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The evolution of security council innovations in sanctions

The attitude of security council members toward sanctions has been fraught with contradictions mixed, at times, with a strong dose of reluctance. Looking at the employment of UN sanctions over the years and across cases, however, one is struck by how much has been achieved, both in terms of their impact and in terms of the development of council working methods despite the undercurrent of political uneasiness and discord that has almost always accompanied this issue within the council. This article outlines the significant changes made to the design of sanctions regimes by the council over the years and the processes and methods associated with the regimes in order to present a clearer and more accurate assessment of the council's efforts to improve its working methods and procedures vis-à-vis sanctions.

EVOLUTION IN SANCTIONS REGIMES DESIGN

The security council has changed, fundamentally, its construction of sanctions regimes since the early 1990s. After years of Cold War paralysis the council

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became much more interventionist, resorting to chapter VII tools more often. Sanctions were the council's tool of choice to address threats to and breaches of international peace and security. The council applied sanctions to address a varied list of crises and conflicts, especially intrastate conflicts and, most recently, to target nonstate actors who support international terrorism. In addition, the objectives towards which the security council applies sanctions have expanded from, in most cases, stopping or slowing hostilities to include a variety of goals, such as improving state governance; restoring democratically elected governments; and addressing a range of global security issues from nuclear proliferation and terrorism to the use of child soldiers, and most recently, sexual violence in conflict situations. Finally, the security council has become more selective about the types of targets chosen and the types of measures applied.

In the early 1990s, the council was less inventive in the types of sanctions it applied. Sanctions applied in some cases were comprehensive (e.g., in the case of Iraq, Haiti, and the Federal Republic of Yugoslavia) while in other cases, only an arms embargo was applied (e.g., in the case of the former Yugoslavia, Ethiopia/Eritrea, Liberia I, Rwanda, and Kosovo). In this period, sanctions were applied against the states in question rather than particular actors. However, the council began to differentiate between the measures and the particular actors of the conflicts. In the case of Angola, for example, in 1993, the council chose to apply sanctions against only a nonstate actor—the rebel group *União Nacional para a Independência Total de Angola* (UNITA)—rather than the state. Determining that as a result of UNITA's military actions, the situation in Angola constituted a threat to international peace and security, the council invoked chapter VII.[1] The security council imposed a mandatory arms embargo (including related matériel) and a ban on petroleum and petroleum products to Angola in September 1993,[2] with the objective of inducing UNITA to accept the terms of the peace accord signed in 1991.[3] When UNITA and its leader, Jonas Savimbi, refused to comply with the council's demands, the council choose to target UNITA's main source of funding—diamonds. Diamonds, however, were also an important legitimate source of funds for the Angolan government. Therefore, the council made the decision to target only diamonds not certified by the Angola government,

1 S/RES/864, 1993; section B, preamble, paras. 4 and 5 respectively.

2 Ibid., para 19.

3 S/22609, annex, 17 May 1991.

further differentiating the target UNITA and the particular commodity of concern—the conflict diamonds sold by UNITA.

Following the UNITA example, the council continued to focus on commodities as a way of pressuring conflict groups by tailoring the types of commodities sanctioned to the state in conflict. Timber sanctions, for example, were applied against Liberia, as timber represented a major source of the country's wealth, whereas in Côte d'Ivoire, the security council considered the possibility of targeting cocoa and cotton in addition to diamonds in order to maximize the impact of the sanctions on those responsible for the continuation of the conflict, while limiting the consequences to the general population.[4]

The transition from comprehensive "dumb" sanctions to targeted "smart" sanctions was prompted by the fact that the council faced a number of new dilemmas and questions. For example, how effective were the sanctions? Were sanctions indeed accomplishing the council's goals? Were sanctions inflicting excessive humanitarian pressure in the targeted state and/or neighbouring countries? Were they hurting general populations in a disproportionate and unacceptable way? Were the elites able to evade the sanctions? Council members, practitioners, governments, nongovernmental organizations, and academics grappled with these questions, embarking on studies, supporting government-led "processes" to study and improve sanctions, and creating working groups to review the council's internal processes vis-à-vis sanctions.

Sanctions employed against Haiti between June 1993 and October 1994 to return to power the democratically elected government of President Jean-Bertrand Aristide provide a case study of many of the targeting issues mentioned above. When the council first responded to the Haitian crisis in June 1993, it applied petroleum, arms, and financial sanctions on the assets of the de facto government authorities.[5] Medical supplies and foodstuffs were specifically exempted from the sanctions several months later in October of 1993.[6] When it looked as though the illegal government would comply with the terms of the Governor's Island agreement, which included the reinstatement of Aristide, the sanctions were temporarily suspended.

4 S/2005/699, paras. 22-58; and S/2006/204, paras. 20-30. Sanctions were never placed on cocoa and cotton, only diamonds.

5 S/RES/841, 1993.

6 S/RES/875, 1993.

However, it soon became clear that the authorities were unwilling to comply with the council's demands and that the human rights situation had deteriorated sharply, with new patterns of repression such as the abduction and rape of family members of political activists. In that context, the council took further action. In May 1994, the council reapplied the petroleum, arms, and financial sanctions, and also called upon member states to enforce the sanctions with a naval blockade.[7] An aviation ban was already in place, which required states to ban any aircraft that was destined for or had originated in Haiti from taking off, landing in, or overflying their territories.[8]

By this time, however, concerns about the impact of sanctions on the Haitian population were growing. In response, the council developed new measures that targeted specific individuals so as to increase the pressure on the illegal government while minimizing the harm to the general population. To that end, the council asked its Haiti sanctions committee to make a list of the names of members of the military junta, Haitian military, and immediate family members for targeting purposes.[9]

The council learned many lessons from the Haitian sanctions regime. Members learned that applying comprehensive sanctions, especially targeting one of the poorest countries in the world, was unacceptable to the international community. A second lesson was that specifying exactly who should be targeted, by naming names and outlining clearly the specific expectations of the council vis-à-vis the targets, was a necessity for future sanctions regimes.

By the mid-1990s, discussions about security council sanctions were numerous and vocal. In 1995, the council's five permanent members penned a "non-paper on humanitarian aspects of sanctions." Reflecting lessons learned from the Haitian case, and signalling a new caution, the permanent five declared that:

> The five permanent members emphasize the importance of the peaceful settlement of international disputes in accordance with

7 S/RES/917, 1994.

8 S/RES/875, 1993: para 2.

9 Haiti sanctions were originally imposed by resolution 841 of 16 June 1993. Resolution 917 of 6 May 1994, paragraph 3, imposed a series of measures against several categories of individuals implicated in the military coup of 1991. On 20 June, according to secretary-general's report S/1994/742, the council sanctions committee "adopted...a comprehensive list of persons falling under the provisions of paragraph 3 of resolution 917 (1994)."

> the Charter of the United Nations. While recognizing the need to maintain the effectiveness of sanctions imposed in accordance with the Charter, further collective actions in the Security Council within the context of any future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.[10]

Humanitarian agencies, in particular the UN children's fund (UNICEF) and UN high commissioner for refugees, were invited to participate in debates about sanctions and their humanitarian impacts.

By 2000, the council had made it a habit to apply targeted sanctions—especially against individuals—often using a combination of an asset freeze and travel bans. Targeted sanctions were originally meant to be imposed against individuals in high-level decision-making positions—those in a position to change the errant behaviour targeted by the council (for example, individuals closely connected with military junta, leaders of particularly abusive regimes, etc.) However, the expansion, following the 11 September 2001 attacks, of the 1267 al Qaeda and Taliban sanctions list, changed the nature of the game once more. The individuals targeted by financial and travel bans were no longer necessarily the elite. Because of the diffuse nature of al Qaeda and the very broad language of the resolution describing the targets, the list grew in number dramatically. The council soon found itself under a lot of criticism and pressure. Initially, it resisted making any changes to the procedures, but after some 30 legal challenges to its sanctions were brought by courts all over the world, it gradually started changing the procedures for placement of names on and removal from the list, and in December 2009 created and ombudsperson's office to deal with delisting requests.[11]

CHANGING WORKING METHODS AND PROCESSES

Sanctions are one of the security council tools with the most developed working methods.[12] It is important to keep in mind that the council—or

10 S/1995/300, April 1995, 2.

11 S/RES/1904, 2009.

12 For more on council working methods, see Security Council Report's "Security council transparency, legitimacy and effectiveness: Efforts to reform council working methods 1993-2007," 18 October 2007.

rather its permanent members—has always been resistant to settling on any generic policy or to adopt firm rules on its procedures for fear of constraining its ability as a body to act quickly and take decisions. Formally, the council still operates under the "provisional rules of procedure" adopted in 1946 and last amended in 1982.[13] It is impressive, therefore, that despite this reluctance, not only any progress, but actually quite significant advancement, has been made to systematize the way the council applies and manages sanctions.

When the council imposed sanctions on Iraq in 1990, creating what was arguably the most complicated sanctions regime it had ever imposed, it had very little experience to draw upon. During the first four-and-a-half decades of its existence, the council imposed only two mandatory sanctions regimes—against Rhodesia and South Africa. Both were cases that could be described as chronic crises, rather than an acute crisis as was the case for Iraq, and as a result neither was a new case for the council. Rhodesia and South Africa had been on the agenda of the council for several years prior to the decision to apply mandatory sanctions. In contrast, resolution 661 of 6 August 1990 imposed a multifaceted package of sanctions on Iraq within four days of that country's invasion of Kuwait, representing a quick and biting response on the part of the council. The very complex sanctions monitoring system was thus invented out of necessity in a few short days.

The security council imposed a mix of deprivations, including an arms embargo, a comprehensive ban on all trade (including oil), the suspension of international travel, the freezing of government financial assets and financial transactions, as well as diplomatic sanctions against Iraq.[14] The comprehensive sanctions had no end date (as would be the case with all other sanctions regimes for the next several next years), and this later led to considerable divisions among council members.[15] Soon, one of the main preoccupations was the growing impact on the civilian population of Iraq. In March 1991, UN Under-Secretary-general Martti Ahtisaari reported

13 See S/96/Rev. 7, 1983.

14 S/RES/661, 1990, paras. 3 and 4.

15 For an excellent account of the council's discussions about Iraq, see David Malone, *The International Struggle over Iraq: Politics in the Security Council 1980-2005* (New York: Oxford University Press, 2006), especially chapter 5, "Sanctions enforcer: Economic sanctions and the oil-for-food program."

that the situation in Iraq was "near-apocalyptic."[16] The council instructed the sanctions committee, therefore, to review its procedures to hasten the import of legitimate humanitarian goods while ensuring banned items were screened. Thereafter, in April 1991, the Iraq sanctions committee adopted a simplified "no objections" procedure to expedite the importation of materials and supplies for essential civilian needs.[17] In August 1991, the council authorized the oil-for-food program, which permitted the sale of up to US$1.6 billion in Iraqi oil over a six-month period. The proceeds of such sales were to be deposited in a UN escrow account to finance humanitarian imports and war reparations. The oil-for-food system proved to be far from perfect and led to one of the most extensive outside reviews of any of the UN's activities (the independent inquiry committee headed by former US Federal Reserve Chairman Paul Volcker), and a considerable perceived credibility crisis for the security council, especially in the United States.

Early concerns and questions about the Iraq sanctions—from all quarters, including nongovernmental organizations, the press, and council members—and in particular their humanitarian impact and their impact on the economies of other states in the region led to discussions that eventually went beyond the case of Iraq and addressed the issue of sanctions from a more generic angle.[18] Having made the intellectual transition from comprehensive to targeted sanctions, the council's attention turned to the management and monitoring of a growing number of regimes with diverse objectives and targets. This focus, in turn, prompted work on the mechanism through which the council has managed its different sanctions regimes—that is, its sanctions committees.

RECONSIDERING SANCTIONS COMMITTEES

Sanctions committees are subsidiary bodies of the security council that are formed on an ad-hoc basis pursuant to article 29 of the charter, which simply states that the council may appoint a commission or committee or a

16 "Report on humanitarian needs in Iraq in the immediate post-crisis environment by a mission to the area led by the under-secretary-general for administration and management, 10-17 March 1991," UN document S/22366, 20 March 1991, para. 8.

17 S/RES/687, 1991.

18 In S/RES/ 669,1990, the council noted the number of states applying for economic assistance under article 50 resulting from the sanctions placed against Iraq and mandated the sanctions committee to make recommendations to the president of the security council.

rapporteur for a specific question.[19] Most mandatory UN sanctions regimes have had a sanctions committee (always composed of representatives of all members of the security council). The committee meetings are closed (and some are not even announced in the *UN Journal*) and it has been the custom of the committees to take decisions by consensus.

The first sanctions committee was established in 1968 to monitor the sanctions against Rhodesia.[20] But the ad hoc nature of the committees and the differing nature of sanctions regimes meant that the different committees' functioning was very uneven, in some cases to the point of not functioning. There was no sharing of expertise, procedures, or methodology between the committees. Given the mounting number of regimes in place and the number of sanctions committees, it soon became clear that even if the sanctions were well designed (which was also not always the case), if they could not be managed, the council's intentions would be undermined. A Human Rights Watch report on the rearming of the Rwandan *genocidaires* in 1994, despite the existence of an arms embargo, led to questions about sanctions monitoring, the inaction of sanctions committees, and the imprecise design of sanctions.[21] In what would later become a trend, seeking information about the implementation of its sanctions, the council, therefore, created its first body to investigate allegations of sanctions violations—the international commission of inquiry on Rwanda.[22]

During his presidency of the council, in April 1997, the Iraq sanctions committee chairman, Portuguese Ambassador Antonio Monteiro, invited his fellow chairmen of all the council's subsidiary committees to an informal lunch to discuss concerns and thoughts about sanctions in general and the functioning and role of sanctions committees in particular. Informal discussions continued during that year and, in November, the council held its first consultations on sanctions as a theme. In late 1998, the (by then) eight committee chairs sent to the president of the council a concept paper with 19 recommendations related to council's use and management of sanctions,

19 See the provisional rules of procedure of the security council.

20 S/RES/253, 1968.

21 "Rearming with impunity: International support for the perpetrators of the Rwandan genocide," Human Rights Watch, Washington, 1 May 1995.

22 S/RES/1013 establishes the international commission of inquiry for the investigation of arms flows to former Rwandan government forces in the Great Lakes region and contains the mandate and basic design of the first sanctions investigative mechanism, 7 September 1995.

dealing with the undesired side-effects and the implementation, refinement, and targeting of sanctions.[23] The paper pointed out the need for the council to hold a discussion on the overall issue of sanctions and noted that up to that point there had been a lack of comprehensive approach to the matter on the part of the council. It stressed the need for enhanced support from the secretariat, for greater transparency in the overall handling of sanctions, for monitoring of the implementation, and for focus on measures that would target specific actors as an alternative to comprehensive sanctions that affect entire populations.

The next key moment in the evolution of UN sanctions was the assumption, in January 1999, of the chairmanship of the Angola sanctions committee by Canadian Ambassador Robert Fowler, who prompted a sea-change in the quality of work performed by sanctions committees. Fowler further transformed the often passive role of the sanctions committee chair into an active one. Rather than simply receiving information and reporting on the implementation of sanctions, he pursued an active investigative role in which he sought to name and shame high-profile sanctions busters, including heads of state. The targeting of the chief source of money used by the rebels (diamonds) and the arrival of a new, pro-active chairman transformed quite dramatically the way sanctions were managed. Fowler engaged multiple actors he deemed key to ensuring sanctions were effective: governments in the region and in diamond processing countries, nongovernmental organizations, intergovernmental bodies, and the private sector. He travelled to Angola and other countries in the region as well as Europe. He recommended that the council establish a mechanism to monitor the implementation of the Angola sanctions and provided the council with detailed reports of his committee's activities. He organized the first public briefing by a sanctions committee chair in July 1999 in which, among other things, he provided a detailed description of the committee's methodology and activities and engaged the council in a substantive discussion.[24]

In parallel to the increased sanctions-related activity within the council, the late 1990s saw a growing interest in the topic in other environments. In

23 Letter dated 6 November 1998 to US Ambassador Peter Burleigh, president of the council, signed by ambassadors Jassim Mohammed Buallay of Bahrain, Celso Amorim of Brazil, Bernd Niehaus of Costa Rica, Yukio Sato of Japan, Njjuguna Mahugu of Kenya, Antonio Monteiro of Portugal, Danilo Turk of Slovenia, and Hans Dahlgrren of Sweden.

24 S/PV.4027, 29 July 1999.

March 1998, the first of what was to be a series of international meetings on sanctions hosted by different governments and addressing specific aspects of sanctions was organized by the Swiss government in Interlaken. The meeting focused on the design and technicalities of financial sanctions. Financial experts, sanctions practitioners, government representatives, and the financial community were invited to improve the effectiveness of financial sanctions, which suffered from too many technical issues to permit effective or global implementation. This Interlaken process was followed by another, sponsored by the German government. The Bonn-Berlin process that began in 1999 focused on arms embargos and travel sanctions. The Stockholm process was then sponsored by Sweden in 2002 to investigate ways to strengthen the role of the secretariat vis-à-vis sanctions, to improve implementation at the national level, and to stop the evasion of sanctions. Each process resulted in a handbook-type report intended for use by the council and other relevant actors. Smaller, more academic meetings were held at Paris Science Po in late 2001, at London's Chatham House in early 2002, and in other locations. The council, however, kept its distance from these processes. Even though many council members participated in these meetings, the council never formally endorsed the results.

But although the council was not formally involved, the international processes played an enormously important role in the development of council methodology and working methods. The conclusion of the Interlaken process created an opportunity for the first-ever council open debate on sanctions and the addition of an item titled "general issues relating to sanctions" to the council agenda in April 2000. Similar open debates were organized at the conclusion of the Bonn-Berlin and Stockholm processes, in 2001 and 2003 respectively.[25]

In April 2000, the council issued a presidential note in which it acknowledged the efforts by the different governments sponsoring studies and reports on different aspects of UN sanctions. It also decided to establish an informal working group of the council to "develop general recommendations on how to improve the effectiveness of United Nations sanctions."[26] The council working group was mandated to focus on the design of sanctions, the working methods of sanctions committees, the

25 The open debates were held 17 April 2000 held during the Canadian presidency, 22 October 2001 during the Irish presidency, and 25 February 2003 during the German presidency.

26 S/2000/319, 17 April 2000.

capacity of the secretariat and coordination within UN system, monitoring and enforcement, pre- and post-assessment, targeted sanctions, and the unintended impact of sanctions.

While there was general agreement on the need to discuss sanctions in the working group, members had difficulty agreeing on a coherent and clear policy on sanctions. The working group was supposed to report its findings by 30 November 2000. There was considerable delay in beginning the work because there was disagreement about the choice of chair—in particular, whether the process should be led by a permanent member or, as has been the practice with council subsidiary bodies, by a nonpermanent member. The UK was eager to lead, but after several weeks an agreement was reached that Bangladeshi Ambassador Anwarul Chawdhury would guide the work. In the following months, he held over 20 meetings and, despite the initial delay, the work was nearly completed less than two weeks past the original 30 November deadline. There was, however, no consensus on the final document.

One of the more contentious issues debated by the working group was whether sanctions should be open-ended and terminated only by a new resolution, or imposed for a specific period of time and renewed by a new resolution. The council was split on the matter and, in particular, France and the US among the permanent five stood at opposite ends of the spectrum. The US position has been that sanctions should be directly linked to the desired change in policy and behaviour of their targets. France argued that as a matter of principle, sanctions should always be limited in time. Iraq served as a cautionary tale for both sides of this dispute: it demonstrated that unless you create a framework for renewal of the sanctions, you may end up with a very flawed design and be forced to continue with it for years, to the detriment of many. For the opponents of time limits, the underlying fear was that every time any sanctions regime needed to be renewed, the threat of a veto would loom large.

In practice, without ever making any formal commitment, the council has reached a degree of compromise. In the last nine years, some of the sanctions imposed have been renewable and no sanctions renewals during that period have been vetoed. The pattern seems to have been that sanctions imposed as a conflict management tool have been limited in time, whereas measures adopted as a means of addressing global security issues (counterterrorism and nonproliferation) have been left open-ended.

The working group terminated its work six years and three chairmen later when, under the chairmanship of Greece in December 2006, it was able to complete its mandate and issue its final report.[27] The working group's achievements included establishing a rudimentary "delisting" process for names of individuals and entities added to targeting lists and the establishment of a "focal point" position—a UN staff member—charged with the responsibility of facilitating communication with those who wish to petition any listings.[28]

There were some areas where agreement was never reached; several of them had to do with the functioning of the sanctions committees. The unwritten rule that all decisions had to be achieved by consensus was seen by many as particularly paralyzing. France argued for its abolishment in the first open debate on sanctions in April 2000; five years later, the then-chair of the working group, Ambassador Augustine Mahiga of Tanzania, listed the consensus rule problem as one of the areas for which (ironically) consensus was not reached.[29]

An area that has seen some improvement is the coordination of the sanctions committees' work. In the early 2000s, for example, the sanctions committees on UNITA and Angola, Liberia, and Sierra Leone met jointly to discuss the crossborder issues associated with these sanctions regimes. In 2004, pursuant to resolution 1566, the council called on its three counterterrorism committees (the al Qaeda-Taliban or 1267 committee, the 1373 counterterrorism committee, and the 1540 nonstate actors and weapons of mass destruction committee) to coordinate their activities, such as sharing information, holding joint briefings, and aligning respective monitoring bodies.[30] Building on this momentum for more coordination amongst the sanctions committees, the government of Canada has funded a project to assist the UN secretariat and members of the expert panels to manage and share information.

27 S/RES/1732, 21 December 2006.

28 S/RES/1730, 19 December 2006.

29 S/PV.4128; S/2005/842.

30 S/PRST/2004/37.

CONCLUSION

Looking at the last decade of the security council's use of sanctions, it is apparent that the listing-delisting controversy over resolution 1267 has had an effect on the other sanctions regimes. There has been a decline in the number of new sanctions regimes created by the council. There was a three-year gap between regimes created in 2006 to target Iran and North Korea for their proliferation activities and sanctions imposed on Eritrea in late December 2009. There have also been cases of extended delays between the establishment of individually targeted sanctions and the naming of targets. These have included Côte d'Ivoire from November 2004 to January 2006; Sudan from March 2005 to April 2006—also the first time a list was created through a council resolution;[31] the DRC child soldiers' recruiters and users as a category in July 2006 in resolution 1698 but with first names listed in February 2009; or Somalia with years of threatening to impose targeted sanctions, adopting a resolution in November 2008 and still with no names listed.

Most recently, however, there have been some interesting developments. Several observers have noted the possible connection between council-imposed sanctions and the recent rapprochement between Rwanda and the DRC. Following the December 2008 report of the DRC group of experts, which pointed to Rwanda as violating some sanctions, two European states suspended some economic aid to Rwanda. This has been seen as a possible factor in prompting Rwanda to reevaluate its relationship with the DRC, contributing to its decision to detain rebel leader Laurent Nkunda, engage in joint military operations with the DRC, and actively pursue a peace process.

The ongoing debate on sanctions has subsided but has not completely died and may even have shown some recent signs of picking up again. In the council's open debates in 2009 on children in armed conflict and on conflict-related sexual violence, several speakers called for the vigorous use of targeted sanctions against individuals engaged in recruiting children as soldiers and in sexual crimes. And the adoption in late 2009 of profound revisions of procedures related to 1267 listings and delistings may mean that an important corner concerning council credibility has been turned.

Sanctions are a favourite scapegoat for the media critical of the UN, because of their "ineffectiveness, illegality or cruelty." However, these sweeping statements overlook the considerable impact these measures have had in places all over the world and changes that the council itself has achieved in under 20 years.

31 S/RES/1672, 2006.