

BULLETIN

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Political Relevance of Economic Sanctions Against Libya

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After almost two weeks of indecision about the situation in Libya, the U.S., the UN and the EU successively adopted economic sanctions. As the measures do not directly limit the regime's capacity to continue acts of violence, the significance of the sanctions will be mainly political. They might, however, play a unifying role for somewhat confused international community, who shall decide upon a much-needed broadening of the measures in the coming days.

In response to acts of violence against the civilians demanding the resignation of Muammar Qaddafi, the U.S., the UN Security Council and the EU adopted sanctions. The international community was perplexed about how to stem further acts of violence. UN Resolution 1970 (2011) was adopted unanimously, though subject to reservations, which limits the possibility of a smooth modification of the sanctions regime.

China stressed the importance of ensuring the safety and interest of foreign nationals in Libya. Russia explicitly opposed any "counterproductive interventions," stating that the purpose of the resolution was to end the violence and to preserve the united sovereign state and its territorial integrity. Even democratic States do not share the same grounds for justifying sanctions. Mediterranean states focused on the implications for regional security and stability of a mass exodus from North Africa (in reaction to rapid inflow of refugees Italy declared on February 12 a state of humanitarian emergency). This also was voiced by Portugal's representative to the UN SC. From countries farther away there was greater concern about the inviolability of human rights (noted by the U.S.) and the possible criminal responsibility of Libyan leaders (expressed by Germany). Eventually the reaction to acts of violence came with a considerable delay. The narrow scope of sanctions might have a limited impact on the situation (empirical studies show that the effectiveness of economic sanctions applied between 1970 and 1999 amounts to 26%, only when applied under the right set of circumstances).

U.S. Sanctions. First, the U.S. adopted sanctions freezing property and prohibiting certain transactions. The personal scope of the decision adopted on 25 February includes Muammar Qaddafi and four members of his family, high state officials, people cooperating with the regime and their family members, as well as government and Libyan Central Bank assets. Acts whose purpose or effect would be to evade or avoid the sanctions are prohibited. This implies the suspension of any contracts with the Libyan state or its officials, which is crucial for the efficiency of the adopted measures (and omitted in the U.N. resolution). At the same time, sanctions neither directly limit the regime's instruments of repression (including mercenaries) nor do they constrain the regimes' political power (as would an oil embargo).

Without the legal framework of a UN SC resolution, sanctions were adopted in accordance of the American president's constitutional prerogative to protect national security and foreign policy. As stated in the preamble of the executive order, acts of violence against civilians and the increased number of refugees, according to the UN SC, do not constitute a threat to regional peace and security, so the possibility to exercise a right of self-defence appears disputable.

UN and EU Sanctions. On 26 February, the UN SC adopted an arms embargo, a travel ban and froze the assets of certain people. Resolution 1970 condemns acts of violence against civilians,

deplores gross and systematic violations of human rights and the plight of refugees. As compared to the executive order, the wording of the Resolution appears cautious. Most importantly, the Council did not expressly legally qualify the situation as a threat to regional peace and security, though the adoption of sanctions upon the basis of UN Charter Art. 41 suggests some threat was perceived. Otherwise the decision would lack legal grounds since the SC does not have the authority to apply coercive measures in order to enforce obligations under international law (e.g., respect for human rights). Also the Resolution states Libyan authorities violated a legal duty to protect the population, which in practice until now was formulated categorically only occasionally. Given the lack of legal qualification of the situation as a threat to international peace and security, a suggestion that recent events amount to a crime against humanity and the referral of the matter to a prosecutor at the International Criminal Court is surprising. At the same time, it has no impact on the validity of immunity for the head of state, or the jurisdiction of the ICC (since Libya is not party to the Rome Statute).

The scope of the sanctions is very narrow. An intelligent arms embargo (including humanitarian exemptions) is restricted to the Libyan state, even though the American executive order notes the use of mercenaries from states not subject to sanctions. Without a freeze of government and Central Bank assets, sanctions do not restrain the regime's capacity to recruit and arm fighters from abroad. The Security Council also put a travel ban on 16 regime officials and froze the property of six Qaddafi family members. This includes one more person than listed in the U.S. sanctions, but does not freeze the assets of high officials and public properties. These measures will not harness the violence and will, at best, constitute an obstacle to Qaddafi's flight from the country, which could be the more humanitarian end to the current crisis. Most importantly, the Resolution does not contain a clause rendering all contracts null and void or suspended automatically, thus compromising the goals of the Resolution. This alone justifies the unaltered application of those contracts; yet the Security Council further specified that the Resolution does not impede the application of contracts signed prior to the designation of sanctioned persons. This way, depending on political will, sanctions effectiveness might be in fact restricted to relations established after 26 February. The problem already was reflected by controversies surrounding the 2008 friendship, partnership and cooperation treaty with Italy. Finally, the return to the UN SC practice of a "reversed veto" merits attention; that is to say sanctions will be applied until all permanent members agree to lift them, which is difficult in view of formal statements.

On 28 February, acting on the basis of Resolution 1970, the EU Council also adopted sanctions. In comparison to the UN sanctions, the travel ban was extended to 10 more people and assets frozen for 20 more people. However, experience such as the 1990 sanctions on Haiti show that when contracts with non-democratic states do not include a reference to human rights or democratic standards, even a flagrant violation does not constitute grounds for suspension or rescission of the contracts. Faced with the fundamental weakness of the UN SC Resolution not invalidating or suspending contracts automatically, there is no obstacle to their further application, and the wider personal scope of the sanctions is rather a political demonstration.

Support for Democratic Changes. The current situation constitutes a test of western support for democratic changes in the Arab world, for which the former solicited. In a letter to HR Catherine Ashton dated 16 February, foreign affairs ministers from Southern EU states called for greater assistance to the Union for the Mediterranean, recognising the rapid democratisation of the region. Events in the Arab world are a challenge for the Union's solidarity. Should the growing feeling of solitude by some members faced with the emergency remain unanswered, one should not expect support for appeals concerning the development of Eastern politics. Both for the Polish presidency, for which the Eastern Partnership constitutes a top priority, and for the entire European Partnership policy, the upcoming weeks might be a turning point.

The lack of unanimous reaction from the UN (and totally different European and EU sanctions philosophies) send an equivocal message to societies fighting for democracy. At the same time, strong condemnation of Qaddafi's conduct as a threat to international peace and security would paradoxically contribute towards the escalation of regional tensions, which justifies the reticence of the UN. What should be feared most now is the persistence of cacophony amongst democratic states. Despite sanctions' political significance in their current shape, which probably won't prevent the regime from further acts of violence, they may constitute an important step towards unification of the international community in response to the crisis.