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# **Unilateral economic sanctions as a tool for human rights accountability: The case of Ethiopia's suspension from African Growth and Opportunity Act (AGOA) trade preference program**

**Mini dissertation submitted to the Faculty of Law of the University of Pretoria in partial fulfilment of the requirements for the degree of Master of Laws (LLM in Human Rights and Democratisation in Africa)**

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## **Acknowledgement**

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## **Abbreviations**

AU- African Union

AGOA - African Growth and Opportunity Act

ACHPR-African Commission on Human and Peoples' Right

EDF – Ethiopian Defence Forces

EPRDF- Ethiopian Peoples' Revolutionary Democratic Front

EU- European Union

FDI- Foreign Direct Investment

GDP- Gross Domestic Product

ICCPR- International Covenant on Civil and Political Rights

IMF- International Monetary Fund

CESCR- International Covenant on Economic Social and Cultural Rights

OHCHR- Office of the High Commissioner for Human Rights

TPLF- Tigrayan Peoples' Liberation Front

US - United States

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## **Abstract**

The study examines the effectiveness of Ethiopia's suspension from AGOA to address the human rights violations in the country. The study adopts a qualitative research method. Data and other literature sources are collected through desk research and analysed using content analysis technique to inform findings and conclusions.

The study argues that the US unilateral sanction measure of suspending the country's benefits under AGOA has been largely ineffectual and, more alarmingly, may have done more harm than good. The Ethiopian suspension from AGOA has impacted the rights and well-being of on the Ethiopian civilian population by deteriorating their living conditions through suspension-induced unemployment and a decline in households' income for up to a million people who depended on AGOA for their livelihoods. The suspension also rendered debt-financed industry parks ineffective and substantially reduced government revenues and foreign currency earnings. Consequently, the government's ability to repay the debts accrued to finance the industry parks infrastructure was affected which led the government to seek debt-restructure deals with its creditors. In order to secure the debt restructure deal, the government was forced to take measures such as reduction of fuel subsidies and spending cuts on new infrastructure development. These measures coupled with the economic hardship inflicted by the suspension significantly hampers the country's capacity to create conditions for the realisation of economic, social and cultural rights.

The study recommends an immediate review of US unilateral sanctions policy against Ethiopia because, despite its negative impacts on the rights and well-being of Ethiopian people, the measures have failed to produce significant change. It also recommends that the US should provide incentive for a change of behaviour by setting clear benchmarks that the Ethiopian government can meet and be prepared to restore the benefits once progress has been made towards those benchmarks.

## Chapter one: General introduction

### 1.1 Background

The enforcement mechanisms in the international human rights mechanism are weak, primarily limited to the “naming and shaming” of violators.<sup>1</sup> Due to the lack of compliance with international human rights obligations and the weak enforcement mechanism of human rights treaties, some countries have assumed the responsibility to unilaterally punish those who violate human rights. Economic sanctions and other coercive measures such as suspension of aid, preferential trade benefits and lending have been employed by states to promote compliance with human rights obligations.<sup>2</sup>

In response to reports of human rights violations and abuses in relation to the conflict in the Tigray region of Ethiopia, the US has imposed unilateral sanction measures against Ethiopia. The conflict broke out in November 2020 between the Federal government of Ethiopia and the TPLF, a political party turned rebel group which dominated ruling coalition for 27 years until it was ousted in 2018.<sup>3</sup> Even though the conflict was triggered by TPLF's attack on the military bases of EDF located in the Tigray regional state,<sup>4</sup> all belligerent parties have been implicated in violation and abuses of international humanitarian and human rights law.<sup>5</sup>

The sanctions imposed by the US included targeted assets freeze and travel ban, defence export prohibition<sup>6</sup>, and suspension from the AGOA preferential trade regime. The rationale cited by the US for imposing these sanctions is “to promote a negotiated ceasefire and political resolution of this crisis, to ensure the withdrawal of Eritrean forces from Ethiopia, and to promote the unity, territorial integrity, and stability of Ethiopia.”<sup>7</sup> This dissertation puts this into context and assesses whether the use of economic sanction, specifically Ethiopia's

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<sup>1</sup> VR Kingsley ‘Enforcing Conditionality: Human Rights and Preferential Trade Agreements’ unpublished PhD thesis, University of California, Berkley, 2014 32.

<sup>2</sup> As above.

<sup>3</sup> A Bhandari and D Lewis ‘The Conflict in Ethiopia’ 18 December 2020 <https://graphics.reuters.com/ETHIOPIA-CONFLICT/xk1pyjmndvg/> (accessed 26 May 2022).

<sup>4</sup> As above.

<sup>5</sup> United Nations Office of the High Commissioner for Human Rights ‘Oral Update on the situation of human rights in the Tigray region of Ethiopia and on progress made in the context of the Joint Investigation’ 07 March 2022 <https://www.ohchr.org/en/statements/2022/03/oral-update-situation-human-rights-tigray-region-ethiopia-and-progress-made> (accessed 26 May 2022).

<sup>6</sup> Executive Order on Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia 17 September 2021 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/17/executive-order-on-imposing-sanctions-on-certain-persons-with-respect-to-the-humanitarian-and-human-rights-crisis-in-ethiopia/> (accessed 26 May 2022).

<sup>7</sup> As above.



suspension from AGOA preferential trade regime is a plausible way to address the issues that led to sanctions.

## **1.2 Problem statement**

The contentious issue about using unilateral economic sanctions as a tool for human rights accountability is not about the results it aims to achieve; instead, it is about whether such economic sanctions are effective ways of achieving those goals. The US frequently uses unilateral economic sanctions to bring about changes aimed at promoting human rights in other countries.<sup>8</sup> Studies have shown repeatedly that unilateral economic sanction measures often result in negative impacts on the rights and wellbeing of civilians in targeted states disproportionately affecting the vulnerable sections of the society<sup>9</sup>, precisely the kind of people who are supposed to be protected by human rights principles.

Ethiopia's suspension from the AGOA meant that Ethiopia would no longer have duty-free access to the US market, which will be a significant blow to Ethiopia's Economy. In 2020 alone, exports under AGOA brought about US\$525 million to Ethiopia and more importantly, directly generated employment for about 200,000 people.<sup>10</sup> The suspension also significantly hampers the country's effort to promote export-led economic growth. It also resulted in a significant loss of employment in the manufacturing sector, especially in the garment sector, affecting the livelihoods of hundreds of thousands of low-income families and disproportionately affecting women textile workers who make up most garment workers in the industrial parks.<sup>11</sup>

## **1.3 Research questions**

The research is premised on the principal question: To what extent is Ethiopia's suspension from AGOA preferential trade regime an effective tool for promoting human rights in Ethiopia? To address this question, the following sub-questions are analysed

- What is the nature and scope of unilateral economic sanctions?
- What are the impacts of Ethiopia's suspension from AGOA on the country's civilian population, which does not participate in the human rights violations?

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<sup>8</sup> CO Chidibere 'Sanctions and human rights: the role of sanctions in international security, peace building and the protection of civilian's rights and well-being. Case studies of Iran and Zimbabwe' unpublished PhD thesis, Interuniversity Institute of Social Development and Peace, 2016 26.

<sup>9</sup> As above.

<sup>10</sup> IndustriALL Global Union 'Unions fear Job losses if AGOA eligibility is withdrawn from Ethiopia' 20 October 2021 <https://www.industrialall-union.org/unions-express-fear-over-job-losses-if-agoa-eligibility-is-withdrawn-from-ethiopia> (accessed 26 May 2022).

<sup>11</sup> As above.

- Is the suspension of Ethiopia from AGOA an effective way to address the human rights violations in the country?

#### **1.4 Objectives of the study**

The principal objective of this mini dissertation is to assess in-depth the effectiveness and impact of the unilateral economic sanction imposed on Ethiopia specifically its suspension from AGOA preferential trade regime on the human rights and well-being of the general population in Ethiopia. In doing so the mini dissertation aims to achieve the following specific objectives:

- Examining the nature and scope of unilateral economic sanctions.
- Examining the effectiveness of Ethiopia's suspension from AGOA.
- Shedding some light on the impact of Ethiopia's suspension from AGOA on the general population.
- Adding to the growing literature on the use unilateral economic sanctions, from the perspective of trade preference programs such as AGOA.

#### **1.5 Methodology**

The study is qualitative in nature. It relies on primary and secondary data sources, including academic literature such as book chapters, books, journal articles, and an analysis of U.S. and Ethiopian official documents, including legislation, soft law instruments and general internet sources. Data and other literature sources are collected through carefully planned and executed desk research. The data collected from both primary and secondary sources is analysed using content analysis technique to inform findings and conclusions.

#### **1.6 Literature review**

A cursory review of the literature on the effectiveness of unilateral economic sanctions reveals widespread agreement that economic sanctions often fail as a means of diplomacy.<sup>12</sup> Rogers however contends that the negative literature on the effectiveness of sanctions stems from three biases that led to underestimation of the effectiveness of these sanctions.<sup>13</sup> According to Rogers, first, the definition of successful sanctions is frequently too restrictive, leading to the

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<sup>12</sup> DA Baldwin *Economic Statecraft: New Edition* (2019); R Pape 'Why Economic Sanctions Do Not Work' (1997) 22 *International Security* 90; DW Drezner *The sanctions paradox: Economic statecraft and international relations* (1999) 9.

<sup>13</sup> ES Rogers 'Using Economic Sanctions to Prevent Deadly Conflict' 1 May 1996 <https://www.belfercenter.org/publication/using-economic-sanctions-prevent-deadly-conflict> (accessed 26 May 2022).

perception that some successful efforts fail. Second, the literature emphasizes “the ability of imposed sanctions to compel the target to change its behaviour but does not systematically examine whether the threat of sanctions can deter the target from taking a particular action.”<sup>14</sup> Third, “the literature generalizes primarily from cases where partial sanctions were imposed half-heartedly, so it underestimates the potential effectiveness of forceful sanctions.”<sup>15</sup> Further, Rogers makes the case that given their unilateral nature and the fact that they were implemented for symbolic purposes, many of the US's unilateral sanctions, particularly those enacted in the 1970s and 1980s, were ineffective.<sup>16</sup>

A study conducted by Hufbauer *et al* in 1985 is considered one of the most comprehensive empirical analyses of the effectiveness of economic sanctions to date.<sup>17</sup> Using their model, the authors analysed 115 instances of economic sanctions imposed after 1914 and found that in 34% of those instances, the sanctions were successful in achieving one of the four policy objectives set out for each sanctioning period.<sup>18</sup> The authors affirmed this conclusion in the third edition of the book, published in 2007.<sup>19</sup> In this edition, the authors looked at over 200 instances of sanctions imposed between 1914 and 2000 and found “sanctions to be at least partially successful in 34% of the cases that we documented.”<sup>20</sup>

Chidibere examined the effectiveness and the impact on the society of economic sanctions imposed on Zimbabwe and Iran and concluded that they have not been successful in resolving the issues that led to their imposition, such as “restoring real democracy in Zimbabwe, or stopping Iran from enriching uranium”.<sup>21</sup> Sanctions, in Chidibere's view, made matters worse for the regular people. Thus, the issue with unilateral economic sanctions is not just that they don't work to change the behaviour of those who violate their international obligations, but also that they don't safeguard the rights of the civilian population in the targeted country.<sup>22</sup>

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<sup>14</sup> As above.

<sup>15</sup> As above.

<sup>16</sup> As above.

<sup>17</sup> GC Hufbauer *et al Economic Sanctions Reconsidered: History and Current Policy* (1985).

<sup>18</sup> As above.

<sup>19</sup> GC Hufbauer *et al Economic Sanctions Reconsidered* (2007).

<sup>20</sup> As above.

<sup>21</sup> Chidibere (n 8 above).

<sup>22</sup> As above

The AGOA is a trade act<sup>23</sup> aimed at boosting access to US markets for sub-Saharan countries upon fulfilment of a set of conditions set forth therein in the legislation. These conditions include, among others, working to improve rule of law, human rights and workers' rights. The act enables the US president to make designations of specific states as eligible to benefit under the AGOA. However, the eligibility requirements are at times rhetorical and are not strictly adhered to in practice.<sup>24</sup> States such as Chad enjoy AGOA eligibility<sup>25</sup> notwithstanding its human rights record of arbitrary arrest and detentions, extrajudicial killings, repression of critics, torture and cases of cruel, inhuman, or degrading treatment.<sup>26</sup>

Hafner-Burton argues an increasing number of preferential trade agreements such as AGOA are playing a crucial role in ensuring states comply with their international human rights obligations.<sup>27</sup> Furthermore, preferential trade agreements are effective in promoting reform measures by providing the mechanisms and resources to change actors' incentives.<sup>28</sup> There is a scarce literature dealing with AGOA's effectiveness in addressing human rights issues in the beneficiary countries. This study is unique in the sense that it tries to look at the effectiveness and impact on civilian population of using AGOA suspension as a tool for human rights accountability.

### **1.7 Scope and limitations**

The study will solely focus on the use of unilateral economic sanctions particularly trade preference programs for the promotion of human rights. The study will use the case of Ethiopia's suspension from AGOA and bases the analysis and conclusion on this specific case. The study exclusively relies on secondary literature thus no empirical data is included. The other limitation is the concern of academic neutrality since the researcher is an Ethiopian, however such is mitigated through careful execution of research methodology that restricts the researcher to relevant sources thus deriving conclusions from argumentation and literature.

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<sup>23</sup> African Growth and Opportunity Act (AGOA) Public law 106 of 2000.

<sup>24</sup> J Hickel 'USA's Africa trade policy needs revamp' 15 November 2011 <https://blogs.lse.ac.uk/africaatlse/2011/11/15/usas-africa-trade-policy-needs-a-revamp/> (accessed 25 May 2022).

<sup>25</sup> Office of The United States Trade Representative 'AGOA Status: Chad' <https://ustr.gov/countries-regions/africa/central-africa/chad> (accessed 22 September 2022)

<sup>26</sup> US Bureau of Democracy, Human Rights and Labour 'Country Reports on Human Rights Practices: Chad' 30 Mar 2021 <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/chad/> (accessed 22 September 2022)

<sup>27</sup> EM Hafner-Burton 'Trading Human Rights: How preferential trade agreements influence government repression' (2005) 59 *International Organization* 594.

<sup>28</sup> As above

### **1.8 Structure of the study**

This research will be comprised of five chapters. The first chapter will give a background and introduction to the research; provide insight into the research problem and the objective of the study and point out the questions that this research attempts to address. The second chapter will provide a general overview on unilateral economic sanctions and the debates associated with the use of such sanctions to promote human rights in the target state. The third chapter will provide the introduction to the case study and an in-depth analysis of the context, the human rights conditions, and the US economic sanctions on Ethiopia. The fourth chapter will then assess the effectiveness of Ethiopia's suspension from the AGOA preferential trade regime and its impact on the civilian population. The fifth and final chapter will be dealing with conclusions and recommendations.

## **Chapter two: Nature and scope of unilateral economic sanctions**

### **2.1 Introduction**

Unilateral economic sanctions have been used by some western countries to address human rights violations in target countries. Such practice, however, have recently drawn significant criticism. There are legitimate questions about the effectiveness of unilateral economic sanctions as a tool to promote human rights, as these measures, despite being considered as a plausible way of enforcing human rights obligations in sanctioned states, frequently fail to achieve the intended outcome and negatively affect the rights and wellbeing of general populace.

Against this background this chapter deals with the nature and scope of unilateral economic sanctions. It starts with giving the conceptual framework for the study by the defining the concept of unilateral economic sanctions. It then goes on to trace the origins and historical evolution of economic sanctions. To this end, a brief review of the most significant developments is provided. Furthermore, this chapter highlights the significantly increased role of unilateral economic sanction as a coercive measure on target states and provides a glimpse into the debate about the legitimacy and effectiveness of unilateral economic sanctions.

### **2.2 The definition of unilateral economic sanctions**

Sanctions can be categorised in to two, unilateral and multilateral, based on the number of sanctioning states involved.<sup>29</sup> As the names suggest multilateral sanctions require the involvement of more than one sanctioning country while unilateral sanctions are imposed by one country without international support.<sup>30</sup>

There is no universally agreeable definition for ‘unilateral economic sanction’, as the terminology entails different connotations and interchangeable terms. It can be noted that in UN documents the term ‘sanction’ seems to be used interchangeably with other terms such as ‘coercive measures,’ to avoid possible negative connotations in relation with the use of the term.<sup>31</sup> However, the objective the unilateral measure constitutes the defining element.<sup>32</sup>

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<sup>29</sup> TM Nyun “Feeling good or doing good: Inefficacy of the U.S. unilateral sanctions against the military government of Burma/Myanmar” (2008) 7 *Washington University Global Studies Law Review* 465.

<sup>30</sup> As above.

<sup>31</sup> UN Human Rights Council “Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability” (2015) A/HRC/28/74.

<sup>32</sup> RA Sanchez “EU sanctions: a new human rights tool? The Case of Belarus” unpublished masters’ thesis University of Graz 2014 12.

According to Nyun, there are two ways to define economic sanctions and both hinge on what function the sanctions are meant to play in global politics.<sup>33</sup> The definition that focuses solely on effects ignores the methods that were employed to bring about the undesirable effects on the targeted country's economy.<sup>34</sup> Hence, any measure that causes disruptions on the economic activities of the target country would qualify as an economic sanction. By contrast, if the means-based definition of economic sanctions limits the scope to just those sanction measures that impede commerce.<sup>35</sup>

Hufbauer *et al* provide the following definition, economic sanctions are “deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations.”<sup>36</sup> They further state that “customary” means “levels of trade and financial activity that would probably have occurred in the absence of sanctions.”<sup>37</sup> Lowenfeld defines economic sanctions as “the use of economic measures taken by one State to compel a change of policy of another State.”<sup>38</sup>

Based on the above definitions, the working definition of the term “unilateral economic sanctions” for the purposes of this dissertation is: The deliberate withdrawal of trade and investment relations including trade preference benefits by sanctioning state to influence a course of action in the targeted State.

## **2.3 The historical overview of unilateral economic sanctions**

### **2.3.1 Unilateral sanctions before the early 1990s**

The first accounts of the use of economic sanctions in furtherance of political aims date back to the times of ancient Greece.<sup>39</sup> These early attempts of using economic sanctions were usually coupled with the use of military force.<sup>40</sup> Until the early twentieth century, economic measures were heavily relied upon by states during armed conflicts to undermine the economic capabilities of opponent states.<sup>41</sup> However, economic restrictions deployed during armed conflicts had different aims than the present-day use for such measures.<sup>42</sup> During war, the target

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<sup>33</sup> Nyun (n 29 above) 464.

<sup>34</sup> As above.

<sup>35</sup> As above.

<sup>36</sup> GC Hufbauer *et al* (n 19 above) 2.

<sup>37</sup> As above.

<sup>38</sup> AF Lowenfeld *International Economic Law* (2002) 698.

<sup>39</sup> Hufbauer *et al* (n 19 above) 9.

<sup>40</sup> I Bogdanova *Unilateral sanctions in international law and the enforcement of human rights: The impact of the principle of common concern of humankind* (2022) 15.

<sup>41</sup> As above.

<sup>42</sup> MP Doxey *Economic Sanctions and International Enforcement* (1980) 10.

is the enemy, and the main objective is to weaken its capacity to engage in war.<sup>43</sup> On the other hand, when economic measures are imposed as sanctions, the objective behind it is deterring states from policies which are not in line with the accepted norms of international conduct and as a punishment to acts condemned by the sanctioning state or international body.<sup>44</sup>

The start of World War I triggered a debate regarding the role international law and the legal means to be employed towards promoting peaceful coexistence among nations.<sup>45</sup> The debate was around the idea of developing an international rule and a judicial mechanism to resolve inter-state disputes that may arise in the future.<sup>46</sup> This attracted various proposals on how to go about it, ranging from the proposal to establish a world federation to introducing an international legislature.<sup>47</sup> Among the proposals, the ones drafted by the Fabian Society and the Bryce Group were the most influential. Both proposals included economic sanctions as an enforcement tool.<sup>48</sup>

The effectiveness of the economic warfare methods used during World War I and the expectation that the threat of such sanctions would cause states to think twice before going to war led to the embedment of such measures in the League of Nations.<sup>49</sup> The concept of relying on economic sanctions to promote peaceful coexistence among the nations was included under Article 16 of the Covenant of the League of Nations which allowed the imposition of economic sanctions economic sanctions by the members of the league.<sup>50</sup> However, a member could only be subjected to sanctions when it resorted to war.<sup>51</sup> The economic sanctions enshrined under Article 16 were put to the test for the first time during the Italian invasion of Ethiopia.<sup>52</sup> Italy invaded Ethiopia in violation of its obligations under the Covenant of the League of Nations and other international treaties and as a result a number of member states of the League imposed sanctions.<sup>53</sup>

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<sup>43</sup> As above.

<sup>44</sup> As above.

<sup>45</sup> Bogdanova (n 40 above) 19.

<sup>46</sup> S Wertheim 'The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920' (2011) 35 *Diplomatic History* 797.

<sup>47</sup> HR Winkler 'The Development of the League of Nations Idea in Great Britain, 1914– 1919' (1948) 20 *The Journal of Modern History* 95.

<sup>48</sup> As above.

<sup>49</sup> Bogdanova (n 40 above) 20.

<sup>50</sup> Covenant of the League of Nations (1919) art 16.

<sup>51</sup> As above.

<sup>52</sup> Doxey (n 42 above) 45.

<sup>53</sup> As above.



The economic sanctions enshrined under the Covenant were part of a wider efforts to promote the peaceful coexistence between nations, however such economic sanctions proved to be ineffective at achieving their intended targets.<sup>54</sup> According to Dehne:

In the case of the Italian invasion of Ethiopia and the Japanese occupation of Manchuria, the League proved incapable of forcing recalcitrant members to do the League's bidding and thus was fundamentally unable to enforce international law as embodied in the League Covenant.<sup>55</sup>

Even though the measures were proven to be ineffective, the League Covenant and subsequent state practice recognized economic sanctions as a policy option separate from the use of military action.<sup>56</sup> After the outbreak of World War II, states began to use economic sanctions such as the banning of export of certain goods to adversary states, blacklisting individuals and companies in neutral states which were to weaken the economic capabilities of the belligerents. These measures of economic deprivation imposed significant economic pressure on the belligerent state.<sup>57</sup>

In the aftermath of World War II, the devastation resulting from war led the states to realize the need to prevent the destruction caused by military conflicts in the future, which resulted in the introduction of international law rules governing the use of force under the Charter of the United Nations (UN Charter).<sup>58</sup> The UN Charter enshrined the limited circumstances under which states may legitimately resort to military action.<sup>59</sup> The introduction of these rules banning the use of force meant that states had to turn to other forms of coercion.<sup>60</sup> The Charter established the Security Council, a body entrusted with maintaining of international peace and security.<sup>61</sup> In line with its mandate the Charter confers on the Security Council powers and functions such as deciding on "measures not involving the use of armed force" which includes economic sanctions.<sup>62</sup>

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<sup>54</sup> Bogdanova (n 40 above) 22.

<sup>55</sup> PA Dehne *After the Great War: Economic Warfare and the Promise of Peace in Paris 1919* (2019) 2.

<sup>56</sup> Bogdanova (n 40 above) 22.

<sup>57</sup> JC Zarate *Treasury's War: The Unleashing of a New Era of Financial Warfare* (2013) 5.

<sup>58</sup> Bogdanova (n 40 above) 23.

<sup>59</sup> Charter of the United Nations (UN Charter) art 51.

<sup>60</sup> Bogdanova (n 40 above) 23.

<sup>61</sup> UN Charter art 24.

<sup>62</sup> As above art 41.

Sanctions between 1945 and 1990 were dominated by embargoes and export controls imposed by the Western countries against pro-Soviet states and vice versa.<sup>63</sup> The US embargo against Cuba which is in place since 1960s can best demonstrate the ineffectiveness of such measures. The Cuban embargo's purpose was promotion of human rights and democracy.<sup>64</sup> However, owing to the comprehensive and indiscriminate nature of the embargo it ended up adversely affecting the human rights of Cuban citizens, especially in the areas of economic, social, and cultural rights.<sup>65</sup> As Coll points out “the embargo has also failed since its inception to contribute to the promotion of human rights on the island, and it continues to retard any possible political opening by fostering a siege mentality among Cuban leadership.”<sup>66</sup>

Also, during this period the Security Council authorised economic sanctions against the then Rhodesia and South Africa. In 1966 the Security Council determined that the regime in Southern Rhodesia was a threat to the peace and imposed a prohibition to supply it with oil.<sup>67</sup> It also called upon other UN members to enforce the oil embargo and to provide special enforcement rights to the United Kingdom.<sup>68</sup> The effectiveness of the sanctions on Rhodesia was contested shortly after its imposition.<sup>69</sup> Commenting on the Rhodesia sanctions, Austin noted that sanctions can only be effective when they are coupled with military force and if they are universally enforced.<sup>70</sup> Austin also pointed out the negative impacts of the sanctions on the civilian population in Rhodesia as well as on the economies of the neighbouring countries.<sup>71</sup> After a year of subjection to sanction, Harris noted, despite the economic deprivations it became apparent that sanctions imposed were not an effective means to achieve the expected political outcomes and “political reaction has been the opposite of what was intended, and instinct of survival has united the whites in Rhodesia and political sympathy has shifted towards the uncompromising, extremist wing of the Rhodesian Front.”<sup>72</sup>

Similarly, the Security Council called upon the UN member states to impose economic sanctions against South Africa.<sup>73</sup> A glance at the literature on the economic sanctions imposed

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<sup>63</sup> Bogdanova (n 40 above) 24.

<sup>64</sup> AR Coll ‘Harming human rights in the name of promoting them: The case of the Cuban embargo’ (2007) 12 *UCLA Journal of International Law and Foreign Affairs* 272

<sup>65</sup> As above 273.

<sup>66</sup> As above.

<sup>67</sup> UN Security Council Resolution 221 (1966) UN Doc S/RES/221.

<sup>68</sup> As above.

<sup>69</sup> D Austin ‘Sanctions and Rhodesia’ (1966) 22 *World Today* 106.

<sup>70</sup> As above.

<sup>71</sup> As above.

<sup>72</sup> C Harris ‘Note of the Month. Political and Economic Effects of Sanctions on Rhodesia.’ (1967) 23 *The World Today* 1.

<sup>73</sup> United Nations Security Council Resolution 569 (1985) UN Doc S/RES/569.

on South Africa reveals that most scholars consider them to have been effective.<sup>74</sup> As Neier remarks, “acknowledgment of the role of sanctions in helping to end apartheid is not universal, but it is widespread.”<sup>75</sup> Neier further notes that sanctions were not the only factor that brought an end to apartheid.<sup>76</sup> In fact, South Africa was an important ally to the west during the cold war and the regime at the time considered itself as “bastion of anticommunism” in southern Africa.<sup>77</sup> However, after the end of cold war, the emerging new world order would leave the regime completely isolated, and the only way out was to renounce apartheid.<sup>78</sup>

### **2.3.2 The ‘sanctions decade’ and the emergence of ‘targeted’ or ‘smart’ sanctions**

Following the end of the Cold War economic sanctions became a popular tool to enforce international law. According to some scholars this prompted what they termed as “the sanctions decade”, which refers to the increased use of economic sanctions starting from the end of the Cold War.<sup>79</sup>

The majority sanctions by the UN Security Council were imposed after 1990.<sup>80</sup> Even though their effectiveness was subject to debate, the debilitating effects of the sanctions on the civilian population of the targeted states became evident by the mid-1990s.<sup>81</sup> Repressive regimes in these countries were willing to see their vulnerable citizens suffer and used the imposed sanctions as political rallying cry to garner local support by blaming the international community for the suffering of the people and impoverishing their country.<sup>82</sup> For instance, the sanctions imposed against Iraq were severe and disproportionately impacted civilians, particularly the poor and vulnerable section of the population depriving them of basic services such as health care and sanitation. Children and women were among the most affected groups, for instance, infant mortality increased from 47 per 1000 live births during 1984-1989 to 108 per 1000 in 1994-1999, and children under 5 years of age mortality rose from 56 to 131 per 1000 live births following the first round of economic sanctions.<sup>83</sup>

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<sup>74</sup> A Neier ‘Sanctions and Human Rights’ (2015) 82 *Social research* 875.

<sup>75</sup> As above.

<sup>76</sup> As above, 878.

<sup>77</sup> As above.

<sup>78</sup> As above.

<sup>79</sup> L Jones *Societies under Siege: Exploring How International Economic Sanctions (Do Not) Work* (2015).

<sup>80</sup> As above.

<sup>81</sup> KA Elliott ‘Assessing UN Sanctions after the Cold War: New and Evolving Standards of Measurement (UN Sanctions: New Dilemmas and Unintended Consequences)’ (2009) 65 *International Journal* 92

<sup>82</sup> Zarate (n 57 above) 6

<sup>83</sup> MM Ali & IH Shah ‘Sanctions and childhood mortality in Iraq’ (2000) 355 *The Lancet* [http://hmb.utoronto.ca/Old%20Site/HMB303H/Questions/Lancet-Iraq\\_Sanctions.pdf](http://hmb.utoronto.ca/Old%20Site/HMB303H/Questions/Lancet-Iraq_Sanctions.pdf) (accessed 26 August 2022).

Humanitarian exemptions to the sanction measures were introduced in a bid to curb the negative impacts of the sanctions on civilian populations. This paved a way for non-democratic regimes and their allies to benefit themselves at the expense of the civilian population through control of trade permitted under these exemptions.<sup>84</sup> This was evident in the Iraqi Oil-for-Food program which was agreed between the UN and the Government of Iraq to lessen civilian suffering. The program faced backlash after reports of mismanagement and corruption inside the UN system surfaced.<sup>85</sup>

The humanitarian crisis which unfolded following the comprehensive economic sanctions in Iraq marked a turning point in the sanctions debate.<sup>86</sup> The effectiveness and legitimacy of the sanctions policy were questioned since the severe suffering inflicted on the civilians of the target countries did not bring any political gain and scholars advocated for the reformulation of the sanctions policy.<sup>87</sup> As Elliot notes “By the mid-1990s, it was no longer enough for sanctions to achieve foreign policy goals, they had to do so without excessive harm to civilians in the target country, or third countries”.<sup>88</sup> Consequently, the international community came to the realization that sanctions, as they were being applied at the time, were ineffective. After the legitimacy of comprehensive economic sanctions had been undermined, “smart” or “targeted” sanctions started to emerge. Targeted sanctions, as the name suggests, are sanctions imposed against specific individuals, groups or entities responsible for the policies or behaviour which the sanctioning state finds objectionable.<sup>89</sup> Usually, such sanction measures include travel bans, freezing of assets and a prohibition on directly or indirectly providing financial assistance to economic interests of the sanctioned individuals and entities.<sup>90</sup>

### **2.3.3 The rise of unilateral economic sanctions**

It is worth noting that the use of unilateral economic sanctions is on the rise in the last decades.<sup>91</sup> As Mulder notes the major global players such as the EU and the US resort to sanctions for almost all foreign-policy crisis that arises.<sup>92</sup> By way of example, in the aftermath of its withdrawal from Kabul in 2021, the US government froze more than US\$9 billion in

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<sup>84</sup> Zarate (n 57 above) 6.

<sup>85</sup> E MacAskill, ‘Oil-for-Food Report Condemns “corrupt” UN’ *The Guardian* (2005) <https://www.theguardian.com/world/2005/sep/07/iraq.ewenmacaskill> (accessed 26 August 2022).

<sup>86</sup> Bogdanova (n 38 above) 31.

<sup>87</sup> Sanchez (n 32 above) 15.

<sup>88</sup> Elliott (n 81 above) 92.

<sup>89</sup> Bogdanova (n 40 above) 32.

<sup>90</sup> Chidenbere (n 8 above) 51.

<sup>91</sup> Bogdanova (n 40 above) 36.

<sup>92</sup> E Moulder ‘How America learned to love (ineffective) sanctions’ 30 January 2022 <https://foreignpolicy.com/2022/01/30/us-sanctions-reliance-results/> (accessed 26 August 2022).

Afghan central bank assets held in the US and stopped shipments of cash to Afghanistan assets to keep the Taliban led government from accessing the money.<sup>93</sup> Sanctions are also the chief instrument with which the Biden administration and its European allies are dealing with the violations resulting from Russia's invasion of Ukraine in early 2022.<sup>94</sup>

There are several reasons behind the increasing use of unilateral economic sanctions. First and foremost, as Zarate notes: "Economic sanctions and financial influence are now the national security tools of choice when neither diplomacy nor military force proves effective or possible."<sup>95</sup> Second, the increasing deployment of unilateral economic sanctions can also be explained by the growing consensus against the effectiveness of military interventions. As Drezner points out: "As public resistance to military interventions increases, and as foreign aid budgets are slashed, policy-makers are turning more and more to economic coercion as an attractive substitute to advance the national interest."<sup>96</sup> Economic sanctions are more acceptable for society in the sanctioning states and are also 'politically cheap' which explains their significantly increased use.<sup>97</sup>

#### **2.4 The rationalizations for the use of unilateral economic sanctions**

Although the motives behind the economic sanction measures may be legitimate, the mechanism used to obtain such change is problematic. Economic sanctions are based on the premise that a country's population will rise up in response to the government's failure to address its citizens' most basic needs (such as food, shelter, and employment) if trade ties and other benefits are severed.<sup>98</sup> The desired consequence is that the aggrieved people in the sanctioned state will rise against the government to demand change which will then force the target government to change policies and practices which the sanctioning state finds objectionable.<sup>99</sup>

However, the assumed causal link between economic loss and change in policy by the sanctioning governments does not always exist. If the people in the target country could not revolt against the government and demand change, then the sanctions would not be able to

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<sup>93</sup>S Mohsin 'US freezes Afghan central bank's assets of \$9.5bn' 18 August 2021 <https://www.aljazeera.com/economy/2021/8/18/us-freezes-afghan-central-banks-assets-of-9-5bn> (accessed 26 August 2022)

<sup>94</sup>US, EU and UK increase pressure on Russia with further sanctions 10 August 2022 <https://www.shearman.com/en/perspectives/2022/08/us-eu-and-uk-increase-pressure-on-russia-with-further-sanctions> (accessed 26 August 2022).

<sup>95</sup> Zarate (n 57 above) 11.

<sup>96</sup> DW Drezner *The Sanctions Paradox: Economic Statecraft and International Relations* (1999) 8.

<sup>97</sup> Bogdanova (n 40 above) 42.

<sup>98</sup> Nyun (n 29 above) 467.

<sup>99</sup> As above.

work.<sup>100</sup> The ability of the people in the target country to demand change in a repressive regime will be significantly different than in a democratic country. In a dictatorial regime, the premise underlying economic sanctions that the people in every sanctioned state can hold their government accountable is sophistry. The other issue worth noting here is that, often sanctioning countries fail to consider the available alternatives when a government of a certain target country is not accountable to its citizens or cracks down on dissent often citing “national security”.<sup>101</sup>

## **2.5 The ‘unintended’ targets of unilateral economic sanctions**

It is obvious that the civilian population is targeted, and their lives and well-being are impacted by unilateral economic sanctions because their mechanism is geared toward creating popular grievance in the targeted country.<sup>102</sup> These sanctions affect people and their families in varying ways, depending on their degree of vulnerability. The most vulnerable members of society tend to bear the brunt of the negative effects of economic sanctions, while the economic and political elites avoid the negative effects and might even benefit financially from the use of loopholes in the sanctions regime and black markets that are going to inevitably emerge.<sup>103</sup> Therefore, it is safe to say that economic sanctions target civilians in a country, especially the most vulnerable members of society.

When a country is hit with economic sanctions, there is always an accompanying claim which says that while the sanctions are meant to hurt the economy, they are not meant to hurt the most vulnerable people in the country.<sup>104</sup> Yet, it could be argued that those who make use of economic sanctions intend their foreseeable consequences. Those who impose sanctions are not oblivious to the negative effects of sanctions on civilians; indeed, the sanctioning states are counting on the negative effects of sanctions on civilians to accomplish the objectives of the sanctions, since sanctions are imposed on the economy of the target country, which is mainly composed of the civilian population.

## **2.6 Unilateral economic sanctions and human rights**

Unilateral economic sanctions, especially those imposed in the form of trade restrictions, withdrawal of trade benefits, or restrictions on financial and investment flows between sanctioning and target states, are widely agreed upon to have a negative effect on the rights of

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<sup>100</sup> As above.

<sup>101</sup> As above.

<sup>102</sup> Chidenbere (n 8 above) 111.

<sup>103</sup> Zarate (n 57 above) 5.

<sup>104</sup> Chidenbere (n 8 above) 112.

civilians in both sanctioned and non-sanctioned states.<sup>105</sup> Due to the fact that regardless of their declared aims, such as promoting human rights in the sanctioned country or resolving conflict, those who will shoulder the negative impacts of such measures are not the governments they are meant to affect, but rather the general population and especially vulnerable groups in society.<sup>106</sup>

Different scholars have criticized the very rationale behind sanctions where the anticipated result is that sanctions will inflict hardship on civilians forcing either to initiate reforms by sanctioned state government or the population to rise up and demand change, such sanctions are, as Howlett argues by definition, “inhumane and contrary to international human rights law”.<sup>107</sup> Others have, however, countered the criticism of economic sanctions by arguing that they have contributed to the development of international human rights norms and thus strengthened international human rights law. As Cleveland argues “economic sanctions have an importance beyond their classical role in seeking to punish and alter a foreign state's behaviour - that of assisting in the international definition, promulgation, recognition, and domestic internalization of human rights norms.”<sup>108</sup>

As demonstrated in the previous discussions economic sanctions result in negative effect on the population of target countries target by sanctions. If economic sanctions have such effects, as Howlett argues, directly implicate international human rights obligations found in the CESCRR including the right to education, health, water and sanitation, and work.<sup>109</sup> As opposed to the ICCPR which obliges state parties to ensure rights “within their own territories or subject to its jurisdiction”, the CESCRR requires state parties to take steps “individually and through international assistance and co-operation” to ensure fulfilment of the relevant rights.<sup>110</sup> However, this language is weakened by the development of customary law to the contrary as a result of the increased use of economic sanctions that affect the socio-economic rights in the targeted countries.<sup>111</sup> Thus, the recurrent reliance on economic sanctions by certain countries

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<sup>105</sup> UN Human Rights Council ‘Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability’ (2015) A/HRC/28/74.

<sup>106</sup> UN ‘Supplement to an agenda for peace: Position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations’ (1995) A/50/60-S/1995/1 para 70.

<sup>107</sup> A Howlett ‘Getting “Smart”: Crafting economic sanctions that respect all human rights’ (2004) 73 *Fordham Law Review* 1206.

<sup>108</sup> SH Cleveland ‘Norm Internalization and U.S. Economic Sanctions’ (2001) 26 *Yale Journal of International Law* 29.

<sup>109</sup> Howlett (n 106 above).

<sup>110</sup> International Covenant on Economic, Social and Cultural Rights (CESCRR) art 2(1).

<sup>111</sup> Howlett (n 106 above) 1232.

not only underpins the conception that states do not have to take steps to assist towards the realisation of economic, social and cultural rights but also that states are free to violate these rights in third countries without consequences, contrary to the norm that states should cooperate with to contribute to the fulfilment of CESCR obligations.<sup>112</sup>

The Committee on Economic, Social and Cultural Rights (Committee on ESCR), in its general comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights, draws attention to the fact that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security.”<sup>113</sup> The Committee further stated that “lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action.”<sup>114</sup> Although this comment was adopted in relation to sanctions under the UN Security Council, it is equally relevant to unilateral economic sanctions.

## **2.7 The legitimacy of unilateral economic sanctions under international law**

The issue of whether or not imposing unilateral economic sanctions as a response to egregious human rights violations is a legitimate way to enforce human rights obligations is subject to debate in the international stage. While nations like the US are steadfast supporters of unilateral human rights sanctions, a group of developing nations including China and Russia have been opposing such actions. Some scholars contend that the use of unilateral sanctions to uphold human rights obligations has evolved into a recognized and accepted international norm.<sup>115</sup> Persistent objection by some states, however, calls into question this claim.

China, Russia, and the majority of African nations oppose the use of unilateral sanctions on the grounds that they violate human rights.<sup>116</sup> The UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights has also expressed opposition to these measures.<sup>117</sup> Moreover, in its resolutions since 1996, the UN General Assembly has always criticized the use of unilateral economic sanctions and pointed out how

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<sup>112</sup> As above.

<sup>113</sup> UN Committee on Economic Social and Cultural Rights General Comment 8 para 16.

<sup>114</sup> As above.

<sup>115</sup> Bogdanova (n 40 above) 223.

<sup>116</sup> A Hofer ‘The developed/developing divide on unilateral coercive measures: Legitimate enforcement or illegitimate intervention?’ (2017) 16 *Chinese Journal of International Law* 175.

<sup>117</sup> UN Human Rights Council (n 104 above).



they don't fit with the duty of states to respect human rights.<sup>118</sup> Developing countries that voted in favor of these resolutions say that developed countries use human rights as an excuse to impose unfair economic sanctions.<sup>119</sup> Sanctions related to human rights have thus proven to be highly debatable.

### **2.7.1 Unilateral economic sanctions and the principle of non-intervention**

It is still unclear whether any kind of coercive economic measures, regardless of their intended use, qualifies as unlawful intervention. The UN Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty reaffirms that: “No 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 or to secure from it advantages of any kind.”<sup>120</sup> From this, we can understand that, intervention encompasses more than just military intervention and includes other types as well. According to the Charter of Economic Rights and Duties of States, a number of fundamental principles, including the non-intervention principle and the principle of respect for human rights and international obligations, shall govern relations between states.<sup>121</sup> It should be emphasized that, in light of these two principles, the idea of the internationalization of human rights seeks to oblige each state to respect and protect the human rights of subjects under its jurisdiction and to make such commitments enforceable under international law. Therefore, it may be unpersuasive to claim that using economic pressure to compel a state to uphold its obligations under the numerous human rights treaties would be a violation of the principle of non-intervention given that the vast majority of states have accepted various obligations under those treaties.

Some scholars disagree with the claim that coercive economic measures taken to address severe human rights violations are inherently illegal. Cleveland, commenting on the prohibition on intervention and unilateral sanctions, stated that: “Customary international law traditionally has allowed states to use economic coercion for a wide range of purposes, and the relatively frequent use of economic sanctions by the United States and other developed nations since World War II makes it difficult to conclude that a customary international norm exists

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<sup>118</sup> Hofer (n 115 above) 187.

<sup>119</sup> As above.

<sup>120</sup> UN General Assembly Resolution 2131 ‘Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty’ (21 December 1965).

<sup>121</sup> UN General Assembly Resolution 39/163 ‘Charter of Economic Rights and Duties of States’ (17 December 1984) UN Doc a/res/39/163.

against the practice.”<sup>122</sup> Cleveland further notes, “human rights are matters of international concern which justify intervention by the international community.”<sup>123</sup> Similarly, Damrosch notes that “there is an increasing trend not only toward the use of economic sanctions to promote human rights objectives, but also toward acceptance of the legitimacy of such sanctions when employed for that purpose.”<sup>124</sup> However, this view is not shared by all scholars. For instance, Hofer argues that with regards to the legality of unilateral economic sanctions, there is a divide between developed and developing countries, and the purpose behind the imposition of the sanctions seem to do not matter for their opponents.<sup>125</sup>

The main conclusion is that unilateral economic sanctions can still be challenged, even if they are tied to a goal like protecting human rights and it is not clear if states can't take these to target regimes that abuse human rights, despite the principle of non-intervention. Answering this question requires one to establish whether or not human rights violations are considered domestic or international issue. In this regard, Sellers notes: “Even if economic sanctions were in some very broad sense ‘intervention’ or ‘interference,’ economic sanctions against human rights violations would not invade the exclusively ‘domestic’ jurisdiction of any state, because human rights are a universal, and not a purely domestic or national concern.”<sup>126</sup> It should be noted that not all countries share this view. As Poh points out, China's arguments against sanctions centre on the claims that they violate international law by interfering in the internal affairs of other states and that human rights should take a back seat to the sovereign rights of the country in question.<sup>127</sup>

### **2.7.2 Unilateral economic sanctions and the UN Draft articles on state responsibility for internationally wrongful acts**

The creation of the Draft Articles on Responsibility of States (Draft articles)<sup>128</sup>, codifies customary international law rules on state responsibility and the adoption of countermeasures as an instrument of response by the injured state. The Draft articles provide that regardless of the gravity of the wrongful act, the counter measure adopted should not affect “obligations for

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<sup>122</sup> Cleveland (n 104 above) 53.

<sup>123</sup> As above, 54.

<sup>124</sup> LF Damrosch ‘Politics across borders: Non-intervention and nonforcible influence over domestic affairs’ (1989) 83 *American Journal of International Law* 46.

<sup>125</sup> Hofer (n 115 above).

<sup>126</sup> M Sellers ‘Economic Sanctions against Human Rights Violations’ in L Forlati and L-A Sicilianos (eds.), *Economic Sanctions in International Law* (2004) 489.

<sup>127</sup> A Poh *Sanctions with Chinese Characteristics: Rhetoric and Restraint in China’s Diplomacy* (2021) 76.

<sup>128</sup> Draft articles on responsibility of states for internationally wrongful acts (Draft articles).

protection of fundamental human rights”.<sup>129</sup> Economic countermeasures may be legal in certain circumstances, such as when used to punish a state for violating an international law and when relied on by the victimized state.<sup>130</sup> Some countries have put in place economic sanctions on their own to stop human rights abuses in other countries. This allows us to check off the first requirement, which is the existence of a breach of an international obligation. However, for human rights violations establishing the second requirement is challenging. In particular, it is up for debate whether a state can claim to be an “injured state” under the terms of the draft articles if human rights violations happen outside of its borders and people from other countries are hurt.<sup>131</sup>

For the purposes of invoking international responsibility, the Draft articles define five types of injured states: “a state to which the breached obligation is owed to individually; if the obligation breached is owed to the group of states or the international community as a whole and the breach of that obligation particularly affects that state or if the breach is of such a character as to radically change the position of all the other states to which the obligation is owed with respect to the further performance of the obligation.”<sup>132</sup> As Crawford notes: “Human rights obligations are not, in the first instance at least, owed to particular states, and it is accordingly difficult to see how a human rights obligation could itself be the subject of legitimate countermeasures.”<sup>133</sup> This may be a valid point of view from a legal standpoint. However, it should be noted that serious human rights violations can threaten national, regional, and international security.<sup>134</sup> Therefore, one can argue that obligations enshrined under international human rights covenants are owed, at least in part, to the other state parties to those covenants to the extent that such obligations are intended to protect peace and stability by providing human rights guarantees,<sup>135</sup>

Given the foregoing, it's important to emphasize that, within the context of the Draft articles, economic sanctions for human rights violations are most properly classified as third-party countermeasures or countermeasures imposed by non-injured states.<sup>136</sup> The narrow definition of direct injury consequently bars both states and individuals from bringing claims

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<sup>129</sup> As above, art 50(1)(b).

<sup>130</sup> As above, art 42.

<sup>131</sup> Bogdanova (n 40 above) 234.

<sup>132</sup> Draft articles (n 124 above) art 42.

<sup>133</sup> J Crawford *State Responsibility: The General Part* (2013) 692.

<sup>134</sup> Bogdanova (n 40 above) 235.

<sup>135</sup> As above

<sup>136</sup> As above

against states responsible for human rights violations.<sup>137</sup> As Bogdanova argues, this conclusion also stands with regards to the human rights violations that have the status of *jus cogens* or *erga omnes*.<sup>138</sup>

There is a wide range of opinion when it comes to the legitimacy of third-party countermeasures. For instance, Dawidowicz notes that the legal status of third-party countermeasures has always been murky.<sup>139</sup> Furthermore, Dawidowicz provides a number of examples of such countermeasures imposed against Libya, Syria, and Russia to claim that there is an ample state practice supported by *opinio juris* to argue in favor of legality of third-party countermeasures.<sup>140</sup> Hillgruber makes a similar case, arguing that states tacitly agree to rely on countermeasures due to the ineffective enforcement mechanisms embedded within the human rights treaties.<sup>141</sup> As Hillgruber argues “human rights agreements implicitly grant each contracting State the right to respond to violations of the agreement by other States using any one of the entire range of ‘self-help’ instruments permitted under international law, i.e. by having recourse to reprisals.”<sup>142</sup> Commenting on the Draft articles’ uncertainty regarding third-party countermeasures, Paulus argues that “if counter measures are permitted in cases of simple breach of a bilateral obligation, it is inconceivable to provide a lower threshold of protection to those obligations considered *erga omnes* or even *jus cogens*”<sup>143</sup>

These debates show that the scholarly community has been debating the legitimacy of third-party countermeasures for a long time due to the ambiguous language of the Draft articles. The issue of whether or not unilateral sanctions imposed in response to human right violations are legal remains debatable due to the fact that they are third-party countermeasures in the sense described in the Draft articles.

## **2.8 Measuring the effectiveness of economic sanctions**

Assessing the effectiveness of a certain economic sanction episode triggers a continuing debate among scholars. This is because there is a lack of agreed-upon metrics for gauging the

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<sup>137</sup> M Dawidowicz ‘Public Law Enforcement without Public Law Safeguards? An Analysis of State Practice on Third-Party Countermeasures and Their Relationship to the UN Security Council’ (2007) 77 *British Yearbook of International Law* 333.

<sup>138</sup> Bogdanova (n 40 above) 235.

<sup>139</sup> Dawidowicz (n 134 above) 3.

<sup>140</sup> As above, 6.

<sup>141</sup> C Hillgruber ‘The Right of Third States to Take Countermeasures’ in C Tomuschat and JM Thouvenin (eds) *The Fundamental Rules of the International Legal Order* (2006) 273.

<sup>142</sup> As above, 274.

<sup>143</sup> A Paulus ‘Whether Universal Values Can Prevail over Bilateralism and Reciprocity’ in Antonio Cassese (ed) *Realizing Utopia: The Future of International Law* (2012) 91.

effectiveness of a certain round of sanctions. The benchmarks to which the success of the sanctions will be measured against are also subject to debate. The most comprehensive study on the effectiveness of the sanctions by Hufbauer *et al* assessed the effectiveness of sanctions from the vantage point of achieving the changes the sanctioning state intended in the target state.<sup>144</sup> They identified the foreign policy goals pursued in each case based on the statements made by the sanctioning country's officials and the assessments of journalists and historians of the sanctions episode.<sup>145</sup> In reality, policymakers often exaggerate their stated objectives in order to gain domestic support for imposing economic sanctions or to strengthen their hand in negotiations with the target in the hopes of negotiating a more favourable settlement. For this reason, it is not sufficient to gauge the effectiveness of sanctions solely by whether or not the publicly stated goals have been achieved.

Some scholars have argued that it is difficult to quantify the results of economic sanctions for methodological reasons.<sup>146</sup> Since sanctions are frequently paired with diplomatic efforts, incentives, and threats of force, it is difficult to establish a causal link between the sanctions and the changes in the target state, making it difficult to measure the independent success rate of a sanction.<sup>147</sup> On the other hand, it is challenging to quantify the negative effects of a sanction and establish a causal relationship between the two.<sup>148</sup> It's hard to disentangle the negative effects of a sanction from the negative effects of a state's current conditions, such as civil war, human rights violations, and various socioeconomic problems.<sup>149</sup>

In order to analyse the effectiveness of a given sanctions, the following questions are worth considering “(1) Did sanctions help to convince the targeted regime to comply at least partially with the senders’ demands? (2) Did sanctions contribute to an enduring, successful bargaining process leading to a negotiated settlement?”<sup>150</sup> Establishing the effectiveness of a given round of economic sanctions depends on what objectives it is measured against.<sup>151</sup> Thus, effectiveness could be analysed by comparing the variables that would impact the intended sanctions objectives before and after the imposition of the sanctions.<sup>152</sup>

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<sup>144</sup> Hufbauer *et al* (n 19 above).

<sup>145</sup> As above.

<sup>146</sup> B Andronik ‘An inhumane response the humanitarian consequences of sanctions: A case study of Syria’ (2018) *UCL Global Governance Institute Working Paper Series 8*

<sup>147</sup> As above.

<sup>148</sup> As above.

<sup>149</sup> As above.

<sup>150</sup> As above.

<sup>151</sup> Nyun (n 29above) 497.

<sup>152</sup> As above

**Conclusion**

This chapter analysed the concept and evolution of unilateral economic sanctions and the rationale behind this sanctions policy. It established that even if it is argued that unilateral economic sanctions can reduce the human rights violations in the sanctioned state, sanctions usually miss their target and worsen the human rights conditions. Economic sanctions' effectiveness must be assessed considering both their stated goals and the domestic dynamics of the sanctioned state. Thus, the next chapter will introduce the context in the case study.

## **Chapter 3: The Tigray conflict and US's sanction measures: Introduction to the case study**

### **3.1 Introduction**

The war between Ethiopian government and rebel troops have been in the Tigray region has caused widespread instability throughout the country. As the war escalates, so too has the international community's concern over human rights violations, which are having a devastating impact on the rights and well-being of civilians. The US government responded to the reported human rights violations with unilateral sanction measures including suspending Ethiopia's AGOA preferential trade benefits. Analysis of the US' unilateral sanctions strategy against Ethiopia requires a firm grasp of the conflict's underlying dynamics and the chain of events that led to Washington's decision to impose unilateral economic sanctions. Therefore, the purpose of this chapter is to shed light on the conflict's context and lay the groundwork for the sanctions analysis.

The background for the conflict in Ethiopia is long and complex, many factors have accumulated to spur the outbreak of the conflict. This chapter highlights the major events that have shaped the conflict, the human rights concerns and the international institutional as well as the US responses to the human rights concerns in relation with the conflict.

### **3.2 Background: The conflict in Tigray**

Ethiopia, the oldest nation state in Africa, is home to over 80 distinct ethnic groupings, and tension between them has persisted for decades. The monarchy of Emperor Haile Selassie ruled the country until the socialist revolution in 1974.<sup>153</sup> The TPLF, an ethnic-based rebel group, led a coalition of rebel forces that overthrew the socialist military regime that ruled the country following the overthrow of Haile Selassie. The country then became a multi-ethnic federation in 1991, and later the TPLF-led coalition formed the EPRDF, a coalition of ethnic based parties dominated by the TPLF, which ruled the country until it was dissolved in late 2019.<sup>154</sup> During EPRDF rule, Tigrayan ethnic group, which constitute roughly 6% of the population, disproportionately held top government positions.<sup>155</sup> In addition, the government's abuse of power and rampant corruption spawned resentment within Ethiopia's broader population.<sup>156</sup>

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<sup>153</sup> Ethiopia: Introduction and quick facts 13 August 2022 <https://www.britannica.com/place/Ethiopia/Economy> (accessed 10 September 2022).

<sup>154</sup> As above.

<sup>155</sup> M Kelecha 'Protest, repression and revolution in Ethiopia' 24 January 2019 <https://roape.net/2019/01/24/protest-repression-and-revolution-in-ethiopia/> (accessed 10 September 2022).

<sup>156</sup> As above.

In 2018, in the face of rising pressure on the ruling party due to two-year-long protests, the TPLF has agreed to surrender the leadership,<sup>157</sup> and the ruling coalition elected Abiy Ahmed as Prime Minister.<sup>158</sup> Within few months of coming on to power Abiy's government sweeping political and economic reforms.<sup>159</sup> However, despite the vast reform measures undertaken by Abiy's government, there were growing concerns about how the transition was being managed.<sup>160</sup> Reports about the shrinking political space, arbitrary arrests and harassment of journalists, opposition figures started to emerge<sup>161</sup> with some accusing the prime minister, of trying to tighten his grip to power and routing Ethiopia back to authoritarian rule.<sup>162</sup> At the time, while the ostensibly peaceful transfer of power received praise, astute observers worried that a military conflict with the TPLF was inevitable.<sup>163</sup> In the meantime, the TPLF used its influence on the economy and the security apparatus of the country and resources to thwart significant change across the nation as ethnic violence that had been suppressed during its rule erupted.<sup>164</sup>

On 4 November 2020 an attack by TPLF forces on a military base in the Tigray region forced a military confrontation between the federal armed forces and the TPLF.<sup>165</sup> The federal government announced the commencement of what it referred to as a 'law enforcement

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<sup>157</sup> Ethiopia PM Hailemariam Desalegn in surprise resignation 15 February 2018 <https://www.bbc.com/news/world-africa-43073285> (accessed 10 September 2022).

<sup>158</sup> Abiy Ahmed elected as chairman of Ethiopia's ruling coalition 18 March 2018 <https://www.aljazeera.com/news/2018/3/28/abiy-ahmed-elected-as-chairman-of-ethiopias-ruling-coalition> (accessed 10 September 2022).

<sup>159</sup> J Burke 'These changes are unprecedented': How Abiy is upending Ethiopian politics' *The Guardian* 8 July 2018 <https://www.theguardian.com/world/2018/jul/08/abiy-ahmed-upending-ethiopian-politics> (accessed 10 September 2022).

<sup>160</sup> Freedom House 'Ethiopia Working Group: Ethiopia's path to a more stable and democratic future is increasingly at risk' 12 August 2020 <https://freedomhouse.org/article/ethiopia-working-group-statement-ethiopias-path-more-stable-and-democratic-future> (accessed 10 September 2022).

<sup>161</sup> Human Rights Watch 'World Report 2021' 23 January 2021 [https://www.hrw.org/sites/default/files/media\\_2021/01/2021\\_hrw\\_world\\_report.pdf](https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf) 235-238 (accessed 10 September 2022).

<sup>162</sup> A Demissie & A Soliman 'Unrest threatens Ethiopia's transition under Abiy' 24 July 2020 <https://www.chathamhouse.org/2020/07/unrest-threatens-ethiopias-transition-under-abiy-ahmed> (accessed 10 September 2022).

<sup>163</sup> To End Ethiopia's War, Biden Needs to Correct Course *foreign policy* 28 December 2021 <https://foreignpolicy.com/2021/12/28/ethiopia-tigray-abiy-tplf-war-biden-needs-to-correct-course/> (accessed 10 September 2022).

<sup>164</sup> Ethiopia's Cruel Con game *Forbes* 3 March 2017 <https://www.forbes.com/sites/realspin/2017/03/03/ethiopias-cruel-con-game/?sh=3b1035e429d0> (accessed 10 September 2022); Y Woldemariam 'State formation and disintegration in Ethiopia' 21 November 2019 <https://blogs.lse.ac.uk/africaatlse/2019/11/21/state-formation-disintegration-ethiopia-ethnic-conflict/> (accessed 10 September 2022).

<sup>165</sup> AM Bisseda 'Ethiopia: PM Abiy orders military attack against the TPLF' *The Africa Report* 4 November 2020 <https://www.theafricareport.com/48991/ethiopia-pm-abiy-orders-military-attack-against-the-tplf/> (accessed 12 September 2022).



operation' in Tigray region against 'treasonous acts' committed by the rebel forces,<sup>166</sup> and the parliament designated TPLF as a terrorist group.<sup>167</sup> TPLF leaders admitted to the "pre-emptive strike," boasting of killing all the former comrades-in-arms who had resisted their takeover<sup>168</sup>.

The Ethiopian defence forces, backed by Eritrean and local ethnic militias, undertook ground operations and airstrikes. In late November 2020, the government took Tigray's capital Mekele from rebel control and announced the end of military operations and also established an interim regional administration.<sup>169</sup> In June 2021, the rebel forces launched new offensive which marked a major turning point in the conflict. In less than two weeks the rebels took back Mekele and most parts of the region forcing the Ethiopian armed forces to withdraw from much of Tigray.<sup>170</sup> The federal government then announced a unilateral ceasefire on 28 June 2021.<sup>171</sup> However, the government's unilateral declaration of a ceasefire was not reciprocated. TPLF dismissed the ceasefire as cover for military defeat and pledged to "liberate" Tigray.<sup>172</sup>

The warring parties' fortunes fluctuated, the offensive launched by the rebel forces in July 2021 marching towards the nation's capital, Addis Ababa, in an attempt to overthrow the federal government did not succeed due in part to the federal government's use of drone technology, supplied by United Arab Emirates, Turkey and Iran, to carry out attacks against the rebel forces and significant popular mobilisation by the federal and regional governments in Ethiopia.<sup>173</sup> The rebel forces then retreated to their strong hold in Tigray region in December

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<sup>166</sup> The Organization for World Peace 'Tigray Conflict' [https://theowp.org/crisis\\_index/tigray-conflict/#:~:text=The%20Law%20Enforcement%E2%80%9D%20operation%20in%20Tigray%20by%20the.Front%20%28TPLF%29%20has%20resulted%20in%20a%20humanitarian%20crisis](https://theowp.org/crisis_index/tigray-conflict/#:~:text=The%20Law%20Enforcement%E2%80%9D%20operation%20in%20Tigray%20by%20the.Front%20%28TPLF%29%20has%20resulted%20in%20a%20humanitarian%20crisis). (accessed 12 September 2022).

<sup>167</sup> Tigray conflict: Ethiopia lists TPLF as a terrorist group 6 May 2021 <https://www.africanews.com/2021/05/06/tigray-conflict-ethiopia-lists-tplf-as-a-terrorist-group/> (accessed 12 September 2022).

<sup>168</sup> TPLF Admits Sparking Tigray Conflict in Ethiopia 14 November 2020 <https://tesfanews.net/tplf-spokesman-admits-sparking-tigray-conflict-ethiopia/> (accessed 12 September 2022).

<sup>169</sup> Ethiopia's Tigray crisis: PM claims capture of regional capital Mekelle 29 November 2020 <https://www.bbc.com/news/world-africa-55111061> (accessed 12 Sep 2022).

<sup>170</sup> TPLF says Ethiopian gov't claim of Mekelle withdrawal a 'lie' 30 June 2021 <https://www.aljazeera.com/news/2021/6/30/army-can-re-enter-tigray-within-weeks-if-needed-govt-official> (accessed 12 Sep 2022).

<sup>171</sup> As above.

<sup>172</sup> As above.

<sup>173</sup> D Walsh 'Foreign drones tip the balance in Ethiopia's civil war' *Irish Times* 21 December 2021 <https://www.irishtimes.com/news/world/africa/foreign-drones-tip-the-balance-in-ethiopia-s-civil-war-1.4761181> (accessed 13 September 2022).

2021. Following their retreat, the government stopped its military advances in Tigray and declared a humanitarian truce on 24 March 2022, which the rebel leaders reciprocated.<sup>174</sup>

The conflict has destabilised the country leaving thousands of people dead,<sup>175</sup> with hundreds of thousands in severe famine conditions.<sup>176</sup> At the time of writing, the destructive war is still far from ending with renewed fighting erupting on the border of the Tigray region in northern Ethiopia in late August 2022, ending a humanitarian truce declared by the government,<sup>177</sup> and raising concerns for the millions of people already stuck in one of the worst humanitarian disasters in the world today.

### 3.3 Human rights concerns in the Tigray conflict

Even though physical access to the conflict-affected area and telecommunications problems in the Tigray have hindered reporting on human rights violations since the war began, wide range of human rights violations and abuses, including mass killings, sexual violence, and military targeting of civilians committed by both sides to the conflict have been reported.<sup>178</sup>

The UN High Commissioner for Human Rights noted “deeply distressing reports of sexual and gender-based violence, extrajudicial killings, widespread destruction and looting of public and private property by all parties continue to be shared with us.”<sup>179</sup> The commissioner further noted that her office had corroborated information on several incidents, including the shelling of cities and mass killings by Eritrean forces in Axum and Dengelat.<sup>180</sup> UN officials

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<sup>174</sup> Amnesty International ‘Ethiopia: Federal government humanitarian truce in Tigray’ <https://www.amnesty.org/en/latest/news/2022/03/ethiopia-federal-government-humanitarian-truce-in-tigray-is-a-positive-step-forward-and-must-lead-to-humanitarian-access/> (accessed 13 September 2022).

<sup>175</sup> B Ghosh ‘The World’s Deadliest War Isn’t in Ukraine, But in Ethiopia’ *Washington Post* 23 March 2022 [https://www.washingtonpost.com/business/the-worlds-deadliest-war-isnt-in-ukraine-but-in-ethiopia/2022/03/22/eaf4b83c-a9b6-11ec-8a8e-9c6e9fc7a0de\\_story.html](https://www.washingtonpost.com/business/the-worlds-deadliest-war-isnt-in-ukraine-but-in-ethiopia/2022/03/22/eaf4b83c-a9b6-11ec-8a8e-9c6e9fc7a0de_story.html) (accessed 8 September 2022).

<sup>176</sup> Ethiopia: Half of Tigray region faces ‘severe’ food shortage 20 August 2022 <https://www.dw.com/en/ethiopia-half-of-tigray-region-faces-severe-food-shortage/a-62875733> (accessed 8 September 2022).

<sup>177</sup> H Wilkins ‘Fighting Erupts Again in Ethiopia’s Northern Tigray Region’ *VOA News* 5 September 2022 <https://www.voanews.com/a/fighting-erupts-again-in-ethiopia-s-northern-tigray-region-/6732343.html> (accessed 8 September 2022).

<sup>178</sup> W Brown ‘Massacres, rapes and starvation: Breaking through the blackout to expose Tigray’s ‘crimes against humanity’” *Telegraph* 15 May 2021 [https://www.telegraph.co.uk/global-health/terror-and-security/six-months-ofethiopiasshadowwar/?utm\\_content=telegraph&utm\\_medium=Social&utm\\_campaign=Echobox&utm\\_source=Twitter#Echobox=1621067769](https://www.telegraph.co.uk/global-health/terror-and-security/six-months-ofethiopiasshadowwar/?utm_content=telegraph&utm_medium=Social&utm_campaign=Echobox&utm_source=Twitter#Echobox=1621067769) (accessed 12 September 2022).

<sup>179</sup> Amidst ‘conflict, blanket denials and finger-pointing’, UN rights chief calls for probe in Ethiopia’s Tigray 4 March 2021 <https://news.un.org/en/story/2021/03/1086472> (accessed 12 September 2022).

<sup>180</sup> As above

have further noted Ethiopian and Eritrean armed forces and regional ethnic militias used “widespread and systematic rape and sexual assault” as a weapon of war.<sup>181</sup>

In March 2021, a joint investigation into reported abuses during the conflict by OHCHR and the EHRC was announced.<sup>182</sup> Alleged violations and abuses of international human rights law, international humanitarian law, and international refugee law committed by parties to the war were investigated.<sup>183</sup> The findings of the investigation which was released on 3 November 2021 indicate that abuses and violations of human rights, violations of international humanitarian law, such as attacks on civilians and civilian objects, extra-judicial killings, torture, arbitrary detention, abductions and enforced disappearances and sexual violence, have been committed by all parties to the conflict.<sup>184</sup> The report concludes that some of the violations and abuses amount to crimes against humanity and war crimes.<sup>185</sup>

### **3.4 International institutional responses to the human rights conditions over the conflict in Tigray**

In his address to the Peace and Security Council of the AU on 10 March, 2021, the Ethiopian Prime minister characterized the Tigray conflict as an “African problem” which needs “African solutions”, and, on the allegations of human rights violations in the conflict, he offered to “openly engage with the African Commission on Human and Peoples' Rights in undertaking investigations jointly with the Ethiopian Human Rights Commission.”<sup>186</sup> Accordingly, the ACHPR<sub>2</sub> established a Commission of Inquiry into the situation in the Tigray Region to investigate human rights violations through resolution 482.<sup>187</sup>

The commission of inquiry was established for a renewable period of three months.<sup>188</sup> It has the mandate to investigate, among others, “allegations of violations of international

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<sup>181</sup> UN warns sexual violence being used as weapon of war in Ethiopia's Tigray region 16 April 2021 <https://www.rfi.fr/en/africa/20210416-un-warns-sexual-violence-being-used-as-weapon-of-war-in-ethiopia-s-tigray-region> (accessed 12 September 2022).

<sup>182</sup> UN rights chief agrees to Ethiopia request for joint Tigray inquiry <https://www.reuters.com/article/us-ethiopia-conflict-un-idUSKBN2B934E> (accessed 12 September 2022).

<sup>183</sup> EHRC and OHCHR Joint report on the Alleged Violations of Human Rights in the Tigray Region of the Federal Democratic Republic of Ethiopia <https://hrhrc.org/2021/11/08/ehrc-and-ohchr-joint-report-on-the-alleged-violations-of-human-rights-in-the-tigray-region-of-the-federal-democratic-republic-of-ethiopia/> (accessed 12 September 2022).

<sup>184</sup> As above.

<sup>185</sup> As above.

<sup>186</sup> Statement delivered under AOB to the African Union Peace and Security Council (AUPSC) on the Current Situation in Northern Ethiopia 12 March 2021 <https://twitter.com/AbiyAhmedAli/status/1369313761358647307?s=20> (accessed 12 September 2022).

<sup>187</sup> ACHPR ‘Resolution on the fact-finding mission to the Tigray region in the Federal Democratic Republic of Ethiopia ACHPR /Res 482 (EXT.OS/XXXII)’ 7 May 2021 <https://www.achpr.org/pressrelease/detail?id=583> (accessed 12 September 2022).

<sup>188</sup> As above.

human rights law and international humanitarian law and to gather all relevant information so as to determine whether all the allegations constitute serious and massive violations of human rights.”<sup>189</sup> The Commission of Inquiry's mandate was extended to a period of three months effective from 12 August 2022.<sup>190</sup> At the time of writing, the Commission of Inquiry has not yet concluded its investigations.

A resolution was brought by the EU at the UN Human Rights Council to establish an International Commission of Human Rights Experts on Ethiopia was adopted, by a vote of 32 in favour, 2 against and 13 abstentions, despite objections from Ethiopia's government, which accused the Council of being used as an “instrument of political pressure” and declared it will not cooperate.<sup>191</sup> The Panel of experts consisted of three members have the mandate to “establish the facts and circumstances surrounding the alleged violations and abuses, to collect and preserve evidence, and to identify those responsible.”<sup>192</sup>

Accordingly, the Commission of Human Rights Experts presented its initial findings on 20 September 2022 in which it concluded that it has found reasonable grounds to believe that serious violations, such as “extrajudicial killings, rape, sexual violence, and starvation of the civilian population as a method of warfare have been committed in Ethiopia since 3 November 2020.”<sup>193</sup> The Commission also found reasonable grounds to believe that some of these violations amount to war crimes and crimes against humanity.<sup>194</sup> The government rejected the report claiming, “the Commission has submitted a report of sub-standard quality.”<sup>195</sup> In a statement Ethiopia's permanent representative to the UN in Geneva said “The

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<sup>189</sup> As above

<sup>190</sup> ACHPR ‘Resolution on the Renewal of the Mandate of the Commission of Inquiry on the Situation in the Tigray Region of the Federal Democratic Republic of Ethiopia -ACHPR/Res. 521 (LXXII)’ 02 August 2022 <https://www.achpr.org/sessions/resolutions?id=557> (accessed 12 September 2022).

<sup>191</sup> Human Rights Council decides to establish an International Commission of Human Rights Experts to investigate allegations of violations in Ethiopia 17 December 2021 <https://www.ohchr.org/en/press-releases/2021/12/human-rights-council-decides-establish-international-commission-human-rights> (accessed 16 September 2022).

<sup>192</sup> UN Human Rights Council ‘Resolution on situation of human rights in Ethiopia’ 17 December 2021 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/383/88/PDF/G2138388.pdf?OpenElement> (accessed 16 September 2022).

<sup>193</sup> UN Human Rights Council ‘Report of the International Commission of Human Rights Experts on Ethiopia’ 20 September 2022 <https://reliefweb.int/report/ethiopia/report-international-commission-human-rights-experts-ethiopia-ahrc5146-advance-unedited-version> (accessed 22 September 2022).

<sup>194</sup> As above.

<sup>195</sup> Ethiopia rejects report Of UN human rights experts as biased, politically motivated 22 September 2022 [https://www.fanabc.com/english/ethiopia-rejects-report-of-un-human-rights-experts-as-biased-politically-motivated/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=ethiopia-rejects-report-of-un-human-rights-experts-as-biased-politically-motivated](https://www.fanabc.com/english/ethiopia-rejects-report-of-un-human-rights-experts-as-biased-politically-motivated/?utm_source=rss&utm_medium=rss&utm_campaign=ethiopia-rejects-report-of-un-human-rights-experts-as-biased-politically-motivated) (accessed 22 September 2022).

allegations are unsubstantiated and has not met the standard of proof for such investigations.”<sup>196</sup>

### **3.5 The US's response to the human rights situation in the Tigray Conflict**

After series of US diplomatic engagements failed to result in any meaningful steps being taken by warring parties, the US imposed unilateral sanction measures targeting members of the Ethiopian government and TPLF leaders. The sanction measures are pursuant to Executive Order 14046,<sup>197</sup> which declares a ‘national emergency’ to deal with the threat in Ethiopia.<sup>198</sup> The Executive Order states: “Widespread violence, atrocities, and serious human rights abuse, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.”<sup>199</sup> The Executive Order allows the US Treasury, among others, to deny visas and freeze the assets of individuals and entities who “threaten the peace, security, or stability of Ethiopia, or obstructing a ceasefire or a peace process.”<sup>200</sup> However, at the time of writing, any Ethiopian has not yet been sanctioned under this Executive Order.

Moreover, the biggest arrow in the US's quiver was fired with regards to sanction measures when, against the objection from congressional leaders,<sup>201</sup> the Biden administration moved to suspend Ethiopia’s eligibility for duty-free imports under the AGOA for the reported human rights violations in the conflict. On 2 November 2021, President Biden declared that he has determined Ethiopia is not in compliance with the eligibility requirements for AGOA benefits due to “gross violations of internationally recognized human rights.”<sup>202</sup>

Considering the US’s checkered past with the TPLF regime, many Ethiopians have interpreted the Biden administration’s punitive measures against Ethiopia, as a deliberate effort to cover up crimes committed by the TPLF. During the close to three-decade reign of the TPLF, the US has repeatedly praised the TPLF regime for “exporting stability” to its neighbours in

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<sup>196</sup> As above.

<sup>197</sup> Executive Order on Imposing Sanctions on Certain Persons with Respect to the Humanitarian and Human Rights Crisis in Ethiopia (n 6 above).

<sup>198</sup> As above.

<sup>199</sup> As above.

<sup>200</sup> As above.

<sup>201</sup> Van Hollen, Bass urge Biden administration to reconsider Ethiopia’s suspension from critical AGOA trade program 22 December 2021 <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-bass-urge-biden-administration-to-reconsider-ethiopias-suspension-from-critical-agoa-trade-program> (accessed 12 October 2022).

<sup>202</sup> A Message to the Congress on the Termination of the Designation Ethiopia, Guinea, and Mali as beneficiary sub-Saharan African countries under the AGOA 2 November 2021 <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/02/a-message-to-the-congress-on-the-termination-of-the-designation-of-the-federal-democratic-republic-of-ethiopia-ethiopia-the-republic-of-guinea-guinea-and-the-republic-of-mali-mali-as-beneficia/> (accessed 16 September 2022).

the Horn of Africa and relied on the regime to deal with security threats in the region through the deployment of EDF in conflict-affected areas.<sup>203</sup> In return, the US financed a repressive regime that maintained stability in the region through oppression. The US's reliance on the TPLF has made the Ethiopian people pay dearly. Thus, many Ethiopians even worry that the US is actively supporting the insurgency and is aiming for an intervention like those in Libya, Iraq, and Somalia in order to destabilize Ethiopia.<sup>204</sup>

### **3.6 Developments after the US unilateral sanction measures**

The unilateral sanction measures by the US are aimed at facilitating unfettered humanitarian access and peaceful resolution of the conflict. The US sanction measure coupled with diplomatic efforts aimed at bringing the warring parties to the table has failed to result in any meaningful result. After the withdrawal of the rebel forces from the neighbouring regions of the rebel strong hold in Tigray, the move towards negotiations began by a number of conciliatory gestures indicating the willingness of both parties to shift from a military to a political solution.

Following the sanction measures, the federal government halted military advances in Tigray region and freed key opposition prisoners, including a number of former TPLF leaders.<sup>205</sup> Moreover, after rejecting a number of previous efforts such as a proposal from Sudan and the then chairperson of the AU, President Cyril Ramaposa of South Africa, to mediate the conflict, and a cease-fire proposal by the US through Senator Chris Coons, in June 2022, the Ethiopian federal government established of a peace committee to commence negotiations with the TPLF.<sup>206</sup> The announcement was following months of diplomatic efforts by the AU's High Representative for the Horn of Africa, former President Olusegun Obasanjo of Nigeria, and the US and EU Envoys to the Horn of Africa.<sup>207</sup> Even though the committee's

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<sup>203</sup> Briefing with Assistant Secretary for African Affairs Tibor T. Nagy and US Ambassador to Ethiopia Mike A. Raynor on the situation in Ethiopia's Tigray Region 19 November 2020 <https://2017-2021.state.gov/briefing-with-assistant-secretary-for-african-affairs-tibor-p-nagy-and-u-s-ambassador-to-ethiopia-michael-a-raynor-on-the-situation-in-ethiopia-tigray-region/index.html> (accessed 13 September 2022).

<sup>204</sup> *Foreign Policy* (n 163 above)

<sup>205</sup> Tigray conflict: Ethiopia frees rebel leaders in Christmas amnesty 8 January 2022 <https://www.irishtimes.com/news/world/africa/foreign-drones-tip-the-balance-in-ethiopia-s-civil-war-1.4761181> (accessed 13 September 2022).

<sup>206</sup> Y Birhane 'Ending the conflict in Tigray: Negotiations and key issues' 25 August 2022 <https://www.accord.org.za/analysis/ending-the-conflict-in-tigray-negotiations-and-key-issues/> (accessed 12 September 2022).

<sup>207</sup> As above

plan has received wide praise from the international community, the TPLF however, dismissed the efforts by stating the government have no real willingness to peace.<sup>208</sup>

Amidst the mediation efforts, fighting broke out in August 2022 between Ethiopian government forces and Tigrayan rebels, ending a five-month truce and shattering the mediation efforts.<sup>209</sup> At the time of writing, the government and TPLF have accused each other of undermining the efforts towards peaceful resolution of the war.<sup>210</sup> Considering these developments, the potential for a negotiated end to the war in the foreseeable future seems slim. The US cannot continue its punitive policies indefinitely, as they have so far had no effect on de-escalating the conflict. Even if the US manages to bring warring parties to the table, contrary to what the Biden administration seems to believe, there is no assurance that a dialogue with the TPLF would not result in as in the case of South Sudan, endless rounds of peace agreements and intensified conflict as the rebel group rips every agreement it made aiming to recapture political power.

Even though US sanctions has been renewed for an additional one year after conflict erupted again between the government forces and TPLF in late August 2022,<sup>211</sup> the Biden administration seems to have realised the sanctions has failed to produce the intended results. The US special Envoy for Horn of Africa has indicated that the US plans to shift its policy emphasis away from sanctions. In a statement, the Special envoy noted that: “while, of course, there's always a sanctions option available, right now our focus is bringing the parties to the negotiation table” and to that end, instead of sanctions, the US will rely on “the historic relationship and strategic partnership with Ethiopia”.<sup>212</sup>

## **Conclusion**

Despite being in place since September 2021, the US sanctions efforts has failed to result in any of its proclaimed goals of promoting a negotiated ceasefire or political resolution to the conflict in Ethiopia. All the signs till now are that both the rebels and the government remain entrenched in their uncompromising and human-rights-violating policies. Given this context,

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<sup>208</sup> ‘Recommitting to peace’ *The Reporter* 20 August 2022 <https://www.thereporterethiopia.com/25866/> (accessed 12 September 2022).

<sup>209</sup> Wilkins (n 116 above).

<sup>210</sup> As above.

<sup>211</sup> U.S. extends sanctions against Ethiopian officials involved in Tigray conflict 11 September 2022 <https://sudantribune.com/article263865/> (accessed 20 September 2022).

<sup>212</sup> As above.

the next chapter will analyse the impact and effectiveness of the US's sanctions specifically Ethiopia's suspension from AGOA.



## Chapter 4: The effectiveness and impact of Ethiopia's suspension from AGOA

### 4.1 Introduction

The recent decision by the Biden administration to suspend AGOA benefits for Ethiopia raises the question of the effectiveness of unilateral economic sanctions against developing countries. The administration stated that “grave abuses of internationally recognized human rights” in the conflict in northern Ethiopia prompted the decision. However, it is unclear how Ethiopia's suspension from the program will lead to policy changes towards the betterment of human rights conditions. Instead, the suspension will hinder efforts to promote sustainable development and reduce poverty, putting at risk the lives of the most vulnerable people who depend on AGOA for their livelihoods.

Given the foregoing, the purpose of this chapter is to assess the effectiveness of Ethiopia's suspension from the AGOA in bringing about desired changes and its impact on the rights and wellbeing of the civilian population. The chapter begins by introducing the AGOA program then it goes on to discuss human right sanction measures under AGOA. Furthermore, the chapter will discuss the impact of Ethiopia's suspension and its effectiveness in promoting human rights in Ethiopia.

### 4.2 A brief overview of the AGOA trade preference program

In 2000, the US Congress passed the AGOA, a preferential trade program, for eligible sub-Saharan states.<sup>213</sup> The president of the US may designate a country as an AGOA beneficiary, which is reviewable and potentially revocable for violations of stipulated criteria.<sup>214</sup> By qualifying for AGOA, a country is able to export to the US duty-free approximately 6,500 products. This list includes crude petroleum and a wide variety of apparel and footwear.<sup>215</sup>

Since AGOA is a non-reciprocal trade preference program, it does not require the cooperation of any international body or create any international legal obligation.<sup>216</sup> The US can grant and suspend benefits at will, and those who are harmed by this practice have no legal recourse.<sup>217</sup> Unlike with other trade agreements, the threat to end AGOA's benefits would have more teeth given that it is not a mutually binding agreement. Furthermore, this allows the US Congress to easily add any linkage provision it desires into AGOA. As a result, AGOA's legal

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<sup>213</sup> About AGOA <https://agoa.info/about-agoa.html> (accessed 29 September 2022).

<sup>214</sup> As above.

<sup>215</sup> As above.

<sup>216</sup> C Ozden & E Reinhardt “The Perversity of Preferences: GSP and Developing Trade Policies” (2005) 78 *Journal of Development Economics* 6.

<sup>217</sup> As above

eligibility criteria can be all-encompassing, covering a wide range of topics well beyond labour and human rights.<sup>218</sup>

In order to be eligible for AGOA, a country is required to “have established, or is making continual progress toward establishing,” “a market-based economy”; “the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law”; “protection of internationally recognized worker rights”<sup>219</sup>, among others. Moreover, AGOA beneficiary countries should not engage in “gross violations of internationally recognized human rights.” and “activities that undermine the United States' national security or foreign policy interests.”<sup>220</sup> Review of these criteria is conducted for each AGOA beneficiary annually, and the annual reviews will be complemented by cycle updates as required.<sup>221</sup> The president relies on these results to make eligibility determinations under AGOA.<sup>222</sup>

### **4.3 Human rights sanction measures under AGOA**

Scholars argue that preferential trade agreements can aid in the enforcement of international human rights if they include strong human rights conditionality.<sup>223</sup> Potential human rights violators who have few other disincentives to act should be discouraged by the credible threat of a loss of trade benefits. To this end, preferential trade agreements incorporate human rights language into an enforceable incentive structure to bring about the political and economic benefits of increased market access for all members.<sup>224</sup> These privileges are contingent upon the trade partner's compliance with the human rights commitments outlined in the agreement, and the privileges will be withdrawn should the trade partner fail to do so.<sup>225</sup>

Workers' rights are a common topic in preferential trade agreements with human rights provisions.<sup>226</sup> Trade preference programs, such as the Cotonou Agreement of the EU, however, require beneficiaries to uphold universal guarantees of basic civil, political, economic, and cultural rights, often citing the core multilateral human rights treaty commitments.<sup>227</sup> Similar

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<sup>218</sup> TB Curtice & E Reinhardt ‘The limits of linkage: The political economy of human rights trade sanctions’ Conference: International Studies Association 2016 Annual Meeting (2016) 7.

<sup>219</sup> AGOA (n 23 above) sec 104.

<sup>220</sup> As above.

<sup>221</sup> Curtice & Reinhardt (n 218 above) 17.

<sup>222</sup> AGOA (n 15 above) sec 104.

<sup>223</sup> Hafner-Burton (n 27 above) 603.

<sup>224</sup> Curtice & Reinhardt (n 218 above) 6.

<sup>225</sup> As above.

<sup>226</sup> Hafner-Burton (n 27 above) 604.

<sup>227</sup> As above, 607.

provision can also be found in the US' AGOA trade preference program. It makes reference to fundamental human rights, not just labour rights.

Unlike bilateral trade agreements, the US is able to impose sanctions under AGOA on countries that violate human rights without fear of having to defend its decision before dispute settlement mechanisms.<sup>228</sup> This is, however, not the same for all preferential trade schemes. For instance, the EU's Cotonou preferential trade scheme provides for 'Intensified Political Dialogue' and requires the exhaustion of all dialogue before launching any measures for the breach of human rights conditionalities under the agreement.<sup>229</sup> If the consultations fail to bring meaningful results and the party fails to fulfil its human rights related obligations under the agreement, unless in cases of urgency, consultations will be initiated about the measures taken or to be taken, with aim of finding solutions.<sup>230</sup>

The huge imbalance of power between the US and the beneficiary Sub-Saharan countries makes the sanctions less costly for the US. The US also has fewer economic and security interests in sub-Saharan Africa compared to other parts of the globe, hence unlike other trade agreements less domestic pushback is expected against human rights sanction decisions in AGOA.<sup>231</sup> Notwithstanding, as Curtice and Reinhardt note, human rights performance has not improved on average in AGOA beneficiary countries since the establishment of the program.<sup>232</sup> Some countries continued to be beneficiaries of the program despite having questionable human rights records, while other countries with better human rights records have their eligibility suspended. In theory, AGOA's conditions supply countries with both an alluring carrot, in the form of advantageous market access as a consequence of their own policy choices, and a painful stick, in the form of exclusion from such access. However, in reality, the current eligibility designation process raises some questions.

For instance, in 2010, the ICC launched a probe into crimes against humanity in Kenya during the post-election violence in 2007 and subsequently six Kenyans were indicted,

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<sup>228</sup> D Fuhr & Z Klughaupt 'The IMF and AGOA: A comparative analysis of conditionality' (2004) 14 *Duke Journal of Comparative & International Law* 137.

<sup>229</sup> 'Consultation procedure (article 96)' 25 October 2018 <https://www.consilium.europa.eu/en/policies/cotonou-agreement/article-96-cotonou-agreement/> (accessed 23 October 2022)

<sup>230</sup> As above

<sup>231</sup> Curtice & Reinhardt (n 218 above) 19.

<sup>232</sup> As above.

including the current and former president.<sup>233</sup> However, during the ICC probe and subsequent indictments, Kenya's AGOA beneficiary status was unaffected. During the same year, the US suspended Guinea's AGOA benefits despite the fact that the human rights violations in the country didn't rise to the level of crimes against humanity.<sup>234</sup> An unclassified US Department of State memo later revealed that the US government took note of the human rights violations committed by Kenya's security forces, including torture and extra-judicial killings.<sup>235</sup> The memo further reveals that Kenya was an important ally for the US security interests in the region and that influenced the decision on its eligibility for AGOA.<sup>236</sup> The same pattern can be observed in Ethiopia's AGOA suspension. Ethiopia's AGOA eligibility was never in question during the repressive TPLF regime due to the fact that the regime was seen as a key ally in the fight against terrorism, especially in combating the threat from Al-Shabab in neighbouring Somalia.<sup>237</sup>

Curtice and Reinhardt studied AGOA status terminations between 2000-2016 and concluded that "US government officials are actively attuned to economic and security interests in making decisions on AGOA eligibility."<sup>238</sup> They further note that "AGOA sanctions seem to be influenced by political and economic concerns rather than by gross violations of human rights."<sup>239</sup> In order for sanctions to be effective, they must be applied consistently. The inconsistent application of sanctions measures under AGOA undermines its effectiveness and the US's credibility.<sup>240</sup>

#### **4.4 The impacts of Ethiopia's Suspension from AGOA**

While countries and organizations that impose sanctions often claim that they are not aiming at the general populace, the reality is often very different. In line with this, former Secretary of State of the US Madeleine Albright noted: "When the United States imposes sanctions against a regime; it does not intend to create unnecessary hardships for the innocent people, especially

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<sup>233</sup> 'The ICC accuses 6 Kenyans of crimes against humanity during 2007 violence' *The Guardian* <https://www.theguardian.com/world/2010/dec/15/kenya-election-violence-suspects-named> (accessed 3 October 2022).

<sup>234</sup> Curtice & Reinhardt (n 218 above) 19.

<sup>235</sup> As above, 22.

<sup>236</sup> As above.

<sup>237</sup> M Mihretu 'Don't Remove Ethiopia's AGOA Trade Privileges' *Foreign Policy* 13 October 2021 <https://foreignpolicy.com/2021/10/13/ethiopia-agoa-trade-biden-abiy-dont-remove-eligibility/> (accessed 28 September 2022).

<sup>238</sup> As above.

<sup>239</sup> As above.

<sup>240</sup> Fuhr & Klughaupt (n 228 above).

children and infants. Good intentions, however, do not automatically translate into good results”.<sup>241</sup>

In the specific case of Ethiopia’s suspension from AGOA, the effects of the measure on the rights of civilians and also its impact on Ethiopia’s economy and, by extension, its impact on the well-being of the civilian population will be analysed.

#### **4.4.1 The impact of Ethiopia’s suspension from AGOA on the economy**

Ethiopia used AGOA’s duty free access to the US market to attract foreign direct investment mainly in the textile and apparel sector. Consequently, FDI in the sector of light manufacturing increased dramatically, leading to various global brands sourcing materials in these sectors.<sup>242</sup> There has been a similarly significant effect on Ethiopia's export earnings. AGOA’s duty free access to around 6,500 products from Ethiopia, including textiles and clothing, majorly contributed to the growing export earnings.<sup>243</sup> Ethiopia's exports to the US were only worth US\$ 28 million at the time when AGOA was established in 2000; by 2021, that number had increased more than tenfold to US \$500 million.<sup>244</sup>

To increase export earnings, the Ethiopian government spent over US\$ 1.5 billion building 13 industrial parks, with funding coming primarily from loans from international lenders.<sup>245</sup> Of the 33 businesses located in these zones, nearly 30 make use of the AGOA benefit to send clothing items to the US.<sup>246</sup> According to the Ministry of Foreign Affairs of Ethiopia, about 200,000 people are directly employed in the two most successful exporting industries under the AGOA, apparel and leather, and the majority of them are young women.<sup>247</sup> For instance, in Hawassa Industrial Park, women make up 95% of the workforce, giving many young families their first chance at a job.<sup>248</sup> More than a million low-income people are

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<sup>241</sup> MK Albright ‘Economic sanctions and public health: A view from the Department of State’ 132 *Annals of Internal Medicine* (2000) 155.

<sup>242</sup> Mihretu (n 237 above)

<sup>243</sup> Country info: Ethiopia <https://agoa.info/21-country/4047-ethiopia.html#:~:text=%20Ethiopia%20lost%20its%20AGOA%20beneficiary,state%20with%20a%20planned%20economy> (accessed 28 September 2022).

<sup>244</sup> Ethiopia AGOA Brochure .<https://agoa.info/images/documents/15558/ethiopiaincountrybrochureagoafinal.pdf> (accessed 28 September 2022).

<sup>245</sup> Delisting Ethiopia from AGOA unwise move by the US *Fortune* 21 October 2022 <https://addisfortune.news/delisting-ethiopia-from-agoa-unwise-move-by-the-us/> (accessed 28 September 2022).

<sup>246</sup> As above

<sup>247</sup> Federal Democratic Republic of Ethiopia Ministry of foreign Affairs ‘Press Statement on Ethiopia’s suspension from AGOA’ 03 November 2021 <https://twitter.com/mfaethiopia/status/1455878253126762496/photo/2> (accessed 28 September 2022).

<sup>248</sup> *Fortune* (n 244 above)

believed to be sustained by the ecosystem of small businesses that surrounds these two industries, including suppliers of raw materials and providers of services in fields like catering, transportation, hotels, restaurants, and logistics.<sup>249</sup> Thus, the economic effects of the AGOA suspension are immediate and detrimental forcing many people into poverty. This is on top of the global pandemic, war, and inflation that have already made life difficult.

Ethiopia's macroeconomic position is characterized by over 32.50 percent inflation,<sup>250</sup> inadequate foreign currency reserves, a huge budget deficit, and plummeting credit ratings.<sup>251</sup> The International Monetary Fund predicted GDP growth of 3.8% for 2022, down sharply from the double-digit rates seen for much of the past decade.<sup>252</sup> The suspension of Ethiopia from the AGOA further exacerbated the already worsening economic situation. The suspension contributes the severe foreign currency shortage the country is currently facing by taking away the US\$500 million. Ethiopia relies heavily on export revenues, remittances, aid, loans, FDI, and privatization to bring in much-needed foreign currency.<sup>253</sup> Unfortunately, these are not enough to cover the rising cost of its imports. So long as industrial goods don't make up a sizable portion of Ethiopia's export earnings, the country's trade balance will remain in the red.

#### **4.4.2 The impact of Ethiopia's suspension from AGOA on human rights**

States should allocate adequate resources for investments in human, social, and physical infrastructure to meet their international human rights obligations.<sup>254</sup> While governments can and should meet their human rights responsibilities through a variety of policies, plans, and institutions, the allocation of resources is essential to the achievement of all human rights.<sup>255</sup> Specifically, states have an obligation to use their "maximum available resources" to guarantee the progressive realisation of citizens' economic, socio-economic rights.<sup>256</sup> Due to this responsibility, states must maximize domestic resource mobilization, with budgets playing a

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<sup>249</sup> Federal Democratic Republic of Ethiopia Ministry of foreign Affairs (n 214 above).

<sup>250</sup> Ethiopia inflation rate-September 2022 data <https://tradingeconomics.com/ethiopia/inflation-cpi#:~:text=Ethiopia%20Inflation%20Rate%20Hits%201-Year%20Low%20The%20annual,food%20%2833.2%20percent%20vs%2035.5%20percent%20in%20July%29> (accessed 28 September 2022).

<sup>251</sup> Ethiopia's economy struggles as war re-ignites in Tigray *Associated Press* <https://apnews.com/article/africa-economy-government-spending-kenya-826141a7a692574d9609462d2549bffb> (accessed 28 September 2022).

<sup>252</sup> International Monetary Fund 'Ethiopia: Country data' <https://www.imf.org/en/Countries/ETH> (accessed 28 September 2022).

<sup>253</sup> 'Foreign Currency Crunch: Why is it Happening Every Now and Then?' *Ethiopian Business Review* 16 May 2022 <https://ethiopianbusinessreview.net/foreign-currency-crunch-why-is-it-happening-every-now-and-then/> (accessed 3 October 2022).

<sup>254</sup> CESCR (n 106 above) 2(1)

<sup>255</sup> OHCHR *Realizing human rights through government budgets* (2017) 18.

<sup>256</sup> As above, 11.

crucial role.<sup>257</sup> In cases where domestic resources are insufficient, the state has an obligation to seek out and secure international assistance in order to fulfil citizens' economic, social, and cultural rights.<sup>258</sup>

As discussed earlier, the government of Ethiopia developed over a dozen industry parks in the hopes of generating export earnings and employment opportunities for citizens, mainly from textile and apparel exports to the US market using the AGOA preferential trade benefits. These projects are mainly financed by loans from various international lenders. The decision to suspend Ethiopia from the AGOA rendered the debt financed infrastructure less productive, significantly impacting the export earnings of the country. This, in turn, will affect the government's ability to repay the loans used to fund those infrastructure projects. The country will default on its external debt if the IMF's planned debt restructuring is not implemented.<sup>259</sup> This debt has been accumulated over the years as a result of persistent deficits in the balance of payment.<sup>260</sup> In the absence of the IMF's promised debt restructuring, Ethiopia's economic prospects appear bleak.

Countries that seek assistance from the IMF and similar organizations are usually required to implement policy reforms before they can apply for loans and debt relief.<sup>261</sup> Such terms and conditions include wage freezes or caps in the public sector; privatization of state-owned enterprises; reduced government spending on public services; and trade liberalization, which may involve the elimination or reduction of subsidies and import tariffs.<sup>262</sup>

These policy conditions are intended to boost economic growth and prosperity while also reviving the ability of debt-ridden nations to meet their financial obligations.<sup>263</sup> Furthermore, the IMF argues that "conditionality helps countries solve balance of payments problems without resorting to measures that are harmful to national or international

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<sup>257</sup> C Lumina 'Sovereign debt and human rights: Making the connection' in I Bantekas & C Lumina (eds) *Sovereign debt and human rights* (2018) 169.

<sup>258</sup> Committee on ESCR General Comment 3 para 13.

<sup>259</sup> US sanctions on Ethiopia: Good policy or violation of Ethiopia's sovereignty? 21 June 2021 <https://www.globalpolicyjournal.com/blog/21/06/2021/us-sanctions-ethiopia-good-policy-or-violation-ethiopias-sovereignty> (accessed 28 September 2022).

<sup>260</sup> As above.

<sup>261</sup> Lumina (n 257 above) 172.

<sup>262</sup> As above, 173.

<sup>263</sup> IMF 'Factsheet: IMF Conditionality' 6 March 2018 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality> (accessed 28 September 2022).

prosperity."<sup>264</sup> However, evidence from countries that were under pressure to enact economic adjustment programs raises serious doubts about this assertion. The conditionalities attached to multilateral loans and debt relief have negative social and economic impacts. The impacts include reduced economic growth, higher unemployment, weakened social safety nets, higher food prices, lower real incomes for low-income households, higher overall poverty rates, and increased social exclusion of the poor.<sup>265</sup>

The Ethiopian government was recently forced to take the aforementioned measures in an effort to secure the debt restructuring deal. The government recently announced spending cuts on new capital projects<sup>266</sup> and the removal of fuel subsidies<sup>267</sup>. These measures, coupled with the severe foreign currency shortage, further exacerbated by the suspension of AGOA, resulted in steep price increases<sup>268</sup> and a lack of affordable basic goods for the average people. Moreover, the announced spending cuts from new projects aimed at expanding access to basic social services such as education, healthcare and infrastructure significantly hamper the country's capacity to establish the conditions for the realization of human rights, particularly economic, social, and cultural rights. Specific rights affected are discussed as follows.

#### **4.4.2.1 The impact of Ethiopia's suspension from AGOA on the right to adequate standard of living**

According to Article 25(1) Universal Declaration on Human Rights (Universal Declaration), "everyone has the right to a standard of living adequate for the health and well-being of himself and his family".<sup>269</sup> Article 11 of CESCR also reflects this right.<sup>270</sup> The right to an adequate standard of living includes the right to adequate food and nutrition, clothing, and housing, as well as the right to adequate conditions of care when needed.<sup>271</sup>

As explained earlier Ethiopia's suspension from AGOA has crippling impact to the country's economy which in turn has hampered the realisation of human rights, in particular the right to adequate standard of living, by affecting the livelihoods of close to a million civilians who depended on AGOA and decreasing government revenues, which led to budget

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<sup>264</sup> As above.

<sup>265</sup> Lumina (n 257 above) 176.

<sup>266</sup> Ethiopia allocates budget for the next fiscal year 7 June 2022 <https://addiszeybe.com/ethiopia-allocates-highest-record-budget-for-the-coming-fiscal-year> (accessed 28 September 2022).

<sup>267</sup> S Bogale 'Lifting fuel subsidy entails inflation, relieves gov't' *The Reporter* 9 July 2022 <https://www.thereporterethiopia.com/24835/> (accessed 28 September 2022).

<sup>268</sup> As above.

<sup>269</sup> Universal Declaration on Human Rights (Universal Declaration) art 25(2).

<sup>270</sup> CESCR (n 106 above) art 11.

<sup>271</sup> As above.



cuts for social spending. Furthermore, Ethiopia's suspension from AGOA especially inhibits civilians' access to food through reduced jobs and wages as well as through the suspension induced shortage in foreign currency earnings, which inflated imported food prices. The removal of subsidies on fuel as part of the debt restructuring deal has also contributed to the soaring food prices in the country.

#### **4.4.2.2 The impact of Ethiopia's suspension from AGOA on the right to highest attainable physical and mental health**

According to the Universal Declaration, everyone has a right to a standard of living adequate for their health and well-being. Article 12 of CESCR also recognises this right. One's right to the best possible state of physical and mental health includes access to timely and appropriate medical care, as well as the underlying determinants of health, such as clean water, adequate nutrition, adequate shelter, and a conducive environment. Furthermore, there should be no discrimination of any kind in regard to the quality, acceptability, availability, and financial accessibility of all health-related facilities, services, and goods.<sup>272</sup> The Committee on ESCR urges sanctioning states to “refrain at all times from imposing embargoes or similar measures restricting the supply of another state with adequate medicines and medical equipment”.<sup>273</sup>

Ethiopia's suspension from AGOA affected right to highest attainable standard of physical and mental health of Ethiopians in two ways; first by deteriorating their living conditions through suspension induced unemployment, and decline of households' income for up to a million people who depended on AGOA for their livelihoods; then, suspension induced shortage in foreign currency earning reduced the funds available for the importation of essential lifesaving medicines which led to steep rises in price and inhibited access for average citizens.

#### **4.4.2.3 The impact of Ethiopia's suspension from AGOA on the rights of workers**

The rights of Ethiopian workers are also harmed by the country's exclusion from the AGOA. A report by the Civil Society Resource Centre Ethiopia revealed that thousands of people lost their jobs after major corporations announced they would no longer be purchasing materials from Ethiopia's industrial parks due to the country's suspension from AGOA.<sup>274</sup> The report further revealed that, due to the suspension, the remaining companies were no longer required to adhere to the strict requirements for workers' rights under the AGOA, which resulted in the

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<sup>272</sup> UN Committee on Economic, Social and Cultural Rights General Comment 14 (2000).

<sup>273</sup> As above, Para 41.

<sup>274</sup> Civil Society Resource Centre *Unionization in Industrial Parks: The Case of Hawassa Industrial Park* (2022) 32.

denial of some benefits, the blocking of any trade union activities, and the deterioration of working conditions, all of which significantly impacted the rights and well-being of the workers.<sup>275</sup>

#### **4.4.2.4 The disproportional impact of Ethiopia's suspension from AGOA on women**

As the UN Special Rapporteur on negative impacts of unilateral coercive measures on the enjoyment of human rights notes: “unilateral sanctions hurt all, but are particularly harmful to vulnerable groups within the populations of countries targeted by the sanctions.”<sup>276</sup> The special rapporteur further notes that when unilateral sanction measures result in decline in economic activities, typically, women are the first to lose their jobs.<sup>277</sup> The impact of Ethiopia's suspension from AGOA will disproportionately affect women as they make up the majority of the workforce<sup>278</sup> in the textile and apparel manufacturing sectors which rely heavily on AGOA duty free privileges to export to US market.

#### **4.5 The effectiveness of Ethiopia's Suspension from AGOA**

Simply asserting that unilateral economic sanctions, such as suspension from trade preference programs, are ineffective tools of foreign policy is reductionist and misleading as it disregards contextual factors unique to a given episode of sanctions, such as the timing and rationale for their imposition, the goals they were meant to achieve, the successes and failures they spawned.<sup>279</sup> Though unilateral sanctions are often an effective means of bringing about change, whether or not that change is desirable is another matter entirely.<sup>280</sup> Only in cases where unilateral sanctions are chosen over other options to achieve a desired policy outcome do we need to assess their effectiveness.<sup>281</sup>

Finding an answer to the question of effectiveness depends on pinpointing exactly what it is the sanctions measures hope to achieve.<sup>282</sup> Inasmuch as effectiveness is a measure of the extent to which the means contribute to the achievement of the desired outcome, the criteria by which those means are evaluated vary depending on the specific goals being pursued. However, the debate is further complicated by the fluidity of political goals and the difficulty in accurately

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<sup>275</sup> As above.

<sup>276</sup> Unilateral sanctions particularly harmful to women, children, other vulnerable groups 08 December 2021 <https://news.un.org/en/story/2021/12/1107492> (accessed 28 September 2022).

<sup>277</sup> As above.

<sup>278</sup> IndustriALL (n 10 above).

<sup>279</sup> Nyun (n 29 above) 481.

<sup>280</sup> Hufbauer *et al* (n 19 above) 92.

<sup>281</sup> Nyun (n 29 above) 481.

<sup>282</sup> As above, 482.

identifying them. Thus, if the goals are not well defined or if the goals shift depending on the circumstances, it is hard to evaluate the effectiveness of unilateral sanctions.<sup>283</sup> The precise results of any given sanctions episode cannot be predicted in advance with any degree of certainty using any known formula. As a result, even the overarching hypotheses drawn from the experience of previous rounds of sanctions can only act as broad pointers.<sup>284</sup> Due to the fact that no two sanctions episodes are the same, each one requires a unique and country-specific analysis. Given this context, this subsection tries to evaluate Ethiopia's suspension from the AGOA by looking into the factors that affect its effectiveness.

#### **4.5.1 Ethiopia's suspension from AGOA and the investigations into the human rights violations in relation to the conflict.**

Since the Tigray conflict is characterized by communications blackouts and restrictions on access to conflict areas, it is impossible to know for sure whether such gross violations have occurred without an investigation conducted by a body with direct field access. Until now, the investigation by the OHCHR and the EHRC is the only one into human rights abuses during the Tigray conflict that had direct access to conflict-affected areas. At the time of writing, ACHPR and the UNHRC International Commission of Experts are conducting separate inquiries, though neither has conducted any kind of on-site investigation as of yet.

A few days before the release of the joint report by OHCHR and EHRC on 3 November 2021, it was announced that Ethiopia would be suspended from AGOA. Evidently, the US government never intended to give the United Nations investigation its full attention. This undermines the international human rights protection system and may encourage sanctioned parties to disregard the investigations since their determination appears to be made irrespective of the outcomes of the investigations.<sup>285</sup> Due to the gravity of the legal implications involved in concluding the existence of serious human rights violations, a credible investigation is necessary to determine who should be held accountable for these atrocities.<sup>286</sup> As Tilahun notes “sanctions adopted prior to the conclusion of such credible investigations can be popularly perceived as prejudicial and lose their political justification as collective responses ‘in pursuit of a common good’”.<sup>287</sup>

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<sup>283</sup> As above.

<sup>284</sup> As above.

<sup>285</sup> N Tilahun ‘The problem with using sanctions as human rights accountability’ 04 January 2022 <https://voelkerrechtsblog.org/the-problem-with-using-sanctions-as-human-rights-accountability/> (accessed 4 October 2022).

<sup>286</sup> As above

<sup>287</sup> As above.

However, in cases where human rights investigations drag on for too long, subsequent sanctions may be ineffectual as tools for inducing compliant behaviour with international law and instead become punitive in nature. This predicament highlights the need for greater deliberation over the timing and coordination of human rights sanctions. That is to say, it is challenging to find an appropriate response that neither undermines human rights investigations nor is too late or punitive. Tilahun suggests a possible way out that “for the international community to work toward establishing credible and timely investigations, and to use sanctions against actors who obstruct these investigations or subsequent accountability processes.”<sup>288</sup>

#### **4.5.2 Political factors affecting the effectiveness of Ethiopia’s suspension from AGOA**

The rationale behind unilateral economic sanctions is to create enough economic hardship in the sanctioned state hoping that it will lead to change in policies. The case of Ethiopian suspension from AGOA, however, represents an exception to the causal relationship between economic hardship and policy change. Rather than impacting the political and rebel leaders that are responsible for the “gross human rights violations”, the burden of Ethiopia’s AGOA suspension falls mainly on the civilian population, who do not have any participation in the conflict.

The complexities of the political environment in Ethiopia will require more creative solutions than maintaining the erroneous belief that economic hardship on the Ethiopian people will eventually bring about policy change in Ethiopia. The war and the perceived US intervention in favour of the TPLF ignited a massive surge of nationalism in the country. Thousands of people are going out to the street across the world in 27 cities in support of the Ethiopian government,<sup>289</sup> and the youth are flocking by the thousands to the military to be recruited.<sup>290</sup> The ruling party won the majority of seats in parliament in elections that despite the challenges, were deemed by the AU observers’ mission to be “peaceful and credible”<sup>291</sup>

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<sup>288</sup> As above.

<sup>289</sup> Civil war in northern Ethiopia turns in favour of federal government, reversing last month’s advances by TPLF 07 December 2021  
<https://peoplesdispatch.org/2021/12/07/civil-war-in-northern-ethiopia-turns-in-favor-of-federal-government-reversing-last-months-advances-by-tplf/> (accessed 12 October 2022).

<sup>290</sup> As Tigray war intensifies, Ethiopia parades new army recruits 27 July 2021  
<https://www.reuters.com/world/tigray-war-intensifies-ethiopia-parades-new-army-recruits-2021-07-27/> (accessed 12 October 2022).

<sup>291</sup> Ethiopian election ‘peaceful and credible’: African Union observers 23 June 2021  
<https://www.africanews.com/2021/06/23/ethiopian-election-peaceful-and-credible-african-union-observers/> (accessed 12 October 2022).

and approximately 75% of those eligible to vote did so.<sup>292</sup> Furthermore, there is no active opposition party that commands widespread popularity in the country.<sup>293</sup> Thus, it is unlikely that ruling party will lose political support in the near future. More importantly, given the threats faced by armed groups in the country, the government is likely to crack down on peaceful dissenting voices and opposition parties, which makes it more difficult for the people affected by the sanctions to rise up and demand change.

#### **4.5.3 Absence of clear path to the termination of the suspension**

The chances of a given round of sanctions being successful are proportional to the grandiosity of the foreign policy goal that they are meant to achieve. Merely There will be no incentive for a state to change its behaviour in response to sanctions for human rights violations unless the sanctions are accompanied by a clear path to termination.

According to Section 104 of the AGOA Act, the President of the US shall terminate the AGOA eligibility designation of a country, if it is “not making continual progress in meeting the requirements.” There is no way to know for sure if this condition has been met, and the United States government could theoretically argue that it has not. It is thus unclear what criteria the Ethiopian government must meet in order to have sanctions lifted. Clear benchmarks for termination should be specified in concrete terms to ensure that the sanctions measures incentivise a change in behaviour on the part of the Ethiopian government.

#### **Conclusion**

Ethiopia’s suspension from AGOA is an ineffective tool to address “gross human rights violations” in relation to the conflict in Ethiopia. The little impact that suspension has on the country’s political leaders and the rebels responsible for the violations can be considered the main reason for its ineffectiveness. The impact will be felt most by ordinary citizens who depend on AGOA for their livelihood. Also detrimental to the populace is the foregone chance of strategic industrial growth through exports to the US market. Furthermore, the people will shoulder the cost of the debt-financed infrastructure, which Ethiopia’s suspension from AGOA rendered less productive.

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<sup>292</sup> The Ethiopian June 2021 elections: a step to political normality? 8 September 2021 <https://www.ascleiden.nl/content/ascl-blogs/jan-abbink/ethiopian-june-2021-elections-step-political-normality> (accessed 12 October 2022).

<sup>293</sup> As above

## **Chapter Five: General conclusions**

### **5.1 Introduction**

The dissertation has thus far examined the principal question that seeks to evaluate the extent to which Ethiopia's suspension from AGOA is an effective measure for promoting human rights in Ethiopia. It then deep dived into analyses of three sub-questions in which the first, considered under chapter two, discusses the nature and scope of unilateral economic sanctions. The third chapter attempted to illuminate the historical background of the conflict and provide structure to the sanctions analysis. The second and third questions, forming chapter four, investigate the impact of Ethiopia's suspension from AGOA on the rights and well-being of civilians and its effectiveness to address human rights violations in the country. This chapter makes general conclusion and forward recommendations.

### **5.2 General conclusions**

Economic sanctions were first implemented as a part of military strategy. The role assigned to economic sanctions shifted as the system of collective security developed, first through the Covenant of the League of Nations and then through the UN Charter. Economic sanctions emerged as a means to promote collective security after World Wars I and II. Coercive economic measures have gained importance as a tool to enforce international human rights obligations as the number of international legal obligations has grown and the enforcement mechanisms for these obligations are weak. Although these sanctions are employed as a method for accomplishing the significant societal goal of punishing those who violate human rights, there is a possibility that doing so may violate a number of obligations imposed by international law.

The central question at the heart of the ongoing controversy surrounding the use of unilateral sanctions is whether or not such measures are the most effective tool for pressuring other governments to change their unsavoury policies. Those who support the use of unilateral sanctions argue that they are an effective way to respond to the unacceptable actions of foreign governments, as well as a fast and easy way to appease domestic pressure for change. On the other hand, those who are opposed to the use of unilateral sanctions argue that they can have unintended consequences and are excessively expensive in comparison to the potential benefits they could bring. The review of literature on the effectiveness of unilateral sanctions reveals the consensus that they are ineffective tools of foreign policy. The use of unilateral sanctions

has, however, experienced a renaissance since the end of the Cold War, which seems to be at odds with one another.

In this dissertation, the effectiveness of unilateral sanctions was analysed in the context of Ethiopia's suspension from AGOA. Human rights advocacy in Ethiopia makes moral sense on paper. Unfortunately, it's becoming clear that suspending Ethiopia's participation in AGOA is doing more harm than good in terms of achieving those goals. The impact is being felt most by ordinary citizens who depend on AGOA for their livelihood. Ethiopia's nascent manufacturing industry saw a significant loss of employment; it is estimated that the suspension could result in loss of up to 1 million jobs, disproportionately hurting young women who make up majority of the garment workers in the industry parks. In addition, the suspension affected the country's foreign currency earnings and rendered debt-financed industry parks ineffective, which in turn significantly reduced the country's export earnings and hindered the government's ability to pay back the loans. Consequently, the Ethiopian government is forced to seek a debt restructuring deal with its international creditors. In an effort to secure such a deal, the government took spending cuts on new capital projects and the removed fuel subsidies. These measures, coupled with the severe foreign currency shortage, further exacerbated by the suspension of AGOA, resulted in high inflation, undermining the people's access to food, medicine, and other essential goods.

Ethiopia's suspension from AGOA has significantly impacted the economic, social and cultural rights specifically the rights to highest attainable standard of physical and mental health and adequate standard of living, in two ways; first by deteriorating their living conditions through suspension-induced unemployment, and decline in households' income for up to a million people who depended on AGOA for their livelihoods; Second, suspension-induced shortage in foreign currency earning reduced the government resources available for the importation of essential items such as medicine and food, which led to steep rises in price, inhibiting access for average citizens.

Ethiopia's suspension from AGOA will most likely fail in achieving its foreign policy goals. First, the economic hardship inflicted by the suspension is shouldered by the Ethiopian civilian population, who do not have any participation in the human rights violations. Second, the suspension does not take into consideration the current political situation in the country. Due to lack of opposition that has wide popularity and the government's tendency to forcefully

crackdown any effort to voice dissent, it is highly unlikely that the hardship inflicted by the suspension will lead the people to rise up and demand change in the government's policies. Third, the absence of a clear path to termination makes success improbable.

The aforementioned shortcomings with regard to Ethiopia's suspension from AGOA are a reflection of the difficulty of using unilateral economic sanctions as a tool for addressing human rights violations. This dissertation has demonstrated that Ethiopia's suspension from AGOA is an effective tool to address the human rights violations in the country and contributed to the violation of economic, social and cultural rights of the population. Thus, it serves to awaken the US to the negative impacts of the suspension and take necessary measures to alleviate the human rights situation.

### **5.3 Recommendations**

Having highlighted the general conclusions, the following recommendations are forwarded for future consideration:

- The US should evaluate its current policy of unilateral sanctions on Ethiopia given its significant impact on the rights and well-being of Ethiopian people. To encourage the Ethiopian government to undertake necessary policy changes, the US must establish reasonable benchmarks that can be achieved by the government. Moreover, the US must also be prepared to restore Ethiopia's AGOA benefits once the Ethiopian government has made progress towards the benchmarks.
- As this study is limited in scope, more studies are suggested to further investigate the effectiveness of AGOA in promoting human rights in sub-Saharan Africa.

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