Rethinking Sanctions: Important Questions for Canada to Consider

By Andrea Charron and Erin Tramley

Synopsis

Now is the time to consider the utility of certain ‘targeted’ sanctions regimes imposed by Canada. Three cases involving sanctions applied by Canada against elites and decision-makers in Venezuela, Iran and North Korea point to a number of problems with Canadian sanctions measures and policy means versus unintended effects. The penchant by Western states to create sanctions coalitions of the willing is not having the desired effect to change rogue state behaviour and instead is doing irreparable harm. A number of questions are raised in this article that need to be asked and answered by academics and practitioners in concert rather than in parallel if sanctions are to be Canada’s foreign policy tool of choice to decry undesirable behaviour.
About the Authors

Andrea Charron is an Associate Professor in Political Studies and Director of the Centre for Defence and Security Studies at the University of Manitoba.

Erin Tramley is a third year law student at Robson Hall. She also holds an advanced degree in Political Studies from the University of Manitoba. She is the two-time winner of the University of Manitoba’s undergraduate research award.
It is time to scrutinize targeted economic sanctions.\footnote{International Relations scholars refer to economic sanctions as the ‘deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations’ Hufbauer, G., Schott, J., Elliot, K. and Oegg, B., Economic Sanctions Reconsidered: History and Current Policy, Institute for International Economics, Washington, D.C., 2007 :3.} Despite the sanctions literature confirming time and time again that targeted sanctions are only marginally effective, work best on democracies and can have disastrous unintended consequences, they are still the go-to foreign policy tool of Western States to exact change in behaviour of decidedly autocratic governments.

**Exhibit A: sanctions against Venezuela**

Targeted economic sanctions, i.e. those that take pains to restrict particular goods/services to specific targets, have been promoted as a way to minimize the potential humanitarian consequences associated with broad-based or “dumb” comprehensive sanctions.\footnote{Jane Boulden and Andrea Charron: “Evaluating UN Sanctions: New ground, new dilemmas, and unintended consequences 2009-2010. International Journal Vol. 65 (1), (Winter):1-11. (2009-10).} The increasing number of targeted sanctions imposed on Venezuela and the decision by the Trump administration to apply additional sweeping measures have raised a number of questions about whether or not these economic measures are doing more harm than good and whether or not Canada should follow suit. While the newest measures are meant to impact Maduro personally, the sanctions are spun by his supporters as a badge of honour and are not affecting Maduro enough to change tactics.

Canada is not compelled by international law to sanction Venezuela as the UN Security Council has not required them. Therefore all of the decisions taken by Canada, to date, to apply sanctions against individuals associated with Venezuela are completely voluntary. The Venezuelan sanctions represent, however, the first occasion for Canada to list under both old and new sanctions legislation. Originally Canada applied measures against the Venezuelan state in 2017 under the Special Economic Measures Act (SEMA) listing persons (now numbering 97 who are connected to the Maduro regime) “in concert” with the U.S. and the EU. The focus was on the grave human rights abuses as a result of Venezuela’s disastrous governance and to signal the unacceptability of the unconstitutional change in government reinstating Maduro as head. Maduro was the first name listed. Note, that despite serious concerns of abuse and democratic slide under Chavez, his government was never sanctioned by Canada, only by the U.S., which delighted Chavez. In a tweet on 24 May 2011, he wrote: “Sanctions … imposed by the imperialist gringo government? Welcome Mr. Obama! The real impact of the new gringo aggression is potentiating the patriotic and nationalist morale of Venezuela.” Chavez had a point.\footnote{Michael Economides, “Silly Sanctions Against Venezuela Boost Hugo Chavez”, Forbes 13 June 2011. https://www.forbes.com/sites/greatspeculations/2011/06/13/silly-sanctions-against-venezuela-boost-hugo-chavez/#1c7dae8b8f6b}

In March 2018, Global Affairs announced targeted sanctions against nineteen Venezuelan officials under the new Justice for Victims of Corrupt Foreign Officials Act (the “Magnitsky Act” or JVCFOA)\footnote{Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (S.C. 2017, c. 21) https://laws.justice.gc.ca/eng/acts/J-2.3/. Lilly, MB and D. Arabi. “Symbolic Act, Real Consequences: Passing Canada’s Magnitsky Law to Combat Human Rights Violations and Corruption”. International Journal. Forthcoming. https://umanitoba.ca/centres/media/Canadian-Economic-Sanctions-Workshop_finalreport_Nov-2019.pdf} as well as 33 individuals from South Sudan and Russia imposing asset freezes targeting only the individuals as abusers and corrupters but with no connection or comment on the state from which they hail.\footnote{The list assigns no state affiliation with the individuals, no birthdates, titles, or positions within government and the list is not in alphabetical order although the Venezuelans are lumped together, followed by Russians and then South Sudanese. Justice for Victims of Corrupt Foreign Officials Regulations (SOR/2017-233): Schedule 1. https://laws.justice.gc.ca/eng/regulations/SOR-2017-233/page-2.html#docCont} Of the 97 original Venezuelans listed connected to the Maduro government, 3 are repeated in the Magnitsky list: Maduro, Tareck Zaidan El Aissami Maddah - Minister of Industries and National Production and Gustavo Enrique González López - the Director of National Intelligence Service. The other 30 names are “new”. Why the repetition of those names, is anyone’s guess – most likely a political statement to underline their particular culpability. The U.S. also listed Maduro and a number of others while the EU, which does not have

“Magnitsky” type legislation, has so far only listed key officials (like the Commander of the Venezuelan Armed Forces Antonio José Benavides Torres) and not the head of state, respecting the centuries-old amnesty of sitting heads of government. As a result, there is limited concordance between the lists. For example, Canada has not listed Miguel Alcides Vivas Landino, the inspector general of Venezuela’s Bolivarian National Armed Forces, who is listed by the U.S. Mind you, the U.S. has also sanctioned companies, industries (mining and gold for example) and vessels prompting the UN Human Rights Chief Michelle Bachelet (Chilean) to criticize the very broad and unilateral U.S. measures for “fail[ing] to contain sufficient measures to mitigate their impact on the most vulnerable sectors of the population.” U.S. analysts are quick to point out that Venezuela has been a governance disaster since the early 2000s – financing and supporting drug and human trafficking - and that the humanitarian conditions were brought about by years of neglect by Chavismo elites.

The economic crisis brought about by sanctions has led to a reduction in imports and hyperinflation, making it very difficult for Venezuelan citizens to access basic needs and services. U.S. measures have frightened most investors from accessing foreign exchange earnings derived from oil exports, many of which are linked to the U.S. market, and/or Venezuelan banks and financial services, spurring business for black markets and money lenders with usurious rates. Rather than boosting the coordinated attempt by the West to recognize Juan Guaidó as the legitimate state authority, the sanctions seem to have hindered this support. The “targeted sanctions” do not appear to be affecting Maduro or top government officials, but instead the effects are transferred to the general population. And Canada may need to consider in the future an order under the Federal Extraterritorial Measures Act, as it did with U.S. sanctions against Cuba, to block the extraterritorial application in Canada of certain U.S. embargoes against Venezuela. Even if a Canadian company wants to support and invest with anti-Maduro elements in Venezuela, they can run afoul of U.S. laws and incur stiff penalties.

Elsewhere in the world: Iran and North Korea

This humanitarian predicament in Venezuela is not an anomaly. The mainly U.S. broad sanctions against Iran have also caused deadly drug shortages, not by design but by unintended consequences; the targeting of Iran’s energy, shipping and financial sectors has led to an increase in import prices, the blocking of supply chains and an inability for citizens to access life-saving medications like cancer drugs. Canada and the EU lifted some measures in 2016 in recognition of the negotiated Joint Comprehensive Plan of Action (JCPOA) endorsed by UN Security Council Resolution 2231 (2015) between Iran and the P5 + Germany, but clearly this easing cannot mitigate against the U.S. punitive measures. The Western concert approach in this case is derelict.

In North Korea, additional autonomous sanctions by many states have resulted in malnutrition, restricted access to medical supplies and job loss for many citizens manipulated by the DPRK regime. Indeed, if there were a prize awarded for ingenious circumvention of sanctions, the DPRK would win. Even mandatory UN sanctions are

6 First introduced by the US to target individuals involved in the beating and killing in prison of Sergei Magnitsky, a Russian lawyer employed with an investment company, after he had exposed corruption among Russian elites. Magnitsky-type legislation allows for the targeting of individuals with visa bans or asset freezes. The EU has yet to adopt such legislation. See Clara Portela for a discussion of EU thinking. Clara Portela “Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level” Study requested by the DROI committee of the EU Parliament 26 April 2018.

7 The Government of Chile has supported the U.S. sanctions.


9 Michael Camillen, “Plan B in Venezuela: Washington must give up on ideal strategy in favour of an achievable one” Foreign Affairs (3 September 2019).


12 Circumventing and/or deflecting the effects of sanctions is common and began in the 1960s with Ian Smith’s Southern Rhodesian regime rediscovering its entrepreneurial roots. Edward Wong, Christoph Koeftl, Whitney Hurst and Elisabetta Povoledo “Armored cars, robots and coal: North Korea Defies U.S. by Evading Sanctions”, NY Times (9 March 2020). North Korea has evaded sanctions for months by exporting coal, sand and petroleum, and importing luxury goods including armored sedans, alcohol and robotic machinery. The findings were outlined by the U.N.’s Panel of Experts on sanctions against the DPRK in a report which disappeared from the UN’s public website for a day noting China’s objections to some of the findings. Assessments using satellite images and shipping data have been key to discovering the sanctions’ busting activity which has been aided and abetted by Chinese flagged ships. See Report of the Panel of Experts Established Pursuant to S/RES/1874 (2019). S/2020/151 (2 March 2020). https://undocs.org/S/2020/151
unevenly applied (both the measures and their timing) and the economic incentives to flout the rules are too great. Consider the $25,000 financial penalty and 1 – 5 year possible jail sentence if you are a Canadian or foreign national operating in Canada - the consequences for violating the SEMA\textsuperscript{13} versus the thousands of dollars that are made sanctions busting. Depriving Kim Jong Un of his “luxury goods” – the model for the ultimate “targeted sanctions” - have done nothing to change his mind to stop the proliferation of nuclear weapons. Indeed, Tyler Kustra boldly suggests that the West should give him all the luxury goods he wants.\textsuperscript{14} This then frees up precious resources for the DPRK to (perhaps) avoid famine. In either case, sanctions will do little to prevent the proliferation of weapons. The alternative is starvation and proliferation of WMD.

Despite the 13+ years of sanctions against these three states and against key elites, little has changed in the policies of the Venezuelan, North Korean and Iranian governments. Those in power continue to survive and provide for themselves, while the most vulnerable endure the worst effects. What is more, sanctions are emboldening key leaders in these states and building undesirable alliances.

“Global” imposition of sanctions?

Economic sanctions were supposed to create an “us” against “them” divide assuming of course, a cohesive and coherent international system (which is increasingly in doubt). The “us” was the entire global community of states and the “them”, the target in question. Increasingly, however, the “us” is only select Western states and the “them” includes targets and their supporters or benefactors – especially Russia and China. For example, when the U.S. imposed oil sanctions on Venezuela back in February 2019, Venezuela’s state oil company (Maduro’s primary bankroller) was able to find ways to survive despite a plummet in oil exports. Although the economy faltered, the oil company was able to stay afloat because they received assistance from the Russian energy company Rosneft.\textsuperscript{15} China has provided financial and technical support as they continue to import Venezuelan oil. Most recently Chinese technicians have been accused of working with Maduro to eliminate Internet access.\textsuperscript{16}

In North Korea there have been a number of incidences of Chinese banks and firms evading UN sanctions and continuing to support the proliferation of nuclear weapons, and Iran is finding some relief from the sanctions with the help of China and Russia. Imposition of sanctions, therefore, may be accentuating ideological cleavages and strengthening alliances the West wants to avoid. Senders, targets and their supporters are therefore locked in a perpetual state of adversarial relations, raising the stakes and preventing either side from negotiating, changing or backing down. Of course the recent pandemic is exacerbating the unintended consequences on the most vulnerable; state leaders of these countries continue to enrich themselves and find ways to avoid the bit of sanctions while innocent civilians are under even greater financial and resource strains.

Questions and more questions

Why then does Canada and the West continue to resort to sanctions? Not only are there now more Acts on Canada’s books to enable greater autonomous sanctioning activity, Western governments of all ideological stripes use them at a steady rate but with the same, very old-fashioned, goal in mind – to change the behaviour of a target. As noted by Canada’s preeminent sanctions’ expert Margaret Doxey:

governments do not always articulate publicly the full range of their motives and objectives in imposing sanctions. Typically, they stress the unacceptable nature of the target’s behaviour and their own dedication to international community values, but these claims do not give a wholly accurate reflection of their policy thinking.\textsuperscript{17}

\textsuperscript{13} Penalties are difficult to find in the legislation but Global Affairs Canada has useful information listed in a Q and A on sanctions. See https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng#a1
The reasons for the imposition of measures never listed in the sanctions narratives on foreign affairs websites are that the sanctions signal to allies and to domestic audiences that government “X” is a good ally and doing something by applying sanctions. And while lines in the sand to decry abusive and corrupt behaviour are to be lauded, sanctions that create more unintended consequences (including retaliatory sanctions against the senders) may outweigh this benefit. Sanctions wielded especially by Western states today are leaky and blunt tools of national communication rather than as complicated tools of statecraft.

As counselled by Kim Richard Nossal in the 1980s, sanctions “require a continuous calculus about their effects and a constant series of decisions about the hurts being inflicted…”18 Do senders, like Canada, review the measures it applies (in many cases, for decades) or is it “fire and forget”? In other words, does the West have a sanctions exit plan? We tend to want sanctions to achieve the impossible: i.e. to compel a regime change and banishment of the target government. But this has never been achieved with sanctions. Therefore, what is a more realistic expectation for sanctions?

Is there too much reliance on sanctions against individuals (via the financial asset freeze), 19 forgetting other state-based measures, such as natural resource embargoes (for example timber, diamonds, coal, fish and other “lootable” resource embargoes which have been more successful encouraging better management practices than expecting a change in illegal exploitation) or expulsion from regional and other organizations or even sports activities? Is enough thought put into threatening sanctions, or even applying positive sanctions? If the primary goal is to change target behaviour but sanctions are unable to elicit this, what might be more attainable secondary and tertiary goals? Do we consider, as advised by Jones and Portela, sender and system goals for sanctions, not just target goals?20

Is there an analysis of the interaction of sanctions with other foreign policy goals, like missions and trade agreements? Does the West need to dust off the classic theories about defection, deterrence, game theory and power that were vital to the thinking behind sanctions in the 1920s, or have we convinced ourselves that sanctions are now smarter, more surgical and humane? Have we ever interviewed states that were under sanctions for their version of events to learn valuable lessons? And do we have any understanding of how economic coercion in theory has been upended by globalization in practice? Indeed, never has there been such little practical attention paid to such an important foreign policy tool despite years of academic study. Theory and practice need to collide.

A call for a cadre of sanctions professionals

One has the impression that western states are all trying to change the tires of a car while it is careening down a highway, never getting a chance to study and fully understand the evolving logic behind sanctions before finding new ways to apply more. Venezuela, Iran and others are violating international law, abusing human rights and threatening the liberal world order. Something should be done – this seems to be the qualified consensus - and more sanctions seems to be the answer for the West. But are sanctions the best option? Sanctions rarely change behaviour but they do point to egregious behaviour and, importantly, provide a financial fingerprint of the targets. Rather than seeing sanctions as an end point, the US and EU increasingly view sanctions as the starting point to investigations into money laundering and illegal activity. The Office of Foreign Assets Control in the U.S., which administers and enforces economic sanctions programs primarily against countries and groups of individuals, sets a 50% rule that requires scrutineers to consider the customers’ customers of sanctioned individuals and entities. Any entity owned in the aggregate, directly or indirectly, by 50 percent or more by one or more blocked persons is itself considered to be a blocked person. This creates a culture in the U.S. that encourages deep dives into the financial dealings of listed persons and entities, certification systems and training opportunities. Canada has neither such a rule nor such a culture. GAC will not issue guidance or answers to frequently asked questions about sanctions and Canada has no sanctions certification system.

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19 There are also related concerns with the resulting criminalization of individual sanctions because of frequent litigation, listing and due process problems.
Should Canada adopt similar legislation? Do we fully understand Canada’s machinery and architecture to apply and enforce sanctions and/or even the tool itself? Do we understand how targets and the measures applied are chosen? Perhaps it is time to stop the car, resist the temptation to sanction just because we can and start at the beginning. What is the desired and realistic end goal? Should we focus on just targets (and which level) or the system? What, if anything, can Canada do to contribute to the multiple steps of what needs to be a common, international goal, with what means and what tools? And what training on sanctions should be offered/encouraged? These are the questions we suggest need to be tackled by academics and practitioners together rather than in parallel.
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Canadian International Council

6 Hoskin Avenue
Toronto, Ontario
M5S 1H8
thecic.org  thecic

Behind the Headlines  May 2020