Center on Law, Ethics and National Security

Essay Series
Number 22
February 7, 2024

Through a New Lens: Using Vitoria's Work to Recontextualize Economic Sanctions and the Use of Force

By Andrew Parco

DUKE LAW

THROUGH A NEW LENS: USING VITORIA'S WORK TO RECONTEXTUALIZE ECONOMIC SANCTIONS AND THE USE OF FORCE

ANDREW PARCO †

ABSTRACT

Economic sanctions form a key component of American foreign policy, but they are not without controversy. Critics accuse them of ineffectiveness and disproportionality, and they have been likened to a use of force. To shed light on the debated legal status of sanctions, scholars and practitioners can turn to the work of founding thinkers in international law. Francisco de Vitoria, a sixteenth-century Spanish jurist, was one such torchbearer. Even though his reputation is marred by his complicity in colonialism, Vitoria's lecture on economic coercion and religious conversion can be applied to modern sanctions. This analogy serves to recontextualize the lawfulness of sanctions through Vitoria's lens with an emphasis on moderation and intent. While he does not equate financial restrictions with a use of force, Vitoria draws a linkage between the two that indicates a close and relevant connection. These findings can then be applied to sanctions regimes which have been levied against Russia, China, and the Middle East. In sum, this paper seeks to facilitate an ever-evolving understanding of Vitoria's legacy by applying his work to pressing modern questions on the legality of economic sanctions.

† University of North Carolina School of Law, J.D. expected 2025; George Washington University, B.A. 2020. Thank you to Major General Charles J. Dunlap, Jr. USAF (Ret.) for his wholehearted support and expert guidance, and to Riley Flewelling for her insightful feedback.

INTRODUCTION

The United States frequently issues economic sanctions as a key component of its foreign policy.[1] In just two years, it has imposed restrictions on the economies and assets of the Russian Federation, the People's Republic of China, and terrorist organizations operating in the Middle East.[2] And American decisionmakers are laying plans to issue more.[3] However, despite the numerous instances where the United States has relied on sanctions to exert economic pressure, sanctions are a highly imperfect tool.

Well-reasoned criticisms target their ineffectiveness and disproportionality.[4] Some commentators even draw a comparison between economic coercion and the use of force.[5] While these commentators remain the minority for now, they raise important questions on the legality of sanctions moving forward. An indispensable tool to answer such questions and determine the future of the legal landscape is an examination of its past, including a study of the founders that helped shape it.[6] Learning more about the forebears of international law creates the potential to discover more about international law itself.[7]

Among the most influential of those forebears is Francisco de Vitoria, a sixteenth-century Spanish jurist.[8] He laid the groundwork for core principles of international law during Spain's colonization of the Americas, and the impact of his work continues to reverberate and influence current events.[9] However, Vitoria's reputation has evolved over time. Modern critics accuse Vitoria of formulating and weaponizing international law to provide a legal buttress for Spain's "colonialism and imperialism" under the false pretense of "saving [Indigenous] people from maltreatment."[10] While his legacy is open to valid debate, the examination of any historical figure in international law is intended "not [to] glorify the past," but to explore how a founder, their work, and even their flaws might shed light on the present and future of the field.[11]

---

[1] AGATHE DEMARAIS, BACKFIRE: HOW SANCTIONS RESHAPE THE WORLD AGAINST U.S. INTERESTS 3 (2022).
[2] *See infra* Section III.D.
[3] *E.g.*, Press Release, U.S. House Comm. on Armed Servs., Rogers, McCaul, Colleagues Urge Action Against Huawei and SMIC (Sept. 15, 2023), https://armedservices.house.gov/news/press-releases/rogers-mccaul-colleagues-urge-action-against-huawei-and-smic.
[4] *See infra* Section I.A.
[5] *See generally* Cassandra LaRae-Perez, Comment, *Economic Sanctions as a Use of Force: Re-Evaluating the Legality of Sanctions from an Effects-Based Perspective*, 20 B.U. INT'L L.J. 161 (2002).
[6] Valentina Vadi, *International Law and Its Histories: Methodological Risks and Opportunities*, 58 HARV. INT'L L.J. 311, 344 (2017).
[7] *Id.* at 348.
[8] COLONIAL LATIN AMERICA: A DOCUMENTARY HISTORY 65 (Kenneth Mills, William B. Taylor & Sandra Lauderdale Graham eds., 2002)
[9] *See infra* Part II.
[10] Alexis Heraclides, *Humanitarian Intervention Yesterday and Today: A History*, 2 EUR. REV. INT'L STUD. 15, 18 (2015).
[11] Vadi, *supra* note 6, at 346; *see* Anna Spain Bradley, *Human Rights Racism*, 32 HARV. HUM. RTS. J. 1, 8–9 (2019) ("An accurate view of the history of human rights and international law requires recognizing the history of those people who contributed to its development, even as the law

Though Vitoria was imperfect himself, his lecture on economic coercion as a tool for religious conversion presents a ready analogy to modern sanctions regimes.[12] International law scholars and practitioners can rely on his work to better understand the legality of economic restrictions, and these findings can be applied to current sanctions as they stand today.

This paper proceeds in three main segments. Part I lays out the current standing of economic sanctions by discussing their widespread use, shortcomings, and potential categorization as a use of force. Part II covers Vitoria's contemporary impact while describing his reputation's transformation over time and his twenty-first-century relevance. Part III analyzes Vitoria's lecture on financial penalties, analogizes his work to sanctions, explains how he informs the discussion on economic coercion's legal status, and anticipates the role Vitoria could play in evaluating ongoing sanctions regimes. The paper ends with a brief conclusion and areas for further study.

I. ECONOMIC SANCTIONS

Economic sanctions represent "one tool, short of armed conflict, that a state can use to put pressure on a targeted state to change its behavior."[13] The act of levying sanctions against an adversary state is common in international law.[14] While restrictions are discussed, threatened, and levied by nations and international bodies around the world, the United States is a global leader in the enactment of economic sanctions.[15] Throughout the twenty-first century, the United States has "imposed more sanctions than the European Union, the United Nations, and Canada combined."[16]

While this paper largely discusses economic restrictions in the aggregate, it is worth acknowledging the various forms they may take. These include "trade embargoes," which entirely sever economic relations; "financial sanctions," which dissolve the ability to engage with American currency and most global financial systems; and "sectorial penalties," which aim to hobble key industries like ore mining or wheat production.[17] Embargoes have decreased in number but not disappeared; they serve as the model for multiple active sanctions regimes and are still meant to "prohibit virtually all activity and transactions involving a particular country."[18]

---

perpetuated the very abuses it proposed to eradicate—namely slavery, colonialism, and apartheid—upon them.").

[12] *See infra* Section III.B.

[13] Don S. De Amicis & David P. Stewart, *Sanctions on Steroids: The Ukraine-/Russia-Related Sanctions*, 48 N.C. J. INT'L L. 379, 381 (2023).

[14] Adam Schulman, *No Liability Without Feasibility: International Law and the Problem of Punishing the Innocent*, 8 GEO. J.L. & PUB. POL'Y 505, 514 (2010) (describing sanctions as the "prototype of international legal action").

[15] DEMARAIS, *supra* note 1, at 3.

[16] *Id.*

[17] *Id.* at 6.

[18] De Amicis & Stewart, *supra* note 13, at 394.

To limit the impact of collective punishment on innocent populations, "smart sanctions" emerged.[19] They narrow the scope of economic restrictions to target culpable sub-groups and individuals with options like "freezing assets or denying visas" on a case-by-case basis.[20] Smart, or targeted, sanctions first started appearing in practice and in literature by the late twentieth century.[21] After the September 11, 2001, terrorist attacks, they quickly grew to rival "old-fashioned jurisdiction-wide restrictions" as the preference in American foreign policy and are now a "common diplomatic tool" used by the United States.[22] With targeted sanctions, "regime leaders, human rights violators, [and] suspected terrorists or criminals" can be impacted, instead of mass innocent populations.[23] Decision-makers believe that these tools lack the shortcomings of "comprehensive, state-based trade embargoes of old" while remaining an effective mechanism for change.[24]

A. Criticism on the Impact and Effectiveness of Sanctions

Despite their commonplace application in global affairs, the effects of sanctions often reach far beyond culpable parties. For example, United Nations sanctions against Serbia and Iraq in the 1990s likely contributed to deteriorating domestic conditions and exacerbated the plummeting quality of life in countries that were already torn by war.[25] After a year and a half under U.N. sanctions, the average Serbian monthly income had fallen 97%, and after four years of sanctions in Iraq, infant mortality had tripled.[26] In fact, some argue that sanctions are "most effective" when they "impose the heaviest burdens on the targeted country's innocent population."[27] Even targeted sanctions quantitatively damage civilian populations.[28]

---

[19] *Id.* at 392 (noting that the driving purpose behind smart sanctions was "minimizing [the] 'collateral' impact on innocent parties").
[20] *See* Schulman, *supra* note 14, at 531.
[21] *See, e.g.*, Howard W. French, *Study Says Haiti Sanctions Kill Up to 1,000 Children a Month*, N.Y. TIMES (Nov. 9, 1993), https://www.nytimes.com/1993/11/09/world/study-says-haiti-sanctions-kill-up-to-1000-children-a-month.html [hereinafter French, *Haiti Sanctions*]; David R. Moran, *No Panacea: Analyzing Sanctions Before Imposition*, 27 STETSON L. REV. 1403, 1409 (1998) ("[W]hat we need is to find a way to design 'smart sanctions.'").
[22] Adam M. Smith & Cody M. Poplin, *Keeping Sanctions "Smart": Calibrating U.S. Sanctions Policy to Overcome Overcompliance*, 48 N.C. J. INT'L L. 499, 501–03 (2023); DEMARAIS, *supra* note 1, at 5–6.
[23] J. Benton Heath, *The Possible Worlds of Economic Sanctions*, 51 GA. J. INT'L & COMPAR. L. 629, 638 (2023).
[24] *Id.*
[25] Schulman, *supra* note 14, at 515.
[26] *Id.*
[27] De Amicis & Stewart, *supra* note 13, at 389.
[28] *See* Armin Steinbach, Jerg Gutmann, Matthias Neuenkirch & Florian Neumeier, *Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle*, 36 HARV. HUM. RTS. J. 1, 5 (2023) ("Counterintuitively, we find that targeted sanctions do not perform better regarding their human rights effects than non-targeted sanctions."). Of course, smart sanctions provide little humanitarian use when the goal is to determine how to "most severely" impact states. De Amicis & Stewart, *supra* note 13, at 389.

But perhaps the impact of sanctions is vindicated by their efficacy. If sanctions reliably produce sought-after results, there is no question why they are employed so widely. In a Machiavellian sense, the ends would justify the means. However, there is scant evidence that lends itself to a conclusion of consistent success. Historically, economic sanctions rarely succeed.[29] Most of the time, sanctions fail to achieve their intended policy outcome, and even when exemptions are carved out to protect humanitarian interests, the exemptions themselves usually fail to meet their goal of protecting civilians.[30]

Another argument is that economic sanctions are an ill-fitting but necessary bulwark between "international law" and "international anarchy."[31] This all-or-nothing viewpoint ignores the ability to, at a minimum, identify culpable sub-groups and limit sanctions to these groups.[32] Assuming, *arguendo*, that identification were infeasible, it is far from clear that hardship imposed on the innocent many is justified by punishment of the guilty few.[33] Despite the lack of any evidence that would suggest economic restrictions meet policy objectives, American agencies refuse to relent. The U.S. Department of the Treasury continues to claim that "[t]he ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior."[34]

B. Debate on Whether Sanctions Are a Use of Force

International institutions do not tend to take the position that economic sanctions are a use of force. Rather, the current legal landscape has "firmly cemented sanctions in the architecture of world order, both in the Charter of the United Nations and in the laws of powerful states."[35] As mentioned above, the U.N. authorizes the imposition of sanctions itself—despite the fact that some U.N. goals may actually be "defeated in practice" when it levies its own restrictions.[36]

---

[29] Steinbach et al., *supra* note 28, at 2 ("It must be recognized by . . . lawyers that it is widely viewed in political science that coercive sanctions fail in their ability to change behavior."); Schulman, *supra* note 14, at 527 (pointing out "the low likelihood of success that comes with economic sanctions"); RICHARD HANANIA, CATO INSTITUTE, POLICY ANALYSIS NO. 884, INEFFECTIVE, IMMORAL, POLITICALLY CONVENIENT: AMERICA'S OVERRELIANCE ON ECONOMIC SANCTIONS AND WHAT TO DO ABOUT IT 1, 8 (2020), https://www.cato.org/sites/cato.org/files/2020-02/pa-884-updated.pdf (concluding that economic sanctions "almost always fail to achieve their goals").

[30] *See* HANANIA, *supra* note 29, at 4–7 ("Still, sanctions related to the financial sector and other parts of the economy work to nullify [humanitarian] exemptions").

[31] *See* Schulman, *supra* note 14, at 527; *see also* French, *Haiti Sanctions*, *supra* note 21 (quoting a spokesperson for the U.S. Department of State who claimed that economic sanctions "remain the best tool we have at our disposal to bring about the return of democracy in Haiti" even though he admitted they are "by their very nature a blunt instrument").

[32] *See* Schulman, *supra* note 14, at 528.

[33] *Id.*

[34] Press Release, U.S. Dept. of the Treasury, Following Terrorist Attack on Israel, Treasury Sanctions Hamas Operatives and Financial Facilitators (Oct. 18, 2023) [hereinafter Press Release, U.S. Dept. of the Treasury, Terrorist Attack].

[35] Heath, *supra* note 23, at 633.

[36] LaRae-Perez, *supra* note 5, at 173.

Additionally, the International Court of Justice has previously denied legal interpretations that liken economic pressure to a use of force.[37]

In *Nicaragua v. United States*, the I.C.J. mediated a dispute alleging, *inter alia*, that the U.S. indirectly intervened in Nicaragua's internal affairs through economic sanctions. The United States had unilaterally ended aid support, reduced a crop quota, and later enacted a total embargo, battering the Nicaraguan economy with estimated losses of tens of millions of dollars.[38] The United States had also acted multilaterally, by obstructing loans to Nicaragua from international financial institutions like the Inter-American Development Bank.[39] Though it admitted that most of the individual acts did not violate the law, Nicaragua claimed that the totality of the pressure imposed by the United States amounted to "an indirect form of intervention" that impermissibly affected its domestic affairs.[40]

The I.C.J. disagreed.[41] While it did not decide the legal status of the multilateral efforts due to a lack of jurisdiction, the Court did decline to find that any of the United States' unilateral decisions throughout "the economic plane" constituted "a breach of the customary-law principle of non-intervention."[42] It is true that the I.C.J. found that some of the United States' actions violated its responsibilities under a treaty between the two countries.[43] However, much more consequential was its declaration that "[a] State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation."[44] Though the scope of its repercussions is subject to debate,[45] what is clear is that the I.C.J. "effectively foreclosed recourse to the customary principle of non-intervention even for crippling economic sanctions."[46]

However, some have suggested that the effect of economic sanctions on civilian populations indicates that sanctions may properly be considered not just an intervention, but a use of force.[47] Sanctions have been described as "tools of economic warfare" in the context of stronger states versus weaker ones, and they can "pose the same risks and have caused the same effects" as uses of force.[48] The practice of levying sanctions potentially "violates the duty of mitigation since collateral damage" exceeds the radius immediately adjacent to culpable parties.[49] In worst case scenarios, economic restrictions have the potential to actually "be

---

[37] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 245 (June 27).
[38] *Id.* at ¶ 123–25.
[39] *Id.* at ¶ 123.
[40] *Id.* at ¶ 123, 244.
[41] *Id.* at ¶ 245.
[42] *Id.*
[43] *Id.* at ¶ 275.
[44] *Id.*
[45] *See* Heath, *supra* note 23, at 637 n.53.
[46] *Id.* ("[T]he decision effectively blessed 'the most common, and potentially most severe, economic actions that can be employed against a state.'" (quoting Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT'L L. 345, 370 (2009))).
[47] LaRae-Perez, *supra* note 5, at 181.
[48] Heath, *supra* note 23, at 636; LaRae-Perez, *supra* note 5, at 186.
[49] *See* Schulman, *supra* note 14, at 529.

worse than the effects of armed conflict."[50] While the issue is "contextual" and "debated,"[51] the prevailing consensus in international law is that economic sanctions, in most circumstances, do not constitute a use of force.[52]

II. FRANCISCO DE VITORIA

For decades, Francisco de Vitoria has been termed "the earliest 'father' of international law."[53] He is often mentioned by practitioners and scholars alike in the same breath as Thomas Aquinas[54] and Hugo Grotius.[55] However, Vitoria has also been labelled another type of "founding father:" he penned the "first secularly oriented, systematized elaboration of the superior rights of civilized Europeans to invade and conquer" Indigenous communities.[56] His nuanced reputation developed after his influential lectures had already taken root as a basis for international law.

It is important to note that not only has Vitoria's work been "reinterpret[ed]" over time, but an updated evaluation of his work can lead to "a means of rethinking" major dynamics that continue to influence global affairs today.[57] Though the early twentieth century framed Vitoria as "a brave champion of Indian rights in his own

---

[50] LaRae-Perez, *supra* note 5, at 187. A minority of commentators have even suggested that "the United States violates international law when it imposes sanctions without the justification of self-defense." *Id.* at 178; GEOFF SIMONS, IMPOSING ECONOMIC SANCTIONS: LEGAL REMEDY OR GENOCIDAL TOOL? 180 (1999).

[51] De Amicis & Stewart, *supra* note 13, at 390.

[52] Thomas R. Burks, *Cyberspace, Electronic Warfare, and A Better* Jus Ad Bellum *Analogy*, 82 A.F. L. REV. 1, 36 n.238 (2022) ("Use of force irrefutably includes acts that cause physical damage or injury, but not traditional economic or political sanctions." (citation and quotation marks omitted)); Peter S. Konchak, Comment, *Cold War and Peace: A Reconceptualization of Armed Aggression and Collective Security in Circumstances of Modern Great Power War*, 35 TEMP. INT'L & COMPAR. L.J. 297, 329 (2021) ("[E]conomic sanctions do not rise to the level of a use of force."); Jay P. Kesan & Carol M. Hayes, *Mitigative Counterstriking: Self-Defense and Deterrence in Cyberspace*, 25 HARV. J.L. & TECH. 429, 515 n.558 (2012) ("[E]spionage, economic sanctions, and political coercion are not considered uses of force."); Herbert S. Lin, *Offensive Cyber Operations and the Use of Force*, 4 J. NAT'L SEC. L. & POL'Y 63, 80 (2010) ("Under international law, economic sanctions appear not to constitute a use of force, even if they result in death and destruction on a scale that would have constituted a use of force if they were caused by traditional military forces.").

[53] Heraclides, *supra* note 10, at 17; *see also* Charles H. McKenna, *Francisco de Vitoria: Father of International Law*, 21 STUD.: IR. Q. REV. 635, 637 (1932).

[54] Waseem Ahmad Qureshi, *Examining the Legitimacy and Reasonableness of the Use of Force: From Just War Doctrine to the Unwilling-or-Unable Test*, 42 OKLA. CITY U. L. REV. 221, 278 (2018) [hereinafter Qureshi, *Examining the Legitimacy*]; Peter Daly, *Is the War in Ukraine a Just War?*, NAT'L CATH. REP. (Sept. 8, 2023), https://www.ncronline.org/opinion/ncr-voices/war-ukraine-just-war.

[55] Qureshi, *Examining the Legitimacy*, *supra* note 54, at 235; Gonzalo Hernando Rodríguez, A Critical Analysis of the 'Responsibility to Protect' and the Libyan Intervention 16 (June 2023) (master's thesis, Tilburg Law School), http://arno.uvt.nl/show.cgi?fid=162528.

[56] Georg Cavallar, *Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?*, 10 J. HIST. INT'L L. 181, 182 (2008) (quoting ROBERT A. WILLIAMS, THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST 106 (1990)).

[57] Antony Anghie, *Francisco De Vitoria and the Colonial Origins of International Law*, 5 SOC. & LEGAL STUD. 321, 323 (1996) [hereinafter Anghie, *Vitoria and the Colonial Origins*].

time," a modern study of his legacy revealed something far "more insidious."[58] Much has been written about his lectures in the centuries since his death, but the scholarship is never complete. This paper seeks to continue facilitating an ever-evolving, nuanced understanding of Vitoria's legacy.

A. Vitoria's Lectures and Contemporary Impact

During his tenure, Vitoria was a torchbearer leading "some of the most rigorous intellectual scrutiny of Spain's emerging American claims and their papal legitimation."[59] He deliberately built off Aquinas's legacy, establishing himself as part of the Aquinas philosophical lineage.[60] Though Vitoria never published his work, the lectures that he delivered were transcribed by his students and found wide influence beyond the university.[61]

From an academic standpoint, the question of Spanish rule in the Americas presented to Vitoria "an intellectual challenge with dramatic practical repercussions."[62] His response to the challenge left a complicated aftermath. On the one hand, he did not hesitate to criticize the idea that Spain had a rightful claim to the Americas, lambasting the wholly flawed justification that the Spanish had "discovered" the land.[63] Spurning the contemporarily prevalent notion that Indigenous individuals were "slaves, sinners, heathens, barbarians, minors, lunatics and animals," Vitoria "humanely" articulated a far different conclusion.[64] He found that Indigenous institutions and customs exhibited rationality, and he further argued that Indigenous peoples wielded "reason" that allowed them "to determine moral questions."[65]

On the other hand, he built a new framework of international law from the ground up that supported Spanish colonialism. He imposed on Indigenous communities a novel framework by way of their capacity to reason; he contended that any person or community who did "possess reason" was necessarily subject to international law, or "*jus gentium*."[66] In doing so, he subtly replanted Christian norms into his framework by merely "recharacterizing" them—without diluting their "totalizing, hierarchical, Western, repressive, and exclusive" tenor.[67] This

---

[58] *Id.* at 332.
[59] COLONIAL LATIN AMERICA, *supra* note 8, at 65.
[60] *Id.* at 66.
[61] *Id.* at 67. Supposedly, Vitoria claimed "that his students already had more than enough to read." *Id.*
[62] *Id.* at 66.
[63] *Id.* at 67.
[64] Anghie, *Vitoria and the Colonial Origins*, *supra* note 57, at 325.
[65] *Id.* It is worth noting that Vitoria only reached these conclusions by reasoning that Indigenous political structures demonstrated parallels to "institutions found in [his own] world, in Europe itself." *Id.* It does not appear evident that he recognized value inherent in the Indigenous systems, merely that he noticed similarities to the worldview in which he already placed merit. *Id.* A consequential effect resulting from this thought process was that "the particular cultural practices of the Spanish" could then "assume the guise of universality." *Id.* at 326.
[66] *Id.* at 325.
[67] *Id.* at 328; Cavallar, *supra* note 56, at 182 (quoting WILLIAMS, *supra* note 56, at 106). It was clear that "all the Christian practices which Vitoria dismissed earlier as being religiously based, as

intellectual tension led to a result where Vitoria "spoke directly to the engine of Spanish expansion," even though he "did not cause it to change much."[68]

For example, he argued that limiting the right to travel freely—even across others' land—would be "inhuman," and thus in conflict with the principles of natural law he espoused.[69] Though the right to travel could theoretically support any number of activities, a crucial practical application was the Spanish sale of goods throughout Indigenous territory; the result was that the new conceptualization of international law baked in protections for "a system of commerce and Spanish penetration."[70] Vitoria's new framework enabled him to mask commercial manipulation and territorial encroachment with a false sense of "fairness" and "reciprocity."[71] It trapped Indigenous peoples in "a comprehensive, indeed inescapable, system of norms" that could only ever benefit the Spanish.[72] Any attempt to inhibit travel equaled a violation of international law and, according to Vitoria, constituted "an act of war."[73] Every act of war could be met with Spanish defense.[74] In sum, each Spanish encroachment under the banner of open travel prompted a foreseeable Indigenous rebuttal which authorized further Spanish encroachment for allegedly defensive purposes—all sanctioned by Vitoria's framework supposedly grounded in "fairness" and "reciprocity."

On a practical level, Vitoria's personal objection to conquest did not quell his complicity. Vitoria was reportedly disturbed when he learned about the Indigenous genocide.[75] He found it appalling that the Spanish crown was "violating the principle of just war and causing incommensurate harm" throughout its "conquest of the New World."[76] And yet, he made no effort to change course.[77] He continued to justify the Spanish campaign in the Americas.[78] At best, Vitoria's lack of resistance did nothing to slow the Spanish assault on Indigenous communities. At worst, Vitoria's work opened the door for "unmediated and unqualified violence" all in the name of Indigenous "conversion, salvation, [and] civilization."[79]

---

limited in their scope to the Christian world and therefore inapplicable to the Indians, [were] reintroduced into his system as universal rules." Anghie, *Vitoria and the Colonial Origins*, *supra* note 57, at 328.

[68] COLONIAL LATIN AMERICA, *supra* note 8, at 66.

[69] Anghie, *Vitoria and the Colonial Origins*, *supra* note 57, at 326.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] Heraclides, *supra* note 10, at 21.

[76] Qureshi, *Examining the Legitimacy*, *supra* note 54, at 236.

[77] Heraclides, *supra* note 10, at 21.

[78] *Id.* Alexis Heraclides has raised the suggestion that, after Vitoria found out about Spanish atrocities against Indigenous peoples, he may have been implicitly coerced into inaction by King Charles V. *Id.*

[79] Anghie, *Vitoria and the Colonial Origins*, *supra* note 57, at 333.

B. Vitoria's Twenty-First-Century Relevance

In international law, "scholars often cite classic treatises from past decades—or past centuries."[80] For this reason, despite the complicated evolution of both international law and his own reputation, Vitoria and his writings have been frequently cited throughout the twenty-first century to contextualize and understand modern-day conflicts.[81] Vitoria has been invoked during discussions of the September 11 terrorist attacks,[82] Wars in Iraq[83] and Afghanistan,[84] Libyan intervention,[85] Arab Spring,[86] Russian invasion of Ukraine,[87] and 2023–24 conflict between Israel and Hamas.[88]

From a wider perspective, an analysis of Vitoria fits squarely into a growing scholarship of the history of international law.[89] Over the past two decades, "a constant and growing need on the part of international lawyers" has surged that seeks "to establish links between the past and the present situation of international

---

[80] Mary Whisner, *Researching Outside the Box*, 95 LAW LIBR. J. 467, 472 (2003).

[81] Due to the evolution of positive law, some of Vitoria's teachings categorically contradict the current legal landscape. One obvious distinction between the framework developed by Vitoria and present-day international law is that Vitoria authorized states to dispense of several "doctrines of consent, limits and proportion" upon any legal violation. Anghie, *Vitoria and the Colonial Origins*, *supra* note 57, at 331. In contrast, it is now widely understood that a violation of international law by an adversary does not justify additional violations of law. Tom Porteous, *International Humanitarian Law Applies to All States*, HUM. RTS. WATCH (Oct. 19, 2023, 12:15 PM), https://www.hrw.org/news/2023/10/19/international-humanitarian-law-applies-all-states. Nevertheless, experts in international law must still sometimes rely on sources for legal authority that are otherwise obsolete or superseded in other ways. *See* Whisner, *supra* note 80, at 472 (explaining that "international law scholars" occasionally have to cite "sources from even ancient times").

[82] Dale M. Courtney, A Just War Response to the 11 September 2001 Terrorist Attack 79–80 (Nov. 2002) (master's thesis, Reformed Theological Seminary), https://cdn.rts.edu/wp-content/uploads/2019/05/JustWar_on_Terrorism.pdf.

[83] Antony Anghie, *The War on Terror and Iraq in Historical Perspective*, 43 OSGOODE HALL L.J. 45, 61–63 (2005); Bernardo Canteñs, *Francisco De Vitoria's Just Intervention Theory and the Iraq War*, APA NEWSL. ON HISP./LATINO ISSUES PHIL. (Am. Phil. Ass'n, Newark, Del.), Spring 2005, at 1, 5–6, https://cdn.ymaws.com/www.apaonline.org/resource/collection/60044C96-F3E0-4049-BC5A-271C673FA1E5/v04n2Hispanic.pdf.

[84] AFG. LEGAL EDUC. PROJECT, STANFORD L. SCH., AN INTRODUCTION TO INTERNATIONAL LAW FOR AFGHANISTAN 71 (2011).

[85] Luke Glanville, *Gaddafi and Grotius: Some Historical Roots of the Libyan Intervention*, 5 GLOB. RESP. TO PROTECT 342, 346–52 (2013); Joaquín Garro Domeño, *Just War and the Responsibility to Protect on the 10th Anniversary of the Intervention in Libya*, 19 J. SPANISH INST. FOR STRATEGIC STUD. 493, 501–503 (2022).

[86] Valerie Morkevicius, *Why We Need a Just Rebellion Theory*, 27 ETHICS & INT'L AFFS. 401, 403 n.17 (2013).

[87] Jean-Marc Sorel, *International Law and War in Light of the Ukrainian Conflict: A Relation Biased Since Its Inception*, 5 REVUE EUROPÉENNE DU DROIT 101, 101 (2023).

[88] Lucienne Bittar, *Israël peut-il être inculpé de crimes de guerre ou de génocide?*, CATH-INFO (Nov. 17, 2023), https://www.cath.ch/newsf/israel-peut-il-etre-inculpe-de-crimes-de-guerre-ou-de-genocide.

[89] As a combined discipline, international legal history "does not aim to explain history for the sake of history or international law for the sake of international law; rather, it aims to understand law as history and history as law." Vadi, *supra* note 6, at 352 (cleaned up).

norms, institutions and doctrines."[90] Practitioners and scholars have come to realize that "[n]ot only can the history of international law explain the features of the current international legal framework, but it can also provide a critical lens through which to investigate the past and envision the future of the field."[91] To this end, ambiguities in the history of international law have unlocked novel research questions, including questions about the individuals who first wrote the law.[92] Legal biographies of historical figures are growing in number, and their value is increasingly understood as an "important source of information about the international legal system."[93]

The task of interpreting and understanding Vitoria's work is not cabined to his lifetime. His reflections, like all historical legal texts, "can illuminate and are illuminated by present-day legal thought and practice."[94] Though the present analysis is far too limited to approach the expansive scope of a legal biography, it nonetheless joins a rising tide of research that hopes to unveil a better understanding of the present and future by focusing on a single jurist's viewpoint and historical contributions to the field.

III. VITORIA'S LECTURE ON COERCION TO CONVERT NON-CHRISTIANS AND ITS MODERN APPLICABILITY TO ECONOMIC SANCTIONS

In 1534 or 1535, Vitoria delivered a lecture on the evangelization of non-Christians.[95] He sought to understand which tools could be used to effect the forcible conversion of a non-Christian.[96] Though Vitoria generally argued that coercion in any context was "evil," that did not necessarily make it unlawful or unjust in his eyes.[97] Instead, he narrowed the scope and "focuse[d] on the role and effects of coercion in matters of religion."[98]

He divided up his lecture between non-Christians that were subject to the Spanish Crown's jurisdiction and others outside its jurisdiction.[99] Because his latter analysis considered the powers between peoples of different states, his discussion of non-Christians beyond the authority of the Crown is most relevant to the study of international law. Vitoria further weighed different methods of coercion that could be used to force the conversion of non-Christians—including intimidation, threats, and violence—and he considered whether they could be justified under his

---

[90] *Id.* at 317 (quotation marks omitted).
[91] *Id.* at 320 (citations and quotation marks omitted).
[92] *Id.*
[93] *Id.* at 320, 345 & nn.224–26.
[94] *Id.* at 337 (cleaned up) (outlining the principles of textualism in international legal history).
[95] COLONIAL LATIN AMERICA, *supra* note 8, at 65–70.
[96] Francisco de Vitoria, *On the Evangelization of Unbelievers*, *in* POLITICAL WRITINGS 339, 339–51 (Anthony Pagden & Jeremy Lawrance eds., 1991) [hereinafter Vitoria, *On the Evangelization*].
[97] COLONIAL LATIN AMERICA, *supra* note 8, at 69.
[98] *Id.*
[99] *Id.*

conceptualization of "natural law."[100] Among the tactics discussed was the use of "taxes and levies."[101]

A. Vitoria's Reflections on Economic Coercion

Vitoria began his discussion of economic coercion as most academics begin their work: citing earlier scholarship. He invoked Raymond of Peñafort, a Catholic jurist who played a pivotal role in the development of canon law 300 years prior.[102] Raymond posited that financial penalties to convert non-Christians would be acceptable if only they were "customary" and not a "novelty."[103] The chief concern for Raymond was the potential for "provocation," and in turn, he cited canon law and the New Testament.[104] Based off this, Vitoria concluded that Raymond would repudiate the use of coercive economic tools.[105]

Next, Vitoria readily conceded that not all economic tools of the Crown were unjust. He acknowledged "tributes appropriate to the time and place at the outbreak of war," which could be levied on domestic Christians and non-Christians alike.[106] He went a step further, stating that even fines imposed on non-Christians alone could be justified "so long as their fiscal burden [was] moderate and not increased by the fact that Christians [were] exempted."[107] Overall, fines that were not "unjust and immoderate" were likely to be found acceptable.[108]

Providing examples to illustrate the distinction between just and unjust, Vitoria explained that "criminal action" and "the law of war" led to heavier fees.[109] If the Crown discovered "a crime perpetrated by the unbelievers," increased fines would have been permitted.[110] In other words, when a person was rightfully "in a position to be killed or despoiled of their goods," the Crown had every right to impose greater financial penalties.[111] The same held true if non-Christians "were to petition for the right to live among . . . Christians on the agreement that they pay double tribute."[112] Throughout each of these circumstances, Vitoria expounded that "no wrong would be done" if non-Christians were "burdened by heavier taxes than the Christian part of the population."[113]

---

[100] Vitoria, *On the Evangelization*, *supra* note 96, at 341–51; *see supra* Section II.A. for a discussion of his international law framework.
[101] Vitoria, *On the Evangelization*, *supra* note 96, at 348.
[102] *Id.*; Stephen P. Garvey, Versari *Crimes*, 53 ARIZ. ST. L.J. 477, 480 (2021) (providing context about Raymond of Penyafort); *see* Robert M. Jarvis, *St. Raymund of Penafort: Patron Saint of Law Professors*, 8 BARRY L. REV. 111, 112 & n.6 (2007) (explaining that various spellings of his name include Raymund, Raymond, Penafort, Pennafort, Pennaforte, and Penyafort).
[103] Vitoria, *On the Evangelization*, *supra* note 96, at 348.
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.* at 349.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*

Even if adverse actions were taken against non-Christians directly *because* of their religious standing, the actions were not necessarily unjust, according to Vitoria.[114] For example, he explained that deportation of non-Christians could easily be justified by "a probable threat of subverting the faithful or overturning the homeland."[115] Though some non-Christians would have likely converted rather than face "exile," Vitoria found that was not a problem "as long as that intention [of conversion]" did not prompt the expulsion.[116] Similarly, it would have been "perfectly fair" to threaten non-Christians with capital punishment for committing crimes, even if they were crimes that *only* applied to non-Christians.[117]

Evidently, economic fines on non-Christians were permitted under Vitoria's explanation, as were adverse actions against non-Christians because of their belief system—up to and including death. What was most consequential was the fine but important stipulation Vitoria established with intent. He asserted that "tributes which cannot also be demanded of the faithful . . . cannot be demanded of unbelievers *with the intention of making them convert*."[118] The intent to convert a person to Christianity could not justify a financial penalty. In the same vein, Vitoria contended that non-Christians "cannot be deprived of their goods on the grounds of their unbelief" nor can they "be burdened with greater fiscal obligations than are lawful in the case of the faithful."[119] Vitoria added that, because "it is not lawful to use fear and violence to convert [non-Christians]," then it is doubtful that economic pressure could be justified to achieve the same purpose.[120]

He closed his discussion with a recommendation for "greater leniency" for non-Christians—not because he advocated tolerance, but because it served as a more effective tool for conversion.[121] By utilizing softer tactics, Vitoria predicted "that more of them could be converted."[122] Not only would there have been greater numerical benefits, but he believed that lenient measures would result in converts who would "remain firmer in the faith."[123]

B. How Vitoria's Views on Economic Coercion Relate to Modern Sanctions

The task of applying Vitoria's lecture to the current legal landscape is the most crucial step—not to mention the most wide-ranging and delicate. Due to its limited scope, this paper cannot thoughtfully discuss every topic Vitoria mentions. It will strive to briefly address each topic area but will primarily focus on the question of economic sanctions. Beginning with the clear similarities, much of Vitoria's work can be closely tracked with modern equivalents.

---

[114] *Id.* at 348.
[115] *Id.*
[116] *Id.*
[117] *Id.* at 349.
[118] *Id.* (emphasis added).
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*

While his citation to Raymond of Peñafort provides valuable insight into his reasoning, it offers limited utility for modern analysis. Issuing financial penalties to change states' and individuals' behaviors uncontroversially falls under customary international law, so it would not prove to be a "novelty." Raymond's underlying concern, however, about the risk of "provocation" bears resemblance to similar warnings about deteriorating international relationships when it comes to the imposition of economic sanctions.[124] Already, it is evident that Vitoria's discussion of converting non-Christians is applicable to international relations.

1. Ensuring Moderation. Centered on "avoiding excessive disproportionality," the principle of proportionality is meant to prevent unrestrained responses in international law.[125] When Vitoria rejected "unjust and immoderate" coercion, i.e., financial penalties that are excessive, it seems to mirror his adherence to proportionality in other lectures.[126] It is not surprising that the same basis would be found across his work, and it reflects one of the foundational principles embedded in modern international law.[127] At least in some circumstances, it is possible, if not probable, that modern economic sanctions violate the proportionality requirement.[128]

Closely tied to the principle of proportionality, the duty of mitigation is a key focus of concern for commentators studying force in international law,[129] and it has already been suggested that a violation of mitigation marks a step toward categorizing sanctions as a use of force.[130] Ongoing is the debate on whether proportionality is required to legally impose sanctions,[131] and Vitoria's insistence

---

[124] Robert W. McGee, *Legal Ethics, Business Ethics and International Trade: Some Neglected Issues*, 10 CARDOZO J. INT'L & COMPAR. L. 109, 127 (2002) (proposing "that sanctions can lead to war" in an argument against economic restrictions); *see also* Robert Lewis, *U.S. Secondary Sanctions Provoke Strong Backlash Among Both Friends and Foes Around the World*, CHINA LEGAL COMMENT. CHANNEL (July 21, 2021), https://www.lexology.com/library/detail.aspx?g=84f1f477-ad07-4063-9964-c6a030779bb7.

[125] *See* Steinbach et al., *supra* note 28, at 26.

[126] Francisco de Vitoria, *On the American Indians*, *in* POLITICAL WRITINGS, *supra* note 96, at 283 ("All this must be done in moderation, in proportion to the actual offence.").

[127] *See, e.g.*, Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 237 (June 27) (explaining that breaches of the principle of proportionality violate international law).

[128] *See* Steinbach et al., *supra* note 28, at 27 ("Sanctions are disproportionate since they produce harmful effects without these effects being outweighed by the objectives of the sanctions being accomplished.").

[129] Michael A. Becker, *Challenging Some Baseline Assumptions About the Evolution of International Commissions of Inquiry*, 55 VAND. J. TRANSNAT'L L. 559, 589 (2022) (describing the principles considered by an early international inquiry body, including "proportionality in the use of force" and "mitigation of harm"); Harold S. Peckron, *Uniform Rules of Engagement: The New Tax Regime for Foreign Sales*, 25 HASTINGS INT'L & COMPAR. L. REV. 1, 2 (2001) (explaining that the "rules of engagement" include "military principles of necessity, proportionality, and the moral rule of mitigation of suffering").

[130] *See* Schulman, *supra* note 14, at 529.

[131] *See* De Amicis & Stewart, *supra* note 13, at 390 ("Some contend that to be lawful, sanctions must also be objectively necessary, proportionate, and consistent with principles of international human rights law."); Steinbach et al., *supra* note 28, at 7–8.

on "moderat[ion]" appears to fall onto the side that coercion must satisfy the principles of proportionality and mitigation.

2. Responding to National Security Threats. Vitoria's next claim, that expulsion of non-Christians is an appropriate response to "a probable threat of subverting the faithful or overturning the homeland," faces harsher scrutiny through a modern lens. From one angle, it seems that diplomatic and even military action is authorized when national security priorities are threatened, according to Vitoria. As long as national security does not serve as a pretext for the equivalent of religious conversion[132] then forceful action is not immediately unlawful, which is not a dramatic departure from current norms in and of itself.[133]

However, from a more granular angle, the analogy appears to suggest that foreign nationals can be subjected to "exile" if the "homeland" might be "subvert[ed]" or "overturn[ed]." Mass retaliation under the banner of national security eerily recalls a recent American policy that severely curtailed liberties on the basis of nationality and heritage: Japanese American internment.[134] Vitoria believed that expulsion would be "perfectly fair" so long as the intent of the action was not to convert non-Christians. During World War II, internment was not enacted to force citizenship—seeing as the internment population included naturalized and natural-born citizens[135]—and yet internment still amounted to an historic human rights violation.[136] On this point, Vitoria's lecture must be heeded with caution, if not outright rejected.

3. Emphasizing Intention. Vitoria's declaration that financial penalties "cannot be demanded of unbelievers with the intention of making them convert" demarcates an important distinction for the imposition of sanctions. In modern terms, Vitoria's argument means that sanctions that cannot be imposed on an ally

---

[132] *See infra* Section III.C. for an in-depth discussion about the appropriate equivalent to religious conversion.

[133] *See, e.g.*, U.N. Charter art. 51 (permitting the use of force as a response to "an armed attack").

[134] Shoba Sivaprasad Wadhia & Margaret Hu, *Decitizenizing Asian Pacific American Women*, 93 U. COLO. L. REV. 325, 350–51 (2022) (explaining that the Supreme Court decided in cases challenging internment "that foreign cultures threatened American culture and posed national security threats"); Eric L. Muller, *Betrayal on Trial: Japanese-American "Treason" in World War II*, 82 N.C. L. REV. 1759, 1760–61, 1761 n.9 (2004).

[135] *See* Muller, *supra* note 134, at 1760 ("Citizenship meant nothing: Japanese-American citizens were as suspect as aliens because, in the military's view, 'the racial strains [were] undiluted' in the second and third generations." (citation omitted)).

[136] Sunjana Supekar, *Equitable Resettlement for Climate Change-Displaced Communities in the United States*, 66 UCLA L. REV. 1290, 1325 (2019) (noting that "severe human rights violations" have included "the forced internment of Japanese Americans"); Michael Kagan, *Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East*, 38 COLUM. HUM. RTS. L. REV. 263, 314 (2007) ("Japanese internment concerned a much more severe violation of human rights."); *see also* Christopher Ross, *The Alt-Right, the Christian Right, and Implications on Free Speech*, 20 RUTGERS J. L. & RELIGION 52, 76 n.176 (2019) (listing Japanese-American internment alongside the genocide of Indigenous peoples and the enslavement of African Americans (citation omitted)).

nation cannot be justly imposed on an adversary nation[137] with the intent to change their political or economic structures. This assertion directly conflicts with multiple modern sanctions regimes, but it leaves other systems of coercion untouched. Restrictions are enacted for any number of reasons, and almost invariably, these reasons are traced back to the intent to change behavior.[138] Under Vitoria's argument, if the behavior being targeted amounts to the mechanisms of a state's inherent political or economic system, sanctions are impermissible. Vitoria would contend that rival nations "cannot be deprived of their goods" just because they subscribe to a different set of founding beliefs. If, instead, the behavior constitutes some type of "criminal action," then sanctions can be enacted and "no wrong would be done." Therefore, human rights violations, illegal territorial expansion, and other unlawful activity would be acceptable grounds for the imposition of economic restrictions.

To illustrate the dichotomy, compare two examples in American foreign policy. First, the United States' policy of leveraging economic pressure on Cuba in order "to seek a peaceful transition to democracy" and "encourage free and fair elections" would likely violate Vitoria's principles.[139] The purpose of instituting democracy in a foreign nation would likely be recognized as analogous to "the intention of making [non-Christians] convert," so Cuba could not "be burdened with greater fiscal obligations" to coerce it into conversion. But, second, American sanctions against China for its systemic abuse of ethnic minorities would be "perfectly fair" according to Vitoria's argument.[140] Via its "gross human rights violations committed against Uyghurs, ethnic Kazakhs, Kyrgyz, and members of other Muslim minority groups,"[141] China "perpetrated" clear "criminal action." As a result, economic sanctions targeting China on these grounds are not "unjust."

It is crucial to note that the intent prong of Vitoria's lecture does not exactly align with the current movement against sanctions—though it does not contradict it either. Typical analyses that decry economic restrictions rely on the fact that they are largely ineffective and harm civilian populations[142]—a position that more closely parallels Vitoria's emphasis on "moderat[ion]," as discussed above. Here, Vitoria does not invoke a similar effects-based analysis.[143] His approach, which

---

[137] *See infra* Section III.C. for a more thorough analysis about the modern analogy for Christians and non-Christians.

[138] DEMARAIS, *supra* note 1, at 3; *see* Press Release, U.S. Dept. of the Treasury, Terrorist Attack, *supra* note 34 ("The ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior.").

[139] Cuban Democracy Act of 1992, Pub. L. No. 102-484, § 1703, 106 Stat. 2575, 2576 (codified at 22 U.S.C. § 6002).

[140] *See* Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, § 6, 134 Stat. 648, 651–54 (codified at 22 U.S.C § 6901); Uyghur Forced Labor Prevention Act, Pub. L. 117–78, 135 Stat. 1525 (2021) (codified at 22 U.S.C § 6901).

[141] § 3, 135 Stat. at 649.

[142] *See supra* Section I.A.

[143] *But see, e.g.*, Lin, *supra* note 52, at 80 ("Viewed from an effects-based analytical perspective, traditional [Law of Armed Conflict] thus has some inconsistencies as to its treatment of the means used for economic coercion."); LaRae-Perez, *supra* note 5, at 163 ("[F]rom an effects-based perspective, comprehensive and long term economic sanctions can be as severe as the use of force.").

would examine the *intent* of a sanctions regime rather than its *impact*, is largely absent from the modern academic opposition to economic coercion.[144]

4. Factoring in the Use of Force. Vitoria's comparison between "taxes and levies" and "fear and violence" raises questions as well. Undoubtedly, "violence" refers to actions that include the use of force.[145] Vitoria clearly states that the use of force is not permitted for conversion, and he indicates that "heavier taxes" likely could not be implemented *instead* of force. In his view, where force is not permitted, sanctions are probably not permitted either. This seems to suggest that, if there are no grounds to impose "fear and violence" against a population, then the use of sanctions is similarly unjustified. At a minimum, the lack of justification for forceful action is factored against the imposition of economic restrictions. In short, sanctions should not merely serve as a nonviolent alternative to force.

Vitoria's viewpoint is a repudiation of a core tenet of the understanding of modern sanctions. Cemented into legal theory is the conviction that sanctions function as an authorized substitute when the use of force is otherwise unavailable as an option.[146] Contrary to mainstream international law,[147] his argument suggests that economic coercion is more closely adjacent to the use of force than the current legal framework recognizes. Under Vitoria's assertion, if a state is not permitted to use lawful force against another, then it is potentially unable to legally enact economic sanctions. His lecture stops short of equating economic coercion with the use of force, but it does draw a close linkage between the two. His perspective lends credence to the minority of commentators seeking to advocate the view that economic sanctions represent a tool of international law more akin to a use of force.

5. Considering Strategic Lenience. When it comes to his call for "greater leniency" for non-Christians, a modern interpretation would likely recommend adopting a similar "lenienc[e]" in the field of international affairs. The way his argument goes, a lenient policy would not manifest for the purpose of tolerance; rather, it would warm icy relations and lead to "firmer" allegiances. Vitoria would suggest that wielding a policy of restraint is more effective than harsh economic

---

[144] *But see* Federico J. Wynter, Note, *Economic Crimes Against Humanity*, 53 CORNELL INT'L L.J. 497, 521–25 (2020) (discussing extensive mens rea obstacles when comparing economic sanctions to crimes against humanity).

[145] *Violence*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining violence as the "use of physical force" and especially "force unlawfully exercised with the intent to harm"); Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (providing "murder of all kinds, mutilation, cruel treatment and torture" as examples of violence). Underlining the point, Vitoria's use of the word "fear" also strongly implies forceful action. *Fear*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining fear as a "strong, negative feeling that a person experiences when anticipating *danger or harm*" (emphasis added)).

[146] De Amicis & Stewart, *supra* note 13, at 388 ("[E]conomic sanctions are employed as an alternative to (perhaps in response to) the threat or use of force and in support of a peaceful settlement."); Susan S. Gibson, *International Economic Sanctions: The Importance of Government Structures*, 13 EMORY INT'L L. REV. 161, 162 (1999) ("[E]xperience, success, cost, and controversy have not altered the central belief that sanctions are a viable alternative to the use of military force in the pursuit of foreign policy goals.").

[147] *See supra* note 52.

sanctions. Not only could strategic lenience lead to a greater number of foreign populations that are potentially "converted" to prioritize democratic values, but states that do convert would hold stronger positions.

While the scope of this paper is ill-suited to comprehensively address different strategies of foreign affairs, Vitoria's instinct toward leniency, at least on its face, appears to support the principle of "winning hearts and minds" that is an integral component of counterinsurgency theory.[148] For this strategy, leaders focus on "fostering positive relationships with the local population crucial to mission success."[149] Expanded to a macro perspective, the idea of winning hearts and minds plays a similarly critical role in global affairs.[150] Once again, Vitoria's lecture provides prescient and valuable analogies to modern international law.

C. Unanswered Questions About the Extent of Analogizing Vitoria's Work

It is possible that extending Vitoria's principles to economic sanctions distorts his original message. Maybe he strictly intended to assert that there is no right to "wage war to promote religion,"[151] and it might be contended that discussing his writings in the context of modern-day sanctions leads to irreconcilable incongruence. The argument goes that his beliefs should not be extrapolated past the actual facts with which he grappled. However, textualism supports a multi-faceted understanding of historical work, constantly reevaluating its meaning through the lens of updated scholarship and current events.[152] The textualist approach used here attempts to stop short of complete extrapolation, and instead, it "promote[s] the existence of a continuous dialogue between a text and its readers."[153] However, even a "continuous dialogue" lacks clarity at certain points, and here it is no different.

Particular parts of the analogy between Vitoria's lecture on economic coercion and modern international law are less than clear. Most pertinent is the question of what is analogous to religious conversion. It is straightforward to describe an extreme; pressuring another country into annexation is the simplest comparison to making a person join the same religion. Likewise, forcing another state to adopt a democratic or capitalist system clearly parallels forcible conversion. However, the next incremental steps start to grow murkier. If a state is coerced to establish one or two democratic or capitalist institutions, like a free press or some

---

[148] Katharine M. E. Adams, *A Permanent Framework for Condolence Payments in Armed Conflict: A Vital Commander's Tool*, 224 MIL. L. REV. 314, 348 (2016); *see also* Joseph B. Kelly, *Legal Aspects of Military Operations in Counterinsurgency*, 21 MIL. L. REV. 95, 101 (1963) ("Leniency on the part of the established government toward captured guerrillas is dictated not only by the obvious intent of this article, but also by the basic psychological problem posed by a civil war—the problem of converting the dissatisfied insurgent into a friend or ally.").

[149] Adams, *supra* note 148, at 348.

[150] Philip G. Hoxie, Stephanie Mercier & Vincent H. Smith, *Food Aid Cargo Preference: Impacts on the Efficiency and Effectiveness of Emergency Food Aid Programs*, 65 J.L. & ECON. 395, 417 (2022).

[151] Qureshi, *Examining the Legitimacy*, *supra* note 54, at 235.

[152] Vadi, *supra* note 6, at 336–37.

[153] *Id.* at 337.

private industry, would that mirror religious conversion? What about exerting pressure to enshrine individual values, such as freedom of assembly?

As another example of uncertainty, what is the equivalent of Christians and non-Christians in international law? Certainly, allies and adversaries are ready comparisons, but how allied or adversarial does a state need to be? Does an ally need to be party to a formal treaty organization? Conversely, does an adversary need to be a declared enemy of the United States?

While the initial application of Vitoria's lecture to economic sanctions is a step toward an improved understanding of international law, these unresolved issues are key to the steps to come. The answers they yield will shed yet more light on the legality of economic coercion within today's ongoing sanctions regimes.

D. Potential Ramifications for the Current International Law Landscape

A better understanding of economic sanctions within the context of international law's historical foundation provides decisionmakers with a clearer picture to plan, enact, and enforce new restrictions. As current events unfold, sanctions regimes that have existed for years continue to evolve past "the economic statecraft of old."[154] Crucial to the legitimacy of American-imposed sanctions are their basis in settled international law. The insights provided by Vitoria will be useful to evaluate sanctions enacted against the Russian Federation, the People's Republic of China, and terrorist organizations in the Middle East, to name a few.

After its 2014 invasion of Ukraine, Russia faced economic sanctions levied by the United States and European Union.[155] The sanctions signaled strong disapproval but "failed to pressure Russia either to retreat or to reverse the annexation."[156] Subsequent to its February 2022 invasion, "[w]ave after wave of sanctions" were imposed against Russia, amounting to what the U.S. Treasury Department called a "significant and unprecedented" sanctions regime.[157] Part of the reason that the sanctions enacted against Russia were so extensive can be traced to the size of its economy. The United States has not targeted a larger economy with economic sanctions in the past half century.[158] And the U.S. has not held back. By 2023, "virtually every aspect of [Russia's] economy" was subject to sanctions, including "its banks and other financial institutions, its energy and transportation sectors, and the so-called 'oligarchs.'"[159]

From a global perspective, however, the restrictions were not all-encompassing, since "states representing more than two-thirds of the world's population [had] not imposed economic sanctions on Russia."[160] As the "most

---

[154] Heath, *supra* note 23, at 640.
[155] De Amicis & Stewart, *supra* note 13, at 380.
[156] *Id.*
[157] *Id.* at 422; Press Release, U.S. Dept. of the Treasury, U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs (Feb. 24, 2022).
[158] De Amicis & Stewart, *supra* note 13, at 382 ("In the past 50 years, no country subjected to economic sanctions by the United States has had an economy close to the size of Russia's.").
[159] *Id.* at 387.
[160] *Id.* at 423.

predictable consequence" of the 2014 restrictions, Russia sought out "alternative economic partners."[161] The reality is that now, despite Western sanctions, Russia is still free to make deals with states that offer lucrative trade opportunities, such as China, India, and Turkey—not to mention the fact that Russian oil has managed to bypass American restrictions and even reached a refinery that caters to the Pentagon.[162]

On the question of Russia, Vitoria's emphasis on moderation would likely be satisfied by the proportionality of sanctions, i.e., a massive breach of international law was followed by a massive imposition of sanctions.[163] But American leaders might consider the close connection Vitoria draws between economic coercion and the use of force. If the United States cannot subject Russian citizens to "fear and violence," is it legally allowed to pursue "taxes and levies?" Or is the use of force analysis moot, since Russia committed "criminal action" through its unlawful invasion of Ukraine? Would it matter to Vitoria that sanctions were previously ineffective in 2014 or that they appear subject to circumvention today?

The American relationship with China presents an additional sanctions regime where Vitoria's analysis would be useful. While China is already subject to sanctions for its forced labor practices and persecution of ethnic minorities,[164] a growing chorus of voices in Washington, D.C., continues to call for harsher and wider restrictions.[165] The conversation around sanctions only continues to expand.[166] At the same time, experts caution against any action that could backslide into an outbreak of war between the United States and China.[167] It is crucial to

---

[161] Mergen Doraev, Comment, *The "Memory Effect" of Economic Sanctions Against Russia: Opposing Approaches to the Legality of Unilateral Sanctions Clash Again*, 37 U. PA. J. INT'L L. 355, 408 (2015).

[162] Henry Ridgwell, *Russian Trade Rises Despite Sanctions, as NATO Member Turkey Offers 'Critical Lifeline'*, VOICE OF AM. (June 8, 2023, 1:55 PM), https://www.voanews.com/a/russian-trade-rises-despite-sanctions-as-nato-member-turkey-offers-critical-lifeline-/7128651.html; Evan Halper, Dalton Bennett & Jonathan O'Connell, *Forbidden Russian Oil Flows into Pentagon Supply Chain*, WASH. POST, https://www.washingtonpost.com/business/2023/11/14/russian-oil-sanctions-us-greece-turkey (Nov. 14, 2023, 2:42 PM).

[163] *See* De Amicis & Stewart, *supra* note 13, at 391.

[164] Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, § 6, 134 Stat. 648, 651–54 (codified at 22 U.S.C § 6901); Uyghur Forced Labor Prevention Act, Pub. L. 117–78, 135 Stat. 1525 (2021) (codified at 22 U.S.C § 6901); *see also* Matthew J. McCartin, Note, *Confronting the Behemoth: China, Human Rights, and the United Nations*, 49 SYRACUSE J. INT'L. L. & COM. 1, 32–35 (2021) (recommending multilateral sanctions to curb human rights abuses in China).

[165] *See, e.g.*, Letter from Mike Gallagher, Chairman, U.S. House Select Comm. on Strategic Competition Between the U.S. & the Chinese Communist Party, to Antony Blinken, Sec'y, U.S. Dep't of State, & Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Sept. 19, 2023), https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/9.19.23-letter-to-blinken-and-mayorkas-uhrpa-uflpa-sanctions_1.pdf.

[166] *See* Press Release, U.S. House Comm. on Armed Servs., *supra* note 3.

[167] *See generally* Howard W. French, *Almost Nothing Is Worth a War Between the U.S. and China*, FOREIGN POL'Y (Aug. 21, 2023, 2:34 PM), https://foreignpolicy.com/2023/08/21/us-china-war-taiwan-competition; William Hartung, *It's Time to Focus on Preventing War with China, Not Preparing for It*, FORBES (June 12, 2023, 12:53 PM), https://www.forbes.com/sites/williamhartung/2023/06/12/its-time-to-focus-on-preventing-war-with-china-not-preparing-for-it; Daniel L. Davis, *The US Must Avoid War with China Over Taiwan at All Costs*, THE GUARDIAN

gauge the perception and effects of additional penalties imposed by the United States, employing every tool available. Just like the frequent invocations of Vitoria among scholars, historical analogy provides a useful tool for practitioners of international law.

Simultaneously, the United States has sought to ratchet up pressure on terrorist organizations and their sources of funding amid the turbulent conflict between Israel and Hamas.[168] Recent sanctions have also targeted West Bank settlers who commit violent and disruptive acts.[169] From both angles, economic restrictions are a key tool for the Biden administration.[170] It is important to evaluate the impact of sanctions—and the American government's legal justification for levying them—as turmoil in the Middle East shows few signs of slowing.

Moreover, the impact of whether sanctions are considered a use of force extends beyond sanctions themselves. Because economic restrictions represent just one of the many tools states use to engage with each other, the ripple effect of such a question influences other areas of international law. For example, the status of sanctions affects the legal interpretation of developing tactics between states, such as cyberwarfare.[171]

CONCLUSION

While Vitoria has long been recognized as a founding jurist in international law, he continues to shape the field today. Analogized to sanctions, his lectures offer novel considerations for an updated analysis of economic coercion. They recontextualize sanctions within the existing scholarship and link economic restrictions to the use of force. But this reexamination of his work raises additional topics for exploration. How far can these analogies extend, and what are their limitations? In what other areas could Vitoria be invoked—or refuted—such as human rights law, national security law, or military law? Through a closer assessment of Vitoria's work, scholars can gain a wider understanding of economic sanctions and their place in international law.

(Oct. 5, 2021, 6:18 AM), https://www.theguardian.com/commentisfree/2021/oct/05/the-us-must-avoid-war-with-china-over-taiwan-at-all-costs.

[168] *See, e.g.*, Subcomm. on Nat'l Sec., Illicit Fin., & Int'l Fin. Insts., *Hearing Entitled: How America and Its Allies Can Stop Hamas, Hezbollah, and Iran from Evading Sanctions and Financing Terror*, YOUTUBE (Oct. 25, 2023), https://www.youtube.com/live/Bjfyq9QdC6Q?si=Rp390XT7FHM7RKyQ.

[169] Exec. Order No. 14,115, 89 Fed. Reg. 7605, 7605–07 (Feb. 1, 2024).

[170] Press Release, U.S. Dept. of State, Designating Financial Facilitation Networks that Benefit Iran's Military (Nov. 29, 2023) (declaring that American institutions "will continue to disrupt Iran's funding support for terrorists"); *see* Press Release, U.S. Dept. of the Treasury, Terrorist Attack, *supra* note 34.

[171] Thomas Eaton, *Self-Defense to Cyber Force: Combatting the Notion of 'Scale and Effect'*, 36 AM. U. INT'L L. REV. 697, 761–62 (2021) (using a comparison between cyber-attacks and economic sanctions to determine when cyberwarfare should properly be considered a use of force); Waseem Ahmad Qureshi, *Cyberwarfare: A Tortuous Problem for the Law of Armed Conflict?*, 28 TUL. J. INT'L & COMPAR. L. 1, 30 (2019); Ido Kilovaty, Comment, *Rethinking the Prohibition on the Use of Force in the Light of Economic Cyber Warfare: Towards A Broader Scope of Article 2(4) of the UN Charter*, 4 J.L. & CYBER WARFARE 210, 239–41, 240 n.78 (2015).