

Considering the use of Restrictive Measures on Sudan by the European Union

*Mikael Eriksson
Uppsala University*



*A paper commissioned by the European Coalition on Oil in Sudan
April 2005*

Foreword

The signing on 9 January 2005 of the Sudan Comprehensive Peace Agreement and the ongoing conflict in Darfur, have caused sustained and keen international interest in Sudan. The repeated failure by the Sudanese Government to end the pattern of gross human rights abuses in Darfur, has inescapably tabled the sanctions issue.

Since its establishment in 2000, the European Coalition on Oil in Sudan has pleaded for suspension of oil exploitation in the country unless there was a just and lasting peace. Now that peace between the SPLA/M and the Government of Sudan has been signed, ECOS advocates that the oil sector respects the principles of the Peace Agreement and international law, as formulated in the ECOS Business Principles and Benchmarks for Sudan during the Interim Period. (see: www.ecosonline.org)

ECOS and many of its member organisations have yet to determine their position on the issue of sanctions in case of violations of international law and UN Security Council resolutions. To facilitate an informed discussion, Mikael Eriksson of the *Project on European Targeted Sanctions*, Department of Peace and Conflict Research, Uppsala University, was invited to write this paper. We hope it will inform and stimulate debate on the subject.

April 2005

European Coalition on Oil in Sudan
P.O.Box 19318
NL-3501 DH Utrecht
Tel: +31 30 24 28 485
The Netherlands
www.ecosonline.org

Content

Foreword	3
Introduction	5
Sanctions at work	5
Oil embargo as a political pressure	7
Successful EU sanctions, what lessons have been learned so far?	8
The logic of sanctions	10
Sanctions on Sudan	10

- Introduction

Implementing targeted sanctions is a daunting and challenging task that requires much resources, attention and political will. Without all these three components, the enforcement of sanctions is likely to fail. EU sanctions, or restrictive measures as commonly referred to, are foremost a political tool. Unless there is enough capacity to introduce, implement and maintain sanctions these are likely to fail. In many circumstances, in which sanctions have been introduced, the lack or limited support has caused more problems than it intended to solve at the onset.

Despite the peace agreement to bring an end to the civil war between North and South Sudan, violence and political turmoil have not yet vanished. Especially in Darfur, where a militia remain active, the situation is bad. While the World Health Organization has suggested that at least 70 000 people have died for the last few years as a result of the conflict, the latest figure has now been raised to almost 300 000. For the last few months though, several international actors have called for measures to put pressure on the Khartoum government. This call gave result in late March 2005, when the United Nations voted yes with 12 in favour to increase and expand the sanctions on Sudan (Algeria, China and Russia abstaining). But what do sanctions entail, and how does it work?

This paper examines the possibilities of introducing restrictive measures on Sudan. It reviews existing mechanisms of targeted sanctions with a particular emphasis on EU sanctions. The first section of the paper looks at effectiveness and the current use of sanctions. The paper then continues to look at the possibilities of establishing of an oil - trust fund in Sudan with particular reference to the experiences of a similar mechanisms applied earlier on Iraq. The second part of the analysis looks at the lessons learnt when dealing with sanctions. The paper ends with a more explicit discussion on Sudan.

Sanctions at work

A sanction is a second last resort to make a particular target comply with a stipulated set of political goals. EU sanctions are normally evoked as a reaction to violations of international law, violations of human rights, and towards national policies that do not respect the rule of law and democratic principles. When the EU has identified a political situation, as described above, several measures can be evoked. The type of measures depends much upon the degree of severity of the problem. For Sudan, the ongoing genocide discussions call for the harshest measurements.

Usually these measures includes diplomatic sanctions (expulsion of diplomats, severing of diplomatic ties, suspension of official visits); suspension of cooperation; boycotts of sport or cultural events; trade sanctions (general or specific trade sanctions, oil embargoes, arms embargoes etc.); financial sanctions (freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment); flight bans; and restrictions on admission.

When legacy then do sanctions have today? For the last two decades, the use of sanctions has been much refined and developed. Both international and regional efforts to process the sanctions instrument have been made (e.g. by the UN, EU and the African Union etc.). For instance, innovative approaches have been taken to more effectively make sure that sanctions strike targets on a more specific basis for instance by using travel restrictions and freezing of assets. Other new types of measures have been the introduction of timber sanctions and required certification on so-called blood-diamonds (rough diamonds control). Much of the reform-momentum, both on type and use of sanctions, derives from the Iraq legacy. Because UN sanctions on Iraq was subject to much criticism, mainly due to the negative consequences sanctions had on the Iraqi citizens, political action

have been taken to introduce measures which intent is not to target entire countries, but rather specific entities and individuals of the country.

If then considering the creation of a sanctions regime, with intent target a specific entity, what is then needed? The most important requirement is a strong sanctions infrastructure. The strong infrastructure entails administrative skills on behalf of all involved actors implementing the sanction. Depending on the type of measures enforced, adequate and effective public bodies such as customs; finance police; import and export agencies; financial inspection monitors; air-traffic control mechanisms, police and intelligence missions; government ministries etc. are needed. Besides ensuring that right actors are in place to monitor the sanctions, the co-ordination between these enforcing bodies is equally important. To effectively inflict sanctions on the target the sender has to make sure that the stipulated policies could be applied in a flexible, alert and compulsory way. This needs to be thought of, especially if considering Sudan oil sanctions, as these are likely to be subject to much evasion. Without the use of accurate and updated information within and among the enforcing capitals (and the region of concern), the efficiency will not be ample enough to have a desired effect. In addition, the sort of restrictive measures intended as an option should primarily be determined by the type of entities being considered in the sanctions regime. For instance, there is a large discrepancy if sanctions are directed on certain items, or if sanctions are focused on certain activities (for instance financial activities). Items such as timber, arms, oil-barrels, minerals etc. cannot be monitored and inspected in the same ways as frozen accounts, visa restrictions or travel bans. It is also difficult to introduce sanctions on items or services that hit differently across societal sectors. For instance, an oil embargo is likely to cut across all sectors and target several actors, while sector specific restrictions are likely to hit individuals in a particular segment of the society. Because of Sudan's already fragile society this has to be taken into account.

On the other hand, targeted sanctions can be used in a more abstract sense, still with the effect of reaching compliance. This view finds sanctions as a complementary instrument among many other instruments, where the threat concept is especially important. The use of a threat is based on the idea of 'frightening' the target to compliance. Unless certain conditions are fulfilled, sanctions will be implemented. However, the use of threat is difficult to employ for various reasons. One such reason may be the lack of credibility. However, the threat has now been coupled with a stronger UN Security Council action.

The effectiveness of using sanctions as a threat rests is that the target is unaware of the outcome and therefore that feel a sense of uncertainty. The sender could be more or less explicit of what measures to employ, crating a sense of unease. From this more abstract point of view, the very political discussion on enforcing sanctions by 'naming and shaming' is likely to create a sense of unease among those targets being considered. By suggesting informally that some actors may be placed on EU sanctions list, this puts pressure on behalf of those concerned. As seen by the current reaction of the Sudanese government against the threat of EU sanctions, one is able to see that the threat has had an effect.

Oil-embargo as a political pressure

Oil is certainly one of the leading causes to why the civil war that has rampaged Sudan for so many years. It is likely that the oil will also continue to be a future source of political turmoil. How well then would an oil-embargo work as a political instrument? Undoubtedly, measures that restrict trade in oil will have a profound effect on the government of Sudan since oil income is required to effectively run state administrations. Unfortunately it is also likely that restrictive measures on oil-import and export will harm the citizens of Sudan instead of the regime. This is a well-established experience from the Iraq sanctions. Although the former government of Iraq was the main target of the multilateral oil embargo, it managed to manipulate the comprehensive sanctions much to its own political advantage. By selling oil on the black-market it kept a steady inflow of cash, while the suffering of the Iraqi population continued. Despite a degree of income during the course of the initial phases of the embargo, the former Hussein government kept blaming the international community for strangling the Iraqi population. It should be remembered that the idea of an oil – trust fund was introduced in Iraq already in August 1991. But the Iraq government delayed the implementation because it fitted nicely with the policy of obstructing the UN. When the UN Security Council on April 15, 1995 managed to establish the Oil-for-Food programme properly, it took some pressure of the Iraqi population. The Oil-for-Food was a trust fund that built on the concept that for the amount of oil exported, the same amount of income (from this oil export) was allowed to be spent on import of non-military items (in particular on food and medicines). The Iraq government though, was not allowed to buy what ever it wanted. It had to submit a list of goods to a UN sanctions committee in New York. The Iraq committee then had to review these import and export demands and say ‘yes or no’ to this list of goods on a case-by-case review. This mechanism worked well, although it created an immense administrative workload for all parties involved. An important advantage with the entire operation it was thought was that regime would be forced to provide adequate funds and goods to the Iraqi society, as it now could not argue against an inflow of cash. However, not even this Oil-for-Food mechanism would stop the illegal revenues to the former Iraq government. While the program operated for five years, an estimated 64 billion USD was controlled as a result of the oil-sales. Of this, it has been suggested that the former regime of Iraq got almost 10 billion USD through illegal revenues (a side from the programme). On the other hand if the trust fund had not been in place, it has been estimated that the former Iraq government would have had an access to almost 200 billion USD perhaps to be spent on arms. This is also the strong argument in support of such a mechanism. Now, the oil wealth in Sudan may not be reaching that high amounts as in Iraq, but it is not unfeasible to imagine that the same proportions of illegal revenues would reach the Sudanese government as in the case the Oil-for-Food mechanism.

Another problem with the oil-trust fund is that the Iraqi government diverted income from the oil-sale by discriminating certain ethnic segments of the society (i.e. Kurds and Shia Moslems). This should also be kept in mind if considering Sudan, where ethnic and cultural sections, especially against the North-South division, risk being dealt with in the same manner by the Khartoum government.

Would it be realistic then to believe that a similar trust fund would be established for Sudan? As for many UN actions, everything is based on political will. One principal difference between Iraq and Sudan is that the policy on Iraq was much backed by the US. With the backing of a superpower the sanctions mechanism is likely to work very well. However, a similar political will is not yet seen for Sudan although the current U.S. involvement in Sudan is based on strategic importance for instance when it comes to combating terrorism. What then about a compromise limit?

An oil embargo was introduced against Haiti in 1993. An exemption though was that petroleum products were allowed for import as long it concerned a day-to-day basis for the Haitian citizens (so-called 'kitchen use'). A similar oil-ban exemption could be introduced in Sudan as long as the embargo is kept in place on those companies in government control (or in the government sphere). A problem though is that almost all 'privately' owned companies are also owned by people connected to the NIF government. Hence, for an effective use of oil sanctions an updated list on who owns what company is needed.

But this is not the only alternative. Today there are several foreign companies operating in Sudan such as Gulf Petroleum, Total, Lundin Oil AB, and Petronas. These are likely to lobby against all types of limitations of Sudan's oil import and export. An interesting attempt though, would be to convince these companies to sign an 'ethical list'. The list could state: 'We want to invest!', but only as soon as the political situation is calm, democracy is installed and violence is off. If these companies backed out all together and signed a petition on non-investment until all relevant UN Security Council resolutions were to be fulfilled, this could function as a typical carrot strategy (see below). The coordinated pullout could very well work since private companies rarely want to be subject to blacklisting by the international community. One problem with this particular strategy may be that these foreign companies may be state owned and not only owned by private interests. Still, this should not discourage these companies from signing an ethical pact. This strategy is not impossible to implement. In Myanmar for instance, several companies have withdrawn from the textile industry based on the same proposed ethical idea. In fact this strategy also goes well in hand with the idea of the Global Compact initiative.

Successful EU sanctions, what lessons have been learned so far?

When considering EU sanctions, as opposed to multilateral sanctions, one has to keep in mind that the obligations primarily extend to the geographical borders of Europe and to its sovereign political jurisdiction and competence. Unlike the UN, that under 'chapter seven' actions can request all member-states to fulfil its pledges, the EU has great difficulties to maintain and fulfil its goals outside this sphere. The greater geographical, cultural and cognitive distance away from Brussels, the lower credibility sanctions have than strictly symbolic. Despite the limited ratio of direct influence though, EU as a super power, still has a large indirect political credibility. By keeping a fixed and solid unity in its political position though it may have a great chance though of affecting the exposed target. Achieving this however requires that every EU member is fully aware of what alternative actions there are and which of these need to be taken. With the increased UN Security Council attention now taken on Sudan, EU could complement international efforts.

First of all, sanctions cases are unique and carry their own logic. It would be too thin just to seek experiences from the African context, as there are some recurring patterns in many other parts of the world in which EU sanctions have been imposed. One example from other regional settings is the need to have a high amount of consensus in the region of the target that supports the EU policy of sanctions. With a strategic partnership between EU and the neighbours of the target in the region (states and governments) the political goals are likely to be more credible. The risk is otherwise that a regional 'we' against 'them' phenomenon occurs. For instance, when the EU introduced targeted sanctions on Zimbabwe for failing to conduct free and fair parliamentary elections march 2002, neighbouring countries in the region did not unite with EU to the degree it had expected in the onset. This regional split in attitude divided countries for a period of time in 'pro and contra' the EU

sanctions. The fact that some countries sided with Zimbabwe was also used by the regime to justify its 'just cause'. A similar problem was also discovered in EU's Myanmar sanctions. The EU decided on an arms embargo in the early 1990s. While blaming the Myanmar military leadership for leading the country towards undemocratic premises, the EU policy did not calibrate this view with the majority of the countries in the region. Symptomatic to EU's idea of a political ban on trade, neighbouring countries of the target, instead traded and invest like ever before, hence treating and recognizing the regime as a legitimate actor. This of course creates a discrepancy between those who favour relations with Myanmar (Myanmar's neighbours) and those who favour an isolationist policy (the EU). In fact, as has been the case of Myanmar this has also led to a 'north' vs. 'south' division. Unfortunately, if the neighbouring countries are accepting Myanmar as a normal trading partner while the EU is not, this discredits EU's efforts in the longer run to maintain its policy as it will lose support of its actions. This has to do with legitimacy. Unless states are working together with the stipulated policies, they are likely to work against them. On the other hand if the region were in term with the EU (for instance China and Thailand recognizing the isolationist view of EU), then the overall credibility would be much more secure.

Another lesson learned follows the implications of not having political unity in the region. As soon as there is opposing political camps present in the region which supports the targeted entity, the EU will have problem keeping pressure on the target. This could be in the propaganda game that is likely to follow the sanctions. In these situations, it is absolutely necessary that the sender (i.e. EU) prepare a strategy on how to counter the propaganda that may occur. For instance, regimes that are being targeted are likely to pursue both a domestic and international campaign of discrediting the EU sanctions. If the targeted regime is also in control of the media or if the freedom of press is under strain, the countering effort is even more difficult. The EU thus has to be able to meet the allegations, explaining in a credible way why the sanctions are in place and for what purpose. Similarly, with the presence of an opposition in the target country, the sender is likely to have a strategic ally.

What recommendations are then worth considering thinking of applying targeted sanctions on Sudan? First of all, EU has to ensure that unity among its member states exist during the entire sanctions regime. This is worth underlining since on several occasions individual member states of the EU have had differing views on the common policy, which in some extreme cases has damaged the credibility of the sanctions implementation ways, for instance by granting exemptions to designated individuals. For those engaged in the Sudan cause, a constant dialog with EU capitals is needed for updating these on sanctions development. Secondly, each sanction-case needs to have a specific set of clear conditions for introducing sanctions, e.g. what they attempt to accomplish. These aims also need to be made explicit for the target. Thirdly, when implementing a sanction regime EU has to be clear and precise on exit strategies, timeframes and step by step solutions for how the target need to act in order to be de-listed from the sanctions. Finally, keeping in mind those targets that are likely to seek every chance to evade imposed sanctions, EU needs to have a clear monitoring and inspection capability to coordinate and resolve prevailing complexities. One way to create this is to establish a central node of contact between the targets and the EU. In the extreme case this monitoring and inspection function could work much similar as the work of UNMOVIC and UNSCOM in Iraq. The lighter form could be to send troikas or expert panels to the country and the region (as have been done in Myanmar and Sierra Leone). In the UN resolution of late March 2005, a four member panel of exporters was established on a six months period.

When considering sanctions thus, it is very important to consider mechanisms that could support and sustain them. Again, Iraq could make a good point of reference. To maintain an export and import ban on oil, as effective as the Iraq embargo, an important instrument is the presence of a strong military and administrative pressure. As an example, the Multinational Interception Force,

MIF, stopped more than 10 000 shipments during then years of Iraq blockade, stopping trade on crude oil and other commodities. Considering that the UN has decided to introduce more than 10 000 UN peacekeeping soldiers to Sudan, these could well serve the purpose of also making sure that the sanctions system work effectively.

The logic of sanctions

The use of sanctions could be used in different ways: for instance to hamper ongoing conflicts or to force parties to agreements. EU can also use sanctions for specific purposes by introducing its own sanctions, for instance on grounds of low degree of democratic behaviour or for the lack of basic human rights. The threat or the use of sanctions can also be applied on different phases of a turbulent political situation, for instance to prevent parties for taking office on illegitimate grounds (as in Haiti 1993); to force parties to the negotiation table (an idea thought of in the ongoing Sudan conflict); to re-direct sanctions from the general population to a specific number of individuals (as was the case in Iraq); and sometimes to stop the flow of resources to one or several warring parties (such as the sanctions on Angola, Liberia and Sierra Leone). On several occasions the use of sanctions has been introduced on basis of the carrot and stick approach. In Iraq, for instance, the carrot was a lifting of sanctions, while the stick was the immanent threat of war. A similar logic, but with more positive connotations, was the December 1999 sanctions on Yugoslavia. Under the so-called 'Oil-for-Democracy' program, in which the EU supported opposition controlled towns with energy and fuel. Likewise EU sanctions have been to introduced the principle of 'divide and rule', as in Myanmar, where hardliners were being kept on sanctions lists while reformist government members were refrained from these lists. This is an example of the very refinement of sanctions.

Sanctions on Sudan

In this paper a number of issues have been raised to consider when implementing targeted sanctions. The United Nations has recently adopted a stronger stance on Sudan, expanding the arms embargo, the freezing of funds and assets, and to designate individuals that impede the peace process. The future of sanctions is likely to be decided by the amount of political 'will' there is among the states in the United Nations Security Council. The U.S. has long planned sanctions strategy on Sudan including an oil embargo, travel sanctions and freezing of assets. This goes well in hand with their strategy of combating terrorism and supporting weak states.

On behalf of the EU there is already an arms embargo in place which is likely to be expanded. The question is how far it will extend and complement these restrictive measures applied by the UN. In the end, there will always be a compromise among the EU capitals on the final sanctions policy.

What then about the political will in the region? Very likely, the African Union (AU) would support ensuring sanctions on Sudan if called upon by the international community or the EU. When considering individual African countries, Sudan has nine neighbours, which it is having a great deal of varying relationships with. These governments are likely to have diverse motives for being positive or negative to sanctions (though a majority could be expected to be anti-sanctions). Libya has experienced sanctions for a long period of time. Egypt is likely to be equally reluctant because of the close religious and cultural ties (both having a degree of Muslim-identity). Also, the current president Omar al-Bashir fought in the Egyptian army in the 1973 war with Israel). Both Eritrea and Ethiopia have experienced an EU arms embargo. Currently though, Ethiopia is

experiencing good ties with Sudan, while Eritrea is considered as backing the rebels. Depending on their calculation thus the outcome is likely to affect their amount of political will to call for sanctions on Sudan. Furthermore, Chad, the Central African Republic, Uganda, Kenya the Democratic Republic of Congo are hit by ethnic strife, armed conflicts, lack of resources, and a general weak state problematic and thus not be much of support of sanctions (the last country also experienced with an arms embargo).

Then, how could EU sanctions on Sudan look like and what responsibility and problems follow with it? Considering that Sudan does not run a modern economy but is dependent on international donations, loans, export of oil/cotton and sesame etc., options are rather limited. As stopping financial loans is likely to harm the citizens (as much as the regime) this is not an attractive option. Especially since the international community now is thinking of ways to help re-building the war torn country. Indeed an embargo on any of the commodities besides arms would hit the already so vulnerable population. Sector specific sanctions or embargoes are likely to get unintended consequences (e.g. for families and minor private companies in the cotton and textile industry). The question is how far EU then is prepared to go before the risk of harming the Sudanese civilian's increases, for the purpose of putting pressure on the government. Besides commodity based sanctions, there are other options such as travel bans, freezing of assets, diplomatic restrictions, aviation ban, sports and cultural restrictions. A majority of these are possible to impede on specific individuals, and have also recently been applied by the UN. However, before judging what restrictions that are best suited, one needs to consider towards *whom* the measures should be directed at. In the Sudan case these individuals are likely to be officials of the Government of Sudan or members of the Janjaweed militias. The later members are certainly much difficult to target, due to lack of proper information about each individual, as well as their poor integration into economic systems (particularly in financial institutions in Europe). Hence, only the government is likely to be appropriate. But even here it is a need to ask how much relations the Sudanese government really have with EU. For instance, how much do Sudanese officials travel to capitals in Europe, how much private financial transactions flow between accounts in the judicial territory of EU and Khartoum, and how many air planes travel en route to Europe?

In any way, if sanctions of either sort are being introduced monitoring and inspection is needed. A combined team of regional and EU experts could work well (kind of regional expert team or good office). In addition, considering the use of sanctions as a threat the more credibility attached to it, the likelier it will work. Today however, the UN is already using this approach. Coupled with other threats such as the inclusion of the ICC or ad hoc tribunals in the policies, for those who is active in maintaining violence this credibility is likely to higher and the pressure more intense. A central question here though is: who will bring the assumed guilty to the tribunal and how will it look in the eyes of the world when 'meagre' Sudanese militia members are facing international judges? Nevertheless, without a U.S. approved mechanisms on this matter, EU will not have a great success of achieving much of its policies in this particular strategy.

Assuming that sanctions are expanded, disregarding the type, there is a great risk that the government in Sudan will continue with counter propaganda. As the media situation in Sudan is suggested to be one of the most restrictive on the African continent this is indeed much likely. To counter this propaganda the EU could make sure to support radio channels that could be tuned in from within Sudan, including BBC World Service and the Paris-based Radio Monte Carlo (FM in Khartoum), as well as supporting clandestine radio stations.

Finally, when sanctions are imposed there is also the need that the EU effectively declares what steps it requires the targets to take for the sanctions to be lifted. Thus, an open and independent step-by-step procedure to evaluated the steps taken by the targets, are therefore needed.

In addition, there is also the need to have an independent mechanism to consider alternatives for clear exit plans.

Strictly hypothetically then, what could EU do if it wanted to consider options it had never tried before? As mentioned, the use and development of restrictive measures are currently experiencing a momentum. Trying new techniques is therefore not completely unfeasible.

Consider for instance the bilateral sea blockade against Cuba on October 16, 1962 when U.S. sealed off the coastline for entering USSR ships bearing nuclear missile parts. The same innovative design could be used against Sudan but on a lower scale. Why not *threaten* Sudan with random blockades of the coastline of Sudan until the violence in Darfur stopped. This will surely lead to partial interruption of the economy which will be a major disturbance to the political and economical planning of the government. With the deployment of troops inside and around Sudan this threat could be made real. The threat could easily be implemented as both EU and U.S. (for that matter) have both troops and ships in the region. In addition, with the preparation of a 10 000 strong UN troop contingent and the deployment of 715 civilian policemen for Sudan as was recently approved by the UN, this alternative could be considered realistic. This is not to say that the UN should implement the blockade, but only make sure that if this option is being considered it would work in a beneficial manner. The UN could function as a guarantee on behalf of the international community, making sure that the random blockade did not harm to the citizens of Sudan. However, since partial economic interruptions may indeed harm the Sudanese population, the mere *threat* of a blockade could reach a desirable outcome.