SOAS university of London Working Paper Series—School of Law, Gender and Media

# Sanctions and the international constitution: economic coercion as a part of state sovereignty and the hegemony of the UNSC

Panagiotis Gkagkatsis

**Abstract**: This paper critically examines the relationship between hegemony and economic coercion in international law, focusing on the use of sanctions by the United Nations Security Council (UNSC). While the UNSC has long asserted its authority through the imposition of economic sanctions under Articles 39 and 41 of the UN Charter, the extent to which this practice constitutes a hegemonic exercise of power remains ambiguous. The persistence of unilateral sanctions as expressions of state sovereignty undermines the possibility of a Security Council monopoly on coercive economic measures. This paper argues that constitutional and hegemonic authority presuppose the exclusive control over the means of coercion—something the UNSC arguably lacks with respect to economic sanctions. The analysis explores the ambiguous legal status of economic coercion in international law and questions whether its shared use between the UNSC and individual states can be reconciled with the UN's foundational aim of maintaining international peace and security. A central paradox arises from the fact that Article 41 sanctions constitute the UNSC's most frequently used enforcement tool, yet unlike domestic constitutions that monopolise legitimate force, the UN system permits concurrent state practice, complicating claims of constitutional hegemony.

**Reference Details**

SOASWPLGM 17

Published 20 December 2025

**Cite as** : Gkagkatsis, Panagiotis (2025) Sanctions and the International Constitution: Economic Coercion as a Part of State Sovereignty and the Hegemony of the UNSC. Issue 5, pp.1-37. Working Paper 14, ISSN: ISSN 2755-379. London: SOAS School of Law, Gender and Media.

Corresponding author email address: Panagiotis Gkagkatsis <pg27@soas.ac.uk>

# Sanctions and the International Constitution: Economic Coercion as a Part of State Sovereignty and the Hegemony of the UNSC

## Introduction

Economic sanctions are a constitutional tool of international law, but their post-WWII evolution — especially toward unilateral use — reflects both the promises and the breakdowns of international constitutionalism. This essay argues that economic sanctions represent a constitutional mechanism embedded in the UN Charter's architecture, designed to maintain international peace and security. Yet their evolution — particularly the shift toward unilateral and politicised use — exposes deep tensions in the constitutional functioning of the UN system. The Charter of the United Nations has acquired the status of the international constitution since the end of World War II. A successor of the Covenant of the League of Nations, the Charter aimed to establish a model of global governance in uniting core legal and political values into a single document. The dissolution of the League and its failure to prevent World War II had substantially damaged the efforts towards multilateralism and required for a stronger and more robust organization to establish security. Furthermore, following the atrocities of WW II a greater shift was required towards further human rights protection. Following the words of Harry Truman, the Charter would be evolving along with the rest of the world as we move forward.[1] Consequently, the Charter was a mere paper, but like domestic constitutions, it had a more organic place within international law. Similarly to every attempt to promote forms of constitutionalism and the enforcement of a single understanding of global governance, the Charter aimed to establish a common understanding of international law through substantiating some of the fundamental principles of international law that have been *sui generis* to state conduct to the

[1] Harry S. Truman, Speech (Document of the United Nations Conference on International Organization, June 261945) < Address in San Francisco at the Closing Session of the United Nations Conference | Harry S. Truman> accessed 25/05/2025

international community. Multilateral cooperation, human rights development and perhaps most importantly, peace and security. The latter though, should entail an entity that polices the international community and ensures that those norms are enforced throughout the globe. The Security Council(UNSC) would come to be comprised of the leading countries that emerged victorious after World War II and would determine what, how and when there existed 'any such threat, breach of peace, or act of aggression' to worldwide security.[2] Specifically, in the preparation of drafting Article 39, during the *San Francisco Conference* and the *Dumbarton Oak Proposals*, it was ruled that the Security Council was to enjoy great freedom in its decision-making, as to what constitutes a threat to peace, breach of the peace, or an act of aggression.[3] To achieve the constitutional status of an executive organ, the UNSC required a certain weaponization of some principles of international law, found in Chapter VII, which consisted common practices of state sovereignty prior to a move towards collective security. As such, economic sanctions pre-existed the formation of the Security Council as an expression of sovereignty in the international arena (i.e. the decision not to trade remained within the domestic legislation of the state). This tool was widely adopted by the Council as an alternative to war, which would enforce international constitutional principles around the world. To the extent that this has shifted our understanding of international constitutional law towards a multilateral global society is enigmatic.

This paper argues, however, that constitutions tend to centralize and monopolize power and violence to the state. Whether the UN Charter has done it is questionable. More specifically, the paper examines the constitutionality of the UN Charter through two

[2] UN Charter, Chapter VII, Article 39 (1945); This article recognizes that economic sanctions and triggering of Chapter VII has not been widely consistent throughout the UN's existence. The 'honeymoon' period of the UN lasted about a decade, after the collapse of the Soviet Union. The veto power of the P-5 played a major role in the launching of sanctions, as the interests of states did not align with one another. Similarly, the past years the UN has not been able to launch additional sanctions with consistency due to its structure and their use has dried out; see for this: Gary Clyde Hufbauer , Jeffrey J. Schott, Kimberley Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy* (3rd edition, Institute of International Economics 1990) 934; Col. S. S. Gibson 'International Economic Sanctions: The Importance Of Government Structures' (1999)13 Emory International Law Review 161; Yet this is not the subject of this research, as it would throw us into a pit of constant political battles within the UNSC, which is a whole subject of discussion itself.

[3] United Nations Conference on International Organization 'Report by Special Rapporteur Mr Paul-Boncour. On UN chapter VII, Section B' (1945) UNCIO XII Doc 881 III/3/46, 503-504

legal principles. Firstly, the use of pre-existing laws to ascertain its power and secondly by acting as a supreme, hegemonic model which tasks the Security Council with keeping peace and security.[4] The most common weapon of securing world peace has been the use of economic sanctions. Countries like Iraq, Haiti, North Korea and many more have been placed under the firm grip of economic sanctions, sometimes with devastating consequences. Their use, however, has not been a monopolized feature of the SC. As instead, weaponization of trade and imposition of financial restrictions, such as sanctions, remain an integral part of a state's domestic jurisdiction. Given the flexible status that economic coercion has on international law, monopolizing their use is not considered necessary for effective constitutionalism. Following that, this diminishes or partially blocks efforts towards the latter.

The first section of this paper engages with the broader body of scholarship that conceptualizes the United Nations as a constitutional order. It briefly considers prevailing theories on the purpose and function of domestic constitutions and assesses the extent to which these theories can be applied to the international legal system. Central to this discussion is the idea that a defining feature of a constitution is its capacity to monopolize power and legitimate violence. However, this claim becomes contestable in the international context, particularly in light of the fact that economic coercion remains a sovereign prerogative of individual states, rather than a monopoly exercised exclusively by the UN Security Council.

The second section of this paper examines the legal mechanisms and governance frameworks employed by the United Nations, with a particular focus on economic sanctions. It explores the broad discretionary powers enjoyed by the UN Security Council (UNSC) in imposing such sanctions—powers that are constrained only by the Council's own procedural rules and, effectively, by the veto rights of its permanent members. This expansive authority stands in tension with the status of unilateral sanctions under international law, which are often justified as an expression of state sovereignty. Thus, the same principle of sovereignty that enabled the creation of the UN may also be in conflict with the UN's own sanctioning practices. In other words, economic sanctions are

[4] See for example the whole of Chapter VII.

a regulatory instrument wielded both by the UN and by individual states. Whether the UN's use of sanctions has fulfilled its purported role as a hegemonic tool of global governance remains an open and contested question.

The third section of this paper follows through the UNSC acting as an executive organ by providing certain examples of its actions. Specifically, through certain resolutions the UNSC has been able to establish itself as a the executive arm of the UN Charter. It has been able to assert itself as a law and policy maker inside states, especially in situations where global emergency was present(e.g. terrorism). The resolutions themselves gave unprecedented power to the UNSC to justify forms of economic sanctions against states and individuals. On top of that, the section documents that Article 39, the backbone of Chapter VII, has a wide interpretation and allows the UNSC great discretion in interpreting a breach of it. This has raised several criticism from states and TWAIL scholarship, which perhaps, undermines the authority of the UNSC to act as a hegemon, if the latter depends on state consent. This paper argues that the same state sovereignty that states used to create the UN, is the same state sovereignty which takes away the monopoly of violence by the UNSC. Put differently, that authority does not only depend on the criticism raised by states, but on the fact that states can perhaps use the same weapon as the UNSC to assert hegemony throughout the world.

The fourth section of this paper addresses the above-mentioned statement and asserts that monopoly to economically coerce does not exist due to the status of economic coercion within international law. It argues that, unlike armed conflict or military violence, economic coercion remains a legally and conceptually contested area. This ambiguity is a key reason why the UNSC has not sought to monopolize the use of economic coercive measures. In other words, because states do not consistently classify economic sanctions as a form of violence—and even when they do, they often regard such measures as falling within the legitimate scope of state sovereignty—the unilateral imposition of sanctions is frequently justified on sovereign grounds. This gives rise to a paradox: economic coercion is among the most frequently employed tools of the UNSC to maintain international peace and security, yet it is not clearly recognized as a form of violence, nor is it subject to a centralized monopoly of use. The extent to which

the UN itself conceptualizes such measures as violent is unclear. What is evident, however, is that the lack of the classification of economic coercion as a form of violence combined with the absence of a monopoly over economic coercion is relevant in possibly undermining the UN's claim to a constitutional or hegemonic role in global governance.

The last section of the paper seeks to provide certain relevant arguments on the relevance of unilateral economic sanctions and UN hegemony by looking at both sides of the story. On the one hand, multilateralism does entail the express will of states. Meaning that if states wanted the UN to monopolize economic violence they would. On the other hand, this raises criticism and questions the ability of the UN to act in the interests of states. It is also questionable whether the UNSC's original conception and the development of sovereignty of states have parted ways , something is owed to the indeterminacy of economic coercion in international law.

Domestic Constitutionalism and the Monopoly of Power as a Characteristic of Modern Constitutions

This section focuses on the existence of the UN Charter as a constitutional piece of paper, which resembles the likes of domestic constitutions. The section will later discuss the use of economic sanctions as a tool of modern governance which "corrects" a state's behaviour. Many theories of domestic constitutionalism exist, with the most prevalent one perhaps being that constitutions aim to establish a 'limited government, limited in substance and limited in form'.[5] Those limits, however, need both determination and a sense of force, in a legal and in a political sense to be enforced.[6] Constitutions, such as the British one imposes theoretical limits to the legislative acts that are passed by the Parliament, through the doctrine of Parliamentary Sovereignty.[7] Such theories constitute one institution as the legal point of reference of a state. Essentially, the role of courts in constitutions like that is hampered and generally

[5] Dieter Grimm 'Types of Constitutions' in Michel Rosenfield, Andras Sajo (eds.) *The Oxford Handbook of Comparative Constitutional Law* (2012, OUP) 98-132, 102

[6] For example, the South African Court has ruled that a constitution needs a Constitutional Court to rule that all law derives from its Constitution; see*: Re Pharmaceutical Mfrs. Ass'n of S.A*. 2000 (3) BCLR 241 (CC)

[7] Stanley Desmith, Rodney Brazier 1989. *Constitutional and Administrative Law* (6th edn., Penguin 1998) 15

reduced, compared to countries like the U.S. where they assume greater power to ensure the functioning of the society in accordance with the written document. This is not to say that courts do not form a rational actor in such polities, where they play a large part in their organic composition and progress.[8] On the other hand, Dimitrios Kivotidis excellently asserts that Courts are more than willing to bend the hard, constitutional limits, in favour of emergency measures.[9] As a matter of fact, the Greek Constitutional Court easily characterized the situation of 'exception' as 'extremely necessary' to characterize certain knee-bending economic measures adopted by the Greek state as constitutional and legal.[10] Paul O'Connell further states that constitutional courts do tend to change their hard lines based on ongoing neoliberal globalization,[11]damaging entrenched notions of constitutions, such as socio-economic rights in South Africa.[12]Characterizing then a constitution as one, based on the existence of court that constitutes the hard limits of sovereign power could reduce constitutionalism to a series of 'yes or no' answers to legality questions. To do that, would discard normative and organic principles which have come to characterize both the imposition, and most importantly the legitimization of a constitution. It is important to note that constitutions tend to be more empowering than limiting. Although a constitution does arise from pre-existing conditions which drew breath from a country's inner and domestic proceedings, it claims that it constitutes a 'new form of government' which has nothing to do with the previous one.[13] In one way or another then, it establishes a monopoly of power that effectively needs some legitimization through a series of procedures which characterize the foundation of a constitution. For example, the Arab Spring had initial problems in legitimizing its new constitutions due to the historical exclusions of the people from constitutional processes.[14] In such circumstance then, certain forms of governance exist

[8] For a comprehensive analysis of this see: Robert Stevens *The English Judges: Their Role in the Changing Constitution* (Hart Publishing 2002)
[9] Dimitrios Kivotidis 'The Form and Content of the Greek Crisis Legislation' (2017) 29 Law and Critique 57, 59
[10] *Ibid* 68; see also: Symvoulio tis Epikrateias Plenary no. 2307/2014 (2014), [36]
[11] Paul O'Connell 'The Death of Socio-Economic Rights' (2011) 74 Modern Law Review 523, 532-533
[12] *Ibid*.
[13] Grimm (n 5) 103.
[14] Nimer Sultany *Law and Revolution : Legitimacy and Constitutionalism after the Arab Spring* (OUP 2018) 2, 39

or pre-exist the life of a constitution which are 'other' than the modern form of governance, that it aims to legitimize. As Frank Michelman states, the constitution reflects a new social contract and the underlying new political order that pre-existed the formation of a constitution.[15] The mixture of old and new powers results in the use of tools that have pre-existed the existence of the new Constitution, and laws to further assert its legitimization. For example, the Bill of Rights of 1689 in England is pointed out as the end of the first constitutional theory of Great Britain, but is still enacted in the Parliament, which marks Britain as a country of freedom (yet not equality).[16] Similarly, and perhaps equally, coercive measures that have pre-existed the formation of a constitution(prison system, police force, secret services etc.) are also used by the newly found state to maintain its order. Monopoly of state power is characteristic in domestic constitutions. That monopoly, along with other state functions, is also constituted through such documents, codified or uncodified. Constitutionalism does indeed naturalise and hide domination and state-violence through a series of legal proceedings, which legally codify violence to be used by the state institutions.[17] The question is: if we are to characterize a constitution by the granting of monopoly power to a body, can we also characterize the UN Charter as a similar document, keeping into account international relationships and law? To answer that, we need to preliminary understand the ideas behind the function of the UN Charter as a constitution and the general role of sanctions in international law.

## The UN as a constitution and its Characteristics

The UN Charter has attempted to both monopolize several forms of coercive power and has also used pre-existing legal tools or perhaps legalized some forms of coercion that pre-existed its formation, to maintain peace and security. Before we reach

[15] Frank I. Michelman, "Constitutional Authorship by the People" (1999) *74* Notre Dame Law Review 1605; *ibid* 35; see also: Grimm (n 5) 101 regarding the emergence of a constitution after the Glorious Revolution in Britain.

[16] Jelena Trajkovska-Hristovska, 'The Making of Modern Constitutions - Constitutions and Constitutionalism in the Cradle of Constitutional History' (2022) 13 Iustinianus Primus Law Review 1, 3

[17] Rob Hunter, Marx's Critique and the Constitution of the capitalist state in Paul O'Connell, Umut Ozsu (eds.) *Research Handbook on Law and Marxism* (EE Elgar, 2021) 190-209, 200

that point, it is essential to preliminarily assess the constitutional function of the UN. Scholarship has concerned itself widely with the specific issue.[18] Naturally so, since the end of WW II and the failure of the League saw the need to move towards a more hegemonic model of governance. However, Laurence Helfer characterizes international law as 'decentralised' and the Charter reflects on that.[19] The road to unify international law against state sovereignty would always be rocky. Within that sense, the Charter does not assemble all law, similarly to domestic jurisdiction and constitutes itself as its legal source.[20] Likewise, Doyle suggests that much of international law precedes the Charter and in fact has developed in parallel to it. For example, the duty to protect against genocide and general *jus cogens* principles have not been integrated to the Charter,[21]yet they form core components of international law. The central question is the extent to which the Charter relied upon pre-existing norms to establish its legitimacy within international law. One explanation offered asserts that pre-existing legal conditions provide authority and assistance to a newly found constitution. Fassbender, for example, argues that the Charter acted as an intermediate between pre-existing international law and post-Charter international law,[22] so that the former could validate the survival of the latter. Often, courts and constitutions do place and validate their legal decisions in pre-existing legal norms prior to the establishment of a constitution.[23] For example, Thomas

[18] Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing, 2004) 348–351 (2004); Thomas Franck, The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality? (1992) 86 American Journal of International Law 519, 519, 520

[19] Laurence R. Helfer, Constitutional Analogies in the International Legal System,(2003) 37 Loyola of Los Angeles Law Review 193, 207–08

[20] See for this: Frank Michelman, 'What Do Constitutions Do That Statutes Don't (Legally Speaking)' in Richard Bauman and Tzvi Kahana (eds.) *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (CUP, 2006) 273-294.

[21] Michael W. Doyle 'The UN Charter-A Global Constitution' in Jeffrey L. Dunoff & P. Trachtman (eds.) *Ruling the World? Constitutionalism, International Law and Global Governance* (CUP, 2009) 113-132, 114.; Interestingly enough, Bardo Fassbender states that there are some general norms of international law which should be separated from a constitutional feature and that 'Pre-1945 contractual rules of a constitutional character, for instance the renunciation of war as an instrument of national policy in the 1928 Kellogg-Briand Pact, have generally been formally adopted and modified by the Charter.' See: Bardo Fassbender, The United Nations Charter as Constitution of the International Community' (1998) 36 Columbia Journal of Transnational Law 529, 586

[22] Fassbender *ibid*. 585; For a slightly different approach to that see the Erin Pobjie's 'type theory' about how principles of customary international law and the Charter interact (the author researches on the topic of the 'use of force') Erin Pobjie, *Prohibited Force: The Meaning of 'Use of Force' in International Law* (OUP. 2024),

[23] See generally for this: Gregory C. Keating, 'Fidelity to Pre-Existing Law and the Legitimacy of Legal Decision ' (1993) 69 Notre Dame Law Rev 1; Keating talks about certain rules and principles which tend to

C. Grey emphasizes how constitutional conceptions of judicial review and statute interpretation has been influenced to a large extent by the pre-1776 independence struggle for the 'American concept of a judicially enforceable unwritten constitution.'[24] Within that, this explanation runs through the hegemonial nature of the UNSC, which like an executive, asserts dominance over the powers that the United Nations has over international law. Put differently, it determines which past legal principles 'will live' and which ones will 'not live', through its authoritative power. Doyle makes an important input here. He argues that the UNSC, presiding over the Charter, resembles an institutional authority because it allows for authoritative decisions without continuous consent from the Member States of the UN.[25] This correctional behaviour is vested under the powers of Chapter VII, which will be discussed shortly, and give the ability to the UNSC to create forms of "entrenched" norms in international law, one of them being the constant use of economic pressure and coercion, found in pre-Chapter international law. Under these auspices the idea that 'constitutions are created to limit power', is ultimately defeated, due to the historical condition which tasked the UN with the mission of securing peace throughout the world, post-World War II, handing it with wide discretion over it actions. The Charter seems to be more empowering the UNSC than limiting it, while at the same time it is diminishing the legal and political sovereignty of its states.

If the UN Security Council possesses the authority to create legal norms and to determine which rules prevail following the entry into force of the UN Charter, then it effectively asserts itself as a hegemonic actor within the international legal order. This raises critical questions regarding the extent to which the Council's powers can be subjected to legal accountability and whether certain exercises of its authority might be deemed *ultra vires*. Given that state sovereignty and its attributes predate the establishment of the UN Charter, a balance of power remains between the Council and its member states. In this context, the actions or inactions of states may offer a meaningful lens through which to assess both the constitutional character and the

---

form the discourse of courts in a new constitution that affect, guide and also limit the decisions that they take; see also for this Frederick Schauer, 'Formalism' (1988) 97 *Yale Law Journal* 509, 509, 534

[24] Thomas C. Grey, 'Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought' (1978) 30 Stanford Law Review 843

[25] Doyle (n 21) 115

hegemonic tendencies of the UN Charter. Michael Reisman concludes that the first and foremost veto power of the UNSC is the veto power itself, which its members exercise.[26] Put differently, state consent of the P-5 would be considered as an indication or the acceptance of a norm. But binding norm-creation is under the exclusionary authority of the UNSC. The General Assembly(GA) has hinted in its famous *Resolution 377* that it where the UNSC fails to exercise its powers under Chapter VII, the GA could take matters into its own hands and resolve the situation.[27] As a matter of fact then, state action or inaction, through UN institutions, has some wider implications in the norm-making of international law.[28] Julian Arato excellently discusses whether at any point the UNSC's can be deemed *ultra vires* by the states.[29] He concludes that although on the one hand the creation of *ad hoc* tribunals for Yugoslavia and Rwanda was a perfectly established legal norm, on the other hand states are *politically* unhappy with the wide discretion that the UNSC has, which can damage attempts for constitutionality.[30] In a normative way, states have organically created the UN and have transferred (some) of their powers to the Council, to be bound later, through their binding force, in what could be termed a private contract where both parties receive 'mutual benefit' from the transaction.'[31] "Consequently, the constitutional authority of the UN Security Council derives from the foundational consent of states, which conferred upon it corrective powers to maintain international peace and security. This authority has allowed the Council, under specific historical conditions, to establish legal norms through political decision-making. As Arato aptly observes, the 'creature could bind its creator'[32]—a formulation that captures the paradox of state-created institutions exercising binding authority over states themselves in the name of global governance. This dynamic is particularly evident in the

[26]Michael W. Reisman, 'The Constitutional Crisis in the United Nations' (1993) 87 American Journal of International Law 83, 83

[27] Specifically, the resolution reads "…where the Security Council, because of the lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall seize itself of the matter: UN General Assembly Res 377 (November 1950) 5th session Uniting for Peace Resolution, UNGA 5th session A/RES/377(V)AC

[28] While this is an interesting statement, to the extent that this breaks the hegemony of the SC is questionable and a subject of a different research area.

[29] Julian Arato 'Constitutionality and constitutionalism beyond the state: Two perspectives on the material constitution of the United Nations' (2012) 10 International Journal of Constitutional Law 627, 650

[30] *Ibid*. 658

[31] Ben L. Murphy 'Situating the accountability of the UN Security Council: Between liberal-legal and political 'styles' of global constitutionalism'(2021) 10 Global Constitutionalism 465, 476

[32] Arato (n 29) 634

UNSC's broad discretion to impose economic sanctions on states deemed to be in violation of international norms. While state consent remains a fundamental pillar of this system, it is important to note a key distinction from domestic constitutional orders: in the international legal sphere, the authority to impose economic sanctions is not monopolized by the UNSC but is instead shared with sovereign states. Consequently, it is not just the expression of state consent to a UNSC decisions, but also the possible use of the same coercive tools that UNSC uses that may damage the hegemony of the UN. Meaning that powers vested under the Chapter do not grant exclusive ability to the UN to hegemonize the world, as the power to impose sanctions is vested in state sovereignty, which also pre-exists the formation of the Charter. Using the pre-existing international coercive tools, but also its leadership task, has the UNSC been able to ascertain itself as a constitutional executive?

## Global Governance under the UN Charter and Economic Sanctions.

If we are to measure the constitutionality and its hegemonic powers based on the powers of the UN to deploy economic sanctions as a corrective tool, we need to examine the if their use leads to that, as set out by Chapter VII, in Articles 39 and 41. Economic sanctions fall under Article 41 of the UN Charter and serves as a tool of correcting the behaviour of a state, which the Council believes that has breached Article 39. As a result, enforcement action taken under Chapter VII does not necessarily punish a lawbreaker. Instead, it serves as an enforcement of peace and can be addressed to states that have not necessarily violated international law.[33] Article 39 simply states that the UNSC may take any measures, if it deems that a 'threat to peace, breach of peace or act of aggression' exists.[34] The scope of the Charter is to give discretionary powers to the UNSC

[33] Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, *The Charter of the United Nations: A Commentary* (3rd edition, OUP 2012)1245; Benedetto Conforti, *The Law and Practice of the United Nations*(3rd edition, Martinus Nijhoff Publishers 2005) 173-176; Antonios Tzanakopoulos, *Disobeying the Security Council* (OUP 2013) 78

[34] To be more specific, Article 39, Chapter VII reads as: "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.

to decide the time, the nature, and the reasons behind an act that can be constituted as aggressive or threatening, or a breach of the code of conduct are not exhaustive.[35] There are plenty of catastrophic examples of sanction regimes, under Article 41, imposed by the UNSC, such as Iraq and Haiti and less catastrophic ones, such as the ones in South Africa. To that extent, it appears that once consensus is reached within the UN Security Council, a sanctions regime effectively imposes the Council's will on the broader international community—even in cases where certain member states may dissent. When considered alongside the two arguments previously outlined, this supports the view that sanctions constitute a key mechanism within a broader supranational and constitutional hegemony. Through this mechanism, member states are bound—legally and politically—to comply with the determinations of the Security Council. Specifically, there is no exhaustive list of measures of economic nature, and during the *Dumbarton Oak Proposals,* it was agreed that

'*The Security Council should be empowered to determine what diplomatic, economic or other measures not involving the use of armed force should be employed to give effect to its decisions and to call upon members of the Organization to apply such measures. Such measures may include complete or partial interruption of rail, sea, air, postal, telegraphic, radio, and other means of communication and the severance of diplomatic and economic relations.'*[36]

There are plenty of examples that confess to the UNSC's great executive role. Resolution 1373, following the 9/11 attacks enhanced and strengthened the executive role of the UNSC centred around the creation of a Counter-Terrorism Committee(CTC, which gives large powers of implementation, like other sanction committees, but in a far more active way. [37]Not only the tools, but also the reasoning behind their use serve as paradigms of

[35] The reason behind that is the failure of the League of Nations to secure peace after World War I; see for this: Walther Schücking, Hans Wehberg, *Die Satzung des Völkerbundes* (2nd edition, F. Vahlen 1924) 464
[36] Ch VIII s B no 3 of the Dumbarton Oaks Proposals, UNCIO III, 1-23, 15, Doc 1 G/1

[37] See S/RES/1373 (2001) of 28 September 2001, paras. 6 and 7; see also Nico Kirsch 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council' (2003) in Christian

constitutional hegemony. There is a wide ambit for the interpretation of Article 39 by the UNSC. For example, sanctions were imposed in Haiti, due to the political crisis that saw the overthrow of the elected President Aristide, through a *coup d'état* and the establishment of a military dictatorship. Although a purely internal matter, the Security Council viewed the lack of democracy in the country as a threat to peace worldwide, mainly due to the fleeing of Haitians to neighbouring countries.[38] Simultaneously, the UNSC can change the aim for already imposed sanctions, assuming(or utilizing) an executive role within international law.[39] As the UNSC uses its wider discretion over Chapter VII and the binding nature of its resolutions, it is hard to argue that it has not obtained a constitutional executive role within international law, using economic sanctions under Article 41. On top of that, there are few hard lines and limits that they could be put at the UNSC at the time that it is calling members to impose sanctions and these mostly reflect on humanitarian issues.[40] The unrestricted use of economic sanction seem to signify a form of hegemony running through the concept of the UNSC. This paper, argues however, that through the lens of monopoly power, the constitutionality and the hegemony of the UNSC is a part of a wider grey area. Most importantly, this is the case when we view the legal status and function of sanctions within international law, away from the Charter of the United Nations. In other words, since the power to economically sanction a country is a vital component of unilateral state action, which in turn, is also a vital component of international law, to what extent can the UNSC be termed as an executive organ presiding over a constitution?

---

Walter, Silja Vöneky, Volker Röben, Frank Schorkopf, (eds.) *Terrorism as a Challenge for National and International Law: Security versus Liberty* (Heidelberg 2003) 879-908

[38] Monica Lourder de la Serna Galvan, Interpretación del artículo 39 de la Carta de las Naciones Unidas (Amenazas a la paz) por el Consejo de Seguridad. ¿Es el Consejo de Seguridad un legislador para toda la comunidad internacional?'(2011) 11 Anuario Mexicano de Derecho International 147

[39] See for instance the sanctions against Iraq: David Cortright, George A. Lopez *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?* (Routledge 1995) 31

[40] See for instance: Watson Institute for International Studies, "Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System," Occasional Paper 6; P. Conlon, 'The Humanitarian Mitigation of UN Sanctions' (1996) *Brill* 39(8) 227-236; *see*: the previsions and resolution of the Security Council against Afghanistan in 2002. UN Doc S/Res/1333 (2000)

## Economic Coercion as part of State Sovereignty

If a constitution aims to establish itself, it must do so through acquiring all legal power, diminishing and abolishing different sources of legal power that could endanger its existence. Within that level, the power to coerce, at least economically, is a widely used function of the UNSC and a shared power to be exercised hand-in hand with unilateral state power. If that is the case, then we naturally move away from the constitutional utopia that the forefathers of the Charter perhaps promised to a more apologetic notion of international law.[41] If constitutionalism was a part of a wider agenda of the *Dumbarton Proposals*, it owed its existence to the end of the largest war humanity ever saw. States willingly gave their discretion for the creation of an organ which would use part of their sovereignty, economic coercion, to enforce peace and security. As such, the use of unilateral sanctions shows that post-World War II hegemony strengthened the sovereignty of states, and not the opposite. In discussing the League of Nations, Antony Anghie states that the establishment of the League itself was a reinforcement of sovereignty, where it owed its existence, rather than a departure from it.[42] Similarly Percy Cobbett states that the creation of the League(and perhaps any form of supranational organization) was seen as a 'threat to the high personal authority that they derived from manipulation of the sovereign prerogatives of the national state.'[43] The decision to form a more strengthened framework of sanctions also partially came due to the League's failure to impose sanctions, which was catalytic in its dismantlement, showing weakness and indecisiveness. [44]

[41] This terminology refers to outstanding and substantial book by Martti Koskenniemi *From Apology to Utopia* (CUP 2006)

[42] Antony Anghie *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 132

[43] Percy Corbett, The Growth of World Law (Princeton University Press 1971) 38; similar voices have been raised with regards to many multilateral conventions in the past: see for instance: Michael Fakhri 'The Institutionalisation of Free Trade and Empire: A study of the 1902 Brussels Convention' (2014) 2 London Review of International Law 49, 50; For a very decisive account on the role that sugar played in the shaping of international law, see: Michael Fakhri *Sugar and the Making of International Law* (CUP 2014);Fakhri 59.

[44] See for this: Margaret P. Doxey *International Sanctions in Contemporary Perspective*(The Macmillan Press Ltd 2017) 16,17, 21,30; Louis Cavare, *Les Sanctions dans le Pacte de la S.D.N. et dans la Charte des N.U.* (Pedone 1950) 109

This paper argues that economic sanctions operate not solely within the international legal sphere but also constitute a fundamental expression of state sovereignty. The very sovereignty that gave rise to the UN Charter—and by extension, the Security Council, the General Assembly, and other international institutions—was intended to be safeguarded by the same bodies it created. In this respect, a tension emerges regarding the function of the Security Council's 'most frequently used weapon': its authority to impose sanctions is itself rooted in the sovereign powers of states. Historically, under the positivist legal frameworks of the 19th and early 20th centuries, economic coercion was recognized as an inherent right of states, closely tied to their sovereign prerogatives and often deployed as a constitutional tool within their domestic and foreign policy arsenal. At the time of the early recognition of state practice as a fundamental part of international law. For example:

'There appeared to have been no serious allegations that commercial policies such as tariffs which systematically work to the detriment of foreigners were illegal under international law. It evidently was accepted that it was within the unfettered jurisdiction of sovereign states to engage in such policies[..]as in the case of avowedly self-centred tariff policies, there appears to have been no serious contention that this capital embargo policy violated any international law norms[..]Any qualms about injuries to target states took second place to the acceptance of the right of sovereign states to orient their economic policies in their own self-interest.'[45]

Measures of economic nature begin from the interior of a state and finish with its foreign policy. Should we start from the other way around, the ability to trade, to determine the ability to *not* trade, we will reach the same conclusion. The right to trade is a fundamental right bestowed upon state sovereignty. [46] Since states have the power not only to sign the treaties, but also to ratify those treaties, as they reserve the power to do so (or not to do so),[47] it can be assumed that the exertion of influence and power within international law

[45] Stephen C. Neff 'The Law of Economic Coercion: Lessons from the Past and Indications of the Future.' (1982) 20 *Columbia Journal of Transnational Law* 411, 422, 423, 425,426

[46] See for the right to enter into treaty agreements in general: Curtis A. Bradley 'Treaty Signature'(2012) in Duncan B. Hollis(eds.) *The Oxford Guide to Treaties* (OUP 2012) 208-219; Jose Sette Camara, *The Ratification of International Treaties* (Ontario Publishing Toronto 1949) 22-25; Francis O. Wilcox, *The Ratification of International Conventions* (Allen & Unwin London 1935) 21-22.

[47] Samuel B. Crandall, *Treaties: Their Making and Enforcement* (2d edn., John Byrne & Co1916) 94

are parts of a state's internal affairs to the international arena. As Anghie suggests, that internal decision making, and external sovereignty were very closely connected and that 'a specific form of government within a state had a decisive impact on its international behaviour'.[48] It is logical then that since the decision to trade falls within the domestic jurisdiction of a state, so would the decision not to trade. Whereas the positive notion of trading is reserved exclusively for the state's benefit/detriment, the ability to not trade can be synonymous to the weaponization of the latter. Indeed, contemporary international law has attempted to address this issue through the case of *Nicaragua*. In that case, the ICJ ruled that the justification for the application of economic sanctions rests in the general idea that no state is obliged to trade with another state, as this would infringe on their sovereignty to conduct their domestic and external affairs as they see fit,[49]as part of customary international law. This reinforces Doyle's previous argument, that there is a body of law developing in parallel to the Charter.[50]With economic sanctions being inherently linked to normative interpretations of state sovereignty, there arises a battle of norms here which is to ask: does the existence of the Charter's hegemony depend on state sovereignty itself and if so which parts of it? State consent to Security Council decisions remains a crucial factor in determining the legitimacy of international action. However, the parallel use of coercive tools—particularly economic sanctions—by individual states may reveal underlying fractures in the post–World War II hegemonic framework established by the UN Charter. The issue remains unsettled and obscured, largely because economic coercion is not consistently recognised as a direct form of violence under international law. This ambiguity places such measures in a legal grey area. In contrast to unilateral uses of armed force, which more clearly violates the authority of the Security Council, the application of economic coercion operates within

[48] Anghie (n 42) 134; The matter of constitutional arrangements being projected into international law has been studied by many scholars. A more liberal explanation that comes from Ann Oppenheim who suggests that for the recognition of a state, internal cohesion was fundamental as states were required to maintain a certain order to meet treaty obligations and protect foreigners see: Oppenheim's *International Law* (4th ed., vol. 1., A. McNair 1928) 100-101; for a general account of this also see: Benedict Kingsbury 'Sovereign and Inequality' (1998) 9 European Journal of International Law 599

[49] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14 (Nicaragua) 138, [276]; see also for this: Antonios Tzanakopulos, 'The Right to be Free from Economic Coercion'(2017) 4 Cambridge Journal of International Law 616, 626

[50] Doyle (n 21).

a more permissive and contested normative environment, thereby complicating legal and political assessments of its legitimacy.

## Economic Coercion under International Law and the wider use of Article 41 as an assertion of hegemony and the monopoly of violence within the Charter.

Before we embark on a discussion of the status of economic coercion in international law, which might hint the answer as to whether unilateral economic measures violate the hegemony of the Charter, it is crucial to understand the practical implications of the use of sanctions under the Charter.

A formal example of that is Resolution 1373, which obligated states to take various states against terrorism, such as denying haven and asset freezing.[51] Although not purely a form of economic coercive measure, Niko Krisch states the Counter-Terrorism Committee(CTC), established under the Resolution operated exactly like other Sanction Committee.[52] This powerful mechanism was responsible for overseeing the implementation of the resolution, by requiring states to 'report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution'.[53] The Committee itself has been extremely active and it has even been given the ability to identify emerging issues, trends and developments, relating to relevant Security Council resolutions.[54] It was meeting on a daily basis, strengthening and weakening sanction regimes, receiving reports from states and updating the sanctions list, also specifying obligations under further resolutions.[55] The CTC had also a wide

[51] UNSC Res 1373 (September 2001) S/RES/1373

[52] Kirsch (n 37) 7.
[53] UNSC Res (n 51) 6.
[54] UNSC Res 2129 (December 2013) S/RES/2129
[55] Kirch (n 37) 9.; According to UN Doc. S/2003/404 of 3 April 2003 the CTC had received 351 reports from 188 States at the time; see also Kirsch (n 35) 8

discretion in assisting countries, timely interfering in their domestic policies and legislations. Part of the statements heard by the 14 Foreign Ministers and the US Secretary of State, echoing the CTC's work state that:

' ...invites the Counter-Terrorism Committee to explore ways in which States can be assisted, and in particular to explore with international, regional and subregional organizations: the promotion of best-practice in the areas covered by resolution 1373 (2001), including the preparation of model laws as appropriate,'[56]

The CTC acting as the executive arm of the UNSC could request states to change laws, creating not only problems of sovereignty in theory, but practical problems, such as individuals challenging their inclusion in the list under a grey area of law, since the ICJ cannot review the actions of the UNSC.[57] Canadian diplomat David Malone, at the time, wrote that the Council had assumed a legislative role, imposing domestic regulatory requirements.[58] The UNSC often required embargoes, but never did it direct states to change its laws to accommodate its resolutions.[59]

Another example of the use of sanctions promoting hegemonical tendencies from the UNSC is the use of Resolution 687 in 1991 during the war in Iraq, calling all states to implement sanctions against the country. Most known for its devastating effects,[60] the language contained in the resolutions related to the sanction regime demonstrate how economic sanctions can reproduce the hegemonic tendencies of the UNSC. The resolution was calling all States to 'continue to prevent the sale or supply to Iraq, or the

[56] UN Doc. S/2003/404 of 3 April 2003; see also the statement made by the Chinese Foreign Minister: 'the priority for the next stage by the Council should be to give full play to the role of the Counter-Terrorism Committee'

[57] Kirsch (n 37) 10; An important case here, to this paper is the case of Kadi, where an individual managed to successfully challenged the UN sanctions imposed through the EU under the EU legal framework; C-402/05 P and C-415/05 P *Kadi v. Council of the European Union and Commission of the European Communities* [2008] 2008 I-06351

[58] David L. Bosco *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009) 218

[59] *Ibid*.

[60] See for this: David E. Reuther 'UN Sanctions Against Iraq' in David Cortright and George A. Lopez (eds.) *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?*(Routledge 1995) 121-132; Peter Pellett 'Sanctions, Food, Nutrition, and Hea lth in Iraq in Anthony Arnove (eds.), *Iraq under Siege: The Deadly Impact of Sanctions and War*, (MA: South End Press,2003) 152–168;Richar Garfield, Elissa Dresden, Joyceen Boyle 'Health Care in Iraq' (2003) 51 Nursing Outlook 171; Proceedings of the Conference hosted by the Campaign Against Sanctions on Iraq Sanctions *on Iraq: Background, Consequences, Strategies*, (Cambridge: Campaign Against Sanctions on Iraq, 1999), 32-51

promotion or facilitation of such sale or supply, by their nationals or from their territories or using their flag vessels or aircraft,' and to 'act strictly in accordance with paragraph 24, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;'[61] According to David L. Bosco, the draft resolution contained an important, but not unprecedented assertion. Namely that the repression of Iraq's own civilians 'threatened international peace and security'.[62] Effectively, raising a domestic issue to an international one.[63] The issue, however, does not lie solely with that. After all, a wide reading of Article 39 usually does allow for the imposition of economic sanctions to some internal matters.[64] The effective issue here is the sheer power of the UNSC to use a sovereign tool, the weaponization of trade of individual countries, to promote its own agenda. Indeed, Jose E. Alvarez calls the Resolution the "mother of all Resolutions" and the peak of US unilateral power within the Council, allowing it to function as intended.[65] Olga Pellicer, deputy representative at the United Nations at the time stated that the agenda pursued by the UNSC is always 'theirs, not ours'.[66]

Indeed, it is not news that TWAIL scholars, legal realists and general opponents of universalism have criticized the UNSC(and generally international institutions) of perpetuating hegemonical practices. For example, Makau Mutua and Antony Anghie state that TWAIL scholarship stands firmly against the UNSC. Specifically, the attack its actions being indefensible and the selective use of its organs to promote Western interests, while simultaneously failing to address systematic Third World crisis.[67] They give as an example the US sanctions against Iraq, demonstrating that the US can operate both inside and outside the UNSC.[68]

---

[61] UNSC Res 687 (April 1991) S/RES/687

[62] *ibid*

[63] Bosco (n 58) 165

[64] See also the reading of Article 39 of the UNSC when imposing sanctions to Haiti.

[65] José E. Alvarez 'Hegemonic International Law Revisited' (2003) 97 The American Journal of International Law 873, 884

[66] Bosco (n 58), 166

[67] Makau Mutue and Antony Anghie, 'What is TWAIL Proceedings of the Annual Meeting (American Society of International Law, CUP, Vol. 94 April 5-8, 2000) [31-40], [37]

[68] *Ibid*. ; For a recent and comprehensive account of the UNSC actions through a TWAIL approach, see: Jennifer Giblin *United Nations Peacekeeping and the Principe of Non-intervention A TWAIL Perspective* (Taylor & Francis Group 2024)

These two resolutions are just an indication of the mechanisms of economic sanctions which the UNSC employs to reproduce its standards. The imposition of economic sanctions shows a clear ability to assert hegemony over the world through the Charter. If that is the case, then perhaps sharing this power breaks that hegemony in international law. If we are to measure constitutionality through coercion and enforcement, the UNSC would require its 'most used weapon' to be used exclusively by it. In a similar fashion as a state would not accept a second police force, operated by a second power inside a state. To the extent that the UN Charter has attempted to do that but has not managed to do so is questionable. We have briefly seen that economic violence is not widely regarded as a form of violence under the Charter(more is discussed in the next Charter). Scholarship has argued that the original vision of the Charter was to centralize power under which force would only be used as a collective sanction after a recommended clearance by a central organ.[69] James Hickey asserts that at the time of the drafting of the Charter, and especially of Article 53, the idea was that any use of force outside the scope of the UNSC, and specifically from regional organisations, could be utilized by the former, for the interests of collective security.[70] In other words, that some sovereign rights of states, entering into multilateral agreements, could be used by the UNSC to secure peace and security. Matthew Waxman argues that scholars are divided into 'Balancers' and 'Bright-Liners'. While the first ones argue for more flexible standards governing the use of force, allowing states the legal discretion in states to resort to force to situations where the UNSC cannot resolve,[71] the latter ones favour a stricter approach arguing that the UNSC should retain monopoly power over the legal power to use force.[72] While this depends a lot on the situation, the type of force, the method employed as well

[69] James Larry Taulbee 'Governing the use of force: Does the UN charter matter anymore? (2001) 4 Civil Wars 1, 9; for a different view and to understand the efforts made by countries to safeguard a regional, collective use of force without the UNSC's approval see Article 51 of the Charter and the discussion in Thomas M. Franck 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States (1970) 61 *American Journal of International Law* 809

[70] James E. Hickey 'Challenges to Security Council Monopoly Power over the Use of Challenges to Security Council Monopoly Power over the Use of Force in Enforcement Actions: The Case of Regional Organizations' (2004) 10 Ius Gentium 75, 83

[71] Matthew Waxham 'Regulating Resort to Force: Form and Substance of the UN Charter Regime' (2013) 24 European Journal of International Law 151, 170; William Taft, 'Self-Defense and the Oil Platforms Decision' (2004) 29 Yale Journal of International Law 295

[72] *Ibid*. Waxham 156, 161; Yoram Dinstein*, War, Aggression and Self-Defense* (3rd edn., CUP 2001) 166–168

as the proportionality of the use of force as an attack, the original interpretation of the use of force under Article 2(4) has been greatly expanded since its conception. Due to new challenges, the UNSC now shares parts of its powers with other mechanisms. For example, Bruno Simma argues that although the Charter limited the pre-Charter use of force which existed in customary international law, the use of force by NATO in Kosovo and the bombings in the FRY pose a risk to the mere existence of the UNSC.[73] Simma cites the UNA Background Paper which states that:

'In a political variant of free-market competition, the U.N. Security Council risks disappearing as a serious security body as the genuinely powerful prefer to work through a more convenient instrument. All that the Security Council can offer is 'legitimacy' in the view of some Western governments-and NATO may provide the desired multilateral cover, with less obstruction'.[74]

The challenges that explicitly arise from the continuous and changing use of force threaten both the attempts for a constitutional hierarchical model espoused by proponents of a world constitutionalism. To what extent though can we say though that these challenges are not products arising from the structure of international law itself? The use of economic sanctions has been the most preferred method under which the UNSC holds the international reins and enforces obedience. But if scholarship cannot make out the monopoly of power under traditional use of armed force, it is questionable whether things have been more complex or simpler with the use of economic coercion.

## The status of economic coercion as a use of force and the complex issues of state sovereignty against hegemony.

As mentioned, the conception that economic coercion is not regarded as a use of force is prevalent.[75] Practiced widely, economic coercive measures do not enjoy the same level of scrutiny as armed conflicts do and possibly this is why they act as a shadow underlining factor of the Charter's success. Article 2(4) of the UN prohibits the use of

[73] Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects,' (1999) 10 European Journal of International Law 1, 22
[74] *Ibid*; UK Foreign Office Policy Document No. 148, reprinted in 57 British Yearbook of International Law (1986) 9
[75] Tzanakopoulos (n 49)

armed force, because this constitutes a breach of sovereignty and it falls within the aims of the UN, but it does not extend to any form of economic coercion.[76]Further support to that comes from the Committee on Friendly Relations, which commented on the drafting of Article 2(4).[77] The general consensus is that economic coercion and other non-military measures are governed by the principle of non-intervention, which exists in customary international law,[78]which have developed in parallel to the Charter. On the other hand, Jordan Paust and Albert Blaustein contend that Article 2(4) prohibits more than the use of 'armed' force.[79] Richard B. Lillich suggests that just because economic coercion is not governed by Articles 2(4) and 39 of the UN Charter, that does not entail that every concept of economic coercion is legal under international law.[80] Despite this muddling in academic waters, through unilateral and multilateral state action, one would content that economic coercion is an acceptable practice both under the UN and also as an exercise of a state's sovereignty. It is also an action which is more heavily regulated than economic use of force. Hickey furthers that argument and asserts that trade sanctions and general measures of economic disruption fall short of the use of force and have always been regarded as measures falling outside the use of monopoly power of the UNSC.[81] On a similar note, researchers have talked about the imposition of those measures being subject to the exclusive sovereignty of a state. A country can prohibit

[76] Tzanakopoulos (n 49) 616, 621; see also for a wide account of this Pobjie (n 20) Ch 4&5

[77] UNGA 'Report of the Special Comm. on Friendly Relations' UNGAOR 19 24th session Supp UN Doc A/7619 (1969), 12; As instead, the Committee suggested that the principle of 'non-intervention' should govern the use of economic coercion and not Article 2(4); Certain legal debates exist as to what extent the *Arab Oil Embargo 1973* constuted a violation of Article 2(4)

[78] In general, on the drafting of Article 2(4), like the Vienna Convention, states like Poland, Egypt and Czechoslovakia strived to include economic coercion inside Article 2(4). On the other hand, Western states (the prevailed) side desired to include only military pressure.; see J W. Bowett 'Economic Coercion and Reprisal by States' (1972) 13 Virginia Journal of International Law 1, 1

[79] Jordan Paust, Albert Blaustein, 'The Arab Oil Weapon-A Threat to International Peace' (1974) 68 American Journal International Law 410, 410, 417; More specifically, they argue that: 'the substantial impairment of goals of the international community as articulated in the Charter through the deliberate use of coercion against other states, not counterbalanced by complementary policies relating to legitimate self-defence or the sanctioning of UN decisions, constitutes a violation of Article 2(4)'

[80] Richard B. Lillich 'The Status of Economic Coercion under International Law: United Nations Norms,' (1977) 12 Texas Journal of International Law 17, 17, 19; He does contend, however, that few states within the UN tend to believe that Article 2(4) extends to enough to cover economic coercion: 19; see also Bowett (N 49) 3

[81] Hickey (n 70), 85

trade entirely, or in certain articles or with certain states, while everything is permitted regarding the use of economic measures as far as customary international law is concerned.[82] Lauterpacht himself has stated that:

> 'In the absence of explicit conventional obligations, particularly those laid down in commercial treaties, a state is entitled to prevent altogether goods from a foreign state from coming into its territory. It may-and frequently does-do so under the guise of a protective tariff or of sanitary precautions or in some other manner. The foreign state may treat such an attitude as an unfriendly act and retort accordingly. But it cannot legitimately regard it as a breach of international law.'[83]

On the same note, Julius Stone treats the use of economic force as a supportive mechanism to an ongoing armed conflict.[84] Even within the conclusion of treaties, Article 52 of the *Vienna Convention of the Law of Treaties,* does not primarily prohibit a state from economically coercing another to enter a treaty.[85] A paradox thus emerges. The normative interpretation of the UN Charter does not suggest that the United Nations holds exclusive jurisdiction over the imposition of economic coercive measures. Yet, economic sanctions remain the most frequently employed instrument of the Security Council to assert its authority. The distinction between this and the use of armed force lies in the differing normative thresholds established by international law. Armed conflict, due to its higher legal and moral threshold, when undertaken unilaterally, poses a more direct challenge to the integrity of the Charter and the authority of the Security Council. In contrast, economic coercion, although possible to incur similar damage to the use of armed conflict,—often not classified within the broader legal category of 'violence'—is generally perceived as less constitutionally disruptive.[86] However, this raises a critical

---

[82] Clyde Eagleton *International Government* (3rd ed, Ronald Press Co. 1957)
[83] Hersch Lauterpacht, 'Boycott in International Relations' (1933)12 *British Yearbook of International Law* 125, 131
[84] Julius Stone*, Legal Controls of International Conflict: A Treatise on the Dynamics of Disputes- and War-law* (2d ed, Stevens 1959) 289
[85] Guttierme Del Negro, 'The Validity of Treaties Concluded Under Coercion of the State: Sketching a TWAIL Critique (2017) 10 European Journal of Legal Studies 40, 40, 53;Tzanakopoulos (n 49) 623; see also the input of Special Rapporteur Sir Humphley Waldock in the ILC: ILC 'Second report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur' (20 March 1963) UN Doc A/CN.4/156, 52.
[86] Although several UN mechanisms do highlight their illegality and the effect that they have on human rights see:'Unilateral economic measures as a means of political and economic coercion against

question regarding the subjective application of such measures. When both unilateral and multilateral sanctions operate through similar mechanisms of pressure, what truly distinguishes hegemonic action by states from that of the Security Council? If the legitimacy of coercion is measured not by the act itself but by the mode of decision-making, can it genuinely be said that the imposition of sanctions falls within the exclusive jurisdiction of either framework?

## Multilateral and unilateral economic sanctions: conflict or neutrality within international law and the hegemony of the UN

One position argues that UN sanctions are more significant form of intervention since they have their basis on the Charter. Consequently, they carry with them the basis of the UN, and they are commonly used alongside general peace efforts and not in abstract.[87] Ultimately, if we are to assess that our understanding should lie with the purpose of the UNSC as a *locum* tenens of international relationships. Understanding that would entail whether the UNSC is acting as a mechanism of peace, a mechanism which co-ordinates the cooperation of states when their interests are not fundamentally different,[88] or a mechanism to be used by the P5 to serve their own interests,[89] that can be bypassed due to the use of that shared power to sanction? It would also assess whether the UN Charter is the factual and not just the legal hegemony of international relationships, consequently comprehending whether there is a separation between law and facts. Unilateral action is common; this article ends by examining the assertion whether unilateral enforcement of trade barriers impedes the constitutionality and the hegemonic nature of the UN Charter or not.

Starting by the first assessment, that it does not affect constitutionality, as it was discussed above, the Charter came to validate long-standing state practice from pre-existing customary international law. The creation of the UN as a mechanism owes itself

developing countries' UNGA Res (April 2019) 74th session 74/200 2019 UN Doc A/RES/74/200; 'Negative impact of unilateral coercive measures: priorities and road map' Human Rights Council Forty-fifth session 14 September–2 October 2020 A/HRC/45/7 (2020)

[87] Giblin (n 68) 60

[88] John J. Mearsheimer, 'The False Promise of International Institutions'(1994) 19 International Security 3, 15

[89] Giblin (n 68) 61

to the express will of those states. The same way that its possible dissolution would also owe itself to that.[90] At the same time then, the express will of states, or at least most of them or from the most powerful ones was an intention to be bound by a central organ which would direct them in enforcing peace and security. [91] Had the states wanted to include the prohibition of unilateral economic sanctions, they would have done so, by naming it in the Charter through including the use of economic coercion within the jurisdiction of Article 2(4). As James Delanis argues, states include the prohibition of economic coercive measures in their bilateral treaties, signaling two concepts. Firstly, that power to impose and not impose those measures falls within state sovereignty. [92] Secondly, should states so choose, they retain the capacity to articulate explicit prohibitions on unilateral coercive measures through expressions of sovereign will. Within a strict positivist framework, both the express consent and deliberate inaction of states may be interpreted as evidence of legal acceptance or rejection. Historically, moments of global emergency—such as the coordinated response to terrorism—have demonstrated a degree of alignment between unilateral and multilateral sanctions regimes. This coordination reflects an enduring pattern of strategic complementarity between individual state actions and those of centralised institutions such as the United Nations. The fact that economic coercion is not generally categorised as a form of violence in international law further undermines the case for its exclusive monopolisation by the Security Council. In this respect, economic sanctions may be more accurately understood not as a constitutional threat, but as a supplementary mechanism that assists the UN in fulfilling its peace and security mandate—much like domestic constitutions often incorporate or draw upon pre-existing legal norms and practices.

On the other hand, there is plenty of criticism as to why might this not be true. There are two reasons as to why the use of unilateral economic coercion damages the

[90] Anghie (n 42) 132

[91] See for example the case of *S. S. Wimbledon (U.K., France, Italy, Japan v. Germany)* (Merits) [1923] PCIJ Ser. A, No. 1, at 25.

[92] James Delanis '"Force" under Article 2(4) of the United Nations Charter: The "Force" under Article 2(4) of the United Nations Charter: The Question of Economic and Political Coercion'(1979) 12 Vanderbilt Law Review 101, 108; see also: Dapray J.Muir, The Boycott in International Law, (1974) 9 International Law and Economy 187, 200

post-World War II hegemony that UN tries to build. Firstly, adopting the previous position, entails that state interests align with the UN interests. As we saw above, states have criticized the UNSC for abrupt use of power. TWAIL scholarship is also prevalent on the issue. Starting from the point we can see that state interests with UN interests do not always align. Farid Mirbagheri states that at the 'theoretical level, collective security is incompatible with sovereign statehood',[93] and that national statehood always prevails.[94] Mutual state consent has rarely been achieved outside and inside the UNSC, and even at times it has been achieved it was due to fear of unilateral action by an affected state, not because of a mutual understanding of international law.[95] Multiple times, has the US been able through its own multilateral organizations to bypass the UNSC to normalize unilateral action.[96] In terms of economic sanctions, the US along with other countries have attempted to universalize their hegemonic interests outside the UNSC. The example of US sanctions against Iran is exquisite when *BNP Paribas* violated US unilateral economic sanctions, was fined and was placed on a five-year probation period, because it was trading with Iran and Cuba.[97] Unilateral economic coercion does undermine the hegemony of the UN as to the subject that wields I, especially when those states weaponize their trade. US and several other states that possess large trading power can intervene and further their interests inside international relationships bypassing the UNSC through exercising their sovereignty.

Secondly, as previously discussed, economic coercion is not traditionally classified as a principal form of violence under international law. Consequently, its deployment is generally viewed as falling within the sovereignty of individual states. However, reliance on prevailing interpretations of economic coercion as non-violent should not be determinative. Empirical evidence reveals that the consequences of economic sanctions can be severe and, in some cases, catastrophic for targeted

[93] Farid Mirbagheri 'Conflicting Interests: The UN versus Sovereign Statehood'(2000) 2 Global Dialogue 78, 78
[94] *Ibid*.
[95] Bosco (n 58) 217
[96] See Simma (n 73)
[97] For more information regarding this see: Susan Emmenegger 'Extraterritorial Economic Sanctions and Their Foundation in International Law '(2016) 33 Arizona Journal of International and Comparative Law 632*;* Curtis A. Bradley*,* Universal Jurisdiction and U.S. Law*,* (2001) *(9)* University of Chicago Legal Forum Articles. 10211.

populations. The recurrent use of sanctions by the United Nations Security Council (UNSC) in response to breaches of Article 39 of the UN Charter underscores the fact that economic measures function as instruments of pressure—and, arguably, as a form of violence in themselves. If economic coercion was not an effective and coercive tool, it would not be so frequently employed. Nevertheless, scholarship typically situates it below armed conflict on the spectrum of international enforcement measures, thereby contributing to the ambiguity surrounding its legal status.

This legal and conceptual indeterminacy raises important questions, which derive directly from the status of economic coercion as a non-violent tool. Have states handed parts of their sovereignty to the UNSC which they did not regard as violent? If that is the case, the UN does indeed hold a monopoly of violence. If that is not the case, then actual UN hegemony is itself fractured and rigged from its very conception. The foundational principle of state sovereignty, which both precedes and underpins the legitimacy of the UNSC, remains central here. States are dynamic political and legal actors whose consent and practice evolve over time; accordingly, it would be reductive to assume that the UNSC's structure and authority remain fixed in their original post-war design. The Council's enforcement powers are also subject to development through state practice and evolving customary norms. The emergence of new forms of economic coercion—such as trade-based warfare—demonstrates that economic tools continue to evolve as potent mechanisms of control. While the UNSC's authority rests, in part, on the continuing consent of its member states, it also derives strength from its ability to deploy such tools effectively. Whether this authority is grounded more firmly in legal delegation or in the coercive power remains to be figured out.

## Conclusion

This paper has not sought to answer the question whether monopoly to economic coercion challenges the hegemony of the UN Charter. After all, doing so would throw the discussion into a yes or no conversation, which as mentioned in the beginning is not what characterizes a constitution. The paper has however attempted to situate the discussion of constitutions possessing a monopoly of violence on the international plane. It has

attempted to connect the dots between economic coercion, the reasons behind their multilateral use and how can that be a testimony of hegemonic attempts in international law. On the other hand, due to their sheer increase in number, research should attempt to figure the constant use of unilateral measures as a possible fracture to the UNSC's authority. Economic coercion holds a particular "grey" place within international law and relations which gives an also particular element to its unilateral use, especially when assessing its damages to the hegemony of the UNSC.

# Bibliography

## Cases & Legislation


Ch VIII s B no 3 of the Dumbarton Oaks Proposals, UNCIO III, 1-23, 15, Doc 1 G/1

C-402/05 P and C-415/05 P Kadi v. Council of the European Union and Commission of the European Communities [2008] 2008 I-06351Re Pharmaceutical Mfrs. Ass'n of S.A. 2000 (3) BCLR 241 (CC)

Military and Paramilitary Activities in and against Nicaragu*a* (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14 (Nicaragua) 138

Negative impact of unilateral coercive measures: priorities and road map' Human Rights Council Forty-fifth session 14 September–2 October 2020 A/HRC/45/7 (2020)

S. S. Wimbledon (U.K., France, Italy, Japan v. Germany) (Merits) [1923] PCIJ Ser. A, No. 1, at 25

'Second report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur' (20 March 1963) UN Doc A/CN.4/156, 52

Symvoulio tis Epikrateias Plenary no. 2307/2014 (2014)

UN Charter, Chapter VII, Article 39 (1945)

UN Charter, Chapter VII, Article 41 (1945)

UN Doc. S/2003/404

UNGA Res (April 2019) 74th session 74/200 2019 UN Doc A/RES/74/200

UN General Assembly Res 377 (November 1950) 5th session Uniting for Peace Resolution A/RES/377(V)AC

United Nations Conference on International Organization 'Report by Special Rapporteur Mr Paul-Boncour. On UN chapter VII, Section B' (1945) UNCIO XII Doc 881 III/3/46

'Unilateral economic measures as a means of political and economic coercion against developing countries' UNGA Res (April 2019) 74th session 74/200 2019 UN Doc A/RES/74/200; 'Negative impact of unilateral coercive measures: priorities and road map' Human Rights Council Forty-fifth session 14 September–2 October 2020 A/HRC/45/7 (2020)

UNSC Res 1373 (September 2001) S/RES/1373

UNSC Res 2129 (December 2013) S/RES/2129

UNSC Res 687 (April 1991) S/RES/687

## Secondary Literature

Alvarez José E. 'Hegemonic International Law Revisited' (2003) 97 The American Journal of International Law 873

Bradley, Curtis A., 'Universal Jurisdiction and U.S. Law' (2001) 9 *University of Chicago Legal Forum Articles* 10211

Camara, Jose Sette, *The Ratification of International Treaties* (Ontario Publishing, Toronto 1949)

Cavare, Louis, *Les Sanctions dans le Pacte de la S.D.N. et dans la Charte des N.U.* (Pedone 1950)

Conforti, Beneddetto, *The Law and Practice of the United Nations* (3rd edn., Martinus Nijhoff Publishers 2005)

Corbett, Percy, *The Growth of World Law* (Princeton: Princeton University Press, 1971)

Cortright, David and Lopez, A. George, *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?* (Routledge 1995)
Crandall, B. Samuel, *Treaties: Their Making and Enforcement* (2d edn. John Byrne & Co. 1916)
Curtis, Bradley A., 'Universal Jurisdiction and U.S. Law' (2001) (9) *University of Chicago Legal Forum Articles* 10211
Del Negro, Guttierme, 'The Validity of Treaties Concluded Under Coercion of the State: Sketching a TWAIL Critique' (2017) 10 *European Journal of Legal Studies* 39
Delanis, James, '"Force" under Article 2(4) of the United Nations Charter: The Question of Economic and Political Coercion' (1979) 12 *Vanderbilt Law Review* 101
Desmith, Stanley and Brazier, Rodney, *Constitutional and Administrative Law* (6th edn. London: Penguin 1998)
Dinstein, Yoram, *War, Aggression and Self-Defense* (3rd edn., CUP 2001)
Doyle, W. Michael, 'The UN Charter-A Global Constitution' in Jeffrey L. Dunoff & P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law and Global Governance* (CUP 2009) 113–132
Doxey, P. Margaret, *International Sanctions in Contemporary Perspective*
Eagleton, Clyde, *International Government* (3rd ed, Ronald Press Co. 1957)
Emmenegger, Susan, 'Extraterritorial Economic Sanctions and Their Foundation in International Law' (2016) 33 *Arizona Journal of International and Comparative Law* 632
Fakhri, Michael, *Sugar and the Making of International Law* (CUP 2014)
Fakhri, Michael, 'The Institutionalisation of Free Trade and Empire: A study of the 1902 Brussels Convention' (2014) 2 *London Review of International Law* 1
Fassbender, Bardo, 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529
Franck, M. Thomas, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States' (1970) 61 *American Journal of International Law* 809
Franck, Thomas, 'The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality?' (1992) 86 *American Journal of International Law* 519
Garfield, Richard, Dresden, Elissa, Boyle, Joyceen, 'Health Care in Iraq' (2003) 51 *Nursing Outlook* 171

Giblin, Jennifer, *United Nations Peacekeeping and the Principe of Non-intervention: A TWAIL Perspective* (Taylor & Francis Group, 2024)
Gibson, Susan, 'International Economic Sanctions: The Importance Of Government Structures' (1999) 13 *Emory International Law Review* 161
Grey, C. Thomas, 'Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought' (1978) 30 *Stanford Law Review* 843
Grimm, Dieter, 'Types of Constitutions' in Michel Rosenfield, Andras Sajo (eds.), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012)
Helfer, R. Laurence, 'Constitutional Analogies in the International Legal System' (2003) 37 *Loyola of Los Angeles Law Review* 193
Hickey, E. James, 'Challenges to Security Council Monopoly Power over the Use of Force in Enforcement Actions: The Case of Regional Organizations' (2004) 10 *Ius Gentium* 75
Hufbauer, Gary Clyde, Schott, Jeffrey J., Elliott, Kimberley Ann, *Economic Sanctions Reconsidered: History and Current Policy* (3rd edition, Institute of International Economics 1990)
Hunter, Rob, 'Marx's Critique and the Constitution of the Capitalist State' in Paul O'Connell, Umut Ozsu (eds.), *Research Handbook on Law and Marxism* (EE Elgar 2021) 190–209
Jensen, Henning, 'Multilateral and Unilateral Sanctions: Compliance and Challenges' (2021) in Leal Walter Filho et al. (eds.), *Peace, Justice and Strong Institutions. Encyclopedia of the UN Sustainable Development Goals* (Springer, 2021)
Keating, C. Gregory, 'Fidelity to Pre-Existing Law and the Legitimacy of Legal Decision' (1993) 69 *Notre Dame Law Review* 1
Kingsbury, Benedict, 'Sovereign and Inequality' (1998) 1 *European Journal of International Law* 599
Kirsch, Nico, 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council' (2003) in Christian Walter et al. (eds.), *Terrorism as a Challenge for National and International Law* (Heidelberg, 2003) 879–908
Kivotidis, Dimitrios, 'The Form and Content of the Greek Crisis Legislation' (2017) 29 *Law and Critique* 57
Koskenniemi, Martti, *From Apology to Utopia* (CUP 2006)

Lauterpacht, Hersch, 'Boycott in International Relations' (1933) 12 *British Yearbook of International Law* 121

Lillich, B. Richard, 'The Status of Economic Coercion under International Law: United Nations Norms' (1977) 12 *Texas Journal of International Law* 17

Lourder, Monica de la Serna Galvan, 'Interpretación del artículo 39 de la Carta de las Naciones Unidas' (2011) 11 *Anuario Mexicano de Derecho Internacional* 147

Mearsheimer, J. John, 'The False Promise of International Institutions' (1994) 19 *International Security* 3

Michelman, Frank I., 'Constitutional Authorship by the People' (1999) 74 *Notre Dame Law Review* 1605

Michelman, Frank, 'What Do Constitutions Do That Statutes Don't (Legally Speaking)' in Bauman & Kahana (eds.), *The Least Examined Branch* (CUP, 2006) 273–294

Mirbagheri, Farid, 'Conflicting Interests: The UN versus Sovereign Statehood' (2000) 2 *Global Dialogue* 78

Muir, J. Dapray, *The Boycott in International Law* (1974) 9 *International Law and Economy* 187

Murphy, L. Ben, 'Situating the accountability of the UN Security Council' (2021) 10 *Global Constitutionalism* 465

Mutua, Makau and Anghie, Antony, 'What is TWAIL?' (2000) 94 *ASIL Proceedings*

Neff, C. Stephen, 'The Law of Economic Coercion: Lessons from the Past and Indications of the Future' (1982) 20 *Columbia Journal of Transnational Law* 411

O'Connell, Paul, 'The Death of Socio-Economic Rights' (2011) 74 *Modern Law Review* 523

Oppenheim, Ann, *International Law* (4th ed., vol. 1, A. McNair 1928)

Paust, Jordan and Blaustein, Albert, 'The Arab Oil Weapon – A Threat to International Peace' (1974) 68 *American Journal International Law* 410

Pellett, L. Peter, 'Iraq under Siege' in Anthony Arnove (ed.), *Iraq under Siege* (South End Press, 2003) 152–168

Pobjie, Erin, *Prohibited Force: The Meaning of 'Use of Force' in International Law* (OUP 2024)

Proceedings of the Campaign Against Sanctions on Iraq Conference, *Sanctions on Iraq: Background, Consequences, Strategies* (1999)

Reisman, W. Michael, 'The Constitutional Crisis in the United Nations' (1993) 87 *American Journal of International Law* 83

Reuther, David E., 'UN Sanctions Against Iraq' in Cortright and Lopez (eds.), *Economic Sanctions* (Routledge 1995)

Schauer, Frederick, 'Formalism' (1988) 97 *Yale Law Journal* 843

Schücking, Walther and Wehberg, Hans, *Die Satzung des Völkerbundes* (2nd edn., F. Vahlen 1924)

Simma, Bruno, 'NATO, the UN and the Use of Force: Legal Aspects' (1999) 10 *European Journal of International Law* 1

Simma, Bruno et al., *The Charter of the United Nations: A Commentary* (3rd edn., OUP 2012)

Stevens, Robert, *The English Judges: Their Role in the Changing Constitution* (Hart Publishing 2002)

Stone, Julius, *Legal Controls of International Conflict* (2nd edn., Stevens 1959)

Sultany, Nimer, *Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring* (OUP 2018)

Taft, William, 'Self-Defense and the Oil Platforms Decision' (2004) 29 *Yale Journal of International Law* 295

Taulbee, L. James, 'Governing the Use of Force: Does the UN Charter Matter Anymore?' (2001) 4 *Civil Wars* 1

Trajkovska-Hristovska, Jelena, 'The Making of Modern Constitutions' (2022) 13 *Iustinianus Primus Law Review* 1

Tzanakopoulos, Antonios, *Disobeying the Security Council* (OUP 2013)

Waxham, Matthew, 'Regulating Resort to Force: Form and Substance of the UN Charter Regime' (2013) 24 *European Journal of International Law* 295

Wilcox, O. Francis, *The Ratification of International Conventions* (Allen & Unwin, London 1935)

Other

Harry S. Truman, Speech (Document of the United Nations Conference on International Organization, June 261945) < Address in San Francisco at the Closing Session of the United Nations Conference | Harry S. Truman> accessed 25/05/2025