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THE JURISPRUDENCE OF SANCTIONS UNDER INTERNATIONAL LAW: THE CASE OF RUSSIA

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ABSTRACT

In the name of sanctions under international law, a State can demonstrate its displeasure with any other State's activities. The paper therefore aims to study sanction theory and its jurisprudence in the current scenario and seeks to determine the validity and efficacy of sanctions like those on Russia in international law. An extensive examination of interpretations of the sanction theory as provided by distinguished jurists, legal commentary, international statutes and cases is presented using a doctrinal research method. It is recognised that the premise of the positivists on legal sanctions and their effectiveness in the real world have been substantially read down with the development of international law. The paper concludes that the sanction theory cannot be negated in international law, solely due to some sanctions being not so efficacious or because international legal obligations are breached.

INTRODUCTION

Sanction theory is the contribution of the positivist school of law and further, it can be understood through the ideas and opinions on sanctions, propounded by various positivist thinkers. The Sanction theory finds a conspicuous place in legal positivism which is founded upon three concepts - sovereign, command and sanction. John Austin described sanction as one of the important elements of law. Salmon stated that the term sanction was meant to be an instrument of coercion by which an imperative law is enforced. Such sanctions may sometimes be necessary to deliver justice. Sanctions are a time-honoured tool. Thirty sanctions systems, comprising Fourteen existing systems, have been implemented throughout the post-colonial world, with an emphasis on assisting diplomatic resolution of disputes, nuclear disarmament,

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and mitigating terrorism. Unilateral sanctions imposed by state parties are just an additional category of sanctions, with US sanctions being by far the most severe in this scenario due to its overwhelming influence in the worldwide system. This sanction theory becomes of utmost relevance amidst the Russia-Ukrainian war, where the United States and the United Nations have been imposing different sanctions on Russia.

The efficacy of sanctions on target countries in attaining intended outcomes is mixed. Economic sanctions become an ambiguous mechanism within the international legal order, for which any strong nation can evade accusations of duplicity in the implementation of the ideal of protecting territorial sovereignty, inventing proof to attack a foreign nation. Several legal positivist jurists have regarded international law as not a true law since it is incapable of enforcing sanctions. Their theory would mean that Russia would not be prevented from waging a war on Ukraine due to the absence of binding international legal rules. However, sanctions on target countries, which transcend conventional armed strength and include commercial, fiscal, diplomatic, and cultural sanctions, are growing highly efficacious in our globalized world and international legal order. While some critics point to inadequacies and ineptness in the imposition of forceful sanctions, these deficiencies do not negate the law's validity, rather, they serve as a reminder that international law is a work in progress.

HISTORY OF WAR AND INTERNATIONAL SANCTIONS

Penalties and punishments imposed under the international legal system are known as international sanctions. International Sanctions find their legality in Article 41 of the United Nations Charter[2], under Chapter VII which deals with restoring international peace and security. The history of sanctions dates back to the First World War, wherein sanctions were used by the Allied powers (led by Britain and France) against the German and Ottoman empires; sanctions were imposed, disrupting the supply of goods, energy food and information. The power of economic sanctions in the war was realised when this blockade severely impacted Central Europe and the Middle East, as several thousands died due to hunger and disease.[3]

[2] United Nations Charter, Article 41

[3] Nicholas Mulder, 'The History of Economic Sanctions as a Tool of War' (Yale University Press, 24 February, 2022) <https://yalebooks.yale.edu/2022/02/24/the-history-of-economic-sanctions-as-a-tool-of-war/> accessed 26 May 2022

Economic sanctions began to be seriously considered as an alternative to war after USA President Woodrow Wilson's call for an alternative to armed conflict. In the year 1919, Woodrow Wilson described economic sanctions as *"something more tremendous than war": the threat was "absolute isolation . . . that brings a nation to its senses just as suffocation removes from the individual all inclinations to fight . . . Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside of the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist."*[4] Post World War- I, Article 16 of the Covenant of League of Nations[5] incorporated economic sanctions as a retaliation to war. Further, post the Second World War, sanctions have been incorporated as an enforcement mechanism in the League's successor collective security system- the United Nations.

However, the use of economic sanctions became widespread after the Cold War. The end of the Cold War and the corresponding victory of liberalism paved the way for the liberal exercise of international economic sanctions. After 1945 and before the Cold War, sanctions had been imposed only in 1966 and 1977, by the Security Council against Southern Rhodesia and South Africa respectively[6](between 1945 and 1990). Post the Cold War, the imposition of sanctions became a regular ordeal; for example, sanctions were imposed by the Security Council almost twelve times in the 1990s. One of the major examples was the sanctions imposed by the UN against Iraq from 1990 to 2003 as a result of the first Gulf War in 1991.[7] Further, in modern times, sanctions have also been used as a retaliation to bilateral violations, or other reasons such as against human rights violations, etc.

SANCTIONS AGAINST RUSSIA

Since the case of sanctions against Russia will be studied in great detail, it becomes important to study the sanctions imposed against it before the recent set of sanctions. Sanctions were imposed frequently against the USSR during the Cold War, by the United States of America; The embargo imposed on the Soviet Union was a severe one, while that imposed on East-

[4]Woodrow Wilson, *Woodrow Wilson's Case for the League of Nations*, (Princeton, NJ: Princeton University Press, 1923)
[5] Covenant of League of Nations, Article 16
[6] Jeremy Matan Farrall, *United Nations Sanctions and The Rule of Law*, (2007).
[7]Kimberly Ann Elliott, Gary Clyde Hufbauer and Barbara Oegg, 'Sanctions' (Econlib) <https://www.econlib.org/library/Enc/Sanctions.html> accessed 28 May 2022.

European countries was milder in an attempt to drive a wedge between the USSR and its allies. While the restrictions were momentarily lightened in the early 1970s, they were again tightened in 1979 after the Soviet Union invaded Afghanistan. Further, in 1983, the Ronald Regan government approved the National Security Decision Directive 75[8], that was aimed at limiting the military options of the Soviet Union, through the use of economic sanctions.

While sanctions were imposed against Russia even after the collapse of the Soviet Union in 1991, the next important set of sanctions were imposed in 2014, as a result of Russia's illegal annexation of Crimea and Sevastopol. Russia became the target of various economic and financial sanctions imposed by the USA, the European Union, Canada, Australia and others.[9] Sanctions were also imposed against private entities and persons whose actions were considered to have undermined the territorial sovereignty of Ukraine. The impact of these sanctions included the banning of the export of arms and dual-use goods for military purposes, as well as goods related to oil exploration to Russia. Further sanctions included restricting the long-term finance of Russian Companies and investors. Thus, the sanctions imposed were all-pervasive, affecting various sectors and parties.

THE SANCTION THEORY

Legal theory defines sanction as a punishment which is official in nature, and that such imposition is to enforce legal obligations. Sanctions are regarded as not just a mere defining characteristic but represent the core of a legal order. Accountability is coupled with sanctions, which relates to the repercussions that come from the rationale of the implementation of that accountability. Today, inadequate and improper sanctions are one of the main reasons for shortcomings in the legal systems of international law, municipal law, crime and human rights. Sanctions may be criminal, civil or international. Sanctions are important because it is hard to monitor actual disruptions in civilized society without them. Without sanctions, it is impossible to recognise both a prospective threat and a perpetrator's wrongs. The Sanction theory finds a conspicuous place in legal positivism which is founded upon three concepts - sovereign, command and sanction.

[8] Iikka Korhonen, Heli Simola and Laura Solanko, 'Sanctions, counter-sanctions and Russia− Effects on economy, trade and finance' (2018) 4 BOFIT Policy Brief
[9] ibid.

JOHN AUSTIN

The concept of sanctions is central to Austin's theory of law. According to him, law is fundamentally and solely a framework of habitually followed commands of the sovereign directed to his people, the breach of these would result in the application of penalties or sanctions. The Austinian theory is positivist in nature because it equates command and obedience to law regardless of the moral right of the sovereign to rule.[10] He contends a legal theory that is imperatival, monistic and reductivist. In his work *'Lectures on Jurisprudence'*, he states that a man acts according to his legal obligation not because it is the moral thing to do, but because the law creates a threat of force or sanctions.[11] To put it simply, a command would be a mere request if it does not inflict a sanction. In his view a threat of force or imposition of sanctions on the subject, makes them habituated to obedience, else ways they would be prone to disobeying such legal directives. Another important aspect of Austin was his Command of Sovereign theory. His framework of law works hierarchically in which the sovereign is a supreme political superior who does not need obedience but his subjects are expected to obey all his commands due to the fear of imposition of a threat in the form of sanctions in case of a violation.[12]

HANS KELSON

Hans Kelson's legal theory is imperatival, and monistic, but not a reductivist.[13] Law has a distinct form and fundamental rule. According to Kelson, the law should be regarded as a framework of impersonal commands to authorities to inflict specific repercussions or sanctions on the happening of specific circumstances. In Kelson's words, *"a sanction is a forcible infliction of an evil".* His legal system is both dynamic and coercive. It is inextricably linked to the prescriptively controlled action of a state's coercive machinery.[14] This coercive nature of law is structurally separate from that of morality and custom. In his *Pure Theory of Law,* he held the view that to consider a norm to be legally valid, it necessitates a corresponding

[10] Leslie Green and Thomas Adams, 'Legal Positivism' <https://plato.stanford.edu/entries/legal-positivism/?utm_source=fbia> accessed 28 May 2022.
[11] Frederick Schauer, 'Was Austin Right After All? On the Role of Sanctions in a Theory of Law' (2010) 23 Ratio Juris.
[12] Ibid.
[13] Leslie Green (n 9).
[14]Hans Kelsen, *Essays in Legal and Moral Philosophy* (Springer Netherlands 1973).

sanction, or simply without a sanction, a law is not really a law.[15] Further, the execution of a sanction is considered to be the fulfilment of a legal duty. Kelson in the hierarchy of norms, the highest of all being the *Grundnorm,* from which any acceptable conduct derives its legitimacy. He was against the Austinian view that people obliged law due to fear of sanctions. Law is not regarded as the imposition of one's will on another, but rather standards that specify how people should or ought to behave. Therefore, the view of Kelson is that a norm becomes positive law only with a sanction, but not a threat attached.

H.L.A. HART

In his opinion, a law would be considered as inflicting responsibilities, when the public need for compliance is intense and the social conditioning called to press on individuals who breach or appear to breach is high.[16] For Hart, *"law without sanctions is perfectly conceivable.",* a step ahead of the imperativism of Austin and Kelson.*[17]* In his work *The Concept of Law,* though he recognised the necessity of having a sanction for violation of a legal obligation for crimes, he opines that a legal duty is not cast by virtue of a fear of sanction. As per Hart, the most conspicuous element of the law is that its prevalence implies that some types of behaviour are no longer voluntary, but rather such conduct is in a few ways obligatory.[18] Legal obligations, as per Hart remain to prevail despite being aware that such obligation has been breached and there would be no imposition of sanction. He contended that to demonstrate whether a demand can be regarded as a legal duty, it does not necessitate a sanction. Nevertheless, such a sanction might become necessary to demonstrate a demand which forms the element of a legal system as a legal duty.[19]

SANCTION THEORY IN INTERNATIONAL LAW

[15]Ryan Mitchell, 'International Law as a Coercive Order: Hans Kelsen and the Transformations of Sanction' (2019) 29 Indiana International & Comparative Law Review 245.
[16] 'Hart, Austin, and the Concept of a Legal System: The Primacy of Sanctions' (1975) 84 The Yale Law Journal 584.
[17]Leo Kanowitz, 'The Place of Sanctions in Professor H.L.A. Hart's Concept of Law' (1966) 5 Duquesne Law Review 19.
[18]Ibid.
[19]Ibid.

Sanction theory is the contribution of the positivist school of law and further, it can be understood through the ideas and opinions on sanctions, propounded by various positivist thinkers. John Austin is considered to be the founder of legal positivism, particularly the command theory.[20] The command theory stipulates that regulations are accompanied by an enforcement mechanism, such as physical punishment, fines, or any other mandate. It is important to note that these traditional theories have expanded in its scope over the years, beyond the notion of command imposed by the sovereign, to include sanctions imposed by sovereign entities against each other. This has been further fuelled by the recognition of international law as a law.

Collective Economic Sanctions remained largely dormant until the end of the Cold War, post which they became a widely used tool of coercion exercised by countries against each other.[21] The increased use of economic sanctions naturally attracted the attention of the legal academia[22]. The development of sanction theory in international law can be attributed to the movement that sought to recognize international law as a law. According to the sanction theory in international law, international sanctions are not just legitimate but are also preferred modes of retaliation to and penalization of acts contravening international law.[23]

JURISPRUDENCE OF SANCTIONS IN INTERNATIONAL LAW

Whether international law is a true law is a pertinent question to address to understand the sanction theory in international law. The given paper concedes to international law being a law, and it opines that it is a settled position that international law is a true law. Oppenheim and J.L. Brierly[24] are examples of jurists who have considered international law as a law. Even the modern analytical positivist school has recognized international law by analysing and determining a structural hierarchy in law, international law is considered a soft law. It is also

[20]Ashwin Singh, 'Sanction Theory of Jurisprudence Solution to COVID 19' (2021)
[21]Farshad Ghodoosi, 'The Sanctions Theory: A Frail Paradigm for International Law', HarvIntlLJ <https://harvardilj.org/2015/02/the-sanctions-theory-a-frail-paradigm-for-international-law/> accessed 17 May 2022.
[22]Kimberly Ann Elliott, Gary Clyde Hufbauer and Barbara Oegg, 'Sanctions' (*Econlib*) <https://www.econlib.org/library/Enc/Sanctions.html> accessed 28 May 2022.
[23]Farshad Ghodoosi, 'The Sanctions Theory: A Frail Paradigm for International Law', HarvIntlLJ <https://harvardilj.org/2015/02/the-sanctions-theory-a-frail-paradigm-for-international-law/> accessed 17 May 2022.
[24]Allen Hunter White, 'The Outlook for International Law by J. L. Brierly', UPaLRev <https://www.jstor.org/stable/3309516> accessed 27 May 2022.

believed that the sanction theory of jurisprudence has allowed international law to be brought under the ambit of the positivist school of law, due to the recognition of international sanctions under international law.[25]

The only difference that exists between the sanctions under municipal law and international law is that while the sanctions under the former are included in an organized legal system, sanctions under the latter are a question of practice and do not constitute a formalized legal system.[26]

Mary Ellen O'Connell, the author of 'The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement' (Oxford Univ. Press)[27], adopted a positive approach to international law, concerning international sanctions. According to her, International rules and regulations are always accompanied by potential sanctions, and it is the potential existence of sanctions that is central to it being considered a law, rather than the effectiveness of those sanctions.[28] International sanctions were used as forms of countermeasures, armed measures and judicial measures, which are aimed at remedying non-compliance. Since these are coercive in nature and aimed at deterrence, international sanctions successfully find themselves a place in the sanction theory of jurisprudence.

CLASSIFICATION OF SANCTIONS

Sanctions under international law can be largely classified as (i) state-imposed sanctions and (ii) collective sanctions. The first refers to the sanctions imposed by a victimized state party against the oppressor state, an example being the imposition of economic sanctions by India against China in 2020, as a retaliation to the Galwan Valley conflict. However, the latter type of sanctions concerns the imposition of sanctions by international organizations or states collectively against a particular state in retaliation to that state's internationally wrongful act.

[25]Farshad Ghodoosi, 'The Sanctions Theory: A Frail Paradigm for International Law', HarvIntlLJ <https://harvardilj.org/2015/02/the-sanctions-theory-a-frail-paradigm-for-international-law/> accessed 17 May 2022

[26] J. L. Brierly, 'Sanction' (1931) 17 Transactions Grotius Soc'y 67

[27] Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theo and Practice of Enforcement,* (Oxford University Press, 2008)

[28] Gordon A. Christenson, 'The Jurisprudence of Sanctions in International Law', HumRtsQ <https://www.jstor.org/stable/40389988>

An example of the same, which will be discussed in further detail, is the set of sanctions imposed on Russia in retaliation to the Russian invasion of Ukraine. Further, sanctions can also be classified as military, economic and political; the most common and widely used sanctions post the Cold War being economic sanctions.

ASSUMPTIONS UNDERLYING INTERNATIONAL SANCTIONS

International sanctions, especially economic sanctions are based on the following assumptions *Firstly,* that states are rational entities which compare their domestic affairs and conditions with that of their international and foreign affairs; *Secondly* that the economic sanctions imposed on a state, and its corresponding economic impact negatively affects the sanctioned state and the subsequent reduction in the cross border commerce is considered as penal action; *Thirdly,* the neglect of a country from world trade will result in the sanctioned state ceasing its illegal actions; *Fourthly,* that when the sanctioned state ceases its illegal actions, the sanctions will be lifted off the state; *Fifthly,* that such an economic sanctioning system acts a system of deterrence, i.e. other states are made aware that any acts contravening peace, security, etc. or any other non-compliance with international obligations by states would result in the recession of the multitude of privileges offered by the world community.[29]

SANCTIONS AND THEIR LEGITIMACY

International Law stipulates several legal rules for sanctioning countries disrupting global peace and engaging in armed conflict. The United Nations Charter's Article 41 gives its Security Council the authority to force sanctions. Before taking action as per Article 41, the Security Council should first establish the occurrence of any potential danger to the tranquilly or disorderly conduct, or external aggression in compliance with Article 39 of the Charter Of the United Nations, and then offer suggestions or consider what course of action to take to maintain global peace and security.[30] Besides the prospect of Sanctions imposed by the United States, international law allows Countries to assist themselves by using non-violent actions upon perpetrators. The International Law Commission has described the scope to which such

[29] Daniel W. Drezner, *The Sanctions Paradox: Economic Statecraft And International Relations,* (1999)
[30] Boris Kondoch, 'The Limits of Economic Sanctions under International Law: The Case of Iraq' (2001) 7 Journal of International Peacekeeping 267.

action is authorised through its 2001 Articles on the Responsibility of States for Internationally Wrongful Acts as well as the 2011 Draft Articles on the Responsibility of International Organizations, and also their relevant Opinion pieces, particularly within portions enshrining the guidelines of sanctions.[31] The concept of jus cogens is codified in Article 53 of the Vienna Convention on the Law of Treaties, 1969. Jus cogens principles, including international human rights laws, and its infringement is not justified and it is widely acknowledged how such principles apply to Security Council legal actions initiated under Chapter VII of the Charter of the United Nations.[32] Various legal challenges concerning international sanctions have approached the International Court of Justice in recent years. For example, Iran had submitted two legal claims against the United States. One is regarding sovereign rights in 2016, another is concerning sanctions inflicted after America pulled out from the Joint Comprehensive Plan of Action in 2018. Iran requested in the later lawsuit for the ICJ to urge the US to suspend existing sanctions. With unspecified grounds, the ICJ uses the word sanctions in its whole interim remedies ruling of in the October of 2018, sans clarifying it, yet evidently meaning to apply to those steps against which Iran objects in its petition.[33]

EFFICACY OF SANCTION THEORY IN INTERNATIONAL LAW

The sanction theory as given by the jurists' states two things most importantly on legal validity - one that sanctions are not always necessary when a law is breached in a legal system, and two that efficacy of the law is also not necessary to determine its validity.[34] The efficacy or effectiveness of international law is thus limited according to most legal positivists. Hans Kelson's view was that the legal validity of a norm is generally efficacious. HLA Hart also opined similarly. He states that legal validity would be meaningless if it is not generally efficacious, but sometimes there may be exceptions to this.[35] Lon Fuller was inclined to say that whatever law needs to accomplish in the future to attain its goals is not the same as law altogether.[36] As a result, the majority of jurisprudence scholars regard sanctions as just natural

[31] Ibid.
[32] Ibid.
[33] Lori Fisler Damrosch and David D Caron, 'The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts' (2011) 105 Proceedings of the ASIL Annual Meeting 497.
[34] Brenner M Fissell, 'Sanctions and Efficacy in Analytic Jurisprudence' [2017] Rutgers Law Review 27.
[35] Ibid.
[36] Ibid.

needs apart from the idea of law itself. As with effectiveness, the sanction is no longer regarded as having any legal significance.

Today, in the international realm economic sanctions have become appealing policy weapons for States seeking to demonstrate their displeasure with any other State's activities. This is when the theory of sanctions and its efficacy come into the picture. Although if sanctions are endorsed by a lot of nations together and preferably approved by a UN vote, providing them the utmost global and geopolitical backing and legality, its efficacy is nowhere to be guaranteed. Today, it is maintained that international law functions due to sanctions and that it is indeed law since it has the ability to sanction. Sanctioning should serve as the major foundation and productive factor for international law, rather than merely as a weapon for responses and retaliations as it is permitted by international law.[37] Since it might sanction lawbreakers, sanction theory permits legal experts to openly articulate international law within the positivistic explanation of law.

Sanctions in international law can be considered to be more efficacious if several countries are backing them, thus increasing the power disparity between the imposing countries and the target countries. In this light, it is worth examining whether sanctions imposed under the authority of the United Nations represent the most extensive sanctions that could be imposed.[38] The dispute about the efficacy of UN sanctions stems primarily from the complexity necessary to organise international operations over a specific target. To adopt international proposals, the current international framework necessitates protracted discourse, multiple ratifications, and sophisticated implementation procedures. This is primarily due to the current status within which the legality of foreign intervention is based on the approval of independent nations with a principle of sovereign rights.[39]

According to legal scholars, it must be demonstrated that disobedience to the law has no impact on the states' projected value, perhaps since there are no overt or covert sanctions for a violation of international law, such as non-financial damages, or, if there are, such sanctions are not ever

[37]Farshad Ghodoosi, 'THE SANCTIONS THEORY: A FRAIL PARADIGM FOR INTERNATIONAL LAW?' [2015] Harvard International Law Journal 12.
[38] Hunter Wayne Neary, 'The Efficacy Of Sanctions As An Instrument Of International Law' (Tallinn University Of Technology 2020).
[39] Ibid.

imposed.[40] Based on the treaty, a highly aggressive action like Russia's attack on Ukraine may be susceptible to a variety of sanctions, some of which are not efficacious and others which are highly efficacious. The Dispute Settlement Body of the World Trade Organization DSU , for example, could be regarded to be quite successful because it has its own authority.[41] Nations do not really breach treaties because of the exact rationale that nations do not really break other actionable agreements. Nations are afraid of reprisal from another side or perhaps some form of damage to reputation, or nations are afraid of a lack of coordination.[42] In other words, international treaties may sometimes work even without *pacta sunt servanda.* Some nations' reprisal like sanctions, functions as an inducement for conformity as well, but it is sceptical of the regulatory impact of global image, which nations properly see as an experimental issue. Reputation should be broken down according to the type of treaty. Thus, making it harder to understand why certain conventions have higher adherence than others.[43]

SANCTIONS: THE RUSSIAN-UKRAINIAN WAR

The purpose of this section is to examine the recent sanctions imposed against Russia, in light of the sanction theory, i.e. to determine the effectiveness of the sanctions in deterring the illegal acts of Russia. The recent sanctions imposed in 2022 are attributed to the Russian invasion of Ukraine, which began in the early hours of February 24, 2022. The conflict clearly involves concerning the use of force, and thus, it is apparent that Russia has violated Article 2(4) of the United Nations Charter[44], by using armed force against Ukraine. The prohibition on the use of force in international law is also part of customary law and a jus cogens principle.

Sanctions have been imposed by the European Union, as well as countries such as the United States, Canada, Japan, New Zealand, and Italy. Russia has been subjected to several financial sanctions. which not only apply to the government but also to individuals. Sanctions have also been imposed by several multinational corporations and organizations, under government

[40] Anne van Aaken, 'To Do Away with International Law? Some Limits to "The Limits of International Law"' (2006) 17 European Journal of International Law 289.
[41] Ibid.
[42] David M Golove, 'Leaving Customary International Law Where It Is: Goldsmith and Posner's The Limits of International Law' 34 46.
[43] Anne van (n 39).
[44] United Nations Charter, Article 2(4)

pressure. Furthermore, the recent set of sanctions has been imposed at an unprecedented speed.[45]

A Brief on Sanctions Imposed on Russia in 2022

The key economic sanctions imposed on Russia are-

- Russian banks have been barred from using the Swift payments network, which is run by the Society for Worldwide Financial Telecommunication. The SWIFT system is an information system that enables cross-national money transfers. It serves as a conduit for messages between institutions in different countries.[46]
- The Central Bank of Russia's assets have been frozen by Western countries, preventing the bank from using its $630 billion (£470 billion) in dollar reserves.[47] Furthermore, the assets of Russia's oligarchs, or wealthy business executives, have been frozen. Further financial measures include Russia's exclusion from the Bank of International Settlements, which means it is no longer permitted to use its services.[48] Even financial systems such as the UK's financial system have excluded Russian banks, and deposits made by Russians in UK financial institutions will be limited.
- Several companies that provide consumer services in different countries have also stopped operating in Russia.

Effectiveness of the Sanctions: Are they achieving their intended Purpose?

The purpose of the Sanctions against Russia has been to stop Russian military activity in Ukraine and to deter any further armed conflict. However, the Russian-Ukraine conflict has raised questions as to the effectiveness of sanctions in achieving the purpose of deterring international illegal activity. War Crimes continue to be inflicted by the Russian military against the Ukrainian population. Even the momentary retreat of Russian forces from certain

[45] Phil Ciciora, 'How effective have economic sanctions been against Russia?', (*Illinois News Bureau)* <https://news.illinois.edu/view/6367/739476220> accessed 24 May 2022.
[46] Krishna Veera Vanamali, 'What is the Swift Payment System' (*Business Standard*, 1 March 2022) <https://www.business-standard.com/podcast/finance/what-is-the-swift-payment-system-122030100049_1.html.>accessed 25 May 2022.
[47] 'What sanctions are Being Imposed on Russia over Ukraine Invasion' (*BBC News*, 16 March 2022) <https://www.bbc.com/news/world-europe-60125659.> accessed 25 May 2022.
[48] 'UK Freezes Assets of Abramovich, six other Russian Oligarchs' (*Aljazeera*, 10 March 2022) <https://www.aljazeera.com/news/2022/3/10/uk-freezes-assets-of-abramovich-six-other-russian-oligarchs.> accessed 25 May 2022.

areas in Ukraine has been attributed to military defeat and not economic sanctions. The war has only intensified over time, and sanctions have seemed to have given no immediate relief in assuaging the conflict. Even, if we consider the long-term impact of sanctions, sanctions imposed on Russia after its illegal annexation of Crimea, have not deterred Russia from attacking Ukraine's sovereignty once again.

Limitations of International Sanctions

The issue lies in the fact that sanctions in International Law, do not directly affect the decision makers/ the regime in power, but rather, they negatively affect the population living in the country. The effectiveness of sanctions relies entirely on the assumption that the hardships faced by the masses will motivate states to cease their illegal acts.

The sanction theory in international law is thus based on certain assumptions (as discussed earlier) that may not always hold true. This has been observed specifically in the Russian-Ukraine Crisis, wherein the sanctions imposed have not resulted in the deterrence of illegal acts. However, this does not render the sanction theory inapplicable to international law as the existence of a law cannot be negated in light of its ineffectiveness. The potential existence of sanctions associated with an international rule is what makes the sanction theory applicable.

Conclusion

The Sanction Theory has been contributed by the positivist school of law, a school that had been long averse to recognizing international law as a law. The sanction theory is integral to the positivist school of law; it does not recognize law that is not associated with sanctions. However, this restrictive interpretation of law soon began to change; this can be noticed in the theories of HLA Hart, who recognized behaviour motivated by legal obligation and not just sanctions. Interestingly, in modern times, the positivist school of law itself has been used to bring international sanctions under the ambit of the sanction theory. Mary Ellen O'Connell draws from the theories of various positivist thinkers to justify that it is enough that there exists a potential sanction and that the effectiveness of a sanction is not integral to the positivist school. This view has helped bring international sanctions under the sanction theory.

On examining the recent case of sanctions against Russia, it is found that in sync with the widespread economic sanctioning practice, several countries have imposed economic sanctions, cutting out Russia from International Trade and Commerce, to coerce Russia into ceasing its internationally illegal activity. However, Russia has shown no indication of ceasing its attack, and sanctions seem to have not affected its illegal activity. This raises questions on the applicability of the Sanction theory in International Law.

However, economic sanctions have become popular policy tools in the international arena for states wanting to express their disapproval of the actions of others. Sanctions in international law can be deemed more effective if numerous countries support them, hence increasing the power disparity between the inflicting and target countries. The efficacy of sanctions depends and thus depends on various factors. The sanction theory cannot be negated in international law, only because of the ineffectiveness of some sanctions or because international obligations are not honoured. As explained by Mary Ellen O'Connell, the ineffectiveness of the sanction cannot be used to negate its existence as a law.