

U.S. Economic Sanctions on Cuba: An International Ethics Perspective

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³ En América Latina suele designarse con el nombre de “coyotes” a los traficantes de seres humanos. De ahí la expresión “coyoterismo”.

⁴ A propósito del Centro de Detención Hotel Carrión, véase del autor “Welcome to Hotel Carrion: Such a Lovely Place”, *La Línea de Fuego*, 15 de septiembre de 2015. Disponible en: <http://lalineadefuego.info/2015/09/15/welcome-to-hotel-carrion-such-a-lovely-place-por-ahmed-correa-alvarez/>.

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Economic sanctions are not new to international relations. They have been used frequently in the past two centuries, and they date back at least to the Megarian Decree in 400 B.C.¹ In the aftermath of World War I, sanctions were envisioned as having a critical role in global governance. Woodrow Wilson, one of the primary architects of the League of Nations, described the “boycott” as a “peaceful, silent, deadly remedy,” providing a means by which a multilateral supranational organization could promote collective security and police international society (Hufbauer, Schott, and Elliot 1990, 9; quoted in Padover 1942, 108). Sanctions were also incorporated in the Charter of the United Nations as a tool available to the Security Council, which has employed them frequently since the end of the Cold War.

In addition to their role in global governance, economic sanctions also constitute a form of statecraft used to advance foreign policy goals by coalitions of nations or by individual countries imposing sanctions unilaterally. That has been particularly true of the United States. In their extensive study of over two hundred episodes of sanctions over the last century, Gary Clyde Hufbauer and colleagues (2007) concluded that the United States had used economic coercion far more than any other country.

Economic sanctions may be defined as the withdrawal of customary trade and financial relations for foreign and security policy purposes. Sanctions may be partial, affecting only certain goods or individuals; or they may be comprehensive, prohibiting commercial activity with regard to an entire country, like the long-standing U.S. embargo of Cuba (Masters 2015). They may involve positive incentives to reward certain kinds of behavior by a state, or

negative measures to punish or deter unwanted behavior or compel political change in the target state.

Hufbauer, Schott, and Elliot (1990, 2) define sanctions as a “deliberate government inspired withdrawal or threat of withdrawal of customary trade and financial relations.” However, they note that “‘customary’ does not mean ‘contractual’; it simply means levels of trade and financial activity that would probably have occurred in the absence of sanctions.” This definition is particularly applicable to the study of economic sanctions imposed on Cuba by the United States, as the United States was Cuba’s main trading partner and the singularly important source of foreign direct investment.

Many proponents of economic sanctions as a foreign policy tool have advanced the notion of targeted sanctions, or “smart sanctions,” sometimes described as the “precision-guided munitions of economic statecraft” (Drezner 2011, 96). Targeted sanctions are designed to hurt elites and not the general public. They are considered to be more humane and consequently do not raise the same ethical concerns as broad trade sanctions. However, the sanctions imposed against Cuba are not at all targeted. To the contrary, they broadly affect imports, exports, shipping, and international financial transactions. Consequently, they are “traditional” sanctions and are subject to the same ethical objections.

Many have argued that sanctions should not be used as a tool of international relations because they are seldom successful, while they harm the population as a whole. Therefore, they cannot be justified on the grounds of utilitarian ethics, which begins with the premise that an action is ethical only if its beneficial

consequences outweigh the harm done (see, for example, McGee 2003). Within this framework, sanctions in general can rarely be justified, because they are rarely effective, at least according to Robert Pape. In his review of the literature on the effectiveness of sanctions in the twentieth century, Pape maintains that sanctions were clearly successful only 5 percent of the time. In *Failed Sanctions: Why the U.S. Embargo of Cuba Could Never Work*, Paolo Spadoni argues that this is generally due in part to increased interdependence, transnationalism, and globalization; that is, economic sanctions may well be less effective where the interests of transnational corporations and individuals do not coincide with the national interest of the sender state. In the case of Cuba, where the sanctions have been imposed with the goal of regime change, they are clearly unsuccessful.

Robert McGee (2003) takes a different approach, looking at the U.S. economic sanctions on Cuba using a rights-based approach. Within this framework, we may consider whether the sanctions undermine a nation's right to development as well as the economic rights and human rights of its citizens. We see these articulated, for example, in the Universal Declaration of Human Rights, which includes the right to an adequate standard of living, including food, clothing, housing and medical care (Article 25). The International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living (Article 11), the right to health (Article 12), and the right to education (Article 13). The Geneva Conventions recognize the rights of a civilian population to free transit of medical supplies, even in wartime.² The additional protocols to the Geneva Conventions prohibit the destruction of goods that are indispensable to the

survival of the population.³ Furthermore, Article 50 of The Hague Convention and Regulations of 1907 prohibits indiscriminate harm imposed upon a population as a whole: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

The U.S. sanctions against Cuba violate all of these rights. In addition, Amnesty International (2009) and other organizations have repeatedly criticized the embargo for violating the economic and social rights of the Cuban population.

Economic Sanctions as a Tool of U.S. Foreign Policy toward Cuba

Immediately after taking power in January 1959, the new Cuban government took the first steps toward the implementation of the Moncada Program.⁴ This involved a strong and swift structural transformation that began incorporating new property relations and class relations. These policies in turn limited the possibilities for private capital accumulation. The Cuban government saw these actions as a means to achieve economic sovereignty and social justice. By the end of 1959, the United States government, with the support of the Cuban propertied class, gradually applied economic pressure in the form of economic sanctions, accompanied by political and diplomatic isolation, military threats, and covert actions aimed at overthrowing the government.

Beginning in the early 1960s, the economic sanctions evolved into a comprehensive blockade against the island, incorporating every major method available to a sender state: trade control, suspension of aid and

technical assistance, freezing of the target's financial assets, and the blacklisting of companies outside the U.S. involved in bilateral business (Doxey 1980, 14–15). Indeed, in 2007 the U.S. Government Accountability Office described the embargo against Cuba as the most comprehensive set of U.S. sanctions on any country (GAO 2007). It is also the most long-standing application of bilateral sanctions in contemporary history that currently remains in force.

The U.S. economic sanctions had considerably less impact on Cuba's development during the 1970s and 1980s due to preferential trade and aid from the Soviet Union and the Eastern European bloc. But when the Soviet Union dissolved, Cuba lost 75–80 percent of its trade, and Cuba's economy went into free fall. Between 1990 and 1994, Cuba's GDP contracted by one-third (Ritter 2010, 2).

In response to the crisis, the Cuban government initiated a series of measures to rebuild the economy, including joint ventures with foreign companies and establishing relations with a broad array of new trade partners. However, Cuba's efforts to revive the national economy were undermined in part by U.S. legislation that tightened the embargo considerably.

The most significant of these measures were the Cuban Democracy Act of 1992 (Torricelli Act), Cuban Liberty and Democratic Solidarity (Libertad) (Helms-Burton Act of 1996), and the Trade Sanctions Reform and Export Enhancement Act of 2000.⁵ These laws impose severe penalties on ships that enter U.S. ports within six months of stopping at Cuban ports and impose harsh restrictions on foreign subsidiaries of U.S. companies, undermining their trade with Cuba. They prohibit any transactions with Cuba using

U.S. dollars, and they permit U.S. nationals to bring suit in U.S. courts against foreign companies doing business on properties that were held by U.S. nationals prior to the Revolution. In addition, until last year, Cuba was included on the list of nations that support terrorism. All of these created additional impediments and costs to Cuba's normal economic activities.

The Humanitarian Impact of the Sanctions

Last year, at the request of the United Nations Secretary General, the Economic Commission for Latin America and the Caribbean issued a report which found that the U.S. economic sanctions continue to present a formidable barrier to trade, foreign investment, and the development of Cuba's financial sector. In the last few years, French, Dutch, German, British, and other non-U.S. banks have been heavily fined for conducting transactions with Cuba. This has continued even since the agreement of December 17, 2014, between Cuba and the United States to reestablish diplomatic relations. For example, last March, Commerzbank of Germany paid fines totaling \$1.7 billion, for processing financial transactions involving Cuba and three other embargoed countries.⁶ In March 2015, after the United States and Cuba began normalizing relations, the Treasury Department reported eight enforcement actions involving Cuba cases, with fines totaling \$5,278,901 (Whitefield 2016). The policy of actively pursuing prosecutions has continued in 2016. In February 2016, two companies were fined: a French geoscience company, CGG Services; and Halliburton Atlantic and Halliburton Overseas, two foreign subsidiaries of Houston-based Halliburton Energy Services (Whitefield 2016).

U.S. economic sanctions on Cuba have certainly affected the economic and social rights of the Cuban population.

One particular area of concern is health care, which the Cuban government has made a priority. Nearly 80 percent of the patents in the medical sector are issued to U.S. pharmaceutical multinational companies and their subsidiaries, which gives them a monopoly on many of the most effective drugs available. The embargo laws impose such extensive restrictions that Cuba cannot get access to these medications (Lamrani 2013, 46; see also American Association of World Health 1997; Amnesty International 2009, 16–19).

Cuba's education system has also been affected by the U.S. sanctions. For example, the sanctions limit Cuba's access to information technology tools that are crucial to produce educational multimedia. These include Adobe Flash, ToolBook, and Mediator. Sanctions also limit access of Cubans to bibliographic sources and software, such as those provided by Cisco Systems, Oracle, Symantec, Sun Microsystems, ProCite, and EndNote. The licenses to access these tools have to be paid to United States companies, and such transactions are prohibited under the current regulations.⁷ Thus, despite having highly qualified teachers and researchers, Cuban educational institutions find it increasingly difficult to access the latest tools and information needed to maintain and improve education services.

In addition to interfering in Cuba's social services, the embargo also affects Cuba's broader economic development. For example, the Canadian company Sherritt International is the single largest foreign investor in Cuba. Sherritt has repeatedly described the unique political risks that it faces in doing business in Cuba, as a

result of U.S. sanctions: "The Corporation is affected by the difficult political relationship between the United States and Cuba. The United States prohibits U.S. citizens from engaging in virtually all transactions involving Cuba. The U.S. embargo thus limits Sherritt's access to U.S. capital, finance, customers and suppliers. The Corporation has received letters from U.S. nationals claiming ownership of certain Cuban properties or rights in which the Corporation has an indirect interest, and explicitly or implicitly threatening litigation."⁸ While Sherritt has chosen to maintain its investments in Cuba despite the limitations imposed by U.S. sanctions, other companies chose not to participate in business ventures with Cuba, or withdrew and closed their operations in Cuba.⁹

Conclusion

On December 17, 2014, the president of Cuba and the president of the United States announced the start of a process of normalizing their bilateral relations. This was unprecedented and in many ways deeply significant. Since the announcement, considerable progress has been achieved on the political and diplomatic front. However, while there have been four sets of regulatory changes adopted by the executive branch,¹⁰ none of these changes affect the core provisions of the embargo established by federal legislation. Cuban export products are still prevented from entering the United States market, the largest in the region and the closest to Cuba. Cuban trade with companies located in United States territory or their subsidiaries abroad is forbidden. Cuba cannot use the U.S. dollar in international business transactions, which in turn increases costs, makes it necessary to turn to third markets or intermediaries. This

perpetuates the so-called Cuba risk and discourages potential investors.

There are many factors contributing to Cuba's economic problems. But the embargo continues to specifically affect the Cuban population's access to many basic rights, including medical care, food security, potable water, housing, and education. This stands in clear violation of the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. But in addition, the broader interference with trade, shipping, and financial transactions—with both U.S. companies and companies outside the United States—has been a factor in compromising Cuba's economic recovery, conflicting with Cuba's right to social and economic development.

Notes

- ¹ These include Athens vs. Megara (circa 432 B.C.), American colonies vs. Britain (1765), American colonies vs. Britain (1767–1770), Britain and France vs. France and Britain (1793–1815), United States vs. Britain (1812–1814), Britain and France vs. Russia (1853–1856), U.S. North vs. Confederate States (1861–1865), France vs. Germany (1870–1871), France vs. China (1883–1885), United States vs. Spain (1898), Britain vs. Dutch South Africa (1899–1902), Russia vs. Japan (1904–1905), and Italy vs. Turkey (1911–1912) (Hufbauer, Schott, and Elliot 1990).
- ² Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, “The adverse consequences of economic sanctions on the enjoyment of human rights,” E/CN.4/Sub.2/2000/33, paras. 34 and 35.
- ³ *Ibid.*, para. 36.

- ⁴ The Moncada Program became the platform of the 26th of July Movement (Movimiento 26 de Julio, M-26-7), named after the military garrison that was attacked on July 26, 1953, by a group led by Fidel Castro. The program, which became basically the platform of the new government, was profoundly nationalistic. The 1940 Constitution was reinstated and amended, the telephone company was nationalized as early as March 1959, and on May 17, 1959, the Agrarian Reform Law was enacted. For an excellent compilation of the text of the new laws and their impact see Bell Lara, Lopez, and Caram (2008).
- ⁵ Other components of the system of sanctions are the Foreign Assistance Act of 1961 (September 4, 1961), Executive Proclamation No. 3447 (February 6, 1962), Arms Export Control Act (October 22, 1968), and the Export Administration Act of 1979 (September 29, 1979).
- ⁶ According to the OFAC, between September 2005 and December 2007 Commerzbank processed 56 transactions related to Cuba involving a total of \$2,283,456 (Krauland et al. 2015).
- ⁷ United Nations Children's Fund, in “Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba.” Report of the Secretary General, A/70/120 (July 30, 2015), 123.
- ⁸ Sherritt Corporation, “2005 Management's Discussion and Analysis and Financial Statements,” 35. Quoted in *Trade and Investment Sanctions, Sherritt International, The United States and Cuba* (Richard Ivey School of Business, University of Western Ontario, 2006).
- ⁹ The Helms-Burton Act produced adverse effects in the climate of foreign investment in Cuba after 1996. It disrupted or delayed the flow of foreign financing into Cuba for strategic sectors as sugar and, to a lesser degree, tobacco. It has successfully discouraged third-country companies from entering in joint ventures with Cuba for fear of litigation from the United States. These

include the Mexican company Cemex, which withdrew from a joint venture in Cuba for fear of litigation from the U.S. company Lone Star Industries of Texas; and Redpath Company, a Canadian sugar refiner (Spadoni 2010, 101–112).

- ¹⁰ For more details on the regulatory changes since December 2014, see the U.S. Treasury Department, Cuba Sanctions, <https://www.treasury.gov/resource-center/sanctions/Programs/pages/cuba.aspx>.

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