

# **Iranians' Economic Rights Violation by the US Sanctions in the light of ICESCR**

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## **Abstract**

In most target countries unilateral sanctions act as obstacles that deprive nationals of human rights, particularly economic rights. This descriptive-analytical study to assess the legitimacy of US sanctions from a human rights perspective, especially in relation to ICESCR, seeks to answer the following question: On what basis can the US government be committed to respecting the human rights of Iranians in imposing unilateral sanctions? It is necessary to prove the existence of such an obligation since a State is considered internationally responsible if it violates a proven obligation. As it assumes that all states have the commitment to cooperate for the fulfillment of human rights for all human beings, the findings of this study according to CESCR comments, show that obligations that are related to economic human rights including the obligation to respect and cooperate can be considered extraterritorial, as well. Regarding Iranians residing in America, the US government must respect and uphold these economic human rights in its territory and regarding the Iranians who are within a third country, a blend of (Extra)territorial obligations are raised for America and the countries in which Iranians reside.

**Keywords:** Sanctions, Human Rights, Committee on Economic, Social and Cultural Rights (CESCR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Extraterritorial Obligations.

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## **Introduction**

The role of sanctions is considered as a foreign policy tool and the State that imposes sanctions tries to impose "pain and resolve" on another State, person, or organization so that the target changes its behavior or even its nature. (Nephew, 2018, p. 9) Although it is proved that this tool is not effective enough to achieve this goal during the appropriate period or even in the long run, (Tara, 2010, p. 827) economic sanctions are alternatives to military tools in many cases. (Nephew, *ibid*, p. 12) However, the legality (Rahman, 2015, p. 80) and legitimacy (Zamani & Gharib Abadi, 2016, p. 124) of the sanctions are also subjected to serious doubts as far as some States consider the unilateral sanctions as the imposition of a state's will on another state (Hofer, 2017, p. 117) which challenges not only the equality of the sovereign of states but their right to self-determination. In addition, the numerous resolutions adopted by General Assembly announced that such sanctions, under any title, are against international law. (For example GA Res 71/193, GA Res 70/185)

In the middle of the 1990s, United States Congress imposed sanctions known as Helms-Burton Act, which is criticized by many for its extraterritorial characters, (Lowenfeld, 2011, p. 939) on Iran, along with Libya and Cuba. These sanctions put serious obstacles in the way of the development of the oil industry and the export of Iran. (Momenirad & Mousavifar,

2012, p. 150) Moreover, secondary sanctions threatened the investment of other non-American companies and states in Iran.

What turned sanctions into a challenge in the Iranian economy were three types of sanctions that Iran faced after pursuing the peaceful nuclear program. The first sanctions were imposed by the UN Security Council when the International Atomic Energy Agency referred Iranian status to the UNSC and these sanctions began with Resolution 1969. These sanctions increased to the highest point when Resolution 1929 was adopted, this resolution terminated when the Joint Comprehensive Plan of Action (JCPOA) was adopted and the Resolution 2231 endorsed it. In addition, the European Union put sanctions against the Islamic Republic of Iran (Aminzadeh & Khodaparast, 2012, p. 16) within the framework of its common foreign and security policy. (Tzanakopoulos, 2015, p. 146) Such sanctions have a specific character aside from the common points they have with the third form of sanctions – which is the focus of this study. The specific character is that all of them are attributed to an international organization. The third form of sanctions, whose background was the Helms-Burton Act, was imposed by the United States which was initiated under President Obama and increased gradually. When the JCPOA was adopted, the USA pledged to terminate these sanctions which intensified when Trump was elected as president. The sanctions include a wide range of limitations to natural and legal persons, transfer of dollars and banking transactions, purchase of oil, etc. (US Department of Treasury, 2021) They have influenced Iran's budget, the possibility of realizing social, cultural, and economic rights, and especially access to medicine and treatment of patients, as well as the possibility for the education of Iranians around the world, in different ways.

This descriptive-analytical study seeks to argue about the basis of the US human rights obligations (and consequently their violation) in imposing these sanctions. This aim is focused on the ICESCR. Therefore, the basis of legitimacy or illegitimacy of sanctions from the perspective of general international law and humanitarian law is not discussed here.

## **I-Unilateral Sanctions, International Law, and Human Rights**

From the perspective of general international law, arguments can be presented for and against the legitimacy of unilateral economic sanctions. (Pellet, 2015, Vol. 76) The advocates rely on the fact that imposing sanctions is not explicitly prohibited in international law and interpret the rule of prohibition of the use of force narrowly, thus they do not consider an economic sanction as a force. Therefore, they do not ban the coercive measures that are taken to terrorize a nation or political system or to change a state's behavior in international law. In addition, this approach emphasizes on freedom of imposing State to regulate its economic relations based on the principle of sovereignty. These arguments conflict with the declaration annexed to the Vienna Convention on the Law of Treaties (1969) and fail to justify the secondary sanctions. In contrast, opponents consider sanctions as a measure against the sovereignty and independence of the targeted State (Javid & Niavarani, 2016, p. 183) which distorts the principle of freedom of trade (Jazairy, 2019, p. 292) and in some cases distorts such principles as the right to self-determination and sovereignty over natural resources. Numerous resolutions of the General Assembly condemn the economic sanctions (UN/GA/Res. 73/167. 72/168. 66/53. 68/53 etc) and are based on the Declaration on Principles of International Law concerning Friendly Relations (UN/GA/Res. 2625 (XXV) (1970)) can also imply on a legal opinion regarding the prohibition of sanctions. However, since the resolutions of the mentioned entity are non-binding resolutions and the majority of countries that impose sanctions (such as the USA) disagree with these resolutions, it is difficult to rely on them. Even nevertheless unilateral sanctions are not completely banned, the states should take their other international obligations (e.g. human rights obligations) into consideration at the time of putting and implementing sanctions ( Joyner, 2015, p. 84) and in particular, they should refrain from taking unilateral measures with the extraterritorial impact that disrupt the trade relations among states and the measures that are adverse for the realization of the rights

recognized in the Universal Declaration of Human Rights and other documents of International Human Rights, and in particular those measures that are adverse for the right of individuals and peoples to develop. (A/Res/72/168: para 1) Despite the fluidity and flexibility of the general international law that does not cast a minimum of certainty over the legality of resorting to sanctions, this phenomenon can be investigated from specific perspectives of the international law. The Treaty of Amity between Iran and the US (which is assumed to be valid until October 2019) is based on the limited extent of freedom in the trade relations of the two countries. On this basis, when the USA withdrew the JCPOA, the Islamic Republic of Iran formulized it legally and sued the event in the International Court of Justice, claiming the sanctions that the USA imposed on Iran are against the mentioned treaty (especially against Articles 4, 7, 8, 9, and 10). Although the Court will issue a decision on the nature of the dispute in the distant future, it is expected that the US defense is primarily based on Article 20 of the Treaty, and considers it impossible to implement the treaty because it is against its “fundamental interests”. Evaluation of such defenses will be important in substantiating Iran's claim.

Another aspect of the issue which is particularly associated with the mentioned claim is the interim order of the Court issued in October 2018 which express explicitly and as a binding order ( A/Res/72/168: para 1) that “the United States, in accordance with its obligations under the 1955 Treaty, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of Iran of goods required for humanitarian needs”. These goods included medicines and medical devices, foodstuffs and agricultural commodities, as well as goods and services required for the safety of civil aviation. According to this order of the Court, “To this end, the United States must ensure that licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to above” (A/Res/72/168:

para 98) Therefore, the mentioned sanctions violate the international law if they are not in line with the order of the Court.

Since the emphasis of the present study is on the perspective of human rights, the question must be answered by attention to the negative impacts of US sanctions on the realization of the human rights of Iranian people. These impacts which are the main focus of the claim that Iran submitted to the Court, and also the main emphasis of Iran's submissions in the Court,<sup>1</sup> are of great importance to the present study and will be discussed in the following section.

## **II-Jurisdiction and Responsibility**

One of the functions of international law is to determine the scope of jurisdiction of governments. Jurisdiction is a concept that defines the framework in which the function of governance can be applied. This role of international law is the result of accepting the principle of the sovereign equality of states. Typically, this jurisdiction can be identified both geographically and personally. Political boundaries determine the geographical framework of states' jurisdiction, but the same borders are not an absolute barrier to imprison states' jurisdiction in their territory. In some cases, states exercise their jurisdiction regarding the legal relation of nationality among them and the people or even according to their function of protecting their vital interests and even to protect the interests of the international society. The exercise of personal criminal jurisdiction, protection jurisdiction and universal jurisdiction are the most important examples of the development of the jurisdiction of states beyond their borders. The exercise of these jurisdictions within the framework of the international obligations of the states is legal and international responsibility arises beyond that.

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1 At the time of writing this paper, Covid-19 pandemic killed many people all around the world, and especially in Iran. Due to lack of medicines and medical devices as well as money, Iranian government faced difficulty in fighting this virus. Although the same problems affected other countries as well, the US government refused to lift its sanctions.

Although international law limits the states' jurisdiction to their territories, the requirements of international law – which are specifically human rights in the context of the present study– are not solely limited to the territory of each state. In other words, the international human rights law may enforce extraterritorial obligations for each state, and violation of it entails international responsibility, while the scope of the state's jurisdiction is not necessarily expanded. As the International Court of Justice has pointed out in the Wall case according to Article 2, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR), all individuals within the territory of a state and subject to its jurisdiction must enjoy the rights recognized in that Covenant; however, since the International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application, ( Milanovic, 2011, p. 17) the Court finds that occupied areas are subjects to obligations of occupying state as an area of exercising its power under the covenant. (ICJ, 2004, paras 106 and 112.)

This article goes beyond the issues of occupation or any other types of control that a state has over another one or the jurisdiction that a state exercises in one territory and beyond the situations of those Iranians who reside in the United States. This research specifically focuses on the extraterritorial impacts of US sanctions on those Iranians who live in Iran and other countries based on the extraterritorial obligation to cooperation, which will be discussed in the next sections.

### **III- US Sanctions and Violation of Human Rights**

The Special Rapporteur of the Human Rights Council on the situation of human rights in Iran addressed this issue in his reports and evaluated and worried about the impact of sanctions on banking and economic relations of Iran, as well as the right to food and health. (A/HRC/43/61, para 10-15) The organization of Islamic Cooperation has also published a detailed report on the negative impacts of sanctions on economic, social, and cultural rights. (OIC/IPHRC/REP/ECO-SANC/2014/Cfm-41 OIC Independent Permanent Human

Rights) Meanwhile, the General Assembly has emphasized that essential goods such as food and medicines should not be used as tools for economic coercion. (A/Res/72/168: para 8)

Although the destructive role of the US sanctions is discussed, it should be mentioned that the Iranian State has its obligations although sanctions are imposed on it. Though the officials and authorities of the Iranian State stayed silent before the new round of sanctions begin and before they sue in the Court, the Cuban State which is in a nearly similar position, stated at the time of signing the Covenant on Economic, Social, and Cultural Rights in 2008 that, “the economic, commercial and financial embargo imposed by the United States of America and its policy of hostility and aggression against Cuba constitutes the most serious obstacle to the Cuban people's enjoyment of the rights set out in the Covenant.” (UN Treaty Series Collection, 2021)

It does not seem that the mentioned declaration and the imposition of sanctions can in any way nullify or diminish the relevant obligations of the Cuban State, but these sanctions may be considered as an obstacle that prevents the State from fulfilling its international responsibilities or respecting its obligations. ( Javid & Niavarani, 2016, p 183) The CESCR points out in the General Comment No. 8 that the target state must take steps “to the maximum of its available resources” to protect the mentioned rights and it also “remains under an obligation to ensure the absence of discrimination about the enjoyment of these rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society”. (ICESCR, General Comment No. 8. 1997, para 10.) In this regard, Iran has negotiated with the United States many times and also negotiated with EU3 that led to the adoption of JCPOA by all parties, but when the administration in the United States changed, the US not only ended its obligations unilaterally but started to create obstacles and threatened other parties of the agreement and thus deprived Iran of the JCPOA advantages.

Assuming that based on the reports that are approved by the UN Human Rights Council and other reports of international and non-governmental international institutions of human rights, the US embargo led to the violation of economic and civil human rights of Iranian citizens in the territory of the United States and outside this territory, it can be said that a lot of rights have been the subject of the violation directly or indirectly. The Human Rights Council believes that the imposition of unilateral sanctions may have negative impacts on the right to life, right to health and medical care, right to freedom from hunger, right to an adequate standard of living, food, education, work, and housing. (A/HRC/RES/27/21) ICJ declares that the sanction exposes the Iranian people to "danger to health and life". The court implies that "In its opinion, the measures adopted by the United States have the potential to endanger civil aviation safety in Iran and the lives of its users to the extent that they prevent Iranian airlines from acquiring spare parts and other necessary equipment ... necessary for civil aircraft. The Court further considers that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including lifesaving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran." (ICJ, 2018, para 91) Therefore some of the rights that are violated directly are: restrictions on travel since Iranian citizens of the USA are banned to enter the US, violation of the right to freely and safely travel because of the sanctions imposed on the civil aviation and automotive industry, violation of the right to a fair trial because people are added to sanction list without a fair hearing of their defense,<sup>2</sup> violation of the right to freely trade at international level because Iranians cannot have access to SWIFT system and partly due to the direct sanctions imposed

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<sup>2</sup> The assumption does not mean that imposing sanctions on people can be considered legal, but it means that as the International Law Commission (ILC) describes fair trial should be observed even when the sanctions are implemented – although the sanctions are illegal. See: ILC, Report on the work of the fifty-eighth session (2006), p 224.

on banks and the sanctions imposed on various oil industries, petrochemical industries and.... Moreover, the indirect violations are the right to food, medicines, and health because of the restrictions in the transfer of funds and banking in Iran, especially when the US currency is going to be transferred, the right to work, freedom from poverty, and social security because the financial power of the Iranian State diminished when sanctions were imposed on the industries and restrictions in the freedom to trade at international level due to the sanctions imposed on the US dollar transfers, to limit the access of the Iranian State to gold and precious metals, as well as sanctions imposed on natural and legal persons active in the field of trade, including numerous Iranian industries and finally trying to change the behavior of the Iranian State, which may be interpreted as a violation of the right to self-determination.

The wide range of rights that are violated or are about to be violated due to the mentioned sanctions (Mousavi, Jokar, & Mohammadi, 2014, p. 170) lead to the following question: Does the US State have obligation to respect human rights in the case of Iranian citizens or not? And if yes, what kind of obligation? In the human rights law system, and especially in CESC, the obligations of States include respect, protection, and fulfillment. In short, the obligation to respect requires avoiding actions that deprive individuals of their rights. The obligation to protect requires taking measures to protect individuals against the invasion and aggression of the third parties and the obligation to fulfill requires measures that the States have to take to fulfill the rights. (Crayon, 2008), p.152) As will be mentioned, the present study mainly focuses on the US obligation to respect and inter alia its failure to prevent and directly guarantee the rights of the Iranian government as well as the obligation to respect and fulfill the international obligation to cooperate.

#### **IV-The US and International Human Rights**

Regarding the violation of the right to self-determination through the enactment and enforcement of sanctions, there is no doubt that the USA is obliged to the mentioned principle

regarding the imperative quality of this rule. (A/HRC/30/12/Add.1 - Para. 23. See also: Saul, 2011, p. 612) Concerning civil rights, including fair trial and freedom to travel, since the United States is a member of the ICCPR, the arguments are clear. However, concerning the economic rights, since the US State is not a member of the ICESCR, the foundation of this state's obligation to the recognized rights should be argued beyond membership in the Covenant. The CESCR clarified on numerous occasions that the obligation of both States to the Covenant is derived from “the commitment in the Charter of the United Nations to promote respect for all human rights”. ( ICESCR, Ibid,1997, para 8) Thus “obligation to respect human rights” is not derived from the membership of States in the Covenant, but it is derived of inseparability and coherence of human rights (ICESCR, 1990, para 6.) which is such as an informal annex in the Universal Declaration of Human Rights which is integrated into the Charter of United Nations ( Maghami, 2015, p. 73) because this declaration practically clarifies the human rights norms – that is briefly referred to in the Charter of United Nations. (Erika de Wet, 2011, p. 58) In addition, the United States signed the Covenant in 1977 and thus it has the obligations arising when a Treaty is signed under Article 18 of the Vienna Convention 1969, which is now regarded as a part of the customary international law. (Dorr & Schmalenbach, 2011, p. 221) Therefore, the US State must refrain from acts that would defeat the object and purpose of the treaty prior to its entry into force. ( Falsafi, 2012, p. 210)

Moreover, when unilateral imposition is taken into consideration as an international source of States' obligations, it should be pointed out that the United States that refused to recognize economic rights as the real human rights in the 1930s and 1940s, not only fulfilled the economic rights at the national level during the last decades,

but took the issues related to social and economic rights into consideration in its very first report to the Human Rights Council. (US UPR Report, 2010, para 67-76) Therefore now there is no doubt that the United States recognizes this kind of rights generally and has obligations arising from it (Gillian &

McGill, 2012, p. 406) although some mechanisms that are taken into consideration in the following section may be impossible to fulfill because the Covenant was not ratified. Some of the above arguments associated with the US obligation to paragraph 4, Article 24 of the Convention on Rights of the Child regarding the full realization of the rights are also referable to the rights recognized in this Convention. (Committee on the Rights of the Child, General Comment No. 15, 2013, para 10.) According to General Comment No. 8 of the CESCR, first, these rights must be taken fully into account when designing an appropriate sanctions regime. Secondly, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force to protect the economic rights of the affected population (Iranian people in this case). Third, that state has an obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country. (ICESCR, *Ibid*, 1997, para 12-14) The Committee especially points out alleviating the suffering of children and generalizes it to all vulnerable groups (e.g. sick and persons with disabilities). In addition, the Committee of the Rights of the Child also expresses, “States parties should consider the potential impact on children’s rights when planning and implementing economic sanctions”. (Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children’s rights (art. 4) (¶ 16) para 39.)

According to the CESCR even in the case of the resolution of the Security Council under Chapter VII of the charter, humanitarian exemptions are necessary to remove side sufferings of the vulnerable groups although these exemptions may also be ineffective or do not embody all rights. Therefore, it is imperative to evaluate the possible impacts of sanctions before imposing them. Sanctions that violate human rights may be considered contrary to the Charter and nonbinding. (Zamani & Zanganeh Shahraki, 2013, p 52) However, according to the committee, humanitarian exemptions tend to be ambiguous and

are interpreted arbitrarily and inconsistently. ... Delays, confusion, and the denial of requests to important essential humanitarian goods cause resource shortages. ... [Their effects] inevitably fall most heavily on the poor. ( ICESCR, Ibid,1997, para 4-5) This experience was also repeated in the realization of the exceptions to the sanctions against Iran; especially given that the mentioned exceptions prohibited either the access of the Iranian State to financial assistance or required a specific license for each transactional process. (OFAC, 2013) Therefore, in practice, the effect of exemptions on the large volume of deprivations is not significant.

### **V-The Situation of Iranians Residing in Iran**

The first hypothesis is the situation of Iranian citizens residing in Iran who are most affected by the US sanctions. Is it conceivable how their human rights are violated by the US government? What obligations the US government has regarding the human rights of the Iranian people? The answer to these questions has to be sought beyond the generalities of the human rights obligations as *Erga Omnes*. The answer should be sought in each Covenant depending on the type of rights in question. Most of the rights at risk are of an economic kind and the subject of the ICESCR. According to the Covenant, this kind of rights is principal of territorial nature (Fons Coomans,2011, p 5) however, contrary to Article 2 of the ICCPR that include obligations of States towards “individuals who are on the territory or within their jurisdiction”, the ICESCR does not have a jurisdiction clause. Hence, CESCRC has recognized some aspects of extraterritorial obligations in its procedure without explaining the extraterritorial obligations of States in the implementation of the ICESCR systematically and conceptually. (Fons Coomans,2011, p 4.)

The committee stated in General Comment No. 19 that “States parties should extraterritorially protect the right to social security by preventing their citizens and national entities from violating this right in other countries”. (ICESCR, General Comment No. 19 the Right to Social Security (Art. 9),2008, para 54.) Paragraph 53 of the same document states, “to comply

with their international obligations in relation to the right to social security, States parties have to respect the enjoyment of the right by refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to social security in other countries". A similar approach exists in General Comment No. 15 on the right to water. (ICESCR, General Comment No. 15: The right to water, 2002, para 33.) Also, States parties should facilitate the realization of the right to social security in other countries. (ICESCR, *Ibid*, 2008, para 55.)

The main source of this extraterritorial approach should be traced in the concept of "international assistance and cooperation" which is mentioned in Article 2 of the ICESCR. (Coomans, 2011, p. 7) Article 23 of the ICESCR also includes the obligations to international assistance and cooperation by providing technical assistance "for the realization of the rights recognized in Covenant". The committee stated in General Comment No. 3 that, "international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard". (ICESCR, 1990, para 14.) The CESCR suggests that the basis of these obligations is beyond the Covenant and the CESCR introduces these sources in Articles 55 and 56 of the Charter of the United Nations. Moreover, the CESCR expresses that regarding business activities all States should ensure that they will not prevent other States to implement their obligations under the Covenant. (ICESCR, 2017) "Extraterritorial obligation to fulfill" is not limited to the above framework. (Javid & Niavarani, *ibid*, p. 186) Extraterritorial obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. (ICESCR, *Ibid*, 2017, para 29.)

In 2011 experts of International Law and Human Rights along with the International Commission of Jurists developed "the Maastricht Principles on States' Extra-Territorial Obligations in the area of Economic, Social and Cultural

Rights". (Center of International Environment Law, 2021) Paragraph 8 of this document defines the States' extra-territorial obligations as "effects on the enjoyment of human rights outside of that State's territory", as well as the obligations of a global character, e.g. through international cooperation. According to paragraph 22 of the Principles, States must refrain from adopting measures, such as embargoes which would result in nullifying or impairing the enjoyment of economic, social, and cultural rights. So States must ensure that human rights obligations are fully respected in the design, implementation, and termination of any sanctions regime. Furthermore, the Secretary-General of the United Nations has presented several reports on the economic sanctions and human rights to the General Assembly since 1983 (A/Res/71/193. A/Res/70/151. A/Res/69/180. Etc. see also: A/Res/38/197.) and after numerous resolutions of the General Assembly. The Secretary-General in these reports confirmed implicit extra-territorial obligations for the realization of human rights when unilateral coercive measures enact. (A/70/345. Para 14.)

For these reasons, the obligations of the United States regarding the economic, social, and cultural rights of Iranians residing in the territory of Iran, especially when the sanctions are taken into consideration (considering provisions of General Comment No. 8) may be formulated as at first, any part of Iran's territory is not within the effective control of the United States (Madani, 2009, p. 257) and thus the United States does not have an extraterritorial obligation to fulfill any rights for the Iranian citizens residing in Iran. Secondly, the United States has a general obligation to cooperate with the Iranian State in order to facilitate the realization of the mentioned rights. Third, the United States has an obligation to refrain from interfering in the enjoyment of Iranian nationals of the mentioned rights. Fourth, in some specific cases, such as the right to social security or the right to water, the United States may have some direct obligations. Fifth, in imposing sanctions, the US government must take into account its effects on the economic rights enshrined in the Covenant. Thus according to the framework of customary international law and under Article 18 of the Vienna

Convention 1969, the United States has violated its obligations to the Iranians residing in Iran's territory or in the territories under its jurisdiction.

Regarding the probable obligations related to civil and political rights, particularly fair trial (Articles 9, 10, and 14 of the ICCPR) and the human rights of foreigners (Article 13 of the ICCPR), the same arguments can be presented with a similar approach. Human Rights Committee confirms this point in its General Comment No. 31 that, "Every State Party has a legal interest in the performance by every other State Party of its obligations". Thus it confirms the hypothesis that the obligations contained in the Covenants are *erga omnes*. The committee states as a principle that "State Parties are required to respect and to ensure the Covenant rights to all persons who may be within their territory and to all person's subject to their jurisdiction,"

## **VI-The Situation of Iranians residing in the US**

The second situation is of Iranian nationals in the United States. In this regard again as a principle and in accordance with the framework of the obligations that arise under paragraph 3, Article 2 of the ICESCR concerning developing countries, foreign and non-national citizens' enjoyment of the economic rights in the Covenant depends on the economic situation of these countries. The Covenant has not restricted the obligations of the developed States, (Saul & Kinley, 2014, p 21) such as the United States, in this regard, but, as noted, General Comment No. 31 considers these obligations enforceable to all persons who may be within their territory or to all person's subject to their jurisdiction. According to paragraph 10 of the mentioned document, enjoyment of the Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers, and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. The committee also separately expressed that foreigners should enjoy special rights such as the right to water, (ICESCR, *ibid* (2002) para 16.) the right to social

security, (ICESCR, *ibid* (2008) para 31.) and the right to work. (ICESCR, 2005, para 30.)

Since this area is territorial, US obligations include the obligation to respect, fulfill and protect. Therefore, the negative impact of sanctions on Iranian students, migrant workers, and Iranian asylum seekers and in general on any Iranian person who may be within the territory of the US or on all Iranian person's subject to its jurisdiction or on all Iranian persons who may be within its control is a violation of the US obligations to respect, fulfill and ensure the economic rights listed in the Covenant. In addition, the implementation of the sanctions occasionally led to the arrest and punishment of economic actors who assisted Iran or any third state to breach or circumvent sanctions anyway. Therefore, since the sanctions are illegitimate from the perspective of human rights, it can be said that the punishment of these persons will also be illegitimate and constitute breaches of some obligations to respect, ensure, and cooperate.

### **VII-The Situation of Iranians Residing in Third Countries**

The third assumption is the situation of Iranian nationals outside the United States and Iran. When the two mentioned situations are summed up, it can be said that the obligations of the United States to these persons who are foreign nationals within the territory of other States Parties are the same based on the first assumption of the above arguments. In addition, the States in which these Iranian persons reside have an obligation that is derived from the exercise of their jurisdiction under the second paragraph above, and they should attract cooperation with the US for the realization of the economic rights. Therefore, restriction or non-realization of the rights of these individuals, including for monetary and banking limitations that are attributable to the US government, results in an international responsibility for the US government. The important point is that because such sanctions are illegal and since the third States (including most European countries or Canada and some other countries which are the destination of Iranian immigrants and students) have no international legal obligation to respect the

secondary US sanctions, the mentioned violations (including refrain from respect, fulfillment or protection of economic rights) can be directly referred to the action of these States that primarily results in the international responsibility of these States. A higher threshold can be introduced to justify this argument; the Court of Justice of the European Union considered that the implementation of the Security Council's decisions depends on compliance with human rights in Kadi Case. (Mohebbi & Azari, 2016, p 60) Some argue that if the decision of the Security Council is not in line with international law, there is no obligation to implement it. ( Maghami, 2012, p 266. Also see De Wet,2001, p 280) Accordingly, implementation of illegal decisions of the third State which results in the violation of the rights of Iranian nationals causes responsibility for the State which committed the breach and that State cannot justify its actions with the US sanctions. A financial mechanism called INSTEX<sup>3</sup> is an inadequate attempt of these countries to let Iran enjoy the benefits of the JCPOA and at the same time adhere to secondary US sanctions; an experience that failed in practice. (Brzozowski, 2020)

Here the important point is the possibility to resort to some mechanisms which are can be invoked against the third States that are members of related treaties but not invocable for the US government since the US is not a member of some treaties.

### **VIII-Sanctions as a Crime against Humanity**

Crimes against humanity are strongly linked to the violation of human rights. Iranian officials have insisted over this belief in the past two years that US economic sanctions are “crimes against humanity”. This claim was especially strengthened when the US Secretary of State posted on Twitter that Iran must listen to the US if they want their people to eat (Cole, 2019). Years earlier, the mastermind of nuclear sanctions against Iran wrote, “If you intentionally reduce a country’s ability to earn foreign currency through exports, then you will almost by definition create at least some pressure on imports,

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3 The Instrument in Support of Trade Exchanges

including of food and medicine. True, a sanctioner can always point out that it is the responsibility of the sanctioned country to manage its imports and even to avoid the entire confrontation. But this does not mean that sanctions were not painful, including at the street level, or that the sanctioner is innocent of having created any resulting crisis.”( Nephew, 2018, p 12) Subsequently, the Iranian Foreign Minister accused the US government of committing crimes against humanity, and the President of Iran reiterated this point in various statements. Representative of Iran to the United Nations also addressed this issue at a meeting of the Human Rights Council. The Iranian Minister of Foreign Affairs also described in a letter to the Secretary-General of the United Nations that the obstacles created by the US for Iran's economy during fighting the coronavirus are “crimes against humanity” (Iranian Ministry of Foreign Affairs, 2020) but Iran has not taken any legal measure in this regard.

Alfred Zayas, the UN independent expert on the promotion of a Democratic and Equitable International Order, confirmed in his report to the Human Rights Council that the US sanctions against Venezuela contributed to many deaths and “can amount to crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court”. (A/HRC/39/47/Add.1: para 36) On this basis, the Venezuelan State expresses in a letter to the prosecutor of the International Criminal Court that, a crime is committed against humanity “as the consequence of the implementation of forcible measures that have been approved unilaterally at least since 2014 by the US government against Venezuela” (ICC, 2020) The prosecutor of ICC acknowledged the receipt of the referral and confirmed that it will be subject to investigation. (Office of the Prosecutor of the ICC, 2020)

Regarding the situation in Iran, since the official reports of Special Rapporteur addressed two particular areas of the right to food and right to health, and by summing all requirements, US sanctions may be considered as an example of “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health”

or even to “exterminate” the civilian population.<sup>4</sup> If such a step is taken “as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” it will be an example of crime against humanity under Article 7 of the Rome Statute of the International Criminal Court. According to “Elements of Crimes”, these measures should not necessarily be in the form of a military invasion. “Policy to commit such attack” requires that the State or organization has actively promoted or encouraged such an attack against a civilian population. ( ICC, 2011, p. 5) Considering disconnection of the concepts of war crimes and crimes against humanity in international practice ( Cassese, 2008, p 87) and according to the view of the ICTY, “In the context of crimes against humanity, an “attack” is distinct from the concept of “armed conflict” and not limited to the use of armed force. Rather, it may encompass any mistreatment of the civilian population. The attack may precede, outlast or continue during the armed conflict and need not be part of it.” ( ICTY, 2011, para. 82) The ICTY also confirmed that attacks can have a non-violent nature. (ICTR-96-4, ICTR T. Ch., 2, Akayesu,(1998) para. 581)ICC asserted in the Bemba case that, “The commission of the acts referred to in article 7(1) of the Statute constitute the “attack” itself and, besides the commission of the acts, no additional requirement for the existence of an “attack” should be proven” ( ICC, 2009. para 75) However, it does not mean that as soon as any of the above acts are committed, a crime against humanity is proved. ( Klamberg, 2017 p 32) Moreover, some described sanctions as “economic war” and believe that “humanitarian law” should rule it. ( Milaninia, 2015, p. 123) Such an approach, of course, is inconsistent with the narrow interpretation of the concept of “the use of force” in the Charter. ( Simma, 2013)

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4 Extermination: Intentional imposition of certain conditions of life, including denial of access to food and medicines to destroy a part of a population (paragraph b, para 2, Article 7 of Statute). Therefore, merely making living conditions difficult with the aim of destroying a part of the population is not enough to commit this crime and it is necessary for the massacre to take place. See: Cassese, 2008, p 89.

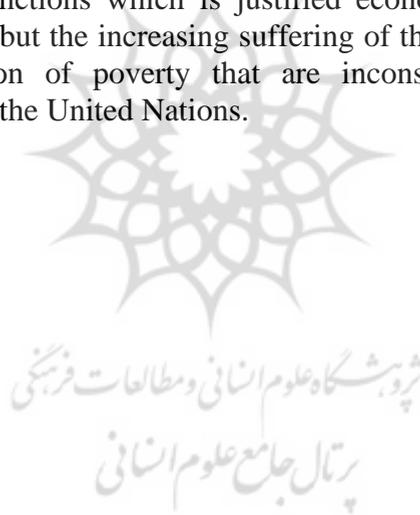
It is beyond the scope of this article to prove that economic sanctions can be considered a "crime against humanity" or "war crime" if, in the context of advancing the policy of a state or organization and the above conditions are met. This requires a wider opportunity.

Although the destructive role of the US sanctions is discussed, it should be mentioned that the Iranian State has its obligations although sanctions are imposed on it. The officials and authorities of the Iranian State stayed silent before the new round of sanctions begin and before they sue in the Court. It does not seem that any claim like the mentioned Cuban declaration and the imposition of sanctions can in any way nullify or diminish the relevant obligations of any under sanctions state, but these sanctions may be considered as an obstacle that prevents the State from fulfilling its international commitments or respecting its obligations ( Javid & Niavarani, *ibid*, p 183.) as force majeure ( ILC,2001, Art. 23) or perhaps may be considered in the context of the "available resources" of any state (Art. 2 of the Covenant). The CESCR mentioned in the General Comment No. 8 the obligations of the target state and it also "remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of these rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society". ( ICESCR, 1997, para 10) In this regard, the Iranian State has negotiated with the United States many times and also negotiated with EU3 that led to the adoption of JCPOA by all parties, but when the government in the US government changed, the US not only ended its obligations unilaterally but started to create obstacles and threatened other parties of the agreement and thus deprived Iran of the advantages of the mentioned agreement.

## **Conclusion**

US unilateral economic sanctions against Iran led to the violation of the US extraterritorial and territorial obligations to respect, protect and fulfill in order to ensure human rights. It

may also justify Iran's responsibility, and within the framework of the Rome Statute of the International Criminal Court, it can be considered as a "crime against humanity" when all the conditions are met, this issue, of course, maybe independently evaluated. The extra-territorial character of human rights obligations causes the US to be responsible for the non-enjoyment of the human rights of Iranians who may be within Iran's territory, as well as other Iranians. Moreover, third countries have obligations to nullify the impact of sanctions. Therefore, the international community should seek solutions to strengthen the rule of law to fulfill the objectives of the Charter of the United Nations and specially to guarantee the enjoyment of all individuals of fundamental rights and freedoms without discrimination in terms of race, gender, religion, and nationality. Extensive cooperation of third states with such sanctions which is justified economically has no consequence but the increasing suffering of the Iranian people and expansion of poverty that are inconsistent with the objectives of the United Nations.



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