

## I. Nuclear-related targeted sanctions on Iran

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### **The shift from comprehensive to targeted sanctions**

In general terms, sanctions can have three aims: (a) coercing a target state to change its behaviour; (b) constraining a target state and preventing it from engaging in a proscribed activity; and (c) signalling to both the target state and others about a perceived violation of an international norm.<sup>1</sup> Sanctions can also play a role in helping to assuage domestic political constituencies or concerned allied states.

According to article 41 of the United Nations Charter, the Security Council: ‘may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations’.<sup>2</sup> Since the end of the cold war the Security Council has made active use of sanctions under Chapter 7 of the Charter, which tasks the Council with determining ‘the existence of any threat to the peace, breach of the peace, or act of aggression’ and deciding what measures shall be taken ‘to maintain or restore international peace and security’.<sup>3</sup> In January 1992, at a special meeting held at the level of heads of state and government, the Security Council decided that ‘the proliferation of all weapons of mass destruction constitutes a threat to international peace and security’.<sup>4</sup>

The decision to impose sanctions can originate from more than one source. While all states would be expected to implement Security Council resolutions, there are also autonomous sanctions, which are based on decisions taken outside the framework of common UN action. In some cases, autonomous sanctions may be supplementary measures that apply to the target of UN measures but go beyond the scope of Security Council decisions. However, they may also be applied to targets that are not subject to Security Council measures.<sup>5</sup>

Throughout the 1990s there was growing dissatisfaction with the humanitarian impact of the comprehensive economic sanctions against Iraq, which

<sup>1</sup> Targeted Sanctions Consortium (TSC), *Effectiveness of UN Targeted Sanctions: Findings from the Targeted Sanctions Consortium* (TSC: Geneva, Nov. 2013), p. 12.

<sup>2</sup> United Nations Charter, 26 June 1945, Article 41.

<sup>3</sup> United Nations Charter, Article 39 (note 2).

<sup>4</sup> United Nations, Security Council, Note by the President of the Security Council, S/23500, 31 Jan. 1992.

<sup>5</sup> On multilateral embargoes on arms and dual-use goods, also see chapter 19, section II, in this volume.

were part of an integrated attempt to discover and eliminate illegal weapon programmes. This dissatisfaction led to an extensive review of their use.<sup>6</sup> In particular, several European states pushed the UN to modify its sanctions policy and adopt more targeted measures that were focused on political leaderships and economic elites while minimizing the collateral impact on the wider population.<sup>7</sup> These efforts gained a significant amount of traction and were largely adopted at the UN level during the 1990s. As David Cortright and George Lopez have noted, there is a shared view that ‘strategic targeting of sanctions is now considered a crucial element of policy’.<sup>8</sup>

Designing targeted sanctions involves an assessment of the policy objectives that states are seeking to achieve and an analysis of the kind of restrictive measure most likely to accomplish that particular objective while minimizing the negative impact on the wider economy and citizens. The strategic targeting of sanctions often means trying to identify the activities most likely to influence the behaviour of the target. For example, degrading military capability or reducing revenues from a particularly important sector of the economy are often part of strategic targeting. In general terms, targeted sanctions can be divided into three categories: financial, trade, and travel and transportation.

Financial sanctions are restrictions on finance that could be asset-based or activity-based. Restrictions on the assets of a target can take the form of a freeze or forfeit. Restrictions on financial activity might prohibit payments to or from the target (or both) connected to a transaction of concern, or such payments might be made subject to certain conditions.

Trade sanctions are restrictions on the flow of goods, whether through commerce or aid and gifts, and can focus on the supply of goods to the target or the import of goods from it. Exactly which goods are subject to restriction will depend on the specific context, since different targets will be vulnerable to different kinds of restriction. The restrictions might take the form of a prohibition on the import or export of specific goods, or restrictions that set conditions on imports or exports. An important subset of trade sanctions is sanctions on the trade in conventional arms and dual-use items.<sup>9</sup>

Travel and transportation sanctions can ban travel or certain types of transportation, or make them subject to certain conditions that would not normally apply. Restrictions on travel are likely to focus on people consid-

<sup>6</sup> Wallensteen, P., Staibano, C. and Eriksson, M., *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Uppsala University Department of Peace and Conflict Research: Uppsala, 2003).

<sup>7</sup> Brzoska, M., ‘From dumb to smart? Recent reforms of UN sanctions’, *Global Governance*, vol. 9, no. 4, (Oct. 2003).

<sup>8</sup> Cortright, D. and Lopez, G., *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner: Boulder, CO, 2000), p. 223.

<sup>9</sup> Dual-use items are goods and technologies that may be used for both civilian and military purposes.

ered to be directly responsible for decisions relevant to the purpose of the sanctions, or they might extend to the family and close associates of those people. Restrictions on the movement of vehicles can apply to aviation—by blocking or restricting the landing rights of aircraft owned by the target or restricting their overflight rights. Restrictions can also apply to the maritime transfer of goods, for example by prohibiting ships owned or controlled by the target from carrying specified cargoes.

All of these measures can be classed as targeted sanctions—and are therefore distinct from the type of comprehensive economic sanction imposed on Iraq in the 1990s—but they are not necessarily limited in their impact. For example, placing restrictions on the trade in oil can be classed as a targeted sanction but it might have a major economic impact on the target state. As such, targeted sanctions can be seen as sitting on a sliding scale of comprehensiveness with individually targeted travel bans and asset freezes at one end and certain types of trade and financial sanction at the other.<sup>10</sup>

### **Nuclear-related sanctions on Iran**

Iran has been subject to nuclear-related sanctions imposed by the UN Security Council since December 2006. However, the situation regarding Iran and sanctions is complicated.<sup>11</sup> Iran has been subject to US sanctions of some kind since 1979, when the Mohammad Reza Shah Pahlavi, the Shah of Iran, fled the country following a popular uprising. Many of these sanctions are unaffected by the Joint Comprehensive Plan of Action (JCPOA). After November 1979, when Iranian students seized the US embassy in Tehran with more than 60 US diplomats inside, the United States imposed a ban on purchasing Iranian oil and froze Iranian assets in the USA. As part of the 1981 agreement that freed the hostages, the USA lifted the trade sanctions in place but not the financial sanctions. In 1983 the USA imposed new trade and additional financial sanctions on Iran in response to allegations of Iranian involvement in bomb attacks on the Multinational Force in Lebanon, which killed US personnel.

The USA has tried to win broader international support for the use of sanctions to try to influence Iranian policies. However, even among close friends and allies, it was not until late 2005 that US efforts to expand the international reach of autonomous sanctions gained traction. Until the second half of 2005 there were divided views on the utility of sanctions vis-à-vis Iran among the European Union (EU) member states. After the election of President Mahmoud Ahmadinejad, however, EU member states began to con-

<sup>10</sup> Targeted Sanctions Consortium (TSC) (note 1), p. 17.

<sup>11</sup> See the discussion on Iran's role in the Middle East in chapter 2, section V, of this volume; and Iran's nuclear deal in chapter 17, section I, of this volume.

**Box 3.1.** Key dates in the Joint Comprehensive Plan of Action implementation plan

**Finalization Day (14 July 2015)** Occurred when the JCPOA was successfully concluded and endorsed by the relevant parties. The United Nations Security Council endorsed the JCPOA in its Resolution 2231 on 20 July 2015.<sup>a</sup>

**Adoption Day (18 Oct. 2015)** Took place 90 days after the endorsement of the JCPOA by the Security Council. On Adoption Day the relevant parties began preparations for lifting sanctions.

**Implementation Day (16 Jan. 2016)** The date on which, simultaneously with the International Atomic Energy Agency (IAEA) report verifying implementation by Iran of the nuclear-related measures, the European Union (EU), the United States and the UN take the actions described in Resolution 2231 on relaxing or lifting sanctions.

**Cessation of Arms Embargo Day (18 Oct. 2020)** The date, five years after Adoption Day, when all restrictions are lifted on the supply of major conventional arms and related components and services to and from Iran (with the exception of goods and technology that could contribute to the development of nuclear weapon delivery systems).<sup>b</sup>

**Transition Day (18 Oct. 2023)** Will occur 8 years after Adoption Day or on the delivery of a report from the director general of the IAEA to the IAEA Board of Governors and the UN Security Council stating that all nuclear material in Iran remains in peaceful activities, the so-called Broader Conclusions, whichever occurs first. On that date, all remaining UN and EU sanctions related to the transfer of goods and technology that could contribute to the development of nuclear weapon delivery systems are due to be relaxed or lifted, and Iran will seek ratification of the Additional Protocol.

**Termination Day (18 Oct. 2025)** Will occur 10 years after Adoption Day, at which point any remaining UN and EU sanctions on arms and dual-use goods are due to be lifted 'and the UN Security Council would no longer be seized of the Iran nuclear issue'.

<sup>a</sup> United Nations Security Council Resolution 2231, 20 July 2015.

<sup>b</sup> This milestone does not have an official title in the agreement.

Source: The Joint Comprehensive Plan of Action (JCPOA), IAEA INFCIRC/887, 31 July 2015, <<https://www.iaea.org/sites/default/files/infcirc887.pdf>>

verge around the need for sanctions as an element of their overall response to concerns about the Iranian nuclear programme.<sup>12</sup> In August 2005 there was a significant change in the policy of engagement with Iran and negotiations on an EU–Iran Trade and Cooperation Agreement were suspended.<sup>13</sup>

The nuclear-related sanctions imposed on Iran sought to coerce Iran to enter into negotiations about its nuclear programme, constrain Iran's ability to advance its nuclear programme and acquire nuclear weapon-related delivery systems, and signal to Iran and the wider international community about Iran's perceived violation of non-proliferation norms. In the case of

<sup>12</sup> For a more detailed description of the shift in EU member states' thinking, see Portela, C., 'EU Strategies to Tackle the Iranian and North Korean Nuclear Issues', in eds S. Blavoukos, D. Bourantonis and C. Portela, *The EU and the Non-Proliferation of Nuclear Weapons Strategies, Policies, Actions* (Palgrave Macmillan, 2015), pp. 189–204.

<sup>13</sup> Council of the European Union, EU–Iran: Basic Facts, Brussels, Apr. 2009, p. 1.

the USA they were also part of an attempt to forestall calls from domestic political constituencies and Israel for a more robust military response to Iran's nuclear programme. The measures adopted included financial, trade, and travel and transportation sanctions that spanned a broad spectrum of comprehensiveness. The UN-imposed sanctions were at the less comprehensive end, focused on conventional arms, dual-use items and the movement of people and vehicles. The US- and EU-imposed sanctions were at the more comprehensive end and included restrictions on money transfers and a wider range of goods. Several other states, particularly Australia, Canada, Japan, New Zealand, Norway, South Korea and Switzerland, closely aligned themselves with US and EU measures.<sup>14</sup>

### **Iran sanctions and the Joint Comprehensive Plan of Action**

On 14 July 2015 six countries (China, France, Germany, Russia, the United Kingdom and the USA), along with the EU and Iran, announced a Joint Comprehensive Plan of Action (JCPOA) laying out an agreed approach to ensuring that Iran's nuclear programme is limited to peaceful uses.<sup>15</sup> The JCPOA sets out a road map for lifting all the sanctions imposed by the UN Security Council, the EU and the USA in response to Iran's nuclear programme. The JCPOA includes a detailed implementation plan, describing the sequence of events through which the UN's various nuclear-related sanctions on Iran will be lifted. There are five main dates in this process (see box 3.1).

Implementation of the JCPOA will be overseen by a joint commission of representatives of China, France, Germany, Iran, the Russian Federation, the United Kingdom and the USA, as well as the High Representative of the European Union for Foreign Affairs and Security Policy (HR). One task of the joint commission is to address issues arising from the implementation of the lifting of sanctions. A dedicated working group on sanctions, chaired by the HR, will assist the joint commission. If Iran believes that any nuclear-related sanction has not been lifted after Implementation Day, there is an obligation on the state concerned to consult with Iran to try to resolve the issue. If the issue is not resolved, Iran may refer the issue to the working group.

In an innovation in sanctions practice, the JCPOA includes a so-called snap back provision making termination conditional on Iranian future per-

<sup>14</sup> International Crisis Group, 'Spider web: The making and unmaking of Iran sanctions', *Middle East Report* no. 138 (International Crisis Group: Brussels, Feb. 2013), p. 14.

<sup>15</sup> International Atomic Energy Agency, Communication dated 24 July 2015 received from China, France, Germany, the Russian Federation, the United Kingdom, the United States of America (the E3/EU+3) and the Islamic Republic of Iran concerning the text of the Joint Comprehensive Plan of Action (JCPOA), INFCIRC/887, 31 July 2015. For the full text of the JCPOA see <[http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)>.

formance. If it is determined that there is ‘significant non-performance’ of JCPOA commitments by Iran, all of the sanctions provisions in past UN resolutions snap back into place, without the need for new resolutions. Under the dispute resolution mechanism of the JCPOA, any of the participants can refer an issue to the joint commission for resolution if they believe that commitments are not being respected.<sup>16</sup> If the joint commission is not able to resolve the issue within 15 days, it can be referred to the ministers of foreign affairs of the participants. If the ministers cannot resolve the issue within 15 days, a non-binding opinion on the compliance issue can be requested from an advisory board made up of three members—one each appointed by the participants in the dispute and a third independent member. The advisory board should deliver its opinion within 15 days.

If, after a maximum of five days, the joint commission does not accept the advisory board’s opinion, and the complaining participant deems the issue to constitute significant non-performance, that participant can treat the unresolved issue as grounds to cease performing its commitments under the JCPOA and notify the UN Security Council that it believes the issue constitutes significant non-performance.

The UN Security Council must vote on a resolution to continue the lifting of sanctions within 30 days of the notification. If no resolution can be agreed, or if a draft resolution is vetoed or defeated, then the provisions of the original resolutions will be reimposed unless the Security Council decides otherwise. Iran has stated that if any nuclear-related sanctions are reinstated in whole or in part, it will treat that as grounds to cease performing its commitments under the JCPOA in whole or in part. The EU has created an equivalent ‘EU snapback’ mechanism to facilitate the reimposition of its own set of nuclear-related sanctions on Iran.<sup>17</sup>

National legal measures were therefore suspended on Implementation Day rather than repealed, as they can be reimposed if necessary without the need for new legislation. However, reimposing the provisions in existing resolutions appears to be the limit of the measures that the Security Council could adopt at present because Russia has said it will block any resolution containing additional measures.<sup>18</sup>

Described as ‘a balanced deal that respects the interests of all sides’, the JCPOA contains six annexes, one of which describes the sanctions-related aspects of the agreement.<sup>19</sup> That annex details how sanctions imposed on

<sup>16</sup> JCPOA (note 15), Dispute Resolution Mechanism, pp. 17–18.

<sup>17</sup> European Union External Action, ‘Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)’, Brussels, 23 Jan. 2016.

<sup>18</sup> Harress, C., ‘UN sanctions against Iran to be blocked by Russia in future, Russian Deputy Foreign Minister says’, *International Business Times*, 14 Aug. 2015.

<sup>19</sup> European Union External Action, Joint Statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif, Vienna, 14 July 2015; and JCPOA (note 15),

Iran by the EU and the USA in response to concerns about Iran's nuclear programme will be managed within the framework of the agreement. Other countries not party to the JCPOA that have imposed autonomous sanctions on Iran have also indicated how restrictive measures will be lifted after Implementation Day.<sup>20</sup> Other countries, first and foremost China and Russia, have also decided on procedures for terminating their national restrictive measures on Iran following Implementation Day.<sup>21</sup>

Annex II: Sanctions-related commitments. Annex V, the Implementation Plan, describes how the sanctions-related commitments will be implemented.

<sup>20</sup> Government of Switzerland, Le Conseil Fédéral prend une décision de principe concernant l'assouplissement des sanctions frappant l'Iran [The Swiss Federal Council takes a decision in principle concerning the easing of sanctions against Iran], Berne, 21 Oct. 2015.

<sup>21</sup> Erdbrink, T., 'China deepens its footprint in Iran after lifting of sanctions', *New York Times*, 24 Jan. 2016; and Kramer, A. E., 'Russian companies rush to return to post-sanctions Iran', *New York Times*, 8 Feb. 2016.