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The European Union as an Emerging Sender of Economic Sanctions

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Trotz zahlreicher Enttäuschungen über mangelnde Effektivität sind in den letzten Jahrzehnten eine wachsende Anzahl von Wirtschaftssanktionen aus einer Vielfalt von ausenpolitischen Gründen verhängt worden. Obwohl die USA weiterhin am häufigsten auf Wirtschaftssanktionen zurückgreifen, haben in den neunziger Jahren auch zusehends andere Länder Sanktionen verhängt. Das Ende des Kalten Krieges hat es dem UN-Sicherheitsrat erlaubt, aktiver in internationale Geschehnisse einzugreifen; eine Konsequenz davon ist, dass der Sicherheitsrat in den neunziger Jahren dreizehn Mal Sanktionen verhängte. Die Europäische Union setzt ebenfalls in zunehmendem Mass wirtschaftliche Mittel ein, um andere Staaten zur Einhaltung von Menschenrechtsstandards zu bewegen. Ebenso werden Bedrohungen des Friedens und der internationalen Sicherheit mit Handelsbeschränkungen und der Aussetzung von Entwicklungshilfe beantwortet. Institutionelle Strukturen und geteilte Kompetenzen erschweren jedoch im Fall der EU die effektive Nutzung von Wirtschaftssanktionen als politisches Druckmittel.

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JEL-Codes: F00, F14

1 Introduction

On May 22, 2003 the United Nations Security Council unanimously passed Resolution 1483 formally ending more than over a decade of comprehensive sanctions against Iraq. For most of the 1990s, the Iraqi sanction regime, the most comprehensive UN sanctions to date, dominated the debate about the effectiveness of economic sanctions, about their humanitarian impact and the legitimacy and morality of this "deadly weapon".

The debate about the use and efficacy of economic sanctions as an alternative to the use of force, however, dates back to the 1930s. While economic statecraft has been at the core of international relations for centuries, the idea that economic sanctions could be an alternative to warfare did not emerge until the 20th century. Inspired by President WOODROW WILSON, the League's Covenant authorized collective economic and military

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actions against a state in response to territorial aggression. The failure of the League of Nations' sanctions in 1935–1936 to stop Italian hostilities against Ethiopia triggered an intense debate about the usefulness of economic sanctions and ultimately led to the demise of the League.¹ Despite the early disappointments with the effectiveness of economic sanctions in halting aggression, an increasing number of sanctions have been initiated over the last several decades.

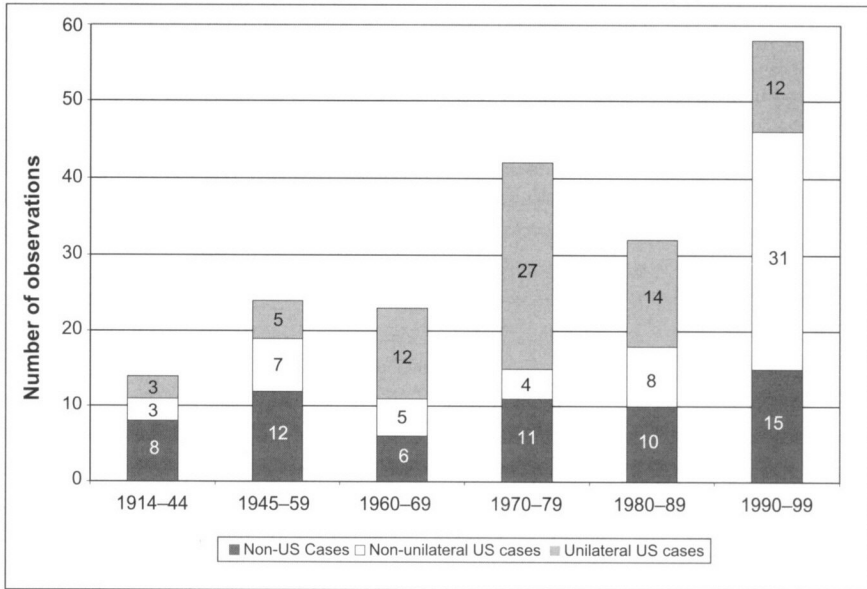
2 Use and Effectiveness of Economic Sanctions in the 20th Century

2.1 Trends in the Use of Sanctions

Over the last several decades not only did the use of economic sanctions increase, but they have also been used for a broader array of foreign policy objectives. Economic sanctions have been utilized to combat weapons proliferation, to support nuclear disarmament, to stop drug trafficking, to fight terrorism, to end civil wars, and to promote democracy and human rights. Some sanctions are drastic and comprehensive, such as the UN sanctions against Iraq or the U.S. unilateral sanctions imposed on North Korea and Iran; but most are far less severe, such as the suspension of U.S. military aid to Indonesia over East Timor.

Public controversy over the use of economic sanctions was relatively quiet in the 1950s, 1960s and 1970s. But increasingly frequent deployment of sanctions in the late 1980s and 1990s (and in particular UN sanctions against Iraq) generated intense debate among policy makers, corporations, and scholars. Much of the debate and research has centered on the question whether economic sanctions are effective tools in shaping a target country's policies. Advocates of economic sanctions regard them as an important middle-of-the-road policy between diplomatic protest and military force. Opponents, on the other hand, stress that economic sanctions are generally ineffective in achieving policy changes abroad, and that the costs of sanctions, both to the sender and the civilian population in the target country, are seldom worth the benefits derived.

1 The League had several small successes with economic sanctions, such as in convincing Yugoslavia to withdraw its troops from Albania in 1921 and inducing Greece to back down from its incursion into Bulgaria in 1925, but these were not enough to offset the Ethiopian fiasco.

Figure 1 Trends in the Use of Economic Sanctions

Source: Preliminary results from HUFBAUER ET AL. (forthcoming).

2.2 Effectiveness of Foreign Policy Sanctions

Assessments of sanction effectiveness vary as widely as definitions of economic sanctions themselves. Each scholar or practitioner employs his or her own test for identifying the foreign policy success or failure of economic sanctions. Some scholars argue that unless sanctions alone achieve the stated foreign policy goal, by default they have failed. A sanction episode that was accompanied or followed by the use of force would, under this definition, be considered a failure.² Similarly, if foreign policy goals are only partially achieved, some scholars conclude that economic sanctions have been unsuccessful. Others place more emphasis on the less tangible goals of sanctions such as signaling resolve to allies and domestic constituencies, deterring others from future wrongdoing, or upholding international norms. Measured against these goals, sanctions generally succeed. Indeed, sanctions that conspicuously fail to change a specific target country's policy may nevertheless be considered successful.

2 See, for example, PAFF (1997).

Our own evaluation of the success of economic sanctions has two parts, both judgmental: first, the extent to which the stated policy goals of the sender country have in fact been achieved, and second, the contributions made by sanctions to a positive outcome.³ Outcomes are judged in terms of changes in a target country's policies, military or economic capacities, or changes in its regime. We do not attempt to measure collateral outcomes, such as giving satisfaction to domestic constituencies, that may at times outweigh foreign policy concerns.

While we have not finished our assessment of cases for the third edition of *Economic Sanctions Reconsidered*⁴, preliminary results suggest that the effectiveness of economic sanctions in achieving their stated foreign policy goals has steadily declined since the early post-World War II decades (see *Table 1*). Between 1945 and 1969, sanctions contributed to a positive policy outcome in 43 percent of the cases studied. By the 1990s the success rate, by our evaluation, had dropped to 29 percent.

The decline in effectiveness is even more pronounced when it comes to U.S. sanction initiatives, both unilateral and multilateral. As *Table 1* shows, U.S. sanctions were successful over 50 percent of the time in the early post-war period (1949–1969). Since then the success rate of U.S. cases has dropped to much lower levels. Between 1970 and 1999, the United States succeeded in roughly one-fifth of all its cases. U.S. unilateral sanctions fared particularly poorly. Between 1945 and 1969, U.S. unilateral sanctions achieved their goal in more than 60 percent of the cases; after 1970 the success rate dropped below 20 percent. Broadly speaking, the drop in foreign policy effectiveness was not a continuous slide, but rather a steep decline to a lower plateau.

A common explanation for the drop in both the effectiveness of sanctions generally and unilateral sanctions in particular is globalization. Compared to the 1950s and 1960s, target countries found it progressively easier to tap into world trade and capital markets for alternative goods and finance in the 1970s, 1980s and 1990s. It has become nearly impossible for the United States, acting alone, to deny a target country access to vital markets and finance. At least the cooperation of other OECD countries is re-

3 In fact, in some circumstances economic sanctions can actually have a net negative effect and make it harder for the sender to achieve stated foreign policy objectives. For example, USSR sanctions against Yugoslavia in the 1940s led to a closer relationship with the United States and offsetting U.S. assistance. We are making revisions to our scoring system to capture these cases in the 3rd edition of HUFBAUER ET AL. (forthcoming).

4 HUFBAUER ET AL. (forthcoming).

quired. These global realities probably contributed as well to the shift from unilateral actions towards multilateral initiatives.

Table 1 Use and Effectiveness of Economic Sanctions as a Foreign Policy Tool

	Total number of observations	Number of successes	Success as a percentage of total
All cases			
1914–44	14	7	50%
1945–69	47	20	43%
1970–79	42	13	31%
1980–89	32	8	25%
1990–99	58	17	29%
Total	193	65	34%
All cases involving the United States			
1945–69	29	16	55%
1970–79	31	8	26%
1980–89	22	3	14%
1990–99	43	11	26%
Unilateral U.S. Sanctions			
1945–69	17	12	71%
1970–79	27	5	19%
1980–89	14	1	7%
1990–99	12	2	17%

Source: Preliminary results from HUFBAUER ET AL. (forthcoming).

2.3 Changes in Use of Economic Sanctions the 1990s

While the United States remains the most frequent user of economic sanctions in absolute terms, the frequency of new unilateral U.S. initiatives declined in the 1990s. Some high profile unilateral ventures such as Cuba and Iran were inherited from the previous decades, but the majority of new U.S. sanctions in the 1990s were undertaken in conjunction with other senders. Less than a third of the cases initiated in the 1990s were purely unilateral ventures. By contrast, in the 1970s, the United States was involved in 32 sanction episodes and three-quarters of them were unilateral initiatives.

The collapse of the Soviet Union and the end of the superpower rivalry allowed for much greater cooperation of major powers under the United Nations framework. The UN has played a much bigger role in internatio-

nal disputes in the 1990s than at any time before. The new activism of the UN is reflected in the fact that the Security Council imposed mandatory sanctions thirteen times⁵ in response to instances of civil strife, regional aggression or grave violations of human rights compared to just twice – against South Africa and Rhodesia – in previous decades.

The 1990s also saw the emergence of new sender countries. The Soviet Union or its allies were targets of Western sanctions twelve times in the 1970s and 1980s. In the 1990s, Western sanctions against the Former Soviet Union (FSU) sharply diminished, but the new FSU states were subject to six sanction initiatives by Russia.⁶ The European Union as well has become a much more active user of economic sanctions over the last decade.

The other striking change in the 1990s compared to previous decades is the decline in new cases targeting Latin American countries as that region moved towards democratic governance. On the other hand, new sanction initiatives in Africa increased in response to the rise of ethnic strife, regional conflict and the atrocious behavior of oppressive regimes. This shift in geographical focus – from the U.S. backyard to a region with historically closer ties to Europe – is one factor in the decline in unilateral U.S. sanctions and the rise in European initiatives.

The European Union and the UN have also been at the forefront of recent efforts to fine-tune the sanctions tool to focus coercive pressures on leaders and ruling elites responsible for objectionable behavior rather than vulnerable populations. Concerned about the humanitarian impact of comprehensive sanctions, they hope that targeted sanctions will achieve much of the intended goals at lower economic and political costs.

Targeted sanctions, such as arms embargoes, travel bans, and asset freezes, are a relatively new concept. In our database of over 190 case studies, we could only identify 20 cases where targeted measures were imposed outside the framework of more comprehensive sanctions. Historically, asset freezes, for example, were part of more comprehensive embargoes in episodes of severe hostility (e.g. during World War II). However, there has been an increasing number of instances where sanctions were targeted not

5. Iraq (1990), former Yugoslavia (1991), Liberia (1992), Libya (1993), Somalia (1993), Angola (1993), Haiti (1993), Rwanda (1994), Sudan (1996), Sierra Leone (1997), Federal Republic of Yugoslavia/Kosovo (1998), Afghanistan (1999), and Ethiopia and Eritrea (2000).

6. See DRIZNER (1999).

at aggressive states but rather at internal actors within a state. Selective asset freezes were imposed on the Angolan rebel group UNITA, the leadership in Serbia, and most recently the military junta in Burma/Myanmar. In most cases, selective financial sanctions were imposed in conjunction with other targeted measures such as aviation bans on all air travel to and from a country or travel and visa restrictions on targeted individuals and groups.

Targeted sanctions operate at a level of intervention and discrimination in the internal affairs of states that was unknown in previous decades. Their effective implementation requires a tremendous amount of detailed knowledge about the country, persons and groups targeted. Identification of funds belonging to the individuals, governments, and companies targeted can be difficult. Even when individual funds can be identified, secrecy and speed are critical to preventing targets from moving assets to numbered accounts in off-shore banking centers. In many instances, countries lack the financial resources and administrative capacities to adequately monitor and enforce targeted measures, making them mere symbolic gestures. Because of the lack of resources or political will to enforce these measures success often remains elusive. To cite the best-known example, financial sanctions and a travel ban imposed on the Taliban in Afghanistan by the UN and the U.S. failed to secure the extradition of OSAMA BIN LADEN.

As mentioned, European countries have been at the forefront of the movement towards more targeted sanctions seeking to improve UN capacities in the context of the Interlaken process as well as their own sanction activities. While scholars have written extensively on the UN experience with economic sanctions in the 1990s, much less is known about European initiatives.

3 Economic Sanctions as an Instrument of EU Common Foreign and Security Policy

3.1 Brief Overview of the Common Foreign and Security Policy

For decades, critics both inside and outside of Europe have lamented the fact that the European Union is a “political dwarf [...] unable to exert influence in international politics commensurate with its economic weight.” (GINSBERG 2001, p.1). As the second largest economy in the world with external EU trade accounting for around 18 percent of total world trade

in 2001 and humanitarian and development aid from the EU and its member states accounting for almost 50 percent of total world aid, the European Union has been a key player in international trade and development forums. Yet, despite the European Union's continuing influence in international economic issues, it has only recently become an international political actor. One of the central questions of emerging EU foreign policy is whether and how the European Union uses its economic power as leverage for political purposes and how successful its attempts at influencing policies of nonmember states have been.⁷

Since the 1960s, Europe has made repeated efforts to speak with one voice on foreign policy issues, but only in the Maastricht treaty of 1992 was the concept of a "common foreign and security policy" introduced. The Treaty of Maastricht created a new legal entity – the European Union, consisting of three pillars: the European Communities (EC) (1st pillar), the Common Foreign and Security Policy (CFSP) (2nd pillar), and the Justice and Home Affairs (3rd pillar). Another important step towards better coordination of the Union's foreign policy was the establishment of the High Representative for Common Foreign and Security Policy in 1998 and the subsequent appointment of the former Secretary General of NATO, JAVIER SOLANA, to that post.

Prior to the creation of CFSP, foreign policy issues were coordinated under the umbrella of European Political Cooperation (EPC, 1969–1993). Collective policies adopted under the EPC framework were Community level activities. After Maastricht, foreign policy has become a European Union matter. Unlike the first pillar of the EU under which member states delegated sovereignty for certain matters to the European Commission, the CFSP is an intergovernmental pillar. The European Commission, the administrative body of the EC, is an equal partner in foreign policy making, but the Commission's normal exclusive right to submit initiatives was not extended to foreign policy. Initiatives come mainly from member states or the institutions in which member governments directly participate, such as the Presidency or the Council of Europe.⁸

The CFSP established a set of principles, procedures, and instruments designed to facilitate coordination of foreign and security policy. Because the CFSP is intergovernmental in nature, its decision-making procedures

7 See GINSBERG (2001); and SANFISO (2002).

8 See HOLLAND (1995); and THE COUNCIL OF THE EUROPEAN UNION, Common Foreign and Security Policy, Internet: <http://ue.eu.int/pesc/default.asp?lang=en> (downloaded August 15, 2003).

differ from the traditional pillars of the Community. Whereas Community matters, such as single market and trade policy, are decided by majority vote, CFSP procedures in general require consensus among member states.⁹ Two key instruments are available under the CFSP: common positions and joint actions. Common positions define the Union's approach to a particular issue or nonmember state. The member states are required to ensure that national policies comply with the common position defined by the Union. Joint actions are adopted when coordinated actions by member governments are required such as deployment of EU peace-keeping missions.

The consensus decision-making process of the CFSP limits the coordination of foreign policy at the EU level. To achieve consensus among fifteen member states – soon to be 25 – each with different national interests and foreign policy traditions is no small achievement. In addition, compared to foreign policy options available to nation states, the tools available to the European Union are more limited in particular with respect to the use of force.¹⁰

3.2 European Sanctions Policy – Use and Effectiveness

With the establishment of CFSP, EU members took the opportunity to provide a transparent legal basis and to clarify decision-making procedures for the imposition of economic sanctions. Most importantly, Article 301 of the Treaty of the European Union allows the Council “to interrupt or to reduce, in part or completely, economic relations with one or more third countries” on behalf of the European Union. Furthermore, member states explicitly transferred the authority to restrict capital movements and payments to nonmember states to the Community level in an effort to ensure more unified implementation of financial sanctions.¹¹

Despite these efforts, EU sanctions policy illustrates the particular challenges faced by Europe in developing a more consistent and coherent foreign policy as well as in becoming a more effective international actor.

9. A few exceptions to unanimity rules were introduced in the Treaty of Amsterdam. See Internet: <http://europa.eu.int/scadplus/leg/en/tyb/t00001.htm> (downloaded August 15, 2003).

10. The European Union began to gradually introduce a common defense policy and military capabilities in 1998. Humanitarian and rescue missions, peacekeeping and combat-force missions in crisis management, including peacemaking (so-called “Petersberg tasks”) are at the core of EU's developing defense policy.

11. See HAZELZEL (2001).

While member states transferred sovereignty for external economic relations to the European Commission, under the CFSP framework sovereignty over sensitive foreign policy issues remains firmly in the hands of individual member states. The distinction between economic competence covered by the Treaty of Rome and the intergovernmental foreign policy decision-making process is, by design, hazy when it comes to economic sanctions for foreign policy purposes. Depending on what measures are to be imposed different procedures are required.

3.2.1 *Trade Embargoes and Restrictions on Capital Movements*

In response to the objectionable behavior of a state, the Council of Europe, composed of the ministerial representatives of the member states, can unanimously adopt a common position outlining the response of the European Union and goals sought by the proposed sanctions. However, under the terms of the EU's common commercial policy, the actual implementation of trade and financial sanctions falls under Community jurisdiction.¹² To implement the proposed measures, the Commission must submit a proposal to the Council on the level and types of sanctions to be implemented. Once the Council adopts the Commission's proposal by a qualified majority, the EC regulation becomes Community law applicable in all member countries. Therefore, trade embargoes and restrictions on capital movements require both a common position by the Council and Community regulation to be legally binding on the member governments. Additionally, member states may take unilateral actions with regard to capital movements and payments if (1) the Council has not taken action in that matter and (2) unilateral action is necessary for reasons of urgency or political necessity. The Council can, based on a proposal by the Commission, ask the member state to modify or abolish unilateral financial sanctions.¹³

Other measures, such as travel and diplomatic sanctions, fall under the competence of the member states and are adopted by common positions only, which must then be implemented by member states in domestic legal provisions. Restrictions on the export of weapons, munitions and related *matériel* also fall under the exclusive jurisdiction of the member states.

12 Article 60 of the Treaty of the European Union refers to capital movements and payments. Article 301 refers to trade measures.

13 See Article 60 (2), Treaty establishing the European Community, consolidated text. Official Journal C 325, 24 December 2002.

and EU institutions have no formal power to influence the member states' policies in that area.¹⁴

Apart from implementing UN mandated trade embargoes, the European Union has only imposed trade restrictions a few times. The first cases of autonomous EU trade sanctions were restrictions imposed on the Federal Republic of Yugoslavia/Serbia in response to events in Kosovo. The Kosovo case study, in particular in comparison with the European reaction to the earlier crisis over Bosnia-Herzegovina, illustrates several important aspects of the evolving EU sanction policy.

As permanent members of the UN Security Council, Great Britain and France can significantly shape UN sanctions policy. The voice of other EU members only counts when the luck of draw puts them on the Security Council as rotating members. Moreover, Security Council members represent their own national interests and priorities at the Council rather than a coordinated position of all EU member states. Hence, there is no guarantee that UN and EU positions on sanctions policy will necessarily coincide.

The case of the Federal Republic of Yugoslavia will be considered in order to illustrate this point. Between 1991 and 1996, the European Union adopted a number of measures in response to the disintegration of the Socialist Federal Republic of Yugoslavia and the ensuing conflict in Bosnia-Herzegovina.¹⁵ The majority of EU measures implemented UN mandated economic sanctions. In addition to UN measures, the EU, in coordination with the United States, suspended its bilateral trade and cooperation agreement as well as the GSP benefits and imposed an arms embargo a few months ahead of the UN arms embargo. Comprehensive sanctions were lifted in October 1996, after a political agreement was reached.¹⁶

In 1998 the European Union again imposed economic sanctions against the former Yugoslavia in response to the escalating violence in the Serbian province of Kosovo. The initiatives for most of the sanctions came from the Contact Group of the former Yugoslavia comprised of the United States, France, the United Kingdom, Germany, Italy, and Russia.

14 See ANTHONY (2002) pp. 211-212; and European Union sanctions applied to nonmember states, Internet: <http://www.eurunion.org/legislat/Sanctions.htm> (downloaded August 15, 2003).

15 Although strictly speaking the European Union, as created by the Maastricht Treaty, is itself not an authority, we will, for convenience, refer to the EU as the acting body throughout.

16 See HUBBAUER ET AL. (forthcoming) Case 91-1: UN, U.S., F.C.A., Federal Republic of Yugoslavia; and ANTHONY (2002).

Russia, because of its historically close ties with Serbia, however, did not support the Contact Group's economic sanctions proposals.

Unlike the comprehensive UN trade embargo imposed in the first half of the 1990s, EU measures taken in response to the Kosovo crisis were more targeted on the MILOSEVIC regime and its supporters, while trying to minimize the collateral damage to the civilian population. The European Union banned the export of arms and equipment used for internal repression, established a moratorium on government-supported export credits and guarantees, banned all new investment in Serbia, restricted landing rights of Yugoslav airlines, and later banned all flights to and from Serbia. Assets of Yugoslav and Serbian governments as well as of designated individuals were frozen. The EU also implemented a visa ban on members of the regime and its supporters. The EU list of designated individuals affected by the visa ban and asset freeze was continually expanded and updated. There is some evidence suggesting that, while President MILOSEVIC and his supporters benefited from the earlier UN trade embargo by controlling the profitable black market, they felt the negative effects of this personal international isolation.¹⁷

The case of Serbia also illustrates European efforts to utilize a "sticks and carrots" approach to achieve its foreign policy goals. While both America and Europe exempted the Republic of Montenegro from practically all economic sanctions in an effort to support the opposition of the Montenegrin government to the regime in Belgrade, the European Union unilaterally introduced additional incentive programs intended to reward more moderate forces within Serbia. Following the imposition of an oil embargo in support of NATO military action in April 1999, the European Union introduced the "Energy for Democracy" program. The program was designed to exempt Serbian cities controlled by opposition parties from the oil embargo. Originally limited to two cities, the program was extended to five additional cities in early 2000.

Rather than rely on a blacklist of companies identified as being associated with the MILOSEVIC regime, in April 2000 the EU switched to a "white list" of companies exempt from the sanctions because they fulfilled certain criteria, such as the ability to withhold funds from the regime. The change from black to white list was intended to tighten the financial re-

17 See PETER NORMAN, EU Ministers Suspend Ban on Flights to Belgrade, *Financial Times*, 5 February 2000, p.7; and JANE PERLEZ, U.S. Supports Tightening of Sanctions in Belgrade, *New York Times*, 10 February 2000, A14.

strictions imposed on Serbian companies and to provide companies with an incentive to cut ties with the MILOSEVIC regime.

Both incentive programs proved difficult to implement. Serbian authorities delayed the delivery of the oil for weeks and Serbian firms on the white list were subject to retaliation by the Serbian government.¹⁸ Nonetheless, these programs illustrate a greater willingness by the EU to combine incentives and punitive measures to achieve the desired foreign policy result than has been the practice of the United States.

Despite the innovative quality of EU sanction policy with respect to Kosovo, the case illustrates the challenges created by the two-stage process of the EU mechanism. Because competence for commercial relations with third countries is a Community matter, the EU members of the Contact Group had to coordinate their policies with the other member states. However, other EU member governments were far less enthusiastic about economic sanctions. Therefore, to reach political agreement on common positions the Council proposals were kept vague.¹⁹ As a result, phase one of the process, the political agreement of the Council of Ministers to take action, was achieved relatively quickly. The Council approved most measures one or two weeks after the initial Contact Group proposals were made.

It was left to the Commission to more precisely interpret, design and execute the sanctions in EC regulations. Agreement on the second phase of the process was subsequently much harder to achieve. For example, the Contact Group agreed on the immediate freeze of Yugoslav and Serbian government assets on April 29, 1998. The Council adopted a common position to that effect eight days later, but EC regulations actually implementing restrictions were delayed until June 22, 1998, 54 days after the initial Contact Group proposal.²⁰ Implementation of all other measures was similarly delayed.²¹ The slow implementation process, especially with respect to financial sanctions, left the targets ample time for evasion. In addition, disagreements among EU member states as to the level and modality of sanctions signaled lack of resolve and political will to the targets, decreasing the likelihood of success.

18 See DE VRIES (2002) p. 101.

19 See DE VRIES (2002) pp. 90–91.

20 Common Position 98/240/CFSP, see Bulletin of the European Union, 5-1998; and Council Regulation (EC) NO 1295/98, see Bulletin of the European Union, 6-1998.

21 See BUCHHEI DE NEUBLEY (2001).

In the end, economic sanctions did not convince President MILOSEVIC to withdraw troops from Kosovo. However, after NATO air strikes ended, the objectives of sanctions shifted toward regime change in Serbia. Insofar as they strengthened democratic forces within Serbia, targeted economic sanctions contributed to the demise of the MILOSEVIC regime in 2000.

The most recent examples of autonomous EU sanctions are targeted measures imposed against the military junta in Burma/Myanmar and against the MUGABE regime in Zimbabwe. As part of a larger effort to coordinate foreign and defense policy, the European Union has also sought to “sharpen” its sanctions tool. Yet institutional structures, divided competencies, and the need for coordination between member states continue to make the prompt implementation of trade and financial sanctions difficult.

3.2.2 *Suspension of EU Development Assistance – Political Aid Conditionality*

While the EU has taken only a few trade measures outside of UN mandated embargoes, it has been much more active with respect to aid sanctions. According to data collected for our survey of economic sanctions imposed in the 20th century, the EC/EU partially or fully suspended development aid to 23 countries in the 1990s in response to violations of human rights and democracy (see *Table 2* in the *Appendix*).²²

However, since most development assistance is provided under special trade and cooperation agreements between the EU and specific countries or groups of countries, the Union’s ability to impose economic sanctions against these countries was limited.²³ The agreements provided no legal basis for the suspension or termination of cooperation on political grounds. In response to the controversy surrounding the suspension of the cooperation agreement with Yugoslavia in 1991, the Council felt it needed to address this shortcoming and to find a mechanism to suspend cooperation in cases of grave violations of human rights.²⁴

Beginning in 1992, conditionality clauses with respect to human rights and democracy were incorporated in all new framework agreements ne-

22. See also CRAWFORD (2001).

23. For a discussion of legal aspects and the history of human rights clauses see RIEDEL and WIL (1999).

24. See RIEDEL and WIL (1999) p. 728.

gotiated with third countries. Initially, there were slight variations between specific clauses, but by 1995 standard clauses had evolved that contain two elements: an *essential element clause* stating that human rights and respect for democratic principles are considered essential to the cooperation agreement, and a *non-compliance clause* stating that "appropriate measures" including suspension will be taken in the event of non-compliance with the *essential elements* by the partner country. By 2003, some 200 countries had, in this indirect fashion, contractually agreed to human rights and democracy obligations.²⁵

Much as with trade measures, competency for the imposition of aid sanctions is divided between the first and second pillar.²⁶ Member states delegated responsibility for negotiating new agreements and the management of aid to the European Commission in the Maastricht Treaty, and in practice they increasingly channel their aid through the EU. Yet, the decision to suspend or terminate an agreement is a political decision and therefore the prerogative of the Council. The Council must unanimously adopt a proposal by the Commission to fully suspend an agreement.

Apart from providing a legal basis for taking punitive measures on political grounds, the contractual nature of the essential element and non-compliance clauses also make concerns over human rights and democracy issues legitimate subjects of EU-third country relations. Some have argued that the significance of the human rights and democracy clauses "lies not so much in their negative function as in the positive conditional effect they produce by binding treaty partners indirectly." (RIEDEL and WILL 1999, p. 735). In theory, the human rights and democracy clauses offer leverage for pressuring countries over their human rights record during the negotiation and the ratification process. They also offer a tool for responding to grave violations of human rights or abrupt interruptions of the democracy process.

However, in practice the application of the clauses has been less successful. One of the reasons may be the unanimity rule of the Council and the consequent veto right of individual member states. Special interests of individual member states, in particular with regard to former colonies, can

25 For model clauses see Commission Communication COM(95)216, 23 May 1995; and also SXXIISO (2003b).

26 Recall that the member states transferred sovereignty for economic matters to the European Commission under the first pillar (European Communities), while the second pillar dealing with foreign and security matters (CFSP) remains intergovernmental.

undermine consistent application of the conditionality clauses, in particular as "the process by which a country qualifies, disqualifies and re-qualifies for EC support remains to be specified." (SANTISO 2003a, p. 160). In addition, management of EU relations with third countries is not only divided between different functional Directorates General (DG), such as Trade or Development, but also along geographic lines. For example, the DG for Development oversees trade and cooperation agreements with the African, Caribbean and Pacific Group of States (ACP countries), while the DG External Affairs deals with similar agreements signed with other regions such as Middle East and Mediterranean. This division of competencies further complicates the implementation of conditionality clauses. Nonetheless, there have been several occasions, in particular with respect to ACP countries, where development aid was either partially or fully suspended because of violations of essential elements of the Lomé and later Cotonou Conventions.

The cooperation with ACP countries might serve as a case in point. One of the main development instruments of the EU is its cooperation agreement with 77 countries in Africa, the Caribbean and the Pacific - successive Lomé Conventions and since 2000 the Cotonou Convention. Since the mid-term review of Lomé IV in 1995, the framework agreement contains an essential elements and non-compliance clause allowing for the suspension of the agreement in the event of a sudden interruption of democratic process and grave human rights violations.²⁷

In negotiating revisions of the Lomé IV Treaty, the ACP countries accepted human rights and democracy conditionality as essential elements of the agreement, but were concerned about the standard suspension clause. As a result, much stronger emphasis was put on consultation mechanisms in the Revised Lomé IV Convention.²⁸ Article 366a specifies that unless there is special urgency, consultations should be held in view of assessing and remedying the situation. If consultations are rejected or do not produce a solution, cooperation can be partially or fully suspended. Termination and suspension are seen as measures of last resort.

The Cotonou Convention replicates the conditionality clauses on human rights and democracy principles as well as the consultation procedures. In addition, the agreement specifies that development aid to ACP states in-

27. See Article 5 and Article 336a of Revised Lomé IV; and Article 9 and 96 of the Cotonou Agreement. See also SANTISO (2003a).

28. See RIEDL and WILF (1999) pp. 730-731.

volved in armed conflict can be suspended or reduced to avoid diversion of financial resources for military purposes.²⁹

Since the inclusion of political conditionality in the Lomé and Cotonou Conventions, the EU has been much more proactive. For example, it invoked Article 366a and Article 9, respectively, in the case of Niger (1996), Togo (aid initially suspended 1992, consultations in 1998), Haiti (2000), Ivory Coast (2000), Fiji (2000), Liberia (2001), and most recently Zimbabwe (2001).³⁰

The first case in which the human rights and democracy clause was invoked was in response to a military coup in Niger. In January 1996 Lieutenant Colonel IBRAHIM BARE MAINASSARA ousted democratically elected President MAHAMANE OUSMANE, suspended the constitution, and declared himself head-of-state. The Council of Europe invoked Article 366a and under the "special urgency" provision immediately suspended development aid for six months. Because this was the first time Article 366a was invoked there was some confusion in the Council as to voting requirements (unanimity or qualified majority). In the end, the unanimity principle prevailed allowing for the possibility of a member state's veto, which is what in fact happened. France, Niger's former colonial power, vetoed the renewal of the aid suspension in July 1996 and as a result, EU development aid to Niger resumed. The brief suspension of EU aid could not halt the erosion of the democratic system. The political situation in Niger further deteriorated over the next several years. On April 9, 1999 IBRAHIM BARE MAINASSARA was assassinated by his bodyguards under the command of General WANKE. Subsequently, General WANKE suspended the constitution and set up a new government. The EU again suspended development aid and initiated consultation procedures, which ended in July 1999 with an agreement on a timetable for the return to democracy and the gradual resumption of EU aid.³¹ Many observers credit international pressure, particularly by the European Union and the United States, for the positive resolution of the political crisis in 1999. Economic sanctions seemed to have had more impact in 1999 than in 1996.

29 Article 11 (4) of Cotonou Agreement.

30 Our dataset of economic sanctions imposed by major powers collected for HUBAUFER ET AL. (forthcoming) includes cases from 1914 to 2000. Some of the cases listed here are therefore not included. For additional case studies see SANTISO (2003a) and HAZLIZI (2001).

31 See HUBAUFER ET AL. (forthcoming) Case Study 96-2: US/EU v. Niger (1996-2000: Restore Democracy); and SANTISO (2003a) pp. 161-162.

Again in response to a *coup d'état*, the EU initiated consultation with the Ivory Coast in 2000. In December 1999, Ivory Coast President HENRI BÉDIE was ousted in a Christmas Eve military coup led by General ROBERT GUIE. The European Union ended consultations after the *de facto* government committed to a return to democracy by October 2000. Despite the commitments made, General GUIE amended the constitution to bar the two most popular opposition candidates from participation in the presidential elections. In response, the European Union and United States suspended their election assistance and withdrew election monitors. Following manipulated presidential elections, GUIE was ousted by street protests in October and LAURENT GBAGBO was sworn in as president. The European Union launched a second round of consultations in February of 2001 and gradually resumed economic aid after fair and free elections were held in March. However, political and ethnic rivalries further intensified and ultimately led to armed conflict between rebel groups and the Ivorian government. Under UN mandate, the former colonial power France, the driving force behind EU involvement in the Ivory Coast, and the Economic Community of West African States (ECOWAS) provided peacekeeping forces to monitor a fragile peace agreement reached in January 2003.

Neither in the case of Niger nor the Ivory Coast were EU consultations and the threat of development aid suspension successful in halting the disintegration and deterioration of the political situation. Similarly, EU consultations and suspension of development aid to Fiji failed to ease tension between indigenous Fijian and ethnic Indian.³² In fact, RIEDEL argues that the value of the human rights clauses lies in the consultation mechanism and that "the human rights clause has missed its point, if it actually has to be applied by way of treaty suspension." (RIEDEL and WILL, 1999, p. 751).

In fact, the EU primarily suspended aid in response to two types of circumstances. Under the provisions of the human rights and democracy clauses, sanctions were imposed in response to coups or abrupt interruptions of the democratic process, such as happened in Fiji, Niger and Togo. Apart from measures taken under conditionality clauses, the European Union also suspended aid in response to internal conflicts or threats to regional stability and security. Sanctions imposed against Sudan, Rwanda,

32. See HUFBAUER ET AL. (forthcoming) Case 87-4: India, New Zealand, Australia v. Fiji (1987: Restore Democracy, Modify Constitution).

and Burundi, for example, illustrate this point (see *Table 2* in the *Appendix*).

4 Summary and Conclusions

This brief survey illustrates that the European Union has increasingly used its economic power as leverage for political purposes in the 1990s. However, attempts to influence third country policies through economic sanctions have thus far had only limited success.³³ *Table 2* shows that EU attempts to influence target country behavior have been about as successful in achieving their stated foreign policy goals as U.S. efforts. By our metric, in nine out of 34 observations did EU economic sanctions contribute to a successful policy outcome. A success rate of 26 percent is equivalent to the success rate of U.S. sanctions initiatives in the 1990s (see *Table 1*). This result is not surprising since in most EU initiatives the sanctions were imposed in cooperation with other countries and in particular with the United States. Of the 34 observations identified for the 1990, only in two instances – against Turkey and Algeria – did the EU impose unilateral sanctions.

Our data indicates that there is a much greater degree of co-ordination between U.S. and EU sanction policies than is commonly believed. For sure, attempts by U.S. Congress to extend the reach of U.S. unilateral sanctions to companies in third countries have put a strain on U.S.-EU relations. The extraterritorial scope of the Helms-Burton Act targeting companies that invest in Cuba and the Iran-Libya Sanctions Act (ILSA) seeking to prevent European companies from investing in the oil sector in Iran and Libya irritated the EU. Despite the fact that the Helms-Burton Act and the ILSA were never fully enforced they remain points of friction in the transatlantic relationship. However, in the vast majority of sanctions cases initiated in the 1990s, especially in response to the reversal of democratization and grave human rights violations in Africa, the United States and the European Union were co-senders. This conclusion reaffirms observations made earlier about the geographic shift of new sanction initiatives from Latin America to Africa and the decline of U.S. unilateral sanctions in the 1990s.

33 Although it is beyond the scope of our dataset on sanctions and this paper, it is worth noting that the European Union has also made use of positive incentives to achieve foreign policy goals. The EU's special GSP arrangement with Andean Pact countries to combat drug production and trade would be one example of the use of positive incentive.

Despite the similarities in EU and U.S. sanction policies in recent years, important differences remain, in particular with respect to human rights violations and democracy. The divergent approaches can partly be ascribed to differences in the legislative as well as institutional settings. Whereas the standard human rights and democracy clauses incorporated in EU association agreements allow for a great deal of flexibility and more emphasis is placed on a consultation mechanism than on punitive measures, U.S. administrations are required by law to immediately terminate aid to countries where the government is deposed by a coup or that engages in a "consistent pattern of gross violations of internationally recognized human rights."³⁴ Similar legislation mandates the automatic imposition of economic sanctions in response to lack of cooperation with U.S. anti-narcotics efforts, nuclear proliferation, support for terrorism, and religious persecution. Congressionally driven legislation limits the administration's discretion and flexibility in addressing these foreign policy issues.

In addition, while the EU has become a more frequent user of economic sanctions in recent years, its approach to foreign policy issues still remains focused on positive inducements and engagement rather than punitive measures. In her study on EU and U.S. reactions to human rights violations, HADEWYCH HAZELET concludes that "historically and institutionally it is easier for the EU to decide on positive measures than on negative measures. The institutional set up of US sanctions policy, in contrast, favors the use of sticks [...]" (HAZELET 2001, p. 238). European relations with Cuba and Iran illustrate this point. Despite Cuba's record of gross human rights violations the European Union has continued to maintain friendly relations and has frequently been at odds with the United States over U.S. sanctions policy. Notwithstanding a desire to diversify its trading partners, Cuba withdrew its application to join the Lomé Convention because of the European link of accession to improvements in Cuba's human rights record and political reform. The Cuba government's crackdown on dissidents in April 2003 further strained EU-Cuban ties and plans for Cuba to join the Cotonou Agreement were again dropped.³⁵ The carrot of accession to the Cotonou Agreement could not induce the regime in Havana to make concessions on human rights and democracy.

34 Section 508 Foreign Operations, Appropriations Act and Section 502B, Section 76, Foreign Assistance Act of 1966, as amended.

35 See THE ECONOMIST (2003), *Castro's grim phonex*, 24 May 2003, p. 31 and GIESBERG (2001) pp. 211-212.

Nevertheless, the Council reaffirmed that “constructive engagement remain the basis of the European Union’s Policy towards Cuba.”³⁶

Similarly, the U.S. frequently criticizes the European Union for its failure to pressure Iran on nuclear proliferation and international terrorism. However, negotiations on a Trade and Cooperation Agreement between the European Commission and Iran have been called into question because of Iran’s development of a nuclear program. The Council explicitly linked progress on economic relations between the Union and Iran to progress in “four areas of concern, namely human rights, terrorism, non-proliferation and the Middle East Peace Process.”³⁷ It will surprise most observers if the incentive of a trade and cooperation agreement offered by the EU can achieve what U.S. sanctions have been unable to do.

A related development is the growing emphasis on the individual accountability of those in power for the unlawful acts of states. This emphasis goes hand in hand with the shift towards more targeted sanctions by the European Union. It is manifested both in economic measures targeted against individuals and in recent efforts to bring those responsible for unlawful acts to justice. In 1993, Belgium, for example, passed a law that allowed its courts to prosecute anyone in the world for genocide, war crimes and crimes against humanity, wherever they were committed. Complaints filed in Belgium courts involve four Rwandans for their role in the 1994 genocide, Iraqi President SADDAM HUSSEIN, Chile’s General AUGUSTO PINOCHET, and Israeli Prime Minister ARIEL SHARON for alleged crimes against humanity during his time as Israel’s minister of defense in the 1980s.³⁸ Under international pressure, Belgium severely limited the jurisdiction of its courts in 2003.³⁹ At the international level, European nations supported the establishment of *ad hoc* tribunals for the former Yugoslavia and Rwanda and have been a driving force in the creation of the International Criminal Court (ICC). Common positions adopted by the Council of Europe outline the EU’s support for the effective functioning of the ICC and its goal of enlisting universal support for the Court.⁴⁰ EU Guiding Principles put forward proposals for arrangements concerning

36 General Affairs and External Relations, 2522 – Council Meeting, External Affairs, Brussels, 21 July 2003, 11439/03 (Presse 209).

37 General Affairs and External Relations, 2522 – Council Meeting, External Affairs, Brussels, 21 July 2003, 11439/03 (Presse 209).

38 See BRAND, CONSTANT (2002), Belgian appeals court throws out war crimes case against Israeli Prime Minister Ariel Sharon, *Associated Press*, 26 June 2002.

39 See NEW YORK TIMES (2003), *Belgium Scales Back its War Crimes Law under U.S. Pressure*, 2 August 2003, p. 6.

40 See Council Common Positions 2001/443/CFSP and 2002/474/CFSP.

conditions for the surrender of persons to the Court. While this can only be speculative, it seems likely that European nations will increasingly make use of the ICC in response to threats to international security and egregious violations of human rights.

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Appendix

Table 2 Selective European Union Sanction Cases initiated in the 1990s

Case#	EU Action	Target	Goal	Other senders	Policy result	Sanctions effect	Success Rating
87-4	Aid suspended	Fiji	Restore democracy, modify constitution	India, Australian, New Zealand	2	2	4
88-1	Targeted measures	Burma	Human rights, elections	US, Japan, Canada	2	2	4
88-2	Aid suspended, arms embargo	Somalia	Human rights, civil war	US, UN	1	1	1
89-3	Aid suspended	Sudan	Human rights; democracy	US	1	1	1
90-1	UN embargo	Iraq, pre-war	Military disruption, Kuwait	UN	1	1	1
90-1	UN embargo	Iraq, post-war	Military impairment	UN	2	3	6
90-1	UN embargo	Iraq, post-war	Destabilization	UN	1	1	1
90-3	Aid suspended	Kenya	Political repression, human rights, democracy	US, Western donors	2	3	6
90-4	Aid suspended	Zaire	Democracy	US, Canada, Japan	2	2	4
91-1	UN mandated embargo, GSP benefits, association agreement	Yugoslavia	Civil war in Bosnia	UN, US	3	3	9
91-5	UN mandated embargo	Haiti	Democracy	UN, US	4	1	4
91-6	Aid disbursement halted	USSR	Coup	US, Canada, Japan	4	1	4
91-8	New project aid suspended	Peru	Democracy, human rights	US	3	4	12
92-1	Aid suspended	Liberia	Civil war	US, UN, ECOWAS	3	2	6
92-2	Aid suspended	Togo	Democracy, human rights	US, Japan	2	2	4
92-3	Aid suspended	Malawi	Democracy, human rights	US, Western donors	4	4	16
92-4	Aid suspended	Equatorial Guinea	Democracy, human rights	US	2	3	6
92-5	Release of balance of payment aid delayed	Algeria	Democracy	--	2	1	2
92-8	UN mandated sanctions	Cambodia	Democracy	UN	1	1	1

Case#	EU Action	Target	Goal	Other senders	Policy result	Sanctions effect	Success Rating
92-12	UN mandated sanctions, reduction of economic relations	Libya	Extradite PanAm suspects	UN, US	3	3	9
93-2	Freeze of development aid	Guatemala	Coup	US, Japan	4	4	16
93-3	Targeted measures	Angola, UNITA	Civil war, democracy	UN, US	1	1	1
93-4	Aid suspended, arms embargo, targeted measures	Nigeria	Human rights, democracy, narcotics	US	2	1	2
94-3	Aid suspended	Rwanda	Civil violence	UN, US	1	1	1
94-4	Aid suspended	The Gambia	Democracy	US, Japan	2	3	6
95-2	European Parliament links approval of Customs Union to human rights improvements	Turkey	Human rights	--	3	3	9
96-1	Aid suspended	Burundi	Democracy	East African Members of OAU	2	3	6
96-2	Aid suspended	Niger	Democracy	US, Canada	3	3	9
97-1	UN arms embargo, diamond embargo	Sierra Leone	Democracy	UN, ECOWAS	2	1	2
98-2	Trade sanctions, aid suspended, investment ban, targeted measures	Yugoslavia/Serbia	Kosovo	US	3	1	3
98-2	Trade sanctions, aid suspended, investment ban, targeted measures	Yugoslavia/Serbia	Removal of MILOSEVIC	US	4	3	12
98-2	Trade sanctions, aid suspended, investment ban, targeted measures	Yugoslavia/Serbia	Cooperation with War Crimes Tribunal	US	4	4	16
99-1	UN targeted measures	Afghanistan	Extradite OSAMA BIN LADEN	UN	1	1	1
99-2	Aid suspended	Ivory Coast	Democracy, human rights	US	N/A	N/A	N/A
99-3	Postponement of cooperation agreement	Pakistan	Coup, democracy	US, Japan	1	2	2

Note: "N/A" denotes "not available".

Source: Preliminary results from HUFBAUER ET AL. (forthcoming).