²⁷³ *Ibid.*

²⁷⁴ Article 9(1) of the ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

²⁷⁵ Article 19(2) of the ICCPR

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

²⁷⁶ Article 2(1) of the ICCPR

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

²⁷⁷ Neta C. Crawford, “The Humanitarian Consequences of Sanctioning South Africa: A Preliminary Assessment,” in Thomas G. Weiss et al. ed, *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Rowman & Littlefield Publishers, 1997) pp.75-77.

²⁷⁸ *Ibid*, p.75.

²⁷⁹ See the section 311 of the CAAA, *supra note* 272.

successfully accomplished.²⁸⁰

3.3.4. Sanctions against Iraq

On August 2, 1990, the U.S. enacted the Iraq Sanctions Act (ISA) of 1990 to impose economic sanctions on Iraq, including a comprehensive trade ban and a prohibition of financial relationships with the country for its invasion of Kuwait.²⁸¹ As discussed in Chapter III.2.B., the U.N. also imposed economic sanctions against Iraq under Security Council Resolution 661 calling upon all member states to take trade and financial sanctions against Iraq.²⁸² The U.S. and the U.N. sanctions shared the same objective.

Furthermore, through the ISA, the U.S. emphasized its purpose to protect human rights by stipulating that the U.S. Congress “condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.”²⁸³

Prohibition of torture is found not only in the Torture Convention²⁸⁴ but also in Article 7 of the ICCPR.²⁸⁵ The summary executions and mass extrajudicial killings are addressed in Articles 6(1)²⁸⁶ and 14(1)²⁸⁷ of the ICCPR. Overall, the rights protected by this act through the

²⁸⁰ Sanctions against South Africa (1986), *supra note* 270.

²⁸¹ Iraq Sanctions Act (ISA) of 1990, 101 Pub. L. No. 101-513, 104 Stat. 1079 (1990)

²⁸² Iraq-Kuwait, *supra note* 134.

²⁸³ Iraq Sanctions Act (ISA) of 1990, *supra note* 281, sec.586A(7)

²⁸⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra note* 74.

²⁸⁵ Article 7 of the ICCPR

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

²⁸⁶ Article 6(1) of the ICCPR

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

²⁸⁷ Article 14(1) of the ICCPR

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of

imposition of sanctions against Iraq correspond to the international human rights norms.

The U.S. sanctions against Iraq have been widely criticized for “their disproportions impact on the Iraqi population at large.”²⁸⁸ While there were many reports and warnings about lack of food and medicine, economic sanctions remained firmly in place.²⁸⁹ Finally, after the Iraq War in 2003 (the second Gulf War) with the subversion of the Iraqi government of Saddam Hussein, the U.S. lifted its sanctions against Iraq.

3.3.5. Sanctions against Haiti

In 1990, Haiti held its first free and fair elections in its history.²⁹⁰ However, in 1991, a military coup ousted the constitutional government.²⁹¹ The U.S. government called for a restoration of democracy with the support of the Organization of American States (OAS). And the U.S. imposed economic sanctions including a trade embargo on all goods except food and medicine.²⁹² The aim of the sanctions was “to put pressure on the leaders of the coup and to deter any other coups from taking place.”²⁹³

After the U.S. presidential election, the U.S. government strengthened the sanctions to further pressure the Haitian military government to step down and to protect the human rights of

a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

²⁸⁸ See generally Eric Hoskins, “The Humanitarian Impacts of Economic Sanctions and War in Iraq,” in Thomas G. Weiss et al. ed, *supra* note 277, pp.91-143.

²⁸⁹ *Ibid.*

²⁹⁰ Bureau of Western Hemisphere Affairs, “Background Note: Haiti” U.S. Department of State (Jan. 2007) available at <http://www.state.gov/r/pa/ei/bgn/1982.htm>

²⁹¹ *Ibid.*

²⁹² Paul Robyn, “The United States and Haiti (1993-1994): A Case Study in Coercive Diplomacy,” WWS Case Study 1/01, available at <http://www.wws.princeton.edu/cases/papers/haiti.html>

²⁹³ *Ibid.*

the Haitians including the return of refugees to Haiti.²⁹⁴ The Haitian military government “unleashed a campaign of terror and repression.....including extrajudicial execution, disappearances, torture, rape, limitations on freedom of association and assembly, and disruption in personal and professional activities.”²⁹⁵

The majority of the named offenses clearly implicate fundamental human rights codified in international human rights law, and concern for international human rights became an impetus for the U.S. government to impose sanctions against Haiti.

In 1994, the U.N. Security Council passed Resolution 940, which authorized the use of “all necessary means” to remove the military government and to restore Haiti's constitutionally elected government to power.²⁹⁶ With this resolution the Council expressed its grave concerns about “the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties.”²⁹⁷

While a multinational force (MNF) led by the U.S. prepared to enter Haiti based upon Security Council Resolution 940, the rule of the military government ended and the constitutional government restored its power.²⁹⁸ President Aristide and other elected officials in

²⁹⁴ *Ibid.*

²⁹⁵ Sarah Zaidi, “Humanitarian Effects of the Coup and Sanctions in Haiti,” in Thomas G. Weiss et al. ed, *supra* note 277, p.189.

²⁹⁶ On authorization to form a multinational force under unified command and control to restore the legitimately elected President and authorities of the Government of Haiti and extension of the mandate of the UN Mission in Haiti, U.N. SC Resolution 940 (Jul. 31. 1994) UN Doc. S/RES/940. para.4.

4. Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States;

²⁹⁷ *Ibid.*

²⁹⁸ Background Note: Haiti, *supra* note 290.

exile returned on October 15 1994, and all the sanctions were lifted after that.²⁹⁹

During the time when the sanctions were in effect, the U.S. maintained its humanitarian assistance by funding non-governmental organizations in Haiti to ease the growing pains of the Haitian people due to the shortage of food and medical supplies.³⁰⁰

3.3.6. Sanctions against Burma

Myanmar, formerly known as Burma, has a grim human rights record. There are numerous reports of gross human rights violations by the Burmese military government, such as apartheid, forced labor and drug trafficking.³⁰¹ Millions of ethnic minorities in Burma have fled from economic and political oppression to Bangladesh, India, China, Malaysia and Thailand to seek asylum. More than 170,000 Burmese live in nine refugee camps in Thailand and two in Bangladesh.³⁰²

Burma has become the object of international reproach since 1988 when the Burmese military junta seized power. This military government formed the State Law and Order Restoration Council (SLORC)³⁰³ after a bloody crackdown on a series of democratic movements led by students. The SLORC nullified the results of the national election in 1990 and arbitrarily

²⁹⁹ *Ibid.*

³⁰⁰ Sarah Zaidi, *supra note* 295, pp.206-207.

³⁰¹ Bureau of East Asian and Pacific Affairs, "Background Note: Burma" U.S. Department of State (Sep. 2006) available at <http://www.state.gov/r/pa/ei/bgn/35910.htm>

³⁰² *Ibid.*

³⁰³ The State Law and Order Restoration Council (**SLORC**) was the name of the military government of Burma from September 1988 to November 1997. On November 1997, the SLORC was abolished and reconstituted itself as the State Peace and Development Council (**SPDC**). However, this was essentially just a renaming because the leadership itself was not changed. Most of the members of the SLORC were in the SPDC with similar appointments. See The IRRAWADDY, "Cabinets of Burma since 1948" available at <http://www.irrawaddy.org/aviewer.asp?a=3532&z=14> (The Irrawaddy is published by the Irrawaddy Publishing Group (IPG). IPG was established in 1992 by Burmese citizens living in exile. On its research pages, the website has detailed information and statistics of Burma like a full list of political prisoners, a list of cease-fire agreements with the Junta, etc.)

detained democracy activists including their leader, Aung San Suu Kyi.³⁰⁴ While Burma is a member state of a number of major human rights treaties,³⁰⁵ including the Convention on the Rights of the Child,³⁰⁶ the Convention to Eliminate All Forms of Discrimination against Women,³⁰⁷ the Convention to Eliminate All Forms of Racial Discrimination,³⁰⁸ and the Genocide Convention,³⁰⁹ the Burmese military government has violated fundamental human rights norms regarding arbitrary detention, torture, extrajudicial execution, forced child labor, and coercive relocation of minorities, for more than 10 years.³¹⁰

Following the Free Burma Act of 1995, the Burma Freedom and Democracy Act of 1996, Foreign Operations Appropriations Act of 1997, and Executive Order 13047 in 1997,³¹¹ in 2003, the U.S. government imposed new economic sanctions against Burma.³¹² Other countries and international organizations joined the U.S. by imposing sanctions against the gross human rights violations by the Burmese military junta.³¹³ These include the condemnation by U.N. bodies, monitoring by international organizations and NGOs, severance of diplomatic relations, bans on foreign assistance, and the prevention of investment in Burma.³¹⁴

Through the Burmese Freedom and Democracy Act of 2003, the U.S. government condemned the Burmese military government as follows.

(1) The State Peace and Development Council (SPDC) has failed to transfer power to the National League for Democracy (NLD) whose parliamentarians won an overwhelming victory in the 1990

³⁰⁴ Sarah H. Cleveland, *supra note* 12, pp.8-9.

³⁰⁵ *Ibid.*

³⁰⁶ Convention on the Rights of the Child, *supra note* 77.

³⁰⁷ Convention on the Elimination of All Forms of Discrimination against Women, *supra note* 76.

³⁰⁸ International Convention on the Elimination of All Forms of Racial Discrimination, *supra note* 75.

³⁰⁹ Convention on the Prevention and Punishment of the Crime of Genocide, *supra note* 73.

³¹⁰ U.S. Department of State, "Report on U.S. Trade Sanctions Against Burma," (2004) (Congressionally mandated report submitted to Congress on April 28, 2004.) available at <http://www.state.gov/p/eap/rls/rpt/32106.htm>

³¹¹ Leon T. Hadar, "U.S. Sanctions against Burma: A Failure on All Fronts", Trade Policy Analysis No.1 (Mar 26, 1998) available at <http://www.cato.org/pubs/trade/tpa-001.html>

³¹² Burmese Freedom and Democracy Act of 2003, Pub. L. No.108-61, 117 Stat. 864 (2003)

³¹³ Report on U.S. Trade Sanctions Against Burma, *supra note* 10.

³¹⁴ Sarah H. Cleveland, *supra note* 12, p.19.

elections in Burma.

(4)the SPDC brutally attacked NLD supporters, killed and injured scores of civilians, and arrested democracy advocate Aung San Suu Kyi and other activists.

(5) The SPDC continues egregious human rights violations against Burmese citizens, uses rape as a weapon of intimidation and torture against women, and forcibly conscripts child-soldiers for the use in fighting indigenous ethnic groups.

(6) The SPDC is engaged in ethnic cleansing against minorities within Burma.....which constitutes a crime against humanity and has directly led to more than 600,000 internally displaced people living within Burma and more than 130,000 people from Burma living in refugee camps along the Thai-Burma border.³¹⁵

Under this Act, the U.S. government stressed that sanctions against Burma will not be lifted until it meets the following conditions:

(B) The SPDC has made measurable and substantial progress toward implementing a democratic government including

(i) releasing all political prisoners;

(ii) allowing freedom of speech and the press;

(iii) allowing freedom of association;

(iv) permitting the peaceful exercise of religion; and

(v) bringing to a conclusion an agreement between the SPDC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.³¹⁶

Most of the conditions listed in the text of the Burmese Freedom and Democracy Act of 2003 correspond to international human rights law. Arrests of democracy advocates and their arbitrary detention, as well as that of other political prisoners, are directly linked with liberty-rights stipulated in Article 9 through 15 of the ICCPR.³¹⁷ In addition, Article 8(3) of the ICCPR

³¹⁵ Burmese Freedom and Democracy Act of 2003, *supra* note 311, section. 2 (1), (4), (5), (6)

³¹⁶ *Ibid*, section. 3. (3) (B).

³¹⁷ International Covenant on Civil and Political Rights, *supra* note 69.

prohibits "forced or compulsory labour,"³¹⁸ Article 7 prevents torture,³¹⁹ and Article 18 protects freedom of thought and religion.³²⁰ All of these articles of the ICCPR and most of the major international human rights treaties are in accord with the human rights violations listed in this U.S. Act of 2003.

There have been, however, criticisms of the sanctions for their negative effects.³²¹ For example, *The New York Times* reported that the sanctions caused the loss of more than 400,000 jobs in the textile industry of Burma and most of the women who lost their jobs have been forced to become prostitutes.³²²

In response to the U.S. sanctions since 1995, the Burmese military government has taken "a number of modest but significant steps."³²³ It released Aung San Suu Kyi, the pro-democracy leader of the political opposition party, the National League for Democracy (NLD), from her six-year house arrest in 1995, though her rights to travel and meet other democracy advocates were restricted.³²⁴ In the late 1990s, the use of forced labor declined due to the Burmese government's replacement of man power by machinery.³²⁵ In 1999, the Burmese government permitted the International Committee of the Red Cross to reopen its office in the capital of Burma and to visit

³¹⁸ Article 8(3) of the ICCPR

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

³¹⁹ Article 7 of the ICCPR, *supra note* 285.

³²⁰ Article 18 of the ICCPR.

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

³²¹ See Nicholas D. Kristof, "Our Man in Havana," *N.Y. Times*, Nov. 8, 2003, p.A15.

³²² *Ibid.*

³²³ Sarah H. Cleveland, *supra note* 12, pp.19-20.

³²⁴ *Ibid.*

³²⁵ *Ibid.*

Burmese prisons on a regular basis.³²⁶ Since October 2000, the Burmese military government had engaged Aung San Suu Kyi, the head of the NLD, in peace talks for a political settlement in Burma.³²⁷ On July 27, 2000, the government reopened most universities which had been closed since 1996.³²⁸ In addition, the Burmese military government periodically released small groups of political prisoners and 182 of them had been freed by November 2002.³²⁹ Overall, the U.S. economic sanctions against Burma and its support for the Burmese democracy movement have played an essential role in promoting change in Burma. There are still strong criticisms on the effect of the U.S. sanctions against Burma.³³⁰ However, this paper believes that the refusal of China and ASEAN to support the U.S. sanctions should be the main target of such criticisms because Burmese economy is heavily dependent on the export of natural resources like natural gas to those countries.

3.3.7. Effect of U.S. Economic Sanctions

All five cases reviewed above illustrate the idea that the U.S. economic sanctions reinforce fundamental human rights. In each case, it is quite clear that the sanctions stipulated in the text of the legislations are against the gross human rights violations recognized in international law, including the U.N. Charter.

Therefore, this paper argues that the sanctions by the U.S. government have at least some positive effects on international human rights law. Undoubtedly, these economic sanctions had some negative effects on the targeted states. In numerous reports and articles, scholars and

³²⁶ Human Rights Watch, World Report 1999: Burma, available at <http://www.hrw.org/wr2k/Asia-01.htm#TopOfPage>

³²⁷ Human Rights Watch, World Report 2002: Burma, available at <http://hrw.org/wr2k2/asia2.html>

³²⁸ Human Rights Watch, World Report 2000: Burma, available at <http://www.hrw.org/wr2k1/asia/burma.html>

³²⁹ World Report 2002: Burma, *supra note* 327.

³³⁰ Leon T. Hadar, *supra note* 311.

human rights advocates have constantly argued that economic sanctions hurt large numbers of innocent civilians in the targeted states not only by limiting the availability of food and medicine, but also by disrupting the whole economy, depriving civilians of essential income, and reducing the national capacity of water treatment, electrical systems and other infrastructure critical for health and life.³³¹

However, the cases discussed above demonstrate that the U.S. economic sanctions have played an important role in “broadening and deepening the global response” to the human rights crisis in the targeted states.³³² They also show that the sanctions induced the targeted states to accept international treaty obligations including human rights norms and modestly change their human rights policies. In most of the cases, ultimately the targeted state entered into a comprehensive agreement including the protection of human rights with the international community in order to have the sanctions lifted.

Economic sanctions cannot be a sole cause of civilian suffering in targeted states. The targeted states should bear the heavy burden of responsibility for people’s suffering. It is undeniable that economic sanctions have inherent flaws. However, they should not object sanctions because of these flaws and negative effects. The problem is not in the sanctions themselves, but in their effect. Therefore, the criticism on economic sanctions should focus on finding a way to decrease their negative effects, rather than on arguing for not imposing them without providing a better alternative.

Overall, the U.S. economic sanctions have been part of a collective effort by the international community to develop current human rights norms and to protect and promote fundamental human rights in the targeted states.

³³¹ See Global Policy Forum, *supra note* 145.

³³² Sarah H. Cleveland, *supra note* 12, p.19.

3.4. Economic Sanctions by the E.U.

3.4.1. General Perspective

The European Union established one of the most effective international systems for the protection of human rights³³³ and has imposed economic sanctions against gross human rights violation.

In recent years, the E.U. has frequently imposed sanctions³³⁴ following its own basic law or the UN Security Council resolutions. The E.U. imposes sanctions for the specific objectives of the Common Foreign and Security Policy (CFSP). These objectives are stipulated in Article 11 of the Treaty on European Union. It states:

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

*— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of **the United Nations Charter**,*

— to strengthen the security of the Union in all ways,

*— to preserve peace and strengthen international security, in accordance with the principles of **the United Nations Charter**, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,*

— to promote international cooperation,

*— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms*³³⁵ (emphasis added).

Respect for human rights and fundamental freedom is one of the objectives clearly prescribed in the Treaty. Thus, sanctions against gross human rights violations are recognized as lawful measures by the E.U. In addition, as the U.N Charter confers power on the Security Council to impose sanctions through its resolutions in order to restore international peace and

³³³ Thomas Buergenthal, *supra note* 87, p.792.

³³⁴ In E.U., 'sanctions' and 'restrictive measures,' both terms are interchangeably used.

³³⁵ Article 11 of the Treaty on European Union, 2006 OJ (C 321) E14.

security,³³⁶ the E.U. implements sanctions imposed by the Security Council resolutions not only based upon the U.N. Charter, but also pursuant to the Treaty on European Union.

In 2004, in order to develop a policy framework for more effective use of sanctions, the Political and Security Committee under the Council of the European Union prepared a draft of the *Basic Principles on the Use of Restrictive Measures (Sanctions)*. Selected paragraphs of this draft are cited below:

1. We are committed to the effective use of sanctions as an important way to maintain and restore international peace and security in accordance with the principles of the UN Charter and of our common foreign and security policy. In this context, the Council will work continuously to support the UN and fulfil our obligations under the UN Charter.

3. If necessary, the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance. We will do this in accordance with our common foreign and security policy, as set out in Article 11 TEU, and in full conformity with our obligations under international law.

4. The Council will work to enlist the support of the widest possible range of partners in support of EU autonomous sanctions which will be more effective when they are reinforced by broad international support.

*6. Sanctions should be targeted in a way that has maximum impact on those whose behaviour we want to influence. Targeting should reduce to the maximum extent possible any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries. Measures, such as arms embargoes, visa bans and the freezing of funds are a way of achieving this.*³³⁷

To impose sanctions not by an individual member state, but by the E.U. itself, a Common Position should be adopted under Article 15 of the Treaty establishing the European Union.³³⁸

As an instrument of the CFSP for the imposition of sanctions, the adoption of a new Common

³³⁶ Article 39 of the U.N. Charter, *supra note* 120; Article 41 of the U.N. Charter, *supra note* 121.

³³⁷ Basic Principles on the Use of Restrictive Measures (Sanctions), Council of the European Union, 2004, Council Doc. 10198/1/04 REV 1.

³³⁸ Article 15 of the Treaty on European Union, 2006 OJ (C 321) E16.

Position requires unanimity from E.U. Member States in Council.³³⁹ If the Common Position provides for imposing sanctions against targeted states, Article 301³⁴⁰ and 60³⁴¹ of the Treaty establishing the European Community is applied.

In some cases, it is possible to implement economic sanctions through a CFSP legal instrument and a pre-existing Regulation. Currently, there are two pre-existing regulations which are closely related to the sanctions against gross human rights violations. The first one is Council Regulation 2368 of 2002.³⁴² It aims to control the trade of rough diamonds due to the deep concerns about “the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts.”³⁴³ This regulation is also related to the Kimberley Process, which was established in 2002 as an international forum to control the trade in rough diamonds.³⁴⁴ The second one is Council Regulation 1236 of 2005.³⁴⁵ This regulation prohibits the export from or import to the E.U. of certain goods which can be used for capital punishment, torture or other cruel and inhuman treatment.

Economic sanctions imposed by the E.U. include arms embargos, specific or general import and export bans, restrictions on financial assistance, travel bans and other appropriate measures.

³³⁹ Article 250, 251 of the Treaty establishing the European Community, 2006 OJ (C 321) E153-155.

³⁴⁰ Article 301 of the Treaty establishing the European Community, 2006 OJ (C 321) E177.

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

³⁴¹ Article 60 of the Treaty establishing the European Community, 2006 OJ (C 321) E65.

1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

³⁴² Council Regulation (EC) No 2368/2002 of 20 December 2002 (implementing the Kimberley Process certification scheme for the international trade in rough diamonds), 2002 OJ (L 358) 28.

³⁴³ *Ibid.*

³⁴⁴ See more information at <http://www.kimberleyprocess.com/>

³⁴⁵ Council Regulation (EC) No 1236/2005 of 27 June 2005 (Concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment), 2005 OJ (L 200) 1.

The arms embargo applies to the items listed in the E.U. Common Military List.³⁴⁶ It may be extended to related financial and technical assistance, and to items which may be used for internal repression which in many cases is considered a human rights violation. In addition, in the case of an arms embargo, Article 296 of the Treaty establishing the European Community allows member states to use their domestic measures for an embargo of military related goods.³⁴⁷ Thus, an arms embargo is imposed by a Common Position of the E.U., and implemented pursuant to the national legislation of the member states.

3.4.2. Sanctions adopted by the E.U.

The following are cases of economic sanctions imposed by the E.U. at least partially for human rights violations.

3.4.2.1. Sanctions against Belarus

The Council of the E.U. adopted Common Position 2004/661/CFSP to impose sanctions³⁴⁸ against the Belarusian government³⁴⁹ for the enforced disappearances of three pro-democracy persons in 1999 and one well-known journalist in 2000.

In 2004, in response to the fraudulent elections and a series of gross human rights violations by the Belarusian government during the repression of peaceful demonstrations in the aftermath of the elections, the E.U. adopted Common Position 2004/848/CFSP to strengthen and expand

³⁴⁶ Common Military List of the European Union (equipment covered by the European Union Code of Conduct on Arms Exports), 2006 OJ (C 66) 1

³⁴⁷ Article 296 of the Treaty establishing the European Community, 2006 OJ (C 321) E173.

1. (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

³⁴⁸ See Common Position 2006/276/CFSP (April, 11, 2006), 2006 OJ (L101) 5.

³⁴⁹ See Bureau of International Organization Affairs, "Situation of Human Rights in Belarus," U.S. Department of State, (April, 2005) available at <http://www.state.gov/p/io/rls/othr/44759.htm>

the sanctions against Belarus by amending its previous Common Position.³⁵⁰

In 2006, the Belarusian government arbitrarily arrested more than 500 people who had exercised their right of free assembly to protest the fraudulent presidential elections on 19 March 2006.³⁵¹ The Election Observation Mission of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) concluded that the presidential election in 2006 was severely flawed and fell significantly short of Belarus' OSCE commitments.³⁵² Based upon this final report of ODIHR, the E.U. consequently adopted Common Position 2006/276/CFSP to impose sanctions against the Belarusian government including President Lukashenko for “the violation of international electoral standards and the crackdown on civil society and democratic opposition.”³⁵³ The economic sanctions included a travel ban and an assets freeze. In May 2006, Council Regulation 765/2006 was adopted to enforce Common Position 2006/276/CFSP.³⁵⁴

3.4.2.2. Sanctions against Democratic Republic of the Congo (DRC)

In 2003, the E.U. adopted Common Position 2003/680/CFSP in order to implement Security Council Resolution 1493³⁵⁵ which imposed an arms embargo against the DRC.³⁵⁶ In 2005, Common Position 2005/440/CFSP was adopted pursuant to Security Council Resolution 1596³⁵⁷ which strengthened the sanctions against the DRC including a freeze of all funds, financial assets

³⁵⁰ *Ibid.*

³⁵¹ See “West to Put Sanctions on Belarus,” BBC News, (Mar, 24, 2006) available at <http://news.bbc.co.uk/1/hi/world/europe/4840370.stm>

³⁵² See Office for Democratic Institutions and Human Rights – Elections, “Final report on the 19 March 2006 presidential election in Belarus,” OSCE (June, 2006) available at http://www.osce.org/documents/odihr/2006/06/19393_en.pdf; See also, Office for Democratic Institutions and Human Rights website <http://194.8.63.155/odihr-elections/>

³⁵³ Common Position 2006/276/CFSP, *supra note* 348.

³⁵⁴ Council Regulation (EC) No 765/2006 (March, 20, 2006), 2006 OJ (L134) 1.

³⁵⁵ The situation concerning the Democratic Republic of the Congo, *supra note* 201.

³⁵⁶ Common Position 2005/440/CFSP (June, 15, 2005), 2005 OJ (L152) 22

³⁵⁷ The situation concerning the Democratic Republic of the Congo, *supra note* 203.

and economic resources and a travel ban.³⁵⁸ Based upon this Common Position, the E.U. adopted Council Regulations 889/2005³⁵⁹ and 1183/2005³⁶⁰ to enforce such sanctions.

3.4.2.3. Sanctions against Côte d'Ivoire

In 2004 and 2006, the E.U. Council adopted Common Position 2004/852/CFSP and 2006/30/CFSP pursuant to Security Council Resolutions 1572³⁶¹ and 1643.^{362 363} Based upon the resolutions, economic sanctions including “embargo on arms and related materiel, ban on exports of equipment for internal repression, ban on certain services, restrictions on admission, freezing of funds and economic resources of certain persons who constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, and import ban on diamonds” were imposed by the Common Position.³⁶⁴ Then, to enforce this Common Position, the E.U. legislated Council Regulations 174/2005³⁶⁵ and 560/2005.³⁶⁶

3.4.2.4. Sanctions against Haiti

On June 2, 1994, Common Position 94/315/CFSP³⁶⁷ was adopted in accordance with Security Council Resolutions 917, 841, 873, and 875. Specifically pursuant to paragraph 4 of Resolution 917,³⁶⁸ the E.U. decided to reduce its economic relations with Haiti and to impose necessary sanctions to freeze the funds and financial resources of the Haitian military

³⁵⁸ *Ibid.*

³⁵⁹ Council Regulation (EC) No 889/2005 (June, 15, 2005), 2005 OJ (L152) 1.

³⁶⁰ Council Regulation (EC) No 1183/2005 (July, 23, 2005), 2005 OJ (L193) 1.

³⁶¹ The situation in Côte d'Ivoire, *supra note* 208.

³⁶² The situation in Côte d'Ivoire, *supra note* 212.

³⁶³ Common Position 2007/92/CFSP (February, 13, 2007), 2007 OJ (L41) 16

³⁶⁴ *Ibid.*

³⁶⁵ Council Regulation (EC) No 174/2005 (February, 2, 2005), 2005 OJ (L29) 5.

³⁶⁶ Council Regulation (EC) No 560/2005 (April, 14, 2005), 2005 OJ (L95) 1.

³⁶⁷ Common Position 94/315/CFSP (June, 2, 1994), 94 OJ (L139) 10.

³⁶⁸ On sanctions for restoration of democracy and return of the legitimately elected President to Haiti, U.N. SC Resolution 917 (May. 6. 1994) UN Doc. S/RES/917.

government under this Common Position.³⁶⁹ Council Regulation 1264/1994 was also adopted under this Common Position on the same day.³⁷⁰

3.4.2.5. Sanctions against Burma

In 1996 the E.U. adopted Common Position 96/635/CFSP to impose sanctions against Burma³⁷¹ for the continuing human rights violations by the Burmese military government,³⁷² including detention of pro-democracy advocates, forced labor, torture and oppression of the freedom of religion and speech. These included “arms embargo, ban on exports of equipment for internal repression, freezing of funds and economic resources, restrictions on admission, ban on financing of Burmese state-owned companies, suspension of certain aid and development programs, suspension of high level bilateral governmental visits and reduction of diplomatic relations.”³⁷³

The sanctions imposed by Common Position 96/635/CFSP were replaced and renewed subsequently by the adoption of Common Position 2003/297/CFSP in 2003, Common Position 2004/423/CFSP in 2004, and Common Position 2006/318/CFSP in 2006.³⁷⁴

³⁶⁹ Common Position 94/315/CFSP, *supra note* 367.

³⁷⁰ Council Regulation (EC) No 1264/1994 (June, 2, 1994), 94 OJ (L139) 4.

³⁷¹ Common Position 96/635/CFSP, (November, 8, 1996), 96 OJ (L287) 1.

³⁷² See more details at ch.III.3.F. (Sanctions against Burma)

³⁷³ See *Ibid.*

³⁷⁴ Common Position 2006/318/CFSP (April, 29, 2006), 2006 OJ (L116) 77.

The reason and purpose to renew the sanctions are clearly stipulated in paragraph (3) of the Preamble.

(3) In view of the current political situation in Burma/ Myanmar, as witnessed by:

- the failure of the military authorities to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy,
- the continuing detention of Aung San Suu Kyi, other members of the National League for Democracy (NLD) and other political detainees,
- the continuing serious violations of human rights, including the failure to take action to eradicate the use of forced labour in accordance with the recommendations of the International Labour Organization’s High-Level Team report of 2001 and recommendations and proposals of subsequent ILO Missions;
- recent developments such as increasing restrictions on the operation of international organizations and non-governmental organizations,

the Council considers it fully justified to maintain the restrictive measures against the military regime in

3.4.2.6. Sanctions against the Sudan

In January 2004, the E.U. adopted Common Position 2004/31/CFSP concerning the imposition of an embargo on arms, munitions and military equipment for the Sudan³⁷⁵ to promote peace and reconciliation within the country. In 2005, pursuant to Security Council Resolution 1556 of 2004³⁷⁶ and Resolution 1591 of 2005³⁷⁷, the E.U. adopted Common Position 2005/411/CFSP to extend its sanctions against the Sudan.³⁷⁸

These comprehensive sanctions comprise “[r]estrictions on admission of persons who infringe UN arms embargo or human rights, prohibition to grant, sell, supply or transfer technical assistance and to provide financing or financial assistance related to military activities, freezing of funds and economic resources of persons who infringe UN arms embargo or human rights, and embargo on arms and related materials,” under Common Position 2005/411/CFSP.³⁷⁹

3.4.2.7. Sanctions against Zimbabwe

Following the huge frustration of the 2000 national referendum to change the constitution, the human rights situation in Zimbabwe has been of grave concern to the international

Burma/Myanmar, those who benefit most from its misrule, and those who actively frustrate the process of national reconciliation, respect for human rights and democracy.

³⁷⁵ Common Position 2004/31/CFSP (January, 10, 2004), 2004 OJ (L 6) 55; To implement this Common Position, Council Regulation 131/2004 (OJ L21, 1) was adopted on January, 28, 2004. For example, Article 2 states: Article 2. It shall be prohibited:

(a) to grant, sell, supply or transfer technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in Sudan;

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any grant, sale, supply, or transfer of related technical assistance, directly or indirectly to any person, entity or body in, or for use in Sudan.

³⁷⁶ Reports of the Secretary-General on the Sudan, *supra note* 220.

³⁷⁷ Reports of the Secretary-General on the Sudan, *supra note* 221.

³⁷⁸ Common Position 2005/411/CFSP (June, 2, 2005), 2005 OJ (L139) 25.

³⁷⁹ *Ibid.*

community.³⁸⁰ The Zimbabwean government has persecuted the supporters of the political opposition and human rights advocates, with the objective of eliminating any dissent against the government policies.³⁸¹ Human rights violations by the Zimbabwean government have steadily increased in the form of “state-sponsored intimidation, arbitrary arrest, torture and attacks on human rights defenders.”³⁸² Furthermore, the government’s repression has caused severe economic decline and food shortage.³⁸³

In 2002, the E.U. adopted Common Position 2002/145/CFSP to impose sanctions against Zimbabwe, including an arms embargo, prohibition of related technical training or assistance, freezing of government funds, and travel bans.³⁸⁴ Because of the aggravated human rights situation in Zimbabwe, the E.U. decided to extend and strengthen the sanctions against the Zimbabwean government, which “bear[s] a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly.”³⁸⁵ Common Position 2002/145/CFSP was amended and renewed by Common Position 2002/600/CFSP of 2002,³⁸⁶ Common Position 2003/115/CFSP of 2003,³⁸⁷ and Common Position 2004/161/CFSP of 2004.³⁸⁸

With its Common Position, the E.U. clearly indicated that the objective of these sanctions is “to reject policies that lead to the suppression of human rights, of the freedom of expression and

³⁸⁰ Human Rights Watch, World Report 2005: Zimbabwe, available at <http://hrw.org/english/docs/2006/01/18/zimbab12312.htm>

³⁸¹ Amnesty International Canada, “Human Rights in Zimbabwe: Overview,” available at <http://www.amnesty.ca/zimbabwe/>

³⁸² *Ibid.*

³⁸³ World Report 2005: Zimbabwe, *supra note* 380.

³⁸⁴ Common Position 2002/145/CFSP, (February, 21, 2002), 2002 OJ (L50) 1.

³⁸⁵ Common Position 2004/161/CFSP (February, 20, 2004), 2004 OJ (L50) 66.

³⁸⁶ Common Position 2002/600/CFSP, (July, 24, 2002), 2002 OJ (L195) 1.

³⁸⁷ Common Position 2003/115/CFSP, (February, 20, 2003) 2003 OJ (L46) 30.

³⁸⁸ Common Position 2004/161/CFSP, *supra note* 385.

of good governance.”³⁸⁹ The current sanctions will be valid until February 20, 2008.³⁹⁰

3.4.3. Targeted Sanctions

As discussed in Chapter III. 2 and 3 of this paper, the criticism against the sanctions by the Security Council and the U.S. also applies to the sanctions imposed by the E.U.

Therefore, to reduce the negative impact of broad economic sanctions on civilian populations in the targeted states, the E.U. has actively discussed a way of mitigating any negative humanitarian impact of economic sanctions.

These are known as *targeted* or *smart* sanctions as stipulated in the project paper on *E.U. Best Practices for the Effective Implementation of Restrictive Measures*³⁹¹ adopted by the Council of the European Union. In 2003, the Council adopted Guidelines on Implementation and Evaluation of Restrictive Measures in the Framework of the CFSP.³⁹² Based upon them, in February 2004, the Foreign Relations Counsellors Working Party was established to develop more effective and well-designed implementation of the sanctions.³⁹³ This Council body proposed a detailed and thoughtful draft on this wide-ranging subject and subsequently, the Council adopted this project paper in December 2005.³⁹⁴

While they are not legally binding for the E.U. and its member states, these guidelines were adopted by the Council with the intention of using them to impose future sanctions. Targeted sanctions include “financial, travel, aviation, arms and commodities restrictions on **individuals**

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ See generally EU Best Practices for the Effective Implementation of Restrictive Measures, Council of the European Union, 2006, Council Doc. 10533/06.

³⁹² Guidelines on Implementation and Evaluation of Restrictive Measures in the Framework of the CFSP, Council of the European Union, 2003, Council Doc. 15579/03, last updated by Council Doc. 15114/05.

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

or corporate entities with the objective of applying coercive pressure on transgressing parties, leaders and the network of elites and entities who support them.”³⁹⁵ (emphasis added.)

The guidelines provide clear criteria for the purposes of determining who should be listed and who should be not listed where individuals or specific entities are subject to targeted sanctions.³⁹⁶ They also present specific conditions and procedures for exemptions from the sanctions.³⁹⁷ For example, in connection to humanitarian exemptions, paragraph 55 states:

*55. While acting consistently with the letter and spirit of the Regulations, the competent authority shall take into account fundamental rights when granting exemptions to cover basic needs.*³⁹⁸

Many individual member states of the E.U. have also worked on this project.³⁹⁹

³⁹⁵ Watson Institute Targeted Sanctions Project, “Strengthening Targeted Sanctions through Fair and Clear Procedures,” (2006) p.5., n.2.

³⁹⁶ Guidelines on Implementation and Evaluation of Restrictive Measures in the Framework of the CFSP, *supra* note 392, para.7-19.

³⁹⁷ *Ibid*, para.54-61.

³⁹⁸ *Ibid*.

³⁹⁹ See, for example, Interlaken Process (Website: <http://www.smartsanctions.ch>) Bonn-Berlin process (Website: <http://www.smartsanctions.de>), Stockholm process (Website: <http://www.smartsanctions.se>)

IV. ECONOMIC SANCTIONS AGAINST HUMAN RIGHTS VIOLATIONS UNDER THE WTO SYSTEM

The World Trade Organization (WTO) deals with the rules of trade between nations at the international level. Its foremost goal is “free trade.” To achieve this goal, the WTO trade system tries to eliminate almost all types of trade barriers by individual member states which can undermine trade liberalization.⁴⁰⁰

This is clearly stipulated in Article I: General Most-Favoured-Nation Treatment,⁴⁰¹ and Article III: National Treatment on Internal Taxation and Regulation,⁴⁰² of the General Agreement on Tariffs and Trade (GATT 1947: hereafter GATT).

On the other hand, under certain conditions, the GATT allows exceptions from the general agreement, as stipulated in Article XX: General Exceptions⁴⁰³ and Article XXI: Security Exceptions.⁴⁰⁴

This Chapter will argue that while economic sanctions are in principle contrary to the free trade provisions of the GATT, economic sanctions against gross human rights violations are allowed under the exceptional provisions of the GATT in the WTO system.

⁴⁰⁰ Sarah H. Cleveland, “Human Rights Sanctions and International Trade: A Theory of Compatibility,” 5 J. Int’l Econ. L. 133. (2002) p.146.

⁴⁰¹ The principle of MFN treatment is also clearly stated in Article 2 of the General Agreement on Trade in Services (GATS) and Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), while in each agreement this principle is manipulated in slightly different ways.

⁴⁰² The principle of National Treatment is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPs), although in each agreement once again the principle is treated in slightly different ways.

⁴⁰³ The General Exception clause is also contained in Article 14 of GATS. The TRIPs also contains a general exception clause related with the granting of patents in Article 27.2.

⁴⁰⁴ The Security Exception clause is also contained in two other main WTO agreements. (Article 14*bis* of GATS and Article 73 of TRIPs)

4.1. Free Trade Provisions of the GATT

Article I and Article III require a Most-Favoured-Nations Treatment (MFN) and a National Treatment (NT) in the trade policy of the individual member states. Each provision states:

Article I: General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and [a]ny advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

Article III: National Treatment on Internal Taxation and Regulation

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.....

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.....⁴⁰⁵

As stated above, these free trade provisions require member states respectively to give equal market access to “like” products from all other GATT member states, and prohibit any discrimination between domestic products of member states and “like” products of other member states. In addition, the member states of the GATT can refuse MFN or NT only for the reasons expressly mentioned in the GATT. Otherwise, member states cannot impose conditions on MFN or NT like the targeted state’s compliance with international human rights law. For example, the

⁴⁰⁵ Article I & Article III of the General Agreement on Tariffs and Trade (GATT 1947) available at http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

U.S. withdrawal of MFN from Poland in 1980s⁴⁰⁶ would have been a violation of the GATT, if Poland had objected.

Furthermore, Article XI prohibits each member state of the GATT from imposing so-called Non-Tariff Barriers to its own trade policies for import. This provision states:

Article XI: General Elimination of Quantitative Restrictions

*1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.*⁴⁰⁷

As stated above, Non-Tariff Barriers include quotas, import or export licensing restrictions and embargoes as a form of import restraints.⁴⁰⁸ As it is worded, Article XI applies to all import restrictions “other than duties, taxes or other charges.” The goal of this provision is “to promote transparency in the international trading system” by decreasing the possibility of each member state using any type of camouflaged Non-Tariff Barriers in its trade.⁴⁰⁹

All economic sanctions against gross human rights violations are initially and inherently, a violation of these free trade provisions of the GATT because most of them depend on embargoes, the barring of the export of goods related to human rights violations to the targeted states, and the prohibition of the import of goods from the targeted states. What is more, not all human rights violations have direct linkage to international trade: for example, as discussed in Chapter III, the use of forced labor in Burma, the subversion of democracy in Haiti, Belarus, and Zimbabwe,

⁴⁰⁶ See more details at ch.III.3.B. (Sanctions against Poland)

⁴⁰⁷ Article XI of the General Agreement on Tariffs and Trade (GATT 1947) available at http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

⁴⁰⁸ Sarah H. Cleveland, *supra note* 400, p.155.

⁴⁰⁹ Sarah H. Cleveland, “Human Rights Sanctions and the World Trade Organization” in Francesco Francioni ed., *Environment, Human Rights and International Trade* (Hart Publishing, 2001), pp.226-228.

torture, arbitrary arrest, detention, and deprivation of religious freedom in most of the targeted states.

4.2. Exceptional Provisions of the GATT

4.2.1. Article XXI (Security Exceptions)

In 1949, Czechoslovakia complained against the U.S. for its prevention of certain exports to Czechoslovakia.⁴¹⁰ The GATT Contracting Parties rejected the Czechoslovakian complaint with the following contention:

*..... thought that since the question clearly concerned Article XXI, the United States action would seem to be justified because every country must have the last resort on questions relating to its own security. On the other hand, the CONTRACTING PARTIES should be cautious not to take any step which might have the effect of undermining the General Agreement.*⁴¹¹

As a result, in 1951 the U.S. suspended the MFN status of communist states, including Czechoslovakia.⁴¹²

In 1985, President Reagan prohibited all trade with Nicaragua on the ground of national security pursuant to Article XXI. The U.S. also argued that, “[t]he GATT is not an appropriate forum for debating political and security issues.”⁴¹³ Then, in its report, the GATT panel reached the following conclusion:

.....as it was not authorized to examine the justification for the U.S. invocation of a general exception to the obligations under the General Agreement, it could find the United States neither to be complying with its obligations under the General Agreement nor to be failing to carry out its

⁴¹⁰ John H. Jackson, at el, *Legal Problems of International Economic Relations: Cases, Materials and Text*, 4th ed., (West Group, 2002) p.1046.

⁴¹¹ GATT Panel Report, Summary Record of the Twenty-second meeting, (Request of the Government of Czechoslovakia for a decision under Article XXIII), June, 8, 1949 GATT Doc. CP.3/SR22

⁴¹² John H. Jackson, *supra note* 408.

⁴¹³ *Ibid*, p.1047.

*obligations under that Agreement.*⁴¹⁴

Because of Nicaragua's opposition, however, this panel report was not adopted.

In addition, Sweden and Ghana, respectively, tried to justify trade restrictions based upon this article in 1961 and 1975.⁴¹⁵

Article XXI of the GATT contains a general exception to all obligations of the GATT for certain measures imposed by a member state in view of the necessity to protect its essential security interests. This provision states:

Article XXI: Security Exceptions

Nothing in this Agreement shall be construed

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

*(i) relating to **fissionable materials** or the materials from which they are derived;*

*(ii) relating to **the traffic in arms, ammunition and implements of war** and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;*

*(iii) taken in time of war or **other emergency in international relations**; or*

*(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.*⁴¹⁶ (emphasis added.)

While there are three specific situations stipulated in Article XXI(b), the exceptions are “too broad to be subject to abuse.”⁴¹⁷ Thus, the problem is how to define the scope of Article XXI and whether economic sanctions against human rights violations can be applied to this article or not.

Based upon Article XXI(b)(i) and (ii), this paper argues that economic sanctions against

⁴¹⁴ GATT, GATT Activities 1986, at 58-59, recited in *Ibid*

⁴¹⁵ Sarah H. Cleveland, *supra note* 400, p.181.

⁴¹⁶ Article XXI of the General Agreement on Tariffs and Trade (GATT 1947) available at http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

⁴¹⁷ John H. Jackson, *supra note* 410, pp.1045-1046.

human rights violations in the form of an arms embargo should be justified. Whether a prohibition on the import or export of arms and related materials for human rights violation is necessary for the protection of essential security interests of the sanctioning state or not is unclear. However, as the GATT panel concluded in the Nicaragua case,⁴¹⁸ the WTO may have jurisdiction in determining whether trade restriction measures are related to “fissionable materials or the traffic in arms, ammunition and implements of war” rather than in determining whether there is national security interest or not. Therefore, as long as the sanctioning state argues its necessity for the protection of essential security interests, economic sanctions like arms embargos can be regarded as legitimate trade restriction measures under Article XXI(b)(i) and (ii).

More controversial is the provision in Article XXI(b)(iii) concerning the economic sanctions against human rights violations. The most important issue is how to define “international emergencies.” This term is not defined in international law, either. In the Nicaragua case, Nicaragua argued that “international emergencies” should be limited to situations that meet the conditions for self-defense under Article 51 of the U.N. Charter.⁴¹⁹ Contrary to this position, some scholars argue that a state can determine the existence of “international emergencies” by itself, based upon its security interests.⁴²⁰

As reviewed in Chapter III.2, the U.N., especially through the Security Council, has increasingly recognized gross human rights violations as a threat to peace and international security, in many cases: Rhodesia, Iraq, the Federal Republic of Yugoslavia, Somalia, Rwanda, Sierra Leone, Liberia, Congo, Côte d’Ivoire, and the Sudan.

⁴¹⁸ *Ibid.*

⁴¹⁹ Sarah H. Cleveland, *supra note* 400, p.183.

⁴²⁰ See Antonio F. Perez, ‘The WTO and UN Law: Institutional Comity in National Security’, 23 Yale J Int’l L 301 (1998)

The U.S. has also increasingly recognized gross human rights violations as national security emergencies. For instance, as discussed in Chapter III.3.B, President Clinton described the Burmese military government's enormities as “an unusual and extraordinary threat to the national security and foreign policy of the United States.”⁴²¹ While it is hard to accept that the Burmese military government’s actions constituted an “extraordinary threat” to the U.S. security, it is an undeniable fact that the gross human rights violations by the Burmese military government were against the international human rights norms and the international community as a whole took certain actions including economic sanctions for the promotion and protection of fundamental human rights.

Therefore, this paper argues that based upon such evolving international practice, gross human rights violations should be considered international emergencies. Such violations are the infringement of *Jus Cogens*. This paper also argues that this interpretation of Article XXI(b)(iii) will enhance the international human rights norms by allowing economic sanctions against gross human rights violations.

4.2.2. Article XX (General Exceptions)

Another possible approach to make economic sanctions against gross human rights violations a legitimate trade restriction measure under the GATT is in Article XX. It states:

Article XX: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

⁴²¹ Executive Order 13047, “Prohibiting New Investment in Burma” 62 FR 28301, Exec. Order No. 13047, 1997 WL 33796751 (Pres.)

- (a) *necessary* to protect **public morals**;
- (b) *necessary* to protect **human, animal or plant life or health**;
- (e) relating to the products of **prison labour**;⁴²² (emphasis added).

To be a general exception under the WTO system, economic sanctions against human rights violations should satisfy one of this article's exceptions stipulated from (a) to (j) and its substantive condition.⁴²³ Moreover, the sanctions should meet the requirement stated in the chapeau to this article.⁴²⁴ In the context of Article XX, the Article XX(a) exception for measures "necessary to protect public morals," the Article XX(b) exception for measures "necessary to protect human ... life or health," and the Article XX(e) exception for measures "relating to the products of prison labour," have increased the likelihood of allowing economic sanctions against human rights violations.

The first question to raise is the scope of jurisdiction for Article XX, General Exceptions. The Article XX(e) exception clearly recognizes "extraterritorial" jurisdiction by allowing trade restriction measures against a foreign state's prison labor.⁴²⁵ The Article XX(b) exception only applies to trade restriction measures for the protection of "human, animal or plant life or health" within a member state's own jurisdiction.⁴²⁶ The Article XX(a) exception has never been the subject of interpretation in dispute settlement processes of the WTO and as a result,⁴²⁷ the scope of "public morals" can be potentially extended to international human rights concerns, to some extent. In the "*United States - Import Prohibition of Certain Shrimp and Shrimp Products*" case,

⁴²² Article XX of the General Agreement on Tariffs and Trade (GATT 1947) available at http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

⁴²³ John H. Jackson, *supra note* 410, pp.532-533.

⁴²⁴ The chapeau states that trade restriction measures adopted under the Article XX 'General Exceptions' must not constitute "arbitrary or unjustifiable discrimination or a disguised restriction on international trade." This requirement is often called as "unjustifiable discrimination." *Ibid*, pp.552-555.

⁴²⁵ Sarah H. Cleveland, *supra note* 400. p.158.

⁴²⁶ John H. Jackson, *supra note* 410, pp.534-539.

⁴²⁷ *Ibid*, p.533.

the WTO construed that Article XX grants some authority for individual states to act against a foreign state's conduct.⁴²⁸ However, it is still a very controversial issue.

The second question is the scope of human rights implicated in Article XX, General Exceptions. In other words, the question is whether fundamental human rights norms can be incorporated into the Article XX exceptions or not.

The Article XX(a) exception on public morals may include slavery, the prevention of racial discrimination, the prevention of gender discrimination, the freedom of speech, the freedom of assembly, the freedom of religion and possibly democracy. The Article XX(b) exception on human life could be understood as crimes against humanity, genocide, summary execution, and disappearance. The Article XX(e) exception on prison labor is initially harder to extend. However, it can at least be interpreted to allow trade restrictions on products under prison-like conditions, e.g. forced labor, including child labor.

However, there is not much possibility of economic sanctions against human rights violations to be accepted under Article XX, General Exceptions, in the WTO system. The reason is that the WTO's strict adherence to both the "necessity" requirement of Article XX (a) and (b), and the "proportionality" requirement of the chapeau, hinders the adoption of economic sanctions against gross human rights violations.⁴²⁹ These requirements make Article XX, General Exceptions, "an unattractive locus" for economic sanctions against human rights violations.⁴³⁰

⁴²⁸ See WTO Appellate Body Report on *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, (adopted 6 November 1998); John H. Jackson, *supra note* 410, pp.550-551; Sarah H. Cleveland, *supra note* 400. p.159.

⁴²⁹ This paper does not deal with these requirements, in detail. See John H. Jackson, *supra note* 410, pp.534-539, 547-549, and 552-574. See also Sarah H. Cleveland, *supra note* 400. pp.157-181.

⁴³⁰ Sarah H. Cleveland, *id.*, p.181.

4.3. Reconciling International Economic Law with International Human Rights Law

This paper maintains that the GATT should be interpreted consistently with international law. That is, trade restriction measures against gross human rights violations are compatible with the GATT. As discussed in Chapter II and III, fundamental human rights violations are no longer just the domestic concern of each individual state.

The evolving of international human rights law for last 60 years has been in two parallel directions. First, international human rights norms which are recognized as *Jus Cogens* provide the legality for the international community's intervention in offending states. Second, the *Erga Omnes* status of international human rights norms shows that every state has an interest in having these human rights norms observed by other states. All of these norms authorize economic sanctions not only by the international community including the U.N., but also by each individual state.

Overall, while some economic sanctions may conflict with the main goal of the WTO, i.e. free trade, economic sanctions against human rights violations do not undermine the WTO system itself. Rather, they can be adapted to the WTO's free trade framework under international law.

V. CONCLUSION

This paper reviews the role of economic sanctions in international human rights law.

Chapter II examines the principle of non-intervention and its exceptions in international human rights law. The chapter concluded that the relationship between human rights and state sovereignty should and can be complementary. The protection and promotion of human rights can be enhanced with a respect for state sovereignty. The state should be viewed not as the denier of human rights, but as the protector and promoter of the human rights of its nationals. The respect for state sovereignty can be realized by protecting the fundamental rights of its nationals through national law. In other words, each individual state has a responsibility to protect and promote the human rights of its own nationals based upon the principle of sovereignty. State sovereignty and independence should serve not as a hurdle to, but as a guarantee for the realization of the fundamental human rights of the state's nationals. Each individual state, then, should cooperate with others to carry out their obligations under state sovereignty and international human rights law.

Chapter II also maintains that the concept of human rights has been expanded and the core human rights are inalienable and legally enforceable ones. The concept of sovereignty has also been developed and one of its tenets is the protection of the state's nationals' fundamental rights from state interference and the abuse of power by the government. The evolvement of international human rights law is one of the most remarkable innovations in modern international law. If gross human rights violations, especially those established by the status of *Jus Cogens* or obligations *Erga Omnes*, are not solved by a state itself, it is no longer solely the problem of this state. Therefore, this paper concludes that fundamental human rights have acquired a status of universality and the international community should accept this.

Chapter III reviews the doctrines and practices of economic sanctions for human rights protection by the U.N. Security Council, the U.S., and the E.U. All cases of economic sanctions against gross human rights violations discussed, ten by the Security Council, five by the U.S. and seven by the E.U., were provided as samples to illustrate the idea that economic sanctions by the international community as a whole bolster fundamental human rights. In each case, it was quite clear that the sanctions mentioned in the text of the resolutions, legislation and Common Positions against gross human rights violations, were codified in international law, including the U.N. Charter. If all cases of sanctions against human rights violations were examined, they would only further support this conclusion. Therefore, this paper concludes that the sanctions by the Security Council, the U.S. and the E.U. have at least some positive effects on international human rights law. They build international human rights norms. This development leads to the growing willingness of the international community and other individual states to deal with gross human rights violations with one effective tool of modern international law, economic sanctions.

Undeniably, these economic sanctions have had some negative effects on the targeted states. In numerous reports and articles, scholars and human rights advocates have constantly argued that economic sanctions hurt large numbers of innocent civilians in the targeted states not only by limiting the availability of food and medicine, but also by disrupting the whole economy, depriving civilians of essential income, and reducing the national capacity for water treatment, electrical systems and other infrastructure critical for health and life. The cases discussed, however, demonstrate that the sanctions forced the targeted states to accept international treaty obligations including human rights norms and modestly change their human rights policies. In most of the cases, the targeted state entered into a comprehensive agreement including the protection of human rights with the international community in order to have the sanctions

ultimately lifted. What is more, economic sanctions cannot be the sole cause of civilian suffering in the targeted states. The targeted states should bear the heavy burden of responsibility for this suffering. It is undeniable that economic sanctions have inherent flaws. However, they should not be abolished because of these flaws and negative effects. The problem is not in the sanctions themselves, but in their effect. Therefore, the criticism on economic sanctions should focus on finding a way to decrease their negative effects, rather than arguing against the use of economic sanctions without providing a better alternative. In addition, in order to reduce the negative impact of broad economic sanctions on civilian populations in the targeted states, the Security Council, the U.S. and the E.U. have actively discussed a way of mitigating any negative humanitarian impact.

Overall, this paper concludes that economic sanctions have become part of a collective effort by the international community to develop current human rights norms and to protect and promote fundamental human rights in the targeted states. The international community has been increasingly willing to recognize gross human rights violation as a matter which threatens regional and international peace and to grant economic sanctions. Because of the increasing use of economic sanctions, this paper also concludes that the use of economic sanctions against gross human rights violations has become an accepted customary international norm.

Chapter IV examines the legality of economic sanctions against human rights violations under the WTO system and reviews the possibility of harmonizing international economic law and international human rights law. The chapter concludes that while economic sanctions are inherently against the free trade provisions of the GATT, economic sanctions against gross human rights violations are allowed under the exceptional provisions of the GATT in the WTO system. This paper also argues that the GATT should be interpreted consistently with

international law. That is, trade restriction measures against gross human rights violations are compatible with the GATT. As discussed in Chapter II and III, fundamental human rights violations are no longer just the domestic concern of each individual state. The evolvement of international human rights law demonstrates that, first, international human rights norms recognized as *Jus Cogens* provide the legality for the international community's intervention in offending states; and second, the *Erga Omnes* status of international human rights norms shows that every state has an interest in other states observing these human rights norms. All of these norms authorize economic sanctions not only by the international community, including the U.N., but also by each individual state. Overall, while some economic sanctions may conflict with the main goal of the WTO, i.e. free trade, economic sanctions against human rights violations do not undermine the WTO system itself. Rather, they can be adapted to the WTO's free trade framework under international law.

Since the adoption of the Universal Declaration of Human Rights in 1948, there has been a significant evolution toward the universality of human rights. However, international legal enforcement systems for human rights norms are still underdeveloped despite the considerable progress in international human rights law. This paper concludes that economic sanctions can contribute to a decrease in individual states' human rights violations and can be an effective enforcement tool for international law.

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