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**THE EFFICACY OF SANCTIONS AS AN INSTRUMENT OF
INTERNATIONAL LAW**

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ABSTRACT

Sanctions are fiercely debated instruments in the realm of international relations and classic legal studies, which can also be treated as competing fields of research. Generalizing on the prospective content, this paper analyzes sanctions as an instrument of international policy by exploring their goals, power dynamic and dilemmas, and their normative impact. While war has traditionally been the main coercive tool in the arsenal of states, it has declined in practice, whereas the use of sanctions has increased substantially in recent decades. It is therefore crucial to understand the proper use of sanctions, as they are becoming key to enforcing a reliable international legal and security framework.

Conceptually, this research understands sanctions as a broad instrument used by national governments and international organizations with differing goals: coercion, containment, signaling, and the setting of international norms. They take place unilaterally or multilaterally, and previously existing diplomatic/economic relations, power balances, and internal political-economic conditions dictate whether they will be effective.

Sanctions are subject to a number of dilemmas in their enforcement that complicate the goal of coercion, making sanctions on balance only situationally effective in altering undesired behavior on a short-term basis. Better sanctions can be designed, but status quo conditions in the international environment are far more determinative in the success of these policies than good design or ‘smart sanctions’ can compensate. However, this paper argues that sanctions are only situationally effective coercively and not nearly reliable enough to be normative instruments.

Keywords: Sanctions, International Law, Norms, Diplomacy, Political Economy

INTRODUCTION

Sanctions are one of many instruments which states use in international relations to sway other states towards their interest. For as long as the notion of a state has existed, so too have sanctions. From trade embargoes on various Greek city-states in the Peloponnesian War over their refusal to enter an alliance with Athens¹, to the sanctions regime that the U.S.A. has on Iran over its alleged nuclear weapons program, states use sanctions to exert power over their surroundings. As such, this makes sanctions one of the primary tools of hard power that states have at their disposal. Sanctions are generally considered to be the level of action between words and war; they are more severe than threats, yet one step under the action of war. This too, is why sanctions are the subject of this paper, as for some actors without independent war-making abilities (ie. the European Union/EU and United Nations Security Council/UNSC), sanctions are the most powerful coercive instrument in their entire arsenal. In an era when warfare is more complicated and expensive than ever, sanctions have become an instrument of immediate application for coercion.

All major schools of thought are in agreement that international relations and law exist within the anarchy of the current international system. Unlike power relations within a given state's domestic legal order, wherein individuals can make enforceable contracts and expect the protection of the law from undesirable behavior, states function in a system where there is no higher power from whom to seek protection or enforcement of laws. This is what most clearly separates conceptions of domestic legal order from those of international legal order, as seen in the formulation of Waltz:

A government, ruling by some standard of legitimacy, arrogates to itself the right to use force—that is, to apply a variety of sanctions to control the use of force by its subjects. If some use private force, others may appeal to the government. A government has no monopoly on the use of force, as is all too evident. An effective government, however, has a monopoly on the legitimate use of force, and legitimate here means that public agents are organized to prevent and to counter the private use

¹ Alexander K. (2009). *The Origins and Use of Economic Sanctions*. In: *Economic Sanctions*. London, UK: Palgrave Macmillan, 8-29.

of force. Citizens need not prepare to defend themselves. Public agencies do that. A national system is not one of self-help. The international system is.²

In the process of attempting to understand the use of sanctions in an anarchy-framed order, it is therefore important to recognize that there is no monopoly on the legitimate use of violence in international relations. Paradoxically for the context, there are politics, but no political order. This is especially true when an existing international system is unsuccessfully trying to answer a range of existential questions. Thus, sanctions can be understood as instruments to be used to enforce a conception of law when there is no legal order.

This paper will evaluate the effectiveness of sanctions based on two metrics: their immediate coercive power to stop or contain behaviour considered to be unwanted or unacceptable, and their long-term ability to create reliable international norms which can govern international relations in the absence of a monopoly of violence, as well as how these two interact with each other, which brings up the question of whether it is possible to use sanctions in order to create norms. In other words, sanctions will be analyzed from the perspective of both ‘tactics’ and ‘strategy’, wherein tactics mean their ability stop or deter an ongoing action, and strategy means their ability to establish an overarching set of rules and conduct that will make the international system more reliable. For instance, Western sanctions on Russia could be considered in the coercive or tactical sense to aim at halting Russia’s aggression against Ukraine and Georgia, while they could also be measured strategically by their ability to solidify the international norms of non-aggression and the cessation of territorial aggrandizement. In this case specifically, Russia is engaged in an offensive international armed conflict for the purpose of territorial aggrandizement³, which violates the peremptory norm against wars of aggression. Sanctions in this situation may fail to immediately contain Russia or prevent it from continuing such actions, but in the long-term it may still be the case that these norms have been reinforced as some cost has been imposed where it otherwise would not have been, thereby reinforcing a norm desired by the West despite the lack of an immediate successful coerced outcome.

² Waltz, K. (1979). *Theory of International Politics*. Reading, Massachusetts, USA: Addison-Wesley Publishing Company, 103-104.

³ Tsybulenko E., Kelichavyi B. (2018) International Legal Dimensions of the Russian Occupation of Crimea. In: Sayapin S., Tsybulenko E. (eds) *The Use of Force against Ukraine and International Law*. T.M.C. Asser Press/Springer, The Hague, 277-296.

Additionally, there are multiple theoretical perspectives in international relations from which to approach this subject. An approach from realist theory, for instance, would not on the surface place much importance on the idea of normative development, as instead states are viewed as entities which act in a grand zero-sum game and struggle for power. Supposedly, when a state considers a norm which violates its immediate interest, it would ignore said norm as otherwise it would lose power and thus the ability to pursue its own interests and security.

However, as one of the founders of defensive realism has already been mentioned, in understanding the offensive realism proposed by theorists such as John Mearsheimer⁴, it is possible to note how norms can exist in an anarchic international system with great powers at its forefront. In this system, norms are created and enforced by great powers to suit themselves in their relations with less powerful states, and in this world all actors prioritize their own survival as the primary goal. No state ever reaches the point of accepting that they have enough power or enough security, but rather every state is in a constant struggle to achieve more power to influence their surroundings. In understanding how norms such as nuclear non-proliferation can come to exist, one could interpret the reasons for its implementation as not only being to reduce the likelihood of a destructive nuclear conflict, but also to prevent challenges to the existing power order wherein less influential states could challenge the hegemony of entities such as the US and China. Thus, sanctions are an interesting mechanism -primarily from the point of view of the above-mentioned great powers- which can be used to analyze how norms can be created and upheld, as norms can and do exist without any sense of 'altruism' on those subjected to them.

Additionally, there must be some recognition that takes into account the two competing, often conflicting, fields of study: international relations and law. Approaching sanctions from the perspective of international relations places great emphasis on the power motivations behind international actors, and how these motivations (such as security) decide the applicability of laws or norms. This paradigm contrasts with a notion of law as stable, uniform rules of conduct backed reliably by a central force. Therefore, it is crucial to describe the status quo on the rising use of sanctions, the logic that underlies their ability to coerce, and their legal implementation and applicability. This paper argues that, while sanctions can be situationally effective in achieving successful coercion to international norms, they ultimately fail to serve as a reliable normative

⁴ Mearsheimer, J. (2001). *The Tragedy of Great Power Politics*. New York, USA: W.W. Norton & Company.

instrument, a concerning development for policy makers who are increasingly relying on sanctions in the pursuit of common international standards.

The task begins with defining on what basis something can be described as having ‘efficacy’, and then to a description of how sanctions function in their desired roles instrumentally and normatively. The methodology for this paper will be primarily interpretative, considering data from historical instances of sanctions and analysis of ‘success’ on the basis of behaviour change via coercion and subsequent withdrawal of sanctions. Normative discourse is important to demonstrate the recurring patterns that occur in the use of sanctions and the inherent flaws that this presents from the basis of sanctions as legal instruments, understanding that the concepts of law and norms are only as effective as the mechanisms that enforce them. From thereon, sanctions will be analyzed on the basis of common features from successful and failed instances and how this compares with the way in which sanctions are legally implemented within the limitations of the international system. As the material for interpreting sanctions’ success as normative instruments is quite subjective, special focus will be given to inductive reasoning to parse together a theoretical understanding of sanctions from previous observations.

1. EFFICACY- FRAMEWORK AND DEFINITIONS

To clarify the purpose of this paper, it is necessary to lay out and define the metrics by which the concept of ‘efficacy’ can be proven; in this case, it will mean the ability of the instrument to achieve the desired effect. Sanctions are understood as instruments used by international actors to exert influence upon other actors. This paper will refer to the actors which impose sanctions as senders, and the actors upon which they are imposed as targets⁵. Economic sanctions will be the instruments primarily considered, as they are typically wide-ranged enough to be both coercive and normative, whereas targeted measures such as bans on the trade of specific types of weapons have objectives that do not often extend beyond containment of violence within an individual conflict. Sanctions are typically also used unilaterally by strong individual actors such as the United States and the European Union (within the framework of its Common Foreign and Security Policy/CFSP⁶), or multiple actors working in coalition such as in the UNSC. There is also an important differentiation to make in the analysis of sanctions’ coercive and normative power, and that is ‘can’ versus ‘do’. This paper focuses on the ‘doing’ ability of sanctions to coerce and make norms as they are used contemporarily, rather than how they theoretically ‘can’ be used to achieve these aims; nevertheless, common features of successful sanctions will be defined if possible. In summary, the current effectiveness of sanctions in achieving successful coercion and normative construction is the main object of analysis, with an emphasis on the commonalities of ‘successful’ sanctions.

1.1. Coercion as a notion

Coercion is defined in classical legal studies as “a pressure, a constraint that is exerted on a person in order to bring about a particular form of behaviour which would not otherwise be engaged in, or a change in that person’s intention. Coercion is thus associated with repression, constraint or inhibition. It involves various types of forceful actions that violate the free will of an individual in order to bring about the desired response.”⁷ Moving this concept from an individual living in an organized society to an international system composed of many states -and thus societies- is often complicated, as there is no central power from which these actions can be equally and fairly taken and there are often competing interests in senders and targets which impede coercion.

⁵ Eaton, J., & Engers, M. 1992. Sanctions. *Journal of Political Economy*, 100(5), 899-928.

⁶ From this point abbreviated as CFSP.

⁷ Ladavac N. (2016) Coercion and Sanctions as Elements of Normative Systems. In: Bezemek C., Ladavac N. (eds) *The Force of Law Reaffirmed*. Law and Philosophy Library. Cham: Springer.

1.2. International Norms

Norms are a critical part of how humans behave in groups. They form a backbone of being able to describe why humans, either individually or in groups, act in a certain way. Yet, norms are also difficult to pin down exactly to one definition, which can make the qualification difficult in an academic context. This paper will define norms as “exist[ing] in a given social setting to the extent that individuals usually act in a certain way and are often punished when seen not to be acting in this way.”⁸

Similar to taking the notion of coercion and applying it from the individual realm to a more international level, the same can be done when speaking of norms or ‘normative behavior’. Norms provide a general framework by which it is possible to understand how states interact with each other in international politics. There will generally exist some level of shared values on issues such as human rights, nuclear non-proliferation, conflict resolution, trade, and so forth. While there are resolutions, treaties, and entire institutions dedicated to the standardization of rules on these subjects, in the absence of centralized violence to enforce these rules, norms are the main force behind why states give these structures any sort of recognition. With this notion that states can be punished for acting in a way that does not fit the norm, so too is it possible for states to follow norms out of pure self-interest without any nuance of altruism.

Another important thing to note about norms is that they are not eternal, non-changing entities, but rather that they are created and can experience decay. A common example in the past century was the norm of colonization, which was supplanted by decolonization.⁹ Whereas the norm of European powers in the XIX and early XX centuries was to exploit Africa and other areas as part of a ‘civilizing mission’, this norm experienced decay in the aftermath of World War II and gave way to the new norm of decolonization. It is possible in this context to also see how the state interests of great powers can push certain norms to be prioritized in international relations. In the case of decolonization, both the US and the USSR supported normalizing this process at the expense of the European powers, primarily out of regard for their own material and strategic interests and not simply out of ideals of self-determination or liberation.¹⁰ As seen in the aftermath of the Suez Crisis in 1956, it was obvious that European powers such as the UK and France were then second-tier powers, and as such they did not have the ability to impose or resist norms in the

⁸ Axelrod, R. (1986). An Evolutionary Approach to Norms. *The American Political Science Review*, 80(4), 1095-1111.

⁹ Goertz G., & Diehl P. 1992. Towards a Theory of International Norms: Some Conceptual and Measurement Issues. *The Journal of Conflict Resolution*, vol 36.

¹⁰ Zoubir, Y. (1995). The United States, the Soviet Union and Decolonization of the Maghreb, 1945-62. *Middle Eastern Studies*, 31(1), 58-84.

same manner that the US and USSR did in what had become a bipolar world. The power dynamics evident in the creation of norms can also be seen in examples such as the norm of nuclear non-proliferation, in Article II of The Treaty on the Non-Proliferation of Nuclear Weapons¹¹:

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.¹²

In essence, the NPT created a system of ‘haves’ and ‘have-nots’ in terms of access to nuclear weapons. Non-nuclear states were pressured and committed to not developing nuclear weapon technology under the trade that the nuclear powers would one day pursue disarmament in good faith (as demanded in Article VI of the NPT). However, in practice, only the norm of non-proliferation sees some level of enforcement (as seen in the Western interventions into Iraq over perceived violations of the NPT, or US sanctions on Iran), whereas for the disarmament portion of the treaty, there remains neither enforcement nor coercive action against nuclear powers who have failed so far to agree to a firm plan of nuclear disarmament.

Ultimately, norms cannot be divorced from the violence that upholds them or creates them. This is where the subject of measures such as sanctions is integral in the international context: “The idea of sanctions means that groups with power are willing and able to use coercion to enforce the norm. Thus norms cannot be considered merely a series of ‘oughts’, but the possibility of sanctions is also an essential component.”¹³ In this specific context sanctions are more broadly defined and could go as far as including war as a sanction that would uphold a given norm, but economic, financial, or political sanctions are instruments much more commonly used as a component of hard power, as they do not impose the sorts of obligations that military actions require.

1.3. Who defines international norms?

It is impossible to continue an analysis of norm construction without delving into detail about which actors are influential in the creation and imposition of norms and how power is meaningful

¹¹ From here on referred to as the NPT

¹² UN Treaty on the Non-Proliferation of Nuclear Weapons (NPT), art. 6.

¹³ Goertz & Diehl (1992), *supra nota* 7, 638.

in deciding that. Given that the nature of sanctions makes them most effective in situations of significant power disparity and economic interlinkage, it is natural therefore to say that they cannot be used equally by all states. Sanctions provide a coercive framework other than military intervention by which norms may be enforced, and the states most likely to use this framework are thus those who are already powerful global actors; in such a context, Nadelmann argued that “[t]he norms held by successful states are likely to receive greater attention and, thus, have a better chance of spreading widely because these states participate in more forums and their voices are likely to carry more weight.”¹⁴ This would also lead in the direction to say that norms are not naturally occurring ideas which gain popularity, but rather that they are constructed, distributed, and enforced by powerful states throughout the world.

In a unipolar world, this application would seem simple enough, as there would be a global hegemon capable of creating and enforcing global norms via the threat of sanctions, the use of sanctions, or the use of military force. Although the subject is hotly debated by political scientists, the current state of the world is likely one of a weak unipolar nature, with the US as the pole and several rising powers competing to challenge it.¹⁵ Many powers make use of the instrument of sanctions in this world, but only a few are able to succeed and only a handful are able to go so far as to influence global norms. It is also possible to see what sorts of states are likely to be on the receiving end of coercive measures by breaking them down into categories of power, insider status, and defensibility using the framework of De Nevers:

Power matters in great power calculations about norm promotion and enforcement. Status matters, but power matters more. Weak states are most likely to be targets of intervention, whereas protected or defensible states are less likely to experience forceful norm promotion. Insider states are much less likely than outsider states or those with contested status to be targets of intervention.¹⁶

De Nevers in this instance refers to the use of force as a form of normative enforcement. Sanctions, unlike force, can and are used on states allied to the sender, or states which can be considered powerful insiders in their own right. However, like force, sanctions are still most likely to be used to enforce norms on the weakest, most isolated states to force them to accept the same norms.

¹⁴ Nadelmann, E. (1990). Global Prohibition Regimes: The Evolution of Norms in International Society. *International Organization*, 44, 479–526.

¹⁵ Romaniuk, S, & Grice, F. (2018). *Norms, Norm Violations, and IR Theory*. E-International Relations. Retrieved from <https://www.e-ir.info/pdf/76475>, 30 March 2020.

¹⁶ De Nevers, R. (2007). Imposing International Norms: Great Powers and Norm Enforcement. *International Studies Review*, 9, 53-80.

From a global perspective, there is then a high chance that states such as the US and China, as well as supranational entities such as the EU, will increasingly rely on sanctions as opposed to military force in the future to enforce their perspective on international norms. This may also provoke problems in instances where proposed norms between these great powers do not align, and smaller states are compelled to accept conflicting norms of international behavior.

2. INSTRUMENTAL CAPABILITY OF SANCTIONS

This chapter will focus on the effectiveness of sanctions as instruments in achieving the more immediate goal of coercion and compliance, laying out the common problems and dilemmas with the implementation of sanctions, and summarizing from past experiences which likely measures must be included if sanctions are to have a chance of being effective. To begin with, it is immediately prescient to admit that sanctions have a somewhat poor record of success. Between 1946 and 1990, only 32% of all sanctions were considered to have been successful. However, since 1990, this has increased to 39%, happening as the use of sanctions has increased substantially from an average of 2.6 sanction episodes per year to 4.5.¹⁷ This proves that, while sanctions have started to be used more effectively, the majority still fail as their general use has risen.¹⁸

Economic sanctions come in many forms, but at a basic level they can be categorized as import/export restrictions and financial restrictions¹⁹. Import sanctions restrict the ability of the target state to export its goods and services to the sender state, and in some formulations may be extended to prevent the target state nationals from exporting and doing commerce even with third parties. A good example for these is the US sanctions on Iran, which apply to both Iran and Iranian nationals even if doing business outside of the US. Export sanctions, however, restrict the exports of the sender to the target markets. Lastly, financial sanctions restrict access to international capital. Historically, there have been differing chances of success depending on the type of sanction, though import/export sanctions have notably the most flaws.

Problematic areas of import sanctions include the fact that they often create a bloc of interest groups within the sender to see that these sanctions remain regardless of whether or not the target meets the conditions. For example, prospective US import sanctions on China over alleged industrial espionage may be difficult to withdraw, as US manufacturers would strongly lobby to

¹⁷ Hufbauer, G., Schott, J., Elliott, K., & Oegg B. (2008). *Economic Sanctions Reconsidered* (3rd ed.) Washington, D.C., USA: Institute for International Economics.

¹⁸ Based on a dataset of 172 sanction episodes since the end of World War II.

¹⁹ Selden, Z. (2010). Are Economic Sanctions Still a Valid Option? *Georgetown Journal of International Affairs*, 11(2), 91-98.

keep them in place to protect their advantage in the marketplace. The problems of import sanctions can also be seen within the target state itself, as these sanctions can lead to smugglers or black marketeers (often with the knowledge or support of the government) being able to profit from the under the table export of the target's good, creating further incentives from the perspective of political economy for the target state not to comply with the goal of the sanctions.

The issues arising from export sanctions towards a given state work differently, as in this case the main recipient of the pain of sanctions would often be the target country's citizens, for instance, with a lack of access to medical equipment or foodstuffs. The main problem arising from this is that it is not necessarily something which is going to pressure the ruling regime of the target state into compliance, as that is reliant on the target state's citizens to connect the economic pain of import sanctions with the actions of the target state and not just of the sender. The US embargo placed on Cuba in 1960, for example, did not cause widespread dissent capable of pressuring or even overthrowing the government, but rather the economic pain caused by these sanctions was connected with the sender (the US) more so than the Cuban government.²⁰ Such sanctions may even backfire, as the target state's citizens view their government's actions as those of resistance against the aggression of the sender, mitigating any possible pressure the sender was seeking to foment. Long-term import/export sanctions such as the Cuban embargo also lose much of their potency from the fact that over time, the economy will adjust to being unable to access the market of the sender and find alternative import and export markets.

On the other hand, financial sanctions can be considered to be much more effective, on average being up to twice as effective as import or export sanctions²¹. This is due to the fact that it is extremely difficult for a state to mitigate lack of access to international capital, as there is frequently no further alternative, especially when responding to the sanctions of powerful international actors such as the US or the UNSC, which have the ability to compel the businesses and organizations of third-parties around the world into following the sanctions. This is also particularly true in sanctions towards the regimes of developing countries which are labor-rich but capital-poor, and thus more reliant on international investment. The elites in a target regime are also susceptible to the power of financial sanctions in a way where they are not to import or export restrictions. In any case, sanctions themselves have a set of two dilemmas, which makes their applicability difficult and distinctly situational.

²⁰ Katz, D. (2005). Sanctioned State: The US Embargo on Cuba. *Harvard International Review*, 27(1), 8-9

²¹ Selden (2010), *supra nota* 12, 93.

2.1. The threat dilemma

Sanctions have an effect on two main levels. The first is the threat of sanctions, which on its own can be sufficient to achieve the desired outcome, and the second is the actual imposition of sanctions. There are multiple variables for why the target will comply or refuse the objective of sanctions, and these include -but are not limited to- whether or not they think the threat is a bluff, how strong they believe the sanctions are going to be, and whether or not they believe that the sanctions are inevitable anyway.²² If these variables are known to the target state, then they will either accept or refuse the conditions of the sender based upon their own cost-benefit analysis to what the sanctions will entail versus the demanded action. In this sense, sanctions function in a way that they can be far more effective when not carried out but merely threatened, as seen in Chesterman & Pouligny:

The greatest point of leverage enjoyed by the international community is just before sanctions are imposed. The threat of sanctions may serve to focus the minds of local elites in the context of a bargaining model, with a clear economic choice. Once sanctions are imposed, the clarity of this choice becomes dissipated among the competing economic incentives that emerge.²³

If the target state's regime has decided that the cost of the sanctions will be worth bearing compared to the cost of the demanded change, then the sanctions regime will inevitably fail to accomplish its goal. This would mean that, theoretically, sanctions themselves cannot be successful when the target has access to all of this information; however, in practice this is not the case: "a target country will yield to imposed sanctions only if it initially underestimated the impact of sanctions, miscalculated the sender's determination to impose them, or wrongly believed that sanctions would be imposed and maintained whether it yielded or not."²⁴ A practical example of this is the sanctions imposed upon Libya under Muammar Qaddafi in the aftermath of the bombing of Pan Am Flight 103 over Lockerbie, Scotland and the subsequent loss of 270 lives. The two suspected perpetrators were Libyan and not immediately extradited by the Libyan government, even after arrest warrants were put out by the US and UK governments. This led to unilateral sanctions placed by the US and two rounds of UNSC sanctions. The Libyan government interpreted the true goal of sanctions as being the deposing of the Libyan government, and only after negotiations made

²² Hovi, J., Huseby, R., & Sprinz, D. (2005). When Do (Imposed) Economic Sanctions Work? *World Politics*, 57(4), 479-499.

²³ Chesterman, S., & Pouligny, B. (2003). Are Sanctions Meant to Work? The Politics of Creating and Implementing Sanctions Through the United Nations. *Global Governance*, 9(4), 503-518.

²⁴ Hovi, Huseby, & Sprinz (2005), *supra nota* 15, 486.

clear that the sanctions would be lifted if the suspects were extradited to the Netherlands and further action would not be taken against the Libyan government, should Libya fold to the pressure of the sanctions.²⁵ This saga lasted between 1992 and 1999, showing the issue of sanctions that may never end when there are no explicit conditions for their removal.

2.2. The enforcement dilemma

The next dilemma for sanctions is what happens after threats have been ignored and the sanctions have been implemented. On the most basic level, the relative power disparity between the target and the sender is important in deciding whether or not said sanctions will be successful. Successful sanctions are ultimately dependent on the cost being low for the sender, but high for the target.²⁶ In this sense, the effectiveness of sanctions can also suffer, as leverage comes from the level of economic dependence and intertwinement of the economies that the target and sender have. For the threat of economic damage to be valid, there must be significant economic links to damage as well. The most effective sanctions on a theoretical basis would therefore be the ones which would come at a high cost to the sender due to this level of interaction.

However, there is also an aspect of political economy in these situations to make note of, and that is the situation of firms and businesses in the sender state and the interest of the state to remain competitive in comparison to others. As mentioned previously, pre-existing economic linkages are important to successful sanctions; nonetheless, from the perspective of state motivations, very high levels of economic linkage may impose too high of a cost to the sender, as its firms would take a very high loss in the case of the imposition of sanctions. As such, there would in these cases be a very high pressure on the sender to refrain from enacting sanctions and, in the long-term, political will to maintain them would shrivel up. On the other hand, having too few economic linkages presents the problem of having little to no leverage for the sender to use against the target - such is basically a situation of low cost to the sender and low cost to the target, which is unlikely to coerce action. Therefore, the ideal model is one in which there are moderate economic linkages and exposure of firms to sanctions.²⁷

²⁵ Hovi, Huseby, & Sprinz (2005), *supra nota* 15, 489.

²⁶ Eaton, J., & Engers, M. (1992). Sanctions. *Journal of Political Economy*, 100(5), 899-928.

²⁷ Bapat, N., & Kwon, B. (2015). When Are Sanctions Effective? A Bargaining and Enforcement Framework. *International Organization*, 69(1), 131-162.

Ironically, sanctions are most effective when the target is a state allied to the sender²⁸, and democracies are far more likely to impose sanctions than other states.²⁹ Thereupon, on a long-term basis it can be difficult to constrain the activities of so-called ‘rogue states’ with sanctions, as they will often not have the level of international linkage to make these tools efficient in the first place.

Sanctions made to constrain the behavior of the norm-violating states with which this paper contends thus naturally run into this enforcement issue. Furthermore, the goals of sanctions placed on states which violate international norms can be quite far-ranging, and this also has an impact on whether or not such states can be compelled to accept the demanded changes. For instance, US sanctions were placed back on Iran after the US withdrawal from Joint Comprehensive Plan of Action (JCPOA) in 2018. The new demands came to include additional requirements not just for limits on Iran’s nuclear enrichment program and possible breakout time (time to obtain a nuclear weapon if desired), but expanded to also require that Iran roll back basically its entire foreign policy and presence in the region, such as a full withdrawal of Iranian forces from Syria and Yemen to the cessation of any support for organizations considered by the US to be terrorist.³⁰ Certain demands and their interpretation of whether they had been implemented would place Iran at the mercy of the US Department of State, a position likely considered to be untenable by the Iranian regime (something that was true even back in the sanctions and demands preceding the JCPOA).³¹ Sanctions do not work when they involve excessively broad or demanding concessions without clear, easily verifiable goals. In these cases, even if the target were willing to give the necessary concessions, if the sanctions do not spell out a clear ending procedure then the target is likely to refuse.

2.3. Smart Sanctions

The aforementioned dilemmas are common faults to the implementation of sanctions and go some way to explain the high failure rate that these measures have historically seen. Such developments have led to the idea of ‘smart sanctions’. While to a certain extent, every contemporary political

²⁸ Whang, T. (2010). Structural estimation of economic sanctions: From initiation to outcomes. *Journal of Peace Research*, 47(5), 561-573.

²⁹ Eaton & Engers, *supra nota* 3.

³⁰ Al-Arabiya. (2018). *Here are the 12 conditions US demands from Iran to review sanctions*. Retrieved from <https://english.alarabiya.net/en/features/2018/05/22/Here-are-the-12-conditions-US-demands-from-Iran-to-review-sanctions>, 21 March 2020.

³¹ Fathollah-Nejad, A. (2014). Why sanctions against Iran are counterproductive: Conflict resolution and state-society relations. *International Journal*, 69(1), 48-65.

scientist will claim that their interpretation of sanctions qualifies to the label, – as opposed to accepting the high failure rate of ‘traditional’ sanctions, – it is possible to select certain successful attributes from previous examples and lay out general principles which can be applied to future sanctions. There is, however, no magical formula to sanctions that could make them successful in every situation that a sender state would prefer. Based on what has been explained so far, smart sanctions would then ideally be composed of the following:

1. Specific, realistic objectives.
2. Clear criteria for removal.
3. Clear means of verifying compliance.
4. Moderate levels of existing economic linkages.
5. Targeted effect on elites and power base.
6. Lack of a negative incentive structure.

Some of these requirements can be satisfied by the policy decisions of the sender (targetting, criteria, objective-setting, compliance verification), whereas other requirements are situational and cannot be taken as a given for success, such as existing economic linkages or the necessary power imbalance between the target and the sender, as explained by Drezner:

Because they do not impede significant trade flows, smart sanctions can be imposed indefinitely with minimal cost. They clearly solve the political problem of “doing something” in the face of target state transgressions. They do not solve the policy problem of coercing the target state into changing its policies.³²

This has ramifications when analyzing the overall utility of sanctions, as they simply cannot be used in every situation to constrain undesirable behavior. Additionally, even if all criteria are met, smart sanctions may fail as a result of the internal obstacles of the target, or unobtainable goals may be demanded as a result of the internal pressures of the sender. In evaluating sanctions as a coercive instrument, reliability and universality are important elements of a successful strategy. In spite of that, sanctions’ demanding groundwork for success makes them at best a situational tool for successful coercive action, but ultimately not something which can be repeatedly depended upon as a reliable instrument of foreign policy.

³² Drezner, D. (2011). Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice. *International Studies Review*, 13(1), 96-108.

3. DISCUSSION: NORMATIVE APPLICABILITY OF SANCTIONS

Having described the mechanism of sanctions, which under ideal circumstances can be used to coerce non-aligning states into following a given action, the question is then how can this translate into the formation of international norms. As discussed earlier in the definitions section, norms only exist when there is a coercive power of some form to enforce them, otherwise they decay or are supplanted by other norms. Norms only exist as far as states have fear that there are repercussions to ignoring them. There are many interesting phenomena that enforce or create norms, with sanctions being one of rising importance. The use of sanctions has increased since 1990³³, and in a contemporary context sanctions can be considered as having supplanted war as the main coercive tool in many situations, especially when considering allies of the sender or states far enough away to complicate military action.³⁴ In the case of many influential actors such as the US and EU, with populations increasingly scrutinizing of military conflicts³⁵ (and with power structures that make these populations more influential in policy decisions), sanctions present a much more palatable means of exerting power into the international space.

This leads to the idea that sanctions are being used especially in cases wherein they seek the enforcement of a norm that applies *erga omnes*, or towards the community of states by each individual state. In the formulation of Posner³⁶, *erga omnes* norms are those enforced in a situation in which a state or community of states apply a sanction against a target even when they have not felt the injury of the target's actions themselves, but rather considering that the violation of a given norm injures the entire community of states. *Erga omnes* norms are partially in reaction to the idea that states have an incentive to "free-ride"³⁷ on the existence of norms, but not undergo the cost to implement them. This overlaps with another important aspect of international law, the concept of *jus cogens*, or norms which are so fundamental that they they are "peremptory" and may never be derogated.³⁸ All norms which are *jus cogens* are necessarily also *erga omnes*, the main difference being that in *jus cogens* there is automatically an international obligation for each state to act,

³³ Hufbauer et al. (2008), *supra nota* 10, 125.

³⁴ Goenner, C. (2007). Economic War and Democratic Peace. *Conflict Management and Peace Science*, 24(3), 171-182.

³⁵ Younis, M. 2019. Do American Want War with Iran? Gallup.

³⁶ Posner, E. (2009). Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law. *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft*, 165(1), 5.

³⁷ *Ibid.*

³⁸ Hannikainen, L. (1988). *Peremptory Norm (Jus Cogens) in International Law - Historical Development, Criteria, Present Status*. Helsinki: Finnish Lawyers' Publishing Company.

whereas there is not an automatic obligation for a state to act in cases of a violation of a norm which is only *erga omnes*³⁹. International norms fitting both definitions are not always explicitly formalized in international conventions and treaties, but general examples are norms against grave human rights abuses, wars of aggression, slavery, piracy, and so forth. In any case, these norms can only be considered as having meaning insofar as there is coercion to enforce and proliferate them, which is where this paper seeks to analyze whether or not sanctions are fit for purpose within the framework of the modern international system.

3.1. Theoretical boundaries of discussion

The question that this all seeks to answer is in many aspects quite broad, asking whether sanctions have efficacy as instruments of legal/normative enforcement. On a theoretical basis, how can an instrument have efficacy in relation to the creation and enforcement of norms? What is the positive basis by which such a claim could be proven or disproven? First, the theoretical framework for whether sanctions effectively enforce norms requires a separate discourse from whether or not the norms are effective or achievable in of themselves. If any proposed mechanism would fail to achieve the desired result, it cannot be taken as an indictment of the mechanism in of itself. From a legal perspective, however, it is valid in this case to consider the structure of the international system as either supporting or opposing the successful application of a given mechanism. It would not be useful to consider sanctions' efficacy operating in a world without the legal and structural limitations of the UNSC or the power disparities that define relations between strong and weak states. Rather, sanctions must be considered as one of the options for enforcement of norms taking into account the legal processes of the UN and how this dictates their effectiveness. Additionally, since the objective of sanctions in this context would be the enforcement of norms aiming for universal acceptance (and fear of retribution for non-compliance), the fact that they do not apply very well to powerful, insider states also merits consideration as for their efficacy in this specific pursuit. Therefore, we can describe sanctions as having efficacy if they coerce targets reliably enough on their own to establish uniform rules of conduct between states within the international system's current limitations.

³⁹ Posner, E. (2009), *supra nota* 33, 14.

3.2. Legal implementation of sanctions- issues of multilateralism

An issue in the discussion of sanctions as an effective legal instrument relates to the political and legal structure of the sender. When sanctions are implemented by a single sovereign actor, such as the US, the legal mechanism for the application of sanctions is clear and straightforward, as it merely follows the standard procedure set out in domestic law for the implementation of a restrictive measure. Ratification, execution, prolongment, and rescission will reliably occur in a manner consistent with the sender's legal acts. However, from the standpoint of power, sanctions are more effective and palatable when there are multiple senders, thereby increasing the power disparity between target and sender. This is also an explanation of why the EU has focused on the creation of a cohesive foreign and security policy in recent years, in line with the EU's principle of subsidiarity. As previously shown, sanctions will be more effective when uniformly agreed upon by the EU's member states than individually implemented with possible competing metrics for rescission and prolongment.

In the EU's case, sanctions are implemented under the CFSP in accordance with Article 21 TEU which states that their purpose shall be to a) uphold EU values and interests, b) support democracy, human rights, and rule of law, c) preserve peace, d) foster sustainable economic development, eradicate poverty, e) encourage global economic integration, f) preserve the environment with sustainable development, g) assist in confronting disasters, and h) promote multilateralism. The mechanism by which this happens is through the Council of the European Union, while the sanctions themselves are enforced by the member states under Article 29 TEU which states that: "The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions". This is a crucial aspect to understanding how EU sanctions function separately from those of truly sovereign actors. In this case, the decision of the Council of the European Union to implement sanctions will immediately be applicable to national authorities of each member state to enforce, without any formal legal transposition necessary.⁴⁰ The measures for member states to punish violations of sanctions therefore, is also defined by each member state, as the EU does not have independent enforcement agencies or capabilities. This is a notable limitation due to the EU's high reliance on sanctions as the primary punitive instrument

⁴⁰Borlini, L. & Silingardi, S. (2018). *Defining Elements and Emerging Legal Issues of EU 'Sanctions'*. Retrieved from <https://dx.doi.org/10.2139/ssrn.3287431>, 30 March 2020.

in its foreign policy competences, having enforced more than 100 sanctions regimes since the 1980s.⁴¹

In relation to this, it is also notable to consider sanctions implemented under the auspice of the UN, as on paper UN sanctions present the possibility for the most comprehensive sanctions that can be implemented. The framework of the UN is explicitly referenced in Article 21 TEU as a guide to the EU's external action policy: "It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations". Therefore, the legal process in which the UN can bring about sanctions is relevant to the overall point of clarifying sanctions efficacy as international legal instruments. In the UN, sanctions are proposed and voted on by the 15- member UN Security Council, subject to the veto power of the 5 permanent members: the United States, Russia, People's Republic of China, the United Kingdom, and France. The obvious limitation of this arrangement is that within the UN, these five states (and likely their close affiliates) therefore enjoy a level of immunity from punitive actions within the framework of the UN, immediately limiting the applicability of prospective sanctions. The power of the UNSC to act comes specifically from Article 41 of the Charter of the United Nations:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Given that the UN also lacks the direct enforcement agencies or the competences therefore, enforcement of UN sanctions is also implemented by the UN's member states. This occurs either in the form of a general, precise piece of legislation to be transposed by domestic legal sources or an individual case implementation according to the resolution.⁴² The efficacy aspect of the debate surrounding UN sanctions comes largely from the time and complication required to coordinate international efforts against a given target. While broad, sweeping sanctions from the perspective of the UN are less complicated to implement, as shown in chapter two, targeted sanctions are far more effective in the coercive sense. As demonstrated by Portela, targeted sanctions are difficult

⁴¹ Hörbelt, C. (2017). A Comparative Study: Where and Why does the EU Impose Sanctions. *UNISCI Journal*, 43, 53-71.

⁴² Portela, C. (2009). National implementation of United Nations sanctions: Towards fragmentation. *International Journal*, 65(1), 18.

to legally implement due to a) the high level of administrative capacity needed to monitor and enforce them, b) frequent changes (and international agreements) necessary to strengthen or loosen them flexibly, and c) vagueness in defining the terms of sanctions and lack of institutional capacity to continuously clarify them.⁴³ In the overall analysis of how to define sanctions as having ‘efficacy’ as legal instruments, the legal issues stemming from their implementation must be considered. Sanctions are most effective when they are flexible, reactive, and multilateral, yet the very basis of the international system as seen in the cases of EU and UN implementation prevent them from being able to function ideally.

This leads to a pessimistic approach for the consideration of sanctions, as there exists an internal conflict between legality and practicality that is not easily overcome. The international system as it is requires long-term dialogue, extensive rounds of ratification, and complex enforcement mechanisms in order to enact international policy proposals. This largely stems from the status quo of the international system as one in which the legitimacy of international action is found in the acceptance of individual states under a notion of sovereignty. Sanctions, on the other hand, require timely deployment and targeted, amendable enforcement which may exceed the original mandate and agreed terms for implementation.

3.3. Reliability of sanctions as a normative mechanism

The question then becomes, can sanctions be relied upon as a consistent normative enforcement mechanism for great powers? Some entities, especially the EU, envision a foreign policy not made of using military force, but rather of using targeted sanctions to enforce values and punish bad behavior as the main component of hard power, in addition to a reliance on soft power. This is part of the so-called “Normative Power Europe”⁴⁴, which would in theory contrast the EU to other entities by making it one capable of forming international standards by leadership in the normalization of rules. Opposite to that is the leadership of entities such as the US, which have historically backed up norm creation with military force, especially as an alternative measure when sanctions prove ineffective. In the case of the EU, sanctions therefore represent the limit of the actor to impose norms using hard power, since currently there is not a unified EU military force

⁴³ Portela, *supra nota* 19-20.

⁴⁴ Whitman, R. (2011). *Normative Power Europe: Empirical and Theoretical Perspectives*. Palgrave Studies in European Union Politics. Basingstoke, UK.: Palgrave Macmillan.

(or political will to implement one) which would grant some alternative, violent means of utilizing hard power. The EU thus proposes an interesting scenario: is it possible to become a normative power by solely relying on sanctions and lesser instruments of coercion?

The apparent answer to this question is no, and that is for a variety of reasons. Foremost is that there still lies a power imbalance between the EU and the other great powers, which is compounded by its internal disagreements and lack of early decisiveness. For example, the EU was significantly slower in implementing sanctions on Russia than the US in the aftermath of the annexation of Crimea in 2014 and the poisoning of Sergei and Yulia Skripal in Salisbury in 2018, largely due to internal disagreements by member states, some of whom had more significant political and economic ties with Russia than others⁴⁵. Ironically, it was these pre-existing ties that would make sanctions more painful for Russia, and the threat of losing such ties could be considered useful as a coercive tool.

However, one of the issues of sanctions is that they are very ineffective against countries with significant military or economic power, and there is not enough of a power disparity between the EU and Russia to make coercion a likely event, especially since the most powerful sanctions would also pose a high cost to the EU. In this case, it is quite problematic, as the EU has norms opposed to those of Russia and sanctions are ineffectual even as the ultimate coercive tool in the EU's arsenal. This means that the natural limit of sanctions is on countries with significant economic relations with the EU, but also a large power imbalance, and importantly there must not be a competing norm being pushed by another power, as explained by Greilinger: "Especially vis-à-vis another major power which does not share the same norms and values with the EU, or a country that is supported by such an actor, the EU's ability to shape conceptions of normal and thereby its ability to exercise normative power is drastically diminished."⁴⁶ As the EU competes with other powers in Eastern Europe, the Middle East, and Northern Africa, it ultimately cannot rely on sanctions to be successful normatively, especially given that not everyone can be sanctioned. These same complications apply equally to other great powers which would intend to make sanctions a key tenet of foreign policy; the EU is merely a useful example as it has a higher propensity to attempt this in lieu of military force. There is some additional utility to sanctions as an instrument

⁴⁵ Ivan, P. (2018). *The US and EU need a stronger dialogue on Russia Sanctions*. European Policy Centre. Retrieved <https://www.epc.eu/en/Publications/The-US-and-the-EU-need-a-stronger-dialogue-on-Russia-sanctions~1e70f8,29> March 2020.

⁴⁶ Greilinger, G. (2018). *Shaping Conceptions of Normal? Normative Power Europe and EU Sanctions against Russia and Syria*. (Master's Thesis). University of Amsterdam, Graduate School of Social Sciences, Amsterdam.

for powers such as the US, as in these cases sanctions are not the ultimate coercive tool, but rather can also function as a signalling mechanism that can prelude some form of military action.

However, in themselves, the same practical limitations of sanctions preclude their wide implementation as a tool for enforcing international norms. There is also an inherent issue in the fact that norms cannot be effectively made when they contradict the interest of great powers, and sanctions are absolutely incapable of mitigating this paradigm. The best that can be said is that they are situationally effective against smaller actors, but norm enforcement requires something more reliable and universal, or a fundamental redefining of the international system. In this case, there would have to exist some independent enforcement agency capable of applying sanctions in a reliable, equal manner to all states within a framework of universally agreed norms, a development in complete conflict with the international system as it exists now, an anarchy in which international law functions as a shaky set of breakable obligations.

CONCLUSION

As demonstrated in the previous chapters, there are several issues in relying on sanctions as a tool for the creation and enforcement of norms. The first problems relate to the situational nature of sanctions and their complicated implementation. For states attempting to create and enforce international norms, sanctions often fail as a result of the threat and enforcement dilemma that negatively impact them from the position of political economy and incentive structures. The coercive element of sanctions to stop unwanted behavior in the short-term is therefore unreliable unless there are base conditions in place in relation to power between target and sender as well as clear, definable objectives. The limitations of sanctions can be mitigated by applying the criteria of proposed 'smart sanctions', but even then there must exist features in the status quo such as economic linkages that often will not be present in states committing actions on the international fringe, and as such, coercion is far from a given even when most criteria are met.

As for the second point of analysis in regards to the ability of sanctions to effectively create international norms when used by great powers, the answer is also negative to the extent that enforcement of norms can be considered reliable. This is largely due to the situational coercive potential of sanctions and competing concepts of normative behavior among great powers. Norms are recognized as behavior that is pushed to be universal within a given space, and sanctions cannot be relied upon as a mechanism that can consistently accomplish this even in situations of great power imbalance between target and sender. Examples of influential insider powers such as the EU making sanctions a key tenet of their push for global normative power (the main 'stick' to the proverbial 'carrot') have largely seen these efforts fail, in part due to the EU's limitation as a sender, but also largely caused by the inherent limitations of sanctions as an enforcement mechanism as laid out in this paper.

Therefore, the response to the initial question of the paper states that sanctions are at best situationally effective in a coercive sense, and far too unreliable normatively to fulfill the requirements of efficacy in their purpose. The point of this is not to dismiss sanctions as an instrument, but to demonstrate that they are relied upon far too often and require much greater consideration by policy makers before being used. The current approach of international actors of viewing sanctions as a natural coercive measure for the fulfillment of international law is therefore misguided and potentially obscures other, more effective means of pursuing compliance with international norms.

Additional areas of future research could include comparisons between sanctions and more violent means of hard power in coercion and normative enforcement. Sanctions are increasingly being used as an alternative to war in such pursuits, and therefore direct comparison of outcomes would provide additional clarity to policy makers about whether or not this is a positive development. Additionally, there is space for further scholarship into the legal conundrum of reconciling the legal basis for state sovereignty in terms of a sender state's ability to decide its own foreign policy in contrast with a target state's humanitarian rights, as sanctions (even under the most targeted circumstances) often have humanitarian implications for the civilian populace, a development which may be in conflict with international human rights convention.

Traditionally, sanctions from an approach of classical legal studies are viewed based on their applicability in comparison to the limitations in international treaties and convention, whereas an approach from international relations stresses the power dynamics and game theory that influences their use. The additional value provided by this paper is found in the analysis of sanctions from the perspective of both law and international relations, and how specifically the requirements of these fields (practicality and uniformity or reliability) conflict in the application of sanctions as a measure to achieve normative regularity and collective international security. A large part of the difficulty in reconciling these two approaches comes as a reflection of the greater contemporary conflict in global politics between state sovereignty and a desire for stable, global order. The status quo is one in which the use of sanctions is rising, but there is not enough evidence to say that this development will lead to norms being more reliable and influential in governing interstate conduct, or that they will lead to a useful development of collective security.

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