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Tom Lantos Human Rights Commission

Hearing
on
Considerations on Economic Sanctions

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Co-Chair McGovern, Co-Chair Smith and distinguished members, thank you for giving me the opportunity to address the Tom Lantos Human Rights Commission about the unintended consequences of economic sanctions. It is an honor to speak at this important hearing in the company of my distinguished co-panelists.

I am a senior analyst at the International Crisis Group, a global organization committed to the prevention, mitigation and resolution of deadly conflict. In the spirit of our conflict prevention mission, I would like to focus my remarks on the impact of economic sanctions on peacemaking – that is, activities in the service of violence prevention and conflict resolution.

I will start by briefly describing the recent use of sanctions in U.S. foreign policy.

Coercive economic measures featured in statecraft throughout the 20th century, but their use increased rapidly in the 1990s. The U.S. regularly imposed sanctions at that time in concert with the UN Security Council, which enjoyed a brief period of cooperation among members after the Cold War that allowed it to coordinate sanctions in response to the crises of the day. The Council imposed sanctions in Iraq (1990), the former Yugoslavia (1991, 1992, 1998), Libya (1992), Liberia (1992), Somalia (1992), parts of Cambodia (1992), Haiti (1993), parts of Angola (1993, 1997, 1998), Rwanda (1994), Sudan (1996), Sierra Leone (1997 and 2000), Afghanistan (1999) and Eritrea (2000). It had used sanctions only twice previously, in Rhodesia (1966) and South Africa (1977).¹

The sanctions mentioned above had varying degrees of intensity. Some were narrow, comprising measures such as travel bans on individuals, and others were broad, such as trade embargoes that targeted entire economies and populations. As the humanitarian implications of broad sanctions became apparent toward the end of the 1990s, policymakers started to favor targeted sanctions.²

¹ David Cortright and George Lopez, “Learning from the Sanctions Decade”, Center for World Dialogue, 2000.

² David Cortright and George Lopez, eds., *Smart Sanctions: Targeting Economic Statecraft* (New York, 2002).

These more precise measures were designed to change the behavior of, or to constrain, specific groups or individuals, while minimizing damage to broader populations.

The attacks of September 11, 2001 prompted a series of innovations in the use of sanctions, as U.S. officials expanded the toolkit of economic coercion to address terrorism threats to the homeland and to U.S. interests abroad. The use of the legal authorities underpinning sanctions programs expanded, for instance with Executive Order 13224 – enacted under the International Emergency Economic Powers Act (IEEPA) – enabling Washington to block assets of foreign individuals and groups who commit, or threaten to commit, acts of terrorism, as well as their supporters.

Washington's use of financial statecraft expanded further in the context of Iran sanctions in the late 2000s and early 2010s, as the U.S. used sanctions to isolate the country and its economy from the international financial system. The U.S. government also marshalled its allies and major financial institutions to implement regulations that prevented terrorist groups and a small number of countries considered as pariahs from gaining access to international financing. The dominance of the U.S. dollar among international currencies meant that financial institutions wishing to transact in dollars steered clear of sanctions targets; the risk of being cut off from U.S. markets – and the risk of heavy fines – gave the private sector incentives to comply with sanctions, and sometimes to over-comply – that is, to take excessive measures beyond what is required to avoid risk.

Although the UN Security Council continued to mandate new sanctions programs (asset freezes, an arms embargo, export controls and other measures for North Korea (2006), an arms embargo on Libya (2011) and asset freezes for violators of the 2015 peace agreement in Mali (2017) are examples), the U.S. increasingly imposed sanctions unilaterally, or together with likeminded allies. Sharpened competition and more frequent deadlocks among permanent members of the UN Security Council have meant that the Council has not agreed on a new sanctions regime since 2017, although it has renewed and adjusted existing programs.³ In general, it is faster and easier for the U.S. to impose sanctions outside the UN Security Council, although policymakers have recognized that multilateral sanctions tend to be more effective.⁴

Today, most U.S. sanctions target specific individuals or groups, although some comprehensive regimes remain in place. Sanctions against Cuba, Iran, Syria and North Korea – enacted under a wide range of authorities – regulate nearly all transactions with those countries. Other sanctions regimes, notably on Russia and Venezuela, combine hundreds of targeted sanctions on individuals, groups and entities with sanctions on specific sectors of the economy; the result is sanctions programs approximating the comprehensive sanctions described above. Other sanctions regimes are thematic, addressing, in addition to terrorism, narcotics trafficking, nuclear weapons proliferation and, since the Global Magnitsky Act of 2016 and the associated Executive Order 13818 (2017), human rights abuses and corruption.

The sanctions imposed on any single country may be based on multiple authorities. IEEPA provides the basis for most sanctions programs, but a range of other thematic and country-

³ Thomas Biersteker, Zuzana Hudakova and Marcos Tourinho, UN SanctionsApp: An Interactive Database of UN Sanctions, August 2020.

⁴ “The Treasury 2021 Sanctions Review”, U.S. Department of the Treasury, October 2021.

specific statutes underpin others.⁵ As a result, the U.S. economic sanctions landscape is a complex mix of country, group, individual and thematic measures.

Why Sanction?

As an organization committed to the prevention, mitigation and resolution of deadly conflict, the International Crisis Group has offered analysis and recommendations concerning the use of sanctions in many crises around the world. Our analysis has recognized that – while by themselves sanctions may not be decisive in steering parties away from or out of conflict – they may affect the cost-benefit calculations of conflict actors, constrain their resources for waging war, or signal the opprobrium of the U.S. and its partners with respect to egregious behavior.⁶ These are among the calculations that have led us to support the imposition of sanctions in the context of Russia’s invasion of Ukraine, among other examples.⁷

But we do not have a one-size-fits-all approach to sanctions, in part because we believe it is important to weigh their anticipated costs against their likely benefits in each specific context. In Myanmar, for example, we recommended targeting sanctions at the military and its business interests in conjunction with other efforts to impose costs for, and to encourage the reversal of, the February 2021 coup.⁸ But we have also discouraged blanket trade or financial sanctions that would have devastating effects on an already impoverished population in Myanmar, as we have in other contexts.⁹ In the Russia-Ukraine context, we have supported the threat and imposition of heavy sanctions on Russia for the reasons noted above, but we have also recommended steering clear of some measures that we thought could be counterproductive – in particular discouraging the designation of Russia as a state sponsor of terrorism because of the implications it could have for peace efforts in and beyond Ukraine, among other factors.¹⁰ We have also discouraged sanctions that may unduly impede humanitarian relief efforts, as we did when we argued against designating the Yemen-based Huthis as a foreign terrorist organization.¹¹

In speaking to practitioners and outside experts about the impact of U.S. sanctions in conflict contexts, the subject of my research, many spoke of certain overarching considerations that should guide when and how sanctions should be imposed. First, given sanctions’ imperfect track record, it is important that policymakers temper their expectations of what sanctions alone can achieve. Second, sanctions should fit within a well-communicated policy and strategy, which

⁵ “United States Statutes”, OFAC Legal Library, U.S. Department of the Treasury.

⁶ Tiziano Breda, “If sanctions failed to solve Nicaragua’s crisis, will more sanctions succeed?”, *Global Americans*, 14 July 2021; Michael Wahid Hanna and Murithi Mutiga, “The U.S. must raise the stakes for Sudan’s coup leaders”, *World Politics Review*, 2 March 2022; Crisis Group Middle East Report N°228 *Managing Lebanon’s Compounding Crises*, 28 October 2021; Crisis Group Africa Report N°278, *Running Out of Options in Burundi*, 20 June 2019; Crisis Group Africa Report N°267, *Drug Trafficking, Violence and Politics in Northern Mali*, 13 December 2018.

⁷ Crisis Group Europe & Central Asia Briefing N°92, *Responding to Russia’s New Military Buildup Near Ukraine*, 8 December 2021; Crisis Group Statement, “Avoiding an Even Worse Catastrophe in Ukraine”, 18 March 2022; Crisis Group Statement, “Staying the Course in Ukraine”, 23 September 2022.

⁸ Crisis Group Asia Briefing N°171, *Resisting the Resistance: Myanmar’s Pro-military Pyusawhti Militias*, 6 April 2022.

⁹ Crisis Group Asia Briefing N°173, *Coming to Terms with Myanmar’s Russian Embrace*, 4 August 2022. Crisis Group Statement, “Venezuela: An Opportunity That Should Be Seized”, 7 May 2021; Crisis Group Commentary, “U.S. Sanctions on Syria: What Comes Next?”, 13 July 2020; and Crisis Group Africa Briefing N°127, *Time to Repeal U.S. Sanctions on Sudan?*, 22 June 2017.

¹⁰ Delaney Simon and Michael Wahid Hanna, “Why the U.S. Should Not Designate Russia as a State Sponsor of Terrorism”, Crisis Group Commentary, 4 August 2022.

¹¹ Crisis Group Statement, “The U.S. Should Reverse Its Huthi Terror Designation”, 13 January 2021.

should be imposed multilaterally where possible to advance effectiveness and legitimacy, include clear and feasible demands, and involve credible commitments to lift sanctions when agreements are reached or aims are achieved. Finally, and of great importance, policymakers must be highly attuned to the possibility that sanctions will have deleterious humanitarian impacts, and build into their strategy the capacity to monitor and mitigate these effects, including by altering the sanctions themselves where appropriate.

Costs for Peacemaking

While the above guidelines have been widely embraced even within the U.S. government – the 2021 Treasury Sanctions Review reflects several of the principles noted previously – they are too often honored in the breach, with negative implications for the capacity of the United States and others to defuse conflict-related risks around the world. I will call attention here to five chronic issues that I have identified as particularly problematic in the course of my research:

First, sanctions can be too difficult to durably lift, making them less effective as a source of negotiating leverage. While sanctions can sometimes help start negotiations and cement agreements – they helped induce Iran to enter negotiations about its nuclear program and U.S. commitments to relieve them helped cement the 2015 nuclear deal – these successes depend on the capacity of negotiators to credibly promise sanctions relief.¹² If a sanctioned actor does not believe that negotiations will result in sanctions relief – for example, because sanctions in a particular context have been politicized, because U.S. messaging on sanctions’ purposes has shifted markedly over time or due simply to bureaucratic inertia – then it is likely to exact a higher price at the negotiating table or to turn away from negotiations altogether. A similar situation arises if the sanctioned actor believes that relief on paper will not deliver relief in practice. Also, given the difficulty of lifting sanctions, U.S. officials generally cannot act as nimbly, creatively or quickly as they do when imposing sanctions; as a result, they can miss opportunities to use sanctions relief to advance certain peace- and stability-related priorities.

There are several examples of this phenomenon, some of which will be familiar. A high-profile illustration is the Iran nuclear deal, where the fact that the U.S. reneged on its earlier promises of relief in 2018 made recent negotiations to re-enter the deal more difficult.¹³ In the course of my research I came across other examples, too. In Colombia, for instance, the U.S. did not rescind the designation of the Revolutionary Armed Forces of Colombia (FARC), the country’s largest guerrilla group, as a foreign terrorist organization until 2021 – five years after it had reached a peace deal with the Colombian government. The fraught process of lifting sanctions caught the attention of the National Liberation Army (ELN), a still-active guerrilla group, which reportedly cited the difficulties as a reason for its reluctance to re-enter peace negotiations with the Colombian government.¹⁴

Second, outdated sanctions programs can hinder the implementation of peace deals and other U.S. policy goals aimed at conflict prevention. The above-referenced 2016 peace deal with the FARC was intended to transform the group by offering its members licit livelihoods, and an

¹² Crisis Group Middle East Report N°166, *Iran After the Nuclear Deal*, 15 December 2015.

¹³ Crisis Group Middle East Briefing N°87, *Is Restoring the Iran Nuclear Deal Still Possible?*, 12 September 2022.

¹⁴ Crisis Group interviews, diplomats and experts, Bogotá, March 2022.

opportunity to integrate into society.¹⁵ Yet for the first five years after that deal was signed, the lingering foreign terrorist organization designation impeded the achievement of this objective. As I heard in Colombia when I visited earlier this year, while the listing was still in place, it created obstacles that slowed former combatants' integration into Colombian society, contributed to a loss of faith in the peace process, and hampered the implementation of the peace accords. I learned that demobilized combatants had no access to job opportunities, U.S.-funded humanitarian or development assistance, or bank accounts; a former commander told me, "We weren't affected [by sanctions] in the war, but we were affected in peace".

Third, U.S. sanctions sometimes make it harder for the U.S. to advance other peace and stability-related goals, such as economic recovery. Investors often lack confidence to enter markets where sanctions exist even when Treasury Department licenses are in place or when the U.S. government has given other assurances that their planned activities are permitted. They also may be deterred by compliance costs that sometimes outweigh potential profits, and the prospect of massive fines if they stray into prohibited behavior. In Afghanistan, the stated policy of the U.S. and its allies is helping with economic revival after the war. Yet firms are hesitant to re-engage, despite broad general licenses permitting transactions that would otherwise be prohibited under sanctions on the Taliban and the Haqqani network. Sanctions are of course not the only business risk in Afghanistan, but they are a compelling deterrent.

In some instances, hesitancy to reinvest remains even when sanctions are lifted. Firms are hesitant to invest in case sanctions are reimposed (as occurred when the U.S. withdrew from the Iran nuclear deal) and because usually not all sanctions constituting a particular country's sanctions program are removed at the same time. The U.S. lifted trade restrictions on Sudan in 2017 but a state sponsor of terrorism designation remained in place until 2020. This discrepancy contributed to firms' calculations that the legal, reputational and financial risks involved in investing in Sudan were too great. These impressions persisted despite a campaign by U.S. officials to encourage reinvestment in the country. The state sponsor of terror designation also served to slow and constrain the financial support offered to the new civilian-led transitional government in Sudan following the 2019 ouster of dictator Omar al-Bashir following months of popular protests. The lingering impact of the sanctions deepened an already serious economic crisis and contributed to the conditions that culminated in the 2021 coup.¹⁶

Fourth, sanctions hamper the work of peacebuilding organizations. Peacebuilding organizations work, often outside of the limelight, to help advance peace negotiations or lessen violence inflicted on civilians in conflict-affected areas. Often funded by the U.S. government, they perform functions like rebuilding ties between divided communities, convening warring parties to discuss violence reduction and disarming former combatants.¹⁷ Sanctions pose serious operational challenges for them. Banks concerned about the risks of facilitating transactions in sanctioned areas limit or deny services to peacebuilding organizations in efforts to comply with sanctions and other regulations.¹⁸ In some places, peacebuilding organizations simply cannot

¹⁵ Crisis Group Latin America Report N°92, *A Fight by Other Means: Keeping the Peace with Colombia's FARC*, 30 November 2022.

¹⁶ Crisis Group Statement, "Reversing Sudan's Dangerous Coup", 26 October 2021.

¹⁷ "What We Do: Peacebuilding and Reconciliation", USAID, 12 July 2021.

¹⁸ United States Government Accountability Act, "Bank Secrecy Act: Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries", December 2021.

function unless they work with service providers that are sanctioned, such as an organization in Syria whose local staff needed to fly on the sanctioned national airline and use the sanctioned national mobile carrier.

Fifth, carveouts do not usually cover peacebuilding activities. While the U.S. government commendably issues licenses and other carveouts for humanitarian activities, it could do more to extend these to peacebuilding efforts, which also lessen the toll of conflict on populations. In the absence of carveouts, peacebuilding organizations often withdraw from contexts where their activities might put them into contact with sanctioned entities. They also avoid engaging sanctioned conflict parties in training, dialogue or other activities designed to promote conflict resolution and lessen violence, including because of restrictions on the provision of material support to terrorist groups, a label conferred on several conflict parties.¹⁹

Legal advisers tend to counsel peacebuilding organizations that even if the U.S. government has not recently brought enforcement actions against non-governmental organizations, protection from liability cannot be guaranteed. Too often, prohibitive compliance costs also force the organizations to shut down their operations. For example, a major international landmine removal organization stopped training demobilized FARC on removing explosive remnants of war in Colombia due to concerns about liability and the risk of losing U.S. funding. In the Democratic Republic of Congo, reintegration and trauma healing projects led by USAID partners cannot work with former members of sanctioned armed groups, including former child soldiers. In Syria, an organization overseeing disarmament, demobilization, and reintegration activities excluded Hei'at Tahrir al-Sham, the former al-Qaeda affiliate that is Idlib's dominant rebel group. In these three very different settings, organizations steer clear of activities designed to mitigate conflict in order to avoid sanctions-related risks.

Mitigating Consequences

There is a rich literature on sanctions reform that I will not seek to replicate here, but I will highlight two possible improvements to current practice that could be of particular benefit to the peacemaking efforts and peacebuilding organizations that have been the focus of my testimony.

First, new and existing sanctions programs should require the following three measures:

- *Clear statements of the foreign policy objectives they are intended to further*
- *Periodic reauthorization requirements*
- *Regular reviews submitted to Congress on the extent to which they are meeting their foreign policy objectives and affecting humanitarian and peacebuilding activities*

These three requirements would represent an important step forward in mitigating some of the negative impacts of sanctions on peacemaking I have described in my testimony. Some sanctions authorities include renewal requirements, but renewals are usually pro forma, and as I have noted, sanctions can persist for years after the time when their primary objective has been

¹⁹ Megan Coorado, Kay Guinane, Gabe Murphy and Liz Hume, "Preventing Peace: How 'Material Support' Laws Undermine Peacebuilding", Alliance for Peacebuilding and the Charity & Security Network, July 2021.

achieved, and in the process come to undermine conflict resolution and prevention aims. Too often the reason for this appears to be less linked to policy than to political or bureaucratic considerations. To address this shortcoming, authorizing statutes should require periodic reauthorization requirements, as well as including clear statements of policy objectives and benchmarks for removal (or escalation as the case may be). Doing so will afford the executive branch and Congress an opportunity to gauge whether sanctions are achieving, or are capable of achieving, their objectives. Meaningful reviews, conducted by the executive branch and submitted to Congress, could help prompt policymakers to weigh the costs and benefits of the sanctions they have imposed, provide a basis for considerations on calibrating, relaxing or lifting them in line with political or conflict-related developments, and afford an opportunity to address the effects of sanctions on peacebuilding I have outlined.

Second, U.S. policymakers should consider sanctions carveouts for peacebuilding activities. As I noted, the U.S. government's efforts to mitigate the humanitarian costs of sanctions by creating carveouts for humanitarian activities is a very welcome development, but peacebuilding does not receive the same attention. Given peacebuilding's role in lessening, preventing and resolving violent conflict, and the focus of many sanctions programs on addressing conflicts around the world, the inclusion of peacebuilding activities in carveout considerations is consistent with ongoing efforts. As reforms are made to enable the important work of peacebuilding organizations, risk management and mitigation systems should remain in place and continue to be strengthened.²⁰

Efforts to create carveouts for peacebuilding activities could comprise a number of measures. The Treasury Department should be prepared to issue licenses permitting peacebuilding organizations to work, when acting in good faith and with appropriate risk management measures in place. A Global General License, to be developed in consultation with humanitarian and peacebuilding organizations, that both allows these organizations to do their jobs and permits their facilitation by financial institutions and other private sector actors, is an idea worthy of serious consideration. Congress could support and advance these efforts by creating appropriate legislative exceptions for peacebuilding (and humanitarian) activities in the statutes underpinning sanctions regimes, including relief from criminal prohibitions on providing support to sanctioned individuals and entities.

Thank you for your attention today. I look forward to discussing this subject further and to answering your questions.

²⁰ Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action", Norwegian Refugee Council and UN Office for the Coordination of Humanitarian Affairs, July 2013.