

# SHOULD WE IMPOSE SANCTIONS ON RUSSIA BECAUSE OF THE CRIMEA?

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## Abstract

This article examines the view that sanctions should be imposed on Russia because of its involvement with Crimea. Applying sanctions fails the utilitarian ethics test because sanctions result in more losers than winners. The result would be a negative-sum game. Sanctions fail the rights test because rights are necessarily violated by their imposition. It is not in the best interest of the United States to impose sanctions because the United States has little to gain and much to lose by imposing sanctions. It fails the constitutional test because there is nothing in the Constitution to permit it.

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**Keywords:** Sanctions, Russia, Crimea, utilitarian, ethics, secession, human rights, property rights, contract rights, right of association, General Welfare Clause, foreign policy

## INTRODUCTION

Historically, the Crimea was part of Russia. That changed in 1954 when the Soviet Union transferred it to Ukraine.<sup>1</sup> About 58 percent of the population of the Crimea is ethnically Russian; only about 24 percent are Ukrainian, with the remainder of the population being a smattering of Tatars and other ethnic groups.<sup>2</sup>

It would not be inaccurate to say that a supermajority of the people who live in the Crimea would like to be part of Russia. In 1991, a referendum on sovereignty was held in the Crimean oblast of the Ukrainian Soviet Socialist Republic. The proposal to re-establish the Crimean

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<sup>1</sup> Maria Drohobysky, *Crimea: Dynamics, Challenges, and Prospects* (Rowman & Littlefield, 1996);

<sup>2</sup> Crimea. [http://en.wikipedia.org/wiki/Crimea#Crimea\\_in\\_the\\_20th\\_and\\_21st\\_centuries](http://en.wikipedia.org/wiki/Crimea#Crimea_in_the_20th_and_21st_centuries). (visited March 16, 2014).

Autonomous Soviet Socialist Republic passed by more than 94 percent. It became part of an independent Ukraine later that year.<sup>3</sup>

On March 6, 2014, the Supreme Council in Crimea voted to become part of Russia.<sup>4</sup> On March 16, 2014, Crimea held a referendum where the only two choices were whether to become part of Russia or whether to restore the 1992 Crimean constitution, which would allow the Crimean assembly to decide with whom Crimea will establish relations. The option to remain part of Ukraine was not included among the choices. Since the assembly has already expressed a desire to become part of Russia, the two options were really between (1) returning to Russia, and (2) returning to Russia.<sup>5</sup> There was more than an 80 percent turnout for the vote. More than 90 percent of the voters voted to become part of Russia.<sup>6</sup>

The United States and various other countries are against the idea that the Crimea should leave Ukraine and become part of Russia, citing that the move violates the Ukrainian constitution and international law. Russian troops have gone into Crimea and more have moved close to the border. President Obama and various European leaders are considering imposing sanctions on Russia because of its military actions and its support for the return of the Crimea to Russia.

Various sanctions have been proposed, ranging from not allowing certain Russian dignitaries to enter the United States to freezing Russian assets around the world and punishing companies for doing business with Russia.

## WOULD THEY WORK?

When one asks the question, “Would they work?” what is meant is whether the sanctions would be successful in positively altering the behavior of the country targeted with the sanctions.<sup>7</sup> That seems unlikely, since the

<sup>3</sup> Crimean sovereignty referendum, 1991. [http://en.wikipedia.org/wiki/Crimean\\_sovereignty\\_referendum%2c\\_1991](http://en.wikipedia.org/wiki/Crimean_sovereignty_referendum%2c_1991). (visited March 16, 2014).

<sup>4</sup> 2014 Crimean Crisis. [http://en.wikipedia.org/wiki/2014\\_Crimean\\_crisis](http://en.wikipedia.org/wiki/2014_Crimean_crisis). (visited March 16, 2014).

<sup>5</sup> Crimean referendum, 2014. [http://en.wikipedia.org/wiki/Crimean\\_referendum,\\_2014](http://en.wikipedia.org/wiki/Crimean_referendum,_2014). (visited March 16, 2014).

<sup>6</sup> Reuters, *Russia media say Crimea votes 93 percent to quit Ukraine*. <http://news.msn.com/world/about-93percent-of-voters-in-crimea-back-union-with-russia-state-news-agency> (visited March 16, 2014).

<sup>7</sup> GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT, KIMBERLY ANN ELLIOTT & BARBARA OEGG, *ECONOMIC SANCTIONS RECONSIDERED*, 3<sup>rd</sup> edition, Washington, DC: Peterson Institute for International Economics, 2007, hereinafter referred to as Hufbauer, et al., 2007. They said the same thing in the second edition, which contains much valuable information on 116 case studies of sanctions in the twentieth century. See GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND*

transfer of the Crimea to the Russian sphere of influence is a *fait accompli*. If one wants to ignore the facts in this particular case and apply probability theory, one might look to the empirical literature to determine how successful sanctions have been in the past, which could act as a predictor in estimating the likelihood that sanctions would be successful in the future. Hufbauer et al, (2007 & 1990) have examined this historical pattern, and have concluded that sanctions generally are not successful, even if one only defines success as a positive change in the behavior of the target. Some statistical data are provided below.

Only 34 percent of the 204 cases Hufbauer et al. (2007) examined could be labeled as successful. In determining whether a sanction has been successful, they limit their analysis to whether the sanction resulted in a positive change in the target country's policies, behavior or regime.<sup>8</sup> They do not do a full utilitarian analysis, much less an examination of human rights issues. Their formula for a successful sanction is when the cost of defiance exceeds the cost of compliance.<sup>9</sup> Table 1 shows the success rates by policy goal:

**Table 1 Success by Policy Goal<sup>10</sup>**

<b>Policy Goal</b>	<b>Success cases</b>	<b>Failure cases</b>	<b>Total</b>	<b>Success ratio (% of total)</b>
Modest policy changes	22	21	43	51
Regime change and democratization	25	55	80	31
Disruption of military adventures	4	15	19	21
Military impairment	9	20	29	31
Other major policy changes	10	23	33	30
All cases	70	134	204	34

They did not compare gains and losses and they almost totally ignored human rights issues. However, they did estimate the cost to the target country as a percentage of GDP. Table 2 summarizes their findings.

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CURRENT POLICY, 2<sup>nd</sup> edition (Volume 1), Washington, DC: Institute for International Economics, 1990; GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES, 2<sup>nd</sup> edition (Volume 2), Washington, DC: Institute for International Economics, 1990.

<sup>8</sup> HUFBAUER ET AL. (2007), at 7.

<sup>9</sup> HUFBAUER ET AL. (2007), at 50.

<sup>10</sup> HUFBAUER ET AL. (2007), at 159.

**Table 2 Average Cost to Target, by Policy Goal<sup>11</sup> (% of GDP)**

	<b>Success Cases</b>	<b>Failure cases</b>
Modest policy changes	2.6	1.1
Regime change and democratization	3.4	2.3
Disruption of military adventures	0.9	2.3
Military impairment	2.1	0.7
Other major policy changes	5.5	0.7
All cases	3.3	1.6

Their findings show that successful sanctions are about twice as costly as unsuccessful sanctions, on average.

## **WOULD IT MEET THE REQUIREMENTS OF UTILITARIAN ETHICS?**

If one applies utilitarian ethics to the question of imposing economic sanctions, a logical question to ask is whether the gains from imposing the sanctions exceed the losses. In other words, is the result a positive-sum game? The Hufbauer et al. (2007) study does not ask this question. They focus on whether the sanction accomplishes the goal it set out to accomplish without regard to the costs imposed on all sides.

Cortright and Lopez<sup>12</sup> take a similar approach. For them, sanctions are effective if they achieve the goal. In other words, the end justifies the means, which is a utilitarian argument. Gordon believes that economic sanctions cannot be justified on utilitarian grounds because the result is a negative-sum game and they do not achieve their objectives.<sup>13</sup>

One of the structural problems inherent in utilitarian ethics is that it is not possible to precisely measure gains and losses.<sup>14</sup> One may only estimate. Another flaw is that it is not even possible to identify who some of the winners and losers would be, as Frederic Bastiat pointed out in the mid-

<sup>11</sup> HUFBAUER ET AL. (2007), at 170.

<sup>12</sup> David Cortright and George A. Lopez, *Are Sanctions Just? The Problematic Case of Iraq*, 52 ETHICS & INTERNATIONAL AFFAIRS 735-755 (1999).

<sup>13</sup> Joy Gordon, *A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions*, 13 ETHICS & INTERNATIONAL AFFAIRS 123-142 (1999); Joy Gordon, *Reply to George A. Lopez's "More Ethical than Not."* 13 ETHICS & INTERNATIONAL AFFAIRS 149-150 (1999).

<sup>14</sup> Robert W. McGee, *The Fatal Flaw in NAFTA, GATT and All Other Trade Agreements*, 14 NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS 549-565 (1994); MURRAY N. ROTHBARD, *MAN, ECONOMY & STATE*, Los Angeles: Nash Publishing, 1970.

nineteenth century.<sup>15</sup> However, the fatal flaw in any utilitarian ethical analysis is that it ignores rights violations.<sup>16</sup> For a utilitarian, rights may be violated if the result is a positive-sum game. As Shakespeare would say, “All’s well that ends well.” As many tyrants and politicians would say, “The end justifies the means.”

Imposing sanctions does not meet the utilitarian test because the losers exceed the winners. Both the side imposing sanctions and the target of the sanctions lose more than they gain. The view that the country that imposes the sanctions “wins” as long as they are harmed less than the country that is the target of the sanction is perverse logic. If both parties lose, the result is always a negative-sum game. It is not necessary to be able to precisely measure the degree of harm inflicted on all sides to arrive at this conclusion.<sup>17</sup>

## WOULD IT VIOLATE RIGHTS?

Some philosophers do not even recognize the existence of rights. Jeremy Bentham, the classical utilitarian ethical theorist, for example, has said: “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense — nonsense upon stilts.”<sup>18</sup> Perhaps I will punch him in the nose and take his wallet the next time I see him and see if his view of rights has changed since he made that statement.

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<sup>15</sup> FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY*, Irvington-on-Hudson, NY, 1968. See especially his essay, *The Broken Window Fallacy*, which has been reprinted many times, including at [http://bastiat.org/en/twisatwins.html#broken\\_window](http://bastiat.org/en/twisatwins.html#broken_window) and <http://www.econlib.org/library/Bastiat/basEss1.html>.

<sup>16</sup> Robert W. McGee, *The Fatal Flaw in NAFTA, GATT and All Other Trade Agreements*, 14 *NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS* 549-565 (1994).

<sup>17</sup> For more on economic sanctions from an ethical perspective, see Robert W. McGee, *Economic Sanctions and International Relations*, Andreas School of Business Working Paper, Barry University, Miami Shores, FL 33161 USA, January, 2007, reprinted at <http://ssrn.com/abstract=955972>; Robert W. McGee, *MFN Status, Trade Embargoes, Sanctions and Blockades: An Examination of Some Overlooked Property, Contract and Other Human Rights Issues*, Eighth International Conference, International Trade and Finance Association, Atlantic City, NJ, May, 1998., published in Gulser Meric and Susan E.W. Nichols, editors, *THE GLOBAL ECONOMY AT THE TURN OF THE CENTURY, VOL. I, INTERNATIONAL TRADE* (Laredo, TX: International Trade & Finance Association, 1998), 3-13, reprinted at <http://ssrn.com/abstract=87810>; Robert W. McGee, *Trade Sanctions as a Tool of International Relations*, 2 *COMMENTARIES ON LAW & PUBLIC POLICY* 53-127 (2004), reprinted at <http://ssrn.com/abstract=615724>; Robert W. McGee & Yeomin Yoon, *The Takings Clause and Compensation for Trade Sanctions*, 5(2) *APPLIED MANAGEMENT AND ENTREPRENEURSHIP* 161-171 (June, 2000), reprinted at <http://ssrn.com/abstract=242428>; Robert W. McGee, *The Ethics of Economic Sanctions*, 23 *ECONOMIC AFFAIRS* 41-45 (December, 2003), reprinted at <http://ssrn.com/abstract=519208>.

<sup>18</sup> JEREMY BENTHAM, *ANARCHICAL FALLACIES*, Amazon Digital Services, 2011.

Rights violations are very serious things. Property rights, contract rights and the right of association would all be violated if sanctions were imposed on Russia. Punishing businesses for doing business with Russia, for example, would violate all three of these rights. Practically any sanction one might think of would violate at least one of these rights.

One might not get too emotional if Russia's leaders were harmed by the imposition of sanctions. The problem is that many more people besides Russia's leaders would suffer harm as a result of sanctions. The people of Crimea, most of whom prefer to be part of Russia rather than Ukraine, would be harmed if economic activity were prohibited, penalized or made more costly, which would certainly be the case if sanctions were imposed. So would any individual or company that is prohibited from doing business as a result of the sanctions. That includes Americans and American companies.

One must not exclude the issue of attempts to violate Crimean and Russian sovereignty. If both the people of Crimea and Russia want to form an association, punishing them for doing so violates their right of association and their right to have the government of their choice. Whether Crimea might be better off remaining part of Ukraine is irrelevant as far as rights are concerned.

Ludwig von Mises summed up the moral solution to the issue of secession nearly one hundred years ago.

“No people and no part of a people shall be held against its will in a political association that it does not want.”<sup>19</sup>

In other words, the people who live in the disputed area should be the ones who determine what their political affiliation should be. It should not be up to Russia, the Ukraine, the European Union, the United Nations or any other group or organization to determine their fate. If some group believes that their present government does not suit their needs, they have the right to abolish it and form a new government that is more to their liking.

The U.S. Declaration of Independence addresses this issue.

“Governments are instituted among Men, deriving their just powers from the consent of the governed --- Than whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government ...”<sup>20</sup>

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<sup>19</sup> LUDWIG VON MISES, *NATION, STATE, AND ECONOMY* 34 (1983). This book first appeared in German as *NATION, STAAT, UND WIRTSCHAFT* (1919).

<sup>20</sup> U.S. DECLARATION OF INDEPENDENCE, July 4, 1776.

The idea that it is necessary to first obtain approval of someone else is morally abhorrent. If the people of the Crimea wish to secede from the Ukraine, they should be able to do so without first obtaining the Ukraine's permission, just like the American colonists should not need the permission of King George before being able to secede from Great Britain. Likewise, if the people who live in the Crimea want to remain part of the Ukraine, they should be able to do so without interference from Russia or any other country. They should not be required to obtain anyone's permission if they want to establish an independent nation, either.<sup>21</sup>

### **WOULD IMPOSING SANCTIONS BE IN THE BEST INTERESTS OF THE UNITED STATES?**

One might reasonably ask: "Would imposing sanctions on Russia (and Crimea) be in the best interests of the United States? Or Europe? Or Asia? Or any other country that is thinking of becoming part of this coalition to impose sanctions?"

This question should be one of the first questions asked whenever anyone enters into a debate involving United States foreign policy. However, it is seldom asked, and practically never considered as something worthy of serious consideration. The kinds of questions most likely asked by politicians and foreign policy advisors are: "What would the Europeans think of us if we did it?" "How would it affect the balance in the House of Representatives or Senate in the next election?" "How should we do it?"

All of these questions have their place, at least if one is an armchair policy analyst. However, asking whether imposing this policy or that policy would be in the best interest of the United States should be one of the first questions asked.

It is difficult to see how imposing sanctions on Russia would be in the best interests of the United States. Sanctions do not meet the utilitarian test because there are more losers than winners. Both sides lose as a result of the sanctions. From a utilitarian perspective, it does not matter whether one side is harmed more than the other side. The result is always a negative-sum game, which fails the utilitarian test.

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<sup>21</sup> For more in-depth analyses of the issue of secession in general, see Robert W. McGee, *The Theory of Secession and Emerging Democracies: A Constitutional Solution*, 28 *STANFORD JOURNAL OF INTERNATIONAL LAW* 451-476 (1991-1992), reprinted at <http://ssrn.com/abstract=2177439>; Robert W. McGee and Danny Lam, *Hong Kong's Option to Secede*, 33 *HARVARD INTERNATIONAL LAW JOURNAL* 427-440 (1992), reprinted at <http://ssrn.com/abstract=2403476> ; Robert W. McGee, *Secession and Emerging Democracies: The Kendall and Louw Solution*, 2 *JOURNAL OF INTERNATIONAL LAW AND PRACTICE* 321-335 (1993), reprinted at <http://ssrn.com/abstract=2177437>; Robert W. McGee, *Secession Reconsidered*, 11 *JOURNAL OF LIBERTARIAN STUDIES* 11-33 (1994), reprinted at <http://ssrn.com/abstract=2177434>.

It would also increase international tensions, which is not a good thing, unless one wants to trigger a crisis in order to gain more power.

Imposing sanctions must necessarily violate someone's property, contract or association rights, and infringes on the right to choose the form of government the people of Crimea want. Thus, imposing sanctions fails the rights test. If sanctions fail both the utilitarian ethics test and the rights test, on what grounds can they be justified?

### **WOULD IT BE CONSTITUTIONAL?**

The question of whether imposing sanctions is constitutional is almost never asked, let alone seriously analyzed or discussed. However, it is one of the first questions that should be asked.

The United States Constitution is a constitution of limited powers. The federal government may only engage in the activities that Constitution permits it to engage in. If there is no provision in the Constitution that permits the federal government to engage in a certain activity, it is prohibited from engaging in that activity.

Over the years, this principle of limiting the scope of the federal government has been eroded, to the point where our policy makers believe that the federal government can do practically anything it wants because some majority of Congress have passed a law allowing them to do it. The most frequent constitutional provision they cite to justify the action they want to take is the General Welfare Clause,<sup>22</sup> which provides that the government may do whatever is for the general welfare.

However, it is difficult to see how the general welfare can be promoted by imposing sanctions on Russia. No identifiable group of Americans stands to benefit by the sanctions, and some groups and individuals stand to lose something. Their property rights are violated if they are prevented from trading the property they have for the property they want (doing business or purchasing Russian goods). Their contract and association rights are also violated as a result of the sanctions.

### **CONCLUSION**

From the above analysis, it seems clear that there is little justification for imposing sanctions on Russia as a result of its involvement in Crimea. A supermajority of the people of Crimea wants to separate from Ukraine and become part of Russia. Russia wants Crimea to become part of Russia. The fact that many Ukrainians disagree is irrelevant. No one should be forced to be part of a political affiliation that they do not want, to paraphrase Ludwig von Mises.

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<sup>22</sup> United States Constitution, Article I, Section 8, clause 1.



Sanctions fail the utilitarian ethics test because there are more losers than winners. Sanctions fail the rights test because property, contract and association rights are violated, not to mention the right of political affiliation. It is not in the best interest of the United States to impose sanctions, and it is not in the best interest of any European country, with the possible exception of Ukraine, to prevent the political realignment, which could only be done at great cost, if at all.