

Targeted Sanctions: Providing a Solution to the Issue of General Sanctions

CHRIS HOTTON*

Lead Article

I. INTRODUCTION

Russia's annexation of Crimea in Ukraine led to repercussions from the international community. There was a strong reaction by the E.U. and U.S. to impose economic sanctions on the Russian government and officials.¹ On March 6, 2014, U.S. President Barack Obama signed Executive Order 13660 to authorize sanctions against individuals and entities responsible for violating Ukraine's sovereignty.² These sanctions tightened restrictions on Russian banks, blacklisted dozens of senior officials, and targeted Russia's state energy and arms sectors.³ The focus of these targeted sanctions is on "those considered materially or financially supporting actions undermining or threatening Ukraine's sovereignty, territorial integrity and independence."⁴ The nature of these sanctions is coming in the form of asset freezes on both shares and property, travel bans, and restrictions on access to long-term loans.⁵ Since 2014, the U.S. and E.U. have tightened the restrictions. In 2015, it was feared that sanctions could ratchet up to include the country's all-important fuel exports, cut off Russian banks from international transactions, and limit Russian business's ability to engage in lucrative overseas deals.⁶ The hope behind these sanctions is that the targeted individuals will alter their actions and eventually cause the withdrawal of Russian troops and rebel support in Ukraine. If

* J.D. Candidate, 2016, J. Reuben Clark Law School, Brigham Young University. Special thanks to Professor Eric Jensen, J. Reuben Clark Law School, Brigham Young University, for his guidance and direction on this paper.

¹ *How Far Do EU-US Sanctions on Russia Go?*, BBC (Sept. 15, 2014), <http://www.bbc.com/news/world-europe-28400218>.

² *Ukraine and Russia Sanctions*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/e/eb/tfs/spi/ukrainerussia/> (last visited Apr. 1, 2016).

³ *How Far Do EU-US Sanctions on Russia Go?*, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ Bradley Klapper, *Europe and the US are Ready for a New Round of Crippling Sanctions against Russia*, BUSINESS INSIDER (June 18, 2015), <http://www.businessinsider.com/europe-and-the-us-are-readying-a-new-round-of-crippling-sanctions-against-russia-2015-6>.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

these individuals continue to ignore the enforcement tactics used by the E.U. and U.S., then it could lead to stricter targeted sanctions or other forms of enforcement.

Economic sanctions play a role in restoring peace and order by imposing restrictions on those who violate international law. Boundaries and specifications need to be placed on economic sanctions to ensure that human rights violations and economic destruction are avoided. Targeted sanctions are a tool that properly defines boundaries and specifications of those who will be punished, why they will be punished, and what method will be used. They provide the most effective means of limiting human rights violations and economic catastrophes.

This paper will argue the validity of targeted sanctions by detailing the history, legality, and effects of economic sanctions and then clearly explaining what targeted sanctions are and how they can be an effective enforcement tool in international law. Section II will layout the historical background and significance of economic sanctions and how they have evolved over time. A comparison will be done of the sanctions used in Malawi, North Korea, Iraq, and Russia. In each of these cases, sanctions were used in different ways and different results ensued. Section III will layout the legality surrounding sanctions. This will include the legal background of who can enforce sanctions and the legal instruments that give those states and organizations the authority to do so. Section IV will discuss targeted sanctions in detail. This Section will outline what targeted sanctions are, how they differ from non-targeted sanctions, and how they can be used to improve the effects of international enforcement. Section V will conclude.

II. HISTORY OF ECONOMIC SANCTIONS

A. HISTORICAL FOUNDATION

Economic sanctions have been around since the Greek ages.⁷ Nations and international organizations have held sanctions against nations, entities, and individuals for violations of international law. Common forms of economic sanctions are “manipulation of taxation, imports, exports, foreign aid, access to markets, or access to financial institutions.”⁸ Sanctions can be imposed regionally, such as the U.S. and E.U.’s sanctions against Russia, or by international

⁷ Adam Taylor, *13 Times that Economic Sanctions Really Worked*, WASH. POST (Apr. 28, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/04/28/13-times-that-economic-sanctions-really-worked/>.

⁸ Justin D. Stalls, *Economic Sanctions*, 11 U. MIAMI INT’L & COMP. L. REV. 115, 116 (2003).

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

organizations such as the United Nations (“UN”) through its executive arm the Security Council.⁹ Economic sanctions are the “withdrawal of customary trade and financial relations for foreign and security policy purposes.”¹⁰ There is a debate amongst international scholars as to the validity and limitations of economic sanctions. There is a growing concern that the utility of sanctions is greatly outweighed by the negative impact they have on civilian populations.¹¹

Sanctions are a tool used by states and international organizations, such as the UN. The power to enforce economic sanctions, prior to the formation of the charter to the UN, was used by the League of Nations.¹² One example is in 1925, the League of Nations imposed sanctions against Greece for involvement in a border skirmish between it and Bulgaria. There is debate as to how the skirmish began but it resulted in Greek soldiers moving into Bulgarian territory along with air artillery and air campaign bombing.¹³ This sparked the Bulgarian government to appeal to the League of Nations asking them to intervene.¹⁴ The League of Nations ordered the withdrawal of both nations’ troops and threatened to take military action or use economic sanctions against Greece if the order was ignored.¹⁵ Troops were withdrawn and the enforcement mechanisms were never used.

⁹ U.N. Charter art. 39, 41 (“[T]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to restore international peace and security. . . . The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions. . . . These may include complete or partial interruption of economic relations. . . .”).

¹⁰ Jonathan Masters, *What are Economic Sanctions*, COUNCIL ON FOREIGN REL. (Apr. 8, 2015) <http://www.cfr.org/sanctions/economic-sanctions/p36259>.

¹¹ Matthew Craven, *Humanitarianism and the Quest for Smarter Sanctions*, 13 EUR. J. INT’L L. 43, 45 (2002).

¹² Nicholas Tsagourias, *Nicolas Politis’ Initiatives to Outlaw War and Define Aggression, and the Narrative of Progress in International Law*, 23 EUR. J. INT’L L. 255, 256-257 (2012).

¹³ Jason C. Nelson, *The United Nations and the Employment of Sanctions as a Tool of International Statecraft: Social Power Theory as a Predictor of Threat Theory Utility*, 29 LAW & PSYCHOL. REV. 105, 139 (2005).

¹⁴ *Id.*

¹⁵ *Id.*

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

Since 1945, the UN has imposed multiple sanctions against nations and their governing officials and continues to hold sanctions against countries.¹⁶ Sanctions are a formidable alternative to armed conflict because they allow the UN to maintain peace and security without having to resort to war.¹⁷ The UN implements sanctions through the Security Council.¹⁸ In order for the authorization to be proper, the Security Council can only employ enforcement measures when there is an international “threat to the peace, breach of the peace, or act of aggression.”¹⁹ Despite the availability of this option since 1945, the UN did not first employ this technique until 1966 when it placed sanctions on Rhodesia. Still, this was not a commonly used method of enforcement until the past twenty years.

There are examples of nations imposing economic sanctions against each other, such as the U.S. against Russia for violations in Ukraine and Greece’s sanctions against Albania for imprisoning Greek citizens.²⁰ For the past several decades the United States has become one of the leaders in utilizing economic sanctions. They have imposed sanctions against countries such as, Germany, North Korea, Cuba, South Vietnam, and Cambodia.²¹

Sanctions have become more prevalent throughout the world. Currently, there are over forty nations or regions that are under sanction.²² The most common types of sanctions include an embargo on arms, restrictions on admission into the country, freezing funds and economic resources, banning certain imports, exports, and services, and restricting certain products.²³ Historically, the intent of economic sanctions is to place financial restrictions on the government of the wrongdoer. Debate continues as to the merit of sanctions-regimes and their effectiveness.

Economic sanctions impose restrictions on a nation, entity, or individual’s finances or economic status. They act as a deterrent by reprimanding inappropriate behavior. There have been times throughout history where sanctions worked and the results were as desired and there have been times when sanctions missed the

¹⁶ *Id.* at 107.

¹⁷ Stalls, *supra* note 8.

¹⁸ *Id.* at 133.

¹⁹ *Id.*

²⁰ Taylor, *supra* note 7.

²¹ Stanley J. Marcuss, *Grist for the Litigation Mill in U.S. Economic Sanctions Programs*, 30 *LAW & POL’Y INT’L BUS.* 501, 502 (1999).

²² *Sanctions List Countries*, BUSINESS AND SANCTIONS CONSULTING NETHERLANDS, <http://www.bscn.nl/sanctions-consulting/sanctions-list-countries> (last updated Mar. 24, 2016)

²³ *See id.*

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

mark. Recently the success rate is declining. “Evidence collected for the third edition of *Economic Sanctions Reconsidered* suggests that in about one-third of cases, economic sanctions were successful in achieving their stated policy objectives.”²⁴ Another study shows that sanctions, from 1915-2006, were effective only thirty percent of the time.²⁵ Despite the lack of success, the UN and other nations continue to use general sanctions as a means of enforcement. The use of these types of sanctions has created unnecessary results.

A constant concern surrounding sanctions are the effects they can have. A. Amir Al-Anbari, the former ambassador of Iraq to the U.K., the U.S., the UN and UNESCO, states that, “[i]n reality, economic sanctions are by no means peaceful and quite often are deadlier and more destructive than military action. Economic sanctions are not as harmless as they appear at first glance; they may involve the deprivation or infringement of human rights.”²⁶ Al-Anbari goes further to state, “[h]orrible as it is, the use of force ... is in my view less destructive than economic sanctions.”²⁷ The Secretary-General of the UN stated that:

Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects. They can complicate the work of humanitarian agencies by denying them certain categories of supplies and by obliging them to go through arduous procedures to obtain the necessary exemptions. They can conflict with the development objectives of the Organization and do long-term damage to the productive capacity of the target country. They can have a severe effect on other countries that are neighbours or major economic partners of the target country. They can also defeat their own purpose by provoking a patriotic response against the international community, symbolized by the United Nations, and by

²⁴ Gary Clyde Hufbauer and Barbara Oegg, *Economic Sanctions: Public Goals and Private Compensation*, 4 CHI. J. INT'L L. 305, 307 (2003).

²⁵ Daniel Wagner, *Do Sanctions Work?*, HUFFINGTON POST (May 4, 2015), http://www.huffingtonpost.com/daniel-wagner/do-sanctions-work_b_7191464.html.

²⁶ Stalls, *supra* note 8, at 118-19.

²⁷ *Id.*

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

rallying the population behind the leaders whose behaviour the sanctions are intended to modify.²⁸

Four brief case studies of nations that underwent economic sanctions will help illustrate the effectiveness of sanctions and the role they have played historically as a tool in international law. The first case study is Malawi where sanctions were threatened because the government was inflicting human rights violations on its citizens and denying its citizens the right to democracy. The threat of sanctions proved to be a successful deterrent. The second case study is North Korea where sanctions were implemented because of nuclear arms dealing. Results show that the sanctions proved ineffective. The third case study is Iraq for arms dealing. The U.N., U.S., and Great Britain placed heavy restrictions on Iraq which lead to human rights violations and debate as to the probative value of sanctions being outweighed by potential human rights issues. The fourth is Russia, which has current sanctions in place. Russia will be used to demonstrate modern sanctions versus traditional sanctions and how the use of targeting sanctions has proven useful.

B. MALAWI

In 1992, the United States significantly cut aid to Malawi in an attempt to promote democratic standards and human rights.²⁹ For the first thirty years of Malawi being out of colonial rule, the country was governed by President Banda and a single party system.³⁰ Throughout the early 1990s, pressure mounted against the government to change its political system to allow for a multiparty system and to improve the human rights conditions of its citizens.³¹ Pressure came from citizens of Malawi, the Catholic Church, world banks, and other nations.³² The U.S., along with the World Bank and other Western countries, placed economic sanctions against Malawi following the death of some thirty-eight individuals in an anti-government demonstration.³³ Malawi was reliant on the aid and as a result the country's GNP decreased by 6.6%.³⁴ The sanctions were lifted in 1993 once the new government

²⁸ Craven, *supra* note 11, at 46.

²⁹ Taylor, *supra* note 7.

³⁰ Lindsay Carpenter, *Malawians Bring Down 30-year Dictator 1992-1993*, GLOBAL NONVIOLENT ACTION DATABASE (Feb. 8, 2011), <http://nvdatabase.swarthmore.edu/content/malawians-bring-down-30-year-dictator-1992-1993>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Taylor, *supra* note 7.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

was elected and put into power.³⁵ A referendum was held and multi-party democracy was introduced.³⁶

This is an example of how targeted sanctions can be effective in achieving their desired result. Human rights were being violated by the governing party and so economic sanctions were positioned appropriately. Targeted sanctions were used against the forms of aid that the country relied upon, causing positive change. Sanctions that targeted specific government individuals and financial aid that the country was reliant on rather than general sanctions aimed at impairing all aid prevented the people of Malawi from being denied their human rights. The country was hurt economically and so changes were made.³⁷

C. NORTH KOREA

In 1992, the U.S. placed sanctions on “North Korea’s Lyongaksan Machineries and Equipment Export Corporation and Changgwang Sinyong Corporation for missile proliferation activities.”³⁸ These sanctions grew to include missile sanctions against the same entities, but over time, North Korea negotiated with U.S. and UN officials to try and alleviate the sanctions by allowing on-site inspections and demonstrating the removal of nuclear material from the country.³⁹ Throughout the late 1990s, the sanctions continued to expand as North Korea continued to engage in what appeared to be nuclear-missile programs.⁴⁰ Sanctions were temporarily lifted in June 2000 for what appeared to be a time of cooperation, but were quickly re-imposed only a year later.⁴¹ During the 2000s and up to present day, the U.S., UN, and other nations have continued to impose and expand economic sanctions against North Korea.⁴²

³⁵ Carpenter, *supra* note 30.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, ARMS CONTROL ASSOCIATION (Mar. 2016), <https://www.armscontrol.org/factsheets/dprkchron>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Office of Foreign Assets Control, *North Korea Sanctions Program*, <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf> (last updated June 3, 2015).

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

In 2008, the United States imposed sanctions on North Korea through its Office of Foreign Assets Control.⁴³ This came as a response to the “threat to the national security and foreign policy of the United States constituted by the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula.”⁴⁴ Sanctions initially included terminating the application of authorities under the Trading with the Enemy Act (“TWEA”), but have since been expanded to include blocking of property and interests in property, restricting imports and exports, and terminating any nuclear-arms dealing.⁴⁵ The targeted sanctions focused on the government as well as specific persons with the purpose to eliminate North Korea’s nuclear arm and to serve as an effective punishment for violating international law.⁴⁶ Commentators allege that hidden within these sanctions is an attempt by the U.S. “to destabilize and manipulate the current communist regime.”⁴⁷ This hidden agenda has been a key factor in undermining the successfulness of the targeted sanctions because there needs to be a clear purpose of the sanctions and that purpose needs to be understood when the targeted sanctions are imposed.

The successfulness of the sanctions has come under scrutiny. One commentator stated that the “sanctions have proved largely ineffective in stopping the DPRK [Democratic People’s Republic of Korea (i.e. the North Korean government)] from developing an advanced rocketry program and the potential for nuclear weapons.”⁴⁸ Several authors agree that North Korea has continued to develop its military capabilities and has consistently failed to “cooperate with the international community or adhere to its commitments.”⁴⁹ Sanctions against North Korea have damaged their nuclear weapons development but have done little to harm the current regime. Targeted sanctions that clearly stated both objectives—to bring

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, ARMS CONTROL ASSOCIATION, (May 2015), <https://www.armscontrol.org/factsheets/dprkchron>. The TWEA is the Trading with the Enemy Act. It was enacted in 1917 and then was terminated with respect to North Korea in 2008 when the President of the United States signed Proclamation 8271. The TWEA was designed to restrict trade with countries that were considered hostile to the United States.

⁴⁶ *Id.*

⁴⁷ Paul VanWagenen, *U.S. Economic Sanctions--Non-Traditional Success Against North Korea*, 32 *LAW & POL'Y INT'L BUS.* 239, 239 (2000).

⁴⁸ *Id.*

⁴⁹ *Id.* at 254.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

down North Korea's nuclear-proliferation and regime—could have improved results. Also, not enough was done to monitor the North Korean government during the sanctions-regime.

D. IRAQ

The sanctions against Iraq demonstrate the negative impact that non-targeted sanctions can have on a nation and its people. In 1990, Iraq invaded Kuwait and in response to that invasion, the U.S., the UN, and other nations imposed sanctions.⁵⁰ The emphasis on the sanctions imposed by the UN Security Council was “sharply restricting all foreign trade.”⁵¹ The broad generality of UN Security Council’s definition of what constituted sanctions caused the sanctions to fail to meet their desired results. The UN Security Council had hoped that these sanctions would impact the then-Iraqi led government of Saddam Hussein, but instead it caused a trickle-down effect that assisted the government in taking money and supplies from the people, leaving the people with nothing.⁵² Initially, the sanctions were seen as being slow to produce the desired results and so the UN moved to the use of “all necessary means” in their sanctions to end Iraq’s occupation of Kuwait.⁵³ According to a UN Roundtable, the purpose behind the sanctions was three-fold: 1) to coerce Iraq to meet the requirements in United Nations Security Council Resolution 687, 2) to prevent Iraq from becoming a military significant actor in the region, and 3) to bring about the fall of Saddam Hussein.⁵⁴ Unfortunately, there were unintended consequences. During part of the sanctions era, the UN humanitarian coordinator in Iraq was quoted as saying, “We are in the process of

⁵⁰ *Iraq: An Overview of the Iraq Stabilization and Insurgency Sanctions Regulations*, OFFICE OF FOREIGN ASSETS CONTROL, 2 (Sept. 15, 2010), <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iraq.pdf>.

⁵¹ David Reiff, *Were Sanctions Right?*, N.Y. TIMES, (July 27, 2003), <http://www.nytimes.com/2003/07/27/magazine/27SANCTIONS.html?pagewanted=all>.

⁵² *Id.*

⁵³ Peter Wallensteen et al., THE 2004 ROUNDTABLE ON UN SANCTIONS AGAINST IRAQ: LESSONS LEARNED 6 (2005), http://www.pcr.uu.se/digitalAssets/173/173819_1iraqreport_050210.pdf.

⁵⁴ *Id.* at 7; see also S.C. Res. 687 (Apr. 8, 1991). Resolution 687 came after Iraq lost the Gulf War. It set the compliance terms for Iraq. The terms included respecting the sovereignty of Kuwait, recognizing the boundary line between Iraq and Kuwait, and a reminder to remove and destroy all biological and chemical weapons that they have in their possession.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

destroying an entire society. It is as simple and terrifying as that.”⁵⁵ One of the highly debated results of the sanctions is the death of approximately 500,000 Iraqi children, with some experts claiming that the number is unknown and others claiming that the number is not high enough.⁵⁶ There is debate from the other side of the issue, with individuals claiming that the sanctions were still necessary and had to be enforced.⁵⁷ Otherwise the only other option would have been war. Richard Holbrooke, the U.S. Ambassador to the UN under President Clinton stated, “The concept of sanctions is not just still valid; it's necessary. What else fills in the gap between pounding your breast and indulging in empty rhetoric and going to war besides economic sanctions?”⁵⁸ But these opinions cannot overcome the role that sanctions played in destroying a country that was once the envy of the entire Middle-eastern region. In the 1980's, Iraq was known for its “investment in health, education and physical infrastructure.”⁵⁹ Since the sanctions, the country has collapsed with the effects being the unnecessary deaths of thousands of children, a decimated economy, and restricted access to food and water.⁶⁰

Due to the nature of the sanctions, Iraq was no longer free to import anything not expressly permitted by the UN and companies were forbidden from doing business with Iraq.⁶¹ Restricting imports was a genuine issue because prior to 1990, Iraq had imported nearly 70% of its food, medicine, and chemicals for agriculture.⁶² Iraq was known for its wealth that came as a result of its oil reserves but the United Nations did not understand that Iraq could not feed its citizens without the help of international trade.⁶³

Some believe that the sanctions against Iraq generated positive results. One such consequence was the dismantling of the Iraq's nuclear ambitions and potential ownership of “Weapons of Mass Destruction” (WMD). As a result of “the sanctions

⁵⁵ Reiff, *supra* note 51.

⁵⁶ *Id.*; see also Sheldon Richman, *Iraqi Sanctions: Were They Worth It?*, GLOBAL POL'Y F., (Jan. 2004), <https://www.globalpolicy.org/component/content/article/170/41952.html>.

⁵⁷ Richman, *supra* note 56.

⁵⁸ Reiff, *supra* note 51.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Elizabeth Clark Hersey, *No Universal Target: Distinguishing Between Terrorism and Human Rights Violations in Targeted Sanctions Regimes*, 38 BROOK. J. INT'L L. 1231, 1240-41 (2013).

⁶² Reiff, *supra* note 51.

⁶³ See generally Hersey, *supra* note 61.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

imposed on Iraq, which were enforced by NATO and largely by the United States, Iraq was never able to acquire inputs to any of its WMD programs.”⁶⁴ Even critics of the sanctions regime could tell that the sanctions worked to prevent Saddam Hussein from building WMDs.⁶⁵ It is debated that “without the sanctions the American victory in the second gulf war might very well not have been as smooth.”⁶⁶ Sanctions led to the crippling Iraq’s government and military.

During the sanctions regime, “civilians faced unemployment, malnourishment, and disease while the very wealthy, those politically connected to the regime, and the political leadership itself . . . remained largely immune to the shortages of food and consumer goods.”⁶⁷ Many of these effects came as a result of Saddam Hussein responding to the sanctions, rather than coming directly from the sanctions. The difficulty in all of this was finding a balance and choosing between two evils because if not for sanctions, the region in Iraq could have gone into a state of war.⁶⁸

Throughout the 1990s there was common dissent even among the members of the UN Security Council in regards to the sanctions; the U.S. and Great Britain wanted to hold fast to the sanctions whereas Russia and France wanted them eased or lifted.⁶⁹ Members of the UN General Assembly began to feel that sanctions were wantonly brutal because they harmed the citizens without weakening Saddam Hussein’s power and there was concern from these countries that Iraqi civilians were suffering more than Saddam Hussein.⁷⁰ In response to these concerns, the UN came out with a program titled oil-for-food, which would allow Saddam Hussein to sell oil for money and with that money would be permitted to buy essential humanitarian supplies for his citizens.⁷¹ The concern with this program was that

⁶⁴ Mary Ellen O’Connell, *21st Century Arms Control Challenges: Drones, Cyber Weapons, Killer Robots, and WMDS*, 13 WASH. U. GLOBAL STUD. L. REV. 515, 520-21 (2014).

⁶⁵ *Id.*

⁶⁶ Reiff, *supra* note 51.

⁶⁷ Hersey, *supra* note 61.

⁶⁸ Reiff, *supra* note 51.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* (“The premise of the oil-for-food program, which was administered by the United Nations, was that Saddam Hussein would be allowed to sell a certain amount of oil. With the proceeds, Hussein’s government would be permitted to buy essential humanitarian supplies, including food, medicine and materials needed to keep Iraq’s crumbling infrastructure running.”).

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

there were several items that could be purchased for humanitarian aid but could quickly be used for military aid, such as chemical fertilizer or shoes.⁷² Saddam Hussein took advantage of the oil-for-food program by beginning a food rationing program whereby he would store food provided by foreign aid in warehouses and would ration it out to citizens creating dependence.⁷³

There has been “considerable negative humanitarian effects” from Saddam’s regime’s response to the sanctions.⁷⁴ Some of the effects were unpredictable such as the issues with the country’s public system. The country’s health care system was geared towards taking care of the elite and was not ready for a nutritional shortage to the entire population.⁷⁵ Food distribution was also a major concern because the Hussein regime was using food distribution as a means to punish or rewards citizens and so the areas of the country where the regime had less control generally ate better.⁷⁶

There is debate as to whether or not the sanctions played a role in debilitating the quality of life of the Iraqi citizens. The sanctions were so general and crippling that the country was left with very little options. Targeted sanctions would have helped maintain human rights in Iraq. Sanctions could have been specifically geared towards the Iraqi military and the creation of WMDs. The UN Security Council’s main concern was Iraq’s nuclear-proliferation. Therefore, sanctions could have been strategically focused to limit Saddam Hussein’s access to resources related to their development. There was no reason for food and medicine imports to be limited. In the end, sanctions in Iraq proved to be ineffective.

E. RUSSIA

Russia is currently under a sanction regime from the E.U. and U.S. for its invasion in Crimea. These sanctions have been mentioned previously in this paper⁷⁷, but it is important to compare the current sanctions against Russia with the past sanctions in Malawi, North Korea, and Iraq. The biggest difference between the modern sanctions against Russia and the past sanctions is that the modern ones are more

⁷² *Id.*

⁷³ Richman, *supra* note 56; *see also* O’Connell, *supra* note 64. O’Connell discusses that it was Saddam’s decision to warehouse the purchases in an attempt to create an impression in the media that the sanctions were forcing the Iraqi people to starve when in fact he had warehouses full of food and medicine.

⁷⁴ Wallenstein et al., *supra* note 53, at 18.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Supra* notes 1-6 and accompanying text.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

targeted. They focus on the individuals and government leaders involved rather than on general punishments. The sanctions against Russia target the state's financial, energy, and arms sectors and included the blacklisting of a dozen Russian officials.⁷⁸ Examples include: Bank Rossiya, a major bank in Russia, including its biggest shareholders, Yuri Kovalchuk and Nikolai Shamalov; three major oil firms, Rosneft, Transneft, and Gazprom Neft; and several large Russian businesses and banks, including Sberbank a defense conglomerate.⁷⁹ The expected results of these sanctions are intended to damage the Russian economy and prevent them from building their military threat to Ukraine.

The modern sanctions in Russia are targeted and specific. They are created in a way that it would be hard for the individuals under sanction to pass along the restrictions of the sanctions to others. This strategy differs from the sanctions placed against countries such as Iraq where the sanctions were general and caused a large-scale trickle-down effect. The goal for the targeted sanctions in Russia is that the government and individuals will be deterred from future negative decisions and that the citizens of Russia will not feel the effects. Unfortunately, In response to the E.U. and U.S. sanctions on Russia, the Russian government has put an embargo on food imports from Western countries.⁸⁰

Sanctions against Russia represent a more “modern” form as they are targeted on the individuals, businesses, and government leaders. There is less effect on the human rights of civilians. Russia's embargo on food exports was created by the Russian government in response to the sanctions, not by the sanctions themselves. Targeted sanctions provide a better mechanism for international law enforcement because the specific sanctions are to designed to affect only the individual or organization violating the law.

III. LEGALITY OF SANCTIONS

The laws surrounding economic sanctions are predominantly governed by executive and legislative branches of nations or international governmental organization (“IGO”) treaties such as the UN Charter. The judicial branch has very little reach in the international arena in regards to the imposition of economic sanctions. International courts have played almost no role in the imposition of economic sanctions. Even the enforcement of when sanctions go too far is handled by states and international organizations.

⁷⁸ *How Far do EU-US Sanctions on Russia Go?*, *supra* note 1.

⁷⁹ *Id.*

⁸⁰ *Id.*

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

The UN Security Council's authority to impose sanctions is provided in Articles 39 and 41 of the UN Charter. There is debate as to the limitations of these articles because there is no stated legal constraint stated within them. Article 39 grants the UN Security Council the authority to determine the existence of "any threat" and then "make recommendations" or "decide what measures shall be taken" to "restore international peace and security."⁸¹ Article 41 grants the UN Security Council authority to "decide what measures . . . are to be employed" and that these measures may include "complete or partial interruption of economic relations."⁸² These articles are the authoritative power governing the application of economic sanctions. There is no limitation or exception given to these powers within these articles.

There are however two legal means restricting the members of the UN Security Council in regards to economic sanctions. The first is veto power. In Article 27 of the UN Charter it states that "decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members" and "decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."⁸³ The issue with this was found in the sanctions against Iraq. The U.S. and Great Britain wanted to maintain sanctions and so they were able to veto the votes of the other members of the Security Council. One exception is that sanctions can be lifted upon an expiration date. If the sanctions have an expiration, then it would take an affirmative vote from nine of the fifteen members to reinstate them and no veto from a permanent member. If the sanctions do not have an expiration, then it takes an affirmative vote by nine members and no veto from a permanent member to remove them.⁸⁴

Countries derive their authority to impose sanctions from their own domestic laws and their agreement to international treaties. This can run counter to the idea that a country's own laws are meant to govern within their own borders

⁸¹ U.N. Charter art. 39.

⁸² *Id.* at 41.

⁸³ *Id.* at 27.

⁸⁴ *Id.* (The UN Security Council has fifteen members, five permanent members, and ten non-permanent members. The five permanent members are the United States, the United Kingdom, China, France, and the Russian Federation.).

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

and are not to be applied extraterritorially.⁸⁵ The effects of sanctions imposed by other nations allow them to reach within another state's national borders and thus "[t]he objectives of sanctions regimes are antithetical to concepts of sovereignty in international law."⁸⁶ For example, in 1995 the U.S. placed trade sanctions against Iran and undermined its sovereignty.⁸⁷ The sanctions reached a point where third-parties could "no longer maintain Iranian business relations without fear of penalty or losing the United States as a trade partner."⁸⁸ This level of power gave the U.S. the ability to interfere with the business relation of Iran and third-party states.

International law places legal constraints on the ability of a nation or an IGO to impose sanctions. Human rights act as a natural barrier to the full-on effects that sanctions can have. Since WWII there have been three major legislative milestones in human rights. The first came in 1948 when the Universal Declaration of Human Rights ("UDHR") was created by the UN General Assembly and was meant to recognize "the inherent dignity and of the equal and inalienable rights of all members of the human family."⁸⁹ The UDHR states that "human rights should be protected by the rule of law."⁹⁰ The Declaration outlines almost thirty human rights and further states that these rights represent the highest level of achievement.⁹¹ The UDHR demonstrates a standard that in many ways is impractical. Some of the human rights—such as the right to social security and the right to rest and paid holidays—may not be economically achievable by the nation state. On the other hand, some rights—such as life and liberty—are standards that each nation can and should meet.

In 1966, two more documents on human rights were created and then entered into force in 1976: the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"). The ICCPR emphasizes that certain conditions need to be present in order for human beings to enjoy their civil, political, economic, social,

⁸⁵ Hersey, *supra* note 61, at 1248 (discussing that the U.S. presumes federal legislation to be bounded by the territory of the U.S. and that the need for a strong nation state as an international actor is apparent).

⁸⁶ *Id.* at 1247.

⁸⁷ Judson Bradley, *The Legality of Executive Orders 13628 and 13645: A Bipartite Analysis*, 29 EMORY INT'L L. REV. 705, 706 (2015).

⁸⁸ *Id.*

⁸⁹ Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁹⁰ *Id.*

⁹¹ *See id.*

CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL

and cultural rights.⁹² The ICCPR also affirms that States are under an obligation to “promote universal respect for, and observance of, human rights and freedoms.”⁹³ The Covenant then outlines several human rights that nations should ensure to pursue for their citizens. The ICESCR is more aspirational than the UDHR and ICCPR. These documents demonstrate a fundamental understanding internationally that every human being is entitled to certain rights and that these rights are to be safeguarded by a nation’s governing body.⁹⁴

The legal validity of economic sanctions is traditionally governed by a country’s domestic laws, international treaties to which it is a signatory, or international organizations to which it belongs. Articles 39 and 41 of the UN Charter give the UN its authority to impose sanctions. The laws surrounding economic sanctions also create constraints, such as human rights and *jus cogens*. Documents such as the UDHR, ICCPR, and the ICESCR create a standard for human rights that is fundamentally understood by most nations. The doctrine of *jus cogens* demands that there are certain human rights that cannot be violated by any other act or treaty. Human rights and *jus cogens* violations create a barrier that sanctions cannot cross, regardless of the acts committed by the individuals or governments.

IV. TARGETED SANCTIONS

Targeted sanctions “are measures that are designed and implemented in such a way as to affect only those parties that are held responsible for wrongful, unacceptable, illegal, or reprehensible behavior—meaning individuals, legal entities, and other nonstate actors.”⁹⁵ It is theorized that they will “substantially reduce the amount of collateral damage incidental to a general sanctions regime.”⁹⁶ Commentators have argued that properly targeting sanctions can eliminate civilian suffering and focus the pressure on the government, and thereby reduce human

⁹² International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

⁹³ *Id.*

⁹⁴ Compare International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A(XXI) U.N. Doc. A/RES/2200(III) (Dec. 16, 1966), with Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), and International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

⁹⁵ Hersey, *supra* note 61 at 1241.

⁹⁶ *Id.* at 1242.

CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL

rights violations.⁹⁷ These types of sanctions allow the sanctioning party the ability to focus on the targeted individual or government. The targeting state uses specific measures and guidelines to reprimand the individuals responsible for committing the wrongful acts. The scope of the sanctions can be narrowed and the intensity increased.⁹⁸ One example, previously mentioned in this paper, is the use of targeted sanctions against Russia.⁹⁹ These sanctions zeroed in on individuals and entities that violated the law.

The use of targeted sanctions by the UN and nations has increased over the last twenty-two years.¹⁰⁰ They have been used to address a number of issues.¹⁰¹ The design of targeted sanctions differs greatly from general or comprehensive sanctions. This is done by “focusing measures on leaders, decision makers, and their principal supporters, rather than on the general population or by targeting a single sector, rather than an entire economy.”¹⁰² A study done by the Graduate Institute Geneva, Targeted Sanctions Consortium found that targeted sanctions have “three principal and fundamentally different purposes: to coerce a change in target’s behavior; to constrain a target from engaging in a proscribed activity; or to signal and/or stigmatize a target or others about the violation of an international norm.”¹⁰³ They also found that targeted sanctions can be categorized into six

⁹⁷ Marc Bossuyt, *The Adverse Consequences of Economic Sanctions*, Global Policy Forum (June 21, 2000), <https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html#smart>.

⁹⁸ Hersey, *supra* note 61, at 1259-60.

⁹⁹ *Supra* Section II(E).

¹⁰⁰ See Thomas Biersteker et al., *The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, THE GRADUATE INSTITUTE GENEVA (Nov. 2013), <http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/Effectiveness%20of%20UN%20Targeted%20Sanctions%20-%206.Nov.2013%20.pdf> (noting that all UN sanctions imposed since 1994 have been targeted).

¹⁰¹ *Id.* at 9 (noting that these issues include counter terrorism, prevent conflict, consolidate peace agreements, protect civilians, support democracy, improve resource governance, and limit the proliferation of weapons of mass destruction).

¹⁰² *Id.*

¹⁰³ *Id.* at 12.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

different groups: individual/entity, diplomatic, arms embargoes, commodity, transportation, and core economic sectors.¹⁰⁴

Targeted sanctions continue to be the most used enforcement mechanism by the UN and nations around the world. Arms embargos, a form of targeted sanctions, are the most common type of sanctions that the UN has used in the last twenty-two years.¹⁰⁵ They have been used to resolve a wide variety of international law violations from a high number of countries. The most common violations are issues with armed conflict, terrorism, and restoring a government.¹⁰⁶ Targeted sanctions have also been used to eliminate a nation's nuclear proliferation activities, such as the case with Iran and the Democratic People's Republic of Korea.¹⁰⁷ Other instances include: supporting a judicial process in Lebanon, providing support for better natural resources in Liberia, and protecting civilians in Libya.¹⁰⁸ Chart 1 shows the findings at the Graduate Institute Geneva on the frequency of objectives for targeted sanctions.

Objectives	Present		Main Objective	
	Frequency	Percent	Frequency	Percent
<i>Armed Conflict</i>	42	67.7	37	59.7
<i>Human Rights</i>	21	33.9	0	0
<i>Democracy Support</i>	17	27.4	6	9.7
<i>Counter-terrorism</i>	16	25.8	9	14.5
<i>Good governance</i>	8	12.9	1	1.6

¹⁰⁴ See *id.* at 15-17 (explaining that sanctions are categorized as: individual (most likely asset freezes or travel bans); diplomatic (limitations on government officials such as travel and suspensions); arms embargoes (most common, suspension of international arms or proliferation-related dual-use goods); commodity (natural resources); transportation (prohibition of carriers); or economic sectors (typically finance or oil embargoes)).

¹⁰⁵ See generally *id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 14.

¹⁰⁸ *Id.*

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

<i>Support judicial process</i>	6	9.7	1	1.6
<i>Non-proliferation</i>	6	9.7	6	9.7
<i>Support humanitarian efforts</i>	3	4.8	0	0
<i>Protect population under "Right to Protect"</i>	2	3.2	2	3.2

Chart 1- Frequency of Objectives for Sanctions.¹⁰⁹

In order to be effective, targeted sanctions should possess certain characteristics. They need to be narrowly defined with a detailed scope and provide for constant monitoring by a third party. Narrow definition allows for the targeting nation to focus its scope and increase its intensity.¹¹⁰ A venue is created whereby the sanctions are designed to “affect only those parties that are held responsible for wrongful, illegal, or reprehensible behavior.”¹¹¹ A narrow definition in a targeted sanction would have a focus on individual accountability and would be designed to impact the government leader, political elite, or “segments of the society believed to be responsible for the objectionable behavior.”¹¹² A narrow definition allows the enforcement to be carried out against a particular individual while at the same time makes it difficult for that punishment to be passed on to civilians.

Sanctions need to have constant monitoring by a third party in order to be effective. A lack of monitoring will undermine the effectiveness of the sanctions, as was seen by the arms embargo in Angola.¹¹³ It needs to be a third party monitoring in order to create a more likely scenario of fairness and justice. The objectives need to be clearly outlined to the third party so that they understand the purpose and mission behind the enforcement and the consequences for failure to comply.

Implementing the appropriate sanctions is another important consideration. When creating sanctions, the targeting country needs to consider factors such as:

¹⁰⁹ *Id.*

¹¹⁰ Hersey, *supra* note 61, at 1242.

¹¹¹ *Id.* at 1241.

¹¹² Gary C. Hufbauer, *Targeted Sanctions: A Policy Alternative?*, 32 LAW & POL'Y INT'L BUS. 11, 12 (2000).

¹¹³ *Id.* at 13.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

the types of sanctions that would be most effective in achieving the desired result, the infrastructure that is in place in the targeted nation, potential human rights violations that could result, the length of time that the sanctions should remain in place, and the third party nations that will be affected by the sanctions.¹¹⁴ Implementation should be done at the targeting nation's level because "it cannot be assured that self-interested states will implement the proper procedures and regulate themselves."¹¹⁵ The implementation of the proper sanctions is important the sanctions overall effectiveness because the implementation follows naturally from the definition and scope. Once the definition and scope are understood, and proper monitoring has been put into place, then implementing the sanctions is the final step.

A counter-argument to targeted sanctions is that the "procedures associated with targeted sanctions are inadequate."¹¹⁶ The laws surrounding targeted sanctions lack formal regulation that is governed by a legitimate international body.¹¹⁷ Sanctions need to become an issue of international law rather than an expression of extraterritoriality.¹¹⁸ The imposition of international law and regulation would create stability and enhance the safeguarding of human rights. This would also overcome the issue of sovereignty as the issue of sanctions would then turn on mutually-agreed upon international law between the two nations. Another option would be to grant the UN Security Council authority to develop a regulatory scheme.¹¹⁹ The scheme would be used to outline the targeted sanctions and prevent human rights violations against civilians.

Targeted sanctions will increase the effectiveness of sanctions as an enforcement mechanism in international law. A narrow definition and well-defined scope, coupled with proper monitoring and implementation, will generate a mechanism that is more equipped to restore order and peace. Targeting the wrongdoer with restrictions pertinent to them will also decrease the frequency of human rights violations and unnecessary economic downturn.

V. CONCLUSION

Economic sanctions are a common enforcement mechanism in international law. They place restrictions on the trade, finances, industry, military, and economy of

¹¹⁴ See Thomas Biersteker et al., *supra* note 100, at 33-39.

¹¹⁵ Hersey, *supra* note 61, at 1262.

¹¹⁶ Reiff, *supra* note 51, at 1241.

¹¹⁷ *Id.* at 1259.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1260.

*CREIGHTON INTERNATIONAL
AND COMPARATIVE LAW JOURNAL*

targeted nations and can be imposed on governments, entities, or individuals. Historically, sanctions have been used in many countries with mixed results. Currently there are sanctions imposed on several nations, including North Korea and Russia. Legally, IGOs and nations are entitled to impose sanctions. This authority is granted to them via domestic laws and international treaties. Human rights and *jus cogens* act as limitations on the placing of economic sanctions. Many times, these limitations are violated during a sanctions regime.

Targeted sanctions are designed to increase effectiveness and decrease human rights violations. This is done by designing the sanctions with a narrow definition and detailed scope and constant monitoring. This better ensures that the wrongdoer is restricted in a specific way to restore order and peace and deter future improper actions. Targeted sanctions need to be properly implemented with time limitations and done by a third party. The use of targeting provides an effective means of ensuring that human rights of civilians are not violated and the desired results of the sanctions are achieved.