

UNIVERSITY OF PÉCS



Doctoral Thesis

***Economic Sanctions as Public Authority:
A Structural Approach to Human Rights Obligations in
International Law***

By
Sanaz Noori

Supervisor:
Dr. Mihály Maczonkai

PÉCS, 2026

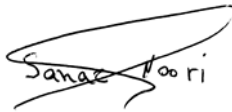
Declaration

I hereby declare that this doctoral dissertation is the result of my own independent research.

I confirm that all sources used in the preparation of this dissertation have been properly acknowledged and cited in accordance with academic standards.

This work has not been submitted, in whole or in part, for any other degree at any other institution.

PÉCS, 2026

A handwritten signature in black ink, consisting of a large, sweeping loop above the name "Sanaz Koori".

Acknowledgements

I would like to express my sincere gratitude to my supervisor, Dr. Mihály Maczonkai, for his invaluable guidance, continuous support, and insightful academic advice throughout the preparation of this dissertation.

I gratefully acknowledge the financial support provided by the Stipendium Hungaricum Scholarship Programme, which made this research possible.

I am also deeply grateful to my family, especially my husband, for their patience, encouragement, and unwavering support during this journey.

Finally, I would like to thank all those who, in one way or another, contributed to the completion of this research.

Abstract

This thesis begins with a fundamental question: can contemporary economic sanctions be analyzed simply as foreign policy instruments, or do they certain circumstances operate as a form of public authority that must be assessed within the framework of states' human rights obligations?

The central argument of this study is that economic sanctions, in their contemporary form, are no longer simply instruments of political or economic pressure, but rather function as an exercise of “regulatory authority” by regulating access to critical infrastructures of the global economy. In this framework, the sanctioning state not only influences the behavior of others, but also structurally redefines the conditions of possibility for action. This analytical shift has direct consequences at the legal level: wherever public authority is exercised, questions of limits, obligations, and responsibility are simultaneously triggered.

The present study begins by reconstructing the concept of “authority” in public international law and shows that the distinction between power, influence and authority is a necessary condition for a careful analysis of sanctions. Then, by re-examining the concept of jurisdiction in international human rights, it argues that jurisdiction is not a purely geographical concept, but a functional relationship based on the exercise of authority. Accordingly, in situations where a state, through binding frameworks, structurally determines the conditions for access to fundamental rights, a basis for triggering transboundary obligations is formed.

The thesis continues by redefining the concept of causality in international responsibility law, showing that in the context of structural policies such as sanctions, the analysis of causality cannot be based on simple models of a single cause, but must be based on the assessment of the “effective and meaningful role” in a cumulative chain of factors. This redefinition allows for the linking of regulatory policies to human rights outcomes without an unlimited extension of responsibility.

Accordingly, the “regulatory authority” model is presented as the theoretical framework of this research, which is based on three cumulative elements: the existence of a binding framework, a structural and reasonably foreseeable effect on the conditions of enjoyment of

rights, and a real capacity to influence. This model acts simultaneously as a criterion for triggering obligations and as a means of delimiting the scope of responsibility.

At the normative level, the research shows that the exercise of sanctions authority, even within the framework of collective security, faces fundamental limitations in international law, including peremptory norms and obligations erga. It also argues, drawing on the behavioral obligations of states, including due diligence, positive obligations, and the principle of good faith, that an ex ante assessment of the human rights impacts of sanctions is not a policy recommendation, but a practical manifestation of existing legal obligations.

Finally, the theoretical framework presented is evaluated through a comparative test in two cases, Iran and Russia, to assess its internal coherence and applicability. The result of this analysis shows that the theory of regulatory authority is able to fill the gap between the evolution of forms of exercising economic power and traditional frameworks of responsibility in international law in a coherent and limited way, without leading to an unlimited expansion of responsibility.

Table of Contents

Declaration.....	ii
Acknowledgements.....	iii
Abstract.....	iv
Introduction.....	1
CHAPTER ONE	3
Regulatory Power in Public International Law	3
1.1 The Concept of Authority in Public International Law	3
1.1.1 Authority as a Category of Public Law: Reconstructing the Theoretical Basis	6
1.1.2 Authority and Normative Change: From Direct Regulation to the Redefinition of Practical Capacity	10
1.1.3. Conceptual Limits of Regulatory Authority: Distinction from Influence, Jurisdiction, and Coercion	13
1.1.4 Conditions of Possibility as a Normative Component of the Legal Status	16
1.2 Authority and Territory in the Classical Model of International Law.....	18
1.2.1 Territorial Sovereignty as a Historical Basis for Authority	21
1.2.2 Territory as a Criterion for the Activation of Jurisdiction and Obligation	23
1.2.3 Limitations of the Territorial Model in the Context of the Global Network Economy.....	25
1.3 Economic Sanctions as Exercises of Regulatory Authority.....	28
1.3.1 Banking Sanctions as Structural Regulation of Access.....	30
1.3.2 Secondary Sanctions and the Extension of the Cross-Border Regulatory Chain	32
1.3.3 Controlling Access to the Global Financial System as an Advanced form of Regulatory Authority	34
1.4 Regulatory Authority as Structural Governance	37
1.4.1 Financial Infrastructure as a Platform for the Exercise of Public Authority	39
1.4.2 Distinction Between Regulatory Authority and Jurisdiction and the Use of Force	41

1.4.3 Indirect Enforcement Mechanisms and Structural Compliance Generation	42
1.5 Conceptual Contribution and Limitation of Scope	45
1.6 Transition to the Framework of Obligations	47
1.7 Chapter Conclusion	47
CHAPTER TWO.....	50
Jurisdiction as a Functional Basis for the Activation of Extraterritorial Human Rights Obligations.....	50
2.1 The Concept of Jurisdiction as a Basis for Activating Human Rights Obligations	50
2.1.1 The Territorial Basis of Jurisdiction and Its Internal Logic.....	53
2.1.2 Effective Control as an Expanded Criterion of Jurisdiction	54
2.1.3 The Gradual Development of the Concept of Jurisdiction and the Problem of New Forms of Authority	56
2.2 Positive Obligations and the Principle of Due Diligence in International Human Rights Law	58
2.2.1 The Obligation to Respect	60
2.2.2 The Obligation to Protect	62
2.2.3 The Obligation to Fulfil.....	64
2.3 Foreseeability of Harm as a Criterion for Triggering Human Rights Responsibility	66
2.3.1 Direct Harm	68
2.3.2 Structural Harm.....	69
2.3.3 Vulnerable Groups	71
2.4 The Triple Criterion for the Activation of Transboundary Obligations.....	73
2.4.1 Regulatory Framework	76
2.4.2 Structural and Foreseeable Effect.....	78
2.4.3 Effective Role of the State in Creating or Maintaining the Restrictive Situation	79
2.5 Children’s Rights as a Hard Test for the Activation of Transboundary Human Rights Obligations	81
2.5.1 The Principle of the Best Interests of the Child	83
2.5.2 Structural Vulnerability and Long-Term Effects	85
2.5.3 Intensifying the Standard of Due Diligence for Children	87

2.6 Conceptual Contribution of the Chapter	88
2.7 Chapter Conclusion	89
CHAPTER THREE	91
International Responsibility and Causation.....	91
3.1 The Classical Model of Responsibility in International Law	91
3.1.1 Attribution	93
3.1.2 Violation of an International Obligation	95
3.1.3 Linear Causality in the Classical Model of Responsibility	98
3.2 Cumulative Causality in the Context of Economic Sanctions.....	100
3.2.1 The Linear Model of Causation.....	103
3.2.2 The Cumulative Model of Causation.....	105
3.2.3 The Role of Foreseeability in Causation Analysis	107
3.3 The Obligation of Due Diligence in the Context of International Responsibility	109
3.3.1 Legal Basis of the Duty of Due Diligence	112
3.3.2 The Relationship between the Obligation of Due Diligence and the Obligation to Respect.....	114
3.3.3 Failure to Assess as Evidence of a Breach.....	116
3.4 The Criterion of Effective Causal Contribution.....	118
3.4.1 Determinative Role versus Marginal Role	120
3.4.2 Private Intermediaries and the Continuity of the Causal Chain	122
3.5 Cumulative and Intergenerational Effects on Children	124
3.5.1 Temporality of Harm	126
3.5.2 Structural Accumulation and Irreversible Thresholds	127
3.5.3 Limiting the Scope of Responsibility to Prevent Unlimited Expansion..	129
3.6 Chapter Conclusion	131
CHAPTER FOUR	134
Normative Limits on Sanction Authority.....	134
4.1 Collective Security and Sanctions	134
4.2 Peremptory Norms and Obligations Erga Omnes as Hierarchical Limits to Sanctioning Authority	136
4.2.1 Peremptory Norms as an Inviolable Non-Derogable Limit of Authority	138

4.2.2 Obligations Erga Omnes and the Collective Interest in Compliance	140
4.2.3 The Relationship Between the Security Council’s Powers and Superior Norms.....	141
4.2.4 Normative Implications for the Theory of Regulatory Authority	143
4.3 Security Council Powers in Light of Normative Limitations on Sanctions Authority.....	145
4.3.1 Jurisdictional Basis and Nature of the Security Council’s Authority	148
4.3.2 The relationship Between the Principle of Primacy of the Charter and Superior Norms	150
4.3.3 The Security Council and Human Rights Obligations	152
4.3.4 The Boundary of Institutional Authority and Normative Legitimacy	154
4.4 The Principle of Proportionality as an Outer Boundary of Sanctioning Authority.....	155
4.5 The Child as an Indicator of Intensified Normative Scrutiny of Sanctioning Authority.....	158
4.6 Chapter Conclusion	160
CHAPTER FIVE	163
Ex Ante Assessment and Reporting of Human Rights Impacts of Sanctions.....	163
5.1 The Legal Basis for the Requirement for Prior Assessment of the Human Rights Impacts of Sanctions.....	163
5.1.1 Linking Ex Ante Assessment to the Obligation of Due Diligence	163
5.1.2 Prior Assessment in Light of Positive Human Rights Obligations	165
5.1.3 The Principle of Good Faith and the Effective Implementation of Obligations.....	166
5.1.4 The Evolution of Standards of Conduct in International Law and the Precautionary Logic	167
5.2 Existing Monitoring Mechanisms and the Possibility of Institutionalizing the Requirement for Prior Assessment.....	168
5.2.1 The Human Rights Council and its Structural Political Monitoring Capacity	169
5.2.2 Treaty Bodies and the Development of the Interpretation of Extraterritorial Obligations	170
5.2.3 Specialized Thematic Mechanisms and Technical Analysis Capacity ..	171
5.2.4 Structural Limitations of Existing Mechanisms	172

5.3 A Proposed Model for Reporting and Institutionalizing Ex Ante Assessment	173
5.3.1 Obligation to Document a Pre-Implementation Assessment	174
5.3.2 Reporting to an Existing Human Rights Institution	175
5.3.3 Obligation for Periodic Review and Ex Post Evaluation	176
5.3.4 Linking the Model to Regulatory Authority Theory	177
5.3.5 Limits of the Model and Avoiding the Unlimited Expansion of Responsibility	179
5.4 Minimum Standards for Prior Assessment	180
5.4.1 Identifying Rights at Risk	182
5.4.2 Vulnerable Groups	183
5.4.3 Child-Specific Indicators	185
5.5 Legal Consequences of Failure to Assess and Report	186
5.6 Chapter Conclusion	188
CHAPTER SIX	191
The Regulatory Authority Model	191
6.1 The Regulatory Authority Model.....	191
6.1.1 Definition of Regulatory Authority.....	192
6.1.2 The Three Elements of the Model	193
6.1.3 Implications for the Jurisdiction Criterion	195
6.1.4 Implications for the Analysis of Responsibility	197
6.1.5 Normative Limits on Regulatory Authority	198
6.1.6 The Model’s Place in the Architecture of International Law.....	200
6.2 Activation of Extraterritorial Obligations in the Light of Regulatory Authority	201
6.2.1 The Conceptual Shift from Territory to the Exercise of Effective Authority	202
6.2.2 The Three Elements for Triggering the Obligation	204
6.2.3 Scope and Nature of the Triggered Obligation	205
6.2.4 The Relationship Between the Activation of the Obligation and the Principle of Sovereignty	207
6.2.5 Systematic Implications for the Concept of Jurisdiction.....	208

6.3 The Link between Power and Responsibility in the Age of Regulatory Authority	210
6.3.1 Responsibility as a Function of the Form of Power	211
6.3.2 Proportionality between the Scope of Power and the Scope of Obligation	213
6.3.3 Transparency as an Institutional Condition for the Link between Power and Responsibility	214
6.3.4 Structural Coherence of the Legal Order.....	215
6.3.5 Final Formulation of the Theory.....	217
6.4 Limiting the Theory and Avoiding Unlimited Expansion of Responsibility ...	218
6.5 Chapter Conclusion	221
CHAPTER SEVEN.....	224
Comparative Test: Iran and Russia	224
7.1 Methodology of the Comparative Test.....	224
7.2 Regulatory Authority in the Case of Iran	227
7.3 Regulatory Authority in the Case of Russia	230
7.4 Children’s Rights Subtest in Both Cases	233
7.5 Final Assessment of the Theory’s Validity.....	236
CHAPTER EIGHT.....	239
Final Conclusion.....	239
Bibliography.....	243

Introduction

Economic sanctions are in a dual position in contemporary international law. On the one hand, they are recognized as legitimate instruments of foreign policy or civilian mechanisms for maintaining international peace and security. On the other hand, practical experience over the past few decades has shown that these measures can have profound and structural effects on the living conditions of civilian populations. This duality raises a fundamental question at the level of legal analysis: how should the legal nature of sanctions be understood in the contemporary international legal system?

The dominant analysis in the literature examines sanctions in the context of instruments of political or economic pressure. In this context, the main focus is on their objectives, political legitimacy or effectiveness. However, this type of analysis faces serious limitations when faced with the structural and long-term effects of sanctions on the conditions for the enjoying fundamental rights. If sanctions are seen simply as instruments of influence, the link between them and the structure of states' human rights obligations cannot be properly explained.

The starting point of this thesis is to move away from this analytical assumption. The main question is not whether sanctions are effective instruments, but rather what kind of power these measures represent, from a legal perspective. The answer to this question will determine the framework for subsequent analyses of limits, obligations, and responsibility.

This research is based on the assumption that economic sanctions in their contemporary form, in many cases, operate beyond economic influence and rise to the level of public authority. This development is due to the changing structure of the global economy. In a situation where participation in the global economy depends on access to financial, banking, transportation, and technological networks, the regulation of this access can directly determine the conditions of possibility of action. In such a situation, the sanctioning state does not simply increase costs, but redefines the range of practical options.

This analytical redefinition has important consequences. In the public law tradition, the exercise of authority is always accompanied by a structure of obligation and accountability. If sanctions are understood as a form of exercise of authority, they can no longer be analyzed outside the framework of legal constraints. In this case, the question of human rights obligations is not an external intervention, but the logical consequence of recognizing the authoritative nature of these measures.

However, the adoption of this framework is accompanied by a theoretical danger. If every cross-border economic effect is considered an exercise of authority, the boundary between legitimate economic policy and legal responsibility will disappear and the scope of responsibility will expand indefinitely. This thesis seeks to strike a balance precisely between these two poles: on the one hand, to identify new forms of exercise of power that cannot be explained in traditional frameworks, and on the other, to prevent the uncontrolled expansion of responsibility.

To achieve this goal, the research develops a coherent theoretical framework in which the concept of “regulatory authority” is placed as the center of the analysis. This framework is designed in such a way that one can speak of the exercise of authority only when three specific criteria are simultaneously present: the existence of a binding framework, a structural and reasonably foreseeable effect, and a real capacity to influence. This restriction allows for a rigorous analysis without losing conceptual control.

The framework is then connected to the field of human rights and international responsibility. The research shows that the concept of jurisdiction must be reinterpreted in a functional and authority-based way, and at the same time, causal analysis must be redefined in a way that can adapt to the complexity of contemporary economic relations, without becoming an unlimited tool for attributing responsibility.

Ultimately, the aim of this thesis is not to provide a political critique of sanctions, but to provide a rigorous legal framework for their analysis. A framework that can simultaneously perform two functions: explaining the legal structure of new forms of exercising economic power, and determining their normative limits in the international legal system.

CHAPTER ONE

Regulatory Power in Public International Law

1.1 The Concept of Authority in Public International Law

The analysis of economic sanctions in this paper is based on a conceptual premise: before any judgment on legitimacy, violation or responsibility can be made, it must be clear what kind of power we are dealing with. If sanctions are considered merely as an instrument of foreign policy, the analysis remains at the level of motives and effects. But if sanctions can be conceptualized in terms of the exercise of public authority, then the question of limits, obligations and accountability comes into play. Therefore, the first step of this research is to reconstruct the concept of “authority” in the context of public international law.¹

Classical international law has not directly provided a coherent theory of authority. Concepts such as sovereignty, jurisdiction, control, consent and non-interference are prominent in its literature, but authority as an institutional capacity to regulate the binding status of others has been less examined as an independent issue.² This gap is partly due to the historical structure of the international order; an order in which authority was mainly expressed in the form of territorial sovereignty.³ The state regulated, enforced, and exercised coercion within its territory. Outside the territory, the principle of absence of authority was applied, except in exceptional cases.

This historical overlap between territory and authority gradually became established as a conceptual presupposition, as if authority were inherently territorial. But this establishment was more a product of the historical organization of power in the state-centered system than of conceptual necessity. What distinguishes authority from other forms of power is not its place of exercise but its normative quality.

¹ Martin Loughlin, *Foundations of Public Law* (Oxford University Press 2010).

² Daniel W Drezner, *The Sanctions Paradox: Economic Statecraft and International Relations* (Cambridge University Press 1999).

³ Armin von Bogdandy, Philipp Dann and Matthias Goldmann, ‘Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities’ in Armin von Bogdandy and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer Berlin Heidelberg 2009) 3.

To clarify this distinction, it is necessary to distinguish between three levels of influence: power, influence, and authority.

Power, in a general sense, is any ability to influence the behavior of others. A state can influence the decisions of others by virtue of the size of its economy, the weight of its financial market, or its geopolitical position. This influence may be very profound and even decisive, but it does not necessarily have a legal quality. Power in this sense can be exercised without any binding normative framework.

Influence is a step beyond raw power. Influence occurs when an actor can change the preferences or calculations of another actor. The threat of cutting off trade relations, the promise of economic aid, or the application of diplomatic pressure can induce another state to change its policy. But even here, behavior is changed through a calculation of costs and benefits, not through a normative obligation that redefines the legal framework.

Authority, however, is at a different level. Authority is achieved when an actor, through an established institutional mechanism, regulates the legal status or practical capacity of others in such a way that their behavior is redefined within a binding framework. In this case, the change in behavior is not simply the result of a calculation, but the consequence of the existence of a rule whose violation is subject to enforcement mechanisms.⁴

The key element in authority is “binding regulation.” Binding regulation means the creation, withdrawal or limitation of a right, obligation or legal capacity within the framework of a normative system. This regulation may be direct, such as the enactment of a law or the issuance of an administrative decision, or indirect, such as the regulation of access to an infrastructure that is a condition for the possibility of performing legal acts. What is important is that the reorganization of legitimate and available options is the result of institutional design and attributable to a specific actor.

In domestic law, this logic is clear. By enacting a rule, the legislator changes the legal status of individuals. By issuing a permit or prohibition, the administrative authority determines the scope of the possibility of action. By issuing a ruling, the court establishes rights and

⁴ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press 2009).

obligations. In all these cases, authority derives not from the intensity of the effect, but from the normative quality of the regulation.⁵

In international law, although the structure is more complex and fragmented, the same logic is observable. Binding Security Council resolutions, regional union regulations, or regulatory body decisions are examples of the exercise of authority, since they alter the legal status within an institutional framework.⁶

The issue becomes more complicated when binding regulation is exercised not through a physical presence in the territory, but through the control or regulation of access to transnational networks. In the contemporary global economy, access to financial, banking, and currency settlement infrastructure is a practical condition for the exercise of many rights and obligations.⁷ If a state can restrict this access in a binding manner, the result is not simply an increase in economic costs; rather, the practical capacity to exercise legitimate legal acts is structurally altered.

At this point, a distinction must be made between a “formal change in the legal status” and a “reconfiguration” of the practical capacity to exercise rights. In many cases, economic sanctions under international law do not formally alter the legal status of the target state. But if the institutional design of sanctions renders practically impossible or severely restricts the possibility of transferring assets, enforcing contracts, or accessing financial services, this situation is, from a functional perspective, a kind of normative reordering.⁸

Authority is understood in this paper precisely at this level: not simply changing the text of rules, but regulating the conditions of possibility of benefiting from those rules. Whenever a state can, through its legal framework, redefine the conditions of possibility of others’ actions in a binding manner, it is exercising authority, even if these actions do not appear in the traditional form of territorial jurisdiction.

⁵ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006).

⁶ Matthias Goldmann, ‘Inside Relative Normativity: From Sources to Standard Instruments for the Exercise of International Public Authority’ in Armin von Bogdandy and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2009) 661.

⁷ von Bogdandy, Dann and Goldmann, ‘Publicness of Public International Law’ (n 3).

⁸ Goldmann, ‘Relative Normativity’ (n 6).

However, to avoid an uncontrolled expansion of the concept of authority, it must be emphasized that mere strong economic impact is not enough. Market fluctuations, investment decisions, or monetary policy changes can have profound cross-border consequences, but they do not fall within the scope of authority unless these consequences are the direct result of a binding institutional framework.

As a result, authority in this study is a functional and normative concept that It is based on three axes: institutionalization, constraint, and structural reconfiguration of the capacity for action. This definition makes it possible to analyze new forms of exercising economic power without undermining the classical boundaries of jurisdiction. At the same time, it is narrow enough not to transform every transboundary effect into authority.

The importance of this redefinition is that if economic sanctions possess these characteristics, they can no longer be considered simply as instruments of influence. They fall within the realm of public authority and, consequently, are subject to questions of limits, obligations, and responsibility. Therefore, clarifying the concept of authority is not a mere theoretical introduction, but the cornerstone of the entire argument of the thesis.

Consequently, for the purposes of this thesis, “regulatory authority” is operationally defined as: the exercise of an institutionalized and attributable framework that, through the binding regulation of the conditions of possibility of action, redefines the practical capacity of actors outside the territory in a structural and predictable way. Henceforth, wherever regulatory authority is discussed, this definition will be the basis for analysis.

1.1.1 Authority as a Category of Public Law: Reconstructing the Theoretical Basis

If economic sanctions are to be analyzed in this essay as exercises of authority, it must first be made clear what exactly authority means in public international law. Without establishing this basis, any discussion of obligations, jurisdiction, or responsibility in the following steps will be built on slippery ground.

In the tradition of domestic public law, public authority is the fundamental point of distinction between state action and private action. What distinguishes the state from other actors is not merely material power, but the ability to produce binding effects on the legal

status of others through institutional mechanisms. Authority allows the state to create rights, limit rights, impose obligations, and redefine legal capacities without the need for the consent of the other party. This capacity is exercised through legal, administrative, and judicial structures, and because of this normative quality, it is always accompanied by requirements of accountability and legal constraints.⁹

In contrast, classical international law has focused more on the concept of sovereignty. Sovereignty as the independence and equality of states has formed the main framework for the distribution of power in the international system. But sovereignty is not necessarily equivalent to authority. Sovereignty defines the legal status of a state vis-à-vis other states, while authority refers to the regulatory relationship between an actor and the subject of regulation. In other words, sovereignty determines status; authority determines function.¹⁰

This distinction is of theoretical importance. For a state may be sovereignly equal to other states, but in practice, through its institutional mechanisms, it can regulate the practical status of others in a way that functions similarly to the exercise of public authority. In this case, an analysis solely in terms of sovereign equality will not be sufficient.

From an analytical perspective, authority can be reduced to three fundamental components: institutional source, binding quality, and regulatory effect.

First, the institutional source. Unlike influence or raw power, authority is not exercised in a vacuum. Authority requires a normative framework that gives it legitimacy and enforceability. This framework can be domestic law, an executive regulation, an institutional decision, or even a regional legal regime. Without this institutional context, the effect remains in the realm of politics or economics.

Second, binding quality. Authority is realized when the addressees of the rule face a legal consequence in the event of non-compliance. This consequence may be a fine, a disqualification, the annulment of a transaction, or some kind of formal enforcement

⁹ Mattias Kumm, 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis' (2004) 15(5) *European Journal of International Law* 907.

¹⁰ Lea Raible, 'Territory and Jurisdiction in International Human Rights Law: Three Models for a Fraught Relationship' (2018) 31(2) *Leiden Journal of International Law* 315.

mechanisms. Binding here means the existence of a structure that moves compliance from the level of choice to the level of obligation.¹¹

Third, the regulatory effect. Authority must change the normative status or practical capacity to act. This change may take the form of creating or denying a right, granting permission or prohibiting an activity, or restricting access to vital resources. What is important is that the legitimate options available are redefined.

These three components are clearly visible in domestic law. Tax legislation, administrative regulations or court orders are all examples of the exercise of authority, because they change the legal status of individuals, based on an institutional framework, through binding rules backed by enforcement mechanisms.¹²

The fundamental question is whether the same logic can be applied at the international level, especially where regulation is exercised through transnational economic and financial networks?

In response, it should be noted that authority at the international level does not necessarily mean the creation of a rule in general international law. Authority can be exercised through the domestic law of a state, but if its effect is designed to reorganize the practical situation of others at a transboundary level, its function goes beyond the domestic level.¹³

At this point, the concept of “regulatory authority” comes into play. Regulatory authority is a type of authority that is exercised not by directly acting on individuals outside the territory, but by regulating access to institutional mechanisms under its control. This type of authority is based on controlling or regulating the conditions of possibility of action. More precisely, regulatory authority is achieved when a state, through its legal framework, creates conditions in which the performance of certain legitimate acts by foreign actors is effectively dependent on compliance with the state’s rules.

¹¹ Oona A Hathaway, ‘Between Power and Principle: An Integrated Theory of International Law’ (2005) 72(2) *University of Chicago Law Review* 469.

¹² Daniel W Drezner, ‘Targeted Sanctions in a World of Global Finance’ (2015) 41(4) *International Interactions* 755.

¹³ Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press 2010).

In this analysis, authority does not mean direct command, but rather a structural design that redefines the available options. This design may be achieved through control of the financial market, the payment system, or access to a reference currency. What makes it authority is not the intensity of the economic effect, but its institutional and binding quality.

However, two theoretical dangers must be avoided.

First, the reduction of authority to any kind of transboundary effect. If every economic action with external consequences were to be considered authority, the boundary between legitimate economic policy and the exercise of public authority would disappear. Thus, the existence of an institutional framework and direct obligations towards actors under the authority of the sanctioning state are the initial conditions for the recognition of authority.

Second, the confusion of authority with jurisdiction. Jurisdiction refers to the legal authority to apply the law, while authority refers to the practical functioning of regulation. A state may be merely exercising its jurisdiction in domestic law, but if the result of these actions is to create structural constraints on the practical capacity of external actors, the analysis must be elevated from the level of jurisdiction to the level of authority.¹⁴

This theoretical reconstruction suggests that authority in public international law must be defined in terms of the quality of binding regulation and its structural effect, not simply in terms of the place where it is exercised. Such a definition makes it possible to analyze new forms of the exercise of economic power without denying the classical structure of jurisdiction.

Public authority in the public law tradition is never a neutral concept. The exercise of authority is always accompanied by a structure of accountability and normative constraints. The reason is clear: wherever an actor can redefine the legal status or practical capacity of another actor without the consent of the affected party, the question of justification and limitation of that power becomes inevitable.¹⁵

¹⁴ Hans Kelsen, *General Theory of Law and State* (Routledge 2017).

¹⁵ Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford University Press 1994).

Hence, the identification of an action as “authority” is not merely descriptive, but carries normative consequences. This intrinsic link between authority and accountability is established at the domestic level; the question of this thesis is whether the same logic is also activated at the level of transnational network regulation.

Accordingly, authority in the sense used in this study is realized when three elements exist simultaneously: first, an institutionalized and attributable framework; second, a legal obligation towards the actors under the authority of the sanctioning state; and third, a predictable structural effect on the practical capacity of actors to act, even beyond the territory. This definition will be the analytical criterion of the chapter from this point on.

The conclusion of this section is that regulatory authority is a concept in which the elements of institutionalization, obligation, and the reconfiguration of the capacity for action are simultaneously present. It is this definition that provides the conceptual framework necessary for the analysis of economic sanctions in the following sections, without transforming every transboundary effect into authority or undermining the traditional boundaries of the international system.

1.1.2 Authority and Normative Change: From Direct Regulation to the Redefinition of Practical Capacity

If in the previous section authority was defined as the institutional capacity for binding regulation, it is now necessary to clarify more precisely what is meant by “normative change” in the context of international law. For without a precise definition of this point, there is a risk that any drastic practical effect will be interpreted as normative change.

In domestic law, normative change is generally clear. The enactment of a new law can create or remove a right. The issuance of an administrative decision can grant or revoke a permit to operate. A court ruling can create liability or lead to acquittal. In all these cases, the change in legal status is explicit and formal.¹⁶

¹⁶ Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004).

But at the international level, especially in the context of economic regulation, normative change does not always appear in an explicit and formal form. Sometimes what changes is not the text of international rules, but the practical conditions for benefiting from those rules. In this situation, the main question is whether the redefinition of practical capacity can be considered equivalent to normative change.¹⁷

To answer, a distinction must be made between two levels.

First, formal change in legal status. This level occurs when a rule in the legal system changes or a formal decision redefines the legal status of a person or state within that system. For example, a binding Security Council resolution that imposes a specific restriction is an example of formal change.¹⁸

Second, a structural reconfiguration of the practical capacity to exercise rights. At this level, the text of the rules may not change, but the possibility of enforcing those rules or enjoying the rights arising from them is structurally restricted. This restriction acquires legal significance when it is the result of a binding institutional design, not the fortuitous consequence of economic circumstances.

This is precisely the sensitive point. If a state, through its domestic regulations, requires banks under its jurisdiction to refrain from providing financial services to a foreign actor, there is no apparent change in the international law applicable to that actor. But if access to those services is a practical condition for the performance of contracts, the transfer of assets, or the conduct of legitimate transactions, the practical capacity to exercise rights is predictably limited.¹⁹

Here, the normative change occurs not at the level of the text of the rules but at the level of the “conditions of possibility.” The conditions of possibility are part of the normative structure, since rights and duties are meaningless without the practical possibility of

¹⁷ Nico Krisch, ‘Jurisdiction Unbound: (Extra)Territorial Regulation as Global Governance’ (2022) 33(2) *European Journal of International Law* 48; Karen J Alter and Kal Raustiala, ‘The Rise of International Regime Complexity’ (2018) 14(1) *Annual Review of Law and Social Science* 329.

¹⁸ Pierre-Hugues Verdier, *Global Banks on Trial: US Prosecutions and the Remaking of International Finance* (Oxford University Press 2020).

¹⁹ Goldmann, ‘Relative Normativity’ (n 6).

exercise.²⁰ If an institutional framework is designed in such a way that the possibility of exercising rights is systematically limited, this situation cannot be considered a purely economic consequence.

However, one must avoid uncritical generalizations. Not all practical restrictions are normative change. For a reconfiguration of practical capacity to fall within the realm of authority, three conditions must be met.

First, the constraint must result from a binding institutional design. If private actors decide not to interact for independent commercial reasons, this situation, although it may have a similar practical effect, lacks the institutional element of authority.

Second, the constraint must be structural, not ad hoc and transitory. Authority concerns a lasting redefinition of legitimate options, not a temporary disruption of access.

Third, the effect must be predictable and logically derived from the regulatory architecture. If the practical constraint is an unexpected or unforeseeable consequence of a policy, it will be difficult to analyze it in terms of authority.

Given these conditions, the reconfiguration of practical capacity can be seen as a particular form of normative change. In this sense, regulatory authority does not necessarily mean a formal change in the international legal situation, but rather a structural adjustment of the conditions under which rights and duties make sense.²¹

This analysis has important implications. If the change in the conditions of possibility of exercising rights is designed institutionally and in a binding manner, it cannot be analyzed outside the scope of public law. For public authority is activated precisely where an institution can redefine the framework within which action is possible without the consent of the addressee.²²

²⁰ Alexy, *Constitutional Rights* (n 13).

²¹ Armin von Bogdandy, Matthias Goldmann and Ingo Venzke, 'From Public International to International Public Law: Translating World Public Opinion into International Public Authority' (2017) 28(1) *European Journal of International Law* 115.

²² Armin von Bogdandy and Ingo Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford University Press 2014).

Consequently, in the context of economic sanctions, the main question is not whether the international law of the target state has been formally changed or not. The question is whether the institutional design of the sanctions is such that the practical capacity of that state or its associated actors to perform legitimate legal acts is structurally limited.

If the answer is yes and the three aforementioned conditions are also met, then we are faced with a form of regulatory authority that, although exercised in the form of domestic law, has effects that go beyond the domestic level.

Therefore, normative change in this thesis does not simply mean amending the text of the rules, but rather structurally reorganizing the practical capacity to benefit from those rules. This distinction will be the theoretical basis for the analysis of sanctions in the following sections and prevents confusion between mere economic effect and normative authority.

1.1.3. Conceptual Limits of Regulatory Authority: Distinction from Influence, Jurisdiction, and Coercion

Having defined authority as an institutionalized and binding reconfiguration of the capacity for action, it is essential to specify its limits precisely. If this concept lacks clear boundaries, or is extended to any transboundary economic effect, it not only loses its analytical function but also conflicts with the classical structure of the international system. This section therefore establishes three fundamental distinctions: the distinction of regulatory authority from economic influence, from jurisdiction in the classical sense, and from coercion.

A) Distinction from Economic Influence and Market Effects

First, it must be made clear that regulatory authority is not equivalent to any kind of strong economic influence. In a global economy, monetary decisions, interest rate changes, exchange rate fluctuations, or trade policies can have far-reaching consequences beyond the jurisdiction of the decision-making state. These consequences are sometimes very profound

and even devastating. However, the intensity of the economic effect does not in itself produce authority.²³

The fundamental difference is that in market effects, the behavior of foreign actors changes as a result of changing competitive conditions or cost-benefit calculations. In regulatory authority, however, behavior is redefined in terms of a binding rule, the violation of which is subject to enforcement mechanisms. In other words, authority requires a normative mechanism that moves compliance from the level of economic choice to the level of legal obligation.²⁴

If a government causes capital to flee another country by raising interest rates, although it has cross-border effects, it has not imposed a binding legal framework on that country. In contrast, if the same government, through formal regulations, requires its banks to refrain from providing services to certain foreign individuals, and this requirement is subject to enforcement mechanisms, we are dealing with an exercise of authority, not mere market influence.

This distinction prevents every economic policy with external consequences from being analyzed in terms of authority. The element of institutionalization and direct obligation towards the actors under jurisdiction is a condition for the distinction.

B) Distinction from jurisdiction in the classical sense

A second necessary demarcation is the distinction between authority and jurisdiction. In international law, jurisdiction refers to the legal power of a state to establish and enforce rules within its territory or in specific cases with respect to specific individuals. Discussions of territorial, personal or protective jurisdiction concern the legitimacy of the application of domestic law in light of the principle of sovereign equality.²⁵

Regulatory authority, however, is a more functional concept. A state may simply be exercising its territorial jurisdiction from the perspective of domestic law. However, if the

²³ Hathaway, 'Between Power and Principle' (n 11).

²⁴ Alexy, *Constitutional Rights* (n 13).

²⁵ Cedric Ryngaert, *Jurisdiction in International Law* (Oxford University Press 2015).

result of these actions is to create a structural and foreseeable limitation on the practical capacity of foreign actors to perform legitimate legal acts, analysis solely at the level of jurisdiction will not be sufficient.

More precisely, jurisdiction answers the question “does the state have the legal power to establish this rule?”, while authority addresses the question “what regulatory function does this rule perform at the transboundary level?” These two levels of analysis are distinct, although they may overlap.

This distinction is important because the analysis of regulatory authority does not mean the rejection of the classical jurisdictional structure. Rather, it means that in some cases, even if the application of a rule is legitimate within the framework of domestic jurisdiction, its regulatory effect may require independent assessment in light of transboundary obligations.

C) Distinction from the use of force

A third demarcation is the distinction of regulatory authority from the concept of the use of force. In international law, the prohibition on the use of force mainly concerns the use or threat of military force. Economic sanctions are generally not considered armed force, although they can have severe economic effects.²⁶

Regulatory authority is not based on physical coercion. Here, the sanctioning state does not occupy the territory of the target state and does not exercise physical control over it. Coercion in this area is structural, not military. Restricting access to critical infrastructure or imposing institutional costs changes behavior, but not through the threat of military force.

This distinction has two important consequences. First, it separates the analysis of regulatory authority from the framework of rules on the use of force. Second, it shows that the absence of the element of force does not mean the absence of authority. Authority can be exercised through the structural regulation of the conditions of possibility, without resorting to military means.

D) The risk of uncontrolled expansion and its response

²⁶ Ibid.

After these three distinctions, the critical question remains: does the definition of regulatory authority not entail the risk of an unlimited expansion of responsibility or accountability?

The answer is no, provided that the three previous criteria are applied rigorously. The mere existence of a transboundary effect is not enough. The mere exercise of domestic jurisdiction is not enough. The mere severity of the economic consequence is not enough. Only when a binding institutional framework, direct obligation on the actors under jurisdiction, and a foreseeable structural effect on the practical capacity of foreigners are simultaneously established can we speak of regulatory authority.

This conceptual restriction has two functions. On the one hand, it prevents the concept of authority from being reduced to any kind of economic policy. On the other hand, it allows for the analysis to be elevated from the level of influence or foreign policy to the level of public authority in specific cases, such as certain financial sanctions.

In light of these demarcations, regulatory authority is a concept that lies in the middle of three domains: beyond economic influence, distinct from mere jurisdiction, and not identical with the use of force. This intermediate position makes it a suitable analytical tool for examining economic sanctions.

By establishing these conceptual boundaries, the theoretical framework necessary to move from an abstract definition of authority to its concrete analysis in the context of economic sanctions is provided. From here on, the question is no longer merely theoretical, but rather whether financial and secondary sanctions meet the criteria for regulatory authority.

1.1.4 Conditions of Possibility as a Normative Component of the Legal Status

The previous analysis of regulatory authority was based on the concept of “rearranging the conditions of possibility”. However, to avoid conceptual ambiguity, it should be made clear that the conditions of possibility in this essay are not simply descriptive metaphors, but rather part of the normative structure in public law.²⁷

²⁷ Marko Milanović, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011).

In law, the traditional distinction between the existence of a right and the practical possibility of exercising it is often ignored. However, a right without enforceability has no normative function. If a person has the right to contract, but the institutional structure is organized in such a way that the enforcement of that contract is systematically impossible, in practice their legal position has changed, even if the text of the formal rules has not been amended.²⁸

From this perspective, the legal position does not only include the text of rights and duties, but also the institutional conditions that make their enforcement possible. These institutional conditions are part of the normative structure, since they determine what action is practically feasible within the framework of the legal system.

In domestic public law, this logic is accepted. When a state restricts access to essential infrastructure such as a property registry, a domestic banking system, or an energy grid, it changes the practical capacity to exercise a right, even without formally abolishing it. This change is analyzed as an exercise of public authority, since it occurs at the level of the conditions of possibility.²⁹

Transposing this logic to the international level requires caution, but is not impossible. If a state regulates, through its binding institutional framework, access to an infrastructure on which the exercise of a wide range of economic rights depends, it is intervening in the structure of conditions of possibility. Such an intervention is not a mere economic side-effect, but an institutional reordering of the normative structure.³⁰

For the reordering of the conditions of possibility to fall within the realm of authority, three conditions must be met:

First, the infrastructure in question must play a role that is a necessary condition for the exercise of rights, not merely a marginal facilitating role.

²⁸ Krisch, 'Jurisdiction Unbound' (n 17).

²⁹ von Bogdandy, Goldmann and Venzke, 'International Public Law' (n 21).

³⁰ von Bogdandy, Dann and Goldmann, 'Publicness of Public International Law' (n 3); Karen J Alter and Sophie Meunier, 'The Politics of International Regime Complexity' (2009) 7(1) *Perspectives on Politics* 13.

Second, the restriction of access must be made within the framework of a binding and attributable legal framework.

Third, the effect of the constraint must be structural and predictable, not ad hoc and random.

With these conditions met, the readjustment of the conditions of possibility can be seen as part of a change in the normative structure. This change occurs not at the level of the text of the rules, but at the level of the architecture of their implementation.

Accordingly, regulatory authority in this essay does not mean the direct regulation of behavior, but rather the structural regulation of the conditions in which legitimate behavior can occur. This distinction will be the theoretical basis for the analysis of financial sanctions in the rest of the chapter and prevents confusion between the mere economic effect and normative authority.

1.2 Authority and Territory in the Classical Model of International Law

If in the previous section authority was defined as the institutional capacity for the binding reorganization of the legal situation or the practical capacity for action, now the relationship of this concept to the classical foundation of international law must be clarified. Because any redefinition of authority, if not formulated in relation to the territorial structure of the international system, will either lead to conceptual instability or be accused of undermining the sovereign order.

The classical model of international law is based on a fundamental assumption: political authority in the world is distributed among independent and equal states and each state has the exclusive authority to exercise power within its territory.³¹ This model, which has its roots in the modern state-centered order, has conceptualized authority in an inextricable link with territory. Territory is the area in which the state can enact law, implement it, and, if necessary, apply coercion.

³¹ Pierre-Emmanuel Dupont, 'Human Rights Implications of Sanctions' in Masahiko Asada (ed), *Economic Sanctions in International Law and Practice* (Routledge 2019) 39.

This link has had three fundamental functions.

First, the function of determining jurisdiction. In a system of equal states, an objective standard for determining the scope of law was essential. Territory provided this standard. Each state knew within what limits it could regulate without interference from others.³²

Second, the conflict-containment function. If authority were defined in terms of effects or interests, powerful states could expand their scope of regulation indefinitely. The territorial principle provided a clear boundary to prevent destabilizing conflicts of jurisdiction.

Third, the protection-against-intervention function. The principle of non-intervention is based on the assumption that each state has exclusive authority in its own internal affairs. Territory here serves as a shield; a shield against the intrusion of foreign authority.³³

These three functions show that the dependence of authority on territory was not simply a historical custom but an institutional mechanism for maintaining order and predictability in the international system.

However, a conceptual distinction must be noted. Territory in this model has been a means of delimiting authority, not its substantive definition. In other words, authority has been considered territorial because the international system has required a clear geographical criterion to prevent conflict, not because authority inherently has meaning only in terms of physical presence.

This distinction becomes important when new forms of exercising power emerge; forms that, without occupation or physical presence, can structurally regulate the behavior of others. In such circumstances, the question is whether the territorial model is still able to explain these phenomena on its own.

³² Vera Gowlland-Debbas, *United Nations Sanctions and International Law* (Brill 2021).

³³ Tom Ruys, 'Sanctions, Retortions and Countermeasures: Concepts and International Legal Framework' in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017) 19.

The critical point here is that the classical model has not only regulated the distribution of jurisdiction, but also shaped the criterion for the activation of obligations. Many human rights regimes have attributed the activation of state obligations to the existence of some kind of “competence” or “effective control”. This competence has often been understood in terms of territorial control or physical control over individuals.³⁴ Thus, the link between authority and obligation has also been established in a territorial framework.

Consequently, if authority is not recognized outside the territory, obligation is not activated outside the territory. This historical overlap between territory, authority, and obligation has also made the structure of responsibility strongly territorial.

But the contemporary global economy, with its network logic, has challenged this overlap. Access to financial infrastructure, payment systems, capital markets, or reference currencies has become a practical condition for many legitimate activities. Control of these nodal points can limit the practical capacity of others to act without physical presence.

In such a context, if legal analysis continues to reduce authority solely to physical presence or direct control, effective and structural forms of regulating behavior may fall outside the scope of the recognition of authority. This situation could lead to a gap between real power and legal accountability.

However, this study does not claim the collapse of the territorial model. Territory remains the basic rule for the distribution of jurisdiction and the containment of conflict. What is questioned is its exclusive adequacy. More precisely, is territory the only criterion for identifying authority, or should the analysis be elevated to a functional level in specific cases where structurally binding regulation is applied without physical presence?

The answer to this question is cautious. Authority is still understood in a territorial context as a general rule. But in cases where institutional design is such that it predictably reorganizes the practical capacity of actors outside the territory, a purely territorial analysis may be inadequate.

³⁴ Surya P Subedi (ed), *Unilateral Sanctions in International Law* (Hart Publishing 2021).

The present section therefore seeks not to deny territorial sovereignty but to demonstrate its analytical limitations in the face of networked forms of behavioral regulation. This theoretical background will serve as a basis for the subsequent subsections, in which the relationship between territory, jurisdiction, and authority is explored in more detail.

1.2.1 Territorial Sovereignty as a Historical Basis for Authority

To understand the relationship between authority and territory in international law, it is necessary to return to the theoretical basis of territorial sovereignty. In the modern state-centered order, sovereignty has been not merely a political principle, but an organizing rule for the distribution of authority at the international level. This principle states that each state has the exclusive competence to exercise authority within its own specific geographical area and that other states are obliged to refrain from interfering in that territory.³⁵

The importance of territorial sovereignty lies in the fact that it places the three fundamental elements of authority in an overlapping framework: territory, population, and government. Territory is the physical area of the exercise of authority, the population is the subject of regulation, and the government is the institution exercising authority. This triple overlap has led to authority being regarded as a naturally territorial phenomenon.³⁶

However, this historical link between authority and territory has been based on institutional and functional considerations rather than on conceptual necessity. The international system, in order to maintain order among equal states, required a clear criterion for delimiting the sphere of exercise of power. Territory provided such a criterion. Without this criterion, any state could claim to regulate the behavior of others on the basis of interests, effects, or economic connections, leading to widespread conflicts of jurisdiction and instability.³⁷

Territorial sovereignty, therefore, has been primarily a technique for delimiting authority, not its substantive definition. This technique has served three essential functions.

³⁵ Ruys, 'Sanctions, Retortions and Countermeasures' (n 33); Ali Z Marossi and Marisa R Bassett, 'Economic Sanctions under International Law' in Ali Z Marossi and Marisa R Bassett (eds), *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences* (TMC Asser Press 2015).

³⁶ Drezner, *Sanctions Paradox* (n 2).

³⁷ Thomas J Biersteker, Sue E Eckert and Marcos Tourinho (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge University Press 2016).

First, it created legal certainty. States knew where they could and could not regulate. This certainty was a condition for predictability in international relations.

Second, it guaranteed sovereign equality. If authority were separated from territory, powerful states could extend their scope of regulation beyond their borders and effectively influence the legal structure of other states. The attachment of authority to territory provided a theoretical barrier to such expansion.

Third, it upheld the principle of non-intervention. This principle is based on the premise that each state has exclusive authority in its internal affairs. Territory demarcates the boundary between “internal” and “external” and prevents the intrusion of external authority.³⁸

However, it should be noted that even in the classical model, authority has never been entirely limited to territory. Exceptions such as personal jurisdiction, protective jurisdiction, or some forms of universal jurisdiction show that the international system has from the beginning envisaged possibilities for the exercise of authority beyond territory, although these possibilities have been limited and exceptional.³⁹ These same exceptions show that territory is not the logical condition of authority, but the general rule of its delimitation.

More importantly, the dependence of authority on territory has gradually led to the dependence of obligations on territory. In many human rights regimes, State obligations are triggered when that State has jurisdiction or effective control over territory or persons. This historical intersection between territorial authority and territorial obligation has also made the structure of international responsibility deeply territorial.⁴⁰

But this link is challenged when new forms of exercising power, without a physical presence in the territory of others, can regulate their practical capacity. If a state can structurally limit the conditions of possibility for the economic activity of another state without entering the

³⁸ Ksenia Kirkham, *The Political Economy of Sanctions: Resilience and Transformation in Russia and Iran* (Palgrave Macmillan 2022).

³⁹ Verdier, *Global Banks on Trial* (n 18).

⁴⁰ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (PublicAffairs 2013); Daniel Franchini, 'When Finance Becomes a Weapon: The Challenge of Central Bank Sanctions under International Law' (2025) 24(1) *Journal of International Trade Law and Policy* 28.

territory of another state, can authority still be understood solely in terms of territorial control?

The answer to this question requires caution. Because any disorderly weakening of the link between authority and territory can lead to the instability of the jurisdictional system. The aim of this section is therefore not to reject the territorial model, but to show that the link between authority and territory has been historical and functional, not essentialist.

The dependence of authority on territory has been made so natural and self-evident over time that territory appears as the essential condition of authority. However, this naturalization has been the result of the historical consolidation of a particular form of power organization rather than conceptual necessity. If we link authority not to physical presence but to the capacity for binding regulation, then territory will be one of the ways in which authority is exercised, not its essential definition. This distinction allows for a limited but necessary rethinking of the relationship between authority and transboundary regulation

Consequently, territorial sovereignty must be retained as the main framework and general rule for the distribution of authority. But this framework does not necessarily explain all new forms of binding regulation. Recognizing this analytical limitation is the first step in examining the relationship between territory and jurisdiction more closely in the next section.

1.2.2 Territory as a Criterion for the Activation of Jurisdiction and Obligation

In the classical architecture of international law, authority is not only distributed within the framework of territory, but is activated through the concept of “jurisdiction.” Jurisdiction expresses the legal authority of a state to establish, implement and guarantee rules with respect to certain persons, property or situations. In the traditional model, this authority is exercised by default within the geographical limits of the state. Territory in this sense is not only the physical space, but also the context for the legitimate application of law.⁴¹

The link between territory and jurisdiction has gradually become so established that jurisdiction appears essentially territorial. The principle of territoriality in criminal,

⁴¹ Ryngaert, *Jurisdiction in International Law* (n 25).

administrative and regulatory law is considered the general rule and other bases of jurisdiction such as personal or protective jurisdiction are analyzed as exceptions. This structure shows that territory is not only the criterion for the distribution of authority, but also the starting point for the analysis of jurisdiction.⁴²

This link has also had another important consequence: the overlap between jurisdiction and obligation. In many human rights regimes, especially in regional systems, the activation of state obligations has been conditioned by the existence of some kind of jurisdiction over persons or territory. This jurisdiction has often been understood in terms of territorial control or effective control over persons.⁴³ Thus, the structure of human rights has implicitly been based on the same territorial logic that defined classical authority.

This historical overlap has created a triple entanglement: territory is the criterion of jurisdiction, jurisdiction is the condition for the activation of the obligation, and the obligation is the basis of responsibility. In such a framework, if authority is not recognized outside the territory, the obligation is not activated outside the territory and responsibility remains within the same scope.

However, in a context where the regulation of behavior is carried out through transnational economic and financial networks, this structure faces a conceptual challenge. Suppose a state, through its domestic regulations, requires banks under its jurisdiction to refrain from providing financial services to certain foreign persons. This is formally an exercise of territorial jurisdiction, since the obligation is directed at domestic banks. But its practical effect can be a structural limitation of the capacity of foreign actors to act.

In this situation, from the perspective of classical analysis, the state is simply exercising its territorial jurisdiction and, since it has no physical control over the territory or foreign actors, transboundary obligations are not triggered. But from a functional perspective, the behavior of foreign actors is reorganized within a binding framework. Their practical capacity to perform legitimate legal acts is structurally limited.

⁴² Ibid.

⁴³ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

This gap between the form of jurisdiction and the regulatory function is the central point of the problem. If the analysis remains based solely on the place of exercise of jurisdiction, effective forms of transboundary regulation may fall outside the scope of authority recognition. As a result, the traditional link between authority and obligation becomes asymmetrical: the power that actually regulates behavior remains outside the framework of accountability.

However, this argument should not lead to the conclusion that every transboundary effect must lead to an unlimited extension of jurisdiction. The territoriality principle continues to play a restraining role in conflict of jurisdictions. The question here is not about the legitimacy of the exercise of jurisdiction, but about the adequacy of the analysis limited to jurisdiction alone to describe the phenomenon.

In other words, jurisdiction is the answer to the question of whether the state is legally authorized to enact a particular rule. But regulatory authority addresses the question of what kind of structural reorganization that rule actually produces in the capacity to act of others. These two levels of analysis overlap, but are not identical.

As a result, territory remains the general rule as a criterion for the activation of jurisdiction. But in cases where the exercise of territorial jurisdiction predictably rearranges the practical capacity of external actors, the analysis must go beyond the mere level of jurisdiction and consider the regulatory function of the measure in question

This result does not mean the negation of the classical structure, but rather indicates its limitations in the face of networked forms of power. This same limitation provides the context for a more detailed examination of the relationship between authority and non-territorial forms of the regulation of behavior in the next section.

1.2.3 Limitations of the Territorial Model in the Context of the Global Network Economy

The territorial model of authority, as shown in the previous two sections, has played a fundamental role in stabilizing the international order. By linking authority to territory, this model has prevented widespread conflicts of jurisdiction, guaranteed sovereign equality, and upheld the principle of non-intervention. However, the question of this research is not about

the historical efficacy of this model, but about its analytical adequacy in the face of new forms of the exercise of power.⁴⁴

The structural transformation of the global economy in recent decades has transformed the pattern of the exercise of power. Many fundamental economic activities are no longer confined to national frameworks. Financing, payment settlement, transport insurance, access to reference currencies, and the enforcement of international contracts all depend on networks that cross geographical boundaries. These networks often have centralized nodal points; points whose control or regulation can have widespread and structural effects.⁴⁵

In such a context, the exercise of power no longer necessarily requires a physical presence in the territory of the target state. A state that can restrict access to critical infrastructure through its legal framework can predictably reorganize the practical capacity of foreign actors, even if it has no territorial control over them.

The classical territorial model, which links authority to physical control or presence in a territory, faces an analytical limitation in the face of this phenomenon. If the analysis continues to be based solely on the criterion of physical presence or direct control, forms of network-based structural regulation are marginalized and classified as “indirect economic consequences.”⁴⁶

This classification may be useful from the perspective of maintaining jurisdictional order, but it is not accurate from the perspective of regulatory function. For in cases where institutional design is such that it systematically and predictably limits the practical capacity of foreigners to act, speaking of “indirect effects” obscures the normative reality of the phenomenon.

⁴⁴ Kimberly Ann Elliott, ‘Assessing UN Sanctions after the Cold War: New and Evolving Standards of Measurement’ (2010) 65(1) *International Journal* 85.

⁴⁵ Panagiotis Delimatsis, ‘Transnational Economic Activism and Private Regulatory Power’ (2023) 26(3) *Journal of International Economic Law* 559; Anton Moiseienko, ‘Due Process and Unilateral Targeted Sanctions’ in Charlotte Beaucillon (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar Publishing 2021) 405.

⁴⁶ 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* braa007; Jacob J Lew and Richard Nephew, ‘The Use and Misuse of Economic Statecraft’ (2018) 97(6) *Foreign Affairs* 139.

However, accepting this analytical limitation should not lead to an unlimited expansion of the concept of authority. If any kind of network effect is considered an exercise of authority, jurisdictional boundaries collapse and the risk of widespread conflict between states increases. The main issue is therefore not to abandon the territorial model, but to complement it by identifying limiting criteria for certain forms of network regulation.

In this context, three points are important.

First, a distinction must be made between “broad economic effects” and “designed structural reorganization.” Only in the latter case can one speak of regulatory authority.

Second, it must be shown that the cross-border effect results from a direct obligation on the actors under jurisdiction, and not from market influence or commercial preference. This causal link between the domestic institutional framework and the external structural effect is a fundamental condition for the analysis of authority.

Third, one must avoid generalizing this analysis to areas lacking infrastructural concentration or structural dependence. Regulatory authority makes sense in the context of networks to which access is a practical condition for engaging in legitimate activity.⁴⁷

The limitation of the territorial model in the era of the network economy is therefore not that it is invalid, but rather that it is inadequate on its own to explain all forms of the exercise of power. Territory remains the general rule of jurisdiction, but in the face of networked forms of the regulation of behavior, analysis must also attend to the level of normative function and structural effect.

This result paves the way for a transition from the theoretical discussion of authority and territory to the empirical examination of economic sanctions. If sanctions reorganize the practical capacity of foreign actors by regulating access to global financial infrastructure, it is worth examining whether this reorganization contains elements of regulatory authority.

⁴⁷ von Bogdandy, Dann and Goldmann, ‘Publicness of Public International Law’ (n 3).

1.3 Economic Sanctions as Exercises of Regulatory Authority

Having established the conceptual basis of authority and examined its relationship to territory and jurisdiction in the classical model, the central question of this chapter now arises: can contemporary economic sanctions be analyzed in terms of regulatory authority, or do they remain merely instruments of political pressure?

In the political and diplomatic literature, sanctions are generally described as instruments of foreign policy. This description focuses on the motive: to change the behavior of the target state, to force it to comply with international norms, or to exert pressure without resorting to military force.⁴⁸ But this motivational narrative ignores the normative function of sanctions. The legal question is not why sanctions are imposed, but what kind of regulation they actually create.

Classical economic sanctions, like traditional trade restrictions, were largely limited to prohibiting the import or export of certain goods. Although these measures had economic effects, they usually remained within the framework of bilateral relations and their scope of regulation was limited.⁴⁹ Contemporary financial and banking sanctions, in contrast, have a more complex and deeper structure.

New sanctions often focus on regulating access to global financial infrastructure. International payment networks, foreign exchange settlement systems, correspondent banks, capital markets, and global reserve currencies are at the heart of this structure. Access to these infrastructure is a practical requirement for a wide range of legitimate economic activities. Without such access, transferring assets, executing international contracts, financing imports and exports, and even making everyday payments become difficult or impossible.⁵⁰

When a government, through its legal framework, requires banks and financial institutions under its jurisdiction to refrain from providing services to specific individuals or entities, the

⁴⁸ Drezner, *Sanctions Paradox* (n 2).

⁴⁹ Gary Clyde Hufbauer and Euijin Jung, 'Economic Sanctions in the Twenty-First Century' in Peter AG van Bergeijk (ed), *Research Handbook on Economic Sanctions* (Edward Elgar Publishing 2021) 26.

⁵⁰ International Monetary Fund, 'The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action' (Staff Discussion Note SDN/16/06, June 2016).

first level of regulation is achieved: a direct legal obligation for domestic actors. This obligation is enforceable and its violation is subject to administrative or criminal penalties. At this level, the state is exercising its territorial jurisdiction.

But the structure of financial sanctions is not limited to this level. Their institutional design is such that their effects predictably extend beyond the territory. When a foreign bank or institution's access to the financial network controlled by the sanctioning state is restricted, that institution's practical capacity to conduct international transactions is structurally reduced. This reduction is not simply an increase in cost; it is a redefinition of the practical options available.

In secondary sanctions, this logic becomes more apparent. The sanctioning state declares that any person or entity that interacts with the targeted actor may lose access to that state's market or financial system. As a result, third parties, even if they are not present in the territory of the sanctioning state, adjust their behavior in accordance with the sanctions framework in order to maintain access to critical infrastructure.⁵¹

In this situation, the behavior of foreign actors is reorganized not simply on the basis of free market calculation, but within a binding framework whose design is attributable to the sanctioning state. The element of institutionalization, direct obligation towards the actors under jurisdiction, and a foreseeable structural effect on the practical capacity of foreigners are present at the same time.

At this point, the analysis of sanctions as economic influence is not enough. If the restriction of access to financial infrastructure is the direct result of institutional design and this design systematically restricts legitimate practical options, we are faced with a form of binding regulation. This binding regulation is precisely the distinguishing element of authority.

It should be emphasized, of course, that not all sanctions automatically constitute regulatory authority. If the measure remains merely at the level of political pressure or a limited trade restriction and does not have a broad structural effect, it remains in the realm of influence.

⁵¹ Ruys and Ryngaert, 'Secondary Sanctions' (n 46).

But where the regulation of access to network infrastructure is involved, the analysis must be elevated from the level of foreign policy to the level of public law.

As a result, contemporary financial and banking sanctions, particularly those imposed through the regulation of access to critical global financial infrastructure, have the potential to be analyzed as exercises of extraterritorial regulatory authority. This analysis is not meant to be a judgment on legitimacy or illegitimacy. Rather, it is a conceptual step that shows that sanctions, in some of their forms, are a type of power that can activate obligations and be subject to human rights assessment and accountability.

The following sections of this chapter will show in detail how this analysis applies to banking sanctions, secondary sanctions, and access control to the global financial system.

1.3.1 Banking Sanctions as Structural Regulation of Access

Banking sanctions are a point where the logic of regulatory authority is clearly visible. Unlike traditional trade sanctions, which focused on the flow of goods, banking sanctions focus on the flow of possibilities. They do not simply prohibit a particular exchange, but regulate access to a mechanism that is a prerequisite for the implementation of most economic obligations.⁵²

In the contemporary global economy, banks are not simply financial intermediaries. They are the institutional nodes of a network through which funds are transferred, transactions are settled, letters of credit are opened, payments are guaranteed, and international contracts are enforced. Every international contract ultimately requires financial settlement. Every cross-border transfer of property is dependent on the transfer of funds. Access to the banking system is therefore not a commercial privilege but a practical condition for the exercise of a large range of economic rights.⁵³

When a state, through its legal framework, requires banks under its jurisdiction to freeze the assets of a foreign entity or to refuse to provide financial services to it, the first level of

⁵² Cedric Ryngaert, 'Extraterritorial Export Controls (Secondary Boycotts)' (2008) 7(3) *Chinese Journal of International Law* 625.

⁵³ World Bank, *De-risking in the Financial Sector* (World Bank 2018).

authority is achieved: direct legal obligation. Banks face enforcement if they fail to comply . At this level, the state is exercising territorial jurisdiction.

But the effect of a banking sanctions is not limited to this level. If the banking system under the jurisdiction of that state plays a central role in the global financial network, restricting access to that system effectively limits the target entity's practical capacity to perform a wide range of legal acts. This restriction may make it impossible to perform current contracts, disrupt debt payments, or eliminate the possibility of financing projects.

In this situation, what changes is not simply transaction costs but the structure of possibilities. The target actor may still have the right to contract or transfer assets under international law, but in practice the possibility of exercising that right is structurally impaired. This disruption is a direct result of the institutional design of the sanctions, not a random market outcome.

The key point is that banking sanctions are imposed by regulating access to infrastructure. Infrastructure here means the network without which legitimate economic activity on an international scale is practically impossible. Regulating access to infrastructure is regulating behavior by controlling the conditions of possibility.

From an analytical perspective, three elements of regulatory authority can be identified in banking sanctions.

First, a clear institutional framework. Banking sanctions are imposed in the form of law, executive regulation, or official list and are attributable to a specific government.

Second, a direct obligation on the actors under jurisdiction. Domestic banks are required to comply, and violations are punishable.

Third, a foreseeable structural effect on the capacity of foreigners to act. The sanctions are designed to restrict access to the core financial network, and this restriction logically and predictably leads to disruption of legitimate legal acts.⁵⁴

⁵⁴ Francesco Giumelli, *How EU Sanctions Work* (Chaillot Paper No 129, EU Institute for Security Studies 2013).

However, to avoid unwarranted generalization, it should be emphasized that the infrastructural role of the banking system is an important condition for this analysis. If the financial system in question plays a marginal role in the global network and its constraints do not structurally affect the practical capacity of foreign actors, the analysis of regulatory authority will be difficult. Therefore, this research focuses on banking sanctions that create a wide network effect due to the structural position of the sanctioning state's financial system.

Banking sanctions in this sense are an example of indirect but institutionalized authority. The sanctioning state does not directly command the foreign actor, but through the legal obligation imposed on domestic banks, it creates conditions in which the foreign actor is inevitably faced with a structural rearrangement of its practical options.

Consequently, banking sanctions show that authority can redefine the practical situation of foreign actors by regulating access to infrastructure without a physical presence and without a formal change in international rules. This feature takes them beyond the level of economic influence and places them in the realm of regulatory authority.

1.3.2 Secondary Sanctions and the Extension of the Cross-Border Regulatory Chain

If banking sanctions represent structural regulation of access, secondary sanctions are the point at which regulatory authority extends beyond the level of the direct relationship between the sanctioning state and the sanctioned target and into the network of economic interactions. Here we are faced with a more advanced form of regulation; one that has a structural binding effect not only on the primary target but also on third parties.⁵⁵

Secondary sanctions occur when the sanctioning state declares that any person or entity that interacts with the targeted actor may face legal consequences, including denial of access to the market, banking system, or other critical infrastructure of that state. This declaration is usually enshrined in a formal law or regulation and is enforceable.

⁵⁵ Goldmann, 'Relative Normativity' (n 6).

In this situation, the direct obligation still applies to actors under the jurisdiction of the sanctioning state. Domestic banks, companies, and financial institutions are required to refrain from interacting with specific individuals. But the institutional design of sanctions is such that third parties outside the territory also adjust their behavior in accordance with the prescribed framework in order to avoid the consequences of sanctions.⁵⁶

Here, regulation is exercised not through direct command to foreign actors, but through the creation of an institutionalized risk structure. The foreign actor faces a structural choice: either engage with the sanctioned target and lose access to critical infrastructure, or cut off that engagement and maintain access. This choice is not in practice between two simple economic options, but between the possibility of participating in the central network of the global economy and exiting it.

The crucial point is that this cross-border effect is not an unintended consequence but part of the logic of secondary sanctions design. The regulatory structure is designed in such a way that dependence on the central infrastructure becomes a lever for regulation. Thus, the compliance of foreign actors is not simply a response to market pressure, but rather the realization of the regulatory goal envisaged in the legal architecture of sanctions. At this level, the subjective intention of the state is not decisive; what matters is that the network effect is embedded in the institutional design.

Conceptually, secondary sanctions are a prime example of extraterritorial regulatory authority. All three elements of authority are present in them in an enhanced form.

First, an explicit and attributable institutional framework. Secondary sanctions are formulated in the form of a formal law or regulation and are consciously designed to have an impact beyond the bilateral relationship.

Second, a direct legal obligation on the actors under the sanctioning state's jurisdiction. Enforcement of the sanctions is ensured through a enforcement measures against domestic entities.

⁵⁶ Raz, *The Authority of Law* (n 4).

Third, a predictable structural effect on the network of external interactions. The sanctions are designed in such a way that dependence on the central infrastructure becomes a regulatory lever. their effect is not accidental, but logical and predictable.⁵⁷

The key point is that secondary sanctions redefine the rules of economic interaction at the network level. Before sanctions, foreign actors could interact based on their own commercial assessments. After sanctions, this interaction is placed within an institutional framework that has specific legal consequences. Thus, the framework of possible interaction has changed.

In this sense, secondary sanctions become a transboundary regulatory regime. Although the regulatory state formally enforces its own domestic law, its practical function is to reorganize economic relations on a transnational level.

However, there is a fundamental limitation. Regulatory authority in secondary sanctions depends on the structural position of the sanctioning state in the global network. If the market, currency, or infrastructure controlled by that state plays a marginal role, the network effect will be limited and the analysis of regulatory authority becomes difficult. Therefore, the element of “infrastructure centrality” is a condition that strengthens authority.

However, in cases where the regulated infrastructure plays a nodal role in the global economy, secondary sanctions demonstrate that authority can structurally and bindingly reorganize the behavior of foreign actors without direct territorial control, and without the use of force.

As a result, secondary sanctions are not simply instruments of coercion but institutional mechanisms for regulating behavior at the global network level. This feature makes them a prominent example of non-territorial regulatory authority and paves the way for a final analysis of access control to the global financial system.

1.3.3 Controlling Access to the Global Financial System as an Advanced form of Regulatory Authority

⁵⁷ Subedi (ed), *Unilateral Sanctions* (n 34).

The analysis of banking and secondary sanctions has shown that regulating access to financial infrastructure can structurally constrain the practical capacity of foreign actors. However, to complete the conceptual framework of this chapter, it is necessary to take a step back and ask a more fundamental question: why does controlling global financial infrastructure acquire such an authoritative function?

In this subsection, the discussion remains at the level of the sanctions case and shows why regulating financial access can in practice become an advanced form of regulatory authority within the framework of sanctions regimes. In the contemporary economy, some financial infrastructure play a role beyond that of a technical tool. International payment networks, foreign exchange settlement systems, global reserve currencies, capital markets, and financing mechanisms are not only conduits for money transfers, but also institutional platforms for participation in the global economy. Without access to this infrastructure, many economic rights and contractual obligations cannot be effectively enforced.⁵⁸

In this context, controlling access to financial infrastructure can be seen as a form of “control over the conditions of possibility.” The Conditions of possibility refer to those institutional prerequisites without which the exercise of rights and freedoms is not possible in practice. If a state can regulate these conditions in a binding manner through its domestic regulations, it is in fact regulating the practical capacity to act at a level beyond the territorial sphere.⁵⁹

An important feature of global financial infrastructure is its structural centralization. Many international transactions pass through limited routes and are dependent on specific reference currencies or correspondent banks. This centralization means that the regulation of one node can have a wide network effect. In such a case, authority is exercised not through territorial control, but through the control of network nodes.⁶⁰

This form of authority has three distinct features.

⁵⁸ Zarate, *Treasury's War* (n 40).

⁵⁹ Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2010).

⁶⁰ Henry Farrell and Abraham L Newman, ‘Weaponized Interdependence: How Global Economic Networks Shape State Coercion’ (2019) 44(1) *International Security* 42.

First, indirectness. The sanctioning state does not directly command foreign actors, but rather, by compelling actors under its jurisdiction, creates conditions in which foreign actors are induced to comply. This compliance is not the result of free choice in a competitive market, but a response to a binding structure.

Second, networked character. The implementation of regulation depends on the cooperation or subordination of a set of private and intermediary actors. Banks, financial institutions, and insurance companies become the bearers of the enforcement of authority. But this distribution of the enforcement of authority does not change its nature, because the source of the obligation lies in the institutional framework of the sanctioning state

Third, the structural nature of the effect. Restricting access to financial infrastructure is not an occasional disruption, but a change in the architecture of possibility. This change can systematically disrupt the implementation of current contracts, the financing of projects, and participation in global markets.

An important theoretical point should be noted here. Regulatory authority in the form of infrastructure control does not necessarily mean the exercise of direct jurisdiction over foreign entities. The sanctioning state may not claim that its law applies to entities outside its territory. But if the institutional design is such that foreign entities are induced to comply with that state's framework in order to access critical infrastructure, then we are effectively dealing with a form of transboundary regulation.

This situation suggests that authority can be exercised through the regulation of structural dependency. Dependence on central infrastructure becomes a lever for reorganizing behavior. The stronger the dependency and the more central the infrastructure, the greater the capacity for regulatory authority.⁶¹

However, the analysis must remain limited and precise. Not all forms of economic dependency generate authority. The essential condition is that access regulation is carried out within an institutional and binding framework and that its impact on the practical capacity of foreign actors is predictable and structural.

⁶¹ Ibid.

In conclusion, controlling access to the global financial system can be considered the most advanced form of non-territorial regulatory authority. This form of authority is based neither on physical presence nor on the exercise of force, but on the regulation of the conditions of possibility of participation in a network that has itself become a precondition for legitimate economic activity.

This analysis brings the chapter closer to its conceptual conclusion: where a state, by regulating access to critical infrastructure, redefines the practical capacity of external actors in a binding way, we are faced with an exercise of public authority, even if it does not appear in the traditional form of territorial control.

1.4 Regulatory Authority as Structural Governance

The analysis of the previous section at the level of specific instances showed that regulating access to infrastructure can produce an authoritative effect. However, that analysis was still focused on sanctions as a specific example. The question now is whether a more general formulation of authority in the context of infrastructure networks can be derived from this example. The present section addresses this level of abstraction. It is now necessary to elevate the analysis from the level of specific instances to the structural level. The issue is no longer sanctions as a specific instrument, but the contemporary form of exercising authority in the network economy.

In the classical order, authority was realized through direct action on territory and population. The state legislated, enforced, and, if necessary, applied physical coercion. In this framework, authority depended on spatial presence and direct hierarchical relations.⁶²

But in the network structure of the global economy, the exercise of authority can be achieved through the regulation of infrastructure nodes. In this situation, rather than issuing a direct command to an external actor, the state designs conditions in which some options for action are effectively eliminated or limited. Authority operates at the level of an “architecture of choice,” not at the level of individual command.⁶³

⁶² Loughlin, *Foundations of Public Law* (n 1).

⁶³ Farrell and Newman, ‘Weaponized Interdependence’ (n 60).

This development has three conceptual implications.

First, authority can be exercised without physical control, provided that the conditions of possibility are institutionally regulated and binding

Second, authority can be networked, in the sense that its exercise is carried out through multiple actors, but the source of the obligation remains within the legal framework of the state.

Third, authority can be structural, in the sense that its effect is not ad hoc but rather persistent and predictable in redefining the practical capacity of actors.

In this model, governance does not mean the exercise of force, but the design of institutional structures that guide behavior within a binding framework. The regulation of access to critical infrastructure is an example of this form of governance, since infrastructure constitutes part of the conditions of possibility for participation in the economic order.

Accordingly, regulatory authority can be defined as a form of structural governance: the exercise of power through the institutional reorganization of the conditions of possibility for action, in such a way that the practical capacity to enjoy rights or perform legitimate acts is predictably limited or redefined.

This formulation of authority neither replaces nor denies the territorial model. Territory remains the general criterion for the distribution of jurisdiction. But in cases where the structural regulation of the conditions of possibility is applied at the network level, the analysis of authority cannot be reduced to physical control.

Thus, this chapter argues that authority in the contemporary order can emerge in the form of governance through infrastructure. This conceptual identification provides the context for examining its normative consequence: whether the exercise of such authority activates human rights obligations.

1.4.1 Financial Infrastructure as a Platform for the Exercise of Public Authority

In order for the concept of “governance through infrastructure” to move beyond the level of metaphor and become a rigorous analytical tool in public international law, it is necessary to clarify the legal nature of global financial infrastructure. The analysis in this section is formulated independently of the specific instance of sanctions and concerns any regulatory situation in which access to critical infrastructure, within a binding framework, becomes a lever of governance. Without this clarification, there is a risk that infrastructure will be described as a mere economic phenomenon, rather than as a platform for the exercise of authority.⁶⁴

Financial infrastructure, in its legal and institutional sense, is a system of established rules, institutions and mechanisms that enable the circulation of capital, the settlement of obligations, the enforcement of international contracts and the transfer of value. This infrastructure includes payment networks, foreign exchange settlement systems, correspondent banks, capital markets, insurance institutions and regulatory compliance systems. What makes these elements infrastructure is not their mere technical function, but their fundamental role in enabling legitimate economic action.⁶⁵

As shown in Section 1.1.4, the issue here is not a change in the text of the rules, but an institutional reconfiguration of the conditions of possibility for the enjoyment of rights.

In the contemporary global economy, many economic rights are not practically feasible without access to this infrastructure. The right to contract, the right to transfer ownership, the right to receive or pay funds..., and all ultimately depend on the possibility of financial settlement. Financial infrastructure can therefore be seen as part of the “conditions of possibility” for the exercise of economic rights.

When a state regulates access to this infrastructure through its legal framework, it is in fact regulating the conditions of possibility for the exercise of rights. This regulation can take the form of freezing assets, prohibiting the provision of banking services, or restricting access

⁶⁴ Goldmann, ‘Relative Normativity’ (n 6).

⁶⁵ Ibid.

to the foreign exchange settlement system. In each of these cases, the effect is not merely economic, but a redefinition of the practical capacity to enjoy rights.

A key feature of the global financial infrastructure is its centralization and interconnectedness. Many international transactions pass through limited channels and specific institutions. This centralization means that the regulation of a single node can have widespread network effects. In such circumstances, regulating access to a central node can have consequences that go beyond the direct jurisdiction of the sanctioning state.⁶⁶

From a public law perspective, this situation is analogous to the regulation of a vital public space. In domestic law, if a state restricts access to key infrastructure such as an energy grid or a property registry system, it is undoubtedly exercising public authority, since it reorganizes the conditions under which rights can be enjoyed. At the international level, too, when global financial infrastructure plays a similar role, regulating access to it cannot be seen as a purely economic decision.

However, a distinction must be made between two situations. First, the case where the state acts solely within the framework of market competition or monetary policy, and its external effects are indirect and diffuse. Second, the case where the state explicitly and institutionally restricts access to the infrastructure, and this restriction has enforcement mechanisms and a foreseeable effect on the practical capacity of foreign actors. It is only in the latter case that the analysis of regulatory authority arises.

Another important point is that the global financial infrastructure, despite its transnational nature, is still governed by national and regional legal regimes. This allows the states at the center of these infrastructures to produce cross-border effects through their domestic regulations. Thus, the origin of authority remains in the attributable legal framework, although its scope of effect extends beyond the territory.⁶⁷

Consequently, financial infrastructure can be considered a contemporary platform for the exercise of public authority at the network level. The regulation of access to it, if it has

⁶⁶ Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2005).

⁶⁷ Benedict Kingsbury, Nico Krisch and Richard B Stewart, 'The Emergence of Global Administrative Law' (2005) 68(3–4) *Law and Contemporary Problems* 15; Alter and Meunier, 'Regime Complexity' (n 30).

elements of institutionality, obligation and structural effect, goes beyond the sphere of economic influence and falls within the realm of authority.

This analysis provides the necessary theoretical basis for a more detailed examination of the mechanisms of indirect enforcement and structural compliance in the next subsection.

1.4.2 Distinction Between Regulatory Authority and Jurisdiction and the Use of Force

The formulation of regulatory authority as governance through infrastructure has theoretical solidity only when its relation to two classical concepts of international law is clarified: jurisdiction and the exercise of force. Without this demarcation, the analysis is either reduced to a jurisdictional dispute or unjustifiably shifted to the regime governing the prohibition of the use of force.

A) Regulatory authority and jurisdiction

Jurisdiction in the classical sense refers to the legal authority of a state to make and enforce rules in relation to certain persons, property or situations, and its central question is the legitimacy of the application of law in light of the principle of sovereign equality. At this level, the main issue is whether the state has the “right to apply” the rule.⁶⁸

Regulatory authority poses a different question. The question of this research is not how far the state can extend its law, but under what conditions the exercise of law, which is formally within the framework of territorial jurisdiction, produces a regulatory function at the network level and structurally redefines the practical capacity of actors outside the territory. Thus, the analysis of regulatory authority is not a substitute for the concept of jurisdiction, but a distinct layer for assessing the “regulatory function” of the exercise of jurisdiction.⁶⁹

This distinction is doubly important in the discussion of human rights obligations. If the analysis remains solely at the level of jurisdiction, the activation of obligations will also be limited to traditional criteria of territorial control. But if authority is defined in terms of the binding regulation of the conditions of possibility, then the structural effect of institutional

⁶⁸ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

⁶⁹ von Bogdandy, Goldmann and Venzke, ‘International Public Law’ (n 21).

design can become the subject of assessment of human rights obligations, even when the legal form of the action remains “internal.”⁷⁰

B) Regulatory Authority and the Use of Force

The prohibition of the use of force mainly concerns the use or threat of military force. Economic sanctions, although they may have severe effects, are generally not considered a use of armed force.⁷¹ The decisive point in this chapter is not the intensity of economic pressure, but the regulatory form of the action.

Regulatory authority is not based on physical coercion. The sanctioning state does not occupy the territory of another state and does not exercise physical control. Coercion in this area is structural: restricting institutionalized access to critical infrastructure or designing an environment in which non-compliance carries foreseeable legal consequences. The analysis of regulatory authority must therefore be separated from the framework of rules on force, without jumping to the slippery conclusion that the absence of force equals the absence of authority.

Regulatory authority is neither equivalent to the development of grounds of jurisdiction based on the theory of effects nor to the exercise of force. Its distinguishing element is not the intensity of the economic consequence, but the binding and attributable regulation of the conditions of possibility of action at the network level. Hence, the present analysis falls neither under the jurisdictional regime of effects nor within the realm of the prohibition of the use of force; the point is to measure the regulatory function of an institutional framework that structurally redefines the capacity for action of actors outside the territory.

1.4.3 Indirect Enforcement Mechanisms and Structural Compliance Generation

One of the most important objections that may be raised to the analysis of regulatory authority is that the sanctioning state does not directly issue orders to persons outside its territory. The legal obligation is directed at domestic banks and institutions, not foreign

⁷⁰ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

⁷¹ Ruys and Ryngaert, ‘Secondary Sanctions’ (n 46).

actors. Therefore, it may be said that the behavior of foreigners is the result of their free commercial choice, not the exercise of authority.

To respond to this objection, it is necessary to analyze the mechanisms of indirect enforcement and compliance generation in the context of financial sanctions.

A) Transfer of Enforcement Authority to Intermediary Actors

In financial sanctions, the sanctioning state establishes the normative framework, but its practical implementation is carried out through banks, financial institutions, insurance companies, clearing agents, and other economic intermediaries. These actors, being located within the territory or jurisdiction of the sanctioning state, are obliged to comply with the regulations and face enforcement measures in the event of violation.⁷²

As a result, authority is exercised through a network of intermediaries. These intermediaries are the carriers of the implementation of the regulation, but the origin of the obligation remains in the legal framework of the sanctioning state. The distributed nature of the implementation does not eliminate the nature of the authority. In domestic law, many regulations are also implemented through private individuals, without their authoritative character being questioned.

B) Generating institutional risk and over-compliance

The second feature is the generation of “structural risk”. Sanctioning regulations are often accompanied by strict enforcement mechanisms, heavy fines and extensive liabilities. Even in cases where the formal scope of the sanction is limited, the ambiguity of the regulations and the high costs of violation lead economic actors to adopt a precautionary approach.⁷³

This phenomenon, which can be called over-compliance, extends the scope of the sanction’s effect beyond the express text of the regulation. Banks may exclude not only explicitly listed

⁷² Chiara Zilioli, Régis Bismuth and Luc Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives* (Brill 2024).

⁷³ IMF, *Withdrawal of Correspondent Banking Relationships* (n 50).

individuals, but also related entities or even entire economic sectors from their services in order to avoid the risk of being penalized.

Here, the behavior of private actors is not the result of free market choice, but a rational response to a designed risk structure. Risk becomes a regulatory tool. By designing a framework with high costs of non-compliance, the state creates an environment in which maximum caution becomes the dominant behavior.

C) Structural Dependence on Central Infrastructure

The third mechanism is structural dependence. When access to a central financial infrastructure is a condition for participation in the global economy, the choice between compliance and non-compliance is effectively a choice between participation and exit.⁷⁴ This choice is ostensibly voluntary, but in practice, due to the intensity of the dependence, it takes on a quasi-mandatory nature.

If a foreign bank needs access to a specific financial system to conduct dollar transactions, and that access is made conditional on compliance with sanctions regulations, the option of non-compliance means the loss of a significant portion of economic activity. This situation cannot be simply considered market competition, because the choice framework is pre-established by regulation.

D) Network and Self-Reinforcing Effects

Financial sanctions operate in a network environment. The decision of one key actor can also influence the behavior of other actors. If a large bank cuts its relationship with an institution due to sanctions considerations, other banks may follow suit to avoid the same risk.

Thus, the effect of sanctions is reinforced through network mechanisms. Authority is extended not only through formal enforcement mechanisms but also through economic

⁷⁴ Goldmann, 'Relative Normativity' (n 6).

network dynamics. However, this extension is still attributable to the original design of the sanctions framework, since it was the main driver of prudential and chain-like behavior.⁷⁵

E) Attribution and Responsibility in the Context of Indirect Enforcement

It may be argued that since the final decision to sever ties is made by private actors, the wider effects cannot be attributed to the sanctioning state. But this argument is plausible when private behavior is autonomous and unpredictable.

In cases where the institutional design of sanctions logically and predictably produces such compliance, indirect enforcement does not break the chain of attribution. If a framework is deliberately designed to push the network towards compliance by imposing risks and costs, the resulting effects are part of its regulatory function.

In conclusion, indirect enforcement mechanisms and structural compliance demonstrate that financial sanctions are not simply instruments of political pressure. They are regulatory regimes that, through institutional design, redefine the environment for economic action.

Of course, this analysis is only applicable where there is binding institutional regulation that can be attributed. Mere broad market effects, monetary policy, or financial volatility, even if they have profound cross-border implications, do not fall within the scope of regulatory authority in the absence of such a framework.

1.5 Conceptual Contribution and Limitation of Scope

The analysis presented in this chapter cannot be fully integrated into any of the classical models in the literature. This research neither seeks to develop the traditional doctrine of jurisdiction based on the theory of effects, nor to recast sanctions as a form of economic coercion, nor to remain solely at the level of describing network governance.

First, this analysis is not based on the theory of effects or the development of extraterritorial jurisdiction. In the doctrine of effects, the focus is on whether the economic consequences

⁷⁵ von Bogdandy, Dann and Goldmann, 'Publicness of Public International Law' (n 3).

of an action can provide a basis for the exercise of jurisdiction over foreign persons.⁷⁶ In contrast, the present analysis does not seek to expand the scope of jurisdiction. The question is not to what extent a state can apply its law, but under what conditions the application of a law that is formally territorial leads to the production of extraterritorial regulatory authority. The focus of the analysis is shifted from the basis of jurisdiction to the regulatory function.

Second, this analysis does not equate sanctions with the concept of the exercise of force. Although broad sanctions may have severe economic effects, this study does not analyze them in the context of rules on the prohibition of the use of force. The focus is not on the intensity of the pressure, but on the regulatory structure that redefines the conditions of possibility of action. Regulatory authority is based on the structural regulation of dependence, not on physical coercion.

Third, this study does not remain at the level of mere description of the phenomenon of network governance. The concept of governance through infrastructure is analyzed here not as a sociological framework, but as a new form of exercising public authority.⁷⁷ The distinguishing element in this formulation is the link between the structural regulation of the conditions of possibility and its normative consequence. In other words, it is not just the existence of the network that is at issue, but the possibility that obligations may be activated in the light of regulatory authority.

The innovation of this chapter lies in redefining authority as the institutionalized and binding regulation of the conditions of possibility of action. In this framework, a change in the normative situation does not necessarily require an explicit modification of the text of the rules, but can be realized through a structural reorganization of the capacity for action. This redefinition allows for the analysis of contemporary financial sanctions not as instruments of foreign policy but as exercises of public authority.

At the same time, this formulation is limited in scope. Mere economic spillovers or cross-border market consequences, without a binding and attributable institutional framework, do not fall within the realm of regulatory authority. Thus, the present analysis neither breaks down the classical boundaries of the international system nor transforms every economic

⁷⁶ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

⁷⁷ Koskenniemi, *From Apology to Utopia* (n 5).

dependency into authority, but only addresses cases in which the structural regulation of the conditions of possibility is institutionally entrenched.

1.6 Transition to the Framework of Obligations

What this chapter has done is not to judge the legitimacy or illegitimacy of sanctions, nor to enter into the discussion of international responsibility. The focus of this chapter has been simply to redefine the kind of power exercised in some forms of financial sanctions. The argument of the chapter is that in these cases, we are not dealing with mere political influence or pressure, but with a form of public authority that is exercised through the binding regulation of the conditions of possibility of action.

If this redefinition is accepted, the question of the normative limits of such authority will no longer be optional or secondary, but will become a logical and inevitable consequence. It is precisely at this point that the transition to the discussion of extraterritorial obligations becomes necessary. For wherever public authority is exercised, the question of accountability also arises as its twin.

1.7 Chapter Conclusion

Chapter 1 began with a conceptual question: Can contemporary economic sanctions be considered merely as instruments of foreign policy, or do they in some form have the nature of public authority? The answer in this chapter is formulated not on the basis of the political motivation of sanctions, but on their normative function.

In the first step, authority was distinguished from power in its sociological sense. Authority is not any kind of influence, but the ability to bindingly reorganize the legal situation or the practical capacity for action. This rearrangement falls within the realm of authority when three elements are simultaneously present: the existence of an attributable institutional framework, direct obligation towards actors under jurisdiction, and a predictable structural effect on the practical capacity of actors outside the territory.

In the second step, the relationship of this concept to the classical territorial model was examined. It was shown that the historical link between authority and territory has been functional and institutional rather than substantive. Territory has been a tool for limiting authority and containing conflicts of jurisdiction, not a logical condition for the realization of binding regulation. However, this model remains the general rule of the distribution of jurisdiction, and its negation is neither desirable nor necessary.

The third step of the chapter was to apply this framework to financial and banking sanctions. The analysis showed that in cases where sanctions are imposed by regulating access to central financial infrastructure, the behavior of foreign actors is reorganized within an institutionalized and binding framework. In this situation, the change is not simply economic, but structural and related to the conditions of possibility of exercising rights. In secondary sanctions in particular, regulation goes beyond the level of the bilateral relationship and extends to the network of economic interactions.

Finally, the concept of “governance through infrastructure” was formulated as a contemporary form of exercising authority. In this model, the state redefines the conditions of possibility of action by regulating access to critical nodes of the economic network. This form of authority is neither based on physical presence nor on the exercise of force, but on the regulation of structural dependence.

The conceptual conclusion of this chapter is clear: where the state, through a binding institutional framework, regulates access to critical infrastructure in such a way that the practical capacity of foreign actors to carry out legitimate legal acts is structurally and predictably limited, we are dealing with the exercise of public authority, even if these acts do not appear in the traditional form of territorial control.

This conclusion does not yet adjudicate on legitimacy or responsibility. The work of the first chapter was to establish that the kind of power exercised in some financial sanctions is one of authority, not mere influence. This conceptual identification is a prerequisite for entering the main question of the thesis: if authority is exercised, are human rights obligations also activated, and under what conditions can international responsibility be invoked?

The next chapter will explore this link; the link between non-territorial regulatory authority and the activation of extraterritorial obligations in international human rights law.

CHAPTER TWO

Jurisdiction as a Functional Basis for the Activation of Extraterritorial Human Rights Obligations

2.1 The Concept of Jurisdiction as a Basis for Activating Human Rights Obligations

In international human rights law, jurisdiction is not a mere technical condition for the application of a treaty, but rather the main mechanism linking public power and legal responsibility. States' human rights obligations are neither absolute nor unqualified. They are activated where the state is in a position to exercise authority over a given person or situation. The question of jurisdiction is therefore ultimately a question of when and under what conditions public power reaches a point where it activates human rights accountability.⁷⁸

In some human rights regimes, particularly in the area of civil and political rights, treaty texts explicitly link the scope of obligations to persons who are “within the territory or jurisdiction” of the State.⁷⁹ This formulation seems at first glance to reflect a territorial understanding, but conceptual analysis shows that territory here is a practical indicator of the sphere in which authority is exercised than an intrinsic basis for the obligation. The obligation is not formed by the existence of a geographical boundary, but is activated by a relationship of authority in which the state is able to determine the legal or factual situation of an individual.⁸⁰

In this sense, jurisdiction is a relational and functional concept. It designates the sphere in which the state has the power to regulate, exercise control, or make decisive decisions about the conditions for the enjoyment of rights. This power can be exercised through the establishment of normative rules, the creation of enforcement mechanisms, the exercise of direct coercion, or other forms of authority. The common element in all these forms is the possibility of exerting decisive influence over the situation of the individual. Wherever such

⁷⁸ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27); Ryngaert, *Jurisdiction in International Law* (n 25).

⁷⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁸⁰ Human Rights Committee, ‘General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 10; Raible, ‘Territory and Jurisdiction in IHR’ (n 10).

a possibility exists, it becomes difficult to claim that human rights obligations are not engaged, since human rights are fundamentally designed to constrain this power.⁸¹

However, the distinction between “influence” and “exercise of authority” must be carefully maintained. In today’s interconnected world, states create extensive transboundary effects through their economic, financial, or political decisions. But not every transboundary effect creates jurisdiction. If indirect economic consequences or general changes in the world market are taken as the basis for triggering human rights obligations, the boundaries of responsibility would expand indefinitely and the jurisdictional order of the international system would be undermined. The main criterion is therefore the existence of a regulatory or controlling relationship in which the state is in a meaningful and structural position to determine the conditions of enjoyment of a right, not simply in a position to influence general economic conditions.⁸²

From a normative perspective, jurisdiction constitutes the point of intersection of authority and accountability. Where the state has binding decision-making or regulatory power over the situation of the individual, it is difficult to claim a human rights obligation. But whenever the state is in a position to determine or limit the conditions of access to fundamental rights through legal or administrative mechanisms, a basis for responsibility arises. Consequently, a precise understanding of jurisdiction requires an analysis of the structures through which power is exercised, not a mere reliance on geographical coordinates.⁸³

In conclusion, jurisdiction in international human rights law is an authority-based and functional concept. Its historical connection with territory reflects the classical organization of power in a state-based system, but its essence depends on a relationship in which the state is able to determine the legal or practical status of the individual. Any change in the ways in which power is exercised, especially in the regulatory and economic spheres, inevitably calls the scope of this concept into question. This theoretical necessity is the basis for examining the classical territorial form of jurisdiction in the next section.⁸⁴

⁸¹ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27); Mariagiulia Giuffrè, ‘A Functional-Impact Model of Jurisdiction: Extraterritoriality before the European Court of Human Rights’ (2022) *Questions of International Law* 53.

⁸² Ryngaert, *Jurisdiction in International Law* (n 25); Karen da Costa, *The Extraterritorial Application of Selected Human Rights Treaties* (Intersentia 2012).

⁸³ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27); Sigrun Skogly and Mark Gibney, ‘Transnational Human Rights Obligations’ (2002) 24(3) *Human Rights Quarterly* 781.

⁸⁴ Raible, ‘Territory and Jurisdiction in IHRL’ (n 10).

This analysis, of course, does not operate in the same way in all human rights regimes. In some systems, especially in the field of civil and political rights, jurisdiction is an explicit condition for the activation of obligations and acts as a gateway to responsibility.⁸⁵ In contrast, in the field of economic, social and cultural rights, the discussion of extraterritorial obligations does not always proceed solely through the classical formulation of jurisdiction and is sometimes formulated through obligations of conduct, the principle of non-interference in the enjoyment of rights, and the requirements of due diligence.⁸⁶

Even in these areas, however, the question of jurisdiction as an analysis of the relationship between authority and accountability retains its structural importance. In this chapter, jurisdiction is used not as the only possible basis, but as an analytical model linking power and obligation.

However, the differences between treaty regimes require more precise specification. In civil and political rights law, especially in systems where the “within jurisdiction” clause is explicitly stated in the treaty text, jurisdiction is seen as the gateway to the activation of obligations. In contrast, in the area of economic, social and cultural law, extraterritorial obligations are often analyzed through frameworks such as the obligation to act, progressive realization, the prohibition of interference with the enjoyment of rights, and the obligation of international cooperation, rather than solely through the classic jurisdiction model.⁸⁷ In the Convention on the Rights of the Child, too, the literature on extraterritorial obligations is largely based on a combination of the principle of best interests, non-discrimination, special protection, and international cooperation.⁸⁸

This chapter therefore uses jurisdiction not as a single, universal framework, but as an analytical model linking authority and accountability. Even in regimes where extraterritorial obligations are formulated in other ways, the fundamental question remains when the

⁸⁵ HRC, General Comment No 31 (n 80).

⁸⁶ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011); Olivier De Schutter and others, ‘Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights’ (2012) 34(4) *Human Rights Quarterly* 1084.

⁸⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 2(1); Committee on Economic, Social and Cultural Rights, ‘General Comment No 3: The Nature of States Parties’ Obligations’ UN Doc E/1991/23 (14 December 1990)

⁸⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 3–4

exercise of public power can activate human rights responsibility. At this level, the analysis of regulatory authority serves as a common analytical bridge between regimes.⁸⁹

2.1.1 The Territorial Basis of Jurisdiction and Its Internal Logic

In the classical formation of international human rights, jurisdiction overlapped with territory by default. This overlap was not coincidental, but the result of the historical organization of public power in the state-centered order. The state, as the main unit of authority, legislated, implemented, and ensured the enforcement of law within its own geographical boundaries. In such a structure, it was natural that human rights obligations would also be activated within the same boundaries.

The territorial model of jurisdiction was based on a simple but powerful assumption: where the state routinely and centrally exercised its authority, it should also bear responsibility. Territory, in this framework, was an objective and identifiable indicator of the sphere in which power was exercised. In this sense, it served three important legal functions.

First, it created certainty and predictability. Defining the scope of obligations on the basis of formal boundaries allowed for a clear identification of the persons subject to the obligation. The state knew toward whom it was responsible, and individuals knew against which state they could assert their rights.

Second, it limited responsibility and prevented its uncontrolled expansion. If human rights obligations were defined without a geographical stopping point, the risk of incoherent overlaps, conflicts of jurisdiction, and unlimited responsibility would increase. The territorial model provided a practical boundary to prevent such a situation.

Third, it harmonized with the principle of non-intervention. Limiting the scope of obligations to territory prevented human rights from becoming a tool for structural interference in the internal affairs of other states. This function was particularly important in an era when territorial sovereignty was considered the foundation of international order.

⁸⁹ Michał Gondek, *The Reach of Human Rights in a Globalizing World* (Intersentia 2009).

However, a distinction must be maintained between the “practical basis of limitation” and the “conceptual basis of obligation.” Territory in this model was not the intrinsic source of the obligation, but rather a reflection of the location where authority was concentrated. The obligation was not activated by the presence of an individual within a geographical boundary, but rather because the state was able to exercise decisive power within that boundary. Territory was the sign of the concentration of power, not the normative cause of the obligation.

Consequently, the territorial basis of jurisdiction must be seen as a product of the historical organization of authority, not as an immutable conceptual necessity. As long as the exercise of public authority remained largely within the physical boundaries of states, the link between territory and obligation was logical and efficient. But this link does not define the essence of jurisdiction; it is one of the historical forms of its manifestation.

A thorough understanding of the internal logic of the territorial model is a prerequisite for analyzing the subsequent stages of jurisdictional development. Only by recognizing that territory was a means of delimitation, not the essence of the obligation, can the possibility of a transition to authority-based criteria be examined coherently.

2.1.2 Effective Control as an Expanded Criterion of Jurisdiction

The shift from a purely territorial model of jurisdiction began when it became clear that the authority of states does not always stop at geographical boundaries. In practice, a state may also be in a position to effectively and decisively determine the status of individuals or a territory outside its formal territory. If the analysis of jurisdiction is limited to a physical boundaries, in such situations a gap arises between power and responsibility. The criterion of “effective control” was developed in response to this gap.⁹⁰

Effective control refers to a situation in which the state, although outside its territory, has the ability to exercise practical and direct authority over individuals or a geographical area. This control can take the form of administering an area, the maintenance of a sustained military presence, the detention of individuals, or any other form of de facto dominance. In this

⁹⁰ *Al-Skeini and Others v United Kingdom* App no 55721/07 (ECtHR, 7 July 2011).

framework, the determining criterion is not geographical location, but the degree of dominance and decision-making power of the state. Wherever the state can effectively decide on the situation of an individual, the logic of human rights requires that the corresponding obligation be engaged.⁹¹

The adoption of effective control established two important conceptual developments. First, territory was no longer seen as the essence of jurisdiction, but as one of its usual forms. Second, the basis of the obligation was explicitly linked to “actual authority.” In other words, if the state can practically determine an individual’s access to liberty, security, services, or other fundamental rights, it cannot escape accountability by the absence of territorial presence.⁹²

Effective control, however, is based on a relatively physical and tangible conception of authority. In most classical examples, the relationship between the state and the individual is direct, observable, and based on material dominance. This characteristic limits the scope of the criterion. In situations where power is exercised through regulatory, economic, or institutional mechanisms, the relationship of authority may be more indirect and networked, and may not take the form of physical dominance.⁹³

Effective control should therefore be seen as an intermediate step in the evolution of jurisdiction. This criterion showed that the geographical boundaries are not the ultimate criterion and that the obligation can be activated by actual authority. However, it still relies on the model of direct dominance. This theoretical limitation therefore raises the question of whether new forms of regulatory authority can also play a similar role in activating human rights obligations in certain circumstances.⁹⁴

The model of effective control in classical practice has generally emerged in two forms: control over territory and direct authority over the person. In the first form, the state exercises its practical authority through effective presence and control over a geographical area. In the

⁹¹ *Al-Jedda v United Kingdom* App no 27021/08 (ECtHR, 7 July 2011).

⁹² *Banković and Others v Belgium and Others* App no 52207/99 (ECtHR, 12 December 2001)

⁹³ Yohei Okada, ‘Effective Control Test at the Interface between the Law of International Responsibility and the Law of International Organizations: Managing Concerns over the Attribution of UN Peacekeepers’ Conduct to Troop-Contributing Nations’ (2019) 32(2) *Leiden Journal of International Law* 275.

⁹⁴ Giuffré, ‘Functional-Impact Model’ (n 81).

second form, authority is realized through the direct exercise of power over an individual, such as detention or other forms of physical control. Both forms are based on some kind of tangible exercise of executive power.⁹⁵

Broad economic sanctions fall into neither the form of control over territory nor detention or direct physical dominance over the person. Authority here is exercised not through physical presence, but through the regulation of financial, commercial, and institutional networks. If this kind of authority is to enter human rights analysis, it is necessary to build a conceptual bridge between physical control and regulatory authority, a bridge based not on material dominance but on the decisive capacity to regulate the conditions of action. The following sections of this chapter seek to formulate precisely this analytical transition.⁹⁶

2.1.3 The Gradual Development of the Concept of Jurisdiction and the Problem of New Forms of Authority

The evolution of the concept of jurisdiction in international human rights law was neither sudden nor the product of an explicit treaty redefinition. This evolution has taken place gradually and in response to changing ways of exercising power. What has remained constant along this path is the attempt to maintain alignment between authority and accountability. Whenever the form of exercising power has changed, the analysis of jurisdiction has inevitably been revised.⁹⁷

In the first stage, jurisdiction was practically synonymous with territory. Public power and human rights obligations were located in a common geographical framework. In this framework, there was no gap between the sphere in which authority was exercised and the sphere of responsibility.⁹⁸

⁹⁵ Menno Kamminga, 'Extraterritoriality' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2020); Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62(1) *American Journal of Comparative Law* 87.

⁹⁶ Alice Ollino, 'The "Capacity-Impact" Model of Jurisdiction and Its Implications for States' Positive Human Rights Obligations' (2021) 82 *Questions of International Law* 81.

⁹⁷ Ryngaert, *Jurisdiction in International Law* (n 25).

⁹⁸ Sigrun Skogly, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Oxford University Press 2006).

The second stage began with the adoption of the criterion of effective control. At this stage, it became clear that authority could also be exercised outside formal borders and, as a result, obligations could also be activated outside the territory. The analytical criterion shifted from the “place of presence of the individual” to the “nature of the relationship of authority”. However, this development was still based on a model of direct, physical, or managerial dominance.⁹⁹

A further development, still in the making, arises from the question of whether authority must necessarily manifest itself in the form of physical dominance to create jurisdiction, or whether more complex and regulatory forms of power can also play the same decisive role. In the contemporary world, states can, through financial rules, trade regulations, compliance standards, and cross-border enforcement mechanisms, compulsorily guide the behavior of actors outside their territory. This type of authority, while lacking direct control over a person or territory, can structurally determine the conditions of access to essential infrastructures.¹⁰⁰

At this point, legal analysis faces two competing dangers. If jurisdiction continues to be limited to physical contact or direct administration, part of contemporary authority will fall outside the sphere of accountability, creating a gap between real power and obligation. If, on the other hand, every economic effect or every indirect consequence is considered a basis for jurisdiction, responsibility would expand without meaningful limits, and the distinction between authority and mere influence disappears.¹⁰¹

The gradual development of jurisdiction must therefore be seen as a transition from a spatial to an authority-based criterion, but one that still requires precise formulation. The main issue is no longer where the individual is located, but which state is in a position to determine the conditions for the enjoyment of rights. However, this determination must go beyond the level of general influence and reach the level of meaningful regulatory authority.¹⁰²

As a result, the concept of jurisdiction today is on the verge of a new stage of theoretical elaboration. The fundamental question is how to analyze new forms of authority, especially

⁹⁹ HRC, General Comment No 31 (n 80).

¹⁰⁰ von Bogdandy, Goldmann and Venzke, ‘International Public Law’ (n 21).

¹⁰¹ De Schutter and others, ‘Maastricht Principles Commentary’ (n 86).

¹⁰² Giuffré, ‘Functional-Impact Model’ (n 81).

regulatory and economic authority, in such a way that neither an accountability vacuum is created nor responsibility is reduced to transboundary consequences. This necessity provides the basis for entering into the discussion of positive obligations, the principle of due diligence, and the criteria of predictability, which will be examined later in the chapter.¹⁰³

2.2 Positive Obligations and the Principle of Due Diligence in International Human Rights Law

Jurisdictional analysis alone is not sufficient to explain the scope of extraterritorial obligations. Even in cases where a relationship of authority is established, the next question is what the nature is of the state's obligation. At this point, another important development in international human rights law plays a decisive role: the shift from a purely negative understanding of obligations to the acceptance of their positive dimensions.¹⁰⁴

In the classical sense, human rights obligations were understood mainly as obligations to refrain. The state must not violate the right. This picture, while true for many direct violations, is inadequate to deal with more complex forms of harm. Many threats to fundamental rights are not created by direct state action, but by economic structures, regulatory decisions, or the conduct of third parties. In such a situation, limiting responsibility to refraining from direct intervention means ignoring an important part of public power.¹⁰⁵

The development of human rights doctrine has addressed this limitation by recognizing positive obligations. Positive obligations imply that the state must not only refrain from direct violations, but also, within its sphere of power and influence, take reasonable steps to

¹⁰³ Skogly and Gibney, 'Transnational Human Rights Obligations' (n 83).

¹⁰⁴ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' (1992) 35 *German Yearbook of International Law* 9; Robert Barnidge, 'The Due Diligence Principle under International Law' (2006) 8(1) *International Community Law Review* 81.

¹⁰⁵ Vladislava Stoyanova, 'Fault, Knowledge and Risk within the Framework of Positive Obligations under the European Convention on Human Rights' (2020) 33(3) *Leiden Journal of International Law* 60; Richard Mackenzie-Gray Scott, 'Due Diligence as a Secondary Rule of General International Law' (2021) 34(2) *Leiden Journal of International Law* 343.

prevent foreseeable harm to fundamental rights. This development has elevated human rights from a reactive framework to a preventive one.¹⁰⁶

Within this development, three levels of obligations are usually distinguished: respect, protection and fulfilment. However, the importance of this distinction lies not in its theoretical classification but in indicating the scope of the state's responsibility. The state must refrain from direct violations, prevent violations by third parties, and provide the institutional and structural conditions necessary for the effective enjoyment of rights. These different levels of obligation all rely to some extent on the exercise of public authority.¹⁰⁷

In this context, the principle of due diligence takes on a central position. Due diligence is a standard against which the state's conduct is measured. This principle states that if a state is in a position to reduce the risk of harm to fundamental rights through policy, regulation or supervision, it must take reasonable and proportionate steps to do so. Responsibility here is not based on the absolute outcome, but on the quality of the conduct and the extent to which the state addressed foreseeable risks.¹⁰⁸

A key element in the principle of due diligence is foreseeability. The state is only responsible for harm that was reasonably foreseeable on the basis of available information, past experience or a rational analysis of the policy. This criterion strikes a balance between two extremes: on the one hand, it prevents the state from being held responsible for completely unexpected consequences; and on the other, it does not allow the state to escape responsibility for obvious risks by invoking the absence of direct intent.¹⁰⁹

The principle of due diligence is also directly related to the level of power and capacity of the state. The more extensive a state's regulatory authority and enforcement capacity, the greater the expectation that it will be able to identify and manage risks. In other words, the

¹⁰⁶ Neil McDonald, 'The Role of Due Diligence in International Law' (2019) 68(4) *International and Comparative Law Quarterly* 104; Joanna Kulesza, 'Human Rights Due Diligence' (2021) 30 *William and Mary Bill of Rights Journal* 265.

¹⁰⁷ Heike Krieger, Anne Peters and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford University Press 2020).

¹⁰⁸ *Osman v United Kingdom App no 23452/94 (ECtHR, 28 October 1998)*.

¹⁰⁹ Stoyanova, 'Fault, Knowledge and Risk' (n 105).

scope of positive obligations is analyzed in proportion to the scope of public authority. This proportion is essential to avoid the imposition of unlimited responsibility.¹¹⁰

In the area of economic, social and cultural rights, this analysis is particularly important. Many of these rights are directly linked to structural decisions of the state in the areas of budgeting, market regulation, the financial system and public policies. In this area, inaction or the design of a policy that predictably undermines access to basic services can be assessed in the context of positive obligations. Progressive realization, the use of the maximum available resources and the prohibition of unjustified retrogression are all manifestations of the same behavioural logic.¹¹¹

Consequently, positive obligations and the principle of due diligence provide a framework within which more complex forms of the exercise of power can be analysed. In this framework, responsibility is not only established at the point of direct intervention, but also at the stage of designing, formulating and implementing policies that pose foreseeable risks to fundamental rights. This development provides the necessary theoretical context for examining the relationship between cross-border regulatory authority and human rights obligations.¹¹²

2.2.1 The Obligation to Respect

The obligation to respect is the first and most fundamental level of human rights obligations. It requires the state to refrain from any action or policy that would in an attributable and effective manner restrict or violate a fundamental right.¹¹³ In the simplest terms, the state must not itself violate the right. However, this seemingly simple definition becomes more complex upon rigorous legal analysis.

¹¹⁰ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

¹¹¹ Daniel Augenstein and David Kinley, 'When Human Rights "Responsibilities" Become "Duties": The Extra-Territorial Obligations of States that Bind Corporations' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013).

¹¹² Barnidge, 'Due Diligence' (n 104).

¹¹³ Andrea Gattini, 'Breach of International Obligations' in André Nollkaemper and Ilias Plakokefalos (eds), *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art* (Cambridge University Press 2014) 25.

In its classical sense, the obligation to respect concerned direct and overt interference. Arbitrary detention, direct censorship, denial of a fair trial, or the taking of life were clear examples of violations of this obligation. In these cases, the relationship between the state's action and the restriction of the right is immediate and identifiable. The element of causality is clear and attribution is not in doubt.

However, the development of human rights has demonstrated that the obligation to respect is not limited to physical or immediate violations. If the state, by enacting a binding rule, adopting an administrative decision or designing a public policy, creates conditions that directly or structurally limit the enjoyment of a fundamental right, this situation can also fall within the scope of the obligation to respect.¹¹⁴ Here too, the decisive element is the existence of State action that meaningfully interferes with the exercise of the right.

The analysis of the obligation to respect is based on three components: the existence of conduct attributable to the state, a meaningful causal link between that conduct and the restriction of the right, and the absence of a valid legal justification. Intent to violate is not required. What matters is that the State, through the exercise of its authority, has altered the conditions for the enjoyment of the right. In this framework, the focus is on the "nature of the effect of the action", not the political motivation behind it.¹¹⁵

However, not all restrictions resulting from state action necessarily constitute violations. In many human rights systems, some rights can be limited, provided that the restriction is in accordance with the law, pursues a legitimate aim and is proportionate. The assessment of the obligation to respect therefore also involves an assessment of the necessity and proportionality of the action.¹¹⁶ If the state's action exceeds these standards or undermines the essential core of the right, a breach of the obligation to respect is established.

In the context of the analysis of regulatory authority, the obligation to respect is of particular importance. If the state acts through its binding frameworks in a way that structurally restricts access to essential infrastructure or the possibility of enjoying fundamental rights,

¹¹⁴ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

¹¹⁵ André Nollkaemper and Dov Jacobs, 'Shared Responsibility in International Law: A Conceptual Framework' (2012) 34 *Michigan Journal of International Law* 359.

¹¹⁶ Alexy, *Constitutional Rights* (n 13).

the question of the obligation to respect arises, even if there is no direct physical interference. In such cases, regulatory authority can play the same role as direct interference, provided that a causal link between the rule and the restriction of the right can be established.

Consequently, the obligation to respect expresses the fundamental principle that the state should not use its public power to undermine or deny fundamental rights. The criterion of analysis is not merely the appearance of the interference, but its real and attributable effect on the exercise of the right. This level of obligation constitutes the negative core of the human rights system and forms the basis for assessing any binding state policy or rule.

2.2.2 The Obligation to Protect

The obligation to protect provides that a state's responsibility in the human rights system is not limited to refraining from direct violations. In addition to not being a violator of rights itself, the state must also prevent violations by third parties.¹¹⁷ This obligation takes the relationship between the state and the individual beyond a simple bilateral model and positions the state as a regulator and overseer of social and economic relations.

The basis of this obligation lies in social reality. Many threats to fundamental rights are created by private actors, corporations, financial institutions, or even market structures. If the state remains passive in the face of these threats, the protection of human rights would be reduced to a formal level. Therefore, the obligation to protect requires the state to create a legal and institutional framework that prevents foreseeable violations from occurring.¹¹⁸

This obligation has three practical dimensions. First, the adoption of appropriate rules to regulate the behavior of third parties. Second, the creation of effective monitoring mechanisms to ensure the implementation of these rules. Third, providing access to redress and accountability in the event of a violation. Each of these dimensions relies in some way on the exercise of the state's regulatory authority. The state, through its legislative and

¹¹⁷ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

¹¹⁸ McDonald, 'Role of Due Diligence' (n 106).

executive powers, must create an environment in which fundamental rights are protected from private threats.¹¹⁹

However, the obligation to protect is not absolute. The main criterion in this area is the principle of due diligence. The state is held responsible when the risk of a violation was reasonably foreseeable and it nevertheless failed to take reasonable and proportionate measures to prevent it. Responsibility here is not based on a definite outcome, but on the quality of the state's conduct and the extent to which the state was aware of the risks identified.¹²⁰

There is a direct relationship between the scope of the state's regulatory authority and the intensity of the obligation to protect. The more effective the tools available to the state for regulation, monitoring, or enforcement, the greater the expectation that it will prevent breaches. Conversely, in areas where the state has limited control, the scope of the obligation will correspondingly be more limited. This proportionality prevents the imposition of unreasonable responsibility, while at the same time not exempting the state from accountability for its actual authority.¹²¹

In the analysis of transboundary regulatory authority, the obligation to protect is of particular importance. In many cases, practical constraints are imposed not directly by the state, but through private actors acting within the framework of state rules. If the behavior of these actors is a foreseeable consequence of a binding state framework and the state has the means to revise or adjust that framework, the obligation to protect can be triggered. In such a situation, the state cannot evade responsibility by referring to private intermediaries.¹²²

Consequently, the obligation to protect shows that human rights do not only concern the direct relationship between the state and the individual, but also the overall structure of social regulation. The state is obliged to prevent foreseeable violations of rights by third parties within its sphere of power and influence, through effective regulation and supervision. This

¹¹⁹ International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, *Yearbook of the International Law Commission*, vol II, Part Two.

¹²⁰ James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013).

¹²¹ André Nollkaemper and others, 'Guiding Principles on Shared Responsibility in International Law' (2020) 31(1) *European Journal of International Law* 15.

¹²² Vladislava Stoyanova, 'Causation between State Omission and Harm within the Framework of Positive Obligations under the European Convention on Human Rights' (2018) 18(2) *Human Rights Law Review* 309.

obligation constitutes one of the essential links between public authority and human rights accountability.

2.2.3 The Obligation to Fulfil

The obligation to fulfil is the broadest and most structural level of human rights obligations. While the obligation to respect focuses on refraining from direct interference and the obligation to protect focuses on preventing violations by third parties, the obligation to fulfil requires the state to create the institutional, economic and administrative conditions necessary for the effective enjoyment of rights.¹²³ This obligation is positive in nature and is directly linked to public policy-making and the allocation of resources.

In the area of civil and political rights, the obligation to fulfil usually takes the form of establishing an effective judicial system, ensuring access to justice, or providing appropriate enforcement mechanisms. However, in the area of economic, social and cultural rights, this obligation plays a more fundamental role. Many of these rights cannot be realised in practice without active state action. The right to health, education, housing or social security requires planning, institutional organisation and the allocation of resources.¹²⁴ In this area, structural inaction can undermine the rights as much as direct interference.

An important feature of the obligation to fulfil is its link to the concept of progressive realization. States are required to move continuously towards improving the conditions of enjoyment of rights, using the maximum available resources.¹²⁵ This obligation does not mean an immediate and absolute guarantee, but it does not mean unlimited discretion either. The state must show that it has taken reasonable, measured and purposeful steps to advance the right and has avoided unjustified retrogressive measures. The prohibition of retrogression without adequate justification is part of the logic of this obligation.¹²⁶

¹²³ ICESCR, Article 2 (n 87).

¹²⁴ CESCR, General Comment No 3 (n 87).

¹²⁵ Maastricht Principles (n 86); Arie Trouwborst, *Precautionary Rights and Duties of States* (Brill 2006).

¹²⁶ Committee on Economic, Social and Cultural Rights, 'General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (art 2, para 2 of the Covenant)' UN Doc E/C.12/GC/20 (2 July 2009); Owen McIntyre, 'The Current State of Development of the No Significant Harm Principle: How Far Have We Come?' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 601.

The analysis of the obligation to fulfil is carried out at the behavioral level. The main question is not whether the full result has been achieved, but whether the state has designed a framework that reasonably moves towards enhancing access to the right. If public policies are structured in such a way that they structurally limit or undermine access to essential services, this situation can be assessed within the scope of the obligation to fulfil.

In this framework, the relationship between regulatory authority and the obligation to fulfil is direct. Wherever the state shapes the conditions for the enjoyment of a right through economic, fiscal or administrative policies, its responsibility is not limited to avoiding violations but also extends to designing mechanisms that make the right possible in practice. As a result, broader regulatory authority creates a greater expectation of conduct.

The obligation to fulfil also overlaps with, but goes beyond, the principle of due diligence. Due diligence focuses on preventing foreseeable harm, while the obligation to fulfil obliges the state to take active steps to improve conditions. This obligation demonstrates that human rights are not simply a defensive shield against power, but a normative framework for guiding public policy.

In the area of economic, social and cultural rights, the obligation to fulfil includes not only progressive realization but also immediate obligations, such as the obligation of non-discrimination, to guarantee minimum essential levels, and the prohibition of unjustified retrogression.¹²⁷ These dimensions show that even in the context of gradual realization, the state cannot, by invoking policy objectives or resource constraints, create conditions that predictably lead to the structural weakening of the fundamental core of rights.

In summary, the obligation to fulfil requires the state to enable the effective enjoyment of fundamental rights through the design of institutional structures and public policies. This obligation is positive, gradual, and resource-proportional, but it also includes immediate minimum core obligations and the prohibition of unjustified retrogression. In the analysis of regulatory authority, this level of obligation shows that responsibility is not only formed at the point of direct intervention, but can also be designed into the architecture of public policy.

¹²⁷ Mara Tignino and Christian Bréthaut, 'The Role of International Case Law in Implementing the Obligation Not to Cause Significant Harm' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 631.

A fundamental distinction must be emphasized here. The activation of a human rights obligation does not mean that a violation has been established. The activation of the obligation simply means that the state's behavior enters the realm of human rights assessment and must be measured against behavioral standards such as due diligence, proportionality, and foreseeability. Proving a violation requires a further stage of analysis in which it is examined whether the State, despite having the authority and possibility to act, failed to take reasonable measures.¹²⁸ This distinction is necessary to avoid transforming the criterion for triggering the obligation into a system of results-based responsibility.

2.3 Foreseeability of Harm as a Criterion for Triggering Human Rights Responsibility

After explaining positive obligations and the principle of due diligence, the decisive question is at what point these obligations are triggered. The human rights system does not hold the state responsible for every negative consequence of public policies. Responsibility arises when there is a link between the exercise of authority and the harm to a right that was reasonably foreseeable.¹²⁹ Foreseeability in this sense is a rational and normative criterion for distinguishing between legal responsibility and mere unintended consequence.

Foreseeability does not mean certain knowledge of the harm. The legal criterion focuses on the question of whether the state, given the available information, previous experience, expert data or the internal logic of the adopted policy, could have identified the risk of harm. If the answer is yes, disregarding that risk can be considered a breach of a behavioral obligation. This criterion strikes a balance between two extremes: on the one hand, it prevents the state from being held accountable for completely unexpected outcomes; on the other, it does not allow the state to escape responsibility for obvious risks by invoking the absence of direct intent.¹³⁰

In legal analysis, foreseeability has two distinct dimensions. The first is cognitive. It must be examined whether sufficient data and evidence existed at the time of the decision to identify the risk. The existence of expert reports, institutional warnings, or previous similar

¹²⁸ Maastricht Principles (n 86).

¹²⁹ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

¹³⁰ *Osman v United Kingdom* (n 108).

experiences can show that the risk was recognizable to the state. The second dimension is structural. Some policies are designed in such a way that, by their own internal logic, they create the possibility of harming certain categories of rights. In such cases, even without formal warning, the risk can be inferred from the nature of the policy itself.

Foreseeability is also directly linked to the scope of authority. The broader and more profound the public policy, the greater the expectation that its consequences be assessed. Policies that affect essential infrastructure, access to finance, or the provision of basic goods logically have consequences for fundamental rights.¹³¹ In such cases, the claim that the harm was unforeseeable is difficult to defend.

However, foreseeability does not mean automatic attribution of responsibility. It is a condition for triggering legal scrutiny, not final proof of a breach. Once foreseeability has been established, it must be examined whether the state took reasonable and proportionate steps to prevent or mitigate the harm. Foreseeability is thus the link between authority and the assessment of state conduct.¹³²

In the context of regulatory authority, this criterion assumes particular importance. When the state regulates economic or institutional conditions through binding and structural rules, it must take into account the foreseeable consequences for fundamental rights. If the policy is designed to entail a risk of widespread and serious harm and this risk was identifiable, the due diligence principle is activated. Here, Foreseeability arises not from intent but from disregard for reasonable risks.¹³³

In this context, foreseeability is not merely a theoretical concept, but means the existence of a real and identifiable risk at the time of the decision; a risk that a reasonable state, given the information available, should have recognized and taken appropriate measures against. The standard of foreseeability is thus linked to the behavioral standard of due diligence and becomes a legal test, not a purely analytical one.

¹³¹ Vladislava Stoyanova, 'Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete' (2023) 23(3) *Human Rights Law Review* ngad010.

¹³² McDonald, 'Role of Due Diligence' (n 106).

¹³³ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

The standard of foreseeability in this sense is consistent with the tests that have been used in the analysis of positive obligations; in particular, the standard that the state “knew or ought to have known” that there was a real and identifiable risk to the right and yet failed to take reasonable measures.¹³⁴ Therefore, foreseeability in this chapter is not an abstract concept, but a translation of a standard of conduct established in the practice of positive obligations.

Consequently, foreseeability of harm is the rational criterion for the activation of human rights responsibility. This criterion, on the one hand, limits the scope of the obligation and, on the other, prevents the state from escaping accountability for the foreseeable consequences of the exercise of its authority. In what follows, various forms of harm, including direct harm and structural harm, will be analyzed in light of this criterion.

2.3.1 Direct Harm

In the analysis of human rights responsibility, the clearest and most classical form of connection between state action and a violation of a right is direct harm. Direct harm occurs when there is a direct and identifiable link between conduct attributable to the state and the restriction of a fundamental right.¹³⁵ In this situation, public authority is clearly exercised against the individual and the result immediately or almost immediately affects the individual’s legal or practical situation.

In the context of direct harm, the element of causation is relatively clear. Arbitrary detention, the closure of a media outlet, the denial of a specific individual’s access to a public service, or the issuance of an order to freeze certain assets are examples of this situation. In such cases, state action directly results in the restriction or deprivation of a right, and the link between the authority exercised and the harm suffered is legally clear.¹³⁶

The analysis of direct harm is based on three components:
the existence of an act or decision attributable to the state,
a clear causal link between that act and the restriction of the right,

¹³⁴ Maastricht Principles; De Schutter and others, ‘Maastricht Principles Commentary’ (n 86).

¹³⁵ ILC Articles on State Responsibility (n 119).

¹³⁶ Nollkaemper and Jacobs, ‘Shared Responsibility’ (n 115).

and the absence of a valid legal justification based on criteria such as necessity and proportionality.¹³⁷

In this model, the foreseeability of the harm is usually not in doubt. When the state directly restricts an individual's access to a right, the logical consequence of that action is reasonably foreseeable. The focus of the analysis is therefore on the legitimacy and proportionality of the intervention rather than on the principle of attribution or foreseeability.

The importance of the concept of direct harm lies not only in its simplicity but also in its comparative function. This model constitutes the classical basis for human rights violations and provides a point of reference for the analysis of more complex forms of harm. The further the relationship between public policy and the restriction of the right deviates from this linear model, the more complex the legal analysis becomes, and the need for additional criteria such as structural foreseeability and a contributing role in the causal chain increases.

Direct harm is, therefore, a situation in which the authority of the state directly and specifically plays a role in creating a restriction of a right. In this framework, the relationship between power and responsibility is clear and attributable. This clarity makes it the starting point for the analysis of human rights responsibility and provides a basis for comparison with indirect and structural harm.

2.3.2 Structural Harm

In contrast to the classical model of direct harm, the concept of structural harm refers to a situation in which the restriction of a fundamental right is not the result of a single and immediate action, but rather the result of the design or continuation of a regulatory framework or public policy that systematically undermines the conditions for the enjoyment of the right.¹³⁸ In these cases, the relationship between the state action and the final result is not linear and instantaneous, but rather networked, cumulative and gradual.

Structural harm arises when a policy or regulation is designed in such a way that its consequences have a lasting impact on the infrastructure related to fundamental rights. For

¹³⁷ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

¹³⁸ Giuffr , 'Functional-Impact Model' (n 81).

example, widespread restrictions on access to the financial system, disruptions in the supply chain of essential goods, or persistent barriers to access to public services can lead to a real reduction in the possibility of enjoying a right through multiple intermediaries. In such a situation, the harm is not the result of a specific order against a specific individual, but rather the logical consequence of the architecture of the policy.¹³⁹

The key feature of structural harm is the distance between authority and outcome. This distance may involve private actors, market mechanisms, or intermediary decisions. However, the existence of intermediaries does not in itself sever the relationship of responsibility. The legal question is whether the state's regulatory framework played a significant and decisive role in creating or perpetuating a situation that predictably led to the restriction of the right.¹⁴⁰

In this analysis, the linear model of causation gives way to an analysis of the effective contribution to the causal chain. The state need not be the sole cause of the harm. It is sufficient that its policy or regulation made a substantial contribution to creating the restrictive conditions, such that without it the situation would not have occurred in the same form and intensity. This criterion, on the one hand, prevents the reduction of responsibility to mere contemporaneity and, on the other hand, avoids the requirement to prove an exclusive cause, which is often impossible in complex economic structures.¹⁴¹

Foreseeability plays a central role in structural harm. Since the relationship between action and result is more indirect, it must be examined whether the risk of structural undermining of fundamental rights was identifiable at the time the policy was designed or implemented. If the internal logic of the policy or the available data indicated that the regulatory framework was likely to lead to a lasting impairment of access to essential rights, the element of foreseeability is established.¹⁴²

¹³⁹ Antal Berkes, 'Extraterritorial Responsibility of the Home States for MNCs' Violations of Human Rights' in Yannick Radi (ed), *Research Handbook on Human Rights and Investment* (Edward Elgar Publishing 2018) 304.

¹⁴⁰ Benedict Kingsbury, 'The Concept of "Law" in Global Administrative Law' (2009) 20(1) *European Journal of International Law* 23.

¹⁴¹ Ibid.

¹⁴² Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

Structural harm often affects large groups or those in vulnerable situations. Here, the issue is not reduced to an individual case, but to a systematic undermining of the possibility of enjoying a right. This characteristic makes it a sensitive area in the analysis of positive obligations engages the standard of due diligence, since the state at this level is not faced with a single intervention, but with the design or perpetuation of a structure.¹⁴³

Structural harm thus refers to a situation in which the regulatory authority of the state, through stable and predictable mechanisms, systematically restricts the conditions for the enjoyment of fundamental rights. In this context, responsibility is assessed on the basis of the effective role in the creation or perpetuation of this structure and the reasonable possibility of foreseeing its consequences. This concept provides the necessary context for the analysis of more complex forms of transboundary authority, where the violation arises not from a direct order but from the architecture of a public policy.

2.3.3 Vulnerable Groups

The analysis of the foreseeability of harm is incomplete without taking into account the situation of vulnerable groups. International human rights law does not stop at formal equality, but rather aims at effective and real equality.¹⁴⁴ Therefore, the assessment of the effects of a public policy cannot be based solely on the average population, but must also include its impact on groups in a more vulnerable position.

Vulnerable groups include people who, due to their economic, social, age, physical, gender or legal status, are more sensitive to structural changes. Children, the elderly, people with disabilities, the sick, minorities and people living in extreme poverty are examples of these groups. These people are often more dependent on public services, social protection and stable access to vital resources.¹⁴⁵ As a result, any structural disruption in these areas can have a more severe impact on them.

¹⁴³ Maastricht Principles (n 86).

¹⁴⁴ CESCR, General Comment No 20 (n 126).

¹⁴⁵ Committee on the Rights of the Child, 'General Comment No 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)' UN Doc CRC/C/GC/14 (29 May 2013)

From a human rights perspective, the importance of vulnerable groups is that the threshold for foreseeability of harm to them is lower. A policy that causes only relative hardship to the majority of society may result in serious deprivation or a serious threat to a particular group. The reasonableness of a state's conduct must therefore be assessed in the light of the differential effects of the policy on these groups.¹⁴⁶

This analysis is also linked to the principle of non-discrimination. If a regulatory framework is designed to have a disproportionate negative effect on a particular group, even if it appears to be neutral, it may raise the issue of indirect discrimination. In such cases, foreseeability concerns not only the existence of harm but also the pattern of its distribution. The state must recognise and manage the differential effects of policy on different groups in its decision-making process.¹⁴⁷

Importantly, vulnerability is often a product of social and economic structures, not an inherent characteristic of individuals. In many cases, states themselves play a revealing role in shaping or perpetuating these structures. Therefore, neglecting the situation of vulnerable groups in the design of macro-level policies can be seen as a failure to fulfil positive obligations.¹⁴⁸

In the framework of the analysis of regulatory authority, attention to vulnerable groups plays a revealing role. The effects of a policy may appear gradual or ambiguous at the macro-level, but they can manifest themselves rapidly and intensely in the case of specific groups. This suggests that foreseeability must be assessed with sensitivity to vulnerable situations, not simply on the basis of general economic criteria.

Consequently, attention to vulnerable groups is an integral part of assessing the foreseeability of harm. In exercising public authority, the state is obliged to take into account the differential effects of its policies on those in vulnerable situations. Ignoring these effects can

¹⁴⁶ Ibid.

¹⁴⁷ Committee on the Rights of the Child, 'General Comment No 16 (2013): State Obligations regarding the Impact of the Business Sector on Children's Rights' UN Doc CRC/C/GC/16 (17 April 2013)

¹⁴⁸ Ibid.

be a sign of a lack of due diligence and can trigger the activation of human rights responsibility.¹⁴⁹

2.4 The Triple Criterion for the Activation of Transboundary Obligations

The discussion of transboundary obligations in human rights has long oscillated between two fundamental concerns. On the one hand, there is the risk of an accountability vacuum in the face of new forms of transboundary authority; an authority that, without physical presence or territorial control, can decisively affect the conditions of enjoyment of fundamental rights.¹⁵⁰ On the other hand, there is the risk of the unlimited expansion of responsibility; if every economic effect or every indirect consequence is considered the basis for the obligation, the jurisdictional boundaries of the international system are weakened and responsibility is separated from authority.

To avoid these two extremes, the activation of transboundary obligations must be based on a criterion that both identifies real authority and provides defensible limits to the scope of responsibility. Accordingly, a triple criterion can be formulated that can be derived from the internal logic of human rights and the principles of international responsibility.¹⁵¹ This criterion is based on three elements: the existence of a binding regulatory framework, a structural and foreseeable effect on fundamental rights, and the effective role of the state in creating or maintaining the restrictive situation.

The first element is the existence of a binding regulatory framework. The transboundary obligation in this model is not activated on the basis of sporadic decisions or random consequences, but requires that the state has created a regulatory structure through general normative rules, enforcement mechanisms and specific enforcement mechanisms.¹⁵² This condition preserves the distinction between public authority and mere participation in economic relations. The state is in a position to exercise authority when it establishes binding rules and, through legal instruments, guides the behavior of actors.

¹⁴⁹ Carla Ferstman, 'Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent "Irregular" Migration: European Union and United Kingdom Support to Libya' (2020) 21(3) *German Law Journal* 459.

¹⁵⁰ Stoyanova, 'Causation between Omission and Harm' (n 122) .

¹⁵¹ von Bogdandy and Venzke, *In Whose Name?* (n 22).

¹⁵² Crawford, *State Responsibility* (n 120).

The second element is the establishment of a structural and foreseeable effect on fundamental rights. The effect must go beyond an isolated or exceptional consequence and undermine the conditions for the enjoyment of rights through relatively stable and analyzable pathways. At the same time, this effect must have been reasonably foreseeable at the time the regulatory framework was designed or implemented. Foreseeability here is the rational criterion for triggering the obligation.¹⁵³ If the risk of rights being undermined was discernible on the basis of available data or the internal logic of the policy, the second element is met.

The third element is the effective role of the state in creating or maintaining the restrictive situation. In many complex economic situations, multiple factors are involved in causing the harm. The proposed criterion is not based on a single or exclusive cause, but at the same time it does not allow mere simultaneity or correlation to replace causal analysis. It must be shown that without the regulatory framework in question, the restrictive situation would not have materialized in the same way and with the same intensity, or at least that the state's role played a decisive part in the causal chain.¹⁵⁴

The combination of these three elements creates a balanced framework. On the one hand, the state cannot escape accountability simply by citing a lack of territorial presence, since the basis of the obligation in this model is the exercise of regulatory authority, not a geographical boundary.¹⁵⁵ On the other hand, not every transboundary economic impact will translate into a human rights obligation, because the absence of a binding framework, a lack of structural impact, or an effective role of the state will prevent the obligation from being activated.

Activation of the obligation under this criterion does not necessarily mean that the result is guaranteed. What is activated in most cases are obligations of conduct: the obligation to assess the effects, to adopt harm reduction measures, and to review policy if widespread

¹⁵³ Maastricht Principles (n 86).

¹⁵⁴ von Bogdandy, Dann and Goldmann, 'Publicness of Public International Law' (n 3).

¹⁵⁵ Raible, 'Territory and Jurisdiction in IHRL' (n 10).

consequences emerge. Thus, the triple criterion not only specifies the point of entry of responsibility, but also keeps its nature conduct-based and proportionate.¹⁵⁶

The necessity of combining these three elements arises from the fact that none of them is able to limit and justify responsibility on its own. The presence of a binding framework without a structural impact reduces responsibility to a formal level. A structural impact without an effective role of the state entails the risk of attributing responsibility on the basis of mere simultaneity. And a causal role without regulatory authority removes the analysis from the realm of the exercise of public power. Only where these three elements are simultaneously present can we say that there is a legal, not merely economic, link between transboundary authority and the limitation of the conditions for the enjoyment of fundamental rights. The triple criterion is therefore not an unlimited extension of the obligation but a mechanism for its systematic limitation.

The necessity for the simultaneity of these three elements arises from the internal logic of the human rights system. Without the first element, the binding framework, the analysis is removed from the sphere of the exercise of public authority and reduced to the level of mere effects. Without the second element, the structural and foreseeable effect, the obligations will be activated on the basis of random or unidentifiable consequences, and the principle of due diligence will become meaningless. And without the third element, the effective role in the causal chain, the relationship between authority and harm will be reduced to a statistical simultaneity. The removal of any one of these elements would therefore lead either to the unlimited extension of responsibility or to its complete denial. The combination of the three is precisely necessary to maintain the balance between real authority and proportionate accountability.

This three-pronged test is not an abstract proposition but an inference from the internal logic of human rights and international responsibility. The first element, the existence of a binding framework, reflects the principle that human rights obligations are triggered by the exercise of public authority, not by mere effect.¹⁵⁷ The second element, structural and foreseeable effect, is rooted in the logic of positive obligations and the “knew or ought to have known”

¹⁵⁶ Krisch, ‘Jurisdiction Unbound’ (n 17).

¹⁵⁷ Ollino, ‘Capacity-Impact Model’ (n 96).

standard, which is well established in due diligence analysis.¹⁵⁸ The third element, the effective role in creating or perpetuating the restrictive situation, is consistent with the logic of attribution and effective participation in multi-factorial harm in the law of international responsibility.¹⁵⁹

In the combination of these three elements, the activation of the obligation is based on real authority, rational foreseeability, and a decisive contribution to the causal chain. The proposed test is therefore not an unlimited expansion but a coherent translation of established principles.

Human rights thus provide the normative framework for the assessment of transboundary regulatory authority.

In conclusion, this three-fold formulation is an attempt to translate contemporary regulatory authority into the language of human rights. This framework both avoids the vacuum of accountability for new forms of power and avoids the reduction of responsibility to any economic effect alone. In the following sections, the elements of this criterion will be analyzed separately and in more detail.

2.4.1 Regulatory Framework

The first element of the three-part criterion for the activation of extraterritorial obligations is the existence of a regulatory framework. This condition serves to move the analysis from the level of “economic effect” to the level of “exercise of public authority”. Human rights responsibility can arise when the state has acted as a normative regulator, not simply as a market actor or a political actor in foreign relations.¹⁶⁰

A regulatory framework is a set of general, formal, and enforceable rules established by the state and supported by enforcement and monitoring mechanisms.¹⁶¹ This framework must have three characteristics: normativity, binding force, and effective enforceability.

¹⁵⁸ HRC, General Comment No 31 (n 80).

¹⁵⁹ Pisillo-Mazzeschi, ‘Due Diligence Rule’ (n 104).

¹⁶⁰ *von Bogdandy, Goldmann and Venzke, ‘International Public Law’* (n 21).

¹⁶¹ Kingsbury and others, ‘Global Administrative Law’ (n 67).

Normativity means that the state has established rules of general scope and repeatability, rather than simply a case-by-case decision or a single administrative action. Binding force requires that non-compliance with the rules have specific legal consequences, such as fines, exclusions, blockages or other formal enforcement measures. Effective enforceability means that the framework, through enforcement institutions and mechanisms, guides the behavior of actors in practice.¹⁶²

This element is fundamental to delimiting the scope of the obligation. If every economic policy or every decision with transboundary consequences is considered a basis for activating the obligation, the boundaries of responsibility are expanded unreasonably. But when the state creates a binding structure that conditions or limits access to essential infrastructure, financial resources, or essential networks of economic interaction, we are no longer dealing with mere economic effects,, but with the exercise of public authority.¹⁶³

In this framework, the direct addressees of the rules are not necessarily individuals outside the territory. Regulations may apply only to domestic individuals or companies, but if their effect is to systematically restrict access by persons outside the territory to essential resources or services, the element of regulatory authority is met. The criterion here is not the formal addressee, but rather its binding structure and practical effect.¹⁶⁴

At the same time, the mere existence of a formal normative framework is not enough. If the rules adopted lack actual implementation or do not have any effect in guiding behavior in practice, one cannot speak of effective regulatory authority. The activation of the obligation requires that the framework in question have the practical capacity to change the conditions of action.¹⁶⁵

Consequently, the first element of the three-part test ensures that the analysis of responsibility only begins where the state has created a binding structure through its legal and administrative instruments. This condition links the extraterritorial obligation to the

¹⁶² Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

¹⁶³ ILC Articles on State Responsibility (n 119).

¹⁶⁴ Goldmann, 'Relative Normativity' (n 6).

¹⁶⁵ Kingsbury and others, 'Global Administrative Law' (n 67).

exercise of real authority and prevents mere transboundary economic consequences from becoming the basis for human rights responsibility.

2.4.2 Structural and Foreseeable Effect

The mere existence of a binding regulatory framework is not sufficient to trigger a transboundary obligation. Many domestic regulations may have transboundary consequences without reaching the level of triggering a human rights obligation. The link between regulatory authority and a human rights obligation is the establishment of a “structural and foreseeable effect” on fundamental rights.¹⁶⁶

Structural effect means that the consequences of a regulatory framework are not limited to an exceptional case or a random outcome, but rather affect the conditions for the enjoyment of rights at a wider level through stable and analyzable mechanisms. The effect must result from the internal logic and design of the policy, and not simply from case-by-case misapplication or the individual decision of an intermediary actor. A structural effect occurs when the structure of regulations is such that they repeatedly restrict access to essential services, basic resources or essential infrastructure.¹⁶⁷

The distinction between structural and isolated effects is of fundamental importance. An isolated effect may result from an administrative error, misinterpretation or specific circumstances and does not necessarily reflect the logical consequence of the regulatory framework. In contrast, a structural effect is established when there is a regular and explainable relationship between the design of the regulation and the restriction of the possibility of enjoying the right. In this case, the harm is not the result of an aberration, but part of the expected consequences of the policy.

In addition to being structural, the element of foreseeability plays a limiting and normative determining role. Foreseeability does not mean that all the results are certain, but rather that it is reasonably possible to identify the main risks at the time of designing or implementing the regulatory framework. If, based on available data, similar experiences, expert analysis or the economic logic of the policy, it can be expected that the regulation in question will lead

¹⁶⁶ Giuffrè, ‘Functional-Impact Model’ (n 81).

¹⁶⁷ Ollino, ‘Capacity-Impact Model’ (n 96).

to a weakening of the conditions for enjoying fundamental rights, the element of foreseeability is met.¹⁶⁸

This condition operates in two ways. First, it prevents the unlimited extension of responsibility, since the state will not be held liable for completely unforeseen or unforeseeable consequences. Second, it requires the state not to ignore the foreseeable consequences of the policy in the decision-making process. Foreseeability is linked here to the principle of due diligence, but at this stage is merely a condition for entering into the responsibility analysis.¹⁶⁹

Nor does foreseeability mean statistical certainty. It is sufficient that the risk of serious and significant harm was discernible within the framework of rational decision-making. For example, if widespread restrictions on access to financial networks were reasonably linked to disruptions in the supply of essential goods, it would be difficult to claim that the consequences were unforeseeable.

Consequently, the element of “structural and foreseeable effect” shifts the test from the level of the mere exercise of authority to the level of meaningful normative consequences. Only when the regulatory framework affects the conditions for the enjoyment of fundamental rights in a systematic and foreseeable manner does the analysis of extraterritorial obligation become applicable. The next step is to examine the effective role of the state in the causal chain.

2.4.3 Effective Role of the State in Creating or Maintaining the Restrictive Situation

The existence of a binding regulatory framework and the establishment of a structural and foreseeable effect are not yet sufficient for the triggering of an extraterritorial obligation. In many complex economic and social situations, the harm to fundamental rights is the result of the interaction of multiple factors. Decisions of the target state, global market conditions, the conduct of private actors, or domestic crises can all play a role in the formation of the restrictive situation. If the analysis of responsibility is limited to the mere existence of a structural effect, there is a risk of arbitrary and unlimited attribution of responsibility. Hence,

¹⁶⁸ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

¹⁶⁹ *Ibid.*

the third element of the three-part test focuses on establishing the “effective role of the State”.¹⁷⁰

Effective role means that the regulatory framework of the state has made a significant and decisive contribution to the creation or maintenance of the restrictive situation. This condition does not require proof of a single or exclusive cause. In complex structures, such an expectation is often unrealistic. However, the mere simultaneity between the implementation of the policy and the occurrence of the harm is not sufficient either. It must be shown that without the regulatory framework in question, the restrictive situation would not have materialized in the same form and intensity, or at least that the state’s contribution to the causal chain was substantial.¹⁷¹

This analysis requires a shift from a linear model of causation to an assessment of the effective contribution to the causal chain. The legal criterion here is based on a “determining role” or “substantial contribution” If the regulatory framework has blocked or systematically restricted the main routes of access to vital resources, and this restriction plays a fundamental role in the formation of the harm, the element of effective role is established.¹⁷²

The effective role is not limited to the moment of creation of the situation, but also encompasses its continuation. If the structural negative effects become apparent over time and the state, despite being aware of the consequences, maintains the regulatory framework without amending or adopting measures to mitigate the harm, its contribution to the continuation of the situation is reinforced. In this case, responsibility relates not only to the initial design, but also to the decision to continue the policy.¹⁷³

This element is also important in dealing with private intermediaries. In many cases, practical restrictions are imposed by banks, companies or other actors. However, if the conduct of these actors is a logical and foreseeable consequence of the state’s binding framework and is shaped by its enforcement guarantees, the state’s role in the causal chain

¹⁷⁰ CRC, General Comment No 16 (n 147).

¹⁷¹ Stoyanova, ‘Causation between Omission and Harm’ (n 122) .

¹⁷² Crawford, *State Responsibility* (n 120).

¹⁷³ Ryngaert, *Jurisdiction in International Law* (n 25).

is not interrupted. Indirect enforcement, if it was foreseeable in the design of the policy, does not preclude the existence of a contributing role.¹⁷⁴

Conversely, if other independent and dominant factors play a major role in creating the restrictive situation and the contribution of the state's regulatory framework is marginal or secondary, the contributing role element will not be met. This distinction prevents the three-part test from becoming the basis for general responsibility for any economic hardship.

This analysis is also consistent with the logic of responsibility in multi-factorial situations. In cases where the harm results from the interaction of multiple factors, liability arises only if there is a contributing or decisive contribution to the causal chain, not on the basis of mere contemporaneity.¹⁷⁵ The transfer of this logic to the field of human rights obligations, especially in the context of transboundary regulatory authority, prevents liability from being based on economic interdependence or indirect consequences that lack a decisive role.

Consequently, the third element of the three-part test ensures that the activation of the transboundary obligation occurs only where there is a meaningful and decisive causal link between the exercise of regulatory authority and the restrictive situation of fundamental rights. This condition protects the theory from the arbitrary extension of responsibility while at the same time preserving the possibility of accountability for actual forms of transboundary authority.

2.5 Children's Rights as a Hard Test for the Activation of Transboundary Human Rights Obligations

The triple criterion for the activation of transboundary obligations will be theoretically valid to the extent that it can be applied to a domain that combines the greatest causal complexity, the greatest normative sensitivity, and the greatest evidentiary difficulty. Children's rights are precisely such a domain. The entry of children in this chapter is not as an independent

¹⁷⁴ Laura Lundy, Karen Orr and Chelsea Marshall, 'Children's Rights Budgeting and Social Accountability: Children's Views on Its Purposes, Processes and Their Participation' (2020) 4(1) *Global Campus of Human Rights Journal* 91.

¹⁷⁵ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121); Koskenniemi, *From Apology to Utopia* (n 5).

subject of the thesis, but as a hard test of the theory; a domain in which, if the criterion is effective, it will also be applicable to other domains of fundamental rights.

First, children's rights are structurally dependent on the functioning of public systems. The enjoyment of children's rights to health, nutrition, education, social protection, and balanced development is directly tied to the functioning of economic and institutional infrastructures.¹⁷⁶ Any sustained disruption in the financial system, the supply chain of basic goods, or public services can affect these rights through indirect but systematic mechanisms. From this perspective, children are a sensitive indicator for measuring "structural effects". Because harm in this area often passes through institutional and networked pathways, rather than individual and immediate actions.

Second, harm in the area of children's frequently cumulative and long-term in nature. A decrease in the quality of nutrition, disruption of access to medicine, or interruption of education may have limited effects in the short term, but in the medium and long term may lead to deeper consequences such as impaired physical and cognitive development or the reproduction of inequality.¹⁷⁷ This temporal feature places the criterion of foreseeability on a more complex level. Legal analysis cannot be limited to immediate results, but must consider a broader time horizon in assessing identifiable risks.

Third, the special normative position of children in the system of international human rights law increases the level of expectations from states. The principle of special attention to the situation of children and the need to consider their interests in public decision-making demonstrates that the state cannot treat the effects of macro-policies on children as secondary or marginal consequences.¹⁷⁸ This does not mean that the interests of children are absolutely paramount to other objectives, but rather that disregarding foreseeable consequences for children would not be consistent with the required standard of care.

Fourth, the field of children's rights also provides a test for the "effective role of the state". Children's situations are often the result of the interaction of internal and external factors. If,

¹⁷⁶ CRC (n 88), arts 24, 27, 28.

¹⁷⁷ Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)' UN Doc E/C.12/2000/4 (11 August 2000); CRC, General Comment No 16 (n 147).

¹⁷⁸ CRC (n 88), art 3; CRC, General Comment No 14 (n 145).

in such a context, it can be shown that the regulatory framework of the State has made a significant contribution to creating or exacerbating structural constraints, the coherence of the triple criterion is strengthened. Conversely, if the State's contribution is marginal, the theory does not allow the mere existence of public harm to trigger the obligation.

As a result, children's rights, as a stringent test of the activation of the obligation, serve two simultaneous functions. On the one hand, they constitute the most sensitive area for identifying structural and foreseeable effects, and on the other hand, they provide a field for assessing the restrictiveness of the triple standard. If the standard can distinguish between real authority and proportionate responsibility in this area, the theoretical framework will be sufficiently robust.

In the following, specific elements related to children's rights, including the principle of best interests, structural vulnerability and the intensification of the due diligence standard, will be analyzed within the framework of this criterion.

2.5.1 The Principle of the Best Interests of the Child

The principle of the best interests of the child is a fundamental principle of international children's rights law and goes beyond a simple rule of interpretation. It requires that in all decisions affecting children, their best interests must be a primary consideration.¹⁷⁹ The importance of this principle in the present context is that it sharpens the standard for assessing state conduct in an area where the effects of policies are indirect and structural.

From an analytical perspective, the principle of the best interests has three legal implications for the discussion of the activation of extraterritorial obligations.

First, it requires the state to identify and assess the potential effects of its policies on children before making a decision. This requirement applies to the decision-making process, not just the final outcome. If a regulatory framework is designed to predictably affect areas such as children's health, nutrition or education, the state cannot claim that these effects were beyond

¹⁷⁹ CRC (n 88), art 3; CRC, General Comment No 14 (n 145).

its control. The principle of best interests requires that such potential impacts be seriously considered at the policy design stage.¹⁸⁰

Second, this principle heightens the standard of care required in the area of children. While in many areas of human rights a reasonable assessment of risk is sufficient, in the case of children, due to their structural dependency and special vulnerability, the expectation of foreseeability and management of risks is higher. This does not mean that the state guarantees an absolute outcome, but rather that the threshold of acceptable negligence is lower and the foreseeability analysis is more sensitive.¹⁸¹

Third, the principle of best interests plays a regulatory role in cases of conflicting policy objectives. The state may pursue legitimate objectives such as maintaining security or implementing foreign policy. But the principle requires that the impact on the rights of children be given weight as a fundamental consideration in the balance between these objectives and the potential impacts on children. Ignoring it completely or reducing it to a marginal factor is not consistent with the legal standard.¹⁸²

Within the framework of the three-part test for the activation of the obligation, the principle of best interests acts as an aggravating factor in the analysis of the second and third elements. If the structural impact of a regulatory framework on vital areas relevant to children is foreseeable and the State has not yet taken appropriate assessment or mitigation measures, the element of foreseeability and effective role of the State is more strongly established.

However, the principle of best interests does not mean that the obligation is automatically activated in every case of harm. The existence of a binding framework, structural impact and effective role of the State must still be independently assessed. This principle does not broaden the scope of the criterion, but rather makes the quality of the assessment more precise and rigorous.

¹⁸⁰ CRC (n 88), art 3; Ruth W Grant and Robert O Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99(1) *American Political Science Review* 29.

¹⁸¹ CRC (n 88), art 3.

¹⁸² CRC, General Comment No 14 (n 145).

The heightened level of scrutiny required in this area is not based solely on moral or social considerations, but is rooted in the normative structure of the Convention on the Rights of the Child, which establishes the best interests as a fundamental consideration in all decisions concerning children and requires States to adopt appropriate legislative and administrative measures to implement the rights of the child.¹⁸³ In this context, assessing the foreseeable effects of public policies on children is part of the State's legal obligation, not merely a policy recommendation.

The principle of the best interests of the child in this chapter is therefore not an independent basis of responsibility, but rather a benchmark for measuring the level of care required in an area where harms are often indirect and cumulative. This principle suggests that in the area of children, the State's regulatory authority must be accompanied by a higher level of consideration of foreseeable consequences.

2.5.2 Structural Vulnerability and Long-Term Effects

One of the distinctive features of the field of children's rights in the analysis of transboundary obligations is the structural nature of the harm in this area. Children are neither independent economic actors nor do they have the capacity to compensate for the consequences of macro-policies. Their situation is one of deep dependence on the functioning of the family, the education system, health services and support structures. Hence, any sustained disruption in these infrastructures can indirectly but effectively affect the children's legal and practical situation.¹⁸⁴

The children's vulnerability is structural because their dependence on a network of public institutions and services increases their sensitivity to economic and regulatory developments. While adults may be able to mitigate the effects of some constraints by shifting resources, changing consumption patterns or accessing alternative networks, children largely lack such capacities. As a result, policies that structurally affect the provision of basic goods, access to health services, or the quality of education can be quickly translated into the realm of children's rights.¹⁸⁵

¹⁸³ Kumm, 'Legitimacy of International Law' (n 9).

¹⁸⁴ CRC (n 88), arts 24, 27 and 28.

¹⁸⁵ CRC, General Comment No 16 (n 147).

Furthermore, harm in this domain often has a long-term temporal dimension. Negative consequences may not be fully visible in the short term, but in the medium and long term they lead to more profound consequences; consequences such as impaired physical development, reduced cognitive capacity, or limited educational and social opportunities.¹⁸⁶ This temporality complicates the analysis of foreseeability. The state cannot simply rely on the absence of an immediate consequence if the internal logic of the policy shows that its cumulative effects on children were reasonably foreseeable.

Within the framework of the three-part criterion for the activation of the obligation, the structural vulnerability of the child has two analytical implications. First, the element of “structural effect” is more easily ascertained in this domain, because the harm is transmitted through institutional and network mechanisms. Second, the element of “foreseeability” must be assessed in the light of existing knowledge about children’s vulnerability to economic and social disruption. If the link between structural constraints and negative outcomes for children is well-known in the literature or from previous experience, it will be difficult to claim that such effects are unforeseeable.¹⁸⁷

However, structural vulnerability is not a substitute for causal analysis. It must also be shown that the regulatory framework in question played a significant and effective role in creating or exacerbating the restrictive situation. The proposed theory includes children as a stringent test for precisely this reason: if the three elements can be coherently established in a domain with such a degree of temporal and network complexity, the analytical framework is sufficiently robust.

Structural vulnerability and long-term effects in the context of children’s rights therefore suggest that the analysis of transboundary obligations cannot be limited to immediate and direct effects. Regulatory authority may produce consequences that only become apparent over time, but this temporal dimension is part of the logic of structural effect. If these consequences are foreseeable and the state plays an effective role in creating or maintaining the restrictive conditions, the criterion for activating the obligation will be met.

¹⁸⁶ CESCR, General Comment No 14 (n 177).

¹⁸⁷ CRC, General Comment No 14 (n 145); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136

2.5.3 Intensifying the Standard of Due Diligence for Children

If the three-part criterion for triggering the obligation is based on regulatory authority, structural effect and foreseeability, the area of children's rights is where the standard of due diligence is significantly intensified. This intensification does not mean creating an absolute result-based obligation, but rather increasing the level of care and consideration expected of the state in the decision-making process.¹⁸⁸

In the logic of positive obligations, the state is held responsible when it fails to take reasonable and proportionate measures in the face of foreseeable risks.¹⁸⁹ In the area of children, due to structural vulnerability and dependence on public infrastructure, the range of foreseeable risks is wider and the consequences deeper. Hence, the level of scrutiny and assessment expected will be correspondingly higher.

Intensifying the standard of due diligence in this area has three dimensions.

First, the state must clearly identify its potential impacts on areas that are directly related to the well-being and development of the children at the policy design stage. Ignoring these areas entirely, while the relationship between economic constraints and the situation of children can reasonably be expected, would not be consistent with the prudential standard.¹⁹⁰

Second, the state should provide mechanisms for ongoing monitoring and review. Since many child-related harms are gradual and cumulative, an initial assessment is not sufficient. Continuing a regulatory framework in the face of mounting evidence of negative impacts on children, without amending or adopting mitigating measures, can reinforce the state's role in perpetuating the restrictive situation.¹⁹¹

¹⁸⁸ CRC (n 88), arts 3 and 4.

¹⁸⁹ Ibid.

¹⁹⁰ CRC, General Comment No 16 (n 147); Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017).

¹⁹¹ CRC, General Comment No 14 (n 145); Annamaria Viterbo, 'Extraterritorial Sanctions and International Economic Law' in *Building Bridges: Central Banking Law in an Interconnected World: ECB Legal Conference 2019* (European Central Bank 2019) 157.

Third, where significant risks are identified, the State should take reasonable measures to mitigate the harm. These measures may include designing targeted exceptions, creating specific enforcement pathways for the provision of child-related goods and services, or setting up mechanisms to ensure practical access to essential services. The standard here is reasonable and proportionate action, not the complete elimination of any risk.¹⁹²

However, the heightened scrutiny required does not mean that every negative impact on a children constitutes an automatic breach of the obligation. The three elements of the criterion for triggering the obligation must still be met: the existence of a binding framework, a structural and foreseeable effect, and an effective role for the state. The intensification of the standard simply means that in the context of children's rights the threshold for acceptable negligence is lower and the state cannot invoke its policy objectives without seriously considering the possible consequences.

In conclusion, the intensification of the standard of due diligence towards children shows that the theory of regulatory authority is able to adjust the intensity and quality of the obligation of conduct in accordance with the sensitivity of the sphere. This preserves the internal coherence of the three-part criterion while at the same time preventing the unlimited expansion of responsibility.

2.6 Conceptual Contribution of the Chapter

The innovation of this chapter occurs simultaneously on three levels: conceptual, structural, and methodological.

First, at the conceptual level, the chapter moves away from reducing jurisdiction to a purely geographical or physical criterion and reinterprets it as a relationship between authority and accountability. In this reinterpretation, the key question is not "where" but "which state is in a decisive position to determine the legal or practical situation of individuals." This shift from location to authority provides the basis for analyzing new forms of power exercise, especially transboundary regulatory authority.

¹⁹² Maastricht Principles; De Schutter and others, 'Maastricht Principles Commentary' (n 86).

Second, the chapter moves beyond the classical model of effective control, without negating it. Control over territory and direct authority over the person are identified as two established forms in practice, but it is shown that these models are insufficient for analyzing networked and structural forms of power, including broad economic sanctions. The innovation here lies in building a conceptual bridge between physical control and regulatory authority; a bridge based on the “determinative capacity to regulate the conditions of action.”

Third, the chapter’s most important innovation lies in the formulation of a three-part criterion for the activation of extraterritorial obligations. This criterion is based on three elements: the existence of a binding regulatory framework, a structural and foreseeable effect on fundamental rights, and the effective role of the state in creating or maintaining the restrictive situation. This formulation is presented neither as an unlimited extension of the obligation nor as a complete denial of it, but as an inference from the logic of positive obligations, the standard of due diligence, and the rules of effective participation in multi-factorial harms. In this way, the chapter moves away from two common extremes: the “pure effect” model and the “complete denial of jurisdiction in the absence of territorial presence” model.

Fourth, the inclusion of children’s rights as a stringent test constitutes the chapter’s methodological innovation. The children enters the analysis not as an independent subject, but as a field for measuring the sensitivity and restrictiveness of the three-part criterion. If the criterion is applicable in the area of greatest causal complexity and greatest structural vulnerability, its coherence in other areas is also strengthened.

Overall, the innovation of this chapter lies in redefining the link between transboundary authority and human rights obligations, and in providing a coherent framework for the activation of obligations in the context of regulatory authority; a framework that both ensures accountability and prevents the unlimited expansion of responsibility.

2.7 Chapter Conclusion

This chapter began with the question of when human rights obligations are activated in situations of transboundary authority. The analysis showed that relying solely on the territorial criterion is not consistent with the reality of new forms of power, and at the same

time, accepting any economic effect as the basis for obligation also leads to an uncontrolled expansion of responsibility

Rereading the concept of jurisdiction as a relationship between authority and accountability made it possible to overcome this dichotomy. In this framework, effective control was identified as an intermediate step in the development of the analysis, but it was not considered sufficient to understand network-based regulatory authority. Hence, the three-fold criterion for the activation of transboundary obligations was formulated.

According to this criterion, the obligation is activated when the state, through its binding framework, structurally and foreseeably affects the conditions for the enjoyment of fundamental rights and plays an effective role in creating or maintaining a restrictive situation. The activation of the obligation does not mean proving a violation, but rather entering the sphere of the state's behavior into the sphere of human rights assessment and requiring compliance with behavioral standards such as due diligence, proportionality and review.

The analysis of children's rights as a stringent test showed that this criterion is able to maintain its coherence even in an area with indirect, cumulative and long-term harms. In this area, predictability and due diligence are measured more intensely, but the three-part structure of the criterion remains restrictive.

The conclusion of this chapter is that transboundary regulatory authority cannot be excluded from accountability simply because of the lack of a territorial presence. At the same time, human rights responsibility is only activated where real authority, a predictable structural effect, and a meaningful causal role are simultaneously established. This theoretical framework will serve as the basis for the analysis of the subsequent chapters on economic sanctions and their effects on fundamental rights, especially children's rights.

CHAPTER THREE

International Responsibility and Causation

3.1 The Classical Model of Responsibility in International Law

The analysis of the international responsibility of States in classical international law is based on a relatively clear and structured framework. This framework, according to the accepted formulation in the law of responsibility, rests upon two main elements: first, the existence of conduct attributable to the State and second, the incompatibility of that conduct with a binding international obligation.¹⁹³ These two elements form the core of the traditional model of responsibility and constitute the starting point for any coherent discussion of the activation of responsibility.

In this model, first, there must be conduct attributable to the State. The conduct can be an act or an omission, but it must have occurred within the sphere of action of State organs or of persons and institutions whose conduct international law, in certain circumstances, considers to be State conduct.¹⁹⁴ The element of attribution plays a decisive role here, because without it, the matter falls outside the scope of State responsibility and is confined to the level of private conduct or social events.

The second element is the violation of an obligation. The mere occurrence of an act, even if harmful, is not sufficient to establish State responsibility. That conduct must be incompatible with an obligation that the State has under treaty, custom, general principles or peremptory norms.¹⁹⁵ Consequently, violation in this model is a normative concept: a comparison between “what happened” and “what should have happened”. in light of the applicable international standard. If the conduct is not consistent with the binding standard, a violation is established, even if no measurable material damage or demonstrable personal harm has yet been produced.¹⁹⁶

A methodological distinction must be made here, because many analytical errors begin at this point. In the logic of the law of international responsibility, the establishment of a

¹⁹³ ILC Articles on State Responsibility (n 119), art 2.

¹⁹⁴ ILC Articles on State Responsibility (n 119), arts 4–8.

¹⁹⁵ Gattini, ‘Breach of International Obligations’ (n 113).

¹⁹⁶ Ibid.

“violation” does not necessarily depend on proof of a causal link between the conduct and a specific harm.¹⁹⁷ A violation may be established without material harm having been proven. However, when the discussion turns to harm and reparation, or when the alleged violation is formulated in terms of external consequences and objective effects of policies, the issue of causality and the linking of those consequences to the state’s conduct becomes of practical importance. More precisely, causality in this model is not always a condition for the occurrence of a violation, but often a condition for proving harm, determining the scope of reparation, and justifying the attribution of specific consequences to the wrongful conduct.¹⁹⁸

Despite this distinction, in practice, the relationship between conduct and consequence is not entirely abandoned. Even when a violation is defined in terms of normative inconsistency, in many cases the proof that the state’s conduct “played a role in creating the situation of violation” or “was effective in exacerbating it” plays a key role in judicial and quasi-judicial assessment.¹⁹⁹ But this role must be placed in its proper place: not as a third element of the violation, but as an analytical and evidentiary tool for linking policy and effect, especially in areas where the claim relies on gradual or indirect consequences.

An important feature of the classical model is that it is usually conceived in the context of direct and overt violations. Cases such as unlawful use of force, arbitrary detention, or expropriation without compensation are examples in which the conduct of the state and the resulting violation are closely linked, and the normative incompatibility is often not difficult to detect. This model is consistent with the state-centric and territorial structure of international law, since the conduct often occurs within a specific territory and the mechanisms for exercising power are observable and institutionalized.

However, this same model faces challenges when applied to more complex forms of the exercise of authority. When State conduct is not a single act but part of a broader regulatory framework, and the consequences are not immediate but gradual and structural, analysis based on a simple cause-and-effect model becomes analytically insufficient. In such cases, the main difficulty is not always whether there is attribution or responsibility, but how to

¹⁹⁷ Crawford, *State Responsibility* (n 120).

¹⁹⁸ Crawford, *State Responsibility* (n 120); James Crawford, Alain Pellet, Simon Olleson and Kate Parlett (eds), *The Law of International Responsibility* (Oxford University Press 2010).

¹⁹⁹ *Corfu Channel (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4.

link external and multi-stage effects to State conduct in a legal way, without either unrealistically simplifying the relationship or extending responsibility indefinitely.

From a theoretical perspective, the classical model relies on several practical assumptions: a focus on specific conduct, the possibility of relatively clear detection of normative incompatibility, and a simpler conception of the link between conduct and outcome. These assumptions remain useful in many cases. But for the analysis of structural policies or network actions whose effects unfold through multiple intermediaries, over time, and in the context of the interaction of various agents, they are not sufficient on their own. The result of this situation is that the question of “causation” in such cases is not primarily about finding a single cause, but rather about formulating criteria for assessing the meaningful role of the State conduct in creating or maintaining the restrictive situation, while the elements of attribution and violation remain the main pillars.

In conclusion, the classical model of international responsibility offers a framework based on attribution and violation of obligation, and generally introduces causation as a tool for analysing of the link between the conduct and the alleged consequences, especially in the context of proving harm and the scope of reparation. This model is effective for direct and obvious violations, but in the face of complex and nonlinear forms of the exercise of authority, especially regulatory policies with structural effects, it requires a more precise formulation of the criteria for the legal link between the regulatory framework and the cumulative consequences. A proper understanding of this model is a prerequisite for proceeding in the following sections to redefine causation in a legal and controlled manner, rather than in a metaphorical or unlimited manner.

3.1.1 Attribution

Attribution is the first element of the international responsibility of a State. Before it can be said that there has been a violation of an international obligation, it must be clear whether the conduct in question is legally attributable to the State. Without attribution, even if serious harm has occurred, the situation does not fall within the framework of the international

responsibility of the State, since international law only responds to conduct that is attributable to a subject possessing international legal personality.²⁰⁰

In the classical model, attribution is based on the distinction between “conduct of the State” and “conduct of private individuals”. The fundamental principle is that the actions of State organs, whether legislative, executive or judicial, are attributed to the State itself.²⁰¹ What matters here is not the personal intention of the official or individual motivation, the institutional position and legal status of that official. Whenever an official acts within the framework of official authority, his conduct is considered, from the perspective of international law, to be conduct of the State, even if that conduct is considered permissible or even mandatory under domestic law.

The issue becomes more complex in cases where conduct is carried out by individuals or entities that are formally private. In such circumstances, international law provides criteria for establishing attribution. These criteria include the status of a State organ, the delegation of public authority, or the exercise of effective control by the State over the conduct in question.²⁰² Only if one of these criteria is met can the conduct of a non-State actor be attributed to the State.

In this context, a distinction must be made between two different questions. The first question is whether the conduct in question is legally attributable to the State as State conduct. This question concerns the element of attribution. The second question is whether specific consequences that have manifested externally can be attributed to the State’s conduct. This question no longer concerns attribution, but falls within the scope of causation analysis and the link between conduct and consequence. Confusing these two levels of analysis can lead to an unwarranted extension of the scope of attribution.

In the context of broad regulatory policies, including economic sanctions, this distinction becomes particularly important. The conduct of the sanctioning state is the regulatory framework itself: enacting regulations, imposing financial restrictions, or establishing supervisory and punitive systems. These actions are directly attributable to the state because

²⁰⁰ ILC Articles on State Responsibility (n 119), art 2; Crawford, *State Responsibility* (n 120).

²⁰¹ ILC Articles on State Responsibility (n 119), art 4.

²⁰² ILC Articles on State Responsibility (n 119), arts 5 and 8.

they are the product of the exercise of its legislative or executive authority. In contrast, subsequent conduct by private actors, such as the decision of banks or corporations to refrain from economic interaction, is not necessarily attributable to the state.

However, the non-attribution of the conduct of private intermediaries to the state does not mean that the consequences of that conduct are completely outside the scope of responsibility analysis. In such cases, the key question is no longer the attribution of private conduct, but whether the state's regulatory framework played a significant role in creating the conditions in which these private responses took place. This question falls within the realm of causation analysis and assessment of policy effects, not within the law of attribution

Consequently, the attribution element still determines the initial boundary of responsibility: only conduct falling within the exercise of the State's public authority can give rise to international responsibility. But once this conduct has been established, the analysis of responsibility may turn to examining the consequences that have been produced by other actors or by complex economic mechanisms. At this stage, the question is no longer whether to attribute the conduct of those actors to the State, but to assess the legal link between the State's regulatory framework and its external effects.

In summary, attribution is the initial condition for an act to fall within the scope of international responsibility. This element ensures that responsibility is confined to conduct falling within the scope of the State's public authority. At the same time, a clear distinction between attribution of conduct and analysis of consequences allows, on the one hand, avoiding the undue extension of the scope of attribution and, on the other, examining the actual effects of the State's regulatory policies in the subsequent stages of the analysis of responsibility.

3.1.2 Violation of an International Obligation

After attribution has been established, the second element of the international responsibility of a State is the existence of a violation of an international obligation. The State's responsibility does not arise simply because it has engaged in conduct, but rather that

conduct must be inconsistent an international obligation binding upon the State.²⁰³ Consequently, the analysis of violation requires a comparison between the State's actual conduct and the normative standard that international law imposes upon the State.

In this model, the precise obligation of the State must first be identified. This obligation may arise from various sources of international law, including treaties, customary international law, general principles or peremptory norms. Once the obligation has been identified, it must be examined whether the conduct attributed to the State is consistent with the requirements of that obligation. If the conduct is inconsistent with what the obligation requires, a violation is established.²⁰⁴

Importantly, the realisation of a violation does not necessarily depend on proof of material damage or measurable loss. In many cases, the mere inconsistency of the State's conduct with the international obligation is sufficient to establish a violation.²⁰⁵ For this reason, violation in the law of responsibility is essentially a normative concept. What matters is the inconsistency with of a binding standard, not merely the occurrence of harmful consequences.

In the field of human rights, the analysis of violation becomes more complex because human rights obligations are often multilayered. States are not only obliged to refrain from directly violating rights, but in many cases they are also obliged to take reasonable measures to prevent the impairment or restriction of the enjoyment of rights.²⁰⁶ As a result, a violation may arise from direct State action, or from the failure to take reasonable measures to prevent foreseeable harm.

In the context of economic sanctions, the issue of violation is usually raised in the form of human rights obligations that limit the exercise of public power. These obligations include, in particular, the obligation of States to respect fundamental rights and to refrain from adopting policies that could seriously and foreseeably impair the enjoyment of those rights. In such a context, a violation can arise not only from direct actions but also from the design

²⁰³ ILC Articles on State Responsibility (n 119), art 2.

²⁰⁴ Crawford, *State Responsibility* (n 120).

²⁰⁵ Gattini, 'Breach of International Obligations' (n 113).

²⁰⁶ HRC, General Comment No 31 (n 80).

or continuation of policies that, in practice, structurally restrict the conditions for the enjoyment of rights.

One of the major challenges in analysing a violation is determining the moment at which it arises. In cases of immediate violations, such as arbitrary detention or outright confiscation of property, the moment of the violation is relatively clear. However, in cases where public policy gradually undermines the conditions for the enjoyment of a right, the violation may take on a continuing character.²⁰⁷ In such a situation, the violation is not constituted in a single moment but in the persistence of a situation incompatible with an international obligation.

A distinction must also be made between a legitimate restriction and a violation of an international obligation. Many fundamental rights are subject to restrictions, provided that the restriction is prescribed by law, pursues a legitimate aim, and is proportionate.²⁰⁸ Therefore, not every negative impact on a right necessarily constitutes a violation. The analysis of a violation requires an assessment of the necessity, proportionality and conformity of the policy with the relevant normative framework.

In cases where public policy has indirect effects on rights, the key question is whether these effects were foreseeable in the context of the State's obligations and whether the State, in designing or implementing its policy, took reasonable steps to avoid serious impairment of rights. In such circumstances, a violation may arise not from a single act but from the design or continuation of a regulatory framework that is in practice incompatible with human rights standards.

From a theoretical perspective, a violation is the point at which the exercise of public power moves beyond the framework of legal legitimacy and into the realm of responsibility. As long as the State's conduct is consistent with its international obligations, the exercise of power remains within the State's discretion. But when this consistency ceases, the structure of responsibility is engaged

²⁰⁷ ILC Articles on State Responsibility (n 119), art 14.

²⁰⁸ Alexy, *Constitutional Rights* (n 13).

In summary, a violation of an international obligation occurs when the conduct attributable to the State is inconsistent with a binding standard of international law. This inconsistency can result from direct action, failure to meet behavioural obligations, or the continuation of a regulatory policy that is structurally in conflict with human rights requirements. Recognizing this inconsistency is a prerequisite for entering the analysis of consequences, causality, and scope of responsibility in the following sections.

3.1.3 Linear Causality in the Classical Model of Responsibility

After establishing attribution and identifying a breach of an international obligation, one of the important questions in the analysis of international responsibility is the examination of the relationship between the State's conduct and its alleged consequences. This relationship is analyzed through the concept of causation. Although causation is not defined independently as an element of breach in the classical structure of responsibility, in practice it plays a fundamental role in linking the State's conduct to the harms and consequences that form the basis of a claim of responsibility.²⁰⁹

In the classical model, causation is often understood in a linear terms. In this framework, it is assumed that specific conduct of the State has led to a specific result in a relatively direct and identifiable way. In such a model, the relationship between the conduct and the consequence is conceived as a short and relatively simple causal chain, such that the link between the two can be explained without complex intermediaries or multiple independent factors.

The linear model of causation is usually based on the idea that the state's conduct played a decisive role in bringing about the relevant outcome. In other words, if that conduct had not occurred, the alleged harmful situation would not have occurred in the same way.²¹⁰ This method of analysis seeks to identify a relationship that can be established logically and empirically between the conduct and the outcome, without extending the causal chain to a potentially infinite set of distant and unrelated factors.

²⁰⁹ Crawford, *State Responsibility* (n 120).

²¹⁰ Alan E Boyle, 'State Responsibility and International Liability for Injurious Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?' (1990) 39(1) *International and Comparative Law Quarterly* 1.

The main feature of this model is its focus on the direct link between the conduct and the outcome. The shorter the temporal, spatial or institutional distance between the two, the easier it is to establish a causal relationship. For this reason, this model is most compatible with situations in which the violation appears in the form of a specific act and its consequence as a relatively clear factual situation.

For example, in cases such as the unlawful detention of a person, the direct seizure of property or the use of force in violation of international obligations, the relationship between the state's conduct and the violating situation is usually directly identifiable. In such cases, there is no need for a complex causal chain analysis, since the conduct of the State itself directly created the situation in question.

However, these same features also indicate the limitations of the linear model. The model is based on the implicit assumption that the harmful outcome is largely due to a specific conduct. But in many complex situations, especially in the area of economic or regulatory policy, the final consequences are often the result of the interaction of several factors. In such situations, an attempt to reduce the causal chain to a simple relationship between conduct and an outcome may ignore the real role of some contributing factors.²¹¹

Furthermore, the linear model often focuses on relatively immediate or observable consequences. However some harms in the context of public policies occur gradually and through a series of intermediaries. In such cases, the time and structural lag between the initial conduct and the final outcome may be significant. If the analysis focuses solely on the direct and short-term relationship between conduct and outcome, a significant part of the real effects of public policies will be left out of the scope of responsibility analysis.

It should also be noted that the linear model has often been developed in the context of violations that are individual or event-based in nature. That is, the relationship between the conduct of the State and the situation of a specific person or property is examined. However, in cases where the consequences are collective, structural, or gradual in nature, the model faces greater difficulties.

²¹¹ Philippa Foot, 'Hart and Honoré: Causation in the Law' (1963) 72(4) *The Philosophical Review* 505.

Despite these limitations, linear causality remains the starting point for analyzing the relationship between State conduct and its alleged consequences. It provides a framework within which to examine whether State conduct contributed in a discernible way to the creation of the situation in question. In cases where the relationship between conduct and outcome is direct and clear, the model remains a suitable analytical tool for examining international responsibility

In summary, linear causality is based on the assumption of a relatively direct and identifiable relationship between State conduct and its consequences. This model is useful for analyzing immediate and obvious violations, but it faces limitations when applied to situations in which consequences are shaped by a complex chain of economic, institutional, and social factors. These limitations provide the basis for examining alternative models of causality, including analyses based on cumulative causal chains, in the following sections.

3.2 Cumulative Causality in the Context of Economic Sanctions

The classical model of causality, which is based on a linear and relatively direct relationship between State conduct and harmful outcomes, faces serious difficulties when applied to widespread economic sanctions. Sanctions are usually not a single action with an immediate consequence, but rather a set of regulations, restrictions, and regulatory mechanisms that produce their effects over time and through a network of economic and institutional responses. In such circumstances, the analysis of the relationship between State conduct and alleged outcomes cannot rely solely on a simple cause-and-effect model.

In sanctions policies, legal restrictions are usually imposed in the form of a set of financial, banking, insurance, transportation, and trade rules. These rules often operate simultaneously and affect the conduct of a wide range of economic actors. In response to this regulatory framework, banks, insurance companies, transport companies, suppliers of goods and other market players make decisions that collectively alter the structure of economic transactions. The social or human consequences of this situation are usually not the result of a single decision, but rather the product of the interaction of multiple factors.

In such a situation, the causal relationship between the sanctions policy and the harmful situation often assumes a cumulative character. In other words, the final result arises from the synergy of several factors, rather than from a single and independent cause. Restrictions on access to financial infrastructure, increased transaction risk, prudent bank responses, reduced access to credit, and disruptions in supply chains can all simultaneously contribute to the creation of a restrictive situation. None of these factors is necessarily the complete cause of the outcome, but together they can create conditions that have significant effects on the enjoyment of fundamental rights.

In such a complex context, the main question is no longer whether the sanctions were the “sole cause” of the harm. Focusing on finding a single cause in complex economic realities is often misleading. Instead, the analysis should focus on whether the regulatory framework of the sanctioning state has made a significant contribution to creating or exacerbating the situation in question.²¹²

Accordingly, the concept of cumulative causation is based on the idea that responsibility can arise even in the absence of exclusive causation. If the sanctions policy is one of the factors contributing to the chain leading to harm and its removal from this chain significantly changes the final situation, then a causal link can be said to exist. In this context, the main issue is not the exclusivity of the cause, but the causal weight of the state’s conduct among the set of factors involved.²¹³

This approach also allows the role of market reactions and the conduct of private actors not to be ignored in the analysis. In many cases, the effects of sanctions are manifested not only through official prohibitions, but also through precautionary responses by economic actors. Banks and companies may limit their interactions beyond formal requirements due to legal risks, financial penalties, or compliance complexities. This phenomenon, often described as over-compliance, can be part of the causal chain of sanctions policy, even if each individual decision was made independently.

In such circumstances, causality analysis must be able to distinguish between two situations. On the one hand, cases where the conduct of private actors is a logical and predictable

²¹² Nollkaemper and Jacobs, ‘Shared Responsibility’ (n 115).

²¹³ Crawford, *State Responsibility* (n 120).

consequence of the regulatory framework. In these cases, the market response is part of the policy's effectiveness mechanism. On the other hand, cases where the conduct of economic actors is the result of factors that are completely independent and unrelated to the sanctions framework. In this case, it will be difficult to attribute those consequences to government policy.

Cumulative causality is also closely linked to the issue of foreseeability. The more a state can reasonably expect, at the time of designing or implementing a sanctions policy, that the set of restrictions imposed is likely to lead to widespread disruption of access to economic infrastructure or essential services, the stronger the link between the policy and its consequences. In such circumstances, the complexity of the causal chain cannot be considered a sufficient basis for denying the relationship between conduct and outcome.²¹⁴

However, accepting cumulative causation does not mean an unlimited extension of responsibility. If every indirect participation in a complex process is considered a basis for responsibility, the boundaries of responsibility will disappear. Hence, the analysis must remain focused on the question of whether the state's role among the multiple actors was a genuinely significant one or was merely a marginal presence in a complex process.

From a theoretical perspective, cumulative causation reflects a transformation in the way power is exercised in the international system. In the contemporary world, many forms of authority are exercised not through individual acts but through complex regulatory frameworks that influence the conduct of networks of actors. In such circumstances, responsibility analysis must also be able to take this causal complexity into account, without completely abandoning the requirement of a link between state conduct and its consequences.

In summary, cumulative causation is based on the idea that in structural policies such as economic sanctions, harmful consequences are often the product of the interaction of several factors. However, if the regulatory framework of the sanctioning state has made a significant contribution to creating or exacerbating the situation and these effects were reasonably foreseeable at the time the policy was designed or implemented, then the causal link required

²¹⁴ CESCR, General Comment No 8 (n 232).

for responsibility analysis can be established. This approach allows responsibility analysis to take into account the real complexity of economic policies, without abandoning the requirement of a legal link between state conduct and its consequences.

3.2.1 The Linear Model of Causation

The linear model of causation, as explained in the previous section, is the traditional model for analyzing the relationship between state conduct and its consequences in the law of international responsibility. In this model, causation is understood as a relatively direct relationship between specific conduct and a specific result. This notion of causation is based on the assumption that a short, clear, and identifiable causal chain can be established between the state conduct and the alleged harmful situation.²¹⁵

In many classic cases of international responsibility, such a model works well. For example, if the official decision of a state official directly leads to the arrest of an individual, the seizure of property, or the use of force against another state, the relationship between the conduct and the consequence is relatively clear. In these circumstances, the analysis of causation is usually not very complicated, since the state conduct itself has created the situation in question.

However, when the analysis moved from individual acts to broad regulatory policies, the limitations of the linear model become more apparent. In economic or fiscal policy, final outcomes are often not the result of a single action, but rather a series of chain reactions among multiple actors. In such circumstances, attempting to find a single starting point for the entire causal chain can distort the actual structure of the process.²¹⁶

One of the main difficulties in this regard is that the linear model tends to reduce causality to a direct link between State conduct and the final outcome. In many regulatory policies, State conduct first changes institutional or economic structures, and then these changes lead to social or human consequences through multiple actors over time. In such circumstances, the distance between the initial conduct and the final outcome may include several intermediate stages.

²¹⁵ Crawford, *State Responsibility* (n 120).

²¹⁶ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

The linear model also has difficulty dealing with the role of third-party actors. If the causal analysis focuses solely on the direct conduct of the State, each stage of the intervention of another actor can be seen as a break in the causal chain. But in many economic cases, the response of market actors is not an independent and random intervention, but a predictable response to the State's regulatory framework. Ignoring this fact can lead to ignoring an important part of the mechanism through which public policies produce effects.

In addition, the linear model often focuses on immediate or observable consequences. However, some effects of economic policies occur gradually and over time. Disruptions in financial infrastructure, reduced investment in public services or changes in the conduct of economic actors may have limited consequences in the short term, but lead to important structural changes in the medium and long term.

For this reason, exclusive reliance on the linear model in the analysis of sanctions policies can lead to two undesirable results. On the one hand, the real role of the State's regulatory framework in the formation of a restrictive situation may be overlooked, because the final outcome is shaped through multiple intermediaries. On the other hand, responsibility analysis may be limited to cases where the relationship between conduct and outcome is almost immediate and unmediated.

Consequently, although the linear model remains the starting point for causation analysis in the law of international responsibility, it is not sufficient on its own when faced with complex economic policies. These limitations highlight the need to develop an approach that can also examine the role of state conduct in multi-stage and multi-factor causal chains. It is this need that paves the way for the development of models based on cumulative causation.

In conclusion, the linear model of causation is a useful tool for analyzing cases where the relationship between state conduct and the alleged outcome is direct and immediate. However, in the context of broad regulatory policies, especially economic sanctions, the effects of which are manifested through a network of institutional and economic responses, this model faces significant limitations. Therefore, analyzing responsibility in such circumstances requires a framework that can assess the role of State conduct in a more complex causal chain.

3.2.2 The Cumulative Model of Causation

The cumulative model of causality is an analytical response to the limitations of the linear model when applied to structural and multifactorial policies. In this model, the harmful outcome is not the product of a single, isolated cause, but rather the result of the interaction of a set of factors that together create the conditions under which the harm occurs. In such a situation, the attempt to find a “single cause” is not only difficult but also analytically misleading.²¹⁷

In the cumulative model, causality is understood as a network. State conduct is one element of this network, but usually not the only one. Decisions of private actors, market reactions, existing economic structures, and domestic policies of the target state can also play a role in shaping the final situation. As a result, causality analysis is no longer limited to identifying a direct link between a particular conduct and an outcome, but rather assesses the causal weight of different factors in a complex chain.

In this framework, the main question is not whether the state’s conduct was the sole cause of the outcome. Focusing on the sole cause in many complex economic situations misrepresents reality. The fundamental question in the cumulative model is whether the state’s conduct contributed significantly to the creation or aggravation of the harmful situation.²¹⁸

Accordingly, the central criterion in this model is the concept of “contributory causality.” Contributory causality is established when the state’s conduct contributed to the final situation in such a way that its removal from the causal chain would significantly change the outcome. In other words, if the harmful situation would not have occurred to the same extent, magnitude, or form without that conduct, then that conduct can be regarded as having made a significant contribution to the causal chain.²¹⁹

²¹⁷ Vladyslav Lanovoy, ‘Causation in the Law of State Responsibility’ (2022) *British Yearbook of International Law* brab008.

²¹⁸ Nollkaemper and others, ‘Guiding Principles on Shared Responsibility’ (n 121).

²¹⁹ Foot, ‘Causation in the Law’ (n 116) .

This criterion has two important points. First, the existence of other factors does not preclude the analysis of responsibility. In many cases, multiple factors contribute to the creation of a situation. The presence of these factors does not in itself eliminate the causal link between State conduct and the final outcome, provided that the State conduct plays genuinely significant role among these factors.²²⁰

The second point is that effective causal contribution is different from mere participation in a causal chain. In a complex process, many factors may be present, but they do not all have the same weight. Some factors may play only a marginal or secondary role, while others are at the center of the process. The criterion of effective causal contribution is used precisely to distinguish between these two situations.

In the context of economic sanctions, this distinction becomes particularly important. The social or economic consequences of sanctions are usually the result of a series of chain reactions. Formal financial restrictions can lead to increased transaction risk; this increased risk may change the conduct of banks and firms; and this change in conduct can ultimately limit access to goods, services, or financial resources. In such circumstances, the relationship between the sanctions policy and the final outcome is formed through several intermediary stages.

The cumulative model allows this multi-stage chain to be taken into account in the analysis of responsibility. Even if each stage of this chain is implemented by a different actor, it is still possible to examine whether the initial regulatory framework played a fundamental role in initiating or intensifying this process. If such a role is established, the existence of multiple intermediaries does not in itself prevent the analysis of the causal relationship.

However, adopting the cumulative model does not mean eliminating the boundaries of responsibility. If every factor present in a causal chain is considered the basis for responsibility, the scope of responsibility will expand indefinitely. For this reason, the condition of effective causal contribution plays an important limiting role. Only when the state's conduct among the multiple factors plays a decisive or at least meaningful role can a causal relationship be established for the purposes of the analysis of responsibility.

²²⁰ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

From a theoretical perspective, the cumulative model reflects the evolution in the modes through which power is exercised in the global economic system. Many forms of authority in the contemporary world are exercised not through direct intervention but through regulatory frameworks that influence the conduct of a network of actors. In such a situation, responsibility analysis must also be able to identify the role of the state in this complex network of effects, without losing the link between conduct and outcome.

In summary, the cumulative causality model provides an analytical framework for examining the relationship between state conduct and the multifactorial consequences of economic policies. In this framework, responsibility is assessed not on the basis of the exclusive cause, but on the basis of the effective causal contribution of state conduct to the chain leading to harm. This approach allows the real complexity of economic processes to be taken into account in responsibility analysis, while still maintaining the logical boundaries of the attribution of responsibility.

3.2.3 The Role of Foreseeability in Causation Analysis

In the transition from a linear to a cumulative model of causality, the concept of foreseeability plays a decisive role. The more complex and multi-stage the causal chain between State conduct and the final consequences, the more difficult it becomes to rely solely on a direct relationship between conduct and outcome. In such situations, foreseeability enters the analysis as a criterion that allows the assessment of the relationship between policy and its consequences within a normative framework.²²¹

In the linear model, foreseeability often plays a secondary role. When State conduct directly leads to the creation of a violation, the causal relationship is almost self-evident and there is little need to analyze possible consequences. However, in structural policies such as economic sanctions, the consequences usually occur through a series of chain reactions. In such a situation, complete certainty about the exact path of influence is often not possible. For this reason, responsibility analysis is forced to assess what was reasonably foreseeable at the time of the decision.

²²¹ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

Foreseeability in this context does not mean absolute knowledge of all future consequences. The criterion in question is based on a measure of reasonableness: whether the State, at the time of designing or implementing its policy, could have expected, based on available information, past experience, expert analysis, or the inherent nature of the policy adopted, that its actions were likely to lead to the consequences in question. If the answer is yes, the complexity of the causal path does not in itself preclude an examination of the relationship between conduct and consequence.

This concept serves two important functions in causation analysis. First, it prevents the unlimited extension of responsibility. The State is not liable for consequences that were completely unusual, unexpected, or beyond any reasonable assessment. Therefore, foreseeability acts as a limiting threshold, limiting the scope of responsibility analysis to consequences that were conceivable at the time the policy was adopted.²²²

The second function of foreseeability is to prevent artificially breaking the causal chain in complex situations. In policies such as economic sanctions, the State may argue that the final outcomes were the result of independent decisions by market actors or domestic factors of the target state. However if these responses were the expected result of the regulatory framework, the presence of those intermediaries does not in itself eliminate the relationship between the policy and the outcome. In such situations, foreseeability allows the role of the State in creating the conditions that led to these responses to be assessed.

In the context of sanctions, this is particularly important. Historical experience has shown that widespread restrictions on access to financial and trade infrastructure can have far-reaching consequences for a country's economic and social system. Disruptions in access to financial resources, increased transaction risk, and changes in the conduct of financial institutions can ultimately lead to reduced access to essential goods and services. If such consequences were foreseeable at the time the policy was designed, the mere complexity of the causal chain cannot be used as a reason to deny the link between the policy and the outcome.²²³

²²² Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

²²³ CESCR, General Comment No 8 (n 232).

foreseeability also plays an important role in assessing the conduct of private intermediaries. In many cases, the response of banks or companies to sanctions policies is part of the logic of the policy. If the prudent conduct of these actors is a normal and expected consequence of the regulatory framework, the existence of these reactions does not break the causal chain. However, if the conduct of intermediaries is completely unusual or based on independent and unpredictable factors, the relationship between State policy and the final outcome may be weakened.

From a theoretical perspective, foreseeability is the connecting point between causality analysis and the assessment of State conduct. The more extensive the regulatory power of the State, the more it is expected to assess the possible consequences of its policies. For this reason, assessing what was foreseeable at the time of the decision has gradually become an important criterion in the analysis of the responsibility of structural policies.²²⁴

In summary, foreseeability in causality analysis serves as a normative criterion that allows for the attribution of complex, multi-stage consequences to State conduct, without the need to prove a strictly linear causal chain. This criterion allows the analysis to both take into account the real complexity of economic policies and to limit the scope of responsibility to consequences that were reasonably foreseeable at the time the policy was adopted.

3.3 The Obligation of Due Diligence in the Context of International Responsibility

In the classical analysis of international responsibility, the main focus is on the two elements of the attribution of conduct to the State and the inconsistency of that conduct with an international obligation. However, in many cases, especially when the State's conduct appears in the form of complex and structured policies, the assessment of this inconsistency requires an examination of the quality of the State's conduct in the face of foreseeable risks. In such circumstances, the concept of "due diligence" becomes important as a criterion for measuring State conduct.²²⁵

²²⁴ James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press 2002).

²²⁵ Crawford, *ILC Articles on State Responsibility* (n 224).

The obligation of due diligence does not mean that the State is responsible for absolutely guaranteeing a particular result. In many areas of international law, the obligations of States are not obligations of result but obligations of conduct.²²⁶ States are obliged to take measures in the exercise of their jurisdiction and power that are considered reasonable and proportionate in the light of the available information and the foreseeable capacities. Due diligence expresses precisely this criterion of conduct.

Therefore, due diligence should not be considered an independent element of international responsibility. This concept is part of the content of primary obligations and helps us to determine whether the State's conduct has been consistent with the standard expected of that obligation.²²⁷ If the State has failed to take reasonable steps in the face of foreseeable risks, its conduct can be said to have been inconsistent with the international obligation and, as a result, a breach of the obligation has been committed.

This issue becomes even more important in the case of broad regulatory policies, such as economic sanctions. In such policies, States usually do not directly create the final state of affairs, but rather establish a regulatory framework that influences the conduct of a set of economic actors. The ultimate consequences of this framework may unfold through a chain of economic and institutional responses. In such circumstances, the assessment of responsibility cannot focus solely on the occurrence or non-occurrence of a particular outcome, but must examine whether the State made a reasonable assessment of the foreseeable risks in designing and implementing its policy.

The obligation to exercise due diligence in this context has several essential components. First, risk assessment. Before adopting a public policy, the state should examine the information relevant to its potential consequences. This assessment may include economic, social or human rights analyses that indicate what consequences the policy in question could have.

The second component is the adoption of preventive or mitigating measures. If the assessment identifies that a policy is likely to have significant consequences for the enjoyment of fundamental rights, the state is expected to take measures to mitigate these

²²⁶ Crawford, *State Responsibility* (n 120).

²²⁷ Barnidge, 'Due Diligence' (n 104).

risks. These measures may include designing specific exceptions, creating safeguards or periodically reviewing the policy.

The third component is the ongoing monitoring of the consequences of the policy. Even if not all possible consequences can be foreseen at the time the policy is designed, the government cannot remain indifferent to the actual effects of the policy. If signs of serious harm emerge during implementation, continuing the policy without review or correction may indicate a failure to exercise due diligence.

The importance of due diligence is also related to the extent of the state's regulatory power. The more active a state is in designing a framework that influences the conduct of a network of economic actors, the more it is expected to assess the likely consequences. The required level of care is therefore a relative measure, assessed in light of the state's level of influence, available knowledge, and institutional capacity.

In the context of economic sanctions, this analysis means that the sanctioning state cannot simply rely on the complexity of the economic system or the role of market intermediaries to exempt it from assessing the consequences of its policy. If financial or trade restrictions are designed to reasonably increase the likelihood of disruptions to essential services, the state is required to take these risks into account in its decision-making process.

From a theoretical perspective, the obligation due diligence provides a bridge between causality analysis and the assessment of state conduct. On the one hand, the notion of foreseeability suggests that some consequences were conceivable at the time the policy was adopted. On the other hand, due diligence provides a criterion for assessing whether the State has acted reasonably in the face of these risks.²²⁸

In conclusion, the obligation of due diligence is a standard of conduct for assessing the implementation of international obligations. It is not an independent element of responsibility, but rather a criterion for determining whether the State's conduct is inconsistent with its primary obligations. In the context of complex policies such as economic sanctions, this criterion allows for a more rigorous assessment of the State's

²²⁸ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

conduct in the face of foreseeable risks and whether the regulatory framework adopted was consistent with the requirements of international law.

3.3.1 Legal Basis of the Duty of Due Diligence

The duty of due diligence is not merely a managerial or ethical concept in public policy, but is rooted in the normative structure of international law. In order for this obligation to be useful in the analysis of international responsibility, it must be shown that it can be inferred from authoritative sources of international law and that it fits within the framework of existing rules.²²⁹

The first legal basis for due diligence can be found in the nature of certain international obligations, which are defined as obligations of conduct. In such obligations, States are not required to guarantee a definite result, but must take reasonable and proportionate measures to prevent the occurrence of situations that may lead to a breach. In these cases, the criterion for breach is not the achievement of a specific result, but the failure to take the necessary measures to prevent that result. The concept of due diligence is used precisely to assess such State conduct.²³⁰

The second basis for due diligence can be found in customary international law. In various areas of international law, states are required to exercise reasonable care in the exercise of their jurisdiction to avoid causing or facilitating harm to others. This obligation does not mean an absolute guarantee that harm will not occur, but rather requires that the state take reasonable steps to manage the risk within the framework of the available means and knowledge. The same behavioral logic is observed in many areas of international law, including environmental law, the law of the sea, and human rights.²³¹

In the area of human rights, the concept of due diligence is also directly or indirectly present in the analysis of state obligations. When states are expected to establish appropriate legal and institutional frameworks to protect fundamental rights, or to take effective measures to prevent violations of rights, a standard of conduct that is consistent with the concept of due

²²⁹ Scott, 'Due Diligence as a Secondary Rule' (n 105).

²³⁰ Kulesza, 'Human Rights Due Diligence' (n 106).

²³¹ Barnidge, 'Due Diligence' (n 104).

diligence is applied. In this context, the state must show that it has identified foreseeable risks and taken reasonable measures to mitigate them.²³²

In addition, the principle of good faith is also an important basis for due diligence. States are obliged to implement their international obligations in good faith. Implementing obligations in good faith requires that a State, in exercising its public power, does not ignore the foreseeable effects of its policies on international obligations. If a State acts without regard to the foreseeable consequences of its policies or ignores serious warnings about their effects, its conduct can be said to be inconsistent with the requirements of good faith.²³³

Another basis for due diligence can be found in the link between regulatory power and responsibility. Whenever a State uses its public authority to regulate economic, social or financial conduct, this authority must be exercised within the framework of its international obligations. Regulatory power cannot be exercised in a way that creates foreseeable risks to fundamental rights without the State taking at least some measures to assess and manage those risks.

This basis becomes particularly important in the context of economic sanctions. Sanctions are usually imposed through a set of regulatory rules in the financial, banking and trade spheres. These rules can influence the conduct of a network of economic actors and, as a result, have far-reaching consequences for the economic and social system of the target country. In such circumstances, the sanctioning state is expected to assess the foreseeable effects of such a policy before adopting or continuing it and, if necessary, to take measures to mitigate unintended consequences.

Finally, the legal basis for due diligence can also be seen in the general logic of the international responsibility system. This system is based on the assumption that the exercise of public power must be carried out within the framework of legal obligations. If the state can act without a reasonable assessment of the foreseeable consequences of its policies, an important part of the normative function of this system will be undermined. Due diligence

²³² CESCR, General Comment No 14 (n 177); Committee on Economic, Social and Cultural Rights, 'General Comment No 8: The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights' UN Doc E/C.12/1997/8 (12 December 1997).

²³³ ILC Articles on State Responsibility (n 119).

is, in fact, a criterion that allows the quality of the state's conduct in such circumstances to be assessed.

In conclusion, the obligation of due diligence is based on a set of legal foundations: the nature of conduct obligations in international law, customary principles of reasonable care, obligations arising from human rights, the principle of good faith, and the relationship between the exercise of regulatory power and international accountability. These foundations demonstrate that due diligence is not a theoretical addition, but part of the internal logic of international law in regulating the relationship between power and responsibility.

3.3.2 The Relationship between the Obligation of Due Diligence and the Obligation to Respect

The obligation to respect in human rights is usually defined as a negative obligation. According to this obligation, the state must refrain from direct interference with individuals' enjoyment of fundamental rights. In its simplest form, this obligation means that the state itself must not directly take measures that would lead to the denial or restriction of a right.²³⁴

However, in a more advanced analysis of human rights, the obligation to respect does not simply mean refraining from overt interference. The manner in which public power is exercised is also important in assessing this obligation. States must not only refrain from directly violating rights, but must also refrain from adopting policies that would foreseeably undermine in a serious way the conditions for the enjoyment of rights.

At this point, the concept of due diligence enters the analysis. Due diligence is a criterion for assessing whether the state, in exercising its regulatory power, has taken into account the foreseeable consequences of its policies on fundamental rights. If a state adopts a policy that was reasonably foreseeable at the time of the decision-making process to result in a serious impairment of a right, failure to take this into account may mean that the state's conduct is inconsistent with the obligation to respect.²³⁵

²³⁴ HRC, General Comment No 31 (n 80).

²³⁵ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

In other words, due diligence illuminates the practical dimension of the obligation to respect in more complex situations. Respect for rights does not simply mean not issuing a direct order to restrict a right, but rather exercising public power within a framework whose foreseeable consequences are consistent with human rights requirements.

This is particularly important in the context of broad regulatory policies. In such policies, the state may not directly restrict a right, but may create a framework that changes the conduct of a set of economic or social actors. This change in conduct may ultimately affect the conditions under which the rights are enjoyed. In such cases, assessing the obligation to respect requires examining whether the state has taken into account its foreseeable effects on fundamental rights in designing this regulatory framework.

However, a distinction must be made between the obligation to respect and positive obligations. The obligation to respect is essentially about the State refraining from creating a situation of violation, whereas positive obligations require the State to take active steps to protect rights or improve conditions.²³⁶ Due diligence in relation to the obligation to respect becomes relevant when the State itself, through its policy or regulatory framework, contributes to the creation of a risk, rather than when the risk arises from factors entirely independent of the State's conduct.

In the context of economic sanctions, this analysis means that a sanctioning State cannot simply argue that its policy did not directly deny a right. If the regulatory framework of sanctions is designed to foreseeably undermine the enjoyment of fundamental rights, assessing the obligation to respect requires examining whether the State has exercised due diligence in designing and implementing its policy.

From a theoretical perspective, this connection suggests that the obligation to respect and the obligation to due diligence in regulatory policies are intertwined. The foreseeability of the consequences of a policy indicates that the risk was identifiable, and due diligence is a measure of how the state has behaved in the face of that risk.

²³⁶ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

In conclusion, due diligence illuminates the analytical dimension of the obligation to respect in complex situations. Respect for fundamental rights does not simply mean avoiding direct violations, but also requires that the state, in exercising its regulatory power, take into account the foreseeable consequences of its policies on rights. In cases where such consideration is lacking, the state's conduct can be considered inconsistent with the obligation to respect even in the absence of direct intervention.

3.3.3 Failure to Assess as Evidence of a Breach

Within the framework of the obligation of due diligence, an important question is what role the failure of a State to conduct a reasonable assessment of the foreseeable consequences of a public policy prior to its adoption. In other words, whether the lack of assessment can be considered an indication of a failure to comply with the standard of conduct expected of the state.²³⁷

In many public policies, especially those with broad economic or social implications, states usually assess the likely consequences before making a decision. This assessment may take the form of economic analyses, social studies or reviews of the human rights impacts of the policies. Such a process allows the state to identify foreseeable risks and, if necessary, take measures to mitigate them.

In this context, the absence of any systematic and documented assessment can be an indication that the state has not given sufficient attention to the foreseeable consequences of the policy in its decision-making process. Therefore, the failure to conduct an assessment can be considered as a reasonable indicator in the due diligence analysis. It is not in itself conclusive proof of a breach of an obligation, but it can indicate that the State has not acted reasonably in the face of foreseeable risks.

This is particularly important in policies that have a wide range of effects. The more likely a public policy is to have structural consequences in economic or social areas, the more the State is expected to consider its consequences. In such circumstances, adopting a policy

²³⁷ Ferstman, 'Due Diligence and Extraterritorial Cooperation' (n 149).

without a reasonable assessment of its effects can be a sign of disregard for foreseeable risks.²³⁸

This issue becomes particularly important in the context of economic sanctions. Sanctions are usually imposed through a set of financial, trade and institutional restrictions that can change the conduct of a network of economic actors. Such changes may have far-reaching consequences for access to goods, services or economic infrastructure. In such circumstances, the State is expected to make a reasonable assessment of the likely effects of the policy before adopting or continuing it.

The failure to do so can affect the due diligence analysis. If the State has acted without considering the foreseeable consequences of a broad regulatory policy, this may be an indication that the State has not given serious consideration to the risks associated with that policy. In such circumstances, the State's subsequent reliance on the complexity of the causal chain or the unpredictability of the consequences may be analytically weakened.

At the same time, it should be noted that the existence of a formal assessment is not in itself sufficient to meet the due diligence requirement. What matters is the actual quality of the assessment process. If the assessment carried out is merely formal or does not address identifiable risks, it cannot fully demonstrate compliance with the due diligence standard.

From a normative perspective, the requirement to assess foreseeable consequences is part of the good faith implementation of international obligations. States cannot absolve themselves of responsibility for their policies by ignoring available information or ignoring expert warnings. Policy impact assessment is a tool that allows a state to consider the consequences of a policy before making important decisions.²³⁹

In conclusion, the failure to carry out a reasonable assessment of the foreseeable effects of a policy can be used as evidence in the analysis of a breach of the obligation to exercise due diligence. This evidence becomes more important when the policy in question has a wide-ranging impact, structural consequences and identifiable risks to fundamental rights. In such

²³⁸ CESCR, General Comment No 14 (n 177).

²³⁹ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

circumstances, the lack of assessment may be an indication that the state has not observed the expected standard of conduct in its decision-making process.

3.4 The Criterion of Effective Causal Contribution

In the classical model of international responsibility, the causal relationship is often conceived as linear and direct. In this framework, the state's conduct is expected to have led to the harmful outcome relatively directly. This model works well in many traditional situations of responsibility, such as the use of force or direct violations of individual rights. However, in the context of complex economic policies, such as widespread sanctions, such a model faces serious difficulties.²⁴⁰

The harms caused by sanctions are usually not the result of a single action, but rather are produced through a series of chain reactions in the economic and institutional system. Financial restrictions may change the conduct of banks; this change in conduct may limit access to credit or trade; and these restrictions may ultimately affect access to essential goods or services. In such situations, the final outcome is the product of a multi-step process in which multiple factors act together.

In this situation, the insistence on finding a simple and direct causal relationship between the sanctions policy and the final outcome can lead to a deadlock in the analysis of responsibility. On the other hand, if every presence in a complex causal chain is considered as the basis for responsibility, the scope of responsibility will expand indefinitely. Therefore, legal analysis requires a criterion that can balance these two extremes.

The criterion of "effective causal contribution in the cumulative chain" is formulated precisely with this aim in mind. According to this criterion, responsibility can be assessed when the state's conduct plays a significant and significant role among the set of factors involved in creating the harmful situation. The focus here is not on the exclusivity of the cause, but on the causal weight of the state's conduct among the multiple factors.²⁴¹

²⁴⁰ *Certain Phosphate Lands in Nauru (Nauru v Australia) (Preliminary Objections)* [1992] ICJ Rep 240.

²⁴¹ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

More precisely, effective causal contribution is established when the removal of the state's conduct from the causal chain significantly changes the overall picture of the situation. If, without that conduct, the situation in question would not have occurred to the same extent, magnitude or form, then that conduct can be said to have made a significant contribution to causing or aggravating the result.²⁴²

This criterion has several important features. First, it recognizes the multifactorial nature of the harm. In many cases, various factors, including the domestic policies of the target state, the structural conditions of the global economy and market reactions, operate alongside the sanctions policy. The criterion of significant causal contribution does not deny the existence of these factors, but rather assesses the role of the sanctioning state among them.

The second feature of this criterion is that it distinguishes between a determining role and a marginal role. In a complex causal chain, there may be multiple factors, but they do not all have the same weight. If the sanctions policy plays only a secondary role in a process that is mainly caused by other factors, the threshold of significant causal contribution is not met. But if the sanctions policy is one of the main factors in creating or exacerbating the restrictive situation, then the necessary condition for responsibility analysis is met.

A third feature of this criterion is its link to the concept of foreseeability. If the structural consequences of a policy were reasonably foreseeable at the time of its design or implementation, the causal role of that policy in the chain of causing harm is strengthened. In such circumstances, the state cannot simply invoke the complexity of the economic system or the existence of multiple intermediaries to deny the relationship between its conduct and its consequences.

From a theoretical perspective, the effective causal contribution criterion is an attempt to adapt responsibility analysis to the complex realities of contemporary economic policies. In many cases, state power is exercised not through direct intervention but through regulatory frameworks that influence the conduct of a network of actors. In such circumstances, responsibility analysis must also be able to identify the state's role in this complex network of effects.

²⁴² Crawford and others (eds), *International Responsibility* (n 198).

However, this criterion still preserves the boundaries of responsibility. The existence of multiple factors or complex causal chains does not mean that any policy can be held responsible. Only when the state's conduct has made a real and meaningful contribution to the creation or perpetuation of the restrictive situation can an analysis of responsibility be justified.

In conclusion, the criterion of effective causal contribution in the cumulative chain provides an analytical framework that allows for the examination of responsibility in complex economic policies. On the one hand, it recognizes the real complexity of the causal chains in economic sanctions and, on the other hand, by setting a threshold for a meaningful role, it prevents the unlimited extension of responsibility.

3.4.1 Determinative Role versus Marginal Role

The adoption of the criterion of “effective causal contribution” requires a clear distinction to be made between the determinative role and the marginal role in the causal chain. In many economic and social processes, several factors are simultaneously involved in the formation of an outcome. In such circumstances, the presence of a factor in the causal chain alone is not sufficient to attribute international responsibility. What is important from a legal perspective is the actual weight of that factor in shaping the outcome.²⁴³

A determinative role is established when the State's regulatory framework is one of the main factors in creating or exacerbating the restrictive situation. The criterion here is whether removing that factor from the causal chain would significantly change the overall picture of the situation. If without that policy, the severity, scope or persistence of the restrictive situation would have been significantly reduced, then that policy can be said to have played a determinative role in the formation of the outcome.

In contrast, a marginal role arises when a factor has only a limited contribution to a process that is largely shaped by other independent factors. In such circumstances, even if that factor

²⁴³ Nollkaemper and Jacobs, ‘Shared Responsibility’ (n 115).

is theoretically present in the causal chain, its weight is not sufficient to establish international responsibility.

In the context of economic sanctions, this distinction is particularly important. The economic or social situation of a country may be influenced by a variety of factors, including the domestic policies of the target state, pre-existing economic structures, global market conditions, or the decisions of private actors. If the existing constraints are largely the result of such independent factors and the sanctions policy plays only a limited role in exacerbating them, the causal contribution of the sanctioning state may be reduced to a marginal level.

However, the situation is different in cases where the sanctions framework itself is one of the main factors in creating or perpetuating the restrictive situation. For example, if financial or trade restrictions are designed to structurally restrict access to key infrastructures in the international economy, the framework can play a decisive role in shaping the new economic conditions. In such a situation, even if other domestic or external factors are involved, the role of the sanctioning state can still be at the center of the causal chain.

Making this distinction requires a careful analysis of the available evidence and data. Economic reports, expert analyses, empirical data, and comparisons of the situation before and after the policy can all contribute to assessing the causal weight of the various factors. However, the final decision is a legal one. The main question is not which factor was the primary or which factor alone produced the outcome, but whether the regulatory framework in question made a substantial contribution to shaping the situation.²⁴⁴

The distinction between a decisive role and a marginal role also plays an important role in limiting the scope of responsibility. If every factor in the causal chain is treated as the basis for responsibility, the boundaries of responsibility quickly disappear. But by focusing on the determinative role, responsibility analysis becomes active only in cases where the policy in question is at the core of the causal structure.

At the same time, the determinative role can appear not only in the initial creation of the situation, but also in its perpetuation. Even if some economic or social problems existed

²⁴⁴ Boyle, 'State Responsibility and Liability' (n 210).

before the policy was implemented, the continuation of a regulatory framework that significantly contributed to the stabilization or exacerbation of that situation can strengthen the state's effective causal contribution at later stages.

In conclusion, the distinction between determinative and marginal roles is an analytical tool for operationalizing the criterion of effective causal contribution. This distinction allows the real role of state policies in causing or exacerbating harm to be assessed in complex and multi-factorial contexts, while avoiding an unlimited extension of responsibility.

3.4.2 Private Intermediaries and the Continuity of the Causal Chain

One of the most difficult issues in the analysis of causation in the context of economic sanctions is the role of private intermediaries in the practical implementation of the restrictions. In many cases, restrictions on access to financial, credit or trade services are not imposed directly by the sanctioning state, but by banks, insurance companies, transport companies or other economic actors. This situation raises the question of whether the intervention of these private actors breaks the causal chain between the sanctions policy and the final outcome.

In the classical theory of causation, the intervention of an independent agent can in some cases break the causal chain. If a third actor acts independently, unpredictably and outside the initial framework, the relationship between the initial conduct and the final outcome may be considered legally disconnected.²⁴⁵ However, such a conclusion is only acceptable if the conduct of the third actor is truly independent and unrelated to the initial framework.

In the context of economic sanctions, the conduct of private intermediaries often does not have this characteristic. Banks, insurance companies or financial institutions usually operate in an environment that is strongly influenced by sanctions regulations and related regulatory mechanisms. The risk of heavy financial fines, denial of access to international financial markets or other legal consequences naturally leads these actors to adjust their conduct to the sanctions framework.

²⁴⁵ Ilias Plakokefalos

In such circumstances, the cautious or restrictive conduct of private intermediaries cannot be considered simply an independent and separate decision. This conduct is often the expected and logical consequence of the regulatory framework established by the sanctioning state. When the regulatory policy is designed in such a way that non-compliance with it entails serious legal or economic risks, the cautious reaction of economic actors is part of the mechanism for implementing that policy.²⁴⁶

Thus, the presence of private intermediaries in many cases does not mean a break in the causal chain, but rather reflects the way in which regulatory authority operates in complex economic structures. Sanctions policy may not directly impose all restrictions, but it creates a framework within which different actors change their conduct to avoid legal or economic risks. This change in conduct is in fact one of the transmission channels of the effect of regulatory policy.

An important criterion in this context is the foreseeability of the conduct of private intermediaries. If the reaction of these actors is a normal and expected consequence of the sanctions framework, their presence does not break the causal chain. However, if their conduct is completely outside the logic of the regulatory policy, unusual, or based on other independent factors, it may be considered an independent intervention that weakens the original causal relationship.

In the context of sanctions, many of the phenomena known as “over-compliance” are examples of such predictable reactions. Financial institutions may limit the scope of their activities beyond formal requirements to avoid the risk of violating sanctions regulations. Although these decisions are made by private actors, they occur within a framework established by the regulatory policy of the state.²⁴⁷

From the perspective of responsibility analysis, the decisive point is whether the conduct of private intermediaries can be considered a rational response to the regulatory structure established. If so, this conduct is part of the causal chain resulting from the sanctions policy and cannot be considered as a factor breaking the causal relationship.

²⁴⁶ Boyle, ‘State Responsibility and Liability’ (n 210) .

²⁴⁷ De Schutter and others, ‘Maastricht Principles Commentary’ (n 86).

In conclusion, the intervention of private intermediaries in the practical implementation of the restrictions does not in itself break the causal chain. The decisive criterion is whether the conduct of these actors was a foreseeable and rational consequence of the regulatory framework established by the state. If so, the role of the state in the cumulative chain can still be identified and the responsibility analysis can proceed.

3.5 Cumulative and Intergenerational Effects on Children

The analysis of causality in the context of economic sanctions becomes more complex when considering their consequences in the area of children's rights. In this area, harms often appear not immediately and overtly, but gradually and cumulatively. Many economic or institutional changes first occur at the level of social and institutional structures and only at a later stage do they manifest their effects on the situation of children.²⁴⁸

An important feature of this type of harm is that the relationship between the initial policy and the final outcome is usually formed through a series of intermediate stages. Economic constraints may initially affect the financial capacity of the state or the functioning of certain economic sectors. These changes can lead to a reduction in resources in areas such as health services, education or social protection. The consequences of these reductions in resources are often not fully visible in the short term, but can affect the situation of children in the medium and long term.²⁴⁹

In such circumstances, causality analysis cannot rely solely on the classical model of a direct relationship between action and outcome. In many cases, the relationship between economic policy and harm to children is formed as a gradual, multi-stage process. Causality in this area is therefore more of a process than an event. What is important is the possibility of drawing a reasonable path that leads from the initial policy to the final consequences.

Another feature of this type of harm is its cumulative nature. Restrictions that have limited effects in the short term may have more serious consequences if they persist over time. For example, gradual reductions in resources in the education or health sector may initially lead

²⁴⁸ CRC, General Comment No 16 (n 147).

²⁴⁹ Stoyanova, 'Causation between Omission and Harm' (n 122).

to only a relative decline in the quality of services, but if they persist, they can have lasting effects on children's growth and development opportunities.

In some cases, these effects may even have intergenerational dimensions. Disruption of access to education, adequate nutrition or health services during childhood can have consequences that extend beyond a short period of time and affect the human capacities of the next generation.²⁵⁰ However, the introduction of the intergenerational concept in this analysis does not imply an unlimited extension of international responsibility. It is still necessary to show that the transmission path of the effect was analyzable and reasonably foreseeable.

From the perspective of international responsibility, the introduction of the concept of cumulative effects into the analysis of causation has two important consequences. First, the time gap between the initial policy and the final outcome does not in itself preclude the examination of the causal relationship. If the transmission path of the effect is identifiable, the time gap cannot be considered alone as an indication of a causal break. Second, the analysis of responsibility must consider the entire process path, not just the first stage of the effect.

However, this analysis must remain within the framework of the criterion of effective causal contribution. Even in cases where cumulative or long-term effects are observed, responsibility can only be raised if the role of the sanctions policy in creating or perpetuating this path can be meaningfully identified. The presence of multiple other factors in this path must still be taken into account in assessing the causal weight of each factor.

In conclusion, the cumulative and sometimes intergenerational nature of harm in the area of children's rights suggests that the analysis of causation in the context of economic sanctions must go beyond the classical model of an immediate relationship between action and effect. However, this analytical extension remains within the framework of the criterion of effective causal contribution and leads to responsibility only in cases where the role of the regulatory policy in shaping the path of harm can be meaningfully identified.

²⁵⁰ Augenstein and Kinley, 'Human Rights Responsibilities and Duties' (n 111); World Health Organization, 'Access to Medicines and Vaccines: Report of the Director-General' (2019) WHO Doc EB146/12

3.5.1 Temporality of Harm

In classical causality analysis, temporal proximity between conduct and consequence is often taken as an indication of the existence of a causal relationship. The greater the time gap between the initial act and the harmful outcome, the more difficult it is to prove this relationship. This is understandable in many traditional responsibility situations, since in those cases the consequences usually appear immediately or within a short time after the wrongful conduct.²⁵¹

However, in the context of widespread economic sanctions, particularly in the area of children's rights, such an assumption is not always applicable. Many of the consequences of such policies occur with a time lag. Economic sanctions often first affect financial, commercial or institutional structures and only at a later stage do the resulting disruptions do they spill over into public services or the living conditions of individuals. As a result, the consequences observed in the situation of children may appear after a considerable period of time.²⁵²

In such circumstances, the time lag between the initial policy and the final outcome does not necessarily mean that the causal relationship is broken. What is important in causal analysis is the ability to draw a reasonable path from the initial conduct to the final outcome. If it can be shown that the policy in question first affected economic or institutional structures and that these changes were logically transmitted to areas such as health services, education, or social protection, the time lag between the different stages of this process does not in itself break the causal relationship.

In analyzing such processes, attention must be paid to the staged nature of the transmission of the effect. Economic policy may initially limit the financial or institutional capacity of the State. These restrictions can lead to reduced investment in some public areas. The consequences of this reduced investment may only become apparent over time, in the form of gradual changes in the quality of services or their accessibility. In such cases, the causal relationship is not identifiable at a specific point in time, but rather along a gradual path.

²⁵¹ Boyle, 'State Responsibility and Liability' (n 210).

²⁵² UN Human Rights Council, 'Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights' UN Doc A/HRC/39/54 (30 August 2018).

At the same time, a long time interval can also increase the role of other independent factors. The more time that has passed since the initial policy, the more likely it is that new and independent factors have been involved in shaping the final situation. Therefore, causality analysis must simultaneously consider two aspects: on the one hand, accepting that structural damage may appear with delay, and on the other hand, examining whether new independent factors have come to dominate the situation.

Time can in some cases even strengthen the causal role of the initial policy. If the negative effects of a policy become apparent over time and the State continues the policy without reform despite being aware of these consequences, the continuation of that policy can strengthen the State's causal contribution to the continuation of the situation. In this case, the causal relationship is not limited to the initial moment of regulation, but also to the continuity of the regulatory framework.²⁵³

In conclusion, the temporality of harm suggests that causality analysis in the context of economic sanctions must be process-based and stage-based, not simply instantaneous and point-based. The time gap between policy and the final outcome does not in itself break the causal chain. What matters is the ability to identify a reasonable path of transmission of the effect and assess the effective contribution of the policy in question to this path.

3.5.2 Structural Accumulation and Irreversible Thresholds

In many cases, the consequences of economic sanctions appear not as a single event but as a gradual accumulation of constraints. Each constraint may have a limited effect on its own, but their combination and persistence over time can lead to more profound changes in economic and social structures. This phenomenon can be described as the structural accumulation of constraints.²⁵⁴

Structural accumulation occurs when a set of economic constraints gradually weakens the institutional or economic capacity of a society. Restrictions on access to financial resources, difficulties in trade, or increased economic costs may initially only cause limited pressure.

²⁵³ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

²⁵⁴ CRC, , General Comment No 14.

But if this situation persists over time, it can lead to reduced investment in vital sectors such as education, health, or social protection.²⁵⁵

In such circumstances, the changes produced are often gradual in nature. The quality of public services may slowly decline, institutional infrastructure may gradually weaken, and societal capacities to compensate may diminish. The consequences of this process are often not fully visible in the short term, but in the long term they can have more serious effects on the situation of vulnerable groups, including children.

In some cases, this cumulative process may reach a point where becomes possible to identify “irreversible thresholds.” These thresholds are situations where the damage has reached a level at which it is no longer possible to restore the situation to its previous state. For example, a long-term decline in the quality of education or a sustained disruption of health services may have consequences that cannot be fully compensated for even if economic conditions improve in the future.

In the area of children’s rights, this is particularly important. Many aspects of children’s physical, cognitive, and social development are highly dependent on the conditions provided at specific times in their lives. If access to education, adequate nutrition, or health services is seriously disrupted during these critical periods, the consequences may persist into later life.²⁵⁶

However, the introduction of the concept of irreversible thresholds in this analysis does not imply an unlimited extension of international responsibility. Even where such thresholds are identified, it must still be shown that the policy in question has contributed significantly to the formation or perpetuation of the cumulative path of harm. The presence of multiple other factors in this process must still be taken into account in assessing the causal weight of each factor.

From the perspective of responsibility analysis, the concept of structural accumulation has another important implication. It suggests that the assessment of the role of a policy should not be limited solely to its immediate consequences. In some cases, the real impact of a

²⁵⁵ CESCR, General Comment No 14 (n 177).

²⁵⁶ CRC, General Comment No 16 (n 147).

policy can only be seen in a longer time frame and in interaction with other constraints. Causation analysis must therefore be able to take this gradual path into account.

In conclusion, the concept of structural accumulation and irreversible thresholds suggests that the harms resulting from economic sanctions may be formed through a gradual and cumulative process. However, even in such circumstances, the analysis of responsibility should remain within the framework of the criterion of effective causal contribution and should only lead to the attribution of responsibility in cases where the role of the policy in question in creating or perpetuating this cumulative path can be meaningfully identified.

3.5.3 Limiting the Scope of Responsibility to Prevent Unlimited Expansion

The acceptance of cumulative causation, cumulative effects and intergenerational analyses can raise concerns that the scope of international responsibility will expand indefinitely. In the contemporary world, many economic policies have indirect and complex effects on social structures. If every contribution to a long-term causal chain is considered the basis for responsibility, the line between effective role and mere presence in an economic process will disappear.²⁵⁷

For this reason, the analysis presented in this study requires the establishment of specific thresholds for the attribution of responsibility. These thresholds ensure that the theory of regulatory authority does not lead to an unregulated expansion of responsibility and is applied only in cases where the role of the state in creating or exacerbating the restrictive situation can be meaningfully identified.

The first limitation concerns the nature of the conduct in question. The analysis of responsibility arises only in cases where the state has acted in the capacity of establishing or enforcing a binding regulatory framework. Policies that lack a clear normative structure or effective enforcement mechanisms, even if they have economic effects, do not fall within this framework. Thus, responsibility is assessed only where the State appears to be exercising public authority.

²⁵⁷ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

The second limitation concerns the element of foreseeability. Consequences that were completely unexpected, unusual or beyond any reasonable assessment cannot be the basis for responsibility. Foreseeability must be assessed on the basis of reasonable information and knowledge available at the time the policy was adopted or continued, not on the basis of purely ex post analysis that is possible only after the consequences have occurred.²⁵⁸

The third and most important limitation concerns the criterion of effective causal contribution. Even in cases where cumulative effects or complex causal chains are observed, responsibility can only be attributed if the policy in question made a significant contribution to creating or perpetuating the restrictive situation. If the sanctions policy is merely one of the minor factors in a broader context that is largely shaped by other factors, the threshold for attributing responsibility will not be met.²⁵⁹

The fourth limitation relates to the distinction between obligations of conduct and obligations of result. The activation of extraterritorial obligations in this context does not mean an absolute guarantee of economic or social outcomes. In many cases, what the state is expected to do is to take reasonable measures to assess, mitigate and review foreseeable consequences. This approach prevents the transformation of responsibility into a blanket guarantee obligation.²⁶⁰

The fifth limitation relates to the role of other independent factors. The economic and social situation of a country may be shaped by a combination of internal and external factors. If the analysis shows that other independent factors played a dominant role in creating the situation in question, the causal contribution of the sanctions policy may reach a level that can no longer be used as a basis for international responsibility.

This set of limitations shows that the regulatory authority theory does not seek to extend responsibility in an unregulated manner. The purpose of this analysis is simply to allow for the examination of legal responsibility in cases where the state plays a significant role in creating restrictive conditions through transboundary regulatory frameworks.

²⁵⁸ Crawford, *State Responsibility* (n 120).

²⁵⁹ Ilias Plakokefalos

²⁶⁰ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

Consequently, transboundary regulatory authority cannot be completely separated from the framework of legal responsibility. However, responsibility is only activated within the specific and restrictive conditions formulated in this chapter. These conditions allow for a balanced analysis of the relationship between regulatory power and legal responsibility in the context of complex economic policies.

3.6 Chapter Conclusion

Chapter Three was devoted to examining the question of how the relationship between sanctions policies and human rights harms can be analyzed within the framework of the international responsibility system. The starting point of this analysis was a reconstruction of the classical model of responsibility in international law. In this model, responsibility is based on three main elements: the attribution of the conduct to the State, the existence of a violation of an international obligation, and the existence of a causal link between the conduct and the harmful outcome. This framework remains effective in many traditional cases of responsibility, especially in direct and immediate violations.

However, the analysis showed that this model faces limitations when faced with complex economic policies, including widespread sanctions. In such policies, harmful consequences are often shaped by a chain of institutional, economic, and social reactions. The final outcome is usually not the product of a single cause, but rather the interaction of a set of factors that affect each other over time. In such circumstances, relying solely on a linear causal model can pose serious difficulties for the analysis of responsibility.

To address this challenge, this chapter introduces the concept of cumulative causation as a more appropriate analytical framework for examining the consequences of sanctions. In this framework, the focus shifts from searching for a single cause to assessing the causal role of different factors in a complex chain. Accordingly, international responsibility can be examined even in situations where the final outcome is the result of the interaction of several factors, provided that the State's conduct has made a significant contribution to creating or exacerbating the harmful situation.

Next, the concept of foreseeability was introduced as an important element in the analysis of causality. In structural policies, especially in the area of economic sanctions, many consequences may be shaped by indirect market reactions or the behavior of third-party actors. In such circumstances, the criterion of foreseeability allows the State's contribution to creating dangerous conditions to be assessed, even if the causal relationship cannot be drawn in a completely direct manner.

The analysis was then completed by examining the role of the obligation to exercise due diligence. This concept suggests that states are required to reasonably assess and manage foreseeable risks to fundamental rights in the exercise of their regulatory powers. In this context, failure to take into account foreseeable consequences or the lack of an appropriate assessment can be a sign of failure to meet the expected standard of conduct.

The most important analytical step in this chapter was the formulation of the criterion of "effective causal contribution to the cumulative chain". This criterion attempts to balance two conflicting imperatives: on the one hand, to acknowledge the real complexity of causal chains in contemporary economic policies, and on the other, to prevent the unlimited extension of international responsibility. Under this criterion, responsibility can only be considered when the State's regulatory framework makes a significant and decisive contribution to creating or perpetuating the restrictive situation.

The analysis of cumulative effects, temporality of harm, and the role of private intermediaries also showed that in many cases, the path from sanctions policy to human rights consequences is shaped by a gradual and multi-stage process. In such circumstances, the time gap, the presence of multiple factors, or the role of private actors does not necessarily mean a break in causality, but should be examined within the framework of a structural and staged analysis.

Finally, to prevent the unlimited development of responsibility, a set of analytical constraints was introduced. The existence of a binding regulatory framework, the predictability of consequences, the establishment of an effective causal contribution, the distinction between behavioral and result-oriented obligations, and the role of other independent factors are among the conditions that limit the scope of responsibility within this framework.

From an innovative perspective, this chapter has attempted to reconcile the analysis of international responsibility with the complex realities of contemporary economic policies. The main innovation is in the formulation of the criterion of effective causal contribution in the cumulative chain and its connection with the concepts of foreseeability, due diligence and cumulative effects. This analytical framework shows that even in complex causal contexts, the relationship between the regulatory authority of states and their legal accountability can be examined in a coherent manner.

Accordingly, Chapter 3 provides the necessary theoretical foundation for examining the normative framework limiting this responsibility. If sanctions policies can create international responsibility in certain circumstances, the next question is under which human rights obligations and principles this responsibility should be assessed. The answer to this question will be the subject of the next chapter, which examines the human rights framework governing the exercise of cross-border regulatory authority.

CHAPTER FOUR

Normative Limits on Sanction Authority

4.1 Collective Security and Sanctions

In the contemporary international legal order, economic sanctions are not simply instruments of state foreign policy, but also have a legal status within the framework of the collective security system.²⁶¹ Understanding the normative limits on sanctioning authority is not possible without explaining its relationship to collective security, because an important part of the alleged legitimacy of sanctions derives from their connection to the task of maintaining international peace and security.²⁶² In the legal architecture of the United Nations, the primary responsibility for maintaining international peace and security is vested in the Security Council, which can take binding measures in the face of a threat to peace or a breach of the peace.²⁶³ In this context, economic sanctions are one of the most important non-military instruments that allow the Council, without resorting to military force, to influence state conduct in order to secure compliance with international obligations.²⁶⁴

The collective security system is based on the idea that threats to peace are not a purely bilateral issue between states, but are a matter that involves the entire international community.²⁶⁵ For this reason, the UN Charter has defined the organization's fundamental purpose as the maintenance of international peace and security through collective action.²⁶⁶ In such a structure, the response to serious violations of the international order goes beyond the level of relations between states and is elevated to the level of institutional action. Sanctions are justified in this context not simply as a punitive measure, but as a means of enforcing collective order and restoring a situation consistent with international obligations.²⁶⁷

²⁶¹ Dan Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford University Press 1999).

²⁶² de Wet, *Chapter VII Powers* (n 16).

²⁶³ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 24(1).

²⁶⁴ Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (Oxford University Press 2013).

²⁶⁵ UN Charter (n 263), art 1(1)

²⁶⁶ UN Charter (n 263), arts 1(1), 24.

²⁶⁷ Tzanakopoulos, *Disobeying the Security Council* (n 264).

However, accepting sanctions as an instrument of collective security does not mean granting unlimited authority. The Charter of the United Nations stipulates that the Security Council, in carrying out its functions, must act in accordance with the purposes and principles of the Organization.²⁶⁸ Hence, even when the Council is acting under Chapter VII, the exercise of sanctioning authority does not take place in a normative vacuum. The measures taken must be aimed at maintaining or restoring international peace and security and the manner in which they are exercised must remain consistent with the fundamental principles of the international legal order.²⁶⁹ Collective security cannot be interpreted as a basis for disregarding fundamental obligations of international law, including obligations to protect fundamental human rights.²⁷⁰ The case-law of the International Court of Justice has also emphasized that the exercise of institutional powers within the framework of the United Nations system must be assessed in the light of the general rules of international law, including human rights.²⁷¹

Here a structural tension arises between two sets of considerations. On the one hand, a collective security system requires that the international community be able to respond effectively to serious threats to peace. On the other hand, the exercise of this authority cannot be indifferent to the human and legal consequences of the measures taken. The main issue here is not whether security or human rights are absolutely superior to the other, but rather that the sanctioning authority must be exercised within a framework that balances security effectiveness with the normative constraints of the international legal order.²⁷²

The experience of comprehensive sanctions in recent decades has shown that broad economic measures can have significant effects on the living conditions of the civilian population.²⁷³ The comprehensive sanctions imposed in the 1990s, particularly in the case of Iraq, drew widespread attention to the humanitarian consequences of such policies and paved the way for a gradual transformation in the design of sanctions regimes.²⁷⁴ As a result of this experience, there has been a growing trend in the literature and practice of the Security

²⁶⁸ UN Charter (n 263), art 24(2).

²⁶⁹ de Wet, *Chapter VII Powers* (n 16).

²⁷⁰ Subedi (ed), *Unilateral Sanctions* (n 34).

²⁷¹ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v United States) (Provisional Measures)* [1992] ICJ Rep 114.

²⁷² Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge University Press 2007).

²⁷³ Biersteker, Eckert and Tourinho, *Targeted Sanctions* (n 37).

²⁷⁴ Masahiko Asada, *Economic Sanctions in International Law and Practice* (Routledge 2019) 270.

Council towards targeted or “smart” sanctions, which aim to reduce the negative impact on the civilian population and focus on the actors deemed responsible.²⁷⁵

From a theoretical perspective, collective security should be seen as the basis for the authority to act, not as an absolute exception to other legal obligations. In other words, the fact that a measure is taken in the context of the maintenance of international peace and security does not in itself exempt it from assessment in the light of other rules of international law.²⁷⁶ The case-law of the International Court of Justice also shows that, even in situations related to international security, the legal analysis of the actions of States and international institutions must be conducted within the overall framework of the international legal system and the obligations arising from it.²⁷⁷ In this sense, authority and obligation are formed simultaneously: wherever regulatory authority is exercised, the question of its normative limits will also arise.

Consequently, sanctions in the context of collective security have a clear legal basis, but this basis does not create unlimited authority. Collective security explains the legitimate aim of sanctions measures, but the means of achieving this aim must be assessed in the light of other fundamental norms of the international legal system, including obligations related to the protection of human rights.²⁷⁸ This tension between the necessity of security action and the existence of normative limitations is the starting point for the analysis of the limits of sanctioning authority in this chapter.

4.2 Peremptory Norms and Obligations Erga Omnes as Hierarchical Limits to Sanctioning Authority

If the previous section showed that collective security can be the primary basis for the exercise of sanctioning authority, a more important question arises: whether sanctioning authority, even when exercised with the aim of maintaining international peace and security, faces insurmountable limits within the normative structure of international law. The answer to this question depends on the structure of the international legal system. If this system has

²⁷⁵ van den Herik (ed), *UN Sanctions and International Law* (n 190).

²⁷⁶ Devon Whittle, ‘The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action’ (2015) 26(3) *European Journal of International Law* 671.

²⁷⁷ *Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) (Second Phase)* [1970] ICJ Rep 3.

²⁷⁸ Subedi (ed), *Unilateral Sanctions* (n 34).

some kind of normative hierarchy, then the exercise of sanctioning authority cannot take place in a vacuum, but must be analyzed in relation to the fundamental norms of the international legal system.²⁷⁹

In contemporary international law, two concepts play a central role in identifying these fundamental limits: peremptory norms and obligations erga omnes.²⁸⁰ Peremptory norms indicate the existence of norms that the international community as a whole accepts as fundamental rules of the legal order and from which no deviation is permitted.²⁸¹ In contrast, obligations erga omnes. refer to obligations whose observance is not limited to relations between specific states, but in whose implementation the entire international community has a legal interest.²⁸²

Although these two concepts are not entirely identical in terms of theoretical basis and legal function, they play a complementary role in the analysis of the limits of sanctioning authority.²⁸³ Peremptory norms indicate the existence of boundaries that cannot be crossed even in extreme security situations, while obligations erga omnes. indicate that some fundamental obligations are of such importance that their violation is not considered a mere bilateral issue between states, but concerns the entire international community.²⁸⁴

In the context of economic sanctions, these two concepts suggest that even when a sanctions regime is adopted in the context of collective security or in response to serious threats to peace, its application cannot take a form that conflicts with the fundamental norms of the international legal order.²⁸⁵ In other words, the legitimacy of the security objectives alone is not sufficient to justify any form of exercise of economic authority. Rather, the manner in

²⁷⁹ Alexander Orakhelashvili, 'The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions' (2005) 16(1) *European Journal of International Law* 59.

²⁸⁰ Dire Tladi, *The International Law Commission's Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)* (Oxford University Press 2024).

²⁸¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53.

²⁸² *Barcelona Traction (n 277)*.

²⁸³ Thomas Kleinlein, 'Jus Cogens as the "Highest Law"? Peremptory Norms and Legal Hierarchies' in Maarten den Heijer and Harmen van der Wilt (eds), *Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?* (TMC Asser Press 2016) 173.

²⁸⁴ Yoshifumi Tanaka, 'The Legal Consequences of Obligations Erga Omnes in International Law' (2021) 68(1) *Netherlands International Law Review* 1.

²⁸⁵ Daniel Costelloe, 'Peremptory Norms and Resolutions of the United Nations Security Council' in Dire Tladi (ed), *Peremptory Norms of General International Law (Jus Cogens)* (Brill Nijhoff 2021) 441.

which this authority is exercised must be assessed in light of the higher norms of the international legal order.²⁸⁶

This analysis assumes particular importance within the framework of the theory of regulatory authority developed in this thesis. If sanctions are imposed by regulating access to critical economic infrastructure and this regulation has structural and foreseeable effects on the enjoyment of fundamental rights, their legitimacy cannot be assessed solely on the basis of institutional competence or security objective. Rather, it must be examined whether the effects of this policy are consistent with the fundamental norms of the international legal order.²⁸⁷

From this perspective, peremptory norms and obligations *erga omnes*. provide a framework within which to analyze the hierarchical limits of sanctioning authority.²⁸⁸ This framework shows that even in the context of collective security, the exercise of economic power takes place within a normative structure that imposes some fundamental limits on sanctioning authority.

4.2.1 Peremptory Norms as an Inviolable Non-Derogable Limit of Authority

Peremptory norms in international law are recognized as norms that the international community as a whole accepts as fundamental rules of the legal order.²⁸⁹ The defining feature of these rules is that no treaty or legal act can conflict with them and any rule that is inconsistent with them is considered invalid. This feature is specified in Article 53 of the Vienna Convention on the Law of Treaties, which defines peremptory norms as norms from which no deviation is permitted and which can only be changed by the emergence of a new rule of the same nature.²⁹⁰

²⁸⁶ de Wet, *Chapter VII Powers* (n 16).

²⁸⁷ August Reinisch, 'Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions' (2001) 95(4) *American Journal of International Law* 851.

²⁸⁸ Christian J Tams, *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005).

²⁸⁹ Tladi, *Peremptory Norms (Jus Cogens)* (n 280).

²⁹⁰ VCLT (n 281), art 53.

In this context, peremptory norms represent a kind of structural superiority in the international legal system.²⁹¹ This superiority means that even in situations where States or international institutions have extensive powers, the exercise of these powers cannot be in take a form that conflicts with the fundamental norms of the international legal order. It is also widely accepted in the literature of international law that peremptory norms form part of the fundamental structure of the legal system and therefore take precedence over other legal norms.²⁹²

In the analysis of sanctioning authority, the importance of peremptory norms is that even if sanctions are adopted within the framework of the Security Council's broad competence or as part of collective action by the international community, they cannot lead to a situation that conflicts with the core of fundamental norms.²⁹³ For example, fundamental rights such as the right to life or the prohibition of inhuman and degrading treatment are among the rights that are closely related to the core of peremptory norms and their violation cannot be justified by political or security considerations.²⁹⁴

The important point in this context is that a conflict with peremptory norms does not always manifest itself in the form of a direct violation of a specific conduct. In some cases, a legal or economic framework may indirectly create conditions that are in practice incompatible with the core of these norms. In the context of economic sanctions, this issue arises when a sanctions regime is designed to have widespread and predictable effects on conditions that are relevant to the minimum necessary to maintain life or human dignity.²⁹⁵

This is particularly important in the context of the theory of regulatory authority presented in this thesis. This theory suggests that legal authority can be exercised not only through direct action, but also through the regulation of economic and institutional structures. Consequently, if authority is exercised at the structural level, conflicts with fundamental norms can also arise at the structural level, even in situations where no individual conduct is considered a direct violation of a peremptory norm.

²⁹¹ M Cherif Bassiouni, 'International Crimes: "Jus Cogens" and "Obligatio Erga Omnes"' (1996) 59(4) *Law and Contemporary Problems* 63.

²⁹² Kleinlein, 'Jus Cogens as the "Highest Law"' (n 283).

²⁹³ Christian Tomuschat, 'The Security Council and Jus Cogens' in Enzo Cannizzaro (ed), *The Present and Future of Jus Cogens* (Sapienza University Press 2015) 7.

²⁹⁴ Tams, *Obligations Erga Omnes* (n 288)., CESCR, General Comment No 8 (n 232).

²⁹⁵ Dupont, 'Human Rights Implications' (n 31).

In such circumstances, the question of the legitimacy of sanctioning authority is no longer limited to examining the competence of the decision-making body, but also extends to assessing the compatibility of the structural effects of sanctions policy with the core of peremptory norms of the international legal system.²⁹⁶ In this way, peremptory norms serve as one of the most important normative limits on sanctioning authority, demonstrating that even in the most severe security conditions, some fundamental boundaries remain in the international legal order.

4.2.2 Obligations Erga Omnes and the Collective Interest in Compliance

Alongside peremptory norms, the concept of obligations erga omnes is also of fundamental importance in determining the limits of sanctioning authority.²⁹⁷ This concept refers to obligations whose implementation, due to their fundamental importance, is not limited to relations between two States but concerns the entire international community.²⁹⁸ The International Court of Justice made this distinction clear in its famous judgment in the *Barcelona Traction* case, stating that some obligations, including those relating to the protection of fundamental human rights, are of such a nature that all States have an interest in their compliance.²⁹⁹

This analysis shows that the violation of some obligations is not merely a matter between two States, but is a matter in which the entire international community has an interest. Consequently, compliance with these obligations is seen as part of the international public order. obligations erga omnes do not mean that all States have the authority to directly enforce them in all circumstances, but rather that they are of such importance that their observance is of concern to the entire international community.³⁰⁰

In the context of economic sanctions, this concept has important implications for the analysis of responsibility. The sanctioning State cannot ignore fundamental human rights obligations simply because it has no contractual relationship with the affected individuals or no

²⁹⁶ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

²⁹⁷ *Barcelona Traction* (n 277).

²⁹⁸ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

²⁹⁹ Tanaka, 'Legal Consequences of Erga Omnes' (n 284).

³⁰⁰ Reinisch, 'Accountability of the Security Council' (n 287).

territorial presence in the territory of the targeted State. If a sanctions framework is designed to have predictable and structural effects on the enjoyment of fundamental rights by individuals outside the territory of that State, the issue is no longer limited to bilateral relations between States. In such a situation, the effects of sanctions policy fall within the scope of obligations whose observance is of concern to the entire international community.³⁰¹

The gradual development of jurisprudence has also reinforced this perception. The International Court of Justice in *Belgium v Senegal* emphasized that certain obligations arising from treaties relating to the protection of fundamental rights are of a nature in which all States are interested and can claim compliance.³⁰² This approach suggests that, where fundamental obligations are at issue, the analysis of responsibility cannot remain solely within the framework of bilateral relations between States.

Within the framework of the theory of regulatory authority presented in this thesis, obligations *erga omnes* play a reinforcing role in the analysis of extraterritorial obligations. When transboundary regulatory authority produces structural effects on the enjoyment of fundamental rights, these effects fall within the scope of obligations whose observance is of concern to the international community as a whole.³⁰³ Hence, the analysis of responsibility in such cases cannot be carried out solely on the basis of traditional criteria of territorial jurisdiction, but must be assessed in the light of the *erga omnes* character of the fundamental obligations.

Thus, the concept of obligations *erga omnes* suggests that the human rights effects of sanctions cannot be viewed as a purely domestic matter for the target state. When cross-border economic power is exercised in a way that predictably affects the enjoyment of fundamental rights by individuals, the assessment of the legitimacy and responsibility of these actions will arise within the broader framework of international public order.³⁰⁴

4.2.3 The Relationship Between the Security Council's Powers and Superior Norms

³⁰¹ Tams, *Obligations Erga Omnes* (n 288).

³⁰² *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422.

³⁰³ de Wet, *Chapter VII Powers* (n 16).

³⁰⁴ Tanaka, 'Legal Consequences of Erga Omnes' (n 284).

One of the most sensitive issues in analyzing the limits of sanctions authority is the relationship between the Security Council's powers and superior norms of the international legal system. The Security Council, under the UN Charter, has broad authority to take binding measures in the face of threats to peace.³⁰⁵ Decisions taken within the framework of Chapter VII of the Charter are binding on all member states and can have direct and widespread effects on the legal status of states and individuals. This breadth of authority has made the Security Council one of the most important bodies influencing economic and political relations at the international level.

At the same time, the UN Charter stipulates in Article 103 that in the event of a conflict between obligations arising from the Charter and other international treaty obligations of states, the obligations of the Charter shall take precedence.³⁰⁶ This rule allows the Council to take decisions in situations of threats to peace that may conflict with some of the treaty obligations of states. For this reason, the principle of the primacy of the Charter is considered one of the most important legal foundations of the Security Council's authority to take binding measures.

However, the principle of the primacy of the Charter does not mean that the Security Council is excluded from the entire system of international law. The Charter itself is part of the same legal order in which peremptory norms are recognized as fundamental norms.³⁰⁷ Therefore, it has been argued in international law literature that even the powers of the Security Council must be interpreted within the framework of the fundamental norms of the international legal order and cannot be exercised in a way that conflicts with peremptory norms.³⁰⁸

Judicial developments have also reinforced this argument. For example, in the Kadi case of the Court of Justice of the European Union, the Court emphasized that even measures taken in implementation of Security Council resolutions cannot be exempt from review in the light of fundamental legal principles.³⁰⁹ The Court clarified that the implementation of Security Council resolutions in the EU legal order must be compatible with fundamental legal

³⁰⁵ Rain Liivoja, 'The Scope of the Supremacy Clause of the United Nations Charter' (2008) 57(3) *International and Comparative Law Quarterly* 583.

³⁰⁶ UN Charter (n 263), art 103.

³⁰⁷ Tomuschat, 'Security Council and Jus Cogens' (n 293).

³⁰⁸ Kleinlein, 'Jus Cogens as the "Highest Law"' (n 283).

³⁰⁹ Gráinne de Búrca, 'The European Court of Justice and the International Legal Order after Kadi' (2010) 51 *Harvard International Law Journal* 1.

principles, including the protection of fundamental rights. Although this judgment was delivered within the framework of EU law, it reflects the growing tendency of legal systems to assess sanctions measures normatively.

From this perspective, the powers of the Security Council must be analysed at two distinct levels. At the first level, the Council has broad institutional competence to adopt binding decisions, and member states are obliged to implement these decisions. At the second level, the normative legitimacy of the content of these decisions is still assessed within the framework of the fundamental principles of the international legal order.³¹⁰ In other words, the legal validity of a measure does not necessarily imply its immunity from normative scrutiny.

This distinction becomes particularly important within the framework of the theory of regulatory authority presented in this thesis. If the Security Council's institutional authority is exercised through the regulation of access to critical economic infrastructure and this regulation has structural and predictable effects on the enjoyment of fundamental rights, that authority is subject to the same normative questions as are raised about the actions of individual States. In such circumstances, the analysis of the legitimacy of sanctions is not limited to examining the Council's competence, but also extends to assessing the compatibility of their effects with the fundamental norms of the international legal order.³¹¹

Thus, the relationship between the Security Council's powers and higher norms cannot be conceived as an absolute opposition between security and fundamental rights. The Security Council continues to play a central role in maintaining international peace and security, but the exercise of this institutional authority takes place within a normative framework within which certain fundamental limits cannot be crossed.³¹² This framework shows that even at the highest levels of institutional authority, power and obligation are simultaneously constituted.

4.2.4 Normative Implications for the Theory of Regulatory Authority

³¹⁰ Whittle, 'Limits of Legality and the Security Council' (n 276).

³¹¹ Tzanakopoulos, *Disobeying the Security Council* (n 264).

³¹² Tomuschat, 'Security Council and Jus Cogens' (n 293).

The combination of peremptory norms and obligations erga omnes shows that regulatory authority, even when exercised with a legitimate security objective, cannot be considered absolute.³¹³ In the international legal order, the exercise of legal power always takes place within a framework of fundamental norms that determine the limits of its legitimacy. From this perspective, although economic sanctions can also be justified within the framework of collective security objectives, the manner in which they are applied must remain consistent with the fundamental norms of the international legal system.

Within the framework of the theory of regulatory authority developed in this thesis, assessing the legitimacy of economic sanctions requires a two-stage analysis. In the first stage, it must be examined whether the sanctioning measure was actually taken in pursuit of a legitimate aim in the field of international security. This stage concerns the assessment of the jurisdictional basis and the declared purpose of the measure. However, this examination alone is not sufficient to determine the legitimacy of a sanctions regime.

The second stage concerns the assessment of the compatibility of the mode of exercising authority with the overriding norms of the international legal system. Even where a security objective is considered a legitimate measure, this cannot in itself justify a conflict with fundamental rules. Peremptory norms and obligations erga omnes show that there are certain limits to the international legal order that cannot be ignored even in extreme security situations.³¹⁴

This conclusion has important implications for the analysis of responsibility in the context of sanctions. If a sanctions regime is designed or implemented in such a way that its structural and foreseeable effects conflict with fundamental norms of the international legal order, its legitimacy cannot be defended solely on the basis of a security objective. In such circumstances, the issue is no longer limited to policy efficiency or political legitimacy, but is elevated to the level of normative assessment within the framework of international law.

In the theory of regulatory authority, this analysis is linked to the concept of extraterritorial obligations. When cross-border economic power is exercised in a way that affects the conditions of enjoyment of fundamental rights outside the territory of the exercising State,

³¹³ Tams, *Obligations Erga Omnes* (n 288).

³¹⁴ Orakhelashvili, 'Peremptory Norms and UN Security Council' (n 279).

the question of responsibility can no longer be answered solely on the basis of traditional criteria of territorial jurisdiction. Rather, it must be examined whether the exercise of this power was consistent with the normative limits of the international legal system.

From this perspective, Peremptory norms and obligations *erga omnes* provide a framework within which the limits of the legitimacy of the sanctioning authority can be analyzed. This framework shows that even in the context of collective security, the exercise of economic power must be assessed in the light of the fundamental principles of the international legal order. As a result, regulatory authority not only raises questions of jurisdiction and causality, but also raises the need to assess its compatibility with the fundamental norms of the international legal system.

Thus, the analysis presented in this section shows that the assessment of the legitimacy of economic sanctions cannot be limited solely to examining their jurisdictional basis. Rather, it must be done within a broader framework in which the relationship between authority, obligation, and the fundamental norms of the international legal order is considered simultaneously. This conclusion paves the way for an examination of the practical criteria for measuring the legitimacy of sanctioning authority, which will be analyzed in the following sections of the chapter.

4.3 Security Council Powers in Light of Normative Limitations on Sanctions Authority

The Security Council has the broadest authority in the architecture of the collective security system to take binding measures against states.³¹⁵ Economic sanctions have become one of the most important non-military instruments of this institution in recent decades, and through them the Council can provide a coordinated response to threats to peace without resorting to military force.³¹⁶ These powers are exercised under Chapter VII of the UN Charter, and after determining the existence of a threat to peace, breach of the peace, or act of aggression, the Council can take various measures, including economic sanctions.³¹⁷ The Council's

³¹⁵ Sarooshi, *Development of Collective Security* (n 261).

³¹⁶ Tzanakopoulos, *Disobeying the Security Council* (n 264).

³¹⁷ UN Charter (n 263), arts 39–41

decisions within this framework are binding on all member states and can have direct effects on the legal status of states and individuals.³¹⁸

The Security Council's authority in this area is institutional and collective in nature. Unlike unilateral actions by states, the primary legitimacy of this authority stems from the structure of collective security and the delegation of authority by the international community.³¹⁹ For this reason, Security Council sanctions are a clear example of the exercise of regulatory authority at the institutional level. These sanctions often regulate access to financial resources, banking networks, international trade or specific technologies and can thus affect economic and legal structures at a transnational level.³²⁰

However, the breadth of the Security Council's powers has raised important questions about the normative limits of this authority. Although the UN Charter grants the Council broad powers, these powers do not operate in a legal vacuum. In carrying out its functions, the Council must act within the framework of the purposes and principles of the United Nations.³²¹ These purposes and principles include respect for and promotion of human rights. Hence, even when the Council is acting under Chapter VII, the analysis of the legitimacy of its actions cannot be entirely divorced from human rights considerations.

The experience of broad economic sanctions in recent decades has shown that sanctions measures can have profound and far-reaching effects on the living conditions of the civilian population.³²² The comprehensive sanctions imposed on Iraq in the 1990s were widely criticized for having significant humanitarian consequences for the civilian population.³²³ This experience eventually led to a gradual transformation in the Security Council's approach to the design of sanctions regimes, reinforcing the trend towards targeted or "smart" sanctions aimed at reducing the negative impacts on the civilian population.³²⁴

³¹⁸ de Wet, *Chapter VII Powers* (n 16).

³¹⁹ *Ibid.*

³²⁰ Tzanakopoulos, *Disobeying the Security Council* (n 264).

³²¹ Ruys, 'Sanctions, Retortions and Countermeasures' (n 33).

³²² Jerg Gutmann, Matthias Neuenkirch, Florian Neumeier and Armin Steinbach, *Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle* (Research Papers in Economics No 2/18, 2018).

³²³ *Ibid.*

³²⁴ van den Herik (ed), *UN Sanctions and International Law* (n 190).

Within the framework of the theory of regulatory authority, these developments show that the Security Council's sanctioning authority cannot be considered as entirely immune from normative scrutiny. If the Council regulates access to critical economic infrastructure through sanctions and this regulation has structural and predictable effects on the enjoyment of fundamental rights, the question of the limits of its legitimacy will arise. In such circumstances, the legal analysis of the Council's actions is not limited to examining its institutional competence, but also extends to assessing the normative effects of the sanctions policy.

This does not mean denying the role of the Security Council in maintaining international peace and security. The Council remains the central institution of the collective security system, and in many cases, sanctions are one of the few non-military instruments at the disposal of the international community to respond to serious violations of international order. However, accepting this institutional role does not mean that the exercise of sanctions authority is immune from any normative assessment. Even at the institutional level, authority is exercised within a legal framework in which power and obligation are simultaneously constituted.³²⁵

From this perspective, the analysis of the Security Council's powers must distinguish between two levels. At the first level, the Council has broad authority to adopt binding measures within the framework of Chapter VII. At the second level, the normative legitimacy of the content of these measures is still assessed in the light of the fundamental principles of the international legal order.³²⁶ This distinction shows that the jurisdictional validity of a binding decision does not necessarily mean that it is completely immune from normative assessment.

Consequently, the Security Council's powers in the area of sanctions must be analyzed within a framework that both recognizes the centrality of this body in the collective security system and takes into account the normative limits to the exercise of power. Such an analysis shows that even at the highest level of institutional authority the exercise of economic power must be assessed in light of the fundamental principles of the international legal order. This conclusion paves the way for a more detailed examination of the criteria for measuring the

³²⁵ Dupont, 'Human Rights Implications' (n 31).

³²⁶ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

legitimacy of sanctioning authority, which will be analyzed in the following sections of the chapter.

4.3.1 Jurisdictional Basis and Nature of the Security Council's Authority

The Security Council's authority to impose economic sanctions is primarily defined within the framework of Chapter VII of the Charter of the United Nations. According to Article 39 of the Charter, the Security Council must first determine the existence of a threat to the peace, breach of the peace or act of aggression. Following this determination, the Council may take such measures as may be necessary to maintain or restore international peace and security. Within this framework, Article 41 of the Charter allows the Council to take measures not involving the use of military force, including the interruption or restriction of economic relations, transport links, financial relations or other economic interactions.³²⁷

An important feature of these powers is that decisions taken within the framework of Chapter VII are binding on all Member States. Article 25 of the Charter stipulates that the Members of the United Nations are obliged to accept and carry out the decisions of the Security Council.³²⁸ Therefore, Security Council sanctions regimes can have wide-ranging legal effects, affecting not only States but also natural and legal entities. This feature has made Security Council sanctions one of the most important instruments for regulating economic behavior at the international level.³²⁹

From a legal perspective, the authority of the Security Council in this area is institutional and collective in nature. Unlike unilateral actions by states, this authority is based on the collective security structure of the United Nations and its primary legitimacy derives from the delegation of authority by the international community.³³⁰ As a result, Security Council sanctions can be analyzed as an example of the exercise of regulatory authority at the institutional level. These sanctions are often imposed by regulating access to critical

³²⁷ UN Charter (n 263), arts 39 and 41; Safoura Moeeni, 'The Intergenerational Effects of Economic Sanctions' (2022) 36(2) *World Bank Economic Review* 269.

³²⁸ UN Charter (n 263), art 25

³²⁹ de Wet, *Chapter VII Powers* (n 16).

³³⁰ Sarooshi, *Development of Collective Security* (n 261); Seamus Byrne, 'Reclaiming Progressive Realisation: A Children's Rights Analysis' (2020) 28(4) *The International Journal of Children's Rights* 748.

infrastructure of the global economy, such as the international financial system, banking networks, trade in specific goods, or access to sensitive technologies.³³¹

However, the institutional nature of the Security Council's authority does not mean that this authority remains solely at the level of relations between states. Many Security Council sanctions regimes have directly targeted individuals and legal entities. Especially since the early 2000s, the Council has increasingly resorted to targeted sanctions, including the listing of individuals or entities, asset freezes, and travel restrictions.³³² This development indicates that the Council's sanctioning authority has in practice reached a level where it can also directly affect the legal status of individuals.

This development has made the discussion about the normative limits of the Security Council's powers more important. When the Council's decisions directly affect the rights and interests of individuals, the question of their compatibility with the fundamental principles of the international legal order becomes more salient. The international law literature has also increasingly emphasized that even Security Council actions under Chapter VII must be analysed in the light of the fundamental principles of international law.³³³

This feature is particularly important in the context of the theory of regulatory authority developed in this thesis. If the Security Council regulates access to economic resources or critical infrastructure through sanctions regimes and this regulation has structural effects on the enjoyment of fundamental rights, the authority exercised can be analysed as a kind of transboundary regulatory authority. In such circumstances, the legal analysis of the Council's actions is not limited to examining its institutional competence, but also extends to assessing its normative effects.

Thus, the jurisdictional basis of Security Council sanctions is legally clear and defined within the framework of the UN Charter. However, the broad and structural nature of this authority makes it particularly important to examine its normative limits. This provides the basis for a more detailed analysis of the relationship between the Security Council's powers and the normative constraints of the international legal order.

³³¹ Reinisch, 'Accountability of the Security Council' (n 287).

³³² Tzanakopoulos, *Disobeying the Security Council* (n 264).

³³³ Tomuschat, 'Security Council and Jus Cogens' (n 293).

4.3.2 The relationship Between the Principle of Primacy of the Charter and Superior Norms

One of the important issues in analyzing the limits of the authority of the Security Council is the relationship between the principle of primacy of the UN Charter and the superior norms of the international legal system. The UN Charter stipulates in Article 103 that in the event of a conflict between obligations arising from the Charter and other international obligations of States, the obligations of the Charter shall take precedence.³³⁴ This rule in practice creates a special position for obligations arising from decisions of the Security Council, since Member States are obliged to implement the decisions of the Council even in cases where they conflict with some of their treaty obligations.

The principle of primacy of the Charter acquires particular importance in the context of economic sanctions. Since many of the Security Council sanctions regimes entail restrictions on economic, financial or trade relations, their implementation may conflict with obligations arising from other treaties, including economic or trade treaties. In such cases, Article 103 of the Charter states that the obligations arising from the Charter and the decisions of the Security Council shall take precedence over other treaty obligations of States.³³⁵

However, the principle of the primacy of the Charter does not mean its absolute superiority over the entire system of international law. The Charter itself is part of the same legal order in which peremptory norms are recognized as fundamental norms. The Vienna Convention on the Law of Treaties states that no treaty may conflict with a peremptory norm and that any treaty that conflicts with such a norm shall be void.³³⁶ From this perspective, peremptory norms have a place in the system of international law that takes precedence even over treaty obligations.

³³⁴ UN Charter (n 263), art 103

³³⁵ Orakhelashvili, 'Peremptory Norms and UN Security Council' (n 279); Grégoire Mallard, Farzan Sabet and Jin Sun, 'The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions' (2020) 26(1) *Global Governance: A Review of Multilateralism and International Organizations* 121.

³³⁶ Tladi, *Peremptory Norms (Jus Cogens)* (280); Sue E Eckert, 'Counterterrorism, Sanctions and Financial Access Challenges: Course Corrections to Safeguard Humanitarian Action' (2021) 103(916–917) *International Review of the Red Cross* 415.

In the literature of international law, it has been argued on this basis that the powers of the Security Council cannot be interpreted in a way that would allow for conflict with peremptory norms. If peremptory norms are part of the fundamental structure of the international legal order, no institution can act outside this framework. Therefore, even decisions taken under Chapter VII of the Charter must be interpreted in the light of these fundamental norms.³³⁷

Judicial developments have also reinforced this argument. For example, in the Kadi case of the Court of Justice of the European Union, the Court emphasized that even measures taken to implement Security Council resolutions cannot be exempt from scrutiny in the light of fundamental legal principles. The Court stated that the implementation of Security Council resolutions in the EU legal order must be compatible with fundamental legal principles, including the protection of fundamental rights.³³⁸ Although this judgment was delivered in the context of EU law, it reflects a broader trend in contemporary legal systems to assess the normative validity of sanctions measures.

From this perspective, the relationship between the principle of the primacy of the Charter and the superior rules of the legal order cannot be conceived as a simple opposition between two rules. Article 103 of the Charter is designed primarily to resolve conflicts between States' treaty obligations, while peremptory norms have a different place in the structure of the international legal system. Consequently, an analysis of the limits of the authority of the Security Council requires that the principle of the primacy of the Charter be interpreted within the overall framework of the normative hierarchy of the international legal system.

This analysis is of particular importance in the context of the theory of regulatory authority presented in this thesis. If Security Council sanctions have structural and foreseeable effects on the enjoyment of fundamental rights by regulating access to critical economic infrastructure, the assessment of their legitimacy cannot be limited solely to the invocation of Article 103 of the Charter. Rather, it must be examined whether these effects are compatible with the fundamental norms of the international legal order.

³³⁷ de Wet, *Chapter VII Powers* (n 16).

³³⁸ *Joined Cases C-402/05 P and C-415/05 P, Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351.

Consequently, while the principle of the primacy of the Charter plays an important role in ensuring the effectiveness of the collective security system, it does not mean that Security Council decisions are absolutely immune from normative assessment. Even within the framework of the Security Council's broad powers, the question of the compatibility of sanctions measures with the fundamental norms of the international legal order remains.

4.3.3 The Security Council and Human Rights Obligations

A more complex question in the analysis of the limits of the Security Council's sanctioning authority is whether the body is required to take human rights considerations into account in the exercise of its powers. The UN Charter does not explicitly commit the Security Council to full respect for all human rights in all circumstances, but the Council operates within a system in which the protection of human rights is one of its fundamental objectives. The UN Charter identifies the promotion of respect for human rights and fundamental freedoms as one of the primary objectives of the organization.³³⁹ Hence, an analysis of the Security Council's actions cannot be completely separated from the broader framework of international human rights obligations.

Historical experience with economic sanctions has shown that Security Council decisions can have significant effects on the living conditions of the civilian population. The comprehensive sanctions imposed in the 1990s, particularly in the case of Iraq, were widely criticized for their widespread humanitarian consequences for the civilian population.³⁴⁰ This experience led to a greater focus in the legal literature and in the institutional practice of the Security Council on the human rights impacts of sanctions, and a gradual trend towards the design of targeted sanctions regimes aimed at reducing the negative impacts on the civilian population.³⁴¹

Alongside this institutional development, case law has also highlighted the importance of human rights considerations in the implementation of sanctions. In the Kadi case, the Court of Justice of the European Union emphasized that the implementation of Security Council

³³⁹ UN Charter (n 263), art 1(3); Fatemeh Kokabisaghi, 'Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review' (2018) 7(5) *International Journal of Health Policy and Management* 374.

³⁴⁰ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

³⁴¹ Reinisch, 'Accountability of the Security Council' (n 287).

resolutions within the framework of the EU legal order must be compatible with the fundamental principles of the protection of fundamental rights.³⁴² The Court stated that even in the context of the fight against terrorism and the implementation of Security Council decisions, it is essential to respect fundamental legal guarantees and fundamental rights of individuals. Although this judgment was issued within the framework of EU law, it reflects the growing attention to the human rights impacts of sanctions regimes in contemporary legal systems.

These developments take on particular importance within the framework of the theory of regulatory authority developed in this thesis. If the Security Council regulates access to critical economic infrastructure through sanctions regimes and this regulation has structural and foreseeable effects on the enjoyment of fundamental rights, the question of the normative limits of this authority will arise. In such circumstances, the legal analysis of the Council's actions is not limited to examining its institutional competence, but also extends to assessing its normative effects on the enjoyment of fundamental rights.

Accepting this does not mean that the Security Council is obliged to fully guarantee the realization of all human rights in all circumstances. The Council is a political institution with a security mission, and its actions are often taken in situations of severe international crises. However, this fact does not prevent the humanitarian and human rights implications of the Council's decisions from being taken into account in assessing their legitimacy. In this sense, human rights considerations into account does not mean completely limiting the Security Council's authority, but rather reflects the principle that even at the highest level of institutional authority, the exercise of power must be accompanied by fundamental human considerations.

Consequently, the relationship between the Security Council and human rights obligations must be analyzed within a framework that recognizes both the Council's central role in maintaining international peace and security and the importance of protecting fundamental human rights. Such an analysis suggests that the Security Council's sanctioning authority,

³⁴² *Kadi (n 388)*; Jerg Gutmann, Matthias Neuenkirch and Florian Neumeier, 'Sanctioned to Death? The Impact of Economic Sanctions on Life Expectancy and Its Gender Gap' (2021) 57(1) *The Journal of Development Studies* 139.

while enjoying a strong jurisdictional basis, cannot be entirely immune from normative assessment in light of fundamental human rights principles.

4.3.4 The Boundary of Institutional Authority and Normative Legitimacy

The powers of the Security Council within the framework of the collective security system are considered to be among the broadest institutional powers in international law. The Council can regulate economic and political relations between states by adopting binding decisions and even restrict access to critical infrastructure of the global economy. This level of authority reflects the Council's central role in maintaining international peace and security. However, the breadth of these powers does not mean that they are completely immune from normative assessment.³⁴³

In the legal analysis of the actions of the Security Council, a distinction must be made between two different levels. The first level concerns the institutional authority of the Council. At this level, the main question is whether the Council has acted in accordance with the powers granted in the UN Charter. If the Council acts within the framework of Chapter VII of the Charter and after establishing the existence of a threat to peace, it will have the authority to take binding measures from the perspective of institutional competence.³⁴⁴

However, the second level concerns the normative legitimacy of the content of the Council's actions. At this level, the question is no longer simply whether the Council had the authority to take an action, but whether the manner in which it exercised that authority was consistent with the fundamental principles of the international legal order. Even where an action is legally valid in terms of institutional competence, it may face challenges in terms of its normative effects, particularly when it has far-reaching and foreseeable effects on the enjoyment of fundamental rights.

This distinction becomes particularly important in the context of the theory of regulatory authority presented in this thesis. If the Security Council regulates access to critical economic infrastructure through sanctions regimes and this regulation has structural and foreseeable effects on the conditions for the enjoyment of fundamental rights, the assessment

³⁴³ de Wet, *Chapter VII Powers* (n 16).

³⁴⁴ Ruys, 'Sanctions, Retortions and Countermeasures' (n 33).

of the Council's actions cannot be limited to a mere examination of its institutional competence. Rather, it must be examined whether the exercise of that authority was consistent with the normative limits of the international legal order.

In this sense, the legal validity of a measure in terms of institutional competence of a binding decision does not mean that it is completely immune from normative assessment. Even within the framework of a collective security system, the exercise of authority must be carried out within a framework of fundamental principles that determine the limits of its legitimacy. This analysis shows that institutional authority and normative legitimacy are two different but related levels in the assessment of Security Council actions.

From this perspective, the analysis of Security Council sanctions must simultaneously pay attention to both levels. At the first level, the legitimacy of the action relates to its jurisdictional basis in the UN Charter. At the second level, the assessment of legitimacy relates to the examination of the normative effects of the action within the framework of the fundamental principles of the international legal order. This distinction shows that the Security Council's sanctioning authority, although it has an institutional and legal basis, is still subject to assessment in the light of normative standards.

This conclusion paves the way for the next stage of the analysis. If sanctioning authority is to be subject to normative assessment even at the institutional level, there must be a standard that specifies the acceptable limits of the exercise of this authority. In international and human rights law, one of the most important tools for such an assessment is the principle of proportionality. Hence, the next section will examine how the principle of proportionality can be used as a criterion for measuring the limits of the legitimacy of the sanctioning authority.

4.4 The Principle of Proportionality as an Outer Boundary of Sanctioning Authority

The acceptance that economic sanctions can be an exercise of regulatory authority and, in certain circumstances, trigger extraterritorial human rights obligations does not mean that any exercise of authority is inherently illegitimate. International law, particularly in the area of collective security and countermeasures, has envisaged the possibility of adopting

measures that may have far-reaching economic effects.³⁴⁵ The main issue is therefore not whether sanctions may in principle be imposed, but the limits of the legitimacy of such authority. In this context, the principle of proportionality, as one of the fundamental principles of international law and human rights, plays a central role in determining the outer limit of the legitimacy of sanctions measures.³⁴⁶

The principle of proportionality requires that there be a reasonable and balanced relationship between the legitimate aim claimed and the intensity and scope of the effects of the measure taken. This principle has been used in various areas of international law, including in international humanitarian law, human rights law, and in the context of countermeasures by States.³⁴⁷ In the context of countermeasures, the Articles on Responsibility of States for Internationally Wrongful Acts emphasize that measures taken in response to a wrongful act must be proportionate to the harm caused and the rights in question.³⁴⁸

In the context of economic sanctions, the principle of proportionality requires that, even if the stated objective of a sanctions policy is considered legitimate, its intensity and scope do not exceed what is necessary to achieve that objective. In other words, the existence of a legitimate security objective is not in itself sufficient to justify any economic measure. Rather, it must be examined whether the means chosen to achieve that objective were proportionate to that objective in terms of their intensity and scope.

The proportionality analysis in this area is usually carried out in three stages. The first stage is to examine whether the measure is appropriate to achieve the objective in question. This stage asks whether there is a reasonable connection between the means of the sanction and its stated objective. If broad economic sanctions have no effective connection with the claimed objective, their legitimacy will be called into question from the outset.

The second stage is the examination of the necessity of action. At this stage, it must be assessed whether there were less harmful alternative means that could have pursued the same objective. If the desired security objective could have been achieved through more limited

³⁴⁵ Tzanakopoulos, *Disobeying the Security Council* (n 264).

³⁴⁶ Alexy, *Constitutional Rights* (n 13).

³⁴⁷ de Wet, *Chapter VII Powers* (n 16); Matthias Klatt and Moritz Meister, *The Constitutional Structure of Proportionality* (Oxford University Press 2012).

³⁴⁸ ILC Articles on State Responsibility (n 119), art 51.

or targeted means, the imposition of broad sanctions may be considered incompatible with the principle of proportionality.

The third stage concerns the assessment of the final balance between the objective and the consequences. At this stage, it is examined whether the severity of the foreseeable harm resulting from the sanctions policy, compared to the expected benefit from it, exceeds the acceptable level. Here, the effects of the sanctions policy on the enjoyment of fundamental rights, especially in areas such as health, livelihood and access to basic needs, become of particular importance.

Within the framework of the theory of regulatory authority presented in this thesis, the principle of proportionality has a dual function. On the one hand, at the stage of analyzing extraterritorial obligations, it highlights the element of foreseeability of the effects and the effective causal contribution to the chain of harm. If the widespread and severe effects of a sanctions policy were foreseeable, the proportionality assessment would be incomplete without taking these effects into account. On the other hand, even where an extraterritorial obligation has been activated, the principle of proportionality can define the limits of responsibility and accountability and prevent any negative effect from automatically being interpreted as meaning that the policy is generally illegitimate.

The principle of proportionality also provides a means of managing the tension between security objectives and human rights obligations. It is not based on the assumption that human rights take absolute precedence over all other considerations in all circumstances. Rather, it aims to provide a framework for balancing different objectives within the international legal system. However, where structural and widespread effects on fundamental rights are foreseeable, the threshold for justification of sanctions measures is significantly raised.

Thus, the principle of proportionality can be seen as an outer boundary of sanctioning authority. Even where the State or decision-making body is competent to impose sanctions, and even where its effective causal contribution to the harm is identifiable, a policy whose effects disproportionately and widely undermine fundamental rights will encounter this outer limit. In such a situation, the issue is no longer limited to the activation of legal obligations, but also the legitimacy of the exercise of regulatory authority itself is called into question.

This analysis provides the context for examining another factor that plays an aggravating role in assessing the proportionality and legitimacy of sanctions measures. In the human rights system, certain groups require a higher level of protection due to structural vulnerability. Among the most important of these groups are children. Hence, the next section will examine how the special status of the child in international law can be considered as an indicator for intensifying normative oversight of the sanctions authority.

4.5 The Child as an Indicator of Intensified Normative Scrutiny of Sanctioning Authority

If the principle of proportionality determines the outer limit of sanctioning authority, the next question is what factors can change the normative weight of the assessment in the process of assessing proportionality. In the international human rights law system, the position of the child is one of the most important factors that can intensify the level of normative oversight of the exercise of public power. In this framework, the child is not only the holder of a set of independent rights, but also, due to their structural vulnerability, is recognized as a group whose effects public decisions must assess more carefully than those affecting other groups.³⁴⁹

In contemporary international law, this special position is clearly reflected in the Convention on the Rights of the Child. This Convention stipulates that in all actions affecting children, the best interests of the child must be taken into account as a primary consideration.³⁵⁰ This principle indicates that public policies, even when adopted with legitimate objectives such as international security or stability, must take their effects on children seriously.

In the context of economic sanctions, the importance of this principle becomes even more salient when considering the structural nature of many of the consequences of sanctions. Economic sanctions can indirectly affect areas that are directly related to the well-being and development of children, such as health, nutrition, education and social services, by restricting access to financial resources, disrupting economic systems or undermining public

³⁴⁹ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

³⁵⁰ CRC (n 88), art 3.

infrastructure. In such circumstances, even if the sanctions policy does not directly target children, its effects may disproportionately affect this group.

Another important feature in the legal analysis of the situation of children is their structural dependence on the effective functioning of public institutions. Unlike many adults who may be able to mitigate some of the economic consequences of crises, children are fundamentally dependent on the stable functioning of health, education and support systems. Disruptions in these systems can therefore have a more profound impact on children. This fact is particularly important in assessing the proportionality of economic policies, especially at the stage of the final balance between the goal and the consequences.

Furthermore, the consequences of many economic policies in the field of children are temporal in nature. Some harms may not be visible in the short term, but in the medium or long term they lead to serious and even irreversible consequences for the physical, mental and social development of children. Hence, the assessment of proportionality in such cases cannot be based solely on the immediate effects of a policy, but must consider a broader time horizon.

However, the position of the child in this analysis is not to be understood as an absolute prohibition of sanctions. The theory of regulatory authority presented in this thesis does not claim that every negative impact on children automatically makes a sanctions policy illegitimate. Rather, the child in this framework serves as an indicator for the intensification of normative supervision. This means that where there are foreseeable impacts on children, the threshold for justifying sanctions policies is raised and the State or decision-making body must show that it has taken reasonable measures to prevent, mitigate or compensate for the potential harm.

In other words, the child plays the role of a “normative indicator” in this analysis. If a sanctions regime is designed to have widespread and foreseeable impacts on children’s rights, but no appropriate measures are provided to mitigate these impacts, this can be a strong indication that the sanctions policy is not proportionate. In contrast, designing the policy in such a way that its impacts on areas relevant to children are limited and managed can serve to support the proportionality assessment.

Consequently, the child is considered in this chapter not simply as a subject of human rights protection, but as a yardstick for measuring the quality of the exercise of public authority. The special status of children in the international human rights system suggests that in assessing the legitimacy of economic sanctions, the policy's effects on vulnerable groups should be given greater weight in the proportionality assessment process. This analysis establishes a link between regulatory authority theory and the broader human rights architecture, and suggests that the exercise of transboundary economic authority, particularly in the face of vulnerable groups, requires a higher level of normative accountability.

4.6 Chapter Conclusion

This chapter examined the normative limits of sanctioning authority in international law. The starting point of the analysis was that economic sanctions are not simply instruments of states' foreign policy, but in many cases act as exercises of regulatory authority. When such authority is exercised through the regulation of access to critical economic infrastructure, its effects can extend beyond relations between states and affect the conditions under which individuals enjoy fundamental rights. Hence, the analysis of the legitimacy of sanctions cannot be limited to examining their jurisdictional basis alone, but must be conducted within the broader framework of the fundamental norms of the international legal order.

In this regard, the relationship between sanctions and the collective security system was first examined. The analysis showed that economic sanctions have a clear legal basis within the collective security system and that the Security Council has the authority to adopt such measures under the UN Charter. However, the existence of this jurisdictional basis does not mean that it grants unlimited authority. Even within the framework of collective security, the exercise of authority must be assessed in the light of the purposes and fundamental principles of the United Nations and the general rules of international law.

In the next step, peremptory norms and obligations *erga omnes* were analyzed as the most important hierarchical constraints on the sanctioning authority. These two concepts show that there are some fundamental norms in the structure of the international legal system that cannot be ignored even in extreme security situations. Peremptory norms mark boundaries beyond which no legal action can be taken, while obligations *erga omnes* indicate that

compliance with some fundamental obligations is not a matter of relations between states alone, but concerns the entire international community.

The powers of the Security Council were then examined in the light of these normative constraints. The analysis showed that although the Council has broad powers to adopt binding measures, these powers do not operate in a legal vacuum. The distinction between institutional authority and normative legitimacy shows that the legal validity of a binding measure does not necessarily mean that it is immune from assessment in the light of the fundamental principles of the international legal order. In particular, in cases where sanctions regimes have structural and foreseeable effects on the enjoyment of fundamental rights, the question of the limits of legitimacy of this authority becomes more salient.

Next, the principle of proportionality was introduced as the most important criterion for assessing the limits of legitimacy of sanctions authority. This principle provides a framework through which a balance can be struck between security objectives and the humanitarian consequences of sanctions policies. The analysis showed that even in cases where the objective of a sanctions policy is considered legitimate, the intensity and scope of its effects must be in reasonable proportion to this objective. Otherwise, a sanctions policy may encounter the outer limits of legitimacy in international law.

Finally, the status of the child was examined as an indicator for intensifying normative scrutiny of sanctions authority. Because of their structural vulnerability and dependence on the effective functioning of public institutions, children are disproportionately affected by the consequences of disruptions in economic and social systems. Hence, the foreseeable effects of sanctions policies on children's rights can gain greater normative weight in assessing the proportionality and legitimacy of these policies.

In sum, the analysis presented in this chapter shows that sanctions authority, even within the framework of collective security, is not an unlimited authority. It is exercised within a normative structure in which preemptory norms, obligations *erga omnes*, and principles such as proportionality determine the limits of its legitimacy. This framework suggests that the assessment of economic sanctions in international law must simultaneously consider the jurisdictional basis of the measures and their normative effects. Such an approach provides the necessary theoretical ground for a more detailed analysis of international responsibility

for the human rights consequences of sanctions, which will be examined in subsequent chapters of the thesis.

CHAPTER FIVE

Ex Ante Assessment and Reporting of Human Rights Impacts of Sanctions

5.1 The Legal Basis for the Requirement for Prior Assessment of the Human Rights Impacts of Sanctions

The proposal to require a prior assessment of the human rights impacts of sanctions is only legally defensible if it can be explained as a practical formulation of existing obligations in international law, rather than as a policy recommendation or moral proposition.³⁵¹

If this requirement remains solely at the policy level, it will not be normatively binding and will lose its legal defensibility against arguments based on sovereign discretion.

The fundamental question of this section is therefore: can an a ex ante conduct-based obligation to identify and assess foreseeable impacts on fundamental rights be inferred within the current framework of international law?³⁵²

This question is a logical extension of the theory of regulatory authority.

If the exercise of transboundary regulatory authority can trigger extraterritorial human rights obligations in certain circumstances, it must be made clear what standard of conduct governs the state before exercising that authority and how that standard is measured.³⁵³

Ex ante assessment in this analysis is not a new institution, but a means of realizing and making measurable a set of existing obligations that are conduct-based in nature and relate to the “reasonable decision-making process”.³⁵⁴

5.1.1 Linking Ex Ante Assessment to the Obligation of Due Diligence

The first and most fundamental basis for requiring ex ante assessment is the obligation of due diligence.³⁵⁵

³⁵¹ ILC Articles on State Responsibility (n 119); *Corfu Channel* (n 199).

³⁵² Scott, ‘Due Diligence as a Secondary Rule’ (n 105).

³⁵³ Milanović, *Extraterritorial Application of Human Rights Treaties* (n 27).

³⁵⁴ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107).

³⁵⁵ Barnidge, ‘Due Diligence’ (n 104).

Due diligence is not an obligation of result, but a conduct-based obligation that requires the state to take reasonable measures to prevent and mitigate harm in the face of foreseeable risks.³⁵⁶

In this context, the state cannot plead ignorance of the foreseeable consequences of the exercise of its power if this ignorance was due to a lack of reasonable consideration.³⁵⁷

But risk management is not possible without first identifying the risk.

If a government does not consider the likely consequences and transmission pathways of the sanctions framework before it applies it cannot be expected to reasonably reduce or mitigate the risks at the implementation stage.

An ex ante assessment is therefore a logical and practical requirement for the fulfilment of the due diligence requirement, not a new and independent obligation.³⁵⁸

In the context of regulatory authority, this connection becomes clearer.

When a government regulates access to critical financial and economic infrastructure through binding regulations, it is in a position where the potential effects of its policy can be structural, cumulative and cross-border.

The greater the scope and intensity of this authority, the greater the level of foreseeable risk and, consequently, the higher the level of due diligence expected of the state.³⁵⁹

More precisely, it is not the existence of authority itself that generates the duty, but the intensity and scope of the authority that is one of the determining factors in assessing the reasonableness of the expected precautionary measures.³⁶⁰

Consequently, ex ante assessment functions as a practical means of fulfilling the existing obligation of due diligence.

³⁵⁶ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

³⁵⁷ *Corfu Channel* (n 199).

³⁵⁸ McDonald, 'Role of Due Diligence' (n 106).

³⁵⁹ Alice Ollino, *Due Diligence Obligations in International Law* (Cambridge University Press 2022).

³⁶⁰ *Ibid.*

Its absence, especially in circumstances where public data, past experience, or credible warnings allow for reasonable prediction of structural effects, can be considered strong evidence of a failure to exercise due diligence.³⁶¹

5.1.2 Prior Assessment in Light of Positive Human Rights Obligations

The second basis for the requirement for prior assessment is positive human rights obligations.

In international human rights law, the obligation of a State is not limited to refraining from direct violations, but also includes taking reasonable measures to prevent foreseeable harm to fundamental rights.³⁶²

Positive obligations require that States, in circumstances where there is a foreseeable risk to the enjoyment of fundamental rights, take reasonable steps to prevent or mitigate that risk.³⁶³

In such a framework, effective prevention is not possible without prior identification of the risk. Prior assessment can therefore be seen as the first step in fulfilling the protective obligation.

If a State knows or could reasonably foresee that a sanctions framework may affect access to essential services by disrupting access to finance, technology or supply chains, it would not be consistent with the logic of positive obligations to fail to consider these pathways of impact before implementation.³⁶⁴

Furthermore, prior assessment is also linked to the obligation to respect.

The obligation to respect does not simply mean refraining from direct infringement, but also requires that the State refrain from adopting a policy that foreseeably increases the risk of undermining the enjoyment of fundamental rights, without adequate consideration and assessment.³⁶⁵

³⁶¹ Vladyslav Lanovoy, 'Due Diligence in International Law: A Useful Renaissance or "All Things to All People"?' (2024) 35(4) *European Journal of International Law* 1029.

³⁶² Sandra Fredman, 'Human Rights Transformed: Positive Duties and Positive Rights' (2006) *Public Law* 498.

³⁶³ Stoyanova, 'Fault, Knowledge and Risk' (n 105).

³⁶⁴ CESCR, General Comment No 14 (n 177).

³⁶⁵ HRC, General Comment No 31 (n 80).

Within the framework of the theory of regulatory authority presented in this thesis, the extraterritorial obligation is triggered when there is a structural and foreseeable effect on the enjoyment of fundamental rights.³⁶⁶

Ex ante assessment here is the legal tool for identifying and documenting this foreseeability. In the absence of such an assessment, it is more difficult for the State to claim that the potential effects of the sanctions policy were not foreseeable to it.³⁶⁷

5.1.3 The Principle of Good Faith and the Effective Implementation of Obligations

The principle of good faith is one of the fundamental principles of international law and requires that States implement their international obligations in a genuine and effective manner.³⁶⁸

In this context, good faith does not simply mean the absence of an intention to violate, but also requires that the State, in exercising its powers, seriously consider the foreseeable effects of its actions on the obligations undertaken.³⁶⁹

Adopting a broad sanctions framework without considering its foreseeable human rights consequences is not consistent with the logic of good faith implementation.

If the State knows or should have known that its action could have structural and transboundary effects on the enjoyment of fundamental rights, ignoring this possibility would not be consistent with the standard of reasonable and honest conduct required by the principle of good faith.³⁷⁰

In this context, ex ante assessment can be seen as an institutional means of achieving the effective implementation of obligations.

³⁶⁶ Dalia Palombo, 'Extraterritorial, Universal, or Transnational Human Rights Law?' (2023) 56(1) *Israel Law Review* 92.

³⁶⁷ Berkes, 'Extraterritorial Responsibility' (n 139).

³⁶⁸ VCLT (n 281), art 26.

³⁶⁹ McDonald, 'Role of Due Diligence' (n 106).

³⁷⁰ *Ibid.*

This assessment does not mean guaranteeing a specific outcome, but rather requires serious consideration of foreseeable consequences and the adoption of reasonable measures to mitigate the harm.

Good faith therefore requires that the state consider not only the stated purpose of the policy but also its foreseeable consequences and, if there is a reasonable risk to fundamental rights, assess that risk before exercising regulatory authority.³⁷¹

5.1.4 The Evolution of Standards of Conduct in International Law and the Precautionary Logic

A fourth basis for requiring prior assessment can be seen in the gradual evolution of standards of conduct for States in various areas of international law.³⁷²

In some areas, notably in international environmental law and activities involving a risk of significant harm, prior assessment of impacts has gradually become established as part of the obligation to exercise due diligence.³⁷³

In this approach, the importance of prior assessment is not due to the specific nature of environmental law, but rather to the precautionary logic embedded in states' conduct-based obligations.³⁷⁴

According to this logic, the greater the likelihood of widespread, transboundary, or irreversible harm, the greater the legal expectation that a State will assess the risk before acting.³⁷⁵

Broad-based economic sanctions can have similar features.

These measures can have structural and cumulative effects on the economic and institutional capacity of the target state by restricting access to financial networks, technology or supply chains. In such circumstances, the effects of these measures may indirectly affect the enjoyment of fundamental rights.

³⁷¹ Crawford, *State Responsibility* (n 120).

³⁷² Neil Craik, 'The Duty to Cooperate in the Customary Law of Environmental Impact Assessment' (2020) 69(1) *International and Comparative Law Quarterly* 239

³⁷³ Tignino and Bréthaut, 'Obligation Not to Cause Significant Harm' (n 127).

³⁷⁴ Jutta Brunnée, 'Harm Prevention' in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2021) 269.

³⁷⁵ McIntyre, 'No Significant Harm Principle' (n 126).

Consequently, the precautionary logic developed in other areas of international law can be analytically applied to this area as well.³⁷⁶

This does not mean a mechanical transfer of environmental rules to the field of sanctions, but rather a general shift in the standard of conduct of states in the face of widespread risks: when there is a foreseeable and potentially widespread risk, the state must assess that risk before acting.³⁷⁷

5.2 Existing Monitoring Mechanisms and the Possibility of Institutionalizing the Requirement for Prior Assessment

If it was shown in the previous section that the obligation to assess the human rights effects of sanctions *ex ante* can be inferred from the existing foundations of international law, the next step is to examine the institutional dimension of this obligation. The question at this stage is through which mechanisms such a duty can be realized in practice and to what extent it can be institutionalized within the framework of existing institutions of the human rights system.³⁷⁸

Answering this question requires adopting a realistic approach to the institutional structure of international law. In the current circumstances, the creation of a new institution with binding jurisdiction to oversee the design and implementation of economic sanctions does not seem politically feasible, nor is it consistent with the logic of the distribution of authority in the international system.

The analysis of the thesis is therefore based on the assumption that the institutionalization of the requirement for a *ex ante* assessment should take place, to the extent possible, within existing human rights mechanisms. These mechanisms, although often lacking direct

³⁷⁶ Craik, 'Duty to Cooperate' (n 372).

³⁷⁷ Alistair Rieu-Clarke, 'The Duty to Take Appropriate Measures to Prevent Significant Transboundary Harm and Private Companies: Insights from Transboundary Hydropower Projects' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 667.

³⁷⁸ Ioannis Prezas, 'From Targeted States to Affected Populations: Exploring Accountability for the Negative Impact of Comprehensive Unilateral Sanctions on Human Rights' in Charlotte Beaucillon (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar Publishing 2021) 385.

binding power, play an important role in shaping standards of conduct, increasing transparency and strengthening the accountability of States.³⁷⁹

Accordingly, rather than proposing the creation of a new authority, the model in question focuses on using and strengthening existing monitoring capacities. Within this framework, three categories of institutional mechanisms have the greatest potential for institutionalizing the expectation of ex ante assessment: the political mechanisms of the Human Rights Council, the monitoring bodies of human rights treaties, and specialized thematic mechanisms within the human rights system.³⁸⁰

In the following sections, the capacities and limitations of each of these mechanisms will be examined.

5.2.1 The Human Rights Council and its Structural Political Monitoring Capacity

As the central political body of the UN human rights system, the Human Rights Council has the authority to examine thematic and country-specific human rights situations.³⁸¹

Although the Council does not have the power to directly prevent the imposition of sanctions or to compel states to change their foreign policies, it can play an important role in shaping standards of conduct and increasing accountability through monitoring mechanisms and intergovernmental dialogue.³⁸²

Within the framework of the theory of regulatory authority, the Human Rights Council can serve as a forum for examining and highlighting the structural effects of sanctions policies. This role is mainly realized through three principal mechanisms of the Council.³⁸³

First, the system of special rapporteurs includes both thematic and country-specific mandates. Special rapporteurs can document, analyze, and report to the international community on the effects of sanctions on the enjoyment of fundamental rights. Although

³⁷⁹ Grant and Keohane, 'Accountability and Abuses of Power' (n 180).

³⁸⁰ UN General Assembly, 'Human Rights Council' UN Doc A/RES/60/251 (3 April 2006).

³⁸¹ Idriss Jazairy, 'Unilateral Economic Sanctions, International Law, and Human Rights' (2019) 33(3) *Ethics and International Affairs* 291.

³⁸² Alena F Douhan, 'Obligation of Human Rights Due Diligence in the Unilateral Sanctions Environment' (2025) 24(4) *Chinese Journal of International Law* jmaf036.

³⁸³ Jazairy, 'Unilateral Economic Sanctions' (n 381).

their findings are not binding, these reports play a significant role in shaping legal discourse and raising normative awareness.³⁸⁴

Second, there is the Universal Periodic Review mechanism, which periodically subjects all states to peer review. In this context, it is possible to ask whether sanctioning states have conducted their own human rights impact assessments before adopting their policies.³⁸⁵

Third, there are Human Rights Council resolutions, which, although not legally binding, can establish normative standards of conduct and reinforce expectations of explanation and transparency regarding the effects of sanctions policies.³⁸⁶

In this sense, the Human Rights Council provides an important institutional context for transforming ex ante assessment from a theoretical argument into an institutional expectation, even if it lacks the direct binding means to impose it.³⁸⁷

5.2.2 Treaty Bodies and the Development of the Interpretation of Extraterritorial Obligations

Human rights treaty bodies play an important role in the interpretation and practical development of treaty obligations, through the examination of States' periodic reports, the issuance of concluding observations and, in some cases, the handling of individual complaints.³⁸⁸

In recent years, some of these bodies have increasingly paid attention to the transboundary effects of State policies and have emphasized the need to consider the consequences of States' economic and trade actions on the enjoyment of human rights.³⁸⁹

³⁸⁴ Douhan, 'Human Rights Due Diligence in Sanctions' (n 382).

³⁸⁵ Zuzana Trávníčková, 'Human Rights Influencing Targeted Sanctions: On the Role of International Treaties on Human Rights and Treaty Mechanisms in Relation to Sanctions' in Pavel Šturma (ed), *International Sanctions and Human Rights* (Springer Nature Switzerland 2024) 117.

³⁸⁶ UN Human Rights Council, 'Human Rights and Unilateral Coercive Measures' UN Doc A/HRC/RES/27/21 (26 September 2014).

³⁸⁷ Prezas, 'From Targeted States to Affected Populations' (n 378).

³⁸⁸ HRC, General Comment No 31 (n 80).

³⁸⁹ De Schutter and others, 'Maastricht Principles Commentary' (n 86).

In this context, an *ex ante* assessment of the human rights impact of sanctions could be proposed in the form of an obligation for States to provide an explanation of how they measure the consequences of sanctions policies in their periodic reports. This does not require the creation of a new obligation in treaty law, but rather represents a the development of the interpretation of existing obligations in light of evolving practice by monitoring bodies.³⁹⁰

In other words, if a State is bound by a treaty to respect and protect fundamental rights, and if the exercise of its regulatory authority has a foreseeable impact on the enjoyment of those rights, then expecting the State to explain how it will assess these impacts would be part of the reasonable implementation of its treaty obligations.³⁹¹

The advantage of this approach is that it builds on the existing treaty structure and does not require formal amendment of the core human rights instruments or the creation of a new institution. Development in this area can be achieved through interpretation, monitoring procedures and the gradual development of reporting standards.³⁹²

5.2.3 Specialized Thematic Mechanisms and Technical Analysis Capacity

Alongside political and treaty bodies, thematic mechanisms of the human rights system also have an important capacity to analyze the structural effects of sanctions. These mechanisms operate mainly in the form of special rapporteurs of the Human Rights Council, whose mandate is to examine specific human rights issues and provide specialized analysis of trends related to those areas.³⁹³

In recent years, some of these rapporteurs have specifically addressed the negative effects of unilateral coercive measures on the enjoyment of human rights. Reports presented in this framework show that economic sanctions can have structural effects on the enjoyment of

³⁹⁰ Samantha Besson, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25(4) *Leiden Journal of International Law* 857.

³⁹¹ Berkes, 'Extraterritorial Responsibility' (n 139).

³⁹² VCLT (n 281), art 31

³⁹³ UN Human Rights Council, 'Institution-building of the United Nations Human Rights Council' UN Doc A/HRC/RES/5/1 (18 June 2007).

fundamental rights by disrupting access to financial resources, supply chains and economic infrastructure.³⁹⁴

This experience suggests that there is a specialized capacity within the human rights system for technical analysis of the effects of sanctions. Such mechanisms can play an important role in developing methodological frameworks for assessing the effects of sanctions, developing indicators to measure structural harm, and providing technical advice to mitigate negative impacts.³⁹⁵

Within the framework of the theory of regulatory authority, these thematic mechanisms can gradually shape analytical standards for ex ante assessment. Even in the absence of an explicit legal obligation, the formation of such standards can raise institutional expectations of states and gradually influence their behavior in designing sanctions policies.³⁹⁶

5.2.4 Structural Limitations of Existing Mechanisms

Institutional analysis of the requirement for ex ante assessment also requires explicit attention to the limitations of existing human rights mechanisms. Human rights monitoring bodies often lack direct binding authority to prevent the imposition of sanctions or alter the foreign policies of states. Their decisions are often advisory in nature and their implementation depends to a significant extent on the will of states.³⁹⁷

Moreover, the political structure of the international system may in some cases prevent powerful states from being fully accountable. States that play a major role in imposing economic sanctions may cooperate with monitoring mechanisms only to a limited extent or may refuse to provide full information about the design and consequences of sanctions policies.

³⁹⁴ Douhan, 'Human Rights Due Diligence in Sanctions' (n 382).

³⁹⁵ Iryna Bogdanova, 'Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship' in Wolfgang Benedek, Matthias C Kettmann and Miriam Saage-Maaß (eds), *European Yearbook on Human Rights 2023* (Intersentia 2023) 171.

³⁹⁶ Alena Douhan, 'Unilateral Coercive Measures, IHL and Impartial Humanitarian Action: An Interview' (2021) 103(916–917) *International Review of the Red Cross* 25.

³⁹⁷ Reinisch, 'Accountability of the Security Council' (n 287).

However, these limitations do not necessarily mean that these mechanisms lack legal relevance. Even in the absence of direct binding instruments, human rights monitoring mechanisms can play an important role in shaping state behavior by increasing transparency, documenting the effects of policies, and exerting normative pressure.³⁹⁸

Within the framework of the theory of regulatory authority, the requirement for ex ante assessment is more about increasing the level of accountability in the decision-making process than about creating a new judicial system. Even requiring a documented explanation of how the effects of sanctions policies are assessed can increase the political and normative costs of ignoring human rights consequences.³⁹⁹

From this perspective, the main function of these mechanisms is not to impose direct coercion, but to strengthen transparency, public oversight, and normative accountability in the field of cross-border policies.⁴⁰⁰

5.3 A Proposed Model for Reporting and Institutionalizing Ex Ante Assessment

Once the normative basis for ex ante assessment of the human rights impacts of sanctions and the institutional capacities available to monitor it have been examined, the next step is to formulate this requirement in practice. If this step is not clarified, the argument presented remains at an abstract level and will not be able to become an applicable standard in the decision-making process of states.⁴⁰¹

The model proposed in this thesis is based on the assumption that increasing accountability in the field of economic sanctions does not necessarily require the creation of new institutions or the transfer of decision-making authority to a supranational authority. Instead, it is possible to subject the decision-making process of states to normative and public scrutiny by strengthening transparency and reporting requirements within the framework of existing human rights mechanisms.⁴⁰²

³⁹⁸ von Bogdandy and Venzke, *In Whose Name?* (n 22).

³⁹⁹ Koskenniemi, *From Apology to Utopia* (n 5).

⁴⁰⁰ Vegard Tørstad, 'Can Transparency Strengthen the Legitimacy of International Institutions? Evidence from the UN Security Council' (2024) 61(2) *Journal of Peace Research* 228.

⁴⁰¹ von Bogdandy, Dann and Goldmann, 'Publicness of Public International Law' (n 3).

⁴⁰² Slaughter, *A New World Order* (n 66).

Accordingly, the model presented in this section is based on three fundamental principles. First, the authority of states to adopt sanctions policy is not transferred to another authority. Second, no ex ante authorization mechanism or institutional veto for the imposition of sanctions is proposed. Third, the main focus is on establishing a measurable process for identifying and reporting on the foreseeable effects of sanctions policy.⁴⁰³

Within this framework, the central element of the proposed model is the “requirement for documented reporting on ex ante assessment,” which could be institutionalized within existing human rights monitoring mechanisms and gradually become a standard of conduct in the design of sanctions policies.⁴⁰⁴

5.3.1 Obligation to Document a Pre-Implementation Assessment

The first component of the proposed model is the obligation of the State to conduct and document a human rights impact assessment before implementing a sanctions framework. Such an assessment should be part of the State’s decision-making process at the stage of designing sanctions policy and should aim to identify and analyze the foreseeable consequences of the policy on the enjoyment of fundamental rights.⁴⁰⁵

In the context of international law, such an obligation can be understood as part of the conduct-based obligations of States in the face of foreseeable risks to fundamental rights. This obligation does not require the State to prevent any negative impact, but rather requires that it reasonably identify and assess the foreseeable risks before adopting the policy.⁴⁰⁶

An ex ante assessment in this framework should include at least several essential elements. First, the identification of rights at risk, including rights that may be indirectly affected by disruptions to economic or financial infrastructure. Second, the analysis of the transmission

⁴⁰³ Ibid.

⁴⁰⁴ Krisch, *Beyond Constitutionalism* (n 59).

⁴⁰⁵ Nico Krisch, ‘The Decay of Consent: International Law in an Age of Global Public Goods’ (2014) 108(1) *American Journal of International Law* 1.

⁴⁰⁶ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

pathways of the economic impact to the legal status of individuals, in the sense of identifying how economic restrictions can affect the enjoyment of fundamental rights.⁴⁰⁷

Third, the examination of the social groups that may be disproportionately affected by the sanctions policy, especially those that are more dependent on public services or economic infrastructure. Fourth, the prediction of the likely scope and severity of the policy effects, given existing data and past experience. Fifth, the identification of possible measures to mitigate the harm, including designing practical and enforceable exceptions to avoid severe humanitarian consequences.⁴⁰⁸

The key point is that conducting this assessment does not mean guaranteeing that there will be no negative impact. The criterion here is the reasonableness of the review process, not the achievement of a specific outcome. What is important is that the state can show that it has considered the foreseeable consequences of its policy before exercising regulatory authority and has taken them into account in its design.⁴⁰⁹

In the framework of the theory of regulatory authority, this stage is the point at which the element of foreseeability of the structural effect is documented. The absence of such a review could seriously undermine the state's ability to claim that the effects of a sanctions policy were unforeseeable.⁴¹⁰

5.3.2 Reporting to an Existing Human Rights Institution

The second component of the proposed model is the requirement for the state to submit a documented summary of the ex ante assessment to one of the existing mechanisms of the human rights system. The purpose of this reporting is not to create a mechanism for authorizing or controlling the application of sanctions, but rather to increase transparency and the possibility of public scrutiny of the human rights consequences of sanctions policy.⁴¹¹

⁴⁰⁷ Kulesza, 'Human Rights Due Diligence' (n 106).

⁴⁰⁸ ILC Draft Articles (2001) (n 351), commentary to art 2.

⁴⁰⁹ Ollino, *Due Diligence Obligations* (n 359).

⁴¹⁰ Scott, 'Due Diligence as a Secondary Rule' (n 105).

⁴¹¹ Grant and Keohane, 'Accountability and Abuses of Power' (n 180).

Within the existing institutional framework, the most appropriate forum for such reporting is the Human Rights Council, and in particular the Universal Periodic Review (UPR) mechanism. In this mechanism, all states periodically submit reports on the human rights situation and related policies, and other states and relevant institutions can ask questions and make recommendations on these reports.⁴¹²

In this framework, sanctioning states could be required to explain whether they conducted a human rights impact assessment before implementing a sanctions policy, what methodology was used for this assessment, and what measures were taken to mitigate potential negative impacts.⁴¹³

Such reporting does not mean that the Human Rights Council has the power to approve or reject a sanctions policy. The Council does not have the authority to prevent the imposition of sanctions, and foreign policy decisions remain in the hands of states. However, reporting can increase the level of transparency of sanctions policy and provide the opportunity for expert and normative criticism.⁴¹⁴

In this sense, reporting to human rights institutions creates a mechanism of political and normative accountability. Even in the absence of direct binding instruments, exposing government decisions to public scrutiny can influence the conduct of states in designing and implementing sanctions policies.⁴¹⁵

5.3.3 Obligation for Periodic Review and Ex Post Evaluation

The third component of the proposed model is to establish a mechanism for periodic review of the effects of sanctions after their implementation. Economic sanctions often have gradual and cumulative consequences, and some of their effects only become apparent over time. Therefore, ex ante evaluation alone is not sufficient to assess the actual consequences of sanctions policy.⁴¹⁶

⁴¹² Trávníčková, 'Human Rights Influencing Targeted Sanctions' (n 385).

⁴¹³ Ibid.

⁴¹⁴ Krisch, *Beyond Constitutionalism* (n 59).

⁴¹⁵ Thomas M Franck, 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium' (2006) 100(1) *American Journal of International Law* 88

⁴¹⁶ Mallard and others, 'Humanitarian Gap in Sanctions Regime' (n 335).

Within the framework of the obligation of due diligence, states are obliged not only to assess foreseeable risks before taking action, but also to review their policy if unexpected or widespread effects occur.⁴¹⁷

Periodic review could include several essential elements. First, comparing initial predictions with the actual effects of sanctions in areas relevant to fundamental rights. Second, identifying unforeseen consequences or effects more severe than initially anticipated. Third, examining whether the harm-mitigation measures designed at the initial stage have worked effectively.

In cases where the actual effects of a sanctions policy significantly exceed the initial projections, the state should consider the possibility of amending or adjusting the policy. Such an amendment could include changing the scope of the sanctions, strengthening humanitarian exemptions, or creating practical channels for access to essential goods and services.

This step is directly related to the principle of proportionality. The continuation of a sanctions policy in circumstances where its effects have significantly exceeded the initial projections may be questioned in the analysis of proportionality and due diligence.⁴¹⁸

Consequently, periodic review can be considered as a mechanism to monitor the persistence of the structural effects of sanctions. This mechanism does not guarantee that no negative consequences will occur, but it does require the state to reassess its policy in the event of severe or unforeseen effects.⁴¹⁹

5.3.4 Linking the Model to Regulatory Authority Theory

The proposed model of ex ante assessment and reporting in this thesis is not independent of the theoretical framework presented in previous chapters, but rather directly derives from

⁴¹⁷ ILC Draft Articles (2001) (n 351), commentary to art 1.

⁴¹⁸ Jerg Gutmann, Matthias Neuenkirch and Florian Neumeier, *Political Economy of International Sanctions* (Research Papers in Economics No 7/24, 2024).

⁴¹⁹ Ollino, *Due Diligence Obligations* (n 359).

the logic of the theory of regulatory authority. In this theory, the main issue is not the mere existence of sanctions, but the manner in which cross-border regulatory authority is exercised and its structural consequences for the enjoyment of fundamental rights.

According to this theoretical framework, when a state regulates access to critical financial and commercial infrastructure through economically binding rules, it is in a position to indirectly affect the conditions for the enjoyment of fundamental rights outside its territory. In such a situation, the main legal question is how to assess these exercises of authority in the context of the international obligations of states.⁴²⁰

The model presented in this chapter intervenes precisely at this point. Ex ante assessment, institutional reporting, and periodic review are three mechanisms that, in turn, make three key elements of the theory of regulatory authority measurable.

First, ex ante assessment is a means of identifying and documenting the foreseeability of the structural effects of sanctions policy. This step allows the state to identify potential pathways for regulatory authority to impact fundamental rights before implementing the policy.

Second, reporting to human rights monitoring mechanisms is a mechanism for establishing accountability for the exercise of regulatory authority. Through this process, state decisions are subject to public and normative scrutiny.

Third, periodic review provides a means of monitoring the persistence of the structural effects of sanctions policy and allows the state to revise its policy in the event of widespread or unforeseen consequences.

Thus, the proposed model is not an external mechanism for limiting sanctions, but a framework for making the main elements of the theory of regulatory authority measurable. This model shows how the exercise of regulatory authority can be placed within a framework of legal and normative accountability without negating the authority of state.

⁴²⁰ Palombo, 'Extraterritorial, Universal, or Transnational Human Rights Law?' (n 366).

5.3.5 Limits of the Model and Avoiding the Unlimited Expansion of Responsibility

In order for the proposed model not to lead to the unlimited expansion of the international responsibility of States, it is necessary to set clear limits to the scope of its application. If every economic decision or foreign policy of a State requires a complex assessment of human rights impacts, such a model would be neither legally defensible nor practically applicable.

First, the scope of the model is limited to sanctions that are structural and widespread in nature. Structural sanctions are measures that, through binding economic or financial regulations, restrict access to critical economic infrastructure such as banking networks, international financial systems or key supply chains and are therefore capable of having widespread and cross-border effects.

Second, the obligation envisaged in the model is conduct-based, not result-based. States are not required to guarantee that no negative effects will arise from their sanctions policy. What is expected of the State is to conduct a reasonable and documented assessment of the foreseeable consequences of the policy before implementing it.⁴²¹

Third, the failure to conduct an ex ante assessment or report does not in itself automatically constitute a violation of a fundamental right. Such a situation can only be considered as an indicator in the analysis of compliance with a state's conduct-based obligations and play a role in examining its international responsibility.⁴²²

These limitations are necessary to maintain a balance between two fundamental considerations: on the one hand, the need to increase accountability in the exercise of cross-border regulatory authority, and on the other, the preservation of the discretion of states in the design and implementation of their economic and foreign policies.

Consequently, the proposed model is activated only in situations where the exercise of economic regulatory authority has a structural scope and foreseeable effects on the

⁴²¹ Ollino, *Due Diligence Obligations* (n 359).

⁴²² McDonald, 'Role of Due Diligence' (n 106).

enjoyment of fundamental rights. In such situations, the expectation of conducting an ex ante assessment and reporting can be considered as part of the state's conduct-based obligations.

5.4 Minimum Standards for Prior Assessment

If regulatory authority can trigger transboundary obligations and, if it has an effective causal role, create liability, the next question is what obligations states have before exercising such authority. The answer to this question is that, when the three-step criterion for triggering the obligation is met, the state is obliged to conduct a prior assessment of human rights effects. However, this obligation is only defensible when clear and measurable minimum standards are set for it.

A prior assessment in this context is not a result-based obligation but a conduct-based obligation. Its purpose is not to ensure that no harm will occur, but to ensure that the state reasonably identifies, analyzes, and takes into account foreseeable risks in policy design before applying the regulatory framework. Therefore, minimum standards should be defined in such a way that they are both enforceable and prevent this obligation from becoming a formality.⁴²³

The first minimum is a structural analysis of the proposed policy. The state should identify the pathways through which the proposed regulatory framework could impact access to critical economic infrastructure. This analysis should go beyond the stated policy objective and examine the actual mechanisms of impact transmission. If the policy could reasonably be expected to lead to disruptions in access to financial services, trade or the supply of essential goods, this should be explicitly identified.

The second minimum is to identify the rights at risk. The ex ante assessment should identify which fundamental rights are likely to be affected and the likely severity and extent of the impact. This identification should be based on existing data, past experience and expert analysis, not on general assumptions or political convictions.

⁴²³ Ryngaert, *Jurisdiction in International Law* (n 25).

The third minimum is to pay particular attention to vulnerable groups. If the impacts of the policy fall disproportionately on groups that are structurally more dependent on public services, the assessment should reflect this. This is particularly important in the area of children's rights, as the harms associated with this group are often cumulative and long-lasting.⁴²⁴

The fourth minimum is to consider alternatives and harm-mitigation measures. The principle of proportionality requires that the government demonstrate whether there are less harmful or more targeted means to achieve the desired goal. In addition, if specific risks are foreseen, the state must take reasonable measures to limit the negative effects, including the provision of practical and enforceable exceptions.⁴²⁵

The fifth minimum is to provide for a monitoring and review mechanism. Since some effects may only become apparent after implementation, the ex ante assessment should be accompanied by a commitment to ongoing monitoring and the possibility of policy modification. The absence of such a mechanism could indicate a disregard for the element of foreseeability of harm.⁴²⁶

These minimum standards provide an operational framework for ex ante assessment, without committing the state to guarantee a specific outcome. The criterion here is the reasonableness and seriousness of the assessment process, not the complete elimination of any negative effects. At the same time, merely carrying out a formal assessment, without a real analysis of the impact pathways, cannot be sufficient to discharge responsibility.

Thus, the minimum ex ante assessment standard completes the link between the theory of regulatory authority and the accountability architecture. If a state complies with these requirements before exercising regulatory authority, both the risk of violating its transboundary obligations is reduced and, if harm occurs, the assessment of its causal contribution will be more accurate and fair.

⁴²⁴ Simon Hoffman, 'Ex Ante Children's Rights Impact Assessment of Economic Policy' in Aoife Nolan and Juan Pablo Bohoslavsky (eds), *Human Rights and Economic Policy Reform* (Routledge 2021) 87.

⁴²⁵ ILC Articles on State Responsibility (n 119), art 51.

⁴²⁶ Ollino, Due Diligence Obligations (n 359).

5.4.1 Identifying Rights at Risk

The first operational component of an ex ante assessment is the specific identification of fundamental rights that may be at risk as a result of the proposed regulatory framework. This identification should be objective, documented and based on an analysis of the transmission pathways. A general reference to “human rights” or “economic and social rights” is not sufficient to meet this requirement.⁴²⁷

Identifying rights at risk requires that the state, before imposing sanctions, draw a logical link between the regulatory mechanism and the specific legal areas. For example, if the regulatory framework restricts access to banking systems or financial channels, it should examine how this restriction could affect the provision of basic goods, access to health services, or the functioning of the education system. The analysis should be stepwise: from the level of financial infrastructure, to the level of institutional capacity, and then to the level of enjoyment of rights.

In this framework, rights that are typically at risk are those that are structurally dependent on the sustainable functioning of economic infrastructure. These rights can include the right to health, the right to health care, the right to education, the right to an adequate standard of living and, in some cases, the right to life.⁴²⁸

However, the identification of rights at risk should be done on a case-by-case basis and in line with policy design; not through an abstract listing of all possible rights. The aim of this stage is to develop a detailed analysis of the areas that could realistically and foreseeably be affected by the sanctions policy.

The likely severity and scope of the impact should also be assessed. The distinction between a limited and localized impact and a widespread and structural impact is of fundamental importance. If the impact of the policy is likely to be only marginal or manageable, the proportionality analysis will be different from that where there is a risk of widespread and sustained impairment of a legal area.⁴²⁹

⁴²⁷ HRC, General Comment No 31 (n 80).

⁴²⁸ CESCR, General Comment No 14 (n 177).

⁴²⁹ Crawford, *State Responsibility* (n 120).

The element of foreseeability is central to this stage. The state should assess whether the risk of impairment of these rights can reasonably be expected, based on available information, past experience and expert analysis. In the context of international law, ignoring known data or documented warnings can be seen as a sign of a lack of due diligence in the decision-making process.⁴³⁰

Importantly, identifying rights at risk does not automatically imply acceptance of violations. This stage merely determines which areas require special attention in the design and implementation of policy. However, the failure to explicitly identify areas that are reasonably foreseeable can be used against the State in the subsequent analysis of causality and proportionality.⁴³¹

Consequently, identifying rights at risk is the first serious step in transforming the ex ante assessment from a formal obligation to a substantive obligation. This step moves the sanctions policy from the level of general political decision to the level of detailed legal analysis and paves the way for examining vulnerable groups and specific indicators.

5.4.2 Vulnerable Groups

A general identification of rights at risk, without analyzing which groups are disproportionately affected, reduces ex ante assessment to an abstract and inadequate level. Human rights are not meaningful merely at the level of the average population; rather, the effects of public policies must be examined in light of their actual distribution across different population groups. Therefore, identifying vulnerable groups is a basic minimum of ex ante assessment.⁴³²

A vulnerable group in this context refers to a group that, due to its economic, social, age or institutional situation, is more dependent on public services and basic infrastructure and has

⁴³⁰ McDonald, 'Role of Due Diligence' (n 106).

⁴³¹ HRC, General Comment No 31 (n 80); Committee on the Rights of the Child, 'General Comment No 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child' UN Doc CRC/GC/2003/5 (27 November 2003).

⁴³² Sigrun I Skogly, 'Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations' (2024) 46(2) *Human Rights Quarterly* 330; CESCR, General Comment No 3 (n 87).

a lower ability to compensate for the effects of structural constraints. This vulnerability may be due to poverty, illness, disability, migration status or age. What matters is the degree to which these groups are structurally dependent on the sustainable functioning of public systems.

In the context of economic sanctions, the analysis of vulnerable groups means that the state should consider whether the proposed regulatory framework could have disproportionate effects on these groups. For example, restrictions on access to financial resources may be manageable for segments of the population that have access to informal markets or private networks, but have more severe consequences for groups that are completely dependent on public services.⁴³³

This analysis is important not only from the perspective of social justice, but also from the perspective of legal obligations. International human rights instruments have repeatedly emphasized the need to pay special attention to the situation of vulnerable groups in public policy-making.⁴³⁴ The failure to consider these groups in the design of sanctions policy, especially in situations where their disproportionate effects are foreseeable, can be considered against the state in assessing the observance of due diligence and the principle of proportionality.⁴³⁵

Vulnerable group analysis also helps to avoid false generalizations of effects. A policy may show limited effects at the macro level, but cause severe harms at the level of specific subgroups. Without population disaggregation, these effects remain hidden in the overall averages and the ex ante assessment loses its real function.

Consequently, identifying vulnerable groups transforms the ex ante assessment from a general analysis to a distributional analysis. This step shows that the state has not only considered the existence of potential effects on fundamental rights, but also how these effects are distributed across the population. Within the framework of the theory of regulatory

⁴³³ CESCR, General Comment No 8 (n 232); .

⁴³⁴ CRC, General Comment No 14 (n 145); Berna Eren and Fatih Demir, 'Child Rights and Structural Abuse by Income Level: A Global Comparative Analysis Based on World Bank Classification' (2025) 10 (Sp Iss 3) *Journal of Awareness* 71.

⁴³⁵ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

authority, such an analysis is essential for assessing the necessary proportionality and precision.

Among vulnerable groups, children have a special place that requires a separate analysis. This issue will be discussed in the next section.

5.4.3 Child-Specific Indicators

If children are identified as a group with structural vulnerability and a special normative status, an *ex ante* assessment cannot be limited to a general reference to “impact on children”. In order for this assessment to go beyond the formal level, specific and measurable indicators should be used in the analysis of the impacts on children. Such an approach is also consistent with the special place of children’s rights in the international human rights system, where the principle of the best interests of the child is recognized as a fundamental interpretative criterion in public policy-making.⁴³⁶

The first indicator is sustainable access to health and medicine services relevant to children. The assessment should examine whether the proposed regulatory framework could directly or indirectly affect the import, financing or distribution of essential medicines and equipment for children. This analysis should be based on actual transmission pathways, not on the assumption of theoretical exemptions that may be ineffective in practice due to banking or administrative barriers.⁴³⁷

The second indicator is sustainable access to education. Extensive financial constraints may affect the capacity of the target government to provide educational resources. The *ex ante* assessment should examine whether there is a risk of reduced quality or access to education for children and, if so, what measures can be envisaged to reduce this risk.

The third indicator is child food and nutritional security. In many economies, imports of food, nutritional supplements or agricultural inputs depend on financial mechanisms. Disruptions in these mechanisms can indirectly affect children’s nutritional status. The

⁴³⁶ CRC (n 88), art 3; Hoffman, ‘Children’s Rights Impact Assessment’ (n 424).

⁴³⁷ Kokabisaghi, ‘Effects of Economic Sanctions on Right to Health’ (n 339).

assessment should analyse the possible transmission pathways and not consider the existence of general exceptions to be sufficient.⁴³⁸

The fourth indicator is cumulative and medium-term effects. The assessment should not only look at immediate consequences, but should also consider whether structural constraints could lead to a sustained reduction in the capacity of child-related services over time. This analysis should take into account a longer time horizon, particularly in areas where initial damage may not be visible in the short term. Such an approach is also consistent with the Committee on the Rights of the Child's emphasis on the long-term consequences of economic policies on children's well-being.⁴³⁹

The fifth indicator is the practical availability of humanitarian exemptions and exceptions. Even if the sanctions framework formally excludes areas relevant to children, the assessment should examine whether these exemptions are applicable in practice or are ineffective due to implementation complexities and banking risks. The indicator here is actual effectiveness, not the formal existence of an exemption.⁴⁴⁰

These indicators provide a minimal framework for the ex ante assessment of impacts on children. They are not intended to create a binding obligation, but to ensure that the State has seriously and documented the foreseeable consequences for children before exercising regulatory authority. The lack of such analysis can be invoked against the State in assessing due diligence and proportionality.⁴⁴¹

As a result, child-specific indicators elevate ex ante assessment to an objective and measurable level and demonstrate that the special position of children in the human rights system should also be reflected in the policy design stage.

5.5 Legal Consequences of Failure to Assess and Report

⁴³⁸ CESCR, General Comment No 12 (n 145); Sylvanus Kwaku Afesorbor, 'Sanctioned to Starve? The Impact of Economic Sanctions on Food Security in Targeted States' in Peter AG van Bergeijk (ed), *Research Handbook on Economic Sanctions* (Edward Elgar Publishing 2021) 438.

⁴³⁹ CRC, General Comment No 5 (n 147).

⁴⁴⁰ Jazairy, 'Unilateral Economic Sanctions' (n 381).

⁴⁴¹ Krieger, Peters and Kreuzer (eds), *Due Diligence* (n 107) .

If ex ante assessment is part of the state's conduct-based obligation in the context of exercising regulatory authority, the fundamental question is what the legal consequences are of not doing so. The answer to this question is that the lack of assessment and reporting is not simply an administrative or managerial shortcoming, but can play a decisive role in the analysis of violations of transboundary obligations.

First, the failure to carry out an ex ante assessment can be seen as evidence of a lack of due diligence. When a policy with potentially structural and foreseeable effects on fundamental rights is adopted, but no documented analysis of these effects is provided, this situation indicates a disregard for the element of foreseeability. In such cases, the state is in a more difficult position to prove compliance with its conduct-based obligation. In international law, due diligence requires that states take reasonable steps to prevent harm when faced with foreseeable risks.⁴⁴²

Second, the lack of an assessment can affect the proportionality analysis. If a state cannot show that it has considered less harmful alternatives or taken harm-mitigation measures before implementing a policy, the claim to compliance with the principle of proportionality is weakened. In other words, an ex ante assessment is part of the process of proving proportionality; its absence can deprive the claim of analytical support. In the practice of human rights institutions, the principle of proportionality also requires that states consider the likely consequences of restrictive measures before adopting them.⁴⁴³

Third, failure to report to existing monitoring mechanisms can have additional normative consequences. If a sanctions framework is designed to have foreseeable transboundary effects, but the state refuses to provide information and analysis on these effects to human rights institutions, this can be relevant in assessing the good faith and transparency of that state. In international law, the conduct of a state in the process of interacting with monitoring mechanisms is considered part of the overall assessment of compliance with obligations.⁴⁴⁴

⁴⁴² Ollino, *Due Diligence Obligations* (n 359).

⁴⁴³ ILC Articles on State Responsibility (n 119), art 51.

⁴⁴⁴ Talya Uçaryılmaz, 'The Principle of Good Faith in Public International Law' (2020) 68(1) *Estudios de Deusto* 43.

Fourth, in cases where structural and widespread effects have actually occurred, the lack of an ex ante assessment can play a role in the analysis of effective causal contribution. If the state, without considering reasonable risks, has implemented a policy, and this policy has played a decisive role in the causal chain of harm, the initial failure to assess can strengthen the element of effective causal contribution. In the framework of international State responsibility, establishing a causal link between the State's conduct and the harm suffered is a key element of responsibility.⁴⁴⁵

However, it should be emphasized that the failure to assess does not in itself amount to an automatic violation of a specific right. Its legal consequence appears mainly at the level of the conduct-based obligation and in the overall analysis of responsibility. If the State can show that, despite the lack of a formal assessment, it has in practice identified the risks and taken reasonable measures, the analysis of responsibility may be different. But the burden of proof will be higher in such a situation.⁴⁴⁶

Consequently, ex ante assessment and reporting are not bureaucratic formalities, but part of the architecture of accountability in the context of transboundary regulatory authority. Failure to do so undermines the state's ability to defend the legitimacy and proportionality of sanctions policy and could play a significant role in establishing violations of international obligations.

5.6 Chapter Conclusion

This chapter has examined the question of what conduct-based requirements should govern states before sanctions are imposed if economic sanctions are to be understood as an exercise of transboundary regulatory authority. The analysis has shown that the requirement to assess the human rights impacts of sanctions ex ante can be formulated within the existing structure of international law, without requiring the creation of an entirely new obligation or a fundamental redesign of the international institutional system.

⁴⁴⁵ Boyle, 'State Responsibility and Liability' (n 210).

⁴⁴⁶ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

First, the normative basis for this requirement is rooted in a body of existing principles and obligations. The obligation of due diligence requires that States, when faced with foreseeable risks to fundamental rights, take reasonable steps to identify and manage those risks. Positive human rights obligations also require States to take appropriate preventive measures when there is a foreseeable risk to the enjoyment of rights. Moreover, the principle of good faith in the implementation of international obligations requires that States not ignore the foreseeable consequences of their policies. Alongside these foundations, the gradual evolution of standards of conduct in other areas of international law also shows that the requirement to consider the effects before action has gradually become part of the preventive logic in the management of transboundary risks.

Second, this chapter has shown that institutionalizing *ex ante* assessment does not necessarily require the creation of new mechanisms. Existing human rights mechanisms, including the Human Rights Council, the Universal Periodic Review (UPR) and treaty monitoring bodies, have the capacity to gradually establish this standard of conduct by strengthening reporting requirements and developing the interpretation of existing obligations. Such an approach is more consistent with the institutional realities of the international system and is more likely to be implemented in practice.

Third, in order for *ex ante* assessment to go beyond the level of a general concept, this chapter has provided an operational framework for it. This framework includes conducting a documented assessment prior to the imposition of sanctions, reporting on this assessment to existing oversight mechanisms, and providing for a periodic review mechanism during the implementation of the policy. In addition, certain minimum requirements for the content of an *ex ante* assessment were proposed, including identifying rights at risk, analyzing the distributional impacts on vulnerable groups, and using specific indicators to measure the impacts on children.

Finally, this chapter has shown that the lack of an *ex ante* assessment and reporting can have important legal implications in the analysis of the international responsibility of States. Although the failure to conduct an assessment does not in itself amount to a direct violation of a specific right, it can play a decisive role in assessing the required level of diligence, the proportionality of the measures, and the effective causal contribution of the State to the chain

of harm. In this sense, an ex ante assessment is part of the architecture of accountability for the exercise of cross-border regulatory authority.

Accordingly, Chapter 5 shows that a framework can be established to increase accountability in the design and implementation of sanctions without denying the principle of legitimacy of the use of sanctions. The requirement for ex ante assessment and reporting is not a means of absolute limitation of state discretion, but rather a mechanism to ensure that the exercise of regulatory authority is carried out in light of human rights obligations and with due regard to its foreseeable effects. This framework completes the link between the theoretical analysis of regulatory authority and the logic of international responsibility and provides the basis for the final conclusion of the thesis.

CHAPTER SIX

The Regulatory Authority Model

6.1 The Regulatory Authority Model

This thesis began with a fundamental question: can contemporary economic sanctions be considered simply instruments of foreign policy, or are they a specific form of the exercise of public authority that should be analyzed within the framework of international human rights law?

The analysis of the previous chapters demonstrates that modern economic sanctions are no longer simply bilateral political responses. They are implemented through the control of access to financial, banking, energy, and global trade infrastructures. This control does not focus on territory but on the conditions of participation in the vital networks of the global economy. The regulatory authority model therefore seeks to conceptualize this form of power within the framework of international human rights law.⁴⁴⁷

The same “accountability gap” has been repeatedly described in the literature on extraterritorial obligations: globalization and the regulation of networks can produce significant transboundary effects, while traditional jurisdictional criteria still rely mainly on territorial presence or physical control.⁴⁴⁸ The present model does not aim to create a new rule, but instead seeks to fill this gap by coherently reinterpreting existing criteria and showing why and how some forms of sanctions can be analyzed as the exercise of public authority.

The model is based on the premise that whenever a state can structurally regulate the conditions of access to critical resources, it is exercising public authority, even if it lacks physical presence or territorial control.⁴⁴⁹ By “critical resources and infrastructure” in this chapter, this study refers to those institutional and technical bottlenecks that make participation in the global economy possible or impossible, such as payment and settlement systems, banking and brokerage services, insurance services, shipping and transportation

⁴⁴⁷ von Bogdandy, Goldmann and Venzke, ‘International Public Law’ (n 21).

⁴⁴⁸ Grant and Keohane, ‘Accountability and Abuses of Power’ (n 180).

⁴⁴⁹ Goldmann, ‘Relative Normativity’ (n 6).

networks, access to key technologies and components, and financial channels without which normal trade and the supply of essential goods would be structurally disrupted. This formulation limits the scope of the theory from the outset: the discussion is not about general economic effects, but about the legal regulation of network bottlenecks that have the capacity to produce foreseeable effects on the enjoyment of fundamental rights.

Consequently, the main question in this section is not “the political justification for sanctions” but “the legal character of the measure.” If the state conditions access to these bottlenecks through binding legal instruments, and if this conditioning can reasonably produce structural effects on fundamental rights, then legal analysis must situate it within the logic of authority and obligation, not simply within the language of economic influence or political pressure.⁴⁵⁰

6.1.1 Definition of Regulatory Authority

Regulatory authority refers to a situation in which a state, through legally binding rules or regulations, limits or regulates the access of another state or persons outside its territory to critical economic or financial infrastructure, in such a way that this regulation has structural and foreseeable effects on the enjoyment of fundamental rights.

In this definition, authority does not mean mere economic influence or territorial control. The criterion is the ability to create a binding framework that determines the actual conditions of access to critical resources. In such a situation, the state is not simply an actor in the global market, but rather a regulator of the conditions of participation in those networks. It is this feature that transforms the measure from a form of economic pressure into an exercise of public authority.⁴⁵¹

This understanding of authority is consistent with the distinction made in public law theory between “influence” and “authority”. Influence operates through economic incentives, political pressure or market interactions, without changing the legal status of the addressee.

⁴⁵⁰ Raz, *The Authority of Law* (n 4).

⁴⁵¹ Loughlin, *Foundations of Public Law* (n 1); Stephen J Kobrin, ‘Private Political Authority and Public Responsibility: Transnational Politics, Transnational Firms, and Human Rights’ (2009) 19(3) *Business Ethics Quarterly* 349.

In contrast, authority requires the establishment of binding rules that alter the rights, obligations, or practical capacities of actors.⁴⁵² In the context of economic sanctions, this transformation often occurs through regulations that restrict access to financial systems, banking services, key technologies, or trade routes.

Three elements are implicit in this definition.

First, the binding element. Regulatory authority is based on legal rules, not mere economic influence or political pressure. When restrictions are imposed through laws, executive regulations, or binding regulatory mechanisms, the state's action becomes regulatory in nature.⁴⁵³

Second, the subject of regulation. What is regulated is access to critical infrastructure, not merely voluntary exchanges between economic actors. This infrastructure includes payment and settlement systems, banking and brokerage networks, insurance and transportation services, key technologies, and other bottlenecks without which participation in the global economy would be seriously disrupted.

Third, structural effect. The regulation must be such that it affects the actual conditions of life and the enjoyment of rights. If the effect is merely limited, ad hoc or marginal, it cannot be used as a basis for the analysis of public authority. However, if the restriction imposed is capable of reasonably altering the conditions of access to goods, services or essential resources, the structural element is met.

In this framework, the criterion of authority is not physical presence, occupation or direct control over persons. The criterion is the ability to regulate the conditions of access to essential resources through binding frameworks that may generate foreseeable effects on the enjoyment of fundamental rights.⁴⁵⁴

6.1.2 The Three Elements of the Model

⁴⁵² MacCormick, *Legal Reasoning and Legal Theory* (n 15).

⁴⁵³ Kingsbury, 'Concept of Law in GAL' (n 140).

⁴⁵⁴ Scott, 'Extraterritoriality in EU Law' (n 95).

The regulatory authority model is based on three cumulative elements. Only when these three elements are present together that the situation moves from the level of mere political action to the level of the exercise of public authority. Each of these elements establishes an analytical threshold that prevents the unlimited expansion of the concept of authority.⁴⁵⁵

A) The Exercise of Transboundary Regulatory Authority

The first element is the existence of a binding legal framework or regulations that condition participation in global economic networks. This element clarifies the distinction between economic influence and legal authority. Political pressures, market competition, or independent decisions of private actors may have important economic effects, but they cannot be considered exercises of public authority unless they are formulated through binding state rules.⁴⁵⁶

In contrast, when a state restricts access to the banking system, payment systems, capital markets, or critical commercial infrastructure through laws, executive regulations, or mandatory regulatory regimes, it is engaging in rule-making. In such a situation, the state determines the conditions of participation in an economic network. It is this feature that transforms the measure from economic influence into the exercise of regulatory authority.⁴⁵⁷

B) Structural and Foreseeable Effect

The second element is the presence of a structural effect. The effect must go beyond isolated or ad hoc interactions and be capable of reasonably affecting the conditions of enjoyment of fundamental rights. Sanctions that affect only limited or marginal interactions do not meet this criterion.

Predictability is the key consideration here. The criterion is not the intention of the state, but an objective assessment of the likely effects of the policy. If at the time of designing or implementing the policy it can be reasonably foreseeable that the restrictions imposed could disrupt access to vital goods, services or resources, the second element is satisfied.⁴⁵⁸

⁴⁵⁵ Kumm, 'Legitimacy of International Law' (n 9).

⁴⁵⁶ Delimatsis, 'Private Regulatory Power' (n 45).

⁴⁵⁷ Zilioli, Bismuth and Thévenoz (eds), *International Sanctions* (n 72).

⁴⁵⁸ Stoyanova, 'Fault, Knowledge and Risk' (n 105).

This element establishes the link between regulatory authority and the human rights sphere. Only where the structural effects on the actual conditions of enjoyment of rights are foreseeable does human rights analysis become engaged.

C) Capacity for Real Impact

The third element is the practical capacity for impact. Regulatory authority arises when the state imposing the sanctions is in a position where its rules can change real life conditions. If the sanctions policy is merely symbolic or fails in practice to change access to critical infrastructure, it cannot be considered an exercise of public authority.⁴⁵⁹

This element prevents the theory from becoming a tool for analyzing any form of economic restriction. Only when the state, by virtue of its structural position in global economic networks, can restrict access to key bottlenecks is the third element satisfied

In light of these three elements, a clear distinction can be made between symbolic or limited sanctions and structural sanctions. It is only in the latter case that an analysis of public authority and, consequently, an examination of the activation of human rights obligations is justified.

Thus, the regulatory authority model does not rely on any cross-border economic effect, but on the intersection of three conditions: the existence of a binding regulatory framework, a structural and reasonably foreseeable effect, and a real capacity to influence. It is only at this point that the situation moves from the level of economic interaction to the level of the exercise of public authority.

6.1.3 Implications for the Jurisdiction Criterion

In the classical human rights model, the triggering of states' human rights obligations is largely linked to the concept of jurisdiction and to either a territorial nexus or effective physical control. This criterion reflects the historical structure of the state-based order, in which the exercise of power was largely within the territory of states. As such, in many

⁴⁵⁹ Ryngaert, *Jurisdiction in International Law* (n 25).

judicial and quasi-judicial decisions, the criterion of jurisdiction is linked to territorial presence or the exercise of direct control over individuals.⁴⁶⁰

However, the evolution in the nature of economic power has challenged this analytical framework. In the contemporary world, states can influence the actual conditions of life outside their territory by regulating access to financial infrastructure, banking networks, payment systems, key technologies or trade routes, without exercising physical presence or territorial control. In such a situation, focusing solely on the criterion of physical control cannot explain all effective forms of power.⁴⁶¹

The regulatory authority model suggests that in such circumstances, the criterion for triggering obligations should focus on the exercise of effective authority, not merely on territorial presence. If a state regulates the conditions of access to vital resources through binding regulatory frameworks, and this regulation can reasonably have structural effects on the enjoyment of fundamental rights, then that state is in effect exercising public authority, even if this authority is exercised outside its territorial jurisdiction.

In this framework, jurisdiction is understood not as a purely geographical concept but as a functional one, related to the place where public authority is exercised. Wherever a state can effectively regulate the conditions of enjoyment of rights, a link is established between the exercise of authority and the activation of human rights obligations.⁴⁶²

This does not imply an absolute obligation to guarantee outcomes.

Rather, it means the activation of a set of conduct-based obligations that are defined in proportion to the scope of the authority exercised. These obligations include the requirement of due care in policy design and implementation, the requirement to assess foreseeable impacts in advance, and the requirement to avoid widespread and foreseeable harm to the enjoyment of fundamental rights.⁴⁶³

⁴⁶⁰ Raible, 'Territory and Jurisdiction in IHRL' (n 10).

⁴⁶¹ Giuffrè, 'Functional-Impact Model' (n 81).

⁴⁶² Ryngaert, *Jurisdiction in International Law* (n 25).

⁴⁶³ Scott, 'Due Diligence as a Secondary Rule' (n 105).

The regulatory authority model thus suggests that changes in the structure of economic power can lead to a reinterpretation of the jurisdiction requirement. In this reinterpretation, the activation of the obligation depends not on the geographical location of the actor, but on the nature and intensity of the exercise of public authority. This approach attempts to adapt existing international law frameworks to the new reality of transboundary forms of regulatory power without negating them.

6.1.4 Implications for the Analysis of Responsibility

The regulatory authority model does not simply redefine the criterion for the activation of obligations, but also requires a rethinking of the way in which international responsibility is analyzed. If the exercise of transboundary economic power can activate human rights obligations, the assessment of responsibility must also be tailored to the characteristics of this form of regulatory power.

In the classical framework of international responsibility, the analysis usually focuses on a relatively direct relationship between the wrongful act and the harmful outcome. This model has developed mainly in contexts where the State acts directly and within its own territory. But in the context of structural economic sanctions, the relationship between regulatory policy and human consequences often appears as a complex chain of economic, institutional and social factors.⁴⁶⁴

In such a situation, the analysis of responsibility cannot rely solely on a linear and exclusive model of causation. What matters is the effective role of the State in creating or maintaining conditions that predictably affect the enjoyment of fundamental rights. Causation in this framework does not mean the exclusive creation of the result; rather, it refers to a significant causal contribution to the emergence of a harmful situation.⁴⁶⁵

The second important element in this analysis is foreseeability. In many cases, the human impacts of economic sanctions are not the direct result of intention, but rather the foreseeable consequence of structural restrictions on access to vital resources. Thus, the absence of intention to violate human rights cannot in itself exempt a State from legal assessment. The

⁴⁶⁴ Crawford, *State Responsibility* (n 120).

⁴⁶⁵ Lanovoy, 'Causation in State Responsibility' (n 217).

legal test here is whether a reasonable State could have foreseen the structural impacts at the time of designing or implementing the policy.⁴⁶⁶

The third element is the standard of due diligence. The exercise of transboundary regulatory authority requires that a State, in designing and implementing its policies, seriously assess the potential impacts on fundamental rights. This assessment must begin before the policy is implemented and continue throughout its implementation. If widespread impacts or deviations from initial predictions become apparent, the State is obliged to consider corrective and mitigation measures.⁴⁶⁷

In this context, the lack of ex ante assessment, disregard for foreseeable impacts, or failure to take reasonable measures to mitigate harm can be considered as evidence of a failure to meet the standard of due diligence.

6.1.5 Normative Limits on Regulatory Authority

The regulatory authority model does not negate the authority to impose sanctions. The aim of this model is not to deny the legitimacy of sanctions as a foreign policy instrument, but to place the exercise of this authority within the normative framework of international law. In this framework, the legitimacy of a political goal alone is not sufficient to justify any mode of exercising economic power.

In international law, the exercise of public authority is always defined within a set of normative limits. Even in areas where states enjoy broad discretion, this discretion is not absolute and must be exercised within the framework of the fundamental rules of the legal order. Economic sanctions are no exception.⁴⁶⁸

In the regulatory authority model, this normative limit can be analyzed at three levels.

⁴⁶⁶ Stoyanova, 'Causation between Omission and Harm' (n 122) .

⁴⁶⁷ Samantha Besson, 'Due Diligence and Extraterritorial Human Rights Obligations: Mind the Gap!' (2020) 9(1) *ESIL Reflections*.

⁴⁶⁸ Raz, *The Authority of Law* (n 4).

First, the level of peremptory rules. Peremptory rules of international law establish boundaries that no policy, even in pursuit of legitimate security or political goals, can cross. If a sanctions regime is designed or implemented in a way that leads to widespread and serious violations of fundamental rights, the question of its compatibility with these fundamental boundaries will inevitably arise.⁴⁶⁹

Second, the level of obligations *erga omnes*. Some obligations in international law go beyond bilateral relations and are considered obligations to the international community as a whole. In such cases, the broad effects of sanctions on fundamental rights can raise questions about the international responsibility of the sanctioning State at a level beyond purely bilateral relations.⁴⁷⁰

Third, the level of conduct-based obligations derived from the standard of due diligence. Even in cases where there is no direct violation of peremptory norms or general obligations, States are still required to observe a reasonable standard of care, foreseeability and proportionality in the exercise of their economic authority. This standard requires that the potential effects of sanctions policies on fundamental rights be assessed and that the policy be reviewed if severe consequences arise.⁴⁷¹

In this framework, collective security or legitimate foreign policy objectives can provide a basis for justifying the imposition of sanctions. However, the legitimacy of the objective does not mean that the exercise of authority is exempt from normative assessment. Even when the policy objective is defensible, the exercise of authority must still be consistent with the fundamental constraints of the legal order.

The regulatory authority model thus analyses sanctions not as a domain outside the legal order, but as a form of exercise of public authority within that order. Economic authority, however extensive, is ultimately defined and limited within the framework of the normative rules of international law.

⁴⁶⁹ Kamminga, 'Extraterritoriality' (n 95).

⁴⁷⁰ Palombo, 'Extraterritorial, Universal, or Transnational Human Rights Law?' (n 366).

⁴⁷¹ Viterbo, 'Extraterritorial Sanctions' (n 191).

6.1.6 The Model's Place in the Architecture of International Law

The regulatory authority model does not claim to create a new rule in international law. It aims to reformulate existing concepts in light of the structural transformation of the ways in which economic power is exercised. International law has always established a conceptual link between authority and responsibility.⁴⁷² However, many of the classical criteria for the triggering of obligations were developed at a time when the exercise of power was largely territorial.

The evolution of the structure of the global economy has changed this historical assumption. In the contemporary world, states can control or constrain the global economy through regulatory instruments, access to financial networks, payment infrastructures, trade routes, key technologies, and other institutional bottlenecks. This form of power is not based on the occupation of territory or direct control over individuals, but rather on regulating the terms of participation in economic networks.⁴⁷³

In such circumstances, legal analysis that continues to rely solely on territorial criteria or physical control will not be able to fully explain the relationship between power and obligations. The regulatory authority model attempts to fill this analytical gap. The model suggests that where the state regulates the conditions of access to critical infrastructure through binding frameworks and this regulation has structural and predictable effects on the enjoyment of fundamental rights, it can be analyzed as an exercise of public authority.

In this context, the regulatory authority model seeks neither to extend responsibility indefinitely nor to deny the legitimacy of economic sanctions. It aims to provide an analytical criterion that can connect the actual forms of power exercise in the global economy with the accountability mechanisms of international law.

The theoretical innovation of this paper lies precisely in this. It shows that the concept of regulatory authority can serve as a connecting link between three areas that are often analyzed separately: the economic sanctions regime, extraterritorial human rights obligations, and the rules of international responsibility. By placing these three domains

⁴⁷² Raz, *The Authority of Law* (n 4).

⁴⁷³ Stoyanova, 'Framing Positive Obligations' (n 131).

within a common conceptual framework, the regulatory authority model explains how some forms of economic sanctions can create the conditions for the activation of human rights obligations beyond the territory.

The theoretical contribution of this paper is thus not to create a new legal regime, but to provide a coherent conceptual framework for understanding the relationship between transnational economic power and legal accountability.⁴⁷⁴ This framework shows that, without negating the instrument of sanctions and without extending liability indefinitely, the criterion for the activation of obligations can be shifted from mere physical control to the exercise of regulatory authority with a structural and predictable effect.

Thus, responsibility in the regulatory authority model is not based on complete control over all economic factors, but on the exercise of effective authority with the ability to predict its effects. This approach attempts to balance the complex reality of causal chains in the global economy with the normative requirements of international law.

6.2 Activation of Extraterritorial Obligations in the Light of Regulatory Authority

The central question of this thesis has been from the outset: whether and under what conditions the imposition of economic sanctions activate the human rights obligations of the sanctioning state towards persons outside its territory?

The analysis of the previous chapters has shown that the answer to this question lies neither in an unlimited expansion of human rights jurisdiction nor in a complete denial of the possibility of extraterritorial obligations. Each of these two approaches faces serious theoretical problems. An unlimited extension of jurisdiction can lead to the weakening of the principle of sovereignty and the collapse of the boundaries of responsibility, while a complete denial of extraterritorial obligations is also unable to explain cases in which states, without a physical presence, effectively affect the conditions of enjoyment of fundamental rights outside their territory.⁴⁷⁵

⁴⁷⁴ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

⁴⁷⁵ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

The regulatory authority model provides an analytical framework for moving beyond these two extremes. It shows that in some circumstances, economic sanctions are not simply instruments of political pressure, but act as exercises of public authority. When a state regulates, through its own binding rules, the conditions of access to the critical infrastructure of the global economy, it is in effect shaping the institutional environment in which the enjoyment of fundamental rights is realized.⁴⁷⁶

In such a situation, the question of the triggering of human rights obligations is no longer limited to the issue of territory or physical presence. What becomes important is the relationship between the exercise of regulatory authority and its foreseeable effects on the actual conditions of the enjoyment of rights.

From this perspective, the triggering of extraterritorial obligations is not the result of a political expansion of the concept of jurisdiction, but rather the logical consequence of the recognition of new forms of the exercise of authority in the global economy. If the state can determine, through its own regulatory instruments, the conditions of access to critical resources and this determination reasonably affects the enjoyment of fundamental rights, a relationship is formed between the exercise of authority and the activation of the obligation.⁴⁷⁷

Accordingly, the aim of this section is to formulate precisely the conditions under which economic sanctions can lead to the activation of transboundary obligations. This formulation attempts to balance two fundamental considerations: on the one hand, the need to avoid a disconnect between transnational economic power and legal accountability, and on the other, to avoid an unlimited expansion of the scope of States' human rights obligations.⁴⁷⁸

The precise elements of this activation of the obligation are examined below.

6.2.1 The Conceptual Shift from Territory to the Exercise of Effective Authority

In the classical human rights model, the triggering of states' obligations has been largely linked to the notion of jurisdiction and territorial nexus or effective physical control. This

⁴⁷⁶ Goldmann, 'Relative Normativity' (n 6).

⁴⁷⁷ Kulesza, 'Human Rights Due Diligence' (n 106).

⁴⁷⁸ Ferstman, 'Due Diligence and Extraterritorial Cooperation' (n 149).

criterion reflects the historical structure of the traditional state-based order, in which the exercise of public power was largely within the territory of States and geographical boundaries were therefore the natural framework for determining the scope of obligations.⁴⁷⁹

However, the evolution of the structure of the global economy shows that public power is no longer exercised solely within a territorial framework. States can now determine the conditions of participation in global economic networks by regulating access to financial infrastructure, payment systems, banking services, insurance, transport, or critical technologies. This regulation can be applied in a way that has direct and structural effects on the enjoyment of fundamental rights outside the state's territory, without any physical presence or territorial control.⁴⁸⁰

In such circumstances, focusing solely on the criterion of physical control cannot explain all cases of effective exercise of power. If the state can determine the conditions of access to critical resources through its binding regulatory instruments and this determination reasonably and foreseeably affects the enjoyment of fundamental rights, legal analysis cannot dispense with the consideration of responsibility simply because of the lack of territorial presence.

In response to this development, the regulatory authority model proposes to shift the criterion for triggering the obligation from "physical control" to "the exercise of effective authority." Effective authority here refers to the ability of a state to regulate the actual conditions of access to resources and infrastructure on which the practical realization of many fundamental rights depends.

In this framework, territory is no longer a necessary condition for the activation of the obligation. What matters is the relationship between the exercise of regulatory authority and its actual effect on the conditions of enjoyment of rights. Wherever a state can create such an effect through its binding frameworks, a link is established between the exercise of power and the activation of human rights obligations.⁴⁸¹

⁴⁷⁹ Skogly, 'Prevention is Better than a Cure' (n 432).

⁴⁸⁰ Pisillo-Mazzeschi, 'Due Diligence Rule' (n 104).

⁴⁸¹ Krisch, 'Jurisdiction Unbound' (n 17).

This conceptual shift does not mean a complete rejection of the traditional criteria of jurisdiction. Territorial control or effective physical control remains one of the most important factors in the activation of obligations. What the regulatory authority model proposes is the addition of a new analytical dimension that can also include transboundary forms of the exercise of regulatory power in the framework of legal analysis.

In this way, jurisdiction is transformed from a purely geographical criterion to a functional concept related to the place where public authority is exercised. The activation of the obligation in this model is measured not based on the geographical location of the state, but on its ability to regulate the actual conditions for the enjoyment of rights.

6.2.2 The Three Elements for Triggering the Obligation

To prevent the unlimited development of obligations, the triggering of extraterritorial obligations in this model is limited to the fulfillment of three cumulative conditions. Only if these three elements are present simultaneously can we speak of a transition from the level of economic influence to the level of exercise of public authority.⁴⁸²

A) The Existence of a Binding Regulatory Framework

The first condition is the existence of a binding legal or regulatory framework established by the state. Mere informal economic pressure, market fluctuations or independent decisions of private actors are not sufficient to trigger obligations. What matters is the existence of a rule that the state has established and made its implementation mandatory through legal or institutional means.

In the context of economic sanctions, this framework can appear in the form of laws, executive regulations, licensing systems or supervisory mechanisms that restrict access to financial, banking, technological or trade routes services. In such a situation, the state is not simply influencing the market, but is also regulating the conditions of participation in it.⁴⁸³

B) Structural and Reasonably Foreseeable Effects on Fundamental Rights

The second condition is the existence of structural and reasonably foreseeable effects on the enjoyment of fundamental rights. For an extra-territorial obligation to be triggered, it is not

⁴⁸² von Bogdandy and Venzke, *In Whose Name?* (n 22).

⁴⁸³ Goldmann, 'Relative Normativity' (n 6).

enough that an economic policy has diffuse or marginal consequences. The effect must go beyond the level of ad hoc interactions and be capable of affecting the actual conditions of access to essential resources or services.

Foreseeability here is an objective criterion. The question is not whether the state intended to violate human rights, but whether a reasonable state in the same situation could have foreseen the structural effects of the policy. If the widespread and lasting effects on the conditions of enjoyment of fundamental rights are reasonably foreseeable, the second condition is met.⁴⁸⁴

C) The State's Effective Role in Creating or Maintaining the Restrictive Situation

The third condition is the effective role of the state in creating or maintaining the restrictive situation. In many cases, economic and social consequences are the result of a complex set of factors that include domestic policies, global market conditions, and the decisions of private actors. In such circumstances, responsibility cannot be determined solely on the basis of the presence of a single agent in the causal chain.

What matters is the effective causal contribution of the state to the formation of the restrictive situation. If the sanctions policy plays a decisive role in creating or maintaining the structural constraints, this condition is met. Conversely, if the state's role is entirely marginal or non-determining, the activation of the obligation has no legal justification.⁴⁸⁵

It is only with the sum of these three conditions that the situation is transferred from the level of general economic influence to the level of the exercise of public authority and that extra-territorial obligations can be activated. This formulation attempts to strike a balance between the need to be accountable for the exercise of cross-border economic power and to avoid an unlimited extension of international responsibility.

6.2.3 Scope and Nature of the Triggered Obligation

The activation of an extraterritorial obligation does not mean creating an absolute obligation to guarantee the outcome. This is essential to maintain the theoretical coherence of the

⁴⁸⁴ Committee on Economic, Social and Cultural Rights, 'General Comment No 24 (2017): State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' UN Doc E/C.12/GC/24 (10 August 2017); Besson, 'Extraterritoriality of the ECHR' (n 390).

⁴⁸⁵ Hathaway, 'Between Power and Principle' (n 11).

model. In the framework of regulatory authority, the scope of the obligation is measured in proportion to the nature of the authority exercised and the severity of its structural effect. Therefore, the responsibility of the sanctioning state does not mean complete control over all economic and social consequences, but rather compliance with a reasonable standard of legal conduct in the exercise of regulatory power.⁴⁸⁶

In this framework, the activated obligation is primarily conduct in nature. What the state is expected to do is to make decisions based on rational assessment, anticipate the expected effects, and observe proportionality between the policy objective and its consequences. In other words, the state is obliged to act in the exercise of its regulatory authority in a way that minimizes the risk of widespread and foreseeable harm to the enjoyment of fundamental rights.⁴⁸⁷

In this model, three main levels of behavioral obligations can be identified.

First, the obligation to respect. The State should not create a regulatory framework that is foreseeable to lead to a direct or structural impairment of fundamental rights, unless it can demonstrate the necessity and proportionality of such a restriction in light of legitimate aims.⁴⁸⁸ This obligation means avoiding restrictions that structurally impair access to basic needs.

Second, the obligation to due diligence. The State is obliged to assess the potential effects of sanctions on the enjoyment of fundamental rights before designing and implementing them. This assessment should include examining the foreseeable consequences on access to essential goods and services and, if there are significant risks, measures to mitigate the harm.⁴⁸⁹

Third, the obligation to review and amend. If the implementation of a sanctions policy in practice leads to consequences beyond the initial expectations or has widespread effects on the enjoyment of fundamental rights, the State is obliged to review its policy. This review

⁴⁸⁶ Crawford, *State Responsibility* (n 120).

⁴⁸⁷ Anne Peters, 'Proportionality as a Global Constitutional Principle' in Anthony F Lang Jr and Antje Wiener (eds), *Handbook on Global Constitutionalism* (Edward Elgar Publishing 2023) 346.

⁴⁸⁸ Kingsbury and others, 'Global Administrative Law' (n 67).

⁴⁸⁹ Besson, 'Due Diligence and Extraterritorial Obligations' (n 467).

could include amending the scope of the sanctions, creating humanitarian exemptions, or adopting harm-reduction mechanisms.⁴⁹⁰

In this context, the activation of the obligation does not mean a complete guarantee that no negative effects will occur. The global economy is a complex network of interacting factors, and many outcomes are beyond the direct control of a state. What international law demands in such a situation is a reasonable standard of anticipatory and responsible conduct in the exercise of regulatory power.⁴⁹¹

Thus, the nature of the obligation in the regulatory authority model is not consequential but conduct-based. The state is obliged to act in the exercise of its economic authority in such a way that its policies are based on assessment, anticipation, and proportionality, and that there is room for revision and revision in the event of unforeseen effects.

6.2.4 The Relationship Between the Activation of the Obligation and the Principle of Sovereignty

A major theoretical concern in the discussion of extraterritorial obligations is that the expansion of the scope of human rights obligations may lead to the weakening of the principle of state sovereignty. If any transboundary economic effect could provide a basis for the triggering of obligations, the boundaries of responsibility would expand indefinitely and the distinction between the spheres of state competence would disappear.⁴⁹²

The regulatory authority model is designed to avoid precisely such an outcome. It does not consider the mere existence of an indirect, general or marginal economic effect to be sufficient the triggering obligations. In the global economy, many economic policies may have transboundary consequences, but this does not in itself mean the exercise of public authority over living conditions outside the territory.

The decisive criterion in this model is the existence of regulatory authority producing structural effects and involving an effective causal role. Only in cases where a state, through

⁴⁹⁰ CESCR, General Comment No 24 (n 484).

⁴⁹¹ Goldmann, 'Relative Normativity' (n 6).

⁴⁹² Besson, 'Due Diligence and Extraterritorial Obligations' (n 467).

its binding frameworks, can regulate the conditions of access to critical infrastructures of the global economy, and this regulation has reasonably foreseeable effects on the enjoyment of fundamental rights, can the question of the activation of extraterritorial obligations arise.⁴⁹³

In other words, what is important in this model is not the extent of the state's economic activity in the global market, but the intensity of its regulatory authority in determining the conditions of participation in economic networks. If a state is merely a market player and does not play a decisive role in regulating access to critical resources, its economic impact cannot be considered a basis for the activation of extraterritorial obligations.

From this perspective, the regulatory authority model does not seek to expand human rights jurisdiction indefinitely, nor does it seek to create obligations beyond the actual capacity of states. The model aims to maintain the link between power and responsibility in a situation where new forms of exercising power have transcended territorial boundaries.⁴⁹⁴

In fact, this analytical framework attempts to strike a balance between two fundamental principles of international law: on the one hand, the principle of the sovereignty of states and the limitation of their jurisdiction, and on the other, the principle of accountability for the exercise of public authority.⁴⁹⁵ The activation of extraterritorial obligations in this model occurs only at the point where the exercise of state regulatory authority actually and structurally affects the conditions for the enjoyment of fundamental rights.

Thus, rather than undermining the principle of sovereignty, the regulatory authority model actually places it in a balanced framework with the principle of accountability. This model shows that respect for sovereignty does not mean ignoring the foreseeable consequences of the exercise of economic power, but rather regulating a proportionate relationship between the scope of authority and the scope of obligation.

6.2.5 Systematic Implications for the Concept of Jurisdiction

⁴⁹³ Krisch, 'Jurisdiction Unbound' (n 17).

⁴⁹⁴ Eckert, 'Financial Access Challenges' (n 336).

⁴⁹⁵ Grant and Keohane, 'Accountability and Abuses of Power' (n 180).

The final conclusion of this analysis is that the evolution of the structure of economic power in the international system has necessitated a reinterpretation of the concept of jurisdiction. Traditional criteria that linked the activation of human rights obligations primarily to territory or effective physical control were developed at a time when the exercise of public power was largely confined to territorial boundaries.⁴⁹⁶ In such an order, the link between territory, authority and responsibility was relatively clear.

But in the contemporary world, many forms of economic power are exercised through the regulation of cross-border networks. States can use their legal and institutional instruments to limit or condition access to financial infrastructure, payment systems, banking services, key technologies or global trade routes. These measures can affect the actual conditions of life and the enjoyment of fundamental rights without a physical presence in the territory of other States.⁴⁹⁷

In such circumstances, limiting the concept of jurisdiction to purely geographical criteria cannot capture all cases of the exercise of effective authority. The regulatory authority model suggests that where a state regulates the conditions of access to vital resources through its own binding frameworks and this regulation has structural and reasonably foreseeable effects on the enjoyment of fundamental rights, a relationship is formed between the exercise of authority and the activation of human rights obligations.⁴⁹⁸

Accordingly, jurisdiction in this model is understood not simply as a territorial concept, but as a functional concept related to the place of exercise of public authority. What activates the obligation is not the geographical location of the state, but its ability to regulate the actual conditions of enjoyment of rights.

This reinterpretation does not mean an unlimited expansion of the scope of the obligations. As explained in the previous sections, the activation of the obligation is only possible if three conditions are present simultaneously: the existence of a binding regulatory framework, a structural and predictable effect on fundamental rights, and the causal role of the state in creating or maintaining the restrictive situation.

⁴⁹⁶ Kulesza, 'Human Rights Due Diligence' (n 106).

⁴⁹⁷ Zarate, *Treasury's War* (n 40).

⁴⁹⁸ Douhan, 'Human Rights Due Diligence in Sanctions' (n 382).

Consequently, the evolution of the concept of jurisdiction in this framework is not a political change in the scope of state competence, but rather a logical reflection of a deeper transformation in the nature of the exercise of power in the global economy.⁴⁹⁹ If power can change the conditions of enjoyment of rights without crossing borders, legal accountability cannot be limited to territorial boundaries.

Thus, the activation of transboundary obligations in the regulatory authority model is based on a fundamental principle: wherever public power effectively regulates the conditions of enjoyment of rights, a corresponding obligation is also formed.

6.3 The Link between Power and Responsibility in the Age of Regulatory Authority

The fundamental issue of this thesis was not sanctions as a foreign policy instrument, but the relationship between the evolution of the structure of power and the evolution of the criteria of responsibility in international law. The main question was whether the evolution of the methods of exercising power could remain consistent with the internal coherence of the legal order without a transformation in the criteria of accountability.⁵⁰⁰

In the classical order of international law, power and responsibility overlapped to a large extent within a territorial framework. The state exercised authority within its territory and was accountable within that same territory. This simultaneity between the realm of power and the realm of responsibility gave the legal system conceptual coherence. The criterion for triggering obligations was clear: territorial presence or the exercise of effective physical control.⁵⁰¹

However, the evolution of the structure of the global economy has changed this traditional simultaneity. In the contemporary world, states can influence the practical conditions of life in those spaces by regulating access to financial networks, capital markets, payment systems, key technologies, and commercial infrastructures, without having a physical presence

⁴⁹⁹ Koskeniemi, *From Apology to Utopia* (n 5).

⁵⁰⁰ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

⁵⁰¹ Besson, 'Extraterritoriality of the ECHR' (n 390).

outside their borders. This development represents a structural shift in the way public authority is exercised.⁵⁰²

If the criteria of responsibility continue to be defined solely on the basis of territory, a gap will open between power and accountability. Power can be exercised across borders, while responsibility remains confined to territorial boundaries. Such a situation would not be consistent with the internal logic of international law, which always establishes a link between authority and obligation.⁵⁰³

The regulatory authority outlined in this essay is an attempt to fill this gap. It suggests that in some circumstances, modern economic sanctions are not simply instruments of political pressure but also act as exercises of public authority. When a state regulates, through its binding frameworks, the conditions of access to the critical infrastructure of the global economy, and this regulation produces structural and reasonably foreseeable effects on the enjoyment of fundamental rights, a relationship between the exercise of authority and legal responsibility is formed.

The guiding principle of this analysis is simple, but theoretically significant:

Wherever public authority is effectively and structurally exercised, corresponding responsibility arises.⁵⁰⁴

This principle is not based on a political expansion of state competence, but on a coherent rereading of existing concepts of international law. What changes is not the foundations of the legal order, but its adaptation to new forms of exercise of power in the global economy.

The implications of this link between power and responsibility are examined at several levels of analysis below.

6.3.1 Responsibility as a Function of the Form of Power

⁵⁰² Thomas Gehring and Sebastian Oberthür, 'The Causal Mechanisms of Interaction between International Institutions' (2009) 15(1) *European Journal of International Relations* 125.

⁵⁰³ Koskenniemi, *From Apology to Utopia* (n 5).

⁵⁰⁴ Delimatsis, 'Private Regulatory Power' (n 45).

The first theoretical consequence of the link between power and responsibility is that standards of legal accountability cannot remain independent of the ways in which power is exercised. In international law, responsibility has always been defined in relation to the exercise of public authority.⁵⁰⁵ In other words, the form of power in any historical period largely determines how the criteria for the activation of obligations and responsibilities are formulated.

In a system where power was exercised primarily within a territorial framework, territorial criteria were sufficient to activate obligations. Presence in a territory or the exercise of effective physical control over persons or areas was a clear indication of the exercise of public authority and therefore provided a basis for the activation of human rights obligations. This analytical framework was consistent with the structure of power at that time.

But in a system where economic power is exercised in a networked and regulatory manner, the same criteria cannot explain all cases of the effective exercise of authority. Modern economic sanctions are a clear example of this development. States can restrict access to financial networks, banking services, critical technologies, or global trade routes through their binding rules. These restrictions may be imposed without a physical presence in the territory of other States, but they have the potential to alter the actual conditions of enjoyment of fundamental rights.⁵⁰⁶

The regulatory authority model suggests that in such circumstances, the criterion for triggering the obligation cannot be limited to territorial presence alone. What matters is the State's ability to regulate the conditions of access to the resources and infrastructure on which the practical realization of many fundamental rights depends.

In this framework, legal responsibility is subordinate to the form of power. Wherever public authority is exercised through regulatory and network mechanisms, the analysis of responsibility must also be based on the same ground. If a State can effectively regulate the conditions of access to vital resources and such regulation produces structural and

⁵⁰⁵ Crawford, *State Responsibility* (n 120).

⁵⁰⁶ Goldmann, 'Relative Normativity' (n 6).

reasonably foreseeable effects on the enjoyment of fundamental rights, the mere invocation of the lack of territorial presence cannot exempt that State from accountability.⁵⁰⁷

Thus, the regulatory authority model suggests that the evolution of the criteria for activating obligations is not an arbitrary expansion of the scope of responsibility, but rather a logical consequence of the evolution of the ways in which power is exercised in the international system. When the form of power changes, the criteria for accountability must inevitably adapt to that evolution.

6.3.2 Proportionality between the Scope of Power and the Scope of Obligation

A second theoretical consequence of the link between power and responsibility is that the scope of the obligation should be measured in proportion to the scope of the authority exercised. The triggering of obligations were based solely on the existence of any transboundary economic effect, responsibility could extend indefinitely. Such an approach is neither consistent with the structure of international law nor defensible in practice.⁵⁰⁸

The regulatory authority model is designed to avoid precisely such an outcome. In this model, the activation of the obligation is only possible if the state, through its binding frameworks, effectively regulates the conditions of access to critical infrastructure and where such regulation produces structural and reasonably foreseeable effects on the enjoyment of fundamental rights. Even in these cases, the scope of the obligation depends on the extent of the authority exercised and the intensity of its effect.

In other words, a proportional relationship is established between power and obligation. The broader the regulatory authority and the more severe its structural impact, the greater the level of care, assessment and caution expected of the state. Conversely, where the policy effects are more limited or the state's role in shaping the situation is less decisive, the scope of the obligation is correspondingly reduced.⁵⁰⁹

⁵⁰⁷ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

⁵⁰⁸ Crawford, *State Responsibility* (n 120).

⁵⁰⁹ Besson, 'Due Diligence and Extraterritorial Obligations' (n 467).

This principle of proportionality is important in two ways. First, it prevents the theory from becoming a basis for unlimited liability. If human rights obligations are applied without regard to the extent of the state's actual authority, the boundaries of liability will expand uncontrollably. Second, it allows legal analysis to remain attuned to the complex reality of the global economy, where social and economic outcomes are often the result of the interaction of a multitude of factors.

In this context, liability in the regulatory authority model is largely conduct-based in nature. What is required of the state is not a complete guarantee of the outcome, but rather a reasonable standard of legal conduct in the exercise of economic authority. This conduct should be based on an assessment of foreseeable effects, a proportionality between the policy objective and its consequences, and the adoption of measures to mitigate potential harm.⁵¹⁰

Thus, the principle of proportionality between the scope of power and the scope of commitment allows the regulatory authority model to strike a balance between two important considerations: on the one hand, the need to be accountable for the exercise of cross-border economic power, and on the other, the avoidance of imposing obligations that go beyond the actual capacity of states.

6.3.3 Transparency as an Institutional Condition for the Link between Power and Responsibility

A third consequence of the link between power and responsibility is the need for transparency in the exercise of regulatory authority. In areas where states regulate the terms of participation in global economic networks through legal and institutional means, the lack of transparency can lead to a distancing of power from normative oversight. If regulatory decisions with potentially far-reaching effects on the enjoyment of fundamental rights are taken without assessment, without explanation and without public scrutiny, the link between authority and accountability will gradually weaken.⁵¹¹

In such circumstances, transparency becomes an institutional condition for maintaining this link. Regulatory authority can only be sustained within the legal order if the process of

⁵¹⁰ Gutmann and others, *Economic Sanctions and Human Rights* (n 322).

⁵¹¹ Ollino, *Due Diligence Obligations* (n 359).

designing, implementing, and reviewing regulatory policies is subject to assessment and accountability. Without such a mechanism, economic power can become a domain in which decisions affecting the living conditions of millions of people are made without adequate normative oversight.⁵¹²

In the regulatory authority model, ex ante impact assessment and reporting during policy implementation serve as key instruments for ensuring transparency. Ex ante assessment allows the government to assess the potential impacts of a policy on access to essential resources and services before it is implemented and, if necessary, to take measures to mitigate potential harm. Reporting also allows for ongoing monitoring of the actual consequences of the policy and provides the basis for correction or revision in the event of unforeseen impacts.

These requirements do not negate the authority of states. States can still use sanctions as a tool for legitimate foreign or security policy objectives. What these requirements do is to place the exercise of this authority within a mechanism that allows for normative assessment and legal accountability.

Transparency, in this model, is therefore not a mere administrative or managerial recommendation, but rather an institutional condition of the link between power and responsibility. Without mechanisms that make the effects of regulatory policies visible and assessable, the principle of accountability for the exercise of economic authority will be difficult to implement in practice.⁵¹³

The requirement for ex ante assessment and reporting can thus be seen as one of the key tools for maintaining coherence between the evolution of the structure of economic power and the normative requirements of international law.

6.3.4 Structural Coherence of the Legal Order

The link between power and responsibility in this framework is not an abstract moral principle, but a structural necessity in the international legal order. In order to maintain its

⁵¹² Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

⁵¹³ Hathaway, 'Between Power and Principle' (n 11).

internal coherence, any legal system must establish an identifiable relationship between the exercise of authority and the formation of obligations. If it is possible to exercise power, but no mechanism is foreseen for accountability for its effects, the legal order will face a kind of conceptual discontinuity.⁵¹⁴

In the classical order of international law, this coherence was maintained through the link between territory, authority and responsibility. States mainly exercised power within their own territory, and therefore legal accountability was also defined within the same territorial framework. Traditional criteria of jurisdiction reflected this historical structure.⁵¹⁵

However, the evolution of the structure of the global economy has shown that economic power can also be exercised without a territorial presence. States are able to limit or condition the conditions of access to financial networks, banking services, key technologies or global trade routes through their regulatory tools. These measures can directly or indirectly affect the conditions of enjoyment of fundamental rights outside the territory of the exercising State.⁵¹⁶

If in such circumstances responsibility remains based solely on a territorial criterion, a gap will be created between the reality of the exercise of power and the mechanisms of legal accountability. Power can become transnational, while responsibility remains confined to geographical boundaries. Such a situation would not be compatible with the internal logic of international law, which always establishes a conceptual relationship between authority and obligation.⁵¹⁷

The regulatory authority model attempts to fill this gap through a coherent reinterpretation of existing concepts of international law. It shows that concepts such as jurisdiction, causality, due diligence, obligations erga omnes and peremptory norms have the necessary capacity to be reinterpreted in the light of changes in the ways in which economic power is exercised.⁵¹⁸ Such a reinterpretation would allow the link between power and responsibility to be maintained in the new circumstances without creating an entirely new regime.

⁵¹⁴ Koskenniemi, *From Apology to Utopia* (n 5).

⁵¹⁵ von Bogdandy, Goldmann and Venzke, 'International Public Law' (n 21).

⁵¹⁶ Zarate, *Treasury's War* (n 40).

⁵¹⁷ von Bogdandy, Goldmann and Venzke, 'International Public Law' (n 21).

⁵¹⁸ Besson, 'Due Diligence and Extraterritorial Obligations' (n 467).

The aim of this model is not to completely rewrite the framework of international law, but to restore analytical coherence between the structure of power and the structure of accountability. If international law is to continue to play the role of regulating power relations, it must be able to accommodate new forms of the exercise of authority within its framework of legal analysis.

The regulatory authority model thus shows that maintaining the structural coherence of the legal order requires that the criteria for triggering obligations be aligned with the evolution of the modes of exercising power. Only under such conditions can the disconnect between transnational economic power and legal accountability be avoided.

6.3.5 Final Formulation of the Theory

The analysis of this thesis can be concisely formulated in the form of a few theoretical propositions. These propositions are the result of the connection between previous discussions on regulatory authority, the activation of transnational obligations, and the relationship between power and responsibility in international law.

The first proposition is that public authority in the contemporary international system is not exercised solely within a territorial framework. Through their regulatory instruments, states can determine the conditions of access to global economic networks and thus affect the actual conditions of life and the enjoyment of fundamental rights without having a physical presence outside their territory.⁵¹⁹

The second proposition is that in such circumstances, legal analysis cannot rely solely on territorial criteria or physical control. If the exercise of public authority can change the conditions of enjoyment of rights without crossing borders, the criteria for triggering obligations must also be able to encompass these new forms of exercise of power.⁵²⁰

The third proposition is that the concept of regulatory authority can provide an analytical framework for identifying this situation. When a state regulates access to critical

⁵¹⁹ Krisch, 'Jurisdiction Unbound' (n 17).

⁵²⁰ Ryngaert, *Jurisdiction in International Law* (n 25).

infrastructures of the global economy through binding regulatory frameworks and such regulation produces structural and reasonably foreseeable effects on the enjoyment of fundamental rights, that state exercises public authority even if such authority operates beyond its territorial boundaries.⁵²¹

The fourth proposition is that the exercise of such authority can lead to the activation of human rights obligations, provided that three conditions are met simultaneously: the existence of a binding regulatory framework, a structural and foreseeable impact on fundamental rights, and the effective causal contribution of the state in creating or maintaining the restrictive situation.⁵²²

The fifth proposition is that the activation of these obligations does not mean the creation of unlimited liability or an absolute obligation to guarantee the outcome. The obligations activated in this framework are primarily conduct-based and require states to observe a reasonable standard of precision, predictability, and proportionality in the exercise of their regulatory authority.⁵²³

Finally, it can be concluded that the transformation of the structure of economic power in the international system requires a rereading of some analytical criteria of international law. The model of regulatory authority proposed in this thesis shows that a coherent balance can be established between the reality of new forms of economic power and the requirements of legal accountability without denying the legitimacy of the instrument of sanctions and without unlimited expansion of responsibility.

Accordingly, the guiding principle of this treatise can be summarized in a single proposition: Wherever public authority effectively regulates the conditions for the enjoyment of fundamental rights, a corresponding legal obligation arises.⁵²⁴

6.4 Limiting the Theory and Avoiding Unlimited Expansion of Responsibility

⁵²¹ Goldmann, 'Relative Normativity' (n 6).

⁵²² Crawford, *State Responsibility* (n 120).

⁵²³ Viterbo, 'Extraterritorial Sanctions' (n 191).

⁵²⁴ Raz, *The Authority of Law* (n 4).

The theory of regulatory authority was formulated with the aim of filling the gap in accountability for new forms of transnational economic power. However, any theory that redefines the relationship between structural power and human rights obligations inevitably faces the question of whether such an approach can lead to an unlimited expansion of international responsibility. Therefore, setting clear limits to the scope of the theory is not a secondary consideration but a fundamental condition for its defensibility under international law.⁵²⁵

The first limit of the theory lies in the element of regulatory authority. The theory applies only to cases where the state regulates access to the critical infrastructure of the global economy through a binding and organized framework. Many international economic interactions can have transboundary effects, but as long as these effects do not result from the exercise of state regulatory authority, they do not fall within the scope of the theory. The scope of the theory is therefore limited to the exercise of public authority, not to every economic action with a transboundary consequence.⁵²⁶

The second limit of the theory concerns the requirement of structural and reasonably foreseeable effects. The regulatory authority theory is not based on any negative economic outcome, but only on cases where the consequences of the sanctions policy are structurally related to its design and were reasonably foreseeable at the time the policy was adopted. Effects that are completely unexpected, far-fetched, or result from complex and unanalyzable economic chains do not fall within the scope of this framework.⁵²⁷

The third limit of the theory is the criterion of effective causal contribution. In the global economy, many social and economic consequences are the result of the interaction of a set of different factors. The regulatory authority theory does not distribute responsibility based on mere presence in the causal chain, but limits it to cases where the sanctions policy plays a decisive role in creating or maintaining the restrictive situation. If the role of the state in this chain is merely marginal or non-determining, the threshold for attributing responsibility will not be met.⁵²⁸

⁵²⁵ Nollkaemper and others, 'Guiding Principles on Shared Responsibility' (n 121).

⁵²⁶ Ibid.

⁵²⁷ CESCR, General Comment No 24 (n 484); Peters, 'Proportionality as a Global Constitutional Principle' (n 487).

⁵²⁸ Ollino, *Due Diligence Obligations* (n 359).

The fourth limit of the theory is the distinction between conduct-based obligations and result-based obligations. The activation of the extraterritorial obligation in this framework does not mean that the state is required to guarantee a specific economic outcome. The global economy is composed of multiple and variable factors, and many outcomes are beyond the direct control of a state. What is required of the state is to observe a reasonable standard of legal conduct in the exercise of regulatory authority. This conduct includes assessing the effects of the policy *ex ante*, taking measures to mitigate harm, and reviewing if unforeseen consequences arise.⁵²⁹

The fifth limit of the theory lies in recognizing the role of other actors in shaping complex economic situations. In many cases, the domestic policies of the target state, the independent decisions of private actors, or structural developments in the global economy also play a role in shaping human outcomes. The theory of regulatory authority does not replace the responsibility of these actors. Rather, it considers only the contribution of those state actions that, through the exercise of regulatory authority, have contributed to the creation or perpetuation of the restrictive situation.⁵³⁰

Finally, the theory of regulatory authority should be understood as a minimalist rather than a maximalist theory. Its aim is neither to deny the legitimacy of all economic sanctions nor to extend the responsibility of states indefinitely. The theory is activated only at the point where three elements meet: structural power, structural effect, and effective causal role.

Outside this intersection, this analytical framework does not provide a basis for triggering obligations.

Thus, the delimitation of the theory shows that the link between power and responsibility in this treatise is not absolute and unfettered, but conditional and based on certain thresholds. It is this delimitation that transforms the theory of regulatory authority from a broad political claim into a defensible legal framework in international law.⁵³¹

⁵²⁹ Augenstein and Kinley, 'Human Rights Responsibilities and Duties' (n 111).

⁵³⁰ Nollkaemper and Jacobs, 'Shared Responsibility' (n 115).

⁵³¹ von Bogdandy, Dann and Goldmann, 'Publicness of Public International Law' (n 3).

6.5 Chapter Conclusion

This chapter has attempted to formulate the analytical results of the entire thesis into a coherent theoretical framework. The fundamental question of this research was whether contemporary economic sanctions can be analyzed simply as foreign policy instruments, or whether in some circumstances these measures act as a form of exercise of public authority that must be assessed within the framework of states' human rights obligations. The analysis presented in this chapter has shown that the evolution in the ways in which economic power is exercised in the international system requires a rethinking of the criteria for triggering human rights obligations.

In the classical order of international law, the nexus between territory, authority, and responsibility formed the main structure of legal analysis. States exercised power primarily within their own territory, and therefore legal accountability was also defined within the same territorial framework. Traditional criteria of jurisdiction reflected this structure, linking the activation of human rights obligations to territorial presence or effective physical control. This framework was developed at a time when the main forms of public power were exercised within the borders of states.

However, developments in the global economy have shown that public power is no longer exercised solely in terms of territorial control. States can now, through their regulatory instruments, limit or condition access to critical infrastructures of the global economy. Access control to financial networks, payment systems, banking services, key technologies or global trade routes can be exercised without a physical presence in the territory of other states, but at the same time be able to affect the actual conditions of enjoyment of fundamental rights in those spaces.

In such a situation, a legal analysis that continues to rely solely on territorial criteria or physical control will not be able to fully explain the relationship between power and obligation. If the exercise of authority can cross territorial borders, accountability mechanisms must also be able to accommodate these new forms of power. Otherwise, a gap will develop between the reality of the exercise of power and the legal frameworks of accountability.

The regulatory authority model presented in this paper is an attempt to fill this analytical gap. It suggests that in cases where a state regulates, through its own binding frameworks, the conditions of access to critical infrastructures of the global economy, and this regulation has structural and reasonably foreseeable effects on the enjoyment of fundamental rights, it can be analyzed as an exercise of public authority. In such a situation, a relationship is formed between the exercise of authority and the triggering of human rights obligations, even if this authority is exercised outside the territorial scope of the state.

However, to avoid an unlimited expansion of responsibility, this paper proposes three cumulative conditions for the activation of extraterritorial obligations: the existence of a binding regulatory framework, a structural and foreseeable effect on fundamental rights, and the effective causal contribution of the state in creating or maintaining the restrictive situation. Only if these conditions are simultaneously fulfilled can one speak of a transition from the level of public economic influence to the level of exercise of public authority.

In this context, the triggering of human rights obligations does not mean creating an absolute obligation to guarantee a result. The obligations activated in this model are largely conduct-based in nature and require states to observe a reasonable standard of care, foresight, and proportionality in the exercise of their regulatory authority. These obligations include ex ante assessment of the effects of the policy, adoption of harm reduction measures, and review in the event of widespread or unforeseen consequences.

The regulatory authority model thus attempts to strike a balance between two fundamental considerations. On the one hand, it prevents new forms of cross-border economic power from remaining outside the framework of legal accountability. On the other hand, by setting specific thresholds for the activation of the obligation, it prevents the unlimited expansion of international responsibility.

Finally, The theoretical conclusion of this thesis can therefore be expressed in a concise principle: Where a state effectively regulates the conditions for the enjoyment of fundamental rights through regulatory authority, a corresponding legal responsibility arises. Recognizing this relationship does not mean denying the legitimacy of economic sanctions, but rather placing their application within the normative framework of international law.

Accordingly, the regulatory authority model suggests that it is possible to reconcile the evolution of the ways in which economic power is exercised with the requirements of legal accountability without creating an entirely new regime and without an unlimited expansion of the scope of responsibility. Such a reinterpretation would allow international law to maintain its regulatory role in the face of new forms of authority in the global economy and to reconstruct the fundamental link between power and responsibility in the new circumstances.

CHAPTER SEVEN

Comparative Test: Iran and Russia

7.1 Methodology of the Comparative Test

Chapter 7 has a different function from the previous chapters. While chapters 1 to 6 have dealt with the theoretical formulation of the concept of regulatory authority, the criterion for activating extraterritorial obligations, the redefinition of causality, and the delimitation of responsibility, this chapter is concerned with testing the internal coherence and applicability of this framework. The aim of this section is not to present a comprehensive political or economic narrative of the situation in the two countries, but to assess the explanatory power and analytical capacity of the theory in two complex and contemporary sanctions contexts. From this perspective, the present chapter is an applied legal analysis whose task is to demonstrate the possibility of moving from conceptual propositions to assessable and operational legal thresholds.

The method adopted in this chapter is a “theory-driven comparative examination.” The purpose of being theory-based is that the starting point of the analysis is not the countries or the history of sanctions, but the criteria and components of the theory themselves. First, the elements of the theory are operationalized, then these elements are tested in a structured manner in two specific situations to clarify whether the conditions for the three criteria of activation of obligations, effective causal contribution, and proportionality are met. Thus, countries are the “field of testing” in this chapter, not the “independent object of research”. This approach is consistent with the logic of structured comparison in case studies and prevents comparison from becoming a juxtaposition of scattered descriptions.⁵³² In the methodological literature, this approach can be explained by the idea of structured and focused comparison and testing theory through case studies.⁵³³ The methodological reference for this work can be formulated in frameworks such as George and Bennett (2005) and the literature on causal analysis in case studies by Mahoney (2012).⁵³⁴

⁵³² George and Bennett, *Case Studies* (n 403).

⁵³³ *ibid.*

⁵³⁴ James Mahoney, ‘The Logic of Process Tracing Tests in the Social Sciences’ (2012) 41(4) *Sociological Methods and Research* 570.

The choice of Iran and Russia was made based on three considerations. First, both countries have been subject to extensive economic sanctions with financial and banking dimensions, which clearly demonstrate the characteristics of networked regulatory authority.⁵³⁵ Second, in both cases, the human rights implications of sanctions have been the subject of debate, particularly in areas related to public services and vulnerable groups.⁵³⁶ Third, the structural differences between the two situations allow for analytical comparison, in a way that tests the theory in two different contexts and reduces the risk of premature generalization. In terms of test design, this choice simultaneously serves two purposes: on the one hand, it allows for the observation of the realization of elements of regulatory authority in two high-intensity sanctions regimes, and on the other hand, it allows for the impact of structural variables such as the size of the economy, the capacity for substitution, and the level of integration in global markets on the transmission path and on legal thresholds.

In this comparative test, the analysis proceeds in five steps. The first step is to identify the binding regulatory framework in each case and examine the realization of the elements of regulatory authority, that is, to examine institutionalization, binding, and networked enforcement through compliance mechanisms. The second step is to analyze the transmission paths and assess the structural character of the consequences as well as their predictability, in the sense of whether the consequences presented are merely sporadic and random or follow an understandable logic at the level of financial and economic mechanisms that were reasonably foreseeable to the sanctioning decision-maker.⁵³⁷ The third step is to examine the effective causal contribution in the cumulative chain. At this stage, the theory deliberately does not commit to a single-cause model. The question is not whether the sanction was the “sole cause” or not, but whether, among the multiple causes, the sanction played an effective and legally meaningful role in shaping the outcome, in such a way that we can speak of normative attribution of responsibility.⁵³⁸ The fourth step is to assess the proportionality and normative limits of the sanctioning authority, that is, to assess whether the intensity and design of the regulatory instruments are consistent with the expected behavioral requirements and with the restrictive criteria reconstructed in the previous

⁵³⁵ Drezner, ‘Targeted Sanctions’ (n 12); Verdier, *Global Banks on Trial* (n 18).

⁵³⁶ Mallard and others, ‘Humanitarian Gap in Sanctions Regime’ (n 335); Eckert, ‘Financial Access Challenges’ (n 336).

⁵³⁷ Besson, ‘Due Diligence and Extraterritorial Obligations’ (n 467).

⁵³⁸ Crawford, *State Responsibility* (n 120).

chapters.⁵³⁹ The fifth step is to assess the existence of ex ante assessment and accountability, that is, whether the sanctioning states have foreseen mechanisms for measuring foreseeable effects, policy reform, and harm reduction.⁵⁴⁰

This approach deliberately avoids extensive analysis of all political and economic dimensions of each case. The focus is on elements that are directly relevant to the theoretical framework. Such a limitation is necessary not for the sake of simplification but to preserve the egal character of the test. If the analysis tends toward a comprehensive political description, the result will inevitably be either non-legal judgments or an accumulation of data that does not clarify the legal threshold. Instead, the present chapter commits itself to assessing the question of whether elements of the theory can be confirmed or refuted by relying on available data and by drawing plausible pathways of impact.

Also, this chapter does not claim to provide definitive empirical proof of the relationship between sanctions and any particular harm. The level of analysis here is legal and conceptual. The analysis is formulated in terms of “thresholds”: whether a structural and foreseeable effect can be demonstrated in the areas relevant to fundamental rights, whether the causal contribution is defensible, and whether a specific behavioral obligation is activated as a result. Thus, although economic data and official reports are essential for understanding the transmission path of the effect, they are not a substitute for the legal criterion. They are raw materials that only make sense in relation to the theoretical thresholds defined in previous chapters.

From a methodological perspective, this chapter uses a combination of normative sources, official international reports, economic analyses, and human rights literature. Normative sources are used to establish the level of legal obligation and the language of the criterion. Official reports and economic data are important for demonstrating the plausibility of the causal pathways and for testing predictability. The human rights literature is also useful for highlighting to highlight how the harms in question are framed within the framework of fundamental rights, and in particular in relation to vulnerable groups. However, the final assessment remains based on the same theoretical criteria and thresholds and does not go beyond them.

⁵³⁹ De Schutter and others, ‘Maastricht Principles Commentary’ (n 86).

⁵⁴⁰ CESCR, General Comment No 8 (n 232).

Finally, the comparative test has two essential functions. First, it shows that the theory of regulatory authority is not merely an abstract formulation, but is applicable and capable of being operationalized in real situations. Second, it reveals the practical limits of the theory. That is, it identifies under what conditions the criteria are not met and responsibility does not automatically arise. Thus, this chapter is not only a test of the validity of the theory, but also a means of delimiting its scope. The result that this test should produce is not a predetermined one. Its value lies precisely in the fact that it recognizes the possibility of reaching different conclusions in the two cases, without falling into relativism or purely political judgment.

At the same time, it must be emphasized that the aim of this chapter is not to provide a fully conclusive empirical test in the conventional sense of the empirical sciences. The function of the comparative study here is closer to what is described in the methodological literature as a plausibility probe; that is, an initial test to assess whether the proposed theoretical framework has analytical coherence and applicability in the face of real cases.⁵⁴¹ Such a test does not seek to definitively prove causal relationships, but rather examines whether the causal pathways and legal thresholds defined in the theory can be applied in a reasonable and defensible manner in real contexts. In this sense, the present comparative study plays the role of assessing the applicability and determining its practical limits rather than serving as definitive proof of the theory.

7.2 Regulatory Authority in the Case of Iran

The first step in testing the theory in the case of Iran is to examine whether the sanctions framework imposed has the characteristics of “regulatory authority” in the sense defined in this thesis. The key question at this stage is not the political legitimacy of the sanctions, but their structural and regulatory nature. In other words, the analysis in this section focuses on whether the sanctions in this case have acted merely as a instrument of economic pressure or have in effect created a binding regulatory framework that regulates access to critical economic infrastructure.

⁵⁴¹ Mahoney, ‘Process Tracing Tests’ (n 534).

At various times, Iran has been the target of a wide range of financial, banking, and energy sanctions imposed by individual governments and, at times, by international institutions. Among these measures, banking sanctions and restrictions on access to the international financial system are of particular theoretical importance, as they have directly affected the critical infrastructure of capital flows and economic exchanges.⁵⁴² These restrictions have included asset freezes, prohibitions on dealings with specific banks, restrictions on access to international payment networks, and the imposition of secondary sanctions on third parties. In particular, in the case of secondary sanctions, the scope of their impact has extended beyond the territory of the sanctioning state and has also subjected private actors in other jurisdictions to regulatory obligations.⁵⁴³

According to the first criterion of the theory, it must be examined whether these measures have been applied within the framework of an organized “binding regulatory framework”. In the case of Iran, financial sanctions have been imposed mainly on the basis of the domestic laws of the sanctioning states and detailed implementing regulations, accompanied by criminal and financial enforcement mechanisms.⁵⁴⁴ These frameworks have not been mere political recommendations, but rather a set of binding rules that have been implemented through supervisory bodies and financial compliance systems. Banks and financial institutions have been subject to heavy fines and regulatory restrictions if they violate these regulations.⁵⁴⁵ From this perspective, the structure of the sanctions has had the characteristics of an institutionalized regulatory framework that guides the behavior of economic actors through binding rules.

The second element is the structural nature of authority. Financial sanctions against Iran have not been limited to specific transactions or individuals, but have targeted the access of the country’s banking system to parts of the global financial infrastructure. Restrictions on international settlement, difficulties in transferring currency, and increased transaction costs are all signs of an impact at the structural level of economic functioning.⁵⁴⁶ Here, authority is exercised not through territorial control but through the regulation of access to key financial infrastructure. In other words, regulatory power in this situation does not manifest

⁵⁴² Hufbauer and Jung, ‘Economic Sanctions in the Twenty-First Century’ (n 49).

⁵⁴³ Ruys and Ryngaert, ‘Secondary Sanctions’ (n 46).

⁵⁴⁴ Zarate, *Treasury’s War* (n 40).

⁵⁴⁵ Verdier, *Global Banks on Trial* (n 18).

⁵⁴⁶ IMF, *Withdrawal of Correspondent Banking Relationships* (n 50).

itself in direct control of economic activity, but in the ability to determine the terms of access to international financial and payment networks.

The third element is the networked nature of enforcement and compliance. In the case of Iran, the practical implementation of many of the sanctions restrictions has been through a network of foreign banks, financial institutions, and private companies that have refrained from interacting with Iranian institutions to avoid facing financial and legal penalties. In the legal literature on sanctions, this phenomenon is often described as “over-compliance.”⁵⁴⁷ Reports by international bodies and the UN Special Rapporteur on the effects of unilateral coercive measures have also repeatedly pointed out that the legal and financial risks arising from sanctions regimes can lead banks and companies to refrain from engaging with the target country more broadly, even in areas where formal humanitarian exemptions exist.⁵⁴⁸

In such a situation, the behavior of private actors cannot be considered simply as an independent commercial decision, because the regulatory framework of sanctions structures legal risk in a way that effectively limits the range of acceptable economic behavior. Thus, an indirect and networked enforcement mechanism is also visible in this case. Sanctions in this sense are implemented not only through direct action by the sanctioning state, but also through a set of compliance mechanisms in the global financial network.⁵⁴⁹

However, the establishment of regulatory authority does not automatically entail a violation of human rights or international responsibility of state. At this stage, it is only necessary to show that the features of regulatory authority, in the sense of exercising power through infrastructure, were present. Questions related to the structural impact on fundamental rights, the causal contribution to the causal chain, and the assessment of proportionality will be examined in subsequent stages of the analysis.

It should also be noted that in the analysis of the Iranian case, the role of domestic factors such as economic structure, fiscal policies, institutional capacity, and the quality of economic

⁵⁴⁷ Mallard and others, ‘Humanitarian Gap in Sanctions Regime’ (n 335); Eckert, ‘Financial Access Challenges’ (n 336).

⁵⁴⁸ UN Human Rights Council, ‘Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena F Douhan’ UN Doc A/HRC/54/23 (31 July 2023); Douhan, ‘Human Rights Due Diligence in Sanctions’ (n 382).

⁵⁴⁹ Drezner, ‘Targeted Sanctions’ (n 12); Verdier, *Global Banks on Trial* (n 18).

governance is also important. The theory of regulatory authority does not require ignoring these factors. On the contrary, one of the main steps in testing the theory is precisely to examine how domestic and external factors interact to shape the final outcome.⁵⁵⁰ Therefore, in this section, the focus is solely on the establishment of the element of regulatory authority, and the analysis of causal contribution will be carried out in subsequent stages.

As a result, based on the elements defined in the previous chapters, it can be said that in the case of Iran, financial and banking sanctions have been imposed in the form of a binding, institutionalized, and enforceable framework that creates structural transboundary effects by regulating access to international financial infrastructure. This situation provides the basis for entering the next stage of analysis, namely examining the structural impact on fundamental rights and the possible activation of extraterritorial obligations.

7.3 Regulatory Authority in the Case of Russia

The sanctions imposed on Russia, especially after 2014 and with a wider scope after 2022, constitute one of the most complex examples of financial and economic sanctions in the contemporary international system. This sanctions regime has included a set of financial, banking, commercial and technological measures, applied by different states and within different legal frameworks.⁵⁵¹ To test the regulatory authority theory, the main question in this section is whether this framework also contains the elements of regulatory authority in the sense defined in this thesis.

The first element is the existence of a binding regulatory framework. Sanctions related to Russia have been imposed mainly on the basis of the domestic laws of the sanctioning states and a set of detailed implementing regulations. These regulations have included asset freezes on specific individuals and entities, restrictions on access of some Russian banks to international settlement systems, restrictions on the financing of government debt, and broad restrictions on financial transactions, investments, and technology transfers.⁵⁵² These measures have been accompanied by significant criminal and financial enforcement

⁵⁵⁰ Esfandyar Batmanghelidj, 'Resistance is Simple, Resilience is Complex: Sanctions and the Composition of Iranian Trade' (2024) 16(2) *Middle East Development Journal* 220.

⁵⁵¹ Drezner, 'Targeted Sanctions' (n 12); Kirkham, *Political Economy of Sanctions* (n 38).

⁵⁵² Ruys and Ryngaert, 'Secondary Sanctions' (n 46).

mechanisms, and individuals and legal entities that violate the regulations have been subject to heavy fines and regulatory restrictions.⁵⁵³ Therefore, from the perspective of the first element, it can be said that the sanctions measure in this case have also been applied within a binding and institutionalized legal framework.

The second element is the structural nature of the exercise of authority. In the case of Russia, some of the sanctions measures have targeted not only specific individuals or transactions, but also parts of the country's banking and financial system. For example, the restriction of access of some Russian banks to international financial settlement infrastructure and the removal of a number of these banks from the SWIFT financial messaging network in 2022 are examples of measures that directly concern key infrastructure of international financial interaction.⁵⁵⁴ Such measures can affect the overall capacity of an economy to conduct international financial transactions, and their effects go beyond the level of individual transactions. In this sense, the effects of sanctions in these cases are also achieved through the regulating of access to critical financial infrastructure, rather than through direct control of economic activity on the territory.⁵⁵⁵

The third element is networked implementation and mandatory compliance mechanisms. As in the case of Iran, the practical implementation of Russia-related sanctions has largely been carried out through a network of banks, financial institutions, multinational corporations, and financial service providers. These actors have limited or severed their business and financial relationships with sanctioned individuals or entities in order to avoid facing legal and financial risks arising from violations of sanctions regulations.⁵⁵⁶ As a result, the implementation of the sanctions regime is not limited to the direct actions of the sanctioning states, but is also implemented through a set of compliance mechanisms in the global financial network.⁵⁵⁷ This implementation pattern reflects the same networked nature of regulatory authority that was analyzed in previous chapters.

However, there are also important structural differences compared to the Iranian case that will be important for the next stages of the analysis. The Russian economy, in terms of size,

⁵⁵³ Verdier, *Global Banks on Trial* (n 18).

⁵⁵⁴ Zarate, *Treasury's War* (n 40).

⁵⁵⁵ IMF, *Withdrawal of Correspondent Banking Relationships* (n 50).

⁵⁵⁶ Mallard and others, 'Humanitarian Gap in Sanctions Regime' (n 335).

⁵⁵⁷ *Ibid.*

diversity of natural resources, and position in global energy markets, has characteristics that could make the transmission of the effects of sanctions distinct. For example, Russia's role in global oil and gas markets, as well as the existence of some alternative financial and trade mechanisms, may have provided the opportunity to mitigate some of the effects of financial restrictions. Economic reports from institutions such as the International Monetary Fund and the World Bank have also shown that the impact of sanctions on the Russian economy has been strongly influenced by domestic capacities, the government's economic policies, and the possibility of creating alternative trade routes.⁵⁵⁸

These differences show that the existence of regulatory authority does not mean that the economic or social consequences are the same in the two cases. The theory of regulatory authority seeks to identify only whether regulatory authority is exercised through economic infrastructure. The intensity of the effects and the transmission pathways are issues that will be addressed in the subsequent stages of the analysis, in particular in examining the structural impact on fundamental rights and in assessing the effective causal contribution.

Consequently, in the case of Russia, the main elements of regulatory authority can also be identified. The existence of a legally binding framework, the exercise of power through the regulation of access to international financial infrastructure, and the implementation of a network through financial compliance mechanisms all indicate that the sanctions regime in this case also possesses the characteristics of regulatory authority. Thus, from a theoretical perspective, the conditions for entering the next stage of the analysis, namely the examination of the structural impact on fundamental rights and the possible activation of extraterritorial obligations, are met.

At the same time, the structural differences between the two cases indicate that the final outcome of the analysis will not necessarily be the same. These differences will become more important in the subsequent stages, especially in the children's rights subtest and in the assessment of the effective causal contribution in the causal chain, and will allow for a more precise assessment of the scope of the theory.

⁵⁵⁸ Kirkham, *Political Economy of Sanctions* (n 38).

7.4 Children's Rights Subtest in Both Cases

After establishing the regulatory authority element in both cases, the fundamental question is whether the criteria for triggering a extraterritorial obligation in the area of children's rights are also met. This subtest is deliberately conducted at the level of the child, because the child enjoys a special normative position in the international human rights system and is at the same time structurally more vulnerable to economic and institutional disruptions.⁵⁵⁹ The Convention on the Rights of the Child and the interpretative practice of relevant monitoring bodies also emphasize that states must take into account the potential impacts of their policies on the well-being and fundamental rights of children when adopting economic and social policies.⁵⁶⁰ Consequently, if the regulatory authority theory can maintain its coherence at this sensitive normative level, it will also be defensible at more general levels.

A) Iran

In the case of Iran, a transmission path from banking restrictions to areas related to children can be traced. Restricted access to the international financial system can affect a country's ability to finance imports of medicines, medical equipment and some essential items.⁵⁶¹ Even where formal humanitarian exemptions are provided for in sanctions regimes, banking barriers, increased transaction costs and compliance risks can make practical access to these items difficult.⁵⁶² Reports from some international institutions and humanitarian organizations have also pointed out that financial constraints can affect the functioning of medicine and medical equipment supply chains under sanctions.⁵⁶³

To establish the activation of the extraterritorial commitment, three elements must be examined. First, the existence of a binding regulatory framework. As shown in the previous section, financial sanctions against Iran have been imposed in the form of a set of binding regulations with specific enforcement mechanisms. Therefore, the first element can be established.

⁵⁵⁹ CRC (n88).

⁵⁶⁰ CRC, General Comment No 14 (n 145); Committee on the Rights of the Child, General Comment No 16 UN Doc CRC/C/GC/16 (2013).

⁵⁶¹ IMF, *Withdrawal of Correspondent Banking Relationships* (n 50).

⁵⁶² Mallard and others, 'Humanitarian Gap in Sanctions Regime' (n 335).

⁵⁶³ Kokabisaghi, 'Effects of Economic Sanctions on Right to Health' (n 339).

The second element is to examine the existence of a structural and predictable impact in areas relevant to children. The question here is whether the financial restrictions imposed could reasonably have affected areas such as access to health services, essential medicines or child nutrition. If the available data show that banking restrictions or disruptions in international financial channels have disrupted the supply chain of some vital services or goods, the element of predictability is strengthened. In this case, we can say that the effect in question was not simply an unforeseeable consequence, but was predictable within the framework of known economic mechanisms.⁵⁶⁴

The third element is the effective causal contribution to the causal chain. At this point, the analysis becomes more complex, because the health and well-being of children in each country are influenced by a combination of internal and external factors. Government economic policies, the quality of resource management, the capacity of the health system and the level of development of social infrastructure can all play a role in determining the final outcome. Therefore, the theory of regulatory authority does not claim that sanctions alone are the cause of the current situation. The main question here is whether structural constraints resulting from financial sanctions, among the set of influencing factors, played a significant and legally meaningful role in shaping the outcome.⁵⁶⁵

If it is determined that structural banking constraints were one of the influencing factors in the disruption of the supply chain of critical services and that this effect was reasonably foreseeable at the time of policy adoption, the threshold for activating the behavioral obligation is strengthened. In such a situation, at least the obligation to assess the human rights impacts *ex ante*, adopt harm reduction measures and review the sanctions policy can be raised based on the theoretical framework of this thesis.⁵⁶⁶

B) Russia

⁵⁶⁴ CESCR, General Comment No 8 (n 232).

⁵⁶⁵ Crawford, *State Responsibility* (n 120).

⁵⁶⁶ Besson, 'Extraterritoriality of the ECHR' (n 390); De Schutter and others, 'Maastricht Principles Commentary' (n 86).

In the case of Russia, the transmission path of the effect may be different. The size of the economy, the diversity of natural resources, the level of industrialization and the capacities of alternative trade can moderate the intensity and scope of the sanctions effects in the social and humanitarian spheres.⁵⁶⁷ For this reason, the analysis of this case cannot be based solely on direct analogy with the Iranian experience, but must be based on specific data and structural features of the Russian economy.

If the financial and trade restrictions imposed have not resulted in a significant disruption in access to child-related services or goods, or if domestic factors and alternative mechanisms play a dominant role in determining the situation, the threshold of effective causal contribution may not be met.⁵⁶⁸ In such circumstances, the regulatory authority theory will not automatically lead to a conclusion that the extraterritorial obligation is triggered.

However, if there has been a structural and foreseeable disruption in access to child-related services in some areas, particularly those that have been more dependent on international financial or technological infrastructure, the analysis could approach a conclusion similar to that in the Iran case. In such a case, the question of the obligation of the sanctioning states to assess the humanitarian impact, adopt harm reduction measures, and review the design of sanctions policy will also arise.⁵⁶⁹

Subtest Result

The child rights subtest shows that the regulatory authority theory is not based on the assumption of automatic harm from sanctions, but rather on a stepwise analysis based on legal thresholds. In both cases, the realization of regulatory authority is a necessary condition for entering the liability analysis, but it is not sufficient on its own to activate the obligation. Only if a foreseeable structural effect and an effective causal contribution in areas relevant to children are established does the extraterritorial obligation become active.

The analysis also shows that the theory is able to take into account structural differences between the two countries and does not reach a predetermined conclusion. If the threshold

⁵⁶⁷ Kirkham, *Political Economy of Sanctions* (n 38); Batmanghelidj, 'Resilience is Complex' (n 550).

⁵⁶⁸ Besson, 'Extraterritoriality of the ECHR' (n 390).

⁵⁶⁹ CESCR, General Comment No 8 (n 232); De Schutter and others, 'Maastricht Principles Commentary' (n 86).

is activated in one case and not in the other, this difference indicates the flexibility and precision of the theory, not its weakness. Indeed, the analytical value of this framework is precisely that it allows distinctions between different situations and avoids turning legal analysis into general political judgement.

7.5 Final Assessment of the Theory's Validity

The comparative test of Iran and Russia allows for the assessment of the theory of regulatory authority at two levels. First, in terms of the theory's explanatory power in explaining the legal structure of contemporary sanctions. Second, in terms of its ability to establish clear normative boundaries for the attribution of responsibility. The validity of a legal theory is only defensible when it can simultaneously perform both functions: that is, both explain the phenomenon under study and prevent the unlimited extension of responsibility.⁵⁷⁰

From the perspective of explanatory power, the analysis of the two cases showed that the sanctions framework in both situations contained elements of regulatory authority. In both cases, the sanctions regime was based on a set of binding regulations that regulated the behavior of economic actors through legal rules and compliance mechanisms. Moreover, the exercise of power in both situations was exercised through the regulation of access to financial and economic infrastructure. Restrictions on access to financial networks, international settlement systems, and banking services suggest that sanctions in these cases were not simply a tool of political pressure, but a form of regulatory governance over global economic infrastructure. This observation suggests that the concept of regulatory authority can provide a conceptual framework for understanding the legal structure of economic sanctions in the contemporary international system.

In the second stage, the criterion for activating the extraterritorial obligation was tested based on a predictable structural effect and an effective causal contribution. In the case of Iran, it was conceivable to draw a transmission path from banking restrictions to areas related to social welfare, and in particular children's rights, although determining the precise causal contribution of this factor among a set of domestic and external factors requires a more detailed examination of empirical data. In the case of Russia, the analysis showed that the

⁵⁷⁰ Koskenniemi, *From Apology to Utopia* (n 5).

exercise of regulatory authority alone is not sufficient for the activation of the obligation, and that structural differences in the economy, alternative capacities, and the role of domestic policies in determining outcomes must also be taken into account. This difference between the two cases shows that the theory does not automatically lead to the same result in every situation and avoids premature generalizations.

The comparative test is also of particular importance in terms of normative limitation. The theory of regulatory authority is activated only at the intersection of three elements: the existence of a binding regulatory framework, a foreseeable structural effect on areas relevant to fundamental rights, and a causal contribution in shaping the desired outcome.⁵⁷¹ In cases where one of these elements does not reach the required threshold, liability under this framework does not arise. Thus, the theory neither considers every sanctions policy a priori illegitimate nor attributes every social harm to the sanctioning state. This analytical limitation is necessary to maintain the coherence of the system of responsibility in international law.⁵⁷²

The subtest on children's rights also showed that the theory is able to manage the most sensitive normative area of the human rights system without falling into absolutism. The child serves as an indicator of structural vulnerability and the intensification of normative scrutiny, but the existence of an impact on children's well-being or health is not in itself sufficient to prove a violation of human rights. The foreseeability of the impact and the effective causal contribution to the causal chain must also be established. This suggests that the theory of regulatory authority, on the one hand, maintains the necessary sensitivity to human dignity and the vulnerability of specific groups, and on the other, prevents the transformation of legal analysis into a mere moral or political judgment.

In sum, the comparative test suggests that the theory of regulatory authority has three essential features. First, its applicability to complex and contemporary situations in which economic power is exercised through global infrastructures. Second, its flexibility in the face of structural differences between countries and sanctions regimes. Third, its possession of clear normative limits that prevent the unlimited development of responsibility in international law.

⁵⁷¹ See Chapter 6 above.

⁵⁷² De Schutter and others, 'Maastricht Principles Commentary' (n 86).

Thus, the theory neither claims to deny the legitimacy of sanctions nor accepts the claim of irresponsibility of regulatory powers. Rather, it offers an analytical framework in which, wherever the exercise of transboundary regulatory authority is accompanied by foreseeable and effective effects on fundamental rights, a corresponding behavioral obligation is activated. Outside this range, no responsibility is established on the basis of this framework.

From this perspective, the comparative test of this chapter shows that the link between power and responsibility in the contemporary international legal system requires a conceptual reinterpretation.⁵⁷³ The theory of regulatory authority is an attempt to formulate this reinterpretation in the form of a limited, defensible, and consistent analytical framework consistent with the logic of the international responsibility system.

⁵⁷³ Ryngaert, *Jurisdiction in International Law* (n 25); Koskenniemi, *From Apology to Utopia* (n 5).

CHAPTER EIGHT

Final Conclusion

This thesis began with a fundamental question: can contemporary economic sanctions be analyzed simply as foreign policy instruments, or do they in some circumstances act as a form of public authority that must be assessed within the framework of states' human rights obligations? This question arises from a profound transformation in the structure of power in the contemporary international system. In today's world, states are able to influence the actual conditions of life and economic activity beyond their borders not only through traditional territorial means, but also by regulating access to global financial, banking, trade, and technological networks. Economic sanctions are one of the most important manifestations of this transformation in the ways in which power is exercised.

The analysis presented in this thesis has shown that traditional international law frameworks for analyzing this transformation face limitations. In many classical analyses, economic sanctions have been examined mainly within the framework of the law of countermeasures or the powers of international institutions. In these frameworks, the main focus is on the legitimacy of the political objective of sanctions or the formal conditions of their application, while the structural effects of these measures on the conditions of enjoyment of fundamental rights have received less attention. On the other hand, in the field of international human rights, the activation of state obligations has been based mainly on criteria such as territoriality or effective physical control. These criteria reflect a historical order in which the exercise of public power was mainly carried out within the borders of states.

The transformation of the structure of the global economy has changed this historical assumption. The contemporary economy is heavily dependent on cross-border financial networks, payment systems, banking services, insurance, transport and complex supply chains. States that are able to regulate access to these infrastructures through binding rules can in practice determine the conditions of participation in the global economy. Such power can be exercised without a physical presence in the territory of other states, but at the same time has significant effects on the actual conditions of enjoyment of fundamental rights in those spaces.

In response to this development, this thesis proposes the concept of “regulatory authority” as its main analytical framework. According to this concept, public authority in the global economy is not only exercised through territorial control, but can also be exercised through the regulation of access to the institutional and technical bottlenecks of the global economy. When a state determines the conditions of access to critical economic infrastructure through laws, regulations, or mandatory regulatory mechanisms, it is in fact regulating the institutional environment in which many fundamental rights are realized.

Within this framework, the first main finding of this research is that economic sanctions can in some circumstances be analyzed as an exercise of regulatory authority in the global economy. This situation arises when the sanctioning state, through its binding frameworks, restricts or conditions access to critical economic infrastructure in a way that has structural and reasonably foreseeable effects on the enjoyment of fundamental rights. In such circumstances, sanctions are no longer simply a tool of political pressure between states, but rather a form of public authority.

The second important finding of this research concerns the relationship between this form of economic authority and the human rights obligations of states. The analysis conducted showed that the activation of human rights obligations in such circumstances does not necessarily require an unlimited expansion of the concept of jurisdiction. Instead, the concept of jurisdiction can be reinterpreted in a functional manner that focuses on the place of exercise of public authority. Wherever a state, through its binding instruments, effectively regulates the conditions of access to critical resources and this regulation has structural effects on the enjoyment of fundamental rights, a legally relevant link is formed between the exercise of authority and the activation of human rights obligations.

However, to prevent the unlimited expansion of the scope of responsibility, this thesis proposes three cumulative conditions for the activation of extraterritorial obligations in the context of economic sanctions. First, the existence of a binding regulatory framework imposed by the State. Second, the existence of a structural and reasonably foreseeable effect on the conditions for the enjoyment of fundamental rights. Third, the existence of an effective causal role of the State in creating or maintaining the restrictive situation. Only if these three conditions are simultaneously fulfilled does the situation move from the level of

general economic influence to the level of the exercise of public authority and the possibility of analyzing human rights obligations arises.

The third finding of this research concerns the issue of international responsibility in the context of economic sanctions. The analysis conducted showed that in many cases, the human consequences of sanctions are the result of a complex chain of economic, institutional and social factors. In such circumstances, the analysis of responsibility cannot be based solely on linear and exclusive models of causality. Instead, what matters is the effective role of the state in creating or maintaining conditions that predictably affect the enjoyment of fundamental rights. From this perspective, liability under regulatory authority is not based on the exclusive creation of the outcome, but on a causal contribution to the formation of the harmful situation.

The fourth finding of the thesis concerns the nature of the obligations activated. This research shows that the activation of cross-border obligations in the context of economic sanctions does not mean the creation of an absolute obligation to guarantee the outcome. The global economy is a complex network of interacting factors, and many economic and social consequences are beyond the direct control of a state. Therefore, the obligations arising from the exercise of regulatory authority are largely behavioral in nature. What is expected of the state is to observe a reasonable standard of due diligence, predictability, and proportionality in the design and implementation of sanctions policies.

In this framework, governments are required to assess the potential impact of sanctions on access to essential resources and services before imposing them, to monitor their actual consequences during policy implementation, and to take measures to correct or mitigate the damage in the event of widespread or unforeseen effects. The requirement to assess the human rights impact of sanctions in advance, which has been examined in detail in this thesis, is one of the most important means of achieving this standard of conduct.

The comparative analysis presented in Chapter 7 showed that in practice, economic sanctions can have significant structural effects on the enjoyment of fundamental rights by restricting access to global financial and trade infrastructure. The experience of sanctions in Iran and Russia shows that restrictions on access to financial systems, key technologies, and global trade networks can indirectly but in a reasonably foreseeable manner affect areas such

as public health, food security, industrial capacity, and economic development. These examples demonstrate that analyzing sanctions within the framework of regulatory authority can provide a more nuanced understanding of the relationship between transnational economic power and its human consequences.

Overall, the theoretical innovation of this thesis can be seen in providing a conceptual framework that link three areas that have often been studied separately: the legal regime of economic sanctions, transnational human rights obligations, and the rules of international responsibility. The concept of regulatory authority acts as a connecting link between these three areas and allows for the analysis of the relationship between transnational economic power and legal accountability.

Accordingly, the main theoretical conclusion of this research can be summarized in one concise principle: in situations where a state, through its regulatory authority, effectively regulates the conditions for the enjoyment of fundamental rights outside its territory, an inevitable relationship is formed between the exercise of power and human rights obligations. Recognizing this relationship does not mean denying the legitimacy of economic sanctions as a foreign policy instrument, but rather placing the exercise of this authority within the normative framework of international law.

Thus, the model of regulatory authority proposed in this thesis attempts to strike a balance between two fundamental considerations. On the one hand, it prevents new forms of transnational economic power from remaining outside the framework of legal accountability. On the other hand, by setting specific thresholds for the activation of obligations, it prevents the unlimited expansion of international responsibility. Such an approach can help maintain the conceptual coherence of international law in the face of structural changes in the global economy and restore the fundamental link between power and responsibility in the new conditions.

Bibliography

- Afesorgbor SK, 'Sanctioned to Starve? The Impact of Economic Sanctions on Food Security in Targeted States' in van Bergeijk PAG (ed), *Research Handbook on Economic Sanctions* (Edward Elgar Publishing 2021)
- Alexy R, *A Theory of Constitutional Rights* (Oxford University Press 2010)
- Al-Jedda v United Kingdom* App no 27021/08 (ECtHR, 7 July 2011)
- Al-Skeini and Others v United Kingdom* App no 55721/07 (ECtHR, 7 July 2011)
- Alter KJ and Meunier S, 'The Politics of International Regime Complexity' (2009) 7(1) *Perspectives on Politics* 13
- Alter KJ and Raustiala K, 'The Rise of International Regime Complexity' (2018) 14(1) *Annual Review of Law and Social Science* 329
- Asada M, *Economic Sanctions in International Law and Practice* (Routledge 2019)
- Augenstein D and Kinley D, 'When Human Rights "Responsibilities" Become "Duties": The Extra-Territorial Obligations of States that Bind Corporations' in Deva S and Bilchitz D (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013)
- Banković and Others v Belgium and Others* App no 52207/99 (ECtHR, 12 December 2001)
- Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) (Second Phase)* [1970] ICJ Rep 3
- Barnidge R, 'The Due Diligence Principle under International Law' (2006) 8(1) *International Community Law Review* 81
- Bassiouni MC, 'International Crimes: "Jus Cogens" and "Obligatio Erga Omnes"' (1996) 59(4) *Law and Contemporary Problems* 63
- Batmanghelidj E, 'Resistance is Simple, Resilience is Complex: Sanctions and the Composition of Iranian Trade' (2024) 16(2) *Middle East Development Journal* 220
- Berkes A, 'Extraterritorial Responsibility of the Home States for MNCs' Violations of Human Rights' in Radi Y (ed), *Research Handbook on Human Rights and Investment* (Edward Elgar Publishing 2018)
- Besson S, 'Due Diligence and Extraterritorial Human Rights Obligations: Mind the Gap!' (2020) 9(1) *ESIL Reflections*

- Besson S, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25(4) *Leiden Journal of International Law* 857
- Biersteker TJ, Eckert SE and Tourinho M (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge University Press 2016)
- Bogdanova I, 'Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship' in Benedek W, Kettemann MC and Saage-Maaß M (eds), *European Yearbook on Human Rights 2023* (Intersentia 2023)
- Boyle AE, 'State Responsibility and International Liability for Injurious Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?' (1990) 39(1) *International and Comparative Law Quarterly* 1
- Brunnée J, 'Harm Prevention' in Rajamani L and Peel J (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2021)
- Byrne S, 'Reclaiming Progressive Realisation: A Children's Rights Analysis' (2020) 28(4) *The International Journal of Children's Rights* 748
- Certain Phosphate Lands in Nauru (Nauru v Australia) (Preliminary Objections)* [1992] ICJ Rep 240
- Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945)
- Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)' UN Doc E/C.12/2000/4 (11 August 2000)
- Committee on Economic, Social and Cultural Rights, 'General Comment No 3: The Nature of States Parties' Obligations' UN Doc E/1991/23 (14 December 1990)
- Committee on Economic, Social and Cultural Rights, 'General Comment No 8: The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights' UN Doc E/C.12/1997/8 (12 December 1997)
- Committee on the Rights of the Child, 'General Comment No 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)' UN Doc CRC/C/GC/14 (29 May 2013)
- Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990)
- Corfu Channel (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4

- Costelloe D, 'Peremptory Norms and Resolutions of the United Nations Security Council' in Tladi D (ed), *Peremptory Norms of General International Law (Jus Cogens)* (Brill Nijhoff 2021)
- Craik N, 'The Duty to Cooperate in the Customary Law of Environmental Impact Assessment' (2020) 69(1) *International and Comparative Law Quarterly* 239
- Crawford J, Pellet A, Olleson S and Parlett K (eds), *The Law of International Responsibility* (Oxford University Press 2010)
- Crawford J, *State Responsibility: The General Part* (Cambridge University Press 2013)
- Crawford J, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press 2002)
- da Costa K, *The Extraterritorial Application of Selected Human Rights Treaties* (Martinus Nijhoff Publishers 2012)
- de Búrca G, 'The European Court of Justice and the International Legal Order after Kadi' (2010) 51 *Harvard International Law Journal* 1
- De Schutter O and others, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34(4) *Human Rights Quarterly* 1084
- de Wet E, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004)
- Delimatsis P, 'Transnational Economic Activism and Private Regulatory Power' (2023) 26(3) *Journal of International Economic Law* 559
- Douhan A, 'Unilateral Coercive Measures, IHL and Impartial Humanitarian Action: An Interview' (2021) 103(916–917) *International Review of the Red Cross* 25
- Douhan AF, 'Obligation of Human Rights Due Diligence in the Unilateral Sanctions Environment' (2025) 24(4) *Chinese Journal of International Law* jmaf036
- Drezner DW, 'Targeted Sanctions in a World of Global Finance' (2015) 41(4) *International Interactions* 755
- Drezner DW, *The Sanctions Paradox: Economic Statecraft and International Relations* (Cambridge University Press 1999)
- Dupont P-E, 'Human Rights Implications of Sanctions' in Asada M (ed), *Economic Sanctions in International Law and Practice* (Routledge 2019)
- Eckert SE, 'Counterterrorism, Sanctions and Financial Access Challenges: Course Corrections to Safeguard Humanitarian Action' (2021) 103(916–917) *International Review of the Red Cross* 415
- Elliott KA, 'Assessing UN Sanctions after the Cold War: New and Evolving Standards of Measurement' (2010) 65(1) *International Journal* 85

Eren B and Demir F, 'Child Rights and Structural Abuse by Income Level: A Global Comparative Analysis Based on World Bank Classification' (2025) 10 (Sp Iss 3) *Journal of Awareness* 71

Farrall JM, *United Nations Sanctions and the Rule of Law* (Cambridge University Press 2007)

Farrell H and Newman AL, 'Weaponized Interdependence: How Global Economic Networks Shape State Coercion' (2019) 44(1) *International Security* 42

Ferstman C, 'Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent "Irregular" Migration: European Union and United Kingdom Support to Libya' (2020) 21(3) *German Law Journal* 459

Foot P, 'Hart and Honoré: Causation in the Law' (1963) 72(4) *The Philosophical Review* 505

Franchini D, 'When Finance Becomes a Weapon: The Challenge of Central Bank Sanctions under International Law' (2025) 24(1) *Journal of International Trade Law and Policy* 28

Franck TM, 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium' (2006) 100(1) *American Journal of International Law* 88

Fredman S, 'Human Rights Transformed: Positive Duties and Positive Rights' (2006) *Public Law* 498

Gattini A, 'Breach of International Obligations' in Nollkaemper A and Plakokefalos I (eds), *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art* (Cambridge University Press 2014)

Gehring T and Oberthür S, 'The Causal Mechanisms of Interaction between International Institutions' (2009) 15(1) *European Journal of International Relations* 125

George AL and Bennett A, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005)

Giuffré M, 'A Functional-Impact Model of Jurisdiction: Extraterritoriality before the European Court of Human Rights' (2022) *Questions of International Law* 53

Giumelli F, *How EU Sanctions Work* (Chaillot Paper No 129, EU Institute for Security Studies 2013)

Goldmann M, 'Inside Relative Normativity: From Sources to Standard Instruments for the Exercise of International Public Authority' in von Bogdandy A and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2009)

Gondek M, *The Reach of Human Rights in a Globalizing World* (Intersentia 2009)

Gowlland-Debbas V, *United Nations Sanctions and International Law* (Brill 2021)

Grant RW and Keohane RO, 'Accountability and Abuses of Power in World Politics' (2005) 99(1) *American Political Science Review* 29

- Gutmann J, Neuenkirch M and Neumeier F, ‘Sanctioned to Death? The Impact of Economic Sanctions on Life Expectancy and Its Gender Gap’ (2021) 57(1) *The Journal of Development Studies* 139
- Gutmann J, Neuenkirch M and Neumeier F, *Political Economy of International Sanctions* (Research Papers in Economics No 7/24, 2024)
- Gutmann J, Neuenkirch M, Neumeier F and Steinbach A, *Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle* (Research Papers in Economics No 2/18, 2018)
- Hathaway OA, ‘Between Power and Principle: An Integrated Theory of International Law’ (2005) 72(2) *University of Chicago Law Review* 469
- Hoffman S, ‘Ex Ante Children’s Rights Impact Assessment of Economic Policy’ in Nolan A and Bohoslavsky JP (eds), *Human Rights and Economic Policy Reform* (Routledge 2021)
- Hufbauer GC and Jung E, ‘Economic Sanctions in the Twenty-First Century’ in van Bergeijk PAG (ed), *Research Handbook on Economic Sanctions* (Edward Elgar Publishing 2021)
- Hufbauer GC, Schott JJ and Elliott KA, *Economic Sanctions Reconsidered: History and Current Policy* (Peterson Institute 1990)
- Human Rights Committee, ‘General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004)
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976)
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)
- International Law Commission, ‘Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc A/56/10, *Yearbook of the International Law Commission*, vol II, Part Two
- International Monetary Fund, ‘The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action’ (Staff Discussion Note SDN/16/06, June 2016)
- Jazairy I, ‘Unilateral Economic Sanctions, International Law, and Human Rights’ (2019) 33(3) *Ethics and International Affairs* 291
- Joined Cases C-402/05 P and C-415/05 P, Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351
- Kamminga M, ‘Extraterritoriality’ in *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2020)

- Kelsen H, *General Theory of Law and State* (Routledge 2017)
- Kennedy D, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004)
- Kingsbury B, 'The Concept of "Law" in Global Administrative Law' (2009) 20(1) *European Journal of International Law* 23
- Kingsbury B, Krisch N and Stewart RB, 'The Emergence of Global Administrative Law' (2005) 68(3–4) *Law and Contemporary Problems* 15
- Kirkham K, *The Political Economy of Sanctions: Resilience and Transformation in Russia and Iran* (Palgrave Macmillan 2022)
- Klatt M and Meister M, *The Constitutional Structure of Proportionality* (Oxford University Press 2012)
- Kleinlein T, 'Jus Cogens as the "Highest Law"? Peremptory Norms and Legal Hierarchies' in den Heijer M and van der Wilt H (eds), *Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?* (TMC Asser Press 2016)
- Kobrin SJ, 'Private Political Authority and Public Responsibility: Transnational Politics, Transnational Firms, and Human Rights' (2009) 19(3) *Business Ethics Quarterly* 349
- Kokabisaghi F, 'Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review' (2018) 7(5) *International Journal of Health Policy and Management* 374
- Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006)
- Krieger H, Peters A and Kreuzer L (eds), *Due Diligence in the International Legal Order* (Oxford University Press 2020)
- Krisch N, 'Jurisdiction Unbound: (Extra)Territorial Regulation as Global Governance' (2022) 33(2) *European Journal of International Law* 481
- Krisch N, 'The Decay of Consent: International Law in an Age of Global Public Goods' (2014) 108(1) *American Journal of International Law* 1
- Krisch N, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2010)
- Kulesza J, 'Human Rights Due Diligence' (2021) 30 *William and Mary Bill of Rights Journal* 265
- Kumm M, 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis' (2004) 15(5) *European Journal of International Law* 907
- Lanovoy V, 'Causation in the Law of State Responsibility' (2022) *British Yearbook of International Law* brab008

- Lanovoy V, 'Due Diligence in International Law: A Useful Renaissance or "All Things to All People"?' (2024) 35(4) *European Journal of International Law* 1029
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136
- Lew JJ and Nephew R, 'The Use and Misuse of Economic Statecraft' (2018) 97(6) *Foreign Affairs* 139
- Liivoja R, 'The Scope of the Supremacy Clause of the United Nations Charter' (2008) 57(3) *International and Comparative Law Quarterly* 583
- Loughlin M, *Foundations of Public Law* (Oxford University Press 2010)
- Lundy L, Orr K and Marshall C, 'Children's Rights Budgeting and Social Accountability: Children's Views on Its Purposes, Processes and Their Participation' (2020) 4(1) *Global Campus of Human Rights Journal* 91
- Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011)
- MacCormick N, *Legal Reasoning and Legal Theory* (Oxford University Press 1994)
- Mahoney J, 'The Logic of Process Tracing Tests in the Social Sciences' (2012) 41(4) *Sociological Methods and Research* 570
- Mallard G, Sabet F and Sun J, 'The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions' (2020) 26(1) *Global Governance: A Review of Multilateralism and International Organizations* 121
- Marossi AZ and Bassett MR, 'Economic Sanctions under International Law' in Marossi AZ and Bassett MR (eds), *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences* (TMC Asser Press 2015)
- McDonald N, 'The Role of Due Diligence in International Law' (2019) 68(4) *International and Comparative Law Quarterly* 1041
- McIntyre O, 'The Current State of Development of the No Significant Harm Principle: How Far Have We Come?' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 601
- Milanović M, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011)
- Moeeni S, 'The Intergenerational Effects of Economic Sanctions' (2022) 36(2) *World Bank Economic Review* 269
- Moiseienko A, 'Due Process and Unilateral Targeted Sanctions' in Beaucillon C (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar Publishing 2021)

- Nollkaemper A and Jacobs D, ‘Shared Responsibility in International Law: A Conceptual Framework’ (2012) 34 *Michigan Journal of International Law* 359
- Nollkaemper A and others, ‘Guiding Principles on Shared Responsibility in International Law’ (2020) 31(1) *European Journal of International Law* 15
- Okada Y, ‘Effective Control Test at the Interface between the Law of International Responsibility and the Law of International Organizations: Managing Concerns over the Attribution of UN Peacekeepers’ Conduct to Troop-Contributing Nations’ (2019) 32(2) *Leiden Journal of International Law* 275
- Ollino A, ‘The “Capacity-Impact” Model of Jurisdiction and Its Implications for States’ Positive Human Rights Obligations’ (2021) 82 *Questions of International Law* 81
- Ollino A, *Due Diligence Obligations in International Law* (Cambridge University Press 2022)
- Orakhelashvili A, ‘The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions’ (2005) 16(1) *European Journal of International Law* 59
- Osman v United Kingdom* App no 23452/94 (ECtHR, 28 October 1998)
- Palombo D, ‘Extraterritorial, Universal, or Transnational Human Rights Law?’ (2023) 56(1) *Israel Law Review* 92
- Peters A, ‘Proportionality as a Global Constitutional Principle’ in Lang AF Jr and Wiener A (eds), *Handbook on Global Constitutionalism* (Edward Elgar Publishing 2023)
- Pisillo-Mazzeschi R, ‘The Due Diligence Rule and the Nature of the International Responsibility of States’ (1992) 35 *German Yearbook of International Law* 9
- Prezas I, ‘From Targeted States to Affected Populations: Exploring Accountability for the Negative Impact of Comprehensive Unilateral Sanctions on Human Rights’ in Beaucillon C (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar Publishing 2021)
- Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v United States) (Provisional Measures)* [1992] ICJ Rep 114
- Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422
- Raible L, ‘Territory and Jurisdiction in International Human Rights Law: Three Models for a Fraught Relationship’ (2018) 31(2) *Leiden Journal of International Law* 315
- Raz J, *The Authority of Law: Essays on Law and Morality* (Oxford University Press 2009)

- Reinisch A, 'Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions' (2001) 95(4) *American Journal of International Law* 851
- Rieu-Clarke A, 'The Duty to Take Appropriate Measures to Prevent Significant Transboundary Harm and Private Companies: Insights from Transboundary Hydropower Projects' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 667
- Ruys T and Ryngaert C, 'Secondary Sanctions: A Weapon Out of Control? The International Legality of, and European Responses to, US Secondary Sanctions' (2020) *British Yearbook of International Law* braa007
- Ruys T, 'Sanctions, Retortions and Countermeasures: Concepts and International Legal Framework' in van den Herik L (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017)
- Ryngaert C, 'Extraterritorial Export Controls (Secondary Boycotts)' (2008) 7(3) *Chinese Journal of International Law* 625
- Ryngaert C, *Jurisdiction in International Law* (Oxford University Press 2015)
- Sarooshi D, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford University Press 1999)
- Scott J, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62(1) *American Journal of Comparative Law* 87
- Scott RMG, 'Due Diligence as a Secondary Rule of General International Law' (2021) 34(2) *Leiden Journal of International Law* 343
- Skogly S and Gibney M, 'Transnational Human Rights Obligations' (2002) 24(3) *Human Rights Quarterly* 781
- Skogly S, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Oxford University Press 2006)
- Skogly SI, 'Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations' (2024) 46(2) *Human Rights Quarterly* 330
- Slaughter AM, *A New World Order* (Princeton University Press 2005)
- Smith H, 'The Ethics of United Nations Sanctions on North Korea: Effectiveness, Necessity and Proportionality' (2020) 52(2) *Critical Asian Studies* 182
- Stoyanova V, 'Causation between State Omission and Harm within the Framework of Positive Obligations under the European Convention on Human Rights' (2018) 18(2) *Human Rights Law Review* 309

- Stoyanova V, 'Fault, Knowledge and Risk within the Framework of Positive Obligations under the European Convention on Human Rights' (2020) 33(3) *Leiden Journal of International Law* 601
- Stoyanova V, 'Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete' (2023) 23(3) *Human Rights Law Review* ngad010
- Subedi SP (ed), *Unilateral Sanctions in International Law* (Hart Publishing 2021)
- Tams CJ, *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005)
- Tanaka Y, 'The Legal Consequences of Obligations Erga Omnes in International Law' (2021) 68(1) *Netherlands International Law Review* 1
- Tignino M and Bréthaut C, 'The Role of International Case Law in Implementing the Obligation Not to Cause Significant Harm' (2020) 20(4) *International Environmental Agreements: Politics, Law and Economics* 631
- Tladi D, *The International Law Commission's Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)* (Oxford University Press 2024)
- Tomuschat C, 'The Security Council and Jus Cogens' in Cannizzaro E (ed), *The Present and Future of Jus Cogens* (Sapienza University Press 2015)
- Tørstad V, 'Can Transparency Strengthen the Legitimacy of International Institutions? Evidence from the UN Security Council' (2024) 61(2) *Journal of Peace Research* 228
- Trávníčková Z, 'Human Rights Influencing Targeted Sanctions: On the Role of International Treaties on Human Rights and Treaty Mechanisms in Relation to Sanctions' in Šturma P (ed), *International Sanctions and Human Rights* (Springer Nature Switzerland 2024)
- Trouwborst A, *Precautionary Rights and Duties of States* (Brill 2006)
- Tzanakopoulos A, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (Oxford University Press 2013)
- Uçaryılmaz T, 'The Principle of Good Faith in Public International Law' (2020) 68(1) *Estudios de Deusto* 43
- UN General Assembly, 'Human Rights Council' UN Doc A/RES/60/251 (3 April 2006)
- UN Human Rights Council, 'Human Rights and Unilateral Coercive Measures' UN Doc A/HRC/RES/27/21 (26 September 2014)
- UN Human Rights Council, 'Institution-building of the United Nations Human Rights Council' UN Doc A/HRC/RES/5/1 (18 June 2007)

- UN Human Rights Council, 'Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights' UN Doc A/HRC/39/54 (30 August 2018)
- UN Human Rights Council, 'Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena F Douhan' UN Doc A/HRC/54/23 (31 July 2023)
- van den Herik L (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017)
- Verdier PH, *Global Banks on Trial: US Prosecutions and the Remaking of International Finance* (Oxford University Press 2020)
- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980)
- Viterbo A, 'Extraterritorial Sanctions and International Economic Law' in *Building Bridges: Central Banking Law in an Interconnected World: ECB Legal Conference 2019* (European Central Bank 2019)
- von Bogdandy A and Venzke I, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford University Press 2014)
- von Bogdandy A, Dann P and Goldmann M, 'Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities' in von Bogdandy A and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer Berlin Heidelberg 2009)
- von Bogdandy A, Goldmann M and Venzke I, 'From Public International to International Public Law: Translating World Public Opinion into International Public Authority' (2017) 28(1) *European Journal of International Law* 115
- Whittle D, 'The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action' (2015) 26(3) *European Journal of International Law* 671
- World Bank, *De-risking in the Financial Sector* (World Bank 2018)
- World Health Organization, 'Access to Medicines and Vaccines: Report of the Director-General' (2019) WHO Doc EB146/12
- Zarate J, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (PublicAffairs 2013)
- Zilioli C, Bismuth R and Thévenoz L (eds), *International Sanctions: Monetary and Financial Law Perspectives* (Brill 2024)