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Abstract

This Book Review reviews the book: “Economic Sanctions and U.S. Trade” by M. Malloy. The book deals with economic sanctions and the reviewer is very praiseworthy finding that the book will remain at the forefront of the debate over future uses of economic sanctions.

BOOK REVIEW

ECONOMIC SANCTIONS AND U.S. TRADE. By M. Malloy. Boston: Little, Brown and Company, 1990. vii + 752 pp. ISBN 0-316-54515-5. US\$125.00.†

*Reviewed by James C. McMillin**

Economic sanctions are a political instrument. The study of economic sanctions is an investigation of politics through an economic prism. Because economic sanctions largely operate in the foreign policy arena, sanctions can be seen as consuming a large gray area between purely communicative diplomacy and conventional war. From the concluding days of 1990, however, the demarcation between economic sanctions and war could not be more clear.

As political instruments, economic sanctions and war share many characteristics,¹ yet the attempt to define sanctions as economic warfare results in a blur of different activities. Like war, however, economic sanctions are the province of the executive and legislative branches of the U.S. government: the judiciary, playing the supportive role, declares executive acts either constitutionally permissible or statutorily authorized. Like war, economic sanctions are intended to be punitive. Traditionally, sanctions have been restricted to crisis situations. Both economic sanctions and war contain boomerang elements in that they cannot be effective without inflicting harm on the imposing country as well as the target country.

Indeed, empirical evidence supports the view that economic sanctions always attend war.² The reverse, however, is

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1. Such diverse thinkers as von Clausewitz and Mao Tse-Tung have made the point that war, too, is an extension of political activity:

War is not merely a political act, but also a political instrument, a continuation of political relations, a carrying out of the same by other means.

Von Clausewitz *Von Krieg* (1833)

War cannot be divorced from politics for a single moment.

Mao Tse-Tung (1938)

2. For example, economic sanctions have attended U.S. military operations in

not true, as the sanctions programs against Rhodesia (now Zimbabwe) and South Africa demonstrate.³ Nevertheless, the study of U.S. economic sanctions involves the study of the major U.S. foreign policy initiatives of our time. Professor Malloy's book, *Economic Sanctions and U.S. Trade*, adds a major voice to the debate concerning these foreign policy issues in the post-World War II era.⁴

I. A BRIEF OVERVIEW

Professor Malloy undertakes the daunting task of defining the role of economic sanctions in public policy, describing at length the major post-World War II sanctions programs of the United States, and suggesting an objective standard to assess the effectiveness of sanctions.⁵ The first chapter of the book contains the theoretical core of the entire work.⁶ The second chapter describes the statutory authorities by which economic sanctions are imposed and provides a brief summary of the current uses of those provisions.⁷ This chapter forms the critical foundation for Part II of the book, which describes in elaborate detail currently existing sanctions programs: Export Controls and East-West Trade,⁸ East Asian Embargo Controls,⁹ Cuban Embargo Controls,¹⁰ Central American Sanctions Programs,¹¹ South African Sanctions,¹² and finally Libyan

World War II, the Korean War, the Vietnam War, and most recently, the Persian Gulf War. See *Black v. Clark*, 79 F. Supp. 373 (E.D. Pa. 1948) (discussing World War II sanctions); G. HUFBAUER & J. SCHOTT, *ECONOMIC SANCTIONS RECONSIDERED* 221-30 (1985) (discussing imposition of sanctions on North Korea in 1950); A. KENDRICK, *THE WOUND WITHIN: AMERICA IN THE VIETNAM YEARS 88-97* (1974) (noting that sanctions were imposed on North Vietnam as early as mid-1954); U.N. Security Council Resolution No. 661 (Aug. 6, 1990), 29 I.L.M. 1325 (1990) (imposing sanctions on Iraq).

3. See Executive Order No. 11,322, 32 Fed. Reg. 119 (1967) (adopting U.N. Security Council Resolution No. 232 imposing sanctions on Rhodesia); Mehlman, Milch & Toumanoff, *United States Restrictions on Exports to South Africa*, 73 AM. J. INT'L L. 581 (1979).

4. M. MALLOY, *ECONOMIC SANCTIONS AND U.S. TRADE* (1990) [hereinafter *ECONOMIC SANCTIONS*].

5. *Id.* at 625-71.

6. *Id.* at 3-31.

7. *Id.* at 33-182.

8. *Id.* at 223-82 (chapter four).

9. *Id.* at 283-347 (chapter five).

10. *Id.* at 349-93 (chapter six).

11. *Id.* at 395-442 (chapter seven).

Sanctions.¹³

After describing the mechanics of the existing sanctions programs, Professor Malloy describes in Part III the legal limits of sanctions¹⁴ and their effectiveness.¹⁵ He concludes his book by suggesting methods of improving future programs.¹⁶

II. ECONOMIC SANCTIONS

While Professor Malloy describes his book as "an extended analysis of economic sanctions in contemporary practice,"¹⁷ his efforts to construct a model to define and evaluate sanctions are of at least equal value to the "mechanics and practical application"¹⁸ analysis of the various programs that forms a major part of his work. Professor Malloy defines economic sanctions as "any country-specific economic or financial prohibition imposed upon a target country or its nationals with the intended effect of creating dysfunction in commercial and financial transactions with respect to the specified target, in the service of specified foreign policy purposes."¹⁹

Defined as such, economic sanctions do not further general notions of trade policy or economic policy. Indeed, Professor Malloy persuasively argues that sanctions tend to operate antithetically to those policies.²⁰

Professor Malloy recognizes that sanctions serve "directive" policy objectives of creating "economic pressure calculated to alter behavior of a target state"²¹ and "defensive" objectives of impeding development of military or strategic capabilities by an adversary.²² Although he notes that the concept of sanctions may serve a third communicative policy objective, he generally disagrees with this formulation because sanctions are likely to be ineffective and suspect unless the communicative objective is linked to an operative (directive or

12. *Id.* at 443-97 (chapter eight).

13. *Id.* at 499-530 (chapter nine).

14. *Id.* at 533-624 (chapter ten).

15. *Id.* at 625-71 (chapter eleven).

16. *Id.* at 673-82 (chapter twelve).

17. *Id.* at 4.

18. *Id.* at 5.

19. *Id.* at 13.

20. *Id.* at 22-26.

21. *Id.* at 20.

22. *Id.* at 21.

defensive) objective.²³ The imposition of sanctions for purely communicative purposes, Professor Malloy argues, tends to further domestic political goals rather than foreign policy objectives.²⁴

While this concern is legitimate, it is nevertheless important to remember that political acts tend to send symbolic as well as objective messages. The symbolic message of imposing economic sanctions is real. In fact, the dilution of this symbolic message is one of the most palpable effects of the U.S. government's increasing use of economic sanctions in situations that do not generally rise to the level of a crisis—a development against which Professor Malloy repeatedly warns.²⁵

Economic sanctions exist as an instrument within a dynamic world arena. It is therefore inevitable that events will, to some extent, overtake any analysis of the subject. Professor Malloy's book generally speaks to events as of June 30, 1989 and accordingly does not address the sanctions program imposed on Iraq via article 41 of the U.N. Charter.²⁶ Certainly, Professor Malloy cannot be criticized for failing to foresee the overhaul of Soviet foreign policy that permitted effective U.N. Security Council action against Iraq.

Professor Malloy does include a straightforward description of the intersection of the U.N. Participation Act of 1945 with article 41 of the U.N. Charter, while commenting that these provisions have "not been a growth area in U.S. economic sanctions."²⁷ He provides a tantalizing footnote to the Persian Gulf crisis in observing that it was the United States which violated the only previous use of article 41 to impose international sanctions.²⁸ In that instance, involving Rhodesia, the United States for six years continued to import Rhodesian chrome ore.²⁹

In his analysis of these sanctions programs, Professor Mal-

23. *Id.*

24. *Id.* at 21-22 n.8.

25. *See, e.g., id.* at 674-76.

26. *See* U.N. Security Council Resolution No. 661 (Aug. 6, 1990), 29 I.L.M. 1325 (1990).

27. *ECONOMIC SANCTIONS*, *supra* note 4, at 157.

28. *Id.* at 202.

29. *Id.* It should be noted, however, that the United States failed to comply with the U.N. sanctions against Rhodesia to prevent U.S. dependence on the Soviet Union as its sole source of chrome ore. *See id.* at 152-53.

loy amply demonstrates his training at the U.S. Department of the Treasury as well as his continuing mastery of a complex series of statutory and regulatory controls.³⁰ These chapters are not light reading. If there is a criticism of this part of the book, it is that Professor Malloy's effort to simplify through the use of acronyms occasionally overwhelms. Thus, one is sometimes confronted with sentences such as:

GTF-US is available for Country Group Q and the PRC, except for "A" designated ECCNs where Country Group Q or the PRC was not the country from which the commodity was originally imported into the United States.³¹

Notwithstanding these occasional difficulties, Professor Malloy manages to make sense out of a regulatory thicket. Students of the area will find particularly useful a recurring hypothetical that appears in the Summary and Conclusions section of each chapter.³² The hypothetical is used to demonstrate how each of the programs operate. The cumulative effect is to highlight the substantial differences of these programs.

The first of the concluding chapters contrasts the extent to which U.S. courts have upheld sanctions with the seemingly increasing hostility of foreign courts when asked to disregard their country's domestic law in favor of enforcing U.S. sanctions in transactions involving foreign subsidiaries of U.S. corporations.³³ Professor Malloy provides ample support for the observation that attempts to impose unilateral U.S. sanctions extraterritorially have been a complete failure.³⁴

In his penultimate chapter, Professor Malloy addresses the question of whether sanctions are "effective."³⁵ He persuasively argues that effectiveness is extraordinarily difficult to assess because sanctions tend to serve a bundle of foreign policy objectives that change during the duration of the sanctions. Moreover, he draws the critical distinction that too often policymakers confuse the instrument of the policy objectives, *i.e.*, sanctions, with the policy itself.³⁶ Thus, he reminds us that

30. *Id.* at xvii.

31. *Id.* at 249-50.

32. *See, e.g., id.* at 340-47.

33. *Id.* at 533-624 (chapter ten).

34. *See id.* at 610-20.

35. *Id.* at 625-72 (chapter eleven).

36. *Id.* at 625-71.

the effectiveness of the policy itself is a much different question from the effectiveness of economic sanctions.³⁷

Instead, Professor Malloy attempts to determine whether economic sanctions have served their purpose of inflicting economic damage. In determining if there are discernible differences, Professor Malloy tests a variety of sanctions programs against publicly available data such as foreign exchange holdings, exports, imports, and gross domestic product for a period of years before and after the implementation of or the lifting of sanctions.³⁸ Based upon this empirical data, Professor Malloy concludes that the most effective sanctions programs are the ones that are the most comprehensive,³⁹ and the least effective programs (most notably Nicaragua) impose a limited range of sanctions lacking intensive coordination or enforcement.⁴⁰ He concludes that the most effective programs may not be ones that are layered in over time but rather are imposed vigorously over a brief period, thereby enhancing the economic dysfunction created by the sanctions.⁴¹ Again, Professor Malloy points to the Iranian sanctions in support of this proposition.⁴²

In a broader context, one may wonder whether U.S. unilateral economic sanctions are not in some sense doomed to failure as the U.S. economy continues to play a smaller role in the world economy. Ironically, as Professor Malloy points out, it is during this period of economic decline that the United States has become the recognized world leader in imposing sanctions.⁴³

Professor Malloy concludes his book with a general plea

37. *Id.* at 626.

38. *Id.* at 635-69.

39. *Id.* at 671. Examples of comprehensive programs would include the sanctions imposed upon the People's Republic of China until May 1971 and the ones imposed against Iran commencing in 1977. *See id.* at 639-44 (discussing U.S. sanctions against China); *id.* at 645-51 (discussing U.S. sanctions against Iran).

40. *Id.* at 671.

41. *See id.* at 646.

42. There exists a rather obvious additional element in the effectiveness of unilateral sanctions—the trading partner of the target. Thus, the full array of economic sanctions imposed upon Iran were magnified by the importance of the United States as a long-term former ally of that country. This situation may be contrasted with long-term U.S. relations with Libya, where little trade predated the imposition of sanctions.

43. ECONOMIC SANCTIONS, *supra* note 4, at 625-71.

that economic sanctions should be imposed only in situations of genuine crisis and not in the Nicaraguan model of a false emergency declared for domestic political purposes.⁴⁴ He then argues in favor of ending the traditional division of implementation responsibility between the U.S. Departments of Commerce and the Treasury.⁴⁵ He points out that the most effective sanctions program, against Iran, was unusual in that it was administered by the Department of the Treasury.⁴⁶

CONCLUSION

One who reads *Economic Sanctions and U.S. Trade* will gain an immense amount of knowledge about the formulation and implementation of foreign policy through the instrument of economic sanctions. Michael Malloy has constructed a work that will maintain him at the forefront of the debate over future uses of economic sanctions.

44. *Id.* at 674-76.

45. *Id.* at 677-82.

46. *Id.* at 679-81.