

UNIVERSITY OF VIENNA

ASSESSING THE EFFECTIVENESS OF UN TARGETED SANCTIONS

(A SEMINAR PAPER ON LEGAL CRISIS MANAGEMENT AND CONFLICT SETTLEMENT)

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ABBREVIATIONS AND ACRONYMS

AJIL	American Journal of International Law
CTC	Counter Terrorism Committee
DPRK	Democratic People’s Republic of Korea
DRC	Democratic Republic of Congo
EJIL	European Journal of International Law
EU	European Union
FRY	Federal Republic of Yugoslavia
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
INTERPOL	International Criminal Police Organization
JICJ	Journal of International Criminal Justice
RUF	Revolutionary United Front
SC	Security Council
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNGA	United Nations General Assembly
UNITA	National Union of the Total Independence of Angola
UNODC	United Nations Office for Drugs and Crime
UNSC	United Nations Security Council
UK	United Kingdom
US	United States
WCO	World Customs Organization
WMD	Weapons of Mass Destruction

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ASSESSING THE EFFECTIVENESS OF UN TARGETED SANCTIONS

A. INTRODUCTION

The UN was established in 1945 following the decline of the League of Nations in the 1930s and in reaction to the atrocities witnessed during World War II.¹ The Security Council and the ICJ are the two principal organs assigned the responsibility of resolving and preventing the exacerbation of international conflict. While the ICJ is empowered to adjudicate legal disputes between states that were willing to submit disputes to its jurisdiction,² the Security Council is tasked with the primary responsibility of maintaining international peace and security, which is the overall purpose of the UN.³ To that end, the UN Charter empowers the Security Council to take a range of effective collective measures so as to eradicate the potential causes of international and regional conflict, as well as build genuine and lasting peace among its member states.⁴ These include facilitating the pacific settlement of disputes under Chapter VI as well as taking the necessary action with respect to threats to the peace, breaches of the peace and acts of aggression under Chapter VII. Pursuant to the doctrine of implied powers, the Security Council is possessed with further competencies that are not explicitly enumerated in the UN Charter, but are nevertheless necessary for the discharge of its duties.⁵

During the Cold War, the UN's system of collective security was in a state of recurrent deadlock, due to ideological differences that existed among the permanent members of the Security Council⁶ coupled with the power of the veto.⁷ Consequently, it authorized the use of armed force once, against South Rhodesia in 1996⁸ as well as imposed non-military sanctions twice, against South Rhodesia and South Africa, in 1966⁹ and 1977¹⁰ respectively. However, the fall of the Iron Curtain brought about a wave of

¹ Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law*, (Cambridge University Press, Cambridge 2007) p 62 - 63

² United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 92

³ *Ibid*, Article 24 (1)

⁴ Farrall, *supra* note 1, p. 62

⁵ *Reparations of Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 ICJ Rep. 174 (April 11) at 182 in which the ICJ noted that under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by the necessary implication as being essential to the performance of its duties

⁶ Hanspeter Neuhold, 'Mars versus Mercury: The Legal Dimension', in Neuhold H. (ed) *Transatlantic Legal Issues – European Views*, *Favorita Papers* No. 3 (2005) 81, p 81 – 82

⁷ UN Charter, *supra* note 2, Article 27(3)

⁸ UNSC Res. 221 (9 April 1966) S/RES/221

⁹ UNSC Res. 217 (20 November 1965) S/RES/217; UNSC Res. 253 (1966) S/RES/253

¹⁰ UNSC Res. 418 (1977); Vera Gowlland – Debbas, "Sanctions Regimes under Article 41 of the UN Charter" in Vera Gowlland - Debbas (ed) *National Implementation of UN Sanctions: A Comparative Study*, Graduate Institute of

political change that revitalized the Security Council and saw it make increasing use of its broad powers under Chapter VII.¹¹ Since then, it has mandated more peacekeeping missions, authorized able and willing states to use force as well as established ad-hoc international criminal tribunals for the former Yugoslavia and Rwanda in 1993 and 1994 respectively, thus marking a significant milestone in the evolution of international law. Moreover, it has imposed mandatory sanctions against states and non-state actors in more than a dozen different conflict zones spanning four continents and for a variety of policy objectives.¹² These range from halting the illicit trade in diamonds to addressing the threat of international terrorism. To date, twenty five sanctions regimes have been created, eleven of which remain in place today.¹³

Since the end of the Cold War stalemate, the landscape of international politics has changed significantly.¹⁴ The principal threats to international peace and security are today posed by transnational terrorist organizations, the proliferation of WMD and so-called rogue states. Against this background, targeted sanctions have fast become the Security Council's tool of choice for a variety of reasons. Firstly, they provide a middle ground between mere rhetoric on the one hand and the use of armed violence on the other.¹⁵ This is particularly significant given that it is difficult to garner the support necessary to authorize the collective use of force.¹⁶ To date, Operation Desert Storm in 1990, which was designed to drive out Iraqi forces from Kuwait, remains the most spectacular case of such authorization.¹⁷ Subsequent cases in which armed force have been used have been tainted with controversy and disagreement regarding their legality, and have done much to undermine the legitimacy of the UN as a whole.¹⁸ Secondly, targeted sanctions are deemed to be more effective and less indiscriminate than

International Studies, Vol. 4 (Koninklijke Brill NV, Leiden, The Netherlands, 2004) p 8 in which the author notes that this was the first time that the Security Council imposed mandatory sanctions against a UN member.

¹¹ Ibid, p 4; Neuhold, supra note 6, p 81 - 82

¹² Ibid, p 82; David Cortright and George A. Lopez, *Sanctions and the Search for Security: Challenges to UN Action*, (Lynne Rienner Publishers Inc., Boulder London 2002) p 3

¹³ UN Sanctions Committees, <<http://www.un.org/sc/committees/index.shtml>> accessed on 6/4/2010

¹⁴ Neuhold, supra note 6, p 84

¹⁵ UNGA 'A More Secure World: Our Shared Responsibility' Report of the Secretary General's High Level Panel on Threats, Challenges and Change (2004) UN Doc. A/59/565, para 178

¹⁶ Hanspeter Neuhold, "The United Nations as a Security Organization: The Balkan Laboratory", in: Christoph Benicke/Walter Gropp/Thilo Marauhn (eds.), *S/A/I/L - Studies in Applied International Law*. Discussion Paper no. 3 (Gießen 2007), p 18

¹⁷ UNSC Res. 678 (29 November 1990) UN Doc S/RES/ 0678 ; Ibid, p 19

¹⁸ Neuhold, supra note 6, p 81 et seq. in which the author gives the examples of Operation Allied Force in 1999 and Operation Iraqi Freedom in 2003, both of which had no prior authorization to use force as required by article 42 of the UN Charter.

comprehensive economic sanctions which were imposed during the 1990s.¹⁹ Their perceived effectiveness is partly attributed to technological advances and globalization, which have created a climate of growing interdependence. Lastly, they are generally thought to entail fewer costs than measures involving the use of armed force.²⁰ By authorizing sanctions, the Security Council can be seen to be taking strong symbolic action against threats to international peace and security, without having to assume the responsibility for, or incur the costs of using force.

The increasing use of targeted sanctions by the Security Council reflects its desire to enforce international values and norms through measures that do not involve the use of armed force.²¹ This however, has been accompanied with growing public criticism from a variety of sources. Targeted sanctions have been denounced as politically ineffective and counterproductive in addressing the growing threat of international terrorism as well as reining in states that are hell bent on pursuing nuclear activities.²² Their selective use has led to a spiral of growing distrust and outright animosity between the US and countries such as Iran, as well as reignited the debate over the possibility of Security Council reform.²³ Domestic and regional courts have repeatedly found fault with the listing and de-listing procedures of the 1267 sanctions regime, in so far as they fail to offer access to effective judicial remedies to those designated as Al-Qaida associates.²⁴ Consequently, UN members have found themselves in the difficult position of having to choose between complying with the decisions of their domestic and regional courts on the one hand, and their obligations under the UN Charter on the other. These challenges are further compounded by the numerous inherent technical and operational difficulties associated with implementing targeted sanctions as well as the intricacies of the Security Council's political process.²⁵

¹⁹ A More Secure World: Our Shared Responsibility, supra note 15, para 179; Arne Tostensen and Beate Bull, 'Are Smart Sanctions Feasible?' (2002) 54 World Politics, 373

²⁰ Ibid, para 179; Farrall, supra note 1, p 3 - 4

²¹ Thomas Biersteker and Sue Eckert, 'Addressing Challenges to Targeted Sanctions: An Update of the Watson Report' (2009) <<http://www.watsoninstitute.org/pub>> accessed on 21 December 2009, p 4

²² Ibid, p 5

²³ Andrea Bianchi, 'Ad-hocism and the Rule of Law' (2002) 13 EJIL, 263, p 267; Parisa Hafezi, 'Iran at Nuclear Conference Hits Out at Bullies' *Reuters*, (Tehran 17 April 2010) <<http://www.newsdaily.com/stories/tre63g0yi-us-iran-nuclear-conference/>> accessed on 1/5/2010; Kyle James and Rob Mudge, 'Iran holds its own Nuclear Conference as New UN Sanctions Loom' *Deutsche Welle* (Iran 16 April 2010) <<http://www.dw-world.de/dw/article/0,,5470164,00.html>> accessed on 1/5/2010

²⁴ Biersteker and Eckert, supra note 21, p 4

²⁵ Tostensen and Bull, supra note 19, p 374

Growing criticism regarding the efficacy of UN targeted sanctions in general, coupled with the proliferation of cases challenging the implementation of the 1267 sanctions regime in particular, have done much to weaken the authority and credibility of the Security Council.²⁶ In an attempt to improve the latter, the Security Council recently established the Office of the Ombudsperson to assist with the de-listing of individuals and entities designated as Al-Qaida associates.²⁷ While this development is to be welcomed, it is highly doubtful that it will appease regional and domestic courts and dissuade them from further engaging with the implementation of sanctions under this regime.²⁸ It is evident that more needs to be done to address the concerns that commentators have vis-à-vis the 1267 sanction regime.²⁹ It is feared that unless adequate measures are taken to address this and other challenges, not only shall the overall effectiveness of targeted sanctions be undermined, but the ability of the Security Council to take effective measures against contemporary threats to international peace and security shall be severely compromised.³⁰

This paper seeks to discuss the past and current use of targeted sanctions by the Security Council pursuant to Article 41 of the UN Charter, as well as analyze the extent to which this tool has been instrumental in addressing major transgressions of international law in a dynamic political environment. To this end, it is divided into three chapters. The first chapter shall discuss the general nature and purpose of sanctions, the powers of the Security Council and their substantive limitations, the use of comprehensive economic sanctions during the 1990s, the various initiatives that led to the emergence of smarter sanctions as well as their impact on the current design and implementation of targeted sanctions. The second chapter shall assess the effectiveness of past and current UN targeted sanctions regimes as well as analyze the various factors that have and continue to impede their overall political effectiveness. The third chapter shall critic the feasibility of the proposals that have been suggested to reform the sanctions regimes currently in place, as well as analyze the most recent developments aimed at making them less ineffective, less counterproductive and less indiscriminate.

²⁶ Biersteker and Eckert, supra note 21, p 4 - 5

²⁷ UNSC Res 1904 (17 December 2009) S/RES/1904

²⁸ *HM Treasury v. Mohammed Jabar Ahmed and others (FC); HM Treasury v. Mohamed al – Ghabra (FC); R (on the application of Hani El Sayed Sabaei Youssef) v. HM Treasury* (2010) UKSC 2 A para 181 (Lord Rodger) and 239 (Lord Mance in which they both noted that despite the establishment of the Office of the Ombudsperson, UNSC Res 1904 does not offer any access to effective judicial remedies to those listed under the 1267 sanctions regime. The Supreme Court then proceeded to quash, in part, the Order implementing the 1267 sanctions regime in the UK.

²⁹ Antonios Tzanakopoulos, 'United Nations Sanctions in Domestic Courts,' (2010) 8 JICJ <<http://www.icj.oxfordjournals.org/cgi/content/full/8/1/249>> accessed on 25 April 2010, p 14

³⁰ Biersteker and Eckert, supra note 21, p 5

CHAPTER 1**B. SANCTIONS AS AN INSTRUMENT OF CONTEMPORARY INTERNATIONAL RELATIONS****I. THE NATURE AND PURPOSE OF SANCTIONS**

Non-military sanctions are coercive measures that fall short of armed force and which generally lead to the temporary abrogation of normal state-to-state relations.³¹ Generally speaking, such sanctions serve three purposes. Firstly, they seek to induce the target to change its conduct or policy that is deemed undesirable under international law, by making the cost of pursuing the undesired conduct or policy greater than the benefit to be gained from it.³² Their objective therefore, is to modify the behavior of the target as opposed to inflicting punishment or otherwise exacting retribution.³³ Secondly, sanctions seek to weaken the target from inflicting further harm and damage and/or delay its progress vis-à-vis a proscribed activity, such as acquiring WMD.³⁴ Thirdly, they constitute a process through which the sanctioning party defines its identity by dissociating itself from what it considers to be “evil”.³⁵ Consequently, sanctions imposed under the auspices of the UN have two audiences; the target and the international community as a whole. By imposing sanctions, the Security Council not only elaborates the values and principles that are constitutive to the UN, but also defines the ideologies and practices that negate that identity.³⁶ Their overall success or failure therefore depends on whether the desired change in behavior or policy has been achieved and/or whether the ability of the target to inflict further harm or damage has been significantly reduced.

Non-military sanctions are generally distinguished on the basis of their source as well as their range of prohibitions.³⁷ Firstly, they may be unilateral or multilateral in nature.³⁸ While the former are imposed by one state against another state or group of states, the latter are imposed by universal and regional organizations such as the UN and the EU respectively. Secondly, sanctions may be comprehensive or targeted.³⁹ While the former are indiscriminately applied against a state in its totality and thus tend to have an adverse humanitarian impact, the latter are aimed against the specific individuals and entities

³¹ Tostensen and Bull, supra note 19, p 374

³² Adeno Addis, ‘Economic Sanctions and the Problem on Evil’ (2003) 25 Human Rights Quarterly 573, p 576 - 577

³³ Supplement to an Agenda for Peace, (1995) UN Doc. A/50/60-S/1995/1, para. 66

³⁴ Tostensen and Bull, supra note 19, p 377

³⁵ Addis, supra note 32, p 578

³⁶ Ibid, p 594 in which the author notes that in imposing sanctions against apartheid South Africa, the Security Council affirmed that racism is deeply inconsistent with the identity of the UN.

³⁷ Ibid, p 574; Farrall, supra note 1, p 106

³⁸ Ibid, p 574 - 575; Tostensen and Bull, supra note 19, p 374;

³⁹ Ibid, p 374; Farrall, supra note 1, p 107

that are responsible for breaches of international law. All multilateral sanctions in place today are targeted sanctions.⁴⁰ Assets freeze, travel bans and arms embargoes constitute the most common form of targeted sanctions. Lastly, sanctions may be economic or non-economic in nature.⁴¹ While economic sanctions seek to prevent the flow of commodities, products and/or supplies to or from a target, non-economic sanctions interrupt a target's relations with the external world, in areas other than economic trade. Economic sanctions may be comprehensive in nature, in which case they prohibit the flow of all commodities, products and supplies vis-à-vis the target or they may be selective, in which case they are restricted to particular products, commodities or supplies such as arms, timber and diamonds.

II. THE LEGAL BASIS OF SANCTIONS UNDER THE UN CHARTER

Sanctions are one of the weapons available to the Security Council in the discharge of its duties under Chapter VII of the UN Charter.⁴² Where the Security Council has determined that a particular situation constitutes a threat to the peace, breach of the peace or an act of aggression, it may either make recommendations or decide what measures are appropriate to give effect to that determination.⁴³ The latter may or may not involve the use of armed force. Article 39 therefore constitutes the trigger for all preventive and enforcement action invoked by the Security Council under Chapter VII.⁴⁴ This notwithstanding, the UN Charter is silent as to what constitutes a threat to the peace, breach of the peace or an act of aggression.⁴⁵ Moreover, the UN Charter contains no explicit requirement to adopt enforcement measures in any specific order.⁴⁶ According to the *travaux préparatoires*, this was done deliberately.⁴⁷ Consequently, the Security Council has a wide margin of discretion deciding whether to intervene in a given situation as well as the measures most appropriate to restore and maintain international peace and security in each case.⁴⁸ With respect to measures not involving the use of armed force, Article 41 provides as follows:-

⁴⁰ Biersteker and Eckert, *supra* note 21, p 4

⁴¹ Farrall, *supra* note 1, p 107 and 123

⁴² Addis, *supra* note 32, p 580

⁴³ UN Charter, *supra* note 2, Article 39

⁴⁴ David Schweigman, 'The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice' (Kluwer Law International, The Hague) p 38; Farrall, *supra* fn. 1, p 82; Debbas, *supra* fn. 10, p 4

⁴⁵ Farrall, *supra* note 1, p 64

⁴⁶ Robin Geiss, 'Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring and Follow-Up Assessment of Long-Term Effects,' (2005) 18 Harvard Human Rights Journal 167, p 174; Debbas *supra* note 10, p 40

⁴⁷ Schweigman, *supra* note 44, p 34

⁴⁸ Geiss, *supra* note 46, p 173 and 177

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.”

Article 41 it is not exhaustive.⁴⁹ Consequently, the Security Council may apply measures that are not explicitly included therein, provided that they fall short of armed force. In practice, the Security Council has almost exclusively determined the existence of a threat to the peace before imposing sanctions.⁵⁰ Moreover, explicit invocations of Article 41 as the legal basis for the application of sanctions have been few and far between.⁵¹ In majority of the cases, the Security Council simply notes that it is acting under Chapter VII of the UN Charter before applying, modifying or terminating sanctions. This notwithstanding, UN members are legally obliged to comply and implement all mandatory sanctions imposed by the Security Council.⁵² They are further obliged to refrain from assisting any state against which the UN has imposed such measures.⁵³ Moreover, where there is a conflict between their obligations under the Charter and their obligations under any other international agreement, the former shall prevail.⁵⁴ This is in sharp contrast to the situation that existed under the League of Nations’ system of collective security, which essentially allowed member states to decide for themselves whether a breach of the Covenant of the League of Nations had been committed,⁵⁵ thus enabling them to avoid the obligation of applying sanctions pursuant to Article 16(1) of the Covenant.⁵⁶

III. SUBSTANTIVE LIMITS TO THE POWERS OF THE SECURITY COUNCIL UNDER CHAPTER VII

As mentioned earlier in this paper, the Security Council enjoys a wide margin of discretion in the discharge of its duties under Chapter VII.⁵⁷ This has created the perception that its powers are unlimited.⁵⁸ This is further reinforced by the fact that none of the other UN organs has the power to

⁴⁹ Ibid, p 174; Debbas, supra note 10, p 5 - 6

⁵⁰ Farrall, supra note 1, p 105

⁵¹ Ibid p 69

⁵² UN Charter, supra note 2, Article 25

⁵³ Ibid, Article 2(5)

⁵⁴ Ibid, Article 103

⁵⁵ League Assembly Res. 4 (27 September 1921): League of Nations Document A.1921.P, 453

⁵⁶ Schweigman, supra note 44, p 37; Farrall, supra note 1, p 53 - 54

⁵⁷ Geiss, supra note 46, p 173 and 177

⁵⁸ August Reinisch ‘Developing Human Rights and Humanitarian Accountability of the Security Council for the Imposition of Economic Sanctions’ (2001) 95 AJIL 851, p 855

review its decisions.⁵⁹ Moreover, the UN is not a party to any universal or regional treaty on human rights and fundamental freedoms.⁶⁰ Accordingly, it is not directly bound by these instruments, despite the fact that majority of its members have either signed or ratified them. However, while the rights and obligations of international organizations have to be distinguished from those of their respective member states,⁶¹ it does not follow that the powers of the Security Council are devoid of any substantive limitation.⁶² The UN is an international organization based on the rule of law.⁶³ Consequently, its organs are bound to comply with the rules of the UN Charter when exercising their respective functions. Failure to do so will render their actions *ultra vires*. This much was affirmed in *Admission to UN Membership*, in which the ICJ emphasized that the political character of an organ of the UN does not exempt it from the provisions in the Charter which constitute limitations on its powers or criteria for the exercise of its discretion.⁶⁴ Similarly, in *Prosecutor v. Dusko Tadic a/k/a 'Dule'*, the ICTY held that neither the spirit nor the text of the UN Charter conceives the Security Council as being exempt to the constitutional limitations therein, regardless of how broad its powers may be therein.⁶⁵

The UN Charter constitutes the principal source of human rights obligations of the Security Council.⁶⁶ When imposing sanctions pursuant to Article 41, the Security Council is required to act in accordance with the purposes and principles of the UN, which are stipulated in Articles 1 and 2 respectively.⁶⁷ Article 1(1) provides that measures undertaken to maintain international peace and security must not only be effective, but also in conformity with the principles of natural justice and international law. This has been interpreted to mean that the Security Council must review its sanctions regimes, to ascertain that they not only meet their policy objectives, but that they are also just under international law.⁶⁸

⁵⁹ Addis, supra note 32, p 600; By virtue of Article 39 of the Statute of the ICJ, this includes the ICJ which is the principal judicial organ of the UN

⁶⁰ Reinisch, supra note 58, p 854; Bardo Fassbender 'Targeted Sanctions and Due Process' (2006) Study Commissioned by the United Nations Office of Legal Affairs <http://www.un.org/law/counsel/Fassbender_study.pdf> accessed on 27 February 2010, p 6

⁶¹ *Reparations of Injuries Case*, supra note 5, para. 179

⁶² Reinisch, supra note 58, p 854

⁶³ Ibid, p 25; Geiss, supra note 46, p 173

⁶⁴ *Conditions of Admission of a State to Membership in the United Nations* (Article 4 of the UN Charter), Advisory Opinion, 1948 ICJ REP. 57, 64, (May 28)

⁶⁵ *Prosecutor v. Dusko Tadic a/k/a 'Dule'*, Appeal on Jurisdiction, Case IT-94-1-AR72, para. 28 (Oct. 2, 1995), reprinted in 35 ILM 32, 42 (1996)

⁶⁶ Fassbender, supra note 60, p 25

⁶⁷ UN Charter, supra note 2, Article 24(2)

⁶⁸ Marc Bossuyt, Commission on Human Rights: Sub-Commission on the Promotion and Protection of Human Rights, *Review of Further Developments in Fields With Which The Sub-Commission Has Been or May Be Concerned:*

Moreover, Article 1(3) provides that one of the goals of the UN is to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. This is further reinforced by Article 55(c). The Preamble further stipulates *inter alia* that the peoples of the UN are determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person as well as in the equal rights of men and women. They are also determined to establish conditions under which justice and respect for the obligations arising from international law can be maintained.

The Security Council must therefore strive to discharge its principal duty of maintaining international peace and security, while at the same time respect the rights and fundamental freedoms of those likely to be adversely affected by its measures.⁶⁹ Sanctions imposed against state and non-state actors must not only be necessary, but also proportionate to the objectives they seek to achieve, after exhausting all other measures, including those outlined in Article 40.⁷⁰ Their legality shall therefore depend on the circumstances of each case and the extent to which they are likely to affect the rights of those affected. The right to life is the most fundamental of all human rights and fundamental freedoms from which no derogation is permissible.⁷¹ It should be interpreted broadly and may therefore be invoked to protect against deprivation of life through starvation or the lack of fulfillment of basic needs such as food, basic health facilities and medical care.⁷² Consequently, any sanction regime that denies civilian population access to basic goods and services that are essential to sustain life would be in contravention of the right to life. This is further reinforced by the right to food and freedom from hunger,⁷³ the right to health⁷⁴ as well as the right to an adequate standard of living.⁷⁵ In the context of targeted sanctions, the Security Council is further obliged to respect due process rights of the individuals and entities listed as targets.⁷⁶

The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights, (2000) UN DOC. E/CN.4/Sub.2/2000/33, para.24

⁶⁹ Fassbender, *supra* note 60, p 27

⁷⁰ *Ibid*, p 27 – 28; Geiss, *supra* note 46, p 174;

⁷¹ Universal Declaration of Human Rights, GA Res. 217, Dec 10, 1948, Article 3, UN Do. A/810, AT 71 (1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, Article 6(1), 999 UNTS 171 [hereinafter ICCPR]; Convention on the Rights of the Child, Nov. 20, 1989, Article 6(1), 1577 UNTS 3 [hereinafter CRC]

⁷² Human Rights Committee, General Comment 6 (Article 6), para. 5, UN GAOR 37TH Sess., Supp. No. 40, at 93, UN Doc. A/37/40 (1982)

⁷³ International Convention on Social, Economic and Cultural Rights, Dec. 16, 1966, Article 11(1), 993 UNTS 3 [hereinafter ICESCR]

⁷⁴ *Ibid*, Article 12 of ICSECR

⁷⁵ UDHR, *supra* note 71, Article 25(1); ICESCR, *supra* note 73, Article 11(1)

⁷⁶ Fassbender, *supra* note 60, p 27; Geiss, *supra* note 46, p 174

They should therefore be given the opportunity to be heard before such measures are imposed as well as have access to an effective remedy before an impartial authority.

Any sanctions imposed by the Security Council in the context of an internal or international armed conflict are further governed by the rules of international humanitarian law.⁷⁷ These seek to protect civilian population and injured combatants against the effects of armed conflict and are codified in the 1949 Geneva Conventions⁷⁸ and the 1977 Additional Protocols.⁷⁹ In particular, they prohibit starvation of civilians as a method of warfare as well as the destruction of objects indispensable to the survival of the civilian population.⁸⁰ They further provide that civilians have the right to receive humanitarian assistance during an armed conflict. To this end, contracting parties are obliged to allow the free passage of essential foodstuffs, medical supplies and other necessities to the civilian population of the enemy state.⁸¹ In addition to food and medical supplies, Protocol I imposes an obligation on the occupying power to take steps to ensure the provision of other articles that are essential to the survival of the civilian population.⁸² These include clothing, means of shelter and objects necessary for religious worship. Consequently, any sanctions regime that prohibits or otherwise limits the provision of humanitarian assistance or articles essential to human survival during an armed conflict, would be illegal under international law. This is further reinforced by the fact that the provisions of the Four Geneva Conventions may not be waived or abrogated under any circumstances.⁸³

⁷⁷ Reinisch, *supra* note 58, p 860

⁷⁸ Convention [I] for the Amelioration of the Condition for the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 6 UST 3114, 75 UNTS 31; Convention [II] for the Amelioration of the Condition of Wounded Sick and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949, 6 UST 3217, 75 UNTS 85; Convention [III] Relative to the Treatment of Prisoners of War, August 12, 1949, 6 UST 3316, 75 UNTS 135; Convention [IV] Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 UST 3516, 75 UNTS 287 [hereinafter the four Geneva Conventions]

⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 UNTS 3 [hereinafter Protocol I]; Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 UNTS 609 [hereinafter Protocol II]

⁸⁰ *Ibid*, Article 54 of Protocol I; Article 14 of Protocol II

⁸¹ Geneva Convention [IV], *supra* note 78, Article 55(1)

⁸² Protocol I, *supra* note 81, Article 69

⁸³ Geneva Conventions [I], [II], [III] and [IV], *supra* note 80, Article 7 of the Geneva Conventions [I], [II] and [III]; Article 8 of the Geneva Convention [IV]

C. THE EMERGENCE OF TARGETED SANCTIONS UNDER THE AUSPICES OF THE UN

I. COMPREHENSIVE ECONOMIC SANCTIONS DURING THE 1990s

As mentioned earlier in this paper, the end of the Cold War brought about a proliferation of mandatory sanctions by the Security Council pursuant to Article 41 of the UN Charter.⁸⁴ Following Iraq's invasion of Kuwait in 1990, the Security Council demanded the withdrawal of Iraqi troops by the 15th January 1991.⁸⁵ Four days later, it banned all trade and means of transportation, imposed an oil and arms embargo as well as froze the Government's financial assets.⁸⁶ These were followed by aviation and maritime sanctions.⁸⁷ When Saddam's Government failed to withdraw its troops by the 15th January 1991 deadline, the Security Council authorized a US-led coalition of more than thirty able and willing states to assist Kuwait to drive them out.⁸⁸ After the victory of Operation Desert Storm, it established a cease fire as well as imposed a ban on WMD and ballistic missiles with a range of over 150 kilometers, subject to international inspection.⁸⁹ However, it did not terminate the sanctions it had imposed prior to the cease fire nor did it subject them to a temporal limitation, as they were viewed as necessary to obtain the Iraqi Government's compliance with its disarmament obligations.⁹⁰

The Security Council applied similarly broad sanctions against the SFRY and Haiti in 1991 and 1993 respectively.⁹¹ Against the SFRY, it imposed an arms embargo in response to the heavy fighting that broke out in various parts of the country.⁹² Following its dismemberment, the Security Council took further measures confined to the territory of the newly proclaimed FRY (Serbia and Montenegro).⁹³ These included a comprehensive ban on all imports and exports, a flight ban, the severance of financial relations, a reduction of diplomatic representation, suspension of sporting contracts, scientific and technical co-operation and cultural exchanges. These were later strengthened to cover all communication and transport as well as the freezing of assets.⁹⁴ The Security Council also denied the

⁸⁴ Neuhold, *supra* note 6, p 17

⁸⁵ UNSC Res. 660 (6 August 1990) S/RES/660

⁸⁶ UNSC Res. 661 (6 August 1990) S/RES/661

⁸⁷ UNSC Res. 670 (25 September 1990) S/RES/670

⁸⁸ UNSC Res. 678 (29 November 1990) S/RES/678

⁸⁹ UNSC Res. 687 (3 April 1991) S/RES/687

⁹⁰ Debbas, *supra* note 10, p 9

⁹¹ *Ibid*, p 10 - 11; Cortright and Lopez, *supra* note 12, p 3

⁹² UNSC Res. 713 (25 September 1991) S/RES/713

⁹³ UNSC Res. 757 (30 May 1992) S/RES/757

⁹⁴ UNSC Res. 787 (16 November 1992) S/RES/787; UNSC Res. 820 (17 April 1993) S/RES/820

new Serbian entity membership into the UN.⁹⁵ In Haiti, sanctions were imposed following the ousting of President Jean-Bertrand Aristide by a military coup.⁹⁶ They included an oil and arms embargo as well as freezing of assets controlled by the de - facto authorities. While these measures were suspended two months after they had been imposed,⁹⁷ they were reinstated in October 1993,⁹⁸ and tightened the following year, to include all commodities and products, with the exception of medical supplies and foodstuffs.⁹⁹

The measures imposed against Iraq, FRY and Haiti had certain features in common. Firstly, they were based on the prevailing punitive concept of sanctions at the time; the best strategy for facilitating the change desired by the international community is through comprehensive economic sanctions that are not only fully enforced, but are aimed at completely alienating the target economy from the rest of the world.¹⁰⁰ Secondly, they gave rise to unintended adverse consequences.¹⁰¹ These included the emergence of black markets, which created windfall profit-making opportunities for the political elite, as well as loss of market and economic damage on third states, in particular those neighboring the target state. In addition, humanitarian agencies were denied access to supplies that were essential for their work, as well as subjected to arduous procedures to obtain the necessary exemptions. Thirdly, they had a detrimental humanitarian impact on the civilian population.¹⁰² Nowhere was this more evident than in Iraq which saw a sharp decline in food production and water quality, as well as an increased incidence in infectious diseases, chronic malnutrition and infant mortality.¹⁰³ By 1999, Iraq's infant mortality rates were among the highest in the world while only 41% of the population had regular access to clean water, a sharp contrast to the situation that prevailed prior to 1990-1991.

Lastly, comprehensive economic sanctions proved highly ineffective and counterproductive, as they were premised on the false assumption that the civilian population would either remove the offending

⁹⁵ UNSC Res. 777 (19 September 1992) S/RES/777; UNSC Res. 821 (28 April 1993) S/RES/821

⁹⁶ UNSC Res. 841 (16 June 1993) S/RES/841

⁹⁷ UNSC Res. 861 (27 August 1993) S/RES/861

⁹⁸ UNSC Res. 873 (13 October 1993) S/RES/873

⁹⁹ UNSC Res. 917 (6 May 1994) S/RES/917

¹⁰⁰ Cortright and Lopez, *supra* note 12, p 3; Bull p 375

¹⁰¹ UNGA 'Supplement to an Agenda for Peace', (1995) UN Doc. A/50/60-S/1995/1, para. 70

¹⁰² Reinisch, *supra* note 58, p 851

¹⁰³ UNSC "Report of the Second Panel Established Pursuant to the Note By The President of the Security Council of 30 January 1999 (S/1999/100), Concerning The Current Humanitarian Situation in Iraq", S/1999/356, Annex II (30 March 1999)

regimes from power or otherwise pressurize them to alter their offending policies and/or conduct.¹⁰⁴ As the Sub-Commission on the Protection and Promotion of Human Rights noted:-

“The theory behind economic sanctions is that economic pressure on civilians will translate into pressure on the Government for change. This theory is bankrupt both legally and practically, as more and more evidence testifies to the inefficiency of comprehensive economic sanctions as a coercive tool. The traditional calculation of balancing civilian suffering against the desired political effects is giving way to the realization that the efficacy of a sanctions regime is in inverse proportion to its impact on civilians.”¹⁰⁵

The above state of affairs was largely due to the fact that the Security Council failed to acknowledge that authoritarian regimes assume and maintain power by force.¹⁰⁶ Consequently, they are not accountable or responsive to the very same citizens for whom they are being forced to alter their offending policies and/or conduct.¹⁰⁷ Ironically, the sanctions imposed went a long way in strengthening the political hand of the ruling elite, particularly in Iraq and SFY, where they manipulated their populace into believing that these measures were in fact one action in a long line of historical attempts by the West to demean and dominate the East.¹⁰⁸ While the international community was labeled as “the common enemy”, the sanctions built solidarity between the citizenry and the target regimes. Consequently, the ruling elite remained in power and continued to enjoy an opulent lifestyle, while their citizenry bore the brunt of these measures.

Criticism against the damage and futility of comprehensive economic sanctions came from a variety of sources, including UN Secretary-General Boutros Boutros-Ghali, who referred to them as a blunt instrument.¹⁰⁹ Various UN agencies and independent researchers initiated studies to assess their humanitarian impact, while human rights activists, political observers and scholars began to question their legality.¹¹⁰ Against the backdrop of mounting public criticism, the Security Council attempted to address the deteriorating humanitarian situation in Iraq by establishing the Oil for Food Programme,¹¹¹

¹⁰⁴ Addis, supra note 32 p 585; Tostensen and Bull, supra note 19, p 375

¹⁰⁵ Report of the Sub-Commission on Protection and Promotion of Human Rights, supra note 68, para 48

¹⁰⁶ Addis, supra note 32, p 584 - 585

¹⁰⁷ Ibid, p 585 and 611

¹⁰⁸ Ibid, p 586

¹⁰⁹ Supplement to an Agenda for Peace, supra note 101, para. 70

¹¹⁰ Cortright, Lopez and Gerber, supra note 12, p 3; Reinisch, supra note 58, p 852

¹¹¹ UNSC Res. 706 (15 August 1991) S/RES/706; UNSC Res. 986 (14 April 1995) S/RES/986; Cortright and Lopez, supra note 12, p 27 et seq. in which the authors note that the Oil for Food Programme allowed Saddam’s Government to sell petroleum and petroleum products in order to meet its humanitarian needs, but without enabling it to rebuild its military. Despite initial resistance on the part of the Iraqi Government, the Programme facilitated the provision of significant quantities of food, medicine and other humanitarian supplies. Over the

which did little to redress the magnitude of the crisis.¹¹² The Iraqi sanctions regime led to the resignation of three top UN officials,¹¹³ and it was eventually declared unequivocally illegal under existing international human rights and humanitarian law.¹¹⁴ Moreover, its damage and futility, coupled with the US and UK's reluctance to adopt alternative measures, created the perception that certain countries were willing to sacrifice individuals in other parts of the world, so as to achieve their political goals.¹¹⁵ This much was affirmed by former US Secretary of State and Ambassador to the UN, Madeline Albright, who, when asked whether she thought that the death of half-a-million Iraqi children was an acceptable price for sanctions, responded by saying; "We think the price is worth it."¹¹⁶ It is ironical that in attempting to dissociate itself from evil, the Security Council created an even greater evil.¹¹⁷

II. TOWARDS SMARTER SANCTIONS: INITIATIVES AT REFORMING UN SANCTIONS

Faced with the grave realities of comprehensive economic sanctions, there were various attempts at improving the design and implementation of UN sanctions during the late 1990s and early 2000s.¹¹⁸ The most significant were the Interlaken (1998-1999) and Bonn-Berlin Processes (1999) which were initiated by the Swiss and German Governments respectively. While the former focused on targeted financial sanctions,¹¹⁹ the latter analyzed ways of refining the utility of travel sanctions and arms embargoes as instruments for international diplomacy and political action.¹²⁰ Generally, their recommendations

years, the Security Council steadily expanded the scale of the Programme, which coincided with a significant rise in global oil prices, thus resulting in a sharp increase in Iraqi oil revenues.

¹¹² Cortright and Lopez, supra note 12, p 29 et seq. in which the authors note that the failure of the Programme was partly because the Iraqi Government refused to take full advantage of the opportunity as well as widespread accusations that some of its profits were unlawful diverted to the Iraqi Government and top UN officials

¹¹³ Report of the Sub-Commission on the Promotion and Protection of Human Rights, supra note 68, para 68 which notes that among those who resigned were former UN Assistant Secretary General and Humanitarian Coordinator in Iraq, Denis Halliday, who, before leaving office in 1998, declared that; "We are in the process of destroying an entire society. It is as simple and as terrifying as that."

¹¹⁴ Ibid, para. 71

¹¹⁵ Addis, supra note 32, p 608; Cortright and Lopez, supra note 12, p 7 - 8

¹¹⁶ "Pushing Saddam: Interview by Leslie Stahl with Madeline Albright", 60 Minutes, CBS News (12 May 1996) Lesley Stahl (referring to the sanctions against Iraq): "We have heard that a half a million children have died because of sanctions in Iraq. I mean that is more than the children who died in Hiroshima. And – you know, is the price worth it?" Madeline Albright: "I think this is a very hard choice, but the price – we think the price is worth it."

¹¹⁷ Addis, supra note 32, p 608

¹¹⁸ Tostensen and Bull, supra note 19, p 379; Cortright and Lopez, supra note 12, p 4

¹¹⁹ *Targeted Financial Sanctions: A Manual for the Design and Implementation. Contributions from the Interlaken Process*, coordinated by Prof. Thomas Biersteker (Providence, R.I.: Thomas J Watson Jr. Institute of international Studies, Brown University, 2001) [hereinafter Interlaken Manual]

¹²⁰ *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin" Process*, edited by Dr. Michael Brzoska (Bonn: Bonn International Centre for Conversion, 2001) [hereinafter Bonn-Berlin Manual]

comprised two main strands. Firstly, sanctions should be directed not against a state in its entirety, but rather against specific individuals and entities that are responsible for violating acceptable international standards of behavior.¹²¹ Not only would this remedy the shortcomings of comprehensive economic sanctions, but it would also considerably reduce their detrimental humanitarian impact and leave international trade relations unaffected. Secondly, they recommended establishing clear and detailed procedures for the administration of exemptions as well as monitoring the humanitarian impact of sanctions, so as to minimize their unintended consequences.¹²² To consolidate on their findings, the Swedish Government sponsored the Stockholm Process (2003) which examined the requirements for effective implementation of targeted sanctions.¹²³

All three sanction reform processes underscored the fact that unlike comprehensive sanctions, targeted sanctions are a highly technical policy instrument and are therefore more complex and difficult to administer and implement.¹²⁴ Consequently, their effectiveness is contingent on certain factors. Firstly, they must be deemed legitimate under international law and/or moral standards.¹²⁵ Not only should the Security Council discharge its collective functions in conformity with the UN Charter, but it must also do so on behalf of the international community as a whole.¹²⁶ Secondly, they must be designed with implementation in mind.¹²⁷ If not, it is highly likely that those targeted shall dismiss the measure along with the need to change their undesired behavior and/or policies. To this end, the Security Council must agree on policy goals that are not only well articulated and feasible from the outset, but that are also accompanied with clear criteria to measure their success.¹²⁸ Clear guidelines for determining which individuals and entities are listed as targets should also be set, together with clear standards and procedures for their de-listing. Moreover, an accurate and up-to-date list of the targets must be compiled and disseminated to UN members as well as relevant private and public actors.¹²⁹ This

¹²¹ Tostensen and Bull, supra note 19, p 380

¹²² Ibid

¹²³ *Making Targeted Sanctions Effective: Results from the Stockholm Process on the Implementation of Targeted Sanctions*, edited by Peter Wallensteen, Carina Staibano and Mikael Eriksson (Uppsala, Department of Peace and Conflict Research, University of Uppsala) [hereinafter Stockholm Manual] p 7

¹²⁴ Ibid, p 55;

¹²⁵ Dingli Shen, 'Can Sanctions Stop Proliferation?', (2008) 31 *The Washington Quarterly*, 89, p 90

¹²⁶ Bianchi, supra note 23, p 267

¹²⁷ Stockholm Manual, supra note 123, p 13 et seq.

¹²⁸ Ibid, p 92 - 93

¹²⁹ Ibid, p Tostensen and Bull, supra note 19, p 389

presupposes detailed knowledge and analysis of the targets, their supportive constituencies and the internal political dynamics of the state in question.¹³⁰

Thirdly, given that the primary responsibility of implementing UN sanctions rests on member states, their effective implementation is dependent on strong coordination and communication between the Security Council and UN members, coupled with adequate institutional and technical capacity on both levels.¹³¹ Moreover, implementation must not only be effectively monitored, but also regularly assessed and modified to ensure that policy objectives are properly met. This requires an unhindered flow of information, transparency as well as the political will to respond to developments on the ground. Fourthly, international support for targeted sanctions must be maintained throughout their duration, especially among neighboring states.¹³² The more international and regional consensus exists vis-à-vis imposed or threatened sanctions, the more likely the target shall comply. This implies that the benefits of complying with these measures must be higher than the benefits states would otherwise derive from circumventing them.¹³³ Lastly, targeted sanctions require coordinated input and support of a wide range of specialized actors and agencies beyond the UN.¹³⁴ These include international and regional organizations, specialized international agencies, the media and the private sector. The degree of UN interaction with outside actors in specific instances shall vary depending on factors such as the precise nature of the sanctions imposed as well as the regions and interests affected.

While targeted sanctions should always be high on the list of options, they are not always the most appropriate course of action. Firstly, not all targeted sanctions are the same.¹³⁵ Some are easier to implement as the necessary procedures and institutions already exist, while others may require special legislation or even the creation of new institutions to facilitate their implementation. Travel restrictions and bans on luxury goods may prove highly ineffective against individuals who are not heavily dependent on international worldly lifestyles.¹³⁶ Similarly, not all regimes can be effectively targeted by

¹³⁰ Ibid, p 378 - 379

¹³¹ Ibid, p 56 et seq.

¹³² Ibid; Shen, supra note 125, p 90

¹³³ Tostensen and Bull, supra note 19, p 378

¹³⁴ Stockholm Manual, supra note 123, p 29 et seq.

¹³⁵ Ibid, p 12

¹³⁶ Graduate Institute of International and Development Studies Geneva, 'Assessing the Effects and Effectiveness of UN Targeted Sanctions,' (Workshop Report: 1 - 3 October 2009) <http://graduateinstitute.ch/webdav/site/ccdp/shared/8376/Workshop_targeted%20sanctions_report_f3.pdf> accessed 16 March 2010

financial sanctions as these require the existence of considerable private wealth amassed abroad.¹³⁷ Moreover, the more dependent the target is on international trade, the more likely it is to comply with the demands of the Security Council. However, if the target has access to alternative sources of income, the effectiveness of these measures is reduced considerably.¹³⁸ Secondly, targeted sanctions are not a cure-all solution; they cannot achieve the desired political objectives in isolation and are thus more likely to be effective if considered as part of a broader, coordinated political and diplomatic strategy.¹³⁹ The Security Council must therefore ascertain their suitability vis-à-vis the particular circumstances and idiosyncrasies of each case, taking into account empirical evidence and accumulated experience.¹⁴⁰

III. SANCTION REFORM IN PRACTICE: THE IMPACT OF THE INTERLAKEN, BONN-BERLIN AND STOCKHOLM PROCESSES ON THE CURRENT DESIGN AND IMPLEMENTATION OF UN TARGETED SANCTIONS

The Interlaken, Bonn-Berlin and Stockholm Processes have made several important contributions to the design and implementation of UN sanctions.¹⁴¹ The change was immediately evident in the new measures that were imposed against the Taliban regime in Afghanistan, following the bombing of the US Embassies in Kenya and Tanzania in August 1998,¹⁴² as well as those imposed against the Government of Charles Taylor in Liberia in 2001.¹⁴³ Their influence was further reflected in the extension and adaptation of earlier sanctions against UNITA and RUF rebels in Angola¹⁴⁴ and Sierra Leone¹⁴⁵ respectively. In the latter countries, the Security Council had previously imposed an arms and petroleum/oil embargo in an attempt to contain the internal conflicts that had resulted in horrendous human rights abuses. However, both UNITA and RUF rebels managed to circumvent these measures and sustain their military ambitions through the illicit trade in conflict diamonds.¹⁴⁶ Following the recommendations of the sanction reform process, the Security Council adopted innovative measures that sought to alienate those responsible for the conflicts, while at the same time minimize the adverse humanitarian impact. Since then, it has

¹³⁷ Tostensen and Bull, supra note 19, p 388 - 389

¹³⁸ Ibid, p 388

¹³⁹ Graduate Institute of International and Development Studies Workshop Report, supra note 136, p 6; Interlaken Manual p ix

¹⁴⁰ Stockholm Manual, supra note 123, p 11 - 12

¹⁴¹ Cortright and Lopez, supra note 12, p 3 ; Tostensen and Bull, supra note 19, p 379 – 380; Background Paper on Targeted Sanctions, supra note 136, p 5

¹⁴² UNSC Res. 1267 (15 October 1999) S/RES/1267

¹⁴³ UNSC Res. 1343 (7 March 2001) S/RES/1343

¹⁴⁴ UNSC Res. 1127 (28 August 1997) S/RES/1127

¹⁴⁵ UNSC Res. 1306 (5 July 2000) S/RES/1306

¹⁴⁶ Cortright and Lopez, supra note 12, p 81

continued to apply sanctions that directly impact a wide range of targets.¹⁴⁷ This is clearly reflected in Table 1 annexed hereto, which shows the extent to which it has preferred targeted sanctions over comprehensive economic sanctions in the post-Cold War period.

As recommended by the sanction reform process, the Security Council has taken significant steps to enhance the administration, monitoring and enforcement of targeted sanctions.¹⁴⁸ Although it has not always articulated the specific objectives of its sanctions regime in a methodical manner, it has often provided at least an indication of those objectives.¹⁴⁹ In addition to distinct sanctions committees, it has established independent panel of experts and monitoring mechanisms which report on possible sanction violations, recommend ways of improving follow-up action where poor compliance is discovered and assist UN members with enforcement measures.¹⁵⁰ The panel of experts established under the Sierra Leone sanctions regime was particularly instrumental in providing unequivocal evidence that the Government of Charles Taylor in Liberia was actively supporting the RUF through the provision of weapons, logistical support as well as a safe haven for retreat and recuperation.¹⁵¹ As recommended by the sanction reform Process, the Security Council followed through on the panel's recommendations by imposing a travel ban on senior members of the Liberian Government, its armed forces and their spouses, as well as mandating Liberia to freeze the financial assets of the RUF.¹⁵² The decision to impose secondary measures against Liberia marked an important development in the use of sanctions by the Security Council, as this was the first time that it sanctioned a UN member because of its refusal to comply with measures imposed against another.¹⁵³

Pursuant to the recommendations of the Interlaken, Bonn-Berlin and Stockholm Processes, all but one of the eleven sanctions regimes currently in place have compiled lists of targeted individuals and entities, which are generally updated periodically and disseminated to UN members.¹⁵⁴ However, the accuracy of these lists varies depending on whether the sanctions are targeting government elites within a viable state or members of a transnational terrorist organization within a failed state. Contrary to the

¹⁴⁷ Farrall, supra note 1, p 128; Geiss, supra note 46, p 168

¹⁴⁸ Cortright, Lopez and Gerber, supra note 12, p 128; Tostensen and Bull, supra note 19, p 380

¹⁴⁹ Farrall, supra note 1, p 133

¹⁵⁰ Ibid, p 146 - 147

¹⁵¹ United Nations Security Council, *Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone, S/2000/1195*, para. 20

¹⁵² UNSC Res. 1373 (28 September 2001) S/RES/1373

¹⁵³ Cortright and Lopez, supra note 12, p 83

¹⁵⁴ UN Sanctions Committees, supra note 13

recommendations of the sanction reform process,¹⁵⁵ the listing and de-listing procedures have generally failed to ensure the strictest protection and observance of due process rights.¹⁵⁶ This is despite the recent attempts to reform the 1267 sanctions regime, which boasts the largest number of targeted individuals and entities.¹⁵⁷ In contrast, the 1343 sanctions regime against Liberia allowed appeals for de-listing in exceptional circumstances and from the state to which the target is a citizen or from any UN office.¹⁵⁸ While it did not clearly establish the grounds upon which appeals were to be considered, the procedures for deciding such appeals were nevertheless specified, as recommended by the sanctions reform process. These procedures have been maintained by the sanctions committee established pursuant to Res. 1521(2003)¹⁵⁹ and extended to the administration of targeted financial sanctions pursuant to Res. 1532(2004).¹⁶⁰

Prior to the sanction reform processes, the criteria for granting exemptions and their administration lacked clarity while sanctions committees were overburdened with the task of making exemptions on the basis of humanitarian, medical and/or religious grounds.¹⁶¹ The Interlaken Process therefore developed a list of fifteen exemptions to targeted financial sanctions¹⁶² and suggested allowing member states to participate in their administration,¹⁶³ while the Stockholm Processes noted the importance of providing clear and complete mandates to sanctions committees.¹⁶⁴ With respect to the 1267 sanctions regime, the Security Council established separate procedures for three different kinds of transactions excluded from the assets freeze.¹⁶⁵ Firstly, as recommended by the Interlaken Process, exemptions may

¹⁵⁵ Stockholm Manual, supra note 123, p 22

¹⁵⁶ Watson Report, supra note 21, p 6 et seq.

¹⁵⁷ Ibid, p 10 – 11. These include the recent creation of the Office of the Ombudsperson pursuant to UNSC Res 1904 (17 December 2009) S/RES/1904 and the Focal Point pursuant to UNSC Res. 1730 (19 December 2006) S/RES/1730 respectively

¹⁵⁸ UNSC 'Procedures for Updating and Maintaining the List of Persons Subject to Travel Restrictions Pursuant to Resolution 1343 (2001)' 18 March 2003 <http://www.un.org/Docs/sc/committees/Liberia2/Proced_TBL.pdf> accessed 3 April 2010

¹⁵⁹ UNSC Res. 1521(22 December 2003) S/RES/1521

¹⁶⁰ UNSC Res. 1532(12 March 2004) S/RES/1532

¹⁶¹ Watson Institute for International Studies: Targeted Financial Sanctions Project , 'Background Paper on Targeted Sanctions,' (Workshop on United Nations Sanctions 16 – 17 July 2004) <http://www.watsoninstitute.org/pub/Background_Paper_Targeted_Sanctions.pdf> accessed 16 March 2010, p 8 - 9

¹⁶² Interlaken Manual, supra note 119, p 72 - 75

¹⁶³ Ibid, p 20 - 21

¹⁶⁴ Stockholm Manual, supra note 123, p 24 - 25

¹⁶⁵ UNSC Res 1452(20 December 2002) S/RES/1452

be granted vis-à-vis specific purposes such as foodstuffs, rent, medicines and taxes.¹⁶⁶ These are granted by member states, subject to their notifying the 1267 Committee and not receiving a negative decision within 48 hours, the amount of time specified by the Bonn-Berlin Process.¹⁶⁷ Secondly, it permits payments from frozen bank accounts for extraordinary expenses, subject to prior approval from the 1267 Committee.¹⁶⁸ Thirdly, as suggested by the Interlaken Manual, it permits payment of interest or other earnings due on a frozen account as well as payments due under contracts or obligations that arose prior to the imposition of the assets freeze.¹⁶⁹

Unlike in the past where sanctions were traditionally imposed for an unspecified duration,¹⁷⁰ the Security Council has employed time-limits as part of the sanctions regime against Eritrea and Ethiopia,¹⁷¹ Sierra Leone,¹⁷² Afghanistan, the Taliban and Al Qaida,¹⁷³ 1343 Liberia,¹⁷⁴ DRC,¹⁷⁵ 1521 Liberia¹⁷⁶ and Cote d'Ivoire.¹⁷⁷ It has also engaged relevant actors to assist in implementing targeted sanctions as recommended by the sanction reform processes. This is most evident in the 1267 sanctions regime which incorporates UN agencies such as UNODC and the UN Register of Conventional Arms as well as international agencies such as INTERPOL, ICAO, IATA and the WCO in its activities.¹⁷⁸ Moreover, the establishment of the CTC has gone a long way in improving member state reporting practices vis-à-vis the 1267 sanctions regime.¹⁷⁹ In the past, the quality of reports submitted to sanctions committees had been variable, in some cases consisting of no more than one sentence. There were also many UN members that failed to submit reports all together. To facilitate their preparation, the CTC adopted

¹⁶⁶ Ibid, para.1(a)

¹⁶⁷ Bonn-Berlin Manual, supra note 120, p 58

¹⁶⁸ UNSC Res 1452(2002) supra note 166, para. 1(b)

¹⁶⁹ Ibid, para. 2(a) and (b)

¹⁷⁰ Farrall, supra note 1, p 140

¹⁷¹ UNSC Res 1298 (17 May 2000), S/RES/1298, para. 16

¹⁷² UNSC Res 1306 (5 July 2000), para. 1,5 and 6

¹⁷³ UNSC Res. 1333 (19 December 2000), S/RES/1333, para. 23. However, in subsequent resolutions, the Security Council has not incorporated time-limits, noting instead that it would review the sanctions after twelve months and decide how to improve them

¹⁷⁴ UNSC Res. 1343 (7 March 2001) S/RES/1343

¹⁷⁵ UNSC Res.1493 (28 July 2003), S/RES/1493 para. 20

¹⁷⁶ UNSC Res. 1521 (22 December 2003) S/RES/1521, para. 18

¹⁷⁷ UNSC Res. 1572 (15 November 2004), para. 7, 9 and 11; UNSC Res. 1643 (15 December 2005), para. 6

¹⁷⁸ UNSC 'Tenth Report of the Analytical Support and Sanctions Implementation Monitoring Team Submitted Pursuant to Resolution 1822(2008) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities' (2 October 2009) S/2009/502, para. 81 and 84

¹⁷⁹ Background Paper on Targeted Sanctions, supra note 160, p 10

detailed guidelines vis-à-vis the format and substance of reporting requirements¹⁸⁰ along the lines suggested by the Interlaken and Bonn-Berlin Processes.¹⁸¹ Consequently, the quality and quantity of substantive reports by UN members has improved and has served as a basis for dialogue.¹⁸²

D. CONCLUSION

Targeted sanctions have fast become a prominent feature of contemporary international relations, primarily because the Security Council heeded the criticisms leveled against its indiscriminate use of comprehensive economic sanctions during the 1990s. While the Security Council enjoys a wide margin of discretion in the discharge of its duties under Chapter VII, it is nevertheless obliged to respect the rights and fundamental freedoms of those likely to be adversely affected by its measures. Consequently, targeted sanctions must not only be necessary, but also proportionate to the objectives they seek to achieve. Moreover, given that they are a highly technical policy instrument, it is imperative that they are designed with implementation in mind as well as accompanied with adequate institutional and technical capacity, both within the Security Council and among UN members. Equally important is the need to maintain international and regional support, so as to reduce the likelihood of circumvention. While targeted sanctions should always be high on the list of options, it is clear that they are not always the most appropriate course of action. The Security Council must therefore ascertain their suitability vis-à-vis the particular circumstances and idiosyncrasies of each case, taking into account empirical evidence and accumulated experience. What needs to be discussed is whether targeted sanctions have been instrumental in achieving the changes in behaviour and policy that are desired by the Security Council, and/or effective in significantly reducing the ability of those targeted to inflict further harm or damage. As mentioned earlier in this paper, this shall be the main substance of the second chapter of this paper.

¹⁸⁰ Note from the Chairman, Guidance for the Submission of Reports pursuant to Paragraph 6 of Security Council Resolution 1373 (2001), 26 October 2001

¹⁸¹ Interlaken Manual, *supra* note 119, p 30 – 32; Bonn-Berlin Manual, *supra* note 120, p 34 – 35, 61, 81 - 82

¹⁸² Background Paper on Targeted Sanctions, *supra* note 160, p 10

ANNEX: TABLE 1**UNSC RESOLUTIONS IMPOSING SANCTIONS DURING THE POST-COLD WAR PERIOD**

Cases in chronological order	Comprehensive	Targeted financial sanctions	Arms embargo	Travel ban	Aviation-related sanction	Oil embargo	Ban on trade in diamond	Ban on trade in timber
Iraq	Res 661 (1990)	Res 1483 (2003)						
Yugoslavia	Res 757 (1992) Res 942 (1994)	Res 820 (1993)	Res 713 (1991) Res 1160 (1998)					
Somalia		Res 1844 (2008)	Res 733 (1992) Res 1844 (2008)	Res 1844 (2008)				
Libya		Res 883 (1993)	Res 748 (1992)	Res 748 (1992)	Res 748 (1992) Res 883 (1993)	Res 883 (1993)		
Liberia		Res 1532 (2004)	Res 788 (1992) Res 1343 (2001) Res 1521 (2003)	Res 1343 (2001) Res 1521 (2003)			Res 1343 (2001) Res 1521 (2003)	Res 1478 (2003) Res 1521 (2003)
Haiti	Res 917 (1994)	Res 841 (1993) Res 917 (1994)	Res 841 (1993)					
UNITA (Angola)		Res 1173 (1998)	Res 864 (1993)	Res 1127 (1997)	Res 1127 (1997)	Res 864 (1993)	Res 1173 (1998)	
Rwanda			Res 918 (1994) Res 997 (1995)					
Sudan		Res 1591 (2005)	Res 1556 (2004)	Res 1054 (1996) Res 1591 (2005)	Res 1070 (1996) although the ban never went into effect			
Sierra Leone		Res 1373 (2001)	Res 1137 (1997) Res 1171 (1998)	Res 1132 (1997) Res 1171 (1998) Res 1373 (2001)		Res 1132 (1997)		

Afghanistan, the Taliban and Al Qaida		Res 1267 (1999) Res 1333 (2000) Res 1390 (2002) Res 1452 (2002) Res 1526 (2004)	Res 1333 (2000) Res 1390 (2002) Res 1526 (2004)	Res 1333 (2000) Res 1390 (2002) Res 1526 (2004)	Res 1267 (1999) Res 1333 (2000)			
Eritrea/Ethiopia		Res 1907 (2009)	Res 1268 (2000) Res 1907 (2009)	Res 1907 (2009)				
DRC			Res 1493 (2003) Res 1807 (2008) Res 1896 (2009)	Res 1807 (2008) Res 1896 (2009)	Res 1807 (2008) Res 1896 (2009)			
Cote d'Ivoire		Res 1572 (2004)	Res 1572 (2004)	Res 1572 (2004)				
Hariri		Res 1636 (2005)		Res 1636 (2005)				
Iran		Res 1737 (2006)	Res 1747 (2007)	Res 1737 (2006)				
DPRK		Res 1718 (2006)	Res 1718 (2006)	Res 1718 (2006)				

*This table summarizes UNSC Resolutions imposing sanctions only (amendments that do not impose new measures are not included) and is current to April 2010.

Sources: The Watson Institute for International Studies, 'Background Paper on Targeted Sanctions,' (Workshop on UN Sanctions 16 – 17 July 2004)

http://www.watsoninstitute.org/pub/Background_Paper_Targeted_Sanctions.pdf accessed 16 March 2010 as well as the various sites of the UN Sanctions Committees available at <http://www.un.org/sc/committees/index.shtml> and UNSC Resolutions available at <http://www.un.org/Docs/sc/index.html> (all accessed on 6 April 2010)