***Bogdanova, Iryna*: Unilateral Sanctions in International Law and the Enforcement of Human Rights: The Impact of the Principle of Common Concern of Humankind.** Leiden: Brill Nijhoff 2022. ISBN 978-90-04-50788-3 (hardback), ISBN 978-90-04-50789-0 (eBook). 362 pp. €138,03

*Unilateral Sanctions in International Law and the Enforcement of Human Rights: The Impact of the Principle of Common Concern of Humankind* focuses on the legality of unilateral sanctions, particularly those adopted in response to severe human rights violations. In the first part of the volume, the author introduces the history of unilateral sanctions and the various policy and legal issues that surround their adoption. The second part then turns to the gaps that plague the enforcement of human rights, including the legal shortcomings of unilateral sanctions that are adopted to enforce compliance with human rights. The final section introduces 'the principle of common concern of humankind' as a means to enhance the protection of human rights and resolve gaps in unilateral sanctions' legality. While the lawfulness of unilateral coercive measures and the enforcement of human rights could each have been addressed in a separate volume, Iryna Bogdanova is right to address them together in this timely and topical monograph.

Unilateral sanctions – which the author defines as 'unilateral acts on the part of states, which were introduced in line with their domestic laws and were not authorised by any international institution' (p. 1) – are often seen as an appropriate tool to respond to human rights breaches. Although the definition provided focuses on measures adopted by states, one should note that unilateral sanctions are also implemented by the European Union (EU). The regional organisation actively adopts 'restrictive measures' against non-state members to, *inter alia*, protect human rights abroad. The adoption of 'Magnitsky Sanctions' in the United States (US), Canada, and Australia[1] as well as the EU's Global Human Rights Act[2] illustrates that individual states and the EU consider that targeted sanctions against individuals (which consist of asset freezes and travel bans) are a tool of enforcement. The author provides countless examples throughout the volume of broader unilateral measures (targeting, amongst others, states' financial, economic, and energy sectors), such as those adopted against Syria, Venezuela, and Russia. At the

1 USA: Global Magnitsky Human Rights Accountability [23 December 2016] Act 22 U.S.C. 2656, Public Law 114-238; Canada: Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) [18 October 2017] S.C. 2017, c. 21; Australia: Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021 [8 December 2021].

2 Council Decision Concerning Restrictive Measures against Serious Human Rights Violations and Abuses of 7 December 2020, OJ L 410I/13; Council Regulation Concerning Restrictive Measures against Serious Human Rights Violations and Abuses of 7 December 2020, OJ L 410I/1.

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time of writing this review, the US government has announced it is considering sanctions against Uganda for adopting the anti-LGTBQ bill, which President Biden has described as a 'tragic violation of universal human rights',[3] showcasing once more how popular unilateral sanctions are.

Under international law, unilateral sanctions are neither legal nor illegal. Whether these measures are lawful depends on the legal obligations the sender owes the target. Given the variety of sanctions, various legal quagmires arise when states adopt unilateral sanctions, which are covered in chapter 2 and chapter 4 of the monograph. The former focuses on unilateral sanctions more generally, while the latter is centred on measures adopted to enforce human rights. The author deserves praise for mapping out the various questions that arise under international law when unilateral sanctions are adopted. Unilateral economic sanctions can fall foul of the laws on jurisdiction, on state immunity, the agreements under the World Trade Organization (WTO), etc. There are also more controversial questions, such as whether sanctions can constitute a use of force or breach the principle of non-intervention. It is thus challenging to determine whether sanctions constitute retorsions (a term used to define lawful sanctions), internationally wrongful acts (because they breach an obligation the sender owes the target), or, if wrongful, they could be justified as countermeasures.

Overall, the monograph provides a solid basis for research on unilateral sanctions in international law. However, I was at times left a bit wanting, particularly on the question of third-party countermeasures. These are countermeasures adopted by a non-directly injured State or group of States in response to breaches of obligations *erga omnes (partes)*. They were highly controversial during the drafting of the Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA). Whereas the final Special Rapporteur, James Crawford, proposed to include these measures in the final text, the International Law Commission (ILC) ultimately found state practice was 'limited and embryonic'[4] and the matter was left to the further development of international law. The question is whether, twenty years after the adoption of ARSIWA, customary international law has evolved to include third-party countermeasures. Bogdanova mainly cites the authors that have found that these measures are part of customary international law

3 The White House, Briefing Room, 'Statement from President Joe Biden on the Enactment of Uganda's Anti-Homosexuality Act' (29 May 2023), <https://www.whitehouse.gov/briefing room/statements-releases/2023/05/29/statement-from-president-joe-biden-on-the-enactment-of-ugandas-anti-homosexuality-act/>

4 ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, Commentary to Article 54 in ILCYB 2001, vol. II (part two), UN Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) (137, para. 3).

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(pp. 82-85). She does not note that the authors have reached this conclusion even though *opinio juris*, one of custom's constitutive elements, is lacking. Furthermore, as others have noted, the actual practice itself is ambiguous and there are various practical issues related to their adoption, notably their compatibility with the United Nations Security Council and the risk of abuse.[5] The author prefers Tom Ruys's approach, who suggests: 'the time may ultimately be ripe to shift the debate from the binary question whether third-party countermeasures are permissible or not, to defining the possible boundaries to their use' (quoted at p. 85). While this is a practical solution, it does not account for states' disagreements on the permissibility of third-party countermeasures. The result is at times a rather cursory discussion, especially when only a few pages are devoted to controversial and contentious issues. On the other hand, other issues under international law are covered more thoroughly, such as problems relating to extraterritorial sanctions and WTO law. This discrepancy is inevitable; it simply is not possible to address each issue in-depth.

In spite of their questionable legality, unilateral sanctions are seen as a means to resolve the weak enforcement mechanisms that are available to enforce human rights. As the author maps out in Chapter 3, the available tools to respond to human rights violations are multifaceted. They include reporting mechanisms, inter-State and individual complaints, inquiries, dispute settlement mechanisms, etc. Yet, as she explains (pp. 197-204), they have various shortcomings, the main issue being they are dependent upon states' political will. The Human Rights Council and the Security Council are also unsatisfactory because of their political and inconsistent nature (p. 222). Here, one cannot help but ask: are unilateral sanctions any less political?

There is a clear tension between states who advocate in favour of sanctions and those who contest them. As the author herself notes, 'the consistent objection by states pours cold water' over the claim that unilateral human rights sanctions are permitted under customary international law (p. 239). Such objections often arise because sanctions are considered to lack a legal basis and to be politically motivated.[6] Even when sanctions are justified to promote international norms, they are often used as a tool by powerful states

5 Vladsylav Lanovoy, 'Third-Party Countermeasures in International Law. By Martin Dawidowicz. Cambridge: Cambridge University Press, 2017', AJIL 113 (2019), 200-205; Carlo Focarelli, 'International Law and Third-Party Countermeasures in the Age of Global Instant Communication', QIL Zoom-in 29 (2016), 17-23.

6 Consider, for example, Stefano Palestini, 'Judging the Legitimacy of Sanctions – A Perspective from Latin America', 1 March 2022, Opinio Juris, <https://opiniojuris.org/2022/03/01/unilateral-and-extraterritorial-sanctions-symposium-judging-the-legitimacy-of-sanctions-a-perspective-from-latin-america/>.

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to impose their preferences on those that are weaker.[7] A telling example are the US sanctions imposed against Venezuela. Although the US justified the measures as a response to grave human rights violations, John Bolton, President Trump's security advisor, claimed that they were part of a broader effort to trigger regime change.[8] Donald Trump later boasted how Venezuela's regime was on the brink of collapse in 2019, almost giving US access 'to all that oil'.[9]

Bogdanova's research cumulates by arguing in favour of the *lex ferenda* 'principle of common concern of humankind', which was initially evoked in the context of environmental law. Citing Thomas Cottier (who was Iryna Bogdanova's thesis supervisor), a 'common concern' encapsulates: 'an important shared problem and shared responsibility, and […] an issue which reaches beyond the bounds of a single community and state as a subject of international law' (p. 279). Broadening the doctrine to human rights (pp. 287-298), the author aspires to resolve the 'conceptual issues and inconsistencies' that plague unilateral sanctions and the enforcement of human rights (p. 273). She 'attempt[s] to introduce the idea of subsidiary responsibility for human rights protection' by deriving three normative implications from the principle (p. 279 ff.). The first is the reinforced duty to cooperate, rendering cooperation compulsory. This would call for more transparency between states over why human rights violations have occurred, an obligation to consult and negotiate, burden sharing and differentiated responsibility (such as, for example, providing financial assistance to states where human rights are occurring because of institutional weaknesses) and an obligation to cooperate when implementing human rights obligations. Secondly, under the doctrine states would have 'the obligation to do one's homework', which entails the duty to implement international obligations, including implementing additional measures that would secure the obligation in question. Finally, states would have 'the duty to secure compliance', which would solve the problem of reciprocity in international law.

Based on these normative implications, the author suggests that the doctrine provides 'legality and legitimacy of unilateral actions when a state intervenes to prevent grave human rights violations occurring on the territory of another state' (p. 299 and pp. 301-305). The argument is that through the

7 Asli U. Bali, 'Weapons against the Weak', 29 June 2023, LPE Project, <https://lpeproject.org/blog/weapons-against-the-weak/>. Of course, the EU and US sanctions against Russia and the EU restrictive measures against China illustrate these measures can be imposed against more powerful states.

8 'Tapper and Bolton debate Trump's ability to plan a coup', 12 July 2022, CNN <https://edition.cnn.com/videos/politics/2022/07/12/jake-tapper-john-bolton-debate-january-6-coup-attempt-sot-lead-vpx.cnn>.

9 Ben Norten, 'Trump Boasts He Wanted to Take Venezuela's Oil After Overthrowing Its Government', 12 June 2023, Geopolitical Economy <https://geopoliticaleconomy.com/2023/06/12/trump-venezuela-oil-coup/>.

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'principle of common concern of humankind', states would have the subsidiary obligation to respond to grave human rights violations, thereby resolving the political and inconsistent nature of unilateral sanctions. Importantly, unilateral action should only be adopted after multilateralism has failed.

While the argument has normative value, I am rather sceptical when it comes to its practical implications. Whether states would accept the principle of common concern of all humankind is subject to their political will. To justify recourse to unilateral sanctions, the author finds that 'unilateralism has always been part of public international law' (p. 302) and that states 'frequently rely upon unilateral economic coercive measures to', *inter alia*, protect human rights. Yet, as mentioned above, this unilateralism is subject to contestation – how would the doctrine resolve these disagreements and provide more assurances to the states that are wary of unilateralism? If states have not accepted third-party countermeasures, because amongst other concerns they fear the risk of abuse, why would they not have the same reservations against measures adopted under the principle of common concern of humankind? Whereas it would apply only to 'grave and systemic violations which potentially threaten international peace and stability' (pp. 298-299), who decides when this is the case? As the author notes, there would be 'no institution for supervising its functioning' (p. 305). And even if there is an (at least general) agreement that grave and systemic breaches are occurring, whether states will act multilaterally or unilaterally is, once again, subject to political will (though she suggests that this can be encouraged by civil society's engagement, p. 305).

One issue that is not addressed in the monograph but that would have been deeply relevant is the impact of unilateral sanctions on human rights. It is well known that unilateral sanctions can restrict the exercise of human rights, and in some cases that is their very purpose (for example by imposing an asset freeze, which restricts the right to property). Any restriction on human rights must be necessary and proportionate – but the tests that apply are often unsatisfactory and deferential to sanctioners' political objectives.[10] Moreover, an important discussion is taking place over the broader impact of unilateral sanctions on the civilian population. Even though targeted sanctions were supposed to remedy the harm caused by comprehensive sanctions, this has not been borne out in practice.[11] This raises an important question:

10 Discussed in Alexandra Hofer, 'The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?', NJIL 89 (2020), 339-421.

11 Erica Moret, 'More Civilian Pain Than Political Gain (Again?) The Demise of Targeted Sanctions and Associated Humanitarian Impacts' in: Andrea Charron and Clara Portela (eds) *Multilateral Sanctions Revisited: Lessons Learned from Margaret Doxey* (Montreal and Kingston: McGill-Queen's University Press 2022), 177-192.

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what is the logic in adopting measures that negatively impact the exercise of human rights to defend human rights? It would have been insightful to know how the principle of common concern for humankind would have resolved these issues.

One of the critics of the treaty-based mechanisms is that they 'improve human rights protection only marginally' (p. 197). As the author points out in chapter 1, the effectiveness of sanctions at changing behaviour is heavily debated (see also p. 227). In discussing whether sanctions 'work', an important question is: 'why do states violate human rights?'. After all, to solve an issue the focus should be on addressing its root cause. The volume asks this question (p. 284) and, referencing Emilie Hafner-Burton, suggests that human rights are violated in the majority cases because of violent conflicts and 'weak or overly powerful state institutions'. Such breaches can also be caused by 'a lack of the resources necessary to guarantee better human rights standards or by a government's intention to deprive its citizens of human rights guarantees' (p. 299). The author also cites David Weissbrodt and Patrick Finnegan, who find that the main causes for human rights violations are '(1) government behaviour and structure, (2) armed conflict, (3) economic factors, and (4) psychological factors'. According to them, 'sanctions can successfully yield concessions to improve human rights in some circumstances' (cited at p. 284). But what are these circumstances? It is suggested that sanctions can be used to encourage cooperation (p. 286), but there is also the risk that sanctions backfire or hurt cooperation.[12] If human rights are violated because of a lack of resources or because of 'economic factors' it is difficult to see how sanctions can provide a viable solution. A more in-depth discussion would have been welcome; clarity on when sanctions have been found effective would provide insight on when they should be adopted and would have strengthened the argument.

I agree with the main claim in *Unilateral Sanctions in International Law*, which is that we require a foundational shift in our approach to enforcement. The author deserves praise for addressing the issue head-on in providing a normative basis for unilateral sanctions. However, I argue that we need to go a step further and that this shift should also apply to the tools that we rely upon for enforcement. The main critique I have of Iryna Bogdanova's monograph is a broader one against international lawyers: it often appears that 'we' remain too committed to sanctions; costs need to be imposed in response to wrongdoing. Martti Koskenniemi coins this as the 'domestic analogy'; no

12 Agathe Demarais, *Backfire: How Sanctions Reshape the World Against US Interests* (New York: Columbia University Press 2022); Trita Parsi, *Losing an Enemy: Obama, Iran and the Triumph of Diplomacy* (New Haven: Yale University Press 2017).

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difference is made between international and national contexts, and it is assumed that states respond to punishment in the same way citizens respond to domestic enforcement measures.[13] In a certain manner, the monograph falls short of pursuing the proposed solution to its logical end. In discussing the normative implications of the principle of common concern to humankind, the author draws attention to the need for cooperation, inter-state discussion and transparency, and at times education and financial assistance. In many ways, this resonates with managerial and interactional approaches to compliance.[14] Why, then, fall back on unilateral sanctions? No doubt the author wanted to return to her original starting point – which was the legality of these measures under international law.

To my mind, we have reached a point in international legal scholarship where discussions on enforcement require broadening our understanding of state behaviour, which entails integrating insights from social science. To quote Anne van Aaken: 'Normativity without reality check is at best naïve, at worst untruthful. In order to explore how certain international values can be best pursued, social science is indispensable.'[15] If we are going to advocate for unilateral sanctions, or any other enforcement mechanism, then we should have a well-rounded understanding of how they impact decision-making and encourage compliance with international law.

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13 Martti Koskenniemi, 'Solidarity Measures: State Responsibility as a New International Order?', BYIL 72 (2002), 337-356.

14 Abram Chayes and Antonia Handler Chayes, *The New Sovereignty*, *Compliance with International Regulatory Agreements* (Cambridge, Massachusetts: Harvard University Press 1996); Jutta Brunnée and Stephen Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press 2010).

15 Anne van Aaken, 'Rationalist and Behavioralist Approaches to International Law' in: Jeffry L. Dunoff and Mark A. Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge: Cambridge University Press 2019), 261-281 (263).

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