H-**Diplo** | **ISSF**

Article Review 147
issforum.org

Editor: Diane Labrosse
Commissioning Editor: Seth Offenbach
Production Editor: George Fujii

Bryan R. Early and Keith A. Preble. "Going Fishing versus Hunting Whales: Explaining Changes in How the US Enforces Economic Sanctions." *Security Studies* (2020). DOI: https://doi.org/10.1080/09636412.2020.1722850.

Published by ISSF on 14 April 2021

https://issforum.org/to/iar147

Review by Clara Portela, University of Valencia

Unfamiliar with sanctions issues, and accustomed to their capitals' discreet use of this foreign policy tool, the European public follows sanctions-related headlines with some puzzlement. If the United Nations (UN) lifted sanctions on Tehran following the conclusion of the nuclear deal, why was it necessary to create a special vehicle for trade with Iran, the Instrument for Trade Exchanges (INSTEX)? If sanctions regimes are invariably endowed with provisions for humanitarian exemptions, why do humanitarian agencies struggle to get aid to places like Iran and Syria? Why are European banks like BNP Paribas fined with exorbitant penalties?[1] As it turns out, these are manifestations of the same phenomenon, and Bryan Early and Keith Preble have the answer to these questions in the article under discussion here.

Sanctions scholars typically focus on one of two questions: what accounts for sanctions effectiveness in compelling the desired policy changes in the targets, and what accounts for target selection. Some works examine how senders enlisted support for their sanctions from other countries.[2] Others debate how the breath of sanctions co-operation affects efficacy.[3] Yet little attention is given to implementation and evasion issues, and even less to the strategies of enforcement agencies. Their work sounds technical and boring. And it does not help that the most powerful national enforcement agency on the planet, the U.S. Treasury's Office of Foreign Assets Control (OFAC), is characterised by its inaccessibility. Yet, the work of OFAC is anything but boring, and as Early and Preble show, it bears more responsibility for the power of U.S. sanctions regimes than the classical determinants that most scholars look at. Early and Preble set out to explain the strategies followed by the U.S. to enforce its sanctions and identify the factors that shaped them. In particular, interest in this question emanates from the fact that OFAC instils fear among private firms not only in the U.S. but also overseas, a situation that did not prevail only fifteen years ago. In order to investigate this question, the authors do not

[1] "America's Legal Forays against Foreign Firms Vex Other Countries," *The Economist*, 19 January 2019.

[2] See the seminal work by Lisa Martin, *Coercive Co-operation* (Princeton: Princeton University Press, 1992).

[3] Daniel Drezner, "Bargaining, Enforcement, and Multilateral Sanctions: When is Cooperation Counterproductive?" *International Organization* 54:1 (2000): 73–102.

draw on any of the standard datasets employed in the field.[4] By contrast, they employ a dataset of OFAC enforcement actions from a commercial website, covering the period from 2003 to 2017.[5]

The results of the investigation are illuminating. During the period under investigation, OFAC shifted its attention from the embargo on Cuba to the Iran sanctions. The transformation of U.S. sanctions enforcement was enabled by two factors. First, new legislation concerning penalties for sanctions violations was passed in 2007. The reformed International Emergency Economic Powers Act (IEEPA) removed ceilings for penalties and allowed amounts for different breaches to accumulate. Second, and most importantly, the strategy changed. Instead of picking on small firms which were transacting with Cuba, OFAC aimed at banks that were responsible for egregious violations. Counterintuitively, the number of enforcement actions declined markedly. This shift inspired the metaphor that titles the article: OFAC moved from "fishing" small companies to "hunting" major international banks. This resulted in unprecedented fines that caused a commotion across the Atlantic and beyond.[6] OFAC targeted banks it could fine for several violations and imposed multiple penalties that accumulated in large amounts. However, it was not until the U.S. withdrawal from the Iran deal – known under the cumbersome name of Joint Comprehensive Plan of Action (JCPOA) – and the re-imposition of U.S. sanctions on Tehran that European authorities became aware of the magnitude of the influence OFAC exerted on its operators.[7] There was little they could do to prevent them from disengaging from Iran. This was the result of an evolution that had progressed over time, whose depth had been obscured by growing transatlantic convergence over the Iran nuclear file.[8]

Once this convergence collapsed, European authorities found humanitarian actors banging at their doors, protesting that banks refused to make transactions to enable relief work.[9] When read in conjunction with Richard Nephew's detailed account of the design of the Iran sanctions, "The Art of Sanctions,"[10] the analysis helps our understanding of how Washington managed to craft sanctions that do not require a UN seal, or any international co-operation to be impactful. Crafting sanctions against Iran with limited international support meant that stringent measures at the UN level were out of reach, and that allies would not be brought on board the sanctions efforts without difficulty. Thus, creativity in devising a new approach – rather than traditional leadership – had to be found. Interestingly, the analysis confirms suspicions that OFAC disproportionality targets foreign firms.[11] A breakdown of the data by U.S. administrations shows that the percentage of OFAC enforcement actions against foreign firms has increased steadily: from 4% under President George W. Bush, these actions rose to 19% under President Barack Obama and then to 43% in the first years of

---

[4] See Gary C. Hufbauer, Jeffrey Schott, Kimberly A. Elliott and Barbara Oegg, *Economic Sanctions Reconsidered*, 3rd ed. (Peterson Institute for International Economics, 2007); T. Clifton Morgan, Nevin Bapat and Valentin Krustev,"The Threat and Imposition of Economic Sanctions, 1971–2000". *Conflict Management and Peace Science* 26:1 (2009): 92–110.

[5] www.SanctionsAlert.com

[6] "America's Legal Forays against Foreign Firms Vex Other Countries," *The Economist* 19 January 2019.

[7] Eric-André Martin, *La Politique de Sanctions de l'Union Européenne* (Paris : Ifri, 2019).

[8] Sascha Lohmann, "The Convergence of Transatlantic Sanctions Policy against Iran," *Cambridge Review of International Affairs* 29:3 (2016): 930-951.

[9] Gregoire Mallard, Farzan Sabet and Jin Sun, "The Humanitarian Gap in the Global Sanctions Regime," *Global Governance* 26:1 (2020): 121–153.

[10] Richard Nephew, *The Art of Sanctions. A view from the Field* (New York: Columbia University Press, 2018).

[11] "America's Legal Forays against Foreign Firms Vex Other Countries," *The Economist*, 2019.

President Donald Trump's administration (248). It also shows that under the Obama administration the financial sector became disproportionally targeted in comparison to other sectors. The medical and pharmaceutical sectors have not been spared from enforcement actions. While this may be justified in cases of transfers of dual use equipment, it may help explain why humanitarian exemptions failed to work as planned.

Early and Preble's analysis has important implications for the study of sanctions co-operation as a phenomenon in international relations. In their exploration of what shapes approaches to sanctions enforcement, the authors highlight that "OFAC's enforcement track record suggests that governments invest in enforcing sanctioning programs unevenly—prioritizing some sanctioning efforts more than others" (265). This begs the question of the extent to which the level of enforcement correlates to the stakes of the country which is issuing the sanctions in the dispute with the target. One could go as far as to suggest that it renders existing research on sanctions coalition building all but obsolete. Compliance with sanctions 'behind-the-borders' - to borrow International Political Economy terminology - is no longer a government-to-government affair, but a government-to-company one, at least when economic coercion emanates from Washington.

The article does not really feature any deficits – laying out the transformation in OFAC strategy and laying bare the intricacies about sanctions enforcement to a 'lay' audience is about all that one single article has space for. Overall, it is remarkably educative without featuring a single regression or case study. This said, the analysis could perhaps have illuminated better the drivers for the transition from 'fishing' to 'hunting' – there are interesting hints that could be developed further and provide a fuller account. Also, more discussion on the relationship between OFAC's strategy and the extraterritorial effects of U.S. sanctions – particularly given that both phenomena do not appear to be dissociable from each other - would have enhanced the analytical value of the text. That task will fall on future research.

For the time being, a major achievement of this piece is to foreground the fact that nothing much is known about how governments enforce sanctions regimes, which means that we miss part of the picture - in the U.S. and elsewhere, especially in Europe.[12] What is most urgently required is a specific focus on what incentives and disincentives enforcement strategies create for their addressee, the private sector. Also, Early and Preble rightly claim that it is unknown whether governments enforce some sanctions regimes more vigorously than others (236). Can one imagine that countries under the stringent supervision of national enforcement agencies will be monitored less closely by OFAC, or find their firms less frequently among its targets? More research ought to be done on sanctions enforcement, a strand in sanctions that is only just starting to develop.[13]

Dr **Clara Portela** is a full-time faculty member in Political Science at the University of Valencia (Spain), having previously served in a similar role at Singapore Management University (Singapore). Her monograph *European Union Sanctions and Foreign Policy* (Routledge, 2010) received the 2011 THESEUS Award for Promising Research in European Integration.

©2021 The Authors | Creative Commons Attribution-NonCommercial-NoDerivs 3.0 United States License

[12] Clara Portela, "Implementation and Enforcement," in Niklas Helwig, Juha Jokela, and Clara Portela, eds., *Sharpening EU Sanctions Policy* (Helsinki: FIIA, 2020), 105-111.

[13] See Ivan N. Timofeev, "Rethinking Sanctions Efficiency," *Russia in Global Affairs* 17:3 (2019): 86-108.