
COMMENTS

The Limitations on Economic Countermeasures: We Can Freeze, But When Can We Seize?

Aria Sakona*

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I. INTRODUCTION

On February 24, 2022, Russia invaded Ukraine in what President Vladimir Putin deemed a “special military operation.”¹ This aggressive step in Russia’s ongoing efforts to delegitimize Ukrainian sovereignty prompted a swift response from the United States, with President Biden

* © 2024 Aria Sakona, J.D. Candidate 2024, Tulane Law School. The author is grateful to Alveena Shah for her guidance and support throughout the drafting of this Comment, and would like to thank the hardworking members of the *Tulane Journal of International and Comparative Law* for all their time and dedication put into the publication of Vol. 32, Issue I.

1. *Russian Forces Launch Full-Scale Invasion of Ukraine*, AL JAZEERA (Feb. 24, 2022), <https://www.aljazeera.com/news/2022/2/24/putin-orders-military-operations-in-eastern-ukraine-as-un-meets>.

describing Russia's actions as "a flagrant violation of international law."² As an ally to Ukraine and a noncombatant in this conflict, the U.S.' immediate response included strengthening the economic sanctions already in place against Russia in coordination with other states to limit Russia's ability to participate in the global economy.³ The size and scope of sanctions against Russia are striking, but most notable of the U.S.' immediate actions is the Treasury Department's decision to freeze all of the Central Bank of the Russian Federation's assets.⁴ The U.S. was not the only state to respond by freezing Russian assets; however, the strength of the U.S. dollar in the global market arguably makes the sting of roughly hundreds of billions of U.S. dollars in frozen assets a bit more painful.⁵ Tactical maneuvers like these are often tantamount to an artful use of sovereign power; however, living in today's economically interdependent and dollar-dominated world begs the question: when do sanctions rise to a more serious, illegal level?

Exploring this question involves a combined discussion of the areas where international humanitarian law meets international monetary law. The United Nations (UN) Charter's silence on prohibiting states from using unilateral economic coercion seems to settle this question.⁶ Nevertheless, issues involving bilateral or multilateral treaty obligations, due process, extraterritorial jurisdiction, and the human rights of the sanctioned nation's population suggest that some coercive sanctions may fall into a grey area.⁷ Today, the U.S. and other allied states are

2. President Joseph R. Biden, Remarks by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine (Feb. 24, 2022) [hereinafter "President Biden February Remarks"], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/>.

3. *Id.* (speaking to the strategy behind the U.S.' response to Russia, Biden declared that "[the US is] going to impair their ability to compete in a high-tech 21st century economy.").

4. Press Release, U.S. Dep't of Treasury, *Treasury Prohibits Transactions with Central Bank of Russia and Imposes Sanctions on Key Sources of Russia's Wealth* (Feb. 28, 2023), <https://home.treasury.gov/news/press-releases/jy0612>.

5. President Biden February Remarks, *supra* note 2 (collaborating with all twenty-seven members of the European Union, the United Kingdom, Canada, Japan, Australia, New Zealand, and others, a coalition was built months before Russia's invasion to coordinate a global economic response).

6. Rebecca Barber, *An Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions*, 70 Int'l Compar. L. Q. 343, 343-78 (Apr. 1, 2021) ("Article 2(4) prohibits the threat or use of force, but as many commentators have observed, this provision was never intended to encompass economic coercion.").

7. *Id.*

("[T]he reports of the Special Rapporteurs have asserted-and elaborate the legal basis for the assertion-that unilateral coercive measures are illegal if they: (i) violate well-established legal principles regarding due process; (ii) purport to extend the sanctioning

approaching this grey area and asking themselves—according to domestic and international law—what can legally be done beyond freezing assets? With Ukraine’s current cost of reconstruction and recovery totaling \$411 billion USD, states want Russia to pay, and eyes are turning to the potential of seizing frozen assets—an action that, for most nations, falls firmly in the grey area if not entirely outside the realm of legality.⁸

Pulling from this predicament, this Comment broadly considers the circumstances when legality of unilateral financial retaliation is questionable. It applies this discussion to the issue of seizing a sovereign’s central bank assets. First, this Comment looks at what elements make economic sanctions illegal under international law. Second, it examines how U.S. law considers the prospect of foreign asset seizure when determining its legality. Last, seeing how treaty law for international monetary organizations responds to aggressive economic sanctions assists when considering where to go next after exhausting the sanction stage. When giving a speech in Warsaw, President Biden described the U.S.’ economic sanctions as “. . . a new kind of economic statecraft with the power to inflict damage that rivals military might.”⁹ When economic measures inflict damage on a level equivalent to the use of military force, it is at least reasonable to assume international law should account for behavior that could be called financial warfare. The breadth and depth of the ramifications of harmful sanctions calls for further study into when

State’s domestic jurisdiction extraterritorially, in violation of well-established principles of jurisdiction; (iii) negatively impact the human rights of the target State’s population, in violation of the sanctioning State’s treaty obligations; or (iv) are so comprehensive as to amount to a blockade.”).

8. Press Release, *Updated Ukraine Recovery and Reconstruction Needs Assessment* (Mar. 23, 2023), <https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment#:~:text=KYIV%2C%20March%2023%2C%202023%E2%80%94,equivalent%20of%20%E2%82%AC383%20billion>) (The estimate comes from a joint assessment released by the Government of Ukraine, the World Bank Group, the European Commission, and the United Nations); Tony Wesolowsky, *A New Marshall Plan? How Ukraine Will Be Rebuilt*, RADIOFREEEUROPE/RADIOLIBERTY (Dec. 26, 2022), <https://www.rferl.org/a/ukraine-rebuilding-russia-costs-marshall-plan/32193833.html> (“Some states, like Estonia, Latvia, Lithuania, and Slovakia, have joined Ukraine in calling for [frozen] assets to be used as part of the reparations and, in June, the Group of Seven (G7) advanced economies of the world vowed to explore the idea.”).

9. Valentina Pop, Sam Fleming, and James Politi, *Weaponization of Finance: How the West Unleashed ‘Shock and Awe’ on Russia*, FIN. TIMES (Apr. 5, 2022), <https://www.ft.com/content/5b397d6b-bde4-4a8c-b9a4-080485d6c64a> (elaborating on the measures, Biden said they were “sapping Russian strength, its ability to replenish its military, and its ability to project power.”).

economic coercion becomes aggression, and how international monetary law assumes a passive role in these circumstances.

II. ILLEGAL SANCTIONS UNDER INTERNATIONAL LAW

The action of sanctioning can consist of different measures—violent or nonviolent; multilateral or unilateral. Staying within the scope of monetary law, this Comment generally focuses on economic and financial sanctions when used as coercive mechanisms to change the behavior of another entity.¹⁰ Sanctions, even those that directly target a state's civilian population and economy, are not prohibited by international humanitarian law.¹¹ How and when states choose to wield sanctions on others in the international arena is understood to be one of the many tools available for diplomacy.¹² International law may tell us that sanctions fall short of being a use of force as defined under Art. 2(4) of the United Nations (UN) Charter, but what international principles do govern a country's use of sanctions?

A. *Non-Intervention, Neutrality, and Qualified Neutrality*

The negative impact harmful sanctions or unilateral coercive measures can have on human rights remains a legitimate concern of the UN Human Rights Council (HRC).¹³ In 2014, the HRC created a mandate for a Special Rapporteur on unilateral coercive measures, a term defined in HRC resolutions as measures “not limited to economic or political measures,” used to “coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind[.]”¹⁴ This mandate views coercive measures broadly, but it recognizes the specific issue of economic sanctions that

10. Hans Kelsen, *Collective Security Under International Law*, 49 NAVAL WAR COLL. INT'L STUD. 49, 49-101 (2014) (coercive measures are defined as “the forcible deprivation of life, freedom, property or other values” and “[t]he coercive character of the measures concerned is established by the fact that they are applied without or even against the will of the person against whom they are directed . . .”).

11. Cordula Droege, *Get Off My Cloud: Cyber Warfare, International Humanitarian Law, and the Protection of Civilians*, INT'L REV. RED CROSS 886, 553, 533-578 (June 2012).

12. Barber, *Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions*, *supra* note 6.

13. See UNITED NATIONS, *Mandate of the Special Rapporteur: Special Rapporteur on Unilateral Coercive Measures*, <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/mandate-special-rapporteur> (last visited April 18, 2023).

14. G.A. Res. 27/21, at 1 (Oct. 3, 2014) (calling unilateral coercive measures and legislation “contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States[.]”).

“have far-reaching implications for the human rights of the general population of targeted States . . .”¹⁵ International legal concepts such as non-intervention and neutrality provide perspective on where unilateral coercive measures are protected and unprotected under customary and treaty law.

As a binding principle of customary international law, non-intervention protects the sovereign affairs of nations from the intervention, direct or indirect, of other states.¹⁶ As ideas of collective security and international cooperation developed, caveats to non-intervention have developed as international law. For the U.S., placing sanctions on Russia in response to their invasion of Ukraine seems to fall under the subject of neutrality more so than non-intervention. The traditional understanding of neutrality in international law changed after World War II when the UN Charter implemented collective security practices. Chapter VII of the Charter authorizes Security Council power to determine when and how to respond to threats to peace, effectively violating neutrality law under certain circumstances.¹⁷ As the desire to assist belligerents without Security Council approval grew, the idea of qualified neutrality emerged. The intention being that conflict in some circumstances involves both a belligerent state and a state only acting in self-defense—putting them on unequal footing in terms of responsibility for breaching the peace. Qualified neutrality as a concept developed as a legal basis for aiding belligerents who are victim to unjustified uses of force, using a “who struck first” reasoning to weigh degrees of fault.¹⁸

At first glance, the U.S.’ actions seem particularly reasonable in the case of Russia and Ukraine given that Russia’s actions have and continue to violate many international laws.¹⁹ How a state not party to an international conflict can react is legally governed by the Articles of the Responsibility of States for Internationally Wrongful Acts. The UN’s International Law Commission (ILC) created fifty-nine articles on state

15. *Id.*

16. *See* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1984 I.C.J. 70, ¶ 73 (Nov. 1984).

17. Michael N. Schmitt, *Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force*, LIEBER INSTITUTE WEST POINT (Mar. 7, 2022), <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/>; *see generally* UN Charter, chp. VII.

18. *Id.*

19. Lisa Morjé Howard, A Look at the Laws of War—and How Russia is Violating Them, U.S. INST. PEACE (Sept. 29, 2022), <https://www.usip.org/publications/2022/09/look-laws-war-and-how-russia-violating-them> (listing just some of the violations as *jus ad bellum*, *just in bello*, and genocidal crimes).

responsibility, which codified a secondary set of rules as customary law in addition to the international obligations already in force.²⁰ They are widely considered a source of legal authority on the legality of unilateral measures in response to violations of international law.²¹ However, when asking what measures a non-combatant, third-party country can take, the drafters left that question up to later developments in international law.²²

In fact, they state that the current state of international law on countermeasures taken for the collective interest is uncertain.²³ Art. 48(1)(b) seems to allow uninjured states to invoke the responsibility of another if an obligation owed to the entire international community is breached, but that does not speak to third-party countries that take countermeasures unilaterally when international law is breached.²⁴ Additionally, Art. 54 clarifies that these articles in no way limit states from using “lawful measures” to get other states to behave but this creates a logical distinction between “countermeasures” and “lawful measures” in the eyes of the articles.²⁵ The drafters acknowledged the existence of a gap in international law on unilateral sanctions, but pushed that discussion for later legal developments on the topic. Despite the gap in law, it is intuitive that a legal spectrum has formed that spans when a state takes “lawful measures” as a sovereign, makes internationally legal counter measures through invocation of an injured state’s responsibilities, or acts unilaterally in a seemingly unlawful manner

20. *Customary Law on State Responsibility*, GEORGETOWN LAW LIBRARY, <https://guides.ll.georgetown.edu/c.php?g=371540&p=2511830> (last visited Apr. 19, 2023); Suzanne Katzenstein and Stephen Park, *International Law and 21st Century Financial Warfare*, JUST MONEY (Dec. 5, 2022), https://justmoney.org/international-law-and-21st-century-financial-warfare/#_ftn1.

21. *Id.*

22. Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, U.N. Doc. A/56/10 at 139 (“[C]hapter II include a saving clause which reserves the position and leaves the resolution of the matter to the further development of international law.”).

23. *Id.*

24. Int’l Law Comm’n, Responsibility of States for Internationally Wrongful Acts, U.B. Doc. A/56/49(Vol. I)/Corr.4., Art. 48(1)(a); Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, U.N. Doc. A/56/10 at 127 (commenting on Art. 48(1)(b), the drafters intended this provision to give effect to the ICJ *Barcelona Traction* case, but they shied away from saying all states have obligations *erga omnes*—towards all—because defining those obligations went beyond their scope).

25. *Id.*

B. *Proportionality and the Violation of Humanitarian Law*

Sanctions are unlawful when they violate the human rights of the sanctioned state's population.²⁶ Some incidental yet harmful ramifications of economic sanctions include limiting access to humanitarian needs such as food or medical resources.²⁷ Such excessive measures are prohibited by the principle of proportionality, but as states find new ways to wield sanctions, it becomes more difficult to track how they impact civilians inside and outside of the sanctioned state to ensure accountability for disproportional sanctions.²⁸ Such monitoring is especially important given that the interconnective nature of the global economy means that economic sanctions can and do incidentally effect other countries besides the targeted nation.

When considering the proportionality of sanctions, the type of sanctions implemented matter. Comprehensive sanctions make no distinction between a state's government and policy makers and the general population.²⁹ Whereas, targeted sanctions, in theory, apply pressure on specific people or entities with no ramifications on the civilian population.³⁰ The UN has shown disapproval of comprehensive sanctioning, but some countries, like the U.S., claim that justifications such as national security and universal jurisdiction permit comprehensive sanctions.³¹

26. Barber, *Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions*, *supra* note 6.

27. Suzanne Katzenstein and Stephen Park, *International Law and 21st Century Financial Warfare*, JUST MONEY (Dec. 5, 2022), https://justmoney.org/international-law-and-21st-century-financial-warfare/#_ftn1 (depriving civilians of humanitarian needs can violate the International Covenant on Economic, Social, and Cultural Rights).

28. INTERNATIONAL COMMITTEE OF THE RED CROSS, International Expert Meeting Report: The Principle of Proportionality (Sept. 3, 2018), <https://www.icrc.org/en/document/international-expert-meeting-report-principle-proportionality> ("The principle of proportionality prohibits attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.").

29. Alexandra Hofer, *The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?*, *Nordic J. Int'l L.*, 399, 399-421(2020), <https://doi.org/10.1163/15718107-89030008>.

30. *Id.*

31. G.A. Res. 74/154, at 1 (Dec. 18, 2019) (citing Art. 32 of the Charter of Economic Rights and Duties of States, from non-binding GA resolution 3281, which "declared that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights[.]"); *See also* Alexandra Hofer, *The Proportionality of Unilateral "Targeted" Sanctions*, *supra* note 28.

The U.S.' sanctions on Russia are a great example of economic sanctions having wide-spread ramifications on other third-party countries. Russia is a major exporter of oil and gas, and current sanctions have put great constraints on the supply of energy worldwide.³² Additionally, Russia, Ukraine, and Belarus are great suppliers of the world's grains and fertilizer.³³ The sanctions have had a particularly significant impact because it is quite unprecedented for such a large economic player to face sanctions of this extent. Even during the Cold War, UN and Western sanctions against Zimbabwe and apartheid-era South Africa, and U.S. sanctions on Cuba and Iran, have not targeted such a large player in the global economy.³⁴ Many sanctions against Iran, North Korea, and Venezuela are even more stringent; however, these countries play a much smaller role in the global economy compared to Russia.³⁵ Unfortunately, the spillover effect of current Russia sanctions is affecting the smaller, emerging economies that consciously chose not to contribute to harsh sanctions since they are most at risk of economic crises from long-term sanctions on Russian exports.³⁶

An additional example of questionable sanctions includes the U.S.' sanctions against Syria. Since 1989, U.S. sanctions in Syria have raised concerns over their efficacy and consequential effect on Syrian civilians.³⁷ Harsher U.S. sanctions against Syria, implemented under the Caesar Syrian Civilian Protection Act in 2019, sanctioned non-Syrian entities—specifically, secondary sanctions on anyone doing business with a person or entity related to Syria and Bashar al-Assad.³⁸ The legality of this

32. Peter S. Goodman et al, *Poor Countries Face a Mounting Catastrophe Fueled by Inflation and Debt*, N.Y. TIMES (May 17, 2022), <https://www.nytimes.com/2022/05/17/business/inflation-developing-economies.html>.

33. Alan Rappeport, *Global Food Crisis Tests Western Resolve to Retain Russia Sanctions*, N.Y. TIMES (June 27, 2022), <https://www.nytimes.com/2022/06/27/business/russia-food-crisis-sanctions.html>.

34. Nicholas Mulder, *The Sanctions Weapon*, INT'L MONETARY FUND, (June 2022), <https://www.imf.org/en/Publications/fandd/issues/2022/06/the-sanctions-weapon-mulder>.

35. *Id.* (“The impact of the sanctions on Russia belongs to an altogether different category. Russia is the world’s 11th largest economy, and its role as the prime commodity exporter among emerging markets gives it a structurally significant position.”).

36. *See id.*

37. Karam Shaar and Said Dimashqi, *US Sanctions on Syria Aren't Working. It's Time for a New Sanctions Approach that Minimizes Humanitarian Suffering and Increases Leverage*, ATLANTIC COUNCIL (Jan. 13, 2023), <https://www.atlanticcouncil.org/blogs/menasource/us-sanctions-on-syria-arent-working-its-time-for-a-new-sanctions-approach-that-minimizes-humanitarian-suffering-and-increases-leverage/>.

38. Steven Heydemann, *The Caesar Act and a Pathway Out of Conflict in Syria*, BROOKINGS (June 19, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/06/19/the-caesar-act-and-a-pathway-out-of-conflict-in-syria/>.

innovation of secondary or extraterritorial sanctions is questionable.³⁹ In the case for Russia, relevant are those who are directly targeted and also those who are indirectly feeling the humanitarian effect of sanctions. There are much fewer protections for civilians outside of targeted states that suffer secondary or tertiary effects of sanctions—effects often not caught in monitoring by the states wielding sanctions or not monitored at all.⁴⁰

III. FREEZING AND SEIZING CENTRAL BANK ASSETS

States often hold central bank assets abroad for a variety of reasons. For central banks, holding foreign reserves is essential for anticipating liquidity and balance of payments issues. It has become quite common for states to hold assets in foreign currencies as a domestic financial security measure used to maintain a stable exchange rate. Central banks often select jurisdictions with stable political climates and limited foreign exchange controls.⁴¹ Given the stability of the dollar and its preeminence in the international financial market, most central banks hold assets in U.S. dollars.⁴² However, central banks commonly also hold reserves in gold since it is a currency free from the liability of one specific state.⁴³ Through sovereign wealth funds, central banks can also expand through investment, which also poses its own advantages and disadvantages.

Holding assets in another country poses some legal issues for central banks.⁴⁴ Freezing or seizing of property is a significant risk when holding

39. Rebecca Barber, *The New U.S. “Caesar” Sanctions on Syria Are Illegal, Just Security* (July 8, 2020), <https://www.justsecurity.org/71189/the-new-u-s-caesar-sanctions-on-syria-are-illegal/> (“[T]he sanctions program also represents an illegal exercise of U.S. jurisdiction abroad in the form of so-called ‘secondary sanctions.’”).

40. Barber, *Exploration of the General Assembly’s Troubled Relationship with Unilateral Sanctions*, *supra* note 6.

41. Thomas C. Baxter, *Chapter 21: Legal Issues Incident to Holding Central Bank Assets Abroad*, *CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW*, INT’L MONETARY FUND (2003) at 447, <https://doi.org/10.5089/9781589061767.072.ch02>.

42. INT’L MONETARY FUND, *Currency Composition of Official Foreign Exchange Reserves*, <https://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4> (last updated Mar. 31, 2023) (reporting that in Q4 of 2022, 58.36% of all allocated reserves in the world were held in U.S. dollars. Following U.S dollars was 20.47% of assets held in Euros and 5.51% held in Japanese yen).

43. Jonathan Grosvenor, *Understanding How Central Banks Manage Foreign Exchange Reserves*, ASIAN DEVELOPMENT BANK (Oct. 31, 2018), <https://blogs.adb.org/blog/understanding-how-central-banks-manage-foreign-exchange-reserves>.

44. Baxter, *Chapter 21: Legal Issues Incident to Holding Central Bank Assets Abroad*, *supra* note 41, at 450 (“The significant legal risks are (1) attachment and execution; (2) asset

assets overseas, diminishing any benefit of liquidity.⁴⁵ However, sovereign immunities in other countries provide varying degrees of protection for people, property and assets that are abroad. For Russia, the U.S and G7 countries put an asset freeze on the Central Bank of the Russian Federation following the invasion of Ukraine amongst other tough financial restrictions.⁴⁶ Discussion in the U.S. and in other countries of moving beyond freezing to seizing assets concerns questions of the current state of domestic legislation, due process, and sovereign immunity.

A. *U.S. Federal Law on Due Process for Foreign Entities*

Though U.S. federal law allows the government to take personal property for many different reasons, the question of due process is essential to the constitutionality of the government's powers.⁴⁷ The Fifth Amendment guarantees that the government must give property owners notice to object to their property being taken and prohibits eminent domain without just compensation.⁴⁸ Whether or not these due process provisions apply to foreign states is an unanswered question at the federal level, with only two circuits having held that foreign states are not given constitutional due process.⁴⁹

In terms of current U.S. legislation on controlling foreign assets, the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) are two federal statutes used for sanctioning

freezes; (3) uncertainties surrounding sovereign or central bank immunity; (4) notice of litigation involving assets; (5) specific counterparty and custodian legal risk; and (6) choice of law.”).

45. *Id.*

46. Suzanne Katzenstein and Stephen Park, *International Law and 21st Century Financial Warfare*, *supra* note 27 (“The U.S. and its European allies effectuated the removal of certain Russian banks from the SWIFT messaging system, the primary means to process cross-border payments. The U.S. blocked the Russian government from making payments on international bonds using U.S. dollars held in U.S.-based banks, effectively forcing Russia into an external debt default.”).

47. Forms of U.S. governmental powers involving the taking of personal property include eminent domain, civil and criminal forfeiture, taxation, reversions, etc.

48. Scott R. Anderson and Chimène Keitner, *The Legal Challenges Presented by Seizing Frozen Russian Assets*, *LAWFARE* (May 26, 2022), <https://www.lawfareblog.com/legal-challenges-presented-seizing-frozen-russian-assets>; *see* U.S. Const. amend. V.

49. *Id.* (explaining that this is only relevant for frozen Russian Federation-controlled assets, foreign people and corporations have due process rights if the substantial connection test is passed.); *See also* William S. Dodge and Ingrid Wuerth Brunk, *Second Circuit Gets Civil Forfeiture Under the Foreign Sovereign Immunities Act Wrong*, *JUST SECURITY* (Aug. 23, 2019), <https://www.justsecurity.org/65934/second-circuit-gets-civil-forfeiture-under-the-foreign-sovereign-immunities-act-wrong/>.

during peacetime and wartime, respectively.⁵⁰ The IEEPA, originally passed in 1977, was amended after 9/11 to allow seizing assets when the country is involved in armed conflict; the meaning of the term “armed conflict” continues to be debated.⁵¹ Seizing Russian assets does not necessarily fall within the parameters laid out in the IEEPA given that the U.S. is not, and does not want to be, in direct armed conflict with Russia, when “armed conflict” is understood in the strictest sense of the word.

In the past, the U.S. has seized assets from Iraq, Afghanistan, Iran, and Venezuela.⁵² These examples, however, differ from the current situation with Russia. For Iraq in 2003, the U.S. was “engaged in armed hostilities” with the state and therefore the IEEPA’s vesting provision was legally utilized.⁵³ For Venezuela, politics played a larger role because the Trump Administration recognized Juan Guadió as Venezuela’s President in defiance of a highly contested election that Nicolás Maduro claimed to have won. Through diplomatic recognition, the opposition government received access to Venezuela’s central bank assets. For Russia, the circumstances fall into neither of these camps.

Given the absence of federal legal guidance on how the U.S. could seize Russian Central Bank assets when it is not engaged in armed conflict with Russia, many different arguments on how the U.S. can or cannot proceed exist. Some opinions view the IEEPA and the *Dames & Moore v. Regan* as providing the executive with wide authority during national

50. Andrew Boyle, *Why Proposals for U.S. to Liquidate and Use Russian Central Bank Assets are Legally Unavailable*, JUST SECURITY (Apr. 18, 2022), <https://www.justsecurity.org/81165/why-proposals-for-u-s-to-liquidate-and-use-russian-central-bank-assets-are-legally-unavailable/>.

51. BROOKINGS, *Proposals to Seize Russian Assets to Rebuild Ukraine* (Dec. 29, 2022), <https://www.brookings.edu/research/proposals-to-seize-russian-assets-to-rebuild-ukraine/>; 50 U.S.C. § 1702(a)(1)(c) (“[T]he President may . . . when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest”).

52. See Boyle, *Why Proposals for U.S. to Liquidate and Use Russian Central Bank Assets are Legally Unavailable*, *supra* note 50; see also Karen DeYoung and Anthony Faiola, *Trump Administration to Tap into Frozen Venezuela Government Funds to Revive Efforts to Oust Maduro*, *Washington Post* (Aug. 20, 2020), https://www.washingtonpost.com/national-security/trump-administration-to-tap-into-frozen-venezuelan-government-funds-to-revive-efforts-to-oust-maduro/2020/08/20/b0024968-df20-11ea-809e-b8be57ba616e_story.html.

53. *Id.*

emergencies.⁵⁴ Other opinions do not read *Dames* as broadly, rather suggesting that the legislative branch would need to pass new legislation in order to liquidate Russia's central bank assets.⁵⁵

B. Sovereign Immunity

The U.S. abides by the international legal requirement to provide sovereign immunity to foreign states and their public property through the Foreign Sovereign Immunities Act (FSIA).⁵⁶ Customary international law establishes that central banks holding foreign reserves abroad are essentially *per se* immune, and all central bank assets are almost fully immune as well.⁵⁷ In addition to the IEEPA, the FSIA also pertains to the subject of seizing foreign state assets. The FSIA offers certain protections to central bank assets unless immunity is explicitly waived.⁵⁸ Central banks gained greater legal immunity protections abroad as central banks became more independent from state government in the twentieth century.⁵⁹ The U.S. protects foreign central bank property “held for its own account,” but has caveats for waivers and terrorism-related judgments.⁶⁰ What activities are considered as being “held for its own account” is not set in stone. Courts have found that activities “normally understood as central banking activities,” and “the regulation and

54. See Laurence H. Tribe and Jeremy Lewin, *\$100 Billion. Russia's Treasure in the U.S. Should Be Turned Against Putin*, N.Y. TIMES (Apr. 15, 2022), <https://www.nytimes.com/2022/04/15/opinion/russia-war-currency-reserves.html>.

55. See Boyle, *Why Proposals for U.S. to Liquidate and Use Russian Central Bank Assets are Legally Unavailable*, *supra* note 50 (suggesting that many policy concerns would need to be considered by Congress when crafting applicable legislation, reasoning that seizure is not an urgent matter because the U.S. is not dependent on Russia's central bank assets to provide necessary aid to Ukraine—a conclusion made without discussing where funds for more long-term, necessary aid to Ukraine will come from when the time comes).

56. Scott R. Anderson and Chimène Keitner, *The Legal Challenges Presented by Seizing Frozen Russian Assets*, *supra* note 48.

57. Ingrid Wuerth Brunk, *Sovereign Immunity of Foreign Central Bank Assets*, LAWFARE (Feb. 23, 2018), <https://www.lawfareblog.com/sovereign-immunity-foreign-central-bank-assets>.

58. Baxter, *Chapter 21: Legal Issues Incident to Holding Central Bank Assets Abroad*, *supra* note 41, at 453 (“The FSIA specifically protects central bank property from prejudgment attachment and, unless the immunity is explicitly waived, from attachment in aid of execution and from execution.”).

59. Ingrid Wuerth, *Immunity from Execution of Central Bank Assets*, THE CAMBRIDGE HANDBOOK ON IMMUNITIES AND I. L. (Tom Ruys & Nicolas Angelet, eds., 2019), doi:10.1017/9781108283632.014.

60. *Id.*

supervision of a nation's foreign exchange reserves" are sovereign activities that are protected.⁶¹

IV. INTERNATIONAL MONETARY LAW OBLIGATIONS DURING WARTIME

Beyond considering economic sanctions and unilateral coercive measures from a humanitarian law perspective, the international financial market maintains additional standards and practices that apply to this discussion. Unilateral sanctions, especially from the U.S. or a coalition of countries, have direct repercussions on the international economy and the mission of international financial organizations as well. The power of the dollar is part of what makes U.S. sanctions so powerful, but for organizations that aim to promote economic cooperation, such harsh sanctions can cause shocks counterproductive to the goals of improving global economic prosperity.

International financial regulation can sometimes differ from the typical format of international organizations and their typical systems of creating international law.⁶² International financial institutions are quite fragmented with different organizations dealing with specific topics or sectors. This fragmentation and decentralized structure does not necessarily mean that international financial law lacks legitimacy, rather shared responsibilities and collective agreements play a larger role in ensuring universal adherence to soft law.

There is not one large, centralized, supranational financial authority that dictates international financial law.⁶³ There are large financially focused organizations that have historic reputations and were established through treaties; however, there are institutions of various sizes and objectives that all participate in international regulation.⁶⁴ Even decentralized, the presence of working financial institutions encourage actors to develop habits of cooperation and maintains focus on common problems.⁶⁵ In terms of the roles organizations play in the system, major economies inevitably play a larger role in decision making and agenda

61. Baxter, *Chapter 21: Legal Issues Incident to Holding Central Bank Assets Abroad*, *supra* note 41 at 453; see also Wuerth, *Immunity from Execution of Central Bank Assets*, *supra* note 59 at 8.

62. Chrus Brummer, *Soft Law and the Global Financial System: Rule Making in the 21st Century* 61 (2012) ("[I]n the international financial system, the production of international standards and rules arises through largely informal institutional arrangements grounded in nonbinding laws, charters, and accords—which, as such, are not recognized under international law.").

63. *Id.* at 65.

64. *Id.*

65. *Id.* at 60.

setting—a role and theme that trickles down throughout multiple organizations.⁶⁶ Institutions that set standards tend to take after agenda setters and provide more strategic services that relate to specific sectors or issue areas.⁶⁷ Lastly, monitoring is a prevalent part of many financial organizations, but the World Bank and International Monetary Fund (IMF) also play very dominant and important roles.⁶⁸

Groups like the IMF and World Trade Organization (WTO) have large, sweeping purposes like stabilizing exchange rates or liberalizing trade, respectively. The soft law and general goals of these organizations may not have binding legal repercussions for abusive uses of unilateral coercive measures; however, sanctioning is a domestic tool that is geared towards having international spillover effects. The institutions monitor and ridicule states' domestic monetary and trade policies, not letting them off the hook. Alternately, it is beneficial to view involvement in these organizations through the eyes of a sanctioned state. During wartime, what rights do belligerent states have and what methods of economic recourse are still available when you are the one sanctioned?

A. *IMF Obligations and Sanctioning*

In the crowded field of international financial regulation, large countries consistently play large roles in the system. As with many other aspects of global governance, the larger the economic power, the more influential a state's voice is in the institutions that regulate international finance. Major economic-focused multilateral organizations like the World Bank Group, IMF, and WTO are very interconnected pillars in the field and feature some of the stronger examples of treaty law in the field. For example, to be a member of the World Bank, per the Articles of Agreement, a state must also be a member of the IMF.⁶⁹

The World Bank Group is a conglomerate of five organizations that revolve around development and economic assistance.⁷⁰ The U.S. has

66. *Id.* at 68.

67. *Id.*

68. *Id.*

69. WORLD BANK, *Member Countries*, <https://www.worldbank.org/en/about/leadership/members> (last visited Apr. 22, 2022); INTERNATIONAL BANK OF RECONSTRUCTION AND DEVELOPMENT, *Articles of Agreement*, art. VI, section 3 (Per, Art. VI, section 3, “[a]ny member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.”).

70. The WBG is made up of the International Bank of Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation

been a member of the World Bank since December 27, 1945, and the Russian Federation since June 16, 1992.⁷¹ As a bank, though Articles VI mentions methods for withdrawal or suspension of membership, the means for forms of removal are associated with fraud or corruption in relation to the use of IBRD loans or World Bank funding. On the other hand, the IMF's Articles of Agreement are more reflective of general economic goals and member obligations have clearer repercussions.

Under Art. VIII, Section 3, the IMF's Charter (or Articles of Agreement) members are required to avoid the use of discriminatory currency practices—an extremely broad designation.⁷² Further, Art. VIII, Section 2(a) says “. . . no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.”⁷³ In relation to unilateral economic sanctions, Art. VIII, Section 2(a) seemingly prohibits government policies that effect payments made in connection with foreign trade.⁷⁴ However, the IMF Executive Board, through a special procedure, can grant approval for restrictions based on security grounds in an Executive Decision created in 1952.⁷⁵ How frequently this procedure is enforced is uncertain.⁷⁶ Perhaps the acquiescence from the IMF on U.S. sanctions against Russia fits more with their role as a bird's-eye-view monitor, noting how changes have and will affect the international monetary system after the fact.⁷⁷

(IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre of Settlement of Investment Disputes (ICSID).

71. WORLD BANK, *Member Countries*, *supra* note 69.

72. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. VIII, section 3 (“No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices . . .”).

73. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. VIII, section 2(a).

74. Tom Ruys and Cedric Ryngaert, *Secondary Sanctions: A Weapon Out of Control? Part II: The Legality of Secondary Sanctions Under Conventional Law and the IMF's Tacit Approval Procedure for Payment Restrictions Inspired by Security Concerns*, EJIL: TALK! (EUR. J. INT'L L.) (Sept. 30, 2020), <https://www.ejiltalk.org/secondary-sanctions-a-weapon-out-of-control-part-ii-the-legality-of-secondary-sanctions-under-conventional-law-and-the-imfs-tacit-approval-procedure-for-payment-restrictions-inspired-by-se/>.

75. *Id.* (“The Decision crucially provides that restrictions must be notified to the IMF in advance (or within a period of 30 days in cases of urgency). If the IMF does not object within 30 days, the restrictions are tacitly approved.”).

76. *Id.*; *see also* INTERNATIONAL MONETARY FUND, *Annual Report on Exchange Arrangements and Exchange Restrictions 2020*, <https://doi.org/10.5089/9781513556567.012> (last visited Apr. 23, 2023).

77. Jonathan Wheatley and Colby Smith, *Russia Sanctions Threaten to Erode Dominance of US Dollar, Says IMF*, FIN. TIMES (March 30, 2022), <https://www.ft.com/content/3e0760d4-8127-41db-9546-e62b6f8f5773> (“Gita Gopinath, the IMF's first deputy managing director, said the sweeping measures imposed by western countries following Russia's invasion, including

Moving away from how member's obligations clash with harmful sanctions, sanctioned states may find some redress through IMF programming. A major part of the IMF—and a way it wields power—is through loan and program conditionality. Seeking IMF loans as assistance during times of economic turmoil will often require a state submit to conditions that implement economic adjustments.⁷⁸ Highly-sanctioned states can seek assistance from the IMF, and an important part of the IMF is its adherence to its Articles of Agreement and goals. Article I describes the purposes of the IMF, with Section III listing: “[t]o promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.”⁷⁹ The IMF maintains a strict focus on its mission of monitoring exchange rates and identifying and mitigating spillover effects of domestic economic policies, so sanctioned states are likely to face conditions more geared towards economic issues. The IMF has begun to expand its consideration of other factors that affect the economic health of a country, which could lead to political critiques or recommendations for sanctioned countries.

For example, Iran is overdue by more than twenty-nine months for an Article IV Consultation with IMF officials.⁸⁰ In the last Article IV Consultation in 2018, the Executive Board provided commentary on the Iranian economy and market predictions, and it also acknowledged areas for social reform that could lead to economic improvements.⁸¹ Specifically, the Executive Directors encouraged Iranian authorities to increase female participation in the labor force by “reducing barriers,” “subsidizing child care to low income women,” and “tackling informality.”⁸² This shows an effort by the IMF to address larger social

restrictions on its central bank, could encourage the emergence of small currency blocs based on trade between separate groups of countries.”).

78. INTERNATIONAL MONETARY FUND, *IMF Conditionality*, <https://www.imf.org/en/About/Factsheets/Sheets/2023/IMF-Conditionality#:~:text=When%20a%20country%20borrows%20from,adopts%20strong%20and%20effective%20policies> (last visited April 23, 2023).

79. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. I, section iii (The Fund lists five purposes in Article I that guide all the policies and decisions).

80. Press Release, *IMF Holds Informal Board Briefing on Iran* (Dec. 20, 2022), <https://www.imf.org/en/News/Articles/2022/12/20/pr22448-iran-imf-holds-informal-board-briefing-on-iran#:~:text=Washington%2C%20DC%3A%20In%20line%20with,on%20economic%20developments%20in%20Iran> (When members Article IV consultations are excessively delayed, staff brief the IMF Executive Board in informal sessions based on publicly available information approximately every twelve months).

81. Press Release, *IMF Executive Board Concludes 2018 Article IV Consultation with the Islamic Republic of Iran* (Mar. 29, 2018) (“Directors emphasized that deeper reforms are needed to close the infrastructure gap, create more jobs, and further reduce poverty.”).

82. *Id.*

problems while still remaining true to the goals of its Charter. This also indicates that heavily sanctioned states like Iran will not go unjudged for violating international law when participating in the IMF. However, Article IV Consultations are just talk compared to the granting of loans, which in fact is a more political process, and countries with more power at the IMF can have a greater impact.⁸³

One mechanism available to all IMF members are Special Drawing Rights (SDRs). The SDR is not a currency, but an international reserve asset allocated to all IMF members.⁸⁴ SDR allocation is in proportion to the quota shares of each member.⁸⁵ Since the last re-allocation of SDRs in 2021, Russia is allocated \$12,367.6 million USD of SDRs.⁸⁶ SDRs are a way for member states to supplement their foreign exchange reserves by exchanging their SDRs for another member's currency, either through voluntary exchange agreements or mandatory designation plans.⁸⁷ For Russia, a country with a majority of its foreign reserves frozen or unavailable, whether SDRs could be a mechanism to circumvent sanctions is an important question.

The first avenue of Russia exchanging SDRs for foreign currency through voluntary bilateral agreements looks like it could be a challenge. All states in the fund—bar Saudi Arabia, Oman, and China—who could participate in a voluntary trade agreement have condemned Russia's invasion of Ukraine.⁸⁸ The Biden Administration has even preemptively

83. DEUTSCHE WELLE, *COVID-19-hit Iran Asks IMF for Aid Amid US Sanctions* (Mar. 13, 2020), <https://www.dw.com/en/covid-19-hit-iran-asks-imf-for-aid-amid-us-sanctions/a-52763114> (Iran asked the IMF for a \$5 billion USD emergency loan, the first in the country's history. Granting the funds would be in conflict with U.S. sanctions and, with a seat on the IMF's Executive Board, the US can veto); Patrick Clawson, *Opposing an IMF Loan to Iran: Not an Outlier, Not a Barrier to Aid*, WASHINGTON INST. NEAR EAST POLICY (Apr. 10, 2020), <https://www.washingtoninstitute.org/policy-analysis/opposing-imf-loan-iran-not-outlier-not-barrier-aid> (suggesting that though the U.S. has means to disrupt loans, persuading IMF Director Kristalina Georgieva is less likely as she hails from an EU country and major EU governments have endorsed the idea of giving Iran a loan).

84. INTERNATIONAL MONETARY FUND, *Special Drawing Rights (SDR)*, <https://www.imf.org/en/About/Factsheets/Sheets/2023/special-drawing-rights-sdr> (last visited Apr. 23, 2023).

85. *Id.*

86. INTERNATIONAL MONETARY FUND, *2021 General SDR Allocation* (Aug. 23, 2021), <https://www.imf.org/en/Topics/special-drawing-right/2021-SDR-Allocation#footnote>.

87. INTERNATIONAL MONETARY FUND, *Questions and Answers on Special Drawing Rights* (Aug. 31, 2021), <https://www.imf.org/en/About/FAQ/special-drawing-right#Q3.%20Why%20do%20an%20SDR%20allocation%20when%20a%20majority%20would%20go%20to%20advanced%20economies>.

88. Mark Plant, David Andrews, and Lucas Sala, *Can Russia Use Its SDRs? Yes and No*, CENTER FOR GLOBAL DEV. (Mar. 7, 2022), <https://www.cgdev.org/blog/can-russia-use-its-sdrs-yes-and-no>.

enacted legislation to require Secretary of the U.S. Treasury, Janet Yellen, to “vigorously advocate that the governments of the member countries of the [IMF], to the extent that the member countries issue freely usable currencies, prohibit transactions involving the exchange of [SDRs] held by the Russian Federation of Belarus . . .”⁸⁹ Nevertheless, Article XIX of the IMF’s Articles of Agreement offers an institutional designation mechanism that could require members to engage in an exchange agreement.

Article XIX covers operations and transactions pertaining to SDRs.⁹⁰ Specifically, Section 2(c) permits the use of this designation mechanism by a seventy percent majority and Section 3(a) requires that the participating state must show it “has a need because of its balance of payments or its reserve position or development in its reserves.”⁹¹ Countries are “designated” to engage in exchanging their currencies for SDRs if their reserve positions are considered sufficiently strong.⁹² Schedule F focuses on designation and provides guidance on what determines designation.⁹³ Use of the designation mechanism would be rare and rather complicated given the strength of the US and EU in the IMF. Even if designated as a country required to assist, sanctioning any country that does not comply would require a decision by an eighty-five percent majority of the Fund.⁹⁴ The specific sanctions in regard to this situation include suspending a state’s use of their SDRs for not more than one year, but seeing a state vote to inflict SDR suspension upon itself or its allies is hard to imagine.⁹⁵ The IMF and SDRs do not seem to offer Russia any sort of relief from the harsh sanctions from the U.S. and other countries that oppose the invasion of Ukraine. Through the IMF’s surveillance and consultation tools, suggestions and commentary serve as one way to wield verbal influence over state economic policies; however, that is merely a use of soft power. Economic sanctions and their impact

89. Russia and Belarus SDR Exchange Prohibition Act of 2022, H.R. 6899, 117th Cong. § 2(b) (2022).

90. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. XIX, sections i-vii.

91. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. XIX, sections 2(a) and 3(c).

92. Mark Plant, David Andrews, and Lucas Sala, *Can Russia Use Its SDRs? Yes and No*, CENTER FOR GLOBAL DEV., *supra* note 88 (Schedule F of the Articles of Agreement on designation provides guidance on what determines designation).

93. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, Sch. F.

94. INTERNATIONAL MONETARY FUND, *Articles of Agreement*, art. xxiii, section 1.

95. *Id.*; Mark Plant, David Andrews, and Lucas Sala, *Can Russia Use Its SDRs? Yes and No*, CENTER FOR GLOBAL DEV., *supra* note 87.

look rather untouchable in terms of being in grasp of anything the IMF could do per the Articles of Agreement.

B. Trade Agreements and Sanctioning

Currently, the WTO maintains a great responsibility for ensuring the liberalization of trade and providing a forum for trade dispute resolution. In the case of sanctions against Russia, discussion between the U.S., EU, and G7 countries on revoking Russia's "most favored nation" trade status is an issue that Russia could take to the WTO.⁹⁶ This would be engaging in trade discrimination and a violation of an essential principle of the WTO. The WTO's Dispute Settlement Body is a forum specifically for dealing with disputes between two members and would be one legal avenue for redress against harsh sanctions.⁹⁷ The General Agreement on Tariffs and Trade (GATT) does offer security exceptions in Article XXI, which would likely serve as the U.S.' justification for its coercive measures.⁹⁸ However, Russia has signaled that it will withdraw from the WTO entirely because the organization has "neglected all obligations towards [Russia]."⁹⁹

In terms of bilateral trade, the U.S. has ceased almost all engagement with Russia since the invasion of Ukraine.¹⁰⁰ U.S. sanctions of the size and type implemented on Russia were always likely to bruise, but coordination with other countries to form a bloc of economic sanctions is

96. CBS News, *Biden Announces U.S. Will Move to Revoke Russia's "Most Favored Nation" Trade Status* (Mar. 11, 2022), <https://www.cbsnews.com/live-updates/biden-revokes-russia-favored-trade-status/>.

97. World Trade Organization, Dispute Settlement Body, https://www.wto.org/english/tratop_e/dispu_e/dispu_body_e.htm (last visited Apr. 23, 2023).

98. GENERAL AGREEMENT ON TARIFFS AND TRADE, art. xxi, section b

("Nothing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considered necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations; or to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.").

99. Sarah Anne Aarup and Ashleigh Furlong, *Russia Takes First Steps to Withdraw from WTO, WHO*, POLITICO (May 18, 2022), <https://www.politico.eu/article/russia-takes-first-steps-to-withdraw-from-wto-who/> (In March 2022, a pro-Kremlin minority party in the Duma crafted a bill proposing Russia withdraw from the WTO in response to countries ceasing to grant Russia most-favored-nation status).

100. See EXECUTIVE OFFICE OF THE PRESIDENT, *2022 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2022), <https://ustr.gov/countries-regions/europe-middle-east/russia-and-eurasia/russia/2022-report-implementation-and-enforcement-russias-wto-commitments-0>.

what is particularly damaging for Russia. This strategic coordination of economic sanctions is impactful, but China's absence also raises the question of whether tough sanctioning is pushing Russia further towards a China that welcomes a shift in the global power structure. Russia and China continue to be close partners. Specifically, their joint "no-limits" statement in 2022 indicated where their cooperation could go in the future.¹⁰¹ Prospects on the Sino-Russian alliance becoming one of military assistance are beyond the scope of this Comment; however, their economic alliance is already present and should remain top of mind for policy-makers as the U.S. reflects on the effect the current sanction regime has had on Russia.

V. CONCLUSION

Both the speed and collaboration with which the U.S. and its allies reacted with in response to Russia's invasion of Ukraine is notable as a success in U.S. foreign policy. Now, being more than a year since the invasion and without any significant efforts made towards a ceasefire or peace settlement, the natural question arises: what next? Economic sanctions—when proportional, targeted, and for a legitimate legal basis—seem to clear any international legal hurdles. Disproportional and unjustifiable sanctions risk running into principles of humanitarian and established treaty law. However, given the dominance of the dollar and current climate of globalization, it should not be beyond discussion to question whether some of the extreme U.S.' economic sanctions fall into a grey area given their impact on third parties.

The topic of seizing assets of a sovereign central bank under U.S. law is an example of a grey area, given that it is not yet settled federal law and opinions swing both in favor and against the possibility. This conversation is unique to the U.S. and its economic sanctions because weaponizing the dollar is so easy to do when such damaging repercussions are at your disposal. Limits do exist for economic sanctions, but the UN is right in seeing that unilateral coercive measures can and will wreak economic havoc on sanctioned states if parameters are not set. Does that make international law a double-edged sword, capable of

101. Tony Munroe, Andrew Osborn, and Humeysra Pamuk, *China, Russia Partner Up Against West at Olympics Summit*, REUTERS (Feb. 4, 2022), <https://www.reuters.com/world/europe/russia-china-tell-nato-stop-expansion-moscow-backs-beijing-taiwan-2022-02-04/>.

promoting accountability while also reinforcing the understanding that there can be a measurable and humanitarian financial war?¹⁰²

The answer this Comment suggests is: not necessarily. Deep accountability problems have been identified, and the current practice of virtually unlimited sanctioning, which goes unchecked due to the inability to thoroughly monitor third-country ramifications, is worse than establishing norms to acknowledge the problem. The closer unilateral coercive measures get to essentially being forms of economic combat, the more some form of guidance is necessary. As Russia and other nations routinely targeted by sanctions begin to insulate their economies, the pressure to push harder with sanctions will get stronger—the desire to not only freeze, but also to seize assets will grow. In anticipation, international and U.S. domestic law must become more concrete on the legality of this subject for fear of the effect unchecked sanctions from economic superpowers will have on ordinary people.

102. Suzanne Katzenstein and Stephen Park, *International Law and 21st Century Financial Warfare*, *supra* note 27.