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Economic Sanctions

Justin D. Stalls*

- I. Introduction
- II. Modern Economic Sanctions: A Definition
- III. Legality of Economic Sanctions
- IV. Justifying Circumstances for Economic Sanctions
- V. Unilateral v. Multilateral Economic Sanctions
- VI. The United Nations: Legality and Justifying Circumstances of Multilateral Economic Sanctions
- VII. A Violation of Human Rights as a Justification for Economic Sanctions by the United Nations
- VIII. Expanding the Scope of Economic Sanctions to Affect Third-Party States
- IX. Effectiveness of Economic Sanctions
- X. Costs of Economic Sanctions
- XI. Culpability and Punishment
- XII. Conclusions

I. Introduction

Coercion and cooperation are opposing facets of human social interaction.¹ In fact, “every human relationship is some mixture of coercion and cooperation.”² On any given issue, many factors cause people to agree and disagree. When people agree, they are able to cooperate for the benefit of all involved parties. When individuals do not agree, negotiations occur. If these negotiations fail, coercive measures may be attempted. The decision whether to use coercive measures involves the balancing of the probable costs against the benefit, or likely success, of the coercive measures. On the international level, relations between States are similar to those between people on a social level. When State interests do not coincide, and negotiations fail, States will perform a cost-benefits analysis and may decide to use coercive measures to achieve their objectives.

* Justin D. Stalls is a 3rd year student at the University of Miami School of Law. He completed his undergraduate degree at Trinity University in San Antonio, Texas.

¹ Tom J. Farer, *Political and Economic Coercion in Contemporary International Law*, 79 AM. J. INT’L L. 405, 406 (1985) (stating that “[c]oercion is normal in all human relationships. . . [i]t’s part of life”).

² *Id.*

Historically, the basic tool for international coercion has been warfare. However, the sheer horror of violence, the memory of both World Wars, and the fear of atomic annihilation have led many States to limit violent conflict in the latter half of the twentieth century. To this end, many modern international organizations have been founded, including the United Nations. Such organizations provide a forum for diplomacy, communication, and negotiation. However, when diplomacy fails, the basic necessity for coercion between States still exists.³ In order to meet said necessity, many nations have expanded their use of non-violent forms of coercion.

Economic sanctions are generally considered a nonviolent form of coercion because they do not involve military warfare. Nonetheless, the traditional use of economic sanctions has led to or accompanied warfare.⁴ For example, the British colonies in the United States of America instituted economic sanctions against England when they boycotted English goods from 1767 to 1770.⁵ In effect, the colonies closed their market to England in response to the Townshend Acts which taxed the colonists. Eventually, England repealed the act but retained the tax on tea. This tea tax was the pretext for the Boston Tea Party of 1774 and was a precursor to the American War for Independence. This traditional association between a military undertaking and economic sanctions continued throughout the first half of the 20th century.⁶ However, the search for non-violent forms of coercion motivated policy makers to disassociate economic sanctions from military action.⁷

³ See Farer, *supra* note 1, at 413 ("For the sake of survival, we have tried to harness force. But unless and until we build a real international community, other forms of coercion will remain as instruments for the games nations play.").

⁴ GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* 4 (1985) ("Most of these episodes [pre-World War I instances of economic sanctions] foreshadowed or accompanied warfare").

⁵ See GEORGE E. SHAMBAUGH, *STATES, FIRMS, AND POWER: SUCCESSFUL SANCTIONS IN UNITED STATES FOREIGN POLICY* 43 (James N. Rosenaw ed., 1999) ("The U.S. government first imposed restrictions on the trade of American goods in 1774 when the Continental Congress outlawed British imports and then again, one year later, when it outlawed exports to Great Britain").

⁶ HUFBAUER & SCHOTT, *supra* note 4, at 4-5.

⁷ See JOHN C. SCHARFEN, *THE DISMAL BATTLEFIELD MOBILIZING FOR ECONOMIC CONFLICT* 180 (1995) ("The erosion of confidence in the utility of military force has promoted the use of economic force."). Cf. HUFBAUER & SCHOTT, *supra* note 4, at 4 ("Only after World War I was extensive attention

Currently, economic sanctions are considered a non-violent form of coercion that may take the place of warfare.

The modern understanding of economic sanctions as a nonviolent form of coercion coupled with the desire of policy makers to avoid violent conflict has led to a dramatic increase in the use of economic sanctions during the latter half of the twentieth century. We can look to the behavior of the United States as an example of this international trend. After World War I, the United States expanded its use of economic sanctions.⁸ During the Cold War, the potentially high costs of warfare between the former United Soviet Socialist Republic (U.S.S.R.) and the United States motivated the United States to use economic sanctions rather than military might to manage the conflict.⁹ The United States has continued to expand its use of economic sanctions up to the present day. In particular, the 1990s saw a massive expansion in the use of economic sanctions.¹⁰ The current Vice President of the United States, Dick Cheney, stated in 2001 that the United States has, "some 70 countries around the world affected by sanctions of one kind or another imposed by the United States. Those 70 countries are home to almost two-thirds of the world's population."¹¹ It is apparent that the

given to the notion that economic sanctions might substitute for armed hostilities.").

⁸ See, e.g., HUFBAUER & SCHOTT, *supra* note 4, at 7.

⁹ See, e.g., Miroslav Nincic & Peter Wallenstein, *Economic Coercion and Foreign Policy*, in DILEMMAS OF ECONOMIC COERCION 2 (Miroslav Nincic & Peter Wallenstein eds. 1983) ("As the Cold War locked its protagonists into two rival military blocks, and as the potential costs of their confrontation grew, economic coercion became a less perilous manner of fighting the East-West conflict.").

¹⁰ See, e.g., ERNEST H. PREGG, *FEELING GOOD OR DOING GOOD WITH SANCTIONS* ix (1999) ("The United States has been the preeminent trading nation during the 1990s to use unilateral economic sanctions as a foreign policy instrument"). See also Bret A. Sumner, *Due Process and True Conflicts: The Constitutional Limits on Extraterritorial Federal Legislation and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996*, 46 CATH. U.L. REV. 907, 907-908 (1997) ("In the last ten years, the United States has increasingly focused on the use of economic sanctions, embargoes, and threats of private legal action in its courts, as opposed to threats of nuclear weapons or promises of billions of dollars of economic aid, to achieve long term foreign policy objectives.").

¹¹ Richard B. Cheney, *Defending Liberty in a Global Economy*, in ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND

United States is the current world leader in the use of economic sanctions.¹² As the current world leader in the use of economic sanctions, the actions of the United States exemplify the expansive modern use of these sanctions as a nonviolent form of coercion motivated by a desire to avoid military conflict.

It should be noted that economic sanctions have a powerful impact, even though their use is not violent in a military sense. A. Amir Al-Anbari, the former ambassador of Iraq to the UK, the US, 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.”¹³ Economic sanctions are not as harmless as they appear at first glance; they may involve the deprivation or infringement of human rights.¹⁴ Al-Anbari goes further to state, “[h]orrible as it is, the use of

LIBERTY (Solveig Singleton & Daniel T. Griswold eds. 2001) at 23 (citing *U.S. News* as his source). Cf. Clayton Yeutter, *Unilateral Sanctions: A Politically Attractive Loser*, in *ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY* (Solveig Singleton & Daniel T. Griswold eds. 2001) at 85 (“The President’s Export Council calculated that, in 1997, more than half of the world’s people were threatened by U.S. sanctions.”).

¹² See, e.g., Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1162, 1169 (1987) (“The United States leads the world in resorting to economic sanctions for foreign policy purposes”). See also Andreas F. Lowenfeld, *Unilateral Versus Collective Sanctions: An American Perception*, in *UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 95* (Vera Gowlland-Debbas ed. 2001) (“There is no doubt that the United States has been the strongest proponent of economic sanctions since World War II – in connection with the Cold War in its various shapes: in response to terrorism as directed from Libya, Iran, Syria, perhaps Afghanistan, and other countries; in response to suppression of democracy, as in Haiti and Yugoslavia; and in response to forbidden arms build-up as in Iraq.”); William H. Lash III, *An Overview of the Economic Costs of Unilateral Trade Sanctions*, in *ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY* (Solveig Singleton & Daniel T. Griswold eds. 2001) at 13 (“Over 75 individual states, literally ranging from Angola to Zaire, are currently subject to or potentially targeted by U.S. unilateral economic foreign policy sanctions.”).

¹³ A. Amir Al-Anbari, *The Impact of United Nations Sanctions on Economic Development, Human Rights and Civil Society*, in *UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 371* (Vera Gowlland-Debbas ed. 2001).

¹⁴ See Leonard B. Boudin, *Economic Sanctions and Individual Rights*, 19 N.Y.U. J. INT’L. L. & POL. 803 (1987) (“Trade boycotts and other economic sanctions

force. . . is in my view less destructive than economic sanctions.”¹⁵ If Al-Anbari is correct, it appears that the international community has been rash in its increased use of economic sanctions. Perhaps policy makers have not been cognizant of the destructive power of implementing economic sanctions or conversely, they have found that there is simply no better option at the present time. In either case, there is no doubt that economic sanctions are violent in their own way.¹⁶

II. Modern Economic Sanctions: A Definition

Modern economic sanctions may be defined as coercive economic measures taken by the sending State against the target State(s) to coerce a change in the policies and practices of the target State(s).¹⁷ The sending State’s government may achieve its goals through

may seriously abridge the human rights of all persons as well as the constitutional rights of citizens of the United States.”).

¹⁵ Al-Anbari, *supra* note 13, at 380.

¹⁶ See generally John Mueller & Karl Mueller, *Sanctions of Mass Destruction*, FOREIGN AFFAIRS, May/June 1999, at 43.

¹⁷ Compare Carter, *supra* note 12, at 1166 (defining economic sanctions as, “coercive economic measures taken against one or more countries to attempt to force a change in policies, or at least to demonstrate the sanctioning country’s opinion of another’s policies”), with HUFBAUER & SCHOTT, *supra* note 4, at 2 (defining economic sanctions as, “the deliberate government-inspired withdrawal, or threat of withdrawal, of “customary” trade or financial relations), with PREGG, *supra* note 10, at 4 (defining economic sanctions, “as a restriction on normal commercial relations with the targeted country”), with Kenneth W. Abbott, *Coercion and Communication: Frameworks for Evaluation of Economic Sanctions*, 19 New York University Journal of International Law and Politics 781, 783, 789 (1987) (defining economic sanctions as a means of communication), with Nincic & Wallenstein, *supra* note 9, at 3 (stating, “[e]conomic coercion will be defined as the imposition of economic pain by one government on another in order to attain some political goal”), with John Galtung, *On The Effects of International Economic Sanctions*, in DILEMMAS OF ECONOMIC COERCION 17, 19 (Miroslav Nincic & Peter Wallenstein eds. 1983) (stating, “[w]e shall define sanctions as actions initiated by one or more international actors (the “senders”) against one or more others (the “receivers”) with either or both of two purposes: to punish the receivers by depriving them of some value and/or to make the receivers comply with certain norms the senders deem important”). Cf. D. BALDWIN, ECONOMIC STATECRAFT 13-14 (1985) (“*Economic Statecraft* [a term that includes economic sanctions] refers to influence attempts relying primarily on resources which have a reasonable semblance of a market price in terms of money”).

manipulation of taxation, imports, exports, foreign aid, access to markets, or access to financial institutions.¹⁸ Therefore, many government programs may fall under the broad category of economic sanctions. It is often difficult to differentiate between the normal economic controls that a State exercises over its economy and economic sanctions designed to coerce a foreign State.¹⁹ This difference may be found in the objective of the sending State. If the objective is furtherance of the sending State's economy, the coercive measures are not economic sanctions. In contrast, when the objective of the sending State is not to achieve an economic advantage for itself, the sending State is likely using economic sanctions. Modern economic sanctions are no longer restricted to military objectives. States have endeavored to "protect human rights, to halt nuclear proliferation, to settle expropriation claims, and to combat international terrorism"²⁰ through the use of economic sanctions. National security interests continue to motivate policy makers to implement economic sanctions.²¹ Taken as a whole, these expanded objectives show that sending States have begun to use economic sanctions to enforce legal norms.²² In sum, modern economic sanctions attempt to enforce modern legal norms through economic, rather than military means.

¹⁸ See Carter, *supra* note 12, at 1164.

¹⁹ Cf. André Beirlaen, *Economic Coercion and Justifying Circumstances*, 18 *Revue belge de droit international* 58, 68 (1984-85) (stating, "a State can always consider the economic measures taken by another State as "coercive," just because of the fact that it was obliged to take them into account while determining its own economic policy").

²⁰ HUFBAUER & SCHOTT *supra* note 4, at 6.

²¹ See, e.g., HUFBAUER & SCHOTT *supra* note 4, at 5 (discussing multiple sanction by the U.S. directed at the former Soviet Union and China).

²² See Georges Abi-Saab, *The Concept of Sanction in International Law*, in *UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW* 32 (Vera Gowlland-Debbas ed. 2001) ("The over-all purpose of sanction...is to ensure the normative integrity of the legal system, that is the translation of the normative prescriptions of its rules into social conduct."). See also Joy K. Fausey, *COMMENT: Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?*, 10 *CONN. J. INT'L L.* 193, 196 (Fall 1994) (stating that sanctions are, "non-military measures used to influence the leaders of a nation for directing that nation in a certain way contrary to international human rights law.").

III. Legality of Economic Sanctions

It is well settled that customary international law does not prohibit economic sanctions.²³ The historical practice of States does not recognize any prohibition against the use of economic sanctions.²⁴ However, many poorer States argue that economic sanctions transgress international law. These economically weaker nations need protection from the economically coercive powers of the richer nations. They argue that the U.N. Charter and other General Assembly resolutions constitute sufficient State practice and *opinio juris* to create a new rule of customary international law prohibiting the use of economic sanctions.²⁵ There may be a new rule of customary practice emerging²⁶ but this process has not been completed.²⁷ Current State practice does not recognize a prohibition against the use of economic sanctions under customary international law. In fact, the expansive use of economic sanctions in current State practice strongly evidences a belief that economic sanctions are legal under customary international law.

In an attempt to regain control of its internal policies, an economically weaker State may attempt to use a bilateral or multilateral treaty for protection from economic sanctions. These treaties may “expressly prohibit recourse to economic sanctions”²⁸ or “they may restrict the use of economic sanctions as countermeasures [retortion or

²³ Richard D. Porotsky, *Economic Coercion and the General Assembly: A Post-Cold War Assessment of the Legality and Utility of the Thirty-Five-Year Old Embargo Against Cuba*, 28 VAND. J. TRANSNAT'L L. 901, 918 (1995) (“[H]istorically, there has been no norm prohibiting the use of economic coercion.”).

²⁴ Cf. BALDWIN, *supra* note 17, at 337 (“Traditional international law has treated the regulation of foreign trade as one of the ‘sovereign prerogatives of an independent country;’ therefore, in the absence of treaty obligations, states have been free to use trade to pursue a wide variety of foreign policy goals”).

²⁵ Porotsky, *supra* note 23, at 919.

²⁶ Cf. J. Patrick Kelly, *The Twilight of Customary International Law*, 40 Virginia Journal of International Law 449, 450 (2000) (“[T]here is neither a common understanding of how customary international legal norms are formed, nor agreement on the content of those norms”).

²⁷ Cf. Porotsky, *supra* note 23, at 957 (“[T]he recent U.N. votes concerning the embargo [against Cuba] provide no evidence that the post-Cold War international community has moved toward a consensus on a norm prohibiting the unilateral use of economic coercion”).

²⁸ Hans Van Houtte, *Treaty Protections Against Economic Sanctions*, 18 Revue belge de droit international 34 (1984-85).

reprisals].”²⁹ These treaties are generally enforceable under the cornerstone of international law: *pacta sunt servanda*.³⁰ However, the current economic inequality between States makes it difficult for economically poorer States to execute such a treaty.³¹ Even if such a treaty is signed, “[t]reaty clauses forbidding economic measures. . . cannot offer absolute protection against economic sanctions. Their impact is often limited by other provisions of the treaty itself, by the law of treaties, or by international law in general.”³² Therefore, even when a bi-lateral or multi-lateral treaty exists, resorting to economic sanctions may still be legal under international law.

IV. Justifying Circumstances for Economic Sanctions

State control over its domestic economy is an accepted exercise of its sovereignty. This domestic economic control may have worldwide impacts in the modern international economy. These impacts may force other States to modify their own domestic economies. Therefore, the domestic actions of one State may infringe upon the sovereignty of other States. Nonetheless, “[c]onsidering economic measures as illegal only because of their inflicting damage upon another State can hardly be accepted since all economics are competitive.”³³ Determining the intent of the sending State is essential to differentiating between sovereign control of one’s domestic economy and economic sanctions. If the sending State is merely acting to benefit its own economy its actions are not economic sanctions. The enactment of economic sanctions by a

²⁹ *Id.* at 36.

³⁰ BLACK’S LAW DICTIONARY 1133 (7th ed. 1999) (“[Latin “agreements must be kept”] The rule that agreements and stipulations, esp. those contained in treaties, must be observed.”). See SCHARFEN, *supra* note 7, at 83 (“[I]t is expected that ‘civilized’ nations will contribute to legitimate international cooperative efforts and, once agreeing to the provisions of a charter or treaty, abide by their commitment.”).

³¹ See Porotsky, *supra* note 23, at 956 (“[A]s long as inequality in terms of economic power persists, the economically powerful have little incentive to sign a treaty or engage in state practice that explicitly recognizes such a norm [prohibiting the unilateral use of economic coercion.”]).

³² *Id.* at 42.

³³ Beirlaen, *supra* note 19, at 68-69.

sending State is designed to infringe upon the sovereignty of the target State³⁴ and not necessarily benefit the sending State's economic position.

Since the mid-17th century, the principle of absolute State sovereignty has been recognized.³⁵ Sovereignty is "supreme dominion, authority, or rule"³⁶ and is exercised by every independent (sovereign) State.³⁷ "Contained within the concept of sovereignty is the notion that a nation may govern itself through institutions and rules created to effect its goals and promote its values. In short, sovereignty is an expression of self-determination."³⁸ However, under modern international law, the absolute right to State sovereignty has been modified into a limited right. This change was caused by the growing interdependence of States, expansion of international business, technological improvements, the growth of customary international law, i.e., the application of *jus cogens*,³⁹ and the rise of intergovernmental and non-governmental organizations. Limited State sovereignty allows for intrusion into a State's internal affairs if the intrusion is justified under international law. When economic sanctions are used, the sending State must justify its action because economic sanctions are coercive measures designed, "to

³⁴ Cf. Beirlaen, *supra* note 19, at 67 ("[S]everal GA Resolutions consider economic coercion as an intervention in domestic affairs"). See generally U.N. CHARTER art. 1, para. 2, and U.N. CHARTER art. 2, para. 1 and 7.

³⁵ See Daniel C. Thomas, *International NGOs, State Sovereignty, and Democratic Values*, 2 CHI. J. INT'L L. 389, 392 (2001) ("Since the Treaties of Westphalia in 1648, the doctrine of unconditional State sovereignty has been a central pillar of international law--States were not to interfere with each other's handling of matters within their jurisdiction, including their treatment of individuals within their borders.").

³⁶ BLACK'S LAW DICTIONARY 1402 (7th ed. 1999). Compare SHAMBAUGH, *supra* note 5, at 25 ("Sovereignty is a legal, political, and social concept that identifies the state as an autonomous entity responsible to no outside authority.").

³⁷ BLACK'S LAW DICTIONARY 1401 (7th ed. 1999) ("A political community whose members are bound together by the tie of common subjection to some central authority, whose commands those members must obey").

³⁸ Steven L. Snell, *Controlling Restrictive Business Practices in Global Markets: Reflections on the Concepts of Sovereignty, Fairness, and Comity*, 33 STAN. L. INT'L. L. 215, 218 (1997).

³⁹ BLACK'S LAW DICTIONARY 864 (7th ed. 1999) ("[Latin "compelling law"] A mandatory norm of general international law from which no two or more nations may exempt themselves or release one another.").

'interfere in the internal affairs' of the target government."⁴⁰ Therefore, a sending State will not enact economic sanctions unless it believes that its action is justified.

A violation of international law may be a justification for the enactment of economic sanctions. States, both individually and in concert, use economic sanctions as a form of reprisal in response to violations of international law.⁴¹ When a State violates international law, other States may act like an international police force and attempt to enforce the law. This is a necessary action because there is no formal international law enforcement mechanism. In such a situation, reprisals⁴² are commonly used by sending States in an attempt to impose "respect for the law" on the target States.⁴³ Independently considered, reprisals are illegal acts.⁴⁴ However, they are justified by the previous illegal act of the target State.⁴⁵ Under modern international law, "it is generally accepted that armed reprisals are prohibited."⁴⁶ Since economic

⁴⁰ See HUFBAUER & SCHOTT, *supra* note 4, at 9.

⁴¹ Stephen Zamora, *Economic Relations and Development, in THE UNITED NATIONS AND INTERNATIONAL LAW* 279 (Christopher C. Joyner ed. 1997) ("States individually and in concert are using economic sanctions to achieve the enforcement of rules and decisions in the political or public law spheres").

⁴² Beirlaen, *supra* note 19, at 58, 62 ("Reprisals are a form of coercive action, *in se* contrary to international law, which are taken by a claimant State against a target State accused of having committed an unlawful act, with the purpose of imposing respect for the law on the target State" and "[i]t is generally accepted that reprisals must conform to the following criteria: (i) The first condition – a *conditio sine qua non* – is that reprisals be a response to an act which is contrary to the law of nations; this unlawful act and the subsequent refusal by the offending State to amend it, presents a *justa causa* for the claimant State; (ii) Reprisals should only be taken after an unsuccessful request to redress; (iii) In view of the previous exhaustion of peaceful remedies, reprisals should react to a situation of necessity; (iv) Reprisals must not be disproportionate vis-à-vis the unlawful acts against which they are directed; (v) Reprisals must not consist of inhuman or cruel acts, nor acts prohibited by *jus in bello*; (vi) Reprisals must not prejudice the rights of third States; (vii) Reprisals should come to an end as soon as reparation of the unlawful act occurred. Practically, this means the restoration of the State of affairs existing before reprisals were resorted to; final situation is never to emerge on the basis of reprisals; (viii) Reprisals should only be taken by competent State organs").

⁴³ *Id.* at 58

⁴⁴ *Id.* at 58, 61, 62.

⁴⁵ *Id.* at 58, 61, 62.

⁴⁶ *Id.* at 60-2.

sanctions are non-armed coercive measures, they are used as economic reprisal.⁴⁷ Such non-armed economic reprisals may take the forms of, “seizure of property, raising of customs tariffs, blocking of funds or goods, boycott, [and] embargo.”⁴⁸ Therefore, when a sovereign State violates international law, another sovereign State may attempt to instill respect for the law through the enactment of economic sanctions as reprisals.

If a State’s violation of international law directly threatens the security, political independence, territorial integrity, national or economic interests of a second State, the second State may initiate measures of self-defense.⁴⁹ An act of self-defense is justified by the necessity of self-preservation. This necessity differentiates self-defense from reprisals, which merely attempt to enforce international law.⁵⁰ It is unlikely that self-defense would be claimed as the justification for economic sanctions as independent measures. Legitimate self-defense is recognized as an international exception to the prohibition of the use of force.⁵¹ Therefore, if a State is threatened, it is more likely to respond with military action. Nonetheless, in theory, self-defense may be claimed as a justification for economic sanctions.

A sending State may also claim that its program of economic sanctions is a measure of retortion which is merely an “unfriendly, uncourteous or unfair” act by the sending State in response to a previous

⁴⁷ *Id.* at 70 (“The limits and conditions for the applicability of economic reprisals are the following: (i) According to international law reprisals have to be a reaction against an illegal action. There is no legal ground for ordering reprisals if the original infringement by the other State does not exist. . . (ii) Reprisals have to be the *ultimum remedium*; all other procedures have been tried without results. This implies *primo* that before a unilateral reprisal can be ordered, the procedures provided for in a bi-or multilateral treaty for the settlement of disputes which should arise, have been exhausted. *Secundo* that if sanctions are provided for in the framework of certain organizations, parties are obliged to use those sanctions rather than unilateral reprisals; (iii) Reprisals have to be proportionate vis-à-vis the unlawful act; (iv) Reprisals have no final character; (v) The utmost limits of reprisals are the rules of the *jus in bello*; (vi) Reprisals are not permitted against a State for actions undertaken by its national subjects; however nationals of the delinquent State may be the object of reprisals.”).

⁴⁸ *Id.* at 61.

⁴⁹ *Id.* at 59, 74.

⁵⁰ *Id.* at 59.

⁵¹ *See, e.g.*, U.N CHARTER, art. 51, para. 1.

“unfriendly, uncourteous or unfair” act by the target State.⁵² These measures are merely “an exercise of normal State competence.”⁵³ Retortion is not an illegal act and does not require a legal justification.⁵⁴ Each individual State makes its own internal determination of whether or not to enact a measure of retortion. It is not necessary to justify an act of retortion because it is an inherently licit act.

V. Unilateral Versus Multilateral Economic Sanctions

In a program of unilateral economic sanctions, the sending State determines whether the economic sanctions are justified or not. This is a highly “subjective”⁵⁵ process. When multilateral economic sanctions are enacted, there is a process of diplomatic communication and compromise. This process involves the “subjective” determination of whether there is a justification for the enactment of economic sanctions that legitimizes the decision. Multilateral economic sanctions are commonly coordinated by intergovernmental organizations such as the United Nations.⁵⁶ The necessity to reach “prior international agreement” before enacting multilateral economic sanctions restricts their implementation and legitimates the sanctions.⁵⁷ When a program of economic sanctions is supported by a multiplicity of nations, the program is internationally legitimate.

The illegitimacy of unilateral economic sanctions is demonstrated by the international community’s response to the United States’ use of unilateral economic sanctions. In the 1990s, the United States used unilateral economic sanctions more often than multilateral sanctions.⁵⁸ The expanded use of unilateral economic sanctions evidences the United States’ desire to unilaterally “assert its leadership in world affairs.”⁵⁹ The most common goals of U.S. unilateral economic sanctions in the 1990s were U.S. morality (human rights/democratization)⁶⁰ and national

⁵² Beirlaen, *supra* note 19, at 63.

⁵³ *Id.* at 63.

⁵⁴ *Id.* at 63 (“The question whether a measure of retortion is or is not justified, is not a legal question.”).

⁵⁵ *Id.* at 63.

⁵⁶ See *supra* notes 67-96 and accompanying text.

⁵⁷ PREEG, *supra* note 10, at 1.

⁵⁸ PREEG, *supra* note 10, at 1.

⁵⁹ HUFBAUER & SCHOTT, *supra* note 4, at 9.

⁶⁰ PREEG, *supra* note 10, at 201-203.

security.⁶¹ However, nearly all of the U.S. programs of unilateral economic sanctions during the 1990s failed. This failure lends credence to the international belief that unilateral economic sanctions by the U.S. are the result of “ill considered haste”⁶² or “in response to immediate events and domestic political pressure.”⁶³ If these programs had been based upon a multilateral decision, the international criticism for the program would not have existed. Therefore, the international community’s response to the United States’ use of unilateral sanctions demonstrates the illegitimacy of unilateral economic sanctions.

As a general rule, multilateral economic sanctions are more successful in achieving their stated policy goal than are unilateral economic sanctions.⁶⁴ For unilateral sanctions to be effective, the target State must be vulnerable to the sending State. If there is not a high-level of economic dependence between the two, the sanctions will be ineffective. Obviously, an economically inconsequential sending State will be ineffective if attempting to use unilateral economic sanctions. In contrast, an economically powerful State may implement unilateral economic sanctions and expect to have an impact on the target State. However, the globalization of modern business has made it easier for target States to find alternative suppliers, lessening the impact on the target State. The success of economic sanctions is directly related to the size of the economic power behind the program and the absence of alternative markets. The general failure of unilateral economic sanctions has been demonstrated by the experiences of the United States. “[B]roadly based unilateral economic sanctions [used by the United States] during the 1990s...have been almost entirely ineffective in achieving their intended foreign policy objectives.”⁶⁵ The failure of U.S.

⁶¹ *Id.* at 203-206.

⁶² *Id.* at 1.

⁶³ *Id.* at 1.

⁶⁴ See PREEG, *supra* note 10, at 215 (“The familiar statement that multilateral sanctions are preferable to unilateral sanctions is self-evident.”). See also Yeutter, *supra* note 11, at 85 (“[U]nilateral sanctions are almost always a loser in economic terms, and more often a loser than a winner in foreign policy terms. The track record for multilateral sanctions (where we are joined by our major allies) is better, but not that much better.”).

⁶⁵ PREEG, *supra* note 10, at 2-3. See, e.g., *Id.* at 207-208 (“[T]he overall assessment is that unilateral economic sanctions during the 1990s, with few exceptions, have been ineffective in achieving their foreign policy objectives while having various adverse effects on other U.S. interests. The record for

unilateral sanctions evidences the need for international coordination to increase the likely success of economic sanctions.⁶⁶ Such international cooperation exists when a State enacts multilateral economic sanctions as opposed to unilateral economic sanctions. Therefore, multilateral economic sanctions are more likely to succeed than unilateral economic sanctions.

VI. The United Nations: Legality and Justifying Circumstances of Multilateral Economic Sanctions

The common use of multilateral economic sanctions by the UN is a recent development. In fact, “[t]he first resort to mandatory

sanctions directed at human rights/democratization objectives is especially bleak, while targeted sanctions for national security objectives, in one case at least, produced a positive result. The rare exceptions of positive results from unilateral sanctions, however, only tend to prove the rule.”) *See also* Cheney, *supra* note 11, at 22-23 (“[T]hey [unilateral economic sanctions imposed by the U.S.] almost never work.”). *Cf.* JOSEPH J. COLLINS & GABRIELLE D. BOWDIN, THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, BEYOND UNILATERAL ECONOMIC SANCTIONS, BETTER ALTERNATIVES FOR U.S. FOREIGN POLICY x (1999) (“Nearly all unilateral sanctions fail nearly all of the time. The frequent use of unilateral sanctions by the United States has generally worked against U.S. foreign policy objectives. Although there is ample justification for the selective use of sanctions, in a future strongly influenced by the globalization of commerce and communications, unilateral sanctions will be even less effective as U.S. goods and services become more easily replaceable by those from other sources.”).

⁶⁶ *Cf.* Daniel W. Drezner, *The Complex Causation of Sanctions Outcomes*, in SANCTIONS AS ECONOMIC STATECRAFT 212 (Steven Chan & A. Cooper Drury eds. 2000) (“Without a high degree of international cooperation, sanctions are useless”). *But compare* HUFBAUER & SCHOTT, *supra* note 4, at 42 (“[T]here is little correlation between the extent of international cooperation and the contribution of sanctions to the policy outcome.”), with William H. Kaempfer & Anton D. Lowenber, *A Public Choice Analysis of the Political Economy of International Sanctions*, in SANCTIONS AS ECONOMIC STATECRAFT 162 (Steven Chan & A. Cooper Drury eds. 2000) (“In order for trade or investment sanctions to have a major economic impact on the target country, it is necessary that there be a sufficiently large coalition of trading partners joining in the sanctioning effort, comprising a large share of the total world market for goods and capital, so that the target country is not easily able to circumvent the sanctions by finding alternative buyers or sellers.”).

sanctions in the history of the United Nations was in December 1966.”⁶⁷ In 1945, the “international climate” was “receptive to the ideas of international cooperation.”⁶⁸ This “international climate” facilitated the foundation of the United Nations. However, the onset of the Cold War and its associated politics created a state of inertia in the United Nations as a whole and particularly in the Security Council.⁶⁹ This state of inertia restricted the enforcement of international law by the UN, and consequently, the use of multilateral economic sanctions. Regardless, with the end of the Cold war, the UN found “itself at the forefront of international relations, and the political deadlocks within the Security Council have abated substantially.”⁷⁰ As a result, the UN recently began to play a stronger role in the enforcement of international law than it did during the Cold War.⁷¹ Since the beginning of the 1990s, the UN has used economic sanctions to punish violations of international law under Article 41 of the U.N. Charter.⁷² Therefore, the frequent use of multilateral economic sanctions by the UN Security Council has been occurring for slightly more than 10 years.

⁶⁷ Vera Gowlland-Debbas, *UN Sanctions and International Law: An Overview*, in UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 1 (Vera Gowlland-Debbas ed. 2001).

⁶⁸ ROBERT E. RIGGS & JACK C. PLANO, THE UNITED NATIONS: INTERNATIONAL ORGANIZATION AND WORLD POLITICS 213 (1988) (“The Charter framers...never contemplated that the United Nations would abolish differences of interest among States. They did believe that international disputes should be kept within peaceful bounds and that the United Nations could help with this task.”).

⁶⁹ See David Bills, *NOTE: International Human Rights and Humanitarian Intervention: The Ramifications of Reform of the United Nations’ Security Council*, 31 TEX. INT’L L.J. 107, 110 (1996) (“In the Cold War era, the Security Council consisted of a body of members with diametrically opposed political viewpoints that overshadowed all other international concerns.”).

⁷⁰ See *id.* at 107.

⁷¹ See August Reinisch, *Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions*, 95 AM. J. INT’L. L. 851 (2001) (“The end of the Cold War has led the United Nations Security Council to intensify its use of economic sanctions.”).

⁷² Cf. Oscar Schachter, *The UN Legal Order: An Overview*, in THE UNITED NATIONS AND INTERNATIONAL LAW 16 (Christopher C. Joyner ed. 1997) (“Article 41[of the UN Charter] was applied sparingly for many years, but after the end of the Cold War it was increasingly used.”).

At its inception, the primary purpose of the United Nations was to maintain peace and security within the international community.⁷³ The primary means through which the UN was to achieve this goal was communication. The UN was to provide a forum, "where representatives of States [could] convene to discuss and negotiate issues involving international political, social, and economic concerns."⁷⁴ It should be noted that each member State did not surrender any sovereign rights by joining the United Nations. The UN Charter itself was a multilateral

⁷³ See Frederic L. Kirgis, Jr., *The United Nations at Fifty: The Security Council's First Fifty Years*, 89 A.J.I.L. 506 (1995) ("The goal was primarily to create an organization that would serve as a mechanism for post-World War II international security."). See also Robert W. Gregg, *The Politics of International Economic Cooperation and Development*, in *POLITICS IN THE UNITED NATIONS SYSTEM* 106, 115 (Lawrence S. Finkelstein ed. 1988) ("In 1945, the UN's central goal was to maintain, "peace and security."); *Id.* at 109 (stating that the main goals of the UN are the maintenance of peace and security and the promotion of equal rights and self-determination of peoples); John F. Murphy, *Force and Arms*, in *THE UNITED NATIONS AND INTERNATIONAL LAW* 97 (Christopher C. Joyner ed. 1997) ("As Article 1, paragraph 1 and 2 of the UN Charter suggest, the primary purposes of the United Nations are: '(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'; and '(2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'."); Christopher C. Joyner, *Conclusion: The United Nations as Internal Law-Giver*, in *THE UNITED NATIONS AND INTERNATIONAL LAW* 457 (Christopher C. Joyner ed. 1997) ("The main purposes of the United Nations as set out in the Charter are to 'save succeeding generations from the scourge of war'; develop friendly relations among States; cooperate in solving international economic, social, cultural, and humanitarian problems; and promote respect for human rights and fundamental freedoms.'" and that, "[t]he fundamental 'purposes and principles' in the charter express international concern over the need to suppress acts of aggression, to support principles of international law, peaceful settlement, and international cooperation."); RIGGS & PLANO, *supra* note 68, at 1 ("[T]he UN system represents...human outreach toward peace and cooperation."); *Id.* at 3 ("[T]he main reason for the UN is "prevention of war.").

⁷⁴ Joyner, *supra* note 73, at 432.

treaty and was binding under the principle of *pacta sunt servanda*.⁷⁵ Therefore, member States had to agree to be bound by the UN Charter.⁷⁶ The United Nations itself was not intended to be a legislative body.⁷⁷ Therefore, the UN was not in and of itself to become a ruling government over all nations. The underlying principle was that States, through discussion and compromise, could resolve their problems without resorting to war. The United Nations was intended to provide a forum for international cooperation to preserve peace, not to create a one-world government that would create and enforce its own laws as some individuals mistakenly contend.

When a major conflict occurs between member States of the United Nations and communication and compromise fail to resolve the conflict, the United Nations Security Council may endeavor to collectively control the potential armed conflict rather than leave the resolution of such conflict to the individual States currently involved.⁷⁸ To collectively control a potential armed conflict, the UN Security Council was given the ability to enforce respect for international law through the enactment of economic or military sanctions under the UN Charter.⁷⁹ Member States are considered to have consented to this potential invasion of the sovereignty by becoming members of the UN. Due to this consent, it is generally accepted that economic sanctions

⁷⁵ See RIGGS & PLANO, *supra* note 68, at 22 (“Formally written and ratified as a multilateral treaty, the UN charter became a *de facto* constitution with the establishment of the UN organization.”).

⁷⁶ See *id.* at 3 (“In the absence of supranational government, only voluntary agreement can succeed in mitigating international conflicts, and international organization provides an institutionalized means for eliciting such agreement”).

⁷⁷ See Schachter, *supra* note 72, at 3 (“Neither the United Nations nor any of its specialized agencies was conceived as a legislative body.”).

⁷⁸ Cf. Beirlaen, *supra* note 19, at 73 (“[S]anctions, whether military or economic, can be taken only by the Security Council or by a regional organization, pursuant to Security Council authorization.”).

⁷⁹ Cf. Gregg, *supra* note 73, at 15. *Id.* at 15 (“[T]he Council has generally applied Article 41 sanctions against a State that has not complied with a Charter requirement or a significant legal obligation.”). Cf. Jochen A. Frowein, *Opening Remarks: Sanctions and Human Rights Law*, in UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 125 (Vera Gowlland-Debbas ed. 2001) (“Sanctions against the State for violations of international law, particularly for breach of the fundamental norm prohibiting the use of force, are part of the collective security system of the United Nations.”).

enacted under the authorization of the Security Council are justified under international law.

Many third-world UN member States believe that economic sanctions enacted under the authorization of the Security Council are not justified under international law. This group of third-world member States commonly argues that the power structure of the Security Council is unrepresentative and unjust, i.e., that the founding members have much more power than the majority of States. There is no doubt that the present majority in the UN general assembly is third-world States.⁸⁰ There is also little debate over whether the third-world States are incorrect. The UN Security Council does not accurately represent the membership of the UN General Assembly. When enacting enforcement measures the UN Security Council is intruding upon the sovereignty of independent States and acting as if it were a government with police powers over the member States. The third-world States claim that they did not consent to this loss of sovereignty, and consequently, economic sanctions enacted under authorization by the Security Council are not justified under international law.

In response to the third-world majority, more developed States argue that the UN was not designed to be a democratic organization. Even though the UN is committed to a consensual process,⁸¹ it was never intended that the majority of member States would rule over the minority. Although, UN political bodies, such as the General Assembly, may, "act like legislatures by adopting law-making treaties and declarations of law,"⁸² they do not actually have the power to create laws, as does a legislature. The Security Council was not designed to be the police force for the UN General Assembly. As a result, the UN Security

⁸⁰ Cf. Gregg, *supra* note 73, at 111 ("As new States from the Third World joined the United Nations and ultimately became the overwhelming majority of the membership the priorities that had characterized the organization's early years were modified."). See also EVAN LUARD, *THE UNITED NATION: HOW IT WORKS AND WHAT IT DOES* 159 (2nd ed. 1997) ("The West was converted, by the influx of new members, into a minority, part of the larger minority of the developed.").

⁸¹ Cf. RIGGS & PLANO, *supra* note 68, at 2-3 ("Democracy in national government fostered the growth of international organization because both involve, in essence, commitment to a consensual process. Just as democracy in a national political setting implies a process of public decision making by consent of the governed, international organization implies a process of international action through the consent of States.").

⁸² Schachter, *supra* note 72, at 3.

Council is not bound by the majority driven treaties and declarations of the UN General Assembly. Instead, the Security Council is merely obliged to operate within the confines of the UN Charter. The developed States, which control the Security Council, argue that the UN Security Council is operating within the bounds designated for it under the UN Charter. Therefore, the proper authorization of economic sanctions by the Security Council justifies the use of such sanctions under international law.

In order for this Security Council authorization to be proper, the Security Council must fulfill its obligations under the UN Charter. As a condition predicate to the Security Council's use of enforcement measures under the UN Charter, an international "threat to the peace, breach of the peace, or act of aggression" (hereafter "threat to the peace") must exist.⁸³ The Security Council makes the determination that a "threat to the peace" exists under article 39 of the UN Charter. Consequently, third-world States argue that Security Council enforcement measures are self-justifying and not a real restriction on Security Council authorization.⁸⁴ Nonetheless, once the Security Council determines that a "threat to the peace" exists, the Security Council may enact enforcement measures under article 41 of the UN Charter. The Security Council has commonly exercised its enforcement powers, "to impose economic embargoes extending to trade and financial relations on either a comprehensive or selective basis."⁸⁵ Presently, the Security Council regularly authorizes multilateral economic sanctions to protect the world community from "threats to the peace."

The conflict over the validity of Security Council authorization of economic sanctions is representative of the deep divide in the modern world between developed States and the less-developed world. This

⁸³ See LUARD, *supra* note 80, at 23 ("Under Article 39, the Council is to 'determine the existence' of such a State of affairs and decide what recommendations to make."). See also Schachter, *supra* note 72, at 15-16 ("While the council may impose such sanctions only when it has decided that a threat to peace, breach of peace, or act of aggression has occurred, its determination is considered discretionary and final.").

⁸⁴ See Lois E. Fielding, *Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises*, 73 U. DET. MERCY L. REV. 551, 557 (1996) ("Chapter VII does not limit the discretion of the Security Council in making this determination [that a "threat to the peace", breach of the peace, or act of aggression has occurred].").

⁸⁵ Schachter, *supra* note 72, at 3.

division plays itself out daily in the United Nations. As mentioned above, the third-world States are the majority within the UN General Assembly. This new majority is continually struggling to strengthen their economic power. This continual struggle has caused a shift in the focus of UN activities from peace and security to the "pursuit of international economic and social cooperation."⁸⁶ In fact, "[e]conomic development may be the UN's primary purpose today."⁸⁷ When one recognizes the power of this division in world politics, one is able to understand the importance of the issue of economic sanctions and the apparent injustice of the essentially non-democratic actions of the Security Council.

The historical happenings that have created the present division between richer and poorer States are of great importance. Through the colonial period the West imposed its control on much of the modern day underdeveloped world. However, decolonization and the abstention from forcible control by the West in the latter half of the twentieth century have left many relatively new States to search for their place in the present world economy. Typically, these new States have not had sufficient economies. Not surprisingly then, the first and foremost goal of each new State is economic power. This is true because economic power equates to freedom. A third-world State's struggle to develop its economy is ultimately a struggle to increase its power for self-determination.⁸⁸ Without a developed economy, the West is able to continue to control the actions of the poorer States through different forms of economic coercion. Though the West has stopped its physical colonialism, economic imperialism still exists.

Economically weaker States have turned to the United Nations for protection from economic sanctions as an outgrowth of treaty protection.⁸⁹ Several multilateral documents dealing with economic coercion have been promulgated by the United Nations General Assembly. Economically weaker States argued that article 2, paragraph 4 of the United Nations Charter⁹⁰ created a rule against economic

⁸⁶ *Id.* at 111.

⁸⁷ *Id.* at 114.

⁸⁸ *Cf. Gregg, supra* note 73, at 114 (stating that, "it [the struggle for economic freedom] is simply another stage in the long-term struggle for self-determination").

⁸⁹ *See supra* notes 28-32 and accompanying text.

⁹⁰ *See* U.N. CHARTER art. 2, para. 4 ("All members shall refrain in their international relations from the threat or use of force against the territorial

sanctions. This article is a prohibition on the “threat or use of force” in international relations against “the territorial integrity or political independence of a State.” Of course, the meaning of the term “force” has been controversial.⁹¹ Economically weaker States argue that “force” should include economic sanctions. To the contrary, many more developed States claim that “force” merely referred to physical violence. Currently, there is a general consensus that economic sanctions are not prohibited under article 2, paragraph 4 of the United Nations Charter.⁹²

In addition, economically weaker States argue that article 2, paragraph 7 of the United Nations Charter and its principle of non-intervention⁹³ create a rule against the use of economic sanctions. Similar prohibitions on intervention into a State’s sovereignty by economic means are included in the U.N. Declaration on Intervention,⁹⁴ the Declaration on Friendly Relations, and the Charter of Economic Rights and Duties of States.⁹⁵ However, the subsequent behavior of

integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”).

⁹¹ See generally BELATCHEW ASRAT, PROHIBITION OF FORCE UNDER THE UN CHARTER: A STUDY OF ART. 2(4) (1991).

⁹² See Farer, *supra* note 1 at 410 (“[I]t must be concluded that Article 2(4) was concerned with violence, with military force, not with economic coercion”); Beirlaen, *supra* note 19, at 67 (“Nowadays, one generally accepts that the notion of “threat or use of force” in art. 2, Section 4 of the U.N. Charter is restricted to “armed force” and does not include the notion of “economic coercion.”). See generally Ignaz Seidl-Hohenveldern, *The United Nations and Economic Coercion*, 18 *Revue belge de droit international* 9, 10-11 (1984-85).

⁹³ See Porotsky, *supra* note 23, at 920-921.

⁹⁴ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, 20th Sess., 1408 plen. mtg., Agenda Item 107, U.N. Doc. A/RES/2131(XX)/Rev.1. (1965) (stating that, “No state may use or encourage the use of economic, political, or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind”).

⁹⁵ See Beirlaen, *supra* note 19, at 67 (“In the Declaration on the Inadmissibility of Intervention in the domestic Affairs of States and the Protection of Their Independence and Sovereignty a State’s “use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind” is condemned; in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations it is stipulated (under the

States has not recognized a rule against the use of economic sanctions. In sum, economically weaker States have failed to create a rule of international law against economic sanctions through the United Nations.⁹⁶

It appears that the third-world's struggle within the United Nations for economic development has not succeeded in creating protection from the economic powers of the western world. The voice of the third-world has been heard in the UN General Assembly, and it cries out for protection from the economic powers of the western world. Unfortunately though, this voice has not been heard in the UN Security Council. In fact, the United Nations Security Council is presently increasing its use of multilateral economic sanctions. Therefore, the United Nations has provided a forum for the third-world to request freedom from the West's economic coercion and, at the same time, a means, i.e., economic sanctions, that makes the third-world's request appear meaningless. Nonetheless, the debate over the use of economic sanctions by the United Nations is not likely to end in the near future.

heading "Principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter" that "no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind"; the Resolution on Permanent Sovereignty over National Resources "deplores acts of State which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of the sovereign rights mentioned...above"; art. 32 of the Charter of Economic Rights and Duties of States prohibits "the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.").

⁹⁶ Cf. SCHARFEN, *supra* note 7, at 86 ("Notwithstanding the provisions of the UN...Charter or the UN General Assembly Resolution, the customary usage of economic force since the drafting of these documents and the weight of political and scholarly opinion validate the rights of the state to use the economic instrument coercively for the good of a single nation or the world in general."). *But cf.* Seidl-Hohenveldern, *supra* note 31 at 12 ("We thus may safely assume, that there exists a consensus declaring illicit the most extreme uses of economic force. The problem remains, where this line is to be drawn.").

VII. A Violation of Human Rights as a Justification for Economic Sanctions by the United Nations

The United Nations Security Council has the power and the will to use economic sanctions to punish violations of human rights norms.⁹⁷ The enforcement of human rights by the UN is a very recent development. The Cold War created a State of inertia in the Security Council that restricted many forms of action including the enforcement of human rights.⁹⁸ Since the end of the Cold War, the UN Security Council has attempted to answer people who, “cry out for the international community to bring an end to their sufferings caused by political oppression, persecution, famine, or other disasters.”⁹⁹ At present, the Security Council agrees that the enforcement and preservation of human rights is its responsibility.¹⁰⁰ Therefore, the Security Council attempts to forward the cause of human rights by authorizing economic sanctions to coerce changes in a violating State’s human rights policy.¹⁰¹

To justify Security Council action in the area of human rights, the Council has expanded the historical definition of “threat to the peace.” Historically, a “threat to the peace” was understood to be a volatile situation or act of aggression by a State or group of States that menaced the territorial integrity of another State or group of States. The Security Council has broadened this definition to include “mass

⁹⁷ Bills, *supra* note 69, at 114. (“[T]he Security Council has both the authority and the will to enforce human rights.”). *Cf.* Fausey, *supra* note 22, at 193 (“The imposition of collective sanctions is a tool used increasingly by the United Nations in response to violations of international human rights law.”).

⁹⁸ *See supra* note 69 and accompanying text.

⁹⁹ Richard B. Lillich, *ARTICLE: The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World*, 3 *TUL. J. INT’L & COMP. L.* 1, 17 (1995).

¹⁰⁰ *Cf.* Bills, *supra* note 69, at 107 (“The end of the Cold War marked a turning point in the world’s political, social, and economic makeup. Efforts led by the United Nations in general and the Security Council in particular resulted in a new emphasis on democracy, humanitarian needs, and human rights.”). *See also Id.* at 129 (“Human rights initiatives have become an important part of the Council’s work in the post-Cold War era.”).

¹⁰¹ *See id.* at 4 (“Even though the Charter does not specifically grant the council the authority to initiate economic sanctions or military intervention to protect human rights in crisis situations, such inherent power recently was validated by Resolution 794, adopted in December 1992 in response to the Somali crisis.”).

violations of human rights.”¹⁰² The Council argues that a violation of human rights will ultimately expand to affect the security of other States. In addition, the global community needs a multi-national enforcement mechanism to enforce human rights norms and the Security Council has stepped in to fulfill this need. In fact, the condition precedent of a “threat to the peace” may be vanishing from Security Council practice. In recent practice, the Security Council has failed to explain how the violation of human rights that justifies economic sanctions is a “threat to the peace.”¹⁰³ The broadened definition of a “threat to the peace” and its subsequent diminution in importance have significantly expanded the Security Council’s power.

The UN Security Council’s present power to authorize economic sanctions based on a violation of human rights is extensive. When the Security Council authorizes economic sanctions against a State based on a human rights violation, its action is essentially a collective reprisal,¹⁰⁴ i.e., the Security Council attempts to enforce current internal human rights law¹⁰⁵ with economic sanctions. Essentially, the Council has the power to act as judge, jury, legislature, and police force when authorizing economic sanctions based on a violation of human rights.¹⁰⁶ As judge

¹⁰² Schachter, *supra* note 72, at 21. *See also* Lillich, *supra* note 99, at 5 (“[T]he Council...has found a State’s violations of human rights to constitute a threat to the peace and has consequently adopted mandatory sanctions against that State.”). *See also* Frowein, *supra* note 79, at 125 (“To a growing extent gross and flagrant violations of human rights are no longer seen as only human rights violations but also as a possible threat to the peace which can trigger the application of Chapter VII of the United Nations Charter.”) Gowlland-Debbas, *supra* note 67, at 1 (“The Council’s determinations under Article 39 of the charter that there exists a threat to the peace, or breach of the peace (though so far not act of aggression), have served as the basis for the adoption of” sanctions against many States and non-State entities.”)

¹⁰³ *See* Kirgis, *supra* note 73, at 514 (“When the Security council first imposed limited economic sanctions on Haiti in June 1993, the discussion concerned the urgent need to relieve the humanitarian crisis within the country and to foster a return to democracy. There was scarcely any mention of a threat to international peace and security.”).

¹⁰⁴ *See supra* notes 41-48 and accompanying text.

¹⁰⁵ Frowein, *supra* note 79, at 125 (“Human rights form part of international law.”).

¹⁰⁶ *Cf.* Al-Anbari, *supra* note 13, at 372 (stating, “It is true that Article 39 of the Charter requires the Council to make a determination as to ‘the existence of any threat to the peace, breach of the peace or act of aggression’ before making its

and jury, the Security Council determines which States to accuse, and whether or not a violation of human rights has occurred. As legislature, the Security Council determines how to define the human right that has been violated.¹⁰⁷ As police force, the Security Council determines that economic sanctions should be enacted against the violating State. Because of its monopoly on the process, the Security Council's power to punish a violation of human rights is extensive.

Perhaps the most incredible facet of this new Security Council power is the Council's ability to interfere with domestic violations of human rights. Under current international law, the UN Security Council may authorize or require other world States to implement economic sanctions in an attempt to coerce a target State's domestic human rights policy. This ability offends traditional concepts of sovereignty. Traditionally, similar violations have been considered within the domestic jurisdiction of the violating State. However, States are no longer able to hide behind the banner of domestic jurisdiction when it violates the human rights of its own citizens.¹⁰⁸ This diminished respect

recommendations or decisions as to 'what measures shall be taken in accordance with Articles 41 and 42...' Such a determination is equivalent to a judgment that an international crime has been committed, but the punishment to be imposed is left totally to the discretion of the Council which in practice means the five permanent members.").

¹⁰⁷ Cf. *supra* notes 102-103 and accompanying text.

¹⁰⁸ See Fielding, *supra* note 84, at 555 ("[M]assive violations of human rights, even though they take place internally with no or only indirect external effects, can jeopardize international peace and security; hence, they may constitute a threat to peace."). See also *id.* at 568 ("[T]he ability of the Security Council to protect international peace and security, whether the threat has direct or immediate trans-border effects or not, whether the threat involves the use of force or not, or whether the threat arises from a newly recognized threat, is witness to the flexibility of the language of the U.N. Charter. Perhaps the activism of the Security Council, in recognizing new threats to peace, may lead to an emerging right of all individuals to be secure and to have peace within the territorial confines of their State, whether a threat arises across a border or internally."). See also David P. Forsythe, *The Politics of Efficacy: The United Nations and Human Rights*, in *POLITICS IN THE UNITED NATIONS SYSTEM* 247 (Lawrence S. Finkelstein, ed. 1988) ("In the area of human rights the UN has moved from an early deference to State consent to an increasing use of majority decision to override State consent."); Fielding, *supra* note 84, at 554-555 ("It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind

for domestic jurisdiction may or may not be seen as a welcomed evolution to traditional concepts of sovereignty or as a license to disregard and disrespect State independence. In either case, the Security Council has determined that domestic human rights violations constitute an international "threat to the peace" and subsequently, justify the authorization of economic sanctions.

The ambiguous definition of human rights norms by the international community allows the Security Council a great deal of freedom to define such norms as it sees fit. Most States agree that the "fundamental rights of the human person create obligations erga omnes which must be respected by all States."¹⁰⁹ Not surprisingly though, there is debate over what these obligations contain. On the foundation of a few vague references to human rights in the UN Charter,¹¹⁰ the UN General Assembly has created a variety of "human rights treaties,"¹¹¹ which have attempted to create a shared definition of human rights. However, the General Assembly is not a legislative body,¹¹² and many States have not become parties to these human rights treaties or accepted the definition of human rights contained therein. Therefore, when the Security Council determines that a violation of human rights has occurred, the Council itself defines the human right that has been violated.

Security Council authorization to use economic sanctions based on a human rights violation will inevitably be premised on a definition of human rights that is not accepted by the offending State. For example, the United States consistently denies that the death penalty violates international human rights norms, while nearly the entire developed world disagrees. The United States does not believe that the Security

which human rights could be massively or systematically violated with impunity."); *Id.* at 555 ("The legal right of the international community to reach within a State to protect a population from massive human rights violations is supported by the concept of popular sovereignty."); Bills, *supra* note 69, at 113 ("Recent Security Council action shows a trend not only in recognizing the ability of the Council to become involved in situation over the claims of sovereign rights, but also in the Council's willingness to do so as a means of fulfilling its mandate to maintain international peace and security.").

¹⁰⁹ Frowein, *supra* note 79, at 125.

¹¹⁰ Schachter, *supra* note 72, at 20 ("Its [human right's] beginnings were not auspicious. The Charter references are slight.").

¹¹¹ Forsythe, *supra* note 108, at 250.

¹¹² See *supra* note 77 and accompanying text.

Council has the right to authorize economic sanctions against it based upon the use of the death penalty because the United States has determined that use of the death penalty does not violate human rights. However, the Security Council could claim that the United States has violated human rights norms and authorize the use of economic sanctions against the United States. In such situations, the real conflict is over who should determine (define) what human rights are and when they have been violated. In other words, States disagree over whether such determinations should be made by the domestic government or the Security Council.

The extreme power that the Security Council has in the area of human rights has led many UN member States to carefully consider modern human rights law as the new imperialism.¹¹³ The West's control of the Security Council and the world economy have combined to create an extremely powerful way to coerce the cultures of third-world States. The Security Council acts as judge, jury, legislature, and police force by enforcing a view of the world through western eyes. Then the more developed world States enforce the Security Council's decision to enact economic sanctions. The third-world has few if any means to combat this coercion. Ultimately, the third-world is left to choose between adjusting their culture and economy to western ideas or suffering the consequences of economic sanctions. At the same time, the most important aspect of most third-world States' domestic goals is economic development. It is difficult to argue that the Security Council is not enforcing a new form of imperialism.

The extensive power of the Security Council to punish violations of human rights obviously creates the possibility for abuse of such power.¹¹⁴ As with most concentrations of power, whether or not the end result of the Council's enforcement of human rights is just will depend upon the people in power. It may be that the Security Council's desire to enforce human rights norms is motivated by a sense of compassion for the people of the world and a desire to do justice. Few States would disagree with the general exigency for enforcing human rights norms. People are suffering, and someone must help. The Security Council

¹¹³ Generally, the more developed States have the power to enforce their version of human rights. Their version of human rights is commonly in conflict with cultural beliefs held by less developed States. Therefore, the new imperialism forces less developed States to adopt the beliefs of more developed States.

¹¹⁴ Kirgis, *supra* note 73, at 506 (There is a possibility of abuse of power by the Security Council.). See *supra* notes 97-114 and accompanying text.

argues that if it does not perform this function, no one will. If one believes in modern human rights law, as enforced by the UN Security Council, the use of economic sanctions to enforce human rights norms may be the beginning of a new world order based on international justice for the individual enforced through economic sanctions. However, it may be that the Security Council's desire to enforce human rights norms is motivated by a desire to create a homogeneous world built in the image of, and for the benefit of, developed western States. In either case, the exercise of Security Council power to enact economic sanctions based on a violation of human rights is sure to be the subject of much scrutiny over the coming years.

VIII. Expanding the Scope of Economic Sanctions to Affect Third-Party States

Once a sending State has decided to enact economic sanctions against a target State, it will strive to make the target State's economic deprivation as complete as possible. If the target State is able to locate alternative trading partners, the economic deprivation caused by the sending State's economic sanctions will be negligible. In addition, current trading relationships with the target State may negate the effect of the sending State's economic sanctions. Therefore, sending States have found means through which they expand the scope of economic sanctions to restrict the availability of alternative trading partners of the primary target State, including current trading partners of the primary target State, within the scope of the given program of economic sanctions.

A sending State may expand the scope of its economic sanctions by involving third party States.¹¹⁵ A sending State may enact secondary and tertiary economic sanctions against third-party States that are economically involved with the target State. When a sending State uses secondary economic sanctions, it sanctions firms or States that trade or invest with the primary target State.¹¹⁶ When a sending State uses

¹¹⁵ Third-party States are States other than the sending state, and the official target State(s).

¹¹⁶ See DANIEL W. DREZNER, *THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS* 316 (1999) ("Another type of economic pressure that has recently captured attention is the use of extraterritorial, or secondary, sanctions. In these situations, the United States threatens to sanction firms or countries that trade or invest in a country that it has already sanctioned.").

tertiary economic sanctions, it sanctions firms or States that trade with the firms or States that are sanctioned under secondary economic sanctions. For example, "the Arab boycott against Israel includes a secondary boycott that forbids Arab states from trading with parties that the Arab League Boycott Committee designates to have contributed to Israel's economic and military strength. It also includes a tertiary boycott that forbids the use of materials, equipment, or services of blacklisted firms by Arab countries."¹¹⁷ In sum, secondary and tertiary economic sanctions may be used to expand the scope of traditional bilateral economic sanctions to include third-party States that have economic relationships with the primary target State.

The sending State's desired result from these secondary and tertiary economic sanctions is two-fold. Primarily, these sanctions should destroy current trading relationships other States have with the primary target State. If the secondary or tertiary target State's economic relationship with the sending State is more important to it than its relationship with the primary target State, the secondary or tertiary target State will, in theory, discontinue its relationship with the primary target State. Additionally, secondary and tertiary sanctions are designed to discourage any new States from filling the void created by such sanctions. The use of secondary and tertiary economic sanctions threatens all States with potential retribution for trading with the primary target State. Therefore, secondary and tertiary sanctions are designed to destroy current trading relationships between the primary target State and third-party States, as well as to discourage other third-party states from establishing new trading relationships with the primary target State.

Another technique that a sending State may employ to expand the scope of its economic sanctions is to control the trading practices of foreign subsidiaries of domestic corporations. An international corporation will commonly have one State of nationality (or incorporation), and multiple States of residence. The State of incorporation may claim jurisdiction over the entire corporation under the nationality principle.¹¹⁸ For example, if corporation A is headquartered in New York City, corporation A must comply with United States sanctions regulations. If Corporation A has a subsidiary office abroad, this foreign subsidiary will also be considered a U.S. corporation

¹¹⁷ SHAMBAUGH, *supra* note 5, at 24.

¹¹⁸ The nationality principle holds that a sovereign State has the right to control the conduct of its citizens.

by the U.S. government. Therefore, the U.S. sanction regulations will restrict the trading practices of the foreign subsidiary. Through this technique of extraterritorial regulation, the United States has expanded its program of economic sanctions into the territory of a third-party State. In addition, the United States is regulating the conduct of foreign nationals employed by the foreign subsidiary of corporation A. The technique of extraterritorial regulation over foreign subsidiaries of domestic corporations provides a means through which sending States may expand the scope of their economic sanctions.

Most third-party States of residence, which house the subsidiaries of a sending State's domestic corporation, do not approve of the use of extraterritorial regulation by sending States.¹¹⁹ From the perspective of such third-party States of residence, the sending State is invading the third-party State of residence's sovereign right to control its own economic policy and nationals.¹²⁰ The third-party State of residence claims jurisdiction over the foreign subsidiary corporation under the territoriality principle¹²¹ and over its employees under both the territoriality and the nationality principles. International law does not provide an answer to this conflict of concurrent jurisdiction between the sending State or State of incorporation and the third-party State of

¹¹⁹ Cf. Peter L. Fitzgerald, *Pierre Goes Online: Blacklisting and Secondary Boycotts in U.S. Trade Policy*, 31 VAND. J. TRANSNAT'L L. 1, 78 (1998) ("[I]t is not uncommon for governments to resist the extraterritorial application of the U.S. blacklists and controls. Such resistance aims not so much to espouse the interests of the other countries' nationals and companies, although that is certainly part of the motivations, as to preserve those countries' interests in notions of state sovereignty and jurisdiction. This resistance manifests itself in a variety of government-to-government communications ranging from private diplomatic communications, to public statements or debate in both domestic and international for a, to the passage of blocking legislation, and the pursuit of international remedies where available.").

¹²⁰ See SHAMBAUGH, *supra* note 5, at 28 (quoting Raymond Vernon, "The network of the multinational enterprise can become a conduit through which the power of one sovereign state is projected into the territory of another"). See also Snell, *supra* note 38, at 218 ("[E]xtraterritorial application of one's own domestic law may interfere with others' ability to order their lives according to the norms of their choice"). Cf. DREZNER, *supra* note 116, at 317 ("The host countries inevitable see extraterritorial sanctions as a violation of their sovereignty.

¹²¹ BLACK'S LAW DICTIONARY 857 (7th ed. 1999) ("Jurisdiction over cases arising in or involving persons residing within a defined territory.").

residence.¹²² Even though the current legal status of this action has not been resolved,¹²³ sending States have effectively utilized the technique of extraterritorial regulation over foreign entities to expand the scope of their economic sanctions.

If the impacts of economic sanctions on third-party States are derived from secondary or tertiary economic sanctions, the sending State must be able to justify its use of economic sanctions under international law. Primarily, sending States argue that third-party State's trade relationships with the primary target State makes the third-party State trading partner a type of co-conspirator. In essence, the sending State argues that the third-party state is merely an extension of the target State. Therefore, whatever justification the sending State claims for the initial program of economic sanctions against the primary target State is expanded to include all third-party States that have trade relations with the primary target State. As a result, these sanctions will commonly be reprisals that are justified by a prior violation of international law by the primary target-state or by UN Security Council authorization. Third-party States contest the validity of the extension of the target State's responsibility for the prior violation of international law by the primary target State. Third-party states commonly argue that the mere existence of trade relations between a third-party State and the primary target State does not justify international coercive actions, such as economic sanctions. Regardless, the ultimate motivation for the sending State to use secondary and tertiary economic sanctions is to expand the effectiveness of its economic sanctions, and not to punish the third-party

¹²² Snell, *supra* note 38, at 304 ("Unfortunately, international law has yet to develop mechanisms for resolving the conflicts arising under the present system of concurrent jurisdictions. States are thus left relatively free to define the scope of their own jurisdiction.").

¹²³ See Lowenfeld, *supra* note 12, at 100-101 ("The question remains whether the link between the parent corporation, clearly subject to the territorial jurisdiction of the state imposing the sanction, and the member of the multinational enterprise established in another country, is sufficient to support application of a prohibition by the sanctioning state to the foreign unit – branch or subsidiary."). See also SHAMBAUGH, *supra* note 5, at 27 (stating that the, "conflict of concurrent jurisdiction over property, licensing rights, technical know-how, and the actions of individuals and firms have created an unresolved question of who has sovereign authority over these individuals, firms, and resources."). See generally Kenneth R. Feinberg, *Economic Coercion and Economic Sanctions: The Expansion of United States Extraterritorial Jurisdiction*, 30 AM. U. L. REV. 323 (1981).

States for the actions of the primary target State. The sending States conspiracy argument seems terribly weak. However, whether the sending State's claimed justification for secondary and tertiary economic sanctions is satisfactory under international law has not been conclusively determined.

IX. Effectiveness of Economic Sanctions

Many factors influence whether economic sanctions achieve their stated policy objective.¹²⁴ In addition to basic economic concerns,¹²⁵ the "personalities of national leaders,"¹²⁶ "the kaleidoscope of contemporaneous world events,"¹²⁷ "the degree of competence in the use of the [economic sanction] instrument, and the effectiveness of political endeavors to terminate the conflict on favorable terms"¹²⁸ all influence the end result of economic sanctions. In fact, "[h]uman personalities and plain luck may well determine the outcome of a sanctions episode."¹²⁹ The aforementioned factors combine to create a complex system of causation that influences the success or failure of economic sanctions.

The most difficult aspect of determining whether economic sanctions are successful may be the ambiguity of the objective sought by the sending State. David Cortright and George Lopez state that:

The calculation of effectiveness [of economic sanctions] is a highly complex and nuanced process that must take into account all the purposes that sanctions may serve, stated and unstated, instrumental and symbolic. Such a process does not lend itself to convenient quantification or simple conclusions of success or failure.¹³⁰

¹²⁴ See SCHARFEN, *supra* note 7, at 180 (stating, "the utility of economic force depends upon many related factors").

¹²⁵ See DAVID CORTRIGHT & GEORGE A. LOPEZ, *THE SANCTIONS DECADE, ASSESSING UN STRATEGIES IN THE 1990S* 18 (2000) (stating, "[t]he success of sanctions also depends on a range of objective economic factors").

¹²⁶ HUFBAUER & SCHOTT, *supra* note 4, at 79.

¹²⁷ *Id.* at 79.

¹²⁸ SCHARFEN, *supra* note 7, at 180.

¹²⁹ HUFBAUER & SCHOTT, *supra* note 4, at 79.

¹³⁰ CORTRIGHT & LOPEZ, *supra* note 125, at 19.

Policy makers may claim that a program of economic sanctions is designed to achieve a specific objective. This specific objective is most commonly a change in the target State's policies. If this is the claimed objective, the cursory determination of whether the economic sanctions are successful is simple. One must merely determine whether the target State modified its policies.

It should be noted that the sending State's policy maker may have other objectives that she does not state. In fact, the sending State's policy maker may not expect to achieve the stated policy objective but only an unstated objective.¹³¹ In such a situation, the actual objectives of economic sanctions may be instrumental or symbolic. For example, an instrumental objective might be to use economic sanctions to impact the target State's economy and nothing further. A symbolic objective would be to use the economic sanctions to make a statement to varied audiences. These audiences may include the policy maker's State, the target State, and third-party States. However, making a determination as to whether these unstated objectives have been reached is near impossible. Only the policy makers know whether their unstated objectives have been achieved. Due to this ambiguity of the actual objective of economic sanctions, it is very difficult to have a comprehensive analysis of the success of economic sanctions.

The relationship between the temporal aspect of sanctions and their objectives adds to the complexity of determining whether economic sanctions are successful. Economic "sanctions are applied over time, and their immediate objectives may shift in emphasis over time."¹³² Due to the many varied factors that influence the outcome of economic sanctions, policy makers are likely to modify the objectives that they seek throughout the program of economic sanctions. Therefore, analyzing whether economic sanctions are successful depends greatly on what point in time one is analyzing the program and which objective of the program is used for the analysis. It is possible that economic sanctions achieve their initial goal and are not discontinued so that they may achieve a secondary goal. It is also possible that the initial goal is not achieved but that a latter goal is achieved. Determining which objective must be achieved and the degree of success for each objective is extremely complex. The fact that the objectives of economic sanctions

¹³¹ See *id.* at 18 ("[T]he major states that dominate sanctions policy may have purposes in mind that differ from the officially stated objectives.").

¹³² MICHAEL P. MALLOY, *ECONOMIC SANCTIONS AND U.S. TRADE* 629 (1990).

are modified over time is a further aspect of the complex determination of whether economic sanctions are successful.

Nearly all scholarly analyses conclude that economic sanctions are generally unsuccessful.¹³³ In addition to analytical analysis, this conclusion is supported by conventional wisdom.¹³⁴ It is clear that, "tracking the effect of sanctions in any direct causal sense is not an easy matter."¹³⁵ However, different scholars have attempted to answer the question of whether sanctions are successful. To date, the most complete scholarly analysis of the success of economic sanctions claims that economic sanctions have the modest success rate of thirty-six percent.¹³⁶ The only real debate "among sanctions scholars 'relates to the degree to which sanctions fail.'"¹³⁷ As a result, it is well settled that scholars have determined that economic sanctions are generally unsuccessful.

Policy makers, not scholars, determine whether to use economic sanctions, and in turn, whether sanctions are successful.¹³⁸ To begin an analysis of a proposed program of economic sanctions, policy makers must determine the specific objective(s) of the economic sanctions.¹³⁹

¹³³ See, e.g., THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, ALTERING U.S. SANCTIONS POLICY, FINAL REPORT OF THE CSIS PROJECT ON UNILATERAL ECONOMIC SANCTIONS 11 (1999) ("The heart of the matter is to assess whether the use of sanctions as currently pursued is effective in achieving the desired foreign policy objectives. We have examined the record and concluded that it is not"). See also Nincic & Wallenstein, *supra* note 9, at 5 (stating, "instances of major policy changes under economic pressure are quite rare"); Galtung, *supra* note 17, at 46 (stating, "the conclusion about the probable effectiveness of economic sanctions is, generally negative").

¹³⁴ See CORTRIGHT & LOPEZ, *supra* note 125, at 13 (stating, "[T]he conventional belief, seemingly supported by the scholarly research, is that sanctions do not work.") See also Abbott, *supra* note 17, at 783 n.16.

¹³⁵ MALLOY, *supra* note 132, at 629.

¹³⁶ See HUFBAUER & SCHOTT, *supra* note 4, at 80 (stating that, "sanctions have been "successful"—by our definition—in 36 percent of the cases overall"). See, e.g., *id.* at 10 ("Sanctions often do not succeed in changing the behavior of foreign countries.").

¹³⁷ CORTRIGHT & LOPEZ, *supra* note 125, at 13.

¹³⁸ Cf. Kaempfer & Lowenber, *supra* note 66, at 159 (bringing to light the fiction of a rational, individual policy maker, stating, "[p]ublic choice theory requires for the most part that we reject single rational-actor models of international relations in favor of an analysis of domestic interest-group pressures").

¹³⁹ See Abbott, *supra* note 17, at 785 citing HUFBAUER & SCHOTT, *supra* note 4 (stating that, such objectives commonly are: "(i) to effect change in a major

When the objectives of the economic sanctions are defined, the policy makers estimate the degree of influence the economic sanctions will have upon the subsequent behavior of the target State.¹⁴⁰ To make this estimate of success, policy makers might compare the proposed program of economic sanctions to a similar program that has already occurred. However, an accurate analysis of a similar, previous program of economic sanctions may not be available. Furthermore, even if a thorough analysis of the previous program is available, the ever-changing factors that influence the outcome of economic sanctions may make the comparison an inaccurate predictor. Nonetheless, policy makers must still decide whether or not to use economic sanctions and whether or not economic sanctions are successful.

At first glance, the increasing use of economic sanctions¹⁴¹ by policy makers seems to demonstrate that policy makers believe economic sanctions to be successful.¹⁴² If policy makers do not believe that economic sanctions are successful, why would they continue to use them? Why would policy makers have exponentially increased their use

policy of the target State; (ii) to effect change in a modest policy of the target; (iii) to destabilize the target State's government; (iv) to impair its military potential; and (v) to disrupt a minor military adventure"). See also HUFBAUER & SCHOTT, *supra* note 4, at 80 (stating, "the success rate importantly depends on the type of goal sought"). See also MALLOY, *supra* note 132, at 628 n.3 ("The critical policy question involves determining the objective (against which the effectiveness of the instrument will then be measured).").

¹⁴⁰ See HUFBAUER & SCHOTT, *supra* note 4, at 32 ("The 'success' of an economic sanctions episode—as viewed from the perspective of the sender country—has two parts: the extent to which the policy outcome sought by the sender country was in fact achieved, and the contribution made by sanctions to a positive outcome").

¹⁴¹ See CORTRIGHT & LOPEZ, *supra* note 125, at 13 ("More than fifty new episodes [of economic sanctions] have occurred during the 1990s"). See also SHAMBAUGH, *supra* note 5, at 202 ("Economic sanctions and incentives are often maligned, misused, and misunderstood, yet they are increasingly the policy tools of choice"). Cf. SCHARFEN, *supra* note 7, at 136 ("[T]he question as to whether or not economic force 'works' is nearly moot. Notwithstanding ratios of success to failure, all indications are that economic force is being used and will be used with greater frequency").

¹⁴² Cf. CORTRIGHT & LOPEZ, *supra* note 125, at 13 (questioning if, "sanctions work" and responding, "[g]iven the frequency with which sanctions have been imposed in the last decade, policy makers seem to be answering in the affirmative").

of economic sanctions in the past few years? It is difficult to imagine that policy makers are ignorant of the extensive studies on the success of economic sanctions that consistently demonstrate that they fail to achieve the stated modification of policy in the target State. As time passes, "sanctions are a decreasingly useful policy instrument" due to the "growth in global economic interdependence," which has "made it easier for target countries to find alternate suppliers, markets, and financial backers to replace goods embargoed or funds withheld by the sender country."¹⁴³ Nonetheless, policy makers continue to increase their use of economic sanctions.¹⁴⁴ Though the reasons may not be clear, policy makers must find merit in the use of economic sanctions beyond the mere likelihood of achieving the stated policy goal.¹⁴⁵

The actions of the United States demonstrate this seemingly incongruent situation where policy makers continue to use economic sanctions in spite of their almost certain failure. In the 1990s, the U.S. programs of unilateral economic sanctions "have been almost entirely ineffective in achieving their intended foreign policy objectives."¹⁴⁶ During the same period, the growth of the international trading community has made it easier for target States to locate alternative suppliers and markets.¹⁴⁷ This has only increased the likely failure of economic sanctions. However, the use of unilateral economic sanctions by the United States continues to be extensive. Therefore, it is extremely important to ask why the United States would continue to use economic

¹⁴³ HUFBAUER & SCHOTT, *supra* note 4, at 81. See also COLLINS & BOWDIN, *supra* note 65, at 6 ("[T]he globalization of the international economy, the rapid development of worldwide communications, and the spread of the Internet have also tended to make both unilateral and multilateral sanctions increasingly ineffective").

¹⁴⁴ See Ted Galen Carpenter, *Eagle in the China Shop: The Economic Consequences of U.S. Global Meddling*, in ECONOMIC CASUALTIES HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY 8 (Solveig Singleton & Daniel T. Griswold eds. 2001) ("[T]hey [economic sanctions] are often imposed even when there is virtually no prospect that they will achieve their stated objective.").

¹⁴⁵ Cf. Kaempfer & Lowenber, *supra* note 66, at 159 ("Such pessimistic conclusions [scholarly claims of failure] are somewhat puzzling in the light of the fact that recent years have seen an increase rather than a decrease in the use of sanctions").

¹⁴⁶ See *id.* at 2-3, 200 (analyzing the U.S. unilateral economic sanctions enacted against: Cuba, Iran, Vietnam, Asia, and China).

¹⁴⁷ See *infra* Part VIII.

sanctions in the face of the apparent decreasing utility of economic sanctions.

As was previously noted, often times the actual objectives of economic sanctions are consistently unstated by policy makers. Because the scholarly analyses of economic sanctions uses the stated policy objective to measure success, the scholarly analysis on this matter does not represent the view of policy makers. Perhaps economic sanctions are primarily a political tool,¹⁴⁸ and any effects that they have upon the target State are welcome, but unexpected. Economic sanctions may merely be “symbols”¹⁴⁹ that policy makers use to communicate with their own State, the target State and third-party States.¹⁵⁰ The main objective of economic sanctions may simply be to satisfy the domestic political needs of the policy maker who needs to appear to be doing something about a given problem.¹⁵¹ For example, when Britain imposed sanctions against

¹⁴⁸ See HUFBAUER & SCHOTT, *supra* note 4, at 2 (“[S]anctions also serve important domestic political purposes in addition to whatever change they may bring about in the behavior of foreign states.”)

¹⁴⁹ See CORTRIGHT & LOPEZ, *supra* note 125, at 16 (“In addition to their official or publicly declared objectives, sanctions can be imposed for symbolic purposes.”). See also Kaempfer & Lowenber, *supra* note 66, at 187-188 (“In such approaches [to the signaling qualities of sanctions in collective security], the automatic imposition of economic sanctions after some act of aggression is intended to signal the community’s disapproval and remind the offender that unless amends are made, a war of all against one will ensure.”).

¹⁵⁰ See Abbott, *supra* note 17, at 792 (stating, “economic sanctions may be aimed as much at influencing third countries and setting the stage for future transactions as at changing the policies of the immediate target State”). Compare Drezner, *supra* note 66, at 214 (stating, “sanctions are symbols; their effectiveness is of secondary concern”) with HUFBAUER & SCHOTT, *supra* note 4, at 10 (stating, “the imposition of sanctions conveys a triple signal: to the target country it says the sender does not condone your actions; to allies, it says that words will be supported with deeds; to domestic audiences it says the sender’s government will act to safeguard the nation’s vital interests”).

¹⁵¹ See BALDWIN, *supra* note 17, at 65 (“Neither war nor economics can be divorced from politics; each must be judged as an instrument serving the higher goals of the polity.”); Abbott, *supra* note 17, at 788 (stating, “economic sanctions are frequently aimed at (i) multiple audiences, of which the immediate target State may not even be the most important; and (ii) multiple goals, not just the coercion of the immediate target State through economic pressure”). See also HUFBAUER & SCHOTT, *supra* note 4, at 9 (“[S]anctions often are imposed because the cost of inaction—in lost confidence at home and abroad in the ability or willingness of the US to act—is seen as greater than the cost of the

Italy in response to Italy's invasion of Abyssinia, "domestic political considerations appear to have been of more concern to policymakers than was the potential effectiveness of the technique of sanctions."¹⁵² The unstated objectives of economic sanctions are likely to communicate as symbols and to satisfy the domestic political needs of policy makers. If the achievement of these unstated objectives is used to determine the success of economic sanctions, the likelihood of success would increase greatly. In such studies, it might even be said that economic sanctions are always successful. Merely using economic sanctions may satisfy the domestic political needs of the policy maker as well as make them symbols that communicate with other States. Perhaps this assured political success is why policy makers continue to use economic sanctions.

It is apparent that policy makers' decisions to use economic sanctions are directly opposed to the scholarly studies that determine that economic sanctions generally fail. In the words of Gary C. Hufbauer:

Lurking behind the conventional rationale [for economic sanctions] are pragmatic reasons that too often come into play: congressmen, governors, and mayors who sponsor sanctions can reap all the political thrill of playing "Secretary of State for a Day" without bearing any of the responsibility.¹⁵³

Hufbauer points to the unstated motivation for the use of economic sanctions: political utility. Policy makers' decisions to use economic sanctions are not based upon the potential success of economic sanctions but instead upon the immediate political benefits of the action.

sanctions"). Compare Drezner, *supra* note 66, at 213 ("[S]anctions are often imposed half heartedly by sender governments, out of a need to satiate domestic political pressure to do something in response to some aspect of target behavior") with CORTRIGHT & LOPEZ, *supra* note 125, at 13 ("[S]anctions are considered 'an ineffective bromide intended to placate public demands for action but incapable of achieving real results'").

¹⁵² MALLOY, *supra* note 132, at 626.

¹⁵³ Gary C. Hufbauer, *Economic Sanctions: America's Folly*, in ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY 92 (Solveig Singleton & Daniel T. Griswold eds. 2001).

X. Costs of Economic Sanctions

Even though economic sanctions are generally unsuccessful in achieving the stated foreign policy goal, they have instrumental effects that impact the sending State, the target State, and third-party States.¹⁵⁴ These instrumental effects are the direct and immediate costs of economic sanctions as “instruments of foreign policy”¹⁵⁵ and may be “political, military, or psychological as well as economic.”¹⁵⁶ Individuals and States must pay the costs imposed when the sending State enacts economic sanctions.

The instrumental effects of economic sanctions on the sending state are generally economic.¹⁵⁷ These effects include the modification or destruction of private relationships, such as vested property rights through blocking assets, and existing contractual obligations made impossible by export and/or import controls.¹⁵⁸ These costs are generally borne by domestic corporations.¹⁵⁹ The present operating costs of each

¹⁵⁴ Cf. Kaempfer & Lowenber, *supra* note 66, at 159 (“[S]anctions are costly to the sanctioning countries as well as to the targets”).

¹⁵⁵ See MALLOY, *supra* note 132, at 636 (stating that the instrumental effects of sanctions are: “preventing the movement or transfer of assets already subject to the sanctioning state’s jurisdiction; limiting the flow of foreign exchange to the target state; isolating the target country from international trade and financial markets; and maintaining sanctions (and embargoes assets) as a counter or “bargaining chip” for any future resolution of the differences between sanctioning and target states”).

¹⁵⁶ BALDWIN, *supra* note 17, at 128.

¹⁵⁷ See SHAMBAUGH, *supra* note 5, at 165 (“[E]conomic costs result from a variety of factors including the reciprocal nature of dependence and the threat of retaliation; the negative repercussions of sanctions on the reliability and competitiveness of domestic firms; and the incentives that sanctions create for the indigenous foreign development of restricted resources.”). See also Robert Carswell, *The Need for Planning and Coordination of Economic Sanctions*, 19 N.Y.U. J. INT’L. L. & POL. 857 (1987) (stating that, “financial or trade sanctions have often proved not only ineffective in achieving an ascertainable objective, but have also proven to be very expensive, particularly to the U.S. business and financial sectors that are affected”); HUFBAUER & SCHOTT, *supra* note 4, at 11 ([U.S.] “business firms at home may experience severe losses when sanctions interrupt trade and financial contacts. Moreover, they may lose their reputation for reliability.”).

¹⁵⁸ See generally Georges Van Heck, *The Effect of Economic Coercion on Private Relationships*, 18 *Revue belge de droit international* 113, 115 (1984-85).

¹⁵⁹ Cf. James B. Burnham, *Export Controls: A National Emergency?*, in *ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE*,

company are increased by the direct cost of compliance with sanction regulations.¹⁶⁰ Each corporation within the sending State must ensure that it complies with the sanction regulations. This means that every affected sending State corporation must pay for individuals and technology to ensure that it complies with the sanction regulations. When economic sanctions are enacted, trading relationships between sending State and target State corporations will be destroyed because performance of any contracts between the two corporations is made impossible by the sending State's sanction regulations. The use of economic sanctions by the sending State may cause domestic business to lose future business relationships. Domestic business will pay "the cost of business never considered as well as the loss of potential foreign investment."¹⁶¹ In addition, sending States "that frequently coerce can create the reputation of being unreliable partners."¹⁶² Finally, when economic sanctions are enacted, the sending State loses the opportunity

GROWTH, AND LIBERTY 34-35 (Solveig Singleton & Daniel T. Griswold eds. 2001) (providing "a survey of ways in which an individual firm can be affected by export controls: Direct cost of compliance: Staff, legal and consultant time; recordkeeping costs. Indirect costs: Added time to respond to requests for quotations; the increased uncertainty as to whether or not a specific item requires a certain type of license. Deterrent costs: Potential business or job applicants never considered or pursued, given an estimate of the added direct cost, time, and uncertainties that would be involved. Competitive costs: Order inquiries that are never made, ideas from foreign suppliers or consultants that never get exposure; the ability of foreign suppliers or consultants that never get exposure; the ability of foreign competitors to operate in an environment with far fewer controls than the U.S. firm."). See Lash, *supra* note 12, at 13 ("Current federal sanctions block U.S. firms from participating in nuclear power projects, defense trade, and satellite launch programs. They prohibit financial transactions and loans, restrict air travel and exports, impose embargoes, block foreign firms from federal procurement, deny General System of Preferences tariff treatment, and deny visas to corporate officers and their families.").

¹⁶⁰ See *supra* note 166 and accompanying text.

¹⁶¹ Lash, *supra* note 12, at 16. See also *id.* at 15 ("While the losses of initial sales are quite large, the follow-up sales of goods, equipment, and services are sales losses that will continue for decades.").

¹⁶² DREZNER, *supra* note 116, at 320. See Cheney, *supra* note 11, at 27 (stating that it is difficult for Halliburton to, "function when our partners overseas are periodically reminded that we may not be able to carry through on a particular project because somebody here at home decides to sanctions the particular country involved—thus causing us to be viewed as an unreliable partner.").

to influence the target State through its economic involvement with the target State's businesses.¹⁶³ These costs must be borne by sending State businesses and their employees. Eventually, the sending State itself will lose tax revenue because the income of its domestic businesses has decreased. All of the above economic costs are borne throughout the sending State's economy.

When the sending State enacts economic sanctions, it chooses to bear the domestic economic costs of such action. Therefore, enacting economic sanctions is a "deliberate infliction of economic self-harm"¹⁶⁴ by the sending State. The sending State's willingness to bear this burden may be based on the importance that the sending State places on the issue at hand. However, it may simply be that the sending State policy maker fails to recognize or consider the costs of her decision to enact economic sanctions. If the former is true, it appears that the sending State should not enact economic sanctions if domestic costs are greater than the importance of the policy objective sought or the likelihood that such objective will be achieved. In contrast, if the policy maker is ill informed or does not consider the domestic costs to be of sufficient

¹⁶³ See Cheney, *supra* note 11, at 27 ("[I]t is important for us to recognize as a nation the enormous value of having American businesses engaged around the world. To recognize that engagement does more to encourage democracy and freedom, to open up societies, to create opportunities for millions of people who up until now have not been able to participate, than just about anything else we can do."). See also Robert A Sirico, *Free Trade and Human Rights: The Moral Case for Engagement*, in ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY 112 (Solveig Singleton & Daniel T. Griswold eds. 2001) ("Ronald Reagan's words are worth recalling: 'The freer the flow of world trade, the stronger the tides of human progress and peace among nations.'"); PREGG, *supra* note 10, at 223 ("maximum U.S. private sector engagement can do substantial good by promoting democratization and improved respect for human rights"). *Id.* at 9 (stating that, "[t]he loss of U.S. private sector engagement in the target country as a positive force for political as well as economic change" was one of the "six inherent downsides" of U.S. economic sanctions). *Cf. Id.* at 200 ("There is no rational explanation for the contradiction between highly praising U.S. private sector engagement in communist Vietnam and blindly condemning it in communist Cuba").

¹⁶⁴ Valerie L. Schwebach, *Sanctions as Signals: A Line in the Sand or a Lack of Resolve*, in SANCTIONS AS ECONOMIC STATECRAFT 188 (Steven Chan & A. Cooper Drury eds. 2000) (also stating, "[a] state that levies sanctions is deliberately sacrificing the benefits of an economic relationship for the sake of its position on the disputed issue").

concern, the domestic costs of economic sanctions may not affect the sending State's policy maker's decision. In either case, the enactment of economic sanctions by the sending State is a form of self-harm.

The experience of U.S. corporations provides examples of the economic costs borne by sending State business.¹⁶⁵ It has been determined that, "[e]conomic sanctions [enacted by the United States (as a sending State)] today cost the United States some \$15 billion to \$20 billion in lost exports, depriving American workers of some 200,000 well-paid jobs."¹⁶⁶ These "[e]conomic losses fall in several camps: lost sales, lost market shares, lost technology, lost foreign investment, and higher costs to American consumers and taxpayers."¹⁶⁷ William H. Lash III has summarized the situation as follows:

Observe an economic tragedy in the making. You have spent billions of dollars on establishing a first-rate corporation, employing thousands of workers worldwide. Your product is an industry leader and your technology is state of the art. In key emerging markets you have a market share of approximately 85 percent. Then, voilà, overnight you find that your government has placed two-thirds of the world's markets under sanctions, restricting your ability to sell. This story is not by horror meister Stephen King. The author of these repeated economic horrors is the U.S. government.¹⁶⁸

It is apparent that the use of economic sanctions has the potential to decimate domestic business. The extensive use of economic sanctions by the United States has created an international belief that U.S.

¹⁶⁵ See generally William C. Lane, *Caterpillar Inc.: A Case Study in America's CAT-astrophic Sanctions Policy*, in *ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY* 95 (Solveig Singleton & Daniel T. Griswold eds. 2001) (explaining how Caterpillar Inc. has paid the costs of economic sanctions).

¹⁶⁶ See, e.g., Hufbauer, *supra* note 153, at 92. Compare Lash, *supra* note 12, at 13 ("The estimated economic losses from unilateral trade sanctions are \$15 billion to \$20 billion in forgone exports annually.").

¹⁶⁷ Lash, *supra* note 12, at 13.

¹⁶⁸ Lash, *supra* note 12, at 13.

businesses are unreliable trading partners.¹⁶⁹ This belief has cost the United States international business opportunities.¹⁷⁰

It is logical to question why the United States would choose to pay such high costs for enacting economic sanctions. One possibility is that U.S. economic sanctions are motivated by national security interests that outweigh the costs of such sanctions. Perhaps the mere political utility¹⁷¹ of economic sanctions motivates U.S. policy makers to bear the domestic costs of enacting economic sanctions. In such a case, "the American people [would be] . . . overtaxed and over-regulated so that Washington can pursue the unrealistic goal of a permanent global pax Americana."¹⁷² The actual response to what motivates the United States to enact economic sanctions is likely a mix of the above two propositions.

In certain cases, economic sanctions are based on legitimate national security interests or other highly important objectives, which outweigh the costs to the sending State. In other cases, U.S. business is forced to bear the costs of economic sanctions that do not have a sufficiently important objective to outweigh the self-harm of enacting economic sanctions. The U.S. experience demonstrates that policy makers' decisions to enact economic sanctions should be carefully analyzed due to the ambiguous motivation for the infliction of economic self-harm.

The instrumental effects of economic sanctions upon the target State are in part economic but also include the human costs of suffering and death. "[S]evere economic sanctions are bound to impoverish the majority of the population, cause hyperinflation, retard the agricultural, industrial, educational and health systems while spreading crime and corruption."¹⁷³ Sending States ultimately believe that, "denying a nation the benefits of trade will cause it to suffer, and that suffering will induce

¹⁶⁹ See Lash, *supra* note 12, at 15 ("A fear of sanctions has led to many states viewing U.S. manufacturers as unreliable sources of supply and the United States as a nation that ignores the rights of private parties to freely contract.").

¹⁷⁰ Cf. Lash, *supra* note 12, at 15 ("Fear of U.S. unilateral sanctions also drives American firms from lucrative joint venture or supply opportunities.").

¹⁷¹ See *supra* notes 143-153 and accompanying text.

¹⁷² Carpenter, *supra* note 144, at 9-10. See *id.* at 7 ("It is painful enough for American businesses to accept the need to forgo commercial opportunities because of bona fide national security requirements. It is far worse to endure such interference when national security is not at stake.").

¹⁷³ Al-Anbari, *supra* note 13, at 376

a willingness to bargain.”¹⁷⁴ As a result of this belief, sending States aim to make the consequences suffered by the target State as dire as possible. In fact, economic sanctions “may have contributed to more deaths during the post-Cold War era than all weapons of mass destruction throughout history.”¹⁷⁵ For example, “various agencies of the United Nations...have estimated that they [economic sanctions against Iraq] have contributed to hundreds of thousands of deaths.”¹⁷⁶ This massive human cost is a direct result of economic sanctions.

The cost of economic sanctions to third-party States is an infringement of their sovereignty. When economic sanctions are enacted, the world economy is affected. The artificial (non-market) effects of economic sanctions influence the domestic economic policy of third-party States. This domestic policy control should fall within the control of the third-party State’s government. However, when economic sanctions are enacted, the third-party State is coerced into changing its domestic policy. If the economic sanctions involve the use of secondary or tertiary sanctions or the use of extraterritorial regulation, the infringement on the third party States will be greater.¹⁷⁷ Third-party states commonly respond to these costs through diplomatic means and enact blocking statutes¹⁷⁸ to restrict the sanction’s applicability within their territory. The infringement of sovereignty that third-party States suffer under economic sanctions is the denial of their right to self-determination.¹⁷⁹ These costs to sovereignty may not appear to be very severe. However, the resentment built up towards the sending State may become an important cost that the sending State will have to pay. For

¹⁷⁴ Schwebach, *supra* note 164, at 189.

¹⁷⁵ Mueller & Mueller, *supra* note 16, at 51.

¹⁷⁶ Mueller & Mueller, *supra* note 16, at 49. *See also* Reinisch, *supra* note 71, at 852 (“In some cases the maintenance of economic sanctions has resulted in outright humanitarian disaster. That the sanctions against Iraq had such an effect has been recognized not only by various health scientists, human rights activists, and nongovernmental organizations, but even by some UN institutions.”).

¹⁷⁷ *See supra* notes 115-123 and accompanying text.

¹⁷⁸ Blocking statutes attempt to make it illegal for the third-party State’s citizens to comply with the sending State’s economic sanctions.

¹⁷⁹ *See, e.g.,* Feinberg, *supra* note 123, at 324 (“[F]oreign criticism is two pronged: on a political and foreign policy level, the United States is seen as a meddler, interfering in the internal political affairs of independent foreign states; on an economic level, U.S. interference is viewed as a misguided effort, undercutting policies of foreign states that are designed to promote internal economic health and stability.”).

example, the British tea tax that in no small way triggered the American Revolution did not impose a significant economic hardship.¹⁸⁰ Although, “[i]t did inspire a revolution against the greatest power of the day.”¹⁸¹ All of this demonstrates that the infringement upon a third-party State’s sovereignty caused by economic sanctions should not be taken lightly.

Before enacting economic sanctions, policy makers must consider the costs of their action.¹⁸² Policy makers need to balance the importance of their policy objective against the domestic costs of enacting economic sanctions, the suffering of the target State’s citizens, and the infringement on the sovereignty of third-party states.¹⁸³ If the policy objective of the sending State is not sufficiently important to outweigh all the other costs, a rational policy maker should not enact economic sanctions. However, in reality, policy makers will most likely value the costs to their own State over the costs to the target State or third-party States.¹⁸⁴ Policy makers generally believe that their State’s costs are relatively low, especially when compared with the potential costs of military conflict. From the U.S. perspective, as articulated by the current Vice President of the United States, Dick Cheney:

The problem [with economic sanctions] in part stems from the view by my former colleagues on Capitol Hill that sanctions are the low-cost option. They are the cheap, easy thing to do. It is not necessary to appropriate any taxpayer’s money. It is not necessary to send any young

¹⁸⁰ See, e.g., Hufbauer, *supra* note 153, at 93 (“The British tea tax imposed no real economic hardship.”).

¹⁸¹ *Id.* at 93.

¹⁸² Cf. Schwebach, *supra* note 164, at 188 (questioning, “whether sanctions are sufficiently effective to justify their costs”). See SHAMBAUGH, *supra* note 5, at 165 (1999) (“[C]osts must be balanced against the benefits derived from economic statecraft before using it as a tool of foreign policy”). See also BALDWIN, *supra* note 17, at 120 (“Costs always matter to the rational decision maker, and cost estimates must be made no matter how difficult that may be”); HUFBAUER & SCHOTT, *supra* note 4, at 70, (“Policy makers need to take a close look at the cost and effectiveness of sanctions when designing foreign policy strategy.”).

¹⁸³ Cf. SHAMBAUGH, *supra* note 5, at 177 (“Once policymakers have determined whether sanctions or incentives are likely to achieve their chosen objectives, they must weigh the benefits gained by achieving those goals using economic statecraft against the economic and political costs of doing so.”).

¹⁸⁴ Cf. Mueller & Mueller, *supra* note 16, at 49 (“The dominant powers have shown that they can inflict enormous pain at remarkably little cost to themselves or the global economy.”).

Americans into combat. We are able to take a firm, aggressive action and do something about the outrageous behavior of the offending government and, many members believe, it does not cost a thing.¹⁸⁵

There is no doubt that the costs to the sending State are serious and deserve attention. Obviously, the policy makers' belief that economic sanctions do not cost a thing is erroneous. From a moral perspective, the costs to the target State and third-party States should be seriously considered. A determination of whether the policy objective justifies the suffering and death of citizens of the target State should weigh heavily on the minds of the policy makers that inflict this damage. Too often this damage does not even seem to be considered by sending States. For example, "[i]t is interesting that this loss of human life [in Iraq, due to the economic sanctions against Iraq,] has failed to make a great impression in the United States."¹⁸⁶ This disregard for the suffering in the target State may also be motivated by the belief that economic sanctions are a non-violent means of coercion. However, there is no doubt that the costs to the sending State, the target State, and third-party States are severe. Policy makers should seriously consider these costs before enacting economic sanctions.

XI. Culpability and Punishment

Economic sanctions are commonly used as economic reprisals which punish the violating State for its unwanted behavior.¹⁸⁷ The United States has become "the world's policeman in the post-cold war period" through its extensive use of economic sanctions. The U.S. has been, "'assessing fines' in lots of places for lots of offenses."¹⁸⁸ An analogy may be made between economic sanctions and domestic criminal punishment which is commonly enforced after a domestic criminal proceeding. The decision to enact economic sanctions is equivalent to an international criminal adjudication which determines guilt for a certain international crime. Through a comparison between commonly shared principles of domestic criminal law and the

¹⁸⁵ Cheney, *supra* note 11, at 24 (emphasis added).

¹⁸⁶ Mueller & Mueller, *supra* note 16, at 51.

¹⁸⁷ See *supra* notes 67-114 and accompanying text. See also Al-Anbari, *supra* note 13, at 374 ("[I]n practice sanctions have actually been used as a collective punishment."); HUFBAUER & SCHOTT, *supra* note 4, at 38 ("Sanctions are designed to penalize the target country for its unwanted behavior.").

¹⁸⁸ Yeutter, *supra* note 11, at 85.

international system of economic sanctions, the latter is shown to be dysfunctional.

The determination of guilt on the international level is highly suspect because the States involved in the conflict are the same States that decide whether a violation has occurred. An impartial international criminal court system, which would be capable of an impartial determination of guilt, does not exist. Therefore, individual States may determine that a violation of international law has occurred and enact economic sanctions as a punishment.¹⁸⁹ In addition, the U.N. Security Council is empowered to decide whether a State has violated international law and authorize economic sanctions as a punishment.¹⁹⁰ The sending State is not capable of justly deciding that the target State has violated international law because it is commonly involved in the conflict. Furthermore, the individual members of the U.N. Security Council may be involved in the conflict. Even if they are not, the UN Security Council decision-making process is highly suspect due to its autonomy and inequitable power structure.¹⁹¹ The international determination that economic sanctions should be enacted does not conform to common domestic principles of a fair trial because there is not an impartial determination of guilt.

Assuming, *arguendo*, that a sending State or U.N. Security Council decision is sufficient to justify the punishment of the target State by the sending State, the manner in which economic sanctions are used as punishment does not satisfy the basic requirement that only the perpetrator be punished for the offense that was committed. The use of economic sanctions against all the citizens of a target State is based upon the fiction that all citizens of a State are responsible for the actions of their government. Under this fiction the culpable acts of the political or military leaders of a State are imputed to the State's civilian population.¹⁹² It is self-evident that all citizens of a State are not directly responsible for the actions of their leaders. Nonetheless, the use of this fiction has created an international system of collective responsibility. In

¹⁸⁹ See *supra* notes 41-48 and accompanying text.

¹⁹⁰ See *supra* notes 78-87 and accompanying text.

¹⁹¹ See *supra* notes 78-87 and accompanying text (discussing the unjust nature of UN Security Council decisions).

¹⁹² See Al-Anbari, *supra* note 13, at 372 (“[E]conomic sanctions imposed on states or governments degenerate to a collective punishment of the people.”).

other words, guilt is imputed through mere nationality.¹⁹³ It is obvious that the use of this erroneous fiction punishes the innocent along with the guilty and violates the elementary principle of domestic criminal law that only offenders should be punished for their individual actions.

XII. Conclusion

The use of economic sanctions involves the punishment of innocent people.¹⁹⁴ Economic sanctions are designed to coerce the target State into changing its policies in the following manner: (1) economic sanctions devastate the target State's economy; (2) this devastation causes the citizens of the target State to suffer; (3) this suffering causes the citizens of the target State to modify the target State's policies, which initially motivated the sending State to use economic sanctions.¹⁹⁵ Sending States assume that the suffering of the citizens of a target State will translate into political change. Therefore, the damage inflicted by economic sanctions is not specifically placed upon the leaders of the target State, who are actually responsible for controlling the target State's

¹⁹³ Cf. Galtung, *supra* note 17, at 46 ("Sanctions against collectivities will always affect the just together with the unjust, since collective sanctions correspond to a philosophy of collective guilt."). See CORTRIGHT & LOPEZ, *supra* note 125, at 23 ("[E]conomic sanctions are 'too often a blunt instrument' and may impose hardships on a civilian population that are disproportionate to likely political gains."). See also Fausey, *supra* note 22, at 216 ("The use of collective sanctions by the U.N. to respond to violations of international human rights law is intended to lead to further human rights violations. A large number of people within the population of a nation are sentenced for the crimes of a few of its members. This aspect of the concept of sanctioning is in direct conflict with human rights principles outlined in the U.N. charter regarding living standards. The foundation of collective sanctioning makes the U.N. appear hypocritical at best when attempting to protect human rights.").

¹⁹⁴ See Hufbauer, *supra* note 153, at 93 ("[E]conomic sanctions often wreak havoc on innocent people.").

¹⁹⁵ See HUFBAUER & SCHOTT, *supra* note 4, at 38 ("In theory, the target country will weigh the costs imposed by the sanctions against the benefits derived from its continuing policies—the higher the cost, the more likely that the target country will alter its policies."). See also Nincic & Wallenstein, *supra* note 9, at 4 ("[I]t is assumed that the economic costs would induce the victim nation's decision makers, out of concern for the national welfare and their own incumbency, to abandon the course that provoked the economic retribution").

policies, but instead upon the State as a whole.¹⁹⁶ The general failure of economic sanctions demonstrates that there is no guarantee that the citizens of the target State will redirect their economic damage onto their leaders.¹⁹⁷ Therefore, when a sending State uses economic sanctions they punish the innocent civilians of target States for the actions of their leaders based on an erroneous assumption that the suffering of the citizens will translate into political change.

When one examines the political structure of common target States, the falseness of the sending State's belief that the civilian population is able to modify the behavior of their leaders is made more evident. Commonly target States are "developing countries whose regimes are authoritarian."¹⁹⁸ These authoritarian regimes "do not change their behavior as long as it is the vulnerable groups, rather than the political or military elites, which suffer most under sanctions."¹⁹⁹ The leaders and elites of these target States commonly have the ability to redirect the damage from economic sanctions onto the poor minority citizens of their State while they remain relatively unaffected. In fact, these leaders may be able to use the economic sanctions to their benefit and strengthen their power by creating a "rally around the flag" mentality among their citizens.²⁰⁰

¹⁹⁶ Cf. PREG, *supra* note 10, at 7 ("The adverse economic impact of sanctions is likely to fall predominantly on the people in the targeted country, especially the poorest, while an authoritarian government tends to become even more repressive.").

¹⁹⁷ See CORTRIGHT & LOPEZ, *supra* note 125, at 20 ("There is no assurance that a sanctioned population will redirect the pain of external coercion onto political leaders and force a change in policy, especially with the authoritarian or dictatorial regime.").

¹⁹⁸ Al-Anbari, *supra* note 13, at 375.

¹⁹⁹ *Id.* at 375.

²⁰⁰ See, e.g., Reinisch, *supra* note 71, at 851 ("[E]conomic sanctions 'theory' maintains that economic pressure on civilians will translate into pressure on the government for change, but the targeted leaders, sometimes expressly intended to be ousted by their outraged peoples, have managed to continue pursuing their policies and to stay in power. Part of the reason for this effect derives from the 'leaders' ability to 'retranslate' the message of sanctions into punishment and retribution against the country, which enhances popular support for the regime in 'rally round the flag' fashion."). See also CORTRIGHT & LOPEZ, *supra* note 125, at 23 ("Governments may use the adverse impacts of sanctions (1) to rally public support and deflect their economic effects, (2) to further centralize control of the economy and increase the repressive power of the ruling elite, or

History demonstrates the truth of the above assertions. Fidel Castro's power has not diminished due to the U.S. embargo against Cuba. Despite the devastating Iraqi economic sanctions, Saddam Hussein continues to rule. To base economic sanctions on the fiction that citizens of an authoritarian target State are responsible for the actions of their leaders, one must be blind to the reality of the situation. The leaders of an authoritarian regime do not allow their citizens, who suffer under economic sanctions, to influence their behavior. In such a situation, punishing innocent civilians for the actions of their leaders is wholly unjust.

Even in the case of a Western democratic society, it is self-evident that mere nationality does not make each citizen responsible for the actions of their leaders.²⁰¹ For example, it is clear that many U.S. citizens did not claim responsibility for the actions of the U.S. military in Vietnam during the Vietnam War. Nonetheless, under the theoretical basis for how economic sanctions are supposed to work, other nations could have enacted economic sanctions against the United States. These sanctions would have punished all citizens including those that did not support the War. Few U.S. citizens would claim to be directly responsible for all the policies and actions of their government. Even if these citizens did claim responsibility for their government's actions, none of them could directly or immediately modify the actions of the U.S. government. Therefore, it should be exceedingly obvious that the imputation of responsibility to the citizens of an authoritarian State for the actions of their leaders is completely unjust.

Considering the injustice, the general failure and the high costs of economic sanctions it is logical to question why policy makers continue to increase their use of economic sanctions. The likely answer to this question is that economic sanctions have a high political utility.

(3) to dole out resources in a 'political' manner to reward supporters and punish real or potential adversaries."); PREG, *supra* note 10, at 9 ("Sanctions are used as propaganda by target country governments to blame internal economic problems on the sanctions and to appeal to anti-American nationalism.").

²⁰¹ *But cf.* Kaempfer & Lowenber, *supra* note 66, at 185 ("[P]ublic choice theory directs attention away from sovereign nation states as agents of international relations and toward individuals and groups within these states. Policy is viewed as a product of collective choices involving voters, interest groups, politicians and bureaucrats. The unit of analysis is not the personified nations state, but rather those decision makers whose rational choices generate public policies as endogenous outcomes of a political market process.").

Economic sanctions allow political leaders to appear to be doing something about a given problem. Whether the problem will actually be resolved may not even be of primary concern. The primary concern for the policy maker is to appease her constituents. Economic sanctions provide a perfect means for doing this because most individuals do not understand the dismal success rate of economic sanctions, the costs that they themselves will pay as citizens, or the extreme damage that will be inflicted upon the target State. To the citizens of most sending States, the desire to implement economic sanctions is based upon a belief that doing so will further justice in the international community. These citizens want to improve the behavior of other States. When something happens that the citizens of the sending State view as horrible, they pressure their policy makers to do something about the problem. Policy makers will commonly respond to this situation by enacting economic sanctions. Policy makers will continue to use economic sanctions as long as the use of economic sanctions furthers their political ambitions.

The political motivation for the use of economic sanctions might diminish if the citizens and policy makers of sending States recognized the costs that they pay when they enact economic sanctions. These citizens and policy makers believe that economic sanctions will not cost them anything. They believe that to say, "I support trade sanctions on country X," means that they disapprove of the behavior of country X and such behavior is so horrible that they can no longer maintain trade relations with country X. Robert A. Sirico provides a more realistic view of economic sanctions from the U.S. perspective:

To say, "I support trade sanctions on country X," really means, "I think that American consumers ought to be punished by higher taxes for their desire to buy products from country X. American producers ought to be forced by their own government to invest someplace where they are less likely to make money. The U.S. government, not markets, ought to determine where and what people buy and sell across borders with their own money. Moreover, the people in country X ought to be denied essential goods and services and the right to enjoy the fruits of the international division of labor."²⁰²

²⁰² Sirico, *supra* note 163, at 109.

In a sending State, such as the United States, the citizens and policy makers often have a highly self-important economic outlook on the world. In the case of the United States, they may believe that the U.S. economy is so large and powerful that they will not suffer any of the consequences of breaking off trade with the target State. However, this is not a realistic view.²⁰³ The very nature of sanction regulations requires that the enactment of economic sanctions restrict the freedom of the citizens of the sending State. It is the citizens of the sending State that are no longer able to trade with the target State. It is also the citizens of the sending State that will potentially be punished for violating the sanctions regulations.²⁰⁴ If the citizens and policy makers of sending States understood the true impact of economic sanctions on their own State, it is likely that they might not continue to support their government's imposition of economic sanctions. In turn, from the perspective of the sending State's policy maker, the political utility of economic sanctions would decrease.

If the citizens and policy makers of sending States recognized the suffering and death that the enactment of economic sanctions causes in the target State, they might be less likely to enact economic sanctions. Currently, it appears that sending State's citizens and policy makers disregard the damage that will occur in the target State.²⁰⁵ From the

²⁰³ See *supra* notes 157-172 and accompanying text. Cf. Carswell, *supra* note 14, at 863 (stating in 1987 that, "the time has long since passed when we can afford not to think about trade and economic issues, including sanctions, in the context of our long-term national security goals. It is neither sound economic policy nor politically beneficial for us to continue to reduce our international economic leverage for short-term political goals.").

²⁰⁴ See CORPORATE COUNSEL'S GUIDE TO ECONOMIC SANCTIONS AND EMBARGOES 102.021 (William A. Hancock ed. 2000) (stating that the penalties for willful violations of sanction programs include fines up to \$500,000 for entities and fines up to \$250,000 and imprisonment for up to 10 years for individuals). See also *id.* at 102.021 (stating that the maximum civil penalty, per offense, enforced under the IEEPA is \$11,000).

²⁰⁵ See Mueller & Mueller, *supra* note 16, at 48 ("[T]he dangers posed to human well-being by comprehensive economic sanctions are clear, present, and sometimes devastating, yet they have often been overlooked by scholars, policymakers, and the media."). See also *id.* at 51 ("[T]he massive death toll among Iraqi civilians has stirred little public protest, and hardly any notice."); *Id.* at 52 ("Some of the inattention may derive from a lack of concern about foreign lives."); *Id.* at 52 ("Some of the inattention may also be due to the fact

citizen's perspective, this may be based on sheer ignorance or upon a lack of empathy for foreign peoples. On the other hand, policy makers likely recognize the suffering and death that will be incurred by the citizens of the target State. However, these policy makers place more importance on the objective of the economic sanctions or on the political benefits of enacting economic sanctions. Policy makers will almost certainly argue that the enactment of economic sanctions is based on the importance of the objective sought. Nonetheless, the general failure of economic sanctions to achieve their stated foreign policy goal diminishes the validity of this argument. Therefore, it appears that policy makers simply do not regard the suffering and death that will occur in the target State to be more important than the political utility of the enactment of sanctions.

To determine whether policy makers actually believe that the importance of the stated policy objective outweighs the suffering and death of the innocent citizens of the target State, we must examine these extremely important objectives. When the stated policy objective is the protection of national security it is easy to believe that policy makers would believe that this objective outweighs nearly all costs. It should be noted however, that in the United States, economic sanctions have been used for many reasons that do not appear terribly important. For example:

We [U.S. policy makers] have established or seriously threatened trade sanctions against various foreign countries for any of the following reasons: (1) they do not share the U.S. understanding of the relationship between the individual and the state; (2) their police forces do not conduct themselves as we would like; (3) they discriminate against religious minorities; (4) they do not accord trade unions the rights that they enjoy in the United States; (5) they make overseas investments in places we do not like; (6) they catch fish in a manner of which we disapprove; (7) they trade with the wrong

that, in contrast to deaths caused by terrorist bombs, those inflicted by sanctions are dispersed rather than concentrated, and statistical rather than dramatic.”).

people or they trade with the right people but in the wrong things.²⁰⁶

It is difficult to believe that a rational policy maker would believe that most of these objectives are important enough to outweigh the suffering inflicted on the target State. Therefore, it continues to appear that policy makers base the decision to use economic sanctions predominantly on the political utility of such an action.

Perhaps the use of economic sanctions merely demonstrates that there are no better alternative coercive means available to the policy makers of sending States.²⁰⁷ It has been established that economic sanctions do not appear to be a useful means for international coercion. It is well settled that economic sanctions: (a) rarely achieve their stated policy objective, (b) have high costs to the sending State, the target State and third party States, and (c) are unjust because they punish the innocent civilians of the target State for the actions of their leaders. Nonetheless, the world is not an ideal place, and in certain instances the necessity for international coercion exists. In such a situation policy makers must determine which coercive means they will use to modify the policies of the target State. Policy makers will likely debate whether to use military force, economic sanctions, or some combination of the two.²⁰⁸ Within such a debate, the argument for the use of economic sanctions rather than

²⁰⁶ R. Ian Butterfield, *Export Controls, Trade Sanctions, and the Nuclear Industry*, in *ECONOMIC CASUALTIES: HOW U.S. FOREIGN POLICY UNDERMINES TRADE, GROWTH, AND LIBERTY* 48 (Solveig Singleton & Daniel T. Griswold eds. 2001). See also *Id.* at 48 (“[T]he U.S. Congress now appears willing to legislate trade sanctions when only minor U.S. interests are under threat, or even when no U.S. interests are endangered whatsoever.”).

²⁰⁷ See BALDWIN, *supra* note 17, at 123 (“No matter how much evidence and argument are amassed to demonstrate the uselessness of economic statecraft, little has been said that is relevant to policy making until one states or implies the existence of more useful policy instruments.”). See also Nincic & Wallenstein, *supra* note 9, at 15 (“Whether one regards sanctions with equanimity or misgivings will depend upon how one assesses the options. A new form of coercion is only as attractive or unattractive as are its alternatives.”).

²⁰⁸ Cf. Lowenfeld, *supra* note 12, at 103 (“Sanctions are a middle ground...between resort to military force and ‘business as usual’...sanctions are often too late and too slow. But the alternatives—doing nothing and applying force—may well be even more unattractive in a still dangerous world.”).

military force is actually an argument against military force.²⁰⁹ Policy makers debate the relative costs and benefits of military action and economic sanctions to determine which is preferable in the given situation.²¹⁰

Sending State policy makers have determined that military conflict will have a higher human cost than economic sanctions. Citizens of the sending State may die if it uses military force, while the sending State's citizens will not die if economic sanctions are used. The potential human cost that accompanies military action decreases the political utility of military action. This diminished political utility is a strong motivating factor for sending State policy makers to use economic sanctions rather than military force. Even if sending State policy makers acknowledge all the economic costs that their State will pay when they enact economic sanctions, military action has a higher perceived human cost than economic sanctions because the sending State's citizens may die if military force is used.

It is likely, but not necessarily true, that military action will cost the target State more than economic sanctions. Only a case-by-case analysis of the proposed military action and the proposed economic sanctions is able to provide an accurate prediction of whether military action or economic sanctions will be more costly for the target State. It appears obvious that military action is more likely to have a higher cost because it necessarily involves the killing of target State citizens. This appearance may be erroneous because the long-term use of economic sanctions has been shown to cause widespread suffering and death. It is possible that the long-term effects of economic sanctions will cause more suffering and death in the target State than military conflict. In such a case, the sending State policy makers should consider the use of military force as preferable to the use of economic sanctions.

Sending State policy makers might consider the use of military force more just than the use of economic sanctions. Economic sanctions punish the innocent civilians of the target State for the actions of their leaders. Through a combination of modern intelligence gathering and modern military weaponry, the sending State may restrict the effects of

²⁰⁹ See BALDWIN, *supra* note 17, at 129 ("One of the biggest advantages of using economic instead of military statecraft derives from avoiding the costs associated with military statecraft.").

²¹⁰ See BALDWIN, *supra* note 17, at 121 ("The rational statesman will compare the costs and benefits of a policy alternative with the costs and benefits of other alternatives.").

its military actions to those individuals who are responsible for the offensive behavior that has motivated the sending State to act. The targets of military action will be combatants: the leaders and military of the target State. These combatants are individually responsible for the actions of their State. The sending State's coercive action directed at these individuals is relatively just when compared to economic sanctions. If economic sanctions only affected the offending individuals within the target State, economic sanctions could be as just as controlled military force. However, the current use of economic sanctions is equivalent to blanket bombing which kills the innocent along with the guilty.

The above analysis may provide more insight into why economic sanctions fail. Perhaps economic sanctions fail because there is no guarantee that the innocent citizens of the target State will translate their economic pain into political change. Moreover, if the target State is authoritarian, its citizens will not have the power to change the policies of their government. In sum, the use of military force may be more just than the use of economic sanctions because military force attempts to restrict its effects to combatants, while using economic sanctions knowingly punishes the innocent civilians of the target State for the actions of their leaders.

The general failure of economic sanctions should motivate the acting State's policy makers to use military force to coerce a change in the target State's policies. It would be logical for sending State policy makers to use the means of international coercion that will most likely achieve their stated policy goal. The current use of economic sanctions seems to go against this common sense principle of utility. Sending States continue to increase their use of economic sanctions in the face of an extremely low likelihood of success. From a utilitarian perspective it is obvious that a pointed military action that kills the leaders of the target State is not infinitely more successful than plunging the entire target State into economic ruin. The futility of the latter approach may be seen in the experiences of Cuba and Iraq. In both cases, despite extreme economic deprivation, the leaders that the sending State unequivocally condemned have remained in power while the civilian populations have suffered. Therefore, it appears that the general failure of economic sanctions should motivate the sending State to use military force. Nonetheless, a more accurate statement may be that sending State policy makers are not particularly concerned with the success of economic sanctions.

Sending State policy makers are concerned with the immense political utility of economic sanctions. The political utility of economic sanctions appears much greater than the political utility of military force. It is obvious that sending State policy makers will value their own costs and benefits over those of the target State or third-party States.²¹¹ For this reason it is apparent that sending State policy makers continue to use economic sanctions because the sending State's use of economic sanctions is less costly than its use military force. Also, the use of economic sanctions provides the sending State policy makers with the ability to appear to be doing something about a given problem. These factors combine to give economic sanctions a high political utility. This political utility motivates policy makers to use economic sanctions rather than military force.

A Sending State policy makers' decision to use economic sanctions disregards the economic costs that the sending State will have to pay, the extensive human costs that the innocent citizens of the target State will incur, and the almost certain proposition that economic sanctions will fail to achieve their stated policy objective. It appears that, at least in some cases, the sending State policy makers have been motivated by self-interest when deciding to implement economic sanctions. Sending State policy makers use economic sanctions because it helps their careers and appeases their constituents, not because the stated policy objective is of such value that it outweighs all the negative consequences of their use of economic sanctions. At the least, the present extensive use of economic sanctions should be restricted to worthy objectives that might justify the extensive damage that is caused by the use of such sanctions. Even if the stated policy objective is of such extreme importance that it outweighs the damage caused, it is highly unlikely that economic sanctions will achieve their stated policy objective. This futility should weigh heavily against the use of economic sanctions. If it is truly important to achieve their objective, sending State policy makers should use the coercive means with the highest success rate. As a result, even though it is counterintuitive, one must recognize

²¹¹ Cf. BALDWIN, *supra* note 17, at 121. ("For the rational statesman the relevant cost comparison is not between his country and the target but rather between *his* costs and *his* benefits").

that military action may be preferable to the use of economic sanctions. Military action may be more successful and more just than the use of economic sanctions. In conclusion, economic sanctions do not provide an effective or just means of international coercion.