

Sri Lanka: The failure of EU human rights sanctions

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>>> The EU's response to human rights violations at the end of Sri Lanka's civil war seems to represent a case of Europe 'acting tough' on human rights. Certainly, the EU has taken important steps to pressure the Sri Lankan government. As Sri Lanka's biggest export market and fourth largest donor, it might expect to wield significant influence. However, it has had little impact for three key reasons. Firstly, the EU has been undercut by regional superpowers China and India. Secondly, it failed to respond in a timely fashion to political trends and opportunities within Sri Lanka. Thirdly, it did not effectively coordinate its response. The result is that despite the EU's critical stance, in Sri Lanka human rights abuses continue unchecked, democracy is being undermined and the EU's influence is weaker than ever.

SRI LANKA'S CRISIS

The final months of Sri Lanka's civil war saw war crimes committed by both sides, as the military finally defeated the Liberation Tigers of Tamil Eelam (LTTE). Since the end of the war the Sri Lankan government has not offered a political solution to the ethnic grievances underlying the conflict and has rejected international calls for a full independent inquiry into the conduct of the war. Instead, President Rajapaksa is using his political capital from winning the war to strengthen presidential power and undermine democracy. The rival candidate from last January's presidential elections is in prison; journalists and activists face intimidation; and in October 2010 the government amended the constitution to allow the president to stand for election an unlimited number of times and appoint all top judges.

HIGHLIGHTS

- EU efforts to put pressure on Sri Lanka have been undermined by China and India, who compete for influence in the country.
- Western powers failed to respond to the changing political situation in Sri Lanka or to maximise opportunities for influence.
- Lack of effective internal and external coordination has limited the impact of EU human rights sanctions.
- Human rights promotion in South Asia must take better account of China-India power dynamics.

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»»»»» EU member states began to act on human rights concerns following the end of the ceasefire in 2006. Some froze development aid, while others increased the emphasis on human rights within their assistance. As the war escalated in spring 2009, EU members pushed unsuccessfully for international action, both at the UN Security Council (UNSC) and the UN Human Rights Council. In July 2009 three EU countries abstained from an IMF vote on loans to Sri Lanka in protest at the situation.

In a relatively rare move, in July 2010 the EU withdrew Sri Lanka's access to the Generalised System of Preferences Plus (GSP+) preferential trade system because of its failure to implement human rights conventions. GSP+ offers trade incentives for countries that meet governance and development requirements. Sri Lanka is only the third country to have suffered GSP+ removal (after Burma and Belarus).

Sri Lanka still has access to the standard GSP scheme. It is estimated that GSP+ saved Sri Lanka EUR 78 million in import duties in 2008 compared with the standard GSP, around 6 per cent of its total exports to the EU. This is a relatively small amount and suggests that the loss of GSP+ will not have any major impact on the Sri Lankan economy or the Rajapaksa regime. Despite the fact that 39 per cent of Sri Lanka's exports go to the EU, the government did not even respond to the EU's offer to delay GSP+ withdrawal in return for a plan to improve human rights.

REGIONAL POWER DYNAMICS

The main factor that has enabled Sri Lanka to ignore international pressure on human rights is the strategic interest of China in Sri Lanka and the challenge that this poses to India, the traditional regional power.

China's 'string of pearls' policy to create a chain of ports to secure its trade routes across the South China Sea, Indian Ocean, Arabian Sea and Persian Gulf gives Sri Lanka strategic importance. Moreover, the

election of anti-Western President Rajapaksa in 2005 has given China the opportunity to position itself as Sri Lanka's key ally, providing military and development assistance as the government turned away from its Western partners.

Adopting its traditional position of non-interference, China provided political protection to Sri Lanka during the conflict, thwarting EU and US efforts to mobilise international action. China blocked efforts by France, Britain and the US to get Sri Lanka onto the UNSC agenda, and ensured that when the UNSC did discuss the situation, it did not result in a resolution. Likewise, China helped to block any meaningful outcome from a Special Session on Sri Lanka at the UN Human Rights Council.

China is rapidly expanding its aid to Sri Lanka, reportedly passing Japan to become the country's biggest donor in 2009. China provided military support to Sri Lanka during the conflict and the two countries recently announced plans to 'deepen military ties'. China is also providing vast sums to rebuild Sri Lanka's infrastructure.

India is deeply concerned that China's policy is undermining its power within South Asia, and its response to the Sri Lanka crisis is influenced by these concerns. While India has a long and murky history of involvement in the Sri Lankan conflict, since 2002 it has taken a lower profile role and allowed the international community to lead the peace process. However, seeing China's influence in Sri Lanka grow as the conflict spiralled, India became more proactive in its support of the Sri Lankan government. It has provided financial and military assistance and helped to block action at the UN Human Rights Council.

Given the dynamics of South Asian regional politics and India's standard position of non-interference, India was never going to support international criticism of Sri Lanka. Nonetheless, it has been known to apply strong diplomatic pressure for conflict resolution within its region, as seen recently in Nepal. However, in this case the need to compete with China, combined with the Congress Party's hatred of the LTTE, overrode internal pressures from India's

Tamil population. This robbed the EU of a powerful ally that could have put significant pressure on the Sri Lankan government.

While the EU cannot compete with Chinese and Indian influence in Sri Lanka, it must take greater account of these regional dynamics. The EU must make the Sri Lanka situation part of its dialogue with South Asian governments. In particular, the EU should increase pressure on India. It should reinforce Obama's recent message to Delhi that 'with increased power comes increased responsibility'. India is vulnerable to this message, because of its international ambitions and the emphasis on its democratic identity, as well as political pressure from its Tamil constituency.

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Judging from the December 2010 EU-India summit, the EU does not appear to be doing this. Although the Joint Statement includes specific references to regional issues and other South Asian countries, Sri Lanka is not mentioned. This suggests that EU

concerns about Sri Lanka are outweighed by its desire not to rock the boat with India, as talks proceed on a free trade agreement. India's insistence that the Joint Statement demands Pakistani action on the Mumbai attacks could have been an opportunity for the EU to press for a mention of Sri Lanka in return.

Although the EU cannot influence China's position on Sri Lanka, it should have been better prepared to counter this position. In particular, EU members could have made more – and earlier – efforts to gain support from independent countries in order to isolate China at the UNSC and Human Rights Council, the most important opportunities for international action that were blocked.

FAILURE TO RESPOND TO NATIONAL TRENDS

Not only did the EU fail to take account of regional trends, it also has not responded effectively to political shifts within Sri Lanka, in particular the rise of anti-Western politics and the undermining of democracy. It also did not take full advantage of opportunities for influence.

The EU was a key partner for the 2001-2004 Western-looking Wickremasinghe government. During this time it acted as co-chair of the peace process (with Japan, Norway and the US). However, Rajapaksa's rise has curtailed EU influence. The Rajapaksa government uses anti-Western rhetoric to gain popular support and deflect criticism on human rights and the economy. Following the LTTE's defeat this rhetoric has spread within Sri Lankan media and civil society. The strength of this anti-Western discourse limits the EU's ability to promote human rights in Sri Lanka, as its actions are inevitably discredited as 'imperialist'.

The EU must be smarter in responding to this rhetoric. It should promote greater awareness within Sri Lanka of the reasons behind actions such as the withdrawal of GSP+. It must directly challenge the government's accusations about the EU and other international actors. In addition, wherever possible the EU could coordinate its comments on human rights with those of other non-Western countries, such as Japan. Perhaps most crucially, the EU should provide more support to civil society voices that offer an alternative to this discourse, both within Sri Lanka and in the diaspora.

The anti-democratic drift of Rajapaksa's government was clear from the beginning and should have triggered earlier EU concern. In recent years attacks against journalists and activists have increased; paramilitaries have openly operated with the Sri Lankan military and have been given ministerial posts; and there has been an erosion of the rule of law and judicial independence. However, the European and US understanding of the conflict as a 'fight against terrorism' meant that they did not focus enough on these governance problems that



»»»»» drove the conflict and posed a barrier to peace. While the EU expressed increasing concern about conflict-related human rights abuses from 2005 onwards, it failed to connect these abuses to the broader erosion of democratic institutions.

The EU had a number of earlier opportunities to promote governance reform in Sri Lanka, but did not take full advantage of these. As a co-chair of the peace process it could have placed greater emphasis on strengthening democratic institutions and oversight mechanisms. This may have increased the chances of a successful peace process. Instead, the peace process focused heavily on power negotiations between the parties.

Another missed opportunity for influence was the aftermath of the Asian tsunami, when the government briefly showed openness to governance reform and the EU played a major role in reconstruction. Likewise, when the EU banned the LTTE in 2006 this could have been an opportunity to extract human rights concessions, as Sri Lanka had long been requesting this ban. As the EU failed to seize such moments of influence, by the time it began taking serious action its influence over the Sri Lankan government was already in decline.

LACK OF EFFECTIVE COORDINATION

The extent of EU coordination on the Sri Lanka crisis has been mixed. Aid freezes were undertaken unilaterally, missing the opportunity for greater impact through a coordinated aid freeze. Moreover, some member states continued to approve arms sales to Sri Lanka at the same time as the EU was calling for a ceasefire and in contravention of the EU's Code of Conduct on Arms Exports. The UK's position was particularly incoherent, as it continued to allow arms sales even once it had frozen development aid. Conversely, within international forums, including the UN and IMF, EU actions have been coordinated.

More serious than lapses in internal cohesion has been the EU's failure to coordinate its response with other international actors. This was particu-

larly necessary given Chinese and Indian support for Sri Lanka and has been a key factor inhibiting international action. This lack of coordination dates back to the peace process, when the co-chairs often pulled in different directions, causing the process to drift.

Critically, the EU should have pressed Japan to live up to its human security commitments by taking action on Sri Lanka. Japan is an important player as it has traditionally been Sri Lanka's biggest donor and was a co-chair of the peace process. However, Japan refused to criticise Sri Lanka and continued to provide vast sums of aid throughout the crisis. As chair of the UNSC it also helped block efforts to get UNSC action on Sri Lanka. Japan's position appears to be a result of its concern that China's new partnership with Sri Lanka threatens its own influence in the country, and specifically its access to important shipping lanes. However, Japan's desire to present itself as an international leader and win a permanent seat on the UNSC gives the EU an entry point to push Japan to show leadership in the case of Sri Lanka.

The US position on Sri Lanka is similar to that of the EU and the two worked together to raise concerns at the UN. However, greater coordination between them on aid freezes and weapons sales could have increased their impact. EU members could also use their membership of multi-lateral forums to build pressure on Sri Lanka, for example through the Commonwealth, which has significant credibility in South Asia. The UK has pushed for the 2011 Commonwealth Heads of Government meeting to be moved from Sri Lanka, but this seems a small gesture when compared with previous suspensions of countries such as Pakistan and Zimbabwe.

CONCLUSION

Despite its flaws, the EU's critical stance on Sri Lanka is welcome and must be maintained. Although the immediate crisis is over, deeper problems regarding human rights and lack of democracy remain, and an investigation into the conflict and a political solution for the Tamils are urgently required to

ensure durable peace. These issues must remain central to all EU engagement with Sri Lanka.

Sri Lanka cannot ignore the EU forever. Indeed, recent actions suggest the government wants to rebuild its relationships in Europe. A UK visit by President Rajapaksa planned for November 2010 was cancelled amid rumours that he could have been arrested for war crimes. This was followed by Sri Lanka's announcement that it will finally grant visas to a UN investigation team. These events indicate both that Rajapaksa wants to repair relations with the international community, and that he now understands the level of international anger and the threat this poses to him. The EU must respond by stepping up the pressure.

The withdrawal of GSP+ sent an important political message, but is not likely to have any major effect on trade revenues or on Rajapaksa's government. The EU should now put pressure directly on the Sri Lankan leadership by putting sanctions on individuals and investigating war crimes where jurisdiction exists.

President Rajapaksa's popularity will also not last forever. The EU should identify and support the development of moderate voices that can counter and eventually succeed the current government. In particular, through providing protection to critical activists and supporting the development of a vibrant Tamil polity, now freed from the tyranny of the LTTE.

The main lesson for the EU is that it must work with Asian powers. The traditional India–Pakistan rivalry already put smaller South Asian countries in a strong position, and with China's entry into South Asia this dynamic has been exacerbated, as the regional superpowers vie for influence. India and Japan are the key powers that the EU needs to bring on board. Of course, the question remains whether even such a broad alliance could counter China's influence.

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