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The courts can cut off Assad's supply line

By Owen Barder

The support that sustains Syria's agony is the regime's weakness, writes Owen Barder



No end is in sight to the violence in Syria. In the two years since Bashar al-Assad's regime began to suppress peaceful protests, more than 70,000 people are estimated to have died. Last month was the deadliest so far. The regime continues to kill and the number of refugees continues to climb. There are new allegations that the government is using nerve gas.

The opposition within Syria is still fragmented. As the civil war in Syria worsens, the international community is under pressure to act. But the Friends of Syria, a group of international bodies and interested countries that supports a swift and peaceful end to the Assad regime, is running out of options.

Yet few courses of action come without serious political or financial trade-offs. The predicament has been worsened by disagreement among European governments, the US and the Arab League on whether and how to assist the opposition. There is little support for armed intervention, and disagreement about whether the rebels should be armed.

But there may be a way: President Assad needs new financial and other resources to continue his repressive rule. So-called pre-emptive contract sanctions, a concept devised by the Center for Global Development, would make it harder for him to get such resources.

The plan is simple. In short, any new contracts with the Assad regime would not be recognised in the courts of any other nations. And anyone doing business with the Assads would find that their contracts would be deemed to be unenforceable against any successor regime in Damascus.

In the immediate future, it would help to turn up the pressure on the government in Damascus. It would probably be sufficient for the US and the EU to make such a declaration, but it would gain greater legitimacy if it were endorsed by the Arab League and the Friends

of Syria.

The US, EU and Arab League have imposed tough trade and financial sanctions. But because Russia and China have blocked a UN agreement on global sanctions, other countries have supported Mr Assad through arms sales, oil purchases and financing, including a \$550m Russian contract for fighter jets in 2012 and seven energy investment contracts from Iran in 2013. Contract sanctions would undermine this type of support.

Furthermore, pre-emptive contract sanctions would close an indefensible loophole in the existing sanctions regime. At the moment, US and EU courts can be called upon to arbitrate on contracts between the Assad government and citizens of other countries – even though the same transactions would be prohibited for their own companies and citizens because of existing sanctions.

Traditional trade sanctions can be self-defeating because they make it more profitable to do business with pariah regimes for people outside their reach or who are willing to break the law. Pre-emptive contract sanctions, by contrast, can help to make sanctions self-enforcing. Anyone who would be tempted to profit from sanctions-busting will be forced to think twice because their contracts are potentially worthless and unenforceable.

This style of sanction has other useful features. A decision by the US and EU to implement pre-emptive contract sanctions would demonstrate support for opposition without having to favour one group over another. Furthermore, whatever the composition of a future legitimate government in Syria, it would get a better start if it did not have to repay debts being run up by its predecessor.

If a legitimate successor regime can repudiate the contracts without damaging their reputation in world markets, it would raise the price of finance for the Assad regime without increasing the returns on sanctions-busting or harming its own prospects.

Implemented in concert with traditional sanctions and humanitarian aid, pre-emptive contract sanctions are a viable option that could strengthen the international response and support for the opposition, protect the Syrian people from having to repay illegitimate obligations covered by the declaration – and squeeze Mr Assad by reducing the profits on doing business with him.

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