

### 3. The role and impact of international sanctions on Iran

#### Overview

*It is not certain that the Joint Comprehensive Plan of Action (JCPOA) agreed in July 2015 will permanently settle disagreements over the Iranian nuclear programme. However, the JCPOA has reduced tensions over the issue and provided a framework that could eliminate the risk of a serious crisis between Iran and the international community.*

*International sanctions were an important factor in the period before the 2015 agreement and they will remain an important factor during its implementation. Prior to the agreement, the United Nations (UN) put in place targeted nuclear-related sanctions against Iranian individuals and entities. Other actors, first and foremost the United States and the European Union (EU), applied considerably more extensive sanctions. These autonomous sanctions, which were not mandated by UN decisions, introduced restrictions that were called for in UN resolutions, but not required by them. Over time they also began to include certain kinds of sanction—in particular in regard to financial transactions—for which there was no clear reference point in UN decisions.*

*If autonomous sanctions were an important factor in bringing about the conditions for the JCPOA, then there may be a strong case for making extensive financial and commercial sanctions mandatory in Security Council resolutions in future. This would at least partly reverse the recent tendency in the UN to favour more precisely targeted sanctions in order to reduce any unintended secondary impact.*

*The JCPOA opens the way for sanctions relief for Iranian individuals and entities. However, this relief is limited to nuclear-related sanctions and Iran remains subject to a number of other sanctions regimes. If it appears to Iran that the relief provided under the JCPOA is being undermined by measures applied in other sanctions regimes, this might be a threat to the agreement. Understanding the role and impact of sanctions in regard to the Iranian nuclear programme is therefore important in its own right, but also as an indicator of the role of sanctions in international disputes.*

*This chapter considers the different kinds of nuclear-related sanctions imposed on Iran in recent years as well as the processes through which they will be lifted in the light of the JCPOA and UN Security Council Resolution 2231. Section I outlines the historic shift from comprehensive to targeted sanctions and the key provisions of the JCPOA as they relate to the lifting of nuclear-*

*related sanctions on Iran. Sections II-V describe the different types of sanctions imposed on Iran. Section II focuses on financial sanctions, section III examines trade sanctions, section IV looks at sanctions on the trade in conventional arms and dual-use items, and section V looks at travel and transportation sanctions. In each case, the chapter looks at which sanctions were in place prior to the escalation in tensions surrounding its nuclear programme. It then describes the nuclear-related sanctions imposed by the UN Security Council, the USA and the European Union (EU), and which sanctions will be lifted under the JCPOA. The final section considers the role that sanctions played in achieving the JCPOA, the potential challenges posed by the lifting of sanctions and their implications for the successful implementation of the agreement.*

IAN ANTHONY, MARK BROMLEY AND PIETER D. WEZEMAN

## I. Nuclear-related targeted sanctions on Iran

IAN ANTHONY AND MARK BROMLEY

### **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.

## II. Financial sanctions

IAN ANTHONY

### **Types of sanction**

As noted in section I, there are two general types of financial sanction. Asset-based financial sanctions require states to freeze the funds or other assets of the target, and to ensure that no funds and other assets are made available to them either directly or indirectly. There may also be a prohibition on a designated entity or person accumulating new assets. This might include, for example, blocking grants or loans to a sanctions target. Activity-based financial sanctions focus on the financial aspects of restricted or prohibited trade and commerce, including secondary services such as insurance cover. Iran has been the target of both asset-based and activity-based financial sanctions.

United Nations Security Council Resolution 1737 decided that all states should freeze the funds, other financial assets and economic resources owned or controlled by persons or entities designated by the Council as being engaged in, directly associated with or providing support for Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.<sup>1</sup> The decision extended to persons or entities acting on behalf of, or at the direction of, designated persons or entities, as well as entities owned or controlled by them, including through illicit means.

Resolution 1737 applied to specific, named individuals and manufacturing companies. However, in 2007 Security Council Resolution 1747 called on states and international financial institutions not to enter into any new commitments for grants, financial assistance or concessional loans to Iran except for humanitarian or development purposes.<sup>2</sup>

The Security Council put in place activity-based financial sanctions in Resolution 1737. The resolution prohibits the transfer to Iran of specified items, and also prohibits financial assistance, investment or the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of those prohibited items.<sup>3</sup>

In June 2010 the asset freeze was extended to include the Islamic Revolutionary Guard Corps (IRGC) as an entity, as well as 'any individuals or entities acting on their behalf or at their direction' and 'entities owned or controlled by them, including through illicit means'.<sup>4</sup> This could be considered a turning point, in that UN Security Council Resolution 1929 contained

<sup>1</sup> United Nations Security Council Resolution 1737, 27 Dec. 2006.

<sup>2</sup> UN Security Council Resolution 1747, 24 Mar. 2007.

<sup>3</sup> UN Security Council Resolution 1737 (note 1).

<sup>4</sup> UN Security Council Resolution 1929, 9 June 2010.

what might be termed catch-all financial sanctions. The resolution calls on states to prevent the provision of financial services, including insurance or reinsurance, and to prevent the transfer of any financial or other assets or resources if they have information that provides reasonable grounds to believe that such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

Resolution 1929 also called on states to prevent Iranian banks from opening new branches, subsidiaries or representative offices in their jurisdiction, and to prohibit the purchase of foreign banks by Iranian banks or financial institutions if they have information that provides reasonable grounds to believe that these activities could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems. The same resolution requires states to prohibit financial institutions in their jurisdiction from opening subsidiary branches in Iran if those branches could contribute to proliferation-sensitive activities.<sup>5</sup>

### **The Joint Comprehensive Plan of Action and financial sanctions**

The Joint Comprehensive Plan of Action (JCPOA) requires the lifting of nuclear-related financial sanctions on Iran related to banking activities, insurance, financial messaging services, trade financing, grants, financial assistance and concessional loans, sanctions on Government of Iran public-guaranteed bonds and associated services for all of these sanctions. The UN and European Union (EU) nuclear-related financial sanctions were lifted on 16 January 2016 (Implementation Day). The impact of these steps is likely to be significant. After paying off its creditors, gaining access to its foreign exchange reserves held in foreign banks is expected to provide Iran with nearly \$60 billion.<sup>6</sup> The snap back provision of the JCPOA is an untested mechanism. However, there are also other issues that could complicate implementation of the plan.

#### *National implementation and enforcement*

Decisions by the UN Security Council to impose targeted financial sanctions must be implemented and enforced by all the UN member states. Although autonomous sanctions have been agreed within the framework of the EU, it remains the responsibility of each EU member state to ensure that these sanctions are implemented and enforced within their jurisdiction.

<sup>5</sup> UN Security Council Resolution 1929 (note 4).

<sup>6</sup> Katzman, K., *Iran Sanctions*, Congressional Research Service (CRS) Report for Congress RS20871 (US Congress, CRS: Washington, DC, 21 Jan. 2016), Summary.

National legislation in the USA applies to any transactions where payments are made in the USA, come within the USA or come within the possession or control of a US person. This gives US laws considerable extra-territorial impact, since many international transactions are dollar denominated and therefore at some point pass through the US financial system. The Office of Foreign Assets Control (OFAC) in the US Department of the Treasury, which is responsible for enforcing financial sanctions, has regularly punished foreign as well as US entities considered to be violating sanctions law.

In 2010 the USA expanded the scope of so-called secondary sanctions—sanctions imposed on foreign entities considered by US authorities to be violating the provisions of financial sanctions.<sup>7</sup> These sanctions target any foreign financial institutions that knowingly facilitate, participate in or assist a sanctioned activity by denying them access to the US market and to the US financial system. The USA used these kinds of financial secondary sanctions to exert pressure on sections of the Iranian economy, particularly the oil and gas sector and the shipping industry. For example, in 2012 the USA imposed sanctions on non-US banks if they were processing payments through Iran's Central Bank. The provisions applied to foreign central banks only if the transactions with Iran's Central Bank were for oil purchases. The US President was empowered to waive these sanctions if the state where the bank was headquartered had 'significantly reduced' its imports of oil and gas from Iran.<sup>8</sup> In 2013 the USA imposed sanctions on non-US persons and institutions engaged in financial transactions with Iran's shipping and ship-building sectors or the provision of associated services.<sup>9</sup>

The EU stopped short of imposing these kinds of extra-territorial measures. However, its central position in the global economy allowed the EU to impose a range of financial sanctions that had far-reaching implications for Iran's economy. In January 2012 the EU froze the assets of Iran's Central Bank being held in EU member states; and in March 2012 the EU blocked access to systems for clearing banking transactions to a list of sanctioned Iranian banks.<sup>10</sup> In addition, the banks were no longer able to use the Belgium-based Society for Worldwide International Financial Transfers (SWIFT), the world's most important secure financial messaging service.<sup>11</sup>

<sup>7</sup> US Congress, Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), Washington, DC, 1 July 2010.

<sup>8</sup> US National Defense Authorization Act 2012, section 1245, paragraph (d)(4)(D).

<sup>9</sup> US National Defense Authorization Act 2013, section 1244, paragraph (c)(1).

<sup>10</sup> Council of the European Union, 'Council Implementing Regulation (EU) No 54/2012 of 23 Jan. 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran', *Official Journal of the European Union*, L19, 24 Jan. 2012; Council of the European Union, 'Council Regulation No 267/2012 of 23 Mar. 2012 concerning restrictive measures against Iran', *Official Journal of the European Union*, L88, 23 Mar. 2012.

<sup>11</sup> Katzman (note 6), p. 35.

In March 2012 the EU also banned the granting of financial loans or credit to Iranian persons involved in the oil and gas sector.<sup>12</sup>

The USA issued a series of waiver determinations and findings that include foreign nationals on JCPOA Adoption Day, which took effect on Implementation Day.<sup>13</sup> Prior to Implementation Day, the USA had also relieved certain specific sanctions as required in the JCPOA. With regard to all other sanctions, however, the US Treasury has explained that the US Government ‘will continue to vigorously enforce our sanctions against Iran, including by taking action against those who seek to evade or circumvent our sanctions’.<sup>14</sup> The specific scope of sanctions relief is extremely complicated, and there is an attendant risk that US and, perhaps in particular, foreign entities will misunderstand the relevant regulations and find themselves subject to enforcement actions.

#### *De-risking and over-compliance*

The logic of targeted sanctions is that they should be relieved in response to a change in behaviour by the target. It follows that Iran should see immediate benefits from full implementation of what has been agreed within the framework of the JCPOA. However, decisions on whether to take up new commercial opportunities in Iran will be made, first and foremost, by the private sector.

The overall picture regarding the current scope of financial sanctions remains complicated and rather uncertain. In these circumstances, whether Iran is able to benefit from sanctions relief will depend in part on whether foreign private banks and financial institutions feel that the risk of doing business in Iran, or with Iranian entities, is acceptable in the light of the potential rewards.

The financial authorities, most notably OFAC, have taken an active approach to enforcing financial sanctions on Iran. They have been assisted in this by two fairly recent developments. First, the national legislation enacted in the wake of past terrorist attacks, in particular the attacks on the USA in September 2001, requires banks and financial institutions to collect and store much more information about their customers than was previously the case. The legislation also requires banks and financial institutions to provide this information to the regulatory authorities under certain conditions. Second, the rapid spread of digital technology within the financial system has made it possible to assemble and analyse large amounts of data much more quickly and efficiently than in the past.

<sup>12</sup> Council of the European Union (note 10).

<sup>13</sup> US Department of State, Waiver Determinations and Findings, 18 Oct. 2015.

<sup>14</sup> US Department of the Treasury, US Department of State, ‘Guidance relating to the continuation of certain temporary sanctions relief pursuant to the JPOA prior to the implementation of the JCPOA’, Washington, DC, 7 Aug. 2015.

This combination of more active enforcement, greater transparency and new analytical tools has made both regulators and the financial sector much more vigilant with regard to possible evasion of sanctions. It has also increased the probability that violations will be detected. This applies to inadvertent and accidental non-compliance, as well as to deliberate violations of sanctions law.

Financial sanctions have been the focus of intensive discussions between regulators and the private sector because the complexity of the regulations has made it difficult to be compliant with certain provisions. In particular, the provisions of regulations related to beneficial ownership and activity-based financial sanctions have been highlighted as presenting challenging problems. The provision that the target of a sanction should not benefit indirectly from a transaction requires banks and financial institutions to understand many more aspects than would normally be the case. In regard to activity-based financial sanctions, banks and financial institutions would not typically be experts in the substantive elements of the transaction. Where sanctions regulations require denial of finance if 'such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems', compliance requires information and knowledge not typically found in a bank.<sup>15</sup>

The complexity and risk associated with financial sanctions appear to have led some private companies to avoid all transactions in which there is an Iranian connection, even when the transaction is probably sanctions compliant. Rather than making an individual assessment of potential transactions, risk-averse actors simply avoid any risk by indiscriminately prohibiting finance to Iranian clients.

This risk aversion is perhaps understandable given the very large penalties imposed in recent years on major international banks, such as Barclays Bank and BNP Paribas, as well as other financial actors, such as PayPal.<sup>16</sup> The settlement reached between the United States Department of Justice and BNP Paribas involved total financial penalties of almost \$9 billion, of which \$140 million was a fine, and the remainder was forfeiture of the proceeds from transactions with sanctioned parties over an extended period.<sup>17</sup> In addition

<sup>15</sup> This formulation is taken from United Nations Security Council Resolution 1929, 9 June 2010.

<sup>16</sup> US regulators levied a \$100 million fine against Switzerland's UBS bank in 2004; \$80 million against Dutch bank ABN Amro in 2005; \$350 million against the British Lloyds TSB and \$536 million against Switzerland's Credit Suisse in 2009; \$298 million against the British bank Barclays in 2010; as well as \$619 million against Dutch bank ING, \$8.6 million against Japan's Bank of Tokyo-Mitsubishi UFJ and \$674 million and \$1.92 billion respectively against the UK's Standard Chartered Bank and HSBC in 2012 for unauthorised transactions with Iran and other sanctioned countries. See Katzman (note 6). See also US Department of the Treasury, Civil Penalties and Enforcement Information, [n.d.].

<sup>17</sup> United States Department of Justice, 'BNP Paribas agrees to plead guilty and to pay \$8.9 billion for illegally processing financial transactions for countries subject to US economic sanctions', Press Release, 30 June 2014.

to large fines, penalties have also limited the possibility of doing business in the USA or engaging in dollar-denominated transactions elsewhere—both essential to the survival of companies.

The World Bank, the G20 Financial Stability Board (FSB) and the Financial Action Task Force (FATF) have worked together to understand the extent of de-risking and find ways to reduce any unnecessary loss of financial access by countries under targeted sanctions.<sup>18</sup>

In the USA, regulators have entered into a closer dialogue with the private financial sector to clarify enforcement decision making and provide reassurance that one-off mistakes will not be punished heavily, but ‘egregious activity that was knowingly carried out over long periods of time’ will be subject to vigorous enforcement actions.<sup>19</sup>

<sup>18</sup> Financial Action Task Force (FATF), ‘FATF clarifies risk-based approach: case-by-case, not wholesale de-risking’, Paris, 23 Oct. 2014.

<sup>19</sup> US Department of the Treasury, Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference, Press Release, 16 Nov. 2015.

### III. Trade sanctions

MARK BROMLEY

#### **Types of sanction**

The United States has had comprehensive sanctions in place on virtually all forms of trade with Iran since the 1990s, some of which were expanded during the escalating crisis surrounding Iran's nuclear programme. The UN Security Council did not impose any additional nuclear-related trade and commerce-related sanctions on Iran. However, UN Security Council Resolution 1929 states that the oil and gas sector as well as other sectors of Iran's economy play a role in supporting Iran's nuclear programme. As such Resolution 1929 played a crucial role in enabling states to cooperate with the more comprehensive sanctions imposed by the USA and the European Union (EU).<sup>1</sup>

The USA, the EU and other allied states imposed an ever-expanding range of trade sanctions on Iran in response to its nuclear-related activities. For example, in September 2010 the USA reinstated a ban that had been lifted in April 2000 on the import of nuts, fruit products, carpets and caviar from Iran.<sup>2</sup> The USA also created a range of secondary sanctions on foreign persons and companies trading with Iran (see section II). In March 2012 the EU imposed a ban on the sale to Iran of key equipment or technology in the oil and gas sectors; the import or purchase from Iran of crude oil, petrochemicals and gas; the export to Iran of software for integrating industrial processes; and the export or import to or from the Iranian Government of gold, precious metals, diamonds, banknotes and coinage.<sup>3</sup>

The impacts of US and EU sanctions on Iran's oil and gas sector were substantial. Iran's oil exports declined from 2.5 million barrels per day to 1 million barrels per day.<sup>4</sup> US secondary sanctions meant that a number of oil imports were reduced even in states that did not directly impose sanctions on Iran's oil and gas sector. For example, China's imports of oil from Iran fell from 550 000 barrels per day in 2011 to 410 000 barrels per day in 2015.<sup>5</sup> In 2013 it was reported that Iran's oil fields had seen a steep decline in production rates that would require at least \$300 billion of investment over

<sup>1</sup> Katzman, K., *Iran Sanctions*, Congressional Research Service (CRS) Report for Congress RS20871 (US Congress, CRS: Washington, DC, 21 Jan. 2016), p. 32.

<sup>2</sup> US Congress, *Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010* (CISADA), Washington, DC, 1 July 2010, section 103 (P.L. 111–195).

<sup>3</sup> Council of the European Union, *Council Regulation no. 267/2012 of 23 Mar. 2012 concerning restrictive measures against Iran*, *Official Journal of the European Union*, L88, 23 Mar. 2012.

<sup>4</sup> Katzman (note 1), p. 22.

<sup>5</sup> Katzman (note 4).



10 years to reverse.<sup>6</sup> Meanwhile, the withdrawal of Western, Eastern European and Asian firms from Iran created an estimated loss of investment in Iran's oil and gas sector of around \$60 billion.<sup>7</sup> The impacts of the restrictions on trade with EU member states were particularly severe. In 2011 EU member states were the largest importers of oil from Iran, between them receiving an average of 600 000 barrels per day.<sup>8</sup> This dropped to zero in 2012. Following the imposition of sanctions, total EU imports from Iran decreased by 86 per cent and total EU exports to Iran decreased by 26 per cent.<sup>9</sup>

In April 2015 the US Treasury Secretary Jacob Lew stated that Iran's gross domestic product (GDP) had contracted by 9 per cent in the preceding two years and that its current level was 15–20 per cent lower than it had been in 2010.<sup>10</sup> The sanctions also resulted in a decline of around 56 per cent between 2012 and 2014 in the value of the rial on unofficial markets. This fall accelerated the rate of inflation Iran, which was estimated at between 50 and 70 per cent in the period 2011–13.<sup>11</sup>

### **The Joint Comprehensive Plan of Action and trade and commerce sanctions**

Most US sanctions on trade with Iran remain unaffected by the Joint Comprehensive Plan of Action (JCPOA). However, the JCPOA stipulates that the USA will allow the export to Iran of civilian aircraft and related parts and components, and the import from Iran of nuts, fruit products, carpets and caviar from Implementation Day. All of the EU's sanctions on Iran's oil and gas sector and the trade in precious metals were lifted on Implementation Day. The impact of the lifting of these sanctions is expected to be substantial. Iran's oil exports are expected to reach pre-2012 levels within 8–12 months of the sanctions on its oil sector being lifted.<sup>12</sup> The World Bank has estimated that following the complete removal of sanctions, Iran's GDP growth could reach 5.1 per cent in financial year 2016/17 and 5.5 per cent in 2017/18.<sup>13</sup>

<sup>6</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. 21.

<sup>7</sup> International Crisis Group (note 6), p. 21.

<sup>8</sup> Mix, D. E., *The United States and Europe: Current Issues*, Congressional Research Service (CRS) Report for Congress RS22163 (US Congress, CRS: Washington, DC, 3 Feb. 2015), p. 12.

<sup>9</sup> European Commission, Trade, 'Countries and regions: Iran', Last Updated: 27 Oct. 2015.

<sup>10</sup> Katzman (note 1).

<sup>11</sup> Katzman (note 1).

<sup>12</sup> World Bank, Middle East and North Africa Region, *Economic Implications of Lifting Sanctions on Iran*, MENA Quarterly Economic Briefing no. 5 (World Bank: Washington, DC, July 2015).

<sup>13</sup> World Bank (note 12).

## IV. Conventional arms and dual-use items

MARK BROMLEY AND PIETER D. WEZEMAN

### **Types of sanction**

The USA has had comprehensive sanctions on transfers of conventional arms and dual-use items to Iran since the US Government designated Iran a 'state sponsor of terrorism' in January 1984.<sup>1</sup> These sanctions were expanded during the 1990s and 2000s to include restrictions on companies based outside the USA that were involved in assisting Iran's weapons of mass destruction or ballistic missile programme.

The UN Security Council imposed a range of nuclear-related sanctions on the transfer of arms and dual-use goods to and from Iran. In December 2006 UN Security Council Resolution 1737 prohibited the supply of 'all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities'.<sup>2</sup> The list of specified controlled goods covered all items on the Nuclear Supplier Group (NSG) list of nuclear programme-related goods and technologies but excluded equipment for light water reactors. Resolution 1737 also prohibited the transfer of items and technology which could contribute to 'the development of nuclear weapon delivery system'.<sup>3</sup> The list of specified controlled goods was based on the control list of the Missile Technology Control Regime (MTCR).<sup>4</sup>

In March 2007 UN Security Council Resolution 1747 banned all states and groups from purchasing or receiving arms from Iran and called on all states to 'exercise vigilance and restraint' in their supply of any items covered by the UN Register of Conventional Arms (UNROCA) to Iran.<sup>5</sup> In June 2010 UN Security Council Resolution 1929 banned the supply of major arms as defined by UNROCA—battle tanks, armoured combat vehicles, large calibre artillery, combat aircraft, attack helicopters, warships, certain missiles and missile launchers. It also banned the supply of spare parts, components for and services related to these major weapons.<sup>6</sup> The reference to UNROCA meant that—unlike other UN arms embargoes—supplies of land-based surface-to-air missile (SAM) systems and most small arms and light weapons (SALW) were not covered by the restrictions. At the time the embargo was imposed, Iran had an S-300 SAM system on order from Russia, which was

<sup>1</sup> US Department of State, 'State Sponsors of Terrorism', [n.d.].

<sup>2</sup> UN Security Council Resolution 1737, 27 Dec. 2006.

<sup>3</sup> UN Security Council Resolution 1737 (note 2).

<sup>4</sup> Missile Technology Control Regime (MTCR), <<http://www.mtc.info>>. Also see chapter 19, section III, in this volume.

<sup>5</sup> UN Security Council Resolution 1747, 24 Mar. 2007.

<sup>6</sup> UN Security Council Resolution 1929, 9 June 2010.

not covered by the scope of UN arms embargo. However, Russia adopted legislation to enforce the UN sanctions on Iran that explicitly prohibited the delivery of the S-300 system.<sup>7</sup>

The EU matched—and in several areas expanded on—the UN restrictions on the transfer of arms and dual-use goods to and from Iran. In February 2007 the EU responded to UN Security Council Resolution 1737 by placing a ban on the export to Iran of all items on the NSG and MTCR control lists.<sup>8</sup> In April 2007 the EU responded to UN Security Council Resolution 1747 by imposing a ban on the import from Iran and export to Iran of all items on the EU military list, that is all arms and military equipment.<sup>9</sup>

Separate from the sanctions related to the concerns over Iran's nuclear programme, in April 2011 the EU imposed sanctions on Iran in reaction to concerns about violations of human rights. These included restrictions on the export of items to Iran which might be used for 'internal repression', such as vehicles designed for riot control or prisoner transfers and razor barbed wire. In March 2012 the EU expanded these controls to include a ban on the export of 'equipment, technology or software' that would be used for monitoring or interception of Internet or telephone communications in Iran.<sup>10</sup> The surveillance controls have affected supplies of telecommunications networks and services by EU-based companies to Iran.<sup>11</sup>

#### *Allegations of sanctions violations*

During the years that they were in place, Iran was repeatedly accused of violating the UN-imposed restrictions on the import and export of arms and dual-use goods. In 2013 the UN Panel of Experts tasked with monitoring the UN sanctions on Iran 'found evidence of a wide procurement network to circumvent UN embargoes on export of arms or dual-use items'.<sup>12</sup> Nonetheless, the sanctions are credited with having—at the very least—slowed Iran's nuclear programme and significantly reduced its capability to develop, produce, maintain and modernize its medium- and long-range ballistic

<sup>7</sup> President of Russia, 'Executive order on measures to implement UN Security Council Resolution 1929 on Iran', 22 Sep. 2010.

<sup>8</sup> Council of the European Union, 'Council Common Position 2007/140/CFSP of 27 Feb. 2007 concerning restrictive measures against Iran', 27 Feb. 2007, *Official Journal of the European Union* L61, pp. 49–55.

<sup>9</sup> Council of the European Union, 'Council Common Position 2007/246/CFSP of 23 Apr. 2007 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran', *Official Journal of the European Union*, L106, pp. 67–75.

<sup>10</sup> Council Decision 2012/168/CFSP of 23 Mar. 2012 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran, *Official Journal of the European Union*, 24 Mar. 2012, p. 85.

<sup>11</sup> Stecklow, S., 'Special report: Chinese firm helps Iran spy on citizens', Reuters, 22 Mar. 2012.

<sup>12</sup> United Nations, Security Council, Final report of the Panel of Experts established pursuant to Resolution 1929 (2010), 3 June 2013, annex to S/2013/331, 5 June 2013, paras 24–25.

missiles.<sup>13</sup> Iran could not import new major weapons, with the exception of small numbers of major arms that do not come under the UNROCA, to replace its ageing military equipment.<sup>14</sup>

Many of the reported violations concerned exports of conventional arms by Iran. In 2015 the Panel of Experts reported that ‘Iran’s arms transfers have actively continued’.<sup>15</sup> The panel concluded that an offer by Iran to supply arms to the Lebanese army in support of the fight against terrorism was a violation of the UN embargo on arms exports from Iran. The panel also reported that Iran has given military support to the Huthi rebels in Yemen. However, due to the security situation it could not confirm continuing allegations that Iran was supplying weapons to Syria.<sup>16</sup> The panel also concluded that in 2014 and 2015 Iran had supplied arms to Iraq in support of the Iraqi fight against Islamic State.<sup>17</sup> The USA has openly stated that it was aware that Iran had supplied arms to Iraq.<sup>18</sup>

However, the UN panel noted that no state had formally reported an actual case of non-compliance by Iran, whereas in all previous reporting periods some cases had been reported by states. It noted that ‘the discrepancy between media reports of alleged arms transfers and the lack of reporting to the Committee could have a number of explanations’, including ‘a reluctance to report on the part of Member States’.<sup>19</sup> Despite the open violation of the arms export embargo, no action was taken by the UN Security Council in response. In Iran it was observed that Iranian arms supplies to Iraq appeared to have been accepted by the international community, even if they violate the UN’s embargo on Iranian arms exports.<sup>20</sup>

### **The Joint Comprehensive Plan of Action and arms and dual-use items**

US national restrictions on transfers of conventional arms and dual-use items to Iran are unaffected by the JCPOA. In accordance with the JCPOA, the UN’s nuclear-related restrictions on the transfer to Iran of dual-use items on the NSG and MTCR control lists, items that could contribute to the development of nuclear weapon delivery systems, and items covered by the UNROCA, as well as transfers from Iran of all arms and related material,

<sup>13</sup> Katzman, K., *Iran Sanctions*, Congressional Research Service (CRS) Report for Congress RS20871 (US Congress, CRS: Washington, DC, 21 Jan. 2016), pp. 47–48.

<sup>14</sup> SIPRI Arms Transfers Database, <<http://www.sipri.org/databases/armstransfers>>.

<sup>15</sup> United Nations, Security Council, Final report of the Panel of Experts established pursuant to resolution 1929 (2010), S/2015/401, 2 June 2015.

<sup>16</sup> United Nations, Security Council, Final Report of the Panel of Experts established pursuant to Resolution 1929 (2010), 1 June 2015, annex to S/2015/401, 2 June 2015, pp. 12–14.

<sup>17</sup> United Nations (note 15), pp. 12–13.

<sup>18</sup> United States, Department of State, Daily press briefing, 17 Mar. 2015.

<sup>19</sup> United Nations (note 15), p.12.

<sup>20</sup> Bakhtiari, B., ‘Iran arms exports to Iraq tolerated in fight against Isis says report’, *The Guardian*, 17 Feb. 2015.

were lifted on Implementation Day.<sup>21</sup> However, any transfers have to be approved in advance—on a case-by-case basis—by the UN Security Council. This requirement for prior approval does not apply to transfers of technology and low-enriched uranium ‘for exclusive use in light water reactors’.<sup>22</sup> Requests for approvals are to be sent to the Security Council Facilitator.<sup>23</sup> For items on the NSG control lists, supplier states have to ensure that they are ‘in a position to exercise effectively a right to verify the end-use and end-use location of any supplied item’ and notify the International Atomic Energy Agency (IAEA) within 10 days of the transfer taking place.<sup>24</sup> For items on the MTCR control lists and which could contribute to ‘the development of [a] nuclear weapon delivery system’, supplier states have to ensure that ‘the contract for delivery of such items or assistance includes appropriate end-user guarantees’ and that Iran commits to not use any items received for development of nuclear weapon delivery systems.<sup>25</sup>

The prior approval requirement for transfers to Iran of items on the NSG control list will apply until Termination Day (18 October 2025) or until the IAEA submits a report confirming the Broader Conclusion, whichever comes first. The prior approval requirement for transfers to Iran of items covered by the MTCR control lists and any items which could contribute to ‘the development of nuclear weapon delivery system’ will apply until Transition Day (18 October 2023) or until the IAEA submits the Broader Conclusions report, whichever comes first. The prior approval requirement for transfers to Iran of items covered by the UNROCA and transfers from Iran of all arms and related material will apply until five years after Adoption Day (18 October 2020) or until the IAEA submits the Broader Conclusions report, whichever comes first.

Following the lifting of sanctions, reports indicated that Iran was interested in signing arms deals with Russia.<sup>26</sup> However, many of the items covered by these potential deals are included in the UNROCA and—as such—their transfer to Iran would require the prior approval of the UN Security Council until 2020.<sup>27</sup> Russia’s cancelled contract for S-300 missiles has been

<sup>21</sup> UN Security Council Resolution 2231, 20 July 2015.

<sup>22</sup> UN Security Council Resolution 2231 (note 21).

<sup>23</sup> UN Security Council, ‘Resolution 2231 (2015), Nuclear-related transfers and activities (procurement channel)’, [n.d.].

<sup>24</sup> UN Security Council Resolution 2231 (note 21).

<sup>25</sup> UN Security Council Resolution 2231 (note 21).

<sup>26</sup> Safronov, I. and Chernenko, E., [Iran is eyeing the Russian military], *Kommersant*, 15 Feb. 2015 (in Russian). Several reports also detailed Iran’s plans to acquire nuclear reactors from China and Russia. However, since these are light water reactors they are not covered by the UN sanctions. Rogers, D., ‘China, Iran agree two nuclear power stations and trade worth \$600bn’, *Global Construction Review*, 27 Jan. 2016.

<sup>27</sup> ‘Russian arms sale to Iran without approval would violate ban: US’, *Reuters*, 18 Feb. 2016.

resurrected. President Putin signed a decree in April 2015 stating the sale could proceed in recognition of the progress of the nuclear negotiations.<sup>28</sup>

The way in which the newly created systems for approvals and notifications under the UN's sanctions work in practice—particularly the extent to which supplier states comply with their provisions, which transfers are approved or denied and how supplier states respond to denials—will contribute to the success or failure of the JCPOA. Equivalent systems for approval or notification have been attached to several other UN sanctions regimes in recent years and records of state compliance have often been weak or inconsistent. An analysis of the notification systems attached to the Democratic Republic of the Congo embargo found that many supplier states—including members of the UN Security Council—were failing to comply with its requirements.<sup>29</sup> Meanwhile, disagreements among UN Security Council states about which transfers should be approved or denied may lead to tensions between the JCPOA parties. As one critic of the JCPOA has noted, we may see ‘disconcerting global arguments over exports to Iran within the JCPOA’s Joint Commission, the IAEA and the UN Security Council’.<sup>30</sup> For example, it is possible to imagine significant differences of opinion between the five permanent members of the UN Security Council with regard to whether a particular transfer could contribute to ‘the development of nuclear weapon delivery system’. Since the JCPOA was finalized, there have already been disagreements about whether particular missiles being tested in Iran are capable of carrying nuclear weapons.<sup>31</sup>

The EU bans on the export to Iran of conventional arms and dual-use items will remain in place until Transition Day (18 October 2025).<sup>32</sup> However, certain EU member states are likely to retain highly restrictive policies when it comes to licences for exports of conventional arms and dual-use items to Iran for the foreseeable future.<sup>33</sup> In addition, EU sanctions on the export of items to Iran which might be used for ‘internal repression’ are not affected by the JCPOA.<sup>34</sup>

<sup>28</sup> ‘Russia ends ban on delivery of S-300 missiles to Iran’, Reuters, 13 Apr. 2015.

<sup>29</sup> Bromley, M. and Holtom, P., ‘Arms transfers to the Democratic Republic of the Congo: assessing the system of arms transfer notifications, 2008–10’, SIPRI Background Paper, Oct. 2010.

<sup>30</sup> Moore, T. C., ‘Iran: non-proliferation overshadowed’, *Survival*, vol. 57, no. 5 (Sep. 2015), pp. 53–58.

<sup>31</sup> Charbonneau, L., ‘Iran’s October missile test violated UN ban: expert panel’, Reuters, 16 Dec. 2016.

<sup>32</sup> European Union External Action Service, ‘Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)’, Brussels, 23 Jan. 2016. 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), INF-CIRC/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)>.

<sup>33</sup> ‘Eyes on the prize: Are you ready for Iran?’, *World Export Control Review*, Mar. 2016, pp. 17–28.

<sup>34</sup> European Union External Action Service (note 32); and JCPOA (note 32).

## V. Travel and transport sanctions

MARK BROMLEY

### **Types of sanction**

Prior to the escalating crisis surrounding Iran's nuclear programme there were no travel or transport sanctions on Iran. The UN Security Council imposed a range of restrictions on the movement of individuals with an alleged role in Iran's nuclear weapons or nuclear weapon delivery system programmes in March 2008. UN Security Council Resolution 1803 required states to notify the Sanctions Committee about the entry to or transit through their territories of an expanding list of individuals.<sup>1</sup> In June 2010 these restrictions were expanded by UN Security Council Resolution 1929, which imposed a ban on the entry or transit of named individuals.<sup>2</sup>

The Security Council also imposed an expanding range of provisions on restricting or inspecting ships and aircraft transferring goods to or from Iran. Resolution 1803 also called on states to inspect the cargo of aircraft and vessels owned by 'Iran Air Cargo' and the 'Islamic Republic of Iran Shipping Line' that were travelling to or from Iran where there were 'reasonable grounds' to believe they were carrying prohibited goods.<sup>3</sup> Resolution 1929 expanded the scope of these provisions to cover all ships and aircraft travelling to and from Iran, regardless of ownership.<sup>4</sup> Resolution 1929 also called on states to prohibit the provision of bunkering, ship supply, engineering or maintenance services to any Iranian-owned or contracted vessels suspected of carrying prohibited items.<sup>5</sup>

Attempts by member states to enforce the UN's targeted sanctions by inspecting ships and aircraft travelling to or from Iran and limiting the activities of Iranian-owned ships led to a prolonged game of cat-and-mouse with the Iranian Government. This involved Iran renaming or reflagging its ships, registering ships in poorly regulated jurisdictions and disabling its ships' tracking devices.<sup>6</sup> However, after 2012 US pressure led an increasing number of states to refuse to register Iranian shipping companies or flag Iranian vessels.<sup>7</sup> There were also a significant number of seizures of prohibited items travelling to or from Iran. Many of these seizures concerned exports

<sup>1</sup> UN Security Council Resolution 1803, 3 Mar. 2008.

<sup>2</sup> UN Security Council Resolution 1929, 9 June 2010. In both cases, exceptions to the ban were allowed on humanitarian and religious grounds.

<sup>3</sup> UN Security Council Resolution 1803 (note 1).

<sup>4</sup> UN Security Council Resolution 1929, 9 June 2010.

<sup>5</sup> UN Security Council Resolution 1929 (note 4).

<sup>6</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. 17.

<sup>7</sup> International Crisis Group (note 6), p. 17.

of conventional arms from Iran. For example, in 2013 the Yemeni coast-guard and US Navy found Iranian-origin man-portable air defence systems (MANPADS), 122-mm rockets, grenade launchers and explosives on board a ship intercepted in Yemeni territorial waters.<sup>8</sup> Yemeni authorities suspected that the weapons had been intended for delivery to Huthi rebels in northern Yemen.<sup>9</sup>

### **The Joint Comprehensive Plan of Action and sanctions on the movement of goods and people**

The requirements for states to inspect the cargo of ships and aircraft that they have reason to believe are violating UN sanctions are not affected by the JCPOA. As these various sanctions are lifted in the run-up to Termination Day, however, the requirements to carry out inspections will also cease to apply. The restrictions on travel by named individuals will continue until five years after JCPOA Adoption Day or until the IAEA submits its Broader Conclusions report, whichever is the earlier.<sup>10</sup>

<sup>8</sup> United Nations, Security Council, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council Resolution 2060 (2012): Somalia, annex to S/2013/413, 12 July 2013, pp. 28, 313–14.

<sup>9</sup> United Nations (note 8), pp. 278–85, 292.

<sup>10</sup> UN Security Council Resolution 2231, 20 July 2015.



## VI. Conclusions

IAN ANTHONY AND MARK BROMLEY

While it is too early to reach any definitive conclusions about many of the issues highlighted in this chapter, several preliminary points can be made.

### Targeted or comprehensive?

Despite the recent arguments in favour of a shift towards targeted sanctions and away from comprehensive sanctions, the USA and the EU were willing to impose an ever-widening array of trade and financial sanctions that had a significant impact on Iran's economy. The Iran sanctions were always significantly less severe than the economic sanctions imposed on Iraq in the 1990s. Even so, during their imposition they were the subject of sustained criticism, because of the impact they were having on Iran's economy and for the unintended consequences they were generating.<sup>1</sup> In addition to the broader economic impacts on Iran's population, even in cases where sanctions exempted medicine, food and humanitarian aid from their scope these items were effectively denied Iran because of the risk aversion and over-compliance of suppliers and financial institutions.<sup>2</sup> These arguments have fed growing signs of resistance in parts of the international community to a perceived increase in the use of economic sanctions. For example, the argument that unilateral sanctions are contrary to human rights has recently gained some momentum within the UN Human Rights Council.<sup>3</sup>

The shift towards the adoption of more comprehensive sanctions was largely driven by the United States. The global reach of US policy tools, particularly in the field of financial regulation and trade controls, also did much to strengthen their impact. However, the adoption of many of these comprehensive sanctions at the EU level lent the measures additional weight, particularly given the significant economic ties between EU member states and Iran.<sup>4</sup> The EU's sanctions against Iran signalled an increased willingness on the part of the EU and its member states to expand the use of sanctions beyond narrowly targeted restrictions and towards more comprehensive measures. The EU has also imposed more comprehensive targeted sanctions on Syria and Russia where, unlike with Iran, the measures were not

<sup>1</sup> World Bank, Middle East and North Africa Region, *Economic Implications of Lifting Sanctions on Iran*, MENA Quarterly Economic Briefing no. 5 (World Bank: Washington, DC, July 2015).

<sup>2</sup> Moret, E. S., 'Humanitarian impacts of economic sanctions on Iran and Syria', *European Security*, vol. 24, no. 1 (2015), pp. 120–140.

<sup>3</sup> Portela, C., 'How the EU learned to love sanctions', ed. M. Leonard, *Connectivity Wars* (European Council on Foreign Relations: London, 2016), p. 42.

<sup>4</sup> Esfandiary, D., 'Assessing the European Union's sanctions policy: Iran as a case study', EU Non-Proliferation Consortium, Non-Proliferation Paper no. 34, Dec. 2013.

preceded by the imposition of UN sanctions. According to one commentator, '(t)his indicates an emerging consensus within the EU that sanctions should have a serious economic impact, and a growing acceptance that individuals and entities not directly involved in the policies being condemned may suffer from the measures'.<sup>5</sup>

### **Were comprehensive sanctions decisive in coercing Iran?**

Many commentators have argued that the more comprehensive sanctions imposed by the USA and the EU played the most decisive role in coercing Iran into changing its policies. During the JCPOA negotiations, there was a widely held view that Iran would not be swayed by sanctions but would instead adjust its economic policy to adapt to the restraints they imposed.<sup>6</sup> However, as the negotiations reached their conclusion it became clear that lifting the trade sanctions and accessing funds held in Western banks were key factors motivating Iran's negotiating team.<sup>7</sup> By contrast, the more targeted sanctions imposed by the UN had little impact on Iran's negotiations. Their importance was in the 'legitimizing role' they played in supporting the more comprehensive sanctions by the USA and the EU.<sup>8</sup>

If this assessment of the relative importance of the UN, EU and US sanctions is accurate, it challenges many of the assumptions that have driven much of the work on smart sanctions in recent years. In particular, it could challenge the widespread dismissal of the 'naive theory of sanctions', which held that increased economic pressure would drive political leaders to change policy.<sup>9</sup>

That said, while sanctions no doubt played a role, there is broad consensus on the fact that wider political developments also played a key role in making the agreement possible. Without the election of President Barack Obama in 2008 (and his re-election in 2012) and that of President Hassan Rouhani in 2013 it seems inconceivable that a deal could have been reached. President Obama maintained US objectives vis-à-vis the Iranian nuclear programme, and also maintained the sanctions policy, but he framed these policies in terms that facilitated dialogue. While it could be argued that the imposition of sanctions played a role in the election of President Hassan Rouhani, how-

<sup>5</sup> Esfandiary (note 4), p. 40.

<sup>6</sup> International Crisis Group, 'Spider web: the making and unmaking of Iran sanctions', *Middle East Report* no. 138 (International Crisis Group: Brussels, Feb. 2013), pp. 34–35.

<sup>7</sup> Nephew, R., 'How US made sure its sanctions worked', *The World Today*, Royal Institute of International Affairs (Feb./Mar. 2016), pp. 36–38. Richard Nephew was the Principal Deputy Coordinator for Sanctions Policy at the US Department of State between 2013 and 2015.

<sup>8</sup> The Targeted Sanctions Initiative at the Graduate Institute, Geneva, <<http://sanctionsapp.com/>>.

<sup>9</sup> Targeted Sanctions Consortium (TSC), *Effectiveness of UN Targeted Sanctions: Findings from the Targeted Sanctions Consortium* (TSC: Geneva, Nov. 2013), p. 13.

ever, it would be hard to argue that it was the only factor—or even that it was the most decisive.

### **Continuing complexities post-sanctions**

The complexity of various targeted sanctions imposed on Iran, the difficulties of lifting them in an orderly fashion and the ongoing problems of over-compliance by Western companies might generate sufficient ill will to undermine the JCPOA.<sup>10</sup> Moreover, the deal could still collapse as a result of the collateral impact of non-nuclear-related sanctions by the EU and—particularly—the USA. The implementation of the JCPOA and UN Security Council Resolution 2231 will not have any impact on existing sanctions in place for reasons other than concern over the Iranian nuclear programme. However, the Iranian Government has emphasized that once nuclear-related sanctions are lifted, they should not be reimposed using a different legal framework. Should that happen, Iranian representatives have underlined that Iran would no longer consider itself bound by the commitments in the JCPOA.<sup>11</sup>

Iran is currently the target of a number of sanctions that are not nuclear-related. The USA has maintained autonomous sanctions related to allegations of Iranian state sponsorship of terrorism since the 1980s and all financial transactions with Iran have been prohibited for US companies since 1995.<sup>12</sup> In the first quarter of 2011 the EU adopted restrictive measures in response to what was determined to be a deteriorating human rights situation in Iran.<sup>13</sup>

In addition, the Financial Action Task Force (FATF) on money laundering has found Iran to be a country that fails to meet adequate standards in countering terrorist financing. The FATF has therefore identified Iran as a threat to the integrity of the international financial system, and called on its participating states to apply effective countermeasures to protect their financial sectors from the money laundering and terrorist financing risks emanating from Iran.<sup>14</sup>

Aside from the Iranian nuclear programme, targeted financial sanctions have been used to try to dissuade Iran from continuing its development of

<sup>10</sup> International Crisis Group (note 6), p. ii.

<sup>11</sup> United Nations, Security Council, Letter dated 20 July 2015 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the President of the Security Council United Nations, S/2015/550, 20 July 2015.

<sup>12</sup> The White House, The Iran and Libya Sanctions Act of 1996, Fact sheet, 6 Aug. 1996.

<sup>13</sup> Council Decision 2011/235/CFSP of 12 Apr. 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran, Brussels, 14 Apr. 2011; Council Regulation (EU) 359/2011 of 12 Apr. 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran, Brussels, 14 Apr. 2011.

<sup>14</sup> Financial Action Task Force (FATF), FATF Public Statement, Paris, 23 Oct. 2015.

ballistic missiles.<sup>15</sup> At the end of 2015, the US Government was being urged by members of Congress to consider whether targeted financial sanctions should form part of the response to further progress made by Iran in its ballistic missile development programme.<sup>16</sup> If Iran takes the view that as nuclear-related sanctions are lifted, essentially identical restrictions are being imposed for other reasons, a serious issue could arise over JCPOA implementation.

<sup>15</sup> See sections II and III in this chapter.

<sup>16</sup> Zengerle, P., 'US says considering response to Iran ballistic missile test', Reuters, 17 Dec. 2015.