

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific countries or regions.

# Global Threats and the Role of United Nations Sanctions

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- Since their proliferation in the post-Cold War period, Security Council sanctions have never before been more widely deployed and adapted in response to global threats to peace and security than in the past year. Despite some continued skepticism, the credible use of sanctions is firmly established as the primary disincentive in the international community's conflict resolution strategy, short of the threat or use of force.
- The Security Council has demonstrated over time its willingness and ability to learn, change, and adapt to existing realities. It must extend this tendency to ensuring the continued minimization of the humanitarian impact of sanctions that combine targeted measures with broader short-term measures as may be increasingly required by realities on the ground.
- Targeted sanctions are not a panacea. Effective sanctions require coherence with other measures and are difficult to implement and monitor. They also require unity and resolve among Council members. They depend on political will and capacity among states to ensure that all divisions of their governments, including their regulatory and supervisory agencies, lead rather than follow in carrying out their obligations.
- For the sanctions tool to remain strong and credible, the Council and the Secretary-General must work together to ensure that the UN system has clear guidance on the mutual reinforcing of the various UN mandates and policies and on the skills that are needed by actors on the sanctions support and implementation chain.
- Sanctions regimes can operate efficiently only when all actors, including non-state stakeholders such as the private sector fulfill their responsibilities in international peace and security. Civil society organizations have shown that they can also play a pivotal role as watchdogs and early warning systems for sanctions violators.



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# 1. Sanctions – From Blunt Instrument to Precision Tool

## 1.1 Background and History of Sanctions

Current and emerging global threats and crises require an effective collective response. Diplomacy alone is often an insufficiently persuasive tool; military intervention is costly and frequently politically unviable. Sanctions, positioned in the middle of the spectrum of tools, have been deployed by the United Nations Security Council with increasing frequency since the post-Cold War period. Sanctions do not work in isolation. They are most effective when employed in a coherent strategy, with other tools available to the international community. Given that much of diplomacy is conducted away from public view, sanctions are currently the global community's most frequent visible response to crises.

Since the end of the Cold War, multilateral sanctions have been honed and refined and have evolved in important ways. The number of cases, types of targets and purposes have expanded. Beginning in 1992, sanctions have moved gradually away from the comprehensive model, often including a general trade embargo, and their associated humanitarian impact, toward targeting leaders and decision-makers responsible for defying international norms. Security Council sanctions have been in the spotlight lately with respect to Al Qaida-Taliban, Côte d'Ivoire, and the Democratic People's Republic of Korea (DPRK), Iran, and Libya, with significant expansion of traditional targeted sanctions in some cases. These cases highlight both the increasing utility of the tool and perennial questions about the future of Security Council sanctions in the face of the ever-changing geopolitical landscape, the complexities and resilience of some current targets, pervasive misperceptions, and other challenges to sanctions' legitimacy, credibility, and effectiveness.

This compendium begins with a brief discussion of the development over time of multilateral sanctions mechanisms along with the institutions that help to implement and monitor them, and the expanding range of purposes and objectives for which they are currently deployed. It describes the cast of sanctions actors, the type of targeted sanctions currently in use, and their evolution from the original model of comprehensive sanctions. The first chapter concludes with a discussion of the perennial controversies surrounding sanctions, including how to assess

their effectiveness. Chapter 2 analyzes how the Security Council gradually embraced the full versatility of targeted sanctions and continues to introduce a growing number of new applications. Chapter 3 discusses the most frequently observed challenges to sanctions legitimacy, credibility, and effectiveness. Chapter 4 illustrates the emergence of regional sanctions as an important element for helping to strengthen the international community's response to threats to international peace and security. With the increasing reliance on sanctions as a flexible and versatile conflict resolution tool, the training and education of all sanctions actors has become a priority. The fifth chapter introduces the sanctions skills enhancement project currently sponsored by the Government of Canada and implemented by the authors of this paper.

### An Ancient Tool

Sanctions are an ancient tool of economic and political coercion. The earliest sanctions case in recorded history was a ban by Pericles on Megaran traders from Athenian marketplaces and ports, in 432 BC, shortly before the start of the Peloponnesian war. Sanctions have been deployed throughout history in pursuit of economic and political objectives and with increasing intensity after World War I. The first cases of multilateral sanctions (imposed by a group of states) were deployments by the League of Nations in response to incidents of cross-border aggression by Yugoslavia (1921); Greece (1925); and Italy (1935).<sup>1</sup> During the period of Cold War paralysis, the Security Council deployed sanctions only twice: trade and financial sanctions against Southern Rhodesia from 1965 to 1979 for its unilateral declaration of independence from Great Britain, and a voluntary and mandatory arms embargo in 1963 and 1977 respectively, to pressure the South African regime to end apartheid.

### Legal Basis

The word ›sanctions‹ does not appear anywhere in the UN Charter. Article 39 of Chapter VII states that once the Council determines that a threat, breach of the

\* The authors gratefully acknowledge Sue E. Eckert and George A. Lopez for their valuable insights and feedback, and Sue E. Eckert and the Council on Foreign Relations for their permission to use the chart on Security Council sanctions (page 10).

1. Hufbauer, Gary C., Jeffrey J. Schott, and Kimberly Ann Elliott (2009). *Economic Sanctions Reconsidered*. (Peterson Institute).



peace or act of aggression exists, it may choose from an escalating menu ranging from provisional measures (Article 40) to the use of force (Article 42). Sandwiched in between are ›measures not involving the use of armed force‹, or sanctions (Article 41), variously described as the middle ground between ›words and wars‹<sup>2</sup> or between ›talking therapy and military force‹<sup>3</sup>.

### Expanding Purposes After the Cold War

In the heady period of new-found unity among the five permanent members of the Security Council after the end of the Cold War, beginning in 1990 until the early 2000s (called ›The Sanctions Decade‹ by Cortright and Lopez)<sup>4</sup> the Council deployed sanctions in two cases of cross-border aggression: on Iraq and the former Yugoslavia in 1991; and in civil war (the National Union for the Total Independence of Angola, UNITA) and civil dispute (Haiti), in 1993. The Council also imposed sanctions on several other state and non-state actors in Africa for actions considered as threats to, or breaches of international peace and security: Liberia and Somalia (1992); Rwanda (1994); the Revolutionary United Front (Sierra Leone, 1997); Eritrea and Ethiopia (2000, for their border dispute); and Liberia again in 2001 in response to Charles Taylor's support for the Revolutionary United Front (RUF). In the mid-2000s, the Council deployed sanctions on the Democratic Republic of the Congo (DRC), Côte d'Ivoire and on Darfur (Sudan) (see table on page 10).

While many early sanctions cases were related to cross-border aggression or civil conflict, over time the Security Council expanded its interpretation of threats to international peace and security. Sanctions against international terrorism began with Libya for its involvement in the downing of two civilian aircraft (1988 and 1989) and against Sudan for an attempt on the life of Egyptian President Hosni Mubarak (1996). Sanctions for the purpose of counter-terrorism were deployed against the Taliban in 1999 and expanded to include Al-Qaida and associates after the September 11, 2001 attack against

the United States. Security Council resolution 1373 adopted on 28 September 2001, though not technically a sanctions regime, established a Counter-Terrorism Committee and obliged states to enact legislation criminalizing terrorist acts.

Sanctions against the proliferation of weapons of mass destruction began with Iraq in 1990 and were most recently imposed against North Korea and Iran in 2006. In the early to mid- 2000s, human rights abuses, breaches of international humanitarian law, and the pillaging of natural resources were addressed by sanctions on Darfur (Sudan), Côte d'Ivoire, and the Democratic Republic of the Congo (DRC), as were issues of sexual violence in conflict and children in combat. Sanctions deployed in 2011 on Libya with resolutions 1970 and 1973, represent the first case of Security Council sanctions explicitly deployed for the purpose of the ›responsibility to protect‹.<sup>5</sup> R2P as it is called, is based on the principle of protecting innocents and reinforcing as well as penalizing breaches of human rights and international humanitarian law. In Libya, sanctions stipulating an assets freeze successfully denied the regime of Colonel Qaddafi the benefits of its vast sovereign wealth and the income from its oil production, limiting its ability to fund military operations. The sanctions were not universally embraced, and even the Arab League, which unanimously endorsed the no-fly zone on 12 March and presented a formal request for UN intervention, expressed misgivings and considered withdrawing its support in the face of the broad scope of the military intervention. In addition, the abstentions by China, Russia, Brazil, India, and Germany, in the Security Council vote for resolution 1973, over the question of the enforcement of the no-fly zone as well as robust opposition by the African Union to the determined NATO intervention, heightened the lack of consensus on international sanctions implementation standards. The most immediate indications of these differences may involve the recent unsuccessful attempts by some Council members to gain the necessary support to impose sanctions on Syria and Yemen. At the same time, the sudden and unexpected imposition of sanctions on Syria by the Arab League in November 2011 created new room for the possible deployment of UN sanctions.

2. Wallensteen, Peter/Staibano, Carina (2004): *International Sanctions: Between Words and Wars in the Global System* (Routledge).

3. Gottemoeller, R. (2007): ›The Evolution of Sanctions in Practice and Theory‹, *Survival* 49(4): 99-110.

4. Cortright, David/Lopez, George A. (2000): *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner).

5. United Nations (2009): *Implementing the responsibility to protect. Report of the Secretary-General (A/63/677)*.



## Recent Sanctions Trends

Since the inception of targeted sanctions, the standard model of an arms embargo coupled with financial and travel restrictions proved to be adequate for many sanctions cases. However, the same cannot be said for sanctions against the DPRK, Iran, and most recently, Libya. In each of these conflicts, the individual complexities required an expanded repertoire of sanctions measures. In the DPRK, Iran and Libya, the Council responded with a range of new measures, including against institutions that are critical to the infrastructure of the state. In Libya, these included the Central Banks of Libya, the Libyan Investment Authority, the Libyan Foreign Bank, and the Libyan African Investment Portfolio.

These expanded measures prompted critics to claim, erroneously, that the sanctions were the cause of unintended humanitarian consequences. Unlike its prolonged inertia in previous sanctions scenarios such as Iraq and Haiti, the Security Council acted quickly in the Libya case to ease the most severe measures within a few months of their imposition, and as soon as Muammar Qaddafi and his family lost power over the state. The quick success produced by these expanded sanctions may very well signal a new direction for the Council – toward combining sharply-focused targeted sanctions and broader-based short-term measures where appropriate.

## 1.2 Key Sanctions Actors

The following presents, a brief overview of key sanctions actors, including their primary functions and challenges.

### Security Council

Under provisions of the United Nations Charter, the Security Council, faced with a conflict, may begin with actions under Chapter VI (Pacific settlement of Disputes), before resorting to more robust actions under Chapter VII (Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression). Once it progresses to the Chapter VII stage, the Security Council may choose sanctions as an appropriate tool, in which case it would decide on the design of a sanctions regime, usually involving an arms embargo and a mix of other targeted measures. Sanctions are imposed by the

Council through the adoption of a resolution. A resolution imposing sanctions normally establishes a Sanctions Committee (Committee) to monitor the sanctions regime and frequently requests the Secretary-General to establish a Panel of Experts (Panel; sometimes called a group of experts or monitoring group) to monitor compliance. Over time, the language of resolutions has become clearer and more specific regarding the scope of sanctions and benchmarks for easing or lifting. The Interlaken and Bonn-Berlin processes (discussed in detail later in this chapter) were instrumental in pointing the way toward enhanced standard language for targeted measures.<sup>6</sup> In recent years, there has been ever-increasing detail and consistency in resolution language concerning travel bans, assets freezes and arms embargoes as reflected in the latest resolution on the DPRK (1985, adopted on 10 June 2011) which mirrored the resolution on Iran adopted exactly a year before (1929 adopted on 10 June 2010). Resolutions have also become more precise in stipulating the tasks for the Committee and the Panel and for peace support operations in cases where they are mandated to monitor an arms embargo. Drafting of the resolution is usually undertaken by the Council member (often, but not always a permanent member) who has the lead on the issue. As is the case with any Security Council resolution, adoption of sanctions requires a majority of nine members and no veto by any of the five permanent members (China, France, Russia, the United Kingdom, and the United States).

### Sanctions Committee

Committees are established under rule 28 of the Security Council's provisional rules of procedure. Committees are normally chaired by the Ambassador of an elected state member of the Council, and their membership consists of the fifteen members of the Council. The Committee's task is to monitor implementation of the sanctions measures. In order to do so, the Committee seeks information from states regarding specific measures they have taken; considers requests for sanctions exemptions; considers and acts on reports of sanctions violations; and designates persons and entities subject to individual targeted sanctions. Committees take decisions by consensus, and most meetings are informal and held in closed session. Experience has

6. Eckert, Sue E./Biersteker, Thomas (2005): »Consensus from the Bottom Up? Assessing the Influence of the Sanctions Reform Processes«, in: *International Sanctions: Between Words and Wars in the Global System*.



shown that the level of activity of the Chairperson has an important impact on sanctions effectiveness. For example, Robert Fowler of Canada, who chaired the Angola sanctions Committee in 1999 and 2000, pushed for effective sanctions monitoring and implementation and through his activism set the standard for Committee chairs.

### Panels of Experts

The Council usually mandates a Panel to assist the Committee in monitoring the sanctions regime. Panels gather information on compliance and make recommendations to the Security Council, normally through the Committee, on ways to improve sanctions effectiveness. Panels are created for an initial period of six months to a year and normally consist of five to eight members, each with a particular area of expertise, such as arms, finance, aviation, or commodity sanctions. Until recently, most candidates were chosen from a roster maintained by the Secretariat, based on their qualifications, expertise, the principle of equitable geographical distribution, and gender. Panels are based in New York (Al-Qaida/Taliban, DPRK, and Iran) or in Nairobi (Somalia and Eritrea) or Addis Ababa (Sudan), or operate mostly in the field (called 'home based') without a common home base. While Panels are appointed by the Secretary-General, their members are not United Nations staff. Rather, candidates are recruited for several short consultancy periods up to a maximum of five consecutive years. At the end of their final contract, Panel members are barred from UN employment for at least six months. Panels are considered to be independent in the sense that they are expected to resist political pressure from any and all sources, and are solely responsible for the conduct of their work and the content of their reports. They are expected to maintain high methodological and evidentiary standards including allowing alleged sanctions violators (state or non-state) an opportunity to review, comment and respond to their allegations.<sup>7</sup>

While Panel members receive a basic handbook and cursory orientation prior to beginning their work, there is no comprehensive manual or training provided. Further, some shortcomings in the information management system established in 2009 for storing and

analyzing cross-cutting issues gleaned from information gathered by Panels have not been addressed by the Secretariat.<sup>8</sup>

### UN Secretariat

The principal UN Secretariat body tasked with assisting the implementation of sanctions is the Security Council Subsidiary Organs Branch, commonly referred to as the »Sanctions Branch«, situated in the Security Council Affairs Division (SCAD), within the Department of Political Affairs. Each Committee is assigned a Secretary who heads a Secretariat team that provides support to the Committee and the related Panel. Given the fluidity of the Council's elected members, from whose ranks the Sanctions Committee chairs are elected, and the short-term mandates of expert panels, Committee Secretaries perform an important function of institutional continuity for both bodies. Yet, once they are promoted from the ranks of Secretariat professionals in the chronically under-resourced Sanctions Branch, they receive no specialized training to prepare them for their tasks. As noted by Cortright et al, the Sanctions Branch's »current capacity and resources are not adequate to the task of managing the existing number of sanctions and expert panels. Nor is it capable of assuming the task of integrating these efforts with an increasing array of UN peace and security policy initiatives.«<sup>9</sup>

### Member States

Member States are obliged to comply with sanctions under Article 25 of the UN Charter. Once a resolution is adopted by the Council, states are expected to transpose the resolution into laws that allow implementation. Resolutions require states to report to the Committee within a specific time-frame on measures they have taken to implement the sanctions regime. States are also expected to cooperate with expert panels. The nexus between low political will and capacity constraints is difficult to gauge and there is no system in place for providing assistance to states, except in the area of

7. United Nations (2007): *Best Practices and Recommendations for Improving the Effectiveness of United Nations Sanctions* [Based on the report of the Security Council Informal Working Group on General Issues of Sanctions (2006), S/2006/997].

8. Boucher, Alix J. (2010): *UN Panels of Experts and UN Peace Operations: Exploiting Synergies for Peacebuilding* (The Stimson Center), page 13.

9. Cortright, David/Lopez, George A./ Gerber-Stellingwerf, Linda (2010): *Integrating UN Sanctions for Peace and Security* (The Sanctions and Security Research Program), page 22.



counter terrorism, where most of the assistance is carried out bilaterally (facilitated by the UN Counter Terrorism Executive Directorate). Some capacity-building assistance is also provided through the UN by bilateral partners for regimes related to non-proliferation and trade in conflict minerals.

Traditionally, most state reporting is perfunctory. Counter-terrorism efforts (resolution 1373 adopted on September 28, 2001, in the wake of the attack on the United States) ushered in a short-lived period of more detailed and meaningful reporting by states, largely confined to the two issues that garner the most political support, namely counter-terrorism and non-proliferation.

#### Other Actors

Effective sanctions implementation requires the active support and participation of a range of actors including states, United Nations peace support operations, UN departments and agencies, Special Representatives of the Secretary-General, regional organizations, the private sector, and civil society. Panels have also found it useful to interact with some intergovernmental organizations such as INTERPOL, the International Civil Aviation Organization (ICAO), the World Customs Organization (WCO), the International Maritime Organization (IMO), the International Atomic Energy Agency (IAEA), and the Financial Action Task Force (FATF). Moreover, non-governmental organizations, companies or industries such as banking or transport, and their trade or industry associations, all play a pivotal role in gathering information on sanctions busting.

Obviously, variations in UN sanction regimes are not only a matter of the role that particular actors play, but are also related to the different types of sanctions imposed. They will therefore be addressed next.

### 1.3 Varieties of Targeted Sanctions

In designing a sanctions regime, the Council may choose from a menu of targeted sanctions options, such as an arms embargo, travel ban, assets freeze or commodity ban, according to where specific sanctions might impact most effectively on the target. It is likely that as the spectrum of targeted measures have changed over time,

they will continue to evolve. For instance, access to Internet signals or satellite communications, and specialized products and industrial agents critical to the nuclear industry, could in future become part of the sanctions repertoire.

#### Arms Embargoes

An arms embargo is a ban on the import and/or export of arms and related material and spare parts, technical assistance, training, and financial or other assistance related to military activities. Exemptions normally include non-lethal military equipment for humanitarian or protective use; and may include assistance to the security sector, subject to approval by the Committee. Arms embargoes may be total or partial, meaning that they may be imposed on an entire territory, or on a government or group of non-state actors, or on an individual.

#### Travel and Aviation Restrictions

A travel ban obliges states to prevent the entry or transit through their territories of individuals (except their own nationals) subject to travel restrictions. The Committee may exempt persons traveling for humanitarian reasons such as medical treatment or religious purposes; for a judicial process; or to advance the peace process. An aviation ban may prohibit all flights within a particular airspace, or may oblige states to prevent the entry into their territories of aircraft registered to a particular state, an effective way to ground a national airline carrier or its subsidiaries which are often owned by the state. Humanitarian flights are usually exempted.

#### Assets Freeze

An assets freeze obliges states to freeze all funds and assets on their territories, owned or controlled by individuals or entities, or their associates, listed by the Council (sometimes annexed to the resolution) or by the Committee. Exemptions for funds for basic expenses such as food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or legal services, are allowed upon notifying the Committee, and extraordinary expenses are subject to Committee approval.





### Commodity Sanctions

Commodity sanctions have included the import or export of oil, fuel, diamonds, and timber. Diamond bans have been imposed in Angola, Sierra Leone, Liberia, and Côte d'Ivoire. Timber sanctions were imposed on Liberia in 2003. Because of the potential for impacting civilian livelihoods, an impact assessment was requested by the Council before the timber embargo was imposed.

### Trade Sanctions

UN trade sanctions are currently in place only on the export of luxury goods to the DPRK. An innovative form of trade ban currently operates in the DRC, whereby persons or entities trading in minerals from the Eastern Congo have to demonstrate that they meet certain due diligence standards regarding the origin of the minerals and possible linkages to those promoting violence and conflict.

### Listing

Persons and entities subject to individual targeted sanctions (arms embargo, assets freeze, travel ban) are designated by the Council or by the respective Committee, and their names and identifying information entered on lists annexed to resolutions imposing sanctions, or published by the Committee.

## 1.4 Evolution of Sanctions

The shift from comprehensive to targeted sanctions occurred gradually in the early to mid-1990s. Libya, the earliest case of targeted sanctions, consisted of an arms embargo mixed with an assets freeze, travel ban, aviation ban, and a prohibition on the import of some oil-transporting equipment. Sanctions on UNITA (Angola) began as an arms and petroleum embargo and between 1993 and 1998 were ratcheted up to a level approaching comprehensive sanctions. Other early cases such as Liberia, Somalia and Rwanda were termed ›stand-alone‹ sanctions, meaning that they consisted of an arms embargo only. By the mid-1990s, stand-alone sanctions were abandoned in favor of a mix of targeted measures (arms embargo, assets freeze, travel ban, aviation ban, or commodity sanctions.)

Sanctions targets were expanded to non-state actors (individuals and entities) in the form of assets freezes or travel restrictions applied for reasons such as breaches of human rights or international humanitarian law, obstructing humanitarian aid, recruiting children in combat, sexual violence in conflict, engaging in or providing support to international terrorism, obstructing the peace process, or the proliferation of weapons of mass destruction. Sanctions on natural resources such as diamonds and oil in Angola, diamonds in Sierra Leone, Liberia, and Côte d'Ivoire, timber in Liberia, were applied to prevent the illegal diversion of revenues and to curtail the use of such funds for fueling conflict. In the first case of this type, sanctions were reconfigured and maintained on Liberia as ›Sanctions for Peace‹ to assist the Johnson-Sirleaf government with post-conflict peacebuilding.

Between 1999 and 2003, non-Council member states played an important role in the shift from comprehensive to targeted sanctions, by collaborating with members of academia, officials of the UN system, civil society, and others, to sponsor a number of processes to enhance sanctions design and implementation. The Interlaken process focused on financial sanctions (1998-1999); the Bonn-Berlin process on arms embargoes, travel bans and aviation bans (1999-2000); and the Stockholm process on enhancing sanctions implementation (2002-2003). Greece produced a best practices manual, following its successful chairing of the Informal Working Group on General Issues of Sanctions in 2006,<sup>10</sup> and sponsored a follow-up sanctions process in 2007 (UN report S/2007/734) focused on enhancing sanctions effectiveness.

## 1.5 Beyond the Comprehensive Sanctions Model

One of the important purposes of the sanctions processes was to address the issue of sanctions' unintended consequences. Apart from their collateral effects on vulnerable groups in the target state, comprehensive sanctions have numerous flaws. As early as 1967, Johan Galtung considered the premise that ›pain equals gain‹ as inherently naïve.<sup>11</sup> The idea that economic pain translates

10. United Nations (2007): *Best Practices and Recommendations for Improving the Effectiveness of United Nations Sanctions* [Based on the report of the Security Council Informal Working Group on General Issues of Sanctions (2006), S/2006/997].

11. Galtung, J. (1967): ›On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia‹, in: *World Politics* 19(3): 378-416.





into political gains is not supported by experience. As he and others have shown, economies tend to adapt or find ways to circumvent comprehensive sanctions. Autocratic leaders are adept at deflecting the pain of sanctions on to the people. Populations in target countries often rally around their beleaguered leaders and in any case, seldom have the power to influence the regime. Other unintended consequences of comprehensive sanctions include the weakening of opposition groups and criminalizing effects on the economy of the target state.

A case in point and the first major challenge to the legitimacy of comprehensive sanctions concerned Iraq. Although the 1990 sanctions were eventually shown to have contained the Iraqi regime's ability to develop and sustain its weapons of mass destruction program, sanctions were politically insupportable because of their humanitarian impact. In the early and mid-1990s, the Council faced a global outcry against the cost in human suffering caused by the sanctions. This backlash sparked a movement toward sanctions reform that culminated in the design and refinement of sanctions aimed at applying pressure directly to decision-makers and political leaders while minimizing their impact on the general population.

#### Continued Controversy

Although the issue of the humanitarian impact of comprehensive sanctions was largely resolved by the evolution to targeted sanctions, the ghost of Iraq still looms large. Critics remember when sanctions resolutions contained unclear objectives and even hidden agendas such as regime change (notably in Iraq and Liberia). These questions and others related to a perceived blurring of the lines between comprehensive and targeted sanctions recently resurfaced in the Libyan case. In addition, the Council has over time faced assertions that it exercises uneven standards. Why are some state and non-state actors held to account for flouting international norms while others are not? Why so many cases in Africa and so few in other regions? Why impose sanctions without a monitoring mechanism, with no chance of effectiveness (Liberia and Somalia, 1992); why too little too late in Rwanda (1994)? And more recently: why too much too early in Libya (2011)? What about consequences for human rights and other sanctions violators? And once violators make it on to a sanctions list, what about their due process rights (see chapter 3).

Concerning the perception of sanctions as punishment rather than a bargaining tool, critics recall when the Security Council seemed unable to muster the will to meet concessions with reciprocity in some of the earlier sanctions cases. Competing interests got in the way of agreement among the permanent members on retailoring Iraq sanctions to target the leadership while easing hardship on the general population. Similarly, in the first Libya sanctions case, Qaddafi's early proposal for a trial of the terror suspects in The Hague was rebuffed, until several years later when regional organizations, impatient with the protracted stalemate, pushed the Council to agree to a compromise.

Adding to the controversy, the United States and the European Union have imposed their own sanctions either before or following UN sanctions. Some observers assert that Security Council sanctions have devolved into merely a means to legitimize stronger unilateral measures by powerful states on the Council. Again, sanctions on Libya came under fire from some quarters for harking back to Iraq in appearing to provide cover for military action to bring about regime change.

#### Do Sanctions Work?

Some of the controversy surrounding sanctions centers on the question of whether or not sanctions work. Given the important disincentive role of sanctions in any credible conflict resolution strategy, as well as the paucity of alternative tools available to the international community, more pertinent questions would seem to be: what are realistic expectations of sanctions; under what conditions do sanctions work; are basic principles of fairness, transparency and accountability being applied; and are the mechanisms in place designed to maximize their effectiveness?

Assessments of sanctions effectiveness are complicated partly because of misperceptions concerning their goals coupled with unrealistic performance expectations. There are also difficulties inherent in sorting out the impacts of various actions on a particular conflict. Which impacts are attributable to unilateral and which to multilateral sanctions? How should one account for the impact of diplomacy, peacekeeping, negotiation or mediation? What about the role of political will: are the permanent members of the Council united behind the sanctions?



Are states willing to implement and enforce sanctions? What can sanctions realistically accomplish? What are their limitations? Because of a dearth of data, and the difficulties involved in measuring success, sanctions have long had mixed reviews. Depending on who is doing the assessing, the glass is either half full or half empty.

In the case of arms embargoes, a 2009 study edited by Brzoska and Lopez posits that real or potential success is tied to the sender's specific goals and decisions.<sup>12</sup> In general, much of the scholarly research is understandably, if unduly, pessimistic given its construction on shifting sand. Some studies conflate unilateral and multilateral sanctions; or comprehensive and targeted sanctions, or fail to take account of sanctions' multiple purposes: to coerce/compel; to deny/constrain; to signal (e. g., support for international norms); or deter. In particular, the deterrent effects of sanctions are often overlooked, perhaps because they are difficult to quantify. In addition, autocratic regimes are notoriously difficult to coerce or compel because of their vested interest in appearing strong to their constituents.

In such cases, denial of resources in an effort to contain or constraint may be the only achievable result. Similarly, sanctions goals must be realistic in terms of their targets, including by ensuring that those individuals and groups listed for individual targeted sanctions are decision-makers or are able to influence those in leadership positions. Studies that attribute abysmally low success rates to sanctions tend to focus on whether or not sanctions achieved desired results (often assumed to be limited to behavioral or regime change) on their own, without either the threat or use of force. A more realistic assessment would be based on the contribution made by sanctions to outcomes.<sup>13</sup>

This being said, the reality may be that there is simply insufficient available data on multilateral sanctions in general, and targeted sanctions in particular, to formulate definitive conclusions about their effectiveness. The first comprehensive study of the effectiveness of targeted multilateral sanctions is underway as a joint effort by Thomas J. Biersteker of The Graduate Institute, Geneva, and Sue E. Eckert of the Watson Institute for International Studies (Brown University).

12. Brzoska, Michael/ Lopez, George A. (eds.) (2009): *Putting Teeth in the Tiger: Improving the effectiveness of arms embargoes* (Emerald Group).

13. Elliott, K. (1998): »The Sanctions Glass: Half Full or Half Empty?«, in: *International Security*, 23(1): 50-65.

Regarding the two earliest Security Council cases, while sanctions are considered to have helped in both cases, the guerilla war in Southern Rhodesia and the international divestment campaign in South Africa are considered to have played the decisive roles in these conflicts. For more recent cases, sanctions are considered to have contained the regime of Saddam Hussein in Iraq by preventing it from building up its arsenal of weapons of mass destruction, albeit at a high humanitarian cost. Sanctions are deemed to have worked in Angola by denying resources to UNITA; in Liberia by denying legitimacy to Charles Taylor; to have helped to persuade Libya to renounce state-sponsored terrorism; and to have helped to bring Milosevic to the bargaining table.

### Innovations

Several innovations and improvements have taken place since the sanctions reform effort that took place in the late 1990s and early 2000s that led to targeted sanctions. Unlike stand-alone and notoriously ineffective arms embargoes placed on Liberia, Somalia and Rwanda in the early 1990s, it has become standard practice for some years for the Council to establish a sanctions monitoring body whenever it imposes sanctions. The first such body was established in 1995 (the UN International Commission of Inquiry, UNICOI) to investigate and report on violations of the sanctions on the rebel Hutu groups in eastern Zaire (following the suspension of the arms embargo on the Rwandan government). UNICOI acted in a capacity very similar to that of today's Panels. As noted earlier, the language of resolutions has become clearer; there are fewer hidden agendas. Expert panels have produced numerous detailed reports documenting evasion tactics of sanctions violators and made hundreds of recommendations to the Security Council including on ways to improve the effectiveness of sanctions.

### Gap Between Expectations and Outcomes

Given that the sanctions tool has been honed and refined and is in frequent use by the Council, what accounts for the persistent gap between expectations and outcomes? Besides the effects of low political will for implementing sanctions, another obvious, but often least considered, answer is that sanctions are often deployed in conflicts that have been allowed to fester, or where the parties to the conflict have already demonstrated



Table 1: United Nations Security Council Sanctions (1990-2011)

Cases (Chronological)	Compre- hensive	Targeted								Panel of Experts	UN Security Council Resolutions <sup>14</sup>
		Arms	Financial	Travel	Aviation	Oil	Diamonds	Timber	Other		
Iraq	[✓]	✓	✓								661 (1990), 1483/1518 (2003), 1546 (2004)
[Yugoslavia] <sup>15</sup>	[✓]	[✓]	[✓]	[✓]	[✓]						713 (1991), 757 (1992), 820 (1993), 942 (1994), 1160 (1998)
Somalia/Eritrea		✓	✓	✓						✓	733 (1992), 751 (1992), 1772 (2007), 1844 (2008), 1907 (2009)
[Libya I] Libya II		[✓] ✓	[✓] ✓	✓	[✓]					[✓] <sup>16</sup>	✓ 748 (1992), 883 (1993), 1970/1973/2009 (2011)
Liberia		✓	✓	✓				[✓]	[✓]	✓	788 (1992), 1343 (2001), 1478/1521 (2003), 1532 (2004), 1753 (2006), 1903 (2009)
[Haiti]	[✓]	[✓]	[✓]	[✓]	[✓]	[✓]					841 (1993), 873 (1993), 917 (1994)
[Angola (UNITA)]		[✓]	[✓]	[✓]		[✓]	[✓]			[✓] <sup>17</sup>	✓ 864 (1993), 1127 (1997), 1173 (1998)
[Rwanda]		[✓]								[✓] <sup>18</sup>	918 (1994), 997/1011 (1995), 1823 (2008)
[Sudan I] Sudan II		✓	✓	[✓] ✓	[✓]					[✓] <sup>19</sup>	✓ 1054 (1996), 1070 (1996), 1556 (2004), 1591 (2005), 1769 (2007)
[Sierra Leone]		[✓]		[✓]		[✓]	[✓]			[✓]	1132 (1997), 1171 (1998), 1306 (2000), 1940 (2010)
Afghanistan Al Qaida/ Taliban <sup>20</sup>		✓	✓	✓	[✓]					✓	1267 (1999), 1333 (2000), 1393 (2002), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1988/1989 (2011)
[Eritrea/Ethi- opia]		[✓]									1298(2000)
Democratic Republic of Congo		✓	✓	✓	✓					✓	1493 (2003), 1596 (2005), 1807/1857 (2008), 1952 (2010)
Côte d'Ivoire		✓	✓	✓			✓			✓	1572 (2004), 1584 (2005), 1643 (2005), 1893 (2009), 1975/1980 (2011)
Lebanon/Syria <sup>21</sup>			✓	✓							1636 (2005), 1701 (2006)
Democratic People's Republic of Korea		✓	✓	✓						✓ <sup>22</sup>	✓ 1718 (2006), 1874 (2009)
Iran		✓	✓	✓						✓	1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010)

Source: Sue E. Eckert: *Strengthening UN Sanctions* (Council on Foreign Relations Press, forthcoming 2012).

14. Includes resolutions imposing sanctions only (subsequent resolutions extending sanctions but not imposing new measures are not included). As of October 2011.

15. Brackets [ ] indicate UN sanctions terminated.

16. Oil-related equipment.

17. Sanctions against UNITA included diplomatic measures (closing of offices), a ban on the supply of aircraft, spare parts and servicing, prohibition on equipment for mining/mining services, and a transportation ban on motorized vehicles, watercraft, and ground or water-borne services to areas in Angola.

18. Commission of Inquiry to collect information on the arms embargo (first expert-panel type mechanism).

19. Diplomatic restrictions including reduction in the number and level of staff at Sudanese missions.

20. UNSCR 1988 (June 2011) separated the Taliban from al Qaeda and established a new sanctions regime.

21. UNSCR 1636 authorized measures against individuals designated by the international independent investigation commission or the Government of Lebanon suspected of involvement in the 14 February 2005 terrorist bombing in Beirut, Lebanon that killed former Lebanese Prime Minister Rafiq Hariri and 22 others. No individuals ever designated.

22. Luxury goods.



their intransigence in the face of diplomatic efforts or the threat of sanctions. Frequently, by the time sanctions are imposed, the threat or actual conflict they are meant to address has grown complex and intractable. Again, authoritarian regimes, often the targets of sanctions, are invested in maintaining a defiant stance in the face of sanctions. There are difficulties inherent in exerting leverage on non-state actors, especially those with few assets in the formal sector and little need to travel. As mentioned, uninformed and unrealistic expectations are also behind much of the skepticism concerning the effectiveness of sanctions. For example, sanctions are expected to work alone when in fact they work best in concert with other measures, or expected to substitute for the use of force, a role they are not intended to play.

A recent report sponsored by the Government of Canada offers some insight into the panoply of obstacles in the path of sanctions effectiveness.<sup>23</sup> Competing economic and political agendas among the five permanent members of the Council are a major impediment. Widespread misperceptions within and outside the UN system about what sanctions are, how they work, and what they are able and unable to accomplish are another obstacle. There is discomfort among many with the coercive nature of sanctions despite their clear role as an instrument of bargaining, leverage, and persuasion in any credible conflict-resolution strategy.

Some of the gaps between expectations and outcomes are attributable to the lack of a unified United Nations sanctions policy that emphasizes and amplifies synergies among the various programs and policies. These and other challenges must be addressed if sanctions are to move beyond their current image as an ubiquitous but chronic underperformer in the quest for global peace and security.

## 2. Versatility and Innovation

The Security Council's most recent use of its versatile sanctions tool confirms a growing recognition that targeted sanctions combined with diplomacy and other measures can be a powerful, quick and effective response to breaches of international peace and security.

23. Cortright, David/Lopez, George A./Gerber-Stellingwerf, Linda (2010): *Integrating UN Sanctions for Peace and Security* (The Sanctions and Security Research Program)

Recent resolutions on Libya, and Côte d'Ivoire as well as last year's sanctions against the DRC and Somalia/Eritrea, signaled the Council's willingness to utilize sanctions in a targeted and decisive manner, albeit belatedly in Côte d'Ivoire where the Council missed opportunities for using sanctions to exert leverage on that country's prolonged stalemate. With its stepped-up efforts to also engage with thematic issues, for example by raising, as in resolution S/1960 (2010), the specter of individual sanctions against those who commit sexual violence in conflict, the Council has demonstrated its increasing reliance on and skillful use of the sanctions tool.

The following overview summarizes some of the Council's recent noteworthy sanctions innovations:

Libya – the rapidly implemented sanctions regime (S/1970/2011 and S/1973/2011), rooted in humanitarian concerns, included not only the traditional mix of an arms embargo, an assets freeze, and a travel and aviation ban; it also encompassed cargo inspections anywhere in the world, referral to the International Criminal Court, and possibly the most forward-looking initiative: the prospect of converting the assets freeze into an assets seizure. Indeed, paragraph 20 of resolution 1973 (2011) offered the tantalizing prospect that seized assets might be »made available to and for the benefit of the people of the Libyan Arab Jamahiriya«. By the middle of September 2011, even while hostilities continued, resolutions 2009 (2011) lifted some of the assets freeze measures in order to provide the incoming interim administration of the Transitional National Government with a cash flow.

Remarkably, compliance with the assets freeze has been vigorous. On February 24, even before the Security Council had actually adopted the assets freeze resolution, the Swiss Government had already unilaterally blocked accounts and other property in the name of 29 Libyans, mostly family members of Muammar Qaddafi. The next day, United States President Obama signed Executive Order 13566 targeting all assets under the control of Qaddafi, his family and political entourage. Finally, on 26 February, the UN adopted its own targeted sanctions list, followed two days later by the European Union and its member states. Further changes were made following the initial listings, to reflect new insights concerning Qaddafi's funding mechanisms.



Côte d'Ivoire – with its most recent resolution, S/1980/2011, the Security Council, albeit belatedly, buttressed the long-standing arms embargo, assets freeze, travel ban, and diamond restrictions with the threat of new targeted sanctions aimed at protecting the national reconciliation process. Similar to the sanctions, first applied to protect Liberian President Ellen Johnson Sirleaf's administration, the concept of »Sanctions for Peace« may be gaining relevance for other post-conflict situations. Besides Côte d'Ivoire, South Sudan and the DRC may benefit from such protective measures that increasingly target those who undermine peace and democratic institutions, who attack peacekeepers and humanitarian workers, or impede the delivery of humanitarian aid.

Democratic Republic of Congo – a proactive response similar to the assets freeze against Qaddafi and his supporters was achieved with the Council's imposition of sanctions against trade in minerals that funds parties engaged in conflict and violence in the Congo. Under Security Council resolution 1952 adopted in November 2010, commercial actors involved with cassiterite, coltan, wolframite and gold sourced in the DRC, must prove that they observe »due diligence« practices or risk being subject to targeted sanctions as prescribed in resolution 1857 (2008). Such due diligence practice should confirm that the origin of the minerals is conflict free, and that international social and environmental standards as defined by the OECD are observed in their exploitation and processing.

Conflict-specific due diligence obligations for the Congo's natural resource trade originate from recommendations made in July 2007 by the Group of Experts mandated by the Security Council to monitor the sanctions regime (S/423/2007). These early attempts left many commercial actors unfazed, despite the harmful consequences to the populations of the Eastern DRC. With renewed violence in the Eastern Congo since 2008, the Security Council was ready to act on natural resources. The result is significant in that United Nations action spawned the United States Conflict Minerals Law and a temporary export embargo by the Congolese Government. The confluence of these measures triggered hectic compliance efforts by global enterprises concerned with protecting their reputation and related commercial interests. This flurry of activity in turn caused significant upstream pressure on refineries and brokers to clean up their act as well. There is no evidence however, that these measures have eradicated the problem of conflict minerals.

Sexual Violence in Conflict and Children in Conflict – Significant mobilization is underway in these thematic areas of Council engagement. Ten years after the Convention on the Rights of the Child came into force, there is tangible progress on the implementation of targeted sanctions against those who violate the rights of children. In paragraph 5 c) of resolution 1539 (2004,) the Council for the first time envisioned the imposition through country-specific resolutions of an arms embargo against parties who refuse to enter into dialogue, fail to develop an action plan, or fail to meet their commitments regarding the protection of children. The first, and so far only time, that these intentions became reality was when the Council imposed with resolution 1698 (2006) individual targeted sanctions on political and military leaders in the DRC who recruit children for combat or commit other grave violations of the human rights of children. The Council confirmed with Presidential Statement S/2010/10 its intention to list for targeted sanctions persistent violators of the rights of children. On 1 December 2011, in response to a request by Special Representative on Sexual Violence in Conflict Margot Wallström, the Congolese Mayi Mayi leader Ntabo Ntaberi Sheka was placed under sanctions for organizing mass rape in the mining region of Walikale.

In a parallel effort, the Council also moved sexual violence into the realm of sanctionable acts when it adopted resolutions S/1888 (2009) and S/1960 (2010). In both resolutions, the Council stated its intention to include designation criteria for acts of rape and other forms of sexual violence in its renewal of targeted sanctions in conflict situations. The Secretary General's Special Representative on Sexual Violence in Conflict also has a mandate to report regularly to all Sanctions Committees. As part of the implementation of these resolutions, all peacekeeping and other relevant United Nations missions and entities are requested to brief the relevant Sanctions Committee about their findings on abuses of children's rights and sexual violence in conflict.

The Libyan assets freezes, the DRC natural resource sanctions, and the threat of additional sanctions on Côte d'Ivoire, appear to confirm what sanctions monitors have gleaned from years of monitoring targeted financial sanctions: the mere threat of sanctions tends to cause behavioral adjustments by many actors. Those who depend on a positive public image will likely comply, whereas others may take advantage of sanctions-



busting bonus opportunities presented by the absence of effective enforcement efforts. Examples are privately held companies, parastatal entities, or companies that can raise capital and interact with stakeholders who perceive defiance of sanctions as a positive. The decision to comply or not is partly based on an assessment of the credibility of sanctions, i. e., the risks of non-compliance weighed against the benefits of compliance.

For the first group, the choices are simple: In today's highly interlinked financial industry, being subject to negative media reports triggers financial institutions to review accounts, disrupts shareholder relations, and can impede access to capital markets. The opposite is true for the second group, which includes individuals and entities. If the success of their operations is not affected, or only minimally, by reputational issues, they may seek out sanctioned activities because of the financial advantages over their legitimate competitors who shun such proscribed business opportunities.

In a mere few days, the implementation of targeted financial sanctions against Muammar Gaddafi and his cohorts netted over \$34 billion in blocked assets. These funds represented approximately fifty percent of the amount that the Bank for International Settlements had identified in its most recent report as the total of financial assets deposited in the international banking system by Libyan nationals. Or, according to an IMF release, this sum is about one fifth of total foreign assets held by Libyans, including the Libyan Investment Authorities' holdings in equities, bonds and other securitized assets

In the DRC natural resource context, many traders, brokers and refineries continued unsavory business dealings until Security Council sanctions were adopted and the US Conflict Minerals Law was in the making. At that point, efforts to comply reached a frantic level and emerging industry consensus regarding the appropriate level of due diligence practices turned into well-funded lobbying campaigns to stem regulatory zeal.

But how and why does proactive and innovative Council action translate into positive outcomes in terms of helping to resolve conflict? And when and how does sanctions compliance translate into tangible benefits for victim communities and other potential targets of mass violations of human rights and humanitarian law? More specifically, does the freezing of Libyan assets or coer-

cive due diligence standards for the Congo's mineral sector in themselves amount to noticeable improvements in the conditions for civilians in these battlegrounds? Undeniably, UN sanctions on Libya spurred defections and constrained Qaddafi's ability to continue to buy much-needed support in the battle against his opponents. In the DRC, the manner in which sanctions shook up the global mining industry and triggered national legislation could not have been anticipated even by diehard sanctions optimists. Here again, it is important to stress that sanctions even in the best-case scenario are never successful on their own. Ideally, they work in concert with diplomacy and the credible threat of force, as appropriate and necessary, to achieve desired outcomes.

While Security Council innovations have greatly improved the potential for sanctions effectiveness, the gaps between intent and outcomes deserve further attention. Obvious opportunities for enhanced implementation relate to the timely application of listing criteria, and shortening of the elapsed time between the threat of targeted sanctions, their adoption by the Council, and actual listings. Other opportunities involve precision in the choice of measures and targets while taking care to avoid adding to the suffering of the general population. Another issue involves the level of implementation of recommendations contained in reports of expert panels of experts, on which the 2009 Stimson Center report remarked: »While not all Panel reports contain valuable or actionable recommendations, the study demonstrates that UN Panels findings can be quite useful. They remain under-utilized, yet implementation of their recommendations, if integrated with wider efforts to build the rule of law, could contribute to building peace and security.«<sup>24</sup> These shortcomings, prominently observed in the sanctions regimes of Côte d'Ivoire, Sudan and Somalia, and in the DPRK as well, contribute to a serious credibility loss for the sanctions process.

With the Council's strong emphasis in recent years on preparing the ground for thematic sanctions, innovative opportunities for further improvements and adjustments continue to arise. Sanctions against those who commit sexual or gender-based violence (S/GBV) and those who violate children's rights, in particular by recruiting or forcing them into combat, servitude or sexual

24. Boucher, Alix J./ Holt, Victoria K. (2009): *Targeting Spoilers: The Role of United Nations Panels of Experts* (The Stimson Center), page 16.





bondage are eligible for the most dynamic adjustments. Combined with already existing territorial sanctions, these new measures could evolve into a double-pronged means for constraining perpetrators in conflict zones.

Another area of unexplored potential for increasing sanctions effectiveness could result from adjusting the language of resolutions to take account of religious and cultural conditions. Some examples relate to Sharia-sensitive language for financial sanctions, or language for natural resource sanctions that give due consideration to traditional laws. For example, the inclusion in resolutions of language that defines property rights could help to decrease challenges to the implementation of assets freezes. Currently in some countries with Sharia law, court challenges have been mounted against freezing the assets of individuals who allege that portions of their assets are their wife's personal property. The standard that spouses may own separate assets is of course not unique to Sharia law. But specific resolution language could help to clarify questions such as how such separate property rights will be affected once the wife dies, initiates a divorce, or when the sanctioned husband has several wives.

Sanctions are on the upswing as the primary disincentive in the Security Council's toolkit. They add leverage to diplomacy and other measures, and will likely increase in importance as new threats to international peace and security emerge. There will be no shortage of opportunities for honing and using this unique and indispensable tool. Those who undermine the integrity of global digital communication and information technologies are as much a threat as those responsible for the corrosion of international, national and regional governance systems. Sanctions against corruption or against internationally operating cybercriminals represent new frontiers that the Council may find itself having to explore in response to the nefarious side-effects of an increasingly interconnected world. Piracy, as a specialized form of organized crime threatens the security of the sea's trading highways. In preparing for Rio +20 and the inevitable need to build defenses against threats to environmental security, Security Council sanctions may offer a versatile and pragmatic response in concert with more decisive measures embodied in international law. For example, the environmental havoc wreaked by Saddam Hussein when he torched Kuwait's oilfields, or those responsible for large-scale industrial disasters, could be targets for sanctions under a new environmental protection regime.

The question is no longer whether Security Council sanctions combined with other measures offer a flexible and rapid response to many current and future global challenges. Sanctions are clearly the non-violent, yet coercive tool of choice. The question at stake is how skillfully this tool is used, and whether the necessary competence and political will for enhanced effectiveness exists among all actors on the support and implementation chain.

Enhancing skills in sanctions implementation presents one of the few opportunities for facilitating peaceful conflict resolution without incurring heavy political or material costs. Improving the effectiveness of sanctions means focusing on defining norms and methodologies, and improving the awareness and skills of the actors in an effort to facilitate a functional implementation chain.

### 3. Challenges to UN Sanctions

The viability of sanctions depends to a large extent on geopolitical formations and ever-changing political ground rules. Periods of increased global tensions tend to exert a chilling effect on collective action, including the imposition of Security Council sanctions. A notable period of such political constraints occurred during the Cold War when a lack of internal cohesion obstructed Security Council responses to a number of global crises. The imposition of sanctions was perhaps one of the functions most affected by the fracturing of the Council into the NATO and Warsaw Pact camps. With the growth of the Non-Aligned Movement (NAM) in the early 1960s, a third group of states emerged in pursuit of their own sanctions policies. During the post Cold-War period, the NAM has partly transferred its influence to some of its more powerful sub-groupings such as the G-77, and the Organization of the Islamic Conference (OIC). Currently there are growing indications of new divisions along the lines of the NATO partners, the BRIC states (Brazil, Russia, India, China), and the G-77.

Given the fundamental political nature of sanctions, fissures within the global power structure will always be the most critical impediment to their effectiveness. In order to preserve their utility, other less intractable challenges to sanctions effectiveness must be mitigated as diligently as possible. In most cases these challenges are connected with: unilateral political maneuvering; inadequate understanding of compliance and implementation obligations;





lack of information concerning sanctions implementation mechanisms; confusion regarding the goals and purposes of sanctions including their inherently political nature; attempts to reinterpret sanctions as a quasi-judicial process; and demands for enhanced due process.

### 3.1 Unilateral Political Maneuvering

Most Security Council sanctions scenarios of the past ten years have experienced some level of political overreach that undermines the independence and reliability of sanctions monitoring. Some states are motivated to eschew sanctions because of stated ideological differences, or because they perceive sanctions as detrimental to their national interests. Others may oppose sanctions in an effort to maintain friends or build political alliances. Typically, attempts at blocking the imposition of new sanctions is only possible with the leadership or support of one or more of the permanent members of the Council.

Faced with evidence that would normally lead to the deployment of targeted measures against a sanctions violator, states, including Council members, may claim that the evidence presented is insufficient, incomplete, or false. A state will sometimes demand »more detailed evidence«. In other cases, states may allege that the evidence represents merely a »technical violation« or assert »self-exemption« to justify a violation. In several instances, states have, without substantive reason, pushed back against the reappointment by the Secretary-General of a particular Panel member by stating its intention to withhold approval in the Committee, where decisions are made by consensus. Such rejections and objections are sometimes put forward on the ground that sanctions or sanctions monitoring encroaches on the sovereignty of the state in question.

Yet, the responsibility of Member States to exercise restraint comes into play with their acceptance of the full implications of Article 25 of the United Nations Charter which stipulates the obligation of Member States to carry out the decisions of the Security Council in full recognition of the principle articulated in Article 2.7 that non-interference in national jurisdiction »shall not prejudice the application of enforcement measures under Chapter VII«.

The institution of sanctions monitoring has become politicized in other ways. The established practice has been to choose Panel members from a Secretariat

roster based on expertise and equitable geographical distribution. Beginning with some members of the Al-Qaida monitoring team, and escalating to all members of the DPRK and Iran Panels, the Council's permanent five (P5) states plus one or two other »interested« countries nominate their nationals for inclusion on a slate of candidates presented to the Committee for approval. The result is that the tensions inherent in P5 dynamics have been transferred to Panels with unfortunate consequences for their independence, objectivity and credibility.

Panels present regular reports to the Council through the Committee on their findings regarding sanctions compliance. These reports vary in quality, but many contain detailed information regarding violations, and all contain recommendations on enhancing sanctions effectiveness. Although no systematic tracking has been done of Committee action in response to reported violations or Panel recommendations, a 2009 Stimson Center study noted that »Panel efforts deserve greater attention from and use by the United Nations and member states to maximize their potential to improve implementation of targeted sanctions«<sup>25</sup>. Recently, a former member of the North Korea Panel expressed dismay to the authors of this paper that of the 25 recommendations made by the Panel to the Committee in May 2010 and another 23 recommendations in May 2011, only one has been implemented to date. The fact that over a hundred recommendations have been presented in six reports by the Panel of Experts on the Sudan to date, with fewer than five of the recommendations having been implemented, is yet another indication that in some situations the political will to implement and enforce UN sanctions is too weak to maintain credibility.

### 3.2 Inadequate Understanding of Compliance and Implementation Obligations

The inability of many sanctions decisions to translate into positive outcomes is in large part attributable to a lack of understanding of the workings of sanctions implementation and compliance. Actors situated on the sanctions support and implementation chain who are unaware of, or perceive reasons not to carry out their obligations

25. Boucher, Alix J./Holt, Victoria K. (2009): *Targeting Spoilers: The Role of United Nations Panels of Experts* (The Stimson Center).



include not only states, but also international organizations, companies and industry associations, and United Nations officials, agencies and bodies.

Frequently, states implement sanctions only in the narrowest sense, meaning by using existing legislation – not necessarily appropriate for the purpose – in order to freeze assets, restrict travel, or investigate alleged arms embargo violations. For example, the respective states may implement a UN assets freeze only with respect to a narrow interpretation of national and international anti-money-laundering laws. Further, it is currently not possible to obtain cooperation from certain states with regard to commercial arms embargo violators or traders in conflict minerals. Frequently, it is also not possible to obtain adequate preventive action in the context of trade and exports of arms, ammunitions and dual-use equipment, or in the supervision of air, maritime and land transport systems.

Minimalism in sanctions support and implementation is also pervasive within the UN system. Officials in UN field missions and relief organizations may lack pertinent information to guide them in differentiating legitimate interlocutors from sanctions violators among non-state actors. There is also a dearth of guidance and knowledge necessary for avoiding actions that might facilitate sanctions violations or support actual violators. For example, inadequate safeguarding during the transportation of arms and ammunition may lead to a loss for the UN and a gain to sanctions violators. Even relatively innocuous dual-use equipment such as 4X4 pickup trucks or communication gear can become embargoed items once they fall into the wrong hands.

The lack of a unified sanctions policy in the UN Secretariat and wider UN system adds to the gap between expectations and outcomes. As a consequence, various parts of the UN system may perceive tension between their mandate and their requirement to support and implement sanctions. Peacekeepers may perceive sanctions as conflicting with their mandate of winning hearts and minds on the ground. Humanitarian and aid agencies may view sanctions as standing in the way of providing assistance to those in need. High-level officials may ask the Council to hold off on sanctions to allow a peace process to take hold, while overlooking the integral leveraging role of sanctions in resolving conflict. Skills enhancement training tailored to the needs of particular sanctions actors on the support and implementation chain can help (see chapter 5).

### 3.3 Lack of Information Concerning Sanctions Implementation Mechanisms

Many actors in the international community may have a vague awareness of Security Council sanctions but lack a detailed understanding of their own role in the support and implementation chain. Many UN officials harbor the misperception that sanctions implementation is solely the responsibility of states, whereas UN bodies and other international organizations, local and international companies, industry organizations, civil society groups and the media, are all important contributors to sanctions support and effectiveness. At the very least, compliance obligations operate on two levels: first, ensuring that persons and entities entered on targeted sanctions lists do not benefit from inadequate sanctions enforcement; and second, establishing a proactive compliance system that guards against becoming a sanctions violator, inadvertently or not.

The reality for many states and other actors is that they lack basic information and understanding about the specific actions necessary for ensuring compliance and preventing violations. So long as an actor is not in the immediate neighborhood of a sanctioned state, passive compliance is generally considered as excusable. Ignorance is also a studiously practiced stance by some actors for avoiding sanctions support and implementation obligations.

UN officials often appear reluctant to accept that any effective conflict resolution strategy must include not only the incentives or carrots of diplomacy, peacekeeping, capacity building, and financial aid, but the disincentives or sticks of sanctions as well. Many mediators and peacekeepers are unable to reconcile their principal mandates with sanctions objectives, perceiving contradictions where potential synergies exist. Consequently, tensions continue to mount among UN actors involved in carrying out various UN policies and programs with mutually reinforcing objectives.

A recent report on potential synergies between UN Panels of Experts and UN Peace Support Operations identified numerous gaps.<sup>26</sup> Rather than cooperation and coordination between these two sanctions frontline actors – both mandated by the Security Council –

<sup>26</sup> Boucher, Alix J. (2010). UN Panels of Experts and UN Peace Operations: Exploiting Synergies for Peacebuilding (The Stimson Center).



they are frequently mired in stalemates or embroiled in disputes about the degree of support and cooperation they are required to provide each other. The reasons for these failures range from a systemic lack of awareness or denial of the essential synergy among peacekeeping, diplomacy and sanctions monitoring, and a lack of capacity in personnel, information, or expertise.

Sharp divisions are even more pronounced among the diplomatic staffs and special envoys of member states and regional organizations such as the European Union (EU), the African Union (AU), or the League of Arab States (LAS). Few mediators relish being confronted with the vociferous protests of counterparts who face the threat of sanctions, or experience the stigma or practical consequences of sanctions. Short of the threat or use of force, the credible use of sanctions remains the primary disincentive in a conflict resolution strategy. Experience with UNITA (Angola), RUF (Sierra Leone), and with many former militias in the DRC, has shown that when sanctions are used credibly by a unified international community, in conjunction with diplomatic efforts, targets eventually modify their behavior.

Unless states and the UN system demonstrate that they are serious about sanctions implementation, other actors on the support and implementation chain cannot be expected to be reliable partners. The private sector, in particular, systematically neglects sanctions compliance unless faced with tangible disadvantages resulting from non-compliance. Companies involved with blood diamonds in Angola and Sierra Leone, with conflict minerals in the DRC, with timber and other agricultural products in Liberia and Côte d'Ivoire, as well as with transportation and communication services in Sudan and Somalia, adopt proactive compliance practices only when confronted with serious political and regulatory pressures. Thus, credible sanctions implementation depends on states that must ensure that all divisions of their governments, including their regulatory and supervisory agencies, lead rather than follow in carrying out their obligations.

### 3.4 Confusion Regarding the Political Nature of Sanctions

Some criticisms of UN sanctions stem from confusion about their political nature. Sanctions are often misconstrued as permanent, as punishment, or as judicial ac-

tions lacking in checks and balances; or they are viewed as indistinguishable from military intervention. Recent military actions in Libya or Côte d'Ivoire, for example, were legitimized through resolutions of the Security Council but were separate from sanctions measures. However, whenever UN sanctions are initiated almost simultaneously with military action, the erroneous misperception is perpetuated that they are an alternative or a prelude to military intervention.

While much of this confusion is due to misinformation, in the past, some criticisms were justified. For years, the collateral damage caused by comprehensive sanctions was tolerated as the inevitable price to be paid by the population of the state under sanctions. In the early 1990s, highly televised images of the indiscriminate effects of comprehensive sanctions in the former Yugoslavia, Haiti and Iraq tipped the scale. The public outcry over these abuses quickly forced a rethinking and ushered in a new age of targeted sanctions.

Similarly, the legitimacy of counter-terrorism-related targeted financial sanctions and travel bans came under fire after a torrent of listings were adopted in response to the 9/11 attacks on the United States. Not all of these listings were prepared with adequate precision and care. In some cases the balance between the urgent need to act versus the need to protect fundamental human rights, including those of terrorist suspects, was subverted by the political goals of powerful members of the Security Council. In recent years, sanctions critics were invigorated by the argument that sanctioned persons and entities suffer from insufficient legal remedies against the effects of sanctions, for example an assets freeze or a travel ban. As a consequence, many sanctioned individuals and entities began to seek redress in national courts of law.<sup>27</sup>

A coalition of reform-minded member states initiated the introduction of due process principles into the sanctions system that includes a UN Ombudsperson with the authority to review files of sanctioned individuals and entities and recommend delisting where appropriate.<sup>28</sup> While these innovations have made sanctions a noticeably fairer and stronger conflict resolution tool, they

27. Biersteker, Thomas J./Eckert, Sue E. (2009): *Addressing Challenges to Targeted Sanctions: An Update of the »Watson Report«*.

28. Security Council resolution S/RES/1989 (2011).



have not silenced the critics. Some observers view recent developments (in particular the EU General Court's decision in the Kadi II case, see the next section below) as a steady and insidious chipping away of the authority of the world's preeminent body in matters of international peace and security.

With the gradual erosion of the political nature of sanctions, their ability to protect victims may also slowly vanish. Activists may not realize that as campaigns for the rights of perpetrators grow, so will the alliances among those who wish to see sanctions undermined for their own political purposes. Sanctions derive much of their ›bite‹ from the placement of violators on lists. While there is surely room for increased transparency concerning the listing of individuals, particularly for counter-terrorism purposes, it is clear that there can be no sanctions efficacy or credibility without listing, the primary consequence for violations. As Portela warns, the current controversy places sanctions implementation at risk of fragmentation.<sup>29</sup> Ultimately, the Security Council may lose the ability to agree on sanctions. Faced with new threats to international peace and security the Council may be reduced to choosing between two options only: ignore the threat or go to war.

### 3.5 Attempts to Reinterpret Sanctions as a Quasi-Judicial Process and Demands for Enhanced Due Process

Fallout from the mix of confusion concerning the political nature of sanctions and the lack of information about sanctions procedures and the mechanics of the implementation chain, have contributed to serious challenges to the credibility and legitimacy of Security Council sanctions. A model case of such misunderstanding has been playing out in the Seventh Chamber of the General Court of the European Union. Through the Council of the European Union, the European Commission adopted a regulation,<sup>30</sup> ordering the freezing of the funds and other economic resources of Yassin Abdullah Kadi (Kadi II) in accordance with the assets

freeze lists<sup>31</sup> of the Security Council Committee (the Consolidated List of the Al Qaida and Taliban Sanctions Committee or »the AQT Sanctions Committee«). The General Court delivered a judgment on 30 September 2010 that invalidated the EU regulation implementing the assets freeze.

The Court held that a full and rigorous judicial review was required because the re-examination procedure operated by the AQT Sanctions Committee clearly failed to offer guarantees of effective judicial protection. With this charge, the Court did not appreciate that Security Council Sanctions Committees cannot be viewed in the same light or level as national tribunals or domestic tribunals of the European Union. UN Committees are subsidiary organs of an international body and cannot be subject to judicial review by any tribunal of an individual member State or group of member States. Yet, by determining that its task was to ensure a full and vigorous judicial review of the lawfulness of the Council regulation, the Court was in a circuitous way, carrying out a full and vigorous judicial review of the Security Council sanctions process.

The General Court, after reviewing the Committee's narrative summary of reasons for the listing of Kadi, considered the AQT Sanctions Committee as failing to offer effective judicial protection. However, the Court's judgment was based on the review of only one aspect of the Committee's procedures and failed to take into account the entirety of the processes in use, including several reviews under which the appropriateness for the listings of 488 names were checked, resulting in the removal of 45 names from the sanctions list. In addition, as part of the practice of regular reviews, Mr. Kadi's listing would be examined every three years.

The General Court also failed to take into account the fact that the composition of the Sanctions Committee, thanks to the annual UN geographical group rotation of five member states, is very different from the one that listed Mr. Kadi in 2001. These changes guaranteed that reviewers representing a wide variety of criteria and perspectives have regularly closely checked the continued appropriateness of the Kadi listing.

29. Portela, Clara: National implementation of United Nations sanctions: towards fragmentation, in: *International Journal*, 2009-10.

30. Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101<sup>st</sup> time Council Regulation (EC) No 881/2002.

31. The assets freeze sanctions measure has been imposed by the Security Council in all of the current 12 Security Council Committees.



Finally, the General Court determined that the Committee had breached Mr. Kadi's rights of defence. Yet it failed to take into account that he had not exhausted all remedies available to him under the sanctions regime processes before challenging the implementation procedures of the European Commission. In particular, Mr. Kadi had so far not submitted a delisting request through the Office of the Ombudsperson as provided under paragraphs 20 and 21 of resolution 1904 (2009).

The General Court also challenged the Sanctions Committee's reasons leading to the sanctions as »general, unsubstantiated, vague and unparticularized allegations«. Again, the Court did not appreciate the difference between Security Council sanctions and the evidentiary standards used in court proceedings. Kadi was sanctioned in a political determination by 15 member States of the United Nations.

More broadly, the Court also did not take into account the context under which targeted sanctions are imposed. These are temporary measures imposed against individuals and entities that are associated with terrorists, terrorist organizations, or those perpetrating other grave threats to international peace and security. The purpose of UN sanctions' is to prevent these acts.

To further underscore the temporary nature of sanctions, the Court should also have examined their broader applications. Once the risk of continued violations against international peace and security ceases to exist, these targeted measures are removed. For this reason, a total of 120 names have already been removed from the AQT sanctions list. Of the 20 sanctions regimes that have been imposed by the Security Council since 1966, 8 regimes have since been terminated.

Since the Court's decision, over a dozen appellants ranging from the original petitioners, the European Commission, the French Republic and the United Kingdom of Great Britain and Northern Ireland, and other parties, are filing new briefs to the case. Still, this case begs the question about circuitous arguments leading to the conclusion that national regulations implementing Security Council sanctions are illegal. This and similar challenges to sanctions demonstrate how flawed policies and practices can become destructive forces against global conflict resolution mechanisms.

## 4. Integration of UN Sanctions with Measures by Regional Organizations

Articles 52-54 of the UN Charter provide for the formation of regional organizations by UN member states. At the same time, the Charter insists on the UN Security Council's ultimate overall responsibility and authority for maintaining international peace and security and on its right to investigate any dispute or situation. Over time, a number of resolutions and presidential statements by the Security Council as well as the General Assembly have acknowledged cooperation with regional organizations such as the African Union (AU), the Organization of American States (OAS), League of Arab States (LAS), the Association of Southeast Asian Nations (ASEAN), the European Union (EU), and other sub-regional and regional economic communities.

According to the Common Foreign and Security Policy (CFSP) as set out in Article 11 of the Treaty on the European Union, EU member states must implement UN sanctions. In addition, the EU also imposes its own sanctions, very similar to those of the UN. The EU sanctions repertoire currently consists of:

- diplomatic sanctions, including the expulsion of diplomats, or severing of diplomatic ties;
- suspension of cooperation with a third country;
- boycotts of sport or cultural events;
- general trade sanctions, or targeted sanctions such as an arms embargoes;
- freeze of financial assets or other economic resources;
- prohibition on financial transactions; restrictions on export credits or investments;
- flight bans and travel restrictions.

Considerable sanctions innovation has taken place during the past ten years by the AU and its sub-regional organizations. In response to the Lomé Declaration of July 2000, the UN increased its support to the AU, or rather to its predecessor, the Organization of African Unity (OAU). Both the UN General Assembly and the UN Security Council have pledged political, financial, and technical support to meet the growing security, capacity-building and humanitarian needs of the continent. As a result, a number of supporting institutional facilities were created, such as the United Nations Office to the African Union (UNOAU) and the United Nations Liaison Office to the African Union (UNLO).



The AU has used these institutional investments to build and implement its own successful sanctions regimes. While the buildup of a cooperative relationship between the UN and regional organizations proceeds more or less harmoniously, their implementation of UN sanctions is somewhat inconsistent. Among regional organizations, only the EU publishes explanations of their processes for implementing UN sanctions or lists of sanctioned individuals and entities. This uneven treatment of UN sanctions by some regional organizations may come as no surprise given their disproportionate representation in the Security Council. Traditionally the Europeans hold two permanent seats (France and the United Kingdom), and two non-permanent seats. Since the dissolution of the Soviet Union, the seat, which is occupied by an Eastern European state, tends to vote with the European block, giving the smallest continent a total of five votes.

In contrast, the two largest blocks of states, the Asian and African countries, are represented by five seats in the Security Council, in addition to China as a permanent member. One of Asia's five seats is shared with the block of Arab states.

Understandably, this outdated and flawed regional distribution does not inspire a strong sense of ownership among non-Western members of the Security Council. The implementation of Security Council decisions reflects these underlying realities. European states are traditionally not only among the most diligent implementers of UN sanctions, but also frequently strengthen UN sanctions with additional targets or by expanding the range of restrictions. European states also tend to leverage their political investment in UN sanctions regimes into substantial pro-UN engagements in Africa and in Central Asia. The EU's political, financial and technical contributions to AU humanitarian, peacekeeping and capacity-building projects make it the most significant donor.

Not surprisingly, these regional imbalances in the Security Council have a chilling effect on the willingness of some AU member states to proactively implement UN sanctions or use the sanctions tool as a response to regional conflicts. In recent years, some African states on the Council have voted against UN sanctions. The AU has also shown its willingness to challenge the UN Security Council as well as pursue alternative conflict resolution strategies, most notably in the first Libya case, in Darfur, and more recently, again on Libya.

It is noteworthy here that Arab League support of Security Council action in the recent Libya case provided the necessary legitimacy and credibility. Also, the Arab League's recent action in imposing sanctions on Syria may have the effect of spurring agreement within the currently stalemated Security Council for deploying its own measures.

#### 4.1 AU Sanctions Regimes

Its somewhat reluctant cooperation with the Council has not hindered the AU in fostering its own sanctions mechanism. AU sanctions against unconstitutional changes of Government are based on the OAU Response to Unconstitutional Changes of Government adopted by the 36<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lomé, Togo, from 10 to 12 July 2000, as well as the relevant provisions of the Constitutive Act of the African Union and the Protocol Relating to the Establishment of the Peace and Security Council. In 2009, the Peace and Security Council set up a Sanctions Committee with a five-state membership.

The emerging AU sanctions model may very well serve as a guide to the broader international community in helping to manage divergent political interests and low compliance. Within the AU context, the only sanctionable act is »unconstitutional change of government«. Many critics have remarked that this measure allows incumbent heads of state – many of whom attained power by illegal means – to strengthen their position. While this criticism may be justified, narrowly focusing AU sanctions on politically feasible objectives gives them considerable strength.

A further sign of the considerable pragmatism inherent in the AU sanctions system is the consensual relationship with the Chairperson of the Commission on the Prevention of Unconstitutional Changes of Government and the Strengthening of the Capacity of the African Union. A key issue is that AU sanctions should wherever possible, be adopted in consultation with the Regional Mechanisms for Conflict Prevention, Management and Resolution. The provision for buy-in from the Regional Economic Communities has proven to be very successful. So far, of the seven AU sanctions regimes, all but one – against Madagascar – have achieved their desired objectives





Table 2: AU Sanctions Regimes

Date of Decision and Target of AU Sanctions	Cause of Intervention / Nature of Sanctions	Additional Conditions	Date of Decision to Withdraw AU Sanctions
<b>Togo</b> 19 February 2005 (ECOWAS) 25 February 2005 (AU)	Military Coup  ECOWAS arms embargo AU suspends Togo from participation in all AU activities and endorses the ECOWAS sanctions;	NA	27 May 2005
<b>Comoros</b> 10 October 2007 (AU)	Secession led by the leadership of Anjouan;  Asset Freeze and travel ban against leadership of Anjouan	NA	25 March 2008 renegade leadership of Anjouan was dislodged by AU military task force
<b>Islamic Republic of Mauritania</b> 22 December 2008 (AU)	Military Coup  Declares null and void all measures of a constitutional, institutional and legislative nature taken by the military authorities	NA	30 June 2009
<b>Republic of Madagascar</b> 31 March 2009 (SADC) 19 February 2010 (AU)	Unconstitutional change of government  Imposes travel ban, assets freeze and diplomatic isolation of those responsible for unconstitutional change of government	One-month grace period to comply with AU	
<b>Republic of Guinea</b> 17 September 2009 (ECOWAS / AU)	Military Coup  ECOWAS arms embargo; AU asset freeze and travel ban	One-month grace period before measures will become active	9 December 2010 AU lifts sanctions; 25 March 2011 ECOWAS lifts arms embargo
<b>Republic of Niger</b> 19 February 2010 (ECOWAS / AU)	Military Coup  Suspends the participation of Niger in all activities of the African Union	NA	25 March 2011 ECOWAS lifts sanctions
<b>Côte d'Ivoire</b> 9 December 2010 (ECOWAS / AU)	Unconstitutional change of government  Suspend the participation of Côte d'Ivoire in the activities of the AU	NA	21 April 2011 Lifting suspension of the participation of Côte d'Ivoire in the activities of the AU

in a time frame comparatively shorter than that of UN sanctions. The sanctions against Andry Rajoelina and his supporters, who have unconstitutionally assumed control of the government in Madagascar, are ongoing.

So far, the AU Peace and Security Council has been supported very actively by the Economic Community of West African States (ECOWAS) in the cases of unconstitutional changes in Togo, Guinea, Mauritania, Niger and Côte d'Ivoire. The Southern African Development Community (SADC) was the initiator of the sanctions against Madagascar. Only once, in the case of the illegal challenge by the leadership of Anjouan against the government of the Comoros, did the AU launch successfully a largely bloodless two-day military intervention.

## 5. Sanctions Skills Enhancement Needs

Because political and judicial challenges to sanctions effectiveness are often too complex to overcome, enhancing sanctions support, coordination, and implementation

skills is a more readily available and cost-effective option. Specific needs for education, training, and capacity-building throughout the UN system, including member states, affiliated regional organizations, and the private sector, have been acknowledged most recently by the Canadian-sponsored report, »Integrating UN Sanctions for Peace and Security«.<sup>32</sup>

Similar conclusions have emerged during numerous sanctions meetings and workshops. However, the most obvious indication of the need for a systematic and methodological approach to sanctions skills improvement are the day-to-day challenges faced by states. Council members, including new members, are confronted with multiple roles that require them to formulate and agree on sanctions policies while simultaneously defining guidelines for implementation, chairing committees that monitor compliance, and ensuring that their own national authorities comply with all sanctions measures

32. Cortright, David/Lopez, George A. / Gerber-Stellingwerf, Linda (2010): *Integrating UN Sanctions for Peace and Security* (The Sanctions and Security Research Program).





and satisfy reporting obligations. For these, as well as for many other states, insufficient knowledge of sanctions mechanisms impedes the establishment of adequate institutional structures and capacities. These complications cause frustration that sometimes leads member states with moderate or weak capacities to question the necessity, and even legitimacy of sanctions.

Given that sanctions are one of the most frequently used and versatile conflict resolutions tools available to the international community, the lack of consistent efforts to ensure a high level of UN system-wide sanctions skills and knowledge for their support, coordination, and implementation is remarkable. For several years during the early to mid-2000s, the Watson Institute for International Studies (Brown University), with UN Secretariat collaboration, offered an introductory seminar to Security Council members, sponsored jointly by Germany, Switzerland and Sweden. Similarly, the Permanent Mission of Finland to the United Nations has sponsored for a number of years a seminar for Council members on the work of the Council. The seminar, which takes the form of a day and a half retreat, includes minimal reference to sanctions. Bits and pieces of training dot the system, but there is no organized or coherent program in place. The Department of Political Affairs, whose Security Council Division houses the sanctions support teams, would be the logical body to assume a coordination role for sanctions support and implementation. Yet as noted earlier (chapter 1), the Sanctions Secretariat is hard-pressed to keep up with its current responsibilities pertaining to Committees and Panels and lacks both the capability and resources necessary for assuming a coordination role.

It has become increasingly evident that UN system-wide apathy toward addressing the issue of effective sanctions support and implementation is unsustainable. Since 2005, the UN Security Council has been imposing more sanctions regimes than ever before in its history. With this increased reliance on sanctions, the international community has rapidly recognized that it must enhance its ability to implement and monitor sanctions in order to derive the fullest benefit from this versatile policy tool. Therefore, on April 27, 2011, UN Undersecretary General for Political Affairs Lynn Pascoe welcomed an initiative by the Government of Canada to launch a sanctions skills enhancement project for the UN system.

## 5.1 Sanctions Actors

The following scheme for sanctions training, education and capacity-building centers on the Security Council and its various Sanctions Committees as primary sanctions actors. Branching out from this center are sanctions support and implementation chains, beginning with states and sanctions monitoring mechanisms that usually include a panel of experts (or monitoring group) and peace support operations mandated to monitor compliance with arms embargoes. The importance of states as primary sanctions implementers is accentuated by the fact that all states are obliged by Article 25 of the UN Charter to abide by Security Council decisions. Moreover, virtually all states are also members of a regional organization. Bodies such as the African Union, the League of Arab States, the European Union, or the Organization of American States are expected, by extension of their obligations under Article 25, to amplify UN sanctions by adopting them into their legal and policy repertoires. In a further extension of this implementation chain, national mediators as well as those from regional organizations, and the diplomatic staffs of state, can play a critical role in the success of UN sanctions by integrating sanctions' objectives into their work.

Beginning again with the sanctions monitors such as the Panels of Experts and Peace Support Operations, another implementation chain comprises Special Representatives of the UN Secretary General for specific conflict regions or thematic issues. Other specialized bodies are often at the forefront of effective sanctions implementation. Examples are the UN bodies responsible for addressing issues such as the rights of children in combat, sexual and gender-based violence, or conventional disarmament. Important, but often overlooked sanctions implementation roles accrue also to the UN Department of Security and Safety (DSS), the Office for the Coordination of Humanitarian Affairs (OCHA), the UN High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Program (WFP), and other UN departments and agencies. To ensure full support for sanctions implementation, the senior leadership and the field staffs of UN departments and agencies must take a proactive role. Their responsibilities include providing ongoing training and updating on all support and implementation aspects, including facilitating capacity-building assistance for states, whose role is particularly indispensable for the success of sanctions.



The latter point is of even more critical importance in connection with the role of international organizations such as the World Bank, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the World Customs Organization (WCO) and most important, the International Atomic Energy Agency (IAEA). Organizations that facilitate the timely exchange of information, such as the International Criminal Police Organization (INTERPOL), the Financial Action Task Force (FATF) or the Egmont Group, also play a special role. These organizations have the vital task of helping to translate UN sanctions into an operational format for many important actors such as those in the aviation and maritime industries, financial services, or the international trading sector.

Global civil society, through prominent and well-resourced nongovernmental organizations, has also played a major role in helping sanctions work more effectively, and providing ongoing monitoring and analysis of sanctions effectiveness and impact. Sanctions in sub-Saharan Africa have greatly benefited from the ongoing work and published analyses of the International Crisis Group, and Human Rights Watch. Advocacy groups such as International Alert, Amnesty International, and Global Witness, have helped to sensitize the public and policy-makers to the need to respond quickly and strongly to humanitarian crises. Academic institutions cited in this study have been very helpful in guiding member states towards enhanced sanctions design and implementation.

No sanctions regime can operate efficiently without recognition by the private sector and civil society of their stakeholder responsibilities in international peace and security. International terrorism, the proliferation of WMD and violence even in the most far-flung corners of the world depend on some form of transportation, communication and financial services, as well as the manufacture and supply of arms, ammunition, vehicles and many other dual-use items. In this context, civil society can play a vital role as watchdogs, since in many cases they are the primary front line witnesses of sanctions violations. Where the global citizenry is connected to the international community through competent and active civil society organizations, their vital witness reports can flow to and inform the sanctions monitoring process.

Finally, a still unresolved but important issue pertains to ensuring better synergy between international courts and tribunals and sanctions regimes while maintaining their mutual independence and integrity. The success of both sanctions monitors and international courts depends to a high degree on the integrity and independence of their processes as well as on the quality of their evidentiary standards. Fundamentally however, UN sanctions are a political tool that must not be confused with legal processes and cannot be held subject to judicial reviews. On the other hand, proceedings before international courts and tribunals can easily be compromised if political imperatives interfere with the rule of law. So far, little consideration has gone toward possible mechanisms that would allow a coherent and meaningful collaboration between sanctions monitors and court prosecutors.

## 5.2 The Curricula

Deliberations during workshops and studies devoted to more clearly defining the information needs of sanctions support, coordination, and implementation actors have coalesced around certain basic elements. A comprehensive sanctions skills enhancement curricula would include:

- **Uniformity** – providing all actors with a common understanding of the basic requirements of sanctions support, coordination, and implementation.
- **Flexibility** – ensuring that sanctions remain a versatile and credible tool for use by the international community in responding to ever-changing threats to international global peace and security.
- **Pragmatism** – drawing as much as possible from real-life experiences and dilemmas faced by actors on the ground in the sanctions support, coordination, and implementation chain.

With these principles in mind, a viable sanctions skills enhancement project would comprise a modular system of training units that build on information concerning the essential elements of sanctions, the key support and implementation actors, the nature of targets and their evasion tactics, and progress towards increasingly detailed operational and technical guidance tailored to the needs of specific groups of actors.



Such competency-enhancing tools may cover, for example:

- the structure and specific language of a sanctions resolution;
- the dynamics between sanctions applied by the Security Council and those applied by regional organizations;
- the implementation tasks and dilemmas typically faced by Special Representatives of the Secretary-General and other senior UN officials in the field and how to manage tensions among their various mandates and tasks;
- the monitoring of arms embargoes for military observers of peace support operations in conflict zones, including the identification and tracing of arms, ammunition and other banned materiel or dual-use equipment;
- the identification of and reporting on assets that may be subject to individual targeted sanctions but may not be covered under money laundering statutes. This tool would particularly benefit financial intelligence officials and compliance officers in the financial industry.

These are only a sample of the topics that need to be addressed in order to raise the competence of all sanctions support and implementation actors. Given the high rate of personnel changes in many UN field positions, frequent retraining would be vital to the success of establishing a comprehensive network of skilled sanctions practitioners.

## 6. Conclusions

Since 1990 and the ensuing proliferation of sanctions cases, efforts towards improving the multilateral sanctions mechanism, including the various Sanctions Processes mentioned in chapter 1 have occurred at regular intervals. A group of Like-Minded States has worked with academic institutions, primarily the Watson Institute for International Studies, in an effort to bring attention to and offer solutions to due process concerns. As mentioned, the results of the first comprehensive assessment of the effectiveness of targeted sanctions will be available in 2012. The most recent initiative was Canada's sponsorship of the report on »Integrating UN Sanctions for Peace and Security«, and a Pilot

Workshop for Enhancing Skills for Sanctions Support and Coordination, held at the United Nations on 27 April 2011. Canada has undertaken a new initiative to promote UN system-wide skills enhancement for sanctions support, coordination, and implementation. This effort represents a challenge and an opportunity to the international community to better prepare itself for addressing new and emerging threats to international peace and security.

Following their brief post-Cold War honeymoon, UN sanctions have endured serial crises of confidence in terms of the perception of their legitimacy, credibility, and effectiveness. The first crisis, in the early to mid-1990s, revolved around the unacceptable humanitarian impact of Iraq sanctions. In the mid-2000s came mounting pressure regarding the due process rights of listed individuals. Some recent sanctions trends have triggered the return of overly-simplified perceptions of sanctions as merely a prelude to the use of force and a cover for regime change.

Adding to the complexity of assessing sanctions effectiveness is the reality that sanctions, unilateral or multilateral, face difficult challenges with respect to authoritarian regimes such as the DPRK, Iran, and Libya, beyond those related to the intransigence of their leaders. The regimes of some norm-breaking states rely on very substantial institutional capacities, sovereign wealth funds and formidable conventional and non-conventional military capabilities. Structuring sanctions regimes in response to the threats they pose sometimes requires an expanded and nuanced set of measures that target not only leaders and decision-makers, but sprawling parastatal organizations and key industries as well, and as such, may exert broader than intended impact on sectors of the economy and the general population.

The Security Council has demonstrated over time its willingness and ability to learn, change, and adapt to existing realities, primary examples being its acquired sensitivity to the humanitarian impact of sanctions evidenced by the move to targeted sanctions, and significant improvements in procedures for listing and delisting, in response to due process criticisms. It must extend this tendency into ensuring the continued minimization of the humanitarian impact of sanctions that combine targeted measures with broader short-term measures as may be increasingly required by realities on the ground.



Sanctions require political will and national capacity to implement. Council resolve in adopting sanctions must carry over into effective implementation by national authorities and UN-system actors. After resolutions are adopted, states must incorporate sanctions into their national legislation or regulatory systems including criminalization of violations. States must ensure that they have knowledgeable government officers able to implement sanctions. The paradox remains that while the Council must hold states accountable both for fulfilling their sanctions reporting obligations and for the quality of their reports, many states have none of these prerequisites.

Security Council members must also back up the Council's measures with action and ensure that violators face consequences by pressing its Committees to do a more credible job of following up on Panel reports. Both the Council and its Committees must pay more attention to Panel recommendations on improving sanctions effectiveness.

Targeted sanctions are not a panacea. They require coherence with other measures. They are complex to implement and monitor. For the sanctions tool to remain strong and credible, the Council and the Secretary-General must work together to ensure that the UN system has clear guidance on the mutual reinforcing of the various UN mandates and policies and on the skills that are needed by actors on the sanctions support and

implementation chain. For its part, the Secretariat must ensure that its own personnel and Panel members perform to the highest standards of professionalism and substantive competence.

Despite seemingly unending criticisms and challenges, Security Council sanctions have evolved into a pivotal mechanism for helping to resolve complex issues of international peace and security, including humanitarian emergencies. Moreover, regional UN partners are applying sanctions with growing vigor, often but not always with the Council's blessing. This development is fundamentally positive as it evidences the willingness of the international community to work together to exert the necessary leverage to produce desired outcomes.

Increasing political and economic complexities require renewed efforts to accommodate differing points of view and political divisions that are reshaping the world into a new multi-polar system where responses to threats or breaches of international peace and security result only from complicated and often tedious negotiations. It is all the more essential that the most efficient use be made of mechanisms that offer workable solutions. For these reasons, honing the tool of multilateral sanctions to adapt to current realities in the interest of enhanced effectiveness offers the best hope for peaceful and humanitarian solutions to increasingly complex global issues.



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