

ASSESSING THE EUROPEAN UNION'S SANCTIONS POLICY: IRAN AS A CASE STUDY

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I. INTRODUCTION

Sanctions have emerged as a favoured foreign policy tool of many international actors, including the European Union (EU), for coercing states to change problematic behaviour. Sometimes diplomacy is ineffective and military action is too difficult and too costly. The lack of plausible alternatives makes sanctions an attractive option for policymakers. But sanctions are a policy instrument in themselves, with numerous advantages and disadvantages that must be considered before resorting to their use.

The EU has used sanctions 33 times to-date to address a variety of issues.¹ The increase in employing sanctions is a recent phenomenon, with a 32 per cent increase in decisions from 2010 to 2011. Because the EU does not have the collective capacity to enforce its foreign policy decisions by force, sanctions have become an important tool.

This paper examines the effectiveness of EU sanctions as a policy tool, using Iran as a case study. Section II first outlines what sanctions are—their legal basis, a theory of their use and an assessment of their downsides—and then suggests improvements to the EU's current sanctions policy. Section III examines sanctions in Iran as a case study, and section IV offers brief conclusions.

II. EUROPEAN UNION SANCTIONS

Sanctions are coercive measures primarily imposed to elicit a behavioural change in target actors. The European External Action Service (EEAS) uses the terms 'sanctions' and 'restrictive measures' interchangeably and describes them as designed

¹ This number refers only to EU Common Foreign and Security Policy (CFSP) sanctions and does not include EU sanctions transposed from United Nations decisions. European Commission, European Union restrictive measures (sanctions) in force, Updated 31 July 2013, <http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf>.

SUMMARY

The European Union (EU) has recently increased its use of sanctions. They are often used as a tool to coerce states into changing problematic behaviour, but the EU does not always aim to change behaviour or induce a cost—at times the purpose is broader, for example, to signal that something is being done to address a grave violation. This paper examines the effectiveness of EU sanctions as a policy tool. It examines the coercive measures in place against Iran in particular, and addresses ways in which sanctions can be used to curb the Iranian nuclear programme.

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‘to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles’.² But the EU does not always aim to change behaviour or induce a cost; at times the purpose is broader, for example, to signal that something is being done to address a grave violation. The Council of the EU highlights that the goal of sanctions is to ‘maintain and restore international peace and security’ and that member states will endeavour to ‘reduce to the maximum extent possible any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries’.³

In recent years, the EU’s use of coercive measures has increased exponentially. At the turn of the century, the EU targeted fewer than 20 countries with restrictive measures, while in 2013 that number went up to 29.⁴ Prior to 2010, the frequency of sanctions use was limited and variable. There has been a notable increase in the number of countries targeted since 2010: between 2010 and 2011, ‘the number of relevant decisions more than trebled, jumping from 22 to 69’.⁵ Under its Common Foreign and Security Policy (CFSP) and since the adoption of the Maastricht Treaty, the EU has decided on sanctions that target states and non-state actors, including individuals and entities on 33 different occasions.⁶ Today, the EU’s sanctions regimes range from traditional arms embargos on countries such as Myanmar and asset freezes in Egypt to more complicated and multilayered regimes in countries such as Iran and Syria.⁷

In 2013 the Swedish Minister for Foreign Affairs, Carl Bildt, stated that sanctions were discussed at every single foreign ministers meeting in the EU.⁸ The increase in sanctions use is linked to multiple

factors, including the growth of the EU’s role on the international stage and the recognition of the impact of acting collectively. Cutting off a state’s access to the entire EU economic market has greater impact than limiting its access to only one country.

The change in nature of EU coercive measures contributed to the increase in their use. In the past, sanctions were associated with non-discriminatory blanket bans and broad trade embargoes. These measures often made some imposing countries uncomfortable with their use. During the 1990s the international community pioneered the concept of ‘targeted sanctions’.⁹ The change aimed to minimize the effect of sanctions on the civilian population by targeting specific groups or individuals rather than the economy as a whole. This has been intended to minimize the general humanitarian consequences and increase the legitimacy of the sanctions.

Targeted sanctions fall into a three categories. The first is export and import restrictions, including on weapons, oil and gas. These measures prevent the target from accessing specific technologies, goods and services required for the specific policy that the EU aims to affect. The second is financial sanctions, including restrictions on support for trade such as payment prevention, asset freezes and other prohibitions on financial transactions. The third is travel bans that deny individuals the right to enter and transit through EU countries.

Another reason for the rise in the use of sanctions is the global economic crisis. EU foreign policy has been weakened by the crisis: budgets have been constrained and confidence and soft power have been reduced. Sanctions are a useful tool in such a context because they are ‘not major drains on budgets and not very demanding in terms of manpower or political energy. In times of adversity, they are one of the few things the EU can still do.’¹⁰

Although this argument has some merit, it is no longer the case that sanctions are not politically demanding. EU member states have often expressed their discomfort at the self-perpetuating nature of sanctions regimes or dragged their feet during implementation. This was commonly due to a country’s individual political leanings or economic interests in

² European External Action Service, ‘Sanctions or restrictive measures’, <http://eeas.europa.eu/cfsp/sanctions/index_en.htm>.

³ Council of the European Union, ‘Basic principles on the use of restrictive measures (sanctions)’, 10198/1/04 Rev 1, Brussels, 7 June 2004, paras 1, 6.

⁴ European Commission (note 1).

⁵ Lehne, S., ‘The role of sanctions in EU foreign policy’, Carnegie Endowment for International Peace, 14 Dec. 2012. See, in particular, figures 1 and 2.

⁶ The 33 countries and entities targeted can be found in the EU’s list of restrictive measures in force. European Commission (note 1).

⁷ European Commission (note 1).

⁸ Bildt, C., ‘Assessing the efficacy of sanctions for nonproliferation’, Speech at Carnegie International Nuclear Policy Conference, Washington, DC, 9 Apr. 2013, <<http://carnegieendowment.org/2013/04/09/assessing-efficacy-of-sanctions-for-nonproliferation/fv9s>>.

⁹ On targeted sanctions see Portela, C., *Impact of Sanctions and Isolation Measures with North Korea, Burma/Myanmar, Iran and Zimbabwe as Case Studies* (European Parliament: Brussels, May 2011), p. 7.

¹⁰ Lehne (note 5).

the target country, or the cost to implement them. For example, countries such as Spain and Greece were reluctant to impose oil sanctions on Iran because of their dependence on it, while France was eager to lift sanctions on Myanmar because of its investments in the country.¹¹

The legal basis for sanctions

The legal basis for EU sanctions is derived from two sources: the United Nations Charter and articles 30 and 31 of the Treaty on European Union (TEU). UN sanctions serve to implement UN Security Council decisions to maintain or restore international peace and security. Individual EU member states are legally bound to follow the rules laid down in the UN Charter, but the EU as an entity is also obliged to implement UN decisions under a bilateral agreement with the UN. When UN Security Council resolutions require member states to enact coercive measures a legal process transpires within the EU to bring the UN decision into EU law. The European Commission may either make proposals for regulations imposing restrictive measures that fall within the scope of Union competence to be adopted by the Council of the EU or it may make proposals for Common Positions. The Common Positions are legally binding and directly applicable to member states, effectively writing UN Security Council resolutions into EU law.¹²

EU legislation reduces the scope for member state discretion to individually define what must be done to implement restrictive measures. Following the adoption of the regulation, the EU can decide to add additional measures that will also be applicable to EU member states. When the EU does not have jurisdiction over issue areas (e.g. arms exports), member states must initiate sanctions that are implemented through national legislation.¹³

The TEU allows the Council of the EU to adopt autonomous restrictive measures in pursuit of the CFSP goals. Such measures have no basis in a UN decision and are suggested by individual member states

or the EEAS before they are discussed collectively and agreed on by consensus. The EU has expressed a preference for UN sanctions rather than autonomous EU measures. Indeed, Some EU countries are less comfortable imposing sanctions that have not been mandated by the UN as such measures are perceived as politically more sensitive. EU regulations require that such unilateral measures are agreed on by consensus.

The implications of enacting unilateral measures under either of these headings—as extensions of UN sanctions or as autonomous EU sanctions—are different. Unilateral sanctions passed under the TEU are more flexible because they are decided by the EU only. This means the EU can change the content and suspend or cancel them more easily, as was the case in Myanmar. However, the EU sanctions adopted as a result of UN Security Council resolutions are not as flexible.¹⁴ Although unilateral sanctions passed under the TEU authority are more flexible, recently, the EU has displayed a tendency to adopt UN sanctions and add extensions rather than adopt a separate decision outlining the measures that go beyond UN sanctions. This restricts the EU's manoeuvrability.

The theory of sanctions

Sanctions have become an important coercive tool for the EU. They are a less costly policy than the use of military force and can be applied in a more flexible and targeted manner. Although they are a policy of their own and can be reinforced when used in conjunction with other policies, they are considered a mid-point between diplomacy and military force.

Sanctions work by coercing, constraining or signalling a target.¹⁵ The goal of coercion is to modify the target's cost-benefit calculation of pursuing a certain policy, while constraint restricts a target's capabilities. Both goals are intended to encourage a target to change the direction of a current policy. Sanctions also allow the EU to signal that it is seized of a matter.

When sanctions coerce a target they inflict costs. This is intended to change the target's cost-benefit

¹¹ Gebert, K., *Shooting in the Dark? EU Sanctions Policies*, European Council on Foreign Relations (ECFR) Policy Brief (ECFR: London, Jan. 2013), p. 7.

¹² European Commission, 'Restrictive measures', 2008, <http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf#9>, p. 9.

¹³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <http://europa.eu/lisbon_treaty/>, Article 346.

¹⁴ On the legal implications of UN Security Council sanctions versus TEU sanctions see Beaucillon, C., *Les mesures restrictives de l'Union européenne* [The restrictive measures of the European Union] (Bruylant: Brussels, 2013).

¹⁵ On how sanctions work see Giumelli, F., *Coercing, Constraining and Signaling: Explaining UN and EU Sanctions after the Cold War* (ECPR Press: Colchester, 2011).

calculation. The idea is to encourage the target to modify its behaviour because of the cost of the current policy trajectory. To successfully modify the target's cost-benefit calculation, it must be clear to the target what change of policy is encouraged; effective communication is therefore key. Types of behaviour change can include ceasing a certain policy or bringing a target to the negotiating table, as in the case of Iran. Constraint affects a target's capacity to act or conduct policy, restricting capabilities or preventing future opportunities for continued violations from arising. Export controls and blanket bans constrain by preventing a target from amassing restricted technologies (as in the case of Iran) or weapons.

Sanctions are also intended to signal to both the target and the rest of the international community that the EU cannot remain passive in the face of unacceptable behaviour. They make a strong statement both internally (to signal to domestic audiences that the EU takes action when faced with violations of internationally accepted norms) and externally (to demonstrate to other states that the EU is a strong international actor). Notably, through signalling, sanctions also aim to deter other actors from violating international norms. Travel restrictions fall under this category. They aim to prevent the targeted individuals from engaging in activities in EU countries. Although in some cases this may not impact a government's ability to rule, as in Syria, it humiliates those in power by imposing restrictions that leaders would not ordinarily face.

One notable sub-goal of signalling is to forestall worse action. For example, sanctions are imposed to avoid politically and economically costly forms of military intervention. For example, the sanctions regime has so far convinced Israel not to take unilateral military action to halt the development of Iran's nuclear programme.

The implementation of recent sanctions on Syria offers an example of the constraining, coercing and signalling dynamic. The measures, which came into force in May 2011, included asset freezes and travel restrictions on top Syrian officials involved in the initial crackdown on protestors, but left out Syrian President Bashar al-Assad.¹⁶ The EU stated that 'as the violence and repression continued, the EU decided to introduce

restrictive measures to increase pressure on the regime of President Bashar al-Assad'.¹⁷ The goal was to punish the Assad regime for the violence (constraining) and also to threaten further sanctions, including on Assad himself, if the regime did not stop the crackdown and start negotiating with the opposition (signalling and coercing).¹⁸ The EU progressively strengthened the sanctions, each time by threatening to do so first, and then proceeding when no action was taken on Syria's behalf to modify their behaviour.¹⁹ The sanctions also signalled to the international community that the EU condemned the Assad regime's behaviour. In a context where the UN Security Council—the international community's only organ for decisive action—was blocked, EU sanctions offered a useful alternative.

The downsides of sanctions

The most common critique of sanctions is that they are ineffective and at times even counter-productive. This is because often they do not result in a change in the target's behaviour. Sanctions also have negative consequences that extend beyond the target. In Iran they have not succeeded in stopping the nuclear programme, contributing instead to a wide-array of negative economic problems and humanitarian effects. In Syria, sanctions have barely weakened the Assad regime.

It is well known that sanctions impose a burden on civilian populations. They contribute to economic problems, including inflation, unemployment and a rise in black market trade. Legitimate trade and business is affected by the often indiscriminate nature of financial and transport-related measures.

While the civilian population feels their impact, sanctions may have only a nominal impact on the actual target. Target governments are usually in a stronger position to avoid or adjust to sanctions.

¹⁷ 'The European Union and Syria', Fact Sheet, 4 June 2013, <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128379.pdf>.

¹⁸ Council of the European Union (note 16), paras 1–3.

¹⁹ Including in Council Implementing Decision 2011/302/CFSP which extended EU measures to include Assad and his family and Council Decision 2011/522/CFSP which imposed an EU oil embargo on Syria. Council of the European Union, Council Implementing Decision 2011/302/CFSP of 23 May 2011 implementing decision 2011/273/CFSP concerning restrictive measures against Syria, *Official Journal of the European Union*, L136, 24 May 2011; and Council of the European Union, Council Decision 2011/522/CFSP of 2 Sep. 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria, *Official Journal of the European Union*, L228, 3 Sep. 2011.

¹⁶ Council of the European Union, Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, *Official Journal of the European Union*, L121, 10 May 2011.

Coercive measures result in economic distortions that can be manipulated so that goods and trade flows are rerouted to preferred groups. In Syria, the civil war as well as sanctions have had a significant effect on ordinary Syrians. The Assad regime has thus far had enough concentrated power and money to insulate it from accountability which has in turn 'devastated' the 'formal economy' and led ordinary Syrians to 'suffer . . . more than the regime'.²⁰ In Iran, while the entire population has suffered from the rise in prices (a result of both economic mismanagement and sanctions), the government has attempted to shield the lower classes by providing cash hand-outs and subsidizing certain imported staple goods. Meanwhile, many small- and medium-sized businesses—unable to withstand the rise in production costs and difficult business conditions have gone bankrupt—while the Islamic Revolutionary Guard Corps (IRGC, a direct target of sanctions) fills the void because it is a large and powerful entity already.²¹ In Myanmar, certain sectors, such as the oil sector, were exempt from restrictions, probably because the EU had too high a stake in it. This allowed the regime to profit from French and British private sector investments in this sector despite being targeted by sanctions.

The development of 'targeted' sanctions in the 1990s was aimed at addressing the adverse effect of sanctions on civilian populations. They began by exempting essentials such as food and medical supplies from the measures.²² In addition, such sanctions are often aimed at specific individuals or political groups using financial measures or travel bans, for example. In addition to constraining and coercing specific targets, the sanctions are intended to challenge the balance of power in relation to the target or to encourage opposition to the target. Although targeted measures go some of the way towards addressing the indiscriminate nature of coercive measures, exemptions are not always respected. In other words, targeted sanctions are not always targeted. In the Iran case, for example, many financial institutions go above and beyond the minimum requirements imposed on them by sanctions. This is because of the rising cost of

adjusting their policies and trade after each successive round of UN and unilateral sanctions. In addition, superimposing multiple sanctions regimes result in financial institutions being unable or unwilling to process payments for exempted goods.

For this reason, it is essential to conduct an assessment of how to minimize the humanitarian effects of targeted sanctions, especially those that focus on specific commercial sectors. In fact, if sanctions hurt the general population beyond a predetermined minimal threshold, they should not be considered targeted, even if labelled as such.

The broad impact of sanctions tends to polarize the population: those who do not support the government blame them for their worsening economic situation, while those who support the leadership blame the foreigners who imposed the measures. This divisive effect plays into the target's rhetoric and may provoke sympathy and a 'rally around the flag' effect.

Another problem with coercive measures is their propensity to harden a target's resolve. There are three reasons to go to war according to Thucydides: 'honour, fear and profit'. In imposing sanctions, fear and profit are targeted, but all too often, honour and pride are forgotten. In other words, it is expected that sanctions will alter the cost-benefit analysis of a given target by making life difficult for it. But often sanctions harden views within the target country, group or administration, making them less likely to change its behaviour. Belarus, Iran and Myanmar are all examples of targets that viewed sanctions as a challenge and would not 'cave in'.²³

Despite all the drawbacks, the international community—and the EU in particular—still rely on sanctions as a policy tool. This has been attributed to the 'comparative utility of sanctions'.²⁴ Rather than only examining the impact of sanctions and whether they fulfil their goals, policymakers should consider what would occur in the absence of sanctions. This considers the cost of inaction and a comparison with other available policy options: 'In other words, did sanctions bring about effects that could not have been generated by other foreign policy tools and at a lower cost?'²⁵ Although measures can be an attractive

²⁰ International Crisis Group (ICG), *Syria's Mutating Conflict*, Report no. 128 (ICG: Damascus/Brussels, 1 Aug. 2012), p. 31, fn 186.

²¹ On the negative consequences of sanctions on the Iranian population, see Gordon, J., 'The human costs of Iran sanctions', *Foreign Policy Middle East Channel*, 18 Oct. 2013, <http://mideast.foreignpolicy.com/posts/2013/10/18/the_human_costs_of_the_iran_sanctions>.

²² On targeted sanctions see Tostensen, A. and Bull, B., 'Are smart sanctions feasible?', *World Politics*, vol. 54, no. 3 (Apr. 2002), pp. 373–403.

²³ Gebert (note 11), p. 3.

²⁴ Giumelli, F., *How EU Sanctions Work: A New Narrative*, Chaillot Paper no. 129 (European Union Institute for Security Studies: Paris, May 2013), p. 25.

²⁵ This argument was initially developed in general terms by David A. Baldwin, but Francesco Giumelli applies it to the case of the

alternative to more costly options, Bildt notes that ‘sanctions must never be a substitute for policy’.²⁶ In other words, the lack of available options should not be the only reason for sanctions imposition. This will lead to a lack of purpose and ultimately, failure of the coercive measures.

Making sanctions more effective

Discretionary implementation will limit the effectiveness of sanctions. Universality is therefore key to making sanctions work because, unless the denied good or service is only available from a limited number of states, targeted states can find ways around sanctions.²⁷ Unilateral measures by nature are not universal. Rather than constrain a target’s ability to conduct trade or business, they merely divert trade patterns. In other words, targeted states look elsewhere for the goods or business that is blocked. In the case of Iran, unilateral sanctions from the United States and the EU have resulted in Iran ‘turning east’ and boosting trade with countries in Asia. This also results in unilateral sanctions affecting the states that impose them. For example, following EU sanctions on Belarus, Belarus turned east, to Russia and Ukraine, which were all too ready to offer economic assistance to Belarus, while others, like Latvia estimated it was losing €500 million a year because of EU sanctions.²⁸

Countries that are large enough can overcome the lack of universality by including extraterritorial measures in their autonomous sanctions. This is what the USA did with its 2011 financial sanctions on Iran. The 2010 Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) allowed the US to designate any bank that deals with designated Iranian banks, including those outside US territory or jurisdiction.²⁹ But many countries have questioned the legality of such measures. In addition, countries that have significant clout can encourage universality by applying political pressure on those who do not implement sanctions effectively. But this is not always

effective. US efforts to curb Iranian oil imports have hit a wall as countries like China continue to buy large volumes of Iranian crude, having received repeated exemptions from sanctions.³⁰

Sanctions are a means to an end and must therefore be flexible to address evolving goals. They should be imposed flexibly: rewarding or punishing the target’s behaviour. According to Bildt, sanctions are particularly effective at two stages: prior to imposing them and during negotiations over lifting them. In the first case, if the threat of significant sanctions imposition is communicated effectively, then it may be enough to incite a change in the target’s behaviour. In early 2012, Iran was nervous about the impact of the forthcoming EU oil embargo. Ramin Mehmanparast, the spokesperson for the Iranian Ministry of Foreign Affairs, called the threat of sanctions ‘psychological warfare’.³¹ Had the possibility of delaying or preventing these measures been part of the three rounds of negotiations held in spring 2012, Iran may have agreed to some limits on its nuclear programme. Another time to maximize the effectiveness of sanctions is when there is a ‘clear, credible prospect of them being lifted’ as part of a diplomatic package.³² In other words, suspending or removing them must be possible in order to incite a target to change its behaviour during negotiations or following a change in government for example.

At times, the EU has shown flexibility in suspending sanctions in cases where there is a positive development in the targeted country, but future trends are still unclear. Suspending sanctions, rather than lifting them, sends a different political message. Suspension also allows the EU to rapidly return measures to full force without a unanimous decision—as was the case with EU sanctions on Myanmar. The sanctions on the ruling junta in Myanmar were strengthened over two decades. The EU had frozen the assets of almost 1000 organizations in Myanmar and imposed travel restrictions on almost 500 people, preventing them from entering the EU. It also prohibited military cooperation and banned investment in various resource sectors. It is debateable

EU. See Baldwin D., ‘The sanctions debate and the logic of sanctions’, *International Security*, vol. 24, no. 3 (winter 1999); and Giomelli (note 24), p. 25.

²⁶ Bildt (note 8).

²⁷ Gebert (note 11), p. 3.

²⁸ Gebert (note 11), p. 3, fn 3.

²⁹ On the US unilateral measures see Fitzpatrick, M., ‘US sanctions on Iran’, International Institute for Strategic Studies (IISS) report for regional workshop on Implementing Sanctions on Iran: Prospects and Problems, Auckland, Jan. 2013, p. 3.

³⁰ See Ma, W., ‘Sanction side-step: Iranian oil flows back into China’, *Wall Street Journal*, China Real Time Blog, 24 Oct. 2013; and ‘China needs big cuts in Iran oil imports to meet 2013 target’, Reuters, 21 Oct. 2013.

³¹ Jaseb, H. and Pawlak, J., ‘Iran slams EU oil embargo, warns could hit U.S.’, Reuters, 23 Jan. 2012.

³² Bildt (note 8).

whether sanctions contributed to the opening up of the leadership, but what is notable is the EU's relative flexibility and rapid reaction to changes within the country. Indeed, sanctions on Myanmar were used flexibly; intended to encourage and test a change in policy. In April 2012, after a quasi-civilian government took over from the military junta and began to enact reforms, the EU suspended its sanctions for one year.³³ The goal was to 'welcome and encourage the reform process'.³⁴ Suspension gave the EU the option to resume implementing sanctions should the promised reforms been suspended or cancelled, and it also allowed the EU to demonstrate the benefits of resuming business with the Union. The EU decided to lift all sanctions on Myanmar, except for the arms embargo, a year later in April 2013.³⁵

Communication, cooperation and information sharing are important for the successful implementation of sanctions. In order for sanctions to be effective, information on their content, the measures to be adopted, and the status and difficulties of implementation must be shared between the private sector and government and between states. Targeted entities will adjust and build new structures and mechanisms to circumvent coercive measures. By sharing information, governments can notify businesses of new suspicious entities, while the private sector can flag cases of sanction dodging and suggest improvements in the system.

III. CASE STUDY: SANCTIONS ON IRAN

As Iran's nuclear programme progressed, the EU and its allies focused on sanctions as their preferred policy tool. The 28 member states of the EU are among the countries that have expanded on UN Security Council sanctions by agreeing wide-ranging unilateral measures targeting Iran's energy, financial and transport sectors. Unilateral sanctions imposed

against Iran in 2012 were the most ambitious and comprehensive ever agreed on by the EU. It is indisputable that sanctions have not achieved their strategic goal of changing the Iranian leadership's mind on its nuclear programme. However, they have helped bring Iran to the negotiating table and limit Iran's ability to quickly assemble a nuclear arsenal.

The jurisdictional scope of EU sanctions on Iran is broad.³⁶ They apply 'within the territory of the EU, to any EU national inside or outside the EU, to any legal person, entity or body incorporated or constituted under the law of an EU Member State; and to any legal person, entity or body in respect of any business done in whole or part within the EU'. This includes aircraft and ships under EU jurisdiction and nationals of any member state no matter where they are located.

The categories of goods and technology which are prohibited or restricted include dual-use goods, technology and software; goods and technology which could contribute to Iran's nuclear related activities; goods which might be used for internal repression in Iran and key equipment and technology for the oil and gas industry in Iran. Other than designations (currently, the EU has designated 442 companies, including the Iranian central bank), sanctions cover various sectors including, but not limited to, energy, transport and finance.

The EU sanctions regime is multilayered and complicated, addressing human rights concerns as well as Iran's nuclear programme. It was built following a drawn-out process of consensus building between the 28 member states in parallel with successive rounds of UN Security Council resolutions. Given the broad nature of these sanctions and the economic burden on member states, the EU developed a gradual implementation timeline for the more restrictive measures. This helped ensure that member states would be less tempted to contravene them. Prior to the 2012 oil ban, imports from Iran accounted for 34.2 per cent of Greece's total oil imports, 14.9 per cent of Spain's and 12.4 per cent of Italy's. Given their heavy reliance on Iranian oil and the fragile state of their respective economies, the EU decided to implement the oil ban six months after it was agreed (in July 2012) in order to allow them to find alternative providers.

³³ Council of the European Union, Council Decision 2012/225/CFSP of 26 April 2012 amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar, *Official Journal of the European Union*, L115, 27 Apr. 2013.

³⁴ Council of the European Union, Council Conclusions on Burma/Myanmar, 3159th Foreign Affairs Council meeting, Luxembourg, 23 Apr. 2012, <http://eeas.europa.eu/myanmar/docs/council_conclusions_april_2012_en.pdf>.

³⁵ Council of the European Union, Council Decision 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma and repealing Decision 2010/232/CFSP, *Official Journal of the European Union*, L111, 23 Apr. 2013.

³⁶ Council of the European Union, 'The European Union and Iran', Fact Sheet, 23 Apr. 2012, <http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127511.pdf>.

Interestingly, the legality of some of the EU's sanctions and designations has been questioned over the past few months. Numerous claims have been brought against designations under EU sanctions. Defendants include Iranian banks such as Bank Mellat and Bank Saderat Iran as well as hundreds of people and companies. They stated that the EU had failed to provide sufficient evidence to link targeted companies with Iran's nuclear work. A number of these cases were successful and the EU either appealed the decisions of the General Court of the EU or re-imposed the sanctions³⁷.

In order to judge whether EU sanctions on Iran have been successful to date, their goal must be examined. The EU's stated goal is to 'persuade Iran to comply with its international obligations and to constrain its development of sensitive technologies in support of its nuclear and missile programmes'.³⁸ The objective of changing the Iranian leadership's strategic decision to continue developing its nuclear programme has not been achieved, but sanctions have been effective in other areas. According to Giumelli, the sanctions have reinforced the credibility of the 1968 Non-Proliferation Treaty. They also have a deterrence purpose: establishing the 'standards that every country is supposed to meet in order to avoid the consequences suffered by Teheran'.³⁹

Sanctions that restrict Iran's access to international financial services, transportation, and trade insurance aim to constrain the targets, including to disrupt the IRGC-monopolized black market trade (reported to involve up to 30 per cent of all imported goods in Iran) that Iran has increasingly turned to since the late 1980s. One Iranian parliamentarian suggested that the black market commerce could be valued at \$12 billion a year. But the impact of sanctions on Iran is wide-ranging and extends well beyond the original targets. Although the poor state of the economy is also the result of years of economic mismanagement, sanctions have contributed to slowing Iran's industrial and economic growth, limiting foreign investment and contributing to a national currency devaluation,

³⁷ General Court of the European Union, 'The General Court annuls the acts of the Council freezing the funds of seven companies and one person in connection with the restrictive measures taken against Iran with the aim of preventing nuclear proliferation', Press Release no. 99/13, 6 Sep. 2013; and Pawlak, J., 'EU to re-impose Iran sanctions quashed by court', Reuters, 14 Nov. 2013.

³⁸ European External Action Service, 'The European Union and Iran', <http://eeas.europa.eu/top_stories/2012/130412_iran_en.htm>.

³⁹ Giumelli (note 24), p. 29.

hyperinflation, declining GDP and reducing oil and gas production and export.⁴⁰ They have also weakened the middle classes, lead to increased corruption and resulted in the government being more adept at finding ways around sanctions.⁴¹

In the nuclear sphere, in July 2012, US Secretary of State Hillary Clinton said, 'We believe that the economic sanctions are bringing Iran to the table'.⁴² Yet, as of October 2013, successive rounds of negotiations had not resolved the issues of concern. But in November 2013 the P5+1 came to an interim agreement with Iran, which constrained and in some cases even rolled-back its nuclear programme.⁴³ Despite criticism of the deal, sanctions were used as intended: a bargaining chip used to get concessions from Iran on its nuclear programme. It remains to be seen whether this will lead to a final agreement within six months.

Sanctions on Iran's nuclear and missile programmes

While sanctions have not changed the regime's desires they have been somewhat effective in curbing Iran's nuclear progress. Iran is still dependent on foreign suppliers for the development of elements of its nuclear programme and access to necessary parts and components has been hampered by restrictive measures.

Sanctions have limited Iran's access to foreign parts and components necessary for the improvement of its centrifuges.⁴⁴ Although Iran has developed the know-how to fabricate most of the components for its gas centrifuges, it is still reliant on external suppliers for some dual-use materials and equipment, such as maraging steel, carbon fibre, vacuum pumps and measuring equipment.⁴⁵ Sanctions may have helped

⁴⁰ On the economic and humanitarian impact of sanctions on Iran see Katzman, K., *Iran Sanctions*, Congressional Research Service (CRS) Reports RS20871 (CRS: Washington, DC, 11 Oct. 2013), pp. 51–53; and Gordon (note 21).

⁴¹ On how Iran sets up front companies etc. see United Nations Panel of Experts established pursuant to resolution 1929, 'Final Report', S/2013/331, 3 June 2013.

⁴² Lakshmanan, I. A. R., 'Clinton says sanctions pushing Iran toward negotiations', Bloomberg, 3 July 2013.

⁴³ On the exact terms of the agreement see 'Text: interim nuclear agreement between Iran and six powers', Reuters, 24 Nov. 2013.

⁴⁴ United Nations Panel of Experts Established Pursuant to Resolution 1929, 'Final Report', 2011, para. 88 and Table 1. The report has not been officially released because of opposition by Russia to some of its conclusions.

⁴⁵ *Iran's Nuclear, Chemical and Biological Capabilities: A Net Assessment*, International Institute for Strategic Studies (IISS) Strategic

restrict Iran's ability to upgrade its centrifuges from the outdated IR-1 model. In 1996 Iran obtained designs for second-generation centrifuges (IR-2m) and says it began trying to manufacture them in 2002, but not until 2013 had development reached the point where they could be installed at the main fuel enrichment facility at Natanz. As of August 2013, none of the IR-2m centrifuges that Iran has installed at Natanz were fed with UF₆.⁴⁶ Instead, Iran continued to rely on its IR-1 centrifuges, installing an additional 1861 centrifuges at Natanz since the previous International Atomic Energy Agency Director General's report in May.⁴⁷ The long development process for the IR-2m centrifuges is probably due, at least in part, to the difficulty in obtaining or producing all the necessary parts. The delay in Arak's start date and the constant problems surfacing at Bushehr can also be partially attributed to measures targeting Iran's nuclear programme.

The development of Iran's missile arsenal has also been affected by coercive measures and export controls. Iran has been heavily reliant on foreign parts and components for both its liquid and solid-fuel missile programmes.⁴⁸ It has faced setbacks in the development of its solid fuel missiles, which require materials it does not produce indigenously, such as aluminium and tungsten powder. Iran has been trying to find new suppliers following successive rounds of sanctions and the tightening of export controls. For example, in 2010, 302 drums of pure aluminium powder destined for Iran from China were intercepted in Singapore. It has been argued that the delay in the testing of the two-stage 2000 kilometre-range solid-fuelled Sajjil-2 missile could be attributed to measures that have restricted Iran's access to propellant ingredients.⁴⁹

Dossier (IISS: London, 3 Feb. 2011); and Albright, D. and Walrond, C., 'Iran's advanced centrifuges', Institute for Science and International Security (ISIS) Report, 18 Oct. 2011. See also United Nations Panel of Experts established pursuant to resolution 1929, 'Final Report' (2012 and 2013).

⁴⁶ Instead, Iran has been testing the performance of IR-2 centrifuges by intermittently feeding UF₆ into IR2 machines in the research and development area of Natanz. See International Atomic Energy Agency (IAEA), 'Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran', GOV/2013/40, 28 Aug. 2013, para. 15

⁴⁷ International Atomic Energy Agency (note 46), fn 16.

⁴⁸ See e.g. *Iran's Ballistic Missile Capabilities: A Net Assessment*, International Institute for Strategic Studies (IISS) Strategic Dossier (IISS: London, May 2010); and 'Iranian ICBMs: a distant prospect', *IISS Strategic Comments*, vol. 2013, no. 36 (Nov. 2013).

⁴⁹ 'Iran: sanctions halt long-range ballistic-missile development', *IISS Strategic Comments*, vol. 2012, no. 22 (July 2012).

Although these measures have succeeded in slowing Iran's progress, they have also resulted in Iran becoming increasingly self-sufficient. As coercive measures and stringent export controls hampered Iran's access to foreign technologies, Iran resolved to develop them domestically. It poured resources into research and development of technologies needed for its nuclear and missile programmes. In 2011 it began to produce its own carbon fibre, but its production capacity and product quality are still limited. In addition, the lack of uniformity in the implementation of sanctions and export controls allows Iran to find ways around them. Top quality carbon fibre is only produced in a handful of countries, yet Iran has acquired significant stockpiles of it.⁵⁰ Iran has continued to make a number of worrying breakthroughs including the development of the Fordow facility, unveiled in 2009 (see below), and the production of 20 per cent enrichment uranium despite the multi-layered sanctions regimes. These measures may have impacted Iranian nuclear capability, but they have not affected Iran's desire or ability to continue the development of its nuclear programme.

How can sanctions on Iran be made effective?

Sanctions are a negotiating tool rather than an end in itself. The P5+1 (the five permanent members of the UN Security Council—China, France, Russia, the United Kingdom and USA—plus Germany) must be willing to use the imposed sanctions as a bargaining chip so Iran will agree to restrictions on its programme. An International Crisis Group report highlights that 'the measure of efficacy [of sanctions] lies in what can be obtained when they are removed, not what happens when they are imposed'.⁵¹ Using them to obtain a shift in Iranian policy can only work if the EU and US are able to take the necessary steps to suspend or stop some of the measures that have been put in place.

In order for negotiations with Iran to be a success, the P5+1 must accurately evaluate the importance of the nuclear programme to Iran. Sanctions relief must be proportionate to what Iran is being asked to give up. In March 2013, the P5+1 offered relief from sanctions on gold, precious metals and petrochemical sales.

⁵⁰ Dunne, A., Presentation at the EU Non-proliferation and Disarmament Conference, Brussels, 30 Sep.–1 Oct. 2013.

⁵¹ Vaez, A., *Spider Web: The Making and Unmaking of Iran Sanctions*, International Crisis Group (ICG) Middle East Report no. 138 (ICG: London, 25 Feb. 2013), p. ii.

They also offered to license US repairs to Iran civilian aircraft, and not to impose new UN or EU sanctions related to proliferation. In exchange, the P5+1 asked for a halt in enrichment activities at the Fordow facility, plus an end to 20 per cent enrichment and export of the accumulated 20 per cent enriched uranium.⁵² Fordow is the only known nuclear facility buried deep enough to be immune to Israeli bombardment. It was developed by Iran while under sanctions and is therefore a symbol of national resistance and pride. The closure of Fordow would mean that any further development which could lead to a weapon would have a longer lead time and be vulnerable to air attack by Israel or others. The combination of the strategic and symbolic implications would make closing Fordow a significant concession for Iran and one that outweighed the perceived value of the compensation on offer.

Iran has not made it a secret that it is interested in relief from the sanctions that have the most effect—oil and financial restrictions.⁵³ However, these form the crux of the EU and UN's sanctions regime, which means relief from such sanctions would only come at a high price. According to Ali Vaez, 'The challenge is to come up with a P5+1 package of meaningful, albeit realistic sanctions relief to match a parallel Iranian package of meaningful, albeit realistic nuclear concessions'.⁵⁴

The EU is still in a better position than the USA to offer meaningful sanctions relief to Iran in order to agree to a solution to the nuclear problem. The EU can suspend sanctions for a pre-determined period through a unanimous Council decision. This would allow the EU to explore whether Iran follows through on the concessions agreed to in a deal. Should Iran not respect the deal, EU sanctions would automatically be given full force again. Should Iran respect the deal, then the EU could either extend the suspension or lift the measures (as it did in Myanmar), both through unanimous Council decisions.

However, the EU is restricted in its ability to suspend or rescind measures set by the UN Security Council.⁵⁵ In other words, the EU would only be able to suspend sanctions that were not mandated by the UN Security

Council resolutions and the EU's consecutive adoption and expansion of UN measures. The second restriction is one of impact: it is useless for the EU to suspend measures that are covered by extraterritorial US sanctions for example, because the impact of their removal would not be felt by Iran. The measures prohibiting banks from dealing with designated Iranian banks are an example of this. Even if the EU allowed European banks to deal with US-designated Iranian banks US sanctions would still apply and deny access to the US market for European financial institutions that resume business with Iranian banks. It is likely that European banks would not run this risk, which means such sanctions relief would have no impact. Given that it is unlikely (if not impossible) for the EU to break from the USA, it would have to work with the US Government to receive tacit US approval for any sanctions relief and determine which measures should be targeted.

Iran is acutely aware that the P5+1 cannot remove sanctions immediately after a deal. It knows that the USA faces great constraints because it needs Congressional approval for changes to the sanctions regime. The EU does not face similar constraints. Although the sanctions removal procedure is still onerous, it is more likely to be achieved in a shorter timeframe. This allows the EU to offer sizeable carrots in exchange for Iranian concessions on its nuclear programme. Knowing the time it takes to implement sanctions relief, Iran will request a credible timeline for their removal and a promise not to impose additional sanctions.

IV. CONCLUSIONS

Sanctions have become integral to the EU's foreign policy, but the EU must ensure that their effectiveness is maximized. It must set targeted and achievable goals for sanctions, and communicate them effectively to the target country or group. As established, the stated goal of sanctions is important. In the Iran case, sanctions have not achieved their stated goal of stopping the Iranian nuclear programme. Many point to this as a failure of the policy, and perhaps rightly so. Sanctions have usefully encouraged Iran to return to the negotiating table and curbed its access to the foreign parts and components necessary for its nuclear and missile programmes. The stated goal should reflect this—the more limited the goal, the more likely the EU is to achieve it. This goal should then be communicated

⁵² Almaty Confidence Building Proposal, Istanbul, 18 Mar. 2013.

⁵³ Vaez (note 51), footnote 286, p. 52. The author explains the steps that would have to be taken to offer Iran relief from these sanctions.

⁵⁴ Vaez (note 51), p. 48.

⁵⁵ On the 'legal cause' of EU sanctions i.e. whether they are based on UN Security Council resolutions or are autonomous measures see Beaucillon (note 14).

effectively to the target so that it is clearly understood what is expected from the target. The target should also be informed when goals change.

Sanctions must not be used simply as a display of action for action's sake. Instead, the EU must use sanctions to complement other foreign policy tools—diplomacy and military intervention—in order to maximize the chances for their success, with a clear sense of precisely how sanctions will contribute to foreign policy objectives.

The EU should also be flexible with its sanctions policy. The EU refers to the importance of flexibility in its basic principles: 'The Council will work to further refine sanctions and to adapt the instrument to the new security environment'.⁵⁶ The effectiveness of sanctions is maximized when they are postponed or removed to reward compliance. Two further requirements are noteworthy: sanctions relief must be proportional to the concessions made and there must be a clear timeline for the process of sanctions relief. The timeline must be discussed with the target, so all actors are aware of the steps involved and the timeframe it will take.

ABBREVIATIONS

CFSP	Common Foreign and Security Policy
EEAS	European External Action Service
EU	European Union
TEU	Treaty on European Union

⁵⁶ Council of the European Union (note 3).

A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

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