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A photograph of North Korean soldiers in olive green uniforms, each holding a large green missile vertically. They are standing in a formation against a background of red vertical stripes. The soldiers have serious expressions and are looking forward. The text is overlaid on the center of the image.

# US SANCTIONS POLICY:

THE TRUMP ADMINISTRATION'S RECORD AND  
RECOMMENDATIONS FOR THE NEXT ADMINISTRATION

Daniel Fried



# Atlantic Council

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## GEOECONOMICS CENTER

The GeoEconomics center works at the nexus of economics, finance, and foreign policy with the goal of helping shape a better global economic future. The Center is organized around three pillars - Future of Capitalism, Future of Money, and the Economic Statecraft Initiative.

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Cover image: DOCUMENT DATE: October 10, 2015 Soldiers carry rocket launchers in front of a stand with North Korean leader Kim Jong Un and other officials during the parade celebrating the 70th anniversary of the founding of the ruling Workers' Party of Korea, in Pyongyang October 10, 2015. Isolated North Korea marked the 70th anniversary of its ruling Workers' Party on Saturday with a massive military parade overseen by leader Kim Jong Un, who said his country was ready to fight any war waged by the United States. *REUTERS/Damir Sagolj* <https://tinyurl.com/y5r88t47>

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## Executive Summary

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Economic sanctions have become a default setting for the US government and Congress to respond to policy problems that seem to require more than a demarche and less than military action. Major sanctions regimes currently include Iran, Venezuela, North Korea, several overlapping Russia sanctions programs (e.g., related to Ukraine, cyber aggression and election interference, the Nord Stream II gas pipeline, and human rights), human rights and corruption (“Global Magnitsky”), Syria, Cuba, and, growing fast, various China sanctions programs (e.g., over Hong Kong and the repression of Uyghurs in China). That’s a lot.

Results, as with any policy tool, have been uneven: significant though incomplete in some areas [limiting Kremlin aggression against Ukraine and pushing Iran into negotiating the nuclear deal, the Joint Comprehensive Plan of Action (JCPOA), as well as stigmatizing individual bad actors for corruption and human rights abuses] and more fleeting in others (North Korea). Under the uncertain policy direction of the Trump administration, however, many of the gains achieved through the sanctions policy tool are in danger of unraveling while failing credibility and uneven application are weakening the tool. What in sanctions policy works,

what doesn’t, and what should the Biden administration do to make sanctions work better?

Recommendations include:

- Keep objectives in rough harmony with means;
- Don’t use sanctions as short-term media strategy;
- Don’t get greedy or impatient, or race for the big, showy win;
- Don’t knock incremental steps forward;
- Articulate an “endgame” at the beginning;
- Bring allies along, with respect to both objectives and sanctions;
- Embed sanctions within overall strategies designed to capture as much international support as possible; and
- Remember that sanctions are only one tool of economic statecraft and should be combined with others: export controls; improved financial, real estate, and corporate (e.g., LLC) transparency, especially regarding beneficial owners and more.

# Introduction

Since the September 11, 2001, terrorist attacks on the United States, US administrations have increasingly turned to sanctions as a policy tool. As they have, the US government has gotten better at using it, especially under the administrations of George W. Bush and Barack Obama. The Department of the Treasury put more (though not enough) resources into OFAC (the Office of Foreign Assets Control at Treasury, the US government's main financial sanctions implementer); under Obama, the State Department established the sanctions coordinator's office;<sup>1</sup> and the Commerce Department became a significant player with its parallel ability to impose export restrictions.

For a time, especially under Obama, the US government also expanded its sanctions diplomacy, including working with the Europeans and others on Iran sanctions and coordinating with the European Union (EU) and European and G7 governments on a common Russia sanctions effort after Russian President Vladimir Putin's attack on Ukraine in 2014.<sup>2</sup> These efforts, especially the Russia sanctions program, established precedent for multilateral coordination on hard (not symbolic and easy) sanctions regimes.

With the profile of the sanctions tool on the rise, in March 2016, then-Treasury Secretary Jacob J. Lew gave a powerful speech<sup>3</sup> discussing the risks of sanctions' misuse. It was remarkable both for its reflective quality and integrity: notwithstanding the bad Washington habit of self-serving positioning, Lew raised questions about a policy that Treasury itself had led and that had raised Treasury and Lew's own policy influence within the US government.

In implementing sanctions policy, Lew urged the United States to be as multilateral as possible; to make sanctions relief credible when policy aims are achieved (i.e., no moving the goalposts); and to be disciplined in execution. He warned, in particular, against trivializing the sanctions tool by applying it without a thought-through strategy. Misuse of sanctions, Lew warned, could create the impression that the United States was abusing its position in the global economy as the founder and leader of the international financial system.

Lew's concerns now seem prescient when set against the sanctions record of US President Donald J. Trump's administration. The administration has gotten some sanctions steps right and has some small achievements to its credit. But it has been uneven, uncoordinated, and the trend is in the wrong direction. It has been less multilateral, in some cases celebrating the decline or outright abandonment of allied coordination on sanctions; less credible in offering sanctions relief due to legislative restrictions (itself a product of declining congressional confidence in the administration); incoherent in its rhetoric, with the president often on a different page than his administration; and sometimes sloppy in execution.

These operational problems in the Trump administration's use of sanctions reflect a deeper problem: the mismatch of policy objectives and tools. Sanctions are not a policy. They are a tool in the service of a policy that must make sense and be achievable and articulable. In policy making generally, one cannot be greedy or impatient. But Trump is notoriously both, a feature that affects the administration, even when skilled people in it are trying to do the right thing, as is the case with sanctions policy. The president's capricious style and eagerness for quick wins, unchecked due to this administration's weak policy process, allows individual policy makers to push their own sanctions (and other) policies in a haphazard fashion.

Lew referred to a still deeper challenge: effective sanctions depend on the continued place of the United States and the US dollar at the center of the global financial system. Right now, that place remains secure: no other financial sector, including China's, has comparable market depth and liquidity, free flow of capital, and strong property rights. But, as Lew intimated, that status cannot be taken for granted. While poor application of sanctions by itself is not likely to move global actors away from the systemic benefits of the dollar as the global exchange currency, a collapse of US influence and credibility may.

The Trump administration questioned the US-designed-and-led international system, with Trump himself and some in his inner team arguing against the fundamentals of the

1 Daniel Fried was the first, and so far only, State Department coordinator for sanctions policy; David Mortlock was one of his deputies; and Andrea Mihailescu covered North Korea and other Asia sanctions regimes in the sanctions coordinator's office. All worked closely with the Office of Foreign Assets Control, including Brian O'Toole who was then working there.

2 Daniel Fried was the US government's chief negotiator with the Europeans and others on Russia sanctions.

3 US Treasury Secretary Jacob J. Lew, "Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace," speech to the Carnegie Endowment for International Peace, March 30, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/j10398.aspx>.

rules-based order that (among many things) gives the United States the relative high ground through its ability to set financial rules and impose sanctions effectively and makes the US dollar a recognized safe haven. It's one thing to push multilateral (or supranational) organizations to be more responsive and responsible, it's another to attack them (the EU), weaken them (the World Trade Organization), withdraw from them (the World Health Organization), or, as is the case with the International Criminal Court, impose sanctions upon them. Preference for applying blunt bilateral pressure, especially against one's ostensible friends (e.g., Germany over Nord Stream II), through sanctions or otherwise, may yield short-term gains but will generate longer-term political resistance and position the United States as an unreliable or even destructive power.

These strategic problems incentivize even the United States' friends to consider alternatives to the US-led system while strengthening the arguments of autocratic rivals

China and Russia that the United States is not a well-intentioned guardian of the rules, but a bully no better than they.

In sum, misuse of sanctions, when combined with the Trump administration's unilateralist definition of US global strategy and US abuse of its position in the world, weakens the United States over the longer term which in turn, among many other things, weakens the basis for the application of sanctions. It's a bad feedback loop.

The good news: it's fixable.

It's useful to apply these general cautionary notes against specific sanctions regimes, noting where the Trump administration has gotten it right, where it has gone wrong, and what the incoming Biden Administration can do, both specifically and generally.

# Sanctions Case Studies

## Iran

Two years ago, Trump withdrew the United States from the JCPOA—the Iran nuclear deal concluded in 2015 between Iran and the P5+1 (the United Kingdom, France, the United States, Russia, China, and Germany). Since then, unilateral US sanctions on Iran have grown and remain extensive: they prohibit essentially all trade and financial relations with Iran by US companies and their foreign subsidiaries, with the exception of humanitarian and medical trade, and information and personal communications and other licensed transactions; and include the threat of secondary sanctions against non-US companies doing business with Iran's energy, petrochemical, shipping, automobile, and manufacturing sectors and other sectors that deter much non-US commercial activity with Iran, including purchases of oil.<sup>4</sup> The Administration broadened its financial sanctions with its October 8 designation of another 18 Iranian banks, though the practical impact of these sanctions is apt to be modest.<sup>5</sup>

The JCPOA is a limited agreement that sought to address Iran's nuclear program, a single, albeit major, aspect of Iran's dangerous behavior. It has its weak points. Like arms control with the Soviet Union, it could not resolve the root causes of tensions between Iran and the United States and Europe (notwithstanding exaggerated hopes for it among some in the Obama administration).

More specifically, the deal did nothing to address Iran's support for terrorism in its neighborhood, intervention in Yemen, ballistic missile program, and human rights abuses, among other malign behaviors. But, also like arms control with the Soviets, it did decrease risks in one area of great concern to the United States and its allies—the threat of nuclear confrontation—while positioning the United States to contest Iranian behavior in others. It brought together the United States and its chief allies around Iran policy—the culmination of efforts that began during the Bush administration's second term—while limiting the ability of Russia and China to act as spoilers.

In place of the JCPOA, the Trump administration chose a path of “maximum pressure,” unilaterally applied, as with so many other foreign policy challenges, and intended to deprive the Iranian regime of resources for its malign activity and to force it to renegotiate a nuclear deal on more favorable terms for the United States. This approach indeed has deprived Tehran of financial resources to support its malign activities. But the policy, though not explicitly put in these terms, represents a bet that unilateral US sanctions (and other forms of pressure) can precipitate regime collapse leading to regime change.

That's a big bet.<sup>6</sup> And in its pursuit, the Trump administration has sacrificed the international unity that proved critical to convincing Iran to negotiate in the first place, thus weakening the pressure it seeks to generate. Instead, it's the United States that has found itself isolated. For example, as the United Nations Security Council voted overwhelmingly and embarrassingly on August 14, 2020, not to extend the UN arms embargo against Iran and again as the UK, France, and Germany have rejected the US position that it could call for a resumption (“snap back”) of all former UN sanctions against Iran since the United States had formally withdrawn from the nuclear deal.<sup>7</sup>

Setting aside the US tactics employed, Iran's malign behavior across many areas remains a major threat to peace in the region. Iran has shown it will continue its malign actions even with fewer resources; funding of terror groups may have lessened, but it has not ceased. This marginal success has come at an enormous cost for actually resolving the threats Iran poses. The United States is demanding more from Iran while it is the United States that is now isolated. This is not a sustainable policy position.

### Recommendations for the Next Administration

The next administration should seek to align the United States with its friends to put more effective pressure on Iran, starting with reengagement on nuclear issues, and specifically a reentry into the JCPOA. This

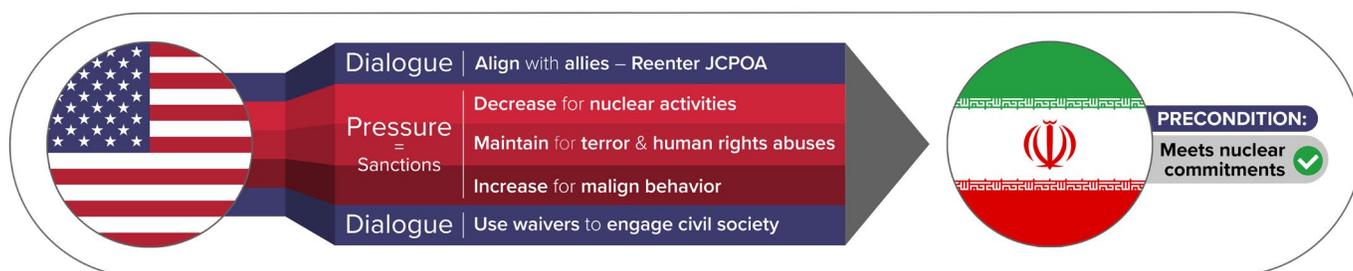
4 David Mortlock, *Trump's JCPOA Withdrawal Two Years On: Maximum Pressure, Minimum Outcomes*, Atlantic Council, May 2020, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/trumps-jcpoa-withdrawal-two-years-on-maximum-pressure-minimum-outcomes/>.

5 Brian O'Toole, “New sanctions on Iran's banks: Crippling or more window dressing?,” *Atlantic Council*, <https://www.atlanticcouncil.org/blogs/iransource/new-sanctions-on-irans-banks-crippling-or-more-window-dressing/>.

6 David S. Cohen and Zoe A.Y. Weinberg, “Sanctions Can't Spark Regime Change,” *Foreign Affairs*, April 29, 2019, <https://www.foreignaffairs.com/articles/usa/2019-04-29/sanctions-cant-spark-regime-change>.

7 US Department of the Treasury, “Issuance of Executive Order ‘Blocking Property of Certain Persons with Respect to the Conventional Arms Activities of Iran;’ Iran-related Designations and Designations Updates; Counter Terrorism, Non-proliferation, & Venezuela-related Designations Updates,” September 21, 2020, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20200921>. The Trump administration's September 21, 2020, executive order directed against Iranian conventional arms trade appears to be more a messing tool, and a sign of frustration, than a viable instrument directed against Iran.

## New Iran Sanctions Framework



Designed by Stefan de Villiers and edited by Ole Moehr

“compliance-for-compliance” approach (as it is known) would be the most effective way for the United States to align itself with the rest of the P5+1 in a way that creates stronger leverage over Iran to remain in compliance with the terms of the nuclear deal. It would also put the US administration in a stronger position to seek to negotiate a JCPOA 2.0, which will be necessary as the current deal’s sunset provisions on the arms embargo and ballistic missile restrictions are approaching, as well as seek talks to address other dangerous aspects of Iran’s behavior.

A track of negotiations and attempts at dialogue do not preclude a separate track of pressure. Iran may quibble that the United States should lift, in addition to nuclear-related sanctions, additional terrorism and human rights-related sanctions imposed over the last four years; the JCPOA made clear that Iran is entitled to no such relief. Indeed, the United States should more clearly differentiate sanctions on Iran, lifting nuclear-related sanctions as it reenters the JCPOA (and making the benefits tangible), maintaining some sanctions related to Iran’s other activities, and working with allies to impose additional sanctions in response to Iran’s malign behavior outside the JCPOA framework.

The United States should reach out to Iranian society, including by using licenses to suspend sanctions to that end. This three-dimensional approach—JCPOA, pressure, outreach with pressure, differentiated sanctions—should be developed with European allies; a common approach increases leverage. At the same time, the United States needs to keep its expectations under control. Iran is an issue on which incremental progress (and limiting its bad behavior) may be possible but will remain a challenge.

## Venezuela

US sanctions against Nicolás Maduro’s regime in Venezuela explicitly seek regime change—a democratic transition such as that proposed by the Trump administration in March 2020<sup>8</sup>—making them among the most ambitious sanctions regimes. The Obama administration initiated sanctions against Venezuela for more limited objectives. Its initial executive order (from March 2015),<sup>9</sup> prompted by the Venezuela Defense of Human Rights and Civil Society Act of 2014, was directed against individuals responsible for the regime’s human rights violations, corruption, and related repression or those undermining democratic institutions in Venezuela.

As Maduro’s autocratic rule deepened, and especially after January 10, 2019, when Juan Guaidó, the elected president of Venezuela’s National Assembly, challenged Maduro’s legitimacy and declared himself interim president under the Venezuelan Constitution, the Trump administration expanded both sanctions and its policy objectives. In addition to targeting more individuals, separate executive orders targeted the gold sector and gave the Treasury secretary the authority to designate other economic sectors; targeted Venezuela’s state-owned petroleum monopoly (PdVSA); and imposed blocking sanctions on the Venezuelan government.<sup>10</sup> By the end of 2019, the Trump administration had put in place blocking sanctions against the principal elements of Venezuela’s economy. In February and March 2020, it imposed sanctions against subsidiaries of the Russian state-owned oil company Rosneft for operating in Venezuela’s oil sector.

In January 2019, the United States recognized Guaidó as Venezuela’s president and directed sanctions in an effort to achieve a transition from the Maduro regime. For a time in 2019, the administration appeared to expect the

8 US Department of State, “Democratic Transition Framework for Venezuela,” fact sheet, Office of the Spokesperson, March 31, 2020, <https://www.state.gov/democratic-transition-framework-for-venezuela/>.

9 Exec. Order No. 13692, 84 FR 38843 (Mar 8, 2019).

10 Exec. Order No. 13850, 83 FR 55243 (Nov 1, 2018); Exec. Order No. 13875, 84 FR 28711 (Jun 14, 2019); and Exec. Order No. 13884, 84 FR 38843 (Aug 5, 2019).



A state oil company PDVSA's logo is seen at a gas station in Caracas, Venezuela May 17, 2019. *REUTERS/Ivan Alvarado* <https://tinyurl.com/yxzqacwm>

imminent collapse of the Maduro regime. When this did not take place, it seemed to recalibrate its expectations (and Trump seemed to lose interest), though not its objectives. Elliott Abrams, the US special representative for Venezuela, made US objectives explicit in his March 31, 2020, press conference in which he outlined the administration's political transition plan for that country: sanctions would remain until a change of regime in Caracas; the United States would suspend key sectoral sanctions when a transition was underway and remove them once free and fair national elections were held.<sup>11</sup>

The objectives of the Venezuela sanctions are more ambitious than those of any other major sanctions program (perhaps excepting Cuba, which is an altogether different program reflecting a policy that seems to remain in place more by tradition and political need rather than an

expectation of success). The Trump administration, however, in an effective diplomatic effort, managed to assemble an impressive set of countries in general support of the sanctions on Venezuela. The Organization of American States (OAS) has also refused to recognize the legitimacy of Maduro's second presidential term and expressed its support for the US democratic transition framework.<sup>12</sup> The Lima Group, composed of Latin American countries and Canada, denounced Maduro's claim of a second term as president, invited the Guaidó government to join the group, and called for sanctions against Maduro regime officials. Canada, the EU, Panama, Mexico, and Switzerland have imposed their own sanctions against regime officials (though generally not against economic sectors).

These diplomatic successes have not yet yielded the desired results. Nevertheless, the Trump administration has

<sup>11</sup> US Department of State, "Briefing with Special Representative for Venezuela Elliott Abrams on the Democratic Transition Framework for Venezuela," special briefing, March 31, 2020, <https://www.state.gov/briefing-with-special-representative-for-venezuela-elliott-abrams-on-the-democratic-transition-framework-for-venezuela/>.

<sup>12</sup> OAS (Organization of American States), Statement from the OAS General Secretariat on the situation in Venezuela, press release, March 31, 2020, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-027/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-027/20).

maintained its reliance on massive sanctions as “maximum pressure” combined with continued international diplomatic support, while Guaidó’s power has declined and Venezuela’s people continue to suffer under a brutal regime.

### Recommendations for the Next Administration

Regime change is a maximal objective not easily obtained. Given the consensus in Europe and the Western Hemisphere that the Maduro regime is illegitimate, however, it is difficult to imagine a US administration backing away from its objective of a transition to a new government in Venezuela through free elections. Earlier administration anticipation of Maduro’s imminent fall has not been realized, but Abrams has (wisely) tried to set expectations for a longer timetable.<sup>13</sup>

Venezuela is one case where a sanctions regime in support of an ambitious, near-maximal objective may be sustainable, even for a long period. In contrast to Iran, the United States is not isolated on Venezuela and its imposition of major sanctions does not generate friction with allies or otherwise eat up political capital. While the administration’s talking points have toyed with the concept of secondary sanctions for purchasing Venezuelan oil, OFAC’s designation of Rosneft’s trading arm focused on its deceptive practices, and the administration has largely held back on secondary sanctions that might antagonize international partners. Staying the course on Venezuela, whatever the odds of near-term success, may be practical.

If the next administration continues current US policy, it should take care to implement sanctions in ways that allow for humanitarian relief to reach the Venezuelan people (easier said than done, given the Maduro regime’s habit of diverting humanitarian aid for its own purposes) and should avoid backing itself into a corner of seeking a rapid resolution, which might tempt it to pursue less sustainable sanctions. The Maduro regime deserves the lion’s share of the blame for the suffering of the Venezuelan people, but a more active stance toward combatting the chilling effect sanctions can have on licit transactions will help the next administration retain credibility in imposing such harsh sanctions. The United States should also be ready to consider political solutions outside of its declared and public transition framework.

## North Korea

The Obama administration used UN Security Council Resolutions (UNSCRs) as the principal vehicle of its sanctions efforts against North Korea, but these initially focused on illicit behavior by “bad” actors in nuclear, missile, and other military goods and technology sectors. These sanctions had only a moderate impact on the North Korean regime’s calculus. Late in its second term, the Obama administration, concerned by the pace of North Korea’s nuclear and ballistic missile programs and its increase in malign cyber hacking, intensified its sanctions efforts by seeking to limit a broader category of North Korean exports, including major exports, and ultimately sanctioned the entirety of Kim Jong-un’s regime.<sup>14</sup> The Trump administration built on this late (but welcome) shift, successfully supporting stronger UNSCRs that limited or banned major categories of North Korean exports, such as minerals, coal, and labor, and seeking to enforce them.<sup>15</sup> The Trump administration also seemed more willing to target Chinese companies and banks for violating UN sanctions on North Korea, an essential step for the effectiveness of a North Korean sanctions program.

This was a sensible “maximum pressure” campaign that built on the Obama policy. The Trump administration also backed away from working with allies and sought instead to use the increased pressure to open top-level bilateral dialogue with North Korea. This was arguably worth a try, given the failed efforts by the previous three administrations.

But the administration undermined its own approach through impatience. It arranged the June 2018 presidential summit with Kim in Singapore, an unprecedented step, but sought a big, quick win apparently without studying previous attempts at diplomacy with North Korea or preparing detailed, verifiable underpinnings. What it got was a weak joint statement (the language of which was weaker than previous North Korean commitments<sup>16</sup>). Trump’s summit with Kim in Hanoi in February 2019 and their meeting along the Demilitarized Zone (DMZ) in June 2019 produced even less.

When Trump’s effort at a quick win fell short, the administration appeared to lose focus. North Korea sanctions have

13 US Department of State, “Briefing with Special Representative for Venezuela Elliott Abrams on Recent Developments in U.S.-Venezuela Policy,” special briefing, July 28, 2020, <https://www.state.gov/special-representative-for-venezuela-elliott-abrams-on-recent-developments-in-u-s-venezuela-policy/>.

14 UN Security Council, Resolution 2270, Non-proliferation/Democratic People’s Republic of Korea, S/RES 2270, March 2, 2016, <http://unscr.com/en/resolutions/2270>; and UN Security Council, Resolution 2321, Non-proliferation/Democratic People’s Republic of Korea, S/RES 2321, November 30, 2016, <http://unscr.com/en/resolutions/2321>.

15 UN Security Council, Resolution 2371, Non-proliferation/Democratic People’s Republic of Korea, S/RES 2371, August 5, 2017, <http://unscr.com/en/resolutions/2371>; UN Security Council, Resolution 2375, Non-proliferation/Democratic People’s Republic of Korea, S/RES 2375, September 11, 2017, <http://unscr.com/en/resolutions/2375>; and UN Security Council, Resolution 2397, Non-proliferation/Democratic People’s Republic of Korea, S/RES 2397, December 22, 2017, <http://unscr.com/en/resolutions/2397>. These resolutions built on conceptual frameworks developed late in the Obama administration and passed to the Trump administration, a rare case of policy continuity.

16 For example, US Department of State, “Joint Statement of the Fourth Round of the Six-Party Talks Beijing, September 19, 2005,” September 19, 2005, <https://2001-2009.state.gov/r/pa/prs/ps/2005/53490.htm>.



A missile is driven past the stand with North Korean leader Kim Jong Un and other high ranking officials during a military parade marking the 105th birth anniversary of the country's founding father Kim Il Sung. *REUTERS/Damir Sagolj* <https://tinyurl.com/y4lptvvb>

continued, but the political impact of “maximum pressure” has been undercut by Trump’s persistent complaints about the US troop presence in South Korea and Japan, and his occasional threats to withdraw them. Fighting with allies does not send a strong message to one’s adversaries. Trump even threatened in 2019 to overturn sanctions imposed by his own Treasury Department within hours of their release because of his good “relationship” with Kim,<sup>17</sup> only to change course later.

Results from the Trump administration’s North Korea sanctions program have been mixed; arguably, no less effective than that of previous administrations, but that’s not saying much. After an initial pause, North Korea has continued (short-range) missile tests and some analysts believe it is planning many more. There have been no North Korean nuclear tests detected since 2017, but possibly because the regime has confidence in its stockpile; according to some reports, North Korea has rebuilt nuclear infrastructure after diplomacy with the United States stalled. On October 10, North Korea displayed what appears to be a new, expanded version of a mobile ICBM.<sup>18</sup> In short, the Trump administration initially intensified its pressure through sanctions, but frittered away this leverage by seeking a showy victory rather than achieving or even advancing a verifiable deal.

### Recommendations for the Next Administration

The next administration needs to decide whether dealing with North Korea’s nuclear and ballistic missile capacity is a first-tier national security problem that it wants to try to solve—and to that end is willing to sacrifice other objectives—or whether it is a problem it is content to tolerate. The latter is what the Obama administration did until its final year and, as it turns out, the Trump administration has done since the three showy, but inconsequential, summits with Kim.

If the former, the United States will need once more to ramp up its sanctions and other forms of pressure on North Korea. Engaging and pushing China to implement its sanctions commitments under the many UNSCRs will be key to doing so. China still has major leverage over its neighbor despite a complicated relationship. The United States would have to be prepared to threaten and implement sanctions against Chinese firms and banks for supporting sanctioned trade with North Korea.

Such escalation options exist. Imposition of full blocking sanctions on major Chinese banks risks financial blowback, but in egregious cases the United States could impose (more modest) financial restrictions, as it did in the Russia sanctions

17 Michael R. Gordon and Ian Talley, “Trump Blocks Large-Scale Sanctions Planned Against North Korea,” *Wall Street Journal*, March 22, 2019, <https://www.wsj.com/articles/trump-reverses-additional-north-korea-sanctions-announced-a-day-ago-11553282228>.

18 [https://www.washingtonpost.com/world/asia\\_pacific/nkorea-missile-icbm/2020/10/12/987e50d4-0c34-11eb-b404-8d1e675ec701\\_story.html](https://www.washingtonpost.com/world/asia_pacific/nkorea-missile-icbm/2020/10/12/987e50d4-0c34-11eb-b404-8d1e675ec701_story.html)

program after 2014, or target smaller to midsize banks and companies.<sup>19</sup> But tailored sanctions against Chinese companies over North Korea may be lost among the growing China sanctions regime the Trump administration and Congress are now putting in place (see below). China may be willing to cooperate with the United States on North Korea but would almost certainly demand in exchange a US easing of economic pressure and sanctions against Chinese firms in other areas. The next US administration will have to prioritize what it wants in relations with China.

The next administration will also have to determine whether it can accept an interim arrangement with North Korea that limits its nuclear and ballistic missile programs in verifiable ways but short of a complete ban or denuclearization. Sanctions may provide the pressure for such an interim or limited arrangement but may not support, at this stage of North Korea's nuclear capacity, an immediate win.

## Russia

Russia sanctions are complex and growing. The Ukraine-related Russia sanctions program, by far the largest of any of the various Russia sanctions regimes and one of the largest ever as measured by the size of the country's economy, includes sanctions on individuals either involved in Russia's aggression against Ukraine or close to Russian President Vladimir Putin (his "cronies"), plus sectoral sanctions and restrictions targeting the financial, energy (mostly oil), and defense industries.

The Trump administration has maintained the sanctions put in place by the Obama administration after Putin's attack on Ukraine in 2014, though possibly because Congress has blocked the administration from repealing sanctions without its consent.<sup>20</sup> In some cases, e.g., designating oligarchs who are close to Putin or targeting the Internet Research Agency (the St. Petersburg troll farm active in disinformation directed against the US elections in 2016), the administration has extended sanctions, including to respond to the Kremlin's interference in US elections. It has also continued to implement the Magnitsky Act (human rights sanctions).

But the administration has not significantly strengthened Russia sanctions, such as by imposing or strengthening sanctions against state financial institutions, although the headroom to do so exists.

Continued Kremlin aggression in a number of forms (against Ukraine, US and European elections, assassinations and assassination attempts, and developing against Belarus) has triggered congressional action to broaden Russia sanctions. Pending sanctions legislation with respect to Russia include the Defending American Security from Kremlin Aggression Act (DASKA) and the Defending Elections from Threats by Establishing Redlines Act (DETER) (there are other bills in less-advanced stages). DASKA provides for intensified financial, energy, and other sanctions in the event of additional Russian aggression, e.g., against US elections or Ukraine. DETER provides for similar sanctions in these areas but only in response to Russian interference in US elections. The PEES Act (Protecting Europe's Energy Security), which mandates additional sanctions intended to derail the Nord Stream II gas pipeline project from Russia to Germany, was enacted in December 2019. Its immediate targets include mostly European companies involved in various aspects of the pipeline project. A strengthened PEES Act is now part of the National Defense Authorization Act and expected to pass late in 2020. As of this writing, Republican and Democratic members of Congress were considering escalatory sanctions legislation to deter Russian aggression against Belarus.

In their initial phase, the Ukraine-related sanctions damaged the Russian economy and hit Putin's inner circle, and probably contributed to Putin's decision to back away from his most aggressive territorial claims against Ukraine. Because they were negotiated in advance with principal US allies, including the EU, they represented a coordinated transatlantic stand of resistance.

The Trump administration's handling of the Russia sanctions regime has been uneven. The administration botched the rollout of the "Kremlin Report" sanctions in early 2018, releasing a badly prepared public list filled with mistakes instead of drawing from the reportedly well-prepared classified list.<sup>21</sup> It compounded the error by launching ill-considered sanctions in April 2018 based on that list and, when faced with the unintended consequences of its sanctions on Putin ally Oleg Deripaska, had to spend months negotiating a way to walk them back (the result, Deripaska's partial divestiture from his Rusal aluminum company, is defensible if it holds up over time). On the other hand, in September 2020, the administration imposed sanctions on Russian intelligence asset (and Ukrainian lawmaker) Andrii Derkach for interfering in the US presidential elections, specifically for attempting to falsely smear Democratic presidential

19 Daleep Singh and Peter E. Harrell, *How to Increase Pressure if Diplomacy with North Korea Fails*, Atlantic Council and Center for a New American Security, June 2018, [https://www.atlanticcouncil.org/wp-content/uploads/2018/06/How\\_to\\_Increase\\_Pressure\\_if\\_Diplomacy\\_with\\_North\\_Korea\\_Fails.pdf](https://www.atlanticcouncil.org/wp-content/uploads/2018/06/How_to_Increase_Pressure_if_Diplomacy_with_North_Korea_Fails.pdf).

20 This was a central piece of (and motivation for) the Countering America's Adversaries Through Sanctions Act (CAATSA).

21 Julia Ioffe, "How Not to Design Russia Sanctions," *Atlantic*, January 31, 2018, <https://www.theatlantic.com/international/archive/2018/01/kremlin-report-sanctions-policy/551921/>.



A member of the Organization for Security and Co-operation in Europe (OSCE) works in Holubivske settlement affected by recent fighting between the armed forces of Ukraine and the separatist Lugansk People's Republic in Luhansk region, Ukraine February 19, 2020. *REUTERS/Alexander Ermochenko* <https://tinyurl.com/y63lo28o>

nominee and former US vice president, Joseph R. Biden, Jr.<sup>22</sup> This was all the more remarkable given that Derkach had been working with former New York Mayor Rudolph W. Giuliani and other pro-Trump figures.

Even when sanctions have been tough, however, Trump's statements of support for Putin seem to undermine whatever deterrent effect they were intended to produce. For example, after expelling sixty Russian diplomats and shuttering Russia's consulate in San Francisco, a solid response to the attempted assassination of former Russian intelligence officer Sergei Skripal in the UK in March 2018, Trump reportedly seethed at doing more than individual European nations and felt tricked by his own staff into being tougher than he intended.<sup>23</sup> Subsequent sanctions for Russia's use of a nerve agent in the attempt on Skripal's life were delayed by months and seen as an effort to do the bare minimum required under the law.

The professional levels in the administration appear to take the Russia sanctions programs seriously. But some at the top of

the administration seem to regard Russia sanctions as a mere defensive necessity in the context of US domestic politics, not a strategic tool to counter Russian aggression. That vitiates the impact that sanctions are intended to have. Appearing on CBS' *Face the Nation* on August 9, 2020, US National Security Advisor Robert O'Brien said that US sanctions on Russia were at a maximum. That was not true and with that answer the administration lost an opportunity to caution the Kremlin against aggression directed at the US elections, Ukraine, or Belarus, which is precisely the behavior the Russia sanctions program is intended to change or forestall.

This seems less a problem of sanctions implementation and more a reflection of the Trump administration's confusing approach to Russia generally. While the professional and even senior levels in the administration and many in both parties in Congress appear determined to resist Putin's aggression, Trump's persistent downplaying of Kremlin interference in the US elections, his view of Ukraine in terms of his personal political interests, and consistent support for Putin undercut the administration's

22 The US Department of the Treasury used Exec. Order No. 13848 directed against election interference. See, Exec. Order No. 13848, 83 FR 46843 (Sep 12, 2018).

23 Pat Ralph, "Trump Was Reportedly Furious That His Administration Was Portrayed As Tough on Russia After Expelling Diplomats from the US," *Business Insider*, April 16, 2018, <https://www.businessinsider.com/trump-wanted-to-expel-fewer-russian-diplomats-2018-4>.

ability to articulate a coherent Russia policy or work with Europe on a common approach.

### Recommendations for the Next Administration

Sanctions are intended to support a credible policy. The next administration should develop one with respect to Russia, including the articulation of thresholds of unacceptable Kremlin behavior, developed in consultation with allies, and execute it. Sanctions can advance that policy. Specifically, the United States and its allies should prepare to escalate sanctions should Kremlin aggression intensify, e.g., against Ukraine or Belarus, or through a new wave of assassinations. Escalatory options, especially in the area of financial sanctions, exist.<sup>24</sup> Blocking all new sovereign debt or targeting one or more Russian state bank or financial institution would be among the options. There is also room to expose more corrupt financial dealings by Putin and his circle using sanctions and other tools of financial statecraft.

A more credible and consistent policy on Russia might ease the pressure for new sanctions legislation; however well-intended, legislation is usually a second-best alternative to executive branch sanctions initiatives.

The United States and its allies must also prepare to remove sanctions should Russian behavior grow more responsible, e.g., with respect to US elections or should a deal be made that restores Ukrainian sovereignty to occupied portions of eastern Ukraine. The next administration will need to work with Congress to set the criteria for removal of sanctions and follow through if conditions warrant. The Crimean Peninsula is likely to remain in Russian hands for a longer period and Crimea-specific sanctions should remain. US Secretary of State Michael R. Pompeo's 2018 declaration of nonrecognition of Russian's claims of sovereignty over Crimea, modeled on the 1940 Welles Declaration about nonrecognition of Soviet annexation of the Baltics, is one example of solid policy from the Trump administration.

Germany's support for the Nord Stream II pipeline, which will carry gas from Russia directly to Germany, represents a bad policy call by the German government. Many prominent Germans have called for its cancellation in the wake of the attempted assassination of Russian

opposition leader Alexei Navalny. But unilateral US sanctions against German and other Western targets are a costly way to deal with it: the potential for damage to relations with Germany, a critical partner in dealing with Putin's aggression, is just too high, and the Trump administration gives the perverse impression that it is picking a fight with Germany for the sake of the fight, not for the sake of European energy security.

If the German government (wrongly, in our view) maintains its support for Nord Stream II, the next US administration should consider putting its weight behind mitigating Nord Stream II's strategic risks, working with the EU, Germany, Poland, and other stakeholders. That plan should include intensified work on LNG infrastructure; secondary pipelines to carry gas from Germany eastward and other energy infrastructure investments, including through the Three Seas Initiative infrastructure development project;<sup>25</sup> and rigorous implementation of the anti-monopoly provisions of the EU's Third Energy Package.<sup>26</sup> It should also include enhanced support to Ukraine, which will suffer financial losses from a loss of transit fees, possibly conditioned on Ukrainian adherence to its International Monetary Fund (IMF) program. Sanctions can support this plan, and we recommend the development of contingency sanctions against Russian targets should Russia abuse Nord Stream II by curtailing gas deliveries to any EU member state or violating its gas transit agreement with Ukraine.

## China

In what now seems like another world, in January 2020, the United States and China concluded Phase 1 of a trade deal that Trump said could lead to "a future of fair and reciprocal trade with China."<sup>27</sup> Currently, trade deals are off and sanctions programs (and punitive measures using other economic policy tools) directed against the world's second-largest economy have multiplied amid a plunge in relations that have yet to find a stable floor.

The Trump administration's sanctions actions include executive orders threatening sanctions against Chinese media companies TikTok and WeChat, sanctions designations of Hong Kong's leadership from July 2020, and the listing of Chinese telecom giant Huawei and numerous port and infrastructure companies on the Commerce Department's

24 See, for example, Daniel Fried and Brian O'Toole, *Pushing Back Against Russian Aggression: Legislative Options*, Atlantic Council, March 2020, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/pushing-back-against-russian-aggression-legislative-options/>.

25 David A. Wemer, "The Three Seas Initiative Explained," *New Atlanticist*, February 11, 2019, <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-three-seas-initiative-explained-2/>.

26 Richard L. Morningstar, András Simonyi, Olga Khakova, and Jennifer T. Gordon, *European Energy Security and the Critical Role of Transatlantic Energy Cooperation*, Atlantic Council, May 26, 2020, <https://www.atlanticcouncil.org/in-depth-research-reports/report/european-energy-security-and-the-critical-role-of-transatlantic-energy-cooperation/>.

27 Ana Swanson and Alan Rappeport, "Trump Signs China Trade Deal, Putting Economic Conflict on Pause," *New York Times*, January 15, 2020, <https://www.nytimes.com/2020/01/15/business/economy/china-trade-deal.html>.



Rushan Abbas, Executive Director of Campaign for Uyghurs, speaks to a group gathered near the White House to call on the U.S. government to respond to China's alleged abuses of a Muslim ethnic minority called the Uighurs, near the White House in Washington, U.S. July 3, 2020. *REUTERS/ Leah Millis* <https://tinyurl.com/yxs4bfxu>

Entity List. On July 1, 2020, the administration issued an advisory cautioning against “risks” for businesses with supply chain ties to Chinese firms engaged in forced labor and other human rights abuses in Xinjiang.

Recent China-related sanctions legislation include the Uyghur Human Rights Policy Act of 2020 and the Hong Kong Autonomy Act (the latter overlaps with one of the executive orders<sup>28</sup>); pending legislation in Congress includes the South China Sea and East China Sea Sanctions Act of 2019 that targets Chinese (e.g., companies and individuals) involved in any infrastructure project in contested areas of the South China Sea, and the STRATEGIC Act (Strengthening Trade, Regional Alliances, Technology, and Economic and Geopolitical Initiatives concerning China Act), which, among other things, provides for sanctions related to intellectual property theft and forced technology transfers.

Many of these sanctions target reprehensible or abhorrent behavior by the Chinese government, e.g., against Hong Kong and China's Uyghur community. In addition, China's government and state-run companies have been exploiting the Western economic system for many years, including through the theft of intellectual property and forced technology transfer, and have earned pushback. Trump administration leaders have strong arguments about the security risks of reliance on China's telecom champion Huawei. Aggressive Chinese behavior in the South China Sea, its bullying diplomatic style (“wolf warrior”), the often-predatory nature of China's Belt and Road Initiative, and more have burnt through much of the political capital China had accumulated in the world through years of more cautious behavior internationally. Pompeo, the US secretary of state, and other observers, including longtime China hands like Kurt Campbell, despite differences on what to do about it, have a point in noting that one of the premises of engagement with China starting in the 1970s—that

28 Exec. Order No. 13936, 85 FR 43413 (Jul 14, 2020).

economic integration would lead to political mellowing and ultimately to liberalization—has been proven wrong.<sup>29</sup>

Given this, a general reassessment of China policy, including pushback through sanctions and other economic policy tools, was going to occur under any US administration.

The Trump administration's policy, however, appears to be seeking too much: not changes in Chinese behavior in the most egregious areas but regime change, which seems a default setting for this administration. While not put explicitly, the administration's recent language focuses less on Chinese President Xi Jinping's policies and actions—externally aggressive and internally repressive—and more on the essential nature of the Communist Party of China (CPC). That doesn't leave a lot of room for changing behavior while also living with a major power and viable competitor which, like it or not, China has become.

Sanctions seem warranted as a response to Chinese repression in Hong Kong and atrocities against Uyghurs, and in other select cases, e.g., North Korea. One good example of the Trump administration's actions was the July 31, 2020, sanctions designation of major cotton producer XPCC (the Xinjiang Production and Construction Corps) due to its role in human rights abuses against Uyghurs.<sup>30</sup> But the Trump administration took this and other steps on a unilateral basis and without apparent diplomatic follow-up, a weaker approach than assembling an international coalition around a common goal. Instead of a strategy to contain China's worst behaviors and expand US influence in Asia, the administration has resorted to merely using the private sector as a cudgel against Chinese business.

### Recommendations for the Next Administration

Sanctions need to be a supplemental, not primary, tool applied to the world's second-largest economy, and intended to support a general strategic and economic readjustment with China, not simply an economic cold war. In addition, a China sanctions program needs to be as multilateral as possible.

The next administration should seek to induce China to play by international rules, not its own rules that Beijing changes when it wants. The United States should not seek to crush the Chinese economy or remove the CPC, a policy objective

beyond reasonable means. The financial damage done to the United States and the world if the administration attempted to apply Iran-level sanctions on China would be profound; there is no sense in such measures that would harm the United States as much as China. In a longer-term historic context, should the United States and its allies succeed in depriving China of its current ambition to game and possibly remake the international system according to its values, the impact on China may be profound; we should not regard its current political character or strategic profile as a final one.

Tools of economic statecraft other than sanctions may be more suitable. Specifically, the United States should mobilize key allies in Asia and Europe and use the preponderant economic power of these democracies in combination to set and enforce standards—in trade; intellectual property rights (IPR); corporate and investment transparency, openness, and general reciprocity; and more. This might be accomplished through cooperation between the Committee on Foreign Investment in the United States (CFIUS), the US government's national security screening mechanism for foreign investment, and its emerging EU counterpart. Technology transfer restrictions and policies to diversify critical supply chains also have a place and such efforts should be multilateral. As many have observed, the United States pulling out of the Trans-Pacific Partnership (TPP) makes no sense in this context; a better alternative might be to align Pacific and Atlantic trading systems, e.g., “free world trade area,”<sup>31</sup> positioning the United States to deal with China (and Russia, a lesser but also adversarial authoritarian power). The goal is not economic warfare but a sustainable and equitable playing field.

Such a determined strategy in pursuit of more practical goals could generate allied support: over-aggressive Chinese diplomacy has alienated previously well-disposed governments around the world so much so that even the Trump administration, not known for effective diplomacy with allies, has gained traction in its arguments about China.

### Human Rights Sanctions

Human rights sanctions are a rare case of the Trump administration surpassing the Obama administration on any human rights issue.

29 US Secretary of State Michael R. Pompeo, “Communist China and the Free World's Future,” speech to the Richard Nixon Presidential Library and Museum, Yorba Linda, California, July 23, 2020, <https://www.state.gov/communist-china-and-the-free-worlds-future/>; and Kurt M. Campbell and Jake Sullivan, “Competition Without Catastrophe,” *Foreign Affairs*, September/October 2019, <https://www.foreignaffairs.com/articles/china/competition-with-china-without-catastrophe>.

30 US Department of the Treasury, Treasury sanctions Chinese entity and officials pursuant to Global Magnitsky human rights executive order, press release, July 31, 2020, <https://home.treasury.gov/news/press-releases/sm1073>.

31 As proposed by the Atlantic Council's Ash Jain and Matthew Kroenig. See, Ash Jain and Matthew Kroenig, *Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System*, Atlantic Council, October 30, 2019, <https://www.atlanticcouncil.org/in-depth-research-reports/report/present-at-the-re-creation/>.

Congress enacted the Global Magnitsky Human Rights Accountability Act in December 2016. GloMag, as it is termed, gave global applicability to the original Magnitsky Act of 2012, which provided for human rights sanctions against Russians involved in the persecution and death of Russian tax auditor Sergei Magnitsky and those responsible for other “gross violations” of human rights. The Magnitsky Act was popular with human rights groups (both US and Russian) and in Congress, and Congress sought to broaden its geographic applicability to all countries.

Although the Obama administration implemented the Magnitsky Act, working with US, European, and Russian human rights groups, it resisted passage of GloMag out of concern over potential profligate overuse or inability to use the tool evenly. Led by then-Treasury Undersecretary Sigal Mandelker, the Trump administration supported GloMag and implemented it with a will. In December 2017, it issued an implementing executive order (E.O. 13818) that provided for sanctions against those responsible for “serious human rights abuse” and officials, current or former, responsible for corruption.

One of GloMag's advantages is that it provides for sanctions against individuals for human rights abuses or corruption without requiring a new executive order (and declaration of national emergency) with respect to each additional country. Canada and the UK have enacted their own versions of GloMag; the UK announced its first GloMag sanctions in July 2020.<sup>32</sup> The EU is considering creating its own GloMag authority.

The US government has used GloMag authorities to target officials and others in Nicaragua, Myanmar, Saudi Arabia (related to the murder of Saudi journalist and dissident Jamal Khashoggi), Iraq, South Africa, Cambodia, Latvia, Serbia, Slovakia (related to murder of journalist Ján Kuciak and his fiancée, Martina Kušnírová, a major scandal in that country that resulted in the fall of the government), and China (for the repression of Uyghurs in China's Xinjiang region).<sup>33</sup> The administration is also preparing sanctions against Belarusian officials responsible for recent human rights violations related to the fraudulent presidential elections in August 2020 and subsequent brutal crackdown on anti-government protesters by Alexander Lukashenko's regime. Either GloMag or existing Belarus sanctions authorities could be used.

This is a solid track record, and much of the credit goes to the civil servants helping drive the policy implementation.



Gultaz Begum, who said she fled from Myanmar with her seven children after she was shot in the eye, her husband killed and village burnt, rests at the ward for Rohingya refugees in Sadar hospital in Cox's Bazar, Bangladesh September 28, 2017. Picture taken September 28, 2017. REUTERS/Damir Sagolj <https://tinyurl.com/yxj3m552>

Some criticism has been made of the administration's choices, e.g., whether more senior Saudi officials should have been sanctioned for the murder of Khashoggi, a US permanent resident, and whether the Trump administration will use GloMag authorities to respond to the attempted poisoning of Navalny, the Russian opposition leader. These are fair points; any human rights sanctions regime would require choices, but the Trump administration's broader inconsistency on human rights may be an obstacle to its future implementation of GloMag and other human rights sanctions.

### Recommendations for the Next Administration

The Trump administration has implemented GloMag with credibility. The next administration could make even better use of GloMag by tightening its coordination with those democracies that have similar programs (the UK and Canada, notably) and encouraging the EU to develop and then implement its own GloMag authorities. It appears that the Trump administration is working with Europe on Belarus-related sanctions, a welcome step. It, and the Biden administration, should proceed, maintaining high (and consistent) standards for designation and act, when possible, in concert with Europe and others. A US administration with a more credible voice on human rights and support for democratic standards may be able to build on an already good foundation.

32 Patrick Wintour and Luke Harding, “UK on Collision Course with Saudis Over New Human Rights Sanctions,” *Guardian*, July 6, 2020, <https://www.theguardian.com/law/2020/jul/06/dominic-raab-to-announce-uk-sanctions-against-human-rights-abusers>.

33 US Department of State, Global Magnitsky program designations for corruption and serious human rights abuse, media note, December 10, 2019, <https://www.state.gov/global-magnitsky-program-designations-for-corruption-and-serious-human-rights-abuse/>.

## Fixing Sanctions Policy

Sanctions will remain a useful policy tool, part of a set of tools of economic statecraft, and the next administration and Congress will continue to turn to it. The Trump administration's record on sanctions includes some reasonable and capable implementation, e.g., the initial period of the "maximum pressure" campaign against North Korea, human rights sanctions, and developing a like-minded coalition on Venezuela.

The administration's weaknesses in sanctions policy implementation, however, are more profound and reflect its overall challenges in formulating and implementing foreign policy. These weaknesses include sloppy execution (especially with respect to Russia sanctions), mixed messages (e.g., Trump's accommodating rhetoric with respect to Putin and Kim), a persistent mismatch between maximalist policy objectives and available policy tools (e.g., with respect to Iran and, judging by the past several months of heated administration rhetoric, China), and, at a strategic level, a frequent failure to mobilize allies around common objectives that sanctions are intended to achieve (Venezuela is a happy exception and Belarus sanctions may be another).

While the administration has maintained the institutional integrity of OFAC, the most important US government institution with respect to sanctions, it dismantled much of the State Department's sanctions apparatus, including the sanctions coordinator's office, weakening its ability to work with allies on common sanctions approaches and to integrate sanctions into larger foreign policy objectives.

The result has too often been poor use of sanctions to seek unachievable policy outcomes within unrealistic timeframes, while piling up more and more fights with friends and allies. Such use of sanctions risks isolating the United States, undermining the point of sanctions in the first place.

Peter Harrell, our former State Department colleague who helped design the sanctions response after Russia's attack on Ukraine in 2014, was so concerned about the Trump administration's potential abuse of sanctions authority that he advocated amending the underlying sanctions legislation, IEEPA (the International Emergency Economic Powers Act of 1977), to limit executive branch discretion.<sup>34</sup> He is not alone in this.

It's fair to ask whether IEEPA's emergency powers are too sweeping to put in the hands of any president, a question we have to ask because of Trump's record of disregard for norms and law, and Harrell's article offered thoughtful remedies. But those remedies would involve giving more power to Congress to oversee (and slow) sanctions. An argument can be made for doing so. But Congress already has the power to check Trump's bad sanctions policies (and sometimes has, e.g., through CAATSA's provision that limited the administration's ability to rescind Russia sanctions without congressional input).<sup>35</sup> Weakening executive authority to implement sanctions as a response to concern about the Trump administration's record and potential for abuses of sanctions authority is worth examining, but not in a rush, and not at the expense of the tool's utility in a crisis.

In some areas, executive discretion should be strengthened. It has long been OFAC policy to allow humanitarian trade and a general carveout in exchange for informational products and services has been covered by the Berman Amendment to IEEPA.<sup>36</sup> But experience suggests that additional discretion and updating could be useful. Treasury has long resisted issuing "comfort letters" with respect to specific arrangements, including humanitarian trade, but these might prove a useful tool in the future if Treasury can do so in a fair and consistent manner. Treasury should also retain its licensing authority to deal with unintended consequences of sanctions, which will multiply as sanctions programs expand, and operational flexibility to lift sanctions. Legislative restrictions on sanctions flexibility with respect to Russia were unfortunate though understandable given congressional lack of confidence in Trump's intentions toward Putin. The Hong Kong Autonomy Act contains similar (also unfortunate) restrictions. Greater congressional confidence in a future administration may end such restrictions.

At the strategic level, fixing sanctions policy can be achieved short of legislation; it is a policy challenge, but achievable. This paper offers above specific recommendations for fixing major sanctions regimes. Underlying these, and in thinking about future sanctions policy, it recommends the following principles:

34 Peter E. Harrell, "How to Reform IEEPA," *Lawfare*, August 28, 2019, <https://www.lawfareblog.com/how-reform-ieepa>.

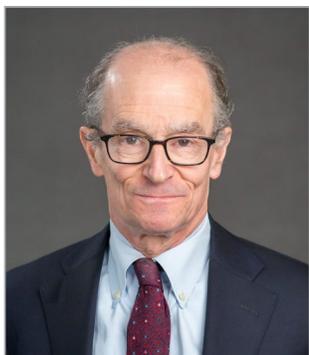
35 Daniel Fried and Brian O'Toole, *The New Russia Sanctions Law: What It Does and How to Make It Work*, Atlantic Council, September 2017, [https://www.atlanticcouncil.org/wp-content/uploads/2017/09/The\\_New\\_Russia\\_Sanctions\\_Law\\_web\\_0929.pdf](https://www.atlanticcouncil.org/wp-content/uploads/2017/09/The_New_Russia_Sanctions_Law_web_0929.pdf).

36 Christopher A. Casey, Ian F. Fergusson, Dianne E. Rennack, and Jennifer E. Elsea, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, Congressional Research Service, 12, July 14, 2020, <https://fas.org/sgp/crs/natsec/R45618.pdf>.

- Keep objectives in rough harmony with means;
  - Don't use sanctions as short-term media strategy, i.e., to "show resolve," unless they make sense on their merits (a principle easier said than followed);
  - Don't get greedy or impatient, or race for the big, showy win;
  - Don't knock incremental steps forward. Sanctions add relative pressure on their target, and that may bring about some movement toward US objectives: more than nothing but less than surrender. Don't race to conclude a bad deal, but don't dismiss interim arrangements if they work for the United States and its friends;
  - Articulate an "endgame" at the beginning. Tie sanctions to particular behavior and make clear that sanctions will go away when that behavior does. Maintain the credibility of sanctions by staying true to those public commitments;
  - Bring allies along, with respect to both objectives and sanctions specifics. Don't just move unilaterally and push them to follow. To the extent possible, design common or compatible sanctions with them. Most major sanctions programs already have some history of multilateral cooperation or coordination that could be strengthened or restored (Iran). It might be possible to do the same for China and especially human rights sanctions (related to Belarus and Russia after the attempted assassination of Navalny);
  - Embed sanctions within overall strategies designed to capture as much international support as possible. Since we face a Putin challenge, don't pick gratuitous fights with Germany; since we face a China challenge, don't blow off a countervailing trade regime with our Pacific friends (TPP); and
  - Remember that sanctions are only one tool of economic statecraft and should be combined with others: export controls; improved financial, real estate, and corporate (e.g., LLC) transparency, especially regarding beneficial owners; broadened anti-money laundering; and more, ideally designed in coordination with Europe, G7, and other financial centers.
- Above all, as Lew pointed out, remember that the structure of the international system gives the United States a natural advantage in the use of the dollar and other tools of economic statecraft. Weakening that system out of frustration or pique risks doing long-term damage to the United States and the system that we built, defended, and enlarged, and that served us and the world well for seventy-five years.

## About the Author

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### Daniel Fried

In the course of his forty-year Foreign Service career, Ambassador Fried played a key role in designing and implementing American policy in Europe after the fall of the Soviet Union. As Special Assistant and NSC Senior Director for Presidents Clinton and Bush, Ambassador to Poland, and Assistant Secretary of State for Europe (2005-09), Ambassador Fried helped craft the policy of NATO enlargement to Central European nations and, in parallel, NATO-Russia relations, thus advancing the goal of Europe whole, free, and at peace. During those years, the West's community of democracy and security grew in Europe. Ambassador Fried helped lead the West's response to Moscow's aggression against Ukraine starting in 2014: as State Department Coordinator for Sanctions Policy, he crafted U.S. sanctions against Russia, the largest U.S. sanctions program to date, and negotiated the imposition of similar sanctions by Europe, Canada, Japan and Australia.

Ambassador Fried became one of the U.S. government's foremost experts on Central and Eastern Europe and Russia. While a student, he lived in Moscow, majored in Soviet Studies and History at Cornell University (BA magna cum laude 1975) and received an MA from Columbia's Russian Institute and School of International Affairs in 1977. He joined the U.S. Foreign Service later that year, serving overseas in Leningrad (Human Rights, Baltic affairs, and Consular Officer), and Belgrade (Political Officer); and in the Office of Soviet Affairs in the State Department.

As Polish Desk Officer in the late 1980s, Fried was one of the first in Washington to recognize the impending collapse of Communism in Poland, and helped develop the immediate response of the George H.W. Bush Administration to these developments. As Political Counselor at the U.S. Embassy in Warsaw (1990-93), Fried witnessed Poland's difficult but ultimately successful free market, democratic transformation, working with successive Polish governments.

Ambassador Fried also served as the State Department's first Special Envoy for the Closure of the Guantanamo (GTMO) Detainee Facility. He established procedures for the transfer of individual detainees and negotiated the transfers of 70 detainees to 20 countries, with improved security outcomes.

Ambassador Fried is currently a Weiser Family Distinguished Fellow at the Atlantic Council. He is also on the Board of Directors of the National Endowment for Democracy and a Visiting Professor at Warsaw University.

Dan Fried has been married to Olga Karpiw since 1979; they have two children (Hannah and Sophie), and are the besotted grandparents of Ava Helen Fried Hanley.

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