

Canada's Sanctions Regime: Curving the Edges of a Blunt Tool

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Issue

The limited success of sanctions suggests that not only are they blunt foreign policy tools, but that without meaningful accountability mechanisms, Canada may be contributing to human rights violations — including against women and girls — and to the growing rivalry among great powers.

Background

Canada's sanctions are classified into five broad types: asset freezes, arms and related materials embargoes, export and import restrictions, financial prohibitions and technical assistance prohibitions (Government of Canada [GoC] n.d.a). States and multilateral institutions also exercise diplomatic sanctions, which refer to the general suspension of a state and its accredited personnel from intergovernmental organizations. The UN Commission on the Status of Women, for example, suspended Iran's participation in the body for its policies and actions that violated the rights of women and girls in Iran (Nichols 2022). Similarly, the Group of Seven — previously the Group of Eight — expelled Russia from the coalition after it annexed the Crimean Peninsula (Nault 2017, 7). Sanctions are used to coerce behavioural changes in the actions and policies of a target, constrain resources of the target from carrying out proscribed activities and signal or stigmatize the target for carrying out those activities in violation of the international norms (Biersteker Tourinho and Eckert 2016b, 21).

The Canadian sanctions regime is mandated under the Special Economic Measures Act (SEMA), the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) and the United Nations Act. Global Affairs Canada (GAC) is the lead agency coordinating the implementation of sanctions with financial, intelligence and security agencies. Until 2017, Canada's use of sanctions was primarily limited to multilateral efforts or acting with at least one other country (Lilly and Arabi 2020, 170, 177). The legal threshold for a unilateral sanction required is a breach of international peace and security, as designated by the UN Security Council. The Sergei Magnitsky Law, introduced in 2017, is Canada's latest foreign policy tool in the sanctions regime tool kit. The law reduces the legal threshold for Canada to respond unilaterally against human rights abusers and corrupt actors anywhere in the world. A key advantage of a targeted sanction against an individual or entity is that the direct impact on the target can be measured with precision and is easier to enforce in comparison with sweeping sanctions against a state, the impact of which can be difficult to measure and have unintended consequences.

The SEMA and the Sergei Magnitsky Law were amended in 2022 to include a provision for the “sharing of information” between financial, security and intelligence agencies. This provision is critical for GAC's coordination with other agencies for targeting, implementing, monitoring and enforcing sanctions, which were previously fragmented and unclear.

The amendment of SEMA (s. 5.1 (1) of SEMA; amendment 2022, c. 10, s 439) also ensured that both pieces of legislation now have provisions for targeted individuals to appeal the sanctions imposed against them. SEMA articulates that proceeds from any forfeiture of assets seized or frozen will be used for reconstruction of a foreign state adversely affected by a grave breach of international peace and security, restoration of peace and security, and compensation of victims of a grave breach of international peace and security, gross and systemic human rights violations or acts of significant corruption. In the case of the Sergei Magnitsky Law, the proceeds will be used to compensate victims of corruption or gross violations of internationally recognized human rights.

Canadian legislation includes the right of appeal. Any forfeiture of assets occurs only with the failure of a target's compliance with human rights commitments, an unsuccessful appeal against the sanction, or a dismissal of the appeal. The laws, however, do not provide criteria for lifting sanctions, or the length of time that Canada should give a target to change its behaviour before it confiscates its assets, or the process for redistribution of the assets to the affected state or individuals.

Canada has targeted more than 3,500 individuals and entities under the SEMA and 70 under the Sergei Magnitsky Law (GoC n.d.b). The sanctions are a symbolic act, functioning primarily to denounce human rights violations and other targeted behaviour. (Lilly and Arabi 2020, 165; Nault 2017, 9). However, there are issues of selectivity at play. In November 2018, Canada sanctioned 17 Saudi nationals for the torture and extrajudicial killing of journalist Jamal Khashoggi (GoC n.d.c). But Canada has not responded in the same way to the murder of other journalists around the world, such as the 2022 assassination of Palestinian-American journalist Shireen Abu Akleh by Israeli forces. Inconsistencies in the applications of sanctions, whether real or perceived, can undermine their legitimacy and effectiveness.

A comprehensive review of the SEMA and the Sergei Magnitsky Law conducted by the Standing Senate Committee on Foreign Affairs and International Trade on the fifth anniversary of the laws' enactments found several criticisms of the Canadian sanctions. Some of the key concerns are that "targets are not informed that they are sanctioned" and that "the Government of Canada does not communicate the changed behaviour required of the

targets to lift the sanctions" (Standing Senate Committee 2022a, 24:20, 21). Unlike its allies, the Canadian sanctions database on the website does not provide "detailed information about sanctioned individuals" such as aliases, alternative spellings of names, dates of birth, when a sanction has been enforced against a target, the reasons behind the sanctions or general guidance on the types of activities that would be deemed permissible and those that would be prohibited (ibid., 24:3, 22; Saunders 2022, 8). In the absence of clear guidelines, companies are prone to overcompliance to avoid violating sanctions, which could worsen the economic impact in Canada and have adverse implications for humanitarian aid and remittances whereby impediments to financial services hinder the transactions many individuals rely upon (Weschler 2022, 9). Moreover, there are no provisions in the law for periodic review of the effectiveness or the human rights or geopolitical impacts of the sanctions.

The Effectiveness of Sanctions

The effectiveness of sanctions is widely contested. Critics say that there is no direct evidence of sanctions alone being able to derive a positive change in the behaviour of a target. In a study of 63 cases of UN-targeted sanctions over a period of 25 years since 1991, sanctions were more effective in constraining and signalling targets (both effective 27 percent of the time) than coercing a change in the target's behaviour (effective 10 percent of the time) (Biersteker Tourinho and Eckert 2016c, 233). Overall, the sanctions were effective 22 percent of the time (ibid., 235). The partial success of sanctions was contingent on criteria, such as modest goals, quick and decisive enforcement, whether the targets were democratic and had close ties and trade relations, whether the sanctions were used in conjunction with other foreign policy tools, and the cost of sanctions on the sanctioning state being lower than the expected gains (Lilly and Arabi 2020, 167; McTaggart 2019, 2).

Despite their narrowed scope, targeted sanctions can have detrimental consequences on the human rights of civilian populations when critical entities of a state fail to function as a result of sanctions. Not only have sanctions had limited success in securing desired behaviour, but more than half of the UN-targeted sanctions had direct adverse impacts on the economy, while psychological impacts on citizens could not be measured (Elliott 2016, 177-78). Furthermore, no systematic study has been

made on the unintended consequences of UN-targeted sanctions (Eriksson 2016, 191). However, there is evidence of increased corruption and criminality (58 percent of the time), followed by negative humanitarian consequences (44 percent of the time) and strengthening of authoritarian rule (35 percent of the time) (*ibid.*, 202, 205). Evasion of sanctions by way of trading through third countries, using private contractors and using an alternative value source (e.g., diamonds) also occurs (Biersteker, Tourinho and Eckert 2016a, 270).

Human Rights and Humanitarian Impacts: From Comprehensive to Targeted Sanctions

The comprehensive UN sanctions against Iraq following its invasion of Kuwait amounted to what one UN official called a “genocide” (Siegal 1999). According to UNICEF, Iraq experienced the death of 500,000 children (Eckert, Biersteker and Tourinho 2016, 1). The cost of a family’s monthly food supply increased 250-fold (Perry 2022, 152). The human rights and humanitarian consequences of the comprehensive sanctions imposed against Iraq in the 1990s prompted the UN Security Council and most states, including Canada, to revise the sanctions regime and limit the interventions to individuals, entities and sectors of a state by using targeted sanctions (*ibid.*, 152; Nault 2017, 8).

One of the most effective human rights sanctions to date is the United States’ targeted sanctions in December 2021 against Bangladesh’s paramilitary force Rapid Action Battalion and six of its members under the Global Magnitsky Act for their involvement in extrajudicial executions (Human Rights First 2022, 28; Office of Foreign Assets Control 2021). Reports of extrajudicial executions and enforced disappearances dropped dramatically as a result (Hasan 2023). However, the country’s Prime Minister, Sheikh Hasina, has since said her government would stop imports from sanctioning states (UNB 2023), suggesting regimes and leaders do not respond passively to sanctions.

Moreover, punitive restrictions on entities like banks and financial institutions, including those based in third countries, can make it difficult for sanctioned states to import essential food items, health-care equipment and other forms of humanitarian aid. In 2021, the UN High Commissioner for Human Rights, Michelle Bachelet, called on states to avoid unilateral coercive measures

targeting entire countries or sectors of economic activity (United Nations Office of the High Commissioner for Human Rights 2021).

The United States and allied sanctions against Iran aimed to constrain Iran’s capacity to build nuclear weapons (Maloney 2023). However, the sanctions against Iran pushed the country’s civilian population into growing poverty and limited people’s access to critical health-care supplies and life-saving vaccines during the COVID-19 pandemic. Moreover, secondary US sanctions targeting foreign companies for trading with Iran resulted in over-compliance by withdrawing investment from the country (United Nations Children’s Fund 2022; United Nations Human Rights Council 2022, 8, 12). Since the re-imposition of US sanctions against Iran in 2018, two in every three job losses affected women in a labour market where women’s representation is one in every nine men (*ibid.*, 13). The socioeconomic circumstances have put approximately three million female-headed households in precarity and nine million women in low-income households into vulnerability in accessing essential services, including health care (*ibid.*). The consequences contradict Canada’s gender-responsive approach to humanitarian action as outlined in its Feminist International Assistance Policy, which addresses the specific needs and priorities of people in vulnerable situations, particularly women and girls. Although targeted sanctions minimize the effect on the wider economy, when key state officials and entities such as central banks become the target of sanctions, the effects can trickle down to the economy. In short, the unintended consequences of enforcing sanctions can contribute to violations of international human rights law.

At the Tom Lantos Human Rights Commission hearing in the House of Representatives on October 4, 2022, Rep. James P. McGovern observed that sanctions were not being reviewed methodically by the US Congress. Consequently, the sanctions were bringing US adversaries together, undermining the use of the US dollar as a reserve currency, exacerbating humanitarian crises and a higher-than-normal migration flow from countries such as Cuba (Rapoza 2022; McGovern 2022, 2).

Geopolitical Impact: Exacerbating Rivalry and Collateral Damage

Canada's use of sanctions is predicated mainly on determinations made by allied countries, most notably the United States and the European Union (Portela and Charron 2023, 8; Saunders 2022, 12; McTaggart 2019, i, 2). In February 2023, the Canadian authorities imposed a sweeping ban on the use of the Chinese social media app TikTok on government-issued devices, two months after the United States imposed the same ban citing concerns about data privacy and the security of users (Hern 2023; Bhuiyan 2022). The actions were taken despite investigations on different continents suggesting that "TikTok's data harvesting is [not] anything more than the same 'surveillance capitalism' that rivals such as Facebook and Instagram apply to sell targeted ads" (Hern 2023).

The tit-for-tat sanctions against individuals and corporate entities escalated over the years. In 2009, China restricted Western social media platforms Facebook, YouTube and Twitter and compelled companies such as Google, Microsoft and Yahoo to comply with the country's content restrictions to limit the spread of news about human rights violations against the Uyghur Muslims (Mueller and Farhat 2022, 354). In May 2019, the United States imposed sanctions against Chinese technology firm Huawei for its supposed links to the Chinese government and evasion of Iran sanctions (Zhou, Jiang and Chen 2022, 15; U.S.-China Economic and Security Review Commission 2019, 46). The United States attributed its decisions to the significant threat that China's technology industry posed to US economic competitiveness and national security. In May 2022, Canada similarly joined its ally in extending the ban to Huawei over security concerns (Tunney and Raycraft 2022). The concerns, however, produced no substance in the findings of the US House Permanent Select Committee on Intelligence and the National Security Agency (Mueller and Farhat, 2022, 358). The Huawei affair further demonstrated the collateral risks that sanctions pose to the citizens of the sanctioned and sanctioning states. The Chinese authorities arrested two Canadians on spy charges in retaliation shortly after Canadian authorities arrested Meng Wanzhou, the company's chief financial officer, in December 2018 on a US extradition request. China released the two Canadians only after Wanzhou was released in September 2021 (Associated Press 2021; BBC 2021). In response

to the Western sanctions, China introduced the Anti-Foreign Sanctions Law in 2021, which enables China to take countermeasures against foreign sanctions, such as restricting visas and entry into China, banning activities with Chinese entities and freezing assets within Chinese territory of entities and individuals behind foreign sanctions, as well as their spouses and relatives (Zhou, Jiang and Chen 2022, 15, 18).

The Western sanctions against Russia in the wake of its invasion of Ukraine in 2022 have had much less of an effect than anticipated. Instead, Russia has expanded trade relations with alternative markets. Brazil, China, India and Turkey increased Russian imports by at least 50 percent in 2022. Russia's critical industrial imports arrived from China, Turkey and Belarus, its artillery pieces arrived from North Korea, and its drones arrived from Iran (Olive 2023). India has refrained from joining its Western and European allies in imposing sanctions against Russia and, instead, has leveraged its own trade and economic interests by purchasing Russian oil at a cheap price (Dieter and Biedermann 2022, 277; Frayer 2023).

Iran and Russia established their own interbank communication and payment gateway as both countries were cut off from the global financial network called the Society for Worldwide Interbank Financial Telecommunication (SWIFT) (Reuters 2023). When the United States re-imposed sanctions against Iran in May 2018, it pulled out of the nuclear deal (Joint Comprehensive Plan of Action) that brought Iran to the table to contain its nuclear program in exchange for sanctions relief. For Iran, access to SWIFT was a deal maker (Farrell and Newman 2019, 68, 69). As the United States re-imposed sanctions, SWIFT followed suit and cut Iran off the network (*ibid.*, 42, 69; Maloney 2023). The US action irked its European allies that were unprepared for another sanction against Iran. Concerned by the US sanctions and the implications of secondary sanctions on third countries for engaging with Iran, policy makers in the European Union have started exploring financial networks outside of the US systems, indicating a potential decoupling in the future (Farrell and Newman 2019, 79). A French diplomat criticized the US move by saying that the United States was not the "economic policeman of the planet" (*ibid.*, 42). Iran has since moved to advance its nuclear ambitions (Maloney 2023).

These actions significantly challenge the foundations of a rules-based international order and exacerbate the rivalry of great powers (Dieter and Biedermann 2022, 280). Western sanctions against authoritarian regimes and economic competitors are giving rise to new partnerships between China, Russia, Iran and North Korea (Wong 2023), which offers an alternative normative order based on the principles of non-interference, collective security and stability instead of individual rights and political freedom (Dieter and Biedermann 2022, 278; Kutlay and Önis 2022, 26). Going forward, sanctions may do little to protect human rights in authoritarian states.

Considerations

The considerations for Canada are the following: Canada has little choice whether to participate in different sanctions regimes, and every sanction comes with costs and the possibility of retaliation; sanctions can be politically unpopular, which is why multilateral sanctions through the United Nations are always preferable to bilateral or unilateral sanctions; the effect of sanctions is presumably disproportionately low compared to the resources needed to implement the sanctions; sanctions can have profound intended and unintended consequences that affect the lives of people; and it is imperative that Canada establish mechanisms to gauge the various consequences.

The above discussion underpins three observations. First, Canadian sanctions alone may not have a significant impact on targets (Nault 2017, 11). Second, regional and unilateral trade sanctions often do not protect peace and security as much as they protect economic nationalism (Wraight 2021, 77; Biersteker, Tourinho and Eckert 2016a, 272). Third, by joining allies on sanctions without independent consideration and transparency in the justification process, Canada could lend itself to accusations of being politically selective about its targets and incoherent about the purpose of sanctions (Nault 2017, 9, 28).

Recommendations

The GoC should enhance the transparency of its sanctions regime by providing clear information on the sanctioned entities to support the principle of due diligence (Wallenstein, Staibano and Eriksson 2003, 97). Specifically, the GoC should update the sanctions database

on its website to include detailed information about targets. The website should contain a general guidance on the types of activities that would be deemed permissible and those that would be prohibited.

The GoC should amend the Sergei Magnitsky Law and SEMA to require periodic House of Commons assessments of the human rights and gender impacts of unilateral and multilateral sanctions. The House of Commons Standing Committee on Foreign Affairs and International Development should review the sanctions every six months in consultation with a diverse range of stakeholders, including experts in human rights and gender issues, civil society organizations and affected communities to ensure that any sanctions are consistent with international human rights standards. The gender impact should identify potential differential gender impacts and ensure that the policy is consistent with Canada's feminist international assistance policy as well as international standards on gender equality and women's rights. Both assessments should be made public.

The Minister of Foreign Affairs, the Standing House of Commons and Senate Committees on Foreign Affairs should periodically review the effects of Canada's sanctions on its larger strategic interests and the preservation of the rules-based international order. Western sanctions are giving rise to new partnerships among predominantly authoritarian states. Without meaningful review, Canada could be pushing states away from the rules-based international order to new geopolitical blocs. Furthermore, resistance to economic interdependence with the West suggests that unilateral sanctions could become a redundant tool to prevent human rights violations.

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