

Preventing Odious Obligations: A New Tool to Pressure Syria's Bashar Assad

Kimberly Ann Elliott and Owen Barder

March 2012

CGD Notes

Sanctions have not stopped the Assad regime from buying weapons from Russia, or from trying to sell oil. It's time to try a new tool that would strengthen existing measures: preemptive contract sanctions.

Countries that throw off a repressive dictator are too often left saddled with illegitimate and odious obligations. To maintain access to international credit markets, legitimate successor governments must honor these debts and comply with other contracts negotiated by the prior regime, even if the proceeds were stolen or used to violently repress opposition.

Syria today epitomizes this mortgaging of the future. The regime of President Bashar Assad has killed thousands of people since protests began last year. The Arab League, United States, and European Union have condemned the violence and imposed strong sanctions against Syria's oil sector and central bank. But these have not stopped the regime from buying weapons from Russia, or from trying to sell to China and other countries the oil the United States and European Union refuse to buy.

Preemptive Contract Sanctions

It's time to try a new tool that would strengthen existing measures: preemptive contract sanctions. This would take the form of a declaration that any *new* contracts with the Assad regime are illegitimate and need not be honored by a legitimate successor government. Such a declaration would discourage new contracts with or loans to the regime because of the increased risk that that they would be repudiated by a successor government.

Discouraging new contracts would make it harder for the regime to sustain itself. It could encourage senior

officials or military officers to abandon the regime and cause outsiders considering doing business with the regime to drive a harder bargain. If contracts are signed despite such a declaration, it would lessen the burden on a legitimate successor government, which could repudiate such contracts without endangering access to international credit markets.

How would this work? Suppose the United States and the United Kingdom, which are home to the world's leading financial centers, acting with support of the European Union and the Arab League, announced that any new contracts signed with the Assad regime are illegitimate. How would governments and firms considering doing business with Assad respond? Would Russians continue to sell weapons, knowing they might not get paid and that their contract could not be enforced? Would China and other countries risk investing in Syria's oil sector, knowing that the contract—and promised oil deliveries—could be repudiated if the Assad regime falls?

Beyond Trade Sanctions

Unlike traditional trade sanctions, preemptive contract sanctions are self-enforcing. Trade sanctions offer those who violate them a windfall: potential profits increase since competition from those who comply with the sanctions has been eliminated. In contrast, preemptive contract sanctions increase the risk for those who would violate them. The incentive to sign a long-term contract with the target regime is decreased.



CGD is grateful to its funders and board of directors for support of this work. The views expressed are those of the author and should not be attributed to the board of directors or funders of the Center for Global Development. Some Rights Reserved. Creative Commons Attribution-NonCommercial.

Declaring new contracts to be illegitimate may not have large, immediate effects, but it would further isolate the regime and signal that the squeeze will get tighter over time.

Who Declares?

In theory, preemptive contract sanctions could work even if the declaration were made only by the governments of the United States and the United Kingdom, since they are home to the world's leading financial centers and the courts that enforce international contracts. In practice, however, such a declaration would be greatly strengthened by an international consensus that includes key developing countries and the endorsement of relevant regional bodies. This would help to ensure that declaration is made in the interests of the affected country, not the parochial foreign-policy interests of outsiders. But unlike many trade sanctions, contract sanctions do not require international unanimity—or a UN Security Council resolution—to be effective.

Criteria for a Declaration

What conditions would define a regime as being so odious that its contracts should be declared illegitimate? A wide body of internationally agreed norms, charters, and treaties provides some basis for deciding. The CGD Working Group on the Prevention of Odious Debt recommended that a declaration of illegitimacy and preemptive contract sanctions be considered for use against regimes that

1. employ military coercion, abuse the human rights of their people, perpetrate electoral fraud, and suppress basic democratic rights; or,
2. engage in massive corruption and widespread mismanagement of public funds, including placement of public funds in private foreign bank accounts and using resources to repress the population.

Syria clearly meets at least the first criterion.

Using Every Tool Available

President Barack Obama has called on the United States and its allies to consider “every tool available” to stop the slaughter in Syria. The British Prime Minister David Cameron has said “Britain needs to lead the way in making sure that we tighten the sanctions, travel bans and asset freezes on Syria.” Preemptive contract sanctions are a potentially powerful new tool to support these goals. While such a declaration would not have large, immediate effects, it would further isolate the regime and signal that the squeeze will get tighter over time.

The failure of the international community to stop Assad's assaults means that more innocent lives will be lost. Calling contracts signed with this regime, in the midst of such violence, what they are—odious and illegitimate—and raising the risk for companies or governments willing to sign them is surely worth a try.

For information on the theory and practice of preemptive contract sanctions, see *Preventing Odious Obligations: A New Tool for Protecting Citizens from Illegitimate Regimes*, a report by the Working Group on the Prevention of Odious Debt (2010).