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When Finance Becomes a Weapon: The Challenge of Central Bank Sanctions under International Law

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When Finance Becomes a Weapon: The Challenge of Central Bank Sanctions under International Law

Central bank sanctions have become a significant foreign policy tool, with states increasingly targeting these institutions to pressure other states to change their conduct. However, this practice raises significant legal challenges under international law. This article offers a comprehensive analysis of central bank sanctions and their compatibility with key international legal principles, such as proportionality and state immunity. Upon offering an overview of state practice and the applicable legal framework, it argues that due to their inherent characteristics, central bank sanctions can only be justified in exceptional circumstances and must adhere to strict conditions to be considered lawful. The article concludes by highlighting the need for responsible use of central bank sanctions and exploring avenues to minimise legal challenges associated with their use.

1. Introduction

Within a few days of Russia's full-scale invasion of Ukraine on 24 February 2022, the European Union (EU) and several Group of 7 (G7) states froze a large part of the foreign reserves of the Central Bank of Russia (CBR), in a move that was described as 'effectively declaring financial war on Russia'.[1] The sanctions against the CBR represent the latest and most prominent example of a growing trend: central banks are increasingly becoming targets of international sanctions.[2] Since 2019, the United States (US) has imposed or tightened existing sanctions against the central banks of Iran, Syria, Venezuela, North Korea, and Afghanistan. The Central Bank of Syria also faced

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1 Valentina Pop, Sam Fleming, and James Politi, 'Weaponisation of finance: how the west unleashed 'shock and awe' on Russia' (Financial Times, 6 April 2022) https://www.ft.com/content/5b397d6b-bde4-4a8c-b9a4-080485d6c64a .

2 For a breakdown of each sanction regime, see Section 2.

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restrictive measures from the EU, the United Kingdom (UK), and the Arab League. In 2022 alone, central banks assets of both Mali and Niger were frozen as part of sanction regimes imposed by the Economic Community of West African States (ECOWAS).

Although the degree of autonomy that central banks have from their governments has fluctuated over time, they are generally distinct legal entities with a significant degree of independence.[3] Still, the crucial role that central banks play in a state's economy makes them appealing targets for international sanctions. Their functions may vary depending on the domestic legal and monetary system, but they often act as lender of last resort, support the currency's value, ensure banking system stability, and sometimes manage sovereign wealth funds.[4] When aiming to inflict 'economic pain' on a state,[5] few targets offer such significant and widespread effects as central banks. Furthermore, central banks typically hold reserve assets in foreign currencies deposited with other central banks,[6] making them more vulnerable to sanctions in those jurisdictions.

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3 See Jakob de Haan and Sylvester Eijffinger, 'The Politics of Central Bank Independence', in Roger D Congleton, Bernard Grofman, and Stefan Voigt (eds), *The Oxford Handbook of Public Choice* (OUP, 2019) 409-500; Rodolfo Dall'Orto Mas et al, 'The case for central bank independence: A review of key issues in the international debate' (European Central Bank, 2020) *ECB Occasional Paper No 248*, 9.

4 See generally Rosa M Lastra, 'The role of central banks in monetary affairs: a comparative perspective' in T Cottier, RM Lastra, & C Tietje (eds), *The Rule of Law in Monetary Affairs: World Trade Forum* (CUP 2014) 78. Because of the public nature of their functions, the conduct of central banks is ordinarily attributable to the state; see Carlo de Stefano, 'Attribution of Conduct to a State' (2022) 37 *ICSID Review* 20, 32.

5 Pop, Fleming, and Politi (2022).

6 Patrick Downes, 'Managing Foreign Exchange Reserves' (1989) 26 *Finance and Development* 20, 21.

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While central bank sanctions are not entirely new, recent state practice gives rise to several critical and underexplored issues under international law. Not only has the number of sanctions packages targeting central banks surged, but a significant portion of these is imposed unilaterally, outside the legal framework of the United Nations (UN). The unilateral nature of these sanctions raises specific concerns about their legality.[7] Moreover, central banks have been increasingly targeted because they can inflict significant, wide-ranging economic damage on the targeted state.[8] This contradicts the trend toward more targeted ('smart') sanctions aimed at minimising civilian suffering.[9]

Despite growing international legal scholarship on sanctions,[10] central bank sanctions have not received dedicated attention. Recent analyses have focussed on the potential conflict between restrictive measures like those enacted against the CBR and

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7 See Charlotte Beaucillon, 'An Introduction to Unilateral and Extraterritorial Sanctions: Definitions, State of Practice and Contemporary Challenges' in Charlotte Beaucillon (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar, 2021) 7. Sanctions imposed by international organisations against their member states must be distinguished from those against non-member states, which can be considered 'unilateral' for the present analysis; see further Section 2.3.

8 See Michael Bernstam, 'Central bank sanctions strike at the foundations of Russia's economy' (*Financial Times*, 3 March 2022) https://www.ft.com/content/3f1c7151-93ed-48ff-a23c-496320919621.

9 See Uri Friedman, 'Smart Sanctions: a Short History' (*Foreign Policy*, 23 April 2012) https://foreignpolicy.com/2012/04/23/smart-sanctions-a-short-history.

10 eg Masahiko Asada, *Economic Sanctions in International Law and Practice* (Taylor & Francis 2020); Beaucillon (2021); Iryna Bogdanova, *Unilateral Sanctions in International Law and the Enforcement of Human Rights: The Impact of the Principle of Common Concern of Humankind* (Brill 2022).

the principle of state immunity.[11] However, there has been no attempt to map more widely the use of central bank sanctions and their compatibility with international law. As a result, the legality of central banks sanctions has often been overlooked or lumped together with other types of unilateral and financial sanctions.[12] This is problematic because, as this article demonstrates, central bank sanctions raise complex and discrete legal issues which remain poorly understood and are aggravated by the growing frequency in their use.

This contribution bridges this gap by providing a comprehensive analysis of central bank sanctions and their legality under international law. Firstly, it offers an extensive overview of state practice, shedding light on the evolution and controversies surrounding these sanctions. Next, it delineates the primary obligations that could be violated through such sanctions, illustrating the multifaceted considerations pertinent to their legal assessment. Lastly, it systematically examines the defences available to states to justify these restrictions. The central argument is that, owing to their inherent characteristics, central bank sanctions should only be imposed in exceptional circumstances and must adhere to stringent conditions to be lawful under international

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11 eg Ingrid Brunk, 'Central Bank Immunity, Sanctions, and Sovereign Wealth Funds' (2023) 91 *George Washington Law Review* 1616; Anton Moiseienko, 'Legal: The Freezing of the Russian Central Bank's Assets' (2023) 34 EJIL 1007; Ron van der Horst, 'Illegal, Unless: Freezing the Assets of Russia's Central Bank' (2023) 34 EJIL 1021-1032.

12 eg Alexander Orakhelashvili, 'Sanctions and Fundamental Rights of States: The Case of EU Sanctions Against Iran and Syria' in Matthew Happold and Paul Eden (eds), *Economic Sanctions and International Law: Law and Practice* (Bloomsbury 2016) 22; Larissa van den Herik, 'The Individualization and Formalization of UN Sanctions' in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar, 2017) 6; Alexandra Hofer, 'The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms' (2023) 25 *Cambridge Yearbook of European Legal Studies* 1.

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law. Consequently, the paper advocates for a reassessment of states' approaches to such sanctions to ensure compliance with international legal standards.

The article is organised as follows. Section 2 provides an overview of state practice regarding central bank sanctions and the context within which they were imposed. It shows that, while the move from comprehensive to targeted sanctions at the UN level has resulted in a considerable decrease in the targeting of central banks, sanctions practice outside of the UN has moved – controversially – in the opposite direction. Section 3 examines the principles and rules of international law implicated by central bank sanctions and analyses the legal challenges they raise. It shows that, by virtue of their inherent characteristics, central bank sanctions often clash with several international law norms. Section 4 explores the defences that states may employ to justify the use of such sanctions. The conclusion is that most central bank sanctions can only be justified as countermeasures subject to strict conditions. Section 5 offers concluding reflections on the potential role of central bank sanctions in the international legal 'toolbox' of states, the associated risks, and the necessary precautions to minimise them.

2. Central Bank Sanctions in the Practice of States

Central bank sanctions have a long history dating back to the rise of modern central banking in the 19th century.[13] To understand how states use them today, they must be situated in the broader evolution of economic sanctions in international relations. This section will first explore the ongoing debate on regulating economic coercion and how sanctions have changed over time. It will then delve into central bank sanctions

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[13] Nicholas Mulder, *Confiscating Central Bank Assets: From the Paris Commune to the G7* (2024) 2 (on file with the author).

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specifically, looking at their use by the UN, individual states, and regional organisations.

2.1. Economic Coercion and the Rise (and Fall?) of Targeted Sanctions in International Relations

Since World War II, there have been efforts to establish rules limiting the use of coercive economic measures in international relations.[14] During the drafting of the UN Charter, an attempt was made to include economic measures under the prohibition on the use of force enshrined in Article 2(4), but this proposal was unsuccessful.[15] Further efforts continued throughout the 1960s to 1980s, when the UN General Assembly (UNGA), led by developing and non-aligned states, passed a number of resolutions condemning the use of coercive economic measures as a form of unlawful intervention in a state's domestic affairs.[16] However, these efforts faced increasing opposition from a block of Western and other states.[17] Their primary concern was that a complete ban on economic coercion would render illegal legitimate foreign policy tools commonly used in international relations.[18] In 1986, this view was somehow vindicated by the

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14 Barry E Carter, 'Economic Coercion', *Max Planck Encyclopedia of Public International Law* (2009) para 5.

15 See *UNCIO Documents of the United Nations Conference on International Organization*, vol 6 (United Nations Information Organizations, 1945) 334.

16 See UNGA Res 2131(XX) (21 December 1965) UN Doc A/RES/2131(XX); UNGA Res 2625(XXV) (24 October 1970) UN Doc A/RES/2625(XXV); UNGA Res 42/173 (11 December 1987) UN Doc A/RES/42/173.

17 Carter (2009) paras 7–9; Rebecca Barber, 'An Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions' (2021) 70 ICLQ 343, 359–360.

18 Natalino Ronzitti, 'Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective' in Natalino Ronzitti (ed), *Coercive Diplomacy, Sanctions and International Law* (Brill Nijhoff, 2016) 4.

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International Court of Justice (ICJ), which ruled that, while the US trade embargo against Nicaragua violated treaty obligations, it did not constitute a breach of the customary law principle of non-intervention.[19] As of 1993, the UN Secretary-General found that 'there is no clear consensus in international law as to when coercive measures are improper'.[20]

One argument for restricting unilateral economic sanctions by states stems from the UN Charter, which vests the UN Security Council (UNSC) with the primary responsibility to maintain international peace and security.[21] Chapter VII empowers the UNSC to impose 'measures not involving armed force' (including economic sanctions) in response to threats to peace, breaches of the peace, or acts of aggression.[22] Historically, the Cold War's bipolarity often resulted in deadlocks, limiting the UNSC's use of this power before 1990.[23]

The end of the Cold War ushered in a 'sanctions decade'[24] with a surge of UNSC-mandated sanctions in the early 1990s.[25] However, many of these, like those imposed on Iraq, Haiti, and the former Yugoslavia, drew criticism for their

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19 *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v US*) (Merits) [1986] ICJ Rep 14, paras 245. See further Section 3.1 below.

20 UNGA, 'Economic Measures as a Means of Political and Economic Coercion against Developing Countries: Note by the Secretary-General' (25 October 1993) UN Doc A/48/535, Agenda Item 91(a), 1.

21 UN Charter, Art 24.

22 UN Charter, Artts 39 and 41.

23 The UNSC imposed sanctions only on two instances before 1990.

24 David Cortright and George Lopez, 'Sanctions Decade: Assessing UN Strategies in the 1990s' (18 April 2000) https://carnegieendowment.org/2000/04/18/sanctions-decade-assessing-un-strategies-in-1990s-event-50.

25 See Christopher C Joyner, 'United Nations sanctions after Iraq: looking back to see ahead' (2003) 4 *Chicago Journal of International Law* 329, 333.

comprehensive and indiscriminate nature.[26] The devastating impact on civilians became a focal point, with the Iraqi case serving as a stark example. Studies directly linked UN sanctions to 'an aggravated humanitarian crisis for nearly all of Iraq's society'.[27] This backlash spurred the development of 'smart' or 'targeted' sanctions.[28] These aim to pressure individual wrongdoers by targeting specific entities and assets while minimising broader harm to vulnerable populations.[29]

The picture outside the UN framework is far less clear. Western states, particularly the US, UK, and EU, have continued to impose unilateral economic sanctions, often facing objections from developing nations.[30] While there seems to be broad consensus against comprehensive sanctions with indiscriminate effects on civilian populations,[31] a challenging trend has emerged in recent years. Many supposedly 'targeted' sanctions now encompass entire economic sectors like banking, shipping, and

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26 Joy Gordon, 'The Hidden Power of the New Economic Sanctions' (2019) 118 *Current History* 3, 4.

27 See Joyner (2003) 338. See also David Cortright and George A. Lopez, 'Are Sanctions Just? The Problematic Case of Iraq' (1999) 52 *Journal of International Affairs* 735; Abbas Alnasrawi, 'Iraq: Economic Sanctions and Consequences, 1990–2000' (2001) 22 *Third World Quarterly* 205.

28 Gordon, 'The Hidden Power' (2019) 4–5.

29 Sue E Eckert, 'The evolution and effectiveness of UN targeted sanctions' in van den Herik (2017) 53.

30 See Alexandra Hofer, 'The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?' (2017) 16 *Chinese Journal of International Law* 175, 186.

31 For instance, since 1992 the UNGA has condemned the US embargo of Cuba and the latest resolution was passed with 187 votes in favour, 2 against, and 1 abstention; see 'General Assembly votes overwhelmingly against US Cuba embargo' (UN News, 2 November 2023) https://news.un.org/en/story/2023/11/1143112.

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energy.[32] This expansive targeting blurs the line between targeted and comprehensive measures, raising concerns about their legality and proportionality.[33]

The evolution of central bank sanctions shares similarities with that of economic sanctions more broadly. The shift towards targeted sanctions in the past two decades has led to a near-disappearance of central bank sanctions in UN practice. Central bank sanctions, however, continue to be employed by individual states or groups of states outside the UN legal framework, highlighting inconsistencies in their application. The following sections will explore this practice in more detail.

2.2. UN Sanctions Against Central Banks

While central banks were not explicitly singled out by the UNSC sanctions adopted in the early 1990s, the language employed in these resolutions was often broad enough to capture central banking activities. For instance, measures mandated against Iraq after the invasion of Kuwait restricted all states from providing financial or economic resources to the Iraqi government or 'any commercial, industrial or public utility undertaking in Iraq or Kuwait'.[34] However, once the UNSC moved towards the adoption of more targeted sanctions, central banks have rarely featured among their targets. The few exceptions were justified not so much by a need to inflict harm on the target states but as means to prevent the dispersion of state funds, with a view to channelling them back to the people of those states.

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32 Joy Gordon, 'The not so targeted instrument of asset freezes' (2019) 33 *Ethics & International Affairs* 303, 304.

33 Eckert (2017) 67; Alexandra Hofer, 'The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?' (2020) 89 *Nordic Journal of International Law* 399, 404.

34 UNSC Res 661 (6 August 1990) UN Doc S/RES/661, para 4.

Iraq and Libya are two notable examples in this regard. In the aftermath of the 2003 US-led invasion of Iraq, the UNSC created a Development Fund with the aim to support humanitarian relief and reconstruction efforts in Iraq.[35] The Fund was to be financed, in part, by recovering financial assets belonging to the former Iraqi government.[36] To this end, an assets freeze was imposed on the Central Bank of Iraq.[37] This was removed in 2018, following an improvement of Iraq's economic condition.[38] In a similar way, in response to the Qadhafi regime's violence against protesters in February 2011, the UNSC imposed asset freezes on designated entities,[39] including the Central Bank of Libya.[40] The declared goal of these measures was to ensure these assets remained available for future use by the Libyan people.[41] Indeed, shortly after the collapse of Qaddafi regime and the formation of the National Transitional Council, these funds were unfrozen.[42]

The fact that, even when responding to a regime's illegal acts, central bank sanctions were justified not to cripple the regime but to safeguard state funds for the people's benefit underscores the exceptional nature of such measures. Notably, the UNSC has not explicitly targeted a central bank since Libya. While imposing sanctions

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35 UNSC Res 1483 (22 May 2003) UN Doc S/RES/1483, preamble.

36 ibid, paras 12–14, 23.

37 UNSC, List Established Pursuant to Security Council Resolution 1483 (2003), Press Release SC/7933 (21 November 2003) https://press.un.org/en/2003/sc7933.doc.htm.

38 See UNSC, 'Security Council Sanctions Committee concerning Iraq Removes One Entity from Its Sanctions List', Press Release SC/13372 (7 June 2018) https://press.un.org/en/2018/sc13372.doc.htm.

39 UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970, paras 17–18.

40 UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973, paras 6, 19–20, and Annex II.

41 ibid.

42 Patrick Worsnip, 'U.N. sanctions lifted on Libya's central bank' (*Reuters*, 16 December 2011) https://www.reuters.com/article/idUSTRE7BF21N.

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on Iran and North Korea for their nuclear and ballistic programs, the UNSC focused on individuals and entities linked to these programs.[43] Resolution 1929 on Iran only 'recall[ed …] the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran'.[44] Similarly, sanctions on North Korea targeted individuals and entities,[45] but not the Central Bank of North Korea (CBNK) directly. This seems to suggest a cautious approach by the UNSC towards central bank sanctions, potentially reflecting concerns about their legality and humanitarian impact.

2.3. Central Bank Sanctions Outside the UN Legal Framework

The use of central bank sanctions by individual states and group of states outside the UN legal framework paints a more complex picture. Between 1945 and the early 2010s, these sanctions were primarily employed by just two states – the UK and, more frequently, the US – with arguably little support from others. Things have however changed since the early 2010s, where other states – particularly EU member states – have resorted to central bank sanctions in a few critical cases. Notably, other regional organisations from Africa and the Middle East also resorted to such measures in some instances. This practice may point to a growing acceptance in state practice but only in exceptional circumstances.

2.4.1. Unilateral Practice from 1945 to 2000s

Having pioneered the freezing of central bank assets against Nazi Germany during War

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43 eg UNSC Res 1737 (23 December 2006) UN Doc S/RES/1737 para 12; UNSC Res 1747 (24 March 2007) UN Doc S/RES/1747, para 7; UNSC Res 1803 (3 March 2008) UN Doc S/RES/1803, paras 9–10.

44 UNSC Res 1929 (9 June 2010) UN Doc S/RES/1929, preamble.

45 See UNSC Res 2094 (7 March 2013) UN Doc S/RES/2094, paras 11–13.

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World II,[46] the UK resorted again to such measures in response to Iran's nationalisation of the Anglo-Iranian Oil Company in 1951.[47] However, the UK's actions in Iran, culminating in a US-backed coup, have been heavily criticised in the subsequent years, drawing accusations of imperialist intervention and gunboat diplomacy.[48] Similar criticism has been levied against the measures taken by the UK and France against Egypt during the 1956 Suez Crisis, which included the freezing of Egyptian foreign reserves and a prohibition on transactions with Egyptian banks.[49] The US initially followed suit but withdrew its support for these measures shortly after France and the UK attempted to retake the Suez Canal by force.[50]

The aftermath of the Suez Crisis saw the rise of the US as a dominant user of central bank sanctions, coinciding with the US dollar's growing dominance in global finance.[51] While the UK resorted again to central bank sanctions during the 1980s Falkland Islands crisis – when it froze all Argentinian funds deposited in London

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46 See David Blaazer, 'Finance and the End of Appeasement: The Bank of England, the National Government and the Czech Gold' (2005) 40 *Journal of Contemporary History* 25–39.

47 These included blocking a $25 million credit request from Iran authorised by the US Export-Import Bank; see Jerrold L Walden, 'The International Petroleum Cartel in Iran – Private Power and the Public Interest' (1962) 11 *Journal of Public Law* 64, 80.

48 The critique was directed at all sanctions taken in this context; see Sundhya Pahuja and Cait Storr, 'Rethinking Iran and International Law: The Anglo-Iranian Oil Company Case Revisited' in James Crawford et al (eds), *The International Legal Order: Current Needs and Possible Responses* (Brill 2017) 72.

49 See Diane B. Kunz, *The Economic Diplomacy of the Suez Crisis* (University of North Carolina Press 1991) 68.

50 ibid 69, 117.

51 See Daniel McDowell, *Bucking the Buck: US Financial Sanctions and the International Backlash against the Dollar* (OUP 2023) 2.

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banks[52] – these sanctions were primarily the initiative of the US from the 1970s onwards.

The blueprint emerged after the 1979 Iranian Revolution and hostage crisis.[53] Leveraging the authority granted by the recently enacted International Emergency Economic Powers Act (IEEPA) of 1977, the US President froze 'all property interests' of the Central Bank of Iran (CBI) subject to US jurisdiction or held by US entities.[54] These measures remained in place until the 1981 Algiers Accord.[55] The US subsequently employed this strategy on several occasions, imposing restrictions on the central banks of Libya (1986),[56] Panama (1988),[57] and Iraq (1990).[58] These sanctions were often characterised by a marked unilateralism, pursuing US foreign policy goals regardless of wider international support. Notably, only after the UNSC imposed

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52 Steven Rattner, 'Britain's Freeze Dismays Bankers' (*New York Times*, 9 April 1982) https://www.nytimes.com/1982/04/09/business/britain-s-freeze-dismays-bankers.html.

53 See Mahvash Alerassool, *Freezing Assets: The USA and the Most Effective Economic Sanction* (Springer 1992) 171.

54 Executive Order No 12170, Blocking Iranian Government Property (14 November 1979) 44 FR 65729.

55 See 'Iran-U. S. Claims Tribunal Dismissal of Case Against the FRBNY' (2000) 94 AJIL 705.

56 Taken in response to alleged support of terrorism by the Libyan government: Executive Order No 12544, Blocking Libyan Government property in the United States or held by US persons (8 January 1986) 51 FR 1235.

57 '[T]o persuade the people of Panama to bring down the Noriega regime': Executive Order No 12635, Prohibiting certain transactions with respect to Panama (12 April 1988) 53 FR 12134.

58 Taken in response to Iraq's invasion of Kuwait: Executive Order No 12724, Blocking Iraqi Government Property and Prohibiting Transactions with Iraq (9 August 1990) 55 FR 33089.

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sanctions on Iraq following the invasion of Kuwait did other states followed suit, freezing foreign assets of Iraq and its central bank.[59]

2.4.2. Unilateral Practice from 2010s to Present Day

The international response to Iran's nuclear program between the late 2000s and early 2010s marked the first turning point for recent central bank sanctions. As seen above, the UNSC sanctions against Iran targeted several entities and individuals linked with the nuclear programme but merely 'recall[ed] the need to exercise vigilance' over transactions with the CBI.[60] Yet, the US leveraged this UNSC resolution to not only impose sanctions on the CBI itself[61] but also to pressure allies into following suit.[62] This pressure ultimately led the EU to enact its own sanctions against the CBI, including asset freezes and trade restrictions.[63]

This marked a paradigm shift for the EU. Within a month, they again resorted to central bank sanctions, this time targeting the Central Bank of Syria (CBS) in response to human rights violations in the context of the Syrian Civil War. Among other restrictive measures, the EU Council imposed the freezing of CBS assets and prohibited

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59 See Alerassool (1992) 174–176.

60 UNSC Res 1929 (9 June 2010) UN Doc S/RES/1929, preamble.

61 Executive Order No 13599, Blocking Property of the Government of Iran and Iranian Financial Institutions (5 February 2012) 77 FR 6115.

62 Joy Gordon, 'Crippling Iran: The UN Security Council and the Tactic of Deliberate Ambiguity' (2013) 44 *Georgetown Journal of International Law* 973, 975.

63 Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, [2012] OJ L19/22.

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transactions with the CBS.[64] Notably, while the US sanctioned the Syrian government in 2011,[65] they only directly targeted the CBS in 2020.[66]

These two examples highlight a qualitative difference between central bank sanctions enacted by the EU and the earlier US practice. The EU measures against Iran and Syria occurred within contexts where there was a degree of international consensus regarding the illegality of the actions prompting them.[67] Thus, despite generating controversy,[68] these sanctions were ostensibly directed at addressing violations of collective obligations.[69]

The contrasting approaches of the US and EU toward central bank sanctions became even clearer after the signing of the Joint Comprehensive Plan of Action (JCPOA or Iran Nuclear Deal). While the EU lifted most sanctions, including those on the CBI,[70] the US stance hardened. In 2012, the Iran Threat Reduction and Syria Human

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64 Council Regulation (EU) No 168/2012 of 27 February 2012 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria [2012] OJ L54/1; Council Decision 2012/122/CFSP of 27 February 2012 amending Decision 2011/782/CFSP concerning restrictive measures against Syria, [2012] OJ L54/14.

65 Executive Order 13582, Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria (17 August 2011) 76 FR 52209.

66 On 22 December 2020, the Office of Foreign Assets Control (OFAC) identified the CBS on the Specially Designated Nationals and Blocked Persons List (SDN List); see OFAC, 'Syria Sanctions' (12 May 2022) https://ofac.treasury.gov/faqs/topic/1571.

67 See Pierre-Emmanuel Dupont, 'Unilateral European Sanctions as Countermeasures: The Case of the EU Measures Against Iran' in Happold and Eden (2016) 56-57.

68 See Alexander Orakhelashvili, 'Sanctions and Fundamental Rights of States: The Case of EU Sanctions Against Iran and Syria' in Happold and Eden (2016) 13.

69 See further Section 4.3 below.

70 EU Council, 'Joint Comprehensive Plan of Action and restrictive measures' (4 March 2024) https://www.consilium.europa.eu/en/policies/sanctions/iran/jcpoa-restrictive-measures.

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Rights Act had allowed seizing Iranian assets (including CBI holdings) to satisfy US court judgments awarded to private plaintiffs in lawsuits against Iran.[71] These assets were distributed in 2016, prompting Iran to initiate proceedings against the US before the International Court of Justice (ICJ). [72] Further complicating matters, the Trump administration's withdrawal from the Nuclear Deal in 2018 led to the reinstatement of most Iranian sanctions,[73] including against the CBI in 2019.[74]

Despite attracting considerable criticism,[75] the US has continued its practice of unilateral central bank sanctions in recent years. In 2017, it targeted the Central Bank of North Korea (CBNK) citing its pursuit of weapons of mass destruction.[76] In 2019, it sanctioned Venezuela's Central Bank (CBV) to prevent its use by the 'illegitimate Maduro regime'.[77] In 2022, following the Taliban takeover of Afghanistan, the US froze Afghan central bank assets held in New York, aiming to safeguard them 'for the benefit

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71 Public Law No 112-158, 126 Stat 1214, 1258–1259 (10 August 2012).

72 *Certain Iranian Assets* (*Islamic Republic of Iran v United States of America*) (Judgment) General List No 164 (30 March 2023), para 1.13.

73 Congressional Research Service, 'Iran Sanctions, Report RS20871' (2 February 2022) 3, https://crsreports.congress.gov/product/pdf/RS/RS20871.

74 'Treasury Sanctions Iran's Central Bank and National Development Fund' (20 September 2019) https://home.treasury.gov/news/press-releases/sm780.

75 See Daniel W Drezner, 'The United States of Sanctions: The Use and Abuse of Economic Coercion' (2021) 100 Foreign Affairs 142.

76 'Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks' (26 September 2017) https://home.treasury.gov/news/press-releases/sm0165.

77 'Treasury Sanctions Central Bank of Venezuela and Director of the Central Bank of Venezuela' (17 April 2019) https://home.treasury.gov/news/press-releases/sm661.

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of the Afghan people'.[78] A portion was later transferred to a newly established Swiss entity for 'targeted disbursements' to stabilise the Afghan economy. [79]

Russia's aggression against Ukraine in February 2022 marked another turning point for central bank sanctions. The measures imposed against the CBR were unprecedented both in terms of state participation and scope.[80] The EU, along with France, Germany, Italy, UK, Canada, US, and Japan,[81] froze an estimated $350 billion

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78 In fact, only $3.5 billion of these assets were designated for the 'Afghan people', while the remainder was retained to satisfy US judgments obtained by 9/11 victims against the Taliban; see White House, 'Fact Sheet: Executive Order to Preserve Certain Afghanistan Central Bank Assets for the People of Afghanistan' (11 February 2022) https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/fact-sheet-executive-order-to-preserve-certain-afghanistan-central-bank-assets-for-the-people-of-afghanistan.

79 'Joint Statement by U.S. Treasury and State Department: The United States and Partners Announce Establishment of Fund for the People of Afghanistan' (US Department of the Treasury, 14 September 2022) https://home.treasury.gov/news/press-releases/jy0947. As of the time of writing, no disbursement had been made from this Fund.

80 Matthias Vermeiren, 'Freezing Russia's central bank reserves: Much Ado about nothing?' (2022) *Ghent Institute for International and European Studies Occasional Paper*.

81 'Joint Statement on Further Restrictive Economic Measures', European Commission (26 February 2022) https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423. See also Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, [2022] OJ L57/4; 'Japan freezes assets of Russia's central bank as part of new sanctions' (Reuters, 1 March 2022) https://www.reuters.com/world/europe/japan-freezes-assets-russias-central-bank-part-new-sanctions-2022-03-01.

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in CBR reserves.[82] While Russia, with support from China,[83] contested the legality of such measures,[84] most states have remained silent, neither endorsing nor condemning them.

The severity of Russia's aggression against Ukraine may have strengthened the argument that these sanctions were a response to a serious breach of a peremptory norm of international law.[85] This may be one of the reasons a larger number of states joined in compared to the previous experiences with central bank sanctions. However, the legal boundaries of permissible central bank sanctions remain a point of contention. Discussions on the opportunity to enact further measures, including confiscating frozen CBR assets to rebuild Ukraine, have emerged. While some initiatives have been advanced domestically,[86] at the time of writing there remains significant disagreement among sanctioning states on the legality and feasibility of such a move.[87]

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82 Martin Sandbu, 'Russian central bank reserves: the numbers' (*Financial Times*, 4 January 2024) https://www.ft.com/content/9529da2e-963e-4b46-956f-3d78548fa3be.

83 'China will not join sanctions on Russia, banking regulator says' (*Reuters*, 2 March 2022) https://www.reuters.com/markets/europe/china-banking-regulator-sees-limited-impact-sanctions-russia-2022-03-02.

84 'Potential UN Resolution on Russia's Frozen Assets Would Be "Highway Robbery", — Diplomat', (TASS, 10 November 2022) https://tass.com/politics/1534425.

85 See Adil A Haque, 'An Unlawful War' (2022) 116 AJIL Unbound 155, 158.

86 eg Budget Implementation Act, 2022, No 1, SC 2022, c 10, ss 440-441, amending the provisions of the Special Economic Measures Act, SC 1992, c 17, s 4(1)(b) (Canada); 'Seizure of Russian State Assets and Support for Ukraine Bill' (UK Parliament, 23 February 2023) https://bills.parliament.uk/bills/3415; Rebuilding Economic Prosperity and Opportunity for Ukrainians Act or the REPO for Ukrainians Act, HR 4175, 118th Cong (2023-2024).

87 Paola Tamma and James Politi, 'Washington puts forward G7 plan to confiscate $300bn in Russian assets' (*Financial Times*, 28 December 2023) https://www.ft.com/content/d206baa8-3ec9-42f0-b103-2c098d0486d9. As of April 2024,

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2.4.3. Regional Organisations' Practice from 2010s to Present Day

Significantly, the last two decades have also seen the adoption of central bank sanctions by regional organizations (ROs) comprising developing nations that had previously opposed economic sanctions, such as the Arab League and the Economic Community of West African States (ECOWAS). These measures were enacted against member states within the RO's legal framework, and thus are not 'unilateral'. However, they might suggest a growing acceptance of central bank sanctions in extraordinary situations, typically involving civil conflicts and severe human rights violations.

The eruption of the Syrian Civil War in 2011 prompted the Arab League to suspend Syria's membership and implement several sanctions. These included a prohibition on all transactions with the Central Bank of Syria (CBS) and the freezing of its assets held within member states.[88] ECOWAS also suspended several of its members in response to military coups and unconstitutional power grabs.[89] Since some of these states, as members of the West African Economic and Monetary Union, held their reserves within the Central Bank of West African States (BCEAO), their assets were also blocked as part of these sanction initiatives. This was the case with Mali, whose reserves were frozen in January 2022 after the military government announced its

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the EU was exploring alternative options, like a windfall tax on the frozen assets' profits; see Council Decision (CFSP) 2024/577 of 12 February 2024 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2024] OJ L2024/577.

88 Ian Black, 'Syria defiant as Arab League votes for financial sanctions' (*The Guardian*, 27 November 2011) https://www.theguardian.com/world/2011/nov/27/arab-league-approves-sanctions-syria.

89 Chikodiri Nwangwu et al, 'Interrogating the Relevance of the ECOWAS in Global Political Economy' (2019) 13 *Central European Journal of International & Security Studies* 111, 122.

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intention to delay new elections.[90] Similar measures were taken against Niger following a military coup in July 2022.[91]

Some of these measures were met with favour by other states. For instance, following a contested presidential election in Cote d'Ivoire in 2010, the BCEAO intervened by blocking Laurent Gbagbo's access to state funds and recognised the opposition candidate, Alassane Ouattara, as the legitimate president.[92] Given that several states and organisations, including the UN through a UNGA resolution, had recognised Ouattara's legitimacy, the blocking of funds by the BCEAO faced minimal protest.[93]

In other instances, however, central bank sanctions imposed by ROs have sparked criticism. For instance, Iraq and Jordan refused to implement the Arab League sanctions against the CBS, citing concerns about their impact beyond the government of

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90 ECOWAS, '4th Extraordinary Summit of the Authority of Heads of State and Government on the Political Situation in Mali, Final Communique' (9 January 2022) para 9, https://old22.ecowas.int/wp-content/uploads/2022/01/Final-Communique-on-Summit-on-Mali-Eng-080122.pdf; 'West African central bank freezes Mali assets' (*Central Banking*, 11 January 2022), https://www.centralbanking.com/central-banks/governance/7917041/west-african-central-bank-freezes-mali-assets.

91 Ben Margulies, 'West African central bank freezes Niger's accounts' (*Central Banking*, 2 August 2023) https://www.centralbanking.com/central-banks/governance/7959406/west-african-central-bank-freezes-nigers-accounts.

92 Communiqué de Presse de la Session Extraordinaire du Conseil des Ministres de l'UEMOA (23 December 2010) https://www.bceao.int/sites/default/files/inline-files/Communique_de_Presse_CME_Bissau0001.pdf. See also Mirko Sossai, 'UN sanctions and regional organizations: an analytical framework' in van den Herik (2017) 395, 411.

93 Yejoon Rim, 'Two Governments and One Legitimacy: International Responses to the Post-Election Crisis in Côte d'Ivoire' (2012) 25 LJIL 683.

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Syria.[94] An Iraqi government spokesperson publicly stated that these sanctions would have a 'negative effect on the people and not the regime'.[95] Recent measures imposed by ECOWAS and the BCEAO against Mali and Niger also encountered similar opposition, with some arguing that they would disproportionately burden the civilian population.[96] Notably, France's attempt to impose equivalent sanctions through a UNSC resolution was vetoed by Russia and China.[97]

These examples from the practice of ROs reinforce the view that only exceptional circumstances can justify the sanctioning of central banks and that humanitarian considerations remain essential to ensure these measures remain permissible.

3. International Legal Issues Arising from Central Bank Sanctions

As the previous section demonstrated, central bank sanctions have witnessed an inconsistent evolution. The shift towards targeted sanctions at the UN level has made targeting central banks exceptional. This held true also for measures enacted outside the UN framework until the 2010s, with limited use by Western states facing contestation

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94 Zeynep Şahin Mencütek, 'The "Rebirth" of a Dead Organization?: Questioning the Role of the Arab League in the "Arab Uprisings" Process' (2014) 19 *Perceptions: Journal of International Affairs* 83, 98–99.

95 Edmund Blair and Ayman Samir, 'Arabs seek UN support for Syria peace plan' (Reuters, 24 January 2012) https://www.reuters.com/article/idUSL5E8CO2GZ.

96 Komlan Avoulete, 'Should ECOWAS Rethink its Approach to Coups?' (International Policy Digest, 31 January 2022) https://intpolicydigest.org/should-ecowas-rethink-its-approach-to-coups.

97 'Russia, China block UN support for ECOWAS sanctions on Mali' (Al Jazeera, 12 January 2022) https://www.aljazeera.com/news/2022/1/12/russia-and-china-block-un-support-for-ecowas-sanctions-on-mali.

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from developing nations. However, the past two decades have seen a rise in these sanctions. Still, the fact that – with the exception of the US – this increased use has been limited to exceptional circumstances can be partly explained by the legal complexities surrounding these measures.

As seen above, while international law does not prohibit economic coercion as such,[98] it does impose limitations. States have latitude to take unfriendly and even coercive measures without violating international law ('retorsions').[99] However, central bank sanctions pose unique legal challenges. Because of their inherent characteristics, these sanctions are likely to violate several international legal principles and rules like non-intervention, state jurisdiction, immunity, human rights, and various international economic law treaties. The following sub-sections will delve deeper into each of these legal categories to illustrate the tension at the heart of central bank sanctions. The next section will then explore potential legal justifications for central bank sanctions in specific circumstances.

3.1. The Principle of Non-intervention

Frequently described as a corollary of the principle of the sovereign equality of states, non-intervention is widely recognised as a rule of customary international law.[100] An

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98 See above section 2.1.

99 UNGA, 'Articles on the Responsibility of States for Internationally Wrongful Acts' (10 August 2001) II(2) Yearbook of the International Law Commission 31, UN Doc A/56/10 128, para 3 (ARSIWA). See Martin Dawidowicz, *Third-Party Countermeasures in International Law* (CUP, 2017) 27–28.

100 *Nicaragua*, para 202. See also Maziar Jamnejad and Michael Wood, 'The Principle of Non-intervention' (2009) 22 LJIL 345, 347; Marko Milanovic, 'Revisiting Coercion as an Element of Prohibited Intervention in International Law' (2023) 117 AJIL 601; Florian Kriener, 'Intervention, Prohibition of' in *Max Planck Encyclopedia of Public International*

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oft-cited definition can be found in the in the UNGA's Friendly Relations Declaration, which states:

> No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.[101]

In the *Nicaragua* case, the ICJ identified two components characterising a prohibited intervention.[102] First, it must 'be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely', including 'the choice of a political, economic, social and cultural system, and the formulation of foreign policy'.[103] Second, it must use 'methods of coercion in regard to such choices, which must remain free ones'.[104]

When it comes to applying these criteria to economic sanctions, however, substantial disagreement emerges.[105] As seen above, attempts by developing states to outlaw all forms of economic coercion have been unsuccessful due to the opposition of a number of Western and other states.[106] This was somewhat validated by the ICJ, which found that the US trade embargo of Nicaragua did not amount to prohibited

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Law (2023) para 1; Marco Roscini, *International Law and the Principle of Non-Intervention* (OUP 2024) 144.

101 UN Doc A/Res/2625(XXV).

102 The two-element approach is also common in the literature; see eg Jamnejad and Wood (2009) 347; Milanovic (2023) 602.

103 *Nicaragua*, para 205.

104 ibid.

105 See Kriener (2023) paras 28–35; Roscini (2024) 175.

106 See Barber (2021) 359–360. See further Section 2.1 above.

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intervention.[107] Yet, considerable practice also from Western states points to the fact that certain forms of interference in the domestic affairs of a state amount to unlawful intervention even when not involving the use of force.[108] In his seminal work on the principle of non-intervention, Roscini identifies 'a trend towards its broadening in scope so as to also include economic coercion'.[109]

To compound this difficulty, state practice on economic sanctions suffers from what Milanovic described as the 'problem of justification'.[110] Because coercion can be used for objectively good ends – in the case, for instance, of measures promoting humanitarian goals – states seeking to justify their actions are incentivised to argue that these measures do not engage the principle of non-intervention, either because they are not coercive, or because they do not infringe upon matters on which states can decide freely.[111]

Drawing a firm line between acceptable economic pressure and prohibited intervention is beyond the scope of the present discussion. However, it is safe to say that at least *some* economic sanctions may violate the principle of non-intervention. A key criterion to judge their potential unlawfulness is the impact that these measures have on the targeted state.[112] For instance, the recently adopted EU Regulation for the protection of the Union and its member states from economic coercion by third countries lists, among the factors to determine the existence of unlawful coercion, the 'intensity,

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107 *Nicaragua*, para 245.

108 See Ori Pomson, 'The Prohibition on Intervention Under International Law and Cyber Operations' (2022) 99 *International Law Studies* 180, 216.

109 Roscini (2024) 183.

110 Milanovic (2023) 620.

111 Milanovic (2023) 621–623.

112 See Jamnejad and Wood (2009) 370–371; Roscini (2024) 177.

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severity, frequency, duration, breadth, and magnitude of the third country's measure and the pressure arising from it.'[113]

In the case of central bank sanctions, there can be little doubt that these measures are designed to have devastating effects on the sanctioned state. Taking the recent sanctions against Russia as an example, this can be evidenced in most statements accompanying the imposition of restrictions on the CBR.[114] The EU Commission explicitly stated that these sanctions aimed to 'weaken Russia's economic base' in order to curtail its ability to wage war.[115] High-ranking officials from the UK, US, and France went as far as to declare that these sanctions were intended to bring about 'the collapse of the Russian economy'.[116]

These statements are not unique to the central bank sanctions against Russia, nor do they represent undesirable, but ultimately collateral, effects of central bank sanctions. These sanctions are designed to cut out a state from global financial markets and interfere with its monetary policies, thereby causing ripple effects on several key component of the targeted state's economy. As such, central bank sanctions directly

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113 Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries [2023] OJ L2675/1, Art 2(2)(a).

114 See Hofer (2023).

115 European Commission, 'Sanctions adopted following Russia's military aggression against Ukraine', https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en.

116 See HM Treasury and Office of Financial Sanctions Implementation, 'UK Statement on Further Economic Sanctions Targeted at the Central Bank of the Russian Federation' (28 February 2022) https://www.gov.uk/government/news/uk-statement-on-further-economic-sanctions-targeted-at-the-central-bank-of-the-russian-federation; Pop, Fleming, and Politi (2022); Bernstam (2022).

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infringe on a state's monetary sovereignty,[117] which has been described as 'one of the last and most solid bastions of national sovereignty'.[118] Because of the magnitude and significance of their effects on key state functions, central bank sanctions are thus *prima facie* meeting the threshold of prohibited intervention.

To be sure, it is possible that measures aimed solely at ensuring compliance with international law – such as halting an ongoing aggression – may not trigger the prohibition on intervention simply because the affected state has no free choice to disregard its international obligations.[119] However, this interpretation risks eliding the distinction between the primary rule of non-intervention and external circumstances that might preclude the wrongfulness of an otherwise prohibited intervention. Considering the challenge of objectively determining when a state is acting to uphold international law – one need only examine the US sanctions against Iran after withdrawing from the JCPOA to see how such claims can be abused[120] – it is preferable to maintain a clear distinction between these issues. Coercive measures that significantly disrupt a state's

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117 Whether monetary sovereignty is a self-standing principle of international law has proven elusive, leading some to describe it as an 'essentially contested concept'; see Claus D Zimmermann, 'The Concept of Monetary Sovereignty Revisited' (2013) 24 EJIL 797, 805. However, there is little doubt that every state has in principle a sovereign right 'to regulate its own currency'; see *Payment of Various Serbian Loans Issued in France* (*France v Kingdom of the Serbs, Croats, and Slovenes*) (1929) PCIJ Series A no 20, 44.

118 Ernst Baltensperger and Thomas Cottier, 'The Role of International Law in Monetary Affairs' in Thomas Cottier, John H Jackson, and Rosa M Lastra (eds), *International Law in Financial Regulation and Monetary Affairs* (OUP 2012) 357–8.

119 Milanovic (2023) 622–623.

120 See Daniel Franchini, '"With Friends Like That, Who Needs Enemies?": Extraterritorial Sanctions Following the United States' Withdrawal from the Iran Nuclear Agreement' (EJIL:Talk!, 29 May 2018) www.ejiltalk.org/with-friends-like-that-who-needs-enemies-extraterritorial-sanctions-following-the-united-states-withdrawal-from-the-iran-nuclear-agreement.

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economic and political systems, such as central bank sanctions, engage the principle of non-intervention but can still be lawful if the conditions of circumstances precluding wrongfulness are met.[121]

3.2. Targeted Nature and Impact on Human Rights

A central concern regarding central bank sanctions is their potential for widespread harm to civilians in the targeted state. Idriss Jazairy, the first UN Special Rapporteur on the negative impact of unilateral coercive measures on human rights, warned that these sanctions 'can, because of their indiscriminate character, be tantamount to the reintroduction of comprehensive sanctions'.[122] This raises concerns about a potential reversal of the progress made since the late 1990s towards targeted sanctions, which aimed precisely to minimise civilian suffering. However, establishing a direct causal link between central bank sanctions and human rights violations remains a challenge.

Quantifying the effects of international sanctions is difficult, especially when considering the gap between their immediate target and their long-term consequences. On the surface, central bank sanctions are 'targeted' measures. Proponents argue that targeting central banks directly cuts off a major source of funding for the illegal activities that the sanctioned government is accused of.[123] However, several studies have highlighted how sanctions encompassing entire sectors of a state's economy, such

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121 See Section 4.3 below.

122 Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy (10 August 2015) UN Doc A/HRC/30/45, para 31.

123 eg US Department of Treasury, 'Treasury Sanctions Iran's Central Bank and National Development Fund' (20 September 2019) https://home.treasury.gov/news/press-releases/sm780.

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as the financial sector, can have significant spillover effects beyond the ruling regime.[124] In the case of central bank sanctions, freezing assets and isolating the banks from global financial markets can severely impede their ability to fulfil their core functions, including ensuring a functioning payment system, acting as lender of last resort, and controlling foreign exchange reserves. Over time, this can lead to a financial crisis in the targeted state with severe repercussions for its people, especially those already facing economic hardship.[125]

Alena Douhan, in her capacity as the UN Special Rapporteur on the negative impact of unilateral coercive measures on human rights, has repeatedly linked central bank sanctions to a severe decline in living standards for citizens in targeted states. For example, Douhan found that US sanctions against Venezuela, including the freezing of CBV assets, 'exacerbated the pre-existing economic and humanitarian situation' and had 'a devastating effect on the entire population of Venezuela'.[126] Similar observations were made regarding sanctions against the central banks of Syria and Afghanistan.[127]

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124 Gordon, 'The not so targeted instrument' (2019) 303-314; Hofer (2020) 399.

125 Potential violations encompass basic human rights (eg right to life, inviolability of the person), economic rights (eg property rights, freedom to trade), women's rights (eg women's economic and political rights), and political rights and civil liberties (eg freedom of assembly and speech); see Armin Steinbach et al, 'Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle' (2023) 36 *Harvard Human Rights Journal* 1, 15.

126 Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, on her visit to the Bolivarian Republic of Venezuela (6 September 2021) UN Doc A/HRC/48/59/Add.2, para 94.

127 See 'US must remove sanctions and allow Syria to rebuild – UN expert' (29 December 2020) https://www.ohchr.org/en/press-releases/2020/12/us-must-remove-sanctions-and-allow-syria-rebuild-un-expert; 'Afghanistan: UN experts call on US Government to unblock foreign assets of central bank to ease humanitarian impact' (25 April 2022)

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These findings raise serious questions about the compatibility of central bank sanctions with core principles of human rights and humanitarian law. Several rules of international law prohibit states, acting individually or collectively, from employing indiscriminate measures that target an entire state without considering the collateral damage inflicted on civilians.[128] At a minimum, states that are parties to widely ratified human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) have an obligation not to deprive a people 'of its own means of subsistence'.[129] Thus, according to Crawford, 'measures taken in the framework of inter-State relations should not be such as to threaten the starvation of the people of a State'.[130] In addition, other substantive human rights such as the right to life under Article 6(1) ICCPR may be implicated by measures causing 'widespread hunger and malnutrition and extreme poverty'.[131]

To be clear, the imposition of economic sanctions against foreign states does not automatically trigger human rights obligations.[132] According to ICCPR Article 2(1), the obligations of each state party are limited to 'all individuals within its territory *and*

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https://www.ohchr.org/en/press-releases/2022/04/afghanistan-un-experts-call-us-government-unblock-foreign-assets-central.

128 See Dupont (2016) 39–40.

129 See common Art 1(2) ICCPR; ICESCR.

130 James Crawford, 'Third Report on State Responsibility' (2000) UN Doc A/CN4/507, 20, para 39.

131 UN Human Rights Committee, 'General Comment No 36: Article 6: Right to Life' (3 September 2019) UN Doc CCPR/C/GC/36, para 26.

132 See Dapo Akande, Payam Akhavan, and Eirik Bjorge, 'Economic Sanctions, International Law, and Crimes Against Humanity: Venezuela's ICC Referral' (2021) 115 AJIL 493, 505.

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subject to its jurisdiction'.[133] There is longstanding debate about whether individuals outside a state's territory – as is ordinarily the case for those affected by economic sanctions – can be considered subject to its jurisdiction for human rights purposes.[134] At the same time, all human rights bodies have accepted that certain forms of control exercised by a state over individuals outside its territory can bring those individuals within its jurisdiction.[135] The Human Rights Committee, for instance, has held that the right to life under Article 6(1) ICCPR extends to 'all persons over whose enjoyment of the right to life [the state] exercises power or effective control', though it emphasised that any interference with the right to life must occur 'in a direct and reasonably foreseeable manner'.[136]

There may be disagreement about whether economic sanctions in general meet this threshold, except perhaps 'in the extreme circumstance where unilateral sanctions rise to the level of depriving a people of its own means of subsistence or threatens the starvation of the people of a state'.[137] Central bank sanctions, however, stand out compared to other economic sanctions because they are specifically designed to have an overwhelming impact on a state's economy. The practice of central bank sanctions shows that they ordinarily have 'a devastating effect on the entire population' of the targeted state, and when they do not reach this level of impact, they are considered to

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133 Emphasis added.

134 See generally Marko Milanovic, Extraterritorial Application of Human Rights Treaties (OUP 2011).

135 See Akande, Akhavan, and Bjorge (2021) 115 AJIL 493, 505.

136 General Comment No 36 (2019) para 63.

137 See Akande, Akhavan, and Bjorge (2021) 115 AJIL 493, 508.

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have 'failed'.[138] Therefore, such effects cannot be said to be anything but 'direct and reasonably foreseeable' consequences of imposing central bank sanctions. To comply with international human rights standards, it is crucial that central bank sanctions include exceptions to ensure basic humanitarian needs are met and mitigate negative impacts on the affected population.[139]

In December 2022, the UNSC took a step towards addressing this issue by approving a general humanitarian exemption for asset freeze measures imposed by UN sanctions regimes.[140] However, no uniform licensing regime exists for other forms of central bank sanctions, especially when imposed unilaterally. The EU has issued a general guidance on the provision of humanitarian aid within the EU sanctions framework,[141] while the US and UK often provide tailored exceptions and licences for specific sanctions programs.[142] Critics argue that these exceptions remain nonetheless

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138 See Robert Huish, 'Vladimir Putin's gold strategy explains why sanctions against Russia have failed' (*The Conversation*, 18 March 2024) https://theconversation.com/vladimir-putins-gold-strategy-explains-why-sanctions-against-russia-have-failed-225748.

139 In a similar vein, see Hofer (2020) 403–404.

140 UNSC Res 2664 (2022), UN Doc S/RES/2664 (9 December 2022), para 1.

141 See, eg, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, 'Sanctions: Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures' (30 June 2022) https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures_en.

142 Eg OFAC, 'Iran General License 8A: Authorizing Certain Humanitarian Trade Transactions Involving the Central Bank of Iran or the National Iranian Oil Company' (26 October 2020) https://ofac.treasury.gov/media/48841/download?inline; OFSI, 'General licence: Humanitarian Activity', INT/2022/1947936 (7 July 2022) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089076/General_Licence_INT-2022-1947936_.pdf.

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too restrictive and impractical.[143] Additionally, the chilling effect of central bank sanctions may induce economic actors to over-comply for fear of violating sanctions, leading to potentially severe humanitarian consequences.[144]

3.3. Extraterritorial Effects and State Jurisdiction

Central bank sanctions typically fall into two categories: prohibition of transactions with the targeted bank and freezing of the assets held on its behalf. Since these sanctions primarily impact the territory or nationals of the sanctioning state, they often raise minimal concerns regarding state jurisdiction under international law. This is because they rely on two widely accepted bases for exercising jurisdiction: territoriality and nationality.[145] However, some sanction packages have extended beyond these boundaries, raising further legal challenges. Notably, 'secondary sanctions' that target entities in third countries doing business with the sanctioned bank are particularly problematic. The US sanctions on North Korea, which imposed penalties on 'foreign financial institutions' engaging in significant commercial transactions with the CBNK,[146] exemplify this issue.

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143 Justine Walker, 'The Public Policy of Sanctions Compliance: A Need for Collective and Coordinated International Action' (2021) 103 *International Review of the Red Cross* 705-716.

144 Pierre-Hugues Verdier, 'Sanctions Overcompliance: What, Why, and Does It Matter?' (2022) 48 NCJ International Law 471.

145 See Bernard H Oxman, 'Jurisdiction of States', *Max Planck Encyclopedia of Public International Law* (2007) para 10; Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, OUP, 2015) 29–48.

146 Executive Order 13810 of 20 September 2017, s 4. See also National Defense Authorization Act 2012, requiring the President to sanction foreign financial institutions found to knowingly conduct or facilitate any significant transactions with the CBI; Public Law 112–81, 31 December 2011, section 1245. See further Yann Kerbrat, 'Unilateral

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The legality of secondary sanctions is a complex issue beyond the scope of this discussion.[147] Briefly, attempts by the US to justify such measures on the basis of the effects doctrine or alternative jurisdictional principles have been contested by other states and are generally considered unlawful.[148] Therefore, central bank sanctions that include secondary elements present an additional layer of potential illegality under international law.

3.4. State Immunity

There is broad consensus in the literature that central bank assets, particularly those used for sovereign purposes like foreign exchange reserves, constitute state property enjoying immunity from measures of constraints of other states.[149] This aligns with Articles 19 and 21(1)(c) of the 2004 UN Convention on the Jurisdictional Immunities of States and Their Property (not yet in force), which likely reflect customary international

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Extraterritorial Sanctions as a Challenge to the Theory of Jurisdiction' in Beaucillon (2021) 182.

147 See Tom Ruys and Cedric Ryngaert, 'Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions' (2020) *British Yearbook of International Law*.

148 See Vaughan Lowe, 'US Extraterritorial Jurisdiction: The Helms-Burton and D'Amato Acts' (1997) 46 ICLQ 378, 388; Sarah H Cleveland, 'Norm Internalization and US Economic Sanctions' (2001) 26 *Yale Journal of International Law* 1, 56–57; Tobias Stoll et al, *Extraterritorial Sanctions on Trade and Investments and European Responses* (European Union, 2020) 53.

149 This is distinct from the inviolability recognised to certain state property under treaty regimes such as the 1961 Vienna Convention on Diplomatic Relations; see Tom Ruys, 'Immunity, Inviolability and Countermeasures: A Closer Look at Non-UN Targeted Sanctions' in Ruys, Angelet and Ferro (2019) 691.

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law on this point.[150] However, there is disagreement among commentators regarding the extent to which freezing central bank assets violates international law.

Some argue that freezing central bank assets, when implemented solely through executive and legislative acts, avoids the issue of immunity altogether.[151] This view rests primarily on three arguments. First, the UN Convention on State Immunity, like other immunity codifications,[152] frames immunity specifically 'in connection with proceedings before a court'.[153] Second, states targeted by asset freezes have often failed to raise specific complaints about a breach of state immunity.[154] Third, the core purpose of state immunity is ostensibly to prevent states from 'sitting in judgment' on the acts of other states, not 'to curtail [their] foreign policy powers'.[155]

Upon closer examination, however, these arguments lack persuasion. First, while the language of immunity codifications offers a valuable starting point, it does not

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150 See Ingrid (Wuerth) Brunk, 'Immunity from Execution of Central Bank Assets' in Tom Ruys, Nicolas Angelet & Luca Ferro (eds), *The Cambridge Handbook of Immunities and International Law* (CUP 2019) 280–281.

151 Brunk, 'Central Bank Immunity' (2023) 1633; Philippa Webb, *Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine* (*European Parliament Think Tank*, 23 February 2024) 11-14, https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2024)759602.

152 Webb (2024) p. 12.

153 Tom Ruys, 'Non-UN Financial Sanctions against Central Banks and Heads of State: In Breach of International Immunity Law?' (*EJIL:Talk!*, 11 May 2017) https://www.ejiltalk.org/non-un-financial-sanctions-against-central-banks-and-heads-of-state-in-breach-of-international-immunity-law; Ingrid (Wuerth) Brunk, 'Does Foreign Sovereign Immunity Apply to Sanctions on Central Banks?' (*Lawfare*, 7 March 2022) https://www.lawfaremedia.org/article/does-foreign-sovereign-immunity-apply-sanctions-central-banks.

154 Brunk, 'Central Bank Immunity' (2023) 1634.

155 Ruys (2019) 706.

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definitively establish the full scope of state immunity. The UN Convention itself acknowledges this in its Preamble, stating that 'customary international law continue[s] to govern matters not regulated by the provisions of the present Convention'. As Thouvenin observes, the frequent association of immunity with judicial proceedings stems from the fact that 'it is extremely rare for states to attack the property of other states outside the judicial framework'.[156]

Second, the apparent lack of protests concerning immunity violations during asset freezes overlooks the consistent objections raised by states, particularly from the Global South, against unilateral sanctions, including asset freezes.[157] Some of these protests explicitly referenced state immunity.[158] Even in the absence of such reference, it is unreasonable to infer that a state's protest against the overall illegality of a measure implicitly concedes compliance with legal rules not specifically raised.

Finally, statements of principle about state immunity often reflect subjective views on what immunity should be, rather than an objective reflection of what it is based on state practice. For example, in French scholarship the view that immunity encompasses all interferences with state property has long been prevalent.[159] Ultimately, immunity is a corollary of sovereignty, and in practice, there is no meaningful distinction between judicial and extra-judicial interferences with sovereign property.

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156 Jean-Marc Thouvenin, 'Gel des fonds des banques centrales et immunité d'exécution' in Anne Peters et al (eds), *Immunities in the Age of Global Constitutionalism* (Martinus Nijhoff, 2015) 212.

157 See Section 2.1 above.

158 Letter dated 28 April 2016 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (2016) UN Doc A/70/853S/2016/400.

159 Geneviève Burdeau, 'Le Gel d'Avoirs Étrangers' (1997) 124 *Journal du Droit International* 5, cited by Thouvenin (2015) p. 213.

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From a policy standpoint, it is also undesirable to suggest that executive actions outside judicial processes face fewer legal constraints than those subject to judicial review.

Therefore, the preferable view seems to be that freezing central bank assets constitutes a *prima facie* violation of state immunity rules, which can nonetheless be temporarily justified under certain circumstances.[160] There is significantly less disagreement regarding the illegality of permanent confiscation of central bank assets. Even commentators who argue that immunity applies only in judicial proceedings concede that confiscation might raise immunity concerns due to the need for some form of judicial review.[161] Recent practice concerning Russia's assets reveals that several Western states remain sceptical about the legality of confiscating central bank assets.[162] This reinforces the notion that any interference with sovereign property likely implicates the rules of state immunity.

3.5. International Economic Law Treaties

Central bank sanctions inherently clash with the principles of trade and investment liberalisation that underpin international economic law. Whether specific sanctions violate individual international agreements hinges on the circumstances of each case and requires a detailed examination beyond the scope of this article. Generally, while most international economic law agreements offer exceptions and limitations granting states flexibility in enacting economic sanctions, including those against central

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160 See Section 4.3 below.

161 Brunk, 'Central Bank Immunity' (2023) 1642.

162 Tamma and Politi (2023).

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banks,[163] not all central bank sanctions fit these exceptions neatly. Consequently, external legal justification may be necessary.

The World Trade Organization (WTO) framework does not directly apply to central bank sanctions. Article 1(b)(i) of the General Agreement on Trade in Services (GATS) Annex on Financial Services lists 'activities conducted by a central bank … in pursuit of monetary or exchange rate policies' among the 'services supplied in the exercise of governmental authority', which are excluded from the GATS pursuant to Article I(3)(b). However, restrictive measures that contain secondary sanctions targeting individual and entities located in third states doing business with sanctioned central banks[164] may potentially conflict with the most-favored-nation (MFN) treatment obligation and specific market access commitments.[165] To be lawful, such measures would need justification under an exception, such as that for security measures pursuant to Article XIVbis (1)(b)(iii) GATS.[166]

Central bank sanctions could constitute prohibited monetary restrictions under the International Monetary Fund's Articles of Agreement (IMF Articles).[167] Specifically, preventing certain transactions with central banks might qualify as a restriction on current payments and an interference with the exchange rate system, proscribed under Articles VIII(2)(a) and VIII(3) respectively. Freezing central bank

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163 See Marcin J Menkes, 'The Legality of US Investment Sanctions against Iran before the ICJ: A Watershed Moment for the Essential Security and Necessity Exceptions' (2019) 56 *Canadian Yearbook of International Law* 328, 348.

164 See Section 3.4 above.

165 Menkes (2019) 347.

166 ibid 349.

167 Articles of Agreement of the International Monetary Fund (27 December 1945) 2 UNTS 39.

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assets may also run afoul of Article VIII, Section 2(a), which upholds the principle of current account convertibility.[168]

These prohibitions can be bypassed under certain circumstances. In 1952, the IMF Executive Board established a simplified procedure for approving exchange restrictions implemented 'solely for the preservation of national or international security'.[169] Member states notifying the Board of such restrictions are considered approved if no objections are raised, which has never occurred to date.[170] Nevertheless, it remains unclear whether central bank sanctions always comply with these requirements.

Finally, central bank sanctions might conflict with obligations to protect foreign investments arising from bilateral or multilateral trade agreements between the sanctioning and sanctioned states. These agreements may include clauses on free transfer of funds, fair and equitable treatment, and prohibition on unlawful expropriation.[171] While arbitral practice offers few examples of central banks successfully invoking investment protection treaties, this likely stems from the difficulty

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168 See Dupont (2016) 44; Annamaria Viterbo, 'Extraterritorial Sanctions and International Economic Law' in Michael Ioannidis, Tončica Radovčić and Germán Gómez Ventura (eds), *Building Bridges: Central Banking Law in an Interconnected World* (European Central Bank 2019) 153, 164. Note that some states have not accepted this obligation; see IMF, 'Article VIII Acceptance by IMF Members: Recent Trends and Implications for the Fund' (26 May 2006) https://www.imf.org/external/np/pp/eng/2006/052606.pdf.

169 IMF Executive Board Decision No 144(52/51) (14 August 1952) https://www.imf.org/en/Publications/Selected-Decisions/description?decision=144-(52/51). See Cynthia C Lichtenstein, 'The Battle for International Bank Accounts: Restrictions on International Payments for Political Ends and Article VIII of the Fund Agreement' (1986) 19 *NYUJ Int'l L & Pol* 981, 988–989.

170 Viterbo (2019) 164.

171 Viterbo (2019) 172.

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in establishing that central banks qualify as protected 'investors' under relevant treaties. In *Certain Iranian Assets*, the ICJ ruled that the CBI activities were not sufficiently commercial for the bank to be considered a 'company' under the US-Iran Treaty of Amity.[172] However, future cases may yield different outcomes depending on the specific treaty language. Notably, two Iranian banks – though not the CBI – successfully obtained compensation from Bahrain for measures taken pursuant to sanctions against Iran.[173] The CBI itself also initiated investment proceedings against Bahrain on similar grounds.[174]

In sum, while international economic law treaties do not create an absolute bar on central bank sanctions, some sanctions may raise concerns under applicable legal regimes and necessitate separate legal justification.

4. Legal Justifications for Central Bank Sanctions

Given the potential incompatibility of central bank sanctions with various international law principles, the key question is whether these measures can be reconciled with international law through legal justifications. It is not possible to provide a uniform answer given that their legal basis hinges on who imposed the sanctions and under what circumstances. Sanctions adopted by the UNSC differ legally from those imposed by ROs or unilaterally by states. Similarly, the legal framework for wartime sanctions

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172 For instance, the ICJ found that the CBI's activities were not sufficiently of a commercial character to be considered a 'company' under the US-Iran Treaty of Amity; see *Certain Iranian Assets*, paras 34–54.

173 *Bank Melli Iran and Bank Saderat Iran v The Kingdom of Bahrain* (Award) (9 November 2021) PCA Case No 2017-25.

174 'Iran's Central Bank takes on Bahrain' (*Global Arbitration Review*, 9 August 2021) https://globalarbitrationreview.com/article/irans-central-bank-takes-bahrain.

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diverges from that of peacetime measures. This section will explore these categories, demonstrating that most central bank sanctions in state practice – those enacted unilaterally during peacetime – can only be justified under exceptional circumstances pursuant to the framework of countermeasures.

4.1. Sanctions Under UN Chapter VII Resolutions and the Framework of Regional Organisations

In principle, central bank sanctions mandated by the UNSC should raise few legal issues. Not only are measures adopted under Chapter VII of the UN Charter binding on all member states pursuant to Article 25, but they also supersede any conflicting treaty obligations as per Article 103. However, some argue that certain obligations under customary international law, particularly those of a peremptory character (*jus cogens*), remain binding on the UNSC even when acting under Chapter VII.[175] Consequently, even UN-mandated sanctions cannot entirely disregard the impact on the civilian population of the targeted state and must, to the greatest extent possible, ensure compliance with basic human rights.[176] This may explain the UNSC's cautious use of central bank sanctions in the last two decades and the concerns regarding their potentially indiscriminate impact when adopted.[177] Thus, even UNSC-mandated central bank sanctions raise proportionality and humanitarian considerations similar to those

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175 See Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (OUP 2013) 69.

176 See Christopher Michaelsen, 'Human Rights as Limits for the Security Council: A Matter of Substantive Law or Defining the Application of Proportionality?' (2014) 19 Journal of Conflict and Security Law 451, 462; Monica Lugato, 'Sanctions and Individual Rights' in Ronzitti (2016) 171.

177 See Amelia Broodryk and Anton du Plessis, 'African perceptions of UN sanctions' in van den Herik (2017) 466, 481.

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arising from unilateral sanctions, which are discussed in Section 4.3 below.

Central bank sanctions imposed by ROs against their members present more intricate legal questions. On the one hand, if the RO's constitutive instrument grants it the authority to sanction member states for conduct violating its rules, the legal basis for these sanctions stems from the state's consent provided upon joining the organisation.[178] On the other hand, issues of institutional competence can be more complex in practice. For example, the Pact of the Arab League only explicitly provides for one sanction in Article 18, stating that the 'Council of the League may consider any State that is not fulfilling the obligations resulting from this Pact as excluded from the League'. The League's authority to impose sanctions like those against Syria in 2011 hinges on implied powers, a frequent source of contention among member states.[179] Regardless, the same limitations highlighted for UNSC sanctions apply even more forcefully to sanctions by ROs.

4.2. Self-Defence and the Law of Armed Conflict

When a state becomes the victim of an armed attack, the question arises whether sanctions against the attacker's central bank can be justified as self-defence under Article 51 of the UN Charter. State practice might offer some support for this view, with examples such as the UK's freezing of Argentinian assets during the Falklands War and, potentially, even recent sanctions on the CBR following the invasion of Ukraine (if interpreted as collective self-defence).[180] However, there is no clear consensus on this

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178 Ronzitti (2016) 17.

179 Jan Klabbers, *An Introduction to International Organizations Law* (CUP 2022) 56.

180 See Artem Ripenko, 'Should Third States Follow Ukraine's Lead and Confiscate Russian State Assets?' (Völkerrechtsblog, 19 June 2023) https://voelkerrechtsblog.org/should-third-states-follow-ukraines-lead-and-confiscate-russian-state-assets.

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issue in the academic literature. While scholars like Buchan argue that self-defence should encompass economic sanctions,[181] several authorities point in the opposite directions.[182]

Undoubtedly, if central bank sanctions can be justified as self-defence, they need to comply with relevant conditions, including being: (i) directed at repelling the armed attack; (ii) necessary and proportionate to the threat; (iii) reported to the UNSC and ceased when the Council takes action.[183] These limitations make permanent measures like central bank asset confiscation difficult to justify in terms of self-defence, as their effects extend beyond repelling the immediate attack.[184]

Beyond self-defence, it is doubtful whether central bank sanctions can be taken without further justifications in the context of armed conflict.[185] In any event, international humanitarian law mandates that belligerents, even those engaged in economic warfare, respect basic humanitarian obligations, particularly regarding civilian protection.[186] This means even wartime central bank sanctions must consider proportionality and human rights, which will be discussed in the next sections.

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181 Russell Buchan, 'Non-forcible Measures and the Law of Self-defence' (2023) 72 ICLQ 1.

182 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion [2004] ICJ Rep 136, Separate Opinion of Judge Higgins, para 35; Ian Scobbie, 'Smoke, Mirrors and Killer Whales: The International Court's Opinion on the Israeli Barrier Wall' (2004) 5 *German Law Journal* 1107, 1128-9.

183 Christopher Greenwood, 'Self-Defence', *Max Planck Encyclopedia of Public International Law* (2011) para 8.

184 Webb (2024) 31.

185 On the relevance of wartime confiscation of a belligerent's property, see Anton Moiseienko, 'Trading with a Friend's Enemy' (2022) 116 AJIL 720, 723-726.

186 Vaughan Lowe and Antonios Tzanakopoulos, 'Economic Warfare' in *Max Planck Encyclopedia of Public International Law* (2013) para 24.

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4.3. Countermeasures

The doctrine of countermeasures appears to be the primary legal justification for most central bank sanctions, especially those imposed outside of armed conflict. Under customary international law, states injured by another state's wrongful act have the right to take otherwise unlawful measures to pressure it into compliance with its international obligations.[187] There is ongoing debate regarding whether this right extends to 'collective countermeasures' taken by states other than the injured state in response to breaches of collective obligations,[188] but state practice suggests increasing acceptance of this concept.[189]

For central bank sanctions to qualify as countermeasures, they must first and foremost be demonstrably responding to internationally wrongful acts by other states. This excludes measures lacking a credible basis in this sense, such as many unilateral sanctions imposed by the US, especially before 1990.[190] Even when responding to an international wrongdoing, countermeasures do not grant injured states unfettered discretion to breach international law. The International Law Commission (ILC)'s

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187 See *Air Service Agreement of 27 March 1946 between the United States of America and France* (*US v France*) (1978) 18 RIAA 417, paras 81–82; *Gabčíkovo-Nagymaros Project* (*Hungary v Slovakia*) (Merits) [1997] ICJ Rep 7, 56, para 87. See also James Crawford, *Brownlie's Principles of Public International Law* (CUP 2019) 572–573.

188 Oona Hathaway et al, 'The Emergence of Collective Countermeasures' (Articles of War, 1 November 2023) https://lieber.westpoint.edu/emergence-collective-countermeasures.

189 Christian J Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP, Cambridge 2005) 249; Dawidowicz (2017) 383; Federica Paddeu, 'Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures' (Just Security, 1 March 2024) https://www.justsecurity.org/92816/transferring-russian-assets-to-compensate-ukraine-some-reflections-on-countermeasures.

190 See Section 2.4.1 above.

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Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) recognised that countermeasures are subject to both procedural and substantive requirements.[191] Procedurally, a state should first call upon the wrongdoing state to fulfil its obligations and—save for urgent measures—provide adequate notice.[192] These requirements are not particularly difficult to meet for central bank sanctions. However, some substantive conditions may pose a greater challenge when targeting central banks.

Countermeasures must be directed at the wrongdoing state and limited to the temporary non-performance of an obligation owed to that state. [193] This generally prohibits secondary sanctions impacting individuals and entities in third-party states.[194] Even when solely directed at the wrongdoing state, questions remain regarding whether central bank sanctions can be sufficiently targeted to satisfy countermeasures requirements such as proportionality. The next section explores this issue in more detail.

4.3.1. Proportionality and Humanitarian Considerations

Proportionality is arguably the single most critical factor in evaluating the legality of central bank sanctions. Some argue that even measures that are not incompatible with other rules of international law (thereby qualifying as 'retorsion') 'are still governed by the limitations of necessity and proportionality'.[195] Others contend that proportionality does not set limits to the use of retorsion, since states enjoy a wide measure of

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191 Crawford (2019) 573.

192 ARSIWA Commentary 136.

193 ARSIWA, art 49.

194 See Daniel Franchini, 'Extraterritorial Sanctions in Response to Global Security Challenges: Countermeasures as Gap-fillers in the United Nations Collective Security System' (2023) 12 *Cambridge International Law Journal* 129.

195 Nigel D White, 'Countermeasures and Sanctions' in Malcolm Evans (ed), *International Law* (6th edn, OUP 2024) 508.

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discretion in resorting to such action.[196] A more balanced approach considers that even the right to use retorsion could be abused by manifestly disproportionate measures.[197] Thus, the proportionality test 'should be applied before deciding whether a sanction is an act of retorsion', 'taking into account the goal pursued by the sender …, the limits imposed on the target and the impact on those that are not targeted'.[198]

Regardless of one's view on the proportionality of retorsion, the numerous rules of international law examined above which are potentially violated by central bank sanctions make it highly likely that such measures can only be justified if they meet the requirements of countermeasures. Proportionality is a key element in regulating the use of countermeasures,[199] establishing 'a functional connection between the ends and the means of countermeasures'.[200] However, defining precisely when countermeasures are proportionate remains challenging, as any proportionality assessment is notoriously difficult and can 'at best be accomplished by approximation'.[201] Article 51 ARSIWA states that countermeasures must be 'commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question'. This requires both a quantitative and qualitative comparison between the 'effects of the countermeasures' and the 'injury suffered'.[202]

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196 Thomas Giegerich, 'Retorsion', *Max Planck Encyclopedia of Public International Law* (2020) para 14.

197 Hofer (2020) 415.

198 Hofer (2020) 415.

199 Enzo Cannizzaro 'The Role of Proportionality in the Law of International Countermeasures' (2001) 12 EJIL 889.

200 Federica Paddeu, 'Countermeasures', *Max Planck Encyclopedia of Public International Law* (2015) para 24.

201 *Air Service Agreement*, 443, para 83. See also Hofer (2020) 401.

202 Paddeu (2015) para 23.

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Because central bank sanctions can inflict significant and widespread harm on targeted states, their people, and even third states, it appears that only responses to internationally wrongful acts of significant gravity can make these measures proportionate. Serious breaches of peremptory norms – which, according to Article 40 ARSIWA and its commentary, are 'gross or systematic failure' to fulfil obligations such as the prohibition of aggression, slavery, genocide, racial discrimination, and apartheid[203] – may exemplify such situations. Yet, the gravity of the breach is just one of the factors to determine the proportionality of these measures.

Among the 'rights in question' that must be taken into account under Article 51 ARSIWA, the rights of the targeted state's population require paramount consideration, given the potential for central bank sanctions to infringe upon them. This is reinforced by Article 50 ARSIWA, which prohibits countermeasures that 'affect … obligations for the protection of fundamental human rights'.[204] At first glance, this provision seems to render proportionality considerations unnecessary, as any measure impacting such rights would automatically fail to qualify as a countermeasure. However, there are two important caveats to this prohibition.

First, not all human rights necessarily qualify as 'fundamental' human rights under Article 50 ARSIWA, and the ILC commentary suggests that only non-derogable rights would fall within this provision.[205] Second, if 'affect' is interpreted as 'violate', countermeasures may negatively impact the enjoyment of certain human rights without

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[203] ARSIWA Commentary, 112.

[204] However, it remains unclear which fundamental rights cannot be affected by countermeasures; see Hofer (2023) 9.

[205] See ARSIWA Commentary, 132, para 6.

directly violating them.[206] This impact, however, must still be considered when evaluating the proportionality of an otherwise unlawful measure.[207]

In light of this, it appears necessary for states implementing central bank sanctions to make efforts to minimise their impact on the general population of the targeted state for such actions to be considered lawful.[208] As discussed in Section 3.3, the inconsistency in humanitarian exceptions across various sanctions regimes coupled with the risk of overcompliance by economic operators underscores this critical point. Arguably, states should not simply provide for licences and exceptions relating to humanitarian assistance but also actively facilitate the provision of these services, potentially through specialised financial entities that can conduct humanitarian transactions without the risk of sanctions.[209] The effects of central bank sanctions should also be continuously monitored, as the proportionality justification may evolve with changing circumstances.

For instance, conflicting reports might cast doubt on the ongoing impact of recent sanctions against the CBR on both the Russian economy and its society.[210] The long-term effectiveness of freezing foreign exchange reserves also remains uncertain,

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206 This is exacerbated by the lack of consensus regarding the extent to which the human rights of individuals affected by sanctions fall under the jurisdiction of the sanctioning state; see Section 3.2 above.

207 See Roger O'Keefe, 'Proportionality' in James Crawford, Alain Pellet, and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) 1165.

208 See Dupont (2016) 39–40; Daniel H Joyner, 'International legal limits on the ability of states to lawfully impose international economic/financial sanctions' in Ronzitti (2016) 190–206, 205.

209 See Axel Hellman, 'Mitigating Iran sanctions: The case for a humanitarian SPV' (*Atlantic Council*, 13 December 2018) https://www.atlanticcouncil.org/blogs/iransource/mitigating-iran-sanctions-the-case-for-a-humanitarian-spv.

210 Quaglia and Verdun (2023) 881; Hofer (2023) 14.

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particularly given potential shifts in the US dollar's role as the default reserve currency.[211] Should such sanctions fail to achieve their intended effect over time, the justification for the harm inflicted on the population weakens. This necessitates periodic reassessments to ensure proportionality is maintained.

4.3.2. Temporary Nature and Reversibility

Article 49(3) of ARSIWA emphasises that countermeasures must 'as far as possible, be taken in such a way as to permit the resumption of performance of the obligations' affected by the measure. This requirement reflects the core purpose of countermeasures: to induce the wrongdoing state into compliance with international law, not to inflict lasting punishment.[212]

Most central bank sanctions do not raise issues with this principle. Prohibitions on financial transactions and asset freezes can be lifted once the targeted state has resumed compliance with its international obligations. Although some of the effects of these measures might persist after they are lifted – for instance, a state's currency may have depreciated as a result of sanctions – this does not make them unlawful. What is important is that the sanctions themselves can be removed once their law-enforcing goal has been achieved.[213]

However, reversibility challenges arise when central bank sanctions become permanent. While the freezing of central bank assets can be justifiable as a temporary

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211 See Srichander Ramaswamy, 'The Threat of Financial Sanctions: What Safeguards Can Central Banks Build?' (2022) 30 *China & World Economy* 23, 35.

212 ARSIWA Commentary, 131.

213 See ARSIWA Commentary, 131; Paddeu (2024).

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suspension of the rules of state immunity,[214] it is harder to apply the logic of countermeasures to permanent measures such as confiscation.[215] Once central bank assets are transferred to a new owner, full reversal becomes impossible.[216] Many scholars emphasise that such permanent effects make confiscation inherently incompatible with the framework of countermeasures.[217] The reluctance of several states to confiscate CBR assets lends further support to this view.[218] The sole examples of central bank asset confiscation are statutes enacted by the US and Canada allowing for the enforcement of domestic court judgments against states declared 'sponsors of

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214 On the applicability of countermeasures to the rules of state immunity, see Daniel Franchini, 'State Immunity as a Tool of Foreign Policy: The Unanswered Question of Certain Iranian Assets' (2019) 60 *Virginia Journal of International Law* 433.

215 See Brunk (2023) 1654; Ingrid (Wuerth) Brunk, 'Countermeasures and the Confiscation of Russian Central Bank Assets' (*Lawfare*, 3 May 2023) https://www.lawfaremedia.org/article/countermeasures-and-the-confiscation-of-russian-central-bank-assets; Webb (2024) 24; Federica Paddeu, 'Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures' (*Just Security*, 1 March 2024) https://www.justsecurity.org/92816/transferring-russian-assets-to-compensate-ukraine-some-reflections-on-countermeasures; Dapo Akande et al, 'On Proposed Countermeasures Against Russia to Compensate Injured States for Losses Caused by Russia's War of Aggression Against Ukraine' (*International Institute for Strategic Studies*, 20 May 2024) https://www.iiss.org/research-paper/2024/05/on-proposed-countermeasures-against-russia-to-compensate-injured-states-for-losses-caused-by-russias-war-of-aggression-against-ukraine.

216 Paul Stephan, 'Response to Philip Zelikow: Confiscating Russian Assets and the Law' (*Lawfare*, 13 May 2022) https://www.lawfareblog.com/response-philip-zelikow-confiscating-russian-assets-and-law.

217 eg Scott R Anderson and Chimène Keitner, 'The Legal Challenges Presented by Seizing Frozen Russian Assets' (*Lawfare*, 26 May 2022) https://www.lawfareblog.com/legal-challenges-presented-seizing-frozen-russian-assets; Brunk (2023) 1647–1648.

218 Tamma and Politi (2023).

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terrorism'.[219] The legality of such measures under international law is highly debatable.[220]

Still, it is possible that even non-reversible measures like confiscation of central bank assets might be justifiable in exceptional circumstances. In the aftermath of Russia's invasion of Ukraine, a number of experts argued that frozen CBR assets could be permanently transferred to an international compensation mechanism, aimed at distributing these funds to Ukraine.[221] The legality of such measures would rest on the mechanism's goal to 'ensure the effectiveness of the transfer of funds in compensating Ukraine and others for the injuries they have suffered'.[222]

Other scholars also supported the view that countermeasures in the forms of confiscation may be lawful when enforcing a damages award issued by a competent international court or tribunal.[223] In this situation, confiscating assets for an amount equivalent to what owed by the wrongdoing state would have the same effects of that states fulfilling its obligation to pay court-ordered damages. The ultimate purpose

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219 Iran Threat Reduction and Syria Human Rights Act, Public Law No 112-158, 126 Stat 1214, 1258–1259 (10 August 2012); Justice for Victims of Terrorism Act, SC 2012, c1, s2.

220 Victor Grandaubert, 'Is there a place for sovereign immunity in the fight against terrorism? The US Supreme Court says 'no' in Bank Markazi v. Peterson' (EJIL: Talk!, 19 May 2016) https://www.ejiltalk.org/is-there-a-place-for-sovereign-immunity-in-the-fight-against-terrorism-the-us-supreme-court-says-no-in-bank-markazi-v-peterson.

221 See Webb (2024) 38; Akande et al (2024) para 67.

222 Akande et al (2024) para 68.

223 See Oscar Schachter, 'The enforcement of international judicial and arbitral decisions' (1960) 54 AJIL 1; Linos-Alexandre Sicilianos, *Les réactions décentralisées à l'illicite* (LGDJ 1990) 268–271; Alessandra Gianelli, *Adempimenti preventivi all'adozione di contromisure internazionali* (Giuffrè 1997) 129–130.

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would not be punishing the wrongdoing state but ensuring full implementation of international responsibility.

State practice does not offer many examples of this form of self-help, likely because the practical and political costs of asset confiscation discourage states from pursuing such measures. One notable exception is the UK's experience in enforcing the ICJ judgment in the *Corfu Channel* case.[224] When Albania refused to comply with the award of damages, the UK announced its intention to seize Albanian assets within its territory to unilaterally satisfy the judgment.[225] Although this effort ultimately failed due to the absence of identifiable Albanian assets in the UK, Schachter notes that no objections were raised at the time regarding the legality of the procedure.[226] While this perspective has gained some support in the literature,[227] the broader viability of such an approach remains largely untested in practice.

5. Conclusion

Central bank sanctions have emerged as a powerful tool for influencing state behaviour, but their growing popularity raises complex issues under international law. This is particularly noteworthy considering that the rise of these sanctions in state practice has occurred parallel to the UN's shift towards more targeted measures, which rarely involve central banks. That being said, the majority of state practice treats central bank sanctions as exceptional measures to be used only in response to particularly serious breaches of collective obligations. This apparent restraint can be explained by the fact

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224 *Corfu Channel* (*UK v Albania*), Merits [1949] ICJ Rep 4.

225 Schachter (1960), 7–8.

226 ibid.

227 See Sicilianos (1990) 268–271; Gianelli (1997) 129–130.

that central bank sanctions inherently clash with several legal principles, including non-intervention, state jurisdiction, immunity, human rights, and various international economic law treaties. Thus, to comply with international law, these sanctions require a specific legal justification, especially when adopted outside the UN legal framework.

As this article argued, the most plausible justification for most central bank sanctions should be found in the framework of countermeasures. However, even as countermeasures, these sanctions must meet strict conditions, making them lawful only in exceptional circumstances. Proportionality presents the most significant challenge. Central bank sanctions often have broad economic ramifications, impacting not just the targeted entities but also civilians and potentially even third-party states, as repeatedly highlighted by the UN Special Rapporteur on unilateral coercive measures and human rights. Only when responding to particularly serious breaches of international law can these measures be considered proportionate responses. Even then, the human rights of affected people cannot be disregarded. Sanctioning states must take all steps to minimise harm against the general population and ensure that humanitarian assistance continues to flow.

State immunity adds another layer of complexity. The lack of clarity regarding the permissibility of freezing central bank assets makes the current situation particularly problematic. Countermeasures might again provide a basis for temporarily suspending immunity, but justifying permanent measures like asset confiscation under this framework becomes extremely difficult. Perhaps only very exceptional circumstances, such as enforcing international judgments, might warrant a different outcome.

As state practice continues to evolve, the international community faces a delicate balancing act. Central bank sanctions, like other types of sanctions, may serve a useful purpose. However, their potential human costs and unintended economic

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consequences raise serious concerns about their justification in many situations. Ensuring that their effects and the conditions on which they can be employed are properly understood is a crucial first step in ensuring that the use of such measures does not spiral out of control, threatening to destabilise the international rule of law and global financial stability.

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