

**ECLA Seminar – Global Sanctions
13th September 2022**

A history of sanctions

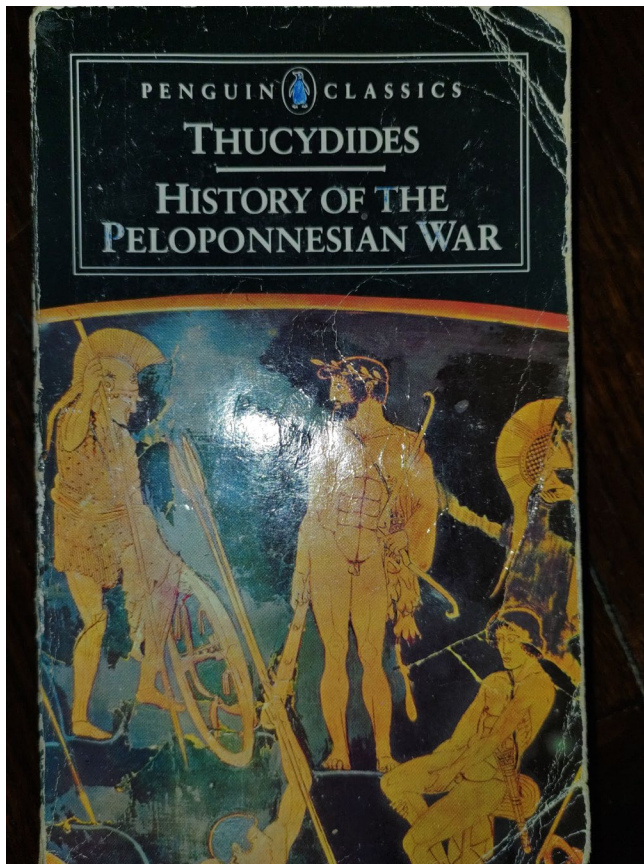
Rachel Barnes KC

- 432BC onwards
- Economic warfare
- Implications for normative framework(s)

Early historical example

THREE RAYMOND BUILDINGS

BARRISTERS



- 432BC Megarian Decree
- Precipitated Peloponnesian War?
- Economic power of Athens

Other historical examples

- Swiss protestant cantons' trade embargos against catholic cantons in C16th
- American colonies' boycotts of English goods following Stamp Act 1765; Townshend Acts 1767-1770
 - “No taxation without representation”
 - Economic costs in England: e.g. Bristol Merchants' Petition to Parliament for repeal of Stamp Act
 - Boston Tea Party 1773 & Revolutionary War 1775

Other historical examples

- **Napoleonic Wars 1793-1815** GB v France
- **1812-1814 US embargo of British goods** – response to GB’s extraterritorial measures of intercepting neutral US ships on high seas involved in US-French trade
- **Battle of Navarino 1827 (Greek war of indep. from Turkey)** GB, Fr. & Russian pacific blockade of Greek coast to prevent supplies and reinforcements reaching Turkish and Egyptian forces
- **Crimean War 1853-1856** GB & Fr. blockade of the Danube
- **American civil war 1861-1865** North blockade of Confederate States: cutting munitions supply lines and foreign imports
- **Franco-Prussian War 1870-1871** Fr. blockade of P. controlled ports. P army suffered but ultimately prevailed
- **Indochina War 1883-85** Fr. declare rice contraband; China cedes Vietnamese territory of Annam



Other historical examples

- **Spanish-American war 1898** (22nd April) US Congress authorises president to 'prohibit the export of coal or other material used in war' against Spain; US naval blockades of Cuba and the Philippines (to deny Spanish revenues from that colony). See *US v Curtiss-Wright Export Corp* 299 US 304, 325 (1936).
- **Boer War 1899-1902** British denial of contraband to Afrikaners is part of wider scorched earth policy and use of concentration camps
- **US embargo of Dominican Republic 1905** Roosevelt relies on 1898 Congressional joint resolution to prevent arms reaching revolutionaries as US takes control of Dominican customs agency
- **Russo-Japanese War 1904-1905** Russia declares rice, all fuel and cotton contraband
- **Italian-Turkish War 1911-1912** limited Italian blockade as part of campaign to seize Libya from Ottoman Empire

First World War – UK sanctions regime

- UK blockade of & sanctions against Germany & Austria 1914-1918; US joins later, adopting UK legislative regime
- UK v. Russia 1918-1920 (to persuade Russia to renew support for Allies in WWI and to destabilise Bolsheviks)

WW1 cont.

- **Comprehensive legislative regime of trade and financial sanctions extending to neutral states and third parties**
- **Import and export (customs) controls**
- **Trading with the Enemy Acts (1914, 1915, 1916, 1918)**
 - Blacklisting by Proclamation of “enemies” and “enemy associates” (individuals and entities known or suspected of acting on behalf of, or controlled by, the enemy)
 - Asset freezes; Custodian/Public Trustee; Controllers
 - Prohibitions on trading, transfers of property, assignments of debt, delivery or transfer of any securities or obligations & invalidity of such transactions
 - Reporting obligations on banks and trustees
 - Board of Trade powers: inspection of books & records, to demand information and to order winding up of companies or restrictions on trading subject to licences.

- Scheme of penalties:
 - criminal offences
 - *R v Oppenheimer & Colbeck* [1915] 2 KB 755
 - NB: trading with the enemy was a pre-existing common law offence
Daimler v Continental Tyre [1916] 2 AC 307
 - corporate criminal liability, secondary liability and inchoate offences
 - seizure and forfeiture of goods
 - shifts in burden of proof in some situations (e.g. for offences re false declarations, forfeiture of goods)
 - denaturalisation (British Nationality and Status of Aliens Act 1914, s7(2)(a))

- Covenant envisaged coordinated use of multilateral economic measures as alternative to war – art. 16
 - “modern economic sanctions as an instrument of collective security” (Alexander)
 - Move from economic warfare to pacific tool in international relations in new dawn of “international liberalism”
- Failings reflected wider problems with League
 - Insufficient enforcement mechanisms, relied on good faith and cooperation
 - Covenant provided no central authority to mandate multilateral sanction; imposition remained unilateral decision of each Member State
 - Non-participation of US, USSR (1934-1939), Germany (1926-1933); Japan (ex. 1933)



2nd World War - return to economic warfare

- **UK's Ministry of Economic Warfare**
 - +1,000 MEW staff in 1940 (HC Deb 23 July 1940 vol 363 c572)
 - coordinated approach to attack economic heart of Axis (nb: including bombing of economic assets; preclusive purchasing of strategic commodities through the UK Commercial Corporation)
 - Relied on Allied sea power to control imports into Europe: blockade based on “navicerts” system
 - War trade agreements to control trade with neutral States
 - “shipping warrants” system to access facilities and ports of UK & Allies
 - Asset freezes: blacklisting by Statutory Orders; +650 individuals and entities listed; licensing system administered by the TwTE branch of Board of Trade; built on regime established in WWI



Cold War

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- US led export controls v. Soviet bloc & China
 - UK concentrated on export controls under CoCom and phased out asset blocking & blacklisting mechanisms of wartime
 - US maintained both. OFAC est. 1950
 - US policy objectives of containment and influence beyond active states of war
 - UNSC paralysis except S. Africa (1962/63), Rhodesia (1966)



UNSC sanctions

- Explosion' in UN sanctions episodes post 1990
- Reflects growth of SC activity post Cold War
- Applied in a widening range of circumstances mirroring the widening of concept of threats to international peace and security
- Criticisms of humanitarian consequences (e.g. Iraq Oil for Food programme - SC/Res/986 (1995))
- Development of targeted sanctions or “smart sanctions”
 - Sanctions against non-State entities, e.g. bin Laden & Al-Qaida S/RES/1333 (2000) para. 8(c)
 - Growth of humanitarian exceptions
 - Due process?

Limited normative frameworks

- IHL: patchwork of limited protections in armed conflict
- Human rights and due process: limited procedural protections
– EU *Kadi* litigation
- Move away from multilateral collective security measures to unilateral regimes
- UN Special Rapporteur on Unilateral Sanctions
- Lack of framework re. proportionality in designation decisions and collateral consequences