

THE SYSTEM OF SANCTIONS FOR THE ILLICIT TRADE OF NUCLEAR GOODS

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INTRODUCTION

- Nuclear goods have a dual use feature: both peaceful and non-peaceful applications
- Their trade needs regulation:
 1. **Prevention side:** a proper control can prevent WMD proliferation → strategic trade controls and restrictions;
 2. **Sanctioning side:** penalties for violation of trade restrictions.

THE NOTION OF SANCTION

- No agreed definition of 'sanction' but a common understanding: penalty for the violation of a rule;
- Elements of Sanctions:
 - **AUTHOR/SOURCE:** international, regional, (i.e. EU), or national level;
 - **TARGET:** States (broad-based sanction) or specific goods (selective sanction) or specific person (targeted or smart sanction);
 - **PURPOSE:** 'punitive' or 'positive' ('stick' and 'carrot');
 - **NATURE:** typology of sanctions (criminal, administrative, economic, visa/travel bans, military, political /diplomatic, and cultural).

T TYPOLOGY OF SANCTIONS FOR VIOLATION OF STRATEGIC TRADE CONTROLS

1. ECONOMIC SANCTIONS

A) Trade sanctions:

- export restrictions and embargoes (total suspension or block of exports to a country);
- import / customs restrictions, and boycotts (total suspension or block of imports from the addressed country).

Trade sanctions can be comprehensive or selective (on certain goods).

B) Financial sanctions:

- restrictions on support for trade (restriction on financial aid);
- restriction to access to capital and resources (asset freezes).

2. VISA / TRAVEL BANS

- preventing a person from getting a visa, or from entering or transiting a country (visa bans);
- restricting or banning ships or aircraft registered in and out of a designated target country (aviation bans).

ECONOMIC SANCTIONS

A) TRADE SANCTIONS

INTERNATIONAL LAW

a) UN CHARTER

- It does not contain the word 'sanctions';
- However, Chapter VII provides that the Security Council has the “primary responsibility for the maintenance of international peace and security” (art. 24); it determines the existence of any threat to the peace, breach of the peace, and it decides what measures to take (art. 39), included the “**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” (art. 41)

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

- Admitted the interruption of economic relations with the countries that are liable for trading illicit nuclear goods, as long as the possession/trade represents a breach to peace and security;
- list of sanctions embedded in art. 41 is not exhaustive;
- sanctions must be effective and in conformity with the principles of international law, respect the principle of equal rights and the self-determination of peoples (art 1), and respect human rights (art. 55).

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

b) SC RESOLUTIONS

- in general: **UN Resolution 1540 (2004)** obligates States to develop and maintain 'appropriate effective' border controls and law enforcement measures to detect, deter, prevent and combat illicit trafficking and brokering in such items, included the obligation to establish and apply **appropriate criminal or civil sanctions** for violations of such export control laws and regulations (operative paragraph 3)

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

- specifically: for example against Iran
→ Resolutions 1737 (2006), 1747 (2007), 1984 (2011), 2049 (2012), 210 (2013) and 2159 (2014) prevent Iran from importing all items, materials and technologies which could contribute to the development of weapon delivery systems; and prohibit Iran exporting any items or technology related to nuclear programs (“reverse embargo”).

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

c) EXPORT CONTROL REGIMES

- **Nuclear Suppliers Group** demands Supplier States to draw specific penalties for violations of Guidelines and nuclear non-proliferation obligations → responsibility and authority for such decisions remain at the level of national governments;
- **Wassenaar Arrangement** on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: reference to domestic authorities that should investigate the violation of export control laws, and punish the violator through administrative and criminal sanctions.

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

EUROPEAN UNION LAW

Premise: with **Regulation 428/2009** the EU controls dual-use items trade (export control) → each Member State must provide 'proportionate, dissuasive and effective sanctions' (criminal and administrative) in case of violation of dual use control;

- In specific cases: additional EU restrictive measures: Iran, Syria, Democratic People's Republic of Korea;
- Adopted in the framework of **Common Foreign and Security Policy** (through Council Decisions)

ECONOMIC SANCTIONS

A) TRADE SANCTIONS (continued)

- Legal basis → **Art. 215 TFEU** distinguishes between two sanctions:
 - par. 1: interruption or reduction, in part or completely, of economic relations → comprehensive measures (such as trade embargo);
 - par. 2: “restrictive measures” against “natural or legal persons and groups or non-State entities”. They are “smart” or “targeted” sanctions with economic nature.
- Autonomous or applying UN SC resolutions;
- If **broad-based** sanctions: **Council Decisions are implemented through a Regulation** (under art. 207 TFEU on common commercial policy);
- If **selective** sanctions: **Council Decisions are implemented directly by Member States.**

ECONOMIC SANCTIONS

B) FINANCIAL SANCTIONS

INTERNATIONAL LAW

a) UN CHARTER and UN SC RESOLUTIONS

- Under Chapter VII: broad-based or targeted sanctions;
- **Broad-based:** Resolution 1747 (2007) → Iran should not receive grants, financial services or loans related to the supply or use of prohibited materials or technology (except for humanitarian reasons);
- **Targeted:** listed individuals or groups, according to the following criteria: the entity/individual constitutes a threat to peace, security or stability; it violates an embargo; it supports armed groups through illegal commodity trade; and it boosts proliferation of nuclear weapons. Ex: Resolution 1737 (2006) → it imposes the States to freeze economic assets owned or controlled by people (78 listed) associated with supporting Iran's nuclear activities or weapon delivery systems.

ECONOMIC SANCTIONS

B) FINANCIAL SANCTIONS (continued)

EUROPEAN UNION LAW

- **Targeted** sanctions: adopted in the framework of Common Foreign and Security Policy (**through Council Decisions**, no need of further Regulation) with a blacklist annexed of individuals, who are prevented from having access, directly and indirectly, to their assets;
- EU companies that hold funds on account for listed persons will be required to freeze those accounts;

ECONOMIC SANCTIONS

B) FINANCIAL SANCTIONS (continued)

- **Broad-based** sanctions: **Council Decisions are followed by Regulations** → Member States must adopt legislation, providing for penalties in case of breach of the measures: ex. Council Decision 2015/556/CFSP and Council Implementing Regulation 2015/549 listed Iranian people and entities that are subject to assets freeze;
- **Court of Justice:** EU sanctions did not comply with the required standards of proof; lacked the institutional transparency; criteria for listing individuals/entities too vague and in violation of the principle of legal certainty and proportionality (ex: Case T-35/10 Bank Melli Iran; Case T-262/12, Central Bank of Iran).

VISA / TRAVEL BANS

INTERNATIONAL LAW

a) UN CHARTER and UN SC RESOLUTIONS

- Under Chapter VII: **targeted** sanctions.
- For example, Resolution 1803 (2008) to Iran, stating that 43 individuals associated with Iran's proliferation sensitive nuclear activities or nuclear weapon delivery systems should not be allowed to enter other States, included 'suspected' students (**visa bans**)

VISA / TRAVEL BANS (continued)

EUROPEAN UNION LAW

- Sanctions adopted in the framework of **Common Foreign and Security Policy** (through Council Decisions with direct implementation by Member States, non further Regulation):
 - a) blacklist annexed of individuals who are suspected of being associated with proliferation-sensitive nuclear activities (**visa bans**): ex. Council Decision 2010/413/CFSP to Iran;
 - b) Blockage to cargo flights operated by suspected countries, or coming from suspected countries + no maintenance service of flights in EU **airports(travel bans)**

Exceptions to the bans can be provided by Member States in the name of international agreements, or when they host a UN or OSCE conference, or for humanitarian reasons.

CONCLUSIONS

Sanctions for the violation of strategic trade controls of dual-use items:

- a) can refer to **goods**: trade sanctions, and travel bans;
- b) can refer to the **resources** that can finance the purchase of dual-use or proliferation items: financial sanctions;
- c) can target **people**: financial sanctions and visa bans.

CONCLUSIONS (continued)

- Progressive preference for targeted and selective sanctions ;
- At the **international level**, **UN SC Resolutions** remain the preferred instrument for imposing sanctions;
- At the **EU level**, preference for autonomous and targeted measures in the framework of **CFSP**: the EU wishes to operate as an international actor.

Thanks for your attention!

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