

DEFINING THE LIMITS: THE INTERNATIONAL COURT OF JUSTICE'S CRUCIAL TASK IN ASSESSING THE LEGALITY OF UNILATERAL SANCTIONS

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ABSTRACT

Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America) (hereinafter Treaty of Amity case), initiated by the Islamic Republic of Iran on July 16, 2018, marks a pivotal point for public international law. States have increasingly resorted to unilateral sanctions to advance foreign policy goals, reasoning that these measures are preferable to armed conflict. States targeted by these sanctions, however, note that civilians suffer the brunt of these measures and that their legality under international law is uncertain. Unilateral sanctions—despite their increased usage—constitute a “grey area” in international law. The Treaty of Amity case provides the International Court of Justice (ICJ) an opportunity to clarify the legality of these measures.

U.S. sanctions on Iran encompass various economic restrictions, including limitations on access to vital resources, impediments to transactions involving Iranian currency, and constraints on Iranian business entities. Notable are the sanctions’ extraterritorial aspects—several impose punitive measures on third parties engaged with targeted Iranian sectors, such as energy and finance. These measures have resulted in human rights consequences, despite the United States’ proclaimed carve-outs for supplies related to humanitarian needs. Citizens in Iran now struggle to access food, medicine, and other vital supplies. The ICJ, in the Treaty of Amity case, should address the implications of the United States’ unilateral sanctions on human rights obligations, thereby illuminating, for the first time, any restrictions on the power of sanctioning states to burden civilian populations.

In addition to human rights obligations, the use of unilateral sanctions implicates potential violations of the customary international law principle of non-intervention and the countermeasures framework of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). The ICJ

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has broached the former topic before, in its *Nicaragua v. United States* case, delineating when a state imposing economic restrictions on another state runs afoul of the non-intervention principle. The Court should now consider whether U.S. unilateral sanctions encroach on Iran's sovereignty in a manner that violates the principle of non-intervention. The ICJ has not yet considered unilateral sanctions under the ARSIWA countermeasures framework; it should do so in the *Treaty of Amity Merits Judgment*.

In sum, this Note asks the ICJ to clarify the legal landscape of unilateral sanctions in the *Treaty of Amity Merits Judgment*, which provides the Court with a direct question about the legality of U.S. sanctions on Iran. The Note provides a summary of the background and legal principles relevant to the use of unilateral sanctions and suggests that the Court apply the ARSIWA countermeasures framework to the use of unilateral sanctions. Should the ICJ choose this approach, unilateral sanctions will no longer constitute a grey area in international law.

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I. INTRODUCTION

On July 16, 2018, the Islamic Republic of Iran instituted proceedings in the International Court of Justice (ICJ) against the United States

amid deteriorating relations between the two countries.¹ At the heart of the claim, before the Court still today, lies the assertion that the United States, acting unilaterally, violated the Treaty of Amity, Economic Relations, and Consular Rights by reimposing sanctions that target Iranians and Iranian industry.² The Treaty of Amity, which entered into force between Iran and the United States in June 1957, establishes the parties' general desire to promote friendly relations and trade, with a focus on reciprocal equal treatment.³ In relevant part, the treaty obligates the United States and Iran to afford protection and fair and equitable treatment to nationals and companies of the other state party,⁴ to avoid restrictions on the flow of funds⁵ and products,⁶ to maintain most favored nation treatment,⁷ and to assure freedom of commerce and navigation.⁸ Iran alleged that the United States' sanctions violated the several treaty provisions requiring these protections.⁹ As outlined in Iran's application instituting proceedings, the sanctions restrict access to precious metals and crucial industrial resources, disrupt transactions involving Iranian currency, hamstring the operations of nearly 500 Iranian entities, and restrict Iranian access to U.S. bank notes.¹⁰

Iran voiced particular concern over the use of "extraterritorial sanctions" that impose punitive measures on third parties interacting with Iran's energy, shipping, insurance, and financial sectors.¹¹ Iran alleges that these extraterritorial sanctions have deterred third-party businesses from interacting with Iran by sowing uncertainty for any

1. Iran's application instituting proceedings came less than three months after President Trump withdrew the United States from the Joint Comprehensive Plan of Action (JCPOA). Trump asserted that Iran refused to curtail development of its nuclear program and allow third party monitoring.

2. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Application Instituting Proceedings, 2018 I.C.J. 175, ¶1 (July 16) [hereinafter Treaty of Amity Application Instituting Proceedings].

3. Treaty of Amity, Economic Relations, and Consular Rights, Iran-U.S., pmb., Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853.

4. *Id.* art. IV.

5. *Id.* art. VII.

6. *Id.* arts. VIII, IX(3).

7. *Id.* arts. IX(2), V(1).

8. *Id.* art. X.

9. See Treaty of Amity Application Instituting Proceedings, *supra* note 2, ¶¶ 40–50.

10. Nicolette Butler, *The Effect of Unilateral Sanctions on Foreign Investors and the Foreign Investment Regime*, in UNILATERAL SANCTIONS IN INTERNATIONAL LAW, 161, 180 (Surya P. Subedi ed., 2021); Treaty of Amity Application Instituting Proceedings, *supra* note 2, ¶ 28.

11. Treaty of Amity Application Instituting Proceedings, Request for the Indication of Provisional Measures, 2018 I.C.J. Doc. No. 175-20180716-REQ-01-00-EN, ¶¶ 40–41 (July 16); Butler, *supra* note 10, at 180.

actor wishing to have an economic relationship with the country.¹² Away from the proceedings, the Iranian Foreign Minister labeled the sanctions “economic terrorism,”¹³ and human rights advocates voiced concerns that the Iranian civilian population would bear the brunt of the economic asphyxiation induced by the sanctions.¹⁴ In its 2021 Preliminary Objections Judgment, the ICJ denied the United States’ jurisdictional objections and ruled that considerations of U.S. unilateral sanctions could proceed to the merits stage.¹⁵ In 2018, the Court had gone a step further in its Provisional Measures Order, requiring the United States to suspend the implementation and enforcement of its sanctions until the Court could properly consider their legality in the merits proceedings.¹⁶ Notably, the ICJ acknowledged that, despite the sanctions’ exemptions for humanitarian goods, certain restrictions on the importation of foodstuffs, medicines, and aviation supplies “may entail irreparable consequences” for the Iranian population.¹⁷ It specifically ordered the United States to remove any impediments to the free exportation of goods required for humanitarian needs in Iran.¹⁸ This language was a subtle recognition that even those unilateral sanctions with humanitarian carve-outs could harm civilians, and it hints that the ICJ will not avoid human rights considerations at the merits stage.¹⁹

In its application, Iran hints that the problem of unilateral sanctions stretches far beyond narrow issues arising from bilateral commercial

12. *Id.* ¶ 20 (alleging that the sanctions and threat of further sanctions damage the Iranian economy by “creating uncertainty for all actors who would wish to have any economic relationship with Iran, and by deterring any such relationship, even if that relationship is not currently covered by the scope of the sanctions”).

13. See Luis Martinez, *Iran’s Foreign Minister Javad Zarif Says US Sanctions Are ‘Economic Terrorism’*, ABC NEWS (June 2, 2019), <https://abcnews.go.com/Politics/irans-foreign-minister-javad-zarif-us-sanctions-economic/story?id=63355661>.

14. See Press Release, Off. U.N. High Comm’r Hum. Rts., *Civilians Caught in Sanctions Crossfire Need Geneva Convention Protection, Says UN Expert* (Nov. 8, 2018), <https://www.ohchr.org/en/press-releases/2018/11/civilians-caught-sanctions-crossfire-need-geneva-convention-protection-says>.

15. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Preliminary Objections Judgment, 2021 I.C.J. 624, ¶¶ 77, 81 (Feb. 3).

16. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Provisional Measures Order, 2018 I.C.J. 623, ¶¶ 98, 102 (Oct. 3) [hereinafter *Treaty of Amity Provisional Measures*].

17. *Id.* at ¶¶ 90–91, 98.

18. *Id.* at ¶ 98.

19. *Id.* at ¶ 91.

obligations under the Treaty of Amity.²⁰ Indeed, the urgency of the request to institute proceedings is rooted in Iran's prolonged experience with U.S. unilateral sanctions, which have complicated the procurement of medical supplies and impeded humanitarian aid, to various degrees, since 1979.²¹ Other targeted countries and their populations have experienced the same or similar results under unilateral sanctions.²² The consensus is that unilateral sanctions have wide-ranging effects—on the targeted regime, on the targeted population, and on third-party actors.²³ From inhibiting the Syrian people's recovery from natural disaster to complicating the procurement of powdered milk in Cuba,²⁴ these effects raise questions about the international legality of unilateral sanctions that the ICJ has thus far avoided.

On the other hand, unilateral sanctions are a modern mechanism that states use to respond quickly and sometimes effectively to other states' transgressions of international law.²⁵ Their utility as an alternative to armed aggression cannot be denied. For example, U.S. pressure vis-à-vis unilateral sanctions played a role in dismantling South African apartheid, in incapacitating the oppressive Somoza regime in Nicaragua, and in crippling Idi Amin's dictatorship in Uganda.²⁶ More recently, unilateral sanctions have allowed the United States and others to pressure Russia in the wake of its invasion of Ukraine by adopting financial measures and other restrictions that implicate at least EUR 200 billion of Russian assets abroad.²⁷ The problem, however, is that unilateral

20. See Treaty of Amity Application Instituting Proceedings, *supra* note 2, ¶ 29 (“[The sanctions] will have a major and irreparable impact on Iran's economy and upon Iranian nationals and companies.”).

21. See Butler, *supra* note 10, at 179 (noting that the Iranian populace struggled under US sanctions regimes since the freezing of Iranian assets in response to the Iranian hostage crisis).

22. See, e.g., Rep. of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, U.N. Doc. A/HRC/39/54, at 11 (Aug. 30, 2018) (compiling reports from Cuba, Sudan, Qatar, Zimbabwe, and other countries about the negative impacts of unilateral sanctions on civilians).

23. See *infra* Sec. II.B (noting that states often enact unilateral sanctions to cripple a state's economy with the hopes that the population will demand regime change).

24. See *infra* note 54.

25. See Sarah Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 5 (2001) (highlighting the utility of unilateral sanctions to induce a target state's compliance with international law).

26. *Id.* (citing GARY CLYDE HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES* 463–66 (2d ed. 1990)).

27. See Tom Ruys & Mira Deweerdt, *From Tehran to Moscow: The ICJ's 2023 Certain Iranian Assets Judgment and Its Broader Ramifications for Unilateral Sanctions, Including Against Russia*, 70 NETH. INT'L L. REV., 273, 289 (2023) (describing the extent of the assets covered by U.S. sanctions against Russia). But see Christof Rühl, *Energy Sanctions and the Global Economy: Mandated vs.*

sanctions remain a “grey area” in international law, and powerful states employ these measures without clear constraint, placing their policy goals before considerations of citizens in the targeted states. Even when unilateral sanctions may be effective, their direct and extraterritorial effects complicate the enjoyment of human rights for civilian populations in targeted states.²⁸ Sanctions are certainly here to stay, but they must be subject to boundaries in international law.

The ICJ is well-suited to define the international legal boundaries within which states may enact unilateral sanctions. It should identify and remedy the issue: unilateral sanctions lack a clear framework in international law. Unlike United Nations collective sanctions, which operate within the clear parameters of the U.N. Charter, unilateral sanctions exist in a “grey area” of international law.²⁹ This Note argues that the forthcoming merits judgment of *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)* (hereinafter *Treaty of Amity* case) provides the ICJ an opportunity to clarify the law applicable to unilateral sanctions. First, this Note gives an overview of the current sanctions landscape to highlight the unique character of unilateral sanctions. Next, it addresses the effects of unilateral sanctions on human rights in targeted states. With this background, this Note discusses the treaty law and customary international law that the ICJ should consider as applicable rules of international law for unilateral sanctions in the *Treaty of Amity* Merits Judgment. This Note concludes that the ICJ should limit lawful unilateral sanctions only to those that qualify as permissible countermeasures, pursuant to the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). The ICJ confronts two options: clarify the legality of unilateral sanctions or dodge this critical issue by restricting its judgment to the specific legality of the U.S. sanctions under the Treaty of Amity. This Note advocates for the ICJ to

Unilateral Sanctions, 19 INT’L ECON. & ECON. POL., 383, 383 (2022) (noting that Russia remains the world’s premier commodities exporter despite sanctioning states’ efforts to cripple its economy).

28. See, e.g., Seyed Mohsen Rowhani, *Rights-Based Boundaries of Unilateral Sanctions*, 32 WASH. INT’L L.J. 127, 151 (2023) (citing Alexandra Hofer, *Introductory Note to Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates): Request for the Indication of Provisional Measures (ICJ)*, 57.6 INT’L LEGAL MATERIALS 978 (2018) (detailing human rights complications resulting from unilateral sanctions in Qatar)); Nigel D. White, *Shades of Grey: Autonomous Sanctions in the International Legal Order*, in UNILATERAL SANCTIONS IN INTERNATIONAL LAW 61, 81 (Surya P. Subedi ed., 2021) (detailing the “devastating impact of sanctions” in various contexts).

29. See White, *supra* note 28, at 62 (coining the term “grey area” for the legal landscape of unilateral sanctions).

choose the former. Both targeting states and targeted populations need the Court's guidance in this area.

II. THE MODERN SANCTIONS LANDSCAPE

Unilateral sanctions have become a favorite tool for economically capable modern states. They are economic measures, short of the use of force, taken by states in response to perceived wrongful acts or policies of another state.³⁰ *Unilateral* sanctions are those adopted by a single state.³¹ Their targets include specific governments, companies, and individuals.³² From the perspective of the United States and similarly powerful countries, the goal of unilateral sanctions is to impose economic pressure on targets to comply with the targeting state's foreign policy and national security objectives.³³ Another frequent goal is to demonstrate a state's economic power and influence in the global system—a showcase of what might happen to another state that acts similarly to the targeted state.³⁴ Importantly, both these goals prioritize the independent interests of the targeting state over a consideration for the effects in the targeted state, unlike U.N. collective sanctions. Despite the increasing popularity of unilateral sanctions as tools of foreign policy, there remains no multilateral treaty that directly addresses their validity under international law. While general rules of customary international law indicate that unilateral sanctions can only be imposed within limits,³⁵ powerful states maintain that these general rules are too broad to

30. See Seyed M.H. Razavi & Fateme Zeynodini, *Economic Sanctions and Protection of Fundamental Human Rights: A Review of the ICJ's Ruling on Alleged Violations of the Iran-U.S. Treaty of Amity*, 29 WASH. INT'L L.J. 303, 303 (2020).

31. See Charlotte Beaucillon, *An Introduction to Unilateral and Extraterritorial Sanctions: Definitions, State of Practice and Contemporary Challenges*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS 1, 3 (Charlotte Beaucillon ed., 2021) (recognizing that some scholars define unilateral sanctions as those not instituted by the United Nations Security Council but adopting a definition focusing on unilateral sanctions as those enacted by single states).

32. See generally John D. Buretta & Megan Y. Lew, *US Sanctions*, in GLOBAL INVESTIGATIONS REVIEW: THE GUIDE TO SANCTIONS 109–32 (Rachel Barnes K.C. et al. eds., 2023).

33. *Id.*; see also Beaucillon, *supra* note 31, at 5–6 (noting that sanctions are a key foreign policy tool designed to affect a change in behavior of the targeted state).

34. See Nikolay Anguelov, *Economic Sanctions: An Overview*, in ECONOMIC SANCTIONS VS. SOFT POWER: LESSONS FROM NORTH KOREA, MYANMAR, AND THE MIDDLE EAST 1, 4 (Nikolay Anguelov ed., 2015) (noting also that sanctions in the United States are increasingly a means of “political muscle-flexing aimed not at solving international disputes, but rather at showing local constituents and political rivals a strong presidential leadership initiative.”).

35. See *infra* Sec. 4(C)(2).

encompass the practice of unilateral sanctions.³⁶ This tension is further explored, in Section IV.C, *infra*.

A. *Unilateral Sanctions and United Nations Collective Sanctions*

The contrast between unilateral sanctions and U.N. collective sanctions results in distinct implications for international law. Whereas unilateral sanctions operate in a legal “grey area,” the U.N. Charter expressly permits collective sanctions.³⁷ Within the Charter’s Chapter VII framework, the U.N. Security Council (UNSC) may impose multilateral sanctions that are binding on all Member States.³⁸ Article 41 of the Charter provides the UNSC with a framework for collective sanctions, empowering it to “call upon Members of the United Nations” to apply “measures not involving the use of armed force . . . to give effect to its decisions.”³⁹ At least nine of the fifteen UNSC members must affirmatively decide to impose U.N. collective sanctions to create a wider obligation for Member States to impose sanctions on the target state.⁴⁰ The process involves a UNSC determination that there exists a threat to the peace, a breach of the peace, or an act of aggression.⁴¹ For example, the UNSC employed collective sanctions to hamper funding of terrorist organizations in the wake of the September 11, 2001 attacks, determining that international terrorism constituted a threat to international peace and security.⁴² The collaborative nature of the U.N. sanctions process, with its goal of pursuing international peace, lends it a unique multilateral legitimacy.

The current reality, however, is that the UNSC process is often sluggish and subject to political blocking, which can paralyze the U.N.

36. *Id.*

37. See U.N. Charter art. 41 (“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] [t]hese may include complete or partial interruption of economic relations. . . .”). See also White, *supra* note 28, at 71 (“The UN Security Council is expressly empowered to impose non-forcible measures. . .”).

38. See Andrea Charron et al., *Multilateral Sanctions: An Overview*, in MULTILATERAL SANCTIONS REVISITED: LESSONS LEARNED FROM MARGARET DOXEY 15, 17 (Andrea Charron & Clara Portela eds., 2022) (noting that some legal scholars consider the UN the only entity capable of multilateral action).

39. U.N. Charter art. 41.

40. See GOLNOOSH HAKIMDAVAR, A STRATEGIC UNDERSTANDING OF UN ECONOMIC SANCTIONS: INTERNATIONAL RELATIONS, LAW, AND DEVELOPMENT 24 (2014).

41. See Matthew Happold, *UN Sanctions as Human Rights and Humanitarian Law Devices*, in RESEARCH HANDBOOK ON UN SANCTIONS AND INTERNATIONAL LAW 125, 125 (Larissa Van Den Herik ed., 2017).

42. See Charron et al., *supra* note 38, at 21–22; S.C. Res. 1373, 1 (Sept. 28, 2001).

collective sanctions mechanism.⁴³ While this mechanism lags, states with economic power resort to unilateral sanctions, unrestrained by the requirement that there be a threat to international peace and security. Many states use unilateral sanctions to enforce bilateral norms—as manifestations of “self-help,”⁴⁴ “private justice,”⁴⁵ or even “political muscle-flexing.”⁴⁶ This contrasts with enforcing communal international norms, which is the purpose of U.N. collective sanctions. The issue is that there is currently no mutually accepted framework for unilateral sanctions that resembles the process under Articles 39 and 41 of the U.N. Charter: it is international law’s “wild west.”

B. *Unilateral Sanctions with Extraterritorial Design and Effect*

In theory, the scope of unilateral sanctions is narrower than that of U.N. collective sanctions, as the former are limited to the jurisdiction of the state that adopts them, and the latter implicate various states’ jurisdictions.⁴⁷ In practice, however, an economically powerful state’s ability to craft sanctions with extraterritorial effects leads to implications far beyond the targeting state’s legal domain. Extraterritorial sanctions—also known as secondary sanctions—target third-party actors’ actions outside the targeting state’s jurisdiction, notably those pertaining to business with individuals, corporations, or governments that are the targets of unilateral sanctions.⁴⁸ These differ from primary sanctions, such as trade embargoes and asset freezes, which directly restrict a targeting state’s nationals from conducting business with a targeted state and its nationals.⁴⁹

Economic powerhouse states frequently craft extraterritorial sanctions that threaten punitive measures against private actors interacting with identified sectors of a target state.⁵⁰ For example, some U.S. sanctions on Iran dictate that a foreign bank facilitating transactions with Iranian companies or nationals will have its U.S. assets frozen.⁵¹ Other

43. See Charron et al., *supra* note 38, at 16.

44. White, *supra* note 28, at 65.

45. *Id.*

46. Anguelov, *supra* note 34, at 4.

47. See Beaucillon, *supra* note 31, at 5.

48. *See id.* at 6.

49. *See id.* at 5.

50. See Surya P. Subedi, *The Status of Unilateral Sanctions in International Law*, in UNILATERAL SANCTIONS IN INTERNATIONAL LAW 19, 42–43 (Surya P. Subedi ed., 2021).

51. See Emmanuel Breen, *Corporations and US Economic Sanctions: The Dangers of Overcompliance*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS 256, 259 (Charlotte Beaucillon ed., 2021). *See also* Buretta & Lew, *supra* note 32, at 101.

U.S. sanctions allow the U.S. executive branch to decline a license to a foreign company known to have invested in Iran's energy infrastructure.⁵² Criminal and civil liabilities for states engaging in behavior that offsets the effects of primary sanctions are also common,⁵³ despite questions about jurisdictional overreach.⁵⁴ Many companies refrain from any business activity with the target state, fearing the consequences of these measures.⁵⁵ A common practice is "overcompliance," in which a third-party actor avoids business with the target state, despite not being absolutely sure whether it would experience negative consequences from the targeting state.⁵⁶ The extraterritorial nature of many modern unilateral sanctions may well be contrary to international law, with concerns ranging from jurisdictional overreach to interference with international trade obligations.⁵⁷ At the very least, extraterritoriality complicates the international rules applicable to unilateral sanctions. Absent clarity from the ICJ, targeting and targeted states confront an uncertain legal landscape.

III. HUMAN RIGHTS IMPLICATIONS OF UNILATERAL SANCTIONS

Alongside the increased use of unilateral sanctions has been a growing concern regarding these measures' impact on human rights. Two generations of Special Rapporteurs on Unilateral Coercive Measures,⁵⁸ academic experts,⁵⁹ representatives of affected

52. See *id.* at 260. See also Alexandra L. Anderson, *Good Grief! Iran Sanctions and the Expansion of American Corporate Liability for Non-U.S. Subsidiary Violations Under the Iran Threat Reduction and Syria Human Rights Act of 2012*, 34 NW. J. INT'L L. & BUS. 125, 126–27 (2013) (describing the Iran Threat Reduction and Syria Human Rights Act of 2012, which holds U.S. parent corporations liable for the sanctionable activity of their foreign subsidiaries).

53. Alana Douhan, *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶¶ 26–28, U.N. Doc A/78/196 (Sept. 4, 2023).

54. See Tom Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, in RESEARCH HANDBOOK ON UN SANCTIONS AND INTERNATIONAL LAW 19, 30 (Larissa van den Herik ed., 2017).

55. See Anderson, *supra* note 52, at 127.

56. See Douhan, *supra* note 53.

57. See Ruys, *supra* note 54, at 29–30 (listing potential international law concerns implicated by unilateral sanctions with extraterritorial effects). See also *infra* Sec. IV(C) (1).

58. Mr. Idriss Jazairy held this position from May 1, 2015 to Dec. 9, 2019; Professor Alena Douhan succeeded Jazairy on March 25, 2020 and still holds the position. See *Annual Thematic Reports: Special Rapporteur on Unilateral Coercive Measures*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/annual-thematic-reports> (last visited May 29, 2020).

59. See, e.g., Pierre-Emmanuel Dupont, *Human Rights Implications of Sanctions*, in ECONOMIC SANCTIONS IN INTERNATIONAL LAW AND PRACTICE 39, 39 (Masahiko Asada ed., 2020); Jerg Gutmann et al., *Precision-Guided or Blunt? The Effects of US Economic Sanctions on Human Rights*, 185 PUB. CHOICE, 161, 161 (2020).

countries,⁶⁰ and human rights organizations⁶¹ warn of the humanitarian impact of unilateral sanctions and the implications of this impact on international law. Even unilateral sanctions with humanitarian carve-outs can negatively affect the enjoyment of human rights, as acknowledged by the ICJ itself in its *Treaty of Amity* Provisional Measures Order.⁶² There is no analogous international outcry against modern U.N. collective sanctions, as they do not have similarly deleterious effects on human rights, largely thanks to the multilateral vetting process and a range of represented states' interests.⁶³ While U.N. collective sanctions result from joint consideration of threats to international peace, the purpose of many unilateral sanctions is to further the policy interests of the targeting state—interests that do not adequately consider the human rights of foreign citizens.⁶⁴ Repeated warnings about the harmful effects of unilateral sanctions on human rights highlight the importance of clarifying applicable international law in this area.⁶⁵

In the months after the United States began to reimpose sanctions, U.N. Special Rapporteur Idris Jazairy warned that the renewed unilateral sanctions “will harm ordinary people in the Islamic Republic of Iran and affect their enjoyment of a range of human rights.”⁶⁶ Jazairy emphasized that the United States imposed a comprehensive sanctions regime, which included extraterritorial sanctions, amounting to a peacetime blockade, impermissible under international human rights law.⁶⁷ He predicted that these measures would achieve their desired effect, professed by the U.S. Secretary of State in his remarks from May 5, 2018:

60. See Martinez, *supra* note 13.

61. See generally HUM. RTS. WATCH, “MAXIMUM PRESSURE”: US ECONOMIC SANCTIONS HARM IRANIANS’ RIGHT TO HEALTH (2019) [hereinafter Human Rights Watch Report].

62. Treaty of Amity Provisional Measures, *supra* note 16, ¶ 102.

63. See *infra* notes 64–68 (acknowledging that past U.N. sanctions regimes likely violated human rights obligations but asserting that the U.N. collective sanctions mechanism has matured such that it no longer tolerates this).

64. See Jana Ilieva et al., *Economic Sanctions in International Law*, 9 (2) UTMS J. ECON. 201, 203-04 (2018).

65. See, e.g., Human Rights Council Res. 46/5, U.N. Doc. A/HRC/46/5, at 1–6 (Mar. 31, 2021); Alena F. Douhan, *Impact of the Unilateral Coercive Measures on the Right to Health: Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/54/23 (July 19, 2023).

66. Idriss Jazairy, *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶ 33, U.N. Doc. A/HRC/39/54 (2018).

67. *Id.* ¶ 25.

“[Iran] will be battling to keep its economy alive.”⁶⁸ The civilian population was set to suffer total isolation.⁶⁹

Jazairi’s fears have come true. Most foreign pharmaceutical companies have ceased operations in Iran, apprehensive of U.S. sanctions.⁷⁰ Iranian medicine providers can neither import essential medicines nor the materials necessary to produce these medicines domestically, and civilians lack remedies for rare diseases and cancer.⁷¹ U.N. experts have further reported that U.S. sanctions prevent all people in Iran, including migrants and refugees, from enjoying basic rights to health and life.⁷² Humanitarian imports have been similarly affected.⁷³ Humanitarian organizations—unable to receive funds from international banks—cannot fund aid initiatives in the country.⁷⁴ Of the several negative effects resulting from U.S. threats to penalize foreign companies that conduct business with Iran, an inability to access new technologies has led to an environmental disaster, including 40,000 premature deaths from respiratory diseases, likely caused by air pollution.⁷⁵ An overall economic crisis has resulted: basic goods nearly doubled in price in 2019, oil exports fell by more than 80%, and the value of Iranian currency contracted by 60%.⁷⁶ While unilateral sanctions on Iran may advance U.S. foreign policy goals, the civilian population suffers the brunt of these negative effects.

Unilateral sanctions applied without careful consideration of human rights have proliferated in the absence of legal certainty, and citizens of targeted states experience difficulties like those in Iran. Unilateral sanctions—including those with humanitarian carve-outs—disproportionately affect persons in vulnerable situations, such as

68. *Id.* ¶ 33 (quoting U.S. Department of State, Secretary’s Remarks), <http://www.state.gov/secretary/remarks/2018/05/282301/htm> (last visited Nov. 14, 2023) (the contents of the webpage have since been removed)).

69. *Id.* ¶ 34.

70. See Human Rights Watch Report, *supra* note 61, at 4.

71. *Id.* at 21. See also Fatemeh Kokabisaghi, *Assessment of the Effects of Economic Sanctions on Iranians’ Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review*, 7 INT’L J. HEALTH POL’Y MANAG. 374, 386–87 (2018).

72. Press Release, U.N. Hum. Rts. Off. of the High Comm’r, US Sanctions Violate Iranian People’s Rights to Clean Environment, Health, and Life: UN Experts, (Dec. 20, 2022), <https://www.ohchr.org/en/press-releases/2022/12/us-sanctions-violate-iranian-peoples-rights-clean-environment-health-and> [hereinafter December 2022 OHCHR Press Release].

73. See Human Rights Watch Report, *supra* note 61, at 25–29. See also Kokabisaghi, *supra* note 71, at 375.

74. See Human Rights Watch Report, *supra* note 61, at 25–26.

75. December 2022 OHCHR Press Release, *supra* note 72.

76. Daniel W. Drezner, *How Not to Sanction*, 98 INT’L AFFS. 1533, 1542 (2022).

women, children, the sick or disabled, migrants, the impoverished, and those dependent on humanitarian assistance.⁷⁷ For example, companies, “overcomplying” with extraterritorial sanctions, have been reluctant to transport powdered milk and agricultural machinery to Cuba, fearing negative effects on their U.S. operations.⁷⁸ Mortality rates rose in Zimbabwe after medical companies deserted the country, wary of running afoul of sanctions that would impede their operations in the United States and Europe.⁷⁹ Syrian citizens recovering from natural disaster in 2023 encountered sanctions-induced logistical and financial obstacles.⁸⁰ These are just some of the human rights complications⁸¹ that states precipitate when enacting unilateral sanctions with the goal of furthering their own policy interests.⁸²

Contemporary U.N. collective sanctions, as compared to unilateral sanctions, operate within the clear parameters of the Charter and may more carefully consider secondary effects on human rights.⁸³ The consensus

77. Press Release, U.N. Hum. Rts. Off. of the High Comm’r, *Unilateral Sanctions Hurt All, Especially Women, Children and Other Vulnerable Groups* – UN Human Rights Expert, (Dec. 8, 2021), <https://www.ohchr.org/en/press-releases/2021/12/unilateral-sanctions-hurt-all-especially-women-children-and-other-vulnerable>.

78. Alena Douhan (Special Rapporteur), *Secondary Sanctions, Overcompliance and Human Rights*, ¶¶ 47–48, U.N. Doc. A/78/196 (Sept. 4, 2023); Livingstone Sewanyana (Independent Expert on the promotion of a democratic and equitable international order), *In Defense of a Renewed Multilateralism to Address the Coronavirus Disease (COVID-19) Pandemic and Other Global Challenges*, ¶ 38, U.N. Doc. A/HRC/48/58 (Aug. 9, 2021). *See also* Breen *supra* note 51, at 266 (“US and other economic sanctions, when they are overcomplied with, may cause significant damage to communities, in target countries, by unduly limiting their access to basic goods, services and information.”).

79. Alena Douhan, *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶ 66, U.N. Doc. A/HRC/54/23 (Sept. 2, 2022), https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/A_HRC_54_23_AdvanceUneditedVersion.docx.

80. *Id.* ¶ 76; *Questions and Answers: How Sanctions Affect Humanitarian Response in Syria*, HUMAN RIGHTS WATCH (June 22, 2023), <https://www.hrw.org/news/2023/06/22/questions-and-answers-how-sanctions-affect-humanitarian-response-syria>.

81. *See also* Alena Douhan, *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, U.N. Doc. A/75/209 (2020) (detailing the struggles of civilian populations in sanctioned states to access medicines and medical equipment during the COVID-19 pandemic).

82. While it is outside the scope of this paper, scholars doubt that unilateral sanctions achieve the stated policy goals. Since 2018, Iran has abandoned any attempts to comply with the nuclear non-proliferation requirements of the JCPOA and has attracted rebel group allies from Yemen, Afghanistan, Iraq, and Syria; *see* Drezner, *supra* note 76, at 1543.

83. *See* Nadeshda Jayakody, *Refining United Nations Security Council Targeted Sanctions: ‘Proportionality’ as a Way Forward for Human Rights Protection*, 29 SEC. & HUM. RTS. 90, 99 (2018) (noting that the U.N. Charter obliges the UNSC to act in accordance with the U.N.’s purposes

required for U.N. collective sanctions, coupled with the UNSC's mandate to maintain international peace and security, assures that these sanctions are imposed cautiously.⁸⁴ Indeed, the designation criteria for several current sanctions regimes—including Somalia, the Democratic Republic of the Congo, Côte d'Ivoire, Sudan, and Libya—expresses protection for civilians and other language regarding the assurance of human rights.⁸⁵ The UNSC has acted conservatively in its interpretation of threat or breach of peace, refusing to enact sanctions absent some impact on regional or global security.⁸⁶ To be sure, modern U.N. collective sanctions are the result of trial and error, avoiding the pitfalls of previous U.N. collective sanctions that violated citizens' human rights in the targeted state.⁸⁷ Notably, the U.N. revamped its approach after it ordered controversial and devastating sanctions against Iraq, which garnered extensive criticism for its lack of concern for human rights.⁸⁸ In the wake of the Iraq mistakes, the UNSC began crafting smarter sanctions designed to target key elites instead of the mass public and the general economy.⁸⁹

U.N. Sanctions Committees now monitor and improve the fairness of collective sanctions.⁹⁰ A Sanctions Committee is established for each U.N. collective sanctions regime, and its role includes reviewing reports of

and principles, one of which is to “promote and encourage respect for human rights and fundamental freedoms.”). See also Matthew Happold, *Targeted Sanctions and Human Rights*, in *ECONOMIC SANCTIONS AND INTERNATIONAL LAW: LAW AND PRACTICE* 87, 101 (Matthew Happold & Paul Eden eds., 2016) (detailing the considerable detail that U.N. resolutions include for which actors should be affected by sanctioning measures and thus minimizing harm to the broader population).

84. See SECURITY COUNCIL REPORT, UN SANCTIONS 6 (2013), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf (detailing the cautious references to the maintenance of international peace and security and the details listed in mandates for U.N. collective sanctions, which includes the reasons for the sanctions, the specific targets, the types of sanctions, the institutional mechanisms needed for implementation, and the timeline of the sanctions).

85. *Id.* at 9.

86. See Happold, *supra* note 41, at 126 (2017) (“[E]ven widespread atrocities committed within a State [] were not viewed as sufficient to bring [sanctions] into being, absent some impact on regional or global security.”).

87. See Charron et al., *supra* note 38, at 20–21.

88. See Christopher C. Joyner, *United Nations Sanctions After Iraq: Looking Back to See Ahead*, 4 CHI. J. INT'L L. 329, 352 (2003).

89. See Drezner, *supra* note 76 at 1540; Joy Gordon, *Smart Sanctions Revisited*, 25 ETHICS & INT'L AFFS. 315, 317–18 (2011) (noting that the criticism of the humanitarian sanctions was so extensive that the U.N. began to refrain from broad trade sanctions and eventually reached a modern “smart sanctions” regime).

90. See Thilo Marauhn & Ignaz Stegmüller, *Sanctions and the Protection of Human Rights: The Role of Sanctions Committees*, in *COERCIVE DIPLOMACY, SANCTIONS AND INTERNATIONAL LAW* 161, 167–68 (Natalino Ronzitti ed., 2016).

individuals affected by the sanctions.⁹¹ Individuals who feel their rights have been violated by the implementation of U.N. collective sanctions may challenge a country's implementation of these measures before a U.N. adjudicatory body, such as the Human Rights Committee.⁹² Further, the U.N. has unique power to create initiatives to counteract negative effects of sanctions, as it did with the Oil-for-Food program in Iraq, which allowed Iraq to sell its otherwise sanctioned oil if it deposited funds into a U.N.-controlled escrow account, used exclusively for humanitarian aid.⁹³ The U.N. is incentivized to focus on the broad goal of international peace and security, and modern U.N. collective sanctions—unlike many unilateral sanctions—reflect this goal.

Unilateral sanctions are often a means for a state to express political viewpoints and punish opposition to them.⁹⁴ When detailing preconditions for lifting the sanctions on Iran, U.S. Secretary of State Mike Pompeo listed twelve demands on Iran's regime; eight of these were policy demands unrelated to Iran's alleged breach of its obligation to refrain from nuclear development.⁹⁵ When a state imposes sanctions to further its national interest, there is a less holistic consideration of the range of international legal implications, including direct and extraterritorial implications for human rights. The ICJ acknowledged this in its Provisional Measures Order for the *Treaty of Amity* case, where it ruled that the existence of humanitarian carve-outs was insufficient if the United States did not otherwise ensure that its unilateral sanctions did not restrict humanitarian aid.⁹⁶ In the upcoming Merits Judgment, it should further delineate the effects of unilateral sanctions on human rights and clarify the extent to which these measures are permissible.

91. *Id.* at 168.

92. In *Sayadi and Vinck v. Belgium*, Belgian nationals successfully argued that Belgium had violated their rights to liberty of movement and to be free from unlawful attacks on reputation by its implementation of collective sanctions mandated by the UNSC. See Jayakody, *supra* note 83, at 101 (citing *Sayadi and Vinck v. Belgium* (1472/2006), Views, CCPR/C/94/D/2006).

93. See Yujin Jeong & Robert J. Weiner, *Who Bribes? Evidence from the United Nations' Oil-for-Food Program*, 33 STRAT. MGMT. J. 1363, 1365 (2012). See also Drezner, *supra* note 76, at 1537 (noting that the Oil-for-Food program was a response to reports of humanitarian concerns resulting from the sanctions).

94. Critics of unilateral sanctions cite their political goals as particularly problematic; see G.A. Res. 70/185, at 2 (Dec. 22, 2015) (urging the international community to cease enacting unilateral economic measures as a means of political and economic coercion against developing countries). See also, Charter of the Organization of American States art. 16, Apr. 30, 1948, 52 U.N. T.S. 47 (asserting the illegality of coercive economic measures enacted by one state against another for political or economic ends).

95. See Drezner, *supra* note 76, at 1542.

96. *Treaty of Amity Provisional Measures*, *supra* note 16, ¶ 70.

The ICJ is best suited to provide a clear framework that curbs the negative impact of unilateral sanctions on human rights. It should take an effects-oriented approach that designates clear boundaries of permissible behavior for sanctioning states.

IV. INTERNATIONAL LAW APPLICABLE TO UNILATERAL SANCTIONS

Diverse sources of treaty law and customary international law are germane to the ICJ's consideration of the legality of unilateral sanctions. In the *Treaty of Amity* Merits Judgment, the ICJ should note these disparate sources and clarify their applicability to unilateral sanctions. The ICJ will consider Iran's alleged violations of the Treaty of Amity itself, but it would be a critical mistake for the ICJ to stop its analysis there. It should also acknowledge all rules of international law relevant to the use of unilateral sanctions, particularly human rights treaties and customary international law.⁹⁷ The ICJ's approach to the *Treaty of Amity* Merits Judgment will have broad implications both for targeting states and for targets of unilateral sanctions. A failure to address relevant rules of international law beyond the Treaty of Amity itself will communicate the untethered permissibility of these measures. Nuanced interpretation of the law, on the other hand, will assure that the inevitable use of unilateral sanctions takes place within a clear legal framework.

A. *The 1955 Treaty of Amity*

In its Provisional Measures Order, the ICJ noted the provisions of the Treaty of Amity that may be relevant to the United States' use of unilateral sanctions against Iran.⁹⁸ The Treaty of Amity requires the United States and Iran to afford protection and fair and equitable treatment to nationals and companies of the other state party,⁹⁹ to avoid restrictions on the flow of funds¹⁰⁰ and products,¹⁰¹ to maintain most favored nation treatment,¹⁰² and to assure freedom of commerce and navigation.¹⁰³ The Court noted that the sanctions at issue complicate these rights, specifically highlighting the United States' revocation of licenses and authorizations

97. See International Court of Justice Statute art. 38, 59 Stat. 1055, 33 U.N.T.S. 993 (requiring the Court to apply treaty law, customary international law, general principles of law, and subsidiary sources to interpret the rules of law when deciding the disputes before it).

98. See generally *Treaty of Amity Provisional Measures*, *supra* note 16.

99. *Treaty of Amity, Economic Relations, and Consular Rights*, *supra* note 3.

100. *Id.*, art. VII.

101. *Id.*, arts. VIII, IX(3).

102. *Id.*, arts. IX(2), V(1).

103. *Id.*, art. X.

for commercial transactions, the ban on trade of certain items, and limitations to financial activities.¹⁰⁴ These U.S. actions indeed complicate the Treaty of Amity's assurances of fair and equitable treatment to the fellow party's investors,¹⁰⁵ most favored nation treatment to the parties' products,¹⁰⁶ and general freedom of commerce.¹⁰⁷ The Court thus positioned the consideration of these potential violations for the Merits Judgment. To restrict its analysis to international trade law, however, would be a mistake. The Court cannot consider these obligations in a vacuum without recognition of other conflicting or relevant international law obligations concerning unilateral sanctions. This crucial area of international law deserves a holistic approach; thus, the ICJ should acknowledge other applicable rules arising from treaties and customary international law that the global increase in unilateral sanctions practice implicates.

B. *Unilateral Sanctions and Human Rights Treaties*

Iran and the United States are both parties to human rights treaties that also bind a majority of other states. As an example, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)¹⁰⁸ enshrine certain human rights whose enjoyment is complicated in states targeted by unilateral sanctions. This would not be the first time that the ICJ has considered human rights implications alongside other alleged treaty violations. In its *Armed Activities on the Territory of the Congo* Judgment, the Court found that Uganda's military had committed widespread violations of international human rights law, in violation of customary international law and treaty obligations, including the ICCPR and the U.N. Convention on the Rights of the Child (UNCRC).¹⁰⁹ While Iran's application to the ICJ did not seek consideration of its citizens' rights under these or similar treaties, the application does note the effects on the enjoyment of human rights that it alleges result or will result from the sanctions, such as the difficulty in accessing food and medicine for the civilian

104. Treaty of Amity Provisional Measures, *supra* note 16, ¶¶ 74–75.

105. *Id.* ¶ 31.

106. *Id.*

107. *Id.*

108. *See generally* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 933 U.N.T.S. 3 [hereinafter ICESCR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

109. *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶¶ 205–21 (Dec. 19) [hereinafter *Armed Activities*].

population.¹¹⁰ The ICJ thus might address how unilateral sanctions affect the rights protected by human rights treaties, noting that the international community remains concerned about the human rights implications of unilateral sanctions.¹¹¹ Since the U.N. Commission on Economic, Social, and Cultural Rights (CESCR) has warned that unilateral sanctions might violate the rights of citizens under that treaty, the ICJ should consider how U.S. sanctions on Iran frustrate Iranian citizens' rights under the ICESCR, and it should delineate treaty-based human rights limitations for unilateral sanctions.

When considering human rights treaties, the Court would first consider whether the obligations of these treaties apply extraterritorially to the citizens of other states. The ICJ should consider the comments of the CESCR, which indicate that states may have obligations under the ICESCR that extend to individuals in other states, especially in the context of international cooperation and assistance.¹¹² Further, while many treaties have jurisdictional clauses limiting their scope of application to the domestic territory of the state party, the ICESCR and other similar human rights treaties do not, implying that the drafters intended their extraterritorial application.¹¹³ There is a developing consensus that human rights treaties have extraterritorial application, including positive obligations abroad, particularly for situations in which a state can influence events in another country's jurisdiction.¹¹⁴ This makes sense when considered alongside the customary international law rule that prohibits a state from allowing its territory to be used to cause damage to the territory of another state, likely including damage to human rights.¹¹⁵ Unilateral sanctions often allow a targeting state to commit damage abroad that its human rights treaty obligations would forbid it to enact on its own citizens. The ICJ should confirm that these treaty

110. Treaty of Amity Application Instituting Proceedings, *supra* note 2, ¶¶ 35–38 (noting also the general effect on household welfare that isolation from the global economy will entail).

111. See Drezner, *supra* note 76, at 1542.

112. Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 8 on the Relationship Between Economic Sanctions and Respect for Economic, Social, and Cultural Rights*, ¶ 8, U.N. Doc. E/C.12/1997/8 (Dec. 12, 1997) [hereinafter *The Relationship Between Economic Sanctions and Respect for Economic, Social, and Cultural Rights*]; Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 14 on the Highest Attainable Standard of Health*, ¶ 38, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *The Right to the Highest Attainable Standard of Health*].

113. See Dupont, *supra* note 59, at 51.

114. *Id.* See also Rowhani, *supra* note 28, at 144–45 (2023) (“It would be unreasonable to interpret responsibility in such a way that a state party could commit violations of the Covenant on the jurisdiction of another state that it could not commit on its own.”).

115. Dupont, *supra* note 59, at 52.

obligations, including those of the ICESCR, also apply extraterritorially to the protection of human rights abroad.

The U.N.'s CESCR took a major step towards advocating for human rights limitations on unilateral sanctions when it urged states to refrain from enacting food embargoes and economic measures that directly restrict or endanger the production and supply of food, adequate medicine, and medical equipment.¹¹⁶ This was, in essence, a call for targeting states to align their behavior with their obligations under the ICESCR, which requires states to ensure a "right of everyone to an adequate standard of living."¹¹⁷ The comments of the ICESCR clarify that the right to an adequate standard of living includes availability of food and of funds necessary to acquire food.¹¹⁸ Despite humanitarian carve-outs, food prices in Iran doubled within a year after the United States announced reimposition of sanctions in May 2018.¹¹⁹ Further, the ICESCR assures a fundamental right to health, and CESCR has warned that this right is impeded by unilateral sanctions restricting access to medical supplies.¹²⁰ As the ICJ itself acknowledged, the U.S. sanctions on Iran have direct and indirect implications for Iranian citizens' access to medicine.¹²¹ Thus, the CESCR's warnings reign true for modern sanctions: they adversely affect the ICESCR rights of target state citizens.

A similar analysis applies to the ICCPR, which contains rights complicated by the United States' imposition of unilateral sanctions. At Article 1(2), the ICCPR dictates that "[a]ll peoples may, for their own ends, freely dispose of their wealth and resources without prejudice to any obligations arising out of international economic co-operation. . . ."¹²² Unilateral sanctions, such as those imposed by the United States against Iran, limit the products that Iranian citizens may buy and the services they may contract by restricting third parties' capabilities of conducting business with Iran and its citizens. It is also worth mentioning that

116. The Relationship Between Economic Sanctions and Respect for Economic, Social, and Cultural Rights, *supra* note 112, ¶ 10; The Right to the Highest Attainable Standard of Health, *supra* note 112, ¶ 41. *See also* Razavi & Zeynodini, *supra* note 30, at 312.

117. ICESCR, *supra* note 108, art. 11. *See also* Razavi & Zeynodini, *supra* note 30, at 312.

118. *See* Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 12: The Right to Adequate Food*, ¶ 8, U.N. Doc. E/C.12/1999/5 (May 12, 1999) (referencing article 11 of the Covenant, "availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals. . . ."). *See also* Razavi & Zeynodini, *supra* note 30, at 312.

119. *See* Drezner, *supra* note 76, at 1542.

120. The Right to the Highest Attainable Standard of Health, *supra* note 112, at ¶ 41.

121. *See* Treaty of Amity Provisional Measures, *supra* note 16, ¶ 102.

122. ICCPR, *supra* note 108, art. 1(2).

unilateral sanctions frustrate the right to development, which—although not yet enshrined in a treaty—stems in its modern form from the U.N. Declaration on the Right to Development, the relevant provisions of which are anchored in binding instruments such as the U.N. Charter, the ICESCR, and the ICCPR.¹²³

C. *Unilateral Sanctions Under Customary International Law*

While Articles 29 and 41 of the U.N. Charter govern its collective sanctioning behavior, there is no mention of unilateral sanctions in the Charter.¹²⁴ Nor does any broadly applicable instrument of international law speak to the legality or illegality of unilateral sanctions—it is a veritable grey area, despite the popularity of these measures. The debate over this grey area is most active in customary international law. Some observers assert that *opinio juris* and state practice have given rise to a rule banning or curtailing the use of these measures; others contest that there is no such crystalized rule of customary international law.¹²⁵ The latter group points to the 1927 *Lotus* case as the starting point for an assessment of the legality of unilateral sanctions: sovereign states may act freely so long as they do not contravene an explicit prohibition of international law.¹²⁶ The ICJ affirmed this principle in the context of economic relations in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, stating that a “state is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation.”¹²⁷ This same case, however, noted an international legal principle that may proscribe some restrictions on unilateral sanctions: the principle of non-intervention.¹²⁸ Further, more recent developments in customary international law suggest that unilateral sanctions are subject to restrictions.

123. See generally G.A. Res. 41/128, Declaration on the Right to Development (Dec. 4, 1986); UNITED NATIONS OFFICE OF THE HIGH COMM’R FOR HUM. RTS., FREQUENTLY ASKED QUESTIONS ON THE RIGHT TO DEVELOPMENT, FACT SHEET NO. 37 (2016).

124. See UN Charter arts. 29, 41; see generally UN Charter.

125. See Rebecca Barber, *An Exploration of the General Assembly’s Troubled Relationship with Unilateral Sanctions*, 70 INT’L & COMPAR. L. Q. 343, 354 (2021) (collecting sources and noting the increased use of unilateral sanctions since World War II and the lack of a right to be free from economic coercion).

126. S.S. *Lotus* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, ¶¶ 65–66 (Sept. 7).

127. *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 276 (June 27) [hereinafter *Nicaragua*]; see Barber, *supra* note 124, at 350.

128. *Nicaragua*, *supra* note 127, ¶ 202.

1. Unilateral Sanctions and the Principle of Non-Intervention

The customary international law principle of non-intervention is closely associated with the right to state sovereignty, which itself is enshrined in Article 1(1) of the U.N. Charter, mandating sovereign equality of all U.N. Member States.¹²⁹ The non-intervention principle is, however, a distinct rule of international law that prohibits a state from intervening in matters which another state is permitted to decide freely pursuant to the principle of state sovereignty.¹³⁰ The ICJ has noted that the non-intervention principle upholds “the right of every sovereign state to conduct its affairs without outside interference. . . .”¹³¹ States targeted by unilateral sanctions invoke the non-intervention principle to argue that another state’s sanctions restrict the target state’s ability to choose with whom it would like to have an economic and financial relationship.¹³² This is a particular concern in the context of extraterritorial unilateral sanctions, as the non-intervention principle restricts the extraterritorial exercise of state powers on actors outside of a state’s jurisdiction.¹³³ While the boundaries of non-intervention are amorphous, scholars warn that “[t]he exercise of economic pressure, even in the absence of specific obligations, must not exceed a certain limit, lest it constitute a violation of the principle of non-intervention.”¹³⁴ States’ intervention into the domestic affairs of other states via the assertion of economic pressure has concerned the U.N. General Assembly (UNGA) for decades.

The UNGA directly addressed the non-intervention principle in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States (Friendly Relations Declaration), unanimously adopted in 1971.¹³⁵ The Friendly Relations Declaration first

129. UN Charter art. 1(1).

130. *Nicaragua*, *supra* note 127, ¶ 205.

131. *Id.* ¶ 202; Subedi, *supra* note 50, at 25.

132. See Julia Schmidt, *The Legality of Unilateral Extra-Territorial Sanctions Under International Law*, 27 J. CONFLICT & SEC. L. 53, 77 (2022).

133. Mirko Sossai, *Legality of Extraterritorial Sanctions*, in ECONOMIC SANCTIONS IN INTERNATIONAL LAW AND PRACTICE, 62, 68 (Masahiko Asada ed., 2019). See also, Charter of the Organization of American States art. 16 (“No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.”).

134. Vaughan Lowe & Antonios Tzanakopoulos, *Economic Warfare*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1, 11 (Rüdiger Wolfrum ed., 2013).

135. G.A. Res. 2624 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, at 123 (Oct. 24, 1970).

confirms that “the principles of the Charter which are embodied in this Declaration constitute basic principles of international law. . . .”¹³⁶ It proceeds to list the non-intervention principle as one of the seven basic principles arising from the Charter.¹³⁷ Specifically, “[n]o State may use or encourage the use of economic, political or any other types 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.”¹³⁸ The Friendly Relations Declaration upholds that each state has an inalienable right to choose its economic, political, and cultural system.¹³⁹ Insofar as unilateral sanctions seek to force regime change in another state or influence its sovereign decisions concerning economic relations, they run afoul of the non-intervention principle, as described in the Friendly Relations Declaration.

In its *Nicaragua* judgment, the ICJ provided further detail on the non-intervention principle in the context of economic relations. The Court confirmed that the non-intervention principle is a rule of customary international law, stating that expressions of *opinio juris* are numerous and that these are backed by established and substantial state practice.¹⁴⁰ Rebecca Barber suggests that the ICJ articulated a two-part test in *Nicaragua* to assess compliance with the non-intervention principle.¹⁴¹ First, the intervention is one bearing on matters which each state is permitted, by the principle of state sovereignty, to decide freely.¹⁴² Second, the intervention must use methods of coercion.¹⁴³ Thus, the ICJ has articulated that the non-intervention principle prohibits coercive interference in a state’s internal affairs.¹⁴⁴ Although the Court found that the U.S. measures at issue in *Nicaragua* did not violate the non-intervention principle, it left open the question of when and how unilateral sanctions might contravene this established rule.¹⁴⁵ In *Nicaragua*, the ICJ confirmed that the non-intervention principle is entrenched in customary international law and that a state violates it with coercive incursion on another state’s sovereign affairs.¹⁴⁶

136. *Id.* at 124.

137. *Id.* at 122.

138. *Id.* at 123.

139. *Id.*

140. *Nicaragua*, *supra* note 127, ¶ 202.

141. *See* Barber, *supra* note 125 at 351.

142. *Id.*

143. *Id.*

144. *Id.* (collecting sources).

145. *Nicaragua*, *supra* note 127, ¶¶ 269, 292. *See also* Barber, *supra* note 125, at 351.

146. *Nicaragua*, *supra* note 127, ¶ 202.

On the other side of the non-intervention debate, proponents of unilateral sanctions argue that these measures do not violate the non-intervention principle because they are not coercive in nature.¹⁴⁷ While it is true that economic assistance is given voluntarily and may be removed at any time,¹⁴⁸ the exertion of economic pressure on private third parties to cripple a target state's ability to participate in the global economy likely involves coercion and intrusion into internal affairs sufficient to satisfy the *Nicaragua* test.¹⁴⁹ While not all unilateral sanctions necessarily involve coercion, those that seek to subordinate another state's ability to exercise its sovereign rights amount to measures of a coercive nature.¹⁵⁰ Many modern unilateral sanctions regimes, likely including the United States' sanctions on Iran, involve coercion. In the *Treaty of Amity* case, the Court should now employ the two-part test to clarify the restrictions the non-intervention principle places on unilateral sanctions.

The principle of non-intervention works alongside competing rules of international law, entitled to equal weight.¹⁵¹ Treaties carve out areas within which states may have some break from the non-intervention principle.¹⁵² Particularly, the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) delineate areas within which states may intervene in each other's internal affairs in ways that the non-intervention principle might forbid.¹⁵³ These treaties and others stem from consent, not from impermissible coercion. Under these treaties, a state grants permission to another state or its nationals to intervene in its internal affairs by investing in development projects or facilitating trade. These treaties do not contemplate unilateral sanctions; rather, the World Trade Organization

147. See, e.g., Antonios Tzanakopoulos, *The Right to be Free from Economic Coercion*, 4 CAMBRIDGE J. INT'L & COMPAR. L. 616, 620 (2015).

148. See Cleveland, *supra* note 25, at 53.

149. See, e.g., Idriss Jazairy, *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, U.N. Doc A/HRC/30/45 (Aug. 10, 2015) (highlighting the coercive nature of unilateral coercive measures and questioning whether a peremptory norm of international law had arisen to forbid them).

150. *Id.* ¶ 13.

151. See Subedi, *supra* note 50, at 25.

152. *Lex specialis derogat legi generali* is a general principle of international law, stating that a specific rule of law takes precedence over a general standard in cases where the two overlap. See, e.g., Int'l Law Comm'n, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, ¶ 8, U.N. Doc. A/CN.4/L.702 (July 18, 2006).

153. See General Agreement on Tariffs and Trade 1994 arts. I, III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT 1994]; General Agreement on Trade in Services art. XIV, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183.

cautions against trade policy measures such as unilateral sanctions.¹⁵⁴ In fact, unilateral sanctions that impose restrictions on imports or exports violate the most favored nation rule, as these restrictions apply only to the targeted state.¹⁵⁵ Further, many unilateral sanctions constitute quantitative restrictions on trade, prohibited under GATT Article XI.¹⁵⁶ While a web of treaties creates carve-outs from the non-intervention principle to facilitate international trade, these treaties either do not contemplate unilateral sanctions or forbid them in recognition that they may impermissibly intervene in the sovereignty of another state. The GATT and GATS may allow some limited interventions to facilitate international trade, but these treaties do not provide any grounds for a targeting state to intervene coercively in the affairs of a targeted state via unilateral sanctions. Thus, the ICJ should uphold the non-intervention principle in the *Treaty of Amity* Merits Judgment.

2. United Nations General Assembly Resolutions and the Condemnation of Unilateral Sanctions

The UNGA has not restricted its criticism of economic coercion to the context of the non-intervention principle. Rather, it has expressed a more general concern with unilateral sanctions and their resulting effects for decades. The UNGA is the body that perhaps most consistently condemns the use of unilateral sanctions as violations of international law.¹⁵⁷ Annually since 1992, the UNGA has adopted resolutions voicing the necessity of ending the U.S. embargo against Cuba due to “the adverse effects of such measures on the Cuban people and on Cuban nationals living in other countries.”¹⁵⁸ The U.N. Human Rights

154. See *Introduction to the WTO Dispute Settlement System*, WTO, https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c1s3p1_e.htm#:~:text=Where%20non%2Dcompliance%20with%20the,will%20face%20possible%20trade%20sanctions (last visited May 28, 2024).

155. Michael Bothe, *Compatibility and Legitimacy of Sanctions Regimes*, in COERCIVE DIPLOMACY, SANCTIONS, AND INTERNATIONAL LAW 33, 35 (Natalino Ronzitti ed., 2016) (noting also that such a deviation would be allowed only if it fell under GATT or GATS Art. XX or XXI exceptions, which is a controversy outside the scope of this paper).

156. GATT 1994, *supra* 153, art. XI (“No prohibitions or restrictions other than duties, taxes or other charges . . . 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.”).

157. See, e.g., G.A. Res 68/200 (Dec. 20, 2013); G.A. Res. 70/151, (Dec. 17, 2015); G.A. Res. 70/185 (Dec. 22, 2015).

158. Cuba, *Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba*, U.N. Doc. A/79/L.5 (Oct. 11, 2023). See also G.A. Res. 47/19 (Nov. 24, 1992) and succeeding annual resolutions.

Council (UNHRC), a subsidiary body of the UNGA, has similarly adopted resolutions that criticize the use of unilateral sanctions as tools of pressure by certain powers,¹⁵⁹ highlighting their limiting effect on the sovereignty of states and their negative impacts on human rights.¹⁶⁰ Generally, the UNGA's message is that unilateral sanctions may be unlawful if they negatively impact the enjoyment of human rights in the targeted state, fail to respect due process in international law, purport to apply extraterritorially in violation of international law principles of jurisdiction, or amount to a blockade.¹⁶¹ While these resolutions are non-binding, the ICJ has confirmed that they contribute to the formation of customary international law.¹⁶² The consistent and normative character of UNGA resolutions against the use of unilateral sanctions indicates that their unrestrained usage, leading to extraterritorial consequences, may violate customary international law.¹⁶³

On the other hand, many states capable of enacting unilateral sanctions assert that UNGA resolutions, albeit consistent, are insufficient to establish crystalized *opinio juris* and that state practice demonstrates that states enacting unilateral sanctions are within their rights to do so.¹⁶⁴ The United States, for example, responded to one UNGA resolution by asserting that unilateral sanctions are "a legitimate means to achieve foreign policy, security, and other national and international objectives" and that international legal rules do not proscribe their use.¹⁶⁵ Currently, the battle is framed as a zero-sum game: either international law outright permits unilateral sanctions or outright forbids them. However, there is room for nuance in the solution. The time is

159. As to state practice, the ICJ should recognize that economically powerful States in the West are those employing sanctions, not the vast majority of states in the international system. The "widespread and consistent" requirement thus remains in question.

160. Hum. Rts. Council, *Draft Resolution on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶ 1, U.N. Doc. A/HRC/52/L.18 (Mar. 27, 2023) (urging "all States to stop adopting, maintaining, implementing or complying with unilateral coercive measures not in accordance with international law..."); Human Rights Council Res. 34/13, U.N. Doc. A/HRC/RES/34/13, ¶ 4 (Apr. 7, 2017); Comm. on Hum. Rts., *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*, U.N. Doc. E/CN.4/Sub.2/2000/33 (June 21, 2000).

161. See Barber, *supra* note 124, at 355–57.

162. See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 70 (July 8).

163. See Subedi, *supra* note 50, at 42.

164. See Alexandra Hofer, *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?*, 16 CHINESE J. INT'L L. 175, 211 (2017).

165. See U.N. GAOR 70th Sess., 52d mtg. of the Third Committee, ¶ 32, UN Doc. A/C.3/70/SR.52 (Nov. 20, 2015).

ripe for the ICJ to demystify where customary law stands as to unilateral sanctions.

3. Unilateral Sanctions and the Articles on the Responsibility of States for Internationally Wrongful Acts

Despite the issues questioning the legality of unilateral sanctions, it would be a mistake for the ICJ to conclude that they are per se violations of international law. This is because—when proper restraint is applied—they provide states with a swift mechanism to respond to other states’ violations of peremptory norms of international law, such as incidents of armed aggression. Instead, the ICJ should look to developments in customary international law to propose legal criteria to govern the use of unilateral sanctions so that states understand within what boundaries they might properly apply these measures. The Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) offer the best approach.¹⁶⁶ The use of unilateral sanctions would fit neatly into its countermeasures framework, which considers necessity, proportionality, and effects on human rights.¹⁶⁷ The ICJ recognized the concept of countermeasures, later codified in ARSIWA, as crystalized customary international law in its 1997 *Gabčíkovo-Nagymaros Project* case.¹⁶⁸ In the *Treaty of Amity* Merits Judgment, the ICJ should conclude that unilateral sanctions must conform to ARSIWA’s countermeasures framework or otherwise violate international law.

The International Law Commission (ILC) developed ARSIWA to codify the law of state responsibility, including principles for attributing conduct to states and the consequences of internationally wrongful acts.¹⁶⁹ Within ARSIWA is the countermeasures framework.¹⁷⁰ Countermeasures allow a state, injured by an internationally wrongful act of another state, to respond to that act with measures that would otherwise be unlawful, so long as certain criteria are met.¹⁷¹ For a countermeasure taken by an

166. The Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) are an articulation of the customary international law and progressive developments of international law, adopted by the International Law Commission in 2001. The countermeasures framework was confirmed as crystalized customary international law by the ICJ in its 1997 *Gabčíkovo-Nagymaros Project* case.

167. *Articles on the Responsibility of States for Internationally Wrongful Acts*, [2001] 2 Y.B. Int’l L. Comm’n, arts. 22, 49, 50, 51, 52, U.N. Doc. A/56/49(Vol.I)/Corr.4 [hereinafter ARSIWA].

168. *Gabčíkovo-Nagymaros Project* (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, ¶ 85 (Sept. 25).

169. See Pierre-Marie Dupuy, *Concluding Remarks: ARSIWA – A Reference Text Partially Victim of Its Own Success?* 37 ICSID REV. 601, 601–02 (2022).

170. ARSIWA, *supra* note 167, arts. 22, 49, 50–52.

171. See Ruys, *supra* note 54, at 33.

injured state to be legal, it must be necessary and proportionate,¹⁷² and it must not affect obligations for the protection of fundamental human rights.¹⁷³ Most commonly, the injured state is the state to whom the obligation is owed and who is directly affected by the breach.¹⁷⁴ In other instances, multiple states have standing to bring countermeasures, such as when a breached obligation is owed to a group of states or to the international community as a whole.¹⁷⁵

The countermeasures framework would mitigate the commonly cited issues—including human rights implications and intervention into domestic affairs of another state—characterizing unilateral sanctions in several ways. First, this framework would exclude unilateral sanctions intended to force the sovereign will of another state to achieve strictly political ends, as these sanctions are not in response to an internationally wrongful act. This would bring the function of unilateral sanctions closer to that of U.N. collective sanctions, which are similarly limited to remedy breaches of international obligations. Second, the requirements of necessity and proportionality would assure that unilateral sanctions are a last resort, to be pursued only after attempts to negotiate with the target state.¹⁷⁶ The sanctions would have to be “commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.”¹⁷⁷ Unilateral sanctions enacted to choke another state’s economy would almost always be either unnecessary or disproportionate to the injury suffered, especially since the humanitarian effects are often dire.¹⁷⁸ Third, the framework would exclude unilateral sanctions affecting obligations for the protection of human rights, as expressly stated by ARSIWA’s

172. ARSIWA, *supra* note 167, arts. 51, 52.

173. *Id.* art. 50(1)(b).

174. See Masahiko Asada, *Definition and Legal Justification of Sanctions*, in ECONOMIC SANCTIONS IN INTERNATIONAL LAW AND PRACTICE 3, 14–17 (Masahiko Asada ed., 2020); Natalino Ronzitti, *Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective*, in COERCIVE DIPLOMACY, SANCTIONS AND INTERNATIONAL LAW 1, 28–30 (Natalino Ronzitti ed., 2016).

175. ARSIWA, *supra* note 167, art. 41. See also Asada, *supra* note 174, at 12–13 (noting that this alternative avenue to standing for injured states still requires that the state enacting the countermeasures be “specially affected” or that the internationally wrongful act “is of such a character as radically to change the position of all the other States to which the obligation is owed . . .”).

176. ARSIWA, *supra* note 167, arts. 51, 52.

177. ARSIWA, *supra* note 167, art. 51.

178. See Ioannis Prezas, *From Targeted States to Affected Populations: Exploring Accountability for the Negative Impact of Comprehensive Unilateral Sanctions on Human Rights*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS 385, 402 (Charlotte Beaucillon ed., 2021) (asserting that the humanitarian effects of modern sanctions are almost always disproportionate to any injury claimed by the targeting state).

countermeasures framework.¹⁷⁹ The framework would only allow unilateral sanctions carefully targeted to avoid collateral damage to third-party states or civilians.¹⁸⁰ This would require states to diligently monitor unilateral sanctions' implications for the targeted state's human rights—perhaps by developing monitoring bodies similar to U.N. Sanctions Committees.¹⁸¹

The countermeasures framework would thus limit the scope of permissible unilateral sanctions to those furthering international peace and security and exclude those pursuing a state's individual interest. This countermeasures-based sanctions framework would continue to permit unilateral sanctions as a response to a breach of the prohibition of aggression.¹⁸² Take, for example, the Russian invasion of Ukraine. Several states enacted unilateral sanctions against Russia in the wake of the invasion.¹⁸³ These measures, if carefully tailored to consider necessity, proportionality, and human rights, would comply with the ARSIWA countermeasures framework in most cases, since the obligation breached was owed to the international community as a whole.¹⁸⁴ Unilateral sanctions under the ARSIWA framework would remain an option in similar situations threatening international peace and security. Thus, the function of unilateral sanctions would better mirror that of U.N. collective sanctions. If grouped within ARSIWA's countermeasures framework, unilateral sanctions will become a useful tool for the furtherance of international peace—no longer an aggressive and destructive foreign policy option with collateral damage to civilians. The ICJ has the power to assign this developed and effective legal framework to unilateral sanctions in its *Treaty of Amity* Merits Judgment.

179. ARSIWA, *supra* note 167, art. 50(1)(b).

180. U.N. Secretary-General, *Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶ 21, U.N. Doc. A/73/175, (July 18, 2018).

181. See Marauhn & Stegmiller, *supra* note 90, at 167–68.

182. See Asada, *supra* note 174, at 11.

183. See, e.g., Rachel Lyngaas, *Sanctions and Putin's War: Limiting Putin's Capabilities*, U.S. DEPT. TREAS. (Dec. 14, 2023), <https://home.treasury.gov/news/featured-stories/sanctions-and-russia-war-limiting-putins-capabilities>; Daphne Psalidakis et al., *US Issues Sweeping Sanctions Targeting Russia over Ukraine War*, REUTERS (Dec. 12, 2023), <https://www.reuters.com/world/us/us-issues-sweeping-sanctions-targeting-russia-over-ukraine-war-2023-12-12/> (detailing new US sanctions in December 2023, designed to increase pressure on Putin's government).

184. See Kathryn Allinson, *Can Russia be Held Responsible for Their Invasion of Ukraine?* UNIV. BRISTOL L. SCH. BLOG (Apr. 2 2022), <https://legalresearch.blogs.bris.ac.uk/2022/04/can-russia-be-held-responsible-for-their-invasion-of-ukraine>.

V. CONCLUSION

Unilateral sanctions are a favorite foreign policy tool for economically capable states. Despite this, the international law governing unilateral sanctions remains as murky as ever—targeting states cite a lack of legal prohibition while targeted states list human rights violations. The *Treaty of Amity* case positions the ICJ to elucidate the boundaries of unilateral sanctions. When it decides whether U.S. unilateral sanctions on Iran violated international law, the Court should not narrow its consideration to a potential breach of the Treaty of Amity. This would be a disservice to the international community, which deserves clarity on the use of unilateral sanctions. Rather, the ICJ should contemplate all applicable rules of international law, including human rights treaties and customary international law. Prominent in its consideration of customary international law should be a determination that the non-intervention principle and the two-part test from *Nicaragua* apply to unilateral sanctions, such as those enacted by the United States on Iran. Most importantly, the ICJ should apply the ARSIWA countermeasures framework to unilateral sanctions and determine that they are, as countermeasures, subject to ARSIWA's boundaries of necessity, proportionality, and consideration of human rights. Thus, a permissible unilateral sanction would both comply with the *Nicaragua* test and the ARSIWA countermeasures framework. States implementing unilateral sanctions would then know precisely when their actions violate international law. The *Treaty of Amity* case provides the ICJ a timely opportunity to add color to the grey area of unilateral sanctions.