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EU Sanctions in Context: Three Types

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All international sanctions are embedded in larger contexts of overlapping policy instruments and other sanctions regimes. Yet we tend to look at sanctions and evaluate their effectiveness from the vantage point of a single sender of sanctions – whether it is the UN, the EU, or an individual country like the United States – rather than consider the combined and interactive effects of different, co-existing sanctions regimes.

EU sanctions tend to be imposed in conjunction with measures by other actors: their interplay deserves closer analysis in terms of sequencing, objectives, complexity and legitimacy. The latter is particularly important, given recent criticisms of unilateral sanctions measures voiced at UN forums such as the General Assembly and the Human Rights Council.

Three types of 'embeddedness'

There are three different major types of EU sanctions applied in combination with other sanctions regimes. First, there is the EU as an implementer of UN sanctions. All members of the UN are obliged to implement sanctions measures adopted under Chapter VII of the UN Charter, and the EU gives such measures

standing in European law through two pieces of legislation: a Council decision under the CFSP followed by the adoption of a regulation. The EU sanctions on Liberia, Angola, Guinea Bissau, Somalia, the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), and South Sudan are all examples of this type of EU sanction. The EU measures are thus 'embedded' in universally applicable UN sanctions, legitimated by the UN Security Council and, at least in theory, implemented by all member states of the UN. Since these measures simply give effect to United Nations Security Council (UNSC) decisions, no independent role or initiative of the EU is observable here.

Second, there are EU autonomous sanctions that go beyond UN sanctions, sometimes described as 'supplementary' measures. These are additional measures taken to strengthen UN sanctions regimes. Often, these are based upon the wording of UNSC resolutions. For example, when the UN Security Council urges member states to 'exercise vigilance' with regard to the implementation of sanctions taken under Chapter VII, the EU may decide to add supplementary sanctions. The EU sanctions on Iran since 2010, the Democratic People's Republic of Korea (DPRK), Libya in 2011, and Côte d'Ivoire

in 2011 are examples of this type of EU sanction. The legitimacy of these measures has recently been called into question by some UN members – particularly UNSC permanent members Russia and China – in what is sometimes referred to as the 'floor versus ceiling' debate: i.e., whether UN sanctions should be considered the 'floor' on which other measures can be built or whether they constitute the 'ceiling' (or limit) on what is legitimate.

Third, there are EU autonomous sanctions applied in the absence of UN sanctions. These are employed in instances where the UN Security Council is unable to reach agreement due to opposition by a Permanent Member. They also serve as an instrument of EU foreign policy, with a view to expressing concern about what is believed to be unacceptable behaviour and to reaffirming EU values on the international scene.

The EU sanctions on Syria, Russia, Ukraine, Burma/Myanmar, Zimbabwe, Belarus, China, Uzbekistan or the Comoros are examples of this category of EU sanction. The EU sanctions are typically applied in conjunction with unilateral measures by the United States or by other countries or regional organisations. However, it is this category of measures, in particular, that has come under fire at the UN Human Rights Council which in September 2014 adopted a resolution on the negative impact of unilateral coercive measures on the enjoyment of human rights.

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This brief survey does not aim to be exhaustive: it is simply indicative of the different kinds of combinations that exist. These distinctions, however, are not entirely separate and hermetic: one can be transformed into another, such as when an autonomous EU sanctions regime is subsequently legitimated by UN action that extends the EU measures on a global scale.

Sequencing of regimes

How do EU sanctions regimes interact with measures by other senders? In terms of sequencing, the first type – *implementing* EU sanctions that give effect to UN measures – are invariably adopted shortly after the UNSC resolution. By definition, *supplementary* EU sanctions also follow UN measures. However, they can be politically sensitive, which explains why they sometimes refer to the language of UNSC resolutions: often, but not always, EU sanctions invoke language calling upon UN members to 'exercise vigilance' with regard to implementing the terms of the resolution. Supplementary measures agreed by the EU often take the form of additional designations of individuals and entities that are merged with UN lists, which makes them difficult to distinguish from UNSC measures in the eyes of the general public.

Sometimes, the supplementary measures are adopted concurrently with the enactment of mandatory UN sanctions, as was the case with the Libya sanctions of early 2011. In other cases, additional measures are only agreed years after the UN sanctions were enacted. This might be due to an initial reluctance to adopt measures beyond the letter of the UNSC resolution which, over time, subsides due to a growing frustration with unsuccessful negotiations, as was the case with Iran.

Alternatively, EU sanctions might be imposed on a target that is already the subject of UN sanctions when a new crisis erupts, complicating the situation with regard to which the original UN measures were imposed. Such was the case with the crisis that followed the presidential elections in Côte d'Ivoire in November 2010: it gave rise to a new unilateral sanctions regime on top of the original UN sanctions, which had addressed the armed conflict from the previous decade and had targeted both parties to the conflict.

The EU seldom 'goes it alone.' Autonomous EU sanctions are often the subject of cooperation with other senders such as the Economic Community of West African States (ECOWAS), the African Union, the Arab League and, most frequently, the United States. Indeed, autonomous EU sanctions practice gives clear expression to the transatlantic orientation of the Union's foreign and security policy. The vast majority of EU autonomous measures are imposed alongside Washington. Examples abound: Syria, Belarus, Russia/Ukraine, Burma/

Myanmar, Guinea, Zimbabwe, Sudan or China are cases in point.

Still, the specific measures imposed by Washington and Brussels do not always coincide. In fact, the transatlantic partners are not always on the same page when it comes to sanctions policy. This is best exemplified by the extraterritorial application of US sanctions on Cuba, vocally opposed by the EU. The same is true for the objectives pursued by sanctions: while Washington often advocates regime change, the EU tends to demand compliance from the target, however adversarial the relationship. Finally, Washington and Brussels differ in their approaches to the termination of sanctions. While the EU is often ready to ease sanctions after the target has taken credible steps towards compliance, the US is reluctant to modify sanctions regimes before full compliance has been achieved.

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The negotiations on the lifting of sanctions against Tehran have occasionally highlighted the divergences between the two sides of the Atlantic with regard to the imposition of these measures. Sometimes these discrepancies between the EU and US sanctions policies can be played to advantage, such as in the case of the sanctions imposed on Russia over Ukraine. The US has less economic interdependence with Russia and has applied wider and harsher sanctions than the EU. This can contribute to opening a bargaining space for the EU, as evidenced for example by the Minsk Process, since EU members have less extensive sanctions (and use less vehement rhetoric) than the US.

Despite their occasionally unilateral character, EU measures are closely interlinked with UN practice. Observers often fail to notice how frequently regional organisations prompt the UNSC to use their sanctions to endorse regional sanctions, often at the instigation of these same organisations. EU sanctions are sometimes a prelude to the imposition of UN sanctions: EU arms embargoes on Sudan, DRC and the former Yugoslavia pre-date identical measures undertaken by the UN.

The EU has also maintained sanctions after the UN has lifted them: examples include the sanctions kept in place against the former Yugoslavia following the termination of UN measures after the Dayton Accords, and the maintenance of an arms embargo on Libya once the UNSC lifted in 2003 the measures it had imposed after the Lockerbie bombings.

Different aims and contexts

The three types of EU sanctions tend to be associated with different sets of objectives.

Implementing sanctions are primarily associated with the UN's traditional preoccupation with the cessation of armed conflict, but the UN Security Council has expanded its sanctions mandate since the end of the Cold War to address terrorism and proliferation. More innovative concepts have been included among the goals, such as reversing unconstitutional change of government, and giving concrete expression to the notion of the Responsibility to Protect (R2P).

Supplementary EU sanctions are primarily devoted to non-proliferation goals, as in Iran and the DPRK, and to cases of armed conflict where strong historical and economic interests of an EU member are at stake, as in Libya or the Côte d'Ivoire.

Autonomous EU sanctions typically involve cases where the UNSC cannot agree. This is illustrated in the case of Syria, where Russia and China wielded their vetoes at least in part out of dissatisfaction with the expansion of the objectives of the no-fly zone over Libya to include regime change in 2011.

Agreement on sanctions at the UNSC also fails to materialise in cases directly involving the behaviour of a P5 member (Russia, Ukraine, China), support for democracy and the rule of law (Burma/Myanmar, Zimbabwe), and instances of significant human rights violations against a background of armed conflict (Syria, Islamic State of Iraq and the Levant).

Relationships and legitimacy

Implementing sanctions constitute an obligation under the UN Charter; here, the EU is simply

complying with international law. The only difference vis-à-vis the implementation of UN sanctions elsewhere is that this is normally accomplished through national legislation. On account of the EU's exclusive competence in external trade, EU member states have to implement the measures through the European Community. Implementing sanctions are universally regarded as legitimate international sanctions, and tend to be challenged only by the targeted parties themselves.

Supplementary sanctions, by contrast, have given rise to some controversy within the UN Security Council. While some – notably Western – members see supplementary measures as strengthening UN sanctions, others are weary of a practice that effectively expands the scope of the measures. They also argue that supplementary sanctions undermine the legitimacy of UN measures, since targets often do not differentiate sanctions by their source. Supplementary sanctions are thus increasingly being challenged in UN forums, particularly in the 'floor versus ceiling' debate among the P5.

Genuinely *autonomous* EU sanctions have proven even more controversial. Indeed, this type of sanction is currently being challenged in the context of a recent (26 September 2014) resolution on unilateral coercive measures at the UN Human Rights Council. Here, the EU's commitment to multilateralism is put to the test, since multilateral sanctions are understood as UN-mandated measures only. In the sanctions field, the EU is undoubtedly a cooperation-oriented partner: the Union almost invariably works closely in tandem with the US. Its bans often co-exist with sanctions imposed by regional organisations, which it sees as enhancing the regional and global legitimacy of its measures (not to mention their effectiveness).

The EU sanctions regime on Syria is a case in point. It was imposed alongside similar measures by the US; a few months later, Turkey and the Arab League followed suit with sanctions regimes of their own. Another example of cooperation with a regional organisation took place during the Ivorian crisis of 2011, when the EU and ECOWAS joined forces to bring an end to the conflict.

Finally, the legality of individual designations featured on both UN and EU sanctions lists has also been challenged through litigation in European courts, often successfully (in two out of three cases). Thus, while the EU views itself as a team player in its sanctions effort, the legitimacy of its measures is increasingly questioned.

Complex multilateralism

While the effectiveness of these different types of EU sanctions deserves further study, their status in relation to other sanctions regimes clearly matters. Implementing sanctions have the broadest scope and most legitimacy, but they are, in actual fact, UN sanctions. Supplementary sanctions can make a significant difference in ongoing negotiations, as they did in the case of Iran, where they were applied in the wake of decades of unsuccessful US unilateral comprehensive sanctions, and legitimated by the highly targeted UN sanctions that preceded them. Fully autonomous EU sanctions not only provide an essential way of communicating EU norms, but can also create space for negotiations, as in the case of Russia.

It is important to distinguish analytically between these different types of 'embedded' EU sanctions. Even though we tend to evaluate them from the perspective of the senders of sanctions, when seen from the vantage point of the target, it is the combination and the interactive effects, not the source, of the measures that matters most.

One final point: the EU regards itself as an unequivocally multilateral actor given that it implements UN-mandated measures stringently and almost invariably imposes sanctions in unison with other senders. Supplementary and autonomous measures, however, are tricky. Instead of firmly positioning the EU as a multilateral actor, they have the potential of doing exactly the opposite: for much of the non-Western world, these measures are perceived as illegitimate, as evidenced by several initiatives at UN level to which the EU has not yet responded. And supplementary sanctions can create reputational problems for the UN itself, when it is included collectively in blame for measures applied by the EU and other senders.

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