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Unilateral Economic Sanctions and Protecting U.S. National Security

FATEMEH BAGHERZADEH*

Abstract:

Terrorism remains the most important national security concern. Multi-national economic organizations around the world have increasingly established counter-terrorism commissions to assess the magnitude of the threat posed by terrorism. Economic sanctions have been a counter-terrorism measure for many decades and remain an essential tool of U.S. foreign policy and a mechanism to protect the U.S. national security interests.¹ In recent years, the internationalization of terrorism and emergence of non-state terrorist actors has led the U.S. to use smart targeted sanctions to dismantle financial support of terrorism. Yet, conventional country-specific nationwide sanctions that penalize a single target nation, continue to be used despite their limited success.²

Nation-wide sanctions operate on the theory that by depressing the economy of the target country, and to a certain extent its leadership, the target county will have no choice but to comply with the policy objective of the sanction imposing country. However, there is growing evidence of an inverse relationship between the length of the sanctions and their effectiveness.³ Moreover, justifications for the use of nation-wide sanctions to punish countries supporting terrorism has become obsolete. Today, we are witnessing the internationalization of terrorism and emergence of non-state adversaries. Hence, imposing nation-wide sanctions that are overreaching and

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1. Mergen Doraev, *The "Memory Effect" of Economic Sanctions Against Russia: Opposing Approaches to the Legality of Unilateral Sanctions Clash Again*, 37 U. PA. J. INT'L L. 355, 381 (2015).

2. Maarten Smeets, *Can Economic Sanctions Be Effective?* 4, (WTO Economic Research and Statistics Division, Geneva, Working Paper No. ERS-2018-03, 2018), <https://doi.org/10.30875/0b967ac6-en>.

3. *Id.* at 12.

punish society as whole is inconsistent with today's realities. Furthermore, the negative effects of nation-wide sanctions on the socioeconomic conditions of the target country help establish a setting for dissatisfaction amongst the citizens of the target country and hostility towards the sanction imposing country that encourages ideological extremism and terrorism.⁴ For this reason, nation-wide sanctions should only used as a short-term measure, not as a permanent solution to terrorism. For economic sanctions to function as a successful counter-terrorism policy, they must use a combination of smart sanction and antipoverty initiatives.

4. Kevin J. Fandl, *Terrorism, Development & Trade: Winning the War on Terror Without the War*, 19 AM. U. INT'L L. REV. 587, 602-3 (2004).

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I. Introduction

Terrorism has become one of the most critical national security issues in recent years. The threat of terrorism could disrupt the current balance of power, generate significant global instability, and lead to increased violence.⁵ The threat of terrorism can be ascertained by looking at the growing number of counter-terrorism commissions and official initiatives—many of them established by economic multi-national organizations. For example, the Asia-Pacific Economic Cooperation (APEC) introduced its Counter Terrorism Task Force (CTTF) in February 2003, which oversees the Secure Trade in the APEC Region (STAR)⁶ among its other activities.⁷ In 2002, The European Union (EU) adopted the Treaty on European Union, which contains Provisions on Police and Judicial Cooperation in Criminal Matters.⁸ After the terrorist attacks in Madrid on March 11, 2004 the EU launched a pan-European antiterrorism program that created a single database for arrest warrants to monitor and mitigate possible terrorist threats.⁹ In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) initialed the Declaration on Joint Action to Counter Terrorism in November 2001.¹⁰

Since the beginning of the 21st century, the main counter-terrorism policy has focused on attacking the financing of terrorism and today remains the immediate responses to terrorism. In June 2002, the member nations of the regionally based Organization of American States (OAS) signed the Inter-

5. Hale E. Sheppard, *Revamping the Export-Import Bank In 2002: The Impact of This Interim Solution on the United States and Latin America*, 6 N.Y.U. J. LEGIS. & PUB. Pol'y 89, 122 (2002-2003).

6. *Secure Trade in the APEC Region*, THE WHITE HOUSE ARCHIVES, https://georgewbush-whitehouse.archives.gov/infocus/internationaltrade/apec_star.html (last visited Mar. 18, 2020). See also Bruce Bennett, *APEC's Response to Terrorism*, UNISCI Discussion Papers, https://georgewbush-whitehouse.archives.gov/infocus/internationaltrade/apec_star.html (last visited Mar. 18, 2020).

7. *Counter-Terrorism*, ASIA-PACIFIC ECON. COOPERATION, <https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Counter-Terrorism> (last visited Mar. 18, 2020).

8. See Treaty of Amsterdam Amending the Treaty on European Union, 1997, O.J. (C 340/1), art. K.1 at 16-17. The Treaty of Amsterdam amended Article 29 of the Treaty of European Union [Maastricht Treaty]. See Treaty of Maastricht 1992, O.J. (C 191/1).

9. Thomas Fuller, *European Union Agrees on Plan to Coordinate Antiterror Effort*, N.Y. TIMES (Mar. 26, 2004), <https://www.nytimes.com/2004/03/26/world/european-union-agrees-on-plan-to-coordinate-antiterror-effort.html>.

10. ASS'N OF SOUTHEAST ASIAN NATIONS (ASEAN), ASEAN Efforts to Counter Terrorism (2001), https://asean.org/?static_post=2001-asean-declaration-on-joint-action-to-counter-terrorism (last visited Apr. 2, 2021).

American Convention Against Terrorism.¹¹ Following the September 11 attacks on the U.S., the United Nations Security Council unanimously adopted Resolution 1373 to condemn the attacks and set up the Counter-Terrorism Committee, applicable to all members of the Security Council.¹² Through their Financial Action Task Force, the G7 nations adopted a number of recommendations against terrorist financing.¹³ Moreover, the U.S. has used financial measures against its adversaries for a long time.¹⁴ After the September 11 attacks, Congress passed the USA Patriot Act which extended the authority of the President.¹⁵ The Act enabled President George W. Bush to issue sweeping economic sanctions as a counterterrorism strategy.¹⁶ Since the attacks, the U.S. has since taken more serious steps to tackle the financing of terrorism.¹⁷ Consequently, the U.S. has used economic sanctions to ban North Korea, Syria, and Iran from entering the global financial system and has established serious financial measures to prevent terrorist organizations such as Al Qaeda and Islamic State of Iraq and Syria (ISIS) from accessing funds.¹⁸

The connection between terrorism and globalization has helped world leaders establish broad security and economic policies. The Financial Action Task Force (FATF) is an inter-governmental body that fights against money laundering and terrorist financing, and provides information sharing techniques between countries on terrorist financing policing.¹⁹ While the attempt to identify and disrupt sources of terrorist funding remains at the center of many antiterrorism policies today, the approach is not new. For decades, countries have been using trade and economic sanctions against governments accused of sponsoring terrorism.²⁰

11. Inter-Amer. Convention Against Terrorism, OAS General Assembly Resolution AG/RES. 1840 (XXXII-0/02) 2nd plenary session, 3 June 2002, *available at* http://www.oas.org/xxxiiiga/english/docs_en/docs_items/agres1840_02.htm.

12. S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) [hereinafter S.C. Res. 1373].

13. *See* FATF Recommendations 2012 (amended October 2020), FINANCIAL ACTION TASK FORCE, *available at* <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

14. *See* Juan C. Zarate, *TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* ix (2013).

15. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272 (2001) [hereinafter Patriot Act].

16. Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

17. *Id.*

18. Zarate, *supra* note 14, at x.

19. FATF Recommendations 2012, *supra* note 13, at 7.

20. *See generally* Loretta Napoleoni, *MODERN JIHAD: TRACING THE DOLLARS BEHIND THE TERROR NETWORKS*, 22 (2003).

Before discussing why nation-wide sanctions are ineffective in achieving national security objectives, it is important to understand the legal context and history of U.S unilateral economic sanctions. The first part of this paper discusses the regulations of trade sanctions in today's war against international terrorism and explains the most important legislation regarding U.S. unilateral economic nation-wide sanctions, including their application and regulatory changes over the time. The second part examines the systemic inadequacy conventional nation-wide sanctions to fight against contemporary forms of terrorism. First, it will discuss the inverse relationship between the length of sanctions and their efficacy by providing some examples of U.S. unilateral economic sanctions, country-based or activity-based, and their effectiveness in achieve their desired objectives. As addresses below, due to the internationalization of terrorism, there is no national identity for terrorists today and the traditional justifications for the use of nation-wide sanctions to punish nation-states for supporting terrorism has become outdated.²¹ Second, I will discuss the adverse effects of unilateral economic nation-wide sanctions on the target state's socioeconomic conditions which consequently lead to dissatisfaction and encourages extremist ideologies. Finally, I address how smart sanctions and antipoverty initiatives can act as a preventive policy to combat terrorism and protect the national security.

II. Conventional Nation-Wide Sanctions

Nation-wide sanctions are a conventional form of unilateral economic sanctions intended to penalize a nation as a whole for violations by its government.²² Until recently, the fight against terrorism focused on stopping terrorism funding by penalizing government sponsored terrorism, typically by punishing whole nations through limited trade and foreign investment.²³ The connection between terrorism and the globalization of economies has led world powers to establish global, political, and economic policies focused on combatting terrorism.²⁴ The policy of using trade as a counter-terrorism measure is based on the theory that the sanction-implementing country will weaken the income and welfare of the target country to an extremely low level.²⁵ As the target country suffers depreciation in its economy, it will

21. Eric J. Lobsinger, *Diminishing Borders in Trade and Terrorism: An Examination of Regional Applicability of GATT Article XXI National Security Trade Sanctions*, 13 ILSA J. INT'L & COMP. L. 99, 101 (2006) (discussing traditional justifications for sanctions).

22. *Id.* at 111.

23. *Id.*

24. *Id.* at 109.

25. Smeets, *supra* note 2. As indicated by the author a limitation of trade through the protection of individual markets by increasing tariffs or applying direct import restrictions will reduce the general welfare. Hence "[a]n embargo will create a supply shock and a boycott

eventually have little choice but to acquiesce to the objectives of the implementing country.²⁶

The U.S. is the most active player in this arena, making it difficult to imagine U.S. foreign policy without its impositions of nation-wide sanctions.²⁷ Sanctions became an important part of the U.S. foreign policy during the Napoleonic wars in Europe.²⁸ In the 19th century, the U.S. limited the use of economic sanction to times of serious emergency situations.²⁹ By the turn of the century, technological developments made sanctions methods such as blockades and other economic limitations obsolete.³⁰ Nation-wide sanctions have become a common practice in international conflicts between governments to settle international disputes instead of resorting to military action.³¹ During the World War I and II, the U.S. and the U.K. began implementing sanctions against neutral states and individuals who traded with the enemy.³² After World War II, the U.S. developed a more extensive legal and regulatory system of sanctions and export controls, which have since become an economic warfare instrument.³³

Therefore, economic sanctions have long been used to cut off funding to foreign adversaries. In the aftermath of the September 11 attacks on the U.S., the United Nations Security Council adopted Resolution 1373 which applied to all members and required compliance with its International Convention for the Suppression of the Financing of Terrorism.³⁴ Hence, the U.S. as the financial world superpower made specific efforts to cut off funding for terrorist organizations like Al Qaeda and ISIS³⁵ and has invested considerable resources in improving its financial capabilities in the fight against terrorism. The Treasury Department's intelligence and counter-terrorism

will isolate the target country from the world market. A net welfare loss will be the result. Depending on the relative balance of powers between the countries involved and the importance of their economic interaction (large versus small country), the imposing party can explicitly depress the income and welfare level of the target country to an unacceptably low level. The weaker party will face deteriorating terms of trade and it is expected that it will be forced to comply," *id.* at 5.

26. *Id.*

27. Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 4 (2001) (discussing United States' sanction activity).

28. Sarabeth Egle, *The Learning Curve of Sanctions - Have Three Decades of Sanctions Reform Taught Us Anything?*, 19 CURRENTS INT'L TRADE L.J. 34, 38 (2011) (discussing United States' stance on unilateral sanctions).

29. See generally Kern Alexander, *International Political Economy and Economic Sanctions*, in ECONOMIC SANCTIONS 30-54 (2009).

30. Egle, *supra* note 28, at 38.

31. See Lobsinger, *supra* note 21, at 111.

32. Egle, *supra* note 28, at 38.

33. *Id.*

34. S.C. Res. 1373, *supra* note 12.

35. Zarate, *supra* note 14, at v-ix.

units now consist of more than 700 individuals with an annual budget of \$200 million to battle increasing numbers of adversaries using various financial weapons of war.³⁶ The most important relevant U.S. legislations are the International Emergency Economic Powers Act (IEEPA)³⁷ and the Export Administration Act (EEA).³⁸ These regulations grant wide powers to the President of the U.S. to impose sanctions against hostile nations.³⁹ The EEA has been imposed against South Africa, Iraq, Haiti, Burma, Sudan, Serbia, Montenegro, and the Federal Republic of Yugoslavia.⁴⁰

Although the primary goal of imposing economic sanctions is to suppress a threat to international peace and security,⁴¹ the U.S. has previously used sanctions against nations for different reasons including promoting human rights, urging a regime change, and fighting against narcotics trafficking and terrorism.⁴² Arguably, if sanctions are imposed due to human rights concerns, severe violations can be seen as a danger of worldwide peace and security.⁴³

III. Legislative Bases of U.S. Unilateral Economic Sanctions Regulations

Economic sanctions remain an essential element of U.S. foreign policy and a mechanism to address international security challenges.⁴⁴ In 2011, former Secretary of State Hillary Clinton explicated: “We are committed to raising the economic cost of unacceptable behavior [of states that threaten global security or its own people] and denying the resources that make it possible.”⁴⁵ The U.S. also uses economic sanctions as unilateral self-help counter measures.⁴⁶ Unilateral economic sanction is defined as

36. Tom C.W. Lin, *Financial Weapons of War*, 100 MINN. L. REV. 1377, 1405 (2016) (citing Julie Hirschfeld Davis, *Enforcer at Treasury is First Line of Attack Against ISIS*, N.Y. TIMES, Oct. 21, 2014).

37 50 U.S.C. § 1702 (2004).

38 50 U.S.C. § 2401 (2004).

39. Lobsinger, *supra* note 21, at 110.

40. Sarah H. Cleveland, *Human Rights Sanctions and International Trade: A Theory of Compatibility*, 5 J. INT'L ECON. L. 133, 143-44 (2002).

41 Cleveland, *supra* note 27, at 39.

42. Sarah P. Schuette, *U.S. Economic Sanctions Regarding the Proliferation of Nuclear Weapons: A Call for Reform of the Arms Export Control Act Sanctions*, 35 CORNELL INT. L. J. 231, 234-35 (2001).

43. Hoe Lim, *Trade and Human Rights: What's at Issue?* 35 (Apr. 10, 2001) (unpublished working paper) (SSRN: <https://ssrn.com/abstract=1682245>).

44. Doraev, *supra* note 1, 381.

45. See Secretary of State Hillary Rodham Clinton, *Remarks on Economic Statecraft*, Speech at Economic Club of New York (Oct. 14, 2011), available at <https://2009-2017.state.gov/secretary/20092013clinton/rm/2011/10/175552.htm>.

46. Alexander, *supra* note 29, at 58.

“any unilateral restriction or condition on economic activity with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security.”⁴⁷

The U.S. believes that foreign trade is a matter of national sovereignty and there are no restrictions on the state’s sovereign right to regulate its trade relations with other nations under international law.⁴⁸ Currently, the U.S. is indirectly enforcing several sanctions against various countries and regions independently of the U.N. Security Council.⁴⁹ There are several statutory regulations, some of which reflect congressional concerns defining which sanctions are applied, and others that are more general and authorize executive actions.⁵⁰

There are two types of U.S. unilateral economic sanctions—country-specific and activity-based.⁵¹ Country-specific sanctions fall into two categories, comprehensive and entity-based. Comprehensive sanctions restrict the activities of U.S. persons with nationalities of the target country. Entity-based sanctions restrict the activities of U.S. persons with designated nationals who engage in the activities subject to sanctions. Entity-based sanctions are also known as list-based sanctions based on Specially Designated Nationals (SDNs) lists.⁵²

A. Country-Specific Sanctions

Country-specific sanctions are the most common form of U.S. sanctions.⁵³ The list of countries subject to U.S. economic sanctions is adjusted regularly as the Treasury Department’s Office of Foreign Assets Control (OFAC)⁵⁴ adds or repeals regulations based on the target country and its relations with the U.S.⁵⁵

47. *Overview and Analysis of Current U.S. Unilateral Economic Sanctions*, No. 332-391, USITC Pub. 3124 (Aug, 1988).

48. Doraev, *supra* note 1, at 381.

49. *See generally* Office of Foreign Assets Control (OFAC), U.S. DEP’T OF TREASURY, Sanctions Programs and Country Information, *available at* <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

50. 17.04 *General Operation of U.S. Sanctions*, 17 U.S. Economic Sanctions, *in* INTERNATIONAL TRADE LAWS OF THE UNITED STATES (Mark K. Neville ed. 2020) (WL 5356750) [hereinafter *U.S. Economic Sanctions*].

51. *Id.*

52. *Id.*

53. *Id.*

54. *See* Office of Foreign Assets Control (OFAC), U.S. DEP’T OF TREASURY, Specially Designated Nationals and Blocked Persons List (Mar. 31, 2021), *available at* <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.

55. *U.S. Economic Sanctions*, *supra* note 50.

Unless the U.S. government grants a license permitting otherwise, comprehensive country-based sanctions limit most economic interactions with those specified countries. U.S. persons are generally prohibited from participating or facilitating, directly or indirectly, any transaction involving a sanctioned country, government, or agent of that government.⁵⁶ There may also be prohibitions on dealings with any national of the sanctioned country.⁵⁷ Under these sanctions, shipments of goods, providing services, or other dealings with sanctioned countries or with restricted individuals in those countries cannot take place without a license.⁵⁸ Assets of sanctioned organizations that are under the control of U.S. persons must be held in blocked bank accounts to prevent owners from accessing them.⁵⁹ The sanctions also prohibit other transactions, such as imports, exports, contracts, financial transactions, and other economic relations with the sanctioned country, government, and nationals.⁶⁰

Under the entity-based or list-based sanctions program, the Treasury Department designates individuals, entities, banks, vessels, and organizations that are owned, controlled, or acting on behalf of sanctions targets (i.e., targeted governments) and places them on the SDN list.⁶¹ Accordingly, U.S. persons are prohibited from doing business, directly or indirectly, with such designated entities.⁶²

B. Activity-Based Sanctions

Activity-based sanctions are intended restrict to certain illegal activities such as terrorism, drug trafficking, and proliferation of weapons of mass destruction.⁶³ Unlike country-specific sanctions, activity-based sanctions do not seek to target a specific country but instead target designated persons or organizations, regardless of their country of residence. An exception to activity-based sanctions involve certain governments that are considered to promote the restricted activities, such as government sponsored terrorism.⁶⁴ The primary mechanism for enforcing activity-based sanctions is identification of individuals and organizations engaged in the restricted activities and

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Alan F. Enslin et. al., *Balancing Free Trade with International Security: What Every Alabama Attorney Should Know about International Trade Controls*, 74 Ala Law. 97, 100 (2013).

62. *Id.*

63. *U.S. Economic Sanctions*, *supra* note 50.

64. *Id.*

the prohibition of any financial transaction with them.⁶⁵ Hence, these kind of sanctions, known as “smart sanctions,” may be directed at specific foreign officials or governmental functions without having a direct adverse impact on the economy of the foreign nation state as a whole and its people.⁶⁶ This is in stark contrast to conventional nation-wide sanctions which impact the economy of whole nation and its population rather than the specific entities that sponsor or support terrorism.⁶⁷

Following the September 11 attacks, the Bush Administration introduced new legislation extending U.S. counter-terrorism sanctions policy against individuals and organizations on the list of specially designated terrorist (SDTs) and foreign terrorist organizations (FTOs).⁶⁸ Moreover, in order to develop broad international cooperation in the War on Terror, the U.S. stated its readiness to lift sanctions against previously targeted states.⁶⁹ OFAC, as the financial intelligence and enforcement agency within the Department of the Treasury, is responsible for administering and regulating economic sanctions against targeted adverse countries for the purpose of advancing U.S. national security and foreign policy.⁷⁰ The authority of OFAC to enforce sanctions is primarily set out in ten statutes:

1. **TWEA** (The Trading with the Enemy Act)⁷¹ addresses political concerns and was the basis for Cuban and, formerly, North Korean sanctions. The TWEA is seldom used today because of a congressional joint resolution in October 1951, which restricted TWEA’s applicability to only periods of war or national emergencies. The International Emergency Economic Powers Act (IEEPA) expanded this restriction by excluding the applicability of TWEA from national emergencies.⁷²
2. **IEEPA** (The International Emergency Economic Powers Act)⁷³ was enacted in 1977 and is the legislative basis for sanctions against Burma, Iran, Sudan, and Zimbabwe as well as sanctions against the diamond trade, terrorism, narcotics, and nonproliferation

65. *Id.*

66. Doraev, *supra* note 1, at 385.

67. *Id.*

68. *Id.* at 386.

69. See Gary Clyde Hufbauer et al., *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY*, 171-172 (3d ed. 2009).

70. See John Crabb, *OFAC Designation of Russian Bank a Warning to Maduro’s Supporters*, *INTR’L FINANCIAL L. REV.* N. Page (2013).

71. 50 U.S.C. § 4301.

72. 50 U.S.C. §§ 1701-07.

73. *Id.*

sanctions.⁷⁴ After preparing a report for Congress on circumstances constituting an “unusual and extraordinary threat,” the President can use IEEPA to recommend the necessary measures to deal with the situation.⁷⁵ Following the September 11 attacks, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA Patriot Act),⁷⁶ which expanded the powers of the President and his designees by granting the President the authority to block transactions involving properties within the jurisdiction of the U.S. during the investigation.⁷⁷

3. **ISA** (The Iraqi Sanctions Act)⁷⁸ is the basis for the former Iraqi sanctions in response to the Iraq attacks on Kuwait. It has largely been replaced by the Iraqi Sanctions Regulations, generally issued under the authority of IEEPA.⁷⁹
4. **UNPA** (The United Nations Participation Act)⁸⁰ is the basis for the sanctions against Iraq and the diamond Trade⁸¹. The Act grants to the President the authority to implement mandatory provisions of United Nations Security Council Resolutions and authorizes the President to align U.S. foreign policy with UN Security Council resolutions, including civil and criminal sanctions.⁸² Under this Act, any funds or properties involved in any violation of the President’s regulations under will be forfeited to the U.S.⁸³

74. *Id.* at § 1701(a) (“Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”).

75. *Id.*

76. Patriot Act, *supra* note 15, at 115.

77. *Id.*

78. *See 17.03 Statutory Bases For Sanctions Regulations*, in INTERNATIONAL TRADE LAWS OF THE UNITED STATES (Mark K. Neville Jr. ed. 2020) (WL 5356752) [hereinafter *Statutory Bases*].

79. *Id.*

80. 22 U.S.C. § 287c.

81. Exec. Order No. 13312, Fed. Reg. 45151 (July 29, 2003).

82. *See* 22 U.S.C. § 287c.

83. § 546.701 Penalties., 31 C.F.R. § 546.701.

5. **ISDCA** (The International Security and Development Cooperation Act)⁸⁴ was the basis of certain sanctions imposed on Iran. The Act also provides a ban on the import of goods and services from any country that supports terrorism. While Iran was the target of this Act, it can be extended to trade with any country that supports terrorism.⁸⁵
6. **CDA** (The Cuban Democracy Act of 1992) was partially the other basis for Cuban sanctions.⁸⁶ The Act states that blocked funds could not be used to exports goods to Cuba.⁸⁷ The Act also decreased Cuba's restrictions on receiving food and humanitarian donations by allowing non-governmental organizations and individuals in Cuba to assist without requiring a particular license.⁸⁸ Exports of medicines and medical supplies from the U.S. to Cuba are also permitted, but such exports must be authorized through licenses from Bureau of Industry and Security (BIS).⁸⁹
7. **LIBERTAD** (The Cuban Liberty and Democratic Solidarity Act)⁹⁰ remains a partial basis for Cuban sanctions. The Act is also known as the Helms-Burton Act, which codifies the Cuban Assets Control Regulations and imposes some extraterritorial limits on the activities of foreign persons.⁹¹ The Act was used to refuse visas to foreign executives entering the U.S.⁹²
8. **AEDPA** (The Antiterrorism and Effective Death Penalty Act)⁹³ was enacted in 1996 and is the basis for sanctions against Cuba, Iran, Iraq, Sudan, and Syria. It discusses circumstances in which U.S. citizens' who support or participate in financial transactions with governments of the stated countries can be perceived as supporting international terrorism.

84. International Security and Development Cooperation Act of 1985, Pub. L. No. 99 - 83. (99 Stat. 190). Now codified in 22 U.S.C. § 2349aa-9.

85. *Statutory Bases*, *supra* note 78.

86. Cuban Democracy Act of 1992, Pub. L. No. 102-484 (106 Stat. 2575). Remaining provisions codified in 22 U.S.C. §§ 6001-6010.

87. *Statutory Bases*, *supra* note 78.

88. Cuban Democracy Act of 1992, *supra* note 86.

89. *Statutory Bases*, *supra* note 78.

90. Cuban Liberty and Democratic Solidarity Act of 1996, Pub. L. No. 104-114 (110 Stat. 785). Remaining provisions codified in 22 U.S.C. §§ 6021-6091,

91. *Id.*

92. 22 U.S.C. § 6091.

93. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (110 Stat. 1214). Remaining provisions codified in 18 U.S.C §§2339B & § 2332d.

9. **Kingpin Act** (The Foreign Narcotics Kingpin Designation Act)⁹⁴ is the basis for restrictions against narcotics trafficking. The purpose of the Act is to deny significant foreign narcotic traffickers, their organizations, and agents access to the U.S. financial system and prohibit all trade and transactions between U.S. corporations and individuals.⁹⁵ It also seeks to block the property in which designated narcotic dealers and specially designated narcotic traffickers are involved.⁹⁶
10. **CISADA** (The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010)⁹⁷ is the basis of the Iranian Transactions and Sanctions Regulations, the Iranian Financial Sanctions Regulations, and the Iranian Human Rights Abuses Sanctions Regulations.⁹⁸ CISADA amended the provisions of the previous Iran Sanctions Act to: (1) broaden U.S. sanctions against third-country entities; (2) allow additional sanctions to be imposed on Iran; (3) codify existing sanctions against Iran; and (4) establish new due diligence obligations for financial institutions.⁹⁹ It also amended the Iran Sanctions Act by Requiring the President to initiate an investigation into imposing possible sanctions on person who contribute to Iran's supply of refined petroleum, increase the possible sanctions the U.S. government can impose, and extending coverage of the sanctions to any persons or entity worldwide.¹⁰⁰ Coverage can extend to parent companies of subsidiaries who knew or should have known of the sanctionable activity.¹⁰¹

These ten laws cover the entire legal structure of OFAC enforcement actions, but they are not the only applicable authorities. By passing new laws, Congress frequently imposes new sanctions or modifies existing ones.

IEEPA is the basis for most of the current sanctions imposed today because it is based on a declaration by the President of a "national emergency"

94. See Intelligence Authorization Act for Fiscal Year 2000, Pub. L. No. 106-120 (113 Stat. 1606). Codified in 21 U.S.C. §1902-1908 (Westlaw through 116-259).

95. Press Release, THE WHITE HOUSE, Fact Sheet: Overview of the Foreign Narcotics Kingpin Designation Act (Apr. 15, 2009), <https://obamawhitehouse.archives.gov/the-press-office/fact-sheet-overview-foreign-narcotics-kingpin-designation-act>.

96. *Statutory Bases*, *supra* note 78.

97. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195 (124 Stat. 1312). Codified in 22 U.S.C §§ 8501 -8551.

98. *Statutory Bases*, *supra* note 78.

99. *Id.*

100. *Id.*

101. *Id.*

situation.¹⁰² Upon the declaration of “national emergency,” IEEPA authorized the president to take the following actions:¹⁰³

[I]nvestigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States . . .

.¹⁰⁴

IEEPA permits the confiscation of any property of a foreign individual who has “planned, authorized, aided, or engaged” in hostilities against the U.S.¹⁰⁵

Sanctions and export controls are the top priorities of the U.S. government.¹⁰⁶ The Department of Justice (DOJ) launched a comprehensive National Counter-Proliferation Initiative on October 11, 2007, which includes coordination between the DOJ and special agents of the BIS Office for Export Enforcement, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Federal Bureau of Investigation (FBI) to target export controls and sanctions violations.¹⁰⁷ The sharp focus on enforcement increases the risks to businesses and companies potentially impacted by the regulations.¹⁰⁸ Risks are increased because the sanctions’ regulations bring the compilation of international transactions under scrutiny.¹⁰⁹ Contracts, financial transactions, letters of credit, and intellectual property rights registered in sanctioned countries, and insurance, liens on property, travel, and transactions with subsidiaries dealing with the sanctioned country are all subject to restrictions.¹¹⁰ The scope of the sanctions and the vast

102. Christopher A. Casey et al., CONG. RES. SERV., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 5 (2020), available at <https://fas.org/sgp/crs/natsec/R45618.pdf>.

103. 50 U.S.C. § 1701.

104. *Id.* § 1702.

105. *Id.*; see also Exec. Order No. 13290, 69 Fed. Reg. 46055 (Mar. 24, 2003).

106. *Statutory Bases*, *supra* note 78.

107. Press Release, U.S. DEP’T OF JUST., Justice Department and Partner Agencies Launch National Counter-Proliferation Initiative (Oct. 11, 2007), https://www.justice.gov/archive/opa/pr/2007/October/07_nsd_806.html.

108. *Statutory Bases*, *supra* note 78.

109. *Id.*

110. *Id.*

shadow of the OFAC over foreign transactions make it important to understand the essence of sanctions and to know how to enter into safe transactions.¹¹¹

IV. National Security Challenges to the U.S. Unilateral Economic Sanctions

Broad sanctions that gives extensive discretion to the President to implement may result in criminal convictions, as permitted under TWEA and IEEPA, have been challenged in courts on constitutional grounds—however, such cases rarely succeed.¹¹² As the U.S. Supreme Court stated in *Regan v. Wald*, these are matters “so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.”¹¹³ IEEPA’s immunity from constitutional attack is striking because of its especial open-ended terms.¹¹⁴ The Act provides a broad authority to the President to implement sanctions without going to Congress.¹¹⁵ Challenges to IEEPA on First Amendment and other constitutional grounds has not been successful, although courts agreed that the Act provides “sweeping and unqualified” grants of power to the President.¹¹⁶ The courts have denied claims that IEEPA provides an unconstitutional grant of “essentially unbridled discretion to the Executive Branch”¹¹⁷ or that it is “unconstitutionally vague.”¹¹⁷ The same judicial argument applies to the other laws authoring sanctions that are challenged on different constitutional grounds.¹¹⁸ Since the probability of success of any such claims is low, the risks of non-compliance with sanctions are surprising high. The scope and applicability of the rules can be difficult to assess, and recent cases demonstrate the magnitude of the U.S. government’s reaction to violations.¹¹⁹

As mentioned above, economic sanctions can be aimed against nation-states or specific individuals and entities, and may include measures such as asset freezes, import tariffs, trade barriers, travel bans, and embargoes.¹²⁰

111. *Id.*

112. Casey et al., *supra* note 102, at 33.

113. *Regan v. Wald*, 468 U.S. 222, 242 (1984).

114. *Statutory Bases*, *supra* note 78.

115. *Id.*

116. *Dames & Moore v. Regan*, 453 US 654, 671 (1981).

117. *U.S. v. Vaghari*, No. 08-693-01-02, 2009 WL 2245097, at 1 (E.D. Pa 2009).

118. *Statutory Bases*, *supra* note 78.

119. *Id.*

120. Lin, *supra* note 36, at 1401; *see also* Jimmy Gurule, *The Demise of the U.N. Economic Sanctions Regime to Deprive Terrorists of Funding*, 41 CASE W. RES. J. INT’L L. 19, 20-22, 28 (2009) (demonstrating the prevalence of economic sanctions post September 11, 2001).

OFAC has overseen many longstanding and recent financial sanctions as weapons in modern warfare against American enemies as diverse as the Iranian Revolutionary Guard, terrorist organizations, Mexican drug cartels, and foreign nation-states.¹²¹ For instance, the U.S. and its allies imposed a series of economic sanctions against Russia and certain Russian citizens following Russia's annexation of Crimea in 2014.¹²²

V. Effectiveness of U.S. Unilateral Economic Sanctions

Despite the movement toward globalization, modern financial infrastructure is very American-Centric such that economic sanctions imposed by the U.S. have a universal effect.¹²³ Although geography may matter less in finance today, U.S. currency is the world's reserve currency and the most trusted investment during times of distress.¹²⁴ In 2015, 81% of global trade financing is funded by the U.S. dollar.¹²⁵ Because of its significance, U.S. public and private institutions such as the Federal Reserve, the Securities and Exchange Commission (SEC), stock exchanges, and major investment banks are at the forefront of international financial policies and practices. As such, when America takes financial measures against a country, it has global consequences.¹²⁶ For example, the financial rules and regulations declared by the U.S. after the September 11 attacks had a universal effect because of the importance of U.S. currency to global financial system.¹²⁷

Hence, because of the interconnectedness of modern finance and the central position of the U.S., banking prohibitions may make a restricted nation-state or entity disconnected from the global financial system. They would not be able to obtain financing due to the risks that legal institutions might face by associating with these organizations.¹²⁸ In a financial system that revolves around the U.S., American financial policy can leverage the

121. Lin, *supra* note 36, at 1402.

122. *Id.* at 1402.

123. See Richard Barrett, *Time to Reexamine Regulation Designed to Counter the Financing of Terrorism*, 41 CASE W. RES. J. INT'L L. 7, 10 (2009) (discussing American-centric financial infrastructure).

124. Lin, *supra* note 36, at 1386-87.

125. *Id.* at 1387 (citing a report by Ian Bremmer & Cliff Kupcha, EURASIA GROUP, *Top Risks* 9 (2015)). A copy of the report is available at: https://eurasiagroup.bluematrix.com/sellside/AttachmentViewer.action?encrypt=bb489f5d-29ae-439a-9355-6f824999bf34&fileId=16645_fcb7dbe1-770f-4ad0-81de-829815eae238&isPdf=false?link=instory (last visited Apr. 4, 2021).

126. *Id.* at 1387.

127. Barrett, *supra* note 123, at 10.

128. Zarate, *supra* note 14, at 2-5.

support of international financial institutions¹²⁹ to push adversaries out of the international financial community.¹³⁰

While there is no definitive proof that nation-wide economic sanctions are successful,¹³¹ the countries have long used such policies and they have become more widespread in recent years.¹³² Economic sanctions are intended to inflict financial harm and destruction to the enemy in a hot war or a cold war.¹³³ Although the economic theory of sanctions is largely based on assumptions as to how trade can be affected by sanctions, such an assumption cannot take into account all of the facts, such as human behavior and the responses of the country leaders who are under the sanctions regime.¹³⁴ Scholars have argued that economic sanctions have only a limited capacity to achieve their intended objectives.¹³⁵ “The effectiveness of sanctions is further reduced today due to a growing interdependency between markets and a shrinking world.”¹³⁶

If the use of economic sanctions is strategically effective, it could be tempting for countries to misuse the policy.¹³⁷ One reason why some countries have changed their conduct is because they need to defend themselves from the overuse of economic sanctions imposed by other countries.¹³⁸ Moreover, a reasonable leader is likely to restrict his or her activities in order to limit the choices of political opposition within a country that he or she considers to be a threat to their political power. However, there are some leaders whose behavior appears to be unaffected by the use of economic sanctions.¹³⁹

Although no weapon can completely avoid every attack by an enemy, thoughtfully targeted financial restrictions can provide the most protection from adversaries.¹⁴⁰ On the other hand, economic sanctions tend to be the best choice for countries that are reluctant to fight and endanger the lives of

129. *Id.* at 349.

130. *Id.* at 24.

131. Smeets, *supra* note 2, at 3.

132. Lin, *supra* note 36, at 1401.

133. Lin, *supra* note 36, at 1401.

134. Smeets, *supra* note 2, at 4.

135. See, e.g., Lobsinger, *supra* note 21, at 121; Amichai Cohen, *Economic Sanctions in IHL: Suggested Principles*, 42 *ISR. L. REV.* 117, 135 (2009); Egle, *supra* note 28, at 47.

136. Smeets, *supra* note 2, at 5.

137. Amichai Cohen, *Economic Sanctions in IHL: Suggested Principles*, 42 *ISR. L. REV.* 117, 135 (2009).

138. *Id.*; see generally Anne-Marie Slaughter, *A NEW WORLD ORDER* (5th 2009).

139. Cohen, *supra* note 137, at 144 (“In dictatorships, for instance, ruling party officials continue to receive perks and the armed forces continue to receive supplies of food and other goods despite sanctions imposed on the State.”).

140. Lin, *supra* note 36, at 1405.

their soldiers.¹⁴¹ Economic sanctions are therefore seen by policymakers as a good replacement for the more dangerous policy of using military forces; a resolution that entails no risks and only benefits.¹⁴² However, economic sanctions do not always produce the desired goal of the imposing country, often because the sanctions are used when they are not needed and inflict needless suffering on civilians.¹⁴³

Scholars use the example of economic sanctions against Cuba to argue that economic sanctions are not successful and place unreasonable economic pressure on Cuba's internal political issues.¹⁴⁴ Many of critics argue that such unilateral economic sanctions without the authorization of the Security Council should be considered as a violation of non-intervention rule from an international law point of view.¹⁴⁵ The U.S. has been attempting to place a full embargo on Cuba for more than half a century.¹⁴⁶ Most of the sanctions have not accomplished their objectives and most of them are now coming to an end.¹⁴⁷ On December 17, 2014, President Obama proposed a new path in the 50-year U.S. sanctions strategy against Cuba.¹⁴⁸ The announced changes were intended to normalize diplomatic relations between Cuba and the U.S., to allow travel, some trade relations, and the flow of information to and from Cuba.¹⁴⁹ OFAC and BIS implemented new rules amending the Cuban Assets Control Regulations and the Export Administration Regulations in accordance with new policies announced by the President.¹⁵⁰ In other words, the President's announcement that "50 years have shown that isolation has not worked," and the subsequent steps of the Administration to decrease the use of sanctions against Cuba show how the sanctions policy against Cuba failed.¹⁵¹ U.S. economic sanctions against North Korea are also

141. Cohen, *supra* note 137, at 123.

142. *Id.* at 135.

143. *Id.* at 136.

144. *Id.*

145. See e.g., Doraev, George N. Barrie, *International Law and Economic Coercion - A Legal Assessment*, 11 S. AFR. Y.B. INT'L L. 40, 53 (1985-1986); Derek W. Bowett, *International Law and Economic Coercion*, 16 VA. J. INT'L L. 245, 246-254 (1976).

146. Smeets, *supra* note 2, at 4.

147. *Id.*

148. Press Release, THE WHITE HOUSE, Statement by President Barack Obama, Statement by the President on Cuba Policy Changes (Dec. 17, 2014), <http://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>.

149. *Id.*

150. *Id.*; see also Press Release, DEP'T OF TREASURY, Fact Sheet: Treasury and Commerce Announce Regulatory Amendments to the Cuba Sanctions (Jan. 15, 2015), <http://www.treasury.gov/press-center/press-releases/Pages/j19740.aspx>.

151. Doraev, *supra* note 1, at 386 (internal quotation omitted).

far-reaching and continue to be expanded.¹⁵² Some have argued that economic sanctions are not effective as North Korea continues to have business interactions with certain trading partners to bypass U.S. economic sanctions.¹⁵³

Although imposing sanctions is based on the theory that they decrease the income and the welfare of the target country because the target country suffers depreciation in its economy and eventually complies, given the rising interdependence of global markets, there are alternate ways for the target country to enter markets.¹⁵⁴ Sanctions are often frequently circumvented by trading with third parties who refuse to comply with the sanctions.¹⁵⁵ Today, the world is more interdependent, thus increasingly complicating trading relations between all countries. These new realities are the result of the rapid growth of international commerce, globalization, liberalization, and the rise of multinational companies with complex interrelations in trade and investment with foreign subsidiaries.¹⁵⁶ One cannot conclude that by depressing the economy of a target country, its leaders will have no choice but to comply with the objectives of the imposing country. Pressure from economic sanctions may have the reverse effect. Leaders may use the sanctions to justify the lower levels of economic growth and welfare to prevent even more sanctions.¹⁵⁷ The economic sanctions against Iraq are a good example. Saddam Hussain's resistance to outside pressure caused by the sanctions ultimately led to the military intervention.¹⁵⁸ Furthermore, research studies have shown that economic sanctions lose much of the impact after their first and second years, followed by a sharp decline over time.¹⁵⁹

In another report, researchers found that “[the effects [or economic sanctions] are only significant in the first two years and turn negative after six to seven years, reflecting that even short-term sanction costs will wane

152. See generally Office of Foreign Assets Control (OFAC), U.S. DEP'T OF TREASURY, North Korea Sanctions, available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/north-korea-sanctions>.

153. See e.g., Kaitlan Collins et. al., *Trump Announces New North Korea Sanctions*, CNN, (Feb. 24, 2018), <https://www.cnn.com/2018/02/23/politics/donald-trump-north-korea-sanctions/index.html>; Katrina Manson, *US Sanctions 27 Shipping Companies over North Korea Ties*, FINANCIAL TIMES (Feb. 23, 2018), <https://www.ft.com/content/666e7710-18ab-11e8-9376-4a6390addb44>.

154. Smeets, *supra* note 2, at 6.

155. *Id.*

156. Peter Muchlinski, *The Changing Face of Transnational Business Governance: Private Corporate Law Liability and Accountability of Transnational Groups in A Post-Financial Crisis World*, 18 IND. J GLOB. LEG. STUD. 665, 666 (2011).

157. Smeets, *supra* note 2, at 5.

158. *Id.* at 6.

159. See Hufbauer et al., *supra* note 69.

due to economic adjustment.”¹⁶⁰ In this manner, the target country is more likely to become immune to economic spirals caused by sanctions rather than more vulnerable over time. During the sanctions period, the target country can strengthen its diplomatic ties in order to build alliances with other countries, expand its import industry, and establish new trade relationships.¹⁶¹ Hence, the speedy application of sanctions to prevent the target country from coordinating a resistance to the sanctions is essential to the effectiveness of sanctions.¹⁶² The role of third countries and their participation in the sanction period is vital for fostering ties with the target country.¹⁶³ For example, Russia and China developed approximately forty finance and technology agreements in October 2014, and China is turning to Brazil and Latin American countries to compensate its losses due to restrictions on importing agricultural goods from other countries.¹⁶⁴

Another example of sanctions diminishing effectiveness in the long-term are the U.S. sanctions against Russia. U.S. economic sanctions against Russia are a combination of economic and political sanctions.¹⁶⁵ The U.S. imposed sanctions on Russia mainly in response to Russia’s 2014 invasion and occupation of Ukraine’s Crimea region and parts of eastern Ukraine.¹⁶⁶ The sanctions include the freezing of assets of individuals and companies, restrictions on financial transactions with Russian businesses, restrictions on oil-related goods, and dual-use exports.¹⁶⁷ The sanctions also targeted several Russian officials and politicians, banning them from entering the U.S. and freezing their assets and properties abroad.¹⁶⁸

Russia experienced a significant depreciation of its currency due to the sanctions, with a fall of almost 50% in its value in 2014.¹⁶⁹ Sanctions exacerbated the investment climate in Russia and had a major effect on the Russian Central Bank’s ability to borrow money.¹⁷⁰ Shortly after the implementation of sanctions against Russia, the international oil market crashed—presumably strengthening the power of the sanctions and the chances of their

160 Sajjad Faraji Dizaji & Peter A.G. van Bergeijk, P., *Potential Early Phase Success and Ultimate Failure of Economic Sanctions: A VAR Approach with an Application to Iran*, 50(6) *J. of Peace Res.* 721, 734 (2013).

161. Smeets, *supra* note 2, at 8.

162. *Id.*

163. *Id.*

164. *Id.*

165. Smeets, *supra* note 2, at 10.

166. Corry Welt et al., CONG. RES. SERV., R45415, *U.S. Sanctions on Russia* 1 (2020), available at <https://crsreports.congress.gov/product/pdf/R/R45415>.

167. Smeets, *supra* note 2, at 10.

168. *Id.*

169. *Id.*

170. *Id.*

success.¹⁷¹ On the basis of several press reports, the Russian Central Bank had to dig deep into its reserve to support the Ruble, but it continued to depreciate.¹⁷² Hence, purchasing power diminished and many goods became unavailable.¹⁷³

Nevertheless, the structural dimension and trade patterns of Russia have remained largely unchanged since 1990s.¹⁷⁴ Because the Russian economy is not significantly diversified, it is potentially less susceptible to the economic impacts of sanctions.¹⁷⁵ The economy is highly dependent on the import of goods and supplies for the use, production, and export of raw materials and essential items. Russian exports are mainly made up of mineral imports, including chemicals, food, and agricultural machinery.¹⁷⁶

From a political viewpoint, Russian leadership has succeeded in managing the difficult economic situation caused by the sanctions.¹⁷⁷ The real purpose of sanctions was to damage the Russian economy and minimize political support for President Putin and force Russia to de-annex Crimea.¹⁷⁸ Despite a relatively low GDP growth rate, Russia's current economy is stronger than it was in 2014, when sanctions were imposed.¹⁷⁹ The sanctions did not have a major effect on Russian imports and Russia's net exports and GDP continued to rise.¹⁸⁰ Sanctions have also failed to minimize President Putin's political popularity, as seen by the 2018 elections when President Putin raised his vote percentage from 65% to 76%.¹⁸¹

Russia is also diversifying its trade by building closer relations with other countries in order to have access to technology and finances to trade in agricultural goods; and to export its oil.¹⁸² This means that Russia's reliance on foreign goods and services for internal use and its supply of goods and services to foreign markets will change.¹⁸³ Because some countries, including South Korea, have not joined to enforce sanctions against Russia, the

171. *Id.*

172. *Id.* at 11.

173. *Id.*

174. See Sergei F. Sutyurin et al., *Integrating into the Multilateral Trading System and Global Value Chains: The Case of Russia*, in *CONNECTING TO GLOBAL MARKETS, Challenges and Opportunities: Case Studies Presented by WTO Chair-holders* (Marion Jansen et al. eds, 2014) at 106-107.

175. Smeets, *supra* note 2, at 11.

176. *Id.* at 11.

177. *Id.* at 12.

178. *Id.*

179. L. Jan Reid, *The Effect of American and European Sanctions on Russia*, 1, 4-6 COAST ECON. CONSULTING (2019).

180. *Id.*

181. *Id.*

182. Smeets, *supra* note 2, at 12

183. *Id.*

effect of sanctions is diminished. Moreover, the inevitable market opportunities presented by Russia make other countries hesitant to renew their sanctions against Russia.¹⁸⁴

However, growing evidence proves that there is an inverse relationship between the length of sanctions and their efficiency. The effectiveness of the sanctions decreased the longer the sanctions were imposed, showing how sanctions that have been in play for years lose the power to coerce the target country into complying with the objectives of the imposing country.¹⁸⁵ This debunks the presumption that sanctions against a country in the long term will work.¹⁸⁶ Therefore, sanction imposing countries need to be more strategic with respect to the length and extension of the sanctions.

VI. Unilateral Economic Sanctions and the Fight Against Terrorism

Despite the increase use of economic sanctions efforts, terrorist organizations continue to use illicit and undercover means to gain access to funds in the global financial system.¹⁸⁷ As a result, the U.S., as the lone financial superpower in the world, has used multiple financial measures against its adversaries in an innovative and effective manner.¹⁸⁸ In recent years, the internationalization of terrorism has become an undeniable characteristic of the modern world.¹⁸⁹ It can be said that non-state actors, including terrorist organizations, will continue to play a more prominent role in global affairs.¹⁹⁰ In this regard, the conventional method of viewing terrorism in terms of nation-states is obsolete, and even dangerous.

Traditional norms of war and armed conflict are comprehensive and rich in addressing the actions of state adversaries but are not as well suited to address the actions of non-state adversaries.¹⁹¹ While non-state adversaries, such as terrorist organizations, have existed for decades, most of the legal infrastructure remains best adapted to confronting state rather than non-state adversaries. Traditional doctrines of war do not meet the new realities

184. *Id.*

185. *Id.* at 13.

186. *Id.*

187. Lin, *supra* note 36, at 1400, *see also* J.W. Verret, *Terrorism Finance, Business Associations, and the "Incorporation Transparency Act"*, 70 LA. L. REV. 857, 857-62 (2010).

188. *See* Zarate, *supra* note 14, at ix (noting that "[o]ver the past decade, the United States has waged a new brand of financial warfare, unprecedented in its reach and effectiveness.").

189. Lobsinger, *supra* note 21, at 116.

190. NAT'L INTELLIGENCE COUNCIL, *Mapping the Global Future: Report of the National Intelligence Council's 2020 Project* 111 (Dec. 2004), available at <https://www.hsdl.org/?abstract&did=484392>.

191. Lin, *supra* note 32, at 1422, *see also* Kenneth Anderson, *U.S. Counterterrorism Policy and Superpower Compliance with International Human Rights Norms*, 30 Fordham Int'l L.J. 455, 472 (2007).

of non-state adversaries who play a more significant role in contemporary warfare.¹⁹² For this reason, the lack of “comity, reciprocity, and accountability” amongst non-state adversaries raises new legal challenges.¹⁹³ Nevertheless, many non-state adversaries reside in places governed by state adversaries or neutral states making it far more difficult to identify who the non-state actor is.¹⁹⁴ Certain actions by non-state adversaries, such as those using cyber financial weapons, recognition is challenging or almost impossible, often making enforcement action unachievable at a reasonable and satisfactory level.¹⁹⁵

There are a variety of debates about terrorism and its origins. In one sense, terrorism is an act of political expression that generates public attention to a specific group or cause.¹⁹⁶ In another sense, it is a manifestation of desperation and hopelessness for a better way of life.¹⁹⁷ Many, however, address the origins of modern terrorism in poverty, religion, and envy.¹⁹⁸ If a society is isolated and unable to modernize, expand, and enter the world economy, people will have little opportunity to earn a living, and this in turn will produce waves of resentment against those who profit from the otherwise growing global market.¹⁹⁹

Terrorist groups have a common tradition of recruiting members from the poor who have few opportunities to support themselves.²⁰⁰ Terrorist groups recognize that a lack of economic opportunities combined with a lack peaceful alternatives to alleviating hardship allows terrorist ideologies to take root.²⁰¹ “To pretend that the issue of terrorism is simply a choice

192. Lin, *supra* note 36 at 1422-23; *see also* Jason Barkham, *Information Warfare and International Law on the Use of Force*, 34 N.Y.U. J. INT’L L. & POL. 57, 102 (2001) (“International law focuses on states, but the growing power of nonstate actors, such as insurgent groups, multinational corporations, transnational criminal organizations, and non-governmental organizations, is a challenge for traditional international law.”).

193. *Id.* at 1423.

194. *Id.* at 1425; *see also* Matthew J. Sklerov, *Solving the Dilemma of State Responses to Cyberattacks: A Justification for the Use of Active Defenses Against States Who Neglect Their Duty to Prevent*, 201 Mil. L. Rev. 1, 38 (2009).

195. Lin, *supra* note 36, at 1425.

196. Fandl, *supra* note 4, at 591.

197. *Id.*; *see also* Sanam F. Vakil, *The Great Leap Backward: Review of Barry Rubin: The Tragedy of the Middle East*, 27 Fletcher F. World Aff., 209, 209-11 (2003) (book review).

198. *Id.* at 588-89 (citing Interview by Neal Conan with Edward Walker, President, Middle East Institute (June 3, 2003) NPR, (transcript available at <https://legacy.npr.org/programs/totn/transcripts/2003/jun/030603.barsh.html>)).

199. Fandl, *supra* note 4, at 592.

200. *Id.* at 593-94; *see also* Rex A. Hudson, WHO BECOMES A TERRORIST AND WHY: THE 1999 GOVERNMENT REPORT ON PROFILING TERRORISTS, 76-77 (1999).

201. *Id.* at 594.

between good and evil is to know nothing of human psychology.”²⁰² Public despair and political and social humiliation provide fertile ground for terrorist to exploit and more easily manipulate the minds of desperate individuals, not always in the name of religion but sometimes in the name of revenge or as an act of political empowerment.²⁰³ One of the mentioned objectives of Al Qaeda is revenge for the alleged historical mistreatment of Muslims around the world.²⁰⁴ For some of these individuals, terrorist actions are empowering because the act does not rely on their government taking action against perceived wrongs and the act gives voice to their frustration against an enemy state with superior strength.²⁰⁵

In his final speech in the U.K., President Bill Clinton acknowledged “how abject poverty accelerates conflict, how it creates recruits for terrorists and those who incite ethnic and religious hatred, [and] how it fuels a violent rejection of the economic and social order on which our future depends.”²⁰⁶ The Bush Administration expressed a similar sentiment when it indicated that it “is aware of the link between desperate economic circumstances and terrorism.”²⁰⁷ The Middle East is the main target for terrorist recruiters due to its exceptionally high unemployment rate, the absence of GDP growth, and lack of free markets and stable financial institutions.²⁰⁸ However, international and state counter-terrorism initiatives have generally ignored the root causes of terrorism. Although the 1999 U.S. government profile on terrorism acknowledged this point, its post September 11 agendas have largely overlooked it.²⁰⁹ As such, most terrorism prevention effort focused on stopping terrorism via nation-wide economic sanctions is not effective.

202. Shibley Telhami, *Conflicting Views of Terrorism*, 35 CORNELL INT’L L.J. 581, 587 (2002).

203. *Id.* at 597 (“In the end, it should be clear that the issues of political violence broadly and terrorism specifically are not about religion and theology.”).

204. *Id.* at 597 (citing Lucien J. Dhooge, *A Previously Unimaginable Risk Potential: September 11 and the Insurance Industry*, 40 AM. BUS. L.J. 687, 697-98 (2003)).

205. Shibley, *supra* note 202 at 597 (“Whatever the aims of the attacks on the United States, they succeeded in sending an empowering message to those in the Middle East who are frustrated but are seemingly resigned to their fate because of the superior strength of their enemies and their apparent helplessness.”).

206. President William Jefferson Clinton, *Remarks at the Dimpleby Lecture* (Dec. 14, 2001), available at <https://australianpolitics.com/2001/12/14/bill-clinton-struggle-for-the-soul-of-the-21st-century.html>.

207. Fandl, *supra* note 4, *Id.* at 598 (quoting Hale E. Sheppard, *Revamping the Export-Import Bank In 2002: The Impact of This Interim Solution on the United States and Latin America*, 6 N.Y.U. J. Legis. & Pub. Pol’y 89, 121 (2002-2003)).

208. *Id.* at 599-600 (citing Edward Gardner, IMF, *Creating Employment in the Middle East and North Africa* (2003) <http://www.imf.org/external/pubs/ft/med/2003/eng/gardner/> (last visited Apr. 04, 2021)).

209. Fandl, *supra* note 4, at 602.

Economic sanctions do have a significant impact on the economy of a developing nation.²¹⁰ But the negative effects of an increased unemployment rate, reduced opportunities to export goods, and the inability to receive substantial international aid are felt more severely by the population than by the intended governmental targets.²¹¹ Even when the population is struggling to establish an adequate living environment under a powerless government, these governments find ways to finance or support extremist groups.²¹² Moreover, when people encounter poverty and lack of resources due to economic sanctions, this further encourages western hostility.²¹³ The sanctions may establish a setting for dissatisfaction and hostility which foster ideological extremism and terrorism.²¹⁴

Effective antiterrorism policies need to address the central issues that promote terrorism. As Representative J.C. Watts of Oklahoma explained: “[O]ur national security improves when global stability prevails.”²¹⁵ As such, global stability may require sanction imposing countries to consider alternatives to nation-wide sanctions. A nation without diplomatic relations is almost isolated, which precludes the improvement of social changes and results in defensive governmental actions.²¹⁶ Therefore diplomatic relations and negotiations between sanction imposing governments and sanctioned countries prevents isolation and enhances social development, thus facilitating human rights and economic integration.²¹⁷

As terrorism becomes more internationalized, non-state terrorism has adapted to exist on the fringe of economic activity or completely outside the ordinary economy.²¹⁸ Consequently, the economy of non-state terrorist organization is less impacted by nation-wide sanctions, in contrast to state-sponsored terrorism.²¹⁹ Increasing evidence shows the degree to which

210. *Id.* at 603.

211. *Id.* at 604, *see also* citing Joseph Bradica, *Havana Club Rum: One Step Back for U.S. International Trademark Policy*, 16 *Temp. Int'l & Comp. L.J.* 147, 172 (2002).

212. *See* Douglas Farah, *Al Qaeda's Finances Ample, Say Probes; Worldwide Failure to Enforce Sanctions Cited*, *WASH. POST*, Dec. 14, 2003, at A01).

213. *See* Fandl, *supra* note 4, at 588-89.

214. *Id.* at 602-03.

215. *See* 148 *CONG. REC.* 1773, at H1785 (daily ed. May 1, 2002) (statement of Rep. J.C. Watts Jr.).

216. *See* Morten B. Pedersen, *PROMOTING HUMAN RIGHTS IN BURMA* 267 (2008).

217. *See* Wendy Zeldin, *Burma: New Human Rights Commission*, *LIBR. OF CONG.* (Sept. 9, 2011), <https://loc.gov/law/foreign-news/article/burma-new-human-rights-commission/> (last visited Apr. 4, 2021).

218. *See* M. Cherif Bassiouni, *Legal Control of International Terrorism: A Policy-Oriented Assessment*, 43 *HARV. INT'L L.J.* 83, 88 (2002).

219. Lobsinger, *supra* note 21, at 120-21 (“Since many terrorist organizations today are not conveniently located or funded within neat political borders, but rather exist as shadowy entities spanning across nations and even continents, it must logically follow that trade sanctions imposed on nations put very little pressure on these non-state terrorist organizations.”).

terrorist organizations, especially non-state organizations, receive funds through the illegal trade on drugs.²²⁰ The U.S. government has evidence that Hezbollah and terrorist groups in Yemen and Lebanon have earned direct profits from the selling of methamphetamine in Chicago, Detroit, and other U.S. cities.²²¹ Among Islamic terrorist organizations, no organization has been more involved in illegal drug trade than the Taliban in Afghanistan.²²² The U.S. Drug Enforcement Agency (DEA) has proposed that Osama bin-Laden may have directly supported the trade of heroin from Afghanistan to fund terrorist activities.²²³

The modern financial infrastructure is the new sphere of war.²²⁴ This new sphere provides a special fighting space for adversaries since they may be able to steal large amounts of money through cyberterrorist activities to fund other terrorist activities while also causing widespread financial crisis and damage.²²⁵ “Unlike previous wartime theaters, the financial theater of war is less defined by geography and more by its critical functions, assets, and liabilities” which “presents new risks, threats and vulnerabilities for modern warfare posed by a cast of familiar and unfamiliar antagonists.”²²⁶

The new mechanisms of terrorist financing freezing and confiscations of assets, has led to systematic cooperation between governments and international organizations to fight against terrorist financing.²²⁷ Although, the FATF has established sanctions as a critical step to prevent terrorist funding, it may not be enough to just freeze suspected assets, the FATF must rely on foreign governments to police bank records to prevent the financing of terrorism.²²⁸ Furthermore, as a result of terrorists’ access to technology, the current terrorist threat is worrying because of the significant impact it could have on financial markets and a country’s development.²²⁹ Terrorist organizations have also founded non-governmental organizations (NGOs) to recruit members and spread information of terrorist targets; to receive official recognition from governments and international organizations, such as the U.N.; for their humanitarian activities; and to collect donations.²³⁰ One of the

220. *Id.* at 127.

221. *Id.* at 119. (citing Don Barnard, *Narco-Terrorism Realities: The Connection Between Drugs and Terror* 9:1 J. COUNTERTERRORISM & SEC. INT’L 31 (2003)).

222. *Id.* at 118.

223. *Id.*

224. Lin, *supra* note 36, at 1381.

225. *Id.*

226. Lin, *supra* note 36, at 1381.

227. Lobsinger, *supra* note 21, at 121; *see also* FATF Recommendations 2012, *supra* note 13, at 7.

228. *Id.* at 121.

229. Lin, *supra* note 36, 1405-412.

230. Lobsinger, *supra* note 21, at 119.

nine modern terrorism-related dangers identified by the FATF is the creation of terrorist front organizations as legitimate NGOs.²³¹

Despite the apparent weakness and ineffectiveness of economic sanctions, they remain an excellent alternative to military force. When properly collaborated, nation-wide sanctions can be an effective deterrent policy, as seen when sanction dissuaded both South Korea and Taiwan from their pursuit of nuclear weaponry in the 1970s and reversed a coup in Paraguay in 1996.²³²

Although sanctions may be an effective policy choice, sometimes they are not given enough time to be successful.²³³ Moreover, as shown by sanctions against Russia and Cuba, even when sanctions are given time, they are not always effective in achieving the desired policy goals. Despite the poor track record of sanctions, they remain popular because they are a “powerful expression of disagreement” with the target country’s policies and allow government leaders to show the electorate that they are taking action rather than doing nothing.²³⁴

There is an ideological rift between those who see unilateral economic sanctions as efficient and helpful in achieving foreign policy goals and those who find sanctions to be ineffective or counterproductive.²³⁵ According to an analysis of the 54 U.S. unilateral economic sanction cases between 1970 and 2014, success was only achieved in eleven cases.²³⁶

Overall, only a third of economic sanctions are estimated to be successful, with success defined as making a significant contribution to substantial achievement of foreign policy outcomes sought by the sanction imposing country.²³⁷

VII. Alternative Solutions

Most economic sanctions have been too broad to successfully achieve their desired objectives.²³⁸ Therefore, activity-based sanctions, also known as “smart” or “targeted” sanctions, are the next rational step in motivating

231. FATF Recommendations 2012, *supra* note 13, at 20.

232. See Gary Clyde Hufbauer, *Sanctions Sometimes Succeed: But No All-Purpose Cure*, Cato Unbound (Nov. 7, 2014), http://www.cato-unbound.org/2014/11/07/gary-clyde-hufbauer/sanctions-sometimes-succeed-no-all-purpose-cure#_ftn4.

233. Smeets, *supra* note 2, at 9 (noting that economic sanctions against Iraq in 2009 presented ideal conditions for sanctions to work, but the subsequent military intervention undid the effort).

234. *Id.*

235. Doraev, *supra* note 1, at 384.

236. See Hufbauer, *supra* note 232.

237. *Id.*

238. Egle, *supra* note 28, at 40.

target countries to comply.²³⁹ One comprehensive study found that sanctions with narrow policy objectives, such as the release of hostage, were only effective half of the time, while sanctions directed to regime changes were only successful 30% of the time between 1970 and 2014.²⁴⁰ Instead of imposing broad nation-wide sanctions, U.N. smart sanctions have started to tack on criminal culpability to individual leaders.²⁴¹ These sanctions allow the U.N. to divert any unintended adverse effects away from the general public to specifically targeted individuals within the regime, with the intent to financially crippling the regime itself.²⁴² The EU has also started to impose smart sanctions as a weapon against terrorism maintaining a “terrorist list” and strictly targeting individuals rather than enlisting unnecessarily broad sanctions that target the whole country.²⁴³

In the 1990s. the U.S. adopted the policy of imposing smart sanctions, which were later imposed against Bin Laden and Al Qaeda.²⁴⁴ The recent developments of U.S. sanctions policies expand the role of smart sanctions which target foreign officials or governmental functions without substantially impacting on overall economy and the people of the target state.²⁴⁵

Smart sanctions can theoretically be for effective, if they are combined with “deepened international cooperation and flexible approaches towards the revocability of coercive measures”²⁴⁶ The U.S. government can trace the financial “footprint” of terrorist networks, weapons proliferators, and drug traffickers by blacklisting them from accessing their funds.²⁴⁷ For this reason, smart sanctions offer a better alternative to nation-wide sanctions.

Unlike state-sponsored terrorism whose funding is vastly dependent on the state of the country’s economy,²⁴⁸ non-state terrorism usually operates on the margins of the economic activity and even entirely outside the country’s economy.²⁴⁹ Hence, the funding of non-state terrorism is less affected by nation-wide sanctions. Nation-wide sanctions can disrupt the economic development of the target country and thereby eliminating a number of economic

239. *Id.* at 8

240. *See* Hufbauer, *supra* note 232.

241. Egle, *supra* note 28, at 37.

242. *Id.*

243. *Restrictive Measures*, EUR. COMM’N (Mar, 2020), https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions_en (last visited Apr. 4, 2021).

244. Egle, *supra* note 28, at 39.

245. Hufbauer et al., *supra* note 69, at 134-141.

246. Doraev, *supra* note 1, at 416-417.

247. Peter L. Fitzgerald, *Smarter Smart Sanctions*, 26 PENN ST. INT.L. LAW REV. 37, 40 (2007).

248. Lobsinger, *supra* note 21, at 107.

249. *Id.* at 117-18.

opportunities its people.²⁵⁰ This in turn can foster a setting for dissatisfaction and hostility towards the sanction imposing country and encourage ideological extremism and terrorism.²⁵¹

The most appropriate time for the World Bank and similar institutions to start their development programs is when terror recruiters are searching in neighborhoods for new recruits.²⁵² Although these organizations have been addressing poverty from since their inception, preventing terrorism has not been a central focus of their programs.²⁵³

Nevertheless, eliminating poverty remains an important and vital solution to prevent terrorism. Antipoverty programs improve health, promote the sanctity of life, increase access to education, and eventually promotes democracy and new economic development opportunities.²⁵⁴ Although significant economic growth and political stability will not completely eliminate the risk of terrorism, the goal of any effective antiterrorism policy should prevent terrorism from being a feasible tool and a viable form of political expression.²⁵⁵

VIII. Conclusion

Today we are witnessing a pattern of global regionalism and the internationalization of terrorism. Terrorism has typically been carried out by independent organizations such as overly radical religious and nationalist groups. For example, sixty-eight groups may be included in the U.S State Department's List of Designated Foreign Terrorist Organizations, yet no single organization is explicitly or officially funded by a single nation-state.²⁵⁶ Terrorist organizations like Al-Qaeda and ISIS do not hold quantifiable territories and their leaders are highly mobile and operate under the radar.²⁵⁷ These organizations can be far more dangerous than state-sponsored terrorism because they operate in a wide variety of territories. For example, the Taliban both spread their radical ideologies to people and recruited "jihadists" to from all over the world.²⁵⁸

250. *Id.* at 113.

251. Fandl, *supra* note 4, at 602-03.

252. *Id.* at 606

253. *Id.* at 606-07

254. *Id.* at 609.

255. *Id.* at 629.

256. U.S. DEP'T OF STATE, Bureau of Counterterrorism, of Democracy, Foreign Terrorist Organizations, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Apr. 4, 2021).

257. Lobsinger, *supra* note 21, at 117.

258. *See id.* at 116-17.

As terrorism loses its national identity, the use of nation-wide sanctions established two decades ago is no longer a successful strategy to fight terrorism. For this reason, nation-wide sanctions should not be used as permanent counter-terrorism policy.

New anti-terrorism policies must implement a combination of smart sanctions and antipoverty programs to combat the disparate conditions that allow non-state terrorism to grow. Politicians often ignore the fact that country-specific sanctions are a double-edged sword because instead of promoting political collaboration, they foster animosity and impose economic hardships on countries that further exasperate radical ideologies the foster terrorism. When sanctions are not limited to specific activities, they can be less effective against modern forms of terrorism. Although economic sanctions have a long way to go before becoming a particularly effective foreign policy tool, the implementation of smart sanctions do appear to have more successful outcomes.²⁵⁹ For this reason, economic sanctions can be a successful counter-terrorism policy if they are activity-based rather than nation-wide sanctions and are combined with antipoverty initiatives.

259. Egle, *supra* note 28, at 46.