



ON THE NEED TO CAREFULLY CALIBRATE INTERNATIONAL SANCTIONS AS AN INSTRUMENT TO FIGHT CORRUPTION IN THE MENA REGION

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Businesses thriving on corrupt behaviour and a weak and corrupt public sector often go hand in glove. The public sector is either the counterpart of corrupt business people, or is responsible for contributing to poor governance by failing to implement laws and regulations, or actively protects corrupt players via a corrupt, or simply incompetent, judiciary system. For corruption to grow in the private sector, authorities have to be complicit and, when they are, a culture of corruption starts spreading. There may be individuals in the public sphere that fight corruption ferociously but it is often not enough to address its systemic nature.

Let us start by addressing **legalised corruption**. How many times have we seen laws passed to favour institutions or individuals at the expense of the competition and to the detriment of citizens? In Lebanon, for instance, a company was created by law to rebuild and manage the heart of the capital that was demolished during the war. Its immediate consequences was the dispossession of most of the land and real estate owners at very low levels of compensation to the advantage of tycoons, many of them prominent politicians. In this same category, there were laws and decrees related to free zones, casinos, and quarries; as well as laws and regulations supposedly meant to boost investment that in the end boil down to helping the happy few avoid taxation. In many countries in the Middle East, solid waste management has been a fabulous source of income for entrepreneurs who redistribute part of their illegitimate – though legalised – profits to corrupt politicians who secure the backing needed by those entrepreneurs. And it is no coincidence that those same companies have members of parliament (MPs) and media figures on their payroll. In the solid waste business, these companies have strong leverage: they swamp the population with rubbish in the streets whenever they have an unmet request, with the passive collusion of the authorities.

The next item concerns the **pseudo private entrepreneurs** and businesses. We call them “pseudo” because they look like private companies owned by people who are not politically exposed but, in reality, are a façade for members of the ruling elite. In this case, the segment of the economy in which they operate quickly turns into a monopoly or an oligopoly. In this situation, citizens lose a sizeable share of their purchasing power to increase these people’s profits, and the business environment deteriorates, quickly leading to losses in competitiveness due to market distortions, as those in control are usually not the best, and their ability to compete abroad is generally limited, resulting in a loss of competitiveness in the economy and worsening comparative advantages. In other words, they do not only amass dirty money today, they also jeopardise the future. For an economy to prosper, good companies should gradually take over the weaker ones in order to boost productivity and competitiveness, which will trigger strong added-value and quality jobs. But if good companies pay their dues, taxes and social expenses and play by the rules while the system allows, if not encourages, competitors that instead of renting land and premises simply occupy them, refrain from paying taxes and social security, use informal workers, steal electricity and telecom instead of paying bills and smuggle their goods and avoid custom duties, this can only lead to them taking over and eliminating the good companies, which is a tremendous moral hazard that threatens the economy’s competitiveness in the long term.

Control bodies also matter, which means courts, of course, but also auditors. In many countries of the region, it is openly admitted that two or more accounting books are kept: one for the tax authorities, sometimes with the help of a tax controller, one for minority shareholders, and another for those who benefit from the fraud. In such ecosystems, many of the most reputable names in the audit field have learnt how to adapt to keep a large market share.

The local **judiciary** could theoretically provide the solution by addressing corrupt behaviour, provided it is willing, able and competent. Usually, in dysfunctional systems, judges are appointed by the political elite, and many of them act before anything else in favour of their patrons, however corrupt they are. Moreover, the judiciary is very often kept with significant vacancies to further undermine its work, a situation that obviously has consequences for private businesses.

Clearly, corruption can translate into a very big number of **ill-behaviours**, including tax fraud, although on this specific topic, we have witnessed significant initiatives on the right track since the Panama papers. For instance, the Global Forum for tax transparency, with which the author of these lines led Lebanon’s successful negotiations, introduced some good practices. But in any case, when it comes to non-transparency, banking secrecy is always an issue, and it has been a major obstacle to my administration as it favours tax fraud and hiding illegal incomes. Additionally, there are many other corruption areas such as smuggling, intellectual property, bribery, and selling counterfeited products. This last item, by the way, can go as far as filling medicine for cancer ampules with water instead of the medicine and selling it at high prices, just like what happened in Lebanon.

Moreover, we could, of course, spend hours describing how, in Lebanon, **bankers** colluded with their regulator to preserve large shareholders and loot depositors on the widest scale, against all laws and principles, actively supported by MPs and the media, and inactively supported by the silence of the courts, while insiders were smuggling their money abroad despite de facto capital controls imposed on normal depositors.

Such things can only happen when the **corrupt players** in one system **outweigh** the decent ones, as it involves the complicity of influential people, such as politicians, regulators, judges, the governor of the central bank, bankers, large corporate managers, the media and others. This means that tackling corruption is mainly about going after the big players involved, and about being able to pressure those who protect them by neutralising or misusing the

institutions that should theoretically go after them, and by twisting the truth and forging facts to disorient public opinion. In other words, these players sabotage democratic control and judicial control to keep the corrupt system running, if not using the two control systems against the virtuous elements that they are supposed to support and rely on.

The million dollar question is thus: how do you fight the hydra of corruption in a **system** where institutions, MPs and judges are mostly **on the wrong side**? Even whistleblowing becomes counterproductive since it unveils what whistleblowers have gathered in terms of information with very little impact on wrongdoers, which allows the system to come up with its own story, including forged documents or fake news, and puts whistleblowers under the threat of criminals or under the harassment of corrupt institutions that would go after them instead of lawbreakers, not to mention that part of public opinion will be turned against them. For example, let us assume that a civil servant is the witness of an illegal action committed by her upper hierarchy level, and she wants to report the issue. She knows she has to report it to the relevant control body (perhaps inspection or judiciary) and maybe also to a higher level. If she does, knowing that these counterparts are either corrupt or terrorised by the perspective of confronting the criminal network, her action will lead nowhere and she will pay a high price for having tried. If she does not and decides to breach her reserve duty and reveal the story to the public, not much would happen apart from some condemnatory voices, and she will ultimately pay a high price, namely breaching regulations. If she decides not to do anything, she slowly but surely becomes part of the system. And if she quits for good reasons, she will have to face a wide campaign accusing her of leaving because she has a lot to be blamed for, and she may become the culprit in the eyes of the public. In other words, the number of options for honest people in a system that is under the control of corrupt parties is very limited. They end up making sure they write the right things, only doing what is required strictly of them and avoiding clashes. And the few who choose to clash with their hierarchy whenever they should – and who have the courage to do so – are quickly categorised as either unbearable, or not smart enough, or politically-motivated.

Clearly, in the absence of a critical mass of people who are willing to fight and the lack of strong and committed support from the top of the system, **not much** can be achieved **from within** in terms of curtailing – let alone eradicating – corruption to allow the economy to breathe and to give citizens their basic rights at the proper cost, unless a revolution fires up and takes everything on its path. But what about curbing corruption and putting the system on a virtuous road from the outside?

For a long time, interfering in one **country's internal affairs** was not even considered, even when dictators inflicted terrible suffering on their people. Without going into the details of how this became possible, **international sanctions** have often been an option for years now. One would of course need to scrutinise the underlying legislations in various places, from the Hizballah International Financing Prevention Act 2015 to the Caesar Syria Civilian Protection Act 2019 in the United States (US), which focus on Hizballah and the Syrian regime, respectively, to the Magnitsky Act 2016 (which “authorizes the U.S. government to sanction foreign government officials worldwide who are deemed to be human rights offenders, freeze their assets, and ban them from entering the U.S.”), to many other laws in the European Union (EU) or other countries. In any case, imposing sanctions has become common, and sometimes useful.

There are at least two broad types of international sanctions. I would refer to the first type as **politically-motivated** sanctions. This does not mean that the targets are not involved in reprehensible or criminal activities, but the reason why these activities – if they exist – are underlined is mainly political, as the targets are enemies of the sanctioning government. As for the second type of international sanctions, it is mostly geared to fighting specific illegal and **criminal activities** by individuals or entities but, again, this does not mean that political motivations are non-existent. In both cases, politics can introduce a significant bias.

As we have said, corruption can be embedded to the extent that very little hope remains for any internal forces to curb it. This is when citizens start hoping that international sanctions imposed by the external world lead to an improvement of their elites' behaviour. We are, of course, talking here about the second type of sanctions, i.e., those imposed on the basis of **corruption**. Relatively new regulations by some countries foresee international sanctions in cases of serious corruption (e.g., Australia: serious corruption sanctions regime 2021; United Kingdom (UK): the Global Anti-Corruption Sanctions Regulations 2021; by contrast, the EU Global Human Rights Sanctions Regime 2020 does not explicitly refer to corruption as sanctionable conduct). Since they have strong evidence that their corrupt elites care only about their individual wealth and assets, citizens call or wish for international sanctions that harm those elites at a personal level, as it is the only one that matters to them.

Now that such sanctions have been imposed on many individuals, entities or countries, it is critical to properly analyse their **impact**. If imposed on **countries**, we have proof that international sanctions do weaken the regime vis-à-vis the rest of the world, but they usually inflict more harm on the population if not properly designed in detail. When it is the case and when the most needed goods and services remain accessible to the people, sanctions are usually more effective. Nevertheless, when imposed on a country, sanctions do tend to strengthen the grip of the regime and increase inequalities in its favour. Thus, the proper calibration of sanctions when imposed on a country as a whole is a very difficult exercise that is highly **unlikely to succeed**.

Since imposing sanctions can be a **lengthy process** that requires convincing various parties and negotiating terms, it is sometimes tempting to limit their scope to the parties that are considered politically hostile in one country. For instance, in a country where there are pro-Western and anti-Western politicians, a Western country could be tempted to limit corruption-related sanctions to anti-Western **politicians**. Of course, this is much easier to sell to lawmakers, parliament or even the public, as those who do not support corruption-targeted sanctions will accept them on political grounds. But, clearly, the consequences of such a choice are negative and can be very counterproductive because the perception in the country of the targeted individuals or groups is that the whole process has nothing to do with corruption and ethics, and that it is actually completely unfair. Thus, corrupt individuals are **victimised**, and end up getting stronger local support as their fight against external parties overshadows their illegal activities. In this situation, the impact of sanctions can be perverse. Corruption-targeting lies in the field of law and ethics, and cannot be influenced by interests without losing its legitimacy; and, too often, the initial efforts of going after corruption have to be restrained during the course of negotiations with various players to going after some without the others, and it ends up being counterproductive and very divisive in the targets' country.

Another critical point to keep in mind is that international sanctions are a bargaining weapon, not an ultimate one. They are meant to bring corrupt players to comply with integrity laws, exit the political game, smooth their positions, or even actively contribute – politically and/or financially – to solutions. They are rarely meant to constrain them forever. Therefore, if international sanctions are immediately going to extremes, the targeted parties will have nothing left to lose, and that normally pushes them to refuse negotiations and take the hardest line. Since reversing sanctions is not an option for those who impose them, if they do not want to lose credibility the only option left is total confrontation. Thus, sanctions should always be well calibrated and gradual, one step opening the door to another one that could follow if necessary, unless it is part of a total war against the target.

Another reason to calibrate the measures properly is that all targets are not sensitive to **one specific measure** in the same way. Some have high exposure to a specific geographic zone, while others do not. If the EU issues sanctions against somebody who has significant assets in European countries, the impact can be meaningful, but if this person/entity holds its assets

in Far East Asia, the relevance would be minor. Some have a high level of sophistication in hiding or protecting their assets – whether ill-gotten or not – and sanctions imposed on them might prove very difficult to implement, and some not. In any case, the level of pain that targets are willing to take is never the same. As a matter of fact, some targets would immediately try to find ways to be delisted from the sanctions list (these are usually taken by surprise when designated), while others know very well that their designation is unavoidable and part of the game they are willingly playing. These targets would typically ignore the sanctions that hit them, and they would certainly not be destabilised by the first shots. In other words, some would immediately surrender their weapons while others would see sanctions as another weapon deployed by the enemy and would strive to find ways to avoid their consequences. And, finally, some targets care about their reputation for various reasons that vary greatly from one case to another, and some would not care at all, and would perhaps turn sanctions into something to be proud of in front of their troops. In extreme cases, sanctioned individuals can simply hold onto power in their country and hunker down until the pressure is relieved, and that would imply that their population will pay the price of restrictions if the sanctions are not properly tailored to concentrate the harm on them.

Generally speaking, international sanctions constitute one item within the whole range of weapons, and they have to be as precise and well-calibrated as possible to achieve their goal with minimum collateral damage.