

UCLA

UCLA Public Law & Legal Theory Series

Title

Just Sanctions

Permalink

<https://escholarship.org/uc/item/72z604mz>

Journal

Human Rights Quarterly, 21

Author

Winkler, Adam

Publication Date

1999

UCLA School of Law
Public Law & Legal Theory Research Paper Series
Research Paper No. 09-13

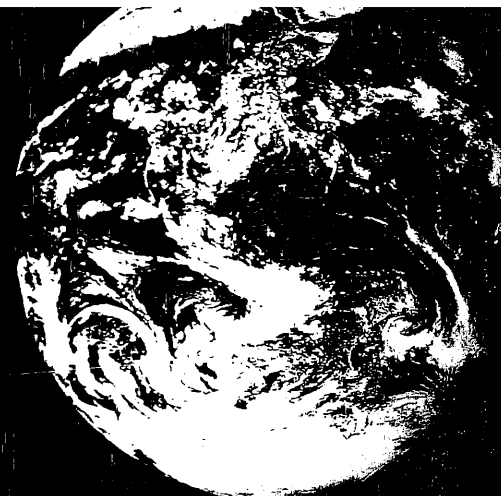
JUST SANCTIONS

by

ADAM WINKLER

in 21 *Human Rights Quarterly* 133 (1999)





Human Rights Quarterly

A Comparative and International Journal
of the Social Sciences, Humanities, and Law

Edited by
The Urban Morgan Institute for Human Rights
University of Cincinnati
College of Law

Volume 21 Number 1 February 1999
The Johns Hopkins University Press

Bert B. Lockwood, Jr.
Professor and Director, Urban Morgan Institute for Human Rights
College of Law, University of Cincinnati

ADVISORY EDITORIAL BOARD

Abdullahi Ahmed An-Na'im
Emory Law School

Dom Helder Camara
Martin Luther King
Human Rights Awardee

Richard Pierre Claude
Founding Editor
Human Rights Quarterly

Alessandra Luini del Russo
Professor Emeritus
Howard University

Yoram Dinstein
Editor
Israel Human Rights Yearbook

Denis Goulet
O'Neill Chair
Education for Justice
University of Notre Dame

Gitobu Imanyara
Editor-in-Chief
Nairobi Law Monthly

Adnan Buyung Nasution
Founder and Director
Legal Aid Institute of Indonesia

Adolfo Pérez Esquivel
Nobel Peace Prize and Coordinator General
del Servicio Paz y Justicia América Latina

Theo van Boven
Former Director
United Nations Centre on Human Rights

PUBLISHER

The Johns Hopkins University Press

EDITORIAL REVIEW BOARD

Philip Alston
Peter R. Baehr
Hugo Adam Bedau
Lawrence Ward Beer
Kevin Boyle
Reed Brody
Thomas Buergenthal
June K. Burton
William J. Butler
Gordon A. Christenson
Rebecca Cook
Margaret E. Crahan
Norman Daniels
Unity Dow
Patricia Weiss Fagen
Tom J. Farer
A. Belden Fields
Joan M. Fitzpatrick
David P. Forsythe
Mark Gibney
Richard Greenfield
Iain Guest
Hurst Hannum
William A. Hazelton
Alice H. Henkin

Charles P. Henry
Paul Hoffman
Rhoda E. Howard
Peter Juviler
Harold Hongju Koh
Donald P. Kommers
Paul Gordon Lauren
Virginia Leary
John A. Lent
Natan Lerner
Matthew Lippman
George A. Lopez
J. Paul Martin
Ann Elizabeth Mayer
Gay J. McDougall
Cecilia Medina
Theodor Meron
Herman Montealegre
Clovis C. Morrisson, Jr.
Johannes Morsink
A. Glenn Mower, Jr.
Ved P. Nanda
Paula R. Newberg
James W. Nickel

Jay Ovsiovitich
Zoran Pajic
Han S. Park
Steven C. Poe
Adamantia Pollis
Patricia L. Rengel
Alison Dundes Renteln
Nigel S. Rodley
Kenneth Roth
Abdul Aziz Said
Lars Schoultz
James D. Seymour
Dinah L. Shelton
Henry Shue
Henry J. Steiner
Eric Stover
Maxime E. Tardu
Howard Tolley
Vernon Van Dyke
David Weissbrodt
Claude E. Welch
Burns H. Weston
Laurie S. Wiseberg
Amy Young

ISSN 0275 0392

HUMAN RIGHTS QUARTERLY

Just Sanctions

*Adam Winkler**

I. INTRODUCTION

Prior to 1990, the United Nations Security Council imposed economic sanctions against only two countries, Rhodesia and South Africa.¹ However, the end of the Cold War has witnessed a marked increase in the use of sanctions.² Over the last eight years, the Security Council has imposed sanctions against Iraq, the Serb-controlled areas of the former Yugoslavia, Somalia, Libya, Haiti, Liberia, and the Khmer Rouge-held areas of Cambodia.³ The Security Council is hardly alone in its newfound appreciation of sanctions. In the same time period, the United States has used economic sanctions in one form or another more than seventy times, occasioning the conclusion that "American foreign policy these days is sanctions."⁴ Sanctions have become the new "tool of choice for governments bent on bringing international miscreants to heel."⁵

The growth of sanctions as a means of pursuing foreign policy has been

* Adam Winkler holds a B.S.F.S. from Georgetown University's School of Foreign Service and a J.D. from New York University School of Law. He practiced law at Katten Muchin & Zavis and is currently a Ph.D. candidate in political science at the University of California Los Angeles. He also serves as an adjunct professor of law at Loyola Law School in Los Angeles.

The author is grateful to the following people for thoughtful comments and advice regarding this article at various stages: Lea Brilmayer, Anthony D'Amato, Thomas Franck, Steven Spiegel, and Richard Steinberg. Special thanks to Melissa Bomes for her faithful support and encouragement.

1. See Patrick Clawson, *Sanctions as Punishment, Enforcement, and Prelude to Further Action*, 7 *ETHICS & INT'L AFF.* 17, 17-18 (1993).
2. See George Lopez & David Cortright, *The Sanctions Era: An Alternative to Military Intervention*, 19 *FLETCHER F. WORLD AFF.*, Summer/Fall 1995, at 65 (stating that "[i]n the post-Cold War world, the prominence of economic sanctions has increased dramatically, as have the different situations in which they are employed").
3. See *id.* at 67.
4. Jonathan Power, *Sanctions Not Always the Answer*, *CALGARY HERALD*, 21 Feb. 1994, at A4.
5. Edward T. Pound & Jihan El-Tahri, *Sanctions: The Pluses and Minuses*, 117 *U.S. NEWS & WORLD REP.*, 31 Oct. 1994, at 58.

accompanied by an increasing recognition of the moral dilemmas raised by such measures. For example, the United Nations Food Program has called sanctions a "brutal" instrument,⁶ and the World Health Organization has called for the banning of sanctions altogether.⁷ Likewise, in January 1997, the General Assembly of the United Nations adopted its now-annual resolution denouncing economic sanctions as a method of exerting pressure on member states.⁸ In addition, in a report on emergency operations, UNICEF agreed that sanctions were too harsh: "The dilemmas posed by the imposition of sanctions call for an urgent review to ensure that vulnerable groups are protected and cushioned from the adverse effects of this doubled-edged instrument."⁹

The academic literature on sanctions has predominantly focused on their efficacy in achieving foreign policy objectives, rather than the moral dilemmas posed by their use.¹⁰ Two scholars who have addressed sanctions from a moral perspective are Lori Fisler Damrosch¹¹ and Patrick Clawson.¹² Damrosch argues that sanctions can be a morally acceptable instrument of foreign policy so long as they are applied consistently to similar cases,

6. See Maggie O'Kane, *The Wake of War*, GUARDIAN, 18 May 1996, at 35.
7. See *id.*
8. *Economic Measures as a Means of Political and Economic Coercion Against Developing Countries*, G.A. Res. 168, U.N. GAOR, 48th Sess., U.N. Doc. A/Res/48/168 (1994).
9. Thalif Deen, *U.N. Warned Against Reckless Economic Sanctions*, INTER PRESS SERV., 30 May 1996, available in LEXIS, News Library, Wires File.
10. The main works in the academic literature on sanctions that emphasize the functional effectiveness, or lack thereof, of sanctions as an instrument of foreign policy include: James Barber, *Economic Sanctions as a Policy Instrument*, 55 INT'L AFF. 367 (1979); MARGARET P. DOXEY, *ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT* (1980); Johan Galtung, *On the Effects of International Economic Sanctions, with Examples from the Case of Rhodesia*, 19 WORLD POL. 378 (1967); James M. Lindsay, *Trade Sanctions as Policy Instruments: A Re-examination*, 30 INT'L STUD. Q. 153 (1986); Richard Stuart Olson, *Economic Coercion in World Politics, with a Focus on North-South Relations*, 31 WORLD POL. 471 (1979); ROBIN RENWICK, *ECONOMIC SANCTIONS* (1981).

See also THE UTILITY OF INTERNATIONAL ECONOMIC SANCTIONS (David Leyton-Brown ed., 1987) (offering a panoply of opinions on the effectiveness of sanctions and providing a helpful overview of the controversy); GARY C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* (2d ed. 1990) (being widely cited as the most thorough study of sanctions in practice: the authors analyzed the effectiveness of 115 cases of sanctions and concluded that they were effective in achieving policy objectives approximately one-third of the time); WILLIAM H. KAEMPFER & ANTON D. LOWENBERG, *INTERNATIONAL ECONOMIC SANCTIONS: A PUBLIC CHOICE PERSPECTIVE* (1992) (offering a recent theoretical flourish in the utility-of-sanctions literature).

11. See Lori Fisler Damrosch, *Collective Enforcement of International Norms Through Economic Sanctions*, 8 ETHICS & INT'L AFF. 59 (1994).
12. See generally Clawson, *supra* note 1. Other scholars have contended that sanctions should be subject to moral analysis without identifying the ethical guidelines to apply. See DAVID A. BALDWIN, *ECONOMIC STATECRAFT* 63-67 (1985); Anthony D'Amato, *The Moral and Legal Basis for Sanctions*, 19 ETHICS & INT'L AFF. 19 (1995).

preserve international norms, and do not serve merely political ends.¹³ Clawson reasons that sanctions are morally justifiable because the blame for the suffering belongs to the rulers and citizenry of the target state not to the sanction-enacting states.¹⁴ The rulers are at fault because they inappropriately divert food and resources from the civilian population, and the citizenry must be accountable for its government's policies.¹⁵

Damrosch and Clawson offer insightful analyses, but their moral frameworks lack a firm basis in international law or custom. They each choose their moral principles from thin air. Lacking foundation, their approaches are not likely to generate support in the international arena, where it is notoriously hard to gain consensus on moral imperatives.

One potential way to frame the moral dilemmas posed by sanctions that is grounded in recognized principles of international conflict is provided by the laws of just war.¹⁶ The just war tradition is a longstanding moral framework for analyzing the intentional infliction of harm by one state upon the citizens of another. In light of its broad acceptance and long history, this body of laws, codified in international treaties and established by the practice of states,¹⁷ offers more fertile soil for international agreement than the personal moral intuition of Damrosch or Clawson. By taking the principles underlying the laws of just war seriously, it is possible to devise strategies for economic sanctions founded on existing international ethical norms.

13. Damrosch, *supra* note 11.
14. See Clawson, *supra* note 1, at 20-21, 25.
15. See *id.*
16. The oft-cited *Just and Unjust Wars* by Michael Walzer provides an excellent overview of the laws of just war. MICHAEL WALZER, *JUST AND UNJUST WARS* (1977). See also JAMES TURNER JOHNSON, *JUST WAR TRADITION AND THE RESTRAINT OF WAR* (1981); James F. Childress, *Just War Criteria, in WAR OR PEACE?: THE SEARCH FOR NEW ANSWERS* 40 (Thomas A. Shannon ed., 1980); MICHAEL HOWARD, *WAR AND THE LIBERAL CONSCIENCE* (1978).
17. The author uses the terminology "laws of just war" with some hesitation. In recent years, scholars have attacked the use of the word "law" in international relations, questioning whether it makes sense in light of the absence of vibrant enforcement mechanisms. See Anthony D'Amato, *Is International Law 'Law'?*, in INTERNATIONAL LAW ANTHOLOGY 37 (Anthony D'Amato ed., 1994). It may be more accurate to refer to the "norms" of just war. Cf. Gary Goertz & Paul F. Diehl, *Toward a Theory of International Norms: Some Conceptual and Measurement Issues*, 36 J. CONFLICT RESOL. 64 (1992). Nevertheless, the terminology of law will be used to reflect the traditional custom of just war theorists.
17. In the words of the International Military Tribunal that oversaw the Nazi war crimes trials in Nuremberg, "[t]he law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts." 1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 221 (1947), quoted in W. MICHAEL REISMAN & CHRIS T. ANTONIOU, *THE LAWS OF WAR* at xix (1994). Unfortunately, the practice of states has often been to disregard the laws of war.

This article begins the process of crafting a moral approach to sanctions through the laws of just war. Part II briefly considers the nature of economic sanctions and posits an explanation of why states increasingly resort to sanctions to pursue foreign policy objectives. With that context established, the article then analyzes economic sanctions through the prism of just war. This inquiry is divided into two parts to mirror the just war tradition's separation of *jus ad bellum* (justice in commencing war) and *jus in bello* (justice in the fighting of war). Part III proposes moral guidelines for the decision to enact sanctions against a foreign nation. Part IV suggests what sorts of sanctions can be adopted in accordance with the principles of the just war tradition.

II. ECONOMIC COERCION: THE RISE AND IMPACT OF SANCTIONS

Economic sanctions are limitations on trade or access to markets enacted to encourage a target nation to behave in a way preferred by the sanctioning nations. Economic sanctions cover four types of trade limitations: "(a) restrictions on the flow of goods, (b) restrictions on the flow of services, (c) restrictions on the flow of money, and (d) control of markets themselves in order to reduce or nullify the target's chance of gaining access to them."¹⁸ Some examples include trade embargoes, restrictions on the importation of metals, petroleum, or other goods and commodities, and freezing foreign assets, lines of credit, or development aid.

A definitive characteristic of economic sanctions is that they are specifically intended to cause economic harm to another state. The basic idea is that "the burden of economic hardship imposed by sanctions will become intolerable"¹⁹ to the citizens of the target state, who in turn will pressure their leaders to change undesirable policies.²⁰ Unlike domestic economic policies, which may have unintentional economic effects abroad, sanctions are adopted specifically to harm the economy in a target country. In this way, sanctions are similar to war; both are used to inflict harm intentionally upon a target nation in order to alter its policies or conduct.

Although sanctions may be similar to war in some ways, the differences between them have led to the increasing use of the former. Warfare has lost much of its attractiveness as a means of pursuing international objectives,

particularly in the West. The reasons for this are multifaceted, but three factors deserve special attention. First, there is popular awareness of the human cost of modern warfare. On account of the mass media's coverage of warfare in the last half of this century—from Algeria to Vietnam to the former Yugoslavia—familiarity with the "face of battle"²¹ extends far beyond the battlefields themselves. Recognizing the human cost of war from the vicious experience of trench warfare in World War I, President Woodrow Wilson recommended economic sanctions as a primary strategy of the proposed League of Nations. Sanctions, he argued, were both quicker, cleaner, and more effective than battlefield combat:

A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside the nation boycotted, but it brings pressure upon the nation which, in my judgment, no modern nation could resist.²²

In contrast to the horror and savagery of modern war, sanctions offer an approach to international coercion that sheds no immediate blood and causes fewer dramatic casualties. "Sanctions give national leaders the ability to 'do something,' while allowing them to refrain from high risk engagements that might result if other foreign policy actions, such as military intervention, were used."²³

A second reason for the rise of sanctions is the development of the international economy, the growth of which has exposed new vulnerabilities of nations. According to the Statistical Department of the United Nations, the annual level of world exports has risen from \$134 billion in 1960 to \$3.94 trillion in 1992.²⁴ The interdependence of the international economy means that even the developing countries rely heavily upon international trade to supply raw materials and technological resources. Economic interdependence has made the restriction of trade a more viable method of achieving foreign policy objectives.²⁵ If one state—or several together—has a vital role in another's economy, it can use its economic leverage to attempt to bring about conformity to its interests.

21. See JOHN KEEGAN, *THE FACE OF BATTLE* (1976) (characterizing the horrors of war in a historical account of the battles of Agincourt, Waterloo, and the Somme).

22. BARRY E. CARTER, *INTERNATIONAL ECONOMIC SANCTIONS: IMPROVING THE HAPHAZARD U.S. LEGAL REGIME* 9 (1988).

23. Lopez & Cortright, *supra* note 2, at 68 (discussing the factors likely to influence the decisions of states to join international sanctioning efforts). See LISA MARTIN, *COERCIVE COOPERATION* (1992).

24. STATISTICAL DEPARTMENT OF THE UNITED NATIONS, *1 INT'L TRADE STAT. Y.B.* 5 (1992).

25. See Lopez & Cortright, *supra* note 2, at 67; NINCIC & WALLENSTEEN, *supra* note 20, at 2.

18. MAKIO MIYAGAWA, *DO ECONOMIC SANCTIONS WORK?* 16 (1992).

19. DOXEY, *supra* note 10, at 89.

20. See *id.* at 1-4; MIROSLAV NINCIC & PETER WALLENSTEEN, *Economic Coercion and Foreign Policy*, in *DILEMMAS OF ECONOMIC COERCION* 1, 4 (Miroslav Nincic & Peter Wallensteen eds., 1983). See generally Galtung, *supra* note 10.

The third reason for the increased use of economic sanctions is the end of the Cold War, which has created further vulnerabilities to economic coercion. In the bipolar world of the Cold War era, economic sanctions were a less viable option because it was difficult to gain international consensus to impose the sanctions. Furthermore, even if sanctions were imposed, targeted nations were often able to obtain restricted goods from one of the two blocs. For example, communist nations refused to join a boycott of Cuba after Castro took power in 1959.²⁶ As a result, Cuba evaded the impact of the Organization of American States' embargo because it was able to continue to trade with the Eastern bloc and China. Since 1989, however, the Security Council has been able to reach consensus and has imposed sanctions more than a half-dozen times.²⁷ The ideological barriers of the Cold War have fallen so much that even Communist China declined to exercise its veto over sanctions on Haiti,²⁸ despite the fact that the measures were justified as a means to restore a democratic government.

Is the attempt to exercise this economic leverage effective? As noted above, this is the dominant question in the academic literature on sanctions, and the evidence is mixed. Most analysts have concluded that the utility of sanctions is "rather doubtful."²⁹ In the most thorough study to date, the Institute for International Economics in Washington, DC examined 115 cases of economic sanctioning since World War II.³⁰ The study concluded that the sanctions were effective in achieving intended policy goals in one-third of the cases, usually when the goals themselves were modest, such as improving human rights or preventing nuclear proliferation.³¹ For every success story, such as South Africa in the 1980s, there are two failures, such as Iraq and Libya in the 1990s.

But whether sanctions are effective in achieving policy goals is a separate question from whether they inflict significant harm on the target population. To the latter question, there is little doubt that sanctions work considerable harm. Sanctions can cause serious economic disruption, such as hyperinflation and unemployment, which in turn may result in impoverishment, malnutrition, and even death.³²

26. Within a year of the US-led embargo, for example, Cuba signed a trade agreement with the Soviet Union. See Joel Brinkley, *Cuba Case Said to Cast Doubt on the Embargo*, N.Y. TIMES, 2 May 1985, at A10.

27. See Lopez & Cortright, *supra* note 2, at 67.

28. See David M. Lampton, *Is China a Rogue State?*, CURRENT, June 1998, at 25.

29. See NINCIC & WALLNSTEEN, *supra* note 20, at 6; MARGARET DOXEY, INTERNATIONAL SANCTIONS IN CONTEMPORARY PERSPECTIVE 92 (1987); THE UTILITY OF INTERNATIONAL ECONOMIC SANCTIONS, *supra* note 10, *passim*.

30. See HUFBAUER ET AL., *supra* note 10.

31. See *id.* at 93.

32. See *id.* at 46.

However, determining the precise impact and effectiveness of sanctions is difficult because there is no way to isolate completely their effects on the target economy.³³ In many instances, the target nation is undergoing other turmoil, such as war or domestic strife, that contributes to economic decline. For example, the amount of economic suffering in Iraq attributable to sanctions cannot be readily distinguished from that caused by the destruction of Iraqi industry during the Gulf War. Likewise, due to the violent civil war in the former Yugoslavia, the effect of sanctions on the Serb-controlled areas is difficult to identify.

Nevertheless, some broad generalizations as to the scope of the economic impact from sanctions are possible. For example, the total embargo imposed by the Security Council against Iraq has contributed to considerable suffering among ordinary Iraqis. Just five months after the adoption of sanctions, but prior to the war, CIA Director William Webster testified in Senate hearings that sanctions had cut Iraqi imports by more than ninety percent and exports by an even larger margin.³⁴ Christiansen & Powers' 1993 report for the *Bulletin of Atomic Scientists* noted a 1990 study estimating that "sanctions ha[d] reduced the standard of living in Iraq by about one-third."³⁵ Another study, in the *New England Journal of Medicine*, concluded that the infant mortality rate in Iraq had tripled due to the combined effects of sanctions and the war.³⁶ In addition, a World Health Organization (WHO) report concluded that over six years, 500,000 Iraqi children under the age of five died as a result of the sanctions.³⁷ These numbers highlight how sanctions take their toll on the most vulnerable members of society.

Such effects from sanctions are predictable. Similar to the Iraqi situation, the embargo against Haiti also had a profound impact on ordinary citizens. According to official US estimates, 240,000 manufacturing and associated industry jobs were lost in 1991 due to sanctions imposed by the Organization of American States.³⁸ Likewise, an analysis of the sanctions

33. According to Doxey, "[t]here is . . . a methodological problem in attempting precise measurement of the effects of sanctions. It is not possible to isolate them from the effects of other factors which may be operating . . . nor can there always be confident assertion about what [the] behavior of the target state would have been if no sanctions had been threatened or imposed." DOXEY, *supra* note 10, at 8.

34. See Lopez & Cortright, *supra* note 2, at 73.

35. Drew Christiansen & Gerald F. Powers, *Unintended Consequences*, 49 BULL. ATOM. SCIENTISTS 41, 43 (1993).

36. See Alberto Ascherio, *Effect of the Gulf War on Infant and Child Mortality in Iraq*, 327 NEW ENG. J. MED. 931 (1993).

37. See Ian Black, *Saddam and U.N. Are Making Iraq Grim*, PLAIN DEALER, 31 Aug. 1996, at A5 (reporting the conclusions of the WHO study). Surprisingly, the study received little press attention in the United States.

38. See Clawson, *supra* note 1, at 27.

against Serbia-Montenegro reported in the *British Journal of Medicine* details the devastating impact of sanctions on the health care of ordinary Serbs.³⁹ Indeed, this is the very premise of sanctions: to inflict such harm upon the economy, and consequently on the target population, that leaders will be forced to alter undesirable policies.

Nevertheless, it may be that some of these numbers are exaggerated. However, even if, for example, only one percent of the estimated 500,000 Iraqi children died due to sanctions, moral consideration of this deadly instrument of foreign policy is warranted. In this task, the principles underlying the laws of just war provide a place to begin.

III. THE LAWS OF JUST WAR: *JUS AD BELLUM*

The laws of just war subject armed conflict to two sorts of judgments: first, on the decision to go to war; and, second, on the process of fighting wars.⁴⁰ In the terminology of the just war tradition, the former judgment considers the *jus ad bellum* (justice to war) while the latter deals with the *jus in bello* (justice in war). The requirement of *jus ad bellum* restricts the sort of circumstances in which one can take up arms to threaten, coerce, and harm others.⁴¹ But even in pursuit of a just war, one is limited in harming others by the second requirement of *jus in bello*. The moral judgments are made independently, insuring that those who perceive their cause to be just—as soldiers and statesmen are prone to do—do not inflict harm on those who are not responsible for the war or who themselves pose no threat to the opposing state.⁴²

Economic sanctions, while new to this century,⁴³ resemble the economic warfare that has been conducted at least since the ancient Greeks burned olive trees when invading neighboring city-states. Throughout the history of war, warriors have conducted sieges and blockades to help bring down an enemy. Although they share similar characteristics, sanctions are generally distinguished from blockades and sieges because the latter tactics are wartime measures while the former are not.⁴⁴ Sieges and blockades are conducted as part of a larger war and are enacted as a measure of military conflict. Due to their wartime context, sieges and blockades have occupied

a strained place in the laws of just war;⁴⁵ though destructive, they seem less evil than military invasion, the common alternative. Early just war theorists welcomed sieges and blockades as improvements over invasions,⁴⁶ but modern theorists and international conventions condemn these tactics.⁴⁷

The sanctions of concern here are those enacted outside of war (although, as the examples of Iraq and Haiti indicate, they may be a prelude or an epilogue to military action). Such measures can be subjected to a two-pronged moral analysis similar to that encouraged by the laws of just war. With regard to the first moral judgment concerning just war—determining the justice of deciding to fight—there are two ethical notions with particular relevance to sanctions: just cause and right intention. Although there are other limitations in the laws of just war that might apply to sanctions, including competent authority and comparative justice,⁴⁸ just cause and right intention present issues and questions unique to sanctions. One principle of just war that runs throughout the discussion is proportionality, the requirement that the ultimate good outweigh the harm done.⁴⁹ In all judgments of justice in international conflict, proportionality must be respected.

A. Just Cause

Under the laws of just war, just cause is necessary to legitimize any resort to force. What constitutes just cause is a limited range of potential motivations behind the use of force, including self-defense⁵⁰ and humanitarian intervention.⁵¹

45. See WALZER, *supra* note 16, at 160–75.

46. See FRANCISCUS DE VICTORIA, *De Indis et de Jure Belli Reflectiones*, in *THE CLASSICS OF INTERNATIONAL LAW* (James P. Scott ed. & John P. Bate trans., Carnegie Institution of Washington 1925), *microformed on Classics of International Law* (William S. Hein Co.). Victoria's position was refuted in the middle eighteenth century by Vattel. See EMMERICH DE VATTTEL, *THE LAW OF NATIONS* § 166–69 (Charles G. Fenwick trans., 1964).

47. See WALZER, *supra* note 16, at 167–69, 174–75; JAMES TURNER JOHNSON, *CAN MODERN WAR BE JUST?* 30–31 (1984). After the firebombing of World War II, sieges of cities were outlawed by international agreements, such as Articles 25 and 26 of the Hague Convention Respecting the Laws and Customs of War on Land, arts. 1–4 of the Hague Convention Concerning Bombardment by Naval Forces in Time of War. See REISMAN & ANTONIOU, *supra* note 17. Blockades, at least those without exemptions for food and medicine, are prohibited by the First Geneva Convention. See *id.* These types of blockades are also prohibited by the Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), adopted 12 Aug. 1948, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287 (entered into force 21 Oct. 1950) (entered into force for U.S. 2 Feb. 1956) [hereinafter Geneva IV].

48. See JOHNSON, *supra* note 47, at 3. The author has omitted discussion of these additional requirements of *jus ad bellum* not because they are unimportant, but because they translate to sanctions either in obvious ways or without significant modification.

49. See *id.*

50. See WALZER, *supra* note 16, at 53–55, 62.

51. See *id.* at 101–08.

39. See Mary Black, *Collapsing Health Care in Serbia and Montenegro*, 307 BRIT. MED. J. 1135 (1993).

40. See, e.g., WALZER, *supra* note 16, at 21.

41. See *id.*

42. See *id.*

43. See DOXEY, *supra* note 10, at 3.

44. See *id.* at 10.

Under the principle of self-defense, states can resort to doing harm when faced with an actual or imminent infringement of state sovereignty. Self-defense against aggression has been codified as a legitimate reason to use force in Articles 2 and 51 of the UN Charter,⁵² but the principle can be traced to the beginnings of the just war tradition.⁵³ The scope of self-defense is broad enough to encompass collective self-defense, enabling allied states to come to the assistance of a nation under attack by an aggressor.⁵⁴ Self-defense can also justify the use of harmful force enacted for the purposes of deterrence, a strategy designed to diminish potential future infringements of sovereignty. But the principle of self-defense has its limits: one can fight back to repel an attack, but one cannot harm the aggressor for purposes of revenge or domination.⁵⁵

In the context of economic sanctions, self-defense means that states certainly can resort to harmful economic measures when faced with infringements of territorial boundaries; where just war would declare the use of armed force to be legitimate, economic sanctions of some sort are justifiable. Self-defense would also allow the adoption of sanctions when an aggressor state imposes measures of economic coercion against other states without appropriate reason. If, for example, one nation declared economic war on a neighbor, the neighboring state and its allies would be justified in imposing economic sanctions as a defensive response.

An example of self-defense supplying just cause for the use of economic sanctions is the Iraqi invasion of Kuwait in 1990. Although there had been longstanding disputes over the borders of the two countries, the existing borders were internationally recognized. In addition, Iraq was clearly the aggressor under international norms; the UN General Assembly's 1974 Declaration on Aggression provides that the first resort to armed force in a dispute is *prima facie* evidence of aggression,⁵⁶ and Article 2(4) of the UN Charter prohibits the use of aggressive force against the territorial integrity of another nation. Therefore, when the Security Council imposed mandatory sanctions against Iraq, just cause was present.⁵⁷

Beyond self-defense, the laws of just war consider humanitarian

intervention to constitute just cause legitimizing the use of force.⁵⁸ Therefore, when a state engages in widespread violations of internationally recognized human rights, other nations can properly resort to harmful force to end the violations. Although the exact marking lines are unclear for when the treatment of people within a state reaches the level at which an international response is justified, among the conditions allowing the use of force are enslavement, genocide, and subjugation of peoples.⁵⁹ While the principle of self-determination generally allows the state to deal with its citizens in the manner that they as a people wish to be treated, self-determination is a misnomer if the state severely oppresses part of its population.⁶⁰ And while some have suggested that concern with humanitarian ideals represents a new focus for international relations—an evolution from states to individuals as relevant actors⁶¹—the laws of just war dictate that humanitarian intervention can amount to just cause, thereby providing at least one instance where the pursuit of humanitarian ideals maintains a focus on the state.⁶²

Humanitarian reasons would support the resort to economic sanctions, and, indeed, violations of international humanitarian norms have provided justification for the use of sanctions in recent years. For example, the UN Security Council's sanctions against Serb-controlled areas of the former Yugoslavia⁶³ were prompted in part by the Serbian war policy of "ethnic cleansing," a polite way of referring to genocide. During the late 1980s, the Iraqis also engaged in genocide. Targeting its Kurdish population, Iraq used chemical weapons, destroyed Kurdish villages, and buried Kurdish casualties in mass unmarked graves.⁶⁴ Even in the absence of territorial aggression, this would have supplied ample just cause for the imposition of economic sanctions against Iraq.

58. See Tom J. Farer, *An Inquiry into the Legitimacy of Humanitarian Intervention*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 185–99 (Lori Damrosch & David Scheffer eds., 1991); ANTONIO CASSESE, *HUMAN RIGHTS IN A CHANGING WORLD* 7 (1990).

59. See ANTHONY D'AMATO, *INTERNATIONAL LAW: PROCESS AND PROSPECT* 226–29 (1995); WALZER, *supra* note 16, at 101–08.

60. See WALZER, *supra* note 16, at 101.

61. See Jarat Chopra & Thomas G. Weiss, *Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention*, 6 ETHICS & INT'L AFF. 95 (1992).

62. In the case of genocide, the International Convention on Genocide declares the killing of ethnic or religious groups to be an international crime. See REISMAN & ANTONIOU, *supra* note 17, at 84–85; Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 Dec. 1948, 78 U.N.T.S. 277 (entered into force 12 Jan. 1951) (entered into force for U.S. 23 Feb. 1989).

63. See Paul Lewis, *U.N. Votes 13-0 for Embargo on Trade with Yugoslavia*, N.Y. TIMES, 31 May 1992, at A1.

64. See Judith Miller, *Iraq Accused: A Case of Genocide*, N.Y. TIMES, 3 Jan. 1993, (Magazine) at 12.

52. See REISMAN & ANTONIOU, *supra* note 17, at 5, 8.

53. See *id.*

54. Defense of others has remained a part of the laws of just war since Augustine argued that it was necessitated by Christian love of victims. See St. Augustine, *The City of God*, in BASIC WRITINGS OF ST. AUGUSTINE 481 (Whitney J. Oates ed., 1948).

55. See RICHARD B. MILLER, *INTERPRETATIONS OF CONFLICT: ETHICS, PACIFISM, AND THE JUST WAR TRADITION* 13 (1991).

56. *Declaration on Aggression*, G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 42 (1974).

57. See REISMAN & ANTONIOU, *supra* note 17, at 5.

B. Right Intention

Along with the principle of just cause, the laws of just war include a complimentary requirement of right intention. In its basic form, this means that war is a last resort and designed to restore peace.⁶⁵ Augustine, an early just war philosopher who recognized the importance of intent in war, defined wrong intent as "the desire for harming, the cruelty of avenging, an unruly and implacable animosity, the rage of rebellion, [and] the lust of domination."⁶⁶ As a measure of insurance, the principle of right intention requires nations to declare publicly their objectives, for all to see and judge.⁶⁷ Right intention is therefore both substantive and procedural, substantive in that it only allows certain ends, and procedural in that it mandates the articulation of public reasons for armed conflict. With regard to economic sanctions, three special dilemmas are posed by the requirement of right intention: sanctioning without clarity of purpose, sanctioning in pursuit of symbolic sanctioning goals, and sanctioning out of national self-interest.

To insure right intention, it is essential that economic sanctions be enacted only when the enacting states can articulate clear, specific policy goals. As the just war tradition recognizes, when goals are unstated or stated ambiguously, observers cannot be sure that the state is acting out of appropriate motivations, and it becomes difficult to assess when goals have been met.⁶⁸ Sanctions implemented without clearly articulated reasons are susceptible to half-hearted enforcement or unnecessarily long duration—lasting far beyond their usefulness.

The international sanctions against Iraq illustrate the dilemmas associated with unclear goals. Originally, the articulated rationale for the sanctions was to roll back Iraqi forces from Kuwait. Yet, more than seven years after the Gulf War secured the withdrawal of Iraqi troops from Kuwait, the sanctions remain in place, mainly due to the shifting sands of US policy. Since the War, the United States has at times insisted that the sanctions remain until Saddam Hussein leaves power,⁶⁹ only to drop that demand and

replace it with a requirement that Hussein give up all of his chemical and biological weapons,⁷⁰ even though the Security Council would not likely have adopted sanctions on the basis of this goal in the first place. The Iraqi experience led then-Secretary-General Boutros-Ghali to suggest the inclusion of clear standards and criteria in future sanctions resolutions.⁷¹ If followed, his suggestion would help insure right intention in Security Council sanctions.

A second dilemma for right intention is that posed by the pursuit of symbolic goals. David Baldwin argues that sanctions should be understood to have both primary economic objectives, such as impacting a foreign economy and achieving a change in a target nation's policies, and symbolic objectives, such as demonstrating resolve to allies or domestic constituents.⁷² According to Baldwin, even when sanctions have little economic impact, they may still be considered successful if symbolic messages are relayed.⁷³ As sanctions are more often successful in relaying messages than in achieving policy objectives, Baldwin recommends that states use them for their communicative potential.⁷⁴

The principle of right intention, however, renders the pursuit of symbolic goals objectionable. Because of the harm caused by economic sanctions, they are far too penal to be used as signaling devices intended for domestic constituents or foreign allies. Symbolic messages can be sent in numerous other ways without harming anyone, including public statements, resolutions of international organizations, and diplomatic maneuvers, like recalling ambassadors or negotiators. Symbolic sanctions are neither the last resort short of war nor do they aim at objectives that absolutely mandate inflicting harm on others. Finally, symbolic goals are often unarticulated and thus risk the same dangers of vague sanctioning goals described above.

A third dilemma associated with right intention arises from the fact that the injury caused by economic sanctions is borne almost exclusively by the target nation, not by the sanction-adopting nation. As a result, policymakers may be inclined to give inadequate weight to hardships abroad when considering the imposition of economic sanctions, particularly when an alternative military solution would risk the lives of citizens of the policymakers'

65. See JOHNSON, *supra* note 47, at 51.

66. *Id.*

67. The requirement of publicly declared objectives in just war theory stems from the writings of Franciscus de Victoria, *supra* note 46, and Hugo Grotius. HUGO GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (James B. Scott ed. & John D. Macguire trans., Carnegie Institute of Washington 1925), *microformed on Classics of International Law* (William S. Hein & Co.). Translations of both can be found in *THE CLASSICS OF INTERNATIONAL LAW*, *supra* note 46.

68. See JOHNSON, *supra* note 47, at 20–21.

69. See Paul Lewis, *Security Council Votes 13 to 0 to Block Trade with Bagdad*, N.Y. TIMES, 7 Aug. 1990, at A1.

70. See Eric Schmitt, *U.S. Backs Off Sanctions, Seeing Poor Effect Abroad*, N.Y. TIMES, 31 July 1998, at A1 (describing the shifts in US sanctions policy regarding Iraq).

71. See Lopez & Cortright, *supra* note 2, at 75.

72. BALDWIN, *supra* note 12, at 61–65, 131–33. Baldwin's theory is evocative of the communication-oriented strategizing in international relations described by Thomas Schelling. THOMAS SCHELLING, *THE STRATEGY OF CONFLICT* (1960). Kaempfer and Lowenberg, arguing from the perspective of positive political theory, also view sanctions as effective signaling devices. KAEMPFER & LOWENBERG, *supra* note 10, at 133–34.

73. BALDWIN, *supra* note 12, at 63–65.

74. *Id.* at 64–65.

own country. Economic sanctions may be tempting precisely because the harm is external rather than domestic. In other words, selfish domestic interests, coupled with the lack of risk or injury to the domestic population, may motivate the resort to economic sanctions in lieu of other, more humane measures.

This concern is more pronounced in the context of economic sanctions than in armed conflict, for the latter almost always risks the lives of domestic soldiers. Economic sanctions adopted because the costs are borne by others do not meet the ethical requirements of right intention, which demand that an objective balancing of the harms be undertaken. This danger can perhaps best be avoided by adopting sanctions through international organizations, such as the United Nations, rather than on a state-by-state basis. "The necessity of gathering a coalition together to meet any particular crisis provides a certain insurance that the intervening states are aiming for an approximation of the common good and not simply pursuing their selfish interest."⁷⁵ Cooperative, multilateral sanctions will also likely be better organized and more effective—particularly in a world of economic interdependency⁷⁶—than those adopted by numerous states haphazardly.

IV. THE REQUIREMENT OF FIGHTING WELL: *JUS IN BELLO* AND SANCTIONS

In fighting a war, the means used are judged without reference to the cause—be it just or not—of the conflict. All soldiers are similarly bound by the rules of *jus in bello*, no matter for which side they fight or the perception of justice that underlies their assertion of *jus ad bellum*. The primary principle of *jus in bello* is noncombatant immunity. When applied to sanctions, this principle exposes the main moral dilemma of sanctions. It also suggests strategies for pursuing sanctions in a moral way.

A. Noncombatant Immunity

At the heart of the laws of just war lies the distinction between those who are legitimate targets for military attacks and those who are not. The just war

75. David C. Hendrickson, *The Ethics of Collective Security*, 7 ETHICS & INT'L AFF. 1, 14 (1993).

76. See Kimberly Ann Elliot, *Factors Affecting the Success of Sanctions*, in ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING IN A POST-COLD WAR WORLD? 51 (David Cortright & George A. Lopez eds., 1995).

tradition sets out a blanket rule that separates out noncombatants from combatants so that war will be fought in a limited manner. Simply stated, combatants may be the direct and intentional target of military attack, but noncombatants may not be.⁷⁷ Combatants are those who engage in the fighting of the war—i.e., soldiers—and can be legitimately targeted because they pose a direct threat of harm to others.⁷⁸ No such direct threat of harm is posed by noncombatants—i.e., civilians—and so they are "immune" from attack. Of course, civilians are often injured accidentally in conflict, but any incidental, unintended injuries that they suffer can be acceptable under the just war notion of double effect.⁷⁹

The principle of noncombatant immunity exposes perhaps the most troubling moral dilemma of economic sanctions, particularly broad embargoes such as those imposed upon Iraq and Haiti. Economic sanctions of this sort directly and intentionally target the ordinary civilians of a target state and can cause them significant harm and even death.

The adverse effects of even more limited sanctions are often felt throughout the target nation's economy, and subsequently throughout every socioeconomic group. For example, an oil embargo not only harms the gross national product of the affected country, but does so through the economic suffering of ordinary working people engaged in the manufacturing, refining, and transporting of oil and related products. Likewise, an international restriction on air traffic halts tourism and affects import-dependent industries, imposing economic harm on those involved in these sectors of the economy, from company executives to day laborers. Often the impact of sanctions is felt by children, as the World Health Organization's report on Iraq attests.⁸⁰ In other words, people who have done little more than inhabit a state with disfavored policies suffer from the brunt of broad sanctions. These people pose no threat to other states, but merely go about their usual routine of trying to survive or prosper by way of participation in the economy; in the terms of just war, they are "innocent," and should not be targeted.

As one Under-Secretary-General of the United Nations recently commented, an economic sanction is a "blunt weapon that punishes people

77. The First Geneva Protocol mandates respect for noncombatant immunity in war. See REISMAN & ANTONIOU, *supra* note 17, at 87–91.

78. See JOHNSON, *supra* note 47 (noting the importance of intentionality in the noncombatant immunity principle). See generally PAUL RAMSEY, *THE JUST WAR: FORCE AND POLITICAL RESPONSIBILITY* (1968).

79. The principle of double effect allows noncombatants to be incidentally harmed so long as they are not intentionally targeted. See Mark Vorobej, *Double Effect and the Killing of Innocents*, in JUST WAR, NONVIOLENCE AND NUCLEAR DETERRENCE 25, 26 (Duane L. Cady & Richard Werner eds., 1991).

80. See *supra* text accompanying note 37.

who are not to blame."⁸¹ Recognition of the moral dilemma posed by sanctions is nothing new; when President Woodrow Wilson recommended the use of economic sanctions as a peaceful alternative to war, John Foster Dulles condemned the idea because of the devastating effect on the innocent civilians of the targeted state.⁸² From the perspective of just war, Dulles was right; any sanctioning that directly targets the civilian population of a foreign nation is suspect.

However, one argument against applying the principle of noncombatant immunity in the context of economic sanctions is that the ordinary citizens of the target state, not the state, shoulder the blame for any economic hardship. Clawson, for example, claims that "citizens must be assigned at least some of the responsibility for the government that rules over them."⁸³ If citizens would exert pressure on their leaders, the argument goes, they could change the policies that lead to international reprisal.⁸⁴

Yet Clawson's argument ignores our actual experience with sanctions. Of the seven instances of UN sanctions this decade, not one of the targeted nations could be said to have had democratic systems of government that effectively enabled popular rule.⁸⁵ Indeed, it is counter-democratic tendencies that often invite international sanctions in the first place.⁸⁶ Johan Galtung, writing before Clawson, described the "blame the people" justification for sanctions as naive⁸⁷ in light of the people's powerlessness. Furthermore, even in nations in which the people can exert power over their leaders, this justification cannot meet the moral demands of just war. If accepted, the argument would undermine the very notion of noncombatant immunity. Soldiers would always be able to justify targeting civilians as a means to bring pressure to bear upon foreign leaders to surrender; bomb cities and the people will rise up and force a change in military policy. If such an exception to noncombatant immunity were allowed, the rule against harming noncombatants would be but an empty shell. Similarly, if noncombatant immunity is to apply to economic sanctions, no exception can be made for intentional harm to civilians done to bring pressure upon foreign leaders.

81. Thalif Deen, *UNICEF Says U.N. Sanctions Have Unintended Impact*, INTER PRESS SERV., 2 May 1994, available in LEXIS, News Library, Wires File (quoting U.N. Under-Secretary-General for Humanitarian Affairs, Jan Eliasson).

82. See Alan Elsner, *U.S. Sanctions Policies Coming Under Fire*, REUTER EUR. BUS. REP., 11 Jan. 1994, available in LEXIS, News Library, Wires File.

83. Clawson, *supra* note 1, at 20-21.

84. See Anna M. Vradenburgh, *The Chapter VII Powers of the United Nations Charter: Do They "Trump" Human Rights Law?* 14 LOY. L.A. INT'L & COMP. L.J. 175, 199-200 (1991).

85. The seven are Iraq, the Serb-controlled areas of the former Yugoslavia, Somalia, Libya, Haiti, Liberia, and Rwanda.

86. See Christiansen & Powers, *supra* note 35.

87. See generally Galtung, *supra* note 10.

While the moral innocence of ordinary civilians renders them "non-combatants" in just war terms, the question remains as to who can be considered "combatants." One possibility is that the definition of combatants should be the same as it is in war terms: soldiers. In the wake of the Iraqi invasion of Kuwait, it is reasonable to view Iraqi soldiers as legitimate targets of sanctions. The same holds true for Haitian soldiers in the wake of the military coup. If soldiers could be intentionally targeted by military weapons due to the invasion, no moral objection could be raised to intentionally targeting them with the less destructive weapon of targeted sanctions.

Soldiers are susceptible to direct targeting by the sanctioning state in the form of restrictions on the import of arms and military equipment. This type of sanction frequently has been a part of international efforts at economic coercion, including the Security Council's sanctions against Rhodesia, Iraq, Somalia, and Haiti.⁸⁸ Because armaments and military equipment have little civilian use, prohibiting their importation does not threaten the ordinary citizens of the target state. Although a long-term ban might result in increased unemployment as the military is scaled back, any such impact is likely to be small. In any event, such unemployment is incidental, not intentional; the purpose of the sanctioning state is to inhibit the target nation's use of force by directly denying them the means to exert it.

Soldiers are not the only group within the target nation at which action may be legitimately aimed. Those who set the relevant government policy bear direct responsibility for the aggression that invites international sanctions. That at least some "political officials are combatants in a war is an old idea in just war tradition,"⁸⁹ and those who are at fault for aggression may be legitimately targeted.⁹⁰ But responsibility, not merely status as a government official, is key to the judgment. Thus the conventions of war provide for immunity of diplomatic officials, in part to keep open the avenues for negotiated peace.⁹¹ If, however, a political official bears particular responsibility, either by participating in the planning or carrying out of aggression, he can be considered a combatant.⁹²

Unlike soldiers, however, it is not apparent at first how government policymakers can be specifically targeted by economic sanctions. Public

88. See HUFBAUER ET AL., *supra* note 10, at 283-98; GARY C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES* 285-92, 598-605, 619-24 (2d ed. 1990).

89. JOHNSON, *supra* note 47, at 60-61.

90. See *id.* at 20 (discussing fault in just war theory).

91. See WALZER, *supra* note 16, at 199.

92. See Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, *adopted* 14 Dec. 1973, 28 U.S.T. 1975 (*entered into force for U.S.* 20 Feb. 1975), *reprinted in* REISMAN & ANTONIOU, *supra* note 17, at 299-300, arts. 1, 2.

officials do not have different preferences or needs than the rest of the citizens of the state. The goods that they use in their daily lives and professions are not significantly different from those used by any number of innocent people. Their industry is politics, which is not dependent upon the importation of any special resource. However, several types of sanctions offer potential means of targeting government officials without imposing direct harms on the ordinary citizenry.

One method is to deny policymakers international cordialities, what we might call diplomatic sanctions. A diplomatic sanction would include denying government officials the ability to travel abroad, requiring them to recall ambassadors, or refusing them access to international forums, such as the United Nations or regional international bodies.⁹³ Such efforts would deny the targeted individuals part of the benefit of being political leaders, for they will be unable to represent their country's interests internationally. Because the ordinary citizenry is not directly and intentionally harmed, diplomatic sanctions do not run afoul of just war principles nor do they violate norms of diplomatic immunity. Nevertheless, diplomatic sanctions may be more symbolic than substantive, and therefore only minimally effective.

A second, more substantive method of targeting government officials is to apply an international freeze on their assets held abroad. Many foreign leaders maintain assets in bank accounts or own foreign property in the West, particularly in the United States and the European Union. A freeze on foreign-held assets of government leaders can serve directly to target the government officials in whose names those assets or property are held without imposing significant harm on ordinary civilians. On several occasions, the Security Council has frozen leaders' foreign assets. For example, the military leaders who overthrew Aristide's democratic government in Haiti were targeted in this way in 1993.⁹⁴ In addition, the Security Council committee overseeing the sanctions imposed against Libya has relentlessly pursued Qadhafi's foreign-held assets.⁹⁵

Although no guarantee of success, as the Qadhafi example attests, freezing foreign-held assets has been shown by one study to be nearly twice as effective as wider forms of economic sanctions.⁹⁶ Moreover, freezing assets offers a method of pursuing international sanctions that accords with just war principles.

93. For example, the United States and eleven European nations imposed diplomatic sanctions on Syria in 1986 in retaliation for Damascus involvement with the terrorist bombing of an Israeli airliner. See *U.S. Places Sanctions Against Syria*, INTER PRESS SERV., 14 Nov. 1986, available in LEXIS, News Library, Wires File.

94. See S.C. Res. 841, U.N. SCOR, 3238th mtg., U.N. Doc. S/RES/841 (1993).

95. See Pound & El-Tahri, *supra* note 5, at 59.

96. See HUFBAUER ET AL., *supra* note 10, at 70-71.

B. Total Embargoes Reconsidered: Are Humanitarian Exemptions Enough?

One may accept that a sensible distinction can be made between noncombatants and combatants in economic coercion and yet respond that the limited types of sanctions outlined above, namely arms embargoes, diplomatic sanctions, and freezing foreign-held assets, are not the only legitimate sanctions. After all, even total embargoes invariably include humanitarian exemptions designed to allow the import of goods, including foodstuffs and medical supplies, that are necessary to alleviate pain and suffering. Indeed, such exemptions are required by international law. For example, Article 23 of the Fourth Geneva Convention mandates free import of medical supplies intended for civilians and food intended for children and women in maternity.⁹⁷

However, the exemptions required by Article 23 are minimal and hardly protect all those who the laws of just war would consider innocent noncombatants. If only children and women in maternity must be allowed access to food, all other women and all men are still excluded from the protections of the Convention. Yet, these last two groups are comprised mainly of noncombatants. Thus, the legal requirements of Article 23 are vastly under-inclusive.

In practice, the humanitarian exemptions allowed by the Security Council committees charged with overseeing the implementation of sanctions are more liberal than Article 23. Iraq, for example, is allowed to import "supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs" intended for all civilians, in accordance with UN Resolution 661.⁹⁸ For Iraq and others targeted by total embargoes, the Security Council committees allow two categories of humanitarian trade. First, those who wish to send food or medicine can file a notice of intent and send their goods to the embargoed country once their submission is officially acknowledged.⁹⁹ Second, those requesting permission to send other types of aid, such as spare parts, clothing, or school equipment, have their submissions reviewed by the committee.¹⁰⁰ All requests are approved automatically unless a committee member raises a timely objection.¹⁰¹ So, although Article 23 is tightly constrained, the actual grant of humanitarian exemptions provides considerably more protection for civilians.

97. See Christiansen & Powers, *supra* note 35, at 44; Geneva IV, *supra* note 47, art. 23.

98. See S.C. Res. 661, U.N. SCOR, 2933d mtg., ¶ 3(c), U.N. Doc. S/RES/661 (1990).

99. See Paul Lewis, *U.N. Is Worried by Human Cost of Embargoes*, N.Y. TIMES, 19 Dec. 1993, at A21 (summarizing sanctions committee procedures).

100. See *id.*

101. See *id.*

But even with these liberal standards, the economic devastation brought about by trade embargoes is hardly tempered. Countries have found that although they can technically buy basic food and medical supplies under the exemption, they have no money to actually purchase those humanitarian goods as a result of the broader sanctions. For example, in Iraq, more than seven years of an almost total embargo on oil sales and other international business, combined with the Gulf War, have left the country impoverished.¹⁰² Although international relief organizations often donate humanitarian goods, the harm done to ordinary civilians by total embargoes remains severe. The data described earlier on the impact of sanctions in targeted states bespeak this reality.¹⁰³

Humanitarian exemptions indicate that moral norms, such as those of the just war tradition, have begun to influence economic coercion. But even under the more liberal rules used by the Security Council committees, humanitarian exemptions do not sufficiently ease the burden on innocents.

Nevertheless, Clawson argues that embargoes are morally justifiable even if they harm ordinary civilians because the responsibility for the scarcity of resources rests with the rulers, not the sanctioning states.¹⁰⁴ Often, the rulers keep the relief supplies intended for ordinary civilians for themselves and the military.¹⁰⁵ No doubt that Clawson is right that rulers who divert resources from civilians deserve to be condemned. But from the perspective of just war, the sanctioning states cannot so easily evade moral judgment. That governments will insure that elites and the military are supplied first is a foreseeable and predictable result of sanctions. Moreover, the intended strategy of embargoes is to deprive the people of resources in order to pressure their leaders. Even if resources were not diverted, the strategy depends on restricting the economy, which inevitably takes its harshest toll on the most vulnerable in society.

What if humanitarian exemptions were used in such a way as to protect against the loss of civilian lives? Presumably the exemptions could be even broader than current practice, allowing sufficient foodstuffs and medical supplies to prevent death. Would the prevention of death be adequate to salvage total embargoes as an instrument of foreign policy? From the perspective of just war, the answer is no. The protection of noncombatants

102. The oil embargo was partially lifted in December 1996 so that more civilian necessities could be purchased. See Barbara Crossette, *Iraq Gets U.N. Approval to Sell Oil to Meet Civilian Needs*, N.Y. TIMES, 10 Dec. 1996, at A14.

103. See *supra* text accompanying notes 35–39.

104. Clawson, *supra* note 1, at 27–28.

105. See *id.*

extends beyond their lives to encompass their livelihoods and property.¹⁰⁶ From at least the 1300s, just war theorists have contended that warriors have a moral duty to protect not only the peasant, but his ox as well; so long as the peasant was peaceful, he could not be intentionally injured in any way.¹⁰⁷ Even with broad exemptions to protect civilian lives, embargoes would destroy industries, cause intentional unemployment, and render property, such as privately owned plants and equipment, worthless. By denying civilians their livelihoods and property, total embargoes would still run afoul of the principle of noncombatant immunity.

Embargoes can also have unintended consequences, including the fortification of the renegade ruler's power, and the creation of refugee flows into neighboring states. Embargoes "can generate patriotic support for the target government and make it easier for that regime to crush domestic groups opposed to the government's objectionable policies."¹⁰⁸ At least one scholar has noted that in Serbia-Montenegro, for instance, the embargo has exaggerated the Serbs' feelings of victimization, enhancing the very ethnic loyalties that paved the way for the conflict.¹⁰⁹ Embargoes also end up helping the ruler and the ruling class because it is they who maintain the monopoly over many goods. And when the rulers and the black market sellers are the same people, embargoes add to their economic clout by enabling them to charge higher prices for scarce goods. Moreover, with the economy stifled, men look for the only available jobs: those in the government and the military.¹¹⁰ Embargoes can thus exacerbate the very problems leading to their adoption.

V. CONCLUSION

The laws of just war provide few hard answers to the moral dilemmas posed by economic sanctioning, but they establish guideposts to help direct the decision of when and how to use sanctions. They enable policy analysts to frame sanctioning regimes to accord with moral norms, but they do not

106. See JOHNSON, *supra* note 47, at 23. "The moral requirement to protect noncombatants implies the development of weapons usable in ways that satisfy legitimate military functions without corollary damage to the lives, livelihoods, and property of noncombatants." *Id.* at 28.

107. See HONORE BONET, *THE TREE OF BATTLES OF HONORE BONET 188–89* (G.W. Coopland trans. & ed., 1949) (1387).

108. Lopez & Cortright, *supra* note 2, at 82.

109. See Susan Woodward, *The Use of Sanctions in Former Yugoslavia: Misunderstanding Political Realities*, in ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING IN A POST-COLD WAR WORLD?, *supra* note 76, at 141.

110. See Damrosch, *supra* note 10, at 75.

provide a traffic code for international behavior that can be enforced without making difficult judgment calls.

One potential safeguard against the improper use of sanctions is to create a special UN organization devoted to assessing the impact of sanctions, proposing targeting strategies, overseeing humanitarian trade, and gauging international compliance. Lloyd (Jeff) Dumas has suggested the creation of such a body, a Council for Sanctions and International Peacekeeping.¹¹¹ Boutros-Ghali has similarly endorsed a new mechanism for organizing sanctions.¹¹² The very existence of such an organization would encourage multilateral sanctioning efforts in lieu of more piecemeal, unilateral efforts. Sanctioning states would likely seek the added legitimacy of UN-backed measures. And rather than relying on the haphazard decisions of individual states, this council would centralize the decision-making process. This will help insure that sanctioning mechanisms are analyzed and implemented uniformly and in accordance with international moral norms. Both the effectiveness and moral acceptability of sanctions would be served by such an organization.

An international sanctions organization might well look to the laws of just war when devising strategies for sanctions. This ancient, yet living body of principles is widely supported in the international community, providing common ground for disparate international interests. It also captures what is most troubling about sanctions, namely the direct and intentional harm that they cause to ordinary civilians of a target state. Guided by notions of just cause, right intention, and noncombatant immunity, such an organization could ensure the morality of sanctioning regimes.

Even in the absence of a formal organization, the laws of just war indicate that only some forms of sanctioning are morally permissible. Total embargoes, even with humanitarian exemptions, should not be used, but arms embargoes, diplomatic sanctions, and the freezing of foreign assets fit comfortably within just war principles. This list does not exhaust the potential sanctions that can be employed within the moral framework of just war. For instance, some scholars have argued in favor of positive sanctions, or economic incentives, to change the undesirable policies of foreign states.¹¹³ Deterring aggression or stimulating foreign leaders to obey international norms through economic rewards, such as extending Most Favored Nation trading status or granting development aid, raises no concern from the perspective of just war.

One who is hesitant to use a just war approach to sanctions might well ask, "Isn't it better to impose harsh sanctions on an outlaw nation than launch a military strike or invasion?" The answer depends on the context of the situation at hand. In some circumstances, a targeted military strike that meets the principles of discrimination and proportionality can be more morally appropriate under just war guidelines than a total embargo. A military strike against a weapons facility at night, or one aimed to destroy purely military targets such as missile sites or military airport runways, would likely take a lesser toll on civilians than a ban on international trade. This conclusion might surprise those accustomed to thinking that military attacks are categorically worse than trade measures. But the just war principles tell us that it is not the divide between military and trade measures, but rather the separation between combatants and innocents, that is key. If a military strike can foreseeably harm fewer innocents than a trade sanctions regime, under just war principles the military action is more justifiable. Of course, there may be circumstances in which a military attack will cost many innocent lives, such as an attack against a guerrilla opponent hiding among the ordinary citizenry, and the calculus will change. Context matters in moral judgment, and policymakers should be attuned to the details of the situation whenever they set a policy course.

Although sanctions pose moral dilemmas, they will continue to be a frequent instrument of foreign policy in a world of economic interdependence. They will not be banned any time soon. Thus, the task is to begin to develop more effective targeting strategies for sanctions, enhancing their precision and sparing the vast majority of innocent civilians from undue hardship. The principles of just war provide a helpful guide in this process.

111. See Lloyd (Jeff) Dumas, *A Proposal for a New United Nations Council on Economic Sanctions*, in *ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING IN A POST-COLD WAR WORLD?*, *supra* note 76, at 187.

112. See Lopez & Cortright, *supra* note 2, at 81.

113. See David A. Baldwin, *The Power of Positive Sanctions*, 24 *WORLD POL.* 19 (1971).