TARGETED SANCTIONS:

What effect do they have?

Since the United States' Global Magnitsky Act came to the fore in 2016, multiple countries including Australia have expanded sanctions to include individuals accused of corruption related crimes. Author and senior lecturer in Law at the Australian National University, Dr ANTON MOISEIENKO led an empirical study evaluating the impact of sanctions. He writes about the findings.

In June 2024, Senator David Pocock urged "targeted sanctions against members of the Israeli government and the Israeli Defence Force" in response to Israel's ongoing military operation in Gaza. Similar comments have been made by other politicians, including Labor's Ed Husic, the Minister for Industry and Science.

This an increasingly familiar trend: that is, calls for targeted sanctions against those responsible for various forms of alleged wrongdoing. A great many situations give rise to such sanctions. Australia's current sanctions cover wrongdoing by individuals, including government officials, from Russia, Iran, Libya, Myanmar, North Korea, Syria and more. Many would like to see further expansion. For example, the Australia Tibet Council has been advocating for targeted sanctions against Chinese officials.

All of this raises the question of how effective targeted sanctions are. If they are an effective tool of countering human rights abuse or other wrongdoing, one would expect them to be used yet more often. If, conversely, the effectiveness of targeted sanctions leaves much to be desired, then we need to either improve the regime or put our readiness to use sanctions into perspective.

As we shall see, there is much that we do know about the effectiveness of targeted sanctions. However, to fully appreciate the nuance, it is worth examining the basics.

What Are Targeted Sanctions?

"Sanctions", a very broad term, can encompass anything from a total embargo on trading with another country to the expulsion of a single diplomat. It is therefore almost impossible – and a widespread mistake! – to speak about the effectiveness, or lawfulness, or unintended consequences of "sanctions" writ large. The specific form of sanctions at hand determines the effectiveness.

On the other hand, "targeted" sanctions, a considerably more evolved category, can be imposed on specific people or companies, as opposed to whole countries or sectors of the economy, and normally include financial and immigration sanctions. Broader, country-oriented sanctions tended to have greater humanitarian consequences.

To appreciate how targeted sanctions work, let us begin with the components of financial sanctions. First, the targets have their assets frozen in the country that imposed the sanctions. The freezing of an asset means that its use or transfer is prohibited, but ownership remains unaffected. In theory, all rights over frozen assets will revert to the owner once sanctions are lifted; in reality, property can stay frozen for decades, which blurs the line between (temporary) freezing and (permanent) confiscation.

Second is the prohibition for anyone within the sanctioning country to do business with sanctioned persons. US sanctions are particularly important in this context because most international dollar transactions are cleared through US-based banks, and so a prohibition on them dealing with a particular person will potentially shut them out of international commerce.

The final component, prohibition on entering the sanctioning country, significantly does not involve a ban on the targeted person travelling internationally, but only on entering the specific country. Of course, if multiple countries impose such sanctions in concert, the targeted person's ability to travel internationally may indeed be severely constrained.

Effectiveness and Effect

Debates over the effectiveness of sanctions, targeted or otherwise, have gone on for decades. Surprisingly for such a practical topic, they often acquire a highly theoretical, almost philosophical quality. This is because any serious discussion of the effectiveness of sanctions requires an understanding of their objectives ("effective at what?"), but there is no consensus as to what sanctions are meant to achieve.

One influential school of thought is that sanctions ought to result in behaviour change. This offers a straightforward benchmark of effectiveness: did the target stop their malicious activities after sanctions were brought to bear? However intuitively appealing, this view of effectiveness is very limited. For example, it implies that sanctions fail if they "merely" make it significantly more difficult to engage in wrongdoing, or that there is no point bringing in sanctions as a response to past misconduct.

Another perspective on sanctions is to emphasise their symbolic aspect. Quite apart from their practical effects, so the argument goes, sanctions signal disapproval of the targeted conduct. The phrase "between wars and words" encapsulates this view of the role of sanctions. All sanctions are by default "effective" if what they are meant to achieve is, in essence, making a public statement.

This definitional to-and-fro renders contemporary debates on the effectiveness of sanctions increasingly akin to medieval disquisitions on how many angels could fit on a pinhead. One useful way of getting a firmer grasp on reality is therefore to focus not on the effectiveness of sanctions – with all the discussions of their objectives that this invites – but on their effect. In other words, what happens to those subjected to sanctions, and what does this tell us about how sanctions can be best used?

The Effect of Targeted Sanctions

In June 2023, with experts from UK-based civil society organisation International Lawyers Project, I published what to our knowledge was the first detailed study of the effect (or, as we also called it, impact) of targeted sanctions. The question at the heart of the study was very simple: namely, how the imposition of targeted sanctions affected the sanctioned parties.

We chose 20 people as our sample, all sanctioned by the US government under a law known as the Global Magnitsky Act 2016. The sanctions we studied were made between 2017-2019, this meant that at least five years had passed by the time we commenced our research, that is, sufficient time had elapsed for the consequences of sanctions, if any, to be felt.

Ascertaining those consequences was far from straightforward. If one studies how countries change their policies in response to sanctions, the answers are relatively obvious (Does South Africa still have apartheid? No. Does North Korea continue its nuclear proliferation program? Yes.) By contrast, when individuals are concerned, one needs to undertake far more significant research to figure out what happened to them, including through reading sources in multiple languages. This task would have been impossible without the involvement of a cohort of legal fellows working with the International Lawyers Project, who lent their linguistic expertise and research skills.

The 20 individuals were in the Dominican Republic, DRC, Gambia, Iraq, Israel, Mexico, Nicaragua, Russia, Serbia, South Sudan and Uzbekistan. Three were from the same family – the South African Gupta brothers – and so were grouped in the same case study. The US sanctions were imposed because of alleged involvement in corruption. The Global Magnitsky Act also provides for sanctions in response to human rights abuse, but we chose to focus on the corruption sanctions program because it is more likely to involve people with international business interests and, therefore, greater vulnerability to sanctions.

This brings me to the point about the actual effect of sanctions. To begin with, we were seeking to understand the kinds of effects on those subject to sanctions. Having one's assets frozen, being shut out of business dealings with companies in the sanctioning country and not being able to travel there are obvious, direct consequences of sanctions. However, there are also plenty of indirect, downstream effects.

Corporations around the world may refuse to do business with sanctioned persons even when not legally required to do so, to avoid reputational damage. Relatedly, heightened media scrutiny almost invariably follows on the heels of- sanctions designations – which is why we were able to do our research! In some cases, one might even experience adverse consequences in one's home country, such as losing one's job or facing a criminal investigation in the aftermath of a foreign sanctions designation. Finally, behaviour change can occur, too – either by the person concerned, or even by the broader regime, government or network that suddenly finds its members targeted by foreign sanctions.

All in all, we identified 10 kinds of effects (impacts) in four categories: the direct impact of sanctions; private-sector action; developments in the targeted person's home jurisdiction; and behaviour change. Interestingly, some of the most immediate impact can also be the hardest to evaluate. Consider, for example, the freezing of a sanctioned person's assets. If that person does not actually have any property in the sanctioning country, the freezing is a mirage. As outside researchers, we can look for any indications in the public domain of whether a particular person's property was indeed frozen, but in many cases this information will only be available to the government concerned (and governments are often reluctant to publicise it – no doubt because the actual state of sanctions enforcement may be less than stellar!). Equally, travel bans only bite if the person sanctioned would otherwise seek to spend some time in the sanctioning country, about which an outside observer

Russian Tax Auditor Sergei Magnitsky died in a Russian prison in 2009 after having exposed a massive tax fraud scheme involving Russian officials and organised crime. In his memory the Magnitsky Rule of Law Accountability Act of 2012 was passed in the US and later in other countries. The Act sanctions Russian officials implicated in human rights violations. It was the first law in history to target individuals.

would ordinarily have no insight. Our study sought to assess the impact of asset freezes and travel bans based on publicly available information.

Perhaps surprisingly, in half of the cases we studied, there was publicly available evidence of property actually being frozen. This is a substantial proportion, arguably more than one might have expected. It is likely that this reflects the profile of the people concerned. They were among the first people sanctioned under the Global Magnitsky Act due to the degree of notoriety they acquired. In addition to the Gupta brothers, the sample included the Gambia's former dictator Yahya Jammeh, the Israeli billionaire Dan Gertler, the powerful daughter of Uzbekistan's late president Gulnara Karimova, and the Serbian arms dealer Slobodan Tesic. Their wealth and the extent of publicly available information about it are likely greater than for some of the more pedestrian targets.

Still, we could observe a clear correlation. Assets were more likely to be frozen when the US government accompanied its sanctions announcement with identifying the network of companies and associates operating on behalf of the sanctioned person. Such a move reduces the opportunities for sanctions evasion that are otherwise available by simply holding property via a proxy.

Another unexpected finding was a smattering of cases involving domestic criminal prosecutions or the loss of political influence in the wake of US sanctions. Given the wealth and power of most of the sanctioned persons, one might expect them to continue to enjoy impunity back home, regardless of foreign sanctions. In our sample, however, many of the targeted persons had already suffered a decline in their political standing, so it would perhaps be too optimistic to see domestic action against them as a consequence of US sanctions. It is more likely that it is simply a symptom of a reversal in their political fortunes.

More soberingly, we could not identify any discernible impact of sanctions on one-third of our sample. This included targets in Iraq, Nicaragua, Russia and South Sudan. These cases test one's likely geopolitical intuitions. One would not be surprised that targets in Nicaragua and Russia, both of which were openly antagonistic towards the US during the relevant time period, would be largely shielded from the consequence of sanctions. The position in Iraq and South Sudan is different, but in both of those cases the US-sanctioned individuals continue to personally wield significant political influence, unaffected by sanctions. This is a stark demonstration that someone comfortably ensconced in one's domestic political system is less likely to be impacted by sanctions than those who actively pursue international business opportunities, such as Dan Gertler or Slobodan Tesic.

Implications for Sanctions Policy

A nuanced picture emerges that has far-reaching implications for sanctions policy, including in Australia. In a nutshell, targeted sanctions can be a potent means of affecting an individual's life. The nature and extent of such impacts depends on multiple variables, among them the links between the sanctioning country and targeted person, the extent of the targeted person's international business activities, and the simultaneous identification of that person's corporate structures and proxies.

The bigger question of "what's the point?" remains. There is no right or wrong answer – only a range of options. One could conceive of sanctions as an instrument of, among other things, accountability, disruption, behaviour change or symbolic condemnation. All are legitimate, and can be invoked by democratic governments from time to time.

The greatest challenges in the domain of sanctions are, arguably, consistency and credibility. Once governments start addressing certain kinds of wrongdoing through sanctions, there will always be further similar situations clamouring for their attention. A great many calls for the imposition of sanctions are framed in precisely those terms – if a human rights abuser from Country A was sanctioned, why not someone involved in comparable misconduct in Country B? Before Australia enacted corruption and human rights-related sanctions programs in 2021, it was reported that it was exactly such concerns that accounted for the Australian government's reluctance to endorse the reforms.

The best solution to this particular problem is the publication of criteria that guide the government in imposing sanctions, while acknowledging that foreign policy sensitivities can legitimately require that some sanctions not be imposed. This would not happen in an ideal world, but there is no shame in occasional concessions to political realities. On the whole, greater transparency about when sanctions should be used would be a step forward, and understanding possible effects of sanctions – which are neither overwhelming nor trivial – should contribute to that discussion.

Footnotes

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