Human Rights and Economic Sanctions: the New Imperialism

Christopher Wall*
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Abstract

The point of this Essay is to examine the role of economic sanctions, particularly those taken unilaterally by the United States, in influencing the development of human rights policies worldwide. In some cases those unilateral sanctions are imposed without considering cultural differences behind the human rights themselves. In other instances, the United States fails to consider the effectiveness of those sanctions. In still other situations, the United States fails to realize important self-determination issues or the idea of participating in the broader international community. In all cases, the United States, in its role as international arbiter of human rights, needs to be aware of blinding influences that can obscure its vision of the larger picture.
ESSAY

HUMAN RIGHTS AND ECONOMIC SANCTIONS: THE NEW IMPERIALISM

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Then I noticed a small sketch in oils, on a panel, representing a woman, draped and blindfolded, carrying a lighted torch.

INTRODUCTION

One hundred years ago, Joseph Conrad described a world not too dissimilar from our own. He saw a world in which wealthy nations in the name of civilization took advantage of less-developed nations to accomplish their own economic ends. One of the most striking symbols in Heart of Darkness is Conrad’s description of a painting that depicts a blindfolded woman holding a lighted torch. The painting’s message is one of hypocrisy and irony: while she herself is blinded, the bearer of light professes to enlighten. The times and some of the players have changed, but the general story line remains much the same.

The United States is arguably the most powerful and influential nation in the world today. It uses, however, a limited range of economic actions to police human rights in other countries. Those actions, taken with a nod toward international

* LL.M., 1998, University of Durham (England); J.D., 1997, Brigham Young University; B.A., 1995, Brigham Young University. The author recognizes the rapidly changing nature of this area of international law and notes that the material contained herein is current as of September 1, 1998.


2. According to USAEngage, a coalition of U.S. businesses, as of June 1, 1998, the United States had imposed unilateral economic sanctions upon at least 74 countries, including Afghanistan, Algeria, Angola, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Belize, Burundi, Cambodia, Canada, China, Colombia, Cuba, the Democratic Republic of Congo, Costa Rica, Djibouti, Egypt, Gambia, Georgia, Guatemala, Haiti, Honduras, India, Iran, Italy, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Liberia, Libya, Maldives, Mauritania, Mexico, Moldova, Morocco, Myanmar (Burma), the New Independent States of the former Soviet Union, Nigeria, North Korea, Oman, Pakistan, Panama, Paraguay, Qatar, Romania, Russia, Rwanda, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Tunisia, Turkmenistan, Uganda, Ukraine, the United Arab Emirates, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, and the Federal Republic of Yugoslavia. The United States was also con-
human rights standards, are of no small impact, both upon the
economies of those countries that the economic sanctions are
meant to influence, and upon the United States' economy it-
self.\(^3\) Between 1993 and 1996 alone, the United States used eco-

demic sanctions sixty-one times as its preferred human rights po-
lcing tool—more than one half the total number of times san-
c-
ctions had been imposed since the end of World War II.\(^4\) For
better or for worse, around the globe the United States uses its
economic brawn to bring other nations into line with its human
rights policies.

The United States' power to influence is almost unequaled
in the world today, and if the number of economic sanctions
imposed is any indication of the number of human rights viola-
tions occurring worldwide, then much of the world has a long
way to go before meeting Western human rights standards. But
those Western standards are just that: Western standards. Where
does this drive to be the "bearer of light" come from? Former
U.S. President Jimmy Carter offered this explanation for the
United States' assumption of the leadership position:

With the end of the Cold War, we in the United States no
longer face intense competition with a powerful Soviet Union
for hegemony or influence in almost every region of the
world. There is a void in international leadership, which of-
fers us a comparatively blank slate on which to imprint the
finest aspects of our nation's ideals.\(^5\)

While many nations may indeed look to the United States

\(^3\) Economic sanctions put a multi-billion-dollar dent every year in the U.S. econ-

omy. According to the Institute for International Economics, in 1995 alone, unilateral
sanctions cost the U.S. economy an estimated US$15 to US$19 billion and up to
260,000 jobs. See Thomas Omestad, Addicted to Sanctions, U.S. News & World Rep.,
June 15, 1998, at 30; see also US Acknowledges Disarray in Sanctions Policy, APWIRE, Jan. 8,
1998 (citing recent official estimates of cost of economic sanctions to U.S. economy at
US$15 billion in lost export sales and up to 250,000 U.S. jobs).

\(^4\) Stuart E. Eizenstat, Under Secretary for Economic, Agricultural, and Business
Affairs, Remarks before the North American Committee of the National Policy Associa-
www/policy Remarks/1998/980107_eizen_policyassoc.html> (on file with the Fordham
International Law Journal) [hereinafter Eizenstat].

\(^5\) Excerpts from Carter's "Living Faith," News Observer (Raleigh, NC), Nov. 17,
1996, at E3.
for leadership in forming and implementing their human rights policies, a fundamental difference exists between various states looking toward the U.S. torch for enlightenment and having that torch thrown at them.

The point of this Essay is to examine the role of economic sanctions, particularly those taken unilaterally by the United States, in influencing the development of human rights policies worldwide. In some cases those unilateral sanctions are imposed without considering cultural differences behind the human rights themselves. In other instances, the United States fails to consider the effectiveness of those sanctions. In still other situations, the United States fails to realize important self-determination issues or the idea of participating in the broader international community. In all cases, the United States, in its role as international arbiter of human rights, needs to be aware of blinding influences that can obscure its vision of the larger picture.

I. ESTABLISHING HUMAN RIGHTS

As long as there was a piece of paper written over in accordance with some farcical law or other made down the river, it didn’t enter anybody’s head to trouble how they would live.6

Before discussing the means by which the United States attempts to enforce human rights, it is helpful to examine those rights themselves. The U.N. Universal of Human Rights (the “Universal Declaration”), adopted in 1948, is the world’s seminal human rights document and is meant to be a “common standard of achievement for all peoples and all nations.”7 The Universal Declaration was a precursor to individual regional covenants, and while not meant necessarily as a legally binding instrument itself, the Universal Declaration was a statement of principle and a foundation upon which the signatories could build.8 The Universal Declaration has since given rise to dozens of regional trea-

6. Conrad, supra note 1, at 68.
8. Henry J. Steiner & Philip Alston, International Human Rights in Context 119-20 (1996). The Universal Declaration of Human Rights (“Universal Declaration” or “Declaration”) was meant “to precede more detailed and comprehensive provisions” and would be a “springboard” for other treaties. Id.
ties, conventions, and resolutions. All of those treaties and conventions came into being as a result of the notion that if human rights are articulated and reduced to writing, "that piece of paper written over in accordance with some farcical law" will soothe the people of the world so that it need not enter anyone's head to trouble about how they would live. But while such writings, conventions, and treaties make states' human rights ideals clear, the writings are less clear when it comes to implementation of those ideals. The Universal Declaration's statement of high ideals does not include any language providing enforcement mechanisms for those ideals, nor do the regional treaties and covenants include enforcement mechanisms.


conventions do provide for reports, they do not provide means of redress should those reports be negative. Without clearly defined enforcement provisions, the burden of enforcement has been assumed by states such as the United States so as to protect the human rights that the Universal Declaration and its progeny sets forth.

The lack of clear enforcement procedures is perhaps best accounted for by the same notion that gave rise to the conventions' and treaties' existence: the simple articulation of a law prohibiting a particular act will lead to the eventual disappearance of that act. Essentially, that is why laws are made. Yet, even if those human rights are spelled out with indubitable clarity and absolute universality, the elimination of certain human rights violations almost certainly requires some form of deterrent. Until such deterrent or police power exists on an international scale, no truly universal change of action may take place. Without enforcement, the Universal Declaration remains but a descriptive statement of lofty ambitions, lacking a workable scheme for its implementation. In fact, in the fifty years since its adoption, the Universal Declaration appears to be "little more than a paper promise" for the world's population, lacking any teeth for its implementation.


13. One author has noted that "[r]ights are physically embodied in court decisions or statutes, treaties, or conventions. They are made real through the language of law, politics, and diplomacy, collectively, if ambivalently, believed." Elizabeth K. Spahn, Waiting for Credentials: Feminist Theories of Enforcement of International Human Rights, 44 Am. U. L. Rev. 1053, 1056 (1995).

14. The Human Rights Committee under the International Covenant on Civil and Political Rights and the European and American conventions include some scheme for enforcement, as does the United Nation's Human Rights Commission. The deterrent effect of these schemes is largely normative in approach. Louis Henkin, International Law: Politics, Values & Functions, in Steiner & Alston, supra note 8, at 352.

universal Declaration "the world's best-kept secret," even though most of the world's governments have agreed to promote the rights espoused therein wherever possible.

The Universal Declaration declares that recognition of a human right is the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family." But if human rights, and in particular those defined in the Universal Declaration, are to be truly "universal," and thus universally enforced, then there ought to be little objection to review a signatory state's action for compliance with that standard. But objection there is, for not only is the interpretation, weight, and scope of such rights almost certain to vary from state to state, but even if those rights were uniformly interpreted and applied, it is unclear whether any signatory state would want any other nation or body of nations to be the arbiter of how that state has acted with regard to those rights.

Besides being embodied in the Universal Declaration itself, many of the same rights and freedoms are enshrined constitutionally by most of the world's sovereign states. The Iranian Constitution, for example, establishes a democratic form of government and provides for presidential and parliamentary elections by direct and secret ballots. The Chinese Constitution, in its first forty-nine articles, invokes more rights than are pronounced in the United States Constitution and provides for many of the same rights proclaimed in the Universal Declara-

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17. Universal Declaration of Human Rights, supra note 7, pmbl. cl. 1.
18. See, e.g., Louis Henkin, U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker, 89 Am. J. Int'l L. 341 (1995) (noting hesitance of United States to bind itself to any international jurisdiction, particularly that of International Court of Justice ("ICJ"); Paul P. Craig & Grainne de Burca, EC Law: Text, Cases & Materials 309 (1997) (noting that even within supranational European Community, interpretation of meaning and scope of fundamental rights varies from Member State to Member State and that it is unlikely that any Member State would be keen to have European Court of Justice judge that Member State's actions according to such unclear set of rights and principles).
19. QANUN-E ASASI-YE JOMHURI-YI ESLAMI-YE [Constitution] arts. 6, 62 (Iran) (stating that "the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the National Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution" and that "[t]he Islamic Consultative Assembly is constituted by the representatives of the people elected directly and by secret ballot.").
tion, including a prohibition on minority discrimination, a right to free speech, freedom of religion, and a freedom of privacy and correspondence.

While the Universal Declaration and many states' constitutions invoke the name of human rights, what is actually occurring "is . . . not the emergence of a general, extensive, uniform consistent, settled practice accompanied by the more or less gradual building up of an opinion juris." Without an opinion juris and a uniform body of case law, there can be no real "hard" law with regard to human rights. Rather, what is occurring is a steady growth, through years of debate and after numerous international conventions and treaties, of soft law resolutions and declarations with regard to certain human rights obligations and standards. A reliance upon the notion of some inherent power in a "piece of paper written over in accordance with some farcical law or other made down the river" and a hope that the articulation of that law will lead to the disappearance of the act prevent human rights from being approached in the same way as "hard" law.

A. Including Without Excluding

Could we handle that dumb thing, or would it handle us? I felt how big, how confoundedly big, was that thing that couldn't talk, and perhaps was deaf as well.

20. XIANFA [Constitution] art. 4 (P.R.C.) ("All nationalities in the People's Republic of China are equal . . . Discrimination against and oppression of any nationality are prohibited.").

21. Id. art. 35 ("Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.").

22. Id. art. 36 ("Citizens of the People's Republic of China enjoy freedom of religious belief . . . No state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.").

23. Id. art. 40 ("The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law."). In contrast to the specific provisions found in the Chinese and Iranian constitutions, Article 1(2) of the German Constitution simply includes the broad provision that "[t]he German people . . . acknowledge inviolable and inalienable human rights as the basis of every human community, of peace and of justice in the world." GRUNDGESETZ [Constitution] art. 1(2) (1995) (F.R.G.).


25. Id.

26. CONRAD, supra note 1, at 43.
How big, how confoundedly big, is the task of finding a truly "universal" set of human rights? The Universal Declaration is an attempt to reach some consensus as to the breadth of those core, or "universal," human rights.\textsuperscript{27} Presumably, "universal" human rights are those that are "so universal that all societies, systems, nations and ideologies could, and do, espouse them."\textsuperscript{28} But some rights declared within the Universal Declaration and other human rights agreements may not provide a sufficient standard of protection in states where those rights are valued more than in others. Perhaps the notion of a "universal" set of human rights has become so inclusive that it is unmanageable, amorphous, and over-broad.\textsuperscript{29}

The implementation of human rights, even those clearly defined in the Universal Declaration, illustrates the enormity of the task of determining the breadth of enforceable human rights. The core human right of democratic government, for example, which is a fundamental element of the Universal Declaration,\textsuperscript{30} the European Convention for the Protection of Human Rights and Fundamental Freedoms,\textsuperscript{31} and the American Convention on Human Rights,\textsuperscript{32} seems to meet with less than universal accept-

\begin{footnotesize}
\begin{enumerate}
\item Universal Declaration of Human Rights, \textit{supra} note 7, pmbl.
\item \textit{See} Stirling, \textit{supra} note 11, at 3.
\item \textit{See} Philip Alston, \textit{Conjuring Up New Human Rights: A Proposal for Quality Control}, 78 \textit{Am. J. Int'l L.} 607 (1984); Anthony D'Amato, \textit{The Concept of Human Rights in International Law}, 82 \textit{Colum. L. Rev.} 1110 (1982) (noting that voluminous literature has been produced to describe expansion of new fundamental rights); \textit{see} Craig & De Bôrca, \textit{supra} note 18, at 298 (noting that identification of "commonly shared underpinnings" in European Community, as accomplished with ECHR, is only first step, and would have to be followed by some determination of standard of protection). The European Community is notably smaller geographically and shares more cultural similarities than other international organizations such as the United Nations.
\item Universal Declaration of Human Rights, \textit{supra} note 7, art. 21, ¶1, 3. "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." \textit{Id.} art. 21, ¶1. "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." \textit{Id.} art. 21, ¶3.
\item ECHR, \textit{supra} note 9, pmbl., ¶5, 213 U.N.T.S. at 222. The ECHR reaffirms that the fundamental freedoms dictated by the Universal Declaration "are best maintained by... an effective political democracy." \textit{Id.}
\item American Convention on Human Rights, \textit{supra} note 9, art. 23, ¶1, O.A.S.T.S. No. 36, at 18, 9 I.L.M. at 682.
\end{enumerate}

Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote and to be elected in genuine periodic elections,
ance when it comes to implementing that right. By way of illustration, the Holy See of the Roman Catholic Church does not hold periodic elections, nor does it grant universal or equal suffrage. But not surprisingly, the Vatican does not call down the wrath of Amnesty International or Human Rights Watch. Nor does the Vatican incur any Western nation’s economic sanctions because of its facial violation of one of the foundational elements of the Universal Declaration and most other of the world’s human rights conventions. On a more pragmatic level, and using the same core human right to illustrate, when the U.N. Security Council approved U.S. action to enforce militarily the democratic process in Haiti, no other major Western government joined the United States in enforcing the “universal” right of democratic representation. The lack of universality or even agreement with regard to the enforcement of this fundamental human right places in doubt the legitimacy of democracy as a “universal” human right.

Thus, while a human right—in this case democracy—is something that should be universally sustained, in practice the right only appears to be sustained when it conforms with a particular state's interests. One commentator’s simple hypothetical illustrates the point. Imagine an individual who, while walking near a shallow pond, notices a small child drowning. With mini-

which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.

Id.

33. Many practices that facially violate “universal” human rights are admittedly often given greater deference because of their religious significance. Even though Article 9 of the Universal Declaration prohibits exile, the Amish practice of shunning, a form of exile, continues without criticism, in large part because of its religious significance, as well as because of its relative severity. Universal Declaration of Human Rights, supra note 7, art. 9. Yet the same deference has its limits. Some non-Western religious practices, such as female circumcision, or female genital mutilation ("FGM"), are afforded less deference and receive much criticism in the West in general. Similarly, the Iranian Islamic practice of Mut’a, or temporary marriages, which permits “a Muslim man to contract an unlimited number of temporary marriages . . . in addition to his permanent marriages,” meets with equal disdain in those Western cultures that have come to recognize a woman's individual rights of choice to a greater degree than have some non-Western countries. Kristin J. Miller, Comment, Human Rights of Women in Iran: The Universalist Approach and the Relativist Response, 10 EMORY INT’L L. REV. 779, 798 (1996).


35. See Stirling, supra note 11, at 11.
mum effort and the nominal cost of soiled clothing, the individual could wade into the water and save the child. Few would doubt the individual’s duty to overlook the minor inconvenience in favor of performing a greater good.36 A similar duty may well exist for the able international passers-by to assist in other countries where human rights are threatened by the actions of others.37

In the United States, most U.S. citizens demonstrated a willingness to wade into their backyard pond, with minimum cost, to save democracy in Haiti.38 But clearly not all countries valued enforcement of democracy in Haiti as much as the United States did. The rest of the world simply did not recognize the hypothetical as a good analogy. In a similar vein, many Europeans demonstrated a willingness to wade readily into their own backyard pond to save Bosnia, while most U.S. citizens found the hypothetical completely inapplicable.39 Within those gray areas of balancing national interest and human rights lie the difficulties in enforcing human rights.

As the situations in Haiti and Bosnia demonstrate, within the West itself there is only broad agreement as to what constitutes an enforceable, let alone “universal,” human right. In the European Community, for example, human rights have been incorporated into the broad corpus of “general principles of Community law” as those principles exist in the several member states.40 The European Community itself, however, has been less than willing to adopt any kind of European Bill of Rights precisely because of a lack of harmony as to what those rights should include.41 Similarly, in the United States the divisive

37. Brilmayer, supra note 36, at 957.
38. Id.
39. Id. One scholar has noted that “[t]he principle of defense of human rights cannot be consistently applied in foreign policy because it can and must come in conflict with other interests that may be more important than the defense of human rights in a particular instance.” Hans Morgenthau, Human Rights & Foreign Policy, in STEINER & ALSTON, supra note 8, at 814.
40. While not incorporated into any of the treaties establishing the European Union, the human rights principles that are now general principles of European Community law have been found so by virtue of the fact that all members states within the European Union are also signatories to the ECHR.
41. See CRAIG & DE BURCA, supra note 18, at 309 (stating that “there should not be
abortion issue illustrates of the problems that arise in attempting to define the breadth of human rights within a single country.\textsuperscript{42} Yet even if the world, the West, or the United States should be able to agree upon \textit{which} human rights should be enforced and protected, that is not the same thing as determining \textit{how} those rights should be enforced and protected.\textsuperscript{43} Even if a number of states agree that there should be protection of particular human rights, that agreement is very likely to differ from state to state in the extent to which those rights should be protected, particularly when balanced with other national interests.

Some Western critics, for example, accuse Chinese officials of failing to address human rights abuses adequately because the Chinese "have failed to treat women’s rights as human rights, frequently sacrificing the rights of women to other policy goals seen as more pressing."\textsuperscript{44} Such a condemnation is both ironic and illustrative of the cross-cultural difficulties involved in implementing any kind of "universal" human rights scheme. In this case, while recognizing the human rights of women, Chinese officials would probably readily agree that other policy goals are too much objection to the review of state action for compliance with those shared legal standards and values . . . [but] not only is the interpretation of the meaning and scope of such rights certain to vary from state to state, but it is far from clear that all general principles of Community law will be shared by all states."). The European Court of Justice’s decision not to decide the human rights issue in \textit{Society for the Protection of Unborn Children Ireland, Ltd. v. Grogan} demonstrates the political, religious, and cultural charge that the gender rights debate carries among various European states. \textit{See} Society for the Protection of Unborn Children Ireland, Ltd. v. Grogan, Case C-159/90, [1991] E.C.R. 1-4685, [1990] 1 C.M.L.R. 689. Also, within the European Community it is clear that some Member States will accept greater restrictions than others upon individual liberties in pursuit of other public interests. \textit{See} Hauer v. Land Rheinland-Pfalz, Case 44/79, [1979] E.C.R. 3727, [1980] 3 C.M.L.R. 42.

\textsuperscript{42} The U.S. Supreme Court, for example, has established a general right for a woman to procure an abortion. \textit{See} Roe v. Wade, 410 U.S. 113 (1973). Admittedly, the abortion right as developed by the Supreme Court is derivative of a privacy right, but can be recognized as a fundamental right nonetheless. Various states have interpreted that right differently, which has resulted in less-than-unanimous agreement as to the breadth of that right among the various states. \textit{See}, e.g., \textit{Utah Code Ann.} § 76-7-310.5 (1998); \textit{La. Rev. Stat. Ann.} § 14:87 (West 1998); Minn. Stat. § 145.411 (1998); \textit{N.Y. Penal Law} § 125.05 (Consol. 1998).

\textsuperscript{43} \textit{See}, e.g., \textit{Craig & De Borca}, \textit{supra} note 18, at 299 (noting difficulty in determining means of implementing agreed upon human rights even within European Community).

more pressing than human rights abuses because China rejects the Western proposition that in the human rights hierarchy individual liberties and political freedoms should be placed above the right to national stability and communal rights of citizens as a whole.\footnote{Stirling, supra note 11, at 31.}

In discussing different types of rights, such as Eastern social rights as opposed to Western concepts of civil or political rights, perhaps it is possible to take a broader, more inclusive approach. After all, “what is meant by universality is inclusiveness of human rights as opposed to exclusiveness, respect for cultural diversity without falling into cultural relativism, regional efforts supporting the world-wide effort in favor of human rights.”\footnote{Spahn, supra note 13, at 1062 (quoting Peter Leuprecht, Conflict Prevention & Alternative Forms of Dispute Resolution: Looking Towards the Twenty-First Century, in Human Rights & the Twenty-First Century: A Global Challenge 959, 963 (Kathleen E. Mahoney & Paul Mahoney eds., 1993)).} At the end of the day, in our efforts to be more accommodating and inclusive of other cultures' notions of human rights, we must take care not to permit the diversity of opinions to handle us. We cannot permit the enormity of the cultural divide to cause us to reduce human rights to mere human notions, and thereafter to forget the very idea of humanity altogether.

B. Which Human Rights Standard?

[From the point of development we had arrived at, 'must necessarily appear to them [savages] in the nature of supernatural beings—we approach them with the might as of a deity' . . . 'By the simple exercise of our will we can exert a power for good practically unbounded.'\footnote{Conrad, supra note 1, at 84.}]

The Universal Declaration was created precisely so that we would not forget the very idea of humanity.\footnote{The Universal Declaration was created "to promote respect for these rights and freedoms and . . . to secure their universal and effective recognition and observance." Universal Declaration of Human Rights, supra note 7, pmbl.} It is founded upon the premise that notions of human rights established in the West should be the controlling ideals after which the rest of the world’s nations should strive. But why Western ideals?

Perhaps, at the time of the Universal Declaration’s framing, other nations saw the United Nations as the embodiment of
Western human rights ideals and recognized the United States as a "super" nation with unbounded power and potential to exert its own will and the United Nations' will for the worldwide good. The adoption of Western standards perhaps bespeaks those nations' loss of confidence in their own norms in favor of something new. A second possibility is that the Universal Declaration simply reflects the balance of power following World War II. In the post-war rebuilding years, the United States found itself in a financially sound position relative to many of the world's other economies and also found itself in a position to act as a moral voice for the fledgling United Nations. Any opposition or failure to sign the Universal Declaration might have had a detrimental effect upon the dissenting state's economic interests. Whatever the reason, the United States sees itself perched upon the crest of a hill bearing the Western human rights torch. By the light of that torch the United States encourages all nations to give greater recognition to its brand of human rights.

Lost in the United States' notion of itself as the bearer of the human rights torch is that while holding the torch, the United States may still be in the dark. Who is to say that the United States' interpretation of "universal" human rights is any more correct than any other state's? The Western human rights

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50. The notion that the United States should be a beacon for all other nations appears deeply engrained in the American psyche. Reverend John Winthrop, leader of the Massachusetts' Bay Company, exhorted his Puritan followers: "For we must consider that we shall be as a City upon a hill. The eyes of all people are upon us, so that if we shall deal falsely . . . in this work we have undertaken . . . we shall be made a story and a by-word throughout the world." John Winthrop, A Model of Christian Charity, in 1 THE NORTON ANTHOLOGY OF AMERICAN LITERATURE 31, 41 (3d ed. 1989). Later, Justice Brandeis of the U.S. Supreme Court wrote, "Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example." Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting). Former U.S. President Ronald Reagan referred to the United States as a "city on a hill" and pointed to the United States' divinely appointed role: "Who but a Divine Providence could have placed this nation here . . . this new Jerusalem, this shining City on a Hill." Chris Smith & Mark Souder, Help States Fight Illegal Aliens . . . But Protect Legal Immigrants, WASH. TIMES, Mar. 20, 1996, at A17. But obviously not all U.S. citizens subscribe to this view, as evidenced by Black Muslim Louis Farrakhan's criticism of the United States' economic sanctions imposed upon Libya. "What gives the United States the right to impose sanctions on the Libyan people?" he demanded, adding that the only right the United States could assert was a "self-appointed" one. Farrakhan Denounces U.S. Policy in Libya, AGENCE FRANCE-PRESSE, Aug. 29, 1996.
norm, and especially the norm most espoused by the United States, is one built upon concepts of individual civil and political rights.51 Other cultural traditions do not necessarily share those same legal or moral foundations.52 Iran, for instance, claimed exemption in 1984 from the “universal” human rights embodied in the Universal Declaration because the rights as interpreted conflicted with Islamic values.53 Consequently, Iran could not allow itself to be judged by other states that did not share a common human rights foundation.54 Human rights as the United States envisions them have also met with cultural differences in other parts of the world. In India, for example, the cultural outlook was historically not in reference to individual rights and liberties, but to individual duties.55 As one author has observed, India was once a state in which “[e]veryone was conscious only of his duties, there was no clamor for rights. As a result, everyone was prone to serve others.”56 Observing the infusion of Western legally individualistic norms into the duty-minded ideal, however, the same author noted that “[s]ince this ideal [of societal duty] is lost, enormous inequality has resulted. One lives in a society without having any corresponding obligations to serve


52. One author has pointed out that:

the attempt to impose so-called human rights upon others or to punish others for not observing human rights assumes that human rights are of universal validity—that, in other words, all nations or all peoples living in different nations would embrace human rights if they knew they existed and that in any event they are as inalienable in their character as any of the Western individual civil or political rights. Morgenthau, supra note 39, at 813.


54. Id. at 321 (noting that “[c]oncepts analogous to human rights have certain precursors in the Islamic heritage of philosophy and theology, but human rights as they are presently formulated in international law lack precise equivalents in the Islamic legal heritage.”).


56. Id.
the others."  

As a final illustration of the cultural relativity involved in human rights interpretation, in the United States there is no right that guarantees against unemployment, starvation, or lack of health care. There is, however, a freedom to voice publicly one's concerns or grievances about those social ills. But in China, Western-style human rights and individual liberties are considered "illusory because political power and the means of production are in the hands of the capitalists, and the system exploits the masses." To many Chinese, the idea is absurd that there should exist a right to complain about unemployment and starvation, but that there should not exist a right to employment and food. To incorporate U.S.-style human rights into their societal fabric would be to incorporate a flaw into their social weave, their economic system, and their form of government.

Thus, the enforcement of human rights, whether civil or economic, is directly related to the value placed upon the respective right in the respective country. But because different economic standards abound worldwide, and because economic theories are equally diverse, there can be no truly universal agreement on which economic rights can or should be recognized. While the United States' posture as to civil rights in China may largely ignore the historic and cultural basis for China's civil rights practices, the United States has taken a well defensible position because any attempt by China to enforce economic rights in the United States would prove even more difficult than U.S. attempts to enforce civil rights in China. As one commentator put it, "it is easier to tell governments that they shall not throw persons into jail without a fair trial than that they

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57. Id.
58. Goler T. Butcher, The Immediacy of International Law for Howard University Students, 51 How. L.J. 435, 445 (1998) (noting that United States stands out as state which, "while promoting the rights of individuals against the excesses of government, that is civil and political rights, is opposed to a concept of a human right not to be hungry, a right to have work, the right to education.").
59. U.S. Const. amend. I ("Congress shall make no law... abridging the freedom of speech... and to petition the Government for a redress of grievances.").
shall guarantee a minimum standard of living."\textsuperscript{62}

II. \textsc{The Effectiveness of Unilateral Sanctions}

[T]heir administration was merely a squeeze, and nothing more, I suspect.\textsuperscript{63}

The United States sees itself as the captain of the international human rights protection team, but has been unwilling on many occasions to be a team player in the actual enforcement of human rights. Rather, it demonstrates its maverick manner in human rights enforcement in several ways. First, when the United States chooses to enforce human rights around the globe, it often acts unilaterally, choosing to "go it alone" with tools such as the Helms-Burton Act\textsuperscript{64} and the Iran-Libya Sanctions Act\textsuperscript{65} instead of seeking multilateral support for the enforcement action.\textsuperscript{66} Second, the United States is party to many international human rights agreements, but is not party to others, and in so doing seems to apply one human rights standard at home and another to the rest of the world. Finally, inconsistency in the sanctions' application undermines the United States' ability to deal effectively with human rights abuses.

A. \textit{Holding the Torch Alone}

Something like an emissary of light, something like a lower sort of apostle.\textsuperscript{67}

It would be difficult to dispute the extent of the United


\textsuperscript{63} \textsc{Conrad, supra} note 1, at 9.


\textsuperscript{67} \textsc{Conrad, supra} note 1, at 18.
States' overwhelming influence and leadership in the world. That economic leadership is perhaps nowhere more evident than in the United States' efforts to assist other states in developing their own human rights policies through economic aid and economic sanctions. Sanctions can, in fact, be a powerful tool for change; economic sanctions worked well enough to help bring an end to apartheid in South Africa and may have deterred India and Pakistan's nuclear threat for several decades. What is important to note is that those efforts were multilateral efforts. A quick look at unilateral approaches to human rights change, such as the United States' approach in Cuba, tells another story. The United States has had economic sanctions in place for nearly forty years, Fidel Castro is still in power, and little progress has been made in the way of Cuban human rights.

In many instances, unilateral action is not only ineffective, but also is actually a hindrance rather than a help to U.S. human rights goals. In Burma, for instance, failure to gain multilateral support for U.S. economic sanctions eventually led to talks that served as a forum for bashing the United States' self-appointed role "as the world's arbiter of human rights." 68

Similarly, during the 1993-94 debacle involving China's Most Favored Nation ("MFN") trading status, the United States demonstrated how ineffective its unilateral human-rights-dependent trade policies can be. 69 The United States insisted that China improve its human rights practices or else the United States would withdraw MFN status or impose additional economic sanctions upon China. China responded by rebuking the United States for interfering with its domestic policies and cultural ideologies. At the end of the day, China came away with the coveted MFN status, and the United States tacitly agreed to wink at China's human rights policies. 70 In the past, the United States could successfully make such unilateral threats because it was in a position of economic strength. Now that China has become a world player economically, however, it is able to flout

68. Stirling, supra note 11, at 31 & nn. 217-20 (noting that after implementation of U.S. policy to isolate Burma economically, "[n]o Asian nation would cooperate with the United States, however, forcing it to reopen talks with Burma's leaders" and that Burmese talks were "an illustration of the wildly divergent views of what constitutes essential human rights.").
69. Id. at 1 & nn. 1-4.
70. Id.
U.S. threats more easily and to force the United States to act more carefully.

Besides hindering the human rights effort as in Burma, or backfiring as in China, U.S. unilateral action can also drive away potential support for human rights change. The United States’ position in Cuba\textsuperscript{71} and in Iran and Libya,\textsuperscript{72} for example, effectively penalizes other countries that fail to go along with the United States’ unilateral sanctions. This stance lacks international support and has resulted in friction with some of the United States’ traditionally loyal trading partners.\textsuperscript{73} Secondary boycotts result in alienation of the United States’ traditional allies, who object to such unilateral measures as serious infringements of their sovereignty and violations of international law.\textsuperscript{74} In fact, shortly after passage of the Helms-Burton Act, the U.N. General Assembly approved a non-binding resolution calling for an end to U.S. economic measures against Cuba.\textsuperscript{75} Only the United States, Israel, and Uzbekistan voted against the resolution.\textsuperscript{76} The end result weakened the United States’ power to bring about change through diplomacy and leadership.

1. The Carrot and the Stick

In light of the international opposition to its unilateral stance, the United States has begun to reconsider its unilateral approach to human rights violations and the restrictiveness of its unilateral sanctions such as the Helms-Burton Act and the Iran-Libya Sanctions Act.\textsuperscript{77} Yet this approach does not remove the


\textsuperscript{74} \textit{Id.}

\textsuperscript{75} \textit{U.N. General Assembly Votes for End to Cuba Embargo, supra note 73, at 1755.}

\textsuperscript{76} \textit{Id.}

\textsuperscript{77} \textit{See Statement on U.S.-EU Understanding on Expropriated Property, May 18, 1998 (vis-}
fact that unilateral economic sanctions do not work as well as expected. Another damper on the effectiveness of unilateral sanctions is that while the United States may be doing its part to remedy human rights ills through unilateral sanctions worldwide, at the same time, those unilateral sanctions threaten the United States' own economic future by giving the United States' export markets to its foreign competitors. In fact, some argue that U.S. unilateral economic sanctions deprive the United States of some of its best tools for advancing human rights and democracy: political and economic engagement. As one U.S. businessman noted, too often unilateral economic sanctions seem to be the United States' only tool:

When I see the list of potential (sanction) target countries, I'm reminded of the old saying, 'When your only tool is a hammer, every problem starts to look like a nail.' In thinking about the effectiveness of sanctions in general, I'm inclined to wonder if we are hitting our thumbs more often, and harder, than the nail.

Perhaps unilateral sanctions are too negative a solution for every case of human rights abuse. Besides a more multilateral approach to human rights enforcement, other tools that the United States might consider keeping in its toolbox might include spreading investment, developing economic markets, and otherwise creating employment opportunities around the world. U.S. Secretary of State Madeline Albright has realized as much: "It's all sticks and no carrots . . . . If we have to sanction every country because its religious laws do not fit America's and we

78. See U.S. Acknowledges Disarray in Sanctions Policy, supra note 3 (citing official government estimates of costs to U.S. economy, and particularly, export profits).

79. See, e.g., Arendt, supra note 73; Gibney, supra note 77.

have to sanction every country in the world as a result of it, it sure doesn’t leave us much operating room. Perhaps a more constructive course of action would be to offer positive incentives to take a certain action, rather than to create disincentives if states fail to take certain action. Indeed, one can only hope that the United States does not awaken one day to find that it has sanctioned itself into a corner with no bargaining power at all. A United States without any bargaining power would be all but impotent in the struggle for human rights.

2. Multilateral Legitimacy

One justification for the United States “going it alone” by using punitive unilateral economic sanctions to enforce human rights is that the United States tries to lead the world in doing the right thing, but no one follows. The recent Gulf crisis was an illustration of such a case of “going it alone” simply because no one would follow. If the United States has chosen one course of action while most of the rest of the world has chosen another, as it has done in Haiti, however, then the “universality” of the rights to be enforced, and indeed the rectitude of the action, can be called into question. To some degree that is what appears to be occurring in Iraq, where much of the world has lost interest in Saddam Hussein’s antics. The United States, however, has declared that unilateral action on its part, if necessary, is justified because “we are America. We are the indispensable nation. We stand tall. We see further into the future.”

But that far-reaching wisdom notwithstanding, it has been suggested that a centralized body, such as the World Trade Organization (“WTO”), might better orchestrate the imposition of economic sanctions in the protection of human rights, rather

83. See discussion of U.S. intervention in Haitian elections, supra note 38 and accompanying text.
84. This statement is made by U.S. Secretary of State Madeleine Albright, justifying the Clinton Administration’s threat to bomb Iraq. R.C. Longworth, Like It or Not, U.S. in Charge, CHICAGO TRIB., Apr. 12, 1998.
than allowing states to act unilaterally.\textsuperscript{85} Often, as Iraq has demonstrated, economic sanctions take a long time to work. An overseeing body that has the power to police trade violations might indeed take the softness of human rights law and give it some bite and at the same time remove the spectre of self-interested unilateral action.\textsuperscript{86} Working in conjunction with the United Nations, the WTO could take action, for example, after an appropriate U.N. Security Council resolution has been adopted, thereby ensuring international consensus to some degree, which would allow for multilateral, rather than unilateral action.\textsuperscript{87}

On the other hand, using such an organization for human rights enforcement has its drawbacks as well. The WTO was not established to deal with human rights violations.\textsuperscript{88} Its current framework has no more human rights enforcement mechanisms than does the United Nations, and there is no guarantee that the WTO could achieve any greater success than the United Nations in seeing universal human rights standards enforced.\textsuperscript{89} Principles of democracy, however, can and should work on an international as well as a national scale, particularly where the wisdom of many can often provide greater objectivity in finding a solution than can the wisdom of one. Using organizations like the United Nations and WTO as cooperative tools in selecting and enforcing human rights could go a long way toward more effective multilateral enforcement of human rights.

\textbf{B. Abroad but Not at Home}

I arrived in a city that always makes me think of a whited sepulchre . . . . It was the biggest thing in town, and everybody I met was full of it. They were going to run an over-sea empire,

\textsuperscript{86} Brietzke, supra note 85, at 127.
\textsuperscript{87} Bhala, supra note 71, at 16.
\textsuperscript{88} According to the World Trade Organization ("WTO"), the legal agreements forming the basis of the WTO have three objectives: "to help trade flow as freely as possible, to achieve further liberalization gradually through negotiation, and to set up an impartial means of settling disputes." \textit{WTO—About the WTO} (visited Oct. 31, 1998) \url{http://www.wto.org/wto/about/facts0.htm} (on file with the \textit{Fordham International Law Journal}).
\textsuperscript{89} See Bhala, supra note 71, at 39 (illustrating difficulty in getting case before WTO when human rights, trade, and national security are at issue).
and make no end of coin by trade.  

"Going it alone" in its enforcement efforts is not the only troubling aspect of United States' human rights policy. The United States' reluctance in protecting human rights through multilateral action has led to international resentment—resentment that is exacerbated by the fact that the United States readily imposes economic sanctions to protect human rights abroad, but is far less willing to suffer any judgment of its own human rights troubles. This reticence often proves an impediment in the United States' efforts to enforce human rights effectively at all and instead gives rise to accusations of hypocrisy. The United States operates with a curious double standard in assessing other states' human rights performance and obligations and in assessing and taking those obligations upon itself. Since the passage of the 1974 Foreign Assistance Act, the U.S. State Department has issued yearly country-by-country human rights reports in an effort to rectify human rights difficulties worldwide. Many of the same difficulties, however, cited in other states, that serve as justification for the sanctions, are similar to difficulties found in the United States itself. To much of the world, the United States appears willing to judge others' difficulties while at the same time ignoring its own problems at home. In Cuba, for example, the United States points a finger at the Castro regime's refusal to accept international standards for human rights, but

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90. Conrad, supra note 1, at 14.
92. See Stirling, supra note 11, at 28.
at the same time is willing to overlook its own attempts to justify the refusal to accept international standards embodied in the judgments of the International Court of Justice. Of course the comparison is not exact, but nonetheless, the United States must recognize that it does not fulfill its role as unilateral human rights enforcer with spot-free hands.

1. The Non-self-executing Problem

The United States, like any nation, resists the idea of being singled out and scrutinized by an international body set up to investigate human rights violations. Largely for that reason, the United States is absent from several important human rights conventions such as the American Convention on Human Rights. But to those treaties to which the United States is party, the treaty provisions are subject to a non-self-executing policy within the United States, meaning that, pending congressional incorporation of the treaty into national law, any rights created by the treaties would be unavailable to individuals in the United States. Many of these treaties are meant to be impor-

96. Nicaragua v. United States, 1984 I.C.J. 392 (1984). Nicaragua alleged that the United States had violated the prohibition of the use of force in international relations and the parallel rule on prohibition of intervention with the purpose of overthrowing the Nicaraguan Sandinista government. The United States argued that the ICJ lacked jurisdiction, but the ICJ rejected those arguments. The United States thereafter chose not to appear at the proceedings in an attempt to stonewall the ICJ. The ICJ concluded that the United States’ non-appearance did not prevent the ICJ from giving a decision in the case and found that the United States was required to make reparations. The United States, however, refused, ignoring international calls for compliance with the judgment from principal judicial arm of the United Nations. See ICJ’s own recitation of facts at Judgment of the International Court of Justice of 27 June 1986 concerning military and paramilitary activities in and against Nicaragua: need for immediate compliance, Nov. 3, 1986 (visited Oct. 31, 1998) <http://www.undcp.org/webdocs/GA/GA4131.txt> (on file with the Fordham International Law Journal).


98. See Smith, supra note 91, at 806-07 (pointing out that of seven primary U.N. human rights instruments, United States has consented to only three).

99. While a treaty signed by the Executive Branch is binding upon the United...
tant resources for garnering support for progressive changes in human rights around the world. But it is precisely this kind of "progress" that some countries resent coming from the West. The resentment derives in part from the United States' use of economic sanctions to force changes in human rights practices at times supplanting cultural practices as well. Because the human rights conventions are non-self-executing once ratified in the United States, their effect creates an instrument through which certain rights are created and that is capable of being enforced outside the United States. The convention does not, however, necessarily create individual privately enforceable rights in U.S. courts for U.S. citizens. The non-self executing policy serves not only to immunize the United States from foreign judgment, but also to prevent U.S. judges from judging persons under their jurisdiction under international standards.

2. Reservations

The applicability of international conventions to U.S. citizens aside, other states are quick to point out that the most powerful and most active unilateral enforcer in the world is very particular about which parts of multilateral efforts it enters to protect international human rights. Where the United States is party to human rights conventions, those conventions' full efficacy is in some cases hindered because the United States partici-

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100. See, e.g., Ernst, supra note 44, at 323.
101. See, e.g., Rasha al-Disuqi, Family Values in Islam, in The Traditional Family in Peril 33 (Susan Roylance ed., 1996) (pointing to changes from traditional role of women as nurturers implied by treaties such as Convention on the Elimination of All Forms of Discrimination Against Women). Such changes could lead a woman to "abandon her children and run to work" thereby hindering "the children's well-being and future." Id. at 36.
102. See supra note 99 and accompanying text (dealing with non-self-executing problem); see also Stirling, supra note 11, at 26-27 (explaining history of non-self-executing interpretation of human rights treaties).
103. Henkin, supra note 18, at 346.
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pates with extensive reservations. Indeed, the United States sometimes walks a fine line between hypocrisy and straightforward imperialism where it seeks to enforce rights embodied in human rights instruments that it has not ratified itself or where it flexes its economic muscle to dictate policy to smaller developing nations. That particularity seems to say that the United States is willing to play the human rights game so long as it can determine its own rules. It also seems to say that the United States is unwilling to play the game if anyone else has a say in how the game is played.

By way of illustration, the United States acceded to the International Covenant on Civil and Political Rights, but did so with reservations, refusing to prohibit capital punishment for persons under the age of eighteen. That reservation was likely based upon the continued cultural acceptability of capital punishment in at least thirty U.S. states and an unwillingness to change current U.S. law to bring it in line with international standards. In that light, where the United States has carved a reservation for itself out of multilateral human rights agreements, it can scarcely expect China, Cuba, Iran, or Libya to want anything different, especially where they are placed under largely unilateral pressure to bring their own practices in line with a U.S. standard that, in many cases, is inapplicable to U.S. citizens, themselves. The inapplicability of international standards to U.S. citizens, coupled with the United States' selective approach to accession, has led some to criticize as hypocritical the United States' unilateral approach to human rights enforce-

105. See Henkin, supra note 18, at 345-66 (noting that U.S. ratification of Convention Against Torture and International Convention on the Elimination of All Forms of Racial Discrimination included large "packages" of reservations); Ernst, supra note 44, at 308-21 (noting historical congressional mistrust and hostility toward international treaties as basis for extensive reservations); see also Declaration of Rights Little Help, supra note 15, at A5, (quoting 1997 Amnesty International Annual Report, which states that "[e]ven when [the United States] has ratified international human-rights conventions, it has often entered extensive reservations, refusing to be bound by many of the provisions within them.").


107. See Henkin, supra note 18, at 342 ("By its reservations, the United States apparently seeks to assure that its adherence to a convention will not change, or require change, in U.S. laws, policies or practices, even where they fall below international standards.").
This double standard neither helps the United States' credibility, nor its efficacy, when it comes to the unilateral enforcement of human rights a particular agreement is meant to protect.

C. Inconsistency

She talked about 'weaning those ignorant millions from their horrid ways . . . ."109

The final reason for the ineffectiveness of unilateral trade sanctions is an inconsistent pattern of human rights enforcement. Once such a pattern is established with regard to certain human rights, the threat of sanctions no longer has the weight that it may have had before.110 The United States talks convincingly of weaning the rest of the world from their horrid ways, but the United States' actions seem to say something else entirely. For example, the United States' condemnation of human rights violations in Iran is confusing in light of the considerable human rights abuses tolerated during the Shah's pro-U.S. regime.111 Similarly, if the United States fails to pressure China on human rights issues, or fails to remedy domestic human rights abuses, then it undermines its ability to make credible threats elsewhere, such as in Cuba.

To illustrate, where the United States consistently looks away in the face of human rights abuses, such as female genital mutilation and Chinese "family planning," and, rather, seeks to advance its other policy objectives, then a clear paradigm is established and the United States consequently loses any concession that it might make in order to get the support it seeks.112 The United States loses that credibility for several reasons, the primary being its spectre of hypocrisy of picking and choosing which human rights violations to enforce through economic sanctions.

But why shouldn't the United States be selective in determining where to enforce human rights unilaterally? Some devel-

108. Id. at 341-43.
109. CONRAD, supra note 1, at 18-19.
111. See Mayer, supra note 58, at 313.
112. See Brilmayer, supra note 110, at 338.
Developing nations see economic sanctions as economic strangulation that is "yet another manifestation of imperialism, one that is more subtle, more cunning and terrifyingly effective in preventing [those states] from exercising [their] rights as [sovereign states]." Others argue that the United States is free to trade or not to trade with whomever it desires and that economic sanctions are but a part of that freedom. In the minds of many U.S. citizens, it should be up to the United States and the United States alone to determine in which cases of human rights abuses to become involved. After all, many U.S. citizens reason that such determinations are what democracy is all about, allowing each state to determine its own actions, including whether to enforce human rights in Haiti but not Bosnia, and Somalia but not Rwanda.

If roles were reversed, however, many Americans would likely feel differently. The idea that any state could currently impose trade sanctions successfully upon the United States in order to get it to change its human rights laws may seem outrageous because most states would be hard-pressed to convince the United States through economic means to rectify its own human rights problems. For example, their current economic hardship aside, the Asian financial powers could scarcely hope to use its economic power to persuade the United States to do something about its own continuing use of capital punishment. Similarly, a European Union ("EU") boycott of U.S. goods because of the United States' historically discriminatory approach in the treatment of women would meet the same U.S. response: "It's none of your business." This response would suffice, considering the United States' current dominant economic and military position, which permits it to "go it alone," and considering that the United States would simply be unwilling to make the cultural concession. The United States could make strides in human rights enforcement by keeping in mind that the same cultural constraints exist in places such as China, where attempts to im-

114. See Brilmayer, supra note 36, at 955.
115. Id.
pose U.S. or Western norms in some cases amounts to an attempt to make apple pie out of egg rolls.

III. SELF-DETERMINATION

What can you expect? [H]e came to them with thunder and lightning, you know—and they had never seen anything like it—and very terrible.\textsuperscript{116}

No discussion of unilateral human rights policing would be complete without some mention of self-determination. After all, the purpose of many of the United States’ unilateral sanctions is to cause another state to change its human rights policies or practices. Therefore, when states are faced with the thunder and lightning of U.S. economic sanctions, things can look very terrible indeed, because when it comes to a state’s right to determine its own human rights policies, the United States’ role is often more than merely an advisory one.

The idea of sovereign self-determination has been called “the imperative basis for all human rights,”\textsuperscript{117} although in certain instances the right to self-determination should only be guarded where human rights are ensured.\textsuperscript{118} So important is the principle of self-determination that potential infringement of a state’s sovereignty is one of the primary reasons for the lack of any international regime for the enforcement of human rights. The U.N. Charter makes a point of declaring a policy of non-intervention in “matters which are essentially within the domestic jurisdiction of any state” in order to protect the fundamental principle of state sovereignty.\textsuperscript{119} In addition, few states desire to bind themselves to treaties that could potentially conflict with domestic policies and the treatment of their own citizenry.\textsuperscript{120}

The right to self-determination, however, is an important

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\item[\textsuperscript{116}] CONRAD, supra note 1, at 94.
\item[\textsuperscript{117}] MICHALA POMERANCE, SELF DETERMINATION IN LAW \& PRACTICE 41 (1982). “Again and again the General Assembly has loudly trumpeted what has become an axiom in the United Nations, that self determination is the imperative basis for all human rights.” Id.
\item[\textsuperscript{118}] Id.
\item[\textsuperscript{119}] U.N. CHARTER art. 2(7). Article 2(7) of the U.N. Charter is invoked primarily in response to threats of forceful intervention. A number of Third World states, however, have resisted such a narrow interpretation. See STEINER \& ALSTON, supra note 8, at 369.
\item[\textsuperscript{120}] See Stirling, supra note 11, at 6 (citing H. LAUTERPACHT, INTERNATIONAL LAW \& HUMAN RIGHTS 175 (1968)).
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fundamental right to be considered in and of itself, even though the right to self-determination is not necessarily a human right recognized with any regularity by the West. In fact, for some Third World countries, the right to self-determination involves a right to rise from poverty and third-rate status to which they see themselves consigned by wealthy imperialists. In a very real sense, the right to self-determination is in itself a human right, and in many of those states that recognize it as such, the quest to improve their global status becomes an overriding goal that may temporarily subsume other rights. Other states see the imposition of unilateral economic sanctions as an attempt by the United States to impose its will upon them in violation of their human right to self-determination. They argue that to concentrate too much upon civil liberties is to ignore rights of national sovereignty and self-determination. One commentator has noted that “[t]he international community constantly frustrates the creative management of self-determination through its unwillingness or inability effectively to sanction states that manifestly violate the right.” Thus, while the United States has become a most vocal advocate of human rights in the realm of civil liberties around the globe, it has also become an example of human rights violations in the realm of self-determination simply because self-determination falls below other human rights in the United States’ hierarchy of human rights enforcement.

To illustrate, one U.S. critic has pointed out that “[t]he United States wrongly believes that the Chinese people desperately demand the ouster of the leadership of the Communist Party of China, changing the country’s socialist system and introducing capitalism, or quite simply seek change.” If that is indeed the case in China, then economic sanctions aimed at

121. One critic pointedly stated that historically, the only human rights that the United States has consistently fought for has been the freedom from socialism and the freedom to make a profit. Weil, supra note 61, at 14.
122. Id.
123. See Stirling, supra note 11, at 11.
124. The Chinese, for example, see such sanctions based upon human rights violations, as “just one more attempt to ‘civilize’ the Chinese, right in line with the missionaries, opium, and gunboats of old.” Weil, supra note 61, at 6.
125. Id.
126. Brietzke, supra note 84, at 127.
changing Chinese behavior could well be looked at as an attempt to force the state to surrender a degree of its sovereignty to bring its actions in line with the United States' will. The United States has not consciously sought to interfere with China's right to self-determination; rather, it has sought to convince China to realign its prioritization of human rights to bring it into conformity with the United States' prioritization.128

As discussed above, in balancing the right of self-determination with other human rights, there must be consistency in the analysis. Consistency appears to be a key element in enforcing other human rights while respecting the right to self-determination. Where the weighing of self-determination and human rights enforcement is consistent, the use of economic coercion can be put to most effective use.129 But where application of the right of self-determination is not uniformly applied, then quite the opposite occurs and economic sanctions lose their effect. Often, in implementing its unilateral sanctions, the United States lacks exactly the kind of consistency to which multilateral action lends itself. Multilateral action tends toward greater stability in its approach, primarily because more perspectives are called upon in making decisions.

Besides including a policy of non-intervention within the framework of the U.N. Charter, there is established an ideal of self-determination through freedom from forceful infringement upon sovereignty. Indeed, the U.N. Charter requires that signatories "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."130 The United States would certainly arouse international furor if it were to intervene militarily in Cuba, Iran or Libya unilaterally—particularly in light of the aforementioned U.N. Charter provision.131 Whether such an action would fall under the U.N. Charter's prohibition seems indubitable.

The U.N. Charter, however, provides the only international standard by which "aggression" can be judged, and while the U.N. Charter speaks clearly as to coercion by force, implying military action, it is silent with regard to economic coercion. This

128. See Morgenthau, supra note 39, at 813-14.
129. Muzhi, supra note 127.
130. U.N. Charter art. 2(4).
131. Id.
silence certainly indicates that the U.N. Charter does not prohibit economic sanctions outright. The spirit of the U.N. Charter, however, is one of multilateral cooperation because economic aggression today can wreak just as much havoc upon a victim state as any military action.\textsuperscript{192}

Such havoc is not without historic precedent, although the roles were reversed from how they are played today. On at least one occasion, other states have been at least somewhat successful in placing the shoe on the other foot and imposing effective economic or trade sanctions upon the United States. Indeed, the United States' current stance regarding its human rights-economic sanctions policies falls into an interesting light some twenty-five years after it has been on the receiving end of similar economic sanctions. In 1973 the United States suffered at the hands of the Organization of Petroleum Exporting Countries ("OPEC") as Middle-Eastern oil-rich states cut off oil supplies to the United States and the West to protest Arab displacement in Israel. The response from the United States was indignation, including cries that the embargo violated the spirit, if not the letter of the U.N. Charter provisions dealing with self-determination.\textsuperscript{133} The United States did, in fact, have some authority under the U.N. Charter for its proposition that the use of unilateral economic sanctions could be proscribed as an internally illegal act of aggression.\textsuperscript{134} The basis for that assertion still exists.

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\item 132. The spirit of multilateral cooperation is reflected in articles 56 and 55 of the U.N. Charter, which state that:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of . . . (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms.

U.N. CHARTER arts. 55, 56.

\item 133. See Jordan J. Paust & Albert P. Blaustein, The Arab Oil Weapon—A Threat to International Peace, 68 AM. J. INT’L L. 410 (1974). "[T]he fact that economic forms of coercion are regulated under Chapter VII [of the U.N. Charter] supplements the expectation that the term ‘force’ in Article 2(4) includes measures of economic force." Id. at 418-19 n.41. But see Ibrahim F.I. Shihata, Destination Embargo of Arab Oil: Its Legality Under International Law, 68 AM. J. INT’L L. 591, 625-26 (1974) (noting that sanctions were "following the steps of a great number of other states which have used their export regulations to further their foreign policies").

\item 134. See James A. Boorman, III, Economic Coercion in International Law: The Arab Oil Weapon & the Ensuing Judicial Issues, in ECONOMIC COERCION & THE NEW INTERNATIONAL
The U.N. Charter has not been significantly altered since, and the spirit, if not the letter of the Charter remains the same.

But while the players changed roles, fundamental economic principles have changed little in the twenty-five years since the United Nations proclaimed that "[e]conomic and social progress is the common and shared responsibility of the entire international community . . . . Every country has the right and duty to develop its human and natural resources, but the full benefit of its efforts can be realized only with concomitant and effective international action." The international community is today even more tightly woven together economically than ever before, and "the full benefit" of a country's development can only be realized "with concomitant and effective international action." This declaration still rings true, bearing in mind that the concurrent right to self-determination seems to call for all nations to seek multilateral cooperation in achieving their aims, rather than simply "going it alone."

CONCLUSION

Whether he knew of this deficiency himself I can't say. I think the knowledge came to him at last—only at the very last . . . . I think it had whispered to him things about himself which he did not know, things of which he had no conception till he took counsel with this great solitude . . . .

Even though the United States enjoys a great deal of prominence in world affairs and its dominance seems to be at its apex, it still has not fully grasped the importance of its role as bearer of the human rights torch. While it proudly holds up the torch for the rest of the world to see, behind its blindfold it fails to recognize the peril of holding the torch alone. Certainly, the United States should not merely sit idly by and look the other way as human rights abuses continue around the globe. The economic might of the United States can and should be used toward the elimination of human rights abuses.

LEGAL ORDER, supra note 113, at 255. Admiral Boorman concludes, however, that while such authority exists, the Organization of Petroleum Exporting Countries embargo was not technically illegal under international law.


136. CONRAD, supra note 1, at 98.
The human rights expressed in the Universal Declaration, regional human rights covenants, and many states' constitutions all seem to speak to the same goal: the eradication of human rights abuses. They speak of similar rights and of similar needs in order to preserve humanity. Yet underneath the varied statements of lofty human rights ambitions lie fundamentally different interpretations of those rights among various countries. The similarities in statement of the rights notwithstanding, the difference in the weight and value placed on each respective right does not lend itself to any real sense of universality. As one author pointed out, "whereas truth and justice were once synonymous with the American way," and many nations looked readily to the United States for guidance, "many nations now recoil from the wholesale imposition of views and policies that are unique to America's own political interests. This is particularly evident when American allies are expected to support U.S. efforts to punish, isolate, or otherwise neutralize countries with which the U.S. finds fault . . . ." Consequently, any attempt by a country to enforce its own interpretation of a right unilaterally upon a second country that places different weight upon the right in question results in a battle of human rights ideals. This result is the trouble with establishing any real framework of "universal" human rights, let alone human rights enforcement.

Even if some universally acceptable standard of human rights enforcement can be defined with indubitable clarity, the only truly effective enforcement mechanism can be a multilateral one. Multilateral enforcement on an international scale removes at least some of the aura of imperialism and cultural bias that accompanies unilateral action. The United States would be well served to seek greater multilateral consensus in striving for enforcement of human rights. Multilateral human rights enforcement resounds with greater authority than unilateral action, and if multilateral support for enforcement does not exist, then perhaps the United States, in contemplating the action, should rethink its position. In rethinking its position, the United States must be aware of the historical imperialistic and

137. Adonis Hoffman, Increasingly, U.S. Finds Itself Whistling Alone, CHRISTIAN SCI. MONITOR, Dec. 13, 1996, at 18. Hoffman points out that "[s]uch has been the case with the Helms-Burton Act and the Iran-Libya Sanctions Act, in which U.S. allies must choose not to do business with Cuba, Iran, and Libya or open themselves up to legal challenges in the U.S." Id.
colonial legacy that provides room for doubt as to the West's assertions of the "universality" of human rights and its reasons for enforcing them. Not surprisingly, in that context, enforcement of those human rights sometimes appears merely as a pretext for intervention into a nation's sovereign domestic affairs.\textsuperscript{138}

If the United States fails to work toward greater recognition of human rights through multilateral efforts and instead continues to act unilaterally in its enforcement efforts then it could find itself increasingly isolated from the international community and the subject of increased resentment from those same countries that it once sought to lead.

The knowledge about the United States' multilateral deficiency has probably reached the ears of its subject. Perhaps the whisperings from the wilderness have caused the United States to learn things about itself that it did not know and had previously refused to recognize until it was faced with the potential of great solitude. The United States is learning that unilateral economic sanctions are not the panacea that they once seemed to be and that economic sanctions from the United States alone cannot cure all human rights ills.\textsuperscript{139} After years of using the sword of unilateral economic sanctions to carry the human rights torch into the wilderness, the U.S. State Department is peeking from beneath its blindfold and attempting to take a more effective, less unilateral approach.\textsuperscript{140} The new approach, it says, is guided by the following principles: first, economic sanctions are to be used only as a last resort, after other diplomatic

\begin{itemize}
  \item \textsuperscript{138} Hom, \textit{supra} note 51, at 209; \textit{see} Morgenthau, \textit{supra} note 39, at 814 (stating that "there is a fundamental difference . . . between the present agitation in favor of human rights as a universal principle to be brought by the United States to the rest of the world and the dedication to human rights as an example to be offered to other nations"); Wilner, \textit{supra} note 10, at 418-19. Wilner notes the argument that the very standards with which the West gauges human rights "are nothing more than contemporary Western values," but also clings to the "universalist" approach in pointing out that "there are differences in certain values" even among Western states and that those differences have not prevented the West from coming to some consensus as to core human rights. \textit{Id.} at 419.
  \item \textsuperscript{139} Sen. John Glenn, D-Ohio, author of the 1994 measure requiring automatic sanctions on nuclear testing violators, said on CNN that while some sanctions have been successful, "the biggest problem is we can't unilaterally control these things around the world." \textit{See Albright Criticizes U.S. Sanctions, supra} note 81; \textit{see} Susan J. Long, Comment, A \textit{Challenge to the Legality of Title III of LIBERTAD & an International Response}, 7 IND. INT'L & COMP. L. REV. 467 (1997).
  \item \textsuperscript{140} \textit{See} Eizenstat, \textit{supra} note 4.
\end{itemize}
options have failed; second, before unilateral sanctions are taken, the United States will try to seek international support; third, economic sanctions are to be designed carefully to minimize hardship upon the innocent; and finally, before sanctions are used, views of the Congress, business groups, and others will be considered.\textsuperscript{141}

This less unilateral approach is evident in the United States' recent agreement with the European Union\textsuperscript{142} in which the United States agreed both to grant waivers that will keep sanctions from being imposed on European firms doing business with Cuba, Iran, and Libya and to work with the European Union to determine multilaterally how to deal with "unacceptable behavior" by other countries.\textsuperscript{143} Such a step is a step in the right direction if the United States seeks to preserve the effectiveness of economic sanctions as well as the human rights the sanctions are meant to protect.

Without additional multilateral action on the part of the United States, the Universal Declaration and its progeny and the human rights ideals for which they stand may forever remain but descriptive statements of lofty human ambitions rather than grounded declarations of human rights. But if the United States truly wants to enforce human rights for altruistic reasons and not for other economic ends, then it must seek ways to garner multilateral support for its actions rather than simply "go it alone" on the basis that it is the United States of America and is the holder of the human rights torch. The United States may once have been able to base its policies upon the assumption that the rest of the world strives to share its values, but its external human rights policies today require a much broader multilateral approach.

\textsuperscript{141} Id.
