

RSIL BRIEF—JULY 2022

Understanding Global Sanctions

Categories, Application and Impact



GLOBAL GOVERNANCE
INITIATIVE

RSIL | RESEARCH SOCIETY OF
INTERNATIONAL LAW
IMPARTIAL ANALYSIS • LEGAL SOLUTIONS



TABLE OF CONTENTS

1	Introduction	1
2	What are Sanctions?	3
3	Defining Sanctions: Categories	5
4	Defining Sanctions: Avenues	13
5	Human Rights Considerations	15

AUTHORS

Noor Fatima Iftikhar

Senior Research Associate – RSIL

Ayesha Mushtaq

Communications Lead – RSIL

DESIGN

Ayesha Mushtaq

Communications Lead – RSIL

This brief is part of the Global Governance Initiative at RSIL.

The views expressed in this document are those of the authors and are not intended to represent the official policy or position of any agency of the Government of Pakistan.

© Research Society of International Law, Pakistan 2022



GLOBAL GOVERNANCE
INITIATIVE

RSIL | RESEARCH SOCIETY OF
INTERNATIONAL LAW
IMPARTIAL ANALYSIS • LEGAL SOLUTIONS



Introduction

Introduction

Technical in nature and scope, and with the potential of disrupting entire economies, sanctions are often deployed as biting tools of foreign policy, wielded as weapons to alter state behaviour. The past century has seen various forms of sanctions be imposed on countries to achieve a variety of results – all of which revolve around disrupting either partly or fully, the sanctioned state's economy. In doing so, sanctioning states (those imposing sanctions) are able to achieve results such as coercing the sanctioned states to oblige by their international obligations, etc.

Over the years, the frequency and scale of instruments used under the ambit of sanctions has increased multifold. The practice of sanctions has also evolved in character – moving beyond embargoes and blanket bans to more targeted measures focusing on specific sectors or even individuals. The avenues through which

sanctions are imposed have also been changed, with multilateral and unilateral channels all now capable of imposing sanctions.

Sanctions today, are wide-ranging and nebulous, and thus require delineation and clarity. The purpose of this brief is to define the various kinds of sanctions available, as well as discuss some of the existing sanctions regimes in terms of design and impact. These include explaining the differences in between sectoral, thematic, targeted and horizontal/vertical sanctions, as well as the unilateral and multilateral avenues through which they can be imposed. This brief also lays out how extraterritoriality is now woven into the understanding and state practice of sanctions. It finally lays out the humanitarian impact of unbridled sanctions on vulnerable populations, summing up the need for more targeted and effective sanctions regimes throughout the world.



What are sanctions?

According to the Research Handbook on Unilateral and Extraterritorial Sanctions, ‘international sanctions’ refer to “non-armed coercive measures adopted by a state or organization to put pressure on and ultimately induce a change in behaviour of another state, group of states, or non-state target.”¹ Apart from influencing behaviour of states, sanctions can also be imposed to constrain access to resources, signal support of certain international norms and legal tenets, as well as to reinforce stigma around a certain state or entity. When used practically, states also employ sanctions to announce their presence in the international arena, using it as a posturing tool to cement themselves as leaders on a certain issue or agenda.

The practice of sanctions as well as the reasons underpinning them have evolved considerably in the past few decades. Some of the earliest sanctions regimes in history were used to secure surrender of territory and induce regime change. Modern use of sanctions now can vary in nature and scope widely, ranging from the achievement of narrow and modest, to comprehensively broad objectives.²

As a coercive measure, sanctions are not without their fair share of criticisms. When applied comprehensively without specified targets and or objectives, sanctions can result in severe humanitarian crises, and may even fuel further belligerent behaviour.

¹ Charlotte Beaucillon (ed.), Research Handbook on Unilateral and Extraterritorial Sanctions.

² Ibid.



The background is a detailed map of the North Polar region, centered on the North Pole. A circular chart, labeled 'THE NORTH POLAR SEA CHART', is overlaid on the map. The chart features concentric circles representing latitude and radial lines representing longitude. The map shows various geographical features, including the Arctic Ocean, surrounding landmasses like Greenland, and numerous islands and straits. The text 'THE NORTH POLAR SEA CHART' is written in a circular path around the center of the chart. The overall color scheme is a monochromatic blue.

Defining Sanctions: Categories

There are multitudes of sanctions to be considered in the field of sanctions studies. It can be useful to deconstruct such measures in terms of breadth of application – categorising them from broad (or comprehensive) to narrow (or targeted/smart).

Comprehensive vs Targeted Sanctions

Comprehensive sanctions comprise blanket bans or embargoes, levied with very few exceptions, on entire countries. These country-centric sanctions regimes revolve around isolating entire states, including all citizens and sectors of the economy – and can even go on to limit other, non-sanctioned states from conducting transactions with or otherwise pursuing an economic relationship with sanctioned countries (also known as secondary sanctions, explained further below). Comprehensive sanctions, especially if supported and implemented by multiple countries, have the potential to gravely disrupt the targeted country's trade and economy, and thus serves as a strong signal to the government of the targeted country to desist certain actions. In this respect, comprehensive sanctions can and theoretically do operate as an effective 'stick' measure in coercing states to comply with the sanctioning states objectives.

In contrast, targeted sanctions are employed narrowly – targeting specific key sectors of the economy, or key individuals (and at times, both concurrently). The aim of targeted sanctions is effectively target areas or individuals of the economy that are critical to the country. Examples of these can range from the embargo of Russian oil and gas sectors following the invasion of Ukraine, or the travel ban of individuals involved in the Iranian nuclear proliferation regime.³ The aim is not merely to limit the movement of individuals, but can be extended to ban participation of individuals in the global financial regime, or asset freezes owned by the individuals abroad.

³ Ibid.

Sanctions types

1 Comprehensive—country-based regimes

AIM

Whole of country – including individuals, corporations, all sectors of the economy, etc.

RANGE OF ACTIONS

Complete Embargo, Travel Ban, Asset Freeze

EXAMPLE

The sanctions imposed on Iraq in UN Resolution 661 on August 6, 1990 were the first of these measures, prohibiting all imports and all exports with Iraq, with only the narrowest exemptions for medicine. Despite these, millions of civilians were said to have suffered as an unintended result of such blanket sanctions.

2 Targeted/Smart

SECTORAL

AIM

Targeting the “core” sectors of an economy for maximum impact

RANGE OF ACTIONS

Economic restrictions on specific sectors of the domestic economy, such as arms, oil/energy, gold, etc. Can also target financial/banking sectors weaponized via AML/CFT regulations, etc.

Non-economic sanctions:

Air traffic constraints, the downscaling of diplomatic relations or boycotts of cultural and sporting events

EXAMPLE

In light of the Russian war on Ukraine, the West, particularly the US and EU have initiated broad sanctions against belligerent Russia. A prominent feature of these are sectoral sanctions aimed at Russia's energy (oil and gas) sector.

The EU and US are in tandem banning all Russian oil and gas imports and the UK will phase out Russian oil imports by the end of 2022.

Germany has frozen plans for the opening of the Nord Stream 2 gas pipeline from Russia. The EU has also said it will halt Russian coal imports by August.

INDIVIDUAL

AIM

Targeting certain individuals central to the behaviour being sanctioned

RANGE OF ACTIONS

Travel Ban

Asset Freeze

Suspension of transactions involving sanctioned individuals

EXAMPLE

During the crisis in Venezuela, governments of the United States, the European Union, Canada, Mexico, Panama and Switzerland applied individual sanctions against people associated with the administration of Nicolás Maduro.

Sanctions were placed on current and former government officials, including members of the Supreme Tribunal of Justice (TSJ) and the 2017 Constituent National Assembly (ANC), members of the military and security forces, and private individuals accused of being involved in human rights abuses, corruption, degradation in the rule of law and repression of democracy.

These can be further sub-categorized based on the intensity of the discrimination of the sanctions regime. More target measures imply focused, specific responses, whereas relatively non-discriminating measures inch closer towards broader application of sanctions and by extension, comprehensive sanctions.

Discrimination scale of sanctions



MOST TARGETED MEASURES

Sanctions targeting specific individuals and entities, with asset freezes and/or travel bans



RELATIVELY DISCRIMINATING MEASURES

Sanctions targeting specific sectors of government (or nongovernmental targets), such as arms embargoes, diplomatic sanctions, nuclear dual-use items, and luxury goods.



MODERATELY DISCRIMINATING MEASURES

Sanctions targeting key export commodities of the targeted economy (excepting oil), e.g., diamonds, timber and charcoal; or individual sanctions targeting large companies that affect entire sectors of an economy.



RELATIVELY NON-DISCRIMINATING MEASURES

Sanctions affecting core economic sectors, such as the financial, oil, and transportation (e.g. aviation and shipping) sectors.



COMPREHENSIVE SANCTIONS

Comprehensive trade bans/trade embargo. May Include either export and/or import ban (some exemptions possible, such as humanitarian aid, food, and medicines).

Horizontal (or Thematic) Sanctions⁴

Recent discourse on sanctions uses another way of framing targeted sanctions is by focusing on their thematic application. Thematic, or horizontal sanctions, therefore, are a logical continuation of the targeted approach of applying sanctions, by focusing on the achievement of set foreign policy goals around certain themes. Rather than framing the issue of sanctions based on countries, horizontalization involves the application of sanctions along certain themes, such as counter-terrorism, nuclear non-proliferation, promotion of democracy and human rights protection, and cybersecurity. Any country involved in any activity contrary to these stated themes runs the risk of attracting horizontal sanctions.

Countries particularly in the West, particularly the European Union, are increasingly employing horizontal/thematic sanctions as it offers increased flexibility of such sanctioning tools. Implementing comprehensive or country-based regimes necessitated raising new frameworks, and risked violations of human rights regimes. Horizontal or thematic sanctions allow for the creation of an “umbrella framework” under which offenders are to be penalized.⁵ Such sanction allows for the listing of individuals and entities responsible for activities, irrespective of their location. By focusing on themes rather than geographic regions or countries also reduces any geopolitical tension or xenophobia in policy-making that comes with designated trade partners and allies, and helps escape judicial scrutiny over unintended or harmful application of sanctions.

The Issue of Extra-territoriality: Primary vs Secondary Sanctions

Having discussed the breadth of sanctions available, it is now pertinent to discuss issues of jurisdiction and applicability. According to the Research Handbook on Unilateral and Extraterritorial Sanctions, primary sanctions comprise those measures applied on designated “individuals or entities located in, or originating from the jurisdiction” of the target state, which has been the subject of sanctions.⁶ In contrast, secondary sanctions are those sanctions that are applicable on any country, entity or individual that interacts with the primary sanctioned state. This essentially means that third parties, unsanctioned, may face penalties for doing business with the sanctioned targets.

Secondary sanctions are imposed to supplement primary sanctions, but also serve to protect the national security interests of the issuing country on a global basis by discouraging third parties from engaging in harmful actions.⁷ Penalties for noncompliance with secondary sanctions usually include prohibition on doing business with the issuing country or a restriction of access to the issuing country’s financial system.

Suppose Country A imposed sanctions on key individuals and entities of Country B. If Country C (unsanctioned directly by Country A), decides to conduct trade relations with the banned sectors of Country B, then Country C can be subject to secondary sanctions imposed by Country A to penalize supporting the primary sanctioned state (Country B). This can apply even if Country B has no laws or directives in place sanctioning Country C or entrenching Country A’s sanctions regimes in its domestic laws.

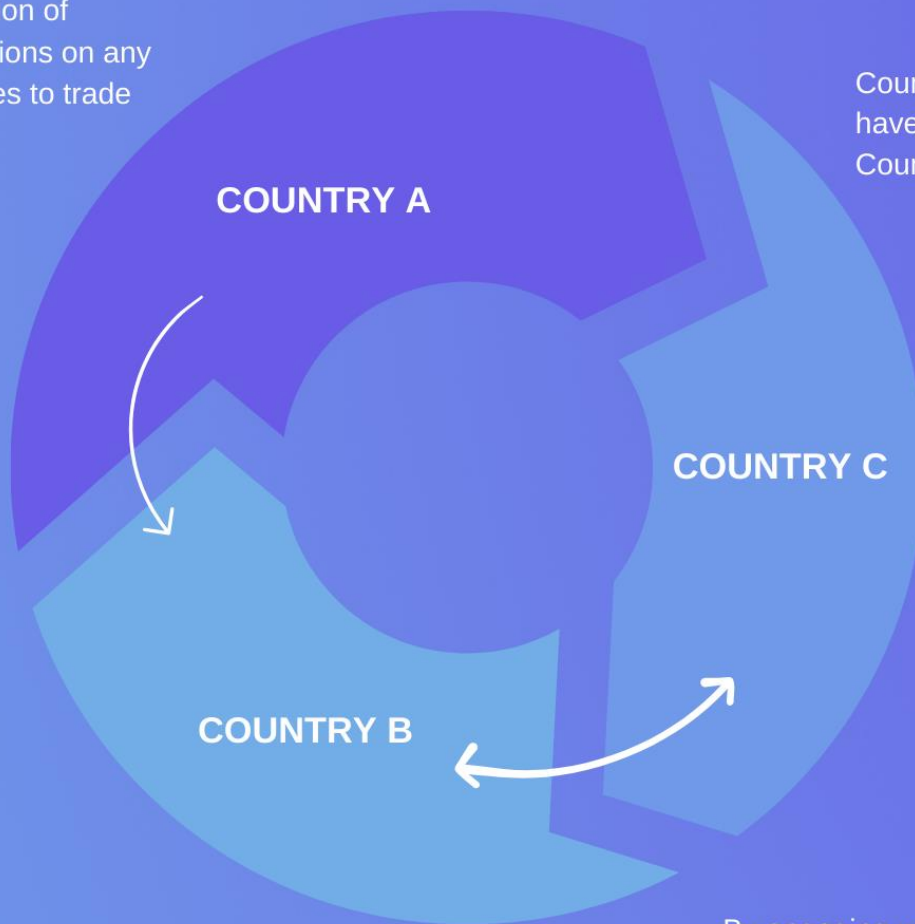
⁴ ‘The Spread of Horizontal Sanctions – CEPS’ <<https://www.ceps.eu/the-spread-of-horizontal-sanctions/>> accessed 7 July 2022.

⁵ ‘Unilateral and Extraterritorial Sanctions Symposium: A Rejoinder – Part I’ (n 3).

⁶ Charlotte Beaucillon (ed.), Research Handbook on Unilateral and Extraterritorial Sanctions.

⁷ <https://complyadvantage.com/insights/global-sanctions/>

Country A imposes sanctions on Country B, with the application of secondary sanctions on any entity that decides to trade with Country B



Country C decides to have trade relations with Country B.

By engaging with Country B, Country C attracts Country A's sanctions regime. Country C now faces face secondary sanctions in the form of certain restrictions.

This grants secondary sanctions an **extraterritorial reach** – applicable on any country, company, or even individual that decides to formally interact with the primary sanctioned state.⁸ As a rule, thus far, only the

United States has employed secondary sanctions as a tool of foreign policy, at times leaving countries with little room for effectively conducting foreign relations.⁹

Case Study: Pakistan's Energy Crisis and the Threat of Sanctions¹⁰

In a report by the UN General Assembly Human Rights Council (2015), it was found that unilateral coercive economic sanctions had a detrimental impact on human rights obligations. Specifically, Pakistan's energy crises and the threat of being subject to sanctions for completing the Iran Gas Pipeline was highlighted as a case study.

To meet its energy shortages, the Government of Pakistan signed a multi-billion dollar agreement for the supply of 750 million cubic feet of gas per day, extendable to one billion cubic feet gas per day, through a pipeline from the Islamic Republic of Iran.¹¹ This would ease the gas deficit in the country to a reasonable level and help to curb rising inflation. The gas pipeline project, however, came to a halt as a direct consequence of the unilateral sanctions imposed by the United States of America on the Islamic Republic of Iran.¹² Failure to complete the project within the stipulated time frame would make Pakistan liable for \$3 million a day in penalties. Significantly, a State already burdened with international and local loans could hardly afford such additional financial burdens.

Failure to complete the project would clearly have an adverse impact on the human rights of citizens of Pakistan, including, inter alia, their rights to life, food, health, development, education and employment, as well as national socioeconomic growth. These fundamental rights are guaranteed to the citizens of Pakistan by international treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The report also found that the impact of comprehensive sanctions was felt most by marginalized communities, women and children, hindering progress and emancipation.

⁸ Charlotte Beaucillon (ed.), Research Handbook on Unilateral and Extraterritorial Sanctions.

⁹ Ibid.

¹⁰ United Nations General Assembly Human Rights Council (2015) 28th Session, Advisory Committee Report, A/HRC/28/74.

¹¹ Zafar Butta, "Iran Gas pipeline: Iran wants assurance that Pakistan is 'all in'", *Express Tribune*, 25 November 2013.

¹² Although under United States law the sanctions on

the Islamic Republic of Iran have been in place for longer, the Iranian entity with whom the Inter-State Gas System of Pakistan entered into the gas purchase agreement was specifically sanctioned on 24 September 2012, that is, after Pakistan had signed the agreement. Thereafter, Pakistan has expressed reservations at the impact of sanctions on the project. See "Pakistan may face sanctions over gas pipeline with Iran: US", *Times of India*, 4 October 2013.

*Blocking Laws*¹³

When governments deem secondary sanctions to be unreasonable, they may implement regulations known as 'blocking laws'. These laws effectively block secondary sanctions, penalizing domestic firms that comply with them while authorizing civil suits for firms that suffer financial

damages as a result of their noncompliance. Recent examples of blocking laws include the EU's Blocking Statue, implemented in 2018 to prevent compliance with US sanctions on Iran, and China's Blocking Rules, implemented in 2021 as a response to escalating economic tensions with the US.¹⁴

¹³ Sebastian Cooper, 'What Are Sanctions?' (*ComplyAdvantage*) <<https://complyadvantage.com/insights/what-are-sanctions/>> accessed 7 July 2022.

¹⁴ *Ibid.*

The background is a detailed map of the North Polar Sea region, including parts of Siberia, Greenland, and the Arctic Ocean. Overlaid on this is a circular nautical chart titled 'THE NORTH POLAR SEA CHART'. The chart features concentric circles representing latitude (70°, 75°, 80°) and radial lines representing longitude. The title is written in a circular path around a central emblem. The map includes various geographical labels such as 'BAY OF WHITES', 'LAPTEV BAY', 'KARSKOYE MORYE', and 'ZEMELIA'.

Defining Sanctions: Avenues

There are primarily two ways of applying sanctions: unilaterally, or multilaterally. Multilateral sanctions are those that are applied through the auspices of the United Nations multilateral framework, particularly the Security Council. Depending on countries that adopt them, the implementation of such measures might be voluntary, conditional or obligatory.

Alternatively, unilateral (or autonomous) sanctions are those that are employed outside the UN framework by countries or regional groups. These regimes are created by countries specifically for the furtherance of foreign policy aims. Countries such as the United States, United Kingdom, Canada, Australia and regional organizations such as the European Union continue to apply sanctions unilaterally. Countries can also apply both regimes concurrently: that is, they can adopt UN-based sanctions as well as generate their own sanctions regime and apply both simultaneously.

The declared objectives of multilateral sanctions have tended to differ from unilateral measures. Multilateral sanctions employ the language of the UN Charter and focus largely on threats to international peace and security, and in particular on violent inter-and intra-state conflicts, counter-terrorism and nuclear non-proliferation. Unilateral measures applied by countries such as the US and EU have adopted these themes but also co-opted further areas, such as the promotion of democracy, human rights and good governance, as well as the aforementioned cyber and chemical weapons domains. Geographically, UN-based multilateral sanctions are applied on hot conflict zones, particularly in the African region, whereas the US and EU's unilateral measures are spread evenly across Africa, Asia and the Middle East.

The differences between multilateral and unilateral sanctions are primarily centered on reach and legitimacy. The central distinguishing feature between unilateral and multilateral sanctions is the political impetus that lies behind them. The UNSC, when it acts under Chapter VII of the UN Charter to maintain international peace and security, reacts to 'any threat to the peace, breach of the peace, or act of aggression' – and applies sanctions in furtherance of these objectives. Alternatively, unilateral sanctions pursue wider goals as defined by foreign policy priorities, and carry a different political nature. Unilateral sanctions are therefore interpreted primarily as "instruments of national or supranational foreign policies."¹⁵

¹⁵ 'Unilateral and Extraterritorial Sanctions Symposium: A Rejoinder – Part I' (n 3).



NORTH POLAR SEA CHART

Human Rights Considerations

Countries resort to sanctions to avoid military conflicts as they cause catastrophic human suffering. However, critics argue that the damage inflicted by these sanctions is no less than that of a war.¹⁶ While proponents of sanctions accept that negative consequences are an unfortunate drawback, it is argued that these harms are a central element of such restrictions to compel the targeted country or entity into submission to the targeting country or entity.¹⁷

Sanctions can have many devastating consequences for the human rights, especially the right to health, as import of basic food items, medicines, medical equipment becomes hard to import due to strict compliance and the threat of attracting secondary sanctions.

During the 1990s, global sanctions were placed on Saddam Hussein's regime, yet it resulted in the deaths of nearly 1.5 million Iraqis, with at least half a million children.¹⁸ Similarly, economic sanctions have been employed to limit Iran's ability to sponsor terrorist activities. In 2018, the US sanctions on Iran led to the disruption of basic commodities, upsetting their healthcare system and food chains. Due to secondary sanctions, banks and other financial institutions applied countermeasures accordingly, as a result isolating the country from the global financial system entirely.¹⁹ The pandemic of Covid-19 further intensified the impact of sanctions, with Iran which is

routinely subjected to sanctions by the UN, US, EU, and most developed economies of the world, was reportedly hit the hardest. While these sanctions did not affect the import of medicines and medical equipment, the over-arching impact of continuing and new sanctions, limited Iran's ability to contain the disease.²⁰ As a result, have been severely detrimental to the Iranian economy, particularly crippling for the lives of ordinary civilians.

Countries from the global South continue to protest against the haphazard and harmful application of economic sanctions. The UN General Assembly has passed a resolution which calls upon all states "*not to recognize unilateral extraterritorial coercive economic measures or legislative acts imposed by any state.*"²¹ Furthermore, the regional organization Asian-African Legal Consultative Organisation (AALCO) also purports that unilateral sanctions are of an extra-territorial character, and therefore, constitute a violation of international law.²²

Increasingly, countries are continuing to move away from the broader application of comprehensive sanctions to more targeted approaches, in a bid to evade humanitarian implications. The UN is further encouraging the use of sanction along with a comprehensive strategy to ensure peacekeeping, peacebuilding, and peacemaking in the affected country.²³

¹⁶ Jerg Gutmann, Matthias Neuenkirch and Florian Neumeier, 'Precision-Guided or Blunt? The Effects of US Economic Sanctions on Human Rights' 46.

¹⁷ Seyed MH Razavi and Fateme Zeynodini, 'Economic Sanctions and Protection of Fundamental Human Rights: A Review of the ICJ's Ruling on Alleged Violations of the Iran-U.S. Treaty of Amity' 29 39.

¹⁸ 'Razing the Truth About Sanctions Against Iraq', accessed 5 April 2022, <https://www.gicj.org/positions-opinions/gicj-positions-and-opinions/1188-razing-the-truth-about-sanctions-against-iraq>.

¹⁹ Idriss Jazairy, 'Unilateral Economic Sanctions, International Law, and Human Rights' (2019) 33 Ethics & International Affairs 291.

²⁰ Gutmann, Neuenkirch and Neumeier (n 17).

²¹ 'General Assembly Adopts Resolution Calling On States Not To Recognize Unilateral Coercive Economic Measures | Meetings Coverage and Press Releases', accessed 5 April 2022, <https://www.un.org/press/en/2002/ga10083.doc.htm>.

²² Asian-African Legal Consultative Organization, 'Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties', n.d., <https://www.aalco.int/59thsession/Final%20Extraterritorial%20Brief%202021%20on%2013.10.2021.pdf>.

²³ Henning Jessen, 'Multilateral and Unilateral Sanctions: Compliance and Challenges' in Walter Leal Filho and others (eds), *Peace, Justice and Strong Institutions* (Springer International Publishing

Alternatively, it is argued that while sanctions can exacerbate human rights in a country, they can also be used to improve human rights by economically isolating oppressive regimes until human rights compliance improves.²⁴ Theoretically, it can be argued that sanctions successfully yield improvements in human rights through such interventions, but there remains general

skepticism about the nature of such measures and the violation of sovereignty.

Despite the potential harms of implementing sanctions, the practice of achieving foreign policy goals as well as maintaining international order through sanctions is gaining currency – warranting the study of such measures more so than ever before.

2020) <https://doi.org/10.1007/978-3-319-71066-2_51-1> accessed 7 July 2022.

²⁴ 'Smart Sanctions: Targeting Economic Statecraft | Foreign Affairs'

<<https://www.foreignaffairs.com/reviews/capsule-review/2002-09-01/smart-sanctions-targeting-economic-statecraft>> accessed 7 July 2022.



GLOBAL GOVERNANCE
INITIATIVE