

SYMPOSIUM ON UNILATERAL TARGETED SANCTIONS

THE EFFICACY OF TARGETED SANCTIONS IN ENFORCING COMPLIANCE WITH INTERNATIONAL LAW

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In the international legal order, sanctions are valued for their coercive and stigmatizing functions. Through the imposition of financial or other costs, these measures seek to induce compliance with international law by those who are targeted. They also aim to signal the sender's commitment to the violated norm and stigmatize an actor responsible for wrongful behavior. In light of these functions, this essay examines the factors to assess when evaluating the efficacy of unilateral targeted sanctions in enforcing international law. The issue is relevant not only for political scientists, but also for international lawyers interested in ensuring compliance with international norms.

The Metrics of Efficacy

There is no single methodology for determining sanctions' efficacy. The methods employed and the variables identified in studies on sanctions depend on the definition and purposes the analyst attributes to the measures. This essay only addresses the efficacy of unilateral targeted sanctions that are adopted in response to violations of international law and that aim to pressure a state into complying with its international obligations. The discussion focuses on third-party enforcement of collective obligations, which is somewhat of a trend in current international politics.

States can use unilateral targeted sanctions to “stigmatize or isolate targets for violating international norms.”¹ Oona Hathaway and Scott Shapiro focused on this method of enforcement in their article on state “outcasting”—a practice that “involves denying the disobedient the benefits of social cooperation and membership” in the international community.² When outcasting occurs, the actors responsible for violating international law are stigmatized for their wrongful behavior and suffer the costs of exclusion from cooperation and trade with other international actors. Targeted sanctions operate in a similar manner to encourage compliance with international law.

An obvious example involves the targeted measures against Russian individuals, private entities, and sectors of the state's economy following Russia's violation of Ukraine's territorial sovereignty, including through the 2014 annexation of Crimea. The targeting states' declared objectives have been to impose costs on Russia for violating

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¹ Francesco Giumelli, *The Purposes of Targeted Sanctions*, in TARGETED SANCTIONS: THE IMPACTS AND EFFECTIVENESS OF UNITED NATIONS ACTION 38, 46 (Thomas J. Biersteker et al. eds., 2016).

² Oona Hathaway & Scott Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252 (2011); *see also* OONA HATHAWAY & SCOTT SHAPIRO, *THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD* ch. 16 (2017) (discussing outcasting, including in relation to the recent measures against Russia).

a fundamental norm of the international community. As explained by then-U.S. President Barack Obama, as soon as Russia “stop[s] doing that, the sanctions will be removed.”³ Similar illustrations involve the sanctions imposed in response to, *inter alia*, human rights violations in Venezuela and Syria, or the nonproliferation sanctions against Iran. In all these cases, the state should be understood as the true target.⁴ The lifting of the measures is dependent upon the state’s behavior—i.e., its compliance with international norms—rather than the behavior of the individuals and entities that are directly targeted. In addition, the state associated with the targeted actors typically perceives itself as the real target and reacts accordingly. Russia, for example, adopted countersanctions in the form of a ban on agricultural products from the states that sanctioned Russian individuals and businesses. Similarly, in reaction to the measures against Venezuelan actors, Venezuela expelled the Canadian chargé d’affaires and declared the Spanish ambassador *persona non grata*.

Throughout this short piece it will be argued that a broad conception of how sanctions influence the targeted state is necessary to understand their efficacy at enforcing international law. Although scholarship tends to assess the impact of coercion and stigma in an isolated manner, in practice they can overlap. When states respond to targeted sanctions, they respond not only to the infliction of financial and other tangible costs but also to the social and psychological impact of stigmatization.⁵ It is therefore important to take into account how both factors impact the state’s policy decisions and whether they will lead to compliance.

The simultaneous imposition of costs and stigma means that the sanctions have a punitive effect on the state concerned. Though Special Rapporteur Gaetano Arangio-Ruiz acknowledged that sanctions could have punitive consequences⁶ and Special Rapporteur Roberto Ago initially defined sanctions as punitive,⁷ the final Special Rapporteur of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) sought to prevent countermeasures from serving such purposes.⁸ Nonetheless, understanding sanctions as a form of punishment provides insight on their (in)efficacy, as it enables us to take into account the social-psychological impact of such practices on state behavior.

The Effects of Coercion

From an international law perspective, the purpose of unilateral targeted sanctions is to induce an actor that is violating its legal obligations to comply. Targeted sanctions aim to pressure the government responsible for an objectionable policy by raising personal costs for leaders directly or through their elite supporters, or by reducing trade in a key sector of the state’s economy. These sanctions inflict a variety of costs, notably financial, economic, political, and personal costs. The rational choice paradigm underpins the logic behind coercive sanctions. These measures are expected to influence the state’s cost-benefit analysis and direct the decision-making process to the action preferred by the targeting state.⁹

³ [Obama’s Last News Conference: Full Transcript and Video](#), N.Y. TIMES (Jan. 18, 2017).

⁴ This is generally the case when the purpose of the sanction is to influence state behavior. *See, e.g.*, RICHARD NEPHEW, [THE ART OF SANCTIONS: A VIEW FROM THE FIELD](#) (2018).

⁵ CLARA PORTELA, [EUROPEAN UNION SANCTIONS AND FOREIGN POLICY: WHEN AND WHY DO THEY WORK?](#) 37 (2010).

⁶ Gaetano Arangio-Ruiz (Special Rapporteur), [Second Report on State Responsibility](#), UN Doc. A/CN.4/425 at 1-3, 7, paras. 3-4 (1992).

⁷ James Crawford (Special Rapporteur), [Fourth Report on State Responsibility: The Origin of International Responsibility](#), UN Doc. A/CN.4/517 at para. 16 (1970).

⁸ [Draft Articles on State Responsibility for Internationally Wrongful Acts](#), 2 Y.B. INT’L L. COMM’N 129 paras. 1, 6 & 7 & pp. 130–31 (2001).

⁹ David Cortright & George A. Lopez, *Introduction: Assessing Smart Sanctions*, in *SMART SANCTIONS: TARGETING ECONOMIC STATECRAFT* 1-22 (David Cortright & George A. Lopez eds., 2002).

Quite often, the efficacy of coercive sanctions is determined by the costs imposed on the target and whether they generated, or contributed to, a policy or behavioral change. For this reason, sanctions need to be properly designed, implemented, enforced, and monitored in order to impose the desired costs, and the target must not be able to evade them. International cooperation makes it easier to impose higher costs and more difficult for the target to circumvent the measures. Nonetheless, even if sanctions have successfully inflicted the desired costs, this does not mean that the targeted actor will cave and act according to the wishes of the sanctioning state. If behavioral change is the primary objective for international lawyers, in political science there is a general consensus that coercive sanctions are generally a “failure” in terms of their ability to change behavior (and this in spite of the diversity of sanctions studies).¹⁰

In order for coercion to be successful, the cost of compliance with the norm that the targeting state has sought to reinforce needs to be lower than the cost of continued defiance. The targeting state’s demands should be clear, achievable, and avoid threatening the target’s political existence. Leaders are more likely to comply if the targeting state’s demands do not jeopardize their position.¹¹ In addition, a target will more readily comply if it views the sanction as legitimate. Whether the sanctions threaten the target and whether the target perceives them as legitimate are matters of perception. Accordingly, how decision-makers perceive the sanctions is an important unit of analysis.¹² This brings us to the social-psychological effects of stigmatization.

The Effects of Stigmatization

Processes of stigmatization are valued because it is presumed that stigmatized actors want to be part of the “in-group” and therefore will adjust their actions in order to enjoy the benefits of membership.¹³ Like individuals, however, states can react to stigma in a variety of ways.¹⁴ Due to measurement difficulties, few studies include psychological impacts in their analysis,¹⁵ but studies on stigma in sociology and international relations can provide insight on behavioral implications when a state is stigmatized for wrongful policies. Although the state may, in theory, be an abstract entity, in practice it is composed of a group of decision-makers who are, of course, individuals with cognitive and emotional processes and who tend to identify with their state. This identification process shapes their policy choices.¹⁶ For this reason, taking into account the social-psychological elements that influence decision-making is likely to improve our understanding of state behavior in reaction to the stigmatizing effect of sanctions.¹⁷

¹⁰ See Michael Brzoska, *Research of Effectiveness of International Sanctions*, in *STUDYING EFFECTIVENESS IN INTERNATIONAL RELATIONS: A GUIDE FOR STUDENTS AND SCHOLARS* 143, 157 (Hendrik Hegemann et al. eds., 2013).

¹¹ *ORTELA*, *supra* note 5, at 46.

¹² *Id.* at 154.

¹³ *Hathaway & Shapiro*, *supra* note 2. Hathaway and Shapiro also warn, however, that “you cannot outcast a voluntary outcast.” *Id.* at 340; see also Moshe Hirsch, *INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW* 178–80 (2015).

¹⁴ Ayse Zarakol, *AFTER DEFEAT: HOW THE EAST LEARNED TO LIVE WITH THE WEST* (2010).

¹⁵ *ORTELA*, *supra* note 5, at 37–38; Kimberly Ann Elliott, *The Impacts of United Nations Targeted Sanctions*, in *TARGETED SANCTIONS*, *supra* note 1, at 172–89.

¹⁶ Jacques E.C. Hymans, *THE PSYCHOLOGY OF NUCLEAR PROLIFERATION: IDENTITY, EMOTIONS AND FOREIGN POLICY* ch. 2 (2006) (discussing leaders’ national identity conceptions and how these give rise to a specific cognitive and emotional effect, which will in turn generate different actions and foreign policy choices).

¹⁷ Robin Marwika, *EMOTIONAL CHOICES: HOW THE LOGIC OF AFFECT SHAPES COERCIVE DIPLOMACY* (2018) (using the “logic of affect” to study how individual leaders respond to coercive diplomacy).

Drawing from Erving Goffman's sociological study of stigma, Rebecca Adler-Nissen has argued that, when stigmatized, states can respond by adopting a variety of coping strategies: stigma recognition, stigma rejection, and counterstigmatization.¹⁸ Only in the first case would the stigmatized actor accept the label and adjust its behavior in order to reintegrate with the in-group. In the second scenario the stigmatized state accepts the group's behavioral norms but rejects being responsible for deviant behavior. In the third scenario, the sanctioned state accepts the role of the deviant and wears it as an emblem of pride. It counters the label imposed on it by attempting to stigmatize the actors that initially imposed it. In the latter two scenarios, stigmatization is unsuccessful and can lead to a power struggle between the sanctioned and the sanctioner.

The success of stigmatization is likely to depend on a variety of factors. How states cope with stigma depends on their material and social resources; powerful states are more likely to resist or counter stigma. State responses equally depend on the degree to which the norms in question are shared and the moral authority of the sanctioner is accepted. If the norms are contested or the target questions the sanctioning state's moral authority, a labeled actor is more likely to reject the norms being enforced and seek solidarity among other deviant actors. In this sense, a target's sense of identity and interaction with the targeter are also important factors.¹⁹

In addition, for stigma to succeed, the stigmatized actor must want to be a member of the in-group and feel ashamed of the behavior that led to the outcasting. It must also accept the legitimacy of the actor imposing the measure. If neither of these conditions is met, the sanctioned entity may believe the measures taken against it are unfair and resist compliance with the sanctioning state's demands. There is evidence that states care more about their ontological security—a consistent sense of self—than they do about their material interests.²⁰ States' sense of identity and the norms they wish to uphold in their international relations have led sanctioned actors to declare that such measures are illegitimate.²¹ Noncompliance becomes a form of resistance against an illegitimate act.

The efficacy of stigmatization also depends on whether the group on behalf of which the stigma is imposed is united in responding to normative violations. Solidarity increases the legitimacy of sanctions. However, this is difficult to achieve in the international community (on behalf of which collective obligations are enforced), where states are divided on the legitimacy of unilateral sanctions. If third states believe that the sanctions are illegitimate, they will be more inclined to politically support those who have been sanctioned and possibly help them circumvent the measures. The target will therefore be able to rely on another group and have less interest in joining the group that imposed the measures.

Inconsistent practice might also decrease the perceived legitimacy of sanctions. Those who believe that the targeting state is applying double standards might claim that the alleged wrongful behavior is being used as a pretext and that the sanctions are merely an attempt to weaken or diminish their target. Even worse, inconsistency might lead the targeted state to perceive the sanctions as a threat to its identity; it might perceive that it is not being sanctioned for what it has done but for who it is.²² Under these circumstances the political cost of compliance is likely to be too high.

Finally, the position of moral authority adopted by the sanctioner means there is an implied hierarchy in the imposition of stigma, which can also hurt the sanctions' efficacy in enforcing international law. This leads us to sanctions' punitive effect.

¹⁸ Rebecca Adler-Nissen, *Stigma Management in International Relations: Transgressive Identities, Norms and Order in International Society*, 68 INT'L ORG. 143 (2014).

¹⁹ ZARAKOL, *supra* note 14.

²⁰ See Ayse Zarakol, *Ontological (In)security and State Denial of Historical Crimes: Turkey and Japan*, 24 INT'L REL. 3 (2010).

²¹ Alexandra Hofer, *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?*, 16 CHIN. J. INT'L L. 175 (2017).

²² Mark Daniel Jaeger, *Constructing Sanctions: Rallying Around the Target in Zimbabwe*, 29 CAMBRIDGE REV. INT'L AFF. 952, 960–61 (2016).

Efficacy Implications of Sanctions' Punitive Effect

According to Anthony Lang, “the primary criterion that differentiates punitive sanctions from other forms of sanctions is that they must be the infliction of harm in response to a violation of a rule or norm of international society.”²³ The party imposing the measure needs to do so on behalf of a community to which it belongs. In Richard Nossal’s view, inasmuch as coercive sanctions consist of an imposition of costs in response to violations of community norms, or collective obligations, as perceived by the sender they are a form of punishment.²⁴

Sanctions are often referred to as punitive and the word itself implies punishment, yet this aspect has received very little attention. The punitive effect of countermeasures was ultimately rejected in ARSIWA.²⁵ Perhaps one of the reasons this has been overlooked is because punishment does not sit well in the international legal system. The vertical nature of punitive sanctions is at odds with international law’s horizontal structure, where sovereign equality is one of the system’s general principles.²⁶ Nonetheless, accepting that unilateral coercive measures are a form of punishment provides insight on their effectiveness and thus on how to increase their efficacy.

This essay does not suggest that states adopt sanctions with the intention of imposing punishment, but instead that the combination of coercion and stigmatization has a punitive effect, meaning that the target will perceive the sanction as a form of punishment. As Armin Falk et al. demonstrate, when judging the fairness of an action, people take into account not only its consequences but also the intention it signals.²⁷ When applied to sanctions, this means that the target’s interpretation of the targeter’s intentions matters.

In a horizontal system, acts of punishment may be perceived as unfair or degrading, thereby triggering feelings of resentment and motivating the target to resist. Resentment is related to status and hierarchy; it is an emotion that arises when one feels that one’s (low) position is undeserved or that one’s peers have not properly recognized one’s rightful status.²⁸ More often than not, Western powers that impose sanctions invest themselves with moral authority to enforce the normative order. A targeted state’s (historical) interactions with these state(s) shape how it will respond to stigmatization.²⁹ It would be informative to consider the impact of punitive sanctions on actors such as Russia, Iran, Syria, Venezuela, Myanmar, or Zimbabwe, all of which have lengthy histories of tension with either European countries, the United States, or both. How do their historical narratives and previous interactions with sanctioning states inform their responses to sanctions in present international relations?

Finally, unlike anger, which can trigger an immediate response, resentment lingers below the surface. Under these circumstances the target will wait for the opportune moment to reverse the status quo. Although certain sanction regimes seek to change behavior over the long term, such an approach underestimates the target’s ability to adapt and to remain resilient. It also assumes that the context in which the sanctions are implemented will remain unchanged. Yet change in international politics can occur in unpredictable moments and have unpredictable effects. Only time will tell if the winds blow in favor of the sanctioned or the sanctioner.

²³ ANTHONY LANG, JR., *PUNISHMENT, JUSTICE AND INTERNATIONAL RELATIONS: ETHICS AND ORDER IN THE COLD WAR* 78 (2008).

²⁴ Kim Richard Nossal, *International Sanctions as International Punishment*, 43 INT’L ORG. 301, 308 (1989). *But see* LANG, *supra* note 23, at 81–82.

²⁵ *See supra* note 8 and accompanying text.

²⁶ ELISABETH ZOLLER, *PEACEFUL UNILATERAL REMEDIES: AN ANALYSIS OF COUNTERMEASURES* 58–62, 63 (1984).

²⁷ Armin Falk et al., *Testing Theories of Fairness—Intentions Matter*, 62 GAMES & ECON. BEHAV. 287, 299–300 (2008).

²⁸ Reinhard Wolf, *Political Emotions as Public Processes: Analyzing Transnational Resentiments in Discourses*, in RESEARCHING EMOTIONS IN INTERNATIONAL RELATIONS: METHODOLOGICAL PERSPECTIVES ON THE EMOTIONAL TURN 231–54 (Maéva Clémaend & Eric Sangar eds., 2018).

²⁹ ZARAKOL, *supra* note 14, at 8.

Does Efficiency Overrule (In)Efficacy?

Although there was some optimism that the transition from comprehensive to targeted sanctions would lead to more successful coercion, this does not seem to be borne out in practice.³⁰ This brings us back to what David Baldwin argued many years ago: whether or not coercive sanctions work, they are a cost-efficient means for political leaders to demonstrate that they are “doing something.”³¹ The same holds true for international law’s enforcement. Unless an alternative means of enforcement appears, it is unlikely that states will forego coercive sanctions. This provides all the more reason to broaden our understanding of sanctions’ (in)efficacy. In the meantime, sanctions enable the sanctioning state to signal its commitment to international norms.³²

The approach suggested here is an invitation to consider the social-psychological effects of unilateral targeted sanctions. Studying the effectiveness of sanctions from this perspective would be in line with emerging scholarship in international relations that broadens our understanding of coercive practices and integrates emotion into international politics.³³ In essence, this approach calls for a broadening of what we call “behavior” to include, inter alia, “beliefs, attitudes, opinions, expectations, emotions” in assessments of efficacy.³⁴

³⁰ See [Brzoska](#), *supra* note 10; Consider also the results provided on UN targeted sanctions by Thomas J. Biersteker et al., *The effectiveness of United Nations targeted sanctions*, in TARGETED SANCTIONS, *supra* note 1, at 233–245.

³¹ [Brzoska](#), *supra* note 10, at 143–44 (quoting David Baldwin, *The Sanctions Debate and the Logic of Choice*, 24 INT’L SEC. 80 (1999)).

³² See [Hofer](#), *supra* note 21; see also Alexandra Hofer, *Negotiating International Public Policy Through the Adoption and Contestation of Sanctions*, REVUE BELGE DE DROIT INT’L 440 (2017).

³³ MARK DANIEL JAEGER, *COERCIVE SANCTIONS AND INTERNATIONAL CONFLICT: A SOCIOLOGICAL THEORY* (2018); LEE JONES, *SOCIETIES UNDER SIEGE: EXPLORING HOW INTERNATIONAL ECONOMIC SANCTIONS (DO NOT) WORK* (2015); [MARWIKA](#), *supra* note 17.

³⁴ [Baldwin](#), *supra* note 31, at 88.