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CHECKING THE PRESIDENT’S SANCTIONING POWER IN THE NEW AGE OF ECONOMIC WARFARE

*Jaden McQuivey*¹

I. INTRODUCTION

On February 24, 2022, Russia snapped the long-standing tension with Ukraine through a full-scale invasion. The United States immediately retaliated against Russia by imposing its first round of sanctions, self-proclaimed by the White House as “unprecedented” and “devastating.”² These sanctions involved blacklisting Russia’s top banks, cutting imports and exports, and freezing \$300 billion of Russian assets in allied countries. These measures targeted Russia’s economy and, according to the Secretary of the Treasury, intended to deliver “swift and severe consequences to the Kremlin.”³ United States sanctions, along with similar measures imposed by other

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2 Fact sheet: Joined by Allies and Partners, the United States imposes devastating costs on Russia, The White House (2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/fact-sheet-joined-by-allies-and-partners-the-united-states-imposes-devastating-costs-on-russia/>.

3 *U.S. Treasury announces unprecedented & expansive sanctions against Russia, imposing swift and severe economic costs* (2022) U.S. Department of the Treasury. <https://home.treasury.gov/news/press-releases/jy0608>.

countries, quickly produced detrimental economic consequences.⁴ In just a few months⁵, Western sanctions amplified inflation in Russia; decreased the ruble exchange rate; and halved Russia's gains from energy, which constitute the majority of the country's revenue.⁶ From this perspective, US sanctions were successful and fulfilled their designed purpose.

However, attacking Russia's economy would also inevitably affect its citizens—not only President Vladimir Putin and the Russian government. But, the effects of sanctions spread further than the United States might have predicted, and many unintended outcomes quickly surfaced for neighboring countries, Russian citizens, and many businesses. By summer 2022, nearly 1,000 American companies restricted operations in Russia. Curtailing the operations of these companies, which constituted a large portion of Russia's GDP, generated a \$600 billion loss for the country⁷ and, more significantly, triggered financial downturn and massive layoffs for the five million Russian employees who work for these companies. As a result, unemployment rates in Moscow skyrocketed while consumer spending plummeted. Local businesses lost money, and more than half a million citizens fled the country.⁸ In large part due to American sanctions, neighboring European Union (EU) countries also suffered drastically. Europe saw its highest inflation rates ever⁹ and watched its energy crisis worsen. Although Russia's behavior reasonably justified a strict response from the United States, this example serves as a case study of the major unintended consequences United States sanctions can have on the world.

4 Sonnenfeld, J. *et al.* (2022) *Business retreats and sanctions are crippling the Russian economy*, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4167193.

5 *Id.*

6 *Id.*

7 Sonnenfeld, J. *et al.*, *Supra* note 4.

8 *Id.*

9 *European Union inflation rate*. Available at: https://ycharts.com/indicators/europe_inflation_rate.

Considering the strength of United States sanctions, it is shocking that just one person—the President—has total control over them.¹⁰ With a GDP of \$23 trillion making it the largest economy in the world,¹¹ the United States, at the simple nod of its President, can unleash economic warfare with consequences as lethal as its military. Although traditional warfare is truly incomparable in tragedy, magnitude, and impact,¹² unilateral sanctions programs can, over time, produce effects that stretch far beyond the fiscal sector and can only be aptly described as warlike. Sanctions can ruin a country for decades by devastating public health, welfare, living conditions, mortality rate, and overall quality of life.¹³ These effects will be outlined later with several case studies from United States history. Because of the expansive and warlike effects of economic sanctions, this paper will argue that unilateral sanctions should be legally considered a legitimate form of economic warfare, not merely a tool of negotiation or diplomacy.

Although the president's authority over sanctions is firmly established by over a century of Supreme Court holdings, the Constitution's text, and historical precedent as old as the nation itself, this authority morphed into virtually unlimited sanctioning power¹⁴ through a number of 18th-century congressional acts, decisions from the Court, and power abuse by United States presidents. This

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- 10 Due to the Trading With the Enemy Act (1917) and International Emergency Economic Powers Act (1977).
 - 11 The top 25 economies in the world Investopedia, <https://www.investopedia.com/insights/worlds-top-economies/> (last visited Jan 26, 2023).
 - 12 This paper does not attempt to downsize the effects of traditional warfare; that would be completely inappropriate and naive. Although even the strongest unilateral sanctions programs may not exact the death and destruction produced from history's wars, certainly, at the very least, their effects merit a legal classification that is closer to war than diplomacy.
 - 13 Amy Howlett, Getting "Smart": Crafting Economic Sanctions That Respect All Human Rights, 73 *Fordham L. Rev.* 1199 (2004). Available at: <https://ir.lawnet.fordham.edu/flr/vol73/iss3/15>.
 - 14 Benjamin Coates, A century of sanctions Origins (2019), https://origins.osu.edu/article/economic-sanctions-history-trump-global?language_content_entity=en.

paper agrees with presidential deference in the realm of sanctions, but does not condone unchecked presidential sanctioning power. The major unintended consequences of sanctions, coupled with the immense economic power of the United States, gives overwhelming justification to impose a legislative check on unilateral sanctions. This can best be accomplished by amending the International Emergency Economic Powers Act (IEEPA) to mimic the congressional checks on wartime powers provided in the War Powers Resolution (WPR) of 1973, namely by creating a 60-day window for Congress to approve sanctions issued by the President.

II. BACKGROUND

A. Unilateral Sanctions

Unilateral sanctions are coercive economic restrictions or punishments imposed by one country on another.¹⁵ These measures target an entire country, not only the belligerent government. The goal is usually to change the policies of another state, punish actions deemed as unacceptable, or symbolically demonstrate opposition.¹⁶ The United States is notorious for its aggressive and narrow-sighted use of unilateral sanctions, which commonly include “embargoes... export and import limitations, asset freezes, tariff increases...visa denials...and credit, financing, and investment prohibitions.”¹⁷ These kinds of sanctions heavily strain (and if the United States is involved, destroy) the targeted country’s economy, public health, and infrastructure while often failing to gain compliance with the government under siege. In contrast, so-called “smart sanctions” directly pressure national policy-makers and aim to avoid causing

15 Richard N. Haass, *Sanctioning madness*, 76 *Foreign Affairs* 74 (1997), https://www.jstor.org/stable/20048277?seq=6#metadata_info_tab_contents.

16 Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 *Cal. L. Rev.* 1159 (1987). <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2598&context=facpub>.

17 Richard N. Haass, *Sanctioning madness*, 76 *Foreign Affairs* 74 (1997), https://www.jstor.org/stable/20048277?seq=6#metadata_info_tab_contents.

widespread humanitarian damage.¹⁸ Moreover, unilateral sanctions are especially dangerous because of their unpredictable side effects. Regardless of presidential motive, the far-reaching impact of sanctions is difficult to foresee. Even righteous intentions are insufficient to control the effects.

B. Presidential Authority to Sanction

1) Constitution

From the beginning, the United States' power to levy economic sanctions has fallen under the wide, legal umbrella of foreign policy and diplomacy. Although the Constitution grants power over foreign relations to both the legislative and executive branches, over time, the authority to sanction transitioned nearly exclusively to the president. One reason for this is the Constitution's brevity on the subject. Although a few shared powers are well-defined in this document, the president is granted many others that the Constitution describes only vaguely.

In Article II Section 1, the Constitution gives the president "executive power" and delegates him as "Commander-in-Chief."¹⁹ In Article II Section 2, the president receives power to "make Treaties," and "appoint Ambassadors" and "other public Ministers and Consuls."²⁰ The Constitution's terse declaration of foreign presidential powers caused "the authority of a President [to be] largely determined by the President himself."²¹ This means presidents can choose between two camps: to either only exercise power expressly granted, or exercise power until expressly restricted. Thus, the Con-

18 Gordon, J. (2011) *Smart sanctions revisited: Ethics & international affairs*, Cambridge Core. Cambridge University Press. <https://www.cambridge.org/core/journals/ethics-and-international-affairs/article/abs/smart-sanctions-revisited/14E85413C04EE483370E6A23CB7C7225>.

19 U.S. Const. art. II § 1.

20 U.S. Const. art. II § 2.

21 Halchin, L.E. (2021) *National emergency powers - federation of American scientists*, Congressional Research Service. Available at: https://sgp.fas.org/crs/natsec/98-505.pdf?mod=article_inline.

stitution allows the President to define his own power, which means that “emergency powers are not solely derived from legal sources.”²²

2) Historical Precedent

In 1793, President George Washington tested his ambiguous foreign relations powers.²³ Washington issued a Neutrality Proclamation in response to France’s declaration of war on Great Britain, which included strict rules about international commerce that resembled legislation. The modern era would view these measures as economic sanctions. Later that year, Congress codified Washington’s regulations, thus establishing the precedent of presidential deference in foreign policy. This precedent still stands today.

In 1936, the Supreme Court spoke definitively regarding sanctions in *United States v. Curtiss-Wright Export Corporation*.²⁴ The Court’s 7-1 majority firmly held that “the President is the sole organ of the nation in its external relations.” This case solidified the growing precedent that the judicial and legislative branches would give extreme deference to the executive branch’s use of international powers. For decades afterwards, presidents primarily donned this mantle of power with selectivity and prudence. However, World War I (WWI) marked the beginning of an era of “sanctioning madness” for the United States, which is in full force today.

3) Trading With the Enemy Act

In 1917, during the height of WWI, Congress passed the Trading With the Enemy Act (TWEA). This act allowed the president to “investigate, regulate, or prohibit”²⁵ any foreign financial transaction during times of war; practically, this gave the president unchecked power to sanction during wartime. A suspicious amendment several years later²⁶ expanded this power to also apply during times of

22 Halchin, *Supra* note 21.

23 Foreign relations powers granted by the Constitution.

24 *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936).

25 50 U.S.C. §§ 4301-4341 (1917) - “*Trading With the Enemy*”.

26 12 U.S. Code § 227 - “*Banking Act of 1933*”.

peace, as long as the country was in a state of national emergency, which the president could declare for any reason.

4) National Emergencies & Emergency Powers

Declaring a national emergency is the primary way that presidents have justified imposing economic sanctions on other countries. When the United States is in a state of national emergency, the President can draw upon special emergency powers,²⁷ including those outlined in TWEA. Invoking these powers would normally be unconstitutional, but their conditioned availability enables presidents to address major crises adequately. However, presidents have not always acted prudently in these situations.

Following TWEA, significant events such as both World Wars; the Korean, Vietnam, and Cold Wars; and the Great Depression led Congress to cede an aggregate of 470 special emergency powers to the President.²⁸ Since Presidents ensured the United States was in a constant state of emergency²⁹ throughout the twentieth century, Congress passed the National Emergencies Act (NEA) in 1976 to suppress the president's ability to manipulate emergency powers. Before then, the President could declare emergencies with limitless scope and duration. Congress was also unable to overturn a national emergency, thus allowing the President to impose sanctions without check.³⁰ NEA ended every state of national emergency, quartered the

27 Brennan Center, *A guide to emergency powers and their use*, Brennan Center for Justice (2023), <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

28 Senate Historical Office, Senate stories: Reasserting checks and balances: The National Emergencies Act of 1976 U.S. Senate: Reasserting Checks and Balances: The National Emergencies Act of 1976 (2021), <https://www.senate.gov/artandhistory/senate-stories/reasserting-checks-and-balances.htm>.

29 *Id.*

30 50 U.S.C. §§ 1701-1708 (1977) - "*International Emergency Economic Powers*".

President's emergency powers,³¹ and allowed for a legislative veto (accomplished via a concurrent resolution) to override the President's declaration of any national emergency. Instead of automatically carrying over for indefinite periods of time, national emergencies also needed to be renewed annually by the President.

5) International Emergency Economic Powers Act (IEEPA)

The following year, Congress passed the International Emergency Economic Powers Act (IEEPA) in conjunction with NEA. Although IEEPA reaffirmed the President's "sweeping powers to impose economic sanctions on persons and entities,"³² (guaranteed by TWEA³³) this act sought to amend TWEA by adding more restrictions to national emergencies. Congress declared that in order to invoke the powers of IEEPA, the President must declare a national emergency in response to an "unusual and extraordinary threat... to the national security, foreign policy, or economy of the United States" originating "in whole or substantial part outside the United States."³⁴ Congress further clarified that "emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems."³⁵

Examples of valid national emergencies declared according to these criteria involved major international issues such as the Gulf

31 Brennan Center, *A guide to emergency powers and their use*, Brennan Center for Justice (2023), <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

32 Brennan Center, *Checking the president's sanctions powers*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/policy-solutions/checking-presidents-sanctions-powers>.

33 IEEPA retained key language from TWEA's text, namely by reaffirming the President's power to "investigate, regulate, or prohibit" economic matters related to foreign countries.

34 See case cited Supra note 30.

35 House, *Trading with the Enemy Act Reform Legislation*, p. 11

War, nuclear threats from North Korea,³⁶ and foreign interference in United States elections.³⁷ However, although serious situations such as the H1N1 influenza outbreak and Hurricane Katrina led presidents to declare national emergencies, these were not justified under IEEPA because of their domestic nature.

6) Supreme Court

In 1983, just a few years after IEEPA was enacted, the Supreme Court declared NEA's legislative veto to be unconstitutional in *Immigration and Naturalization Service v. Chadha*.³⁸ No longer could Congress draft a concurrent resolution to challenge the President's declaration of national emergency.³⁹ This decision completely flipped IEEPA from its original intent, transforming it into a grant of "virtually unlimited sanctioning power."⁴⁰ Paradoxically, presidents have used IEEPA—which intended to rein in the president's power—to justify more than 16 times the amount of national emergencies than TWEA,^{41, 42} which prompted Congress to pass IEEPA in the first place.

36 Brennan Center for Justice (2023) *Declared national emergencies under the National Emergencies Act*. <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>.

37 Casey, C.A., Rennack, D.E. and Elsea, J.K. (no date) *Product details R45618 - congress*, Congressional Research Service. Available at: <https://crsreports.congress.gov/product/details?prodcode=R45618>.

38 *INS v. Chadha*, 462 U.S. 919 (1983).

39 Casey, Rennack, Elsea, Supra note 37 (Instead, the Court determined that a joint resolution could still be used to check the President's declaration of a national emergency. This, however, has proved to be insignificant since joint declarations must also be signed by the President.)

40 Coates, Supra note 13.

41 Benjamin A. Coates, *The secret life of statutes: A century of the trading with the Enemy Act*, Modern American History Cambridge Core (2018), <https://www.cambridge.org/core/journals/modern-american-history/article/secret-life-of-statutes-a-century-of-the-trading-with-the-enemy-act/77DD7CF528D3190CFC8CF8FF6DDAACB0>.

42 Casey, Rennack, Elsea, Supra note 37

Supreme Court rulings such as *Curtiss-Wright* and *Chadha* have set precedents for the president's general foreign relations powers, rightly establishing presidential authority in this realm. However, although *Chadha* abolished the legislative veto in general instances, congressional approval is still required for matters like war. According to the War Powers Resolution of 1973, after 60 days of military action initiated by the president, Congress must give its authorization for the conflict to move forward.⁴³ The Constitution clearly supports this check as a power and responsibility of Congress.⁴⁴

This paper will argue that sanctions should be legally considered a legitimate form of economic warfare, not merely a tool of negotiation or diplomacy. By viewing sanctions in the same legal vein as war, IEPPA can be amended to include the provisions of congressional approval patterned after the War Powers Resolution. This will reinstate the original intent of IEPPA, create a check on the president's "dizzying range"⁴⁵ of emergency powers, and help temper unintended effects of sanctions.

III. PROOF OF CLAIM

A. Presidential Abuse of the Sanctioning Power

Passed in 1917, TWEA clearly serves as the origin of sanctions abuse by United States presidents. Later Senate committees described TWEA's broad language as "sketchy" and "sleight-of-hand" intended to inflate the president's power.⁴⁶ Originally, this legislation justified nearly any foreign economic measure taken by the president, but it applied exclusively to wartime. However, later presidents significantly stretched and abused this power. The following quote describes the evolution of TWEA:

43 50 U.S.C. §§ 1541-1550 (1973) - "*War Powers Resolution*".

44 U.S. Const. art.I § 8

45 Boyle, A. *et al.* (2022) *Emergency powers*, Brennan Center for Justice. <https://www.brennancenter.org/issues/bolster-checks-balances/executive-power/emergency-powers>.

46 Coates, *Supra* note 40.

What began as an effort to ‘define, regulate, and punish trading with the enemy’ in the context of a congressionally declared war of limited duration has transformed over the decades into a broad writ of executive authority to wage economic warfare against loosely defined enemies virtually anywhere and at any time.⁴⁷

In 1933, President Franklin Delano Roosevelt became the first to abuse the powers of TWEA—and the power to declare a national emergency. Roosevelt successfully forced⁴⁸ Congress to stretch TWEA to apply during any “period of national emergency declared by the President.”⁴⁹ The first emergency introduced by Roosevelt remained in effect for most of the twentieth century,⁵⁰ thus allowing six of his successors the legal right to arbitrarily use special, normally unconstitutional emergency powers to address issues far beyond (and often unrelated to) the original exigence they were granted to address.

Although Congress passed IEEPA to remedy further misuse of this power, presidents in fact abused their power at exponentially worse rates. Unbelievably, the first emergency invoking IEPPA—declared by President Jimmy Carter in 1979 vis-à-vis the Iranian hostage crisis—has been ongoing for 44 years and counting.⁵¹ This stands in direct contrast with Congress’s instructions regarding IEEPA: “The emergency should be terminated in a timely manner when the factual state of emergency is over and not continued in

47 Coates, *Supra* note 40.

48 *Id.* (On March 6, 1933, President Franklin Delano Roosevelt (FDR) closed all the banks in the United States for four days, citing TWEA as his authority. The problem was that the United States was not at war, so TWEA did not apply. With a suspiciously fast, 40-minute Senate debate pressed urgently by FDR, Congress passed legislation that approved the President’s actions and stretched TWEA to apply during any “period of national emergency declared by the president.” Since the President had unchecked power to declare national emergencies at the time, TWEA afforded the President boundless power to sanction until the National Emergencies Act was passed in 1976).

49 *12 U.S. Code § 227 - “Banking Act of 1933”*.

50 Senate Historical Office, *Supra* note 27.

51 Casey, Rennack, Elsea, *Supra* note 37.

effect for use in other circumstances. A state of national emergency should not be a normal state of affairs.”⁵² Despite IEEPA’s restrictive definition of national emergencies and explicit call to make them rare, presidents have used IEEPA to declare an astounding 67 national emergencies since the act was passed in 1977.⁵³ Nearly half of these are still in effect today.⁵⁴ Research reveals that annually since 1990, “Presidents have issued roughly 4.5 executive orders citing IEEPA and declared 1.5 new national emergencies citing IEEPA.”⁵⁵ Since the act was passed, there have been an average of 14 ongoing emergencies each year; this number is steadily increasing.⁵⁶ Additionally, the average length of an emergency invoked by IEEPA is 9 years, and this number is also increasing.⁵⁷

Surely, to cite the language of IEEPA, not all of those situations currently present “unusual,” “extraordinary,” and “rare” threats.⁵⁸ Definitely, at least, these issues have not been “brief,”⁵⁹ perhaps the most important criterion established by the act. Many of the national emergencies still in effect today were declared in the 1990s or early 2000s and issued in response to arcane issues with countries such as Zimbabwe, Colombia, Sudan, and those of the Western Balkans.⁶⁰

A recent example of power abuse was displayed by President Donald Trump’s administration. In 2019, Trump relied on IEEPA to make severe threats against Mexico. After unsuccessfully siphoning federal funds toward construction of the border wall by declaring a national emergency, Trump threatened to sanction Mexican exports to the US up to 25% unless Mexico “remedied” the number

52 House, *Supra* note 35.

53 House, *Trading with the Enemy Act Reform Legislation*, p. 11.

54 *Id.*

55 Casey, Rennack, Elsea, *Supra* note 37.

56 *Id.*

57 *Id.*

58 50 U.S.C. §§ 1701-1708 (1977) - “International Emergency Economic Powers”.

59 *Id.*

60 Casey, Rennack, Elsea, *Supra* note 37.

of illegal immigrants fleeing to the US.⁶¹ This move would have been harsh, especially since Mexico did not initiate any kind of warfare against the United States. Although the sanction never took effect, this case reveals the unnerving potential for United States presidents to stretch their sanctioning power to meet their personal agendas.

Even more disturbing is the hypothetical “horrific president.”⁶² Thus far, the abuse of IEEPA has arguably not reached a “horrific” degree, but there is enormous potential for economic sanctions to be used for tyranny, conflict, personal or political agendas, or purely wicked reasons. Because this act operates solely on the basis of trust,⁶³ IEEPA justifies most foreign economic actions taken by the president without allowing for legitimate congressional oversight.

One round of sanctions could easily destroy relations with scores of countries, thus damaging foreign policy for years or indefinitely. Sanctioning the wrong country at the wrong time could be the spark to commence the next World War. Governments of volatile countries such as China, North Korea, Syria, or even Russia would not likely respond well to harsh, insulting sanctions haughtily imposed by the United States. Besides provoking conflict, US economic sanctions also have the power to completely cripple a nation, as will be later discussed in the cases of Venezuela and Iraq. Though sanctions on Russia may not be surprising, the world would certainly be shocked if the United States sanctioned less provoking countries such as Costa Rica or Denmark.

61 Expert Insights, *Trump threatens sanctions against Mexico Synergia Foundation* (2019), <https://www.synergiafoundation.org/insights/analyses-assessments/trump-threatens-sanctions-against-mexico>.

62 Galbraith, Jean, *The Runaway Presidential Power over Diplomacy* (2022), Faculty Scholarship at Penn Law. 2656, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3659&context=faculty_scholarship.

63 IEEPA grants the President expansive power under the assumption that he will i) appropriately identify legitimate emergencies (defined as “rare and brief...not to be equated with normal, ongoing problems” and which constitute “unusual and extraordinary threat[s]”) and ii) address such emergencies prudently.

Political and personal disagreements are also potential fuel for a president to impose sanctions on a foreign country. A Democratic president could hypothetically sanction a foreign government solely because of the country's strong, conservative values. Or a tense relationship with another country's president could cause retaliatory sanctions that serve no purpose related to the nation's welfare. This could make an irreparable tear in our extremely polarized society.

B. Unintended Consequences of Sanctions

Forty years ago, the Court outlawed the legislative veto of national emergencies and sanctions in *INS v. Chadha*. However, the world is rapidly changing and not at all what it was in the twentieth century. Since then, the United States has significantly amplified the caliber and frequency of its sanctions since then. As shown in the Department of the Treasury's (USDT) 2021 Sanctions Review, the United States' use of sanctions increased 933% from 2001 to 2021.⁶⁴ That is an astounding number. Notably, no country has imposed more sanctions than the United States.⁶⁵ USDT also admits that "unanticipated challenges" arise from sanctions.⁶⁶ The department also specifically expresses concern about the United States' ability to effectively levy sanctions in the increasingly complex world.⁶⁷ Economists agree that the more severe the sanctions, the more unpredictable the results.⁶⁸

64 The Treasury, *The Treasury 2021 Sanctions Review (2021)*, <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>.

65 Gary Clyde Hufbauer, *The snake oil of diplomacy: When tensions rise, the US peddles sanctions*, PIIE (2018), <https://www.piie.com/commentary/op-eds/snake-oil-diplomacy-when-tensions-rise-us-peddles-sanctions>.

66 Reuters Staff (2021) *Treasury deputy chief says reviewing costs, benefits of U.S. sanctions*, Reuters. Thomson Reuters. Available at: <https://www.reuters.com/article/us-usa-treasury-sanctions/treasury-deputy-chief-says-reviewing-costs-benefits-of-u-s-sanctions-idUSKBN2C82W5>.

67 *Id.*

68 Gregory T. Chin, *US financial statecraft on China and Hong Kong: Unintended consequences across the asia-pacific*, T.wai (2021), <https://www.twai.it/articles/us-financial-statecraft-china-hong-kong/>.

1. United States Sanctions on Russia

a. European Union

The current Russia-Ukraine situation serves as a prime example of the negative consequences that sanctions, even enacted with good intentions, can produce. The European Union (EU) was caught in a crossfire between the United States and Russia and has suffered as a result. Given the United States' position as a global superpower, NATO allies often follow its strong lead. When the United States imposed expansive sanctions on Russian imports and exports in February 2022, the EU issued a complete import ban on Russian oil by the end of the year.⁶⁹ Though implemented with patriotic intentions, these measures were impractical for countries⁷⁰ highly dependent on Russian resources and put many of them, and the EU as a whole, in a dangerous situation. Individual countries like Hungary, Slovakia, and Finland will likely struggle to find replacements, and the energy crisis has already dramatically worsened throughout all of Europe. With its sizable economy and large geographical separation from Russia, the United States is capable of sustaining "severe" sanctions on Russia, but most EU countries are not.

Additionally, although the EU was quick to ban oil imports from Russia, the organization left natural gas imports from Russia alone. After all, some European countries are "perilously dependent on Russian gas,"⁷¹ which also constitutes 40% of all natural gas in all

69 Person, R. (2022) *EU chief proposes Russian oil ban over war in Ukraine*, Reuters. Thomson Reuters. <https://www.reuters.com/business/energy/eu-chief-proposes-russian-oil-ban-over-war-ukraine-2022-05-04/>.

70 Statista (2023) *EU dependence on Russian oil by country 2020*, Statista. Statista Research Department. <https://www.statista.com/statistics/1298031/dependence-on-russian-oil-in-the-eu-and-uk/>. (Slovakia (78%), Lithuania (69%), Poland (67.5%), and Finland (67%) top the list for dependence on Russian oil).

71 ACER, Diversity of Gas Supply (2020). <https://aegis.acer.europa.eu/chest/dataitems/214/view>

(According to the European Union Agency for the Cooperation of Energy Regulators, Finland is 100% dependent on Russian gas, Latvia is 93%, and Estonia is 79%. Several other countries are more than 50% dependent on Russia for their natural gas).

of Europe.⁷² However, in the midst of the EU's symbolic speech via oil sanctions, Russia answered with its own harsh strike. Beginning in September 2022, Russia severely limited its natural gas exports to EU countries because of fictitious "technological problems" sanctions created for the Nord Stream Pipeline.⁷³ President Putin said that unless "the west would lift its sanctions on Moscow," Russia would not be able to deliver the natural gas that some European countries desperately needed.⁷⁴ Since US sanctions themselves are a major piece of aggregate measures against Russia and have led other western countries to impose similar sanctions, it can be reasonably concluded that the US has played a large role in Russia's natural gas retaliation on the EU. As of October 2022, the market share of Russian gas in Europe fell sharply to just 9%—a gap the EU will struggle to replace—which has caused fuel prices to skyrocket and further threatens Europe's energy crisis.⁷⁵

Moreover, inflation in the EU has significantly worsened since the war began. From February to October 2022, the EU's inflation rate increased 75% to a record-high level.⁷⁶ In addition to the rising cost of fuel, food prices have risen 15% in the last year.⁷⁷ Russia and

72 Hurst, L. (2023) *Eurozone inflation has dropped again but how do countries compare?*, euronews. <https://www.euronews.com/next/2023/02/01/record-inflation-which-country-in-europe-has-been-worst-hit-and-how-do-they-compare>.

73 Sauer, P., *Russia will not resume gas supplies to Europe until sanctions lifted, says Moscow* (2022) *The Guardian*. Guardian News and Media. <https://www.theguardian.com/world/2022/sep/05/russia-will-not-resume-gas-supplies-to-europe-until-sanctions-lifted-says-moscow>.

74 *Id.*

75 Reuters, *Russian gas exports to EU will fall by 50 BCM this year -IFX cites deputy PM* Reuters (2022), <https://www.reuters.com/business/energy/russian-gas-exports-eu-will-fall-by-50-bcm-this-year-ifx-cites-deputy-pm-2022-09-15/>.

76 Y Charts, *European Union inflation rate.*, https://ycharts.com/indicators/europe_inflation_rate.

77 EUROSTAT, *European Union Food Inflation February 2023 Data - 1997-2022 historical European Union Food Inflation (2023)*, <https://tradingeconomics.com/european-union/food-inflation>.

Ukraine account for one-third⁷⁸ of the world's wheat and are major exporters of corn, barley, and fertilizer. Russia retaliated against Western sanctions by intentionally withholding Ukrainian grain exports to Europe.⁷⁹ Instead of responding exclusively with harsh sanctions spearheaded by the United States, negotiations could have mitigated the effects of the war on Europe's food supply and prevented Russia from potentially starting a global food crisis.

Thus, despite United States sanctions meeting several of the country's goals—including reducing Russia's oil and gas exports, oil production, and ability to conduct international business—these comprehensive measures had a negative impact on the EU that greatly superseded the United States' original intent. This example further shows that unilateral sanctions should be considered war, not negotiation or diplomacy. Diplomacy builds bridges and opens conversations; it does not involve attacks on other countries, whether direct or indirect. "Sanctions that harm the general population can bring about undesired effects, including strengthening the regime, triggering large-scale emigration, and retarding the emergence of a middle class and a civil society."⁸⁰

b. Global Supply Chain

US sanctions on Russia not only dramatically affected the EU, but posed global threats. The COVID-19 pandemic caused drastic supply chain issues throughout the world, alerting everyone to the visible, real-life effects of hindering an otherwise unseen and seamless process. Heavy US sanctions on Russia added a devastating layer to already-damaged supply chain operations and processes. Almost 70% of US companies admit that US sanctions are negatively affect-

78 *Id.*

79 Lorne Cook & Samuel Petrequin, EU bans majority of Russian oil imports as punishment for Ukraine invasion PBS (2022), <https://www.pbs.org/newshour/world/eu-bans-majority-of-russian-oil-imports-as-punishment-for-ukraine-war>.

80 Richard N. Haass, *Sanctioning madness*, 76 Foreign Affairs 74 (1997), https://www.jstor.org/stable/20048277?seq=6#metadata_info_tab_contents.

ing their business.⁸¹ With such drastic changes to import and export restrictions, supply chain processes have been disrupted for all those involved, whether directly or indirectly.

Recent industry research unrelated to the current conflict shows the negative impact economic sanctions can have on entities not directly targeted by sanctions.⁸² This phenomenon is explained by the contagion effect,⁸³ which postulates that a shock to a country or economy spreads and affects others. This research shows that firms not targeted by economic sanctions, but which operate in the same supply chain, perform worse than other companies. Meddling with any supply chain often results in increased prices and damaged economies. Practically, it means that individuals or businesses cannot obtain the products and goods that help their daily lives function. Because of the contagion effect, hefty US sanctions on Russia have exceeded their original target and now affect the world. This is another powerful reason why economic sanctions should be considered warfare.

2. Deprivation of Human Rights

In many cases, sanctions programs can actually cause more devastation than traditional warfare, but go under the radar due to underestimation and lack of sensationalization by news media. The following quote illustrates the impact of economic sanctions on human rights:

81 Reuters, Disrupted supply chain, steep tariffs and sanctions cited as pain points for global trade professionals, according to research from Thomson Reuters Institute, Thomson Reuters, <https://www.thomsonreuters.com/en/press-releases/2022/september/disrupted-supply-chain-steep-tariffs-and-sanctions-cited-as-pain-points-for-global-trade-professionals.html>.

82 Jie Sun et al., Economic sanctions and shared supply chains: A ... - wiley online library Wiley Online Library, <https://onlinelibrary.wiley.com/doi/10.1111/emre.12497>.

83 Akhilesh Ganti, Contagion: Definition in economic crises, brief history Investopedia (2022), <https://www.investopedia.com/terms/c/contagion.asp>.

[T]o deny a nation the means to purify water or to treat sewage... encourage[s] the spread of disease[.] ...To deny a nation access to antiseptics, antibiotics and other essential medical supplies. ... render[s] disease untreatable[.] ...To deny people adequate electricity for hospitals and factories, to deny people — including pregnant women, babies, infants, the sick, the old — sufficient food and clean water is... undeniably a gross violation of humanity.”⁸⁴

Looking to the past reveals several cases where US economic sanctions produced significant human rights violations, including many from the above list. An ongoing example is Venezuela. Since the early 2000s,⁸⁵ the United States has enforced major sanctions on Venezuela, including fully blocking “any United States person”⁸⁶ from doing business with the country, including major companies that provide necessary goods, such as Chevron. Venezuela has suffered drastically, and its perilous human rights situation grew far worse. Research reveals that United States sanctions directly decreased sanitation and access to clean water, endangered fuel supply, and hindered scientific research.⁸⁷ Venezuela’s vulnerable populations, namely women, children, and those with illnesses or disabilities, were particularly affected.⁸⁸

84 Amy Howlett, Fordham Law Review - Fordham University Getting “Smart”: Crafting Economic Sanctions That Respect All Human Rights (2004), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?httpsredir=1&article=4073&context=fldr> (Footnote 144).

85 Clare Ribando Seelke, Venezuela: Overview of U.S. sanctions - Congress Venezuela: Overview of U.S. Sanctions (2022), <https://crsreports.congress.gov/product/pdf/IF/IF10715>.

86 *Id.*

87 Unilateral sanctions threaten scientific research and academic freedom: UN experts (2022), <https://www.ohchr.org/en/press-releases/2022/07/unilateral-sanctions-threaten-scientific-research-and-academic-freedom-un>.

88 United Nations, Unilateral sanctions particularly harmful to women, children, other vulnerable groups | UN news Unilateral sanctions particularly harmful to women, children, other vulnerable groups (2021), <https://news.un.org/en/story/2021/12/1107492>.

Another country severely affected by the United States' war-like sanctions is Iraq⁸⁹. Before United States sanctions, "Iraq's medical facilities and public health system were well-developed."⁹⁰ The country had invested much in its economic development, and the majority of citizens had access to clean water and health services. However, just one year after sanctions were imposed, Iraq suffered serious food shortages. United States sanctions amplified the effects of the Persian Gulf War by blocking access to food—which the "starving country" desperately needed. This contributed to malnutrition, contaminated water, widespread diseases, "and the collapse of every system necessary to ensure human well-being in a modern society."⁹¹ Mortality rates tripled for infants and quadrupled for young children. On top of this, sanctions blocked access to necessary child care items such as baby food and incubators.⁹²

In Poland, United States sanctions caused threats of population-wide starvation.⁹³ Economic sanctions on Haiti also caused "severe damage" on the country's entire population, namely through cutting off financial aid equivalent to Haiti's annual budget.⁹⁴ Following, "prices nearly doubled, unemployment skyrocketed, and the minimum wage fell to three dollars a day... Reductions in spending also made food very expensive, reduced the availability of medicine and medical supplies, stopped garbage collection and the maintenance of sewage treatment plants, and decreased the supply of drinking water."⁹⁵ Undoubtedly, United States sanctions resemble warfare.

In the case of both Venezuela and Iraq, sanctions made it more difficult for citizens to challenge tyrannical governments. "How can one enjoy liberty or free speech, for example, without adequate food or health? ... Starving people may find it difficult to exercise their

89 Iraq Sanctions Act of 1990, 101 Pub. L. No. 513, 104 Stat. 2047 (1990).

90 Howlett, *Supra* note 84.

91 Gordon, *Supra* note 18.

92 Howlett, *Supra* note 84.

93 *Id.*

94 *Id.*

95 *Id.*

freedom of speech.”⁹⁶ Further, oppression of civilians by tyrannical governments increases when heavy sanctions are imposed on the country. Additional studies reveal that sanctions negatively affect democracy in targeted countries, even though democratization is the reason for most US sanctions.⁹⁷ Perhaps the most striking research findings of all declare that sanctions actually increase the likelihood of military conflict.⁹⁸ This serves as additional evidence that sanctions are dangerous enough to be considered a form of warfare. Although economic warfare is not identical to military conflict, many of the effects are similar enough to reclassify sanctions in the realm of war, not merely diplomacy.

C. Applying WPR to IEEPA

The underlying problem is the misuse of IEEPA. Although Presidents often ignored these points, Congress clearly intended to prevent abuse of sanctioning power fueled by TWEA, redefine and limit emergencies, and place a check on the President. The latter is strongly evidenced by IEEPA's provision that “the President, *in every possible instance*, shall consult with the Congress before exercising any of the authorities granted by [IEEPA] and shall consult regularly with the Congress so long as such authorities are exercised.” Perhaps more important is the striking similarity to language from WPR: “The President *in every possible instance* shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United

96 *Id.*

97 Christian von Soest & Michael Wahman, The underestimated effect of Democratic sanctions Weatherhead Center for International Affairs (2014), <https://wcfia.harvard.edu/publications/underestimated-effect-democratic-sanctions-0>.

98 Lektzian, D., Sprecher, C., Sanctions, Signals, and Militarized Conflict Midwest Political Science Association (2007), https://www.jstor.org/stable/pdf/4620074.pdf?refreqid=excelsior:2799c875b7810cf77730148cc255c2fc&ab_segments=&origin=&initiator=&acceptTC=1.

States Armed Forces are no longer engaged in hostilities or have been removed from such situations.” Further, similarly to IEEPA, Congress enacted WPR to prevent the erosion⁹⁹ of congressional authority.

Significantly, although the Court’s landmark decision in *INS v. Chadha* made the legislative veto of national emergencies unconstitutional, this ruling did not invalidate WPR, which requires the president’s use of military force to be approved by Congress after 60 days. Congress retained this wartime power in order to “fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”¹⁰⁰

As this paper has established, there must be greater congressional oversight on the President’s ability to declare national emergencies and impose sanctions. WPR’s language could reasonably be replaced to include “unilateral sanctions programs” instead of references to war. Moreover, sanctions are widely cited as the primary alternative for traditional war, implying that their intent is similar.

Mirroring the original intent of IEEPA, one way to introduce a legislative check is by reinstating Congress’s ability to veto the President’s national emergencies or sanctions. Since *INS v. Chadha* was decided on the basis of separation of powers—and at the expense of checks and balances—one plausible method to restore this form of congressional oversight is by legally reclassifying sanctions in the same realm as war, over which both the Constitution and WPR guarantee the Legislative and Executive Branches joint power.

In his dissenting opinion in *INS v. Chadha*, Justice Byron White spoke on the dangers of removing congressional checks on the presi-

99 War powers resolution: Presidential compliance - everycrsreport, War Powers Resolution: Presidential Compliance (2012), https://www.everycrsreport.com/files/20120925_RL33532_b949fdc39302f131bf27bdc-536cab4c9b51b9567.pdf.

100 50 U.S.C. §§ 1541-1550 (1973) - “War Powers Resolution”.

dent's foreign powers. "I fear it will now be more difficult to ensure that the fundamental policy decisions in our society will be made not by an appointed official, but by the body immediately responsible to the people."¹⁰¹ In other words, Justice White expressed concern that this decision would disallow Congress from performing its constitutional duties. In the Executive Branch, the president alone has power to initiate sanctions against foreign entities. An equally important distinction is that *appointed* officials—not those elected by the people—in the Treasury and State departments primarily administer, enforce, maintain, develop, and implement economic sanctions suggested by the President.¹⁰² *D. Prescription*

Since the Court's strong ruling in *INS v. Chadha* may apprehend some from being willing to reconsider Congress's ability to check national emergencies, this paper will ultimately argue for congressional oversight of sanctions, one primary result of national emergency abuse. The checks outlined in WPR serve as an excellent foundation for a check that inevitably needs to be included in IEEPA. Due to legal and doctrinal obstacles, some conditions need to be slightly altered or clarified. This paper's proposal to amend IEEPA is as follows:

First of all, Congress should primarily be allowed to check unilateral sanctions programs because of these sanctions' warlike power.

Equally important, in order for Congress's check to actually reduce unintended consequences, these sanctions need only be

101 See case cited supra note 38.

102 Office of Foreign Assets Control - sanctions programs and information U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

checked if they are severe,¹⁰³ arbitrary,¹⁰⁴ or unilateral. Congress should also be aware of potential human rights violations, paying close attention to the often overlooked economic, social, and cultural rights afforded in ICESCR.¹⁰⁵

Further, as WPR only applies to presidential actions outside of declared war, congressional authorization of sanctions should also only apply to times when the country is not at war. Otherwise, as stated in WPR, the president's role as "Commander-in-Chief" takes precedence.

Finally, to mimic direct language from WPR, all eligible sanctions should be authorized by Congress after 60 days in order to continue. In lieu of the 30-day period WPR provides to remove troops, this time will serve as an open negotiation period between Congress and the president to iron out any misunderstandings.

This prescription is a valid solution to a pressing problem. Most importantly, it is consistent with common law. In *Youngstown Sheet & Tube Company v. Sawyer*, the Court established three tiers to give clarity regarding foreign relations powers shared between the President and Congress. The lowest tier says that "when the president takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb."¹⁰⁶ This tier additionally

103 Economists say that more severe sanctions lead to more unintended consequences. Further, the United States' 2022 sanctions on Russia serve as a good example of what "severe" means.

104 The example cited earlier about President Donald Trump is a prime example of an attempt to sanction arbitrarily. Desperately seeking a way to acquire the necessary funds to build the border wall with Mexico, he invoked IEEPA and further threatened to sanction Mexico to generate income for this purpose.

105 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967).

106 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

further this paper's prescription by supporting the idea of checks and balances.¹⁰⁷

Examining the history of WPR reveals additional evidence for this solution. Passed in 1973, this act has been operative for 50 years. Because WPR has stood the test of political change and time, including the sweeping strike imposed in *INS v. Chadha*, applying its provisions to IEEPA is a sound idea.

Another reason this amendment should be added to IEEPA is deterrence. Although WPR has not stopped past presidents from pursuing some wartime actions—including conflicts in Bosnia, Kosovo, Somalia, Libya, and former Yugoslavia¹⁰⁸—the provision of congressional authorization has measurably deterred the radical use of war power and prompts careful consideration by the president. Presidents have shown their compliance with WPR by formally submitting a collective total of 132 reports to Congress regarding potential or ongoing conflicts.¹⁰⁹

IV. CONCLUSION

For the entirety of history, the United States President has possessed nearly unlimited sanctioning power. Although presidential authority over sanctions has been firmly established, the unchecked nature of this power is alarming. From 1917 until the present day, Presidents have gotten away with significant power abuse of both TWEA and IEEPA. Many other pertinent factors raise concern about whether this authority is best left unchecked, including the devastating and unpredictable impact of unilateral sanctions, the increasing complexity of the world, and strong indications from core legislation

107 See case cited *Supra* note 38, (The Supreme Court's main reasoning for abolishing the legislative veto afforded in IEEPA was separation of powers. However, this paper believes that emphasizing checks and balances would be better).

108 War powers resolution: Presidential compliance, EveryCRSReport.com (2012), https://www.everycrsreport.com/reports/RL33532.html#_Toc336322202.

109 *Id.*

such as NEA and IEEPA that Congress intended to check the President in this realm.

Ensuring United States sanctions account for global impact and harmful side effects has never been more critical. The United States's use of dangerous unilateral sanctions is increasing rapidly, and their effects on the world are starting to show. All the while, the President has the final say regarding these measures, which strongly resemble legislation and far transcend the economic sphere.

Thus, reinstating a legislative check on the President's ability to invoke emergency powers is of the utmost importance. Unilateral sanctions must be considered a legal form of economic warfare due to their sheer power and worldwide impact. This would allow for the creation of a legislative check that mirrors provisions from WPR, which would check the President's sanctioning power without diluting nor removing his authority. This would restore the constitutional principle of checks and balances to weighty areas, protect the President, and allow the United States to eschew avoidable disaster and preserve its global integrity into the future.