

SECURITY IN TRANSITION:
AN INTERDISCIPLINARY
INVESTIGATION INTO THE
SECURITY GAP



Human Security and Sanctions, from Security to Governance: Strengthening EU Capacities and Involving the locals

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Abstract

The European Union (EU) has resorted to sanctions on several occasions in the last two decades, led by the assumption that restrictive measures would be less invasive and harmful than war. This paper discusses sanctions from a human security perspective. Specifically, it assesses the extent to which the EU has been aligned with a human security approach in using restrictive measures. The paper examines EU sanctions practice in relation to two principles of human security: human rights and a bottom-up approach. First, the paper argues that the use of EU sanctions has been partially adapted to meet the challenges posed by human security concerns, for instance by adopting the targeted approach and including exemptions to restrictive measures, but specific steps need to be made in order to further align EU practice with human security principles. Second, the decision to impose sanctions has sometimes considered local voices, but more should be done to acquire more knowledge about targeted societies and to increase the legitimacy of EU actions abroad. The paper suggests several ways for strengthening the capacity of EU institutions and involving local populations and non-state actors in the decision-making process in order to align EU sanctions with a human security approach.

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Introduction

Sanctions have gained the center of the international stage since the end of the Cold War. Military strategy dominated the discourse from WWII to the fall of the Berlin Wall, when it became common to talk about 'Mutually Assured Destruction' and 'Flexible Response'. The new world order has been constructed on the assumption that the use of force would not be central to solving problems in international relations, and instruments other than war, such as sanctions, would be more suitable to deal with the contemporary challenges of international politics. The European Union (EU) has contributed to the expansion of sanctions practices, also led by the belief that sanctions were less intrusive than military force. However, sanctions reduce the influx of resources towards certain regions and, therefore, the local dynamics affecting the economy has a negative spill-over effect over innocent civilians.

This article discusses sanctions from a human security perspective. Specifically, this chapter assesses the extent to which the EU has been inspired by a human security approach in using restrictive measures.¹ The argument is that the use of EU sanctions has been partially adapted to meet the challenges posed by human security concerns, but specific steps need to be made in order to further improve the situations. The chapter looks at the EU sanctions practice through two principles of a human security approach: human rights a bottom-up approach. Human rights concerns refer to the negative consequences of sanctions on innocent civilians and the legal protections that need to be upheld when individuals are subjects of freedom restrictions. Whereas human rights concerns have deeply affected the practice of sanctions, problems still exist. Human rights are also affected by sanctions both for the population and for the primary targets.² Among others, targeted sanctions can affect the practices of local economies by providing incentives for illegal activities. Bottom-up approach regards the involvement of local communities and actors when the EU decides to resort to restrictive measures. The little involvement of locals often contributes to undermine the legitimacy of the EU and, therefore, the effectiveness of any action towards a certain community is imperilled. The chapter suggests that stronger institutional capacities at the EU level combined with a well-tailored strategy considering local actors would contribute to the creation of a human security strategy for the future.

The chapter is divided as follows. First, a human security perspective is presented. Second, the legal framework and the practice of EU sanctions are introduced. Third, human security concerns are highlighted. Fourth, the chapter presents specific solutions that the EU should undertake to address existing concerns.

¹ In EU jargon, sanctions are called 'restrictive measures'. I will use both concepts as synonyms in this chapter.

² Consistently with the literature on sanctions, the article refers to 'senders' when it talks about actors that impose sanctions and to 'targets' when it talks about actors that suffer sanctions.

Human security and Sanctions

A human security approach shifts the attention of the security of individuals away from the security of states. This means that a human security approach to sanctions focuses on the role of individuals in the policy process, from their conception to their enforcement and assessment. The Barcelona and the Madrid report published in 2004 and 2007 identified principles to construct a human security strategy. The reports identified six principles – human rights, legitimate political authority, bottom-up approach, multilateralism, regional focus and clear objectives – upon which a human security strategy should be constructed. Human rights and a bottom-up approach are specifically relevant to the case of sanctions and they are introduced in this section.

The first category is to look at the implications of imposing sanctions on human rights. This takes the discussion to two levels. The former is constituted by the consequences that sanctions have on entire economies. This concern was especially strong in the 1990s, when the United Nations imposed a total embargo on Iraq following its invasion of Kuwait and the toll on the population was extremely severe while its leaders did manage to hold on onto power. Iraq is by far the most notorious example of this, but the conflicts in the former Yugoslavia and Haiti also contributed to consolidate the idea that sanctions hurt civilians rather than their leaders.

This is the reason for which sanctions have fundamentally evolved and we talk about targeted sanctions today. The main difference stems from the evolution from comprehensive (targeting states and whole economies) to targeted sanctions (aiming also at individuals and non-state entities). The idea behind this evolution of sanctions was driven by the need to minimize the consequences on innocent civilians and to maximize the burden on the responsible individuals of undesired policies. Since the late 1990s, three international conferences – the so-called Interlaken, Bonn-Berlin and Stockholm processes – took place to set up formal and informal procedures that would allow make targeting individuals possible under international law.

However, targeted sanctions have a more limited scope compared to the past, but they are sanctions nevertheless. The denial of resources to individuals and sectors rather than states may have less invasive consequences, but it does have consequences. Sanctions can affect the security of individuals by influencing their wellbeing in multiple ways. First, the economy of a targeted society can be affected, prices can increase, there can be shortages of resources and primary goods, and the provision of public goods can be affected. This often concerns rulers that decide the best allocation of resources given their policy objectives. For instance, the worsening of health care services documented in Iran can be due to sanctions, but it can also be due to the decision of the government to invest resources in the nuclear program instead of in its health care system, since sanctions did target other sectors. Second, the regular functioning of the economy can change with a new structure of incentives

to trade with goods included in the list of sanctions and beyond. For instance, new actors enter the market of specific products, smuggling and other kinds of activities emerge at the expense of regular business practices. In other words, predatory criminalized economies may emerge out of sanctioned societies.

Sanctions not only impact the human security of individuals via the effects on the wider economy, but the practice of targeted sanctions has also opened the Pandora's Box of individual rights of due process at the international level. Indeed, legal concerns have emerged in recent years, since individual rights should be guaranteed when restrictions to property and freedom of movement are implemented. Therefore, principles such as due process and effective remedy have inspired the preparation of legal texts with a view to reduce human rights violations in the sanctions process. Several Courts, national and regional, have considered complaints and issued decisions on sanctions cases and an international practice of targeted sanctions is being constituted, but guaranteeing human rights to individuals in legal proceedings at the international level turned out to be a complicated task, so that grey areas remain in how targeted sanctions affect the human rights of individuals.

The second category for a human security approach that is relevant when sanctions are under scrutiny is the bottom-up approach. The shift from comprehensive to targeted sanctions is even more evident in this realm. Targeted sanctions replace domestic policies very often, for instance in cases when spoilers of conflicts or democratization processes are targeted. Therefore involving local actors in the decision-making process becomes an essential aspect of a human security approach to sanctions. In fact, targeted sanctions are frequently imposed after consulting with local actors, and if it is true that the nature of the instrument does not allow this in all the occasions, this aspect still needs to be considered. Indeed, sanctions are used to rectify wrongdoings and to fight deviant behaviors; therefore targets of sanctions are *by nature* in disagreement with senders. Nevertheless, local actors have begun to see sanctions as an instrument in the hands of others, but that can also serve their own interests. In practice, this means that while sanctions were seen as an instrument of the strong on the weak, they can also be requested by opposition parties against their direct rulers. Sanctions are today often about meeting requests coming from actors in the country under sanctions, be it opposition or government forces.

Overview of EU policy on targeted sanctions

The European Union has imposed sanctions as a foreign policy instrument since the entry into force of the Maastricht Treaty. In fact, economic sanctions had been imposed before, but only as coordinative efforts among members of the European community. With the creation of the European Union, sanctions became mandatory to all members when decided by the Council and this foreign policy instrument was, in fact, Europeanized. UN sanctions and decisions to suspend cooperation under the

Cotonou Agreement are also similar measures, but they lack the political weight to be considered autonomous decisions of the Council. Thus, when restrictive measures are concerned, this chapter refers to sanctions imposed as CFSP decisions by the EU.

As such, sanctions are imposed under Article 29 of the Treaty on the European Union. This article gives the Council the power to alter provisions of EU treaties for foreign policy concerns. Sanctions can be brought to the attention of the Council by any state and by the High Representative, and a decision has to be taken unanimously. Following a decision of the Council, arms embargoes and travel bans are to be implemented by EU member states, whereas a Council regulation according to article 215 of the Treaty on the Functioning of the European Union is necessary insofar as economic restrictions are concerned. Indeed, financial and trade bans alter the functioning of the common market, which is one of the exclusive competences of the EU.

The EU resorts to restrictive measures to achieve specific objectives of policy. According to article 21 of the TEU the objectives are: advancing in the wider world 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'. In more specific terms, restrictive measures have been adopted to support democracy and human rights, to preserve peace, to prevent conflicts, to strengthen international security, and to promote an international system based on stronger multilateral cooperation and good global governance.

There are three documents that constitute the framework under which sanctions operate: the Basic Principles, the Guidelines and the Best Practices. The Guidelines were the first document approved by the Council (2003) as specific indications were needed to cope with the post-9/11 listings and to administer the evolution from comprehensive to targeted sanctioning. This is a living document and it was updated for the last time in 2012. Following the Guidelines, the activity of the EU needed to be inspired to general norms, therefore the Basic Principles were adopted in 2004, stating that the EU should impose targeted sanctions whenever 'necessary' to meet the objectives of the EU. Finally, the Best Practices were adopted in 2008 and they are more technical indications to ensure proper and consistent implementation across the EU.

There are four most recurrent types of sanctions. The first are arms embargoes, which are bans on sale weapons and provision of military related services (e.g. training). The second category is travel bans and this refers to the prohibition of entering or transiting the territory of the European Union. Third is the range of financial restrictions, which encompasses freezing funds, to preventing payments and financial services to targets. Finally, trade restrictions regard the sale/purchase of goods, technology and services that are considered strategically linked to political activity that is being targeted.

The imposition of sanctions follows the same cycle than other decisions made by a political actor. The first stage is the articulation of interest, when different actors (usually a member state via the High Representative) make the case to use sanctions. If there is enough support for such decision, then the second phase is designing sanctions. This stage takes place mostly in the committees of the Council, mainly Relex and Coreper, with the important input from the European External Action Service (EEAS) with the sanctions unit, the country desks and the delegations. Once sanctions are imposed, then the monitoring and the enforcement are mostly left to EU members, and the Council (with the support of the Commission). The Commission is the guardian of the treaty and it verifies that EU regulations are properly and timely implemented, therefore it should exercise indirect monitoring of sanctions implementation. Finally, the fourth phase is the assessment of sanctions, which is done by the Council relying also on the public debate fed by civil society groups.

The area of application for sanctions has expanded greatly in the past years. Currently, the EU is running about 20 regimes of autonomous sanctions³³ in a variety of crises. The most frequent adoption regards cases of democracy promotion, like the cases of Belarus and Zimbabwe, and conflict related measures, such as the cases of Russia and Syria. Additionally, anti-terrorist and non-proliferation are also relevant areas of application as demonstrated by the Iran case, and by the anti-terrorist list that the EU has prepared.

EU sanctions and human security

The European Union has used sanctions for over two decades now. This accumulated experience can be looked at through the lenses of the two categories that we identified above related to human security. Namely the imposition of sanctions, even in their most recent targeted form, do have human rights implications. Additionally, as any other policy decisions, targeted sanctions should/could be decided with the involvement of local actors (e.g. civil society, governments, etc.) at any stage of the policy process. The improvements in the recent years notwithstanding, the EU policy on restrictive measures presents challenges that should be addressed to implement a sanctions policy that adheres to human security principles. Specifically, we will look at the human rights implications and at the degree to which the EU policy is shaped by a bottom-up approach.

The first main debate on sanctions relates to their unintended consequences on innocent civilians: do EU sanctions hurt civilians? The answer is that the EU has done a lot to address this problem, such as the series of exemptions that have been structurally added to sanctions texts, but more can be done and a limited impact is inevitable when sanctions are imposed.

³³ Autonomous sanctions are restrictive measures imposed without the request of the Security Council and outside of the legal framework provided by the Cotonou Agreement.

In general, the EU imposes targeted sanctions only. This is stated in the Basic Principles, one of the key documents for sanctions, where it is indicated that sanctions are to minimize the negative implications for innocent civilians. The European Union has adopted this principle and it has imposed mostly targeted sanctions in the past years, but there have been *de facto* exceptions to this rule.

The first case has been Iran, where the EU imposed a ban on the purchase of oil from Teheran. On the one hand, this has not been defined comprehensively because of a number of exemptions to the rule, but on the other, it is difficult to argue that such decision would not have affected innocent bystanders as oil profit are central for the public budget in Iran. The oil export of Iran dropped drastically after the imposition of the US/EU sanctions in 2010/2011. The key decision was to prohibit insurance companies to cover the carriers of oil, which made business too risky for any company to transport oil to Iran without some sorts of authorization from public authorities. This issue was important for the European Union because 90% of insurance companies working in that sector were located in London.

Another relevant case is Syria. After an initial phase of targeting, EU sanctions became broader and broader. At a later stage, sanctions affected most transactions, and made trading with Syria more difficult than before. However this occurred despite the fact that sanctions include several exemptions for trade that can be done on humanitarian criteria. Dual-use goods require the clearance of the competent authority from the state of origin, therefore sanctions are *de jure* not comprehensive and of a limited impact. But the problem emerges when the situation on the ground is so complicated that companies shy away from Syria in order to not to take risks, thereby making sanctions *de facto* comprehensive.

Finally, the sanctions on Russia were expected to impact the broader economy, however other factors should also be considered in the context of a multiplayer effect of sanctions on the Russia economy. The EU decided to impose sanctions after the annexation of Crimea, but sanctions were limited in scope and impact for a few months. After having added to the list the a few individuals and sectors, the downing of the MH17 of Malaysian airlines created the momentum to impose sanctions that were much broader in scope. Since July 2014, several products – dual-use goods for instance – need to be authorized for export to Russia, but many of them fall outside the scope of this decision. This extra procedure combined with the uncertainties of the overall EU-Russia relations, the weakened structure of the Russian economy and the depreciation of the Ruble hindered heavily the EU-Russia trade. If it can be stated that sanctions are not the only factor to explain the problem of the Russia economy, they are certainly one of them.

In all these cases the magnitude of sanctions could hardly justify the claim that civilians were not affected, but targeted sanctions can also have broader implications. The first countermeasure undertaken by the EU was to set a time limit to the duration of

sanctions. While early cases of sanctions, such as the voluntary arms embargo on China, were imposed to stay indefinitely until another decision was adopted to lift it, all sanctions today are imposed for review within 12 months (this limit can vary, and is mostly shorter). This ensures a regular screening of the political reasons that motivated the imposition of sanctions, and forces the Council to review the situation so that sanctions could be modified in the presence of massively negative humanitarian consequences, for instance. Moreover, the EU has integrated several exceptions to sanctions in order to deal with the unintended effects. For instance, individuals who are in need of medical care can apply for a visa even if they are banned from entering the EU. States retain the power to grant visas when targets have to participate in international negotiations. Finally the effects of sanctions should not affect third parties, therefore purchases decided before the imposition of sanctions should still be paid in full by listed individuals, and banks would not violate the sanction regimes if this occurs.

In any case, the switch to targeted sanctioning and the other decisions have not eliminated the fact that human security is affected, either directly or indirectly, by the imposition of sanctions. For instance, targeted sanctions are not always perceived as being 'targeted'. Sanctions increase the perception of instability of a country, and foreign investments also shy away from sanctioned countries, even if their activity would most likely be allowed. Firms or intermediaries can decide to stop having relations with a country wherein individuals were sanctioned. This is due to little clarity of the regulations and the fines that companies incur into occasionally.

Moreover, prohibitions to send money or to trade with a specific group create incentives for those who do want to profit out of illegal trading. Targeted sanctions make markets less attractive, but they also provide opportunities. This is a feature for targeted sanctions that needs to be taken into serious consideration. When the EU resorts to targeted sanctions, the more they are targeted, the easier it is to circumvent them. This is because targeted sanctions aim at changing individual behaviours rather than national conducts. Targeted measures take often the shape of domestic policies, so that certain individuals will be willing to take risks in trading such goods illegally if the expected profits are high, which is often the case when the trade of a good becomes illegal. Criminal organizations are, of course, at the forefront of such competition because they can rely on their infrastructure to trade the banned product. However, anyone in a position of power, be it government officials or business actors, has the incentive to circumvent sanctions and by doing so, the incentives of the economy of a country would be directly and inevitably affected. There is evidence that this occurred in several cases of UN sanctions, as documented by the reports of the Panels of experts, and there is anecdotal evidence that this was also the case in Syria, Zimbabwe, Myanmar, Russia and Iran among others.

The imposition of sanctions can favour – once again directly, indirectly or both – the emergence of criminalized economies. For instance, this can occur when public

officials are targeted by the European Union. In order to maintain their standard of living, they are likely to divert public resources to their own benefits creating a problem for others. Trading illegally is also detrimental to the proper functioning of a market. If certain operators have access, for instance, to liquidity while their direct competitors have not, the latter will pay the consequence of unfair competition even if they have higher productivity (which would benefit the whole economy).

Regardless from the cause, citizens normally pay a toll for the imposition of sanctions. The effects can vary according to the type of sanctions imposed. For instance, a ban on sale of weapons can favor the ones that already have weapons in a conflict situation. A ban on oil can increase the price of transportation and, therefore, the price of consumer goods, including basic ones such as medicines and food.

A human security approach does bring the attention towards the economic impact of sanctions, but individual rights should also be under focus when dealing with restrictive measures of the European Union. As mentioned above, the restriction of individual rights should be done according to principles of due process and effective remedy. Since the aftermath of 09/11, this problem has become clear when individuals were wrongly blacklisted, and they found themselves unable to rectify these mistakes when individuals were not told why their assets had been frozen. The EU has adopted several initiatives to deal with these challenges.

For instance, a statement of reasons must accompany the decision to list individuals, and they have to be properly notified. In case of disagreement with such decision, targeted entities can lodge their case to the General Court (formerly Court of First Instance) and the Court of Justice of the European Union is empowered to judge whether EU decisions violated their individual rights. This procedure was used numerous times by targets and the judgements of the Court have been crucial in shaping an international doctrine for international sanctions. After an initial trend of the Court to dismiss the requests for delisting, the Kadi case in 2008 set an important precedent. The Court said that even if decisions are taken as foreign policy matters, they are not to violate the principles that are established by European law. Other judgements led to de-listing due to lack of evidence, such as the cases of six Ukrainian individuals who were listed under the accusation of misappropriation of funds. The Court found that the listing was based exclusively on a letter sent by the office of Ukraine's Prosecutor General, which provided very limited evidence on the accusation. The Court found that little evidence was provided for the case of the Islamic Republic of Iran Shipping Lines as well, but it also ruled over the substance of the reason. For instance, the Court delisted the son of Tay Za, who had been listed in the Burma case, because the family tie itself is not enough to justify the listing.

These improvements notwithstanding, problems and doubts remain. There are concerns, for instance, linked to the listing of individuals based on classified information. Member states do not feel comfortable to share classified information

with EU courts, therefore individuals are listed at the request of EU members, but the evidence to justify such decisions is not shown. When the case ends up in Court, individuals have their chance to look at the evidence, which has not been provided. Eventually, individuals are de-listed, but they have been on the list for a long time without evidence being produced to substantiate the accusation that motivated the listing. Moreover, judicial review is an instrument available only to people who can afford it, so that Russian oligarchs and larger corporations managed to bring their case to the Court, while many others had to suffer the consequences of sanctions. However, EU decisions could and should be the projection of EU values abroad in terms of guaranteeing human rights to targets of sanctions.

The second relevant category for human security is the bottom-up approach. Despite the fact that sanctions are notoriously an instrument of the strong versus the weak, therefore it is a rare even that the strong involves the weak in making decisions; the EU has partially followed this principle in several occasions. Basically, local actors were heard and inspired the imposition of targeted sanctions. For instance, the restrictive measures on the leaders in Burma (Myanmar) were more supported by the National League for Democracy (NLD) led by Aung San Suu Kyi than by certain members of the European Union. The sanctions on the leaders of Zimbabwe, Mugabe and his associates, were strongly sustained by the Movement for Democratic Change (MDC) led by Morgan Tsvangirai, and the several rounds of measures on Lukashenko and his governments were also welcome by the internal oppositions in Belarus. Contrarily to what many believe, targeted sanctions are often imposed after having heard and/or in strict cooperation with the legitimate government of a country or with its opposition.

However, the decision to follow the recommendations of the government or the civil society can present problems. For instance, the ruling party may enjoy stronger international rather than internal support; therefore its decisions would be further weakened by the support of the international community, which is not seen very often as a legitimate actor. To the same extent, opposition parties may not be any more representative of the society than the government, therefore gaining their support may not be crucial either.

The post 2010/2011 phases in Tunisia, Egypt and Ukraine have highlighted this pattern, where the European Union imposed sanctions to support the legitimate authority towards consolidating national institutions. Under this light, the EU imposed a travel ban and a freeze of assets on individuals considered spoilers of the consolidation process. The list of individuals targeted by sanctions is neither decided in Brussels nor in EU capitals only, but the discussion revolves around a list of names provided by local authorities. In any case, whenever cooperation takes place, this is limited to governments and political parties, while civil society is left aside, but this undermines the efforts of the EU to intervene and provides local actors the scapegoat to justify the mismanagement of economic policies shifting the blame to foreign sanctions.

However, other cases, such as Iran and Russia, are examples of little involvement of local communities. There has been a 'third way' for the EU, such as the cases of Belarus and Transnistria, where local actors have been indirectly involved via dual-track diplomacy actions (i.e. sanctioning the elite while supporting the civil society). When the target is the government (or some of its members), then sanctions may strengthen the rulers rather than weakening them. The gatekeepers remain firmly in charge of what comes in and out of the country, therefore they enjoy a privileged position vis-à-vis other (and normally weaker) citizens. Moreover, rulers may be the cause of economic troubles, but sanctions provide a scapegoat for their policies triggering the well-known effect of the rally-around-the-flag. This occurs because local actors perceive sanctions as unjust actions undertaken by foreign powers and, therefore, they prefer to sustain local politicians rather than 'betray their country'. A well thought bottom-up approach would contribute to solving this problem.

A human security perspective on EU sanctions: problems and challenges

Although the EU imposes mostly targeted sanctions, human security is often affected and EU sanctions are, as any other sanction, linked to the worsening of human security in targeted societies. In fact, this connection is theoretical rather than real as it is extremely complicated to link the imposition of targeted sanctions with the economic performance, both at a macro and a micro level, of targeted societies. Nevertheless, there are recurrent problems that emerge when sanctions are imposed that can be identified in relation to a human security debate. Specifically, the EU could undertake a number of measures to deal with the unintended consequences of sanctions, with individual rights of targeted individuals and with the involvement (or lack thereof) of local actors in the decision of resorting to sanctions.

This requires a re-centralization of powers at the EU level with regards to sanctions, which would counter the decision made with the Lisbon Treaty to return implementing powers from the Commission to the Council, so from the EU to its members.

First, it is of outmost priority to increase **the capacities of EU institutions** that can be used in all phases of a sanctions process. The sanctions unit of the EEAS has expanded in the recent years, but more is required to ensure that pre-impact assessment, effective enforcement, proper monitoring and evaluation take place. At the moment, the 28 EU members have personnel dealing with sanctions issues in the capitals creating a situation in which many people do the same things. Instead, the EEAS would be able to take up several of the challenges listed above if part of this manpower were transferred from the capitals to Brussels. The immediate action to be undertaken is the secondment of national officials, but the long-term plan to institutionalize memory within EU institutions implies that the sanctions unit at the EEAS should increase its staff allocation. The EU would exponentially benefit from little polling and sharing in the area of sanctions.

For instance, the unintended impact of sanctions can be addressed ahead of the imposition of sanctions. A pre-impact assessment would permit to foresee that the economic consequences of sanctions could create unnecessary damage to the local population. This has a dual importance. On the one hand, human security focuses on individuals and crises should not justify the worsening of human conditions for non-necessary reasons. And on the other, sanctions causing humanitarian problems are not seen as legitimate decisions by the local population, so locals will stand by their governments rather than by those who impose sanctions.

Impact assessments should be done before sanctions are imposed in order to anticipate the emergence of human rights crises. The situation should be constantly monitored for changes, and enforcement practices should be shared across EU institutions and its member states. Finally, such supervision should lead to a flexible utilization of sanctions in order to address the constantly changing situation that can affect the human security of the societies where sanctions are adopted. Pre-impact assessment would also reduce the risk to create a criminalized economy. Greater capacity means deeper knowledge, and deeper knowledge means that the sanctions could be designed to provide the minimum incentive for illegal trading of goods and technologies.

Greater capacities also mean greater monitoring and enforcement activities. The monitoring, especially, is essential to prevent and deal with unintended consequence of sanctions. EU members do have uncoordinated capacities to address emerging issues, and this is demonstrated by the number of amendments that were approved related to various sanctions regimes, but more is necessary. If this activity is contingent to the situation and cannot be met with the existing personnel, the EU should adopt the Panel of Experts system on the model designed by the United Nations. This turned out to be a great system to acquire knowledge, investigate problems, address concerns and provide recommendation to the Security Council on sanctions matters. The EU would create a roster of experts that would be appointed on an *ad hoc* basis to monitor the implementation of sanctions, and enquire on potential violations and circumventing activities. This is also to address potential diverging implementation practices across the EU. This exercise has provided independent and novel knowledge to the Sanctions branch of the UN that has made it a central actor in the sanctions world. This mechanism would empower the EU to properly design sanctions, monitor its impact, and modify its decisions if the human security of targeted society is put at risk. This would create a positive spiral as member states would have an incentive to strengthen cooperation, and knowledge would be institutionalised on evasion strategies and techniques.

A more central role for the EEAS would also favour the centralization of the discussion on sanctions in combination with other foreign policy instruments, such as foreign aid and the deployment of CSDP missions. **Sanctions cannot be disconnected from other foreign policy tools.** In fact, sanctions should be devised and designed to *complement*

other decisions. As of today, these instruments seem to be adopted by different actors who instead could take advantage of a strategy based on human security. While human security is inevitably affected by sanctions, predicting the consequences of sanctions would allow the EU to take compensatory measures to reduce the negative cost of sanctions. For instance, foreign aid could be tailored in coordination with the kind of sanctions that are being imposed. This would leave intact the effect that sanctions are to have on undesired behaviours, but it would also keep individuals and their security at the centre of the attention. At the same time, the deployment of personnel with CSDP operations would sustain efforts to deal with the criminalization of economic sectors created by the very same imposition of sanctions.

The creation of panels of experts is only a way to draw from civil society competences that cannot be kept *in house* by EU institutions and its member states. Thence, **the sanctions process should be institutionalized in order to draw competence and knowledge also outside of EU institutions**. The number of EU sanctions has increased significantly over the last two decades. It is likely that EU policymakers will continue to deal with a high number of sanctions regimes in the upcoming years and all sources of information should be involved. For instance, targeted sanctions are often implemented by private actors, firms and NGOs mostly, who have specific competences that should be explored when sanctions are designed, monitored, enforced and adjusted. For example, the EU could create consultative forums where companies and EU officials would exchange views and experiences in implementing sanctions. This is extremely relevant because the imposition of sanctions does create the incentive for illegal trades, and illegal trading is deleterious for the proper functioning of a market economy. The EU has to be prepared to administer sanctions in new regional areas, but also sanctions that are applied with specific and evolving objectives. For instance, there is a growing consensus over the regulation of assets recovery done with the adoption of sanctions, as attempted by the EU in the cases of Tunisia, Egypt, Libya and Ukraine. This is likely to create concerns linked to human security that the EU should not underestimate. Such creative evolution of how restrictive measures are utilized requires creative responses, and specific knowledge should be tapped in from the civil society that is already present in the EU market.

More knowledge and more ownership of the listing would benefit the legitimacy of the sanctions process. Today, the **Court of Justice** of the European Union (CJEU) ensures that mistakes are corrected *post-facto*, but a more coherent management of the sanctions process, combined with stronger capacities at the EU level, would contribute to safeguarding the rights of targets *ex-ante*. Sufficient evidence needs to be gathered to ensure sanctions do not end up being annulled by the CJEU as well. If the EU were to present evidence to justify its listing before the Court, then it is more likely that higher legal standards would be guaranteed. In order to do it, memory needs to be institutionalized via a serious effort to collect information and evidence that would be independent from other sources. A more robust judicial process would guarantee the

rights of those who would not be able to access the court system in order to challenge decisions of the Council.

A human security strategy for sanctions also needs a bottom-up approach. Compatibly with the needs of security, secrecy and urgency of political crises – and the involvement of locals in the different phases of the sanctions process – would reduce the rally-around-the-flag effect, increase the legitimacy of the EU as a foreign actor, and contribute to the knowledge on the effects of sanctions on targeted societies. Thus, the strategic thinking of sanctions would envision a bottom-up approach for the four sanctions phases, meaning articulation, designing, monitoring/enforcement and evaluation.

The first phase focuses on ensuring that sanctions would receive internal support in targeted countries. If local actors are antagonized by sanctions, and local authorities are able to redirect the pain of sanctions on weaker parts of the society, then the designing of sanctions should be adjusted to the extent that the impact of sanctions does not cause unnecessary pain on the civil society that, often, should be nurtured and not undermined. Local actors can also provide for information and collaborate with the enforcement of sanctions. For instance, sanctions are often imposed on spoilers of democratizing processes, but if local authorities are not properly involved and trained, the enforcement may be affected by local dynamics that would counter the intention of the EU. Finally, a bottom-up approach is advisable also because local actors are an invaluable source of information regarding the impact of sanctions. The members of the panels of experts could engage with civil societies in order to gain a better and detailed knowledge on the impact of sanctions, and a better perspective on how the lives of individuals are being affected. Such knowledge is central to the revision of sanctions that, as written above, occurs regularly with the intent to update sanctions and to consider that the original causes that motivated their imposition are still in place. The EU should create the premises for a dialogue between civil society organizations from the EU and the communities where targets are located, which would favor the exchange of information and practices across boundaries into targeted societies. This would strengthen the awareness of the locals within the EU and it would shape the way in which local NGOs perceive the European Union and its actions. This mutual exchange will facilitate the process of dealing with the humanitarian consequences of sanctions, and the utilization of a bottom-up approach in the future.

Conclusions

Looking at the sanctions from a human security perspective offers a different view on a central problem for international relations scholars. In a way, human security concerns have shaped the understanding and the practice of sanctions in the recent years. The EU has adopted a targeted sanctions approach in order minimize the negative consequences of its decisions, just to mention one. However a human security

perspective focuses on individuals rather than on states, and there are measures that the EU can undertake to ensure that human rights are the center of its actions.

Priorities change if we look at sanctions from a human security perspective, but these concerns could also enhance the effectiveness of such foreign policy instrument. The individual is at the center of a foreign policy initiative, and the impact that sanctions have on individuals should be considered in carrying out the strategic review of EU external relations. For instance, the focus on human rights shows that sanctions can undermine the very objective that the EU intends to pursue with their adoption. If human rights promotion is the objective of the EU, then it is appropriate to ask whether human right violations, or how much violation, should be accepted to enhance/achieve a foreign policy objective. For instance, guaranteeing legal protections to individuals that are targeted by sanctions is an important objective. The evolution from comprehensive to targeted sanctions has also facilitated the dialogue between civil society groups and international actors, so that the European Union is responding with sanctions as requested by either the government, or civil society groups where targets are located. This is an important departure from the understanding of sanctions as instruments of power only. Certainly, this is not only the case, but the involvement of local actors does represent a novelty that emerges clearly from a human security perspective.

This analysis led to four recommendations to EU institutions. First, the EEAS should strengthen its capacities to be used in the different phases of a sanction process. This should occur with more seconded personnel in the short term, but with more personnel in the long-term. There is also the need to institutionalize memory and ensure that EU institutions would be able to run pre-assessments when sanctions are considered. More institutional memory, but also better coordination among the different units using foreign aid and deploying personnel when sanctions are used is advisable. Second, the EEAS should rely on expertise from the civil society to deal with sanctions issues, for instance by establishing panels of experts and by opening a dialogue with firms and NGOs who have to implement EU restrictive measures. Third, the EU should become the owner of the decisions regarding the listing of individuals, as it would ensure that due process is guaranteed to targeted individuals. Finally, local actors should be involved in the decision making in two ways. On the one hand, EU institutions should have a direct dialogue with local actors, be it government officials and/or firms. On the other, the EU should create a forum where local and international NGOs can meet to exchange views, and share competences on specific societies were targets of sanctions are located. Sanctions are not instruments of power only, but they became instruments of governance. This means that the way in which sanctions attempt to affect the behaviour of actors needs to be shared by the actors that live in the closest proximity with the direct targets of sanctions.

The EU would fundamentally gain by adopting a human security approach when sanctions are implemented. Targeted sanctions represent an improvement compared

to the past, but their effectiveness and functioning should also be evaluated within the emerging framework of hybrid peace, which appears more apt to look at the foreign policy challenges that the EU will have to deal with in the future. There are ways of understanding peace and the way in which the EU sees the world that are difficult to change in a short time. There are boundaries of actions that cannot be eliminated as well, such as the need to keep the details of sanctions secret before their imposition (e.g. financial assets can be quickly relocated if rumors of sanctions reach the ears of those who are being sanctioned), and analytical fallacies that do affect our understanding of peace and war (for instance, why do we need to build states using the existing borders?). However, there are still wide margins for improvement and the strategic review offers a great opportunity to do it.