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# United Nations Sanctions and the Rule of Law

JEREMY MATAM FARRALL



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## **United Nations Sanctions and the Rule of Law**

The United Nations Security Council has increasingly resorted to sanctions as part of its efforts to prevent and resolve conflict. *United Nations Sanctions and the Rule of Law* traces the evolution of the Security Council's sanctions powers and charts the contours of the UN sanctions system. It also evaluates the extent to which the Security Council's increasing commitment to strengthening the rule of law extends to its sanctions practice. It identifies shortcomings in respect of key rule of law principles and advances pragmatic policy-reform proposals designed to ensure that UN sanctions promote, strengthen and reinforce the rule of law. In its appendices, *United Nations Sanctions and the Rule of Law* contains summaries of all twenty-five UN sanctions regimes established to date by the Security Council. It forms an invaluable source of reference for diplomats, policy-makers, scholars and advocates.

JEREMY MATAM FARRALL is a Research Fellow at the Centre for International Governance and Justice, in the Regulatory Institutions Network at the Australian National University. He worked for the United Nations from 2001 to 2006, serving as a political officer in the UN Security Council in New York, on the UN Secretary-General's Mission of Good Offices in Cyprus and with the UN Mission in Liberia. He received his Ph.D. in International Law from the University of Tasmania Faculty of Law, where he has also worked as a Postdoctoral Research Fellow.

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# United Nations Sanctions and the Rule of Law

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*by*

Jeremy Matam Farrall



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# Preface

This book began life as a doctoral thesis. I originally expected the thesis to focus less on the UN Security Council's sanctions practice and more on theoretical questions arising from the Council's application of sanctions. However, early in my research I discovered that most books on UN sanctions analysed sanctions from a broad policy perspective and did not pay too much attention to the finer print of the provisions of Security Council resolutions that establish and modify each UN sanctions regime. Although there were valuable studies of this type concerning individual sanctions regimes, there was no central source tracing the evolution of the Security Council's many sanctions regimes. I thus began to prepare the summaries of UN sanctions regimes that feature in Appendix 2. Once I had completed these summaries, I moved on to the challenging assignment of describing and analysing the contours of the UN sanctions system.

Just as I did not originally set out to describe the UN sanctions system, neither did I intend to explore the relationship between those sanctions and the rule of law. I had planned to analyse the legitimacy of sanctions, which I still consider to be an extremely important theme. But on 24 September 2003 I witnessed a Security Council debate on justice and the rule of law, culminating in the adoption of a Security Council presidential statement affirming the vital importance of the rule of law in the Council's work. I immediately began to wonder whether the Council's commitment to the rule of law might be said to extend to its own sanctions system. How would the Council's sanctions practice measure up when viewed through a rule of law lens? What lessons might be learned from such an analysis and how might they be used to strengthen the Council's future sanctions policy and practice?

This book therefore has two basic aims: to describe the evolution of UN sanctions and to examine the relationship between sanctions and the rule of law. The book's practical goal is to advance policy proposals for improving the rule of law performance of UN sanctions. But my major hope is modest: I hope that readers find the following pages interesting and helpful, whether they are seasoned sanctions policy-makers or students engaging with sanctions for the very first time.

I am indebted to many people, whose support, guidance and inspiration have helped to shape this book. I owe a particular debt to the University of Tasmania Faculty of Law and my PhD supervisors: Professor Stuart Kaye, for his exemplary mentorship; Professors Donald Chalmers and Margaret Otlowski, for their kind and generous support; and Professor Ryszard Piotrowicz, for his guidance with early research. I would also like to thank my PhD examiners, Professors Ivan Shearer and Gerry Simpson, for their helpful suggestions on improving the manuscript.

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*Australian National University, Canberra, January 2007*

# Abbreviations

<b>AJIL</b>	American Journal of International Law
<b>AMIS</b>	African Union Observer Mission in Sudan
<b>AU</b>	African Union
<b>AYBIL</b>	Australian Yearbook of International Law
<b>BYIL</b>	British Yearbook of International Law
<b>CPPCG</b>	Convention on the Prevention and Punishment of the Crime of Genocide
<b>CSCE</b>	Conference on Security and Cooperation in Europe
<b>CTC</b>	UN Counterterrorism Committee
<b>CY</b>	Conference on Yugoslavia
<b>DJILP</b>	Denver Journal of International Law and Policy
<b>DPRK</b>	Democratic People's Republic of Korea
<b>DRC</b>	Democratic Republic of the Congo
<b>EC</b>	European Community
<b>ECOMOG</b>	Monitoring Group of the Economic Community of West African States
<b>ECOWAS</b>	Economic Community of West African States
<b>EJIL</b>	European Journal of International Law
<b>EU</b>	European Union
<b>FRY</b>	Federal Republic of Yugoslavia
<b>FRYSM</b>	Federal Republic of Yugoslavia (Serbia and Montenegro)
<b>GA</b>	General Assembly
<b>GEMAP</b>	Governance and Economic Management Assistance Program
<b>GIA</b>	Governor's Island Agreement
<b>GRL</b>	Goods Review List
<b>GYIL</b>	German Yearbook of International Law



<b>HILJ</b>	Harvard International Law Journal
<b>IAEA</b>	International Atomic Energy Agency
<b>IATA</b>	International Air Transport Association
<b>ICAO</b>	International Civil Aviation Organization
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICFY</b>	International Conference on the Former Yugoslavia
<b>ICIR</b>	International Commission of Inquiry on Rwanda
<b>ICISS</b>	International Commission on Intervention and State Responsibility
<b>ICJ</b>	International Court of Justice
<b>ICLQ</b>	International and Comparative Law Quarterly
<b>ICRC</b>	International Committee of the Red Cross
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for Yugoslavia
<b>IFOR</b>	Multinational Implementation Force
<b>IGAD</b>	Intergovernmental Authority on Development
<b>ILJ</b>	International Law Journal
<b>ILM</b>	International Legal Materials
<b>ILR</b>	International Law Review
<b>JIL</b>	Journal of International Law
<b>KFOR</b>	International Security Forces in Kosovo
<b>LAS</b>	League of Arab States
<b>LR</b>	Law Review
<b>LURD</b>	Liberians United for Reconciliation and Democracy
<b>MODEL</b>	Movement for Democracy in Liberia
<b>MONUC</b>	United Nations Organization Mission in the DRC
<b>NATO</b>	North Atlantic Treaty Organization
<b>NJIL</b>	Nordic Journal of International Law
<b>NPT</b>	Treaty on Non Proliferation of Nuclear Weapons
<b>NTGL</b>	National Transitional Government of Liberia
<b>NYUJILP</b>	New York University Journal of International Law and Politics
<b>OAS</b>	Organization of American States
<b>OAU</b>	Organization of African Unity
<b>OFFP</b>	Oil-for-Food Programme
<b>OHCHR</b>	Office of the High Commissioner for Human Rights

<b>OIP</b>	Office of the Iraq Programme
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PCASED</b>	Economic Community of West African States Programme for Coordination and Assistance for Security and Development
<b>Res.</b>	Resolution
<b>RUF</b>	Revolutionary United Front
<b>SADC</b>	Southern African Develop Community
<b>SAM</b>	Sanctions Assistance Mission
<b>SAMCOMM</b>	Sanctions Assistance Missions Communications Centre
<b>SC</b>	Security Council
<b>SCOR</b>	UN Security Council Official Records
<b>SICI</b>	Sudan International Commission of Inquiry
<b>SLA</b>	Sudan Liberation Army
<b>TLCP</b>	Transnational Law & Contemporary Problems
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNAMSIL</b>	United Nations Assistance Mission in Sierra Leone
<b>UNASOG</b>	United Nations Aouzou Strip Observer Group
<b>UNCC</b>	United Nations Compensation Commission
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>UNCIO</b>	United Nations Conference on International Organization
<b>UNGA</b>	United Nations General Assembly
<b>UNGAR</b>	United Nations General Assembly Resolution
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNIIC</b>	United Nations International Independent Investigation Commission
<b>UNITA</b>	National Union for the Total Independence of Angola
<b>UNITAF</b>	United Task Force
<b>UNMAS</b>	United Nations Mine Action Service
<b>UNMICI</b>	United Nations Mission in Côte d'Ivoire
<b>UNMIH</b>	United Nations Mission in Haiti
<b>UNMIK</b>	United Nations Mission in Kosovo
<b>UNMIL</b>	United Nations Mission in Liberia
<b>UNMIS</b>	United Nations Mission in Sudan
<b>UNMOVIC</b>	United Nations Monitoring Verification and Inspection Commission
<b>UNOCI</b>	United Nations Operation in Côte d'Ivoire

<b>UNOL</b>	United Nations Office in Liberia
<b>UNOMIL</b>	United Nations Observer Mission in Liberia
<b>UNOMSIL</b>	United Nations Observer Mission in Sierra Leone
<b>UNOSOM</b>	United Nations Operation in Somalia
<b>UNPREDEP</b>	United Nations Preventive Deployment Force
<b>UNPROFOR</b>	United Nations Protection Force
<b>UNSC</b>	United Nations Security Council
<b>UNSCOM</b>	United Nations Special Commission
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNSG</b>	United Nations Secretary-General
<b>US</b>	United States
<b>VJIL</b>	Virginia Journal of International Law
<b>WCO</b>	World Customs Organization
<b>WEU</b>	Western European Union
<b>WMD</b>	Weapons of Mass Destruction



## PART I • SETTING THE SCENE

*[W]e are ushering in an epoch of law among peoples and of justice among nations. The UN Security Council's task is a heavy one, but it will be sustained by our hope, which is shared by the people, and by our remembrance of the sufferings of all those who fought and died that the rule of law might prevail.*

French Ambassador Vincent Auriol, at the inaugural meeting of the  
UN Security Council  
17 January 1946

*We meet at the hinge of history. We can use the end of the Cold War to get beyond the whole pattern of settling conflicts by force, or we can slip back into ever more savage regional conflicts in which might alone makes right. We can take the high road towards peace and the rule of law, or we can take Saddam Hussein's path of brutal aggression and the law of the jungle.*

US Secretary of State James Baker, when the Council authorised the  
use of force against Iraq  
29 November 1990

*This Council has a very heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security.*

UN Secretary-General Kofi Annan, at the Council's meeting on justice  
and the rule of law  
24 September 2003



# 1 Introducing UN sanctions

Looking back from an early twenty-first century vantage-point, it is easy to forget that there was once a time when the United Nations Security Council could not easily employ its sanctions tool. From 1946 until the middle of 1990, Cold War politics prevented the Council from imposing the coercive sanctions provided for in Article 41 of the United Nations Charter more than twice. In 1966 the Council imposed sanctions against Southern Rhodesia and in 1977 it applied them against South Africa.<sup>1</sup> By contrast, the post-Cold War period has witnessed a dramatic increase in UN sanctions. Since August 1990 the Security Council has initiated no fewer than twenty-three additional UN sanctions regimes.<sup>2</sup> UN sanctions now form a prominent feature of the international relations landscape.

While the end of Cold War tensions created the preconditions for a sanctions renaissance, two other factors have contributed to the rise of sanctions. First, sanctions can often represent the least unpalatable of the coercive alternatives available to the UN Security Council when faced with the task of taking action to maintain or restore international peace and security. From a political perspective, it can be extremely difficult to garner the support necessary to authorise collective military action under Article 42 of the UN Charter, as the governments which would be expected to shoulder the burden of collective forceful action are reluctant to assume responsibility for the serious financial, political and humanitarian consequences that are likely to flow from the use of military sanctions. The imposition of non-military sanctions, by contrast, is generally thought to entail fewer costs than the use of force. By authorising sanctions, the Security Council can be seen to be taking

<sup>1</sup> See Appendix 3, Table B.    <sup>2</sup> *Ibid.*

strong symbolic action against threats to international peace and security, without having to assume the responsibility for, or incur the costs of, using force. Second, there is the perception that the potential of sanctions to achieve their policy objectives has increased with advances in international technology, communications and trade. Globalisation has fostered a climate of growing interdependence, in which states are increasingly reliant upon trade and communication links with the international community. In such an interdependent economic environment, a stringent UN sanctions regime has the power to devastate a target economy and to rein in target political elites.

The Security Council has employed a broad variety of sanctions, ranging from comprehensive measures which prevent the flow to and from a target of virtually all products and commodities,<sup>3</sup> to simple measures that target specific items, such as arms,<sup>4</sup> timber<sup>5</sup> or diamonds,<sup>6</sup> or particular activities, such as diplomatic relations<sup>7</sup> or travel.<sup>8</sup> UN sanctions have been applied around the globe, from Southern Rhodesia to Yugoslavia and from Haiti to North Korea.<sup>9</sup> They have targeted nations, rebel groups and terrorist organisations.<sup>10</sup> The Council has imposed sanctions for a range of objectives, including compelling an occupying state to withdraw its troops,<sup>11</sup> preventing a state from developing or acquiring weapons of mass destruction,<sup>12</sup>

<sup>3</sup> See Appendix 2, summaries of the 232 Southern Rhodesia, 757 Federal Republic of Yugoslavia (Serbia-Montenegro) (FRYSM), 820 Bosnian Serb and 841 Haiti sanctions regimes.

<sup>4</sup> See Appendix 2, summaries of the 418 South Africa, 713 Yugoslavia, 733 Somalia, 788 Liberia, 918 Rwanda, 1160 Federal Republic of Yugoslavia (FRY) and 1298 Eritrea and Ethiopia sanctions regimes.

<sup>5</sup> See Appendix 2, summaries of the 1343 and 1521 Liberia sanctions regimes.

<sup>6</sup> See Appendix 2, summaries of the 864 UNITA, 1132 Sierra Leone, 1343 and 1521 Liberia and 1572 Côte d'Ivoire sanctions regimes.

<sup>7</sup> See Appendix 2, summaries of the 748 Libya and 1054 Sudan sanctions regimes.

<sup>8</sup> See Appendix 2, summaries of the 232 Southern Rhodesia, 661 Iraq, 748 Libya, 841 Haiti, 864 UNITA, 1054 Sudan, 1132 Sierra Leone, 1267 Taliban and Al Qaida, 1343 and 1521 Liberia, 1493 DRC, 1556 Sudan, 1572 Côte d'Ivoire, 1636 Hariri, 1718 North Korea and 1737 Iran sanctions regimes.

<sup>9</sup> See Appendix 3, Table B.

<sup>10</sup> The majority of sanctions regimes have targeted states: see Table B. Rebel groups have been targeted in the 820 Bosnian Serb, 864 UNITA, 1132 Sierra Leone and 1493 DRC sanctions regimes. The 1267 Taliban and Al Qaida sanctions regime targets terrorist organisations. See the summaries of these regimes in Appendix 2.

<sup>11</sup> This was the initial objective of the 661 sanctions regime against Iraq: see Appendix 2.

<sup>12</sup> Non-proliferation was an objective of the 418 South Africa, 1718 North Korea and 1737 Iran sanctions regimes, as well as the primary reason for maintaining the 661 Iraq sanctions regime after the conclusion of 1991 Gulf War hostilities. See Appendix 2.



countering international terrorism,<sup>13</sup> stemming human rights violations<sup>14</sup> and promoting the implementation of a peace process.<sup>15</sup>

The collection of sanctions regimes stacking up in the Security Council's trophy-cabinet is impressive. Yet UN sanctions attract many critics. Some denounce sanctions as ineffective.<sup>16</sup> Others warn that sanctions can be counterproductive, galvanising opposition to UN intervention and strengthening the target government's position of power.<sup>17</sup> At the other end of the spectrum, sanctions are criticised for being too effective due to the devastating impact they can have on innocent civilian populations. Sanctions have been described as 'the UN's weapon of mass destruction',<sup>18</sup> as 'a genocidal tool'<sup>19</sup> and as 'modern siege warfare'.<sup>20</sup>

This book adds another voice to the critical chorus. But the criticism ventured here is designed to be constructive. No matter how ineffective, counterproductive or indiscriminate they might appear, the Security Council is not about to remove sanctions from its peace and security toolkit. As Secretary-General Kofi Annan observed in his 2005 report *In Larger Freedom*, sanctions constitute 'a necessary middle ground between war and words'.<sup>21</sup> Enthusiasm for sanctions may wax and wane, but the Council will continue to resort to its sanctions tool when diplomacy is failing and other policy options are unpalatable or

<sup>13</sup> Preventing and responding to international terrorism was an objective of the 748 Libya, 1054 Sudan, 1267 Taliban and Al Qaida and 1636 Hariri sanctions regimes. See Appendix 2.

<sup>14</sup> Stemming human rights violations has been an objective of the 232 Southern Rhodesia, 418 South Africa, 841 Haiti, 1160 Federal Republic of Yugoslavia (FRY) and 1556 Sudan sanctions regimes. See Appendix 2.

<sup>15</sup> Promoting the implementation of a peace process was an objective of the 788 and 1521 Liberia, 864 UNITA, 918 Rwanda, 1132 Sierra Leone, 1493 DRC and 1572 Côte d'Ivoire sanctions regimes. See Appendix 2.

<sup>16</sup> See, e.g., Robert A. Pape, 'Why Economic Sanctions Do Not Work' (1997) 22 *International Security* 90–136.

<sup>17</sup> Johan Galtung, 'On the Effects of Economic Sanctions: With Examples from the Case of Rhodesia', in Miroslav Nincic and Peter Wallensteen (eds.), *Dilemmas of Economic Coercion* (New York: Praeger, 1983), pp. 17–60, 46.

<sup>18</sup> Denis Halliday, 'Iraq and the UN's Weapon of Mass Destruction' (1999) 98 *Current History* 65–68; John Mueller and Karl Mueller, 'Sanctions of Mass Destruction' (1999) 78(3) *Foreign Affairs*, 43–53.

<sup>19</sup> Geoffrey Simons, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* (London: Pluto Press, 1999); George E. Bisharat, 'Sanctions as Genocide' (2001) 11 *TLCF* 379–425.

<sup>20</sup> Joy Gordon, 'Sanctions as Siege Warfare' *The Nation*, 22 March 1999.

<sup>21</sup> A/59/2005 (21 March 2005): *In Larger Freedom: Towards Development, Security and Human Rights for All*.

impractical. The key is thus to reform the Council's sanctions practice so that sanctions are less ineffective, less counterproductive and less indiscriminate.

## 1. Defining UN sanctions

The term 'sanctions' can have many meanings. In the national sphere, sanctions generally represent a range of action that can be taken against a person who has transgressed a legal norm.<sup>22</sup> Thus, a person who has committed the crime of manslaughter might receive the sanction of a term in prison. The nature, scope and length of potential national sanctions are generally determined by legislatures. The sanctions are then applied to concrete cases by judiciaries or juries, and they are then enforced by police forces and penal systems. National sanctions may serve a number of purposes, including defining the limits of permissible behaviour, punishing wrongdoers and deterring potential future wrongdoers.<sup>23</sup> But whatever specific purpose a particular sanction may serve, the essence of national sanctions lies in their nexus with legal norms. This nexus separates sanctions from simple acts of coercion. In the national context, sanctions are imposed in order to enforce the law and they therefore aim to reinforce the rule of law.

In the international sphere, however, the term 'sanctions' is commonly used to describe actions that often bear only a slight resemblance to their domestic relative. Media commentators, diplomats and scholars employ the term to refer to a wide array of actions, taken for a variety of purposes, by a range of actors against a variety of targets.<sup>24</sup> The spectrum of action commonly described as 'sanctions' includes military and non-military action. The term 'sanctions' can be used to describe action which aims to place physical restrictions upon the ability of a target to engage in the use of force itself, or to depict action which seeks to restrict the target's freedom in other respects, such as in relations of an economic, financial, diplomatic or representative, sporting or cultural nature.

<sup>22</sup> Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (London: Steven & Sons, 1951), p. 706.

<sup>23</sup> Margaret P. Doxey, *International Sanctions in Contemporary Perspective*, 2nd edn (New York: St Martin's Press, 1996), p. 7.

<sup>24</sup> Galtung and Doxey both provide useful summaries of the different types of international 'sanctions': Galtung, 'On the Effects of Economic Sanctions', 21; Doxey, *International Sanctions*, p. 15.

The fundamental difference between the meaning of sanctions in the national context and the popular understanding of sanctions in the international context is that the action commonly referred to as sanctions in the international sphere does not necessarily serve the purpose of enforcing a legal norm.<sup>25</sup> The term ‘sanctions’ is widely used to refer to action which seeks either to coerce the target into behaving in a particular manner, or to punish it for behaviour considered unacceptable by the sender. The motive for imposing sanctions may be to respond to a breach of a norm or to prevent such a breach, but it may also be to pursue a foreign policy agenda or to gain some advantage over the target.<sup>26</sup> Some commentators have even employed the term ‘positive sanctions’ to refer to acts of a non-coercive nature which seek to induce a particular type of behaviour.<sup>27</sup>

The range of actors who impose sanctions on an international basis includes individual states, groups of states, the international community as a whole, and non-state actors. When one state initiates coercive action, its actions are commonly referred to as ‘unilateral sanctions’. A prominent example of unilateral sanctions is the regime which has been maintained against Cuba by the United States since the Cuban missile crisis.<sup>28</sup> When action is initiated by a group of states, the action becomes ‘multilateral’ or ‘regional’ sanctions. Examples of multilateral/regional sanctions regimes include those imposed against Haiti by the Organization of American States<sup>29</sup> and against the former Yugoslavia by

<sup>25</sup> This can also be the case with UN sanctions, as it is not a requirement that they be applied in response to a violation of Charter obligations. Thus they can be interpreted as ‘political measures’ which the Security Council has the ‘discretion’ to apply in order to maintain or restore international peace and security. See Kelsen, *The Law of the United Nations*, p. 733.

<sup>26</sup> The US sanctions regime against Cuba is one example of a ‘sanctions’ regime imposed in pursuit of a foreign policy agenda. Since it first adopted a resolution on the subject in 1992, the UN’s General Assembly has condemned on an annual basis the continued application of US ‘sanctions’ against Cuba. For the initial resolution, see A/RES/47/19 (24 November 1992). For the most recent resolution, see A/RES/58/7 (18 November 2003). For the annual resolutions in between, see A/RES/58/7 (18 November 2003), preambular para. 6.

<sup>27</sup> Peter A. G. Van Bergeijk, *Economic Diplomacy, Trade and Commercial Policy: Positive and Negative Sanctions in a New World Order* (Brookfield: Edward Elgar Publishing, 1994).

<sup>28</sup> For a comprehensive list of instances of unilateral sanctions, see Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 2nd edn (Washington, DC: Institute for International Economics, 1990).

<sup>29</sup> For a detailed account of the Haiti sanctions, see Elisabeth D. Gibbons, *Sanctions in Haiti: Human Rights and Democracy Under Assault* (Westport: Praeger, 1999), especially ch. 3.

the European Union.<sup>30</sup> When action is taken by a majority of states, it is referred to as ‘collective’ or ‘universal’ sanctions. These terms have generally been reserved to describe sanctions applied by the League of Nations or the United Nations.<sup>31</sup> Finally, even non-forceful coercive activities initiated by non-state actors, such as citizen-initiated boycotts, are sometimes described as sanctions.<sup>32</sup> The range of actors who could potentially be the target of sanctions generally mirrors the actors who can impose sanctions. In practice, forms of sanctions have been imposed against one state, a group of states, and extra-state entities.

In this study, the focus is upon the ‘collective’ or ‘universal’ sanctions applied by the United Nations. The term ‘UN sanctions’ denotes binding, mandatory measures short of the use of force that are applied against particular state or non-state actors by the UN Security Council, as envisaged by Chapter VII and Article 41 of the UN Charter.<sup>33</sup> As provided in Article 41, ‘UN sanctions’ thus fall within the following description:

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 it 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.<sup>34</sup>

<sup>30</sup> On the EU sanctions regime against the Former Yugoslavia, see Christine Chinkin, ‘The Legality of the Imposition of Sanctions by the European Union in International Law’, in Malcolm D. Evans (ed.), *Aspects of Statehood and Institutionalism in Contemporary Europe* (Brookfield: Dartmouth, 1997), pp. 183–213; Jean-Pierre Puissechot, ‘The Court of Justice and International Action by the European Community: The Example of the Embargo Against the Former Yugoslavia’ (1997) 20 *Fordham ILJ* 1557–1576.

<sup>31</sup> M. S. Daoudi and M. S. Dajani, *Economic Sanctions, Ideals and Experience* (London: Routledge, 1983), pp. 56–90 (ch. 2).

<sup>32</sup> For further discussion, see Hersch Lauterpacht, ‘Boycott in International Relations’ (1933) 14 *BYIL* 125–140; Maged Taher Othman, *Economic Sanctions in International Law: A Legal Study of the Practice of the USA* (Ann Arbor: University Microfilms International, 1982), pp. 19–25.

<sup>33</sup> Like the general term ‘sanctions’, the term ‘UN sanctions’ can also be used to refer to a variety of measures. Without further qualification, UN sanctions may denote: military or non-military action; action that is authorised by the Security Council or the General Assembly; and action that is requested and thus ‘voluntary’ or action that is binding and thus ‘mandatory’.

<sup>34</sup> Article 41, UN Charter. Article 41 was designed to be read in concert with Article 39, such that UN sanctions should be applied to maintain or restore the peace once the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression.

Since the birth of the United Nations, the Security Council has acted upon its Article 41 sanctions powers to create twenty-five UN sanctions regimes.<sup>35</sup> In addition to its actions establishing and modifying those twenty-five sanctions regimes, the Security Council has at times requested states to impose measures that might be described as ‘voluntary sanctions’. In the cases of Southern Rhodesia and South Africa, prior to the eventual imposition of mandatory sanctions the Council requested states to take certain action against Southern Rhodesia and South Africa, without requiring the application of such measures under Chapter VII.<sup>36</sup> Similarly, in the case of Cambodia, the Council requested states bordering Cambodia to prevent the import of timber products from Khmer-Rouge controlled areas.<sup>37</sup> These instances are not covered as part of the current analysis, as the measures requested were neither imposed under Chapter VII nor framed in mandatory language.

The Security Council has also taken some other initiatives that might be interpreted to fall within the scope of Article 41, due to the fact that they involved action short of the use of military force taken under Chapter VII and after the Council had determined the existence of a threat to the peace. These initiatives include the creation of two international criminal tribunals,<sup>38</sup> which have in fact each determined that their establishment falls within the scope of Article 41.<sup>39</sup> The Council has also applied wide-ranging measures short of the use of force in an

<sup>35</sup> See Appendix 3, Table B.

<sup>36</sup> For the Southern Rhodesian instance, see: SC Res. 217 (20 November 1965), para. 8. For the South African instance, see SC Res. 181 (7 August 1963), para. 3. The status of the measures called for in the South African instance as ‘voluntary’ is clear with the benefit of hindsight: see SC Res. 418 (4 November 1977), preambular para. 8.

<sup>37</sup> See SC Res. 792 (30 November 1992), para. 12. For further details of that case, see David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder: Lynne Rienner, 2000), pp. 135–145. Unfortunately, however, Cortright and Lopez do not distinguish between the non-mandatory character of the measures requested in the Cambodian instance and the mandatory nature of the other examples of UN sanctions to which they refer, which are all imposed under Chapter VII of the UN Charter.

<sup>38</sup> In May 1993 the Council established the International Criminal Tribunal for the former Yugoslavia (the ICTY): SC Res. 827 (25 May 1993), paras. 1–2, annex. In November 1995 the Council established the International Criminal Tribunal for Rwanda (the ICTR): SC Res. 955 (8 November 1995), para. 1.

<sup>39</sup> *Prosecutor v. Dusko Tadić*, Case IT-94-1-AR72, Appeals Chamber, (2 October 1995), para. 36; *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction (18 June 1997), para. 27.

effort to prevent and suppress terrorism<sup>40</sup> and to prevent non-state actors from acquiring weapons of mass destruction and their means of delivery.<sup>41</sup> These instances are not treated as examples of UN sanctions regimes for the purposes of this study, however, as they do not possess the key characteristics of UN sanctions regimes, which are applied traditionally against states or particular, readily identifiable groups of non-state actors.

## 2. Central contention and key objectives

The central contention of this book is that sanctions have been applied in such a way that they have undermined the rule of law, thus weakening the authority and credibility of the UN Security Council and its sanctions tool. As a consequence, states are less likely to have full confidence in the UN sanctions system and are thus less likely to comply fully with their obligation under Article 25 of the UN Charter to implement sanctions. The end result is that sanctions are less effective than they could be. Until the UN Security Council's sanctions practice can be reformed so that there is widespread confidence in its integrity, sanctions are unlikely to serve as an effective tool for resolving international conflict. Without such reform, the UN sanctions system will remain a destabilising influence upon, rather than a symbol of, the rule of law in international society.

The challenge is therefore to reform the UN Security Council's sanctions practice so that the Council and the UN sanctions system command such respect and inspire such confidence that states both desire and feel compelled to comply with sanctions regimes and thus implement sanctions effectively. This book proposes a pragmatic model of the rule of law that is designed to be used in the context of Security Council decision-making on sanctions. If followed, this model would help to reassure the broader community of states that the Security Council is genuinely committed to the rule of law. By ensuring that

<sup>40</sup> In the wake of the 11 September 2001 terrorist attacks in the United States, the Council established a collection of mandatory counterterrorism measures to be taken against terrorists and terrorism and created a Counterterrorism Committee to monitor the implementation of those measures. See SC Res. 1373 (28 September 2001).

<sup>41</sup> In April 2004 the Council adopted resolution 1540 (2004), requiring states to take a range of measures designed to prevent non-state actors from acquiring weapons of mass destruction and their means of delivery. The Council also established the 1540 Committee to administer the measures. See SC Res. 1540 (28 April 2004).

its sanctions practice reinforces, rather than undermines, the rule of law, the Council could induce greater compliance with its sanctions regimes.

This book has two major objectives. The first is to trace the evolution of the UN sanctions system. For the uninitiated, it is no easy task to identify the parameters of a single UN sanctions regime, let alone to distil themes of sanctions policy that emerge across dozens of instances of sanctioning. The official story of sanctions is scattered across thousands of identical-looking UN documents that are differentiated simply by their UN serial number. Finding even one short chapter of that story requires painstaking forensic examination of Security Council resolutions, correspondence between the Council and UN member states, and technical reports prepared by a variety of UN bodies charged with sanctions administration and monitoring. This book aims to save other readers from the need to engage in such forensic forays. If it serves as a useful guide to the UN sanctions system, then it will have achieved its first objective.

The second major objective is to explore the relationship between sanctions and the rule of law. This objective has three subsidiary goals. The first is to construct a pragmatic model of the rule of law that can be used to analyse the UN Security Council's sanctions practice. The second is to demonstrate how UN sanctions have undermined the rule of law. The third is to provide pragmatic policy proposals designed to ensure that UN sanctions can reinforce the rule of law in future.

### **3. The path ahead**

Analysis in this book is divided into four Parts. Part I sets the stage for subsequent analysis. This chapter has introduced UN sanctions and explained the book's central contention and key objectives. Chapter 2 examines the relationship between the UN Security Council and the rule of law. It explains the Security Council's reliance upon law and describes the increasing influence of the concept of the rule of law upon the Council's activities. It explores the meaning of the rule of law, charting the many ways in which the concept can be interpreted and criticised. The chapter concludes by constructing a pragmatic model, according to which the primary aim of the rule of law is to prevent the misuse or abuse of power. It proposes five basic principles of the rule of law that seek to prevent the misuse or abuse of power: transparency, consistency, equality, due process and proportionality.

To the extent that the Security Council and its sanctions practice respect and promote those five basic principles, they reinforce the rule of law.

Parts II and III then trace the evolution of UN sanctions. Part II explores the origins of the UN Security Council's sanctions powers. Chapter 3 delves into the pre-history of UN sanctions, surveying historical precedents in international relations for the employment of non-military coercive strategies to compel the resolution of international disputes. These precedents range from early forms of sanctions employed in the days of ancient Greece through to the ill-fated League of Nations sanctions experience against Italy. Chapter 4 describes the UN sanctions framework that was created by the UN founders and enshrined in the United Nations Charter. It thus outlines the legal basis for the Security Council's sanctions powers.

Part III describes how UN sanctions have operated in practice, charting the contours of the evolving UN sanctions system. Chapter 5 explains how the Security Council has established the legal basis for the application of sanctions by identifying threats to the peace and invoking Chapter VII of the Charter. Chapter 6 illustrates how the Council has delineated the scope of its sanctions regimes. It also outlines the different types of targets against which sanctions have been applied. Chapter 7 describes the Council's efforts to fine-tune sanctions by setting sanctions objectives, defining the temporal application of sanctions and seeking to address the unintended consequences of sanctions upon civilian populations and third states. Chapter 8 surveys the manner in which the Council has bestowed responsibility for sanctions administration and monitoring upon a range of subsidiary bodies.

Part IV then applies the pragmatic model of the rule of law developed in Part I to the UN sanctions system described in Parts II and III. Chapter 9 scrutinises the relationship between the UN sanctions system and the rule of law, identifying shortcomings in respect of each of the key component principles of the pragmatic model of the rule of law. Chapter 10 advances policy reform proposals designed to address those shortcomings and enhance the capacity of the UN sanctions system to promote and reinforce the rule of law. Chapter 11 contains concluding remarks.

The book also contains three appendices, which are included as an aid for research and analysis of UN sanctions. Appendix 1 recapitulates the key sanctions policy proposals designed to strengthen the UN sanctions system's rule of law performance. Appendix 2 contains summaries of all



twenty-five UN sanctions regimes. Each summary outlines the constitutional basis for sanctions, as well as their objective(s) and scope, and describes the UN bodies created and/or tasked with responsibilities for sanctions administration and monitoring. Appendix 3 presents tables which gather together Security Council resolution provisions and other UN documents that aid analysis of the Council's practice with respect to the rule of law and the UN sanctions system.

## 2 Towards a pragmatic rule of law model for UN sanctions

*We are here to strengthen and adapt this great institution, forged 55 years ago in the crucible of war, so that it can do what people expect of it in the new era – an era in which the rule of law must prevail.*

UN Secretary-General Kofi Annan<sup>1</sup>

*[W]hile prescribing norms and standards for national or international conduct, the UN Security Council must scrupulously accept those norms for itself.*

Prime Minister Rao, of India<sup>2</sup>

At the end of the Cold War, the UN Security Council awoke from its slumber and began to flex its peace and security muscles. The Council had only applied sanctions twice in the forty-five years from 1946 until 1989, but between 1990 and 2006 it established twenty-three new sanctions regimes.<sup>3</sup> The Council also increased its activities exponentially in the field of peacekeeping, creating three times as many peace operations between 1990 and 2006 as it had during the Cold War.<sup>4</sup> In many respects these two boom areas of Council business go hand in hand, as demonstrated by the concurrent existence of a number of peace operations in states subject to sanctions, including Somalia and Haiti in the early 1990s, Sierra Leone at the turn of the century, and Liberia, Côte d’Ivoire and Sudan in the early years of the twenty-first century. Both sanctions and peacekeeping aim to prevent further exacerbation of situations that threaten international peace and security. Sanctions

<sup>1</sup> Secretary-General Kofi Annan, speech delivered at the opening session of the UN Millennium Summit: PR/GA/9750 (6 September 2000).

<sup>2</sup> Prime Minister Rao, of India, speaking at the Security Council Summit Meeting: S/PV.3046 (31 January 1992), p. 97.

<sup>3</sup> See Appendix 3, Table B. <sup>4</sup> <http://www.un.org/Depts/dpko/list/list.pdf>.

seek to enforce stability from the top down, whereas peacekeeping aims to build stability from the ground up.

But there is one striking difference between the Security Council's peacekeeping and sanctions practice. In its oversight of peacekeeping operations, the Council frequently emphasises the importance of the rule of law, portraying it as one of the key building blocks of a stable society and routinely incorporating the objective of strengthening the rule of law in peace operation mandates. Yet when it comes to sanctions decision-making, the Council's practice tends to undermine the rule of law. Sanctions are often applied and modified in an ad hoc and selective manner. Decisions are generally made behind closed doors, with little or no public record of the decision-making process. Sanctions tend to have disproportionate effects upon innocent civilian populations and third states, and individuals subject to travel bans or assets freezes are regularly denied due process.

This chapter explains the relevance of the rule of law to the Security Council's sanctions practice, exploring the Council's complex relationship with law and charting the increasing importance of the rule of law to the Council's practice. It examines the promise and perils of employing a rule of law-based approach, tracing scholarly debate surrounding the concept. It then constructs a pragmatic model of the rule of law, which can be used both to evaluate and to reform the Security Council's sanctions practice.

## **1. The relevance of the rule of law to the UN Security Council's activities**

At the birth of the United Nations, the rule of law was effectively snubbed. Despite concerted efforts at the San Francisco Conference to ensure that the principles of justice and the rule of law would guide the action of the UN Security Council,<sup>5</sup> the concept of the rule of law is conspicuously absent from the provisions of the United Nations Charter. The UN Charter established the Security Council as a political organ, with primary responsibility for the maintenance of international peace and security.<sup>6</sup> Although threats to international peace and

<sup>5</sup> Herbert Vere Evatt, *The United Nations* (Cambridge, MA: Harvard University Press, 1948) p. 36. See also *Documents of the UNCIO*, vol. 1, pp. 129–130 (statement by the Chinese delegate).

<sup>6</sup> See UN Charter, Chapters III and V.

security may take the form of violations of international law, these two concepts do not necessarily overlap.<sup>7</sup> When acting in accordance with its power to maintain international peace and security, the Council does not necessarily respond to a violation of international law, nor even to a violation of the UN Charter.<sup>8</sup> In fact, some commentators have interpreted the broad discretion granted to the Security Council for the maintenance of international peace and security to mean that the Security Council is ‘a law unto itself’; that it can, does and should act above the law.<sup>9</sup> Why then should the Security Council be expected to take rule of law considerations into account when formulating its sanctions policy?

While the Security Council’s political nature is undeniable,<sup>10</sup> it does not necessarily follow that the Council is or should be uninterested in the rule of law. There are two compelling reasons why the Security Council might be expected to take rule of law considerations into account when formulating sanctions policy. First, the Security Council has a close relationship with and reliance upon law and the rule of law. Second, the Security Council has increasingly proclaimed the importance of strengthening the rule of law.

### 1.1 *The Council’s close relationship with and reliance upon law*

The relationship between the Security Council and law is complex and multifaceted. On the one hand, the Council is a political body which takes decisions in an environment that is highly charged. On the other, by virtue of its power to issue decisions that are legally binding upon UN member states,<sup>11</sup> and authorise mandatory non-military and military coercive action to maintain or restore international peace and security,<sup>12</sup> the Council is a body whose activities have profound legal implications.<sup>13</sup> The Council thus sits prominently at the juncture between politics and law in international affairs.

<sup>7</sup> Kelsen, *The Law of the United Nations*, pp. 724–731.      <sup>8</sup> *Ibid.*, pp. 732–737.

<sup>9</sup> John Foster Dulles, *War or Peace* (New York: Macmillan, 1950), pp. 194–195.

<sup>10</sup> Although the term ‘political’ does not feature in the UN Charter’s provisions pertaining to the Security Council, the Council’s political nature has been widely acknowledged. See, e.g., Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations* (Oxford: Oxford University Press, 1963).

<sup>11</sup> UN Charter, Articles 25, 48. These provisions are discussed further in Chapter 4.

<sup>12</sup> UN Charter, Chapter VII, Articles 39, 41, 42. These provisions are also discussed in Chapter 4.

<sup>13</sup> As discussed in Chapter 4, the Security Council’s power to bind UN member states derives from Articles 25 and 48 of the UN Charter.

The Security Council's ability to create legal obligations that are binding on practically all states has led commentators to describe aspects of the Council's activities as quasi-legislative in character.<sup>14</sup> Although the Council's law-making process may be less sophisticated than the legislative process in many national parliamentary or congressional legislatures, the legal consequences flowing from Council decisions can bestow upon those decisions a quality akin to legislation. Examples include the Council's resolutions requiring states to take global action to counter terrorism, beginning with resolution 1373 (2001), as well as its decisions pressing for action to prevent the supply to non-state actors of weapons of mass destruction, commencing with resolution 1540 (2004).<sup>15</sup> On occasion the Security Council has also declared certain activities to be illegal, thus interpreting and applying international law in a quasi-judicial manner.<sup>16</sup> Examples of the Council's law-interpreting activities include declarations regarding the illegality of claims of statehood in the cases of Southern Rhodesia<sup>17</sup> and the 'Turkish Republic of Northern Cyprus',<sup>18</sup> as well as declarations concerning boundary delimitation, as in the case of the border between Iraq and Kuwait.<sup>19</sup>

The Security Council's close relationship with law is particularly evident in its sanctions practice, where it has donned both quasi-legislative and quasi-judicial hats. Whenever the Council applies sanctions, it enters quasi-legislative mode. The mandatory provisions of its sanctions resolutions establish the contours of each sanctions regime, creating a new web of legal obligations. This amounts to legislation. The Council has also entered quasi-judicial mode in connection with its sanctions regimes. Indeed, prior to establishing its very first sanctions regime, the Council characterised the white minority regime in Southern Rhodesia as 'illegal'<sup>20</sup> and described its purported declaration of independence as having 'no legal validity'.<sup>21</sup> The Council has made

<sup>14</sup> Paul C. Szasz, 'The Security Council Starts Legislating' (2002) 96 *AJIL* 900-905; José E. Alvarez, *International Organizations as Law-makers* (Oxford: Oxford University Press, 2005) pp. 184-198.

<sup>15</sup> SC Res. 1373 (28 September 2001); SC Res. 1540 (28 April 2004).

<sup>16</sup> Oscar Schachter, 'The Quasi-Judicial Role of the UN Security Council and the General Assembly' (1964) 58 *AJIL* 960-965; Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edn (Oxford: Oxford University Press), p. 708.

<sup>17</sup> SC Res. 216 (12 November 1965), paras. 1 and 2; SC Res. 217 (20 November 1965), para. 3.

<sup>18</sup> SC Res. 541 (18 November 1983), paras. 1-2; SC Res. 550 (11 May 1984), para. 2.

<sup>19</sup> SC Res. 687 (3 April 1991), preambular paras. 6 and 7, paras. 2-4.

<sup>20</sup> SC Res. 216 (12 November 1965), paras. 1 and 2; SC Res. 217 (20 November 1965), para. 1.

<sup>21</sup> SC Res. 217 (20 November 1965), para. 3.

other quasi-judicial proclamations in connection with its sanctions regimes against Iraq and Haiti. In 1990 it declared Iraq's attempted annexation of Kuwait to have 'no legal validity'<sup>22</sup> and stated that Iraq was liable under international law 'for any loss, damage or injury arising in regard to Kuwait and third States' as a result of its 'invasion and illegal occupation' of Kuwait.<sup>23</sup> In 1994 the Council described as 'illegal' the de facto government which assumed control of Haiti following the ouster of the democratically elected government of President Jean-Bertrand Aristide.<sup>24</sup>

In order for sanctions to be effective, the Security Council relies heavily upon the good will and good faith of states. UN sanctions are not self-implementing – it falls upon states to take the necessary steps to bring sanctions into effect. Article 25 of the UN Charter places a binding legal obligation upon states to implement the Council's sanctions decisions, but if states choose not to comply with the Council's decisions, sanctions will prove ineffective. The Council is therefore dependent upon the commitment of states to respect and act in conformity with the rule of law. The Council's reliance upon the rule of law raises the stakes in relation to its own rule of law performance. States are more likely to implement sanctions, and thus to act in accordance with the rule of law, if they perceive the Security Council to be acting in accordance with its own responsibilities under the rule of law.

### *1.2 The increasing emphasis upon the rule of law in Security Council practice*

The expectation that the Security Council should respect the rule of law has also been prompted by the Council's own practice. Despite the failure of attempts at San Francisco to enshrine the rule of law in the UN Charter as a guiding principle for Security Council action, the concept has wielded surprising influence over the Council's activities. This influence, which has been particularly pronounced in the post-Cold War era, was foreshadowed at the Council's very first meeting. At the inaugural Council meeting, held on 17 January 1946, a number of Council members emphasised that they expected the Council to play a pivotal role in strengthening the rule of law.<sup>25</sup> France, for example,

<sup>22</sup> SC Res. 662 (9 August 1990), para. 1.      <sup>23</sup> SC Res. 674 (29 October 1990), para. 8.

<sup>24</sup> SC Res. 917 (6 May 1994), para. 3(d).

<sup>25</sup> See, e.g., the statements made by Australia and France: *Security Council Official Records, First Year, First Series, January–February 1946*, 6 (Australia), 9 (France).

observed that: ‘The Security Council’s task is a heavy one, but it will be sustained by our hope, which is shared by the people, and by our remembrance of the sufferings of all those who fought and died that the rule of law might prevail.’<sup>26</sup>

As the Cold War settled in, this utopian vision of a Security Council that would actively promote the rule of law quickly dissipated. The Council’s ability to fulfil its responsibilities under the UN Charter became severely circumscribed by the frequent failure of the Council’s permanent members to achieve consensus. The Security Council began to function less as an effective agent for the maintenance of international peace and security and more as a stage for ideological battles between East and West. During this period, the UN’s rule of law-related activities tended to focus on the creation and expansion of international legal agreements. This approach of equating the promotion of the rule of law with the codification of international law can be seen in General Assembly resolution 2627 (XXV), adopted in October 1970 to mark the UN’s twenty-fifth anniversary. In that resolution, member states declared that: ‘The progressive development and codification of international law . . . should be advanced in order to promote the rule of law among nations.’<sup>27</sup> Examples of successful codification efforts negotiated during the Cold War years include the Convention on the Prevention and Punishment of the Crime of Genocide (1951),<sup>28</sup> the International Covenant on Economic, Social and Cultural Rights (1976),<sup>29</sup> the International Covenant on Civil and Political Rights (1976)<sup>30</sup> and the United Nations Convention on the Law of the Sea (1994).<sup>31</sup>

Following the end of the Cold War, the rule of law began its rise to prominence in the Security Council’s rhetoric and practice. In January 1992, world leaders gathered in New York for the first ever Security Council summit meeting, where they discussed the theme ‘The Responsibility of the Security Council in the Maintenance of

<sup>26</sup> *Ibid.*, 9. <sup>27</sup> GA Res. 2627 (XXV) (24 October 1970), para. 3.

<sup>28</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

<sup>29</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 23 January 1976).

<sup>30</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>31</sup> *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

International Peace and Security'.<sup>32</sup> At that landmark meeting, which was to set the agenda for UN action in the post-Cold War era,<sup>33</sup> leaders from countries with a broad range of political and socio-economic traditions underlined the importance of strengthening the rule of law in international affairs.<sup>34</sup> The President of the United States, George H. W. Bush, urged the Security Council to 'advance the momentous movement towards democracy and freedom . . . and expand the circle of nations committed to human rights and the rule of law'.<sup>35</sup> The Prime Minister of Cape Verde also stressed that the Security Council must act 'as a catalyst for the promotion of the primacy of the rule of law in international relations'.<sup>36</sup>

The importance of the rule of law has subsequently been reinforced at multiple high-level UN meetings. In September 2000, world leaders again gathered for the Millennium Summit, where they adopted the Millennium Declaration.<sup>37</sup> Ranked first among the Declaration's objectives of 'special significance'<sup>38</sup> was strengthening respect for the rule of law in international affairs.<sup>39</sup> Five years later, at the 2005 World Summit, leaders reaffirmed the Millennium Declaration.<sup>40</sup> They acknowledged that 'good governance and the rule of law at the national and international levels' were 'essential for sustained economic growth'<sup>41</sup> and they recognised that the rule of law belonged to 'the universal and indivisible core values and principles of the United Nations'.<sup>42</sup> Leaders further reaffirmed their commitment to 'an international order based on the rule of law and international law'.<sup>43</sup>

<sup>32</sup> For the verbatim record of the meeting, see S/PV.3046 (31 January 1992).

<sup>33</sup> At the end of the meeting, the Council requested the Secretary-General to prepare a report with recommendations for strengthening UN capacity in preventive diplomacy, peacemaking and peacekeeping: see S/23500 (31 January 1992); *Presidential statement dated 31 January 1992*, paras. 15–16. The resulting report proved extremely influential over UN and Security Council policy in the 1990s: S/24111 (17 June 1992); *An Agenda for Peace*.

<sup>34</sup> See, e.g., S/PV.3046 (31 January 1992), pp. 8–9 (UNSG Boutros-Boutros Ghali), p. 18 (President Mitterand, France), p. 23 (President Borja, Ecuador), p. 36 (King Hassan II, Morocco), p. 47 (President Yeltsin, Russian Federation), pp. 50 (a-z) and 50 (President Bush, United States), pp. 59–60 (President Perez, Venezuela), p. 67 (Chancellor Vranitsky, Austria), pp. 78–79 (Prime Minister Veiga, Cape Verde), p. 97 (Prime Minister Rao, India), p. 107 (Prime Minister Miyazawa, Japan).

<sup>35</sup> *Ibid.*, p. 50. <sup>36</sup> *Ibid.*, pp. 78–79.

<sup>37</sup> A/RES/55/2 (18 September 2000): *United Nations Millennium Declaration*.

<sup>38</sup> *Ibid.*, para. 7. <sup>39</sup> *Ibid.*, para. 9.

<sup>40</sup> A/RES/60/1 (24 October 2005): *World Summit Outcome*, para. 3.

<sup>41</sup> *Ibid.*, para. 11. <sup>42</sup> *Ibid.*, para. 119. <sup>43</sup> *Ibid.*, para. 134.



Within the Security Council itself, mounting interest in the rule of law led to the establishment in September 2003 of a thematic agenda item entitled 'Justice and the Rule of Law'.<sup>44</sup> Discussion in the Council's debates on the rule of law has focused on the need to strengthen the rule of law within post-conflict societies. However, a number of speakers have taken the opportunity to emphasise that the rule of law is equally important in international affairs.<sup>45</sup> UNSG Kofi Annan, for example, has observed that the Security Council has a 'heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security'.<sup>46</sup> Russia has also emphasised that the principle of the rule of law is 'an imperative for the entire system of international relations'.<sup>47</sup>

UN member states have also stressed that the Council should not only promote, but *respect*, the rule of law.<sup>48</sup> Mexico has urged that, 'for the sake of justice and the rule of law, the Security Council must continue to act on the bases of legality that provide support for its mandate'.<sup>49</sup> Chile has underscored that the rule of law offers the Council 'the possibility of basing its work on a concept that embodies the core values of the United Nations'.<sup>50</sup> Austria has warned that a Security Council that is 'dedicated to the resolute implementation of international law' is 'the best incentive for the implementation of law at the national level'.<sup>51</sup>

The Council's meetings on justice and the rule of law culminated in the adoption of two presidential statements devoted to the topic. Security Council presidential statements are adopted by the Council as a whole and must therefore be supported by all Council members. While they may not carry as much weight as Security Council resolutions, presidential statements nevertheless provide an important indication of the Council's position on a given matter. In the first of these statements, adopted on 24 September 2003, the Council reaffirmed the 'vital importance' of justice and the rule of law.<sup>52</sup> The Council also

<sup>44</sup> For meetings held under this new agenda item, see S/PV.4833 (24 September 2003); S/PV.4835 (30 September 2003); S/PV.5052 (6 October 2004).

<sup>45</sup> See, e.g., S/PV.4833 (24 September 2003), p. 2 (Secretary-General Kofi Annan), p. 4 (Pakistan), p. 5 (Russian Federation), p. 13 (Guinea), p. 14, (Spain), p. 21 (United States), p. 21 (Chile); S/PV.4835 (30 September 2003), p. 22 (Sweden).

<sup>46</sup> S/PV.4833 (24 September 2003), p. 2. <sup>47</sup> *Ibid.*, p. 5.

<sup>48</sup> See, e.g., S/PV.4833 (24 September 2003), p. 9 (Mexico), p. 22 (Chile); S/PV.4835 (24 September 2003), p. 13 (Austria), p. 16 (Switzerland).

<sup>49</sup> S/PV.4833 (24 September 2003), p. 9. <sup>50</sup> *Ibid.*, p. 22.

<sup>51</sup> S/PV.4835 (24 September 2003), p. 13.

<sup>52</sup> S/PRST/2003/15 (24 September 2003), para. 1.

recalled the ‘repeated emphasis’ given to justice and the rule of law in its own work, including with respect to the protection of civilians in armed conflict, peacekeeping operations and international criminal justice.<sup>53</sup> In the second statement, adopted twelve months later, the Council stressed the importance and urgency of the restoration of justice and the rule of law in post-conflict societies.<sup>54</sup> The Council also observed that justice and the rule of law at the international level were ‘of key importance for promoting and maintaining peace, stability and development in the world’.<sup>55</sup>

The Security Council’s promotion of the rule of law has extended beyond hosting talk-fests within the walls of UN Headquarters. Perhaps the most striking illustration of the transformation of the rule of law from curiosity to familiar friend lies in the term’s increasing appearance in the Council’s resolutions. During the Cold War, the rule of law featured in Security Council resolutions a mere handful of times.<sup>56</sup> By contrast, in the nine years from the beginning of 1998 until the end of 2006, the phrase ‘rule of law’ appeared in no fewer than sixty-nine Council resolutions.<sup>57</sup> The Council has invoked the rule of law in a range of ways. It has called upon parties to an international conflict to resolve their differences in accordance with the rule of law, as in the case of the dispute between the governments of the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia.<sup>58</sup> It has emphasised the importance of (re-)establishing the rule of law in post-conflict situations.<sup>59</sup> It has incorporated the task of promoting and strengthening the rule of law in peace operation mandates, including those in the Central African Republic,<sup>60</sup> Angola,<sup>61</sup> the Democratic Republic of the Congo (DRC),<sup>62</sup> Afghanistan,<sup>63</sup> Haiti,<sup>64</sup> Iraq,<sup>65</sup> Guinea-Bissau,<sup>66</sup> the Sudan<sup>67</sup> and Burundi.<sup>68</sup>

<sup>53</sup> *Ibid.* <sup>54</sup> S/PRST/2004/34 (6 October 2004), para. 3.

<sup>55</sup> *Ibid.*, para. 6. <sup>56</sup> See, e.g., SC Res. 161 (21 February 1961).

<sup>57</sup> For a list, see Appendix 3, Table A. <sup>58</sup> SC Res. 1345 (21 March 2001), para. 5.

<sup>59</sup> See, e.g., S/PRST/2003/15 (24 September 2003), para. 1; S/PRST/2004/34 (6 October 2004), para. 3.

<sup>60</sup> SC Res. 1159 (27 March 1998), para. 14(e).

<sup>61</sup> SC Res. 1433 (15 August 2002), para. 3B(i). <sup>62</sup> SC Res. 1493 (28 July 2003), paras. 5, 11.

<sup>63</sup> SC Res. 1536 (26 March 2004), para. 10. <sup>64</sup> SC Res. 1542 (30 April 2004), para. 7(I)(d).

<sup>65</sup> SC Res. 1546 (8 June 2004), para. 7(b)(iii).

<sup>66</sup> SC Res. 1580 (22 December 2004), paras. 2(a), 2(h).

<sup>67</sup> SC Res. 1706 (31 August 2006), para. 8(k).

<sup>68</sup> SC Res. 1719 (25 October 2006), para. 2(d).

Although the Security Council's resolutions have not drawn an explicit link between the application of sanctions and the promotion of the rule of law, this connection has been made during the Council's debates surrounding the potential establishment or modification of sanctions regimes. In August 1990, when the Council debated the application of sanctions against Iraq, the United States emphasised that the proposed sanctions aimed to prevent 'disregard for international law'.<sup>69</sup> Canada suggested that sanctions sought to 'safeguard respect for the rule of law'.<sup>70</sup> The United Kingdom argued that sanctions would reinforce a 'world order based on respect for law'.<sup>71</sup> In March 1992, when the Council met to consider applying sanctions against Libya, the United States argued that such a step would 'preserve the rule of law'.<sup>72</sup> In October 2005, when the Council prepared to apply sanctions against suspects involved in the terrorist bombing that killed former Lebanese Prime Minister, Rafiq Hariri, Denmark observed that: 'At stake are the sovereignty and integrity of Lebanon, the principle of the rule of law and the credibility of the Security Council in following through on its own resolutions.'<sup>73</sup> Sanctions have thus been portrayed in the Council's debates as an instrument which can be used to strengthen, reinforce and promote the rule of law.

Council debates also demonstrate concerns with the potential negative impact of sanctions upon the rule of law. Speakers have stressed that the Security Council should not engage in 'double standards' when choosing whether to impose sanctions and that, once sanctions are employed, they should be applied in a consistent and uniform manner.<sup>74</sup> They have spoken of the need for the Security Council and its sanctions committees to act transparently.<sup>75</sup> They have also emphasised the need to ensure that sanctions are applied proportionately, so that the negative effects upon civilian populations and third states are minimised.<sup>76</sup>

<sup>69</sup> S/PV.2933 (6 August 1990), p. 18. <sup>70</sup> *Ibid.*, p. 25.

<sup>71</sup> *Ibid.*, p. 28. <sup>72</sup> S/PV.3063 (31 March 1992), p. 67.

<sup>73</sup> S/PV.5297 (31 October 2005), pp. 3–4 (United Kingdom: 'Turning our backs on the crime, because it appears politically difficult to solve, will not only lead the Lebanese people to lose faith in this body, it will undermine the Council's credibility and authority and damage our enforcement of the international rule of law'); p. 8 (Denmark: 'At stake are the sovereignty and integrity of Lebanon, the principle of the rule of law and the credibility of the Security Council in following through on its own resolutions').

<sup>74</sup> S/PV.2977 (Part I: 13 February 1991), pp. 27–28 (Cuba); S/PV.3046 (31 January 1992), p. 79 (Cape Verde).

<sup>75</sup> S/PV.4833 (24 September 2003), p. 9 (Mexico).

<sup>76</sup> S/PV.4833 (24 September 2003), p. 22 (Chile).

The rule of law is therefore extremely relevant to the Security Council and its sanctions practice. For its decisions to be effective, the Council relies upon the compliance of states with the rule of law. The Council has increasingly championed the importance of the rule of law and underlined that it expects states and non-state actors to comply with the rule of law. But in order to ensure that its actions genuinely promote the rule of law, the Council should ensure that its own extraordinary powers are not themselves susceptible to misuse or abuse. This book demonstrates that the Council's rhetorical commitment to promoting the rule of law does not yet extend to its sanctions practice.

## 2. The promise and perils of the rule of law

The Security Council tends to refer to the rule of law as if the concept is both clearly understood and inherently desirable. A case in point is resolution 1265 (1999), which was adopted to strengthen the protection of civilians in armed conflict.<sup>77</sup> In that resolution the Council lists the rule of law as one of a number of phenomena that help to prevent the outbreak of armed conflict, along with poverty eradication, sustainable development, national reconciliation, good governance, democracy and the protection of human rights.<sup>78</sup> The Council does not see the need to clarify the meaning of the rule of law, nor to explain why it is a positive phenomenon. It simply presents the rule of law as something that is essential to peaceful society.

The tendency to treat the rule of law as both inherently positive and requiring little elaboration is not restricted to the Security Council. The rule of law has been described as 'an unqualified human good'<sup>79</sup> and 'the most important political concept today'.<sup>80</sup> It has been prescribed as 'a solution to the world's troubles'.<sup>81</sup> Its promise has been trumpeted by presidents of countries with vastly different political, economic, religious and cultural traditions, such as China, Indonesia, Iran, Mexico,

<sup>77</sup> SC Res. 1265 (17 September 1999). <sup>78</sup> *Ibid.*, preambular para. 6.

<sup>79</sup> E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975), p. 266.

<sup>80</sup> Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2005), back cover.

<sup>81</sup> Thomas Carothers, 'The Rule-of-Law Revival', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad* (Washington, DC: Carnegie Endowment for International Peace, 2006), pp. 3–13, 3 (characterising the approach of others to the rule of law).

Russia, the United States and Zimbabwe.<sup>82</sup> The rule of law is frequently used as a trump-card in contentious discussions. As the aftermath of the 2000 US presidential elections graphically illustrated, this trump-card can even be played by opposing parties to the same dispute.<sup>83</sup> The rule of law appears to possess a 'power or force of its own'.<sup>84</sup> It seems so self-evidently good that it cannot be challenged and it need not be defined.

Yet despite its apparent magnetism, rhetorical power and simplicity as a political ideal, the rule of law is a remarkably slippery concept.<sup>85</sup> Indeed, the problem of the rule of law has preoccupied political philosophers and legal theorists alike for 2,500 years.<sup>86</sup> The rule of law has been criticised as 'opaque',<sup>87</sup> 'chameleon-like',<sup>88</sup> 'impossible'<sup>89</sup> and 'meaningless'.<sup>90</sup> It has been exposed as 'mere ideology'<sup>91</sup> and 'a slogan without substance'.<sup>92</sup> Even theorists who tenaciously defend and promote the merits of the rule of law, begrudgingly acknowledge that the term is 'remarkably elusive',<sup>93</sup> 'essentially contested'<sup>94</sup> and susceptible to 'promiscuous use'.<sup>95</sup>

The decision to employ a rule of law-based approach to analyse UN sanctions is thus something of a double-edged sword. On the one hand,

<sup>82</sup> Tamanaha, *On the Rule of Law*, pp. 1–2.

<sup>83</sup> Jeremy Waldron, 'Is the Rule of Law an Essentially Contested Concept (in Florida)?' (2002) 21 *Law and Philosophy* 137–164 at 137–138.

<sup>84</sup> Paul Craig, 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework' (1997) *Public Law* 467–487 at 487.

<sup>85</sup> Sir Arthur Watts, 'The International Rule of Law' (1993) 36 *German YBIL* 15–45 at 15.

<sup>86</sup> Waldron, 'Is the Rule of Law an Essentially Contested Concept?', 158.

<sup>87</sup> George P. Fletcher, *Basic Concepts of Legal Thought* (Oxford: Oxford University Press, 1996), p. 11.

<sup>88</sup> Sir Anthony Mason, 'The Rule of Law and International Economic Transactions', in Spencer Zifcak (ed.), *Globalisation and the Rule of Law* (London: Routledge, 2004), pp. 121–139 at 125.

<sup>89</sup> Timothy A. O. Endicott, 'The Impossibility of the Rule of Law' (1999) 19 *Oxford Journal of Legal Studies* 1–18.

<sup>90</sup> Judith N. Shklar, 'Political Theory and the Rule of Law', in Allan C. Hutchinson and Patrick Monahan (eds.), *The Rule of Law: Ideal or Ideology* (Toronto: Carswell, 1987), pp. 1–16 at 1.

<sup>91</sup> Margaret Jane Radin, 'Reconsidering the Rule of Law' (1989) 69 *Boston University LR* 781–819 at 781.

<sup>92</sup> Hilary Charlesworth, 'Whose Rule? Women and the International Rule of Law', in Zifcak (ed.), *Globalisation and the Rule of Law*, pp. 83–95 at 83 (noting that others have described the concept thus).

<sup>93</sup> Cheryl Saunders and Katherine Le Roy (eds.), *The Rule of Law* (Annandale: Federation Press, 2003), p. 3.

<sup>94</sup> Jeremy Waldron, 'Is the Rule of Law an Essentially Contested Concept?'

<sup>95</sup> Joseph Raz, 'The Rule of Law and its Virtue' (1977) 93 *TLQR* 195–211 at 196.

the Security Council's increasing emphasis upon the rule of law suggests that the Council should treat seriously the recommendations that emerge from a rule of law-based analysis of its sanctions practice. On the other hand, however, the contested nature of the rule of law requires that the task of constructing a model of the rule of law for UN sanctions should be approached with the utmost caution.

### 2.1 *The scholarly crisis concerning the rule of law*

Philosophers and theorists have pondered the notion of the rule of law since at least the days of the ancient Greek philosophers.<sup>96</sup> It is not surprising, therefore, that there should be multiple interpretations of what the rule of law means. Like other political philosophical constructs, such as democracy, liberalism and socialism, the rule of law has attracted, inspired and perplexed countless scholars. The multiplicity of possible interpretations of the rule of law has led one commentator to bemoan that: "There are almost as many conceptions of the rule of law as there are people defending it . . . The effect is that defenders and opponents alike end up talking at cross-purposes."<sup>97</sup>

Differences in approach to the rule of law can be attributed to variations in the context in which the concept is being examined, as well as differences in the particular theoretical perspective being employed by an analyst. In terms of context, an exploration of the rule of law in an eighteenth-century penal colony is likely to differ substantially in complexity and scope from a study of the rule of law in a sophisticated, stable, twenty-first century liberal democratic constitutional system.<sup>98</sup> The rule of law, as with law itself, is 'deeply contextual and . . . cannot be detached from its social and political environment'.<sup>99</sup> A model of the rule of law developed in one politico-legal context will not necessarily translate or adapt well to another context. Indeed, even models developed in similar contexts, with the same underlying philosophy concerning the nature of both law and the rule of law, sometimes differ

<sup>96</sup> For a good survey of the history of the rule of law, see Tamanaha, *On the Rule of Law*, pp. 7–90.

<sup>97</sup> Olufemi Taiwo, 'The Rule of Law: The New Leviathan?' (1999) 12 *Canadian Journal of Law and Jurisprudence* 151–168 at 154.

<sup>98</sup> David Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (Cambridge, Cambridge University Press, 1991), p. 64.

<sup>99</sup> Frank Upham, 'Mythmaking in Rule of Law Orthodoxy', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad* (Washington, DC: Carnegie Endowment for International Peace, 2006), 75–104 at 75.

in emphasis.<sup>100</sup> On the whole, theories developed with complex politico-legal systems in mind tend to focus on finer details concerning the separation of constitutional powers in the state sphere. They have the luxury of being able to promote or criticise functioning legal, constitutional and parliamentary processes. Consequently, these theories tend to construct sophisticated rule of law models consisting of multiple, interrelated principles designed to ensure an effective balance of powers in which the exercise of political power is tempered by judicial controls.<sup>101</sup> In less complex politico-legal contexts, however, where sophisticated legal checks and balances have not yet evolved, the critical rule of law question becomes how to constrain the arbitrary exercise of political power.

In terms of theoretical perspective, differences in approach can often be traced to divergences in the understanding of law underpinning a particular approach to the rule of law. One major fault-line has emerged between legal theorists who maintain that the rule of law is a question of form, who are often classified as ‘positivists’, and those who maintain that it is a question of substance.<sup>102</sup> This dispute between opposing conceptions of the rule of law that are referred to as formal/thin/positivist, on the one hand, and those that are termed substantive/thick/moralist on the other, concerns whether law, and hence the rule of law, inherently promotes a notion of the good, the moral or the just.<sup>103</sup>

Formal theories deny the existence of any necessary link between law and morality.<sup>104</sup> Law is conceived as autonomous from morality and therefore as not susceptible to manipulation according to conflicting notions of what is moral or good. Formal approaches often locate the source of law’s legitimacy in the law-making process, rather than in the inherent or ideal nature of law itself. The benefit of this approach is said to be the ability to analyse law as an objective, scientific phenomenon – as

<sup>100</sup> See, e.g., Waldron, ‘Essentially Contested Concept’, pp. 154–155 (tracing the similar rule of law ‘laundry lists’ drawn up by Fuller, Rawls, Raz, Radin and Finnis).

<sup>101</sup> See, e.g., Raz, ‘The Rule of Law and its Virtue’, 198–202; Lon L. Fuller, *The Morality of Law*, 2nd edn (New Haven: Yale University Press, 1969), ch. 2; Raz, ‘The Rule of Law and its Virtue’, 198–201.

<sup>102</sup> For general discussion of this major fault-line, see Craig, ‘Formal and Substantive Conceptions’; Tamanaha, *On the Rule of Law*, pp. 91–113.

<sup>103</sup> For further discussion of the differences between formal and substantive conceptions of the rule of law, see Craig, ‘Formal and Substantive Conceptions’.

<sup>104</sup> See, e.g., Hans Kelsen, *General Theory of Law and State* (New York: Russell, 1961), p. 113; H. L. A. Hart, ‘Positivism and the Separation of Law and Morals’ (1958) 71 *Harvard Law Review* 593–629; Raz, ‘The Rule of Law and its Virtue’, 207.

something that 'is' rather than something which is contingent upon values and notions of what 'ought to be'.<sup>105</sup> However, when pursued to its extreme logical conclusion, the formal approach can result in the view that law is valid if made through valid legal processes, even if it is created by detestable regimes, such as the Nazis, or employed for a detestable purpose, such as the promotion of genocide or apartheid.<sup>106</sup> Formalists defend this extreme consequence of the separation between law and morals by arguing that if no such separation is made, there is a danger that citizens might consider compliance with detestable law to be a moral requirement.<sup>107</sup> But the potential for law to be misused deeply troubles those who instinctively expect the rule of law to prevent the emergence of detestable regimes or the promotion of detestable purposes.

Substantive approaches to the rule of law, by contrast, understand law to be an inherently good phenomenon, which by its nature promotes a broader purpose. Many substantive theorists openly claim that there is a moral element to law.<sup>108</sup> In medieval times, theologians such as Thomas Aquinas developed the 'just war' doctrine, according to which the resort to war in certain situations was justified by the authority of God.<sup>109</sup> Natural law approaches suggest that a set of ideal normative principles exist, independent of society, which can be deduced and applied to concrete situations through the use of 'right reason'<sup>110</sup> or 'practical reasonableness'.<sup>111</sup> Substantive approaches thus tie their conceptions of the rule of law to the promotion of major societal goals, such as 'justice'<sup>112</sup> or 'rights'.<sup>113</sup> The benefit of substantive approaches is that

<sup>105</sup> David Hume, *A Treatise of Human Nature* (Harmondsworth: Penguin, 1969), p. 521.

<sup>106</sup> Hart, 'Positivism and the Separation of Law and Morals', 615–621.

<sup>107</sup> Anthony Clark Arend, *Legal Rules and International Society* (Oxford: Oxford University Press, 1999), p. 20.

<sup>108</sup> Fuller, *The Morality of Law*; Craig, 'Formal and Substantive Conceptions', 467, 477–484.

<sup>109</sup> Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001); Arthur Nussbaum, *A Concise History of the Law of Nations*, 2nd edn (New York: Macmillan, 1954), pp. 35–38; Tamanaha, *On the Rule of Law*, pp. 18–19.

<sup>110</sup> Cicero, *De Re Publica* (London: William Heineman, 1970), book III, p. xxi.

<sup>111</sup> John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 21, 88–89, 100–127.

<sup>112</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); Robin L. West, *Re-imagining Justice: Progressive Interpretations of Formal Equality, Rights, and the Rule of Law* (Aldershot: Ashgate, 2003).

<sup>113</sup> See, e.g., the UN Secretary-General's conception of the rule of law (explored below), which is articulated in S/2004/616 (23 August 2004): *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, para. 6.



they give law a purpose that is aligned with objectives that are deemed to benefit the community as a whole. By imbuing law with a teleological, public interest component, law becomes a transformative tool for pursuing society's most important goals. The weakness of substantive approaches, however, is that although they purport to provide an authoritative, external, universal basis for the legitimacy of law, they can in fact privilege particular conceptions of truth, validity and what is morally desirable.<sup>114</sup> People from different backgrounds may thus reach contradictory conclusions concerning the legitimate substance of the law. The process of identifying the content of law is therefore contingent upon subjective notions of what the law should be.

Another, deeper theoretical fault-line has evolved in response to the assumption underpinning both formal and substantive approaches, namely that the rule of law can be differentiated from politics and can therefore lead to neutral, objective outcomes. Debate surrounding this second fault-line has been particularly heated in US academic legal circles, where discussion of the rule of law has focused upon the role of judicial decision-making. The key question has been whether it is possible for judges to decide cases objectively, on the basis of an ideal model of the rule of law. Proponents of the view that courts guarantee the rule of law argue that the role of judges is to find and apply, rather than create, law.<sup>115</sup> By being loyal to existing rules, judges can reach decisions that accord with objective notions of the rule of law.<sup>116</sup> If the law is unclear, judges must exercise their discretion responsibly in the search for a 'correct result'.<sup>117</sup> According to this view, diligent judges can ensure that disputes are resolved objectively, in accordance with the rule of law.

Critical scholars have countered that it is a fiction to conceptualise law, and thus the rule of law, as possessing objective, determinate content.<sup>118</sup> As a human construct built upon aspiration and argumentation, law is by its very nature historically contingent.<sup>119</sup> Feminist scholars have demonstrated how 'legal rules and doctrines often

<sup>114</sup> Thomas Hobbes, *Leviathan* (1651) (J. C. A. Gaskin (ed.) (Oxford: Oxford University Press, 1998), ch. 4, p. 26); Hume, *A Treatise of Human Nature* (1740) (D. F. Norton (ed.) (2000), book 2, part 3, section 3, p. 266.

<sup>115</sup> West, *Re-imagining Justice*, 15.

<sup>116</sup> Antonin Scalia, 'The Rule of Law as a Law of Rules' (1989) 56 *U Chicago LR* 1175–1188.

<sup>117</sup> Ronald Dworkin, 'Judicial Discretion' (1963) 60 *Journal of Philosophy* 624–638 at 636.

<sup>118</sup> Mark Tushnet, 'Critical Legal Studies: A Political History' (1991) 100 *Yale LJ* 1515–1544 at 1518.

<sup>119</sup> Morton J. Horwitz, 'The Historical Contingency of the Role of History' (1981) 90 *Yale LJ* 1057–1059 at 1057.

contain ingrained, unseen biases against women'.<sup>120</sup> The rule of law can thus 'mask and even exacerbate the injustices to women'.<sup>121</sup> The choice to conceptualise the rule of law in formal or substantive terms will make little relevance to the outcome, for no rule of law model can live up to its promise of bringing principled, objective, impartial order to unprincipled, subjective, partial chaos.

## 2.2 *Salvaging the rule of law from scholarly crisis*

When one becomes mired in the theoretical debate concerning the rule of law, it is difficult to imagine how the concept might form a useful analytical tool for scrutinising any aspect of public policy, let alone the application of UN sanctions. There is no escaping the fact that the rule of law's portrait has been painted and criticised in almost infinite ways. Yet the chameleon-like nature of the rule of law represents both a weakness and a strength. A simple abstract political idea with strong rhetorical appeal is bound to resonate in different ways as it is employed by different actors located in different political, legal and social contexts. Ironically, the elusiveness of the rule of law strengthens its ability to endure as a magnetic political ideal. For an idea which can be reconceived,<sup>122</sup> recrafted,<sup>123</sup> reconsidered,<sup>124</sup> revived<sup>125</sup> or revisited<sup>126</sup> is unlikely to be condemned for long to history's dustbin.

Despite the inherent tensions in the concept of the rule of law so deftly revealed by theorists of different stripes, valid reasons remain for pursuing a rule of law-based analysis of UN sanctions. The primary reason lies in the potential of the notion of the rule of law to exert genuine influence upon practical developments in the real world. In practice, the goal of strengthening the rule of law underpins a range of concrete interventions around the globe.<sup>127</sup> Indeed, this objective is

<sup>120</sup> Charlesworth, 'Whose Rule? Women and the International Rule of Law', 83.

<sup>121</sup> *Ibid.*, 93.

<sup>122</sup> Charles Sampford, 'Reconceiving the Rule of Law for a Globalizing World', in Zifcak (ed.), *Globalisation and the Rule of Law*, pp. 9–31.

<sup>123</sup> David Dyzenhaus (ed.), *Recrafting the Rule of Law: The Limits of Legal Order* (Oxford: Hart Publishing, 1999).

<sup>124</sup> Radin, 'Reconsidering the Rule of Law'.

<sup>125</sup> Thomas Carothers, 'The Rule-of-Law Revival', in Carothers (ed.), *Promoting the Rule of Law Abroad*, pp. 3–13.

<sup>126</sup> Allan C. Hutchinson, 'The Rule of Law Revisited: Democracy and Courts' in Dyzenhaus (ed.), *Recrafting the Rule of Law*, pp. 196–224.

<sup>127</sup> For a valuable survey of global rule of law interventions, see Carothers, *Promoting the Rule of Law Abroad*.

regularly pursued by the Security Council itself. For those engaged in the rule of law frontlines, the rumours of the concept's demise have been greatly exaggerated.

Furthermore, despite the fact that theorists have conceptualised and criticised the rule of law in a wide variety of ways, they tend to share a basic starting-point. A key aim underpinning virtually all rule of law models is to ensure that political power is exercised in accordance with principle rather than in an arbitrary or self-interested manner.<sup>128</sup> As Plato stated:

Where the law is subject to some other authority and has none of its own, the collapse of the state . . . is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.<sup>129</sup>

No matter how differently scholars approach the rule of law, they tend not to challenge this basic premise that the rule of law aims to curb the arbitrary exercise of political power. It explicitly or implicitly underpins the models propounded by legal theorists such as Dicey, Hayek, Fuller, Raz, Finnis and Radin.<sup>130</sup> Differences may arise over the fine print of particular models of the rule of law, over whether the rule of law is a matter of form or substance, whether it seeks to promote a moral or other purpose, or whether it is genuinely possible to subject political power to the rule of law. But these differences do not detract from the essence at the core of the aspirational notion of the rule of law. As Waldron observes: 'the lead idea of the Rule of Law is that somehow respect for law can take the edge off human political power, making it less objectionable, less dangerous, more benign and more respectful.'<sup>131</sup> Tamanaha, after conducting a careful study of the history, theory and politics of the rule of law, concludes that the rule of law represents a 'universal human good' when it is understood to mean that

<sup>128</sup> The one possible exception is a thin, 'law as order' interpretation of the rule of law, which is more correctly termed 'rule by law'. For further discussion, see Tamanaha, *On the Rule of Law*, pp. 92–93.

<sup>129</sup> Plato, *The Laws*, translated by Trevor J. Saunders (London: Penguin, 1970), p. 174 (715).

<sup>130</sup> A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th edn (London: Macmillan, 1959), pp. 187–203; F. A. Hayek, *The Road to Serfdom* (London: Routledge, 1944), pp. 80–96; Fuller, *The Morality of Law*, 39 (identifying eight common failings in systems that fail to maintain the rule of law); Raz, 'The Rule of Law and its Virtue', 198–202; Finnis, *Natural Law and Natural Rights*, 270–271; Radin, 'Reconsidering the Rule of Law', 785. For a useful summary of the models elaborated by these theorists, see Waldron, 'Is the Rule of Law an Essentially Contested Concept?', 154.

<sup>131</sup> Waldron, 'Is the Rule of Law an Essentially Contested Concept?', 159.

the government is limited by the law.<sup>132</sup> This understanding of the rule of law, as a political ideal which seeks to prevent the misuse or abuse of political power, underpins the approach employed here to the rule of law.

### **3. Towards a pragmatic rule of law model for UN sanctions**

The UN Charter's collective security system is quite different from the legal systems described and theorised by legal scholars who explore the phenomenon of the rule of law in domestic politico-legal contexts. The power-restraining mechanism of separating and balancing the powers of law-maker and adjudicator is palpably absent in the context of Security Council decision-making. The Security Council acts as law-maker, occasional law-interpreter, and sometime law-enforcer. Its relationship to power and law is more akin to that of absolute sovereigns of bygone eras than to contemporary constitutional representative democracies.

The task of identifying an appropriate model of the rule of law for UN sanctions is thus not as simple as transferring to the UN collective security system a sophisticated model developed in a domestic context. The challenge is to find pragmatic strategies which might be employed to prevent the arbitrary use by the Security Council of its sanctions powers. Before proposing a pragmatic model of the rule of law which might be employed to influence the UN sanctions decision-making process, it is helpful to consider how the rule of law has been conceptualised and applied by the Security Council, the UN Secretary-General and scholars of international affairs.

#### *3.1 The rule of law through the eyes of the Security Council*

Since the mid-1990s, the Security Council has referred to the rule of law with increasing frequency.<sup>133</sup> From these references, the Council's support for the rule of law is clear. It is equally clear, however, that the Council's understanding of the term is fluid. But although the Council uses the rule of law to signify different things in different contexts, there is not an infinite variety to its use of the term. Five basic clusters of meaning for the rule of law can be identified.

<sup>132</sup> Tamanaha, *On the Rule of Law*, p. 137. <sup>133</sup> See Appendix 3, Table A.

The first cluster of meaning is that of ‘law and order’. The Council has regularly used the rule of law when emphasising the need to re-establish law and order in war-ravaged post-conflict environments.<sup>134</sup> It has also employed the term when mandating UN peace operations to support the (re-)establishment of law and order institutions, including security agencies and police forces. Peace operations have thus been mandated to support such activities in the Central African Republic,<sup>135</sup> Angola,<sup>136</sup> East Timor,<sup>137</sup> the DRC,<sup>138</sup> Côte d’Ivoire<sup>139</sup> and Haiti.<sup>140</sup>

The second cluster of meaning equates the rule of law with efforts to hold criminals accountable for their crimes. The Security Council has referred to the rule of law when stressing the need to end impunity for war crimes and human rights atrocities, including those committed in Sierra Leone,<sup>141</sup> Haiti,<sup>142</sup> Burundi,<sup>143</sup> Guinea-Bissau<sup>144</sup> and Darfur.<sup>145</sup> The Council has also used the term when advocating the need to strengthen national judicial institutions and systems, as in the cases of Rwanda and the former Yugoslavia,<sup>146</sup> as well as Burundi.<sup>147</sup> It has employed the rule of law with this connotation when mandating UN peace operations to support efforts to strengthen national judicial systems in Afghanistan<sup>148</sup> and Côte d’Ivoire.<sup>149</sup> The Council has also used the term when mandating peace operations to (re-)establish independent judiciaries in Guinea-Bissau<sup>150</sup> and the Sudan.<sup>151</sup>

<sup>134</sup> SC Res. 1040 (29 January 1996), para. 2 (on Burundi); SC Res. 1168 (21 May 1998), para. 4 (on Bosnia and Herzegovina); SC Res. 1327 (13 November 2000), Sections V and VI (on strengthening peace operations).

<sup>135</sup> SC Res. 1159 (27 March 1998), para. 14(e).

<sup>136</sup> SC Res. 1433 (15 August 2002), para. 3B(i). <sup>137</sup> SC Res. 1473 (4 April 2003), para. 1(iii).

<sup>138</sup> SC Res. 1493 (28 July 2003), paras. 5, 11.

<sup>139</sup> SC Res. 1528 (27 February 2004), para. 6(q).

<sup>140</sup> SC Res. 1542 (30 April 2004), para. 7(I)(d).

<sup>141</sup> SC Res. 1315 (14 August 2000), preambular para. 4.

<sup>142</sup> SC Res. 1542 (30 April 2004), preambular para. 4.

<sup>143</sup> SC Res. 1545 (21 May 2004), preambular para. 9.

<sup>144</sup> SC Res. 1580 (22 December 2004), preambular para. 5.

<sup>145</sup> SC Res. 1593 (31 March 2005), para. 4.

<sup>146</sup> SC Res. 1503 (28 August 2003), preambular para. 10 (on the ICTY and ICTR Completion Strategies).

<sup>147</sup> SC Res. 1577 (1 December 2004), preambular para. 9.

<sup>148</sup> SC Res. 1536 (26 March 2004), para. 10; SC Res. 1589 (24 March 2005), para. 9.

<sup>149</sup> SC Res. 1609 (24 June 2005), para. 2(x).

<sup>150</sup> SC Res. 1580 (22 December 2004), para. 2(h).

<sup>151</sup> SC Res. 1590 (24 March 2005), para. 4(a)(viii).

The third cluster of meaning equates the rule of law with principled governance. In a 1998 resolution addressing the situation in Africa in general, the Security Council employed the phrase to underscore the importance of improving governance and eradicating corruption.<sup>152</sup> It also used the rule of law in this sense when mandating the UN Office in Timor-Leste to support initiatives to improve governance and eradicate corruption.<sup>153</sup> In a 2003 resolution on Iraq, the Council used the term as a metaphor for democratic, principled government.<sup>154</sup> It also used the rule of law to denote government that was not above the law in a 2005 resolution on Burundi.<sup>155</sup>

The fourth cluster of meaning associates the rule of law with the protection and promotion of human rights. The Security Council has used the phrase to stress the urgency of protecting vulnerable citizens and respecting human rights in Angola<sup>156</sup> and in the Ituri and South Kivu regions of the DRC.<sup>157</sup> It has employed the term to denote government that respects human rights in resolutions on Liberia<sup>158</sup> and Iraq.<sup>159</sup> The Council has also invoked the rule of law when mandating UN peace operations to support efforts to promote government that respects and promotes human rights in Iraq<sup>160</sup> and Guinea-Bissau.<sup>161</sup>

The fifth cluster of meaning entails resolving conflict in accordance with law. In the case of the dispute between the governments of the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia, the Council thus invoked the rule of law to encourage the principled resolution of conflict in accordance with international law.<sup>162</sup>

Although these five general clusters of meaning emerge from the Council's references to the rule of law, at times the Council's use of the term defies easy categorisation. Sometimes the phrase is used as an umbrella that incorporates more than one of the clusters outlined above.<sup>163</sup> Sometimes it simply appears as one item on a shopping list

<sup>152</sup> SC Res. 1170 (28 May 1998), preambular para. 13.

<sup>153</sup> SC Res. 1599 (28 April 2005), para. 3.

<sup>154</sup> SC Res. 1483 (22 May 2003), preambular para. 5 (on Iraq).

<sup>155</sup> SC Res. 1606 (20 June 2005), preambular para. 3 (on Burundi).

<sup>156</sup> SC Res. 1149 (27 January 1998), para. 4. <sup>157</sup> SC Res. 1417 (14 June 2002), para. 5.

<sup>158</sup> SC Res. 1509 (19 September 2003), preambular para. 7.

<sup>159</sup> SC Res. 1546 (8 June 2004), preambular para. 10.

<sup>160</sup> *Ibid.*, para. 7(b)(iii).

<sup>161</sup> SC Res. 1580 (22 December 2004), para. 2(a).

<sup>162</sup> SC Res. 1345 (21 March 2001), para. 5.

<sup>163</sup> See, e.g., SC Res. 1599 (28 April 2005), preambular para. 9 (on East Timor).

of features that are considered desirable in a peaceful and stable society.<sup>164</sup> Sometimes it is used in such a general way that it is not clear which of the above meanings it is intended to apply.<sup>165</sup> The diversity of meanings ascribed to the rule of law by the Security Council demonstrates yet again the concept's elusive, chameleon-like nature. However, the five major clusters of usage are consistent with the essence of the rule of law identified above: that the rule of law seeks to minimise the misuse or abuse of political power. This is particularly clear in the clusters that equate the rule of law with principled governance and the protection and promotion of human rights. But the notion that it is important to restrain the arbitrary exercise of political power is also inherent in the other three clusters.

### 3.2 *The rule of law through the eyes of the UN Secretary-General*

Like the Security Council, the UN Secretary-General (UNSG) has often expressed support for the rule of law. But unlike the Council, the UNSG has taken the initiative of proposing a definition. In his 2004 report to the Council on the rule of law and transitional justice in conflict and post-conflict societies,<sup>166</sup> Secretary-General Kofi Annan described the rule of law as:

[A] principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.<sup>167</sup>

The Secretary-General further stated that:

[The rule of law requires] measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>168</sup>

<sup>164</sup> SC Res. 1265 (17 September 1999), preambular para. 6 (on the protection of civilians in armed conflict); SC Res. 1346 (30 March 2001), preambular para. 4 (on Sierra Leone); SC Res. 1529 (29 February 2004), para. 4 (on Haiti).

<sup>165</sup> SC Res. 1318 (7 September 2000), Annex, Section I (on ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa).

<sup>166</sup> S/2004/616 (23 August 2004): *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*.

<sup>167</sup> *Ibid.*, para. 6. <sup>168</sup> *Ibid.*

The Secretary-General's conception of the rule of law is remarkably broad. It reflects the aspirations of an ideal rule of law system, in which political power is regulated effectively by reverence for and adherence to laws that are legitimately created and which ensure the protection and promotion of human rights. This model contains elements of both formal and substantive approaches to the rule of law, with the promotion of international human rights norms representing a substantive litmus-test, and a range of procedural principles reflecting formal components of the rule of law.

It is questionable whether many politico-legal systems in the world could satisfy the stringent standards required by the Secretary-General's model of the rule of law. The practical application of such an ideal model to the UN collective security system would require major and drastic amendments to the UN Charter. Such amendments are extremely unlikely to be contemplated, let alone accepted, by the permanent members of the Security Council. Nevertheless, aspects of the Secretary-General's model could be adapted and operationalised within the context of the Security Council's sanctions decision-making process. These aspects include the principles of equality, accountability, certainty, participation and transparency.

### *3.3 Scholarly explorations of the relationship between the Security Council and the rule of law*

Until recently, surprisingly little attention had been paid to the relationship between the Security Council and the rule of law. During the Cold War, the primary concern of internationally minded scholars tended to be the weakness of the Council's authority and its inability to fulfil its responsibilities under Chapter VII of the UN Charter due to antipathies between permanent members of the Council.<sup>169</sup> The focus thus tended to be upon enabling the Council to use its Chapter VII powers more frequently, with the assumption that the Council would use those powers constructively and responsibly. However, the post-Cold War surge in Chapter VII activity has created anxiety among some scholars concerning the Council's capacity to act

<sup>169</sup> Boutros Boutros-Ghali, 'Preface', in Mohammed Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts* (Dordrecht: Martinus Nijhoff, 1994), xvii-xix, xvii.



in an almost unrestrained manner.<sup>170</sup> Legal scholars have begun to explore whether and how the Council's almost unfettered power to take Chapter VII action might be reconciled with the notion of the rule of law.<sup>171</sup>

These explorations of the relationship between the Security Council and the rule of law tend to employ one or both of two approaches. First, there is the quest to identify the legal parameters within which Security Council action is legally permissible.<sup>172</sup> Potential sources for these parameters include the UN Charter itself, as well as extra-Charter principles of general international law. Second, there is the quest to explore whether it might be possible to subject the Security Council's Chapter VII decisions to judicial review.<sup>173</sup> Potential judicial bodies commonly explored as the source for such review include the International Court of Justice and the international tribunals established by the Security Council itself, which have already had occasional cause to consider the general scope of the Council's powers. In the ICJ's deliberations on various cases, individual judges have expressed the view that the Council's powers are not unlimited.<sup>174</sup> The Court as a whole has offered the tentative conclusion in the *Certain Expenses* case that when the Security Council's actions are necessary for the maintenance of international peace and security, the presumption should be

<sup>170</sup> See, e.g., Bedjaoui, *The New World Order and the Security Council*; Ian Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (The Hague: Martinus Nijhoff, 1998).

<sup>171</sup> See, e.g., 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* (The Hague: Kluwer Law International, 2001); Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart Publishing, 2004).

<sup>172</sup> See, e.g., Schweigman, *The Authority of the Security Council*; de Wet, Erika, *The Chapter VII Powers of the Security Council*; Alexander Orakhelashvili, 'The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions' (2005) 16 *EJIL* 59–88; Alexander Orakhelashvili, *Peremptory Norms in International Law* (Oxford: Oxford University Press, 2006).

<sup>173</sup> Vera Gowlland-Debbas, 'The Relationship Between the International Court of Justice and the Security Council in Light of the *Lockerbie* Case' (1994) 88 *AJIL* 643–677; Bernd Martenczuk, 'The Security Council, the International Court of Justice and Judicial Review: What Lessons from *Lockerbie*?' (1999) 10 *EJIL* 517–547; Erika de Wet, 'Judicial Review as an Emerging General Principle of Law and its Implications for the International Court of Justice' (2000) *Netherlands ILR* 181–210.

<sup>174</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK; Libya v. US)*, Provisional Measures (Orders of 14 April 1992), *ICJ Reports* (1992) 3, 32 (Judge Shahabuddeen, separate opinion), 65 (Judge Weeramantry, dissenting opinion).

that it is not acting ultra vires.<sup>175</sup> The International Criminal Tribunal for the former Yugoslavia, for its part, has found that the Council's powers under the Charter do not amount to an unlimited fiat.<sup>176</sup> But neither of these bodies have had cause to explore the detail of potential restrictions upon the Council's powers.

These scholarly studies of the potential legal limits upon Security Council action and the possibilities for international judicial review make a valuable contribution to international legal scholarship. Indeed, the questions of the legal limits upon Council action and judicial review are touched upon in Chapter 4, which outlines the UN Charter framework underpinning the UN sanctions system. But these studies tend to promote an idealised, sophisticated model of the rule of law, advocating the introduction of institutionalised judicial review as the mechanism of choice for ensuring a separation of powers on the international plane.

It is debatable whether the transposition of such a sophisticated rule of law model to the international collective security sphere would be either practical or desirable. The checks and balances built into the UN collective security system aim to ensure that the Security Council does not take action that undermines the core national interests of the most powerful UN member states. This concession was considered essential to guarantee the participation of the major powers and thus increase the prospects for the maintenance of peace. Entrusting the power of review over international peace and security decisions to an external judicial body would not necessarily solve concerns surrounding the legitimate exercise of Security Council power. But it would probably have the disastrous effect of undermining the Council's potency and delaying effective Council action to maintain international peace and security.

Moreover, the introduction of institutionalised judicial review would require major reform of the UN Charter. Historically, it has been extremely difficult to gain the necessary support to reform the UN Charter, even when reform proposals do not attract substantial opposition. There is little chance that reform proposals to institutionalise judicial review of the Security Council's political decision-making

<sup>175</sup> *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, (Advisory Opinion of 20 July 1962) (1962) *ICJ Reports* 151, 168.

<sup>176</sup> See, e.g., *Prosecutor v. Dusko Tadic a/k/a 'Dule'*, Case No. IT-94-1-AR72, 2 October 1995, para. 28.

would ever be approved. If change were to occur to the UN collective security apparatus, it would likely take the form of minor modifications to the membership structure of the Security Council. Indeed, this type of reform has been proposed by the UN Secretary-General's High Level Panel on Threats, Challenges and Change, which advocated an expansion of the Security Council to enable it to represent and reflect the UN membership of the twenty-first century.<sup>177</sup> Yet even these comparatively uncontroversial reform proposals have encountered resistance and it is unclear when they will be put into practice.

The aim here is not to resolve the academic debate surrounding the potential or actual legal limits to Security Council action. Nor is it to build a complex, idealistic model of the rule of law that will ensure institutionalised regulation of Council action by an external judicial body. As laudable as these objectives may be, they are unlikely to be realised in the near future. Instead, the approach here is to build a basic model of the rule of law which can easily be employed to guide Security Council sanctions decision-making.

### *3.4 Constructing a pragmatic rule of law model for sanctions decision-making*

The theoretical model of the rule of law employed here draws inspiration from the various approaches to the rule of law surveyed above. It is grounded on the basic premise that underpins almost every approach to the rule of law; namely, that the primary goal of the rule of law is to prevent the misuse and abuse of political power. But the emphasis of this model is somewhat unconventional. Rather than requiring the introduction of new mechanisms which would seek to impose external regulation of the Council's actions in accordance with an ideal model of the rule of law, the aim here is to infuse the existing Security Council decision-making process with greater awareness of and adherence to basic rule of law principles.

This approach is not necessarily inconsistent with the view that international political decision-making should be subject to regulation by international law. But its focus is upon promoting the idea of the rule of law in a context where there is no institutionalised balance of powers and there is no realistic prospect of introducing such institutionalised

<sup>177</sup> *A More Secure World: Our Shared Responsibility: Report of the Secretary-General's High-level Panel on Threats, Challenges and Change* (New York: United Nations, 2004), paras. 250–253.

restraint in the near future. Rather than exploring the potential external regulation of Security Council action by *the law*, the aim is to examine the potential of the concept of *the rule of law* to influence Security Council decision-making. This pragmatic approach is designed to be used by actors engaged in the Council's decision-making process to improve the Council's rule of law performance.

The objective is thus both more modest and more ambitious than conventional approaches to the relationship between the Security Council and the rule of law: it is to trigger practical reform from within the Council, rather than to enforce ideal reform from without. The major advantage of this approach is that it does not require a radical restructuring of the UN's international peace and security architecture, nor amendments to the UN Charter. It aims to influence Security Council decision-making in the here and now and it can be operationalised immediately. The disadvantage is that it relies upon self-regulation. Like a cantankerous monarch, the Council might choose to ignore the policy proposals advanced here. However, unlike an absolute monarch, the Security Council is not a unitary actor with a single and uncontroversially articulated self-interest. It is made up of fifteen member states, each of which has a stake in the outcomes of the Council's decision-making process. The path to influencing the decision-making behaviour of the Council therefore lies in influencing the decision-making behaviour of the Council's member states.

The model of the rule of law employed here consists of five basic rule of law principles which can be used to guide decision-making: transparency, consistency, equality, due process and proportionality. These principles, which are related yet distinct, feature in some shape or form in most politico-legal systems which promote the rule of law. Moreover, they reflect recurring themes from the Security Council's own deliberations and practice concerning both the rule of law and UN sanctions. They also reflect principles contained in the UN Millennium Declaration, as well as the approach employed to the rule of law by the UNSG.

### i. Transparency

The principle of transparency requires that in the exercise of political power, decision-making should be as open and transparent as possible. The reasoning leading to a particular decision should therefore be apparent to those affected by the ultimate decision. Moreover, it should be clear that power is exercised in accordance with legitimate authority.

In the context of UN sanctions, transparency requires that the Security Council's decision-making process should be made as open as possible, with the reasons for applying and modifying sanctions clearly expressed by the Security Council and its sanctions committees.

## ii. Consistency

The principle of consistency requires that political power should be exercised in a consistent manner. Decisions should thus be made in a predictable rather than an arbitrary manner. Consistency contributes to the rule of law by promoting standards of behaviour. In the context of UN sanctions, the principle of consistency requires that the Security Council should seek to ensure, to the extent possible, that its practice is consistent from one sanctions regime to another.

## iii. Equality

The principle of equality requires that all parties over whom political power is wielded should be considered equal before that power and that any decisions affecting the rights, entitlements and obligations of those parties are made in an impartial manner. In the context of UN sanctions, equality requires that sanctions should not be imposed selectively. If sanctions are imposed against a party in a particular set of circumstances, then they should be applied against other parties under the same circumstances. Equality also requires that the Security Council itself be broadly representative of the UN membership and that all UN members have the opportunity to stand for election to the Council.

## iv. Due process

The principle of due process requires that a party against which it is proposed to exercise coercive power should be given a fair hearing and be granted the opportunity to express their point of view regarding the potential decision. In the context of UN sanctions, the principle of due process requires that states, non-state actors and individuals against which coercive measures are to be applied should be afforded the possibility to present their version of events and, in the case of individuals, to be presumed innocent until proven guilty.

## v. Proportionality

The principle of proportionality requires that the consequences of a decision affecting the rights, entitlements and obligations of other parties are proportional to the harm caused by that party and consistent

with the overall objectives for which the decision is being taken. In the context of sanctions, proportionality requires that the coercive consequences of the application of sanctions, which may be felt by civilian populations, third states or individuals, remain in proportion to the harm caused by the target against which sanctions are imposed and are consistent with the objectives for which sanctions were employed. The adverse effects of sanctions upon innocent civilian populations and third states should thus be minimised.

### 3.5 *A framework for subsequent analysis*

Based upon the model of the rule of law proposed above, in order to possess maximum potential to reinforce the rule of law, UN sanctions should be applied with the utmost respect for the five key principles of the rule of law noted above. This book aims to ascertain the extent to which the UN sanctions system respects and promotes those five key principles of the rule of law. If UN sanctions have indeed promoted the principles of transparency, consistency, equality, due process and proportionality, then they can be said to have reinforced and strengthened the rule of law.

As foreshadowed in the Introduction, this book has two key objectives. The first is to trace the evolution and contours of the UN sanctions system. The second is to examine the relationship between UN sanctions and the rule of law. This chapter has addressed the first subsidiary goal of the second objective by constructing a pragmatic model of the rule of law that can be used to analyse the UN Security Council's sanctions practice. However, before proceeding to address the remaining two subsidiary goals of the second objective, namely to demonstrate how UN sanctions have undermined the rule of law and to provide pragmatic policy proposals designed to ensure that UN sanctions can reinforce the rule of law, it is first necessary to fulfil the first key objective. Discussion now turns to the evolution of the UN sanctions system.

PART II • THE EVOLUTION OF THE UN  
SANCTIONS FRAMEWORK





### 3 From Aegina to Abyssinia: a prehistory of UN sanctions

Although the UN Charter contained many innovations, the idea of sanctions was not one of them. Precedents existed for most of the forms of coercion short of the use of force envisaged by Article 41. Just a generation earlier, sanctions had also featured in the thinking of the founders of the League of Nations. Article 16, paragraph 1 of the Covenant of the League of Nations provided for the application of economic sanctions against a state which had illegally resorted to war. But the evolution of UN sanctions began well before even the League's experiment with sanctions. The notion underpinning UN sanctions – that coercive measures short of the use of force can be employed to compel the resolution of international disputes – has influenced decision-making in the arena of international relations for centuries.

#### 1. Sanctions in ancient and medieval times

States and quasi-state entities have employed a variety of non-military coercive strategies as a means of pursuing foreign policy objectives since at least the days of ancient Greece. In 492 BC the Greek city-state of Aegina took non-military coercive action against Athens by seizing an Athenian ship and holding its passengers hostage.<sup>1</sup> The action was taken in retaliation for the refusal of Athens to release ten Aeginetan citizens whom it was holding captive.<sup>2</sup> Just over half a century later, in 432 BC, Athens itself took non-military coercive action by imposing a

<sup>1</sup> Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*, 2 vols. (London: Macmillan, 1911), vol. 2, p. 354.

<sup>2</sup> *Ibid.*

ban upon the importation of products from Megara.<sup>3</sup> This episode has been described as the earliest recorded instance of economic sanctions.<sup>4</sup> The aim of the action was ostensibly to secure the release of three Athenian women who had been kidnapped.<sup>5</sup>

Throughout the ancient and medieval eras, states and quasi-states employed a range of non-military coercive strategies as part of their foreign policy. One tactic was to authorise the kidnapping of citizens of another state. The measure of retaliation by kidnapping, termed *androlepsia*, evolved in ancient Athens. If an Athenian citizen had been unjustly murdered in another state and that state refused to punish the murderer, then the relatives of the victim were authorised under Athenian law to seize three citizens of that state and to hold them until restitution was made or the murderer surrendered.<sup>6</sup> The strategy of state-sanctioned kidnapping was also employed in medieval Britain. In 1414, King Henry V authorised an English citizen, William Waldern, whose shipment of wool had been illegally seized in Genoan waters, to capture Genoan citizens and hold them until full restitution was paid for their shipment.<sup>7</sup>

Maritime blockades, of the type originally enforced by Athens, were also a common tool of foreign coercion. Venice imposed a commercial blockade against Bologna during the 1270s, in order to coerce it into purchasing its wheat from Venice rather than Ravenna, its traditional wheat provider.<sup>8</sup> In a coercive strategy that was analogous to kidnapping, states would sometimes authorise the seizure of property belonging to another state or to citizens of that state. In 1567 Portugal confiscated English property within its jurisdiction, in response to a raid that had been led by an English national, George Fenner, against Santiago in the Cape Verde Islands.<sup>9</sup> In 1569 Queen Elizabeth authorised two English citizens and their agents to seize property belonging to the King of Portugal or any Portuguese citizens in order to compensate them for

<sup>3</sup> Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered* (Washington, DC: Institute for International Economics, 1985), pp. 4, 21.

<sup>4</sup> Doxey, *International Sanctions* (2nd edn), p. 3; Robin Renwick, *Economic Sanctions* (Cambridge, MA: Center for International Affairs, 1981), p. 1.

<sup>5</sup> Hufbauer et al., *Economic Sanctions Reconsidered* (1985), p. 4.

<sup>6</sup> Phillipson, *The International Law and Custom of Ancient Greece and Rome*, vol. 2, pp. 349–350.

<sup>7</sup> Grover Clark, 'The English Practice with Regard to Reprisals by Private Persons' (1933) 27 *AJIL* 694–723 at 713–714.

<sup>8</sup> Frederic C. Lane, *Venice: A Maritime Republic* (Baltimore: Johns Hopkins University Press, 1973), p. 59.

<sup>9</sup> H. V. Livermore, *A New History of Portugal* (Cambridge: Cambridge University Press, 1966), p. 156.

the loss of their ship, which had been sunk by the Portuguese armada in 1565.<sup>10</sup> Another common coercive tactic was to conduct diplomatic relations in a less than courteous manner. Thus the Roman and Persian empires each employed the strategy of registering dissatisfaction by failing to notify the other power of the installation of a new leader.<sup>11</sup>

These non-military measures were generally applied by individual states or quasi-states, but on occasion groups of states or quasi-states did co-operate in an attempt to apply international coercion. During the medieval Christian crusades, Popes and church councils passed decrees prohibiting Christian nations from selling to the Saracens any arms, ships, lumber for ship construction, or other goods useful in warfare.<sup>12</sup> The Hanseatic League also employed a collective system of trade boycotts against foreign adversaries during the fourteenth and fifteenth centuries, applying such a boycott against the Russian principality of Novgorod from 1385 to 1392.<sup>13</sup>

## 2. Sanctions under classic international law

In the pre-United Nations, pre-League of Nations world, states reserved the freedom to resort to war as the ultimate means of settling differences. Although war was considered undesirable and regrettable, it was regarded as an inevitable phenomenon, which classic international law was powerless to prevent.<sup>14</sup> By the end of the nineteenth century, states commonly employed a number of coercive strategies short of war in their foreign relations. Non-military coercive measures were viewed as a valuable tool of foreign policy, with the potential both to deter other states from waging war and to compel them to resolve disputes that could not be resolved by other means. Indeed, classic international law recognised the right of states to employ such coercive measures in certain circumstances.

A variety of phrases were used to refer to the nineteenth century precursors of UN sanctions, including ‘measures of constraint short of

<sup>10</sup> Clark, ‘The English Practice with Regard to Reprisals’, 717–720.

<sup>11</sup> Stephan Verosta, ‘International Law in Europe and Western Asia Between 100 and 650 A. D.’ (1964) 113 *Recueil des Cours* 485–617 at 521.

<sup>12</sup> Nussbaum, *A Concise History of the Law of Nations* (2nd edn), p. 20.

<sup>13</sup> *Ibid.*, p. 59.

<sup>14</sup> T. J. Lawrence, *The Principles of International Law*, 7th edn (Boston, DC: Heath & Co, 1923), p. 311; John Westlake, *International Law*, 2nd edn, 2 vols. (Cambridge: Cambridge University Press, 1913), vol. II, p. 3.

war',<sup>15</sup> 'compulsive means of settlement of state differences',<sup>16</sup> and 'methods of applying force which are held not to be inconsistent with the continuance of peaceful relations between the powers concerned'.<sup>17</sup> Although generally employed against states with which one was technically at peace, coercive measures short of war were sufficiently aggressive in character that classic international law located them in a grey area between the laws of peace and the laws of war. International law treatises of the era tended to divide their analyses of international law into two main sections: one describing the 'laws of peace' and the other outlining the 'laws of war'.<sup>18</sup> While most treatises located coercive measures short of war within their section on the laws of war,<sup>19</sup> some texts regarded them as part of the laws of peace.<sup>20</sup>

According to classic international law doctrine, when a state was party to a dispute which stemmed from the initial hostile act of another state and which could not be resolved by non-coercive means,<sup>21</sup> it was permissible to employ certain coercive measures short of warfare in an attempt to compel a resolution of the dispute.<sup>22</sup> Among the retaliatory measures that a state might employ were retorsion, reprisals and pacific blockade.<sup>23</sup>

## 2.1 Retorsion

Retorsion consisted of a response to an initial action that was technically legal yet hostile in nature.<sup>24</sup> It generally involved measures that

<sup>15</sup> William E. Hall, *A Treatise in International Law*, 6th edn (Oxford: Clarendon Press, 1909), pp. 360–369.

<sup>16</sup> L. Oppenheim, *International Law: A Treatise*, 2 vols. (London: Longmans, Green & Co, 1905), vol. II, p. 29.

<sup>17</sup> Lawrence, *The Principles of International Law* (7th edn, 1923), p. 311.

<sup>18</sup> See, e.g., Oppenheim, *International Law*, vol. I: *Peace*; vol. II: *War and Neutrality*.

<sup>19</sup> Henry Wheaton, *Elements of International Law*, 4th edn (London: Stevens & Sons, 1904), pp. 411–416; Oppenheim, *International Law*, vol. II: *War*, pp. 29–51; *International Law* (2nd edn, 1913), vol. II, pp. 1–19; Lawrence, *The Principles of International Law* (7th edn, 1923), pp. 311–320.

<sup>20</sup> Thomas Alfred Walker, *A Manual of Public International Law* (Cambridge: Cambridge University Press, 1895), pp. 94–101; Hall, *A Treatise in International Law*, pp. 360–369.

<sup>21</sup> See, e.g., Oppenheim, *International Law*, vol. II, p. 41.

<sup>22</sup> Wheaton, *Elements of International Law* (4th edn, 1904), p. 411.

<sup>23</sup> Some commentators use the term 'retaliation' interchangeably with retorsion and/or reprisals. Here, retaliation is understood as a broad term encompassing retorsion, reprisals and pacific blockade. For discussion of these terminological questions, see Evelyn S. Colbert, *Retaliation in International Law* (New York: King's Crown Press, 1948), pp. 1–2.

<sup>24</sup> Oppenheim, *International Law*, vol. II, p. 31; Albert E. Hindmarsh, *Force in Peace: Force Short of War in International Relations* (London: Kennikat Press, 1933), p. 57.

were identical or closely analogous to the initial hostile act.<sup>25</sup> One example of retorsion was restricting the legal rights of citizens of another state who were within one's own territorial jurisdiction.<sup>26</sup> Another involved imposing higher trade tariffs upon goods imported from or exported to another state. In 1885 the Bismarck regime responded to what it perceived to be unfair customs policies on the part of Russia by forbidding the Reichsbank from making advances on the security of Russian state loans.<sup>27</sup> In 1904, prior to the Russo-Japanese war, Russia introduced regulations excluding Japanese fishermen from Russian waters. Japan responded by threatening to impose differential duties on Russian imports.<sup>28</sup>

## 2.2 Reprisals

Reprisals consisted of coercive action that was *prima facie* illegal, but which was considered justified if it responded to an initial illegal act.<sup>29</sup> Unlike retorsion, reprisals could consist of a response that was not necessarily in kind or analogous to the initial hostile act.<sup>30</sup> Nevertheless, international law required that reprisals be neither disproportionate nor excessive.<sup>31</sup> The most common form of reprisals involved the appropriation of property belonging to the other state or its nationals.<sup>32</sup> Such property could be detained whilst in the waters or ports of the state imposing the reprisals or it could be seized on the high seas by the reprising state's navy or private ships acting with the authority of that state.<sup>33</sup> Some commentators also considered the seizure of foreign territory or citizens to constitute a permissible form of reprisals.<sup>34</sup>

The technical term for detaining foreign ships or other property located in one's jurisdiction was 'embargo'.<sup>35</sup> A distinction was sometimes drawn between this type of action, known as a 'hostile embargo' because it involved the detention of foreign shipping and property, and a 'civil embargo', which prohibited the ships of one's own nationals

<sup>25</sup> Oppenheim, *International Law*, vol. II, p. 33; Hall, *A Treatise in International Law*, p. 360.

<sup>26</sup> Hall, *A Treatise in International Law*, p. 360; Oppenheim, *International Law*, vol. II, p. 32.

<sup>27</sup> Hindmarsh, *Force in Peace*, p. 58.

<sup>28</sup> Henry Wheaton, *Wheaton's International Law*, 7th edn (London: Stevens & Sons, 1944), p. 91.

<sup>29</sup> Oppenheim, *International Law*, vol. II, p. 34. <sup>30</sup> *Ibid.*

<sup>31</sup> Hall, *A Treatise in International Law*, p. 363; Oppenheim, *International Law*, vol. II, p. 38.

<sup>32</sup> Clark, 'The English Practice with Regard to Reprisals', p. 702.

<sup>33</sup> Westlake, *International Law*, vol. II, p. 8. <sup>34</sup> Oppenheim, *International Law*, vol. II, p. 38.

<sup>35</sup> Westlake, *International Law*, vol. II, p. 8.

from sailing for the state which had taken the initial hostile action.<sup>36</sup> In 1807, US President Thomas Jefferson implemented a civil embargo preventing US vessels from leaving US waters.<sup>37</sup> The aim of the embargo was to place pressure upon Britain and France, then at war with one another, to cease hostilities.

### 2.3 *Pacific blockade*

The pacific blockade evolved in the nineteenth century as an alternative measure of coercion short of war.<sup>38</sup> Previously, international law had considered any blockade to amount to warfare. By the end of the nineteenth century, however, the use of blockades during 'peaceful' relations had become so widespread that international law could not credibly confine the use of blockade to periods of war.<sup>39</sup> Early examples of pacific blockade included coercive action taken against Norwegian ports in 1814 by British and Swedish ships,<sup>40</sup> as well as the 1827 blockade imposed against Turkish troops occupying Greece by Britain, France and Russia.<sup>41</sup>

Pacific blockade could be employed either as a measure of reprisal or as a tool of third-party intervention.<sup>42</sup> A pacific blockade was deemed to exist when a state or group of states blockaded the coasts or ports of the other party to the dispute during a period when relations with the blockaded state were technically considered to be peaceful.<sup>43</sup> The legal elements of pacific blockade were similar to those of belligerent blockade. In order for a blockade to be considered genuine, international law required the state intending to impose a blockade both to

<sup>36</sup> Hindmarsh, *Force in Peace*, p. 64; Wheaton, *Wheaton's International Law* (7th edn, 1944), pp. 92–93.

<sup>37</sup> See Louis M. Sears, *Jefferson and the Embargo* (Durham: Duke University Press, 1927); Hindmarsh, *Force in Peace*, pp. 66–70.

<sup>38</sup> Colbert, *Retaliation in International Law*, p. 61.

<sup>39</sup> For debate on the legitimacy of pacific blockade, see L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique' (1888) 9 *L'Annuaire de L'Institut de Droit International* 276–286 at 280–283; Albert E. Hogan, *Pacific Blockade* (Oxford: Clarendon Press, 1908), pp. 21–31.

<sup>40</sup> Hindmarsh, *Force in Peace*, p. 72; Wheaton, *Wheaton's International Law* (7th edn, 1944), p. 96.

<sup>41</sup> Hogan, *Pacific Blockade*, p. 29; Oppenheim, *International Law*, vol. II, p. 43; Westlake, *International Law*, vol. II, p. 11; Anton Bertram, 'The Economic Weapon as a Form of Peaceful Pressure' (1932) 17 *Problems of Peace and War* (Grotius Society Papers) 139–174 at 157.

<sup>42</sup> Oppenheim, *International Law*, vol. II, p. 48; Hogan, *Pacific Blockade*, p. 19; Hindmarsh, *Force in Peace*, pp. 72–73.

<sup>43</sup> L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', 277.

have the actual capacity to launch a blockade and to notify the target state of its intent to do so.<sup>44</sup> A major difference between pacific and belligerent blockade, however, was that a belligerent blockading state was within its rights to bar all shipping between the blockaded state and the external world,<sup>45</sup> whereas a pacific blockader was not supposed to restrict the shipping of third-party states.<sup>46</sup>

#### 2.4 *The possibilities and limitations of pre-twentieth-century sanctions*

Under the classic international law system, coercive measures short of war could theoretically be used to enforce international law. In the ideal scenario, the measures of retorsion, reprisals and pacific blockade would be employed by a state with a genuine grievance and they would force the state against which they were employed to address that grievance. The timely employment of coercive measures short of war could therefore ensure the resolution of international disputes and prevent the outbreak of war. When employed in the ideal manner envisaged by classic international law, such coercive measures could constitute genuine sanctions that were imposed in response to violations of international law.

In practice, however, coercive measures short of war often functioned as a means of self-help that was open to abuse.<sup>47</sup> Even in cases where states may have wished to apply coercive measures in accordance with international law, their ability to engage in effective reprisals was contingent upon size and strength.<sup>48</sup> Small states were less likely to engage in, and more likely to fall victim to, non-military coercive measures than large, powerful states.<sup>49</sup> Moreover, even if the parties to a dispute were evenly matched, and even if the state taking coercive action acted within the letter of international law, the state against which the measures were imposed was within its rights to interpret the action as warlike and to respond accordingly.<sup>50</sup> Ironically, if the state against which coercive measures short of war were applied chose to treat them as a belligerent act, then war was retrospectively deemed to have begun at

<sup>44</sup> *Declaration of Paris (1856)*, para. 4; L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', 286.

<sup>45</sup> Oppenheim, *International Law*, vol. II, pp. 399–400.

<sup>46</sup> L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', 277; Hall, *A Treatise in International Law*, p. 367.

<sup>47</sup> Oppenheim, *International Law*, vol. II, pp. 42, 48. <sup>48</sup> Hindmarsh, *Force in Peace*, p. 81.

<sup>49</sup> Lawrence, *The Principles of International Law*, p. 321.

<sup>50</sup> *Ibid.*, p. 320; Hogan, *Pacific Blockade*, p. 27.

the moment when the coercive measures were imposed.<sup>51</sup> This meant that a state that sought to act within the letter of the law could end up being held responsible for escalating the dispute to the level of war. Classic international law's coercive measures short of war were thus a double-edged sword, with the potential both to resolve conflict and to trigger war.

### 3. Sanctions under the League of Nations system

*The economic weapon, conceived not as an instrument of war but as a peaceful means of pressure, is the great discovery and the most precious possession of the League. Properly organised, it means the substitution of economic pressure for actual war.*<sup>52</sup>

The League of Nations was created at the end of the First World War, as the culmination of the Versailles post-war peace settlement.<sup>53</sup> The founding document of the League, the Covenant of the League of Nations, sought to circumscribe the general right of states to engage in warfare by only permitting states to resort to war in response to an aggressive act that violated the Covenant.<sup>54</sup> League member states were under an obligation to submit any serious disputes to arbitration, judicial settlement or enquiry by the League Council.<sup>55</sup> They also agreed to refrain from resorting to war until three months after the conclusion of attempts to resolve the dispute through arbitration, judicial settlement or enquiry.<sup>56</sup> Moreover, they undertook not to resort to war against any member state which had complied with pacific attempts at dispute resolution.<sup>57</sup>

In the event that a dispute between member states was not submitted to arbitration, judicial settlement or enquiry, it would be referred to the League Council, which would endeavour to effect a settlement.<sup>58</sup> If these efforts were to fail, the Council would issue a report suggesting how the dispute should be resolved.<sup>59</sup> If the report was unanimous, member states agreed not to go to war with any party to the dispute which subsequently complied with the report's recommendations.<sup>60</sup> However, if the Council failed to reach unanimity, member states

<sup>51</sup> Hall, *A Treatise in International Law*, p. 361. <sup>52</sup> Bertram, 'The Economic Weapon', 169.

<sup>53</sup> On the Versailles conference, see Margaret MacMillan, *Paris 1919: Six Months that Changed the World* (New York: Random House, 2001).

<sup>54</sup> Covenant of the League of Nations, Articles 12, 13 and 15. <sup>55</sup> *Ibid.*, Article 12.

<sup>56</sup> *Ibid.* <sup>57</sup> *Ibid.*, Article 13, para. 4. <sup>58</sup> *Ibid.*, Article 15, paras. 1, 3.

<sup>59</sup> *Ibid.*, Article 15, para. 4. <sup>60</sup> *Ibid.*, Article 15, para. 5.



reserved the right to take ‘such action as they consider necessary for the maintenance of right and justice’.<sup>61</sup>

### 3.1 *The League of Nations sanctions provision*

Sanctions assumed a central role in the League’s collective security scheme, as they were to be applied against states that resorted to war in violation of the Covenant. The Covenant thus provided that:

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.<sup>62</sup>

The text of the League’s sanctions provision suggested that a member state which resorted to war in violation of the Covenant would automatically be subject to sanctions. This was clearly the understanding of US President Woodrow Wilson. Wilson, who was one of the greatest supporters of the creation of the League at the Versailles conference, described the situation as follows:

Suppose somebody does not abide by these engagements, then what happens? An absolute isolation, a boycott. The boycott is automatic. There is no ‘if’ or ‘but’ about it . . . It is the most complete boycott ever conceived in a public document, and I want to say with confident prediction that there will be no more fighting after that. There is not a nation that can stand that for six months.<sup>63</sup>

In practice, however, the sanctions framework envisaged by Wilson was compromised by the manner in which it was subsequently interpreted by member states. Two controversial issues cast a shadow over the League’s sanctions provision. First, there was the question of who could make the determination that there had been a resort to war in violation of the Covenant. Second, there was the question whether, even after such a determination had been made, states could genuinely be obligated to apply sanctions. On 27 September 1921, the League Assembly adopted a resolution which clarified that it was ‘the duty of each Member of the League to decide for itself whether a breach of the

<sup>61</sup> *Ibid.*, Article 15, para. 6.    <sup>62</sup> *Ibid.*, Article 16, para. 1.

<sup>63</sup> As quoted by Daoudi and Dajani, *Economic Sanctions*, p. 26.

Covenant ha[d] been committed'.<sup>64</sup> Ultimately, individual states could therefore decide for themselves whether there had been a resort to war in violation of the Covenant. States could thus avoid the obligation to apply sanctions simply by making a determination that there had been no breach of the Covenant.<sup>65</sup>

### 3.2 *The League of Nations sanctions experiment against Italy*

The mere existence of the League's sanctions provision has been credited with playing a constructive role in resolving some potential conflicts, such as an emerging 1921 dispute between Albanians, Serbs, Croatians and Slovenians.<sup>66</sup> However, the League's first and only concrete experiment with sanctions occurred in 1935–36, when measures were taken against Italy in response to its invasion of Abyssinia. A dispute had been brewing between Italy and Abyssinia since late 1934, and various attempts at negotiation, arbitration and conciliation had failed.<sup>67</sup> The League Council was in the process of writing a report which would make recommendations as to what should be done to resolve the dispute. However, the preparation of the report was soon rendered redundant. On 3 October 1935 Italian forces invaded Abyssinian territory.<sup>68</sup>

Two days after Italy's invasion, the Abyssinian government sought to invoke the League's sanctions provision at a meeting of the League Council.<sup>69</sup> The Council immediately established a sub-committee, consisting of the United Kingdom, Chile, Denmark, France, Portugal and Romania, to verify whether a resort to war in violation of the Covenant had taken place.<sup>70</sup> On 7 October 1935 the sub-committee presented its findings, concluding that Italy had indeed resorted to war in violation of its obligations under the Covenant.<sup>71</sup> Later that day, the members of the

<sup>64</sup> League Assembly Res. 4 (27 September 1921): League of Nations document A.1921.P, 453. See also Kelsen, *The Law of the United Nations*, p. 726.

<sup>65</sup> Walter Schiffer, 'The Idea of Collective Security', in Joel Larus (ed.), *From Collective Security to Preventive Diplomacy* (New York: John Wiley, 1965), pp. 187–202 at 190.

<sup>66</sup> George de Fiéodorowicz, 'Historical Survey of the Application of Sanctions' (1937) 22 *Problems of Peace and War (Grotius Society Papers)* 117–131 at 119.

<sup>67</sup> League of Nations, *The League From Year to Year* (Geneva: League of Nations Information Section, 1935), pp. 53–69.

<sup>68</sup> Royal Institute of International Affairs, *Sanctions: The Character of International Sanctions and their Application* (Oxford: Oxford University Press, 1935), pp. 70–72.

<sup>69</sup> League of Nations Information Section, *The League From Year to Year* (1935), p. 75.

<sup>70</sup> *Ibid.*, p. 76.

<sup>71</sup> League of Nations document C 417, 1935, VII: *Report of the Committee of Six on Responsibility for the Outbreak of Hostilities*.

Council unanimously indicated in a roll-call that they agreed with the findings of the sub-committee and the matter was referred to the League Assembly.

On 9 October, the League Assembly convened to consider whether sanctions should be imposed against Italy. Fifty-four League member states were in attendance. All but four concluded that Italy had violated Article 12 of the Covenant and agreed to implement the measures prescribed in Article 16.<sup>72</sup> Of the four member states who did not vote in favour of applying sanctions, three (Austria, Hungary and Italy itself) expressed the view that Italy had not violated the Covenant and one (Albania) advocated against the application of sanctions.<sup>73</sup>

The League Assembly subsequently established a Co-ordinating Committee to recommend the measures to be taken by member states who had agreed to implement sanctions.<sup>74</sup> The Committee, which comprised a representative of each state which had agreed to impose sanctions, proved too large and unwieldy to engage in the necessary determinations. A sub-committee was formed, featuring eighteen member states whose co-operation was considered essential to the success of the sanctions. The Sub-Committee of Eighteen completed its initial work quickly, forwarding its findings to the Co-ordinating Committee on 19 October 1935. The Co-ordinating Committee ultimately recommended that participating governments should: prevent the export of arms and arms-related material to Italy;<sup>75</sup> prohibit financial transactions between individuals and institutions within its jurisdiction and Italian individuals and institutions;<sup>76</sup> prohibit the import of goods originating in Italy;<sup>77</sup> and prohibit the export to Italy of goods considered necessary for the waging of war, such as rubber, bauxite, aluminium and iron ore.<sup>78</sup> The recommendations of the Co-ordinating Committee were adopted by the League Assembly on 2 November,<sup>79</sup> and sanctions came into effect on 18 November.<sup>80</sup>

The sanctions against Abyssinia were not completely ineffective, as there was some evidence that they had considerable impact upon the

<sup>72</sup> League of Nations, *The League From Year to Year (1935)*, p. 78.

<sup>73</sup> *Ibid.* <sup>74</sup> Royal Institute, *Sanctions*, pp. 70–71. <sup>75</sup> *Ibid.*, Proposal No. 1.

<sup>76</sup> *Ibid.*, Proposal No. 2. <sup>77</sup> *Ibid.*, Proposal No. 3. <sup>78</sup> *Ibid.*, Proposal No. 4.

<sup>79</sup> Fifty-two member states agreed to enforce proposals 1 and 2, fifty agreed to enforce proposal 3, and fifty-one agreed to impose proposal 4. For a full list of those states, see League of Nations, *The League From Year to Year (1935)*, pp. 84–85.

<sup>80</sup> *Ibid.*, p. 82.

Italian economy. In January 1936, Italian exports to thirty of its regular trading partners had declined 53 per cent compared to the figures of the preceding year, and by February exports that decline had risen to 59 per cent.<sup>81</sup> Nevertheless, the experiment with League of Nations sanctions ultimately failed to achieve the aim of forcing Italy to withdraw from Abyssinia. On 4 July 1936, less than eight months after they were first authorised, the sanctions were officially terminated by the League Assembly. Of the forty-five member states which voted, only one – Abyssinia itself – voted against terminating the sanctions.<sup>82</sup>

#### 4. Learning from the League's experience

Less than two decades after its creation, the League of Nations lay in tatters. The serial military aggression of the 1930s culminated in the outbreak of a Second World War. The League manifestly failed to achieve its mission of preventing war. In the end it was powerless to prevent the concerted efforts of major powers to wage war. British Prime Minister Winston Churchill expressed common exasperation at the League's record by saying: 'When the war is over, we must build up a League of Nations based upon organised force and not disorganised nonsense.'<sup>83</sup>

Post-mortems unearthed a multitude of potential causes for the League's failure. Some contended that the League had been doomed from the moment of its creation, enmeshed as it was in a peace settlement that had been perceived as unfair and vengeful by the nations who had been vanquished in the First World War.<sup>84</sup> Others attributed the League's impotence to the fact that it did not contain all of the major powers of the time.<sup>85</sup> Some also speculated that things might have been different if the League Covenant had outlawed not simply the resort to war, but also the use of force.<sup>86</sup>

The League's experiment with sanctions also attracted considerable criticism. One failing was perceived to be the absence of a definitive objective test to determine when sanctions should be applied.<sup>87</sup>

<sup>81</sup> *Geneva*, vol. IX, No. 5 (May 1936).    <sup>82</sup> *Geneva*, vol. IX, No. 7 (July 1936).

<sup>83</sup> Harold Nicolson, *Diaries and Letters* (New York: Atheneum, 1966), vol. 1: 1930–1939, p. 393.

<sup>84</sup> Schiffer, 'The Idea of Collective Security', 198.

<sup>85</sup> Hindmarsh, *Force in Peace*, p. 170.    <sup>86</sup> *Ibid.*, p. 124; Clark, *Boycotts and Peace*, p. 94.

<sup>87</sup> Gilbert Murray, 'A League of Nations: The First Experiment', in Larus, *From Collective Security to Preventive Diplomacy*, p. 186; Hindmarsh, *Force in Peace*, p. 171.

Another was the inability to prevent Italy's neighbours from opting out of the coalition of states imposing sanctions.<sup>88</sup> Yet another was the decision not to include as part of the sanctions regime an embargo against the sale or supply to Italy of oil and petroleum products.<sup>89</sup> Without these commodities, it is arguable that Italy could not have continued its occupation of Abyssinia. However, the greatest contributing factor to the failure of the sanctions against Italy was the refusal of the four major powers of the time to take the necessary steps to ensure that the sanctions against Italy were effective.<sup>90</sup> As Lorenz comments:

France sabotaged all efforts to embargo oil, without which the Italian army would have ground to a halt; Britain allowed Rome passage through the Suez Canal, which was essential to the Italian supply line; Germany, no longer a member of the League, happily took up the slack in the sale of arms and other commodities; and the United States, driven by economic self-interest, refused to support the embargo in every respect except for a ban on arms shipments to both belligerents.<sup>91</sup>

It is not surprising that Germany and the United States chose not to implement the League sanctions, as neither country was then a League member state. However, the motives of France and Britain, which remained important League members, were more difficult to comprehend. It has been speculated that these two powers were afraid of creating too stringent a sanctions regime, in case it drove Mussolini into partnership with Hitler.<sup>92</sup> Ironically, this partnership developed in any event.

<sup>88</sup> Hindmarsh, *Force in Peace*, p. 171.

<sup>89</sup> Daoudi and Dajani, *Economic Sanctions*, p. 63; Robert E. Dell, *The Geneva Racket* (London: Robert Hale, 1941), p. 117.

<sup>90</sup> Albert E. Highley, *The Actions of the States Members of the League of Nations in Application of Sanctions Against Italy, 1935/1936* (Geneva: Journal de Genève, 1938), p. 229; Hindmarsh, *Force in Peace*, p. 171.

<sup>91</sup> Lorenz, *Peace, Power and the United Nations*, p. 25.

<sup>92</sup> Alex Millward, 'Only Yesterday: Some Reflections on the "Thirties" with Particular Reference to Sanctions' (1957) 1 *International Relations* 281-290 at 283.

## 4 Sanctions under the UN Charter

The United Nations was born in the final months of the Second World War, when delegates from around the globe gathered in San Francisco to create an international organisation which would 'save subsequent generations from the scourge of war'.<sup>1</sup> The founders of the UN were motivated by a desire to avoid repeating the failures of the League of Nations. Their objective was to create an international organisation which would not stand idly by in the face of threats to international peace and security.

### 1. A fresh approach to collective security

The UN founders sought to incorporate in the United Nations Charter features designed to ensure not just the participation of as wide a collection of states as possible, but also the active engagement of the most powerful states. The participation of the great powers of the time – the United States of America, the Soviet Union, the United Kingdom, China and France – was secured by granting them permanent membership on the Security Council.<sup>2</sup> Along with permanent membership came the power of the veto, ensuring that the permanent five would never be subjected to collective security action.<sup>3</sup> In order to attract the

<sup>1</sup> UN Charter, Preamble, *Charter of the United Nations* (New York, NY: Department of Public Information), p. 3. The Charter was signed on 26 June 1945 and entered into force on 24 October 1945.

<sup>2</sup> *Ibid.*, Article 23.

<sup>3</sup> *Ibid.*, Article 27(3). On the veto, see Simma, *The Charter of the United Nations* (2002), pp. 476–523; Sydney Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd edn (Oxford: Clarendon Press, 1998), pp. 227–239.

participation of lesser states, the UN founders drew together a range of idealistic purposes and principles that aimed to reassure smaller states that the UN would protect them where the League could not. Among the key incentives for lesser states were formal recognition of the principles of sovereign equality, the prohibition on the use of force and the inviolability of domestic sovereignty.

### 1.1 *An incentive for the great powers: the veto*

The idea of the veto was first floated in late 1944 at the Dumbarton Oaks Conference, which involved the participation of the United States, the United Kingdom, the Soviet Union and China.<sup>4</sup> The decision concerning who should become permanent members was therefore made by a process of self-selection. By the time of the San Francisco Conference, these four powers had agreed to include France.

The notion of the veto attracted heated debate at San Francisco. Some states were against the very idea, with Mexico and the Netherlands arguing that the UN system would be fundamentally flawed and unjust if one country were able to prevent the Security Council from taking urgent action to maintain the peace.<sup>5</sup> Others, including Australia, argued that the exercise of the veto should be restricted to decisions under Chapter VII of the Charter.<sup>6</sup> Ultimately, however, the great powers were unprepared to compromise. The US Representative, Senator Connally, demonstrated what would happen if the proposed veto was modified by tearing up a copy of the UN Charter.<sup>7</sup> The only hint of a concession came in the form of a non-binding declaration by four of the five permanent members, in which they suggested that they would use the veto with restraint.<sup>8</sup>

<sup>4</sup> On the Dumbarton veto discussions, see Robert C. Hilderbrand, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill, NC: University of North Carolina Press, 1990), pp. 183–228. For the proposals arising from Dumbarton, see *Proposals for a General International Organization as Developed at Dumbarton Oaks* (Washington, DC: U.S. Department of State, 1944).

<sup>5</sup> *Documents of the United Nations Conference on International Organization* (1945) UN Information Organization, New York, vol. XI: Commission III: Security Council, pp. 163–164 (Netherlands), p. 333 (Mexico).

<sup>6</sup> Evatt, *The United Nations*, p. 36.

<sup>7</sup> Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Boulder: Westview Press, 2003), p. 223.

<sup>8</sup> *Documents of the UNCIO*, vol. XI, pp. 710–714: *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, para. 8.

## 1.2 Incentives for lesser powers: the UN purposes and principles

The San Francisco Conference culminated in the signing of the United Nations Charter on 26 June 1945. The Charter, which came into effect on 24 October 1945, outlines the UN's purposes and principles, defines the rights and obligations of UN member states, and establishes the major UN organs.<sup>9</sup> The formal purposes of the United Nations are outlined in Article 1 of the UN Charter. They are:

1. To maintain international peace and security; and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.<sup>10</sup>

Article 1 makes it clear that the UN's primary goal is to maintain international peace and security. But it recognises that a range of initiatives must be pursued concurrently in order to build genuine, lasting peace. Article 1(1) acknowledges the necessity of taking effective steps to resolve existing and budding conflicts. But Article 1(2)-(4) also recognise the importance of taking proactive steps to eradicate the potential causes of future conflict.

The principles of the United Nations, which are outlined in Article 2 of the Charter, aim to guide the activities of the UN and the behaviour of its member states. The first principle is the sovereign equality of all UN

<sup>9</sup> For accounts of the drafting history of the Charter, which can be traced back to as early as December 1941, see Evatt, *The United Nations*; Schlesinger, *Act of Creation*; Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2005), pp. 165-193.

<sup>10</sup> UN Charter, Article 1(1)-(4).



member states.<sup>11</sup> The second, third and fourth principles require members to fulfil their obligations under the Charter in good faith;<sup>12</sup> to settle their disputes by peaceful means;<sup>13</sup> and to refrain from the threat or use of force.<sup>14</sup> The fifth principle requires member states to give the UN every assistance in action taken under the Charter and to refrain from giving assistance to any state subject to UN preventive or enforcement action.<sup>15</sup> The sixth principle requires the UN to ensure that non-members act in accordance with the Charter where necessary for the maintenance of international peace and security.<sup>16</sup> The final principle recognises state sovereignty, providing that the UN shall not intervene in the domestic jurisdiction of any state except when it is undertaking enforcement measures under Chapter VII.<sup>17</sup>

### 1.3 *The UN's principal organs*

The UN Charter created six principal organs which were entrusted with realising the organisation's purposes and principles: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat.<sup>18</sup> Three of these organs were dedicated to developing broad strategies to eradicate the causes of conflict. The General Assembly was to discuss questions within the scope of the Charter and make appropriate recommendations to member states and the Security Council,<sup>19</sup> with the only restriction being that the Assembly could not make recommendations on a matter already being addressed by the Council, unless the Council so requested.<sup>20</sup> The Economic and Social Council was to undertake studies and make recommendations on a range of matters, including international economic, social, cultural, educational and health questions, as well as human rights.<sup>21</sup> The Trusteeship Council was to monitor conditions in 'trust territories' administered by UN member states.<sup>22</sup> Its creation reflected the fact that in 1945 many territories remained under the colonial authority of

<sup>11</sup> *Ibid.*, Article 2(1).    <sup>12</sup> *Ibid.*, Article 2(2).    <sup>13</sup> *Ibid.*, Article 2(3).    <sup>14</sup> *Ibid.*, Article 2(4).

<sup>15</sup> *Ibid.*, Article 2(5).    <sup>16</sup> *Ibid.*, Article 2(6).    <sup>17</sup> *Ibid.*, Article 2(7).    <sup>18</sup> *Ibid.*, Article 7.

<sup>19</sup> Chapter IV of the Charter (Articles 9–22) details the composition, functions and powers, voting and procedure of the General Assembly.

<sup>20</sup> UN Charter, Article 12.

<sup>21</sup> Chapter X of the Charter (Articles 61–74) details the composition, functions and powers, voting and procedure of the Economic and Social Council (ECOSOC).

<sup>22</sup> Chapter XIII of the Charter (Articles 86–91) details the composition, functions and powers, voting and procedure of the Trusteeship Council.

other nations. The spread of self-determination in the second half of the twentieth century has made the Trusteeship Council redundant.

Two of the principal UN organs, the International Court of Justice and the Security Council, were assigned responsibility for resolving and preventing the exacerbation of international conflict. The ICJ was to adjudicate legal disputes between states willing to submit disputes to its jurisdiction.<sup>23</sup> The Security Council was given primary responsibility for the maintenance of international peace and security.<sup>24</sup> The final UN organ, the Secretariat, was created primarily in order to provide administrative support to the other UN organs, with the exception of the International Court of Justice.<sup>25</sup> However, the Charter did provide some scope for the UN Secretary-General to take initiatives to resolve conflict through the vehicle of 'good offices'.<sup>26</sup> Such initiatives could be taken at the request of another primary organ of the UN excluding the ICJ,<sup>27</sup> but the Secretary-General was also empowered to bring any matter which threatened international peace and security to the attention of the Security Council.<sup>28</sup>

## 2. The UN Security Council's sanctions powers

As their League predecessors had done decades earlier, the UN's founders included the instrument of sanctions as one of the major tools in the new international organisation's arsenal for resolving international conflict. However, the UN founders sought to construct a sanctions mechanism that would come into operation in a more clear-cut manner.<sup>29</sup> Where sanctions decision-making had been decentralised

<sup>23</sup> Chapter XIV of the Charter (Articles 92–96) outlines the role of the International Court of Justice within the UN system. The composition and procedure of the International Court of Justice are defined in the Charter of the International Court of Justice, which appears as an annex to the UN Charter.

<sup>24</sup> Chapter V of the Charter (Articles 23–32) details the composition, functions and powers, voting and procedure of the Security Council.

<sup>25</sup> Chapter XV of the Charter (Articles 97–101) establishes the Secretariat.

<sup>26</sup> On the 'good offices' of the UNSG, see Thomas M. Franck and Georg Nolte, 'The Good Offices Function of the UNSG', in Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World: The UN's Roles in International Relations*, 2nd edn (Oxford: Oxford University Press, 1994), pp. 143–182; J. G. Merrills, *International Dispute Settlement*, 3rd edn (Cambridge: Cambridge University Press, 1998), pp. 226–232.

<sup>27</sup> UN Charter, Article 98. <sup>28</sup> *Ibid.*, Article 99.

<sup>29</sup> For comparisons of the relative merits of the sanctioning systems of the League of Nations and the United Nations, see Kelsen, *The Law of the United Nations*, pp. 724–756; Hans Kelsen, 'The Old and the New League: The Covenant and the Dumbarton Oaks

under the League, effectively permitting states to decide for themselves whether to apply sanctions, the UN Charter centralised decision-making.<sup>30</sup> The Charter empowered the Security Council to make the decision to apply sanctions and obligated member states to implement them.

Chapter V of the UN Charter outlines the functions and powers of the Security Council.<sup>31</sup> It confers primary responsibility for the maintenance of international peace and security upon the Security Council<sup>32</sup> and empowers it to take a range of action under Chapters VI, VII, VIII and XII to fulfil that responsibility.<sup>33</sup> The Council is thus responsible for facilitating the peaceful settlement of disputes under Chapter VI,<sup>34</sup> taking action under Chapter VII with respect to threats to the peace, breaches of the peace and acts of aggression,<sup>35</sup> involving regional arrangements in initiatives to maintain international peace and security under Chapter VIII,<sup>36</sup> and exercising certain functions with respect to the international trusteeship system under Chapter XII.<sup>37</sup>

### 2.1 *The sanctions trigger: Article 39*

The legal basis for the Security Council's sanctions powers is located in Chapter VII of the Charter. Comprising Articles 39–51, Chapter VII bestows responsibility upon the Council for taking action to maintain or restore international peace and security. Articles 39 and 41 are the key provisions governing the application of sanctions. Article 39 provides that:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.<sup>38</sup>

Proposals' (1945) 39 *AJIL* 45–83; and Kim Richard Nossal, 'Economic Sanctions in the League of Nations and the United Nations', in David Leyton-Brown (ed.), *The Utility of International Economic Sanctions* (Beckenham: Croom Helm, 1987), pp. 7–22.

<sup>30</sup> Kelsen, *The Law of the United Nations*, pp. 726, 746. See also Vera Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (Dordrecht: Martinus Nijhoff, 1990), p. 367.

<sup>31</sup> Chapter V of the Charter comprises Articles 23–32. <sup>32</sup> UN Charter, Article 24(1).

<sup>33</sup> *Ibid.*, Article 24(2). <sup>34</sup> Chapter VI comprises Articles 33–38.

<sup>35</sup> Chapter VII comprises Articles 39–51. <sup>36</sup> Chapter VIII comprises Articles 52–54.

<sup>37</sup> Chapter XII comprises Articles 75–85.

<sup>38</sup> *Ibid.*, Article 39. Article 41 provides for the possibility of sanctions short of the use of force, as discussed in the next section. Article 42 describes the types of military action that the Council can mandate if it considers that non-military sanctions would prove, or have proven, ineffective. It provides: 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or

The UN Charter does not elaborate upon what constitutes a ‘threat to the peace’, a ‘breach of the peace’, or an ‘act of aggression’. This lack of a precise definition was intentional, as the founders aimed to give the Security Council maximum flexibility in determining when it was necessary to respond to a particular situation.<sup>39</sup> Nevertheless, when the Charter was framed, most observers would have predicted that a breach of the peace would represent a full-blown conflict between states, whereas a threat to the peace would have encompassed a situation likely to result in such a full-blown conflict and an act of aggression would have described an act of military intervention by one state against another.<sup>40</sup> However, as illustrated in Chapter 5, below, in practice the Council has almost exclusively used determinations of a threat to the peace as the trigger for applying sanctions. The one exception was when it characterised Iraq’s invasion of Kuwait as a breach of the peace.

## 2.2 *The UN Charter’s sanctions provision: Article 41*

Article 41 outlines an inclusive list of the coercive measures short of force that may be authorised by the Security Council in response to a threat to the peace, breach of the peace, or act of aggression. It provides that:

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 it 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.<sup>41</sup>

A literal reading of Article 41 in isolation would suggest that the Security Council has the broad power to authorise non-military sanctions in order to give effect to any of its decisions, but in practice Article 41 was designed to be read in conjunction with Article 39, meaning that non-military sanctions should be authorised by the Council only after it

restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.’

<sup>39</sup> Hilderbrand, *Dumbarton Oaks*, p. 138.

<sup>40</sup> On threats to the peace, breaches of the peace and acts of aggression, see Inger Österdahl, *Threat to the Peace: The Interpretation by the Security Council of Article 39 of the UN Charter* (Uppsala: Iustus Förlag, 1998); Simma, *The Charter of the United Nations* (2nd edn, 2002), pp. 717–728; Chesterman, *Just War or Just Peace?*, pp. 127–162.

<sup>41</sup> UN Charter, Article 41.

has determined the existence of a threat to the peace, breach of the peace, or act of aggression.<sup>42</sup> The basic objective of the Council in authorising non-military sanctions should therefore be the maintenance or restoration of international peace and security.

The inclusive approach of Article 41 to the list of potential sanctions to be employed has given the Security Council great flexibility to determine the appropriate measures to apply in response to a given threat to the peace. In practice, the Council has made full use of this flexibility. Chapter 6 illustrates both the broad variety of sanctions employed, as well as the Council's willingness to experiment with new sanctions strategies.

### 2.3 *Other sanctions-related Chapter VII provisions: Articles 48 and 50*

Two further provisions in Chapter VII are relevant to the application of sanctions. Article 48 provides that the Security Council may determine whether the action required to carry out its decisions shall be taken by all or some of the members of the United Nations,<sup>43</sup> and that the Council's decisions shall be carried out by UN members both directly and through their action in international agencies.<sup>44</sup> Article 50 provides that when enforcement or preventive measures are taken against a state, any other state which finds itself confronted by special economic problems arising from the implementation of those measures shall have the right to consult the Security Council with regard to a solution of those problems.<sup>45</sup>

### 2.4 *The binding character of Article 41 sanctions*

When the Security Council applies UN sanctions, all UN member states are under a legal obligation to implement those measures. This legal obligation flows from Articles 25, 103 and 2(5) of the UN Charter. Under Article 25, UN member states agree to carry out the decisions of the

<sup>42</sup> Kelsen, *The Law of the United Nations*, p. 729; Gowlland-Debbas, *Collective Responses*, p. 381; Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 739.

<sup>43</sup> Article 48(1). In practice, the Security Council has not called upon particular states to impose mandatory sanctions. For discussion of the Council's practice in relation to identifying the actors who must apply mandatory sanctions, see Chapter 8, section 1.

<sup>44</sup> Article 48(2).

<sup>45</sup> Article 50. For discussion of the practice of the Security Council in relation to the unintended consequences of sanctions upon third states, see also Chapter 8, section 8.4.

Security Council in accordance with the Charter.<sup>46</sup> Thus UN member states must comply with and implement UN sanctions. Article 103 also requires UN member states to grant precedence to their legal obligations under the Charter, meaning that they cannot claim previous legal obligation as an excuse to avoid obligations arising from a decision of the Security Council.<sup>47</sup> Article 2(5) further requires member states to refrain from giving assistance to states subject to action under Articles 41 and 42.<sup>48</sup>

Although the obligation to implement UN sanctions is clearly established for UN member states, there has been some debate regarding whether that obligation might not extend to non-member states. The traditional, restrictive view is that under general principles of international law states cannot be bound by an obligation under a treaty to which they are not party, unless that treaty obligation reflects a peremptory obligation under customary international law.<sup>49</sup> A permissive view holds, however, that the Security Council has the power and the capacity to adopt decisions that are legally binding upon non-member states.<sup>50</sup> This power arguably flows from Article 2(6), which provides that the UN should ensure that non-members act in accordance with the Charter's principles, particularly where necessary for the maintenance of international peace and security.<sup>51</sup> As almost all of the obligations of member states under the Charter might be considered necessary for the maintenance of international peace and security, it has been suggested that Article 2(6) seeks to extend the obligations of UN members to

<sup>46</sup> Article 25 states that: 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'

<sup>47</sup> Article 103 states that: 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.'

<sup>48</sup> Article 2(5) states that: 'All Members shall . . . refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.'

<sup>49</sup> Article 34 of the Vienna Convention on the Law of Treaties provides that a treaty is not binding on non-parties without their consent. For the view that Article 2(6) cannot bind non-member states, see Bruno Simma (ed.), *The Charter of the United Nations: A Commentary* (Oxford: Oxford University Press, 1995), p. 627; Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: Commentary and Documents*, 2nd edn (Boston: World Peace Foundation, 1949), pp. 108-109.

<sup>50</sup> Kelsen, *The Law of the United Nations*, pp. 85-86; Hans Kelsen, 'Sanctions in International Law Under the Charter of the United Nations' (1946) 31 *Iowa LR* 499-543 at 502.

<sup>51</sup> Article 2(6) states that: 'The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.'

non-members.<sup>52</sup> Article 2(6) has thus been described as heralding a transition from an old to a new international law.<sup>53</sup>

The Security Council's practice suggests that it has intended the majority of its sanctions decisions to bind all states. The Council has only twice directed its mandatory sanctions-related language explicitly at UN member states, doing so in the cases of the 232 Southern Rhodesia<sup>54</sup> and 1718 North Korea sanctions regimes.<sup>55</sup> In connection with its other twenty-three sanctions regimes, the Council has employed the phrase 'All States shall' when outlining sanctions obligations.<sup>56</sup> A number of non-members, including the Republic of Korea (prior to becoming a UN member), Switzerland (also prior to becoming a UN member) and The Holy See, have taken steps to implement various sanctions regimes,<sup>57</sup> suggesting that they felt more than a moral obligation to apply sanctions. Further support for the permissive view can be found in the *Milutinović* decision by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), which found that in practice the Security Council has adopted resolutions that apply to non-member states.<sup>58</sup> Moreover, drawing upon the findings of the International Court of Justice in the *Certain Expenses* case, the Chamber proceeded to reaffirm that when the Security Council takes action that is necessary for the maintenance of international peace and security, the presumption is that such action is not *ultra vires* the Charter of the United Nations.<sup>59</sup>

In practice, the question of whether UN sanctions technically create a legal obligation upon states non-members of the UN is effectively academic, as UN membership has expanded beyond 190 states, leaving just

<sup>52</sup> Kelsen, *The Law of the United Nations*, pp. 85–86.

<sup>53</sup> *Ibid.*, pp. 109–110; Kelsen, 'Sanctions in International Law', 502.

<sup>54</sup> SC Res. 232 (16 December 1966), paras. 2, 7.

<sup>55</sup> SC Res. 1718 (14 October 2006), paras. 8–10.

<sup>56</sup> See the provisions outlining the scope of all other sanctions regimes, as contained in Appendix 3, Table D.

<sup>57</sup> See, e.g., the communications sent to the UNSG outlining steps taken to implement the sanctions against Iraq by: the Republic of Korea, S/21487 (10 August 1990); S/21617 (24 August 1990); S/23016 (9 September 1991); Switzerland, S/21585 (22 August 1990); S/22958 (19 August 1991) and The Holy See, S/22802 (16 July 1991). Switzerland also submitted similar communications in relation to implementation of the sanctions regimes against the former Yugoslavia and FRYSM. See S/23338 (31 December 1991) and S/24160 (24 June 1992).

<sup>58</sup> *Prosecutor v. Milan Milutinović and others*, Case IT-99-37-PT, Trial Chamber Decision on Jurisdiction (6 May 2003), paras. 51–57.

<sup>59</sup> *Ibid.*, para. 57.

a handful of small states beyond the sphere of the legal obligations clearly established for UN member states.<sup>60</sup> Thus, even if UN sanctions are not technically binding upon that handful of states, their legal effect is practically universal in any event.

### 3. The question of the limits upon the Security Council's sanctions powers

The Security Council's ability to create sanctions obligations that are practically universal in their legal effect raises the question of where the limits lie upon the Security Council's sanctions powers. Some commentators conclude that the Council's broad discretion to take action for the maintenance of international peace and security effectively places it above the law.<sup>61</sup> Others insist, however, that the Council's actions are subject to legal limitations, the basis of which can be found both in the UN Charter itself and in extra-Charter sources such as customary and general international law.<sup>62</sup>

#### 3.1 *Potential Charter-based limits on the Council's sanctions powers*

The UN Charter provides a general indication, in Articles 24 and 25, that the Council's sanctions powers are not unlimited. As noted in section 2.4, above, under Article 25, UN member states agree to carry out the decisions of the Security Council in accordance with the Charter. There is some ambiguity as to whether the phrase 'in accordance with the Charter' applies to the actions of member states or the decisions of the Council.<sup>63</sup> Nevertheless, it can be interpreted as meaning that states are

<sup>60</sup> In June 2006 the Republic of Montenegro became the 192nd state to join the UN. On 22 June the Security Council adopted SC Res. 1691, recommending to the General Assembly that Montenegro be granted membership. On 28 June 2006 the General Assembly adopted GA Res. 60/264, formally admitting Montenegro to membership. The Holy See is one example of the few states that remain a non-member. It nevertheless maintains an observer mission to the UN.

<sup>61</sup> Dulles, *War or Peace*, pp. 194–195.

<sup>62</sup> See, e.g., Mohammed Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts* (The Hague: Martinus Nijhoff, 1994); Georg Nolte, 'The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections', in Michael Byers (ed.), *The Role of Law in International Politics* (Oxford: Oxford University Press, 2000), pp. 315–326; Schweigman, *The Authority of the Security Council under Chapter VII of the UN Charter*; de Wet, *The Chapter VII Powers of the United Nations Security Council*; Orakhelashvili, *Peremptory Norms in International Law*.

<sup>63</sup> Martenczuk, 'The Security Council, the ICJ and Judicial Review', 535.



only obligated to carry out Council decisions that are taken in conformity with the Charter. Article 24 provides:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf;
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations . . .

Under Article 24(2), the Council is thus required to act in accordance with the UN Purposes and Principles, which are surveyed in section 1.2, above. By pointing to the UN Purposes and Principles and the provisions of the Charter in general, Articles 24 and 25 provide a clear indication that the Security Council's powers are not supposed to be exercised without limits. This position has been reaffirmed by various international judicial bodies. In the *Certain Expenses* case, the International Court of Justice acknowledged that the Council's powers are not unlimited, but it found that when the Council's actions are necessary for the maintenance of international peace and security, the presumption should be that it is not acting *ultra vires*.<sup>64</sup> The ICTY, for its part, held in the *Tadić* case that the Security Council is subject to constitutional limitations, no matter how broad its powers may be.<sup>65</sup>

Although the UN Purposes and Principles provide a potential source of limits upon the Security Council's powers, they deliver scant clarity concerning the specific contours of those limits. The normative aspirations contained in the provisions of the Purposes and Principles are broad, abstract and open to subjective interpretation. Indeed, they have been described as 'far too vague and general . . . to provide a meaningful limitation of the Council's powers'.<sup>66</sup> Nevertheless, some commentators have sought to extract from the UN's Purposes and Principles meaningful, practically applicable rules that might limit Security Council action.<sup>67</sup> Thus, it has been proposed that the Council cannot undermine the essence of the right of self-determination (Article 1(2)),<sup>68</sup>

<sup>64</sup> *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, (Advisory Opinion of 20 July 1962) (1962) ICJ Reports 151, 168.

<sup>65</sup> *Prosecutor v. Dusko Tadić a/k/a 'Dule'*, Case No. IT-94-1-AR72, 2 October 1995, para. 28.

<sup>66</sup> Martenczuk, 'The Security Council, the ICJ and Judicial Review', 542.

<sup>67</sup> See, e.g., Schweigman, *The Authority of the Security Council*, pp. 167–182.

<sup>68</sup> *Ibid.*, p. 169; de Wet, *Chapter VII Powers*, p. 193.

must respect basic human rights (Article 1(3))<sup>69</sup> and must exercise its responsibilities in good faith (Article 2(2)).<sup>70</sup> Upon closer inspection, however, these same commentators concede qualifications that dilute these prospective limits. The Council can thus violate the principle of self-determination by imposing a transitional UN administration, if on a temporary basis and for the purpose of establishing stability.<sup>71</sup> It can violate human rights in the interests of peace and security if it acts out of necessity and with proportionality.<sup>72</sup> And the proposed limitation of acting in good faith does not necessarily require the Council to act consistently if that would undermine its efficiency.<sup>73</sup>

The other major Charter-based source of limits upon the Council's sanctions powers is the text of Article 39 itself.<sup>74</sup> It has thus been argued that the discretion of the Security Council to determine the existence of a threat to the peace, breach of the peace or act of aggression is restricted to situations that have 'a demonstrable link to the use of armed force in international relations'<sup>75</sup> or a clear 'impact upon international relations'.<sup>76</sup> These thresholds would seem to be consistent with the intent of the text of Article 39 and Chapter VII as a whole. However, in an interdependent, globalised world, practically every situation that might be characterised as a threat to the peace has an impact upon international relations, including the potential to lead to the use of armed force. It is thus questionable whether even these modest attempts at restraining the Council's discretion would lead to any meaningful contraction of the Council's determinations under Article 39.

Moreover, there is conflicting international jurisprudence concerning whether the Council's discretion to make determinations under Article 39 can be restricted. The ICTY concluded in the *Tadić* case that the Security Council does not have a completely unfettered discretion concerning what amounts to a threat to the peace.<sup>77</sup> However, in the *Kanyabashi* case, the ICTR held that the Council's discretionary

<sup>69</sup> Schweigman, *ibid.*, p. 172; de Wet, *ibid.*, p. 193.

<sup>70</sup> Schweigman, *ibid.*, p. 174; de Wet, *ibid.*, p. 195.

<sup>71</sup> Schweigman, *ibid.*, pp. 170–171. <sup>72</sup> *Ibid.*, p. 171.

<sup>73</sup> *Ibid.*, pp. 175–177; cf. de Wet, *Chapter VII Powers*, p. 198 (arguing the need to ensure consistency in the employment of measures that could only be subjected to judicial review with great difficulty).

<sup>74</sup> See, e.g., de Wet, *ibid.*, pp. 178–216.

<sup>75</sup> Martenczuk, 'The Security Council, the ICJ and Judicial Review', 544.

<sup>76</sup> de Wet, *Chapter VII Powers*, pp. 175–176.

<sup>77</sup> *Prosecutor v. Dusko Tadić a/k/a 'Dule'*, Case No. IT-94-1-AR72, 2 October 1995, para. 29.

assessments under Article 39 were not justiciable.<sup>78</sup> The ICJ has not pronounced itself definitively on this question. However, in the *Lockerbie* case various judges expressed the view that the Council retained exclusive discretion concerning the state of affairs that brings Chapter VII into operation.<sup>79</sup>

### 3.2 *Peremptory norms as a potential limit upon the Council's sanctions powers*

Explorations of the potential limits upon Security Council action have not been confined to the Charter's quarry. A growing literature analyses the potential of extra-Charter legal sources to restrict Security Council action.<sup>80</sup> Foremost among these proposed sources are peremptory norms of general international law, which are commonly referred to as norms of *jus cogens*.<sup>81</sup> The concept of peremptory norms was recognised by Article 53 of the Vienna Convention on the Law of Treaties, which provides that a treaty is null and void if it is concluded in conflict with peremptory norms. Peremptory norms are normative principles that are considered to be so important for the welfare and even survival of the global community that they cannot be violated or derogated from.<sup>82</sup> As these norms are so essential, it can be argued that the Security Council is legally bound to respect them.<sup>83</sup> According to this view, if the Council makes a decision that contravenes a peremptory norm, that decision should be considered void ab initio.<sup>84</sup>

The category of norms that are considered peremptory has not been exhaustively defined. However, a variety of norms touching upon the activities of the Security Council are likely candidates for the mantle of

<sup>78</sup> *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction (18 June 1997), para. 20.

<sup>79</sup> See, e.g., *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United States)*, Provisional Measures, ICJ Reports (1992) 114, 176 (Judge Weeramantry, dissenting opinion); *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom)*, Preliminary Objections ICJ Reports (1998) 2, 110 (Judge ad hoc Jennings, dissenting opinion).

<sup>80</sup> Schweigman, *The Authority of the Security Council*; de Wet, *Chapter VII Powers*; Orakhelashvili, 'The Impact of Peremptory Norms'; Ioana Petculescu, 'The Review of the United Nations Security Council Decisions by the International Court of Justice' (2005) 52 *Netherlands ILR* 167–195; Orakhelashvili, *Peremptory Norms in International Law*.

<sup>81</sup> See, e.g., Schweigman, *The Authority of the Security Council*, pp. 197–201; de Wet, *Chapter VII Powers*, pp. 187–191; Orakhelashvili, 'The Impact of Peremptory Norms', 63–67.

<sup>82</sup> Orakhelashvili, 'The Impact of Peremptory Norms', 62–63.

<sup>83</sup> *Ibid.* <sup>84</sup> *Ibid.*, 83.

*jus cogens*, including the prohibition of the use of force, the right to self-determination, fundamental human rights and international humanitarian law.<sup>85</sup> Orakhelashvili has explored the practice of the Security Council in relation to these norms and identified several instances in which the Council has arguably extended implicit support for a breach of a peremptory norm or failed to act when faced with such a breach.<sup>86</sup>

A recent international judicial decision has supported the view that the Security Council's sanctions powers can be restricted by peremptory norms. In the *Kadi* case, the Court of First Instance of the European Communities considered a petition from an individual whose assets had been frozen by the European Council in accordance with the 1267 Taliban/Al Qaida sanctions regime.<sup>87</sup> Whilst conceding that it could not review the Council's determination of what constitutes a threat to international peace and security,<sup>88</sup> the Court found that it was empowered to consider the lawfulness of Security Council resolutions with regard to *jus cogens*.<sup>89</sup> It also concluded that if the Council's resolutions failed to observe *jus cogens*, they would not bind UN member states.<sup>90</sup> It proceeded to affirm that fundamental human rights were peremptory norms,<sup>91</sup> and explored the extent to which the Council's sanctions practice had violated the applicant's rights to respect for property,<sup>92</sup> to a hearing<sup>93</sup> and to effective judicial review.<sup>94</sup> Ultimately, the Court held that the Security Council and its 1267 Committee had not violated the first two rights, as the elaboration of exemptions meant that the applicant had not been arbitrarily deprived of property,<sup>95</sup> and the Committee's process for listing and delisting provided for some form of hearing.<sup>96</sup> With respect to the question of effective judicial review, the Court acknowledged that the applicant's rights had been restricted, but it held that the applicant's interest in having a court hear his case on the merits was not enough to outweigh 'the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council in accordance with the Charter of the United Nations'.<sup>97</sup>

<sup>85</sup> *Ibid.*, 63–67. <sup>86</sup> *Ibid.*, 71–73.

<sup>87</sup> *Yassin Abdullah Kadi v. Council and Commission*, Court of First Instance, Case T-315/01, 21 September 2005, (2006) 45 *ILM* 81, para. 219.

<sup>88</sup> *Ibid.*, para. 219. <sup>89</sup> *Ibid.*, para. 226. <sup>90</sup> *Ibid.*, para. 230. <sup>91</sup> *Ibid.*, para. 231.

<sup>92</sup> *Ibid.*, paras. 234–252. <sup>93</sup> *Ibid.*, paras. 253–276. <sup>94</sup> *Ibid.*, paras. 277–291.

<sup>95</sup> *Ibid.*, para. 243. <sup>96</sup> *Ibid.*, paras. 265–268. <sup>97</sup> *Ibid.*, para. 289.

### 3.3 *The possibility of judicial review of Security Council sanctions*

There is no shortage of potential legal limits upon the actions of the Security Council. The key question, however, is how to ensure that the Security Council observes and respects those legal limits. These potential legal limits upon Council action will remain prospective rather than actual until a means can be found to ensure that they are observed and respected by the Council.

Most scholars who explore the legal restrictions upon Council action also embark upon a quest to find a mechanism to guarantee that the Council would respect their freshly charted legal boundaries. The favoured mechanism is judicial review.<sup>98</sup> The idea that Security Council action might become subject to judicial review, or that there would even be a need for such review, would once have been considered fanciful. During the Cold War, the Council was generally criticised for failing to exercise, rather than for exceeding, its powers. However, in the early 1990s, as the post-Cold War Security Council finally began to exercise its Chapter VII powers, some observers started to fear that international peace and security might be threatened as much by an active Council as it had been by an inactive Council. Almost immediately there began to be calls for the International Court of Justice to play a role in restraining the Council.

The UN Charter does not provide for institutionalised judicial review, according to which the legal validity of Security Council decisions would be subject to review by a judicial organ. As the International Court of Justice observed in the *Certain Expenses* case, this was not an oversight:

In the legal systems of States, there is often some procedure for determining the validity of even a legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted.<sup>99</sup>

<sup>98</sup> de Wet, 'Judicial Review as an Emerging General Principle of Law'; John Dugard, 'Judicial Review of Sanctions', in Vera Gowlland-Debbas (ed.), *United Nations Sanctions and International Law* (The Hague: Kluwer Law International, 2001), pp. 83–91; Schweigman, *The Authority of the Security Council*; de Wet, *Chapter VII Powers*; Petculescu, 'The Review of the United Nations Security Council Decisions'.

<sup>99</sup> *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, (Advisory Opinion of 20 July 1962) (1962) ICJ Reports 151, 168.

Instead of providing for a system of judicial review with the ICJ at its apex, the Charter bestowed upon the Security Council primary responsibility for the maintenance of peace and security, whilst at the same time providing that the International Court of Justice was the principal judicial organ of the UN.<sup>100</sup>

Although the UN Charter does not establish a basis for institutional judicial review of the decisions of the UN's political organs, it does not preclude the ICJ from deliberating upon disputes that are concurrently before those bodies. The ICJ is thus not subject to the same restrictions as the UN General Assembly, which is prohibited by Article 12 of the Charter from considering a dispute already before the Security Council. As the *Lockerbie* case demonstrates, the Court may thus consider the legal dimensions of a dispute that is concurrently under consideration by the Security Council.<sup>101</sup> Moreover, as various cases heard by other judicial bodies illustrate, including the ICTY *Tadić* case, the ICTR *Kanyabashi* case and the *Kadi* case heard by the Court of First Instance of the European Communities, the ICJ is not the only international judicial body that may have cause to consider legal questions touching upon the powers of the Security Council. With the establishment of the International Criminal Court, there is also the possibility that yet another international judicial body may have cause to touch upon the Council's powers.<sup>102</sup>

However, despite the fact that these various international judicial bodies may continue to have occasional cause to touch upon the Council's powers, their potential to play a meaningful regulatory role over Security Council action is limited. The ICJ would be the logical candidate to play a primary judicial review role, yet its capacity to hear cases addressing the Council's powers is restricted by jurisdictional questions. Cases come before the Court either under contentious or advisory jurisdiction. The Court has power to issue binding decisions heard under its contentious jurisdiction. However, such decisions are only binding upon the parties to each particular dispute. The Security Council cannot be party to a contentious case and thus cannot be bound

<sup>100</sup> UN Charter, Articles 24 and 92.

<sup>101</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom; Libya v. United States)*, Provisional Measures (Orders of 14 April 1992), *ICJ Reports* (1992) 3, 114; Preliminary Objections (Orders of 27 February 1998) *ICJ Reports* (1998) 2, 115.

<sup>102</sup> For discussion, see Petculescu, 'The Review of the United Nations Security Council Decisions', 186–188.

by a decision made under contentious jurisdiction. As Alvarez notes: 'The most the Court would find [in a contentious jurisdiction case] is that a particular Council decision as applied to these parties in the circumstances at issue would be illegal.'<sup>103</sup> The Court may, of course, pronounce upon the Council's powers under its advisory jurisdiction and its pronouncements would carry considerable weight as authoritative findings of law, but the Council would not be bound by such advisory findings.

The ICJ's inability to review the Council's actions in a routine, determinative and binding manner thus suggests that its future review activities will continue to be 'incidental or fortuitous'.<sup>104</sup> Review activities by other international judicial bodies, which rank below the ICJ in the international legal hierarchy, have even less capacity to bind the Council. Moreover, although these bodies have shown a willingness to pronounce upon general legal principles touching upon the Council's powers, they have also demonstrated a reluctance to enter into conflict with the Council. This is natural and understandable, especially as some of the bodies concerned owe their very existence to the Council. Thus, although recent developments show that the Council's actions are not completely shielded from the international judicial microscope, the ability of international judicial tribunals to engage in meaningful regulation of Security Council decision-making remains limited.

### 3.4 *The Security Council's enduring power*

The fact that a number of international judicial bodies have been prepared to speculate upon the outer limits of the Security Council's powers represents a considerable development in the international legal order. Nevertheless, for at least the foreseeable future these judicial interventions are unlikely to occur frequently. In all probability, instances of judicial review will continue to be ad hoc and haphazard, as judicial bodies continue to struggle with the ramifications of sitting in judgment upon a Security Council which is empowered by the UN Charter to take urgent action to maintain and restore international peace and security. In the absence of any mechanism to ensure a separation and balance of powers on the international sphere, meaningful

<sup>103</sup> José E. Alvarez, 'Judging the Security Council' (1996) 90 *AJIL* 1-39 at 5.

<sup>104</sup> Gowlland-Debbas, 'The Relationship Between the International Court of Justice and the Security Council', 670.

judicial review is unlikely to emerge on the international plane in the near future.

Recent contributions to the expanding literature on the legal limits upon the Security Council's powers are both important and timely. They provide valuable guidance to scholars contemplating the legitimate scope of the Security Council's powers. They may also influence the thinking of judges sitting on courts and tribunals that decide that they have jurisdiction to review the Security Council's activities and therefore seek to identify the legal norms that might legitimately be considered to restrict the Council's powers. However, even in the unlikely event that judicial review of Security Council action were to become the rule rather than the exception, it is unclear to what extent that process would have the ability to transform the Council's behaviour.

The generally glacial pace of the judicial review process makes it likely that, as in the *Lockerbie* case, by the time an issue comes before a court that determines it has jurisdiction to review the Council's action, the original state of affairs would have been superseded either by developments that fundamentally affect the original facts of the case, or by legally binding Chapter VII Council action that has the effect of moving the matter beyond the reach of the court. Even if judicial review of Security Council action were to become institutionalised and were to prove more effective than anticipated, in all probability the impact upon the Security Council's practice would be piecemeal, ad hoc and minimal. It is highly unlikely that judicial review will result in a paradigm shift in the Security Council's practice. Such a shift can only come from within the Council itself.

#### **4. The Charter's implementation lacuna and the organic evolution of the UN sanctions system**

In theory, the virtually universal nature of the legal obligation upon states to implement UN sanctions should mean that, when the Security Council decides to apply sanctions, they will then be implemented universally. Experience has demonstrated, however, that the Council's authorisation of mandatory sanctions is rarely sufficient in itself to guarantee that sanctions will actually be implemented. In some instances, a state may not be able to ensure the watertight implementation of sanctions. In other cases, a state may stand to lose so much from the



observation of sanctions, or to gain so much from their violation, that it might turn a blind eye to sanctions violations, or resolve not to implement them at all.

The UN founders did not outline a detailed blueprint for a system to guarantee the practical implementation of UN sanctions. Although the UN Charter provides the Security Council with the authority to impose sanctions, it is silent upon the question of what steps could or should be taken to ensure that sanctions are, in fact, applied. The founders were clearly mindful, however, of the possibility that sanctions might not be fully implemented. The inclusion of Article 50, which provides that any state confronted by 'special economic problems' arising from the application of UN sanctions has the right to consult the Council to seek a solution to its problem, appears to have been designed to offset the temptation to continue to engage in trade with a state subject to UN sanctions. In addition, the founders bestowed upon the Council, through Article 29, the power to establish subsidiary organs to facilitate the Council's work.<sup>105</sup> Article 30 also empowers the Council to adopt its own rules of procedure.<sup>106</sup> Through these mechanisms, the UN founders therefore afforded the Council the flexibility to take whatever steps it considered necessary to guarantee the implementation of its decisions.

The absence of a detailed, pre-designed Charter framework for the application, administration and enforcement of sanctions, has not prevented the Security Council from taking a variety of steps to seek the effective implementation of sanctions. Indeed, the absence of a prescriptive framework could be interpreted as both a weakness and a strength. On the one hand, the Council is granted such a wide discretion in sanctions matters that its powers are vulnerable to neglect or abuse. It has been accused of applying sanctions on an ad hoc, case-by-case basis<sup>107</sup> and its approach to law enforcement has been described as

<sup>105</sup> Article 29 of the Charter states that: 'The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.'

<sup>106</sup> Article 30 of the Charter states that: 'The Security Council shall adopt its own rules of procedure, including the method of selecting its own President.' Although the Council has never adopted a formal set of rules of procedure, it has agreed upon a set of provisional rules of procedure, which are followed in practice. See S/96/Rev. 7: *Provisional Rules of Procedure of the Security Council* (1982) United Nations, New York. For a description of the negotiations leading to the formulation and adoption of the provisional rules, see Bailey and Daws, *The Procedure of the Security Council*, pp. 9–17.

<sup>107</sup> Andrea Bianchi, 'Ad-hocism and the Rule of Law' (2002) 13 *EJIL* 263–272; Larry Minear, David Cortright, Julia Wagler, George A. Lopez and Thomas G. Weiss, *Toward More*

‘unsystematic and largely unconscious’.<sup>108</sup> On the other hand, however, this freedom enables the Council to innovate as and when necessary in its quest to ensure that sanctions are well administered and monitored. Moreover, even in the absence of a sophisticated, Charter-prescribed machinery for implementing sanctions, sufficient patterns can be detected in the Council’s sanctions practice to indicate the evolution of an organic UN sanctions system. Analysis now turns to describing how the Security Council has acted upon its sanctions powers to create that sanctions system. Part III thus traces the manner in which the Council has established the legal basis for sanctions, delineated the scope of sanctions, fine-tuned sanctions and delegated responsibility for sanctions administration and monitoring.

*Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* (Providence, RI: Watson Institute for International Studies, 1998), p. xxxvi.

<sup>108</sup> Vera Gowlland-Debbas, ‘The Functions of the United Nations Security Council in the International Legal System’, in Byers (ed.), *The Role of Law in International Politics*, p. 311.

## PART III • UN SANCTIONS IN PRACTICE



## 5 Establishing the legal basis for sanctions: identifying threats and invoking Chapter VII

In its role as the creator and overseer of UN sanctions, the Security Council shapes the parameters of each sanctions regime. When the Security Council imposes a new sanctions regime, it generally identifies a threat to or breach of international peace and security, before invoking Chapter VII of the Charter as the basis for action. The Council then delineates the scope of the measures to be applied and identifies the particular state, group or individuals against which sanctions are to be applied. The Council has also taken a number of additional steps to fine-tune sanctions application. It has clarified the objectives of sanctions, setting conditions whose fulfilment will lead to the suspension or termination of sanctions. It has outlined exemptions from the sanctions regime and determined the temporal application of the sanctions, stipulating whether sanctions were subject to a time-limit or would come into force immediately or after a time-delay.

The Security Council has generally delegated responsibility for the day-to-day administration of its new sanctions regimes to a subsidiary organ, most often a sanctions committee that is created expressly for that purpose. The Council has also established other sanctions-related subsidiary bodies, including Panels of Experts, Monitoring Mechanisms and Special Commissions, to administer and monitor the implementation of sanctions. These subsidiary bodies generally undertake responsibilities that are specific to an individual sanctions regime, rather than having a broader, system-wide focus connected with the implementation of sanctions in general.<sup>1</sup>

<sup>1</sup> An exception to this tendency was the establishment of the Informal Working Group of the Security Council on General Issues of Sanctions (the 'Working Group on Sanctions'). For further discussion of that Working Group, see Chapter 8.

Once a sanctions regime is established, the Council's role subsequently becomes one of oversight. In its oversight role, the Council responds to developments on the ground, expanding the scope of the sanctions if necessary to induce the compliance of a non-compliant target, or contracting the scope of the sanctions in order to reward partial compliance. In instances where the objectives of a sanctions regime have been partially or fully achieved, the Council might also decide to suspend or terminate the sanctions.

## **1. Determining the existence of a threat to the peace, breach of the peace or act of aggression**

Article 39 of the UN Charter requires the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to decide what measures shall be taken, including the application of sanctions, in order to maintain or restore international peace and security.<sup>2</sup> When the Council applied its first sanctions regime, against the illegal white minority regime in Southern Rhodesia, it expressly invoked both Articles 39 and 41 of the Council as the basis for its action.<sup>3</sup> Following that first instance, the Council has tended not to invoke these Articles explicitly in connection with its sanctions regimes.<sup>4</sup> Nevertheless, the Council has continued to acknowledge Article 39 as the trigger for its sanctions action by making a determination of the type envisaged by that Article when applying new sanctions.

### *1.1 Must the Security Council make a determination under Article 39 before applying sanctions?*

The text of Article 39 suggests that, prior to applying sanctions, the Council should first determine the existence of a threat to the peace, breach of the peace or act of aggression. In practice, however, while the Council has made a determination of the type envisaged by Article 39 in connection with each sanctions regime established to date, the Council has thrice failed to make such a determination until sanctions had

<sup>2</sup> UN Charter, Article 39.

<sup>3</sup> SC Res. 232 (16 December 1966), preambular para. 4.

<sup>4</sup> This remains true for Article 39, although the Council has recently begun to cite Article 41 again, doing so when applying sanctions against North Korea and Iran. See SC Res. 1718 (14 October 2006), preambular para. 10 (North Korea); and SC Res. 1737 (23 December 2006), preambular para. 10 (Iran).

already been imposed. In its resolutions establishing the 820 Bosnian Serb, 1160 Federal Republic of Yugoslavia and 1737 Iran sanctions regimes, the Council noted that it was acting under Chapter VII and proceeded to apply sanctions, without having made a prior determination of a threat to the peace, breach of the peace or act of aggression.<sup>5</sup> From a legal perspective, the Council's failure to make a determination of a breach or threat to the peace or an act of aggression prior to imposing sanctions was problematic. Did the absence of such a determination render the invocation of Chapter VII, and therefore the application of sanctions, illegitimate? Or might it be argued that the invocation of Chapter VII *de facto* amounted to an implicit determination under Article 39?

In the case of the 820 Bosnian Serb sanctions, the lack of a determination of a threat to the peace might have been due to the fact that the sanctions were imposed by a resolution whose primary focus was to strengthen the existing 757 Federal Republic of Yugoslavia (Serbia and Montenegro) (FRYSM) sanctions regime. As the Council had already identified a threat to international peace and security in the situation in the former Yugoslavia in general,<sup>6</sup> and in Bosnia and Herzegovina in particular,<sup>7</sup> perhaps it was not considered necessary to make another such determination.

In the case of the 1160 Federal Republic of Yugoslavia (FRY) sanctions regime, the Council's failure to make such a determination can be attributed to the positions of the Russian and Chinese delegations, which did not consider the situation in Kosovo to constitute a threat to regional or international peace and security.<sup>8</sup> Given that two of the permanent members of the Security Council maintained this position, it is puzzling that the Security Council was able to adopt the decision imposing sanctions. When it came to the vote, China abstained, thus maintaining some consistency *vis-à-vis* its position on the lack of a threat to the peace.<sup>9</sup> It is very

<sup>5</sup> On the Bosnian Serb sanctions, see SC Res. 820 (17 April 1993), Section B, preambular para. 2 (invoking Chapter VII) and para. 12 (applying comprehensive sanctions against the Bosnian Serbs). On the FRY sanctions, see SC Res. 1160 (31 March 1998), preambular para. 8 (invoking Chapter VII) and para. 8 (applying an arms embargo). On the Iran sanctions, see SC Res. 1737 (23 December 2006), preambular para. 10 (invoking Chapter VII and Article 41) and paras. 3–4, 6, 12 (applying sanctions).

<sup>6</sup> SC Res. 713 (25 September 1991), preambular para. 4.

<sup>7</sup> SC Res. 757 (30 May 1992), preambular para. 17.

<sup>8</sup> See the following statements made before the Council adopted resolution 1160 (1998): S/PV.3868 (31 March 1998), pp. 10–11 (Russian Federation), pp. 11–12 (China).

<sup>9</sup> For the vote on resolution 1160 (1998), see S/PV.3868 (31 March 1998), p. 12.

difficult, however, to reconcile the Russian position that there was no threat to the peace with its subsequent vote in favour of the resolution imposing sanctions.<sup>10</sup>

In the case of Iran, the Council had already adopted resolution 1695 (2006), in which it had expressed concern at the proliferation risks presented by the Iranian nuclear programme, stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security, and expressed determination to prevent an aggravation of the situation.<sup>11</sup> The Council had then invoked Article 40 of the Charter,<sup>12</sup> before calling on Iran to take steps that had been required by the Board of Governors of the International Atomic Energy Agency (IAEA),<sup>13</sup> and demanding that Iran suspend all enrichment-related and processing activities, including research and development.<sup>14</sup> Five months later, the Council adopted resolution 1737 (2006), in which it deplored Iran's refusal to take the steps required by the IAEA Board of Governors,<sup>15</sup> and expressed concern at the proliferation risks posed by the Iranian nuclear programme and at Iran's failure to comply with the IAEA's requirements and the Council's own demands.<sup>16</sup> The Council again stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security. Then, noting that it was acting under Article 41 of the Charter,<sup>17</sup> the Council proceeded to apply sanctions against Iran.<sup>18</sup> Thus, although the Council explicitly invoked Articles 40 and 41 in resolutions 1695 (2006) and 1737 (2006), respectively, it did not make a determination that there was a threat to the peace, breach of the peace or act of aggression.

The most plausible legal interpretation of the chain of events in these instances is that the Security Council's decision to invoke Chapter VII and impose sanctions must amount to an implicit determination under Article 39. In the case of the 1160 sanctions regime, the United Kingdom argued that, by adopting resolution 1160 (1998), the Security Council had sent 'an unmistakable message: that by acting under Chapter VII of the Charter, the Council considers that the situation in Kosovo constitutes a threat to international peace and security'.<sup>19</sup> In the 820 Bosnian Serb and 1160 FRY instances, the situation was ultimately clarified as

<sup>10</sup> *Ibid.* <sup>11</sup> SC Res. 1696 (31 July 2006), preambular para. 9.

<sup>12</sup> *Ibid.*, preambular para. 10. <sup>13</sup> *Ibid.*, para. 1. <sup>14</sup> *Ibid.*, para. 2.

<sup>15</sup> SC Res. 1737 (23 December 2006), preambular para. 6. <sup>16</sup> *Ibid.*, preambular para. 9.

<sup>17</sup> *Ibid.*, preambular para. 10. <sup>18</sup> *Ibid.*, paras 3-4, 6, 12.

<sup>19</sup> S/PV.3868 (31 March 1998), p. 12.



the Council proceeded to make multiple subsequent determinations of a threat to the peace.<sup>20</sup> In all likelihood, the Council will remedy its oversight in the Iran instance by making such a determination in future resolutions modifying the application of the 1737 sanctions regime. However, in order to resolve any doubts concerning the legal validity of its sanctions resolutions, where possible the Security Council should make a clear determination of a threat to the peace, breach of the peace or act of aggression before establishing a new sanctions regime.

### *1.2 Threats to the peace*

The Security Council has made a determination of a threat to the peace in relation to each of its sanctions regimes, with the exception of the Iran sanctions. Even in cases where the Council has not originally characterised a situation warranting the application of sanctions as a threat to the peace, it has nevertheless proceeded to do so at a later stage. As discussed in the [previous section](#), after initially neglecting to identify a threat to the peace, breach of the peace or act of aggression in relation to the 820 Bosnian Serb and 1160 FRY sanctions regimes, the Council subsequently determined that both situations constituted a threat to the peace. In the case of the 661 Iraq sanctions regime, where sanctions were initially applied in response to a breach of the peace,<sup>21</sup> the Council later characterised the basis for the continued application of sanctions beyond the 1991 Gulf War as a threat to the peace.<sup>22</sup>

The Security Council tends to avoid articulating the precise nature of threats to the peace. Nevertheless, before determining the existence of a threat, the Council does generally refer to the background context giving rise to the threat. Conceptually, the situations in which the Council has determined the existence of threats to the peace warranting the application of sanctions can be divided into two broad categories: those with a clear international or transboundary dimension and those arising from an internal national crisis.

<sup>20</sup> On the Bosnian Serb sanctions, see SC Res. 942 (23 September 1994), preambular para. 7; SC Res. 1022 (22 November 1995), preambular para. 10. On the FRY sanctions, see SC Res. 1199 (23 September 1998), preambular para. 14; SC Res. 1203 (24 October 1998), preambular para. 15; SC Res. 1244 (10 June 1999), preambular para. 12.

<sup>21</sup> SC Res. 660 (2 August 1990), preambular para. 2.

<sup>22</sup> SC Res. 687 (3 April 1991), preambular para. 17.

### i. Threats with a clear international dimension

Within the broad category of threats with an international or trans-boundary dimension, the Security Council has determined the existence of a threat to the peace in four different types of situations: (a) where a state has a history of maintaining an aggressive foreign policy, combined with the potential to possess or to produce weapons of mass destruction; (b) where a state or non-state entity has engaged in or provided support for acts of international terrorism; (c) where two states have been engaged in international conflict; and (d) where states have undertaken acts of interference in the affairs of another state.

#### *(a) States with an aggressive history and the potential to possess or produce weapons of mass destruction*

The Security Council has determined the existence of a threat to the peace in connection with countries which have demonstrated an aggressive foreign policy and which have sought to possess or produce nuclear weapons, including South Africa, Iraq, North Korea and Iran. In the case of South Africa, an important component of the Security Council's characterisation of a threat to the peace was the combination of South Africa's aggressive foreign policy and its attempts to acquire the capacity to produce nuclear weapons. In November 1977 the Council expressed grave concern that South Africa was at the threshold of producing nuclear weapons,<sup>23</sup> and strongly condemned the government of South Africa for its acts of repression, its continuance of the system of apartheid and its attacks against neighbouring states.<sup>24</sup> It then noted that it was acting under Chapter VII of the UN Charter,<sup>25</sup> determined that, having regard to the policies and acts of the South African government, the acquisition by South Africa of arms and related material constituted a threat to international peace and security,<sup>26</sup> and applied mandatory sanctions against South Africa.<sup>27</sup>

In the case of the sanctions against Iraq, as applied after the Gulf War, the Council referred to the threat posed to peace and security in the area by weapons of mass destruction, as well as to the need to establish a

<sup>23</sup> SC Res. 418 (4 November 1977), preambular para. 5.

<sup>24</sup> *Ibid.*, preambular para. 6. <sup>25</sup> *Ibid.*, preambular para. 10.

<sup>26</sup> *Ibid.*, para. 1; SC Res. 421 (9 December 1977), preambular para. 1.

<sup>27</sup> SC Res. 418 (4 November 1977), para. 2.

zone free of such weapons in the Middle East.<sup>28</sup> It then noted that it was acting under Chapter VII,<sup>29</sup> before reaffirming the continued application of the sanctions.<sup>30</sup> In the case of North Korea, the Council expressed profound concern that the nuclear test conducted by North Korea had generated increased tension in the region and beyond, and determined that there was a clear threat to international peace and security.<sup>31</sup> The Council then noted that it was acting under Chapter VII of the Charter and taking measures under Article 41,<sup>32</sup> before proceeding to apply sanctions.<sup>33</sup>

As just discussed, the Council did not make an explicit determination of a threat to the peace when applying sanctions against Iran. However, various provisions of resolutions 1695 (2006) and 1737 (2006) indicate that the Council considered Iran's actions to constitute a threat to international peace and security. In resolution 1695 (2006) the Council expressed concern at the proliferation risks presented by the Iranian nuclear programme and stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security.<sup>34</sup> In resolution 1737 (2006), the Council again expressed concern at the proliferation risks posed by the Iranian nuclear programme and at Iran's failure to comply with the IAEA's requirements and the Council's own demands,<sup>35</sup> and it again stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security.<sup>36</sup>

### (b) *International terrorism*

The Security Council has identified international terrorism as a threat to international peace and security in connection with a number of its sanctions regimes. In the case of Libya, in January 1992 the Security

<sup>28</sup> SC Res. 687 (3 April 1991), preambular para. 17. This reference to a threat to international peace and security raises the question of whether the cessation of Gulf War hostilities also signified the effective dissipation of the breach of international peace and security that the Council had identified in resolution 660 (1990). If so, then it was necessary for the Council to identify an alternative threat to or breach of international peace and security to which the continued application of sanctions would respond. It is also possible, however, that the Council's affirmation in para. 1 of the thirteen prior resolutions on the situation was meant to signify that the breach of international peace and security was continuing. According to such a reading, the breach would not fully dissipate until Iraq complied with its obligations under resolution 687 (1991).

<sup>29</sup> SC Res. 687 (3 April 1991), preambular para. 26. <sup>30</sup> *Ibid.*, paras. 20–24.

<sup>31</sup> SC Res. 1718 (14 October 2006), preambular para. 9. <sup>32</sup> *Ibid.*, preambular para. 10.

<sup>33</sup> *Ibid.*, paras. 8–10. <sup>34</sup> SC Res. 1696 (31 July 2006), preambular para. 9.

<sup>35</sup> SC Res. 1737 (23 December 2006), preambular para. 9. <sup>36</sup> *Ibid.*

Council characterised acts of terrorism as a threat to international peace and security,<sup>37</sup> expressed deep concern that investigations into the Pan Am and UTA bombings had implicated officials of the Libyan government,<sup>38</sup> deplored the fact that the Libyan government had not yet co-operated with attempts to establish responsibility for the bombings,<sup>39</sup> and urged the Libyan government to co-operate with international investigations.<sup>40</sup> Four months later, after Libya had failed to respond to its requests, the Council stated that the suppression of acts of terrorism was 'essential for the maintenance of international peace and security',<sup>41</sup> and determined that the Libyan government's failure to demonstrate by concrete steps its renunciation of terrorism and its failure to respond fully and effectively to the requests of resolution 731 (1992) constituted a threat to international peace and security.<sup>42</sup> The Council then invoked Chapter VII,<sup>43</sup> before applying sanctions.<sup>44</sup>

In the case of the 1054 Sudan sanctions regime, in January 1996 the Council condemned the 'terrorist assassination attempt' that had been made against President Mubarak, of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995.<sup>45</sup> The Council then called upon the government of Sudan to extradite to Ethiopia three assassination attempt suspects who were believed to be in Sudan, and to refrain from assisting, supporting or facilitating terrorist activities and from giving shelter or sanctuary to 'terrorist elements'.<sup>46</sup> In March 1996, after the Un Secretary-General had reported that Sudan had failed to comply with the Council's requests,<sup>47</sup> the Council reaffirmed that the suppression of acts of international terrorism, including those in which states were involved, was essential for the maintenance of international peace and security.<sup>48</sup> It then determined that the government of Sudan's non-compliance with its requests to extradite the three suspects to Ethiopia, and to refrain from assisting, supporting or facilitating terrorist activities, as well as from giving shelter or sanctuary to terrorists, constituted a threat to international peace and security.<sup>49</sup> The Council then noted that it was acting under Chapter VII,<sup>50</sup> before imposing sanctions against Sudan.<sup>51</sup>

<sup>37</sup> SC Res. 731 (21 January 1992), preambular para. 2. <sup>38</sup> *Ibid.*, preambular para. 6.

<sup>39</sup> *Ibid.*, para. 2. <sup>40</sup> *Ibid.*, para. 3. <sup>41</sup> SC Res. 748 (31 March 1992), preambular para. 4.

<sup>42</sup> *Ibid.*, preambular para. 7. <sup>43</sup> *Ibid.*, preambular para. 10.

<sup>44</sup> The sanctions were outlined in: SC Res. 748 (31 March 1992), paras. 3–6.

<sup>45</sup> SC Res. 1044 (31 January 1996), para. 1. <sup>46</sup> *Ibid.*, para. 4.

<sup>47</sup> See S/1996/179 (11 March 1996), para. 31.

<sup>48</sup> SC Res. 1054 (26 April 1996), preambular para. 9. <sup>49</sup> *Ibid.*, preambular para. 10.

<sup>50</sup> *Ibid.*, preambular para. 11. <sup>51</sup> *Ibid.*, paras. 3–4.

In the case of the 1267 Afghanistan/Taliban/Al Qaida sanctions regime, in October 1999 the Security Council strongly condemned the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>52</sup> The Council then determined that the failure of the Taliban to comply with a demand it had made in December 1998 to stop providing sanctuary and training for international terrorists and their organisations and to co-operate with efforts to bring indicted terrorists to justice, constituted a threat to international peace and security.<sup>53</sup> It then noted that it was acting under Chapter VII, before proceeding to apply sanctions against the Taliban.<sup>54</sup> In subsequent decisions related to the Taliban and Al Qaida sanctions regime, there has been a subtle evolution in the Council's characterisation of the threat to the peace. While the Taliban regime retained power in Afghanistan, the Council again determined – on two occasions – that the failure of the Taliban to comply with the requirements of the sanctions regime constituted a threat to international peace and security,<sup>55</sup> whilst also reaffirming that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>56</sup> Since January 2002, however, the Council has simply reaffirmed that acts of international terrorism constitute a threat to international peace and security.<sup>57</sup>

In the case of the 1636 Hariri sanctions regime, in October 2005 the Security Council reaffirmed that terrorism constituted 'one of the most serious threats to peace and security'.<sup>58</sup> The Council then determined that the 14 February 2005 terrorist bombing in Beirut that killed former Lebanese Prime Minister Rafiq Hariri and twenty-two others constituted a threat to international peace and security and noted that it was acting under Chapter VII before proceeding to impose sanctions.<sup>59</sup>

<sup>52</sup> SC Res. 1267 (15 October 1999), preambular para. 5.

<sup>53</sup> *Ibid.*, preambular para. 8. For the original demand, see SC Res. 1214 (8 December 1998), para. 13.

<sup>54</sup> SC Res. 1267 (15 October 1999), preambular para. 10.

<sup>55</sup> SC Res. 1333 (19 December 2000), preambular para. 14; SC Res. 1363 (30 July 2001), preambular para. 2.

<sup>56</sup> S/PRST/2000/12 (7 April 2000); SC Res. 1333 (19 December 2000), preambular para. 7.

<sup>57</sup> SC Res. 1390 (16 January 2002), preambular para. 9; SC Res. 1455 (17 January 2003), preambular para. 7.

<sup>58</sup> SC Res. 1636 (31 October 2005), preambular para. 3. <sup>59</sup> *Ibid.*, preambular paras. 19, 21.

(c) *International conflict*

In the case of Eritrea and Ethiopia, in late January 1999 the Security Council expressed grave concern at the escalating arms build-up on both sides of the border between Eritrea and Ethiopia.<sup>60</sup> At the time, the Council also expressed its strong support for the mediation efforts that had been undertaken by the Organization of African Unity (OAU), and in particular for the Framework Agreement which had been approved by the OAU's Mechanism for Conflict Prevention, Management, and Resolution in December 1998.<sup>61</sup> Two weeks later, after conflict broke out between the two countries, the Council stressed that the situation constituted a threat to peace and security<sup>62</sup> and demanded an immediate halt to hostilities.<sup>63</sup> On 12 May 2000, after a fresh outbreak of hostilities between Eritrea and Ethiopia, the Council stressed that the situation constituted a threat to peace and security,<sup>64</sup> and demanded that both parties immediately cease all military actions and refrain from the further use of force.<sup>65</sup> Five days later, with hostilities continuing, the Council determined that the situation between Eritrea and Ethiopia constituted a threat to regional peace and security,<sup>66</sup> and, acting under Chapter VII,<sup>67</sup> it imposed sanctions against both Eritrea and Ethiopia.<sup>68</sup>

It is unclear why the Security Council decided to make a determination of a threat to the peace in the case of Eritrea and Ethiopia, rather than to characterise the situation as a breach of the peace. The existence of hostilities between states would seem to give rise to the archetypal instance of a breach of the peace. The same might also be said for the case of the sanctions against the former Yugoslavia. Although the sanctions were applied before Yugoslavia had dissolved, thus explaining why a threat rather than a breach was initially determined by the Council, in the post-Yugoslavia environment, with most of the successor entities of Yugoslavia recognised by the UN as states, it would have been open to the Security Council to define the ongoing conflict as a breach of the peace. In decisions relating to the application of the arms embargo dating from after the dissolution of Yugoslavia, however, the Council reaffirmed on a number of occasions that the situation in the

<sup>60</sup> SC Res. 1226 (29 January 1999), preambular para. 2.

<sup>61</sup> *Ibid.*, para. 1. For the text of the Framework Agreement, see S/1998/1223 (28 December 1998), annex.

<sup>62</sup> SC Res. 1227 (10 February 1999), preambular para. 4. <sup>63</sup> *Ibid.*, para. 2.

<sup>64</sup> SC Res. 1297 (12 May 2000), preambular para. 9. <sup>65</sup> *Ibid.*, para. 2.

<sup>66</sup> SC Res. 1298 (17 May 2000), preambular para. 13.

<sup>67</sup> *Ibid.*, preambular para. 14. <sup>68</sup> *Ibid.*, para. 6.

former Yugoslavia continued to constitute a threat to international peace and security.<sup>69</sup>

(d) *Interference*

In the case of the Federal Republic of Yugoslavia (Serbia-Montenegro) (FRYSM), the Security Council expressed deep concern in May 1992 about the rapid and violent deterioration of the situation in Bosnia and Herzegovina,<sup>70</sup> and made certain demands of all parties that were active in Bosnia and Herzegovina, including that all forms of interference from outside Bosnia and Herzegovina should cease immediately.<sup>71</sup> Two weeks later, the Council deplored the fact that its demands had not been complied with,<sup>72</sup> and determined that the situation in Bosnia and Herzegovina and other parts of the former Yugoslavia constituted a threat to international peace and security.<sup>73</sup> The Council then invoked Chapter VII,<sup>74</sup> before imposing sanctions against FRYSM.<sup>75</sup>

In the case of the 1343 Liberia sanctions regime, the precise characterisation of the threat to the peace evolved in response to developments on the ground. In March 2001, the Council determined that the active support provided by the Liberian government for armed rebel groups in neighbouring countries, and in particular for the Revolutionary United Front (RUF) in Sierra Leone, constituted a threat to international peace and security.<sup>76</sup> It then noted that it was acting under Chapter VII before imposing sanctions.<sup>77</sup> In May 2002, when the Council extended the sanctions, it determined that the active support provided by the Liberian government for armed rebel groups in the region, including the RUF, constituted a threat to international peace and security.<sup>78</sup> In May 2003, when the Council again extended the initial sanctions and introduced additional timber and travel sanctions, it determined that the active support provided by the Liberian government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilise the region, constituted a threat to international peace and security.<sup>79</sup>

<sup>69</sup> See, e.g., SC Res. 721 (27 November 1991), preambular para. 4; SC Res. 743 (21 February 1992), preambular para. 5; SC Res. 1021 (22 November 1995), preambular para. 5.

<sup>70</sup> SC Res. 752 (15 May 1992), preambular para. 3. <sup>71</sup> *Ibid.*, paras. 3–4.

<sup>72</sup> SC Res. 757 (30 May 1992), preambular para. 4. <sup>73</sup> *Ibid.*, preambular para. 17.

<sup>74</sup> *Ibid.*, preambular para. 18. <sup>75</sup> *Ibid.*, paras. 3–8.

<sup>76</sup> SC Res. 1343 (7 March 2001), preambular para. 8. <sup>77</sup> *Ibid.*, preambular para. 9.

<sup>78</sup> SC Res. 1408 (6 May 2002), preambular para. 11.

<sup>79</sup> SC Res. 1478 (6 May 2003), preambular para. 13.

In these situations, it is interesting that the Security Council opted to determine the existence of a threat to the peace rather than a breach of the peace or an act of aggression. In each of the cases, the action giving rise to the determination of a threat was clearly of an international character. Thus, it would have been open to the Council to determine either the existence of a breach of the peace or of an act of aggression. The fact that the Council opted to characterise those situations as threats to the peace thus suggests that, in future, the determination of breaches of the peace or of aggression will continue to be considerably rarer than determinations of threats to the peace.

## ii. Threats arising from internal crisis

Within the broad category of threats arising from internal crisis, the Security Council has determined the existence of a threat to the peace in the four following types of situation: (a) where a racist minority has prevented the majority from exercising its right to self-determination; (b) where a Government maintains a policy of apartheid; (c) where there is general civil war, with no entity in effective control of the apparatus of government; (d) where power has been seized from a democratically elected government; (e) where a government has been subject to or threatened by the use of military force by a rebel group; (f) where there has been a serious humanitarian crisis; and (g) where a government has used oppressive force against a minority, in violation of that minority's fundamental rights, including the right to self-determination.

### (a) *The denial of the right to self-determination by a racist minority regime*<sup>80</sup>

In the case of Southern Rhodesia, the denial of the right to self-determination by the illegal white minority regime was the major factor prompting the Council to determine the existence of a threat to the peace.<sup>81</sup> In late 1965, the Council condemned the unilateral declaration

<sup>80</sup> The term 'racist regime' was used consistently by the Council in respect of the Southern Rhodesian and South African regimes. In relation to Southern Rhodesia, see, e.g., SC Res. 326 (2 February 1973), para. 3; SC Res. 423 (14 March 1978), para. 5; SC Res. 455 (23 November 1979), preambular para. 8, para. 4. In relation to the South African regime, see, e.g., SC Res. 326 (2 February 1973), para. 1; SC Res. 473 (13 June 1980), preambular para. 4, paras. 1, 9; SC Res. 546 (6 January 1984), preambular para. 3; SC Res. 591 (28 November 1986), preambular para. 8.

<sup>81</sup> Simma has contended that an equally important factor was the potential for the spread of armed conflict throughout Southern Africa: Simma, *The Charter of the United Nations*



of independence by Ian Smith's white minority,<sup>82</sup> and determined that the continuance of the illegal regime constituted a threat to international peace and security.<sup>83</sup> More than twelve months later, with the Smith regime still in power, the Council noted that it was acting in accordance with Articles 39 and 41,<sup>84</sup> determined that the situation in Southern Rhodesia constituted a threat to international peace and security,<sup>85</sup> and applied sanctions.<sup>86</sup> At the same time, the Council also reaffirmed 'the inalienable rights of the people of Southern Rhodesia to freedom and independence'.<sup>87</sup> In subsequent decisions modifying the scope of the sanctions regime, the Council reaffirmed the ongoing nature of the threat posed to international peace and security by the illegal minority regime in Southern Rhodesia<sup>88</sup> and invoked Chapter VII<sup>89</sup> and Article 41.<sup>90</sup> On multiple occasions, the Council also reaffirmed the importance of the objectives of ending the rebellion in Southern Rhodesia<sup>91</sup> and enabling the self-determination and independence of the Southern Rhodesian people.<sup>92</sup>

(2nd edn, 2002), p. 724. However, the Council did not refer to the aggressive foreign policies of the illegal Southern Rhodesian regime in its relevant resolutions until more than six years after the sanctions were first imposed. See SC Res. 326 (2 February 1973). Moreover, even when the Security Council did incorporate the aggressive external policies of the illegal regime as part of its characterisation of the threat to the peace, the basis of the original determinations of a threat to the peace – the existence of the illegal racist minority regime in Southern Rhodesia – was mentioned prior to the reference to the regime's aggressive external policies. See, e.g., SC Res. 424 (17 March 1978), preambular para. 8; SC Res. 445 (8 March 1979), preambular para. 7; SC Res. 455 (23 November 1979), preambular para. 8.

<sup>82</sup> SC Res. 216 (12 November 1965), para. 1; SC Res. 217 (20 November 1965), para. 3.

<sup>83</sup> SC Res. 217 (20 November 1965), para. 1.

<sup>84</sup> SC Res. 232 (16 December 1966), preambular para. 4.

<sup>85</sup> *Ibid.*, para. 1. <sup>86</sup> *Ibid.*, para. 2. <sup>87</sup> *Ibid.*, para. 4.

<sup>88</sup> See, e.g., SC Res. 253 (29 May 1968), preambular para. 9; SC Res. 277 (18 March 1970), preambular para. 6; SC Res. 328 (10 March 1973), preambular para. 4; SC Res. 445 (8 March 1979), preambular para. 7; and SC Res. 455 (23 November 1979), preambular para. 8.

<sup>89</sup> See, e.g., SC Res. 253 (29 May 1968), preambular para. 10; SC Res. 277 (18 March 1970), preambular para. 7; SC Res. 388 (6 April 1976), preambular para. 5; SC Res. 409 (27 May 1977), preambular para. 5.

<sup>90</sup> See SC Res. 277 (18 March 1970), para. 9.

<sup>91</sup> See, e.g., SC Res. 232 (16 December 1966), preambular para. 2; SC Res. 253 (29 May 1968), preambular para. 3 and para. 3; SC Res. 277 (18 March 1970), para. 9; SC Res. 288 (17 November 1970), para. 2; SC Res. 326 (2 February), para. 4; SC Res. 423 (14 March 1978), in general.

<sup>92</sup> See, e.g., SC Res. 232 (16 December 1966), para. 4; SC Res. 253 (29 May 1968), preambular paras. 7, 8, para. 2; SC Res. 277 (18 March 1970), preambular para. 5, para. 4; SC Res. 288 (17 November 1970), preambular para. 4, para. 2; SC Res. 318 (28 July 1972), paras. 1, 2; SC Res. 326 (2 February), preambular para. 3; SC Res. 328 (10 March 1973), preambular para. 7, para. 3; SC Res. 386 (17 March 1976), preambular para. 4; SC Res. 403 (14 January

*(b) Apartheid*

While one component of the Security Council's determination of a threat to the peace in the case of South Africa was the combination of the South African government's aggressive foreign policies and pursuit of nuclear weapons, another important factor leading to the characterisation of a threat to the peace was the South African government's policy of apartheid, repression of the majority of its population, and denial of the right to self-determination.<sup>93</sup> On 31 October 1977, five days before it imposed sanctions against South Africa, the Council recalled its earlier calls to the South African regime to end violence against its people and to take urgent steps to eliminate apartheid and racial discrimination,<sup>94</sup> and noted that it was convinced that the violence and repression by the South African racist regime had greatly aggravated the situation in South Africa and would lead to violent conflict and racial conflagration with serious international repercussions.<sup>95</sup> At the same time, the Council also reaffirmed the legitimacy of the struggle of the South African people for the elimination of apartheid and racial discrimination,<sup>96</sup> and affirmed the right to the exercise of self-determination by all the people of South Africa, irrespective of race, colour or creed.<sup>97</sup> The Council then strongly condemned the South African regime for its repression of its black people and of other opponents of apartheid,<sup>98</sup> expressed support for and solidarity with those people struggling for the elimination of apartheid,<sup>99</sup> and demanded that the South African regime take steps to eliminate apartheid and racial discrimination.<sup>100</sup>

Five days later, when the Council imposed sanctions against South Africa, it again called upon the South African government to end

1977), preambular para. 3; SC Res. 424 (17 March 1978), preambular para. 4; SC Res. 445 (8 March 1979), preambular para. 8; SC Res. 448 (30 April 1979), preambular para. 7; SC Res. 460 (21 December 1979), para. 1; SC Res. 463 (2 February 1980), para. 1.

<sup>93</sup> Simma has contended that the international threat posed by South Africa was the decisive factor in the Council's determination of a threat to the peace: Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 724. However, it is unlikely that the Council would have made a determination of a threat to the peace in the absence of the South African government's policy of apartheid and its repression of the black South African majority. Similarly, it is unlikely that the Council would have terminated the sanctions regime if the South African government had renounced its aggressive external policies and made a commitment not to pursue any longer its quest to obtain nuclear weapons, without also abolishing the policy of apartheid and enabling the right of the majority of its population to self-determination.

<sup>94</sup> SC Res. 417 (31 October 1977), preambular para. 1. <sup>95</sup> *Ibid.*, preambular para. 4.

<sup>96</sup> *Ibid.*, preambular para. 5. <sup>97</sup> *Ibid.*, preambular para. 6. <sup>98</sup> *Ibid.*, para. 1.

<sup>99</sup> *Ibid.*, para. 2. <sup>100</sup> *Ibid.*, para. 3.

violence against its people and to take urgent steps to eliminate apartheid and racial discrimination.<sup>101</sup> While it recognised that the military build-up by South Africa and its persistent acts of aggression seriously disturbed the security of those states,<sup>102</sup> in addition to condemning the government of South Africa for its attacks against neighbouring states, the Council also condemned it for its acts of repression and its continuance of the system of apartheid.<sup>103</sup> Thus, although the Council's determination of a threat to the peace focused upon the danger posed by South Africa's acquisition of arms and related material,<sup>104</sup> the Council was clearly concerned by the South African government's internal policies, as well as its foreign policy. Moreover, in subsequent decisions addressing the situation in South Africa, the Council characterised the South African government's policy of apartheid as 'seriously disturbing international peace and security',<sup>105</sup> and reaffirmed the importance of the objectives of eliminating apartheid,<sup>106</sup> establishing a democratic society,<sup>107</sup> and ensuring the enjoyment of equal rights by all South Africans.<sup>108</sup>

(c) *General civil war*

The Security Council has applied sanctions to address situations of general civil war, where no single entity is effectively exercising the powers of government, in the cases of the former Yugoslavia, Somalia, Liberia and Rwanda. In the case of the former Yugoslavia, in September 1991 the Council stated that it was deeply concerned by the fighting in Yugoslavia, which was 'causing a heavy loss of human life and material damage', and by 'the consequences for the countries of the region'.<sup>109</sup> The Council then expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and

<sup>101</sup> SC Res. 418 (4 November 1977), preambular para. 1.

<sup>102</sup> *Ibid.*, preambular para. 2. <sup>103</sup> *Ibid.*, preambular para. 6.

<sup>104</sup> *Ibid.*, para. 1; SC Res. 421 (9 December 1977), preambular para. 1.

<sup>105</sup> SC Res. 473 (13 June 1980), para. 3.

<sup>106</sup> SC Res. 418 (4 November 1977), preambular para. 1; SC Res. 424 (17 March 1978), preambular para. 7; SC Res. 473 (13 June 1980), preambular para. 7, para. 4, 7; SC Res. 569 (26 July 1985), para. 5; SC Res. 591 (28 November 1986), preambular para. 7; SC Res. 765 (16 July 1992), para. 7.

<sup>107</sup> SC Res. 473 (13 June 1980), preambular para. 7, para. 4; SC Res. 569 (26 July 1985), preambular para. 5, para. 5; SC Res. 591 (28 November 1986), preambular para. 7.

<sup>108</sup> SC Res. 473 (13 June 1980), preambular para. 7, paras. 4 and 7; SC Res. 569 (26 July 1985), preambular para. 5; SC Res. 591 (28 November 1986), preambular para. 7.

<sup>109</sup> SC Res. 713 (25 September 1991), preambular para. 3.

security,<sup>110</sup> and invoked Chapter VII before imposing an embargo upon the delivery of weapons and military equipment to Yugoslavia.<sup>111</sup>

In the case of Somalia, in January 1992 the Security Council expressed alarm at the rapid deterioration of the situation in Somalia, as well as at the heavy loss of human life and widespread material damage resulting from conflict, and expressed its awareness of the potential consequences of the conflict for stability and peace in the region.<sup>112</sup> The Council then expressed concern that the continuation of the situation constituted a threat to international peace and security,<sup>113</sup> and invoked Chapter VII before imposing an arms embargo against Somalia.<sup>114</sup>

In the case of the 788 Liberia sanctions regime, in November 1992 the Security Council reaffirmed its belief that a particular peace agreement offered the best framework for a peaceful resolution of the Liberian conflict.<sup>115</sup> The Council then expressed regret that the parties to the conflict had not respected or implemented that agreement,<sup>116</sup> determined that the deterioration of the situation in Liberia constituted a threat to international peace and security,<sup>117</sup> and invoked Chapter VII of the UN Charter before imposing sanctions against Liberia.<sup>118</sup>

In the case of Rwanda, in May 1994 the Security Council strongly condemned the ongoing violence in Rwanda,<sup>119</sup> and expressed its deep concern that the consequences of the violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of 'enormous proportions'.<sup>120</sup> Noting that it was deeply disturbed by the magnitude of the human suffering caused by the conflict,<sup>121</sup> the Council determined that the situation in Rwanda constituted a threat to peace and security in the region,<sup>122</sup> and invoked Chapter VII,<sup>123</sup> before imposing sanctions against Rwanda.<sup>124</sup>

<sup>110</sup> *Ibid.*, preambular para. 4. <sup>111</sup> SC Res. 713 (25 September 1991), para. 6.

<sup>112</sup> SC Res. 733 (23 January 1992), preambular para. 3. <sup>113</sup> *Ibid.*, preambular para. 4.

<sup>114</sup> The invocation of Chapter VII appeared in the same paragraph, by which the Council imposed the embargo: see SC Res. 733 (23 January 1992), para. 5.

<sup>115</sup> SC Res. 788 (19 November 1992), preambular para. 2. The Yamoussoukro IV Agreement, of 30 October 1991, had endeavoured to create the conditions necessary for the holding of free and fair elections. For details, see S/24815 (17 November 1992), annex.

<sup>116</sup> SC Res. 788 (19 November 1992), preambular para. 4. <sup>117</sup> *Ibid.*, preambular para. 5.

<sup>118</sup> *Ibid.*, para. 8. <sup>119</sup> SC Res. 918 (17 May 1994), preambular para. 5.

<sup>120</sup> *Ibid.*, preambular para. 8. <sup>121</sup> *Ibid.*, preambular para. 18.

<sup>122</sup> *Ibid.*, section B, preambular para. 1. <sup>123</sup> *Ibid.*, section B, preambular para. 2.

<sup>124</sup> *Ibid.*, para. 13.

*(d) Seizure of power from a democratically elected government*

In the case of the sanctions against Haiti, in June 1993 the Security Council received a letter from the representative of Haiti to the UN, requesting that it make universal and mandatory the trade embargo against Haiti which had been recommended by the Organization of American States (OAS).<sup>125</sup> In response, the Council expressed its strong support for the efforts made by the UN Secretary-General, the OAS Secretary-General and the international community to reach a political solution to the crisis in Haiti.<sup>126</sup> It then noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security,<sup>127</sup> and stated that it deplored the fact that the legitimate government of Jean-Bertrand Aristide had not been reinstated.<sup>128</sup> The Council then considered that the request from the representative of Haiti warranted 'exceptional' measures by the Council in support of the efforts that had already been taken to resolve the situation within the OAS framework,<sup>129</sup> and it determined that, in those 'unique and exceptional circumstances', the continuation of the situation in Haiti threatened international peace and security in the region.<sup>130</sup> The Council then noted that it was acting under Chapter VII,<sup>131</sup> and imposed sanctions against the de facto authorities in Haiti.<sup>132</sup>

In the case of Sierra Leone, in October 1997 the Security Council recalled its earlier statements condemning the military coup that had taken place in Sierra Leone on 25 May 1996,<sup>133</sup> and deplored the fact that the military junta had not taken steps to allow the restoration of the democratically elected government and a return to constitutional order.<sup>134</sup> The Council then expressed its grave concern at the continued violence and loss of life in Sierra Leone following the military coup, at the deteriorating humanitarian conditions in that country, and at the consequences for neighbouring countries.<sup>135</sup> The Council then determined that the situation in Sierra Leone constituted a threat to

<sup>125</sup> S/25958 (16 June 1993). <sup>126</sup> SC Res. 841 (16 June 1993), preambular para. 6.

<sup>127</sup> *Ibid.*, preambular para. 9. <sup>128</sup> *Ibid.*, preambular para. 10.

<sup>129</sup> *Ibid.*, preambular para. 13. <sup>130</sup> *Ibid.*, preambular para. 14.

<sup>131</sup> *Ibid.*, preambular para. 15. <sup>132</sup> *Ibid.*, paras. 5, 6 and 8.

<sup>133</sup> SC Res. 1132 (8 October 1997), preambular para. 1. For the earlier statements, see S/PRST/1996/29 (27 May 1996); S/PRST/1996/36 (11 July 1996); and S/PRST/1997/42 (6 August 1997).

<sup>134</sup> SC Res. 1132 (8 October 1997), preambular para. 7. <sup>135</sup> *Ibid.*, preambular para. 8.

international peace and security in the region,<sup>136</sup> and invoked Chapter VII before imposing sanctions.<sup>137</sup>

*(e) The use or threat of military force by rebel groups against a government*

The Security Council has determined the existence of a threat to the peace in several situations where armed rebel groups have used or threatened to use military force against a government, including in the cases of the Bosnian Serbs, UNITA, Sierra Leone and the DRC. The objectives of sanctions applied to address such a threat have generally been to induce the rebel group to engage in a peace process, including through the disarmament, demobilisation and reintegration of rebel troops into civilian population.

In the case of the sanctions against the Bosnian Serbs, on 17 April 1993 the Security Council expressed grave concern at the refusal of the Bosnian Serb party to participate in the Bosnian peace plan,<sup>138</sup> expressed determination to strengthen the implementation of its earlier relevant resolutions,<sup>139</sup> and noted that it was acting under Chapter VII,<sup>140</sup> before imposing sanctions against the Bosnian Serbs.<sup>141</sup> As noted above, the Council did not make an explicit determination of a threat to or breach of international peace and security before imposing the sanctions against the Bosnian Serbs. It did make such a determination in September 1994, however, when it strengthened the sanctions against the Bosnian Serbs. At that time, the Council reaffirmed the need for a lasting peace settlement to be signed and implemented in good faith by all the Bosnian parties,<sup>142</sup> and noted that it viewed the measures it was about to impose as a means towards the end of producing a negotiated settlement to the conflict.<sup>143</sup> The Council then determined that the situation in the former Yugoslavia continued to constitute a threat to international peace and security<sup>144</sup> and invoked Chapter VII,<sup>145</sup> before strengthening the sanctions.

In the case of the sanctions against UNITA, in September 1993 the Security Council expressed grave concern at the continuing

<sup>136</sup> *Ibid.*, preambular para. 9.    <sup>137</sup> *Ibid.*, preambular para. 10.

<sup>138</sup> SC Res. 820 (17 April 1993), para. 3.    <sup>139</sup> *Ibid.*, Section B, preambular para. 1.

<sup>140</sup> *Ibid.*, Section B, preambular para. 2.    <sup>141</sup> *Ibid.*, para. 12.

<sup>142</sup> SC Res. 942 (23 September 1994), preambular para. 4.

<sup>143</sup> *Ibid.*, preambular para. 5.    <sup>144</sup> *Ibid.*, preambular para. 7.

<sup>145</sup> *Ibid.*, preambular para. 8; SC Res. 1022 (22 November 1995), preambular para. 11; SC Res. 1074 (1 October 1996), preambular para. 9.

deterioration of the political and military situation in Angola,<sup>146</sup> and strongly condemned UNITA for not having taken the necessary steps to comply with its previous demands to respect the results of the election that had been held in September 1992 and to cease its military actions immediately.<sup>147</sup> The Council then determined that, as a result of UNITA's military actions, the situation in Angola constituted a threat to international peace and security,<sup>148</sup> and it noted that it was acting under Chapter VII,<sup>149</sup> before imposing sanctions against UNITA.

In the case of Sierra Leone, upon the return to power of the Sierra Leone government the basis of the threat to the peace shifted subtly from the seizure of power from a democratically elected government to the use or threat of military force by a rebel group against a legitimate government.<sup>150</sup> Although the Council has not explicitly acknowledged this shift in its resolutions,<sup>151</sup> the change can nevertheless be inferred from multiple statements by the Council that the objective of the sanctions regime subsequent to the restoration to power of the Sierra Leone government was the re-establishment throughout Sierra Leone of government control, as well as the disarmament, demobilisation and reintegration of rebel forces, including those led by the former military junta and the Revolutionary United Front (RUF).<sup>152</sup>

In the case of the DRC, in July 2003 the Security Council welcomed the conclusion of the Global and All Inclusive Agreement on the Transition in the DRC,<sup>153</sup> whilst expressing deep concern at the continuation of

<sup>146</sup> SC Res. 864 (15 September 1993), preambular para. 3.

<sup>147</sup> *Ibid.*, section B, preambular para. 1. For the demands, see SC Res. 804 (29 January 1993), para. 3; SC Res. 811 (12 March 1993), paras. 2–3; SC Res. 834 (1 June 1993), para. 3; SC Res. 851, paras. 4–5.

<sup>148</sup> SC Res. 864 (15 September 1993), section B, preambular para. 4.

<sup>149</sup> *Ibid.*, section B, preambular para. 5.

<sup>150</sup> The government was returned to power on 10 March 1998; SC Res. 1156 (16 March 1998), para. 1.

<sup>151</sup> In its first resolution maintaining the sanctions regime after the government's return to power, the Council invoked Chapter VII of the Charter, but did not make an explicit determination of a threat to the peace. See SC Res. 1171 (5 June 1998), preambular para. 4. In subsequent resolutions, the Council did determine explicitly that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region, but without articulating clearly the basis for such a determination. See, e.g., SC Res. 1306 (5 July 2000), preambular para. 4; SC Res. 1385 (19 December 2001), preambular para. 9; SC Res. 1446 (4 December 2002), preambular para. 9.

<sup>152</sup> See, e.g., SC Res. 1171 (5 June 1998), para. 7; SC Res. 1306 (5 July 2000), para. 6; SC Res. 1385 (19 December 2001), para. 3; SC Res. 1446 (4 December 2002), para. 2.

<sup>153</sup> SC Res. 1493 (28 July 2003), preambular para. 5.

hostilities in the eastern part of the DRC, particularly in North and South Kivu and Ituri, and by the grave violations of human rights and international humanitarian law that accompanied those hostilities.<sup>154</sup> The Council then noted that the situation in the DRC continued to constitute a threat to international peace and security in the region,<sup>155</sup> and stated that it was acting under Chapter VII,<sup>156</sup> before imposing the sanctions.<sup>157</sup>

(f) *Serious humanitarian crises*

In a number of situations, the Security Council has identified a serious humanitarian crisis as part of the background circumstances at play in a situation that ultimately led to a determination of a threat to the peace. This was especially evident in relation to the 841 Haiti, 918 Rwanda, 1556 Sudan and 1572 Côte d'Ivoire sanctions regimes. In the case of Haiti, the Council noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security.<sup>158</sup> Although the seizure of power from the democratically elected government of President Aristide was an important factor contributing to the Council's determination of a threat to the peace, there can be little doubt that the humanitarian crisis at play formed another important factor leading the Council to determine that, in those 'unique and exceptional circumstances', the continuation of the situation in Haiti threatened international peace and security in the region.<sup>159</sup>

In the case of Rwanda, the Council expressed its deep concern that the consequences of the violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of 'enormous proportions'.<sup>160</sup> Then, noting that it was deeply disturbed by the magnitude of the human suffering caused by the conflict,<sup>161</sup> the Council determined that the situation in Rwanda constituted a threat to

<sup>154</sup> *Ibid.*, preambular para. 6.

<sup>155</sup> *Ibid.*, preambular para. 11. The Council had originally made a determination of a threat to the peace an early resolution relating to the mandate of the UN Organization Mission in the DRC (MONUC). See: SC Res. 1291, preambular para. 20.

<sup>156</sup> SC Res. 1493 (28 July 2003), preambular para. 12. <sup>157</sup> *Ibid.*, para. 20.

<sup>158</sup> SC Res. 841 (16 June 1993), preambular para. 9. <sup>159</sup> *Ibid.*, preambular para. 14.

<sup>160</sup> SC Res. 918 (17 May 1994), preambular para. 8. <sup>161</sup> *Ibid.*, preambular para. 18.



peace and security in the region,<sup>162</sup> and invoked Chapter VII,<sup>163</sup> before imposing sanctions against Rwanda.<sup>164</sup>

In the case of the Sudan, in July 2004 the Security Council expressed grave concern at the ongoing humanitarian crisis and widespread human rights violations in the Darfur region of the Sudan,<sup>165</sup> and condemned all acts of violence and violations of human rights and international humanitarian law by all parties to the crisis, in particular by the Janjaweed militia group, including indiscriminate attacks on civilians, rapes, and forced displacements, and expressed its utmost concern at the consequences of the conflict in Darfur on the civilian population, including women, children, internally displaced persons and refugees.<sup>166</sup> The Council further recalled that the government of the Sudan bore the primary responsibility to respect human rights while maintaining law and order and protecting its population within its territory,<sup>167</sup> and noted with grave concern that up to 200,000 refugees had fled to the neighbouring state of Chad.<sup>168</sup> The Council then determined that the situation in Sudan constituted a threat to international peace and security and to stability in the region.<sup>169</sup>

In the case of Côte d'Ivoire, the Security Council deplored a resumption of hostilities and repeated violations of a ceasefire agreement of 3 May 2003,<sup>170</sup> expressed its deep concern at the humanitarian situation in Côte d'Ivoire, and by the use of the media to incite hatred and violence against foreigners in Côte d'Ivoire,<sup>171</sup> and determined that the situation in Côte d'Ivoire continued to pose a threat to international peace and security in the region.<sup>172</sup>

*(g) The violation of a minority's fundamental rights*

In the 1160 FRY sanctions regime, the Council did not make an initial determination of a threat to the peace before invoking Chapter VII and imposing sanctions. Nevertheless, in resolution 1160 (1998), the Council pointed to certain background factors that might be considered to have prompted it to apply sanctions. The Council thus condemned the excessive use of force by Serbian police forces against civilian and peaceful demonstrators in Kosovo, as well as acts of terrorism in Kosovo,

<sup>162</sup> *Ibid.*, section B, preambular para. 1. <sup>163</sup> *Ibid.*, section B, preambular para. 2.

<sup>164</sup> *Ibid.*, para. 13. <sup>165</sup> SC Res. 1556 (30 July 2004), preambular para. 7.

<sup>166</sup> *Ibid.*, preambular para. 8. <sup>167</sup> *Ibid.*, preambular para. 9.

<sup>168</sup> *Ibid.*, preambular para. 20. <sup>169</sup> *Ibid.*, preambular para. 21.

<sup>170</sup> SC Res. 1572 (15 November 2004), preambular para. 4.

<sup>171</sup> *Ibid.*, preambular para. 5. <sup>172</sup> *Ibid.*, preambular para. 8.

including by the Kosovo Liberation Army.<sup>173</sup> It also called upon the FRY to take the necessary steps to achieve a political solution to the issue of Kosovo through dialogue,<sup>174</sup> called upon the authorities in Belgrade and the leadership of the Kosovo Albanian community to enter into dialogue on political status issues,<sup>175</sup> and agreed that the principles for a solution to the Kosovo problem should be based on the territorial integrity of the FRY and should take into account the rights of the Kosovo Albanians and all who lived in Kosovo, as well as expressing support for an enhanced status for Kosovo, including a greater degree of autonomy and self-administration.<sup>176</sup>

In subsequent decisions related to the FRY sanctions regime,<sup>177</sup> the Council ultimately affirmed that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region.<sup>178</sup> The Council also expressed grave concern at the indiscriminate use of force by Serbian security forces and the Yugoslav army, resulting in numerous civilian casualties, the displacement of hundreds of thousands of people, and a substantial flow of refugees,<sup>179</sup> expressed deep concern at reports of increasing violations of human rights and international humanitarian law,<sup>180</sup> and reaffirmed its support for a peaceful resolution of the Kosovo problem, including an enhanced status for Kosovo, a greater degree of autonomy, and self-administration.<sup>181</sup>

### 1.3 Breaches of the peace

The Security Council has made one finding so far of a breach of the peace requiring the application of sanctions – in the case of Iraq’s invasion of Kuwait in August 1990. When Iraq invaded Kuwait on 2 August, the Council immediately adopted resolution 660 (1990), in which it determined the existence of a breach of the peace,<sup>182</sup> and demanded that Iraq withdraw unconditionally from Kuwait.<sup>183</sup> Four days later, when Iraq had not withdrawn from Kuwait, the Council

<sup>173</sup> SC Res. 1160 (31 March 1998), preambular para. 3.

<sup>174</sup> *Ibid.*, para. 1. <sup>175</sup> *Ibid.*, para. 4. <sup>176</sup> *Ibid.*, para. 5.

<sup>177</sup> See, e.g., SC Res. 1199 (23 September 1998), para. 7; SC Res. 1203 (24 October 1998), para. 15; SC Res. 1244 (10 June 1999), para. 16.

<sup>178</sup> See SC Res. 1199 (23 September 1998), preambular para. 14; SC Res. 1203 (24 October 1998), preambular para. 15; SC Res. 1244 (10 June 1999), preambular para. 12.

<sup>179</sup> SC Res. 1199 (23 September 1998), preambular paras. 6, 7.

<sup>180</sup> *Ibid.*, preambular para. 11.

<sup>181</sup> *Ibid.*, preambular para. 12; SC Res. 1203 (24 October 1998), preambular para. 8.

<sup>182</sup> SC Res. 660 (2 August 1990), preambular para. 2. <sup>183</sup> *Ibid.*, para. 1.

noted that it was acting under Chapter VII,<sup>184</sup> determined that Iraq had failed to comply with the demands outlined in resolution 660 (1990),<sup>185</sup> and imposed sanctions.<sup>186</sup> As noted above, after the Gulf War the basis for the continued application of the sanctions shifted from being a breach of the peace to a threat to the peace.

#### 1.4 Acts of aggression

Although Article 39 empowers the Security Council to take action to address ‘acts of aggression’, it does not provide any guidance as to the meaning of what has been described as a ‘very problematical concept’.<sup>187</sup> When the Charter was being drafted, the question of whether to include a definition of ‘acts of aggression’ was fiercely debated.<sup>188</sup> Ultimately, the founders decided that it would be prudent to provide the Council with the flexibility to determine for itself when an act of aggression had taken place. The main rationales for this decision were that a defined list of acts of aggression, even if it were inclusive rather than exclusive, might impair the Council’s ability to respond to unforeseen forms of aggression, and that such a list might lead the Council to treat as less important acts not included in the list.<sup>189</sup> As the San Francisco Conference left the phrase ‘acts of aggression’ undefined, there was considerable conjecture in subsequent years regarding what acts might be said to amount to aggression.<sup>190</sup> That conjecture has dissipated somewhat with the contributions made to the endeavour of defining aggression by the UN General Assembly’s Resolution on the Definition of Aggression<sup>191</sup> and the International Court of Justice’s

<sup>184</sup> SC Res. 661 (6 August 1990), preambular para. 7. <sup>185</sup> *Ibid.*, para. 1

<sup>186</sup> *Ibid.*, paras. 2–4. <sup>187</sup> Kelsen, *The Law of the United Nations*, p. 727.

<sup>188</sup> For accounts of the discussions concerning aggression at the Dumbarton and San Francisco Conferences, see Ahmed M. Rifaat, *International Aggression* (Uppsala: Almqvist & Wiksell, 1979), pp. 105–116; Hilderbrand, *Dumbarton Oaks*, pp. 137–138.

<sup>189</sup> See, e.g., Hilderbrand, *Dumbarton Oaks*, p. 138; *Documents of the United Nations Conference on International Organization* (New York: UN Information Organization, 1945), vol. XI: Commission III: Security Council, 17 (comments of the Rapporteur of Committee 3 of Commission III on the Security Council).

<sup>190</sup> See, e.g., Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963), pp. 351–358. See also Rifaat’s extensive ‘select bibliography’: Rifaat, *International Aggression*, pp. 327–334 (Appendix IV).

<sup>191</sup> A/RES/3314 (XXIX) (14 January 1975), para. 1 (approving the Definition of Aggression, which is attached as an Annex), Annex: *Definition of Aggression* (containing the Definition of Aggression). For discussion of the process leading up to the adoption of the Definition of aggression, charting the deliberations of the First through Fourth Special Committees on the Question of Defining Aggression, see Rifaat, *International Aggression*, pp. 222–264.

decision in the *Nicaragua* case.<sup>192</sup> Nevertheless, while those contributions provide the Security Council with useful guidance in determining whether acts of aggression have taken place, they do not restrict the Council's discretion to reach its own conclusions.<sup>193</sup>

In light of the founders' reasons for not defining acts of aggression, it is interesting that the Council has not made greater use of its flexibility to identify acts of aggression as the basis for the application of sanctions. In fact, the Council has only once referred to acts of aggression in a resolution applying sanctions, doing so in the case of the South Africa sanctions regime.<sup>194</sup> Moreover, even on that occasion the Council immediately proceeded to make a clear determination of a threat to the peace, thus suggesting that the relevant acts of aggression formed one of a number of background factors combining to form a threat to the peace, rather than constituting the primary reason for the application of sanctions.<sup>195</sup> The Council's apparent reluctance in practice to make acts of aggression the primary trigger for the employment of sanctions, combined with the fact that instances of aggression can in any case be characterised as breaches of or threats to the peace,<sup>196</sup>

<sup>192</sup> *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)* (1986) ICJ Rep 14–546, 103, para. 195.

<sup>193</sup> The Resolution on the Definition of Aggression makes this point crystal clear. See, e.g., A/RES/3314 (XXIX) (14 January 1975), para. 4, Annex: *Definition of Aggression*, preambular para. 4, Articles 2 and 4. See also Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 722.

<sup>194</sup> SC Res. 418 (4 November 1977), preambular para. 2. The Security Council has, however, referred to the 'aggressive acts', 'acts of aggression' or 'aggression' of targets against which sanctions were already being applied, doing so in the case of the sanctions regimes against Southern Rhodesia, South Africa and Iraq. In relation to Southern Rhodesia, see SC Res. 326 (2 February 1973), preambular paras. 2, 5; SC Res. 328 (10 March 1973), para. 2; SC Res. 386 (17 March 1976), preambular para. 3, para. 2; SC Res. 423 (14 March 1978), preambular para. 3; SC Res. 424 (17 March 1978), preambular paras. 3, 6, 8; SC Res. 445 (8 March 1979), preambular paras. 5, 7; SC Res. 455 (23 November 1979), preambular paras. 3–6, 8, paras. 1, 4–5. In relation to South Africa, see SC Res. 418 (4 November 1977), preambular para. 2; SC Res. 455 (23 November 1979), para. 2; SC Res. 546 (6 January 1984), preambular para. 3, para. 3; SC Res. 571 (20 September 1985), preambular paras. 3–4, 6–7, paras. 3, 5–6, 8; SC Res. 574 (7 October 1985), preambular paras. 4–5, paras. 1–3, 6–7. In relation to Iraq, see SC Res. 667 (16 September 1990), preambular para. 6, para. 1. Interestingly, a reference to the Iraqi invasion of Kuwait as an act of aggression had been included in the original draft resolution for what was to become resolution 660 (1990), but it was removed due to the objections of the USSR. See Christopher Greenwood, 'New World Order or Old?: The Invasion of Kuwait and the Rule of Law' (1992) 55 *Modern LR* 153–178 at 159.

<sup>195</sup> SC Res. 418 (4 November 1977), para. 1.

<sup>196</sup> Kelsen, *The Law of the United Nations*, p. 727; Yoram Dinstein, *War, Aggression and Self-Defence*, 2nd edn (Cambridge: Cambridge University Press, 1994), p. 283; Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 722.

suggests that sanctions-related determinations of acts of aggression will continue to be rare in future.

## 2. Invoking Article 41 and Chapter VII of the Charter

In addition to making a determination of a threat to the peace, breach of the peace or act of aggression, before imposing sanctions the Council generally invokes either the specific basis in the UN Charter for the application of sanctions – Article 41 – or the more general basis of Chapter VII. Explicit invocations of Article 41 have in fact been few and far between, with the Council referring to that provision as the basis for the application of sanctions only on a handful of occasions, in connection with the sanctions regimes against Southern Rhodesia,<sup>197</sup> North Korea<sup>198</sup> and Iran.<sup>199</sup> In most instances, the Council has simply noted that it was acting under Chapter VII before applying, modifying or terminating sanctions.<sup>200</sup> It is unclear why the Security Council has not invoked Article 41 on a more regular basis, as the invocation of the more general Chapter VII does not appear to add anything significant over and above what a more specific reference to Article 41 would provide.<sup>201</sup> It is understandable that, in instances where the Council makes authorisations of the use of military force in a manner that does not appear to have been envisaged by the founders of the Charter, it might wish to locate the basis of such action in Chapter VII in general rather than in Article 42. In connection with the application or modification of sanctions regimes, however, the constitutional basis is so clearly located in Article 41 that a general reference to Chapter VII does not provide any meaningful additional flexibility or strengthen the Council's hand in terms of sanctions implementation.

<sup>197</sup> SC Res. 232 (16 December 1966), preambular para. 4; SC Res. 253 (29 May 1968), para. 9; SC Res. 277 (18 March 1970), paras. 9, 11; and SC Res. 409 (27 May 1977), para. 3.

<sup>198</sup> SC Res. 1718 (14 October 2006), preambular para. 10.

<sup>199</sup> SC Res. 1737 (23 December 2006), preambular para. 10.

<sup>200</sup> In general, resolutions applying, modifying or terminating sanctions have included a provision noting that the Council was 'acting under Chapter VII of the Charter'. For the relevant references with respect to each sanctions regime, see Appendix 3, Table C.

<sup>201</sup> Österdahl, *Threat to the Peace*, p. 89.

## 6 Delineating the scope of sanctions and identifying targets

Once the Security Council decides to apply sanctions, it must decide which of a range of possible measures to employ. Article 41 outlines an inclusive, rather than an exclusive or exhaustive, list of measures that might be taken to address threats to the peace, breaches of the peace or aggression. It thus provides the Security Council with considerable flexibility to determine which particular measures might be appropriate for each individual case. The Council also has broad discretion concerning the target(s) against which sanctions are to be applied.

### 1. The many types of UN sanctions

In practice, the scope of sanctions employed by the Security Council has varied from sanctions regime to sanctions regime and even within a particular regime, as the Council has expanded or contracted the measures applied in order to induce or reward a target's compliance. With the exception of regimes consisting of basic arms embargoes, no two sanctions regimes have been precisely the same. Sanctions regimes usually contain a blend of different types of sanctions. These can be broadly divided into the categories of economic and financial sanctions, and non-economic sanctions.

In order to determine the scope of a particular sanctions regime at a particular time, it is necessary to take into account both the range of prohibitions directed against a target, as well as any exemptions provided from those prohibitions. Almost every UN sanctions regime has contained exemptions of some description. Sanctions committees are generally tasked with responsibility for receiving and deciding upon applications for exemptions. When the Security Council provides for

exemptions, it stipulates whether the exemption applies subject to notification to or approval by the relevant sanctions committee.

### *1.1 Economic and financial sanctions*

Economic sanctions are measures that aim to prevent the flow of commodities or products to or from a target. In sanctions terminology, a distinction is sometimes drawn between ‘embargoes’ and ‘sanctions’, with the former representing prohibitions against the export to the target of a particular product or commodity and the latter encompassing either the export to or the import from the target of particular products or commodities. Sanctions upon arms are often referred to as ‘arms embargoes’, due to the fact that they usually prohibit the export to, rather than the import from, a target of arms.

Financial sanctions are closely related to economic sanctions, but their focus is upon prohibiting the flow to and from the target of financial and economic resources, rather than commodities, products or supplies. Economic sanctions can be ‘comprehensive’, in which case they seek to halt the flow to and from a target of all commodities and products, or they can be ‘particular’, in which case they aim to prevent the flow to or from a target of particular commodities or products.<sup>1</sup> In theory, particular economic sanctions could be employed against any product or commodity.

#### *i. Comprehensive economic sanctions*

The term ‘comprehensive sanctions’ is used to describe a sanctions regime that seeks to prevent the flow to and from a target of all commodities and products. Comprehensive sanctions regimes therefore effectively incorporate all of the forms of particular sanctions discussed below. In practice, the Security Council has applied comprehensive sanctions on five occasions, as part of the 232 Southern Rhodesia,<sup>2</sup>

<sup>1</sup> ‘Particular sanctions’ should be distinguished from ‘targeted sanctions’ and ‘smart sanctions’, because the former denotes the type of activity sanctioned, whereas the primary focus of the latter is upon the actors sanctioned. The two can overlap, however, as when diamond sanctions (‘particular sanctions’) are imposed against a rebel group, thus becoming targeted sanctions.

<sup>2</sup> The sanctions against Southern Rhodesia were not initially comprehensive, as they targeted the import from Southern Rhodesia of key Southern Rhodesian products and the export to Southern Rhodesia of arms and related material, aircraft and motor vehicles and associated parts, and oil and oil products: SC Res. 232 (16 December 1966), para. 2. The sanctions became comprehensive seventeen months later: SC Res. 253 (29 May 1968), para. 3.

661 Iraq,<sup>3</sup> 757 FRYSM,<sup>4</sup> 820 Bosnian Serb<sup>5</sup> and 841 Haiti<sup>6</sup> sanctions regimes. In each instance the Council provided limited exemptions from the comprehensive sanctions.

(a) *Humanitarian exemptions from comprehensive sanctions*

The Security Council has exempted from each of its comprehensive sanctions regimes the export to the target of some humanitarian supplies. In outlining exempt supplies, the Council has identified particular exempt items, as well as classes of supplies that may be exempt with the approval of the relevant sanctions committee. Among the particular items exempted from comprehensive sanctions regimes have been: medical supplies (all comprehensive sanctions regimes<sup>7</sup>); educational equipment and material (Southern Rhodesia<sup>8</sup>); informational materials (Southern Rhodesia<sup>9</sup> and Haiti<sup>10</sup>); foodstuffs (all comprehensive sanctions regimes<sup>11</sup>); petroleum and petroleum products

<sup>3</sup> The sanctions against Iraq were comprehensive from the time of their application until May 2003. See SC Res. 661 (6 August 1990), para. 3 (applying comprehensive sanctions); SC Res. 1483 (22 May 2003), para. 10 (terminating all measures except the arms sanctions).

<sup>4</sup> SC Res. 757 (30 May 1992), para. 4; SC Res. 787 (16 November 1992), para. 9; SC Res. 820 (17 April 1993), para. 15.

<sup>5</sup> SC Res. 820 (17 April 1993), para. 12.

<sup>6</sup> The 841 Haiti sanctions regime initially consisted of an arms embargo, a petroleum embargo and financial sanctions: SC Res. 841 (16 June 1993), paras. 5, 8. The Council applied comprehensive sanctions eleven months later: SC Res. 917 (6 May 1994), paras. 6-7.

<sup>7</sup> SC Res. 253 (29 May 1968), para. 3(d) (Southern Rhodesia); SC Res. 661 (6 August 1990), para. 3(c) (Iraq); SC Res. 917 (6 May 1994), para. 7(a) (Haiti); SC Res. 757 (30 May 1992), para. 4(c) (FRYSM); SC Res. 820 (17 April 1993), para. 12 (Bosnian Serbs). In most comprehensive sanctions regimes the exemption of medical supplies has operated without controversy. In the case of Iraq, however, the ability of the government to import medical supplies was restricted by the operation of the 'no dual-use requirement', which meant that medical and other exempted supplies could not be exported to Iraq if they had potential for diversion or conversion to military use. For further details, see Appendix 2, summary of the 661 sanctions regime.

<sup>8</sup> SC Res. 253 (29 May 1968), para. 3(d). <sup>9</sup> *Ibid.* <sup>10</sup> SC Res. 917 (6 May 1994), para. 8.

<sup>11</sup> SC Res. 253 (29 May 1968), para. 3(d) (Southern Rhodesia); See SC Res. 661 (6 August 1990), para. 3(c) (Iraq); SC Res. 757 (30 May 1992), para. 4(c) (FRYSM); SC Res. 820 (17 April 1993), para. 12 (Bosnian Serbs); SC Res. 917 (6 May 1994), para. 7(a) (Haiti). In the Southern Rhodesian and Iraq instances, the export to the target of foodstuffs was contingent upon the existence of 'humanitarian circumstances'. The Security Council delegated the responsibility for determining whether humanitarian circumstances existed in Iraq to the 661 Committee: SC Res. 666 (13 September 1990), paras. 1, 5. After the conclusion of Gulf War hostilities, a report commissioned by the UNSG concluded that humanitarian circumstances did indeed exist, warning that the Iraqi people might soon face a 'catastrophe', including 'epidemic and famine' if 'massive life-supporting needs' were not met: S/22366 (20 March 1991), para. 37. The 661 Committee



(Haiti<sup>12</sup>); and clothing (FRYSM<sup>13</sup>). Among the classes of items that have been exempted by the Council are: 'materials and supplies essential for civilian need' (Iraq<sup>14</sup>); and 'commodities and products for essential humanitarian need' (FRYSM,<sup>15</sup> Bosnian Serbs<sup>16</sup> and Haiti<sup>17</sup>). As a general rule, where the Security Council specifies particular exempt items, those items may be exported to the target with simple notification to the relevant sanctions committee.<sup>18</sup> Where the Council identifies a class of supplies that are exempt, however, exports of items potentially falling within that class must be approved or authorised by the relevant sanctions committee before they may proceed.<sup>19</sup>

*(b) Other exemptions from comprehensive sanctions*

In addition to humanitarian exemptions, the Security Council has also provided for certain other exemptions from comprehensive sanctions regimes. In the case of the sanctions regime against Iraq, the Council permitted Iraq to export limited amounts of oil in order to enable it to finance the purchase of exempt commodities and products and the payment of reparations for liabilities arising from the Gulf War.<sup>20</sup> In the case of the FRYSM sanctions regime, exemptions were provided initially for transshipments through FRYSM of commodities and products.<sup>21</sup> The Council also provided for subsequent, temporary

subsequently decided to permit states to export foodstuffs to Iraq upon simple notification to the Committee: S/22400 (22 March 1991). The Council endorsed the Committee's decision in SC Res. 687 (3 April 1991), para. 20.

<sup>12</sup> SC Res. 917 (6 May 1994), para. 7(c)-(d) (when authorised by the Haiti Sanctions Committee or requested by the President and Prime Minister of Haiti and approved by the Committee).

<sup>13</sup> SC Res. 943 (23 September 1994), para. 3; SC Res. 970 (12 January 1995), para. 5; and SC Res. 988 (21 April 1995), paras. 13, 15.

<sup>14</sup> SC Res. 687 (8 April 1991), para. 20. <sup>15</sup> SC Res. 760 (18 June 1992), sole para.

<sup>16</sup> SC Res. 942 (23 September 1994), para. 7(b). <sup>17</sup> SC Res. 917 (6 May 1994), para. 7(b).

<sup>18</sup> One exception to this rule was the exemption from the Haiti sanctions regime for petroleum and petroleum products. In that instance, the Council stipulated that such exemptions would be provided on an exceptional, case-by-case basis under a no-objection procedure: SC Res. 841 (16 June 1993), para. 7.

<sup>19</sup> For discussion of the responsibilities bestowed upon the sanctions committees with respect to determining the application of such exemptions, see Chapter 8.

<sup>20</sup> The program established to implement that exemption became known as the 'Oil-for-Food Programme'. For further details, see the summary of the 661 Iraq sanctions regime in Appendix 2.

<sup>21</sup> SC Res. 757 (30 May 1992), para. 6. Transshipments nevertheless required the 724 Committee's approval. However, the transshipment process was subject to considerable abuse, leading the Council to restrict, then prohibit, transshipments. See SC Res. 787 (16 November 1992), para. 9; SC Res. 820 (17 April 1993), para. 15.

exemptions from that sanctions regime for the export of anti-serum for diphtheria,<sup>22</sup> and for activities connected with repairs to river locks on the Danube.<sup>23</sup> Finally, in relation to the Haiti sanctions regime, the Council exempted equipment for journalists.<sup>24</sup>

## ii. Particular economic sanctions

Discussion here does not consider every potential form of particular economic sanctions, as such a list could potentially be almost limitless. Rather, it considers those types of particular sanctions that have already been employed by the Security Council in one or more of its sanctions regimes. The most common form of particular economic sanctions applied by the Security Council has been arms sanctions, but the Council has also employed particular economic sanctions to prevent the flow to or from targets of specific goods, products or commodities.

### (a) *Arms sanctions*

Arms sanctions have been the most frequently applied form of particular sanctions, with every sanctions regime except the 1054 Sudan and 1636 sanctions regimes incorporating prohibitions against arms at some stage. Seven sanctions regimes have consisted solely of arms sanctions, including the South Africa,<sup>25</sup> 713 Yugoslavia,<sup>26</sup> Somalia,<sup>27</sup> 788 Liberia,<sup>28</sup> Rwanda,<sup>29</sup> FRY<sup>30</sup> and Eritrea and Ethiopia<sup>31</sup> sanctions regimes.

The Security Council has employed a number of formulations in outlining the scope of arms sanctions to be applied. In the first case of UN sanctions, against Southern Rhodesia, the Council required UN member states to prevent the sale or shipment to Southern Rhodesia of 'arms, ammunition of all types, military aircraft, military vehicles, and equipment and of arms and ammunition'.<sup>32</sup> In three other cases, the Council has required states to implement 'a general and complete embargo on all deliveries of weapons and military equipment' to the target (former Yugoslavia,<sup>33</sup> Somalia<sup>34</sup> and 788 Liberia<sup>35</sup>).

<sup>22</sup> SC Res. 967 (14 December 1994), para. 1.   <sup>23</sup> SC Res. 992 (11 May 1995), paras. 1–2.

<sup>24</sup> SC Res. 917 (6 May 1994), para. 8. The conditions and terms regulating the operation of this exemption were to be determined by the Haiti Sanctions Committee.

<sup>25</sup> SC Res. 418 (4 November 1977), paras. 2, 4.

<sup>26</sup> SC Res. 713 (25 September 1991), para. 6.   <sup>27</sup> SC Res. 733 (23 January 1992), para. 5.

<sup>28</sup> SC Res. 788 (19 November 1992), para. 8.   <sup>29</sup> SC Res. 918 (17 May 1994), para. 13.

<sup>30</sup> SC Res. 1160 (31 March 1998), para. 8.   <sup>31</sup> SC Res. 1298 (17 May 2000), para. 6.

<sup>32</sup> SC Res. 232 (16 December 1966), para. 2(d).

<sup>33</sup> SC Res. 713 (25 September 1991), para. 6.   <sup>34</sup> SC Res. 733 (23 January 1992), para. 5.

<sup>35</sup> SC Res. 788 (19 November 1992), para. 8.

In the majority of cases, however, the Council has required states to prevent the sale or supply to the target of arms and related material. The Council first used the phrase in relation to the sanctions regime against South Africa, when it noted that the phrase included ‘weapons, ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for all of those articles’.<sup>36</sup> That elaboration has provided the basis for a fairly standard interpretation of the phrase, with some minor variations. On occasion, however, the Council has provided a quite different interpretation of the phrase (Iraq<sup>37</sup>), or has not elaborated at all on its meaning (DRC<sup>38</sup>). The Council has also clarified that, in addition to the standard interpretation of the phrase, it can also encompass ‘nuclear, strategic and conventional weapons’ (South Africa<sup>39</sup>) and ‘the provision of any types of equipment, supplies and grants of licensing arrangements, for the manufacture or maintenance of arms and related material’ (Libya<sup>40</sup>).

In its oversight of the various sanctions regimes incorporating arms sanctions, the Council has made it clear that the obligations imposed by arms sanctions can extend beyond the requirement to prevent the flow to a target of arms and related material. In the case of Rwanda, the Council clarified that the arms sanctions required all states to prevent the sale or supply of arms and related material to states neighbouring Rwanda, if they would be forwarded to non-government actors in Rwanda.<sup>41</sup> The Council has also required states to prevent the provision of assistance, advice or training in respect of the use, manufacture or maintenance of arms and related material to the target (Somalia,<sup>42</sup> Libya,<sup>43</sup> FRY,<sup>44</sup> Afghanistan/Taliban/Al Qaida,<sup>45</sup> Eritrea and Ethiopia,<sup>46</sup> 1343 Liberia,<sup>47</sup> DRC,<sup>48</sup> 1521 Liberia,<sup>49</sup> 1556 Sudan<sup>50</sup> and Côte d’Ivoire<sup>51</sup>).

<sup>36</sup> SC Res. 418 (4 November 1977), para. 2.

<sup>37</sup> SC Res. 687 (3 April 1991), para. 24(a) (noting that the phrase included ‘conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production’).

<sup>38</sup> SC Res. 1493 (28 July 2003), para. 20 (using the phrase ‘arms and related material’ without defining what it meant).

<sup>39</sup> SC Res. 591 (28 November 1986), para. 4. <sup>40</sup> SC Res. 748 (31 March 1992), para. 5(a).

<sup>41</sup> SC Res. 997 (9 June 1995), para. 4. The Council reaffirmed this provision in SC Res. 1011 (16 August 1995), para. 9.

<sup>42</sup> SC Res. 1425 (22 July 2002), para. 2. <sup>43</sup> SC Res. 748 (31 March 1992), para. 5(b), (c).

<sup>44</sup> SC Res. 1160 (31 March 1998), para. 8.

<sup>45</sup> SC Res. 1333 (19 December 2000), para. 5(b); SC Res. 1390 (16 January 2002), para. 2(c).

<sup>46</sup> SC Res. 1298 (17 May 2000), para. 6(b). <sup>47</sup> SC Res. 1343 (7 March 2001), para. 5(b).

<sup>48</sup> SC Res. 1493 (28 July 2003), para. 20. <sup>49</sup> SC Res. 1521 (22 December 2003), para. 2.

<sup>50</sup> SC Res. 1556 (30 July 2004), para. 7. <sup>51</sup> SC Res. 1572 (15 November 2004), para. 7.

Moreover, in the case of Somalia, the Council has clarified that the application of arms sanctions can require the prohibition of financing of acquisitions and deliveries of weapons and military equipment,<sup>52</sup> as well as the provision of financial assistance related to military activities.<sup>53</sup>

*Exemptions from arms sanctions* The Council has provided exemptions from arms sanctions in a number of sanctions regimes. Where the Council provides such exemptions, the export of arms and related material can generally proceed upon simple notification to the relevant sanctions committee. Examples of exemptions from arms sanctions include: (a) for the supply of necessary items to UN or international peacekeeping forces or international civilian police forces (Iraq,<sup>54</sup> 713 Yugoslavia,<sup>55</sup> Somalia,<sup>56</sup> 788 Liberia,<sup>57</sup> Rwanda,<sup>58</sup> Sierra Leone,<sup>59</sup> FRY,<sup>60</sup> Eritrea and Ethiopia,<sup>61</sup>

<sup>52</sup> SC Res. 1425 (22 July 2002), para. 1. <sup>53</sup> *Ibid.*, para. 2.

<sup>54</sup> SC Res. 1483 (22 May 2003), para. 10 (exempting arms and related materiel required by the Coalition Authority).

<sup>55</sup> SC Res. 743 (21 February 1992), para. 2 (exempting weapons and military equipment destined for the sole use of the UNPROFOR); SC Res. 1031 (15 December 1995), para. 22 (exempting weapons and military equipment destined for the sole use of the member states participating in the Multinational Implementation Force (IFOR), or for international police forces).

<sup>56</sup> Initially, the Council did not elaborate any explicit exemptions from the embargo: see SC Res. 733 (23 January 1992), para. 5. However, that the Council's authorisation of the establishment of the United Nations Operation in Somalia (UNOSOM) and its successor the United Nations Operation in Somalia II (UNOSOM II), as well as of the United Task Force (UNITAF), amounted to an implicit exemption from the arms embargo for those operations. See, e.g., SC Res. 794 (3 December 1992), paras. 6–8, 10–13, 15–16.

<sup>57</sup> SC Res. 788 (19 November 1992), para. 9; SC Res. 813 (26 March 1993), para. 13 (exempting from the 788 Liberia sanctions regime weapons and military equipment destined for the sole use of the peacekeeping forces of ECOWAS).

<sup>58</sup> SC Res. 918 (17 May 1994), para. 16 (exempting from the arms sanctions activities related to the United Nations Assistance Mission for Rwanda (UNAMIR) and the United Nations Observer Mission Uganda-Rwanda (UNAMUR)).

<sup>59</sup> SC Res. 1171 (5 June 1998), para. 3 (exempting the arms and related material for the use of the Military Observer Group of ECOWAS (ECOMOG)); SC Res. 1299 (19 May 2000), para. 3 (exempting arms and related material for the use in Sierra Leone of member states co-operating with the United Nations Assistance Mission in Sierra Leone (UNAMSIL) and with the government of Sierra Leone).

<sup>60</sup> SC Res. 1203 (24 October 1998), para. 15 (exempting equipment for the use of the OSCE and NATO verification missions); SC Res. 1244 (10 June 1999), para. 16 (exempting equipment for the use of the international civil and security presences – which subsequently evolved into UNMIK and KFOR).

<sup>61</sup> SC Res. 1320 (15 September 2000), para. 10 (exempting arms and related material for the sole use in Ethiopia or Eritrea of the United Nations).

DRC,<sup>62</sup> 1521 Liberia,<sup>63</sup> 1556 Sudan<sup>64</sup> and Côte d'Ivoire<sup>65</sup>); (b) for protective clothing for UN, media and humanitarian personnel (Somalia,<sup>66</sup> Afghanistan/Taliban/Al Qaida,<sup>67</sup> 1343 Liberia,<sup>68</sup> 1521 Liberia,<sup>69</sup> 1556 Sudan<sup>70</sup> and Côte d'Ivoire<sup>71</sup>); (c) for non-lethal military equipment for humanitarian or protective use (Somalia,<sup>72</sup> Afghanistan/Taliban/Al Qaida,<sup>73</sup> Eritrea and Ethiopia,<sup>74</sup> 1343 Liberia,<sup>75</sup> DRC,<sup>76</sup> 1521 Liberia,<sup>77</sup> 1556 Sudan<sup>78</sup> and Côte d'Ivoire<sup>79</sup>); (d) where requested by an exiled democratic government (Haiti<sup>80</sup>); (e) for arms and related material destined for the use of a legitimate government (UNITA,<sup>81</sup> Rwanda,<sup>82</sup> and Sierra Leone<sup>83</sup>); (f) for equipment and supplies connected to demining programmes (Rwanda<sup>84</sup> and Eritrea and Ethiopia<sup>85</sup>); (g) for training and assistance associated with police and armed forces (DRC,<sup>86</sup> 1521 Liberia<sup>87</sup> and Côte d'Ivoire<sup>88</sup>); (h) assistance and supplies for the implementation of a peace process (1556 Sudan<sup>89</sup>); and (i) a state taking action to

<sup>62</sup> SC Res. 1493 (28 July 2003), para. 21 (exempting supplies to MONUC and the Interim Emergency Multinational Force led by France); SC Res. 1671 (25 April 2006), para. 10 (exempting supplies to the EU Force in the DRC).

<sup>63</sup> SC Res. 1521 (22 December 2003), para. 2(d) (exempting the UN Mission in Liberia).

<sup>64</sup> SC Res. 1556 (30 July 2004), para. 9 (exempting supplies and activities connected with monitoring, verification or peace support operations authorised by the UN or operating with the consent of the relevant parties).

<sup>65</sup> SC Res. 1572 (15 November 2004), para. 8(a) (exempting the UN Operation in Côte d'Ivoire and the French forces supporting it).

<sup>66</sup> SC Res. 1356 (19 June 2001), para. 2. <sup>67</sup> SC Res. 1333 (19 December 2000), para. 6.

<sup>68</sup> SC Res. 1343 (7 March 2001), para. 5(d).

<sup>69</sup> SC Res. 1521 (22 December 2003), para. 2(g). <sup>70</sup> SC Res. 1556 (30 July 2004), para. 9.

<sup>71</sup> SC Res. 1572 (15 November 2004), para. 8(c).

<sup>72</sup> SC Res. 1356 (19 June 2001), paras. 3–4. Such exemptions required the prior approval of the Somalia Sanctions Committee.

<sup>73</sup> SC Res. 1333 (19 December 2000), para. 6.

<sup>74</sup> SC Res. 1298 (17 May 2000), para. 7 (as approved in advance by the Eritrea and Ethiopia Sanctions Committee).

<sup>75</sup> SC Res. 1343 (7 March 2001), paras 5(c) (as approved by the 1343 Committee).

<sup>76</sup> SC Res. 1493 (28 July 2003), para. 21. In order to be exempt, such training and assistance must be notified in advance to the UNSG and his Special Representative.

<sup>77</sup> SC Res. 1521 (22 December 2003), para. 2(f). <sup>78</sup> SC Res. 1556 (30 July 2004), para. 9.

<sup>79</sup> SC Res. 1572 (15 November 2004), para. 8(b). <sup>80</sup> SC Res. 873 (13 October 1993), para. 3.

<sup>81</sup> SC Res. 864 (15 September 1993), para. 19.

<sup>82</sup> SC Res. 1011 (16 August 1995), paras. 7–8. <sup>83</sup> SC Res. 1171 (5 June 1998), para. 2.

<sup>84</sup> SC Res. 1005 (17 July 1995), sole para.

<sup>85</sup> SC Res. 1312 (31 July 2000), para. 5; SC Res. 1320 (15 September 2000), para. 10.

<sup>86</sup> SC Res. 1596 (18 April 2005), para. 2(a).

<sup>87</sup> SC Res. 1521 (22 December 2003), para. 2(e); SC Res. 1683 (13 June 2006), paras. 1–2; SC Res. 1731 (20 December 2006), para. 1(b).

<sup>88</sup> SC Res. 1572 (15 November 2004), para. 8(e). <sup>89</sup> SC Res. 1591 (29 March 2005), para. 7.

evacuate its nationals and those for whom it has consular responsibility (Côte d'Ivoire<sup>90</sup>).

*(b) Sanctions against weapons of mass destruction*

In addition to targeting arms in general, the Council has also taken specific action to target weapons of mass destruction. In the case of South Africa, the Council clarified that the phrase 'arms and related material' can encompass nuclear, strategic and conventional weapons.<sup>91</sup> In the case of Iraq, although the comprehensive sanctions imposed against that country in theory should have prevented the flow to or from Iraq of any goods other than a limited group of humanitarian exemptions, after the Gulf War the Council clarified in some detail the manner in which the sanctions prohibited the possession and acquisition of weapons of mass destruction by Iraq. Thus, the Council noted that, in order to ensure that Iraq did not increase its capacity to re-arm, states were required to continue to prevent the sale, supply or provision to Iraq of: (a) arms and related material;<sup>92</sup> (b) items relating to chemical and biological weapons, ballistic missiles with a range greater than 150 km, and nuclear weapons;<sup>93</sup> (c) technology relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than 150 km, and nuclear weapons;<sup>94</sup> and (d) personnel or training or technical support services relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than 150 km, and nuclear weapons.<sup>95</sup>

In the case of North Korea, all member states were required to prevent the direct or indirect supply, sale or transfer to North Korea of heavy conventional weapons and related materiel, including tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems.<sup>96</sup> Member states were also required to prevent the sale, supply or transfer to North Korea of materials, equipment, goods and technology that were either elaborated in three lists of contraband items (relating to nuclear programmes,<sup>97</sup> ballistic missile programmes<sup>98</sup> and other weapons of mass destruction programmes<sup>99</sup>) or subsequently determined by the Council or the 1718 North Korea Sanctions Committee to be capable of

<sup>90</sup> SC Res. 1572 (15 November 2004), para. 8(d).

<sup>91</sup> SC Res. 591 (28 November 1986), para. 4. <sup>92</sup> SC Res. 687 (3 April 1991), para. 24(a).

<sup>93</sup> *Ibid.*, para. 24(b). <sup>94</sup> *Ibid.*, para. 24(c). <sup>95</sup> *Ibid.*, para. 24(d).

<sup>96</sup> SC Res. 1718 (14 October 2006), para. 8(a)(i). <sup>97</sup> S/2006/814 (13 October 2006).

<sup>98</sup> S/2006/815 (13 October 2006). <sup>99</sup> S/2006/816 (13 October 2006).

contributing to North Korea's nuclear-related, ballistic missile-related or other weapon of mass destruction-related programmes.<sup>100</sup> Member states were also required to prohibit the procurement of such items from North Korea<sup>101</sup> and to prevent any transfer to or from North Korea of technical training, advice, services or assistance related to the provision, manufacture or maintenance of such items.<sup>102</sup> North Korea, for its part, was commanded to cease the export of all such items.<sup>103</sup>

In the case of Iran, all states were to take the necessary measures to prevent the supply, sale or transfer to Iran of all items which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapons delivery systems.<sup>104</sup> The contraband items were detailed in the same lists of prohibited items originally elaborated for the purposes of the 1718 North Korea sanctions regime, one for items related to nuclear programmes<sup>105</sup> and the other for items related to ballistic missile programmes.<sup>106</sup> The Council also provided for the possibility that the 1737 Committee could expand that list by adding further items which could contribute to enrichment-related, reprocessing or heavy water-related activities.<sup>107</sup> Moreover, it required states themselves to refrain from providing any items they determined would contribute to such activities or to activities related to topics about which the International Atomic Energy Agency (IAEA) had expressed concerns.<sup>108</sup> The Security Council also required states to prevent the provision to Iran of any technical assistance, training, financial assistance or services, as well as the transfer of financial resources or services related to the supply, sale, transfer, manufacture or use of the items prohibited under the targeted economic sanctions.<sup>109</sup>

*Exemptions from sanctions against weapons of mass destruction* In the case of Iraq, in 2002 the Council adopted the Goods Review List (GRL).<sup>110</sup> The GRL contained an exhaustive list of potential 'dual-use' items, the supply to Iraq of which first had to be approved via a process which involved careful consideration of the items by the United Nations Monitoring and Inspection Commission (UNMOVIC) and the IAEA, which then

<sup>100</sup> SC Res. 1718 (14 October 2006), para. 8(a)(ii). <sup>101</sup> *Ibid.*, para. 8(b).

<sup>102</sup> *Ibid.*, para. 8(c). <sup>103</sup> *Ibid.*, para. 8(b). <sup>104</sup> SC Res. 1737 (23 December 2006), para. 3. <sup>105</sup> S/2006/814 (13 October 2006). <sup>106</sup> S/2006/815 (13 October 2006).

<sup>107</sup> SC Res. 1737 (23 December 2006), para. 3(d). <sup>108</sup> *Ibid.*, para. 4. <sup>109</sup> *Ibid.*, para. 6.

<sup>110</sup> SC Res. 1409 (14 May 2002), para. 2; SC Res. 1454 (30 December 2002), para. 1. For the full text of the GRL, see S/2002/515 (20 May 2002); and SC Res. 1454 (30 December 2002), Annex A.

recommended the approval or refusal of the application by the 661 Committee.<sup>111</sup> Anything not on the list was considered to be exempt from the sanctions, thus requiring simple notification to the Committee. After the introduction of the GRL process, the flow of exempt goods and commodities to Iraq under the OFFP increased substantially.<sup>112</sup>

In the case of Iran, the Council exempted certain items that were intended for light water nuclear reactors. It also provided for the possibility of further exemptions where the 1737 Committee decided in advance and on a case-by-case basis that particular items or assistance would clearly not contribute to the development of Iran's technologies in support of its nuclear activities, including where such items or assistance were for food, agricultural, medical or other humanitarian purposes.<sup>113</sup> However, this exemption was subject to the provisos that contracts for delivery of such items included appropriate end-user guarantees and that Iran had committed not to use the items in its nuclear activities.<sup>114</sup>

### (c) *Petroleum sanctions*

Petroleum sanctions consist of a prohibition upon the export to or import from a target of petroleum and petroleum products. The Council has imposed petroleum sanctions as part of its sanctions regimes against Southern Rhodesia,<sup>115</sup> Haiti,<sup>116</sup> UNITA<sup>117</sup> and Sierra Leone.<sup>118</sup> In the case of Libya, while the Council did not impose petroleum sanctions as such, it nevertheless imposed sanctions against the export to Libya of particular items used in the refinement and export of petroleum and petroleum products.<sup>119</sup> Thus, it was indirectly seeking to impair the ability of Libya to export petroleum and petroleum products.

<sup>111</sup> For the procedures relating to the application of the GRL, see SC Res. 1409 (14 May 2002), attachment; SC Res. 1454 (30 December 2002), Annex B.

<sup>112</sup> See the UNSG report on GRL implementation: S/2002/1239 (12 November 2002).

<sup>113</sup> SC Res. 1737 (23 December 2006), para. 9. <sup>114</sup> *Ibid.*, para. 9(a)–(b).

<sup>115</sup> SC Res. 232 (16 December 1966), para. 2(f). The petroleum sanctions were part of the Southern Rhodesian sanctions regime before it became comprehensive.

<sup>116</sup> SC Res. 841 (16 June 1993), para. 5. The petroleum sanctions were part of the Haiti sanctions regime before it became comprehensive.

<sup>117</sup> SC Res. 864 (15 September 1993), para. 19.

<sup>118</sup> SC Res. 1132 (8 October 1997), para. 6. The petroleum sanctions were terminated in March 1998, however, upon the return to power of the democratically elected government: SC Res. 1156 (16 March 1998), para. 2.

<sup>119</sup> SC Res. 883 (11 November 1993), para. 5. The prohibition upon particular goods used in the refinement and export of oil required states to prevent the export to Libya of goods such as pumps, boilers, furnaces and prepared catalysts. For a full list of the items, see SC Res. 883 (11 November 1993), annex.



*Exemptions from petroleum sanctions* Exemptions have been outlined from petroleum sanctions on three of the four occasions on which those measures have been employed. In the case of Haiti, an exemption was provided for non-commercial quantities of petroleum or petroleum products, including propane gas for cooking, for verified essential humanitarian needs.<sup>120</sup> In the UNITA case, exemptions were provided for the sale or supply of petroleum and petroleum products to Angola, through points of entry designated by the government of Angola.<sup>121</sup> In the case of Sierra Leone, the Council provided for the possibility of exemptions upon application to the 1132 Sierra Leone Sanctions Committee by the democratically elected government of Sierra Leone,<sup>122</sup> by other governments or UN agencies for verified humanitarian purposes,<sup>123</sup> and for the needs of the Monitoring Group of the Economic Community of West African States (ECOMOG).<sup>124</sup>

*(d) Sanctions on asbestos, iron ore, sugar, leather, chrome, pig-iron, tobacco, copper, meat and meat products*

In the case of Southern Rhodesia, the Council imposed sanctions against the import from Southern Rhodesia of a number of that country's most important export products. The list of contraband products included asbestos, iron ore, sugar, leather, chrome, pig-iron, tobacco, copper, meat and meat products and hides and skin.<sup>125</sup>

*(e) Sanctions against trade in forms of transport: aircraft, vehicle and watercraft sanctions*

The Security Council has imposed sanctions against three forms of transport: aircraft, motor vehicles and watercraft.<sup>126</sup> In general, in imposing sanctions against forms of transport the Council has also prohibited trade in parts of those forms of transport. The Council has

<sup>120</sup> SC Res. 841 (16 June 1993), para. 7. This exemption would only apply, however, if authorised by the Haiti Sanctions Committee on an exceptional, case-by-case basis under a no-objection procedure, and in the event that such exemptions were granted they were subject to the proviso that arrangements were made for the effective monitoring of delivery and use of the exempted items.

<sup>121</sup> SC Res. 864 (15 September 1993), para. 19.

<sup>122</sup> SC Res. 1132 (8 October 1997), para. 7(a). <sup>123</sup> *Ibid.*, para. 7(b).

<sup>124</sup> *Ibid.* <sup>125</sup> SC Res. 232 (16 December 1966), para. 2(a).

<sup>126</sup> The forms of transport considered here are civilian. Trade in military or paramilitary transport is generally prohibited under arms sanctions. For further details, see the section above on arms sanctions.

imposed aircraft sanctions,<sup>127</sup> prohibiting the export to a target of aircraft and aircraft parts, on three occasions, as part of its sanctions regimes against Southern Rhodesia,<sup>128</sup> Libya<sup>129</sup> and UNITA.<sup>130</sup> The Council has imposed vehicle sanctions, preventing the export to a target of vehicles and vehicle parts, on two occasions, as part of its sanctions regimes against Southern Rhodesia<sup>131</sup> and UNITA.<sup>132</sup> Finally, on one occasion the Council has imposed watercraft sanctions, prohibiting the export to a target of watercraft and watercraft parts in its UNITA sanctions regime.<sup>133</sup>

*(f) Diamond sanctions*

Diamond sanctions are measures that seek to prohibit the import from a diamond-producing target of diamonds. The Security Council has imposed diamond sanctions as part of its UNITA,<sup>134</sup> Sierra Leone,<sup>135</sup> 1343 Liberia,<sup>136</sup> 1521 Liberia<sup>137</sup> and Côte d'Ivoire<sup>138</sup> sanctions regimes. In the case of UNITA the Council also prohibited the export to targets of equipment or services connected with the extraction of diamonds.<sup>139</sup>

*Exemptions from diamond sanctions* The Council has provided for the possibility of exemption from the diamond sanctions for the government of the target if they were to implement an effective certificate-of-origin regime to ensure that diamond exports were not being improperly used to finance conflict (Sierra Leone,<sup>140</sup> 1343 Liberia<sup>141</sup> and 1521 Liberia<sup>142</sup>). In the case of Sierra Leone, the Sierra Leone government did in fact establish an effective certificate-of-origin regime, thus bringing

<sup>127</sup> As used here, 'aircraft sanctions' are to be distinguished from 'aviation sanctions'. The former prohibit trade with the target in aircraft or aircraft parts, whereas the latter seek to interrupt flights. Aviation sanctions are discussed below under the broad category of non-economic sanctions.

<sup>128</sup> SC Res. 232 (16 December 1966), para. 2 (e).

<sup>129</sup> SC Res. 748 (31 March 1992), para. 4(b); SC Res. 883 (11 November 1993), para. 6(c).

<sup>130</sup> SC Res. 1127 (28 August 1997), para. 4(d)(ii).

<sup>131</sup> SC Res. 232 (16 December 1966), para. 2 (e).

<sup>132</sup> SC Res. 1173 (12 June 1998), para. 12(d). <sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*, para. 12(b). <sup>135</sup> SC Res. 1306 (5 July 2000), para. 1.

<sup>136</sup> SC Res. 1343 (7 March 2001), para. 6; SC Res. 1408 (6 May 2002), para. 5; SC Res. 1478 (6 May 2003), para. 10.

<sup>137</sup> SC Res. 1521 (22 December 2003), para. 6.

<sup>138</sup> SC Res. 1643 (15 December 2005), para. 6.

<sup>139</sup> SC Res. 1173 (12 June 1998), para. 12(c). <sup>140</sup> SC Res. 1306 (5 July 2000), para. 5.

<sup>141</sup> SC Res. 1408 (6 May 2002), para. 8; SC Res. 1478 (6 May 2003), para. 14.

<sup>142</sup> SC Res. 1521 (22 December 2003), para. 8.

the exemption into play.<sup>143</sup> In the case of Liberia, however, at the time of writing the Liberian government had yet to establish an effective certificate-of-origin regime, thus leaving the exemption dormant.

*(g) Chemical sanctions*

The Security Council has imposed chemical sanctions on one occasion, as part of its Afghanistan/Taliban/Al Qaida sanctions regime, requiring states to prevent the sale to Taliban-controlled areas of the chemical acetic anhydride, which is used in the production of opium.<sup>144</sup>

*(h) Timber sanctions*

Timber sanctions seek to prohibit the import from a timber-rich target of timber and timber products. The Security Council has experimented with timber sanctions as part of its 1343<sup>145</sup> and 1521<sup>146</sup> Liberia sanctions regimes. On both occasions, the Council has required all states to prevent the import of all round logs and timber products originating in Liberia. On a previous occasion, the Council had requested states to respect a moratorium outlined by Cambodia's Supreme National Council upon the export of logs from Cambodia.<sup>147</sup> However, that instance did not amount to an example of mandatory UN sanctions, as the Council was not acting under Chapter VII of the Charter.

*(i) Luxury goods sanctions*

Under the 1718 North Korea sanctions regime, the Council required UN member states to prevent the sale, supply or transfer to North Korea of 'luxury goods'.<sup>148</sup> The Council did not explain what goods it considered to fall within this category, nor did it explicitly delegate such a responsibility to the 1718 Sanctions Committee.

<sup>143</sup> The Sierra Leone Sanctions Committee decided, at its twenty-first meeting on 21 March 2001, that the new Certificate of Origin regime for the trade in Sierra Leone diamonds was in effective operation: see S/2001/300 (30 March 2001): *Letter dated 28 March 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone to the President of the Security Council*. The Council welcomed the establishment and implementation of the Certificate of Origin regime in: SC Res. 1385 (19 December 2001), para. 1.

<sup>144</sup> SC Res. 1333 (19 December 2000), para. 10.

<sup>145</sup> SC Res. 1478 (6 May 2003), paras. 16–17.

<sup>146</sup> SC Res. 1521 (22 December 2003), para. 10.

<sup>147</sup> SC Res. 792 (30 November 1992), para. 12.

<sup>148</sup> SC Res. 1718 (14 October 2006), para. 8(a)(iii).

### iii. Financial sanctions

Financial sanctions are measures seeking to interrupt the ability of the target to engage in financial relations with the external world. Financial sanctions can be general in nature, thus requiring states to freeze any financial resources or assets in their jurisdiction that belong to the target, or to prohibit the transfer of financial resources or assets, including the provision of insurance, to parties either located in the target or acting on behalf of parties located in the target. Financial sanctions have also been more targeted, however, seeking to freeze the personal financial resources and assets of key policy-makers connected with a target. The Security Council has employed general financial sanctions as part of its sanctions regimes against Southern Rhodesia,<sup>149</sup> Iraq,<sup>150</sup> Libya,<sup>151</sup> FRYSM,<sup>152</sup> the Bosnian Serbs<sup>153</sup> and Haiti.<sup>154</sup> It has applied assets freezes against lists of designated individuals and entities as part of its Iraq,<sup>155</sup> UNITA,<sup>156</sup> 1267 Afghanistan/Taliban/Al Qaida,<sup>157</sup> DRC,<sup>158</sup> 1521 Liberia,<sup>159</sup> 1556 Sudan,<sup>160</sup> Côte d'Ivoire,<sup>161</sup> Hariri,<sup>162</sup> North Korea<sup>163</sup> and Iran<sup>164</sup> sanctions regimes.

The Security Council has also clarified that states can be required to impose financial sanctions as part of their obligations to implement arms sanctions. In the case of the Somalia sanctions, the Council clarified that states were to prevent the financing of acquisitions and deliveries of weapons and military equipment,<sup>165</sup> as well as the provision of financial assistance related to military activities.<sup>166</sup>

<sup>149</sup> SC Res. 253 (29 May 1968), para. 4; SC Res. 388 (6 April 1976), paras. 1, 2; SC Res. 409 (27 May 1977), para. 1.

<sup>150</sup> SC Res. 661 (6 August 1990), para. 4; SC Res. 687 (3 April 1991), para.20.

<sup>151</sup> SC Res. 883 (11 November 1993), para. 3.

<sup>152</sup> SC Res. 757 (30 May 1992), para. 5; SC Res. 820 (17 April 1993), para. 21; SC Res. 820 (17 April 1993), para. 27.

<sup>153</sup> SC Res. 942 (23 September 1994), paras. 11–13.

<sup>154</sup> SC Res. 841 (16 June 1993), para. 8. <sup>155</sup> SC Res. 1483 (22 May 2003), para. 23.

<sup>156</sup> SC Res. 1173 (12 June 1998), para. 11.

<sup>157</sup> SC Res. 1333 (19 December 2000), para. 8(c); SC Res. 1390 (16 January 2002), para. 2(a).

<sup>158</sup> SC Res. 1596 (18 April 2005), para. 15 (DRC).

<sup>159</sup> SC Res. 1532 (12 March 2004), para. 1. <sup>160</sup> SC Res. 1591 (29 March 2005), para. 3(e).

<sup>161</sup> SC Res. 1572 (15 November 2004), para. 11.

<sup>162</sup> SC Res. 1636 (31 October 2005), para. 3(a).

<sup>163</sup> SC Res. 1718 (14 October 2006), para. 8(d).

<sup>164</sup> SC Res. 1737 (23 December 2006), para. 12.

<sup>165</sup> SC Res. 1425 (22 July 2002), para. 1.

<sup>166</sup> *Ibid.*, para. 2.

*Exemptions from financial sanctions* The Security Council has provided exemptions from most instances of financial sanctions.<sup>167</sup> The majority of those exemptions have had a humanitarian dimension. The Council has thus provided exemptions from general financial sanctions for the purchase of commodities and products that were exempt from comprehensive sanctions (Southern Rhodesia,<sup>168</sup> Iraq,<sup>169</sup> FRYSM<sup>170</sup> and Bosnian Serbs<sup>171</sup>). The Council has also provided exemptions for the provision of finance for pension purposes (Southern Rhodesia<sup>172</sup>), for the provision of basic services (FRYSM<sup>173</sup>), for payments related to activities of the UN or other international actors (FRYSM<sup>174</sup>), for payments on the ground of humanitarian need (Afghanistan/Taliban/Al Qaida<sup>175</sup>).

In addition to exemptions with a humanitarian dimension, the Council has also outlined some exemptions from general financial sanctions that do not have an immediately identifiable humanitarian connection, including for funds derived from the sale or supply of petroleum or petroleum products and agricultural products or commodities (Libya<sup>176</sup>), and for payments authorised by legitimate governments with sovereignty over the area in which the target is located (Bosnian Serbs<sup>177</sup> and Haiti<sup>178</sup>).

With respect to assets freezes, the Security Council has tended to outline a standard collection of exemptions. It has thus exempted funds that were: (a) necessary for basic expenses as notified to the relevant sanctions committee (1267 Taliban/Al Qaida,<sup>179</sup> DRC,<sup>180</sup> 1521

<sup>167</sup> Only in the case of UNITA did the Security Council fail to outline any exemptions.

<sup>168</sup> SC Res. 253 (29 May 1968), para. 4.

<sup>169</sup> SC Res. 661 (6 August 1990), para. 4; SC Res. 687 (3 April 1991), para. 20.

<sup>170</sup> SC Res. 757 (30 May 1992), paras 5; SC Res. 760 (18 June 1992), sole para; SC Res. 820 (17 April 1993), para. 27.

<sup>171</sup> SC Res. 942 (23 September 1994), para. 11.

<sup>172</sup> SC Res. 409 (27 May 1977), para. 1.

<sup>173</sup> SC Res. 820 (17 April 1993), para. 27.

<sup>174</sup> SC Res. 757 (30 May 1992), para. 10 (exempting financial transactions related to the activities of UNPROFOR, the Conference on Yugoslavia, and the EC Monitoring Mission).

<sup>175</sup> Such an exemption was provided in relation to the Taliban sanctions regime, before it was expanded to target Usama Bin Laden and Al Qaida and individuals, groups and entities associated with them. See SC Res. 1267 (15 October 1999), para. 4(b).

<sup>176</sup> SC Res. 883 (11 November 1993), para. 4.

<sup>177</sup> SC Res. 942 (23 September 1994), para. 11. <sup>178</sup> SC Res. 873 (13 October 1993), para. 2.

<sup>179</sup> SC Res. 1452 (20 December 2002), para. 1(a).

<sup>180</sup> SC Res. 1596 (18 April 2005), para. 15(a).

Liberia,<sup>181</sup> 1556 Sudan,<sup>182</sup> Côte d'Ivoire,<sup>183</sup> Hariri,<sup>184</sup> North Korea<sup>185</sup> and Iran<sup>186</sup>); (b) necessary for extraordinary expenses, as approved by the relevant sanctions committee (1267 Taliban/Al Qaida,<sup>187</sup> DRC,<sup>188</sup> 1521 Liberia,<sup>189</sup> 1556 Sudan,<sup>190</sup> Côte d'Ivoire,<sup>191</sup> North Korea<sup>192</sup> and Iran<sup>193</sup>); (c) subject to legal or administrative lien, as notified to the relevant sanctions committee (DRC,<sup>194</sup> 1521 Liberia,<sup>195</sup> 1556 Sudan,<sup>196</sup> Côte d'Ivoire,<sup>197</sup> North Korea<sup>198</sup> and Iran<sup>199</sup>).

In addition to these standard exemptions, the Council has also qualified that states might allow for frozen accounts to earn interest and to receive outstanding payments owed under contracts, agreements or obligations that had arisen prior to the application of sanctions (1267 Taliban/Al Qaida,<sup>200</sup> 1521 Liberia<sup>201</sup> and Iran<sup>202</sup>). The Council has also outlined exemptions specific to particular sanctions regimes. In relation to the Hariri sanctions regime, it exempted funds necessary for payment of reasonable professional fees and legal expenses connected with maintenance of the frozen funds (Hariri<sup>203</sup>). In the Iran sanctions regime it exempted funds that were necessary for activities related to light water nuclear reactors, as notified to the committee,<sup>204</sup> as well as funds for payment under a contract pre-dating listing, so long as the

<sup>181</sup> SC Res. 1532 (12 March 2004), para. 2(a).

<sup>182</sup> SC Res. 1591 (29 March 2005), para. 3(g)(i).

<sup>183</sup> SC Res. 1572 (15 November 2004), para. 12(a).

<sup>184</sup> SC Res. 1636 (31 October 2005), Annex, para. 2(ii).

<sup>185</sup> SC Res. 1718 (14 October 2006), para. 9(a).

<sup>186</sup> SC Res. 1737 (23 December 2006), para. 13(a).

<sup>187</sup> SC Res. 1452 (20 December 2002), para. 1(b).

<sup>188</sup> SC Res. 1596 (18 April 2005), para. 15(b).

<sup>189</sup> SC Res. 1532 (12 March 2004), para. 2(b).

<sup>190</sup> SC Res. 1591 (29 March 2005), para. 3(g)(ii).

<sup>191</sup> SC Res. 1572 (15 November 2004), para. 12(b).

<sup>192</sup> SC Res. 1718 (14 October 2006), para. 9(b).

<sup>193</sup> SC Res. 1737 (23 December 2006), para. 13(b).

<sup>194</sup> SC Res. 1596 (18 April 2005), para. 15(c).

<sup>195</sup> SC Res. 1532 (12 March 2004), para. 2(c).

<sup>196</sup> SC Res. 1591 (29 March 2005), para. 3(g)(iii).

<sup>197</sup> SC Res. 1572 (15 November 2004), para. 12(c).

<sup>198</sup> SC Res. 1718 (14 October 2006), para. 9(c).

<sup>199</sup> SC Res. 1737 (23 December 2006), para. 13(c).

<sup>200</sup> SC Res. 1452 (20 December 2002), para. 2.

<sup>201</sup> SC Res. 1532 (12 March 2004), para. 3.

<sup>202</sup> SC Res. 1737 (23 December 2006), para. 14.

<sup>203</sup> SC Res. 1636 (31 October 2005), Annex, para. 2(ii).

<sup>204</sup> SC Res. 1737 (23 December 2006), para. 13(d).

contract did not involve activities prohibited under the sanctions regime.<sup>205</sup>

## 1.2 *Non-economic sanctions*

Non-economic sanctions are measures that seek to interrupt a target's relations with the external world in areas other than basic trade. The Security Council has employed a variety of non-economic sanctions.

### i. Diplomatic and representative sanctions

Diplomatic and representative sanctions aim to interrupt the official relations between a target and the external world. The distinction between the two is that diplomatic sanctions are applied against a target that is recognised as a state by the international community and therefore maintains diplomatic relations with other states. Representative sanctions, on the other hand, are applied against a target that is not recognised as a state and whose official relations with the external world are more correctly described as 'representative' rather than 'diplomatic'. In applying diplomatic and representative sanctions, the Council has required states to refrain from legally recognising a target or to restrict or terminate diplomatic or representative relations with a target, whether directed against activities within the states applying the sanctions or against activities within the target. The Council has employed diplomatic sanctions as part of its Libya<sup>206</sup> and 1054 Sudan<sup>207</sup> sanctions regimes and it has applied representative sanctions as part of its sanctions regimes against Southern Rhodesia,<sup>208</sup> the FRYSM,<sup>209</sup> UNITA<sup>210</sup> and Afghanistan/Taliban/Al Qaida.<sup>211</sup>

*Exemptions from diplomatic and representative sanctions* The Security Council has not outlined any exemptions from diplomatic sanctions, and it has only designated an exemption from representative sanctions on one occasion. In that instance, it exempted from the representative sanctions against UNITA contact with UNITA initiated by representatives of the Government of Unity and National Reconciliation, the UN and observer states to the Lusaka Protocol.<sup>212</sup>

<sup>205</sup> *Ibid.*, para. 15.

<sup>206</sup> SC Res. 748 (31 March 1992), para. 6(a); SC Res. 883 (11 November 1993), para. 7.

<sup>207</sup> SC Res. 1054 (26 April 1996), para. 3(a).

<sup>208</sup> SC Res. 277 (18 March 1970), para. 2; SC Res. 277 (18 March 1970), para. 9(a).

<sup>209</sup> SC Res. 757 (30 May 1992), para. 8(a).

<sup>210</sup> SC Res. 1127 (28 August 1997), para. 4(c); SC Res. 1173 (12 June 1998), para. 12(a).

<sup>211</sup> SC Res. 1333 (19 December 2000), paras. 8(a).

<sup>212</sup> SC Res. 1173 (12 June 1998), para. 12(a).

## ii. Transportation sanctions

Transportation sanctions are measures that aim to prevent the flow of transportation, whether by land, sea or air, to a target. Although transportation sanctions will implicitly be applied in respect of any goods or commodities prohibited by economic sanctions, the Security Council has nevertheless taken the step on a number of occasions of stating explicitly that the flow of transportation to or from the target was prohibited as part of a sanctions regime, doing so in relation to the Southern Rhodesia,<sup>213</sup> FRYSM<sup>214</sup> and Bosnian Serb<sup>215</sup> sanctions regimes.

*Exemptions from transportation sanctions* In some cases where the Council has explicitly applied sanctions against transportation, it has provided exemptions for the transport of humanitarian items exempt from sanctions (FRYSM<sup>216</sup> and Bosnian Serbs<sup>217</sup>). The Council has also provided exemptions for cases of *force majeure* (FRYSM<sup>218</sup> and Bosnian Serbs<sup>219</sup>), and where requested by a legitimate government with sovereignty over the area in which the target is located (the government of Bosnia and Herzegovina in the case of the Bosnian Serbs<sup>220</sup>).

## iii. Travel sanctions

Travel sanctions are measures that seek to prohibit or inhibit the ability of individuals associated with the target of a sanctions regime to travel internationally. Travel sanctions have been applied both against a target population as a whole, as well as against individuals and entities designated by the relevant sanctions committee. The Security Council has applied travel sanctions against all nationals of a target on one occasion – in the case of the Southern Rhodesia sanctions regime.<sup>221</sup> The Council has directed travel sanctions against individuals or entities as part of the Iraq, Libya, Bosnian Serb, Haiti, UNITA, 1054 Sudan, Sierra

<sup>213</sup> SC Res. 277 (18 March 1970), para. 9(b).

<sup>214</sup> SC Res. 820 (17 April 1993), paras. 22, 24–25, 28.

<sup>215</sup> SC Res. 942 (23 September 1994), para. 15.

<sup>216</sup> SC Res. 820 (17 April 1993), paras. 22, 28.

<sup>217</sup> SC Res. 942 (23 September 1994), para. 15.

<sup>218</sup> SC Res. 820 (17 April 1993), para. 28.

<sup>219</sup> SC Res. 942 (23 September 1994), para. 15.

<sup>220</sup> *Ibid.* <sup>221</sup> SC Res. 253 (29 May 1968), para. 5.



Leone, Taliban and Al Qaida, 1343 Liberia, DRC, 1521 Liberia, 1556 Sudan, Côte d'Ivoire, Hariri, North Korea and Iran sanctions regimes.<sup>222</sup>

*Exemptions from travel sanctions* When imposing travel bans, the Security Council has taken to affirming that nothing can oblige a state to deny entry to its own nationals.<sup>223</sup> The Council has also exempted travel: on the grounds of humanitarian need or religious obligation (Southern Rhodesia,<sup>224</sup> Sierra Leone,<sup>225</sup> 1343 Liberia,<sup>226</sup> DRC,<sup>227</sup> 1521 Liberia,<sup>228</sup> 1556 Sudan,<sup>229</sup> Côte d'Ivoire,<sup>230</sup> Hariri<sup>231</sup> and North Korea<sup>232</sup>); to further peace, national reconciliation or stability (Bosnian Serbs,<sup>233</sup> 1343 Liberia,<sup>234</sup> DRC,<sup>235</sup> 1556 Sudan<sup>236</sup> and Côte d'Ivoire<sup>237</sup>); consistent with the purposes of a sanctions regime (Bosnian Serbs,<sup>238</sup> Haiti,<sup>239</sup> Sierra Leone,<sup>240</sup> Afghanistan/Taliban/Al Qaida,<sup>241</sup> 1343 Liberia,<sup>242</sup> 1521 Liberia<sup>243</sup> and North Korea<sup>244</sup>); for the fulfilment of a judicial process

<sup>222</sup> SC Res. 1137 (12 November 1997), para. 4 (Iraq); SC Res. 748 (31 March 1992), para. 6(c) (Libya); SC Res. 942 (23 September 1994), para. 14 (Bosnian Serbs); SC Res. 917 (6 May 1994), para. 3 (Haiti); SC Res. 1127 (28 August 1997), para. 4 (UNITA); SC Res. 1054 (26 April 1996), para. 3(b) (1054 Sudan); SC Res. 1132 (5 July 2000), para. 5 (Sierra Leone); SC Res. 1171 (5 June 1998), para. 5 (also Sierra Leone); SC Res. 1390 (16 January 2002), para. 2(b) (Taliban and Al Qaida); SC Res. 1343 (7 March 2001), para. 7(a) (1343 Liberia); SC Res. 1478 (6 May 2003), para. 28 (1343 Liberia); SC Res. 1596 (18 April 2005), para. 13 (DRC); SC Res. 1521 (22 December 2003), para. 4 (1521 Liberia); SC Res. 1591 (29 March 2005), para. 3(d) (1556 Sudan); SC Res. 1572 (15 November 2004), para. 9 (Côte d'Ivoire); SC Res. 1636 (31 October 2005), para. 3(a) (Hariri); SC Res. 1718 (14 October 2006), para. 8(e) (North Korea); and SC Res. 1737 (23 December 2006), para. 10 (Iran).

<sup>223</sup> SC Res. 1127 (28 August 1997), para. 4(a) (UNITA); SC Res. 1132 (8 October 1997), para. 5 (Sierra Leone); SC Res. 1390 (16 January 2002), para. 2(b) (Taliban/Al Qaida); SC Res. 1343 (7 March 2001), para. 7(a) (1343 Liberia); SC Res. 1596 (18 April 2005), para. 13 (DRC); SC Res. 1521 (22 December 2003), para. 4(a) (1521 Liberia); SC Res. 1591 (29 March 2005), para. 3(d) (1556 Sudan); SC Res. 1572 (15 November 2004), para. 9 (Côte d'Ivoire); SC Res. 1636 (31 October 2005), para. 3(a) (Hariri).

<sup>224</sup> SC Res. 253 (29 May 1968), para. 5. <sup>225</sup> SC Res. 1132 (8 October 1997), para. 5.

<sup>226</sup> SC Res. 1343 (7 March 2001), para. 7(b). <sup>227</sup> SC Res. 1596 (18 April 2005), para. 14.

<sup>228</sup> SC Res. 1521 (22 December 2003), para. 4(c).

<sup>229</sup> SC Res. 1591 (29 March 2005), para. 3(f).

<sup>230</sup> SC Res. 1572 (15 November 2004), para. 10.

<sup>231</sup> SC Res. 1636 (31 October 2005), Annex, para. 2(i).

<sup>232</sup> SC Res. 1718 (14 October 2006), para. 10.

<sup>233</sup> SC Res. 942 (23 September 1994), para. 14.

<sup>234</sup> SC Res. 1343 (7 March 2001), para. 7(b). <sup>235</sup> SC Res. 1596 (18 April 2005), para. 14.

<sup>236</sup> SC Res. 1591 (29 March 2005), para. 3(f).

<sup>237</sup> SC Res. 1572 (15 November 2004), para. 10.

<sup>238</sup> SC Res. 942 (23 September 1994), para. 14. <sup>239</sup> SC Res. 917 (6 May 1994), para. 3.

<sup>240</sup> SC Res. 1132 (8 October 1997), para. 5; SC Res. 1171 (5 June 1998), para. 5.

<sup>241</sup> SC Res. 1390 (16 January 2002), para. 2(b). <sup>242</sup> SC Res. 1343 (7 March 2001), para. 7(b).

<sup>243</sup> SC Res. 1521 (22 December 2003), para. 4(c).

<sup>244</sup> SC Res. 1718 (14 October 2006), para. 10.

(Afghanistan/Taliban/Al Qaida<sup>245</sup>); on official intergovernmental business (1343 Liberia<sup>246</sup>); and when participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law, as determined in advance by the 1533 Committee on a case-by-case basis (DRC<sup>247</sup>). In connection with the 1521 Liberia sanctions regime, the Council also outlined exemptions from the travel ban to enable former Liberian President Charles Taylor and witnesses required for his trial to travel to the Netherlands.<sup>248</sup>

#### iv. Aviation sanctions

Aviation sanctions aim to prohibit flights to and from a target or to inhibit a target's ability to utilise flights within its own area of influence. The Security Council has employed aviation sanctions banning all flights to and from a target as part of the Southern Rhodesia,<sup>249</sup> Iraq,<sup>250</sup> Libya,<sup>251</sup> FRYSM,<sup>252</sup> Haiti,<sup>253</sup> UNITA,<sup>254</sup> Afghanistan/Taliban/Al Qaida<sup>255</sup> and DRC<sup>256</sup> sanctions regimes. The Council has imposed sanctions targeting the operations of a target's national airline in the case of the sanctions regimes against Libya,<sup>257</sup> 1054 Sudan<sup>258</sup> and Afghanistan/Taliban/Al Qaida.<sup>259</sup> In examples of sanctions that aim to inhibit a target's ability to utilise flights within its own sphere of influence, the Council has prohibited the provision of technical assistance, advice, training, insurance and insurance-related payments related to the use, manufacture or maintenance of aircraft within areas controlled by a target as part of its sanctions regimes against Libya,<sup>260</sup> FRYSM<sup>261</sup> and UNITA.<sup>262</sup>

<sup>245</sup> SC Res. 1390 (16 January 2002), para. 2(b). <sup>246</sup> SC Res. 1343 (7 March 2001), para. 7(a).

<sup>247</sup> SC Res. 1649 (21 December 2005), para. 3. <sup>248</sup> SC Res. 1688 (16 June 2006), para. 9.

<sup>249</sup> SC Res. 253 (29 May 1968), para. 6. <sup>250</sup> SC Res. 670 (25 September 1990), para. 3.

<sup>251</sup> SC Res. 748 (31 March 1992), para. 4(a). <sup>252</sup> SC Res. 757 (30 May 1992), para. 7(a).

<sup>253</sup> SC Res. 917 (6 May 1994), para. 2. <sup>254</sup> SC Res. 1127 (28 August 1997), para. 4(d)(i).

<sup>255</sup> SC Res. 1267 (15 October 1999), para. 4(a); SC Res. 1333 (19 December 2000), para. 11.

<sup>256</sup> SC Res. 1596 (18 April 2005), para. 6.

<sup>257</sup> SC Res. 748 (31 March 1992), para. 6(b); SC Res. 883 (11 November 1993), para. 6(a), para. 6(b).

<sup>258</sup> SC Res. 1070 (16 August 1996), para. 3.

<sup>259</sup> SC Res. 1333 (19 December 2000), para. 8(b).

<sup>260</sup> SC Res. 748 (31 March 1992), para. 4(b); SC Res. 883 (11 November 1993), para. 6(d)–(f).

<sup>261</sup> SC Res. 757 (30 May 1992), para. 7(b).

<sup>262</sup> SC Res. 1127 (28 August 1997), para. 4(d)(iii).

*Exemptions from aviation sanctions* The Security Council has provided exemptions from most instances of aviation sanctions. Exemptions have been granted from aviation sanctions prohibiting flights to or from a target in the following situations: when carrying medical supplies, foodstuffs and other humanitarian items (Iraq,<sup>263</sup> FRYSM,<sup>264</sup> Libya,<sup>265</sup> Haiti,<sup>266</sup> UNITA<sup>267</sup> and Afghanistan/Taliban/Al Qaida<sup>268</sup>); in cases of medical emergency (UNITA<sup>269</sup>); for instances of religious pilgrimage and obligation (Afghanistan/Taliban/Al Qaida<sup>270</sup>); for flights by the UN or other international actors (Iraq,<sup>271</sup> Libya,<sup>272</sup> FRYSM<sup>273</sup> and Afghanistan/Taliban/Al Qaida<sup>274</sup>); in order to enable the inspection and verification of cargo (Iraq<sup>275</sup>); where authorised by a sanctions committee (Iraq<sup>276</sup>); for regularly scheduled commercial passenger flights (Haiti<sup>277</sup>); and to facilitate the achievement of the objectives of a sanctions regime (Afghanistan/Taliban/Al Qaida<sup>278</sup>). The Council also outlined exemptions from sanctions aiming to inhibit the operation of flights on one occasion, exempting from the Libya sanctions regime the provision of materials for the construction, improvement or maintenance of Libyan airfields for emergency equipment and equipment and services directly related to civilian air traffic control.<sup>279</sup>

## v. Sporting, cultural and scientific sanctions

Sporting, cultural and scientific sanctions are measures that aim to prohibit sporting, cultural and scientific relations between the target

<sup>263</sup> SC Res. 670 (25 September 1990), para. 3. <sup>264</sup> SC Res. 757 (30 May 1992), para. 7(a).

<sup>265</sup> SC Res. 748 (31 March 1992), para. 4(a). <sup>266</sup> SC Res. 917 (6 May 1994), para. 2.

<sup>267</sup> SC Res. 1127 (28 August 1997), para. 5.

<sup>268</sup> SC Res. 1267 (15 October 1999), para. 4(a); SC Res. 1333 (19 December 2000), para. 11.

<sup>269</sup> SC Res. 1127 (28 August 1997), para. 5.

<sup>270</sup> SC Res. 1267 (15 October 1999), para. 4(a); SC Res. 1333 (19 December 2000), para. 11.

<sup>271</sup> SC Res. 670 (25 September 1990), paras. 3, 4(c) (exempting flights for the United Nations Iran-Iraq Military Observer Group).

<sup>272</sup> SC Res. 910 (14 April 1994), para. 1 (exempting UN aircraft carrying a reconnaissance team to explore the feasibility of deploying a team of UN observers to monitor Libya's withdrawal from the Aouzou strip); SC Res. 915 (4 May 1994), para. 4 (exempting UN aircraft carrying the UN Aouzou Strip Observer Group).

<sup>273</sup> SC Res. 757 (30 May 1992), para. 10 (exempting flights connected to the activities of UNPROFOR, the Conference on Yugoslavia and the EC Monitoring Mission).

<sup>274</sup> SC Res. 1333 (19 December 2000), para. 12 (exempting flights being undertaken for humanitarian purposes by humanitarian organisations, when they featured on a list approved by the 1267 Committee).

<sup>275</sup> SC Res. 670 (25 September 1990), para. 4(a). <sup>276</sup> *Ibid.*, para. 4(b).

<sup>277</sup> SC Res. 917 (6 May 1994), para. 2. <sup>278</sup> SC Res. 1333 (19 December 2000), para. 11.

<sup>279</sup> SC Res. 883 (11 November 1993), para. 6(d).

and the external world.<sup>280</sup> The Security Council has employed sporting, cultural and scientific sanctions once, as part of the 757 FRYSM sanctions regime, when it required states to prevent the participation in sporting events on their territory of persons or groups representing the FRYSM,<sup>281</sup> and to suspend scientific and technical co-operation and cultural exchanges and visits involving persons or groups officially sponsored by or representing the FRYSM.<sup>282</sup>

#### vi. Telecommunications sanctions

Telecommunications sanctions, which are listed in Article 41 as one potential measure that might be applied as part of a sanctions regime, would entail disrupting telecommunications between the target of a sanctions regime and the outside world. Although the Security Council has not yet employed telecommunications sanctions, it nevertheless expressed its readiness to consider imposing such measures as part of the sanctions regime against UNITA.<sup>283</sup> In another action linked to the potential disruption of a target's telecommunications, the Council encouraged the FRYSM to sever telecommunications links between it and the areas of Bosnia and Herzegovina under the control of the Bosnian Serbs, while that group was subject to UN sanctions.<sup>284</sup>

## 2. Identifying targets

As the Charter framework for collective security was designed to address disputes between states, the founders of the UN likely envisaged sanctions being applied against state targets. In practice, sanctions have been applied against a range of targets, including single and multiple states, failed states, as well as against pseudo-state-, sub-state- and extra-state-actors. In addition, the practice of the Security Council demonstrates an increasing recognition of the desirability of applying measures that seek to impact decision-makers within the general group against which sanctions are imposed. When the Council imposes sanctions, it therefore

<sup>280</sup> Sporting, cultural and scientific sanctions could be treated as three separate types of sanctions. They are treated as a single category here, because they were applied at the same time by the Council in the case of the sanctions against FRYSM.

<sup>281</sup> SC Res. 757 (30 May 1992), para. 8(b). <sup>282</sup> *Ibid.*, para. 8(c).

<sup>283</sup> SC Res. 1221 (12 January 1999), para. 8.

<sup>284</sup> SC Res. 988 (21 April 1995), para. 10. FRYSM had severed such telecommunications once before, in August 1994, so the Council's encouragement was phrased in terms of reinstating that severance.

undertakes a two-step process of targeting. The first step is to identify the general target against which the sanctions will be imposed, and the second step is to consider implementing measures that will directly target decision-makers within the general target.

### 2.1 *Single state targets*

The Security Council has targeted single states in the manner likely envisaged by the founders of the UN in several cases, including the South Africa, Iraq, 713 Yugoslavia, Libya, 1054 Sudan, FRY, 788 Liberia, North Korea and Iran sanctions regimes. In each of these instances, the sanctions were imposed against a functioning government and were applied to the territory of the state as a whole. In the case of the 713 Yugoslavia sanctions regime, however, the maintenance of the sanctions after the dissolution of Yugoslavia meant that their target effectively became the successor states of the former Yugoslavia.

### 2.2 *Multiple state targets*

The continuation of the 713 Yugoslavia sanctions regime beyond the dissolution of Yugoslavia effectively led, albeit unintentionally, to the first application of a UN sanctions regime against multiple state targets. The Council subsequently imposed sanctions against multiple state targets in the case of Eritrea and Ethiopia, in an attempt to resolve the conflict between those two countries.

### 2.3 *De facto state targets*

The term 'de facto state targets' is used here to denote targets which are in de facto control of the machinery of government within a state, but which are not recognised by the international community to be the legitimate, or de jure, government of that state. Examples of sanctions imposed against de facto state targets including the regimes against Southern Rhodesia, FRYSM, Haiti, Sierra Leone and Afghanistan. In the case of Southern Rhodesia, the sanctions were applied against the illegal white minority regime led by Ian Smith. In the case of the FRYSM, sanctions were applied against the de facto government of Serbia-Montenegro, led by Slobodan Milosevic.<sup>285</sup> In the case of Haiti, the

<sup>285</sup> FRYSM is treated here as a case of a de facto state target rather than as a state target due to a dispute concerning that entity's international status which took place while sanctions were imposed. The international community refused to recognise the claim made by FRYSM to the former Yugoslavia's membership in the UN. It was also hesitant to grant FRYSM membership in its own right until it had engaged meaningfully in the

sanctions were employed against the de facto authorities who had seized power from the democratically elected government of President Aristide. In the case of Sierra Leone, the sanctions were initially applied against the military junta that had seized power from the democratically elected government of Sierra Leone. In the case of Afghanistan, the sanctions were initially imposed against the Taliban regime.<sup>286</sup> In the cases of Southern Rhodesia, Haiti and Sierra Leone, the sanctions were applied against the entire territories of the states over which the de facto authorities were exercising control. In the case of the sanctions against the Taliban, however, the sanctions were applied against Taliban-controlled territory, which initially amounted to approximately 90 per cent of the total territory of Afghanistan.

#### *2.4 Failed state targets*

The Security Council has applied sanctions against targets which have effectively constituted failed states in the cases of Somalia, Liberia and Rwanda. In each of those instances the relevant country found itself in a state of chaotic civil war and the Security Council imposed an arms embargo with the aim of fostering peace and stability. In the case of the sanctions against Rwanda, however, the sanctions regime was modified fifteen months after its initial application, such that it exempted the then government and targeted sub-state actors in Rwanda and neighbouring states.

#### *2.5 Sub-state targets*

The main characteristic of sub-state targets is that they operate within, and tend to pose a threat to the peace and security of, a state. In general, sub-state targets are rebel groups that seek to acquire control of the state from the existing government. Examples of sub-state actors against which sanctions have been applied include the Bosnian Serb, UNITA, rebel groups in Rwanda, rebel groups in Sierra Leone and the

peace process in the former Yugoslavia. Ultimately, it was admitted to membership in the United Nation on 1 November 2000, under the name 'the Federal Republic of Yugoslavia'. See SC Res. 1326 (31 October 2000); A/RES/55/12 (1 November 2000).

<sup>286</sup> With the Security Council's subsequent modification of the Taliban sanctions regime, such that the sanctions targeted first the activities within Afghanistan of the Taliban, Usama Bin Laden, Al Qaida, and associates of those entities, then second the activities of those entities wherever they may take place, the target changed from being a pseudo-state to a sub-state actor (in the case of the Taliban) and extra-state actors (in the cases of Bin Laden and Al Qaida and their associates). For discussion of those aspects of the sanctions regime, see the discussion of sub-state and extra-state actors.

Taliban. In the case of the Bosnian Serbs and UNITA, the sanctions targeted those sub-state actors from the point at which they were imposed until they were terminated. In the case of the sanctions against Rwanda, the sanctions were initially imposed against a failed-state target. The sanctions regime was subsequently modified, however, to exempt the new Rwandan government from the arms embargo, making the new target of the sanctions non-government forces operating in Rwanda, and in particular forces of the former Rwandan government.<sup>287</sup> In the case of the sanctions against Sierra Leone and the Taliban, the Security Council initially imposed the sanctions against pseudo-state targets, before focusing them against sub-state targets. In the case of Sierra Leone, the target shifted once the Sierra Leone government was returned to power, such that the sanctions were directed against the former military junta and members of the RUF. For its part, the Taliban changed from a pseudo-state to a sub-state target once it lost control of the reins of power in Afghanistan.<sup>288</sup>

## 2.6 *Extra-state targets*

An extra-state target is one which does not maintain a connection with a particular geographical base or operate solely within a particular state. Examples of extra-state targets include Usama Bin Laden and Al Qaida, and their associates. Initially, the sanctions against Bin Laden and Al Qaida and their associates were connected to their activities in Afghanistan. In January 2002, however, the Security Council abolished the geographical nexus between Afghanistan and the Taliban/Al Qaida sanctions regime.

## 2.7 *Individuals as targets*

As noted by former UNSG Boutros Boutros-Ghali, sanctions tend to be a 'blunt instrument'.<sup>289</sup> Responding in part to a concern in respect of the unintended consequences of sanctions upon civilian populations, the

<sup>287</sup> Although the resolutions of the Security Council modifying the sanctions refer generally to 'non-governmental forces', it is clear from various statements by the Council that the main target of the sanctions was the former Rwandan government. See SC Res. 997 (9 June 1995), preambular para. 5; SC Res. 1011 (16 August 1995), preambular para. 7; SC Res. 1013 (7 September 1995), preambular para. 5. See also the mandate of the International Commission of Inquiry to investigate violations of the Rwandan sanctions: SC Res. 1013 (7 September 1995), para. 1.

<sup>288</sup> The Taliban is treated as a sub-state actor rather than an extra-state actor due to the fact that it remains integrally connected to, and operative in, Afghanistan.

<sup>289</sup> S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace*, para. 70.

Security Council has experimented with measures designed to ensure that its sanctions regimes have a more direct impact upon policy-makers and individuals whose actions have contributed to the relevant threat to international peace and security. Examples of the types of tailored measures applied by the Council are assets freezes and travel bans.

These tailored measures have fast become the Security Council's sanctions tool of choice. The Council has applied both an assets freeze and a travel ban as part of its seven most recent sanctions regimes. Travel restrictions have been applied against individuals as part of the Iraq, Libya, Bosnian Serb, Haiti, UNITA, 1054 Sudan, Sierra Leone, Taliban and Al Qaida, 1343 Liberia, DRC, 1521 Liberia, 1556 Sudan, Côte d'Ivoire, Hariri, North Korea and Iran sanctions regimes.<sup>290</sup> The Council has applied an assets freeze against individuals as part of the 661 Iraq, 864 UNITA, 1267 Taliban and Al Qaida, 1493 DRC, 1521 Liberia, 1556 Sudan, 1572 Côte d'Ivoire, 1636 Hariri, 1718 North Korea and 1737 Iran sanctions regimes.<sup>291</sup>

<sup>290</sup> SC Res. 1137 (12 November 1997), para. 4 (Iraq); SC Res. 748 (31 March 1992), para. 6(c) (Libya); SC Res. 942 (23 September 1994), para. 14 (Bosnian Serbs); SC Res. 917 (6 May 1994), para. 3 (Haiti); SC Res. 1127 (28 August 1997), para. 4 (UNITA); SC Res. 1054 (26 April 1996), para. 3(b) (1054 Sudan); SC Res. 1132 (5 July 2000), para. 5 (Sierra Leone); SC Res. 1171 (5 June 1998), para. 5 (also Sierra Leone); SC Res. 1390 (16 January 2002), para. 2(b) (Taliban and Al Qaida); SC Res. 1343 (7 March 2001), para. 7(a) (1343 Liberia); SC Res. 1478 (6 May 2003), para. 28 (1343 Liberia); SC Res. 1596 (18 April 2005), para. 13 (DRC); SC Res. 1521 (22 December 2003), para. 4 (1521 Liberia); SC Res. 1591 (29 March 2005), para. 3(d) (1556 Sudan); SC Res. 1572 (15 November 2004), para. 9 (Côte d'Ivoire); SC Res. 1636 (31 October 2005), para. 3(a) (Hariri); SC Res. 1718 (14 October 2006), para. 8(e) (North Korea); and SC Res. 1737 (23 December 2006), para. 10 (Iran).

<sup>291</sup> SC Res. 1483 (22 May 2003), para. 23 (Iraq); SC Res. 1173 (12 June 1998), para. 11 (UNITA); SC Res. 1333 (19 December 2000), para. 8(c) (Taliban and Al Qaida); SC Res. 1390 (16 January 2002), para. 2(a) (also Taliban and Al Qaida); SC Res. 1596 (18 April 2005), para. 15 (DRC); SC Res. 1532 (12 March 2004), para. 1 (1521 Liberia); SC Res. 1591 (29 March 2005), para. 3(e) (1556 Sudan); SC Res. 1572 (15 November 2004), para. 11 (Côte d'Ivoire); SC Res. 1636 (31 October 2005), para. 3(a) (Hariri); SC Res. 1718 (14 October 2006), para. 8(d) (North Korea); SC Res. 1737 (23 December 2006), para. 12 (Iran).



## 7 Fine-tuning sanctions: setting objectives, applying time-limits and minimising negative consequences

In addition to identifying the legal basis and delineating the scope of sanctions, the Council can also take a number of steps to fine-tune the manner in which sanctions will be applied. As part of its sanctions practice, the Council has fine-tuned its Article 41 measures by clarifying particular objectives whose fulfilment would lead to the suspension or termination of sanctions. It has applied sanctions against a range of targets. It has experimented with the use of time-delays and time-limits, and it has also attempted to respond to criticism of the negative consequences of sanctions upon civilian populations and third-states.

### 1. Setting sanctions objectives

As UN sanctions are imposed under Chapter VII of the UN Charter, the implicit general objective of any sanctions regime is to address the threat to the peace, breach of the peace or act of aggression that led to the imposition of sanctions, and thus to maintain or restore international peace and security. In addition to that general objective, however, sanctions regimes generally possess a more specific objective, or set of objectives, the achievement of which should ensure the maintenance or restoration of peace and thus lead to the termination of sanctions. Thus, although the specific objectives of a sanctions regime stem from the general objectives of addressing the identified threat to the peace, breach of the peace or act of aggression and maintaining or restoring international peace and security, they are usually more detailed, consisting of particular steps that must be taken by the target to ensure that the sanctions are suspended or terminated.

Analysis here focuses upon the formal, explicit objectives of sanctions regimes. In any given situation there may, of course, be other factors

motivating the Council as a whole, or certain of its members, to seek the imposition or continued application of sanctions.<sup>1</sup> The 748 Libya sanctions regime provides one example where implicit objectives were at play. That regime remained in a state of suspended animation for more than four years after Libya handed over for trial before a Scottish court in the Netherlands the two suspects for the Lockerbie bombing. Eventually, the regime was terminated, after the Libyan government agreed to pay compensation to the relatives of the victims of Pan Am flight 103. Yet the payment of such compensation had not featured as an explicit objective of the sanctions regime. Thus, although it was an important factor in the ultimate termination of that regime, it was not something that Libya was required to do by the decisions of the Council. Rather, it was an implicit objective pursued by certain Council members.

Although the Security Council has not always articulated the specific objectives of its sanctions regimes in a methodical manner, it often provides at least an indication of those objectives. Such indications usually take the form of demands made of the target, of an expression of the Council's readiness to consider suspending or terminating the sanctions upon the satisfaction of certain conditions, or of a statement that the sanctions shall be imposed until certain developments have occurred.

### *1.1 Ending a rebellion, invasion or external interference*

The Security Council applied sanctions with the objective of ending a rebellion in the case of the illegal regime in Southern Rhodesia.<sup>2</sup> Bringing about the withdrawal of an invading force was a major objective of the sanctions regimes against Iraq<sup>3</sup> and the FRYSM.<sup>4</sup> In the case of the Iraq sanctions, the Council also sought to ensure that Iraq paid compensation for liabilities arising from its invasion of Kuwait.<sup>5</sup> Securing the cessation of external forms of interference formed one of the main objectives of the FRYSM<sup>6</sup> and 1343 Liberia sanctions

<sup>1</sup> For analysis of the many potential implicit objectives of sanctions, see Doxey, *International Sanctions* (2nd edn), pp.54–58.

<sup>2</sup> SC Res. 232 (16 December 1966), preambular para. 2; SC Res. 253 (29 May 1968), preambular para. 3 and para. 3; SC Res. 277 (18 March 1970), para. 9; SC Res. 288 (17 November 1970), para. 2; SC Res. 326 (2 February), para. 4; SC Res. 423 (14 March 1978), in general.

<sup>3</sup> SC Res. 661 (6 August 1990), para. 2. <sup>4</sup> SC Res. 757 (30 May 1992), para. 3.

<sup>5</sup> SC Res. 687 (3 April 1991), para. 22. <sup>6</sup> SC Res. 757 (30 May 1992), para. 3.

regimes.<sup>7</sup> In the case of Haiti, one objective was securing the departure from the target of key players in a coup d'état.<sup>8</sup>

### *1.2 Restoring a legitimate and/or democratically elected government to power*

The Security Council applied sanctions with the objective of restoring the authority of a legitimate government in the case of the sanctions regime against Iraq.<sup>9</sup> In the case of the sanctions regimes against Haiti and Sierra Leone, major objectives included: the reinstatement of a democratically elected government (both Haiti<sup>10</sup> and Sierra Leone<sup>11</sup>), ensuring the return of constitutional order (both Haiti<sup>12</sup> and Sierra Leone<sup>13</sup>), and bringing about the restoration of democracy (Haiti<sup>14</sup>). In the case of the sanctions regimes against Sierra Leone and UNITA, the Council also sought to ensure the re-establishment of government control throughout Sierra Leone<sup>15</sup> and Angola.<sup>16</sup>

### *1.3 Facilitating the exercise or protection of human rights*

The Security Council has imposed sanctions with the objective of facilitating the exercise or protection of human rights on a number of occasions. Sanctions have thus been applied: to enable the exercise of self-determination and independence (Southern Rhodesia<sup>17</sup> and South Africa<sup>18</sup>); to eliminate apartheid (South Africa<sup>19</sup>); to bring about the

<sup>7</sup> SC Res. 1343 (7 March 2001), paras. 2, 8–11; SC Res. 1408 (6 May 2002), para. 5; SC Res. 1478 (6 May 2003), paras. 1, 3, 10, 12, 17.

<sup>8</sup> SC Res. 917 (6 May 1994), para. 18. <sup>9</sup> SC Res. 661 (6 August 1990), para. 2.

<sup>10</sup> SC Res. 841 (16 June 1993), para. 16; SC Res. 873 (13 October 1993), para. 1; SC Res. 917 (6 May 1994), preambular para. 8; SC Res. 940 (31 July 1994), preambular para. 8, para. 17; SC Res. 944 (29 September 1994), para. 4.

<sup>11</sup> SC Res. 1132 (8 October 1997), paras. 1 and 19. <sup>12</sup> SC Res. 917 (6 May 1994), para. 18(e).

<sup>13</sup> SC Res. 1132 (8 October 1997), paras. 1 and 19.

<sup>14</sup> SC Res. 917 (6 May 1994), preambular para. 8, para. 18(e); SC Res. 940 (31 July 1994), preambular para. 8, para. 17.

<sup>15</sup> SC Res. 1171 (5 June 1998), para. 7; SC Res. 1306 (5 July 2000), para. 6; SC Res. 1385 (19 December 2001), para. 3; SC Res. 1446 (4 December 2002), para. 2.

<sup>16</sup> SC Res. 1173 (12 June 1998), para. 2.

<sup>17</sup> SC Res. 232 (16 December 1966), para. 4; SC Res. 253 (29 May 1968), preambular paras. 7–8.

<sup>18</sup> SC Res. 473 (13 June 1980), preambular para. 7, paras. 4, 7; SC Res. 569 (26 July 1985), preambular para. 5, para. 5; SC Res. 591 (28 November 1986), preambular para. 7.

<sup>19</sup> SC Res. 418 (4 November 1977), preambular para. 1; SC Res. 473 (13 June 1980), preambular para. 7, paras. 4, 7; SC Res. 569 (26 July 1985), para. 5; SC Res. 591 (28 November 1986), preambular para. 7; SC Res. 765 (16 July 1992), para. 7.

occurrence of free and fair elections (FRYSM and the Bosnian Serbs,<sup>20</sup> as well as Haiti<sup>21</sup>); to secure the enjoyment of minority rights within a target, including greater autonomy and self-administration (FRY<sup>22</sup>); to bring an end to acts of repression against a civilian population (FRY<sup>23</sup>); to facilitate the return of refugees and displaced persons (FRY<sup>24</sup>); to bring to justice rebel or militia leaders and their associates who had incited and carried out human rights and international humanitarian law violations and other atrocities (1556 Sudan<sup>25</sup>).

#### 1.4 *Bringing about disarmament or arms control*

The Security Council has incorporated disarmament-related objectives in a number of its sanctions regimes. Among those objectives have been: containing an aggressive target (South Africa<sup>26</sup>); bringing about a target's complete disarmament (Iraq<sup>27</sup>); securing a target's co-operation with an arms control monitoring body (Iraq<sup>28</sup>); inducing targets to conclude and implement a regional arms control agreement (former Yugoslavia<sup>29</sup>); securing the disarmament and demobilisation of rebel groups or government-sponsored militias (Sierra Leone,<sup>30</sup> DRC,<sup>31</sup> 1521 Liberia,<sup>32</sup> 1556 Sudan<sup>33</sup>); and inducing a target to cease developing a weapons of mass destruction programme and return to participation in the Nuclear Non-Proliferation Treaty framework (North Korea<sup>34</sup> and Iran<sup>35</sup>).

#### 1.5 *Facilitating the establishment and consolidation of peace*

Although, as noted above, the underlying objective of any sanctions regime should be the maintenance or restoration of peace and security, on a number of occasions the Council has articulated particular

<sup>20</sup> In connection with both the 757 FRYSM and 820 Bosnian Serb sanctions regimes, see SC Res. 1022 (22 November 1995), para. 4.

<sup>21</sup> SC Res. 917 (6 May 1994), para. 18(c).

<sup>22</sup> SC Res. 1160 (31 March 1998), para. 5; SC Res. 1199 (23 September 1998), preambular para. 12; SC Res. 1203 (24 October 1998), preambular para. 8; SC Res. 1244 (10 June 1999), preambular para. 11.

<sup>23</sup> SC Res. 1160 (31 March 1998), para. 16; SC Res. 1199 (23 September 1998), para. 4.

<sup>24</sup> SC Res. 1493 (28 July 2003), para. 4. <sup>25</sup> SC Res. 1556 (30 July 2004), para. 6.

<sup>26</sup> SC Res. 418 (4 November 1977), paras. 1–2; SC Res. 558 (13 December 1984), preambular paras. 4, 5.

<sup>27</sup> SC Res. 687 (3 April 1991), paras. 8–10, 12, 22.

<sup>28</sup> SC Res. 1137 (12 November 1997), para. 6; SC Res. 1284 (17 December 1999), para. 33.

<sup>29</sup> SC Res. 1021 (22 November 1995), para. 1. <sup>30</sup> SC Res. 1171 (5 June 1998), para. 7.

<sup>31</sup> SC Res. 1493 (28 July 2003), para. 22. <sup>32</sup> SC Res. 1521 (22 December 2003), para. 5.

<sup>33</sup> SC Res. 1556 (30 July 2004), para. 6. <sup>34</sup> SC Res. 1718 (14 October 2006), paras. 2–4, 5–7.

<sup>35</sup> SC Res. 1737 (23 December 2006), para. 24(a).

objectives associated with the establishment and consolidation of peace. Among those objectives have been the following: establishing peace and stability in general (713 Yugoslavia,<sup>36</sup> Somalia,<sup>37</sup> 788 Liberia<sup>38</sup> and FRY<sup>39</sup>); bringing about a peaceful, definitive settlement to a conflict between two countries (Eritrea and Ethiopia<sup>40</sup>); ensuring the establishment and observance of cease-fires (FRYSM,<sup>41</sup> Bosnian Serbs,<sup>42</sup> UNITA,<sup>43</sup> Rwanda,<sup>44</sup> Eritrea and Ethiopia<sup>45</sup> and DRC<sup>46</sup>); securing the engagement of the target or other relevant actors in a peace process (FRYSM,<sup>47</sup> Bosnian Serbs,<sup>48</sup> FRY<sup>49</sup> and Eritrea and Ethiopia<sup>50</sup>); facilitating the implementation of, or progress in, a peace process (Haiti,<sup>51</sup> UNITA,<sup>52</sup> Rwanda,<sup>53</sup> 1343 Liberia<sup>54</sup> DRC,<sup>55</sup> 1521 Liberia,<sup>56</sup> 1556 Sudan<sup>57</sup> and Côte d'Ivoire<sup>58</sup>); bringing about progress in a process of national reconciliation (UNITA,<sup>59</sup> Côte d'Ivoire<sup>60</sup>); and securing co-operation with peace-keeping operations or other peace-related international actors (Haiti,<sup>61</sup> 1160 FRY<sup>62</sup> and 1556 Sudan<sup>63</sup>).

### 1.6 Addressing international terrorism

The Libya, 1054 Sudan, Taliban/Al Qaida and Hariri sanctions regimes have each had the major objective of addressing international terrorism.

- <sup>36</sup> SC Res. 713 (25 September 1991), para. 6.      <sup>37</sup> SC Res. 733 (23 January 1992), para. 5.  
<sup>38</sup> SC Res. 788 (19 November 1992), para. 8.      <sup>39</sup> SC Res. 1160 (31 March 1998), para. 8.  
<sup>40</sup> SC Res. 1298 (17 May 2000), para. 17.      <sup>41</sup> SC Res. 757 (30 May 1992), para. 3.  
<sup>42</sup> SC Res. 1022 (22 November 1995), paras. 2 and 4.  
<sup>43</sup> SC Res. 864 (15 September 1993), para. 17.      <sup>44</sup> SC Res. 918 (17 May 1994), para. 1.  
<sup>45</sup> SC Res. 1298 (17 May 2000), paras. 2–3.      <sup>46</sup> SC Res. 1493 (28 July 2003), para. 22.  
<sup>47</sup> SC Res. 820 (17 April 1993), paras. 10 and 31; SC Res. 943 (23 September 1994), para. 4.  
<sup>48</sup> SC Res. 820 (17 April 1993), paras. 10 and 31; SC Res. 942 (23 September 1994), paras. 3 and 21; SC Res. 943 (23 September 1994), para. 4.  
<sup>49</sup> SC Res. 1160 (31 March 1998), paras. 1 and 16.  
<sup>50</sup> SC Res. 1298 (17 May 2000), para. 4.      <sup>51</sup> SC Res. 861 (27 August 1993), para. 3.  
<sup>52</sup> SC Res. 864 (15 September 1993), para. 17; SC Res. 1127 (28 August 1997), para. 7; SC Res. 1295 (18 April 2000), preambular para. 5; SC Res. 1432 (15 August 2002), para. 2.  
<sup>53</sup> SC Res. 918 (17 May 1994), preambular para. 6, para. 19.  
<sup>54</sup> SC Res. 1343 (7 March 2001), para. 3; SC Res. 1408 (6 May 2002), para. 3; SC Res. 1478 (6 May 2003), para. 3.  
<sup>55</sup> SC Res. 1493 (28 July 2003), para. 22.      <sup>56</sup> SC Res. 1521 (22 December 2003), para. 5.  
<sup>57</sup> SC Res. 1591 (29 March 2005), para. 1.  
<sup>58</sup> SC Res. 1572 (15 November 2004), para. 13; SC Res. 1633 (21 October 2005), para. 12; SC Res. 1643 (15 December 2005), para. 8; SC Res. 1727 (15 December 2006), para. 6.  
<sup>59</sup> SC Res. 1412 (17 May 2002), para. 2.  
<sup>60</sup> SC Res. 1572 (15 November 2004), para. 13; SC Res. 1633 (21 October 2005), para. 12; SC Res. 1643 (15 December 2005), para. 8; SC Res. 1727 (15 December 2006), para. 6.  
<sup>61</sup> SC Res. 873 (13 October 1993), para. 1; SC Res. 917 (6 May 1994), para. 18(d).  
<sup>62</sup> SC Res. 1160 (31 March 1998), para. 16; SC Res. 1199 (23 September 1998), para. 4.  
<sup>63</sup> SC Res. 1591 (29 March 2005), para. 1.

In addition to this broad objective, the Council has also outlined the following particular objectives: securing the co-operation of a target with investigations into acts of terrorism (Libya,<sup>64</sup> 1054 Sudan<sup>65</sup> and Afghanistan/Taliban/Al Qaida<sup>66</sup>); ensuring that a target desists from assisting, supporting and providing shelter to terrorists (Libya,<sup>67</sup> 1054 Sudan<sup>68</sup> and Afghanistan/Taliban/Al Qaida<sup>69</sup>); inducing the formal renunciation of terrorism by a target (Libya<sup>70</sup>); and ensuring the completion of all investigative and judicial proceedings relating to a terrorist incident (Hariri<sup>71</sup>).

### 1.7 Promoting good governance

In some instances the Security Council has begun to tie the lifting of sanctions to improvements in governance. This condition has generally been attached to sanctions against natural resources, such as diamond and timber sanctions. The condition for termination of diamond sanctions has generally been the establishment of an effective certificate of origin scheme (Sierra Leone,<sup>72</sup> 1343<sup>73</sup> and 1521<sup>74</sup> Liberia). In the 1521 Liberia sanctions regime, the major conditions for lifting timber sanctions were that the Liberian government gain full authority and control over Liberian timber producing areas and that government revenues from the timber industry were used for legitimate purposes for the benefit of the Liberian people.<sup>75</sup>

The Security Council also took the unusual step in connection with the 1521 Liberia sanctions regime of encouraging the Liberian government to implement the Governance and Economic Management Assistance Program (GEMAP), which had been developed by international donors in co-operation with the NTGL, with the aim of preventing the loss of government revenue through corrupt practices.<sup>76</sup> Part of the rationale underpinning the GEMAP was that securing Liberian

<sup>64</sup> SC Res. 748 (31 March 1992), para. 1; SC Res. 883 (11 November 1993), para. 16; SC Res. 1192 (27 August 1998), para. 8.

<sup>65</sup> SC Res. 1054 (26 April 1996), para. 1(a).

<sup>66</sup> SC Res. 1267 (15 October 1999), paras. 1–2, 14; SC Res. 1333 (19 December 2000), paras. 1–2, 24.

<sup>67</sup> SC Res. 748 (31 March 1992), paras. 2–3. <sup>68</sup> SC Res. 1054 (26 April 1996), para. 1(b).

<sup>69</sup> SC Res. 1267 (15 October 1999), para. 1; SC Res. 1333 (19 December 2000), paras. 1, 3, 24.

<sup>70</sup> SC Res. 748 (31 March 1992), paras. 2–3. <sup>71</sup> SC Res. 1636 (31 October 2005), para. 3(c).

<sup>72</sup> SC Res. 1306 (5 July 2000), para. 5.

<sup>73</sup> SC Res. 1408 (6 May 2002), para. 8; SC Res. 1478 (6 May 2003), para. 14.

<sup>74</sup> SC Res. 1521 (22 December 2003), para. 8; SC Res. 1549 (17 June 2004), para. 4.

<sup>75</sup> SC Res. 1521 (22 December 2003), paras. 11–12; SC Res. 1549 (17 June 2004), para. 4.

<sup>76</sup> SC Res. 1647 (20 December 2005), para. 4.

government control over all revenue from natural resources would eradicate the need for sanctions.

## 2. Defining the temporal application of sanctions

When crafting a sanctions regime, the Security Council has occasionally experimented with the temporal application of the sanctions to be applied. Traditionally, a decision by the Council to impose sanctions required states to implement the sanctions immediately and for an unspecified duration. In some of its sanctions regimes, however, the Council has varied the temporal application of sanctions, both in terms of when the sanctions enter into force and in terms of the length of time for which sanctions must be applied.

### 2.1 *Time-delays*

The Security Council has employed time-delays in respect of the entry into force of sanctions in several of its sanctions regimes, including the Libya,<sup>77</sup> FRYSM,<sup>78</sup> Haiti,<sup>79</sup> UNITA,<sup>80</sup> 1054 Sudan,<sup>81</sup> Afghanistan/Taliban/Al Qaida,<sup>82</sup> 1343 Liberia<sup>83</sup> and Côte d'Ivoire<sup>84</sup> sanctions regimes. The rationale for utilising time-delays is sometimes to provide the target with a period of grace during which it can avoid falling subject to the sanctions by satisfying the conditions tied to the termination of sanctions, as occurred in the case of the FRYSM sanctions regime.<sup>85</sup> In the absence of a desire to induce the early compliance of a target with the

<sup>77</sup> SC Res. 748 (31 March 1992), para. 3; SC Res. 883 (11 November 1993), para. 2.

<sup>78</sup> SC Res. 820 (17 April 1993), paras. 10–11.

<sup>79</sup> See: SC Res. 841 (16 June 1993), paras. 3, 4; SC Res. 873 (13 October 1993), para. 1; SC Res. 917 (6 May 1994), para. 5.

<sup>80</sup> SC Res. 864 (15 September 1993), para. 17; SC Res. 1127 (28 August 1997), para. 7; SC Res. 1173 (12 June 1998), para. 14. On two occasions the Council extended the initial date for the application of sanctions, in response to what appeared to be positive developments on the ground. The date for the entry into force of the sanctions outlined in resolution 1127 (1997), initially set for 30 September 1997 (SC Res. 1127 (28 August 1997), para. 7), was delayed for a period of thirty days: SC Res. 1130 (29 September 1997), para. 2. The date for the entry into force of resolution 1173 (1998), initially set for 25 June 1998, was also delayed, this time by six days: SC Res. 1176 (24 June 1998), para. 2. In both cases, the additional time seemed to be permitted in response to observations made by the UNSG relating to potential positive developments on the ground.

<sup>81</sup> SC Res. 1054 (26 April 1996), para. 2; SC Res. 1070 (16 August 1996), para. 4.

<sup>82</sup> SC Res. 1267 (15 October 1999), para. 3; SC Res. 1333 (19 December 2000), para. 22.

<sup>83</sup> SC Res. 1343 (7 March 2001), para. 8; SC Res. 1478 (6 May 2003), para. 17.

<sup>84</sup> SC Res. 1572 (15 November 2004), para. 19 (providing that the travel ban and assets freeze would come into force one month later).

<sup>85</sup> SC Res. 820 (17 April 1993), paras. 10–11.

objectives of a sanctions regime, the rationale for employing time-delays is likely to be the desire to grant states sufficient time to make the necessary arrangements to ensure that the sanctions will be effectively implemented once they enter into force.

## 2.2 *Time-limits*

The Security Council has employed time-limits in connection with a number of sanctions regimes. The Council first experimented with a time-limit in May 2000, as part of the sanctions regime against Eritrea and Ethiopia.<sup>86</sup> The sanctions were established for a period of twelve months,<sup>87</sup> at the end of which the Council did not decide to extend the sanctions any further and they therefore expired.<sup>88</sup> Since then the Council has employed time-limits as part of the Sierra Leone,<sup>89</sup> Afghanistan/Taliban/Al Qaida,<sup>90</sup> 1343 Liberia,<sup>91</sup> DRC,<sup>92</sup> 1521 Liberia<sup>93</sup> and Côte d'Ivoire<sup>94</sup> sanctions regimes.

<sup>86</sup> SC Res. 1298 (17 May 2000), para. 16.

<sup>87</sup> *Ibid.* <sup>88</sup> S/PRST/2001/14 (15 May 2001).

<sup>89</sup> The Council imposed diamond sanctions for an initial period of eighteen months: SC Res. 1306 (5 July 2000), paras. 1, 5, 6. For discussion of the extensions and ultimate lifting of the diamond sanctions, see Appendix 2, summary of the 1132 sanctions regime.

<sup>90</sup> In December 2000, the Council decided that the additional measures it was applying against the Taliban would terminate after twelve months, unless it (the Council) were to decide otherwise: SC Res. 1333 (19 December 2000), para. 23. In its subsequent resolutions, however, the Council has not incorporated time-limits, noting instead that it would review the sanctions after twelve months and decide how to improve them. See, e.g., SC Res. 1390 (16 January 2002), para. 3; SC Res. 1455 (17 January 2003), paras. 1, 2; SC Res. 1526 (30 January 2004), para. 3.

<sup>91</sup> The Council outlined time-limits for most of the sanctions imposed. The arms sanctions were applied for an initial period of fourteen months: SC Res. 1343 (7 March 2001), paras. 5, 9. The diamond and travel sanctions, which came into effect two months after the application of the arms sanctions, were applied for an initial period of twelve months: SC Res. 1343 (7 March 2001), paras. 6–8. The timber sanctions were applied for an initial period of ten months, beginning on 6 July 2003: SC Res. 1478 (6 May 2003), para. 17. For extensions and renewals of these sanctions, see the summary of the 1343 sanctions regime in Appendix 3.

<sup>92</sup> SC Res. 1493 (28 July 2003), para. 20 (applying the arms sanctions for an initial period of twelve months).

<sup>93</sup> SC Res. 1521 (22 December 2003), para. 18 (deciding that the arms, travel, diamond and timber sanctions were established for twelve months). The Council subsequently extended all these measures on multiple occasions, before eventually lifting the timber sanctions in June 2006. For further details, see Appendix 2, summary of the 1521 sanctions regime. It should be noted that the Council did not apply a time-limit for the financial sanctions imposed by resolution 1532 (2004): SC Res. 1532 (12 March 2004), paras. 1, 5.

<sup>94</sup> SC Res. 1572 (15 November 2004), paras. 7, 9, 11; SC Res. 1643 (15 December 2005), para. 6. For discussion of renewals of these measures, see Appendix 2, summary of the 1572 sanctions regime.



### 3. Addressing the unintended consequences of sanctions

UN sanctions have received considerable criticism due to the negative consequences that have resulted from their application both for civilian populations living in a target state, as well as for states that would normally benefit from engaging in trade or other relations with the target. This section outlines the manner in which the Council has sought to address unintended consequences both for civilian populations and for third states.

#### 3.1 Security Council action to address the humanitarian impact of sanctions upon civilian populations

The United Nations has been quite sensitive to the charge that sanctions have brought suffering upon civilian populations.<sup>95</sup> For its part, the Security Council and its sanctions-related subsidiary bodies have noted that the aim of sanctions is not to harm civilian populations.<sup>96</sup> The Council and its permanent members have also issued a number of statements to the effect that more must be done to minimise the humanitarian impact of sanctions.<sup>97</sup> In terms of concrete action, the Security Council has sought to address the negative humanitarian consequences of sanctions upon civilian populations in three main ways. First, the Council has outlined humanitarian exemptions from comprehensive and complex sanctions regimes. Second, it has moved towards targeted, ‘smart sanctions’. Third, it has occasionally requested assessments of the humanitarian and socio-economic impact of sanctions.

#### i. The exemptions process

The Security Council has outlined humanitarian exemptions from each of the comprehensive sanctions regimes applied to date, articulating

<sup>95</sup> See, e.g., S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace*, para. 70; and the statement by senior UN official Lakhdar Brahimi in his foreword to: Gibbons, *Sanctions in Haiti*.

<sup>96</sup> See, e.g., S/PRST/2000/12 (7 April 2000), para. 17. For similar statements by the Council’s sanctions-related subsidiary bodies, see S/1999/644 (4 June 1999): *Report on the visit by the Chairman of the 864 Committee to Central and Southern Africa, May 1999*, para. 18; S/1999/829 (28 July 1999): *Report on the visit by the Chairman of the 864 Committee to Europe and participation in the seventieth ordinary session of the Council of Ministers of the Organisation of African Unity, July 1999*, para. 23.

<sup>97</sup> See, e.g., S/1995/300 (13 April): *Humanitarian Impact of Sanctions* (containing a non-paper by the five permanent members of the Council), para. 1; S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees*, paras. 1, 9–11.

particular exempt items, as well as classes of supplies that can be exempt with the approval of the relevant sanctions committee. The Council has also provided for exemptions from financial sanctions for the purchase of humanitarian items and to finance pensions, the provision of basic services, payments on the ground of humanitarian need, and 'basic' or 'extraordinary' personal expenses of individuals subject to financial sanctions. The Council has also expressed its support, via the issuance of a Presidential Note, for the idea that food, pharmaceuticals, medical supplies and basic agricultural and medical equipment should be exempt from any sanctions regime.<sup>98</sup> In that note it also expressed the view that consideration should be given to drawing up lists of items that should be excluded from sanctions regimes and it recognised that civilian populations in target states should have access to appropriate resources and procedures for financing humanitarian imports.<sup>99</sup>

Towards the end of the comprehensive Iraq sanctions regime's tenure, the Security Council also refined the exemptions process in a way that might provide a positive precedent, should comprehensive sanctions again be employed. In May 2002, the Council adopted a 'Goods Review List' (GRL).<sup>100</sup> The GRL contained an exhaustive list of potential 'dual-use' items, the supply to Iraq of which must first be approved via a process which involved careful consideration of the items by the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA), which then recommended the approval or refusal of the application by the 661 Committee.<sup>101</sup> Anything that was not on the list was considered to be exempt from sanctions, thus requiring simple notification to the Committee. After the introduction of the GRL process, the flow of exempted goods and commodities to Iraq under the Oil-for-Food Programme increased substantially.<sup>102</sup>

<sup>98</sup> S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees*, para. 16.

<sup>99</sup> *Ibid.*

<sup>100</sup> The GRL was adopted by SC Res. 1409 (14 May 2002), para. 2. It was refined by SC Res. 1454 (30 December 2002), para. 1.

<sup>101</sup> For the GRL itself, see S/2002/515 (20 May 2002); and SC Res. 1454 (30 December 2002), Annex A. For the procedures relating to the application of the GRL, see SC Res. 1409 (14 May 2002), attachment; SC Res. 1454 (30 December 2002), Annex B.

<sup>102</sup> For details of the improvements resulting from the introduction of the GRL, see the report of the Secretary-General dated 12 November 2002: S/2002/1239 (12 November 2002).

## ii. Smart sanctions

There has been a noticeable evolution in the Security Council's practice towards 'smart' or 'targeted' sanctions.<sup>103</sup> The Council has thus sought to target decision-makers more directly, through the employment of individual travel and financial sanctions. It has also focused its sanctions regimes increasingly upon strategic goods, prohibiting particular items – such as arms, diamonds and timber – the export or import of which is perceived to contribute to the relevant threat to the peace.

## iii. Humanitarian impact assessment

The Council has requested the UNSG and sanctions-related subsidiary bodies to undertake a number of monitoring and evaluation activities in relation to the humanitarian situation in areas subject to sanctions. The UNSG has thus been requested to report on the humanitarian situation in general in a target state (Iraq,<sup>104</sup> Haiti,<sup>105</sup> Eritrea and Ethiopia<sup>106</sup>), to appoint a committee of experts to report on the humanitarian situation in a target state (Iraq<sup>107</sup>), and to report on the actual or potential humanitarian implications of sanctions within a target state (Afghanistan/Taliban/Al Qaida<sup>108</sup> and 1343 Liberia<sup>109</sup>). Sanctions-related subsidiary bodies, for their part, have been tasked with: reporting on the humanitarian needs of the civilian population within a target state (Iraq);<sup>110</sup> determining whether humanitarian circumstances had arisen, thus requiring the provision of exemptions for food-stuffs (Iraq);<sup>111</sup> reporting

<sup>103</sup> For monographs studying this evolution, see *Smart Sanctions: the Next Steps: The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (Baden-Baden: Nomos, 2001); David Cortright and George A. Lopez (eds.), *Smart Sanctions: Targeting Economic Statecraft* (Lanham: Rowman & Littlefield, 2002).

<sup>104</sup> SC Res. 666 (13 September 1990), paras. 3–5. <sup>105</sup> SC Res. 917 (6 May 1994), para. 16.

<sup>106</sup> SC Res. 1298 (17 May 2000), para. 15. <sup>107</sup> SC Res. 1302 (8 June 2000), para. 18.

<sup>108</sup> SC Res. 1333 (19 December 2000), para. 15(d). The UNSG subsequently submitted four reports to the Council in 2001 on the humanitarian implications of the sanctions: S/2001/241 (20 March 2001); S/2001/695 (13 July 2001); S/2001/1086 (19 November 2001); and S/2001/1215 (18 December 2001).

<sup>109</sup> SC Res. 1343 (7 March 2001), para. 13(a); SC Res. 1478 (6 May 2003), para. 19. The UNSG subsequently submitted the following reports: S/2001/939 (5 October 2001); and S/2003/793 (5 August 2003).

<sup>110</sup> The Council established three panels to explore different aspects of the situation in Iraq, the second of which considered the humanitarian needs of the Iraqi people. See S/1999/100: *Note by the President of the Security Council* (30 January 1999). The Humanitarian Panel reported in: S/1999/356 (30 March 1999), Annex II.

<sup>111</sup> The Council made such a request of the 661 Committee in: SC Res. 666 (13 September 1990), paras. 1, 5.

on the potential and actual economic, humanitarian and social impact of sanctions (Afghanistan/Taliban/Al Qaida<sup>112</sup> and 1343 Liberia<sup>113</sup>); and making recommendations to the Council on ways to limit unintended effects of sanctions on a civilian population (1343 Liberia<sup>114</sup>).

### 3.2 Security Council action to address the impact of sanctions upon third states

The framers of the UN Charter implicitly recognised the inequity inherent in requiring a greater sacrifice of some states than others by providing such states the right, under Article 50, to consult the Security Council in respect of special economic problems resulting from the implementation of Council-mandated preventive or enforcement measures.<sup>115</sup> States have consulted the Security Council under Article 50 concerning the economic consequences experienced as a result of implementing the sanctions regimes against Southern Rhodesia, Iraq, the FRYSM and Haiti.

In the case of Southern Rhodesia, the Council tasked technical missions to explore the issue of special assistance for Zambia and Botswana.<sup>116</sup> In the other cases, the Council requested sanctions committees to examine requests for special assistance and to make appropriate recommendations to the Council (Iraq,<sup>117</sup> Libya,<sup>118</sup> FRYSM<sup>119</sup> and Haiti<sup>120</sup>). In two cases, the relevant sanctions committee has taken the step of establishing Article 50 Working Groups to focus on the issue of special assistance (Iraq<sup>121</sup> and FRYSM<sup>122</sup>). In both of those instances, the

<sup>112</sup> The Council requested the 1267 Committee to undertake such a task in relation to the Taliban and Al Qaida sanctions regime: SC Res. 1267 (15 October 1999), para. 6(c).

<sup>113</sup> The Council made such a request of the Liberia Panel of Experts: SC Res. 1395 (27 February 2002), para. 4; SC Res. 1478 (6 May 2003), para. 25(c).

<sup>114</sup> The Council made such a request of both the 1343 Committee and the Liberia Panel of Experts: SC Res. 1343 (7 March 2001), para. 14(g) (aimed at the 1343 Committee); SC Res. 1478 (6 May 2003), para. 25(c) (aimed at the Liberia Panel of Experts).

<sup>115</sup> Article 50, UN Charter.

<sup>116</sup> SC Res. 326 (2 February 1973), para. 9 (regarding Zambia); SC Res. 403 (14 January 1977), para. 6 (regarding Botswana).

<sup>117</sup> SC Res. 669 (24 September 1990), preambular para. 4.

<sup>118</sup> SC Res. 748 (31 March 1992), para. 9(f); SC Res. 883 (11 November 1993), para. 10.

<sup>119</sup> SC Res. 843 (18 June 1993), para. 2. <sup>120</sup> SC Res. 917 (6 May 1994), para. 14(g).

<sup>121</sup> For a brief description of the activities of the 661 Working Group, see S/1996/700 (26 August 1996): *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, para. 105.

<sup>122</sup> For a tangential reference to the 724 Working Group, see S/1996/946 (15 November 1996): *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, para. 42.

Committee issued recommendations concerning requests they found to be valid (Iraq<sup>123</sup> and FRYSM<sup>124</sup>).

In two instances, the Council's response has been to appeal directly to all states to provide technical, financial and material assistance to the country concerned, and to invite the competent organs and specialised agencies of the UN system, including the international financial institutions and regional development banks, to review their programmes of assistance to the country in question, with a view to alleviating those hardships (Southern Rhodesia<sup>125</sup> and Iraq<sup>126</sup>). In three cases, the Council has responded indirectly to such appeals, by requesting the UNSG to make such an appeal to all states (Southern Rhodesia,<sup>127</sup> Iraq<sup>128</sup> and FRYSM<sup>129</sup>).

<sup>123</sup> S/21786 (18 September 1990): *Special report to the Security Council concerning the application of Jordan for special assistance*; S/22021 & Add.1 & Add.2 (19 and 21 December 1990, and 19 March 1991): *Recommendations of the 661 Committee concerning the applications for special assistance of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia*.

<sup>124</sup> S/26040 & Add. 1 & Add.2 (2 July, 4 August and 10 December 1993): *Recommendations of the 724 Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine*.

<sup>125</sup> SC Res. 253 (29 May 1968) para. 15 (concerning Zambia); SC Res. 277 (18 March 1970), para. 16 (concerning Zambia); SC Res. 329 (10 March 1973), paras. 3 and 4 (concerning Zambia); SC Res. 386 (17 March 1976), paras. 4, 5 (concerning Mozambique); SC Res. 411 (30 June 1977), paras. 9, 10 (concerning Mozambique); SC Res. 406 (25 May 1977), paras. 5, 7 (concerning Botswana).

<sup>126</sup> S/22508 (29 April 1991): *Presidential statement of 29 April 1991*.

<sup>127</sup> SC Res. 386 (17 March 1976), para. 6 (requesting the UNSG, in collaboration with the appropriate organisations of the UN system, to organise, with immediate effect, all forms of financial, technical and material assistance to Mozambique).

<sup>128</sup> S/21826, 22033 and 22398 (24 September and 21 December 1990 and 21 March 1991): *Letters dated 24 September and 21 December 1990 and 21 March 1991 from the President of the Security Council addressed to the Secretary-General, endorsing the recommendations of the 661 Committee concerning the applications for special assistance of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia*.

<sup>129</sup> S/26056, 26282 and 26905 (6 July, 9 August and 20 December 1993): *Letters dated 6 July, 9 August and 20 December 1993 from the President of the Security Council addressed to the Secretary-General, endorsing the recommendations of the 724 Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine*.

## 8 Delegating responsibility for sanctions administration and monitoring

When the Security Council applies sanctions, the primary responsibility for implementing the sanctions falls upon states. In order to ensure that states do in fact implement sanctions, however, the Council has bestowed additional responsibilities for the administration and monitoring of sanctions upon the UN Secretary-General and a range of subsidiary actors. Article 29 of the UN Charter provides that the Security Council may establish ‘such subsidiary organs as it deems necessary for the performance of its functions’.<sup>1</sup> Further authority for the establishment of subsidiary bodies is derived from rule 28 of the Council’s provisional rules of procedure, which provides that ‘the Security Council may appoint a commission or committee or a rapporteur for a specified question’.<sup>2</sup> The Security Council has established a number of subsidiary bodies to facilitate the implementation of sanctions, including sanctions committees, disarmament commissions, commissions of inquiry, bodies of experts and monitoring mechanisms. It has also tasked pre-existing UN actors, such as UN peace operations, with responsibilities relating to sanctions implementation.

The Security Council does not always invoke Article 29 or Rule 28 when establishing a subsidiary organ. It has tended to invoke Rule 28 in respect of sanctions committees, but not in respect of bodies of experts or monitoring mechanisms. Practice concerning the establishment of bodies of experts and monitoring mechanisms also varies considerably. Sometimes the Council decides to establish these bodies directly, but at

<sup>1</sup> Article 29 of the UN Charter. For further discussion of subsidiary organs, see Simma (ed.), *The Charter of the United Nations* (2nd edn, 2002), pp. 539–563; Bailey and Daws, *The Procedure of the Security Council*, pp. 333–378.

<sup>2</sup> S/96/Rev.7 (December 1982): *Provisional Rules of Procedure of the Security Council*, Rule 28.

others it requests the UN Secretary-General to establish them. The Council's approach to extending such bodies is also inconsistent, sometimes choosing to 'extend' and at others deciding to 're-establish' the relevant body.

## 1. Sanctions committees

Sanctions committees have been the most common form of subsidiary organ established to facilitate the administration, monitoring and implementation of sanctions. In the vast majority of sanctions regimes, the Security Council has established distinct sanctions committees, which come to be known by the number of the resolution by which they were created.<sup>3</sup> In the case of the 1054 sanctions regime, however, the Security Council chose not to create a sanctions committee. In the case of the FRYSM and Bosnian Serb sanctions regimes, the Council assigned responsibility for sanctions administration to the 724 Committee that had previously been created to administer the 713 Yugoslavia sanctions regime. The majority of sanctions committees have been established by the same resolution that created the relevant sanctions regime.<sup>4</sup> The remaining committees were established to undertake responsibilities in respect of sanctions regimes that had already been initiated,<sup>5</sup> or to succeed a dissolved committee.<sup>6</sup>

### 1.1 *Composition*

The composition of sanctions committees has evolved slightly since the first sanctions committee was established to oversee the sanctions regime against Southern Rhodesia. The 253 Southern Rhodesia

<sup>3</sup> For a list of all of the Security Council's sanctions committees, along with references to the provisions outlining their mandates, see Appendix 3, Table E.

<sup>4</sup> These committees included those concerning: Iraq (661 Committee); Libya (748 Committee); Haiti (841 Committee); UNITA (864 Committee); Rwanda (918 Committee); Sierra Leone (1132 Committee); the FRY (1160 Committee); Afghanistan/Taliban/Al Qaida (1267 Committee); Eritrea and Ethiopia (1298 Committee); 1343 Liberia (1343 Committee); 1521 Liberia (1521 Committee); Côte d'Ivoire (1572 Committee); Hariri (1636 Committee); North Korea (1718 Committee) and Iran (1737 Committee).

<sup>5</sup> These committees included those concerning the following sanctions regimes: Southern Rhodesia (253 Committee); South Africa (421 Committee); the former Yugoslavia (724 Committee); Somalia (751 Committee); 788 Liberia (985 Committee); the DRC (1533 Committee) and 1556 Sudan (1591 Committee).

<sup>6</sup> The 1518 Committee was established to succeed the 661 Committee, which had been dissolved. It thus assumed responsibilities relating to the administration of the Iraq sanctions regime.

Sanctions Committee initially consisted of representatives of seven of the Security Council's member states, with a fixed Chairman.<sup>7</sup> From the end of March 1969, the chairmanship rotated every two months, in alphabetical order.<sup>8</sup> Then, from October 1970, the Committee was expanded to include a representative of each Security Council member state, with the chairmanship of the Committee rotating each month in accordance with the Presidency of the Council.<sup>9</sup> A further adjustment was made to the organisation of the Committee's work on March 1972, when the President of the Security Council issued a note stating that the chairmanship of the Committee would subsequently rotate on a one-year basis and that the Chairman and two Vice-Chairmen would be elected at the beginning of each year.<sup>10</sup>

The composition of each of the subsequent sanctions committees has followed the model that evolved through the experience of the 253 Southern Rhodesia Sanctions Committee. Each committee has thus consisted of a representative of each of the member states of the Security Council, leading them to be described as 'Committees of the whole'.<sup>11</sup> In addition, the chairmanship and vice-chairmanship of each sanctions committee have rotated annually, on the basis of an informal election within the Council at the end of each calendar year. In practice, the positions of Chair and Vice-chair have almost exclusively been filled by representatives of non-permanent members of the Council. Thus, sanctions committee office-bearers have tended to serve in their positions for a maximum of two years, reflecting the two-year term of their delegation on the Security Council.

## 1.2 Mandates

As sanctions committees are ad hoc entities, their mandates can vary quite markedly. In order to ascertain the mandate of a particular sanctions committee, it is necessary to analyse both the resolution in which

<sup>7</sup> S/8697 (31 July 1968). The initial Chairman was India, with the other members of the Committee being Algeria, France, India, Paraguay, the USSR, the United Kingdom and the United States. India was replaced as Chairman at the end of 1968, when its term on the Council expired, by another non-permanent member – Pakistan. See Gowlland-Debbas, *Collective Responses*, p. 607.

<sup>8</sup> Gowlland-Debbas, *Collective Responses*, p. 607.

<sup>9</sup> S/9951 [Official Records of the Security Council, Twenty-fifth Year, Supplement for July, August and September 1970: S/9951].

<sup>10</sup> S/10578 (29 March 1972) [Official Records of the Security Council, Twenty-seventh Year, Supplement for January, February and March 1972: S/10578].

<sup>11</sup> Bailey and Daws, *The Procedure of the Security Council*, p. 365.



the committee was established, as well as any subsequent resolutions that either modify the scope of the sanctions regime for which the committee has responsibility or that add to the committee's existing collection of tasks. Although the mandates of most committees exhibit particular characteristics that are not shared by other committees, the Council has tended to delegate a number of core responsibilities to most, if not all, committees. Among the more generic responsibilities delegated to sanctions committees, however, have been receiving reports from member states on actions taken to implement sanctions, and reporting to the Council, with observations and recommendations on the implementation of the relevant sanctions regime.<sup>12</sup> Sanctions committees have also been requested or required to undertake a range of additional duties, as outlined below.

### i. Reporting activities

As part of the more specific reporting activities, committees have been requested or required to undertake the following duties: examining reports of the UNSG on the implementation of sanctions (Southern Rhodesia,<sup>13</sup> South Africa<sup>14</sup> and Iraq<sup>15</sup>); reporting to the Council on action which could be taken to address the refusal of states to implement sanctions (Southern Rhodesia<sup>16</sup>); reporting on proposals for strengthening the effectiveness of sanctions (Southern Rhodesia,<sup>17</sup> South Africa,<sup>18</sup>

<sup>12</sup> In the initial Security Council sanctions committee-creating resolution, in relation to the regime imposed against Southern Rhodesia, the Council established a general duty to report to the committee with observations relating to the areas of its mandate: SC Res. 253 (29 May 1968), para. 20. Later in the para. the Council referred to the committee's 'duty' to report: para. 20 (b). This duty has applied to each subsequent sanctions committee.

<sup>13</sup> SC Res. 253 (29 May 1968), para. 20(a). <sup>14</sup> SC Res. 421 (9 December 1977), para. 1(a).

<sup>15</sup> SC Res. 661 (6 August 1990), para. 6(a).

<sup>16</sup> SC Res. 320 (29 September 1972), paras. 4 and 5. The Council requested that the 253 Committee submit this report no later than 31 January 1973. The Committee was late in submitting the report, however, as the Council's subsequent requests to it to expedite its preparation of that report attest: see, e.g., SC Res. 326 (2 February 1973), para. 8; SC Res. 328 (10 March 1973), para. 6.

<sup>17</sup> SC Res. 320 (29 September 1972), paras. 4 and 5. The Council requested that the Committee submit this report no later than 31 January 1973. The Committee was late in submitting the report, however, as the Council's subsequent requests to it to expedite its preparation of that report attest: see, e.g., SC Res. 326 (2 February 1973), para. 8; SC Res. 328 (10 March 1973), para. 6; SC Res. 445 (8 March 1979), para. 8.

<sup>18</sup> SC Res. 421 (9 December 1977), para. 1(b); SC Res. 473 (13 June 1980), para. 11; SC Res. 591 (28 November 1986), para. 13.

1343 Liberia,<sup>19</sup> Côte d'Ivoire,<sup>20</sup> North Korea<sup>21</sup> and Iran<sup>22</sup>); reporting on the possible application of further measures under Article 41 (Southern Rhodesia<sup>23</sup>); and providing oral reports to the Council via the relevant committee Chairman (Afghanistan/Taliban/Al Qaida<sup>24</sup>).

## ii. The administration of exemptions

Among the tasks related to the administration of sanctions exemptions, committees have assumed the following responsibilities: considering applications for exemptions from a sanctions regime (Iraq,<sup>25</sup> Somalia,<sup>26</sup> Libya,<sup>27</sup> FRYSM,<sup>28</sup> Bosnian Serbs,<sup>29</sup> Haiti,<sup>30</sup> UNITA,<sup>31</sup> Rwanda,<sup>32</sup> Sierra Leone,<sup>33</sup> Afghanistan/Taliban/Al Qaida,<sup>34</sup> Eritrea and Ethiopia,<sup>35</sup> 1343 Liberia,<sup>36</sup> DRC,<sup>37</sup> 1521 Liberia,<sup>38</sup> 1556 Sudan,<sup>39</sup> Côte d'Ivoire,<sup>40</sup> Hariri,<sup>41</sup> North Korea<sup>42</sup> and Iran<sup>43</sup>); determining whether humanitarian circumstances had arisen requiring exemptions for foodstuffs (Iraq<sup>44</sup>); and receiving notifications regarding the provision of supplies that are exempt from a sanctions regime and that

<sup>19</sup> SC Res. 1343 (7 March 2001), para. 14(g).

<sup>20</sup> SC Res. 1572 (15 November 2004), para. 14(f).

<sup>21</sup> SC Res. 1718 (14 October 2006), para. 12(f).

<sup>22</sup> SC Res. 1737 (23 December 2006), para. 18(h).

<sup>23</sup> See: SC Res. 409 (27 May 1977), para. 3.

<sup>24</sup> SC Res. 1455 (17 January 2003), paras. 9, 14.

<sup>25</sup> SC Res. 687 (3 April 1991), para. 20. <sup>26</sup> SC Res. 1356 (19 June 2001), para. 4.

<sup>27</sup> SC Res. 748 (31 March 1992), para. 9(e).

<sup>28</sup> SC Res. 757 (30 May 1992), paras. 13(e)–(f); SC Res. 787 (16 November 1992), para. 9; SC Res. 820 (17 April 1993), paras. 22(b)–(c), 27–28.

<sup>29</sup> SC Res. 942 (23 September 1994), paras. 7(ii)(b), 13, 15.

<sup>30</sup> SC Res. 841 (16 June 1993), para. 10(d); SC Res. 917 (6 May 1994), para. 14(e).

<sup>31</sup> SC Res. 1127 (28 August 1997), para. 11 (b); SC Res. 1173 (12 June 1998), para. 13.

<sup>32</sup> SC Res. 1005 (17 July 1995), sole para. <sup>33</sup> SC Res. 1132 (8 October 1997), para. 10(e).

<sup>34</sup> SC Res. 1267 (15 October 1999), para. 6(f); SC Res. 1333 (19 December 2000), paras. 16(c), 16(d); SC Res. 1452 (20 December 2002), paras. 1, 3.

<sup>35</sup> SC Res. 1298 (17 May 2000), para. 8(e). <sup>36</sup> SC Res. 1343 (7 March 2001), para. 14(d).

<sup>37</sup> SC Res. 1596 (18 April 2005), para. 18(d); SC Res. 1649 (21 December 2005), para. 4.

<sup>38</sup> SC Res. 1521 (22 December 2003), para. 21(c); SC Res. 1683 (13 June 2006), paras. 1–3; SC Res. 1731 (20 December 2006), para. 1.

<sup>39</sup> SC Res. 1591 (29 March 2005), paras. 3(a)(ii), 3(a)(v).

<sup>40</sup> SC Res. 1572 (15 November 2004), para. 14(c).

<sup>41</sup> SC Res. 1636 (31 October 2005), Annex, para. 2(i)–(ii).

<sup>42</sup> SC Res. 1718 (14 October 2006), para. 12(c).

<sup>43</sup> SC Res. 1737 (23 December 2006), para. 18(d).

<sup>44</sup> SC Res. 666 (13 September 1990), paras. 1, 5.

do not require its approval (Bosnian Serbs,<sup>45</sup> Rwanda<sup>46</sup> and Sierra Leone<sup>47</sup>).

### iii. Considering requests for special assistance under Article 50

In relation to the consideration of requests for special assistance under Article 50, committees have been tasked with examining such requests and making appropriate recommendations to the Security Council (Iraq,<sup>48</sup> Libya,<sup>49</sup> FRYSM<sup>50</sup> and Haiti<sup>51</sup>).

### iv. Sanctions monitoring

Among the tasks related to sanctions monitoring, committees have been requested or required to undertake the following tasks: monitoring the implementation of sanctions (Iraq,<sup>52</sup> 1521 Liberia<sup>53</sup> and 1556 Sudan<sup>54</sup>); developing a mechanism to monitor the sale or supply to a target of items prohibited under a sanctions regime (Iraq<sup>55</sup>); monitoring the sale and supply from a target subject to comprehensive sanctions of commodities exempted from the sanctions for the purposes of financing the purchase of humanitarian items (Iraq<sup>56</sup>); considering information about sanctions violations and recommending appropriate measures of response (former Yugoslavia,<sup>57</sup> Somalia,<sup>58</sup> Libya,<sup>59</sup> FRYSM,<sup>60</sup> 788 Liberia,<sup>61</sup> Haiti,<sup>62</sup> UNITA,<sup>63</sup> Rwanda,<sup>64</sup> Sierra Leone,<sup>65</sup>

<sup>45</sup> SC Res. 942 (23 September 1994), para. 7(ii)(b) (in relation to supplies intended strictly for medical purposes and foodstuffs).

<sup>46</sup> SC Res. 1011 (16 August 1995), para. 11(a). <sup>47</sup> SC Res. 1171 (5 June 1998), para. 4.

<sup>48</sup> SC Res. 669 (24 September 1990), preambular para. 4.

<sup>49</sup> SC Res. 748 (31 March 1992), para. 9(f); SC Res. 883 (11 November 1993), para. 10.

<sup>50</sup> SC Res. 843 (18 June 1993), para. 2. <sup>51</sup> SC Res. 917 (6 May 1994), para. 14(g).

<sup>52</sup> SC Res. 700 (17 June 1991), para. 5. <sup>53</sup> SC Res. 1521 (22 December 2003), para. 21(a).

<sup>54</sup> SC Res. 1591 (29 March 2005), para. 3(a)(i). <sup>55</sup> SC Res. 715 (11 October 1991), para. 7.

<sup>56</sup> SC Res. 986 (14 April 1995), paras. 1(a), 6.

<sup>57</sup> SC Res. 724 (15 December 1991), paras. 5(b)(iii) and (iv).

<sup>58</sup> SC Res. 751 (24 April 1992), paras. 11(b) and (c).

<sup>59</sup> SC Res. 748 (31 March 1992), paras. 9(c) and (d).

<sup>60</sup> SC Res. 757 (30 May 1992), paras. 13(c)-(d); SC Res. 820 (17 April 1993), para. 18.

<sup>61</sup> SC Res. 985 (13 April 1995), paras. 4(b)-(c); S/PRST/1999/1 (7 January 1999).

<sup>62</sup> SC Res. 841 (16 June 1993), para. 10(c); SC Res. 917 (6 May 1994), para. 14(c) and (d); SC Res. 841 (16 June 1993), para. 10(e).

<sup>63</sup> SC Res. 864 (15 September 1993), paras. 22(c)-(d); SC Res. 932 (30 June 1994), para. 8; SC Res. 1221 (12 January 1999), para. 8.

<sup>64</sup> SC Res. 918 (17 May 1994), para. 14(b)-(c).

<sup>65</sup> SC Res. 1132 (8 October 1997), para. 10(b)-(c); SC Res. 1171 (5 June 1998), para. 6; S/PRST/1999/1 (7 January 1999); SC Res. 1306 (5 July 2000), para. 7(b)-(c).

FRY,<sup>66</sup> Afghanistan/Taliban/Al Qaida,<sup>67</sup> Eritrea and Ethiopia,<sup>68</sup> 1343 Liberia,<sup>69</sup> DRC,<sup>70</sup> North Korea<sup>71</sup> and Iran<sup>72</sup>); drawing up rules for monitoring sanctions, including provisions relating to the monitoring of exemptions (FRYSM<sup>73</sup>); considering information on the transport of arms into countries neighbouring a target for eventual use in that target (Rwanda<sup>74</sup>); investigating reports of violations of sanctions (UNITA<sup>75</sup>); and suggesting methods for improving monitoring of sanctions implementation (Afghanistan/Taliban/Al Qaida<sup>76</sup>).

## v. Improving sanctions implementation

Among the tasks related to improving sanctions implementation, committees have been requested or required to undertake the following duties: seeking the co-operation of states neighbouring a target in the effective implementation of sanctions (Somalia<sup>77</sup>); sending a mission, led by the Chairman of the committee, to the region in which a target is located, in order to demonstrate the Security Council's determination to give full effect to sanctions (Somalia<sup>78</sup> and Afghanistan/Taliban/Al Qaida<sup>79</sup>); drawing to the attention of member states their obligations in

<sup>66</sup> SC Res. 1160 (31 March 1998), para. 9(c).

<sup>67</sup> SC Res. 1267 (15 October 1999), paras. 6(b), 6(d); SC Res. 1333 (19 December 2000), para. 16(g).

<sup>68</sup> SC Res. 1298 (17 May 2000), paras. 8(b), (c).

<sup>69</sup> SC Res. 1343 (7 March 2001), para. 14(b). At the same time, the Council also requested the 1343 Committee to consider, and take appropriate action on, information brought to its attention concerning alleged violations of the first sanctions regime imposed against Liberia, while that sanctions regime had been in force: see SC Res. 1408 (6 May 2002), para. 14. The Council's decision to ask the 1343 Committee to assume responsibilities relating to the earlier sanctions regime raises interesting legal issues, as the Council was effectively asking the Committee to explore and act upon violations of a terminated sanctions regime, thus leading to the potential conclusion that it was effectively resurrecting that earlier regime.

<sup>70</sup> SC Res. 1533 (12 March 2004), para. 8(b).

<sup>71</sup> SC Res. 1718 (14 October 2006), para. 12(b).

<sup>72</sup> SC Res. 1737 (23 December 2006), para. 18(c).

<sup>73</sup> SC Res. 820 (17 April 1993), para. 22(a). <sup>74</sup> S/PRST/1995/22 (27 April 1995).

<sup>75</sup> SC Res. 1202 (15 October 1998), para. 14 (requesting the Chairman of the 864 Committee to investigate reports that the leader of UNITA had travelled outside Angola in violation of the sanctions, and that UNITA forces had received military training and assistance, as well as arms).

<sup>76</sup> SC Res. 1267 (15 October 1999), para. 12. <sup>77</sup> SC Res. 954 (4 November 1994), para. 12.

<sup>78</sup> SC Res. 1474 (8 April 2003), para. 8.

<sup>79</sup> SC Res. 1333 (19 December 2000), para. 16(f); SC Res. 1455 (17 January 2003), para. 11.

connection with aviation sanctions in the event that aircraft registered in a target state were to land in their territory (Libya<sup>80</sup>); consulting with regional organisations and arrangements on ways to strengthen sanctions implementation (UNITA<sup>81</sup> and Sierra Leone<sup>82</sup>); liaising with a target regarding the establishment of a certificate-of-origin regime for the legitimate trade in diamonds (Sierra Leone<sup>83</sup>); holding a hearing to assess the role of the diamond trade in fuelling conflict in a target (Sierra Leone<sup>84</sup>); and assisting states in tracing and freezing funds subject to financial sanctions (1521 Liberia<sup>85</sup>).

#### vi. Liaising with other subsidiary organs

The tasks delegated to committees in connection with liaising with other sanctions-related subsidiary organs have included the following: forwarding to the Council reports of panels of experts, monitoring mechanisms and other subsidiary organs (Somalia<sup>86</sup> and UNITA<sup>87</sup>); notifying the Council of any lack of co-operation with panels of experts, monitoring mechanisms and other subsidiary organs (Somalia<sup>88</sup>); reviewing the reports of a monitoring mechanism, with a view to offering guidance on its future work (UNITA<sup>89</sup>); and co-operating with other

<sup>80</sup> S/PRST/1996/18 (18 April 1996).

<sup>81</sup> The regional organisations noted were the OAU and SADC: SC Res. 1221 (12 January 1999), para. 9.

<sup>82</sup> The regional organisation noted was generally ECOWAS. See SC Res. 1132 (8 October 1997), paras. 9, 10(h); SC Res. 1171 (5 June 1998), para. 6. In resolution 1306 (2000), however, the Council also referred to the OAU and INTERPOL: SC Res. 1306 (5 July 2000), para. 22.

<sup>83</sup> SC Res. 1306 (5 July 2000), paras. 4–5.

<sup>84</sup> SC Res. 1306 (5 July 2000), para. 12. For the report on the hearing, see S/2000/1150 (4 December 2000).

<sup>85</sup> SC Res. 1532 (12 March 2004), para. 4(c).

<sup>86</sup> The Council requested the 751 Committee to forward to it the report of the preparatory team of experts on sanctions implementation against Somalia: SC Res. 1407 (3 May 2002), para. 2.

<sup>87</sup> The Council requested the Chairman of the 864 Committee to submit reports by the expert panels (SC Res. 1237 (7 May 1999), para. 7), as well as by the monitoring mechanisms: SC Res. 1336 (23 January 2001), para. 6; SC Res. 1348 (19 April 2001), para. 6; SC Res. 1374 (19 October 2001), para. 8; SC Res. 1404 (18 April 2002), para. 7; SC Res. 1439 (18 October 2002), para. 6.

<sup>88</sup> SC Res. 1407 (3 May 2002), para. 7 (with respect to the work of the preparatory team of experts).

<sup>89</sup> SC Res. 1374 (19 October 2001), para. 4.

relevant sanctions committees (Sierra Leone,<sup>90</sup> Afghanistan/Taliban/Al Qaida<sup>91</sup> and 1343 Liberia<sup>92</sup>).

### vii. Refining working methods

Among the tasks delegated to committees in connection with refining their own working methods, committees have been requested or required to undertake the following duties: promulgating and updating guidelines to facilitate the implementation of sanctions (Libya,<sup>93</sup> FRYSM,<sup>94</sup> Haiti,<sup>95</sup> UNITA,<sup>96</sup> Sierra Leone,<sup>97</sup> FRY,<sup>98</sup> Afghanistan/Taliban/Al Qaida,<sup>99</sup> Eritrea and Ethiopia,<sup>100</sup> 1343 Liberia,<sup>101</sup> DRC,<sup>102</sup> 1556 Sudan,<sup>103</sup> Côte d'Ivoire,<sup>104</sup> North Korea<sup>105</sup> and Iran<sup>106</sup>); streamlining procedures for processing applications for exemptions from sanctions (FRYSM<sup>107</sup>); and making relevant information publicly available through appropriate media (Sierra Leone,<sup>108</sup> Afghanistan/Taliban/Al

<sup>90</sup> SC Res. 1306 (5 July 2000), para. 7(e) (requesting that the 1132 Committee continue its co-operation with other relevant committees, and in particular with the 985/Liberia and the 864/UNITA Committees).

<sup>91</sup> SC Res. 1390 (16 January 2002), para. 5(f) (requesting the 1267 Committee to co-operate with other relevant Committees and with the 1373 (Counterterrorism) Committee).

<sup>92</sup> SC Res. 1343 (7 March 2001), para. 14(h) (requesting that the 1343 Committee co-operate with other relevant Committees, in particular the 1132/Sierra Leone and the 864/UNITA Committees).

<sup>93</sup> SC Res. 883 (11 November 1993), para. 9.

<sup>94</sup> SC Res. 1022 (22 November 1995), para. 8 (requesting the 724 Committee to review and amend its guidelines in the light of the fact that the sanctions had been suspended).

<sup>95</sup> SC Res. 841 (16 June 1993), para. 10(f); SC Res. 917 (6 May 1994), para. 14(f).

<sup>96</sup> SC Res. 864 (15 September 1993), para. 22 (e); SC Res. 1127 (28 August 1997), para. 11 (a); SC Res. 1173 (12 June 1998), para. 20 (a).

<sup>97</sup> SC Res. 1132 (8 October 1997), para. 10(d); SC Res. 1171 (5 June 1998), para. 6; SC Res. 1306 (5 July 2000), para. 7(d).

<sup>98</sup> SC Res. 1160 (31 March 1998), para. 9(d).

<sup>99</sup> SC Res. 1390 (16 January 2002), para. 5(d). <sup>100</sup> SC Res. 1298 (17 May 2000), para. 8(d).

<sup>101</sup> SC Res. 1343 (7 March 2001), para. 14(c).

<sup>102</sup> SC Res. 1596 (18 April 2005), para. 18(e); SC Res. 1649 (21 December 2005), para. 4.

<sup>103</sup> SC Res. 1591 (29 March 2005), para. 3(a)(iii).

<sup>104</sup> SC Res. 1572 (15 November 2004), para. 14(e).

<sup>105</sup> SC Res. 1718 (14 October 2006), para. 12(e).

<sup>106</sup> SC Res. 1737 (23 December 2006), para. 18(g).

<sup>107</sup> SC Res. 943 (23 September 1994), para. 2; SC Res. 988 (21 April 1995), para. 11. The Council also reaffirmed on multiple occasions its request that the ICRC, UNHCR and other organisations in the UN system be granted priority in the processing of applications for exemptions from the sanctions for the provision of humanitarian assistance. See, e.g., SC Res. 970 (12 January 1995), para. 4; SC Res. 988 (21 April 1995), para. 12.

<sup>108</sup> SC Res. 1306 (5 July 2000), para. 23.

Qaida,<sup>109</sup> Eritrea and Ethiopia,<sup>110</sup> 1343 Liberia,<sup>111</sup> 1521 Liberia<sup>112</sup> and Côte d'Ivoire<sup>113</sup>).

### viii. Administering lists for targeted sanctions

Among the tasks delegated to sanctions committees in connection with the administration of the lists of those subject to targeted sanctions, committees have been requested or required to undertake the following duties: establishing and maintaining a list of persons and entities against which targeted sanctions were to be applied (Iraq,<sup>114</sup> Bosnian Serbs,<sup>115</sup> UNITA,<sup>116</sup> Sierra Leone,<sup>117</sup> Afghanistan/Taliban/Al Qaida,<sup>118</sup> 1343 Liberia,<sup>119</sup> DRC,<sup>120</sup> 1521 Liberia,<sup>121</sup> 1556 Sudan,<sup>122</sup> Côte d'Ivoire<sup>123</sup> and Iran<sup>124</sup>); designating particular aircraft that would be subject to aviation sanctions (Afghanistan/Taliban/Al Qaida<sup>125</sup>); designating particular points of entry and landing that would be prohibited under aviation sanctions (Afghanistan/Taliban/Al Qaida<sup>126</sup>); designating financial resources that would be subject to financial sanctions (Afghanistan/Taliban/Al Qaida<sup>127</sup>); and keeping states regularly informed of the list of parties against which targeted sanctions were to be applied (Afghanistan/Taliban/Al Qaida<sup>128</sup>).

### ix. Considering the humanitarian impact of sanctions

Among the tasks delegated to sanctions committees in relation to considering the humanitarian impact of sanctions, committees have been

<sup>109</sup> SC Res. 1333 (19 December 2000), para. 16(e); SC Res. 1390 (16 January 2002), para. 5(e).

<sup>110</sup> SC Res. 1298 (17 May 2000), para. 13. <sup>111</sup> SC Res. 1343 (7 March 2001), para. 14(f).

<sup>112</sup> SC Res. 1521 (22 December 2003), para. 21(e).

<sup>113</sup> SC Res. 1572 (15 November 2004), para. 14(d).

<sup>114</sup> SC Res. 1483 (22 May 2003), para. 19. <sup>115</sup> SC Res. 942 (23 September 1994), para. 14.

<sup>116</sup> SC Res. 1295 (18 April 2000), paras. 11 (a), 24.

<sup>117</sup> SC Res. 1132 (8 October 1997), para. 10(f); SC Res. 1171 (5 June 1998), para. 6.

<sup>118</sup> SC Res. 1333 (19 December 2000), para. 16(b); SC Res. 1390 (16 January 2002), para. 5(a).

<sup>119</sup> SC Res. 1343 (7 March 2001), para. 14(e), 14(i).

<sup>120</sup> SC Res. 1596 (18 April 2005), para. 18(a); SC Res. 1649 (21 December 2005), para. 4; SC Res. 1698 (31 July 2006), para. 14.

<sup>121</sup> SC Res. 1521 (22 December 2003), para. 21(d); SC Res. 1532 (12 March 2004), para. 4(a).

<sup>122</sup> SC Res. 1591 (29 March 2005), para. 3(a)(ii).

<sup>123</sup> SC Res. 1572 (15 November 2004), para. 14(a).

<sup>124</sup> SC Res. 1737 (23 December 2006), para. 18(f).

<sup>125</sup> SC Res. 1267 (15 October 1999), para. 6(e).

<sup>126</sup> SC Res. 1333 (19 December 2000), para. 16(a).

<sup>127</sup> SC Res. 1267 (15 October 1999), para. 6(e). <sup>128</sup> SC Res. 1455 (17 January 2003), para. 4.

requested or required to undertake the following duties: reporting on the impact of sanctions, including their humanitarian implications (Afghanistan/Taliban/Al Qaida<sup>129</sup>); and making recommendations to the Council on ways to limit any unintended effects of the sanctions on a civilian population (1343 Liberia<sup>130</sup>).

### 1.3 Working methods

There is no requirement that the committees follow the same working methods.<sup>131</sup> Each committee adopts its own set of guidelines, outlining the working methods to be followed. In theory it is therefore possible that a newly established committee might adopt a set of working methods or procedures that differs completely from those of other sanctions committees, even though it might have been created with a mandate that is identical to that of another committee. In practice, however, there are generally many similarities between the guidelines and working procedures of the various committees. This is probably due to the fact that a number of diplomats represent their state on multiple sanctions committees, thus bringing with them certain expectations of what will be included within the new committee's guidelines and working procedures.

Among the key shared working methods are that the committees must adopt decisions according to consensus.<sup>132</sup> Thus a decision cannot be adopted if even one sanctions committee member does not want it to be adopted. As a practical matter, many sanctions committees have embraced what is known as the 'no-objection procedure'. According to the no-objection procedure, potential decisions of the committee are circulated to all members, who then have a defined period, which varies

<sup>129</sup> SC Res. 1267 (15 October 1999), para. 6(c).

<sup>130</sup> SC Res. 1343 (7 March 2001), para. 14(g).

<sup>131</sup> The information provided here is based in part upon data accessible in the public domain, and in part upon data gathered from interviews conducted with diplomats, UN Secretariat staff, members of the UN's non-governmental organisation community, and academics.

<sup>132</sup> Michael P. Scharf and Joshua L. Dorosin, 'Interpreting UN Sanctions: the Rulings and Role of the Yugoslavia Sanctions Committee' (1993) 19 *Brooklyn JIL* 771-827 at 774. Scharf and Dorosin, writing in relation to the workings of the 724 Sanctions Committee, note that although consensus was technically required only for questions governed by the 'no-objection' procedure, in practice the committee made all of its decisions by consensus.



from committee to committee (from 48 hours to five working days), in which to raise any objections. If any objection is raised, then the potential decision cannot be adopted. If, however, no objection is received by the Chairman of the committee by the time the defined period has elapsed, then the decision is deemed to have been approved by all the members of the committee.

## 2. The Security Council Working Group on Sanctions

The Security Council established an Informal Working Group of the Security Council on General Issues of Sanctions (the 'Working Group on Sanctions') in April 2000.<sup>133</sup> Following the practice of other Working Groups of the Council, the membership of the Working Group was made up of the fifteen members of the Council, with the Chair rotating in accordance with the Security Council presidency. The mandate of the Working Group was to develop general recommendations for improving the effectiveness of sanctions. The Group was supposed to report its findings to the Council by November 2000,<sup>134</sup> but it was unable to do so due to 'divergent views on the recommended duration and termination of sanctions'.<sup>135</sup> The Group finally concluded the required report in late 2006.<sup>136</sup> The report outlined a number of recommendations relating to sanctions design, monitoring and enforcement, committee working methods, as well as reporting by monitoring bodies.

## 3. Disarmament commissions and commissions of inquiry

The Security Council has established Commissions to perform particular tasks related to the implementation of sanctions in connection with the Iraq, Rwanda, 1556 Sudan and Hariri sanctions regimes. Like sanctions committees, these commissions are considered to be subsidiary organs of

<sup>133</sup> For the establishment and mandate of the Working Group, see S/2000/319 (17 April 2000): *Note by the President of the Security Council*.

<sup>134</sup> *Ibid.*, para. 4.

<sup>135</sup> See SC/7960 (18 December 2003): *Press statement by the President of the Security Council concerning the Working Group on General Issues of Sanctions*.

<sup>136</sup> S/2006/997 (22 December 2006): *Report of the Informal Working Group of the Security Council on General Issues of Sanctions*.

the Council. The method for determining the composition of the commissions has varied, however. The UNCC has functioned somewhat like a committee of the whole, with each member of the Security Council represented on its Governing Council,<sup>137</sup> whereas the personnel serving on the remaining commissions have generally been appointed by the UNSG.<sup>138</sup>

### 3.1 *The Iraq Commissions: UNCC, UNSCOM, UNMOVIC*

The UNCC was established in May 1991, in order to process claims and distribute compensation for losses arising from Iraq's invasion and occupation of Kuwait.<sup>139</sup> By the end of 2003, the Commission had received over 2.5 million compensation claims, 98 per cent of which had been resolved.<sup>140</sup>

The Council first foreshadowed the establishment of a Special Commission to monitor and oversee Iraq's compliance with its disarmament obligations in April 1991.<sup>141</sup> The Special Commission was to co-operate in the implementation of its tasks with the IAEA, which would monitor and verify Iraq's compliance with its obligation not to possess, develop or acquire nuclear weapons.<sup>142</sup> UNSCOM was duly established<sup>143</sup> and it oversaw the monitoring of the Iraq disarmament programme until it was replaced by the UNMOVIC in late 1999.<sup>144</sup> UNSCOM's mandate was to carry out immediate on-site

<sup>137</sup> For information regarding the Governing Council of the UNCC, see <http://www.unog.ch/uncc/governin.htm>.

<sup>138</sup> The UNSG appointed twenty-one experts to UNSCOM, six to the Rwanda International Commission of Inquiry, and seventeen to UNMOVIC. See S/22614 (17 May 1991), para. 3 (reporting the appointment of twenty-one experts to UNSCOM, including the initial Executive Chairman Rolf Ekeus); S/1995/879 (20 October 1995) (noting that six people had been appointed to the Rwanda Commission); S/2000/60 (27 January 2000) (recommending the appointment of Hans Blix as Executive Chairman of UNMOVIC); S/2000/207 (10 March 2000) (reporting the appointment of Sixteen Commissioners to serve alongside Executive Chairman Hans Blix).

<sup>139</sup> SC Res. 692 (20 May 1991), para. 3.

<sup>140</sup> For general information on the UNCC, see <http://www.unog.ch/uncc/>.

<sup>141</sup> SC Res. 687 (3 April 1991), para. 9(b)(i). <sup>142</sup> *Ibid.*, para. 13.

<sup>143</sup> For the UNSG's recommendations for the establishment of UNSCOM and his plan for disarming Iraq, see S/22508 (18 April 1991): *Report of the Secretary-General on the implementation of para. 9(b)(i) of resolution 687 (1991)*; S/22614 (17 May 1991): *Report of the Secretary-General pursuant to paragraph 9(b) of resolution 687*. The UNSG's proposals were endorsed by the Council in the following decisions: S/22509 (19 April 1991): *Letter dated 19 April 1991 from the President of the Security Council addressed to the Secretary-General*; SC Res. 699 (June 17 1991), para. 1.

<sup>144</sup> The Security Council replaced UNSCOM with UNMOVIC in SC Res. 1284 (December 17 1999), para. 1.

inspections based on Iraq's declarations regarding its weapons holdings and programmes, to undertake the destruction, removal or rendering harmless of all nuclear, biological or chemical weapons and anti-ballistic missiles with a range greater than 150 km, or components for the manufacture or development thereof, and to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with its disarmament obligations under resolution 687 (1991).<sup>145</sup>

UNSCOM reported to the Council on its activities on a regular basis.<sup>146</sup> During its tenure, the Special Commission played a constructive role in monitoring Iraq's compliance with its disarmament obligations under the sanctions regime. Ultimately, however, the Commission confronted major difficulties in undertaking its mandated activities, due to Iraq's refusal to allow it to resume operations after its inspectors had been withdrawn from Iraq in late 1998. In December 1999 the Council decided to replace UNSCOM with UNMOVIC.

The decision to establish UNMOVIC was made in response to the recommendations of a panel that had been established in January 1999 to explore the disarmament, monitoring and verification issues

<sup>145</sup> For UNSCOM's mandate, see SC Res. 687 (3 April 1991), paras. 8–13. For a concise summary of UNSCOM's activities, see *Report of the first Panel established pursuant to the note by the President of the Security Council on 30 January 1999, concerning disarmament and current and future ongoing monitoring and verification issues*, see S/1999/356 (30 March 1999), Annex I. For a personal account of UNSCOM's operations, see Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000).

<sup>146</sup> The Security Council established a number of reporting requirements for UNSCOM. UNSCOM thus submitted the following reports: one report pursuant to resolution 687 (1991) on its activities (S/23165 (25 October 1991)); nine half-yearly reports pursuant to resolution 699 (1991) on its activities (S/23268 (4 December 1991); S/24108/Corr.1 (16 April 1992); S/24984 (17 December 1992); S/25977 (21 June 1993); S/26910 (21 December 1993); S/1994/750 (24 June 1994); S/1994/1422 (15 December 1994); S/1995/494 (20 June 1995); and S/1995/1038 (17 December 1995)); eight half-yearly reports pursuant to resolution 715 (1991) on the implementation of its plan to ensure ongoing monitoring and verification of Iraq's disarmament activities (S/23801 (10 April 1992); S/24661 (19 October 1992); S/25620 (19 April 1993); S/26684 (5 November 1993); S/1994/489 (22 April 1994); S/1994/1138 (7 October 1994); S/1995/284 (10 April 1995); and S/1995/864 (11 October 1995)); and eight half-yearly reports pursuant to resolution 1051 (1996) – which sought to consolidate UNSCOM's multiple reporting requirements – on its activities in general (S/1996/258 (11 April 1996); S/1996/848 (11 October 1996); S/1997/301 (11 April 1997); S/1997/774 (6 October 1997); S/1998/332 (16 April 1998); S/1998/920 (6 October 1998); S/1999/401 (9 April 1999); and S/1999/1037 (8 October 1999)).

arising from the implementation of the Iraq sanction.<sup>147</sup> UNMOVIC was thus created with the aim of establishing a reinforced system of ongoing monitoring and verification of Iraq's compliance with its disarmament obligations.<sup>148</sup> The Inspection Commission did not have an auspicious beginning, as it was unable to establish operations in Iraq for almost three years. It was not until the Council adopted resolution 1441 (2002), in November 2002, that Iraq finally agreed to UNMOVIC's deployment on its territory. During the subsequent three months, UNMOVIC's role became quite prominent, as the international community scrutinised the extent to which Iraq was complying with its disarmament obligations, as required by resolution 1441 (2002) and previous resolutions. Since the conclusion of the second Gulf War, however, the Commission's work has effectively been placed on hold, as it has not been authorised by the occupying powers to resume its inspections in Iraq.

### 3.2 *The International Commission of Inquiry on Rwanda*

The Security Council experimented with the idea of an International Commission of Inquiry into the implementation of sanctions in connection with the Rwanda sanctions regime. The International Commission of Inquiry for Rwanda was established in September 1995.<sup>149</sup> It consisted of six 'impartial and internationally respected persons',<sup>150</sup> including legal, military and police experts, and it was mandated: to collect information and investigate reports relating to the sale or supply of arms and related material to former Rwandan government forces in the Great Lakes region, in violation of the Rwandan sanctions; to investigate allegations that such forces were receiving military training in order to destabilise Rwanda; to identify parties aiding and abetting the illegal acquisition of arms by former

<sup>147</sup> The Panel was one of three panels established to investigate different issues arising from the Security Council's action to address the situation in Iraq. For the decision establishing the Panel, see S/1999/100: *Note by the President of the Security Council* (30 January 1999). For further discussion of the three panels, see the section below on Panels of Experts.

<sup>148</sup> SC Res. 1284 (17 December 1999), paras. 1, 2.

<sup>149</sup> SC Res. 1013 (7 September 1995), para. 2.

<sup>150</sup> The initial resolution provided for five to ten such people to be appointed, but in mid-October the UNSG noted that six people had been appointed to the Commission: S/1995/879 (20 October 1995): *Letter dated 16 October from the Secretary-General to the President of the Security Council*.

Rwandan government forces, in violation of the sanctions; and to recommend measures to end the illegal flow of arms in the subregion.<sup>151</sup>

The Commission's mandate was initially for a short period,<sup>152</sup> but it was subsequently maintained or re-activated by the Council on two occasions.<sup>153</sup> During its tenure, the International Commission of Inquiry submitted a total of four reports to the Council.<sup>154</sup> The Commission found that arms and related material had indeed been delivered to former Rwandan government forces in Zaire, via the Seychelles, in violation of the Rwandan arms embargo.<sup>155</sup>

The Commission outlined a number of recommendations in the course of its reports, including some that were designed to facilitate the implementation of Security Council arms embargoes in general, as well as others that aimed to improve the implementation of the Rwandan arms embargo in particular. Among the Commission's general recommendations were that: (a) upon the imposition of an arms embargo against a state or a part thereof, the Security Council should consider urging neighbouring states to establish within their respective governments an office to monitor, implement and enforce the embargo within its own territory and to gather information that might be used by investigating bodies dispatched by the Council;<sup>156</sup> (b) where the states concerned could not staff and equip such offices within their existing resources, consideration be given to establishing a trust fund, within the context of Article 50 of the UN Charter, to provide such

<sup>151</sup> SC Res. 1013 (7 September 1995), para. 1.

<sup>152</sup> *Ibid.*, para. 4. Interestingly, the Council did not specify a duration for the Commission's mandate, but it did request the UNSG to submit, within three months from the Commission's establishment, an interim report on the Commission's findings, and to submit a final report as soon as possible thereafter, thus implying that the mandate would not be much longer than three months.

<sup>153</sup> SC Res. 1053 (23 April 1996), para. 2;

<sup>154</sup> S/1996/67 (29 January 1996): *Interim report of the International Commission of Inquiry on the Rwanda arms embargo*; S/1996/195 (14 March 1996): *Report of the International Commission*; S/1997/1010 (24 December 1997): *Final report of the International Commission of Inquiry*; S/1998/63 (26 January 1998): *Addendum to the final report of the International Commission*.

<sup>155</sup> See *Report of the International Commission of Inquiry on the Rwanda arms embargo*, paras. 21–39. The Commission's investigations centred upon allegations that had appeared in a Human Rights Watch report (*Rearming with impunity: international support for the perpetrators of the Rwandan genocide* (1995) Washington, DC, USA) that shipments of arms had found their way into the possession of the former Rwandan government military forces, via Zaire. The Commission concluded that the report was accurate and that two shipments of arms, originating in the Seychelles, had indeed made their way into the hands of Rwandan Government forces: see para. 64.

<sup>156</sup> *Ibid.*, para. 77.

assistance;<sup>157</sup> (c) the Council should consider expanding the functions of future sanctions committees, to include liaising with the offices in neighbouring states, as well as receiving, analysing and circulating to member states reports submitted by those offices;<sup>158</sup> and (d) consideration should be given to requesting states producing arms and material to take any measures necessary under their domestic law to implement the provisions of the arms embargo, and in particular to prosecute their nationals involved in violations of the embargo.<sup>159</sup>

Among the Commission's specific recommendations were that: (a) the Council should consider inviting the government of South Africa to investigate the participation of a particular South African citizen in the negotiations that had led to the delivery of arms to former Rwandan armed forces in Goma, Zaire, in violation of the sanctions;<sup>160</sup> (b) the Council should consider calling upon the government of Bulgaria to make available to the 918 Committee the findings of an internal investigation into allegations that a Bulgarian company had been willing to sell arms in violation of Security Council resolutions;<sup>161</sup> (c) the Council should call upon the government of Zaire to investigate the apparent complicity of its own personnel and officials in the purchase of arms from the Seychelles;<sup>162</sup> (d) the Council should consider inviting the government of Zaire to station UN observers on its territory to monitor sanctions implementation against Rwanda and to deter future violations;<sup>163</sup> (e) the Security Council should consider expanding the sanctions to include a freeze on the assets of individuals and organisations involved in raising funds to finance the insurgency against Rwanda;<sup>164</sup> and (f) the Security Council should encourage Tanzanian authorities to liaise with UNHCR and to consult with the International Criminal Tribunal for Rwanda (ICTR) to see whether legal grounds existed for detaining individuals accused of intimidating people in Rwandan refugee camps into participating in acts that violated the arms embargo.<sup>165</sup>

<sup>157</sup> *Ibid.*, para. 79.    <sup>158</sup> *Ibid.*, para. 80.

<sup>159</sup> See *Final report of the International Commission of Inquiry on the Rwanda arms embargo*, para. 110. The Commission noted that some states had reported that they were unable to prosecute nationals accused of crimes in a third country. It therefore recommended that member states be invited to introduce into their domestic legislation the capacity to prosecute such individuals.

<sup>160</sup> *Ibid.*, para. 86.    <sup>161</sup> *Ibid.*, para. 87.    <sup>162</sup> *Ibid.*, para. 88.

<sup>163</sup> *Ibid.*, para. 91(a).    <sup>164</sup> *Ibid.*, para. 114.    <sup>165</sup> *Ibid.*, para. 115.

### 3.3 *The Sudan International Commission of Inquiry*

In September 2004, the Security Council requested the Secretary-General to establish a commission of inquiry to investigate reports of violations of international humanitarian law and human rights in Darfur, including determining whether or not acts of genocide had occurred.<sup>166</sup> On 4 October 2004 the Secretary-General established such an International Commission of Inquiry.<sup>167</sup> The Commission submitted its report to the Security Council in February 2005.<sup>168</sup> Its substantial findings induced the Council to take the unprecedented step of referring the Darfur situation to the International Criminal Court.<sup>169</sup> The findings also fed into the work subsequently undertaken by the Sudan Panel of Experts.

### 3.4 *The Hariri International Independent Investigation Commission*

The Security Council established the International Independent Investigation Commission in April 2005, in order to assist the Lebanese authorities with the investigation into the Hariri bombing and to identify the bombings perpetrators, sponsors, organisers and accomplices.<sup>170</sup> The Commission's mandate has been extended on a number of occasions.<sup>171</sup> It has submitted regular reports on its activities and findings to the Council.<sup>172</sup>

## 4. Bodies of experts: groups, committees, teams and panels of experts

The Security Council has established bodies of experts to investigate the implementation of sanctions in connection with several sanctions regimes.<sup>173</sup> Expert bodies are generally established to serve for short periods, ranging from a matter of weeks to a number of months. Like sanctions committees and commissions, expert bodies are subsidiary organs of the Council, with a responsibility to report to the Council on their activities. Expert bodies generally report to the Council via the

<sup>166</sup> SC Res. 1564 (18 September 2004), para. 12.

<sup>167</sup> S/2004/812 (4 October 2004). <sup>168</sup> S/2005/60 (1 February 2005).

<sup>169</sup> SC Res. 1593 (31 March 2005), para. 1. <sup>170</sup> SC Res. 1595 (7 April 2005), para. 1.

<sup>171</sup> SC Res. 1636 (31 October 2005), para. 8; SC Res. 1644 (15 December 2005), para. 1; SC Res. 1686 (15 June 2006), para. 2.

<sup>172</sup> See Appendix 3, Table H.

<sup>173</sup> For a list of all bodies of experts, along with references to the provisions outlining their mandates, see Appendix 3, Table G.

relevant sanctions committee, with the Chairman of that committee forwarding or presenting regular written and oral reports to the Council on behalf of the relevant expert body.

#### 4.1 *The Group of Experts on the Iraq sanctions regime*

In June 1998, the Council requested the UNSG to establish a Group of Experts to determine, in consultation with the government of Iraq, whether Iraq was able to export the amount of petroleum and petroleum products permissible under the OFFP.<sup>174</sup> The Group was also to report on Iraqi production and transportation capacity.<sup>175</sup> The Group submitted its report within two months.<sup>176</sup> In its report it noted that the oil industry of Iraq was in a 'lamentable state'.<sup>177</sup> Among the Group's conclusions were that there was a need for rapid and adequate investment in spare parts and repair of oil production wells,<sup>178</sup> and that the Iraqi government's estimates for the potential volume of oil that could be exported was 'optimistic'.<sup>179</sup>

#### 4.2 *Ad hoc Panels on the Iraq sanctions regime*

In January 1999, when Iraq was refusing to allow UNSCOM to resume its activities on Iraqi territory,<sup>180</sup> the Security Council decided to establish three separate ad hoc Panels.<sup>181</sup> The Panels were established with the following objectives: (a) Panel I would make recommendations on how to re-establish an effective disarmament monitoring and verification regime in Iraq; (b) Panel II would address the humanitarian needs of the Iraqi people; and (c) Panel III would consider outstanding issues relating to prisoners of war and Kuwaiti property.<sup>182</sup> The work of the first two Panels was directly related to the administration and monitoring of sanctions. The Panels submitted their reports within two months.<sup>183</sup>

<sup>174</sup> SC Res. 1153 (20 February 1998), para. 12. <sup>175</sup> *Ibid.*

<sup>176</sup> See S/1998/330 (15 April 1998): *Report of the group of experts established pursuant to paragraph 12 of Security Council resolution 1153 (1998)*.

<sup>177</sup> *Ibid.*, para. 7. <sup>178</sup> *Ibid.*, para. 24. <sup>179</sup> *Ibid.*, para. 33.

<sup>180</sup> The UNSCOM inspectors had been withdrawn from Iraq on 16 December 1998, due to security concerns arising from the impending bombardment of Baghdad by US and British warplanes.

<sup>181</sup> See S/1999/100: *Note by the President of the Security Council* (30 January 1999). <sup>182</sup> *Ibid.*

<sup>183</sup> For the reports of the panels, see S/1999/356 (30 March 1999): Letters dated 27 and 30 March 1999, respectively, from the Chairman of the Panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) addressed to the President of the Security Council, Annex I (*Report of the First Panel . . . concerning disarmament and current and future ongoing monitoring and verification issues*), Annex II



The recommendations of the first two Panels were clearly taken into account by the Council,<sup>184</sup> as demonstrated by the actions it subsequently took to replace UNSCOM with UNMOVIC and to reinvigorate the OFFP.<sup>185</sup>

### 4.3 *The Panel of Experts on UNITA sanctions*

Acting upon a recommendation that had been made by the 864 UNITA Sanctions Committee, the Security Council decided in May 1999 to establish Expert Panels to facilitate the effective implementation of the UNITA sanctions.<sup>186</sup> The mandate of the Panels, included: (a) collecting information relating to the violations of the arms, petroleum, diamond and financial sanctions; (b) identifying those committing or facilitating the violations of those sanctions; and (c) recommending measures to end such violations and to improve sanctions implementation.<sup>187</sup> In late July 1999, the 864 Committee appointed ten experts to the Expert Panels.<sup>188</sup> The experts came from a variety of countries, possessing expertise in fields conducive to the investigation of violations of different aspects of the multi-faceted UNITA sanctions regime.

The experts convened for the first time in late August 1999, in New York, when they decided to act as one Panel rather than two.<sup>189</sup> During the six-month period of the Panel's operation, its members visited close to thirty countries and met with a wide range of people, including government officials, diplomats, NGOs, police and intelligence sources, industry associations, corporations and journalists.<sup>190</sup> The Panel circulated a brief interim report on 30 September 1999, and on 28 February 2000 it submitted its full report to the 864 Committee.<sup>191</sup> The report contained the Panel's findings and conclusions on violations of the

(*Report of the Second Panel . . . concerning the current humanitarian situation in Iraq*), Annex III (*Report of the Third Panel . . . on prisoners of war and Kuwaiti property*).

<sup>184</sup> For the major recommendations of the First Panel, see *Report of the First Panel, ibid.*, paras. 61–68. For the major recommendations of the Second Panel, see *Report of the Second Panel, ibid.*, paras. 43–57.

<sup>185</sup> See, in particular, SC Res. 1284 (17 December 1999).

<sup>186</sup> SC Res. 1237 (7 May 1999), para. 6. <sup>187</sup> *Ibid.*

<sup>188</sup> S/1999/837 (30 July 1999): *List of experts appointed to the expert panels established in accordance with para. 6 of Security Council resolution 1237 (1999)*.

<sup>189</sup> S/2000/203 (10 March 2000): *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, para. 8.

<sup>190</sup> *Ibid.*

<sup>191</sup> S/1999/1016 (30 September 1999): *Interim report of the Expert Panel established by the Security Council in resolution 1237 (1999)*; S/2000/203 (10 March 2000): *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*.

arms, petroleum, diamond and financial sanctions against UNITA, as well as on violations of the diplomatic and travel sanctions against UNITA.<sup>192</sup> The Panel made thirty-nine recommendations on how the sanctions violations might be addressed.<sup>193</sup> In April 2000, the Security Council acted upon one of the recommendations put forth in the report of the Panel of Experts by requesting the UNSG to establish a monitoring mechanism on the sanctions against UNITA.<sup>194</sup>

#### 4.4 *The Panel of Experts on the Sierra Leone sanctions regime*

The Security Council requested the UNSG to establish a Panel of Experts to investigate matters relating to the implementation of the Sierra Leone sanctions regime in July 2000.<sup>195</sup> The Panel, which would consist of no more than five members and would operate for a period of four months, was to undertake the following tasks: (a) collecting information on possible violations of the arms embargo against Sierra Leone and on the link between the trade in diamonds and the trade in arms and related material, including through visits to Sierra Leone and other states and through making appropriate contacts;<sup>196</sup> (b) considering the adequacy of air traffic systems in the region for detecting flights suspected of violating the arms sanctions;<sup>197</sup> (c) participating in an

<sup>192</sup> Interestingly, the question of sanctions against UNITA representation and travel was not actually included in the mandate for the Panel as outlined by the Council in resolution 1237 (1999). It is unclear how the Panel came to consider that these sanctions were within the scope of its mandate. In the first paragraph of the Panel's report, it notes that resolution 1237 (1999) established it to investigate violations of Security Council sanctions against UNITA. It then lists the 'sanctions at issue', among which it includes the travel and representation sanctions, despite the fact that the Council had not included those sanctions within the mandate explicitly outlined for the Panel of Experts in para. 6 of resolution 1237 (1999). See *Report of the UNITA Panel of Experts*, *ibid.*, para. 1.

<sup>193</sup> The Panel outlined its recommendations in clusters, arranged according to the different elements targeted by the UNITA sanctions. See *Report of the UNITA Panel of Experts*, *ibid.*, paras. 52–58 (containing recommendations relating to arms and military equipment), 70–74 (containing recommendations relating to petroleum and petroleum products), 109–114 (relating to diamonds), 126–128 (containing recommendations relating to UNITA finances and assets), 157–162 (containing recommendations relating to UNITA representation and travel abroad), and 170–181 (containing recommendations on 'related matters', including facilitating the implementation of sanctions by improving co-ordination between various international actors such as SADC and Interpol).

<sup>194</sup> SC Res. 1295 (18 April 2000), para. 3. For details relating to the establishment of the monitoring mechanism on the UNITA sanctions, see the section below on monitoring mechanisms.

<sup>195</sup> SC Res. 1306 (5 July 2000), para. 19. <sup>196</sup> *Ibid.*, para. 19(a). <sup>197</sup> *Ibid.*, para. 19(b).

exploratory hearing in New York on the role of diamonds in the Sierra Leone conflict and the link between the trade in diamonds and the trade in arms in that country;<sup>198</sup> and (d) reporting to the Council, through the 1132 Committee and by 31 October 2000, with its observations and recommendations on strengthening the implementation of the arms and diamond sanctions.<sup>199</sup>

The Panel of Experts submitted its written report to the Council in December 2000.<sup>200</sup> In its report, the Panel outlined findings on the illicit trade in Sierra Leone diamonds,<sup>201</sup> on the flow of arms and related material and other forms of military assistance into Sierra Leone,<sup>202</sup> and on air traffic control systems in West Africa.<sup>203</sup> The Panel's report remains perhaps the most sophisticated analysis yet completed by a body charged with the administration, implementation or enforcement of a UN sanctions regime, of the challenges that must be overcome in order to facilitate the effective implementation of a sanctions regime. The report contained a range of insightful observations and provided numerous concrete recommendations for action that might be taken to address violations of the Sierra Leone sanctions and UN sanctions in general.<sup>204</sup> The Security Council has subsequently acted upon many of the Sierra Leone Panel's recommendations in addressing the situations in Sierra Leone, Liberia and West Africa in general, and in its oversight of other arms embargoes and diamond sanctions.

#### 4.5 *The Afghanistan/Taliban/Al Qaida Committee of Experts*

The Security Council requested the UNSG to appoint a Committee of Experts to make recommendations on improving the monitoring of the Afghanistan/Taliban/Al Qaida sanctions in December 2000.<sup>205</sup> The Committee of Experts was requested to report to the Council within sixty days on how to monitor the arms embargo against the Taliban and the closure of terrorist training camps.<sup>206</sup> In its report, the Committee outlined the activities it had taken to fulfil its mandate and made a

<sup>198</sup> *Ibid.*, para. 19(c). For details relating to the exploratory hearing, see S/2000/1150 (4 December 2000): *Summary report on the exploratory hearing on Sierra Leone diamonds* (31 July and 1 August 2000).

<sup>199</sup> SC Res. 1306 (5 July 2000), para. 19(d).

<sup>200</sup> S/2000/1195 (20 December 2000): *Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000)*, para. 19, in relation to Sierra Leone.

<sup>201</sup> *Ibid.*, paras. 1–18, 65–150.

<sup>202</sup> *Ibid.*, paras. 19–31, 167–273. <sup>203</sup> *Ibid.*, paras. 32–46, 274–315.

<sup>204</sup> For a more detailed discussion of those recommendations, see Appendix 12.

<sup>205</sup> SC Res. 1333 (19 December 2000), para. 15. <sup>206</sup> *Ibid.*, para. 15(a).

number of key recommendations.<sup>207</sup> As part of its operations, the Committee of Experts had consulted with a range of actors, including representatives of the states sharing a border with Afghanistan and of two states with a major strategic interest in events in Afghanistan – the United States and the Russian Federation.<sup>208</sup> The Committee concluded that the arms embargo and the closure of the terrorist training camps could best be monitored by strengthening mechanisms that were already in place in the six countries bordering Afghanistan.<sup>209</sup> It therefore recommended that the Council establish an office for sanctions monitoring and co-ordination, consisting of a Headquarters team and a number of Sanctions Enforcement Support Teams, each working alongside the border control services in the countries neighbouring Afghanistan.<sup>210</sup> Among the Committee's other recommendations were: that the Headquarters Office be located in Vienna; that the Sanctions Enforcement Support Teams should be based with existing UN offices in the countries neighbouring Afghanistan; and that the Council consider specifying a prohibition against aircraft turbine fuel and fluids and lubricants for use in armoured vehicles, as part of the arms embargo.<sup>211</sup>

#### 4.6 *The 1343 Liberia Panel of Experts*

The Security Council requested the UNSG to establish a Panel of Experts on the 1343 Liberian sanctions regime in March 2001.<sup>212</sup> The Panel was established for an initial period of six months,<sup>213</sup> but it was subsequently 're-established' or 'established' on four separate occasions.<sup>214</sup> The Panel's initial mandate included the following tasks: (a) investigating sanctions violations;<sup>215</sup> (b) collecting information on the compliance of the Liberian government with the demands articulated by the

<sup>207</sup> S/2001/511 (22 May 2001): *Report of the Committee of Experts appointed pursuant to Security Council resolution 1333 (2000) regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan.*

<sup>208</sup> *Ibid.*, paras. 11–19 (listing the range of actors with which the Committee of Experts met).

<sup>209</sup> *Ibid.*, para. 94.

<sup>210</sup> *Ibid.*, para. 96. For discussion of these bodies, which formed the UNITA monitoring mechanism, see the section below on monitoring mechanisms.

<sup>211</sup> *Ibid.*, paras. 97–102. <sup>212</sup> SC Res. 1343 (7 March 2001), para. 19. <sup>213</sup> *Ibid.*

<sup>214</sup> SC Res. 1395 (27 February 2002), para. 3 (re-established for five weeks); SC Res. 1408 (6 May 2002), para. 16 (established for three months); SC Res. 1458 (28 January 2003), para. 3 (re-established for three months); SC Res. 1478 (6 May 2003), para. 25 (established for five months).

<sup>215</sup> SC Res. 1343 (7 March 2001), para. 19(a).

Council,<sup>216</sup> (c) investigating possible links between the exploitation of natural resources and other forms of economic activity in Liberia, and the fuelling of conflict in Sierra Leone and other neighbouring countries, as highlighted by the Panel of Experts on Sierra Leone;<sup>217</sup> (d) collecting information linked to the illegal activities of individuals who had violated the arms sanctions against Sierra Leone;<sup>218</sup> (e) reporting to the Council with observations and recommendations on the matters within its mandate;<sup>219</sup> (f) keeping the 1343 Committee updated on its activities;<sup>220</sup> and (g) bringing relevant information to the attention of the states concerned and to allow them the right of reply.<sup>221</sup>

The Security Council subsequently required the Panel to undertake the following additional tasks: (a) conducting a follow-up assessment mission to Liberia and neighbouring states in order to investigate and compile a brief independent audit of the Liberian government's compliance with the Council's demands under the sanctions regime, as well as of any sanctions violations and to report to the Council with its observations and recommendations on those matters;<sup>222</sup> (b) conducting a further follow-up assessment mission to Liberia and neighbouring states, reporting on the Liberian government's compliance with the Council's demands under the sanctions regime, on the potential economic, humanitarian and social impact of the sanctions, and on any sanctions violations;<sup>223</sup> (c) conducting a further follow-up assessment mission to Liberia and neighbouring states, reporting on the Liberian government's compliance with the Council's demands under the sanctions regime and on any sanctions violations;<sup>224</sup> (d) reviewing audits of how the Liberian government was utilising its revenue from shipping and timber;<sup>225</sup> (e) conducting a further follow-up assessment mission to Liberia and neighbouring states, reporting on the Liberian government's compliance with the Council's demands under the sanctions regime and on any sanctions violations;<sup>226</sup> (f) investigating whether any revenues of the Liberian government were being used in violation of the sanctions regime;<sup>227</sup> (g) assessing the possible humanitarian and

<sup>216</sup> *Ibid.*, para. 19(b).

<sup>217</sup> *Ibid.*, para. 19(c).

<sup>218</sup> *Ibid.*, para. 19(d).

<sup>219</sup> *Ibid.*, para. 19(e).

<sup>220</sup> *Ibid.*, para. 19(f).

<sup>221</sup> *Ibid.*, para. 20. This task has subsequently been reaffirmed upon each 're-establishment' and 'establishment' of the Panel. See SC Res. 1408 (6 May 2002), para. 17; SC Res. 1458 (28 January 2003), para. 5; SC Res. 1478 (6 May 2003), para. 26.

<sup>222</sup> SC Res. 1395 (27 February 2002), para. 4.

<sup>223</sup> *Ibid.*, para. 4.

<sup>224</sup> SC Res. 1458 (28 January 2003), para. 4.

<sup>225</sup> *Ibid.*

<sup>226</sup> SC Res. 1478 (6 May 2003), para. 25(a).

<sup>227</sup> *Ibid.*, para. 25(b).

socio-economic impact of the timber sanctions and making recommendations through the 1343 Committee on how to minimise any such impact;<sup>228</sup> and (h) reporting to the Council through the Committee with its observations and recommendations on how to improve the effectiveness of implementing and monitoring the sanctions.<sup>229</sup>

In the course of its various mandates, the Liberia Panel of Experts submitted four reports to the Security Council.<sup>230</sup> In its reports, the Panel outlined detailed findings on the implementation and violation of the various components of the 1343 Liberia sanctions regime, providing numerous recommendations for further action by the Security Council.<sup>231</sup>

#### 4.7 *The Team and Panel of Experts on Somalia*

The Security Council first expressed its intention to establish a mechanism to generate independent information on violations of the Somalia sanctions and to improve sanctions implementation in March 2001.<sup>232</sup> Two months later it requested the UNSG to establish a team of two experts to prepare for the establishment of a subsequent Panel of Experts on the implementation of the Somalia arms embargo.<sup>233</sup> The preparatory team's mandate included: (a) investigating violations of the embargo; (b) detailing information on violations and the enforcement of the embargo; (c) undertaking field research in Somalia and its neighbour states; (d) assessing the capacity of states in the region to implement the embargo fully; and (e) providing recommendations on practical steps for strengthening the enforcement of the embargo.<sup>234</sup> The preparatory team submitted its report in early July 2002.<sup>235</sup> It noted that there had been a common perception that the embargo had not been enforced effectively,<sup>236</sup> and it suggested that the Council could take the following steps in order to improve the embargo's enforcement: (a) clarifying the scope of the embargo, making it clear that the provision of financing and services in support of military activities in Somalia constituted a violation of the embargo;<sup>237</sup> (b) enhancing

<sup>228</sup> *Ibid.*, para. 25(c). <sup>229</sup> *Ibid.*, para. 25(d).

<sup>230</sup> For a list of these reports, see Appendix 3, Table H.

<sup>231</sup> For discussion of these findings and recommendations, see Appendix 2, summary of the 1343 sanctions regime.

<sup>232</sup> S/PRST/2002/8 (28 March 2002). <sup>233</sup> SC Res. 1407 (3 May 2002), para. 1. <sup>234</sup> *Ibid.*

<sup>235</sup> S/2002/722 (3 July 2002): *Report of the team of experts appointed pursuant to Security Council resolution 1407 (2002) concerning Somalia.*

<sup>236</sup> *Ibid.*, para. 27. <sup>237</sup> *Ibid.*, paras. 63–68.

end-user verification;<sup>238</sup> (c) establishing a Panel of Experts in the region;<sup>239</sup> and (d) promoting transparency and accountability over financial institutions in Somalia.<sup>240</sup>

In late July 2002, shortly after the publication of the preparatory team's report, the Security Council requested the UNSG to establish a Panel of Experts on the Somalia embargo, consisting of three members, for a period of six months.<sup>241</sup> Upon the expiration of the Panel's mandate, the Council re-established it for a further six months.<sup>242</sup> The Panel's mandate was practically identical to that of the preparatory team,<sup>243</sup> with the following additional tasks: (a) taking into account the recommendations of the team of experts on methodology;<sup>244</sup> (b) notifying the Council, through the 751 Committee, of any lack of co-operation it experienced in conducting its work;<sup>245</sup> (c) briefing the Chairman of the 751 Committee prior to his scheduled mission to the region;<sup>246</sup> and (d) providing an oral briefing to the Council, through the Committee, in November 2002.<sup>247</sup> The Panel submitted two reports.<sup>248</sup>

#### 4.8 *The 1521 Liberia Panel of Experts*

When the Security Council established the 1521 sanctions regime against Liberia, it requested the UNSG to establish a Panel of Experts.<sup>249</sup> The Panel has been re-established, extended or renewed continuously throughout the lifetime of the 1521 sanctions regime.<sup>250</sup> As part of its mandate, the Panel has been requested to: (a) report on sanctions implementation, including any violations, and submit any information relevant to the designation by the 1521 Committee of individuals subject to the travel ban and assets freeze;<sup>251</sup> (b) assess progress towards achieving the objectives of the sanctions;<sup>252</sup>

<sup>238</sup> *Ibid.*, paras. 69–71. <sup>239</sup> *Ibid.*, paras. 72–79. <sup>240</sup> *Ibid.*, paras. 80–81.

<sup>241</sup> SC Res. 1425 (22 July 2002), para. 3. <sup>242</sup> SC Res. 1474 (8 April 2003), para. 3.

<sup>243</sup> SC Res. 1425 (22 July 2002), para. 3. <sup>244</sup> *Ibid.*, para. 5.

<sup>245</sup> *Ibid.*, para. 9. <sup>246</sup> *Ibid.*, para. 10.

<sup>247</sup> *Ibid.* The Panel provided such a briefing on 14 November 2002: see S/PRST/2002/35 (12 December 2002), expressing the Council's appreciation for the Panel's oral briefing.

<sup>248</sup> See Appendix 3, Table H. <sup>249</sup> SC Res. 1521 (22 December 2003), para. 22.

<sup>250</sup> See Appendix 3, Table G.

<sup>251</sup> SC Res. 1521 (22 December 2003), para. 22(a); SC Res. 1549 (17 June 2004), para. 1(a); SC Res. 1579 (21 December 2004), para. 8(a); SC Res. 1607 (21 June 2005), para. 14(a); SC Res. 1647 (20 December 2005), para. 9(a); SC Res. 1689 (20 June 2006), para. 5; SC Res. 1731 (20 December 2006), para. 4(a).

<sup>252</sup> SC Res. 1521 (22 December 2003), para. 22(b); SC Res. 1549 (17 June 2004), para. 1(b); SC Res. 1579 (21 December 2004), para. 8(c); SC Res. 1607 (21 June 2005), para. 14(c); SC Res. 1647 (20 December 2005), para. 9(c); SC Res. 1731 (20 December 2006), para. 4(d).

(c) monitor implementation of the financial sanctions and provide the 1521 Committee with information that would help to identify individuals and entities subject to the financial sanctions;<sup>253</sup> (d) assess the socio-economic and humanitarian impact of the sanctions;<sup>254</sup> (e) assess the impact and effectiveness of the sanctions;<sup>255</sup> (f) co-operate with other relevant bodies of experts and the Kimberley Process Certification Scheme;<sup>256</sup> (g) report on sources of financing for the illicit trade of arms;<sup>257</sup> (h) assess the implementation of newly adopted forestry legislation;<sup>258</sup> and (i) recommend how to strengthen the capacity of states in the region to implement the travel and financial sanctions.<sup>259</sup> The Panel has submitted regular reports in accordance with its mandate.<sup>260</sup>

#### 4.9 The DRC Group of Experts

In March 2004 the Security Council requested the UNSG to establish for a period of approximately three months a Group of Experts on the DRC sanctions.<sup>261</sup> The mandate of the Group, which was to consist of no more than four experts, included: (a) analysing information gathered by the UN Organization Mission in the DRC (MONUC) regarding sanctions implementation;<sup>262</sup> (b) gathering and analysing information gathered in the DRC and other countries regarding the flow of arms and related material, as well as on networks operating in sanctions violations;<sup>263</sup> (c) recommending measures to improve the capacity of states to implement the sanctions;<sup>264</sup> (d) reporting to the Council with recommendations and through the 1533 Committee on sanctions implementation;<sup>265</sup> (e) keeping the 1533 Committee abreast of its activities;<sup>266</sup> (f) exchanging with MONUC information that would facilitate MONUC's monitoring mandate;<sup>267</sup> and (g) providing the 1533 Committee with a list of individuals who had violated the sanctions,

<sup>253</sup> SC Res. 1549 (17 June 2004), para. 1(c); SC Res. 1579 (21 December 2004), para. 8(a).

<sup>254</sup> SC Res. 1549 (17 June 2004), para. 1(d); SC Res. 1579 (21 December 2004), para. 8(d); SC Res. 1607 (21 June 2005), para. 14(d); SC Res. 1647 (20 December 2005), para. 9(d); SC Res. 1731 (20 December 2006), para. 4(c).

<sup>255</sup> SC Res. 1579 (21 December 2004), para. 8(b); SC Res. 1607 (21 June 2005), para. 14(b); SC Res. 1647 (20 December 2005), para. 9(b); SC Res. 1731 (20 December 2006), para. 4(b).

<sup>256</sup> SC Res. 1607 (21 June 2005), para. 14(f); SC Res. 1647 (20 December 2005), para. 9(f); SC Res. 1731 (20 December 2006), para. 4(e).

<sup>257</sup> SC Res. 1731 (20 December 2006), para. 4(a). <sup>258</sup> *Ibid.*, para. 4(c). <sup>259</sup> *Ibid.*, para. 4(f).

<sup>260</sup> See Appendix 3, Table H. <sup>261</sup> SC Res. 1533 (12 March 2004), para. 10.

<sup>262</sup> *Ibid.*, para. 10(a). <sup>263</sup> *Ibid.*, para. 10(b). <sup>264</sup> *Ibid.*, para. 10(c).

<sup>265</sup> *Ibid.*, para. 10(d). <sup>266</sup> *Ibid.*, para. 10(e). <sup>267</sup> *Ibid.*, para. 10(f).



as well as of those who had supported those individuals.<sup>268</sup> The Group has submitted regular reports in accordance with its mandate.<sup>269</sup>

#### 4.10 *The Sudan Panel of Experts*

In March 2005 the Security Council requested the UNSG to appoint a Panel of Experts,<sup>270</sup> whose mandate has subsequently been extended on multiple occasions.<sup>271</sup> The Panel has been tasked with: (a) assisting the 1591 Committee in monitoring sanctions implementation and making recommendations to the Committee on potential Council action;<sup>272</sup> (b) reporting to the Council with its findings and recommendations;<sup>273</sup> and (c) co-ordinating its activities with AMIS.<sup>274</sup> The Panel has submitted regular reports in accordance with its mandate.<sup>275</sup>

#### 4.11 *The Côte d'Ivoire Group of Experts*

In February 2005, the Council requested the UNSG to create a Group of Experts on Côte d'Ivoire.<sup>276</sup> The Group, which has been re-established or extended on multiple occasions,<sup>277</sup> has been requested to: (a) analyse information gathered by UNOCI and the French forces;<sup>278</sup> (b) analyse information on flows of arms and related materiel, on the provision of assistance, advice or training related to military activities, on networks operating in violation of the arms embargo and on sources of financing for purchases of arms and related materiel;<sup>279</sup> (c) recommend how to improve the capacity of states to ensure the effective implementation of the arms embargo;<sup>280</sup> (d) report on sanctions implementation;<sup>281</sup>

<sup>268</sup> *Ibid.*, para. 10(g). <sup>269</sup> See Appendix 3, Table H.

<sup>270</sup> SC Res. 1591 (29 March 2005), para. 3(b).

<sup>271</sup> SC Res. 1651 (21 December 2005), para. 1; SC Res. 1665 (29 March 2006), para. 1; SC Res. 1713 (29 September 2006), para. 1.

<sup>272</sup> SC Res. 1591 (29 March 2005), para. 3(b)(i).

<sup>273</sup> *Ibid.*, para. 3(b)(ii); SC Res. 1651 (21 December 2005), para. 2; SC Res. 1665 (29 March 2006), para. 2; SC Res. 1713 (29 September 2006), para. 2.

<sup>274</sup> SC Res. 1591 (29 March 2005), para. 3(b)(iii). <sup>275</sup> See Appendix 3, Table H.

<sup>276</sup> SC Res. 1584 (1 February 2005), para. 7. In October 2005 the Council extended the Group's mandate for an additional two months: SC Res. 1632 (18 October 2005), para. 1. In December 2005, the Council requested the UNSG to re-establish the Group for an additional six months: SC Res. 1643 (15 December 2005), para. 9.

<sup>277</sup> See Appendix 3, Table G. <sup>278</sup> SC Res. 1584 (1 February 2005), para. 7(a).

<sup>279</sup> *Ibid.*, para. 7(b); SC Res. 1643 (15 December 2005), para. 9(b); SC Res. 1727 (15 December 2006), para. 7(b).

<sup>280</sup> SC Res. 1584 (1 February 2005), para. 7(c); SC Res. 1643 (15 December 2005), para. 9(c); SC Res. 1727 (15 December 2006), para. 7(c).

<sup>281</sup> SC Res. 1584 (1 February 2005), para. 7(d); SC Res. 1643 (15 December 2005), paras. 9(d)–(e), 9(i); SC Res. 1727 (15 December 2006), paras. 7(d)–(e), 7(i).

(e) keep the 1572 Committee regularly updated on its activities;<sup>282</sup> (f) exchange information with UNOCI and the French forces pertinent to their monitoring responsibilities;<sup>283</sup> (g) provide the 1572 Committee with a list of those found to have violated sanctions and evidence of those violations;<sup>284</sup> and (h) co-operate with other relevant groups of experts, including in particular the Panel of Experts on Liberia.<sup>285</sup> The Group has submitted regular reports in accordance with its mandate.<sup>286</sup>

## 5. Monitoring bodies

The Security Council has established bodies to monitor the implementation of sanctions in connection with a number of sanctions regimes.<sup>287</sup> Although monitoring bodies have generally been established with short-term mandates, in practice they have tended to serve for longer periods than the various expert bodies. Like expert bodies, however, monitoring bodies are technically subsidiary organs of the Council, with a responsibility to report on their activities. They generally report to the Council via the relevant sanctions committee, with the Chairman of that sanctions committee forwarding or presenting regular written and oral reports to the Council on their behalf.

### 5.1 *The Iraq Export/Import Monitoring Mechanism*

In the case of Iraq, the Security Council established an Export/Import Monitoring Mechanism. In October 1991, the Council requested the 661 Committee to develop, in co-operation with UNSCOM and the IAEA, a mechanism to monitor sales or supplies to Iraq of items that could be used for the production or acquisition of weapons, in contravention of the arms and related sanctions.<sup>288</sup> In July 1995 the 661 Committee approved a joint-proposal for that Mechanism submitted by UNSCOM

<sup>282</sup> SC Res. 1584 (1 February 2005), para. 7(e); SC Res. 1643 (15 December 2005), para. 9(f); SC Res. 1727 (15 December 2006), para. 7(f).

<sup>283</sup> SC Res. 1584 (1 February 2005), para. 7(f); SC Res. 1643 (15 December 2005), para. 9(a); SC Res. 1727 (15 December 2006), para. 7(a).

<sup>284</sup> SC Res. 1584 (1 February 2005), para. 7(g); SC Res. 1643 (15 December 2005), para. 9(g); SC Res. 1727 (15 December 2006), para. 7(g).

<sup>285</sup> SC Res. 1584 (1 February 2005), para. 7(h); SC Res. 1643 (15 December 2005), para. 9(h); SC Res. 1727 (15 December 2006), para. 7(h).

<sup>286</sup> See Appendix 3, Table H.

<sup>287</sup> For a list of all monitoring bodies, along with references to the provisions outlining their mandates, see Appendix 3, Table G.

<sup>288</sup> SC Res. 715 (11 October 1995), para. 7.

and the IAEA.<sup>289</sup> The proposal for the mechanism was then submitted to the Security Council for its consideration, and in March 1996 the Council decided to establish the mechanism.<sup>290</sup> The Monitoring Mechanism consisted of a Joint Export/Import Monitoring Unit established by UNSCOM and the IAEA, and all states were required to notify the Mechanism if their nationals planned to export to Iraq any items or technologies that might have ‘dual-use’ potential.<sup>291</sup> Iraq was also required to inform the Mechanism of any plans to receive potential ‘dual-use’ items or technologies.<sup>292</sup>

When the Security Council established UNMOVIC, it requested the Executive Chairman of UNMOVIC and the Director-General of the IAEA to establish a unit which would assume the Monitoring Mechanism’s responsibilities and to resume the revision and updating of the lists of items and technology to which the Mechanism applied and thus the export to Iraq of which must be notified to the unit.<sup>293</sup> The updated list, which was circulated by the Executive Chairman of UNMOVIC in June 2001,<sup>294</sup> came into effect on 13 July 2001.<sup>295</sup> In its quarterly reports to the Council, UNMOVIC generally summarised the unit’s activities during the reporting period. On the whole those activities consisted of reviewing notifications sent to it by states. The Unit also reviewed the distribution plans for the OFFP to ensure that they contained no ‘prohibited’ items.<sup>296</sup> After the adoption of the Goods Review List (GRL) by the Council in May 2002,<sup>297</sup> the unit’s work increased substantially as it was involved in the process of reviewing applications to export humanitarian supplies to Iraq under the OFFP to ensure that the items or technologies proposed to be supplied to Iraq did not feature on the GRL.<sup>298</sup>

<sup>289</sup> S/1996/700 (26 August 1996): *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, annex, para. 32 (p. 8).

<sup>290</sup> SC Res. 1051 (27 March 1996), para. 1. <sup>291</sup> *Ibid.*, para. 5. <sup>292</sup> *Ibid.*, para. 6.

<sup>293</sup> SC Res. 1284 (17 December 1999), para. 8.

<sup>294</sup> S/2001/560 (15 October 2001): *Letter dated 1 June 2001 from the Executive Chairman of UNMOVIC addressed to the President of the Security Council*.

<sup>295</sup> S/2001/833 (30 August 2001): *Sixth quarterly report of the Executive-Chairman of UNMOVIC*, para. 7.

<sup>296</sup> See, e.g., S/2002/195 (26 February 2002): *Eighth quarterly report of the Executive-Chairman of UNMOVIC*, para. 13.

<sup>297</sup> SC Res. 1409 (14 May 2002), paras. 2–3.

<sup>298</sup> See, e.g., S/2002/606 (31 May 2002): *Ninth quarterly report of the Executive-Chairman of UNMOVIC*, paras. 20–21; S/2002/981 (3 September 2002): *Tenth quarterly report of the Executive-Chairman of UNMOVIC*, para. 28.

## 5.2 *The UNITA Monitoring Mechanism*

The Security Council requested the UNSG to establish a Monitoring Mechanism on the UNITA sanctions in April 2000, after the UNITA Panel of Experts had recommended that such a Monitoring Mechanism be created.<sup>299</sup> The Monitoring Mechanism was to continue the work of the Panel of Experts by collecting additional information on, and investigating relevant leads relating to, allegations of violations of the UNITA sanctions.<sup>300</sup> It would consist of up to five experts and it would have a time-bound mandate of six months.<sup>301</sup> After its initial establishment, the mandate of the UNITA Monitoring Mechanism was extended five times, for one period of three months, three subsequent periods of six months, and a final period of two months.<sup>302</sup> The size of the Mechanism contracted over the course of its mandates, consisting of five experts for the second and third mandates, four experts for the fourth and fifth mandates, and two experts for the final mandate.<sup>303</sup> During the course of its two-and-a-half-year tenure, the Monitoring Mechanism submitted a total of six reports.<sup>304</sup>

## 5.3 *The Taliban and Al Qaida Monitoring Mechanism*

In July 2001, on the recommendation of the Taliban and Al Qaida Committee of Experts, the Security Council requested the UNSG to establish a Monitoring Mechanism.<sup>305</sup> The Monitoring Mechanism was established for an initial period of five and a half months,<sup>306</sup> but it was extended for two further periods of twelve months.<sup>307</sup> The Mechanism's mandate included: (a) monitoring sanctions

<sup>299</sup> SC Res. 1295 (18 April 2000), para. 3. <sup>300</sup> *Ibid.* <sup>301</sup> *Ibid.*

<sup>302</sup> SC Res. 1336 (23 January 2001), para. 3 (three months); SC Res. 1348 (19 April 2001), para. 3 (six months); SC Res. 1374 (19 October 2001), para. 3 (six months); SC Res. 1404 (18 April 2002), para. 3 (six months); SC Res. 1439 (18 October 2002), para. 2 (two months).

<sup>303</sup> SC Res. 1336 (23 January 2001), para. 5 (five experts); SC Res. 1348 (19 April 2001), para. 5 (five experts); SC Res. 1374 (19 October 2001), para. 7 (four experts); SC Res. 1404 (18 April 2002), para. 6 (four experts); SC Res. 1439 (18 October 2002), para. 5 (two experts).

<sup>304</sup> For a list of these reports, see Appendix 3, Table H.

<sup>305</sup> SC Res. 1363 (30 July 2001), para. 3. For the recommendations of the Taliban and Al Qaida Committee of Experts, see S/2001/511 (22 May 2001): *Report of the Committee of Experts appointed pursuant to Security Council resolution 1333 (2000), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan.*

<sup>306</sup> SC Res. 1363 (30 July 2001), para. 3.

<sup>307</sup> SC Res. 1390 (16 January 2002), paras. 9, 10; SC Res. 1455 (17 January 2003), paras. 8, 12, 13.

implementation;<sup>308</sup> (b) offering assistance to states bordering the territory of Afghanistan under Taliban control, and other states as appropriate, to increase their capacity regarding sanctions implementation;<sup>309</sup> and (c) collating, assessing, verifying, and reporting and making recommendations on, information regarding sanctions violations.<sup>310</sup> The Monitoring Mechanism was to consist of two bodies: a Monitoring Group and a Sanctions Enforcement Support Team.<sup>311</sup>

The Sanctions Enforcement Support Team was never actually deployed, however, due to the complex situation that developed on the ground in Afghanistan after 11 September 2001. The Monitoring Group nevertheless functioned as planned, submitting one report on its work in 2001 and three during 2002.<sup>312</sup> The reports contain detailed accounts of the activities of the Monitoring Group during the reporting periods, as well as observations and recommendations for improving sanctions implementation.

#### 5.4 *The Taliban and Al Qaida Monitoring Team*

In January 2004, the Council decided to establish for an initial period of eighteen months an Analytical Support and Sanctions Monitoring Team.<sup>313</sup> The Monitoring Team, whose initial mandate was subsequently extended,<sup>314</sup> was to: (a) submit written reports to the 1267 Committee on sanctions implementation;<sup>315</sup> (b) analyse reports submitted by states concerning sanctions implementation;<sup>316</sup> (c) facilitate areas of convergence between the 1267 Committee and the CTC;<sup>317</sup> (d) report regularly to the 1267 Committee;<sup>318</sup> and (e) assist the 1267 Committee in preparing its oral and written reports to the Council.<sup>319</sup>

<sup>308</sup> SC Res. 1363 (30 July 2001), para. 3(a). <sup>309</sup> *Ibid.*, para. 3(b). <sup>310</sup> *Ibid.*, para. 3(c).

<sup>311</sup> *Ibid.*, para. 4. The Monitoring Group would be based in New York and would consist of up to five experts. Its mandate would be to monitor sanctions implementation, including in the fields of arms embargoes, counter-terrorism and related legislation, as well as money laundering, financial transactions and drug trafficking; SC Res. 1363 (30 July 2001), para. 4(a). The Sanctions Enforcement Support Team would be located in the states neighbouring Afghanistan and would consist of up to fifteen members with expertise in areas such as customs, border security and counter-terrorism: SC Res. 1363 (30 July 2001), para. 4(b). The Sanctions Enforcement Support Team would report at least once a month to the Monitoring Group, and the Monitoring Group would report to the 1267 Committee: SC Res. 1363 (30 July 2001), para. 5.

<sup>312</sup> For a list of the reports submitted by the Monitoring Group, see Appendix 3, Table H.

<sup>313</sup> SC Res. 1526 (30 January 2004), para. 6.

<sup>314</sup> SC Res. 1617 (29 July 2005), para. 19; SC Res. 1735 (22 December 2006), para. 32 and Annex II.

<sup>315</sup> SC Res. 1526 (30 January 2004), para. 7. <sup>316</sup> *Ibid.*, Annex.

<sup>317</sup> *Ibid.* <sup>318</sup> *Ibid.* <sup>319</sup> *Ibid.*

The Security Council has subsequently added a number of tasks to the Monitoring Team's mandate, including to: (a) pursue sanctions implementation case studies and explore in depth any other issues as directed by the Committee;<sup>320</sup> (b) submit a comprehensive programme of work to the 1267 Committee for its approval and review;<sup>321</sup> (c) submit comprehensive reports to the 1267 on sanctions implementation, the listing and de-listing process and exemptions, including specific recommendations for improved implementation and possible new sanctions;<sup>322</sup> (d) analyse reports from states on sanctions implementation;<sup>323</sup> (e) co-operate closely with the expert bodies assigned to the 1373 Counterterrorism Committee and the 1540 Weapons of Mass Destruction Committee;<sup>324</sup> (f) assist the 1267 Committee to address non-compliance with sanctions;<sup>325</sup> (g) present the Committee with recommendations to assist member states with sanctions implementation and additions to the Consolidated List;<sup>326</sup> (h) report on the changing nature of the threat of the Taliban and Al Qaida and the best measures to confront that threat;<sup>327</sup> (i) report regularly to the Committee;<sup>328</sup> (j) assist the Committee in preparing oral and written assessments to the Security Council;<sup>329</sup> (k) consult with the intelligence and security services of member states, in order to share information and strengthen sanctions enforcement;<sup>330</sup> (l) consult with the private sector, including financial institutions, to learn about the practical implementation of the assets freeze and develop recommendations for strengthening the

<sup>320</sup> SC Res. 1617 (29 July 2005), Annex I, para. (a); SC Res. 1735 (22 December 2006), Annex II, para. (a).

<sup>321</sup> SC Res. 1617 (29 July 2005), Annex I, para. (b); SC Res. 1735 (22 December 2006), Annex II, para. (b).

<sup>322</sup> SC Res. 1617 (29 July 2005), Annex I, para. (c); SC Res. 1735 (22 December 2006), Annex II, para. (c).

<sup>323</sup> SC Res. 1617 (29 July 2005), Annex I, para. (d); SC Res. 1735 (22 December 2006), Annex II, para. (d).

<sup>324</sup> SC Res. 1617 (29 July 2005), Annex I, para. (e); SC Res. 1735 (22 December 2006), Annex II, para. (e).

<sup>325</sup> SC Res. 1617 (29 July 2005), Annex I, para. (f); SC Res. 1735 (22 December 2006), Annex II, para. (f).

<sup>326</sup> SC Res. 1617 (29 July 2005), Annex I, para. (g); SC Res. 1735 (22 December 2006), Annex II, para. (g).

<sup>327</sup> SC Res. 1617 (29 July 2005), Annex I, para. (j); SC Res. 1735 (22 December 2006), Annex II, para. (j).

<sup>328</sup> SC Res. 1617 (29 July 2005), Annex I, para. (l); SC Res. 1735 (22 December 2006), Annex II, para. (p).

<sup>329</sup> SC Res. 1617 (29 July 2005), Annex I, para. (m).

<sup>330</sup> SC Res. 1735 (22 December 2006), Annex II, para. (l).

freeze;<sup>331</sup> (m) work with relevant international and regional organisations to promote awareness of and compliance with sanctions;<sup>332</sup> and (n) assist other subsidiary bodies and their expert panels to enhance co-operation with Interpol.<sup>333</sup> The Monitoring Team has submitted regular reports in accordance with its mandate.<sup>334</sup>

### 5.5 The Somalia Monitoring Group

In December 2003, the Council requested the UNSG to establish a Somalia Monitoring Group.<sup>335</sup> The Monitoring Group has been re-established numerous times.<sup>336</sup> The Security Council has tasked the Group with various responsibilities, including to: (a) investigate violations of the arms embargo;<sup>337</sup> (b) make recommendations for strengthening the embargo's implementation;<sup>338</sup> (c) undertake field investigations in Somalia, neighbouring states and other appropriate states;<sup>339</sup> (d) assess progress made by states in the region in implementing the embargo, including by reviewing national customs and border control regimes;<sup>340</sup> (e) compile a draft list of embargo violators both in and outside Somalia, for possible future measures by the Council;<sup>341</sup> (f) refine and update that list;<sup>342</sup> (g) assess action taken by Somali authorities and member states to implement the embargo;<sup>343</sup> (h) work with the 751 Committee on recommendations for additional measures to improve compliance with the embargo;<sup>344</sup> (i) identify how to strengthen the capacity of states in the region to facilitate embargo implementation;<sup>345</sup> (j) investigate

<sup>331</sup> *Ibid.*, Annex II, para. (m). <sup>332</sup> *Ibid.*, Annex II, para. (n).

<sup>333</sup> *Ibid.*, Annex II, para. (o). <sup>334</sup> See Appendix 3, Table H.

<sup>335</sup> SC Res. 1519 (16 December 2003), para. 2.

<sup>336</sup> SC Res. 1558 (17 August 2004), para. 3; SC Res. 1587 (15 March 2005), para. 3; SC Res. 1630 (14 October 2005), para. 3; SC Res. 1676 (10 May 2006), para. 3; SC Res. 1724 (29 November 2006), para. 3.

<sup>337</sup> SC Res. 1519 (16 December 2003), para. 2(a); SC Res. 1558 (17 August 2004), para. 3(a); SC Res. 1587 (15 March 2005), para. 3(a).

<sup>338</sup> SC Res. 1519 (16 December 2003), para. 2(b); SC Res. 1587 (15 March 2005), para. 3(c).  
<sup>339</sup> SC Res. 1519 (16 December 2003), para. 2(c).

<sup>340</sup> *Ibid.*, para. 2(d). <sup>341</sup> *Ibid.*, para. 2(e).

<sup>342</sup> SC Res. 1558 (17 August 2004), para. 3(b); SC Res. 1587 (15 March 2005), para. 3(d); SC Res. 1630 (14 October 2005), para. 3(d); SC Res. 1676 (10 May 2006), para. 3(d); SC Res. 1724 (29 November 2006), para. 3(d).

<sup>343</sup> SC Res. 1587 (15 March 2005), para. 3(b).

<sup>344</sup> SC Res. 1558 (17 August 2004), para. 3(d); SC Res. 1587 (15 March 2005), para. 3(f); SC Res. 1630 (14 October 2005), para. 3(f); SC Res. 1676 (10 May 2006), para. 3(f); SC Res. 1724 (29 November 2006), para. 3(f).

<sup>345</sup> SC Res. 1587 (15 March 2005), para. 3(g); SC Res. 1630 (14 October 2005), para. 3(g); SC Res. 1676 (10 May 2006), para. 3(g); SC Res. 1724 (29 November 2006), para. 3(g).

activities generating revenue used to violate the embargo;<sup>346</sup> and (k) investigate means of transport, routes, seaports, airports and other facilities used in connection with embargo violations.<sup>347</sup> The Somalia Monitoring Group has submitted regular reports in accordance with its mandate.<sup>348</sup>

## 6. United Nations peacekeeping operations

The Security Council has called upon UN peacekeeping operations to play a role in the implementation and monitoring of a number of sanctions regimes, including the Somalia, 788 Liberia, 713 Yugoslavia, DRC, 1521 Liberia, 1556 Sudan and Côte d'Ivoire sanctions regimes. In the case of Somalia, the Council requested the UNSG to support the implementation of the Somalia sanctions regime from within Somalia, utilising as available and appropriate the forces of the United Nations Operation in Somalia II (UNOSOM II).<sup>349</sup> In the case of the 788 Liberia sanctions regime, the Council entrusted the United Nations Observer Mission in Liberia (UNOMIL) with the responsibility for assisting in monitoring compliance with the arms embargo.<sup>350</sup> In the case of the 713 sanctions regime, the Council tasked the United Nations Preventive Deployment Force (UNPREDEP), which was based in the former Yugoslav Republic of Macedonia, with monitoring and reporting on illicit arms flows and other activities prohibited by the FRY sanctions regime.<sup>351</sup>

In the case of the DRC sanctions regime, the Council has tasked the UN Organization Mission in the DRC (MONUC) with a number of responsibilities, including to: (a) deploy military observers in North and South Kivu and in Ituri and to report to it regularly on information concerning arms supply and the presence of foreign military;<sup>352</sup> (b) use all means to inspect the cargo of aircraft and any transport vehicle using the ports,

<sup>346</sup> SC Res. 1630 (14 October 2005), para. 3(b); SC Res. 1676 (10 May 2006), para. 3(b); SC Res. 1724 (29 November 2006), para. 3(b).

<sup>347</sup> SC Res. 1630 (14 October 2005), para. 3(c); SC Res. 1676 (10 May 2006), para. 3(c); SC Res. 1724 (29 November 2006), para. 3(c).

<sup>348</sup> See Appendix 3, Table H.

<sup>349</sup> SC Res. 814 (26 March 1993), para. 10. For the provisions establishing UNOSOM II, see SC Res. 814 (26 March 1993), paras. 5, 6. For UNOSOM II's full mandate, see S/25354 and Add. 1 and 2 (3, 11 and 22 March 1993), paras. 56–88.

<sup>350</sup> SC Res. 866 (22 September 1993), para. 3(b); SC Res. 1020 (10 November 1995), para. 2(c).

<sup>351</sup> SC Res. 1186 (1998) (21 July 1998), para. 1. <sup>352</sup> SC Res. 1493 (28 July 2003), para. 19.



airports, military bases and border crossings in North and South Kivu and in Ituri;<sup>353</sup> (c) seize arms and related material violating the DRC sanctions;<sup>354</sup> and (d) assist DRC customs authorities to ensure that forms of transportation are not used to violate the arms embargo.<sup>355</sup>

In the case of the 1521 Liberia sanctions regime, the Security Council has tasked the UN Mission in Liberia (UNMIL) with a number of responsibilities, including to: (a) assist both the 1521 Committee and Panel of Experts in monitoring the implementation of sanctions;<sup>356</sup> (b) intensify its efforts to assist the National Transitional Government of Liberia (NTGL) to re-establish its authority throughout Liberia, including in diamond- and timber-producing areas;<sup>357</sup> (c) support the efforts of the NTGL to prevent sanctions violations;<sup>358</sup> (d) collect and dispose of arms and related material brought into Liberia in violation of the arms embargo;<sup>359</sup> (e) monitor arms trafficking and recruitment;<sup>360</sup> and (f) develop a strategy, in conjunction with ECOWAS and other international partners, to consolidate a national legal framework, including the implementation of the assets freeze.<sup>361</sup>

In the case of the 1556 sanctions regime, the Security Council has tasked the UN Mission in Sudan (UNMIS) with seizing arms and related material in Darfur in violation of the arms embargo.<sup>362</sup> In the case of the Côte d'Ivoire sanctions regime, the Council has requested the UN Operation in Côte d'Ivoire (UNOCI) to: (a) monitor sanctions implementation, including by inspecting the cargo of aircraft and vehicles using the ports, airports, airfields, military bases and border crossings of Côte d'Ivoire;<sup>363</sup> and (b) collect and dispose of arms and related material brought into Côte d'Ivoire in violation of the arms embargo.<sup>364</sup>

<sup>353</sup> SC Res. 1533 (12 March 2004), para. 3; SC Res. 1565 (1 October 2004), para. 4(f); SC Res. 1596 (18 April 2005), para. 3; SC Res. 1698 (31 July 2006), para. 16.

<sup>354</sup> SC Res. 1533 (12 March 2004), para. 4; SC Res. 1565 (1 October 2004), para. 4(g); SC Res. 1698 (31 July 2006), para. 16.

<sup>355</sup> SC Res. 1596 (18 April 2005), para. 10. <sup>356</sup> SC Res. 1521 (22 December 2003), para. 23.

<sup>357</sup> SC Res. 1607 (21 June 2005), para. 10. <sup>358</sup> *Ibid.*, para. 11(b). <sup>359</sup> *Ibid.*, para. 11(c).

<sup>360</sup> *Ibid.*, paras. 11(d), 12. <sup>361</sup> *Ibid.*, para. 11(e).

<sup>362</sup> SC Res. 1706 (31 August 2006), para. 12(a).

<sup>363</sup> SC Res. 1584 (1 February 2005), para. 2(a); SC Res. 1609 (24 June 2005), para. 2(m).

<sup>364</sup> SC Res. 1584 (1 February 2005), para. 2(b); SC Res. 1609 (24 June 2005), para. 2(n).



PART IV • STRENGTHENING THE RULE  
OF LAW



## 9 Rule of law weaknesses in the UN sanctions system

The previous four chapters have been devoted to describing the UN Security Council's sanctions practice. They have charted the manner in which the Council has acted upon its sanctions powers to weave a web of sanctions obligations. The Council has identified a diverse collection of threats to the peace warranting the application of sanctions. It has created a wide variety of sanctions regimes, consisting of an assortment of measures applied against various targets. The Council has applied sanctions for a wide collection of objectives and has tasked a broad range of actors with responsibility for sanctions administration and monitoring.

Discussion now returns to the relationship between the Security Council's sanctions practice and the rule of law. The pragmatic model of the rule of law constructed in Chapter 2 is now operationalised to examine the extent to which UN sanctions have strengthened the rule of law. This chapter consists of five sections, devoted to the key principles of the rule of law that comprise the pragmatic rule of law model: transparency, consistency, equality, due process and proportionality. Each section critically evaluates the track-record of the UN sanctions system, identifying shortcomings in respect of each principle of the rule of law. Chapter 10 then advances reform proposals designed to increase the capacity of the UN sanctions system to strengthen the rule of law.

### **1. Behind closed doors: the problem of transparency**

The principle of transparency requires that decision-making concerning the exercise of political power should be as clear and transparent as possible. Thus, the reasoning leading to a particular decision should be clear to those affected by the ultimate decision, as well as to the broader

public. Moreover, it should be clear that the relevant power is being exercised in accordance with legitimate authority. In the context of UN sanctions, transparency requires that the Security Council's decision-making process should be as open as possible. Ideally, the Council's deliberations leading to the adoption of sanctions-related decisions should be a matter of public record and it should be clear from the decisions themselves that they are taken in accordance with legitimate authority.

The Council's track-record in this area has been less than impressive. Despite some laudable initiatives to improve transparency,<sup>1</sup> key consultations leading to the adoption of sanctions-related decisions too often occur behind closed doors. Moreover, the decisions themselves rarely provide a transparent picture of the justification for a particular decision or a clear picture of its objectives. The discussion below is divided into three sections. The first section explores the question of transparency in the Security Council's decision-making process. The second section explores the question of transparency in the Council's decisions themselves. The third section considers the transparency of the decision-making process in the Council's sanctions committees.

### *1.1 Transparency in the Security Council's decision-making process*

In the Security Council's early days it was not uncommon for delegates to engage in lengthy debates on the pros and cons of a proposed decision.<sup>2</sup> The official records of the Council's early formal meetings reveal many an extended discussion about draft resolutions, with deliberations sometimes ranging over multiple meetings as diplomats considered competing proposals for provisions within a particular draft resolution. Draft resolutions were sometimes debated so extensively that they would go through numerous incarnations before reaching their final form. While informal, behind-the-scenes negotiations would likely have been taking place at the same time, the substance of which was inaccessible to the public, it is illuminating to read the considered arguments put forth by various delegations in relation to proposed Council action.

<sup>1</sup> See Susan C. Hulton, 'Council Working Methods and Procedure', in David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004), pp. 237–251, especially pp. 245–247.

<sup>2</sup> For examples of such debates, see *Repertoire of the Practice of the Security Council, Supplement for 1946–51*, Chapter VIII.

At a certain point in time, it appears that Security Council members began to feel constrained by the responsibility of having to negotiate in the public eye. Increasingly, substantive discussions began to occur in private. There were good reasons for this development, as in theory diplomats would be at greater leisure to discuss the political motivations underpinning their positions and thus to debate more honestly and openly how to achieve a consensus or compromise approach. In time this informal approach to decision-making was institutionalised, as the Security Council introduced the practice of holding 'informal consultations'. In 1978 a purpose-built room was constructed to house such consultations.<sup>3</sup>

Informal consultations have since become an integral part of Security Council life, with the bulk of the Council's business conducted in the consultations room rather than in the formal Security Council chamber. The consultations have remained a private affair, with no official records kept and attendance tightly controlled. Despite the impressive ability of UN-accredited journalists to report on developments rumoured to have happened in consultations, such discussions unfold beyond the public eye. Since the introduction of consultations, much of the contentious discussion relating to draft resolutions, which might otherwise have featured in the Council's formal meetings, has instead taken place behind closed doors. A comparison of the records of the Council's early formal meetings and those in recent years reveals that the practice of publicly debating the pros and cons of draft resolutions and their provisions has become virtually extinct. Draft resolutions are rarely tabled for discussion in formal meetings until the members of the Council are prepared to vote on them; hence the outcome of the voting is practically pre-determined. There may be a brief recapitulation of national positions with respect to the draft resolution about to be put to the vote, but the public records of contemporary Council meetings provide little indication of how the Council's decision-making process unfolds. The Council sometimes adopts decisions with no discussion at all, thus leaving no public record of the discussions leading to or the reasoning underlying those decisions.<sup>4</sup>

<sup>3</sup> Bailey and Daws, *The Procedure of the UN Security Council*, p. 62.

<sup>4</sup> See, e.g., S/PV.4144 (17 May 2000), adopting resolution 1298 (2000), establishing the Eritrea and Ethiopia sanctions regime, without discussion; S/PV.4287 (7 March 2001), adopting resolution 1343 (2001), establishing the 1343 Liberia sanctions regime, without discussion; S/PV.4797 (28 July 2003), adopting resolution 1493 (2003), establishing the DRC sanctions regime, with only the UNSG making a statement; S/PV.4890 (22 December 2003), adopting resolution 1521 (2003), establishing the 1521 Liberia sanctions regime, without discussion.

This is not to say that the Security Council does not discuss important issues publicly. A number of thematic issues have been inscribed on the Council's agenda, often at the prerogative of the President of the Security Council. Thematic debates have thus been held on issues related to the Security Council's work, such as: children and armed conflict;<sup>5</sup> women, peace and security;<sup>6</sup> Africa's food crisis as a threat to peace and security;<sup>7</sup> and justice and the rule of law.<sup>8</sup> These discussions have taken place in public meetings of the Council, often with the broad participation of the wider UN membership. Moreover, under Article 35 of the Charter and rule 3 of the provisional rules of procedure of the Security Council, UN member states can request that the Council be convened to discuss an urgent matter threatening international peace and security.<sup>9</sup>

These discussions on thematic agenda items and pressing events relating to the maintenance of peace and security provide a good opportunity to ascertain the views of the members of the Security Council, as well as those of the wider UN membership. By scrutinising the records of these meetings, useful insights can be gained into how the Council's members and the UN's members at large view the Council's track-record in fulfilling its responsibilities for the maintenance of international peace and security. Nevertheless, frank and insightful public debate with respect to thematic agenda items and pressing issues of international peace and security can only go so far towards offsetting the transparency deficit caused by the absence of a meaningful public record of much of the Council's decision-making process. Until the Security Council's discussions on the potential implications of proposed decisions become a matter of public record, the Council will be vulnerable to the allegation that its decision-making process lacks transparency.

<sup>5</sup> See S/PV.3896 (29 June 1998); S/PV.3897 (29 June 1998); S/PV.4037 (25 August 1999); S/PV.4167 (26 July 2000); S/PV.4185 (11 August 2000); S/PV.4422 (20 November 2001); S/PV.4423 (20 November 2001); S/PV.4528 (7 May 2002); S/PV.4684 (14 January 2003); S/PV.4695 (30 January 2003).

<sup>6</sup> See S/PV.4208 (24 October 2000); S/PV.4213 (31 October 2000); S/PV.4402 (31 October 2001); S/PV.4635 (28 October 2002); S/PV.4641 (31 October 2002).

<sup>7</sup> See S/PV.4652 (3 December 2002); S/PV.4736 (7 April 2003).

<sup>8</sup> See S/PV.4833 (24 September 2003); S/PV.4835 (30 September 2003).

<sup>9</sup> Article 35, para. 1 reads: 'Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.' Rule 3 of the Security Council's provisional rules of procedure reads: 'The President shall call a meeting of the Security Council if a dispute or situation is brought to the attention of the Security Council under Article 35 ... of the Charter ...'



It is sometimes necessary for the Security Council to conduct business in private. In certain situations the ability to discuss national positions frankly and honestly behind closed doors can facilitate a compromise or consensus outcome. In addition, the ability to function in private and at the ambassadorial or expert level can facilitate efficiency, thus making an increasingly burdened agenda more manageable.<sup>10</sup> Nevertheless, where possible, the Security Council should seek to ensure that the practice of shielding discussions from the public eye is the exception rather than the norm. Compromise and consensus are important, but they can be achieved without sacrificing transparency. An overburdened Security Council agenda requires creative management, but it is no justification for failing to provide as much transparency as possible. There is no intrinsic reason why the majority of the Council's proceedings should not be a matter of public record. Respecting the principle of transparency does not require the full participation of all UN member states in the Security Council decision-making process. However, as the Council's Chapter VII decisions have profound and far-reaching consequences for UN member states, due to the manner in which they are legally bound under Article 25 to observe such decisions, the broader UN membership should be entitled to expect that most of the Council's deliberations will either take place in open session or subsequently become a matter of public record.

### *1.2 Transparency in Security Council decisions*

The less than impressive transparency of the Security Council's decision-making process makes it all the more important that the decisions themselves should provide a clear roadmap of their underlying justification, rationale and objectives. In the context of UN sanctions, it should be evident from the Council's sanctions-related decisions that the Council is exercising its sanctions powers in accordance with legitimate authority. In its sanctions-related decisions, the Council should routinely make a determination under Article 39 of the existence or

<sup>10</sup> Potential Security Council decisions are often thrashed out at the level of experts rather than at the level of ambassadors. The informal process for developing draft resolutions often proceeds through multiple stages of fluid negotiation. A draft is generally initiated by a sponsor or group of sponsors, before being opened up to discussion by the experts of all members of the Council. Once discussed at the expert level, the draft will be taken up by the Security Council itself during informal consultations. Finally, when the draft's sponsor is ready to put the draft to the vote, a formal meeting of the Council is called and a vote held.

continuance of a threat to the peace, breach of the peace or act of aggression. It should also state clearly that it is acting upon its sanctions powers, as provided in Article 41, in order to maintain or restore international peace and security. Moreover, the Council should illustrate its commitment to acting faithfully in accordance with its legitimate powers by outlining clear, attainable and verifiable sanctions objectives, the achievement of which will resolve the threat, breach or act and thus maintain or restore peace and security.

### i. Determination of threats to the peace

As noted in Chapter 5, although the Security Council has generally determined the existence of a breach of or threat to the peace before applying sanctions, on occasion it has applied sanctions without making the requisite determination of a threat to or breach of the peace or act of aggression.<sup>11</sup> While it is arguable that the Council's application of sanctions under Chapter VII in those instances amounted to an implicit determination of a threat to the peace, the fact that no explicit determination was made casts doubt upon the transparency of the Council's decision-making in those particular instances. Another troublesome aspect of the Council's practice with respect to determining the existence of threats to the peace is that the Council has not always stated clearly and precisely the character of the threat in a given situation. The Council usually paints a background picture of a situation in its resolution's preambular paragraphs, before simply determining that a threat to the peace exists. Thus it is left to the reader to deduce from the various circumstances noted in the preambular paragraphs what might be said to constitute the requisite threat. This approach is particularly problematic from the perspective of transparency, as in theory it should be possible to identify from the Council's sanctions-related decisions which of the various background circumstances were critical in leading the Council to determine the existence of a threat. Once it is clear precisely where the threat lies, it should also be apparent how the existing circumstances must change in order to eradicate the threat and maintain or restore international peace and security.

But perhaps the most problematic aspect of the Council's practice from the point of view of transparency is the fact that the wide discretion accorded to the Council in determining the existence of threats to the peace renders the concept susceptible to multiple interpretations,

<sup>11</sup> See Chapter 5, section 1.1.

increasing the potential for abuse. When the Council fails to articulate clearly the precise basis of a threat to the peace, it risks being accused of making determinations of mere convenience. In such instances it is hard to avoid the suspicion that the Council's determination of a threat is simply a pretext to take coercive action that primarily serves the political agenda of powerful Security Council members rather than constituting a sincere attempt to combat a genuine threat to international peace and security. The most prominent case in point is that of the determination of a threat to the peace in the case of the sanctions regime imposed against Libya.

In the Libyan instance, the Council affirmed that terrorism was a threat to international peace and security and determined that Libya's failure to co-operate adequately with investigations into the Pan Am and UTA terrorist bombings, which had implicated the involvement of Libyan officials, constituted a threat to the peace.<sup>12</sup> In early 1992, the Security Council's determination that terrorism threatened the peace broke new ground. Nevertheless, the fact that such a determination was not disputed in the Council's discussions on Libya suggests both that it was not controversial and that the time was ripe for the Council to break such new ground.<sup>13</sup> In that respect, the Council appeared to be acting transparently in accordance with its primary responsibility for the maintenance of international peace and security by asserting that it could use its Chapter VII powers to address the threat of terrorism. More controversial, however, was the Council's characterisation that Libya's failure to co-operate fully with efforts to investigate terrorist acts amounted to a threat to the peace.

On the one hand, the United States, the United Kingdom, France and other states supporting the application of sanctions against Libya, stressed that terrorism constituted a threat to international peace and security and argued that the Council had a responsibility to act against such a threat.<sup>14</sup> They contended that, in order to deter states from

<sup>12</sup> See Chapter 5, section 1.2.

<sup>13</sup> Even among the countries which did not subscribe to the view that the Council should employ Chapter VII action against Libya, there was nevertheless strong condemnation of terrorism. See, e.g., S/PV.3033 (21 January 1992), pp. 18–20 (Libya); S/PV.3063 (31 March 1992), p. 12 (Libya), p. 28 (Jordan), p. 31 (Mauritania, on behalf of the states members of the Arab Maghreb Union – Algeria, Libya, Mauritania, Morocco and Tunisia), p. 37 (Iraq), pp. 39–40 (Uganda), p. 42 (Mr Ansary, representative of the Organisation of the Islamic Conference), p. 45 (Cape Verde), pp. 49–50 (Zimbabwe), p. 56 (India) and p. 59 (China).

<sup>14</sup> S/PV.3063 (31 March 1992), p. 48 (Ecuador), p. 72 (United Kingdom), p. 73 (France), p. 76 (Hungary), p. 77 (Austria), pp. 79–80 (the Russian Federation), p. 81 (Belgium) and p. 82 (Venezuela).

sponsoring future acts of international terrorism, the Council must act firmly against any state whose officials were implicated in acts of international terrorism.<sup>15</sup> The Council had provided Libya with an opportunity to co-operate with efforts to bring to justice those responsible for the terrorist bombings of the Pan Am and UTA flights, but Libya had failed to take advantage of that opportunity.<sup>16</sup> In that context, Libya's failure to comply fully with the Council's requests itself amounted to a threat to the peace, thus warranting the application of sanctions under Chapter VII.<sup>17</sup> This interpretation of the situation was the one that ultimately carried the day, as illustrated by the Council's adoption of resolution 748 (1992), reflecting that position.

But Libya and other states advocating against Chapter VII action portrayed events in a completely different light. While acknowledging that terrorism posed a threat to international peace and security, these states contended that, in the Libyan case, there was no immediate threat justifying action under Chapter VII. Noting that Secretary-General Boutros Boutros-Ghali had reported an evolution in Libya's approach to the investigations,<sup>18</sup> they argued that Libya had taken significant steps to comply with the Council's requests to co-operate with investigations and to renounce terrorism.<sup>19</sup> Moreover, some of them maintained that the situation under consideration was essentially a legal dispute, consisting of a disagreement between Libya, on the one hand, and France, the United Kingdom and the United States, on the other, regarding how to proceed with investigations into the bombings and how to bring those responsible for the bombings to justice.<sup>20</sup> As the dispute was legal in nature, it should be resolved via legal means. The Security Council's proper role should therefore be to encourage the dispute's resolution via peaceful means under Chapter VI of the UN

<sup>15</sup> *Ibid.*, p. 72 (United Kingdom). <sup>16</sup> *Ibid.*, p. 69 (United Kingdom), p. 76 (Hungary).

<sup>17</sup> *Ibid.*, p. 66 (United States).

<sup>18</sup> S/PV.3063 (31 March 1992), pp. 17-18 (Libya), p. 32 (Mauritania), p. 37 (Iraq), p. 51 (Zimbabwe), pp. 56-57 (India). For the UNSG's comments, see S/23672 (3 March 1992), para. 6.

<sup>19</sup> The representative of Libya outlined at length the steps which, in Libya's view, had demonstrated its co-operation with the investigations and the Council's requests made in resolution 731 (1992). See S/PV.3033 (21 January 1992), pp. 8-11; S/PV.3063 (31 March 1992), pp. 5-6, 9-12. For other statements also arguing that Libya had endeavoured to comply with the Council's requests, see S/PV.3063 (31 March 1992), p. 32 (Mauritania) and p. 43 (Mr Ansary, representative of the OIC).

<sup>20</sup> S/PV.3033 (21 January 1992), p. 12 (Libya); S/PV.3063 (31 March 1992), pp. 6-7 (Libya), 18-20, p. 32 (Mauritania).

Charter, and in particular under Articles 33 and 36.<sup>21</sup> Libya had demonstrated its willingness to resolve the dispute peacefully by referring it to the International Court of Justice (ICJ), in accordance with Article 14 of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.<sup>22</sup> Thus, as the potential still existed to resolve the dispute peacefully, it was premature for the Council to proceed to take Chapter VII action.<sup>23</sup> Some countries warned against hasty action that might aggravate the situation.<sup>24</sup> Libya itself went so far as to imply that if there was a threat to the peace, then it was posed by those states that were pressing for Chapter VII action.<sup>25</sup>

The Libyan case illustrates how the Council's motives for determining a threat to the peace can easily be called into question. This can be attributed partly to the vague and general nature of the concept of a threat to the peace. In order to demonstrate that its actions are taken in accordance with legitimate authority, the Council should articulate

<sup>21</sup> S/PV.3063 (31 March 1992), pp. 7 and 18 (Libya), pp. 26–27 (Jordan) and p. 64 (Morocco). Article 33 of the Charter reads as follows:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 36 of the Charter reads as follows:

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment;
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties;
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

<sup>22</sup> S/PV.3063 (31 March 1992), p. 13 (Libya), p. 32 (Mauritania), p. 37 (Iraq), pp. 39–40 (Uganda), p. 46 (Cape Verde). Article 14 of the Montreal Convention reads as follows: 'Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organisation of the arbitration, any one of those Parties may refer the dispute to the ICJ by request in conformity with the Statute of the Court.'

<sup>23</sup> *Ibid.*, pp. 29–30 (Jordan), pp. 34–35 (Iraq), pp. 46–47 (Cape Verde), p. 52 (Zimbabwe), pp. 57–58 (India), p. 64 (Morocco).

<sup>24</sup> *Ibid.*, p. 44 (Mr Ansay, representative of the OIC), p. 53 (Zimbabwe), p. 61 (China).

<sup>25</sup> S/PV.3033 (21 January 1992), p. 23 (Libya); S/PV.3063 (31 March 1992), pp. 19–20 (Libya).

clearly the precise conditions that amount to a threat to the peace in a given instance. In the Libyan case, the Council might have specified more precisely how the situation threatened the peace, thus compelling urgent coercive action against Libya. In the absence of a clear and transparent articulation of the requisite threat, questions will arise concerning the legitimacy of a Security Council decision to act under Chapter VII. The Libyan instance begs a number of such questions. Why was there such an urgent need to act when Libya did not appear to pose an immediate danger to other states or the international community? Given the Secretary-General's observation that there had been an evolution in Libya's co-operation, might the Council not have continued to pursue other avenues to elicit the co-operation it sought from Libya? Why did the Council not establish its own fact-finding team to verify the claims of the American, British and French investigating teams, before proceeding to employ coercive measures against a member state? Why did the Council rush to impose Chapter VII measures rather than awaiting the outcome of the International Court of Justice's deliberations on the matter?

The Council's failure to be completely transparent in determining a threat in the Libyan case raised doubts concerning its motives and undermined the contention made by those calling for Chapter VII measures that it was acting to reinforce the rule of law.<sup>26</sup> Thus the Council unwittingly lent credibility to the claim that it was missing an opportunity to uphold the rule of law by failing to encourage the parties to the conflict to submit their dispute to resolution before the International Court of Justice.<sup>27</sup> While the need to deter future acts of terrorism is both genuine and pressing, that need must be carefully balanced against the potential damage that might be caused to the Council's credibility as the guardian of international peace and security if there is a perception that it has used its Chapter VII powers unnecessarily.

In the Libyan case, it is hard to avoid the suspicion that, in the eyes of certain permanent members of the Security Council, the real threat to international peace and security lay in the possibility that the International Court of Justice might pass judgment on the matter in a way that would undermine the flexibility of the Security Council to act on the matter. Indeed, the United Kingdom admitted as much, stating:

<sup>26</sup> S/PV.3063 (31 March 1992), p. 67 (United States), p. 72 (United Kingdom), p. 73 (France).

<sup>27</sup> *Ibid.*, p. 22 (Libya), p. 53 (Zimbabwe), p. 58 (India).

[W]e believe that Libya's application, while purporting to enjoin action by the United Kingdom against Libya, is in fact directed at interfering with the exercise by the Security Council of its rightful prerogatives under the United Nations Charter. We consider that the Security Council is fully entitled to concern itself with issues of terrorism and the measures needed to address acts of terrorism in any particular case or to prevent it in the future. Any other view would undermine the primary responsibility for the maintenance of international peace and security conferred on the Council by Article 24 of the Charter. It would thus seriously weaken the Council's ability to maintain peace and security in future circumstances which are unforeseen and unforeseeable.<sup>28</sup>

By acting against Libya under Chapter VII, the Council was perhaps responding less to a genuine threat to peace and security than to a threat to its own discretion.

## ii. Invoking the Charter basis for applying sanctions

The Security Council routinely invokes Chapter VII when applying or modifying sanctions.<sup>29</sup> However, it has rarely stated expressly that it was acting under Article 41, which is the only specific basis within Chapter VII for the application of sanctions.<sup>30</sup> The Council's recent references to Article 41 as the basis for its sanctions regimes against North Korea and Iran are welcome,<sup>31</sup> but it is unclear why the Council has not invoked Article 41 on a more regular basis. In other situations, where for example the Council is seeking to exercise its powers to authorise the use of force in a manner that might not have been expressly envisaged by the UN's founders, it is understandable that the Council might wish to locate the basis of such action in Chapter VII in general rather than in a specific Charter provision.<sup>32</sup> But with respect to decisions to apply or modify sanctions regimes, the constitutional basis is so clearly and uncontroversially located in Article 41 that a general reference to Chapter VII does not provide any meaningful additional flexibility or strengthen the Council's hand in terms of the implementation of sanctions. There is little reason for the Council to avoid invoking the Charter's sanctions provision in its sanctions-related decisions. The Council's failure to do so, for no readily apparent

<sup>28</sup> *Ibid.*, pp. 68–69. <sup>29</sup> See Appendix 3, Table C.

<sup>30</sup> SC Res. 232 (16 December 1966), preambular para. 4 (Southern Rhodesia); SC Res. 1718 (14 October 2006), preambular para. 10 (North Korea); SC Res. 1737 (23 December 2006), preambular para. 10 (Iran).

<sup>31</sup> See the relevant provisions in the previous note.

<sup>32</sup> See, e.g., the Security Council's authorisation of the use of all necessary means in the case of Iraq: SC Res. 678 (29 November 1990), para. 2.

rationale, needlessly calls into question its commitment to operating in a transparent manner.

### iii. Articulating sanctions objectives

Closely connected to the problem of a lack of clarity and transparency in the Council's determinations of threats to the peace is the inadequate articulation of the objectives for which sanctions are applied. The survey of the Council's practice in this respect, as outlined above in Chapter 7, reveals both good precedents for the articulation of specific, objectively verifiable goals, as well as troubling examples of objectives that have been so general or vague that it is arguable that they could only elude objective verification. Among the positive precedents,<sup>33</sup> the 1521 Liberia sanctions regime illustrates elements of best practice, as it incorporates goals that are both objectively verifiable and tied to particular components of the sanctions regime.<sup>34</sup> Among the less positive examples, however, the Security Council has on one occasion failed to identify any explicit objective at all, as in the case of the 918 Rwanda sanctions regime.<sup>35</sup> On other occasions, the Council has articulated goals that are general, vague or difficult to verify or satisfy, such as: establishing peace and stability; securing the future, ongoing disarmament of a target; and ensuring that a target ceases supporting terrorism.

#### (a) *Establishing peace and stability*

The Council incorporated the general objective of establishing peace and stability as part of the 713 Yugoslavia,<sup>36</sup> Somalia,<sup>37</sup> 788 Liberia<sup>38</sup> and 1160 FRY sanctions regimes.<sup>39</sup> In the 713 Yugoslavia and 1160 FRY cases, this objective was augmented by more specific objectives.<sup>40</sup> In the

<sup>33</sup> Relatively transparent objectives have been outlined in connection with the 757 FRYSM, 820 Bosnian Serb, 841 Haiti, 864 UNITA, 1132 Sierra Leone, 1160 FRY, 1298 Eritrea and Ethiopia, 1343 Liberia, 1493 DRC and 1521 Liberia sanctions regimes.

<sup>34</sup> See Appendix 2, summary of the 1521 Liberia sanctions regime.

<sup>35</sup> Although the Council did not articulate an explicit objective in connection with the Rwanda sanctions regime, various provisions of resolution 918 (1994) imply that the main objectives of the arms embargo were the establishment of a cease-fire and the achievement of a peaceful settlement to the conflict, within the framework of the Arusha Peace Agreement: SC Res. 918 (17 May 1994), preambular para. 6 and paras. 1, 19.

<sup>36</sup> SC Res. 713 (25 September 1991), para. 6. <sup>37</sup> SC Res. 733 (23 January 1992), para. 5.

<sup>38</sup> SC Res. 788 (19 November 1992), para. 8. <sup>39</sup> SC Res. 1160 (31 March 1998), para. 8.

<sup>40</sup> In the 713 regime, the Council subsequently decided that the arms sanctions would be terminated upon the signing of a proposed Peace Agreement, including the conclusion of a regional arms control agreement: SC Res. 1021 (22 November 1995), para. 1. In the 1160 regime, the Council outlined a range of detailed objectives at the same time that it



Somalia and 788 Liberia regimes, however, the Council simply noted that the sanctions would remain in place until it decided otherwise.<sup>41</sup> In the case of Liberia, it was notable that the Council did not terminate the arms embargo in July 1997, when it might have been claimed that peace and stability had been established. The Council itself had welcomed both the successful holding of presidential and legislative elections and their certification as 'free and fair' by the UNSG and the Chairman of ECOWAS.<sup>42</sup>

*(b) Securing the future and ongoing verification of disarmament*

The Security Council established the general goal of achieving the complete, ongoing disarmament of a target as part of its 661 Iraq sanctions regime. The 661 regime provides an example of a sanctions regime which has had both a particularly clear and verifiable goal, as well as objectives that were difficult to verify. The clear initial objective, of securing the withdrawal of Iraqi forces from Kuwait and the reinstatement of the Kuwaiti government,<sup>43</sup> was achieved through the hostilities undertaken by coalition forces during the Gulf War of early 1991. When the Council decided to maintain the sanctions after the Gulf War,<sup>44</sup> that clear objective was replaced by the following goals: (a) establishing a compensation fund to cover the losses incurred by foreign governments, nationals and corporations;<sup>45</sup> (b) ensuring that Iraq agreed to on-site inspection of its armament facilities;<sup>46</sup> (c) ensuring that Iraq was disarmed of its weapons of mass destruction and missiles with a range greater than 150 km and that it submitted to future and ongoing verification that it was not using, developing, constructing or acquiring such weapons;<sup>47</sup> and (d) ensuring that Iraq reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.<sup>48</sup>

Of the goals articulated in the post-Gulf War environment, objectives (a), (b) and (d) were achievable and objectively verifiable. By contrast, objective (c) was sufficiently general and difficult to satisfy that it is

set the overall objective of establishing peace and stability: SC Res. 1160 (31 March 1998), para. 16(a)–(e).

<sup>41</sup> For the Somalia sanctions regime, see SC Res. 733 (23 January 1992), para. 5. For the 788 Liberia sanctions regime, see SC Res. 788 (19 November 1992), para. 8.

<sup>42</sup> S/PRST/1997/41 (30 July 1997). The joint statement of certification that the elections had been free and fair was contained in S/1997/581 (24 July 1997), annex.

<sup>43</sup> SC Res. 661 (6 August 1990), para. 2. <sup>44</sup> SC Res. 687 (3 April 1991), paras. 20–24.

<sup>45</sup> *Ibid.*, paras. 19 and 22. <sup>46</sup> *Ibid.*, paras. 9 and 22.

<sup>47</sup> *Ibid.*, paras. 8, 10, 12 and 22. <sup>48</sup> *Ibid.*, paras. 11 and 22.

arguable that one could have legitimately claimed *ad infinitum* that it had not been satisfied. Was it possible for Iraq to demonstrate via objective criteria that it had complied with the requirement to submit to ‘future and ongoing verification’? At what point would consistent compliance with verification have been deemed sufficient? It is possible to debate the merits of a policy of total containment of a regime with an aggressive record. Indeed, with the benefit of hindsight, the Council’s approach appears to have achieved its objective of preventing Iraq from reconstituting its weapons of mass destruction stockpiles. Nevertheless, the articulation of such a general and slippery objective provides the Security Council, including in particular its permanent members, with such broad discretion in determining when, and even whether, to lift the sanctions, that it renders the Council’s decision-making process susceptible to arbitrary and non-transparent approaches. This ability of the permanent Council members to block the lifting of sanctions that are not subject to a specific time-limit has been coined the ‘reverse veto’.<sup>49</sup>

*(c) Ensuring that a target stops supporting terrorism*

The Council has set the objective of ensuring that a target stops supporting terrorism as part of the Libya, 1054 Sudan and Taliban and Al Qaida sanctions regimes. In each of those cases, the Council has also outlined quite specific steps, the taking of which might lead to the suspension or termination of sanctions. Nevertheless, the requirement of ceasing to provide support to terrorists is sufficiently difficult to substantiate that it is arguable that in any of those instances the Council could have maintained sanctions for as long as it saw fit.

In the case of Libya, the primary objective of the sanctions was initially to ensure Libya’s co-operation with French, British and American investigations into the terrorist bombings of UTA flight 772 and Pan Am flight 103.<sup>50</sup> Subsequently, that primary objective shifted to ensuring that Libyan authorities handed over for trial the suspects for the bombing of Pan Am flight 103 and satisfied French authorities with respect to the bombing of UTA flight 772.<sup>51</sup> It is notable, however, that although sanctions were suspended once Libya handed over suspects

<sup>49</sup> David D. Caron, ‘The Legitimacy of the Collective Authority of the Security Council’ (1993) 87 *AJIL* 552–588 at 577–584.

<sup>50</sup> SC Res. 748 (31 March 1992), paras. 1, 3.

<sup>51</sup> SC Res. 883 (11 November 1993), para. 16; SC Res. 1192 (27 August 1998), para. 8.

for trial by a Scottish Court sitting on neutral ground,<sup>52</sup> the ultimate termination of the sanctions regime did not take place until more than four years later, once UK, US and French officials had negotiated a compensation deal with the Libyan authorities.<sup>53</sup> The requirement of compensation had not been mentioned in any of the Council's earlier resolutions relating to the Libya situation.

It is possible to argue that the Security Council became convinced of Libya's sincerity to cease supporting terrorism once Libya agreed to provide such compensation to American and French families affected by the Pan Am and UTA bombings. It is equally possible, however, to draw the conclusion that the United States and France were able to use to their benefit the regime's vague objective of ensuring that Libya ceased supporting terrorism in order to prevent the termination of the sanctions until their own political objectives had been satisfied.<sup>54</sup> Regardless what conclusions one draws from the manner in which the sanctions were ultimately lifted, the Libya example does not provide a best-practice precedent of sanctions having been lifted as a result of the achievement of concrete, objectively verifiable goals.

In the case of the 1054 Sudan sanctions regime, the major objective was to induce the extradition from Sudan of three individuals suspected of having undertaken an assassination attempt in Ethiopia against President Mubarak of Egypt.<sup>55</sup> Connected to that objective was the secondary goal of ensuring that Sudan desisted from assisting, supporting and facilitating terrorist activities and from giving shelter or

<sup>52</sup> The Security Council provided for the possibility that the sanctions might be suspended after Libya transferred two Lockerbie bombing suspects to the Netherlands for trial before a Scottish court in SC Res. 1192 (27 August 1998), para. 8. The sanctions were subsequently suspended when the UNSG reported that the conditions for suspension had been satisfied: S/1999/378 (5 April 1999); *Letter Dated 5 April 1999 from the Secretary-General to the President of the Security Council*; S/PRST/1999/10 (8 April 1999).

<sup>53</sup> The Council terminated the sanctions in September 2003, after receiving a letter from the representative of Libya recounting steps taken by the Libyan government to comply with its obligations connected with the sanctions regime. Those steps included accepting responsibility for the actions of Libyan officials, paying appropriate compensation, renouncing terrorism, and making a commitment to co-operate with further investigations. For the provision terminating the sanctions, see SC Res. 1506 (12 September 2003), para. 1. For the text of the Libyan letter, see S/2003/818 (15 August 2003); *Letter dated 15 August 2003 from the representative of the Libyan Arab Jamahiriya addressed to the President of the Security Council*.

<sup>54</sup> At the time that the sanctions were applied, a number of speakers expressed concern that the vagueness of the sanctions regime's objectives would make them difficult to satisfy. See S/PV.3063 (31 March 1992), p. 21 (Libya), p. 36 (Iraq), p. 57 (India).

<sup>55</sup> SC Res. 1054 (26 April 1996), para. 1(a).

sanctuary to terrorist elements.<sup>56</sup> As with the Libyan case, the Sudan example demonstrates that it is difficult to verify precisely when a target has complied with an objective as general as ceasing providing support to terrorism. In June 2000, more than four years after the 1054 Sudan sanctions regime was first established, Sudan's Minister for External Affairs sent a letter to the President of the Security Council outlining the steps that Sudan had taken to comply with its obligations under the sanctions regime and requesting that a meeting of the Council be convened in order to lift the sanctions.<sup>57</sup> Over the following days, the President of the Security Council also received letters from the Foreign Ministers of Egypt and Ethiopia, as well as from the Chairmen of the Arab Group, the Non-Aligned Movement and the African Group, all supporting Sudan's request that the sanctions be lifted.<sup>58</sup>

Despite the requests received in June 2000 advocating the swift convening of a meeting to lift the sanctions, the Council did not consider the matter for a further fifteen months. In late September 2001, the Council noted the steps that had been taken by the Sudanese government to comply with its obligations under the sanctions regime,<sup>59</sup> as well as a collection of correspondence it had received fifteen months earlier advocating the lifting of the sanctions against Sudan.<sup>60</sup> It then welcomed the accession of Sudan to various international conventions

<sup>56</sup> *Ibid.*, para. 1(b).

<sup>57</sup> S/2000/513 (1 June 2000): *Letter dated 1 June 2000 from the representative of the Sudan addressed to the President of the Security Council*, annex. In making the case that the Sudan had complied with its obligations connected to the sanctions regime, the Minister argued that the Sudan had: (a) done all it could to locate the individuals suspected of undertaking the assassination attempt against President Mubarak, but without success, co-operating fully with investigations carried out by the governments of Egypt and Ethiopia; (b) taken a number of steps to demonstrate its commitment to curbing terrorism, including signing a number of international conventions designed to combat terrorism; and (c) maintained good relations with all of its ten neighbours and committed to the maintenance of international peace and security.

<sup>58</sup> The letters from the Foreign Ministers of Egypt and Ethiopia were not circulated as official documents, but are noted in resolution 1372 (2001), by which the Council ultimately terminated the sanctions: see SC Res. 1372 (28 September 2001), preambular para. 4. For the other letters mentioned, see S/2000/517 (1 June 2000), S/2000/521 and S/2000/533: letters dated 1, 2 and 5 June 2000 from the representatives of Algeria (in his capacity as Chairman of the Arab Group), South Africa (in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement) and Gabon (in his capacity as Chairman of the African Group), respectively, addressed to the President of the Security Council.

<sup>59</sup> SC Res. 1372 (28 September 2001), preambular para. 2.

<sup>60</sup> *Ibid.*, preambular paras. 3–5.

for the suppression of terrorism,<sup>61</sup> and decided to terminate the sanctions.<sup>62</sup>

In the case of the 1267 Taliban/Al Qaida sanctions regime, the Security Council has blended examples of both best and worst practice in its articulation of objectives. In its early decisions connected with the 1267 regime, the Council articulated clear and objectively verifiable criteria, the achievement of which would lead to the lifting of sanctions. The major initial objective of the sanctions was thus to ensure that the Taliban turned Usama Bin Laden over to authorities in a country where he had been indicted.<sup>63</sup> In December 2000, the Council identified additional requirements with which the Taliban must comply before the sanctions would be terminated, including: ceasing providing sanctuary and/or training for international terrorists; ensuring that its territory was not being used by terrorists or for the organisation of terrorist acts against other states; co-operating with efforts to bring indicted terrorists to justice; and closing terrorist camps within its territory.<sup>64</sup> At the same time, the Council also attached a time-limit to the sanctions, deciding that they would terminate after twelve months unless it were to decide otherwise.<sup>65</sup> The incorporation of a time-limit in theory meant that, as the time-limit approached, the Council would need to reconsider the situation, assessing whether the objectives had been met and, in the case of reapplication, either reaffirm or modify the objectives already outlined.

In the post-September 11 environment, however, the Council appeared to lose its appetite for articulating clear objectives in connection with the 1267 regime. It also gave up on time-limits. In its subsequent decisions, the Council has noted that the sanctions would be reviewed after a certain period, at which point they would either be maintained in their current form or strengthened.<sup>66</sup> This impulse to maintain unlimited sanctions against Al Qaida is understandable. There are few who would advocate that Al Qaida is not a legitimate sanctions target or that the Council should adopt a lenient approach to such terrorist organisations. Nevertheless, as a matter of principle, the legitimacy of the Council's overall sanctions system suffers when there is a

<sup>61</sup> *Ibid.*, preambular para. 6.   <sup>62</sup> *Ibid.*, para. 1.

<sup>63</sup> SC Res. 1267 (15 October 1999), paras. 2, 14.

<sup>64</sup> SC Res. 1333 (19 December 2000), paras. 1–3, 23–24.   <sup>65</sup> *Ibid.*, para. 23.

<sup>66</sup> SC Res. 1390 (16 January 2002), para. 3; SC Res. 1455 (17 January 2003), paras. 1–2; SC Res. 1526 (30 January 2004), paras. 1, 3; SC Res. 1617 (29 July 2005), para. 21; SC Res. 1735 (22 December 2006), para. 33.

lack of transparency in the articulation of sanctions objectives, no matter how easy it might be to rationalise or justify such a lack of transparency. The Interlaken and Bonn-Berlin inter-governmental processes have both stressed the importance of articulating clearly the criteria to be fulfilled through the application of sanctions.<sup>67</sup> If there is a legitimate reason for maintaining sanctions against a target, then it should not be a difficult matter to identify that reason transparently and to set transparent objectives, the achievement of which will lead to the termination of sanctions. Even if such objectives are unlikely ever to be fulfilled, as may be the case with Al Qaida, they should nevertheless be articulated.

In practice, such specific objectives would likely focus on responding to terrorist events that have already taken place. Thus, for instance, a more objectively verifiable goal connected with the Taliban/Al Qaida sanctions regime might be bringing about the capture and trial of specific individuals suspected of having been involved in Al Qaida-organised terrorist attacks. The Council could also provide for the possibility that sanctions against listed individuals and groups would be relaxed, suspended or lifted if those individuals were to co-operate with investigations into Al Qaida's activities or demonstrate through acts of good faith that they are no longer associated with Al Qaida.

### 1.3 *Transparency in sanctions committees*

Traditionally, the decision-making process in the Security Council's sanctions committees has been less than transparent.<sup>68</sup> The committees have tended to meet in closed sessions, with little public record of their proceedings.<sup>69</sup> Prior to 1995, the transparency of the committees reached a low point, with a number of sanctions committees failing to report to the Council on a regular basis, despite the fact that their

<sup>67</sup> *Targeted Financial Sanctions: A Manual for Design and Implementation. Contributions from the Interlaken Process* (Providence, RI: Watson Institute for International Studies, 2001), 5; *Design and Implementation of Arms Embargo and Travel Sanctions and Aviation-related Sanctions: Results of the Bonn-Berlin Process* (Bonn International Center for Conversion, 2001), 38 (Comment 45).

<sup>68</sup> Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee* (New York: Transnational Publishers, 2000), pp. 33, 36.

<sup>69</sup> Nevertheless, there are some examples in the public domain of records from Sanctions Committee meetings. For an unauthorised collection of some of the early meetings of the Iraq Sanctions Committee, see Daniel L. Bethlehem and E. Lauterpacht, *The Kuwait Crisis: Sanctions and Their Economic Consequences* (Cambridge: Grotius Publications, 1991), vol. 2, Part II, pp. 773–985.

mandates required them to undertake such reporting. Of the early sanctions committees, only the 253 Southern Rhodesian Committee consistently provided the Council with reports relating to its activities.<sup>70</sup> Up until the mid-1990s, few sanctions committees had submitted regular written reports to the Council, with the 841 Haiti Sanctions Committee failing to submit even a solitary report during its sixteen-month existence.<sup>71</sup>

The main motivations for holding sanctions committee meetings behind closed doors and restricting public access to meeting records appear to be a concern regarding the sensitive, confidential nature of the issues discussed, as well as a desire to foster genuine, constructive debate rather than 'grandstanding'.<sup>72</sup> One commentator with first-hand experience of the inner workings of the 661 Iraq Sanctions Committee has contended, however, that discussion of sensitive, confidential matters accounted for a mere 2.5 per cent of the 661 Committee's meeting time, and that the closed meeting format in fact elicited little candour and frankness from committee members.<sup>73</sup> Even more damning is the same commentator's conclusion that the lack of transparency in the proceedings of the 661 Committee actually aided Iraq and sanctions evaders, as it shielded them from the public spotlight.<sup>74</sup>

Recognising that the sanctions committees were perceived to lack transparency, the President of the Security Council issued a note in March 1995, with the primary aim of improving transparency.<sup>75</sup> The note, which had the backing of all Council members, proposed the introduction of a number of measures designed to make the procedures of the sanctions committees more transparent. Those measures included the preparation of annual reports, with a concise summary of activities undertaken in the reporting period, as well as the expedited preparation of summary records of committee meetings.<sup>76</sup> Four years later, in January 1999, the President of the Security Council issued another note regarding the work of the sanctions committees, outlining further proposals for improving transparency.<sup>77</sup> The statement suggested that transparency should be increased: by convening substantive and detailed briefings on the work of the committees, to be given by the

<sup>70</sup> See Appendix 3, Table F. <sup>71</sup> *Ibid.*

<sup>72</sup> Conlon, *United Nations Sanctions Management*, p. 34.

<sup>73</sup> *Ibid.* <sup>74</sup> *Ibid.*, p. 151. <sup>75</sup> S/1995/234 (29 March 1995). <sup>76</sup> *Ibid.*, para. 1.

<sup>77</sup> S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees.*

chairpersons of the committees;<sup>78</sup> by making publicly available summary records of formal meetings of the sanctions committee;<sup>79</sup> and by posting information on the work of the sanctions committees on the internet.<sup>80</sup>

The transparency of the sanctions committees has improved considerably in certain respects as a result of these Council initiatives. Sanctions committees now report to the Council on an annual basis;<sup>81</sup> information relating to each operating committee is available via the internet;<sup>82</sup> the Security Council has begun including additional details of the work of the committees in its annual reports to the General Assembly;<sup>83</sup> and a number of committee Chairs have briefed the Council on their committee's activities in both formal meetings open to the public<sup>84</sup> and informal consultations.<sup>85</sup>

Nevertheless, despite these positive initiatives, there is still no public access either to committee meetings themselves, or to the records of those meetings. Even in respect of the most positive example of transparency, the submission of reports, the record of sanctions committees has improved without becoming stellar. While sanctions committees routinely submit annual reports on their work, those reports tend to lack genuine substance, often conveying little valuable information on

<sup>78</sup> *Ibid.*, para. 18. <sup>79</sup> *Ibid.*, para. 19. <sup>80</sup> *Ibid.*, para. 20. <sup>81</sup> See Appendix 3, Table F.

<sup>82</sup> See <http://www.un.org/Docs/sc/committees/INTRO.htm>.

<sup>83</sup> For the first Security Council annual report containing a section on the work of subsidiary organs, see A/53/2 (1998), pp. 159-169.

<sup>84</sup> For examples of oral briefings given by Sanctions Committee Chairs in formal Security Council meetings, see S/PV.4027 (29 July 1999), pp. 2-5 (briefing by the Chairman of the 864 Committee); S/PV.4090 (18 January 2000), pp. 4-10 (briefing by the Chairman of the 864 Committee); S/PV.4113 (15 March 2000), pp. 2-7 (briefing by the Chairman of the 864 Committee); S/PV.4325 (5 June 2001), pp. 3-4 (containing a statement by the Chairman of the 1267 Committee on the activities of the Committee of Experts on Afghanistan); S/PV.4405 (5 November 2001), pp. 2-5 (containing a statement by the Chairman of the 1343 Committee on the activities of the Panel of Experts on Liberia); S/PV.4673 (18 December 2002), in general (briefings by the Chairmen of the 661 Committee, the 864 Committee, the 1267 Committee and the 1343 Committee); S/PV.4798 (29 July 2003), pp. 2-6 (briefing by the Chairman of the 1267 Committee); S/PV.4888 (22 December 2003), in general (briefings by the Chairmen of the 661, 751, 918, and 1132 Committees); pp. 2-8 (briefing by the President of the Security Council, in his capacity as the Chairman of the 1267 Committee).

<sup>85</sup> Although there are no public records of informal consultations, the President of the Security Council sometimes issues a press statement after consultations. For examples of such statements noting that the Council had been briefed by committee chairs, see: SC/7370 (22 April 2002) (Chairman of the 1343 Committee); SC/7518 (30 September 2002) (Chairman of the 1267 Committee); SC/7730 (15 April 2003) (Chairman of the 1267 Committee).



the manner in which the committees have functioned and providing few substantive or meaningful recommendations. Welcome exceptions include the final report issued by the 724 Yugoslavia Committee,<sup>86</sup> as well as reports by the 1267 Committee providing analytical assessments of sanctions implementation and responses to the findings of the Taliban/Al Qaida Monitoring Team.<sup>87</sup>

## 2. A less than constant practice: the problem of consistency

*The power at the disposal of the Security Council is the power commanded by the solidarity of nations opposed to the transgression of the Charter of the United Nations. It is first and foremost the power of principle. What makes the Council's task particularly onerous – and, I am sure, ultimately fruitful – is that principles must be consistently applied.*

UN Secretary-General Perez de Cuellar<sup>88</sup>

The principle of consistency requires that political power should be exercised in a consistent manner. Decisions should thus be made in a predictable rather than an arbitrary manner. Consistency contributes to the rule of law by promoting predictable standards of behaviour. In the context of UN sanctions, the principle of consistency requires that once the Security Council has decided to impose sanctions, it should seek to ensure, to the extent possible, that its practice is consistent from one sanctions regime to another.<sup>89</sup> In particular, arbitrary decision-making should be avoided.

The track-record of the Security Council with respect to consistency is mixed. While early sanctions regimes defined themselves largely by their difference from each other, a more consistent practice seems to be evolving, particularly with respect to similar types of sanctions, such as arms embargoes, travel bans and assets freezes. Nevertheless, there is room for improvement. Some differentiation between sanctions regimes is unavoidable and is sometimes desirable, as each sanctions

<sup>86</sup> S/1996/946 (15 November 1996). <sup>87</sup> See Appendix 3, Table F.

<sup>88</sup> Statement by Secretary-General Perez de Cuellar, during a Security Council meeting at which the Council adopted resolution 670 (1990) to address the situation between Iraq and Kuwait: S/PV.2943 (25 September 1990), p. 7.

<sup>89</sup> The question of consistency in the application of sanctions, in the sense of whether the Security Council consistently makes the decision to apply sanctions in comparable situations that pose a threat to the peace, is dealt with below, in the discussion on the element of equality. As noted, this section considers the consistency of the Council's approach once it has taken the decision to apply sanctions.

regime usually arises from particular circumstances and aims to achieve particular objectives. Where possible, however, the Council should seek to avoid the perception of arbitrariness and strive to ensure that its practice is as consistent as it can be. When it adopts a novel approach, such an approach should arise from considered reflection, should aim at improvement and should be clearly justified.

The principle of consistency can be broadly applied to the Council's sanctions-related activities in general, as the Council should ideally approach every aspect of its decision-making in a consistent manner. Thus, the Council should seek where possible to employ a uniform approach to the aspects of its sanctions practice identified in Chapters 5 to 8, above. With respect to each of those components of sanctions practice there is room for improvement in consistency. For the purposes of illustrating how the Council might improve its consistency of approach, analysis here focuses upon the Council's practice with respect to setting objectives, delineating the scope of sanctions, and establishing subsidiary bodies to administer and monitor sanctions.

### *2.1 Consistency and the objectives of sanctions regimes*

The Council's practice with respect to outlining the objectives of sanctions regimes has already been touched upon, under the heading of transparency. Just as the discussion there demonstrates that the Council's articulation of objectives has not always been transparent, it also illustrates a lack of consistency. While the Council has on occasion identified clear, objectively verifiable conditions, the satisfaction of which will result in the suspension or termination of the sanctions, on other occasions it has articulated general or vague conditions, the satisfaction of which is extremely difficult to verify objectively. In the case of the Rwanda sanctions regime, the Council failed to stipulate any objective at all.

The Council's approach to objectives has not only been subject to variation from one sanctions regime to another. As the discussion above of the Taliban and Al Qaida sanctions regime illustrates, the Council's strategy has at times been inconsistent with respect to objectives connected with the same sanctions regime. In its oversight of that regime, the Council has modified its approach from one of embracing precise and specific objectives, as demonstrated in its early resolutions such as 1267 (1999) and 1333 (2000), to articulating general or vague objectives, as in the case of resolution 1390 (2002), to neglecting to identify any explicit objective at all, as in the case of resolutions 1455 (2003) and 1526 (2004).

## 2.2 Consistency and the scope of sanctions

One area in which the Security Council's practice has exhibited an increasing degree of consistency is that of setting the scope of its sanctions regimes. Improvements in this sphere owe a debt to the sanctions policy roundtables that have been sponsored in turn by the Swiss, German and Swedish governments and have come to be known as the 'Interlaken', 'Bonn-Berlin' and 'Stockholm' processes. The Interlaken process sought to hone the tool of targeted financial sanctions.<sup>90</sup> The Bonn-Berlin process focused upon the design and implementation of arms embargoes and travel and aviation sanctions.<sup>91</sup> The Stockholm process focused upon the question of making targeted sanctions effective.<sup>92</sup> Largely as a result of those processes, the Council's approach to establishing the scope of similar types of sanctions appears to be following a more consistent pattern. It has thus employed similar language in delineating the scope of its various sanctions regimes incorporating arms embargoes and financial, travel and aviation sanctions.

Nevertheless, there remains clear room for improvement in the consistency of approach to the articulation of exemptions from sanctions, in particular with respect to comprehensive sanctions. One category of commodities and products theoretically exempt from each of the comprehensive sanctions regimes was medical supplies.<sup>93</sup> However, the operation of this exemption was complicated in the case of Iraq due to the introduction of the 'dual-use' prohibition, according to which items with the potential for conversion or diversion for military purposes could not be sold or supplied to Iraq.<sup>94</sup> Thus, despite the fact that

<sup>90</sup> *Contributions from the Interlaken Process.*    <sup>91</sup> *Results of the Bonn-Berlin Process.*

<sup>92</sup> *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options. Results from the Stockholm Process on the Implementation of Targeted Sanctions* (Uppsala: Uppsala University, 2003).

<sup>93</sup> SC Res. 253 (29 May 1968), para. 3(d) (Southern Rhodesia); SC Res. 661 (6 August 1990), para. 3(c) (Iraq); SC Res. 757 (30 May 1992), para. 4(c) (FRYSM); SC Res. 820 (17 April 1993), para. 12 (Bosnian Serbs); SC Res. 917 (6 May 1994), para. 7(a) (Haiti).

<sup>94</sup> SC Res. 666 (13 September 1990), paras. 8; SC Res. 687 (3 April 1991), paras. 8–13, 24, 25 and 27; S/23036 (13 September 1991), para. 7 (in which the 661 Committee defined dual-use items as 'items meant for civilian use but with potential for diversion or conversion to military use'). Some years later, the Council simplified the review of potential dual-use items through the introduction of the 'Goods Review List', which was designed both to provide a comprehensive list of items that were exempt, as well as to speed up the process for determining whether items could in fact be used to develop weapons of mass destruction. See SC Res. 1051 (27 March 1996), para. 5; SC Res. 1284 (17 December 1999), para. 17; SC Res. 1409 (14 May 2002); SC Res. 1447 (4 December 2002); SC Res. 1454 (30 December 2002).

medical supplies in theory remained exempt from the Iraq sanctions regime, in practice the 661 Committee did place holds upon the supply of medical items to Iraq, on the basis that they were potential dual-use items.<sup>95</sup> The 2005 Independent Inquiry into the Oil-for-Food Programme reported that:

The 661 Committee blocked a wide variety of items, ranging from educational materials to equipment for health treatment, health care, electricity and water supply, chemicals, laboratory equipment, generators, chlorine, water purification inputs, and communication equipment, all suspected to be for 'dual-use'. For example, it took over a year to release ambulances on the grounds that they contained (as they should) communication equipment. Thus for over two years there was no access to new ambulances.<sup>96</sup>

Another category of products that was exempt from each regime was foodstuffs. Again, however, the application of this exemption was not uniform. In the cases of Southern Rhodesia and Iraq, the Council permitted the sale or supply of foodstuffs 'in humanitarian circumstances'. In the case of Iraq, a fact-finding mission that was deployed to Iraq just after the conclusion of the Gulf War hostilities determined that humanitarian circumstances did indeed exist.<sup>97</sup> The Council subsequently decided that foodstuffs would be exempt.<sup>98</sup> In the other instances of comprehensive sanctions, the Council outlined a general exemption for foodstuffs from the outset, thus suggesting that it was moving away from the practice of stipulating that 'humanitarian circumstances' must exist in order for food to be exempt from sanctions.<sup>99</sup>

Other items or categories of items were exempted from some regimes but not from others. The Council exempted educational equipment in

<sup>95</sup> See Center for Economic and Social Rights (CESR), (*UN Sanctioned Suffering: A Human Rights Assessment of United Nations Sanctions on Iraq* (New York: Center for Economic and Social Rights, 1996), p. 23 (documenting shortages in pharmaceutical supplies to Iraq and referring to an example in which the 661 Committee denied permission to export to Iraq the cytotoxic drug, Mustine, on the basis that it contained mustard that might have had a military use as mustard gas).

<sup>96</sup> *The Impact of the Oil-for-Food Programme on the Iraqi People*, Report of an Independent Working Group established by the Independent Inquiry Committee, p. 28. This report is available at: [http://www.iic-offp.org/documents/Sept05/WG\\_Impact.pdf](http://www.iic-offp.org/documents/Sept05/WG_Impact.pdf).

<sup>97</sup> S/22366 (20 March 1991). The report concluded that humanitarian circumstances did exist, warning that the Iraqi people might soon face a 'catastrophe', including 'epidemic and famine' if 'massive life-supporting needs' were not met: see para. 37.

<sup>98</sup> SC Res. 687 (3 April 1991), para. 20.

<sup>99</sup> SC Res. 757 (30 May 1992), para. 4(c) (FRYSM); SC Res. 820 (17 April 1993), para. 12 (Bosnian Serbs); SC Res. 917 (6 May 1994), para. 7(a) (Haiti).

the case of the Southern Rhodesian sanctions regime,<sup>100</sup> and news and informational materials in the case of Southern Rhodesia and Haiti.<sup>101</sup> In the case of Iraq, it exempted 'civilian and humanitarian supplies',<sup>102</sup> whereas with respect to FRYSM and Haiti it exempted commodities and products for 'essential humanitarian need'.<sup>103</sup> In the case of FRYSM, the Council also permitted and then restricted transshipment of goods and commodities along the Danube,<sup>104</sup> exempted 'clothing for essential humanitarian need',<sup>105</sup> permitted the supply of items that were essential to repairs being carried out on Serbian locks on the Danube,<sup>106</sup> and enabled the Federal Republic of Yugoslavia (Serbia-Montenegro) to export diphtheria serum temporarily, when global supplies were running dangerously low.<sup>107</sup> In the case of Haiti, the Council also exempted petroleum and petroleum products, including propane gas for cooking.<sup>108</sup>

The Security Council's inconsistency with respect to the elaboration of exemptions has not been confined to its comprehensive sanctions regimes. The Bonn-Berlin and Stockholm processes have recommended that the Council should also embrace standard exceptions from arms, financial and aviation sanctions.<sup>109</sup> There is thus general recognition

<sup>100</sup> SC Res. 253 (29 May 1968), para. 3(d).

<sup>101</sup> For Southern Rhodesia, see SC Res. 253 (29 May 1968), para. 3(d). For Haiti, see SC Res. 917 (6 May 1994), para. 8.

<sup>102</sup> SC Res. 687 (3 April 1991), para. 20.

<sup>103</sup> For FRYSM, see SC Res. 760 (18 June 1992), sole para. In its final report, the 724 Committee noted that an important part of its work had been determining the commodities and products that fell within the phrase 'essential humanitarian need'. It considered applications for exemptions under that category on a case-by-case basis. See S/1996/946 (15 November 1996), para. 13. For Haiti, see SC Res. 917 (6 May 1994), para. 7(b). Such exemptions required the approval of the Haiti Sanctions Committee under the no-objection procedure.

<sup>104</sup> SC Res. 757 (30 May 1992), para. 6; SC Res. 787 (16 November 1992), para. 9; SC Res. 820 (17 April 1993), para. 15.

<sup>105</sup> SC Res. 943 (23 September 1994), para. 3; SC Res. 970 (12 January 1995), para. 5; SC Res. 988 (21 April 1995), paras. 13, 15.

<sup>106</sup> SC Res. 992 (11 May 1995), para. 2.

<sup>107</sup> SC Res. 967 (14 December 1994), para. 1. This exemption was recommended by the 724 Committee. See S/1996/946 (15 November 1996), para. 16(g).

<sup>108</sup> SC Res. 917 (6 May 1994), paras. 7(c)-(d).

<sup>109</sup> See *Results of the Bonn-Berlin Process*, p. 32 (Comment 22 - encouraging the Security Council's Working Group on Sanctions to recommend the adoption of a standing list of exceptions from arms embargoes for non-lethal military equipment for humanitarian use) *Results from the Stockholm Process*, p. 112 (para. 347, recommending that humanitarian exceptions be outlined from financial sanctions, including permitting states to allow exemptions from assets freezes for humanitarian purposes), and p. 120 (para. 374, recommending that clear humanitarian exemptions be provided from aviation sanctions for emergencies, humanitarian need and religious obligation).

amongst intergovernmental sanctions practitioners of the desirability of improving consistency in the articulation of the parameters of the different types of sanctions at the Council's disposal.

### *2.3 Consistency and the Security Council's use of subsidiary bodies*

As the discussion in Chapter 8 illustrates, the Council has established a range of subsidiary actors to facilitate the administration, monitoring and implementation of its sanctions regimes. The Council's use of subsidiary actors very much indicates an ad hoc, rather than a consistent approach.

#### *i. The establishment of sanctions committees*

The Council's use of sanctions committees has not been entirely consistent. The Council has sometimes established a new committee when initiating a sanctions regime, whilst at other times it has created a new committee some time later. On other occasions, the Council has entrusted responsibilities pertaining to a new sanctions regime to an existing committee, or it has not established a committee at all. This is one area where achieving consistency should be a simple matter. If sanctions committees are a good idea, then they should be established routinely when sanctions are applied. While the mere existence of a sanctions committee does not guarantee that there will be effective administration, monitoring or implementation of a sanctions regime, in the absence of a sanctions committee a sanctions regime is likely to be neglected.

The Council's practice has also varied with respect to the elaboration of the responsibilities bestowed upon sanctions committees. Although sanctions committees generally share a common set of core tasks, including receiving information from states regarding sanctions violations and reporting to the Council with observations and recommendations, there has been considerable variation in sanctions committee mandates. Although some differentiation of mandate is likely to be required in order to tailor a particular committee's activities to the appropriate sanctions regime, all sanctions committees should be performing the same basic duties with respect to administering, monitoring and reporting on sanctions implementation.<sup>110</sup>

<sup>110</sup> See *Results from the Stockholm Process*, p. 24 (para. 41).

## ii. Commissions of inquiry, bodies of experts and monitoring mechanisms

As noted in Chapter 8, the Council has created a range of subsidiary organs in addition to sanctions committees as part of its efforts to ensure that sanctions are effectively monitored and implemented. It is not always clear why the Council has decided in a particular instance to establish a 'commission', as opposed to a 'panel' or 'group' of experts or a 'monitoring mechanism'. The responsibilities carried out by these entities are sometimes so similar that giving it a different name amounts to putting a different saddle on the same horse. Experts seconded to these subsidiary entities perform similar core tasks, including investigating alleged sanctions violations, assessing how effective sanctions have been, and making recommendations regarding whether, and if so when and how, sanctions should be strengthened, loosened or lifted. In addition to using different names for what are essentially identical bodies, the Council has also appointed varying numbers of experts, providing them with mandates of differing length.

## 3. First among equals: the veto and the problem of equality

*[T]he provisions of the Charter concerning collective security cannot become operational unless all countries fully respect international law and unless the principle of equality among States is made a reality.*<sup>111</sup>

*The success of the United Nations in the maintenance of international peace and security, within the framework of collective security, is dependent on the ability . . . of the Council to act in upholding the rule of law on a non-selective basis.*<sup>112</sup>

As outlined in Chapter 2, the principle of equality requires that all parties over whom power is wielded are considered equal before that power and thus that decisions affecting the rights, entitlements and obligations of those parties are made in a consistent manner. In a legal context, equality requires that all parties should be considered equal before the law. Thus the law should be equally applied and no one party should be considered to be above the law. In a political context, one

<sup>111</sup> King Hassan II of Morocco, speaking at the Council's Summit Meeting held at the level of Heads of State: S/PV.3046 (31 January 1992), p. 37.

<sup>112</sup> Ambassador Redzuan of Malaysia, speaking during the Council's deliberations on the situation in Bosnia and Herzegovina: S/PV.3135 (13 November 1992), p. 35.

method of achieving equality is to provide all parties with the opportunity to assume a position of power, through democratic representation.

In the context of UN sanctions, equality requires that if sanctions are imposed against one state in a given set of circumstances, then they should be applied against other parties in a similar set of circumstances. It also requires that the Security Council itself be broadly representative of the broader UN membership and that all of its members have the opportunity to stand for election to the Council. Section 3.1 below explores how the veto power has undermined equality in practice. Section 3.2 examines the extent to which the Council can be said to be broadly representative.

### 3.1 *Equality as equal treatment*

At the United Nations the principle of equality is theoretically enshrined in Article 2(1) of the UN Charter, which provides that: ‘The Organization is based on the principle of the sovereign equality of all its Members.’ In practice, however, the aspiration of equality contained in Article 2(2) is considerably circumvented by Articles 23 and 27, which effectively enable some states to be more equal than others. Article 23(1) provides that any UN member state can be elected to one of ten elected positions on the Security Council, but it also extends permanent Council membership to five countries – China, France, the Russian Federation, the United Kingdom and the United States. Article 27(1) grants those permanent members the right of veto over all non-procedural matters.<sup>113</sup> Thus, although all UN member states are equal in name and have the potential to sit on the Security Council, some are entitled not only to sit on the Council permanently, but also to prevent the Council from adopting a substantive decision.

The existence of permanent Security Council membership with the power of the veto dramatically undermines the Council’s capacity to ensure that all states are treated equally when Chapter VII powers are exercised. It effectively permits five states to stand above the law, by enabling them to prevent the Council from taking any action with which they disagree. With respect to sanctions, this means that, in identical factual circumstances, where the application of sanctions is

<sup>113</sup> Article 27(3) does not mention the word ‘veto’, providing simply that: ‘Decisions on all [non-procedural] matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.’



warranted in order to address a threat to international peace and security, one state may find itself the target of a sanctions regime, whereas another would be able to avoid the application of sanctions due to the fact that it is a permanent member of the Council or it has a permanent member as a close ally.

In the Security Council's debates, speakers have often remarked that the Council has not applied sanctions equally in its efforts to maintain peace and security. In December 2006, when the Council prepared to adopt resolution 1737, Iran complained that the Council had been prepared to apply sanctions against it but had done nothing to rein in the nuclear aspirations of Israel.<sup>114</sup> Iran could equally have pointed to India and Pakistan as other examples of states that have gone nuclear without being subject to UN sanctions. In practice, there have been relatively few occasions when the actual use of the veto has prevented the Council from applying sanctions.<sup>115</sup> But the threat of the use of the veto and even the mere knowledge that the veto might be utilised, have likely prevented sanctions from being proposed on many other occasions.<sup>116</sup>

### 3.2 Equality as equal representation

The principle of equality through equal representation requires that the parties over whom political power is exercised should be involved in the selection of those who exercise such power. Equal representation encourages accountability, as those in elected positions of power must perform well in order to retain their power. In domestic political systems, democratic representation enables citizens to elect those in positions of political power. In the context of UN sanctions, equal representation requires that the broader membership of the UN, and

<sup>114</sup> S/PV.5612 (23 December 2006), pp. 8–9.

<sup>115</sup> In the case of South Africa, prior to the eventual application of sanctions the veto was used twice to prevent the application of a mandatory arms embargo. A draft resolution which would have imposed economic sanctions against South Africa was also vetoed: see *Repertoire of the Practice of the Security Council, Supplement for 1975–80* (New York: United Nations, 1987), p. 399.

<sup>116</sup> The *Repertoire of the Practice of the Security Council* documents a number of concrete examples in which a draft resolution which would have applied sanctions has not been put to the vote. One example occurred in August 1980, with respect to a draft resolution that would have called upon states to impose sanctions against Israel was not put to the vote: see *Repertoire, Supplement for 1975–80, ibid.*, p. 400. It is probable, of course, that there have been many instances when, through the threat of a veto, a proposal to impose sanctions did not even proceed to the point of becoming a draft resolution.

potentially the broader public, should be involved in selecting which states sit on the Security Council.

The process for filling the fifteen seats on the Council displays some of the characteristics of democratic representation. The broader UN membership elects ten of the fifteen members of the Security Council (the 'elected ten' or 'E10') on a rotating basis, with five newly elected members joining the Council each year. The other five members – China, France, the Russian Federation, the United Kingdom and the United States – sit permanently on the Council (the 'permanent five' or 'P5') and possess the veto power. Although there are no specific rules regarding which states should sit on the Council as part of the E10, an informal system of regional representation has evolved, according to which regional blocs elect one or more representatives each year.

There has been much discussion at the UN about the need to reform the Security Council so that it is more representative of the broader membership. When the UN was first established, the Security Council had eleven members, forming just less than one-fifth of the broader UN membership of fifty-one states.<sup>117</sup> In the late 1960s the Council's membership was expanded to fifteen, partly in response to the expansion of the broader membership as a result of the process of decolonisation.<sup>118</sup> At the time that the Council grew to fifteen, the broader UN membership numbered 113.<sup>119</sup> Thus the ratio of the broader membership to Council members was just above seven to one. More than forty years after that first expansion of the Council, the membership of the Council remains at fifteen, while the broader membership has grown in excess of 190. In 2007, the ratio of the broader membership to Council members thus stands at over twelve to one.

Proposals for further expanding the Security Council's membership have been on the UN General Assembly's agenda since 1979.<sup>120</sup> Advanced discussions on the topic of Security Council reform have taken place since 1994 in the Open-ended Working Group on the

<sup>117</sup> Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 176 (listing the fifty-one founding UN member states).

<sup>118</sup> The expansion in Security Council membership was approved by the UN General Assembly on 17 December 1963 and entered into force on 31 August 1965, although, as Simma notes, the additional four member states did not in fact assume their places on the Council until the beginning of 1966. See Simma, *The Charter of the United Nations* (2nd edn, 2002), p. 437. For the General Assembly resolution approving the expansion, see A/RES/1991 A (XXVIII) (17 December 1963).

<sup>119</sup> Simma, *The Charter of the United Nations* (2nd edn, 2002), vol. II, p. 1361. <sup>120</sup> *Ibid.*

Reform of the Security Council, which was established by the General Assembly at the end of 1993.<sup>121</sup> The Working Group has considered various reform proposals, including expanding Council membership to as many as twenty-five.<sup>122</sup> In late 2004 the High-level Panel on Threats, Challenges and Change appointed by the UN Secretary-General proposed two potential formulas for an expansion in the Council,<sup>123</sup> both of which were endorsed by the UNSG in his 2005 report *In Larger Freedom*.<sup>124</sup> Both formulas would have entailed an expansion in Security Council membership from fifteen to twenty-four, with six seats apiece allocated on a regional basis to Africa, Asia/Pacific, Europe and the Americas. The first formula would provide for six new permanent seats, with no veto being created, as well as three new two-year non-permanent seats.<sup>125</sup> The second formula would provide for no new permanent seats but would create a new category of eight four-year renewable seats and one new two-year non-permanent (and non-renewable) seat.<sup>126</sup>

While these reform proposals might increase the democratic representativeness of the Council, certain other modifications could be made to the election process to bolster the potential of the Council membership to strengthen the rule of law. It has been the practice in some regional blocs to allow candidates to stand effectively unopposed. Some blocs operate largely according to a rotational process. While such a rotational process encourages broad representation within a bloc, it can lead to problematic outcomes, such as occurred recently in the African bloc when, according to the planned African rotation, Libya was to be nominated as the African representative at the next Council elections. Ultimately, Libya withdrew its candidacy, thus preventing a potentially embarrassing situation from materialising, whereby a state that had until recently been subject to significant coercive Council action under Chapter VII would itself have become a Security Council member.<sup>127</sup>

<sup>121</sup> The Open-ended Working Group was established by A/RES/48/26 (3 December 1993).

<sup>122</sup> For a concise summary of the various proposals, see Simma, *The Charter of the United Nations* (2nd edn, 2002), vol. II, pp. 1361–1363.

<sup>123</sup> *A more secure world: Our shared responsibility*: report of the Secretary-General's High-level Panel on Threats, Challenges and Change (New York: United Nations, 2004), paras. 250–253.

<sup>124</sup> A/59/2005 (21 March 2005): *In larger freedom: towards development, security and human rights for all*, paras. 169–170.

<sup>125</sup> *Ibid.*, para. 170 (Model A). <sup>126</sup> *Ibid.*, para. 170 (Model B).

<sup>127</sup> Felicity Barringer, 'U.S. Blocks Libya's Attempt to Gain Security Council Seat' *New York Times*, 11 July 2003, A7.

In order to ensure that Security Council members are capable of contributing to the maintenance of international peace and security and strengthening the rule of law, certain standards should be applied in the election of new members. Libya is not the only recent example of a potential Council member with a problematic recent history in the resolution of international disputes. At least two other states, which have actually held Security Council seats in recent years, had dubious records in the maintenance of international peace and security at the time they became members of the Council. Prior to its election to the Security Council for the period 2002–03, Bulgaria had failed adequately to regulate the export of arms from its jurisdiction. It had featured in a number of reports of Panels of Experts concerning the origins of arms found to have been imported to states targets in violation of arms embargoes, thus demonstrating that Bulgaria had failed to fulfil its duty to comply with sanctions.<sup>128</sup> Guinea, which also sat on the Council from 2002 to 2003, was itself accused by Human Rights Watch of supplying arms to Liberian rebels whilst Liberia was subject to arms sanctions.<sup>129</sup>

The ability of states with troublesome security records, such as Bulgaria and Guinea, to contribute to the maintenance of international peace and security and efforts to strengthen the rule of law must be open to question. Indeed, much as the election to the UN's Human Rights Commission of countries known to be persistent violators of human rights ultimately drew that body into disrepute,<sup>130</sup> the election of states with such troublesome security records can only undermine

<sup>128</sup> See, e.g., the reports of the Panels of Experts on UNITA and Somalia: S/2000/203 (10 March 2000), paras. 41–42 (documenting Bulgaria as the source of arms used to violate the UNITA sanctions) and 44 (documenting military training assistance provided in Bulgaria); S/2003/223 (25 March 2003), paras. 80–85 (documenting a Bulgarian arms dealer who had violated the arms embargo against Somalia). It is notable that, in the latter example, the Panel 'named and shamed' African countries (such as Yemen, Ethiopia, Eritrea and Djibouti) through which arms transited, without highlighting the countries in which the arms originated, which happened to include Bulgaria. The Chairman of the Somalia Sanctions Committee at the time – whose responsibility it was to forward the report to the Council – happened to be the Ambassador of Bulgaria.

<sup>129</sup> See Human Rights Watch, *Back to the Brink: War Crimes by Liberian Government and Rebels* (New York: HRW, 2002) p. 11 (documenting Guinean support of the Liberian rebel group, Liberians United for Reconciliation and Democracy (LURD)), p. 15 (calling on the Security Council to examine Guinea's role in fuelling the Liberian conflict).

<sup>130</sup> A prime example of this was the election of Libya as the Chair of the UN Human Rights Commission in January 2003. See Richard Waddington, 'Libya wins chair of UN human rights body despite record' *Independent* 21 January 2003, p. 12.

the Security Council's ability to serve as a positive force for the rule of law in international affairs. The Security Council's own subsidiary bodies have recommended that organisations such as the North Atlantic Treaty Organisation (NATO) and the European Union (EU) should make compliance with UN sanctions a condition of gaining membership to their organisations.<sup>131</sup> It is thus no small irony that the body responsible for applying sanctions permits documented sanctions violators to join its own ranks.

#### **4. Guilty until proven innocent? The problem of due process**

As outlined in Chapter 2, the principle of due process requires that parties against which coercive power is proposed to be exercised should be given a fair hearing and granted the opportunity to express their point of view regarding the potential decision. In the context of UN sanctions, the principle of due process requires that potential sanctions targets should be afforded the possibility to present their version of events. In other words, they should be presumed innocent until proven guilty. The Security Council's track-record with respect to due process is not strong. While states targets have been accorded some measure of due process, by virtue of the fact that they have generally been granted the opportunity to present their point of view at formal meetings when the Council votes to apply sanctions, little due process has been extended to non-state actors and individuals.

##### *4.1 Due process and states targets*

Of the various targets of UN sanctions, only member states have been accorded the opportunity to place their views regarding the proposed application of sanctions on the record in formal Security Council meetings. Representatives of Iraq, Yugoslavia (prior to dissolution), Libya, Liberia, Rwanda, the Sudan, North Korea and Iran have thus outlined their governments' positions regarding the actual or potential application

<sup>131</sup> S/1999/829 (28 July 1999) S/1999/829 (28 July 1999), paras. 14–15; S/2000/203 (10 March 2000), para. 56 (recommending that compliance with sanctions regimes should be among criteria considered by NATO and the EU when considering applications for membership).

of sanctions against their countries.<sup>132</sup> One other state target that was not a UN member – the Federal Republic of Yugoslavia (Serbia-Montenegro) – has also been granted the chance to express its opinion regarding proposed sanctions.<sup>133</sup> From a due process perspective, it is positive that most states targets have been granted the opportunity to argue their case at the open meetings at which the Council imposed sanctions. Although the spectre of a rogue regime arguing its case

<sup>132</sup> South Africa did not address the Security Council at the meeting at which sanctions were imposed, but it is not clear that it was prevented from so doing. For that meeting, see S/PV.2046 (4 November 1977). For Iraq's view on the sanctions imposed against it, see S/PV.2933 (6 August 1990), pp. 11–15; S/PV.2981 (3 April 1991), pp. 21–35. For Yugoslavia's position, calling for the application of an arms embargo, see S/PV.3009 (25 September 1991), pp. 6–20. For Libya's view prior to the application of sanctions, see S/PV.3033 (21 January 1992), pp. 4–25; S/PV.3063 (31 March 1992), pp. 3–22. For Rwanda's views on the proposed sanctions against it, see S/PV.3377 (17 May 1994), pp. 2–6. For the views of the Sudan on the sanctions proposed against it, see S/PV.3660 (26 April 1996), pp. 2–10. For the views of North Korea on the sanctions proposed against it, see S/PV.5551 (14 October 2006), pp. 7–8. For the views of Iran on the sanctions proposed against it, see S/PV.5612 (27 December 2006), pp. 8–13.

With respect to the Liberian sanctions regimes, a Liberian representative expressed the view of his government prior to the application of the 788 sanctions regime. See S/PV.3138, pp. 13–20 (prior to the adoption of resolution 788 (1992), applying sanctions). The views of the Liberian government were not expressed upon the application of the two subsequent sanctions regimes, however, which were each imposed without substantive discussion. See S/PV.4287 (7 March 2001) (imposing the 1343 sanctions regime); S/PV.4890 (22 December 2003) (imposing the 1521 sanctions regime). Nevertheless, prior to the extension of sanctions against Liberia the Chairman of the Liberian National Transitional Government, Mr Charles Gyude Bryant, was granted the opportunity to present his views before the Council. See S/PV.4981 (3 June 2004), pp. 6–10. Despite Chairman Bryant's plea to lift the timber and diamond sanctions, two weeks later, the Council adopted resolution 1549 (2004), extending the application of those sanctions.

<sup>133</sup> The entity referred to under the 757 sanctions regime as FRYSM and under the 1160 sanctions regime as FRY was eventually admitted to UN membership on 1 November 2000, under the name 'the Federal Republic of Yugoslavia'. See SC Res. 1326 (31 October 2000) (recommending FRY for membership); A/RES/55/12 (1 November 2000) (admitting FRY to UN membership). Although the views of the government of FRYSM were not expressed prior to the adoption of resolution 757 (1992), a representative was permitted to air that government's position when the Council adopted resolution 787 (1992), strengthening those sanctions. See S/PV.3137 (16 November 1992), pp. 67–77 (statement by 'Foreign Minister Djukic'). When the Council imposed the FRY sanctions regime, the target's position was expressed by Mr Vladislav Jovanović: S/PV.3868 (31 March 1998), pp. 15–19 (upon the adoption of resolution 1160 (1998)).

before the global public may be unpalatable,<sup>134</sup> it is surely better to provide other states with the opportunity to refute such claims, than to sweep them under the carpet.

#### 4.2 *Due process and non-state targets*

The question of providing due process to non-state actors, such as the illegal minority regime in Southern Rhodesia or the Angolan rebel group UNITA, is complicated, as issues of logistics and recognition would arise were it proposed that such actors should be entitled to appear before the Council to plead their case.<sup>135</sup> The proposition of according due process to a non-state actor such as Al Qaida raises even more thorny issues, as the Council would understandably be reluctant to take any action that might provide a forum for terrorists to justify their actions or suggest implicit Security Council recognition of that entity's legitimacy. Nevertheless, the principle of due process requires that an assumption of innocence be accorded even to those accused of the most heinous of crimes. A robust, rule of law-based sanctions framework would thus seek to extend due process in some form to any potential sanctions target.

#### 4.3 *Due process and individuals*

The due process failings of the UN sanctions system are particularly pronounced with respect to targeted individuals. As part of a movement towards better targeted, 'smart sanctions', the Security Council has increasingly applied sanctions against individuals, imposing travel and financial sanctions against leaders and officials deemed to share some responsibility in creating the circumstances necessitating the imposition of sanctions. This development is generally positive, as it aims to focus the coercive action upon decision-makers and specific targets associated with them in order to minimise the unintended impact upon innocent civilian populations.

<sup>134</sup> This occurred in the case of Rwanda, where the representative of Rwanda expressed the views of the regime which was at that very moment perpetrating genocide against its people. See S/PV.3377 (17 May 1994), pp. 2–6. A number of other delegates argued that the Rwandan intervention had been in poor taste. See, e.g., the same meeting at p. 11 (New Zealand) and p. 12 (United Kingdom).

<sup>135</sup> Bailey and Daws, in *The Procedure of the Security Council*, p. 156, note that in May 1966 the illegal Southern Rhodesian regime sought to address the Security Council, but its request was rejected.

The imposition of individual travel sanctions has proven uncontroversial on the whole, as placing restrictions upon a target's ability to travel internationally is generally seen as posing a nuisance to the target individuals, rather than infringing upon their basic rights. The application of financial sanctions, on the other hand, has led to significant due process concerns. The impulse to freeze bank accounts is understandable, particularly where target leaders may be suspected of having embezzled substantial amounts of state-owned funds. Nevertheless, the act of freezing bank accounts entails a significant infringement upon individual rights and freedoms, potentially leaving targets without the means to support themselves financially. To date, targeted individuals have been granted little opportunity to dispute the asserted facts leading to the inclusion of their names on financial blacklists. The Taliban and Al Qaida sanctions regime provides a case in point.

Under the 1267 Taliban and Al Qaida sanctions regime, states are required to freeze the assets of individuals and entities listed on a 'blacklist' of individuals and entities who are associated with Usama Bin Laden, the Taliban and Al Qaida.<sup>136</sup> The blacklist is compiled by the 1267 Taliban and Al Qaida Sanctions Committee, on the basis of suggestions submitted by committee members.<sup>137</sup> When proposals are made to add individuals or entities to the list, committee members have a defined period in which to object to the proposals. This period was initially 48 hours, but the Committee recently expanded the period to five working days.<sup>138</sup> As Committee decision-making is by consensus, if no member objects within that window then the proposed additions are included on the list.<sup>139</sup> The consensus method also means that once an individual or entity is placed on the list, they cannot be removed unless all fifteen committee members agree to their removal.

A number of individuals have sought to have their names removed from the list by appealing both to the 1267 Taliban and Al Qaida Sanctions

<sup>136</sup> SC Res. 1390 (16 January 2002), para. 2(a); SC Res. 1455 (17 January 2003), para. 2; SC Res. 1526 (30 January 2004), para. 1(a).

<sup>137</sup> The process by which proposed individuals and entities are added to the list has been ascertained through off-the-record interviews with diplomats and members of the UN Secretariat. The Taliban/Al Qaida black-list itself is posted at: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

<sup>138</sup> See para. 4(b) of the 1267 Committee's Guidelines, as posted at: [http://www.un.org/Docs/sc/committees/1267/1267\\_guidelines.pdf](http://www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf).

<sup>139</sup> See para. 4(a) of the Committee Guidelines, *ibid.*



Committee itself and to the capitals of Committee member states.<sup>140</sup> Legal proceedings have also been initiated before the Court of First Instance of the European Communities, seeking to have the European Council order freezing assets in accordance with the 1267 sanctions regime overturned on the grounds that the order violated fundamental human rights, including the right to a fair and equitable hearing.<sup>141</sup> The 1267 Committee itself has acknowledged the need to strike a balance between ‘respecting the human rights of those inscribed on the list’ and ‘the need to take preventive measures in the struggle against terrorism’.<sup>142</sup> It has also noted that several states have ‘stressed the importance of adhering to the rule of law and due process standards while implementing the sanctions measures’.<sup>143</sup>

In response to concerns regarding the process by which individuals are placed on the financial blacklist, the 1267 Committee has included in its guidelines an elaborate procedure by which individuals can be ‘delisted’.<sup>144</sup> According to that procedure, listed individuals can petition their government to request review of the case.<sup>145</sup> Their government can then approach the government that originally proposed that the individual be listed (the ‘designating government’), requesting consultations on the individuals concerned.<sup>146</sup> If, after those consultations, their government then wishes to pursue a ‘delisting request’, it can seek to persuade the designating government to submit a joint request for delisting.<sup>147</sup> The 1267 Committee then has the final decision as to whether a delisting will proceed.<sup>148</sup> As noted in Chapter 8, committee decisions are made by consensus, meaning that if one of the fifteen committee members objects, a decision to delist cannot proceed.<sup>149</sup> In such an instance, the committee’s guidelines provide that the matter can be submitted to the Security Council.<sup>150</sup> It is highly unlikely,

<sup>140</sup> See, e.g., Andrew Duffy, ‘Ottawa man “devastated” by charges of terror links: Accused wanted in U.S. for his role in money transfer firm has ‘no job, no income’ *The Ottawa Citizen*, 16 April 2002; Jake Rupert, ‘Canada fights to clear man’s name: Liban Hussein on list of alleged financiers of al-Qaida’ *The Ottawa Citizen*, 13 June 2002; Colum Lynch, ‘U.S. Seeks to Take 6 Names Off UN Sanctions List; Administration Was Criticized for Offering Little Proof that Individuals, Groups Aided Al Qaida’ *The Washington Post*, 22 August 2002.

<sup>141</sup> *Yassin Abdullah Kadi v. Council and Commission*, Court of First Instance, Case T-315/01, 21 September 2005, (2006) 45 ILM 81. For discussion, see Chapter 4, section 3.2.

<sup>142</sup> S/2002/1423 (26 December 2002), para. 12. See also paras. 11, 47 of the same report.

<sup>143</sup> S/2004/281 (8 April 2004), para. 45.

<sup>144</sup> See 1267 Committee Guidelines, para. 7. <sup>145</sup> *Ibid.*, para. 7(a). <sup>146</sup> *Ibid.*, para. 7(b).

<sup>147</sup> *Ibid.*, para. 7(d). <sup>148</sup> *Ibid.*, para. 7(e). <sup>149</sup> See Chapter 8, section 1.3. <sup>150</sup> *Ibid.*

however, that, in the absence of committee consensus to delist, there would emerge a consensus to refer the matter to the Security Council.

In December 2006, the Security Council adopted resolution 1730 (2006), in which it adopted standardised procedures for listing and delisting individuals and entities on consolidated lists created for the purposes of applying travel bans and assets freezes.<sup>151</sup> The procedures, which were attached as an annex to the resolution, outlined an elaborate delisting process that is clearly based on the 1267 Committee process just outlined. A focal point was to be established in the UN Secretariat to receive petitions from individuals and entities seeking delisting from any of the consolidated lists established under UN sanctions regimes.<sup>152</sup> Upon receipt of such petitions, the focal point would contact the government of citizenship and residence of the petitioner, which could then approach the government that had originally designated the petitioner for inclusion on a consolidated list.<sup>153</sup> If, after these consultations, any government recommends delisting, it can forward that recommendation to the Chairman of the relevant sanctions committee, who then places the delisting application on the committee's agenda.<sup>154</sup> If after three months none of the governments involved in the consultations has commented on the application, the focal point will circulate the application to all committee members.<sup>155</sup> Any member of the committee could then, after consulting with the designating government, recommend delisting.<sup>156</sup> However, if, after a month, no committee member has made such a request, it was to be deemed rejected.<sup>157</sup>

The Council's effort to clarify the delisting process is welcome. However, the contorted process elaborated in resolution 1730 (2006) seems to provide a recipe for how to reject rather than take seriously any requests for delisting. What is striking about the delisting procedure is that listed individuals have no capacity to address the relevant committee directly to present their concerns and protest their innocence. They must rely upon a sponsor government, which, if it can be convinced to proceed with the case, must then effectively rely upon the good will of the state that originally suggested the individual be listed, in order for the matter to proceed to the committee.<sup>158</sup> In a domestic legal

<sup>151</sup> SC Res. 1730 (19 December 2006), para. 1. <sup>152</sup> *Ibid.*, para.1 and annex, para. 1.

<sup>153</sup> *Ibid.*, para. 5. <sup>154</sup> *Ibid.*, para. 6(a). <sup>155</sup> *Ibid.*, para. 6(c) <sup>156</sup> *Ibid.* <sup>157</sup> *Ibid.*

<sup>158</sup> Technically, a petitioning state can proceed with the matter without agreement from the designating state. In practice, however, it is unlikely to do so.

context, this is analogous to requiring agreement between the prosecution and the defence before even permitting the defendant's case to be heard. On a practical level, it is understandable that the committee is reluctant to allow petitions to proceed unless they are likely to succeed, as it might otherwise be inundated with petitions that are unlikely to go anywhere. From a due process perspective, however, it would be preferable to permit such petitions to go ahead, whether or not they are sponsored by a government.<sup>159</sup> Designating states should also be required to elaborate clear and compelling reasons why such individuals should remain on the list.

## **5. A disproportionate burden: civilian populations and third states**

*Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects.*

UN Secretary-General Boutros Boutros-Ghali, 25 January 1995<sup>160</sup>

*One of the areas in which the Council can make a contribution to the rule of law and international justice is that of sanctions imposed pursuant to Chapter VII. It is necessary to reduce to a minimum the negative impact which economic sanctions can have on innocent civilian populations and to address the issue of the adverse impact of sanctions on third countries.*

Mrs Soledad Alvear Valenzuela, Minister for Foreign Affairs, Chile<sup>161</sup>

The principle of proportionality requires that the consequences of a decision affecting the rights, entitlements and obligations of other parties must be proportional to the harm caused by that party and consistent with the overall objectives for which the decision is being taken. In the context of sanctions, proportionality requires that the coercive consequences of the application of sanctions remain in proportion to the threat to the peace posed by the target against which

<sup>159</sup> See also *Results from the Stockholm Process*, p. 103 (para. 320).

<sup>160</sup> S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, para. 70.

<sup>161</sup> S/PV.4833 (24 September 2003), p. 22.

sanctions are imposed. In particular, the effects of sanctions upon innocent civilian populations and third states should be minimised.<sup>162</sup>

### 5.1 Proportionality and civilian populations: minimising the humanitarian impact of sanctions

UN sanctions have been heavily criticised due to their potential to devastate innocent civilian populations. They have been referred to as ‘a silent holocaust’,<sup>163</sup> as ‘the UN’s weapon of mass destruction’,<sup>164</sup> as ‘modern siege warfare’,<sup>165</sup> as a ‘genocidal tool’<sup>166</sup> and as ‘state-sanctioned murder’.<sup>167</sup> An increasing number of studies have sought to document the negative humanitarian and human rights impact of sanctions upon civilian populations.<sup>168</sup> The most serious allegations regarding the humanitarian impact of sanctions have concerned the situation in Iraq.

<sup>162</sup> The Heads of UN member states recognised as much in the Millennium Declaration, by which they resolved: ‘to minimize the adverse effects of United Nations economic sanctions on innocent populations; to subject such sanctions regimes to regular reviews; and to eliminate the adverse effects of sanctions on third parties.’ See: A/RES/55/2 (18 September 2000): *United Nations Millennium Declaration*, para. 9.

<sup>163</sup> Felicity Arbuthnot, ‘Dying of Shame’, *New Internationalist*, January/February 1998.

<sup>164</sup> See, e.g., Roger Normand, ‘Sanctions Against Iraq: New Weapon of Mass Destruction’ (1998) 64 *Covert Action* 4–10; Denis J. Halliday, ‘Iraq and the UN’s weapon of Mass Destruction’ (1999) 98 *Current History* 65–68; Mueller and Mueller, ‘Sanctions of Mass Destruction’; Noam Chomsky, Edward Herman, Edward Said, Howard Zinn, et al., ‘Sanctions are Weapons of Mass Destruction’, in Anthony Arnove (ed.), *Iraq Under Siege: The Deadly Impact of Sanctions and War*, updated edn (Cambridge, MA: South End Press, 2002), pp. 217–219.

<sup>165</sup> Gordon, ‘Sanctions as Siege Warfare’.

<sup>166</sup> Simons, *Imposing Economic Sanctions*. See also Bisharat, ‘Sanctions as Genocide’.

<sup>167</sup> Chomsky et al., ‘Sanctions are Weapons of Mass Destruction’, p. 218.

<sup>168</sup> For a study of the humanitarian impact of economic sanctions in general, see: Thomas G. Weiss, David Cortright, George A. Lopez and Larry Minear (eds.), *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham: Rowman & Littlefield, 1997), pp. 91–147; UN Office for the Coordination of Humanitarian Affairs, *Coping With the Humanitarian Impact of Sanctions: An OCHA Perspective* (New York: UN Office for the Coordination of Humanitarian Affairs, 1998).

For studies of the humanitarian impact of sanctions against Iraq, see CESR, (*UN Sanctioned Suffering*; UNICEF, *Results of the 1999 Iraq Child and Maternal Mortality Surveys* (New York: UNICEF, 1999); Eric Hoskins, ‘The Humanitarian Impacts of Economic Sanctions and War in Iraq’, in Weiss et al., *Political Gain and Civilian Pain*, pp. 91–147; Peter L. Pellett, ‘Sanctions, Food, Nutrition, and Health in Iraq’, in Arnove (ed.), *Iraq Under Siege*, pp. 185–203. For studies of the sanctions against FRYSM, see Julia Devin and Jaleh Dashti-Gibson, ‘Sanctions in the Former Yugoslavia: Convoluted Goals and Complicated Consequences’, in Weiss et al., *Political Gain and Civilian Pain*, pp. 149–187. For studies of the Haiti regime, see Gibbons, *Sanctions in Haiti*; Sarah Zaidi, ‘Humanitarian Effects of the Coup and Sanctions in Haiti’, in Weiss et al., *Political Gain and Civilian Pain*, pp. 189–212.

The Iraq sanctions have been accused of contributing to a ‘humanitarian catastrophe’,<sup>169</sup> including effects such as a tenfold increase in typhoid incidences between 1990 and 1991, and a fivefold increase in the mortality rate of children under five years of age between 1990 and 1995.<sup>170</sup> Perhaps the most alarming finding, based on a detailed analysis of child mortality rates in Iraq between 1960 and 1998, is that there may have been as many as 500,000 excess deaths among children under the age of five between 1991 and 1998.<sup>171</sup> The sanctions regimes against the Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti have also been accused of creating dire humanitarian consequences.<sup>172</sup>

The question of precisely which consequences can be directly attributed to sanctions, as distinct from other potential contributing factors, is difficult to resolve with absolute certainty.<sup>173</sup> Moreover, even in cases where it is beyond dispute that sanctions have caused suffering, those supporting the use of sanctions would argue that such suffering is primarily the responsibility of target leaders and policy-makers whose actions have threatened the peace and therefore led to the application of sanctions. Thus, in the case of the Iraq sanctions, the argument was often made that the suffering of the Iraqi people was caused by Saddam Hussein, rather than by the Security Council and its member states.<sup>174</sup>

As noted in Chapter 7, the Security Council has sought to address the negative impact of sanctions upon civilian populations through outlining exemptions, employing so-called ‘smart’ or ‘targeted’ sanctions, and by calling for humanitarian impact assessments.<sup>175</sup> Each of these strategies has contributed to some extent to an overall decrease in the

<sup>169</sup> Minear, Cortright, et al., *Toward More Humane and Effective Sanctions Management*, p. xx.

<sup>170</sup> *Ibid.*; Hoskins, ‘The Humanitarian Impacts of Economic Sanctions’, pp. 120–121.

<sup>171</sup> UNICEF press release, ‘Iraq Survey Shows “Humanitarian Emergency”’ (12 August 1999). See also Pellett, ‘Sanctions, Food, Nutrition, and Health in Iraq’, especially pp. 195–197.

<sup>172</sup> With respect to the sanctions against FRYSM, see Devin, ‘Sanctions in the Former Yugoslavia’, p. 172 (charging that sanctions contributed to a serious deterioration in health conditions). With respect to the Haiti sanctions, see Minear et al., *Toward More Humane and Effective Sanctions Management*, pp. xxi–xxii (charging that sanctions caused malnutrition rates among children under five to rise from 50 per cent to 61 per cent); and Gibbons, *Sanctions in Haiti*, p. 23 (arguing that sanctions lifted the mortality rate of children between 1 and 4 from 56 to 61 per thousand).

<sup>173</sup> Hoskins acknowledges the difficulty of isolating the effects of sanctions from those of war in the case of Iraq: Hoskins, ‘The Humanitarian Impacts of Economic Sanctions’, p. 135. Later, however, he concludes that with the passage of time, sanctions were increasingly responsible for sustaining the Iraqi emergency: see p. 137.

<sup>174</sup> See, e.g., editorial, ‘The Suffering of Children’, *Washington Post*, 17 August 1999, p. A14.

<sup>175</sup> See Chapter 7, section 3.1.

unintended consequences resulting from the application of sanctions. Nevertheless, there remains room for improvement.

As outlined in the section above on consistency, the Council's approach has been quite inconsistent with respect to humanitarian exemptions. It has generally exempted medical supplies, although in the Iraq case such supplies were sometimes prevented from going ahead due to dual-use concerns. It has sometimes exempted foodstuffs completely, whilst at others doing so only in 'humanitarian circumstances'. At times it has also provided exemptions for items such as clothing, petroleum and petroleum products, and educational equipment.

The Council's increasing emphasis on 'smart' or 'targeted' sanctions is most welcome from the perspective of proportionality. Particularly positive has been its focus upon isolating components of a target's economy that are considered to fuel conflict. Nevertheless, sometimes the proceeds from those economic resources, in addition to being put to that negative use of fuelling conflict, also sustain the development and welfare of innocent individuals and societies living in the areas connected with the target. Thus, even though such targeted measures result in less negative consequences for innocent civilians than those that would flow from the application of comprehensive sanctions, creative possibilities could nonetheless be explored in such situations to ensure that sanctions are applied with even fewer negative consequences.

With respect to humanitarian impact, the Council's increased emphasis upon analysis of the humanitarian and socio-economic consequences of sanctions is to be lauded. Even here, however, there remains room for improvement. Such assessments are not yet called for as a matter of course, and when they are mandated, there is a lack of coherence and consistency.<sup>176</sup> This latter point is illustrated by the Council's oversight of the 1343 Liberia sanctions regime. In resolution 1478 (2003), the Security Council called upon two different actors – the UNSG and the 1343 Liberia Panel of Experts – to undertake essentially the same task of providing humanitarian impact analysis of the sanctions imposed against Liberia.<sup>177</sup> The reports that were submitted

<sup>176</sup> The Stockholm process recommended that the Security Council should include regular humanitarian and socio-economic impact assessment in its sanctions monitoring procedures, under established methodology: *Results from the Stockholm Process*, 27 (para. 50).

<sup>177</sup> SC Res. 1478 (6 May 2003), para. 19 (requesting the UNSG to submit to it by 7 August 2003 a report on the possible humanitarian or socio-economic impact of the timber

accordingly both provided interesting insights into the potential humanitarian and socio-economic consequences of the sanctions.<sup>178</sup> They differed substantially, however, employing different methodologies for assessment,<sup>179</sup> and provided diverging observations and recommendations.<sup>180</sup> Humanitarian impact assessments should be mandated as a matter of standard practice and they should follow a consistent methodology. The *Sanctions Assessment Handbook* prepared by the UN Inter-Agency Standing Committee in 2004 provides an excellent blueprint for best-practice sanctions impact assessments.<sup>181</sup>

sanctions); SC Res. 1478 (6 May 2003), para. 25(c) (requesting the 1343 Panel of Experts to assess the possible humanitarian and socio-economic impact of the timber sanctions and to make recommendations for minimising any such impact).

<sup>178</sup> See S/2003/779 (7 August 2003): *Report of the Panel of Experts pursuant to paragraph 25 of Security Council resolution 1478 (2003) concerning Liberia*; S/2003/793 (5 August 2003): *Report of the Secretary-General in pursuance of para. 19 of resolution 1478 (2003) concerning Liberia*.

<sup>179</sup> The methodology of the Panel of Experts focussed upon assessing the impact of the timber sanctions upon seven factors: (1) revenue and taxes; (2) employment; (3) indirect benefits; (4) social services; (5) human rights; (6) investment; and (7) environment. See *Report of the Panel*, paras. 7–14. The UNSG's methodology, by contrast, concentrated upon indicators from the following sectors: (1) health; (2) food and nutrition; (3) education; (4) economic status; (5) governance; and (6) demography. See *Report of the Secretary-General*, para. 6.

<sup>180</sup> The Panel's observations included that the sanctions would: (a) deprive armed state and non-state actors of timber revenue; (b) result in decreased human rights violations associated with the timber industry; and (c) cause long-term consequences for the Liberia's redevelopment. See *Report of the Panel*, para. 17. Its recommendations included that: (a) the Council should impose a moratorium on all commercial activities in the extractive industries; (b) increased emergency aid should be provided; (c) the Liberian timber sector should be reformed in order to achieve good governance; and (d) member states, civil society and UN field presences should be encouraged to monitor and report sanctions violations. See also para. 17.

The UNSG's observations included that: (a) the timber sanctions would have an impact upon humanitarian and socio-economic conditions only once the security environment did not already preclude timber export; (b) a reconstituted timber industry exhibiting transparency and accountability could be a driving force for economic growth and sustainable development; and (c) that alternative sources of economic revenue should be explored, including rubber production, in order to avoid a situation where limited resources were exploited to fuel conflict. See *Report of the Secretary-General*, *ibid.*, para. 48. His recommendations included that: (a) an exemption procedure should be developed to enable legitimate timber exports; (b) in that connection external auditing could be also explored; and (c) humanitarian and development programmes should be developed to reintegrate former timber workers. See paras. 49–51.

<sup>181</sup> Manuel Bessler, Richard Garfield and Gerard McHugh, *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions* (New York: UN Inter-Agency Standing Committee, 2004).

## 5.2 *Proportionality and individual targets*

The question of proportionality also arises concerning the Council's use of sanctions targeting individuals. The use of assets freezes can have a considerable impact upon the fundamental human rights of individuals, including their right to property. In recognition of this concern, the Council has taken to outlining a series of standard exemptions from assets freezes and travel bans. Thus the Council exempted from the assets freeze applied as part of the 1737 Iran sanctions regime funds that were: (a) necessary for basic expenses, as notified to the 1737 Committee and in the absence of a negative decision by the Committee within five working days;<sup>182</sup> (b) necessary for extraordinary expenses, as approved in advance by the Committee;<sup>183</sup> (c) subject to a judicial, administrative or arbitral lien, as notified to the Committee.<sup>184</sup> With respect to travel bans, the Council generally notes that nothing required states to refuse entry to their own nationals<sup>185</sup> and exempts travel when approved on a case-by-case basis by the relevant committee as justified on the ground of humanitarian need, including religious obligation, or in order to further the objectives of a particular sanctions regime.<sup>186</sup>

## 5.3 *Proportionality and third states*

The impact of sanctions upon third states raises questions of proportionality, not just with respect to the issue of the unintended consequences of sanctions, but also in terms of ensuring that the burden of sanctioning is distributed proportionally across the international community. The application of sanctions against a target state generally has a disproportionate effect upon the target's neighbour states and key trading partners. The sacrifice required of such states to implement sanctions is therefore significantly greater than that required of distant states with few ties to or relations with the target state.

The Council has tended to respond to requests for assistance under Article 50 by appealing to states, international organisations and international financial institutions to extend assistance to the states in need of special assistance.<sup>187</sup> The initiative of appealing to various international actors to extend assistance to specially affected states, whilst

<sup>182</sup> SC Res. 1737 (23 December 2006), para. 13(a).

<sup>183</sup> *Ibid.*, para. 13(b). <sup>184</sup> *Ibid.*, para. 13(c).

<sup>185</sup> See, e.g., the travel ban imposed as part of the 1636 Hariri sanctions regime: SC Res. 1636 (31 October 2005), para. 3(a).

<sup>186</sup> *Ibid.*, Annex, para. 2(i). <sup>187</sup> See Chapter 7.



arguably better than taking no action at all, is nevertheless a largely symbolic action. Although the Council may claim that, by taking such steps, it is assisting such states, in practice its appeals have done little to distribute the economic burden of implementing sanctions evenly across the international community. The lack of meaningful Security Council action to alleviate the situation of third states has led one commentator to describe Article 50 as a 'dead letter'.<sup>188</sup>

An expert group mandated by the UN Secretary-General to explore how to give effect to the provisions of Article 50 recommended that an Article 50 trust fund be incorporated into the UN's regular mandated budget, in the same manner as peacekeeping expenses.<sup>189</sup> The working group also proposed that, where significant requests for special assistance under Article 50 are received, the UNSG could appoint a Special Representative to investigate the matter and make appropriate recommendations.<sup>190</sup> In addition, the group suggested that sanctions impact assessments should also address the potential impact of sanctions upon third states.<sup>191</sup>

The arguments in favour of more effective Council action to offset the burden are strong. First, the contention has been made that the Charter's recognition of a right to consult implies a corresponding obligation on the part of the Council to ensure that effective assistance is provided. Second, according to the principle of proportionality, the ability of sanctions to contribute to the rule of law is limited where they result in particularly disproportionate consequences for those who are expected to implement the law. Third, on a purely practical and pragmatic level, sanctions are unlikely to be effective where the costs of implementing sanctions are so prohibitive that it effectively becomes a matter of necessity to continue trading with a target.

<sup>188</sup> David M. Malone, *Decision-Making in the Security Council: The Case of Haiti, 1990–1997* (Oxford: Clarendon Press, 1998), p. 21.

<sup>189</sup> A/53/312 (27 August 1998): *Implementation of provisions of the Charter related to assistance to third states affected by the application of sanctions*, para. 46.

<sup>190</sup> *Ibid.*, para. 54. <sup>191</sup> *Ibid.*, para. 50.

## 10 Strengthening the rule of law performance of the UN sanctions system

The [previous chapter](#) identified a range of rule of law weaknesses exhibited by the UN sanctions system. This chapter proposes sanctions policy reforms designed to enhance the rule of law record of UN sanctions. The Security Council could improve the UN sanctions system's rule of law performance considerably by taking simple steps to strengthen, respect and promote each of the five key rule of law principles.

### 1. Increasing transparency

Of the five principles of the rule of law analysed here, transparency is arguably the one that is the least observed yet the easiest to remedy. Increasing transparency does not require the elaboration of sophisticated new strategies, nor necessitate the allocation of new resources. It does not require amendment to the UN Charter, structural reform of the UN sanctions system or a modification to the Council's rules of procedure. The Council can improve its transparency track-record simply by conducting its business in a more open and accountable manner. The recommendations outlined here flow from the analysis above. They are thus geared towards increasing transparency in the decision-making processes of the Security Council and its sanctions committees, as well as in the Council's sanctions decisions themselves.

In order to improve the transparency of its decision-making process, the Security Council should hold discussions concerning the potential or actual application of sanctions in public. When the application of a new sanctions regime is proposed, the Council should meet in open session to discuss the proposal, with members placing their views and concerns 'on the record'. Where possible, the views of the potential

target should also be presented. Subsequently, if the Council moves to vote on a draft resolution that would impose sanctions, Security Council member states should speak in explanation of their vote. The Council's use of sanctions powers should be considered a sombre, serious occasion. The logic and rationale for taking such a grave step should be made abundantly clear both to the global public and to the target against which sanctions are imposed. The practice that has become prevalent, according to which the Council has imposed sanctions with little or no public discussion, should cease. When the Council imposes sanctions, it should be clear to all that it has considered seriously the policy benefits and costs of such a step, as well as the different alternatives that might be employed.

In order to improve the transparency of its sanctions-related decisions, the Security Council should clearly demonstrate that its actions are taken in accordance with legitimate authority. When applying sanctions, the Council should invoke the Charter basis for taking action – i.e., Articles 39 and 41. As part of the requisite determination under Article 39 of a threat to the peace, breach of the peace or act of aggression, the Council should identify in as much detail, and as clearly as possible, the precise nature and cause of the threat to the peace, breach of the peace or act of aggression. Where possible, this determination should be made in advance of the application of sanctions, in order to demonstrate that it is a considered decision rather than one of mere convenience in order to justify the application of sanctions. When the Council does indeed decide to apply sanctions, it should articulate specific objectives, the achievement of which will address the threat to the peace, breach of the peace, or act of aggression and thus maintain or restore international peace and security. Sanctions objectives should thus be tied to clear, objectively verifiable conditions, the satisfaction of which will trigger the easing or lifting of sanctions. If necessary, the UN Secretary-General could be tasked with reporting upon the satisfaction of those conditions.<sup>1</sup>

Similarly, the meetings of the sanctions committees should be held in open session where possible, with transcripts or summary records being made publicly available as soon as possible after each meeting.<sup>2</sup>

<sup>1</sup> The Bonn-Berlin process also advocated such a role for the UNSG. See *Results of the Bonn-Berlin Process*, p. 63 (Comment 31).

<sup>2</sup> The Bonn-Berlin and Stockholm processes have advocated more transparency in the sanctions committees. See, e.g., *Results of the Bonn-Berlin Process*, p. 36 (Comment 36), p. 58 (Comment 18), p. 60 (Comment 22), p. 78 (Comment 13) and p. 80 (Comment 17); *Results from the Stockholm Process*, pp. 24–25 (para. 43) and p. 34 (para. 64).

Maintaining discussions and decision-making behind closed doors can actually deprive the committees of a valuable tool for publicising the activities of sanctions-busters and thus promoting adherence to and implementation of sanctions. In instances when discussions touch upon issues that are considered highly sensitive or confidential, the committees could move into informal consultations. Such discussions should be strictly circumscribed, however, to the minimum period necessary to debate such confidential matters. The Security Council could ensure that this takes place by so stipulating in its decisions outlining committee mandates.

## **2. Improving consistency**

In order to adhere to the principle of consistency, the Council should seek to ensure that its approach to sanctions is more systematic than ad hoc. This should be true both in terms of the manner in which it formulates its decisions, but also in terms of the manner in which it bestows responsibility upon other actors for the administration and monitoring of sanctions. This section outlines some steps that might be taken to improve the consistency of the Council's approach.

One initiative that would strongly increase consistency would be to entrust a central body with responsibility for ensuring that new sanctions initiatives take into account the lessons of previous sanctions experience. A sanctions quality assurance unit could thus be created, with a mandate to verify that proposed sanctions-related draft resolutions were based upon best practice. Although the composition and sponsorship of draft resolutions remain the prerogative of Security Council member states, the existence of such a body would help to ensure that sanctions best practice is not overlooked in the rush to take effective sanctions action. The sanctions quality assurance unit could consist of experts with considerable sanctions and legal drafting expertise, whose responsibility it would be to ensure that standard language and phrases are employed in the Council's resolutions which outline the contours of each sanctions regime.

Bearing in mind the recommendations outlined above concerning transparency, the unit could also ensure that draft resolutions consistently acknowledge the basis in the UN Charter for sanctions-related action, identify the precise nature of the relevant threat to the peace, breach of the peace or act of aggression, and articulate the necessary objectives and conditions for easing and termination. It could also

ensure a consistency of approach with respect to the scope of sanctions – both in terms of the prohibitions elaborated and any exemptions that are provided from those prohibitions. Moreover, it could also be tasked with ensuring a consistency of approach to the articulation of mandates for subsidiary actors.

Another initiative that would serve the interests of consistency in relation to the activities undertaken by sanctions-related subsidiary actors, would be to streamline the responsibilities currently distributed among a significant number of ad hoc actors. Thus, for example, instead of having a proliferation of sanctions committees, monitoring mechanisms and panels of experts, central bodies focusing upon sanctions administration, monitoring and investigation could be established. Although a movement towards generalised bodies might lead to a decreased focus upon issues relating to specific sanctions regimes, this drawback could be alleviated by ensuring that the general bodies each possessed sufficient expertise relating to the geographic and technical dimensions of each sanctions regime. Moreover, the centralisation of such tasks would eliminate the need to provide new subsidiary bodies with teething periods in which to learn to ply their trade and the centralised bodies would develop institutional memory regarding sanctions best practice.

The rationale for such centralisation is strongest with respect to sanctions committees and monitoring mechanisms. The tasks performed by the different sanctions committees and monitoring mechanisms are quite similar in nature, whereas it is arguable that establishing ad hoc panels of experts to undertake discrete investigative tasks might produce greater independence of findings. Although it has been alleged that the creation of a General Sanctions Committee might diminish the amount of attention paid to each individual sanctions regime,<sup>3</sup> in practice there is significant overlap of the membership of the different committees in any case, due to the fact that the smaller delegations of the members of the Security Council often do not have separate specialists for each committee. Moreover, a General Sanctions Committee that is tasked with reviewing all sanctions regimes might pay even greater attention to neglected sanctions regimes, as it would be meeting on a much more regular basis than a number of the individual committees.<sup>4</sup>

<sup>3</sup> For an argument to this effect, see *Results of the Bonn-Berlin Process*, p. 115.

<sup>4</sup> By way of quick comparison, the UNITA Sanctions Committee held twenty formal meetings between the beginning of 2000 and the end of 2001. During that same period,

### 3. Promoting equality

The solution to the equality deficit in the UN sanctions system is as simple as it is improbable. In order to ensure actual equality in terms of the use of the Council's sanctions powers, the power of veto should be abolished, along with permanent membership. This is unlikely to happen, of course, because those who wield the veto would likely use it to prevent any such reform. Moreover, despite the manner in which the veto undermines the principle of equality, it is arguable that its existence has encouraged most major powers to remain within the UN framework most of the time.

As it is extremely unlikely that the veto will be abolished, it is necessary to think of how to manage the veto so that it undermines to the minimum extent possible the potential of sanctions to reinforce and strengthen the rule of law. One strategy that might be employed would be to encourage restraint in the use of the veto. Indeed, at San Francisco the permanent members issued a declaration concerning voting procedure in the Security Council, in which they suggested that they would use the veto with restraint.<sup>5</sup> Another potential strategy for achieving restraint was proposed by the International Commission on Intervention and State Sovereignty in its 2001 report *The Responsibility to Protect*.<sup>6</sup> The Commission suggested that the permanent members of the Council could agree upon a code of conduct with respect to actions that aimed to stop or avert a significant humanitarian crisis, according to which they would 'constructively abstain' from using the veto unless their vital national interests were affected.<sup>7</sup>

A second strategy could be for the elected members to band together more regularly in a bloc, thus meaning that they could effectively wield a veto. In fact, the permanent members implied as much in their San Francisco declaration on voting procedure:

It should also be remembered that under the Yalta formula the five major powers could not act by themselves, since even under the unanimity

the Rwanda Sanctions Committee did not hold one formal meeting. See *Index to Proceedings of the Security Council for 2000* (2001) United Nations, New York, p. xvi; A/56/2 (2001): *Report of the Security Council: 16 June 2000–15 June 2001*, pp. 444–445; A/57/2 (2002): *Report of the Security Council: 16 June 2001–31 July 2002*, pp. 53–4.

<sup>5</sup> See *Documents of the UNCIO*, vol. XI, pp. 710–714: *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, para. 8.

<sup>6</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

<sup>7</sup> *Ibid.*, p. 61 (para. 6.2).

requirement any decisions of the Council would have to include the concurring votes of at least two of the non-permanent members. In other words, it would be possible for . . . non-permanent members as a group to exercise a 'veto'.<sup>8</sup>

While the strategy of elected members voting as a bloc would not ensure that all players were treated equally before the law, it would mean that all members of the Security Council effectively had the potential to wield a veto, thus creating a greater sense of equality on the Council. Unfortunately, however, such a strategy might also have the effect of tying the Council's hands on a more frequent basis, thus risking a return to the days of Cold War paralysis. Moreover, as one commentator has observed:

It takes considerable unity . . . and considerable backbone, for six or more . . . non-permanent members, all of whom are invariably weaker in economic and military clout . . . to exercise the rarely seen but conceivable 'veto' that the Council's non-permanent members wield.<sup>9</sup>

One area in which the effects of the veto upon sanctions practice could be mitigated through the judicious use of co-operation between the elected ten is in the employment of time-limits. When sanctions are imposed for an unspecified period, any permanent member can veto the decision to terminate sanctions. In order to limit the ability of the permanent members to dictate when, and indeed if, sanctions will be terminated, the elected ten could band together to ensure that sanctions are always imposed with a time-limit. Such time-limits should be set for no longer than two years, as within two years a completely different set of elected ten members will sit on the Council. If it is necessary to maintain the sanctions, then it should be a relatively simple matter for the Security Council to adopt a resolution extending the sanctions. If it is not possible to obtain sufficient votes to maintain sanctions, then it is highly unlikely that the necessary political will to implement the sanctions would exist in any case.

With respect to democratic representation, it seems clear that there should be some expansion in the membership of the Security Council. If and when such an expansion takes place, permanent membership without the right of veto is likely to be extended to a handful of member states. This development would have the disadvantage of creating yet

<sup>8</sup> *Documents of the UNCIO*, vol. XI, pp. 710–714: *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, para. 8.

<sup>9</sup> Alvarez, *International Organizations as Law-makers*, p. 199.

another layer of inequality, making the new ‘permanent members’ more equal than most, but still not as equal as some. It would have the advantage, however, of ensuring that there would be some non-veto-wielding members with consistent institutional memory of the Council’s practice and procedures, thus perhaps offsetting the decided advantage that currently works in favour of the current P5 vis-à-vis the inexperienced E10. Yet in terms of equality, the expansion of the membership of the Security Council, however great it may be and however many additional benefits are accorded to the new ‘permanent members’, may ultimately amount to little more than placing extra chairs on the deck of the Titanic.

Even if it is possible to tame the veto through a combination of fostering restraint and encouraging creative co-operative techniques among the E10, the lack of genuine equality in sanctions practice will remain a sore thumb from the perspective of the rule of law. But, to the extent that the Security Council’s sanctions practice can be reformed so that it adheres to the other four key principles of the rule of law – transparency, consistency, due process and proportionality – the argument might still be made that, although the principle of equality ultimately remains unsatisfied, at least in those instances when the Council gathers the necessary consensus to apply sanctions, it can do so in a manner that reinforces and strengthens the rule of law. Thus, if those other principles are consistently satisfied, the Council’s sanctions practice should retain the potential to instil confidence in the sanctions system and to induce the widespread compliance of member states with sanctions regimes.

#### **4. Providing due process**

Of all of the principles explored in this study, the one with perhaps the greatest resonance as a symbol of the rule of law is due process. As the discussion above illustrates, with the exception of states targets, which have generally been granted an opportunity to place their version of events on-record, the Council’s adherence to the principle of due process has been somewhat piecemeal. The recommendations outlined below aim to improve the extent of due process accorded to potential and actual targets. Some of them apply to situations involving any of the three types of targets analysed above – states, non-state actors and individuals. Others apply specifically to the case of individuals who are targets.



As a general principle, potential targets of sanctions should be afforded an opportunity to present their version of events, so that Council members can make a considered determination as to whether the application of sanctions is justified and necessary. In situations where it is not practical for potential targets to present their case directly before the Security Council, fact-finding missions could be tasked with the responsibility of presenting an objective assessment of the facts. In the Libyan example, for instance, due process might have been well served by establishing a fact-finding mission to ascertain the facts and to determine conclusively whether Libya was obstructing investigations into the terrorist airline bombings to the extent that it posed a threat to the peace. Although it is likely that most cases involving a potential threat to the peace would require immediate action, the Libyan example does not appear to have been one of those cases. Some years had elapsed since the incidents at the heart of the dispute had taken place, and it is difficult to see how waiting a matter of a few more weeks or months to receive the findings of an objective fact-finding mission would have led to an increased threat.

There is a clear and pressing need for due process reform with respect to the application of financial sanctions against individuals. While the articulation of exemptions for basic and extraordinary expenses is a positive development, it does not offset the current due process deficit. Where individuals stand to be deprived of access to their own personal property and livelihood, they should be provided with maximum due process. The listing and delisting process for individual sanctions currently operates in such a way that the presumption is of guilt rather than innocence, with individuals possessing no as-of-right opportunity to hear, let alone contest, the accusations levelled against them. Instead, they must rely upon the good will of their own government to bring their case before the relevant sanctions committee and then they must convince all committee members, including the member responsible for listing them, that they should be delisted. Is this the model of due process the Security Council has in mind when it speaks of the importance of establishing justice and the rule of law in post-conflict societies?

The listing process likely evolved because of a concern that those who stand to have financial sanctions imposed against them would move their finances to a safe place if they knew that there was a possibility that they would be sanctioned. Thus the rush to sanction, without providing full due process, is understandable. Nevertheless, if sanctions

committees fail to provide adequate due process, they risk a situation emerging whereby states might refuse to implement such sanctions, thus undermining both the effectiveness of the sanctions regime and the credibility of the committees and the Council itself.

One method by which the committees could afford greater due process to listed individuals would be to list them temporarily, pending a genuine consideration of the merits of the allegations levelled against them. Such a consideration could take place in the committee itself or before a competent body established by the Security Council specifically for the purpose of hearing such due process appeals. Once a listed individual's situation had been closely considered in such a manner, the committee would then decide to delist or relist the individual, based on the findings that emerge.

A number of useful recommendations for improving due process have arisen from the Stockholm process, including that the Security Council could: establish clear and transparent guidelines for determining which individuals are to be listed as targets;<sup>10</sup> create an independent body to monitor observance of the due process rights of targeted individuals;<sup>11</sup> utilise the expertise of the UN's Office of the High Commissioner for Human Rights to ensure that the procedures for compiling lists of targets are in conformity with international human rights standards;<sup>12</sup> and introduce administrative or judicial processes that fulfil the ordinary expectations of due process.<sup>13</sup>

In March 2006 these proposals were further fleshed out in a white paper prepared by the Watson Institute Targeted Sanctions Project on the topic of strengthening targeted sanctions through fair and clear procedures.<sup>14</sup> That paper recommended that a review mechanism be established, to which individuals and entities could appeal decisions regarding their listing. The options canvassed included: a mechanism under the authority of the Security Council, such as a monitoring team, an ombudsman or a panel of experts;<sup>15</sup> an independent arbitral panel;<sup>16</sup> and a judicial review institution with the power to issue decisions that would bind the Security Council.<sup>17</sup>

<sup>10</sup> *Results from the Stockholm Process*, p. 28 (para. 50). <sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p. 33 (para. 63). <sup>13</sup> *Ibid.*, p. 97 (para. 284).

<sup>14</sup> *Strengthening Targeted Sanctions Through Fair and Clear Procedures* (Providence, RI: Watson Institute Targeted Sanctions Project, 2006).

<sup>15</sup> *Ibid.*, pp. 44–46. <sup>16</sup> *Ibid.*, p. 47. <sup>17</sup> *Ibid.*

## 5. Ensuring proportionality

Of the five principles of the rule of law analysed here, the Security Council appears to have paid the greatest attention to criticisms of its track-record with respect to transparency. The Council has made a genuine attempt to improve the design of its sanctions regimes, with the aim of increasing their ability to target decision-makers and decreasing the unintended fall-out for innocent civilian populations. Nevertheless, while the Council has learned that it should act proportionately, it could still do more to minimise the negative consequences upon civilian populations and third states.

With respect to minimising the impact of sanctions upon civilian populations, the Security Council could ensure that whenever it applies comprehensive sanctions it exempts a core group of items from the regime. Those goods should include, at a minimum, food, medical supplies, and educational equipment and supplies. As an alternative, the Council could embrace the Goods Review List model eventually employed in Iraq, according to which all contraband items are explicitly noted on a list. Anything that does not feature on the Goods Review List could therefore be sold or supplied to the target.

The Security Council should also institutionalise the practice of requiring humanitarian impact assessment of all of its sanctions regimes. These assessments should occur in advance of the application of sanctions and then at regular intervals once sanctions are applied. The Council should ensure that its members have such assessments before them whenever they are reviewing a sanctions regime. In order to improve both the standard and consistency of humanitarian impact assessment, a specialised unit should be established and tasked with the responsibility of undertaking such assessments. The ad hoc practice to date of calling on different actors to perform impact assessments, including the UNSG, sanctions committees, Panels of Experts and monitoring mechanisms, is not conducive to obtaining a meaningful, sophisticated analysis of the negative consequences of sanctions. The question of causation is sufficiently complex that a consistent methodology should be employed to ascertain impact. Moreover, the body undertaking impact assessment should not be the same body that is tasked with improving sanctions enforcement, as such a body is likely to focus upon how sanctions should be strengthened, rather than upon the negative humanitarian consequences of sanctions.

The Security Council could do considerably better at offsetting the negative consequences for third states and distributing the burden of implementation more evenly across the international community. The practice followed to date, of simply appealing to various international actors to provide assistance, does not amount to an effective remedy for specially affected states. The end result is that such states are faced with an unwelcome choice between implementing sanctions faithfully and thus bearing a burden that may cripple their economies, or turning a blind eye to sanctions violations. A creative solution must be found to this problem. At a minimum, the Security Council should undertake impact assessment of the potential special economic consequences of sanctions upon third states. It should also consider alternatives for ensuring an adequate funding base to compensate states experiencing significant economic difficulties as a result of complying with sanctions.

This chapter has explored how the shortcomings in the UN sanctions system's rule of law performance might be addressed. It has proposed a number of ways in which the Security Council might reform its sanctions practice in order to ensure that its sanctions tool strengthens the rule of law. But it is important to emphasise that strengthening the rule of law is not an all-or-nothing affair. Any steps taken by the Security Council to improve adherence to the key rule of law principles explored here will result in a net improvement in the Council's rule of law performance. Particular principles might be easier to implement in some instances than others. However, the more the Security Council and its members are able to respect, promote and adhere to basic rule of law principles, the higher the likelihood will be that UN sanctions will be respected, promoted and adhered to by UN member states.

## 11 Concluding remarks

In late 2006, on opposite sides of the world, two very different countries took determined steps towards developing nuclear weapons. On 9 October in North-East Asia, North Korea detonated its first nuclear device. Around the same time, in the Middle East, Iran was continuing to defy the demands of the UN Security Council to return to constructive participation in the Nuclear Non-Proliferation Treaty (NPT).

Both North Korea and Iran were originally parties to the NPT, but both had ceased co-operating with the International Atomic Energy Agency (IAEA), as required by the NPT. In each case, a range of multilateral diplomatic initiatives had been pursued in an attempt to bring a defiant nation back into the NPT fold. In each case, efforts had so far proved futile. On 14 October 2006 the Security Council imposed sanctions against North Korea. Two months later, on 23 December, the Council also imposed sanctions against Iran. The two sanctions regimes were broadly similar. Their objective was to prevent North Korea and Iran from gaining access to items, equipment and technical assistance for the development of weapons of mass destruction.

Four years earlier, in late 2002, US Secretary of State Colin Powell had appeared before the Security Council to argue that UN sanctions had failed to prevent Iraq from reconstituting its efforts to develop weapons of mass destruction. Yet in both the North Korean and Iranian instances, the United States was a critical force behind the push for sanctions. Did US support for sanctions against North Korea and Iran represent tacit acknowledgement that the Iraq sanctions had succeeded in preventing Saddam Hussein from reconstituting his weapons of mass destruction programme? Or did it simply reflect a lack of imagination concerning how to address the threat posed by nuclear proliferation?

Sanctions have been a feature of international relations since the days of ancient Greece. For centuries, states, quasi-states and international organisations have turned to sanctions when other alternatives have failed or proven unpalatable. The Security Council's decision to apply UN sanctions regimes against North Korea and Iran suggests that sanctions are not likely to go out of fashion anytime soon.

As the Security Council continues to apply sanctions, its sanctions practice will continue to evolve. This evolution provides an ongoing opportunity to develop and refine sanctions policy. The Security Council has introduced a number of laudable innovations to its sanctions policy over the past decade, some of which have served to promote aspects of the rule of law. The general movement towards targeted rather than comprehensive sanctions is one example of these positive developments, resulting in an improved record with respect to the principle of proportionality. But despite these positive developments, the UN sanctions system still exhibits substantial shortcomings with respect to each of the key principles of the rule of law. As the Council formulates future sanctions policy, it should strive to improve its rule of law track-record.

This book seeks to show how the Council might improve its rule of law performance with respect to its sanctions practice. It has constructed and applied a pragmatic, accountability-based model of the rule of law, consisting of five core principles which seek to prevent the abuse of power: transparency, consistency, equality, due process and proportionality. It has demonstrated how the Security Council's sanctions practice has largely failed to promote those core rule of law principles, thus weakening the authority and credibility of the UN Security Council and its sanctions system. The end result is that sanctions are less effective than they could be. If steps are not taken to improve the UN sanctions system's rule of law performance, sanctions risk remaining a destabilising influence upon, rather than a symbol of, the rule of law in international affairs.

The book proposes a new vision of a UN sanctions system that would help to strengthen the rule of law. It elaborates a number of pragmatic policy reform recommendations designed to improve the UN sanctions system's rule of law performance. These recommendations can be applied immediately. They do not require reform to the UN Charter and they do not rely upon the intervention of an external actor to regulate the Council's practice. They aim to promote increased self-regulation within the Security Council. But other actors also have a

critical role to play in prompting the Council to put its rule of law rhetoric into practice. The proposals elaborated here are therefore targeted not just at the Security Council and its members, but also at anyone with an interest in improving UN sanctions practice. This includes the wider UN membership, sanctions policy-makers, non-governmental advocates, diplomats and scholars.

Unless the Security Council continues to embrace sanctions reform, and in particular innovations designed to promote, reinforce and strengthen the rule of law, its sanctions tool will struggle to attract the levels of compliance necessary to serve as an effective instrument for the maintenance of international peace and security. The Council has recently emphasised its commitment to strengthening the rule of law in societies threatened by conflict. By taking simple steps to reform its sanctions practice, such as implementing the policy recommendations outlined in these pages, the Council can demonstrate its commitment to strengthening the rule of law in international society.

# Appendix 1: Summary of policy recommendations

## 1. Increasing transparency

- Whenever possible, the Security Council should hold its discussions concerning the potential or actual application of sanctions in public.
- Sanctions committees should also meet in open session when possible. All formal committee meetings should also become a matter of public record, with verbatim transcripts and/or summary records being released for public distribution. The Security Council could ensure that this takes place by so stipulating in its decisions outlining committee mandates.
- When the Council votes on a draft resolution that seeks to impose or modify sanctions, Security Council members should speak in explanation of their vote. The practice that has become prevalent, according to which the Council has imposed sanctions with little or no public discussion, should cease.
- When determining the existence of a threat to the peace, breach of the peace or act of aggression, the Council should identify as clearly as possible the precise nature and cause of the threat to the peace, breach of the peace or act of aggression.
- Where possible, such determinations should occur some time before sanctions are applied, in order to demonstrate that they are not mere determinations of convenience, made in order to justify the immediate application of sanctions.
- Sanctions objectives should be linked to clear, objectively verifiable conditions, the occurrence of which will resolve the threat to the peace, breach of the peace or act of aggression and thus lead to the termination of sanctions.
- A central quality assurance unit could be tasked with ensuring that draft resolutions acknowledge the basis in the UN Charter for sanctions-related action, identify the precise nature of the relevant threat to the peace, breach of the peace or act of aggression, and



articulate clear goals and objectively verifiable conditions for sanctions termination.

## 2. Improving consistency

- Standard phrases and terms should be employed in the Council's resolutions which outline the contours of each sanctions regime. A central quality assurance unit could be tasked with ensuring such consistency. It could also ensure consistency in the articulation of mandates for subsidiary actors.
- Sanctions-related subsidiary bodies should be centralised and consolidated. Instead of having a proliferation of ad hoc sanctions committees, Panels of Experts and monitoring mechanisms, the Council could establish a permanent General Sanctions Committee, with responsibility for ensuring administration of the Council's various sanctions regimes, as well as a General Sanctions Monitoring Mechanism, with responsibility for monitoring the Council's various sanctions regimes.

## 3. Promoting equality

- Permanent members should be encouraged to use the veto only when absolutely essential.
- In order to minimise the veto's ability to undermine equality, closer alliances could be formed between the Elected 10. Such an alliance could be used in particular in order to ensure that sanctions are always imposed with a time-limit.

## 4. Providing due process

- Potential targets of sanctions should be afforded an opportunity to present their version of events. Where this is not possible, fact-finding missions should be tasked with the responsibility of preparing an objective assessment of the facts.
- When individuals stand to be deprived of access to their own personal property and livelihood, they should be provided with maximum due process.
- The Security Council should establish clear and transparent guidelines for determining which individuals are to be listed as targets. Such individuals should also be permitted to petition sanctions committees directly to protest their listing.
- Individuals subject to financial sanctions should be listed temporarily, pending genuine consideration of their situation by the relevant sanctions committee.

## 5. Ensuring proportionality

- If comprehensive sanctions are employed again, a core group of items should always be exempt, including food, medical supplies, and educational equipment and supplies. Alternatively, the Council could embrace a Goods Review List approach, listing explicitly all contraband items.
- Humanitarian impact assessments should be conducted for all sanctions regimes. These assessments should occur in advance of the application of sanctions and at regular intervals once sanctions are applied. The Council should ensure that its members have such assessments before them whenever they are reviewing a sanctions regime.
- The standard and consistency of humanitarian impact assessment should be improved. A specialised unit could be established and tasked with responsibility for undertaking such assessments. The unit should not be the same body tasked with improving sanctions enforcement.
- The Security Council should also take effective action to offset the economic difficulties experienced by third states as a result of implementing sanctions. At a minimum, it should mandate assessments of the potential impact of sanctions upon third states.

## Appendix 2: Summaries of UN sanctions regimes

The following summaries trace the anatomy of each sanctions regime established by the Security Council, surveying the Council's decision-making with respect to each regime. Each summary outlines the constitutional basis for the application of sanctions, the objective(s) of the sanctions and the scope of the regime. The summaries also outline the manner in which the Security Council has bestowed responsibility upon other actors for the administration and monitoring of sanctions. Where relevant, summaries note any action taken by the Council to suspend or terminate sanctions. Each summary concludes by surveying the most notable aspects of that particular sanctions regime.

### 1. THE 232 SOUTHERN RHODESIA SANCTIONS REGIME

The Security Council established its first mandatory non-military sanctions regime in December 1966, imposing a range of measures against the white minority regime that had taken control of Southern Rhodesia in November 1965. The major objectives of the 232 sanctions regime were to end the reign of the illegal minority Southern Rhodesian regime and to enable the self-determination and independence of the Southern Rhodesian people. The regime initially consisted of a range of targeted trade sanctions, but it was subsequently expanded to incorporate a blend of comprehensive trade sanctions, as well as financial, representative and aviation sanctions. The Council established the 253 Sanctions Committee to administer the sanctions. The measures were terminated in December 1979, shortly after the Smith regime relinquished control of Southern Rhodesia.

## 1. Constitutional basis

The Security Council first characterised the situation in Southern Rhodesia as a potential threat to international peace and security in November 1965, shortly after the white minority regime of Ian Smith sought to declare independence. On 12 November 1965 the Council adopted resolution 217 (1965), in which it condemned that unilateral declaration of independence and called upon all states not to recognise the Smith regime, which it described as ‘illegal’ and ‘racist’.<sup>1</sup> Eight days later, the Council determined that the situation resulting from the proclamation of independence by the illegal authorities was extremely grave and that its continuance in time constituted a threat to international peace and security.<sup>2</sup>

In resolution 217 (1965), the Council also called upon states to undertake a range of voluntary measures against the minority regime, including not recognising the illegal regime’s claim to power or entertaining diplomatic relations with it, refraining from providing arms to the illegal regime, and breaking all economic relations with the illegal regime, including the provision of oil and petroleum products to that regime.<sup>3</sup> A literal reading of resolution 217 (1965) might suggest that the Council was applying sanctions under Article 41, as the Council had determined that the continuance of the situation prevailing in Southern Rhodesia would threaten international peace and security and it was calling upon states to take certain measures to address that threat. However, the view in the Council was that the measures did not possess the necessary character to constitute Article 41 sanctions. Rather, they were ‘voluntary’ in nature, as the situation had not yet evolved from a potential to an actual threat and the Council had not invoked either Chapter VII or Article 41 when outlining the measures it was calling upon states to implement.<sup>4</sup>

Five months later, the Council expressed grave concern at reports that oil may reach Southern Rhodesia,<sup>5</sup> considered that such supplies would enable the illegal regime to remain in power longer,<sup>6</sup> and determined that the resulting situation constituted a threat to the peace.<sup>7</sup> Seven months later, it adopted resolution 253 (1966), imposing

<sup>1</sup> SC Res. 216 (12 November 1965), paras. 1, 2.

<sup>2</sup> SC Res. 217 (20 November 1965), para. 1.   <sup>3</sup> *Ibid.*, paras. 6, 8.

<sup>4</sup> See, e.g., S/PV.1265 (20 November 1965), paras. 18–38 (Ivory Coast), 64 (United Kingdom).

<sup>5</sup> SC Res. 221 (9 April 1966), preambular para. 2.   <sup>6</sup> *Ibid.*, preambular para. 3.

<sup>7</sup> *Ibid.*, para. 1.

mandatory sanctions against Southern Rhodesia. In that resolution the Council noted that it was acting in accordance with Articles 39 and 41 of the UN Charter and determined that the situation in Southern Rhodesia constituted a threat to international peace and security.<sup>8</sup> In subsequent resolutions modifying the scope of the 232 sanctions regime, the Council reaffirmed the ongoing nature of the threat posed to international peace and security by the illegal minority regime in Southern Rhodesia<sup>9</sup> and invoked Chapter VII of the UN Charter.<sup>10</sup> In one of those decisions, the Council explicitly stated that it was acting in accordance with Article 41.<sup>11</sup>

## 2. Objectives

The objectives of the 232 sanctions regime were to bring the rebellion in Southern Rhodesia to an end<sup>12</sup> and to enable the self-determination and independence of the Southern Rhodesian people.<sup>13</sup>

## 3. Scope

Resolution 232 (1966) created a mixture of targeted economic sanctions. The Council subsequently strengthened the 232 sanctions regime on several occasions. In May 1968, it turned the initial targeted measures

<sup>8</sup> SC Res. 232 (16 December 1966), preambular para. 4, para. 1.

<sup>9</sup> SC Res. 253 (29 May 1968), preambular para. 9; SC Res. 277 (18 March 1970), preambular para. 6; SC Res. 388 (6 April 1976), preambular para. 4; SC Res. 409 (27 May 1977), preambular para. 4; SC Res. 445 (8 March 1979), preambular para. 7; and SC Res. 455 (23 November 1979), preambular para. 8.

<sup>10</sup> SC Res. 253 (29 May 1968), preambular para. 10; SC Res. 277 (18 March 1970), preambular para. 7; SC Res. 388 (6 April 1976), preambular para. 5; SC Res. 409 (27 May 1977), preambular para. 5.

<sup>11</sup> SC Res. 277 (18 March 1970), para. 9.

<sup>12</sup> SC Res. 232 (16 December 1966), preambular para. 2; SC Res. 253 (29 May 1968), preambular para. 3 and para. 3; SC Res. 277 (18 March 1970), para. 9; SC Res. 288 (17 November 1970), para. 2; SC Res. 326 (2 February), para. 4; SC Res. 423 (14 March 1978), in general.

<sup>13</sup> SC Res. 232 (16 December 1966), para. 4; SC Res. 253 (29 May 1968), preambular paras. 7, 8, para. 2; SC Res. 277 (18 March 1970), preambular para. 5, para. 4; SC Res. 288 (17 November 1970), preambular para. 4, para. 2; SC Res. 318 (28 July 1972), paras. 1, 2; SC Res. 326 (2 February), preambular para. 3; SC Res. 328 (10 March 1973), preambular para. 7, para. 3; SC Res. 386 (17 March 1976), preambular para. 4; SC Res. 403 (14 January 1977), preambular para. 3; SC Res. 424 (17 March 1978), preambular para. 4; SC Res. 445 (8 March 1979), preambular para. 8; SC Res. 448 (30 April 1979), preambular para. 7; SC Res. 460 (21 December 1979), para. 1; SC Res. 463 (2 February 1980), para. 1.

into comprehensive sanctions. In March 1970 it added representative and transportation sanctions. In April 1976 and May 1977 it applied additional financial sanctions.

### 3.1 *Sanctions obligations*

Resolution 232 (1966) required all UN member states to prevent the import of major Southern Rhodesian export products, including asbestos, iron-ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather.<sup>14</sup> Member states were also required to prevent the export to Southern Rhodesia of arms and arms-related material,<sup>15</sup> aircraft and motor vehicles and associated parts,<sup>16</sup> and oil and oil products.<sup>17</sup> The Council also called upon all states to refrain from providing financial or economic aid to the illegal regime in Southern Rhodesia.<sup>18</sup>

Resolution 253 (1968) required member states to prevent: (a) the ingress to and egress from Southern Rhodesia of all commodities and products;<sup>19</sup> (b) the transfer of economic or financial resources to Southern Rhodesia;<sup>20</sup> (c) Southern Rhodesian citizens and residents from entering their territories;<sup>21</sup> and (d) airline companies linked to their territories or nationals from flying to or from Southern Rhodesia or linking up with Southern Rhodesian airlines.<sup>22</sup> The Council also emphasised the need for the withdrawal of all consular and trade representation in Southern Rhodesia.<sup>23</sup>

Resolution 277 (1970) required member states: (a) to refrain from recognising the illegal regime or rendering any assistance to it;<sup>24</sup> (b) to sever diplomatic and other relations with the illegal regime;<sup>25</sup> and (c) to interrupt all transportation to and from Southern Rhodesia.<sup>26</sup>

Resolution 388 (1976) further required member states: (a) to prevent their nationals and people in their territories from insuring commodities and products exported from or imported to Southern Rhodesia;<sup>27</sup> and (b) to prevent their nationals and people in their territories from granting any commercial, industrial or public entity in Southern Rhodesia the right to use trade names.<sup>28</sup> Resolution 409 (1977) required

<sup>14</sup> SC Res. 232 (16 December 1966), para. 2(a)–(c). <sup>15</sup> *Ibid.*, para. 2(d). <sup>16</sup> *Ibid.*, para. 2(e).

<sup>17</sup> *Ibid.*, para. 2(f). <sup>18</sup> *Ibid.*, para. 5. <sup>19</sup> SC Res. 253 (29 May 1968), para. 3.

<sup>20</sup> *Ibid.*, para. 4. <sup>21</sup> *Ibid.*, para. 5. <sup>22</sup> *Ibid.*, para. 6. <sup>23</sup> *Ibid.*, para. 10.

<sup>24</sup> SC Res. 277 (18 March 1970), para. 2. <sup>25</sup> *Ibid.*, para. 9(a). <sup>26</sup> *Ibid.*, para. 9(b).

<sup>27</sup> SC Res. 388 (6 April 1976), para. 1. <sup>28</sup> *Ibid.*, para. 2.

member states to prohibit the use or transfer of funds in their territories by the illegal South Rhodesian regime.<sup>29</sup>

### 3.2 Exemptions

Although resolution 253 (1968) made the 232 sanctions comprehensive, the Council nevertheless outlined a number of exemptions designed to soften the impact of the sanctions upon the Southern Rhodesian civilian population. Exemptions were thus provided for: (a) the supply to Southern Rhodesia of medical supplies, educational equipment, news materials, and foodstuffs in ‘special humanitarian circumstances’;<sup>30</sup> (b) payments exclusively for pensions or for medical, humanitarian, or educational purposes and for foodstuffs in ‘special humanitarian circumstances’;<sup>31</sup> and (c) travel on ‘exceptional humanitarian grounds’.<sup>32</sup>

## 4. Administration and monitoring

The Security Council bestowed responsibilities relating to the administration and monitoring of the Southern Rhodesia sanctions regime upon the UNSG and the 253 Sanctions Committee.

### 4.1 *The role of the Secretary-General*

When the Council established the 232 sanctions regime, it requested member states to report to the UNSG any measures taken to implement the sanctions.<sup>33</sup> The UNSG, in turn, was to report to the Council within ten weeks on progress made by states in sanctions implementation.<sup>34</sup> The UNSG was also requested to perform this reporting role when the Council strengthened the sanctions.<sup>35</sup> Following the establishment of the 253 Sanctions Committee, the UNSG was requested to provide the Committee with assistance.<sup>36</sup> In March 1976 the UNSG was also tasked with organising the provision of financial, technical and material assistance from the UN and its member states to Mozambique to help it overcome difficulties experienced in implementing the 232 sanctions regime.<sup>37</sup>

<sup>29</sup> SC Res. 409 (27 May 1977), para. 1.   <sup>30</sup> SC Res. 253 (29 May 1968), para. 3(d).

<sup>31</sup> *Ibid.*, para. 4.   <sup>32</sup> *Ibid.*, para. 5.

<sup>33</sup> SC Res. 232 (16 December 1966), para. 8.   <sup>34</sup> *Ibid.*, para. 9.

<sup>35</sup> See, e.g., SC Res. 253 (29 May 1968), paras. 18–19; SC Res. 277 (18 March 1970), paras. 19–20.

<sup>36</sup> SC Res. 314 (28 February 1972), para. 7; SC Res. 318 (28 July 1972), para. 10.

<sup>37</sup> SC Res. 386 (17 March 1976), para. 6.

## 4.2 *The 253 Sanctions Committee*

In May 1968, eighteen months after the 232 sanctions regime had been initiated, the Council decided to create a Sanctions Committee to oversee sanctions implementation.<sup>38</sup> The 253 Committee, which was established in accordance with rule 28 of its provisional rules of procedure, was initially to examine the reports of the UNSG on the implementation of comprehensive sanctions<sup>39</sup> and to seek information from UN member states regarding activity that might constitute a breach of the sanctions.<sup>40</sup> In subsequent resolutions, the Council reaffirmed those tasks of the Committee<sup>41</sup> and outlined the following additional tasks: (a) making recommendations on how member states could more effectively implement sanctions;<sup>42</sup> (b) making recommendations concerning its terms of reference and measures to ensure its effectiveness;<sup>43</sup> (c) reporting on possible action to address the refusal of South Africa and Portugal to implement sanctions and collating proposals made in Council meetings for expanding the scope and increasing the effectiveness of sanctions;<sup>44</sup> (d) reporting on possible further sanctions;<sup>45</sup> and (e) making further proposals to strengthen and widen sanctions.<sup>46</sup>

During its twelve-year existence, the 253 Committee was quite active, holding a total of 352 formal meetings.<sup>47</sup> It submitted twelve general reports to the Security Council on its activities, as well as a number of interim reports and special reports on matters not related to its regular activities.<sup>48</sup> The Committee's reports were often extensive, containing detailed analysis of exports from and imports to Southern Rhodesia during the reporting period, as well as transcripts of some of the Committee's meetings. The Committee also made numerous recommendations and suggestions to the Council for improving sanctions, some of which were acted upon.<sup>49</sup>

<sup>38</sup> SC Res. 253 (29 May 1968), para. 20. <sup>39</sup> *Ibid.*, para. 20(a).

<sup>40</sup> *Ibid.*, para. 20(b). <sup>41</sup> SC Res. 277 (18 March 1970), paras. 21(a) and (b).

<sup>42</sup> SC Res. 277 (18 March 1970), para. 21(c). <sup>43</sup> SC Res. 314 (28 February 1972), para. 6.

<sup>44</sup> SC Res. 320 (29 September 1972), paras. 4 and 5.

<sup>45</sup> SC Res. 409 (27 May 1977), para. 3. <sup>46</sup> SC Res. 445 (8 March 1979), para. 8.

<sup>47</sup> *Index to Proceedings of the Security Council for 1979* (1980) United Nations, New York, p. 2 (listing the meetings held by the Committee during the period leading up to its dissolution).

<sup>48</sup> A list of the Committee's reports is located in Appendix 3, Table F.

<sup>49</sup> SC Res. 318 (28 July 1972), para. 4; SC Res. 333 (22 May 1973), para. 1.



## 5. Termination

The 252 sanctions regime was terminated in December 1979, once it had become apparent that there would be a transition to democratic rule. Upon the signing of an agreement on the Constitution for a free and independent Zimbabwe, which paved the way for genuine majority rule, the Council adopted resolution 448 (1979), terminating the sanctions regime and dissolving the 253 Sanctions Committee.<sup>50</sup> Commentators differ on the extent to which sanctions contributed to the demise of the minority regime. During the thirteen-year period in which sanctions were applied, a number of states continued to engage in relations with the minority regime in contravention of sanctions. Portugal and South Africa had continued to provide Southern Rhodesia with assistance,<sup>51</sup> and the United States had permitted Ian Smith and other members of the minority regime to enter its territory in violation of the sanctions.<sup>52</sup> Furthermore, the Smith regime had maintained an aggressive foreign policy, engaging in military activities against Zambia,<sup>53</sup> Botswana,<sup>54</sup> Angola<sup>55</sup> and Mozambique.<sup>56</sup>

## 6. Conclusions

As the Southern Rhodesia sanctions regime was the first to be established by the Security Council, almost everything about it was notable and innovative. With the benefit of hindsight, however, it is possible to identify particular characteristics of the regime that distinguish it from later regimes. First, the Security Council made a number of explicit references to provisions of the UN Charter in its resolutions related to the Southern Rhodesia sanctions regime. The Council sometimes made such references to clarify the constitutional basis for the measures taken, as with its references to Articles 39,<sup>57</sup> 41,<sup>58</sup> 49<sup>59</sup> and 50.<sup>60</sup> On

<sup>50</sup> SC Res. 460 (21 December 1979), paras. 2 and 3.

<sup>51</sup> SC Res. 277 (18 March 1970), preambular para. 4(c).

<sup>52</sup> SC Res. 437 (10 October 1978), paras. 1–4.

<sup>53</sup> See, e.g., SC Res. 326 (2 February 1973); SC Res. 327 (2 February 1973); SC Res. 328 (10 March 1973); SC Res. 424 (17 March 1978).

<sup>54</sup> See SC Res. 403 (14 January 1977); SC Res. 406 (25 May 1977).

<sup>55</sup> See SC Res. 445 (8 March 1979). <sup>56</sup> See SC Res. 445 (8 March 1979).

<sup>57</sup> SC Res. 232 (16 December 1966), preambular para. 4.

<sup>58</sup> *Ibid.*; SC Res. 253 (29 May 1968), para. 9; SC Res. 277 (18 March 1970), para. 9 and 11; SC Res. 409 (27 May 1977), para. 3.

<sup>59</sup> SC Res. 386 (17 March 1976), preambular para. 10. <sup>60</sup> *Ibid.*

other occasions, it invoked Charter provisions in order to emphasise the legal consequences flowing from its decisions, as with its references to Articles 2,<sup>61</sup> 2(6)<sup>62</sup> and 25.<sup>63</sup> In its resolutions relating to subsequent sanctions regimes, the Council has tended to be more vague about the precise legal basis of, and consequences flowing from, its actions, employing language which implicitly invokes Charter provisions. It commonly identifies a threat to the peace without invoking Article 39 and notes that it is acting under Chapter VII without invoking Article 41.

Second, the Council drew a distinction between the obligations of UN member states and those of non-members. When the Council defined and modified the scope of the 232 sanctions regime, it required 'all States Members of the United Nations' to impose sanctions.<sup>64</sup> In many instances it also made explicit reference to the obligation of member states to implement the sanctions in accordance with Article 25.<sup>65</sup> At the same time, the Council also reminded non-members of the provisions of Article 2 in general<sup>66</sup> and Article 2(6) in particular,<sup>67</sup> thus alluding to a potential legal obligation upon even non-members to apply sanctions.

Third, the Council established a Sanctions Committee for the first time. Perhaps because it was the very first Sanctions Committee, the 253 Committee was considerably more active than most of its younger

<sup>61</sup> SC Res. 232 (16 December 1966), para. 7; SC Res. 253 (29 May 1968), para. 14; SC Res. 277 (18 March 1970), para. 18; SC Res. 388 (6 April 1976), para. 3.

<sup>62</sup> SC Res. 314 (28 February 1972), para. 2; SC Res. 320 (29 September 1972), para. 2; SC Res. 409 (27 May 1977), para. 2.

<sup>63</sup> SC Res. 232 (16 December 1966), paras. 3, 6; SC Res. 253 (29 May 1968), preambular para. 5, paras. 11–12; SC Res. 277 (18 March 1970), preambular para. 4(b); SC Res. 288 (17 November 1970), preambular para. 3, para. 4; SC Res. 314 (28 February 1972), preambular para. 3, para. 2; SC Res. 318 (28 July 1972), preambular para. 5; SC Res. 320 (29 September 1972), preambular para. 3, para. 2; SC Res. 333 (22 May 1973), preambular para. 3; SC Res. 437 (10 October 1978), para. 2; SC Res. 460 (21 December 1979), para. 4.

<sup>64</sup> SC Res. 232 (16 December 1966), para. 2; SC Res. 253 (29 May 1968), paras. 3–6; SC Res. 277 (18 March 1970), paras. 2, 9; SC Res. 388 (6 April 1976), paras. 1, 2; SC Res. 409 (27 May 1977), para. 1.

<sup>65</sup> SC Res. 232 (16 December 1966), paras. 3, 6; SC Res. 253 (29 May 1968), preambular para. 5, paras. 11, 12; SC Res. 277 (18 March 1970), preambular para. 4(b); SC Res. 288 (17 November 1970), preambular para. 3, para. 4; SC Res. 314 (28 February 1972), preambular para. 3, para. 2; SC Res. 318 (28 July 1972), preambular para. 5; SC Res. 320 (29 September 1972), preambular para. 3, para. 2; SC Res. 333 (22 May 1973), preambular para. 3; SC Res. 437 (10 October 1978), para. 2; SC Res. 460 (21 December 1979), para. 4.

<sup>66</sup> SC Res. 232 (16 December 1966), para. 7; SC Res. 253 (29 May 1968), para. 14; SC Res. 277 (18 March 1970), para. 18; SC Res. 388 (6 April 1976), para. 3.

<sup>67</sup> SC Res. 314 (28 February 1972), para. 2; SC Res. 320 (29 September 1972), para. 2; SC Res. 409 (27 May 1977), para. 2.

cousins. It remains the Committee which held the most meetings, circulated the highest number of substantive reports and made the most substantive recommendations to the Security Council regarding potential modifications to a sanctions regime. Finally, in its oversight of the 232 sanctions regime, the Council also invoked Article 50 for the first time, recommending that states and international organisations and agencies provide special assistance to Zambia,<sup>68</sup> Mozambique<sup>69</sup> and Botswana.<sup>70</sup>

## 2. THE 418 SOUTH AFRICA SANCTIONS REGIME

The Security Council imposed a mandatory arms embargo against South Africa in November 1977, with the aim of restricting the South African government's ability to threaten international peace and security. Among additional goals also articulated by the Council while the embargo was in place were bringing about the elimination of the policy of apartheid, the establishment of a democratic society and the enjoyment of equal rights by all South African citizens. The Council established a sanctions committee to administer the sanctions. The 418 sanctions regime was eventually terminated in 1994, following free and fair elections and the inauguration of Nelson Mandela as President of South Africa.

### 1. Constitutional basis

Although sanctions were not imposed against South Africa until 1977, as early as August 1963 the Security Council characterised the South African government's policy of apartheid and its efforts to increase its weapons stockpile as 'seriously disturbing international peace and security'.<sup>71</sup> At the same time, the Council 'solemnly' called upon states to cease selling and shipping arms, ammunition of all types and military vehicles to South Africa.<sup>72</sup>

The status of these 1963 measures as voluntary rather than mandatory appears clear with the benefit of hindsight, as the Council itself

<sup>68</sup> SC Res. 326 (2 February 1973), para. 9; SC Res. 327 (2 February 1973), preambular para. 5, para. 2; SC Res. 329 (10 March 1973), paras. 2-6.

<sup>69</sup> SC Res. 386 (17 March 1976), preambular para. 10, paras. 3-6.

<sup>70</sup> SC Res. 403 (14 January 1977), paras. 5-8; SC Res. 406 (25 May 1977), paras. 5-7.

<sup>71</sup> SC Res. 181 (7 August 1963), preambular para. 8.

<sup>72</sup> SC Res. 181 (7 August 1963), para. 3.

referred to them as a 'voluntary embargo' when it initiated the 418 sanctions regime.<sup>73</sup> In 1963, however, the Council's call upon states to halt sales and shipments of arms and related equipment to South Africa could conceivably have been interpreted as falling within the scope of Article 41, even though some Security Council members made a point of emphasising that these measures were not mandatory and did not constitute action under Chapter VII of the UN Charter.<sup>74</sup> Subsequent Council decisions did little to clarify the situation, suggesting that the initial embargo carried legal implications beyond those of merely voluntary action. For example, the Council condemned violations of the measures<sup>75</sup> and went as far as reaffirming and strengthening them.<sup>76</sup> Moreover, the Council also authorised the establishment of both an expert panel and a committee to look into measures that might help to address the situation in South Africa.<sup>77</sup>

In late 1977, almost fourteen years after it had begun to experiment with a policy of a 'voluntary' arms embargo against South Africa, the Council adopted two resolutions addressing the situation in that country. On 31 October 1977, the Council recalled its earlier calls to the South African regime to end violence against its people and to take urgent steps to eliminate apartheid and racial discrimination,<sup>78</sup> and noted that it was convinced that the violence and repression by the South African racist regime had greatly aggravated the situation in South Africa and would lead to violent conflict and racial conflagration with serious international repercussions.<sup>79</sup> At the same time, the Council also reaffirmed the legitimacy of the struggle of the South African people for the elimination of apartheid and racial discrimination,<sup>80</sup> and affirmed the right to the exercise of self-determination by all the people of South Africa, irrespective of race, colour or creed.<sup>81</sup> The Council then strongly condemned the South African regime for its repression of its black people and opponents of apartheid<sup>82</sup> and expressed support for people struggling for the elimination of

<sup>73</sup> SC Res. 418 (4 November 1977), preambular paras. 8–9.

<sup>74</sup> See, e.g.: S/PV.1056 (7 August 1963), paras. 26–28 (United States), paras. 33–38 (United Kingdom).

<sup>75</sup> SC Res. 282 (23 July 1970), para. 3.

<sup>76</sup> SC Res. 182 (4 December 1963), para. 5; SC Res. 191 (18 June 1964), para. 12; SC Res. 282 (23 July 1970), paras. 2, 4.

<sup>77</sup> SC Res. 182 (4 December 1963), para. 6 (authorising the panel); SC Res. 191 (18 June 1964), para. 8 (authorising the committee).

<sup>78</sup> SC Res. 417 (31 October 1977), preambular para. 1. <sup>79</sup> *Ibid.*, preambular para. 4.

<sup>80</sup> *Ibid.*, preambular para. 5. <sup>81</sup> *Ibid.*, preambular para. 6. <sup>82</sup> *Ibid.*, para. 1.

apartheid.<sup>83</sup> The Council then made a number of demands of the South African regime, including ending violence and repression against black people and opponents of apartheid, abandoning the policy of apartheid and ensuring majority rule based on justice and equality.<sup>84</sup>

On 4 November 1977, the Council again called upon the South African government to end violence against its people and to take urgent steps to eliminate apartheid and racial discrimination.<sup>85</sup> It then recognised that the military build-up by South Africa and its persistent acts of aggression against neighbouring states seriously disturbed the security of those states,<sup>86</sup> further recognised that it was necessary to strengthen the existing voluntary arms embargo in order to prevent a further aggravation of the grave situation in South Africa,<sup>87</sup> and strongly condemned the government of South Africa for its acts of repression, its continuance of the system of apartheid and its attacks against neighbouring states.<sup>88</sup> The Council then noted that it was acting under Chapter VII of the UN Charter,<sup>89</sup> determined that, having regard to the policies and acts of the South African government, the acquisition by South Africa of arms and related material constituted a threat to international peace and security<sup>90</sup> and applied a mandatory arms embargo.<sup>91</sup>

## 2. Objectives

The explicit objective of the sanctions regime was to prevent South Africa from acquiring arms, so as to diminish the South African government's capacity to pose a threat to international peace and security.<sup>92</sup> A number of additional objectives were also implicit in the Council's decisions addressing South Africa, including the elimination of apartheid,<sup>93</sup> the establishment of a democratic society;<sup>94</sup> and the enjoyment of equal rights by all South African citizens.<sup>95</sup>

<sup>83</sup> *Ibid.*, para. 2.    <sup>84</sup> *Ibid.*, para. 3.

<sup>85</sup> SC Res. 418 (4 November 1977), preambular para. 1.

<sup>86</sup> *Ibid.*, preambular para. 2.    <sup>87</sup> *Ibid.*, preambular para. 3.    <sup>88</sup> *Ibid.*, preambular para. 6.

<sup>89</sup> *Ibid.*, preambular para. 10.    <sup>90</sup> *Ibid.*, para. 1.    <sup>91</sup> *Ibid.*, para. 2.

<sup>92</sup> *Ibid.*, paras. 1 and 2; SC Res. 558 (13 December 1984), preambular paras. 4, 5.

<sup>93</sup> SC Res. 418 (4 November 1977), preambular para. 1; SC Res. 473 (13 June 1980), preambular para. 7, paras. 4, 7; SC Res. 569 (26 July 1985), para. 5; SC Res. 591 (28 November 1986), preambular para. 7; SC Res. 765 (16 July 1992), para. 7.

<sup>94</sup> SC Res. 473 (13 June 1980), preambular para. 7, para. 4; SC Res. 569 (26 July 1985), preambular para. 5, para. 5; SC Res. 591 (28 November 1986), preambular para. 7.

<sup>95</sup> SC Res. 473 (13 June 1980), preambular para. 7, paras. 4, 7; SC Res. 569 (26 July 1985), preambular para. 5; SC Res. 591 (28 November 1986), preambular para. 7.

### 3. Scope

The scope of the mandatory sanctions regime imposed against South Africa remained consistent throughout the sixteen and a half years from the time of its establishment to its termination. Under the sanctions regime, the Security Council required all states to stop providing South Africa with arms and related material of all types<sup>96</sup> and to refrain from helping South Africa to develop nuclear weapons.<sup>97</sup> The phrase 'arms and related material' initially encompassed weapons, ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for all of those articles.<sup>98</sup> The Council subsequently clarified that it also applied to nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment, as well as spare parts for all of those items.<sup>99</sup>

The 418 sanctions regime was never expanded beyond an arms embargo, despite frequent UNGA resolutions urging the Security Council to strengthen the 418 sanctions regime.<sup>100</sup> A number of draft resolutions seeking to expand the scope of the sanctions were put to the vote, but none was adopted, owing either to a failure to gain the requisite votes or the exercise of the permanent member veto. Two attempts came extremely close. A February 1987 draft would have required states to apply targeted economic and financial sanctions, including prohibitions upon the import from South Africa of currency, military articles, uranium and coal, the export to South Africa of computers, oil and petroleum products, and the provision of loans to South Africa.<sup>101</sup> A March 1988 draft would also have required states to apply targeted economic and financial sanctions, this time including prohibitions upon investment in South Africa, all forms of military, police or

<sup>96</sup> SC Res. 418 (4 November 1977), para. 2.   <sup>97</sup> *Ibid.*, para. 4.

<sup>98</sup> *Ibid.*   <sup>99</sup> SC Res. 591 (28 November 1986), para. 4.

<sup>100</sup> See, e.g., A/RES/32/105 (14 December 1977), Section G; A/RES/33/183 (24 January 1979), Section E; A/RES/34/93 (12 December 1979), Sections C, D, F; A/RES/35/206 (16 December 1980), Section C; A/RES/36/172 (17 December 1981), Sections B, D; A/RES/37/69 (9 December 1982), Section C; A/RES/38/39 (5 December 1983), Section D; A/RES/39/72 (13 December 1984), Section A; A/RES/40/64 (10 December 1985), Section A; A/RES/41/35 (10 November 1986), Section B; A/RES/42/23 (20 November 1987), Section C; A/RES/43/50 (5 December 1988), Section C; A/RES/44/27 (22 November 1989), Section C; A/RES/45/176 (19 December 1990), Section B; A/RES/46/79 (13 December 1991), Section E; A/RES/47/116 (18 December 1992), Section D.

<sup>101</sup> S/18705 (draft resolution sponsored by Argentina, Congo, Ghana, United Arab Emirates and Zambia).

intelligence co-operation, and the export to South Africa of oil.<sup>102</sup> Both drafts attracted ten votes in favour – one more than the minimum required for a resolution to be adopted. But both failed to come into effect due to vetoes cast by the United Kingdom and the United States.<sup>103</sup>

Although the Council did not manage to strengthen the scope of the 418 sanctions regime, it did adopt decisions calling upon, requesting or urging states to implement a range of additional voluntary measures. These included voluntary arms-related sanctions,<sup>104</sup> financial sanctions,<sup>105</sup> sporting and cultural sanctions,<sup>106</sup> and targeted sanctions against computers and other equipment destined for the use of the South African army and police force.<sup>107</sup>

#### **4. Administration and monitoring**

During the course of its application of sanctions against South Africa, the Security Council bestowed responsibility for the administration and monitoring of sanctions upon the UNSG and the South Africa Sanctions Committee.

##### *4.1 The Role of the Secretary-General*

During the course of the South Africa sanctions regime, the Security Council requested the UNSG to report to it on the implementation of its resolutions relating to the sanctions.<sup>108</sup> On one occasion the UNSG was requested to report to the 421 Sanctions Committee rather than the Council.<sup>109</sup>

##### *4.2 The 421 Sanctions Committee*

A month after imposing the arms embargo, the Security Council decided to establish a Committee to oversee sanctions implementation

<sup>102</sup> S/19585 (draft resolution sponsored by Algeria, Argentina, Nepal, Senegal, Yugoslavia and Zambia).

<sup>103</sup> For the votes, see S/PV.2738 (20 February 1987); S/PV.2797 (8 March 1988).

<sup>104</sup> SC Res. 558 (13 December 1984), para. 2; SC Res. 569 (26 July 1985), para. 6(e); SC Res. 591 (28 November 1986), para. 2; SC Res. 591 (28 November 1986), para. 7.

<sup>105</sup> SC Res. 569 (26 July 1985), para. 6(a); SC Res. 569 (26 July 1985), para. 6(b); SC Res. 569 (26 July 1985), para. 6(d).

<sup>106</sup> SC Res. 569 (26 July 1985), para. 6(c).

<sup>107</sup> SC Res. 569 (26 July 1985), para. 6(f); SC Res. 591 (28 November 1986), para. 3.

<sup>108</sup> SC Res. 418 (4 November 1977), para. 6; SC Res. 473 (13 June 1980), para. 12; SC Res. 569 (26 July 1985), para. 8; SC Res. 591 (28 November 1986), para. 14.

<sup>109</sup> SC Res. 558 (13 December 1984), para. 4.

against South Africa.<sup>110</sup> The 421 Sanctions Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was tasked with reporting to the Council on its work and with observations and recommendations and undertaking the following responsibilities: (a) examining the UNSG's reports on implementation of the embargo;<sup>111</sup> (b) recommending how to make the embargo more effective;<sup>112</sup> and (c) seeking information from states regarding steps taken to implement sanctions.<sup>113</sup> In subsequent resolutions, the Committee was also asked to redouble its efforts to ensure the strict implementation of sanctions by recommending measures to close any 'loop-holes'.<sup>114</sup>

The 421 Committee remains the longest serving Sanctions Committee, having existed for seventeen years. Yet despite its longevity, the 421 Committee was considerably less active than the 253 Committee. During its tenure, the Committee held 113 formal meetings<sup>115</sup> and issued a handful of reports.<sup>116</sup> The 421 Committee also made some recommendations concerning potential additional action on the sanctions, which were forwarded as letters from the Committee Chairman to the President of the Council.<sup>117</sup>

## 5. Termination

The sanctions against South Africa were ultimately terminated in May 1994, when the Council welcomed the first all-race multiparty elections in South Africa and the inauguration of a united, democratic, non-racial government.<sup>118</sup> At the same time, the Council also dissolved the 421 Committee.<sup>119</sup> A month later, the Council removed 'The question of South Africa' from the list of matters of which it was seized.<sup>120</sup>

<sup>110</sup> SC Res. 421 (9 December 1977), para. 1.

<sup>111</sup> *Ibid.*, para. 1(a). <sup>112</sup> *Ibid.*, para. 1(b). <sup>113</sup> *Ibid.*, para. 1(c).

<sup>114</sup> SC Res. 473 (13 June 1980), para. 11; SC Res. 591 (28 November 1986), para. 13.

<sup>115</sup> *Index to Proceedings of the Security Council for 1994* (1995) United Nations, New York, p. xii (containing a list of the meetings held by the 421 Committee in 1994 – the year in which it was dissolved).

<sup>116</sup> For a list of these reports, see Appendix 3, Table F.

<sup>117</sup> See, e.g., S/16680 (13 December 1984); S/18474 (24 November 1986); S/19396 (30 December 1987).

<sup>118</sup> SC Res. 919 (26 May 1994), para. 1.

<sup>119</sup> *Ibid.*, para. 3. <sup>120</sup> SC Res. 930 (27 June 1994), para. 4.



## 6. Conclusions

UN sanctions against South Africa are often credited with playing a role in bringing about the demise of apartheid. A number of speakers made this point before the Council when it voted to terminate the sanctions.<sup>121</sup> It is unclear, however, to what extent the 418 arms embargo was a critical factor in bringing about such change. The embargo without doubt restricted the South African government's ability to gain easy access to arms which would have assisted it to oppress the South African people and take aggressive action against other states. It is probable, however, that other forms of sanctions, including the stronger sanctions called for by the General Assembly and the voluntary measures endorsed by the Council, played a more significant role in apartheid's downfall. Equally influential were other forms of boycott employed by states, organisations and concerned citizens.

The 418 sanctions regime contributed to the evolution of the UN sanctions system in a number of ways. First, it represented the first sanctions regime to be imposed against a UN member state. Second, when the Council outlined the scope of sanctions, it introduced a formulation that has become standard in subsequent sanctions regimes: 'Decides that all States shall'. Third, the Council's calls to states to apply a mixture of 'voluntary' sanctions in addition to the mandatory arms embargo, created a web of 'sanctions' whose legal implications appeared to differ substantially. Although the Council had also adopted voluntary and mandatory sanctions against the illegal minority regime in Southern Rhodesia, most of the voluntary sanctions preceded the application of mandatory sanctions. In its actions relating to South Africa, the Council adopted a range of voluntary sanctions both before and after it imposed the mandatory arms embargo.

## 3. THE 661 IRAQ SANCTIONS REGIME

The Security Council imposed sanctions against Iraq on 6 August 1990, four days after that state had invaded Kuwait. The 661 sanctions regime, which had the initial aim of securing Iraq's withdrawal from Kuwait, consisted of comprehensive economic and financial sanctions. The sanctions were retained after Iraq was forced to retreat from Kuwait

<sup>121</sup> See, e.g., S/PV.3379 (26 May 1994), p. 3 (Mr Thabo Mbeki, Deputy President of South Africa), p. 4 (Botswana), p. 14 (India), p. 26 (United States).

by the Gulf War, with the key objectives becoming the establishment of a Compensation Commission to administer reparations claims arising from the Gulf War and disarming Iraq of nuclear, chemical and biological weapons, as well as anti-ballistic missiles with a range of greater than 150 km. In May 2003, after Saddam Hussein's Government had been toppled by invading forces led by the United States, the Council terminated the bulk of the Iraq sanctions, with only the arms embargo remaining in place. At the same time, the Council also imposed new, targeted financial sanctions against members of the former Hussein regime and their immediate family members. The Council has established a range of subsidiary bodies to administer, implement and monitor the sanctions.

## 1. Constitutional basis

Iraq invaded Kuwait on 2 August 1990. The Security Council immediately adopted resolution 660 (1990), in which it determined that the invasion constituted a breach of international peace and security,<sup>122</sup> noted that it was acting in accordance with Articles 39 and 40 of the UN Charter,<sup>123</sup> and demanded the immediate, unconditional withdrawal of Iraqi forces from Kuwaiti territory.<sup>124</sup> Four days later, when Iraq had not withdrawn from Kuwait, the Council adopted resolution 661 (1990), in which it noted that it was acting under Chapter VII,<sup>125</sup> determined that Iraq had failed to comply with the demands outlined in resolution 660 (1990),<sup>126</sup> and imposed sanctions.<sup>127</sup>

In subsequent decisions clarifying or modifying the scope of the sanctions, adopted prior to the outbreak of Gulf War hostilities, the Council again invoked Chapter VII.<sup>128</sup> However, after the Gulf War the constitutional basis for the continued application of sanctions appeared to shift subtly. In resolution 687 (1991), the Council referred to the threat posed to peace and security in the area by weapons of mass destruction, as well as to the need to establish a zone free of such weapons in the Middle East.<sup>129</sup> It then noted that it was acting under Chapter VII,<sup>130</sup> before reaffirming the continued application of the

<sup>122</sup> SC Res. 660 (2 August 1990), preambular para. 2. <sup>123</sup> *Ibid.*, preambular para. 3.

<sup>124</sup> *Ibid.*, para. 1. <sup>125</sup> SC Res. 661 (6 August 1990), preambular para. 7.

<sup>126</sup> *Ibid.*, para. 1. <sup>127</sup> *Ibid.*, paras. 2–4.

<sup>128</sup> See, e.g., SC Res. 666 (13 September 1990), preambular para. 6; SC Res. 670 (25 September 1990), preambular para. 13.

<sup>129</sup> SC Res. 687 (3 April 1991), preambular para. 17. <sup>130</sup> *Ibid.*, preambular para. 26.

sanctions.<sup>131</sup> In subsequent resolutions clarifying or modifying the scope and application of sanctions, the Council has continued to invoke Chapter VII.<sup>132</sup> It has also determined that the situation continued to constitute a threat to international peace and security.<sup>133</sup>

The Council's determination of a threat to peace and security in resolution 687 (1991) raises the question of whether the cessation of Gulf War hostilities also signified the effective dissipation of the breach of the peace that had been identified in resolution 660 (1990). If so, then it was necessary for the Council to identify an alternative threat to the peace, breach of the peace or act of aggression in order to justify the continued application of sanctions. It is also possible, however, that the Council's affirmation of the thirteen prior resolutions on the situation was meant to signify that the breach of international peace and security was continuing.<sup>134</sup> According to such a reading of the situation, the breach of international peace and security would not completely dissipate until Iraq fully complied with its obligations under resolution 687 (1991).

In May 2003, shortly after the overthrow of Saddam Hussein's regime, the Council reaffirmed the importance of the disarmament of Iraqi weapons of mass destruction and confirmation of such disarmament.<sup>135</sup> At the same time, it determined that the situation in Iraq, although improved, continued to constitute a threat to international peace and security.<sup>136</sup> The Council then noted that it was acting under Chapter VII,<sup>137</sup> before proceeding to modify the Iraq sanctions regime. In November 2003, when the Council replaced the 661 Sanctions Committee with a new Committee, it again determined that the situation in Iraq continued to constitute a threat to international peace and security<sup>138</sup> and noted that it was acting under Chapter VII.<sup>139</sup>

<sup>131</sup> *Ibid.*, paras. 20–24.

<sup>132</sup> See, e.g., SC Res. 986 (14 April 1995), preambular para. 6; SC Res. 1051 (27 March 1996), preambular para. 6; SC Res. 1137 (12 November 1997), preambular para. 12; SC Res. 1284 (17 December 1999), preambular para. 11; SC Res. 1409 (14 May 2002), preambular para. 6; SC Res. 1454 (30 December 2002), preambular para. 6.

<sup>133</sup> SC Res. 1137 (12 November 1997), preambular para. 11.

<sup>134</sup> SC Res. 687 (3 April 1991), para. 1.

<sup>135</sup> SC Res. 1483 (22 May 2003), preambular para. 3. <sup>136</sup> *Ibid.*, preambular para. 17.

<sup>137</sup> *Ibid.*, preambular para. 18. <sup>138</sup> SC Res. 1518 (24 November 2003), preambular para. 4.

<sup>139</sup> *Ibid.*, preambular para. 5.

## 2. Objectives

The initial objective of the Iraq sanctions regime was to ensure the withdrawal of Iraqi forces from Kuwait and the reinstatement of the Kuwaiti government.<sup>140</sup> After the Gulf War, the objectives of the sanctions regime were modified to include: (i) the establishment of a compensation fund to cover the losses incurred by foreign governments, nationals and corporations;<sup>141</sup> and (ii) the complete disarmament of Iraq.<sup>142</sup> In order to comply with its obligation to disarm completely, Iraq was required to undertake the following measures: (a) to accept unconditionally the destruction, removal or rendering harmless of all chemical and biological weapons<sup>143</sup> and all ballistic missiles with a range greater than 150 km;<sup>144</sup> (b) to agree to on-site inspection of its armament facilities;<sup>145</sup> (c) to refrain from the use, development, construction or acquisition of chemical and biological weapons,<sup>146</sup> ballistic missiles with a range greater than 150 km,<sup>147</sup> and nuclear weapons;<sup>148</sup> and (d) to submit to future, ongoing monitoring and verification of its compliance with the obligation to refrain from using, developing, constructing or acquiring those weapons.<sup>149</sup>

In late 1997, when it imposed additional targeted travel sanctions against particular Iraqi officials, the Council made it clear that the objective of those sanctions was to ensure that Iraq co-operated unconditionally with the United Nations Special Commission (UNSCOM), whose task it was to monitor and verify Iraq's compliance with its disarmament obligations under the sanctions regime.<sup>150</sup> In late 1999, when the Council created the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) to replace UNSCOM, it provided that if Iraq were to co-operate with UNMOVIC and the IAEA and if they were both to report to the Council that the system of ongoing monitoring and verification was fully operational, then the elements of the sanctions regime not connected to arms and related material would be suspended for a renewable period of 120 days.<sup>151</sup> By providing for this possibility, the Council signalled that the major objective of the components of the sanctions regime that were not directed at arms and

<sup>140</sup> SC Res. 661 (6 August 1990), para. 2. <sup>141</sup> SC Res. 687 (3 April 1991), para. 22.

<sup>142</sup> *Ibid.*, paras. 8, 9, 10, 12, 22. <sup>143</sup> *Ibid.*, para. 8(a). <sup>144</sup> *Ibid.*, para. 8(b).

<sup>145</sup> *Ibid.*, para. 9(a). <sup>146</sup> *Ibid.*, para. 10. <sup>147</sup> *Ibid.* <sup>148</sup> *Ibid.*, para. 12.

<sup>149</sup> *Ibid.*, paras 10, 12. <sup>150</sup> SC Res. 1137 (12 November 1997), para. 6.

<sup>151</sup> SC Res. 1284 (17 December 1999), para. 33.

related material was to ensure that the system of monitoring and verification was fully operational.

The Security Council did not articulate explicit objectives connected to the arms sanctions that were maintained against Iraq following the overthrow of Saddam Hussein. It did reaffirm, however, that Iraq must meet its disarmament obligations.<sup>152</sup> The newly imposed financial sanctions seemed to have the objective of facilitating Iraq's development in the post-war environment, as funds and assets frozen in accordance with the sanctions were to be transferred to the Development Fund for Iraq.<sup>153</sup>

### 3. Scope

From August 1990 until May 2003, the 661 sanctions regime consisted of a complex blend of comprehensive economic and financial sanctions. Although the Council tinkered relatively little with the broad contours of the Iraq sanctions regime, both the Council and the 661 Committee made subtle modifications to the types of products and commodities that were exempt from the sanctions, as well as to procedures for determining which products and commodities were exempt. Each of these changes altered the overall scope of the sanctions regime. In May 2003 the Council terminated the bulk of the Iraq sanctions, with only the arms embargo remaining in place. At the same time the Council also imposed new, targeted financial sanctions.

#### 3.1 *Sanctions obligations*

In resolution 661 (1990), the Council required all states to prevent: (a) the import of all goods and commodities originating in Iraq;<sup>154</sup> (b) activities designed to promote export from Iraq of any goods or commodities;<sup>155</sup> (c) the export to Iraq of goods and commodities;<sup>156</sup> and (d) the provision to the Iraqi government, any commercial, industrial or public utility undertaking in Iraq or Kuwait, or persons or bodies within Iraq or Kuwait, of any funds or other financial or economic resources.<sup>157</sup> A month later, the Council adopted resolution 670 (1990), in which it clarified that the 661 sanctions regime required all states to prevent

<sup>152</sup> SC Res. 1483 (22 May 2003), para. 11. See also preambular para. 3. <sup>153</sup> *Ibid.*, para. 23.

<sup>154</sup> SC Res. 661 (6 August 1990), para. 3(a). <sup>155</sup> *Ibid.*, para. 3(b). <sup>156</sup> *Ibid.*, para. 3(c).

<sup>157</sup> *Ibid.*, para. 4.

aircraft destined for Iraq or Kuwait from departing from or over-flying their territory.<sup>158</sup>

In April 1991, after the Gulf War hostilities had ended, the Council maintained the 661 sanctions regime. Interestingly, the Council's continuation of the comprehensive sanctions was implicit rather than explicit. Its endorsement of the continuation of these measures can be deduced from the following factors: (a) the Council's affirmation of the thirteen resolutions it had adopted to date on the situation between Iraq and Kuwait, which included resolutions 661 (1990) and 670 (1990);<sup>159</sup> and (b) the Council's decision that upon approval by the Council of the programme for the establishment and operation of the Compensation Commission and upon Council agreement that Iraq had complied with all of its disarmament obligations, the sanctions would have no further effect.<sup>160</sup>

The Council was more explicit concerning the continuation of arms sanctions. In resolution 687 (1991) it clarified that, in order to ensure that Iraq did not increase its capacity to re-arm, states were required to continue to prevent the sale, supply or provision to Iraq of: (a) arms and related material;<sup>161</sup> (b) items relating to chemical and biological weapons, ballistic missiles with a range greater than 150 km, and nuclear weapons;<sup>162</sup> (c) technology relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than 150 km, and nuclear weapons;<sup>163</sup> and (d) personnel or training or technical support services relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than 150 km and nuclear weapons.<sup>164</sup>

In October 1992, the Council applied a form of temporary additional financial sanctions, requiring all states in whose jurisdiction there were funds from the sale of Iraqi petroleum or petroleum products, belonging to the government of Iraq or of its state bodies, corporations, or agencies and paid for since the date sanctions were imposed, to transfer those funds to the escrow account established under the initial attempt at the OFFP.<sup>165</sup> At the same time, the Council also required all states in which there were petroleum or petroleum products belonging to the government of Iraq or its state bodies, corporations, or agencies, to purchase or arrange for the sale of such petroleum or petroleum

<sup>158</sup> SC Res. 670 (25 September 1990), paras. 3–6. <sup>159</sup> SC Res. 687 (3 April 1991), para. 1.

<sup>160</sup> *Ibid.*, para. 22. <sup>161</sup> *Ibid.*, para. 24(a). <sup>162</sup> *Ibid.*, para. 24(b). <sup>163</sup> *Ibid.*, para. 24(c).

<sup>164</sup> *Ibid.*, para. 24(d). <sup>165</sup> SC Res. 778 (2 October 1992), para. 1.

products and transfer the proceeds from that purchase or sale to the escrow account established under the initial attempt at the OFFP.<sup>166</sup>

In late 1997, the Council strengthened the scope of the sanctions in response to certain actions taken by Iraq to interfere with the work of UNSCOM. Iraq had sought to impose conditions upon its co-operation with UNSCOM and government officials had denied two UNSCOM officials the right to enter Iraq on the grounds of their nationality, prevented UNSCOM inspectors from entering inspection sites and tampered with UNSCOM surveillance equipment.<sup>167</sup> In an effort to induce Iraqi compliance with UNSCOM's work, the Council therefore applied targeted travel sanctions against Iraqi officials and members of the armed forces who were involved in such interference.<sup>168</sup>

In May 2003, after the formal completion of the second Gulf War hostilities, the Council adopted resolution 1483 (2003), by which it terminated most of the sanctions against Iraq, with the exception of an arms embargo.<sup>169</sup> At the same time, the Council imposed new financial sanctions in connection with the situation in Iraq, requiring all member states to freeze any funds or other financial assets of economic resources in their jurisdiction belonging to the former government of Iraq and its various entities, as well as those removed from Iraq by Saddam Hussein and other senior officials of the former Iraqi regime and their immediate family members.<sup>170</sup> Member states were also required to transfer those frozen funds, financial assets and economic resources to the Development Fund for Iraq.<sup>171</sup>

### 3.2 Exemptions

When the Council first imposed sanctions against Iraq, it exempted supplies that were 'intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs'.<sup>172</sup> It also exempted payments relating to such exempt supplies.<sup>173</sup> Almost two months later, the Council clarified that aviation sanctions did not apply to flights undertaken for the purpose of transporting supplies exempted from the sanctions regime,<sup>174</sup> on behalf of the United Nations Iran-Iraq Military Observer Group,<sup>175</sup> or otherwise approved by the 661 Committee.<sup>176</sup>

<sup>166</sup> *Ibid.*, para. 2. <sup>167</sup> SC Res. 1137 (12 November 1997), preambular paras. 1–2, para. 1.

<sup>168</sup> *Ibid.*, paras. 4–5. <sup>169</sup> SC Res. 1483 (22 May 2003), para. 10. <sup>170</sup> *Ibid.*, para. 23.

<sup>171</sup> *Ibid.* <sup>172</sup> SC Res. 661 (6 August 1990), para. 3(c). <sup>173</sup> *Ibid.*, para. 4.

<sup>174</sup> SC Res. 670 (25 September 1990), paras. 3–4. <sup>175</sup> *Ibid.*, para. 3. <sup>176</sup> *Ibid.*, para. 4(b).

After the conclusion of Gulf War hostilities, the UNSG commissioned a report to explore whether the ‘humanitarian circumstances’ foreshadowed in resolution 661 (1990) did in fact exist, thus enabling the provision to Iraq of foodstuffs.<sup>177</sup> The report concluded that humanitarian circumstances did exist, warning that the Iraqi people might soon face a ‘catastrophe’, including ‘epidemic and famine’ if ‘massive life-supporting needs’ were not met.<sup>178</sup> After considering the report, the Iraq Sanctions Committee determined that humanitarian circumstances did indeed exist and thus permitted states to export foodstuffs to Iraq, as long as they notified the Committee of any such exports.<sup>179</sup> The Committee also decided that states could export to Iraq ‘civilian and humanitarian supplies’, upon approval by it under the ‘no-objection procedure’.<sup>180</sup>

The Committee’s decision was endorsed by the Security Council in April 1991, in resolution 687 (1991).<sup>181</sup> At the same time, the Council clarified that the following would be exempted from the sanctions: (a) medicine and health supplies;<sup>182</sup> (b) foodstuffs notified to the Iraq Sanctions Committee;<sup>183</sup> (c) materials and supplies for essential civilian needs, subject to the 661 Committee’s no-objection procedure;<sup>184</sup> and (d) exports from Iraq of commodities or products approved by the Iraq Sanctions Committee in order to assure adequate financial resources to purchase medicine and health supplies, foodstuffs and materials and supplies for essential civilian needs.<sup>185</sup>

The Council has also authorised some additional exemptions. In 1998 it exempted from financial sanctions reasonable expenses related to the Hajj pilgrimage, when authorised by the 661 Committee.<sup>186</sup> In May 2003, when the Council retained the arms sanctions following the overthrow of the Hussein regime, it exempted arms and related materiel required by the Coalition Authority.<sup>187</sup>

### 3.3 Exemptions under the Oil-for-Food Programme

The Security Council established the Oil-for-Food Programme (OFFP) in an attempt to alleviate the effects of comprehensive sanctions

<sup>177</sup> S/22366 (20 March 1991), annex: *Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Mr Martti Ahtisaari.*

<sup>178</sup> *Ibid.*, para. 37. <sup>179</sup> S/22400 (22 March 1991): *Note by the Secretary-General*, annex.

<sup>180</sup> *Ibid.* <sup>181</sup> SC Res. 687 (3 April 1991), para. 20. <sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.* <sup>184</sup> *Ibid.* <sup>185</sup> *Ibid.*, para. 23.

<sup>186</sup> SC Res. 1153 (20 February 1998), para. 3; SC Res. 1210 (24 November 1998), para. 3.

<sup>187</sup> SC Res. 1483 (22 May 2003), para. 10.



upon the Iraqi civilian population. It has been widely discredited by the Independent Inquiry Committee into the United Nations Oil for Food Programme, which investigated irregularities in the administration of the OFFP.<sup>188</sup> The Committee's reports (the 'Volcker reports'), which were compiled following the overthrow of the Hussein regime, identified substantial evidence of administrative irregularities, including wrongdoing on the part of senior UN officials and among thousands of contractors engaged in trade under the OFFP. While the Volcker reports unearthed grave irregularities in OFFP administration, they also acknowledged that the Programme supplied valuable humanitarian assistance to the Iraqi civilian population.

The OFFP is important from the perspective of the scope of the 661 sanctions regime, as modifications to the OFFP resulted in subtle changes to the parameters of the sanctions. These modifications clarified the products and commodities to which the sanctions did not apply and improved and simplified the process by which decisions were made regarding whether potential 'dual-use' items were subject to or exempt from the sanctions regime.<sup>189</sup> The Council first attempted to implement an OFFP in August 1991. In resolution 706 (1991) it authorised all states, subject to certain conditions, to permit the import of petroleum and petroleum products in order to finance the purchase of foodstuffs, medicines and materials and supplies for essential civilian needs.<sup>190</sup> The proceeds from the exports from Iraq of petroleum and petroleum products were to be placed in an escrow account, which would be administered by the UNSG and would finance, in addition to the purchase of the items mentioned above, the payment of Iraq's various liabilities under the Compensation Fund scheme elaborated by the Council in resolution 687 (1991).<sup>191</sup>

One month later, the Council approved recommendations made by the UNSG for a scheme to implement such an OFFP.<sup>192</sup> But the Iraqi government refused to co-operate with the proposed scheme and the Council resorted to an interim arrangement to finance the programme, according to which states were required to transfer to the escrow account any funds in their jurisdiction which represented the proceeds

<sup>188</sup> *Reports by the Independent Inquiry Committee into the United Nations Oil for Food Programme* (2005, 2006), available at: <http://www.iic-offp.org>.

<sup>189</sup> For further details concerning the dual-use process, see the discussion below on the Iraq import/export monitoring mechanism.

<sup>190</sup> SC Res. 706 (15 August 1991), paras. 1, 2. <sup>191</sup> *Ibid.*, paras. 1–4.

<sup>192</sup> SC Res. 712 (19 September 1991), para. 3.

of sales of Iraqi petroleum products that had taken place since the application of sanctions.<sup>193</sup> At the same time, states in which Iraqi petroleum or petroleum products were present were also required to purchase or arrange for the sale of those items and to transfer the proceeds to the escrow account.<sup>194</sup>

In April 1995, the Council made another, more successful attempt at the OFFP. Under resolution 986 (1995), Iraq was permitted to export a limited amount of oil in order to finance the purchase of items exempted from the sanctions regime, as well as the activities of entities entrusted with overseeing Iraq's compliance with the provisions of resolution 687 (1991).<sup>195</sup> But the proceeds from the sale of oil were not to be used exclusively by the Iraqi government for the purchase of humanitarian supplies. They were also to fund: (a) distribution of humanitarian relief to the three northern governorates not under the complete control of the Iraqi government;<sup>196</sup> (b) the UN Compensation Fund established to address claims for Iraqi reparations arising from the Gulf War;<sup>197</sup> (c) costs of on-the-ground inspection and auditing of OFFP implementation;<sup>198</sup> (d) UNSCOM's operating costs;<sup>199</sup> (e) reasonable expenses incurred in exporting oil from Iraq;<sup>200</sup> and (f) the replenishment of frozen Iraqi assets from which funds had been transferred under resolution 778 (1992) to cover the costs of the UN Compensation Commission and UNSCOM.<sup>201</sup>

The Council subsequently adopted numerous resolutions extending the OFFP and honing the procedures for its implementation.<sup>202</sup> The major innovation to the process for implementing the OFFP was the adoption of the Goods Review List (GRL).<sup>203</sup> The GRL contained an exhaustive list of potential 'dual-use' items, the supply to Iraq of which first had to be approved via a process which involved careful

<sup>193</sup> SC Res. 778 (2 October 1992), para. 1. <sup>194</sup> *Ibid.*, para. 2.

<sup>195</sup> SC Res. 986 (14 April 1995), paras. 1-2, 7-10. <sup>196</sup> *Ibid.*, para. 8(b).

<sup>197</sup> *Ibid.*, para. 8(c). <sup>198</sup> *Ibid.*, para. 8(d). <sup>199</sup> *Ibid.*, para. 8(e).

<sup>200</sup> *Ibid.*, para. 8(f). <sup>201</sup> *Ibid.*, para. 8(g).

<sup>202</sup> See, e.g., SC Res. 1111 (4 June 1997); SC Res. 1143 (4 December 1997); SC Res. 1153 (20 February 1998); SC Res. 1210 (24 November 1998); SC Res. 1242 (21 May 1999); SC Res. 1281 (10 December 1999); SC Res. 1284 (17 December 1999); SC Res. 1302 (8 June 2000); SC Res. 1330 (5 December 2000); SC Res. 1352 (1 June 2001); SC Res. 1360 (3 July 2001); SC Res. 1382 (29 November 2001); SC Res. 1409 (14 May 2002); SC Res. 1447 (4 December 2002); SC Res. 1454 (30 December 2002); SC Res. 1472 (28 March 2003).

<sup>203</sup> SC Res. 1409 (14 May 2002), para. 2; SC Res. 1454 (30 December 2002), para. 1. For the full text of the GRL, see S/2002/515 (20 May 2002); and SC Res. 1454 (30 December 2002), Annex A.

consideration of the items by UNMOVIC and the IAEA, which then recommended the approval or refusal of the application by the 661 Committee.<sup>204</sup> Anything not on the list was considered to be exempt from the sanctions, thus requiring simple notification to the Committee. After the introduction of the GRL process, the flow of exempt goods and commodities to Iraq under the OFFP increased substantially.<sup>205</sup>

#### 4. Administration and monitoring

During the course of the 661 sanctions regime, the Security Council has bestowed responsibility upon a range of actors for the administration and monitoring of sanctions. These have included the UNSG and several subsidiary entities, such as the 661 and 1518 Committees, UNSCOM and its successor UNMOVIC, the OFFP and a monitoring mechanism. The Council also established ad hoc panels of experts to explore particular questions relating to sanctions implementation.

##### 4.1 *The Iraq Sanctions Committees*

The Security Council has established two sanctions committees to oversee administration of the 661 sanctions regime. The 661 Committee was created at the inception of the sanctions regime. It assumed a range of oversight responsibilities up until its dissolution in November 2003. The 1518 Committee was established in November 2003 to succeed the 661 Committee's responsibilities relating to the remaining arms sanctions and to administer the newly imposed financial sanctions.

##### i. The 661 Committee

The 661 Committee was established in accordance with rule 28 of the Council's provisional rules of procedure.<sup>206</sup> It was to report to the Council on its work, incorporating observations and recommendations, to examine the UNSG's reports on sanctions implementation and to seek information from states regarding action taken to implement sanctions.<sup>207</sup> Between its establishment in August 1990 and dissolution in November 2003, the 661 Committee was tasked with a vast array of

<sup>204</sup> For the procedures relating to the application of the GRL, see SC Res. 1409 (14 May 2002), attachment; SC Res. 1454 (30 December 2002), Annex B.

<sup>205</sup> See the UNSG report on GRL implementation: S/2002/1239 (12 November 2002).

<sup>206</sup> SC Res. 661 (6 August 1990), para. 6. <sup>207</sup> *Ibid.*

additional responsibilities, including to: (a) determine whether humanitarian circumstances had arisen requiring exemptions for foodstuffs;<sup>208</sup> (b) consider UNSG reports on humanitarian circumstances in Iraq and make appropriate recommendations for meeting Iraq's humanitarian needs;<sup>209</sup> (c) examine requests for special assistance under Article 50 and make appropriate recommendations;<sup>210</sup> (d) consider applications for exemptions from the comprehensive sanctions;<sup>211</sup> (e) monitor the implementation of arms sanctions;<sup>212</sup> (f) develop, in co-operation with UNSCOM and the IAEA, a mechanism for monitoring the sale or supply to Iraq of items that might be used for armament ('dual use items');<sup>213</sup> (g) authorise reasonable expenses related to the Hajj pilgrimage;<sup>214</sup> (h) decide upon applications concerning humanitarian and civilian needs within two working days of receiving them;<sup>215</sup> (i) approve lists of basic water, sanitation, electricity and housing supplies that did not need to be submitted for approval;<sup>216</sup> (j) review applications in an expeditious manner, in order to decrease the level of applications on hold, and to improve the approval process;<sup>217</sup> (k) review the GRL and procedures for its implementation and recommend improvements;<sup>218</sup> and (l) identify individuals and entities whose funds, financial assets and economic resources should be frozen and transferred to the Development Fund for Iraq, in accordance with the new financial sanctions.<sup>219</sup>

The 661 Committee was also tasked with a range of responsibilities related to OFFP implementation. It was to: (a) monitor the sale and supply of oil from Iraq to Turkey;<sup>220</sup> (b) develop 'expedited procedures' for OFFP implementation;<sup>221</sup> (c) approve OFFP transactions for the sale of oil and the purchase of permitted goods;<sup>222</sup> (d) assist the monitoring

<sup>208</sup> SC Res. 666 (13 September 1990), para. 1. <sup>209</sup> *Ibid.*, para. 5.

<sup>210</sup> SC Res. 669 (24 September 1990), preambular para. 4.

<sup>211</sup> SC Res. 687 (3 April 1991), paras. 20, 23. <sup>212</sup> SC Res. 700 (17 June 1991), para. 5.

<sup>213</sup> SC Res. 715 (11 October 1991), para. 7.

<sup>214</sup> SC Res. 1153 (20 February 1998), para. 3; SC Res. 1210 (24 November 1998), para. 3.

<sup>215</sup> SC Res. 1284 (17 December 1999), para. 25.

<sup>216</sup> SC Res. 1302 (8 June 2000), para. 8; SC Res. 1330 (5 December 2000), para. 10.

Applications to export to Iraq items which were potentially dual-use items could not, however, be processed via this simple notification procedure.

<sup>217</sup> SC Res. 1330 (5 December 2000), para. 13.

<sup>218</sup> SC Res. 1454 (30 December 2002), para. 2.

<sup>219</sup> SC Res. 1483 (22 May 2003), para. 19. <sup>220</sup> SC Res. 986 (14 April 1995), para. 6.

<sup>221</sup> *Ibid.*, para. 12; SC Res. 1143 (4 December 1997), para. 9; and SC Res. 1153 (20 February 1998), para. 15.

<sup>222</sup> SC Res. 986 (14 April 1995), para. 1(a).

mechanism;<sup>223</sup> (e) report on each phase of OFFP implementation;<sup>224</sup> (f) process expeditiously OFFP applications;<sup>225</sup> (g) approve contracts for parts and equipment to enable Iraq to meet its permitted ceiling of oil exports;<sup>226</sup> (h) approve lists of humanitarian items, including foodstuffs, pharmaceutical and medical supplies, as well as basic medical, agricultural and educational items, which could simply be notified to the UNSG and financed under the OFFP;<sup>227</sup> (i) appoint a group of experts to approve contracts for parts and equipment to increase Iraq's petroleum exports;<sup>228</sup> (j) facilitate the temporary use of OFFP funds for the humanitarian needs of the Iraqi people during 2003 hostilities;<sup>229</sup> (k) review applications outside the OFFP to export to Iraq emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs;<sup>230</sup> and (l) monitor the implementation of temporary plans enabling the OFFP to address the humanitarian situation in Iraq during 2003 hostilities.<sup>231</sup>

In May 2003, shortly after the conclusion of the second Gulf War, the Security Council decided that the 661 Committee would be terminated in six months.<sup>232</sup> The Committee was thus dissolved on 21 November 2003. During its tenure, the 661 Committee held more than 230 meetings<sup>233</sup> and issued seven annual reports.<sup>234</sup> It also issued more than forty reports on the implementation of the arms and related sanctions against Iraq, more than twenty reports on OFFP implementation and several other reports on improvements made to its working procedures to expedite the approval process for sending humanitarian supplies to Iraq.<sup>235</sup>

The 661 Committee summarised its activities in 'annual reports' which it began to issue in 1996. The Committee's first report painted

<sup>223</sup> SC Res. 1051 (27 March 1996), para. 10.

<sup>224</sup> SC Res. 1111 (4 June 1997), para. 4; SC Res. 1143 (4 December 1997), para. 5; SC Res. 1153 (20 February 1998), para. 14; SC Res. 1210 (4 November 1998), para. 10; SC Res. 1242 (21 May 1999), para. 10; SC Res. 1281 (10 December 1999), para. 10; SC Res. 1302 (8 June 2000), para. 6; SC Res. 1330 (5 December 2000), para. 6; SC Res. 1360 (3 July 2001), para. 6; SC Res. 1409 (14 May 2002), para. 7.

<sup>225</sup> SC Res. 1111 (4 June 1997), para. 5. <sup>226</sup> SC Res. 1175 (19 June 1998), para. 2.

<sup>227</sup> SC Res. 1284 (17 December 1999), para. 17. Applications to export to Iraq items which were potentially dual-use items could not be processed via this simple notification procedure.

<sup>228</sup> *Ibid.*, para. 18. <sup>229</sup> SC Res. 1472 (28 March 2003), para. 4(g).

<sup>230</sup> *Ibid.*, para. 7. <sup>231</sup> *Ibid.*, para. 9. <sup>232</sup> *Ibid.*, para. 18.

<sup>233</sup> The Committee had held 236 formal meetings to the end of July 2002: see A/57/2 (2002): *Report of the Security Council: 16 June 2001–31 July 2002*, p. 52.

<sup>234</sup> For a list of these reports, see Appendix 3, Table F. <sup>235</sup> *Ibid.*

quite a detailed picture of its work between 1990 and 1996.<sup>236</sup> The report outlined major Committee activities,<sup>237</sup> reported steps taken by other actors to monitor and enforce sanctions,<sup>238</sup> referred to alleged sanctions violations<sup>239</sup> and described the process that had been created to consider applications under Article 50.<sup>240</sup> However, the Committee offered few substantive observations or recommendations. It stated that close co-operation with member states was essential to enhance the effective implementation of the sanctions, and it observed that, as the responsibility for enforcing the sanctions regime lay with states, the Committee's role was primarily to provide assistance to states in enforcing sanctions.<sup>241</sup> Subsequent reports added little in the way of observations and recommendations. The Committee observed that close co-operation and interaction with member states was particularly important<sup>242</sup> and that it would work closely with relevant actors, including the UNSG, the Office of the Iraq Programme and the government of Iraq to implement the OFFP and improve the humanitarian situation in Iraq.<sup>243</sup>

## ii. The 1518 Committee

In November 2003 the Security Council decided to establish a new Committee, in accordance with rule 28 of its provisional rules of procedure, to oversee the administration of the remaining sanctions.<sup>244</sup> The 1518 Committee was to assume responsibility for identifying individuals and entities whose funds, financial assets and economic resources should be frozen and transferred to the Development Fund for Iraq, in accordance with the financial sanctions imposed by resolution 1483 (2003).<sup>245</sup> The new Committee was also to report to the Council on its work, and it would use as a basis for beginning its work the guidelines and definitions that had been employed by the 661 Committee.<sup>246</sup> The Security Council also foreshadowed the possibility that the 1518 Committee might be tasked with observing compliance with the ongoing arms sanctions against Iraq.<sup>247</sup> By the end of 2005, the

<sup>236</sup> S/1996/700 (26 August 1996). <sup>237</sup> *Ibid.*, paras. 25–77. <sup>238</sup> *Ibid.*, paras. 78–92.

<sup>239</sup> *Ibid.*, paras. 93–100. <sup>240</sup> *Ibid.*, paras. 101–110. <sup>241</sup> *Ibid.*, paras. 111–114.

<sup>242</sup> S/1997/672 (28 August 1997), para. 51; S/1998/1239 (31 December 1998), para. 76.

<sup>243</sup> S/1998/1239 (31 December 1998), para. 77; S/2000/133 (18 February 2000), para. 62; S/2001/738 (27 July 2001), para. 48; S/2002/647 (10 June 2002), para. 62; S/2003/300 (12 March 2003), para. 71.

<sup>244</sup> SC Res. 1518 (24 November 2003), para. 1.

<sup>245</sup> *Ibid.* <sup>246</sup> *Ibid.*, paras. 1–2. <sup>247</sup> *Ibid.*, para. 3.

Committee was yet to convene a formal meeting, although it did manage to hold eight informal meetings in its first two years.<sup>248</sup> It has issued regular annual reports.<sup>249</sup>

#### 4.2 *Actors implementing disarmament objectives: the IAEA, UNSCOM and UNMOVIC*

Under resolution 687 (1991), the task of monitoring and overseeing Iraq's compliance with its disarmament obligations was to be assumed by a Special Commission, which would be established according to the recommendations of the UNSG.<sup>250</sup> That Commission would co-operate in the implementation of its tasks with the International Atomic Energy Agency (IAEA), which would monitor and verify Iraq's compliance with its obligation not to possess, develop or acquire nuclear weapons.<sup>251</sup> The United Nations Special Commission (UNSCOM) was duly established<sup>252</sup> and oversaw the monitoring of the Iraq disarmament programme until it was replaced by UNMOVIC in late 1999.<sup>253</sup> UNSCOM's mandate was to carry out immediate on-site inspections based on Iraq's declarations regarding its weapons holdings and programmes; to undertake the destruction, removal or rendering harmless of all nuclear, biological or chemical weapons and anti-ballistic missiles with a range greater than 150 km, or components thereof; and to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with its disarmament obligations under resolution 687 (1991).<sup>254</sup> UNSCOM was able to play a relatively constructive role in monitoring Iraq's compliance with its disarmament obligations under the sanctions regime.<sup>255</sup> Ultimately, however, UNSCOM confronted major difficulties in undertaking its mandated activities, due to Iraq's refusal to allow it to resume operations after UNSCOM inspectors were withdrawn from Iraq in late 1998.

In December 1999 the Council decided to replace UNSCOM with UNMOVIC. UNMOVIC was created to establish a reinforced system of

<sup>248</sup> S/2004/1036 (31 December 2004), para. 3; S/2005/827 (28 December 2005), para. 3.

<sup>249</sup> See Appendix 3, Table F. <sup>250</sup> SC Res. 687 (3 April 1991), para. 9(b)(i).

<sup>251</sup> *Ibid.*, para. 13. <sup>252</sup> SC Res. 699 (June 17 1991), para. 1.

<sup>253</sup> The Security Council replaced UNSCOM with UNMOVIC in SC Res. 1284 (December 17 1999), para. 1.

<sup>254</sup> SC Res. 687 (3 April 1991), paras. 8–13.

<sup>255</sup> For a useful summary of UNSCOM's activities, see the report by the first ad hoc panel on Iraq sanctions, noted below. For a personal account, see Butler, *The Greatest Threat*.

ongoing monitoring and verification of Iraq's compliance with its disarmament obligations.<sup>256</sup> The new Commission did not have an auspicious beginning, as it was unable to establish operations in Iraq for almost three years. UNMOVIC was not able to deploy effectively in Iraq until the Security Council adopted resolution 1441 (2002), declaring Iraq to be in material breach of its disarmament obligations and requiring it to allow UNMOVIC immediate and unimpeded access to its facilities.<sup>257</sup> During the subsequent three months, UNMOVIC's role became quite prominent, as the international community scrutinised the extent to which Iraq was complying with its disarmament obligations.

#### 4.3 *The Iraq Export/Import Monitoring Mechanism*

In October 1991 the Security Council requested the 661 Committee to develop, in co-operation with UNSCOM and the IAEA, a mechanism to monitor sales or supplies to Iraq of items that could be used for the production or acquisition of weapons, in contravention of the arms sanctions.<sup>258</sup> In July 1995 the 661 Committee approved a joint proposal for that mechanism from UNSCOM and the IAEA.<sup>259</sup> In March 1996 the Council decided to establish the mechanism.<sup>260</sup> The Monitoring Mechanism consisted of a joint export/import monitoring unit established by UNSCOM and the IAEA. All states were required to notify the Mechanism if their nationals planned to export to Iraq any items or technologies that might have 'dual-use' potential.<sup>261</sup> Iraq was also required to inform the Mechanism of any plans to receive potential 'dual-use' items or technologies.<sup>262</sup>

When the Security Council established UNMOVIC, it requested the Executive Chairman of UNMOVIC and the Director-General of the IAEA to establish a unit which would assume the Monitoring Mechanism's responsibilities and to resume the revision and updating of the lists of items and technology to which the mechanism applied and thus the export of which to Iraq must be notified to the unit.<sup>263</sup> The updated list

<sup>256</sup> SC Res. 1284 (17 December 1999), paras. 1, 2.

<sup>257</sup> SC Res. 1441 (8 November 2002), paras. 1, 3.

<sup>258</sup> SC Res. 715 (11 October 1995), para. 7.

<sup>259</sup> S/1996/700 (26 August 1996): *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, annex, para. 32 (p. 8).

<sup>260</sup> SC Res. 1051 (27 March 1996), para. 1. <sup>261</sup> *Ibid.*, para. 5. <sup>262</sup> *Ibid.*, para. 6.

<sup>263</sup> SC Res. 1284 (17 December 1999), para. 8.



came into effect on 13 July 2001.<sup>264</sup> UNMOVIC reported on the monitoring unit's activities in its quarterly reports to the Security Council. Initially, the unit's main focus was reviewing notifications sent to it by states and reviewing the OFFP distribution plans to ensure that they contained no 'prohibited' items.<sup>265</sup> After the adoption of the GRL in May 2002, the unit's work increased substantially as it was involved in the process of reviewing applications under the OFFP to verify that items and technologies proposed to be supplied to Iraq did not feature on the GRL.<sup>266</sup>

#### 4.4 *The Group of Experts on Iraqi oil production*

In June 1998, the Security Council established a Group of Experts to determine whether Iraq was able to export the amount of petroleum permissible under the OFFP.<sup>267</sup> The Group was also to report on Iraqi production and transportation capacity.<sup>268</sup> The Group reported that without rapid investment in spare parts and repair of production wells, oil production would continue to decline.<sup>269</sup> It estimated that an investment of US\$1.2 billion was required to provide capacity to meet production goals.<sup>270</sup>

#### 4.5 *Ad Hoc Panels on Iraq*

In January 1999 the Security Council established three Ad Hoc Panels to explore the implementation of its Iraq resolutions.<sup>271</sup> The first panel was to advise on how to re-establish an effective disarmament monitoring and verification regime in Iraq; the second to explore the humanitarian needs of the Iraqi people; and the third to focus on issues relating to prisoners of war and Kuwaiti property. The first two Panels outlined a number of recommendations relating to the administration and

<sup>264</sup> S/2001/833 (30 August 2001): *Sixth quarterly report of the Executive-Chairman of UNMOVIC*, para. 7. For the list itself, see S/2001/560 (15 October 2001).

<sup>265</sup> See, e.g., S/2002/195 (26 February 2002): *Eighth quarterly report of the Executive-Chairman of UNMOVIC*, para. 13.

<sup>266</sup> See, e.g., S/2002/606 (31 May 2002): *Ninth quarterly report of the Executive-Chairman of UNMOVIC*, paras. 20–21; S/2002/981 (3 September 2002), annex: *Tenth quarterly report of the Executive-Chairman of UNMOVIC*, para. 28.

<sup>267</sup> SC Res. 1153 (20 February 1998), para. 12. <sup>268</sup> *Ibid.*

<sup>269</sup> See S/1998/330 (15 April 1998): *Report of the group of experts established pursuant to resolution 1153 (1998)*.

<sup>270</sup> *Ibid.* <sup>271</sup> See S/1999/100: *Note by the President of the Security Council* (30 January 1999).

monitoring of sanctions.<sup>272</sup> The recommendations of the first two panels were taken into account by the Council,<sup>273</sup> as demonstrated by the actions it subsequently took to replace UNSCOM with UNMOVIC and to reinvigorate the OFFP.<sup>274</sup>

#### 4.6 *The role of the Secretary-General*

The Security Council has requested, invited or directed the UNSG to undertake a vast collection of responsibilities connected to the implementation of the 661 sanctions regime.

##### i. Reporting

Among the UNSG's reporting responsibilities in connection with the Iraq sanctions regime, he was requested, invited or directed to report on: (a) sanctions implementation;<sup>275</sup> (b) the humanitarian situation in Iraq;<sup>276</sup> (c) UNSCOM's work;<sup>277</sup> (d) OFFP implementation;<sup>278</sup> (e) progress in monitoring arms sanctions;<sup>279</sup> (f) implementation of the OFFP distribution plan;<sup>280</sup> (g) improving the electricity sector and on essential humanitarian needs in Iraq;<sup>281</sup> (h) whether Iraq could export the full allotment of petroleum permissible under the OFFP;<sup>282</sup> (i) progress in meeting the humanitarian needs of the Iraqi people and revenues necessary to meet those needs;<sup>283</sup> (j) implementation of resolution 1284 (1999), by which the Council established UNMOVIC and modified

<sup>272</sup> S/1999/356 (30 March 1999), Annex I (*Report of the First Panel on disarmament and ongoing monitoring and verification*), Annex II (*Report of the Second Panel on the humanitarian situation in Iraq*).

<sup>273</sup> For the major recommendations of the First Panel, see *Report of the First Panel, ibid.*, paras. 61–68. For the major recommendations of the Second Panel, see *Report of the Second Panel, ibid.*, paras. 43–57.

<sup>274</sup> See SC Res. 1284 (17 December 1999), in general.

<sup>275</sup> SC Res. 661 (6 August 1990), para. 10.

<sup>276</sup> SC Res. 666 (13 September 1990), paras. 3–5. <sup>277</sup> SC Res. 699, para. 3.

<sup>278</sup> SC Res. 986 (14 April 1995), para. 11; SC Res. 1111 (4 June 1997), para. 3; SC Res. 1143 (4 December 1997), para. 4; SC Res. 1153 (20 February 1998), para. 10; SC Res. 1210 (4 November 1998), para. 6; SC Res. 1242 (21 May 1999), para. 6; SC Res. 1281 (10 December 1999), para. 5; SC Res. 1302 (8 June 2000), para. 5; SC Res. 1330 (5 December 2000), para. 5; SC Res. 1360 (3 July 2001), para. 5; SC Res. 1409 (14 May 2002), para. 7.

<sup>279</sup> SC Res. 1051 (27 March 1996), para. 16.

<sup>280</sup> SC Res. 1153 (20 February 1998), para. 5; SC Res. 1210 (4 November 1998), para. 7; SC Res. 1242 (21 May 1999), para. 7.

<sup>281</sup> SC Res. 1153 (20 February 1998), para. 11.

<sup>282</sup> SC Res. 1281 (10 December 1999), para. 6.

<sup>283</sup> SC Res. 1284 (17 December 1999), para. 28.

the OFFP;<sup>284</sup> (k) proposals for the use of additional export routes for petroleum under the OFFP;<sup>285</sup> (l) the extent to which the Iraqi government was ensuring equitable distribution of OFFP humanitarian supplies;<sup>286</sup> (m) implementation of the GRL;<sup>287</sup> and (n) implementation of temporary measures authorised after the outbreak of the second Gulf War to use contracts previously approved under the OFFP to provide for the humanitarian needs of the Iraqi people.<sup>288</sup>

## ii. Planning

The UNSG has been requested, invited or directed to undertake a number of planning tasks, including to: (a) develop a plan for the formation of UNSCOM;<sup>289</sup> (b) develop a plan for the ongoing monitoring and verification of Iraq's compliance with its obligation not to use, develop, construct or acquire weapons of mass destruction;<sup>290</sup> (c) develop recommendations for the establishment of the Iraq Compensation Fund;<sup>291</sup> (d) develop guidelines for the full implementation of the arms sanctions;<sup>292</sup> (e) submit a plan for implementing the Council's first attempt at an OFFP;<sup>293</sup> and (f) develop plans for phasing out the OFFP.<sup>294</sup>

## iii. Establishing and assisting subsidiary bodies

The UNSG has been tasked with taking the practical steps necessary to establish and assist a number of subsidiary bodies or programmes in connection with the Iraq sanctions regime. These responsibilities include establishing: (a) the United Nations Compensation Commission;<sup>295</sup> (b) an escrow account for the purposes of the OFFP;<sup>296</sup> (c) a group of experts to determine whether Iraq was able to export the permitted amount of oil under the OFFP;<sup>297</sup> and (d) a group of experts on Iraq's petroleum production and export capacity.<sup>298</sup> The UNSG has also been tasked with appointing: (a) the Executive-Chairman of UNMOVIC, as well as a 'College of Commissioners';<sup>299</sup> (b) overseers to approve

<sup>284</sup> *Ibid.*, para. 32. <sup>285</sup> SC Res. 1330 (5 December 2000), para. 18.

<sup>286</sup> SC Res. 1360 (3 July 2001), para. 11; SC Res. 1447 (4 December 2002), para. 4.

<sup>287</sup> SC Res. 1409 (14 May 2002), para. 8; SC Res. 1447 (4 December 2002), para. 5.

<sup>288</sup> SC Res. 1472 (28 March 2003), paras. 9, 11.

<sup>289</sup> SC Res. 687 (3 April 1991), para. 9. <sup>290</sup> *Ibid.*, para. 10. <sup>291</sup> *Ibid.*, para. 19.

<sup>292</sup> *Ibid.*, para. 26. <sup>293</sup> SC Res. 706 (15 August 1991), para. 5.

<sup>294</sup> SC Res. 1483 (22 May 2003), para. 16. <sup>295</sup> SC Res. 692 (20 May 1991), para. 4.

<sup>296</sup> SC Res. 986 (14 April 1995), paras. 7–8. <sup>297</sup> SC Res. 1153 (20 February 1998), para. 12.

<sup>298</sup> SC Res. 1284 (17 December 1999), para. 30.

<sup>299</sup> SC Res. 1284 (17 December 1999), para. 5.

petroleum exports under the OFFP,<sup>300</sup> and (c) independent experts to prepare a comprehensive report on the humanitarian situation in Iraq.<sup>301</sup> The UNSG was also requested to provide all necessary assistance to the 661 Committee,<sup>302</sup> and to provide Iraq and the 661 Committee with a daily statement of the status of the escrow account established under the OFFP.<sup>303</sup>

#### iv. Submitting recommendations for improving implementation and monitoring

Among responsibilities for improving implementation and monitoring, the UNSG has been requested, invited or directed to: (a) submit recommendations for ensuring that Iraq met its obligation to cover the costs of UNSCOM's operations;<sup>304</sup> (b) compile a list of equipment necessary to enable the full level of petroleum production permissible under the OFFP;<sup>305</sup> (c) make recommendations for expenditure under the OFFP;<sup>306</sup> (d) submit recommendations to the 661 Committee for minimising delays in payment for the purchase of Iraqi petroleum under the OFFP;<sup>307</sup> (e) submit recommendations to the 661 Committee for utilising excess funds in an OFFP auditing account for humanitarian purposes.<sup>308</sup>

#### v. Taking action to improve implementation and monitoring

The UNSG was requested, invited, authorised or directed to: (a) use his good offices to facilitate the delivery of humanitarian supplies to Iraq and Kuwait;<sup>309</sup> (b) implement the first attempt at an OFFP;<sup>310</sup> (c) take the necessary actions to ensure OFFP implementation;<sup>311</sup> (d) monitor parts and equipment imported to Iraq to increase oil production for the OFFP;<sup>312</sup> (e) maximise the effectiveness of the OFFP;<sup>313</sup> (f) minimise

<sup>300</sup> SC Res. 1302 (8 June 2000), para. 7. <sup>301</sup> *Ibid.*, para. 18.

<sup>302</sup> SC Res. 661 (6 August 1990), para. 8. <sup>303</sup> SC Res. 1284 (17 December 1999), para. 23.

<sup>304</sup> SC Res. 699, para. 4.

<sup>305</sup> SC Res. 1210 (4 November 1998), para. 9; SC Res. 1242 (21 May 1999), para. 9; SC Res. 1281 (10 December 1999), para. 9.

<sup>306</sup> SC Res. 1281 (10 December 1999), para. 6. <sup>307</sup> SC Res. 1302 (8 June 2000), para. 13.

<sup>308</sup> *Ibid.*, para. 14. <sup>309</sup> SC Res. 666 (13 September 1990), para. 7.

<sup>310</sup> SC Res. 712 (19 September 1991), para. 10.

<sup>311</sup> SC Res. 986 (14 April 1995), para. 13; SC Res. 1153 (20 February 1998), para. 4; SC Res. 1210 (4 November 1998), para. 4; SC Res. 1242 (21 May 1999), para. 3; SC Res. 1281 (10 December 1999), para. 3; SC Res. 1330 (5 December 2000), para. 3; SC Res. 1360 (3 July 2001), para. 3.

<sup>312</sup> SC Res. 1175 (19 June 1998), para. 6. <sup>313</sup> SC Res. 1284 (17 December 1999), para. 21.

the cost of UN activities associated with OFFP implementation;<sup>314</sup> (g) arrange the purchase of Iraqi-produced goods under the OFFP;<sup>315</sup> (h) arrange for reasonable expenses related to the Hajj to be met by funds in the escrow account;<sup>316</sup> (i) redirect excess funds in an account for OFFP auditing so they could be used for humanitarian purchases;<sup>317</sup> (j) expand the list of humanitarian items for which simple notification was required under the OFFP;<sup>318</sup> (k) redirect a percentage of the Compensation Fund to an account for humanitarian projects and report on the use of those funds;<sup>319</sup> (l) develop consumption rates and levels for medicines and medicinal chemicals which could be exported to Iraq under the GRL procedures;<sup>320</sup> (m) undertake, after the beginning of the second Gulf War, temporary measures to provide for the implementation of contracts that had been approved under the OFFP prior to the outbreak of hostilities;<sup>321</sup> and (n) terminate the OFFP over a period of six months.<sup>322</sup>

## 5. Conclusions

The 661 Iraq sanctions regime is notable for many reasons. First, it contained the most longstanding comprehensive sanctions, outlasting the comprehensive measures imposed as part of the 232 Southern Rhodesia regime by less than a year. Second, it has spawned a complex web of subsidiary actors, working to ensure both that sanctions are effectively implemented and that their humanitarian consequences upon the Iraqi civilian population are minimised. Third, the Iraq sanctions regime was maintained, and its objectives modified, beyond the point when its original objectives were achieved.

Many aspects of the regime invite closer inspection, such as the extent to which the initial application of sanctions paved the way for the subsequent authorisation of military sanctions, the manner in which the sanctions were modified – twice – in order to impose a post-conflict settlement upon a vanquished Iraq, and the manner in which the effective implementation of a comprehensive sanctions regime requires the employment of considerable resources and the

<sup>314</sup> *Ibid.*, para. 22. <sup>315</sup> *Ibid.*, para. 24; SC Res. 1330 (5 December 2000), para. 15.

<sup>316</sup> SC Res. 1284 (17 December 1999), para. 26.

<sup>317</sup> SC Res. 1330 (5 December 2000), para. 9; SC Res. 1360 (3 July 2001), para. 8.

<sup>318</sup> SC Res. 1330 (5 December 2000), para. 11. <sup>319</sup> SC Res. 1360 (3 July 2001), para. 9.

<sup>320</sup> SC Res. 1454 (30 December 2002), para. 3. <sup>321</sup> SC Res. 1472 (28 March 2003), para. 4.

<sup>322</sup> SC Res. 1483 (22 May 2003), para. 16.

participation of a broad range of actors. The investigations carried out by the Volcker Committee have unearthed a treasure trove of information concerning the application and administration of the 661 sanctions regime and the OFFP, which will prove invaluable for further research and analysis of the impact and effectiveness of the Security Council's decision-making on Iraq. The comprehensive sanctions against Iraq caused significant hardship for the Iraqi civilian population, without appearing to trigger any significant change in the personnel or ambitions of the Iraqi leadership. Nevertheless, with the benefit of hindsight, it is possible to argue that the 661 sanctions regime succeeded in its primary post-Gulf War objective of starving the Iraqi regime of the means to develop weapons of mass destruction.

#### 4. THE 713 FORMER YUGOSLAVIA SANCTIONS REGIME

The Security Council imposed sanctions against Yugoslavia in September 1991, in an attempt to address the conflict that soon led to the dissolution of that state. The 713 regime, which consisted of a general arms embargo, was maintained after the dissolution of Yugoslavia, becoming a general arms embargo against all of the successor states of the former Yugoslavia. The Council did not make any major subsequent modifications to the regime. It was eventually terminated in June 1996 after the signing of the Dayton Peace Agreement and the entry into force of a regional arms control agreement. The Council established the 724 Sanctions Committee to administer the sanctions.

### 1. Constitutional basis

In September 1991 the Security Council adopted resolution 713 (1991), in which it expressed deep concern with the fighting in Yugoslavia, which was causing a heavy loss of human life and material damage, as well as with the consequences for the countries of the region.<sup>323</sup> The Council then expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and security,<sup>324</sup> and noted its primary responsibility under the UN Charter for the maintenance of international peace and security.<sup>325</sup> It proceeded to invoke Chapter VII and impose an embargo upon the delivery of weapons

<sup>323</sup> SC Res. 713 (25 September 1991), preambular para. 3.

<sup>324</sup> *Ibid.*, preambular para. 4. <sup>325</sup> *Ibid.*, preambular para. 5.

and military equipment to Yugoslavia.<sup>326</sup> In subsequent resolutions relating to the application of the arms embargo, the Council reaffirmed that the situation in the former Yugoslavia continued to constitute a threat to international peace and security,<sup>327</sup> and again invoked Chapter VII.<sup>328</sup>

## 2. Objectives

The initial objective of the 713 sanctions regime was the establishment of peace and stability in Yugoslavia.<sup>329</sup> Three years later, the Council established the more concrete objective of the signing of a proposed Peace Agreement, including the conclusion of a regional arms control agreement, by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>330</sup>

## 3. Scope

The 713 sanctions regime consisted of an arms embargo that was initially applied against Yugoslavia and then maintained against all that country's successor states.

### 3.1 Sanctions obligations

Under the 713 sanctions regime, all states were required to implement immediately a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia.<sup>331</sup> The embargo was maintained after Yugoslavia dissolved, when the Security Council decided, at the UNSG's suggestion, that it should continue to apply to 'all areas that have been part of Yugoslavia'.<sup>332</sup> It thus morphed into an embargo against the provision of weapons and military equipment to all the successor states of the former Yugoslavia.

<sup>326</sup> *Ibid.*, para. 6.

<sup>327</sup> SC Res. 721 (27 November 1991), preambular para. 4; SC Res. 743 (21 February 1992), preambular para. 5; SC Res. 1021 (22 November 1995), preambular para. 5.

<sup>328</sup> SC Res. 724 (15 December 1991), para. 5; SC Res. 1021 (22 November 1995), preambular para. 6.

<sup>329</sup> SC Res. 713 (25 September 1991), para. 6.

<sup>330</sup> SC Res. 1021 (22 November 1995), para. 1.

<sup>331</sup> SC Res. 713 (25 September 1991), para. 6.

<sup>332</sup> SC Res. 727 (8 January 1992), para. 6. For the UNSG's suggestion, see: S/23363 and Add.1 (5 and 7 January 1992), para. 33.

### 3.2 Exemptions

The Security Council did not initially elaborate any exemptions from the arms embargo. In time, however, exemptions were provided for weapons and military equipment being imported into the territories of the former Yugoslavia for the use of UN operations, including the United Nations Protection Force,<sup>333</sup> its successor the Multinational Implementation Force<sup>334</sup> and international police forces.<sup>335</sup>

## 4. Administration and monitoring

During the course of the 713 sanctions regime, the Security Council bestowed responsibility for the administration and monitoring of the sanctions upon the 724 Sanctions Committee.

### 4.1 The 724 Sanctions Committee

Almost three months after initiating the 713 sanctions regime, the Security Council established the 724 Committee to oversee the embargo's implementation.<sup>336</sup> The Committee was to report to the Council on its work and with its observations and recommendations, and to: (a) examine reports from states regarding implementation of the embargo;<sup>337</sup> (b) seek further information from states regarding action to implement the embargo;<sup>338</sup> (c) consider information concerning violations of the embargo and make recommendations to increase its effectiveness;<sup>339</sup> and (d) recommend appropriate measures in response to violations and provide information to the UNSG for distribution to member states.<sup>340</sup> The 724 Committee's mandate in respect of the 713 sanctions regime was not subsequently modified, but the Committee did assume a vast array of responsibilities relating to the administration and monitoring of the 757 FRYSM and 820 Bosnian Serb sanctions regimes. The Committee was ultimately dissolved in November 1996, following the termination of all three sanctions regimes.<sup>341</sup>

<sup>333</sup> SC Res. 743 (21 February 1992), para. 11.

<sup>334</sup> SC Res. 1031 (15 December 1995), para. 22.

<sup>335</sup> *Ibid.*

<sup>336</sup> SC Res. 724 (15 December 1991), para. 5(b).

<sup>337</sup> *Ibid.*, para. 5(b)(i).

<sup>338</sup> *Ibid.*, para. 5(b)(ii). <sup>339</sup> *Ibid.*, para. 5(b)(iii).

<sup>340</sup> *Ibid.*, para. 5(b)(iv).

<sup>341</sup> The Security Council provided for the Committee's dissolution in SC Res. 1074 (1 October 1996), para. 6. The Committee was accordingly dissolved on 15 November 1996, with the publication of its final report.



The 724 Committee held 142 formal meetings,<sup>342</sup> submitting three reports to the Security Council on its activities.<sup>343</sup> In its first report, the Committee noted that it had received a limited amount of information on violations of the embargo and that it was still searching for additional information.<sup>344</sup> It appealed to parties with any information relating to actual or suspected violations of the arms embargo to provide it with such information.<sup>345</sup> In its second report, the Committee expressed disappointment at the lack of information it had received about alleged sanctions violations, particularly as the media had been 'replete' with reports indicating that the embargo was being breached 'in a blatant manner'.<sup>346</sup> The Committee also observed that the lack of an independent monitoring mechanism had inhibited its ability to obtain information and follow up alleged violations.<sup>347</sup> In its final report, the Committee noted that the arms embargo would have been significantly more effective if there had been a system to monitor air and land freight traffic akin to the maritime monitoring that was effected in the Adriatic Sea by the North Atlantic Treaty Organization (NATO) and the Western European Union (WEU) and to the monitoring conducted by the EU Sanctions Assistance Missions of land and Danube traffic.<sup>348</sup>

#### 4.2 *The Secretary-General*

In December 1991 the UNSG was requested to provide all necessary assistance to the 724 Committee.<sup>349</sup> In November 1992, the Council requested that the UNSG co-ordinate the submission by states and regional agencies or arrangements of reports outlining action taken to halt maritime and riparian traffic to verify that cargo was not being transported in violation of the arms embargo.<sup>350</sup> The Council also requested the UNSG to submit recommendations for facilitating sanctions implementation by deploying observers on the borders of Bosnia

<sup>342</sup> A/52/2 (1997): *Report of the Security Council to the UNGA: 16 June 1996–15 June 1997*, p. 273.

<sup>343</sup> S/23800 (13 April 1992) (*First Report of the 724 Committee*); S/25027 (30 December 1992) (*Second Report of the 724 Committee*); S/1996/946 (15 November 1996) (*Final Report of the 724 Committee*).

<sup>344</sup> *First Report of the 724 Committee*, para. 12. <sup>345</sup> *Ibid.*

<sup>346</sup> *Second Report of the 724 Committee*, para. 24. <sup>347</sup> *Ibid.*, para. 25.

<sup>348</sup> *Final Report of the 724 Committee*, para. 85.

<sup>349</sup> SC Res. 724 (15 December 1991), para. 5(d).

<sup>350</sup> SC Res. 787 (16 November 1992), para. 14. The Council had authorised states to take such action in the same resolution – see para. 12.

and Herzegovina.<sup>351</sup> In November 1995, the UNSG was requested to play a reporting role leading to the termination of the sanctions.<sup>352</sup>

## 5. Termination

The arms embargo remained in place for almost five years, before being terminated in June 1996. In November 1995 the Council decided that the embargo would be terminated in a staggered manner once the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro) had all signed the Dayton Peace Agreement.<sup>353</sup> Following notice from the UNSG that the parties had signed the Peace Agreement, the arms embargo would continue to be applied for a period of ninety days.<sup>354</sup> During the following ninety days, most of the embargo would cease to apply, with the exception of heavy weapons, military aircraft and helicopters, which would continue to be banned until a regional arms control agreement, which formed part of the Peace Agreement, had taken effect.<sup>355</sup> Ninety days later, upon the submission of a report by the UNSG that the regional arms control agreement had been implemented, the remaining aspects of the arms embargo would be terminated.<sup>356</sup> Ultimately, the arms embargo was terminated completely on 18 June 1996.<sup>357</sup>

## 6. Conclusions

The 713 sanctions regime was notable for a number of reasons. First, the Council's decision to apply sanctions against Yugoslavia represented a clear movement away from the traditional approach to the operation of Chapter VII, likely held by the UN founders, which viewed conventional state-versus-state conflict as the type of breach of or threat to the peace that would require the application of Article 41 or Article 42 measures. Although the Council identified the potential threat posed to other states in the region by the conflict in the Yugoslavia, the application of sanctions implicitly acknowledged that conflicts traditionally viewed as 'internal' and therefore beyond the scope of Chapter VII intervention could in fact pose a threat to international peace and security. Second, the 713 sanctions regime was also the first instance in which sanctions were applied

<sup>351</sup> *Ibid.*, para. 16. <sup>352</sup> SC Res. 1021 (22 November 1995), paras. 1–2.

<sup>353</sup> *Ibid.*, para. 1. <sup>354</sup> *Ibid.*, para. 1(a). <sup>355</sup> *Ibid.*, para. 1(b). <sup>356</sup> *Ibid.*, para. 1(c).

<sup>357</sup> SCA/8/96(4) (18 June 1996): *Note verbale from the Chairman of the 724 Committee to all States.*

against a target state that subsequently dissolved. Its continued application against the successor states of the former Yugoslavia thus made it the first sanctions regime to be maintained against targets that were different from the target against which it had originally been applied.

The 713 sanctions regime was also notable for the prominent debate that raged concerning whether it in fact facilitated or undermined the goal of re-establishing peace and stability. It was alleged that the continued application of the arms embargo fuelled the conflict by strengthening the hand of those who were able to circumvent it, such as the Bosnian Serbs, at the expense of others who were not able to acquire arms as readily, such as the Bosnian government. The argument was frequently made before the Security Council that the continued application of the arms embargo was preventing Bosnia and Herzegovina from exercising its inherent right to self-defence under Article 51 of the UN Charter.<sup>358</sup> The Bosnian government initially raised a similar argument before the International Court of Justice as part of multiple claims against the government of Serbia-Montenegro, principally under the Genocide Convention.<sup>359</sup>

Those arguing for the lifting of the embargo as it applied to Bosnia and Herzegovina also contended that if the Bosnian government were able to gain more ready access to arms, then the Bosnian Serbs might be deterred from pursuing a policy of aggression and thus be induced to return to the negotiating table. The counter-argument was also made, however, to the effect that an increase in the flow of arms into Bosnia and Herzegovina could only have exacerbated the conflict.<sup>360</sup> Nevertheless, the Bosnian experience raises the question of whether the application of an arms embargo against multiple parties to a conflict serves the goal of

<sup>358</sup> For examples of this position, see S/PV.3370 (27 April 1994), pp. 3-5 (Pakistan), pp. 6-7 (Turkey), pp. 8-11 (Malaysia), pp. 11-13 (Islamic Republic of Iran), pp. 14-16 (Saudi Arabia), pp. 16-17 (Tunisia), pp. 17-20 (Egypt), pp. 20-22 (Mr. Algabid), pp. 22-23 (Bosnia and Herzegovina), pp. 24-25 (Oman), pp. 27-28 (Djibouti), pp. 34-36 (Croatia), pp. 36-37 (Sudan), pp. 37-38 (Bangladesh).

<sup>359</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugo. (Serbia and Montenegro))*, Provisional Measures, 1993 ICJ Rep. 3 (Order of 8 April 1993), 325 (Order of 13 September 1993). For a summary of the legal arguments for terminating the arms embargo against Bosnia and Herzegovina, see Craig Scott, Abid Quresho, Paul Michell, Jasminka Kalajdzic, Peter Copeland and Francis Chang, 'A Memorial for Bosnia: Framework of Legal Arguments Concerning the Lawfulness of the Maintenance of the United Nations Security Council's Arms Embargo on Bosnia and Herzegovina' (1994) 16 *Michigan JIL* 1-134.

<sup>360</sup> For examples of this position, see S/PV.3370 (27 April 1994), pp. 25-27 (Russian Federation), pp. 28-29 (New Zealand), pp. 29-30 (Canada), pp. 31-32 (Sweden), pp. 32-33 (Mr. Djokic), pp. 33-34 (Norway).

maintaining international peace and security if it results in an imbalance in defensive capacity between those parties.

## 5. THE 733 SOMALIA SANCTIONS REGIME

The Security Council imposed sanctions against Somalia in January 1992. The Somalia sanctions regime consists of an arms embargo. The only significant modification has been a prohibition upon technical, financial and training assistance connected with military activities in Somalia. The Council has established a number of subsidiary bodies to administer and monitor the 733 sanctions regime, including the 751 Somalia Sanctions Committee, a team and panel of experts and a monitoring group.

### 1. Constitutional basis

In January 1992 the Security Council adopted resolution 733 (1992), in which it expressed alarm at the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from conflict, and noted its awareness of the potential consequences of the conflict for stability and peace in the region.<sup>361</sup> The Council further expressed concern that the continuation of the situation constituted a threat to international peace and security,<sup>362</sup> recalled its primary responsibility under the UN Charter for the maintenance of international peace and security,<sup>363</sup> and invoked Chapter VII before imposing an arms embargo against Somalia.<sup>364</sup> In subsequent resolutions related to the arms embargo, the Council has reaffirmed that the situation in Somalia continued to constitute a threat to international peace and security<sup>365</sup> and again invoked Chapter VII.<sup>366</sup>

<sup>361</sup> SC Res. 733 (23 January 1992), preambular para. 3. <sup>362</sup> *Ibid.*, preambular para. 4.

<sup>363</sup> *Ibid.*, preambular para. 5. <sup>364</sup> *Ibid.*, para. 5.

<sup>365</sup> SC Res. 751 (24 April 1992), preambular para. 6; SC Res. 767 (27 July 1992), preambular para. 7; SC Res. 775 (28 August 1992), preambular para. 6; SC Res. 794 (3 December 1992), preambular para. 3; SC Res. 954 (4 November 1994), preambular para. 21; SC Res. 1474 (8 April 2003), preambular para. 7; SC Res. 1558 (17 August 2004), preambular para. 5; SC Res. 1587 (15 March 2005), preambular para. 8; SC Res. 1630 (14 October 2005), preambular para. 11; SC Res. 1676 (10 May 2006), preambular para. 12; SC Res. 1724 (29 November 2006), preambular para. 11; SC Res. 1725 (6 December 2006), preambular para. 13.

<sup>366</sup> SC Res. 954 (4 November 1994), preambular para. 21; SC Res. 1407 (3 May 2002), preambular para. 5; SC Res. 1425 (22 July 2002), preambular para. 6; SC Res. 1474 (8 April 2003), preambular para. 8; SC Res. 1558 (17 August 2004), preambular para. 6;

## 2. Objectives

The objective of the 733 sanctions regime is to establish peace and stability in Somalia.<sup>367</sup> The Council has not set any explicit requirements for the termination of the sanctions, simply stating that the embargo would remain in place until it decided otherwise.<sup>368</sup>

## 3. Scope

### 3.1 Sanctions obligations

When the Security Council established the 733 sanctions regime, it required all states to implement immediately a general and complete embargo on all deliveries of weapons and military equipment to Somalia.<sup>369</sup> In July 2002, the Council clarified that the embargo prohibited the financing of all acquisitions and deliveries of weapons and military equipment.<sup>370</sup> It also decided that the embargo prohibited the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.<sup>371</sup>

### 3.2 Exemptions

The Council did not initially elaborate any exemptions from the embargo. It is likely, however, that the Council's authorisation of the establishment of the United Nations Operation in Somalia (UNOSOM) and its successor the United Nations Operation in Somalia II (UNOSOM II), as well as of the United Task Force (UNITAF), each of which comprised significant military components and were endowed with a mandate under Chapter VII of the UN Charter, amounted to an implicit exemption from the embargo for those entities and their activities.<sup>372</sup> The Security Council has subsequently exempted: (a) protective clothing for the personal use of UN personnel, representatives of the media and humanitarian and development workers;<sup>373</sup> (b) supplies of non-lethal military equipment intended solely for humanitarian or protective use, subject to the approval of the 751 Sanctions

SC Res. 1587 (15 March 2005), preambular para. 9; SC Res. 1630 (14 October 2005), preambular para. 12; SC Res. 1676 (10 May 2006), preambular para. 13; SC Res. 1724 (29 November 2006), preambular para. 12; SC Res. 1725 (6 December 2006), preambular para. 14.

<sup>367</sup> SC Res. 733 (23 January 1992), para. 5. <sup>368</sup> *Ibid.* <sup>369</sup> *Ibid.*

<sup>370</sup> SC Res. 1425 (22 July 2002), para. 1. <sup>371</sup> *Ibid.*, para. 2.

<sup>372</sup> SC Res. 794 (3 December 1992), paras. 6–8, 10–13, 15.

<sup>373</sup> SC Res. 1356 (19 June 2001), para. 2.

Committee;<sup>374</sup> and (c) supplies of weapons and military equipment and technical training and assistance for the support of or use by the peacekeeping mission in Somalia of the Intergovernmental Authority on Development (IGASOM).<sup>375</sup>

#### 4. Administration and monitoring

The Security Council has called upon a number of actors to perform roles in the administration and monitoring of the 733 sanctions regime, including the UNSG, the 751 Sanctions Committee, UN operations, the Somalia Team and Panel of Experts and the Somalia Monitoring Group.

##### 4.1 *The Secretary-General*

When the Security Council established the 733 sanctions regime, it requested the UNSG to report on the overall implementation of resolution 733 (1992).<sup>376</sup> The Council has since requested the UNSG to: (a) support from within Somalia the implementation of the arms embargo, utilising the forces of UNOSOM II;<sup>377</sup> (b) make recommendations regarding more effective measures;<sup>378</sup> (c) establish a preparatory team of experts on the Somalia embargo;<sup>379</sup> (d) work with various parties with the capacity to contribute to monitoring and enforcement of the embargo;<sup>380</sup> (e) establish the Panel of Experts on the Somalia embargo;<sup>381</sup> (f) report on technical assistance to enhance administrative and judicial capacities throughout Somalia to monitor and give effect to the embargo;<sup>382</sup> (g) report on measures taken by states to ensure the effective implementation of the embargo;<sup>383</sup> (h) implement the Council's decision to re-establish the Panel of Experts;<sup>384</sup> and (i) establish and re-establish the Somalia Monitoring Group and make financial arrangements to support its work.<sup>385</sup>

<sup>374</sup> *Ibid.*, paras. 3–4. <sup>375</sup> SC Res. 1725 (6 December 2006), para. 5.

<sup>376</sup> SC Res. 733 (23 January 1992), para. 10. <sup>377</sup> SC Res. 814 (26 March 1993), para. 10.

<sup>378</sup> *Ibid.* <sup>379</sup> SC Res. 1407 (3 May 2002), para. 1. <sup>380</sup> *Ibid.*, para. 7.

<sup>381</sup> SC Res. 1425 (22 July 2002), paras. 3–4. <sup>382</sup> *Ibid.*, para. 14. <sup>383</sup> *Ibid.*

<sup>384</sup> SC Res. 1474 (8 April 2003), paras. 4–5.

<sup>385</sup> SC Res. 1519 (16 December 2003), paras. 2–3; SC Res. 1558 (17 August 2004), paras. 3–4; SC Res. 1587 (15 March 2005), paras. 3–4; SC Res. 1630 (14 October 2005), paras. 3–4; SC Res. 1676 (10 May 2006), paras. 3–4; SC Res. 1724 (29 November 2006), paras. 3–4.

#### 4.2 The 751 Sanctions Committee

The Security Council established the 751 Somalia Sanctions Committee three months after imposing the 733 arms embargo.<sup>386</sup> The 751 Committee was to report to the Council with its observations and recommendations and to: (a) seek information from states regarding action taken to implement the arms embargo;<sup>387</sup> (b) consider information on embargo violations and make recommendations on increasing the embargo's effectiveness;<sup>388</sup> and (c) recommend appropriate measures in response to violations of the embargo and provide information on a regular basis to the UNSG for general distribution to member states.<sup>389</sup> Among the Committee's subsequent tasks were to: (d) seek the co-operation of states neighbouring Somalia in the effective implementation of the embargo;<sup>390</sup> (e) decide upon requests for exemptions for non-lethal military equipment intended solely for humanitarian or protective use;<sup>391</sup> (f) forward to the Council the report of the team of experts;<sup>392</sup> (g) notify the Council of any lack of co-operation with it or the team of experts;<sup>393</sup> (h) send a mission, led by the Chairman, to the region to demonstrate the Council's determination to give full effect to the arms embargo;<sup>394</sup> and (i) recommend ways to improve the implementation of and compliance with the arms embargo, including ways to develop capacity of states in the region to implement the arms embargo.<sup>395</sup>

Since 1996, the 751 Committee has issued regular annual reports.<sup>396</sup> The Committee has not been among the most active of sanctions committees, holding on average fewer than two formal meetings per year during its first eleven years.<sup>397</sup> In fact, the number of meetings held by the 751 Committee over its first decade amounted to less than the total

<sup>386</sup> SC Res. 751 (24 April 1992), para. 11. <sup>387</sup> *Ibid.*, para. 11(a). <sup>388</sup> *Ibid.*, para. 11(b).

<sup>389</sup> *Ibid.*, para. 11(c). <sup>390</sup> SC Res. 954 (4 November 1994), para. 12.

<sup>391</sup> SC Res. 1356 (19 June 2001), para. 4. <sup>392</sup> SC Res. 1407 (3 May 2002), para. 2.

<sup>393</sup> *Ibid.*, para. 7.

<sup>394</sup> SC Res. 1474 (8 April 2003), para. 8; SC Res. 1587 (15 March 2005), para. 6; SC Res. 1630 (14 October 2005), para. 7; SC Res. 1676 (10 May 2006), para. 7.

<sup>395</sup> SC Res. 1558 (17 August 2004), para. 6; SC Res. 1587 (15 March 2005), para. 6; SC Res. 1630 (14 October 2005), para. 6; SC Res. 1676 (10 May 2006), para. 6; SC Res. 1724 (29 November 2006), para. 6.

<sup>396</sup> See Appendix 3, Table F.

<sup>397</sup> The Committee had only met on nineteen occasions from the time of its establishment in April 1992 to the end of July 2002: A/57/2 (2002): *Report of the Security Council: 16 June 2001–31 July 2002*, p. 53.

held by the Iraq Sanctions Committee in its first five months.<sup>398</sup> The 751 Committee's annual reports have tended to be brief, with few substantive recommendations or observations. The Committee has consistently noted that its ability to monitor the sanctions is dependent upon the co-operation of states and organisations in a position to provide it with pertinent information.<sup>399</sup> The Committee has increased its activities since 2002, owing largely to the establishment of expert bodies to explore the implementation of the arms embargo. It held three formal meetings in each of 2004 and 2005.<sup>400</sup> By the end of 2005 the Committee had held a total of 32 formal meetings.<sup>401</sup>

### 4.3 *United Nations operations in Somalia*

In December 1992 the Security Council, acting under Chapter VII, authorised the UNSG and member states co-operating with him to use all necessary means to establish a secure environment for humanitarian relief operations in Somalia.<sup>402</sup> As a result of that decision, two peace-enforcement operations were established – the United Task Force (UNITAF), led by the United States, and an expanded and strengthened United Nations Operation in Somalia (UNOSOM II).<sup>403</sup> When the Council established UNOSOM II it requested the UNSG to support the implementation of the 733 arms embargo from within Somalia, utilising the forces of UNOSOM II.<sup>404</sup> Although the UNSG did not subsequently report explicitly on action taken by UNOSOM II to implement the 733 embargo, he nevertheless referred consistently to actions taken by the Operation to bring about the disarmament of the various factions within Somalia.<sup>405</sup>

<sup>398</sup> From its establishment in April 1992 until the end of 2001 the 751 Committee held 18 meetings: *Index to Proceedings of the Security Council for 2001* (New York, UN, 2002), p. xiii. In contrast, the 661 Committee held 22 meetings between August and December 1990 alone: *Index to Proceedings of the Security Council for 1990* (New York, UN, 1991), p. xii.

<sup>399</sup> See, e.g., S/1996/17 (16 January 1996), para. 19; S/1997/16 (7 January 1997), para. 4; S/1998/1226 (28 December 1998), para. 4; S/1999/1283 (28 December 1999), para. 8; S/2004/1017 (30 December 2004), para. 24; S/2005/813 (20 December 2005), para. 21.

<sup>400</sup> S/2004/1017 (30 December 2004), paras. 7–20; S/2005/813 (20 December 2005), paras. 8–17.

<sup>401</sup> S/2005/813 (20 December 2005), para. 15.

<sup>402</sup> SC Res. 794 (3 December 1992), para. 10. <sup>403</sup> SC Res. 814 (26 March 1993), paras. 5–6.

<sup>404</sup> SC Res. 814 (26 March 1993), para. 10.

<sup>405</sup> See, e.g., S/26317 (17 August 1993), paras. 14–18; S/26738 (12 November 1993), paras. 38–40, 83–84.



#### 4.4 *The Team and Panel of Experts on Somalia*

In May 2002 the Council requested the UNSG to establish a team of two experts to prepare for the creation of a Panel of Experts on the Somalia arms embargo.<sup>406</sup> The preparatory team was to: (a) investigate embargo violations; (b) report on violations and enforcement of the embargo; (c) undertake field research in Somalia, states neighbouring Somalia and other states; (d) assess the capacity of states in the region to implement the embargo fully; and (e) provide recommendations on practical steps for strengthening enforcement of the embargo.<sup>407</sup> The preparatory team submitted its report in early July 2002.<sup>408</sup> It noted that there was a common perception that the embargo had not been enforced effectively.<sup>409</sup> In order to improve the embargo's enforcement, the Council could: (a) clarify the scope of the embargo, making it clear that the provision of financing and services that support military activities in Somalia were a violation of the embargo;<sup>410</sup> (b) enhance end-user verification;<sup>411</sup> (c) establish a Panel of Experts in the region;<sup>412</sup> and (d) promote transparency and accountability in Somali financial institutions.<sup>413</sup>

In late July 2002, shortly after the publication of the preparatory team's report, the Security Council requested the UNSG to establish a Panel of Experts on the Somalia embargo, consisting of three members, for a period of six months.<sup>414</sup> It was subsequently re-established for a further period of six months and expanded to four members.<sup>415</sup> The Panel was to assume the same responsibilities as the preparatory team and to: (a) take into account the preparatory team's recommendations concerning methodology;<sup>416</sup> (b) notify the Council, through the 751 Committee, of any lack of co-operation it experienced;<sup>417</sup> (c) brief the Chairman of the 751 Committee prior to his scheduled mission to the region,<sup>418</sup> and (d) brief the Council, through the Committee, in November 2002.<sup>419</sup>

In April 2003, when the Panel was re-established, the Council further requested the Panel to: (a) focus on ongoing violations of the embargo, including transfers of ammunition, single use weapons and small arms;<sup>420</sup> (b) identify those who continued to violate the embargo inside

<sup>406</sup> SC Res. 1407 (3 May 2002), para. 1. <sup>407</sup> *Ibid.* <sup>408</sup> S/2002/722 (3 July 2002).

<sup>409</sup> *Ibid.*, para. 27. <sup>410</sup> *Ibid.*, paras. 63–68. <sup>411</sup> *Ibid.*, paras. 69–71.

<sup>412</sup> *Ibid.*, paras. 72–79. <sup>413</sup> *Ibid.*, paras. 80–81. <sup>414</sup> SC Res. 1425 (22 July 2002), para. 3.

<sup>415</sup> SC Res. 1474 (8 April 2003), paras. 3–4. <sup>416</sup> SC Res. 1425 (22 July 2002), para. 5.

<sup>417</sup> *Ibid.*, para. 9. <sup>418</sup> *Ibid.*, para. 10. <sup>419</sup> *Ibid.* <sup>420</sup> SC Res. 1474 (8 April 2003), para. 3.

and outside Somalia, as well as their active supporters, and provide the 751 Committee with a draft list for possible future actions;<sup>421</sup> (c) explore the possibility of establishing a monitoring mechanism for the implementation of the embargo, with partners inside and outside Somalia, in co-operation with regional and international organisations, including the AU;<sup>422</sup> (d) refine the recommendations provided in the Panel's first report;<sup>423</sup> and (e) brief the Council, through the 751 Committee, on its work in the middle of its term and report again at the end of its mandate.<sup>424</sup>

The Somalia Panel of Experts submitted two reports.<sup>425</sup> In its first report, the Panel concluded that the arms embargo had no normative value as it had been consistently violated since its imposition.<sup>426</sup> The Security Council and the 751 Committee should therefore send a clear signal that, in future, the embargo would be enforced vigorously and its violators penalised.<sup>427</sup> The Panel also recommended that: (a) a system should be created to prevent the forging and abuse of end-user certificates for arms sales;<sup>428</sup> (b) the Committee should draw up a list of individuals deemed to be in violation of the arms embargo, against whom financial sanctions might be implemented;<sup>429</sup> (c) targeted travel sanctions might be implemented against those individuals who had been violating the embargo and against whom financial sanctions were ineffective;<sup>430</sup> (d) where individuals who systematically violated the embargo were closely affiliated with political institutions, their representative privileges could be revoked;<sup>431</sup> and (e) the Panel's mandate should be extended for six months in order to investigate further violations of the embargo and to organise a Somali-based effort to identify and impede embargo violators.<sup>432</sup> In its second report, the Panel noted a continuing 'microflow' of arms into Somalia from neighbouring countries.<sup>433</sup> It recommended that a monitoring mechanism be established to improve the embargo's effectiveness.<sup>434</sup> It also urged that there should be improved co-operation between international, regional and sub-regional organisations, as well as with member states and non-state actors involved in disarmament, demobilisation, cease-fire monitoring and anti-criminal and counterterrorism activities.<sup>435</sup>

<sup>421</sup> *Ibid.* <sup>422</sup> *Ibid.* <sup>423</sup> *Ibid.* <sup>424</sup> *Ibid.*, para. 7.

<sup>425</sup> S/2003/223 (25 March 2003); S/2003/1035 (4 November 2003).

<sup>426</sup> S/2003/223 (25 March 2003), paras. 172–175. <sup>427</sup> *Ibid.* <sup>428</sup> *Ibid.*, para. 187.

<sup>429</sup> *Ibid.*, para. 188. <sup>430</sup> *Ibid.*, para. 189. <sup>431</sup> *Ibid.*, para. 190. <sup>432</sup> *Ibid.*, para. 191.

<sup>433</sup> S/2003/1035 (4 November 2003), para. 173. <sup>434</sup> *Ibid.*, para. 174. <sup>435</sup> *Ibid.*, para. 176.

#### 4.5 The Somalia Monitoring Group

In December 2003, the Council requested the UNSG to establish a Somalia Monitoring Group.<sup>436</sup> The Monitoring Group has been re-established numerous times.<sup>437</sup> The Security Council has tasked the Group with various responsibilities, including to: (a) investigate violations of the arms embargo;<sup>438</sup> (b) make recommendations for strengthening the embargo's implementation;<sup>439</sup> (c) undertake field investigations in Somalia, neighbouring states and other appropriate states;<sup>440</sup> (d) assess progress made by states in the region in implementing the embargo, including by reviewing national customs and border control regimes;<sup>441</sup> (e) compile a draft list of embargo violators both in and outside Somalia, for possible future measures by the Council;<sup>442</sup> (f) refine and update that list;<sup>443</sup> (g) assess action taken by Somali authorities and member states to implement the embargo;<sup>444</sup> (h) work with the 751 Committee on recommendations for additional measures to improve compliance with the embargo;<sup>445</sup> (i) identify how to strengthen the capacity of states in the region to facilitate embargo implementation;<sup>446</sup> (j) investigate activities generating revenue used to violate the embargo;<sup>447</sup> and (k) investigate means of transport, routes, seaports, airports and other facilities used in connection with embargo violations.<sup>448</sup>

<sup>436</sup> SC Res. 1519 (16 December 2003), para. 2.

<sup>437</sup> SC Res. 1558 (17 August 2004), para. 3; SC Res. 1587 (15 March 2005), para. 3; SC Res. 1630 (14 October 2005), para. 3; SC Res. 1676 (10 May 2006), para. 3; SC Res. 1724 (29 November 2006), para. 3.

<sup>438</sup> SC Res. 1519 (16 December 2003), para. 2(a); SC Res. 1558 (17 August 2004), para. 3(a); SC Res. 1587 (15 March 2005), para. 3(a).

<sup>439</sup> SC Res. 1519 (16 December 2003), para. 2(b); SC Res. 1587 (15 March 2005), para. 3(c).

<sup>440</sup> SC Res. 1519 (16 December 2003), para. 2(c).

<sup>441</sup> *Ibid.*, para. 2(d). <sup>442</sup> *Ibid.*, para. 2(e).

<sup>443</sup> SC Res. 1558 (17 August 2004), para. 3(b); SC Res. 1587 (15 March 2005), para. 3(d); SC Res. 1630 (14 October 2005), para. 3(d); SC Res. 1676 (10 May 2006), para. 3(d); SC Res. 1724 (29 November 2006), para. 3(d).

<sup>444</sup> SC Res. 1587 (15 March 2005), para. 3(b).

<sup>445</sup> SC Res. 1558 (17 August 2004), para. 3(d); SC Res. 1587 (15 March 2005), para. 3(f); SC Res. 1630 (14 October 2005), para. 3(f); SC Res. 1676 (10 May 2006), para. 3(f); SC Res. 1724 (29 November 2006), para. 3(f).

<sup>446</sup> SC Res. 1587 (15 March 2005), para. 3(g); SC Res. 1630 (14 October 2005), para. 3(g); SC Res. 1676 (10 May 2006), para. 3(g); SC Res. 1724 (29 November 2006), para. 3(g).

<sup>447</sup> SC Res. 1630 (14 October 2005), para. 3(b); SC Res. 1676 (10 May 2006), para. 3(b); SC Res. 1724 (29 November 2006), para. 3(b).

<sup>448</sup> SC Res. 1630 (14 October 2005), para. 3(c); SC Res. 1676 (10 May 2006), para. 3(c); SC Res. 1724 (29 November 2006), para. 3(c).

The Somalia Monitoring Group has submitted regular reports to the Security Council.<sup>449</sup> The Group has observed a steady flow of arms into and out of Somalia, largely by road and sea.<sup>450</sup> Customs authorities along Somalia's borders lacked the capacity and sometimes the will to implement the arms embargo.<sup>451</sup> Moreover, sophisticated criminal networks were engaged both in smuggling arms and in raising the funds required to purchase arms.<sup>452</sup> Alleged violators of the arms embargo included both the Transitional Federal Government of Somalia and major opposition groups.<sup>453</sup> Among the commodities and resources used to raise revenue to purchase arms were marine fisheries and charcoal.<sup>454</sup> Acts of piracy had also been carried out in and around Somali waters, with the aim of extracting ransoms with which to procure arms.<sup>455</sup> The arms being imported into Somalia were traced as having originated from various countries, including Djibouti,<sup>456</sup> Eritrea,<sup>457</sup> Ethiopia,<sup>458</sup> Italy,<sup>459</sup> Saudi Arabia<sup>460</sup> and Yemen.<sup>461</sup> Kenya was identified as one destination for arms flows out of Somalia.<sup>462</sup> The Monitoring Group has also reported that Somalis did not believe that the purchase of arms inside Somalia constituted a violation of the arms embargo.<sup>463</sup>

The Somalia Monitoring Group has recommended that the Security Council broaden the 733 sanctions regime to target the export from Somalia of charcoal and fish.<sup>464</sup> It has also recommended that technical assistance be provided to states requiring such assistance to combat arms smuggling.<sup>465</sup> The Group has also prepared a list of suspected embargo violators, against whom a travel ban and assets freeze could be imposed at a later date.<sup>466</sup>

<sup>449</sup> See Appendix 3, Table H.

<sup>450</sup> S/2004/604 (11 August 2004), paras. 3, 41; S/2005/153 (9 March 2005), paras. 9–14, 19; S/2005/625 (4 October 2005), paras. 8, 116; S/2006/229 (4 May 2006), para. 8.

<sup>451</sup> S/2004/604 (11 August 2004), paras. 11, 41.

<sup>452</sup> S/2005/153 (9 March 2005), paras. 10, 15–16, 34.

<sup>453</sup> S/2005/625 (4 October 2005), paras. 8, 116; S/2006/229 (4 May 2006), para. 8.

<sup>454</sup> S/2005/625 (4 October 2005), paras. 88–99. <sup>455</sup> S/2006/229 (4 May 2006), para. 91.

<sup>456</sup> *Ibid.*, paras. 13–14. <sup>457</sup> *Ibid.*, paras. 15–21.

<sup>458</sup> S/2004/604 (11 August 2004), para. 65; S/2005/625 (4 October 2005), paras. 23–35; S/2006/229 (4 May 2006), paras. 22–24.

<sup>459</sup> S/2006/229 (4 May 2006), paras. 25–27. <sup>460</sup> *Ibid.*, paras. 28–29.

<sup>461</sup> *Ibid.*, paras. 30–31. <sup>462</sup> S/2004/604 (11 August 2004), para. 66. <sup>463</sup> *Ibid.*, para. 180.

<sup>464</sup> S/2005/625 (4 October 2005), para. 119; S/2006/229 (4 May 2006), para. 159.

<sup>465</sup> S/2006/229 (4 May 2006), para. 139. <sup>466</sup> *Ibid.*, para. 165.

## 5. Conclusions

In its first decade the 733 sanctions regime was one of the most neglected UN sanctions regimes. In the late 1990s, reports of violations were commonplace and the 733 regime gained a reputation for being honoured more in the breach than the observation. As mentioned above, the Committee had met on average less than twice a year in its first decade. Since 2002, however, the Security Council has undertaken a number of monitoring initiatives designed to improve implementation of the 733 sanctions regime. It thus established the first preliminary team of experts to pave the way for a Panel of Experts. In establishing the team and subsequent Panel of Experts and Monitoring Group, the Council appears to have drawn lessons from its experiences with the creation of expert and monitoring bodies created to explore the implementation of a number of other sanctions regimes.

## 6. THE 748 LIBYA SANCTIONS REGIME

The Security Council established sanctions against Libya in March 1992, with the objective of ensuring that the Libyan government co-operated with investigations into the terrorist bombings of two international flights, American airline Pan Am's flight 103 and the French airline UTA's flight 772. Pan Am flight 103 was destroyed above Lockerbie in Scotland in December 1988, resulting in 270 deaths. UTA flight 772 was destroyed on 19 September 1989, resulting in 171 deaths.<sup>467</sup>

The 748 sanctions regime initially consisted of an arms embargo and aviation, travel and diplomatic sanctions. The Council established a Sanctions Committee to administer the sanctions. The regime was subsequently expanded to incorporate financial sanctions, further aviation sanctions, and sanctions against particular items used in the refinement and export of oil. It was suspended in April 1999, after Libya transferred two Lockerbie bombing suspects to the Netherlands for trial before a Scottish court. They were eventually terminated in September 2003, after the Libyan government sent a letter to the President of the Security Council detailing steps taken to comply with its obligations under the 748 sanctions regime.

<sup>467</sup> For further details, see S/1999/726 (30 June 1999), paras. 15–16.

## 1. Constitutional basis

In January 1992 the Security Council adopted resolution 731 (1992), in which it characterised acts of terrorism as a threat to international peace and security,<sup>468</sup> and expressed deep concern that investigations into the Pan Am and UTA bombings had implicated Libyan government officials.<sup>469</sup> The Council deplored the fact that the Libyan government had not yet co-operated with attempts to establish responsibility for the bombings,<sup>470</sup> and urged it to co-operate with international investigations.<sup>471</sup>

Four months later, after Libya had failed to respond, the Council imposed sanctions. In resolution 748 (1992), the Council stated that the suppression of acts of terrorism was ‘essential for the maintenance of international peace and security’.<sup>472</sup> It reaffirmed that, in accordance with Article 2(4) of the UN Charter, every state had the duty to refrain from organising, instigating, assisting or participating in terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts, when such acts involved a threat or use of force.<sup>473</sup> The Council then determined that the Libyan government’s failure to demonstrate by concrete steps its renunciation of terrorism, as well as its failure to respond fully and effectively to the requests of resolution 731 (1992), constituted a threat to international peace and security.<sup>474</sup> It invoked Chapter VII,<sup>475</sup> then applied sanctions.<sup>476</sup> When the Council subsequently strengthened the sanctions regime, it reaffirmed the existence of a threat to the peace<sup>477</sup> and again invoked Chapter VII.<sup>478</sup>

## 2. Objectives

The objectives of the Libyan sanctions regime were to ensure that the Libyan government co-operated with French, British and American investigations into the bombings, committed itself definitively to ceasing all forms of terrorism and all assistance to terrorist groups and demonstrated by concrete actions its renunciation of terrorism.<sup>479</sup> The

<sup>468</sup> SC Res. 731 (21 January 1992), preambular para. 2. <sup>469</sup> *Ibid.*, preambular para. 6.  
<sup>470</sup> *Ibid.*, para. 2. <sup>471</sup> *Ibid.*, para. 3.

<sup>472</sup> SC Res. 748 (31 March 1992), preambular para. 4. <sup>473</sup> *Ibid.*, preambular para. 6.

<sup>474</sup> *Ibid.*, preambular para. 7. <sup>475</sup> *Ibid.*, preambular para. 10. <sup>476</sup> *Ibid.*, paras. 3–6.

<sup>477</sup> SC Res. 883 (11 November 1993), preambular para. 6. <sup>478</sup> *Ibid.*, preambular para. 10.

<sup>479</sup> SC Res. 748 (31 March 1992), paras. 1–2.

Security Council made it clear that the sanctions would terminate once it was satisfied that the Libyan government had complied with those objectives.<sup>480</sup> In November 1993 the Security Council provided that sanctions might be suspended if the UNSG were to report that the Libyan government had ensured the appearance of those charged with the Pan Am bombing before the appropriate UK or US court and had satisfied French judicial authorities with respect to the UTA bombing.<sup>481</sup> In August 1998, after negotiations had led to the proposal that two individuals suspected of involvement in the Pan Am bombing be tried before a Scottish court sitting in the Netherlands,<sup>482</sup> the Council decided that sanctions would be suspended immediately if the UNSG were to report to it that the suspects had arrived in the Netherlands to be tried before the Scottish court, or if they had appeared for trial before an appropriate court in the United Kingdom or the United States.<sup>483</sup>

### 3. Scope

The sanctions regime initially consisted of a range of measures, including aviation sanctions, an arms embargo, diplomatic sanctions, and travel sanctions. The Security Council subsequently expanded the sanctions, adding financial sanctions, measures targeting Libya's oil production, and additional aviation sanctions.

#### 3.1 *Sanctions obligations*

In resolution 748 (1992), the Security Council imposed a range of measures against Libya, including aviation, arms, diplomatic and travel sanctions. The aviation sanctions required states to: (a) deny permission to any aircraft to take off from, land in, or overfly their territory if it was destined to land in or had taken off from the territory of Libya;<sup>484</sup> (b) prohibit the supply of any aircraft or aircraft components to Libya, and the provision of aircraft engineering or servicing of, or airworthiness certification or aircraft insurance to, Libyan aircraft;<sup>485</sup> and (c) prevent the operation of all Libyan Arab Airlines offices.<sup>486</sup> The arms sanctions required states to prevent the provision to Libya of arms and related material,<sup>487</sup> as well as technical advice, assistance or training related to

<sup>480</sup> *Ibid.*, para. 3. <sup>481</sup> SC Res. 883 (11 November 1993), para. 16.

<sup>482</sup> S/1998/795 (24 August 1998). <sup>483</sup> SC Res. 1192 (27 August 1998), para. 8.

<sup>484</sup> SC Res. 748 (31 March 1992), para. 4(a). <sup>485</sup> *Ibid.*, para. 4(b). <sup>486</sup> *Ibid.*, para. 6(b).

<sup>487</sup> *Ibid.*, para. 5(a).

the provision, manufacture, maintenance or use thereof,<sup>488</sup> and to withdraw any officials or agents present in Libya to advise the Libyan authorities on military matters.<sup>489</sup> On the diplomatic front, states were required to reduce staff at Libyan diplomatic missions and consulates and to restrict the movement of staff remaining in their territory.<sup>490</sup> The travel sanctions against Libyan terrorists required states to deny entry to or expel Libyan nationals who had been denied entry to or expelled from other states due to involvement in terrorist activities.<sup>491</sup>

In November 1993, the Council imposed financial sanctions, targeted economic sanctions and additional aviation sanctions. The financial sanctions required states to freeze funds or other financial resources owned or controlled by the government or public authorities of Libya or any Libyan undertaking, and to ensure that no financial resources were made available to or for the benefit of such Libyan entities.<sup>492</sup> The targeted sanctions prohibition required states to prevent the export to Libya of particular goods used in the refinement and export of oil, including pumps, boilers, furnaces and prepared catalysts.<sup>493</sup> The additional aviation sanctions required states to: (a) ensure the immediate closure of all Libyan Arab Airlines offices within their territories;<sup>494</sup> (b) prohibit any commercial transactions with Libyan Arab Airlines by their nationals or from their territory, including the honouring or endorsement of any tickets or other documents issued by that airline;<sup>495</sup> (c) prohibit the provision for operation within Libya of any aircraft, aircraft components, or engineering or servicing of aircraft and aircraft components;<sup>496</sup> (d) prohibit the supply of any materials destined for the construction, improvement or maintenance of Libyan airfields, or of engineering or other services for the maintenance of Libyan airfields;<sup>497</sup> (e) prohibit the provision of advice, assistance, or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya;<sup>498</sup> and (f) prohibit the renewal of any direct insurance for Libyan aircraft.<sup>499</sup>

### 3.2 Exemptions

The Security Council outlined a number of exemptions from the 748 sanctions regime. The Council exempted from the aviation sanctions

<sup>488</sup> *Ibid.*, para. 5(b). <sup>489</sup> *Ibid.*, para. 5(c). <sup>490</sup> *Ibid.*, para. 6(a). <sup>491</sup> *Ibid.*, para. 6(c).

<sup>492</sup> SC Res. 883 (11 November 1993), paras. 3–4. <sup>493</sup> *Ibid.*, para. 5 and annex.

<sup>494</sup> *Ibid.*, para. 6(a). <sup>495</sup> *Ibid.*, para. 6(b). <sup>496</sup> *Ibid.*, para. 6(c). <sup>497</sup> *Ibid.*, para. 6(d).

<sup>498</sup> *Ibid.*, para. 6(e). <sup>499</sup> *Ibid.*, para. 6(f).



particular flights approved by the 748 Committee on the ground of significant humanitarian need,<sup>500</sup> emergency and other equipment and services directly related to civilian air traffic control,<sup>501</sup> and UN aircraft connected with the deployment of a team of UN observers to monitor the withdrawal of Libya from the Aouzou strip.<sup>502</sup> The Council also exempted from the financial sanctions funds derived from the sale or supply of petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities originating in Libya.<sup>503</sup>

#### 4. Administration and monitoring

The Security Council bestowed responsibilities for the administration of the 748 sanctions regime upon the 748 Sanctions Committee and the UNSG.

##### 4.1 *The 748 Sanctions Committee*

The Council created the 748 Libya Sanctions Committee in the same resolution that imposed sanctions.<sup>504</sup> The 748 Committee, which was established in accordance with rule 28 of the Security Council's provisional rules of procedure, was to report to the Council on its work and with its observations and recommendations and to: (a) examine the reports of states on measures taken to implement sanctions;<sup>505</sup> (b) seek further information from states regarding action taken to implement sanctions;<sup>506</sup> (c) consider any information brought to its attention by states concerning sanctions violations and make recommendations to the Council to increase their effectiveness;<sup>507</sup> (d) recommend appropriate measures in response to sanctions violations;<sup>508</sup> (e) provide regular information to the UNSG for distribution to member states;<sup>509</sup> (f) decide expeditiously applications by states for the approval of flights on grounds of significant humanitarian need;<sup>510</sup> and (g) give special attention to Article 50 communications concerning special economic problems arising from sanctions implementation.<sup>511</sup>

<sup>500</sup> SC Res. 748 (31 March 1992), para. 4(a).

<sup>501</sup> SC Res. 883 (11 November 1993), para. 6(d).

<sup>502</sup> SC Res. 910 (14 April 1994), para. 1; SC Res. 915 (4 May 1994), para. 4.

<sup>503</sup> SC Res. 883 (11 November 1993), paras. 3–4.

<sup>504</sup> SC Res. 748 (31 March 1992), para. 9. <sup>505</sup> *Ibid.*, para. 9(a).

<sup>506</sup> *Ibid.*, para. 9(b). <sup>507</sup> *Ibid.*, para. 9(c). <sup>508</sup> *Ibid.*, para. 9(d).

<sup>509</sup> *Ibid.* <sup>510</sup> *Ibid.*, para. 9(e). <sup>511</sup> *Ibid.*, para. 9(f).

The Security Council subsequently added a number of tasks to the 748 Committee's responsibilities, including to: (a) modify the guidelines for sanctions implementation to reflect the additional measures imposed;<sup>512</sup> (b) examine requests for assistance under Article 50 and make recommendations for appropriate action;<sup>513</sup> (c) draw to the attention of member states their obligations under the sanctions regime in the event that Libyan-registered aircraft were to land in their territory;<sup>514</sup> (d) investigate reports that a Libyan-registered aircraft had flown from Tripoli to Accra, in apparent violation of the sanctions;<sup>515</sup> and (e) investigate similar reports concerning a Libyan-registered aircraft that allegedly flew from Libya to Niger, before returning from Nigeria.<sup>516</sup>

The 748 Committee was eventually dissolved in September 2003, when the sanctions were terminated, although it had not been active since sanctions were suspended in 1999.<sup>517</sup> During its tenure, the Committee held ninety-one formal meetings<sup>518</sup> and issued five annual reports.<sup>519</sup> In its reports, the 748 Committee, like other sanctions committees, noted that the full responsibility for sanctions implementation rested upon states.<sup>520</sup> It also outlined some of the exemptions which it had provided from the air sanctions, including for medical evacuation purposes and for flights carrying people undertaking the Hajj pilgrimage.<sup>521</sup> Finally, the Committee also made reference to alleged sanctions violations, which were almost all related to the aviation sanctions.<sup>522</sup>

#### 4.2 *The Secretary-General*

In January 1992, the Security Council requested the UNSG to seek the co-operation of the Libyan government with investigations into the Pan Am and UTA bombings.<sup>523</sup> When it established the 748 sanctions regime, it invited the UNSG to continue playing that role,<sup>524</sup> to receive

<sup>512</sup> SC Res. 883 (11 November 1993), para. 9. <sup>513</sup> *Ibid.*, para. 10.

<sup>514</sup> S/PRST/1996/18 (18 April 1996); S/PRST/1997/18 (4 April 1997).

<sup>515</sup> S/PRST/1997/2 (29 January 1997). <sup>516</sup> S/PRST/1997/27 (20 May 1997).

<sup>517</sup> SC Res. 1506 (12 September 2003), para. 2.

<sup>518</sup> *Index to Proceedings of the Security Council for 1999* (New York, UN, 2000) p. xiii.

<sup>519</sup> See Appendix 3, Table F. <sup>520</sup> S/1996/2 (2 January 1996), para. 6.

<sup>521</sup> S/1996/2 (2 January 1996), paras. 21–30; S/1996/1079 (31 December 1996), paras. 5–9; S/1997/1030 (31 December 1997), paras. 3–7; S/1998/1237 (31 December 1998), paras. 3–7; S/1999/1299 (31 December 1999), paras. 3–6.

<sup>522</sup> S/1996/2 (2 January 1996), paras. 31–32; S/1996/1079 (31 December 1996), paras. 10–14; S/1997/1030 (31 December 1997), paras. 8–10; S/1998/1237 (31 December 1998), paras. 8–14; S/1999/1299 (31 December 1999), para. 7.

<sup>523</sup> SC Res. 731 (21 January 1992), para. 4. <sup>524</sup> SC Res. 748 (31 March 1992), para. 12.

reports submitted by states on measures taken to implement sanctions,<sup>525</sup> and to provide assistance to the 748 Committee.<sup>526</sup> The Security Council subsequently requested the UNSG to: (a) report to it in the event that Libya had ensured the appearance before the appropriate UK or US court of those charged with the Pan Am bombing and had satisfied French judicial authorities with respect to the UTA bombing, in which case the sanctions would be suspended;<sup>527</sup> (b) in the event that sanctions were suspended following that initial report, report again within ninety days on Libya's compliance with the remaining objectives, in the absence of which the suspension of the sanctions would lapse;<sup>528</sup> (c) assist the Libyan government with arrangements for the safe transfer of the two accused from Libya to the Netherlands,<sup>529</sup> and (d) nominate international observers to attend the trial.<sup>530</sup>

## 5. Suspension and termination

The Security Council first provided for the possibility that the sanctions against Libya might be suspended in November 1993, when it made such suspension conditional upon the appearance of those charged with the Pan Am bombing before an appropriate UK or US court and upon the French judicial authorities being satisfied with steps taken by the Libyan government to implement the sentences of those found guilty *in absentia* of the UTA bombing.<sup>531</sup> The Council subsequently modified these conditions so that sanctions would be suspended once the UNSG reported to the Council that the two accused of the Pan Am bombing had arrived in the Netherlands for the purpose of being tried before a Scottish court and that the Libyan government had satisfied the French judicial authorities with regard to the UTA bombing.<sup>532</sup> The sanctions were in fact suspended on 5 April 1999, after the UNSG reported that the conditions for suspension had been satisfied.<sup>533</sup>

The ultimate termination of the sanctions was complicated by the question of whether Libya had fully complied with the objectives of the 748 sanctions regime. In June 1999 the UNSG submitted a report to the Council, in which he suggested that the Libyan government had

<sup>525</sup> SC Res. 748 (31 March 1992), para. 8. <sup>526</sup> SC Res. 748 (31 March 1992), para. 11.

<sup>527</sup> SC Res. 883 (11 November 1993), para. 16. <sup>528</sup> *Ibid.*

<sup>529</sup> SC Res. 1192 (27 August 1998), para. 5. <sup>530</sup> *Ibid.*, para. 6.

<sup>531</sup> SC Res. 883 (11 November 1993), para. 16. <sup>532</sup> SC Res. 1192 (27 August 1998), para. 8.

<sup>533</sup> SC/6662 (5 April 1999): *Statement by the President of the Security Council to the press*; S/PRST/1999/10 (8 April 1999).

largely demonstrated compliance with the remaining objectives of the sanctions.<sup>534</sup> More than four years later, in September 2003, the Security Council welcomed a letter from the representative of Libya which recounted steps taken by the Libyan government to comply with its obligations connected with the sanctions regime.<sup>535</sup> Those steps included accepting responsibility for the actions of Libyan officials, paying appropriate compensation, renouncing terrorism, and making a commitment to co-operate with further investigations. The Council proceeded to lift the sanctions and dissolve the 748 Committee.<sup>536</sup>

## 6. Conclusions

The Libyan sanctions regime contributed to the evolution of sanctions practice in a number of ways. First, it represented the first occasion on which the Security Council had imposed sanctions in connection with an act of terrorism. Second, it was the first sanctions regime to consist of more than a simple arms embargo and less than comprehensive sanctions. Third, it gave rise to the first instance of sanctioning in which the application of the sanctions was not immediate, as the Council provided for a short time-delay prior to the entry into force of the sanctions.<sup>537</sup> Fourth, the Council made explicit references to specific provisions of the UN Charter, including Articles 2(4)<sup>538</sup> and 50.<sup>539</sup> Fifth, the Council adopted the strategy of inducing compliance by articulating particular objectives, the realisation of which would result in the sanctions being suspended and terminated.<sup>540</sup> Finally, the Libya sanctions regime possesses the dubious honour of being the sanctions regime which has been suspended for the longest period.

In political terms, it is noteworthy that the resolutions applying or modifying the sanctions against Libya received less than unanimous support. Resolution 748 (1992), initiating the sanctions regime, received ten votes in favour, none against and five abstentions (Cape Verde,

<sup>534</sup> S/1999/726 (30 June 1999), Section IV, paras. 18–36.

<sup>535</sup> SC Res. 1506 (12 September 2003), preambular para. 3. For the text of the letter itself, see: S/2003/818 (15 August 2003).

<sup>536</sup> SC Res. 1506 (12 September 2003), paras. 1–2.

<sup>537</sup> SC Res. 748 (31 March 1992), para. 3; SC Res. 883 (11 November 1993), para. 2.

<sup>538</sup> SC Res. 748 (31 March 1992), preambular para. 6.

<sup>539</sup> *Ibid.*, preambular para. 9; SC Res. 883 (11 November 1993), preambular para. 9.

<sup>540</sup> SC Res. 883 (11 November 1993), para. 16.

China, India, Morocco and Zimbabwe).<sup>541</sup> Resolution 883 (1993), strengthening the sanctions, received eleven votes in favour, none against and four abstentions (China, Djibouti, Morocco and Pakistan).<sup>542</sup> While this did not affect the legal consequences flowing from the application of the Libya sanctions, it nevertheless demonstrated that the decisions relating to the application of the 748 sanctions regime did not enjoy the same degree of support as most other sanctions regimes. In legal terms, the Libya sanctions regime was notable because the events in response to which the sanctions were applied gave rise to two major examples of legal action. First, the Libyan government brought a case before the International Court of Justice alleging that the United States and United Kingdom's demand that it extradite terrorist suspects violated its rights under the 1971 Montreal Convention on Air Safety.<sup>543</sup> Second, the two Lockerbie suspects were ultimately tried before a Scottish Court temporarily located in the Netherlands.<sup>544</sup>

## 7. THE 757 SANCTIONS REGIME AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

In May 1992 the Security Council imposed sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRYSM) in order to induce it to cease engaging in acts of interference in Bosnia-Herzegovina. The sanctions regime consisted of a complex blend of economic, financial, diplomatic, sporting and cultural sanctions, the concrete objectives of which evolved in response to developments on the ground. The sanctions were suspended gradually over a period of twelve months, beginning in September 1994. Ultimately, the 757 sanctions regime was terminated in October 1996, after free and fair elections had been held in Bosnia and Herzegovina. The Council entrusted responsibility for administering the 757 sanctions regime to the 724 Yugoslavia Sanctions Committee.

<sup>541</sup> S/PV.3063 (31 March 1992), p. 65. <sup>542</sup> S/PV.3312 (11 November 1993), p. 39.

<sup>543</sup> See *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. US/Libyan Arab Jamahiriya v. UK)*. Provisional Measures, ICJ Rep. 1992 (orders of 14 April 1992).

<sup>544</sup> For the Opinion of the Scottish Court in that case, see S/2001/1994 (31 January 2001), annex.

## 1. Constitutional basis

On 15 May 1992, the Security Council adopted resolution 752 (1992), in which it expressed deep concern about the serious situation in certain parts of the former Yugoslavia and in particular about the rapid and violent deterioration of the situation in Bosnia and Herzegovina.<sup>545</sup> The Council then demanded that: (a) all parties and others concerned in Bosnia and Herzegovina stop fighting immediately;<sup>546</sup> (b) all forms of interference from outside Bosnia and Herzegovina cease immediately;<sup>547</sup> (c) Bosnia and Herzegovina's neighbours take swift action to end all interference in and respect the territorial integrity of Bosnia and Herzegovina;<sup>548</sup> (d) the Yugoslav People's Army be disbanded and disarmed;<sup>549</sup> and (e) all irregular forces in Bosnia and Herzegovina also be disbanded and disarmed.<sup>550</sup>

Two weeks later, on 30 May 1992, the Security Council adopted resolution 757 (1992), in which it deplored the fact that its demands had not been complied with,<sup>551</sup> recalled its primary responsibility under the UN Charter for the maintenance of international peace and security,<sup>552</sup> and determined that the situation in Bosnia and Herzegovina and other parts of the former Yugoslavia constituted a threat to international peace and security.<sup>553</sup> The Council then invoked Chapter VII,<sup>554</sup> before proceeding to impose comprehensive sanctions against FRYSM.<sup>555</sup> In subsequent decisions related to the sanctions regime, the Council reaffirmed the continued existence of a threat to international peace and security<sup>556</sup> and again invoked Chapter VII.<sup>557</sup>

<sup>545</sup> SC Res. 752 (15 May 1992), preambular para. 3. <sup>546</sup> *Ibid.*, para. 1.

<sup>547</sup> *Ibid.*, para. 3. <sup>548</sup> *Ibid.*, para. 3. <sup>549</sup> *Ibid.*, para. 4. <sup>550</sup> *Ibid.*, para. 5.

<sup>551</sup> SC Res. 757 (30 May 1992), preambular para. 4. <sup>552</sup> *Ibid.*, preambular para. 12.

<sup>553</sup> *Ibid.*, preambular para. 17. <sup>554</sup> *Ibid.*, preambular para. 18. <sup>555</sup> *Ibid.*, paras. 3–8.

<sup>556</sup> SC Res. 787 (16 November 1992), preambular para. 2; SC Res. 1022 (22 November 1995), preambular para.

<sup>557</sup> SC Res. 760 (18 June 1992), preambular para. 2; SC Res. 787 (16 November 1992), paras. 9–10, 12; SC Res. 820 (17 April 1993), Section B, preambular para. 2, para. 19; SC Res. 943 (23 September 1994), preambular para. 10; SC Res. 967 (14 December 1994), preambular para. 3; SC Res. 970 (12 January 1995), preambular para. 5; SC Res. 988 (21 April 1995), preambular para. 7; SC Res. 992 (11 May 1995), preambular para. 6; SC Res. 1003 (5 July 1995), preambular para. 8; SC Res. 1015 (15 September 1995), preambular para. 6; SC Res. 1022 (22 November 1995), preambular para. 11; SC Res. 1074 (1 October 1996), preambular para. 9.

## 2. Objectives

The major objective of the 757 sanctions regime was inducing FRYSM's compliance with the demands outlined by the Council in resolution 752 (1992), including adherence to a cease-fire, co-operation with the peace process being initiated by the EC and the effective withdrawal, disbandment or disarmament of all military forces operating in the area, with the exception of UNPROFOR and the forces of the government of Bosnia and Herzegovina.<sup>558</sup> When it established the sanctions regime, the Security Council explicitly stated that the sanctions would be terminated once authorities in FRYSM had taken effective measures to comply with those demands.<sup>559</sup>

As the sanctions regime evolved, the Council modified subtly the concrete requirements that needed to be satisfied by FRYSM before the sanctions could be suspended or terminated. In April 1993, the Council expressed readiness to review the sanctions with a view to lifting them gradually after all three Bosnian parties had accepted the Bosnian peace plan and if the UNSG were to verify that the Bosnian Serb party was co-operating in good faith in the plan's implementation.<sup>560</sup> In September 1994 the Council suspended certain aspects of the sanctions, with the objective of ensuring the effective closure of the border between FRYSM and Bosnia and Herzegovina to all goods except foodstuffs, medical supplies and clothing for essential humanitarian need.<sup>561</sup> In November 1995, the Council added the further objectives of the occurrence of free and fair elections in Bosnia and Herzegovina and the continued implementation of the Bosnian Peace Agreement by the Bosnian Serbs.<sup>562</sup>

## 3. Scope

The 757 sanctions regime against FRYSM initially consisted of a range of measures spanning practically the full gamut of possibilities envisaged in Article 41, including comprehensive economic sanctions, as well as financial, aviation, diplomatic, sporting, scientific and cultural sanctions. The Council subsequently modified the sanctions on a number

<sup>558</sup> SC Res. 752 (15 May 1992), paras. 1-5. <sup>559</sup> SC Res. 757 (30 May 1992), para. 3.

<sup>560</sup> SC Res. 820 (17 April 1993), paras. 10, 31.

<sup>561</sup> SC Res. 943 (23 September 1994), paras. 1, 3-4.

<sup>562</sup> SC Res. 1022 (22 November 1995), para. 4.

of occasions, both strengthening and relaxing them in an effort to induce FRYSM's compliance with the sanctions regime's objectives.

### 3.1 *Sanctions obligations*

Resolution 757 (1992) imposed a complex blend of economic, financial, diplomatic, sporting and cultural sanctions. On the economic front, states were required to prevent: (a) the import into their territories of all commodities and products originating in FRYSM;<sup>563</sup> (b) activities with the aim of promoting the export of commodities or products originating in FRYSM;<sup>564</sup> and (c) the export of any commodities or products to FRYSM.<sup>565</sup> The financial sanctions required states to refrain from providing any funds or other financial or economic resources to any commercial, industrial or public utility operating in FRYSM and to prevent the removal of funds or resources from their territories to FRYSM.<sup>566</sup> The aviation sanctions required states to deny permission to any aircraft to take off from, land in, or overfly their territories if it was destined for or had departed from FRYSM and to prohibit the provision of maintenance services and parts in support of aircraft registered in that country.<sup>567</sup> On the diplomatic front, the Council required states to reduce the level of staff at diplomatic missions and consular posts of FRYSM.<sup>568</sup> On the sporting front, states were required to prevent the participation in sporting events on their territory of persons or groups representing FRYSM.<sup>569</sup> On the cultural front, states were required to suspend scientific and technical co-operation and cultural exchanges and visits involving persons or groups officially sponsored by or representing FRYSM.<sup>570</sup>

In November 1992, the Security Council adopted resolution 787 (1992), in which it strengthened the sanctions by prohibiting the transshipment through FRYSM of particular products and commodities, including crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types.<sup>571</sup> In April 1993, the Council adopted resolution 820 (1993), strengthening considerably the existing economic and financial sanctions. In connection with the economic sanctions, the Council required states to: (a) prevent all transshipments

<sup>563</sup> SC Res. 757 (30 May 1992), para. 4(a). <sup>564</sup> *Ibid.*, para. 4(b). <sup>565</sup> *Ibid.*, para. 4(c).

<sup>566</sup> *Ibid.*, para. 5. <sup>567</sup> *Ibid.*, para. 7(a) and (b). <sup>568</sup> *Ibid.*, para. 8(a). <sup>569</sup> *Ibid.*, para. 8(b).

<sup>570</sup> *Ibid.*, para. 8(c). <sup>571</sup> SC Res. 787 (16 November 1992), para. 9.



through FRYSM;<sup>572</sup> (b) prevent the passage through its territories of vessels registered in FRYSM, owned by a person or undertaking from FRYSM or suspected of having violated the sanctions;<sup>573</sup> (c) prohibit the transport of any commodities or products across the land borders, or to the ports, of FRYSM;<sup>574</sup> (d) impound all means of transport owned or operated from FRYSM or suspected of having violated the arms embargo or sanctions;<sup>575</sup> (e) detain any other means of transport suspected of having violated the embargo or the sanctions;<sup>576</sup> and (f) prohibit commercial maritime traffic from entering the territorial sea of FRYSM.<sup>577</sup> At the same time, the Council also required states neighbouring FRYSM to prevent the passage into or out of that country of all freight vehicles and rolling stock, except at a limited number of road and rail crossings to be notified to the 724 Committee.<sup>578</sup> In connection with the financial sanctions, the Council required states to freeze funds in their territories belonging to or controlled by the authorities of FRYSM or commercial, industrial or public undertakings from FRYSM;<sup>579</sup> and to prevent the provision of services, financial or otherwise, to any person or body for the purposes of any business carried on in FRYSM.<sup>580</sup>

### 3.2 Exemptions

The Security Council provided for a number of initial exemptions from the 757 sanctions regime. It exempted from the economic sanctions: (a) the sale or supply to FRYSM of medical supplies and foodstuffs;<sup>581</sup> (b) transshipment through FRYSM of commodities and products, with the approval of the 724 Committee;<sup>582</sup> and (c) the activities of UNPROFOR, the CY and the EC Monitoring Mission.<sup>583</sup> Exemptions were outlined from the financial sanctions for payments for food, medicine or humanitarian purposes and for payments related to the activities of UNPROFOR, the Conference on Yugoslavia and the EC Monitoring Mission.<sup>584</sup> Exemptions were also provided from the aviation sanctions for flights made for humanitarian or other purposes consistent with the sanctions regime, when approved by the 724 Committee, and to the activities of UNPROFOR, the CY and the EC Monitoring Mission.<sup>585</sup>

In June 1992, the Security Council exempted from economic sanctions the provision of commodities and products for essential

<sup>572</sup> SC Res. 820 (17 April 1993), para. 15. <sup>573</sup> *Ibid.*, para. 16(a), (b) and (c).

<sup>574</sup> *Ibid.*, para. 22. <sup>575</sup> *Ibid.*, para. 24. <sup>576</sup> *Ibid.*, para. 25. <sup>577</sup> *Ibid.*, para. 28.

<sup>578</sup> *Ibid.*, para. 23. <sup>579</sup> *Ibid.*, para. 21. <sup>580</sup> *Ibid.*, para. 27.

<sup>581</sup> SC Res. 757 (30 May 1992), para. 4(c). <sup>582</sup> SC Res. 757 (30 May 1992), para. 6.

<sup>583</sup> *Ibid.*, para. 10. <sup>584</sup> *Ibid.*, paras. 5, 10. <sup>585</sup> *Ibid.*, paras. 7(a), 10.

humanitarian need, as approved by the 724 Committee.<sup>586</sup> It also exempted from financial sanctions the provision of financial resources for the purchase of such products and commodities.<sup>587</sup> In November 1992, the Council provided for exemptions from the prohibitions on transshipment under resolution 787 (1992) when authorised on a case-by-case basis by the 724 Committee.<sup>588</sup> In April 1993, the Council outlined exemptions from the prohibitions under resolution 820 (1993) for: (a) transshipment when specifically authorised by the 724 Committee and subject to effective monitoring as they passed along the Danube between the border points of Vidin/Calafat and Mohacs;<sup>589</sup> (b) medical supplies and foodstuffs;<sup>590</sup> (c) other essential humanitarian supplies when approved on a case-by-case basis by the 724 Committee;<sup>591</sup> (d) limited transshipments when authorised on an exceptional basis by the Committee;<sup>592</sup> (e) maritime traffic entering the ports of FRYSM when authorised on a case-by-case basis by the 724 Committee and in the case of *force majeure*;<sup>593</sup> and (f) the provision of financial or other services related to telecommunications, postal services and legal services consistent with the sanctions, and, as approved on a case-by-case basis, services whose supply may be necessary for humanitarian or other exceptional purposes.<sup>594</sup>

In September 1994, the Council exempted 'clothing for essential humanitarian need'.<sup>595</sup> At the same time, it also suspended aspects of the sanctions, including the prohibitions against civilian, non-cargo carrying aircraft, passenger, non-cargo ferries between Bar in FRYSM and Bari in Italy, and participation in sporting events and cultural exchanges.<sup>596</sup> In December 1994, the Council provided a temporary exemption for the export of diphtheria anti-serum, in order to address a shortfall of the serum in places other than FRYSM.<sup>597</sup> In May 1995, it provided additional temporary exemptions for the use of Rumanian river locks by FRYSM vessels while locks on the Serbian bank of the Danube were undergoing repair<sup>598</sup> and the provision of supplies essential to those repairs.<sup>599</sup>

<sup>586</sup> SC Res. 760 (18 June 1992), sole para. <sup>587</sup> *Ibid.*

<sup>588</sup> SC Res. 787 (16 November 1992), para. 9. <sup>589</sup> SC Res. 820 (17 April 1993), para. 15.

<sup>590</sup> *Ibid.*, para. 22. <sup>591</sup> *Ibid.* <sup>592</sup> *Ibid.* <sup>593</sup> *Ibid.*, para. 28. <sup>594</sup> *Ibid.*, para. 27.

<sup>595</sup> SC Res. 943 (23 September 1994), para. 3. <sup>596</sup> *Ibid.*, para. 1(i), (ii) and (iii).

<sup>597</sup> SC Res. 967 (14 December 1994), paras. 1-2.

<sup>598</sup> SC Res. 992 (11 May 1995), para. 1. <sup>599</sup> *Ibid.*, para. 2.

## 4. Administration and monitoring

The Security Council bestowed responsibility for oversight of the sanctions upon the 724 Committee, which had already been established to oversee the 713 sanctions regime against the former Yugoslavia.<sup>600</sup> The UNSG also played a role in the administration of the 757 sanctions regime.

### 4.1 *The 724 Sanctions Committee*

When it established the 757 sanctions regime, the Security Council decided that the 724 Committee would: (a) examine reports submitted by states on steps taken to implement the sanctions;<sup>601</sup> (b) seek further information from states regarding action taken to implement the sanctions;<sup>602</sup> (c) consider information concerning violations and making recommendations to the Council on how to increase the effectiveness of the sanctions;<sup>603</sup> (d) recommend appropriate measures in response to violations and provide information on a regular basis to the UNSG for general distribution to member states;<sup>604</sup> (e) consider and approve guidelines for the transshipment through FRYSM of exempted items;<sup>605</sup> and (f) decide expeditiously upon applications for exemptions from the aviation sanctions.<sup>606</sup>

The 724 Committee was subsequently requested to: (a) consider, on a case-by-case basis, applications for exemptions to the ban on the transshipment of particular goods;<sup>607</sup> (b) report on information submitted to it regarding alleged sanctions violations, identifying where possible persons or entities, including vessels, reported to be engaging in such violations;<sup>608</sup> (c) draw up rules for monitoring sanctions, including provisions relating to the monitoring of exemptions;<sup>609</sup> (d) consider, on a case-by-case basis under the no-objection procedure, applications for exemptions from the sanctions for essential humanitarian supplies that were not medical supplies or foodstuffs;<sup>610</sup> (e) authorise limited shipments through the territory of FRYSM;<sup>611</sup> (f) consider, on a case-by-case basis, applications for exemptions from the financial sanctions for the provision of services for humanitarian or other exceptional purposes;<sup>612</sup> (g) consider, on a case-by-case basis, applications for

<sup>600</sup> SC Res. 757 (30 May 1992), para. 13. <sup>601</sup> *Ibid.*, para. 13(a). <sup>602</sup> *Ibid.*, para. 13(b).

<sup>603</sup> *Ibid.*, para. 13(c). <sup>604</sup> *Ibid.*, para. 13(d). <sup>605</sup> *Ibid.*, para. 13(e). <sup>606</sup> *Ibid.*, para. 13(f).

<sup>607</sup> SC Res. 787 (16 November 1992), para. 9. <sup>608</sup> SC Res. 820 (17 April 1993), para. 18.

<sup>609</sup> *Ibid.*, para. 22(a). <sup>610</sup> *Ibid.*, para. 22(b). <sup>611</sup> *Ibid.*, para. 22(c). <sup>612</sup> *Ibid.*, para. 27.

exemptions from the prohibition on commercial maritime traffic entering the territorial sea of FRYSM;<sup>613</sup> (h) make recommendations concerning requests for assistance under Article 50;<sup>614</sup> (i) adopt streamlined procedures to expedite consideration of applications for exemptions for legitimate humanitarian assistance, in particular from UNHCR and the ICRC;<sup>615</sup> and (j) review and amend its guidelines in the light of suspended sanctions.<sup>616</sup>

As noted above in the overview of the 713 sanctions regime, the 724 Committee held 142 formal meetings during its tenure. Two of its three reports were issued after the establishment of the 757 sanctions regime.<sup>617</sup> In these reports, the Committee outlined action taken to process applications for sanctions exemptions,<sup>618</sup> as well as its consideration of sanctions violations.<sup>619</sup> It also made some recommendations that were subsequently acted upon by the Council, including authorising temporary exemptions from the sanctions for the export of diphtheria serum and for vessels of FRYSM to use the locks on the Romanian side of the Danube while repairs were being carried out to the locks on the Serbian side of the river.<sup>620</sup>

In its second report, the 724 Committee emphasised that the application of sanctions was the responsibility of states and that its role was to offer assistance to states.<sup>621</sup> It also observed that sanctions monitoring had been complicated by the fact that FRYSM was located at the hub of intense economic and cultural activity in the south-eastern region of Europe.<sup>622</sup> The implementation of sanctions had also had an adverse impact on the economies of a number of countries, including in particular the states neighbouring FRYSM.<sup>623</sup> The Committee was disappointed by the lack of information it had received on sanctions violations, particularly as the media had been 'replete' with reports of

<sup>613</sup> *Ibid.*, para. 28. <sup>614</sup> SC Res. 843 (18 June 1993), para. 2.

<sup>615</sup> SC Res. 943 (23 September 1994), para. 2; SC Res. 970 (12 January 1995), para. 4; SC Res. 988 (21 April 1995), paras. 11–12.

<sup>616</sup> SC Res. 1022 (22 November 1995), para. 8.

<sup>617</sup> S/25027 (30 December 1992); S/1996/946 (15 November 1996).

<sup>618</sup> S/25027 (30 December 1992), paras. 16–18; S/1996/946 (15 November 1996), paras. 6–7, 12–13, 34–38, 43–61, 64–67.

<sup>619</sup> S/25027 (30 December 1992), paras. 19–22; S/1996/946 (15 November 1996), paras. 18–28.

<sup>620</sup> S/1996/946 (15 November 1996), paras. 16(g) and 16(h). The exemptions were authorised by SC Res. 967 (14 December 1994), para. 1; SC Res. 992 (11 May 1995), para. 1.

<sup>621</sup> S/25027 (30 December 1992), para. 25. <sup>622</sup> *Ibid.*, para. 23. <sup>623</sup> *Ibid.*

such violations.<sup>624</sup> The lack of an independent monitoring mechanism had also inhibited the Committee's ability to obtain original information and to investigate alleged violations.<sup>625</sup> In that respect, however, it was grateful for information received from sources such as the NATO and WEU monitoring teams in the Adriatic Sea.<sup>626</sup>

In its final report, the Committee acknowledged that a major reason for the effectiveness of the sanctions was the monitoring and enforcement role played by regional organisations.<sup>627</sup> The 757 sanctions regime had demonstrated that, if properly applied, administered and implemented, sanctions could promote international peace and security.<sup>628</sup> Based on its experience, the Committee recommended that in future sanctions regimes, practical arrangements should be considered for alleviating adverse humanitarian effects of sanctions.<sup>629</sup> International humanitarian agencies should be given preferential treatment, provided that adequate monitoring and control mechanisms were in place.<sup>630</sup> The UN Secretariat should also establish an adequate capacity for analysis and assessment of the effectiveness of sanctions and their humanitarian impact.<sup>631</sup> It was also essential to mitigate the adverse economic effects of sanctions upon third countries.<sup>632</sup>

#### 4.2 *The Secretary-General*

The Security Council requested the UNSG to undertake a range of tasks in connection with the 757 sanctions regime, including to: (a) receive reports from states on measures taken to implement sanctions;<sup>633</sup> (b) co-ordinate submissions from states and regional agencies regarding action taken to halt maritime and riparian traffic to verify that cargo did not violate sanctions;<sup>634</sup> (c) submit recommendations for facilitating sanctions implementation by deploying observers on the borders of Bosnia and Herzegovina;<sup>635</sup> (d) report if the Bosnian Serbs had signed and begun to implement the peace plan, in which case the sanctions would not be imposed;<sup>636</sup> (e) in the event that the Bosnian Serbs did sign

<sup>624</sup> *Ibid.*, para. 24.    <sup>625</sup> *Ibid.*, para. 25.    <sup>626</sup> *Ibid.*

<sup>627</sup> S/1996/946 (15 November 1996), para. 79.    <sup>628</sup> *Ibid.*, para. 86.

<sup>629</sup> *Ibid.*, para. 82. The Committee also included in its Final Report a sections entitled 'Humanitarian impact and cooperation with humanitarian relief organisations': paras. 68–78.

<sup>630</sup> *Ibid.*    <sup>631</sup> *Ibid.*, para. 83.    <sup>632</sup> *Ibid.*, para. 84.

<sup>633</sup> SC Res. 757 (30 May 1992), para. 12.    <sup>634</sup> SC Res. 787 (16 November 1992), para. 14.

<sup>635</sup> *Ibid.*, para. 16; SC Res. 838 (10 June 1993), para. 1.

<sup>636</sup> SC Res. 820 (17 April 1993), para. 10.

and begin to implement the peace process, report if they subsequently renewed military attacks or failed to comply with the peace plan, in which case sanctions would come into effect immediately;<sup>637</sup> (f) report if the Bosnian Serbs had signed the peace plan and were implementing their obligations in good faith, in which case the Council would review sanctions with a view to lifting them;<sup>638</sup> (g) report on aerial surveillance received from member states;<sup>639</sup> and (h) report when the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia had certified that the FRYSM authorities had genuinely closed the border between FRYSM and Bosnia and Herzegovina to sanctioned goods, and to report immediately if there was evidence that the border was not effectively closed.<sup>640</sup> Once the sanctions had been suspended, the UNSG was also requested to report if FRYSM had failed to sign the Peace Agreement,<sup>641</sup> or if it was failing to meet its obligations under the Peace Agreement.<sup>642</sup> In either instance, the suspension of the sanctions would lapse after five days.<sup>643</sup>

## 5. Suspension and termination

The Council first began to suspend aspects of the sanctions against FRYSM in September 1994, when it foreshadowed the potential suspension of restrictions against: (a) civilian, non-cargo carrying aircraft;<sup>644</sup> (b) passenger, non-cargo carrying ferries between Bar in FRYSM and Bari in Italy;<sup>645</sup> and (c) participation in sporting events and cultural exchanges.<sup>646</sup> The suspensions were to come into effect upon certification by the ICFY Co-Chairmen that FRYSM had effectively closed the border between it and the Republic of Bosnia and Herzegovina to all goods except foodstuffs, medical supplies and clothing for essential humanitarian needs.<sup>647</sup> The suspensions subsequently came into effect and were extended on multiple occasions,<sup>648</sup> as a result of the

<sup>637</sup> *Ibid.*, para. 11.    <sup>638</sup> *Ibid.*, para. 31.    <sup>639</sup> SC Res. 838 (10 June 1993), para. 2.

<sup>640</sup> SC Res. 943 (23 September 1994), para. 3; SC Res. 970 (12 January 1995), para. 5; SC Res. 988 (21 April 1995), para. 13; SC Res. 1003 (5 July 1995), para. 2; SC Res. 1015 (15 September 1995), para. 2.

<sup>641</sup> SC Res. 1022 (22 November 1995), para. 1.    <sup>642</sup> *Ibid.*, para. 3.    <sup>643</sup> *Ibid.*, paras. 1, 3.

<sup>644</sup> SC Res. 943 (23 September 1994), para. 1(i).    <sup>645</sup> *Ibid.*, para. 1(ii).

<sup>646</sup> *Ibid.*, para. 1(iii).    <sup>647</sup> *Ibid.*, para. 1.

<sup>648</sup> See SC Res. 970 (12 January 1995), para. 1; SC Res. 988 (21 April 1995), para. 1; SC Res. 1003 (5 July 1995), para. 1; SC Res. 1015 (15 September 1995), para. 1.

continuing certification by the Co-Chairmen of the ICFY that the border remained closed.<sup>649</sup> The certifications by the ICFY Co-Chairmen were treated sceptically by the representative of Bosnia and Herzegovina, who consistently argued before the Security Council that the border had not been effectively closed and that forms of military assistance were transiting the border.<sup>650</sup>

In November 1995, the Council suspended all of the remaining sanctions against FRYSM and foreshadowed their ultimate termination.<sup>651</sup> Both the suspension and the termination were conditional. The sanctions would be reapplied if the UNSG were to report that FRYSM had failed to sign the Peace Agreement prior to the date stipulated by the Contact Group of the ICFY,<sup>652</sup> or if subsequent to the signing of the agreement the UNSG were to report that FRYSM was failing to meet its obligations under the Peace Agreement.<sup>653</sup> Moreover, the sanctions would not be terminated until ten days after the occurrence of free and fair elections in Bosnia and Herzegovina.<sup>654</sup> The sanctions were terminated in October 1996, after free and fair elections had been held in Bosnia and Herzegovina.<sup>655</sup>

## 6. Conclusions

The 757 sanctions regime was notable mainly due to its complexity, both in terms of the breadth of scope of the measures to be applied and the practical challenges of implementing sanctions against a country which had many neighbours and was located in the heart of a riparian economic community heavily reliant upon the transportation of goods via an international river.<sup>656</sup> An unprecedented number of regional actors was involved in ensuring the effective implementation of the 757 sanctions regime, including NATO, the EU and the WEU.

The 757 sanctions regime contributed to the evolution of UN sanctions practice in a number of ways. First, the Security Council applied for the first time sanctions against sport, scientific and technological co-operation and cultural exchanges. Second, the Council experimented

<sup>649</sup> S/1995/6 (4 January 1995); S/1995/302 (13 April 1995); S/1995/510 (25 June 1995); S/1995/768 (6 September 1995).

<sup>650</sup> See, e.g., S/PV.3612 (21 December 1995), pp. 2–4.

<sup>651</sup> SC Res. 1022 (22 November 1995), paras. 1, 4. <sup>652</sup> *Ibid.*, para. 1. <sup>653</sup> *Ibid.*, para. 3.

<sup>654</sup> *Ibid.*, para. 4. <sup>655</sup> SC Res. 1074 (1 October 1996), para. 2.

<sup>656</sup> For discussion of the issues peculiar to a riparian target which is part of a multi-national community, see *Final Report of the 724 Committee*, paras. 33–40.

for the first time with using a time-delay to provide the target with a window of time in which they could avoid falling subject to sanctions.<sup>657</sup> Third, it was the first time that the Council had bestowed responsibilities pertaining to a new sanctions regime upon a pre-existing Sanctions Committee. Fourth, the Council employed a strategy of suspending sanctions to induce additional compliance on the part of the target, as it also did with the 841 Haiti sanctions regime and the 748 Libya sanctions regime. Fifth, the Council made a rare endorsement of a recommendation for action under Article 50.<sup>658</sup>

## 8. THE 788 LIBERIA SANCTIONS REGIME

The Security Council imposed sanctions against Liberia in late 1992, in an attempt to bring about the establishment of peace and stability. The sanctions consisted of an arms embargo, which was applied for almost a decade before being terminated in March 2001. The Council established the 985 Liberia Sanctions Committee in 1995. The 788 sanctions regime was eventually terminated in March 2001, when the Council replaced it with the more extensive 1343 sanctions regime designed to induce the Liberian government to cease providing support to rebel groups in Sierra Leone.

### 1. Constitutional basis

In November 1992 the Security Council reaffirmed its belief that the Yamoussoukro IV Peace Agreement of 30 October 1991<sup>659</sup> offered the best framework for a peaceful resolution of the Liberian conflict,<sup>660</sup> regretted that the parties to the conflict had not respected or implemented that agreement,<sup>661</sup> and determined that the deterioration of the situation in Liberia constituted a threat to international peace and security.<sup>662</sup> The Council then invoked Chapter VII and imposed sanctions.<sup>663</sup> In subsequent resolutions related to the 788 sanctions regime,

<sup>657</sup> The Council first utilised a time-delay in April 1993, when it strengthened the sanctions: see SC Res. 820 (17 April 1993), paras. 10–11.

<sup>658</sup> SC Res. 757, preambular para. 16; SC Res. 843 (18 June 1993), preambular paras. 2–3, para. 1.

<sup>659</sup> S/24815 (17 November 1992).

<sup>660</sup> SC Res. 788 (19 November 1992), preambular para. 2.

<sup>661</sup> *Ibid.*, preambular para. 4. <sup>662</sup> *Ibid.*, preambular para. 5. <sup>663</sup> *Ibid.*, para. 8.



the Council again determined the existence of a threat to international peace and security<sup>664</sup> and invoked Chapter VII.<sup>665</sup>

## 2. Objectives

The objective of the sanctions was to establish peace and stability in Liberia.<sup>666</sup> The Council set no explicit requirements for termination of the sanctions, stating that they would remain in place until it decided otherwise.<sup>667</sup> Interestingly, the Council did not terminate the arms embargo in July 1997, despite welcoming both the successful holding of presidential and legislative elections and the certification of those elections as ‘free and fair’ by the Chairman of the Economic Community of West African States (ECOWAS) and the UNSG.<sup>668</sup>

## 3. Scope

### 3.1 *Sanctions obligations*

The sanctions consisted of a general and complete embargo upon all deliveries of weapons and military equipment to Liberia.<sup>669</sup>

### 3.2 *Exemptions*

The Council exempted from the arms embargo weapons and military equipment destined for the sole use of ECOWAS peacekeeping forces.<sup>670</sup>

## 4. Administration and monitoring

During the course of the sanctions regime against Liberia, the Security Council bestowed responsibilities for the administration and enforcement of the sanctions upon the UN Observer Mission in Liberia (UNOMIL), the UNSG and the 985 Liberia Sanctions Committee.

<sup>664</sup> SC Res. 813 (26 March 1993), preambular para. 11.

<sup>665</sup> *Ibid.*, para. 9; SC Res. 985 (13 April 1995), preambular para. 2.

<sup>666</sup> SC Res. 788 (19 November 1992), para. 8. <sup>667</sup> *Ibid.*, para. 8.

<sup>668</sup> S/PRST/1997/41 (30 July 1997). For the certification that elections were free and fair, see S/1997/581 (24 July 1997).

<sup>669</sup> SC Res. 788 (19 November 1992), para. 8.

<sup>670</sup> *Ibid.*, para. 9; SC Res. 813 (26 March 1993), para. 13.

#### 4.1 *The UN Observer Mission in Liberia*

In September 1993 the Council established UNOMIL,<sup>671</sup> with a mandate to observe the extent to which parties to the Liberian conflict were complying with a new Peace Agreement for Liberia – the ‘Cotonou Agreement’.<sup>672</sup> In addition to verifying the implementation of the Cotonou Agreement, the Council also entrusted UNOMIL with responsibility for monitoring compliance with the arms embargo.<sup>673</sup>

#### 4.2 *The Secretary-General*

In July 1994 the Council requested the UNSG to ensure that all information on violations of the arms embargo was made promptly available to it and publicised more widely.<sup>674</sup>

#### 4.3 *The 985 Sanctions Committee*

In April 1995, the Security Council expressed deep concern that arms were being imported into Liberia in violation of the 788 embargo.<sup>675</sup> It then decided to establish, in accordance with rule 28 of its provisional rules of procedure, the 985 Liberia Sanctions Committee.<sup>676</sup> The 985 Committee was to report on its work to the Council with its observations and recommendations,<sup>677</sup> and to: (a) seek from all states information regarding action taken to implement the embargo;<sup>678</sup> (b) consider information brought to its attention by states concerning embargo violations and make recommendations on increasing the embargo’s effectiveness;<sup>679</sup> and (c) recommend appropriate measures in response to embargo violations and provide information on a regular basis to the UNSG for general distribution to member states.<sup>680</sup> In January 1999, the Council again urged the 985 Committee to investigate embargo violations and report with recommendations.<sup>681</sup>

The 985 Committee was dissolved in March 2001, when the Council terminated the 788 sanctions regime. In its six years of operation the 985 Committee held six formal meetings<sup>682</sup> – an average of one meeting per year – and issued six annual reports.<sup>683</sup> The reports contained few

<sup>671</sup> SC Res. 866 (22 September 1993), paras. 2–3. <sup>672</sup> S/26272 (9 August 1993).

<sup>673</sup> SC Res. 866 (22 September 1993), para. 3(b); SC Res. 1020 (10 November 1995), para. 2(c).

<sup>674</sup> S/PRST/1994/33 (13 July 1994). <sup>675</sup> SC Res. 985 (13 April 1995), preambular para. 5.

<sup>676</sup> *Ibid.*, para. 4. <sup>677</sup> *Ibid.*, para. 4. <sup>678</sup> *Ibid.*, para. 4(a). <sup>679</sup> *Ibid.*, para. 4(b).

<sup>680</sup> *Ibid.*, para. 4(c). <sup>681</sup> S/PRST/1999/1 (7 January 1999).

<sup>682</sup> *Index to Proceedings of the Security Council for 1998* (New York: UN, 1999) p. xv.

<sup>683</sup> See Appendix 3, Table F.

substantive observations or recommendations. The Committee noted that it did not possess an independent mechanism to monitor the embargo and therefore relied solely upon the co-operation of states and organisations to provide it with pertinent information.<sup>684</sup> The Committee did, however, encourage member states to adopt legislation making the violation of arms embargoes a criminal offence.<sup>685</sup> The Committee also expressed its intention to improve monitoring of the arms embargo, including communicating with relevant regional and sub-regional organisations.<sup>686</sup>

## 5. Termination

In December 2000, after a period of more than three years in which it did not adopt any decisions concerning the 788 sanctions regime, the Security Council condemned incursions into Guinea by rebel groups emanating from Sierra Leone and Liberia and called upon all states, and in particular Liberia, to refrain from providing military support or taking any other action that might further destabilise the situation on the border between Guinea, Liberia and Sierra Leone.<sup>687</sup> Three months later, the Council took action to address the Liberian government's support of rebels in Sierra Leone. In resolution 1343, the Council noted that the conflict in Liberia had been resolved and that national elections had taken place within the framework of the Yamoussoukro IV Agreement.<sup>688</sup> The Council then decided to terminate the embargo and dissolve the Liberia Sanctions Committee.<sup>689</sup> However, at the same time the Council imposed a new sanctions regime, the 1343 Liberia sanctions regime, in order to address Liberia's support of the Rebel United Front in Sierra Leone in violation of the 1132 Sierra Leone sanctions regime.<sup>690</sup>

## 6. Conclusions

Like the 733 Somalia sanctions regime during its first decade, the 788 Liberian sanctions regime represented an example of an arms embargo

<sup>684</sup> See, e.g., S/1996/1077 (31 December 1996), para. 8; S/1998/1220 (24 December 1998), para. 4; S/1999/1301 (31 December 1999), para. 12; S/2000/1233 (22 December 2000), para. 7.

<sup>685</sup> S/1998/1220 (24 December 1998), para. 4. <sup>686</sup> *Ibid.*, para. 5.

<sup>687</sup> S/PRST/2000/41 (21 December 2000).

<sup>688</sup> SC Res. 1343 (7 March 2001), section A, preambular para. 2.

<sup>689</sup> *Ibid.*, section A, para. 1.

<sup>690</sup> For further details, see the summaries of the 1132 Sierra Leone and 1343 Liberia sanctions regimes.

that was largely neglected by the Security Council. Although the intervention of the international community in Liberia in the early 1990s constituted the first example of major co-operation in peacekeeping between a regional organisation and the UN, the 788 sanctions regime itself contributed little to the evolution of sanctions practice. It became the sanctions regime that was applied for the longest period before the establishment of a Sanctions Committee, as well as the first sanctions regime to be terminated by the same Security Council resolution that applied a new sanctions regime against the same target.

## 9. THE 820 BOSNIAN SERB SANCTIONS REGIME

The Security Council applied sanctions against the Bosnian Serb party in April 1993, in the aftermath of a series of attacks by Bosnian Serb paramilitary forces in eastern Bosnia, including against the town of Srebrenica. The 820 sanctions regime consisted of comprehensive sanctions, with the aim of inducing the Bosnian Serbs to participate in the Bosnian peace plan. The Council entrusted responsibility for administering the 820 sanctions regime to the 724 Yugoslavia Committee. The sanctions were suspended on 27 February 1996, after Bosnian Serb forces withdrew from zones of separation established by the peace plan. They were ultimately terminated in October 1996, when free and fair elections had been held in Bosnia and Herzegovina.

### 1. Constitutional basis

On 17 April 1993 the Security Council adopted resolution 820 (1993), in which it expressed grave concern at the refusal of the Bosnian Serb party to participate in the Bosnian peace plan<sup>691</sup> and expressed determination to strengthen the implementation of its earlier relevant resolutions.<sup>692</sup> The Council then noted that it was acting under Chapter VII,<sup>693</sup> before imposing sanctions against the Bosnian Serbs.<sup>694</sup>

Interestingly, the Council did not make an explicit determination of a threat to or breach of international peace and security before imposing sanctions against the Bosnian Serbs. The reason for this oversight might be that the sanctions against the Bosnian Serbs were applied against the background of the strengthening of the 757 FRYSM sanctions regime. As

<sup>691</sup> SC Res. 820 (17 April 1993), para. 3.

<sup>692</sup> *Ibid.*, Section B, preambular para. 1.

<sup>693</sup> *Ibid.*, Section B, preambular para. 2.

<sup>694</sup> *Ibid.*, para. 12.

the Council had already identified a threat to the peace in relation to that sanctions regime, perhaps it did not consider it necessary to make another explicit determination. In any event, subsequent resolutions related to the 820 sanctions regime did contain a determination that the situation in the former Yugoslavia continued to constitute a threat to international peace and security,<sup>695</sup> as well as invocations of Chapter VII.<sup>696</sup>

## 2. Objectives

When the Security Council initially established the Bosnian Serb sanctions regime, it tied the termination of the sanctions to the signing and implementation of the Bosnian peace plan.<sup>697</sup> In September 1994, this objective was subtly modified, becoming the unconditional acceptance by the Bosnian Serb party of the Bosnian territorial settlement.<sup>698</sup> In November 1995, the Council again modified the explicit objective of the sanctions slightly, making the suspension of the sanctions contingent upon the withdrawal of Bosnian Serbs forces behind zones of separation established in the Bosnia Peace Agreement and tying the ultimate termination of the sanctions to the occurrence of free and fair elections in Bosnia and Herzegovina.<sup>699</sup>

## 3. Scope

The 820 sanctions regime initially consisted of a basic comprehensive sanctions regime. The Council subsequently outlined more specific prohibitions, including targeted economic, financial and travel sanctions.

### 3.1 *Sanctions obligations*

The sanctions regime against the Bosnian Serbs was initially simple but comprehensive. Resolution 820 (1993) required states to prevent the import to, export from, and transshipment through areas under the

<sup>695</sup> SC Res. 942 (23 September 1994), preambular para. 7; SC Res. 1022 (22 November 1995), preambular para. 10.

<sup>696</sup> SC Res. 942 (23 September 1994), preambular para. 8; SC Res. 1022 (22 November 1995), preambular para. 11; SC Res. 1074 (1 October 1996), preambular para. 9.

<sup>697</sup> SC Res. 820 (17 April 1993), section B, paras. 10, 31.

<sup>698</sup> SC Res. 942 (23 September 1994), paras. 3, 21.

<sup>699</sup> SC Res. 1022 (22 November 1995), paras. 2, 4.

control of the Bosnian Serb forces, of products and commodities other than essential humanitarian supplies, including medical supplies and foodstuffs distributed by international humanitarian agencies.<sup>700</sup>

In September 1994, the Council adopted resolution 942 (1994), applying targeted economic, financial and travel sanctions. On the economic front, states were required to prevent economic activities from taking place in their territories if they involved an entity that was owned, controlled or incorporated by a person or entity from those parts of Bosnia and Herzegovina under the control of Bosnian Serb forces.<sup>701</sup> The Council also prohibited all commercial river traffic from entering the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces.<sup>702</sup> On the financial front, states were required to freeze any funds or other financial assets or resources belonging to an entity that was owned, controlled or incorporated by a person or entity from those parts of Bosnia and Herzegovina under the control of Bosnian Serb forces.<sup>703</sup> States were also required to ensure that any payments accruing in their territories for entities doing business in those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces, would be paid only into frozen accounts.<sup>704</sup> Furthermore, the Council required states to prohibit the provision of services, both financial and non-financial, to any person or body for the purposes of business being carried on in those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces.<sup>705</sup>

The targeted travel sanctions required states to prevent the entry to their territories of: (a) members of the authorities in those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces and those acting on behalf of such authorities;<sup>706</sup> (b) officers of the Bosnian Serb military and paramilitary forces and those acting on behalf of such forces;<sup>707</sup> (c) persons found to have provided financial, material, logistical, military or other tangible support to Bosnian Serb forces in violation of the sanctions;<sup>708</sup> and (d) persons in or resident of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces who were found to have violated or contributed to the violation of the sanctions against the Bosnian Serb party.<sup>709</sup>

<sup>700</sup> SC Res. 820 (17 April 1993), para. 12. <sup>701</sup> SC Res. 942 (23 September 1994), para. 7.

<sup>702</sup> *Ibid.*, para. 15. <sup>703</sup> *Ibid.*, para. 11. <sup>704</sup> *Ibid.*, para. 12. <sup>705</sup> *Ibid.*, para. 13.

<sup>706</sup> *Ibid.*, para. 14(a). <sup>707</sup> *Ibid.*, para. 14(a). <sup>708</sup> *Ibid.*, para. 14(b). <sup>709</sup> *Ibid.*, para. 14(c).

### 3.2 Exemptions

When the Security Council established the 820 sanctions regime, it exempted essential humanitarian supplies, including medical supplies and foodstuffs distributed by international humanitarian agencies.<sup>710</sup> In September 1994 it provided exemptions from the measures applied by resolution 942 (1994) for: (a) prohibited economic activities where the state in which such activities were taking place verified, on a case-by-case basis, that those activities would not result in the transfer of property to entities owned or controlled by persons or entities from Bosnian Serb areas; (b) economic activities connected with the provision of medical supplies, foodstuffs or products for essential humanitarian needs;<sup>711</sup> (c) river traffic authorised to enter Bosnian Serb ports on a case-by-case basis by the 724 Committee, by the government of Bosnia and Herzegovina, or in the case of *force majeure*;<sup>712</sup> (d) payments that were made in connection with the import of permitted exemptions or authorised by the government of Bosnia and Herzegovina;<sup>713</sup> and (e) travel consistent with the peace process.<sup>714</sup>

## 4. Administration and monitoring

The Council bestowed responsibility for the administration and monitoring of the 820 sanctions regime upon the 724 Sanctions Committee and the UNSG.

### 4.1 The 724 Committee

When the Security Council established the 820 sanctions regime, it bestowed a number of responsibilities upon the 724 Committee, including to: (a) receive notifications regarding the provision of supplies intended strictly for medical purposes and foodstuffs;<sup>715</sup> (b) decide upon applications for exemptions from the sanctions for essential humanitarian needs;<sup>716</sup> (c) process on a case-by-case basis applications for exemptions for the provision of services necessary for humanitarian or other exceptional purposes;<sup>717</sup> (d) establish and maintain an updated list of persons subject to travel sanctions;<sup>718</sup> and (e) process

<sup>710</sup> SC Res. 820 (17 April 1993), para. 12. <sup>711</sup> SC Res. 942 (23 September 1994), para. 7.

<sup>712</sup> *Ibid.*, para. 15. <sup>713</sup> *Ibid.*, para. 11. <sup>714</sup> *Ibid.*, para. 14.

<sup>715</sup> SC Res. 942 (23 September 1994), para. 7(ii)(b). <sup>716</sup> *Ibid.*

<sup>717</sup> *Ibid.*, para. 13. <sup>718</sup> *Ibid.*, para. 14.

on a case-by-case basis applications for exemptions from the prohibition upon the movement of commercial riverine traffic.<sup>719</sup>

As noted above in the overviews of the 713 and 757 sanctions regimes, the 724 Committee held 142 formal meetings during its tenure. Only the Committee's final report was issued after the establishment of the sanctions regime against the Bosnian Serbs.<sup>720</sup> In observations relevant to the 820 sanctions regime, the Committee noted that it had clarified that educational, cultural and other activities in Bosnian Serb-controlled areas should be not be undertaken without the prior authorisation of the Government of Bosnia and Herzegovina and the 724 Committee itself.<sup>721</sup> The Committee also noted that it had been unable to establish a list of individuals whose travel was prohibited.<sup>722</sup> It had, nevertheless, received and approved requests from Canada and the US to authorise entry into their territories of individuals participating in legal proceedings and the Dayton peace talks.<sup>723</sup>

#### 4.2 *The Secretary-General*

The Security Council requested the UNSG to undertake a number of tasks connected to the 820 Bosnian Serb sanctions regime, including to: (a) report if, within nine days of the adoption of resolution 820 (1993), the Bosnian Serbs had signed and begun to implement the peace plan, in which case the sanctions would not be imposed;<sup>724</sup> (b) report in the event that the Bosnian Serbs initially signed and began to implement the peace process, but then subsequently renewed military attacks or failed to comply with the peace plan, in which case the sanctions would come into effect immediately;<sup>725</sup> and (c) report if the Bosnian Serbs had signed the peace plan and were implementing their obligations in good faith, in which case the Council would review the sanctions with a view to lifting them.<sup>726</sup>

### 5. Suspension and termination

The Council provided for the possibility that the sanctions against the Bosnian Serb party might be suspended in resolution 1022 (1995), which also suspended the sanctions against FRYSM.<sup>727</sup> But whereas the suspensions to the regime against FRYSM were to apply with immediate

<sup>719</sup> *Ibid.*, para. 15.      <sup>720</sup> S/1996/946 (15 November 1996).      <sup>721</sup> *Ibid.*, para. 62.  
<sup>722</sup> *Ibid.*, para. 63.      <sup>723</sup> *Ibid.*      <sup>724</sup> SC Res. 820 (17 April 1993), para. 10.  
<sup>725</sup> *Ibid.*, para. 11.      <sup>726</sup> *Ibid.*, para. 31.      <sup>727</sup> SC Res. 1022 (22 November 1995).



effect,<sup>728</sup> the suspensions to the sanctions against the Bosnian Serbs were conditional upon the withdrawal of Bosnian Serb forces behind the zones of separation established in the Peace Agreement,<sup>729</sup> as well as upon the implementation by the Bosnian Serb forces of their obligations under the Peace Agreement.<sup>730</sup> The condition for termination of the 820 sanctions regime, which was originally the signing and implementation of the Peace plan by the Bosnian Serb party,<sup>731</sup> then the unconditional acceptance by the Bosnian Serb party of the territorial settlement,<sup>732</sup> now became the occurrence of free and fair elections in Bosnia and Herzegovina, in accordance with the Peace Agreement.<sup>733</sup> The 820 sanctions regime was suspended on 27 February 1996, after the Security Council was informed that the Bosnian Serb forces had withdrawn from the zones of separation established in the Peace Agreement. It was ultimately terminated on 1 October 1996, after free and fair elections had been held in Bosnia and Herzegovina.<sup>734</sup>

## 6. Conclusions

The 820 Bosnian Serb sanctions regime was the first example of UN sanctions against a sub-state entity. The framework outlined in Chapter VII and Article 41 of the UN Charter did not exclude this possibility, but it was nevertheless a novel development in sanctions practice. The Council has subsequently applied a number of sanctions regimes against sub-state or non-state actors, including as part of the 864 UNITA, the 918 Rwanda, the 1132 Sierra Leone and the 1267 Taliban/Al Qaida sanctions regimes. In other respects, the Bosnian Serb sanctions regime shared a number of characteristics with the 757 sanctions regime, including the innovative use of time-delays to provide the target with a window of time in which they could avoid falling subject to sanctions,<sup>735</sup> as well as the fact that administering responsibilities were bestowed upon a pre-existing sanctions committee. As with the implementation and enforcement of the 713 and 757 sanctions regimes, a substantial number of regional actors were involved in ensuring the effective implementation of the 820 sanctions regime.

<sup>728</sup> *Ibid.*, para. 1.    <sup>729</sup> *Ibid.*, para. 2.    <sup>730</sup> *Ibid.*, para. 3.

<sup>731</sup> SC Res. 820 (17 April 1993), paras. 10, 31.

<sup>732</sup> SC Res. 942 (23 September 1994), paras. 3, 21.

<sup>733</sup> SC Res. 1022 (22 November 1995), para. 4.    <sup>734</sup> SC Res. 1074 (1 October 1996), para. 2.

<sup>735</sup> SC Res. 820 (17 April 1993), paras. 10, 11.

## 10. THE 841 HAITI SANCTIONS REGIME

The Security Council imposed sanctions against Haiti in June 1993 in order to bring about the reinstatement of the democratically elected government of President Jean-Bertrand Aristide. The sanctions regime initially consisted of targeted petroleum, arms and financial sanctions. The Council established the 841 Haiti Sanctions Committee to administer the 841 sanctions regime. The sanctions were suspended for a short period, from 27 August to 13 October 1993, when it appeared that the de facto authorities in Haiti were complying with the Council's demands in relation to the implementation of two peace agreements – the Governor's Island Agreement (GIA) and the New York pact. Sanctions were reimposed, however, once it became clear that the compliance of the de facto authorities had been only partial and temporary. In May 1994 the Council strengthened the sanctions considerably, imposing comprehensive economic sanctions and targeted aviation and travel sanctions. The sanctions were ultimately terminated on 15 October 1994, upon the return to Haiti of President Aristide.

### 1. Constitutional basis

In June 1993 the Security Council received a letter from the representative of Haiti requesting that it make universal and mandatory a trade embargo against Haiti by the Organization of American States (OAS).<sup>736</sup> In response, the Council adopted resolution 841 (1993), in which it expressed its strong support for the efforts made by the UNSG, the OAS Secretary-General and the international community to reach a political solution to the crisis in Haiti,<sup>737</sup> noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security,<sup>738</sup> and stated that it deplored the fact that the legitimate government of President Aristide had not been reinstated.<sup>739</sup> The Council then considered that the request from the representative of Haiti warranted 'exceptional' measures in support of OAS efforts to

<sup>736</sup> S/25958 (16 June 1993). <sup>737</sup> SC Res. 841 (16 June 1993), preambular para. 6.

<sup>738</sup> *Ibid.*, preambular para. 9. <sup>739</sup> *Ibid.*, preambular para. 10.

resolve the situation,<sup>740</sup> and it determined that, in those unique and exceptional circumstances, the continuation of the situation in Haiti threatened international peace and security in the region.<sup>741</sup> The Council then noted that it was acting under Chapter VII of the UN Charter,<sup>742</sup> and imposed sanctions against the de facto authorities in Haiti.<sup>743</sup> In subsequent resolutions related to the Haiti sanctions regime, the Council again determined the existence of a threat to international peace and security,<sup>744</sup> and invoked Chapter VII.<sup>745</sup>

## 2. Objectives

The major explicit objective of the 841 sanctions regime was the reinstatement of President Aristide's government in Haiti. When the Council first imposed sanctions, it expressed willingness to consider lifting the sanctions if the UNSG reported that the de facto authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the government of President Aristide.<sup>746</sup> In August 1993, the Council expressed readiness to terminate the sanctions if the UNSG, having regard to the views of the OAS Secretary-General, were to conclude that the relevant provisions of the Governor's Island Agreement (GIA) had been fully implemented.<sup>747</sup>

In October 1993, the Council provided for the possibility that the sanctions might not be reimposed if the UNSG were to report, having regard to the view of the OAS Secretary-General, that the authorities in Haiti were implementing in full the agreement to reinstate the legitimate government of President Aristide and had established the necessary measures to enable the United Nations Mission in Haiti (UNMIH) to

<sup>740</sup> *Ibid.*, preambular para. 13.      <sup>741</sup> *Ibid.*, preambular para. 14.

<sup>742</sup> *Ibid.*, preambular para. 15.      <sup>743</sup> *Ibid.*, paras. 5, 6 and 8.

<sup>744</sup> On most occasions, the Council characterised the threat as being the failure of the military authorities in Haiti to fulfil their obligations under the Governor's Island Agreement: see, e.g., SC Res. 873 (13 October 1993), preambular para. 4; SC Res. 875 (16 October 1993), preambular para. 7; SC Res. 917 (6 May 1994), preambular para. 13. On one occasion, however, the Council simply characterised the situation in Haiti as the threat: SC Res. 940 (31 July 1994), preambular para. 10.

<sup>745</sup> SC Res. 861 (27 August 1993), preambular para. 7; SC Res. 873 (13 October 1993), preambular para. 5; SC Res. 875 (16 October 1993), preambular para. 8; SC Res. 917 (6 May 1994), preambular para. 14; SC Res. 940 (31 July 1994), para. 4.

<sup>746</sup> SC Res. 841 (16 June 1993), para. 16.      <sup>747</sup> SC Res. 861 (27 August 1993), para. 3.

carry out its mandate.<sup>748</sup> In November 1993, the Council stressed that sanctions would remain in force until the objectives of the GIA were fulfilled, including the departure of the Commander-in-Chief of the Haitian armed forces, the creation of a new police force permitting the restoration of constitutional order, and the return of the democratically elected President Aristide.<sup>749</sup>

In May 1994, when it strengthened sanctions, the Council reaffirmed that the goal of the international community remained the restoration of democracy in Haiti and the return of President Aristide.<sup>750</sup> The sanctions would not be lifted until the following developments had taken place: (a) the retirement of the Commander-in-Chief of the Haiti armed forces and the resignation or departure from Haiti of the Chief of Police of Port-au-Prince and the Chief of Staff of the Haiti armed forces;<sup>751</sup> (b) the leadership of the police and military high command in Haiti had changed, as required by the GIA;<sup>752</sup> (c) the adoption of legislative actions called for in the GIA and the creation of an environment in which free and fair elections could be organised;<sup>753</sup> (d) the creation of the proper environment for UNMIH deployment;<sup>754</sup> and (e) the return of the democratically elected President and the maintenance of constitutional order.<sup>755</sup>

In July 1994, when the Council again strengthened the sanctions, it reaffirmed that the goal of the international community remained the restoration of democracy in Haiti and the prompt return of President Aristide,<sup>756</sup> and noted that it would lift the sanctions following the return to Haiti of President Aristide.<sup>757</sup> In September 1994 the Council

<sup>748</sup> SC Res. 873 (13 October 1993), para. 1. UNMIH was established by the Security Council in September 1993, in order to assist the government of Haiti in the implementation of the Governor's Island Agreement, which had called for assistance for modernising the armed forces of Haiti and establishing a new police force with the presence of UN personnel. For the establishment of UNMIH, see SC Res. 867 (23 September 1993), paras. 1–4. UNMIH's mandate was extended on a number of occasions, ultimately expiring in late June 1996: see SC Res. 905 (23 March 1994), para. 2; SC Res. 933 (30 June 1994), para. 1; SC Res. 940 (31 July 1994), paras. 9–11 (revising as well as extending UNMIH's mandate); SC Res. 975 (30 January 1995), para. 8; SC Res. 1007 (31 July 1994), para. 9; SC Res. 1048 (29 February 1996), para. 5. UNMIH was succeeded by the United Nations Support Mission in Haiti, which was established by SC Res. 1063 (28 June 1996), para. 2, in order to facilitate the transition back to democracy in Haiti.

<sup>749</sup> S/26747: *Presidential statement of 15 November 1993*.

<sup>750</sup> SC Res. 917 (6 May 1994), preambular para. 8. <sup>751</sup> *Ibid.*, para. 18(a).

<sup>752</sup> *Ibid.*, para. 18(b). <sup>753</sup> *Ibid.*, para. 18(c). <sup>754</sup> *Ibid.*, para. 18(d). <sup>755</sup> *Ibid.*, para. 18(e).

<sup>756</sup> SC Res. 940 (31 July 1994), preambular para. 8. <sup>757</sup> *Ibid.*, para. 17.

decided that the Haiti sanctions regime would be terminated on the day after President Aristide had returned to Haiti.<sup>758</sup>

### 3. Scope

The 841 sanctions regime initially consisted of targeted petroleum, arms and financial sanctions. The sanctions were suspended from 27 August to 13 October 1993, before being reimposed. They were subsequently strengthened by the application of comprehensive economic sanctions and targeted aviation and travel sanctions.

#### 3.1 *Sanctions obligations under resolution 841 (1993)*

Resolution 841 (1993) applied a petroleum embargo, an arms embargo and financial sanctions, which were to come into force one week after the resolution, unless the UNSG reported before that time that the imposition of the sanctions was not warranted.<sup>759</sup> Under the petroleum embargo, states were required to prevent the sale or supply to Haiti of petroleum and petroleum products.<sup>760</sup> Under the arms embargo, states were to prevent the sale or supply to Haiti of arms and arms-related material.<sup>761</sup> The financial sanctions required states to freeze any funds belonging to or controlled by the government of Haiti or the de facto authorities in Haiti.<sup>762</sup> States were further required to prohibit air and sea traffic from entering the territory or territorial sea of Haiti if carrying petroleum or arms in breach of the sanctions.<sup>763</sup>

#### 3.2 *Exemptions under resolution 841 (1993)*

The Council exempted from the petroleum embargo non-commercial quantities of petroleum or petroleum products in barrels or bottles, including propane gas for cooking, for verified essential humanitarian needs, if authorised by the 841 Committee, on an exceptional, case-by-case basis under a no-objection procedure.<sup>764</sup>

#### 3.3 *Temporary suspension under resolution 861 (1993)*

Two months after the sanctions were first imposed, the UNSG reported to the Council that the Prime Minister of Haiti had been confirmed and

<sup>758</sup> SC Res. 944 (29 September 1994), para. 4. <sup>759</sup> SC Res. 841 (16 June 1993), para. 3.

<sup>760</sup> *Ibid.*, para. 5. <sup>761</sup> *Ibid.* <sup>762</sup> *Ibid.*, para. 8. <sup>763</sup> *Ibid.*, para. 6.

<sup>764</sup> *Ibid.*, paras. 5, 7.

had assumed office in Haiti.<sup>765</sup> In response to that development the Council suspended the sanctions,<sup>766</sup> but it noted that the suspension would lapse if the UNSG were to report that the President of Haiti, the Commander-in-Chief of the armed forces of Haiti, or any other authorities in Haiti had not complied in good faith with the GIA.<sup>767</sup> The Council further expressed its willingness to consider terminating the sanctions if the UNSG were to report that the provisions of the GIA had been fully implemented.<sup>768</sup>

In October 1994, barely six weeks after the sanctions had been suspended, the Council reimposed them. On 11 October the Council expressed its deep concern with the situation in Haiti and deplored events that had taken place that day, in which organised armed civilian groups had threatened journalists and diplomats waiting to meet a contingent of UNMIH.<sup>769</sup> It then requested the UNSG to report urgently on whether those incidents constituted non-compliance by the armed forces of Haiti with the GIA, thus warranting the reimposition of sanctions.<sup>770</sup> On 13 October, the UNSG reported that the military authorities of Haiti had failed to comply in good faith with the GIA, and that he therefore considered it necessary to terminate the suspension of the sanctions.<sup>771</sup> On the same day, the Security Council terminated the suspension.<sup>772</sup> The sanctions were to be imposed as before, except that exemptions could now be provided from the financial sanctions upon the request of President Aristide or Prime Minister Malval of Haiti,<sup>773</sup> and from the arms and petroleum sanctions if approved by the Haiti Sanctions Committee on a case-by-case basis under the no-objection procedure in response to a request by President Aristide or Prime Minister Malval.<sup>774</sup>

### 3.4 *Prohibitions under resolution 917 (1994)*

In May 1994, the Security Council adopted resolution 917 (1994), applying comprehensive economic sanctions and targeted aviation and travel sanctions. Under the economic sanctions, states were required to prevent the import to their territories from and the export from their

<sup>765</sup> S/26361 (26 August 1993), as noted by the Council in SC Res. 861 (27 August 1993), preambular para. 6.

<sup>766</sup> SC Res. 861 (27 August 1993), para. 1. <sup>767</sup> *Ibid.*, para. 2. <sup>768</sup> *Ibid.*, para. 3.

<sup>769</sup> S/26567: *Presidential statement of 11 October 1993*. <sup>770</sup> *Ibid.*

<sup>771</sup> S/26573 (13 October 1993): *Report of the Secretary-General on the question concerning Haiti*, paras. 9, 10.

<sup>772</sup> SC Res. 873 (13 October 1993), para. 1. <sup>773</sup> *Ibid.*, para. 2. <sup>774</sup> *Ibid.*, para. 3.

territories to Haiti of all commodities and products.<sup>775</sup> The aviation sanctions required states to deny permission to any aircraft to take off from, land in or overfly their territory if it was destined for or had originated from Haiti.<sup>776</sup> Under the travel sanctions, states were to prevent the entry into their territory of: (a) officers of the Haitian military, including the police, and their families;<sup>777</sup> (b) the major participants in the 1991 *coup d'état* and members of the illegal governments in power since the *coup*, as well as their immediate families;<sup>778</sup> and (c) people employed by or acting on behalf of the Haitian military and their immediate families.<sup>779</sup>

### 3.5 Exemptions under resolution 917 (1994)

The Security Council outlined a number of exemptions from the prohibitions applied under resolution 917 (1994). It exempted from the aviation sanctions regularly scheduled commercial passenger flights and flights approved for humanitarian purposes by the Haiti Sanctions Committee.<sup>780</sup> The Council also exempted from the comprehensive sanctions the export to Haiti of: (a) supplies intended strictly for medical purposes, and foodstuffs;<sup>781</sup> (b) commodities and products for essential humanitarian needs, as approved by the Haiti Sanctions Committee under the no-objection procedure;<sup>782</sup> (c) items previously exempt from sanctions;<sup>783</sup> (d) trade in informational materials, including books and other publications;<sup>784</sup> and (e) equipment belonging to journalists, as approved by the 841 Committee.<sup>785</sup>

## 4. Administration and monitoring

The Security Council bestowed responsibilities related to the administration and monitoring of the sanctions upon the 841 Sanctions Committee and the UNSG.

### 4.1 The 841 Sanctions Committee

The Security Council established the 841 Haiti Sanctions Committee when it created the 841 sanctions regime.<sup>786</sup> The 841 Committee was to report to the Council with its observations and recommendations,<sup>787</sup>

<sup>775</sup> SC Res. 917 (6 May 1994), paras. 6–7. <sup>776</sup> *Ibid.*, para. 2. <sup>777</sup> *Ibid.*, para. 3(a).

<sup>778</sup> *Ibid.*, para. 3(b). <sup>779</sup> *Ibid.*, para. 3(c). <sup>780</sup> *Ibid.*, para. 2. <sup>781</sup> *Ibid.*, para. 7(a).

<sup>782</sup> *Ibid.*, para. 7(b). <sup>783</sup> *Ibid.*, para. 7(c) and (d). <sup>784</sup> *Ibid.*, para. 8. <sup>785</sup> *Ibid.*

<sup>786</sup> SC Res. 841 (16 June 1993), para. 10. <sup>787</sup> *Ibid.*

and to: (a) examine reports submitted by states regarding sanctions implementation;<sup>788</sup> (b) seek from all states further information regarding action taken to implement sanctions;<sup>789</sup> (c) consider information brought to its attention concerning sanctions violations and recommend appropriate measures in response thereto;<sup>790</sup> (d) decide expeditiously upon requests for the import of petroleum and petroleum products for essential humanitarian needs;<sup>791</sup> (e) report periodically on alleged sanctions violations, identifying where possible those reported to be engaged in such violations;<sup>792</sup> and (f) promulgate guidelines to facilitate sanctions implementation.<sup>793</sup>

In May 1994, when the Council strengthened the sanctions regime, it further requested the 841 Committee to: (a) examine reports by states on sanctions implementation;<sup>794</sup> (b) seek from states further information regarding action taken to implement sanctions;<sup>795</sup> (c) consider information concerning sanctions violations and make recommendations on increasing sanctions effectiveness and responding to violations;<sup>796</sup> (d) provide information to the UNSG for distribution to member states;<sup>797</sup> (e) decide expeditiously upon applications by states for exemptions from the aviation sanctions;<sup>798</sup> (f) amend its guidelines to take into account its new responsibilities;<sup>799</sup> and (g) examine requests for assistance under Article 50 and make recommendations for appropriate action.<sup>800</sup>

The 841 Committee was dissolved on 16 October 1994, at the same time that the sanctions regime was terminated.<sup>801</sup> During its sixteen-month tenure, the Committee held eleven formal meetings.<sup>802</sup> It did not publish a single report.

#### 4.2 *The Secretary-General*

The Security Council requested the UNSG to undertake a number of tasks in relation to the Haiti sanctions regime. In June 1993 the Council requested the UNSG to: (a) report if the imposition of sanctions was not warranted;<sup>803</sup> (b) report if he determined that the de facto authorities in Haiti had failed to comply in good faith with their commitments, in

<sup>788</sup> *Ibid.*, para. 10(a).      <sup>789</sup> *Ibid.*, para. 10(b).      <sup>790</sup> *Ibid.*, para. 10(c).      <sup>791</sup> *Ibid.*, para. 10(d).

<sup>792</sup> *Ibid.*, para. 10(e).      <sup>793</sup> *Ibid.*, para. 10(f).      <sup>794</sup> SC Res. 917 (6 May 1994), para. 14(a).

<sup>795</sup> *Ibid.*, para. 14(b).      <sup>796</sup> *Ibid.*, para. 14(c) and (d).      <sup>797</sup> *Ibid.*, para. 14(d).

<sup>798</sup> *Ibid.*, para. 14(e).      <sup>799</sup> *Ibid.*, para. 14(f).      <sup>800</sup> *Ibid.*, para. 14(g).

<sup>801</sup> SC Res. 948 (15 October 1994), para. 10.

<sup>802</sup> *Index to Proceedings of the Security Council for 1994* (New York: UN, 1995), p. xv.

<sup>803</sup> SC Res. 841 (16 June 1993), para. 3.



which case the sanctions would immediately come into force;<sup>804</sup> (c) receive from states reports on sanctions implementation;<sup>805</sup> (d) provide assistance to the 841 Committee;<sup>806</sup> (e) report on progress achieved in efforts to reach a political solution to the crisis in Haiti;<sup>807</sup> and (f) report if he determined that the de facto authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the legitimate government of President Aristide.<sup>808</sup>

In August 1993, when the Council suspended sanctions, it requested the UNSG to: (a) report if he concluded that the parties to the GIA or other authorities in Haiti had not complied in good faith with that Agreement, in which case sanctions would be re-imposed immediately,<sup>809</sup> and (b) report if he were to conclude that the relevant provisions of the GIA had been fully implemented, in which case sanctions would be terminated completely.<sup>810</sup> In May 1994, when the Security Council strengthened the sanctions, it requested the UNSG to report regularly on the situation in Haiti, the implementation of the GIA, legislative actions including preparations for legislative elections, the full restoration of democracy in Haiti, the humanitarian situation in Haiti and the effectiveness of the implementation of sanctions.<sup>811</sup>

## 5. Termination

On 29 September 1994 the Security Council welcomed the peaceful deployment in Haiti of initial units of a multinational force,<sup>812</sup> and decided that the Haiti sanctions regime would be terminated the day after President Aristide returned to Haiti.<sup>813</sup> On 15 October 1994 the UNSG confirmed that President Aristide had returned to Haiti.<sup>814</sup> The Council welcomed with great satisfaction President Aristide's return to Haiti and expressed confidence that the people of Haiti could begin to rebuild their country and consolidate democracy.<sup>815</sup> The Council also welcomed the fact that, with President Aristide's return to Haiti, sanctions would be lifted.<sup>816</sup>

<sup>804</sup> *Ibid.*, para. 4.      <sup>805</sup> *Ibid.*, para. 13.

<sup>806</sup> *Ibid.*, para. 14; SC Res. 917 (6 May 1994), para. 15.

<sup>807</sup> SC Res. 841 (16 June 1993), para. 15.      <sup>808</sup> *Ibid.*, para. 16.

<sup>809</sup> SC Res. 861 (27 August 1993), para. 2.      <sup>810</sup> *Ibid.*, para. 3.

<sup>811</sup> SC Res. 917 (6 May 1994), para. 16.

<sup>812</sup> SC Res. 944 (29 September 1994), preambular para. 4.      <sup>813</sup> *Ibid.*, para. 4.

<sup>814</sup> S/1994/1169 (15 October 1994).      <sup>815</sup> SC Res. 948 (15 October 1994), para. 1.

<sup>816</sup> *Ibid.*, para. 10.

## 6. Conclusions

The 841 sanctions regime was the second-shortest of all sanctions regimes, behind the 1298 Ethiopia-Eritrea sanctions regime. However, at the time of its termination it was the shortest sanctions regime yet imposed by the Security Council. The regime was also noteworthy for the manner in which it followed the initial application of sanctions by a regional organisation and for the fact that its application was requested by a democratically elected Head of State who had been ousted from power by a military *coup*. It also provided an early example of the Council employing targeted travel sanctions against decision-makers and those connected with them, including family members. The Council once again experimented with time-delays, providing the de facto authorities in Haiti with an opportunity to avoid sanctions by complying with its demands under the sanctions regime.

The Security Council demonstrated considerable flexibility in its oversight of the 841 sanctions regime, responding strategically to improvements and deteriorations in the situation in Haiti. The Council identified concrete requirements for the suspension, re-imposition and termination of the sanctions, such that modifications to the sanctions regime flowed directly from the extent to which the de facto authorities in Haiti complied with the requirements of the Council's resolutions. The Haiti sanctions regime provides the only example to date in which a sanctions regime has been suspended in its entirety, then subsequently reapplied in its entirety.

## 11. THE 864 UNITA SANCTIONS REGIME

The Security Council imposed sanctions against the Angolan rebel group the National Union for the Total Independence of Angola (UNITA) in September 1993, with the aim of ensuring that it stopped fighting against the Angolan government and adhered to its commitments under a set of peace accords entitled the 'Acordos de Paz'. Angola had suffered a troubled, decades-long period, consisting of civil war, failed peace agreements and a contested election, in which UNITA had narrowly lost to the sitting Angolan government. The 864 sanctions regime initially consisted of arms and petroleum sanctions. It was subsequently expanded to incorporate travel, aviation, financial, diamond and representative sanctions. The Council established the 864 UNITA Sanctions Committee to administer the 864 sanctions regime and created the UNITA Panel of Experts

and the UNITA Monitoring Mechanism to monitor sanctions implementation. The sanctions regime was applied for nine years before eventually being terminated in December 2002, seven months after the death of UNITA's leader, Jonas Savimbi.

## 1. Constitutional basis

In September 1993, the Security Council expressed grave concern at the continuing deterioration of the political and military situation in Angola.<sup>817</sup> The Council condemned UNITA for not having taken the necessary steps to comply with its previous demands,<sup>818</sup> then determined that as a result of UNITA's military actions the situation in Angola constituted a threat to international peace and security.<sup>819</sup> The Council then noted that it was acting under Chapter VII of the UN Charter,<sup>820</sup> before imposing sanctions against UNITA. In subsequent decisions connected to the sanctions regime, the Council again characterised the situation in Angola as a threat to international peace and security<sup>821</sup> and invoked Chapter VII.<sup>822</sup>

## 2. Objectives

The initial objectives of the 864 sanctions regime were to ensure that UNITA submitted to an effective cease-fire and agreed to implement the

<sup>817</sup> SC Res. 864 (15 September 1993), preambular para. 3.

<sup>818</sup> *Ibid.*, section B, preambular para. 1. <sup>819</sup> *Ibid.*, section B, preambular para. 4.

<sup>820</sup> *Ibid.*, section B, preambular para. 5.

<sup>821</sup> SC Res. 1127 (28 August 1997), section B, preambular para. 1; SC Res. 1135 (29 October 1997), section B, floating para. 1 (located between paras. 4 and 5); SC Res. 1173 (12 June 1998), section B, preambular para. 2; SC Res. 1176 (24 June 1998), preambular para. 3; SC Res. 1237 (7 May 1999), section B, preambular para. 1; SC Res. 1295 (18 April 2000), section A, preambular para. 1; SC Res. 1336 (23 January 2001), preambular para. 4; SC Res. 1348 (19 April 2001), preambular para. 5; SC Res. 1374 (19 October 2001), preambular para. 5; SC Res. 1404 (18 April 2002), preambular para. 6.

<sup>822</sup> SC Res. 1127 (28 August 1997), section B, preambular para. 2; SC Res. 1130 (29 September 1997), preambular para. 3; SC Res. 1135 (29 October 1997), section B, floating para. 2 (located between paras. 4 and 5); SC Res. 1173 (12 June 1998), section B, preambular para. 3; SC Res. 1176 (24 June 1998), preambular para. 4; SC Res. 1237 (7 May 1999), section B, preambular para. 2; SC Res. 1295 (18 April 2000), section A, preambular para. 2; SC Res. 1336 (23 January 2001), preambular para. 5; SC Res. 1348 (19 April 2001), preambular para. 6; SC Res. 1374 (19 October 2001), preambular para. 6; SC Res. 1404 (18 April 2002), preambular para. 8; SC Res. 1412 (17 May 2002), preambular para. 9; SC Res. 1432 (15 August 2002), preambular para. 8; SC Res. 1439 (18 October 2002), preambular para. 8; SC Res. 1448 (9 December 2002), preambular para. 5.

Acordos de Paz and relevant Security Council resolutions.<sup>823</sup> In August 1997, when the Council expanded the UNITA sanctions regime for the first time, it demanded that UNITA implement immediately its obligations under the Lusaka Protocol, including demilitarising its forces, transforming its radio station into a non-partisan broadcasting facility, co-operating with the normalisation of state administration throughout Angola, and participating in verification, disarmament and demobilisation.<sup>824</sup> In June 1998, the Security Council demanded that UNITA co-operate fully in the immediate extension of state administration throughout the national territory.<sup>825</sup>

In April 2000, the Council noted that the sanctions were intended to promote a political settlement to the conflict in Angola, by requiring UNITA to comply with its obligations under the Acordos de Paz and the Lusaka Protocol, and by curtailing UNITA's ability to pursue its objectives by military means.<sup>826</sup> In May 2002, when the Council suspended the targeted travel sanctions, it noted that it would take progress in national reconciliation into account when determining whether to extend the suspension.<sup>827</sup> In August 2002, the Council noted that it would take the implementation of the peace accords into account when further reviewing the suspended measures.<sup>828</sup>

### 3. Scope

The 864 sanctions regime initially consisted of arms and petroleum sanctions. The regime was subsequently expanded to incorporate travel, aviation, financial, diamond and representative sanctions.

#### 3.1 *Sanctions obligations*

Under resolution 864 (1993), the Security Council required states to prevent the sale or supply to Angola of arms and related material, military assistance, and petroleum and petroleum products.<sup>829</sup> In August 1997, after hostilities had resumed and UNITA had continued to refuse to implement the Acordos de Paz, the Council adopted resolution 1127 (1997), which strengthened sanctions by imposing a

<sup>823</sup> SC Res. 864 (15 September 1993), para. 17.

<sup>824</sup> SC Res. 1127 (28 August 1997), paras. 2, 3. <sup>825</sup> SC Res. 1173 (12 June 1998), para. 2.

<sup>826</sup> SC Res. 1295 (18 April 2000), preambular para. 5.

<sup>827</sup> SC Res. 1412 (17 May 2002), para. 2. <sup>828</sup> SC Res. 1432 (15 August 2002), para. 2.

<sup>829</sup> SC Res. 864 (15 September 1993), para. 19.

combination of travel, representative and aviation sanctions against UNITA.<sup>830</sup> The new sanctions entered into force at the end of October.<sup>831</sup>

Under the travel sanctions, states were required to prevent the entry into or transit through their territories of senior UNITA officials and all adult members of their immediate families,<sup>832</sup> and to suspend or cancel any travel documents issued to people in those categories.<sup>833</sup> Under the representative sanctions, states were to close all UNITA offices in their territories.<sup>834</sup> Under the aviation sanctions, states were required to: (a) prevent aircraft from arriving in, departing from, or overflying their territories if they had originated from or were destined for locations not cleared by the Angolan government;<sup>835</sup> (b) prohibit the provision of aircraft or aircraft parts to Angola, other than through points of entry designated by the Angolan government;<sup>836</sup> and (c) prohibit the provision of engineering, servicing, certification or insurance for aircraft registered in Angola, except when designated by the Angolan government.<sup>837</sup>

In June 1998, the Council again expanded the sanctions, imposing a mixture of financial, representative and targeted economic sanctions, including diamond sanctions.<sup>838</sup> The new sanctions entered into force on 1 July 1998.<sup>839</sup> Under the financial sanctions, states were required to freeze funds in their territories belonging to UNITA or to senior UNITA officials and adult members of their immediate families.<sup>840</sup> Under the representative sanctions, states were to prevent all official contacts with the UNITA leadership in areas of Angola to which state administration had not been extended.<sup>841</sup> Under the targeted economic sanctions, states were required to prohibit: (a) the import from Angola of diamonds not controlled through the Angolan government's certificate-of-origin regime;<sup>842</sup> (b) the sale or supply to areas of Angola to which state administration had not been extended of mining equipment and services;<sup>843</sup> and (c) the sale or supply to those areas of vehicles, watercraft and spare parts thereof.<sup>844</sup>

### 3.2 Exemptions

The Security Council exempted from the initial arms and petroleum embargo the sale or supply to Angola of arms and petroleum to the

<sup>830</sup> SC Res. 1127 (28 August 1997), para. 4. <sup>831</sup> SC Res. 1130 (29 September 1997), para. 2.

<sup>832</sup> SC Res. 1127 (28 August 1997), para. 4(a). <sup>833</sup> *Ibid.*, para. 4(b). <sup>834</sup> *Ibid.*, para. 4(c).

<sup>835</sup> *Ibid.*, para. 4(d)(i). <sup>836</sup> *Ibid.*, para. 4(d)(ii). <sup>837</sup> *Ibid.*, para. 4(d)(iii).

<sup>838</sup> SC Res. 1173 (12 June 1998), paras. 11–12. <sup>839</sup> SC Res. 1176 (24 June 1998), para. 2.

<sup>840</sup> SC Res. 1173 (12 June 1998), para. 11. <sup>841</sup> *Ibid.*, para. 12(a). <sup>842</sup> *Ibid.*, para. 12(b).

<sup>843</sup> *Ibid.*, para. 12(c). <sup>844</sup> *Ibid.*, para. 12(d).

government of Angola, through points of entry to be designated by that government.<sup>845</sup> When it strengthened the sanctions, it provided that the travel sanctions could not oblige a state to refuse entry to its own nationals.<sup>846</sup> It also exempted from the aviation sanctions cases of medical emergency and flights carrying food, medicine or supplies for essential humanitarian needs, when approved in advance by the 864 Committee.<sup>847</sup> When the Council applied representative sanctions, it exempted contacts made with UNITA by representatives of the Government of Unity and National Reconciliation, the UN and observer states to the Lusaka Protocol.<sup>848</sup> In May 2002, after the death of the UNITA leader, Jonas Savimbi, and when it appeared that the decades-long conflict between UNITA and the Angolan government was drawing to a close, the Council suspended the travel sanctions.<sup>849</sup>

#### 4. Administration and monitoring

The Security Council has bestowed responsibilities relating to the administration, implementation and enforcement of the sanctions upon a range of actors, including the 864 UNITA Sanctions Committee, the UNSG, the UNITA Panel of Experts and the UNITA Monitoring Mechanism.

##### 4.1 *The UNITA Sanctions Committee*

The Security Council established the 864 Sanctions Committee when it created the 864 sanctions regime.<sup>850</sup> The 864 Committee was established, in accordance with rule 28 of the Council's provisional rules of procedure, to report on its work to the Council with its observations and recommendations, and to: (a) examine the reports submitted by states on the measures they had adopted to meet their obligations under the sanctions regime;<sup>851</sup> (b) seek further information from states on the action taken by them to implement the sanctions;<sup>852</sup> (c) consider information brought to its attention by states concerning sanctions violations and recommend appropriate measures in response thereto;<sup>853</sup> (d) report periodically on information submitted to it

<sup>845</sup> SC Res. 864 (15 September 1993), para. 19.

<sup>846</sup> SC Res. 1127 (28 August 1997), para. 4(a). <sup>847</sup> *Ibid.*, para. 5.

<sup>848</sup> SC Res. 1173 (12 June 1998), para. 12(a).

<sup>849</sup> SC Res. 1412 (17 May 2002), para. 1; SC Res. 1432 (15 August 2002), para. 1.

<sup>850</sup> SC Res. 864 (15 September 1993), para. 22. <sup>851</sup> *Ibid.*, para. 22 (a).

<sup>852</sup> *Ibid.*, para. 22 (b). <sup>853</sup> *Ibid.*, para. 22 (c).

regarding alleged sanctions violations, identifying where possible persons or entities, including vessels, reported to be engaged in such violations;<sup>854</sup> and (e) promulgate guidelines that might be necessary to facilitate sanctions implementation.<sup>855</sup>

The Security Council subsequently requested the 864 Committee to undertake a range of additional responsibilities, including to: (a) report on sanctions compliance and in particular on possible violations by two neighbouring states;<sup>856</sup> (b) draw up guidelines for the implementation of additional sanctions, including the designation of UNITA officials and family members whose travel was to be prohibited;<sup>857</sup> (c) decide upon requests for exemptions;<sup>858</sup> (d) report regarding actions taken by states to implement sanctions;<sup>859</sup> (e) draw up guidelines for the implementation of new sanctions and consider ways of strengthening sanctions effectiveness;<sup>860</sup> (f) authorise, on a case-by-case basis and under the no-objection procedure, exemptions from additional sanctions for verified medical and humanitarian purposes;<sup>861</sup> (g) investigate reports that UNITA's leader had travelled outside Angola in violation of sanctions, and that UNITA forces had received military training and assistance, as well as arms, also in violation of sanctions;<sup>862</sup> and (h) report on possible steps to prevent sanctions violations and improve sanctions implementation.<sup>863</sup>

The Security Council also bestowed a number of responsibilities upon the 864 Committee relating to the activities of the UNITA Panel of Experts and the UNITA Monitoring Mechanism. The Committee was thus requested to: (a) submit an interim report and final report of the Panel by stipulated deadlines;<sup>864</sup> (b) update the list of UNITA officials and adult members of their immediate families subject to travel sanctions and include in that list their date and place of birth and any known addresses;<sup>865</sup> (c) submit the reports by the Monitoring Mechanism prior to the expiration of each mandate;<sup>866</sup> and (d) review the final and

<sup>854</sup> *Ibid.*, para. 22 (d). <sup>855</sup> *Ibid.*, para. 22 (e). <sup>856</sup> SC Res. 932 (30 June 1994), para. 8.

<sup>857</sup> SC Res. 1127 (28 August 1997), para. 11 (a). <sup>858</sup> *Ibid.*, para. 11 (b).

<sup>859</sup> *Ibid.*, para. 11 (c); SC Res. 1135 (29 October 1997), para. 9; SC Res. 1173 (12 June 1998), para. 20 (b); SC Res. 1176 (24 June 1998), para. 3.

<sup>860</sup> SC Res. 1173 (12 June 1998), para. 20 (a). <sup>861</sup> SC Res. 1173 (12 June 1998), para. 13.

<sup>862</sup> SC Res. 1202 (15 October 1998), para. 14. <sup>863</sup> SC Res. 1221 (12 January 1999), para. 8.

<sup>864</sup> SC Res. 1237 (7 May 1999), para. 7. <sup>865</sup> SC Res. 1295 (18 April 2000), para. 24.

<sup>866</sup> SC Res. 1336 (23 January 2001), para. 6; SC Res. 1348 (19 April 2001), para. 6; SC Res. 1374 (19 October 2001), para. 8; SC Res. 1404 (18 April 2002), para. 7; SC Res. 1439 (18 October 2002), para. 6.

supplementary reports of the Monitoring Mechanism, with a view to offering guidance to the Mechanism on its future work.<sup>867</sup>

The 864 Committee was eventually dissolved in December 2002, upon the termination of the 864 sanctions regime.<sup>868</sup> During its almost decade-long tenure, the UNITA Committee held 43 formal meetings and issued eight annual reports.<sup>869</sup> In its final report, the Committee observed that, while the sanctions might not have played a direct role in the development of a promising peace process, it was generally recognised that they had weakened UNITA's military potential.<sup>870</sup> Among the lessons the Committee drew from the UNITA sanctions experience were that: (a) the establishment of the Panel of Experts and the Monitoring Mechanism had significantly enhanced sanctions effectiveness; (b) states often required technical assistance in enacting the necessary legislation to implement sanctions domestically; (c) reporting by states on sanctions violations had been invaluable to the work of the Committee and the Monitoring Mechanism; (d) missions by the Committee Chairman had been extremely useful; and (e) the use of the internet had helped to maintain transparency in the Committee's work.<sup>871</sup>

The 864 Committee also issued a number of ad hoc reports, including reports by on visits conducted by the Committee Chairman to explore how to improve sanctions implementation.<sup>872</sup> In contrast to the annual reports, the ad hoc reports often contained concrete and detailed recommendations on steps that might be taken to facilitate the effective implementation of the sanctions. The major development to arise as a result of the ad hoc reports was the establishment of the Panel of Experts on UNITA sanctions.

#### 4.2 *The Secretary-General*

When the Security Council established the 864 sanctions regime, it requested the UNSG to notify it if, before the date on which the sanctions were due to come into force, an effective cease-fire had been established and agreement reached on implementing the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would not come into force.<sup>873</sup> If that were to occur, then the UNSG

<sup>867</sup> SC Res. 1374 (19 October 2001), para. 4. <sup>868</sup> SC Res. 1448 (9 December 2002), para. 3.

<sup>869</sup> See Appendix 3, Table F. <sup>870</sup> S/2002/1413 (24 December 2002), para. 20.

<sup>871</sup> *Ibid.*, para. 21. <sup>872</sup> See Appendix 3, Table F.

<sup>873</sup> SC Res. 864 (15 September 1993), para. 17.



was requested to report if UNITA subsequently ceased participating constructively in the cease-fire and in implementing the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would come into force immediately.<sup>874</sup>

The Security Council subsequently requested the UNSG to report: (a) if he felt it necessary to impose additional sanctions or to review those in effect;<sup>875</sup> (b) if UNITA had made substantial and genuine progress in fulfilling its obligations under the peace process, in which case additional sanctions would not be applied;<sup>876</sup> (c) if UNITA had taken concrete and irreversible steps to implement its obligations under the Lusaka Protocol, in which case additional sanctions would not come into effect;<sup>877</sup> (d) on UNITA's compliance with its obligation to implement the Lusaka Protocol;<sup>878</sup> (e) on sanctions violations;<sup>879</sup> (f) if UNITA co-operated in the extension of state administration throughout Angola, in which case additional sanctions would not come into effect;<sup>880</sup> (g) if UNITA had complied with all its relevant obligations, in which case additional sanctions would be reviewed and terminated;<sup>881</sup> (g) with recommendations for improving sanctions implementation.<sup>882</sup>

The Security Council also asked the UNSG to take a number of steps in connection with the establishment and support of the Panel of Experts and the Monitoring Mechanism, including to: (a) establish a Trust Fund to finance the activities of the Panel;<sup>883</sup> (b) establish the monitoring mechanism;<sup>884</sup> (c) strengthen collaboration with regional and international organisations, including Interpol, that might be involved in monitoring or enforcing sanctions implementation;<sup>885</sup> (d) develop an information package and media campaign designed to educate the public on sanctions;<sup>886</sup> (e) appoint the experts to serve on the monitoring mechanism and make financial arrangements to support the

<sup>874</sup> *Ibid.*, para. 18.

<sup>875</sup> SC Res. 903 (16 March 1994), para. 10; SC Res. 922 (31 May 1994), para. 7; SC Res. 1055 (8 May 1996), para. 28; SC Res. 1064 (11 July 1996), para. 28.

<sup>876</sup> SC Res. 1075 (11 October 1996), para. 13.

<sup>877</sup> SC Res. 1127 (28 August 1997), para. 7; SC Res. 1130 (29 September 1997), paras. 2–3.

<sup>878</sup> *Ibid.*, para. 8; SC Res. 1135 (29 October 1997), para. 7.

<sup>879</sup> SC Res. 1157 (20 March 1998), para. 4; SC Res. 1164 (29 April 1998), para. 14.

<sup>880</sup> SC Res. 1173 (12 June 1998), para. 14; SC Res. 1176 (24 June 1998), para. 2.

<sup>881</sup> SC Res. 1173 (12 June 1998), para. 15.

<sup>882</sup> SC Res. 1202 (15 October 1998), para. 15; SC Res. 1213 (3 December 1998), para. 13.

<sup>883</sup> SC Res. 1237 (7 May 1999), para. 11. <sup>884</sup> SC Res. 1295 (18 April 2000), para. 3.

<sup>885</sup> *Ibid.*, para. 29. <sup>886</sup> *Ibid.*, para. 30.

mechanism's work;<sup>887</sup> and (f) close, upon the conclusion of the activities of the Panel of Experts, the Trust Fund established to support the Panel and arrange for funds to be reimbursed to contributors.<sup>888</sup>

#### 4.3 *The Panel of Experts on UNITA sanctions*

In May 1999 the Council decided to establish expert panels to facilitate the effective implementation of the UNITA sanctions.<sup>889</sup> The panels were to: (a) collect information relating to the violations of the arms, petroleum, diamond and financial sanctions; (b) identify those committing or facilitating the violations of those sanctions; and (c) recommend measures to end such violations and to improve the sanctions implementation.<sup>890</sup> In late July 1999, the 864 Committee appointed ten experts to the expert panels.<sup>891</sup> The experts came from a variety of countries, possessing expertise in fields conducive to the investigation of violations of different aspects of the multi-faceted UNITA sanctions regime. The experts convened for the first time in late August 1999, in New York, when they decided that, due to the interconnectedness of the areas to be examined, it would be best to act as one panel rather than two.<sup>892</sup> During the Panel's six-month mandate, its members visited close to thirty countries and met with a wide range of people, including government officials, diplomats, NGOs, police and intelligence sources, industry associations, corporations and journalists.<sup>893</sup> The Panel circulated an interim and a final report through the 864 Committee.<sup>894</sup> The final report contained the Panel's findings and conclusions on sanctions violations. The Panel made thirty-nine recommendations for addressing these violations.<sup>895</sup>

#### 4.4 *The Monitoring Mechanism on UNITA sanctions*

In April 2000, the Security Council adopted resolution 1295 (2000), which appeared to endorse the recommendations made by the Panel of Experts. However, the Council employed voluntary rather than mandatory language, using terms such as 'requests', 'calls upon' and 'encourages' instead of the more definitive 'decides'. The resolution thus amounted more to a wish-list of things that could be done to

<sup>887</sup> SC Res. 1336 (23 January 2001), para. 5 (five experts); SC Res. 1348 (19 April 2001), para. 5 (five experts); SC Res. 1374 (19 October 2001), para. 7 (four experts); SC Res. 1404 (18 April 2002), para. 6 (four experts); SC Res. 1439 (18 October 2002), para. 5 (two experts).

<sup>888</sup> SC Res. 1439 (18 October 2002), para. 4. <sup>889</sup> SC Res. 1237 (7 May 1999), para. 6.

<sup>890</sup> *Ibid.* <sup>891</sup> S/1999/837 (30 July 1999). <sup>892</sup> S/2000/203 (10 March 2000), para. 8.

<sup>893</sup> *Ibid.* <sup>894</sup> See Appendix 3, Table H. <sup>895</sup> S/2000/203 (10 March 2000).

improve sanctions implementation than a set of mandatory obligations to be acted upon by states. Nevertheless, the Council did take concrete action upon one of the Panel's recommendations, by requesting the UNSG to establish a monitoring mechanism on the UNITA sanctions.<sup>896</sup> The UNITA Monitoring Mechanism was to continue the work of the Panel of Experts by collecting additional information on, and investigating relevant leads relating to, allegations of violations of the UNITA sanctions.<sup>897</sup> It would consist of up to five experts and would have a six-month mandate.<sup>898</sup>

The Monitoring Mechanism's mandate was extended five times, although in time it contracted from five to two members.<sup>899</sup> During the course of its two-and-a-half-year tenure, the Monitoring Mechanism submitted six reports.<sup>900</sup> In its reports, the Mechanism identified individuals and companies involved in activities that violated or promoted violation of sanctions,<sup>901</sup> as well as states that were complicit in such activities.<sup>902</sup> The Mechanism also commissioned a professional asset tracer to investigate the flow of UNITA's financial assets,<sup>903</sup> and identified and monitored the activities of individuals and non-governmental organisations who appeared to be acting as foreign representatives of UNITA.<sup>904</sup> The Monitoring Mechanism recommended the promotion of better networks between regulatory bodies engaged in sanctions

<sup>896</sup> SC Res. 1295 (18 April 2000), para. 3. <sup>897</sup> *Ibid.*, para. 3. <sup>898</sup> *Ibid.*

<sup>899</sup> See: SC Res. 1336 (23 January 2001), para. 3; SC Res. 1348 (19 April 2001), para. 3; SC Res. 1374 (19 October 2001), para. 3; SC Res. 1404 (18 April 2002), para. 3; SC Res. 1439 (18 October 2002), para. 2.

<sup>900</sup> See Appendix 3, Table H.

<sup>901</sup> S/2000/1225 (21 December 2000), paras. 120–143 (exploring the activities of Victor Bout, alleged violator of arms sanctions), 154–161 (exploring the activities of the De Decker brothers, alleged violators of arms sanctions), 162–164 (exploring the activities of an individual known simply as 'Watson', alleged violator of arms sanctions); S/2001/363 (18 April 2001), paras. 14–34 (companies alleged to have been violators of arms sanctions); S/2001/966 (12 October 2001), paras. 75–85 (companies alleged to have been violators of arms sanctions); S/2002/486 (26 April 2002), paras. 33–40 (companies alleged to have been violators of arms sanctions), 69–73 (Bout).

<sup>902</sup> S/2000/1225 (21 December 2000), paras. 32–38 (Bulgaria), 39–41 (Romania), 43–45 (Togo), 48–49 (Burkina Faso), 78 (Portugal and South Africa) 89–102 (listing a range of states alleged to have failed to curtail violations of representative sanctions), 180–181 (DRC), 182–189 (South Africa), 190 (Zambia), 191–193 (Rwanda and Uganda); S/2001/966 (12 October 2001), paras. 169–171 (DRC), 214–217 (Zambia); S/2002/486 (26 April 2002), paras. 43–50 (Moldova), 51–54 (Bulgaria), 61–63 (Zambia), 65–68 (DRC), 95–102 (Zambia), 156–162 (DRC).

<sup>903</sup> S/2001/363 (18 April 2001), para. 2.

<sup>904</sup> S/2000/1225 (21 December 2000), paras. 80–110; S/2001/363 (18 April 2001), paras. 35–51; S/2001/966 (12 October 2001), paras. 46–63, 234–245.

implementation, including the establishment of an effective international regulatory regime for diamonds and the promotion of better co-operation among SADC member states in the implementation, monitoring and enforcement of arms embargoes.<sup>905</sup> The Mechanism also recommended that the Security Council should establish a permanent sanctions monitoring mechanism.<sup>906</sup>

## 5. Suspension and termination

In May 2002, after the death of UNITA leader Jonas Savimbi and when it appeared that the decades-long conflict between UNITA and the Angolan government was drawing to a close, the Security Council suspended the travel sanctions against UNITA officials and their families.<sup>907</sup> In December 2002, the Council welcomed the steps taken by the Angolan government and UNITA toward the full implementation of the Acordos de Paz, the Lusaka Protocol, relevant Security Council resolutions and other recent initiatives aimed at achieving peace.<sup>908</sup> It then terminated the sanctions regime,<sup>909</sup> and dissolved the 864 Committee.<sup>910</sup>

## 6. Conclusions

The UNITA sanctions regime exhibited a number of noteworthy characteristics. As with the sanctions imposed against the Bosnian Serbs, the UNITA sanctions regime targeted a sub-state entity. The Council also experimented for the first time with diamond sanctions, prohibiting the export of diamonds from UNITA-controlled areas in an attempt to address the link between the diamond trade and the flow of illicit weapons. The Council also continued the trend, initiated with the 748 sanctions regime and utilised again in the 757, 820 and 841 sanctions regimes, of employing time-delays to provide the target with a period of grace in which to avoid the application of sanctions.<sup>911</sup>

The 864 sanctions regime witnessed the first missions by the Chairman of a Sanctions Committee. It also led to the establishment

<sup>905</sup> S/2000/1225 (21 December 2000), para. 230; S/2002/486 (26 April 2002), para. 240.

<sup>906</sup> S/2001/966 (12 October 2001), paras. 260–263.

<sup>907</sup> SC Res. 1412 (17 May 2002), para. 1; SC Res. 1432 (15 August 2002), para. 1.

<sup>908</sup> SC Res. 1448 (9 December 2002), preambular para. 3.

<sup>909</sup> *Ibid.*, para. 2. <sup>910</sup> *Ibid.*, para. 3.

<sup>911</sup> See, e.g.: SC Res. 864 (15 September 1993), para. 17; SC Res. 1127 (28 August 1997), para. 7; SC Res. 1173 (12 June 1998), para. 14.

for the first time of both a Panel of Experts and a Monitoring Mechanism designed to explore sanctions violations. The Security Council made a rare explicit reference to Article 41<sup>912</sup> and expressed its readiness to consider the possibility of imposing a measure contained in Article 41 but rarely used – communications sanctions.<sup>913</sup> Finally, a curious situation arose at the end of the 864 sanctions regime, when sanctions were terminated and the 864 Committee dissolved ten days before the expiration of the UNITA Monitoring Mechanism's final mandate. This meant that the Committee was dissolved prior to the conclusion of the activities of a body which supposedly reported through it to the Security Council.

## 12. THE 918 RWANDA SANCTIONS REGIME

The Security Council imposed sanctions against Rwanda in May 1994, in an attempt to address ongoing violence in that country. The 918 sanctions regime initially consisted of a general arms embargo against the territory of Rwanda, which was subsequently narrowed to target non-government entities in Rwanda or neighbouring states who might supply arms to such entities. The Council has established two subsidiary bodies to administer and monitor the 918 sanctions regime – the 918 Rwanda Sanctions Committee and the International Commission of Inquiry.

### 1. Constitutional basis

In May 1994, the Security Council expressed its deep concern that the consequences of violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of 'enormous proportions'.<sup>914</sup> The Council proceeded to determine that the situation in Rwanda constituted a threat to peace and security in the region.<sup>915</sup> It invoked Chapter VII,<sup>916</sup> before imposing sanctions against Rwanda.<sup>917</sup> In subsequent decisions related to the Rwandan sanctions

<sup>912</sup> SC Res. 1295 (18 April 2000), para. 6.      <sup>913</sup> SC Res. 1221 (12 January 1999), para. 8.

<sup>914</sup> SC Res. 918 (17 May 1994), preambular para. 8.

<sup>915</sup> *Ibid.*, section B, preambular para. 1.      <sup>916</sup> *Ibid.*, section B, preambular para. 2.

<sup>917</sup> *Ibid.*, para. 13.

regime, the Council again invoked Chapter VII, without explicitly determining the continuing existence of a threat to peace and security.<sup>918</sup>

## 2. Objectives

The Security Council did not articulate an explicit objective in connection with the Rwanda sanctions regime. Various provisions of the resolution establishing the sanctions suggest, however, that the main objectives of the arms embargo were the establishment of a cease-fire and the achievement of a peaceful settlement to the conflict, within the framework of the Arusha Peace Agreement.<sup>919</sup>

## 3. Scope

### 3.1 Sanctions obligations

The sanctions regime against Rwanda initially consisted of a prohibition upon the sale or supply to Rwanda of arms and related material.<sup>920</sup> In June 1995, the Council affirmed that the Rwanda sanctions regime prevented the sale or supply of arms and related material to persons in states neighbouring Rwanda, if such sale or supply was for eventual use in Rwanda.<sup>921</sup>

In August 1995, the Council narrowed the scope of the sanctions slightly, deciding that the sanctions regime would not apply to the sale or supply of arms and related material to the government of Rwanda.<sup>922</sup> At the same time, the Council also decided that the Rwandan government could not resell arms or related material to any neighbouring states or to any person not in its service. In addition, the Council also required states to notify the Rwanda Sanctions Committee of any exports of arms and related material to the Rwandan government.<sup>923</sup>

### 3.2 Exemptions

When the Council applied the 918 arms embargo, it exempted activities related to the UN Assistance Mission for Rwanda and the UN Observer

<sup>918</sup> SC Res. 1005 (17 July 1995), preambular para. 6; SC Res. 1011 (16 August 1995), section B, preambular para. 1.

<sup>919</sup> SC Res. 918 (17 May 1994), preambular para. 6, paras. 1 and 19. <sup>920</sup> *Ibid.*, para. 13.

<sup>921</sup> SC Res. 997 (9 June 1995), para. 4; SC Res. 1011 (16 August 1995), para. 9.

<sup>922</sup> SC Res. 1011 (16 August 1995), paras. 7–8. <sup>923</sup> *Ibid.*, para. 11.

Mission Uganda-Rwanda.<sup>924</sup> In July 1995, the Council exempted explosives for use in demining, when authorised by the Rwanda Sanctions Committee.<sup>925</sup>

#### 4. Administration and monitoring

The Security Council has established two subsidiary entities to facilitate the administration and monitoring of the 918 sanctions regime: the Rwanda Sanctions Committee and the International Commission of Inquiry on Rwanda Sanctions. The Council has also bestowed a number of sanctions-related tasks upon the UNSG.

##### 4.1 *The 918 Sanctions Committee*

When the Security Council established the 918 sanctions regime it created the 918 Committee to oversee sanctions administration.<sup>926</sup> The 918 Committee was established, in accordance with rule 28 of the Council's provisional rules of procedure, with a mandate to report on its work to the Council with its observations and recommendations and to: (a) seek from all states information regarding action taken to implement the arms embargo;<sup>927</sup> (b) consider information concerning embargo violations and make recommendations on increasing the embargo's effectiveness;<sup>928</sup> and (c) recommend appropriate measures in response to embargo violations and provide regular information to the UNSG for distribution to member states.<sup>929</sup>

The Council subsequently requested the 918 Committee to: (a) consider information provided by states and organisations on the transport of arms into countries neighbouring Rwanda for eventual use in Rwanda;<sup>930</sup> (b) receive applications and provide authorisation where appropriate, concerning exemptions for explosives used in humanitarian demining programmes;<sup>931</sup> (c) receive notifications from all states of all exports from their territories to Rwanda of arms or related material;<sup>932</sup> (d) receive notification from the government of Rwanda of all imports it received of arms and related material;<sup>933</sup> (e) report regularly on notifications so received,<sup>934</sup> and (f) collate information in its

<sup>924</sup> SC Res. 918 (17 May 1994), para. 16. <sup>925</sup> SC Res. 1005 (17 July 1995), sole para.

<sup>926</sup> SC Res. 918 (17 May 1994), para. 14. <sup>927</sup> *Ibid.*, para. 14(a). <sup>928</sup> *Ibid.*, para. 14(b).

<sup>929</sup> *Ibid.*, para. 14(c). <sup>930</sup> S/PRST/1995/22 (27 April 1995).

<sup>931</sup> SC Res. 1005 (17 July 1995), sole para. <sup>932</sup> SC Res. 1011 (16 August 1995), para. 11.

<sup>933</sup> *Ibid.* <sup>934</sup> *Ibid.*

possession pertaining to the mandate of the International Commission of Inquiry and provide that information to the Commission.<sup>935</sup>

The 918 Committee has been one of the least active of the Security Council's sanctions committees. By the end of 2006 it had issued more annual reports (twelve)<sup>936</sup> in its twelve and a half years than it had held formal meetings (seven).<sup>937</sup> In its reports, the Committee has consistently noted that, in the absence of a monitoring mechanism, its ability to monitor the sanctions effectively is dependent upon the co-operation of states and organisations in a position to provide it with pertinent information.<sup>938</sup> In its 1998 annual report, the Committee endorsed paragraph 2 of resolution 1196 (1998), which encouraged member states to consider, as a means of implementing obligations under arms embargoes, the adoption of legislation or other legal measures making the violation of Security Council arms embargoes a criminal offence.<sup>939</sup> The Committee also expressed its intention to consider appropriate steps to improve the monitoring of the arms embargo, including establishing channels of communication with relevant regional and sub-regional organisations.<sup>940</sup> In its 2006 annual report, the Committee noted that it had held three informal consultations during 2006.<sup>941</sup> The Committee observed that its members had not been able to reach agreement concerning the future status of the notification requirement for arms and related material to be imported to or exported from Rwanda by the Rwandan government.<sup>942</sup> It requested the Security Council to take a decision to resolve the situation.<sup>943</sup>

#### 4.2 *The Secretary-General*

When the Security Council established the Rwanda sanctions regime, it requested the UNSG to provide assistance to the 918 Committee.<sup>944</sup> The Council subsequently requested the UNSG to: (a) consult the

<sup>935</sup> SC Res. 1161 (9 April 1998), para. 2. <sup>936</sup> See Appendix 3, Table F.

<sup>937</sup> The Committee's most recent formal meeting – its seventh – had been held on 6 January 1998: *Index to Proceedings of the Security Council for 1998* (New York: UN, 1999), p. xiv.

<sup>938</sup> See, e.g., S/1997/15 (7 January 1997), para. 10; S/1997/1028 (31 December 1997), para. 5; S/1998/1219 (24 December 1998), para. 5; S/1999/1292 (30 December 1999), para. 5; S/2000/1227 (22 December 2000), para. 5; S/2002/49 (14 January 2002), para. 5; S/2002/1406 (24 December 2002), para. 5; S/2004/134 (20 February 2004), para. 6; S/2005/76 (9 February 2005), para. 6; S/2006/164 (14 March 2006), para. 3.

<sup>939</sup> S/1998/1219 (24 December 1998), para. 5. <sup>940</sup> *Ibid.*, para. 6.

<sup>941</sup> S/2006/1049 (28 December 2006), para. 5. <sup>942</sup> *Ibid.*, para. 7. <sup>943</sup> *Ibid.*, para. 8.

<sup>944</sup> SC Res. 918 (17 May 1994), para. 17.



governments of countries neighbouring Rwanda on the possibility of deploying observers to monitor the implementation of the Rwandan sanctions and report back on those consultations;<sup>945</sup> (b) make recommendations on the establishment of a commission to investigate allegations of arms flows to former Rwandan government forces in the Great Lakes region;<sup>946</sup> (c) continue consultations with governments of neighbouring states concerning the deployment of UN military observers at airfields and transportation points in and around border crossings;<sup>947</sup> (d) notify member states of points of entry through which arms exempt from the embargo might enter the country;<sup>948</sup> (e) report on the legitimate export of arms to Rwanda in accordance with approved exemptions;<sup>949</sup> and (f) consult with states neighbouring Rwanda, and in particular Zaire, on appropriate measures for implementing the arms embargo and deterring shipments of arms to former Rwandan government forces, including through the deployment of UN observers.<sup>950</sup>

The UNSG was also requested to undertake a number of tasks in connection with the activities of the International Commission of Inquiry, including to: (a) establish the Commission;<sup>951</sup> (b) report on the Commission's establishment and submit the Commission's interim and final reports to the Council;<sup>952</sup> (c) maintain the Commission;<sup>953</sup> (d) re-activate the International Commission of Inquiry;<sup>954</sup> and (e) submit the Commission's interim and final reports.<sup>955</sup>

#### 4.3 *The Commission of Inquiry on Rwanda (ICIR)*

In September 1995, the Security Council requested the UNSG to establish, as a matter of urgency, an International Commission of Inquiry.<sup>956</sup> The Commission, which would consist of five to ten impartial and internationally respected persons, including legal, military and police experts,<sup>957</sup> was to: (a) collect information and investigate reports relating to the sale or supply of arms and related material to former Rwandan government forces in the Great Lakes region, in violation of Council resolutions 918 (1994), 997 (1995) and 1011 (1995);<sup>958</sup> (b) investigate allegations that such forces were receiving military training in

<sup>945</sup> SC Res. 997 (9 June 1995), para. 6. <sup>946</sup> SC Res. 1011 (16 August 1995), para. 2.

<sup>947</sup> *Ibid.*, para. 4. <sup>948</sup> *Ibid.*, para. 7. <sup>949</sup> *Ibid.*, para. 12.

<sup>950</sup> SC Res. 1053 (23 April 1996), para. 7. <sup>951</sup> SC Res. 1013 (7 September 1995), para. 1.

<sup>952</sup> *Ibid.*, para. 4. <sup>953</sup> SC Res. 1053 (23 April 1996), para. 2.

<sup>954</sup> SC Res. 1161 (9 April 1998), para. 1. <sup>955</sup> *Ibid.*, para. 7.

<sup>956</sup> SC Res. 1013 (7 September 1995), para. 1. <sup>957</sup> *Ibid.*, para. 2. <sup>958</sup> *Ibid.*, para. 1(a).

order to destabilise Rwanda;<sup>959</sup> (c) identify parties aiding and abetting the illegal acquisition of arms by former Rwandan government forces, in violation of the sanctions;<sup>960</sup> and (d) recommend measures to end the illegal flow of arms in the sub-region.<sup>961</sup>

Six people were appointed to the Commission.<sup>962</sup> At the conclusion of the Commission's mandate it was subsequently maintained, then later re-activated by the Council.<sup>963</sup> Under its subsequent mandates, the Commission was to: (a) follow up its earlier investigations and pursue any further allegations of embargo violations;<sup>964</sup> (b) collect information and investigate reports relating to the sale, supply and shipment of arms and related material to former Rwandan government forces and militias in the Great Lakes region, in violation of the arms embargo;<sup>965</sup> (c) identify parties aiding and abetting the acquisition of arms and related material by former Rwandan government forces, in violation of the arms embargo;<sup>966</sup> and (d) make recommendations relating to the illegal flow of arms in the Great Lakes region.<sup>967</sup>

During its tenure, the International Commission of Inquiry prepared six reports.<sup>968</sup> In its first report, the Commission noted that its activities to date had taken place mainly in Rwanda, Zaire and the region, whilst it had approached a number of governments whose nationals were alleged to have been involved in violations of the arms embargo, including Bulgaria, China, France, Seychelles, South Africa and Zaire.<sup>969</sup> The Commission was not yet able to confirm alleged embargo violations, but it believed that Rwandan men were receiving military training to conduct destabilising raids into Rwanda.<sup>970</sup>

In its second report, the Commission of Inquiry explored allegations made by Human Rights Watch that arms had been delivered to former Rwandan government forces in Zaire, via the Seychelles, in violation of the Rwandan arms embargo.<sup>971</sup> The Commission concluded that the report was accurate and that two shipments of arms, originating in the Seychelles, had indeed made their way into the hands of Rwandan

<sup>959</sup> *Ibid.*, para. 1(b). <sup>960</sup> *Ibid.*, para. 1(c). <sup>961</sup> *Ibid.*, para. 1(d).

<sup>962</sup> S/1995/879 (20 October 1995). <sup>963</sup> SC Res. 1053 (23 April 1996), para. 2. <sup>964</sup> *Ibid.*

<sup>965</sup> SC Res. 1161 (9 April 1998), para. 1(a). <sup>966</sup> *Ibid.*, para. 1(b). <sup>967</sup> *Ibid.*, para. 1(c).

<sup>968</sup> See Appendix 3, Table H. <sup>969</sup> S/1996/67 (29 January 1996), paras. 14–54.

<sup>970</sup> *Ibid.*, paras. 67(a), 67(b).

<sup>971</sup> Human Rights Watch, *Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide* (1995) (Washington, DC: Human Rights Watch 1995), available online at <http://www.hrw.org/reports/1995/Rwanda1.htm>.

government forces.<sup>972</sup> Authorities in the Seychelles had authorised the sale after receiving end-user certificates purportedly issued by the government of Zaire. Once it became apparent that the shipments might have been delivered to a destination other than Zaire, the Seychelles cancelled subsequent additional scheduled shipments.<sup>973</sup> Ironically, the arms had originally been seized by the Seychelles from a ship named *Malo* because they were being transported to Somalia in violation of the 713 sanctions regime.<sup>974</sup> The Commission identified two individuals as being instrumental in facilitating the shipments and concluded that the government of Zaire had aided and abetted the violations.<sup>975</sup>

The Commission made a number of general recommendations designed to facilitate the implementation of Security Council arms embargoes in general, including that: (a) upon the imposition of an arms embargo, the Security Council should consider urging neighbouring states to establish an office to monitor, implement and enforce the embargo within its own territory;<sup>976</sup> (b) where states could not staff and equip such offices, consideration should be given to establishing a trust fund, within the context of Article 50 of the Charter, to provide such assistance;<sup>977</sup> (c) the Council could expand the functions of future sanctions committees to include liaising with such offices in neighbouring states, as well as receiving, analysing and circulating reports submitted by those offices;<sup>978</sup> (d) the governments of the Great Lakes region should intensify their efforts to ensure that their territory was not used for the recruitment or training of refugees, nor as a base from which to launch attacks against other countries;<sup>979</sup> (e) neighbouring states should be encouraged to maintain a register of movements and acquisitions of small arms, ammunition and material;<sup>980</sup> and (f) countries supplying arms should be requested not to transfer such arms to non-state entities or private businessmen.<sup>981</sup>

Among the recommendations applicable to the 918 sanctions regime were that the Security Council should consider: (a) inviting the government of South Africa to investigate the participation of one of its nationals in sanctions violations;<sup>982</sup> (b) calling upon the government of Bulgaria to make available to the 918 Committee the findings of an

<sup>972</sup> S/1996/195 (14 March 1996), paras. 21–39, 64. <sup>973</sup> *Ibid.*, para. 65.

<sup>974</sup> *Ibid.*, para. 29. <sup>975</sup> *Ibid.*, paras. 21–39. <sup>976</sup> *Ibid.*, para. 77.

<sup>977</sup> *Ibid.*, para. 79. <sup>978</sup> *Ibid.*, para. 80. <sup>979</sup> *Ibid.*, para. 82.

<sup>980</sup> *Ibid.*, para. 84. <sup>981</sup> *Ibid.*, para. 85. <sup>982</sup> *Ibid.*, para. 86.

internal investigation into allegations that a Bulgarian company had been willing to sell arms in violation of Security Council resolutions;<sup>983</sup> (c) calling upon the government of Zaire to investigate the apparent complicity of its own personnel and officials in the purchase of arms from the Seychelles;<sup>984</sup> (d) inviting the government of Zaire to station UN observers on its territory to monitor sanctions implementation against Rwanda and to deter future violations;<sup>985</sup> (e) facilitating the establishment of a domestic group, within Zaire, to monitor the sanctions, perhaps in co-ordination with the OAU under Chapter VII,<sup>986</sup> and (f) retaining the Commission, or creating another similar body, to follow up the Commission's investigations.<sup>987</sup>

In its third report, the Commission recommended that: (a) consideration should be given to requesting arms-producing states to take measures necessary under domestic law to implement the arms embargo, including prosecuting nationals involved in embargo violations;<sup>988</sup> (b) the Security Council should call upon the government of Zaire not to allow foreign groups to operate from its soil and to halt the sale or supply of arms and related material and assistance or training to those groups;<sup>989</sup> (c) UN observers should be deployed to reduce the potential for arms shipments;<sup>990</sup> (d) the Security Council should consider imposing an assets freeze on individuals and organisations involved in raising funds to finance the insurgency against Rwanda;<sup>991</sup> (e) the Security Council should encourage Tanzanian authorities to liaise with UNHCR and consult with the ICTR to see if legal grounds existed for detaining individuals accused of intimidating people in Rwandan refugee camps so that they participated in embargo violations;<sup>992</sup> and (f) the Security Council should urge Rwanda to create a climate conducive to the harmonious reintegration of refugees, in order to encourage their return.<sup>993</sup> In its fourth report, circulated in January 1998, the Commission outlined additional responses received from the various governments it had contacted,<sup>994</sup> as well as a limited number of conclusions, including the action it would take if it were maintained.<sup>995</sup>

<sup>983</sup> *Ibid.*, para. 87.    <sup>984</sup> *Ibid.*, para. 88.    <sup>985</sup> *Ibid.*, para. 91(a).    <sup>986</sup> *Ibid.*, para. 91(b).

<sup>987</sup> *Ibid.*, para. 91(c).    <sup>988</sup> S/1997/1010 (24 December 1997), para. 110.

<sup>989</sup> *Ibid.*, para. 112.    <sup>990</sup> *Ibid.*, para. 113.    <sup>991</sup> *Ibid.*, para. 114.    <sup>992</sup> *Ibid.*, para. 115.

<sup>993</sup> *Ibid.*, para. 118.    <sup>994</sup> S/1998/63 (26 January 1998), paras. 1–38.

<sup>995</sup> *Ibid.*, paras. 39–43.

## 5. Suspension of aspects of the Rwanda sanctions regime

In August 1995 the scope of the Rwanda sanctions regime was narrowed such that the embargo no longer applied to the sale or supply of arms and related material to the Rwandan government, through designated entry points. On 1 September 1996, the requirement that such imports proceed to the government via designated points lapsed, such that the general sale or supply of arms and related material to the Rwandan government was permissible.<sup>996</sup>

## 6. Conclusions

The Rwanda sanctions regime is noteworthy largely as a strange mixture of neglect and creative experimentation. The neglect is apparent in the fact that the Rwanda Sanctions Committee had a total of seven formal meetings in its first eleven years. The creative experimentation is demonstrated by the explicit statement on the part of the Council that the arms embargo required states to prevent the sale or supply of arms to persons in states neighbouring Rwanda if destined for use in Rwanda itself, and in particular by the establishment of the International Commission of Inquiry to explore violations of the arms embargo and to recommend measures to improve the embargo's implementation. The Commission represented the earliest attempt on the part of the Council to mandate an independent body of experts to explore the question of improving a sanctions regime. Unfortunately, however, despite the Commission's detailed reports, the Council did little to act upon its recommendations and suggestions.

## 13. THE 1054 SANCTIONS REGIME AGAINST THE SUDAN

The Security Council imposed sanctions against Sudan in March 1996, in an attempt to induce the extradition of three suspects wanted in connection with the assassination attempt that had been made against President Mubarak of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995. The 1054 sanctions regime initially consisted of diplomatic and targeted travel sanctions. It was strengthened slightly in August 1996, when the

<sup>996</sup> SC/6265 (Press Release): *Arms restrictions imposed on Rwanda Government ended, measures remain against non-governmental forces.*

Council also imposed aviation sanctions against Sudan. The Sudan sanctions regime was eventually terminated in September 2001, when the Council determined that Sudan had taken steps to comply with its obligations under the sanctions regime. The Council did not create a sanctions committee or any other subsidiary body in connection with the 1054 sanctions regime. Instead, it bestowed responsibilities related to the regime upon the UNSG.

## 1. Constitutional basis

In January 1996, the Security Council condemned the ‘terrorist assassination attempt’ that had been made against President Mubarak of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995.<sup>997</sup> It then called upon the government of Sudan to extradite the three suspects, who were sheltering in Sudan, to Ethiopia and to refrain from assisting, supporting or facilitating terrorist activities and from giving shelter or sanctuary to ‘terrorist elements’.<sup>998</sup>

In March 1996, after the UNSG had reported that Sudan had failed to comply with the Security Council’s requests,<sup>999</sup> the Council adopted resolution 1054 (1996), in which it reaffirmed that the suppression of acts of international terrorism, including those in which states were involved, was essential for the maintenance of international peace and security.<sup>1000</sup> The Council then determined that the government of Sudan’s non-compliance with its requests to extradite the three suspects to Ethiopia and to refrain from assisting, supporting or facilitating terrorist activities, and from giving shelter or sanctuary to terrorists, constituted a threat to international peace and security.<sup>1001</sup> It noted that it was acting under Chapter VII,<sup>1002</sup> before imposing sanctions against Sudan.<sup>1003</sup> In subsequent decisions related to the Sudan sanctions regime, the Council again reaffirmed that the suppression of acts of international terrorism was essential for the maintenance of international peace and security,<sup>1004</sup> determined that the non-compliance

<sup>997</sup> SC Res. 1044 (31 January 1996), para. 1. For a detailed account of the assassination attempt and the Ethiopian government’s efforts to achieve the extradition of the three suspects from Sudan, see S/1996/10 (9 January 1996).

<sup>998</sup> SC Res. 1044 (31 January 1996), para. 4.

<sup>999</sup> See: S/1996/179 (11 March 1996), para. 31.

<sup>1000</sup> SC Res. 1054 (26 April 1996), preambular para. 9. <sup>1001</sup> *Ibid.*, preambular para. 10.

<sup>1002</sup> *Ibid.*, preambular para. 11. <sup>1003</sup> *Ibid.*, paras. 3, 4.

<sup>1004</sup> SC Res. 1070 (16 August 1996), preambular para. 10.

of the government of Sudan constituted a threat to international peace and security,<sup>1005</sup> and invoked Chapter VII.<sup>1006</sup>

## 2. Objectives

The major objective of the Sudan sanctions regime was to induce the extradition by Sudan of the three suspects wanted for the assassination attempt against President Mubarak.<sup>1007</sup> A secondary objective was to ensure that Sudan desisted from assisting, supporting and facilitating terrorist activities and from giving shelter or sanctuary to terrorist elements.<sup>1008</sup>

## 3. Scope

### 3.1 *Sanctions obligations*

The Sudan sanctions regime initially consisted of a blend of mandatory diplomatic and travel sanctions.<sup>1009</sup> Under the diplomatic sanctions, states were required to reduce the number and level of staff at Sudanese diplomatic missions and consular posts, and to restrict or control the movement within their territory of all such staff who were to remain.<sup>1010</sup> The travel sanctions obligated states to restrict the entry into or transit through their territory of members of the government of Sudan, officials of that government, and members of the Sudanese armed forces.<sup>1011</sup>

In August 1996, with the government of Sudan yet to comply with the Security Council's demands, the Council imposed aviation sanctions. Under the additional sanctions, states were required to deny aircraft permission to take off from, land in or overfly their territories where those aircraft were owned by Sudan Airways or the Sudanese government, or by an undertaking that was owned or controlled by Sudan Airways or the Sudanese government.<sup>1012</sup>

### 3.2 *Exemptions*

The Security Council did not outline any explicit exemptions from the 1054 sanctions regime.

<sup>1005</sup> *Ibid.*, preambular para. 11.

<sup>1006</sup> *Ibid.*, preambular para. 12; SC Res. 1372 (28 September 2001), preambular para. 7.

<sup>1007</sup> SC Res. 1054 (26 April 1996), para. 1(a). <sup>1008</sup> *Ibid.*, para. 1(b). <sup>1009</sup> *Ibid.*, para. 3.

<sup>1010</sup> *Ibid.*, para. 3(a). <sup>1011</sup> *Ibid.*, para. 3(b). <sup>1012</sup> SC Res. 1070 (16 August 1996), para. 3.

## 4. Administration and monitoring

The Security Council broke with its previous sanctions practice by not establishing a sanctions committee to oversee the administration of the 1054 sanctions regime. It remains the only regime for which administrative responsibility has not been bestowed upon a sanctions committee. Instead, the Council requested the UNSG to perform various tasks related to the administration of the sanctions.

### 4.1 *The Secretary-General*

Prior to the application of the Sudan sanctions regime, the Council requested the UNSG, in consultation with the Organization of African Unity (OAU), to seek the co-operation of the government of Sudan with the requests to extradite the three suspects alleged to have been involved in the assassination attempt against President Mubarak and to refrain from supporting terrorist activities.<sup>1013</sup> The Council also requested that the UNSG report to it on those efforts.<sup>1014</sup>

When the Security Council established the 1054 sanctions regime, it requested the UNSG to report on information received from states on steps taken to implement the sanctions,<sup>1015</sup> as well as on whether the government of Sudan had complied with the Council's demands to extradite the three suspects, desist from assisting, supporting and facilitating terrorist activities, and cease giving shelter to terrorist elements.<sup>1016</sup> In August 1996, when the Council strengthened the Sudan sanctions regime, it requested the UNSG to report if Sudan had complied with the objectives of the sanctions regime prior to the date on which additional sanctions were to come into effect, in which case the sanctions might not enter into force.<sup>1017</sup> The Council also requested the UNSG to report on the compliance of the government of Sudan with the Council's demands to extradite the three suspects and to desist from assisting, supporting and facilitating terrorist activities and from giving shelter to terrorist elements.<sup>1018</sup>

In July 1996, the UNSG reported that the government of Sudan claimed that its investigations had produced no trace of two of the alleged suspects and that the identity of the third suspect was unknown.<sup>1019</sup> He also reported that Sudan asserted that it condemned terrorism and did not

<sup>1013</sup> SC Res. 1044 (31 January 1996), para. 7. <sup>1014</sup> *Ibid.*, para. 7.

<sup>1015</sup> SC Res. 1054 (26 April 1996), para. 7. <sup>1016</sup> *Ibid.*, para. 8.

<sup>1017</sup> SC Res. 1070 (16 August 1996), para. 4. <sup>1018</sup> *Ibid.*, para. 5.

<sup>1019</sup> S/1996/541 (10 July 1996): *Report of the Secretary-General pursuant to Security Council resolution 1054 (1996)*, para. 10(a).



condone terrorist activities.<sup>1020</sup> In the same report, the UNSG also listed the forty replies that he had received from member states outlining steps taken to implement the sanctions against Sudan.<sup>1021</sup>

## 5. Termination

In September 2001, the Security Council noted the steps that had been taken by the government of the Sudan to comply with the Council's demands under the sanctions regime,<sup>1022</sup> as well as a collection of correspondence it had received advocating the lifting of the sanctions against Sudan.<sup>1023</sup> The Council then welcomed the accession of Sudan to various international conventions for the suppression of terrorism,<sup>1024</sup> and decided to terminate the sanctions.<sup>1025</sup>

## 6. Conclusions

The most unusual aspect of the 1054 sanctions regime was that the Security Council did not establish a sanctions committee to oversee the administration of the sanctions. As with the sanctions regime against Libya, the main impetus for the application of the sanctions was to gain custody of suspects alleged to have perpetrated acts of international terrorism. The Council stated on a number of occasions that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>1026</sup> Another notable aspect was the Council's employment of time-delays when imposing sanctions. The initial sanctions, outlined in resolution 1054 (1996), did not enter into force until 10 May 1996 – two weeks after the adoption of the resolution.<sup>1027</sup> The additional sanctions, outlined in resolution 1070 (1996), did not enter into force until more than ninety days after the adoption of resolution 1070 (1996).<sup>1028</sup>

## 14. THE 1132 SIERRA LEONE SANCTIONS REGIME

The Security Council imposed sanctions against Sierra Leone in October 1997, in order to induce the military junta, which had come to power

<sup>1020</sup> *Ibid.*, para. 10(b). <sup>1021</sup> *Ibid.*, annex.

<sup>1022</sup> SC Res. 1372 (28 September 2001), preambular para. 2.

<sup>1023</sup> *Ibid.*, preambular paras. 3–5. <sup>1024</sup> *Ibid.*, preambular para. 6. <sup>1025</sup> *Ibid.*, para. 1.

<sup>1026</sup> See, e.g., SC Res. 1044 (31 January 1996), preambular para. 5; SC Res. 1054 (26 April 1996), preambular para. 9; SC Res. 1372 (28 September 2001), preambular para. 7.

<sup>1027</sup> SC Res. 1054 (26 April 1996), para. 2. <sup>1028</sup> SC Res. 1070 (16 August 1996), para. 4.

the previous May by means of a *coup d'état*, to return control of the country to Sierra Leone's democratically elected government. The 1132 sanctions regime initially consisted of targeted travel and petroleum sanctions, as well as an arms embargo. In June 1998, after the democratically elected government had been returned to power, the initial sanctions were terminated. They were replaced immediately, however, by new sanctions targeting the former military junta and the leaders of the major rebel group in Sierra Leone – the Revolutionary United Front (RUF). Those sanctions consisted of an arms embargo, targeted travel sanctions and diamond sanctions. In June 2003, the diamond sanctions expired. The Council established the 1132 Sierra Leone Sanctions Committee to administer the 1132 sanctions regime and created a Panel of Experts to monitor sanctions implementation.

## 1. Constitutional basis

In October 1997, the Security Council recalled its earlier statements condemning the military coup that had taken place in Sierra Leone on 25 May 1996,<sup>1029</sup> and deplored the fact that the military junta had not taken steps to allow the restoration of the democratically elected government and a return to constitutional order.<sup>1030</sup> The Council expressed grave concern at the continued violence and loss of life in Sierra Leone following the military coup, at the deteriorating humanitarian conditions in that country and at the consequences for neighbouring countries.<sup>1031</sup> It then determined that the situation in Sierra Leone constituted a threat to international peace and security in the region,<sup>1032</sup> and invoked Chapter VII before imposing sanctions.<sup>1033</sup> In subsequent decisions related to the 1132 sanctions regime, the Council again determined that the situation in Sierra Leone continued to constitute a threat to international peace and security<sup>1034</sup> and invoked Chapter VII.<sup>1035</sup>

<sup>1029</sup> SC Res. 1132 (8 October 1997), preambular para. 1. Those statements included S/PRST/1996/29 (27 May 1996); S/PRST/1996/36 (11 July 1996); and S/PRST/1997/42 (6 August 1997).

<sup>1030</sup> SC Res. 1132 (8 October 1997), preambular para. 7. <sup>1031</sup> *Ibid.*, preambular para. 8.

<sup>1032</sup> *Ibid.*, preambular para. 9. <sup>1033</sup> *Ibid.*, preambular para. 10.

<sup>1034</sup> SC Res. 1306 (5 July 2000), preambular para. 4; SC Res. 1385 (19 December 2001), preambular para. 9; SC Res. 1446 (4 December 2002), preambular para. 9.

<sup>1035</sup> SC Res. 1156 (16 March 1998), preambular para. 3; SC Res. 1171 (5 June 1998), preambular para. 4; SC Res. 1306 (5 July 2000), preambular para. 5; SC Res. 1385 (19 December 2001), preambular para. 10; SC Res. 1446 (4 December 2002), preambular para. 10.

## 2. Objectives

The objective of the initial sanctions was for the military junta to take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected government and a return to constitutional order.<sup>1036</sup> The objectives of the sanctions targeting the former military junta and the RUF were the re-establishment of government control throughout the territory of Sierra Leone and the disarmament and demobilisation of all non-governmental forces.<sup>1037</sup> In its decisions imposing and extending the diamond sanctions, the Security Council noted that a key factor in determining whether to extend the measures would be the extent of the government's authority over the diamond-producing areas.<sup>1038</sup>

## 3. Scope

The 1132 sanctions regime initially consisted of targeted travel and petroleum sanctions, as well as an arms embargo. After the return to power of the democratically elected government, the sanctions regime was modified. Thereafter, it consisted of an arms embargo and diamond sanctions, as well as targeted travel sanctions against members of the former military junta and RUF leaders.

### 3.1 Sanctions obligations

The travel sanctions required states to prevent the entry into or transit through their territories of the military junta and adult members of their families, unless it was for verified humanitarian purposes or in order to facilitate the return of the democratically elected government.<sup>1039</sup> The petroleum sanctions required states to prevent the sale or supply to Sierra Leone of petroleum and petroleum products.<sup>1040</sup> The arms embargo required states to prevent the sale or supply to Sierra Leone of arms and related material of all types.<sup>1041</sup>

In March 1998, upon the return to Sierra Leone of its democratically elected president, the Council terminated the petroleum sanctions.<sup>1042</sup>

<sup>1036</sup> SC Res. 1132 (8 October 1997), paras. 1, 19. <sup>1037</sup> SC Res. 1171 (5 June 1998), para. 7.

<sup>1038</sup> SC Res. 1306 (5 July 2000), para. 6; SC Res. 1385 (19 December 2001), para. 3; SC Res. 1446 (4 December 2002), para. 2.

<sup>1039</sup> SC Res. 1132 (8 October 1997), para. 5. <sup>1040</sup> *Ibid.*, para. 6. <sup>1041</sup> *Ibid.*

<sup>1042</sup> SC Res. 1156 (16 March 1998), para. 2.

In June 1998, the Council terminated the remaining sanctions,<sup>1043</sup> but immediately imposed an arms embargo and targeted travel sanctions, which aimed to stifle the ability of rebel groups in Sierra Leone to engage in armed conflict against the government. The arms sanctions required states to prevent the supply of arms to Sierra Leone, apart from to the government through named points of entry or for the use of the Military Observer Group of the Economic Community of West African States (ECOMOG).<sup>1044</sup> The targeted travel sanctions required states to prevent the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front (RUF).<sup>1045</sup>

In July 2000, the Security Council imposed diamond sanctions, with the aim of curtailing the activities of rebel groups. The new measures required states to prevent the import to their territories of rough diamonds originating from Sierra Leone.<sup>1046</sup>

### 3.2 Exemptions

When the Security Council established the 1132 sanctions regime, it exempted travel for verified humanitarian purposes when authorised by the 1132 Committee and noted that states were not obliged to refuse entry to their own nationals.<sup>1047</sup> The Council also provided that the 1132 Committee could approve applications for exemptions from the petroleum sanctions, on a case-by-case basis under a no-objection procedure, from: (a) the democratically elected government of Sierra Leone;<sup>1048</sup> (b) other governments or UN agencies, where such applications were for verified humanitarian purposes;<sup>1049</sup> and (c) for the needs of the Military Observer Group of the Economic Community of West African States (ECOMOG).<sup>1050</sup>

In June 1998, the Security Council permitted the supply of arms to the government of Sierra Leone through named points of entry or for the use of ECOMOG.<sup>1051</sup> It again provided for exemptions from travel sanctions when authorised by the 1132 Committee and noted that nothing obliged states to refuse entry to their nationals.<sup>1052</sup> In May 2000, the Council outlined an additional exemption from the arms embargo, permitting the sale or supply of arms and related material for the use

<sup>1043</sup> SC Res. 1171 (5 June 1998), para. 1. <sup>1044</sup> *Ibid.*, paras. 2–3. <sup>1045</sup> *Ibid.*, para. 5.

<sup>1046</sup> SC Res. 1306 (5 July 2000), para. 1. <sup>1047</sup> SC Res. 1132 (8 October 1997), para. 5.

<sup>1048</sup> *Ibid.*, para. 7(a). <sup>1049</sup> *Ibid.*, para. 7(b). <sup>1050</sup> *Ibid.*

<sup>1051</sup> SC Res. 1171 (5 June 1998), paras. 2–3. <sup>1052</sup> *Ibid.*, para. 5.

in Sierra Leone of member states co-operating with the United Nation Assistance Mission in Sierra Leone (UNAMSIL) and the government of Sierra Leone.<sup>1053</sup>

When the Security Council applied diamond sanctions in July 2000, it provided for the possibility of exemptions for rough diamonds certified by the government through a certificate-of-origin regime.<sup>1054</sup> There was no certification-of-origin regime in place at the time, so the Council requested the government of Sierra Leone to establish one.<sup>1055</sup> In March 2001, the 1132 Committee decided that the new Certificate of Origin regime for Sierra Leone diamonds was in effective operation.<sup>1056</sup>

### 3.3 *Time-limits and extensions*

The diamond sanctions were applied for an initial period of eighteen months.<sup>1057</sup> They were subsequently extended for two further periods of eleven and six months.<sup>1058</sup> In June 2003, the members of the Council agreed not to renew the diamond sanctions, in light of the government of Sierra Leone's increased efforts to manage its diamond industry, ensure proper control over diamond areas and participate in the Kimberley Process.<sup>1059</sup>

## 4. Administration and monitoring

During the course of the 1132 sanctions regime, the Security Council has created two subsidiary entities: the 1132 Sanctions Committee and a Panel of Experts.

### 4.1 *The 1132 Sanctions Committee*

When the Security Council created the 1132 sanctions regime, it also established the 1132 Sierra Leone Sanctions Committee to administer the sanctions.<sup>1060</sup> The 1132 Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to report to the Council with observations and recommendations and to:

<sup>1053</sup> SC Res. 1299 (19 May 2000), para. 3. <sup>1054</sup> SC Res. 1306 (5 July 2000), para. 5.

<sup>1055</sup> *Ibid.*, para. 2. <sup>1056</sup> S/2001/300 (30 March 2001).

<sup>1057</sup> SC Res. 1306 (5 July 2000), para. 6.

<sup>1058</sup> SC Res. 1385 (19 December 2001), para. 3; SC Res. 1446 (4 December 2002), para. 2.

<sup>1059</sup> SC/7778 (5 June 2003); *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council*.

<sup>1060</sup> SC Res. 1132 (8 October 1997), para. 10.

(a) seek from all states further information regarding action taken to implement sanctions;<sup>1061</sup> (b) consider information on sanctions violations and recommend appropriate measures in response to those violations;<sup>1062</sup> (c) report periodically on information regarding alleged sanctions violations, identifying alleged violators where possible;<sup>1063</sup> (d) promulgate guidelines to facilitate sanctions implementation;<sup>1064</sup> (e) consider requests for exemptions from the petroleum sanctions;<sup>1065</sup> (f) designate members of the military junta and adult members of their families subject to the travel sanctions;<sup>1066</sup> (g) examine ECOWAS reports regarding action to ensure the strict implementation of the arms and petroleum sanctions,<sup>1067</sup> as well as reports submitted by states on steps taken to give effect to the sanctions,<sup>1068</sup> and (h) liaise with the ECOWAS Committee on sanctions implementation.<sup>1069</sup>

In June 1998, the Security Council realigned the 1132 Committee's responsibilities. The Committee was now to: (a) report on notifications received from the government of Sierra Leone and from states relating to the registration of legitimate arms imports to Sierra Leone;<sup>1070</sup> (b) seek from all states further information regarding action taken to implement the new sanctions;<sup>1071</sup> (c) consider information on violations of the new sanctions and recommend appropriate measures in response to those violations;<sup>1072</sup> (d) report periodically on alleged violations of the new sanctions, identifying where possible alleged violators;<sup>1073</sup> (e) promulgate guidelines to facilitate sanctions implementation;<sup>1074</sup> (f) designate members of the military junta and leaders of the RUF and adult members of their families subject to the travel sanctions;<sup>1075</sup> and (g) liaise with the ECOWAS Committee on the implementation of the new sanctions.<sup>1076</sup>

The 1132 Committee was subsequently assigned a variety of additional tasks. It was thus to: (a) investigate violations of the arms embargo and report with recommendations;<sup>1077</sup> (b) communicate with the Sierra Leone government regarding the establishment of a certificate-of-origin regime for trading diamonds and report when an

<sup>1061</sup> *Ibid.*, para. 10(a).      <sup>1062</sup> *Ibid.*, para. 10(b).      <sup>1063</sup> *Ibid.*, para. 10(c).

<sup>1064</sup> *Ibid.*, para. 10(d).      <sup>1065</sup> *Ibid.*, paras. 7, 10(e).

<sup>1066</sup> *Ibid.*, para. 10(f).      <sup>1067</sup> *Ibid.*, para. 9.

<sup>1068</sup> *Ibid.*, paras. 10(g), 13.      <sup>1069</sup> *Ibid.*, para. 10(h).

<sup>1070</sup> SC Res. 1171 (5 June 1998), para. 4. The Committee thus submitted the following reports: S/1998/740 (7 August 1998); S/1998/1170 (15 December 1998).

<sup>1071</sup> SC Res. 1171 (5 June 1998), para. 6.      <sup>1072</sup> *Ibid.*      <sup>1073</sup> *Ibid.*      <sup>1074</sup> *Ibid.*      <sup>1075</sup> *Ibid.*

<sup>1076</sup> *Ibid.*      <sup>1077</sup> S/PRST/1999/1 (7 January 1999).

effective regime was in operation;<sup>1078</sup> (c) seek from all states further information regarding action taken to implement diamond sanctions;<sup>1079</sup> (d) consider information concerning violations of diamond sanctions, identifying alleged violators where possible;<sup>1080</sup> (e) report periodically on alleged violations of diamond sanctions, identifying alleged violators;<sup>1081</sup> (f) promulgate guidelines to facilitate the implementation of diamond sanctions;<sup>1082</sup> (g) continue co-operating with other relevant sanctions committees, including in particular the 864 UNITA and 985 Liberia Committees;<sup>1083</sup> (h) hold an exploratory hearing in New York to assess the role of diamonds in the Sierra Leone conflict and the link between trade in Sierra Leone diamonds and trade in arms in violation of sanctions;<sup>1084</sup> (i) receive reports from states on measures taken to implement arms and travel sanctions;<sup>1085</sup> (j) strengthen contacts with regional and international organisations, including ECOWAS, the OAU and INTERPOL, with a view to identifying ways to improve effective implementation of the arms and travel sanctions;<sup>1086</sup> (k) make relevant information publicly available through appropriate media, including through the improved use of information technology;<sup>1087</sup> and (l) continue consideration of the arms and travel sanctions and present its views to the Council.<sup>1088</sup>

By the end of 2005, the 1132 Committee had held 35 formal meetings<sup>1089</sup> and issued eight annual reports, as well as a number of other reports related to sanctions implementation.<sup>1090</sup> The Committee has been involved in some innovative activities, including: (a) missions by the Committee Chairman to facilitate sanctions implementation;<sup>1091</sup> (b) convening an exploratory hearing on Sierra Leone diamonds;<sup>1092</sup> and (c) holding joint informal meetings with other sanctions committees, including the 864 and 1343 Committees.<sup>1093</sup>

<sup>1078</sup> SC Res. 1306 (5 July 2000), paras. 4–5. <sup>1079</sup> *Ibid.*, para. 7(a). <sup>1080</sup> *Ibid.*, para. 7(b).

<sup>1081</sup> *Ibid.*, para. 7(c). <sup>1082</sup> *Ibid.*, para. 7(d). <sup>1083</sup> *Ibid.*, para. 7(e). <sup>1084</sup> *Ibid.*, para. 12.

<sup>1085</sup> *Ibid.*, para. 17. <sup>1086</sup> *Ibid.*, para. 22. <sup>1087</sup> *Ibid.*, para. 23.

<sup>1088</sup> SC Res. 1446 (4 December 2002), para. 4.

<sup>1089</sup> For the last reference to the holding of a formal meeting, see S/2005/44 (25 January 2005), para. 9.

<sup>1090</sup> See Appendix 3, Table F.

<sup>1091</sup> Visits were undertaken to the region by the Chairman in December 1997 and December 1998: S/1998/1236 (31 December 1998), paras. 19–21. In June and July 2002, the Chairman visited the region and other locations, including Brussels, Vienna and Lyon: S/2002/1414 (24 December 2002), para. 23.

<sup>1092</sup> S/2000/1150 (4 December 2000); S/2000/1238 (26 December 2000), paras. 13–14.

<sup>1093</sup> S/2002/1414 (24 December 2002), para. 20.

In its annual reports, the Committee has regularly referred to alleged sanctions violations.<sup>1094</sup> In its first report, the Committee observed that non-governmental forces were continuing to launch armed attacks into Sierra Leone and that arms and ammunition were continuing to cross into Sierra Leone from neighbouring countries, including Liberia.<sup>1095</sup> The Committee's future efforts to improve sanctions implementation would include: (a) providing support for national or joint monitoring of the border between Sierra Leone and Liberia;<sup>1096</sup> (b) identifying focal points within ECOMOG/ECOWAS, in order to facilitate closer liaison between the Committee and that regional organisation;<sup>1097</sup> (c) frequent reporting from the United Nations Observer Mission in Sierra Leone (UNOMSIL) to the Committee;<sup>1098</sup> and (d) continuing to distribute, including through the UN presence in the region, an updated list of individuals subject to the travel sanctions.<sup>1099</sup>

In its subsequent reports, the Committee's observations have been less extensive. In its report for 1999, the Committee observed that reports from ECOMOG and UNOMSIL could help to strengthen the effectiveness of the arms embargo.<sup>1100</sup> In its later reports, the Committee noted that it did not have a specific monitoring mechanism to ensure effective sanctions implementation and it urged member states and organizations to provide it with pertinent information.<sup>1101</sup> The Committee also reiterated that reports through ECOWAS and the United Nations Assistance Mission in Sierra Leone (UNAMSIL) could strengthen the effectiveness of the arms embargo.<sup>1102</sup> Since early 2005, with Sierra Leone moving from a peacekeeping to a peacebuilding phase, the Committee has repeatedly observed that the time might be ripe for the Security Council to revisit and streamline the legal basis of the 1132 sanctions regime.<sup>1103</sup>

<sup>1094</sup> S/1998/1236 (31 December 1998), paras. 16–18; S/1999/1300 (31 December 1999), paras. 10–13; S/2000/1238 (26 December 2000), paras. 20–22; S/2002/50 (14 January 2002), paras. 16–17; S/2002/1414 (24 December 2002), paras. 16–19.

<sup>1095</sup> S/1998/1236 (31 December 1998), paras. 23–24. <sup>1096</sup> *Ibid.*, para. 25(a).

<sup>1097</sup> *Ibid.*, para. 25(b). <sup>1098</sup> *Ibid.*, para. 25(c). <sup>1099</sup> *Ibid.*, para. 25(d).

<sup>1100</sup> S/1999/1300 (31 December 1999), para. 14.

<sup>1101</sup> S/2000/1238 (26 December 2000), para. 26; S/2002/50 (14 January 2002), para. 20; S/2002/1414 (24 December 2002), para. 24; S/2004/166 (27 February 2004), para. 20.

<sup>1102</sup> S/2000/1238 (26 December 2000), para. 27; S/2002/50 (14 January 2002), para. 20; S/2002/1414 (24 December 2002), para. 24.

<sup>1103</sup> S/2005/44 (25 January 2005), para. 18; S/2005/843 (30 December 2005), para. 17; S/2006/1043 (28 December 2006) para. 14.



#### 4.2 *The Secretary-General*

When the Council established the 1132 sanctions regime, it requested the UNSG to provide assistance to the 1132 Committee,<sup>1104</sup> to report on measures taken by states to implement sanctions,<sup>1105</sup> and to report on the compliance of the military junta with the requirements of the sanctions regime.<sup>1106</sup> The Council subsequently tasked the UNSG with a number of additional responsibilities, including to: (a) receive from the Government of Sierra Leone the list of points of entry through which arms and related material would be permitted to enter Sierra Leone;<sup>1107</sup> (b) report on exports of arms and related material to Sierra Leone and progress towards the re-establishment of government control throughout Sierra Leone and in the disarmament and demobilisation of all non-government forces;<sup>1108</sup> (c) establish the Sierra Leone Panel of Experts and provide the necessary resources to support the Panel's work;<sup>1109</sup> (d) publicise the provisions of resolutions imposing and extending the diamond sanctions.<sup>1110</sup>

#### 4.3 *The Panel of Experts on the Sierra Leone sanctions regime*

In July 2000, the Security Council established a Panel of Experts to investigate implementation of the 1132 sanctions regime.<sup>1111</sup> The Panel was to: (a) collect information on possible violations of the arms embargo against Sierra Leone and on the link between the trade in diamonds and the trade in arms and related material;<sup>1112</sup> (b) consider the adequacy of air traffic systems in the region for detecting flights suspected of violating the arms sanctions;<sup>1113</sup> (c) participate in the exploratory hearing in New York on the role of diamonds in the Sierra Leone conflict and the link between the trade in diamonds and the trade in arms in that country;<sup>1114</sup> and (d) report, through the 1132 Committee, with its observations and recommendations on strengthening implementation of the arms and diamond sanctions.<sup>1115</sup>

<sup>1104</sup> SC Res. 1132 (8 October 1997), para. 12. <sup>1105</sup> *Ibid.*, para. 13. <sup>1106</sup> *Ibid.*, para. 16.

<sup>1107</sup> SC Res. 1171 (5 June 1998), para. 2. <sup>1108</sup> *Ibid.*, para. 8.

<sup>1109</sup> SC Res. 1306 (5 July 2000), para. 19.

<sup>1110</sup> *Ibid.*, para. 24; SC Res. 1385 (19 December 2001), para. 5; SC Res. 1446 (4 December 2002), para. 5.

<sup>1111</sup> SC Res. 1306 (5 July 2000), para. 19. <sup>1112</sup> *Ibid.*, para. 19(a).

<sup>1113</sup> *Ibid.*, para. 19(b). <sup>1114</sup> *Ibid.*, para. 19(c).

<sup>1115</sup> *Ibid.*, para. 19(d).

The Panel of Experts submitted its written report to the Council in December 2000.<sup>1116</sup> The Panel's report remains perhaps the most sophisticated analysis yet completed by a body charged with the administration or monitoring of a UN sanctions regime. It contained a range of insightful observations and provided numerous concrete recommendations for action that might be taken to address violations of the 1132 sanctions regime and UN sanctions in general. The Security Council has subsequently acted upon many of the Panel's recommendations in addressing the situations in Sierra Leone, Liberia and West Africa in general, as well as in its oversight of other arms embargoes and diamond sanctions.

In its findings on the diamond trade, the Panel noted that diamonds were the major source of income for the RUF, providing enough revenue to sustain the group's military operations.<sup>1117</sup> The vast majority of RUF diamonds had been traded via Liberia, in a manner indicating that the trade was being conducted with the permission and involvement of Liberian government officials.<sup>1118</sup> The Panel reviewed Sierra Leone's certificate-of-origin regime and concluded that, although the regime was a positive development, it was unlikely to achieve the desired results in the absence of effective controls of the diamond trade in neighbouring countries and in the major global diamond trading centres.<sup>1119</sup>

In order to improve implementation of diamond sanctions, the Panel recommended that: (a) a global certification scheme should be developed and endorsed by the Security Council;<sup>1120</sup> (b) until such a global certification scheme was developed, all diamond exporting countries in West Africa should be required to adopt certification schemes such as the one operating in Sierra Leone;<sup>1121</sup> (c) diamond sanctions should be imposed against Liberia until it had demonstrated that it was no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone, and until it too had adopted a certificate-of-origin regime for the export of diamonds;<sup>1122</sup> (d) major diamond trading centres, including Belgium, the United Kingdom, Switzerland, South Africa, India, the United States and Israel, should reach a common agreement on a system for verifying the country of origin and provenance of diamonds;<sup>1123</sup> (e) if diamonds were mixed and/or re-invoiced in a free trade zone, then the

<sup>1116</sup> S/2000/1195 (20 December 2000). <sup>1117</sup> *Ibid.*, para. 1. <sup>1118</sup> *Ibid.*, para. 2.

<sup>1119</sup> *Ibid.*, paras. 4–6. <sup>1120</sup> *Ibid.*, paras. 7, 155. <sup>1121</sup> *Ibid.*, paras. 8, 156.

<sup>1122</sup> *Ibid.*, paras. 9, 157. <sup>1123</sup> *Ibid.*, paras. 14, 162.

government of that country must take responsibility for verifying the bona fides of the diamonds before they were re-exported;<sup>1124</sup> and (f) the Security Council should possess an ongoing capacity to monitor sanctions implementation in order to prevent the overlap and duplication that flowed from establishing concurrent ad hoc bodies.<sup>1125</sup>

In its findings on implementation of the arms embargo, the Panel reported that the region was 'awash with arms'.<sup>1126</sup> It had found 'unequivocal and overwhelming evidence' that Liberia had been actively supporting the RUF at all levels, by providing it with training, weapons and related material, logistical support, a staging ground for attacks and a safe haven for retreat, recuperation and public relations activities.<sup>1127</sup> The Panel had also found conclusive evidence of weapons supply lines via Burkina Faso through Liberia to Sierra Leone and alleged that Liberian President Charles Taylor was actively involved in fuelling violence in Sierra Leone.<sup>1128</sup>

The Panel outlined a large number of recommendations for improving implementation of the arms embargo, including that: (a) all planes operating with a Liberian registration, but not based in Liberia, should be grounded immediately;<sup>1129</sup> (b) the Security Council should publicise the list of grounded Liberian aircraft;<sup>1130</sup> (c) the Security Council should encourage the reinforcement of the ECOWAS Programme for Coordination and Assistance for Security and Development (PCASED), with support from Interpol and the World Customs Organization, and with the aim of establishing a capacity to monitor compliance with arms embargoes;<sup>1131</sup> (d) the Security Council should consider placing an embargo on weapons exports from specific producer countries until internationally acceptable certification schemes had been developed for the trade of weapons;<sup>1132</sup> (e) existing Security Council arms embargoes should be amended to include a ban on the provision of military and paramilitary training;<sup>1133</sup> (f) a training programme on sanctions monitoring should be developed for national law enforcement and security agencies;<sup>1134</sup> (g) a manual should be developed for worldwide use on monitoring sanctions at airports;<sup>1135</sup> and (h) consideration should be given to placing UN monitors at major airports in the region.<sup>1136</sup>

<sup>1124</sup> *Ibid.*, paras. 16, 164.      <sup>1125</sup> *Ibid.*, paras. 17, 165.      <sup>1126</sup> *Ibid.*, paras. 19–20.      <sup>1127</sup> *Ibid.*

<sup>1128</sup> *Ibid.*, paras. 21–23.      <sup>1129</sup> *Ibid.*, paras. 32, 255.      <sup>1130</sup> *Ibid.*, paras. 34, 257.

<sup>1131</sup> *Ibid.*, paras. 36, 259.      <sup>1132</sup> *Ibid.*, paras. 39, 262.      <sup>1133</sup> *Ibid.*, paras. 42, 265.

<sup>1134</sup> *Ibid.*, paras. 44, 267.      <sup>1135</sup> *Ibid.*      <sup>1136</sup> *Ibid.*, paras. 45, 268.

The Panel also recommended that the Security Council should consider applying a range of sanctions against Liberia and Liberian officials until it stopped supporting the RUF and violating UN sanctions. Potential measures included travel sanctions against Liberian officials and diplomats,<sup>1137</sup> and temporary timber sanctions.<sup>1138</sup> The Panel further recommended that the Security Council should consider creating a capacity within the UN for the ongoing monitoring of Security Council sanctions and embargoes, observing that it was imperative to establish an ‘in-house’ knowledge base on issues such as conflict diamonds and the illicit trade in weapons and related material.<sup>1139</sup>

## 5. Termination of aspects of the Sierra Leone sanctions regime

Terminated components of the 1132 sanctions regime include the initial measures imposed against Sierra Leone by resolution 1132 (1996) with the aim of securing the return to power of the democratically elected government of Sierra Leone,<sup>1140</sup> as well as diamond sanctions.<sup>1141</sup> At the time of writing, the arms and targeted travel sanctions remain in place.

## 6. Conclusions

The Sierra Leone sanctions regime has exhibited a number of noteworthy characteristics. The Security Council established its second Panel of Experts to investigate the implementation of a sanctions regime. The findings of the Panel were extensive and led, in turn, to the application of a new sanctions regime – the 1343 Liberia sanctions regime. The Security Council applied diamond sanctions for the second time, targeting the link between the diamond trade and the flow of illicit weapons as it had in its oversight of the 864 UNITA sanctions regime. The Council also employed time-limits for the second time, providing that the diamond sanctions would expire on a specific date. It had first experimented with time limits when it established the 1298 Eritrea and Ethiopia sanctions regime.

<sup>1137</sup> *Ibid.*, paras. 48, 271. <sup>1138</sup> *Ibid.*, paras. 49, 272. <sup>1139</sup> *Ibid.*, paras. 50, 273.

<sup>1140</sup> SC Res. 1156 (16 March 1998), para. 2; SC Res. 1171 (5 June 1998), para. 1.

<sup>1141</sup> SC/7778 (5 June 2003).

## 15. THE 1160 SANCTIONS REGIME AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA

The Security Council imposed sanctions against the Federal Republic of Yugoslavia<sup>1142</sup> (FRY) in March 1998, after a period of rising tension between Serbian authorities and the Kosovar Albanian community. The 1160 sanctions regime consisted of a general arms embargo, whose aim was to foster peace and stability in Kosovo. The Council established the 1160 FRY Sanctions Committee to administer the 1160 sanctions regime, but it did not make any significant subsequent modifications to the sanctions. The 1160 sanctions regime was eventually terminated in September 2001.

### 1. Constitutional basis

When the Security Council established the FRY sanctions regime, it did not explicitly identify a threat to or breach of international peace and security. Moreover, although the Council had determined on numerous occasions that the situation in parts of the former Yugoslavia had constituted a threat to international peace and security,<sup>1143</sup> it had not made a prior determination of a threat to or breach of the peace in relation to the situation in Kosovo. The Council made it clear, however, that it was acting under Chapter VII of the UN Charter,<sup>1144</sup> thus raising the question whether its decision to authorise sanctions was valid in the absence of a prior determination of a threat to the peace, breach of the peace or act of aggression.

When the Council adopted resolution 1160 (1998), Egypt pointed out that the resolution had been adopted without a prior determination of a threat to international peace and security.<sup>1145</sup> It acknowledged that the Security Council was ‘the master of its own procedures’, but stressed that as a rule the constitutional requirements of the Charter should be followed scrupulously.<sup>1146</sup> The Council’s failure to do so can be attributed to the positions of Russia and China, neither of which were prepared to characterise the situation in Kosovo as a threat to

<sup>1142</sup> In its decisions relating to the 1160 sanctions regime, the Council referred to the ‘Federal Republic of Yugoslavia’, rather than the ‘Federal Republic of Yugoslavia (Serbia and Montenegro)’.

<sup>1143</sup> See the summaries of the 713, 757 and 820 sanctions regimes.

<sup>1144</sup> SC Res. 1160 (31 March 1998), preambular para. 8.

<sup>1145</sup> S/PV.3868 (31 March 1998), p. 29. <sup>1146</sup> *Ibid.*

international peace and security. Russia bluntly stated that ‘the situation in Kosovo, despite its complexity, does not constitute a threat to regional, much less international peace and security’ and argued that it was ‘precisely [that] understanding that [was] reflected in the draft resolution’.<sup>1147</sup> China observed that: ‘We do not think that the situation in Kosovo endangers regional peace and security.’<sup>1148</sup>

The Russian and Chinese positions meant that, although many Council members explicitly characterised the situation in Kosovo as a threat to international peace and security,<sup>1149</sup> it was not possible to include a determination of such a threat in the text of resolution 1160 (1998). The extent to which the Council’s failure to make a prior determination of a threat to the peace affected the validity of its decision to apply sanctions is open to conjecture. One interpretation might be that the Council’s adoption of resolution 1160 (1998) under Chapter VII amounted to an implicit determination of a threat to international peace and security. The United Kingdom appeared to employ just such an interpretation, arguing that: ‘In adopting this resolution, the Security Council sends an unmistakable message: that by acting under Chapter VII of the Charter, the Council considers that the situation in Kosovo constitutes a threat to international peace and security in the Balkans region.’<sup>1150</sup> In any event, the Council affirmed sometime later that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region,<sup>1151</sup> when it again invoked Chapter VII.<sup>1152</sup>

## 2. Objectives

When it established the 1160 FRY sanctions regime, the Security Council articulated a number of objectives. The general objectives of the regime were to foster peace and stability in Kosovo<sup>1153</sup> and to bring about a political solution to the situation in Kosovo through

<sup>1147</sup> *Ibid.*, p. 11.      <sup>1148</sup> *Ibid.*

<sup>1149</sup> *Ibid.*, p. 3 (Japan, Costa Rica), p. 5 (Sweden), pp. 7–8 (Slovenia), p. 10 (Portugal), p. 12 (UK), p. 13 (US).

<sup>1150</sup> *Ibid.*, p. 12.

<sup>1151</sup> SC Res. 1199 (23 September 1998), preambular para. 14; SC Res. 1203 (24 October 1998), preambular para. 15; SC Res. 1244 (10 June 1999), preambular para. 12.

<sup>1152</sup> SC Res. 1203 (24 October 1998), preambular para. 16; SC Res. 1244 (10 June 1999), preambular para. 13; SC Res. 1367 (10 September 2001), preambular para. 5.

<sup>1153</sup> SC Res. 1160 (31 March 1998), para. 8.

dialogue.<sup>1154</sup> The regime's more particular objectives consisted of various steps that the Federal Republic of Yugoslavia would have to take in order for the sanctions to be terminated. Those steps included: (a) beginning a substantive dialogue on 'political status issues';<sup>1155</sup> (b) withdrawing its special police units and preventing action by its security forces against the civilian population;<sup>1156</sup> (c) allowing access to Kosovo to humanitarian organisations, representatives of the Contact Group and other embassies;<sup>1157</sup> (d) accepting a mission by the Personal Representative of the Chairman-in-Office of the OSCE for the Federal Republic of Yugoslavia that would include a new and specific mandate for addressing the problems in Kosovo, as well as the return of the long-term missions of the OSCE;<sup>1158</sup> and (e) facilitating a mission to Kosovo by the United Nations High Commissioner for Human Rights.<sup>1159</sup>

The Council subsequently articulated additional objectives connected to the sanctions regime. In September 1998, it demanded that the Federal Republic of Yugoslavia: (a) cease all action by security forces affecting the civilian population and withdraw the security units used for civilian repression;<sup>1160</sup> (b) enable effective and continuous international monitoring of the situation in Kosovo by the European Community Monitoring Mission and diplomatic missions;<sup>1161</sup> (c) facilitate, in agreement with the UNHCR and the ICRC, the safe return of refugees and displaced persons and free and unimpeded access to Kosovo for humanitarian organisations and supplies;<sup>1162</sup> and (d) agree with the Kosovo Albanian community on a timetable for implementing confidence-building measures and finding a political solution to the situation in Kosovo.<sup>1163</sup>

### 3. Scope

#### 3.1 Sanctions obligations

The 1160 sanctions regime consisted of an arms embargo against the territory of the Federal Republic of Yugoslavia, including Kosovo. More specifically, the Council required all states to prevent the sale of supply to the FRY of arms and related material.<sup>1164</sup> In a novel qualification of the meaning of the term 'arms and related material', the Council noted

<sup>1154</sup> *Ibid.*, para. 1. <sup>1155</sup> *Ibid.*, para. 16(a). <sup>1156</sup> *Ibid.*, para. 16(b).

<sup>1157</sup> *Ibid.*, para. 16(c). <sup>1158</sup> *Ibid.*, para. 16(d). <sup>1159</sup> *Ibid.*, para. 16(e).

<sup>1160</sup> SC Res. 1199 (23 September 1998), para. 4(a). <sup>1161</sup> *Ibid.*, para. 4(b).

<sup>1162</sup> *Ibid.*, para. 4(c). <sup>1163</sup> *Ibid.*, para. 4(d). <sup>1164</sup> SC Res. 1160 (31 March 1998), para. 8.

that states were also required to prevent the arming and training of forces for terrorist activities in the FRY.<sup>1165</sup> The basic scope of the measures remained unchanged throughout the duration of the sanctions regime.

### 3.2 Exemptions

Although the Security Council did not subsequently add to the arms embargo, it did exempt equipment for the use of OSCE and NATO verification missions,<sup>1166</sup> as well as international civil and security presences which subsequently evolved into the UN Interim Administration in Kosovo (UNMIK) and the international security forces in Kosovo (KFOR).<sup>1167</sup>

## 4. Administration and monitoring

In its oversight of the 1160 sanctions regime, the Council bestowed responsibilities for the administration and monitoring of the sanctions upon a sanctions committee, the UNSG and the United Nations Preventive Deployment Force (UNPREDEP). The Council also dispatched a mission to Kosovo while the 1160 sanctions regime was in effect.

### 4.1 The 1160 Sanctions Committee

The Security Council established a Sanctions Committee in the same resolution that created the 1160 sanctions regime.<sup>1168</sup> The 1160 Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to report to the Council on its work and with its observations and recommendations, and to: (a) seek from all states information regarding action to implement sanctions;<sup>1169</sup> (b) consider information brought to its attention by any state concerning sanctions violations and recommend appropriate measures in response thereto;<sup>1170</sup> (c) report periodically on alleged sanctions violations;<sup>1171</sup> (d) promulgate guidelines to facilitate sanctions implementation;<sup>1172</sup> and (e) examine the reports submitted to it by states.<sup>1173</sup>

In the course of its activities, the 1160 committee issued three annual reports and one final report.<sup>1174</sup> The Committee's main observation was

<sup>1165</sup> *Ibid.* <sup>1166</sup> SC Res. 1203 (24 October 1998), para. 15.

<sup>1167</sup> SC Res. 1244 (10 June 1999), para. 16. <sup>1168</sup> SC Res. 1160 (31 March 1998), para. 9.

<sup>1169</sup> *Ibid.*, para. 9(a). <sup>1170</sup> *Ibid.*, para. 9(b). <sup>1171</sup> *Ibid.*, para. 9(c). <sup>1172</sup> *Ibid.*, para. 9(d).

<sup>1173</sup> *Ibid.*, para. 9(e). <sup>1174</sup> See Appendix 3, Table F.



that its work was affected by the absence of an effective, comprehensive monitoring mechanism to ensure effective sanctions implementation.<sup>1175</sup> Among the Committee's major recommendations were that: (a) an expert study should be conducted on the military potential of the parties targeted by the sanctions, including analysis of external funding;<sup>1176</sup> (b) the Secretariat should develop more uniform reporting requirements to facilitate the collection of relevant information from states;<sup>1177</sup> and (c) further steps should be taken to strengthen the envisaged monitoring arrangements.<sup>1178</sup>

#### 4.2 *The Secretary-General*

When the Council established the 1160 sanctions regime, it requested the UNSG to: (a) provide assistance to the 1160 Committee;<sup>1179</sup> (b) report regularly on the situation in Kosovo and implementation of resolution 1160 (1998);<sup>1180</sup> and (c) report in the event that FRY had complied with the objectives of the sanctions regime, in which event the Council would terminate sanctions.<sup>1181</sup>

#### 4.3 *The United Nations Preventive Deployment Force (UNPREDEP)*

In July 1998, the Council decided that the United Nations Preventive Deployment Force (UNPREDEP), which was based in the former Yugoslav Republic of Macedonia, would monitor and report on illicit arms flows and other activities prohibited by the 1160 sanctions regime.<sup>1182</sup>

#### 4.4 *The Security Council mission to Kosovo*

In April 2000, the Council decided to send a mission to Kosovo.<sup>1183</sup> The mission's mandate was to enhance support for the implementation of the Council's decisions addressing Kosovo, including reviewing sanctions implementation.<sup>1184</sup> The mission reported that it had discussed with KFOR the issue of strengthening sanctions implementation.<sup>1185</sup> The KFOR Commander had informed the mission that he was sending monthly reports to NATO on the question.<sup>1186</sup> The mission therefore

<sup>1175</sup> S/2000/633 (29 June 2000), para. 20; S/2001/102 (5 February 2001), para. 17.

<sup>1176</sup> S/1999/216 (4 March 1999), para. 21. <sup>1177</sup> *Ibid.*, para. 23.

<sup>1178</sup> S/2000/633 (29 June 2000), para. 24. <sup>1179</sup> SC Res. 1160 (31 March 1998), para. 11.

<sup>1180</sup> *Ibid.*, para. 14. <sup>1181</sup> *Ibid.*, para. 16. <sup>1182</sup> SC Res. 1186 (1998) (21 July 1998), para. 1.

<sup>1183</sup> S/2000/320 (14 April 2000). <sup>1184</sup> *Ibid.*, annex, para. 2(d)

<sup>1185</sup> S/2000/363 (29 April 2000), para. 15. <sup>1186</sup> *Ibid.*, para. 16.

argued that detailed information on KFOR's sanctions implementation activities should be provided to the 1160 Committee.<sup>1187</sup>

## 5. Termination

In early September 2001, the UNSG sent a letter to the President of the Security Council, stating that he believed that the FRY had complied with the provisions of resolution 1160 (1998).<sup>1188</sup> He noted that the new FRY authorities were co-operating constructively with the international community in its efforts to bring peace and stability to the Balkan region.<sup>1189</sup> On 10 September 2001, the Council adopted resolution 1367 (2001), in which it noted with satisfaction that the conditions for lifting sanctions had been satisfied, then terminated the 1160 sanctions regime and dissolved the 1160 Committee.<sup>1190</sup>

## 6. Conclusions

The most notable aspect of the FRY sanctions regime was the manner in which the Security Council imposed sanctions without first determining the existence of a threat to the peace. As discussed above, this was problematic from a 'constitutional' perspective, as the UN founders appear to have designed Chapter VII in the understanding that, in accordance with Article 39, the Security Council would first determine that there is a threat to or breach of the peace before acting to employ enforcement measures under Chapter VII.

### 16. THE 1267 SANCTIONS REGIME AGAINST AFGHANISTAN/THE TALIBAN/AL QAIDA

The Security Council imposed sanctions against the Taliban regime in Afghanistan in October 1999, with the objective of ensuring that the Taliban surrendered for prosecution Usama Bin Laden and ceased providing sanctuary to international terrorists. The sanctions initially consisted of a complex mixture of measures, including travel and aviation sanctions, with the aim of forcing the Taliban to hand over Usama Bin Laden to authorities in countries that had issued an indictment for him.

<sup>1187</sup> *Ibid.*, para. 34. <sup>1188</sup> S/2001/849 (6 September 2001), p. 2. <sup>1189</sup> *Ibid.*

<sup>1190</sup> SC Res. 1367 (10 September 2001), preambular para. 2, paras. 1–2.

The objectives, scope, target and geographical application of the sanctions regime have evolved considerably since the sanctions were first imposed. The focus of the sanctions regime is now upon the activities not just of the Taliban, but also of Al Qaida.<sup>1191</sup> Moreover, the sanctions are no longer concentrated predominantly upon activities taking place in Afghanistan. The Taliban/Al Qaida sanctions regime has therefore become the first regime to focus upon targets that have no specific geographical base. Additional measures applied have included arms, representative, chemical and travel sanctions. The Council established the 1267 Committee to administer sanctions and has created a range of other subsidiary bodies to monitor sanctions implementation, including a committee of experts, a monitoring group and a monitoring team.

## 1. Constitutional basis

When the Security Council first imposed sanctions against the Taliban, it strongly condemned the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>1192</sup> The Council then determined that the failure of the Taliban to comply with a demand it had made in December 1998 to stop providing sanctuary and training for international terrorists and their organisations and to co-operate with efforts to bring indicted terrorists to justice,<sup>1193</sup> constituted a threat to international peace and security.<sup>1194</sup> It also noted that it was acting under Chapter VII, before proceeding to apply sanctions against the Taliban.<sup>1195</sup>

In subsequent decisions related to the sanctions, the Council has consistently invoked Chapter VII.<sup>1196</sup> There has been an evolution, however,

<sup>1191</sup> There has been some inconsistency in the spelling of the name 'Al Qaida' in the decisions of the Security Council. The three most common forms have been 'Al Qaeda', 'Al Qa'ida' and 'Al Qaida'. The latter formulation is used here as it has come to be the standard spelling used in Security Council resolutions.

<sup>1192</sup> SC Res. 1267 (15 October 1999), preambular para. 5.

<sup>1193</sup> The Security Council had made this demand in resolution 1214 (1998): SC Res. 1214 (8 December 1998), para. 13.

<sup>1194</sup> SC Res. 1267 (15 October 1999), preambular para. 8.

<sup>1195</sup> *Ibid.*, preambular para. 10.

<sup>1196</sup> SC Res. 1333 (19 December 2000), preambular para. 19; SC Res. 1363 (30 July 2001), preambular para. 2; SC Res. 1388 (15 January 2001), preambular para. 3; SC Res. 1390 (16 January 2002), preambular para. 10; SC Res. 1452 (20 December 2002), preambular

in the Council's characterisation of the existence of a threat to international peace and security. While the Taliban regime retained power in Afghanistan, the Council again determined – on two occasions – that the failure of the Taliban to comply with the requirements of the sanctions regime constituted a threat to international peace and security,<sup>1197</sup> whilst also reaffirming that the suppression of international terrorism is essential for the maintenance of international peace and security.<sup>1198</sup> Since January 2002, however, the Council has simply reaffirmed that acts of international terrorism constitute a threat to international peace and security.<sup>1199</sup>

## 2. Objectives

The major initial objective of the Taliban/Al Qaida sanctions, as outlined by the Council in resolution 1267 (1999), was to ensure that the Taliban turned over Usama Bin Laden to authorities in a country where he had been indicted.<sup>1200</sup> In December 2000, the Council outlined some additional requirements with which the Taliban needed to comply before the sanctions would be terminated. Thus, as well as ensuring that Usama Bin Laden was turned over to authorities in a country where he had been indicted, the sanctions regime also aimed to ensure that the Taliban: ceased providing sanctuary for international terrorists; took measures to ensure that its territory was not being used by terrorists or for the organisation of terrorist acts against other states; co-operated with efforts to bring indicted terrorists to justice; and closed terrorist camps within its territory.<sup>1201</sup>

In January 2002, the Council determined that the Taliban had failed to comply with the existing objectives of the sanctions regime. Unlike previous resolutions, however, resolution 1390 (2002) did not explicitly state conditions the satisfaction of which would lead to termination of

para. 4; SC Res. 1455 (17 January 2003), preambular para. 8; SC Res. 1526 (30 January 2004), preambular para. 8; SC Res. 1617 (29 July 2005), preambular para. 14; SC Res. 1735 (22 December 2006), preambular para. 16.

<sup>1197</sup> SC Res. 1333 (19 December 2000), preambular para. 14; SC Res. 1363 (30 July 2001), preambular para. 2.

<sup>1198</sup> S/PRST/2000/12 (7 April 2000); SC Res. 1333 (19 December 2000), preambular para. 7.

<sup>1199</sup> SC Res. 1390 (16 January 2002), preambular para. 9; SC Res. 1455 (17 January 2003), preambular para. 7; SC Res. 1617 (29 July 2005), preambular para. 2; SC Res. 1735 (22 December 2006), preambular para. 2.

<sup>1200</sup> SC Res. 1267 (15 October 1999), paras. 2, 14.

<sup>1201</sup> SC Res. 1333 (19 December 2000), paras. 1, 2, 3, 23–24.

the sanctions regime.<sup>1202</sup> Instead, the Council stated that the sanctions would be reviewed after twelve months and either continued or improved, in keeping with ‘the principles and purposes’ of resolution 1390 (2002).<sup>1203</sup> It is unclear why the Council decided to alter its approach and leave the objectives of the sanctions regime vague. One interpretation could be that, as the objectives had been explicitly stated and endorsed in previous resolutions, there was no need to reiterate those objectives. A more likely explanation, however, is that the resolution was deliberately crafted to keep the objectives vague, so that it would be more difficult to terminate the sanctions.

On two subsequent occasions, when strengthening further sanctions implementation, the Council has again noted that the sanctions would be improved after a certain period of time, without articulating the conditions that must be satisfied before sanctions could be terminated.<sup>1204</sup>

### 3. Scope

The 1267 sanctions regime was initially imposed against the Taliban in general and consisted of a combination of aviation and financial sanctions. Those sanctions were subsequently expanded, with the addition of representative, financial, chemical and arms sanctions. Following 11 September 2001, the 1267 sanctions regime was revamped. The geographical nexus with Afghanistan was dropped, with the target becoming members of the Taliban and Al Qaida, wherever they may be located. The revamped sanctions regime consists of financial, travel and arms sanctions against Usama Bin Laden, Al Qaida, the Taliban and associates of those entities.

#### 3.1 *Sanctions obligations*

Resolution 1267 (1999) applied aviation and financial sanctions against Afghanistan and the Taliban. Under the aviation sanctions, all states were required to deny aircraft permission to land in or fly over their territories if owned or operated by the Taliban.<sup>1205</sup> Under the financial sanctions, states were required to freeze funds and other financial

<sup>1202</sup> The Council had done this in resolutions 1267 (1999) and 1333 (2000): see SC Res. 1267 (15 October 1999), para. 14; SC Res. 1333 (19 December 2000), paras. 23, 24.

<sup>1203</sup> SC Res. 1390 (16 January 2002), para. 3.

<sup>1204</sup> SC Res. 1455 (17 January 2003), para. 2; SC Res. 1526 (30 January 2004), para. 3.

<sup>1205</sup> SC Res. 1267 (15 October 1999), para. 4(a).

resources owned directly or indirectly by the Taliban.<sup>1206</sup> In December 2000, the Security Council imposed a combination of arms, representative, financial, chemical and aviation sanctions. Under the arms sanctions, states were required to prevent the provision to the Taliban of arms and related material, as well as military expertise and assistance.<sup>1207</sup> Under the representative sanctions, states were to close all offices on their territories belonging to the Taliban and Afghan airlines.<sup>1208</sup> Under the financial sanctions, states were to freeze the assets of Usama Bin Laden and members of the Al Qaida organisation.<sup>1209</sup> The chemical sanctions required states to prevent the sale to Taliban-controlled areas of a particular chemical used in the production of opium.<sup>1210</sup> Finally, the aviation sanctions required states to prevent all aircraft flying to or from Taliban-controlled territories from landing in, departing from or over-flying their territories.<sup>1211</sup>

In January 2002 the Council adopted resolutions 1388 (2002) and 1390 (2002), which consolidated the sanctions by terminating certain components of the sanctions regime and streamlining others. Among the measures explicitly terminated were the sanctions against Ariana Afghanistan Airlines<sup>1212</sup> and the ban which had been imposed against aircraft owned or operated by the Taliban.<sup>1213</sup> Certain other measures lapsed, owing to the fact that the Council did not reaffirm them. Those measures included the representative sanctions imposed against the Taliban, the sanctions against the provision to Taliban-controlled territory of a particular chemical substance, and the aviation sanctions against flights to or from Taliban-controlled territory.

Through resolution 1390 (2002), the Council streamlined and strengthened the remaining sanctions. Financial sanctions required states to freeze the financial and economic resources of members and associates of the Taliban and Al Qaida.<sup>1214</sup> Travel sanctions required states to prevent the entry into or transit through their territories of individuals appearing on a black-list of individuals associated with the Taliban, Bin Laden and Al Qaida.<sup>1215</sup> Arms sanctions required states to prevent the provision to such entities and individuals of arms and

<sup>1206</sup> *Ibid.*, para. 4(b). <sup>1207</sup> SC Res. 1333 (19 December 2000), para. 5.

<sup>1208</sup> *Ibid.*, paras. 8(a), 8(b). <sup>1209</sup> *Ibid.*, para. 8(c).

<sup>1210</sup> *Ibid.*, para. 10 <sup>1211</sup> *Ibid.*, para. 11.

<sup>1212</sup> In resolution 1388 (2002), the Council terminated the ban on Taliban-controlled aircraft, in so far as it applied to Ariana Afghanistan Airlines: SC Res. 1388 (15 January 2002), paras. 1–2.

<sup>1213</sup> SC Res. 1390 (16 January 2002), para. 1. <sup>1214</sup> *Ibid.*, para. 2(a). <sup>1215</sup> *Ibid.*, para. 2(b).

related material, expertise and assistance.<sup>1216</sup> Moreover, the sanctions were no longer linked primarily to activities within Afghanistan. Thus the arms embargo was upon the provision of arms and related material, expertise and assistance not only to Taliban-controlled territory in Afghanistan, but to the Taliban, Bin Laden, Al Qaida and their associates, no matter where they might be located.

In January 2003, the Council adopted resolution 1455 (2003), by which it decided to improve sanctions implementation.<sup>1217</sup> The scope of the sanctions remained the same, however. In subsequent resolutions the Council has again decided to improve implementation of sanctions, without adding significantly to the prohibitions already in place under the 1267 sanctions regime.<sup>1218</sup> Modifications have included clarifications concerning individuals and groups falling in the category of 'associates' of the Taliban, Al Qaida and Usama Bin Laden,<sup>1219</sup> as well as changes to the process for listing and delisting individuals and entities on the 1267 Consolidated List.<sup>1220</sup> The Council has also adopted initiatives designed to improve sanctions implementation by member states, including a check-list of action taken against listed individuals and entities,<sup>1221</sup> as well as a cover-sheet for submissions for addition to the consolidated list.<sup>1222</sup>

### 3.2 Exemptions

The Security Council has outlined a number of exemptions from the 1267 sanctions regime. When it established the sanctions regime, it exempted from the aviation sanctions flights pursuant to humanitarian need, such as those connected with the Hajj pilgrimage, when approved in advance by the 1267 Committee.<sup>1223</sup> The Council also provided for the possibility of exemptions from the financial sanctions for situations of humanitarian need, as determined by the 1267 Committee.<sup>1224</sup>

<sup>1216</sup> *Ibid.*, para. 2(c). <sup>1217</sup> SC Res. 1455 (17 January 2003), para. 1.

<sup>1218</sup> SC Res. 1526 (30 January 2004), para. 1; SC Res. 1617 (29 July 2005), para. 1; SC Res. 1735 (22 December 2006), para. 1.

<sup>1219</sup> SC Res. 1617 (29 July 2005), paras. 2–3.

<sup>1220</sup> SC Res. 1617 (29 July 2005), paras. 4–6; SC Res. 1735 (22 December 2006), paras. 5–14.

<sup>1221</sup> SC Res. 1617 (29 July 2005), Annex II.

<sup>1222</sup> SC Res. 1735 (22 December 2006), Annex I.

<sup>1223</sup> SC Res. 1267 (15 October 1999), para. 4(a).

<sup>1224</sup> *Ibid.*, para. 4(b). This exemption lapsed in January 2003, however, when the Council streamlined the exemptions process: SC Res. 1452 (20 December 2002), para. 4.

When the Council first applied an arms embargo, it exempted non-lethal supplies intended for humanitarian use, as approved by the 1267 Committee, and protective clothing exported to Afghanistan for the personal use of UN personnel, representatives of the media, and humanitarian workers.<sup>1225</sup> It also exempted from aviation sanctions flights approved in advance by the 1267 Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight would promote discussion of a peaceful resolution of the conflict in Afghanistan, or was likely to promote Taliban compliance with the objectives of the sanctions regime, as well as flights being undertaken for humanitarian purposes by organisations approved by the 1267 Committee.<sup>1226</sup>

Since January 2002, when the Council revamped the 1267 sanctions regime, a number of exemptions have applied from the sanctions. The Security Council has exempted from the travel sanctions travel for the fulfilment of a judicial process or as otherwise approved by the 1267 Committee on a case-by-case basis.<sup>1227</sup> The Council has also clarified that nothing obligates a state to refuse entry to its own nationals.<sup>1228</sup> The Council has also exempted from financial sanctions funds, assets or resources necessary for basic expenses, as notified to the 1267 Committee, or extraordinary expenses,<sup>1229</sup> when approved in advance by the Committee.<sup>1230</sup> It has also qualified that states might allow for frozen accounts to earn interest and to receive outstanding payments owed under contracts, agreements or obligations that had arisen prior to the application of sanctions.<sup>1231</sup>

In December 2006 the Security Council modified the exemptions process for financial sanctions by extending the period for consideration of notifications for basic expenses by the 1267 Committee from forty-eight hours to three working days.<sup>1232</sup> The Council also reiterated that the Committee must make a negative decision, thus requiring the consensus of all fifteen member states, in order to prevent the release of funds and other financial assets under the notification process.<sup>1233</sup>

<sup>1225</sup> SC Res. 1333 (19 December 2000), para. 6. <sup>1226</sup> *Ibid.*, paras. 11–12.

<sup>1227</sup> SC Res. 1390 (16 January 2002), para. 2(b); SC Res. 1526 (30 January 2004), para. 1(b); SC Res. 1617 (29 July 2005), para. 1(b); SC Res. 1735 (22 December 2006), para. 1(b).

<sup>1228</sup> SC Res. 1526 (30 January 2004), para. 1(b); SC Res. 1617 (29 July 2005), para. 1(b); SC Res. 1735 (22 December 2006), para. 1(b).

<sup>1229</sup> SC Res. 1452 (20 December 2002), para. 1(a). <sup>1230</sup> *Ibid.*, para. 1(b).

<sup>1231</sup> *Ibid.*, para. 2. <sup>1232</sup> SC Res. 1735 (22 December 2006), para. 15. <sup>1233</sup> *Ibid.*, para. 16.



### 3.3 *Time-limits and extensions*

When the Council adopted resolution 1333 (2000), imposing arms, representative, financial, chemical and aviation sanctions, it decided that these measures would be applied for a period of twelve months.<sup>1234</sup> In its subsequent resolutions, however, the Council did not incorporate time-limits, instead providing simply that it would ‘review’, ‘improve’ or ‘strengthen’ the sanctions after a given period.<sup>1235</sup>

## 4. Administration and monitoring

The Security Council has created four subsidiary entities to facilitate the implementation of the 1267 sanctions regime: a sanctions committee, a committee of experts, a monitoring mechanism and a monitoring team. The Council has also bestowed various responsibilities upon the UNSG, in particular for reporting on the humanitarian implications of the application of sanctions.

### 4.1 *The 1267 Sanctions Committee*

The Security Council established the 1267 Sanctions Committee in the same resolution which initiated the 1267 sanctions regime.<sup>1236</sup> The Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to report to the Council on its work and with its observations and recommendations, and to: (a) seek from all states information regarding action to implement sanctions;<sup>1237</sup> (b) consider information brought to its attention by states concerning sanctions violations and recommend appropriate measures in response thereto;<sup>1238</sup> (c) report periodically on the impact of sanctions, including their humanitarian implications;<sup>1239</sup> (d) report periodically on information submitted to it regarding alleged sanctions violations, identifying where possible persons or entities reported to be engaged in such violations;<sup>1240</sup> (e) designate the aircrafts and funds or financial resources subject to the sanctions;<sup>1241</sup> (f) decide upon requests for exemptions;<sup>1242</sup> (g) examine the reports and information

<sup>1234</sup> SC Res. 1333 (19 December 2000), para. 23.

<sup>1235</sup> SC Res. 1390 (16 January 2002), para. 3; SC Res. 1455 (17 January 2003), paras. 1–2; SC Res. 1526 (30 January 2004), paras. 1, 3; SC Res. 1617 (29 July 2005), para. 21; SC Res. 1735 (22 December 2006), para. 33.

<sup>1236</sup> SC Res. 1267 (15 October 1999), para. 6. <sup>1237</sup> *Ibid.*, para. 6(a).

<sup>1238</sup> *Ibid.*, para. 6(b). <sup>1239</sup> *Ibid.*, para. 6(c). <sup>1240</sup> *Ibid.*, para. 6(d).

<sup>1241</sup> *Ibid.*, para. 6(e). <sup>1242</sup> *Ibid.*, para. 6(f).

submitted to it by states;<sup>1243</sup> and (h) determine appropriate arrangements to improve monitoring of sanctions implementation.<sup>1244</sup>

In December 2000, the Committee was requested to: (a) establish and maintain a list of all points of entry and landing for aircraft within the territory of Afghanistan under Taliban control;<sup>1245</sup> (b) establish and maintain a list of individuals and entities designated as being associated with Usama bin Laden;<sup>1246</sup> (c) decide upon requests for exemptions;<sup>1247</sup> (d) establish and maintain a list of approved organisations and governmental relief agencies which were providing humanitarian assistance to Afghanistan;<sup>1248</sup> (e) make relevant information regarding sanctions implementation publicly available through appropriate media;<sup>1249</sup> (f) consider a visit to countries in the region by the Committee Chairman to enhance sanctions implementation;<sup>1250</sup> (g) report periodically on information submitted regarding possible sanctions violations and make recommendations for strengthening sanctions effectiveness;<sup>1251</sup> and (h) report on the implementation of resolution 1363 (2001).<sup>1252</sup>

In January 2002, when the Security Council revamped the 1267 sanctions regime, it requested the Committee to: (a) update regularly the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban;<sup>1253</sup> (b) seek from states information regarding action taken to implement sanctions;<sup>1254</sup> (c) report periodically on information submitted to it regarding sanctions implementation;<sup>1255</sup> (d) promulgate guidelines and criteria to facilitate sanctions implementation;<sup>1256</sup> (e) make relevant information, including the travel ban and assets freeze list, publicly available through appropriate media;<sup>1257</sup> and (f) co-operate with other relevant sanctions committees and the Counterterrorism Committee (CTC).<sup>1258</sup>

The Council subsequently requested the 1267 Committee to: (a) maintain a list of states whose notifications of intent to take advantage of the exemption from the financial sanctions for basic expenses had not been rejected;<sup>1259</sup> (b) consider requests for exemptions for extraordinary

<sup>1243</sup> *Ibid.*, para. 6(g). <sup>1244</sup> *Ibid.*, para. 12.

<sup>1245</sup> SC Res. 1333 (19 December 2000), para. 16(a).

<sup>1246</sup> *Ibid.*, para. 16(b). <sup>1247</sup> *Ibid.*, para. 16(c).

<sup>1248</sup> *Ibid.*, para. 16(d). Organisations on the list could then be exempted from the aviation sanctions for activities involving the provision of humanitarian supplies, in accordance with para. 12 of the same resolution.

<sup>1249</sup> *Ibid.*, para. 16(e). <sup>1250</sup> *Ibid.*, para. 16(f). <sup>1251</sup> *Ibid.*, para. 16(g).

<sup>1252</sup> SC Res. 1363 (30 July 2001), para. 6. <sup>1253</sup> SC Res. 1390 (16 January 2002), para. 5(a).

<sup>1254</sup> *Ibid.*, para. 5(b). <sup>1255</sup> *Ibid.*, para. 5(c). <sup>1256</sup> *Ibid.*, para. 5(d). <sup>1257</sup> *Ibid.*, para. 5(e).

<sup>1258</sup> *Ibid.*, para. 5(f). <sup>1259</sup> SC Res. 1452 (20 December 2002), para. 3(a).

expenses;<sup>1260</sup> (c) circulate to member states on a quarterly basis the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban;<sup>1261</sup> (d) consider a visit to selected countries by the Committee Chairman and/or Committee members to enhance sanctions implementation;<sup>1262</sup> (e) circulate a written assessment of actions taken by states to implement sanctions;<sup>1263</sup> (f) brief the Council on the work of the Committee and the Monitoring Group and on reports received from states on steps taken to implement sanctions;<sup>1264</sup> (g) provide detailed oral assessments of member state implementation of sanctions, with a view to recommending further measures to improve the sanctions;<sup>1265</sup> (h) assess information for the Council's review regarding effective sanctions implementation;<sup>1266</sup> (i) consider visits to selected countries by the Chairman and/or Committee members to enhance effective sanctions implementation;<sup>1267</sup> (j) follow up with states regarding effective sanctions implementation and provide states with an opportunity to engage in more in-depth discussion of relevant issues;<sup>1268</sup> (k) brief the Council on its work and that of the Monitoring Team;<sup>1269</sup> (l) prepare a written analytical assessment on sanctions implementation, referring to the implementation successes and challenges of member states;<sup>1270</sup> (m) co-ordinate with the Counterterrorism Committee (CTC) and the 1540 Committee on weapons of mass destruction;<sup>1271</sup> (n) seek status reports from states on sanctions implementation, including in particular on the aggregate amounts of the listed individuals' and entities' frozen assets;<sup>1272</sup> (o) circulate to the Council a list of states that had not submitted reports on sanctions implementation, including an analytical summary of the reasons put forward by states for not reporting;<sup>1273</sup> (p) encourage the submission of names and additional identifying information for inclusion on the Consolidated

<sup>1260</sup> *Ibid.*, para. 3(b).    <sup>1261</sup> SC Res. 1455 (17 January 2003), para. 4.    <sup>1262</sup> *Ibid.*, para. 11.

<sup>1263</sup> *Ibid.*, para. 15.    <sup>1264</sup> *Ibid.*, para. 9.    <sup>1265</sup> *Ibid.*, para. 14.

<sup>1266</sup> SC Res. 1526 (30 January 2004), para. 2.

<sup>1267</sup> SC Res. 1526 (30 January 2004), para. 10; SC Res. 1617 (29 July 2005), para. 15; SC Res. 1735 (22 December 2006), para. 30.

<sup>1268</sup> SC Res. 1526 (30 January 2004), para. 11; SC Res. 1617 (29 July 2005), para. 14; SC Res. 1735 (22 December 2006), para. 28.

<sup>1269</sup> SC Res. 1526 (30 January 2004), para. 12; SC Res. 1617 (29 July 2005), para. 16; SC Res. 1735 (22 December 2006), para. 31.

<sup>1270</sup> SC Res. 1526 (30 January 2004), para. 13.

<sup>1271</sup> SC Res. 1526 (30 January 2004), para. 15; SC Res. 1617 (29 July 2005), para. 13; SC Res. 1735 (22 December 2006), para. 27.

<sup>1272</sup> SC Res. 1526 (30 January 2004), para. 21.

<sup>1273</sup> SC Res. 1526 (30 January 2004), para. 23; SC Res. 1617 (29 July 2005), para. 17.

List from member states;<sup>1274</sup> (q) with the assistance of the CTC, inform the Council of specific additional steps that states could take to implement sanctions;<sup>1275</sup> (r) refine its guidelines, including on listing and delisting procedures;<sup>1276</sup> (s) identify possible cases of non-compliance with sanctions;<sup>1277</sup> and (t) consider requests for inclusion on and removal from the Consolidated List.<sup>1278</sup>

In the course of its activities, the 1267 Committee has issued regular annual reports, as well as various other reports listing submissions received from states on steps taken to comply with sanctions.<sup>1279</sup> The Committee's annual reports demonstrate an increasingly active agenda. In its first report, the Committee provided no recommendations, simply reaffirming its commitment to working closely with other sections of the UN system and expressing appreciation for the co-operation received from member states, international organisations and the Secretariat.<sup>1280</sup> In its second report, the Committee again made no significant recommendations. It did note, however, that it had welcomed and endorsed the recommendations made to it by the Committee of Experts, which had led to the establishment of the Afghanistan Monitoring Mechanism.<sup>1281</sup> In its third report, the Committee noted that the global character of its mandate, as modified by resolution 1390 (2002), provided both greater opportunities and greater challenges.<sup>1282</sup> The Committee described its list of individuals and entities belonging to or associated with the Taliban, Bin Laden and Al Qaida as a 'critical tool' for the effective implementation of the sanctions.<sup>1283</sup> The list must be constantly updated and widely disseminated in order to fulfil the objectives of the sanctions regime.<sup>1284</sup> The Committee noted that the work of the Monitoring Group had become 'indispensable' for the effective discharge of the Committee's mandate,<sup>1285</sup> but it stressed that in order to fulfil the objectives of the sanctions regime, there should be increased interaction between the Committee, the Monitoring Group and other bodies active in the 'fight against terrorism' – both within and outside the UN system.<sup>1286</sup>

<sup>1274</sup> SC Res. 1617 (29 July 2005), para. 11; SC Res. 1735 (22 December 2006), paras. 8–9, 25.

<sup>1275</sup> SC Res. 1617 (29 July 2005), para. 12.

<sup>1276</sup> SC Res. 1617 (29 July 2005), para. 18; SC Res. 1735 (22 December 2006), para. 13.

<sup>1277</sup> SC Res. 1735 (22 December 2006), para. 21. <sup>1278</sup> *Ibid.*, para. 26.

<sup>1279</sup> See Appendix 3, Table F. <sup>1280</sup> S/2000/1254 (29 December 2000), paras. 21–22.

<sup>1281</sup> S/2002/101 (5 February 2002), paras. 22–23.

<sup>1282</sup> S/2002/1423 (26 December 2002), para. 43. <sup>1283</sup> *Ibid.*, para. 44. <sup>1284</sup> *Ibid.*, para. 45.

<sup>1285</sup> *Ibid.*, para. 46. <sup>1286</sup> *Ibid.*, para. 48.

#### 4.2 *The role of Secretary-General*

When the Security Council established the 1267 sanctions regime, it requested the UNSG to report to it if the Taliban had complied with its obligations under the sanctions regime before 14 November 1999, in which case the Council might decide that the sanctions would not come into operation.<sup>1287</sup> The Council also requested the UNSG to provide all necessary assistance to the 1267 Committee.<sup>1288</sup>

The Council has subsequently requested the UNSG to: (a) appoint the Committee of Experts;<sup>1289</sup> (b) consult with relevant member states to put the sanctions into effect;<sup>1290</sup> (c) report on sanctions implementation, make recommendations for strengthening enforcement, and evaluate the actions taken by the Taliban to comply with the aims of the sanctions;<sup>1291</sup> (d) report regularly on the humanitarian implications of the sanctions;<sup>1292</sup> (e) establish the 1267 Monitoring Mechanism;<sup>1293</sup> (f) make the necessary arrangements to support the work of the Monitoring Mechanism;<sup>1294</sup> (g) assign the Monitoring Group to monitor sanctions implementation;<sup>1295</sup> (h) reappoint experts to the Monitoring Group;<sup>1296</sup> (i) ensure that the Monitoring Group and the 1267 Committee and its Chairman had access to sufficient expertise and resources to discharge their responsibilities;<sup>1297</sup> (j) appoint and extend members of the Monitoring Team;<sup>1298</sup> (k) provide necessary support to the 1267 Committee;<sup>1299</sup> and (l) increase co-operation between the UN and relevant international and regional organisations, including Interpol.<sup>1300</sup>

The Security Council has also made direct requests of the UN Secretariat, including to: (a) communicate the Committee's list to member states every three months and convey the list, whenever it was amended, to all states, regional and sub-regional organisations;<sup>1301</sup> and (b) notify the Permanent Mission of the country or countries where a

<sup>1287</sup> SC Res. 1267 (15 October 1999), para. 3. <sup>1288</sup> *Ibid.*, para. 11.

<sup>1289</sup> SC Res. 1333 (19 December 2000), para. 15(a). <sup>1290</sup> *Ibid.*, para. 15(b).

<sup>1291</sup> *Ibid.*, para. 15(c). <sup>1292</sup> *Ibid.*, para. 15(d). <sup>1293</sup> *Ibid.*, para. 3. <sup>1294</sup> *Ibid.*, para. 9.

<sup>1295</sup> SC Res. 1390 (16 January 2002), para. 9.

<sup>1296</sup> SC Res. 1455 (17 January 2003), para. 8. <sup>1297</sup> *Ibid.*, para. 10.

<sup>1298</sup> SC Res. 1526 (30 January 2004), para. 7; SC Res. 1617 (29 July 2005), para. 20; SC Res. 1735 (22 December 2006), para. 32.

<sup>1299</sup> SC Res. 1526 (30 January 2004), para. 9.

<sup>1300</sup> SC Res. 1617 (29 July 2005), para. 8; SC Res. 1735 (22 December 2006), para. 23.

<sup>1301</sup> SC Res. 1526 (30 January 2004), para. 19.

newly listed individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national.<sup>1302</sup>

The UNSG submitted four reports to the Council in accordance with his responsibility to monitor the humanitarian impact of the 1267 sanctions regime.<sup>1303</sup> In those reports, the UNSG noted that the humanitarian situation in Afghanistan was dire, with the health situation being among the worst in the world, refugees and displaced persons numbering over 2.6 million people, and a devastated economy.<sup>1304</sup> Although that situation could not be attributed to the sanctions, the direct impact of sanctions on the humanitarian situation in Afghanistan had been 'limited but tangible'.<sup>1305</sup> The most direct impact of the sanctions had been upon the national airlines, Ariana Afghan Airlines, as the sanctions made it increasingly difficult for Ariana to carry out essential maintenance.<sup>1306</sup> In addition, international civil aviation safety had been affected, as regional and international contacts between the Afghanistan civil aviation authorities and external bodies had been prohibited under the sanctions.<sup>1307</sup> The application of the sanctions had also been accompanied by the devaluation of the Afghan currency ('the Afghani'), which had lost 18 per cent of its value relative to the US dollar from December 2000 to February 2001.<sup>1308</sup> Although the currency subsequently stabilised, the initial devaluation potentially led to an initial deterioration in the humanitarian situation, as a result of decreased purchasing power.<sup>1309</sup> The UNSG also warned that the Taliban authorities had engaged in a sustained campaign against the sanctions, blaming them for deteriorations in the humanitarian situation.<sup>1310</sup> This had had a flow-on effect, making the operating environment for international humanitarian organisations difficult.<sup>1311</sup> On a more positive note, the UNSG noted that, on the whole, the mechanism for providing various humanitarian exemptions from the sanctions was operating smoothly.<sup>1312</sup>

<sup>1302</sup> SC Res. 1735 (22 December 2006), para. 10.

<sup>1303</sup> S/2001/241 (20 March 2001); S/2001/695 (13 July 2001); S/2001/1086 (19 November 2001); S/2001/1215 (18 December 2001).

<sup>1304</sup> S/2001/241 (20 March 2001), para. 15. <sup>1305</sup> *Ibid.*, para. 16.

<sup>1306</sup> *Ibid.*, paras. 22–24; S/2001/695 (13 July 2001), paras. 22–30.

<sup>1307</sup> S/2001/241 (20 March 2001), para. 25. <sup>1308</sup> *Ibid.*, paras. 27–28.

<sup>1309</sup> *Ibid.*, para. 28; S/2001/695 (13 July 2001), para. 35.

<sup>1310</sup> S/2001/241 (20 March 2001), para. 34; S/2001/695 (13 July 2001), para. 62; S/2001/1215 (18 December 2001), para. 8.

<sup>1311</sup> S/2001/1215 (18 December 2001), para. 6.

<sup>1312</sup> S/2001/241 (20 March 2001), paras. 33, 36; S/2001/695 (13 July 2001), para. 54; S/2001/1215 (18 December 2001), para. 7.

In his final report on the humanitarian implications of sanctions, the UNSG observed that the process of reviewing the impact of sanctions had resulted in useful reflections and discussions within the Monitoring Mechanism, the 1267 Committee and the Security Council on the implications of sanctions. He suggested that the Security Council might wish to consider establishing a similar procedure for future sanctions regimes, in order to monitor and assess potential unintended consequences on the civilian population of targeted countries.<sup>1313</sup>

#### 4.3 *The 1333 Committee of Experts*

In December 2000, when it adopted resolution 1333 (2000), the Council requested the UNSG to appoint a committee of experts to make recommendations on improving the monitoring of the 1267 sanctions regime.<sup>1314</sup> The Committee of Experts was requested to report to the Council within sixty days on how to monitor the arms embargo against the Taliban and the closure of terrorist training camps.<sup>1315</sup> In its report, the Committee of Experts outlined the activities it had taken to fulfil its mandate and made a number of key recommendations.<sup>1316</sup>

As part of its operations, the Committee of Experts consulted with a range of actors, including representatives of the states sharing a border with Afghanistan and of two states considered to have a major strategic interest in events in Afghanistan – the United States and the Russian Federation.<sup>1317</sup> The Committee concluded that the arms embargo and the closure of the terrorist training camps could best be monitored by strengthening mechanisms that were already in place in the six countries bordering Afghanistan.<sup>1318</sup> It therefore recommended that the Council establish an office for sanctions monitoring and co-ordination, consisting of a headquarters team and a number of sanctions enforcement support teams, each working alongside the border control services in the countries neighbouring Afghanistan.<sup>1319</sup> Among the other recommendations by the Committee of Experts were that: (a) the headquarters office be located in Vienna; (b) the Sanctions Enforcement Support Teams should be based with existing UN offices in the countries neighbouring Afghanistan; and (c) the Security Council could consider specifying a prohibition against aircraft turbine fuel and fluids and

<sup>1313</sup> S/2001/1215 (18 December 2001), para. 9.

<sup>1314</sup> SC Res. 1333 (19 December 2000), para. 15. <sup>1315</sup> *Ibid.*, para. 15(a).

<sup>1316</sup> S/2001/511 (22 May 2001). <sup>1317</sup> *Ibid.*, paras. 11–19. <sup>1318</sup> *Ibid.*, para. 94.

<sup>1319</sup> *Ibid.*, para. 96.

lubricants for use in armoured vehicles, as part of the arms embargo.<sup>1320</sup>

#### 4.4 *The Afghanistan/Taliban/Al Qaida Monitoring Group*

In July 2001, after considering the report of the Committee of Experts, the Security Council requested the UNSG to establish a monitoring mechanism, whose mandate would extend for the remaining period of the sanctions which had been imposed under resolution 1333 (2000).<sup>1321</sup> The mechanism would: (a) monitor sanctions implementation;<sup>1322</sup> (b) offer assistance to states bordering the territory of Afghanistan under Taliban control, and other states as appropriate, to increase their capacity regarding sanctions implementation;<sup>1323</sup> and (c) collate, assess, verify, report and make recommendations on information regarding sanctions violations.<sup>1324</sup> The monitoring mechanism would consist of two bodies: a Monitoring Group and a Sanctions Enforcement Support Team.<sup>1325</sup>

The Monitoring Group was to consist of up to five experts, based in New York, with a mandate to monitor sanctions implementation, including in the fields of arms embargoes, counterterrorism and related legislation, as well as money laundering, financial transactions and drug trafficking.<sup>1326</sup> The Sanctions Enforcement Support Team (SEST), which was to consist of up to fifteen members with expertise in customs, border security and counterterrorism, would be located in states neighbouring Afghanistan.<sup>1327</sup> It would report to the Monitoring Group, which in turn would report to the 1267 Committee.<sup>1328</sup> Following the establishment of the monitoring mechanism, the Monitoring Group's mandate was extended for two further periods of twelve months.<sup>1329</sup> Its final mandate expired in January 2004, when it was replaced by the Monitoring Team.<sup>1330</sup> The SEST was never actually deployed, however, due to the complex situation that developed on the ground in Afghanistan after 11 September 2001.

The Monitoring Group submitted six reports.<sup>1331</sup> In the Group's first report it recommended that: (a) the arms embargo be maintained against

<sup>1320</sup> *Ibid.*, paras. 97–102. <sup>1321</sup> SC Res. 1363 (30 July 2001), para. 3. <sup>1322</sup> *Ibid.*, para. 3(a).

<sup>1323</sup> *Ibid.*, para. 3(b). <sup>1324</sup> *Ibid.*, para. 3(c). <sup>1325</sup> *Ibid.*, paras. 4–5. <sup>1326</sup> *Ibid.*, para. 4(a).

<sup>1327</sup> *Ibid.*, para. 4(b). <sup>1328</sup> *Ibid.*, para. 5.

<sup>1329</sup> SC Res. 1390 (16 January 2002), paras. 9–10; SC Res. 1455 (17 January 2003), paras. 8, 12, 13.

<sup>1330</sup> For discussion of the 1526 Monitoring Team, see below.

<sup>1331</sup> See Appendix 3, Table H.



the Taliban, Al Qaida and their sympathisers and that consideration be given to an arms embargo upon the whole of Afghanistan;<sup>1332</sup> (b) financial sanctions be maintained and monitored for full compliance;<sup>1333</sup> (c) an effective border control service be put in place by the Afghan authorities;<sup>1334</sup> (d) the sanctions enforcement support teams, which had not been deployed due to the complex situation on the ground subsequent to 11 September 2001, should be maintained, but that their name should be changed to Monitoring and Advisory Teams and that experts with skills and expertise in financial investigations should be added to those teams;<sup>1335</sup> and (e) there be international verification of the closure of drug production facilities and terrorist training camps and facilities in Afghanistan.<sup>1336</sup> Many of these recommendations were taken up and acted upon by the Security Council in resolution 1390 (2002). In subsequent reports, the Monitoring Group arranged its recommendations into five groups: (i) improving the operation of the consolidated list; (ii) improving the implementation of financial sanctions; (iii) improving implementation of the arms embargo; (iv) improving implementation of travel sanctions; and (v) increasing the number of reports received from states on measures taken to implement sanctions.

Among its suggestions on improving the operation of the consolidated list, the Monitoring Group recommended that: (a) the list of individuals and entities associated with the Taliban, Al Qaida and Bin Laden should contain the minimum criteria needed to enhance implementation, including names according to their 'correct cultural construction' and as many 'identifiers' as possible to avoid potential cases of mistaken identity, should be produced in all UN official languages and disseminated as widely as possible;<sup>1337</sup> (b) the list should be used by states as an authoritative reference for the implementation of the 1267 sanctions regime; (c) the list should be updated regularly and states should submit to the 1267 Committee, for possible addition to the list, the names and identifying information of all persons believed to be members of or associated with Al Qaida or the Taliban; (d) states should assist the 1267 Committee in better identifying individuals or entities already on the list, providing confirmation of details such as date and place of birth, passport numbers for all known nationalities and

<sup>1332</sup> S/2002/65 (15 January 2002), paras. 46–47. <sup>1333</sup> *Ibid.*, para. 53. <sup>1334</sup> *Ibid.*, para. 49.

<sup>1335</sup> *Ibid.*, paras. 50, 54. <sup>1336</sup> *Ibid.*, paras. 51, 55.

<sup>1337</sup> S/2002/541 (15 May 2002), paras. 68–73; S/2003/669 (8 July 2003), para. 164.

physical description; (e) the 1267 Committee should establish a mechanism capable of responding immediately to inquiries concerning the identification of persons being detained as suspected members or associates of Al Qaida or the Taliban;<sup>1338</sup> (f) the list should be issued in a revised format and all individuals known to have attended Al Qaida training camps must be considered suspected terrorists and their names should be submitted for designation on the list;<sup>1339</sup> and (g) states should keep the list up to date.<sup>1340</sup>

Among its suggestions for improving the implementation of the financial sanctions, the Monitoring Group recommended that: (a) states should become parties to the International Convention for the Suppression of the Financing of Terrorism;<sup>1341</sup> (b) states involved in the trade of rough diamonds should participate in the Kimberley Process;<sup>1342</sup> (c) states should assist each other in the investigation and sharing of intelligence concerning individuals believed to be members or associates of Al Qaida or the Taliban, in order to ensure that the application and maintenance of financial sanctions is justified; (d) bank secrecy rules should not be an obstacle to the provision to the Monitoring Group of information requested by it concerning individuals and entities alleged to have links to Al Qaida; (e) the 1267 Committee should establish procedures regarding the possible granting of humanitarian exceptions to the sanctions; (f) states should review their laws and procedures regarding oversight of charities, in order to ensure that they were not used to funnel funds to individuals and entities associated with Al Qaida and the Taliban; (g) banking institutions should report suspicious transactions to appropriate national authorities; (h) an international organisation should be granted responsibility for working with states to ensure that *hawala* and other alternative systems for the transfer of money were not exploited or misused by terrorists;<sup>1343</sup> (i) assets belonging to individuals and entities on the list should not be released without prior approval from the 1267 Committee; and (j) member states should be encouraged to introduce mechanisms to enable electronic transfers, particularly international ones, to be monitored for suspicious activity.<sup>1344</sup>

<sup>1338</sup> S/2002/1050 (17 December 2002), paras. 126–133.

<sup>1339</sup> S/2002/1338 (17 December 2002), paras. 95–98; S/2003/669 (8 July 2003), para. 165.

<sup>1340</sup> S/2003/669 (8 July 2003), para. 166.

<sup>1341</sup> S/2002/541 (15 May 2002), para. 74; S/2003/669 (8 July 2003), para. 167.

<sup>1342</sup> S/2002/541 (15 May 2002), para. 75.

<sup>1343</sup> S/2002/1050 (17 December 2002), paras. 134–143.

<sup>1344</sup> S/2002/1338 (17 December 2002), paras. 99–102.

Among its suggestions for improving the implementation of the arms sanctions, the Monitoring Group recommended that: (a) arms-producing states should become members of the Wassenaar Arrangement, work towards the standardisation of 'end-user' certificates, and register and license all nationals operating as arms brokers or dealers;<sup>1345</sup> (b) states should take steps to require the registration of all arms brokers dealing from their territories, to criminalise the operation of non-registered arms brokers, and to ensure the strict use of end-user certificates in any transactions involving the provision of arms and related material;<sup>1346</sup> (c) member states should be encouraged to become party to the 1991 Montreal Convention and the 1997 International Convention for the Suppression of Terrorist Bombings, to participate in the Container Security Initiative and to adopt the recommendations made by the UNSG in his report on small arms.<sup>1347</sup>

Among its suggestions for improving the implementation of the travel sanctions, the Monitoring Group recommended that: (a) states should ensure that their border control officials were given adequate resources, training and technology to improve their ability to detect falsified documents; (b) the 1267 Committee should issue guidelines to states on action to be taken in the event that a designated individual attempted to enter or transit their territory;<sup>1348</sup> (c) the 1267 Committee should consider all individuals on the consolidated list to be actual or suspected Al Qaida terrorists, so that member states could detain, prosecute or extradite them to another country that had issued a warrant or return them for detention in their country of origin; and (d) member states should ensure that they put in place appropriate measures to comply fully with the travel sanctions.<sup>1349</sup>

On the subject of increasing the number of reports received from states on measures taken to implement the sanctions, the Monitoring Group simply recommended that the 1267 Committee should encourage those states which had not yet complied with their obligation to submit such reports to do so.<sup>1350</sup>

<sup>1345</sup> S/2002/541 (15 May 2002), paras. 76–78.

<sup>1346</sup> S/2002/1050 (17 December 2002), paras. 146–151.

<sup>1347</sup> S/2002/1338 (17 December 2002), paras. 105–107. For the report of the UNSG on small arms, see S/2002/1053 (20 September 2002).

<sup>1348</sup> S/2002/1050 (17 December 2002), paras. 144–145.

<sup>1349</sup> S/2002/1338 (17 December 2002), paras. 103–104.

<sup>1350</sup> S/2002/1050 (17 December 2002), paras. 152–153; S/2003/669 (8 July 2003), para. 163.

#### 4.5 *The Taliban/Al Qaida Monitoring Team*

In January 2004, the Council decided to establish for an initial period of eighteen months an Analytical Support and Sanctions Monitoring Team.<sup>1351</sup> The Monitoring Team, whose initial mandate was subsequently extended,<sup>1352</sup> was to: (a) submit written reports to the 1267 Committee on sanctions implementation;<sup>1353</sup> (b) analyse reports submitted by states concerning sanctions implementation;<sup>1354</sup> (c) facilitate areas of convergence between the 1267 Committee and the CTC;<sup>1355</sup> (d) report regularly to the 1267 Committee;<sup>1356</sup> and (e) assist the 1267 Committee in preparing its oral and written reports to the Council.<sup>1357</sup>

The Monitoring Team has subsequently been requested to: (a) pursue sanctions implementation case-studies and explore in depth any other issues as directed by the Committee;<sup>1358</sup> (b) submit a comprehensive programme of work to the 1267 Committee for its approval and review;<sup>1359</sup> (c) submit comprehensive reports on sanctions implementation, the listing and delisting process and exemptions, including specific recommendations for improved implementation and possible new sanctions;<sup>1360</sup> (d) analyse reports from states on sanctions implementation;<sup>1361</sup> (e) co-operate closely with the expert bodies assigned to the 1373 Counterterrorism Committee and the 1540 Weapons of Mass Destruction Committee;<sup>1362</sup> (f) assist the 1267 Committee to address non-compliance with sanctions;<sup>1363</sup> (g) present the Committee with recommendations to assist member states with

<sup>1351</sup> SC Res. 1526 (30 January 2004), para. 6.

<sup>1352</sup> SC Res. 1617 (29 July 2005), para. 19; SC Res. 1735 (22 December 2006), para. 32 and Annex II.

<sup>1353</sup> SC Res. 1526 (30 January 2004), para. 7. <sup>1354</sup> *Ibid.*, Annex.

<sup>1355</sup> *Ibid.* <sup>1356</sup> *Ibid.* <sup>1357</sup> *Ibid.*

<sup>1358</sup> SC Res. 1617 (29 July 2005), Annex I, para. (a); SC Res. 1735 (22 December 2006), Annex II, para. (a).

<sup>1359</sup> SC Res. 1617 (29 July 2005), Annex I, para. (b); SC Res. 1735 (22 December 2006), Annex II, para. (b).

<sup>1360</sup> SC Res. 1617 (29 July 2005), Annex I, para. (c); SC Res. 1735 (22 December 2006), Annex II, para. (c).

<sup>1361</sup> SC Res. 1617 (29 July 2005), Annex I, para. (d); SC Res. 1735 (22 December 2006), Annex II, para. (d).

<sup>1362</sup> SC Res. 1617 (29 July 2005), Annex I, para. (e); SC Res. 1735 (22 December 2006), Annex II, para. (e).

<sup>1363</sup> SC Res. 1617 (29 July 2005), Annex I, para. (f); SC Res. 1735 (22 December 2006), Annex II, para. (f).

sanctions implementation and additions to the Consolidated List;<sup>1364</sup> (h) report on the changing nature of the threat of the Taliban and Al Qaida and the best measures to confront that threat;<sup>1365</sup> (i) report regularly to the Committee;<sup>1366</sup> (j) assist the Committee in preparing oral and written assessments to the Security Council;<sup>1367</sup> (k) consult with the intelligence and security services of member states, in order to share information and strengthen sanctions enforcement;<sup>1368</sup> (l) consult with the private sector, including financial institutions, to learn about the practical implementation of the assets freeze and develop recommendations for strengthening the freeze;<sup>1369</sup> (m) work with relevant international and regional organisations to promote awareness of and compliance with sanctions;<sup>1370</sup> and (n) assist other subsidiary bodies and their expert panels to enhance co-operation with Interpol.<sup>1371</sup> The Monitoring Team has submitted regular reports in accordance with its mandates.<sup>1372</sup>

## 5. Conclusions

Perhaps the most notable aspect of the 1267 sanctions regime is the manner in which its initial geographic target, of entities and individuals operating within the territory of Afghanistan, subsequently expanded to incorporate entities wherever they were, without the necessity of any connection with the territory of Afghanistan. Indeed, even before the Security Council dropped the geographical nexus to Afghanistan, the question of the territory to which the sanctions applied had been difficult to determine, as the territories controlled by the Taliban changed so rapidly and continually.<sup>1373</sup> Although the imposition of most other sanction regimes had carried consequences beyond the geographical territory of the target, never before had the Council imposed a sanctions regime without there being some nexus to a geographical centre for the activities of a targeted entity.

<sup>1364</sup> SC Res. 1617 (29 July 2005), Annex I, para. (g); SC Res. 1735 (22 December 2006), Annex II, para. (g).

<sup>1365</sup> SC Res. 1617 (29 July 2005), Annex I, para. (j); SC Res. 1735 (22 December 2006), Annex II, para. (j).

<sup>1366</sup> SC Res. 1617 (29 July 2005), Annex I, para. (l); SC Res. 1735 (22 December 2006), Annex II, para. (p).

<sup>1367</sup> SC Res. 1617 (29 July 2005), Annex I, para. (m).

<sup>1368</sup> SC Res. 1735 (22 December 2006), Annex II, para. (l). <sup>1369</sup> *Ibid.*, Annex II, para. (m).

<sup>1370</sup> *Ibid.*, Annex II, para. (n). <sup>1371</sup> *Ibid.*, Annex II, para. (o).

<sup>1372</sup> See Appendix 3, Table H. <sup>1373</sup> S/2001/1226 (20 December 2001).

The employment of both a time-delay and a time-limit was also a notable development in the Council's sanctioning practice. In respect of time-delays, the Council provided for a one-month time-delay in respect of the initial sanctions against the Taliban and in respect of the first set of modified sanctions against the Taliban, Usama Bin Laden and Al Qaida.<sup>1374</sup> In respect of the time-limit, the Council followed the precedents established in the sanctions regimes against Eritrea and Ethiopia and Sierra Leone by deciding in December 2000 that the additional measures against the Taliban would terminate after twelve months, unless it (the Council) were to decide otherwise.<sup>1375</sup> In its subsequent resolutions, however, the Council did not incorporate such time-limits, generally providing simply that it would strengthen the sanctions at a given time. Moreover, in its relevant resolutions adopted after 11 September 2001, the Council failed to articulate explicit objectives for the sanctions, thus making it unclear what conditions would need to be fulfilled by those targeted before the sanctions would be terminated.

When the Security Council initiated the 1267 sanctions regime, it was mindful of the humanitarian implications of the sanctions. The Council included, as one of the 1267 Committee's initial responsibilities, the task of reporting on the humanitarian implications of the sanctions.<sup>1376</sup> In its presidential statement of 7 April 2000, the Council underlined that sanctions were not aimed at the Afghan people, reaffirmed its decision to assess the humanitarian impact of the sanctions, and encouraged the 1267 Committee to report in that respect as soon as possible.<sup>1377</sup> In resolution 1333 (2000), the Council took a number of steps to ensure that the issue of the humanitarian impact of the sanctions was being addressed adequately. Thus, the Council reaffirmed the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and for them to be structured in a way that would not impede the provision of international humanitarian assistance.<sup>1378</sup>

<sup>1374</sup> SC Res. 1267 (15 October 1999), para. 3; SC Res. 1333 (19 December 2000), para. 22. By contrast, later sanctions came into effect immediately. See, e.g., SC Res. 1390 (16 January 2002), paras. 1–2.

<sup>1375</sup> SC Res. 1333 (19 December 2000), para. 23.

<sup>1376</sup> SC Res. 1267 (15 October 1999), para. 6(c). The 1267 Committee thus included a section on the humanitarian implications of the sanctions in its annual reports for 2001 and 2002: see S/2002/101 (5 February 2002), paras. 28–31; S/2002/1423 (26 December 2002), para. 41.

<sup>1377</sup> S/PRST/2000/12 (7 April 2000).

<sup>1378</sup> SC Res. 1333 (19 December 2000), preambular para. 16.

The Council also requested the UNSG to report on the humanitarian implications of the sanctions,<sup>1379</sup> and it noted that, in considering the imposition of additional measures to achieve the goals of the sanctions regime, it would take into account the UNSG's impact assessment with a view to enhancing the effectiveness of the sanctions and avoiding humanitarian consequences.<sup>1380</sup>

With the adoption of resolution 1390 (2002), however, the consideration of humanitarian implications of the sanctions became less of a priority. The Council has not subsequently requested reporting on the humanitarian implications of sanctions. It is noteworthy, however, that both the 1267 Committee and the Monitoring Group have reported on humanitarian complications arising from the application of the sanctions.<sup>1381</sup> As a result of these concerns, the Council adopted resolution 1452 (2003), by which it provided for the possibility of exemptions from the financial sanctions for 'basic' or 'extraordinary' expenses.<sup>1382</sup>

## 17. THE 1298 ERITREA AND ETHIOPIA SANCTIONS REGIME

The Security Council imposed sanctions against both Eritrea and Ethiopia in May 2000, in an attempt to induce them to cease hostilities and engage in a meaningful peace process. The sanctions, which were imposed for an initial period of twelve months, consisted of an arms embargo. The Council established a sanctions committee to administer the 1298 sanctions regime. The sanctions terminated at the end of the twelve-month period, when the Council decided not to renew the regime.

### 1. Constitutional basis

In late January 1999, the Security Council expressed grave concern at the escalating arms build-up on both sides of the border between Eritrea and Ethiopia.<sup>1383</sup> At the time, the Council also expressed its strong support for the mediation efforts that had been undertaken by the Organization of African Unity (OAU), and in particular for the Framework Agreement which had been approved by the OAU's Mechanism for Conflict Prevention, Management and Resolution in

<sup>1379</sup> *Ibid.*, para. 15(d).    <sup>1380</sup> *Ibid.*, para. 25.

<sup>1381</sup> See, e.g., S/2002/1050 (17 December 2002), paras. 42, 136.

<sup>1382</sup> SC Res. 1452 (20 December 2002), para. 1.

<sup>1383</sup> SC Res. 1226 (29 January 1999), preambular para. 2.

December 1998.<sup>1384</sup> Two weeks later, after conflict broke out between the two countries, the Security Council stressed that the situation constituted a threat to peace and security<sup>1385</sup> and demanded an immediate halt to hostilities.<sup>1386</sup> The Council also urged all states to end sales of arms to both Eritrea and Ethiopia.<sup>1387</sup>

In May 2000, after a fresh outbreak of hostilities between Eritrea and Ethiopia, the Council adopted resolution 1297 (2000), in which it noted that it was deeply disturbed by the renewed hostilities,<sup>1388</sup> and stressed that the situation constituted a threat to peace and security.<sup>1389</sup> The Council condemned the renewed fighting between Eritrea and Ethiopia, demanded that both parties immediately cease all military actions, refrain from the further use of force and resume substantive peace talks, under OAU auspices.<sup>1390</sup> The Council also warned that, if the hostilities did not cease, it would meet again in 72 hours to take steps to ensure that the parties complied with its demands.<sup>1391</sup>

Five days later, with hostilities continuing unabated, the Council adopted resolution 1298 (2000). The Council noted with concern that the continued fighting had serious humanitarian implications for the civilian population of the two states,<sup>1392</sup> stressed that the hostilities represented an increasing threat to the stability, security and economic development of the sub-region,<sup>1393</sup> and determined that the situation between Eritrea and Ethiopia constituted a threat to regional peace and security.<sup>1394</sup> The Council then noted that it was acting under Chapter VII,<sup>1395</sup> before imposing an arms embargo against both Eritrea and Ethiopia.<sup>1396</sup> The Council later invoked Chapter VII again in a resolution concerning the 1298 sanctions regime.<sup>1397</sup>

## 2. Objectives

The overall objective of the 1298 sanctions regime was to bring about a peaceful, definitive settlement to the conflict between the two countries.<sup>1398</sup> The specific objectives of the regime were for both parties to:

<sup>1384</sup> *Ibid.*, para. 1. For the text of the Framework Agreement, see S/1998/1223 (28 December 1998).

<sup>1385</sup> SC Res. 1227 (10 February 1999), preambular para. 4. <sup>1386</sup> *Ibid.*, para. 2.

<sup>1387</sup> *Ibid.*, para. 7. <sup>1388</sup> SC Res. 1297 (12 May 2000), para. 2.

<sup>1389</sup> *Ibid.*, preambular para. 9. <sup>1390</sup> *Ibid.*, paras. 1-3. <sup>1391</sup> *Ibid.*, para. 4.

<sup>1392</sup> SC Res. 1298 (17 May 2000), preambular para. 11. <sup>1393</sup> *Ibid.*, preambular para. 12.

<sup>1394</sup> *Ibid.*, preambular para. 13. <sup>1395</sup> *Ibid.*, preambular para. 14. <sup>1396</sup> *Ibid.*, para. 6.

<sup>1397</sup> SC Res. 1320 (15 September 2000), para. 10.

<sup>1398</sup> SC Res. 1298 (17 May 2000), para. 17.



(a) cease military action immediately and refrain from the further use of force;<sup>1399</sup> (b) withdraw their forces from military engagement and take no action that would aggravate tension;<sup>1400</sup> and (c) reconvene substantive talks aimed at achieving a definitive peaceful settlement of the conflict.<sup>1401</sup>

### 3. The scope of the 1298 sanctions regime

The 1298 sanctions regime consisted of an arms embargo against the territories of both Eritrea and Ethiopia. Although the Council outlined a number of exemptions from the arms embargo, the basic scope of the measures applied remained unchanged for the duration of the sanctions regime.

#### 3.1 *Sanctions obligations*

Under resolution 1298 (2000), the Security Council required all states to prevent: (a) the sale or supply to Eritrea and Ethiopia of arms and related material;<sup>1402</sup> and (b) the provision to Eritrea and Ethiopia of technical assistance or training related to the provision, manufacture, maintenance or use of arms and related material.<sup>1403</sup>

#### 3.2 *Exemptions*

When the Security Council applied the arms embargo, it exempted supplies of non-lethal military equipment intended solely for humanitarian use, as approved in advance by the 1298 Sanctions Committee.<sup>1404</sup> The Council subsequently outlined additional exemptions for: (a) equipment and related material for the use of the UN Mine Action Service (UNMAS), as well as the provision of related technical assistance and training by UNMAS;<sup>1405</sup> (b) arms and related material for the sole use in Ethiopia or Eritrea of the UN;<sup>1406</sup> and (c) equipment and related material, including technical assistance and training, for use solely for demining within Ethiopia or Eritrea under the auspices of the UNMAS.<sup>1407</sup>

<sup>1399</sup> *Ibid.*, para. 2. <sup>1400</sup> *Ibid.*, para. 3.

<sup>1401</sup> *Ibid.*, para. 4. The Security Council stipulated that such talks should be carried out under OAU auspices, on the basis of the 'Framework Agreement' and other arrangements suggested by the OAU as recorded in a *Communiqué* issued by the OAU current Chairman on 5 May 2000: S/2000/394 (5 May 2000).

<sup>1402</sup> SC Res. 1298 (17 May 2000), para. 6(a). <sup>1403</sup> *Ibid.*, para. 6(b). <sup>1404</sup> *Ibid.*, para. 7.

<sup>1405</sup> SC Res. 1312 (31 July 2000), para. 5. <sup>1406</sup> SC Res. 1320 (15 September 2000), para. 10.

<sup>1407</sup> *Ibid.*

### 3.3 *Time-limit*

When the Council initiated the 1298 sanctions regime, it decided that the sanctions would be imposed for an initial period of twelve months.<sup>1408</sup> At the end of that period, the Council would decide whether to extend the sanctions, based on an assessment of whether the governments of Eritrea and Ethiopia had complied with the objectives of the sanctions regime.<sup>1409</sup>

## 4. Administration and monitoring

The Security Council bestowed responsibilities for the administration of the 1298 sanctions regime upon both a sanctions committee and the UNSG.

### 4.1 *The 1298 Sanctions Committee*

When the Security Council initiated the 1298 sanctions regime, it also established, in accordance with rule 28 of its provisional rules of procedure, a Sanctions Committee.<sup>1410</sup> The 1298 Committee was to report to the Council on its work and with its observations and recommendations, and to: (a) seek from all states information regarding action taken to implement sanctions;<sup>1411</sup> (b) consider information brought to its attention by states concerning sanctions violations and recommend appropriate measures in response thereto;<sup>1412</sup> (c) report periodically on information submitted to it regarding alleged sanctions violations, identifying where possible persons or entities, including vessels and aircraft, reported to be engaged in such violations;<sup>1413</sup> (d) promulgate guidelines to facilitate sanctions implementation;<sup>1414</sup> (e) decide upon requests for exemptions;<sup>1415</sup> (f) examine reports submitted by states to both the Committee and the UNSG;<sup>1416</sup> and (g) make relevant information publicly available, including through information technology.<sup>1417</sup>

In the course of its activities, the 1298 Committee issued two annual reports and one report listing the reports received from states on steps taken to implement the sanctions.<sup>1418</sup> The main observation the Committee made was that, as it did not have any specific monitoring mechanism to ensure the effective implementation of the arms

<sup>1408</sup> SC Res. 1298 (17 May 2000), para. 16.

<sup>1411</sup> *Ibid.*, para. 8(a). <sup>1412</sup> *Ibid.*, para. 8(b).

<sup>1415</sup> *Ibid.*, para. 8(e). <sup>1416</sup> *Ibid.*, para. 8(f).

<sup>1418</sup> See Appendix 3, Table F.

<sup>1409</sup> *Ibid.* <sup>1410</sup> *Ibid.*, para. 8.

<sup>1413</sup> *Ibid.*, para. 8(c). <sup>1414</sup> *Ibid.*, para. 8(d).

<sup>1417</sup> *Ibid.*, para. 13.

embargo, it relied solely on the co-operation of states and organisations in a position to provide pertinent information and it was therefore constrained in the discharge of its mandate.<sup>1419</sup>

#### 4.2 *The Secretary-General*

When the Council established the 1298 sanctions regime, it requested the UNSG to: (a) provide assistance to the 1298 Sanctions Committee;<sup>1420</sup> (b) receive reports by states on steps taken to implement sanctions;<sup>1421</sup> (c) report periodically on steps taken by Eritrea and Ethiopia to comply with the objectives of the sanctions regime;<sup>1422</sup> and (d) report in the event that there were a peaceful, definitive settlement of the conflict, in which case sanctions would be terminated.<sup>1423</sup>

### 5. Termination

As noted above, the 1298 sanctions regime was imposed for an initial period of twelve months, at the end of which the Council would decide whether to extend the sanctions, based on an assessment of whether the governments of Eritrea and Ethiopia had complied with the objectives of the sanctions regime.<sup>1424</sup> On 15 May 2001, the Council adopted a presidential statement, confirming that the sanctions regime would expire the following day.<sup>1425</sup> In that statement, the Council emphasised the importance of the Algiers Peace Agreement, which the parties had signed on 12 December 2000,<sup>1426</sup> recognised that the signing of the Algiers Agreement was consistent with the objectives of the 1298 sanctions regime, and stated that, under the existing circumstances, it had not extended the sanctions beyond the expiration date of 16 May 2001. The Council urged the parties to focus their efforts on reconstruction, development and reconciliation, rather than on weapons procurement and other military activities, and expressed the intention to take appropriate measures if the situation between Eritrea and Ethiopia again threatened regional peace and security.

<sup>1419</sup> See S/2000/1259 (29 December 2000), para. 7; S/2001/503 (18 May 2001), para. 8.

<sup>1420</sup> SC Res. 1298 (17 May 2000), para. 10. <sup>1421</sup> *Ibid.*, para. 11. <sup>1422</sup> *Ibid.*, para. 15.

<sup>1423</sup> *Ibid.*, para. 17. <sup>1424</sup> *Ibid.*, para. 16. <sup>1425</sup> S/PRST/2001/14 (15 May 2001).

<sup>1426</sup> S/2000/1183 (13 December 2000).

## 6. Conclusions

The 1298 sanctions regime became the regime of the shortest duration yet imposed by the Security Council – twelve months. It also provided the first instance of the Council establishing a concrete time-limit for a sanctions regime, and it remains the only occasion on which a time-bound sanctions regime has not been extended. Finally, the Eritrea and Ethiopia sanctions regime was the first UN sanctions regime to be established against multiple state targets.

### 18. THE 1343 LIBERIA SANCTIONS REGIME

The Security Council imposed sanctions against Liberia for the second time in March 2001, with the objective of ensuring that the Liberian government ceased providing support for the Sierra Leonean rebel group the Revolutionary United Front (RUF). The 1343 Liberia sanctions regime initially consisted of arms, diamond and travel sanctions, but its scope subsequently expanded to include timber sanctions and additional travel sanctions. The Council established the 1343 Liberia Sanctions Committee to administer sanctions and created a panel of experts to monitor sanctions implementation. With the improvement of the situation in Sierra Leone, the objective of the regime also broadened, to encompass inducing the Liberian government to cease providing support to rebel groups in the region, including in Côte d'Ivoire. In December 2003, three months after Charles Taylor had resigned as Liberian President and taken refuge in Nigeria, the Council terminated the 1343 Liberia sanctions regime and replaced it with a third Liberian sanctions regime.

#### 1. Constitutional basis

In March 2001 the Security Council expressed deep concern at the evidence presented by the Sierra Leone Panel of Experts that the government of Liberia was actively supporting the RUF, including by participating in the trade of diamonds, which represented a major source of income for the RUF.<sup>1427</sup> It then determined that the active support provided by the Liberian government for armed rebel groups in neighbouring countries, and in particular for the RUF in Sierra Leone,

<sup>1427</sup> SC Res. 1343 (7 March 2001), preambular para. 4. For discussion of the report of the Sierra Leone Panel of Experts, see Appendix 2, Summary 14, section 4.

constituted a threat to international peace and security.<sup>1428</sup> It noted that it was acting under Chapter VII before imposing sanctions.<sup>1429</sup>

In May 2002, when the Council extended the sanctions, and in May 2003, when the Council again extended the initial sanctions and introduced additional timber and travel sanctions, it determined that the active support provided by the Liberian government for armed rebel groups in the region constituted a threat to international peace and security<sup>1430</sup> and noted that it was acting under Chapter VII.<sup>1431</sup>

## 2. Objectives

The major objective of the 1343 sanctions regime was to ensure that the Liberian government stopped providing support for the RUF in Sierra Leone and other armed rebel groups in the region. In order to achieve that overall goal, the Council demanded that the Liberian government take the following concrete steps: (a) expel all RUF members from Liberia and prohibit all RUF activities on its territory;<sup>1432</sup> (b) cease all financial and military support to the RUF and take steps to ensure that no such support was provided from Liberia or by Liberian nationals;<sup>1433</sup> (c) cease all import of Sierra Leone rough diamonds;<sup>1434</sup> (d) freeze funds or financial resources or assets that were made available by its nationals or within its territory for the benefit of the RUF or entities owned or controlled by the RUF;<sup>1435</sup> and (e) ground all Liberia-registered aircraft operating within its jurisdiction until it updated its register of aircraft pursuant to Annex VII to the Chicago Convention on International Civil Aviation of 1944, and provide the Council with updated information concerning the registration and ownership of each aircraft registered in Liberia.<sup>1436</sup> The sanctions would be terminated once the Liberian government had taken these concrete steps.<sup>1437</sup>

The Security Council also noted that these steps were intended to lead to progress in the peace process in Sierra Leone.<sup>1438</sup> It called upon the Liberian President to ensure that the RUF took the following steps: (a) allow UNAMSIL free access throughout Sierra Leone; (b) release all

<sup>1428</sup> SC Res. 1343 (7 March 2001), preambular para. 8. <sup>1429</sup> *Ibid.*, preambular para. 9.

<sup>1430</sup> SC Res. 1408 (6 May 2002), preambular para. 11; SC Res. 1478 (6 May 2003), preambular para. 13.

<sup>1431</sup> SC Res. 1408 (6 May 2002), preambular para. 12; SC Res. 1478 (6 May 2003), preambular para. 14.

<sup>1432</sup> SC Res. 1343 (7 March 2001), para. 2(a). <sup>1433</sup> *Ibid.*, para. 2(b). <sup>1434</sup> *Ibid.*, para. 2(c).

<sup>1435</sup> *Ibid.*, para. 2(d). <sup>1436</sup> *Ibid.*, para. 2(e). <sup>1437</sup> *Ibid.*, paras. 8–11. <sup>1438</sup> *Ibid.*, para. 3.

abductees; (c) enter their fighters in the disarmament, demobilisation and reintegration process; and (d) return all weapons and other equipment seized from UNAMSIL.<sup>1439</sup>

In May 2002, the Security Council noted that, while the Liberian government had complied with its demands concerning the registration of Liberian aircraft,<sup>1440</sup> it had failed to comply with the other four key demands.<sup>1441</sup> The objectives of the sanctions continued to be achieving Liberia's compliance with the remaining demands.<sup>1442</sup> The Council also stressed that the demands were intended to lead to consolidation of the peace process not just in Sierra Leone, but throughout the Mano River Union as a whole.<sup>1443</sup> In May 2003, the Council reaffirmed that the objective of the sanctions remained achieving compliance with the remaining demands,<sup>1444</sup> and again stressed that the demands were intended to consolidate peace and stability in Sierra Leone and among the countries of the region.<sup>1445</sup>

### 3. Scope

The 1343 sanctions regime initially consisted of a mixture of arms, diamond and travel sanctions. It was subsequently expanded to incorporate timber sanctions and targeted travel sanctions.

#### 3.1 Sanctions obligations

Under the arms sanctions, all states were required to prevent the sale or supply to Liberia of arms and related material and equipment, as well as the provision to Liberia of training or assistance related to the provision, manufacture or use of arms and related material and equipment.<sup>1446</sup> The diamond sanctions required states to prevent the direct or indirect import of rough diamonds from Liberia, whether or not those diamonds were originally from Liberia.<sup>1447</sup> Under the travel sanctions, states were required to prevent the entry into or transit through their territories of senior members of the Liberian government and armed forces, as well as the spouses of those individuals and any other individuals providing

<sup>1439</sup> *Ibid.*, para. 3(a)–(d). <sup>1440</sup> SC Res. 1408 (6 May 2002), para. 2. <sup>1441</sup> *Ibid.*, paras. 1, 5.

<sup>1442</sup> *Ibid.*, paras. 1, 3, 5. <sup>1443</sup> *Ibid.*, para. 3.

<sup>1444</sup> SC Res. 1478 (6 May 2003), paras. 1, 3, 10, 12, 17.

<sup>1445</sup> *Ibid.*, para. 3. <sup>1446</sup> SC Res. 1343 (7 March 2001), paras. 5(a), 5(b).

<sup>1447</sup> *Ibid.*, para. 6. The diamond sanctions were initially imposed for a period of twelve months, but they were extended for two additional periods of twelve months: see SC Res. 1408 (6 May 2002), para. 5; SC Res. 1478 (6 May 2003), para. 10.

financial or military support to rebel groups in countries neighbouring Liberia, and in particular the RUF in Sierra Leone.<sup>1448</sup>

In May 2003, the Council expanded the scope of the 1343 sanctions regime, adding timber sanctions and targeted travel sanctions. The timber sanctions required all states to prevent the import of round logs and timber products originating in Liberia.<sup>1449</sup> Under the travel sanctions, all states were required to prevent the entry into or transit through their territories of individuals determined by the 1343 Committee to have violated the arms sanctions.<sup>1450</sup>

### 3.2 Exemptions

In resolution 1343 (2001), the Security Council exempted from the arms sanctions non-lethal military equipment intended solely for humanitarian or protective use, as approved by the 1343 Committee,<sup>1451</sup> as well as protective clothing for the personal use of UN personnel, media representatives, and humanitarian and development workers.<sup>1452</sup> The Council also outlined a variety of exemptions from the travel sanctions. It reiterated that the application of travel sanctions did not oblige a state to refuse entry to its nationals,<sup>1453</sup> and it also provided that those subject to the measures could travel: (a) on official Liberian government business to UN headquarters or official meetings of the Mano River Union, ECOWAS or the OAU;<sup>1454</sup> and (b) when justified on the grounds of humanitarian need or where it would promote Liberian compliance with the objectives of the sanctions regime or assist in the peaceful resolution of conflict in the sub-region.<sup>1455</sup>

In May 2002, the Council provided for a possible exemption from the diamond sanctions, deciding that rough diamonds controlled by the Liberian government through an effective Certificate of Origin would be exempt from the sanctions.<sup>1456</sup> The exemption would only become operative, however, once the 1343 Committee had reported to the Council that an effective and internationally verifiable Certificate of Origin regime was ready to become fully operational.<sup>1457</sup> In September 2004 the Council exempted from the arms sanctions arms and related material and technical training and assistance intended solely for support or use by the United Nations Mission in Liberia (UNMIL).<sup>1458</sup>

<sup>1448</sup> SC Res. 1343 (7 March 2001), para. 7. <sup>1449</sup> SC Res. 1478 (6 May 2003), paras. 16–17.

<sup>1450</sup> *Ibid.*, para. 28. <sup>1451</sup> SC Res. 1343 (7 March 2001), para. 5(c). <sup>1452</sup> *Ibid.*, para. 5(d).

<sup>1453</sup> *Ibid.*, para. 7(a). <sup>1454</sup> *Ibid.* <sup>1455</sup> *Ibid.*, para. 7(b).

<sup>1456</sup> SC Res. 1408 (6 May 2002), para. 8; SC Res. 1478 (6 May 2003), para. 14.

<sup>1457</sup> *Ibid.* <sup>1458</sup> SC Res. 1509 (19 September 2003), para. 12.

## 4. Administration and monitoring

The Security Council bestowed responsibilities for the administration and monitoring of the sanctions upon a range of actors, including a sanctions committee, the UNSG and a panel of experts.

### 4.1 *The 1343 Committee*

The Security Council established a sanctions committee in the same resolution which imposed the new sanctions regime against Liberia.<sup>1459</sup>

The 1343 Committee, which was established in accordance with rule 28 of the Council's provisional rules of procedure, was to report to the Council on its work and with its observations and recommendations and to: (a) seek from all states information regarding action taken to implement sanctions;<sup>1460</sup> (b) take appropriate action on information concerning alleged sanctions violations, identifying where possible persons or entities reported to be engaged in such violations;<sup>1461</sup> (c) promulgate guidelines to facilitate sanctions implementation;<sup>1462</sup> (d) decide upon requests for exemptions;<sup>1463</sup> (e) designate the individuals subject to the travel sanctions and update that list regularly;<sup>1464</sup> (f) make relevant information, including the travel ban list, publicly available through appropriate media;<sup>1465</sup> (g) make recommendations on increasing sanctions effectiveness and limiting unintended effects on the Liberian population;<sup>1466</sup> (h) co-operate with other relevant sanctions committees, in particular the 1132 Sierra Leone and 864 UNITA Committees;<sup>1467</sup> and (i) establish a list of RUF members present in Liberia, whom the Liberian government was required to expel.<sup>1468</sup>

In May 2002, the Council further requested the 1343 Committee to consider and take appropriate action on information brought to its attention concerning any alleged violations of the 788 sanctions regime, while that sanctions regime was in force.<sup>1469</sup> The decision to task the Committee with responsibilities relating to a terminated sanctions regime raised the question of whether the Council was effectively resurrecting the 788 sanctions regime.

In the course of its activities, the 1343 Committee issued three annual reports.<sup>1470</sup> In its reports, the Committee surveyed its consideration of

<sup>1459</sup> SC Res. 1343 (7 March 2001), para. 14. <sup>1460</sup> *Ibid.*, para. 14(a).

<sup>1461</sup> *Ibid.*, para. 14(b). <sup>1462</sup> *Ibid.*, para. 14(c). <sup>1463</sup> *Ibid.*, para. 14(d).

<sup>1464</sup> *Ibid.*, para. 14(e). <sup>1465</sup> *Ibid.*, para. 14(f). <sup>1466</sup> *Ibid.*, para. 14(g).

<sup>1467</sup> *Ibid.*, para. 14(h). <sup>1468</sup> *Ibid.*, para. 14(i). <sup>1469</sup> SC Res. 1408 (6 May 2002), para. 14.

<sup>1470</sup> See Appendix 3, Table F.



applications for removal from the travel ban list and exemptions from the sanctions,<sup>1471</sup> and referred to letters it had addressed to states in pursuit of alleged sanctions violations.<sup>1472</sup> The Committee also reported on new initiatives, including convening five joint informal meetings with the 1132 and 864 Sanctions Committees,<sup>1473</sup> as well as a fact-finding mission by the Committee Chairman to the region in order to ascertain the probable impact of the sanctions, reiterate the Council's demands to the Liberian government and present that government with the list of RUF members subject to expulsion.<sup>1474</sup> In its observations, the Committee noted that, in the absence of a specific sanctions monitoring mechanism, it was reliant upon states and organisations to come forward and provide it with pertinent information.<sup>1475</sup> The 1343 Committee was eventually dissolved in December 2003, when the 1343 sanctions regime was terminated.<sup>1476</sup>

#### 4.2 *The Secretary-General*

When the Security Council initiated the 1343 Liberia sanctions regime, it requested the UNSG to report on: (a) compliance by the Liberian government with its obligations under the sanctions regime;<sup>1477</sup> (b) the potential economic, humanitarian and social impact on the Liberian population of possible additional sanctions;<sup>1478</sup> and (c) steps taken by the Liberian government to improve its capacity in air traffic control and surveillance.<sup>1479</sup> At the same time, the Council also requested the UNSG to establish the 1343 Panel of Experts.<sup>1480</sup> The Council subsequently requested the UNSG to: (a) re-establish the Panel, appoint its experts and support its activities;<sup>1481</sup> (b) report on Liberia's compliance with the requirements of the sanctions regime;<sup>1482</sup> and (c) report on the possible humanitarian or socio-economic impact of the timber sanctions.<sup>1483</sup>

<sup>1471</sup> S/2002/83 (18 January 2002), paras. 8–9; S/2002/1394 (20 December 2002), paras. 8–9.

<sup>1472</sup> S/2002/1394 (20 December 2002), paras. 12–17. <sup>1473</sup> *Ibid.*, para. 20.

<sup>1474</sup> S/2002/83 (18 January 2002), para. 15.

<sup>1475</sup> *Ibid.*, para. 19; S/2002/83 (18 January 2002), para. 23.

<sup>1476</sup> SC Res. 1521 (22 December 2003), para. 1.

<sup>1477</sup> SC Res. 1343 (7 March 2001), para. 12. <sup>1478</sup> *Ibid.*, para. 13(a).

<sup>1479</sup> *Ibid.*, para. 13(b). <sup>1480</sup> *Ibid.*, para. 19.

<sup>1481</sup> SC Res. 1395 (27 February 2002), para. 5; SC Res. 1408 (6 May 2002), para. 16; SC Res. 1458 (28 January 2003), para. 6; SC Res. 1478 (6 May 2003), para. 25.

<sup>1482</sup> SC Res. 1408 (6 May 2002), para. 11; SC Res. 1478 (6 May 2003), para. 20.

<sup>1483</sup> SC Res. 1478 (6 May 2003), para. 19.

### 4.3 *The 1343 Panel of Experts*

In resolution 1343 (2001) the Security Council created a Panel of Experts to monitor sanctions implementation.<sup>1484</sup> The Panel was re-established and/or established on four subsequent occasions in the duration of the 1343 sanctions regime.<sup>1485</sup> The Panel's mandates were for periods between five weeks and six months and its membership varied between five and six members. The Panel's initial mandate was to: (a) investigate sanctions violations;<sup>1486</sup> (b) collect information on Liberian government compliance with the Council's demands;<sup>1487</sup> (c) investigate links between the exploitation of natural resources and other economic activity in Liberia and the fuelling of conflict in Sierra Leone and other neighbouring countries;<sup>1488</sup> (d) collect information on violations of the arms sanctions against Sierra Leone;<sup>1489</sup> (e) report to the Council with observations and recommendations;<sup>1490</sup> (f) keep the 1343 Committee updated on its activities;<sup>1491</sup> and (g) bring relevant information to the attention of the states concerned and allow them the right of reply.<sup>1492</sup>

The Security Council subsequently requested the Panel to: (a) conduct a follow-up assessment mission to audit the Liberian government's compliance with the Council's demands and investigate sanctions violations;<sup>1493</sup> (b) report on the potential and actual economic, humanitarian and social impact of sanctions on the Liberian population;<sup>1494</sup> (c) bring information to the attention of relevant states for prompt and thorough investigation and, where appropriate, to allow them the right of reply;<sup>1495</sup> (d) review the audits of the Liberian government's use of revenue from shipping and timber;<sup>1496</sup> (e) investigate whether any Liberian government revenue was being used in violation of sanctions;<sup>1497</sup> and (f) report on how to improve the effectiveness, implementation and monitoring of sanctions.<sup>1498</sup>

<sup>1484</sup> SC Res. 1343 (7 March 2001), para. 19.

<sup>1485</sup> For Security Council resolution provisions establishing and re-establishing the Panel, see Appendix 3, Table G.

<sup>1486</sup> SC Res. 1343 (7 March 2001), para. 19(a). <sup>1487</sup> *Ibid.*, para. 19(b).

<sup>1488</sup> *Ibid.*, para. 19(c). <sup>1489</sup> *Ibid.*, para. 19(d). <sup>1490</sup> *Ibid.*, para. 19(e).

<sup>1491</sup> *Ibid.*, para. 19(f). <sup>1492</sup> *Ibid.*, para. 20.

<sup>1493</sup> SC Res. 1395 (27 February 2002), para. 4; SC Res. 1408 (6 May 2002), para. 16; SC Res. 1458 (28 January 2003), para. 4; SC Res. 1478 (6 May 2003), para. 25(a).

<sup>1494</sup> SC Res. 1408 (6 May 2002), para. 16; SC Res. 1478 (6 May 2003), para. 25(c).

<sup>1495</sup> SC Res. 1408 (6 May 2002), para. 17; SC Res. 1458 (28 January 2003), para. 5; SC Res. 1478 (6 May 2003), para. 26.

<sup>1496</sup> SC Res. 1458 (28 January 2003), para. 4. <sup>1497</sup> SC Res. 1478 (6 May 2003), para. 25(b).

<sup>1498</sup> SC Res. 1478 (6 May 2003), para. 25(d).

In the course of its various mandates, the 1343 Liberia Panel of Experts submitted six reports to the Security Council.<sup>1499</sup> In its reports, the Panel outlined detailed recommendations on sanctions implementation. In relation to the arms sanctions, the Panel recommended that: (a) all member states should abstain from supplying weapons to the Mano River Union countries;<sup>1500</sup> (b) an arms embargo be imposed against armed non-state actors in the Mano River Union countries;<sup>1501</sup> (c) the ECOWAS moratorium on small arms should be broadened to provide an information exchange mechanism for weapons of all types procured by ECOWAS member states;<sup>1502</sup> (d) member states should investigate any arms transactions involving particular named companies;<sup>1503</sup> (e) a UN working group be established to develop a standardised end-user certificate for arms transactions;<sup>1504</sup> (f) all arms-producing and exporting countries should stop supplying weapons to the Mano River Union countries;<sup>1505</sup> (g) an immediate embargo should be imposed on all non-state actors in the Mano River Union countries, including on the dissident groups constituting the Liberians United for Reconciliation and Democracy (LURD);<sup>1506</sup> and (h) end-user certificates should be submitted to ECOWAS as part of the procedure to obtain waivers for the import of arms into West Africa.<sup>1507</sup>

In relation to the Liberian government's revenue and expenditure, the Panel recommended that: (a) the Liberian government should commission an independent audit of its revenue from the timber industry; (b) the Security Council should impose a ban on all round log exports from Liberia;<sup>1508</sup> (c) revenue derived from the Liberian shipping registry should be audited, to ensure that it was being used for development purposes;<sup>1509</sup> (d) the Liberian government should publish the results of the audit of revenue derived from the maritime and forestry industries;<sup>1510</sup> and (e) the Liberian forestry sector should be reformed under standards of good governance.<sup>1511</sup>

<sup>1499</sup> See Appendix 3, Table H.

<sup>1500</sup> S/2001/1015 (26 October 2001), paras. 24–25, 305–306. <sup>1501</sup> *Ibid.*

<sup>1502</sup> *Ibid.*; S/2002/470 (19 April 2002), paras. 4, 68–69; S/2002/1115 (25 October 2002), paras. 9, 105.

<sup>1503</sup> S/2001/1015 (26 October 2001), paras. 26, 307.

<sup>1504</sup> *Ibid.*, paras. 27, 308; S/2002/1115 (25 October 2002), paras. 8, 101.

<sup>1505</sup> S/2002/470 (19 April 2002), paras. 4, 70; S/2002/1115 (25 October 2002), para. 8.

<sup>1506</sup> S/2002/470 (19 April 2002), paras. 4, 72; S/2002/1115 (25 October 2002), para. 8.

<sup>1507</sup> S/2002/1115 (25 October 2002), paras. 9, 104.

<sup>1508</sup> S/2001/1015 (26 October 2001), paras. 40, 350. <sup>1509</sup> *Ibid.*, paras. 59, 444.

<sup>1510</sup> S/2002/1115 (25 October 2002), paras. 17, 196.

<sup>1511</sup> S/2003/937 (28 October 2003), paras. 10(g), 159.

In relation to the diamond sanctions, the Panel recommended that: (a) Liberia should establish an effective certificate-of-origin scheme;<sup>1512</sup> (b) further international controls should be developed to ensure the effectiveness of certificate-of-origin schemes;<sup>1513</sup> (c) the UN should encourage member states to assist the Liberian government in setting up a credible and transparent certification scheme which was independently audited by an internationally recognised audit company;<sup>1514</sup> and (d) Liberia should finalise a credible plan of action for introducing a credible certificate-of-origin scheme, with the aid of international support.<sup>1515</sup>

In relation to the travel sanctions, the Panel recommended that: (a) the 1343 Committee should respond more effectively to individual requests about the operation of sanctions;<sup>1516</sup> (b) the Committee should post a ‘travel ban web-page’, explaining the criteria for placing names on the list, describing how individuals could apply for an exemption from the ban and listing exemptions that had been granted;<sup>1517</sup> (c) a photographic database should be compiled of key individuals on the travel ban list;<sup>1518</sup> (d) the travel ban list should be updated regularly;<sup>1519</sup> and (e) the list was too long and should be reduced to include Liberian cabinet members and other key government officials, as well as individuals involved in or obstructing investigations into sanctions violations.<sup>1520</sup>

In comments addressing the humanitarian impact of sanctions, the Panel reported that there was a broad perception in Liberia that sanctions were affecting average people, largely due to an effective anti-sanctions public relations campaign by the Liberian government.<sup>1521</sup> The Liberian government was blaming sanctions for its failure to improve services and to engage in reform.<sup>1522</sup> While there had been some ‘collateral damage’, including depreciation of the Liberian dollar and a steep increase in inflation,<sup>1523</sup> the Panel concluded that sanctions had had a negligible impact on the humanitarian situation.<sup>1524</sup> It recommended that a national sensitisation campaign should be launched to inform Liberians about the justification for sanctions.<sup>1525</sup>

<sup>1512</sup> S/2001/1015 (26 October 2001), paras. 48–49, 385–386.

<sup>1513</sup> *Ibid.*, paras. 48–49, 385–386. <sup>1514</sup> S/2002/470 (19 April 2002), paras. 10, 137.

<sup>1515</sup> S/2002/1115 (25 October 2002), paras. 14–15, 157.

<sup>1516</sup> S/2001/1015 (26 October 2001), paras. 62, 456. <sup>1517</sup> *Ibid.*

<sup>1518</sup> *Ibid.*, paras. 63–64, 457–458. <sup>1519</sup> *Ibid.* <sup>1520</sup> S/2002/470 (19 April 2002), para. 13.

<sup>1521</sup> *Ibid.*, paras. 168–176, annex IV. <sup>1522</sup> S/2002/1115 (25 October 2002), paras. 21–22.

<sup>1523</sup> S/2002/470 (19 April 2002), para. 174. <sup>1524</sup> S/2002/1115 (25 October 2002), para. 19.

<sup>1525</sup> S/2003/937 (28 October 2003), para. 10(h).

In an August 2003 report on the potential humanitarian and socio-economic impact of proposed timber sanctions, the Panel observed that the sanctions would deprive armed state and non-state actors of timber revenue, result in decreased human rights violations associated with the timber industry and cause long-term consequences for the Liberia's redevelopment.<sup>1526</sup> It recommended that: (a) the Council should impose a moratorium on all commercial activities in the extractive industries; (b) increased emergency aid should be provided; (c) the Liberian timber sector should be reformed in order to achieve good governance; and (d) member states, civil society and UN field presences should be encouraged to monitor and report sanctions violations.<sup>1527</sup>

The Panel also made a number of general recommendations concerning continued sanctions monitoring and potential measures to strengthen the sanctions regime. It thus recommended that: (a) an officer should be employed within the UN Secretariat with responsibility for monitoring sanctions compliance;<sup>1528</sup> (b) the Panel's own mandate should be renewed to enable it to undertake assessment missions to the region;<sup>1529</sup> (c) financial sanctions should be imposed against certain individuals;<sup>1530</sup> and (d) the UN Mission in Liberia (UNMIL) should play a monitoring role to ensure that sanctions were not being violated.<sup>1531</sup>

## 5. Termination

In December 2003, three months after Charles Taylor had resigned as Liberian President and gone into exile in Nigeria, the Security Council lifted the 1343 sanctions regime and replaced it with a third Liberian sanctions regime. In the process, the Council recalled the various resolutions associated with the 1343 sanctions regime,<sup>1532</sup> and noted that the changed circumstances in Liberia, including the departure of Taylor and the formation of the National Transitional Government of Liberia, required the revision of the basis for action under Chapter VII.<sup>1533</sup> It then terminated the 1343 Liberian sanctions regime and dissolved the 1343 Committee.<sup>1534</sup>

<sup>1526</sup> S/2003/779 (7 August 2003), para. 15. <sup>1527</sup> *Ibid.*, para. 17.

<sup>1528</sup> S/2001/1015 (26 October 2001), paras. 66, 463. <sup>1529</sup> *Ibid.*, paras. 67–68, 464–465.

<sup>1530</sup> S/2003/498 (24 April 2003), para. 10; S/2003/937 (28 October 2003), para. 10(d).

<sup>1531</sup> S/2003/937 (28 October 2003), paras. 10(b), 110.

<sup>1532</sup> SC Res. 1521 (22 December 2003), section A, preambular para. 1.

<sup>1533</sup> *Ibid.*, section A, preambular para. 2. <sup>1534</sup> *Ibid.*, para. 1.

## 6. Conclusions

The 1343 Liberia sanctions regime was noteworthy in a number of respects. First, it was the first sanctions regime that was imposed to succeed an earlier sanctions regime against the same target. Second, it constituted the first time that the Security Council imposed mandatory sanctions against timber. Third, the Council employed time-limits for sanctions, as it had with the 1298 sanctions regime, the diamond sanctions imposed under the 1132 sanctions regime and the initial measures applied under the 1267 sanctions regime.<sup>1535</sup> Fourth, the Council again experimented with time-delays in order to provide the target with an opportunity to avoid the eventual application of the sanctions by complying with the necessary conditions under the sanctions regime.<sup>1536</sup>

Fifth, the Security Council adopted a flexible approach to the characterisation of the relevant threat to international peace and security, first characterising that threat as the active support provided by the Liberian government for armed rebel groups in neighbouring countries, and in particular for the RUF in Sierra Leone,<sup>1537</sup> then characterising it as the active support provided by the Liberian government for armed rebel groups in the region, including the RUF,<sup>1538</sup> then again as the active support provided by the Liberian government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilise the region.<sup>1539</sup> Sixth, the Council established another Panel of Experts, whose mandate it re-established and/or established on multiple occasions during the course of the 1343 sanctions regime. Seventh, the Council experimented for the first time with requiring an audit of the revenue and expenditure of a target, in order to determine whether revenue was being spent in a manner that

<sup>1535</sup> The arms sanctions applied for an initial period of fourteen months, subsequently extended for two periods of twelve months: SC Res. 1343 (7 March 2001), paras. 5, 9; SC Res. 1408 (6 May 2002), para. 5; SC Res. 1478 (6 May 2003), para. 10. The diamond and travel sanctions, which came into effect two months after the arms sanctions, were applied for an initial period of twelve months, subsequently extended for two periods of twelve months: SC Res. 1343 (7 March 2001), paras. 6–8; SC Res. 1408 (6 May 2002), para. 5; SC Res. 1478 (6 May 2003), para. 10. The timber sanctions were applied for an initial period of ten months, beginning on 6 July 2003: SC Res. 1478 (6 May 2003), para. 17.

<sup>1536</sup> SC Res. 1343 (7 March 2001), paras. 8–9; SC Res. 1478 (6 May 2003), paras. 17, 28.

<sup>1537</sup> SC Res. 1343 (7 March 2001), preambular para. 8.

<sup>1538</sup> SC Res. 1408 (6 May 2002), preambular para. 11.

<sup>1539</sup> SC Res. 1478 (6 May 2003), preambular para. 13.

did not violate the sanctions. Finally, the Council requested monitoring of and reporting on the humanitarian implications of sanctions.

## 19. THE 1493 DRC SANCTIONS REGIME

The Security Council imposed sanctions against the Democratic Republic of the Congo (DRC) in July 2003, in an attempt to foster progress in the DRC's peace process. The 1493 sanctions regime initially consisted of an arms embargo against particular actors, which was broadened to incorporate all recipients in the DRC and expanded to include aviation, travel and financial sanctions. The Council has established a sanctions committee to administer the sanctions and a group of experts to monitor sanctions implementation. It has also tasked the UN Organization Mission in the DRC (MONUC) with responsibilities for monitoring the arms embargo.

### 1. Constitutional basis

In July 2003 the Security Council expressed deep concern at the continuation of hostilities in the eastern part of the DRC, particularly in North and South Kivu and Ituri, and at the grave violations of human rights and international humanitarian law that accompanied those hostilities.<sup>1540</sup> The Council noted that the situation in the DRC continued to constitute a threat to international peace and security in the region,<sup>1541</sup> and stated that it was acting under Chapter VII,<sup>1542</sup> before imposing the sanctions.<sup>1543</sup> In subsequent sanctions-related resolutions, the Council has reaffirmed that the situation in the DRC continued to constitute a threat to international peace and security in the region and has again noted that it was acting under Chapter VII.<sup>1544</sup>

<sup>1540</sup> SC Res. 1493 (28 July 2003), preambular para. 6. <sup>1541</sup> *Ibid.*, preambular para. 11.

<sup>1542</sup> *Ibid.*, preambular para. 12. <sup>1543</sup> *Ibid.*, para. 20.

<sup>1544</sup> SC Res. 1533 (12 March 2004), preambular paras. 7–8; SC Res. 1552 (27 July 2004), preambular paras. 5–6; SC Res. 1565 (1 October 2004), preambular paras. 8–9; SC Res. 1592 (30 March 2005), preambular paras. 12–13; SC Res. 1596 (18 April 2005), preambular paras. 9–10; SC Res. 1616 (29 July 2005), preambular paras. 6–7; SC Res. 1649 (21 December 2005), preambular paras. 14–15; SC Res. 1654 (31 January 2006), preambular paras. 3–4; SC Res. 1698 (31 July 2006), preambular paras. 11–12.

## 2. Objectives

The initial objective of the sanctions was to foster progress in the DRC peace process.<sup>1545</sup> The Council noted that it would review the situation in the DRC in twelve months, with a view to renewing the sanctions if no significant progress had been made in the peace process, including in particular if support were still being provided to armed groups, if there were no effective cease-fire, and if there had not been progress in the disarmament, demobilisation, repatriation, reintegration or resettlement ('DDRRR') of foreign and Congolese armed groups.<sup>1546</sup> The Council subsequently reaffirmed on multiple occasions that the objectives of the 1493 sanctions regime remained progress in the DRC peace and transition process, as well as the disarmament of foreign armed groups.<sup>1547</sup>

## 3. Scope

The 1493 sanctions regime initially consisted of an arms embargo against particular actors in the DRC. The sanctions regime has subsequently been expanded, with the application of the arms embargo expanded and new measures added, including aviation, travel and financial sanctions.

### 3.1 Sanctions obligations

Under the DRC sanctions regime, all states were initially required to take the necessary measures to prevent the supply of arms and related material and the provision of military assistance, advice or training to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, as well as to groups not party to the Global and all-inclusive agreement, in the DRC.<sup>1548</sup> The arms embargo was to apply for twelve months.<sup>1549</sup>

In April 2005 the Council adopted resolution 1596 (2005), broadening the application of the arms embargo and applying additional aviation, travel and financial sanctions. The arms embargo now applied against all recipients in the territory of the DRC.<sup>1550</sup> The aviation sanctions

<sup>1545</sup> SC Res. 1493 (28 July 2003), paras. 15, 18, 19, 22. <sup>1546</sup> *Ibid.*, para. 22.

<sup>1547</sup> SC Res. 1552 (27 July 2004), para. 1; SC Res. 1596 (18 April 2005), paras. 5, 17; SC Res. 1616 (29 July 2005), para. 1; SC Res. 1649 (21 December 2005), paras. 7, 15–16; SC Res. 1698 (31 July 2006), para. 1.

<sup>1548</sup> SC Res. 1493 (28 July 2003), para. 20.

<sup>1549</sup> *Ibid.* <sup>1550</sup> SC Res. 1596 (18 April 2005), para. 1.



required all governments in the region to ensure that aircraft operated in accordance with the Convention on International Civil Aviation, to prohibit the operation of any aircraft not in compliance with the ICAO, and to ensure that no airports or airfields on their territories were used to violate the arms embargo.<sup>1551</sup> The Council also required the DRC and other states bordering Ituri and the Kivus to take the necessary measures to strengthen customs controls on their borders and to ensure that no means of transport in their territories would be used to violate the arms embargo.<sup>1552</sup>

The travel ban required states to prevent the entry into or transit through their territories of all persons designated by the 1533 Committee as having violated the arms embargo.<sup>1553</sup> The financial sanctions required all states to freeze funds, other financial assets and economic resources on their territories owned directly or indirectly by individuals designated by the 1533 Committee as having violated the arms embargo, and to ensure that no funds, financial assets or economic resources were made available to such individuals by their nationals or from within their territories.<sup>1554</sup>

In December 2005 the Council broadened the application of the travel ban and assets freeze, deciding that they would also be applied against: (a) political and military leaders of foreign armed groups operating in the DRC who impeded the disarmament and voluntary repatriation or resettlement of combatants belonging to those groups;<sup>1555</sup> and (b) political and military leaders of Congolese militias receiving support from outside the DRC and in particular those operating in Ituri, who impeded the participation of their combatants in disarmament, demobilisation and reintegration processes.<sup>1556</sup> In December 2006, the Council again expanded the category of those subject to the travel ban and assets freeze, applying them against: (a) political and military leaders recruiting or using children in armed conflict in violation of applicable international law;<sup>1557</sup> and (b) individuals committing serious violations of international law involving the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement.<sup>1558</sup>

<sup>1551</sup> *Ibid.*, para. 6.    <sup>1552</sup> *Ibid.*, para. 10.    <sup>1553</sup> *Ibid.*, para. 13.    <sup>1554</sup> *Ibid.*, para. 15.

<sup>1555</sup> SC Res. 1649 (21 December 2005), para. 2(a).    <sup>1556</sup> *Ibid.*, para. 2(b).

<sup>1557</sup> SC Res. 1698 (31 July 2006), para. 13.    <sup>1558</sup> *Ibid.*

### 3.2 Exemptions

When the Council established the 1493 sanctions regime, it exempted from the arms embargo supplies to MONUC, the Interim Emergency Multinational Force led by France, and non-lethal military equipment intended for humanitarian or protective use, as well as related technical assistance and training.<sup>1559</sup> It subsequently exempted from the arms embargo: (a) training and assistance for units of the DRC army and police;<sup>1560</sup> (b) supplies for MONUC;<sup>1561</sup> (c) non-lethal military equipment intended solely for humanitarian or protective use and related assistance and training, as notified to the 1493 Committee in advance;<sup>1562</sup> and (d) arms and related material as well as technical training and assistance intended solely for the support of or the use by EU Force in the DRC.<sup>1563</sup>

When the Council applied travel sanctions it clarified that nothing obliged a state to refuse entry to its own nationals,<sup>1564</sup> and it also provided for exemptions from the travel sanctions: (a) where the 1533 Committee determined that travel was justified on the grounds of humanitarian need or religious obligation;<sup>1565</sup> or (b) to further peace and national reconciliation in the DRC and stability in the region.<sup>1566</sup> In December 2005, the Council also exempted from the travel ban the transit of individuals returning to the territory of the state of their nationality or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law, as determined in advance by the 1533 Committee on a case-by-case basis.<sup>1567</sup>

When the Council applied financial sanctions, it provided for the possibility of exemptions where funds or resources were: (a) necessary for basic expenses;<sup>1568</sup> (b) necessary for extraordinary expenses;<sup>1569</sup> or (c) subject to legal or administrative lien.<sup>1570</sup>

### 3.3 Time-limits and renewals

When the Council established the 1493 sanctions regime, it decided that the initial arms embargo would apply for twelve months.<sup>1571</sup> The Council has subsequently renewed the arms embargo for several

<sup>1559</sup> SC Res. 1493 (28 July 2003), para. 21. <sup>1560</sup> SC Res. 1596 (18 April 2005), para. 2(a).

<sup>1561</sup> *Ibid.*, para. 2(b). <sup>1562</sup> *Ibid.*, para. 2(c). <sup>1563</sup> SC Res. 1671 (25 April 2006), para. 10.

<sup>1564</sup> SC Res. 1596 (18 April 2005), para. 13. <sup>1565</sup> *Ibid.*, para. 14. <sup>1566</sup> *Ibid.*

<sup>1567</sup> SC Res. 1649 (21 December 2005), para. 3.

<sup>1568</sup> SC Res. 1596 (18 April 2005), para. 15(a). <sup>1569</sup> *Ibid.*, para. 15(b).

<sup>1570</sup> *Ibid.*, para. 15(c). <sup>1571</sup> SC Res. 1493 (28 July 2003), para. 20.

additional twelve-month periods on several occasions.<sup>1572</sup> When extending the arms embargo the Council has also reaffirmed the additional sanctions, which are not subject to time-limits.<sup>1573</sup>

#### 4. Administration and monitoring

When it first imposed the DRC sanctions regime, the Council did not establish a Sanctions Committee. Initially, it bestowed responsibilities relating to the administration and monitoring of the sanctions upon the UNSG and the UN Organization Mission in the DRC (MONUC). The Council has subsequently established both a sanctions committee and a group of experts, whilst also reaffirming MONUC's monitoring role.

##### 4.1 *The Secretary-General*

When the Council established the DRC sanctions regime it requested the UNSG to receive notifications from states concerning exemptions from the arms embargo.<sup>1574</sup> The Secretary-General has also been asked to: (a) create and subsequently re-establish or extend the DRC Group of Experts and provide the Group with necessary support;<sup>1575</sup> (b) assist the Committee in the designation of the leaders subject to the travel ban and assets freeze;<sup>1576</sup> (c) submit an assessment of the potential economic, humanitarian and social impact on the DRC population of sanctions against natural resources;<sup>1577</sup> (d) assist the 1533 Committee to identify individuals to be added to the travel ban and assets freeze lists, including political and military leaders who have recruited or used children in armed conflict, as well as individuals who have committed serious violations of international humanitarian law against children;<sup>1578</sup> and (e) submit observations on whether the travel ban and assets freeze should be applied against individuals obstructing the action of MONUC or of the DRC Group of Experts.<sup>1579</sup>

<sup>1572</sup> SC Res. 1552 (27 July 2004), para. 2; SC Res. 1616 (29 July 2005), para. 2; SC Res. 1698 (31 July 2006), para. 2.

<sup>1573</sup> *Ibid.* <sup>1574</sup> SC Res. 1493 (28 July 2003), para. 21.

<sup>1575</sup> SC Res. 1533 (12 March 2004), para. 10; SC Res. 1552 (27 July 2004), para. 5; SC Res. 1596 (18 April 2005), para. 21; SC Res. 1616 (29 July 2005), para. 4; SC Res. 1654 (31 January 2006), para. 1; SC Res. 1698 (31 July 2006), paras. 3, 7.

<sup>1576</sup> SC Res. 1649 (21 December 2005), para. 5. <sup>1577</sup> SC Res. 1698 (31 July 2006), para. 8.

<sup>1578</sup> *Ibid.*, para. 17. <sup>1579</sup> *Ibid.*, para. 21.

## 4.2 *The UN Organization Mission in the DRC*

When the Council established the DRC sanctions regime, it requested the UN Organization Mission in the DRC (MONUC) to deploy military observers in North and South Kivu and in Ituri and to report to it regularly on information concerning arms supply and the presence of foreign military.<sup>1580</sup> The Council has subsequently requested MONUC to: (a) use all means to inspect the cargo of aircraft and any transport vehicle using the ports, airports, military bases and border crossings in North and South Kivu and in Ituri;<sup>1581</sup> (b) seize arms and related material violating the DRC sanctions;<sup>1582</sup> and (c) assist DRC customs authorities to ensure that forms of transportation are not used to violate the arms embargo.<sup>1583</sup>

## 4.3 *The 1533 DRC Sanctions Committee*

In March 2004, ten months after it had initiated the DRC sanctions regime, the Council established a Sanctions Committee to oversee the sanctions administration.<sup>1584</sup> The 1533 Committee, which was established under rule 28 of the provisional rules of procedure, was to: (a) seek from all states information regarding action taken to implement sanctions;<sup>1585</sup> (b) take appropriate action on alleged sanctions violations;<sup>1586</sup> (c) report regularly on its work, including on strengthening the sanctions;<sup>1587</sup> (d) consider lists of sanctions violators, with a view to making recommendations for future measures;<sup>1588</sup> and (e) receive notifications from states concerning exemptions.<sup>1589</sup>

The Security Council has subsequently requested the Committee to: (a) designate persons and entities subject to the aviation, travel and financial sanctions;<sup>1590</sup> (b) seek from relevant states information regarding actions taken to enforce sanctions and investigate and prosecute individuals designated by the 1533 Committee as having violated the arms embargo;<sup>1591</sup> (c) decide upon applications for

<sup>1580</sup> SC Res. 1493 (28 July 2003), para. 19.

<sup>1581</sup> SC Res. 1533 (12 March 2004), para. 3; SC Res. 1565 (1 October 2004), para. 4(f); SC Res. 1596 (18 April 2005), para. 3; SC Res. 1698 (31 July 2006), para. 16.

<sup>1582</sup> SC Res. 1533 (12 March 2004), para. 4; SC Res. 1565 (1 October 2004), para. 4(g); SC Res. 1698 (31 July 2006), para. 16.

<sup>1583</sup> SC Res. 1596 (18 April 2005), para. 10. <sup>1584</sup> SC Res. 1533 (12 March 2004), para. 8.

<sup>1585</sup> *Ibid.*, paras. 8(a), 9. <sup>1586</sup> *Ibid.*, para. 8(b). <sup>1587</sup> *Ibid.*, para. 8(c).

<sup>1588</sup> *Ibid.*, para. 8(d). <sup>1589</sup> *Ibid.*, para. 8(e).

<sup>1590</sup> SC Res. 1596 (18 April 2005), para. 18(a); SC Res. 1649 (21 December 2005), para. 4; SC Res. 1698 (31 July 2006), para. 14.

<sup>1591</sup> SC Res. 1596 (18 April 2005), paras. 18(b)–(c); SC Res. 1649 (21 December 2005), para. 4.

exemptions;<sup>1592</sup> and (d) promulgate guidelines to facilitate sanctions implementation.<sup>1593</sup>

The 1533 Committee has submitted regular annual reports to the Security Council,<sup>1594</sup> but they have contained little in the way of substantive observations or recommendations. In its first two years, the Committee held three formal and nineteen informal meetings.<sup>1595</sup> Its activities were focused upon considering the activities of the DRC Group of Experts,<sup>1596</sup> receiving and considering replies from member states regarding action to implement the arms embargo,<sup>1597</sup> and receiving notifications for exemptions.<sup>1598</sup>

#### 4.4 *The DRC Group of Experts*

In March 2003 the Security Council requested the UNSG to establish a Group of Experts on the DRC sanctions.<sup>1599</sup> The Group has subsequently been re-established or extended on multiple occasions.<sup>1600</sup> The initial mandate of the Group was to: (a) analyse information gathered by MONUC regarding sanctions implementation;<sup>1601</sup> (b) analyse information regarding the flow of arms and related material, as well as networks violating sanctions;<sup>1602</sup> (c) recommend measures to improve the capacity of states to implement sanctions;<sup>1603</sup> (d) report on sanctions implementation;<sup>1604</sup> (e) keep the 1533 Committee abreast of its activities;<sup>1605</sup> (f) exchange information with MONUC to facilitate its monitoring mandate;<sup>1606</sup> and (g) provide the 1533 Committee with a list of individuals who had violated the sanctions, as well as of those who had supported those individuals.<sup>1607</sup>

The Group of Experts has subsequently been requested to: (a) report on sanctions implementation and with recommendations concerning the list of those suspected to have violated the arms embargo;<sup>1608</sup> (b) continue to focus its monitoring activities in North and South Kivu

<sup>1592</sup> SC Res. 1596 (18 April 2005), para. 18(d); SC Res. 1649 (21 December 2005), para. 4.

<sup>1593</sup> SC Res. 1596 (18 April 2005), para. 18(e); SC Res. 1649 (21 December 2005), para. 4.

<sup>1594</sup> See Appendix 3, Table F.

<sup>1595</sup> S/2005/81 (10 February 2005), para. 6; S/2006/54 (27 January 2006), para. 7.

<sup>1596</sup> S/2005/81 (10 February 2005), paras. 7–11; S/2006/54 (27 January 2006), paras. 13–17.

<sup>1597</sup> S/2005/81 (10 February 2005), appendix; S/2006/54 (27 January 2006), appendix.

<sup>1598</sup> S/2006/54 (27 January 2006), para. 10. <sup>1599</sup> SC Res. 1533 (12 March 2004), para. 10.

<sup>1600</sup> SC Res. 1552 (27 July 2004), para. 5; SC Res. 1596 (18 April 2005), para. 21; SC Res. 1654 (31 January 2006), para. 1; SC Res. 1698 (31 July 2006), para. 3.

<sup>1601</sup> SC Res. 1533 (12 March 2004), para. 10(a). <sup>1602</sup> *Ibid.*, para. 10(b).

<sup>1603</sup> *Ibid.*, para. 10(c). <sup>1604</sup> *Ibid.*, para. 10(d). <sup>1605</sup> *Ibid.*, para. 10(e).

<sup>1606</sup> *Ibid.*, para. 10(f). <sup>1607</sup> *Ibid.*, para. 10(g). <sup>1608</sup> SC Res. 1552 (27 July 2004), para. 6.

and in Ituri;<sup>1609</sup> (c) report on implementation of the additional sanctions;<sup>1610</sup> (d) report on the sources of financing which were funding the illicit trade in arms, such as revenue raised from natural resources;<sup>1611</sup> (e) assist the Committee in the designation of the leaders subject to the travel ban and assets freeze;<sup>1612</sup> and (f) recommend measures that might be applied to prevent illegal exploitation of natural resources and compare the significance to illegal armed groups of revenue from natural resources with revenue raised from other 'sources'.<sup>1613</sup> The group has submitted regular reports in accordance with its mandates.<sup>1614</sup>

## 5. Conclusions

In its oversight of the 1493 sanctions regime, the Security Council again employed a time-limit, providing that the arms embargo would apply for an initial twelve months and subsequently renewing the embargo on an annual basis. However, the Council did not apply any time-limits in connection with the additional aviation, travel and financial sanctions. Instead, it has simply reaffirmed those measures when extending the arms embargo. The Council has expanded the category of individuals subject to the DRC travel ban and assets freeze quite dramatically, targeting not just leaders of rebel groups but also those involved in violations of human rights and international humanitarian law. In addition to creating a Group of Experts to monitor the application of sanctions, the Council has also endowed its DRC peacekeeping operation, MONUC, with an aggressive mandate to monitor the implementation of the arms embargo and to seize contraband arms and related material where appropriate.

## 20. THE 1521 LIBERIA SANCTIONS REGIME

In December 2003, five months after Liberian President Charles Taylor had gone into exile in Nigeria and four months after the signing of a comprehensive Liberian peace agreement, the Security Council applied a new sanctions regime against Liberia. The 1521 Liberia sanctions regime had a number of initial objectives, including securing the

<sup>1609</sup> SC Res. 1596 (18 April 2005), para. 3.

<sup>1610</sup> *Ibid.*, para. 22.

<sup>1611</sup> SC Res. 1616 (29 July 2005), para. 5.

<sup>1612</sup> SC Res. 1649 (21 December 2005), para. 5.

<sup>1613</sup> SC Res. 1698 (31 July 2006), para. 6.

<sup>1614</sup> See Appendix 3, Table H.

observance of a cease-fire, the implementation of a comprehensive peace agreement, the establishment of an effective certificate-of-origin regime for Liberian diamonds, and ensuring full government authority and control over Liberian timber producing areas and timber revenues.

The 1521 sanctions regime initially consisted of an arms embargo, a travel ban, timber and diamond sanctions, all of which were applied subject to time-limits. The Council subsequently strengthened the sanctions regime by applying an assets freeze, which was not subject to a time-limit. All of the sanctions were routinely extended beyond the January 2006 inauguration of the democratically elected government of President Ellen Johnson Sirleaf. Timber sanctions were lifted in June 2006, but at the time of writing the other measures remain in place. The Council has established a sanctions committee to administer the sanctions regime and a panel of experts to monitor sanctions implementation.

## 1. Constitutional basis

When the Security Council established the 1521 Liberia sanctions regime, it expressed serious concern that the 1343 sanctions regime continued to be breached, particularly via the flow into Liberia of arms.<sup>1615</sup> While welcoming the Comprehensive Peace Agreement signed by the former government of Liberia, Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL),<sup>1616</sup> the Council noted with concern that the cease-fire and the Comprehensive Peace Agreement were not being implemented throughout Liberia.<sup>1617</sup> It then determined that the situation in Liberia and the proliferation of arms and armed non-state actors, including mercenaries in the sub-region, continued to constitute a threat to international peace and security in West Africa, in particular to the peace process in Liberia,<sup>1618</sup> and noted that it was acting under Chapter VII,<sup>1619</sup> before proceeding to apply sanctions.<sup>1620</sup>

In March 2004, when the Security Council applied an assets freeze, it expressed concern that the actions and policies of former Liberian President Charles Taylor and other persons, in particular depleting

<sup>1615</sup> SC Res. 1521 (22 December 2003), preambular para. 3.

<sup>1616</sup> *Ibid.*, preambular para. 4. <sup>1617</sup> *Ibid.*, preambular para. 6.

<sup>1618</sup> *Ibid.*, preambular para. 8. <sup>1619</sup> *Ibid.*, preambular para. 9.

<sup>1620</sup> *Ibid.*, paras. 2, 4, 6, 10.

Liberian resources and removing from Liberia funds and property, had undermined Liberia's transition to democracy.<sup>1621</sup> It further expressed concern that former President Taylor continued to exercise control over and to access misappropriated Liberian funds and property,<sup>1622</sup> determined that the situation constituted a threat to international peace and security in West Africa, in particular to the peace process in Liberia,<sup>1623</sup> and, acting under Chapter VII,<sup>1624</sup> imposed financial sanctions against former President Taylor and his immediate family and former senior colleagues.<sup>1625</sup> In its subsequent decisions modifying the sanctions regime, the Security Council has again determined that the situation in Liberia continued to constitute a threat to international peace and security and noted that it was acting under Chapter VII.<sup>1626</sup>

## 2. Objectives

With the establishment of the 1521 sanctions regime, the Security Council took the innovative step of outlining particular objectives linked to different components of the sanctions regime. The objectives of the arms and travel sanctions were to ensure that: (a) the Liberian cease-fire was being fully respected and maintained; (b) disarmament, demobilisation, reintegration, repatriation and restructuring of the security sector had been completed; (c) the provisions of the Comprehensive Peace Agreement were being fully implemented; and (d) significant progress had been made in establishing and maintaining stability in Liberia and the sub-region.<sup>1627</sup> The objective of the diamond sanctions was to ensure the establishment of an effective certificate-of-origin regime for trade in Liberian diamonds.<sup>1628</sup> Finally, the objectives of the timber sanctions were to ensure that: (a) the Transitional Government of Liberia gained full authority and control over Liberian timber producing areas; and (b) government revenues from the timber industry were not being used to fuel conflict or in violation of the

<sup>1621</sup> SC Res. 1532 (12 March 2004), preambular para. 2. <sup>1622</sup> *Ibid.*, preambular para. 4.

<sup>1623</sup> *Ibid.*, preambular para. 5. <sup>1624</sup> *Ibid.*, preambular para. 6. <sup>1625</sup> *Ibid.*, para. 1.

<sup>1626</sup> SC Res. 1579 (21 December 2004), preambular paras. 13–14; SC Res. 1607 (21 June 2005), preambular paras. 15–16; SC Res. 1647 (20 December 2005), preambular paras. 8–9; SC Res. 1683 (13 June 2006), preambular paras. 5–6; SC Res. 1688 (16 June 2006), preambular paras. 14–15; SC Res. 1689 (20 June 2006), preambular paras. 14–15; SC Res. 1731 (20 December 2006), preambular paras. 10–11.

<sup>1627</sup> SC Res. 1521 (22 December 2003), para. 5.

<sup>1628</sup> *Ibid.*, para. 8; SC Res. 1549 (17 June 2004), para. 4.



Security Council's resolutions, but rather for legitimate purposes for the benefit of the Liberian people.<sup>1629</sup>

In December 2005, following the holding of free and fair elections, the Security Council confirmed that the objectives of the sanctions regime remained unchanged.<sup>1630</sup> At the same time, it encouraged the new Liberian government to take steps to ensure transparency, accountability and sustainable forest management, which would contribute towards the lifting of the timber sanctions.<sup>1631</sup> The Council further encouraged the new government to implement the Governance and Economic Management Assistance Program, which had been developed by international donors in co-operation with the NTGL, with the aim of preventing the loss of government revenue through corrupt practices.<sup>1632</sup>

### 3. Scope

The 1521 sanctions regime initially consisted of a mixture of arms, travel, diamond and timber sanctions. The Council soon strengthened the sanctions regime by applying financial sanctions.

#### 3.1 *Sanctions obligations*

Under the arms sanctions applied by resolution 1521 (2004), all states were required to prevent the sale or supply to Liberia of arms and related material and equipment, as well as the provision to Liberia of training or assistance related to the provision, manufacture or use of arms and related material and equipment.<sup>1633</sup> Under the travel sanctions, all states were required to prevent the entry into or transit through their territories of all persons who constituted a threat to the peace process in Liberia, including senior members of the former Liberian government and armed forces, as well as the spouses of those individuals and any other individuals providing financial or military support to rebel groups in countries neighbouring Liberia.<sup>1634</sup> Under the diamond sanctions, all states were required to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not those diamonds originated in Liberia.<sup>1635</sup> Under the timber sanctions,

<sup>1629</sup> SC Res. 1521 (22 December 2003), paras. 11, 12; SC Res. 1549 (17 June 2004), para. 4.

<sup>1630</sup> SC Res. 1647 (20 December 2005), para. 1(c).

<sup>1631</sup> *Ibid.*, para. 3(a). <sup>1632</sup> *Ibid.*, para. 4. <sup>1633</sup> SC Res. 1521 (22 December 2003), para. 2.

<sup>1634</sup> *Ibid.*, para. 4(a). <sup>1635</sup> *Ibid.*, para. 6.

all states were required to prevent the import into their territories of all round logs and timber products originating in Liberia.<sup>1636</sup>

In March 2004, the Council strengthened the 1521 Liberia sanctions regime, imposing financial sanctions against former Liberian President Charles Taylor and members of his immediate family and senior officials of his former government.<sup>1637</sup>

### 3.2 Exemptions

In resolution 1521 (2003), the Security Council exempted from the arms embargo: (a) supplies of arms and related material and technical training and assistance intended solely for support of or by the UN Mission in Liberia (UNMIL),<sup>1638</sup> (b) arms and related material and technical training and assistance intended solely for support of or use in an international training and reform programme for the Liberian armed forces and police, as approved in advance by the 1521 Committee;<sup>1639</sup> (c) non-lethal military equipment intended solely for humanitarian or protective use, as approved in advance by the 1521 Committee,<sup>1640</sup> and (d) protective clothing for UN personnel, representatives of the media and humanitarian and development workers.<sup>1641</sup> The Council has subsequently exempted the import of weapons and ammunition for the use of the Liberian Special Security Services and the restructured police and security forces, subject to approval by the 1521 Committee.<sup>1642</sup>

In resolution 1521 (2003), the Council clarified that the travel sanctions did not obligate a state to refuse entry to its own nationals.<sup>1643</sup> The Council also provided for the possibility of exemptions from the travel sanctions where the 1521 Committee determined that travel was justified on the grounds of humanitarian need or religious obligation, or where travel would further the objectives of the Council's resolutions for the creation of peace, stability and democracy in Liberia and lasting peace in the sub-region.<sup>1644</sup> In June 2006, the Council outlined exemptions from the travel ban to enable former Liberian President Charles Taylor and witnesses required for his trial to travel to the Netherlands.<sup>1645</sup>

<sup>1636</sup> *Ibid.*, para. 10. <sup>1637</sup> SC Res. 1532 (12 March 2004), para. 1.

<sup>1638</sup> SC Res. 1521 (22 December 2003), para. 2(d).

<sup>1639</sup> *Ibid.*, para. 2(e). <sup>1640</sup> *Ibid.*, para. 2(f). <sup>1641</sup> *Ibid.*, para. 2(g).

<sup>1642</sup> SC Res. 1683 (13 June 2006), paras. 1-2; SC Res. 1731 (20 December 2006), para. 1(b).

<sup>1643</sup> SC Res. 1521 (22 December 2003), para. 4(a). <sup>1644</sup> *Ibid.*, para. 4(c).

<sup>1645</sup> SC Res. 1688 (16 June 2006), para. 9.

In resolution 1532 (2004), the Security Council outlined exemptions from the financial sanctions for funds that were: (a) necessary for basic expenses;<sup>1646</sup> (b) necessary for extraordinary expenses;<sup>1647</sup> or (c) subject to legal or administrative lien.<sup>1648</sup> The Council also decided that states might allow for frozen accounts to receive outstanding interest or other payments owed prior to the application of the financial sanctions.<sup>1649</sup>

### 3.3 Extensions

The initial sanctions, including the arms, travel, diamond and timber sanctions were all applied subject to a twelve-month time-limit.<sup>1650</sup> The arms embargo and travel ban have subsequently been renewed on an annual basis.<sup>1651</sup> Since the end of 2005 the diamond sanctions have been renewed every six months.<sup>1652</sup> The timber sanctions were initially renewed for a second twelve-month period,<sup>1653</sup> then subsequently for six months,<sup>1654</sup> until June 2006, when the Council decided not to renew them any further.<sup>1655</sup>

## 4. Administration and monitoring

The Security Council has bestowed responsibilities for the administration and monitoring of the 1521 Liberia sanctions regime upon a range of actors, including a sanctions committee, a Panel of Experts, the UNSG and the UN Mission in Liberia (UNMIL).

### 4.1 The 1521 Committee

The Security Council established a Sanctions Committee in the same resolution which imposed the new sanctions regime against Liberia.<sup>1656</sup> The 1521 Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to report on its work and with its observations and recommendations, and to: (a) monitor sanctions implementation, taking into consideration the reports of the Panel of

<sup>1646</sup> SC Res. 1532 (12 March 2004), para. 2(a). <sup>1647</sup> *Ibid.*, para. 2(b). <sup>1648</sup> *Ibid.*, para. 2(c).

<sup>1649</sup> *Ibid.*, para. 3. <sup>1650</sup> SC Res. 1521 (22 December 2003), para. 18.

<sup>1651</sup> SC Res. 1579 (21 December 2004), para. 1(a); SC Res. 1647 (20 December 2005), para. 1(a); SC Res. 1731 (20 December 2006), para. 1(a).

<sup>1652</sup> SC Res. 1579 (21 December 2004), para. 1(c); SC Res. 1607 (21 June 2005), para. 1; SC Res. 1647 (20 December 2005), para. 1(b); SC Res. 1689 (20 June 2006), para. 4; SC Res. 1731 (20 December 2006), para. 1(c).

<sup>1653</sup> SC Res. 1579 (21 December 2004), para. 1(b).

<sup>1654</sup> SC Res. 1647 (20 December 2005), para. 1(b).

<sup>1655</sup> SC Res. 1689 (20 June 2006), para. 1. <sup>1656</sup> SC Res. 1521 (22 December 2003), para. 21.

Experts;<sup>1657</sup> (b) seek from all states, particularly those in the sub-region, information regarding actions taken to implement sanctions;<sup>1658</sup> (c) decide upon requests for exemptions;<sup>1659</sup> (d) designate individuals subject to travel sanctions and update the list regularly;<sup>1660</sup> (e) make relevant information, including the list of individuals subject to the travel sanctions, publicly available through appropriate media;<sup>1661</sup> and (f) take appropriate action on alleged violations of the 1343 sanctions regime while it was in force.<sup>1662</sup>

The 1521 Committee was subsequently tasked with a number of additional responsibilities, including to: (a) identify individuals and entities subject to financial sanctions, circulate that list to all states, and post it on the Committee's website;<sup>1663</sup> (b) maintain and update the list;<sup>1664</sup> (c) assist states, where necessary, in tracing and freezing the funds and other financial and economic resources subject to the financial sanctions;<sup>1665</sup> and (d) seek from all states information regarding action taken to trace and freeze such funds and other financial and economic resources.<sup>1666</sup>

The 1521 Committee has submitted annual reports to the Council summarising its activities.<sup>1667</sup> In its reports, the Committee has surveyed its deliberations concerning exceptions from the 1521 sanctions regime, and reported on actual and alleged violations of the sanctions. In its annual report covering activities in 2005, the Committee noted that it had considered six requests for delisting from the travel ban list, but that it had not removed any names from the travel ban list.<sup>1668</sup> In its 2006 report, the Committee noted that it had granted four requests for exemptions from the arms embargo, as well as three of fourteen requests for waivers from the travel ban.<sup>1669</sup> The Committee also observed that keeping the travel ban and assets freeze lists updated

<sup>1657</sup> *Ibid.*, para. 21(a).    <sup>1658</sup> *Ibid.*, para. 21(b).

<sup>1659</sup> *Ibid.*, para. 21(c); SC Res. 1683 (13 June 2006), paras. 1–3; SC Res. 1731 (20 December 2006), para. 1.

<sup>1660</sup> SC Res. 1521 (22 December 2003), para. 21(d).    <sup>1661</sup> *Ibid.*, para. 21(e).

<sup>1662</sup> *Ibid.*, para. 21(f). The Council's decision to ask the 1521 Committee to assume responsibilities relating to the 1343 sanctions regime raised the same legal issues that had arisen when the Council requested the 1343 Committee to consider information relating to violations of the 788 Liberia sanctions regime. For discussion, see the summary of the 1343 sanctions regime.

<sup>1663</sup> SC Res. 1532 (12 March 2004), para. 4(a).    <sup>1664</sup> *Ibid.*, para. 4(b).

<sup>1665</sup> *Ibid.*, para. 4(c).    <sup>1666</sup> *Ibid.*, para. 4(d).    <sup>1667</sup> See Appendix 3, Table F.

<sup>1668</sup> S/2006/464 (30 June 2006), para. 15.

<sup>1669</sup> S/2006/1044 (28 December 2006), paras. 8, 15.

sent a key message to Liberia and the international community that the Committee was willing to revise the lists in the light of new developments.<sup>1670</sup>

## 4.2 *sThe Secretary-General*

When the Security Council initiated the 1521 Liberia sanctions regime, it requested the UNSG to report to it on progress made towards achieving the sanctions regime's objectives.<sup>1671</sup> The Council has also requested the Secretary-General to make appointments to the Panel of Experts and support the Panel's work,<sup>1672</sup> and to report on sanctions progress.<sup>1673</sup>

## 4.3 *The 1521 Liberia Panel of Experts*

When the Security Council established the 1521 sanctions regime against Liberia, it also requested the UNSG to establish a Panel of Experts.<sup>1674</sup> The Panel has been re-established, extended or renewed continuously throughout the lifetime of the 1521 sanctions regime.<sup>1675</sup> As part of its mandate, the Panel has been requested to: (a) report on sanctions implementation, including any violations, and submit any information relevant to the designation by the 1521 Committee of individuals subject to the travel ban and assets freeze;<sup>1676</sup> (b) assess progress towards achieving the objectives of the sanctions;<sup>1677</sup> (c) monitor implementation of the financial sanctions and provide the 1521 Committee with information that would help to identify individuals and entities subject to the financial sanctions;<sup>1678</sup> (d) assess the socio-economic and

<sup>1670</sup> *Ibid.*, para. 44. <sup>1671</sup> SC Res. 1521 (22 December 2003), para. 26.

<sup>1672</sup> SC Res. 1521 (22 December 2003), para. 22; SC Res. 1549 (17 June 2004), para. 3; SC Res. 1579 (21 December 2004), para. 9; SC Res. 1607 (21 June 2005), para. 15; SC Res. 1647 (20 December 2005), para. 10; SC Res. 1689 (20 June 2006), para. 5; SC Res. 1731 (20 December 2006), para. 5.

<sup>1673</sup> SC Res. 1579 (21 December 2004), para. 12.

<sup>1674</sup> SC Res. 1521 (22 December 2003), para. 22. <sup>1675</sup> See Appendix 3, Table G.

<sup>1676</sup> SC Res. 1521 (22 December 2003), para. 22(a); SC Res. 1549 (17 June 2004), para. 1(a); SC Res. 1579 (21 December 2004), para. 8(a); SC Res. 1607 (21 June 2005), para. 14(a); SC Res. 1647 (20 December 2005), para. 9(a); SC Res. 1689 (20 June 2006), para. 5; SC Res. 1731 (20 December 2006), para. 4(a).

<sup>1677</sup> SC Res. 1521 (22 December 2003), para. 22(b); SC Res. 1549 (17 June 2004), para. 1(b); SC Res. 1579 (21 December 2004), para. 8(c); SC Res. 1607 (21 June 2005), para. 14(c); SC Res. 1647 (20 December 2005), para. 9(c); SC Res. 1731 (20 December 2006), para. 4(d).

<sup>1678</sup> SC Res. 1549 (17 June 2004), para. 1(c); SC Res. 1579 (21 December 2004), para. 8(a).

humanitarian impact of the sanctions;<sup>1679</sup> (e) assess the impact and effectiveness of the sanctions;<sup>1680</sup> (f) co-operate with other relevant bodies of experts and the Kimberley Process Certification Scheme;<sup>1681</sup> (g) report on sources of financing for the illicit trade of arms;<sup>1682</sup> (h) assess the implementation of newly adopted forestry legislation;<sup>1683</sup> and (i) recommend how to strengthen the capacity of states in the region to implement the travel and financial sanctions.<sup>1684</sup>

The 1521 Liberia Panel of Experts has submitted numerous reports to the Council.<sup>1685</sup> The reports document a mixed record of sanctions implementation. The Panel has found little evidence of large-scale weapons trafficking into Liberia in violation of the arms embargo.<sup>1686</sup> However, it has expressed concern that organised smuggling networks remained in place, with the potential to fuel regional instability.<sup>1687</sup> The Panel has documented a number of violations of the travel ban,<sup>1688</sup> and explored reports of recruitment of Liberian ex-combatants to fight in neighbouring countries, including Guinea, Côte d'Ivoire and Sierra Leone.<sup>1689</sup> It has repeatedly stressed the lack of capacity of Liberian authorities to control timber- and diamond-producing areas and thus to prevent violations of the timber and diamond sanctions.<sup>1690</sup> It has also expressed concern at a lack of accountability in the management of revenue by the Liberian authorities.<sup>1691</sup> The Panel has documented a

<sup>1679</sup> SC Res. 1549 (17 June 2004), para. 1(d); SC Res. 1579 (21 December 2004), para. 8(d); SC Res. 1607 (21 June 2005), para. 14(d); SC Res. 1647 (20 December 2005), para. 9(d); SC Res. 1731 (20 December 2006), para. 4(c).

<sup>1680</sup> SC Res. 1579 (21 December 2004), para. 8(b); SC Res. 1607 (21 June 2005), para. 14(b); SC Res. 1647 (20 December 2005), para. 9(b); SC Res. 1731 (20 December 2006), para. 4(b).

<sup>1681</sup> SC Res. 1607 (21 June 2005), para. 14(f); SC Res. 1647 (20 December 2005), para. 9(f); SC Res. 1731 (20 December 2006), para. 4(e).

<sup>1682</sup> SC Res. 1731 (20 December 2006), para. 4(a). <sup>1683</sup> *Ibid.*, para. 4(c).

<sup>1684</sup> *Ibid.*, para. 4(f). <sup>1685</sup> See Appendix 3, Table H.

<sup>1686</sup> S/2004/396 (1 June 2004), para. 52; S/2004/955 (6 December 2004), para. 53.

<sup>1687</sup> S/2004/396 (1 June 2004), para. 54.

<sup>1688</sup> *Ibid.*, paras. 153–155; S/2004/955 (6 December 2004), paras. 82–91; S/2005/360 (13 June 2005), para. 94; S/2005/745 (25 November 2005), paras. 159–160; S/2006/379 (7 June 2006), paras. 155–159.

<sup>1689</sup> S/2005/360 (13 June 2005), paras. 69–84; S/2005/745 (25 November 2005), paras. 142–144.

<sup>1690</sup> S/2004/396 (1 June 2004), paras. 119–120; S/2004/752 (24 September 2004), paras. 11, 18; S/2004/955 (6 December 2004), para. 108; S/2005/176 (17 March 2005), para. 27; S/2005/360 (13 June 2005), paras. 99, 118; S/2005/745 (25 November 2005), paras. 59, 64; S/2006/379 (7 June 2006), para. 54.

<sup>1691</sup> S/2004/396 (1 June 2004), paras. 105, 119–120; S/2004/752 (24 September 2004), para. 13; S/2005/745 (25 November 2005), paras. 68, 81.

number of instances of sanctions violations, including the conduct of diamond mining under the guise of exploratory activities,<sup>1692</sup> as well as the trafficking of diamonds across Liberian borders for passing off as legitimate diamonds from other countries.<sup>1693</sup> It has also documented an almost complete absence of will and capacity on the part of Liberian authorities to implement the assets freeze.<sup>1694</sup> This situation was exacerbated with the election of five individuals on the travel ban list to positions in the Liberian House of Representatives and Senate.<sup>1695</sup> Upon assuming office, those individuals therefore began to receive salaries paid by the Liberian government, in violation of the assets freeze.

As required by the Security Council, the Panel of Experts regularly reported on the socio-economic and humanitarian impact of sanctions.<sup>1696</sup> The Panel found that the sanctions did have economic consequences, largely consisting in lost employment opportunities for people living in diamond- and timber-producing areas.<sup>1697</sup> It also found, however, that a number of Liberians viewed the sanctions as a positive mechanism for bringing about long-term peace and sustainable development.<sup>1698</sup> Moreover, the Panel adopted the view that sanctions had helped to stabilise the situation in Liberia.<sup>1699</sup> In the Panel's opinion, the critical issue was not whether sanctions should be lifted, but rather how the situation could be managed so that sanctions were no longer required.<sup>1700</sup>

Following the January 2006 inauguration of the democratically elected President Ellen Johnson-Sirleaf, the Panel noted a marked improvement in steps taken by the Liberian authorities towards meeting the conditions for lifting sanctions.<sup>1701</sup> Nevertheless, the Panel warned that

<sup>1692</sup> S/2004/955 (6 December 2004), paras. 98–103; S/2005/176 (17 March 2005), paras. 10–15; S/2005/360 (13 June 2005), paras. 107–115; S/2005/745 (25 November 2005), paras. 39–52; S/2006/379 (7 June 2006), paras. 57–62.

<sup>1693</sup> S/2004/955 (6 December 2004), para. 104; S/2005/176 (17 March 2005), para. 16; S/2005/360 (13 June 2005), para. 116; S/2005/745 (25 November 2005), paras. 53–56; S/2006/379 (7 June 2006), paras. 63–64.

<sup>1694</sup> S/2004/955 (6 December 2004), paras. 168–171; S/2005/360 (13 June 2005), paras. 182–186; S/2005/745 (25 November 2005), paras. 124–128.

<sup>1695</sup> S/2005/745 (25 November 2005), paras. 126–128.

<sup>1696</sup> S/2004/396 (1 June 2004), paras. 121–152; S/2004/955 (6 December 2004), paras. 24–52; S/2005/360 (13 June 2005), paras. 15–50; S/2005/745 (25 November 2005), paras. 164–185.

<sup>1697</sup> S/2004/396 (1 June 2004), para. 127; S/2004/955 (6 December 2004), para. 46.

<sup>1698</sup> S/2004/396 (1 June 2004), paras. 133, 138; S/2004/955 (6 December 2004), para. 46.

<sup>1699</sup> S/2006/379 (7 June 2006), para. 146. <sup>1700</sup> S/2005/360 (13 June 2005), para. 46.

<sup>1701</sup> S/2006/379 (7 June 2006).

there should be continued vigilance to improve financial transparency so that when sanctions were lifted, revenue would flow directly to the government of Liberia and would be used for the benefit of all Liberians.<sup>1702</sup> The Panel also reported that, despite the identification by the Johnson-Sirleaf administration of the numbers of bank accounts belonging to individuals on the assets freeze list, the assets freeze had still not been implemented in Liberia.<sup>1703</sup>

#### 4.4 *The UN Mission in Liberia*

When the Security Council initiated the 1521 Liberia sanctions regime, it welcomed the readiness of the UN Mission in Liberia (UNMIL) to assist both the 1521 Committee and Panel of Experts in monitoring the implementation of sanctions.<sup>1704</sup> The Council subsequently reaffirmed its call to provide assistance to the 1521 Committee and the Panel of Experts,<sup>1705</sup> and to monitor arms trafficking and recruitment.<sup>1706</sup> In June 2005, the Council further clarified its expectations of UNMIL, urging it to intensify its efforts to assist the National Transitional Government of Liberia (NTGL) to re-establish its authority throughout Liberia, including in diamond- and timber-producing areas.<sup>1707</sup> The Council also reiterated the importance of UNMIL's continuing assistance to the NTGL, the 1521 Committee and the Panel of Experts in: (a) monitoring sanctions implementation;<sup>1708</sup> (b) supporting the efforts of the NTGL to prevent sanctions violations;<sup>1709</sup> (c) collecting and disposing of arms and related material brought into Liberia in violation of the arms embargo;<sup>1710</sup> (d) assisting the NTGL in monitoring the recruitment and movements of ex-combatants;<sup>1711</sup> and (e) developing a strategy, in conjunction with ECOWAS and other international partners, to consolidate a national legal framework, including the implementation of the assets freeze.<sup>1712</sup>

In December 2005, the Council further encouraged UNMIL to continue undertaking joint patrols with the Liberian Forestry Development Authority.<sup>1713</sup> In June 2006 the Security Council reiterated the importance of UNMIL's continuing assistance to the government of Liberia,

<sup>1702</sup> *Ibid.*, para. 108.    <sup>1703</sup> *Ibid.*, paras. 110-114.

<sup>1704</sup> SC Res. 1521 (22 December 2003), para. 23.

<sup>1705</sup> SC Res. 1579 (21 December 2004), para. 10.

<sup>1706</sup> SC Res. 1607 (21 June 2005), para. 12.    <sup>1707</sup> *Ibid.*, para. 10.    <sup>1708</sup> *Ibid.*, para. 11(a).

<sup>1709</sup> *Ibid.*, para. 11(b).    <sup>1710</sup> *Ibid.*, para. 11(c).    <sup>1711</sup> *Ibid.*, para. 11(d).

<sup>1712</sup> *Ibid.*, para. 11(e).    <sup>1713</sup> SC Res. 1647 (20 December 2005), para. 6.



the 1521 Committee and the Panel of Experts in monitoring sanctions implementation, including inspecting inventories of weapons and ammunition authorised by the 1521 Committee for import to Liberia for the use of Liberian Special Security Service and the restructured police and security forces in accordance with resolution 1683 (2006).<sup>1714</sup>

#### 4.5 *Other UN operations*

When the Council initiated the 1521 Liberia sanctions regime, it requested the UN Missions in Sierra Leone (UNAMSIL) and Côte d'Ivoire (UNMICI) to assist the Committee and Panel by forwarding any information relevant to the implementation of sanctions, in the context of enhanced co-ordination among UN missions and offices in West Africa.<sup>1715</sup> The Council subsequently reaffirmed its call to those missions to provide assistance to the 1521 Committee and the Panel of Experts,<sup>1716</sup> and to monitor arms trafficking and recruitment.<sup>1717</sup>

### 5. Termination of timber sanctions

The timber sanctions lapsed in June 2006, when the Council decided not to renew them any further.<sup>1718</sup>

### 6. Conclusions

The 1521 sanctions regime is notable largely as an example of many of the sanctions innovations implemented by the Security Council in the early years of the twenty-first century. It consists of a range of different targeted sanctions measures, most of which are applied with particular objectives. The Council established both a sanctions committee and a panel of experts in order to administer and monitor sanctions implementation, and it also called upon UN operations present in the region to play a role in sanctions monitoring. The 1521 sanctions regime also represents another instance in which the Council has utilised time-limits in the application of sanctions.

<sup>1714</sup> SC Res. 1683 (13 June 2006), para. 4. <sup>1715</sup> SC Res. 1521 (22 December 2003), para. 23.

<sup>1716</sup> SC Res. 1579 (21 December 2004), para. 10.

<sup>1717</sup> SC Res. 1607 (21 June 2005), para. 12. <sup>1718</sup> SC Res. 1689 (20 June 2006), para. 1.

## 21. THE 1556 SUDAN SANCTIONS REGIME

The Security Council imposed an arms embargo against certain actors in the Darfur region of the Sudan in July 2004, in an attempt to address an unfolding humanitarian crisis. In March 2005, the Council expanded both the scope and the targets of the sanctions regime, applying them against the government in addition to non-governmental actors and broadening the measures to include a travel ban and an assets freeze. The Council has established a range of subsidiary bodies whose activities have contributed to sanctions administration and monitoring, including the Sudan International Commission of Inquiry, the 1591 Sudan Sanctions Committee and the Sudan Panel of Experts. It has also bestowed monitoring responsibilities upon the AU and UN peace-keeping operations in Sudan.

### 1. Constitutional basis

In July 2004 the Security Council reiterated its grave concern at the ongoing humanitarian crisis and widespread human rights violations in the Darfur region of the Sudan.<sup>1719</sup> It condemned all acts of violence and violations of human rights and international humanitarian law by all parties to the crisis, in particular by the Janjaweed, including indiscriminate attacks on civilians, rapes and forced displacements, and expressed its utmost concern at the consequences of the conflict in Darfur on the civilian population, including women, children, internally displaced persons and refugees.<sup>1720</sup> The Council further recalled that the government of the Sudan bore the primary responsibility to respect human rights while maintaining law and order and protecting its population within its territory,<sup>1721</sup> and noted with grave concern that up to 200,000 refugees had fled to the neighbouring state of Chad.<sup>1722</sup> The Council then determined that the situation in Sudan constituted a threat to international peace and security and to stability in the region.<sup>1723</sup> Noting that it was acting under Chapter VII,<sup>1724</sup> the Council proceeded to impose sanctions against the Janjaweed.<sup>1725</sup> The Council has reaffirmed the ongoing existence of a threat to international peace and

<sup>1719</sup> SC Res. 1556 (30 July 2004), preambular para. 7. <sup>1720</sup> *Ibid.*, preambular para. 8.

<sup>1721</sup> *Ibid.*, preambular para. 9. <sup>1722</sup> *Ibid.*, preambular para. 20.

<sup>1723</sup> *Ibid.*, preambular para. 21. <sup>1724</sup> *Ibid.*, preambular para. 22.

<sup>1725</sup> *Ibid.*, paras. 7–9.

security and invoked Chapter VII in its subsequent resolutions connected with the 1556 sanctions regime.<sup>1726</sup>

## 2. Objectives

The initial objective of the 1556 sanctions regime was to ensure that the government of the Sudan fulfilled its commitment to disarm the Janjaweed militias and to apprehend and bring to justice Janjaweed leaders and their associates, who had incited and carried out human rights and international humanitarian law violations and other atrocities.<sup>1727</sup> The Council expressed its intention to consider taking action, including sanctions, against the government of Sudan in the event of non-compliance with that objective.<sup>1728</sup> In March 2005, the Council endorsed additional objectives, including ensuring that the parties in Darfur fulfilled their commitments under the 8 April 2004 N'djamena Ceasefire Agreement and associated Protocols, facilitated humanitarian assistance and co-operated fully with the Mission dispatched by the African Union to monitor the situation in Darfur.<sup>1729</sup>

## 3. Scope

The 1556 sanctions regime initially consisted of an arms embargo against certain non-government actors in the Sudan. The sanctions were subsequently broadened and expanded to include a general arms embargo, as well as travel and financial sanctions.

### 3.1 *Sanctions obligations*

Under resolution 1556 (2004), all states were initially required to prevent the sale or supply of arms and related material and the provision of

<sup>1726</sup> SC Res. 1564 (18 September 2004), preambular paras. 14–15; SC Res. 1591 (29 March 2005), preambular paras. 17–18; SC Res. 1651 (21 December 2005), preambular paras. 7–8; SC Res. 1665 (29 March 2006), preambular paras. 8–9; SC Res. 1672 (25 April 2006), preambular paras. 3–4; SC Res. 1672 (25 April 2006), preambular paras. 3–4; SC Res. 1706 (31 August 2006), preambular para. 12, para. 12; SC Res. 1713 (29 September 2006), preambular paras. 9–10.

<sup>1727</sup> SC Res. 1556 (30 July 2004), para. 6. By para. 10 of the same resolution, the Council expressed its intention to consider the modification or termination of the measures imposed under paras. 7 and 8, when it determined that the government of Sudan had fulfilled its commitments described in para. 6.

<sup>1728</sup> SC Res. 1556 (30 July 2004), para. 6; SC Res. 1564 (18 September 2004), para. 14.

<sup>1729</sup> SC Res. 1591 (29 March 2005), paras. 1, 6, 8.

associated technical training or assistance to all non-governmental entities and individuals, including the Janjaweed, operating in North, South and West Darfur.<sup>1730</sup>

In resolution 1591 (2005), the Council broadened the application of the arms embargo and imposed a travel ban and assets freeze. The arms embargo now applied to the parties to the N'djamena Ceasefire Agreement and associated Protocols, including the government of Sudan, the Sudan Liberation Movement/Army and the Justice and Equality Movement, as well as any other belligerents in the states of North Darfur, South Darfur and West Darfur.<sup>1731</sup> Under the travel ban, all states were required to prevent the entry into or transit through their territories of all persons who impeded the peace process, constituted a threat to stability in Darfur and the region, committed violations of international humanitarian law or human rights law or other atrocities, violated the arms embargo or were responsible for offensive military overflights of the Darfur region.<sup>1732</sup> Under the assets freeze, all states were required to freeze the financial assets and economic resources of persons subject to the travel ban and entities owned or controlled by agents acting on behalf of such persons.<sup>1733</sup>

### 3.2 Exemptions

The Security Council outlined exemptions from the initial arms embargo for: (a) supplies and activities connected with monitoring, verification or peace support operations authorised by the UN or operating with the consent of the relevant parties;<sup>1734</sup> (b) non-lethal military equipment for humanitarian, human rights, monitoring or protective use;<sup>1735</sup> and (c) protective clothing for the personal use of UN personnel, human rights monitors, representatives of the media and humanitarian and development workers and associated personnel.<sup>1736</sup> When the Council expanded the arms embargo it exempted: (a) assistance and supplies for the implementation of the Sudanese Comprehensive Peace Agreement;<sup>1737</sup> and (b) movements of military equipment and supplies into the Darfur region by the government of Sudan when approved in advance by the 1591 Committee.<sup>1738</sup>

<sup>1730</sup> SC Res. 1556 (30 July 2004), para. 7. <sup>1731</sup> SC Res. 1591 (29 March 2005), para. 7.

<sup>1732</sup> *Ibid.*, para. 3(d). <sup>1733</sup> *Ibid.*, para. 3(e). <sup>1734</sup> SC Res. 1556 (30 July 2004), para. 9.

<sup>1735</sup> *Ibid.* <sup>1736</sup> *Ibid.* <sup>1737</sup> SC Res. 1591 (29 March 2005), para. 7. <sup>1738</sup> *Ibid.*

When the Council applied travel sanctions, it provided that nothing would obligate a state to refuse entry to its own nationals.<sup>1739</sup> It also exempted travel: (a) justified on the ground of humanitarian need, including religious obligation, as determined on a case-by-case basis by the 1591 Committee;<sup>1740</sup> and (b) considered by the 1591 Committee to further the objectives of creating peace and stability in Sudan and the region.<sup>1741</sup> The Council also provided exemptions from the financial sanctions where funds were: (a) necessary for basic expenses as notified to the 1591 Committee;<sup>1742</sup> (b) necessary for extraordinary expenses, as approved by the 1591 Committee;<sup>1743</sup> or (c) subject to legal or administrative lien, as notified to the 1591 Committee.<sup>1744</sup>

#### 4. Administration and monitoring

When it first imposed the 1556 sanctions regime, the Council chose not to establish a sanctions committee, instead bestowing administering responsibilities upon the UNSG. However, the Council subsequently established a number of entities to administer and monitor sanctions, including the Sudan Commission of Inquiry, the 1591 Sanctions Committee and the Sudan Panel of Experts. It also bestowed responsibilities relating to sanctions monitoring upon the AU Mission in Sudan (AMIS) and the UN Mission in Sudan (UNMIS).

##### 4.1 *The Secretary-General*

When the Security Council imposed the sanctions regime, it requested the UNSG to report within thirty days, and monthly thereafter, on the progress made by the government of the Sudan in fulfilling its commitments to disarm the Janjaweed militias and to apprehend and bring to justice Janjaweed leaders and their associates who had incited and carried out human rights and international humanitarian law violations and other atrocities.<sup>1745</sup> At the same time, the Council also encouraged the UNSG's Special Representative for Sudan, as well as the independent expert of the Commission on Human Rights, to work closely with the government of Sudan in supporting independent investigation of violations of human rights and international humanitarian law in the Darfur region.<sup>1746</sup>

<sup>1739</sup> *Ibid.*, para. 3(d). <sup>1740</sup> *Ibid.*, para. 3(f). <sup>1741</sup> *Ibid.*

<sup>1742</sup> *Ibid.*, 3(g)(i). <sup>1743</sup> *Ibid.*, 3(g)(ii). <sup>1744</sup> *Ibid.*, 3(g)(iii).

<sup>1745</sup> SC Res. 1556 (30 July 2004), para. 6; SC Res. 1564 (18 September 2004), para. 15.

<sup>1746</sup> SC Res. 1556 (30 July 2004), para. 14.

The Council has subsequently requested the UNSG to: (a) establish the international commission of inquiry;<sup>1747</sup> and (b) establish and extend the Panel of Experts and appoint its members.<sup>1748</sup>

#### 4.2 *The Sudan International Commission of Inquiry*

In September 2004, the Security Council requested the UNSG to establish a commission of inquiry to investigate reports of violations of international humanitarian law and human rights in Darfur, including determining whether or not acts of genocide had occurred.<sup>1749</sup> On 4 October 2004 the UNSG established a Sudan International Commission of Inquiry.<sup>1750</sup> The Commission submitted its report to the Security Council in February 2005.<sup>1751</sup> Its substantial findings induced the Council to take the unprecedented step of referring the Darfur situation to the International Criminal Court.<sup>1752</sup> The findings also fed into the work subsequently undertaken by the Sudan Panel of Experts.

#### 4.3 *The 1591 Sanctions Committee*

Eight months after it established the 1556 sanctions regime, the Security Council created the 1591 Sanctions Committee to oversee sanctions administration.<sup>1753</sup> The Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to: (a) monitor sanctions implementation;<sup>1754</sup> (b) designate individuals subject to the travel ban and assets freeze;<sup>1755</sup> (c) consider and decide upon requests for exemptions;<sup>1756</sup> (d) promulgate guidelines to facilitate sanctions implementation;<sup>1757</sup> (e) report regularly on its work;<sup>1758</sup> (f) assess reports from the Panel of Experts on sanctions implementation by Sudan and member states;<sup>1759</sup> and (g) encourage a dialogue with interested member states concerning sanctions implementation.<sup>1760</sup>

<sup>1747</sup> SC Res. 1564 (18 September 2004), para. 12.

<sup>1748</sup> SC Res. 1591 (29 March 2005), para. 3(b); SC Res. 1651 (21 December 2005), para. 1; SC Res. 1665 (29 March 2006), para. 1; SC Res. 1713 (29 September 2006), para. 1.

<sup>1749</sup> SC Res. 1564 (18 September 2004), para. 12. <sup>1750</sup> S/2004/812 (4 October 2004).

<sup>1751</sup> S/2005/60 (1 February 2005). <sup>1752</sup> SC Res. 1593 (31 March 2005), para. 1.

<sup>1753</sup> SC Res. 1591 (29 March 2005), para. 3(a). <sup>1754</sup> *Ibid.*, para. 3(a)(i).

<sup>1755</sup> *Ibid.*, para. 3(a)(ii). <sup>1756</sup> *Ibid.*, paras. 3(a)(ii), 3(a)(v). <sup>1757</sup> *Ibid.*, para. 3(a)(iii).

<sup>1758</sup> *Ibid.*, para. 3(a)(iv). <sup>1759</sup> *Ibid.*, para. 3(a)(vi). <sup>1760</sup> *Ibid.*, para. 3(a)(vii).

#### 4.4 *The Sudan Panel of Experts*

In March 2005 the Security Council requested the UNSG to appoint a Panel of Experts,<sup>1761</sup> whose mandate has subsequently been extended on multiple occasions.<sup>1762</sup> The Panel has been tasked with: (a) assisting the 1591 Committee in monitoring sanctions implementation and making recommendations to the Committee on potential Council action;<sup>1763</sup> (b) reporting to the Council with its findings and recommendations;<sup>1764</sup> and (c) co-ordinating its activities with AMIS.<sup>1765</sup>

The Sudan Panel has issued regular reports.<sup>1766</sup> In relation to the arms embargo, the Panel has reported that the borders surrounding Darfur were porous and that arms continued to enter Darfur from a number of countries, as well as from other regions of Sudan.<sup>1767</sup> It determined that the Sudan Liberation Movement/Army and the Justice and Equality Movement had continued to receive arms and related material from various sources, including Chad, Eritrea and the Libyan Arab Jamahiriya.<sup>1768</sup> Moreover, the Council's intent to prevent the supply of arms to the Janjaweed had been circumvented by the incorporation of the Janjaweed into the government-supported militias, such as the Popular Defence Force.<sup>1769</sup> The Panel also documented embargo violations by the government of Sudan, such as the movement of arms into Darfur<sup>1770</sup> and the deployment of attack helicopters to Darfur.<sup>1771</sup>

In order to improve implementation of the arms embargo, the Panel recommended that: (a) a verification component and arms inventory should be established to assist the Panel to monitor implementation;<sup>1772</sup> (b) end-use certification should be required for the sale of all military goods and services to Sudan;<sup>1773</sup> (c) the arms embargo should be expanded to cover the entire Sudan, with appropriate exemptions;<sup>1774</sup> (d) UN member states could play a more active role by

<sup>1761</sup> SC Res. 1591 (29 March 2005), para. 3(b).

<sup>1762</sup> SC Res. 1651 (21 December 2005), para. 1; SC Res. 1665 (29 March 2006), para. 1; SC Res. 1713 (29 September 2006), para. 1.

<sup>1763</sup> SC Res. 1591 (29 March 2005), para. 3(b)(i).

<sup>1764</sup> *Ibid.*, para. 3(b)(ii); SC Res. 1651 (21 December 2005), para. 2; SC Res. 1665 (29 March 2006), para. 2; SC Res. 1713 (29 September 2006), para. 2.

<sup>1765</sup> SC Res. 1591 (29 March 2005), para. 3(b)(iii). <sup>1766</sup> See Appendix 3, Table H.

<sup>1767</sup> S/2006/65 (30 January 2006), paras. 78, 130; S/2006/250 (30 January 2006), para. 35.

<sup>1768</sup> S/2006/65 (30 January 2006), para. 79. <sup>1769</sup> *Ibid.*, para. 81.

<sup>1770</sup> *Ibid.*, paras. 107–111. <sup>1771</sup> *Ibid.*, paras. 114–118.

<sup>1772</sup> S/2006/65 (30 January 2006), para. 135; S/2006/250 (30 January 2006), paras. 57–58.

<sup>1773</sup> S/2006/65 (30 January 2006), para. 136; S/2006/250 (30 January 2006), paras. 59.

<sup>1774</sup> S/2006/65 (30 January 2006), para. 136; S/2006/250 (30 January 2006), para. 60.

requiring end-use certification;<sup>1775</sup> (e) the 1591 Committee should prepare a list of dual-use items, the import of which would require advance approval;<sup>1776</sup> and (f) technical assistance should be provided to states bordering Darfur that possessed a willingness, but lacked the capacity, to implement the embargo.<sup>1777</sup>

The Panel of Experts has identified ten categories of acts that might constitute impediments to the peace process or threats to stability thus warranting the application of the travel ban and assets freeze: (i) conducting hostilities and violations of the N'djamena Humanitarian Ceasefire Agreement;<sup>1778</sup> (ii) failing to comply with the provisions of the Abuja Protocol on Security;<sup>1779</sup> (iii) failure of the government of the Sudan to identify, neutralise and disarm armed militia groups in Darfur;<sup>1780</sup> (iv) exacerbating tribal/ethnic tensions;<sup>1781</sup> (v) providing support to parties engaged in ongoing hostilities;<sup>1782</sup> (vi) directing hostile acts against AMIS personnel;<sup>1783</sup> (vii) failing to enforce accountability for violations of international humanitarian law and international human rights law;<sup>1784</sup> (viii) failing to implement Security Council resolutions concerning Darfur;<sup>1785</sup> (ix) performing acts that impede the actual process of negotiations;<sup>1786</sup> and (x) cross-border incursions.<sup>1787</sup>

The Panel has reported widespread violations of international humanitarian law and human rights in Darfur, outlining eleven case-studies of significant incidents of such violations.<sup>1788</sup> The Panel has also

<sup>1775</sup> S/2006/250 (30 January 2006), paras. 61–62.

<sup>1776</sup> *Ibid.*, para. 63. <sup>1777</sup> *Ibid.*, paras. 64–65.

<sup>1778</sup> S/2006/65 (30 January 2006), paras. 145–149; S/2006/250 (30 January 2006), paras. 73–78.

<sup>1779</sup> S/2006/65 (30 January 2006), paras. 145–149; S/2006/250 (30 January 2006), paras. 73–78.

<sup>1780</sup> S/2006/65 (30 January 2006), paras. 150–152; S/2006/250 (30 January 2006), paras. 79–85.

<sup>1781</sup> S/2006/65 (30 January 2006), para. 153; S/2006/250 (30 January 2006), paras. 86–87.

<sup>1782</sup> S/2006/65 (30 January 2006), para. 154; S/2006/250 (30 January 2006), paras. 88–90.

<sup>1783</sup> S/2006/65 (30 January 2006), paras. 156–162; S/2006/250 (30 January 2006), para. 91.

<sup>1784</sup> S/2006/65 (30 January 2006), paras. 163–164; S/2006/250 (30 January 2006), paras. 92–93.

<sup>1785</sup> S/2006/65 (30 January 2006), paras. 163–164; S/2006/250 (30 January 2006), paras. 92–93.

<sup>1786</sup> S/2006/65 (30 January 2006), para. 165; S/2006/250 (30 January 2006), para. 94.

<sup>1787</sup> S/2006/250 (30 January 2006), para. 95.

<sup>1788</sup> S/2006/65 (30 January 2006), paras. 180–263; S/2006/250 (30 January 2006), paras. 102–164.



documented several instances of offensive military flights.<sup>1789</sup> It thus recommended the application of the travel ban and assets freeze against a number of individuals listed in a confidential annex to its first report. The Panel has also identified specific individuals and office-holders whose actions could be monitored for potential future listing, including the senior leadership within the Sudan Liberation Army and the government of Sudan who have impeded the peace process.<sup>1790</sup>

Among its other recommendations, the Panel has proposed that: (a) a standing civilian protection capacity should be established to monitor violations of international humanitarian law and human rights law in Darfur;<sup>1791</sup> (b) the Security Council should consider imposing additional sanctions against the SLA and the government of Sudan as collective entities;<sup>1792</sup> (c) the 1591 Committee should act swiftly to designate individuals who had committed violations of international humanitarian or human rights law as subject to the travel ban and assets freeze;<sup>1793</sup> (d) the Security Council should consider establishing a no-fly zone over Darfur for aircraft used by the government of the Sudan and parties to the Darfur conflict;<sup>1794</sup> and (e) the Council should consider enhancing the Panel's capacity through the establishment of dedicated investigation and analysis teams.<sup>1795</sup>

#### 4.5 *The AU Mission in Sudan*

Under the 8 April 2004 N'djamena Ceasefire Agreement, a Ceasefire Monitoring Commission was established comprising representatives from the parties, the Tchadian mediation team and the international community.<sup>1796</sup> The African Union subsequently undertook to deploy an Observer Mission to support the Ceasefire Monitoring Commission.<sup>1797</sup> On 9 June 2004 the first AU military observers were deployed.<sup>1798</sup> AMIS was subsequently strengthened periodically,<sup>1799</sup>

<sup>1789</sup> S/2006/65 (30 January 2006), paras. 264–269; S/2006/250 (30 January 2006), paras. 165–166.

<sup>1790</sup> S/2006/65 (30 January 2006), paras. 270–274; S/2006/250 (30 January 2006), para. 178.

<sup>1791</sup> S/2006/65 (30 January 2006), para. 275; S/2006/250 (30 January 2006), para. 175.

<sup>1792</sup> S/2006/250 (30 January 2006), para. 169. <sup>1793</sup> *Ibid.*, para. 172.

<sup>1794</sup> S/2006/65 (30 January 2006), para. 277; S/2006/250 (30 January 2006), para. 177.

<sup>1795</sup> S/2006/250 (30 January 2006), para. 173.

<sup>1796</sup> N'djamena Agreement (8 April 2004), Art 3.

<sup>1797</sup> AU doc PSC/AHG/Comm. (X) (25 May 2004), para. A 6.

<sup>1798</sup> AU doc PSC/MIN/2.(XII) (4 July 2004), para. 9.

<sup>1799</sup> AU doc PSC/PR/Comm. (XVII) (20 October 2004), para. 4; AU doc PSC/PR/Comm.(XXVIII), para. 9.

until being converted into a UN peace operation.<sup>1800</sup> The Security Council requested AMIS to co-operate with the 1591 Committee and the Sudan Panel of Experts by supplying any information at its disposal on sanctions implementation.<sup>1801</sup> The Panel has acknowledged the assistance of AMIS in its reports.<sup>1802</sup>

#### 4.6 *The UN Mission in Sudan*

In August 2006, the Security Council tasked the UN Mission in Sudan with seizing arms and related material in Darfur in violation of the arms embargo.<sup>1803</sup>

### 5. Conclusions

The 1556 Sudan sanctions regime is notable for a number of reasons. First, the objective of the regime was initially linked to an actor other than the target of the sanctions regime, as the aim of the 1556 arms embargo was to make the government of the Sudan disarm the Janjaweed militias. Second, along with the Haiti and FRY sanctions regimes, and to a lesser extent the Afghanistan/Taliban/Al Qaida sanctions regime when it was first imposed, a major motivating factor for the application of the sanctions was a growing crisis involving human rights violations. Third, following the example of the DRC sanctions regime, the Council again imposed sanctions without establishing a sanctions committee at the same time, thus leaving the administration and monitoring of the sanctions to the UNSG. As with the DRC sanctions regime, however, the Council subsequently established a sanctions committee to oversee such administration and monitoring.

In an unprecedented move, the Security Council chose to announce the initial list of individuals against whom the travel ban and assets freeze would apply in the form of a resolution.<sup>1804</sup> Previously, the typical practice had been for the relevant sanctions committee to announce new listings via press release. The Council again demonstrated willingness to use time-delays, by providing for a slight delay in the implementation of the travel ban and assets freeze.<sup>1805</sup> In a possible

<sup>1800</sup> SC Res. 1663 (24 March 2006), para. 4 (asking the UNSG to expedite preparatory planning for the transition of AMIS to a UN peace operation).

<sup>1801</sup> SC Res. 1665 (29 March 2006), para. 3.

<sup>1802</sup> S/2006/65 (30 January 2006), para. 59; S/2006/250 (19 April 2006), para. 27.

<sup>1803</sup> SC Res. 1706 (31 August 2006), para. 12(a). <sup>1804</sup> SC Res. 1672 (25 April 2006).

<sup>1805</sup> SC Res. 1591 (29 March 2005), para. 4.

sign that time-limits had fallen from favour, however, the Council provided simply for the possibility of reviewing sanctions.<sup>1806</sup>

## 22. THE 1572 CÔTE D'IVOIRE SANCTIONS REGIME

The Security Council imposed sanctions against Côte d'Ivoire in November 2004, with the aim of securing the implementation of the Côte d'Ivoire peace process. The sanctions regime initially consisted of an arms embargo against Côte d'Ivoire and a travel ban and assets freeze against individuals who posed a threat to the peace and national reconciliation process in Côte d'Ivoire. The sanctions regime was subsequently expanded, with diamond sanctions also being applied. The Council has established a sanctions committee to administer the sanctions regime and a group of experts to monitor sanctions implementation.

### 1. Constitutional basis

The situation in Côte d'Ivoire has been on the Security Council's agenda since December 2002, when the Council condemned attempts to use force to influence the political situation in Côte d'Ivoire and overthrow the elected government of President Laurent Gbagbo.<sup>1807</sup> At the same time, the Council expressed strong support for ECOWAS efforts to promote a peaceful settlement and for the proposed deployment of an ECOWAS monitoring force (ECOFORCE).<sup>1808</sup>

On 23 January 2003, at a round-table meeting sponsored by France, the Ivorian political forces signed the Linas-Marcoussis Agreement.<sup>1809</sup> The Agreement provided for the formation of a Government of National Reconciliation and called upon all Ivorian political forces to work with the President and Prime Minister towards the establishment of a balanced and stable government.<sup>1810</sup> In February 2003, the Council adopted resolution 1464 (2003), in which it noted the existence of challenges to the stability of Côte d'Ivoire and determined that the situation in the country constituted a threat to international peace and security in the region.<sup>1811</sup> Acting under Chapter VII, the Council then authorised

<sup>1806</sup> *Ibid.*, para. 5. <sup>1807</sup> S/PRST/2002/42 (20 December 2002), para. 1.

<sup>1808</sup> *Ibid.*, paras. 3, 6.

<sup>1809</sup> For the text of the Agreement, see S/2003/99 (27 January 2003), Annex I. <sup>1810</sup> *Ibid.*

<sup>1811</sup> SC Res. 1464 (4 February 2003), preambular para. 7.

member states participating in ECOFORCE to take the necessary steps to guarantee the security and freedom of movement of their forces and to ensure the protection of civilians threatened by physical violence within their zones of operation.<sup>1812</sup> Over the course of 2003 and 2004, the Council took a number of further steps to address the situation in Côte d'Ivoire, including the establishment of first a political mission and then a peacekeeping operation.<sup>1813</sup> During that period the Council reaffirmed the existence of a threat to the peace on several occasions.<sup>1814</sup>

On 15 November 2004, the Security Council adopted resolution 1572 (2004), in which it deplored a resumption of hostilities in Côte d'Ivoire and repeated violations of a cease-fire agreement of 3 May 2003,<sup>1815</sup> expressed its deep concern at the humanitarian situation in Côte d'Ivoire and at the use of the media to incite hatred and violence against foreigners,<sup>1816</sup> and determined that the situation in Côte d'Ivoire continued to pose a threat to international peace and security in the region.<sup>1817</sup> The Council then invoked Chapter VII of the UN Charter before applying sanctions.<sup>1818</sup> The Council again reaffirmed the existence of a threat to the peace and invoked Chapter VII in subsequent decisions modifying the Côte d'Ivoire sanctions regime.<sup>1819</sup>

## 2. Objectives

The initial objective of the Côte d'Ivoire sanctions regime was to bring about the full implementation of the Linas-Marcoussis and Accra III Agreements.<sup>1820</sup> On 6 April 2005, at a meeting held in Pretoria under the auspices of South African President, Thabo Mbeki, the Ivorian

<sup>1812</sup> *Ibid.*, para. 9.

<sup>1813</sup> For the establishment of the United Nations Mission in Côte d'Ivoire (MINUCI), see SC Res. 1479 (13 May 2003). In February 2004 MINUCI was replaced by the United Nations Operation in Côte d'Ivoire (UNOCI). See SC Res. 1528 (27 February 2004).

<sup>1814</sup> SC Res. 1479 (13 May 2003), preambular para. 9; SC Res. 1527 (4 February 2004), preambular para. 9; SC Res. 1528 (27 February 2004), preambular para. 17.

<sup>1815</sup> SC Res. 1572 (15 November 2004), preambular para. 4.

<sup>1816</sup> *Ibid.*, preambular para. 5.

<sup>1817</sup> *Ibid.*, preambular para. 8. <sup>1818</sup> *Ibid.*, preambular para. 9.

<sup>1819</sup> SC Res. 1584 (1 February 2005), preambular paras. 8, 9; SC Res. 1632 (18 October 2005), preambular paras. 4, 5; SC Res. 1643 (15 December 2005), preambular paras. 11, 12; SC Res. 1708 (14 September 2006), preambular paras. 4-5; SC Res. 1727 (15 December 2006), preambular paras. 5-6.

<sup>1820</sup> SC Res. 1572 (15 November 2004), para. 13.

parties signed another peace agreement – the ‘Pretoria Agreement’.<sup>1821</sup> In October 2005, the Security Council noted that additional measures were required to expedite the implementation of the Linas-Marcoussis Agreement, Accra III and Pretoria Agreements, including in particular the disarmament, demobilisation and reintegration process, the dismantling and disarmament of militias and the creation of conditions for the holding of free, fair, open and transparent elections, including the identification process and the registration of voters.<sup>1822</sup> The Security Council has subsequently confirmed on multiple occasions that the broad objective of the 1572 sanctions regime is achieving progress in the peace and reconciliation process in Côte d’Ivoire.<sup>1823</sup>

### 3. Scope

The 1572 sanctions regime initially consisted of an arms embargo, an assets freeze and a travel ban. The sanctions regime was subsequently expanded to include diamond sanctions.

#### 3.1 *Sanctions obligations*

Under the arms embargo, all states were required to prevent the sale or supply to Côte d’Ivoire of arms and related material and equipment, as well as the provision to Côte d’Ivoire of training or assistance related to the provision, manufacture or use of arms and related material and equipment.<sup>1824</sup> Under the travel ban, all states were required to prevent the entry into or transit through their territories of all persons who constituted a threat to the peace and national reconciliation process in Côte d’Ivoire, including in particular those who blocked the implementation of the Linas-Marcoussis and Accra III Agreements, any person responsible for serious violations of human rights and international humanitarian law, any person publicly inciting hatred and violence, and any person violating the arms embargo.<sup>1825</sup> Under the assets freeze, all states were required to freeze the financial assets and economic resources of persons subject to the travel ban and entities owned or controlled by agents acting on behalf of such persons.<sup>1826</sup>

<sup>1821</sup> S/2005/270 (25 April 2005), annex I. <sup>1822</sup> SC Res. 1633 (21 October 2005), para. 12.

<sup>1823</sup> SC Res. 1643 (15 December 2005), para. 8; SC Res. 1727 (15 December 2006), para. 6.

<sup>1824</sup> SC Res. 1572 (15 November 2004), para. 7. <sup>1825</sup> *Ibid.*, para. 9. <sup>1826</sup> *Ibid.*, para. 11.

In December 2005 the Council imposed diamond sanctions, requiring all states to take the necessary measures to prevent the import of rough diamonds from Côte d'Ivoire.<sup>1827</sup>

In October 2005 the Council clarified that any obstruction to the action of UNOCI, the French forces, the High Representative for elections and the International Working Group on Côte d'Ivoire constituted a threat to the peace and national reconciliation process for the purposes of identifying individuals to whom the travel ban and assets freeze should apply.<sup>1828</sup>

### 3.2 Exemptions

When the Security Council established the 1572 sanctions regime, it outlined various exemptions. It exempted from the arms embargo: (a) UNOCI and the French forces supporting it;<sup>1829</sup> (b) non-lethal military equipment intended solely for humanitarian or protective use;<sup>1830</sup> (c) protective clothing for UN personnel, representatives of the media and humanitarian and development workers;<sup>1831</sup> (d) a state taking action to evacuate its nationals and those for whom it has consular responsibility;<sup>1832</sup> and (e) the process of restructuring defence and security forces pursuant to the Linas-Marcoussis Agreement.<sup>1833</sup>

When outlining the travel ban, the Council clarified that nothing obliged a state to refuse entry to its own nationals.<sup>1834</sup> The Council further provided for the possibility of exemptions from the travel sanctions where the 1572 Committee determined that travel was justified on the grounds of humanitarian need or religious obligation, or where it would further the objectives of the Council's resolutions for the creation of peace and reconciliation in Côte d'Ivoire and stability in the region.<sup>1835</sup> The Council also exempted from the assets freeze funds that were: (a) necessary for basic expenses, as notified to the 1572 Committee and in the absence of a negative decision by the Committee;<sup>1836</sup> (b) necessary for extraordinary expenses, subject to approval by the 1572 Committee;<sup>1837</sup> or (c) subject to legal or administrative lien, as notified to the Committee.<sup>1838</sup>

<sup>1827</sup> SC Res. 1643 (15 December 2005), para. 6. <sup>1828</sup> *Ibid.*, para. 4.

<sup>1829</sup> SC Res. 1572 (15 November 2004), para. 8(a). <sup>1830</sup> *Ibid.*, para. 8(b).

<sup>1831</sup> *Ibid.*, para. 8(c). <sup>1832</sup> *Ibid.*, para. 8(d). <sup>1833</sup> *Ibid.*, para. 8(e). <sup>1834</sup> *Ibid.*, para. 9.

<sup>1835</sup> *Ibid.*, para. 10. <sup>1836</sup> *Ibid.*, para. 12(a). <sup>1837</sup> *Ibid.*, para. 12(b). <sup>1838</sup> *Ibid.*, para. 12(c).

### 3.3 *Time-limits and renewals*

The arms embargo came into effect immediately and was imposed for an initial period of thirteen months.<sup>1839</sup> The travel ban and assets freeze came into effect after a one-month delay and were applied for a period of twelve months.<sup>1840</sup> All of these initial measures have been renewed for two further periods of twelve months.<sup>1841</sup> The diamond sanctions were applied for an initial period of twelve months,<sup>1842</sup> and have subsequently been renewed for a further twelve months.<sup>1843</sup>

## 4. Administration and monitoring

The Security Council bestowed responsibilities for the administration and monitoring of the Côte d'Ivoire sanctions regime upon a range of actors, including a sanctions committee, a group of experts, the UNSG and the UN Operation for Côte d'Ivoire (UNOCI).

### 4.1 *The 1572 Committee*

The Security Council created a Sanctions Committee in the same resolution by which it initiated the Côte d'Ivoire sanctions regime.<sup>1844</sup> The 1572 Committee, which was established in accordance with rule 28 of the provisional rules of procedure, was to: (a) designate individuals subject to the travel ban and assets freeze;<sup>1845</sup> (b) seek information from states regarding action taken to implement sanctions;<sup>1846</sup> (c) consider and decide upon requests for exemptions;<sup>1847</sup> (d) make relevant information publicly available;<sup>1848</sup> (e) promulgate guidelines for its work;<sup>1849</sup> and (f) report regularly on its work, including its observations and recommendations on strengthening the effectiveness of the sanctions.<sup>1850</sup>

In its initial annual report, the Committee noted that it had held eight formal and fourteen informal meetings<sup>1851</sup> and observed that only thirty-eight UN member states had reported on action taken to implement the sanctions.<sup>1852</sup> It referred to two exemptions it had granted

<sup>1839</sup> SC Res. 1572 (15 November 2004), para. 7. <sup>1840</sup> *Ibid.*, paras. 9, 11, 19.

<sup>1841</sup> SC Res. 1643 (15 December 2005), para. 1; SC Res. 1727 (15 December 2006), para. 1.

<sup>1842</sup> SC Res. 1643 (15 December 2005), paras. 6, 8.

<sup>1843</sup> SC Res. 1727 (15 December 2006), para. 1.

<sup>1844</sup> SC Res. 1572 (15 November 2004), para. 14. <sup>1845</sup> *Ibid.*, para. 14(a).

<sup>1846</sup> *Ibid.*, para. 14(b). <sup>1847</sup> *Ibid.*, para. 14(c). <sup>1848</sup> *Ibid.*, para. 14(d).

<sup>1849</sup> *Ibid.*, para. 14(e). <sup>1850</sup> *Ibid.*, para. 14(f).

<sup>1851</sup> S/2006/55 (30 January 2006), para. 9. <sup>1852</sup> *Ibid.*, para. 11.

from the arms embargo: to France for technical assistance and training and to the United Kingdom for non-lethal military equipment.<sup>1853</sup> The Chairman of the 1572 Committee also issued a report on his October 2005 mission to Côte d'Ivoire.<sup>1854</sup> A commonly expressed Ivorian view was that the travel ban and assets freeze should become operational in order to force the parties to implement the Linas-Marcoussis, Accra III and Pretoria Agreements.<sup>1855</sup> The Chairman recommended that the Council and the Committee should keep the situation under close review until the objectives of the sanctions regime were fulfilled and that the Committee should consider designating individuals to whom the travel ban and assets freeze should apply.<sup>1856</sup>

#### 4.2 *The Secretary-General*

The Security Council has requested the UNSG to undertake a range of responsibilities, including to: (a) report on progress towards the objectives of the Côte d'Ivoire sanctions regime;<sup>1857</sup> (b) report any hindrance encountered by UNOCI in pursuit of its monitoring responsibilities;<sup>1858</sup> (c) establish and support the Group of Experts on Côte d'Ivoire;<sup>1859</sup> (d) communicate to the Security Council information gathered by UNOCI concerning the supply of arms and related material to Côte d'Ivoire;<sup>1860</sup> (e) report any serious obstacle to the freedom of movement of UNOCI;<sup>1861</sup> (f) communicate to the Council information gathered by UNOCI concerning the production and illicit export of diamonds;<sup>1862</sup> and (g) report any serious obstacle to the freedom of movement of UNOCI and of the French forces supporting it.<sup>1863</sup>

<sup>1853</sup> *Ibid.*, para. 12. <sup>1854</sup> S/2005/790 (15 December 2005).

<sup>1855</sup> *Ibid.*, para. 63. While the travel ban and assets freeze had come into effect in December 2004, the 1572 Committee had not yet identified any individuals against whom the measures were to be applied. It first did so on 7 February 2006, when it listed three individuals: SC 8631 (7 February 2006).

<sup>1856</sup> *Ibid.*, paras. 69–70.

<sup>1857</sup> SC Res. 1572 (15 November 2004), para. 18. The UNSG thus submitted the following report: S/2005/186 (18 March 2005).

<sup>1858</sup> SC Res. 1584 (1 February 2005), para. 6.

<sup>1859</sup> *Ibid.*, para. 7; SC Res. 1708 (14 September 2006), para. 1; SC Res. 1727 (15 December 2006), para. 7.

<sup>1860</sup> SC Res. 1584 (1 February 2005), para. 9; SC Res. 1643 (15 December 2005), para. 10; SC Res. 1727 (15 December 2006), para. 8.

<sup>1861</sup> SC Res. 1643 (15 December 2005), para. 5. <sup>1862</sup> *Ibid.*, para. 10.

<sup>1863</sup> SC Res. 1727 (15 December 2006), para. 4.



### 4.3 *The Côte d'Ivoire Group of Experts*

In February 2005, the Council requested the UNSG to create a Group of Experts on Côte d'Ivoire.<sup>1864</sup> The Group, which has been re-established or extended on multiple occasions,<sup>1865</sup> has been requested to: (a) analyse information gathered by UNOCI and the French forces;<sup>1866</sup> (b) analyse information on flows of arms and related material, on the provision of assistance, advice or training related to military activities, on networks operating in violation of the arms embargo and on sources of financing for purchases of arms and related material;<sup>1867</sup> (c) recommend how to improve the capacity of states to ensure the effective implementation of the arms embargo;<sup>1868</sup> (d) report on sanctions implementation;<sup>1869</sup> (e) keep the 1572 Committee regularly updated on its activities;<sup>1870</sup> (f) exchange information with UNOCI and the French forces pertinent to their monitoring responsibilities;<sup>1871</sup> (g) provide the 1572 Committee with a list of those found to have violated sanctions and evidence of those violations;<sup>1872</sup> and (h) co-operate with other relevant groups of experts, including in particular the Panel of Experts on Liberia.<sup>1873</sup>

Since its establishment, the Côte d'Ivoire Group of Experts has issued a number of reports.<sup>1874</sup> In its reports, the Group has explored the implementation of sanctions and examined Côte d'Ivoire's most lucrative export industries, including cocoa, cotton and diamonds, in order to ascertain the potential for revenue to be channelled towards

<sup>1864</sup> SC Res. 1584 (1 February 2005), para. 7. In October 2005 the Council extended the Group's mandate for an additional two months: SC Res. 1632 (18 October 2005), para. 1. In December 2005, the Council requested the UNSG to re-establish the Group for an additional six months: SC Res. 1643 (15 December 2005), para. 9.

<sup>1865</sup> See Appendix 3, Table G. <sup>1866</sup> SC Res. 1584 (1 February 2005), para. 7(a).

<sup>1867</sup> *Ibid.*, para. 7(b); SC Res. 1643 (15 December 2005), para. 9(b); SC Res. 1727 (15 December 2006), para. 7(b).

<sup>1868</sup> SC Res. 1584 (1 February 2005), para. 7(c); SC Res. 1643 (15 December 2005), para. 9(c); SC Res. 1727 (15 December 2006), para. 7(c).

<sup>1869</sup> SC Res. 1584 (1 February 2005), para. 7(d); SC Res. 1643 (15 December 2005), paras. 9(d)–(e), 9(i); SC Res. 1727 (15 December 2006), paras. 7(d)–(e), 7(i).

<sup>1870</sup> SC Res. 1584 (1 February 2005), para. 7(e); SC Res. 1643 (15 December 2005), para. 9(f); SC Res. 1727 (15 December 2006), para. 7(f).

<sup>1871</sup> SC Res. 1584 (1 February 2005), para. 7(f); SC Res. 1643 (15 December 2005), para. 9(a); SC Res. 1727 (15 December 2006), para. 7(a).

<sup>1872</sup> SC Res. 1584 (1 February 2005), para. 7(g); SC Res. 1643 (15 December 2005), para. 9(g); SC Res. 1727 (15 December 2006), para. 7(g).

<sup>1873</sup> SC Res. 1584 (1 February 2005), para. 7(h); SC Res. 1643 (15 December 2005), para. 9(h); SC Res. 1727 (15 December 2006), para. 7(h).

<sup>1874</sup> See Appendix 3, Table H.

procuring weapons.<sup>1875</sup> In that respect it has observed that illegal diamond production provided an important source of income for the rebel group Forces Nouvelles.<sup>1876</sup> The Group has reported widespread confusion about the details of the Côte d'Ivoire sanctions regime,<sup>1877</sup> including whether military training and dual-use maintenance equipment contracts signed prior to the adoption of resolution 1572 (2004) were in violation of the sanctions.<sup>1878</sup> The Group of Experts has noted that, despite rumours of weapons and ammunition deliveries to Côte d'Ivoire's illegal militias, it had seen no evidence of such violations of the arms embargo.<sup>1879</sup> It has expressed concern, however, that Côte d'Ivoire's ports, airports and border crossings remain susceptible to sanctions-busting.<sup>1880</sup>

Among the Group's recommendations, are suggestions that: the 1572 Committee issue a statement clarifying the scope of the sanctions regime, designed in particular to prevent a loophole for dual-use items;<sup>1881</sup> the Committee Chairman could improve awareness about the sanctions by undertaking a mission to Côte d'Ivoire;<sup>1882</sup> the sanctions monitoring activities of United Nations Operation in Côte d'Ivoire (UNOCI) would benefit from the employment of a customs expert;<sup>1883</sup> the Security Council should call upon the government of Côte d'Ivoire to provide a comprehensive breakdown of its defence expenditure;<sup>1884</sup> the Council should call upon the Forces Nouvelles to provide UNOCI with a comprehensive inventory of its weapons;<sup>1885</sup> the 1572 Committee should provide member states with the names of individuals against whom the travel ban and assets freeze should be applied;<sup>1886</sup> there should be a comprehensive audit of expenditures from revenue gained from the cocoa trade; the UN Secretariat should improve its efforts to disseminate the Group's reports in Côte d'Ivoire,<sup>1887</sup> and that Côte d'Ivoire should make a submission to the UN Register of Conventional Arms.<sup>1888</sup>

<sup>1875</sup> S/2005/699, paras. 22–58; S/2006/204, paras. 20–30. <sup>1876</sup> S/2005/699, paras. 56–58.

<sup>1877</sup> S/2005/470, paras. 13–14. <sup>1878</sup> *Ibid.*, para. 14(d).

<sup>1879</sup> S/2005/699, para. 17; S/2006/204, para. 31.

<sup>1880</sup> S/2005/699, para. 60; S/2006/204, para. 31.

<sup>1881</sup> S/2005/470, para. 15; S/2005/699, para. 176; S/2006/204, para. 57.

<sup>1882</sup> S/2005/470, para. 16. <sup>1883</sup> *Ibid.*, para. 17; S/2005/699, para. 172.

<sup>1884</sup> S/2005/699, para. 168. <sup>1885</sup> *Ibid.*, para. 174; S/2006/204, para. 58.

<sup>1886</sup> S/2005/699, para. 178; S/2006/204, para. 39. <sup>1887</sup> S/2006/204, para. 54.

<sup>1888</sup> *Ibid.*, para. 56.

#### 4.4 *The UN Operation in Côte d'Ivoire*

In February 2005, the Security Council authorised the UN Operation in Côte d'Ivoire (UNOCI) to monitor sanctions implementation, in cooperation with the Côte d'Ivoire Group of Experts, the United Nations Mission in Liberia (UNMIL) and the United Nations Mission in Sierra Leone (UNAMSIL), including by inspecting the cargo of aircraft and vehicles using the ports, airports, airfields, military bases and border crossings of Côte d'Ivoire.<sup>1889</sup> UNOCI was also authorised to collect and dispose of arms and related material brought into Côte d'Ivoire in violation of the arms embargo.<sup>1890</sup>

In February 2005 the Security Council also authorised the French forces acting in support of UNOCI to engage in sanctions monitoring activities.<sup>1891</sup> At the same time, the Council also requested the French forces to provide security for UNOCI's sanctions monitoring activities.<sup>1892</sup>

### 5. Conclusions

Like the 1521 Liberia sanctions regime, the 1572 sanctions regime represents an example of a new generation, targeted sanctions regime, consisting of targeted measures that are subject to time-limits. The Council has also outlined relatively clear objectives for the sanctions, reaffirming that the measures may be lifted if there were to be progress in the Côte d'Ivoire peace process and national reconciliation. The Security Council again created a new monitoring body, the Côte d'Ivoire Group of Experts, to monitor sanctions implementation. In an innovative step, the Security Council also warned in December 2006 that it was prepared to apply targeted sanctions against a number of categories of people, including those who posed a threat to the peace and national reconciliation process, those responsible for serious violations of human rights and international humanitarian law, those who publicly incited hatred and violence, and those who violated the arms embargo.<sup>1893</sup>

<sup>1889</sup> SC Res. 1584 (1 February 2005), para. 2(a); SC Res. 1609 (24 June 2005), para. 2(m).

<sup>1890</sup> SC Res. 1584 (1 February 2005), para. 2(b); SC Res. 1609 (24 June 2005), para. 2(n).

<sup>1891</sup> SC Res. 1584 (1 February 2005), para. 2. <sup>1892</sup> *Ibid.*, para. 3.

<sup>1893</sup> SC Res. 1727 (15 December 2006), para. 12.

## 23. THE 1636 HARIRI SANCTIONS REGIME

In October 2005 the Security Council applied sanctions against those suspected of involvement in the terrorist bombing that resulted in the death of former Lebanese Prime Minister Rafiq Hariri. The new sanctions regime consisted of an assets freeze and travel ban. The Council created the 1636 Committee to administer the 1636 sanctions regime. The Council has also created an independent international investigation commission and endorsed the creation of a tribunal, both of which are designed to play a role in achieving the objectives of the 1636 sanctions regime.

### 1. Constitutional basis

On 14 February 2005, a bomb exploded in the Lebanese capital Beirut, killing Prime Minister Rafiq Hariri and twenty-two others, and injuring dozens more people. The Security Council immediately condemned the bombing, characterised it as a terrorist act, and called on the UNSG to report on the circumstances, causes and consequences of the bombing.<sup>1894</sup> The Secretary-General established a fact-finding mission, which reported that the Lebanese investigation process suffered from 'serious flaws' and was unlikely to reach 'a satisfactory and credible conclusion'.<sup>1895</sup> In April 2005, the Security Council established an international independent investigation commission to assist the Lebanese authorities with the investigation into the Hariri bombing and to identify the bombing's perpetrators, sponsors, organisers and accomplices.<sup>1896</sup>

In October 2005 the Commission submitted its report to the Security Council.<sup>1897</sup> After considering the report, the Council adopted resolution 1636 (2005), in which it reaffirmed that terrorism constituted 'one of the most serious threats to peace and security'.<sup>1898</sup> The Council then determined that the 14 February 2005 terrorist bombing in Beirut that killed former Lebanese Prime Minister Rafiq Hariri and twenty-two others constituted a threat to international peace and security and noted that it was acting under Chapter VII before proceeding to impose sanctions.<sup>1899</sup> In subsequent decisions connected with the Hariri

<sup>1894</sup> S/PRST/2005/4 (15 February 2005). <sup>1895</sup> S/2005/203 (24 March 2005), para. 62.

<sup>1896</sup> SC Res. 1595 (7 April 2005), para. 1. For further details, see section 4.

<sup>1897</sup> S/2005/662 (20 October 2005).

<sup>1898</sup> SC Res. 1636 (31 October 2005), preambular para. 3.

<sup>1899</sup> *Ibid.*, preambular paras. 19, 21.

sanctions regime, the Council reaffirmed the existence of a threat to international peace and security and reiterated that it was acting under Chapter VII.<sup>1900</sup>

## 2. Objectives

The initial objective of the Hariri sanctions regime was to ensure the completion of all investigative and judicial proceedings relating to the Hariri bombing.<sup>1901</sup>

## 3. Scope

### 3.1 Sanctions obligations

Under resolution 1636, the Security Council applied a travel ban and an assets freeze. Under the travel ban, all states were required to prevent entry into or transit through their territories of all individuals suspected of involvement in the planning, sponsoring, organising or perpetrating of the Hariri bombing.<sup>1902</sup> If such individuals were already in their territories, then states were required to make them available for interview by the Commission.<sup>1903</sup> Under the assets freeze, all states were required to freeze all funds, financial assets and economic resources in their territories owned or controlled by the same individuals.<sup>1904</sup> Individuals subject to the travel ban and assets freeze were to be designated by the government of Lebanon and the International Independent Investigation Commission.<sup>1905</sup>

### 3.2 Exemptions

The Security Council outlined various exemptions from the travel ban and assets freeze. With respect to the travel ban, the Council noted that nothing required states to refuse entry to their own nationals,<sup>1906</sup> and it exempted travel when approved on a case-by-case basis by the 1636 Committee as justified on the ground of humanitarian need, including religious obligation, or in order to further the objectives of resolution 1636 (2005).<sup>1907</sup> With respect to the assets freeze, the Council provided for exemptions when approved by the 1636 Committee on a case-by-case basis for funds that were necessary for basic expenses and payment

<sup>1900</sup> SC Res. 1644 (15 December 2005), preambular paras. 9, 10.

<sup>1901</sup> SC Res. 1636 (31 October 2005), para. 3(c). <sup>1902</sup> *Ibid.*, para. 3(a). <sup>1903</sup> *Ibid.*

<sup>1904</sup> *Ibid.* <sup>1905</sup> *Ibid.* <sup>1906</sup> *Ibid.* <sup>1907</sup> *Ibid.*, Annex, para. 2(i).

of reasonable professional fees and legal expenses connected with maintenance of the frozen funds.<sup>1908</sup>

#### 4. Administration and monitoring

The Security Council bestowed responsibilities for the administration and monitoring of the 1636 Hariri sanctions regime upon a range of actors, including the UNSG, the International Independent Investigation Commission, the 1636 Sanctions Committee, and the Hariri Tribunal.

##### 4.1 *The Secretary-General*

The Security Council has requested the Secretary-General to undertake a number of tasks in connection with the Hariri sanctions regime. Prior to the establishment of the sanctions regime, the Council requested the Secretary-General to report on the circumstances, causes and consequences of the bombing.<sup>1909</sup> The Secretary-General then dispatched a fact-finding mission, which reported that the Lebanese investigation process suffered from ‘serious flaws’ and was unlikely to reach ‘a satisfactory and credible conclusion’.<sup>1910</sup> When the Council established UNIIIC, it authorised the Secretary-General to extend the Commission’s mandate for three months beyond the initial three-month mandate.<sup>1911</sup> The Secretary-General was also requested to provide regular oral reports to the Council on the Commission’s activities.<sup>1912</sup>

In December 2005 the Security Council acknowledged a request from the government of Lebanon that those charged with involvement in the Hariri bombing should be tried by a tribunal of an international character. The Council subsequently tasked the Secretary-General with helping the Lebanese government to identify the nature and scope of international assistance required for the establishment of such a tribunal;<sup>1913</sup> and with negotiating an agreement with the Lebanese government to establish a tribunal.<sup>1914</sup> The Security Council has also requested

<sup>1908</sup> *Ibid.*, Annex, para. 2(ii). <sup>1909</sup> S/PRST/2005/4 (15 February 2005).

<sup>1910</sup> S/2005/203 (24 March 2005), para. 62. <sup>1911</sup> SC Res. 1636 (31 October 2005), para. 8.

<sup>1912</sup> *Ibid.*, para. 9.

<sup>1913</sup> SC Res. 1644 (15 December 2005), para. 6. The Secretary-General submitted the following report to the Council: S/2006/176 (21 March 2006).

<sup>1914</sup> SC Res. 1664 (29 March 2006), para. 1.

the Secretary-General to ensure that the Commission has the support and resources necessary for the discharge of its duties.<sup>1915</sup>

#### 4.2 *The International Independent Investigation Commission (UNIIC)*

The Security Council established the International Independent Investigation Commission (UNIIC) in April 2005, in order to assist the Lebanese authorities with the investigation into the Hariri bombing and to identify the bombing's perpetrators, sponsors, organisers and accomplices.<sup>1916</sup> The Commission's mandate has been extended on a number of occasions.<sup>1917</sup> UNIIC has submitted regular reports on its activities and findings to the Council.<sup>1918</sup> In its reports, the Commission has summarised its investigations, which included collecting hundreds of witness statements and dozens of suspect statements in the first reporting period alone.<sup>1919</sup> The Commission has found 'converging evidence' of the involvement of both Lebanese and Syrian intelligence services in the Hariri bombing.<sup>1920</sup> In the Commission's initial report, it noted that there had been less than ideal co-operation on the part of Syrian authorities with its investigations.<sup>1921</sup> Subsequently, however, the level of co-operation improved.<sup>1922</sup>

#### 4.3 *The 1636 Committee*

When the Security Council established the Hariri sanctions regime, it also created the 1636 Committee to oversee sanctions administration.<sup>1923</sup> The Committee, which was established in accordance with rule 28 of the Council's provisional rules of procedure, was to: (a) register as subject to the travel ban and assets freeze individuals designated by UNIIC or the government of Lebanon;<sup>1924</sup> (b) remove individuals notified by UNIIC or the government of Lebanon as no longer suspected of involvement in the Hariri bombing;<sup>1925</sup> (c) approve authorised exemptions from the travel ban<sup>1926</sup> and assets freeze;<sup>1927</sup> and (d) inform all

<sup>1915</sup> SC Res. 1644 (15 December 2005), para. 8. <sup>1916</sup> SC Res. 1595 (7 April 2005), para. 1.

<sup>1917</sup> SC Res. 1636 (31 October 2005), para. 8; SC Res. 1644 (15 December 2005), para. 1; SC Res. 1686 (15 June 2006), para. 2.

<sup>1918</sup> See Appendix 3, Table H. <sup>1919</sup> S/2005/662 (20 October 2005), para. 87.

<sup>1920</sup> S/2005/662 (20 October 2005), paras. 216, 222. <sup>1921</sup> *Ibid.*, paras. 218–220, 222.

<sup>1922</sup> S/2005/775 (12 December 2005), paras. 74–87, 94–95; S/2006/375 (10 June 2006), paras. 8–9.

<sup>1923</sup> SC Res. 1636 (31 October 2005), para. 3(b). <sup>1924</sup> *Ibid.*, Annex, para. 1.

<sup>1925</sup> *Ibid.*, Annex, para. 3. <sup>1926</sup> *Ibid.*, Annex, para. 2(i). <sup>1927</sup> *Ibid.*, Annex, para. 2(ii).

member states which individuals were subject to the travel ban and assets freeze.<sup>1928</sup>

#### 4.4 *The Hariri Tribunal*

In December 2005 the Security Council requested the Secretary-General to help the Lebanese government to identify the nature and scope of international assistance required for the establishment of an international tribunal to try individuals suspected of involvement in the Hariri bombing.<sup>1929</sup> In March 2006 the Council requested the Secretary-General to negotiate an agreement with the Lebanese government to establish such a tribunal.<sup>1930</sup>

### 5. Conclusions

The Hariri sanctions regime joined a growing list of Article 41 measures applied in response to terrorist activities. It further demonstrated that applying a combination of a travel ban and an assets freeze is becoming the Council's sanctions tool of choice in the effort to target individuals who threaten international peace and security. The establishment of UNIIC and the groundwork towards the establishment of a tribunal also suggest a move by the Council towards internationalising prosecution of terrorist suspects.

From a rule of law perspective, the Hariri sanctions regime raises familiar questions. With respect to transparency and consistency, to what extent does the characterisation of the Hariri bombing accord with previous practice concerning the identification of threats to the peace? With respect to equality, why does the Council choose to act in this specific instance when there are an almost unlimited number of other terrorist acts that might also be investigated in a similar manner? Does the 48-hour no-objection procedure for listing individuals meet the requirements for due process? Does the existence of UNIIC increase the likelihood that there is substantial justification for listing proposed individuals?

## 24. THE 1718 NORTH KOREA SANCTIONS REGIME

The Security Council applied sanctions against the Democratic People's Republic of Korea (DPRK or North Korea) in October 2006, shortly after

<sup>1928</sup> *Ibid.*, Annex, para. 4. <sup>1929</sup> SC Res. 1644 (15 December 2005), para. 6.

<sup>1930</sup> SC Res. 1664 (29 March 2006), para. 1.



that country conducted its inaugural test of a nuclear device. The sanctions regime initially consisted of a broad arms embargo, a travel ban and an assets freeze. The Council established a sanctions committee to administer the 1718 sanctions regime.

## 1. Constitutional basis

North Korea's campaign to become a nuclear power first became apparent in March 1993, when it announced that it was withdrawing from the Nuclear Non-Proliferation Treaty (NPT). The Director of the International Atomic Energy Agency, which is tasked with monitoring compliance with the NPT, promptly reported the matter to the Security Council. On 11 May 1993, the Council adopted resolution 825 (1993), in which it called upon North Korea to reconsider its intention to withdraw from the NPT.<sup>1931</sup> At the same time, the Council also called upon North Korea to honour its non-proliferation obligations under the NPT and to comply with its safeguards agreement with the IAEA.<sup>1932</sup>

In July 2006 North Korea conducted multiple missile tests over the Japan Sea. In response, the Security Council adopted resolution 1695 (2006), in which it reaffirmed that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security.<sup>1933</sup> The Council then affirmed that North Korea's missile launches jeopardised peace, stability and security in the region and beyond.<sup>1934</sup> Noting that it was acting 'under its special responsibility for the maintenance of international peace and security', the Council condemned North Korea's missile launches.<sup>1935</sup> It then 'required' all member states, in accordance with their national legal authorities and legislation and consistent with international law, to prevent missile and missile-related items, materials, goods and technology from being transferred to North Korea.<sup>1936</sup> The Council also required member states to prevent the procurement of such items from North Korea, as well as the transfer of any financial resources to North Korea's missile or weapons of mass destruction programme.<sup>1937</sup>

<sup>1931</sup> SC Res. 825 (11 May 1993), para. 1. <sup>1932</sup> *Ibid.*, para. 2.

<sup>1933</sup> SC Res. 1695 (15 July 2006), preambular para. 3. <sup>1934</sup> *Ibid.*, preambular para. 12.

<sup>1935</sup> *Ibid.*, para. 1. <sup>1936</sup> *Ibid.*, para. 3. <sup>1937</sup> *Ibid.*, para. 4.

Resolution 1695 (2006) was portrayed by some media outlets as a new instance of UN sanctions<sup>1938</sup> and Japan was one Security Council member that considered the measures to be ‘binding’ upon UN member states.<sup>1939</sup> But the status of these measures as mandatory sanctions is questionable. Although the Council identified the existence of a threat to the peace and proceeded to require member states to take particular steps, the Council did not invoke either Chapter VII or Article 41. Moreover, the Council’s language differed substantially from its previous sanctions practice. Rather than *deciding* that all states should take certain actions, it *required* states to take certain action. In the months following the adoption of resolution 1695 (2006), it might have been possible to argue that the Council had created a new form of sanctions regime, as the measures looked, smelled and felt like sanctions, even if they did not take the conventional form of mandatory Article 41 measures. But further Security Council action soon rendered academic any debate concerning the nature of the 1695 measures.

On 9 October 2006, North Korea conducted its first test of a nuclear device. On 14 October the Security Council adopted resolution 1718 (2006), expressing profound concern that the test claimed by North Korea had generated increased tension in the region and beyond, and determining, therefore, that there was a clear threat to international peace and security.<sup>1940</sup> The Council then noted that it was acting under Chapter VII of the Charter and taking measures under Article 41,<sup>1941</sup> before proceeding to apply sanctions.<sup>1942</sup>

## 2. Objectives

The overall objective of the 1718 sanctions regime was to induce North Korea to abandon its nuclear aspirations and return to the international non-proliferation framework. In resolution 1718 (2006), the Security Council demanded that North Korea not conduct any further nuclear test or launch a ballistic missile,<sup>1943</sup> that it immediately retract its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons,<sup>1944</sup> and that it return to the safeguards of that treaty and the International Atomic Energy Agency.<sup>1945</sup> The Council then decided

<sup>1938</sup> ‘North Korea Rejects UN Resolution Imposing Sanctions’ (16 July 2006) *Agence France Presse*; ‘N Korea Rejects Missile Sanctions’, *The Times*, 17 July 2006 p. 32.

<sup>1939</sup> S/PV.5490 (15 July 2006), p. 2 (Japan).

<sup>1940</sup> SC Res. 1718 (14 October 2006), preambular para. 9. <sup>1941</sup> *Ibid.*, preambular para. 10.

<sup>1942</sup> *Ibid.*, paras. 8–10. <sup>1943</sup> *Ibid.*, para. 2. <sup>1944</sup> *Ibid.*, para. 3. <sup>1945</sup> *Ibid.*, para. 4.

that North Korea should suspend all activities relating to its ballistic missile programme and abandon all nuclear weapons and nuclear and ballistic missile programmes.<sup>1946</sup> The Council also called upon North Korea to return immediately to the Six-Party Talks without precondition and work towards the expeditious implementation of the Joint Statement issued on 19 September 2005 by China, North Korea, Japan, the Republic of Korea, the Russian Federation and the United States.<sup>1947</sup>

### 3. Scope

The North Korea sanctions regime consisted of an arms embargo, limited economic sanctions, an assets freeze and a travel ban.

#### 3.1 *Sanctions obligations*

Under the arms embargo, all member states were required to prevent the direct or indirect supply, sale or transfer to North Korea of heavy conventional weapons and related material, including tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems.<sup>1948</sup> Member states were also required to prevent the sale, supply or transfer to North Korea of materials, equipment, goods and technology that were either elaborated in three lists of contraband items (relating to nuclear programmes,<sup>1949</sup> ballistic missile programmes<sup>1950</sup> and other weapons of mass destruction programmes<sup>1951</sup>) or subsequently determined by the Council or the 1718 Committee to be capable of contributing to North Korea's nuclear-related, ballistic missile-related or other weapon of mass destruction-related programmes.<sup>1952</sup> Member states were also required to prohibit the procurement of such items from North Korea<sup>1953</sup> and to prevent any transfer to or from North Korea of technical training, advice, services or assistance related to the provision, manufacture or maintenance of such items.<sup>1954</sup> North Korea, for its part, was commanded to cease the export of all such items.<sup>1955</sup>

Under the limited economic sanctions, member states were required to prevent the sale, supply or transfer to North Korea of 'luxury goods'.<sup>1956</sup> The Council did not explain what goods it considered to

<sup>1946</sup> *Ibid.*, paras. 5–7. <sup>1947</sup> *Ibid.*, para. 14. <sup>1948</sup> *Ibid.*, para. 8(a)(i).

<sup>1949</sup> S/2006/814 (13 October 2006). <sup>1950</sup> S/2006/815 (13 October 2006).

<sup>1951</sup> S/2006/816 (13 October 2006). <sup>1952</sup> SC Res. 1718 (14 October 2006), para. 8(a)(ii).

<sup>1953</sup> *Ibid.*, para. 8(b). <sup>1954</sup> *Ibid.*, para. 8(c).

<sup>1955</sup> *Ibid.*, para. 8(b). <sup>1956</sup> *Ibid.*, para. 8(a)(iii).

fall within this category, nor did it explicitly delegate such a responsibility to the 1718 Committee. Under the assets freeze, all member states were required, in accordance with their respective legal processes, immediately to freeze funds, assets and other economic resources on their territories owned or controlled by persons or entities designated by the 1718 Committee or the Security Council as engaged in or providing support for North Korea's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes.<sup>1957</sup> Member states were also required to prevent any funds from being made available by their nationals or from within their territories to or for the benefit of persons or entities on the assets freeze list.<sup>1958</sup>

Under the travel ban, member states were required to prevent the entry into or transit through their territories of persons designated by the 1718 Committee or the Security Council as being responsible for North Korea policies in relation to its nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their families.<sup>1959</sup>

### 3.2 Exemptions

Exemptions were outlined from the assets freeze for financial or other resources that were: (a) necessary for basic expenses, as notified to the 1718 Committee and in the absence of a negative decision by the Committee within five working days;<sup>1960</sup> (b) necessary for extraordinary expenses, as approved by the Committee;<sup>1961</sup> or (c) subject to a judicial, administrative or arbitral lien or judgment entered prior to the date of the resolution, as notified to the Committee.<sup>1962</sup> The Security Council also provided for exemptions from the travel ban, as approved by the 1718 Committee on a case-by-case basis, for travel that was justified on the grounds of humanitarian need, including religious obligations, or where the Committee concluded that travel would further the objectives of the 1718 sanctions regime.<sup>1963</sup>

## 4. Administration, monitoring and enforcement

The Security Council bestowed responsibilities for the administration of the 1718 North Korea sanctions regime upon a sanctions committee.

<sup>1957</sup> *Ibid.*, para. 8(d).    <sup>1958</sup> *Ibid.*    <sup>1959</sup> *Ibid.*, para. 8(e).    <sup>1960</sup> *Ibid.*, para. 9(a).  
<sup>1961</sup> *Ibid.*, para. 9(b).    <sup>1962</sup> *Ibid.*, para. 9(c).    <sup>1963</sup> *Ibid.*, para. 10.

#### 4.1 *The 1718 Committee*

When the Security Council established the North Korea sanctions regime, it also created the 1718 Sanctions Committee to oversee sanctions administration.<sup>1964</sup> The Committee, which was established in accordance with rule 28 of the Council's provisional rules of procedure, was to: (a) seek from all states information regarding action taken to implement sanctions;<sup>1965</sup> (b) examine and take appropriate action on alleged sanctions violations;<sup>1966</sup> (c) decide upon requests for exemptions;<sup>1967</sup> (d) determine additional items, materials, equipment, goods and technology subject to the arms embargo;<sup>1968</sup> (e) promulgate guidelines to facilitate the implementation of the sanctions;<sup>1969</sup> and (f) report regularly to the Council with recommendations, including on how to strengthen sanctions.<sup>1970</sup>

### 5. Conclusions

The application of sanctions against North Korea calls into question the extent to which the Security Council is following a consistent and coherent approach to nuclear proliferation. While there is little doubt that nuclear proliferation poses a genuine threat to international peace and security, a number of states that have recently entered the nuclear club, including India, Pakistan and Israel, have not been subjected to UN sanctions. The Council's decision to apply sanctions against North Korea and subsequently against Iran, but not against India, Pakistan and Israel, indicates a troubling, selective approach to the threat of nuclear proliferation.

The 1718 sanctions regime also represents a retreat from some aspects of sanctions best practice. One minor quirk was the return to the practice evident in the very first instance of UN sanctions, the 232 sanctions regime, of using the phrase 'member states' rather than 'all states'. On a more substantive level, however, despite the constructive effort at transparency reflected by the clear invocation in resolution 1718 (2006) of both Article 41 and Chapter VII as the Charter basis for action, the Council does not provide either explicit objectives or a time-limit upon the application of sanctions. These oversights open the Council to the allegation that it is acting in a punitive rather than a constructive manner. Without clear articulation of the steps that must

<sup>1964</sup> *Ibid.*, para. 12.    <sup>1965</sup> *Ibid.*, para. 12(a).    <sup>1966</sup> *Ibid.*, para. 12(b).    <sup>1967</sup> *Ibid.*, para. 12(c).  
<sup>1968</sup> *Ibid.*, para. 12(d).    <sup>1969</sup> *Ibid.*, para. 12(e).    <sup>1970</sup> *Ibid.*, para. 12(f).

be taken by North Korea to achieve a relaxing of sanctions, there is a danger that the sanctions will remain on the books for as long as it suits the purposes of any veto-wielding permanent member. Due to the precarious humanitarian situation in North Korea, there is also a risk that the diligent implementation of the 1718 sanctions regime may prevent certain humanitarian items from reaching North Korea if they are considered by the 1718 Committee and/or the Security Council to possess dual-use potential, thus evoking the spectre of some of the major humanitarian failings of the 661 Iraq sanctions regime following the end of the 1990–91 Gulf War.

## 25. THE 1737 IRAN SANCTIONS REGIME

The Security Council imposed sanctions against Iran in December 2006, in an attempt to stop Iran's push towards becoming a nuclear power. The 1737 sanctions regime consisted of a similar collection of measures to those applied against North Korea, including targeted economic, financial and travel sanctions. The Council established a sanctions committee to administer the sanctions regime.

### 1. Constitutional basis

In July 2006, the Security Council noted with serious concern Iran's decision to resume enrichment-related activities, as well as its continued suspension of co-operation with the International Atomic Energy Agency (IAEA).<sup>1971</sup> The Council expressed concern at the proliferation risks presented by the Iranian nuclear programme, stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security, and expressed determination to prevent an aggravation of the situation.<sup>1972</sup> Noting that it was acting under Article 40 of the Charter,<sup>1973</sup> the Council then called upon Iran to take steps that had been required by the IAEA Board of Governors,<sup>1974</sup> and demanded that Iran suspend all enrichment-related and processing activities, including research and development.<sup>1975</sup> It also expressed its intention, in the event that Iran had not complied

<sup>1971</sup> SC Res. 1696 (31 July 2006), preambular para. 6

<sup>1973</sup> *Ibid.*, preambular para. 10.

<sup>1974</sup> *Ibid.*, para. 1.

<sup>1972</sup> *Ibid.*, preambular para. 9.

<sup>1975</sup> *Ibid.*, para. 2.

with its demand by 31 August 2006, to adopt appropriate measures under Article 41 of the Charter to persuade Iran to comply.<sup>1976</sup>

Five months later, the Council adopted resolution 1737 (2006), in which it deplored Iran's refusal to take the steps required by the IAEA Board of Governors,<sup>1977</sup> and expressed concern at the proliferation risks posed by the Iranian nuclear programme and at Iran's failure to comply with the IAEA's requirements and the Council's own demands.<sup>1978</sup> The Council again stated that it was mindful of its primary responsibility under the UN Charter for the maintenance of international peace and security. Then, noting that it was acting under Article 41 of the Charter,<sup>1979</sup> the Council proceeded to apply sanctions against Iran.<sup>1980</sup>

The striking thing about the Council's framing of the constitutional basis for sanctions against Iran is that it does not bother to determine the existence of a threat to international peace and security. When the Council adopted resolution 1696 (2006), the US stated that: 'The pursuit of nuclear weapons by Iran constitutes a direct threat to international peace and security.'<sup>1981</sup> When the Council adopted resolution 1737 (2006), a number of states also referred to the threat posed by Iran's nuclear ambitions.<sup>1982</sup> Ironically, however, the only speaker to use the language of Article 39 of the Charter when sanctions were imposed was Iran itself, which observed that:

Only a few days ago, the Prime Minister of the Israeli regime boasted about his regime's nuclear weapons, but instead of even raising an eyebrow, let alone addressing that serious threat to international peace and security and to the non-proliferation regime, the Security Council is imposing sanctions on a party to the Treaty on the Non-Proliferation of Nuclear Weapons that, unlike Israel, has never attacked or threatened to use force against any Member of the United Nations.<sup>1983</sup>

The Security Council's failure to make a determination in accordance with Article 39, which serves as the trigger for Chapter VII action, is peculiar. In both resolution 1696 (2006) and resolution 1737 (2006), the Council explicitly invokes not only Chapter VII, but also one of its specific provisions (Article 40 in the former and Article 41 in the latter).

<sup>1976</sup> *Ibid.*, para. 8. <sup>1977</sup> SC Res. 1737 (23 December 2006), preambular para. 6.

<sup>1978</sup> *Ibid.*, preambular para. 9. <sup>1979</sup> *Ibid.*, preambular para. 10.

<sup>1980</sup> *Ibid.*, paras. 3-4, 6, 12. <sup>1981</sup> S/PV.5500 (31 July 2006), p. 3.

<sup>1982</sup> S/PV.5612 (23 December 2006), p. 3 (US), p. 4 (Qatar), p. 5 (UK), pp. 6-7 (Japan).

<sup>1983</sup> *Ibid.*, pp. 8-9.

The only plausible interpretation of events is thus that the Council had implicitly determined the existence of a threat to the peace.

## 2. Objectives

The objective of the 1737 sanctions regime was for Iran to comply fully with its obligations under Security Council resolutions and to meet the requirements laid down by the IAEA Board of Governors.<sup>1984</sup> The Council therefore undertook to suspend the sanctions if and for so long as Iran suspended all enrichment-related and reprocessing activities, including research and development, as verified by the IAEA, to allow for negotiations.<sup>1985</sup>

## 3. Scope

The 1737 sanctions regime initially consisted of a mixture of targeted economic, financial and travel sanctions.

### 3.1 *Sanctions obligations*

Under the targeted economic sanctions, all states were to take the necessary measures to prevent the supply, sale or transfer to Iran of all items which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapons delivery systems.<sup>1986</sup> The contraband items were detailed in the same lists of prohibited items originally elaborated for the purposes of the 1718 North Korea sanctions regime, one for items related to nuclear programmes<sup>1987</sup> and the other for items related to ballistic missile programmes.<sup>1988</sup> The Council also provided for the possibility that the 1737 Committee could expand that list by adding further items which could contribute to enrichment-related, reprocessing or heavy water-related activities.<sup>1989</sup> Moreover, it required states themselves to refrain from providing any items they determined would contribute to such activities or to activities related to topics about which the IAEA had expressed concerns.<sup>1990</sup> The Security Council also required states to prevent the provision to Iran of any technical

<sup>1984</sup> SC Res. 1737 (23 December 2006), para. 24(a). <sup>1985</sup> *Ibid.*, para. 24 (a).

<sup>1986</sup> *Ibid.*, para. 3. <sup>1987</sup> S/2006/814 (13 October 2006).

<sup>1988</sup> S/2006/815 (13 October 2006).

<sup>1989</sup> SC Res. 1737 (23 December 2006), para. 3(d). <sup>1990</sup> *Ibid.*, para. 4.



assistance, training, financial assistance or services, as well as the transfer of financial resources or services related to the supply, sale, transfer, manufacture or use of the items prohibited under the targeted economic sanctions.<sup>1991</sup>

Under the financial sanctions, all states were to freeze the funds, other financial assets and economic resources of persons and entities designated by the Security Council in an Annex to resolution 1737 (2006), as well as additional persons and entities designated by the 1737 Committee as being engaged in, directly associated with or providing support for Iran's nuclear activities.<sup>1992</sup> Under the travel sanctions, all states were to notify the 1737 Committee of the entry into or transit through their territories of the persons designated as being engaged in, directly associated with or providing support for Iran's nuclear activities.<sup>1993</sup>

### 3.2 Exemptions

When the Security Council imposed the 1737 sanctions regime, it exempted from the targeted economic sanctions certain items that were intended for light water nuclear reactors. It also provided for the possibility of further exemptions where the 1737 Committee decided in advance and on a case-by-case basis that particular items or assistance would clearly not contribute to the development of Iran's technologies in support of its nuclear activities, including where such items or assistance were for food, agricultural, medical or other humanitarian purposes.<sup>1994</sup> However, this exemption was subject to the provisos that contracts for delivery of such items included appropriate end-user guarantees and that Iran had committed not to use the items in its nuclear activities.<sup>1995</sup>

The Council outlined a range of exemptions from the financial sanctions. It thus exempted funds that were: (a) necessary for basic expenses, as notified to the 1737 Committee and in the absence of a negative decision by the Committee within five working days;<sup>1996</sup> (b) necessary for extraordinary expenses, as approved in advance by the Committee;<sup>1997</sup> (c) subject to a judicial, administrative or arbitral lien, as notified to the Committee;<sup>1998</sup> and (d) necessary for activities related to light water nuclear reactors, as notified to the Committee.<sup>1999</sup> The

<sup>1991</sup> *Ibid.*, para. 6. <sup>1992</sup> *Ibid.*, para. 12. <sup>1993</sup> *Ibid.*, para. 10. <sup>1994</sup> *Ibid.*, para. 9.

<sup>1995</sup> *Ibid.*, para. 9(a)–(b). <sup>1996</sup> *Ibid.*, para. 13(a). <sup>1997</sup> *Ibid.*, para. 13(b).

<sup>1998</sup> *Ibid.*, para. 13(c). <sup>1999</sup> *Ibid.*, para. 13(d).

Council also decided that states may permit the addition to frozen accounts of interest or other earnings due,<sup>2000</sup> and it clarified that the assets freeze would not prevent listed individuals and entities from making payment due under a contract initiated prior to their listing, so long as the contract did not involve activities prohibited under the sanctions regime.<sup>2001</sup>

## 4. Administration, monitoring and enforcement

The Security Council bestowed responsibilities for the administration of the 1737 sanctions regime upon a sanctions committee and the Director General of the IAEA.

### 4.1 *The 1737 Committee*

The Security Council created the 1737 Sanctions Committee when it initiated the 1737 sanctions regime. The 1737 Committee, which was established in accordance with rule 28 of the provisional rules of procedure,<sup>2002</sup> was to: (a) seek from all states information regarding actions taken to implement sanctions;<sup>2003</sup> (b) seek from the IAEA information regarding actions taken to ensure that its technical assistance to Iran did not violate the sanctions;<sup>2004</sup> (c) take appropriate action on alleged sanctions violations;<sup>2005</sup> (d) decide upon requests for exemptions;<sup>2006</sup> (e) determine additional items to be subject to the targeted economic sanctions;<sup>2007</sup> (f) designate additional individuals and entities subject to the travel and financial sanctions;<sup>2008</sup> (g) promulgate guidelines to facilitate sanctions implementation;<sup>2009</sup> and (h) report regularly on its work, with observations and recommendations for strengthening the effectiveness of the sanctions.<sup>2010</sup>

### 4.2 *The IAEA Director General*

When the Security Council established the 1737 sanctions regime it requested the Director General of the IAEA to report on whether Iran had established full and sustained suspension of all prohibited nuclear activities, as well as on its compliance with the steps required by the IAEA Board of Governors.<sup>2011</sup>

<sup>2000</sup> *Ibid.*, para. 14.    <sup>2001</sup> *Ibid.*, para. 15.    <sup>2002</sup> *Ibid.*, para. 18.    <sup>2003</sup> *Ibid.*, para. 18(a).

<sup>2004</sup> *Ibid.*, para. 18(b).    <sup>2005</sup> *Ibid.*, para. 18(c).    <sup>2006</sup> *Ibid.*, para. 18(d).

<sup>2007</sup> *Ibid.*, para. 18(e).    <sup>2008</sup> *Ibid.*, para. 18(f).    <sup>2009</sup> *Ibid.*, para. 18(g).

<sup>2010</sup> *Ibid.*, para. 18(h).    <sup>2011</sup> *Ibid.*, para. 23.

## 5. Conclusions

The Security Council's decision to apply sanctions against Iran followed quite closely the model employed against North Korea. Indeed, two of the three lists of contraband items compiled for the purposes of the 1718 sanctions regime were also used as part of the 1737 sanctions regime. As with the North Korea sanctions, the application of sanctions against Iran, but not against other states that have recently entered the nuclear club, smacks of a selective approach to threats to international peace and security. There is no doubting that nuclear proliferation represents a genuine threat to international peace and security, of the type that the UN founders would have wanted the Security Council to address robustly. But the credibility of the Security Council is likely to suffer if the decision to impose sanctions against nuclear proliferators is taken with respect to some states but not others.

## Appendix 3: Tables

Appendix 3 contains the following tables:

- **Table A:** UNSCR provisions referring to the rule of law
- **Table B:** UNSCR provisions establishing and terminating UN sanctions regimes
- **Table C:** UNSCR provisions citing Chapter VII of the UN Charter as the basis for sanctions-related action
- **Table D:** UNSCR provisions outlining the scope of sanctions
- **Table E:** UNSCR provisions outlining Sanctions Committee mandates
- **Table F:** Reports by Sanctions Committees
- **Table G:** UNSCR provisions outlining the mandates of sanctions-related expert and monitoring bodies
- **Table H:** Reports by sanctions-related expert and monitoring bodies

## A. UNSCR provisions referring to the rule of law

Item	Provisions referring to the rule of law
Afghanistan	SC Res. 1536 (26 March 2004), paras. 10, 13. SC Res. 1589 (24 March 2005), paras. 9, 11. SC Res. 1662 (23 March 2006), paras. 8, 11.
Situation in Africa	SC Res. 1170 (28 May 1998), preambular para. 13.
Angola	SC Res. 1149 (27 January 1998), para. 4. SC Res. 1157 (20 March 1998), para. 11. SC Res. 1173 (12 June 1998), para. 8. SC Res. 1180 (29 June 1998), preambular para. 6. SC Res. 1202 (15 October 1998), para. 11. SC Res. 1213 (3 December 1998), para. 6. SC Res. 1433 (15 August 2002), para. 3B(i).
Bosnia and Herzegovina	SC Res. 1168 (21 May 1998), para. 4. SC Res. 1396 (5 March 2002), para. 3.
Burundi	SC Res. 1040 (29 January 1996), para. 2. SC Res. 1545 (21 May 2004), preambular para. 9. SC Res. 1577 (1 December 2004), preambular para. 9. SC Res. 1602 (31 May 2005), preambular para. 12. SC Res. 1606 (20 June 2005), preambular para. 3. SC Res. 1719 (25 October 2006), preambular para. 2(d).
Central African Republic	SC Res. 1159 (27 March 1998), para. 14(e).
Côte d'Ivoire	SC Res. 1528 (27 February 2004), para. 6(q). SC Res. 1609 (24 June 2005), para. 2(x).
Dispute between the Former Yugoslav Republic of Macedonia and the FRY	SC Res. 1345 (21 March 2001), para. 5.
Democratic Republic of the Congo	SC Res. 1417 (14 June 2002), para. 5. SC Res. 1493 (28 July 2003), paras. 5, 11. SC Res. 1621 (6 September 2005), preambular para. 3. SC Res. 1635 (28 October 2005), preambular para. 3. SC Res. 1649 (21 December 2005), preambular para. 2. SC Res. 1671 (25 April 2006), preambular para. 3. SC Res. 1693 (30 June 2006), preambular para. 3. SC Res. 1711 (29 September 2006), preambular para. 4, para. 9.
Great Lakes region	SC Res. 1653 (27 January 2006), para. 4.
Guinea-Bissau	SC Res. 1580 (22 December 2004), preambular para. 5, paras. 2(a), 2(h).

*A. UNSCR provisions referring to the rule of law (cont.)*

Item	Provisions referring to the rule of law
Haiti	SC Res. 1529 (29 February 2004), para. 4. SC Res. 1542 (30 April 2004), preambular para. 4, para. 7(l)(d). SC Res. 1608 (22 June 2005), preambular para. 5. SC Res. 1658 (14 February 2006), preambular paras. 8, 12, 14. SC Res. 1702 (15 August 2006), preambular paras. 5, 8, paras. 11, 14–15.
ICTY and ICTR	SC Res. 1503 (28 August 2003), preambular para. 10. SC Res. 1534 (26 March 2004), para. 9.
Iraq	SC Res. 1483 (22 May 2003), preambular para. 5. SC Res. 1546 (8 June 2004), preambular para. 10, para. 7(b)(iii). SC Res. 1637 (8 November 2005), preambular para. 15. SC Res. 1723 (28 November 2006), preambular para. 17.
Liberia	SC Res. 1509 (19 September 2003), preambular para. 7. SC Res. 1626 (19 September 2005), preambular para. 7.
Protection of civilians in armed conflict	SC Res. 1265 (17 September 1999), preambular para. 6. SC Res. 1674 (28 April 2006), paras. 2, 11. SC Res. 1738 (23 December 2006), preambular para. 9. SC Res. 1318 (7 September 2000), Annex, Section I.
Role of the Security Council	SC Res. 1318 (7 September 2000), Annex, Section I.
Sierra Leone	SC Res. 1346 (30 March 2001), preambular para. 4. SC Res. 1370 (18 September 2001), preambular para. 5. SC Res. 1400 (28 March 2002), preambular para. 9. SC Res. 1436 (24 September 2002), preambular para. 5. SC Res. 1470 (28 March 2003), preambular para. 6. SC Res. 1508 (19 September 2003), preambular para. 5. SC Res. 1562 (17 September 2004), preambular para. 9. SC Res. 1610 (30 June 2005), preambular para. 6. SC Res. 1620 (31 August 2005), preambular para. 7, para. 1(a)(v). SC Res. 1688 (16 June 2006), preambular paras. 4, 9. SC Res. 1734 (22 December 2006), preambular para. 10.

## A. UNSCR provisions referring to the rule of law (cont.)

Item	Provisions referring to the rule of law
Strengthening peace operations	SC Res. 1327 (13 November 2000), Sections V–VI.
Sudan	SC Res. 1590 (24 March 2005), para. 4(a)(viii). SC Res. 1593 (31 March 2005), para. 4. SC Res. 1706 (31 August 2006), para. 8(k).
The Congo	SC Res. 161 (21 February 1961), preambular para. 2.
Threats to international peace and security	SC Res. 1625 (14 September 2005), preambular para. 6.
Timor Leste	SC Res. 1473 (4 April 2003), para. 1(iii). SC Res. 1599 (28 April 2005), preambular para. 9, para. 3.

## B. UNSCR provisions establishing and terminating UN sanctions regimes

Sanctions regime	Initiated	Terminated
<b>232 Southern Rhodesia</b>	SC Res. 232 (16 December 1966)	SC Res. 460 (21 December 1979)
<b>418 South Africa</b>	SC Res. 418 (4 November 1977)	SC Res. 919 (25 May 1994)
<b>661 Iraq</b>	SC Res. 661 (6 August 1991)	<i>Continuing</i>
<b>713 Former Yugoslavia</b>	SC Res. 713 (25 September 1991)	Note verbale: SCA/96(4) (18 June 1996)
<b>733 Somalia</b>	SC Res. 733 (23 January 1992)	<i>Continuing</i>
<b>748 Libya</b>	SC Res. 748 (31 March 1992)	SC Res. 1506 (12 September 2003)
<b>757 FRYSM</b>	SC Res. 757 (30 May 1992)	SC Res. 1074 (1 October 1996)
<b>788 Liberia</b>	SC Res. 788 (19 November 1992)	SC Res. 1343 (7 March 2001)
<b>820 Bosnian Serbs</b>	SC Res. 820 (17 April 1993)	SC Res. 1074 (1 October 1996)
<b>841 Haiti</b>	SC Res. 841 (15 June 1993)	SC Res. 948 (15 October 1994)
<b>864 Angola (UNITA)</b>	SC Res. 864 (15 September 1993)	SC Res. 1448 (9 December 2002)
<b>918 Rwanda</b>	SC Res. 918 (17 May 1994)	<i>Continuing</i>
<b>1054 Sudan</b>	SC Res. 1054 (26 April 1996)	SC Res. 1372 (28 September 2001)
<b>1132 Sierra Leone</b>	SC Res. 1132 (8 October 1997)	<i>Continuing</i>
<b>1160 FRY</b>	SC Res. 1160 (31 March 1998)	SC Res. 1367 (10 September 2001)
<b>1267 Afghanistan/ Taliban/Al Qaida</b>	SC Res. 1267 (15 October 1999)	<i>Continuing</i>
<b>1298 Eritrea and Ethiopia</b>	SC Res. 1298 (17 May 2000)	S/PRST/2001/14 (15 May 2001)
<b>1343 Liberia</b>	SC Res. 1343 (7 March 2001)	SC Res. 1521 (22 December 2003)
<b>1493 DRC</b>	SC Res. 1493 (28 July 2003)	<i>Continuing</i>
<b>1521 Liberia</b>	SC Res. 1521 (22 December 2003)	<i>Continuing</i>
<b>1556 Sudan</b>	SC Res. 1556 (30 July 2004)	<i>Continuing</i>



## B. UNSCR provisions establishing and terminating UN sanctions regimes (cont.)

Sanctions regime	Initiated	Terminated
<b>1572 Côte d'Ivoire</b>	SC Res. 1572 (15 November 2004)	<i>Continuing</i>
<b>1636 Hariri suspects</b>	SC Res. 1636 (31 October 2005)	<i>Continuing</i>
<b>1718 North Korea</b>	SC Res. 1718 (14 October 2006)	<i>Continuing</i>
<b>1737 Iran</b>	SC Res. 1737 (27 December 2006)	<i>Continuing</i>

*C. UNSCR provisions citing Chapter VII of the UN Charter as the basis for sanctions-related action*

Sanctions regime	Provisions invoking Chapter VII
<b>232 Southern Rhodesia</b>	SC Res. 232 (16 December 1966), preambular para. 4. <sup>1</sup> SC Res. 253 (29 May 1968), preambular para. 10. SC Res. 277 (18 March 1970), preambular para. 7. SC Res. 388 (6 April 1976), preambular para. 5. SC Res. 409 (27 May 1977), preambular para. 5.
<b>418 South Africa</b>	SC Res. 418 (4 November 1977), preambular para. 10. SC Res. 919 (25 May 1994), para. 1.
<b>661 Iraq</b>	SC Res. 661 (6 August 1990), preambular para. 7. SC Res. 666 (13 September 1990), preambular para. 6. SC Res. 670 (25 September 1990), preambular para. 13. SC Res. 687 (3 April 1991), preambular para. 26. SC Res. 986 (14 April 1995), preambular para. 6. SC Res. 1137 (12 November 1997), preambular para. 12. SC Res. 1409 (14 May 2002), preambular para. 6. SC Res. 1483 (22 May 2003), preambular para. 18. SC Res. 1518 (24 November 2003), preambular para. 5. SC Res. 1546 (8 June 2004), preambular para. 21.
<b>713 Yugoslavia</b>	SC Res. 713 (25 September 1991), para. 6. SC Res. 1021 (22 November 1995), preambular para. 6. SC Res. 1031 (15 December 1995), preambular para. 10.
<b>733 Somalia</b>	SC Res. 733 (23 January 1992), para. 5. SC Res. 1356 (19 June 2001), preambular para. 4. SC Res. 1425 (22 July 2002), preambular para. 6. SC Res. 1474 (8 April 2003), preambular para. 8. SC Res. 1519 (16 December 2003), preambular para. 9.
<b>748 Libya</b>	SC Res. 748 (31 March 1992), preambular para. 10. SC Res. 883 (11 November 1993), preambular para. 10. SC Res. 1192 (27 August 1998), preambular para. 5. SC Res. 1506 (12 September 2003), preambular para. 5.
<b>757 FRYSM</b>	SC Res. 757 (30 May 1992), preambular para. 18. SC Res. 760 (18 June 1992), preambular para. 2. SC Res. 787 (16 November 1992), paras. 9–10. SC Res. 820 (17 April 1993), Section B, preambular para. 2. SC Res. 943 (23 September 1994), preambular para. 10. SC Res. 967 (14 December 1994), preambular para. 3. SC Res. 992 (11 May 1995), preambular para. 6. SC Res. 1074 (1 October 1996), preambular para. 9.
<b>788 Liberia</b>	SC Res. 788 (19 November 1992), para. 8. SC Res. 1343 (7 March 2001), preambular para. 10.

*C. UNSCR provisions citing Chapter VII of the UN Charter as the basis for sanctions-related action (cont.)*

Sanctions regime	Provisions invoking Chapter VII
<b>820 <i>Bosnian Serbs</i></b>	SC Res. 820 (17 April 1993), Section B, preambular para. 2. SC Res. 942 (23 September 1994), preambular para. 8. SC Res. 1074 (1 October 1996), preambular para. 9.
<b>841 <i>Haiti</i></b>	SC Res. 841 (15 June 1993), preambular para. 15. SC Res. 861 (27 August 1993), preambular para. 7. SC Res. 873 (13 October 1993), preambular para. 5. SC Res. 917 (6 May 1994), preambular para. 14. SC Res. 944 (29 September 1994), para. 4.
<b>864 <i>UNITA</i></b>	SC Res. 864 (15 September 1993), Section B, preambular para. 5. SC Res. 1127 (28 August 1997), Section B, preambular para. 2. SC Res. 1130 (29 September 1997), preambular para. 3. SC Res. 1173 (12 June 1998), Section B, preambular para. 3. SC Res. 1176 (24 June 1998), preambular para. 4. SC Res. 1412 (17 May 2002), preambular para. 9. SC Res. 1432 (15 August 2002), preambular para. 8. SC Res. 1439 (18 October 2002), preambular para. 8. SC Res. 1448 (9 December 2002), preambular para. 5.
<b>918 <i>Rwanda</i></b>	SC Res. 918 (17 May 1994), Section B, preambular para. 2. SC Res. 1005 (17 July 1995), preambular para. 6. SC Res. 1011 (16 August 1995), Section B, sole preambular para.
<b>1054 <i>Sudan</i></b>	SC Res. 1054 (26 April 1996), preambular para. 11. SC Res. 1070 (16 August 1996), preambular para. 12. SC Res. 1372 (28 September 2001), preambular para. 7.
<b>1132 <i>Sierra Leone</i></b>	SC Res. 1132 (8 October 1997), preambular para. 10. SC Res. 1156 (16 March 1998), preambular para. 3. SC Res. 1171 (5 June 1998), preambular para. 4. SC Res. 1299 (19 May 2000), para. 3. SC Res. 1306 (5 July 2000), preambular para. 5. SC Res. 1385 (19 December 2001), preambular para. 10. SC Res. 1446 (4 December 2002), preambular para. 10.
<b>1160 <i>FRY</i></b>	SC Res. 1160 (31 March 1998), preambular para. 8. SC Res. 1203 (24 October 1998), preambular para. 16. SC Res. 1244 (10 June 1999), preambular para. 13. SC Res. 1367 (10 September 2001), preambular para. 5.

C. UNSCR provisions citing Chapter VII of the UN Charter as the basis for sanctions-related action (cont.)

Sanctions regime	Provisions invoking Chapter VII
<b>1267 /Taliban/Al Qaida</b>	SC Res. 1267 (15 October 1999), preambular para. 10. SC Res. 1333 (19 December 2000), preambular para. 19. SC Res. 1363 (30 July 2001), preambular para. 2. SC Res. 1388 (15 January 2001), preambular para. 3. SC Res. 1390 (16 January 2002), preambular para. 10. SC Res. 1452 (20 December 2002), preambular para. 4. SC Res. 1455 (17 January 2003), preambular para. 8. SC Res. 1526 (30 January 2004), preambular para. 8. SC Res. 1617 (29 July 2005), preambular para. 14. SC Res. 1735 (22 December 2006), preambular para. 16.
<b>1298 Eritrea and Ethiopia</b>	SC Res. 1298 (17 May 2000), preambular para. 14. SC Res. 1320 (15 September 2000), para. 5.
<b>1343 Liberia</b>	SC Res. 1343 (7 March 2001), preambular para. 10. SC Res. 1408 (6 May 2002), preambular para. 12. SC Res. 1478 (6 May 2003), preambular para. 14. SC Res. 1509 (19 September 2003), preambular para. 22. SC Res. 1521 (22 December 2003), preambular para. 9.
<b>1493 DRC</b>	SC Res. 1493 (28 July 2003), preambular para. 12. SC Res. 1533 (12 March 2004), preambular para. 8. SC Res. 1552 (27 July 2004), preambular para. 6. SC Res. 1565 (1 October 2004), preambular para. 9. SC Res. 1592 (30 March 2005), preambular para. 13. SC Res. 1596 (18 April 2005), preambular para. 10. SC Res. 1616 (29 July 2005), preambular para. 7. SC Res. 1649 (21 December 2005) preambular para. 15. SC Res. 1654 (31 January 2006), preambular para. 4. SC Res. 1698 (31 July 2006) preambular para. 12.
<b>1521 Liberia</b>	SC Res. 1521 (22 December 2003), preambular para. 9. SC Res. 1532 (12 March 2004), preambular para. 6. SC Res. 1579 (21 December 2004), preambular para. 14. SC Res. 1607 (21 June 2005), preambular para. 16. SC Res. 1647 (20 December 2005), preambular para. 9. SC Res. 1683 (13 June 2006), preambular para. 6. SC Res. 1688 (16 June 2006), preambular para. 15. SC Res. 1689 (20 June 2006), preambular para. 15. SC Res. 1731 (20 December 2006), preambular para. 11.

*C. UNSCR provisions citing Chapter VII of the UN Charter as the basis for sanctions-related action (cont.)*

Sanctions regime	Provisions invoking Chapter VII
<b>1556 Sudan</b>	SC Res. 1556 (30 July 2004), preambular para. 22. SC Res. 1564 (18 September 2004), preambular para. 15. SC Res. 1591 (29 March 2005), preambular paras. 18. SC Res. 1651 (21 December 2005), preambular para. 8. SC Res. 1665 (29 March 2006), preambular para. 9. SC Res. 1672 (25 April 2006), preambular para. 4. SC Res. 1706 (31 August 2006), para. 12. SC Res. 1713 (29 September 2006), preambular para. 10.
<b>1572 Côte d'Ivoire</b>	SC Res. 1572 (15 November 2004), preambular para. 9. SC Res. 1584 (1 February 2005), preambular para. 9. SC Res. 1632 (18 October 2005), preambular para. 5. SC Res. 1643 (15 December 2005), preambular para. 12. SC Res. 1708 (14 September 2006), preambular para. 5. SC Res. 1727 (15 December 2006), preambular para. 6.
<b>1636 Hariri suspects</b>	SC Res. 1636 (31 October 2005), preambular para. 21.
<b>1718 North Korea</b>	SC Res. 1718 (14 October 2006), preambular para. 10.
<b>1737 Iran</b>	SC Res. 1737 (27 December 2006), preambular para. 10.

<sup>1</sup> In the resolution initiating the Southern Rhodesian sanctions regime, the Council explicitly invoked Articles 39 and 41 of the Charter, rather than the more general Chapter VII.

## D. UNSCR provisions outlining the scope of sanctions

Sanctions regime	Provisions establishing or modifying the scope of sanctions
<b>232 Southern Rhodesia</b>	SC Res. 232 (16 December 1966), para. 2. SC Res. 253 (29 May 1968), paras. 3–6. SC Res. 277 (18 March 1970), paras. 2, 9. SC Res. 388 (6 April 1976), paras. 1, 2. SC Res. 409 (27 May 1977), para. 1.
<b>418 South Africa</b>	SC Res. 418 (4 November 1977), paras. 2, 4. SC Res. 919 (25 May 1994), para. 1.
<b>661 Iraq</b>	SC Res. 661 (6 August 1990), paras. 3–4. SC Res. 666 (13 September 1990) paras. 1, 5, 8. SC Res. 670 (25 September 1990), paras. 3–6. SC Res. 687 (3 April 1991), paras. 20, 23–4. SC Res. 706 (15 August 1991), paras. 1–2. SC Res. 778 (2 October 1992), para. 1. SC Res. 986 (14 April 1995), paras. 1–2, 7–10. SC Res. 1137 (12 November 1997), para. 4. SC Res. 1409 (14 May 2002), para. 2. SC Res. 1454 (30 December 2002), para. 1. SC Res. 1483 (22 May 2003), paras. 10, 23. SC Res. 1546 (8 June 2004), para. 21.
<b>713 Former Yugoslavia</b>	SC Res. 713 (25 September 1991), para. 6. SC Res. 727 (8 January 1992), para. 6. SC Res. 743 (21 February 1992), para. 11. SC Res. 1031 (15 December 1995), para. 22.
<b>733 Somalia</b>	SC Res. 733 (23 January 1992), para. 5. SC Res. 1356 (19 June 2001), paras. 2–4. SC Res. 1425 (22 July 2002), paras. 1–2. SC Res. 1725 (6 December 2006), para. 5.
<b>748 Libya</b>	SC Res. 748 (31 March 1992), paras. 4–6. SC Res. 883 (11 November 1993), paras. 3–6. SC Res. 1192 (27 August 1998), para. 8. S/PRST/1998/10 (8 April 1999), <i>Presidential Statement of 8 April 1999</i> .
<b>757 FRYSM</b>	SC Res. 1506 (12 September 2003), para. 1. SC Res. 757 (30 May 1992), paras. 4–8. SC Res. 760 (18 June 1992), sole para. SC Res. 787 (16 November 1992), para. 9. SC Res. 820 (17 April 1993), paras. 15–16, 21, 23–5, 27–8. SC Res. 943 (23 September 1994), para. 1. SC Res. 967 (14 December 1994), para. 1. SC Res. 992 (11 May 1995), para. 1. SC Res. 1074 (1 October 1996), para. 2.
<b>788 Liberia</b>	SC Res. 788 (19 November 1992), para. 8. SC Res. 1343 (7 March 2001), para. 1.

## D. UNSCR provisions outlining the scope of sanctions (cont.)

Sanctions regime	Provisions establishing or modifying the scope of sanctions
<b>820 Bosnian Serbs</b>	SC Res. 820 (17 April 1993), para. 12. SC Res. 942 (23 September 1994), paras. 7, 11–15. SC Res. 1022 (22 November 1995), paras. 2–3. SC Res. 1074 (1 October 1996), para. 2.
<b>841 Haiti</b>	SC Res. 841 (15 June 1993), paras. 5, 7–8. SC Res. 861 (27 August 1993), para. 1. SC Res. 917 (6 May 1994), paras. 2–3, 6–8. SC Res. 944 (29 September 1994), para. 4. SC Res. 948 (15 October 1994), paras. 1, 10.
<b>864 Angola (UNITA)</b>	SC Res. 864 (15 September 1993), para. 19. SC Res. 1127 (28 August 1997), paras. 4–5. SC Res. 1130 (29 September 1997), para. 2. SC Res. 1173 (12 June 1998), paras. 11–12. SC Res. 1176 (24 June 1998), para. 2. SC Res. 1412 (17 May 2002), para. 1. SC Res. 1432 (15 August 2002), para. 1. SC Res. 1439 (18 October 2002), para. 1. SC Res. 1448 (9 December 2002), para. 2.
<b>918 Rwanda</b>	SC Res. 918 (17 May 1994), para. 13. SC Res. 1011 (16 August 1995), paras. 7–8, 11.
<b>1054 Sudan</b>	SC Res. 1054 (26 April 1996), para. 3. SC Res. 1070 (16 August 1996), para. 3. SC Res. 1372 (28 September 2001), para. 1.
<b>1132 Sierra Leone</b>	SC Res. 1132 (8 October 1997), paras. 5–6. SC Res. 1156 (16 March 1998), para. 2. SC Res. 1171 (5 June 1998), paras. 1–5. SC Res. 1306 (5 July 2000), paras. 1, 5–6. SC Res. 1385 (19 December 2001), para. 3. SC Res. 1446 (4 December 2002), para. 2.
<b>1160 FRY</b>	SC Res. 1160 (31 March 1998), para. 8. SC Res. 1203 (24 October 1998), para. 15. SC Res. 1244 (10 June 1999), para. 16. SC Res. 1367 (10 September 2001), para. 1.
<b>1267 Taliban/ Al Qaida</b>	SC Res. 1267 (15 October 1999), para. 4. SC Res. 1333 (19 December 2000), paras. 5, 8, 10–11. SC Res. 1388 (15 January 2001), paras. 1–2. SC Res. 1390 (16 January 2002), paras. 1–2. SC Res. 1452 (20 December 2002), paras. 1–2. SC Res. 1455 (17 January 2003), paras. 1–2. SC Res. 1526 (30 January 2004), para. 1. SC Res. 1617 (29 July 2005), para. 1. SC Res. 1735 (22 December 2006), para. 1.

## D. UNSCR provisions outlining the scope of sanctions (cont.)

Sanctions regime	Provisions establishing or modifying the scope of sanctions
<b>1298 Eritrea and Ethiopia</b>	SC Res. 1298 (17 May 2000), para. 6. SC Res. 1312 (31 July 2000), para. 5. SC Res. 1320 (15 September 2000), para. 10.
<b>1343 Liberia</b>	SC Res. 1343 (7 March 2001), paras. 5–7. SC Res. 1408 (6 May 2002), para. 5. SC Res. 1478 (6 May 2003), para. 10, 17, 28. SC Res. 1509 (19 September 2003), para. 12. SC Res. 1521 (22 December 2003), para. 1.
<b>1493 DRC</b>	SC Res. 1493 (28 July 2003), para. 20. SC Res. 1596 (18 April 2005), paras. 1–2, 4, 6–7, 10, 13–16. SC Res. 1616 (29 July 2005), para. 2. SC Res. 1649 (21 December 2005), paras. 2–3, 6. SC Res. 1698 (31 July 2006), para. 2.
<b>1521 Liberia</b>	SC Res. 1521 (22 December 2003), paras. 2, 4, 6, 10. SC Res. 1532 (12 March 2004), paras. 1–3. SC Res. 1579 (21 December 2004), para. 1. SC Res. 1607 (21 June 2005), para. 1. SC Res. 1647 (20 December 2005), para. 1. SC Res. 1683 (13 June 2006), para. 2. SC Res. 1688 (16 June 2006), para. 9. SC Res. 1689 (20 June 2006), paras. 1, 4. SC Res. 1731 (20 December 2006), para. 1.
<b>1556 Sudan</b>	SC Res. 1556 (30 July 2004), paras. 7, 9. SC Res. 1591 (29 March 2005), para. 3. SC Res. 1672 (25 April 2006), para. 1.
<b>1572 Côte d'Ivoire</b>	SC Res. 1572 (15 November 2004), paras. 7–12. SC Res. 1643 (15 December 2005), paras. 1, 4, 6. SC Res. 1727 (15 December 2006), para. 1.
<b>1636 Hariri suspects</b>	SC Res. 1636 (31 October 2005), para. 3(a).
<b>1718 North Korea</b>	SC Res. 1718 (14 October 2006), paras. 8–10.
<b>1737 Iran</b>	SC Res. 1737 (27 December 2006), paras. 3–6, 12–16.



## E. UNSCR provisions outlining Sanctions Committee mandates

Sanctions Committee	Provisions establishing, modifying or dissolving the Committee's mandate
<b>253 Southern Rhodesia Committee</b>	<p><b>Established:</b> SC Res. 253 (29 May 1968), para. 20.</p> <p><b>Modified:</b>            SC Res. 277 (18 March 1970), para. 21.            SC Res. 314 (28 February 1972), para. 6.            SC Res. 320 (29 September 1972), paras. 4-5.            SC Res. 326 (2 February 1973), para. 8.            SC Res. 328 (10 March 1973), para. 6.            SC Res. 409 (27 May 1977), para. 3.            SC Res. 411 (30 June 1977), para. 12.            SC Res. 445 (8 March 1979), para. 8.</p>
<b>421 South Africa Committee</b>	<p><b>Dissolved:</b> SC Res. 460 (21 December 1979), para. 3.</p> <p><b>Established:</b> SC Res. 421 (9 December 1977), para. 1.</p> <p><b>Modified:</b>            SC Res. 473 (13 June 1980), para. 11.            SC Res. 591 (28 November 1986), para. 13.</p>
<b>661 Iraq Committee</b>	<p><b>Dissolved:</b>            SC Res. 919 (25 May 1994), para. 3.</p> <p><b>Established:</b> SC Res. 661 (6 August 1990), para. 6.</p> <p><b>Modified:</b>            SC Res. 666 (13 September 1990), paras. 1, 5.            SC Res. 669 (24 September 1990), preambular para. 4.            SC Res. 687 (3 April 1991), paras. 20, 23.            SC Res. 700 (17 June 1991), para. 5.            SC Res. 715 (11 October 1991), para. 7.            SC Res. 986 (14 April 1995), paras. 1, 6, 12.            SC Res. 1051 (27 March 1996), para. 10.            SC Res. 1111 (4 June 1997), paras. 4, 5.            SC Res. 1143 (4 December 1997), paras. 5, 9.            SC Res. 1153 (20 February 1998), paras. 3, 14, 15.            SC Res. 1175 (19 June 1998), para. 2.            SC Res. 1210 (4 November 1998), paras. 3, 10.            SC Res. 1242 (21 May 1999), para. 10.            SC Res. 1281 (10 December 1999), para. 10.            SC Res. 1284 (17 December 1999), paras. 17-18, 25.            SC Res. 1302 (8 June 2000), paras. 6, 8.            SC Res. 1330 (5 December 2000), paras. 6, 10, 13.            SC Res. 1360 (3 July 2001), para. 6.            SC Res. 1409 (14 May 2002), para. 7.            SC Res. 1454 (30 December 2002), para. 2.            SC Res. 1472 (28 March 2003), paras. 4, 7, 9.</p> <p><b>Dissolved:</b>            SC Res. 1483 (22 May 2003), para. 29 ('terminated' effective six months from the date of adoption of that resolution).</p>

## E. UNSCR provisions outlining Sanctions Committee mandates (cont.)

Sanctions Committee	Provisions establishing, modifying or dissolving the Committee's mandate
<b>724 Former Yugoslavia Committee</b>	<p><b>Established:</b> SC Res. 724 (15 December 1991), para. 5(b).</p> <p><b>Responsibilities concerning the 757 FRYSM sanctions regime:</b></p> <p>SC Res. 757 (30 May 1992), para. 13.            SC Res. 787 (16 November 1992), para. 9.            SC Res. 820 (17 April 1993), paras. 18, 22, 27–8.            SC Res. 843 (18 June 1993), para. 2.            SC Res. 943 (23 September 1994), para. 2.            SC Res. 970 (12 January 1995), para. 4.            SC Res. 988 (21 April 1995), paras. 11, 12.            SC Res. 1022 (22 November 1995), para. 8.</p> <p><b>Responsibilities concerning the 820 Bosnian Serb sanctions regime:</b></p> <p>SC Res. 942 (23 September 1994), paras. 7, 13–15.</p>
<b>748 Libya Committee</b>	<p><b>Established:</b> SC Res. 748 (31 March 1992), para. 9.  <b>Modified:</b> SC Res. 883 (11 November 1993), paras. 9, 10.  <b>Dissolved:</b> SC Res. 1506 (12 September 2003), para. 2.</p>
<b>751 Somalia Committee</b>	<p><b>Established:</b> SC Res. 751 (24 April 1992), para. 11.  <b>Modified:</b></p> <p>SC Res. 954 (4 November 1994), para. 12.            SC Res. 1356 (19 June 2001), para. 4.            SC Res. 1407 (3 May 2002), paras. 2, 7.            SC Res. 1474 (8 April 2003), para. 8.            SC Res. 1519 (16 December 2003), para. 8.            SC Res. 1558 (17 August 2004), para. 6.</p>
<b>841 Haiti Committee</b>	<p><b>Established:</b> SC Res. 841 (16 June 1993), para. 10.  <b>Modified:</b> SC Res. 917 (6 May 1994), para. 14.  <b>Dissolved:</b> SC Res. 948 (15 October 1994), para. 10.</p>
<b>864 UNITA Committee</b>	<p><b>Established:</b> SC Res. 864 (15 September 1993), para. 22.  <b>Modified:</b></p> <p>SC Res. 1127 (28 August 1997), para. 11.            SC Res. 1173 (12 June 1998), paras. 13, 20.            SC Res. 1221 (12 January 1999), paras. 8, 9.            SC Res. 1237 (7 May 1999), para. 7.            SC Res. 1295 (18 April 2000), para. 24.            SC Res. 1336 (23 January 2001), para. 6.            SC Res. 1348 (19 April 2001), para. 6.            SC Res. 1374 (19 October 2001), paras. 4, 8.            SC Res. 1404 (18 April 2002), para. 7.            SC Res. 1439 (18 October 2002), para. 6.  <b>Dissolved:</b> SC Res. 1448 (9 December 2002), para. 3.</p>

## E. UNSCR provisions outlining Sanctions Committee mandates (cont.)

Sanctions Committee	Provisions establishing, modifying or dissolving the Committee's mandate
<b>918 Rwanda Committee</b>	<b>Established:</b> SC Res. 918 (17 May 1994), para. 14. <b>Modified:</b> SC Res. 1005 (17 July 1995), sole para. SC Res. 1011 (16 August 1995), para. 11.
<b>985 Liberia Committee</b>	<b>Established:</b> SC Res. 985 (13 April 1995), para. 4. <b>Dissolved:</b> SC Res. 1343 (7 March 2001), para. 1.
<b>1132 Sierra Leone Committee</b>	<b>Established:</b> SC Res. 1132 (8 October 1997), paras. 9, 10. <b>Modified:</b> SC Res. 1171 (5 June 1998), paras. 4, 6. SC Res. 1306 (5 July 2000), paras. 4-5, 7, 12, 17, 22-3. SC Res. 1446 (4 December 2002), para. 4.
<b>1160 FRY Committee</b>	<b>Established:</b> SC Res. 1160 (31 March 1998), para. 9. <b>Dissolved:</b> SC Res. 1367 (10 September 2001), para. 2.
<b>1267 Taliban/Al Qaida Committee</b>	<b>Established:</b> SC Res. 1267 (15 October 1999), paras. 6, 12. <b>Modified:</b> SC Res. 1333, para. 16. SC Res. 1363 (30 July 2001), paras. 3, 6. SC Res. 1390 (16 January 2002), para. 5. SC Res. 1452 (20 December 2002), paras. 1, 3. SC Res. 1455 (17 January 2003), paras. 4, 9, 11, 14-15. SC Res. 1526 (30 January 2004), paras. 2, 7, 10-13, 21, 23. SC Res. 1735 (22 December 2006), paras. 8-9, 13-17, 21, 25-27, 30-32.
<b>1298 Eritrea and Ethiopia Committee</b>	<b>Established:</b> SC Res. 1298 (17 May 2000), paras. 8, 13. <b>Dissolved:</b> S/PRST/2001/14 (15 May 2001), <i>Presidential statement of 15 May 2001</i> .
<b>1343 Liberia Committee</b>	<b>Established:</b> SC Res. 1343 (7 March 2001), para. 14. <b>Modified:</b> SC Res. 1408 (6 May 2002), paras. 13, 14. SC Res. 1478 (6 May 2003), paras. 24, 29. <b>Dissolved:</b> SC Res. 1521 (22 December 2003), para. 1.
<b>1518 Iraq Committee</b>	<b>Established:</b> SC Res. 1518 (24 November 2003), paras. 1-3.
<b>1521 Liberia Committee</b>	<b>Established:</b> SC Res. 1521 (22 December 2003), para. 21. <b>Modified:</b> SC Res. 1532 (12 March 2004), para. 4.

## E. UNSCR provisions outlining Sanctions Committee mandates (cont.)

Sanctions Committee	Provisions establishing, modifying or dissolving the Committee's mandate
<b>1533 DRC Committee</b>	<b>Established:</b> SC Res. 1533 (12 March 2004), paras. 8, 9.
<b>1572 Côte d'Ivoire Committee</b>	<b>Established:</b> SC Res. 1572 (15 November 2004), para. 14.
<b>1591 Sudan Committee</b>	<b>Established:</b> SC Res. 1591 (29 March 2005), para. 3.
<b>1636 Hariri Committee</b>	<b>Established:</b> SC Res. 1636 (31 October 2005), para. 3 and Annex.
<b>1718 North Korea Committee</b>	<b>Established:</b> SC Res. 1718 (14 October 2006), para. 12.
<b>1737 Iran Committee</b>	<b>Established:</b> SC Res. 1737 (27 December 2006), para. 18.

F. Reports by Sanctions Committees<sup>1</sup>

Sanctions Committee	Reports <sup>2</sup>
<b>253 Southern Rhodesia Committee</b>	<p>S/8954 (30 December 1968).  S/9252 (12 and 13 June 1969).  S/9844 and Corr.1-2 (15 June 1970).  S/10229 &amp; Add.1 (16 June and 13 July 1971).  S/10852 &amp; Add.1-2 (22 and 31 December 1972 and 2 February 1973).  S/11178 and Rev. 1 (3 January 1974).  S/11594 and Rev. 1 (9 and 10 January 1975).  S/11927 &amp; Add.1 (8 January and 6 February 1976).  S/12265 (21 December 1976).  S/12529 &amp; Add.1 (1 March 1978).  S/13000 (11 January 1979).  S/13750 (15 January 1980).</p> <p><b>Interim reports</b></p> <p>S/10408 (3 December 1971);  S/10580 (29 March 1972);  S/10593 (10 April 1972);  S/12450 (18 November 1977);  S/13191 (23 March 1979).</p> <p><b>Special reports</b></p> <p>S/10632 (9 May 1972);  S/10920 (15 April 1973);  S/11597 (15 January 1975);  S/11913 (15 December 1975);  S/12296 (31 December 1976);  S/13296 (4 May 1979).</p>
<b>421 South Africa Committee</b>	<p>S/13708 (26 December 1979).  S/13721 (31 December 1979).  S/14179 (19 September 1980).  S/21015 (11 December 1989).</p>
<b>661 Iraq Committee</b>	<p>S/1996/700 (26 August 1996).  S/1997/672 (28 August 1997).  S/1998/1239 (31 December 1998).  S/2000/133 (18 February 2000).  S/2001/738 (27 July 2001).  S/2002/647 (10 June 2002).  S/2003/300 (12 March 2003).</p> <p><b>Reports on implementation of arms sanctions</b></p> <p>S/23036 (13 September 1991).  S/23279 (11 December 1991).  S/23708 (12 March 1992).  S/24083 (11 June 1992).  S/24545 (10 September 1992).</p>

F. Reports by Sanctions Committees<sup>1</sup> (cont.)

Sanctions Committee	Reports <sup>2</sup>
	S/24912 (4 December 1992).
	S/25442 (19 March 1993).
	S/25930 (7 June 1993).
	S/26430 (7 September 1993).
	S/26874 (14 December 1993).
	S/1994/274 (8 March 1994).
	S/1994/695 (10 June 1994).
	S/1994/1027 (4 September 1994).
	S/1994/1367 (1 December 1994).
	S/1995/169 (1 March 1995).
	S/1995/442 (30 May 1995).
	S/1995/744 (28 August 1995).
	S/1995/992 (28 November 1995).
	S/1996/127 (23 February 1996).
	S/1996/361 (21 May 1996).
	S/1996/676 (20 August 1996).
	S/1996/950 (17 November 1996).
	S/1997/141 (19 February 1997).
	S/1997/374 (16 May 1997).
	S/1997/637 (12 August 1997).
	S/1997/949 (3 December 1997).
	S/1998/108 (9 February 1998).
	S/1998/387 (12 May 1998).
	S/1998/729 (7 August 1998).
	S/1998/1055 (7 November 1998).
	S/1999/110 (3 February 1999).
	S/1999/519 (4 May 1999).
	S/1999/848 (4 August 1999).
	S/1999/1113 (1 November 1999).
	S/2000/72 (1 February 2000).
	S/2000/365 (1 May 2000).
	S/2000/748 (28 July 2000).
	S/2000/1033 (26 October 2000).
	S/2001/72 (23 January 2001).
	S/2001/400 (24 April 2001).
	S/2001/721 (23 July 2001).
	S/2001/1003 (24 October 2001).
	S/2002/84 (18 January 2002).
	S/2002/476 (23 April 2002).
	S/2002/802 (22 July 2002).
	S/2002/1167 (18 October 2002).
	S/2003/61 (17 January 2003).
	S/2003/507 (29 April 2003).

F. Reports by Sanctions Committees<sup>1</sup> (cont.)

Sanctions Committee	Reports <sup>2</sup>
	<p><b>Reports on the Oil-for-Food Programme</b></p> <p>S/1997/213 (11 March 1997).            S/1997/417 (30 May 1997).            S/1997/692 (8 September 1997).            S/1997/942 (2 December 1997).            S/1998/187 (3 March 1998).            S/1998/469 (4 June 1998).            S/1998/813 (27 August 1998).            S/1998/1104 (20 November 1998).            S/1999/279 (16 March 1999).            S/1999/582 (19 May 1999).            S/1999/907 (24 August 1999).            S/1999/1177 (17 November 1999).            S/2000/242 (23 March 2000).            S/2000/536 (5 June 2000).            S/2001/321 (3 April 2001).            S/2001/842 (5 September 2001).            S/2001/1341 (31 December 2001).            S/2002/1261 (18 November 2002).            S/2003/331 (18 March 2003).</p> <p><b>Reports on improvements to working procedures</b></p> <p>S/1998/92 (30 January 1998).            S/1998/336 (20 April 1998).            S/23800 (13 April 1992).            S/25027 (30 December 1992).            S/1996/946 (15 November 1996).            S/1996/2 (2 January 1996).            S/1996/1079 (31 December 1996).            S/1997/1030 (31 December 1997).            S/1998/1237 (31 December 1998).            S/1999/1299 (31 December 1999).            The 748 Committee issued no annual reports for 2000, 2001 or 2002.</p> <p><b>724 Yugoslavia Committee</b></p> <p><b>748 Libya Committee</b></p> <p><b>751 Somalia Committee</b></p> <p>S/1996/17 (16 January 1996).            S/1997/16 (7 January 1997).            S/1998/1226 (28 December 1998).            S/1999/1283 (28 December 1999).            S/2000/1226 (21 December 2000).            S/2001/1259 (26 December 2001).            S/2002/1430 (30 December 2002).            S/2003/1216 (31 December 2003).            S/2004/1017 (30 December 2004).            S/2005/813 (20 December 2005).</p>

F. Reports by Sanctions Committees<sup>1</sup> (cont.)

Sanctions Committee	Reports <sup>2</sup>
<b>841 Haiti Committee</b>	No reports issued.
<b>864 UNITA Committee</b>	S/1996/37 (17 January 1996). S/1997/33 (14 January 1997). S/1997/1027 (31 December 1997). S/1998/1227 (28 December 1998). S/2000/83 (3 February 2000). S/2000/1255 (29 December 2000). S/2002/243 (7 March 2002). S/2002/1413 (24 December 2002).
	<b>Ad hoc reports:</b>
	S/1994/825 (15 July 1994). S/1999/147 (12 February 1999). S/1999/509 (4 May 1999). S/1999/837 (30 July 1999).
	<b>Reports on missions by the Chairman:</b>
	S/1999/644 (4 June 1999). S/1999/829 (28 July 1999).
<b>918 Rwanda Committee</b>	S/1996/82 (2 February 1996). S/1997/15 (7 January 1997). S/1997/1028 (31 December 1997). S/1998/1219 (24 December 1998). S/1999/1292 (30 December 1999). S/2000/1227 (22 December 2000). S/2002/49 (14 January 2002). S/2002/1406 (24 December 2002). S/2004/134 (20 February 2004). S/2005/76 (9 February 2005). S/2006/164 (14 March 2006). S/2006/1049 (28 December 2006).
<b>985 Liberia Committee</b>	S/1996/72 (30 January 1996). S/1996/1077 (31 December 1996). S/1997/1026 (31 December 1997). S/1998/1220 (24 December 1998). S/1999/1301 (31 December 1999). S/2000/1233 (22 December 2000).
<b>1132 Sierra Leone Committee</b>	S/1998/1236 (31 December 1998). S/1999/1300 (31 December 1999). S/2000/1238 (26 December 2000). S/2002/50 (14 January 2002). S/2002/1414 (24 December 2002). S/2004/166 (27 February 2004). S/2005/44 (25 January 2005). S/2005/843 (30 December 2005). S/2006/1043 (28 December 2006).



F. Reports by Sanctions Committees<sup>1</sup> (cont.)

Sanctions Committee	Reports <sup>2</sup>
	<p><b>Reports on measures taken by states to implement sanctions</b></p> <p>S/1998/112 &amp; Add.1 (10 February and 31 March 1998).</p> <p>S/1998/740 (7 August 1998).</p> <p>S/1998/1170 (15 December 1998).</p> <p>S/1999/111 (3 February 1999).</p> <p>S/1999/174 (16 February 1999).</p> <p>S/1999/350 (26 March 1999).</p> <p>S/1999/381 (5 April 1999).</p> <p>S/1999/1013 (29 September 1999).</p> <p>S/1999/1026 (5 October 1999).</p> <p>S/2000/659 (7 July 2000).</p> <p>S/2000/660 (21 July 2000).</p> <p>S/2000/730 (26 July 2000).</p> <p>S/2000/861 &amp; Add.1 (13 September and 4 December 2000).</p> <p>S/2000/862 &amp; Add.1 (13 September and 4 December 2000).</p> <p>S/2000/1127 (27 November 2000).</p> <p>S/2001/105 (2 February 2001).</p> <p>S/2001/126 (12 February 2001).</p> <p>S/2001/261 (22 March 2001).</p> <p>S/2001/492 (10 May 2001).</p> <p>S/2001/493 (10 May 2001).</p> <p>S/2001/664 (2 July 2001).</p> <p>S/2001/718 (20 July 2001).</p> <p>S/2001/771 (7 August 2001).</p> <p>S/2001/772 (8 August 2001).</p> <p><b>Report on the role of diamonds in the Sierra Leone conflict</b></p> <p>S/2000/1150 (4 December 2000).</p>
<b>1160 FRY Committee</b>	<p>S/1999/216 (4 March 1999).</p> <p>S/2000/633 (29 June 2000).</p> <p>S/2001/102 (5 February 2001).</p> <p>S/2001/931 (3 October 2001).</p>
<b>1267 Taliban/Al Qaida Committee</b>	<p>S/2000/1254 (29 December 2000).</p> <p>S/2002/101 (5 February 2002).</p> <p>S/2002/1423 (26 December 2002).</p> <p>S/2004/281 (8 April 2004).</p> <p>S/2004/1039 (31 December 2004).</p> <p>S/2006/22 (17 January 2006).</p>

F. Reports by Sanctions Committees<sup>1</sup> (cont.)

Sanctions Committee	Reports <sup>2</sup>
	<b>Reports listing reports from states on sanctions implementation</b>
	S/2000/282 and Add.1 (4 April and 31 August 2000).
	S/2001/326 and Add.1 (4 April and 21 November 2001).
	S/2002/736 (9 July 2002).
	<b>Reports analysing sanctions implementation or responding to reports by the Monitoring Team</b>
	S/2006/635 (10 August 2006).
	S/2006/1046 (28 December 2006).
	S/2006/1047 (28 December 2006).
<b>1298 Eritrea and Ethiopia Committee</b>	S/2000/1259 (29 December 2000).
	S/2001/503 (18 May 2001).
	<b>Report listing reports from states on sanctions implementation</b>
<b>1343 Liberia Committee</b>	S/2001/39 (12 January 2001).
	S/2002/83 (18 January 2002).
	S/2002/1394 (20 December 2002).
	S/2004/139 (25 February 2004).
<b>1518 Iraq Committee</b>	S/2004/1036 (31 December 2004).
	S/2005/827 (28 December 2005).
<b>1521 Liberia Committee</b>	S/2004/1025 (31 December 2004).
	S/2006/464 (30 June 2006).
	S/2006/1044 (28 December 2006).
<b>1533 DRC Committee</b>	S/2005/81 (10 February 2005).
	S/2006/54 (27 January 2006).
	S/2006/1048 (28 December 2006).
<b>1572 Côte d'Ivoire</b>	S/2006/55 (30 January 2006).
	S/2006/1017 (21 December 2006).
<b>1591 Sudan Committee</b>	S/2006/543 (19 July 2006).
	S/2006/1045 (28 December 2006).
<b>1636 Hariri Committee</b>	Yet to issue reports.
<b>1718 North Korea Committee</b>	Yet to issue reports.
<b>1737 Iran Committee</b>	Yet to issue reports.

<sup>1</sup> As noted in Chapter 9, the practice of issuing annual reports was introduced following the Note by the President of the Security Council dated 29 March 1995. See S/1995/234 (29 March 1995): *Note by the President of the Security Council* (suggesting the introduction of improvements to make the procedures of the sanctions committees more transparent). The reports dating from prior to 1995 are therefore general reports submitted by the relevant Committee on its activities.

<sup>2</sup> Reports are annual or general unless otherwise noted.

G. UNSCR provisions outlining the mandates of sanctions-related expert and monitoring bodies

Sanctions regime	Expert Body	Provisions establishing, modifying or re-establishing the Body's mandate
661	<b>Group of Experts on Iraqi oil</b>	<b>Established:</b> SC Res. 1153 (20 February 1998), para. 12.
	<b>Ad hoc panels of experts on the Iraq sanctions regime</b>	<b>Established:</b> S/1999/100 (30 January 1999).
	<b>Iraq export/import monitoring mechanism</b>	<b>Established:</b> SC Res. 715 (11 October 1995), para. 7.
733	<b>Somalia Team of Experts</b>	<b>Established:</b> SC Res. 1407 (3 May 2002), para. 1.
	<b>Somalia Panel of Experts</b>	<b>Established:</b> SC Res. 1425 (22 July 2002), para. 3.
	<b>Somalia Monitoring Group</b>	<b>Re-established:</b> SC Res. 1474 (8 April 2003), para. 3.
		<b>Established:</b> SC Res. 1519 (16 December 2003), para. 2.
		<b>Re-established:</b> SC Res. 1558 (17 August 2004), para. 3.
		SC Res. 1587 (15 March 2005), para. 3.
		SC Res. 1630 (14 October 2005), para. 3.
		SC Res. 1676 (10 May 2006), para. 3.
		SC Res. 1724 (29 November 2006), para. 3.
864	<b>UNITA Panel of Experts</b>	<b>Established:</b> SC Res. 1237 (7 May 1999), para. 6.
	<b>UNITA Monitoring Mechanism</b>	<b>Established:</b> SC Res. 1295 (18 April 2000), para. 3.
		<b>Extended:</b> SC Res. 1336 (23 January 2001), para. 3.

G. UNSCR provisions outlining the mandates of sanctions-related expert and monitoring bodies (cont.)

Sanctions regime	Expert Body	Provisions establishing, modifying or re-establishing the Body's mandate
		SC Res. 1348 (19 April 2001), para. 3.
		SC Res. 1374 (19 October 2001), para. 3.
		SC Res. 1404 (18 April 2002), para. 3.
		SC Res. 1439 (18 October 2002), para. 2.
918	<b>International Commission of Inquiry on Rwanda</b>	<b>Established:</b> SC Res. 1013 (7 September 1995), para. 1.
		<b>Maintained:</b> SC Res. 1053 (23 April 1996), para. 2.
		<b>Re-activated:</b> SC Res. 1161 (9 April 1998), para. 1.
1132	<b>Sierra Leone Panel of Experts</b>	<b>Established:</b> SC Res. 1306 (5 July 2000), para. 19.
1267	<b>Taliban/Al Qaida Committee of Experts</b>	<b>Established:</b> SC Res. 1333 (19 December 2000), para. 15.
	<b>Taliban/Al Qaida Monitoring Group</b>	<b>Established:</b> SC Res. 1363 (30 July 2001), para. 3.
		<b>Extended:</b> SC Res. 1390 (16 January 2002), paras. 9, 10.
		SC Res. 1455 (17 January 2003), paras. 8, 12-13.
	<b>Taliban/Al Qaida Monitoring Team</b>	<b>Established:</b> SC Res. 1526 (30 January 2004), para. 6.
		<b>Extended:</b> SC Res. 1617 (29 July 2005), para. 19 and Annex I.
		SC Res. 1735 (22 December 2006), para. 32 and Annex II.

G. UNSCR provisions outlining the mandates of sanctions-related expert and monitoring bodies (cont.)

Sanctions regime	Expert Body	Provisions establishing, modifying or re-establishing the Body's mandate
1343	<b>1343 Liberia Panel(s) of Experts</b>	<p><b>Established:</b> SC Res. 1343 (7 March 2001), para. 19.</p> <p><b>Re-established:</b> SC Res. 1395 (27 February 2002), para. 3.</p> <p><b>Established:</b> SC Res. 1408 (6 May 2002), para. 16.</p> <p><b>Re-established:</b> SC Res. 1458 (28 January 2003), para. 3.</p> <p><b>Established:</b> SC Res. 1478 (6 May 2003), para. 25.</p>
1493	<b>DRC Group of Experts</b>	<p><b>Established:</b> SC Res. 1533 (12 March 2004), para. 10.</p> <p><b>Re-established:</b> SC Res. 1552 (27 July 2004), para. 5. SC Res. 1596 (18 April 2005), para. 21. SC Res. 1616 (29 July 2005), para. 4. SC Res. 1654 (31 January 2006), para. 1.</p> <p><b>Extended:</b> SC Res. 1698 (31 July 2006), para. 3.</p>
1521	<b>1521 Liberia Panel of Experts</b>	<p><b>Established:</b> SC Res. 1521 (22 December 2003), para. 22.</p> <p><b>Re-established:</b> SC Res. 1549 (17 June 2004), para. 1. SC Res. 1579 (21 December 2004), para. 8. SC Res. 1607 (21 June 2005), para. 14. SC Res. 1647 (20 December 2005), para. 9.</p>

G. UNSCR provisions outlining the mandates of sanctions-related expert and monitoring bodies (cont.)

Sanctions regime	Expert Body	Provisions establishing, modifying or re-establishing the Body's mandate
1556	<i>Sudan Panel of Experts</i>	<p><b>Renewed:</b> SC Res. 1689 (20 June 2006), para. 5.</p> <p><b>Extended:</b> SC Res. 1731 (20 December 2006), para. 5.</p> <p><b>Established:</b> SC Res. 1591 (29 March 2005), para. 3(b)</p> <p><b>Extended:</b> SC Res. 1651 (21 December 2005), paras. 1-2. SC Res. 1665 (29 March 2006), paras. 1-2. SC Res. 1713 (29 September 2006), paras. 1-2.</p>
1572	<i>Côte d'Ivoire Group of Experts</i>	<p><b>Established:</b> SC Res. 1584 (1 February 2005), para. 7.</p> <p><b>Extended:</b> SC Res. 1632 (18 October 2005), para. 1.</p> <p><b>Re-established:</b> SC Res. 1643 (15 December 2005), para. 9.</p> <p><b>Extended:</b> SC Res. 1708 (14 September 2006), para. 1. SC Res. 1727 (15 December 2006), para. 7.</p>

## H. Reports by sanctions-related expert and monitoring bodies

Sanctions regime	Expert Body	Reports
<b>661</b>	<b>Group of Experts on Iraqi oil Ad hoc panels of experts on the Iraq sanctions regime</b>	S/1998/330 (15 April 1998). S/1999/356 (30 March 1999), Annex I: Report of the Panel on disarmament and current and future ongoing monitoring and verification issues. S/1999/356 (30 March 1999), Annex II: Report of the Panel on the humanitarian situation in Iraq. S/1999/356 (30 March 1999), Annex III: Report of the Panel on prisoners of war and Kuwaiti property.
<b>733</b>	<b>Somalia Team of Experts Somalia Panel of Experts  The Somalia Monitoring Group</b>	S/2002/722 (3 July 2002). S/2003/223 (25 March 2003). S/2003/1035 (4 November 2003). S/2004/604 (11 August 2004). S/2005/153 (9 March 2005). S/2005/625 (4 October 2005). S/2006/229 (4 May 2006). S/2006/913 (21 November 2006).
<b>864</b>	<b>UNITA Panel of Experts  UNITA monitoring mechanism</b>	S/1999/1016 (30 September 1999). S/2000/203 (10 March 2000). S/2000/1225 (21 December 2000). S/2001/363 (18 April 2001). S/2001/966 (12 October 2001). S/2002/486 (26 April 2002). S/2002/1119 (16 October 2002). S/2002/1339 (10 December 2002).
<b>918</b>	<b>International Commission of Inquiry on Rwanda</b>	S/1996/67 (29 January 1996). S/1996/195 (14 March 1996). S/1997/1010 (24 December 1997). S/1998/63 (26 January 1998). S/1998/777 (19 August 1998). S/1998/1096 (18 November 1998).
<b>1132 1267</b>	<b>Sierra Leone Panel of Experts Taliban/Al Qaida Committee of Experts Taliban/Al Qaida Monitoring Group</b>	S/2000/1195 (20 December 2000). S/2001/511 (22 May 2001). S/2002/65 (15 January 2002). S/2002/541 (15 May 2002). S/2002/1050 (17 December 2002). S/2002/1338 (17 December 2002). S/2003/669 (8 July 2003). S/2003/1070 (2 December 2003).

## H. Reports by sanctions-related expert and monitoring bodies (cont.)

Sanctions regime	Expert Body	Reports
	<b>Taliban/Al Qaida Monitoring Team</b>	S/2004/679 (25 August 2004). S/2005/83 (15 February 2005). S/2005/572 (9 September 2005). S/2006/154 (10 March 2006). S/2006/750 (20 September 2006).
1343	<b>1343 Liberia Panel(s) of Experts</b>	S/2001/1015 (26 October 2001). S/2002/470 (19 April 2002). S/2002/1115 (25 October 2002). S/2003/498 (24 April 2003). S/2003/779 (7 August 2003). S/2003/937 (28 October 2003). S/2004/551 (15 July 2004). S/2005/30 (25 January 2005). S/2005/436 (26 July 2005). S/2006/53 (27 January 2006). S/2006/525 (18 July 2006).
1493	<b>DRC Group of Experts</b>	S/2004/396 (1 June 2004). S/2004/752 (24 September 2004). S/2004/955 (6 December 2004). S/2005/176 (17 March 2005). S/2005/360 (13 June 2005). S/2005/745 (25 November 2005). S/2006/379 (7 June 2006). S/2006/976 (20 December 2006).
1521	<b>1521 Liberia Panel(s) of Experts</b>	S/2006/65 (30 January 2006). S/2006/250 (19 April 2006). S/2006/795 (3 October 2006).
1556	<b>Sudan Panel of Experts</b>	S/2005/470 (20 July 2005). S/2005/699 (7 November 2005). S/2006/204 (31 March 2006). S/2006/735 (5 October 2006). S/2006/964 (12 December 2006).
1572	<b>Côte d'Ivoire Group of Experts</b>	S/2005/662 (20 October 2005). S/2005/775 (12 December 2005). S/2006/161 (14 March 2006). S/2006/375 (10 June 2006). S/2006/760 (25 September 2006). S/2006/962 (12 December 2006).
1636	<b>Independent International Investigation Commission</b>	



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