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## An ethics of economic sanctions

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### *Dedications*

*Dr. Dennis Plaisted: Without his scholarly expertise, this paper would never have made it. His constant support helped to bring my ideas to light legibly. His involvement in this project is greatly appreciated.*

*Dr. Welsh and Dr. Bonnal: for offering their valuable insights*

*Mike Bell: for keeping me timely on this project*

*Rachel Hoffman: for always being there to encourage me and offer a second pair of eyes*

*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 does not cost a life outside the nation boycotted, but it brings a pressure upon the nation which, in my judgment, no modern nation could resist.*

President Woodrow Wilson

*Although critics of sanctions differ on what makes them uneasy about economic sanctions and whether sanctions can ever be just, they seem to be united on one crucial point: they assume that the only objective that animates, or should animate, economic sanctions, unilateral or multilateral, is the desire or need to get the regime of the target state to alter its policy or to modify its behavior in relation to an area of concern.*

Adeno Addis

*If sanctions came under the principle of distinction between military and civilian targets, many goods useful to the military but essential to civilians could not be sanctioned and the "silent, deadly" weapon would lose much of its bite. Indeed, economic sanctions are, however viewed, a form of collective punishment -- an approach that is rebuked by all the tenets of Western legal practice. Most people would be materially better off in occupied territory during or after a war than in a country with comprehensive sanctions... Under sanctions, no such protections are assured. Sanctions fall under customary and international law, not the laws of warfare.*

Richard Garfield

*Thus, if sanctions are analogous to siege warfare, then they are problematic for the same reasons -- both effectively violate the principle of discrimination. But if sanctions are not analogous to siege, then sanctions are even more problematic. If the goals of sanctions are the enforcement of humanitarian standards or compliance with legal and ethical norms, then extensive and predictable harm to civilians cannot even be justified by reference to survival or military advantage. Insofar as this is the case, sanctions are simply a device of cruelty garbed in self-righteousness.*

Joy Gordon

## Macaltee Goldman

### I. Introduction

During the founding of the United Nations, the five founding countries (the U.S., Russia, France, China, and Great Britain) gave themselves special veto power on all UN decisions.<sup>1</sup> If one of these countries refused to support a decision, even if against the majority, then the decision or resolution would fail to pass. The United Nations during the Cold War, because of this veto power, was largely inactive due to numerous failures to reach consensus in decisions from the U.S. and Russia. Therefore sanctions during the Cold War were mostly unilateral (sent by one country or party) and used as power plays between the U.S. and Russia. Following the end of the Cold War, the UN was able to fill the void and ushered in a decade of comprehensive sanctions in the 1990's. More sanctions were implemented in shorter succession than ever previously recorded, with over a dozen comprehensive sanctions being implemented.<sup>2</sup> However, after destructive results to innocent civilians in these targeted countries, with the worst case being in Iraq, the UN developed target or "smart" sanctions. Smart sanctions sought to remedy the problem of nondiscrimination that comprehensive sanctions exemplified when implemented. Therefore, smart sanctions were designed so that they only adversely affected responsible parties in a country. This creation of smart sanctions took place in the early 2000s, and only smart sanctions have been used for over the past decade. Since 1991, over 62 UN smart sanctions in total have been implemented.<sup>3</sup> Because of this wide

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<sup>1</sup> This can be read in either "Embargo on Stage. Theory and Empirical Evidence" by Melanie Golliard or in "Economic Sanctions and the Problem of Evil" by Adeno Addis.

<sup>2</sup> This is well documented in *The Sanctions Decade: Assessing UN Strategies in the 1990's* by David Cortright and George Lopez, but this can be verified elsewhere.

<sup>3</sup> This claim can be seen in the article "The Effectiveness of United Nations Targeted Sanctions" by Biersteker et al, as listed in this paper's works cited. They examined 62 UN smart sanctions from 1991-2012.

use of economic sanction implementation, there have been growing concerns on the effectiveness of smart sanctions, and whether economic sanctions can ever truly be ethical.

This paper will introduce a new ethical model for smart sanction implementation to serve as a guideline. As we will see with comprehensive sanctions, while they are more efficient than smart sanctions, they are too destructive for the ends to justify the means. In essence, they are too unethical to be implemented. This problem of ethics and the need for efficient tools for economic statecraft lead to the invention of smart sanctions. This paper will first seek to provide an introduction to economic sanctions. Following this, the paper then will briefly explore the case study of Iraq to provide some background understanding as to why smart sanctions were invented, and to show how destructive comprehensive sanctions could be at their worst. This will start our discussion of smart sanctions, where we will summarize a debate by scholars Joy Gordon and George Lopez on the topic of smart sanction effectiveness. Next, I will provide an ethical analysis of smart sanctions under the framework of the categorical imperative and utilitarianism. With this ethical model also encompassing sanction effectiveness as a means of evaluation, this paper will then summarize and use “clean-hands” morality as an opposing ethical model to argue that smart sanctions should not be used as tools of country expression without efficiency considerations provided by my ethical model. Only when they clearly meet the criteria of this paper’s interpretation of utilitarianism and the categorical imperative in an effective context should smart sanctions be used. I argue that smart sanctions maximize their effectiveness when applied in rational contexts under this ethical model. Therefore, smart sanction effectiveness is maximized in both the ethical

and the empirical contexts when this ethical model is implemented. While this ethical guideline can be argued to be very rigorous, no precaution can be too great when innocent bystanders and lives are at stake.

## **II. A Breakdown of Sanction Definitions.**

Let's look at the definitions of economic warfare, economic sanctions, and trade wars in order to better understand what constitutes economic sanctions. Economic warfare is:

The use of, or the threat to use, economic means against a country in order to weaken its economy and thereby reduce its political and military power. Economic warfare also includes the use of economic means to compel an adversary to change its policies or behavior or to undermine its ability to conduct normal relations with other countries. Some common means of economic warfare are trade embargoes, boycotts, sanctions, tariff discrimination, the freezing of capital assets, the suspension of aid, the prohibition of investment and other capital flows, and expropriation. (Shambaugh)

This definition presents economic sanctions as a tool by which economic warfare is conducted and this is how most people perceive them. However, scholars disagree on the definition of economic sanctions. One reason is that this affects the success rate of economic sanctions. Another explanation is due to controversial situations where it is debatable as to whether the action fits the criteria of one area of economic statecraft or another. An example of this would be a tariff, for the reasoning behind it and their functions are open to interpretation. It is important to note before we begin that when scholars refer to economic sanctions, they are referring to both comprehensive and smart sanctions. The term "economic sanction" merely seeks to act as a broad category which encompasses all sanction types. Also, the tools that constitute smart sanctions existed before their creation; therefore there is no official date when smart sanction implementation began. However, these tools started to be combined and popularized as

smart sanctions around 1998. Therefore, economic sanctions referred to before the late 1990s are generally understood as being comprehensive. Let's now look at two popular definitions of economic sanctions that are debated between Robert Pape and David Baldwin.

Pape defines three main types of strategies for exerting economic pressure by international communities: economic sanctions, trade wars, and economic warfare (Pape, 93). Pape's definitions are tied to specific functions. According to Pape, economic warfare is specifically concerned with matters of war or near war. Economic warfare "seeks to weaken an adversary's aggregate economic potential in order to weaken its military capabilities, either in a peacetime arms race or in an ongoing war... Economic warfare does not seek to coerce the target by inflicting economic pain" (Pape, 94). A trade war is simply "when a state threatens to inflict economic harm or actually inflicts it in order to persuade the target state to agree to terms of trade more favorable to the coercing state" (Pape, 94). Economic sanctions "seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change its political behavior" (Pape, 93-94). Pape develops this detailed distinction of definitions among trade wars, economic sanctions, and economic warfare in order to address findings arguing for the success of economic sanctions presented by Hufbauer, Schott, Elliot, and Oegg (HSEO). These scholars conducted a 115 sample case study from 1914 – 1990 (now 1914-2009 in our edition) through the International Institute of Economics to determine the success rate of sanctions during this period. They define economic sanctions to mean "the deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations" (Hufbauer et al, 3).

Varying from Pape's narrower definition, this definition increases the success rate of economic sanctions by including financial sanction tools (e.g. asset freezing, transaction bans, revoking of foreign aid, etc.).

Pape also seeks to refute Baldwin's definition of economic sanctions which encompasses all tools of economic statecraft (trade wars, economic warfare, sanctions, and other possible tools). Baldwin defines economic sanctions first by arguing that economic statecraft is a broad topic under which sanctions fall<sup>4</sup>. Baldwin then defines economic sanctions as a category in economic statecraft which includes all tools of economic statecraft<sup>5</sup>:

At least three common meanings of the term "economic sanctions" may be identified. The first is a rather narrow concept referring to the use of economic measures to enforce international law. The second refers to the types of values that are intended to be reduced or augmented in the target state. And the third usage corresponds to the concept of economic techniques of statecraft as used here... Later chapters will therefore use this term, but only in its third sense. (Baldwin, 35-36)

Thus Baldwin's definition attributes all economic tools and their success to economic sanctions. Pape argues against this idea, and that economic sanctions are being improperly defined, and by doing so he shows that economic sanctions are less effective than as proposed by HSEO. We will later examine the HSEO study and Pape's criticism in order to better understand comprehensive sanction effectiveness (we will return to the HSEO study and Pape's argument later in section IV).

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<sup>4</sup> This can be seen particularly in page 32 of his book *Economic Statecraft*. However, the entire third chapter from which this page is derived discusses this.

<sup>5</sup> Economic statecraft is merely a broad, categorical term. Any type of tool that uses economic influence to coerce an international target could be considered economic statecraft (e.g. economic warfare, trade wars, tariffs, economic sanctions). In essence, economic statecraft often acts as the category under which all economic tools that are used in the international setting fall under.



With some perspectives defining economic sanctions as economic warfare, it must be acknowledged that sanctions are not by law considered a means of warfare.

Because economic sanctions seek to prevent war and are seen as preventive means, they fall under the realm of international and customary law as explained by Richard Garfield:

Sanctions, if they came under the laws of warfare, would involve a careful process of selecting targets, taking precautions to avoid civilian deaths, and examining the relative strategic merits of a chosen approach relative to the probable civilian harm (Walzer, 1997). If sanctions came under the rules of war, sanctioning powers would have an enormous financial burden associated with the food and medicines they would have to purchase to meet their obligations to provide for captive enemy populations and their families. If sanctions came under the principle of distinction between military and civilian targets, many goods useful to the military but essential to civilians could not be sanctioned and the "silent, deadly" weapon would lose much of its bite. Indeed, economic sanctions are, however viewed, a form of collective punishment -- an approach that is rebuked by all the tenets of Western legal practice. Most people would be materially better off in occupied territory during or after a war than in a country with comprehensive sanctions. The rules of warfare are generally followed by major countries to assure essential goods to such captive populations. Under sanctions, no such protections are assured. Sanctions fall under customary and international law, not the laws of warfare. Like other human rights violations, an individual normally must show damages to seek redress via customary law. Yet a sanction is a collective experience; any health effects will be the result of a chain of events mediated through the economic and social systems and the direct effects of the causative economic event will not be apparent. (Garfield, 94)

Therefore, given that sanctions don't fall under military law, in many respects Robert Pape is correct in that sanctions should not be considered an all-inclusive terminology that factors in trade wars, economic warfare, and other possible categories and tools.

For the purposes of this paper, we will use HSEO's general definition for defining economic sanctions. As we will see when we define comprehensive and smart sanctions in the next section, these tools can include financial tools or means to influence a target (e.g. asset freezing). This paper also maintains the position that economic sanctions are distinct from trade wars and economic warfare as defined by Pape. However, this does

not imply that the paper sees economic sanctions as dealing solely with trade as defined by Pape. While economic warfare and trade wars can use financial tools, they are different in form (e.g. tariffs and currency devaluation).

### **III. Economic Sanctions: A Brief Breakdown of the Various Types and Tools.**

Economic sanctions can be classified in many ways. One way is that they can be stated to be unilateral or multilateral. Unilateral simply implies that the sanction is being enforced by one country or party against another and multilateral means that the sanction is being enacted by many countries or parties against a particular country or party. A comprehensive sanction is usually a sanction that incorporates many different kinds of individual sanction tools (financial, trade, etc.) and the main characteristic making up these sanctions is that they enact total embargos - they cut off all trade with the targeted country. A smart sanction is a sanction category, like comprehensive sanctions, that has a distinct characteristic - it only targets the elite or select groups in the targeted country. Besides comprehensive and smart sanctions there are also selective sanctions. “‘Selective’ sanctions, which are less broad than comprehensive embargoes, involve restrictions on particular products or financial flows. ‘Targeted’ sanctions focus on certain groups or individuals in the target country and aim to directly impact these groups. Obviously the two concepts overlap” (Hufbauer and Oegg). Positive and negative sanctions are another category in which to define sanctions. This merely refers to the positive (reward) or negative (punishment) reinforcement that the sanction uses to influence its target<sup>6</sup>.

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<sup>6</sup> It should be noted here that this paper will be concerned only with negative sanctions, as these make up the majority of sanctions used. Also, positive sanctions fall outside my ethical model.

In addition, many sanctions may actually incorporate many of the various individual sanction tools as seen in table 1 below. It is possible for a sanction to be negative, then when complying behavior change is undergone by the target country, a positive sanction tool like humanitarian aid may be offered or a negative sanction tool lifted. Financial sanctions are interesting as far as sanctions instruments go, because they can be implemented in both comprehensive and smart sanctions. However, when financial sanctions are imposed against a country on a macro level – e.g., the freezing of a country’s aid – they usually can be argued to have a greater impact on innocent civilians, and therefore suggest that the financial sanction is comprehensive in its nature. On the other end of the spectrum, if a financial sanction only freezes aid or the assets to those responsible (regime), then the financial sanction can be argued to be targeted by nature. For the most part, financial sanctions are a part of smart sanctions and are mostly seen in more recent sanction cases due to the popularity for smart sanctions growing since the late 1990s. Later we will read more of these sanction instruments that can be used in either comprehensive or smart sanctions, and graphically see sanction subtypes that can exist within the smart sanction category.<sup>7</sup> What determines whether tools like financial sanctions are comprehensive or smart in nature is the degree to which they discriminate. Sanctions that discriminate (smart or selective) are generally weaker, but they are arguably more ethical because they only target responsible groups in a country. When scholars discuss sanctions, most only refer to them as either smart or comprehensive. Smart and comprehensive sanctions act as broad categories under which

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<sup>7</sup> Attempting to identify and describe every sanction subtype and the various economic sanction tools could prove very difficult and confusing. Therefore, we will discuss only the ones mentioned above or ones mentioned and shown by other scholars in later sections for the sake of simplicity.

various subtypes follow. Selective sanctions are usually seen as a subtype of smart sanctions. Smart sanctions can also include arms embargoes and the seizing or freezing of the responsible party's personal assets, in addition to the tools mentioned in the table below:

**Table 1 Definitions and Types of Sanctions.**

<b>Economic sanctions</b>		
<i>Means to express power and to foster cooperation among countries.</i>		
	Positive sanctions	Negative sanctions
	<i>Actual or promised rewards</i>	<i>Actual or threatened punishment</i>
Trade sanctions	- Tariff's reduction - Tariff's abolition	- Partial embargo - Total embargo
Investment or financial sanctions	- Financial or investment aid from different entities such as the International Monetary Fund, the World Bank or countries	- Restriction on capital flows (restrict or suspend lending) - Mandatory disinvestment - Restrictions on international payments - Freezing of assets
Targeted sanctions	- Humanitarian aid	- Interdiction of transports - Interdiction of communication - Travel bans

Source: Melanie Golliard, *Embargo on Stage. Theory and Empirical Evidence* (Diss. U of Tampere, January 2013) 25.

#### **IV. An Explanation for the Implementation of Economic Sanctions**

It is important to note that this paper will not delve into the debate of politics and its role in implementing sanctions. This is to say that the paper isn't concerned with who's to blame, which party is guilty, or if there is shared responsibility in a sanction episode. Rather this paper will be concerned with economic sanctions as a tool and the efficiency and ethics tied to them. Briefly examining the various reasons why economic sanctions might be implemented allows us to better conceptualize their utility. As hinted above, economic sanctions are imposed for a myriad of reasons. They can be

implemented with the goal of changing the target's behavior or actions (coerce), they can be used by the sender country with the goal of sending a message and to show their stance on a certain topic (signal), or to simply inflict punishment (constrain). The action of signaling is used in a variety of ways, suggesting that economic sanctions foremost seek to send a message. "In sum, the imposition of sanctions conveys a triple signal: To the target country it says the sender does not condone the target's actions; to allies it says that words will be supported with deeds; and to domestic audiences it says the sender government will act to safeguard the nation's vital interests" (Hufbauer et al., 7). This expressive function of sanctions is important, because like definitions, this too is used by economic sanction advocates to argue that sanctions are more successful than studies show. Even if sending a message doesn't add to an economic sanction's objective success rate, it can be argued that this function is essential for policymakers so that they can show peaceful reactions to hostile actions. It is arguable this alone could justify sanction use, for compared to other actions policymakers could implement in response to hostile actions internationally, these are the most peaceful. Later this paper will return to this topic when arguing for its ethical model. The below table provides a good summary of the possible objectives of economic sanctions and their relative mechanisms for achieving these specific goals:

	Possible Objectives	Possible Mechanisms
1	To <i>change or prevent</i> objectionable/unlawful policy/behaviour	<i>Indirect Mechanisms:</i> Economic Pressure Non-Economic Pressure  <i>Direct Mechanism:</i> Direct Denial of Resources
2	To <i>send a message</i>	Imposition alone should send message
3	To <i>punish</i> objectionable/unlawful behaviour	Infliction of economic harm as a penalty and/or sanctions express international condemnation

Source: Elizabeth Ellis; "The Ethics of Economic Sanctions"; *Internet Encyclopedia of Philosophy*; Web; 24 Mar. 2016.

One reason sanctions are highly favored is that they are considered cheap to implement and enforce in terms of costs compared to war or other methods. In terms of costs, the average economic sanction costs the target country “\$27 billion annually as of the year 2000” (Hufbauer et al., 17). Note, however, that this cost has most likely increased since Hufbauer et al. included this number in their study. Sadly, there exists no number as to what the average total cost of war might be in either the year 2000 or other years. This is most likely because the cost of all wars vary considerably depending on the length of the conflict, the size of the military, and too many other unknown variables. Most, if not all, scholars and policymakers seem to believe that the annual average total cost of war exceeds the annual average total cost of economic sanctions. Therefore, this at least seems a reasonable assumption to make.

Comprehensive sanctions have historically shown to be usually very unsuccessful in terms of achieving their stated goals by the sender party or of changing the behavior of the target country:

Successful cases have become increasingly rare as globalization has made it easier for target countries to tap international trade and capital markets and find alternative suppliers of goods and capital. The success rate for US sanctions cases (both unilateral and multilateral) has declined sharply from the early postwar period. In the 1990s, sanctions have contributed to the achievement of US foreign policy goals in less than 20 percent of the cases. (Schott, footnotes omitted).

We see this conclusion of low success rates for sanctions reflected again particularly in *Economic Sanctions Reconsidered*, the published study conducted by HSEO. In this study, they determined the success rate of economic sanctions through using an index system to scale the various attributable variables of these sanctions based off of historical analysis and the work of other scholars. Their study determined that economic sanctions from 1914-1990 had a success rate of 40 cases out of 115 or roughly 35% (Pape, 92).<sup>8</sup> However, when adjusting their definition of economic sanctions to be more specific, as so argued by Robert Pape, sanction success rate, he claims, was really around 4%:

The HSE study is seriously flawed. Practically none of the claimed 40 successes of economic sanctions stands up to examination. Eighteen were actually settled by direct or indirect use of force; in 8 cases there is no evidence that the target made the demanded concessions; 6 do not qualify as cases of economic sanctions; and 3 are indeterminate. Of HSE's 115 cases, only 5 are appropriately considered successes. (Pape, 93)

Using either definition (HSEO's or Pape's) doesn't speak well about the success rate for comprehensive sanctions. While the success of sanctions is only one reason for

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<sup>8</sup> As mentioned earlier, Pape's article only looks at the 2<sup>nd</sup> edition of HSEO's study. The 3<sup>rd</sup> edition covers the years 1914-2000; however their success rate for economic sanctions remains unchanged. This is due to them not adding the 13 new sanctions episodes from this period to their statistical analysis. Also, in the edition Pape used, only Hufbauer, Schott, and Elliot (HSE) were authors (Oegg isn't included).

implementing sanctions, it is still an important one to consider as we begin ethically weighing the costs and benefits of comprehensive and smart sanctions.

#### **V. Problems with Sanction Implementation**

In terms of implementation, sanctions have been found to cause many negative, unintended consequences to those who they have been used against. These include: the rally-round-the-flag-effect, the harming of innocent civilians, increased incentive for illegal operations (black market), and increased income inequality. The rally-round-the-flag-effect, which is common in many sanction episodes, is the opposite of the traditional concept of what sanctions should do - cause political turmoil to pressure the civilian population to overthrow or change the government, regime, or policy responsible for the implementation of the sanction. When the rally-round-the-flag-effect is experienced, the civilian population in the targeted country sees the sanction as a threat or move against their government because of ill-intent of the sender country. During the sanction episode the regime or government of the country will portray the sanction as a hostile, evil act against their country and rally the population against the sender country. The irony in this is that in many cases economic sanctions are executed against tyrannical countries because of unjust or unethical actions against their populous. However, economic sanctions hurt and weaken the civilians they intend to help.<sup>9</sup> Yet when it comes to civilian harm it is difficult for scholars to pinpoint the exact damage or effect that a sanction may have on an innocent civilian in the target country and there is little research on this topic. However, it can be clearly seen in cases like Iraq, where the child mortality rate sharply rose during the UN's sanction from 1991-2003, with the damages being so bad that the

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<sup>9</sup> We will later see when summarizing Joy Gordon's article "Smart Sanctions Revisited," that this too is sometimes the case with smart sanctions.



UN had to enact a relief program “oil for food” in order to stabilize the conditions of the civilian population. Increased income inequality and black market operations<sup>10</sup> are also problems presented by sanctions:

By punishing ordinary market activity, sanctions give entrepreneurs a strong incentive to take the criminal route—and they usually earn higher-than-usual profits in the bargain. Sanctions and black market activity therefore go together... trade sanctions encourage the creation of organized crime syndicates and transnational smuggling networks. (Daniel Drezner, 98)

## **VI. Brief Historical Case Analysis: The Beginning Transition from Comprehensive to Smart Sanctions**

In terms of comprehensive sanctions that turned into a catastrophe, Iraq is the perfect storm. The UN comprehensive sanction was implemented in 1991-2003 as a response to Iraq’s invasion of Kuwait during the Gulf War. Referred to as the “mother of comprehensive sanctions” by scholars, this comprehensive sanction used every possible tool in the sanction arsenal in order to force a response of the Iraqi government. The most comprehensive sanction ever implemented, it included: a ban on all trade, an oil embargo, a freeze on the Iraqi government’s financial assets, suspension of international flights, an arms embargo, and a prohibition on financial transactions (Cortright and Lopez, 37). In terms of damage, Iraq’s GDP was “estimated to have dropped by two-thirds by 1991” (Cortright and Lopez, 43). Various reports estimate anywhere from 200,000 to 500,000 (with consensus generally seeming to agree with an amount upwards of 300,000) child deaths due to starvation and inhuman living conditions brought by the sanctions. These damages attributed to the UN comprehensive sanction were only worsened by the lack of

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<sup>10</sup> UN Resolution 1997/35 highlights these points as well: [policy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html#smart](http://policy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html#smart)

access to clean water, electricity, and indoor plumbing due to the destruction of basic infrastructure from carpet bombing sessions. The oil embargo is estimated to have cost \$18 billion annually, with the total estimated at \$130 billion over the period of its enforcement (Cortright and Lopez, 44).

When scholars who oppose sanctions wish to give a case, Iraq is almost always the first case mentioned. It is a prime warning of the dangers and damages brought about by comprehensive sanctions when left unchecked. However, in terms of effectiveness, the Iraqi sanctions generated some slight positive responses and successes. "In addition to inducing Iraqi concessions on weapons monitoring and border demarcation, sanctions contributed to a significant weakening of Iraq's military capabilities...Iraq's ballistics missile programs were also largely eliminated" (Cortright and Lopez, 52-53). However, while the sanction did eventually get some response from the Iraqi government, it had to devastate the civilian population and economic infrastructure of Iraq to achieve this. This comprehensive sanction, lasting until May 22, 2003, pushed both the UN and the U.S. to rethink sanctions afterwards due to the ethically baffling damages brought by it.

When examining the UN comprehensive sanction against Iraq, it may be helpful to briefly examine the background during the comprehensive sanction's implementation in order to understand the argument by some for its necessity. When Iraq invaded Kuwait, one particular concern shared by the UN and the US was that the Iraqi government might acquire nuclear weapons or the means to produce them. Therefore, the pressure to push Iraq out of Kuwait was heightened by this fear. Some parties involved in this controversy still advocate the Iraqi sanctions today, even after reports of the death count received the attention of the UN and U.S. One such person, Madeleine Albright

(U.S. Ambassador to the UN and later first female U.S. Secretary of State), when asked on 60 Minutes if the cost of over 500,000 Iraqi children's lives was worth it, stated that "I think this is a very hard choice but the price, we think the price is worth it" (Mahajan).

The table below provides an idea of the damages brought about by the UN comprehensive sanction:

**Table 1:  
Comparative Indicators of Humanitarian Conditions  
In Countries Before and After Sanctions**

	Cuba		Iraq		Haiti		Serbia	
	1992	1996	1990	1996	1990	1994	1989	1999
Average Calorie Availability	3100	1865	3150	2277	2125	?	3200	2500
Calories Available via Ration	1400	1200	N/A	1500	N/A	N/A	N/A	>500
GDP per capita in U.S. Dollars	2000	1300	3508	540	370	250	3420	1450
% Mothers breast-feeding 1st 6 mon.	63	97	60	80	?	96	?	60
% Births Under 2,500 gms.	7.3	8.7	4.5	22.1	10	15	6	5
% of Calories Imported	50	25	70	80	>50	>50	>10	>10
<i>Malnutrition Among Under Fives:</i>								
Stunting (Chronic) (% under 2 S.D.)	>5	>5	>22	32	?	32	?	5.1
Underweight (Mixed)	>5	>5	>12	23	18	28	?	2.1
Wasting (Acute)	>5	>5	>3	11	?	8	?	2.2
National Currency per U.S. Dollar	1	35	1	1500	7	15	-	-
Imports for Health (Millions of \$)	70	135	500	50	?	?	125	115
Value of Aide Received	N/A	> 1*	N/A	1*	N/A	250**	N/A	800**
Est. Excess Deaths/Year of Sanctions	N/A	7500 <sup>1</sup>	N/A	5500 <sup>2</sup>	N/A	27,000	N/A	minor
Age Group with Mortality Increase	N/A	elderly	N/A	> 5s elderly	N/A	>5s	N/A	elderly
Under 5 Mortality Rate	13.1	10.7	45	132	157	135	23.5	12.3
% Under 15s in School	99	99	90	70	83	57	95	85
Gov. Health Spending per capita	150	70	?	?	?	?	200	40
Delinquency Change	N/A	up	N/A	up	N/A	up	N/A	up
Migration Change	N/A	minor	N/A	up	N/A	minor	N/A	up
Grey Economy Activity	N/A	up	N/A	up	N/A	minor	N/A	up
Poverty	N/A	up	N/A	up	N/A	up	N/A	up
Immunization Coverage	N/A	minor	N/A	down	N/A	down	N/A	minor
Access to Health Care	N/A	minor	N/A	down	N/A	down	N/A	minor
Sanctions-Related Lost Production	N/A	2*	N/A	120*	N/A	850**	N/A	50-100**

\* Billions of U.S. dollars; \*\* Millions of U.S. dollars.

? = Not Known; N/A = Not Appropriate.

1. Among adults over age 65; 2. Among children age 1-4 years.

Source: Richard Garfield, "Economic Sanctions, Humanitarianism, and Conflict After the Cold War" (*Social Justice*, 29.3, 2002) 105.

Here we can see a correlation between comprehensive sanction implementation and declining economic welfare. In Iraq the GDP per capita dropped from \$3508 to just

\$540 in the course of 6 years. The mortality rate for children under 5 years nearly tripled from 45 to 132. The percentage of mixed underweight children rose from 4.5% to 22.1%, while the estimated excess deaths of children age 1-4 went from being unknown to 5,500 a year. In terms of currency exchange, the value of an Iraqi dinar compared to U.S. dollars went from a dollar-to-dollar ratio to 1500 Iraqi dinar amounting to \$1. While descriptive statistics like these usually can only suggest slight correlation, we can see in all of these mentioned categories similar effects being experienced by Haiti, Cuba, and Serbia. While all of the effects of sanctions on these mentioned categories are not perfect, there is still enough evidence here to reasonably infer that there is a correlation between comprehensive sanctions and these severe adverse effects. We can also see this when reexamining the severe drop in Iraq's GDP per capita and the facts given by Cortright and Lopez above.

After this incident in Iraq, comprehensive sanction use declined. This led to a period of smart sanction implementation by the UN that has lasted for more than a decade. This question of national security versus ethics is long debated on this and many other issues. However, as we begin examining smart sanctions, it will still be difficult to justify economic sanction use. One thing is certain - that the era of smart sanctions that followed would be silent, but still deadly. One thing to remember as we shift our focus to smart sanctions is that in modern scholarship it is generally agreed upon that comprehensive sanctions are unethical or at least ineffective due to the unnecessary and unwarranted damage they cause to civilian bystanders<sup>11</sup>. Before we begin ethically

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<sup>11</sup> Joy Gordon in the article, "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions", shows comprehensive sanctions to be unethical when examined through utilitarianism, the categorical imperative, and just-war morality.

examining smart sanctions, we need to examine the effectiveness of the individual tools that are implemented in them. Therefore, we will examine a debate on smart sanction effectiveness between scholars Joy Gordon and George Lopez.

## **VII. The Effectiveness of Smart Sanctions**

In Gordon's article "Economic Sanctions Revisited" she points out that smart sanctions still inflict damages and cause issues to innocent people, just on a lesser scale. Gordon examines the four main components of smart sanctions: Arms embargoes, travel bans, selective trade embargoes, and asset freezing or financial sanctions. Gordon points out that various studies have shown arms embargoes to be largely ineffective. "Multiple studies have found that arms embargoes do not significantly reduce the flow of arms- they just make them more expensive..." (Gordon, 322, 2011). Gordon exclaims that guns and other lightweight weapons are easy to produce by private companies and readily available. This ability for a country to establish illegal networks, forge documentation, and craft other illegal means to sneak arms often further widens income inequality and may in fact keep arms out of the hands of those the arms embargoes are intended to help in civil war or conflict involving internal parties. (Gordon, 321-324, 2011). In terms of travel sanctions, Gordon finds that "there is little evidence that it is so costly to a political or military leader as to cause him to reconsider a policy or state practice, or that restricting travel affects such individuals in any way that goes beyond inconvenience" (Gordon, 324-325, 2011). However, it is also important to include Gordon's point that there are two kinds of travel bans: those that limit travel to an individual (travel visa and passports), and those that involve border restrictions (airline or aviation ban). In addition to the reason given for individual travel bans, Gordon's primary argument against

aviation bans or travel bans that affect the populace at large is that they can cut off entirely or at least limit access to necessary supplies (medicine, food, clothes, and etc.). Furthermore, they can promote black market activity. Aviation can be critical to certain industries (healthcare, agriculture), and certain types of air or naval travel are better regulated than others (the commercial airlines industry in contrast to the air cargo industry). Because of this, Gordon claims that travel sanctions, like arms embargoes, do more harm than good.

In the case of targeted trade sanctions, Gordon notes that these sanctions, like arm embargoes and travel sanctions, are hard to enforce. She notes that because goods are easily interchangeable, screening or certification processes may not exist. This means identifying where a good came from can be difficult. Also, if these processes are being poorly implemented, then there is always the possible risk of forged certifications or papers accepting product from a sanctioned country. Another issue is that they can directly affect an industry or shift economic activity in a country - hence harming innocent people. Even if only a single good is prohibited from trade, trade sanctions risk being too broad in scope and resembling more of a comprehensive sanction structure, as seen in the oil sanction on Iraq.

Gordon argues with financial sanctions, there are numerous issues facing them. This depends on who or what they are targeting. If a financial sanction targets an individual or company, then there is the issue of implementing it secretly and quickly so that they cannot arrange to have their wealth transferred to outside accessible means. While this problem is true of all financial sanctions, it is particularly highlighted in this instance when it acts against a singular person or institute. This goes without mentioning

the problem of promoting unethical money transfers or black market activity that these other tools also share. Another issue, as Gordon points out, is that it can be hard to identify all of a person's or institute's assets, and even if they are identified and frozen these tactics are limited in their effectiveness. To be clear, Gordon states that "where the target nation is a poor country and the leader has few other options for acquiring wealth, and where the sender is only demanding modest changes that do not threaten the regime's ability to hold power" (Gordon, 328, 2011) are the only circumstances where these means are truly effective.

In the case of financial sanctions against a category or group of individuals there is the famed "McDonalds problem," which argues along the lines of that:

...if all U.S. nationals are prohibited from transacting business with al-Qaeda, does that mean that McDonald's is expected to refrain from selling a hamburger to anyone associated with al-Qaeda? If so, what procedures should McDonald's be expected to put in place to monitor its transactions, so as to avoid the inadvertent sale of a Quarter Pounder to a blacklisted terrorist? (Gordon, 328, 2011)

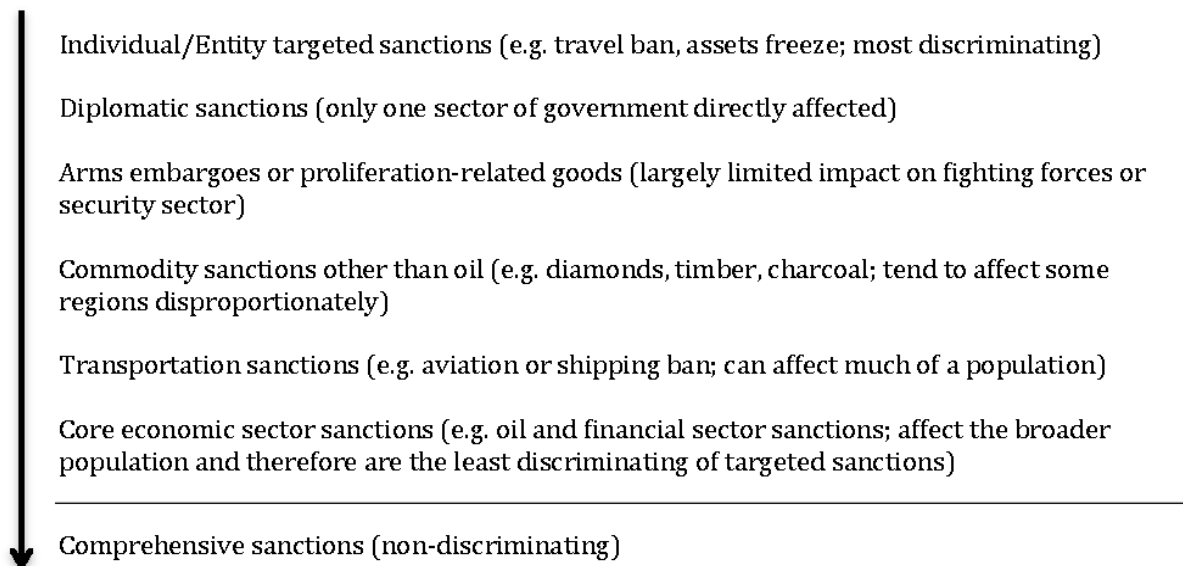
Although laughable, this argument does show how limited financial sanctions can be.

Gordon's final point with the problems of financial sanctions is that of adverse selection.

It is well known that the banking industry is well-regulated, making asset monitoring and freezing ideal, but realistically even here it is hard to enforce and develop good controls in place to halt or monitor hostile transactions. Think about it this way, every time a transaction is flagged in banking it has to be reviewed by someone to ensure it is a fraudulent or prohibited transaction that has taken place (no small feat when applied to a group, state, or large party). Therefore, Gordon argues that the feasibility of the correct assets being frozen and transactions being halted becomes small if a financial sanction is enacted on another less regulated industry besides banking. In regards to financial

sanctions against a state, this also directly impacts a state's innocent populous. Therefore, I argue here that financial sanctions aren't even "smart".

**Types of Targeted Sanctions: Degrees of Discrimination (or relative "comprehensiveness")**



Source: Biersteker et al; "The Effectiveness of United Nations Targeted Sanctions"; The Impacts and Effectiveness of United Nations Action Targeted Sanctions; 2013; Web; 18 Mar. 2016; 17.

Studying the above table, we can better depict this dilemma of smart sanctions becoming too comprehensive in scope as suggested by Gordon and hinted earlier in section III. We can see above that as smart sanctions that discriminate move towards efficiency, they also inevitably become more comprehensive - they become more effective but less ethical in nature. My assumption that comprehensive sanctions are stronger than smart sanctions at achieving results can be seen in the below table when compared to the HSEO success rate for comprehensive sanctions:



**Table 2.1 Sanctions effectiveness distribution**


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	Effective	Mixed	Ineffective
Coerce	<b>10%</b>	<b>27%</b>	<b>63%</b>
Constrain	<b>28%</b>	<b>22%</b>	<b>50%</b>
Signal	<b>27%</b>	<b>44%</b>	<b>29%</b>

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Source: Biersteker et al; "The Effectiveness of United Nations Targeted Sanctions"; The Impacts and Effectiveness of United Nations Action Targeted Sanctions; 2013; Web; 18 Mar. 2016; 21.

This table and the previous one both come from a study by the Targeted Sanctions Consortium (TSC), which is a group comprised of over 50 scholars on economic sanctions. In this study, a sample size of 62 UN smart (targeted) sanctions were selected in order to study smart sanction efficiency. Unlike HSEO, whose study focused mostly on comprehensive sanctions in the 1990 revised edition, and on both smart and targeted sanctions, the study conducted here by TSC focused exclusively on smart sanctions to better understand what they do best in terms of achieving their goals.

From their findings in the above table they discovered that UN targeted sanctions achieved their goals (coercing, constraining, and signaling) on average around 22% of the time (Biersteker et al, 7). These 62 cases of UN smart sanctions were conducted over a span of 22 years from 1991 through 2012, which is a much more concise timeline than the timeline (1914-2009) HSEO used for my edition of the study. If we take possible innocent human lives impacted or killed and other costs out of the equation, and remember that economic sanctions cost an “average of \$27 billion annually as of the year

2000,” then it is arguable that smart sanctions are inefficient from a purely financial cost perspective (Hufbauer et al., 17). As mentioned earlier, this number has likely increased and applies to economic sanctions in general, not smart sanctions. However, if smart sanctions even cost a fraction of this figure, then this cost is still great when considering internationally that some developing countries have annual GDPs amounting to less than \$1 billion annually. Therefore, from this summation of Gordon’s points against smart sanctions and empirical evidence, we can now look at Lopez’s replies against Gordon’s article as we continue to examine smart sanction effectiveness.

Lopez’s main points against Gordon, while rational and optimistic, seem to lack detail. Lopez’s evidence for his argument begins by citing brief case studies of smart sanctions and refers to ways in which smart sanction tools are being improved. While acknowledging Gordon’s points, he also acknowledges that smart sanctions do inevitably have unintended consequences and no serious scholar would argue otherwise. In addition, he argues that smart sanctions are fast evolving and already have precautions that match Gordon’s criticisms of inefficiency. He argues that Gordon is stuck in what he terms a “90s hangover” mentality in sanction thought and that she places too much weight on the examples of the comprehensive sanctions of Iraq, Haiti, Yugoslavia, and other cases in the 1990s period. Citing numbers like, global trade has risen more than doubled from “\$6 trillion in 1995 to \$15 trillion in 2010”, and that, “the GDP of most countries has gradually risen over this period”, Lopez suggests here that there is a correlation between decreased sanction volatility and economic growth resulting from increased trade (Lopez, 137). The reason, offense, or goal of the sanction should be used as well when criticizing smart sanctions according to Lopez. He disagrees with Gordon on the notion that due

diligence isn't being properly executed by the UN. Lopez instead argues that the situations which smart sanctions are often used to combat (ending serious violent conflict, preventing terrorism, preventing or controlling nuclear ability, and the protection of humanitarian rights and civilians) are also indications of which measures will be the most effective. Therefore the UN is able to leverage its experience from past implementation to save time in due diligence processes, he argues. He hints that the effectiveness of smart sanctions can also be tied to the expressive messages that they send for policymakers, as has been argued by many scholars. Concluding, Lopez refers to the cases of smart sanctions against Assad and Qaddafi that had significantly impacted the turnout of these cases. In particular Qaddafi's case offers the most evidence of the promise of smart sanctions, as financial sanctions on Qaddafi's regime froze \$36 billion of his assets. Because of this freezing, while it didn't stop Qaddafi's regime, Lopez argues that this significantly impeded Qaddafi's forces: "the international community immediately denied the dictator the ability to import additional heavy weapons, to hire mercenaries, or to contract with elite commando units. These constraints meant that Tripoli, for example, was not destroyed in an all-out battle. The humanitarian impact of sanctions was negligible, while without the sanctions the Libyan war would have been longer and deadlier" (Lopez, 144). In this response Lopez provides a more optimistic view of smart sanctions, as he argues that there isn't yet enough historical evidence to write them off as tools for statecraft<sup>12</sup>.

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<sup>12</sup>However, it is hard to accept this claim when examining the TSC study on the effectiveness of smart sanctions.

### **VIII. Definitions for The Various Ethical Lenses to Be Used for The Examination of Smart Sanctions**

In terms of ethics, smart sanctions can be examined with multiple lenses. Therefore, as mentioned, we will examine them through utilitarianism, the categorical imperative, and “clean hands” morality. The reason for selecting these ethical models is that Utilitarianism and the categorical imperative can be combined together to produce a strong ethical means of evaluation. However, it can be argued that the UN and other parties implementing smart sanctions already have requirements and procedures in place that follow this model. Therefore, using clean-hands morality as an antithesis to this ethical model, this paper hopes to offer contrast and clarity on the difference between the ethical model proposed here and the speculative implementation models used by the UN and other possible groups. This paper will use clean-hands morality as an opposing ethical model to argue that smart sanctions should not be used as tools of country expression without efficiency considerations provided by this ethical model. Only when they clearly meet the criteria of utilitarianism and the categorical imperative in an effective context should smart sanctions be used. I argue that smart sanction effectiveness is maximized both ethically and in efficiency when this ethical model is applied. Through rigorously examining smart sanctions ethically, this paper hopes to provide a guideline for future smart sanction implementation. This ethical model can be used for other types of foreign policy tools (trade wars, economic warfare, carpet bombing, etc.), but it is designed specifically for smart sanctions since it argues for limited smart sanction implementation. If used for other types of foreign policy tools, this model may be impractical due to its humanitarian constraints.

Starting with utilitarianism I would like to note that this examination will not focus on any particular type of utilitarianism, rather it will examine utilitarianism in its most basic premise: “the greatest good for the greatest number”. Another way of stating this, as stated by Elizabeth Ellis, is “According to utilitarianism, an act is right if and only if it maximizes utility (i.e. the balance of pleasure over pain or, more generally, of benefit over harm)” (Ellis). Therefore this brief explanation will also act as our working definition for Utilitarianism as we apply it to analyzing smart sanctions.

In regards to the categorical imperative Kant gives two alternative definitions or forms for it that he states are equivalent but which are much debated by scholars as to whether they are equivalent. Therefore for simplicity we will only refer to and use Kant’s second form of the categorical imperative that states: we are to treat "humanity, whether in [our] person or in the person of any other, never simply as a means, but always at the same time as an end" (Kant, 96). Kant’s categorical imperative implies an absolute, unbreakable condition or requirement that must be always obeyed in every circumstance because it is an end in itself. This provides an understanding and explanation of the categorical imperative that will be used for analyzing smart sanctions. Since the reasoning given by the categorical imperative for ethically justifying economic sanction implementation is very brief, we will include here the argument made by the categorical imperative against economic sanction use. Addis nicely summarizes Gordon's interpretation of this argument:

It objects to economic sanctions on the ground that often, if not always, sanctions target innocent civilians for suffering as a means to achieving a foreign policy objective, contrary to Kant's categorical imperative. The argument here is that it is morally unacceptable to impose suffering on innocent sectors of the target state, as economic sanctions do, for an

objective that does not involve the prevention of the deaths of other innocent persons. (Addis, 576-577, footnotes omitted)

It's debated whether smart sanctions always target innocent civilians, but it can be argued that smart sanctions might always target innocent civilians indirectly. When smart sanctions are used, a dictator or the targeted party may find ways to shift the costs of the smart sanction to innocent civilians.<sup>13</sup> Therefore, if this argument is true, then we must conclude that smart sanctions are generally unethical under the categorical imperative. But if we accept the premise given by Gordon's interpretation of the categorical imperative, that smart sanctions can be ethical if they aim to prevent the deaths of innocent people, then we can possibly find situations where smart sanctions are ethical under the categorical imperative. Gordon states in her argument for this position on the categorical imperative that:

Where sanctions impose suffering on innocent sectors of the target country population for an objective other than preventing the deaths of other innocent persons, this is clearly incompatible with deontological ethics, since in these situations, to use Kantian language, human beings are reduced to nothing more than a means to an end, where that end is something less than the lives of other human beings. (Gordon, 129, 1999)

However, it can be argued that smart sanctions are usually only implemented in situations where the ultimate goal is to save innocent lives - whether abroad or domestically through protecting national security. Therefore, in order for this standard to be satisfied, I argue that in order for the requirement of smart sanctions preventing deaths to be satisfied, smart sanctions have to be implemented in situations where this claim is clearly observable. Otherwise any economic sanction could arguably be claimed as "ethical" under the categorical imperative. Only in situations where smart sanctions seek to prevent

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<sup>13</sup> Gordon, as read above in her article "Smart Sanctions Revisited", advocates this position.

or limit acts like genocide, mass murder, or imminent war can smart sanction use be justified. Another situation would be if they were implemented to prevent an immediate outbreak of war. However, the situations would still have to be favorable as we will see in our analysis of smart sanctions when applied in utilitarian context. Thus, it appears that under the categorical imperative smart sanctions are usually deemed unethical (because they directly or indirectly use people as a means), but they can be ethical when used to save innocent lives.

Noam Zohar's "clean hands" approach takes inspiration from Jewish theology and argues that economic sanctions are a way of saving face or avoiding complicity in damnable actions of other countries. In Zohar's model, acting to prevent a known evil act or suspected evil action is a moral obligation, for not doing so makes one complicit in the guilt (in this case sin) as referred from the Talmud by Zohar. Therefore, on the mere grounds of suspicion, an individual, group, or country is to act, for not doing so is to fuel the wrong behavior of the other party and makes one an accomplice to the crime. In Zohar's examples, provided from the Talmud, an individual, group, or country is to forbid the selling of weapons and all items that may be used for wrongdoing by the opposing party. However, this example can be expanded upon, as is permitted by the model, to include smart sanctions and their implementation as a reaction to wrongdoing by other countries, whether that country has ties with the other country or not. Therefore our understanding of the clean hands model will be that it seeks to avoid complicity and requires moral reaction within reason to wrongdoing or the suspicion of it.

## **IX. Smart Sanctions Under Utilitarian Critique**

With smart sanctions it can be debatable whether they “meet” the ethical criteria for utilitarianism, but this problem is more so due to the difficulties with measuring utility or happiness. Because of this issue of quantifiable measurement, sanctions, both comprehensive and smart, can be argued to be unethical and ethical in regards to utilitarianism. Most already would agree that comprehensive sanctions fail to satisfy utilitarian requirements. Nevertheless Joy Gordon in her article, "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions", argues that comprehensive sanctions can satisfy utilitarian requirements in cases where “the economic hardship of the civilian population of the target country entails less human harm overall, and less harm to the sanctioned population, than the military aggression or human rights violations the sanctions seek to prevent” (Gordon, 133, 1999). If we combine the categorical imperative and its requirement of saving lives with utilitarianism, then we arrive at an ethical crossroads. In order for smart sanctions to be ethical, this model requires an assumption. Namely, that smart sanctions can affect enough change to save more lives than they harm. However, this assumption also highlights the possibility that smart sanctions can’t leverage enough cost against the responsible party to cause them to change their attitudes (and perhaps save lives). But it must be conceded that this is not an impossibility.

As seen in our table earlier on the relative degree of sanction non-discrimination or comprehensiveness, the problem with a smart sanction leveraging too much cost or using too excessive of sanctioning measures is that it can ultimately become a comprehensive sanction. Having seen the damages in Iraq and in other countries due to



comprehensive sanctions, I argue that comprehensive sanctions are not ethically justifiable in our model. While comprehensive sanctions have an arguable higher success rate, the cost leveraged by them is placed directly on the innocent population. This makes it improbable that comprehensive sanctions could ever be ethical, for it is arguable that they will always do more harm to innocent bystanders than they help. This is to say that they always take more lives than they save, or at least they will always have a high associated risk of doing so.

When we look at comprehensive sanctions in Iraq, seeing the estimated child mortality rate ranging anywhere from 200,000 to 500,000, one must wonder whether utility is gained or lost? Who is to say that sanctions advocates such as Madeleine Albright aren't wrong when they argue along the lines that no cost is too great for national security? Perhaps the massive amounts of utility that are lost in the deaths and suffering of the innocent population are "made up for" when adding the small amounts of utility gained among the hundreds of millions of persons who were anxious about Iraq during this time. Therefore, Gordon is technically right in her argument that comprehensive sanctions can be ethical in a utilitarian context.

The problem is that comprehensive sanctions haven't been historically shown to maximize utility, as suggested by their replacement by smart sanctions. To be clear, the problem with comprehensive and smart sanctions being ethical in our model is that they both are generally too ineffective as tools to provoke the kinds of political changes they seek to enact at costs that would make them ethical. However, this failure or inefficiency of smart and comprehensive sanctions is for different reasons. In regards to comprehensive sanctions, the costs enacted are generally too high to justify the ends

(chance of enacted change whether it is achieved or not). This is to say that aggregate utility is most likely lost rather than gained. While smart sanctions minimize the cost to innocent civilians, they are arguably too ineffective in terms of achieving objective goals - making them at best tools for political expression. However, as HSEO point out in terms of gauging sanction success, “the key question is when, not whether, economic sanctions work” (Hufbauer et al, 43). Below is a general summation of situations that consensus points to as areas where smart and comprehensive sanctions perform best:<sup>14</sup>

- 1) The country is near or solely dependent on trade or the exporting of a good for economic growth and sustainability.
- 2) There is large scale cooperation among countries and legislative bodies in enforcing the sanction.
- 3) The country has little alternative means of maintaining its current economic position or of finding alternative means of supply.
- 4) In countries that are democratic or likely to respond to the suffering of the population.
- 5) The country doesn't have time to react; the sanctions are either rapidly implemented or secretly conceived.
- 6) The country leadership is experiencing a period of weakness.

Through these six points, I hope to provide a summary of examples in which other scholars would argue and agree that economic sanctions (both smart and comprehensive) achieve their best results. These examples offer situations in which smart sanctions are more prone to achieving their goals. Therefore, it is in situations like these (when also ethically meeting the ethical criteria of the categorical imperative) that smart sanctions could be used. The main idea to retain here is that smart sanctions should only be used in an effective, rational, situation that suggests a better chance of success. They must also be

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<sup>14</sup> This table and its points are created by me. These points may be read or supported in other scholarly works due to their reasonable contexts that rationally hint at better success. The Targeted Sanction Consortium and the HSEO studies provide additional insightful points where smart sanctions generally perform best. They also have evidence that generally agrees with these points.

implemented only in situations that are clearly going to save lives, as required by our adaptation of Gordon's interpretation of the categorical imperative. Given the poor success rate of smart sanctions, ideally, multiple of these favorable conditions would be met before considering implementation.

Looking for alternatives, some might propose sanction types like selective sanctions or commodity sanctions as offering the "best of both worlds" of smart and comprehensive sanctions. I argue it is impossible for a sanction to be in the middle, between smart and comprehensive, because smart and comprehensive sanctions are too tightly defined. Smart sanctions are in essence the antithesis of comprehensive sanctions, and the choices available to them (ban completely or partially) do not allow for a third option. Also, smart sanctions are understood as sanctions that don't harm or seek to minimize the harm to innocent civilians. Even if smart and comprehensive sanctions were not so defined, the choices between them are still the same. Concluding our utilitarian analysis, it must be conceded that it is possible for smart sanctions to achieve their goals - hence maximizing utility (as seen in the success rate given by the TSC).

In terms of relating utilitarianism with the categorical imperative in my ethical model, the categorical imperative acts as a threshold condition. Because the categorical imperative has stronger requirements (that people be put first by saving lives) when using an economic sanction, it serves in my ethical model as the first requirement that must be met for an economic sanction to be implemented. However, the categorical imperative alone isn't comprehensive enough of an ethical model. If an economic sanction saves one person, but damns a million innocent civilians in the targeted country, then the categorical imperative's requirement of "putting people first" in terms of saving lives is

still technically being met. Also, even if more people are saved by an economic sanction than harmed, was the economic sanction used in a situation where its use made sense? While most people wouldn't complain if an economic sanction clearly saved more lives than it harmed, how do we know if other foreign policy instruments (e.g. smart bombing) wouldn't have been just as successful? By taking economic sanctions, specifically smart sanctions, out of their proper context, the sanctions are no longer being used in situations where they would have made sense. Therefore, by using economic sanctions outside of situations they are designed to handle, they lose efficiency and their success rate is reduced. What utilitarianism proposes is that after an economic sanction satisfies the initial conditions set by the categorical imperative (it is clearly saving lives), then the situation where the sanction is sought to be used has to make sense – the situation has to fit the tool. In addition, utilitarianism demands that more lives in total be saved than harmed due to the threshold requirement set by the categorical imperative. If we just used utilitarianism as an ethical model, while the economic sanction may be effective in terms of the benefits outweighing the costs, the economic sanction may harm or kill thousands of innocent people in the targeted country to achieve its goals.

As a hypothetical example of what my ethical model would look like in practice, consider two countries: country A and country B. Country B is about to wage war on another country. Therefore, to prevent imminent war without getting militarily involved, country A reasons that it should use a smart sanction against country B. However, to ensure that a smart sanction would be the best choice of action, country A examines the background of country B. Seeing that country B has a weak government that is diplomatic, country A then secretly devises a plan to implement a smart sanction. If

possible, country A may also wish to see if other countries will support the smart sanction without revealing to country B their plans. By taking these precautions, country A not only is implementing a smart sanction with a higher chance of better results, they also are utilizing the smart sanction in an ethical way that might justify the damages that result from it. In essence, country A is using the smart sanction not as a means of expression, but rather as a tool that is being properly implemented in the context where it is the best solution. By using smart sanctions as means of expression, their functions, costs, and efficiency are not being properly considered.

Looking back, we have seen objectively that traditional comprehensive and some early pre-smart sanctions contained anywhere from an estimated 4% to 35% success rate, not counting an estimated cost of “\$27 billion annually as (of) the year 2000” (Hufbauer et al., 17). We have seen historically that comprehensive sanctions, while more effective at achieving results than their smart sanction counterparts, often required too high of a cost economically and ethically to continue their frequent implementation. Even when looking at comprehensive sanctions in a utilitarian fashion, we saw that their evolution into smart sanctions hints at their failure to be effective in an ethical context overall. Because scholars report that smart sanctions are weaker due to their difficulty to enforce and in their ability to achieve their objectives, it is arguable that this leaves only one function of smart sanctions that can be argued as efficient objectively (that smart sanctions are effective means of signaling or sending a message).

As mentioned in section IV, it is arguable that one of the most important functions of economic sanctions is the ability to send a message. It is arguable that every smart

sanction contains a message.<sup>15</sup> For this reason alone, countries may use smart sanctions as a peaceful means to protest evil actions abroad. However, I argue, by using smart sanctions in such a loose way, their efficiency is reduced. By using smart sanctions as tools of expression, they are not implemented in contexts that logically suggest they will be effective, and they usually are used to protest situations where it is debatable if they are saving lives:

NORM SIGNALLED	Present		Principal Norm	
	<i>Frequency</i>	<i>Percent</i>	<i>Frequency</i>	<i>Percent</i>
<b>Prohibition of war/armed conflict</b>	35	56.5	33	53.2
<b>Human rights</b>	27	43.5	1	1.6
<b>Authority of regional arrangements</b>	22	35.5	0	0
<b>Counter-terrorism</b>	16	25.8	9	14.5
<b>Non-constitutional change in government</b>	16	25.8	7	11.3
<b>Improved governance</b> (natural resources/security sector)	9	14.5	3	4.8
<b>Non-proliferation</b>	7	11.3	6	9.7
<b>Authority of the UN Security Council</b>	7	11.3	0	0
<b>Protect population under R2P</b>	4	6.5	2	3.2

Source: Biersteker et al; "The Effectiveness of United Nations Targeted Sanctions"; The Impacts and Effectiveness of United Nations Action Targeted Sanctions; 2013; Web; 18 Mar. 2016; 15.

In the above table we see that 56.5% of the time sanctions contained a message against armed conflict or war. Out of TSC's 62 case study samples, 25.8% contained messages against terrorism, and another 25.8% contained messages against a non-constitutional change in government. However, the principle norm or main message sent by smart sanctions in TSC's study was the prohibition of war/armed conflict at 53.2%.

<sup>15</sup> The Targeted Sanction Consortium states that 100% of the 62 sanctions sent/ signaled a message.

This suggests that smart sanctions are already being used most of the time in contexts where they are aimed at saving lives. However, we can still see that non-constitutional changes in government and terrorism make up 25.8% of smart sanction principle norms signaled. The evidence here points to my above point that the UN and other political parties mostly use smart sanctions already with the main goal to save lives. However, the way smart sanctions are being implemented suggests that they are often used as means of expression without attention being paid to situational contexts as utilitarianism demands for our model. Another issue is that while smart sanctions are mostly being used in situations where they can be argued to be aimed at saving lives, we can see that this isn't always the case. Therefore, let's examine clean-hands morality so that we better understand why it is inefficient to use smart sanctions as tools of expression when unguided by this ethical model. Summarizing the clean-hands ethical model, we will return to this discussion afterwards.

**X. Clean Hands: An Examination of the Clean Hands Ethical Model and Its Greater Context in Regards to Smart Sanctions**

One ethical model, the “clean-hands” ethical theory by Zohar, would imply that parties have a moral obligation, a duty, to avoid complicity in evil acts. Pulling his ideas from Jewish theology, the Talmud in particular, Zohar argues that on the very grounds of suspicion of wrongdoing, a party (person, group, or country) is to cease trading with that country goods that may be used by the party suspected of wrongdoing. "The Noachide Code posits a core set of seven fundamental precepts, which are conceived as binding upon all 'descendants of Noah' -that is, all humankind- regardless of their consent. This conception of universal and historical authority makes the Noachide Code akin to a

system of natural law" (Zohar, 43). The first six fundamental precepts of the Noachide Code prohibit idolatry, murder, theft, adultery, incest, and animal cruelty. The final precept is that of judges. The Noachide Code states along the lines that just judges and courts are to be installed in every district to enforce the first six precepts and admonish the people (Zohar, 42). In the international setting, where state sovereignty becomes a factor, the Noachide Code can be interpreted differently as shown by Zohar through looking at two medieval scholars, Maimonides and Nachmanides, using passages from the Talmud.

Zohar adapts both of these, then he applies them to the international setting. The basic premise, however, without factoring in state sovereignty, is that any violation of this code that is left uncorrected or unpunished holds outside parties complicit in the crime if they do not sanction the country doing wrong. In order to avoid this complicity, the two interpretations adapted by Zohar suggest that international bodies must either enforce a clean-hands boycott of this country, or they must actively intervene through military or offensive means to ensure justice is done. Zohar argues that we should use sanctions or clean-hands boycotts as a means to avoid complicity, since military intervention could possibly inflict more harm than good. In essence, the ends need to justify the means. The clean hands boycott resembles a smart sanction and is one in essence, but it can be adapted to a harsher, comprehensive sanction type structure if necessary.

Zohar reveals a position in Jewish tradition examined by medieval scholar Nachmanides that political autonomy, the separation of political powers, is to be respected - hence individual sovereignty is to be respected. This implies that it is wrong



to take outside matters into our own hands, whether the matter concerns an individual and the state (breaking the law) or the use of enforcement against a country for wrongdoing. However, Zohar reveals a controversial position in the international context with the early Jewish tradition's focus on not selling to sinners and maintaining "clean hands". In particular, Zohar's illustrations from Jewish documents give us examples dealing with individual vendors and their responsibility not to sell to individuals involved or suspected of involvement of wrongdoing. This position, however, is controversial when regarding goods that may be used for either good or evil (dual functioning goods), with helicopters, shields, and oil being the examples given. While it could be argued that weapons could be used in a manner that is good, the Noahide Code and Zohar reflect that any good that could be used evilly (e. g. guns being used to kill or injure in a lesser of two evils scenario) should be banned from sale without hesitation.

Defining this idea of refusing to sell and avoid complicity as a clean-hands boycott, Zohar argues along the lines that this sanction would not involve measures of enforcement - rather it is a measure to avoid complicity. However, the idea that all goods that may be used for evil must be banned (some scholars highlighted by Zohar argue for complete, comprehensive sanctions that would completely ban trade with the opposing party) also can lead to issues of complicity due to deaths brought about by the absence of trade in necessary goods, like food, as seen in Iraq. Therefore, Zohar briefly discusses the idea that clean-hands sanctions may inevitably involve some controversial military intervention in order to ensure that banned dual-purpose or necessary goods may reach civilians but stay out of the hands of governments or military groups responsible for the clean-hands sanction:

It is important to note that this entire discussion of boycott is by no means limited to clients whose crimes constitute international aggression. The sins for which we must not come to share the guilt are defined in terms of the Noachide Code. Faced with a breach of this code abroad, we might be barred (by Nachmanidean respect for the international boundaries of jurisdiction) both from military action and from an enforcement boycott, and yet be obliged to employ a clean-hands boycott, whose scope might be surprisingly broad. (Zohar, 49)

In this above examination of the “clean hands” model we see some weaknesses when adapting the model from the individualistic sense to the international scale. According to the model, a clean-hands boycott (economic sanction) is to be used to avoid complicity whenever the Noachide Code is violated. However, Maimonides, who came a century before Nachmanides, argues a different interpretation of the Noachide Code from the Talmud. He argues that when a country or group fails to punish a crime or enforce a law on a criminal, they too have broken the law by becoming complicit and hence are all criminals. Therefore, in this case, respect for political autonomy or state sovereignty is no longer an issue - that right is now waived. Under Maimonides’ interpretation, outside enforcement in the sense of punitive measures like sanctions is justified. Zohar points out that both of these authors agree the initial responsibility to punish the evil act rests within the society where it takes place, but Nachmanides doesn’t draw failure to punish the action as justification for outside action. In Nachmanides’ viewpoint, the responsibility and right to punish evil abroad always rests with the wronged party and the country. While in Maimonides’ interpretation, outside responsibility to enforce the Noachide Code takes place once a country transgresses or condones evil actions.

However, the words “we might be barred” from Zohar’s above quote need to be emphasized. What is implied here is that state sovereignty may be viewed through the Noachide Code in Nachmanides’ interpretation. If viewed through Nachmanides’

interpretation, then in order for state sovereignty to be disregarded, the cost of not acting would have to be great (as discussed briefly in the beginning of Zohar's article when examining state sovereignty). An example of this, which is argued as the only justifiable means for disrespecting state sovereignty by scholar Michael Waltzer, is a crime against humanity (Zohar, 39-40). Therefore, seeing this example, we see that in the clean hands model even under the Nachmanides interpretation the explicit concern for countries to act when they witness wrongdoing can override state sovereignty. This overriding of state autonomy is not just tied to crimes against humanity, but it could also be valid in cases when the community following or implementing this ethical method perceive a violation of the Noachide Code strong enough to warrant such an action. Another fact to point out, is that international trade has been rapidly growing in recent years. Even if the country following these principles has no dealings with the country committing wrongdoing, it is likely the case that they are trading with someone who does. Therefore, in order to avoid complicity, those following this ethical model as a means for decision making must decide whether to sanction (most likely smart sanction) countries who choose to continue in their wrongdoing.

## **XI. Smart Sanctions: An Argument of Their Ethical-Effective**

### **Implementation and Limitations**

Now that we have seen how smart sanction implementation looks in the context of clean-hands morality, let's return to our previous argument. Looking back at the clean hands ethical model, we notice this pressure to react to evil, whether by enforcing a clean-hand boycott, or by enforcing sanctions against a country suspected or caught committing a sin that goes against the Noachide Code. In terms of enforcement, Zohar

doesn't address what kind of sanction would most likely be used as a means of punishing a criminal country. If the clean-hand model follows some of the more radical views, then the country or group adhering to these principles would have to exercise a complete trade ban or comprehensive type sanction against the country or countries accused of wrongdoing. If the Nachmanides approach was to be taken by the senders of the sanction, then a smart sanction would likely be implemented. This smart sanction would be in either the form of a clean-hands boycott (unilateral, partial trade ban with the targeted country) or of a more traditional smart sanction.

As we've seen, the clean hands model talks about avoiding complicity whatever the costs and is debatable on the topic of whether state sovereignty should be respected. Therefore, connecting the dots, let's assume a radical model of the clean hands approach to demonstrate the problem with sanctions serving as expressive tools. If a country commits an evil act(s) and does nothing to punish it, then the country following the clean-hands model has a responsibility to enforce the Noahide Code. This enforcement can take place either through an economic sanction or military intervention against the country that committed the wrong (not counting any countries that support the wrongdoing country). The problem with this current method of implementing smart sanctions (if military force is avoided) is that it leads to a violation of state sovereignty and individual rights in the countries sanctioned. Due to the necessity of implementing economic sanctions to avoid complicity or to send a message, the sender country or group of these economic sanctions take on a perpetrator persona that creates victims out of the country or countries committing the wrong. This can also be the case outside of countries or political groups that don't follow the clean-hand model for sanction implementation. If a

group like the UN sees evil committed abroad, then they most likely will act due to fear of being stigmatized or other reasons. For example, if a country announces they are changing their government structure to Communism, then the UN most likely would intervene here by sanctioning that country.

This tendency of eradicating perceived evil and enforcing one's notions of what is ethically "right" not only forces one's ethical views on another, but it also "steals" the ability of the country and populous to learn from the action and/or eventually change or punish the behavior. In essence, repeated smart sanction implementation wrongs the victimized country by not allowing them to grow and develop their own thoughts and solutions to internal conflicts. The sender country or group becomes so involved in the target country's affairs that they can no longer focus on their own issues due to being caught up in forceful international dealings. TSC states that "in 90% of the cases the UN sanctions were preceded or supplemented by other sanctions in the form of regional (AU, ECOWAS, EU) or unilateral measures, in 73% of the cases, other sanctions preceded the initial imposition of UN sanctions on the country (Biersteker et al, 19). Instead of these groups working together to better enforce a prior existing sanction, or to implement one together, this evidence supports my point that smart sanctions are used superfluously as an expressive tool.

This is why I argue that only when a smart sanction can be clearly seen to save lives (e.g. mass murder, genocide, or prevention of imminent war), and the conditions set by utilitarianism are met, should smart sanctions be implemented. Otherwise, I cautiously advise that military intervention or more forceful means are more likely to achieve better results here. Perhaps another strong argument against smart sanctions as expressive tools

is through advocates attempting to magnify the trivial successes of smart sanctions through this expressive function of economic sanctions. Irrationally, some would argue that this “halfhearted-victory” achieved by smart sanctions in every political situation overrides the ethical, efficiency, and cost concerns with their implementation. An apt illustration of this is given by Žižek in his *First as Tragedy, Then as Farce*:

In the fifteenth century, when Russia was occupied by Mongols, a peasant and his wife were walking along a dusty road country road; a Mongol warrior on a horse stopped at their side and told the peasant he would now precede to rape his wife; then he added: “But since there is a lot of dust on the ground, you must hold my testicles while I rape your wife, so that they will not get dirty!” Once the Mongol had done the deed and ridden away, the peasant started laughing and jumping with joy. His surprised wife asked: “How can you be jumping with joy when I was just brutally raped in your presence?” The farmer answered: “But I got him! His balls are covered with dust!” This sad joke reveals the predicament of the dissidents: they thought they were dealing serious blows to the party nomenklatura, but all they were doing was slightly soiling nomenklatura’s testicles, while the ruling elite carried on raping the people. (Žižek, 6-7)

While Žižek is writing about the socialist party here, with a little imagination one can readily see this in the context of economic sanctions when evaluating their effectiveness and success rate. In particular, this behavior of magnifying the trivial success of economic sanctions could be argued to be seen with HSEO (as Pape argues).

To rephrase the problem with sanctions in the expressive context is that the argument shouldn’t be about whether sending a message determines their success, rather it should be about whether the “right” message is being sent. In the majority of sanction advocates, especially smart sanction advocates, we see this attitude reflected. Lopez for example, due to his close ties to the UN and political parties (he helps to consult the UN on effective smart sanction implementation due to being one of the first authorities on this topic) attempts to magnify the most trivial of successes or argue that “not enough time has passed” when rebutting accusations like those of Joy Gordon. If anything, smart

sanctions are more dangerous than comprehensive sanctions if left unchecked. This danger results from the thinking that they are “smart”, so surely they do not need to be evaluated, guided, or improved upon in an ethical and efficient context.

Another issue with using smart sanctions in this expressive way is that we are practically awash in a sea of smart sanctions. Since 1991, over 62 UN smart sanctions alone have been implemented, each with their own message. With smart sanctions being implemented by multiple parties, one must wonder how all of these messages are interpreted by one country? Let's suppose an example: say a country is sanctioned by the US for announcing communism, and the UN sanctions the same country for enacting a non-constitutional government change, and the EU imposes another sanction because of suspected terrorism. Due to all of these varying messages, it may become unclear what exactly the targeted country is supposed to do.

It is noted by HSEO, the TSC, and many other scholars that cooperation in enforcing sanctions promotes success, but can't it also hurt success when the sanction parties are not unified in their goals? Enforcing multiple smart sanctions that differ against a country could be argued to make the targeted country become uncaring as to the messages behind them. This is also likely to lead to the target country refusing to give in to the demands of the sender countries. What is being proposed here, then, is not the banning of all smart sanction activity, rather the limitation of smart sanction implementation to contexts where background situations hint rationally at their possibility to maximize their effectiveness when they respect the ethical guidelines of the categorical imperative. While this argument takes on a unique ethical-synthesis approach, this argument for limited smart sanction use is by no means new:

In many ways, these sanctions are smarter. Nevertheless, there is no systematic evidence that smart sanctions yield better policy results vis-a`-vis the targeted country. Indeed, in many ways, the smart sanctions framework has been too successful. Recent research suggests that, in some instances, options other than smart sanctions should be pursued. It would behoove policymakers and scholars to look beyond the targeted sanctions framework to examine the conditions under which different kinds of economic statecraft should be deployed. (Drezner, 97

## **XII.      Conclusion**

Due to smart sanctions being implemented for a variety of reasons that lack urgency, and by using them as expressive tools with other sanctions in contexts that are not rational, smart sanction efficiency is reduced. While it is noble to seek to preserve peace, smart sanctions may not be the best solution most of the time. Therefore, it is up to policymakers and international political parties to weigh alternative situations before they apply smart sanctions. Not doing so is the equivalent of using smart sanctions as a quick fix method. This "shotgun" approach to smart sanction implementation not only reduces their efficiency, but also limits the ability of policymakers and international political parties to affect positive change. Another side effect of this is that economic inefficiency is promoted through reducing global trade. Lastly, and most important, innocent people are either harmed or inconvenienced regardless of whether the smart sanction is successful or efficient. Therefore, in order to justify their costs, smart sanctions need to use this ethical guideline to attempt to ensure that the ends justify the means. The success rate of smart sanction, and their efficiency as hinted by TSC, can be much debated. But we can see with HSEO, Iraq, and other examples that economic sanctions are generally ineffective when examined both ethically and in terms of efficiency.



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