

Sanctions against Russia: Legal Setting, Intermediate Economic Impact and Potential Political Outcome¹

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DOI:10.58866/TQZL8131

1 This article is based on our contributions to the 2022 spring meeting of the Royal Netherlands Society of International Law “Sanctions as the go-to tool: Do they work and what role for international law?”, The Hague, May 24, 2022 and incorporates presentations by Van Bergeijk at Kåkanomics, University of Stavanger, October 26, 2022 and The Modern World and Economic Diplomacy: Challenges, Solutions And Recovery of Ukraine, Diplomatic academy of Ukraine, April 4 2023. Comments by participants and the guest editors of this special issue are gratefully acknowledged.

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Abstract

We discuss the sanctions against Russia from three perspectives: legal, economic, and political. The sanctions fit into a trend towards recomprehensivisation and the use of autonomous rather than UN sanctions. We highlight (1) new sanctions-senders and sanction innovation, indicating which of those are a context-specific development and which are potentially of a more lasting nature, (2) the determinants and economic dynamics of sanctions that are important for an intermediate evaluation of this case, and (3) the uncertainty of the ultimate political outcome of large-scale sanctions. The case suggests that autonomous sanctions are and will remain a central response to serious violations of international law and that they thus require further legal thought.

Keywords

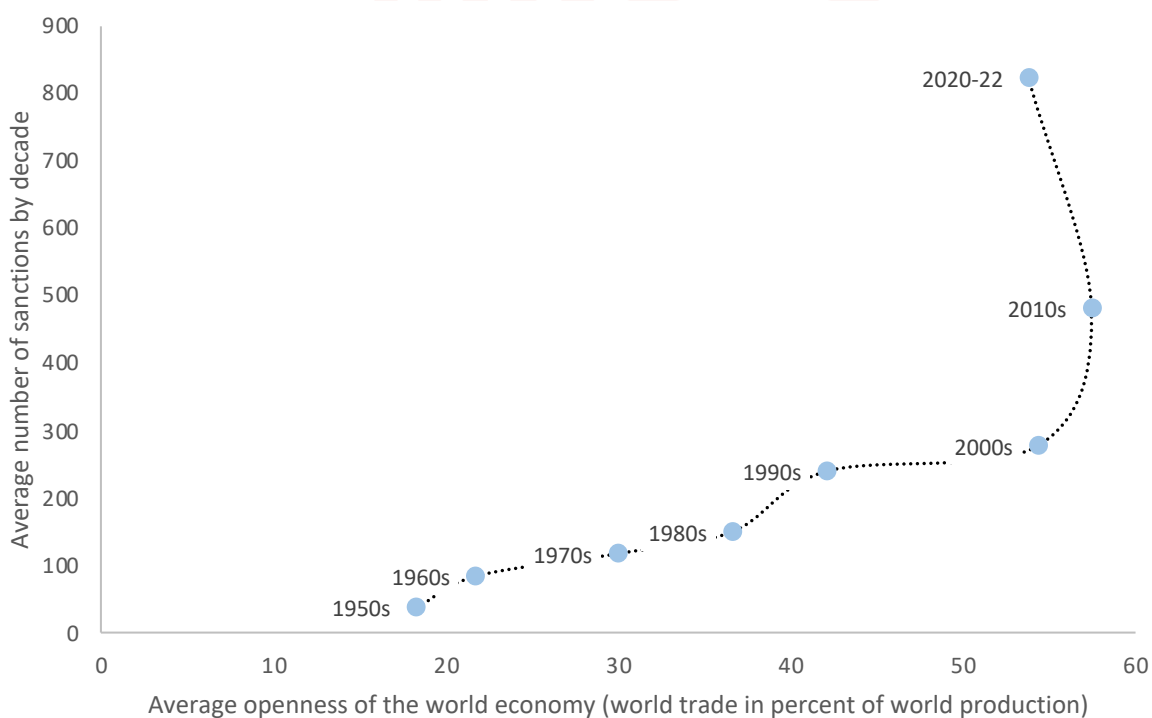
Russia - Ukraine - Sanctions - International law - International peace and security - United Nations

1. Introduction

The imposition of sanctions against Russia is a key component of the Western response to Russia's aggression against Ukraine. The resort to sanctions against Russia aligns with three trends in the sanctions domain, namely (i) a move towards sanctions as the go to tool to respond to international illegal behaviour, (ii) a move away from the system of collective security towards a practice of parallel autonomous sanctions, and (iii) a move to more comprehensive sanctions instead of a focus on targeted sanctions.

Already before the Russian invasion on 24 February 2022, sanctions had become the instrument of choice to deal with threats to international peace and security and breaches of international law. Indeed, as illustrated in Figure 1 a sanction tsunami can be discerned since 2010.

Figure 1 The number of sanctions increased significantly in the past two decades



Note: period averages per decade; for 2020s (the years 2020-2022, inclusive) only three years are available.

Sources: Calculated from the third vintage of the Global Sanctions Data Base⁵ (accessed April 27, 2023) and Peter A.G. van Bergeijk, (2022) COVID-19 and World Trade: In the Eye of the Perfect Storm?, Trade, Law & Development 14 (1) . 39-53.

Initially this development was driven by the coincidence of the end to the superpower conflict and an increasingly open world economy that enabled an increase in multilateral sanctions under the aegis of the UN⁶. Until the sanctions adopted against Mali 2017⁷, the UN Security Council had created around one new UN sanctions regime per year since 1990. Over the past decade though, UN sanctions have been rapidly complemented and finally replaced by autonomous sanctions. Stalemates in the UN Security Council have led to a new practice of the imposition of parallel autonomous sanctions by predominantly Western states. The paralysis in the UN Security Council increased after February 2022 as its functioning was contaminated by the ongoing aggressive behaviour of one of its permanent members, Russia. Consequently, autonomous sanctions are now at the forefront.

With sanctions against Russia already in place since the illegal annexation of Crimea in 2014, new sanctions packages swiftly followed one another after February 2022. The sanctions on Russia reinforced the trend of a recomprehensivisation of sanctions,⁸ that is: a return to more comprehensive and encompassing sanctions, not targeting only individuals or narrowly selected sectors of the economy. The broad sanctions packages that were adopted by the US, the EU and the UK aim to take on the economy and military capacity of Russia as such. The overall aim of the sanctions was to maximize the cost of war and to ensure Putin's strategic failure, as well as to signal strong attachment to the norm that borders cannot be redrawn through the use of force.⁹ The concerted sanctions response by Western actors has been met with greatly varying appraisals centered on the question of the efficacy of sanctions. Do sanctions work? Within the context of the broader sanctions landscape, this contribution reflects on the legal setting of the assortment of sanctions against Russia (Section 2), as well as their economic impact (Section 3) and political potential (Section 4). Section 5 offers some concluding remarks.

2.1 Legal setting of the assortment of sanctions imposed on Russia

The Russian invasion of 24 February 2022 that reinforced the lingering aggression since 2014 drew a great variety of international responses. The UN General Assembly condemned the aggression in the strongest terms.¹⁰ While no UN sanctions were imposed by the UN Security Council – for obvious reasons – a whole range of other actors did exercise their political and economic muscle. And perhaps precisely because of

5 Constantinos Syropoulos et al. 2022. "The Global Sanctions Data Base - Release 3: COVID-19, Russia, and Multilateral Sanctions," School of Economics Working Paper Series 2022-11, LeBow College of Business, Drexel University, Gabriel J. Felbermayr et al., 2020. "The Global Sanctions Data Base," European Economic Review, Volume 129 and Aleksandra Kirilakha et al., 2021. "The Global Sanctions Data Base: An Update that Includes the Years of the Trump Presidency," in Peter A.G. van Bergeijk (ed.) Research Handbook on Economic Sanctions. Cheltenham 2021.

6 Peter A.G. van Bergeijk (ed.), 2021, Research handbook on economic sanctions, Edward Elgar: Cheltenham; and Larissa van den Herik (ed.), 2017, Research handbook on UN sanctions and international law, Edward Elgar: Cheltenham.

7 UN Doc. S/RES/2374, 5 September 2017.

8 This trend is also signalled in Larissa van den Herik, Unilateral and Extraterritorial Sanctions Symposium: Unilateral Sanctions and Geoeconomics – What Role for International Law?, *Opinio Juris Blog*, 28 February 2022.

9 Statement by Daleep Singh, former Deputy National Security Advisor for International Economics and Deputy Director of the National Economic Council, Hearing on Advancing National Security and Foreign Policy Through Sanctions, Export Controls, and Other Economic Tools, U.S. Senate Committee on Banking, Housing, and Urban Affairs, 28 February 2023.

10 UN Doc. A/RES/ES-11/1, 2 March 2022.

Security Council paralysis, others acted much forcefully and pervasively than they had ever done before. The result was an assortment of various measures, ranging from institutional sanctions imposed by international organizations, corporate self-sanctioning by multinationals which en masse wanted to voluntarily exit and divest from Russia, and an increasingly thick web of autonomous sanctions imposed by several states as well as the EU.

2.1 Institutional sanctions

Institutional sanctions are sanctions imposed by international organizations against member states. After February 2022, a number of political and technical international organizations resorted to the institutional sanction of non-participation.¹¹ Some international organizations, such as the Council of Europe, expelled Russia as a member while others, including the International Council for the Exploration of the Sea (ICES), the OECD Nuclear Energy Agency (OECD NEA), and the European Conference of Postal and Telecommunications Administrations (CEPT), fully or partially suspended voting rights and other membership rights and privileges.¹² The institutional framework of some of these organizations did not offer an explicit legal basis for the institutional sanctions that were imposed, raising questions about whether indeed international organizations can take such measures beyond their mandate and the more abstract question whether international organizations can take countermeasures¹³. These questions tie into a broader interrogation of the public mandate of international organizations, and specifically whether they can and should take over public order responsibilities that the UN Security Council is failing to exercise. There is some precedent for such a policing function of international organizations beyond their mandate, dating from 2021 when the Organization for the Prohibition of Chemical Weapons suspended some of Syria's rights and privileges.¹⁴ There is an ongoing discussion on whether such a more outspoken role for international organizations reinforces core rules of the international legal order or whether it rather undermines multilateralism.¹⁵ It is not necessarily the case that the overwhelming number of institutional sanctions against Russia tips the balance in this discussion and that it forebodes a new public role for international organizations as such.¹⁶ The fact that such a great number and variety of international organizations resorted to sanctions in this context can also be understood to underline the truly exceptional and extraordinarily serious circumstances to which the sanctions reacted rather than that it initiated a new trend per se.

2.2 Corporate self-sanctioning

Another form of sanctioning that was particularly prevalent as a response to the Russian aggression was corporate self-sanctioning, in the sense that hundreds of multinational corporations announced plans to leave Russia or suspended operations without being obliged to do so by a formal sanctions regime.¹⁷ The

11 Martina Buscemi, 2022, Outcasting the Aggressor: The Deployment of the Sanction of “Non-participation”, 116 *American Journal of International Law* 4: p. 764-774.

12 For a full overview, see Martina Buscemi, *ibid.*

13 *Ibid.* See also Maurizio Arcari, ‘Sanctions’ at the crossroad of parallel regimes of responsibility, in Giovanna Adinolfi, Alessandra Lang, Chiara Rachni (eds.), *Sanctions by and against International Organizations*, Intersentia (forthcoming).

14 OPCW, Conference Decision C-25/DEC.9: Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic, 21 April 2021.

15 Martina Buscemi, 2022, Outcasting the Aggressor: The Deployment of the Sanction of “Non-participation”, *American Journal of International Law* 116 (4), pp. 764-774, 2022.

16 *Ibid.*

17 Irene Pietropaoli, Do foreign companies have a responsibility under international law to leave Russia?, *BIICL Blog*, 14 March 2022; Richard L. Kilpatrick, Jr., *Self-sanctioning Russia*, *EJIL: Talk!*, 11 May 2022.

rather chaotic and uncoordinated exit from Russia raised some questions about how to exit responsibly and, moreover, it has often been more difficult to leave than anticipated.¹⁸ And while in other sanctions situations, such as Afghanistan, there have been negative consequences of voluntary overcompliance by corporations going beyond what was required by the formal sanctions regime, particularly in terms of impact on the civilian population, overall the phenomenon of self-sanctioning or private sector moral sanctions reflects the prominence of human rights due diligence processes for corporate actors, which is inspired by the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This, in itself, is in our view a positive development.

2.3 Autonomous sanctions

In addition to institutional sanctions and corporate self-sanctioning, autonomous sanctions were imposed by states, most importantly by the US, the EU, and the UK as well as by other states like Japan, South Korea, Singapore, New Zealand, Australia, Norway and Switzerland. Autonomous sanctions are non-UN sanctions, that is: sanctions imposed by states on their own motion without an underlying obligation to do so from the UN Security Council. These sanctions that are adopted outside the UN system of collective security are often also called unilateral sanctions. The EU sanctions are strictly speaking not unilateral as they can only be imposed if all EU member states agree,¹⁹ but they are in many respects comparable to unilateral sanctions in their design and in how they operate. Notably, the EU sanctions against Russia are different from EU institutional sanctions imposed against own members such as Hungary. The EU imposes sanctions, which it calls restrictive measures, as part of its foreign policy. It is atypical for an international organization to have a foreign policy, so this underlines the sui generis character of the EU. When adopting autonomous sanctions as part of its foreign policy, the EU acts like a state. And in fact, the EU is a prominent sanctions-sender, both on Russia as well as on other non-EU member states responding to different situations and violations.²⁰

While UN sanctions are well accepted tools in international legal circles, having a firm basis in Article 41 of the UN Charter, there is a divide in the international community about the legality of non-UN sanctions.²¹ The question of legality becomes particularly acute when autonomous sanctions violate pre-existing international obligations that the sanction-sender has towards the sanctions-recipient and when the sanctions-sender is not responding to a violation of which it is a victim itself. On several occasions, China and Russia have voiced their opposition to unilateralism, including the imposition of unilateral sanctions without a Security Council obligation to do so.²² Yet, those states and interestingly also China have over time also resorted to this instrument themselves, formally or informally. For instance, China imposed sanctions against Australia

18 Daniel Aguirre and Irene Pietropaoli, Responsible Exit from Russia: Business and Human Rights in a Global Governance Gap, 22 March 2022.

19 On EU foreign policy decision-making see Ramses A. Wessel, Elias Anttila, Helena Obenheimer, Alexandru Ursu, The future of EU Foreign, Security and Defence Policy: Assessing legal options for improvement, 26 European Law Journal 5-6, 2020, pp. 371-390.

20 Nina M. Brehl (2023) The inconsistency of EU sanctions in Sub-Saharan Africa. Hypocrisy or careful policy making? A systematic literature review, ISS working paper 713, Erasmus University.

21 Dapo Akande, Payam Akhavan and Eirik Bjorge, Economic Sanctions, International Law, and Crimes Against Humanity: Venezuela's ICC Referral, 115 American Journal of International Law, Issue 3, July 2021, pp. 493 - 512.

22 President Xi Jinping and Russian President Vladimir Putin Sign Joint Statement of the People's Republic of China and the Russian Federation on Deepening the Comprehensive Strategic Partnership of Coordination for the New Era and Stress Settling the Ukraine Crisis Through Dialogue, 22 March 2023; Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development, 4 February 2022.

in retaliation to Australia's request for an international COVID-inquiry.²³ China also used economic coercion against Lithuania after that state had allowed the establishment of a Taiwanese – rather than Taipei - Representative Office,²⁴ resulting in the creation of an EU anti-coercion instrument.²⁵ Beyond China and Russia, other states opposed to autonomous sanctions are mostly concerned about the humanitarian impact of these measures on the civilian population. These concerns are justified and based on experiences in states like Iran, Syria and Afghanistan. Those concerns do not necessarily have the same weight when discussing sanctions imposed on Russia, given Russia's different economic status as a G20 state. Moreover, in discussions about accountability for violations of socio-economic rights of populations, it is not easy to disentangle the humanitarian impact of sanctions from the consequences that poor internal policy planning and grand corruption has on the living standards of populations. This is referred to as the "causality conundrum".²⁶ In the specific case of Russia, an additional element to consider is that the sanctions responded to an inter-state situation where the violation of the prohibition of aggression was at stake rather than to an internal situation.

The fact that Russia's violation of international law involved the prohibition of aggression, one of the most important norms of the international community, also raised different questions, particularly about whether third states had any obligations under international law to do what they could to end this very serious violation.²⁷ In such a setting, unilateral sanctions can also be presented as a means to implement the legal obligation to cooperate to end the violation of an erga omnes norm. The question whether sanctions may be imposed is then replaced by the question whether sanctions ought to be imposed. Hence there has been a certain shift in focus from questions surrounding the legality of sanctions to questions regarding what third states are actually obliged and expected to do to stop the aggression.

2.4 Sanction innovation

Despite this subtle shift, questions on the legality of autonomous sanctions remain outstanding and they have not been fully settled. Moreover, as novel types of sanctions were imposed against Russia, new questions arose. One new type of sanctions that was imposed were the so-called media sanctions. While certain Eastern European states and particularly Baltic states as well as the US had already imposed such sanctions and prohibitions before, the EU targeted the media via sanctions for the first time in the context of the sanctions against Russia. Recognizing the hybrid threats coming from Russia and the "international campaign of media manipulation and distortion of facts" with a view to destabilizing neighboring states and the EU as such, and specifically the propaganda action to support and justify its aggression, the EU suspended broadcasting activities of Russia Today subsidiaries and of Sputnik on 2 March 2022.²⁸ The measures have

23 Kath Sullivan, China's list of sanctions and tariffs on Australian trade is growing. Here's what has been hit so far, ABC News, 16 December 2020.

24 Marcin Szczepeński, Briefing on EU Legislation in Progress regarding Anti Coercion Instrument, European Parliamentary Research Service, November 2022. China's silent boycott is detailed in this briefing on p. 3.

25 Tom Ruys and Felipe Rodríguez Silvestre, The Union strikes back – The proposed EU 'Anti-Coercion Instrument' (ACI) seen through the lens of international law, GRILI Working Paper No. 8, December 2022.

26 Ioannis Prezas, From targeted states to affected populations: exploring accountability for the negative impact of comprehensive unilateral sanctions on human rights, in Charlotte Beaucillon (ed.), Research Handbook on Unilateral and Extraterritorial Sanctions, Elgar, 2021, pp. 385-404.

27 Dutch Advisory Committee on Public International Law, Legal consequences of a serious breach of a peremptory norm: the international rights and duties of states in relation to a breach of the prohibition of aggression, Advisory Report 41, 17 November 2022. The first author of this article was the chair of the Advisory Committee at the time of publication of this advisory report.

28 Council Regulation (EU) 2022/350, 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

been challenged before the General Court of the EU.²⁹ In rejecting the challenge, the EU General Court referred to the prohibition of war propaganda as contained in the main human rights treaties, it underlined the temporary character of the measures as well as the fact that this particular sanctions measure was part of a broader package that responded to the aggression that was condemned by the UN General Assembly and that constituted an *erga omnes* violation. The Court also found that it had been established that the media organization concerned was under the “permanent direct or indirect control of the leadership of the Russian Federation”, and the judgment illustrated at length that the applicant of the case had broadcast the official Russian position and used similar wording as Russian authorities with a view to justifying and supporting the Russian aggression and influencing European civil society.³⁰ It is clear from the Court’s reasoning that the media sanctions are context-specific in their design and their application. Indeed, the references to the condemnation by the UN General Assembly and its characterization of the invasion as aggression, as well as the reference to the concept of *erga omnes*, limit the precedential value of this specific type of sanction and its potential to become a new tool in the EU sanctions toolbox, despite calls for a wider use of sanctions to combat foreign influence operations.³¹ Notably also, Norway, which generally aligns with EU sanctions, chose not to implement the sanctions against Russia state-controlled media pursuant to a constitutional assessment. The Norwegian government considered that the high media literacy of its population and a culture of strong editorial opinion was sufficient to resist manipulation.³² This underlines a preference to deal with disinformation via other tools than sanctions.

A-typical are also the financial nationality-based sanctions, which prohibit to accept deposits from Russian nationals that exceed 100.000 euro or to provide crypto-asset wallets, accounts or custody services.³³ These sanctions predated the invasion of 2022 and were already adopted in 2014. The sanctions contribute to the aim of constraining Russia and of limiting its ability to finance the aggression. The sanctions do not apply to dual citizens who hold both the Russian citizenship and an EU citizenship. Such persons, like Roman Abramovich who is also a Portuguese citizen, can be sanctioned individually. Nationality-based sanctions are exceptional and if they are implemented without sufficient justification, they risk violating the non-discrimination principle.³⁴ So far, the EU has not imposed a visa-ban for all Russians, even though the EU-Russia visa facilitation agreement has been suspended. Given the reservations regarding sanctions that are applied solely on the basis of nationality,³⁵ it is unlikely that they will become a standard new type of sanction. Rather one can presume that these sanctions were considered necessary in the case of Russia given the extremity of the situation and the need to do everything possible to curb financial flows to and from the Kremlin.

29 RT France v Council of the European Union, Judgment of the General Court, Case No. T-125/22, 22 July 2022. Similarly, a case was brought by Dutch media organizations, Case No. T-307/22.

30 RT France v Council of the European Union, Judgment of the General Court, Case No. T-125/22, 22 July 2022, paras. 127, 142, 143, 154, 159, 164, 165, 172-174, 177-191, 209.

31 Council conclusions on a Framework for a coordinated EU response to hybrid campaigns, 21 June 2022, ST 10016/22, para. 14.

32 European Audiovisual Observatory, Sanctions on RT and Sputnik not to be adopted in Norway, IRIS Merlin 2022-5:1/5.

33 Article 5b of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.

34 Larissa van den Herik, *Verbindendheid sanctieregeling Iran 2007 ter uitvoering van Veiligheidsraadresolutie 1737*, *Ars Aequi* 62(6), pp. 496-500, 2013.

35 Francesca Finelli and Javier García Olmedo, *The Implementation and Legality of EU Sanctions Against ‘Russian Nationals’*, paper presented at the Workshop From cradle to grave - The policy cycle of EU restrictive measures, Groningen, The Netherlands, 24-26 November 2022.

2.5 Lasting legal effects

Contrary to those novel sanctions which are not necessarily prone to being repeated, other developments in the EU sanctions domain are more likely to have lasting effects, such as the decision to render sanctions evasion an EU crime.³⁶ This decision has not remained without criticism as sanctions evasion seems to be of a different character than the other current EU crimes, which are terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. It is also not beyond discussion whether criminal law is the best means of enforcement to deal with sanctions circumvention. Moreover, given the highly political nature of sanctions and particularly the fact that the design of sanctions happens ad hoc and in immediate response to an unfolding situation, there is tension with the legality principle which is central to criminal law.³⁷ In contrast to the two novel sanctions discussed above, which are more likely to remain unique to the Russia sanctions, the decision to render sanctions evasion an EU crime is generic and will apply to all current and new sanctions regimes. There is logic in the reflex to resort to strong measures when confronted with extreme violence, but caution is needed when these are given generic applicability.³⁸

3. Economic impact

The great variety of sanctions imposed also implies that an analysis of impact cannot be mono-dimensional. Moreover, an impact or effectiveness analysis depends on goals set and on existing expectations. In the end sanctions are not about imposing damage but about changing behaviour, constraining and signaling.³⁹ Effective sanctions that only work in the sense that they create a lot of damage but do not change the target's behaviour are often considered a failure. The translation of economic damage into behavioural change is not straight-forward though, due to several aspects of the sanctioning process.

3.1 Determinants of sanction success

First and foremost, sanctions are characterized by uncertainty regarding implementation and a reluctance to impose those particular sanctions that bite most. This is so because a sanction that bites will hurt both the sanction target and the sanction sender that both must forego the mutual benefits of international trade. Given these costs, senders may want to avoid the welfare loss of sanction application so that sanctions remain in the threat stage only. This fundamental uncertainty means that the credibility that the sanction will be effectively applied after a threat is a key determinant for behavioural change, that is: success. Indeed, sanctions application may be necessary to restore political credibility. Second, sanctions can create rally-around-the-flag effects: external threats may bolster popular support for the regime. Relatedly, sanctions may be eroded by third parties and sanction busting activities.⁴⁰

36 European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the definition of criminal offences and penalties for the violation of Union restrictive measures, COM/2022/684 final, 2 December 2022.

37 Francesca Finelli, The uncertain contours of member states' obligation to ensure that EU restrictive measures are not circumvented, in Giovanna Adinolfi, Alessandra Lang, Chiara Rachni (eds.), *Sanctions by and against International Organizations*, Intersentia (forthcoming).

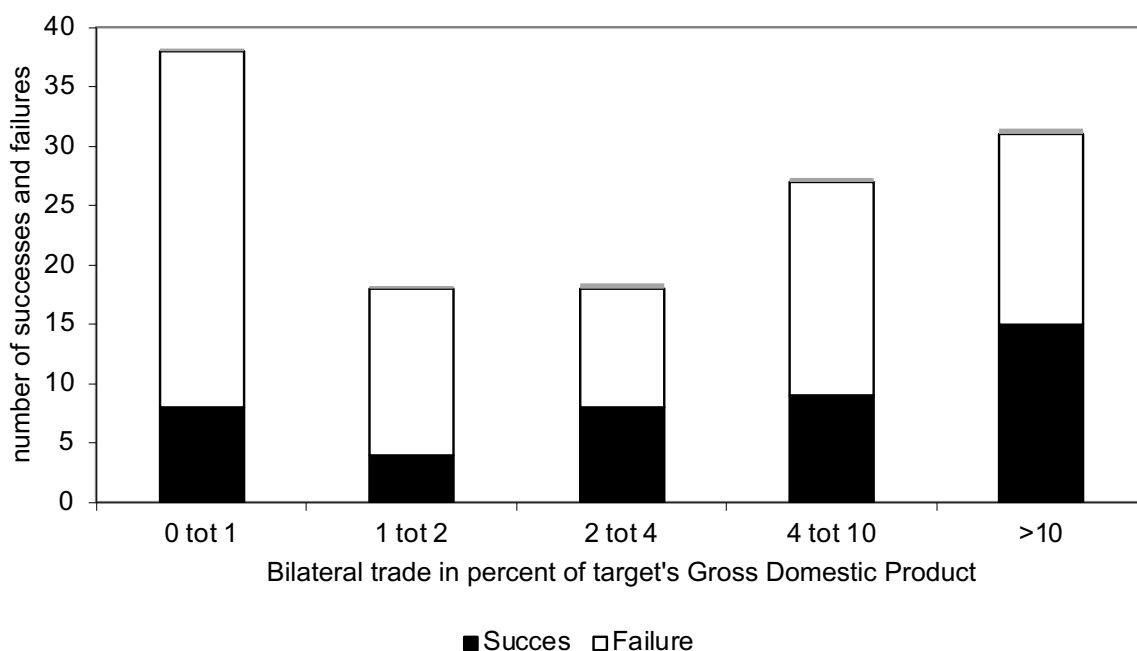
38 General lessons can be learnt from the Security Council's response to 9/11. See for an appraisal of twenty years of counter-terrorism efforts and the need to right-size, *Securing the Future Initiative, Counterterrorism and the United Nations Security Council Since 9/11: Moving Beyond the 2001 Paradigm*, September 2022.

39 Francesco Giumelli, *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions After the Cold War* Paperback, ECPR, 2011. Also see Thomas J Biersteker, Sue E Eckert, Marcos Tourinho, *Targeted sanctions: the impacts and effectiveness of United Nations action*, Cambridge University Press, 2016.

40 See Early, B. R. (2015). *Busted sanctions*. Stanford University Press.

The low success rate of economic sanctions has drawn attention from many observers and often leads to the erroneous conclusion that sanctions cannot work. Typically, this is a fallacy of hasty generalization that ignores the fact that sanction cases that do not meet the requirements for potential success should fail. For example, when pre sanction trade between sender and target is small (i.e. less than one percent of the target's Gross Domestic Product (GDP)) then the failure rate is 80% while at a substantial level of pre sanction trade (more than 10% of the target's GDP) the chance that a sanction succeeds becomes slightly better than fifty-fifty (Figure 2).

Figure 2 Success rate and trade linkage between sender and target



Source: Peter A.G. van Bergeijk Economic diplomacy and the geography of international trade. Edward Elgar, 2009.

Empirical research on the determinants of success and failure of economic sanctions has identified a number of factors that are instrumental for case selection, i.e. to determine ex ante if sanctions in a specific case could in principle succeed. In general, the research strategy has been to estimate the relationship between a measure of sanction success and a set of explanatory variables. The sanction mechanism was generally approached as a black box, although science has progressed and uncovered many mechanisms⁴¹ such as

- imposition versus threat,
- actual versus potential costs,

41 See in order of appearance Sylvanus Kwaku Afesorgbor, (2019) 'The impact of economic sanctions on international trade: How do threatened sanctions compare with imposed sanctions?' *European Journal of Political Economy* 56: 11-26. Peter A.G. van Bergeijk 1989, 'Success and failure of economic sanctions,' *Kyklos*, 42 (3), pp. 385–404., Victoria Golikova and Boris Kuznetsov. "Perception of risks associated with economic sanctions: the case of Russian manufacturing." *Post-Soviet Affairs* 33, no. 1 (2017): 49-62., William H. Kaempfer and Anthony D. Lowenberg, 1988, 'The Theory of International Economic Sanctions: A Public Choice Approach,' *American Economic Review*, 78 (4), 768–93., Peter A.G. van Bergeijk, (1999) 'Economic sanctions; Why do they fail; why do they succeed', in: W. van Genugten and G.A. de Groot (eds), *United Nations Sanctions*, Intersentia, Antwerpen, 97-112, and George Tsebelis, (1989), 'The abuse of probability in political analysis: The Robinson Crusoe fallacy', *American Political Science Review*: 77–91.

- sanction risk versus trade uncertainty,
- the political system or
- deterministic versus strategic.

Moreover, increasingly it was recognized that culture and socio-economic factors also are important components of the sanction mechanism. Cultural factors are important for both the sender's choice to use economic sanctions and the target's response (that is: the outcome of economic sanctions) while developments in the informal sector may be drivers of sanctions outcomes especially in democracies.⁴²

Unfortunately, the multitude of theories on the determinants and success and failure of sanctions has led to a great many – often contradictory – hypotheses. Significant bias is a problem of the empirical literature.⁴³ While this means that the empirical debate on the (in)effectiveness of economic sanctions continues, five policy recipes have emerged by way of consensus as these have statistically strong and robust support:⁴⁴

- 'No trade, no effect'. Sanction damage and pre sanction trade linkage are associated with political success of implemented sanctions.
- 'Smash the hammer instead of turning the vice'. Sanctions should be applied quickly and be as strong as possible from the start. The longer it takes before the sanctions are fully in place the lower the probability of success.
- 'Single sender country sanctions suck'. The involvement of international institutions is associated with larger sanction success.
- 'Don't overreach'. The higher the aim or goal of sanctions the lower the probability of sanction success.
- 'Sanctioning democracies works better than sanctioning autocracies'.

3.2 Sanctioning Russia: an intermediate evaluation

In the case of the West's economic sanctions on Russia, trade linkage (factor a) is significant and the emergence of institutional and parallel sanctions (factor c) that we discussed in the previous section are both factors that support the potential success of these measures. However, Russia's increasingly autocratic organization (factor e), the high goal of ending a war (factor d) and the slow startup of sanctions (factor b) especially by the EU are sobering from this perspective. Whether sanctions are considered successful thus

42 See Donna Driscoll, Dennis Halcoussis, and Anton D. Lowenberg. "Economic sanctions and culture." *Defence and Peace Economics* 22, no. 4 (2011): 423-448 and Brian R. Early and Duncan Peksens, 2020, 'Shadow Economies and the Success of Economic Sanctions: Explaining Why Democratic Targets Are Disadvantaged,' *Foreign Policy Analysis*, 16 (3), pp. 353–372.

43 Binyam A. Demena et al. (2021) "Publication bias of economic sanctions research: a meta-analysis of the impact of trade linkage, duration and prior relations on sanctions success." in P.A.G. van Bergeijk (ed.) *Research Handbook on Economic Sanctions*. Edward Elgar Publishing: Cheltenham, pp. 125-150.

44 See Bapat, Navin A., Tobias Heinrich, Yoshiharu Kobayashi, and T. Clifton Morgan 'Determinants of sanctions effectiveness: Sensitivity analysis using new data', *International Interactions* 39, (1) (2013): 79–98 and Bergeijk, Peter A.G. and Muhammed S.H. Siddiquee, 2017, 'Biased sanctions? Methodological change in Economic Sanctions Reconsidered and its implications,' *International Interactions*, 43 (5), pp. 879–893.

largely depends on the factors taken into account, but also the goal that is set. If the sanctions are understood as a united response that translates the UN General Assembly's condemnations into actions, hence emphasising its signalling function over its aim to change behaviour, then indeed they can be considered relatively successful.

Yet, often the focus lies with the idea that sanctions should in themselves end the war, which is arguably an excessive expectation. It is from that perspective though that currently the most frequently asked question for international economists regarding the Russian war on Ukraine is 'why do the economic sanctions not work?'. With no apparent change in Russian behaviour the focus on the debate has shifted toward the economic consequences of the sanction packages on the Russian economy. Consider Figure 3 that presents three forecasts for the growth rate of Russia's GDP that have appeared in three issues of the IMF's biannual flagship publication *The World Economic Outlook*.

The IMF in April 2022 at the start of the sanctions following the full-scale invasion in February 2022 predicted a 9% collapse for Russia in 2022, but the ex post (April 2023) assessment is a reduction of 2% 'only'. Moreover, a return to positive growth in 2023 is foreseen. So, the impact of the sanctions appears to be much smaller than originally anticipated by the IMF. Moreover, the forecasted growth rates turn from negative into positive earlier on. So, the economic sanctions that from the start have been praised as 'unprecedented' do not seem to bite as hard as originally expected. Indeed, the question why the sanctions do not bite seems to be quite relevant. Four factors, however, need to be considered when discussing the economic impact so far.

Firstly, both strategic data opaqueness and national accounting practices may bias the reported impact of economic sanctions. Also, not all the effects of sanctions on domestic players become visible⁴⁵. Official statistics are among the first victims of wars since it is rational to hide the costs of conflict from public opinion and foreign intelligence and to conceal economic assets including details on supply lines and sanctions evaders. A tradition for distorting statistics goes back a long way in history in this case that concerns the former USSR, that hid many central planning failures from the population and observers in other countries.⁴⁶ The latter aspects of the unreliability of statistics is well recognized and moreover the upward reporting bias tends to be stronger in autocracies than in democracies.

Secondly, GDP in the war economy is a perverse measure of economic impact and economic welfare. The destructive creation of weapons by National Accounting conventions generates income, and this provides a cushion in the GDP numbers. Russia is producing rockets and grenades, and this directly enhances GDP although it does not create anything of value.⁴⁷ Weapons production drives out civilian production and if the increase in the military industrial complex exceeds the civilian loss, GDP rises while the country has less goods to invest and consume than before. This problem is exaggerated by some of the rules that statisticians use to report on the economy. Relatedly and also by convention, a reduction of Russian imports due to sanctions in the short-term increases measured Russian GDP by virtue of the macroeconomic accounting identity.⁴⁸ In the somewhat longer-term, however, production will come under downward pressure because civilian investment

45 Erica Moret, *Sanctions and the Costs of Russia's War in Ukraine*, IPI Global Observatory, 12 May 2022.

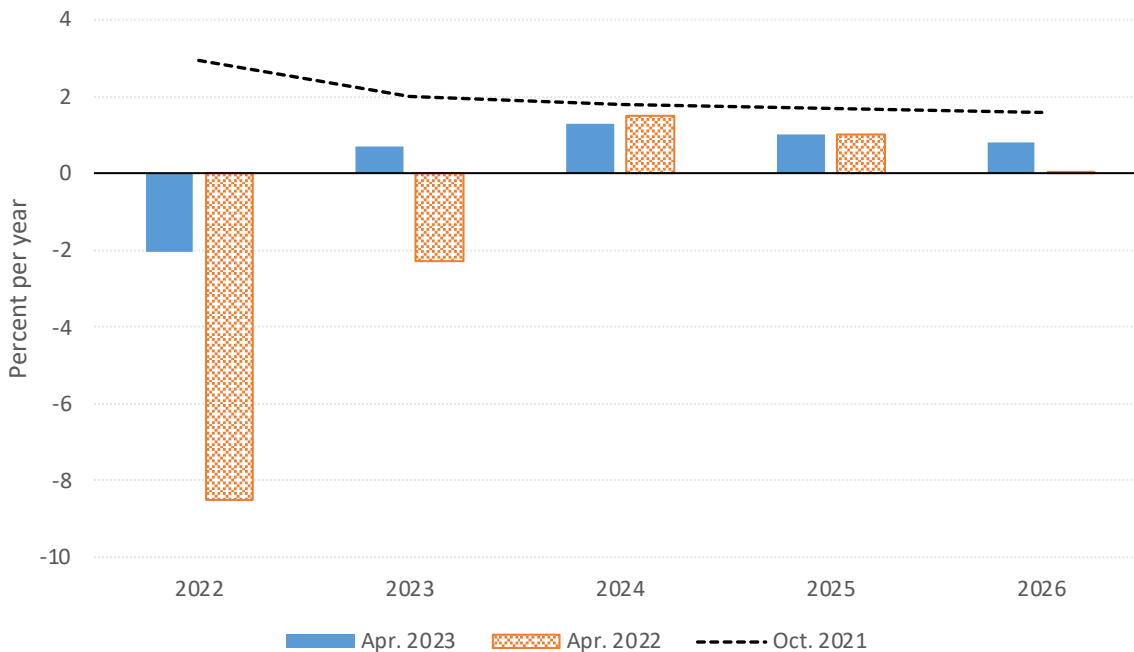
46 Peter A.G. van Bergeijk, (1995), 'The accuracy of international economic observations', *Bulletin of Economic Research* 47 (1), pp. 1-20.

47 In 2022 military spending increased to 4.1% of Russian GDP (Lucie Béraud-Sudreau et al., *Trends in World Military Expenditure*, SIPRI April 2022 <https://doi.org/10.55163/PNVP2622>).

48 Imports of goods and services in 2022 contracted by 15% according to IMF data

and consumption are squeezed out by war damage while inventories of raw materials, spare parts and

Figure 3 IMF forecasts for Russian GDP growth before, at the start and one year into the full-scale invasion)



Thirdly, the focus on observed and predicted growth rates is a common source of mistake. The first reason for the confusion is that the growth that ‘is’ is taken as the outcome of the economic sanctions, but the ‘is’ is meaningless without the ‘what could have been’, that is: what would have happened if these measures had not been imposed by the West. So, key in understanding sanction impact is that we ask ourselves a ‘what-if’ question: ‘What if the sanctions had not been imposed?’. This what-if question is called the counterfactual. One could make this counterfactual wide ranging by considering the impact of non-sanctioning on the battlefield or perhaps even on further future expansion by Russia or rather the inevitable impact of the energy transition on Russia’s economy that would have affected Russia’s exports anyway,⁴⁹ but in order to keep the question manageable and answerable we will limit the counterfactual to the economic domain proper. Now let’s take a look again at Figure 3 with our what-if question in mind. The most obvious counterfactual is the October 2021 forecast of the IMF that predates the 2022 Russian invasion of Ukraine. For a proper understanding of the economic impact of sanctions it is therefore crucial to make a comparison between the economy’s growth trajectory before and after the imposition of sanctions. The forecast of October 2021 (dashed line in black) predates the 2022 full-scale invasion: it is what according to the IMF would have happened if Moscow had not invaded Ukraine in 2022. The most recent IMF forecast was published in April 2023 (solid bar in blue). According to the IMF, the Russian GDP contracted by 2 percent in 2022 and for 2023 a meagre growth rate of ¾% is in the books (this should be compared to the forecasts before the 2022 invasion of 3% and 1¾%, respectively). Figure 3 also illustrates the longer run impact of the sanction up to 2025.

Finally, we need to consider the dynamics of sanctions. Firstly, goods that have been shipped before the

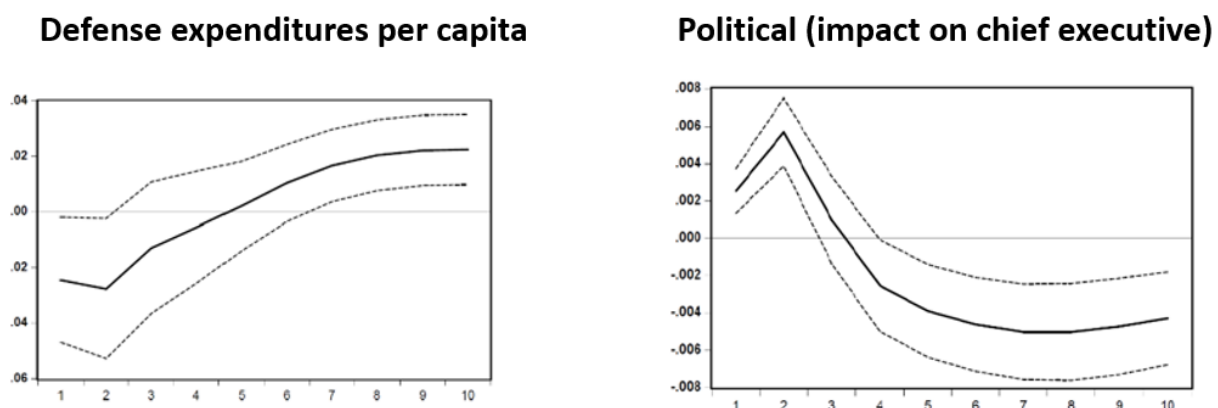
49 Alexander Etkind, *Russia Against Modernity*, Polity Press, 2023, chapter 7, referring to the book of Thane Gustafson, *Klimat: Russia in the Age of Climate Change*, Harvard University Press, 2021, 13-15.

imposition of an embargo or a boycott will sometimes be underway for considerable time and arrive at their destination sometimes months after the imposition of sanctions. Secondly, while the US imposed a full ban on Russian oil, gas and derivative products, the EU did only impose a ban on Russian crude oil shipping on December 5, 2022, and a ban on petroleum on February 5, 2023. (Also, exemptions were and are granted to several EU members.) The EU at the time of writing did not impose sanctions on gas but ‘only’ strived for significant independence from Russia. Thirdly, price movements of oil and gas initially significantly increased thus compensating for quantity reductions. It was not until the sixth EU sanction package and the reduction of oil and gas prices in early 2023 that sanctions started to bite the macroeconomy in a significant way.⁵⁰ Up to that point in time, the only really important measure had been the freezing of the foreign currency holdings of the Russian Central Bank that effectively immobilized Moscow’s war chest, but other measures were either applied at the level of selected individuals and firms with insufficient coverage (for example, SWIFT sanctions initially aimed at a rather limited share of the Russian Banking sector). From this perspective, sanctions simply have at the time of writing simply not been applied long enough to expect to see their full impact.

4. Potential political-economic impact

In this context of uncertainty and delays economic modelling provides a tool to investigate how sanctions may work out in the near future. Figure 4 provides an empirical perspective based on a recent econometric exercise that investigates the economic and political impact of sanctions on Russia. The horizontal axis shows the number of years since the effective implementation of sanctions. Vertically the impact variables are reported in terms of their standard deviations. The middle line is the predicted impacted; the dashed (---) lines are the confidence intervals.⁵¹ Two outcome variables were selected with a view on the potential military and political impact of the sanctions. As to defense expenditures (lefthand panel) the graph indicates that per capita military expenditures are initially under downward pressure. This effect is statistically significant in the first two years of sanction application. However, after seven years the effect is the opposite. As to the political impact (right hand panel) we see a similar picture. Impact on the Chief Executive of Russia is significantly positive in the first three years, but from then on will be on a downward trajectory and that influence turns statistically significant in the fifth year of sanction imposition.

Figure 4 Simulated sanction impact (impulse response functions)



50 Peter A.G. van Bergeijk (2022), ‘Sanctions against the Russian war on Ukraine: Lessons from history and current prospects’, *Journal of World Trade* 56 (4), pp. pp. 571 – 586.

51 The selection is representative of the patterns found for other outcome variables including investment, public consumption and imports as well as alternative measures of political impact. The technical details are beyond the scope of this short contribution.

Source: Peter A.G. van Bergeijk and Sajjad F. Dizaji (2022), Energy Sanctions and Russia's Political System: Short Term and Long Term Consequences, Paper presented at the European Trade Study Group, Groningen, September 9, 2022: [dx.doi.org/10.2139/ssrn.4127031](https://doi.org/10.2139/ssrn.4127031)

These findings should not be interpreted as exact predictions, but rather as a numerical assessment that establishes that the boycott of Russian oil (and potentially gas) meets a necessary condition for sanction success. The model results show that the boycott initially both indirectly and directly contributes towards weakening both the Russian military and the autocratic leadership. The modelling exercise, however, does not demonstrate that the sanctions meet a sufficient condition for success. It could, for example, be argued that sanctions against Russia are less promising because of its (a) autocratic system, (b) its opportunity and ability to adjust (c) the continuation and in some cases intensification of oil trade relations with countries that do not participate in the boycott measures and (d) the weak 2014 sanctions that reduced the credibility of broad-based EU sanctions and/or the threat of scaling up targeted sanctions.⁵² However, even under these conditions a boycott of Russian oil negatively impacts on the Russian war capacities and contributes to behavioural change. Importantly, the impact of sanctions on the political system is strongest in the second year of sanction implementation and after that their impact wanes off until the impact turns insignificant in the fourth year. Hence, sanctions do create a window of opportunity in this case, but the model also shows that this window closes in the medium to long term.

5. Concluding remarks

Sanctions do generally not sort change on their own, they operate in tandem with other measures, and it is difficult to isolate the effects of sanctions from other measures taken. In any event, the unity and intensity with which the US, the EU, the UK and other states have acted as of 2022, have displayed great resolve and reaffirmed a strong commitment to core norms of the post-1945 international order and most prominently to the prohibition of aggression. At the time of writing resolve was still high with a further extension towards a full export ban being discussed at the G7 meeting in Hiroshima, setting a further step on the path of recomprehensivation, and also with increased efforts to address sanctions circumvention in the 11th EU sanctions package. It is, however, as yet an open question whether the sanctions against the Russian war on Ukraine will indeed be a steppingstone to improvement of the situation, if only, because the usefulness and efficacy of such comprehensive sanctions will need evaluation and may in the end be too limited in view of the considerable costs involved. And even if sanctions play an important role in reaction to the Russian aggression and are justified in that context given the plight of the Ukrainian population, there are several reasons why the use of comprehensive sanctions more generally needs to be critically evaluated.

A key issue is the unintended impact of comprehensive sanctions on livelihoods of a population that often has little or nothing to do with the activities of the elite that sanctions try to influence. Sanctions tend to increase income inequality⁵³ and thus, a negative trade-off exists with SDG 10 (reduction of inequality). A potentially negative trade-off also exists for such diverse areas as SDG 2 ('End hunger'),⁵⁴ SDG 4 (education),⁵⁵

52 Peter A.G. van Bergeijk, Sanctions against the Russian war on Ukraine could be made to work, VoxEU, March 28 2022.

53 Sylvanus Kwaku Afesorgbor and Renuka Mahadevan, 2016, 'The impact of economic sanctions on income inequality of target states,' *World Development*, 83 (1), pp. 1–11.

54 Sylvanus Kwaku Afesorgbor, 2021, 'Sanctioned to starve? The impact of economic sanctions on food security in targeted states' in: Peter A.G. van Bergeijk (ed.), *Research Handbook on Economic Sanctions*, Edward Elgar, Cheltenham, Chapter 23.

55 Munyaradzi Hwami, 2021, 'A comparative scoping review of the impact of international economic sanctions on education,' *Compare: A Journal of Comparative and International Education*, doi: 10.1080/03057925.2020.1846120.

SDG 5 (gender equality),⁵⁶ SDG 3 (health)⁵⁷ and SDG 13–15 (environment).⁵⁸ The debate about the sign and significance is still ongoing.⁵⁹ Indeed, nowadays, it is widely accepted that the design and implementation of sanctions need to be improved, and their humanitarian costs to ordinary citizens minimized as far as possible.

There is a question to what extent such considerations apply to the same extent in the case of Russia, given its stronger economic status and the fact that the sanctions are a response to the act of aggression, than for instance that of states like Afghanistan or Syria. Indeed, the sanctions against Russia are quite special in several respects, and this is also illustrated by the use of novel types of sanctions. While it is difficult to engage in too many predictions at this stage, it is clear that autonomous sanctions are and will remain a central response to serious violations of international law. Open questions concern the type, design and desired effect of sanctions, but not their use as such. Given the resort to autonomous sanctions, further international regulation, or at least a principled approach, on sanctions is desired addressing questions on when they may and must be imposed, and how.⁶⁰

Vitae

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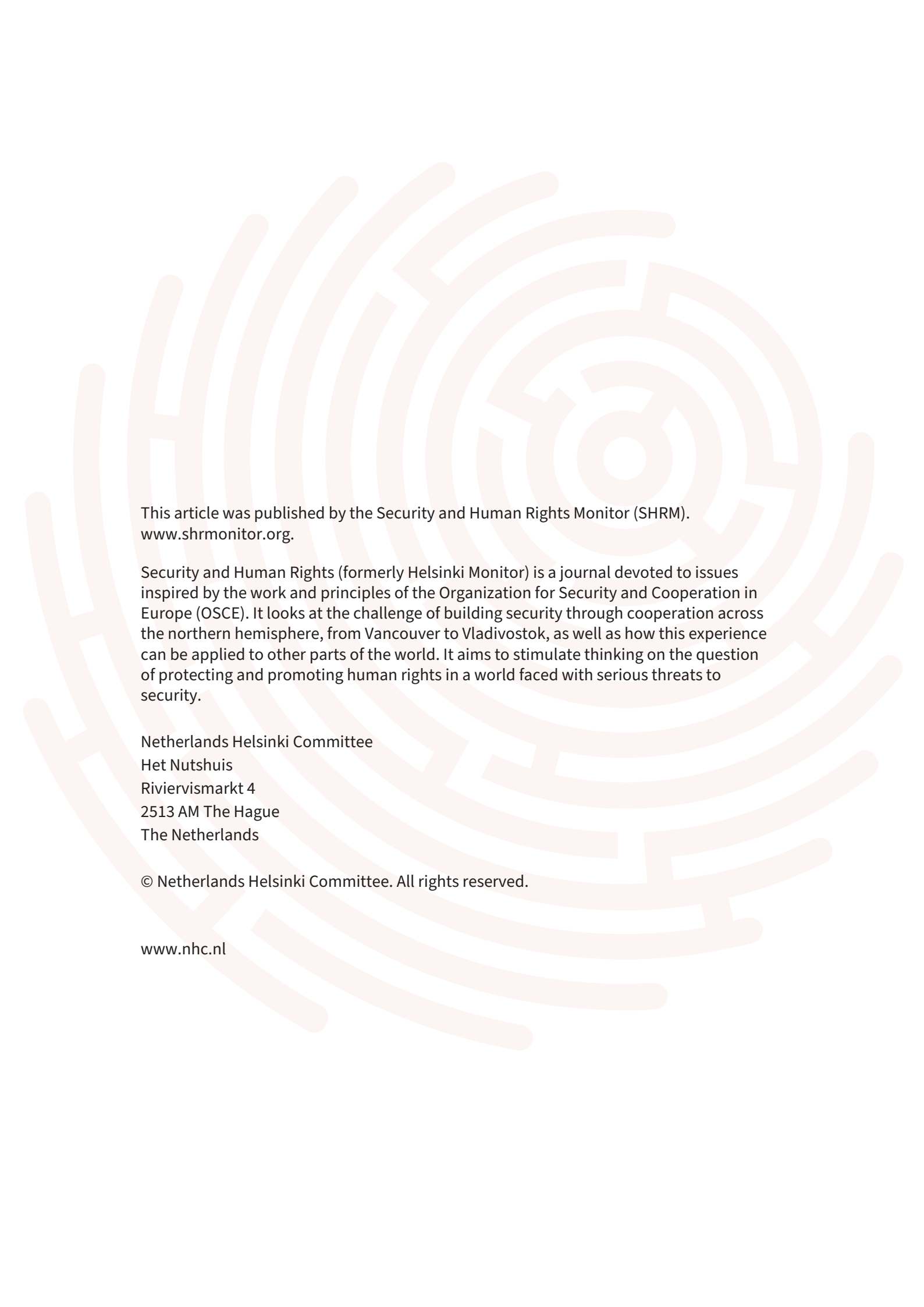
56 A. Cooper Drury, and Duncan Peksen, 2014, 'Women and economic statecraft: The negative impact international economic sanctions visit on women,' *European Journal of International Relations*, 20 (2), pp. 463–490.

57 Jerg Gutmann et al., 2021, 'Sanctioned to death? The impact of economic sanctions on life expectancy and its gender gap,' *Journal of Development Studies*, 57 (1), pp. 139–162.

58 Qiang Fu et al., 2020, 'The impact of international sanctions on environmental performance,' *Science of The Total Environment*, 745, doi: 10.1016/j.scitotenv.2020.141007

59 Jerg Gutmann, et al., 2020, 'Precision-guided or blunt? The effects of US economic sanctions on human rights,' *Public Choice*, 185 (1), pp. 161–182.

60 As also called for in the advice of the Dutch Advisory Committee on Public International Law, Legal consequences of a serious breach of a peremptory norm: the international rights and duties of states in relation to a breach of the prohibition of aggression, 17 November 2022. The first author of this article was the chair of the advisory committee at the moment of publication of this advice. See also Nathanael Tilahun & Obiora Okafor, *Economic Sanctions and Humanitarian Principles: Lessons from International Humanitarian Law*, *Yale Journal of International Law*, 26 June 2023.



This article was published by the Security and Human Rights Monitor (SHRM).
www.shrmonitor.org.

Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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