Sanctions on Cuba: Is it collective Punishment?

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Introduction:

The U.S. has imposed strict sanctions on Cuba since 1962, significantly impacting the Cuban people. These sanctions have contributed to 89% of Cubans living below the poverty line (Hernandez-Roy et al., 2026) and have compounded hardships already present under the Communist regime, such as repression of civil and political rights (Amnesty International, 2025). Although the embargo strains Cuba's economy, factors like limited economic diversification and a bureaucratic command economy also play major roles (Gordon, 2016). Recent energy embargoes and efforts to halt oil exports have further intensified suffering, reflecting the combined effects of U.S. policy and internal governance issues.

This article considers Collective Punishment, which refers to penalties imposed on a group for acts committed by some of its members. It examines

its transference from International Humanitarian Law (IHL) in Article 33 of the Fourth Geneva Convention (1949) to International Human Rights Law (IHRL). Collective Punishment does not seem to go beyond the laws of war into what would otherwise be considered as 'peacetime'; thus, the question is whether Collective Punishment can happen during 'peacetime' while a state experiences sanctions and violations of the International Covenant of Economic, Social, and Cultural Rights (ICESCR). Collective Punishment lies within Customary International Law (CIL), which consists of international practices accepted as law. It applies to hors de combat (individuals who are outside of combat), and raises the question: does opinio juris (the belief that an action is carried out as a legal obligation) extend into IHRL (Rule 103, Volume II, Chapter 32, Section O.)? Can frameworks within IHL be extended to IHRL and govern during 'peacetime'?

The argument will begin by tracing the extraterritorial application of sanctions through an analysis of two Acts of Congress (Torricelli and Helms-Burton). Secondly, it will show how the sanctions affect rights under the ICESCR by sector. Finally, this essay will argue whether it is possible to transfer IHL to 'peacetime' IHRL regarding the case study of Cuba.

1. Extraterritoriality: How do the sanctions affect Cuba?

After the collapse of the USSR, Cuba lost 75-80% of its major trade partners, causing an economic crisis. Shortly after, the United States Congress passed two laws: the Torricelli Act of 1992 and the Helms-Burton Act of 1996, perennially ambering the sanctions. The invasiveness of the acts is evident in their extraterritorial violations of international law. Here, 'extraterritorial' means that laws are applied to conduct or entities outside the United States' own territory. On this occasion, United States laws influence other countries, corporations, and Cuba, none of which are under the sovereignty of the United States. Applying such laws outside a country's own borders is considered extraterritoriality and can be challenged under international law. Nevertheless, the U.S. enforces its laws through pressure on the latter.

Torricelli Act: Any ship that docks in Cuba cannot enter U.S. ports for 180 days, restricting Cuba's trade. This extraterritorial measure affects global shipping companies, who must obtain a special license from the Treasury Department's Office of Foreign Assets Control (OFAC) to avoid sanctions. The Act also blocks foreign subsidiaries of U.S. companies from dealing with Cuba, reducing investment.

The Helms-Burton Act of 1996 extended U.S. sanctions extraterritorially, letting U.S. citizens sue foreign companies using expropriated Cuban property and barring goods containing Cuban raw materials such as Nickel and Sugar (Gordon, 2015, 2). Major fines—HSBC ($1.9 billion), BNP Paribas ($8.9 billion), ING ($619)—deterred investment, triggering what Gordon argues is a "chilling effect" (2016). As a result, by 2025, 200 banks and remittance services like Western Union ended operations, worsening Cubans' access to money (Douhan, 2025, 3).

Gordon highlights how extraterritorial sanctions exclude Cuba from the global financial system, notably by restricting access to SWIFT under the 1962 Cuban Assets Control Regulations (CACR) (Gordon, 2012, 70). This is due to a 10%+ of U.S. components rule under CACR, "[because] it contains United States technologies and components subject to the restrictions of the economic embargo" (A/65/83). SWIFT is software owned by the U.S.; Cuba's access to it prevents Cubans from using it, thus alienating them from the world banking system. Deliveries to Cuba are also made difficult under Torricelli Act and OFAC license distributions. Deliveries often come at a 40-300% markup without an OFAC license; this is due to the 10%+ rule of U.S. components (Douhan, 2025, 4). As a result, the Cuban economy remains uncompetitive as the 10%+ rule increases the risk of multinational companies. This measure of extraterritoriality also impacts the Cuban people as they are prevented from long-term economic planning.

Cuba's economic crisis has deepened under the embargo. After U.S. intervention in Venezuela, Cuba lost its main oil supplier, ending "Médicos por Petróleo" and increasing hardship (Feinsilver, 2010). Mexico and Venezuela had provided most of Cuba's oil, but a U.S. naval embargo and pressure for a total ban have halted supplies (Reuters, 2 Feb 2026). This extraterritorial policy impacts electricity, medicine, water, and food.

Gordon's analysis provides the big picture of how the United States has managed to extend its reach to poke and prod beyond its jurisdiction. However, her analysis is missing important information on how sanctions impact Cuba by sector. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Douhan, provides a more recent analysis from her November 2025 trip.

2. **Sanctions by sector:**

Health

The impact of sanctions on health affects the availability of medicines and medical devices. Under Humanitarian norms, sanctions cannot apply to medicines; however, the 10%+ components rule significantly affects access to 69% of medicines, including cancer treatments, heart disease treatments, repellents, dengue tests, etc. Cuban medical authorities cannot procure the needed resources for rightful access to healthcare (Douhan, 2025, 5). In recent reports, the ongoing oil embargo is said to worsen access to doctors, as ventilators have stopped working due to prolonged power outages (NYT, 26 March 2026).

Under the current embargo, the United States has also exercised extraterritorial measures by pressuring other countries to send back Cuban doctors. These pressure campaigns directly affect people in medically underserved regions in the world, leaving people without healthcare not just in Cuba but also in places like Guatemala, Guyana, Jamaica, St. Vincent and the Grenadines, Paraguay, and Honduras (NPR, 24 March 2026)(Douhan,

2025, 5). Access to healthcare is paramount under the ICESCR (Article 12). Furthermore, under Article 12, 2(a), children have the right to healthy development and the reduction of mortality. A recent report from the CEPR claims that infant mortality has risen 148%, citing the embargo as a direct result of the lack of access to healthcare (Main et all., 2026).

Education

Access to education is also hampered by the embargo. The ICESCR states in Article 13 that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms." In Cuba, however, whether fault of the embargo or government censorship (Amnesty International, 2016), students cannot access close to 320 online platforms as they are blocked. Douhan claims that this is due to the 10%+ components rule, stating that as much as 50% of computers in schools and Universities are not operational (Douhan, 2025, 5).

Food and water

Cuba must import 70-80% of its food as a direct result of a scarcity of animal vaccines, fertilizers, seeds, etc. The importance of OFAC licenses is also stressed in this sector, as food shortages are common and suppliers must pay 45 days in advance (in cash and USD)—without a license, Cuba cannot access food on short notice from its closest neighbor (Douhan, 2025, 6). It is also important to stress that Cuba is not allowed to conduct transactions in dollars (they can only do so in cash), deepening the depth of the sanctions chasm that affects every sector (Gordon, 2015). The current embargo also prevents refrigeration, as food perishes in the heat (NBC, 16 March 2026).

The water situation is also made more precarious by the breakdown of the dichlorination equipment due to poor maintenance and long repair wait times. Crucially, treatment plants are built with components manufactured by the U.S. company Wallace & Tiernan; the Torricelli Act has made it difficult to purchase these components for repair (Gordon, 2016b, 5). ICESCR deems food a human right (Article 11). Under these current conditions, human rights in Cuba are not met.

3. **Is it collective punishment?**

"The circle is tightening, the humanitarian crisis is increasing by the hour. I talked with our senior person on the ground there in Venezuela [...] You can see the increasing pain and suffering that the Venezuelan people are suffering from." (Cited in Weisbrot & Sachs, 2019,18). This quote is taken from former Secretary of State Mike Pompeo in 2019, implicating the true intentions behind sanctions and their clear violation of Articles 2(4) and Article 2(1) of the UN Charter. UN experts have warned that the embargo could amount to collective punishment if it continues, expressing concerns for violations of IHRL. The U.S. is no stranger to proceedings for intervention;

in Nicaragua v. United States (1986), the ICJ declared that the defendant had violated the laws of non-intervention.

Sanctions are meant to lead people to rise against their government, but it is not explicitly stated that this could be an intention for collective punishment. The current administration's rhetoric also hints at its intentions by threatening to use force. "I built this great military. I said, 'You'll never have to use it.' But sometimes you have to use it. And Cuba is next, by the way." This statement by Trump also highlights the administration's intention to threaten force, which is illegal under Article 2(4).

We must now examine how collective punishment extends into 'peacetime'. Darcy states that it has "crystallized into a rule of customary international law" from its beginnings in the Hague Regulations (2010, 33). *Jus cogens* in international law states that states are obligated to follow CIL regardless of whether they subscribe to a specific law. Their participation in the international system requires them to follow CIL. Weisbrot & Sachs make the compelling argument that sanctions regimes can amount to collective punishment as people suffer rather than the governments. Year after year, countries have voted to end the sanctions against Cuba; most recently, in 2025, the UN General Assembly voted on the necessity of ending sanctions, with 165 countries voting in favor (A/RES/80/4). A study released by the Lancet medical journal states that 564,000 people die annually due to sanctions, most of which are imposed by the U.S. This number is also compared to the annual deaths during combat (LA Times, 1 April 2026).

Based on the information stated above, rights under the ICESCR are being violated. Craven argues that sanctions affect the dispossessed through extraterritoriality. He criticizes the notion that poverty is not a local phenomenon. Reducing problems to specific jurisdictions obscures the problems that led to poverty in the first place. The alibi of sanctioning states rests on the pretense that they have no jurisdiction over a population and, therefore, are not responsible for its destitution. The U.S. can deprive civilian populations of food and healthcare while professing democratic values for possible intervention. Craven also argues that the ICESCR does not have a provision that limits its jurisdiction; therefore, the covenant is extraterritorial. Poverty, disease, and malnutrition should be placed into a global framework to understand how sanctions impact people (Craven, 2007).

Conclusion:

The connections between extraterritoriality, sanctions, and human rights should lead to serious consideration of the legitimacy of IHL, CIL, and IHRL. Rights are violated through sanctions, which amount to collective punishment of the Cuban population. The most affected are the poor, who are kept in poverty by the permanence of sanctions. The situation in Cuba cannot be wholly classified under 'peacetime,' as many deaths can be attributed to a lack of access to healthcare and food. The provision of

collective punishment extends to CIL; however, one must consider the lack of ratification by Cuba and the U.S. of the ICESCR. Rights violations cannot be excused under nullem crimen sine lege (no crime without law), for both states have recognized the law by signing it and should respect its provisions by upholding rights rather than violating them through sanctions.

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