

Tom Lantos Human Rights Commission Briefing

Economic Sanctions: Lessons Learned and Best Practices

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What Sanctions Are, Can Accomplish And What They Cannot

Some ideas in bullet format:

- 1> Sanctions 'regimes' have emerged since 1990 via a growth of United Nations Security Council mandated sanctions, combined with the development of European Union sanctions, and the dramatic extension of US Treasury listing procedure and Presidential Executive action.
- 2> Sanctions for condemning human rights violations, or attempting to restore democracy, have mixed results in US actions, and even less in multilateral.
- 3> Sanctions for human rights have never brought down a dictator or resulted in demonstrable improvement in their performance, save in setting up a bargaining situation with the targets over a wider range of issues which then results in change.
- 4> Smart sanctions need to be better understood and used to maximize their human rights 'clout'.
- 5> The general atmosphere of support for sanctions against 'sitting governments' has waned dramatically since the Security Council sanctions and NATO military action against Libya in 2011.

Smart Sanctions and Human Rights

The development and institutionalization of 'smart sanctions' supplies an array of coercive measures to the international community that have proven somewhat effective in particular cases of massive rights abuses and on-going atrocities. As such they provide a basis for scrutinizing how they can be further mobilized to attain prevention goals. Sanctions measures are precisely targeted or 'smart' in two ways. First, they take aim at specific sub-national and transnational actors deemed most responsible for the policies or actions considered by the imposer as illegal or abhorrent. Rather than punishing the society generally through trade sanctions, smart sanctions aim to constrain identifiable, culpable perpetrators.

Generally, in human rights sanctions these are the abusive government institutions and leaders who authorize, and when identifiable, the individuals who perpetrate the violations or killings. But a deeper probing of the abuses should indicate their connection to specific products, companies that supply them, asset holding entities, and a wider array of individuals and entities than visible from early analysis.

Secondly, smart sanctions isolate discrete areas of economic coercion to a specific micro-level economic activity that can be identified as contributing to increased human rights violations. Most often such sanctions aim at the flow of weapons into a country, even as these have been the most difficult sanctions to enforce effectively. The measures below comprise the sanctions most readily available to constrain or end large scale rights abuses and killing. They include:

- freezing financial assets held outside the country of [a] the national government, [b] regime members in their individual capacity, or [c] those persons designated as key supporters or enablers of the regime;
- suspending credits, aid and loans available to the national government, its agencies, and those economic actors in the nation who deal with monies involving international financial institutions;
- denying access to overseas financial markets, often to the target government's National Bank and other governmental entities, as well as to designated private banks and investors and individual designees;
- restricting the trade of specific goods and commodities that provide power resources and revenue to the norm violating actors, most especially highly traded and income producing mineral resources;
- banning aid and trade of weapons, munitions, military replacement parts, dual-use goods of a military nature;
- banning computers, cell phone and satellite, as well as related communications technologies, especially of a 'jamming' and discovery of user nature;
- banning flight and travel of individuals and/or specific air and sea carriers;
- denial of visa, travel, and educational opportunities to those individuals on the designee list;
- denying import of, or otherwise access to, goods labeled as "luxury items" for the entities and individuals on the designated list.

One advantage of these smart sanctions lies in how they make the political action of abusing rights and engaging in atrocities rather personal. The overseas 'rainy-day' funds of dictators become inaccessible to them and relatives. Thus their children lose travel visas and access to tuition monies to attend elite Western schools and universities. When time is of the essence in responding to unfolding rights violations and mass atrocities, some targeted sanctions are likely to be more appealing and effective than others. Due to economic circumstances, some sanctions imposers are likely to be more versatile in targeting certain entities than others. But in all cases sanctions effectiveness in stifling human rights abuses demand a convergence of factors anchored in the willingness of imposers to unite behind a

collection of sanctions and to adapt them to patterns of violation by what should be an expanding list of targets.

Making Smart Sanctions Work

The type of sanctions imposed on rights abusers and sanctions effectiveness have varied over time. In practice, when powerful member states like the US, or regional organization like the EU, reinforce Council sanctions with further measures of their own, this often increases chances of success. At the same time, however, Council sanctions suffer from taking time to mobilize, legislate and implement. Experience shows that the very rumor of UN action may spark potential targets to hide their assets and begin to falsify companies, passports and bank records.

Although practitioners and politicians frequently resort to sanctions to punish wrong-doers, the assessment of sanctions by the analysts continues to be quite mixed. Most observers caution that the limited sanctions success rate, which social science researchers assess at about 33% make sanctions a poor bet. This debate about the sanctions effectiveness for punishing rights violators or enhancing human rights in fragile political environments has always been intense and diverse in policy circles. I argue that the historical evidence about targeted sanctions shows that when dictators change their behavior, sanctions may be part of the mix of a set of foreign policy measures and domestic pressures that lead to an improved human rights situation. However, sanctions have more dramatic success in safeguarding fragile democracies, which protect the rights respecting political climate of former non-democratic states. Generally, the most significant factors associated with effectiveness are the severity of the threats to rights, the degree of cooperation among national imposers, domestic politics within imposer and target states, and the diversity of economic entanglements between imposing nations and the target state or entity.

Sanctions policy analysts tend to argue that these poor results arise from half-hearted purpose, weak sanctions design and/or implementation, especially by Permanent Five members of the UN Security Council. They suggest that a close scrutiny of the Kosovo, Sudan/Darfur, Zimbabwe, and especially the Syrian case, reveals that the reluctance of powerful states to enforce a full slate of coercive measures sabotaged what otherwise might have been effective sanctions for improving human rights. Among quantitative international relations scholars, there is a fairly consistent set of findings that economic trade sanctions are more detrimental to human rights than partial and selective sanctions. But generally, these studies find that economic coercion fails to attain its policy goal, even when sanctions are specifically imposed with the goal of improving human rights.

Lessons from the past two decades of multilateral cases of primarily targeted sanctions policy and mechanisms can be summarized succinctly regarding how sanctions can prompt, persuade or force human rights improvements. First, sanctions succeed when decision makers remember that sanctions are only tools – and thus only one of the important means – of a larger foreign policy for which multiple tools should be serving a

clearly specified policy goal. When sanctions become the policy, or are maintained for so long that they, *de facto*, become the policy, they are no longer effective. This was the trap the US and UN fell into with the sanctions on Iraq by the mid-1990s and may be flirting with regarding Iran. It has been the dilemma of the US experience with Cuban sanctions for half a century.

Secondly, and flowing from the first reality, despite their precision, smart sanctions seldom produce immediate and full compliance from targets. Rather, in a number of cases sanctions produce partial compliance and generate pressure on targets and imposers to engage in more direct bargaining to achieve the sanctions objectives. Thus, the economic squeeze felt by the target comprises only the first tier of smart sanctions success. The political success of getting the target to change its behavior results less over time from the economic pain it experiences, but more so from gains to be made at the bargaining table which the sanctions have set for the contending parties. Thus, sanctions work when they not only enrage, but actually engage their targets. Sanctions must provide a framework for continued dialogue between target and imposers.

When Libya was sanctioned for terrorist activities and support, sanctions impact were a central factor in the ongoing negotiations from the mid-1990s until a decade later that brought suspected terrorists to trial and convinced the regime to reduce its support of international terrorism. In Angola, sanctions that were initially ineffective, but became stronger over the years and combined with military and diplomatic pressures to weaken the UNITA rebel movement. In Liberia, sanctions were designed to deny resources to Taylor and his allies. Then after increased engagement by the imposers with the fighting factions, the sanctions helped to deny legitimacy to the Charles Taylor regime itself.

Thirdly, sanctions as means of punishment and isolation rarely succeed. In fact, sanctions form only half of the mix of mechanisms needed to alter the behavior of stubborn targets, such as regimes or non-state groups engaged in human rights violations. Positive inducements – the proverbial carrots of international economic and political relations - are a necessary complement to the sticks of a sanctions strategy. Within this mix the structure and use of sanctions to achieve the end-game desired from the target must be clear. The more effective sanctions are ones which detail a very clear and limited number of demands and which are clear and credible. Both imposer and target must be in full agreement about what constitutes compliance. Moreover, the target must be confident that if it changes its human rights behavior in accord with actions specified in the sanctions, this will result in a timely lifting of coercive pressure and extending promised benefits to them. When imposers shift the goal-posts [as has often been done in counter-proliferation sanctions] target compliance fails.

Two new emerging trends, maximizing commodity sanctions and targeting what some of us have called “enablers”, may not yet fall into the realm of generalizations about sanctions improving rights, but they should be noted. First, commodity-specific sanctions have increased in frequency and impact in diverse sanctions cases. Highly to moderately successful oil embargoes were imposed as part of the sanctions against Yugoslavia, Haiti, UNITA in Angola, and against the military junta in Sierra Leone. As

aid agencies and human rights NGOs have documented, the role of diamond smuggling in financing the civil wars in Angola and Sierra Leone, and in the recruitment and retention of child soldiers in other conflicts, the Security Council pushed the US and European states to take action to interdict the trade in so-called “blood diamonds.” Diamond embargoes were imposed against UNITA in 1998, in 2000 against the Revolutionary United Front areas (RUF) of Sierra Leone, and in 2001 against Charles Taylor’s Liberian government. A log export ban also was imposed against the government of Liberia, for its support of the RUF. There is increasing evidence that these commodity embargoes stifle the work of the criminal organizations in war torn areas who are often responsible for the rights abuses and murder of civilians.

The concept of focusing human rights sanctions against enablers recognizes that while locking down the assets of dictators is necessary for atrocity prevention and halting human rights abuses, it is seldom sufficient. Because mass atrocities are organized crimes, crippling the means to organize and sustain them—money, communications networks, and other resources—can disrupt their execution. A key element of their organization that is particularly relevant to international responses is the role of third parties. History has taught us that human rights abusers and atrocity perpetrators are seldom able to carry out these crimes on their own. Rather, they are dependent on direct or indirect support from external actors—governments, commercial entities, and individuals—whose goods and services enable them to wage attacks against civilians.

There are three essential elements to enabling: (1) A third party provides resources, goods, services, or other practical support—directly or indirectly—to the perpetrator of ongoing atrocities; (2) This support is a critical ingredient that enables or sustains the commission of the atrocities, without which the atrocities would not have taken place to the same extent; and (3) The third party knew or should have known about the atrocities and about the ways in which its goods or support were likely to contribute to the commission of these crimes.

The type of support identified in element (1), might take the forms listed below.

(A) Providing the means that are used to commit the atrocities directly, including:

- weapons (small arms and light weapons; heavy weapons; chemical and biological weapons)
- ammunition
- military equipment
- personnel (private security forces; paramilitary forces)
- other instruments (heavy vehicles; bulldozers)

(B) Offering goods and services that indirectly facilitate or sustain atrocities, including:

- transportation by air or sea of products used to commit or coordinate violence
- vehicles (trucks and other land vehicles)
- fuel
- technology and communications equipment (satellite phones; cell phones; computer hardware and software)
- air support
- facilities (buildings; warehouses; training stations)
- technical assistance
- information sharing (tip-offs; target lists)
- safe-havens, communications routes, and other geographical support

(C) Providing general support that materially builds or sustains the capacity of the perpetrator to commit atrocities. This includes the large financial reserves accumulated by violent actors, with special attention to the diverse form such assets now take, from sovereign wealth funds to shadow holding companies. Often such enterprises are linked to substantial networks of illicit extraction or trafficking of natural resources that generate revenue for the perpetrator.

This approach aims to focus on the ways in which other national governments, commercial entities, and individuals may all be enablers. In the case of countries, examples include the situation in Syria, Darfur, Sudan, where transfers of arms by China, Russia, Chad, and other governments or state-owned entities to government and rebel forces have helped sustain the violence against civilians for years. There are many other examples in the recent past in which third party governments provided weapons to their allies or proxies even when it was clear they were being used to commit crimes against humanity. Countries involved in questionable trading chains or opaque transshipment practices involving weapons, vehicles, or other forms of equipment may also be enabling dictators in less direct ways.

In the case of commercial entities, the range of enabling activities is potentially very broad. In Nigeria, multinational oil companies have faced lawsuits after being accused of hiring abusive security forces in the Niger Delta. In Darfur, the supply of Toyota trucks accessed by rebel groups has been essential to their capacity to commit widespread attacks on civilians. One U.N. Panel of Experts on Sudan reported that Al-Futtaim Motors Company, the official Toyota dealership in the United Arab Emirates, was, along with second-hand dealers in UAE, the source of “by far the largest number of vehicles that were documented as part of arms embargo violations in Darfur”¹ That dealership “declined or replied . . . in a perfunctory manner” to three requests by the Panel for information about buyers of the trucks identified in Darfur.

¹ Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan (S/2009/562), ¶ 158.

State and commercial actors both may also function as go-betweens, thus playing an important, indirect role as dictator enablers. During the Rwandan genocide, even after a U.N. arms embargo sought to stop the flow of weapons into that country, arms continued to arrive routed through nearby countries and facilitated by international corporations. A 2009 SIPRI study revealed that more than 90% of air cargo carriers used by international organizations and humanitarian agencies to transport crisis response supplies were also named in open source reports on arms trafficking. Individual business people can be instrumental as suppliers or middle-men, with international arms merchant Viktor Bout as the most famous example. But others include the Dutch businessman convicted of providing chemical components that Saddam Hussein used against Kurdish civilians. And who supplied the chemical weapons to the Assad dictatorship that killed hundreds and cost the international community hundreds of thousands of dollars to remove?

Countries and commercial actors also act as enablers when they are engaged in the exploitation of natural resources that generate revenues for their dictator clients. Examples include eastern Congo, where windfalls from the illicit mineral trade fuel the rebels' pursuit of arms and thus contribute to atrocities against civilians by various strongmen. In Burma, during their period of repressive rule that may now be drawing to a close, the country's military rulers derived massive export earnings from their gem mines, which help to finance their brutal repression of that country's citizens.

Various efforts to halt or punish enablers—without calling them by that name or viewing them as a distinct set of actors—already exist. The approaches we choose, therefore, must take those into account and could build on those efforts. At this point, it seems that dictators will likely be most susceptible to approaches by other governments, international organizations, and regional organizations. Because the relationships between the U.S. and governments that act as enablers are likely to be complicated—and, further, often may not prioritize doing away with dictators—we need to be realistic as well as creative about pressure that the U.S. government could apply. Commercial actors will likely be sensitive to approaches from those governments and international and regional organizations too. As other boycott situations evidence they may be particularly sensitive to actions of consumers and other market-based forces, whether acting on their own, through guideline initiatives, or through non-governmental organizations.

The softest existing approach to 'sanctioning' the supporters and enablers of dictators emphasizes information dissemination. In situations in which enablers are involved unwittingly or are particularly susceptible to concerns about negative publicity, shining a critical spotlight on their role may be sufficient to get their attention. Some entities—particularly multinational corporations with a strong presence in the U.S. or Europe—may then be open to new commitments to transparency and due diligence standards to protect human rights.

A stronger and more concerted approach, but one that pertains only to commercial actors, involves the range of mechanisms that has emerged over the past decade to engage corporations in more responsible practices that protect human rights. A number of

these efforts involve the U.S. and other governments, and civil society actors have played a key role in each case. One example is the Kimberley Process, which brings together governments, corporations, and civil society in an effort to regulate the diamond trade. Others include the Voluntary Principles, the OECD Guidelines, and the UN Global Compact.

The work done in the past decade by the U.N. Special Representative on Business and Human Rights is also noteworthy in this regard. And efforts by non-governmental actors to provide guidelines to businesses include the Red Flags project, which identifies potential legal liabilities in high-risk situations. This investigative and regulatory work can be augmented by bridging to the work of other agents who share the need for or desire to expose excessive behavior which sustains dictators. These certainly include the UN Panels of Experts, but also Lloyd's Registry and INTERPOL in their ability to chart linkages across illegal and quasi-legal entities. These and other initiatives may provide a foundation and entry points for addressing commercial enablers of dictators.

Some Particular Options for US Policy

A yet tougher set of approaches to both state and non-state actors involve the myriad political, economic or legal mechanisms that can be used against countries, commercial entities, or individuals to deter or dissuade their actions. In its bilateral relationships, the U.S. can bring pressure to bear on enabling governments through public or private condemnations; by suspending business or cultural exchange programs; by withdrawing diplomatic representation; by reducing aid and other forms of support; or by implementing a wide range of other smart sanctions tools.

The U.S. especially can impose broad or targeted bilateral sanctions, or work through the U.N. Security Council to impose multilateral sanctions against countries or commercial actors. Enforcement of sanctions is a separate challenge, at least as important as their imposition, as we have seen in various cases of weak arms embargoes. New regulations specifically targeted at certain commercial entities or their enabling activities may be useful. In situations in which there is evidence that the enabler-dictator nexus is engaged in illegal behavior, or has violated international law (including human rights law), it may be possible to pursue international criminal charges to complement sanctions and to invoke other legal measures against them.

Whether addressing commercial actors or states in a given situation, information about who the third parties are and what role they are playing is critical. By enhancing its intelligence gathering and analysis related to enablers, the U.S. government and like minded states should be able to better assess the levers that can be employed to target them. Including information on third party actors in intelligence reports on enabler-dictators situations and in interagency discussions about policy options may be useful approaches. The U.S. could also seek to engage international partners in information sharing to supplement its own intelligence sources on enablers and to help enlist others in the effort to halt enablers of massive rights abusers dictators.