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International Law, Security, and Sanctions: A Decolonial Perspective on the Transnational Legal Order of Sanctions

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Grégoire Mallard[1] and Jin Sun[2]

[1]Department of Anthropology and Sociology, Geneva Graduate Institute, Geneva, Switzerland; email: gregoire.mallard@graduateinstitute.ch

[2]Department of Sociology, The Chinese University of Hong Kong, Hong Kong; email: jinsun@cuhk.edu.hk

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Keywords

sanctions, hegemony, colonialism, global legal pluralism, financial governance, humanitarian impact

Abstract

This article reviews recent literature on sanctions from international law, political science, sociology, anthropology, and history. It shows how the literature during the comprehensive sanctions decade (the 1990s), with a largely critical view on sanctions in the age of globalization, was co-opted by the targetization of sanctions in the sanctions miniaturization decade (the 2000s). It then reviews the sanctions literature in sociology and anthropology during the sanctions enforcement decade (the 2010s), addressing the transnational characteristics of sanctions, their infrastructural materiality in the digital economy, and the deputization of private actors to police their implementation. Last, the article reviews the literature in colonial governmentality to encourage sanctions specialists to take a longer-term view of transnational orders of sanctions. This section ends with a call to decolonize sanctions research—or rather, to question the colonial origins of sanctions as an instrument of world making so that a properly decolonial perspective on sanctions can be elaborated.

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1. INTRODUCTION

Thirty years after the debates about comprehensive sanctions in Iraq, which had dramatic effects on the most vulnerable individuals in its population, sanctions still constitute an object of passionate debate among many academic disciplines and fields of scholarship. Their adoption can indeed still be quite dramatic. Today, broad sectoral sanctions, including those on finance and energy sectors, are maintained against a dozen countries. Currently, the United Nations, the United States, the European Union, and others impose sanctions on approximately 30 countries around the world.[1] These are often among the poorest countries with the populations most in need of international aid, especially during recent years marked by pandemics and environmental crises: At the beginning of the COVID-19 outbreak, among the 35 COVID-19 priority countries listed by the United Nations, 55% percent were under various types of sanctions regimes and wider regulations restricting international trade (Blanchet et al. 2021). Legal scholars and political scientists thus continue to debate the question of how to balance concerns for human rights and rule of law principles with the imperative of preserving peace and international security when crimes of aggression, terrorism, or gross violations of human rights call for forceful action by the international community (Andreas & Nadelmann 2008).

Academic debates on sanctions in international law, international relations, and now the social sciences have been linked to real-life transformations of sanction policies and practices in the last 30 years (Biersteker 2014). The UN Security Council Panels of Experts, which are in charge of monitoring UN sanctions regimes, have fueled a demand for academic expertise that can translate into direct policy advisory positions (Niederberger 2018, 2020). In turn, the latter also generally supports the legal and political acceptability of targeted sanctions. Still, although some of these new sanctions are supposedly highly targeted in nature (such as arms embargoes, travel bans, and individual asset freezes), new critical voices in the field of sanctions scholarship have argued that the new machinery of sanctions represents de facto comprehensive regimes of exclusion, which completely cut target countries' access to global financial markets and commodity trade (Mallard et al. 2020). The rise of sanctions as a privileged instrument of foreign policy has therefore shifted the academic conversation between, on one side, legal scholars and political scientists, who want to make targeted sanctions work, and, on the other, sociologists and historians, who raise new questions about the operations of sanctions and tend to favor critical voices that are too-often absent in the broad public discussion (Gordon 1999). Their critical viewpoint is especially prevalent outside of US academia, where the discussion remains heavily skewed toward the broad acceptance of sanctions—and where the only question is how to make them more effective, painful, or biting for the target (Nephew 2017, Zarate 2013).[2]

This article reviews these different strands of literature. It is divided into three parts. The first reviews the literature that was produced during the sanctions decade and the targetization of sanctions that international relations (IR) and international law (IL) sanctions scholars largely inspired. The second reviews the literature in sociology and anthropology of sanctions, which uncovers the transnational characteristics of sanctions (Mallard 2019a) and its infrastructural materiality (Sullivan 2020). It explains the growing centrality of the machinery of sanctions in the

[1] As of mid-2023, 28 countries are currently subject to EU restrictive measures, whereas the US Treasury runs 33 sanctions programs against entities from foreign countries. For details, see the EU Sanctions Map (Eur. Comm. 2017) and the list of Office of Foreign Assets Control sanctions programs (Off. Foreign Assets Control 2023).

[2] In that sense, the view from Geneva, the capital of humanitarian law and host to various UN Rapporteurs on human rights and the negative impact of sanctions (Hoffmann 2024), brings fresh perspectives based on empirically grounded research, exemplified by many scholars cited in this article.

era of globalization, and why its rise may also end globalization as we know it. The last section reviews the literature in history that encourages us to take a longer-term view of sanctions to assess whether our understanding of sanctions should not be placed in the broader context of ending empires, both European and Russian. This section ends with a call to decolonize sanctions research—or rather, it calls on us to question the colonial origins of sanctions as an instrument of world making so that a properly decolonial perspective on sanctions can be elaborated.

2. QUESTIONING THE LEGITIMACY AND EFFECTIVENESS OF SANCTIONS: VIEWS FROM INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Sanctions have become the focus of an abundant literature in IR and IL, especially since the end of the Cold War. This is not surprising, as debates about their legality and effectiveness have accompanied their increasingly widespread use by Western governments.

2.1. The Legitimacy and Legality of Sanctions in Question

Sanctions are not a new instrument. As a technology and a form of knowledge about global flows of commodity and financial instruments, sanctions can be traced back to the end of the Great War and the establishment of the League of Nations (Mulder 2022), the predecessor organization to the United Nations and its Security Council (UNSC). The attraction of sanctions in the twentieth century, marked by President Wilson's Fourteen Points, came from their legitimation as an alternative to war and their broad resonance with an interwar narrative meant to reassure European populations that "never again" would they engage in total warfare as they had done during four years of destructive folly. Still, with the exception of League of Nations sanctions against Italy in 1936 after its invasion of Ethiopia, which marked German thinking on sanctions (Tooze 2008), or UN sanctions against Rhodesia in 1966 and South Africa in 1977, worldwide multilateral sanctions were rarely used until 1989 and the collapse of the Soviet or Russian empire (Moore 2001).

2.1.1. The legality of comprehensive sanctions in and after the Cold War. During the Cold War, state-to-state embargoes and other forms of geographic restrictions to trade, investment, and finance existed, but they were not economic and financial sanctions in the modern sense of being an exceptional action sanctioning a crime against international law by an outcast government in an otherwise fully globalized world. Up until the 1973 Arab oil embargo, unilateral or regional sanctions were implemented mostly by alliances of states like the North Atlantic Treaty Organization (NATO) in the context of an ideological conflict with the Soviet Union—not as a response to a specific action by the Russians—in a world in which economic and financial logics were second to ideological and political determinations. From 1945 until 1989, as the world was divided into these trading blocs, a country that was excluded by one bloc could thus still trade with the other bloc. Therefore, trade restrictions applied by the West, for instance, may have been comprehensive in design, but they never fully sealed off a country.

The end of the Cold War in 1989 changed the situation regarding international sanctions (Farrall 2007). The UNSC demonstrated this by unanimously imposing comprehensive sanctions on Iraq after its invasion of Kuwait in 1990. Although the sanctions against Iraq were driven by the West, there was universal condemnation of the Iraqi act of aggression. However, the impact of these sanctions on the civilian population was devastating, despite gradual exemptions being introduced for food and medical supplies. In fact, some accounts suggest the sanctions even strengthened Saddam Hussein's regime (Gordon 2012). Similar country-specific "comprehensive" sanctions imposed in the 1990s on Haiti (1991–1994) and former Yugoslavia (1992–1996), comparable to those US unilateral ones on Cuba since the 1960s (and until now), also resulted in

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starvation for their populations. The globalization of markets that accompanied the "sanctions decade" (Cortright & Lopez 2000, Doxey 2009) proved too detrimental to Global South civilian populations under sanctions from the seven richest nations (the G7). Comprehensive sanctions on a whole country proved too devastating in a less divided world (Reisman & Stevick 1998). One of the foremost critics argued that "sanctions are inconsistent with the principle of discrimination from just war doctrine" for utilizing the suffering of innocents as a means of persuasion, and "their likelihood of achieving political objectives is low" (Gordon 1999, p. 123). As the machinery of sanctions became radically globalized, it had to change. The public backlash in the 1990s led to a shift in tactics by the international community later in the 2000s to avoid hurting civilians in sanctioned territories.

2.1.2. The legitimacy of targeted sanctions from the 2000s to the 2020s. After September 11, 2001 (9/11), the UNSC moved away from country-wide comprehensive sanctions and toward targeted sanctions, meant to punish and deter violations of human rights and support of terrorism by individuals (Wallensteen & Grusell 2012) and nonstate actors (Biersteker 2009). Targeted sanctions were framed as the most peaceful means to uphold principles of international law, like respect for the human rights of the targeted country's population, or core principles of humanitarian law, like the drawing of clear boundaries between civilian populations and military personnel. It claimed to be the best way to enforce international treaties or customary norms after violations were detected. Not surprisingly, targeted sanctions programs adopted by the United States, the European Union, and the United Nations have proliferated since 9/11: They have included militant nonstate actors involved in terrorist activities; specific branches of governments that provide financial or other assistance to terrorists (Amoore & de Goede 2008); and the financiers who move illicit money across international borders through charities, local banks, and payment systems identified by the Financial Action Task Force (FATF), an advisory group of developed states (Mallard & Niederberger 2021).

From the comprehensive sanctions decade (1989–2001) to the sanctions miniaturization decade (2001–2011), international law scholars have continued to raise key normative and policy contributions, in particular, over (*a*) the legality of sanctions rules from the perspective of human rights law; (*b*) the conflicts of law that emerge when overlapping but contradictory bodies of law (regional or global) develop in the field of sanctions; and (*c*) the possible encroachment of international organizations (IOs) in the domestic fabric of national laws due to the proliferation of sanctions adopted under Chapter 7 of the UN Charter. First, for IL/IR scholars who participated in the creation of the new machinery of sanctions, the post-9/11 UNSC paradigm of targeted sanctions reconciled the UNSC, with better respect for international law and other pillars of the United Nations, namely human rights, which include the right to access vital goods (Biersteker 2009, Biersteker & Eckert 2008). These scholars mostly agree with sanctions practitioners that counterterrorism sanctions buttress the normative standard of hitting those responsible while avoiding costs for innocent civilians (Zarate 2013). Consequently, the academic literature on sanctions has usually spoken of a clear break between the comprehensive sanctions (for example, those on Iraq) and the new targeted sanctions, emphasizing the latter's strong internal coherence with the broader system of UN norms (Biersteker et al. 2016, Nephew 2017). Still, some IL scholars continue to be critical of the operations of multilateral sanctions even after the miniaturization of those sanctions (de Búrca 2010, Halberstam & Stein 2009, Reich 2008). They argue that the decision-making procedures regarding the effective modification and/or termination of sanctions are inadequate with regard to international law standards, due process, and the rights of defense (Reisman & Stevick 1998)—and that they continue to do so in practice even after various reforms of the UN machinery (Weschler 2009). They point to the opacity of the designation criteria used

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by (mostly US) intelligence agencies and the lack of rights for the incriminated parties to know the charges leveled against them, and/or to defend their cases so as to lift the asset freezes and travel bans (Sullivan 2020, Sullivan & de Goede 2013). Defenders of sanctions in IL/IR have argued back that substantial progress in the UNSC listing and delisting procedures has been made since 2006 to respond to these issues, in particular when the UNSC created the Office of the Ombudsperson as a "focal point" to receive delisting requests (Biersteker & Eckert 2008). Still, the debate continues, as critics show that delisting through the Ombudsperson is far from being feasible or transparent in practice (Sullivan & de Goede 2013).

Second, the debate over which normative principles countries should follow regarding sanctions requirements has led to discussions about the appropriateness of monist versus pluralist approaches to international sanctions law (Halberstam 2010). Those rules to enforce international sanctions law and those procedural laws protecting human rights may differ depending on the regional or global sources of the law, leading to conflicts of law. The European courts have been asked to rule on whether UNSC Resolution (UNSCR)-based loose but broad standards should trump more stringent general procedures enshrined in regional treaties that protect the free circulation of assets or economic and social rights (de Búrca 2010, Halberstam & Stein 2009). Legal challenges brought by individuals against their designation have sought to obtain delisting and unfreezing of their assets primarily in European courts, as the EU court system is more open to delisting challenges than those in the United States or China (Sun 2021, 2024). The literature focuses primarily on the cases adjudicated by the European Court of Justice (ECJ). The *Kadi* case led the advocate general of the ECJ to argue in favor of the pluralist approach by insisting that even if designations adopted by the UNSC would be considered lawful by UN and international law standards, the ECJ could still insist on its norms of due process to palliate on a case-by-case basis for the lack of transparency and publicity of those listings (Beaucillon 2014, 2020, 2021). In general, existing literature tends to defend the doctrine of legal pluralism, in line with a general reappraisal of the value of "global legal pluralism" (Berman 2020, Maduro 2003) far beyond scholarship on sanctions law (Benvenisti & Downs 2007, p. 596). Scholars interested in the issue of legal and geopolitical fragmentation (Mallard 2014, Portela 2009) and legal pluralism (Koskenniemi 2006) have started to investigate the possible conflicts of law between human rights and sanctions law in regional orders, as targets of sanctions have increasingly moved from natural persons sanctioned on terrorism charges to corporate entities suspected of providing support to Iranian military and nuclear conglomerates. Inspired by the precedents against "designations associated with efforts to counter terrorism" (Biersteker 2009, p. 105), Iranian banks, for instance, have multiplied legal challenges against their designation at the level of the European General Court and the ECJ. They filed approximately 180 cases at the ECJ alone, excluding those on national levels in EU Member States. The ECJ had to address questions related to "conflicts of law" between regional and global evidentiary standards and due process norms to assess whether to lift the designation of Iranian banks, whether the EU sanctions could be more punishing than UNSCRs, whether the EU sanctions against state legal persons such as state banks conformed to EU human rights norms, and whether the requirement of disclosing reasons of designation was met (J. Sun, G. Mallard & C. Beaucillon, manuscript in preparation). Soon, there might be a new turn with a new wave of judicial challenges hitting the EU courts, brought by Russian oligarchs opposing the freezing of their assets by the European Union, absent any UNSC backing for such designations.

Finally, a third academic debate among IL/constitutional scholars about the legitimacy of post-9/11 global sanctions law concerns the question of whether, and if so how, IOs—especially those with hierarchical relations between states such as the UN Security Council and the veto power it grants to the permanent members of the UNSC (the P5)—should meddle in the domestic fabric of national laws (Scheppele 2007). An important concern about the legitimacy of sanctions is how

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their making has affected the interactions between domestic and international law in light of the principle of sovereign state equality, which is at the core of the UN Charter and the postwar legal order. Violations of this principle were observed in the field of sanctions when, after 9/11, the P5 imposed on all UN Member States a global reform of legislations and criminal codes characterized by the criminalization of new actions, like "assistance to terrorism" in UNSCR 1373 and "assistance to proliferation" in UNSCR 1540. Existing literature has analyzed this shift as an indication of the UNSC becoming a "global legislator" (Krisch 2005, 2014) rather than an inter-executive organ meant to address specific crisis situations through coordinated intergovernmental action. This top-down strategy pressured executive branches of government to impose speedy legislation onto national parliaments when existing domestic laws did not already define such crimes—a rupture in the constitutional balance of power between executive and legislative branches of government at the national level (Pavoni 1999). Because the new UNSC sanctions impose general rules without giving voice to the legislative branches of states (Halberstam & Stein 2009, Scheppele 2007), the process can only lead to "the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl 2006, p. 721). Even more concerning than the delegation of legislative choices to judiciary decisions is the realization by constitutional law scholars that even the judiciary branch has lost jurisdiction over the administrative branches, which have taken the right to act "preemptively" to restrict the freedom of suspected "would-be terrorists" by deciding "administratively" on temporary restrictions on their ability to travel outside their home or use their assets to sustain their lives (Hennette-Vauchez et al. 2018). By legitimizing the broader logic of administrative emergency rule, whereby decisions affecting the well-being and human rights of individuals are taken preventively to prevent catastrophic events (Aradau & Van Munster 2011), the new order of targeted sanctions has participated in the erosion of rule of law principles not only in authoritarian states but also in long-established democracies such as France and other EU Member States (Hennette-Vauchez et al. 2018).

2.2. Assessing the Effectiveness of Sanctions

In parallel to investigating the legality of the new order of sanctions, scholars have debated the intended effectiveness and unintended impacts of sanctions (Baldwin 1985, Hufbauer et al. 1990, Solingen 2012), both of which are major issues for policymakers. Country-specific studies have proliferated to assess the effectiveness of sanctions in forcing states to comply with international law.[3]

2.2.1. Intended consequences of sanctions. The main paradox that emerges in the literature is that although sanctions have proliferated over the past 30 years, they rarely work in the sense of producing stated intended effects (Drezner 1999, 2007; Pape 1997; Solingen 2012; Wood 2008). Scholars provide different explanations for why this may be the case, such as targeted states developing strategies to cope with and adapt to sanctions to minimize their effects (Andreas 2008, p. ix; Cortright & Lopez 2000; Naylor 2008) or unintended humanitarian consequences turning sanctions into collective punishment (Clawson 1993) like that in Iraq (Mueller & Mueller 1999) as well as in Iran, Syria, and Venezuela (Eckert et al. 2017, Mallard et al. 2020, Moret 2015). In this case, the negative humanitarian consequences (Batmanghelidj & Hellman 2018) can end up

[3]As far as UNSC sanctions are concerned, today, the methodology developed by Thomas Biersteker and his colleagues to evaluate the effectiveness of all UNSC sanctions may provide the most elaborate, user-friendly, and deliberative expert-based analysis; see the SanctionsApp (**https://unsanctionsapp.com/pages/about-us**).

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convincing domestic populations that their government is the object of a global conspiracy, which leads them to rally around the flag despite their government's own failings. Too-comprehensive sectoral sanctions may also strengthen rather than undermine the authority of a government and weaken civil society organizations (Biersteker et al. 2016); for instance, cutting the general population off from financial channels limits protesters' ability to raise funds to work for a regime change or a political alternative within the electoral cycle (Batmanghelidj 2023).

Despite the broad scholarly skepticism toward the effectiveness of sanctions, the impact of each country-specific sanctions regime can sometimes conform to the intentions of sanctions designers, although conclusions are often contested and subject to debate (Miller 2014). The response to the question of whether sanctions work to produce their desired effects often depends on the methodology used to assess the impact of sanctions and the political inclination of the evaluator (Biersteker et al. 2016). If we take the example of sanctions against Iran in the 2000s (Pouponneau 2013), some analysts recognize that without the massification of the EU sanctions program, the United States alone could not have convinced the international community to bring the issue of Iran's nuclear behavior to the center of the world's diplomatic attention (Batmanghelidj 2022; Fayazmanesh 2003, 2008; Farzanegan & Batmanghelidj 2023; Giumelli 2013; Nephew 2017). Many scholars agree that the main effects of US and EU financial and sectoral sanctions dramatically diminished Iran's ability to trade with the rest of the world (Esfandiary & Fitzpatrick 2011, p. 149). However, critics argue that comprehensive sanctions may have slowed down the bargaining process by giving the impression to Iranian leaders that "maximum pressure campaigns" were meant to produce only one outcome: regime change (Mousavian 2014). And even practitioners involved in the Iran–US negotiation emphasize the importance of back-channel negotiations during the period through discrete Omani circuits (Burns 2021, Parsi 2017).

The effectiveness of sanctions as an instrument of state policy is also often very uncertain and volatile. One major issue are the doubts as to whether the actions of sanctioning states can control their lifting (Mallard 2019a). For sanctions to be convincing, sanctioning states need to show that should sanctioned states change their conduct, lifting sanctions is within their power. This is not always the case, as sanctions implementation has increasingly been left to private actors, who follow their own logic. For instance, the 2015 Joint Comprehensive Plan of Action lifted UNSC and EU sanctions on Iran, although gradually. In this case, the willingness of European private conglomerates to invest again in Iranian markets depended on their anticipation of whether the United States would commit to the plan: Many picked early signals, which were confirmed by President Trump's decision to reinstate them in 2018, that the US commitment to sanctions lifting was too weak (Batmanghelidj & Rouhi 2021). This experience called into question the ability of sanctioning states to control multilateral lifting. The Western sanctions against Russia have gone a step further, with policymakers and lawyers considering permanently seizing frozen Russian assets for reconstruction purposes (Wintour 2022), which most scholars deem unlawful.

2.2.2. Unintended effects of sanctions. Finally, there is an ongoing debate among scholars and foreign policy analysts about the unintended humanitarian impact of economic sanctions. Research questions the sanctioning state's ability to limit humanitarian harm in sanctioned countries. The debate is, by now, an old one (Cortright & Lopez 2000, p. 274; Drezner 1999, p. 372; Hufbauer et al. 1990, p. 309; Pape 1997; Weiss et al. 1998, p. 320), originating with the sanctions against Iraq and evolving with the adoption of targeted or "smart" sanctions (Biersteker & Eckert 2008, p. 333; Biersteker et al. 2016, p. 405; Brzoska 2003). Scholars argue we cannot assume that sanctions do not interfere with the international trade of vital goods (food or medicine), especially after the US decision to launch "maximum pressure campaigns," against either Iran (Mallard et al. 2020), Venezuela (Kurmanaev & Krauss 2019), Syria (McDowall 2018), or North Korea

(World Food Progr. 2019). The "comprehensivization" of "targeted" sectoral and financial sanctions (Farzanegan et al. 2016) always contributes to the deterioration of humanitarian conditions, along with sanctioned jurisdictions' mismanagement and corruption. For instance, COVID-19 vaccination campaigns in sanctioned territories have encountered barriers to carrying out their mission due to sanctions (Blanchet et al. 2021). "Targeted" sanctions by G7 states have thus had negative humanitarian effects, affecting the international response to global pandemics or natural catastrophes in sanctioned jurisdictions.

Three key factors contribute to this phenomenon. The first factor is sectoral sanctions on areas such as shipping or insurance that affect all forms of international trade (Moret 2015, 2021). The second factor is the lack of consensus among regulators over the scope of sanctions exemptions (Eckert et al. 2017, p. 17). The third factor is the growing reluctance among banks, humanitarian organizations, and medical companies to operate in sanctioned countries due to the risks of US enforcement actions against non-US institutions, especially if they use the US dollar as currency. This last indirect effect is called derisking among development and humanitarian agencies (World Bank 2015). It has increasingly appeared in the wake of US sanctions-enforcement campaigns against global banks that have carried out humanitarian goods exports to high-risk countries like Iran, for which a settlement by accredited correspondent global banks is needed but no longer available, as correspondent banks fear being targeted by US enforcement actions with multi-billion-dollar fines (Debarre 2019, Harrell 2018). These decisions have left many sanctioned jurisdictions "unbanked" (Mallard et al. 2020). Alternative channels outside of Europe, especially through Chinese and Russian banks (Sun 2021), had been used intensively by humanitarian actors operating in Syria and Venezuela but are now cut off and have been mostly abandoned since Russia's aggressive invasion of Ukraine and the resulting blockade of Russia's financial sector by Western banks. Still, the recent adoption of UNSCR 2664 acknowledges the existence of that problem for humanitarian relief and calls on Member States to facilitate granting general humanitarian exemptions to established humanitarian actors like the International Committee of the Red Cross or other organizations that the UNSC recognizes as legitimate in conflict zones. This constitutes a promising trend in the field of humanitarian action.

3. QUESTIONING THE INFRASTRUCTURAL REALITY OF GLOBALIZATION: THE ANTHROPOLOGY AND SOCIOLOGY OF SANCTIONS

As global banks' interpretation of sanctions have increasingly appeared to hold the key to a proper targeted approach to sanctions, sociologists have investigated the impact of overlapping sanctions regimes and broader market regulations on the international banking sector's reluctance to service transactions to so-called high-risk countries for their money-laundering risks.[4]

3.1. The Transnational Legal Recursivity of Sanctions

The process of transnationalization of rulemaking and incorporation of new IOs in the field of sanctions policy has accompanied the privatization of sanctions design and implementation. This deputization has been driven by the increasingly global reach of nominally domestic US and EU sanctions through the threat of market exclusion. Global banks and other multinational

[4]Whereas financial transparency campaigns originated in the context of crusades against the international drug trade in the 1980s, especially from Central America (Alldridge 2008), international pressures to open banking secrecy to public scrutiny in the 1990s targeted the Italian and Russian mafias and their open defiance of international trade rules in Europe (Baumard et al. 2012, p. 36; Mitsilegas & Gilmore 2007).

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companies (MNCs) have acted as deputies of sanctioning states (Farrell & Newman 2019a), expanding their rules beyond their territory. In the field of banking, regulation is thus characterized "by a blurring of the distinctions between public and private actors, states and markets" (Djelic & Sahlin Andersson 2006, p. 9). The emergence of a transnational legal order (TLO) (Halliday 2018; Mallard 2018, 2019a) of sanctions, which includes private actors such as global banks, reflects a broad change in processes of norms creation and rules monitoring in transnational governance (Block-Lieb & Halliday 2017, Djelic & Sahlin Andersson 2006).

A debate exists among TLO theorists over whether the process of rulemaking in the field of sanctions still corresponds to the old model of multilateral rulemaking or exemplifies the new way through which hegemony is now working at the global level. Some sociologists insist on the complementarity between transnational and multilateral regulatory processes by documenting how the TLO of sanctions has become an emergent transnational system of surveillance and monitoring of the financial dealings of individuals, businesses, and states, which has accompanied a sanctions-based multilateral approach to international crises over the last 30 years (Halliday & Carruthers 2007, Halliday & Shaffer 2015, Kentikelenis & Babb 2019, Shaffer 2021, Shaffer & Waibel 2016, Vauchez & de Witte 2013). Since 9/11, new actors have entered the field of international security due to the rising relevance of economic restrictions and financial sanctions for peace and security matters, but without challenging the authority of more established IOs like the UNSC. Few IOs, traditionally with jurisdiction in economic policy to defend the integrity of the global financial system like the FATF (FATF 2012, Serrano & Kenny 2003) or the International Monetary Fund (Mallard 2019a), and transnational networks of legal and financial specialists under their coordination (Halliday et al. 2014, Merry 2011, Morse 2019), have begun to cooperate in the implementation of sanctions policies.[5] These IOs prescribe, for instance, how all UN Member States shall exercise "vigilance" and "restraint" regarding the transit through their territories of goods and financial assets "directly associated with or providing support for Iran's proliferation-related activities" following UNSCR 1737. In parallel, multiple Panels of Experts (Mitchell 2002) were created to assist the UNSC in monitoring compliance at multilateral and domestic levels (Mallard & Niederberger 2021), using indicators and the mobilization of expertise or engaging in investigations to gather primary data about compliance with recommended rules.

In contrast, other scholars insist that the TLO of sanctions has reconfigured how hegemony functions today in global financial capitalism with the emergence of "viral governance" (Mallard & Sun 2022). US sanctions law, so they argue, works like a virus by requiring infected corporate giants operating worldwide to act as if they were US legal persons, and therefore to always follow US law over other rules. US sanctions law enforcement agencies—especially the US Treasury's Office of Foreign Assets Control, the Department of Justice, or the New York State Department of Financial Services—are key operators of such viral governance. Once they target an MNC for alleged violations of US sanctions, the targeted global bank or MNC not only has to submit to costly restructuring programs to reinforce their detection and monitoring systems internally but also is forced to fully participate in the logic of "surveillance capitalism" (Pasquale 2015, Zuboff 2019), which requires the MNC to send information about its clients to US enforcement authorities, creating more targets of US sanctions enforcement. As a result, corporate giants operating worldwide must act as if they were US legal persons (Farrell & Newman 2019b, Garrett 2016, Verdier 2020) and, therefore, always follow US law over other rules. Since the United States

[5] Calls for financial transparency have indeed multiplied since the International Monetary Fund, the Word Bank, the Organisation for Economic Co-operation and Development, and other international financial institutions coalesced around an agenda aimed at strengthening the "rule of law" through "transparency" and anti-corruption initiatives in the 1990s (Mehrpouya & Djelic 2015).

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enforced actions against European and then Chinese MNCs for alleged noncompliance of US sanctions against Iran, Yemen, or other states under US sanctions, many MNCs have been acting as if US law trumps local, European, or international law (Verdier 2019). This is true even when the latter plan penalties specifically against MNCs that privilege foreign law over the domestic law of the jurisdiction in which their activity is located—as the European Union did with its "blocking statutes," first enacted in the 1990s and reaffirmed in the late 2010s.[6] Because local firms in peripheral states can also be under the watch of local enforcement agencies, themselves pressured by US enforcement agencies to apply maximum pressure campaigns, these processes have combined to create a new US regulatory hegemony (Mallard & Sun 2022) grounded on US financial hegemony rather than on multilateral bodies.

Viral governance presents key normative questions for legal or sociological theorists (Pasquale 2015, Zuboff 2019). Whereas the pioneers of TLO theory associate the creation of TLOs with a strengthening of the rule of law and multilateralism at the global level, more critical scholars claim the TLO of sanctions departs from traditional multilateral models of lawmaking and even challenges the rule of law domestically. By encouraging targeted companies suspected of lax sanctions implementation to settle out of court following US law, US sanctions authorities are depriving such companies of the opportunity to appeal the decisions of US agencies (Pierucci 2019), despite the US Supreme Court often reaffirming the unconstitutionality of extraterritorial claims in US law (Verdier 2019). In Europe, this trend is widely perceived as a departure from the rule of law rather than a strengthening of it (Gauvain et al. 2019, Laïdi 2019).

3.2. The Infrastructural Sociality of Sanctions

The emergence of viral governance in the field of sanctions would not have been possible if not for the new material legal infrastructures of markets that have been put in place since the 2000s with the digitalization of global finance. As money flows between global banks have turned digital, sanctions implementation and enforcement practices have changed: Domestic and transnational public regulators have adapted to the changing materiality of money when issuing new banking regulations and sanctions guidance. The materiality of money in general—and the digitalization of money that has occurred since the 2000s—plays a key role in the operation of the global "financial integrity" regime (de Goede 2012). The existence and practice of groups such as the Egmont Group, to which global banks report suspicious financial transactions and which pool resources (de Goede et al. 2016), would not be self-evident without the digitalization of financial data. Only then can traces of suspicious transactions be easily and almost immediately transferrable from global banking institutions to domestic institutions and international regulators to check for matches between the transaction and a list privately sold by operators in the surveillance industry, and then back to global banks (Amicelle 2011). A whole market of sanctions expertise has emerged, with private companies such as World-Check proactively identifying targets on their own and selling these listings to global banks, thus creating infrastructure that partakes in a broader system of "algorithmic governance" (de Goede et al. 2016).

Anthropologists and scholars of law and sanctions have thus started to develop new theoretical and empirical perspectives on TLO of sanctions, focusing on the materiality of sanctions practice at the micro level. Kingsbury & Maisley (2021) and Kingsbury & Merry (2018) refer to "regulatory infrastructures" to emphasize the physical and virtual flow of goods, services, people, money, data, information, practices, and ideas in TLOs. Anthropological research on the changing materiality

[6]This classic conflict of law is not much discussed in the literature, nor is it being challenged in court by the global banks or multinational companies that face contradictory commands from US and home authorities.

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of money and its relation to sanctions has led to exciting crossovers between TLO scholarship and the rise of "algorithmic governance" (Johns 2016, Noble 2018, Pasquale 2015, Ziewitz 2016). Compliance officers adopt monitoring technologies (ACAMS 2016) and calibrate their algorithmic models to global money flows to meet US banking requirements. Ethnographic research on banking compliance shows that the material systems of surveillance bend reviews toward calculative and algorithmic monitoring, where the ethics of care has little role (Maurer 2005). As a result of US sanctions enforcement actions, the back offices of global banks (Mallard & Hanson 2021, Riles 2010) have become highly judicialized, especially for those that have agreed to host monitors after signing Deferred Prosecution Agreements with the US Department of Justice. In reaction, Iranian citizens have revived cash transfers in a gift exchange economy due to the constraints imposed by sanctions, which affect the ability of Iran's Central Bank to fight hyperinflation (Yildiz 2020, 2021). Overall, these studies highlight the materiality of sanctions practices at the micro level and how regulatory infrastructures shape global regulation of trade and finance. These studies reveal the complex nature of sanctions in TLOs and their enormous impact on individuals and states.

4. QUESTIONING THE ORIGINS OF MODERN SANCTIONS: THE IMPORTANCE OF COLONIAL TRANSNATIONAL LEGAL ORDERS

Sociologists and anthropologists have highlighted the consubstantial association between the rise of a TLO of sanctions in which MNCs are deputized by a hegemonic US power and the digitalization of finance and the economy more generally. Historical research, in turn, can shed light on long-term historical trends associated with the deputization of sanctions implementation to MNCs by regulatory hegemons, which show that this pattern is more ancient than some sociologists might believe.

4.1. Sanctions as a Colonial World-Ordering Instrument

Economic and political historians have long talked about sanctions as economic warfare, or "war by other means" (Blackwill & Harris 2016). Sanctions have been used throughout history as a form of economic warfare to weaken the opponent's lifeblood and accrue military strength. The use of sanctions dates back to the Peloponnesian War more than 2,500 years ago, when Greece imposed embargoes on Sparta (Allison 2017, Thucydides 1972), and has repeated in wars since then (Chickering & Förster 2000, Knight 2013). The wars between Britain and France (1793–1815) are an example of such sanctions (Aaslestad 2022, Marzagalli 2022). Britain sought to cut off French access to its markets by imposing a blockade on French ports; in response, France attempted to counter British naval power by launching its own blockade of Britain's ports under the Continental System (1803–1815) through a large-scale embargo administrated by Napoleonic France (Aaslestad & Joor 2015).

Colonialism played a significant role in reshaping the use of sanctions. Chartered companies operated in a "gift exchange" economy between the metropolis and the "colonial subjects," in which the latter were obliged to "give" part of their labor time in exchange for receiving the "gift of civilization" (Mallard 2019b). Chartered companies, which operated as quasi-governmental entities, with their own military forces, judicial systems, and powers of taxation (Prak & van Zanden 2022), played a key role in both forms of peacetime colonial sanctions. Administrative sanctions targeted colonial subjects if the latter failed to provide free forced labor to concessionary companies, and the policing of boundaries between zones of monopoly extraction and preferential trade were agreed upon among European colonial empires, as indicated by the Treaty of Tordesillas in 1494, the Westphalian treaties in 1648, and the Berlin Congress of 1884–1885. The twin goals of

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promoting a capitalist world system and disciplining the economic productivity of colonies and colonial subjects were established under colonial governmentality (Foucault 2010, Saada 2003). These companies had the authority to determine the rights and duties of the colonial subjects, as well as to police them and apply sanctions when they failed to comply with such imperial law (Mallard 2019b). These tools maximized revenue generation for European consumers of new commodities, as well as opportunities for high returns for Europe's financial investors interested in colonial markets. Sanctions against African populations who failed to comply with production quotas were atrocious (including internment camps, amputations, and death by hunger). They do not compare in atrocity with the more subtle freedom-limiting measures decided by the Interior or Homeland Affairs ministries in post-9/11 Europe (Hennette-Vauchez et al. 2018). But with this evident caveat, some parallel could be drawn between the imperial and contemporary TLOs of sanctions as far as the deputization of sanctions to semiprivate quasi-governmental actors is concerned.

This narrative decenters the history of the invention of modern sanctions that takes as its point of departure Wilson's Fourteen Points and the establishment of the League of Nations, in which sanctions were presented as a substitute rather than a complement to war in Europe (Clavin 2013, Mulder 2022). Sanctions were indeed essential tools of colonial governmentality (Davis & Engerman 2006). The British Empire and the French Third Republic (Steinmetz 2023) used chartered companies to police and sanction international trade not only in Africa but also in Asia. The British East India Company established trading posts throughout India and China through its networks of employees (Erikson 2014), controlling much of the region's commerce and political rules, which were changed by force when the latter clashed with imperial demands (Carruthers 1999, Flandreau 2013, Flandreau & Florès 2012). The British East India Company played a significant role in the opium trade in China, resulting in the Opium Wars and the Treaty of Nanking, which granted Britain the most favored nation status in terms of tariffs. Britons also dominated senior posts at Chinese customs offices, and leading British multinational banks administered rail infrastructure investments and war reparations. Hence, colonial rulers frequently alternated between regulatory roles and positions within concessionary companies, much like how today's public officials in sanctions enforcement and compliance executives in global banks, such as HSBC, interchange roles (Mallard & Sun 2022). A colonial genealogy (Go 2008) of sanctions is thus essential to uncover as global banks, insurance companies, and maritime companies have played historical roles in implementing sanctions. Postcolonial legacies may also explain why African states were reluctant to sanction Russia even after its second aggression toward Ukraine in 2022. They preferred not to choose sides and expressed criticism of Western sanctions, when comprehensive sanctions adopted by G7 countries against Russia blocked $58 billion worth of sanctioned oligarch assets and $300 billion of sovereign assets (Atl. Counc. 2023).

4.2. Inner Contradictions in Emerging Sanctioning Orders

The analysis of contemporary sanctions by IR and IL specialists often ignores the historical context and its impact on the present and future of sanctions. However, historical research on imperial political economies can help explain the inner contradictions of the current TLO of sanctions and predict why it may come to an end, similar to the colonial system of sanctions that collapsed during the early Cold War. The shifting trends in sanctions practice in the 2010s and 2020s resemble the waning of colonial powers' authority over MNCs during the Cold War, when the United States became the capitalist ruler of global markets (Mallard & Sgard 2016).

In the Cold War, especially in the 1950s and 1960s, MNCs accompanied the struggle for decolonization, because they understood that the market niches they once secured as deputies of

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colonial powers were less beneficial than the profits they could make by obtaining market shares and new, highly developed technology in the United States (Aron 1957). MNCs thus faced inner contradictions as they hesitated between, first, defending trading restrictions that protected their interests in extractive activities in colonies but limited their competitiveness, and second, authorizing the dismantling of imperial preferences and getting new technologies from the West's new hegemon. At some point, the world system shifted: Colonial-style sanctions were abandoned, and in their place, US export controls, especially in high-end technologies (Krige 2006, Mallard 2014), became the source of MNCs' wealth. This reoriented MNCs from promoters of colonial ambitions to advocates of decolonization and EU market construction (Mallard 2019a). US threats of financial sanctions even against its NATO allies were key to changing the calculation of MNCs, as exemplified by US sanctions on French and British imperial states in the 1956 Suez Crisis, when President Eisenhower threatened the British Prime Minister with the abandonment of US financial support to the declining British economy (Adamthwaite 1988, Kunz 1991).

Today, MNCs face a difficult choice between maintaining joint operations in the United States and China or obeying US demands to disengage from Chinese markets (Demarais 2022). The United States and its allies pursued the revival of Cold War–style sanctions in various forms. Financial sanctions were applied in the case of Huawei (Mallard & Sun 2022). Export controls on high-tech goods and military equipment were resumed against Chinese firms in a manner reminiscent of the approach of the Coordinating Committee for Multilateral Export Controls established in Paris after World War II to restrict trade against the Soviet Bloc (Mastanduno 1992).[7] The new US import and export controls with respect to China put MNCs in a difficult position. The economic, investment, and trade relations between China and the United States are more complex than the US–Soviet ones during the Cold War. Despite different ideological, economic, and political settings, like those of Athens and Sparta (Allison 2017), they are important trading and economic partners; thus, any negative impact of US sanctions on Chinese industries would harm US interests by affecting American exports and US-tied global value chains. The same also applies to European Union–Russia economic ties (Connolly 2018). Thus, heavy tensions between MNCs and Western governments may soon emerge, especially if the European Union and the United States purport to move beyond temporary freezes of assets and halts in foreign investment and start disrupting global value chains permanently, transferring forfeited funds to allies like Ukraine for the purpose of their reconstruction. The latter reconfiguration of global trade through sanctions would follow a logic reminiscent of the reparations imposed on Germany in the 1919 Treaty of Versailles: It could potentially expose a clash of interests and values between Western states and European MNCs, whose assets in Russia and Russian-backing countries like Iran could be seized in retaliation. Historical research is thus vital to understanding the internal contradictions within the TLO of sanctions and their potential impact on the future of capitalism.

5. CONCLUSION

Today, sanctions research is a lively field of scholarship, addressing all aspects of sanctions as a tool of policy, a practice of governance subject to international law standards, and a historical manifestation of hegemonic expansion. In this review, we point toward trends in sanctions research that

[7]The top-down operations in the Coordinating Committee for Multilateral Export Controls made it special compared to other export control regimes set up in the Cold War. The latter operated generally in a horizontal manner and on a voluntary basis, like the Nuclear Suppliers Group, revived after years of dormancy when the Indian government proceeded to conduct a "peaceful" nuclear test in 1974 (Mallard 2014).

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highlight the underlying power dynamics at play in recent sanctions resolutions in the UNSC, as well as in complementary (or autonomous) national and regional sanctions adopted by the United States and/or European Union against Global South countries that were once colonized by Western powers. In this context, it is necessary for sanctions researchers to keep some distance from the demands of the political powers that be: the UNSC, the United States, and the European Union—and China tomorrow. All of these bodies solicit researchers working on sanctions to advise them on how sanctions can be improved to "work better"—by which they often mean "to have more impactful negative consequences for sanctioned economies." The topic of sanctions, and sanctions effectiveness, being highly sensitive, government and multilateral bodies are less interested in hearing the lessons drawn by the kind of sociolegal research highlighted in this review, which seeks to place the history of sanctions in a longer historical perspective and foreground a more critical perspective on sanctions. Not succumbing to the sirens of power means maintaining that distance and calling instead on researchers to decolonize sanctions research by taking into consideration the colonial legacies that exist between the past and present—and working to avoid replicating such biases and even fighting against their tacit reproduction.

Decolonizing sanctions research involves questioning these power structures and examining the ways in which they contribute to the politicization of sanctions and their negative humanitarian impact. It requires recognizing the historical context in which sanctions were developed and acknowledging that the current global order is still shaped by colonial-era legacies of exploitation, subjugation, and marginalization (Bedjaoui 1978). To decolonize sanctions research, we must challenge the assumption that sanctions are a neutral tool for maintaining international peace and security. This viewpoint may mean criticizing the increasing use of both UNSC and unilateral sanctions, particularly when they risk violating international humanitarian law, and when they perpetuate and reinforce colonial-era power structures and economic and political inequality. Decolonizing sanctions research also involves centering the perspectives and experiences of those who are most affected by sanctions, including local communities and civil society organizations. That is why progressive normative perspectives on sanctions, especially those inspired by global legal pluralism, are so important. Pluralist approaches allow analysts and critics to assess when, and how, sanctions are legitimate, by multiplying the viewpoints, taking into consideration that a plurality of legal perspectives can apply to the same issue, for which the decision to privilege one over others must be the conclusion, rather than the start, of a process of open deliberation. In practical terms, this means advocating for greater accountability and deliberation of the Western and UNSC decisions for imposing sanctions, dictated neither by a simplistic anti-Western attitude nor by a moral Western outcry that ignores the historical situatedness of Western moral standards.

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