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International Sanctions as a Primary Institution of International Society

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International sanctioning is an idea which became a right, in certain circumstances a duty, and is now a practice. While acknowledging that the status of international sanctioning as an institution of international society is difficult to prove (Wilson 2012), this chapter assumes that the practice is now sufficiently complex and deep to make reference to it as an institution reasonable. If so, what kind of institution is it? The burgeoning literature on 'primary' or 'fundamental' institutions suggests several possibilities. It could be seen as a 'procedural' institution along with *inter alia* diplomacy, trade and war, the purpose of which is to protect and support the 'foundational' institutions of sovereignty, territoriality and international law (Holsti 2004, 21-27). It could be seen as a 'derivative' institution (along with non-intervention and law) of the 'master' institution of sovereignty; or alternatively a derivative institution (along with alliances, war and the balance of power) of the master institution of great power management (Buzan 2004, 161-204). Different English School theorists have different schemes and a settled scheme has yet to emerge. This does not, however, prevent us from exploring the relationship between institutions, and the purpose of this chapter is to explore the reciprocal effects of the increasingly institutionalized practice of sanctions on the institutions (whether foundational, master, procedural or derivative) of war and great power management.

The chapter begins by exploring the concept of international sanctions as a practice for states to collectively punish the violation of pivotal international norms through the institutionalized authority of international organizations. Rather than considering sanctions as a purely instrumental foreign policy tool, we conceptualize international sanctions as a way for states to reaffirm core constitutive principles of international society, stigmatize transgressors, and deter future norm violations. The chapter then broadly charts the development of international sanctions from the Concert of Europe to the early 21st century and traces how international sanctions as a practice shaped the institutions of great power management and war. In so doing, we show how 'secondary' institutions, primarily the United Nations, through institutionalized

practices such as international sanctions, can change the understanding or shape the transformation of certain primary institutions.

International Sanctions as Communal Penalties

International sanctions are measures taken collectively by states to ensure compliance with major international norms. They are measures taken *in extremis* when lesser means have failed to bring about the desired result. Hence, these measures are rarely isolated practices but form part of international society's toolkit to uphold and enforce norms. Sanctions can be diplomatic, social, cultural, economic and military. The logic of sanctions is simple: breach major international norms and collectively imposed costs will follow. One main purpose of sanctions is instrumental: to ensure compliance with the breached norm. Much scholarship on the use of sanctions—bilateral and multilateral, comprehensive and targeted—have focused on this instrumental aspect and have questioned the effectiveness of employing sanctions in achieving foreign policy goals (Hufbauer, Schott and Elliot 1990; Pape 1997; Solingen 2012). But international sanctions also perform important signalling and deterrent functions. They signal perhaps more than any other action which international norms are the most important. These are the norms transgression of which provokes the deepest and most widespread disapprobation, as measured by the length states are prepared to go to uphold them. Length here usually means pain. International sanctions hurt the imposing states as well as the target. Attempts at burden-sharing—at redistributing costs from those less able to bear them to those more able—have not proved successful. In sending out a strong signal that certain transgressions will not be tolerated, and will likely meet with a strong response, international sanctions also perform an important deterrent function. Their purpose is not only to reverse the current act of norm violation but deter future miscreant acts, not only by this state but by any state (Baldwin 1985, 145-205, 370-74).

While often thought of merely as tools of foreign policy, international sanctions properly speaking are highly communal engagements. It is in this respect that the classic definition of Doxey is deficient. It is true that 'international sanctions … are penalties threatened or imposed as a declared consequence of the target's failure to observe international standards or international obligations' (Doxey 1987, 4). But for them to be properly *international* sanctions the penalties have to be *collectively*

threatened or imposed. But there is a second, deeper, respect in which international sanctions are communal. They are expressive of the moral character of a society, in particular its moral base lines—the rules and principles violation of which it is loath to tolerate, even in the most exceptional circumstances. They are also expressive of the coherence of any given society, its capacity for solidarity in the face of major threats to its well-being—the difficulty in international society being that there is rarely much agreement on the source, nature and magnitude of such threats, and the moral base lines are largely determined by a small sub-set of international society viz. the great powers.

The difficulty of cooperation in a highly heterogeneous international society notwithstanding, the communal nature of international sanctions makes it a highly appropriate subject for the 'societal approach' (Buzan 2014) of the English School (ES). For what we are dealing with here is not just 'raw' and 'observable' 'behaviour' but 'conduct', that is, ethically informed behaviour. The issue is not only what states do but why they do it and for what ends? The assumption is that states are not just rational utility-maximisers, or means-ends calculators, but social subjects. Their behaviour is shaped as much by social expectations and the desire to maintain social standing as it is by rational calculation of advantage—or at least the social element always has a substantial constraining or enabling effect. As Manning argued, states conduct themselves

> …in the presence of a cloud of witnesses, comprising a diversity of what to the social psychologist are known as reference groups. And, as often as not, if it be wondered why a state has done this or that, and no more obvious explanation avails, the answer is that, in doing this or that, it was meeting the expectations of some politically or diplomatically consequential reference group (1972, 323-33).

For Manning, regard for international norms was largely a function of the expectations of the relevant reference group, and 'the less your indignation, the less my self-restraint' (Manning 1972, 323).

At this point it is important to make two further conceptual distinctions. Firstly, international sanctions have to be distinguished from sanctions in general. The former are not only collectively agreed and imposed measures but such measures agreed within the framework of an international organisation and imposed under the authority of that organisation. This is what gives them their sanctity. They are not

merely measures imposed by one state or a few states in pursuit of their individual or joint interests, but measures imposed by a collectively significant and recognised grouping of states. Hence, the UN as a secondary institution is not only a product or expression of primary institutions but can, through its practices such as international sanctions, reinforce and instigate changes in primary institutions such as great power management and war. What makes these secondary institutions significant is their formal grounding in some venerated and/or authoritative treaty or charter and the institutionalized nature of their practices over time. This prompts the second distinction: international sanctions are not merely instruments to achieve foreign policy objectives; they are not merely one among several 'means of pressure' (Northedge 1976). Rather, as we say at the outset, they are measures imposed to defend and promote an important international norm or principle. This is a further source of their sanctity; it is why we expect sanctions to be collective; it is also why we expect the collective to be large and/or significant with regard to some quality of its composition; and in practice this usually entails formal organisation.

The very word 'sanctions' suggests measures that are incontrovertibly just and decent. This is why its employment has become highly popular; but it is also why its meaning has been corrupted. States now use the label sanctions to cover and dignify all manner of acts, not exclusively those to defend an important norm with the backing of a major international organisation. States will often seek to cajole other states into joining them to provide a fig-leaf of respectability. Those with the capability will attempt to get the imprimatur of some international organisation in which it is dominant: one thinks here of the United States (US) with respect to the Organisation of American States, or Russia with respect to the Commonwealth of Independent States. The matter is not helped by the fact that the media daily uses the word sanctions loosely. Taking what states say at face value, it rarely stops to ask whether the sanctions being proposed or talked about are not sanctions in any meaningful sense but merely foreign policy instruments. It often uses sanctions to mean economic sanctions. Indeed, for many people now sanctions and economic sanctions are synonymous, when in fact the measures employed can be and usually are much broader.

A Derivative of Great Power Management

The roots of the practice of international sanctions can be found in the concert system of great power management of the nineteenth-century. While there is no consensus on the nature of this system, how long it lasted, and its historical significance (Hinsley 1963; Holbraad 1970; Jervis 1985; Clark 1989; Holsti 1992; Mitzen 2013), there can be no doubt it brought into the realm of 'diplomatics' (Manning 1962) a number of ideas and practices which paved the way for the innovations of the League of Nations Covenant and the United Nations (UN) Charter. One of these ideas was the negation of the right of any one Power and the assertion of the right of the Powers collectively to make decisions on matters affecting the peace of Europe. Another was the responsibility of the Powers collectively 'to enforce the decisions of Europe'. In addition, the Congress developed the practice of treating as an 'international question' any matter that the Powers collectively deemed a threat to the peace of Europe, whether it was a matter that fell within the domestic jurisdiction of a sovereign nation or not (Woolf 1916, 23-37; Wilson 2003, 34-7).

Explicit rights and duties regarding international sanctions were first established in the League of Nations Covenant. The idea behind them was simple. War had become extremely costly and destructive. It could no longer be considered merely as one among many tools open to increasingly industrialised and nationalistic states. Without completely removing the individual sovereign right of nations to resort to arms, a way had to be found to put the power and strength of the modern nation state to the service of the community rather than against it. The decentralised system of fundamental norm enforcement that had hitherto prevailed was no longer tenable. A more centralised system harnessing the power and will of the community was needed in its place. Building on the work of the Hague Conferences and the principle of collective responsibility for international order tentatively established by the European concert system, the League of Nations sought to put international relations on a more ordered and organised footing. The right to go to war was heavily proscribed. Rekindling a long dormant Grotian idea, the use of force was to be conceived (largely) either as an act of violence against the community or an act of community law enforcement. Under Article 16 of the League Covenant members undertook to immediately apply wide-ranging economic measures against any member of the League resorting to war in disregard of its covenants. Members of the League Council undertook to recommend what armed forces members of the

League should contribute to protect these covenants (Henig 1973, 184-5). The obligation to impose social and economic sanctions was therefore strong under the Covenant. They were to be immediate, all-encompassing and admitting of no exception. The obligation to impose military sanctions, however, was weak. They amounted to no more than an obligation to consider a recommendation from the Council on the armed forces they might voluntarily contribute to any proposed collective enforcement effort.

The failure of the League to act decisively against acts of aggression in Manchuria, Abyssinia and the Rhineland in the 1930s was partly attributed to flaws within the Covenant. The Charter sought to make amends. First and foremost, the unanimity requirement (Article 5) for League Council decisions on disputes likely to lead to a rupture of the peace was abandoned. In its place was put the requirement of a two-thirds majority of the Security Council, but with each of the prevailing five great powers enjoying a right of veto (Article 27). The automaticity of social and economic sanctions was replaced by the requirement of a decision by the Security Council on what measures 'not involving the use of armed force' but including 'complete or partial interruption of economic relations', means of communication and diplomatic relations, should be applied in response to a threat to or breach of the peace (Article 41). Finally, the obligation to impose military sanctions was strengthened with the Security Council given the authority, if measures under Article 41 failed or were deemed inadequate, to 'take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security' (Article 42).

Drawing on the experience of the 1930s the UN Charter equipped the international community with a modified Grotian model of the relationship between law and war. The Security Council was given enhanced executive power to define threats to and breaches of the peace and legally oblige member states to apply the measures it deemed necessary to bring the situation under control. It also gave the five victorious great powers of World War Two an elevated place in the new arrangement. It was precisely this elevated place that led to international sanctions being rarely employed during the Cold War despite the occurrence of many threats and breaches. Only two such threats and breaches proved to be sufficiently above the fray of Cold War politics for the permanent members to be in agreement on international measures under Chapter VII for the enforcement of international peace and security. These

cases were the threat posed by the rebel white supremacist regime in the British colony of Rhodesia, and the threat posed by South Africa's policy of apartheid and its continued illegal occupation of South West Africa.

The parents of international sanctions had high hopes for their children when they were brought into this world on 1 January 1920. But an uneventful and unproblematic first decade was followed by a highly problematic second; prompting something of a rebirth mid-way through the third. Of course, the world in which they had to find their way was hardly hospitable, and some have concluded that so it will always be and it might have been better if they had not been brought into this world at all. Hedley Bull argued, for example, that the Grotian conception of international society is always susceptible to corruption by the Hobbesian, communal concern and solidarity being all too frequently contaminated by power politics. According to this view international sanctions place a solidarist burden on international society that its essentially pluralist nature cannot bear (Bull 1966). Those responsible for their progress in the world, however, have not generally shared this view. Even during the two periods, inter- and Cold War, when their employment was rare there was little talk of abandoning them. This in itself says something important about international society. Even during times when the world was at best a pluralist world of peaceful coexistence, and at worst Hobbesian world of violence and disorder, the solidarist idea of common action in defence of common norms, of collective action to protect and promote common purposes, was not extinguished. It is the strength of this solidarist idea in practice that we need to establish if we are to gain a firm understanding of the place of international sanctions in contemporary international society. Another way of putting this is that the League and the UN are based on an 'authority model' rather than a 'power model'. Until the end of the Cold War the general view was that this 'authority model', reflecting 'orderly procedures and institutionalised behaviour' (Clark 1980, 18-19), existed mainly in the imagination (Doxey 1987, 15-16). The question now is the extent to which, in the decades since the end of the Cold War, what was once mainly imagined has now become real in the sense of praxis—ideas regularly informing and shaping practice.

International Sanctions as Praxis

Doxey's Cold War conclusion was that the UN, like the League before it, provided a forum and procedures whereby common standards could be established and in the right circumstances collectively enforced. The General Assembly was successful in setting standards on a broad range of fronts; but condemnation of standard-breaking was highly selective and collective enforcement of common standards rare. The one comprehensive case of UN sanctions was directed at the white-minority government of Rhodesia, which unilaterally and illegally declared itself independent of British rule in 1966 (Baldwin 1985: 190-204). In other cases, sanctions were either never discussed in the Security Council, or were blocked by one or more of the permanent members (P5) in defence of their own or a client's interests. In consequence of a divided Council, a consistent pattern of sanctioning never materialised. 'Given the lack of consensus on unacceptable behaviour and the absence of a combined will to respond to wrong-doing, mandatory UN sanctions are predictably unlikely' (Doxey 1987, 16).

Even during the Cold War, however, the issue was not so clear-cut. This is because in between unilateral action and comprehensive mandatory sanctions under Chapter VII of the Charter a range collectively agreed and imposed measures were taken against states deemed to be in breach of international obligations. Salient cases include the UN mandatory arms embargo against apartheid South Africa; EU sanctions against Argentina after its invasion of the Falklands/Malvinas; Western sanctions against Iran during the Tehran hostage crisis; and Western sanctions against the Soviet Union following its invasion of Afghanistan (Baldwin 1985: 251-78). All of these cases received at least partial legitimation by the UN in the form of condemnation of the acts of the target states by the Security Council (or in the last case the General Assembly). In the Iran case condemnation was accompanied by a resolution threatening 'effective measures' under Chapter VII, though a draft resolution authorising mandatory economic sanctions was vetoed by the Soviet Union. These cases show that the distance between minimal and maximum legitimation may be great; but even during the Cold War it became an established practice of states to achieve, primarily through the UN, the greatest legitimation possible of their proposed collective action. If direct authorisation by the highest authority was not possible, at least indirect authorisation, or tacit approval of this body was sought, often in conjunction with similar efforts in other bodies. This says

something highly significant about the diplomatic and sanctioning landscape. Even during the Cold War states were nervous about ‘going it alone’. They all sought maximal communal legitimation for their actions, especially through the UN, which became an East-West and North-South ideological battleground while at the same time retaining, however nebulously according to some, its image as the collective conscience and guardian of humankind.

There were, however, cases where the sanctioning state/states sought legitimation of its/their actions but were largely unsuccessful. From 1960-1962 the Organisation of American States (OAS) imposed sanctions on the Trujillo regime in the Dominican Republic for acts of aggression and intervention in Venezuela. While the Security Council was informed of the measures, as required by the OAS Charter, it was divided as to whether the OAS had acted improperly in not seeking prior UN authorisation. No substantive resolution was forthcoming, the Council merely acknowledging the receipt of information regarding the regional implementation of sanctions. Even this acknowledgement did not command a consensus with the Soviet Union and Poland abstaining (Doxey 1987, 57-9). In 1960 the US began its five-decade campaign of sanctions against the Castro regime in Cuba for misdemeanours ranging from expropriation without compensation of foreign-owned assets to the export of revolution. On numerous occasions it sought the approval and support of the OAS, sometimes successfully sometimes not but almost always with significant opposition or foot-dragging. Since 1975 the US has carried on its campaign without OAS support. The superpower veto ensured that the Security Council approval or condemnation was never seriously pursued (Baldwin 1985: 174-89; Doxey 1987, 59-65). In 1979 the Arab League imposed wide-ranging diplomatic and economic sanctions against Egypt for recognising and concluding a peace treaty with Israel. As well as being a blow to Arab solidarity it was contended that the treaty contravened a ban on separate agreements with Israel agreed at an Arab League summit in 1974. While the measures achieved wide support in the General Assembly no attempt was made, given the inevitability of a US veto, to gain the approval of the Security Council. The non-aligned movement, of which Egypt was a founding member, paid no more than lip service (Doxey 1987, 66-69). The case is significant because it raises again the question of how ‘international’ sanctions need to be to be regarded as international sanctions; and also the question of what is to count as a

major international norm. To these questions Cold War international society provided no clear answers.

The Constituting Effects of International Sanctions

In employing sanctions, the UN Security Council must navigate the tension between mutual respect for sovereignty and great power management. In doing so, the Security Council uses international sanctions to enforce basic constitutive principles of international society and reshape fundamental institutions while potentially contributing to the emergence of new constitutive principles. The use of international sanctions are often constitutive acts, creating UN subsidiary organs and procedures to coordinate implementation of and monitor compliance with sanctions, and sustaining regional organizations in ending conflicts. The practice of UN Security Council sanctions also reinforces the aims and policies of other UN bodies such as the International Atomic Energy Agency (IAEA) in the case of Iran and the development of weapons of mass destruction, and the UN Human Rights Council in the case of Libya and the emerging principle of a 'responsibility to protect' (R2P).

Great powers use international sanctions in two interrelated ways—internally as a reinforcing mechanism amongst themselves to solidify certain constitutive principles, and externally as a method to stigmatize certain actors that violate, and practices that undermine, core principles. Through this double mechanism, sanctions have been used to reshape the institution of war while reinforcing other institutions including international law and great power management.

Following the Cold War, the permanent members of the UN Security Council—China, Russia, the US, the UK and France—achieved some consensus regarding limits to legitimate uses of violence, hence the need to further institutionalize war, and used the specific practice of international sanctions to do so. In other words, the UN Security Council as an agency of an international organization and expression of great power management, through its ability to impose international sanctions, sought to shape the institution of war. Certainty the UN Security Council's authority stems from power; its five veto members account for a large chunk of the world's military and economic might. But, as Bull aptly notes, great power management also

“presupposes and implies the idea of an international society…linked by common rules and institutions as well as by contact and interaction” (2012 [1977], 196). Hence, the UN Security Council’s authority in imposing sanctions also stems from the great powers’ legitimate role and responsibility in maintaining international peace and security.

The primary institution of mutual recognition of state sovereignty, however, continued to constrain great power management and frustrate the efficacy of international sanctions. Ten non-permanent members of the UN Security Council are elected every two years by the UN General Assembly and may abstain or vote against sanctions that eventually pass. Permanent Security Council members, particularly Russia and China, often oppose the application of sanctions in an effort to defend state sovereignty, as demonstrated by the failure of proposed UN Security Council sanctions against Myanmar in 2007, Zimbabwe in 2008, and Syria in 2017. Further, as Margaret Doxey stresses, even if international sanctions are approved, implementation may be uneven due to lack of political will, or ineffective due to a range of practical and circumstantial considerations (2009, 541). Black markets and willful neglect on the part of certain parties e.g. frontline states, may allow states a back door to non-compliance.

The successful use of international sanctions showcases instances where the institutions of international law and great power management superseded mutual recognition of sovereignty. However, the converse is equally true: the UN Security Council’s failure to agree on sanctions for certain transgressions against established international norms speak to the continuing centrality of state sovereignty in international society. Further, sanctions applied by regional organizations such as the European Union (EU), the African Union (AU) or the Economic Community of West African States (ECOWAS), operate alongside UN sanctions (Brzoska 2009). In certain instances these actions diminish and in others they augment the authority the UN, which is a complicating factor in the relationship between the fundamental institutions of state sovereignty, international law and great power management. But consideration must also be given to the influence of sanctioning activity on the most controversial institution in the English school’s pantheon of fundamental institutions, that of war. It was to reduce the incidence and destructiveness of war and harness it to the will of the community that, as we have seen, the practice of international

sanctions first developed. The remainder of this chapter will detail how since the end of the Cold War, the UN Security Council as a manifestation of great power politics has used international sanctions to shape the institution of war.

Limiting the Institution of War since the End of the Cold War

The main constitutive principle guiding the UN Security Council's use of international sanctions is the prohibition against the aggressive use of force. In order to maintain international peace and security, Article 2(4) of the UN Charter stipulates that member states shall refrain "from the threat or use of force against the territorial integrity or political independence of any state" with Articles 39-51 detailing measures that may be adopted to address transgressions. Article 41 specifically outlines actions, short of armed conflict, that the Security Council might use against those who transgress Article 2(4) including the "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations". These sanctions are an inward affirmation of principle as well as an outward signal to the world that fundamental principles upholding international peace and security must not be breached. According to the Targeted Sanctions Consortium (TSC), 15 of 23 uses of international sanctions between 1990 and 2013 respond directly to a breach of this prohibition against the aggressive use of force (2014)[1].

The UN Charter's prohibition on the aggressive use of force and the Security Council's use of sanctions to stigmatize and punish violators speaks to the narrowing scope and declining legitimacy of war as a fundamental institution of international society as outlined by Bull, Wight, Jackson and Holsti (Buzan 2004). The institutionalization of war has always been a means to limit its destructive tendencies through the development of shared norms and rules of engagement. Bull defines war as all "organized violence carried on by political units against each other" but confines the legitimate use of violence to war between sovereign states (2012 [1977], 178-9). For Bull, the institutionalization of war as legitimate only between states contributes to international order. Holsti charts the de-institutionalization of

[1] The TSC is a part of the Graduate Institute of Geneva's Program for the Study of International Governance and a project directed by Professor Thomas Bierstker to house quantitative and qualitative data on UN targeted sanctions (http://graduateinstitute.ch/un-sanctions). For every instance of UN sanctions, the database codes the effectiveness of the regime as a tool to induce behavioral change, constrain resources necessary to continue violations, and stigmatize unruly actors.

war since the late-nineteenth century in almost inverse relationship with the growing body of international law regulating conflict (2004, 283-9). But he assesses the situation today as schizophrenic with a schism between a 'zone of peace' in the developed world where war is outlawed or confined to highly institutionalized practices, and the continued de-institutionalization of war in much of the developing world (2004, 298-9). Since the end of the Cold War, the UN Security Council's use of sanctions has acted to stem the de-institutionalization of war in the developing world by stigmatizing and punishing those who transgress non-aggression and humanitarian norms while at the same time consolidating the institutionalization of war among actors in the zone of peace. Nonetheless, Holsti concludes that in many parts of the world today we see "almost perfect inconsistency between law, norms, rules, and etiquette on the one hand, and actual behavior on the other" (2004, 289). The attempt to restrict the occasion for war, and permissible acts within it, has grown *pari passu* with the erosion of the distinction between combatants and non-combatants, disrespect for and abuse of the laws of neutrality, the growth of irregular forces relative to regular, and the erosion of the distinction between war and criminality.

The UN Security Council authorized the first post-Cold War international sanctions against Iraq in 1990, initiating the 'sanctions decade' which saw the Security Council impose sanctions 16 times, in some cases multiple times against the same state (Cortright and Lopez 2000; Mack and Khan 2000). Following Iraq's invasion of Kuwait in August 1990, the Security Council passed Resolution 660 condemning Iraq for its breach of international peace and security and calling for Iraq's immediate withdraw to antebellum status. Resolution 661 passed on 7 August 1990 impose comprehensive sanctions to include naval and air blockades against Iraq for its failure to withdraw (Alnasrawi 2001, 208). Subsequently, Security Council Resolution 687 continued sanctions after the Gulf War[2]. As many authors have noted (e.g. Halliday 1999; Alnasrawi 2001; Sponeck 2006), Iraq imports 70-80% of its caloric

[2] Although sanctions imposed by UNSC Resolution 661 were lifted by UNSC Resolution 686 (1991) following the Gulf War and the withdrawal of Iraq from Kuwait, UNSC Resolution 687 continued to hold Iraq accountable for paying war damages and its continuing threat to support terrorism and develop weapons of mass destruction (WMD). This new comprehensive resolution included a long list of requirements for the lifting of sanctions, including the elimination of WMD, agreement not to develop WMD in the future, establishment of an inspections regime to monitor compliance, and adherence to debt obligations and other financial claims (UNSC Resolution 687). Comprehensive international sanctions were finally lifted in 2003 and replaced with targeted sanctions.

intake, and long-term international sanctions against Iraq had dire humanitarian consequences despite the introduction, in an effort to alleviate civilian suffering, of the controversial Oil-For-Food program in 1996[3]. The humanitarian situation created dissent among great powers as France and Russia opposed further sanctions by the mid-1990s. These concerns shaped the subsequent use of targeted rather than comprehensive sanctions to punish the offending regime rather than the population[4], and crucially to focus the sanctioning effort on weapons and weapons-related imports (Cortright, Lopez and Gerber-Stellingwerf 2007, 350-60; Lopez and Cortright 2004, 100-102). The questionable normative implications of international sanctions against Iraq notwithstanding, the decisiveness of Security Council Resolution 661 and 687 following the First Gulf War demonstrated the UN Security Council's affirmation of the norm against the use of aggressive war. The sanctions also stigmatized the Saddam Hussain regime and limited its sovereignty, particularly its freedom to determine its security needs and develop the military capabilities to meet them. From 1990-2003 Iraq's sovereignty in the area of defense was severely and successfully curtailed (Lopez and Cortright 2004). Here, great power management to govern the institution of war and ensure international peace and security won out against the mutual respect for sovereignty.

In May 1992, following atrocities committed by the Slobodan Milosevic regime, the UN Security Council invoked Chapter VII of the UN Charter and instituted comprehensive and wide-ranging sanctions against the Federal Republic of Yugoslavia (FRY) regime in trade, travel, finance, scientific cooperation and cultural and sport exchanges, with exceptions for foodstuffs and medical supplies (UNSC Resolution 757). The Security Council established the UN Sanctions Assistance Mission (SAM) in neighboring countries and a blockade on the Danube River to enforce the resolution. While some lauded the UN sanctions as a factor in bringing Milosevic to the negotiating table (Cortright and Lopez 2002, 28-9; Luttwark 1995), others have highlighted enforcement difficulties that hindered effectiveness and the

[3] The Oil-For-Food Program allowed Iraq to export oil for humanitarian goods through a UN monitoring scheme. During its existence the Oil-For-Food Program processed $64 million of Iraqi oil (Chesterman, Johnstone and Malone 2016, 380). However, not only was it burdensome but it tasked the UN secretariat with "tasks that are beyond its competence" thus leading to malpractice and corruption (Doxey 2009, 544).

[4] In the late-1990s reports conducted by the Swiss Government, through the 'Interlaken Process' and Brown University's Watson Institute for International Studies, formed the foundations for a rethinking of sanctions by the UN and the shift towards targeted measures.

flourishing of illicit trade in the wake of sanctions (Drezner 2000, 84; Andreas 2005). However, willing cooperation among the great powers in applying international sanctions against the FRY was seen as a model for a new era of multilateral cooperation to enforce the international norm against aggression, particularly in cases involving ethnic cleansing and crimes against humanity. Further, the Targeted Sanctions Consortium's (2014) analysis concluded that the sanctions against FRY were effective in clearly articulating the international norms violated and stigmatizing the Milosevic regime for their breach.

In the following decades, the UN Security Council used international sanctions to reinforce norms against aggression and institutionalize rules governing armed conflict in largely African countries to include Liberia, Libya, Somalia, Angola, Haiti, Rwanda, Sierra Leone, Ethiopia, the Democratic Republic of the Congo and the Central African Republic. With the exception of Haiti in 1994, these sanctions were targeted rather than comprehensive (Cortright, Lopez and Gerber-Stellingwerf 2007, 253-6). Despite their varying degrees of effectiveness in changing the behavior of offending regimes, all cases demonstrated the UN Security Council's commitment to upholding the norm against aggression and thus limited the scope for legitimate violence. In addition, all cases aimed to stigmatize the regimes that violated international norms. The case of Ethiopia/Eritrea in 2000 is particularly noteworthy as Russia led debates concerning the imposition of sanctions while the US, UK or France led all other post-Cold War cases (Brzoska 2015: 1342). In addition to stigmatizing the aggressive use of force, these sanctions also strengthened positive norms and practices such as the use of diplomacy and regional organizations to mediate and resolve conflict (e.g. Ethiopia in 2000, Democratic Republic of Congo in 2003, Central African Republic in 2013), norms against ethnic cleansing and genocide (e.g. Yugoslavia in 1992, Rwanda in 1994), and democratic elections and the peaceful transfer of power (e.g. Haiti in 1994, Sierra Leone in 1997, Cote d'Ivoire in 2004, Guinea-Bissau in 2012). Hence, even after the 'sanctions decade' of the 1990s, the UN Security Council continued to use international sanctions as a tool to shape and limit the institution of war in the developing world.

In addition to upholding the principle against the aggressive use of force, the UN Security Council also used international sanctions since the end of the Cold War to increase the institutionalization of war by barring the state and non-state use of

terrorism as a tool of conflict, and by forbidding the development of WMD. In 1992, the UN Security Council passed several resolutions targeting the Libyan regime for violating the norm against state sponsorship of terrorism. During the 1980s, the Qaddafi regime had been linked with a series of terrorist incidents including the 1986 TWA Flight 840 bombing, the 1986 Le Belle nightclub attack in Berlin, the 1988 Pan Am Flight 103 bombing over Lockerbie in Scotland, and the 1989 bombing of French UTA Flight 772 over Niger. With evidence gathering against Libya, the UN Security Council unanimously passed Resolution 731 calling on Libya to cooperate with investigations and turn over two Pam Am 103 Lockerbie suspects. The Security Council then passed Resolution 748 in accordance with Article 2(4) of the UN Charter imposing an aviation ban, an arms embargo and diplomatic sanctions. The Libyan regime's refusal to comply triggered Resolution 883 with the stated goal to "eliminate international terrorism". Tightened sanctions included a more stringent aviation embargo, financial restrictions, and asset freezes against the Libyan government. The Targeted Sanctions Consortium (2014) assesses the stigmatization effect of sanctions against the Libyan regime as mixed as Qaddafi's diplomatic maneuvers, particularly with the African Union, prevented his international isolation. Others have maintained that international sanctions were more effective than unilateral measures in altering Qaddafi's behavior through economic and reputational cost (Collins 2004; Lopez and Cortright 2004, 102-103; Zoubir 2006)—so much so that as of 2004, Libya had only been linked to one suspected incident of terrorism since UNSC Resolution 731. In 1999 Libya complied with this resolution and released the two Pam Am 103 Lockerbie suspects to The Hague. Further, the Security Council's clear articulation of principles demonstrated great power consensus on terrorism as a breach of international peace and security and an illegitimate instrument of war. The principle against terrorism was affirmed by Security Council Resolution 1373, adopted unanimously after the 9/11 terrorist attacks, and through the use of international sanctions against Somalia in 1992, Sudan in 1996, Al-Qaeda and the Taliban in 1999, Lebanon in 2005, and the Taliban again in 2011.

In 1996, international sanctions against Iran and North Korea consolidated the use of sanctions as a great power management tool to discipline the legitimate use (or potential use) of force to preclude WMDs. In October 2006, following North Korea's

first nuclear test, the UN Security Council passed Resolution 1718 imposing sanctions on trade in nonconventional weapons, large conventional weapons, luxury goods, and on the assets of key individuals. The resolution clearly affirmed that nuclear proliferation threatened international peace and security and established a sanctions committee to oversee implementation. Following subsequent nuclear tests, the Security Council expanded sanctions to all conventional arms in 2009, to some financial services in 2013, and finally to a broad range of commodities and financial services with Resolution 2270 in 2016. This widening of sanctions moved the UN Security Council from targeted to more comprehensive sanctions designed to punish (Berger 2016, 8-9). Support from typically cautious Russia and China demonstrated the strength of the UN Security Council consensus on the need to counter WMD proliferation. In 2016 the US presented a draft of Resolution 2270 to China and was surprised by the relatively few amendments China tendered (Berger 2016, 9). Similarly, the Security Council unanimously adopted Resolution 1737 in 2006 in response to Iran's failure to comply with international principles against nuclear proliferation. The sanctions targeted Iran's nuclear program with trade and financial restrictions. Both sanctions regimes were designed to stigmatize North Korea and Iran as well as to affirm the UN Security Council's consensus on limits to the means and methods of war. Hence, the UN Security Council's use of sanctions against support for terrorism and WMD programs, similar to international sanctions targeting the aggressive use of force, aim to institutionalize war in the developing world by limiting the legitimate use and threat of force.

Expansion of the Institution of War?

Interestingly, the arrival of R2P as an emerging constitutive principle has the potential to take the fundamental institution of war in the opposite direction, extending the parameters of the legitimate use of force. Bull highlighted the dual aspects of the institution of war as both a threat to international order and a useful tool for its management (2012 [1977]: 191). While UN sanctions have been deployed to contain the former threat, R2P's focus on human security and the protection of populations within states from egregious crimes against humanity widens rather than narrows the scope of the legitimate use of force.

The concept of R2P was unveiled at the 2005 World Summit where parties agreed to protect civilian populations from 'atrocity crimes' (Welsh 2016). Despite its official appearance in the early-2000s, the principle has older roots in liberal international theory and early modern notions of state responsibility (Doyle 2011; Glanville 2010). The 2011 Libya case represents the single instance to date where the R2P principle was explicitly invoked as the rationale behind UN Security Council sanctions against an offending regime. In response to the Arab Spring and the Qaddafi regime's repressive measures against demonstrators, the UN Security Council passed Resolution 1970 imposing international sanctions against Libya in condemnation of human rights atrocities, in particular violence against civilians during peaceful demonstrations. The resolution specifically recalls "the Libyan authorities' responsibility to protect its population" as a rationale for invoking Chapter VII and imposing an arms embargo, targeted travel bans, and asset freezes on regime personnel. When the situation continued to worsen, the UN Security Council passed Resolution 1973 imposing a no-fly-zone and authorizing "all necessary means" to protect civilians. Indeed, as implied in Chapter VII of the UN Charter, non-military sanctions are the first step towards the use of force to uphold international principles, and the use of a broad range of non-military sanctions as a first step towards the 2011 Libyan intervention helped legitimize R2P and institutionalize it as part of the primary institution of war.

It is easy to overstate the importance of international sanctions against Libya under the R2P banner as witness to the birth of a new constitutive principle of international society. As commentators have observed, the use of international sanctions often serves the narrow interests of Security Council members, especially the P5, rather than the lofty principles of international morality. While not called R2P, the animating idea behind this 'new' norm, that sovereignty is a doctrine of responsibility as well as rights, has informed the use of international sanctions to institutionalize war since the case of Southern Rhodesia in the 1960s (Hehir 2013, 141). In retrospect the use of international sanctions have always had a hand in the broadening of our understandings of acceptable use of force. Hence, the role of international sanctions in shaping the institution of war has always been two-sided: limiting the effective right of states to use force, while broadening the international community's right to bring

individual states back into line when they fail to comply with established and emerging international principles.

R2P and the use of international sanctions to solidify the principle have come under much criticism. Sanctioned states often accuse the great powers of using Chapter VII and the UN Security Council instrumentally more in defiance than protection of community interests. Even in debates leading up to the Libyan intervention, some members of the Security Council questioned whether the new principle only masked the old geopolitical rationales for regime change (Westervelt 2011; Tourinho, Stuenkel, and Brockmeier 2016). Indeed, the R2P principle itself has come under criticism by developing countries as a tool of Western great power management. Brazil, for example, pushed back against the R2P principle by formulating the Responsibility While Protecting principle as a check against the behaviour of the protectors. It remains to be seen whether the UN Security Council will continue to uphold R2P through the use of international sanctions, solidifying it as a constitutive principle of international society, or whether it remains in the eye of many a fig leaf for self-interested intervention on the part of great powers. It is too much to expect the UN to become less of the 'intensely political institution' (Berdal 2016, 8) it has been since its inception. But this does not mean that the solidarity required to heighten the effectiveness of international sanctions and bolster new normative principles cannot happen.

References

Alnasrawi, Abbas. 2001. Iraq: Economic Sanctions and Consequences, 1990-2000. *Third World Quarterly* 22: 205-218.

Andreas, Peter. 2005. Criminalizing Consequences of Sanctions: Embargo Busting and its Legacy. *International Studies Quarterly* 49: 335-360.

Baldwin, David. 1985. *Economic Statecraft*. Princeton: Princeton University Press.

Barber, James. 1979. Economic Sanctions as a Policy Instrument. *International Affairs* 55: 367-384.

Berdal, Mats. 2016. The State of UN Peacekeeping: Lessons from Congo. *Journal of Strategic Studies* 40:1-31

Berger, Andrea. 2016. From Paper to Practice: The Significance of New UN Sanctions on North Korea. *Arms Control Today*, available at: https://www.armscontrol.org/ACT/2016_05/Features/From-Paper-to-Practice-The-Significance-of-New-UN-Sanctions-on-North-Korea [accessed April 2017].

Brzoska, Michael. 2015. International Sanctions Before and Beyond UN Sanctions. *International Affairs* 91: 1339-1349.

Bull, Hedley. 1966. The Grotian Conception of International Society, in *Diplomatic Investigations: Essays in the Theory of International Politics*, edited by Herbert Butterfield and Martin Wight, pp. 51-73. London: George Allen and Unwin.

Bull, Hedley. 2012 [1977]. *The Anarchical Society: A Study of Order in World Politics*. London: Macmillan.

Buzan, Barry. 2004. *From International to World Society? English School Theory and the Social Structure of Globalisation*. Cambridge: Cambridge University Press.

Buzan Barry. 2014. *An Introduction to the English School of International Relations: The Societal Approach*. Cambridge: Polity.

Chesterman, Simon, Johnstone, Ian, and Malone, David M. 2016. *Law and Practice of the United Nations: Documents and Commentary*. Oxford: Oxford University Press.

Clark, Ian. 1989. *The Hierarchy of States: Reform and Resistance in the International Order*. Cambridge: Cambridge University Press.

Collins, Stephen D. 2004. Dissuading State Support of Terrorism: Strikes or Sanctions? (An Analysis of Dissuasion Measures Employed Against Libya). *Studies in Conflict and Terrorism* 27: 1-18.

Cortright, David, and Lopez, George A. 2000. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder, CO: Lynne Rienner Publishers.

Cortright, David, and Lopez, George A. 2002. *Smart Sanctions: Targeting Economic Statecraft*. Lanham, MD: Rowman & Littlefield.

Cortright, David, Lopez, George A., and Gerber-Stellingwerf, Linda. 2007. Sanctions. In *The Oxford Handbook on the United Nations*, edited by Thomas G. Weiss and Sam Daws, 349-67. Oxford: Oxford University Press.

Doxey, Margaret. 1987. *International Sanctions in Contemporary Perspective*. London: Macmillan.

Doxey, Margaret. 2009. Reflections on the Sanctions Decade and Beyond. *International Journal* 64: 539-49.

Doyle, Michael. 2011. International Ethics and the Responsibility to Protect. *International Studies Review* 13: 72-84.

Drezner, Daniel. 2000. Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive? *International Organization* 54: 73-102.

Drezner, Daniel. 2003. How Smart are Smart Sanctions? *International Studies Review* 5: 107-110.

Glanville, Luke. 2010. The International Community's Responsibility to Protect. Gl*obal Responsibility to Protect* 2: 287-306.

Halliday, Denis J. 1999. The Impact of the UN Sanctions on the People of Iraq. *Journal of Palestine Studies* 28: 29-37.

Hehir, Aidan. 2013. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect. *International Security* 38: 137-159.

Henig, Ruth, ed. 1973. *The League of Nations*. Edinburgh: Oliver and Boyd.

Hinsley, F. H. 1963. *Power and the Pursuit of Peace: Theory and Practice in the History of the Relations between States*. Cambridge: Cambridge University Press.

Holbraad, Carsten. 1970. *The Concert of Europe: A Study in German and British International Theory, 1815-1914*. London: Longman.

Holsti, K. J. 1992. Governance without Government: Polyarchy in Nineteenth-Century European International Politics. In *Governance without Government: Order and Change in World Politics*, edited by James N. Rosenau and Ernst-Otto Czempiel, pp.30-58 Cambridge, Cambridge University Press.

Holsti, K. J. 2004. *Taming the Sovereigns: Institutional Change in International Politics*. Cambridge: Cambridge University Press.

Hufbauer, Gary Clyde, Schott, Jeffrey J., and Elliot, Kimberly Ann. 1990. *Economic Sanctions Reconsidered*. Washington, DC: Institution for International Economics.

Jervis, Robert. 1985. From Balance to Concert: A Study of International Security Cooperation. *World Politics* 38: 58-79.

Lopez, George A., and Cortright, David. 2004. Containing Iraq: Sanctions Worked. *Foreign Affairs* 83: 90-103.

Luttwak, Edward N. 1995. Toward Post-Heroic Warfare. *Foreign Affairs* 74: 109-122.

Mack, Andrew, and Khan, Asif. 2000.The Efficacy of UN Sanctions. *Security Dialogue* 31: 279-292.

Manning, C. A. W. 1962. *The Nature of International Society*. London: Macmillan.

Manning, C. A. W. 1972. The Legal Framework in a World of Change. In *The Aberystwyth Papers: International Politics, 1919-1969*, edited by Brian Porter, pp.301-335. London: Oxford University Press.

Mitzen, Jennifer. 2013. *Power in Concert: The Nineteenth Century Origins of Global Governance*. Chicago: University of Chicago Press.

Northedge, F. S. 1976. *The International Political System*. London: Faber and Faber.

Pape, Robert A. 1997. Why Economic Sanctions Do Not Work. *International Security* 22: 90-136.

Security Council Resolutions. 2017. *United Nations Security Council* [online] available at: http://www.un.org/en/sc/documents/resolutions/ [accessed April 2017].

Solingen, Etel (ed). 2012. *Sanctions, Statecraft, and Nuclear Proliferation*. New York: Cambridge University Press.

Targeted Sanctions Consortium Database. 2014. *The Graduate Institute Geneva*, [online] available at: http://graduateinstitute.ch/home/research/centresandprogrammes/international-governance/research-projects/UN_Targeted_Sanctions/targeted-sanctions-consortium-da.html [accessed March and April 2017].

Tourinho, Marcos, Stuenkel Oliver, and Brockmeier, Sarah. 2016. "Responsibility While Protecting": Reforming R2P Implementation. *Global Security* 30: 134-150.

Von Sponeck, H. C. 2006. *A Different Kind of War: the UN Sanctions Regime in Iraq*. New York: Berghahn Books.

Wallensteen, Peter and Staibano, Carina. 2005. *International Sanctions: Between Words and Wars in the Global System*. London and New York: Routledge.

Welsh, Jennifer. 2016. The Responsibility to Protect at Ten: Glass Half Empty or Half Full? *The International Spectator* 51: 1-8.

Westervelt, Eric. 2011. NATO's Intervention in Libya: A New Model? *NPR*, 12 September 2011, [online] available at: http://www.npr.org/2011/09/12/140292920/natos-intervention-in-libya-a-new-model [accessed April 2017].

Wilson, Peter. 2003. *The International Theory of Leonard Woolf: A Study in Inter-war Idealism*. New York: Palgrave.

Wilson, Peter. 2012. The English School Meets the Chicago School: The Case for a Grounded Theory of International Institutions. *International Studies Review* 14: 567-590.

Woolf, Leonard. 1916. *International Government: Two Reports*. London: George Allen and Unwin.

Zoubir, Yahia H. 2006. The US and Libya: From Confrontation to Normalization. *Middle East Policy* 13: 48–70.

Zoubir, Yahia H. 2011. The United States and Libya: The Limits of Coercive Diplomacy. *The Journal of North African Studies* 16: 275-297.