



IMPACT OF RUSSIAN SANCTIONS WILL LAST FOR DECADES

Lawrence L. Herman

4 May 2022

Lawrence Herman is an international lawyer with Herman & Associates and Senior Fellow at the C.D. Howe Institute in Toronto.

Last week the Canadian and American governments announced plans to liquidate Russian assets frozen by sanctions and to distribute the funds to affected victims and to war-torn countries. The measures have been devised to inflict even greater penalties on that country as a result of its illegal invasion of Ukraine and the appalling atrocities committed by Russian forces there in recent weeks.

As the ground war grinds on, this is a significant escalation of the parallel sanctions war, illustrating their ever-expanding reach and presaging long-lasting impacts on international business, not only involving Russia but with potential expansion to other places where Western sanctions apply, such as Myanmar, Iran and Syria, among them.

In the case of the Ukraine war, even if hostilities are ended by some kind of stalemate or armistice, the web of Western sanctions will be embedded in global trade and capital markets for decades.

Sanctions can be categorized in two ways. First, there are the prohibitions and asset freezes applied to individuals and entities, political actors, senior officials, companies and other commercial operations. In the case of Russia, these number in the many hundreds. They have resulted in the withdrawal of Western companies from doing any kind of business in or with Russia.

The other category is systemic, being directed to broad economic sectors in the target country. In the Russian case, sanctions have frozen out that country's access to foreign reserves in western banks, to capital and financial markets, to the international banking system at large, to technology and corporate supply chains generally.

As in most cases, it's American sanctions that lead the way, aggressively prohibiting any kind of Russian dealings well beyond U.S. borders, reaching around the world to hit Russian-related operations with any kind of involvement in the U.S. banking and financial system. Any business exposed to American sanctions will cease to have any kind of dealings involving Russia as a result.

Some commentators say that economic pressures in themselves won't produce a military win for Ukraine or achieve some kind of geopolitical solution. Nicholas Mulder, assistant professor at Cornell University and one of the leading experts on the history of sanctions, says that they take a long time to have impact and are actually of limited use in crippling the war fighting power of a large, resource-rich and nuclear-armed country like Russia.

Others take a different view, saying that sanctions are clearly having an impact of Russia's war-waging capability, improving Ukraine's military position in an incremental but ever increasing way, leading to a possible stalemate on the ground and an eventual armistice. A review by the Peterson Institute of International Economics, a leading U.S. think-tank, has said even in the remote chance that some individualized sanctions on persons or businesses might be lifted as events unfold, wide-scope financial, banking, technology and market prohibitions on Russia won't be unwound for decades.

And even in the unlikely scenario of a military-political solution in Ukraine, there are other forces at play, mainly that U.S. President Biden and other leaders have labelled Vladimir Putin and his cronies as war criminals. Under international law, war crimes include intentionally targeting civilian populations, willfully killing or causing suffering, and widespread destruction among other serious violations of laws applicable in armed conflict. Individuals who commit such crimes can be prosecuted by international tribunals such as the International Criminal Court or by individual countries under their own domestic laws.

Apart from accusations of personal guilt, Western governments, including the U.S., Canada and in the European Union, have stated that the invasion of Ukraine constitutes breaches by Russia of the UN Charter and other principals of international law. Article 2(4) of the Charter provides that all members of the UN "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." International law experts have said that the Russian invasion of Ukraine has egregiously violated these basic legal principles, namely Article 2(4)'s prohibition on the use of force against other States.

Leaving aside the procedural challenges of proving Putin's and the other Russian leaders' personal guilt or Russia's breaches under international law before an international court, given the political, legal and moral force of these accusations, it would be impossible to Western governments to look the other way and unwind the array of sanctions, whatever military and political settlement might be achieved in Ukraine. Political reality will not allow Western governments to retract accusations of war crimes and breaches of the UN Charter and forgive the devastation brought by Russia on Ukraine or put aside the appalling acts of Russian forces in their devastation of that country.

It means that well after the military conflict in Ukraine ends, Russian sanctions will continue to have deep-seated structural impacts on trade and business relations for decades.
