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CERI Working group
« Diplomacy, the military and the spy »

Seminar held on December 8, 2020:
« The Role of Intelligence in the Efficient Implementation of Sanctions: A US-EU Comparison », with Dr. Sascha Lohmann, Associate. Research Division The Americas, German Institute for International and Security Affairs (SWP), Berlin

On December 8, 2020, the CERI working group on diplomacy, military and intelligence studies, supported by the Centre d'Analyse, de Prévision et de Stratégie (CAPS) of the French Ministry of Foreign Affairs, met to discuss the role of intelligence in the efficient implementation of sanctions, focusing on a comparison between the United States of America and the European Union. Dr. Sascha Lohmann (hereafter Dr. Lohmann), Associate at the Research Division The Americas of the German Institute for International and Security Affairs in Berlin, participated as the keynote speaker to this meeting.

Prior to his current role, Dr.Lohmann held the Fritz Thyssen Fellowship at Harvard University's Weatherhead Center for International Affairs. He also was a guest scholar at the Brookings Institution in Washington, DC in 2015.

Prior to making his address, Dr. Lohmann outlined the SWP's function as a research institution primarily to the German government and parliament, with occasional assignments in collaboration with multilateral organisations such as the NATO and the EU. He stressed that his work entails limited access to traditional intelligence sources, with most of his findings drawn from open-source intelligence, or from changes within relevant institutions observed over time.

I. Dr. Lohmann's address

Noting the evolving role of sanctions in recent times, Dr. Lohmann initially sought to put the modern role and interpretation of sanctions in due perspective. He observed that diplomatic and economic sanctions are fast turning into a versatile tool of choice for numerous governments around the world. This development is largely because they are much easier to use than military means, and often prove far less costly than military intervention.

Dr. Lohmann noted that economic sanctions are usually classified on two broad parameters. The first classification is by kind, wherein trade or financial sanctions remain the most common form invoked.

A second order classification pertains to the breadth of the sanctions, wherein a given sanction may be targeted or comprehensive. Targeted sanctions are aimed at certain, predetermined individuals, entities or sectors, whereas comprehensive sanctions are more general in scope.

Irrespective of scope or form, the speaker emphasized that sanctions can be instituted to pursue a wide variety of objectives, ranging from pure economic objectives, to political goals such as foreign policy objectives or reasons of national security. Thus, in the case of political goals, the country imposing sanctions seeks to protect diplomatic vulnerabilities it may have uncovered.

Moving on to the interplay between intelligence and sanctions, the speaker defined intelligence as the product of collection, interpretation and evaluation of data, usually obtained by secretive means. He proceeded to divide his subsequent remarks in three sections as reproduced below.

Firstly, he shared some general observations on the interaction between intelligence and sanctions, focusing on the tactical and strategic utility of this interaction. Subsequently, he shed some light on the U.S. experience with sanctions, seeking to highlight the possibilities afforded by the relatively young field of financial intelligence. Lastly, he considered the case of the European Union, seeking to highlight the limits of financial intelligence with regards to designing a sanctions regime in compliance with the rule of law.

A. General observations – tactical and strategic

The speaker split his general observations into two parts. Firstly, he examined the use of intelligence in tactical terms, mostly pertaining to the use of sanctions by foreign policy-makers (operational relvance). Subsequently, he sought to put the use of financial intelligence into the broader strategic context in which sanctions regimes operate.

Tactical impact

In order to better contextualise the role of intelligence in the implementation of sanctions, Dr. Lohmann invited the audience to consider the process sanctioning on the basis of a four-stage cyclical process he termed as the sanctions policy cycle.

In the input stage, the speaker primarily considered the design of sanctions, noting the need to define both the goals pursued, as well as the individuals or entities targeted. Intelligence helps to provide a lot of context in this regard, by adding information about the identity of targets and their weaknesses, which in turn informs the form and objectives of the chosen sanctions.

The output stage is chiefly concerned with the optics of announcing the sanctions imposed. Thus, the timing and method of announcing the sanctions is debated. The information supplied about the target to the public at large is also considered. As an example of the output stage, Dr. Lohmann cited the example of U.S. President Donald Trump publicly signing an executive order stipulating a specific use of sanctions on his desk. Intelligence information is often used in this regard to help maximise the impact of announcing sanctions across the parameters outlined above.

The outcome stage tracks the impact of the sanction across a variety of metrics, including psychological, economic and political impact, over the short, mid-, and long-term alike. Such a stage may consider the pathways taken by exported goods, such as done by the Blue Lantern Program administered by the Department of State in the United States. The Blue Lantern Program tracks the end-use of defence goods containing a minimum of 10% of parts deemed of U.S origin. Thus, the program can potentially track all non-US exports of such nature and provide valuable information if the destination is a country facing US sanctions.

Lastly, the impact stage matches the outcome in relation to the goals pursued when the sanction was initially designed. Such impact is principally measured by the means of a cost-benefit analysis. Any collateral damage, or unforeseen consequences, of the sanctions are considered at this stage, along with an opportunity for the sanctioning country to reframe its objectives if applicable. Additionally, they may draw up a strategy to react to any undesirable consequences observed. Such an impact assessment essentially serves to complete the circularity of the cycle, with the information obtained being used to tweak existing sanctions, or introduce a fresh set altogether.

Having thus outlined the utility of intelligence at every stage of the sanctions policy cycle, Dr. Lohmann invited the audience to reflect on broader changes which may have occurred in the recent past, transitioning to his comments about the strategic aspect of the interaction between intelligence and sanction regimes.

Strategic impact

The speaker observed that this growing role of intelligence in sanctions was also leading to visible changes in the institutional framework of national intelligence collection and evaluation. Two evolutions were highlighted in particular: the growing salience of financial intelligence; and the tendency of economic and finance ministries to gain larger roles in the formulation of foreign and security policy.

Speaking on financial intelligence, the speaker sought to underline its growing role in intelligence policy. Largely emanating from improved governmental cooperation with banks and financial institutions, financial intelligence has grown in stature thanks to the twin rise of open-source intelligence and tighter governmental regulation of financial institutions. The rise of regulations such as KYC and due diligence norms, and their use in financial intelligence means that the traditional military-orientated conception of intelligence also stands challenged.

Dr. Lohmann strove to underline that while such regulations have been in place for a long time, particularly in the fight against money laundering, the use of financial intelligence was accelerated, particularly in the aftermath of 9/11. He cited the measures taken by the George W. Bush administration through late 2001 and early 2002, essentially driving a switch of focus within financial intelligence to fight international terrorism, as opposed to its initial objective to curb money laundering.

The clutch of new measures unlocked in the aftermath of 9/11, including but not limited to asset freezes against targeted actors, have also led to a systemic change in the intelligence apparatus. Within the United States in particular, departments such as the Department of Commerce and the Treasury are benefitting from a slight decentralisation of intelligence. This allows the said departments to handle intelligence collection and evaluation on their own to a certain extent, particularly to track the outcome and impact of sanctions. Such an evolution has also given these departments a growing role in the framing and execution of foreign and security policy, marking a departure from the traditional view of the roles of said departments.

Having thus analysed the broader implications of the interaction between intelligence and sanction mechanisms, Dr. Lohmann moved on to his case studies. This text considers his case studies of the U.S. and EU experiences in turn.

B. <u>U.S. – Possibilities of financial intelligence</u>

Dr. Lohmann considers the changes wrought to U.S. intelligence policy in the aftermath of 9/11 to be an illustrative example of the potential of financial intelligence, and a sea change to intelligence policy in theoretical terms.

The speaker noted that the changes to intelligence infrastructure were not carried out in a vacuum. Rather, they followed up on a set of executive orders enacted by the first George W. Bush administration through September and October 2001. For instance, by late 2001, the administration had already enacted asset freezes for certain targets. This had been accompanied by the strengthening of existing money laundering legislation, and amendments to the Bank Secrecy Act.

In the eyes of Dr. Lohmann, this commitment was further reinforced by remarks given by President Bush at the Financial Crimes Enforcement Network (FinCEN) in November 2001. The speaker opined that the very act of President Bush delivering the speech from the FinCEN's headquarters in Virginia served as a statement of intent, and the President used the speech to outline the importance of financial sanctions to interrupt Al-Qaeda's support network, and thus to disrupt their work.

In subsequent years, these changes were followed up by systemic changes to allow for the greater use of financial intelligence across the U.S. governmental apparatus. For instance, the posture of the FinCEN and other Treasury agencies was further reinforced in 2004. Subsequently, the US Department of Treasury housed a standalone department solely dedicated to terrorism and financial intelligence. This department, which oversees FinCEN, is largely dedicated administering economic sanctions and to fighting financial crime. In a similar vein, the Office of Intelligence and Analysis has seen its role expand since 2001, and it now plays a pivotal role in identifying vulnerabilities and collecting information.

Broadly, the example of the U.S. Department of Treasury cited above is an expression of a wider general trend within the United States of conferring independent intelligence capabilities to individual departments, sometimes outside of traditional intelligence organisations such as the CIA. Dr. Lohmann believes that this change has aided the propagation of U.S. interests in multilateral fora, allowing the U.S. government to better 'upload' its intelligence priorities to organisations such as the G7 and the OECD, while indirectly influencing the EU.

In conclusion, the use of financial intelligence within the United States has transformed its bureaucracy, with the additional impact of bringing in a wider range of actors into the practice of information collection and evaluation. The growing emphasis on encouraging private actors such as banks to support sanctions compliance is part of this change, and the U.S. experience has served to modify the view of multilateral organisations with regards to financial intelligence and its utility.

Despite this progress, Dr. Lohmann noted that the use of financial intelligence had still not reached its full potential, owing to certain systemic limitations which remain thus far unresolved. To illustrate such limitations, he turned to the case of the EU, detailed in the forthcoming section.

C. EU – Limits of financial intelligence

The EU, being a supranational organisation, differs from the cases of most countries in the manner its intelligence collection works, chiefly because the EU is dependent on information supplied by the Member States. To that effect, the speaker referred to the previous talk in this conference series, which explored the intelligence relationship between the EU and the United Kingdom (UK) post-Brexit, reminding the audience that the supply of intelligence coming from the UK was crucial to the EU's intelligence apparatus more than a nation-state.

Dr. Lohmann noted that such hindrances do not detract from the gradual improvement demonstrated by the EU in managing intelligence over the past years. He cited the case of the EU Intelligence and Analysis Centre, which has now evolved into a centralised sharing mechanism between all Member States. The Centre takes incoming information from a given member state, and disseminates it to the entire EU27, allowing for better intelligence sharing. The speaker also noted the expanded scope of the Europol and the Justice and Home Affairs Council.

While these are steps in the right direction, Dr. Lohmann argued that the EU's weaknesses owe a lot to their lack of infrastructure to track financial flows. He noted that if this deficiency remains uncorrected, the potential of anti-money laundering legislation within the EU will remain unexploited.

Despite these bureaucratic improvements, the speaker opined that the EU's scope for using financial intelligence was limited compared to the United States, given that the euro is used less than the U.S. dollar internationally. He noted that this could change soon, owing to the EU's growing use as an international currency in the wake of the COVID-19 pandemic.

In his concluding argument, the speaker cited the role of the judiciary in intelligence practice, noting that U.S. federal courts and law enforcement can use more secret evidence than their European counterparts. This divergence is due to the Right to Information legislation in the European Union, which has been invoked in the past by entities targeted by sanctions, wherein they have moved the ECJ to protect this right, and thus limit the impact of sanctions.

Noting the inherent tension between use of secret sources and the need to respect civil liberties, Dr. Lohmann concluded that U.S. law enforcement had been able to extract better results from financial intelligence owing to their freedom to use secret sources. The EU, however, raises a critical argument about the need to balance these results with due respect of civil liberties.

II. <u>Discussion with the audience</u>

The working group proceeded to examine a number of matters at the end of Dr. Lohmann's presentation, to better contextualise a modern sanctions regime in an increasingly globalised and politically fractured economy. These concerns, along with the responses of Dr. Lohmann and other participants, are considered subsequently.

Dr. Lohmann was then asked about the effect of these changes on the decentralisation of intelligence, and whether such change was for the better. He responded by noting that such decentralisation had a lot of potential, admitting the counter-intuitive nature of the same. According to him, the growing use of financial intelligence only demonstrates a broadening of the traditional understanding of intelligence, and that academia would need to react to account for this change. Dr. Lohmann observed that financial intelligence was more readily usable for practitioners since the reliability of sources on financial intelligence is generally less questionable than other forms of intelligence. He also underlined the possibility of using AI in the field of financial intelligence, using AI's power to scour large financial databases. A change in bureaucratic terms was also observed by the speaker, who noted that the rise of financial intelligence was increasingly blurring the line between military and economic matters, leading to increased cooperation between the concerned departments.

Dr. Lohmann was then asked to comment on the impact of sanctions in a world with increasingly globalised production and supply chains. He responded by acknowledging that such economic interdependence made it harder to tailor targeted sanctions while minimising collateral damage. That said, he questioned the liberal academic consensus that economic interdependence would lead to peace, arguing that the said conclusion was not a given, and that states have had a history of weaponising interdependence to suit their national objectives. Keeping the same in mind, he argued that sanctions had an important, and arguably growing place in modern statecraft.

The speaker was then asked about the role of public diplomacy mechanisms such as social networks in supporting the implementation of sanctions. Dr. Lohmann responded by observing that such mechanisms increasingly form an important part in evaluating sanctions. He noted the symbolic value of public diplomacy, wherein a leader levying sanctions on another state could gain legitimacy domestically. Such political posturing could also form a key part of value narratives, wherein the levy of sanctions could be justified towards the defence of given values. Such factors promote a better understanding of a wide range of sanctions. The speaker concluded on the matter by noting that social media also had the benefit of acting as an additional source for intelligence agencies, further aiding the design or refinement of sanctions.

Subsequently, the rise of new financial architectures and clearing houses was considered, with particular emphasis on non-dollar clearing mechanisms originating in Russia and China. Dr. Lohmann sought to first contextualise this development, noting the tendency of the U.S. to use the dollar as a genuine link to U.S. jurisdiction. For instance, the sanctions within the JCPOA during the Trump presidency effectively deprived Iran of Western investment. Such a development, Dr. Lohmann noted, was previously thought by many to be impossible to execute unilaterally. However, the re-imposed U.S. sanctions against Iran in 2018 made clear that EU cooperation was not necessary, as claimed by President Obama vis-à-vis the Congress. The development of alternative clearing mechanisms, particularly encouraged by Beijing or Moscow, are thus an attempt to act on fears within China and Russia of a similar sanctions-driven conflict with the United States.

Dr. Lohmann opined that the rise of such clearing mechanisms will increase the role of financial intelligence, and the implementation of sanctions could also change with the increasing uptake of digital payment applications. Politically, he noted that these developments could limit the impact of the United States as a sanctioning actor, since nations using these new clearing mechanisms could be less hit by unilateral U.S. sanctions.

The session concluded with a detailed examination of the threat of a possible U.S.-China decoupling, as well as its impact on the foreign policy of the EU. The speaker observed that micro-decoupling was a constantly evolving feature of the EU-US-China triangle, changing on a daily basis depending on the intensity of sanctions in place. Despite this trend, he remarked that a total decoupling was highly unrealistic, since production chains were heavily interlinked, and breaking these linkages would be extremely costly.

However, the group noted that the EU and the U.S. could see increasing differences on China policy over time. The same is due to differing threat perceptions of China between the two actors (as well as within the EU itself), in stark contrast to the broadly similar threat perception of the USSR during the Cold War. The group noted that these divergences could be exacerbated by two factors which policymakers would do well to guard against.

Firstly, as noted in Dr. Lohmann's presentation, the increasing participation of different ministries in sanction implementation could prove fertile ground for misunderstandings between allies. This is further complicated in countries such as Germany, where an equivalent of coordinating bodies such as the National Security Council (US) or the Joint Intelligence Committee (UK) does not exist. As the participants observed, this leads to a complex sanctions environment within Germany. While the ministries of Finance and Economy implement joint sanctions, the Bundesbank also administers a subset set of financial sanctions.

The second aspect is a growing desire within Europe to seek financial independence. While political and economic priorities still remain transatlantic, Ministries of Foreign Affairs in Europe are increasingly distinguishing between commercial and financial relations. Such an objective entails challenging the dominance of the U.S. dollar as a reserve currency, and thus according the euro an increasing role in international finance. As the participants note, this desire to reinforce the euro while maintaining the primacy of transatlantic relations entails a delicate balancing act for EU member states, and it must be considered in the light of a political and economic balance with both China and the United States.