

# CURRENT HISTORY

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## The Hidden Power of the New Economic Sanctions

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In 1919, trying to persuade the United States to join the League of Nations, President Woodrow Wilson touted the “boycott”—the League’s primary tool of enforcement—as a powerful yet bloodless means of stopping war:

A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist.

While blockades and sieges have been used as forms of warfare since ancient times, the twentieth century saw the introduction of economic measures as a powerful means of enforcing international law. Sanctions were described by Wilson and others since in odd, contradictory terms. They were unlike warfare—there were no planes, bombs, or bullets involved. Yet their power was precisely in the damage they could do, even if that damage was less obvious and seemed less violent. This tension is still at the heart of current trends in how sanctions are formulated, applied, and justified.

In the past twenty years, the development of targeted “smart” sanctions has been widely viewed as resolving the core tension in the use of economic sanctions. They are seen as ensuring the effectiveness of sanctions, while sparing vulnerable populations from the collateral damage that occurred in the past. But how they have worked in practice is very different.

There have been two broad trends in the use of sanctions in the past two decades. First, contrary to the standard narrative of the rise of precision-targeted sanctions, they are, with some consistency, systemic. They seek to undermine systems on which the target country’s core functionality depends: its access to the international banking network, its imports and exports, and its energy sector. The second trend is the evolution of complex arrangements that serve to obscure the sanctioner’s role, particularly in regard to the humanitarian damage done.

### UNCONSTRAINED POWER

After World War II, sanctions were included among the options available to the United Nations Security Council (UNSC) to respond to aggression and threats to international peace and security. But they were rarely used; the mutual veto powers of the permanent members meant that the UNSC’s enforcement powers were largely paralyzed. Sanctions were used by national governments to achieve foreign policy objectives, but their impact was limited. Comprehensive sanctions were not possible, since any country that was targeted by the Americans or the Soviets could simply turn to the other bloc for its trade. When the United States embargoed Cuba, the Castro regime could still trade with the Soviet bloc. Consequently, the humanitarian impact was limited as well.

While sieges and blockades had long been seen as devastating and indiscriminate, it was not at all clear that this might be true of economic measures outside the context of war. For the duration of the Cold War, scholars writing about sanctions were mostly concerned with how effective they might be

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at pressuring the target state to change its behavior, or how long an alliance of sanctioning states could stay intact without defections as shortages of goods drove up prices and created opportunities for profiteering. There was little discussion about the humanitarian impact of sanctions, apart from the case of South Africa.

At the end of the 1980s, sanctions were widely seen as a humane and effective route to political reform in South Africa—imposing them on the apartheid regime drew little criticism except from the Reagan administration. So when Iraq invaded Kuwait in 1990, there was considerable enthusiasm on the part of nearly everyone, from pacifists to US military leaders, for the imposition of sanctions on Iraq. But the UNSC had just undergone a radical transformation. The Soviet Union was collapsing and no longer a counterweight to the Western permanent members, while China showed no interest in contesting their influence. For the first time since its inception, the vast powers of the UNSC under the UN Charter could be exercised to their fullest.

Under Chapter VII of the Charter, in response to threats to international peace and security the UNSC has broad discretion to impose an array of measures that “may include” severing diplomatic ties, prohibiting travel and communication, cutting off trade, and using military force. Once such measures are adopted by the UNSC, all member states of the UN are required to implement them. There is no provision in the Charter by which a member state may question the UNSC’s decision, or decline to implement the measures it has adopted. A country subject to such measures could not look to an ally or an opposing bloc for trade or military support, since virtually every nation in the world would be bound to enforce the UNSC’s decisions.

That is what happened to Iraq. In response to its invasion of Kuwait, the UNSC imposed nearly comprehensive sanctions, prohibiting both imports and exports. They were disruptive from the start, since Iraq was so dependent on oil exports for its income, and was highly dependent on imports for everything from food to equipment for its infrastructure. Initially it was not even permitted to import food.

But the real damage did not occur until the first Persian Gulf War in the winter of 1991, when a

coalition led by the United States conducted a massive bombing campaign that devastated Iraq’s industrial capacity, its electrical generators, its telecommunications system, its water and sewage treatment plants, and most of its bridges, dams, and major roads. The global sanctions then prevented Iraq from importing the equipment and materials needed to repair and rebuild its infrastructure. In any case, the ban on oil exports meant that Iraq could not generate the income needed to pay for these goods.

The humanitarian impact was immediate and severe. Iraqis suffered epidemics of cholera and typhoid, widespread malnutrition, and the near-collapse of health care and education. This crisis gave rise to considerable tension within the UN, as UNICEF and other agencies—as well as many of the UNSC’s members—pressed the UNSC to allow humanitarian goods into Iraq. While Iraq was permitted to import food after 1991, sanctions continued to block much of what was needed to

meet the population’s needs for potable water, nutrition, and adequate medical care.

In the mid-1990s, under the Oil for Food Program, Iraq was allowed to sell limited amounts of oil, the proceeds from which could then be used to purchase humani-

tarian goods. But even then the UNSC permitted very few imports that could be used to rehabilitate the country’s foundering infrastructure. Although food could be imported freely, the trucks needed to distribute it could not. When the UNSC approved the purchase of a new water treatment plant, it blocked the electrical generator needed to run it, claiming that it had potential military uses in addition to its civilian uses. Such restrictions drew broad criticism internationally and within the UN, as well as from the Red Cross and other organizations. For over a decade, the Iraqi population continued to suffer.

### ‘SMART’ SANCTIONS

It was in this context that targeted sanctions—also known as “smart sanctions”—emerged. In contrast to the comprehensive sanctions imposed on Iraq, smart sanctions primarily consisted of narrowly tailored financial restrictions and asset freezes, commodity and arms embargoes, and travel restrictions. They were envisioned as a means of having a powerful impact on individual

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wrongdoers by targeting their personal assets or their freedom to travel, or by blocking their access to weapons. The expectation was that these targeted measures would not do the kind of broad, indiscriminate harm to vulnerable sectors of the population that was seen in Iraq.

Since the late 1990s, considerable effort and expertise has gone into the design and implementation of targeted sanctions. The Swiss government facilitated a series of discussions on targeted financial sanctions, known as the “Interlaken Process.” In 1999 and 2000, the German government sponsored the “Bonn-Berlin Process,” a series of expert seminars and workshops on arms embargoes and travel restrictions. The “Stockholm Process,” in 2002, was an initiative of the Swedish government concerning many different aspects of targeted sanctions. In 2009, the Targeted Sanctions Consortium was established at the Graduate Institute in Geneva. The UN, several national governments, scholars, the banking industry, and other affected commercial sectors all have continued to invest great effort in refining the design and use of targeted sanctions.

The view commonly held by these actors is that, while the Iraq sanctions regime was tragic, things have changed dramatically. In March 2016, US Treasury Secretary Jacob Lew stated:

Not long ago, conventional wisdom dismissed sanctions as blunt, ineffective instruments. The old model was a countrywide embargo, which provided little flexibility to mitigate disproportionate costs on innocent civilians—both in the targeted countries and here at home. At the same time, early efforts to ensure humanitarian relief sometimes fell short of the intended goal. The sanctions we employ today are different. They are informed by financial intelligence, strategically designed, and implemented with our public and private partners to focus pressure on bad actors and create clear incentives to end malign behavior, while limiting collateral impact.

Asset freezes sometimes have been described as the quintessential form of targeted sanctions. They involve formulating blacklists of specific persons, companies, and foundations, and imposing severe penalties on banks, insurers, manufacturers, and others that do business with these “specially designated nationals.” On the surface, these very specific lists seem to demonstrate what the political scientist Clara Portela has called a “trend toward the personalization and individualization of measures in the field of peace and security.”

The targeted sanctions that are employed these days, it is often said, bear no resemblance to the damaging, indiscriminate measures of the past. Today’s sanctions may be imperfect, since no policy of this complexity could ever be completely successful in every possible situation. Nonetheless, this narrative suggests, any damage to vulnerable populations is unintended, and any “collateral damage” is marginal.

In fact, this is not at all the case. At best such claims apply, in some sense, to the sanctions imposed by the UNSC. Since the early 1990s, very few of its sanctions regimes have—on their face—imposed broad restrictions on core sectors of a target state’s economy. But the same cannot be said of sanctions regimes imposed by national governments, in particular the United States, or regional bodies, especially the European Union. And on closer inspection, it seems that even UNSC sanctions are often designed to do broad damage to the target country’s economy, albeit by circuitous means.

## SYSTEMIC PUNISHMENT

Recent years have seen increasing sophistication in the sanctions that do the greatest damage to critical networks or functions of a target country’s economy and infrastructure. While these have become increasingly common over the past decade, the template can be seen in the sanctions the United States imposed on Cuba in the early and mid-1990s on top of the long-running embargo.

Up until 1990, 85 percent of Cuba’s trade was with the Soviets and the Eastern Bloc. When the Soviet Union dissolved, Cuba’s economy went into free fall. The government scrambled to establish new trade partnerships in Europe and Latin America and sought foreign investors. The tourism industry was rebuilt rapidly, and Cuba took measures to increase its leading exports, sugar and nickel. The country also had a strong science infrastructure including over fifty biotechnology centers, a burgeoning industry that was seen as a promising source of revenue.

In 1992 and 1996, the United States enacted the Torricelli Act and the Helms-Burton Act, laws that directly targeted each of Cuba’s economic strengths and vulnerabilities. Any ships that docked in Cuba were prohibited from docking in a US port for six months, making all imports and exports more costly and difficult. Foreign manufacturers could not send products to the United States containing even trace amounts of Cuban

materials, including nickel and sugar. Foreign investors who built hotels or industrial plants on properties that had been owned prior to 1959 by Cubans who were now US citizens could be sued in US courts for “trafficking” in these properties. Washington prohibited foreign banks from engaging in transactions with Cuba involving US dollars, which meant additional costs and difficulties for Cuba in all its foreign trade. US companies were specifically prohibited from exporting to Cuba any equipment or materials that could be used in developing or marketing biotech products.

These restrictions in fact applied not only to US persons and businesses, but also to foreign companies that were subsidiaries of US corporations. This “extraterritorial” reach drew considerable indignation from the international community; Canada, Mexico, and the EU adopted retaliatory legislation. Even so, the bottom line was that foreign companies could not invest in Cuba without risking their access to the US market, as well as the costs of litigation and potential penalties imposed by the US Treasury Department.

This became the template for US sanctions regimes for the next two decades: measures designed to do maximum harm by neutralizing an economy’s greatest strengths and exploiting its vulnerabilities. They were imposed alongside measures that compromised the country’s access to the international banking system and to the infrastructure for all of its imports and exports.

The United States has imposed sanctions regimes more frequently, more harshly, and for longer periods than any other nation in the world. The use of sanctions, particularly extraterritorial and systemic sanctions, increased greatly under the Obama administration, and that practice has continued under President Donald Trump. To some extent, the United States has been joined by like-minded allies, particularly since around 2010. Concerned by Iran’s burgeoning nuclear program, the EU, which had opposed unilateral US measures in the 1990s, joined Washington in imposing damaging measures designed to cripple the Iranian economy.

Perhaps the most striking instance was the EU’s decision to exclude Iranian banks from the Brussels-based Society for Worldwide Interbank Financial Telecommunication (SWIFT), the messaging hub that facilitates most of the transfers among the world’s banks. While there are some other avenues for trade or financial transfers, such as barter arrangements or the informal *hawala* sys-

tem used in the Arab world, there is no substitute for access to SWIFT, the global standard for international banking transactions. To expel a nation’s banks from SWIFT does immediate and irreparable damage to that country’s ability to sell its exports or services; to purchase fuel, raw materials, and other imports; to transfer funds among businesses or family members; and to purchase even those humanitarian goods that are ostensibly allowed, such as pharmaceuticals. Attracting foreign investment under a SWIFT ban is exceedingly difficult, since fund transfers related to business operations become a logistical nightmare.

Iran’s major banks were excluded from access to SWIFT from 2012 to 2016. Whatever other damage was done by sanctions, or the Iranian government’s economic policies, or anything else, the expulsion from SWIFT in itself caused immeasurable disruption to Iran’s economy.

Sanctions regimes of this kind are indeed “targeted,” but not in the way that is usually meant. They do not single out wrongdoers, leaving the population as a whole unaffected. They are targeted at the core systems of the country’s economy and infrastructure. The design of these measures ensures that they will do extensive and indiscriminate damage to broad sectors of the population.

## **BANKRUPTING THE STATE**

Claiming that a target state is corrupt or engaging in wrongful acts, a sanctioner may impose measures to interfere with the state’s assets and revenue sources. This can be done by seizing or freezing its financial accounts abroad, or prohibiting the purchase of its natural resources, such as timber or oil.

Bankrupting the state can have far-reaching consequences for the population as a whole. It may lead to job losses in state-run industries, or make it impossible to maintain the country’s infrastructure, or to continue providing social security, including pensions, or state subsidies for basic goods, such as food and gasoline. For an economy that is highly centralized, or a socialist state that provides health care, education, and extensive services, the damage done by disrupting the state’s sources of income will be magnified.

For example, in 2003 the United States adopted the Burmese Freedom and Democracy Act, responding to human rights concerns over the actions of Myanmar’s military junta. It targeted industries, such as textiles, that were important revenue sources for the regime. But US textile

sanctions affected the industry as whole, which may have resulted in the loss of some 60,000 jobs in 2003 and 2004.

In 1998, the EU imposed sanctions against Serbia, including state-owned companies, in response to the war crimes committed against Kosovo. The companies, in turn, were unable to pay salaries and pensions to their employees, or to do business with the private firms that relied on them.

Recent US sanctions against Venezuela specifically blocked its efforts to restructure its debt. Venezuela has some \$65 billion in outstanding bonds and is now in default on its debt payments. As the government sought to renegotiate the terms of its debt with its creditors, Trump issued an executive order in August 2017 prohibiting all “US persons”—which the US government considers to include many of Venezuela’s creditors in Europe and elsewhere, if they use the US financial system—from extending new credit for more than thirty days, effectively blocking Venezuela from restructuring its debt. In addition, the United States has blacklisted many of Venezuela’s top government officials, including all those appointed to negotiate with creditors. These measures have undermined Venezuela’s efforts to manage its debt crisis, which will surely worsen the humanitarian disaster that is already taking place.

## DRAINING ENERGY

No modern economy can function without sufficient gasoline for cars, trucks, and buses, along with fuel for industry and for the electrical grid, which in turn is necessary to power water and sewage treatment plants, telecommunications, and domestic consumption. Accordingly, sanctioners have consistently sought to compromise target countries’ energy sectors.

In 2010, the European Council adopted measures specifically targeting “key sectors” in Iran’s oil and gas industry. Canada and Switzerland banned investment in Iran’s energy sector, as well as the sale of goods that could be used in oil and gas production.

US sanctions on Iran have been broader than those of any other government, restricting or prohibiting investment in the energy sector as well as the export and import of gas and petroleum products, and blacklisting hundreds of Iranian

individuals and companies. These measures were expanded dramatically in November 2018, following the US withdrawal from the 2015 Iran nuclear agreement. While the Trump administration has encountered some resistance, and has granted waivers in some cases to allow other countries to continue trading with Iran, the sanctions are designed to compromise Iran’s energy sector as much as possible.

## CUTTING OFF BANKS

Enormous damage to a target state’s economy can be done with great efficiency by cutting off its access to the international banking system. While such measures may be successful in preventing illicit arms transfers or corrupt practices by government officials, they will also compromise a vast range of ordinary and essential financial transactions. Those may include everything from family members sending remittances to their relatives, to payments for food and medicine, or the purchase of raw materials and equipment for industry and the infrastructure a modern country needs to function.

The target country may try to implement some sort of workaround, such as barter arrangements. But any such measures will be costly and difficult. There is no adequate substitute for access to the international banking system.

Cutting off a country’s access can be accomplished by a variety of means, including expulsion from SWIFT. It is also done by blacklisting companies and government institutions, as the United States did to many of North Korea’s major banks in 2017, including those linked to commerce, agriculture, and industry.

The sanctioner may get the same result by targeting individuals who hold key institutional positions, such as the head of the central bank. In the case of US sanctions, blacklisting means not only that the target’s assets are frozen, but that companies, banks, and creditors in the United States, and possibly worldwide, are also prohibited from doing business with these individuals in their institutional capacities.

## SQUEEZING SHIPPING

The sanctions regimes of the past two decades have sought to block imports and exports in several ways. These include blocking the export of

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specific commodities, such as oil or timber, and interfering in the target country's access to shipping. The EU has prohibited oil imports from Syria and restricted North Korean vessels' access to European ports. The US sanctions on Cuba, by prohibiting any ship that docks in Cuba from docking in a US port for six months, require Cuba in many cases to pay for the transit of goods from, say, Europe, and then pay for the ship to return empty.

Since no trader or shipowner would transport goods without insurance coverage for the cargo, sanctioners have increasingly focused their efforts on the insurance industry as a way of indirectly compromising the target country's access to shipping. The UNSC sanctions on North Korea include prohibitions on providing insurance or other support for any shipping that could contribute to North Korea's nuclear or ballistic missile program. But the United States, the EU, and Britain prohibit the provision of insurance more broadly to include all shipping to or from North Korea, as well as restricting transactions with its national insurance company.

In some cases, sanctioners seek to undermine everything related to shipping. The US sanctions against Iran, for example, target its access not only to shipping, but also to port services, marine cargo insurance, and goods that can be used in its shipbuilding industry.

### OBSCURING RESPONSIBILITY

Although it is often said that the tragic consequences of the sanctions on Iraq have led to reforms that ensure sanctions are no longer a "blunt instrument" that indiscriminately harms vulnerable populations, we have seen that is quite untrue. Sanctioners now make considerable efforts to find ways to deny such effects, to minimize their severity, or to disavow responsibility.

While it is true that the language of UNSC resolutions for many years has not explicitly imposed a comprehensive embargo against a target country, it may do so in practice by circuitous means. This sometimes occurs through the use of what Henry Kissinger famously called "constructive ambiguity." There would certainly be political opposition within the UNSC, most notably from Russia and China, to proposed sanctions openly designed to compromise the target country's core institutions, such as its central bank; or to blanket prohibitions

affecting shipping, manufacturing, or the energy sector. It is rare that the UNSC adopts such measures explicitly.

Instead, it may adopt resolutions that are sufficiently vague that member states may invoke them as authorization to impose harsh and indiscriminate measures, which then carry the imprimatur of global governance. Starting in 2006, the UNSC adopted a series of resolutions that required member states to freeze the assets of anyone with ties to Iran's nuclear weapons or ballistic missile programs; to prohibit the export of goods to Iran for use in those programs; and to block the transit of individuals associated with them. But the UNSC also urged member states to "exercise vigilance" regarding Iran's key financial institutions.

For example, the preamble to UNSC Resolution 1929, adopted in 2010, includes the following language: "recalling in particular the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran."

If a member of the UNSC had proposed a measure that explicitly sanctioned the central bank, it likely would have met with opposition from Russia and China, as well as some of the UNSC's elected members. But including vague terms in the

preamble was acceptable.

A "like-minded" group—the United States, the EU, Canada, Australia, and South Korea—then invoked this language to justify national measures that were far more extreme than those contained in the UNSC resolution. The EU froze the central bank's assets, noting that "it is necessary to require enhanced vigilance in relation to the activities of Iran's credit and financial institutions." But the UNSC could not be accused of imposing measures that would damage Iran's overall economy by blacklisting its central bank. At the same time, the "like-minded" parties could say that it was not their choice to do so—they were only complying with the instructions of the UNSC.

Perhaps the most effective means by which sanctioners may disavow the results of their policies is through the creation of conditions that trigger risk assessments by private actors, who then withdraw from trade with the targeted country. This is particularly apparent in US sanctions policy. There are a few variations of this strategy, but all of them have three components: ambiguous regulations,

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very high penalties, and then a predictable risk analysis by banks and other corporations.

In one variation, the US Treasury Department first issues regulations that prohibit US banks from engaging in financial transfers to government officials or military leaders in targeted countries. But while a bank can check transfers against a published list of individuals and companies, it has no means of knowing for certain who the end user will be, or what the end use of the funds may be. When the banks ask for clarification as to what constitutes sufficient due diligence on their part, they receive no clear guidance. Consequently, they may never be sure whether they have met their legal obligations under US regulations.

And the stakes are very high. The United States has imposed penalties in the billions of dollars on banks that have facilitated improper transactions under US law. Most notably, BNP Paribas of France agreed to pay a total of \$9 billion in penalties in 2014. Perhaps of even greater concern, its access to the US Federal Reserve System was temporarily suspended. Since the US dollar is the global reserve currency, any international bank that cannot reconcile its dollar transactions through the Federal Reserve banks can no longer operate. Such an exclusion is known as the “death penalty” for banks in the international arena.

In response to these two conditions—ambiguous regulations and very high stakes—banks and corporations typically decide that whatever benefit may be derived from doing business with the targeted country is outweighed considerably by the risk. Because the requirements for compliance with US law are unclear, it is not possible to reduce their risk of committing an inadvertent violation. So they choose instead to sever all business ties or transactions with the targeted country, even those that may be legally permitted. This is known as “de-risking.”

Since major banks and large corporations often evaluate their risk using the same process, the target country will find it exceedingly difficult to find any bank that is willing, for example, to facilitate payment for pharmaceuticals, even if they are not prohibited by the sanctions. The same obstacles confront individuals who wish to send remittances to family members, humanitarian organizations seeking to ship vaccines to the targeted country, and charities trying to send funds or goods after an earthquake or other natural disaster.

The result is that a unilateral policy by a national government in effect functions as a denial of ac-

cess to the global banking and insurance sectors, compromising not only ordinary trade and commerce but even humanitarian transactions that are ostensibly permitted. Yet the sanctioner may disavow all of this. If banks don't want to do this sort of business with Iran, Cuba, or North Korea, it will say, that's not because the Treasury Department has prohibited medical sales or family remittances—these private actors simply choose not to do business with shady actors.

## SMART AS HELL

It seems that Woodrow Wilson was quite right in his depiction of the “boycott” in contradictory terms, as somehow both “peaceful” and “deadly” at the same time. We might say that its successor—targeted sanctions—has followed a similar path. They were originally envisioned as powerfully effective, yet humane. Just as the language of “smart bombs” conjures up images of surgical strikes, the language of “smart sanctions” has us imagining a tyrant seething in fury when he finds he cannot get at his bank account in Zurich.

The reality is quite different. Bombs may indeed be precision-guided; but they may also, with precision, be aimed at neighborhoods and schools. Sanctions may be targeted as well; but the targets can include a country's financial system, its access to gasoline and electricity, and its ability to ship its goods for export and to find ships that will transport what it needs to operate its infrastructure, or to meet the needs of its population. However they may have been envisioned, and however they may currently be described, what we have seen in the past two decades is that “smart sanctions” are particularly smart at doing great damage, with great efficiency, to the fundamental systems needed for any nation to function.

Within the UN, from time to time there have been calls for reform, including review of sanctions regimes for compliance with international humanitarian law. For the most part, those proposals have not come to fruition. The EU courts have intervened in some cases, invalidating asset freezes where due process was found lacking. But US sanctions have even fewer safeguards. The president has enormous discretion to impose sanctions—Trump even threatened to punish Ecuador with trade sanctions last summer for introducing a resolution in favor of breast-feeding at a meeting of the World Health Organization.

Within the United States, its sanctions regimes draw little opposition since they are almost uni-

versally seen as an attractive alternative to measures that are riskier and costlier, such as military intervention. Even when US sanctions accelerate a humanitarian crisis, as in Venezuela, or compromise the availability of medicines, as in Iran, there is little accountability. Presented with a picture of a child killed in a bombing, most people will feel a sense of tragedy and see the injustice clearly. With sanctions, severe damage may be done when a country's exports and imports are paralyzed because shipping lines cannot obtain insurance coverage to carry their goods. Few people would have much interest in the intricacies or moral implica-

tions of marine cargo insurance. Yet as we saw in Iraq, the human damage from compromising a nation's exports and imports may be far greater than that caused by an airstrike.

Sanctions will continue to be used frequently, mostly by powerful nations. It will be hard to articulate what is morally wrong with them, in part because the human costs are so diffuse and gradual. Proponents will keep describing sanctions as "smart," humane, and precise, even while they are precisely targeted to do the greatest harm possible to the systems on which whole populations rely. ■