COMPLIANCE WITH INTERNATIONAL SANCTIONS COMMITMENTS IN THE CZECH REPUBLIC[1]

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ABSTRAKT

Česká republika patří k zemím, které obvykle pouze vykonávají sankční rozhodnutí přijímané v rámci mezinárodních organizací. Její příspěvek k úspěchu sankcí spočívá zejména v dosažení souladu s platnými normami. Otázka připojování se k mnohostranným sankčním režimům a souladu s nimi nemá v českém případě arbitrární charakter. Stať proto nejprve seznamuje s teoretickými mechanismy zajišťujícími chování v souladu s přijatými normami. Domácí zdroje souladu nově nezávislého státu, stejně jako mezinárodní vývoj ovlivňující poměr nákladů a přínosů při provádění sankcí koncem 90. let 20. století ilustrují obtíže při provádění a dodržování sankcí (dosahování souladu) v České republice. Článek zdůrazňuje vliv institucí stanovujících pravidla a socializačních mechanismů, a to v rámci OSN a především v rámci EU.

Klíčová slova: mezinárodní sankce, národní sankční politika, OSN, Evropská unie, Česká republika

ABSTRACT

The Czech Republic belongs among those countries which only carry out sanctions which have been imposed by organisations. However, in compliance with adopted international norms, it contributes substantially to the sanctions' success. At the same time, the question of joining multilateral sanctions' regimes is not decided arbitrarily in the case of the Czech Republic. This means that the mechanisms ensuring norm-consistent behaviour are introduced first. The domestic sources of compliance in the newly independent state, as well as those international developments which influenced the sanctions' cost-benefit ratio in the late 1990s, illustrate the difficulties in the implementation of, and compliance with, sanctions in the Czech Republic. This article emphasizes the influence of the rule setting institutions, and socialization mechanisms, primarily within the UN and the EU.

Key words: international sanctions, national sanctions policy, United Nations, European Union, Czech Republic

JEL: F51, F53, K33

INTRODUCTION

During the two post-Cold-War decades the foreign relations of the former communist Central and Eastern European countries underwent far-reaching changes. The changes closely relate to the fundamental political and societal reorientation from the East to the West, as well as the Central and Eastern European countries' subsequent integration to Western political structures - the Council of Europe, the North-Atlantic Treaty Organization and the EU,

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respectively. They include, inter alia, the greater adherence of these states to international norms and regimes.

Better compliance with international and regional arrangements such as universal and European human rights instruments, or international rules of environmental protection has been subject of intensive research. Especially in European studies it is closely related to the pre-accession conditions imposed by the Western organizations such as the EU, their pre- and post-accession adaptation pressure and socializing effects.[2] However, despite the considerable interest of scholars several areas of improvement still seem to be rather neglected. This is, for instance, the case with multilateral sanctions regimes.

Despite the fact that the international community has witnessed a substantial increase in the imposition of international sanctions[3] and the fact that sanction instruments were reformed substantially at the turn of the millennium, the state of knowledge achieved is still rather narrow and has many imbalances. The most intensively studied issues include the legal aspects, characteristics and typology of these instruments,[4] the evolution of international sanction regimes, reform proposals[5] as well as the effectiveness of the sanctions from the perspective of the target states and desired changes in their behaviour.[6] As far as the approaches of the sanction imposing organisations are concerned, most research focuses on international organizations[7] and the great powers imposing unilateral sanctions (the US, the former Soviet Union and today's Russia are of particular interest). Smaller countries, merely implementing multilateral sanctions regimes, with no, or very limited autonomous sanctions policy, such as the Central European countries, which are covered sparsely by a few sceptical references to collective action dilemmas, as well as the high risk of free riding and the considerable difficulties in ensuring their cooperation.[8]

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[2] Schimmelfennig, F. - Sedelmeier, U. (2005): Introduction: Conceptualizing Europeanization of Central and Eastern Europe; Smith, A. et. al (1996): The European Union and Central and Eastern Europe: Pre-Accession Strategies; Ronald H. Linden, ed. (2002): Norms and Nannies: The Impact of International Organizations on the Central and East European States; Jacoby, W. (2006): The enlargement of the European Union and NATO: ordering from the menu in Central and Eastern Europe etc.

[3] For the purpose of the following text we understand international sanctions as either broad or targeted coercive non-military actions taken by international organisations and states against other subjects to international relations in order to influence their behaviour and thus support international peace, security, democracy and human rights.

[4] Wallensteen, P. (1968): Characteristics of Economic Sanctions; Drezner, D. (1999): The Sanctions Paradox: Economic Statecraft in International Relations etc.

[5] Tostensen, A. Bull, B (2002): Are Smart Sanctions Feasible; Wallensteen, P., Staibano, C., Eriksson, M. eds. (2003): Making Targeted Sanctions Effective-Guidelines for the Implementation of UN Policy Options; Fruchart, D. et al. (2007): United Nations Arms Embargoes, Their Impact on Arms Flows and Target Behaviour etc.

[6] Hufbauer, G. J., Schott, J., Elliot, K.A. (2009): Economic Sanctions Reconsidered: History and Current Policy; Daudi, M.S. - Dajani, M.S. (1983): Economic Sanctions: Ideals and Experience etc.

[7] Weiss, T.G. (1999): Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses; Addis, A. (2003): Economic Sanctions and the Problem of Evil; Bessler, M., Garfield, R., Gerard Mc Hugh,G. (2004): Sanctions Assessment Handbook, etc.

[8] The only more comprehensive study on states compliance with the UN Security Council sanctions regimes - Gowlland-Debbas, V. ed. (2004): National Implementation of United Nations Sanctions: A Comparative Study - deals with compliance from the legal perspective (relationship between international a domestic law). However, it does not discuss the political aspects of the topic.

This article attempts to contribute to a better understanding of compliance with international sanctions acts and underlying mechanisms, which ensure improvements, by a case study of the Czech sanctions legislation, as well as its implementation methods. We find the Czech case to be significant as the country, during the period of its independent existence, has reversed its policy several times, and has succeeded in bringing the implementation of international sanctions regimes to a high international standard. The case study allows for the comparison of the various methods of sanction implementation, as well as enabling us to isolate and analyse the factors behind each political choice. One of our key findings is that the Czech Republic's implementation of international sanctions improved substantially after the accession to the EU. The Czech experience could be useful for other new EU members and candidate countries where similar changes are in progress.

From the methodological point of view, we draw from previous research on compliance with International and European Law,[9] which introduces four basic mechanisms ensuring that states comply with their obligations: persuasion, enforcement, management and litigation. Within each mechanism, we identify the relevant domestic and international factors affecting compliance. The effects of the domestic and international factors are then examined separately because we want to show that the international factors were crucial, whereas the domestic ones worked rather conversely. We also discuss the different impact which the UN and the EU had on the Czech attitudes in order to show the possibilities and limits of these institutions for forcing the states to implement their sanctions decisions in a timely and proper fashion. Our observations are based predominantly on documentary analysis, including international sanctions decisions (taken by the UN and the EU), as well as the relevant implementing domestic legislation adopted in the Czech Republic.

1 Compliance with international sanctions regimes from a theoretical perspective: Mechanisms ensuring norm-consistent behaviour

As already stated above, the growing body of literature on international sanctions raises many questions. It discusses why sanctions are imposed by international organizations and states, and how the decisions to impose sanctions are taken. In addition, it examines key sanction instruments and their effectiveness, as well as observing how sanctions influence the behaviour of target entities (states, groups, individuals.). However, it focuses insufficiently on the countries that only carry out the decisions to impose the sanctions as members of organizations which apply sanctions. This happens despite the fact that they represent an important part of the sanctions chain, and their compliance contributes substantially to sanctions success. It is thus difficult to find a suitable starting point in the previous sanctions research from where the analysis of sanctions policy of a small Central European state could commence.

A possible solution to this problem could be the application of what is termed a domestic policy approach. The approach links the use of sanctions with domestic (public) demands for action against subjects violating international norms and threatening international peace and security.[10] However, as far as the Czech Republic is concerned, the approach seems to have marginal relevance. The Czech domestic debates on sanctions seldom result in clear calls for activism. They rather focus on the threatened commercial interests of the Czech entrepreneurs. At the same time, the question of joining multilateral sanctions regimes is not of an arbitrary nature in the Czech case. Technically speaking, it was clearly resolved within a wider package of issues related to the accession to the UN and, more recently, to the EU. The

[9] For a detailed overview see section 1 below.

[10] Cf. Drezner, D. (1999): The Sanctions Paradox: Economic Statecraft in International Relations, pp. 11-13.

country is obliged to join sanctions regimes imposed by both institutions under the UN Charter as well as under primary European legislation, respectively.

However, there is always a certain dilemma as to whether or not to implement the required measures. and/or to comply with the relevant sanctions decisions once such decisions have been taken.[11] The persistence of the dilemma is not only referred to by scholars,[12] but also proven by practical efforts of the UN Security Council (UNSC) to establish subsidiary bodies (sanctions committees, bodies of experts, monitoring mechanisms etc.) along with the responsibilities related to the improvement of sanction implementation. The Czech experience discussed below can be regarded as further evidence.

Due to the inapplicability of the domestic approach and an apparent lack of other alternative analytical tools in the sanctions literature, it is necessary to turn to more general research on compliance with International Law. Its various clusters subscribe to several distinct mechanisms ensuring compliance: enforcement, management, persuasion and litigation. These mechanisms each respond to a different source of non-compliant behaviour as well as a different rationale for intervention.[13] The enforcement and persuasion mechanisms are designed to deal with voluntary non-compliance and stress the importance of the international environment in overcoming it. The management and litigation mechanisms focus on involuntary non-compliance and are based on the interplay of the international and domestic environments.

The enforcement mechanism draws on the rational calculi of costs and benefits brought on by various alternatives of behaviour. It is based on the alteration of the relation between the costs and benefits of compliance, by either increasing the costs of non-compliance or decreasing the costs of compliance. The costs are of both a material (financial) and abstract (reputational) nature.[14]

In contrast, the persuasion mechanism reflects the social nature of international relations and the importance of ideals, beliefs and shared standards of appropriate behaviour. It works through social learning and persuasion. The compliance with a norm reflects a (moral) belief that it simply ought to be obeyed. The intensity of this moral obligation is supposed to correlate closely with the intensity of the domestic support for the rule of law and the culture of obedience of the law, as well as the prestige and legitimacy of the rule-setting institution.[15]

The management mechanism deals with inability to meet international obligations which, unlike previous cases, does not reflect a lack of willingness but a lack of national capacity (financial, administrative, technical etc.), or uncertainty regarding the right content and meaning of the international norm to be implemented. In the former case this inability is overcome with the assistance of international institutions (which, just as with the enforcement

[11] In the existing theoretical literature, implementation and compliance are seen as separate concepts. Implementation indicates the necessity for a legal action in order to ensure harmony between international obligation and relevant domestic law. Compliance refers to behaviour corresponding with international obligation. Implementation is thus a prerequisite, but not sufficient condition of compliance.

[12] Cf. e.g. Farrall, J.M. (2007): United Nations Sanctions and the Rule of Law.

[13] Börzel, T.A. (2003): Guarding the Treaty: The Compliance Strategies of the European Commission.

[14] Simmons, B.A. (1998): Compliance with International Agreements, pp. 75-93; Lebovic, J.H. - Voeten, E. (2006): The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNHCR.

[15] Börzel, T.A. et al. (2010): Obstinate and Inefficient: Why Member States Do Not Comply With European Law.

mechanism, leads to reductions in the costs of compliance). In the latter case, the procedures are designed in order to interpret and clarify the rules that come into play.[16]

The litigation mechanism insists on suing states for violations of international norms before national courts. In relation to specific issues of compliance with European Union law and member states, liability for damage caused to private actors (citizens, groups and firms) by member states' non-compliance with obligations to EU law was identified within European studies. In terms of sanctions, it is used by parties questioning their inclusion on sanctions lists, as well as helping to make sanctions more transparent and legitimate. However, in terms of a better implementation of sanctions it is still of marginal importance.

Obviously, studies of compliance examine both domestic and international levels in order to interpret the behaviour of states. The main criteria at both levels are summarized in figure 1.

Figure 1: Compliance mechanisms and sources of compliance – an overview

Mechanism	*Sources of compliance*	
	Domestic level	*International level*
Enforcement	power	alteration of relations between costs and benefits
Persuasion	rule of law culture of obedience to the law	prestige and legitimacy of the rule setting institutions opportunity for social learning
Management	insufficiencies of national capacity	alteration of relations between costs and benefits, procedures supporting implementation
Litigation	national legal enforcement mechanisms	support of awareness

2 Domestic sources of compliance in the newly independent Czech Republic

As far as the domestic factors ensuring compliance are concerned, Figure 1 shows that the theoretical literature emphasizes the domestic culture of obedience to the law, adherence to the principle of the rule of law and the internal capacity for compliance.[17] The importance of the domestic regime, as well as the domestic political changes are also dealt with. Compliance with international norms is commonly supposed to increase apace with the democratization processes.

The evolution of the sanctions policy of the Czech Republic does not correspond with these assumptions in one essential aspect. While the country went through the process of democratization, and respect for the rule of law increased, compliance with sanctions commitments to the UN has deteriorated. In the former socialist Czechoslovakia, sanctions were implemented by the then Ministry of Foreign Trade: The ministry exercised full control over the country's foreign trade within the framework of the foreign trade monopoly. The implementation mechanism was based on ministerial decrees banning certain commercial activities. As delegated legislation, the decrees did not require any lengthy legislative procedure. Thus, the Ministry could respond to the UNSC resolutions promptly. However,

[16] Simmons, B.A. (1998): Compliance with International Agreements. Tallberg, J. (2002): Paths to Compliance: Enforcement, Management, and the European Union.

[17] Börzel, T.A. et al. (2010): Obstinate and Inefficient: Why Member States Do Not Comply With European Law.

practical examples are almost non-existant due to the low frequency of the use of coercive measures by the UN during the Cold War.[18] The flexibility of this ministerial practice was confirmed only by the cases of the South Africa and Iraq (during the first Gulf War).[19]

After the peaceful dissolution of the former Czechoslovakia, the situation changed thanks in large part to the new democratic constitution of the successor state. In accordance with the basic principles of modern European democracy, the new Czech Constitution contained provisions introducing the rule of law on the Czech territory including provisions of article 2(4) which state that *"Everybody may do what is not prohibited by law and nobody may be forced to do what the law does not instruct him to do".* A proper application of the principle prohibited those sanctions which impose constraints on the behaviour of domestic natural persons and legal entities if they be carried out by extra-legal means, and so, acts of parliament were necessary.

In fact, the principle started to be applied in practice even shortly before the dissolution of Czechoslovakia. The UNSC resolution no. 757 of 30th May 1992 was incorporated into domestic law by means of statutory measures taken by the Presidency of the Federal Assembly through a specific procedure for resolving urgent situations requiring the adoption of a certain law.[20] The new Czech Constitution, however, did not introduce any similar procedure.[21] There was no other domestic legislation passed which would allow the immediate implementation of the international sanctions until 2000. What followed was, according to Czaplinski and Šturma, a period of *"hesitations and 'legislative experiments'".*[22]

Since 1993, sanctions regimes that required the regulation of domestic natural persons' and legal entities' activities (with a few exceptions such as the trade with military material, which may only be carried out on the basis of a permit from the Ministry of Industry and Trade) were implemented by ad hoc acts of parliament. As sanctions were not high on the list of priorities of the Czech foreign policy, the relevant political and legislative processes were rather lengthy. This led to a delayed implementation, or non-implementation in several cases, which contradicted both the obligations deriving from the UN Charter and the general purpose and meaning of international sanctions as coercive measures which are an immediate response to negative phenomena in international relations.

As examples, the sanctions imposed against Haiti by the UNSC between June 1993 and 1994 can be mentioned. The relevant national measures were launched by the government resolution no. 338 of the 15th June 1994, but the sanctions regime had been lifted by the UNSC even before the Czech parliament could approve a corresponding bill. The sanctions imposed on Libya in 1992 are another example. They were implemented in the Czech law only after five years (in 1997) because a part of the Czech political spectrum was convinced that joining fully the sanctions regime would complicate the on-going negotiations on the settlement of debts from the socialist past, as well as the economic activities of Czech businesses. Paradoxically, the Czech Republic was represented on the Sanctions Committee established pursuant to the

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[18] Výnos ministra zahraničního obchodu č. 24 ze dne 20. června 1964 Věstníku ministerstva zahraničního obchodu o zákazu obchodu s osobami a podniky v Jihoafrické republice; Czaplinski, W. - Sturma, P. (2004): Poland and the Czech Republic.

[19] United Nations Security Council Resolution 661 (1990) of 6 August 1990 on The Situation between Iraq and Kuwait.; Vyhláška Federálního ministerstva zahraničního obchodu č. 380/1990 Sb. o zákazu obchodování s Iráckou republikou a státem Kuvajt.

[20] Ústavní zákon ze dne 27. října 1968 o československé federaci, 143/1968 Coll., Article 58(1); Zákonné opatření Předsednictva Federálního shromáždění ze dne 15. června 1992 O opatřeních ve vztahu ke Svazové republice Jugoslávie, 366/1992 Coll., Explanatory report.

[21] An equivalent of the procedure was introduced in the Czech law first in 1995 by §99 of Act no. 90/1995 Coll. on the Rules of Procedure of the Chamber of Deputies.

[22] Czaplinski, W. - Šturma, P. (2004): Poland and the Czech Republic, p. 394.

resolution 748 and its representative Karel Kovanda even acted as a chair of that Committee in 1994-1995.[23]

In addition, the creation of the new sanctions regimes was by no means the only case where the ad hoc implementation method failed. The same problems occurred when the scope of sanctions was extended or narrowed, and when the sanctions were suspended temporarily, or even removed completely. Each of the actions required amendments to the original ad hoc sanctions, which was again a time consuming process.

3 International developments influencing the sanctions cost-benefit ratio in the late 1990's

As the sanctions were imposed on several important political and economic partners of the former communist Czechoslovakia (e.g. arms embargoes against Iraq in 1990, or against Libya in 1992), the domestic costs of compliance with sanctions regimes (trade losses, irrecoverable debts) increased in the 1990's. However, there was no particular increase in the international costs of legal non-compliance during that period. The sanctions committees of the UN monitored primarily the behaviour of target states and obvious cases of sanctions violations (practical non-compliance) by the implementing countries.[24] The mere non-implementation of the sanctions measures into domestic law that did not result in exemplary distortions of the sanctions regimes was almost disregarded. It entailed a minimal risk of criticism and shaming within the UN.

As a consequence, the external costs of non-compliance had to be considered first when the Czech Republic attempted to complete its transition to a modern Western democracy with a functioning market economy through its integration into the trans-Atlantic and Western European political structures. During the pre-accession period, the post-communist countries applying for the membership of Western bodies were not only expected to prepare for the assumption of membership obligations, but they also had to prove their adherence to the common values, aims and principles of these institutions.[25] In the most striking case of the EU, the applicant countries were called upon to implement the decisions of the Council of the EU adopted within the Common Foreign and Security Policy (CFSP) framework. Since 1996, they included common positions introducing sanctions (in European terminology often called restrictive measures).[26] The reputation of a dedicated and reliable partner, as well as a positive appreciation of these institutions (which could be improved, inter alia, through compliance with European sanctions) was then highly desirable.

While the processes of integration into Western bodies accelerated, the international variables forming part of the enforcement compliance mechanism worked in several directions. Next to the multilateral sanctions regimes of the late 1990's, this may be demonstrated also on a very specific case of the only unilateral restrictive measure that has ever been imposed by the Czech Republic: the ban on the supply of goods, services, documentation and information to the Iranian Bushehr nuclear facility introduced (within the legislative emergency) by a special Act no. 99/2000 Coll.

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[23] Poslanecká sněmovna ČR (1997): Důvodová zpráva k zákonu č. 78/1997 Sb.; PS ČR (1994). Návrh na upuštění od projednávání zásad zákona o opatření ve vztahu k Libyi; Czaplinski, W. - Šturma, P. (2004): Poland and the Czech Republic.

[24] Cf. e.g. the United Nations Security Council (S.n.) Sanctions Committe 748 reports.

[25] Cf. e.g. European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, SN 180/1/93 REV 1.

[26] For a more detailed overview of this practice see Kronnenberger, V. (2001): Common Foreign and Security Policy: International Law Aspects of the Association of Third States with the Common Positions of the Council of the European Union.

The Act (perceived domestically as controversial and causing disputes even more than ten years after its adoption due to repeated struggle of the Communist party for its repeal)[27] prevented a Czech subcontractor from carrying out the supply of air-conditioning equipment through its Russian partner. The Ministry of Foreign Affairs found the contract inconsistent with the national interests of the Czech Republic although by that time there were no international restrictive measures imposed on Iran, except for the unilateral sanctions of the US. This is obvious from the following comment given by the then deputy minister of foreign affairs Hynek Kmonicek in a radio interview: *"As for us, it is a matter of the credibility of the Czech Republic in relation to its allies and the allies in relation to the Czech Republic. If we now behave as a responsible and proper NATO member, we can, under given circumstances, expect analogous behaviour from other member states in two or three years. Nevertheless, in a recent meeting, the representatives of the United Kingdom confirmed, for example, that British companies do not participate in the construction of the Bushehr nuclear facility, and if they attempted to participate, they would not be issued a permit. The same is clear from our discussions with the Federal Republic of Germany and France."*[28]

The more urgent need to comply with international sanctions has made the ad hoc operational basis of sanctions implementation used since 1993 untenable. For that reason a compromise solution was adopted and a general Sanctions Act was introduced.[29] The legislation specified the areas of competence of the ministries, and authorized the Czech government to implement sanctions of the UN by its decrees. The Act also created a basic framework for practical compliance with international sanctions regimes as it introduced financial penalties for natural persons and legal entities for not respecting the rules of the implemented sanctions regimes. However, this soon turned out to be an insufficient solution.

In addition to the efforts to integrate the Czech Republic into the Western structures, the change of the implementation method also reflected more general international developments towards new sanctions designs. The modifications were carried out with the aim of reducing the negative impact of sanctions on ordinary people. It is also intended to influence significantly the relation between the costs and benefits of sanctions: to replace the costly comprehensive sanctions by more beneficial targeted sanctions. The change came into effect thanks to a series of conferences held in Interlaken (1998, 1999, financial sanctions), Geneva (1999), Bonn and Berlin (1999, 2000, arms embargoes, travel restrictions and flight bans) and Stockholm (2003, targeting of economic embargoes).[30]

As indicated above, the enforcement mechanism operates on the basis of the changing relation between the costs and benefits of compliance.[31] In fact, this is just what the targeted sanctions do, because they bear lower costs in comparison to comprehensive sanctions. Non-compliance with such sanctions can produce benefits in some cases (e.g. of embargoes), however in the case of targeted sanctions such benefits seem to be insignificant. Hence, the reduction of costs for the implementing states is one of the key achievements of the UN within this area.

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[27] Neliba, M. (2011) Politika: KSČM chce opět zrušit zákaz dodávek od íránského Búšéhru.

[28] Czech Radio (2000): V případu ZVVZ Milevsko vadí i ruský zprostředkovatel, Náměstek ministra zahraničí Hynek Kmoníček o zakázce ZVVZ Milevsko pro jadernou elektrárnu v íránském Búšehru (transcript of the interview).

[29] Act no. 98/2000 Coll. on the implementation of international sanctions in order to keep international peace and security.

[30] For details see e.g. Wallensteen, P. – Staibano, C. eds. (2005): International Sanctions. Between Words and Wars in the Global System.

[31] Simmons, B. A. (1998): Compliance with International Agreements.

4 Prestige and legitimacy of the rule setting institution, socialization mechanisms

In contrast to its ability to reduce the costs of compliance by the introduction of the targeted sanctions, the UN has only limited the possibilities how to force the states to comply by other more active means. Even though there are several sanctions committees established to oversee the implementation of sanctions and undertake the tasks of the imposed sanctions,[32] in the case of sanctions violations by implementing states the relevant committee e.g. "… recommends Member States be especially alert for additional violations"[33], but no stricter steps follow.

Contrary to the UN, the EU has a quite effective mechanism to ensure that both its member states and the applicants comply with the adopted sanctions legislation. The EU compels the states to adjust their policies, institutional framework and national legislation to the EU norms by the use of incentives and control or enforcement mechanisms including periodic reviews by the Commission, actions for infringement before the European Court of Justice etc. In the case of the applicant countries, the perspective of the full membership is of crucial importance.

As far as the members are concerned, EU sanctions are introduced, and UN sanctions are incorporated into European law predominantly by Council regulations.[34] Regulations impose concrete obligations on the member states, and are directly applicable in their territories. In addition, in the case of a conflict between them and the domestic law, the EU Regulations take precedence.

As already discussed above, when ensuring norm-consistent behaviour in international relations, the persuasion mechanism relies, unlike the enforcement mechanism, on a (moral) belief that it simply ought to be obeyed. The intensity of this moral obligation is based on the intensity of the domestic support for the rule of law, as well as the culture of obedience of the law, as well as the prestige and legitimacy of the rule-setting institution.[35]

Within the UN, only a small group of states is involved in the decision-making process when sanctions are imposed. As substantive matters, sanctions require an affirmative vote of at least nine out of fifteen members of the UN Security Council (UNSC), including the votes of the permanent members. Hence, the approval, or possible disapproval, of sanctions regimes reflects the current situation and the distribution of power in international relations. Because the Czech Republic belongs, within the UN, among the small states and remains outside the UNSC, the effects of socialization are of limited significance. The country came closer to the decision making in the UNSC only in the period of 1994 - 1995 when it was a non-permanent member. However, by that time it was very difficult to get relevant and valuable experience as the UNSC failed to prevent the genocide in Rwanda. In 2007, during its second candidacy for non-permanent member status of the UNSC, the Czech Republic was not selected.

In regional bodies, such as the EU, the participation in sanctions policy-making is usually broader, and the opportunities for social learning more favourable. This social learning may evolve, for example, when representatives of national ministries at various levels have

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[32] See United Nations Security Council (S.n.): Sanctions Committees.

[33] United Nations Security Council (2010): Implementation Assistance Notice #2: Hansa India to resolutions 1737 (2006), 1747 (2007) and 1803 (2008).

[34] In many cases Council decisions (former common positions) within the framework of Common Foreign and Security policy precede. Sometimes (e.g. when only diplomatic sanctions are imposed) Council decisions are sufficient to impose sanctions within the EU and no regulation has to be prepared.

[35] Börzel, T.A. et al. (2010): Obstinate and Inefficient: Why Member States Do Not Comply With European Law.

intense discussions when holding roundtables during agenda settings, or during Council meetings, European Parliament sessions, Commission negotiations etc. In addition, the possible impact of the EU results from the transfer of national competences to the Union bodies, the legally binding nature of decisions, as well as the fact that other states have been adapting, too.[36]

During the pre-accession period, especially at the turn of the millennium, the Czech Republic implemented the EU (and the UN) sanction decisions faster, which can be seen in the sanctions against the Taliban movement in Afghanistan, for instance. The UNSC resolution was adopted in October 1999 (No. 1267/1999) and the Czech parliament approved the implementing legislation already in March 2000. When comparing this case with the sanctions against Libya (1997), it is obvious that a several years long procedure was reduced to several months. However, even this progress was criticized for being insufficient,[37] as the EU itself had adopted the Council Common Position for implementing measures against the Taliban already in November 1999 (1999/727/CFSP).

To create more suitable conditions for the implementation of sanctions a general enabling statute was adopted in 2000 (98/2000 Coll.). It empowered the Czech government to execute the sanctions of the UN by its decrees (without prior, or subsequent, parliamentary approval). However, the new Act soon turned out to be insufficient for at least two reasons. First, it was not applicable to legal acts of the EU, which represented a danger of criticism of, and recourse to, the EU institutions, both prior to, and after, accession to the EU. Second, it did not define substantial practical procedures regarding the review of particular sanctions and the competence of the responsible state bodies. These deficiencies have been rectified by new ad hoc Acts; for example, by the Act No. 4/2005 Coll., on Some Measures Relating to the Iraqi Republic.

In February 2006, the Parliament of the Czech Republic approved a new sanctions Act on the Implementation of International Sanctions (69/2006 Coll.), which amended financial acts on banks, on capital market entrepreneurship, on the system of payment, or on the Securities Commission. It also updated administrative and criminal laws, e.g. the related Act No. 70/2006 Coll. amending the selected acts; in relation to the adoption of this Act a new offence has been introduced – breach of an international sanction, which can be found in the Criminal Code (Act No. 40/2009 Coll, § 410), and it imposes strict punishment such as financial penalties, suspended sentences or even imprisonment for up to three or eight years respectively. However, when consulting the Statistical Yearbook of Crime published annually by the Czech Ministry of Justice, no such punishment has yet been imposed in the country.

The new sanctions Act (69/2006 Coll.) was prepared by the Ministry of Finance, namely by its Financial Analytical Unit (FAU, established in 1996), which is responsible for supervising observation of the restrictions, authorizing exceptions from the sanctions regime, disposing of frozen assets and their administration. The FAU is the competent authority responsible for the national coordination of the carrying out of international sanctions since accession to the EU (when it took over the coordinating role from the Ministry of Foreign Affairs). Based on the type of imposed sanctions, other ministries and government agencies may participate in their sphere of action as well, e.g. the Ministry of Education, Youth and Sports, Ministry of the Interior, Ministry of Foreign Affairs or the Ministry of Industry and Trade.

It is obvious that EU membership has shifted the domestic decision making processes regarding sanctions from the political level (i.e. laws adopted by the parliament) to the bureaucratic level (i.e. officials from the FAU, nowadays well socialized within the relevant EU

[36] Druláková, R. et al. (2010a): International Sanctions as a Tool of Global Governance? The Case of the Czech Republic, pp. 8 - 9.
[37] Poslanecká sněmovna ČR (2001): Důvodová zpráva k zákonu č. 148/2001 Sb.

structures). This shift makes the Czech sanctions policy more effective (and faster) in the implementation of adopted sanctions. Furthermore, the EU assumed a major part of the legislative initiatives as sanctions are mostly implemented by Council decisions and directly applicable to Council regulations.

Prior to the entry into force of the Lisbon Treaty, there was only one important exception to this rule. The procedure was applicable to sanctions against non-member states, natural persons and legal entities outside the Union. In relation to the restrictions against European citizens and subjects (e.g. ETA and its members), the directly applicable instruments could not be used. Hence, the list of such persons was published only in a form of a common position. Each member state has to implement the common position in its national legislation by its own legislative procedures. For that, the sanctions act of 2006 was completed with the Government regulation in June 2008 Regarding the reason for the Implementation of Special Measures in the Fight against Terrorism (No. 210/2008 Coll.).

When speaking of sanctions' legitimacy, the possibilities of removing individuals and entities from sanctions lists (so called de-listing) are often discussed. A transparent and effective de-listing procedure is essential to the credibility and legitimacy of the restrictive measures. Within the UN, the UNSC adopted resolution No. 1730 (2006) establishing a focal point to receive de-listing requests. A state can decide by a declaration that its citizens or residents should address their de-listing requests directly to the focal point (which is not the case of the Czech Republic, however. Only a few states made this decision). Till March 2011, several people and/or entities were removed from the list.[38]

However, the EU has a more elaborate mechanism for de-listing resulting from several claims which had been submitted to the European Court of Justice (Court of First Instance).[39] A new body – the Council Working Party - examining information with a view to listing and de-listing was established in 2006. The Lisbon Treaty reflects this development and includes Declaration No. 25 on judicial review of decisions subjecting an individual or entity to restrictive measures.

The current Czech legislation on international sanctions (Act No. 96/2006) respects these trends, which are obvious on both the European and the international level as well; i.e., transparency in decisions concerning sanction implementation and the possibility of revision for the listed person.

5 Procedures supporting implementation

Similar to sanction enforcement, the procedures supporting the implementation of sanctions are set by the EU in more detail than by the UN. The EU adopted several documents supporting the legitimate, effective and consistent carrying out of the common sanctions policy (Basic Principles 2004, Guidelines 2005, Best Practices 2008). The Basic Principles on the Use of Restrictive Measures (2004)[40] focus, above all, on supporting the struggle against terrorism by imposing autonomous sanctions, which are presented as one of the foreign-policy instruments. The Council should try to enlist the support of other actors for EU autonomous

[38] See United Nations Security Council (2006): Focal Point for De-listing established pursuant to Security Council resolution 1730 (2006).

[39] The People´s Mojahedin Organisation of Iran (PMOI) was the first that successfully challenged the European sanctions list. In the PMOI case, the Court defined the range of human rights (right of the defence, statement of reasons, right to effective judicial protection) by adopting decisions concerning the counter-terrorist measures. For more information see Trávníčková, Z. (2010): Opatření proti financování terorismu: ladění pravidel pro vytváření evropských sankčních seznamů, p. 59.

[40] Council doc. 10198/1/04.

sanctions (Article 4). The autonomous sanctions represent a decision of the Union and their implementation cannot be strictly connected with other states, or UN support.

The Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy (2005)[41] provide guidance on common issues concerning the imposition of sanctions.[42] The document presents standard wording and common definitions which may be used within the CFSP (Part III), hand in hand with legal instruments (Regulations, Common Positions) when implementing sanctions. The Guidelines also define a mandate for the Sanctions Formation of Foreign Relations Counsellor Working Party (RELEX/Sanctions) established in 2004.[43] RELEX/Sanctions serves, inter alia, as a forum for discussions in cases where the implementation of restrictive measures encounters difficulties or uncertainties in practice. In the Czech Republic it was, for example, the case of implementing measures to prevent certain specialised teaching or training of people in the field of nuclear technologies who were coming from Iran (Common Position 2007/140/CFSP) or North Korea (Common Position 2006/795/CFSP). In accordance with the Act No. 69/2006 Coll., it was the FAU which was designed to coordinate the compliance with these regulations (together with the Ministry of Education, Youth and Sports), however the FAU had to consult RELEX due to uncertainties in their practical implementation. This seems to demonstrate a running socialization within the EU structures as well. It should also be mentioned that within RELEX/Sanctions all the member states are invited to share their opinions in opposition to the UNSC (and even to the UNSC Sanctions Committees).

The EU Best Practices for the Effective Implementation of Restrictive Measures (2008)[44] give practical guidance and recommendations on issues arising from the implementation of financial sanctions, and which appear to have been used intensively since the 1990s.[45] They deal with targeted restrictive measures including the de-listing, freezing of funds and economic resources, humanitarian exemptions and prohibitions on the provisions of goods and services (Article 62). The final part presents a vision of ideal coordination and cooperation among member states, EU institutions and expertise groups.[46]

The EU in its current sanctions policy has responded even to problems which are not solved at UN level when imposing sanctions. The UNSC has no common language standard for sanctions, which often leads to problems with the reading of the resolution which is used to impose the sanctions. In contrast, the EU has developed a standard language for the sanctions to avoid such problems. These provisions can be found in the Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (15114/05) approved by the Council. These Guidelines include the basic principles of the EU's sanctions policy, and in addition the common definition the text that can be used as a model for the legal instruments used in the implementation of restrictive measures.

CONCLUSION

The evolution of the Czech sanctions policy has been influenced by all compliance mechanisms. However, the effects and impact of particular sources of compliance with international sanctions instruments (either domestic or international) have differed at both

[41] Council doc. 15114/05.
[42] The first version of the Guidelines was adopted in 2003 (Council doc. 15579/03).
[43] Council doc. 5603/04.
[44] Council doc. 8666/08.
[45] The first version of the Best Practices appeared in 2006 (Council doc. 10533/06), it was updated in 2007 (Council doc. 11679/07) and the current text was adopted in 2008 (Council doc. 8666/08).
[46] For more information see Druláková, R. et al. (2010b): Assessing the Effectiveness of EU Sanctions Policy.

domestic and international level. At the very beginning, after the dissolution of former Czechoslovakia, low (and delayed) compliance, were caused by a combination of more adherence to the rule of law principle, as well as legislative insufficiencies and mismanagement in the newly emerging democratic system. These negative parts of the management mechanism could not be counter-balanced by the potentially positive effects of the enforcement mechanism.

The international sanctions policies were in fact, after a long period of malfunctioning caused by the Cold War, in the course of being formed, too. The UN was not able to reduce the costs of compliance, or to increase the cost of non-compliance as it, for the first time, faced the challenge of proper implementation. At the same time, the UN was still waiting for its reform, and the institutional structure and procedures within the UN did not offer much room for socialization. It soon turned out that the enforcement and socialization mechanisms within the EU induced the current changes within the Czech sanctions policy, and created the conditions for the increased efficiency of the mechanisms for imposing sanctions by the Czech Republic, as a state participating in sanctions regimes (in the role of the sender of sanctions). The first legislation on the implementation of international sanctions was adopted only in 2000 (98/2000 Coll.) following, among other things, the demands related to the desired EU membership. However, the contribution of the UN was not inconsiderable, thanks to the shift in its sanctions policy at the end of the 1990's and beginning of the 2000's.

The current form of the Czech legislation based on the Sanctions Act of 2006 is undoubtedly also influenced both by the UN documents, as well as by EU law. However, Europe plays a key role again. From the legal point of view, the Czech Republic is now obliged to join coercive measures imposed by both institutions – under the article 48 of the UN Charter (i.e., article 25 of the Charter) as well as the article 2 of the Treaty of Accession to the EU (2003). Once enforcement measures are adopted by the UNSC, they should be implemented by all the UN member states. When speaking about mandatory sanctions, the obligation to comply with them should be binding. Still, in addition to legally binding decisions, sanctions may also be only recommended by the UNSC. In such cases, it is not necessary for the member states to follow the recommendations.

Resolutions of the UNSC leave states to choose the means of implementation, thus the quality and speed of this process depends mainly on the national legislation. However, the competence to implement the sanctions has moved to EU level, which was the case of the Czech Republic since the accession in 2004. The relevant UNSC resolutions are not implemented domestically but within the framework of the EU. Legal compliance is thus guaranteed by the EU, although the European sanctions policy is not a mere copy of that of the UN, as the Union can adopt them with stricter wording, and the EU adopts also its own autonomous sanctions under the CFSP. The Czech Republic is responsible only for practical compliance, which has been improving thanks to the new legislative acts, as well as the advisory, monitoring and enforcement activities of the relevant ministerial bodies and thanks to their officials most significantly socialized within the EU. Hence, the EU actions have been the most decisive incentives for the current sanctions policy changes in the Czech Republic and we can assume the Czech sanctions policy to be a very accurate reflection of European sanctions policy; both in terms of concrete measures and longer-term trends. This is evident in both of the two most recent and most important domestic sanctions instruments - the Act of the 2006 and the Decree of 2008.

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