



**Swiss Federal Office
for Foreign Economic Affairs**

**2nd INTERLAKEN SEMINAR
ON TARGETING UNITED
NATIONS FINANCIAL
SANCTIONS
29-31 March, 1999**

***in cooperation with the
United Nations Secretariat***





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The Findings



Chairman's Report

Chairman: Ambassador Rolf Jeker, Director a.i., Swiss Federal Office for Foreign Economic Affairs

Executive Summary

The concept and strategy of better targeted financial sanctions imposed by the United Nations Security Council has been receiving increased attention from member states, inter-governmental and non-governmental organisations as well as academic think-tanks. Practitioners and analysts generally agree that better-targeting of such measures would increase their effectiveness, while minimising the negative humanitarian impact often experienced by large segments of civilian populations as a result of comprehensive sanctions regimes.

In order to formulate a policy of targeted financial sanctions, the Swiss Government hosted for two consecutive years an expert seminar on the targeting of United Nations financial sanctions. These seminars gathered representatives from national governments, central bank authorities, the Secretariat of the United Nations, various international organisations, the private banking sector and academia. At the first meeting held in Interlaken in March 1998, participants reached a consensus on the potential advantages of financial sanctions over comprehensive economic embargoes and identified priority issues, such as developing consistent national legislation for monitoring, implementing and reporting on financial sanctions. The first seminar made substantial progress in the discussion of the technical aspects of financial sanctions and mechanisms that should be in place to operate a credible targeted financial sanctions regime. In addition, the participants clarified related issues, such as debt servicing, exit clauses and asset management under a targeted financial sanctions regime.

This dialogue among many experts and practitioners has come to be called the *Interlaken Process*. Such discussions have been augmented by two other working seminars held in London (September 1998) and New York (December 1998), which brought together a wider community of specialists under the sponsorship of non-governmental organisations actively supporting the work of the United Nations.

From 29-31 March 1999, the Swiss Government hosted a second Interlaken seminar on the targeting of United Nations financial sanctions, which was attended by more than 70 participants from 22 states. Discussions at the second seminar indicated that much of the conceptual, technical and practical elements required to bring targeted financial sanctions into effect are available and could be effected whenever the Security Council decides to impose targeted financial sanctions.



Chairman's Report

1. The Swiss Government was pleased to host, in close cooperation with the United Nations Secretariat, the second Interlaken Seminar on the Targeting of Financial Sanctions. The objective of the Swiss Government was to offer once again an opportunity for all the parties involved in the imposition of financial sanctions to examine in an informal and technical setting, concrete proposals to improve the effectiveness of financial sanctions regimes and to limit the humanitarian impact of comprehensive economic embargoes.
2. Political authorities, national as well as inter-governmental, have expressed considerable interest in the development of a targeted financial sanctions regime. Such an instrument designed to freezing the assets and blocking financial transactions of entities and individuals linked to the targeted government might offer significant potential to exert pressure on the political elite of the targeted country. At the present stage, the financial assets of the political elite of targeted countries have often been left unaffected by UN sanctions regimes. These assets have been allowed to circulate and fructify almost unhindered on international financial markets while the civilian population of the targeted country has had to bear most of the economic burden of the comprehensive embargoes on national economic activities.
3. The purpose of the Interlaken Seminars was to elaborate on the specific requirements of financial sanctions regimes and to develop new options, more targeted and more effective, driven by finance rather than trade and aimed at specific individuals and entities of the targeted country. Our assumption has been that trade embargoes are likely to affect only in a limited way the targeted elite and may even strengthen its control over the country's resources and markets. Targeted financial sanctions could represent in fact the first tool developed to exert pressure directly on the targeted country's decision-makers by localising and freezing their wealth on the world financial markets.
4. However targeted, financial sanctions may not be sufficient alone to force governments into compliance with collective demands under the UN Charter. They may offer additional valuable tools to demonstrate the determination of the international community and to support a growing sense of individual accountability of targeted elites for the unlawful acts of states by seeking control over their financial assets and transactions. Yet, financial sanctions are probably not effective as stand-alone measure. The targeting of sanctions must be integrated in an overall strategy to induce political changes within targeted states, and be part of other targeted measures such as arms embargoes, visa and travel restrictions, etc. Strategic choices regarding the types of sanctions to be imposed and their modalities

depend on a thorough analysis of the vulnerabilities of the targeted country and of its elite, as well as of the political will necessary to maintain such measures over time.

5. The imposition of targeted financial sanctions presents major technical challenges and demands as well a new level of international cooperation. Such sanctions require the blocking not only of the movement of assets into and out of the targeted country, but necessitate the freezing of assets managed for the benefit of the targeted country all over the world. Considering the fungible character of financial assets, their propensity to be moved in a matter of seconds and the possibilities to conceal the true identity of their owner, the imposition of financial sanctions involves, therefore, a dramatic expansion of the reach of sanctions regimes. Despite the intrinsic complexity of the world financial system, the globalisation of financial flows and the reliance on computer-driven electronic transfer mechanisms offer also significant opportunities to monitor the movement of funds and to track the identity of their owners. Recent experience in similar environments, such as anti-money-laundering operations, has shown that imaginative approaches in the tracking of financial assets coupled with state-of-the-art technologies can provide effective means to locate financial assets, monitor their movement and identify their true owners. New software technologies and the strict monitoring applied in some of the major financial centres in support of anti-money-laundering activities present examples of the most important tools available. In this context, targeted financial sanctions could represent a valuable component of the UN response to a threat to international peace and security once the appropriate instruments and methodologies have been put into place and international cooperation in this regard has been firmly established.
6. At the first Interlaken Seminar in March 1998, participants identified the technical requirements of financial sanctions and mechanisms that should be in place to operate a credible targeted financial sanctions regime. In addition, the participants clarified related issues, such as debt servicing, exit clauses and asset management under a targeted financial sanctions regime. The March 1999 Interlaken Seminar took into account concerns that had been raised since the first seminar regarding the difficulty of implementing targeted sanctions. The most noteworthy areas for further enquiry lie in the development of new techniques to locate financial assets and to monitor financial transactions; the creation of new institutional mechanisms at both the national and international levels to administer targeted financial sanctions; and, the elaboration of national legislation to ensure full and effective implementation of such sanctions regimes. It is widely understood that the effectiveness and credibility of these regimes would depend on the

coordination of these elements.

7. To address these concerns and with the goal of generating practical proposals for the development of targeted instruments, the work of the seminar was divided into three Working Groups, each of which focused on one of the central areas of enquiry, namely:
 - Working Group 1: Technical Aspects of the Targeting of Financial Sanctions.
 - Working Group 2: Main Elements of Domestic Legislation for Sanctions Implementation.
 - Working Group 3: Building Blocks & Definitions for Financial Sanctions Resolutions
8. Additional issues such as dealing with debt servicing, the need for technical assistance to manage an effective financial sanctions regime, and institutional requirements for targeting financial sanctions were examined in other settings within the seminar and will be referred to in a later part of the report.

Working Group 1: Technical Aspects of Targeting Financial Sanctions

9. Working Group 1 focused on the technical aspects of targeting financial sanctions and was able to reach consensus on five major areas. However, with regard to a sixth area, Internet banking, the participants recognised that they lacked the expertise necessary to explore fully its various dimensions. The conclusions reached by the working group are briefly summarised below.

Information-gathering on the Targeted Country's Economic and Financial Profile and Analysis of Its Vulnerabilities.

10. Whereas comprehensive sanctions require only limited knowledge about the target economy, targeted financial sanctions demands a much deeper and detailed amount of qualitative information and analyses of the financial and economic profile of the targeted state's elite and their institutional connections. Specifically, information about trading partners, principal investment partners, correspondent banks and other banking relationships, export information and mechanisms for financing trade operations are all essential. The group agreed that the responsibility for collecting such information rested with UN member states, but that the UN Secretariat should serve as a depository agency for such information, augmenting it over time with in-house data and information available to it from independent sources. The group also agreed that at present the Secretariat had neither the mandate, nor the expertise or capacity to house such information.

11. The working group also reached conclusions on two issues central to the viability of targeted financial sanctions. Firstly, it was agreed that member states, not banking institutions, nor the UN Secretariat, had the responsibility for creating and maintaining lists of designated individuals to be targeted for financial sanctions. The UN Sanctions Committees should be charged with monitoring the discrepancies between the national lists as they occur over time and disseminate any relevant information to member states. Secondly, it was recognised that a number of states did not have the necessary legal framework to establish and maintain such a list of individual targets. In the case of the European Union, for example, it was suggested that the European Commission should examine the possibility of creating an overarching authority whereby member states could establish such a list.

Speed of Money Transfers

12. While acknowledging their concern about the speed of money transfers, the experts in the working group noted that any member state that employed existing interdiction software was capable of detecting transfers of funds violating sanctions. The speed of money transfers does not affect substantially the effectiveness of financial sanctions since the identity of the ordering bank and the beneficiary are attached to each money transfer. The core issue remains the capacity and willingness of member states to enforce measures with regard to the disclosure of the true identity of financial assets owners.

The Role of Offshore Centres

13. The working group also discussed the role of offshore centres as possible loopholes for sanctions evasion. The group noted that there is a great variety in possible attitudes of offshore centres with respect to sanctions implementation as well as the implementation of anti-money-laundering measures. The economic, administrative and legal environment, as well as the structure of the target's assets, and the clarity of UN sanctions resolutions would affect the viability of any off-shore centres' attempt at evasion. Recalling that in most cases off-shore centres were used for accounting purposes, with remaining hard currency and other financial assets held at more traditional institutions and centres, the group concluded that a consistent implementation and monitoring system covering most of the major financial centres would greatly limit the ability of offshore centres to counteract UN targeted financial sanctions. In cases where an offshore centre can demonstrate credible efforts to track the identity of its banks' customers and cooperate with the Sanctions Committees to locate concealed assets, control measures by the corresponding banks may become redundant.



Trade Financing, Barter Trade and the Import of Humanitarian Goods

14. The relationship between comprehensive financial sanctions and trade embargoes was raised and presented some areas of concern. Participants recognised that financial sanctions may also have a substantial impact on a targeted state's ability to engage in international trade, especially in preventing payment for or financing of trade operations, leaving only cash payments or barter as bases for trade activities. This would likely limit considerably the state's ability to import humanitarian goods and services and, consequently, create similar hardship for the civilian population as was experienced under traditional trade embargoes. To address this concern, the group distinguished between comprehensive financial sanctions and targeted financial sanctions.
15. Comprehensive financial sanctions would require the complete blocking of all financial transactions which benefit the targeted state, and a freezing of all public and private assets, including individual and corporate assets. Thus, comprehensive financial sanctions should comprise a prohibition of trade financing and as such restrict target's trading activities without the need to impose border controls and licensing requirements related to trade embargoes.
16. Targeted financial sanctions were understood to require the blocking of the transactions of specific individuals and entities within the targeted state, as well as the freezing of their financial assets. Restricting general trade operations or financing would not be necessary in this situation, unless it was clear that specific trade operations were being conducted for the direct benefit or on behalf of the targeted individuals and entities. Participants recognised the difficulties inherent in situations where state-owned or controlled companies may offer significant loopholes for individuals to avoid targeted sanctions through the trade of goods. Such situations place a premium on expert knowledge and continued monitoring as a means for insuring the ability of sanctions authorities to curtail such sanctions violations.
17. The working group agreed that the effectiveness of targeted financial sanctions would rely on a sound balance between the need for comprehensiveness of sanctions regimes and the necessity of permitting trade activities which encompass humanitarian supplies. This implies an increased capacity to identify the particular interest of the targeted elite in trade activities and the ability to impose, in addition to targeted financial sanctions, targeted embargoes on specific goods, such as luxury items, technology and communication goods, as well as arms. Exports could also be controlled through the establishment of escrow accounts to ensure the necessary import of humanitarian goods and eventually the payment of debt

service. In this context, participants were not in a position to resolve the issue of financing the import of humanitarian goods. Concerns were expressed that the generic licensing of goods under humanitarian exemptions may offer a loophole for the evasion of financial sanctions. Specific control mechanisms of the type of the *Oil for Food* program may be needed to monitor the import and distribution of humanitarian goods.

Evasion of Financial Sanctions

18. The working group discussed the ability of targets to evade financial sanctions through trade triangulation, property sales, and various loan and pledge actions. The group noted the need for tight control over the flow of a target's assets. Central to the success in this area would be a clear mandate from the Security Council to the implementing state and broad jurisdiction under applicable domestic law, supported by effective means of identifying targeted asset holders.

Lessons Learned from the Work of the Financial Action Task Force on Money-Laundering

19. The working group discussed the lessons that could be learned from the work of the Financial Action Task Force on Money-Laundering (FATF). It was noted that those fearing targeting under a financial sanctions regime were likely to adopt strategies to avoid the identification and freezing of assets similar to those used by money-launderers. Strategies to counteract such evasion will therefore bear similarities to those developed in the money-laundering context. The core of FATF strategy is contained in a package of forty recommendations that set a common minimum standard for the member countries of FATF. FATF devotes a considerable part of its work to the monitoring of members' implementation of the FATF Forty Recommendations on the basis of a self-assessment and mutual evaluation procedure. Together they provide for the necessary peer pressure for a speedy and thorough implementation of the Forty Recommendations in member states.
20. The working group also acknowledged, however, that there are marked intrinsic differences between the implementation of UN financial sanctions and anti-money-laundering activities. The latter address a wide and open-ended set of individuals and companies whereas, in a sanctions case, the targeted individuals and companies will be limited in number. Sanctions may be in force for a limited time span, whereas combating money-laundering is a continuous task. The basis for action in a sanctions context is a political decision by the UN Security Council, while it is penal law in a money-laundering context. This leads to differences with respect to the nature and

scope of measures and procedures applied, and the rights and obligations of the targeted individuals under national laws. For example, international co-operation in a sanctions context will not, in general, take the form of judicial assistance in criminal matters neither the confiscation of assets nor the extradition of persons will not normally apply in a sanctions context.

Working Group 2: Elements of Domestic Legislation for Sanctions Implementation

21. Working Group 2 examined the basic elements for a framework law for the implementation of financial sanctions. The group noted that enabling laws were a necessary, but not sufficient, condition for the effective implementation of targeted financial sanctions measures. Such an enabling law would help a state to develop the legal and administrative instruments needed to control and restrict financial assets and transactions, and could also be limited in its applicability to the case of mandatory sanctions. Such limitations were seen as possibly increasing the likelihood of its acceptability to member states.
22. The working group reviewed and made recommendations for improving the draft text of a model enabling law (final version of the text is attached as Annex 1 to this report). The discussion showed a strong sensitivity to the legal implications that such enabling law would have on distinct legal settings. The group also noted that other issues, such as the characteristics of secondary legislation and administrative issues demanded more discussion and analysis, which was not possible at the meeting.

Working Group 3: Main Elements of Sanctions Resolutions and their Interpretation

23. Working Group 3 reviewed a set of options available to the Security Council in freezing financial assets and blocking financial transactions. These options were presented with a draft document detailing technical elements for a resolution on the imposition of financial sanctions and a set of definitions of technical terms (Annexes 2 and 3). Participants made numerous comments on many of these points. The text proposed is not meant to be a draft resolution. Rather, it offers a comprehensive list of options available to the Security Council when negotiating the text of a proposed resolution on the imposition of financial sanctions. In particular, it proposes a list of possible prohibitions and exemptions. It is meant to be considered as a menu from which the most appropriate options can be selected as appropriate in each individual sanctions case.
24. It was noted that Working Group 1 worked on the assumption that the

imposition of financial sanctions is the prerogative of the UN Security Council under Chapter VII of the UN Charter. However, the fact that sanctions are implemented nationally, gave rise to a discussion on the need to harmonise national interpretations. It was also noted that the technical terms used in sanctions resolutions should correspond with technical terms used globally in the financial sector, in inter-bank communications, documents and contracts.

25. Working Group 3 also reflected on the mandate given to the Sanctions Committees and the UN Secretary General. The participants considered that the Sanctions Committees, with the support of the UN Secretariat, should undertake regular assessments of the technical effectiveness of targeted financial sanctions.

Other Issues Raised in the Seminar

26. Parallel to the formal working groups, participants formed other groups based on their expertise and interest to address other issues associated with targeted financial sanctions. These issues included a discussion of the institutional requirements for imposing financial sanctions and the need for technical assistance, the issue of servicing foreign debt under such sanctions, and the need for compensation under Article 50, as well as "exit clauses".
27. Participants agreed that expertise and financial resources should be made available to the UN Secretariat, the Sanctions Committees and, when needed, implementing states to strengthen the ability of the UN system to design, monitor and administer targeted financial sanctions. Experts could be made available to the UN Secretariat once the UN Security Council has decided to develop such capacity. Meanwhile, member states interested in pursuing the implementation of the measures proposed at Interlaken could meet regularly on an informal basis and benefit from the expertise of a focal point on financial sanctions.
28. Citing the need to be consistent with the purpose of a targeted financial sanctions regime, participants urged that a targeted state should not be provided with relief from servicing its debt burden. However, there were disagreements among the participants as to how payments and debts were to be collected. The possibilities of export control mechanisms and swap arrangements such as "commodity for debt" were also mentioned.
29. Constraints of time did not permit a full discussion of the impact of financial sanctions on third countries and the potential need for compensation under Article 50 of the UN Charter. Neither the time frame of financial sanctions nor their exit clauses were properly addressed. However, some participants



argued that these issues might lose some of their relevance, as targeted sanctions are being developed precisely to minimise the undesirable consequences of sanctions regimes. Therefore, the concerns of Member states to avoid unnecessarily protracted sanctions and their long-term impact on the civilian population and third states have been indirectly addressed.

Conclusion

30. The goal of the Interlaken process was to review the technical and legal requirements necessary for the United Nations Security Council to impose targeted financial and to ensure that the means existed whereby targets could not easily counteract such imposition. Both Interlaken seminars followed a narrow work plan with an emphasis on the practical and technical mechanisms which must be developed, or more sharply focused, in order to ensure the effectiveness of such sanctions measures.
31. The Interlaken seminars established the technical feasibility of targeted financial sanctions regimes. Although a number of issues still remain to be resolved, such as the means for the tracking of all forms of financial transactions, the Interlaken seminars have provided new and sharper tools to enable the Security Council to discharge more effectively its responsibilities under the Charter. Among the important accomplishments of the Interlaken process are:
 - an increased knowledge of how financial sanctions work and the weaknesses of loosely designed sanction regimes;
 - the elaboration of technical guidelines for increasing the effectiveness of Security Council resolutions imposing targeted financial sanctions;
 - the development of model legislation to assist Member States in formulating national legislation on financial sanctions;
 - the establishment of an informal international cooperation mechanism, with participation from Member States, the financial sector and academic think-tanks and experts, to facilitate the implementation of targeted financial sanctions.
32. The Interlaken process has raised the level of confidence on the feasibility of Security Council imposed targeted financial sanctions regimes. In this context, participants felt that the following specific recommendations should be addressed in order to enhance the effectiveness of such measures:
 - The need to expand the limited expertise that exists within the United Nations Secretariat with regard to targeted financial sanctions.
 - The need for Member States to adopt the procedures required for



- proper implementation of such sanctions as regards financial institutions and banks within their jurisdiction.
- The need for the Security Council and the Secretariat to devise the exact system of international cooperation needed to provide guidance on targeted sanctions policy.
 - The need for institutions and agencies outside the United Nations system to develop a framework that would enable their contribution toward assessing the vulnerability of a given state to financial sanctions, and the potential humanitarian consequences of such an imposition.
33. The Swiss Government avails itself to maintain its support to the development of more targeted UN financial sanctions and hopes that the results of these discussions over the last two years will carry us forward in the elaboration of a more practical and effective financial sanctions instrument.
34. As in the case of comprehensive economic sanctions, the imposition of targeted financial sanctions regimes may not be sufficient to guarantee target compliance. Such sanctions regimes must be integrated into an overall strategy aimed to induce political change, and could be most successful when combined with other measures.



Working Group 1: The Targeting of Financial Sanctions

Chairmen: Dr. Kurt Schelter, Richard Newcomb
Rapporteur: Christian Schoenenberger

Necessary Information about the Target

So as to be able to hit the target efficiently by targeted sanctions, the target's profile, its 'Achilles heel', has to be known. Whereas comprehensive sanctions need only limited knowledge about the target, targeted sanctions enhance the information needs ('know your target').

The types of information to be available for efficient sanctions design and implementation include, inter alia, knowledge about traditional trading partners of the target, principle correspondent banks and other bank relationships, typical exports, and the names of members of the elite to be targeted.

The Working Group was of the opinion that responsibility for collection of information was largely the task of Member States. The UN Secretariat would primarily act as a depository and distribution centre for such information. In addition, it would draw on information available from independent groups as well as in-house information.

Further information can be found in annex 1.

Lists of targeted individuals and entities

The discussion on how to create an Entities List revolved around two key issues:

- Do the individual member states have the legal authority to create an Entities List?
- Should the list be created by the individual member states or by the UN?

After querying the countries represented in Working Group I, it was discovered that a substantial number of countries did not have legal authority to compile an Entities List. In the case of the EU, the Working Group suggested that the EU Commission should examine the possibility of creating an overarching authority that would permit member states to create an entities list.

As regards the second issue, the Working Group concluded that:

- The task of creating Entities Lists should be left to the member states who will designate entities according to prevailing local law.
- The responsibility for creating the lists lies with local authorities and not the local banks.
- Member states need to ensure the privacy and confidentiality of the sources used to create their list.
- The Sanctions Committee should also monitor the discrepancies in the entities lists as they occur over time and disseminate the information.

Relevance of the ‘Speed of Money’

A question was raised as to whether the rapidity with which transactions are processed is relevant to evading sanctions. The Working Group concluded that any funds transfer (SWIFT or Telex based) destined for a participating member state whose banking system employs interdiction software can be scanned for possible sanctions violations.

Role of Off-shore Centres

The Working Group also discussed the role of offshore centres as possible loop-holes for sanctions evasion. The Group was of the opinion that there was a great variety of offshore centres’ attitudes with respect to sanctions implementation (as well as implementation of anti-money-laundering rules), some offshore centres being as strict as onshore centres.

More information can be found in annex 2.

Barter Trade and Goods for Humanitarian Purposes

Financial sanctions should comprise trade financing. By this way, they become an effective tool to restrict the target’s trade - without the necessity to impose trade sanctions. However, some residual trade will subsist, mainly cross-border and barter trade. Such residual trade does not in general have to be controlled, with the exception of certain goods (weapons, strategic goods like computers, steel etc.).

The question was raised if such residual trade would ‘automatically’ cater for humanitarian needs (food, medicine). However, the selection process of goods in barter trade and the distribution process within the targeted country (black markets, inaccessibility of goods to the common people through excessive prices) might limit such a self-regulating flux of humanitarian goods into the target.

Effects of Internet Banking

The potential effects of internet banking on the implementation of financial sanctions could not be analysed in any depth. The Working Group felt that further study of this issue was necessary

The Most Common Schemes to Evade Sanctions

The Working Group discussed limiting a target's ability to avoid sanctions. A core component in this is controlling the flow of a target's assets. To cite an example, SCR 661 merely stipulated that funds could not be removed from a jurisdiction. It made no mention of actually asserting control over the funds. In this manner, the target would be able to enter into financial transactions within a country's borders with the benefit accruing in the target country.

Lessons from the Financial Action Task Force on Money Laundering (FATF)

The Working Group considered that valuable lessons for the set-up of a sanctions implementation framework can be drawn from analysing the work done by the Financial Action Task Force on Money Laundering (FATF). FATF has worked out a stringent and efficient international framework for combating money laundering, based on a multi-level set-up which includes the national legal systems, the financial sector and an intense international cooperation, including a peer review process. The multi-level set-up as well as FATF's recommendations concerning the financial sector were thought to be of definite relevance to the sanctions context.

However, it was also felt, that there are marked intrinsic differences between implementation of UN financial sanctions and anti-money laundering activities. For instance, it was felt that the sanctions framework should be designed in such a way to make it straightforward to implement and to apply for all countries, including developing countries.

Further information can be found in annex 3.



Annex 1

Knowledge and Information

1. The concept of information gathering can be thought as a three step process:
 - a) information gathering with regard to the viability of financial sanctions based on openly available information;
 - b) information gathering of non-public information including that of individuals, companies and their financial interests. This would result in lists which would be used as part of the financial sanctions;
 - c) information gathering with regard to monitoring/assessment/readjustment of financial sanctions.
2. The questions under chapter five, in R. Newcomb's paper, were accepted as appropriate.
3. If personalised information is a requisite to implement any effective financial sanction as was concluded by the group, the legal framework to allow information sharing should be clarified.
4. The collection of information gathering within the UN should formally commence when the Security Council provides the appropriate mandate. The UN was considered the authoritative framework for information gathering, based on inputs from:
 - a) the UN system as a whole;
 - b) States and groups of States;
 - c) other appropriate organisations.
5. In the gathering of information speed and adequacy of the information collection was considered essential. At present the UN Secretariat does not have the appropriate capabilities to implement the above information management.



6. If decided by the Security Council, along with essential inputs from member States, the Secretariat capacities could be increased as appropriate. This could include capacities to:
 - a) pre-assessment of financial sanctions viability and impact;
 - b) implementation and information gathering;
 - c) monitoring of the impact of the financial sanctions.
7. With regard to the question of lists, further studies by interested countries on a case by case basis are important, given the potential legal complications.

Annex 2

Offshore Centres

The term offshore centre is often used as a generic term as if basically there were no substantial differences amongst them. In fact offshore centres display great diversity and one centre may differ greatly from another. This is so in the context of their economic development, their degree of dependence on business with non-residents and their legal and regulatory environment.

In the context of Anti-Money Laundering and UN sanctions enforcement, there are offshore centres that are as stringently regulated as any other country. In such centres, customer identification is rigorously and comprehensively applied and tracing of assets and money flows can take place.

The experience of some offshore centres at least has been that in the field of UN sanctions enforcement, the relevant UN resolutions have not been drafted in clear and unambiguous language, thus enabling target entities to escape sanctions by claiming the benefit of doubt.

At the same time, prosecuting sanctions busters under normal criminal law procedures requires standards of evidence which are difficult to attain so that prosecutions are rarely successful.

It would facilitate sanctions enforcement if:

- a) UN resolutions were drafted in unequivocal language and target entities more clearly defined
- b) more international cooperation could be secured perhaps through the adoption of an international convention to that effect
- c) the convention referred to above introduced realistically appropriate standards of evidence in the prosecution of sanction related offences.

With regard to offshore centres which are unwilling to take the necessary steps to ensure adequate regulation and enforcement of sanctions, perhaps the countries



whose money centres handle money transfers of said offshore centres may take the necessary measures and be especially vigilant to identify, intercept and block transfers connected with entities under sanctions.

Finally, pressure on recalcitrant countries to tow the line can be most effective when sanctions are enforced and seen to be enforced in an uniform manner across the world.

Annex 3

Lessons from the Financial Action Task Force on Money Laundering (FATF)

Introductory Consideration

Individuals or companies targeted or fearing to be targeted by UN financial sanctions will adopt strategies to avoid identification and freezing of their assets. They will try to hide them, move them away from locations where detection and freeze seem probable and convert them into forms which make it difficult to trace real ownership. These strategies are intrinsically very similar to those applied by money launderers. One should thus assume that strategies to counteract such evasion will also bear similarities. It is therefore to be expected, from the outset, that lessons can be drawn from anti-money laundering activities when it comes to design methods to render targeted financial sanctions efficient.

The Financial Action Task Force on Money Laundering (FATF)

The Financial Action Task Force on Money Laundering (FATF), an inter-governmental body with presently 26 member countries, has worked out a stringent and efficient international framework for combating money laundering. It is based on a multi-level set-up which includes the national legal systems, the financial sector, the supervisory authorities and an intense international cooperation.

FATF recognised that the sole reliance on legal measures such as the establishment of money laundering as a criminal offence would not be sufficient. Its members agreed on a broad range of counter measures, involving in an unprecedented fashion the financial services sector in the strategy to combat money laundering. The core of FATF strategy is contained in a package of Forty Recommendations which set a common minimum



standard for the member countries of FATF¹. The Recommendations have no binding force under international law.

FATF devotes a considerable part of its work to the monitoring of members' implementation of the Forty Recommendations on the basis of a self-assessment and mutual evaluation procedure. The self-assessment exercise consists of a detailed questionnaire and a question and answer session at the Plenary meeting. The mutual evaluation procedure provides for a thorough monitoring mechanism for the examination of the counter-measures in place in the member states and their effectiveness. Together they provide for the necessary peer pressure for a speedy and thorough implementation of the Forty Recommendations in Member States.

FATF is chaired by a rotating presidency. It meets three times a year and brings together policy makers and experts from a wide range of disciplines, Finance, Justice and Foreign Ministries, banking and other financial regulators, as well as law enforcement and legal agencies. FATF is supported by a small secretariat of three persons.

Targeted Financial Sanctions - Lessons Which Could Be Drawn from FATF

Useable Concepts

Concepts for the sanctions context which could be conceived in analogy to the FATF set-up might be the organisation of regular meetings between sanctioning States during a sanctions regime, possibly including a peer review and a policy to deal with non-complying countries, the presence of financial experts at such meetings, the centralisation and sharing of information by a suitable international organisation, and a two-tier guideline system directed towards States and towards financial institutions.

FATF experience as well as past experience with sanctions regimes suggest that States should comply with a set of minimum conditions, both legally and administratively, such as to allow for a uniform sanctions regime without loop-holes. Such minimum conditions could be formulated in a 'model law' or in recommendations.

If a sanctions regime is to work, financial institutions have to comply with it - and have to be *able* to comply with it. A prerequisite of the latter is the existence of reliable information about their customers' identity and records about transactions. In addition, financial institutions have to be under the obligation to notify competent authorities about assets belonging to targeted persons and companies. They must also be obliged

¹The FATF Homepage under <http://www.oecd.org/fatf/> contains the full text of the 40 recommendations, interpretative notes and further information.

to prevent the withdrawal of such assets.

Several of the aforementioned preconditions for financial institutions to be able to comply with financial sanctions are already in place in many countries, as they are requested by FATF in the context of its anti-money laundering strategy. Sanctions implementation can thus in part *directly* build upon the FATF basis, without transposing it into the sanctions context. FATF-required enhanced diligence of the financial sector - e.g. customer identification and record keeping - will help to implement targeted financial sanctions, even if those requirements were not designed to support sanctions implementation in the first place.

Limits of Comparability

Of course, there are also differences between financial sanctions implementation and anti-money laundering activities. The latter address a wide and open-ended set of individuals and companies, whereas in a sanctions case the targeted individuals and companies will be limited in number. Sanctions may be in force for a limited time span, whereas combating money laundering is a continuous task. It is therefore to be expected that the sanctions framework can be devised to be institutionally rather light.

The basis for action in a sanctions context is a political decision by the UN Security Council while it is penal law in a money laundering context. This leads to differences with respect to the nature and scope of measures and procedures applied. For example, international co-operation in a sanctions context will not, in general, take the form of judicial assistance in criminal matters. Confiscation of assets and extradition of persons will not normally apply in a sanctions context.

FATF membership is rather limited and homogeneous as compared to the broad membership of the UN. Solutions found in the latter framework have to be acceptable - and technically feasible - for countries at very different stages of economic development. They will therefore have to be rather straightforward to implement and apply.





Targeted Financial Sanctions: The U.S. Model

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The views presented are those of the author and do not necessarily reflect those of the U.S. Government.

Introduction

The manner in which financial sanctions are implemented in the U.S. is unique to most of the UN member states for a number of reasons -- the methods and extent of targeting, the implementation process, the use of interdiction software by U.S. financial institutions, the broad statutory authority available to implement a sanctions program and the manner in which the program actually works to effect an assets freeze or other type of financial sanctions initiative. All of these topics will be examined in some depth in this paper but this last point is perhaps most instructive in gaining an understanding of the possibilities and limits of the use of financial sanctions as a tool of international diplomacy.

Background: U.N. Security Council Resolutions

The instrument of financial sanctions has been utilised on a number of occasions by the United Nations and other multilateral bodies since the Gulf War. Over this period the actual language used by the UN in relevant Security Council Resolutions („SCRs“) has evolved as follows:

In paragraph 4 of SCR 661 involving Iraq, adopted August 6, 1991, the provision relating to financial sanctions stated as follows:

Decides that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any

² I wish to acknowledge Loren Dohm, Dennis Wood, Lorraine Lawlor, Alexandre Manfull and Mark Roberts for their contributions, comments, and edits to this document. I would also like to thank OFAC staff-members and others that have reviewed and commented on its content.



other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs.

In paragraph 5 of SCR 757 involving the Federal Republic of Yugoslavia (Serbia and Montenegro) adopted May 30, 1992, the provision relating to financial sanctions stated as follows:

Decides that all States shall not make available to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) or to any commercial, industrial or public utility undertaking in the Federal Republic of Yugoslavia (Serbia and Montenegro), any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to those authorities or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within the Federal Republic of Yugoslavia (Serbia and Montenegro), except payments exclusively for strictly medical or humanitarian purposes and foodstuffs.

The operative language for economic sanctions of SCR 757 for Yugoslavia for all intents and purposes was identical to that of SCR 661 involving Iraq. However, a change was made to the Yugoslav (Serbia & Montenegro) program in SCR 820 which was adopted April 17, 1993. Paragraph 21 of that resolution contained modified operative language for financial sanctions as follows:

Decides that States in which there are funds, including any funds derived from property, (a) of the authorities in the Federal Republic of Yugoslavia (Serbia & Montenegro), or (b) of commercial, industrial or public utility undertakings in the Federal Republic of Yugoslavia (Serbia & Montenegro), or (c) controlled directly or indirectly by such authorities or undertakings or by entities, wherever located or organised, owned or controlled by such authorities or undertakings, shall require all persons and entities within their own territories holding such funds to freeze them to ensure that they are not made available directly or indirectly to or for the benefit of the authorities in the Federal Republic of Yugoslavia (Serbia & Montenegro) or to any commercial, industrial or public utility undertaking in the Federal Republic of Yugoslavia (Serbia & Montenegro), and calls on all States to report to the Committee established by resolution 724 (1991) on actions taken pursuant to this paragraph.

In SCR 883 involving Libya adopted November 11, 1993, paragraphs 3 and 4 relating to financial sanctions stated as follows:

Decides that all States in which there are funds or other financial resources (including funds derived or generated from property) owned or controlled, directly or indirectly, by:

(a) the Government or public authorities of Libya, or

(b) any Libyan undertaking

shall freeze such funds and financial resources and ensure that neither they nor any other funds and financial resources are made available, by their nations or by any persons within their territory, directly or indirectly, to or for the benefit of the Government or public authorities of Libya or any Libyan undertaking, which for the purposes of this paragraph, means any commercial, industrial or public utility undertaking which is owned or controlled, directly or indirectly, by

- (a) the Government or public authorities of Libya,*
- (b) any entity, wherever located or organised, owned or controlled by (I), or*
- (c) any person identified by States as acting on behalf of (I) or (ii) for the purposes of this resolution;*

Further decides that the measures imposed by paragraph 3 above do not apply to funds or other financial resources derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities, originating in Libya and exported therefrom after the time specified in paragraph 2 above, provided that any such funds are paid into separate bank accounts exclusively for these funds.

In paragraph 4 of SCR 917 involving Haiti adopted May 6, 1994, the provision relating to financial sanctions stated as follows:

Strongly urges all States to freeze without delay the funds and financial resources of persons falling within paragraph 3 above, to ensure that neither these nor any other funds and financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons or of the Haitian military, including the police.

In paragraph 11 of SCR 1173 involving UNITA in Angola adopted June 12, 1998, the provision relating to financial sanctions stated as follows:

Decides that all States, except Angola, in which there are funds and financial resources, including any funds derived or generated from property of UNITA as an organisation or of senior officials of UNITA or adult members of their immediate families designated pursuant to paragraph 11 of resolution 1127 (1997), shall require all persons and entities within their own territories holding such funds and financial resources to freeze them and ensure that they are not made available directly or indirectly to or for the benefit of UNITA as an organisation or of senior officials of UNITA or adult members of their immediate families designated pursuant to paragraph 11 of resolution 1127 (1997).

There have been different interpretations given to this language by the many UN members nations. The extent of the differences in the interpretation directly relates to

the UN's ability to launch an effective multilateral financial sanctions regime. Lack of uniformity in definitions, interpretations, compliance and enforcement affect the ability to bring about the desired effect on the target.

U.S. Formula for Imposing Targeted Financial Sanctions

U.S. Executive Order and Regulations Language

The U.S. has consistently interpreted and implemented the language in the resolutions cited above in Executive Orders („EO“) issued by the U.S. President, as it did in EO 12724 involving Iraq as follows:

Except to the extent provided in regulations that may hereafter be issued pursuant to this order, all property and interests in property of the Government of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

From the U.S. perspective the key operative language for financial sanctions purposes is „all property and interests in property of the Government of _____ are blocked.“

In implementing regulations issued by the U.S. Treasury's Office of Foreign Assets Control („OFAC“) the term „property“ is traditionally defined very broadly as follows:

The term property includes, but is not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidence of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgements, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

The term „interest“ is traditionally defined as follows:

Except as otherwise provided in this part, the term interest when used with respect to property (e.g., „an interest in property“) means an interest of any nature whatsoever, direct or indirect.

The basic regulatory prohibition to implement the blocking action is traditionally implemented by the following language:

Prohibited transactions involving property in which the [target] has an interest. (a) Except as authorised by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the [target] that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

The term „transfer“ is traditionally defined as follows:

The term transfer means any actual or purported act or transaction, whether or not evidenced by writing and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing or the levy of or under any judgement, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgement or decree of any foreign country; the fulfilment of any condition, the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

The terms „blocked account“ and „blocked property“ are traditionally defined as follows:

The terms blocked account and blocked property shall mean any account or property in which the Government of [target] has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorisation or license from OFAC authorising such action.

Basic Building Blocks of a Financial Sanctions Program

The terms outlined and defined above are the basic building blocks upon which a financial sanctions program in the U.S. involving the freezing of assets is based. Following the adoption of a SCR involving financial assets, the U.S. implements a program to block or freeze assets. This casts a very broad net to insure that all property and/or interests in property, as defined above, are frozen and that any transactions in, or transfers of, this property are prohibited without permission.



Jurisdiction is traditionally asserted broadly as well to include „all property and interests in property“ of the target „that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of a United States person, including their overseas branches“ (but not subsidiaries).

This is typically the formula that has been used in the U.S. for UN programs involving financial sanctions. With a program of this nature and scope in place, all the property of the target is completely immobilised and transfers are prohibited without express permission of the administering body. This allows complete control and discretion over the financial assets, resources and property of the target. This ability to take complete control of the financial situation of the target is a critical element in the effectiveness of a targeted financial sanctions regime.

It should be assumed that any target of any program will take whatever defensive manoeuvres that exist to escape the grip of the sanctions net. If avenues of escape, avoidance or evasion are available to the target, it seems fair to assume that this path will be followed. Moreover, absent a broadly cast sanctions net, these avenues of escape can be pursued, often without knowledge of the administrative body, by converting to alternative forms of property.

It has often been the U.S. experience that a sanctions program of this nature is too broad in certain areas. This requires rapid decisions on areas that need to be licensed. When this happens, the U.S. develops statements of licensing policy, sometimes broad and sometimes very specific, about the kinds of transactions that will be allowed for policy reasons. It could be for humanitarian reasons, to allow completion of certain on-going transactions (e.g., goods on the high-seas), or to permit the completion of foreign exchange or trade financing arrangements. Whatever the policy, it can be fairly easily implemented and controlled in this manner. Moreover, it can be loosened or tightened as the policy changes, without facing an interpretational challenge at every turn.

Financial sanctions implemented in this manner permit strong and effective enforcement. They prevent even the limited movement of funds (or property) within a country which is nearly impossible to oversee and enforce effectively and which sets the stage for enormous opportunities for sanctions evasion. It is essential that the movement of property in which the target has an interest (not only directly owned assets of the target, but property of entities and individuals that are owned or controlled by it, or acting for or on its behalf) cannot occur without explicit permission of the sanctions administering agency.

Countries that implement financial sanctions by only limiting the movement of funds or property of the target to within their jurisdiction or merely prohibiting direct transactions with the sanctioned government cannot effectively deny the target the use of its resources. This type of limited sanctions prohibition actually invites evasion by

permitting the target to procure goods through intermediaries that move goods through a chain of permitted buys, sells, and swaps of goods or property within and across borders until they are located in a country where the goods or property can be moved into the sanctioned government's territory. Methods such as back-to-back loans, asset pledges, property sales and trade triangulation are used to achieve for goods what is analogous to money laundering. No country either at the beginning or at any step of the chain knows the ultimate beneficiary of the movement of the goods, and each of the transactions appears legitimate.

Targeted Financial Sanctions: Initial Considerations

In considering the use of targeted financial sanctions, the first consideration must be to define the target with sufficient specificity and clarity that all affected parties (the multilateral organisation, the member states and the affected domestic parties, such as financial institutions, corporations, individuals, importers, exporters, and other commercial enterprises) can understand, implement, and comply with the requirements of the program. Scope and coverage of the program should be clear enough that a common understanding emerges of who and what are and are not included in the definition.

As is the case in a military situation, which can often be an appropriate analogy to sanctions, the target must be defined with enough specificity so that those who are sent to attack it will know both what it is they need to attack and whether they have hit it. Also, as in a military situation, rarely is it the best strategy to attempt to strike all potential targets of the foe. Resources may and likely will be wasted and there will probably be unintended adverse impact on the civilian population and other innocent parties, many of whom may otherwise be sympathetic to the goals of the program. Similarly, in a sanctions regime, unintended adverse humanitarian consequences will likely have a similar adverse impact on the success of the program and its ability to achieve positive results.

Targeted financial sanctions, by definition, should be designed in such manner as to maximise the likelihood of success in hitting the correct target, thus having the maximum effect possible on the target and its behaviour.

A second, and equally important, goal must be to minimise the amount of collateral damage on unintended targets, (e.g., the innocent civilian population, allies or potential allies) in order to avoid a long-term humanitarian crisis with a new set of unintended adversaries or an economy so permanently crippled that recovery is not possible without massive and long-term rehabilitation efforts after the sanctions have been removed.

It may not always be possible to define a target with such precision that the „maximise/minimise“ effect described above can be achieved completely. It is important however, to have those factors in mind from the outset so that targeting can be achieved to the greatest extent possible. Much of the rest of this paper describes how the U.S. attempts to achieve this goal.

A second initial consideration is the term „financial sanctions“. Traditionally, it has been distinguished from the term „comprehensive sanctions“ by not including „trade sanctions“ or the ban on imports and exports. But this is a very incomplete and, in many ways, imperfect distinction in that there usually is much overlap and a considerable grey area between the two. There is no bright line test. For example, trade financing, usually such an integral element of most importing and exporting activity, could arguably fit under either category of sanctions. Whichever way it is handled, as financial or trade sanctions, there will be consequences for the effectiveness of the program and its impact on the target. For example, the recent Federal Republic of Yugoslavia-Kosovo sanctions imposed by most of the „Contact Group“ countries are purely financial in nature. There is no import or export ban, but for U.S. persons there are very significant restrictions on how such activities can be financed. Had these sanctions included trade sanctions, U.S. persons would have been barred from engaging in any commercial activity with Serbia altogether, including any dealings with private (i.e., non-governmental) companies located in Serbia.

Elements Affecting the Viability of Targeted Financial Sanctions

The question that usually arises when sanctions of any nature are considered is: „Will they work?“ There are always advocates on both sides of this question. There is some agreement however, that they tend to work better when certain conditions or circumstances exist. A realistic assessment of these conditions, combined with appropriate research and analysis that leads to sound program development, will increase the likelihood of success. The extent to which ideal conditions for sanctions are lacking, or the level of multilateral commitment to make the sanctions work is in doubt, the more significant are the questions that should be addressed before a decision is made to proceed.

„How do the sanctions fit within the broader multilateral strategy to deal with the recalcitrant state or target?“ is the first issue to address. Perhaps the most important condition for sanctions to be effective is the clear recognition at the outset by all member states that sanctions are not an end in themselves. Like the use of force, they are only a tool that can be used effectively as a part of, and within the context of other efforts, such as diplomacy. They can and often do provide significant leverage or protection; but they are not an end in themselves or a panacea. They do not operate in a vacuum but must be a part of a larger coordinated multinational strategy.

Another basic issue is whether the target is vulnerable to this type of action. In certain situations a target may be so poor, isolated, or secretive that it may have inadvertently or deliberately immunised itself from being vulnerable.

The issue of vulnerability leads to two additional questions in determining whether the elements for a successful program exist:

First, is there sufficient knowledge and information available about the economic, banking and financial system of the target? This question goes to whether, on a sustained basis, there is sufficient knowledge, understanding, and flow of information to get details about specific accounts, names, individuals, companies, government agencies, instrumentalities and controlled entities. Some of the issues include:

- Whether the target is now, or in recent years has been, a state-controlled economy and, if so, whether it has functioned largely in the open or in deep secrecy.
- Whether its business activities have a history of being at arms length and in the open.
- Are public sources of information available for research?
- What and where are other sources of information?
- To what extent can this information be shared with other member states?

Recognising the practical realities of gaining accurate, timely and up-to-date answers to these questions, as well as an assessment of the pressure points, is helpful in formulating implementation strategies. Access to these pressure points with good and effective host government cooperation is vital to the success of targeted financial sanctions. Otherwise it could easily become business as usual. The program will only be as good as its weakest link and if one country becomes the financial safe-harbour for the target then the entire program will be negatively affected.

Second, is there leverage and, if so, what is it? Does the target and its leaders or members have sufficient assets and business activity abroad that are fairly readily identifiable and subject to blocking by UN member states? If so, where are they, or where are they most likely to be found? These questions, depending on the circumstances, lead to more specific ones such as:

- Who have traditionally been the principal trading partners for both the import and export of goods and services?
- Where are the principal correspondent bank relationships and what is the nature of those relationships? What type of bank activities exist between the target and world banking centres (e.g., loans, credits, trade financing, foreign exchange etc.)?

- What hard currency or currencies are most often used in the international trade of the target?
- Has there been a traditional favoured banking relationship and, if so, with whom?
- What manufactured goods, raw materials or commodities is the potential target most dependent upon and from whom are they obtained?
- Who are the front line (i.e., border) states and what is the historical nature of their commercial relations with the target?
- Does the potential target have any particular relationship with an off-shore banking centre and, if so, what is its nature?
- Where do international banks with head offices in, or associated with, the target have branch or representative offices?
- What foreign banks have branches or representative offices in, or near, the target?
- Who are the family members or principal elites or associates of the target and where else do they reside?

These are illustrative of the types of questions that may be relevant to the issue of whether and to what extent leverage exists against a potential target. Depending on the situation, there may well be other relevant issues that go to the basic question of whether there is a relatively high level of dependence on other nations, thus providing leverage to make its foreign assets subject to sanctions.

Implementing Effective Targeted Financial Sanctions

Following a decision of a multilateral body, such as the UN, requiring the imposition of sanctions by member states, it is important that certain events occur fairly quickly to ensure that the program is put solidly and uniformly in place by all members. Recognising the oft-cited principal that a chain is only as strong as its weakest link, it is critical that there is as much consistency and uniformity as possible in program implementation. Sanctions can have the unfortunate side effect of creating enormous opportunities for profit for those inclined to sanctions busting activity. Unless nations are willing and able to move swiftly to implement the sanctions and maintain a strong effort and a united front in enforcement, not only may they be doomed to failure from the outset, but the sanctions may have created opportunities for international organised crime to flourish uninhibited, resulting in the unintended possibility of aiding the target more than hurting it.

Outlined below is a prescription of basic programmatic steps that the U.S. has found necessary to put a solid program into place to achieve an effective sanctions program. These steps involve implementation, administrative, target identification, and operational activities.

Domestic Implementation Authority

Perhaps the threshold issue for an effective multilateral program is whether each member state has a domestic legal framework to effectively implement sanctions requirements. Other than to highlight its importance as the *sine qua non* for effective targeted sanctions, discussion of this important legal subject is limited here to a brief description of U.S. implementation authority and some related items since another working group will be dealing with the issue.

In recent years, the U.S. has relied predominantly on two domestic statutes to implement sanctions resolutions passed by the UN Security Council: The United Nations Participation Act („UNPA“) and the International Emergency Economic Powers Act („IEEPA“). UNPA provides authority to the President to implement UN Security Council resolutions. IEEPA permits the President to implement sanctions by declaring a national emergency with respect to any extraordinary or unusual threat, arising in whole or part from outside the United States, to the economy, foreign policy or national security of the U.S. The invocation of this authority gives the President broad powers to regulate the property of, or economic relations with, the foreign entity responsible for the threat.

Under these laws, the U.S. President typically issues an Executive order that outlines domestic program requirements and delegates enforcement authority to the Secretary of the Treasury, acting in consultation with the Secretary of State. OFAC is then given operational responsibility to implement the program through rulings and regulations. As described in Section III, jurisdiction is asserted broadly and comprehensively. This approach is premised on the idea that broad and comprehensive jurisdiction over assets is critical to effective financial sanctions implementation and enforcement.

Many countries have attempted to use what were originally designed as foreign exchange control laws to enforce financial sanctions. For a number of reasons this has not been as effective as it could have been since many avenues of evasion will arise unless sanctions authorities can assert comprehensive and direct control over all types of property of the target or those acting on its behalf. In the absence of such control, the target can use variations of techniques that have traditionally been used to circumvent foreign exchange restrictions. For example, in recent years, we have seen a the following schemes used to evade sanctions:

- Back to Back Loans -- The target makes a loan to a company or a bank with a presence in a third country with weak controls. The bank or company in turn makes a loan available to the target or its designee in a third country.
- Asset Pledges -- The target pledges financial assets or real property in one country and receives loans in a third country.



- Sales of Property -- The target sells real property in one country with the proceeds of the sale made available in a third country where transfer restrictions are less stringent.
- Triangulations -- Trade triangulation, where goods move through a series of third countries instead of directly to the sanctioned country, can be illustrated with the following example: Country A permits the movement of a target's funds so long as they are not being repatriated to the target. Funds are transferred from Country A to Country B in payment for industrial chemicals. The chemicals are shipped to Country C where they are sold and machine parts are purchased. The machine parts are shipped to a company in Country D which is near or connected to the target country. The machine parts are then smuggled (or exported legally, if there are no trade sanctions) into the target country. Numerous transactions and shipments have occurred, none of which appear to violate restrictions in Countries A, B, or C, but the money transfers and goods shipments have permitted the target to position goods where they can be smuggled (or legally exported) into its territory. Even if the authorities in Countries B, C, or D suspect the ultimate involvement of the target in the transactions, the chemicals and machine parts could not be blocked because the restrictions apply only to funds or financial assets.

Although the cost of moving funds and goods this way is greater than in the absence of sanctions, the effectiveness of the international sanctions regime is greatly undermined by permitting either funds and/or property in which a sanctioned country has an interest to be in some way controlled by the sanctioned country.

Administrative Steps

In the U.S., immediately after the adoption of a UN resolution requiring mandatory sanctions, the following actions occur very quickly, often within a matter of hours.

- Policy consultations are held with the relevant Executive branch agencies to clarify the scope and intent of the resolution.
- An Executive order is promulgated to give the resolution immediate force and effect under domestic law.
- Authority is passed by a standing delegation from the Secretary of the Treasury to the sanctions enforcing agency, OFAC.
- The U.S. public at large is immediately notified through a wide variety of media (discussed in more detail in section D below) about the new sanctions, the requirements of the law, and the steps that must be taken to comply.
- Personnel are sent to the physical locations of known commercial, real, or tangible properties of the target to serve blocking notices to secure the

property and, in some cases, close or shut down branches and subsidiary firms controlled by the target.

- Banks or firms with a history of relationships with the target are contacted individually. These are identified from a number of public sources. These sources are also very useful in sharpening the target identification process (discussed in section C below).
- Immediate guidance and rulings in the form of general notices may be issued early on, before comprehensive regulations are promulgated, to deal with immediate problems affecting large numbers of persons or transactions. Examples include general registration requirements for blocked property holders and rules for completion of certain in-process commercial activities, etc.
- The early guidance is then incorporated into a comprehensive set of regulations, issued at a later date, that spells out in greater detail the program prohibitions, requirements, definition of terms, and OFAC's licensing policies and procedures.
- At a later date, blocked property is usually surveyed and holders are required to file periodic reports.

Identifying the Target and It's Extensions: the SDN Program

Sanctions targets may conduct business through a variety of public and private firms, authorities, and individuals. Identifying these entities that are owned or controlled by, or act for or on behalf of, a sanctioned government (or a sanctioned class of entities and individuals) and denying them access to the international trade and financial system is key to effective sanctions.

When sanctions are imposed in the U.S., accurate and reliable information on persons related to the sanctioned government, entity, or group of persons is critical for a targeted sanctions program. The net may need to be cast broadly. For example, a sanctioned government engages in a wide variety of direct and indirect economic and financial activity not only through its ministries, but through its agencies and instrumentalities, through parastatals, and through private entities and individuals.

Because international economic sanctions normally are imposed against a target that engages in repugnant activity that threatens neighbouring states or endangers the international community, all venues that are under the effective control of the sanctioned entity or act for or on behalf of that entity should be considered for targeting. For example, a military action or an orchestrated genocide are sustained by an economic and financial support network. But sanctions, to be effective, cannot target only the specific financial or economic sectors that traditionally support the target. If this were so, a sanctioned government or sanctioned group could easily regain access to



the international trade and financial system by engaging other financial and economic sectors that are under their control or acting through private entities amenable to acting for them or on their behalf. To be effective, a sanctions program needs to assert jurisdiction over all potentially relevant public and private persons.

Under U.S. law, once sanctions have been imposed OFAC has the authority to identify and designate the above types of persons, place them on a list, and put them under the same sanctions prohibitions as the sanctioned target. This list is known as the Specially Designated Nationals („SDN“) list.

The U.S. Government continues to recognise the SDN's ownership of its assets and property, but blocks the owner from receiving any benefit or use of its assets and property until sanctions are terminated. Although actions to preserve the value of the asset or property may be permitted, the SDN's rights to transfer, dispose, or otherwise deal with its assets are severely restricted.

OFAC programs normally use one or more of the following criteria to designate a person, when a person is:

- Owned or controlled by the sanctioned target or another designated person.
- Acting for or on behalf of the sanctioned target or another designated person.
- Materially or financially assisting a sanctioned class of persons or another designated person.

The designation of a person involves identifying a relationship, not a criminal act. The designated person is considered to be an extension of the sanctions target and the prohibitions are applied due to that relationship. No criminal or civil violation of U.S. law is alleged or implied by the designation. Criminal and civil actions, however, are taken against U.S. persons engaging in economic activity with that person or the sanctioned target. Understanding the distinction between identifying and applying sanctions prohibitions to a designated entity versus criminally or civilly prosecuting persons violating sanctions prohibitions and the different burdens of proof appertaining to each action is fundamental to the effective implementation and operation of a sanctions program.

Designating a person requires establishing that a relationship exists between that person and the sanctioned target. Dispositive evidence supports a reasonable cause to believe that the person meets the criteria for designation.

Once a person or entity meets the criteria for designation, OFAC places that person on a publicly circulated list of designated persons so that U.S. persons know they are prohibited from dealing with those persons or entities. Each designated person or entity needs to be uniquely identified to avoid confusion as many persons and entities



throughout the world share the same name. An effective sanctions program must help banks avoid stopping the funds transfers of the wrong person or business.

The greatest impact of a sanctions program derives from identifying key designated persons at the inception of, or early in, the program. Designated persons will often try to transform and hide their identity, so designating key persons at the outset helps facilitate the tracking and re-identification of these persons throughout the program.

A successful identification and designation program involves:

- Understanding the proposed sanctions target's economic and financial networks.
- Identifying the key persons within the target's economic and financial networks as targets for designation. Because some parts of a network are more important to assisting in sanctions evasion than others, the targeting of these parts should receive priority.
- Collecting information to create a useable information base from which a sizeable part of the target's business networks and assets can be identified and from which evidence can be drawn to make designations. Numerous trade, industry, and financial database and directory services, as well as government financial and corporate records may provide dispositive information for designations.
- Establishing a strategy to track and re-designate persons that attempt to transform and hide their identity to evade sanctions.

Operational Steps -- Making Sanctions Work

Implementing an effective targeted sanctions regime requires an active effort to educate the affected parties about sanctions requirements, an active program to achieve compliance with the requirements, and an ongoing attempt to obtain new information relating to targets, often on a transaction-by-transaction basis. Such operations make the program credible and effective.

To achieve effective implementation in the U.S., OFAC traditionally has followed a five-tier approach (since several of these steps involve technical issues, so do the descriptions):

Promoting Awareness

OFAC immediately disseminates critical sanctions information to assure that it gets into the hands of key sectors. This is done via a homepage on the Internet (<http://www.treas.gov/ofac>) with automatic notice to users, by means of electronic systems notices to on-line banks through the Central Bank and Automated Clearing Houses, by using a special fax-on-demand service, and through a wealth of industry-specific computer bulletin boards on which OFAC has password-protected



upload capabilities. Individual phone and fax messages are used extensively to insure that federal and state regulatory agencies receive and transmit sanctions information to the institutions over which they exercise oversight. In addition, OFAC notifies all other relevant U.S. Government agencies (including the Customs Service, Federal Bureau of Investigations, and Commerce Department). Press releases are also issued to alert the general public.

As the programs develop, OFAC publishes plain-language brochures relating specifically to each program and for specific industries (such as Financial Institutions, Importers & Exporters, Securities firms, insurance companies, and the Travel Industry), as an adjunct to the technical legal requirements that are codified in regulations. OFAC has over 400 such documents electronically available to the public in a variety of media and formats that explain all aspects of our various financial sanctions. Training videos are also produced in conjunction with the U.S. Chamber of Commerce and other industry groups.

The public is provided on a continuing basis with both print and electronic copies of OFAC's SDN list with the information made available in multiple formats, including fixed-field and delimited versions for easy integration into private corporate data bases.

Sanctions articles are published in popular industry magazines - such as „Specially Designated Who?-A Primer on OFAC Compliance“ and OFAC Compliance: A Perspective for Community Banks“ in *Banking Compliance* magazine of the American Bankers Association; „Foreign Assets Control Regulations: The Countries Aren't Enough: in *Letter of Credit Update*, and „U.S. Economic Sanctions: Concerns for Mariners“ in the *Notice to Mariners* of our National Imagery and Mapping Agency.

Outreach Efforts

OFAC runs sanctions workshops and gives presentations to industry groups across the U.S. Over the last twelve months, over 70 such workshops have been conducted. Extensive use is also made of „multipliers“ from other agencies and from the private sector to deliver the sanctions compliance message and further enhance educational efforts. In-depth compliance assistance is provided annually to nearly 20,000 telephonic inquiries. This is in addition to those associated with the „Interdiction hotline“ which is explained below. OFAC also sends out „Compliance Starter kits“ to help companies set up sanctions compliance programs.

Interdiction Activities

OFAC is directly involved in the flow of financial transactions with sanctions implications. This is unique among U.S. law enforcement agencies in that the focus is on stopping or blocking certain transactions, not merely following audit trails or inspecting records, although those activities are important as well. OFAC's compliance

staff is constantly in the middle of in-process transactions that need immediate determinations about blocking, rejecting, or allowing funds to flow.

OFAC devotes a major effort to stopping sanctions-busting transactions before they occur. As a direct result of these efforts, every major financial institution in the United States has made a business decision to install special software to filter transactions in their wire rooms and other operations areas such as letters of credit and collections to assure that money is not being routed in violation of sanctions. Non-banks have followed their lead in using similar software to scan international purchase orders, securities transactions, and other overseas transactions against OFAC's SDN list. U.S. banks call OFAC Compliance all day every business day on a special toll-free hotline telephone number with questions about suspicious in-process items. In addition banks are required to notify OFAC in writing within 10 days about each and every blocked or rejected item. All of this has had a chilling effect on illegal activities.

Monitoring Compliance

The fourth tier of OFAC's compliance effort is what you might call „pick and shovel work.“ During the past three years, OFAC's Compliance Division has conducted in-depth reviews of over 10,000 reports filed under licenses issued by OFAC. It also follows up on every blocking report and reject item report received, sending out „administrative demands for information“ to parties whom audit trails indicate have been involved in sanctions related transactions but who have not reported as required. During the last year approximately 900 compliance cases (unrelated to license reports) were completed, with over 100 referred for administrative civil penalties action, over 200 handled by warning letters for technical violations, and about 40 referred for criminal investigation.

Auditing Activities

As an adjunct and complement to ongoing monitoring efforts, OFAC's Compliance Division also conducts on-site compliance reviews of banks, securities firms, insurance firms, travel service providers, and others to assure that they are sanctions compliant.

Difficulties of Sanctions Enforcement

It has been argued by some that sanctions are not, and can never be, an effective multilateral tool for diplomacy, as they are both too hard to enforce and too easy to evade. They cite a number of reasons to support both notions and conclude that the difficulties are so great that it seems pointless to even try.

It is true that enforcement of a targeted financial sanctions program is neither easy nor is it free and without costs. These costs accrue to both the member states that must implement the program and the individuals, organisations and corporations affected thereby.



Moreover, states cannot merely decree a program into existence. An effective sanctions program requires an orderly process of information dissemination, target identification, compliance and enforcement and it must be adequately staffed and worked cooperatively with the other multilateral implementing bodies. As outlined above, adequate enforcement steps must be taken with realistic and coordinated implementation strategies in which countries are not able to shift the responsibility and burden of sanctions enforcement to others, thus causing deterioration of the sanctions regime. Disparity in matters such as enforcement, compliance, definition and interpretation of terms, where one nation has looser standards than others, will advantage businesses in that country to the detriment of businesses in countries with more stringent regimes. Ultimately the integrity of the entire program can be undermined. The basic elements must be in place with substantial multilateral informity to have any success.

Sanction regimes, by their very nature, create significant dislocations to the normal flows of goods and money. This creates great opportunities for profit by unscrupulous individuals, corporations and international organised criminals who engage in sanctions busting activities.

The first and most important step to stopping this activity is to recognise at the outset that it will occur and to design programs to incapacitate the target so it can't just move into alternatives. A net broadly cast can achieve this result. Assets broadly defined to include the broad range of „property“ and „interests in property“ encompassing both sides of the balance sheet, liabilities as well as assets (stock) and financial transactions (flow) will help achieve this result. Jurisdiction asserted broadly permits taking complete control of the financial situation and then deciding on a case-by-case basis how to proceed with each type of asset. This puts control of the target's assets firmly in the hands of the sanctions enforcing agency. Anything less than this not only permits avoidance and evasion, it invites it.

Much has been said and written about the difficulties of sanctions enforcement. The following is a discussion of certain issues raised at the last Interlaken Conference regarding the seeming impossibility of the task at hand. They will be addressed point-by-point with a response to each (since some of the points are technical in nature, so are some of the counterpoints):

1) Point: „Exchange controls have been abolished everywhere“ .

Counterpoint: This is not directly relevant to the topic. The basic point of this paper and this conference is that for multilateral sanctions matters, exchange controls are not the right tool for the job. For sanctions to be truly effective, assets must be first immobilised and then very closely regulated and monitored both within countries and across borders. Exchange controls handle cross border movements only. By their definition they are capable of doing only part of what is required. Failure to control

in-country money movements of a target opens many opportunities for evasion. It can render sanctions ineffective from the outset.

2) Point: „Money can move in a few seconds around the world through electronic payment systems (e.g., SWIFT). The carriage of banknote has long since been replaced by electronic systems..“

Counterpoint: This is a true statement, but the effect has been to make sanctions implementation easier not harder. With the development and use of interdiction software by financial institutions, illicit transfers can be stopped fairly easily. This has become a common practice in the U.S. where funds are routinely stopped when a named target is involved in a transfer. In fact movement of banknotes, as a practical matter, is probably much harder to detect and take enforcement action against than electronic funds transfers.

3) Point: „There is no human intervention in these payment systems so that banks are not able to control the operations anymore (straight through operation)“.

Counterpoint: This is an implementation and enforcement issue that interdiction software can address well. In the U.S., financial institutions are using software technology which allows them to scan all funds transfers, including straight-throughs, for sanctions violations. If a match is detected, the transfer is put into a repair cue which requires an employee to make a decision as to whether or not to process the item.

4) Point: „Banks can only control movements into and from accounts in their books“

Counterpoint: This is true. By definition all banks are either processing transactions of behalf of their clients or receiving payments, securities, loans, etc. for the benefit of their clients. This, however, has little or no impact on sanctions enforcement.

Obviously, remitting banks and beneficiary banks may be better able to discern if a transaction violates a sanction since they have access to the full details of the transaction. In the case of funds transfers, intermediary financial institutions processing third party payments also have access to the full details of the transaction and can take action if the payment violates a sanctions regime. For example, a dollar funds transfer between a Spanish firm and an Italian firm in settlement of an export to Iraq will likely be intercepted by either the Italian or Spanish bank's dollar correspondent.

5) Point: „Accounts are not always kept under the names of the targeted persons or entities which makes the control about the application of financial sanctions utmost difficult“

Counterpoint: True. This argues for the net to be broadly cast in the first instance to have the jurisdiction to include entities owned and controlled and acting on behalf of



the target. Also developing and having access to information about the target becomes critical to effectiveness of the sanctions.

6) Point: „International payments require the intervention of several banks, besides the paying and receiving bank, in order to make the necessary cover in the currency concerned. This means that besides the paying and receiving bank, which can only watch movements from and into accounts, other banks will intervene in order to make cover for the payment order concerned, without knowing the whereabouts of the underlying order and hence without any possibility of control.“

Counterpoint: This statement argues that funds transfers involving cover payments and cover instructions are not susceptible to interdiction or blocking. The rationale is that the covering institutions have no knowledge of the underlying transaction and the originating and beneficiary banks can only watch funds flow out of and into accounts. In terms of both routine international bank operations and sanctions enforcement, this statement is erroneous.

The originating and beneficiary financial institutions in this type of funds transfer have complete knowledge of the transactions and are in an ideal position to intercept a violative transaction. The originating financial institution is debiting its clients account based on payment instructions received from it. Inputting payment instructions into a funds transfer system requires a certain amount of manual intervention. At this point, the originating bank has the ability to scan transactions either manually or in an automated fashion using interdiction software, described above.

Beneficiary financial institutions have the responsibility of matching the incoming cover payment it receives from its correspondent to the cover instructions it has received from the originating bank. Some financial institutions have funds transfer systems with modules that will match incoming payments against covering instructions automatically based on the format of several key fields in the payment. If there is an exact match the payment will be effected by debit of a General Ledger (GL) account on the books of the beneficiary bank. Interdict software can easily be configured to scan all debit transactions posted to the GL account. Financial institutions which do not possess this level of sophistication must manually match incoming funds to payment instructions. At this time, the covering instructions may be scanned, manually or automatically, for sanctions violations.

Admittedly, the role of the intermediary financial institutions in cover payments is more difficult. Generally speaking, they have very little or no knowledge of the underlying financial transaction. This does not mean, however, that they are powerless in sanctions enforcement. U.S. Financial institutions that act as correspondent banks are using new software technologies which allow them to scan all funds transfers, including straight-throughs, for sanctions violations. OFAC has seen innumerable cases in which

the cover payment itself was in violation of sanctions or the cover payment indicated that the underlying transaction was in violation of sanctions.

7) Point: „There is a difference in the flow of goods and the flow of money.“

Counterpoint: The flow of the goods is largely irrelevant to the effectiveness of financial sanctions. Targeted financial sanctions focus on the funds flow. The goods flow follows, or is ultimately dependent on, the funds flow. The goods won't ship if the seller isn't confident he will get paid.

8) Point: „As embargoes decided against countries or particular persons need some time before being effective, it is obvious that the targeted countries or individuals can use all existing legal and operation techniques in order to prevent their assets being embargoed.“

Counterpoint: It can be fairly assumed that whenever there are serious multilateral discussions about a possible sanctions action that the targeted party will take whatever steps possible to avoid being caught. This must be considered as part of the initial strategy. The element of surprise is a critical element in the leverage gained over a potential target and may directly affect the success of the program.

For best results, a decision to move against a target should come fairly quickly once proposed, especially when significant liquid assets are available for blocking, to reduce the window of opportunity for the target to hide assets. If the target has a relatively high dependence on normal commercial relationships moving or hiding assets, as a practical matter, can be far more difficult than it seems. Countermeasures can make it even more difficult. If the scope of the program is broad at the outset, it makes movement into most other types of assets futile. The further the target moves away from liquid assets, the less fungible and more difficult to hide the assets become. In addition, a thorough initial evaluation of the target's historical commercial patterns can help identify certain states or commercial entities which are particularly important to the target, allowing quick action on the part of sanctions authorities. Most importantly, if the program is truly multilateral and applies to all property, the sanctions will be effective no matter the location or form of the asset.

9) Point: „It is important to make a difference between operations related to import from embargoed countries or export to embargoed countries. Import is easier to control as goods need to come out of the target countries and will, mainly by their nature, be submitted to specific custom formalities. Export towards target countries is much more difficult to follow as these countries will use all means to have the goods they need and because the financial flow will not follow the flow of goods.

Counterpoint: In the U.S., „interdiction software“ is often used by non-banks to scan purchase orders against involvement by sanctions targets before goods, services, or



technology are exported. This can be done with varying degrees of sophistication, with the simplest methods being a visual review of a printed copy of OFAC's alphabetised list of SDNs or using the search capabilities of any word-processing software to determine if any of the names on a purchase order match names in a simple ASCII version of our list.

Of course all member states should involve their Customs authorities to assist in the enforcement activities for both imports and exports using multilateral cooperation agencies to the greatest extent possible. But, in a targeted financial sanctions regime broadly conceived to include trade financing, this can be controlled almost completely through financial institutions. Customs authorities can be of considerable assistance with trade documentation. Of course, multilateral cooperation is necessary for an effective enforcement regime.

10) Point: „Countries or individuals which feel a coming embargo will of course try to hide as much as possible of their assets under various forms, difficult to track.

Counterpoint: See the answer to number 8. A broadly conceived multilateral program imposed with speed and discretion followed with a strong enforcement program with multilateral cooperation should go a long way to defeat evasive measures.

11) Point: „Financial sanctions against a country or an individual will also affect the reimbursement of outstanding loans. The first victims of the embargo will be the honest companies and businessmen having contracted with the country concerned. They might have delivered goods and will not be paid for them. Banks as well will be victims as the Commercial loans they granted to the sanctioned country will not be reimbursed. Iraq received a tremendous commercial reward when the embargo was installed against it.“

Counterpoint: The embargo against Iraq or any other country was not designed as a debt moratorium. It may have resulted in that as a de facto matter, but the context here is very important. The UN Multilateral force was involved in military action against Iraq, which had an \$80 billion foreign debt when the war began. It also had internal policies about trade financing which, in hindsight, should have put many on notice at the time that this was a very risky situation. Those who took steps to protect themselves by sound lending and trade practices such as the collateralization of loans and the use of letters of credit in the sale of goods that were confirmed by a local bank were not as badly hurt by the embargo. Prudent business practices in lending and trade financing will go a long way to address this problem.

12) Point: „Stocks and bonds do not often circulate physically. Most stock and bonds are kept in a portfolio which is managed either under the true name of the owner but can and will very often be kept under the name of a trust or any other person entitled to keep the portfolio. Stock and bonds will be managed in portfolio by banks which will

entrust other banks to manage certain parts of the portfolio. In the latter case banks will not know the real identity of the basic owner as they must manage portfolios by order of other banks.“

Counterpoint: The fact that stocks and bonds don't usually circulate physically makes them easier, not harder, to control. This is particularly true in a multilateral context. Either the beneficial owner's name is recorded somewhere in a legally binding contract, or the assets are held in the name of a close associate on a nominee basis. Properly conceived and implemented sanctions programs should require disclosure and be sufficiently broad to cover those associates owned or controlled by, or acting for or on behalf of, the target.

13) Point: „Assets which are liable to be sanctioned can, for a big portion, be kept in precious stones. The special economic sector which is dealing with stones will very easily enable to transform these stones into cash without any severe control about the true origin.“

Counterpoint: This scenario is unlikely for a number of reasons. While it is true that a target may accumulate wealth in precious stones, presumably any of these stones maintained outside of the country's borders will be blocked pursuant to a comprehensive blocking program. Any stones maintained within a targeted country for intra-country transactions would not be a sanctions concern.

With regard to trade, using precious stones for substantial international commerce by a sovereign government is impractical, if not impossible. Trade in precious stones is simply not the way international business is conducted. Although some small transactions may be conducted this way, it is difficult to imagine precious stones being used for large transactions, those likely to be conducted by a government. Oil companies, for example, are unlikely to buy or sell oil with precious stones.

14) Point: „The sanctioned countries keep their assets in safe countries. It is not necessary to keep USD assets in the USA. One can easily keep them in another country. Investments in real estate holdings can easily be used to evade any control or any sanction. It is easy to bring sanctioned money into circulation through real estate operations.“

Counterpoint: These issues can be resolved by enacting comprehensive programs which are enforced by all member states and apply to both „stock“ and „flow“ transactions. If all member countries block assets as required, there would be no „safe“ countries in which to hold bank accounts or other liquid assets. Furthermore, even if the target is able to find such a „safe“ country, the funds would presumably be blocked as they flow to another country in payment for transactions.



With regard to the use of real estate to evade sanctions, this is only a problem on rare occasions. Targets need liquid assets in order to evade sanctions. Real estate is not liquid. Furthermore, if the sanctions are comprehensive and vigorously enforced, any dealing by the target in real estate would be prohibited. If the terms „assets“ and „property“ are broadly defined, a parcel of real estate owned by a target is blocked and could not legally be sold, nor could a target purchase a new piece of real estate. Third parties acting on behalf of the target in these transactions would be subject to civil and/or criminal penalties.

15) Point: „Although new direct lending is not always possible due to sanctions, countries concerned will try to obtain financing through third parties or through hidden schemes (e.g., trusts, real estate, art). Moreover, if loans for commercial purposes are not available anymore, it is always possible to use techniques of barter trading. If used in triangular or multi-angular schemes it will not be easy to trace the exact co-ordinates of the parties concerned.“

Counterpoint: Few are going to lend significant amounts to a country under sanctions, whether directly or through third parties, as the country isn't creditworthy. Hidden schemes (e.g., trusts, real estate, art) require a long time to arrange, special expertise, and are not viable on a large scale. Barter trade may be used, but it can be extraordinarily cumbersome.

16) Point: „Possibilities for evasion are more frequent than possibilities of control. As the entering into force of sanctions is subject to a very slow procedure, the countries or the individuals to be sanctioned can easily set up evasive systems.“

Counterpoint: That individual possibilities for evasion are more frequent than possibilities for control is irrelevant. Financial sanctions target financial „choke points“ and key players. Although the target may know for a period beforehand that sanctions are coming, evasion is difficult unless its assets are very liquid, it does not have entangling economic relationships, and it has a relatively safe place to transfer the wealth. In the real world, particularly in case of a multilateral freeze, few countries or entities would have all these advantages available, unless they have planned for a long time in advance. The larger the amounts, the more conspicuous and difficult it becomes to move wealth away from major currencies and money centres. The more comprehensive the definition of property to be blocked, the more difficult economic disentanglement becomes.

17) Point: „The first victim will be the ordinary people of the country concerned, not receiving normal supplies anymore, and certainly the normal suppliers of the country.

Counterpoint: The more targeted and serious the multilateral sanctions effort, the faster it would be over with. Certainly economic relationships will suffer, but in most cases, ordinary people will suffer far less than with other more drastic measures, such as the

use of military force. In addition, there are a variety of approaches which can be used to address humanitarian concerns. In fact, many sanctions programs have humanitarian provisions that would permit the purchase of food or similar products, but the sanctioned countries instead choose to purchase weapons, or other decidedly non-humanitarian goods. Effectively, the sanctioned country inflicts pain and suffering on its own citizenry.

18) Point: „Escaping financial sanctions and money laundering are very likely the same. Both are systems which would enable the owners of funds, which were not earned in a lawful way, to use this money officially as resulting from normal income. Although banks all over the world endeavour to track this money and to prevent these kinds of financial systems one always will find financial institutions, lawyers, accountants willing to enter and to assist people in setting up „special systems.“

Counterpoint: A distinction should be made between a sanctions target attempting to evade sanctions and money laundering. In broad terms, money laundering involves the otherwise legal use of the financial systems to move the proceeds of an illicit transaction. As a result, mechanisms for laundering money have developed over many years. The dollar amounts involved are often modest when compared to a U.S. money centre banks daily volume. By contrast, the transactions of the sanctions target were perfectly licit until the moment the sanctions were implemented and the dollar amounts may be much more significant, especially when the sanctions target is a nation.

The assertion is that there are always individuals who will create systems that will allow goods and funds to flow without being interdicted. While this is true, there are two important points to remember.

First, depending on the legal authority underpinning the sanctions program, it may be very difficult to establish a mechanism to move funds and goods. As an example, OFAC administers and enforces U.S. sanctions laws, which all persons subject to U.S. jurisdiction, individual and corporate, must comply with or face the consequences of non-compliance. A sanctions target may be able to establish a sanctions avoidance mechanism, but faces an increased risk of detection due to the amounts involved and the number of people necessary to obfuscate the source of the money/goods.

Second, the mere fact that a sanctions target has to go „underground“ means the sanctions have made the targets assets harder and more expensive to move. The risk of discovery is magnified if the sanctions are multilateral and information is shared across borders.

19) Point: „One will find all over the world many new banks (Far East, Eastern Europe) which do not have the skills nor the experience to cope with the inventive laundering actions. Moreover these institutions will also more be attracted to large and easy profits than larger banks with well known reputation.“

Counterpoint: The argument that there are banks in less financially sophisticated parts of the world that, either due to their lack of resources or cupidity, engage in sanctions evasion has merit. While it may be impossible to completely isolate the target financially, multilateral sanctions, especially those involving developed nations, will deny the target access to the world's primary financial markets. For the target to successfully evade the sanctions, it must establish relationships with a multitude of unsophisticated banks. Any large upsurge in foreign exchange volume from an emerging market bank will draw the attention of the financial markets. In order to counter this, the target will have to spread out the volume over many banks and in smaller trenches. This action will raise the cost of funds for the target. It also increases the risk of detection as more people are brought into the subterfuge. Once again, sharing information in a multilateral sanctions regime will greatly increase the chance of discovering sanctions evasions.

20) Point: „Financial institutions will be able to tackle the problem on their own. The authorities, the police forces, the legal systems need more awareness about the problem. They need to be adapted and in the first place need skilled staff to deal with the problem.“

Counterpoint: This is true, as far as it goes, but it's certainly doable. In the U.S., a centralised sanctions agency has been empowered to coordinate closely with other law enforcement and regulatory agencies and has an extensive educational outreach program that includes training sessions for enforcers and regulators throughout the country on the federal, state, and even private sector self-regulatory levels.

In the U.S., all federal, and many state, bank regulatory agencies are mandated to annually: „(1) determine whether each bank has policies and procedures in place for complying with OFAC law and regulations; (2) determine whether each bank maintains a current listing of prohibited countries, entities, and individuals; (3) determine whether the OFAC information is disseminated to all offices; (4) determine whether new accounts (i.e., fiduciary, discount, or other securities brokerage transactions), new loan customers, wire transfers, or other new bank transactions are compared to the OFAC listings prior to opening accounts or conducting transactions; and (5) determine whether established accounts and other customer transactions are regularly compared to the current OFAC listings.“ This is written into their examination procedures manuals.

Information about sanctions violations is routinely shared with bank regulators. Every time an audit exception is uncovered in the review of blocking or reject reports OFAC forwards that information to the appropriate bank supervisory agency so the regulator can follow up in its next scheduled oversight visit to that bank.

21) Point: „Offences should be sanctioned more seriously.“

Counterpoint: This is true in some countries. In the United States violations occurring under any of the authorisations or programs is seriously punished. The table hereunder describes the penalties associated with a sanctions violation:

| Penalties | TWEA | IEEPA | Iraq Sanctions Act |
|---------------------------|-------------|-----------|--------------------|
| Civil Penalty (per count) | \$55,000 | \$11,000 | \$275,000 |
| Criminal | | | |
| · Prison Terms | 10 Years | 10 Years | 12 Years |
| · Individual Fines | \$250,000 | \$250,000 | \$1,000,000 |
| · Corporate Fines | \$1,000,000 | \$500,000 | \$1,000,000 |

22) Point: „The important financial institutions all over the world already carry an important attention towards controls and investigations in the field evasion of embargoes. This is a very expensive action which is a heavy burden on the profitability of the sector.“

Counterpoint: It is undeniable that there is a cost associated with sanctions compliance. However, the burden is not excessive. In the U.S. experience, not a single bank has made a business decision based on a cost-benefit analysis that screening for sanctions compliance so adversely impacts its bottom line that the cost of compliance is greater than the „cost“ of non-compliance.

OFAC met recently with an interdiction software vendor who demonstrated the power and flexibility of automated sanctions compliance programs. Running a Pentium 150 laptop using a Windows NT4.0 operating system, the software vendor was able to scan 100,000 funds transfers in under 30 seconds. The scanning software ran OFAC's SDN list against every field of every payment. The software vendor also has modules that scan letters of credit, securities and foreign exchange, and are capable of looking at unstructured fields in such things as telexes and E-mails. This particular program also had the advantage of being platform neutral. The core code is reusable and needs only slight customisation to run in a variety of operating systems.

Given the desire of highly-regulated U.S. banks to be good law-abiding corporate citizens and avoid adverse publicity and potential penalties, there isn't a single major institution that has made the business decision not to install sanctions screening software into its operations areas. Even small banks have rigorous sanctions compliance programs appropriate to their size and operational styles with many entering into contracts with upstream correspondents to provide them with access to sophisticated automated systems. Moreover, sanctions compliance information material and Specially Designated Nationals databases are available to the public in a wealth of different media and in such no-cost user-friendly formats, that they provide the ability to manually



screen either visually or using off-the-shelf programs as inexpensive as word processors, in addition to lending themselves to integration into more advanced PC and mainframe applications.

If the playing field was levelled in terms of multinational sanctions responsibilities all financial institutions world-wide would share equally in the cost of compliance.

23) Point: „Those who want to escape are always one step ahead and are very inventive.“

Counterpoint: This may be true, but to immediately give up and refuse to address these challenges belies the fact that there have been the many successful multilateral sanctions efforts, as well as successful multilateral efforts to combat such ills as money laundering, organised crime and narcotics trafficking. The UN has the resources of all member states in a sanctions program.

24) Point: „Before entering into financial sanctions a serious study should be made about the situation of the particular country or individual. It should be avoided that the sanctions in the first place harm the innocent population or the honest business system rather than the target aimed.“

Counterpoint: There is concurrence on this point as outlined above. Not all potential targets are appropriate for financial sanctions and unintended collateral damage and humanitarian consequences must always be considered in developing a targeting strategy. It is the essence of targeting.

25) Point: „Why not set up, when an embargo has been decided, a team of specialists, e.g., bankers, who can prescribe the real financial measures to be set in place?“

Counterpoint: There should be specialists involved. Governments should devote resources to training and retaining skilled financial and legal personnel whose sole profession is financial sanctions, just like they support a professional military. In some cases, there may also be a need to consult bankers or other commercial players, although those with the most expertise in any particular situation are also those most likely to have conflicts of interest.

26) Point: „Centralise all information about the actions against an embargo in one central place. People wanting to escape from financial sanctions will try to find their way out in several countries, through various institutions. If information and experience gathered by institutions were centralised it would become very much efficient and time saving for other institutions to use the already existing information in order to react on a particular situation.“

Counterpoint: If sanctions concepts and practices become more harmonised globally, a centralised information clearinghouse could be useful. Practices in the area of asset and



funds transfers must be harmonised first, however, as there is no incentive to share information with others if they are unable, or unwilling, to act upon the information.



Working Group 2: Model Law

Chairman: Jeremy Carver

Rapporteur: Stefan Bellwald

Introduction

1. At the *Expert Seminar on Targeting UN Financial Sanctions* held at Interlaken, Switzerland between 17 and 19 March 1998, it was recognised as desirable that all States should have in place a law from which decisions of the United Nations Security Council imposing financial sanctions can be implemented without delay; the objective being that such national laws should lead to sanctions being applied with uniform effect (rather than to the application of sanctions through uniform ways and means). To this end, it was felt that there was merit in formulating a model or framework law which would provide technical assistance to States to comply with their obligations under Article 25 of the UN Charter to implement relevant Security Council decisions under Article 41 imposing financial sanctions.
2. Working Group 2 was established with the mandate to prepare the discussion on the legal requirements of sanctions implementation based on a model law drafted by the Working Group. For this purpose, the Working Group met in New York on 8 December 1998, for consideration of draft note on „Scope of a Model Law“ and a collection of copies of national laws adopted to enable States to implement sanctions resolutions of the Security Council. On 26 February 1999, the Working Group met again to consider a draft Model Law, together with a Commentary and a first draft of this Report.
3. This Report summarises the substantive work that has been undertaken by Working Group 2 in relation to the formulation of a model or framework law.

The Case for a Model or Framework Law

4. International financial sanctions derive, primarily, from the United Nations and, in particular, from Article 41 of the UN Charter which sets out the powers of the Security Council when confronted by threats to the peace, breaches of the peace, or acts of aggression.

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures. Those measures may include complete or partial interruption of economic relations and of rail, sea, air,



postal, telegraphic, radio, and other means of communications, and the severance of diplomatic relations".

5. The measures adopted by resolution of the Security Council are mandatory and bind all UN Members under Article 25 of the Charter whereby members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". When the Security Council calls upon members to implement sanctions, the measures adopted are often intended to have immediate effect.
6. In most States, an undertaking made by the State at the international law level, such as that contained in Article 25, will not, however, be translated into that State's domestic law without national legislation. Most States will be compelled to fall back upon whatever legislation - if any - it may have which empowers the government to give effect in national law to sanctions. Such legislation and the means available to enforce it may be unsuited to the specific measures adopted by the Security Council. In the absence of any legislation, new primary legislation may be required before a State can give any effect to the measures.
7. In order to facilitate States' compliance with their obligations to implement Security Council resolutions, it is important to have a system in place at the national level which enables each State to take prompt and effective action under its own domestic laws.
8. A number of UN Member States have specific enabling legislation which allows the State concerned to give effect to decisions of the Security Council by means of secondary legislation. These are: Australia,³ Canada,⁴ Denmark,⁵ Finland,⁶

3 The Charter of the United Nations Act 1945.

4 The United Nations Act, RSC 1985, c. U-2.

5 Act regarding certain measures in regard to the United Nations' Treaty (Law of 10 May 1967, No. 158) and Act regarding amendment to the Civil Penal Code and Act regarding certain measures in regard to the United Nations' Treaty (Law of 6 June 1985, No. 228).

6 Act on the Enforcement of Certain Obligations of Finland as a member of the United Nations, Act No. 659/67.

Greece,⁷ The Netherlands,⁸ New Zealand,⁹ Norway,¹⁰ Sweden,¹¹ the United Kingdom,¹² the United States.¹³

9. In the overwhelming majority of Member States, however, no such enabling legislation or constitutional provision exists, and implementation requires Member States to have recourse to powers available under existing legislation of a quite different or more general nature; alternatively, to more cumbersome methods of adjusting foreign trade regulation or financial legislation; or, in a limited number of cases, to enacting entirely new legislation.
10. There is growing recognition that the development of more uniform transformation procedures would enhance the consistency and uniformity of compliance with Security Council Decisions. If the measures adopted by the Security Council can be transformed into domestic law largely in the form and language of the resolution, those affected will appreciate that there is little difference in effect wherever potential infringement might occur. The OSCE-sponsored Copenhagen Round Table on United Nations Sanctions in the case of the former Yugoslavia recognised that international cooperation and consultation in order to harmonise domestic legislation, for example by drafting a model law or an international convention, could provide an important impetus to such a development.¹⁴
11. The development of a more widespread and uniform means of transforming resolutions into national laws would have the additional advantage of enabling the Security Council to adopt more targeted measures, aimed specifically at the particular threat to peace and security. The „Interlaken“ process is based on the now widely recognised premise that international sanctions must be more nuanced to enhance effectiveness and reduce unintended harm and suffering. If implementation at the national level requires the measures to conform to existing legislation with a different or more general purpose, it is unlikely that more targeted measures can be

7 Law 92 of 10 August 1967.

8 Act of 15 February 1980, Staatsblad 93, providing for sanctions against third countries or territories (Act on Sanctions 1977).

9 The United Nations Act 1946.

10 Act governing the implementation of a binding resolution by the United Nations Security Council, Act No 4 of 7 June 1968.

11 Act (1976: 95) regarding Certain International Sanctions.

12 United Nations Act 1946.

13 United Nations Participation Act, 22 USCS §287c.

14 Report of the Copenhagen Round Table on United Nations Sanctions in the case of the former Yugoslavia (UN Document S/1996/776, 24 September 1996).

implemented at all.

12. It is emphasised that the adoption by a State of legislation on the basis of the Model would not automatically give effect to an Article 41 resolution in that State's national law. The Model Law is framed so as to enable a State which has passed such a law to implement such a resolution by means of its own secondary legislative or regulatory processes, in whatever terms the resolution calls for, as all Member States are bound to do.

The Approach to the Draft Model Law

13. In order to develop a model or framework law on the implementation of sanctions which States could be encouraged to adopt, the Working Group felt that a useful first step would be to consider the types of provision which have been incorporated into the existing enabling legislation of those Member States referred to above. However, it was recognised that the concept of any "model" or "framework" law which appeared to be based on the practice of a handful of developed States might be dissuasive or unpalatable to some governments. What is therefore needed is not to copy those States; but to offer a sensible, comprehensible framework for legislation which will enable each State to implement an Article 41 Resolution without having to engage its full primary legislative procedures, without derogating from its own constitutional requirements or legal traditions.

The Model

14. The draft framework law attached as Annex 1 is not based on any particular model, but has its roots in a number of common themes of the existing models, as identified in the Commentary on the provisions of the model, attached as Annex 2. It has been possible to identify such common themes because, in practice, there has been little difference between the approach taken in the existing common law and civil law legislative forms. The model is designed to enable immediate implementation of measures without delay: immediate action often being a prerequisite for effective financial sanctions.



ANNEX 1

Draft Model or Framework Law

[Preamble] ¹

It is hereby enacted:

1. If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [*the Member State*] to apply measures to give effect to a decision² taken under that Article, then in accordance with [*the Member State*]'s obligations under Article 25 of the Charter the [*relevant authority*] shall forthwith adopt such [*national measures*]³ as appears necessary or expedient to implement such measures effectively.
2. The [*national measures*] shall apply to transactions entered into prior to, as well as after, the [*national measures*] coming into force, unless expressly stated otherwise; and compliance with the [*national measures*] (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defence to any claim for non-performance of any such transaction.
3. The [*national measures*] made under paragraph 1 shall apply within the territory of [*the Member State*] and to all nationals of and entities incorporated in or organised in accordance with the laws of [*the Member State*]⁴, wherever located or operating.
4. Contravention or evasion of the [*national measures*] shall be an offence, subject to the penalties specified in the [*national measures*]. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.
5. [*Secondary legislation*] made in accordance with this law shall have effect notwithstanding the provisions of any other law.

[1] For civil law systems, the following preliminary language may be appropriate:

Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations to apply such measures;

Whereas such measures 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;

Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations;
and

Whereas [the Member State] is a member of the United Nations

For common law systems, a Short Title might be:

An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.

[2] The Model Law was drafted to enable mandatory decisions of the Security Council to be implemented. If it was preferred to adopt a Law which would enable the State to implement, in addition, non-mandatory measures recommended by the Security Council, wording enabling the *relevant authority* to implement such measures on a discretionary basis would be needed.

[3] The earlier text: *secondary legislation* was felt to be too limiting and potentially misleading as many States would implement sanctions through executive decision or administrative directive (*e.g.* of the Central Bank). *National measures* was considered a more comprehensive phrase.

[4] The experience of the EU has shown a need to add to the list of parties to which national measures would apply: *vessels and aircraft registered in [the Member State]*

ANNEX 2

Commentary on the Draft Model or Framework Law

1. This Commentary identifies the main themes in the primary legislation of the States examined, summarises the position adopted in that legislation in relation to those themes and explains the rationale underlying each proposed clause in the draft model or framework law attached as Annex 1 to the Working Group 2 Report. Themes which arise in the legislation examined which are not proposed for inclusion in the Model are discussed briefly at the end of this Commentary.
2. The legislation reviewed by the Working Group has been either in its original English language text or translated unofficially into English.

Clause 1: Power to Enact Secondary Legislation

3. The primary purpose of national enabling legislation is to provide the government of the relevant Member State with the appropriate powers to adopt secondary legislation to give effect to decisions of the Security Council taken under Article 41 of the UN Charter. Most of the existing legislation reviewed appears to permit immediate secondary action pursuant to the primary enabling legislation, sometimes subject to some form of subsequent legislative approval. The exception is the Danish Act which contemplates measures by Royal Decree „following negotiations with the foreign policy board“, which in practice suggests the possibility of delay in implementation of sanctions measures.

Legislative Overview

4. The following broad provision included in Canada's United Nations Act is typical of the approach adopted by Denmark, New Zealand and the United Kingdom:

When in pursuance of Article 41 of the Charter of the United Nations, set out in the schedule, the Security Council of the United Nations decides on a measure to be employed to give effect to any of its decisions and calls on Canada to apply the measure, the Governor in Council may make such orders and regulations as appear to him to be necessary or expedient for enabling the measure to be effectively applied.

5. The Norwegian Act of 7 June 1968 is even more simple and wide-ranging, providing that:

The King is hereby empowered to effect the provisions which are necessary for the implementation of a binding resolution by The United Nations Security Council. The King hereby determines whether or not a resolution by the Security Council is mandatory.

Similarly, the Australian Act provides that:

The Governor-General may make regulations for and in relation to giving effect to decisions that :

(a) The Security Council has made under chapter VII of the Charter of the United Nations; and

(b) Article 25 of the Charter requires Australia to carry out; insofar as those decisions require Australia to apply measures not involving the use of armed force.

6. In contrast, the United States' legislation is limited to the language of Article 41, permitting the US President to implement the specific measures adopted under Article 41 by imposing economic sanctions and restrictions on communications:

Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which [the Security] Council has decided pursuant to article 41 of [the UN] Charter, are to be employed to give effect to its decisions under [the UN] Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules and regulations as may be prescribed by him, investigate, regulate or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio and other means of communications between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

7. Finland's Act No.659/67 also limits the power to issue secondary legislation

to „necessary measures of an economic nature or concerning telecommunications or other data communications“ .

8. The Dutch Sanctions Act of 1977 reflects a more contemporary understanding of the impact of economic sanctions and provides that sanctions measures adopted under it may affect, among other things, goods, services and payments, shipping, aviation, road traffic, postal services and telecommunications services. As well as prohibiting the activities themselves, „every act that is apparently aimed directly at realising“ the transactions listed in the law is caught. The law also contemplates secondary legislation aimed at „documents commonly used with regard to the movement of goods, services and payments, shipping, air and road transport, postal services and telecommunication.“
9. The most detailed primary legislation is that of The Netherlands and Sweden. The Swedish law „contains directions regarding the implementation of international sanctions which have been resolved or recommended by the United Nations Security Council in accordance with the United Nations resolutions“. To enable the sanctions to be implemented by secondary legislation, the Act provides that the government shall announce directions regarding prohibitions in relation to a blockaded state (defined in the Act as „an area or something else, such as an organisation or a regime, which is the subject of sanctions“), concerning:

Foreigners' stays [in Sweden]

Importation or exportation of goods, money or other assets

Manufacture

Communications

Granting of credit

Commercial activity

Traffic

Education or training

The Act stipulates that any ban shall not apply to property designed purely for the owner's personal use.

Rationale of Model

10. Article 41 of the UN Charter gives the Security Council the power to „decide what measures not involving the use of armed force are to be employed to give effect to its decisions.“ These may, but need not necessarily, 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.“ In light of this wording, some of the provisions in the legislation examined (for example the US and Finnish

statutes) appear to be unnecessarily limited, since Article 41 of the Charter gives a broader power to the Security Council to decide on the most appropriate measures to be taken, the only apparent restriction being that they not involve the use of armed force.

11. The severance of diplomatic relations is specifically referred to as a possible measure but is not mentioned in any of the legislation examined, probably because the power to sever such relations would be an executive act in each Member State, not requiring express legislation.
12. The Model confers a broad enabling power on the "relevant authority" to adopt such "secondary legislation" as appears necessary or expedient to implement effectively the measures required by the Security Council.
 - The parenthesised reference to the "*relevant authority*" contemplates the differences in the type and designation of authorities to whom the relevant powers will be delegated in each State in accordance with its own constitutional and administrative arrangements.
 - Similarly, the bracketed reference to "*secondary legislation*" is intended to denote that States will differ in the measures available to implement sanctions. In some States, such measures will be implemented through the adoption of administrative or executive decisions or regulations; in other States, orders will be made by means of secondary legislation requiring simpler procedures than primary legislation.

Clause 2: Effect of Secondary Legislation on Transactions

13. Certain of the laws reviewed state expressly what the effect of secondary sanctions legislation is to be on (a) transactions pre-dating the legislation, and (b) transactions subsequently entered into. Other laws do not mention the issue at all. In the absence of such a provision, it may not be clear whether the adoption of secondary legislation relieves a party of pre-existing contractual obligations. Even in relation to those laws where specific reference is made to this issue, it is clear that secondary legislation (or administrative measures taken in relation to it) would have to address how those provisions should be interpreted in relation to particular categories of transaction.

Legislative Overview

14. Only the Swedish and Danish Acts expressly deal with this issue. The Swedish Act stipulates that:

A ban which has been announced ... shall also apply to the procedures or measures which are covered by agreements which has been concluded prior to the prohibition coming into force, unless the government decrees otherwise.

15. The Danish Act also specifically provides for the effect of the secondary legislation on transactions:

Contract or commitment entered into contrary to this Act or directives issued by virtue thereof or in order to evade those provisions, shall not be enforced.

If a contract or other commitment, entered into prior to the date of entry into force of a decree issued by virtue of this Act, is contrary to the provisions of such a decree or of directives issued by virtue thereof, enforcement of such commitment shall be interrupted immediately.

Rationale of Model

16. The clause drafted confirms that sanctions apply to transactions entered into prior to the secondary legislation coming into force, as also to transactions post-dating sanctions. But it also provides that the secondary sanctions legislation may specify that a different result is to follow. One practical issue arising from sanctions legislation is the difficulty and unintended loss which innocent parties can face in respect of transactions which they are prevented by the legislation from performing. The clause seeks to ensure that such contracting parties are protected from any civil liability for non-performance of a contractual obligation which is inconsistent with the sanctions legislation.
17. An unprecedented feature of the clause is that it seeks to take account of the difficulties facing institutions which operate in a number of different jurisdictions, to each of whose sanctions legislation they may be subject. The defence to liability created by the clause is therefore expressed to extend to compliance with the laws of other States which have introduced equivalent sanctions legislation to comply with the same Security Council resolutions.

Clause 3: Extent of Jurisdiction – Scope of Effect of Sanctions

18. The scope of the jurisdiction of States to impose sanctions is the subject of some controversy. There is a significant variation in practice on the subject. The narrowest view would be that a State is entitled to regulate activity only within its territorial boundaries. No State examined subscribes to this

narrower view.¹⁵ A more expansive view is that States may regulate all activity within their territorial boundaries and also the activities of their citizens/nationals, and of companies and entities incorporated or organised under their laws, wherever located. This approach accords most closely with the requirement of many Security Council resolutions, which tend to call upon Member States to ensure that all their nationals give effect to multilateral sanctions regimes implemented under Article 41 of the Charter. The United States has - potentially - an even broader view in regard to its purported jurisdiction to impose and enforce sanctions, although the categories of persons in respect of which it exercises jurisdiction in the legislation under examination is more circumscribed than those covered by other legislation by which the United States enacts unilateral sanctions legislation.

Legislative Overview

19. The United Kingdom's United Nations Act is silent as to the extent of application of any secondary legislation enacted pursuant thereto. Persons subject to Orders in Council passed pursuant to the Act have in practice been defined in the secondary legislation adopted pursuant to the Act, according to the resolution being implemented. The United Nations Act does, however, make provision for the extension of the application of secondary legislation passed pursuant to the Act to „any part of His Majesty's Dominions ... and ... to any other territory in which His Majesty has from time to time jurisdiction ... “. (See, similarly, the New Zealand Act).
20. The United States legislation extends to activity between any foreign country or any national thereof and „the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.“ The legislation defines „person“ to include natural persons, all types of business organisation, any other group or entity, including governmental entities. „United States person“ is defined to include any citizen, national or permanent resident of the United States, and any corporation, business association, partnership, entity or group (including governmental groups) organised under the laws of the United States, and includes foreign branches.
21. The Australian Act provides that „The Regulations may be expressed to have extra-territorial effect“. According to the Danish Act, the secondary

¹⁵ It should be noted that Japan's Foreign Trade and Foreign Exchange Control Law, pursuant to which Japan implements Security Council resolutions calling for sanctions, provides only for control and authorisation procedures with respect to persons resident in Japan or to transactions originating in Japanese territory.

measures enacting pursuant to the primary law „may encompass Danish citizens who are domiciled outside of the Danish State.“ The Dutch law makes a general statement that the „Dutch Penal Code is applicable to Dutch subjects abroad undertaking an activity which is considered a criminal offence under this Act.“

Rationale of Model

22. The draft provides for the application of sanctions legislation to the territory of the Member State, and to all nationals and entities incorporated in or organised in accordance with the laws of the Member States, wherever located or operating. This relatively broad definition (which would give the legislation some potential extra-territorial reach), is intended to reflect the view that sanctions as adopted by the Security Council should be given the widest possible effect in accordance with their terms. A common approach would lead to a more uniform application of sanctions.

Clause 4: Enforcement of Sanctions Legislation

23. In order to be effective, sanctions must have teeth. All of the legislative regimes examined contemplate that contravention of sanctions will constitute a criminal offence, generally punishable by fine and/or imprisonment. It is desirable for there to be international harmonisation of penalties for sanctions infringement, to discourage those affected by sanctions from diverting their operations to other jurisdictions with more lenient regimes. States contemplating the adoption of enabling legislation as proposed would need to consider whether the penalties for proposed sanctions offences were consistent with their prevailing legal provisions.
24. The various laws examined vary in their treatment of the enforcement of secondary sanctions legislation enacted in accordance with the primary law. Some laws do not mention enforcement at all. Others (such as the United Kingdom) provide for enforcement measures to be taken; but leave the details of the definition of offences, penalties and powers to the secondary legislation. Other laws specifically provide for the nature of the offence, who may be convicted, the applicable penalties, etc.
25. Such legislation as defines the offence in question varies in the requirement to prove an intent to infringe (*mens rea*). Some statutes (e.g. New Zealand) apparently create a strict liability offence. Others require an element of knowledge of intent (e.g. the United States); but tend not to include negligent violations (Denmark and Norway being exceptions). Some laws prohibit not only the actual contravention of the measures taken, but also attempts to contravene (e.g. the United States and New Zealand), and incitement and

conspiracy to contravene (New Zealand). The Dutch Act alone provides for investigative powers, and imposes a duty of confidentiality on persons involved in implementing the sanctions regime.

26. There is substantial variation between the laws examined concerning the possibility of forfeiture of property used in or derived from the contravention of sanctions. Consistent with the increasing use internationally of forfeiture and confiscation powers to combat serious criminal offences such as drug trafficking and money-laundering, the inclusion of such powers in national sanctions legislation is growing.
27. Only the Australian Act specifically contemplates injunctions to restrain sanctions breaches. The Swedish and Dutch Acts include provisions in relation to deportation of targeted individuals and/or aliens who contravene the sanctions legislation, and/or restrictions on entry to the country by such persons (in the case of The Netherlands).

Legislative Overview

28. The United Kingdom's United Nations Act includes, in the provision enabling the enactment of secondary legislation, the power to include in such secondary legislation „provision for the apprehension, trial and punishment of persons offending against“ the secondary legislation.
29. The United States legislation makes violation, evasion and attempted violation and evasion of the sanctions measures made pursuant to it a criminal offence, subject to a fine on conviction of not more than \$10,000 or, if a natural person, imprisonment for not more than 10 years. Officers, directors or agents of any corporation knowingly involved in a violation or evasion are also subject to fine, imprisonment or both. A range of property, funds, articles, vessels and vehicles concerned in any violation are subject to forfeiture to the United States.
30. The Canadian statute enables the Governor in Council to prescribe a maximum fine not exceeding \$5,000 or a maximum term of imprisonment not exceeding 5 years, or both, for contravention of any secondary legislation passed under the Act. The legislation also provides for seizure and potential forfeiture of goods, wares or merchandise dealt with contrary to secondary legislation made thereunder.
31. The Australian Act permits the secondary legislation to prescribe penalties of not more than 50 penalty units for offences against that legislation. The Australian Act also provides for injunctions restraining conduct contrary to the secondary legislation.

32. An Act amending the Danish civil penal code creates an offence of intentional or negligent contravention of prohibitions issued to implement the State's obligations as a United Nations member; and the same Act amends the primary national legislation to permit provisions for the confiscation of „any yield deriving from contravention“ of the decree implementing measures taken in accordance therewith.

33. The Norwegian Act similarly imposes penalties for intentional or negligent contravention of the secondary measures, and for intentional or negligent „contributions towards contravention“. The Norwegian Act incorporates an elaborate forfeiture provision:

Objects which are introduced, or which are sought to be introduced, or taken out or sought to be taken out, in contravention of the provisions issued pursuant to this present Act, together with means of payment and securities which are employed in contravention of such provisions, may be confiscated upon judgement, irrespective of who the owner may be and without a criminal case being initiated, or being able to be initiated, against anyone. Should confiscation not be able to be effected, the value may wholly, or in part, be confiscated upon judgement at the property of the perpetrator or at the property of whomsoever upon whose behalf he has acted, without a criminal case having to be initiated, or being able to be initiated, against anyone.

Confiscation in accordance with this provision is not to be regarded as constituting a penalty.

34. The Swedish legislation outlaws both intentional contravention of sanctions and contravention as a result of gross negligence. The penalty is a fine and/or imprisonment. Prosecution can only occur if authorised by the government or by an authority designated by the government. The Swedish legislation also makes provision for forfeiture of the „yield from offences“, if not clearly unreasonable. Forfeiture may also be ordered of property employed in the commission of the offence or which has come about as a result of the offence, but only if necessary to prevent the offence or if there are other special reasons for so doing. The same applies to property dealt with in contravention of sanctions. Instead of property itself being forfeit, its value may be declared to be forfeit.

35. The Swedish legislation also contemplates possible deportation of an alien assumed to be domiciled in or to belong to a targeted State, if that alien had committed or intends to commit an action in contravention of sanctions.

36. The Dutch Act takes a slightly different approach, making provision for the refusal of entry to certain aliens associated with the sanctioned country; and

for the revocation of entry and residence permits of such aliens. The Dutch Act is the only one to make express provision for investigative powers in relation to suspected sanctions breaches (other States presumably rely on secondary measures for these powers), and also contains an express confidentiality provision, requiring persons involved in implementation of the sanctions regime to keep secret information acquired in performance of their tasks.

Rationale of Model

37. The Model contemplates the creation of a criminal offence and outlaws contravention and evasion of the secondary legislation. The draft contemplates a strict liability offence, although the draft leaves some scope for national secondary legislation to require an element of knowledge or intent or other state of mind. The Model does not provide for a range of possible penalties in terms of fine or imprisonment. These would be left to national secondary legislation. However, forfeiture is expressly contemplated, not only of property and funds involved in the contravention or evasion of sanctions, but also of documents. Investigative powers are not included in this draft clause. The last sentence of the clause complements the defence provided for in Clause 2.

Clause 5: Precedence of Sanctions Legislation over Other Laws

38. Some national laws examined are silent on the precedence, if any, to be accorded secondary sanctions legislation inconsistent with other laws of the State. It would be appropriate that legislation implemented to meet the State's obligations as a member of the United Nations should be accorded precedence over inconsistent domestic laws. Inconsistency with national laws does not relieve a State of its international legal obligations.

Legislative Overview

39. Some legislation, such as that of the United Kingdom, is silent on this point.
40. The United States law gives the power to the President to act in accordance with Article 41 resolutions „notwithstanding the provisions of any other law“. The New Zealand Act takes a similar approach.
41. The Australian Act provides that the regulations will have effect despite a list of other categories of legislation, effectively giving the secondary sanctions legislation precedence over that other legislation unless that other legislation expressly has effect despite the sanctions legislation.

Rationale of Model

42. As noted above, it seems appropriate for the secondary legislation enacted in accordance with Article 41 of the UN Charter to be accorded precedence over other inconsistent laws, and the draft therefore contemplates express provision to this effect.

Other Themes not Included in the Model

Power to Give Exemptions from the Operation of Sanctions Legislation

43. Not all legislative models examined make express provision for exemptions from the operation of the sanctions legislation contemplated by the primary laws. It is assumed that the power to make exemptions is implicit in the laws which do not expressly refer to it, and would be within the power of any authority responsible for the implementation and operation of secondary sanctions legislation. The power to grant exemptions is desirable, given the exceptions to sanctions contemplated by some Security Council resolutions, but was considered unnecessary for inclusion in the model. Any exceptions should be clearly specified by the Security Council in its resolution adopting sanctions.

Legislative Overview

44. The Swedish Act specifically provides a power to grant exemptions from sanctions prohibitions implemented by secondary legislation, but only in „exceptional circumstances“. The Dutch Act has similar provisions; and also makes express provision for urgent mechanisms which may be invoked to implement sanctions more quickly than the standard secondary legislation route.

Period of Effect of Sanctions Legislation

45. There are three alternatives concerning the way in which primary legislation might deal with the period of effect of secondary sanctions legislation:
- the legislation might say nothing, in which case the normal rules applicable in the domestic legal system would apply; or
 - it may be provided that the legislation remains in effect until future amendment or revocation; or

- it may be provided that the legislation remains in effect for a specific period only, following which it will lapse unless expressly extended prior to expiry of that time limit

The Model is silent on this issue, the intention being that States should be able to comply with any express statement on this point in the relevant resolution. In practice, however, the third approach is likely to become more prevalent in Security Council resolutions, in the light of recent criticisms.

Legislative Overview

46. The United Kingdom's United Nations Act specifies that any secondary legislation made under it may be varied or revoked by a subsequent Order in Council. Any such secondary legislation therefore remains in force indefinitely, until varied or revoked.
47. The Canadian Act provides that a negative resolution of Parliament may annul or render secondary legislation ineffective, within 40 days of its adoption; but is silent on the period of effect of legislation after such 40 day period, in the absence of such negative resolution.
48. The Australian Act provides that the secondary legislation shall „cease to have effect when Article 25 of the Charter of the United Nations ceases to require Australia to carry out“ the decision in relation to which the legislation has been enacted. Alternatively, the regulations may be repealed.
49. The Swedish Act provides that any secondary legislation shall cease to apply if it has not been submitted for legislative approval, or if such approval has not been forthcoming, within specified time limits. In a separate provision, the Act provides for revocation of measures taken pursuant to the Act „as soon as possible“ after the relevant Security Council resolution has ceased to apply.
50. The Dutch Act stipulates that, except when revoked earlier, secondary legislation is cancelled three years following its entry into force; and emergency measures taken by ministerial order continue in force until formal secondary legislation supersedes it, to a maximum of 10 months following its entry into force.

Working Group 3:

Building Blocks and Definitions

Chairman: Ambassador Tono Eitel (ret.)

Rapporteurs: Anthony Gammon, Rae Lindsay

Introduction

The overall objective of the Working Group was to contribute to the improved effectiveness of financial sanctions by providing standard language elements and definitions which would serve as building blocks for future UN resolutions adopted under Article 41 of the Charter, and enhance unambiguous interpretation and uniform implementation by all States of those resolutions.

The Working Group produced a draft menu of wordings dealing with the financial aspects of sanctions in UN Security Council Resolutions, and also a set of definitions of terms as used in those wordings. The main prohibitions are contained in paragraphs 1(i) and 2(i), and paragraphs 1(ii) and 2(ii) contain possible exemptions to those prohibitions. The lists of prohibitions and exemptions contained in the text are intended to be as comprehensive as possible. But the document is not a draft Resolution: the comprehensive sets of prohibitions in sub-paragraphs (i) cannot be matched with the comprehensive sets of exceptions in sub-paragraphs (ii). Rather, the lists are intended to serve as a “menu” of options from which the Security Council may select. By deleting or modifying individual elements of the two sets of paragraphs, any actual Resolution could be made more or less comprehensive with wider or narrower exceptions, to accord with the political objectives of the Council in a particular case.

Paragraphs 3 – 6 of the proposed text contain additional provisions the Working Group considered desirable for inclusion in future UN Security Council Resolutions imposing financial sanctions.

The text of the proposed wordings is supported by detailed definitions intended to clarify the scope of terms used in relation to the financial aspects of sanctions. Although the Proposed Wording is a framework for adoption or modification by the Security Council, it is intended that the definitions should have universal application and not be subject to amendment for specific cases. Rather, should the Security Council consider the defined terms to be overly inclusive in any factual context, the Council could adopt provisions in the Resolution itself which would circumscribe the effect of the Resolution, taken in conjunction with the defined terms. The text of the Definitions would not be included in or appended to the text of any Resolution.

The draft contemplates that a great deal of residual discretion as to the implementation of sanctions will remain with States. This has potential to result in disparities between States and unequal or inconsistent implementation, which highlights the need for co-operation between States in the exchange of information and agreement on practices concerning implementation. This co-operation might be facilitated by the creation of an international institution mandated to monitor and assess the effectiveness of financial sanctions, and to ensure their uniform application (and, possibly, to adjudicate upon competing claims against frozen assets). The creation of such an institution could help tackle problems such as possible inequality of treatment of private parties in sanctioning states, where those parties are creditors of targets of sanctions but there is an uneven geographic distribution of frozen assets. This would be a major innovation, however, and the Working Group's draft assumes that there will continue to be implementation at a national level, although it was hoped and expected that international or regional co-operation will improve.

Paragraph 1 – Asset Freezing

Paragraph 1(i) deals with the freezing of the assets of targeted States, entities and persons, and paragraph 1(i) deals with possible exemptions from that freeze.

Possible Prohibitions

The obligation upon States to implement effectively decisions of the Security Council pursuant to Article 41 of the Charter is the rationale for using the formula “decides that States shall ensure that ...”, which has been used for both prohibitions and exemptions, in the chapeau to paragraphs 1 and 2. The implementation processes relied upon by individual States were beyond the Group's mandate.

Paragraph 1(i) contemplates that all States will take steps under their national laws to ensure the freezing of the assets of the persons and entities referred to in subparagraphs (a), (b) and (c). The categories are extremely broad and intended to include the legitimate government of a State, as well as any military junta or other de facto authority; all entities – governmental and private – that are part of or within the State; and all nationals of a State, including officials and agents of the State. The cases of state-like entities (such as the Palestinian Authority) or failed states were discussed as a result of the concern that non-State international actors might not be included in the scope of those called upon by the Security Council to comply with sanctions resolutions, thus giving rise to a possible inference that they were exempt. It was decided, however, that no specific reference to state-like but non-state entities should be included in the text.

Agents of the State are caught by the phrases “directly or indirectly”, “owned or controlled” and “to or for the benefit of”.

The reference to the “authorities in State X” is intended to include all governmental and other public authorities within the target State, including federal and provincial, local and municipal authorities. It was recognised that there is no generally accepted definition of what such “authorities” might be in any particular State. In some contexts, the term “public authorities” is restricted to central governments and their agencies; in others, it includes the State, local and regional authorities and all bodies associated with them under public law. The term “authorities” appeared to be that which would ensure the most comprehensive coverage.

In paragraph 1(i)(b), the term “entity” is used to differentiate such bodies from State authorities. It includes private sector enterprises and other bodies such as semi-State-owned enterprises and non-governmental organisations. Paragraph 1(i)(b) is therefore intended to include all other entities in or operating in the target State that are not caught by the term „authorities“.

Sub-paragraph (c) completes the broad range of those targeted by the draft Resolution to include all other natural and legal persons connected with the target State, and contemplates that the list can be limited (or clarified) by the use of specific lists of persons or categories of persons targeted by the Resolution (such as governmental personnel, elites, family members or other individuals). The bracketed reference to nationals of the target State is intended to recognise that a special exemption will normally, but not necessarily always, be justified for private accounts owned or controlled by nationals outside State X and not acting for the regime of State X. Clear humanitarian and human rights implications arise from comprehensive inclusion of all natural persons in or nationals of the target State (or categories of such persons). It was also recognised that, in practical terms, it would be rare for a significant proportion of any population to have substantial assets outside the home (target) state; but the option to target such nationals and their assets is important, particularly in respect of oppressive regimes which might exert undue influence on those subject to their jurisdiction to make use of their assets in a manner contrary to the objectives of sanctions.

The draft, in accordance with the practice in previous Security Council Resolutions, not only provides for the freeze of existing assets, but also seeks to ensure that the targeted State and persons and entities connected with it have no access, after adoption of the Resolution, to any other funds or financial resources.

Possible Exemptions

The list of possible exemptions to the assets freeze identifies areas in which the Security Council may decide that it is appropriate to soften the effect of those prohibitions which may have been adopted under paragraph 1(i). Paragraph 1(ii) therefore deals with all kinds of payments that might be permitted from frozen funds, as exemptions to the



prohibitions in paragraph 1(i). The range of exemptions listed in paragraph 1(ii) is potentially very broad.

It was recognised that the list of potential exemptions does not exclude the possibility for potential target States to so structure their financial affairs as to avoid many of the effects of any future sanctions. For example, the State might establish off-shore creditor companies outside the boundaries of State X, in names other than those associated with State X, and orchestrate self-loans which might evade the effects of future sanctions. However, it was also recognised that it would be very difficult to prevent States taking such pre-emptive action and it would be extremely cumbersome to try to make provisions for such measures in the text. It was concluded that it should be left to the Security Council to address this issue as it considers fit in any particular case.

Sub-paragraph 1(ii) operates by requiring States to take steps under their national laws to allow otherwise frozen accounts to be used for the purposes listed. Whether the ability to use frozen accounts for the purposes listed is to depend in the first instance on further authority, for example, of the Sanctions Committee, is a matter for the Security Council. Since implementation of sanctions is a matter for States, those States will make appropriate provision nationally for any necessary administrative procedures and for the provision of licences or other permissions before the actual application of the funds from frozen accounts would be permitted. Access to frozen funds is limited to those funds on account with banks or other authorised financial institutions to ensure that the institutions from which frozen funds may be accessed are subject to appropriate supervision and regulation within States, thus minimising the risk of abuse of the exemptions and consequent evasion of sanctions.

The list of exemptions in paragraph 1(ii) begins with a number of humanitarian exemptions (sub-paragraphs (a) – (e)), although there is no intention to establish a hierarchy of exemptions or to prioritise between those listed. Nevertheless, the Working Group expressed the hope that the payment of humanitarian debts would be preferred over other types of debt.

The exemptions are largely self-explanatory, however:

Sub-paragraph (a) contains an exemption for pharmaceuticals; sub-paragraph (b) for agricultural equipment; sub-paragraph © for educational items. It was noted that these categories could include “dual use” items which can be used not only for the purpose for which the exemption is created, but for other uses contrary to the objectives of sanctions. An example would be computers, which might qualify as educational items, but can be used for other purposes. It was anticipated that such issues would be addressed at a secondary, authorisation level where scrutiny would be given to the purpose for which the items purchased by the release of frozen funds would be put. It would be for the Security Council to decide what further guidelines to issue; or simply to leave that aspect of implementation to States.

Sub-paragraph (c) contains an exemption for payments for items of a cultural nature. Safeguards would be needed to ensure that such an exemption was not exploited as a loophole in the sanctions. Uncertainty might arise as to what types of item are intended to be included. There is a risk that the exempt purchases of items not genuinely to be considered “cultural” in nature. But it was recognised that the protection of cultural rights and heritage is an important humanitarian concern which the Security Council would wish to have the option to protect in appropriate cases through an exemption to financial sanctions. The Working Group considered that UNESCO might be willing to give advice on these matters, or to play a role in monitoring the operation of cultural exemptions in particular cases.

Sub-paragraphs (a) – (d) include the phrase “unless the Security Council has decided otherwise”. This is intended to denote (although the phrase is technically superfluous) that such payments are automatically authorised unless the Security Council decides to make them subject to some specific authorisation procedure; for example, by making them subject to Sanctions Committee approval. The inclusion of the phrase reflects a trend towards inclusion of these exemptions in all United Nations sanctions regimes, as recorded and recommended in paragraph 16 of the Note by the President of the Security Council: Work of the Sanctions Committee (S/1999/92, 29 January 1999). That Note recommended that foodstuffs, pharmaceuticals and medical supplies should be exempt from United Nations sanctions regimes; and that basic or standard medical and agricultural equipment and basic or standard educational items should also be exempt. The Note suggested that consideration should be given to drawing up lists for that purpose.

Although sub-paragraphs (a) – (e) contain the major humanitarian exemptions, some of the other exemptions might also cover payments for humanitarian purposes. Sub-paragraph (i) is an example: it could for instance authorise the use of frozen assets to pay for expenses related to religious obligations (e.g. undertaking pilgrimages).

Sub-paragraph (f) permits the use of frozen funds for the payment of pre-existing debts and includes those due and payable prior to the entry into force of sanctions; and amounts that will become due thereafter in respect of contractual obligations performed prior to the entry into force of sanctions. The policy behind this exemption is that sanctions should not result in a de facto debt moratorium for the target State. It will be for the relevant State authorities to decide which debts qualify for any exemption permitting payment from frozen accounts for this purpose. In relation to such payments, it is assumed that the consent of the owner of the assets will be obtained; or in the absence of that, that a judgement will be available (to avoid any possible assertion that the freeze has been used as an opportunity unlawfully to expropriate the assets of the target State, its entities or nationals). It was felt that non-inclusion of the exemption in sub-paragraph (f) would penalise nationals of the sanctioning (as opposed to target) States, who are creditors of the target; but it was recognised that the exemption does



give rise to a certain inequality of treatment, the availability of assets to meet debts being unequal between States. It also means that frozen assets that might otherwise have been used for humanitarian purposes may be exhausted by their use for settlement of debts.

Sub-paragraph (g) contains an exemption for payments due in respect of taxes and to parties other than those in State X. This is to ensure that entities which were operating in sanctioning states before the imposition of sanctions are not prevented from continuing to exist simply because they are unable to pay taxes and other dues payable by local law and which might result in their being dissolved if non-payment were to occur. Sub-paragraph (h) serves a similar purpose, but is targeted more broadly in recognition of the possible property interests of targets outside State X.

Sub-paragraph (h) authorises payments for authorised goods or non-prohibited services. One purpose of the exemption is to ensure that payments might be authorised in respect of water or power supplies within the target State (including spare parts and maintenance required for these). This exemption extends to payments for non-prohibited goods or services only, and therefore pre-supposes that there are restrictions on trade and services (e.g. under paragraph 2(i) - Financial Services). This may or may not be the case, given the trend towards greater reliance on more targeted, purely financial sanctions. If the provision of goods or services has been prohibited elsewhere, however, that part would also have to provide for possible exemption of any goods or services (in which case the possibility of paying for them from frozen assets might arise). The appropriateness of this exemption, and the extent to which it might require modification, will depend in substantial part on whether the Security Council has decided to impose a trade embargo, and to stop the provision of services to targets, as well as financial sanctions.

Sub-paragraph (j) is designed to enable natural persons otherwise targeted by the sanctions to access their own funds for living expenses and other personal expenditures.

Sub-paragraph (k) has a similar rationale to sub-paragraph (f), but is designed to enable a target State to continue to honour its international financial obligations.

Sub-paragraph (l) is designed to enable a target State to continue to fund the necessary operations of its diplomatic and consular missions abroad.

It should be appreciated that the very broad wording of the exemptions allows the Security Council to adapt the wording to limit the breadth of the exemptions in accordance with the policy objectives of particular sanctions regimes. For example, sub-paragraph (c) permits payments for educational items, without limitation. In deciding how, if at all, to qualify this exemption, the Security Council may take into consideration such factors as its desire not to use sanctions to downgrade the educational system of the target State.

Paragraph 2 – Financial Services

Possible Prohibitions

Paragraph 2(i) requires States to prohibit the provision of financial services by any authority, entity or other person within their jurisdiction. There was no attempt to define “jurisdiction” as this was regarded as a potentially controversial area on which States might well disagree.

Possible Exemptions

Paragraph 2(ii) contains the possible exemptions to the prohibitions required under paragraph 2(i). The exemptions are largely self-explanatory but it may be noted that:

Sub-paragraph (a) is designed to enable the continued operation of otherwise frozen bank accounts; that is, the maintenance of the accounts and any non-prohibited activity in relation to the accounts.

Sub-paragraph (b) performs a function similar to that in the exemption contained in subparagraphs 1(i)(g) and (h) in that it seeks to ensure that targets do not contravene regulations or other mandatory national laws by virtue of sanctions alone.

Sub-paragraph (c) is designed to permit the acquisition or maintenance of insurance on frozen assets located outside the target State, and payments of employee liability and similar types of mandatory insurance designed to protect interests in sanctioning, rather than target, States.

Paragraph 3 – International Organisations

This paragraph appreciates that the membership of the United Nations comprises sovereign states only, and that international organisations are not members of the UN. Any resolution therefore does not technically bind international organisations, but it was considered desirable to call upon such organisations to take measures within their fields of competence, to ensure the efficacy of the sanctions to be imposed pursuant to the Resolution. It was recognised that there would be international financial organisations, the co-operation of which might be vital to the comprehensive application of financial sanctions. The formulation of the text as a „request“ to States adopts the phraseology which has found favour in texts previous resolutions.

Paragraph 4 – Reporting

It is important that the Security Council should be made aware of the steps taken to implement sanctions resolutions and the effectiveness of such measures. This paragraph therefore requests States and calls upon international organisations to report to the



relevant sanctions committee on the action taken to implement the sanctions regime established by the resolution in question. The formulation of the text as a „request“ to States adopts the phraseology which has found favour in texts of previous resolutions.

Paragraph 5 – Role of the Sanctions Committees and of the Secretariat

In a recent Note by the President of the Security Council: Work of the Sanctions Committees (S/1999/92, 29 January 1999), the President of the Security Council reported on the agreement of the members of the Security Council that certain practical proposals should in future be used to improve the work of the sanctions committees. One proposal (contained in paragraph 7 of the Note) was that the technical effectiveness of the mandatory measures taken pursuant to Security Council resolutions should be periodically assessed by the sanctions committees on the basis of “inputs from Member States, reports prepared by the Secretariat and other available sources of information.” Although this has not previously been a feature of Security Council sanctions resolutions, it was decided to include a paragraph making provision for the Secretariat’s role in that assessment process.

Paragraph 6 – Non-liability for Compliance with Sanctions

Sanctions are intended to exert pressure on the target State, and not to detrimentally affect the interests of third parties, including non-target States, entities and private parties. Accordingly, paragraph 6 is designed to ensure that no claim will lie at the instance of a targeted State, entity or person against a non-targeted State, entity or person where that claim arises by virtue of the latter’s compliance with measures taken in accordance with the sanctions resolution. The wording of the proposed text adopts the formula utilised in paragraph 29 of UNSC Resolution 687 (1991) in respect of Iraq.

Definitions

Given past uncertainties over the scope of sanctions resolutions and the objective of uniform application of sanctions, it was considered desirable to provide precise definitions for a number of terms. These were: “assets” (paragraph 1(i)); “assets freeze” (paragraph 1(i)); “funds or other financial resources” (paragraph 1(i)); “assets owned or controlled, directly or indirectly” (paragraph 2(i)); “financial services” (paragraph 2(i)). The definitions are very widely cast and, to a large extent, self-explanatory.

In particular, the definition of “assets” is intended to include all types of property and property interests. It was appreciated that a strict view of financial sanctions might contemplate restrictions on the movement or use of only assets of an economic nature; but the broader definition was preferred for a number of reasons, including the possibility of non-economic assets being exchanged transferred or bartered in a way

which could circumvent the intention of the sanctions. „Funds or other financial resources“, as a component of the defined „assets“, is separately defined.

In the definition of “assets freeze”, it should be noted that the inclusion of the prohibition on moving or changing the location of assets could have the unintended effect of e.g. preventing the movement of aircraft or ships (which would fall within the term “moveable property”). The intention of the prohibition is to prevent the use, transfer or alteration of the assets in any way which might result in a benefit for the target, and it is open to the Security Council to modify the scope of the prohibitions and exemptions to limit the operation of the definition to meet the objectives of any particular case. The definition stipulates that interest or income automatically accruing on assets pre-dating sanctions may be paid into and held on a frozen account, but no other form of portfolio management is allowed.

Other Issues

The Working Group considered whether it should include in the proposed text provision for a defined time limit on the applicability of sanctions (i.e. an exit clause).

The Working Group also touched upon possible problems arising from the application of Article 50 of the UN Charter.

Both of these issues evoked considerable sympathy but were considered to be beyond the Group’s mandate, and of broader relevance than the Working Group’s discussion of wording of Resolutions to impose targeted financial sanctions.



ANNEX 1

Building Blocks of Financial Sanctions in Security Council Resolutions

1. Asset Freezing

Possible Prohibitions

- (i) Decides that all States shall ensure that all assets owned or controlled, directly or indirectly, by:
 - (a) the authorities in State X;
 - (b) any other entity, including any commercial, industrial or public utility undertaking in that State; or
 - (c) any other person, natural or legal, who is (a national of, or) residing in or operating in that State, or any specified person or categories of person,

are frozen and that no funds or other financial resources shall be made available, directly or indirectly, to or for the benefit of the authorities, entities or persons referred to in this paragraph.

Possible Exemptions

- (ii) Decides that all States shall ensure that the prohibitions in paragraph 1(i) shall not apply to payments from accounts with banks or other authorised financial institutions for the following purposes:
 - (d) payments for medicines, pharmaceuticals, medical equipment and supplies, unless the Security Council has decided otherwise;
 - (e) payments for foodstuffs and basic agricultural equipment, unless the Security Council has decided otherwise;



- (f) payments for educational items, news materials and items of a religious or cultural nature, unless the Security Council has decided otherwise;
- (g) payments for books and publications consistent with the goals and purposes of the United Nations, unless the Security Council has decided otherwise;
- (h) payments for other goods intended strictly for humanitarian needs and authorised under the authority of the Security Council (e.g. soap, detergents, clothing, footwear, etc);
- (i) payments of debts owed to creditors other than those in State X, or who are an authority, entity or person referred to in paragraph 1(i), which debts were due or become due in respect of contractual obligations fulfilled by the creditor prior to the entry into force of this Resolution;
- (j) payments due in respect of taxes and utilities, to parties other than those in State X;
- (k) payments due in respect of rents, property maintenance and employee costs, to parties other than those in State X or who are an authority, entity or person referred to in paragraph 1(i)
- (l) payments for authorised goods or non-prohibited services;
- (m) payments by natural persons for non-prohibited personal use;
- (n) payment of dues to the United Nations and other international organisations;
- (o) payments related to the conduct of diplomatic and consular relations in accordance with international law.

2. Financial Services

Possible Prohibitions

- (iii) Decides that all States shall prohibit the provision of financial services by any authority, entity or other person within their jurisdiction in relation to any assets in State X or owned or controlled, directly or indirectly, by any authority, entity or person referred to in paragraph 1(i).

Possible Exemptions

- (iv) Decides that all States shall ensure that the prohibitions in paragraphs 1(i) and 2(i) shall not apply to the provision of the following financial services:
 - (p) maintenance of accounts with banks or other authorised financial institutions, provided such accounts are frozen;
 - (q) the services of auditors as necessary to comply with the requirements of law;
 - (r) insurance of existing assets outside State X and, to the extent required by law, on natural persons.

3. International Organisations

Calls upon international, regional and all other organisations to take measures pursuant to paragraph(s) ... within their fields of competence.

4. Reporting

Requests all States and calls upon the organisations referred to in paragraph 3 to report to the Committee established by Resolution ... on action taken pursuant to paragraph(s)

5. Sanctions Committee and Secretariat

Requests the Committee established by Resolution ... to make periodic assessments on the technical effectiveness of the measures referred to in paragraph(s) ... and requests the Secretary-General to provide the Committee with the appropriate support for that purpose, including the use of inputs from other sources.

6. Non-liability for Compliance with Sanctions

Decides that all States, including State X, shall ensure that no claim shall lie at the instance of State X, or of any authority, person or entity referred to in paragraph 1(i), or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction, the performance of which was affected by reason of the measures taken by the Security Council in this resolution.





Annex 2

Definitions of Specific Terms Used in Annex 1

ASSETS:

Any property or property interest, tangible or intangible, present, future, or contingent, and may include (without limitation):

Any funds or financial resources (as defined below)

Real property, including land and fixtures to land

Moveable property, including goods and chattels

Bullion, precious metals and stones

Patents, trade marks and copyrights

Contracts, licences, insurance policies

Goodwill

Judgements and claims having monetary value

Documents evidencing an interest in assets

ASSETS FREEZE

To freeze assets means that the assets may not be moved, transferred, altered, used or dealt with in any way that would result in any change in their volume, amount, location, ownership, possession or character; including portfolio management, except that any interest or income arising on any capital automatically repayable on maturity of any asset shall be paid into and held in a frozen account.



FUNDS OR OTHER FINANCIAL RESOURCES:

Financial assets and economic benefits of any kind, including (without limitation):

Cash

Cheques, drafts, money orders and other payment instruments

Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations

Publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts

Interest, dividends or other income on or value accruing from or generated by assets

Credit, rights of set-off, guarantees, performance bonds or other financial commitments

Letters of credit, bills of lading, bills of sale

Documents evidencing an interest in funds or financial resources

ASSETS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY:

Assets of which any authority, entity or person referred to in paragraph 1(i) is the legal or beneficial owner, is entitled to or has de facto control over.

In determining ownership or control, a greater than 50% interest in the asset on the part of any authority, entity or person referred to in paragraph 1(i), or in an intermediate person or entity having ownership or control of the asset, will be determinative.

An interest of 50% or less in the asset, (or in an intermediate person or entity having ownership or control of the asset) may constitute ownership or control, depending on the factual circumstances, and in particular:

the representation of any authority, entity or person referred to in paragraph 1(i) in the management of the asset;

the extent of the interest of any authority, entity or person referred to in paragraph 1(i) in the asset;

the nature and identity of interests other than those of any authority, entity or person referred to in paragraph 1(i);

the spread and diversity of interests in the asset;

the ability of any authority, entity or person referred to in paragraph 1(i) to influence decision-making in relation to the asset.

These criteria are not exhaustive or restrictive, and any determination as to ownership or control of assets should be consistent with the objective of the assets freeze concerning State X and the authorities, entities and persons referred to in paragraph 1(i).

FINANCIAL SERVICES:

Any activity, discretionary or otherwise, conducted as principal or agent, involving the provision, custody, management, utilisation, transfer, disposal, movement or exchange of funds or other financial resources and advice relating thereto, including (without limitation):

Banking Services, including the acceptance of deposits and movement of balances on accounts, lending, financial leasing, the extension of credit, money transmissions, purchasing or selling foreign exchange, issuing and administering means of payment, guarantees and commitments

Insurance and insurance-related services, including reinsurance and retrocession, insurance intermediation such as brokerage and agency, and services auxiliary to insurance such as consultancy, actuarial, risk assessment and claims settlement services

Trust creation and management

Investment services, including trading for own account or on account of customers, whether on an exchange, in an over-the-counter market or otherwise, in money market instruments (including cheques, bills, certificates of deposit), foreign exchange, transferable securities, other negotiable instruments and financial assets such as bullion, derivatives products (including financial and commodities futures and options), exchange rates and interest rate instruments (including products such as swaps and forward rate agreements)

Participation in issues of all kinds of securities, including underwriting and placement as agent and provision of services related to such issues



Money broking

Settlement and clearing services for financial assets, including securities, derivatives products and other negotiable instruments

Provision and transfer of financial information, and financial data processing

Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, deposit and trust services

Advisory, intermediation and other auxiliary financial services, including auditing, investment and portfolio research and advice



Papers & Speeches





Chairman's Welcoming Presentation

R. Jeker, Director a.i., Federal Office for Foreign Economic Affairs

Excellencies, Colleagues,
Ladies and Gentlemen,

Welcome to Interlaken !

1. On behalf of the Swiss Government and the Swiss Federal Office for Foreign Economic Affairs, I am very pleased to welcome you for a second year in Interlaken.
2. We are proud to notice that, after the first Seminar in March of last year, so many of you estimated that this informal gathering was useful for the development of more targeted and efficient financial sanctions regimes. We are also very glad to welcome all the new participants in these discussions which, we hope, will be as fruitful and satisfying than the ones of last year. The Swiss Government and, in particular, the Federal Office for Foreign Economic Affairs is pleased to make available again its support to this important debate on the targeting of UN financial sanctions and hope that our discussions will bring us forward in the development of more practical and efficient financial sanctions instruments.
3. We have the privilege to benefit this year from the participation of delegations from 22 countries covering all the continents, including a number of experts from Central Bank authorities, and representatives from the United Nations Secretariat, the private banking sector, international organisations, as well as leading academic scholars in this field.
4. These discussions are of great importance in responding to the mounting challenges to the maintenance of international peace and security. Political authorities, in particular the UN Security Council, have expressed their interest in more targeted sanctions tools that would increase the efficiency and credibility of the international response and limit its undesirable effects on the civilian population and third countries. Among these tools, targeted financial sanctions offer significant potential to exert pressure on the political elite of the targeted country, by freezing the assets and blocking financial transactions of entities and individuals linked to the targeted government.
5. It is of critical importance to ensure that sanctions authorities are provided



with the necessary expertise in the elaboration, implementation and monitoring of targeted financial sanctions. The targeting of financial sanctions is a very complex issue. However, despite its complexities, there are no indications that such sanctions are impractical in technical terms. Recent experience in similar environments, such as the fight against money-laundering, has shown that imaginative approaches in the tracking of financial assets and international cooperation can offer substantive means of pressure on targeted entities.

6. However targeted, financial sanctions may not be sufficient to force governments into compliance to international demands. They may offer additional valuable tools to demonstrate the determination of the international community and to support a growing sense of individual accountability of targeted elites for the unlawful acts of states by seeking control over their financial assets and transactions.
7. Despite the significant achievements in improving our understanding of the implications of targeted financial sanctions over the recent years, much more work needs to be done in ensuring the necessary cohesiveness and credibility of financial sanctions tools. It implies the development of new techniques to locate financial assets and monitor financial transactions, the creation of new institutional mechanisms both at the international and domestic level, and the elaboration of proper legal and administrative frameworks to ensure an adequate and harmonised implementation of financial sanctions.
8. Considering the major steps made over the last year to improve our understanding of the implications of financial sanctions and the significant results achieved in different fora on targeted sanctions in Interlaken, London, New York, among others, over the past 12 months, we are certainly in a position to elaborate practical measures to better target financial sanctions and improve their efficiency. In this context, we have spared no efforts to ensure the best conditions for these discussions in this agreeable environment. Your presence in Interlaken is an encouraging sign of the willingness of states to engage in the examination of the technical aspects of improved financial sanctions, with the support of specialised agencies and scholars.
9. On its side, the Swiss Government has been very supportive of UN economic sanctions and international export control initiatives in the context of the various export control regimes over the recent years. An impressive set of legislation to guarantee enforcement has been put into place. However, we strongly believe in the importance of international harmonisation when it comes to the question of international economic sanctions and export controls, without which the efficiency and credibility of these regimes are



severely curtailed. Financial sanctions are by the essence a multilateral tool and must be addressed in such a way that all the major actors can take part in the development of the tools and share the economic costs of these measures. Only a joint, co-ordinated effort of all nations or at least a large majority of it can help to achieve the intended security policy goal. Moreover, only a harmonised approach can help to achieve this goal without creating undue obstacles to international trade and competitiveness. We, therefore, as a small country, intensely interwoven with the world economy, attach greatest importance to such harmonisation objectives.

10. I am looking forward to working with you over the next three days on the topic of how to improve the financial sanctions instrument with a view of elaborating recommendations on practical measures to enhance their effectiveness.
11. I hope that the picturesque location of Interlaken will not distract you excessively from this important goal, although it is also there for you to enjoy. We believe that a conducive environment will stimulate our informal discussion on these technical issues.
12. In concluding I would like to thank all of you for having joined us here, and in particular also those among you that have volunteered to prepare the background material and to act as a chairperson of a working group, or as a presentator.

Thank you.



UN Sanctions: How Effective? How Necessary?

Strategic Planning Unit, Executive Office of the Secretary General,
United Nations, New York, March 1999

The views expressed in this paper do not necessarily represent those of the United Nations Secretariat.

Introduction

'A nation boycotted is a nation in sight of surrender. Apply this remedy and there will be no need for force.' Woodrow Wilson, 1919

As we move towards the Millennium, a growing number of academic and policy studies have questioned the utility of the UN Security Council's two primary collective security enforcement mechanisms, military force and sanctions.

Resort to force by the Security Council has become constrained by concerns about its efficacy and by the reluctance of member states to risk the lives of their citizens in UN operations where no perceived vital national interests are at stake. In part as a consequence, sanctions have been increasingly used by the Security Council as a substitute, rather than precursor or complement, to the use of force.

Prior to 1990, the Security Council imposed sanctions regimes on only two occasions, on Rhodesia and South Africa; in the post-Cold War 'era of sanctions', no less than eleven sanctions resolutions have been authorised; eight remain in force.

There have been few studies of the efficacy of UN sanctions. Most quantitative studies have examined the totality of sanctions regimes that have been applied in the twentieth century. Most have been imposed unilaterally. Without exception these studies have argued that sanctions are, in general, an ineffective policy instrument. Other, less quantitative, studies have focused on the humanitarian costs of sanctions – particularly comprehensive sanctions like those directed against Iraq.

The major reason for the overwhelmingly negative assessment of the efficacy of sanctions is that success or failure in coercing target states to change their behaviour has become *the* criterion of effectiveness. But while achieving compliance is clearly of great importance, sanctions often seek to realise other important goals from stigmatising and containing transgressor states, to serving as instruments of prevention and deterrence.

No systematic studies have examined the effectiveness of sanctions in supporting these latter goals.

The most widespread charge against sanctions, particularly comprehensive sanctions, is that they impose widespread suffering on ordinary people, while leaving the regimes they target, not only unscathed, but sometimes enriched and strengthened. In part as a consequence almost all studies today argue for one variant or other of what has been called 'smart sanctions', i.e. those that are intended to target regimes not peoples. The effect, though not the intent, of many recent sanctions regimes has been the reverse. People have been harmed, not regimes.

However smart sanctions are no panacea and there is a general consensus among scholars and practitioners working in the area that much work is needed to develop and enhance their effectiveness. A number of ongoing research projects are directed towards this end.

While the sanctions literature is generally sceptical about the utility of sanctions, none of the academic studies, nor even the most critical of the NGOs, argues that sanctions should be abandoned as an instrument of UN policy. Indeed there is a widespread consensus that, when confronting major transgressions of international law, the international community needs some instrument of suasion that lies between diplomatic censure, on the one hand, and war, on the other. For this purpose, there is no real alternative to sanctions.

The Efficacy of Sanctions

The only real disagreement in the contemporary sanctions literature relates to the *degree* to which sanctions fail as an instrument for coercing changes in the behaviour of target states. No study argues that sanctions are *in general* an effective means of coercion, although individual sanctions regimes can and sometimes do succeed.

The most comprehensive, heavily cited and influential study of the efficacy of sanctions was produced by the International Institute of Economics (IIE) in 1990.¹⁶ (A forthcoming update covering the 1990s supports the original conclusions.) The IIE study found that sanctions failed to achieve even 'partial success' in coercing desired changes in target regime behaviour in 66% of 115 cases between WWI and 1990.¹⁷

¹⁶ Gary C. Hufbauer, Jeffrey J. Schott and Kimberley Ann Elliot, *Economic Sanctions Reconsidered*, 2nd. Edition, International Institute of Economics, Washington DC, 1990.

¹⁷ The citations here are from the update (January 1998) of the Executive Summary of the report. www.iie.com/execsum.htm. Success is defined by the authors as having two elements. The first relates to the degree to which the policy outcome sought by the sanctioning body is realised. The second relates to the degree to which sanctions contributed to that success.

Moreover the failure rate increased over time as the global market became more open. Between 1973 and 1990, only one in four sanctions regimes achieved partial success.

Even this very modest success rate has recently been disputed, with one critic arguing that the IIE's 'partial success' estimates are far too high, and that in fact less than 5% of sanctions regimes can be deemed successful.¹⁸

Because a large number of the IIE cases involved unilateral sanctions, mostly by the US, their relevance for the UN, which only imposes sanctions multilaterally, is open to question. Some UN critics of the IIE study argue that its findings are positively misleading. Multilateral sanctions are inherently more effective than unilateral sanctions, they argue, and the IIE's conclusions therefore have little or no relevance for the UN. The logic of this argument is clear enough; whether UN sanctions have *in fact* been more effective than unilateral sanctions is not. Strongly enforced sanctions by a superpower like the US against a country that is dependent on American trade, aid and investment, may well be more effective than weakly implemented multilateral UN sanctions.

Why Sanctions Regimes Fail

One of the core assumptions of traditional sanctions theory is that the pain inflicted by sanctions on citizens of the target state will cause them to pressure their government into making the changes demanded by the sanctioning body. But, in authoritarian states, the assumption that 'civilian pain leads to political gain' is clearly flawed. Those who bear the brunt of the sanctions have no power to influence policy; those in power tend to be relatively unaffected. From this it would seem to follow that sanctions directed against multi-party states, where there is some possibility of domestic pressure being brought to bear against the government, would be more effective than those levied on authoritarian states. A recent study by McMaster University's Kim Nossal provides suggestive evidence that this is in fact the case.

Using more demanding criteria for success than the IIE study, Nossal found only fourteen cases out of more than one hundred in which sanctions were completely

¹⁸ Pape's review of the IIE study raised a number of objections to the IIE methodology. In particular he argued that it was not reasonable to include among the 41 sanctions 'successes', 18 cases where sanctions were accompanied by resort to force. If one wishes to ascertain the utility of sanctions as a stand-alone instrument, then including cases where force is deployed makes it difficult, if not impossible, to tell whether sanctions alone would have succeeded. Removing these cases brings the overall success rate down from 34% to 21%. Pape went on to reject other cases which the IIE study had rated as partial successes and concluded that only 5 cases out of 110 count as successes, a success rate less than 5%. See Robert A. Pape, 'Why Economic Sanctions Still Don't Work', *International Security*, Summer 1998. For a rebuttal see Kimberley Ann Elliot, 'The Sanctions Glass: Half Full or Completely Empty', *International Security*, Summer 1998.

successful (as against the 41 'partial successes' in the 1990 IIE study). What was remarkable about Nossal's finding was that in 86% of cases in which sanctions 'worked', the targeted state had 'a functioning multiparty electoral system.'¹⁹ Sanctions against authoritarian states failed in more than 98% of the total number of hundred-plus cases.

Insofar as UN sanctions have been directed primarily against authoritarian states, the potential significance of this finding seems obvious.

Sanctions May Strengthen the Regimes They Seek to Coerce

When trade embargoes are imposed on a target state, the sanctions-induced scarcity of goods causes prices to rise, often dramatically. In Iraq, between 1990 and 1995, price rises for basic commodities of around 1000% a year were not uncommon. The consequences were predictable. First, the poor who could afford least, suffered most. Second, the economic independence of the middle class, a building block for democratisation and source of potential resistance to the regime, was destroyed. Third, regime members and their allies who controlled the black market profited hugely. In other words sanctions may have created a perverse vested economic interest in their perpetuation among the very elite they were targeted against, while reducing the potential for resistance in the wider community.

Analysing the impact of sanctions on Haiti, Elizabeth Gibbons argues that the Haitian army '... by seizing control of the black market in embargoed goods, especially fuel, was also able to realise huge windfall profits, creating a strong (perverse) incentive to continue sanctions.'²⁰ Another recent study makes the general point that; '... sanctions will inevitably redound to the benefit of an autocratic regime ... precisely because a regime will always be in a better position than the civilian population to wield control over external transactions, and the internal economy.'²¹

In Iraq, efforts by the international community to relieve the suffering of the people had a further perverse effect. Regime control over much of the food and medical supplies distributed under the Oil-for-Food program has increased the dependence of the people on the state, further undermined civil society and provided an additional lever of control and coercion for the regime.

¹⁹ Kim Richard Nossal, 'Liberal Democratic Regimes, International Sanctions and Global Governance', unpublished manuscript, McMaster University, 1988, p.20. Nossal included as sanctions successes only those cases in which the major goals of the sanctioning state had been achieved and where the success was due solely to sanctions.

²⁰ Elizabeth Gibbons, *Sanctions in Haiti: Human Rights and Democracy under Assault*, Center for Strategic and International Studies, Praeger, forthcoming.

²¹ Cited in Gibbons, *Sanctions in Haiti*.

Sanctions Bodies Rather Than the Target Regime May Be Blamed For Sanctions-Induced Suffering

The 'pain-leads-to-gain' assumption of traditional sanctions theory also assumes that it will be the regime, not the sanctioning body, which will be blamed for the privations imposed. In reality, sanctions often increase popular support for the regimes against which they are targeted, especially when the state controls the media and can guarantee that its 'spin' on who is responsible for the sanctions-induced hardship gets the widest hearing. The so-called 'rally round the flag' phenomenon is true of authoritarian as well as democratic regimes.

Failure to Compensate for Third Party Costs May Encourage Cheating

Sanctions often impose extremely high economic costs on the major economic partners of target states. Despite calls from Member States for these costs to be spread equitably this rarely happens. Assistance to disadvantaged states has been ad hoc and widely perceived to be inadequate. Where little or no assistance is available, the affected states will have an incentive to break sanctions and continue their traditional economic relationships to avoid harm to themselves. This is, in part, the reason for the Organisation of African Unity's 1998 decision to cease complying with the UN sanctions directed against Libya.

Some provision for third party compensation has been made in those cases where the interests of major powers have been engaged in the pursuit of sanctions, notably in former Yugoslavia and Iraq. No such aid has been forthcoming in the case of the African sanctions regimes, here and elsewhere demands for compensation have generally been ignored by the wealthy states.

Implementation, Monitoring and Enforcement Problems Can Undermine Sanctions Regimes

Many critics assume that because sanctions rarely succeed there must be some inherent flaw in the strategy of sanctions. But failure may sometimes be due simply to the inadequate monitoring and enforcement of sanctions regimes. In the case of Rhodesia, for example, sanctions-busting took place on such a massive scale that exports actually *rose* during the period that sanctions were in place.

Elizabeth Rogers, a proponent of tough comprehensive sanctions, argues that the pessimistic conclusions of the major sanctions studies are biased because '... the literature generalises largely from cases when partial sanctions were imposed half-



heartedly, so it underestimates the possible effectiveness of forceful sanctions.²² The point is well taken, but not as telling as it might at first appear. The level of resources allocated to monitoring, assessing and enforcing sanctions is a function of the degree that the perceived interests of major powers are engaged. Extraordinary efforts have been devoted to the sanctions imposed on Iraq and the former Yugoslavia, where the major powers had a deep interest in the outcome. By contrast, implementation of UN sanctions directed against Rwanda, Liberia, Somalia and Angola (UNITA) have generated so little interest or effort they have been described as 'atrophic'.

But even when there is serious commitment to the regime in question most studies point to the need for improvements in UN planning, monitoring, assessment and enforcement procedures. A 1997 study by the United Nations Association of the United States of America (UNA-USA) argued, for example, that, 'In general, the Council benefits from virtually no planning or analysis that matches intended goals with proposed options for sanctions.'²³ A 1996 report prepared for the *Carnegie Commission on Preventing Deadly Conflict*, noted that, '... the practical problems of initiating, monitoring and enforcing economic sanctions have become glaringly apparent to professionals within the UN and national governments.'²⁴ Many reports have also stressed the need for greater technical expertise in the various sanctions committees.

The Security Council had also come under pressure from the Chairs of its own Sanctions Committees. In January this year the President of the Council issued a Note on the 'Work of the Sanctions Committees' which affirmed the commitment of all Council members to a series of long overdue reforms designed to improve the implementation of sanctions and to reduce their adverse humanitarian consequences.²⁵ Whether the UN can afford to implement the proposed changes remains to be seen.

The Humanitarian Issue

Numerous recent studies have pointed out that sanctions, and in particular comprehensive sanctions, are not a non-violent alternative to armed force. Like war, they too can result in death and suffering, even though all UN sanctions regimes exempt food and medicines. Unlike war, however, the casualties are all on one side.

²² Elizabeth S. Rogers, 'Using Economic Sanctions to Prevent Deadly Conflict', International Security Program, Belfer Center for Science and International Affairs, John F. Kennedy School of Government, May 1996, p.4.

²³ Lisa L. Martin and Jeffrey Laurenti, *The United Nations and Economic Sanctions*, United Nations Association of the United States of America, New York, August 1997, pp.10-11.

²⁴ John Stremmlau, *Sharpening International Sanctions: Towards a Stronger Role for the United Nations*, Carnegie Commission for Preventing Deadly Conflict, New York, November 1996, p.48.

²⁵ 'Note by the President of the Security Council: Work of the Sanctions Committees', S/1999/92, 29 January, 1999.

The humanitarian suffering associated with some sanctions regimes has become a major political issue, both within the Organisation and in the wider international community.²⁶ Many diplomats at the UN argue that the post-Iraq sensitivity to humanitarian costs is now so great in the international community that it is difficult to imagine similarly comprehensive sanctions ever being imposed again.

The most politically sensitive question, namely the level of sanctions-induced deaths, is difficult to resolve because of real problems in obtaining reliable data. In the Iraqi case, which has generated most concern, media and some NGO reports have sometimes cited Iraqi government claims of one million plus deaths attributable to sanctions, notwithstanding the obvious need for caution in using data from such a source. Some of the most careful and comprehensive recent research has not relied on Iraqi sources, however. For example, a recent Columbia University epidemiological study by Richard Garfield estimates that more than 200,000 under-five year-old children have died as a consequence of sanctions.²⁷ This is far more than the total number of Iraqis killed in the Gulf War, when the overwhelming majority of casualties were combatants.

The primary responsibility for the sanctions-death toll clearly lies with the regime. Iraq's deliberately obstructive tactics meant that humanitarian aid under Oil-for-Food did not start reaching those in need until March 1997, despite the fact that the Security Council had made provisions for such aid in 1991.²⁸ But some scholars suggest that the Security Council should share at least some of the responsibility for the suffering. As one recent study pointedly asked: Is the Security Council justified in maintaining comprehensive sanctions against an opponent willing to make innocent children the primary victim?²⁹

²⁶ In this context it is instructive to note that the comprehensive 1990 International Institute of Economics sanctions study referred to earlier makes no mention of humanitarian costs. In the changed normative climate of the late 1990s such an omission in a major sanctions study would be unthinkable.

²⁷ Richard Garfield, 'Changes in Mortality in Iraq in the 1990s: Assessing the Impact of Sanctions', unpublished manuscript, Columbia University, April 9, 1998, p.30. Using all the relevant surveys from UN agencies and humanitarian NGOs, Garfield concluded that the *minimum* estimate of under-five mortality attributable to sanctions in Iraq is 239,000. There are no reliable means of estimating the increase in mortality rates of older children and adults due to sanctions, although the figures are surely considerable. The under-five death toll compares with an estimated total Iraqi death toll, civilian and military, of some 61,000 during the Gulf War.

²⁸ The Oil-for-Food programme permitted limited Iraqi oil sales to be used to purchase food and medicines for the Iraqi people in order to offset any humanitarian suffering caused by sanctions. In 1998, the value of the oil permitted to be sold under the Oil-for-Food programme was more than doubled to \$5.3 billion every six months, suggesting that the previous level, \$2.0 billion's worth of oil every six months, was inadequate. Iraq is currently physically unable to pump \$3.0 billion's worth of oil every six months.

²⁹ See David Cortright and George Lopez, 'Sanctions and Contending Views of Justice: the Problematic Case of Iraq', as yet unpublished paper, 1998, p.11.

The concern with which the humanitarian costs of sanctions are viewed in some parts of the UN itself was evident in the 1997 ECOSOC report on the 'Relationship Between Sanctions and Respect for Economic Social and Cultural Rights' which noted:

... the inhabitants of a country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security...³⁰

What this and other studies point to is the considerable tension that may exist between the Security Council's pursuit of political goals via sanctions and the Organisation's commitments to the human rights provisions of the charter. As Secretary General Kofi Annan noted in his 1998 *Annual Report on the Work of the Organisation*, 'The international community should be under no illusion: ... humanitarian and human rights goals cannot easily be reconciled with those of a sanctions regime.'³¹

When comprehensive sanctions regimes are imposed and effectively enforced, it is difficult to avoid major humanitarian suffering and severe social dislocation. The impact of sanctions on the Iraqi economy is so large, for example, that, according to an IFRC official; '... any and all relief programs are dwarfed by comparison.'³² Moreover, while post-March 1997 flow of food and medicine under the Oil-for-Food program has reversed the decline in the under-five mortality rate, it will not arrest the insidious decline in the economic development infrastructures of Iraq, in the education and public health systems, and in the institutions of civil society. These may be the most serious long-term cost of sanctions to Iraqi society.

Critics argue that where comprehensive sanctions generate great humanitarian suffering and destroy the social fabric of a target state, without achieving their ostensible political/security goals, support for them will decrease and the UN's moral authority will be undermined.

Measuring Success and Failure

Most studies of the efficacy of sanctions ignore the fact that they may do more than simply seek to coerce states to change their behaviour. Yet, as a recent UNA-USA report pointed out, 'Council members may decide that, even if the prospects for bringing the transgressor to heel are dim, an operational sanctions regime is worth

³⁰ UN Committee on Economic, Social and Cultural Rights, Economic and Social Council, Document number: E/C.12/1997/8. General Comment No. 8 (1997). What is being suggested here is that the Security Council should share some responsibility for the humanitarian suffering.

³¹ Kofi A. Annan, *Partnerships for Global Community*, Annual Report on the Work of the Organisation, 1998, United Nations, New York, p.21.

³² IFRC official cited in Minear et al, *Towards More Humane and Effective Sanctions Management*, p.17.

imposing [in order] to stigmatise, contain and punish the offender and thus uphold international standards.³³

In fact the number of goals, other than coercion, that the Security Council may pursue by imposing sanctions is even greater than the UNA-USA report suggests. A complete list would include the following:

- Stigmatising a transgressor state and in so doing signalling the international community's opposition to, and determination to act against, aggression, terrorism, gross violations of human rights and other major transgressions of international law and norms.
- Containing a target state even when there is little expectation that the measures imposed will lead to the desired change in its behaviour. This is clearly a central US concern with respect to Iraq. Since the Gulf War sanctions have prevented Iraq from spending tens of billions of dollars to rebuild its conventional military capability.
- Deterring other would-be violators of international laws and norms and deterring repeat violations by the target state.³⁴ Even sanctions that do not succeed may contribute to deterrence.
- Serving as an instrument of prevention. A sanctions regime that includes an effective arms embargo will help prevent force modernisation and expansion in the target state. Economic sanctions that reduce GDP levels may force reductions in defence expenditure. Both may reduce the capacity, and hence the incentive, for aggression.
- Building support for the use of force, by ensuring that it not only is, but is seen to be, a measure of last resort. In this sense sanctions can be seen as a crucial rung in an escalation ladder of coercive pressures.
- Responding to the political imperative to 'do something' where the use of force is, for various reasons, ruled out and where mere verbal condemnation would be seen to be too weak.
- Not lifting sanctions may also serve domestic political interests. It is clear, for example, that even if the Clinton Administration came to regard sanctions as ineffective with respect to its Iraq policy, lifting them could generate unacceptable domestic political costs.

Reviews of the utility of sanctions occasionally note, but almost never examine in any detail, the importance of these various roles that sanctions may play. To the extent that they fail to do so they present an unduly pessimistic assessment.

³³ Martin and Laurenti, *The United Nations and Economic Sanctions*, p.19.

³⁴ The UN generally proscribes the use of sanctions as a punishment, even though this may enhance deterrence.

Enhancing the Effectiveness and Reducing the Humanitarian Costs of UN Sanctions

Most reviews/studies of the Security Council's sanctions machinery and implementation and monitoring processes have offered both criticism and detailed proposals for improvement. Some have argued for quite radical structural change, such as the creation of a UN Sanctions Agency, or a major role in sanctions implementation and enforcement for the General Assembly. Many studies propose improvements to the current system for assessing the humanitarian and third party impacts of sanctions.

On the critical issue of the humanitarian impact of sanctions, major reports commissioned by the then Department of Humanitarian Affairs and published in 1995 and 1997 proposed a wide range of reforms.³⁵ Both studies recommended that humanitarian assessments be conducted before, during, and after the imposition of sanctions and argued that the management of sanctions regimes be professionalized. The 1997 study recommended that the Council should, as a matter of policy, affirm that vulnerable populations should be spared the adverse consequences of sanctions, and indicate in advance which exemptions will be considered an essential part of sanctions regimes. The 1995 study argued the need for more creative ways to fund humanitarian projects, e.g. the use of the target state's national resources (as happened in the case of Iraq). It also suggested that the approval process for humanitarian exemptions be made less cumbersome by replacing the current case-by-case system with one based on agreed guidelines.³⁶

The question of assistance to third parties has been addressed by both the General Assembly and the Secretariat. In 1998, an ad hoc experts' group was set up by the Department of Economic and Social Affairs to examine practical measures of assistance to third-party states affected by sanctions. While the recommendations have been presented to the General Assembly, few observers believe that they will be implemented.

Inducements or 'Positive Sanctions'

Over the past decade a number of academic studies have drawn attention to the use of inducements as a means of helping secure compliance with UN resolutions. Inducement strategies on their own are neither realistic nor appropriate. Sanctions are

³⁵ Claudia von Braunmühl & Manfred Kulesa, 'The Impact of UN Sanctions on Humanitarian Assistance Activities', Gesellschaft für Communication Management Interkultur Training mbH, Berlin, December 1995, commissioned by the UN Department of Humanitarian Affairs, p. 74.

Minear et al, *Toward More Humane and Effective Sanctions Management*, Department of Humanitarian Affairs, 1997, pp. 54-55.

³⁶ Ibid. pp.70 and 73.

imposed in response to gross violations of international law. Offering inducements to states to return to compliance with their legal obligations would create a 'moral hazard', rewarding illegal behaviour. But many students of sanctions argue that sanctions regimes are generally biased too far towards coercion and pay too little attention to the use of inducements as a complement to coercive measures. A more effective strategy, they argue, would embrace positive as well as negative sanctions.

The historical and some game theoretic evidence suggest that mixed strategies may work better than coercive strategies on their own. For example, a recent study by Gitty Armani that examined some 22 cases of inducement and coercive strategies intended to change state behaviour found that mixed strategies were three times more effective in promoting desired changes in state behaviour than coercive measures alone.³⁷

In 1993, Australian Foreign Minister Gareth Evans made the case for a 'tit for tat' carrots and sticks strategy, arguing that sanctions should be progressively lifted as the target regime moved towards compliance with UN resolutions. Evans noted that Commonwealth sanctions on South Africa were based on this conditionality principle.³⁸ In similar vein, in 1997, the General Assembly also called for the 'progressive' lifting of sanctions as an inducement to compliance.

Smart Sanctions

Today few dispute that sanctions have, in Kofi Annan's words, been a 'blunt instrument' and that, notwithstanding measures introduced to alleviate the humanitarian impact, more needs to be done. One response to these concerns has been a rapid growth in support for the idea of 'targeted' or 'smart' sanctions.

'Smart' sanctions, like 'smart' weapons systems, are supposedly precision-targeted and designed to reduce 'collateral damage', that is they are designed to coerce regimes without imposing major harm on ordinary citizens. Normal commercial trade would not be disrupted under a smart sanctions regime, though particular categories of imports and exports might well be.

Targeted sanctions may include:

- The freezing of overseas financial assets of government and regime members.

³⁷ Gitty M. Armani, 'A Larger Role for Positive Sanctions in Cases of Compellence?', Working Paper No. 12, Center for International Relations, University of California, Santa Barbara, May 1997. The sample size was relatively small so generalizations cannot be made with any confidence. Armani's findings do, however, corroborate other research on the effectiveness of mixed carrot and stick strategies. The most complete recent study on positive inducements is, David Cortright, ed., *The Price of Peace: Incentives and International Conflict Prevention*, Rowan and Littlefield, Lanham, 1997.

³⁸ Gareth Evans, *Cooperating for Peace*, Allen and Unwin, Sydney, 1993, p. 139.

- The suspension of credits and grant aid from national governments and from international institutions like the UN, the World Bank and the IMF.
- The denial or limitation of access to overseas financial markets.
- Specific trade embargoes: on arms, luxury goods, etc.
- Flight and travel bans.
- Political sanctions intended to stigmatise the target regime, including diplomatic isolation and withdrawal of accreditation.³⁹
- Denial of overseas travel, visas, educational opportunities to regime members and their families.

Advantages:

- Smart sanctions are morally appropriate: when directed against authoritarian states, the regime feels the pain, not the people.
- Minimising humanitarian costs is not only a desirable goal in itself, it also makes the UN less vulnerable to charges that it subverts its own humanitarian commitments by imposing regimes which harm the innocent.
- Minimising humanitarian costs also makes it more difficult for target regimes to rally foreign and domestic support against sanctions as Iraq has sought with some success to do.
- Because smart sanctions do not normally disrupt non-military trade they minimise costs to third party states, reduce incentives to cheat and thus make it easier to sustain sanctions in the long term.
- In denying target regimes the black market opportunities provided by comprehensive sanctions, smart sanctions reduce perverse incentives for elite members to profit from sanctions.
- By reducing the need for humanitarian assistance, smart sanctions deny regimes the opportunities to extend their control over the population through control over the disbursement of aid.
- By reducing the impact on social infrastructures, smart sanctions also reduce long-term damage to educational and health systems, and to the institutions, or proto-institutions, of civil society

Problems

The appeal of smart sanctions is obvious, but they confront two serious difficulties. First, sanctions theory suggests that the greater the costs of sanctions to the regime, the greater the probability of compliance. There is no doubt that comprehensive sanctions

³⁹ This would not include removal of accreditation to functional agencies like WHO and ICAO.

impose far greater costs than smart sanctions, not least because the former include the latter and other measures as well.

Selective trade embargoes - on arms and luxury goods, for example - are attractive in principle, but they are as expensive to enforce effectively as across-the-board trade embargoes, while having a lesser impact. But time-consuming and expensive border and ship searches may not be the only way to prevent 'sanctions busting'. A market-incentive approach could be tried that offered rewards for information leading to the detection of supply-side sanctions violators. Fines imposed on violators could form a pool for the payment of rewards. This approach is similar in principle to that of 'citizen verification' of arms control agreements, which is gaining some support in the arms control community, and to the activities of human rights organisations that report on violations of human rights.

It is true, as sanctions critics point out, that ruthless authoritarian regimes rarely care about the costs that comprehensive sanctions impose on innocent citizens *and* that regime members may profit from sanctions, but comprehensive sanctions also undermine the material basis of regime power far more effectively than smart sanctions. If, as in the case of Iraq, GDP falls precipitately as a consequence of sanctions, it is reasonable to assume that this would be a major source of concern to the target regime and therefor a major lever of suasion for the sanctioning body.

Yet eight years of Iraqi non-compliance remind us that sanctions can reduce a state's GDP by 50% or more and still fail to coerce the regime into full compliance with UN demands.

The smart sanctions option that has generated most interest and has the greatest potential economic impact, involves freezing the overseas financial assets of governments and of regime members. An oft-cited example is the US seizure of Iranian financial assets held in US banks during the Iranian hostage crisis. But this case is of little relevance to the UN. The Security Council never imposes sanctions immediately; there is always debate that will forewarn transgressor regimes that sanctions may be applied. Moreover many in the Organisation believe as a matter of principle, that target states should be warned before sanctions are imposed. The net effect is that regimes under threat of sanctions will always have time to withdraw any overseas assets liable to be frozen before sanctions are implemented. 'Targeting is difficult,' one commentator dryly observed, 'if there is nothing to target.'⁴⁰

If sanctions are to be preceded by pre-assessment of their likely humanitarian impact, as a number of reform proposals have suggested, then the warning time will be lengthened and opportunities to evade the financial sanctions increased still further.

⁴⁰ R. Richard Newcombe. 'Targeted Financial Sanctions', paper presented to Expert Seminar on Targeting Financial Sanctions, Interlaken, March 17-19, 1998, p. 5.



Freezing the overseas financial holdings of target regimes and elite members may be further hampered if fund ownership is disguised (thus negating the utility of name-recognition/searching software packages), or if the accounts are located in tax havens.

Supporters of comprehensive sanctions point out that, unlike financial sanctions, across-the-board trade embargoes, which are the sanctions with the greatest potential impact, cannot be evaded by forewarning.⁴¹ But neither can the suspension of credit, aid and foreign investment that do fall under the rubric of 'smart' sanctions.

An Australian report on the Interlaken Experts' Seminar on Financial Sanctions in March 1998 noted that the diplomats participating were somewhat taken aback by revelations of the difficulties that the effective imposition of financial sanctions confront.

However sanctions against individuals cannot succeed or fail unless they are first attempted, and it is interesting to note in this context that the Security Council has *never* mandated financial sanctions against individual members of a transgressor state. As the Swiss government presentation to the Interlaken seminar pointed out, 'In the case of Iraq and Serbia-Montenegro personal accounts of the political elites, e.g. Presidents Hussein and Milosevic, remained untouched.'⁴²

In Haiti, the assets of individuals belonging to the regime were specifically targeted, but the Security Council resolution only 'urged' states to freeze the funds in question. The resolution was thus not legally binding on member states.

None of the above is intended to argue against smart sanctions -- their benefits are clear -- but it is important not to see them as a quick fix to the many dilemmas that sanctions regimes confront. All proponents of smart sanctions agree that more work is needed to evaluate their potential.

Conclusions

History suggests that only when the interests of major powers are engaged will sufficient economic and political resources be made available to enforce sanctions effectively and provide at least some compensation for disadvantaged third parties. When major power interests are not engaged, 'targeted' sanctions make more sense. They impose far lower

⁴¹ Among other problems that smart sanctions confront are: (1) the costs of monitoring and enforcing selective embargoes will be little different from the cost of enforcing a comprehensive trade ban, but the impact will be much less. (2) very few states have the ability/knowledge to monitor/enforce financial sanctions. The state best equipped in this regard is the US. (3) Denial of travel to elite members and their families, a frequently advocated 'smart' sanction, while no doubt irritating, is not a very powerful form of pressure.

⁴² Swiss government, 'Introductory Statement' to the International Experts' Seminar on Targeting of United Nations Sanctions', Interlaken, 17-19 March, 1998.



humanitarian and third party costs than comprehensive sanctions and they are politically easier to initiate and to sustain in the long term than comprehensive sanctions. For the same reasons they are less likely to bring the sanctions instrument into disrepute. 'Smart' sanctions clearly will not have the same impact as 'fullscope' sanctions, but as we have seen in the case of Iraq, impact does not necessarily translate into efficacy.

Finally it is worth reiterating a recurrent theme in the sanctions literature, namely that sanctions should be seen as a tool of strategy; not a substitute for it. The evidence suggests that the most effective overall sanctions policy is one that is guided by a coherent political strategy, has broad-based political support, seeks to avoid humanitarian costs as far as possible, has a technically competent institutional monitoring and enforcement structure and embraces inducements as well as coercion.



Chairman's Introductory Statement

R. Jeker, Director a.i., Federal Office for Foreign Economic Affairs

1. I would like to thank Assistant-Secretary-General, Mr. Ruggie, for his presentation.

Objectives of the Seminar

2. Allow me to introduce now the objectives of the Seminar and the main elements of its agenda. The Interlaken Seminar has two main objectives.
3. The first objective of the Seminar is to offer an informal platform for the exchange of views on the technical aspects of financial sanctions among UN and government officials engaged in the elaboration and implementation of financial sanctions, and representatives of the private sector involved in the execution of sanctions decisions. The purpose of these exchanges is to expand further our understanding of the technical requirements of effective financial sanctions regimes. Building on the discussions of last year's Seminar and several debates in the course of the last twelve months, this Seminar will explore a number of concrete areas of inquiry linked to the implementation of sanctions regimes, including :
 - the requirements for targeting financial sanctions;
 - techniques to track and freeze financial assets;
 - the management of frozen assets and the issue of debt service;
 - the requirements for national legislation; and
 - the terminology and criteria involved in the drafting of financial sanctions resolutions.
4. The second objective of the Seminar is to contribute positively to the development of the financial sanctions instrument through the elaboration of practical proposals to enhance the efficiency of financial sanctions regimes. As I mentioned, the imposition of targeted financial sanctions is a very complex process that needs to be assessed and analyzed thoroughly. However, several financial sanctions regimes have already been put in place. Beyond the fundamental issues to be explored, there are straightforward practical measures that could be implemented immediately and progressively to assure a certain level of consistency in terms of the technical parameters of sanctions resolutions, the elaboration of proper national legislation, the



development of institutional competencies and expertise, and the definition of priorities in the development of new techniques. This is the reason why this year's Seminar has been oriented toward the elaboration of a work plan to engage states in the development of efficient financial sanctions regimes. We count on your full participation in this effort.

Informal Character of the Discussion

5. At the outset, I would like to underline the technical and informal character of these discussions. Participants are invited to focus on the technical aspects of financial sanctions rather than their political implications, leaving to political authorities, such as states, regional organizations and the UN Security Council, the privilege of determining the political feasibility of these proposals. The technical aspects of the imposition of financial sanctions are already so complex in terms of financial, legal and economic implications, that one should take advantage of this informal setting to concentrate on the technical parameters of financial sanctions. The conclusions and recommendations of this Seminar will be the sole responsibility of the Chair. Comments and observations will not be attributed in the report of the Seminar. In addition, the Chairpersons of the Working Groups, my assistants and myself will remain available throughout the Seminar to ensure that all the relevant perspectives have been properly presented to the group.

Brief Review of Interlaken I

6. Allow me now to make a brief review of the results of the 1st Interlaken Seminar.
7. One of the main results of the first Interlaken Seminar has been the sense that financial sanctions, as one of several targeted sanctions instruments, could offer significant advantages over comprehensive economic embargoes in exerting pressure on the targeted regime while minimizing unintended consequential damage to others, in particular the civilian population.
8. Moreover, the participants developed a clearer understanding of the technical character of financial sanctions instruments. Further areas of enquiry were identified in order to improve the efficiency of targeted financial sanctions and their implementation by states. These include the elaboration of guidelines and models for the technical aspects of resolutions of the UN Security Council and legislation of national authorities pertaining to the imposition of financial sanctions. The attention given from the early stage of the Seminar to the technical character of this project has been the essence of the so-called *Interlaken Process*.

9. More specifically, the participants identified six priority areas of inquiries with regard to the targeting of financial sanctions :
 - methods for the identification of the target, its assets and liabilities, and its vulnerability to financial pressure;
 - methods for controlling financial flows;
 - the need for clear and consistent technical parameters in Security Council decisions on financial sanctions;
 - the need for clear and consistent national legislation for the implementation of financial sanctions by Member states;
 - administrative and institutional requirements for the monitoring of the implementation of financial sanctions by Member states;
 - the elaboration of humanitarian provisions to ensure that financial sanctions will not affect the supply of humanitarian goods and services.

10. In addition, there was a common understanding on several issues related to sanctions management. In particular, participants generally agreed that financial sanctions should not be seen as means to confiscate property, but rather freeze the target's assets and block its transactions for the duration of the sanctions. They also agreed that while some UN Resolutions explicitly allow asset management, they often do not define clearly its scope. The question, how asset management shall be dealt with by states, should be made clear through technical guidelines.

11. The participants also considered the issue of debt service. The failure to collect debt service payments under financial sanctions offers substantial relief to the target state at the expense of sanctioning states and their economic entities. Since debt service payment undertakings are legally binding obligations, new means still need to be found in future sanctions resolutions to collect

12. A final point of the Seminar was the consideration paid to exit clauses and inducement measures. The participants agreed that more serious and specific consideration should be given when designing sanctions programs as to how the sanctions regimes should be terminated. The participants expressed interest in measures to induce targets to abide by the sanctions control mechanisms and deposit their assets in controlled accounts for the duration of the sanctions. Interest was also expressed in considering of a „carrot and stick“ approach to sanctions initiatives, whereby positive incentives to motivate changes in behavior are built into the sanctions regime.

13. In summary, the 1st Interlaken Seminar has been successful in describing

most of the important issues involved in the implementation of targeted financial sanctions. The key conclusion was that if targeting financial sanctions should be seen as successful, they require not only the use of specific techniques to locate and freeze assets, but depend also on enhanced cooperation by all countries, in particular all the major financial centers, and will require clearer and more consistent resolution texts with the appropriate technical guidelines for their interpretation. It has been encouraging to see that the *Interlaken Process* has been well received in United Nations circles and among academics. This attitude was also confirmed at a high level Symposium last December in New York, sponsored by some major think tanks in association with the UN.

Key Aspects of the Current Debate on Targeted Sanctions and Financial Sanctions

14. I would like to review here, very briefly, some of the key aspects of the debates on targeted sanctions and, in particular financial sanctions, over the past 12 months.
15. The most important development over the last year has been the acknowledgment among scholars and policy makers that targeting sanctions implies a new approach to the imposition of sanctions, both in terms of time frame and expertise. Traditionally, sanctions were perceived as a vehicle to transmit a strong message more than a regime to exert pressure over the long run. In this context, time has been seen of the essence of traditional regimes, the apparent objective being to hit hard and hit fast. However, this approach has shown its limitations over the long run. Proponents of targeted sanctions advocate for a shift of approach from the current quick response towards longer-term, in-depth pressure on the targeted elite, as part of an overall political process to resolve the conflict situation. In terms of expertise, targeted sanctions imply a far better understanding of the vulnerabilities of the targeted state than comprehensive embargoes, prior to the imposition of sanctions and throughout the duration of the regimes.
16. One of the shortcomings of this development is a sense that targeted sanctions demand a new level of administrative and expert resources unavailable in most countries and difficult to mobilize in the present circumstances within the UN system. Targeted financial sanctions impose major technical and technological requirements on sanctions authorities, while traditional comprehensive embargoes simply require the closure of the borders with the targeted state.
17. From a different perspective, targeted sanctions have been seen as part of a

new approach to international crises, not so much as a rapid punitive response to violations of international standards, but as part of a longer and comprehensive engagement toward the restoration of international peace. If targeted sanctions cannot be seen as more effective than economic embargoes, they may be more effective over the long run in inducing policy changes as they preserve civil society's capacity and infrastructure.

18. Moreover, it has been argued that the credible threat of the use of targeted sanctions as part of preventive diplomacy may offer significant leverage over the targeted states, as uncertainty surrounding the financial future of the targeted states is far more costly than the damage caused by the actual sanctions. This sort of engagement requires strategic planning and various inducement measures. It is in this context that targeted sanctions have been perceived as potentially adding value to the international community's response capacity, especially for exerting pressure on individual members of the targeted country's elite, strengthening a sense of accountability of the targeted country's leadership and making them more vulnerable to international pressure.
19. On the basis of the recent *Note by the President of the Security Council on the Work of Sanctions Committees* (S/1999/92 of 29 January 1999), we observed that Security Council members have also undertaken major efforts in better targeting sanctions regimes. The awareness of Security Council members of the humanitarian impact of sanctions has been growing, encouraging the Council to consider more targeted sanctions. The requirements in terms of time and expertise that I just mentioned poses, in the present circumstances, serious challenges to the Council's efforts to better target sanctions regimes. The debates surrounding the development of financial sanctions have permitted these points to be addressed seriously. In particular, there have been numerous proposals circulated for the strengthening of the role of the Sanctions Committees in terms of reporting and monitoring body, where the introduction of expert knowledge could be made possible.
20. If the targeting of sanctions since Interlaken 1 has continued to gain momentum, the life of financial sanctions has been somehow more difficult. Several questions have been raised concerning the technical feasibility of the targeting of financial sanctions. The two major concerns that have been articulated refer to the inherent difficulty of locating and freeze targeted assets on short notice and the opportunities available on the international financial market to conceal the true identity of assets owners. As we will see in the course of this Seminar, although these questions of speed and identification are valid, they need to be addressed at a technical level with the appropriate knowledge of existing methods for tracking financial assets and



monitoring financial flows. As we will see in Working Group 1, new technologies and information-gathering techniques may offer valuable tools to track financial transactions and uncover targeted assets. Therefore, beyond these techniques, our attention should focus on the issue of cooperation between states and the requirements for their consistent implementation.

21. Let me turn now to the detailed agenda of work for the coming days.
22. As you saw from the program distributed to you, this edition of the Seminar focuses primarily on the undertakings of specific working groups. We shall not spend time listening to the delivery of papers but rather concentrate on working out concrete results in the three areas identified. Our understanding when we left last year was that progress will only be achieved when we will have concrete proposals before us. In this context, three steering groups were established following Interlaken I to examine on a preliminary basis practical measures to enhance the efficiency of financial sanctions with regard to the targeting of financial sanctions, national legislation, and the building blocks for sanctions resolutions. Since then, considerable reflection has taken place in these steering groups. I would like to pay a special tribute to the chairs and members of these groups. The results of their work will be presented this evening and then discussed over the next days.
23. The chairs of the working groups will have to decide how they want to organize their work. I believe that there could be an advantage in creating additional subgroups to prepare in-depth analyses on a number of specific questions to which we will have to provide answers. I have agreed with the Chairs that we will pragmatically adjust our program according to the prevailing as they develop.
24. Without fixing the order of preference or priority, I would like to mention a number of these questions to which we need conclusive answers and recommendations by Wednesday:

Working Group 1

- a) How do we obtain the necessary knowledge and information about the economic, banking and financial system of the target to determine whether we have sufficient leverage? What are the elements to be examined and how do we deal with these questions in a specific situation, both in institutional and administrative terms?

E.g.: Who has traditionally been the principal trading partners of the target and principal corresponding banks ?



- b) How to deal with the debt issue? A short paper that we prepared will present today's situation and the questions at stake.
- c) How do we establish lists of targeted individuals and entities? Should it be a UN list, or national lists combined, based on authorized exchanges of information? What are the legal issues involved? Do the concerned individuals possess a means of recourse if they feel that their identification with the target is unjustified? Do we aim to cover everybody and narrow the list once the sanctioned party has given proof or adopt an inverse strategy (top-down vs. bottom-up approach)?
- d) How do we identify the assets of the target? Is the speed of money transfer relevant in evading sanctions? Are offshore centers a loophole?
- e) How do we deal with barter trade which could become a preferred tool for circumventing financial sanctions and could be further facilitated through trading on the Internet? What minimal trade measures would need to be introduced to accompany targeted financial sanctions?
- f) How do we deal with Internet banking which requires minimal involvement from financial institutions? How would sanctions apply to Internet transactions? How do we deal with the most common schemes to evade sanctions such as :
- Back-to-back loans;
 - Asset pledges;
 - Sale of property; and
 - Trade triangulation.
- g) How can we benefit from existing measures dealing with money laundering? While accepting that money laundering and financial sanctions pursue fundamentally different objectives and should therefore not be mixed up, the question remains whether techniques and legislation to combat money laundering could also be of benefit if and when a financial sanctions regime is introduced?
- h) Last but not least, how can the necessary expertise be introduced within the UN Secretariat, the UN Sanctions Committees and implementing states to deal with changed patterns brought about by targeted financial sanctions?

25. Under all the points mentioned and there may be more of them, we should

aim towards:

- analyzing and understanding the problem;
- formulating conclusions and recommendations; and, if necessary
- suggesting what further work would be needed and how it should be organized.

Under Working Group 2

26. Working Group 2 will need to have a close look at whether the few suggested elements for a framework law cover all the technical requirements for the proper implementation of financial sanctions and whether further elements need to be added. Moreover, the Group might want to consider whether countries have sufficient knowledge of how a secondary legislation would need to be formulated, and consider further matters related to this topic.
27. Concrete suggestions might be useful as to how to promote the dissemination of this knowledge and how countries interested in pursuing these recommendations could be offered concrete assistance (technical and financial) to achieve this goal.

Under Working Group 3

28. Working Group 3 will need to review the consistency and comprehensiveness of the proposed language for sanctions resolutions and its definitions. We have also received a detailed paper from Mr. Lennan from the European Commission. To make the new resolution texts fully transparent and understood in the capitals of implementing states and to serve as a basis for implementation by government officials and financial institutions, detailed explanations and commentary on every operative paragraph might be further required. A question of utmost importance to the financial sector dealing with the implementation of financial sanctions is that the technical terms used in sanctions resolutions should correspond with technical terms used globally in the financial sector, in inter-bank communications, documents and contracts.

Institutional Requirements

29. Let me reiterate here one thing: Targeted sanctions can only be successful if we attract the participation of all countries. Therefore, improved monitoring of the targeted states' compliance by Sanctions Committees is of great importance. Proper competencies and resources must be delegated to the Sanctions Committees and the UN Secretariat in this regard. We shall pay



some attention to the kind of institutional requirements one could envisage to assist the Sanctions Committees, the UN Secretariat and national sanctions authorities in developing further their capacity to manage targeted financial sanctions.

30. These are some of the important questions we would like to resolve until Wednesday. It might be ambitious, but a lot has been already achieved. We should remind ourselves, however, that considering the complexity of the issues involved, financial sanctions can hardly be made perfect. We should develop an incremental approach to these difficulties and determine what concrete measures can be undertaken today to ensure that financial sanctions are being made more effective, and what areas need to be further studied. Financial sanctions deserve to become part of the various tools at the disposal of the UN Security Council that, combined, could be used for the maintenance of international peace and security. It is upon expert meetings like this one that the difficult but important task of developing these tools falls.
31. As a final word, I would like to extend again my appreciation to those who worked diligently over the last 12 months to prepare this Seminar and its background material. It is now time to test these observations and engage in a thorough and, we hope, interesting debate on the practical implications of targeted financial sanctions.

Thank you.



A Brief Overview of Security Council Applied Sanctions

Informal Background Paper prepared by the Department of Political
Affairs United Nations Secretariat

Executive Summary

Sanctions should be resorted to under Chapter VII of the United Nations Charter when considered by the Security Council to be absolutely necessary. Once the Council has decided on a set of mandatory measures, all States should support the effective implementation of such measures and cooperate with the Sanctions Committee and its Secretariat. Ideally, when new sanctions regimes are established, they should be endowed with a credible monitoring arm and the Sanctions Secretariat should be equipped with the necessary resources and specialised expertise to enable it to administer effectively the sanctions regime. The Secretariat should be ready to undertake, at the request of the Security Council or of the respective Sanctions Committee, analysis and assessment of the effectiveness of the mandatory measures, their possible humanitarian impact on the civilian population as well as the collateral effects they may have on third States. The sanctions instrument could be further enhanced and applied with more specificity and selectivity based on a careful analysis of the situation and taking into account the special characteristics of the targeted regime or group. "Smart" sanctions alone may not be sufficient to induce compliance by the target with the Council's resolutions. For this reason, they must be complemented by other inducement efforts. The value of "smart" sanctions lies in the fact that they would be sharply focused on the targeted leadership or group, with little if any negative impact on civilian populations and third States. In addition to being an effective means of conflict resolution, targeted or "smart" sanctions, could be an important part of an overall strategy for preventive diplomacy.

Basic Information on Security Council Sanctions Regimes

Current Sanctions Regimes

Iraq

The Imposition of Sanctions

Following the invasion of Kuwait by Iraq on 2 August 1990, the Security Council, on 6 August, adopted resolution 661 (1990), imposing under Chapter VII of the Charter comprehensive and mandatory sanctions on Iraq and deciding not to recognise any



regime set up in Kuwait by the occupying Power. The Council also established a committee (known informally as the Sanctions Committee) to monitor implementation of the sanctions, which prohibited the export of all commodities and products from Iraq, and the sale and supply of all products and commodities, including weapons and other military equipment, as well as the transfer of funds, to Iraq. Exceptions to the sanctions regime were made for supplies intended strictly for medical purposes and for certain basic foodstuffs.

On 25 August 1990, in resolution 665 (1990), the Council called upon Member States co-operating with the Government of Kuwait and deploying maritime forces to the area to use such measures as might be necessary "to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)." The Council also requested Member States to use, as appropriate, the Council's Military Staff Committee to coordinate their actions.

The Security Council addressed the humanitarian situation in Iraq and Kuwait in its resolution 666 (1990), adopted on 13 September 1990, in which it instructed the Sanctions Committee to keep the situation regarding foodstuffs in Iraq and Kuwait under constant review, paying particular attention to children under 15 years of age, expectant mothers, nursing mothers, the sick and the elderly.

On 25 September 1990, in its resolution 670 (1990), the Security Council explicitly confirmed that the sanctions against Iraq applied "to all means of transport, including aircraft" and elaborated further measures affecting shipping and air transport. Specifically, the Security Council decided that States would "deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances" and that States were to deny overflight permission to any aircraft destined to land in Iraq or Kuwait. The Council also called upon States to detain any ships of Iraqi registry which entered their ports and were in violation of the sanctions resolution.

Sanctions Regime after the Liberation of Kuwait

Following the successful liberation of Kuwait, the Security Council adopted, on 3 April 1991, resolution 687 (1991) which represented one of the most complex and far-reaching sets of decisions ever taken by the Council. The resolution sought to involve Iraq co-operatively in post-war measures to build lasting peace and stability in the region. At the same time, enforcement measures remained in effect, including the sanctions regime and the Council's authorisation to Member States to use "all necessary means" to uphold Iraqi compliance.

The 34 operative paragraphs of the resolution were divided into nine parts and set out in great detail the terms for a formal cease-fire to end the conflict and restore security

and stability to the area. Its major requirements included boundary settlement and peacekeeping aspects, the elimination of weapons of mass destruction, the non-acquiring by Iraq of nuclear-weapons capability, the return of Kuwaiti property, creation of the Compensation Fund and repatriation issues. As far as the sanctions are concerned, the Security Council decided, under section F of the resolution, that the measures first imposed under resolution 661 (1990) against exports to Iraq would not apply to foodstuffs and to materials and supplies for essential civilian needs, and that it would review this part of the sanctions regime every 60 days, taking into account the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Council for the purpose of determining whether to reduce or lift the prohibitions. The Council also stated that the ban on Iraqi oil exports would be lifted once the Council approved the program for the Compensation Fund called for in section E, and once it agreed that Iraq had completed all the actions pertaining to the weapons provisions of resolution 687 (1991). In the mean time, exceptions to the oil embargo would be approved by the Sanctions Committee when needed to assure adequate financial resources to provide for essential civilian needs in Iraq. Also in section F, the Council specified the categories of weapons to which the arms embargo mandated by resolution 661 (1990) should continue to apply.

By resolution 700 (1991), the Council approved the guidelines, which itemised the types of arms, *matériel* and activities proscribed by the Council and defined the responsibilities of the Sanctions Committee in this regard. The provisions relating to both the oil and the arms embargoes would be reviewed by the Council every 120 days, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region. By resolution 715 (1991), adopted on 11 October 1991, the Security Council, inter alia, requested the Sanctions Committee, the Special Commission and IAEA to develop a mechanism for monitoring future sales or supplies by other countries to Iraq of items relevant to the implementation of section C of resolution 687 (1991) and other relevant resolutions.

By resolution 1051 (1996), adopted on 27 March 1996, the Security Council established an export/import monitoring mechanism for dual-use items (contained in Annex 1 of S/1995/1017). The mechanism was developed pursuant to paragraph 7 of resolution 715 (1991) by the Sanctions Committee together with the Special Commission and the Director-General of the IAEA. By the same resolution, the Security Council also approved the general principles to be followed in implementing the monitoring mechanism contained in the letter from the Chairman of the Special Commission to the Chairman of the Sanctions Committee (Annex to S/1995/1017).

By resolution 1115 (1997), adopted on 21 June 1997, the Security Council decided not to conduct the reviews provided for in paragraphs 21 and 28 of resolution 687 (1991) until after receipt of the consolidated progress report-t of the Special Commission, due



on 11 October 1997, at which time the reviews would resume in accordance with resolution 687 (1991).

By resolution 1134 (1997), adopted on 23 October 1997, the Security Council expressed the firm intention, if the Special Commission reported that Iraq was not in compliance with paragraphs 2 and 3 of resolution 1115, or if the Special Commission did not advise the Council in the report of the Executive Chairman due on 11 April 1998 that Iraq was in compliance with paragraphs 2 and 3 of resolution 1115 (1997), to adopt measures which would oblige all States to prevent without delay the entry into or transit through their territories of all Iraqi officials and members of the Iraqi armed forces who were responsible for or participated in instances of non-compliance with paragraphs 2 and 3 of resolution 1115 (1997). By the same resolution, the Council also decided not to conduct the reviews provided for in paragraphs 21 and 28 of resolution 687 (1991) until receipt of the consolidated progress report of the Special Commission, due on 11 April 1998, after which time the reviews would resume in accordance with resolution 687 (1991), beginning on 26 April 1998.

By resolution 1137 (1997), adopted on 12 November 1997, the Security Council decided, in accordance with paragraph 6 of resolution 1134 (1997), that States should without delay prevent the entry into or transit through their territories of all Iraqi officials and members of the Iraqi armed forces who were responsible for or participated in instances of non-compliance detailed in paragraph 1 of the resolution, and requested the Sanctions Committee to develop guidelines and procedures as appropriate for the implementation of those measures. By the same resolution, the Council also decided that the reviews provided for in paragraphs 21 and 28 of resolution 687 (1991) should resume in April 1998 in accordance with paragraph 8 of resolution 1134 (1997), provided that the Government of Iraq had complied with paragraph 2 of the resolution.

Since the Council received a report in which the Executive Chairman of the Special Commission reported on 6 May 1998 that the requirements of paragraph 6 of resolution 1137 (1997) were sufficiently implemented (S/1998/377), the prohibitions concerning Iraqi officials contained in paragraph 4 and 5 of the resolution were terminated one day after his report was received (no official document to this effect was issued). By resolutions 1154 (1998), 1194 (1998) and 1205 (1998), the Council reaffirmed its intention to act in accordance with the relevant provisions of resolution 687 (1991) on the duration of the prohibitions referred to in that resolution and noted that by its failure so far to comply with its relevant obligations Iraq had delayed the moment when the Council could do so.

Oil-for-Food Arrangements

In an effort to relieve the suffering of civilians in Iraq and in the Iraq/Turkey and Iraq/Iran border areas, the Security Council devised a scheme - the so-called "oil-for-

food" formula - by which exports of Iraqi oil could be used to pay for the provision of foodstuffs and medicines as well as for the Compensation Commission, UNSCOM and other United Nations activities mandated by resolution 687 (1991).

On 15 August 1991, the Security Council adopted resolution 706 (1991), which set out the terms for the limited sale of Iraqi oil and oil products, during a period of six months, primarily to increase the level of funds available for humanitarian programs and for several of the operations mandated by resolution 687 (1991).

On 19 September 1991, the Security Council, in resolution 712 (1991), approved a basic structure for the implementation of resolution 706 (1991). The Council also confirmed that funds from other sources could be deposited in the escrow account as a sub-account and would become immediately available to meet Iraq's humanitarian needs without the deductions specified in the resolutions. By a decision of 15 October 1991 the Sanctions Committee set out a series of procedures to be employed in the proposed scheme of sales. By resolution 778 (1992), adopted on 2 October 1992, the Council decided, inter alia, that all States should transfer to the escrow account provided for in resolutions 706 (1991) and 712 (1991) those funds of Iraq representing the proceeds of sale of Iraqi petroleum or petroleum products. Resolutions 706 (1991) and 712 (1991) have not been implemented to date.

On 14 April 1995, acting under Chapter VII of the Charter, the Security Council adopted resolution 986 (1995), by which it provided Iraq with another opportunity to sell oil to finance the purchase of humanitarian goods and various mandated United Nations activities concerning Iraq. The new proposal permitted the sale of \$2 billion of Iraqi oil (\$1 billion in each of two 90-day periods) subject to certain conditions additional to those contained in resolutions 706 (1991) and 712 (1991), and reaffirmed "the commitment of all Member States to the sovereignty and territorial integrity of Iraq" and describing the new exercise as "temporary".

On 20 May 1996, a Memorandum of Understanding (MOU) between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995) was concluded (S/1996/356*). Subsequently, on 8 August 1996, the Sanctions Committee adopted procedures for the discharge of its responsibilities as required by paragraph 12 of Security Council resolution 986 (1995) (S/1996/636*).

Paragraph 1 of resolution 986 (1995) which authorised States to permit the Import of petroleum and petroleum products originating in Iraq came into force at 00.01 Eastern Standard Time on 10 December 1996 following the submission on 9 December 1996 of the Secretary-General's report to the President of the Security Council pursuant to paragraph 13 of that Resolution (S/1996/1015). By resolution 1111 (1997), adopted on 4 June 1997, the Security Council decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12, should remain in force for another



period of 180 days beginning at 00.01 hours, Eastern Daylight Time, on 8 June 1997. By resolution 1129 (1997), adopted on 12 September 1997, the Security Council decided that the provisions of resolution 1111 (1997) should remain in force, except that States were authorised to permit the import of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars within a period of 120 days from 00.01. Eastern Daylight Time, on 8 June 1997 and, thereafter, a sum not exceeding a total of one billion United States dollars within a period of 60 days from 00.01 Eastern Daylight Time, on 4 October 1997.

To facilitate and further expedite the processing of humanitarian supplies to Iraq under the oil-for-food Arrangement, the Committee adopted a number of points of understanding in the discharge of its responsibilities in implementation of the oil-for-food program. By resolution 1153 (1998) the Council endorsed the recommendation of the Secretary-General for a considerable increase of allowable oil sales by Iraq in order to meet the humanitarian needs of the people of Iraq. By resolution 1175 (1998), the Security Council decided that the funds in the escrow account produced pursuant to resolution 1153 (1998) up to \$300 million may be used to meet the expenses that followed directly from contracts for spare parts and equipment for the pipeline. By resolution 1210 (1998) adopted on 24 November 1998, the Security Council once again decided to extend the oil-for-food program at the expanded scale, for another 180-day period.

Review of Sanctions

Pursuant to paragraph 21 of Resolution 687 (1991), the Security Council has so far conducted 40 reviews of the sanctions regime established in paragraph 20 of that Resolution. Twenty of these Council reviews were at the same time reviews of the sanctions regime established in paragraphs 22, 23, 24 and 25 of Resolution 687 (1991), as referred to in paragraph 28 of that resolution, and in paragraph 6 of Resolution 700 (1991). No modification of the sanctions regime resulted from these reviews. On 21 June 1997, reviews of sanctions as provided for in paragraphs 21 and 28 of resolution 687 (1991) were suspended by resolutions 1115 (1997), 1134 (1997) and 1137 (1997) respectively.) Sanctions reviews were resumed on 27 April 1998, and suspended again pursuant to paragraph 3 of resolution 1194 (1998) adopted on 9 September 1998.

Reports of the Sanctions Committee

In accordance with paragraph 6, subparagraph (f), of the guidelines (S/22660, Annex) to facilitate full international implementation of paragraphs 24, 25 and 27 of Security Council resolution 687 (1991), approved by Security Council resolution 700 (1991), the Committee reports at 90-day intervals to the Security Council on the implementation of the arms and related sanctions against Iraq contained in the relevant resolutions. The latest report, the thirtieth, was submitted to the Security Council on 9 November 1998.



Pursuant to the Note by the President of the Security Council of 29 March 1995 (S/1995/234), the Committee submitted on 26 August 1996 to the Security Council the first comprehensive report (S/1996/700) on its major activities in the past few years. The second annual report was submitted to the Security Council on 27 August 1997 (S/1997/672).

Libyan Arab Jamahiriya

The adoption and imposition of sanctions measures against the Libyan Arab Jamahiriya by the Security Council is a special case which does not imply an internal situation of a country or aggression against another State, but rather its non compliance with a specific demand of the Council, which had determined that terrorist activity against international aviation constituted a threat to international peace and security. The Security Council, having determined that the Government of the Libyan Arab Jamahiriya had failed to comply with its demand for handing over two of its nationals suspected of terrorist activity against international aviation, and acting under Chapter VII of the Charter of the United Nations, by resolution 748 (1992), adopted on 31 March 1992, imposed a regime of mandatory sanctions relating to various aspects of air links with, the supply of arms and military weapons to, reduction and restriction of the activities of the diplomatic and consular missions of and restrictions on the known or suspected terrorist nationals of the Libyan Arab Jamahiriya.

Before adopting resolution 748 (1992), the Security Council, in its resolution 731 (1992) on 21 January 1992, condemned the destruction of Pan American flight 103 and Union de Transports Aériens 772 and strongly deplored the fact that the Libyan Government had not responded effectively to the requests to cooperate fully in establishing responsibility for the terrorist acts referred to above. By resolution 883 (1993), adopted on 11 November 1993, the Security Council, acting under Chapter VII of the Charter of the United Nations, expanded the sanctions against the Libyan Arab Jamahiriya to a freeze on some Libyan assets abroad, tightening of the aerial embargo and banning of certain types of equipment used at oil transportation terminals and refineries.

On 12 August and 9 December 1991, the Security Council held informal consultations pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya in the light of the compliance by the Libyan Government with paragraphs 1 and 2 of the resolution, taking into account as appropriate, any reports provided by the Secretary-General in his role as set out in paragraph 4 of resolution 731 (1992). So far, the Security Council has undertaken 21 such reviews.

At each review, the members found that conditions did not exist for modifying the regime of sanctions established by the Council in paragraphs 3 to 7 of resolution 748 (1992). On 6 March 1998, the Council conducted, in informal consultations, the 18th



review of the sanctions regime and again decided that conditions did not exist for modifying the measures imposed by the Council. It was, however, also agreed to hold a formal meeting of the Council on 20 July 1998 in order to allow for a public debate on Libya. At the meeting, several aspects of the sanctions regime on the Libyan Arab Jamahiriya was discussed at this meeting, including the recent decision of the International Court of Justice with regard to the Lockerbie issue.

At the 3920th meeting of the Security Council, held on 27 August 1998, the Security Council adopted resolution 1192 (1998) by which it, *inter alia*, reaffirmed that the measures set forth in resolutions 748 (1992) and 883 (1993) remain in effect and binding on all Member States. It also reaffirmed the provisions of paragraph 16 of resolution 883 (1993), and decided that the aforementioned measures should be suspended immediately if the Secretary-General reported to the Council that the two accused with the bombing of Pan Am flight 103 had arrived in the Netherlands for the purpose of a trial before the court described in paragraph 2 of resolution 1192 (1998), or have appeared for trial before an appropriate court in the United Kingdom or the United States, and that the Libyan Government had satisfied the French judicial authorities with regard to the bombing of UTA 772 (SC/6566).

Somalia

The sanctions against Somalia were imposed by the Security Council on 23 January 1992 as a response of the international community to the rapid deterioration of the situation in that country involving bloody factional fighting resulting in heavy loss of human life and widespread material damage and a consequent refugee crisis. The Council determined that such a situation constituted a threat to international peace and security, and acting under Chapter VII of the Charter of the United Nations, by resolution 751 (1992), imposed a general and complete embargo on all deliveries of weapons and military equipment to Somalia. The engagement of the Organisation of the Islamic Conference, the Organisation of African Unity and the League of Arab States in national reconciliation, unity and political settlement in Somalia, was strongly encouraged by Security Council resolution 746 (1992) adopted on 17 March 1992.

By resolution 767 (1992), adopted on 27 July 1992, the Security Council stressed the need for the observance and strict monitoring of the general and complete embargo on all deliveries of weapons and military equipment to Somalia. By resolution 794 (1992), adopted on 3 December 1992, the Security Council, acting under Chapter VII and VIII of the Charter, called upon States, nationally or through regional agencies or arrangements, to use such measures as may be necessary to ensure strict implementation of resolution 751 (1992). The same appeal was reiterated in resolution 775 (1992), adopted 28 August 1992 and in subsequent resolutions 814 (1993), 886 (1993), adopted on 26 March 1993 and 18 November 1993, respectively. The Council



also reaffirmed this request to States in its resolutions 897 (1994) and 923 (1994), 954 (1994) adopted on 4 February 1994, 31 May 1994, 4 November 1994, respectively.

Angola

It should be noted that the Security Council sanctions imposed by resolution 864 (1993), on 15 September 1993, were targeted only at the National Union for the Total Independence of Angola (UNITA) which disputed the results of the United Nations supervised elections in 1991. The regime of mandatory sanctions against UNITA comprises the sale or supply to UNITA of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment and spare parts for the afore-mentioned, as well as of petroleum and petroleum products. The Security Council has been monitoring the situation in Angola closely and by the resolutions listed below, inter alia, encouraged the Government of Angola and UNITA to consolidate the peace process at a faster pace on the basis of the "Acordos de paz", the Lusaka Protocol and relevant Security Council resolutions.

By its resolutions 890 (1993), 903 (1994), 922 (1994), 932 (1994), 945 (1994), 976 (1995), 1045 (1996), 1055 (1996), 1064 (1996), 1075 (1996) and 1087 (1996), the Security Council reaffirmed the obligation of all States to implement fully the sanctions provisions of resolution 864 (1993). The Council also decided, in view of the direct negotiations continuing between the parties involved, not to impose the additional measures against UNITA contained in paragraph 26 of resolution 864 (1993). In resolutions 1055 (1996), 1064 (1996), 1075 (1996) and 1087 (1996), the Council reiterated that continuing acquisition and delivery of weapons to Angola would be contrary to paragraph 12 of resolution 976 (1995) and would undermine confidence in the peace process. In resolutions 1075 (1996), 1098 (1997), and 1102 (1997), the Security Council expressed its readiness to consider the imposition of additional measures against UNITA, including, inter alia, those specifically mentioned in paragraph 26 of resolution 864 (1993).

On 28 August 1997, the Security Council, acting under Chapter VII of the Charter of the United Nations, by resolution 1127 (1997), imposed additional measures against UNITA such as restrictions on the travel of senior members of UNITA and adult members of their immediate families, the closing of UNITA offices, the prohibition of flights of aircraft by or for UNITA and the supply of any aircraft or aircraft components to UNITA and the insurance, engineering and servicing of UNITA aircraft. The foregoing measures do not apply to cases of medical emergency or to flights or aircraft carrying food, medicine, or supplies for essential humanitarian needs, as approved in advance by the Security Council Committee established pursuant to resolution 864 (1993) concerning the Situation in Angola. By paragraph 2 of resolution 1130 (1997) and paragraph 6 of resolution 1135 (1997) of 29 September and 29



October 1997 respectively, the foregoing measures came into force on 30 October 1997.

On 12 June 1998, the Security Council, acting under Chapter VII of the Charter of the United Nations, unanimously adopted resolution 1173 (1998) which requires States, except Angola, to freeze UNITA funds within their territory and ensure that those funds are not made available directly to or for the benefit of UNITA as an organisation or of senior officials of UNITA or adult members of their immediate families designated pursuant to paragraph 11 of resolution 1127 (1997). It also requires States, in areas of Angola to which State administration has not been extended, to take the necessary measures to prevent all official contacts with UNITA leadership, to prohibit the import of diamonds from Angola that are not controlled through the Government's Certificate of Origin; to prohibit the sale or supply to persons or entities in areas of Angola to which State administration has not been extended, by their nationals or from their territory, or using their flag vessels or aircraft, of equipment used in mining or mining services as well as motorised vehicles or watercraft or spare parts for such vehicles, or ground or waterborne transportation services. The foregoing measures came into force on 1 July 1998.

Further, the Council, by resolution 1221 (1999) expressed its readiness to consider the imposition of additional measures, including in the area of telecommunications, on the basis of a report to be prepared by the Committee, drawing on the expertise of relevant bodies and organisations, including the International Telecommunication Union. The Council also encouraged the Chairman of the Committee to consult with the Organisation of African Unity (OAU) and the Southern African Development Community (SADC) on ways to strengthen the implementation of the measures. In accordance with paragraph 8 of Security Council resolution 1221 (1999), the Committee submitted its report to the Council (S/1999/147), supporting recommendations made by the Secretary-General in his report (S/1999/49), on, *inter alia*, improving the implementation of the measures imposed on UNITA. The Security Council, at informal consultations held on 18 February 1999, considered and approved the Committee's report and endorsed the recommendations contained therein (S/1999/168). Paragraph 8 of Security Council resolution 1229 (1999) of 26 February 1999 endorsed the recommendations contained in the report of the Committee and reiterated its readiness to take steps to reinforce the measures against UNITA, as well as called upon all Member States to implement fully these measures.

Rwanda

The Security Council adopted the sanctions measures in the case of Rwanda as a response of the international community to the internal situation in that country resulting in the death of many thousands of innocent civilians, the internal displacement of a significant percentage of the Rwandan population, and the massive exodus of



refugees to neighbouring countries. The Security Council, disturbed by the magnitude of the human suffering caused by the conflict in Rwanda and concerned that the continuation of the situation in that country constituted a threat to peace and security in the region, and acting under Chapter VII of the Charter of the United Nations, by resolution 918 (1994), adopted on 17 May 1994, imposed a regime of mandatory sanctions against Rwanda relating to the sale or supply to Rwanda of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts. The support by the Security Council for the efforts of the Organisation of African Unity (OAU) and its organs, as well as the efforts of the Tanzanian Facilitator, in providing diplomatic, political, and humanitarian support for the implementation of the relevant resolution of the Council, should be noted.

By resolution 872 (1993), the Security Council established the United Nations Assistance Mission for Rwanda (UNAMIR). By resolution 997 (1995), the Security Council affirmed that the restrictions imposed under Chapter VII of the Charter of the United Nations by resolutions 918 (1994) applied to the sale or supply of arms and matériel specified therein to persons in the States neighbouring Rwanda, if that sale or supply was for the purpose of the use of such arms or matériel within Rwanda. In the same resolution, the Council called upon the States neighbouring Rwanda to take steps, with the aim of putting an end to factors contributing to the destabilisation of Rwanda, to ensure that such arms and matériel were not transferred to Rwandan camps within their territories. By resolution 1005 (1995), the Security Council, notwithstanding the restrictions imposed in paragraph 13 of resolution 918 (1994), approved the supply of appropriate amounts of explosives intended exclusively for use in established humanitarian demining programs. By resolution 1011 (1995), the Rwanda Sanctions Committee is required to report to the Council on notifications received from States on the export of arms and related matériel to Rwanda as well as notifications of imports of arms and related matériel made by the Government of Rwanda. Accordingly, four notifications received by the Committee were reported to the Security Council (S/1996/329/Rev.1, S/1996/3967Rev.1, S/1996/407/Rev.1 and S/1996/697). Also, the Secretary-General was requested to report to the Council within 6 months of the date of adoption of the resolution, and again within 12 months, regarding, in particular, the export of arms and related matériel to the Government of Rwanda, on the basis of reports submitted by the Committee. The reports are contained in documents S/1996/202, S/1996/663/Rev.1 and S/1996/663/Rev.1/Add.1.

In accordance with paragraph 8 of the resolution, the restrictions imposed by paragraph 13 of resolution 918 (1994) on the sale or supply of arms and related matériel to the Government of Rwanda were terminated on 1 September 1996, following consideration of the second report of the Secretary-General, and subsequently no notifications are required to be submitted by States of exports from their territories of arms or related matériel to the Government of Rwanda or by the Government of



Rwanda of imports of arms and related matériel. However, the above restrictions remain in effect against Rwanda, with a view to prohibiting the sale and supply of arms and related matériel to non-governmental forces for use in Rwanda, and all States should continue to prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts, to Rwanda, or to persons in the States neighbouring Rwanda, if such sale or supply is for the purpose of the use of such arms or matériel within Rwanda. By resolution 1013 (1995), the Committee is required to collate and provide to the International Commission of Inquiry information in its possession relating to the mandate of the Commission, i.e., on the sale or supply of arms and related matériel to former Rwanda government forces in the Great Lakes Region in violation of resolutions 918 (1994), 997 (1995) and 1011 (1995). Accordingly, the Committee provided the Commission with relevant information, as required, on 24 November and 4 December 1995. By resolution 1053 (1996), adopted on 23 April 1996, the Security Council expressing its determination that the prohibition on the sale or supply of arms and related matériel to non-governmental forces for use in Rwanda should be implemented fully in accordance with resolution 1011 (1995), called upon all States, in particular in the region, to prevent military training and the sale or supply of weapons to militia groups or former Rwandan government forces, and to take the necessary steps to ensure the effective implementation of the arms embargo, including by creation of all necessary national mechanisms for its implementation.

Liberia

The sanctions against Liberia were imposed by the Security Council as a response of the international community to the serious deterioration of the internal situation in the country. By resolution 788 (1992), adopted on 19 November 1992, the Security Council, acting under Chapter VII of the Charter of the United Nations, imposed a general and complete embargo on all deliveries of weapons and military equipment to Liberia.

By resolution 813 (1993), the Security Council called upon all States strictly to abide by and comply with the general and complete embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992) and reiterated its call on member States to exercise self-restraint in their relations with all parties to the Liberian conflict, in particular to refrain from providing any military assistance to any of the parties and also to refrain from taking any action that would be inimical to the peace process. By the same resolution, the Security Council welcomed the continued efforts of the Economic Community of West African States (ECOWAS) and the Organisation of African Unity towards a peaceful resolution of the Liberian conflict. By resolution 866 (1993), the Security Council decided to establish the United Nations Observer Mission in Liberia (UNOMIL). UNOMIL is the first peace-keeping mission undertaken by the United Nations in Cooperation with another organisation, in this case



ECOWAS. By resolution 950 (1994), the Security Council called on all Liberians to seek political accommodation and national reconciliation and called once again upon all States strictly to abide by and comply with the general and complete arms embargo imposed by resolution 788 (1992). By resolution 1001 (1995), the Security Council reminded all States of their obligations in this regard, and to bring all instances of violations of the arms embargo before the Committee established pursuant to resolution 985 (1995) of 13 April 1995. The same appeal was reiterated by the Security Council in its resolutions 1014 (1995), 1020 (1995), 1041 (1996) and 1059 (1996).

By resolution 1071 (1996), the Security Council stressed the obligation of all States to comply strictly with the embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992), to take all actions necessary to ensure strict implementation of the embargo, and to bring all instances of violations of the embargo before the Committee established pursuant to resolution 985 (1995). The same appeal was reiterated by the Security Council in its resolutions 1071 (1996), 1083 (1996), 1100 (1997) and 1116 (1997).

Sudan

The Security Council has adopted certain measures against the Sudan but has not established a sanctions committee. The Council determined that the Government of the Sudan had not complied with its request set out in paragraph 4 of resolution 1044 (1996), of 1 January 1996, in which it condemned the terrorist assassination attempt on the life of the President of the Arab Republic of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995, and called upon the Government of the Sudan to comply with the requests of the Organisation of African Unity without further delay, to undertake immediate action to extradite to Ethiopia for prosecution the three suspects sheltering in the Sudan and wanted in connection with the above mentioned assassination attempt. The Government of the Sudan claims that its investigations in respect of two of the suspects have produced no trace of their presence in the Sudan and that the identity of the third suspect is unknown.

On 26 April 1996, the Security Council adopted, on the basis of the report of the Secretary-General of 11 March 1996 (S/1996/179), resolution 1054 (1996) by which the Council, acting under Chapter VII of the Charter of the United Nations, adopted measures against the Sudan consisting of significant diplomatic reductions in the number and the level of the staff at Sudanese diplomatic missions and consular posts and restriction or control of the movement of all such staff who remained in the territory of other States, para 3 (a). Further, the Council imposed restrictions on the entry into or transit through the territory of other States members of the Government of the Sudan, officials of that Government and members of the Sudanese armed forces, para 3 (b). In this regard States were requested to report to the Secretary-General on the steps they had taken to implement these measures. This request was reiterated in



resolution 1070 (1996), adopted by the Council on 16 August 1996. To date, 66 replies have been received from States. These replies have been initially published as documents of the Security Council and later reflected in the reports of the Secretary-General and its addenda (S/1996/541 and Add. 1-3, S/1996/940 and Add. 1). The Council also called on all international and regional organisations not to convene any conferences in the Sudan.

By resolution 1070 (1996), adopted on 16 August 1996, the Security Council decided that all States should deny aircraft permission to take off from, land in, or overfly their territories if the aircraft was registered in the Sudan, or owned, leased or operated or substantially owned or controlled by the Government or public authorities of the Sudan. However, the adopted sanctions measures were to enter into force pending a decision by the Council, within 90 days after the date of the adoption of resolution 1070, unless the Council decides before on the basis of a report by the Secretary-General (S/1996/940 of 14 November 1996). The aforementioned measures were not imposed against the Sudan.

Sierra Leone

The Security Council, gravely concerned at the continued violence following the military coup of 25 May 1997, determining that the situation in Sierra Leone constitutes a threat to international peace and security in the region and deploring 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, imposed sanctions against Sierra Leone by resolution 1132 (1997) adopted on 8 October 1997.

Acting under Chapter VII of the Charter of the United Nations, the Security Council imposed an oil and arms embargo, as well as restrictions on the travel of members of the military junta of Sierra Leone and adult members of their families. It also established a Security Council Sanctions Committee to monitor the implementation of the sanctions. The Committee is also authorised to approve applications, on a case-by-case basis, by the democratically elected Government of Sierra Leone for the importation into Sierra Leone of Petroleum and Petroleum products as well as applications by any other government or by United Nations Agencies for the importation of petroleum or petroleum products into Sierra Leone for verified humanitarian purposes, or for the needs of the Military Observer Group of ECOWAS (ECOMOG). This resolution also authorises ECOWAS, under Chapter VIII of the Charter of the United Nations, to ensure strict implementation of the arms embargo and the supply of petroleum and petroleum products, which would involve inspection of incoming ships where necessary, and in conformity with applicable international standards. ECOWAS is also required to report every 30 days to the Committee on all activities undertaken in this regard.



At the 3861st meeting of the Security Council, held on 16 March 1998, the Council unanimously adopted resolution 1156 (1998) which, among other issues, welcomed the return to Sierra Leone of its democratically elected President on 10 March 1998 and terminated with immediate effect the prohibitions on the sale or supply to Sierra Leone of petroleum and petroleum products as contained in its resolution 1132 of 8 October 1997 (SC/6486).

The members of the Security Council held informal consultations on 6 April 1998 pursuant to paragraph 17 of resolution 1132 (1997) as well as paragraph 4 of resolution 1156 (1998), by which the Council decided to conduct a thorough review 180 days after the adoption of resolution 1132 (1997) and on the basis of the most recent report of the Secretary-General on the measures imposed by paragraphs 5 and 6 against Sierra Leone.

After hearing all the opinions expressed in the course of consultations the Council unanimously decided to continue the review of the prohibitions referred to in resolution 1132 (1997) other than those terminated by paragraph 2 of resolution 1156 (1998), in accordance with paragraph 17 of resolution 1132 (1997) and to follow developments and further discussion with the Government of Sierra Leone, as required.

At the 3889th meeting of the Security Council, held on 5 June 1998, the Council unanimously adopted resolution 1171 (1998) by which it terminated the prohibitions stated in paragraphs 5 and 6 of resolution 1132 (1997), and imposed prohibitions on the sale and supply of arms and related matériel to non-governmental forces in Sierra Leone. The Military Observer Group of the Economic Community of West African States (ECOMOG) and the United Nations in Sierra Leone are exempt from these prohibitions. The resolution also prevents the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front (RUF). The Council also decided that the Committee established by resolution 1132 (1997) should continue to undertake the tasks referred to in paragraph 10 (a), (b), (c), (d), (f) and (h) of that resolution in relation to paragraphs 2 and 5 of resolution 1171 (1998).

On 16 September 1998, the Security Council, at its 3927th meeting, adopted resolution 1196 (1998), by which it requested Security Council Sanctions Committees related to Africa, to include in their annual reports a section on implementation, strengthening and violations of arms embargoes. It should be noted that the Sierra Leone Committee since its inception had already established, as per paragraph 4 of the above resolution, liaison with regional and subregional organisations for the implementation of monitoring violations of the embargo on that country.



The Federal Republic of Yugoslavia

Because of the situation in Kosovo, the Security Council in its resolution 1160 (1998) requested all states to prevent the sale or supply to the FRY, including Kosovo, of arms and related materiel of all types and spare parts thereto and arming and training for terrorist activities there.

By resolution 1186 (1998), the Security Council decided to include in the mandate of UNPREDEP the tasks of monitoring and reporting on illicit arms flows and other activities that are prohibited under resolution 1160 (1998).

By resolution 1199 (1998) the Security Council recalled the obligations of all States to implement fully the prohibitions contained in resolution 1160 (1998) and requested States to pursue all means to prevent funds collected on their territory from being used to contravene resolution 1160 (1998).

Regarding the monitoring of the above prohibitions imposed by the Security Council, the Committee established pursuant to resolution 1160 (1998), presently relies on reports submitted by the Danube Commission, the EU, NATO, OSCE, WEU and UNPREDEP, as well as on information retrieved from public sources.

Terminated Sanctions Regimes

The Former Yugoslavia

Arms Embargo

As part of an effort by the United Nations, the European Community (now the European Union) and the Conference on Security and Cooperation in Europe to restore peace and dialogue in the then Yugoslavia (former Socialist Federal Republic of Yugoslavia), the Security Council unanimously adopted, during its meeting at the ministerial level on 25 September 1991, resolution 713 (1991) imposing a general and complete embargo on all deliveries of weapons and military equipment to the country. On 15 December 1991, the Security Council established a Committee to undertake a number of tasks related to the implementation by States of the arms embargo (resolution 724 (1991)). By resolution 727 (1992), adopted on 8 January 1992, the Council decided that the arms embargo applied in accordance with paragraph 33 of the Secretary-General's report S/23363 (i.e. to all areas that had been part of the former Yugoslavia).

Following the initialling of the Dayton Peace Agreement, the Council adopted on 22 November 1995, resolution 1021(1995), by which it set out the terms and timing for the termination of the arms embargo. On 14 December 1995, the Secretary-General informed the Security Council that the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia and other parties thereto

had formally signed the Peace Agreement on that day in Paris. Accordingly, 13 March 1996 was determined to be the date of termination of the arms embargo, with the exception of heavy weapons (as defined in the Peace Agreement), ammunition, mines, military aircraft and helicopters. Following the receipt by members of the Security Council of the reports dated 13 June and 17 June 1996 (documents S/1996/433 and S/1996/442, respectively) from the Secretary-General on the implementation of Annex 1-B (Agreement on Regional Stabilisation) of the Dayton Peace Agreement, the Chairman of the Committee informed all States by a note verbale dated 18 June 1996 (SCA/96(4)), that all provisions of the arms embargo had been terminated. The President of the Security Council made a similar statement to the press.

Sanctions Against the Federal Republic of Yugoslavia and the Bosnian Serb Party

Following the eruption of a military conflict in Bosnia and Herzegovina, the Security Council imposed, under resolution 757 (1992), adopted on 30 May 1992, a wide range of economic, trade, cultural and other sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro). In taking the decision, the Council deplored, *inter alia*, the fact that its earlier demands, in particular, immediate cessation of fighting in Bosnia and Herzegovina, immediate cessation of all forms of interference from outside Bosnia and Herzegovina and action regarding units of the Yugoslav People's Army (JNA) in Bosnia and Herzegovina, had not been complied with.

Subsequently, the Council addressed the issue of the supply to the FRY of commodities and products for essential humanitarian need (resolution 760 (1992) of 18 June 1992) and, by resolution 787 (1992) of 16 November 1992, prohibited the transshipment through the FRY of certain products unless authorised by the Sanctions Committee, called upon States to use necessary measures to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of resolutions 713 (1991) and 757 (1992), and reaffirmed the responsibility of riparian States to take necessary measures to ensure that shipping on the Danube was in accordance with the resolutions of the Security Council. In January and February 1993, the Council was seized of the sanctions violations on the Danube (Presidential Statements S/25190 of 28 January 1993 re: Yugoslav vessels carrying oil from Ukraine and S/25270 of 10 February 1993: the detention of Romanian vessels on the Danube by the authorities of the FRY).

Reacting to the unabated conflict in Bosnia and Herzegovina and to the non-acceptance by the Bosnian Serb party of the peace plan (S/25479), the Council adopted, on 17 April 1993, a ground-breaking resolution 820 (1993), making sanctions against the FRY virtually comprehensive and simultaneously strengthening their implementation. In addition, the Council put in place certain requirements regulating the shipments to and through areas in Croatia and Bosnia and Herzegovina, controlled by the local Serb authorities.



In October 1993, the Council considered, under the item "Navigation on the Danube," the blockade of foreign vessels in the portion of the Danube flowing through the FRY, as well as the imposition of tolls on such vessels by the authorities of the FRY (Presidential Statement S/26572 of 1 October 1993). In March 1994, the Council was seized of the sanctions violation on the Danube by the Bulgarian convoy "Han Kubrat," which delivered a shipment of 6,000 tons of diesel oil to the FRY (Presidential Statement PRST/10 of 14 March 1994).

Facing the refusal of the Bosnian Serb party to accept the territorial settlement proposed by the "contact group" countries, the Security Council adopted, on 23 September 1994, resolution 942 (1994), reinforcing and extending the measures with regard to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces. (The Council reviewed these measures, without change, on four occasions, in January, May and September 1995, and in January 1996.)

On the same day, welcoming the decision by the authorities of the FRY to support the proposed territorial settlement and the decision to close the international border between the FRY and the Republic of Bosnia and Herzegovina with respect to all goods except certain humanitarian items, the Council adopted resolution 943 (1994), by which it suspended, for an initial period of 100 days, certain prohibitions against the Federal Republic of Yugoslavia including the ones relating, *inter alia*, to civilian passenger flights to and from Belgrade. By resolutions 970 (1995) of 12 January 1995, 988 (1995) of 21 April 1995, 1003 (1995) of 5 July 1995 and 1015 (1995) of 15 September 1995, the Council consecutively extended the suspension of these measures on the basis of reports by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, certifying that the authorities of the FRY were effectively implementing their decision to close the above border.

Following an appeal from UNICEF and on the recommendation of the Yugoslav Sanctions Committee, the Security Council authorised, by adopting on 14 December 1994 resolution 967 (1994), the export of 12,000 vials of diphtheria anti-serum from the Federal Republic of Yugoslavia (Serbia and Montenegro), which were urgently needed in certain Eastern European countries.

On the recommendation of the Yugoslav Sanctions Committee, which had been approached by Romania, supported by other riparian States and the Danube Commission, the Security Council adopted on 11 May 1995 resolution 992 (1995), which came into force on 23 June 1995, allowing vessels of the Federal Republic of Yugoslavia (Serbia and Montenegro) to use the Romanian locks of the Iron Gates 1 system, on the left bank of the Danube, while repairs were carried out to the locks on the right hand bank. The resolution remained in force until the sanctions were suspended under resolution 1022 (1995).



Following the initialling of the Dayton Peace Agreement, the Security Council adopted on 22 November 1995 resolution 1022 (1995), by which it decided a) to suspend indefinitely with immediate effect most of the sanctions against the Federal Republic of Yugoslavia and stipulated the terms of the re-imposition of the sanctions as well as of their termination; b) that the above suspension should not apply to the measures against the Bosnian Serb party until the latter met certain obligations, c) that all funds and assets previously frozen or impounded pursuant to resolutions 757 (1992) and 820 (1993) would be released by States, provided certain conditions were met.

The measures imposed on the Bosnian Serb party were suspended indefinitely starting on 27 February 1996, after the Security Council was informed, through the appropriate political authorities, that, in the assessment of the commander of the Implementation Force in Bosnia and Herzegovina, Bosnian Serb forces had withdrawn behind the zones of separation established in the Peace Agreement.

According to paragraph 4 of resolution 1022 (1995), the Council decided to terminate the sanctions against the FRY and the Bosnian Serb party on the tenth day following the occurrence of the first free and fair elections provided for in the Dayton Peace Agreement (House of Representatives of Bosnia and Herzegovina, Presidency of Bosnia and Herzegovina, House of Representatives of the Federation of Bosnia and Herzegovina, National Assembly and the Presidency of the Republica Srpska, and, if feasible, for cantonal legislatures and municipal governing authorities).

At its 142nd meeting, on 19 September 1996, the Committee considered a report of the Copenhagen round table on the United Nations sanctions in the case of the former Yugoslavia, which was hosted by Denmark and held under the auspices of the Organisation for Security and Cooperation in Europe (OSCE) on 24 and 25 June 1996. At the round table, representatives and experts from 29 countries, as well as from the Secretariat of the United Nations, humanitarian agencies, the European Union, OSCE, North Atlantic Treaty Organisation, Western European Union and the Danube Commission, directly involved in various aspects of the implementation of the sanctions, had expressed their views on lessons learned from the Yugoslav sanctions experience. The Committee decided to transmit the report to the President of the Security Council, to be brought to the attention of the members of the Council (S/1996/776).

Noting with satisfaction that the elections called for in Annex 3 to the Peace Agreement had taken place on 14 September 1996 in Bosnia and Herzegovina, the Security Council decided by resolution 1074 (1996), adopted on 1 October 1996, *inter alia*, to terminate, with immediate effect, the measures referred to in paragraph 1 of resolution 1022 (1995). The Council thus ended sanctions imposed on the Federal Republic of Yugoslavia and the Bosnian Serb party under the previous relevant



resolutions. By resolution 1074 (1996), the Council also decided to dissolve the Committee upon finalisation of its report.

On 15 November 1996, the Committee adopted its final report, which was transmitted to the President of the Security Council on the same day (S/1996/946). The final report of the Committee presents a concise account of its work since 1993 and until the termination of sanctions, in discharging the mandate entrusted to it by the Security Council. This mandate included assistance to States and international organisations in applying the comprehensive sanctions on the Federal Republic of Yugoslavia and the Bosnian Serb party, and the general and complete embargo on all deliveries of weapons and military equipment to the countries of the former Yugoslavia. The mandate also encompassed monitoring and the implementation of these measures in all its aspects.

Haiti

After the military coup d'état in 1991, the international community worked actively to achieve the recovery of the legitimate institutions in Haiti, in particular the return, from exile of the democratically elected President Jean-Bertrand Aristide. In vigorous activity and actions by the Organisation of American States, the General Assembly and the Secretary-General of the United Nations, the sanctions adopted by the Security Council and implemented by Member States played a supportive role in this regard.

On 16 June 1993, by resolution 841 (1993), the Security Council imposed a regime of mandatory sanctions against Haiti as a response of the international community to the crisis in that country. After the legitimate Government of President Jean-Bertrand Aristide was removed, a climate of fear of persecution and economic dislocation of a great number of Haitians seeking refuge in neighbouring countries was causing negative repercussions in the region. The Security Council determined that the situation in Haiti was caused by the illegitimacy of the military government and by its human rights violations against the Haitian people. Sanctions were imposed on the sale or supply of arms and related matériel of all types, including weapons and ammunition, petroleum and petroleum products and the freezing of funds to ensure that they were not made available directly or indirectly to or for the benefit of the de facto authorities in Haiti.

By resolution 861(1993), adopted on 27 August 1993, the Security Council suspended the sanctions measures against Haiti as a reaction to the conclusion of the Government Island Agreement between the President of the Republic of Haiti and the Commander-in-Chief of the Armed Forces of Haiti and reimposed them by resolution 873 (1993) on 13 October 1993 after determining that the military authorities of Haiti, including the police, had not complied in good faith with the Government Island Agreement. By its resolution 917 (1994), adopted on 6 May 1994, the Security Council imposed additional sanctions measures, including freezing the funds and financial resources of all officers of the Haitian military and their immediate families and those employed by or acting on



behalf of them. By resolution 940 (1994), adopted 31 July 1994, the Council authorised the establishment of the multinational force, mainly to facilitate the departure from Haiti of the military leadership. By resolution 944 (1994), adopted on 29 September 1994, the Security Council decided to terminate all sanctions against Haiti, on the day after the return to Haiti of President Jean-Bertrand Aristide. By resolution 948 (1994), adopted 15 October 1994, the Council welcomed the return of President Aristide to Haiti on the same day and expressed full support for the efforts of the legitimate Government of Haiti in bringing the country out of crisis and returning it to the democratic community of nations.

South Africa

The apartheid racist system in South Africa was imposed in 1948. The first two Security Council resolutions 181 (1963) and 182 (1963) introducing sanctions against South Africa were not adopted under Chapter VII of the United Nations and were only voluntary. It was not until 4 November 1977, that the Security Council, having determined that the policies and acts of the South African Government, the acquisition by South Africa of arms and related matériel constituted a threat to the maintenance of international peace and security, and acting under Chapter VII of the Charter, adopted resolution 418 (1977), by which it imposed mandatory measures on arms and other military supplies to South Africa. However, the Security Council never imposed comprehensive economic sanctions against South Africa. The Security Council decided that all States should cease forthwith any provision to South Africa of arms and related matériel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, and should cease as well the provision of all types of equipment and supplies, and grants of licensing arrangements, for the manufacture or maintenance of the aforementioned. Operative paragraph 3 of the same resolution, called on all States to review all existing contractual arrangements with and licenses granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to their termination. Operative paragraph 4 of the same resolution further decided that all States should refrain from any cooperation with South Africa in the manufacture and development of nuclear weapons.

By resolution 473 (1980) the Security Council called on the Sanctions Committee to redouble its efforts to secure full implementation of the arms embargo against South Africa by recommending measures to close all loopholes in the arms embargo, and reinforce and make it more comprehensive. By resolution 558 (1984) adopted 13 December 1984, the Security Council requested States to refrain from importing arms, ammunition of all types and military vehicles produced in South Africa. By resolution 591 (1986) adopted on 28 November 1986, the Security Council adopted comprehensive measures recommended by the Committee to close loopholes in the



arms embargo, reinforce it and make it more comprehensive. The Security Council, acting under Chapter VII of the Charter of the United Nations, terminated the sanctions against South Africa on 25 May 1994, by its resolution 919 (1994), after the first democratically elected government was formed in South Africa.

Southern Rhodesia

The sanctions against Southern Rhodesia were the first comprehensive mandatory sanctions in the history of the United Nations, imposed by the Security Council under Chapter VII of the United Nations Charter, as a response of the international community to the declaration of the independence of Southern Rhodesia in 1965 by its racist minority regime. Although no State recognised the self declared independence of Southern Rhodesia, there was a permanent lack of willingness to enforce the sanctions adopted by the Security Council by a number of States, especially by the apartheid regime of South Africa.

In resolution 221 (1966) of 9 April 1966, the Security Council, recalling its resolutions 216 (1965) of 12 November 1965 and 217 (1965) of 20 November 1965 and in particular its call upon all States to do their utmost to break off economic relations with Southern Rhodesia, including an embargo on oil and petroleum products, called upon the Government of the United Kingdom to prevent by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia. Resolution 232 of 16 December 1966 imposed sanctions on commodities in addition to oil; Resolution 253 of 29 May 1968 set up a sanctions committee. The sanctions were lifted by Resolution 460 of 21 December 1979.

The Impact of Sanctions on Third States (Article 50 of the Charter of the United Nations)

Under Article 50 of the Charter, countries which find themselves confronted with special economic problems arising from the carrying out of enforcement measures taken by the Security Council can consult with the Council about a solution to their problems. In the case of Iraq, 21 States, as follows, addressed the Council on this basis, the first time in United Nations history that a large number of States had taken such a step: Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Jordan, Lebanon, Mauritania, Pakistan, the Philippines, Poland, Romania, Seychelles, Sri Lanka, the Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia.

Jordan, having had close economic relations with Iraq prior to the invasion, was particularly hard hit by the imposition of sanctions and was thus the first of the Article 50 applicants to have its case considered by the Sanctions Committee and acted upon by the Council. On 18 September 1990, the Committee appealed to States to provide immediate assistance and, on 24 September, based on the Committee's



recommendation, the Security Council asked the Secretary-General to undertake an immediate assessment of Jordan's problems, which he did by dispatching a special representative to visit Jordan from 10 to 15 October (S/21938). With regard to the other States experiencing difficulties, the Security Council, in its resolution 669 (1990), adopted on 24 September 1990, entrusted the Sanctions Committee with the task of examining requests for assistance and making recommendations to the Council for appropriate action.

In the case of the Former Yugoslavia, following the receipt of several applications from States under Article 50 of the Charter, the Council adopted, on 18 June 1993, resolution 843 (1993), in which it, *inter alia*, invited the Yugoslav Sanctions Committee, upon completion of the examination of each request, to make recommendations to the President of the Council for appropriate action. Overall, eight countries, namely, Albania, Bulgaria, Hungary, Romania, the former Yugoslav Republic of Macedonia, Slovakia, Ukraine and Uganda submitted such applications. The Committee examined the applications and presented its recommendations (S/26040, S/26040/Add. 1 and S/26040/Add.2) to the Security Council. Under each recommendation, the Committee recognised the urgent need to assist the affected country in coping with its special problems and, *inter alia*, appealed to all States to provide immediate technical, financial and material assistance to the countries in question. By letters dated 6 July, 9 August and 20 December 1993 (S/26056, S/26282 and S/26905, respectively), the President of the Security Council informed the Secretary-General, by agreement of all the members of the Council, of the Committee's recommendations and requested him to implement the actions contained therein as appropriate. The subsequent action taken by the international community has been reflected in a number of reports by the Secretary-General to the General Assembly (A/48/573, A/49/356 and A/50/423). Two reports on the subject matter, submitted to the General Assembly, are contained in documents A/51/317 and A/52/308.

In the case of Haiti, the Dominican Republic, having had close economic relations with Haiti prior to the imposition of the sanctions on that country, claimed particular economic difficulties as a result of the sanctions. The case was never considered by the Sanctions Committee since it was forwarded to the United Nations after the termination of the sanctions regime on Haiti.

Arrangements for sanctions impact assessment and follow-up work have been made within the Secretariat and an ad-hoc expert group meeting on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of the sanctions was convened by the Secretary-General from 24 to 26 June 1998 to study the issue of assistance to third States affected by sanctions. The report of the group was considered by the General Assembly and a resolution of the Sixth Committee is being considered by the General Assembly.



Humanitarian Impact of Sanctions

As shown by the experience gained by the Secretariat in administering the various sanctions regimes, the application of comprehensive sanctions often causes unintended hardships to the civilian population in the target State. In the case of Iraq, the comprehensive sanctions measures had a serious negative impact on the civilian population. As a result, the oil-for-food program, which is now administered by the Office of the Iraq Program (OIP), was instituted by the Security Council as a temporary measure designed to alleviate the hardships encountered by the civilian population. In addition, various measures have been adopted by the 661 Committee (Iraq) and its Secretariat with a view to streamlining and speeding up the procedures for the processing of humanitarian exemptions. Similar measures were undertaken by the 724 Sanctions Committee, in the case of the former Yugoslavia; such measures enabled the expeditious processing of applications for humanitarian exemptions.

While the sanctions regime against Libya has a more limited humanitarian impact, the Sanctions Committee Secretariat arranges frequent emergency medical evacuations by air, of Libyan and other nationals, and has made arrangements for the annual Haj pilgrimage to Saudi Arabia. On 19 March 1998, the Libya Sanctions Committee adopted a press release (SC/6488) that among other issues, reiterated its willingness to facilitate travel of Libyan pilgrims to the Haj as well as to continue to consider humanitarian exemptions from the sanctions regime. In this regard, special attention is being given to the readiness of the Committee to agree to replace Libyan air ambulances, upon consideration of the relevant International Civil Aviation (ICAO) assessment report. After reviewing the report submitted by the International Civil Aviation Organisation (ICAO), the Committee agreed, in principle, to the purchase of new aircraft for emergency medical evacuations.

It should be noted that recent resolutions of the Council establishing or modifying existing sanctions regimes in the cases of the Sudan, Angola (UNITA), the military junta in Sierra Leone, and most recently, the arms embargo in the case of the Federal Republic of Yugoslavia, by design include measures with little or no humanitarian impact on the civilian population. This trend confirms the wish of the Council to focus on measures limiting, as much as possible, the humanitarian impact and other collateral effects of sanctions.

The question still remains, however, whether a more expeditious processing of humanitarian exemptions can provide an adequate safety net under a comprehensive sanctions regime. The experience in Iraq, to date, seems to indicate that even with such enhanced administrative measures, the imposition of “smart” sanctions on decision-making elites offers the best possibility to minimise civilian suffering.

Lessons Learned in the Implementation of Security Council Sanctions

The discretionary powers of the Security Council to take action under Chapter VII, including the imposition of sanctions, made it incumbent upon the Council to pay close attention to the issue of ensuring that sanctions are effective in order to induce a conduct deemed necessary by the Council for the maintenance of international peace and security, while inflicting minimum suffering on innocent people and on neighbouring States. In that respect, sanctions should be used not as a tool for collective punishment but as a device aimed at facilitating the solution of a particular crisis. All political measures should be exhausted before sanctions are imposed and, when imposed, their implementation should be closely linked to a continuous political process to resolve the problem. A sanctions regime should be determined in clear terms and in accordance with strict criteria so as to avoid any possibility of a broad interpretation which could extend their scope and duration.

On the question of effectiveness of sanctions, it would be desirable for the Council to ensure that the envisaged sanctions, particularly in the case of an arms embargo, is enforceable. It should be noted that in certain cases the threat of sanctions could be more effective than the actual imposition of sanctions and that "conditional" or "deferred" sanctions should be considered when possible.

States are obliged to implement the mandatory decisions of the Security Council, but may need assistance in enacting the necessary enabling legislation. Development of more uniform enacting procedures would certainly enhance compliance with Council decisions. International cooperation and consultation in order to harmonise domestic legislation, for example by drafting a model law or an international convention could be of major assistance.

Once a sanctions regime has been established, it should be endowed by the Security Council with a credible monitoring and enforcement arm and the Secretariat should be equipped with adequate resources and specialised expertise to enable it to administer effectively the sanctions regime.

More rigorous reporting to the sanctions committees by Member States on measures taken domestically to implement the sanctions, as required by the resolutions imposing the sanctions, would enhance the ability of the sanctions committees to monitor the implementation of sanctions.

One of the ways to minimise the adverse humanitarian impact of sanctions is to direct them at specific targets, something that the Council is doing more often in recent times. It should also be borne in mind that broad economic sanctions might not be effective in non-democratic states or in intra-state conflicts where the population has no power to induce a change of conduct on the part of the Government or faction leaders. In



this connection, the question may be raised as to how possible it might be to gain the degree of international cooperation necessary to make targeted measures effective and what legal and administrative reforms would be needed on the international level to enhance the feasibility of financial sanctions.

It would also be necessary to look into what countervailing strategies are available to potential targets and whether targeted elites could shelter their financial assets and thus avoid the sting of financial sanctions. Could sanctioning authorities develop their own strategies to defeat such tactics of potential targets?

Regarding the need to minimise the negative humanitarian effects of sanctions, humanitarian exemptions should be provided for in the relevant Council resolutions. Furthermore, in the course of the implementation of sanctions, an appropriate mechanism could be put in place to provide the Council with periodic evaluations of the effectiveness of the sanctions as well as their humanitarian, socio-economic and political impact. The issue of the impact of sanctions on third states should be looked at, in keeping with Article 50 of the Charter.

Lastly, there is a need to further improve the efficiency of the respective sanctions committees. In that connection, attention may be drawn to the work of the Open-Ended Working Group on an Agenda for Peace and, more specifically, on its recommendations which had been adopted by the General Assembly on the issue of sanctions (GA Resolution 51/242).

UN Sanctions and Debt Service: A Discussion Paper

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The Problem

The imposition of financial sanctions often has an effect similar to a debt moratorium on the target state. By failure to collect debt service payments, the sanctioning countries suffer substantial losses while the target country is offered relief at their expense. Since debt service payments are legally binding obligations, means would have to be found in future sanctions regimes to collect such payments.

UNSC Resolutions

While some SC Resolutions do explicitly affirm the obligation of the target state to debt servicing and repayment, as in the cases of Iraq and Libya, in practice this does not happen. For obvious reasons, a targeted state may choose to cancel any payments of debts and interests on debts. UN Resolutions so far have never contained any provisions on how these debts could be collected if the target state does not fulfil its contractual obligations.

In the absence of explicit provisions for the collection of these debts in the resolutions, states have dealt differently with this situation. While some states do not allow the collecting of debts by debiting blocked accounts, others do, while others, still, require a court decision as a precondition for the collection of debts once sanctions are lifted. Today, there is no common position on how sanctions regimes need to be implemented with respect to debt nor on how debt servicing shall be regulated in future sanctions regimes.

If sanction resolutions were to regulate debt service even to the extent that blocked accounts could be used to pay for external debts or interest on debts, such provisions would not run contrary to the rationale of the sanctions measures. Financial sanctions measures intend to cut off the target from its foreign assets and to stop access to foreign capital markets. The collecting of debts from frozen assets would not interfere with this intention.

A mechanism to collect debts, decided by the Security Council, would therefore help to minimise the costs of the sanctions to the sender states, and especially those states that were major creditors prior to the imposition of sanctions. In any case, contractual

obligations might need to be called without having to engage in an expensive and lengthy process of obtaining a court decision, which is the only way today to get paid.

UNSCR 687

UNSCR 687 on Iraq contains provisions for a mechanisms to collect payments for losses and damages which are a direct result of the invasion and occupation of Kuwait. These provisions might serve as a starting point for a discussion on how a mechanism for the collection of debts could be modelled.

Under the terms of UNSCR 986, Iraq is allowed to sell a certain amount of oil over a six month period to buy food and medicines. The revenues from these oil exports have to be paid into an escrow account. The funds so generated are divided:

- 53% for food, medicine and humanitarian supplies in the centre and south,
- 13% for food, medicine and humanitarian supplies in the three northern Governorates,
- 30% to the UN Compensation Fund,
- 2.2% for the UN's costs in administering the programme (415 international staff and 1300 local staff in Iraq plus 65 in New York),
- 0.8% for the administrative costs of the UN Special Commission (UNSCOM) and 1% to the Escrow account.

Building on this model, the Security Council could define the purpose of the escrow account broader so as to apportion a certain percentage of the funds towards the paying off of debts. In this regard, debts would be paid out of economic activities allowed under a sanctions regime. This option has the advantage that frozen assets would not have to be debited and would remain unchanged. As for the other items in the 'compensation fund', claims would need to be validated and a priority ranking established for meeting debt service payments.

However, in the case of the Oil-for-Food Program, the targeted country agreed to the percentages for the distribution of the revenues. It is questionable whether such an agreement from the target can be obtained in all cases. This raises an important question: Is it legal to collect debts from blocked accounts, even if they are contractual, agreed or approved by court ruling, against the will of the target or would that amount to confiscation? The question also arises of whether, even in today's circumstances, national legislation implementing UN resolutions could introduce a compulsory debit clause for debt service payment due from accounts located in its jurisdiction to be allocated to debt holders within its jurisdiction.

Another option would be to debit blocked accounts. A body such as or similar to the Paris Club could be mandated by the Security Council to review debts claims submitted

by private and public entities and to establish a program for debt consolidation. For the purpose of the actual debt service payments, an escrow account would have to be established which would be funded from the blocked accounts.

In any model, equal treatment should be assured to the extent possible and a priority ranking established for payments.

Resolution 687 (1991) on Iraq

16. Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait;

17. Decides that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. Decides also to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund;

19. Directs the Secretary-General to develop and present to the Security Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the fund to meet the requirement for the payment of claims established in accordance with paragraph 18 above and for a programme to implement the decisions in paragraphs 16, 17 and 18 above, including: administration of the fund; mechanisms for determining the appropriate level of Iraq's contribution to the fund based on a percentage of the value of the exports of petroleum and petroleum products from Iraq not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payments are made to the fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16 above; and the composition of the Commission designated above;

Resolution 986 (1995) on Iraq

8. Decides that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population and for the following other purposes, and requests the Secretary-General to use the funds deposited in the escrow account:



(c) To transfer to the Compensation Fund the same percentage of the funds deposited in the escrow account as that decided by the Council in paragraph 2 of resolution 705 (1991) of 15 August 1991; (30%)

17. Affirms that nothing in this resolution affects Iraq's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt, in accordance with the appropriate international mechanisms;

Resolution 883 (1993) on Libya

11. Affirms that nothing in this resolution affects Libya's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt;

Background Paper for Working Group 3

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As one gets closer to the concrete cases associated with the application of sanctions, the more difficult it can be to come to terms with the intentions of those who actually formulate the measures. This gap in understanding is perhaps even more keenly felt by bank managers and customs officials who are faced with the micro-problems of implementation. At the more abstract level of the diplomatic process, it is probable that achieving agreement on measures can sometimes mean that terms may be left loosely defined in order to reach a consensus. Can we bridge this gap between the abstract and the concrete? Probably not very easily. It involves some measure of comprehension between diplomats, economists, lawyers, bankers and customs officials. This is a tall order particularly in so far as economists are famous for their two-handed approach, and one could expect lawyers not to be too far behind!

However a first step might be to move towards some, commonly understood, approach to definitions at least.⁴⁴ Another useful approach in this context might also be a negative one – i.e. some measure of agreement on what a particular operation is not. This paper is but a tentative step in this direction. It, hopefully, will help the process of mutual understanding from the diplomatic circle midway to those who have to formulate somewhat more specific legislation on what was agreed to, and perhaps give diplomatic decision-makers some feedback on the more mundane issues involved. The quantum leap from this mid-level of legislative formulation to concrete case application is undoubtedly best left to an expert in that particular field.

Although in this paper financial sanctions are more specifically treated, there can be quite considerable spill over into the trade sanctions realm, so, perhaps, several slight digressions can be forgiven. This contribution will also look at how different definitions, in particular on investment, are used in some selected multilateral and bilateral

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⁴⁴ An early contribution in this respect is to be found in the paper “How can financial assets and financial transactions be controlled?” by Ambassador R.M. Jeker at last year’s seminar.



instruments and try to distil some common approaches with the objective of moving towards preliminary 'Sanctions definitions: 101' course notes. The question of payments will weave through this whole approach, since it is usually inextricably linked. Some views will be expressed on the question of sequencing and the logic inherent in the usual progression to general financial sanctions as a last resort. Finally, one concern on the respective penal effects of different measures will be advanced.

Some Preliminary Views on Definitions

It is extremely useful in the classification of operations to turn our mind to the old, and boring, dual-entry accounting system. Effectively this implies that all international operations actually are two operations - one out, and one in. While multiplying the comprehension problem by two, this approach does at least prevent us from falling into some familiar traps. Thus we have a trade, services or capital transaction,⁴⁵ out or in, and, usually, a corresponding payment in the opposite direction, although not necessarily at the same time. In the pure case of barter we would have two compensating trade, services or capital operations, or any mixture of these, in opposite directions, without any payment operation taking place (although notional ones can be included for consistency). Barter can be the, normally understood, 'guns for butter' operation (i.e. trade for trade), but it could equally well be 'guns for shares in the butter company' (i.e. trade for capital movements – or claims on capital, see below).

Thus, for instance, certain sanctions were fairly easily applied in the past (particularly in an era when exchange controls were prevalent) through the compensating payments channel, i.e. if the payment for a transaction is blocked, operators would not normally conclude that transaction. But this method of application did miss out barter operations.

Secondly, we should perhaps make a clear distinction in our minds between flows and stocks. We are probably all equally at fault in allowing the catch-all term "making available of funds" to creep into legislation, as well as being perpetuated in future ones (because that is how it was done last time). It is a quite convenient global term, but are we exactly sure what it covers? We should also be clear in our minds that when we talk about financial or real assets we are talking about stocks, while when we talk about changes in claims on financial or real assets we are talking about flows (capital movements in this case).

⁴⁵ The cases of current and capital transfers (and acquisition disposal of non-produced, non-financial assets) are neglected here. For full coverage see IMF Balance of Payments Manual, Fifth Edition 1993 pps. 74-76 and 83-85. In the slightly obscure sounding non-produced non-financial assets an example would be patents. Here the purchase of the right would be the acquisition of a non-produced asset (in EU definitional terms "XIII D – Other capital movements: authors' royalties, patents,..."), while its use would be the provision of services.

Thirdly, the term ‘capital movements’ is probably the most misunderstood concept in the whole potential armoury of the sanctions’ specialist. The precise wording is probably pretty unfortunate in itself. It seems to imply that an asset (stock) is actually moving. The concept can be understood in a very limited subset of the term, which is frequently understood by some to englobe the whole concept, i.e. money in a suitcase moving over borders (for the more technically minded, the physical transfer of means of payment, but even here the bank notes or other instruments in question are, effectively, just pieces of paper - their intrinsic value being the claim that they represent on the assets of some institution, which has moved nowhere). The idea of movement can also be conceptualised easily in the case of certain forms of portfolio investment e.g. bearer shares, although the company, of which ultimately the share represents a part, has not ‘moved’ either. It is the claim on the company which has moved. The hardest cases of capital movements for the newcomer to come to terms with are those cases where it seems obvious that nothing at all has moved countries. But, as before, the ‘asset’ (stock) does not necessarily move, only the ‘claim on the asset’ (flow). Typical cases here would be investment in real estate or direct investment. Intermediate cases in the neophyte’s learning curve would be foreign financial loans and credits. Here he would suspect that there might be a capital movement but perhaps it could be erroneously confused with a movement in an actual stock rather than the claim on this stock. Another case to trap the unwary is gold. Almost all cross-frontier movements of gold are, in fact, trade. Since countries no longer use gold coins as means of payment, carrying a ‘Marie Therese’ across a frontier is not considered a capital movements’ transaction, but trade in a rare coin. The one exception to the rule is ‘monetary gold’. But here, like in real estate, the gold tends to stay in its vault in the FED, the BIS, the Bank of England, or wherever, it is the claim on this gold that moves, and in this case a capital movement takes place.

Fourthly in any analysis of our concepts we always seek inspiration from standard balance of payments accounts methodology. Here the IMF’s “Balance of payments Manual”, currently in its fifth edition, is a mine of information and treatment of ‘hard cases’.

Certain Easily Arrived at Misconceptions

The supply of capital goods (a machine) to a country can sometimes be thought of as a capital operation. It is not, it is trade (in balance of payments terms, a current account operation). The act of acquiring ownership to this machine to produce goods in the country in question is an investment there. If one of our firms obtains this ownership (by, for example creating a firm there to use the machine), then they are conducting a direct investment operation in the foreign country (a capital movement). If this is done by a local firm, it is an investment there, but there is no cross-border capital movement involved. For these reasons the expenditure classification of our national accounts adds investment and subtracts imports to avoid double counting. But it also continues to



recognise the two operations (the import of the capital good – in imports of goods and services, and its installation and use to produce goods – in gross domestic fixed capital formation). With this distinction we arrive at a clear choice for policy makers. If we impose sanctions on the particular capital movement (investment) and not on trade, we prevent our firms investing in the country concerned. But we allow them to export all the capital equipment they like to that country for locals to conduct the investment operation. If we impose sanctions on trade in capital goods and not on investment there, it means that no machinery from our countries can be exported to the place in question, but our firms are perfectly entitled to invest in that country, which could mean building a factory and installing local machines.

A recent opinion seen to surface is that if FDI is carried out through mergers or acquisitions, or through an exchange of shares, reinvestment of dividends and or/royalties, this, somehow, is not an international capital movement. It patently is, and a pretty important one too in economic terms. There may be no actual payments involved but these can be arrived at notionally as in the case of barter treated above.

There also seems to be a widely held view that direct investment is a completely different animal from portfolio investment. While there is a difference in definitional terms, the ultimate economic effect, or benefit, to the errant country can be very similar. How is this the case? Although foreign purchases of shares in a company in a target country initially only have financial effects they can ultimately, through their effect on the net worth of the company, permit an increase in its productive capacity (and the economy under siege). How so? Ignoring the dividing line between direct and portfolio investment, we could assume the foreigner buys half the outstanding shares of the company.⁴⁶ Either the price of the shares in the company doubles (not, of course, convincing a sceptic that anything “real” will happened) or the company doubles its share issues, the price of the shares fall back to their initial value, and the company uses the proceeds of its new issue to double its productive capacity. So targeting direct investment alone, and not portfolio investment, probably makes relatively little economic sense. There is not that much difference in the eventual effects. It is usually just the scale of the investment that is different. Additionally it runs into major problems in defining the dividing line between the two.

The definitional line between these two forms of investment is very thin. Effectively the difference is that one form, direct investment, creates genuine economic links between the investor and the company in which the investment is made and gives an effective say in the management of the company, while the other, portfolio investment, does not. Sounds fine! But what do we say when the bank official asks us, quite practically, where the line is drawn? This is a hard question. One may notice that the dividing line,

⁴⁶ Here perhaps we can be excused for taking a very simplistic view of supply/demand dynamics as well as calling the operation portfolio investment when it is, almost certainly, direct investment.

in terms of a percentage holding of the company, is very rarely pronounced upon (although, now and then, one sees a rule of thumb of 10% of share capital used). Why? Effectively because there is no unique solution. Much will depend on the distribution of share ownership in the company. If this is very widely dispersed, the acquisition of even 2% of the company could provide an important say in the management of the company and be a direct investment. It could even, at the very limit, be a subset of direct investment, one often regarded as even more important, achieving control of the company (this is usually, in its turn, referred to as “establishment”, but is still also direct investment and, more broadly, “investment”). In other cases, where 51% of the shares are owned by one party (or several acting in concert), an effective say in the company is not always guaranteed, even with large holdings, since the majority shareholder could, depending on company law in the country concerned, make this say, or these economic links, pretty academic. In addition it will obviously never be establishment, since control will remain with the 51% shareholder.

We might also, while we are at it, demolish the fallacy that the only variety of “real” investment that is of significance is greenfield investment – where a firm or individual buy a field, builds a factory, installs some machines and starts producing widgets. (In passing we should note that this is already encompassed in all usual definitions of direct investment, e.g. participation in a new enterprise).⁴⁷ Drawing on the analogy above, other forms of direct or portfolio investment have equal capabilities for increasing the productive capacity of the economy in question, either directly through actually increasing productive capacity, or indirectly through the wealth effects they generate.

We can also consider extending our consideration to other forms of capital movements to the country concerned. In a State-controlled economy it can perhaps be seen that transactions in bonds, money market securities etc. are practically identical to purchasing shares in a company, the State this time. We are purchasing shares in the only productive base that that economy knows. Even if the economy is not State-controlled, our purchases of Treasury bills, bonds etc. are paying for domestic capital-building, e.g. military barracks, and, in many cases, current expenditure, e.g. paying the wages of the army, etc.. The Central Bank of the country concerned, without this external assistance, can always print money for these purposes, but hyperinflation is the inevitable long-term result.

As we look through other categories of capital movements, the similarities are again evident – financial loans and credits, credits related to commercial operations, sureties, operations in current and deposit accounts, etc.. We eventually come to the conclusion that all capital movements are effectively coming to add up to the sanctions term “the

⁴⁷ In OECD and EU definitions.

making available of resources to". Some of us however, probably in the minority, would prefer to use the terms with which we are infinitely more comfortable.⁴⁸

Differences and Similarities in Definitions (WTO, OECD, EU, NAFTA, etc.)

The annexes set out extracts from various definitions which exist at multilateral or bilateral level, with a particular concentration on investment. It is not sought in this contribution to come to any synthesis of these. However, their presentation may go some way to enable us to come to a somewhat more common understanding of the operations we may have to restrict, and how these may be understood by others. We also suggest how some operations may, in several classification systems, need to be reclassified to exactly fit into our first principles classification of trade, services and capital movements on the one side, and payments on the other.

WTO

Generally WTO disciplines relate to trade in the GATT, and more recently services in the GATS, with some allied trade related investment measures. However in the WTO context we should take some care in our treatment of the provision of services in GATS through delivery mode 3. This is an operation involving the provision of services through a commercial presence in the country concerned, rather than from the territory of one State into the territory of another (mode 1), i.e. the more normally understood cross-border provision, or in the territory of one State to the service consumer of the other (mode 2), i.e. the purchaser receives the service in the suppliers' State. In our simple framework set out above and in balance of payments definitions, GATS mode 3 would more normally be classified as a capital movement in the form of an investment in that country, and not as the provision of services.

OECD Code

The Code of Liberalisation of Capital Movements at the OECD⁴⁹ is probably quite familiar to most representatives present. It has existed, more or less in its current form, since the early sixties. Basically it classifies all capital operations in flow terms, Member States take on obligations for liberalisation, subject to specific reservations on particular transactions which are not freed. The instrument is binding on OECD Member States and its application (as well as that of the parallel Code of Liberalisation of Invisible

⁴⁸ Potential gaps in this particular approach, in sanctions terms, are the treatment of offshore operations and the familiar difference between residency (usually used in the past for the definitions of operators in capital movements operations) and nationality (used elsewhere).

⁴⁹ Code of Liberalisation of Capital Movements [OECD/C(61)96], adopted by the OECD Council on 12/12/1961.

Transactions) is monitored by an OECD Committee (the “CMIT”) which conducts regular country examinations and exerts peer pressure on adherents. The extremely useful background for the code definitions are set out in Annex 1.

Draft Definitions of Abortive MAI

While not foreseen as an OECD instrument, but rather as a free-standing multilateral agreement, open to accession by all, much of the work on the MAI took place at the OECD, with the assistance of the Secretariat, over the period April 1995-1998. It is therefore classified here. The objective was to formulate a multilateral agreement on investment which would achieve a wide level of liberalisation in investment operations together high standard in the protection of this investment, and, have, not only a state-to-state disputes settlement procedure, but also an investor-to-state one. Although the draft proposals of the Negotiating Group have not been published, participant countries in the negotiations should be able to trace the definitions, which are based on stock concepts, and fit them into the schema elaborated here.

EU

The EU framework⁵⁰ (in Annex 2)⁵¹ is remarkably similar, in definitional terms, to that of the OECD Code of Liberalisation of Capital Movements. It also is based on flow concepts. Not having been in either institution at the time, no suggestion will be made as to which was the precursor. However, there was significant movement on this front in the early sixties, with the acceptance of IMF Article VIII obligations by the original six EC countries, as well as the UK and Ireland on 15/2/1961, so some cross-fertilisation is likely. As in the case of WTO, mentioned above, there are particular definitional traps for the unwary in the EU classification. These are the inclusion in the Nomenclature, under Heading X, of two types of operations “premiums and payments in respect of life assurance” and “credit insurance”, and under Heading XIII of “Transfers of the monies required for the provision of services”. These would be classified in our theoretical classification not as capital movements but rather as services related payments, much as trade payments (other than commercial credits) would be the contra-flow, in payments terms, of trade.⁵² Even with over sixty potential categories,

⁵⁰ See Nomenclature of Capital Movements in 1960, 1962 and 1988 Directives.

⁵¹ Since 1/1/94 the 1988 Directive was replaced by Treaty Articles 73b to 73h providing for a more comprehensive liberalisation requirement which also applied to most operations with third countries. At the same time, financial sanctions on third countries, previously within the competence of individual EU Member States, became subject to an explicit Treaty provision (Article 73g). Although the Directive provisions were replaced by Treaty Articles, the definitional annex of the 1988 Directive continues to form the background for the application of the Treaty rules.

⁵² For a detailed discussion of why these particular headings crept in here, see p.93 A.F.P. Bakker *The Liberalisation of Capital Movements in Europe – The Monetary Committee and Financial Integration 1958-1994*, Kluwer Academic Publishers 1996.



at the end of the list there is still to be found a category “XIII F - Other capital movements: Miscellaneous”.

Energy Charter Treaty

The ECT in its Article 1(6) defines the concept of investment in an asset based framework (see Annex 3) including tangible and intangible movable and immovable property, participation in a company, claims, intellectual property, returns and rights. It also provides for changes in the form in which assets are invested (in our model classification this might be more appropriately treated as two operations). Claims to performance, which in the past had created the need for specific legislative action, are also explicitly regarded as an investment.⁵³

NAFTA

The NAFTA in Article 1139 sets out that agreement’s definition of investment which is also asset based (i.e. stock concept). Extracts are included in Annex 4. Of interest is the inclusion of investment in real estate for economic benefit, which sometimes is classified separately in other definitions.⁵⁴ Certain contracts included in item h) would seem to be quite close to the borderline between provision of services and capital movements. An investment is also defined to extend to direct or indirect ownership or control, as is the case in the ECT and bilateral investment protection agreements.

Bilateral Investment Protection Agreements

Bilateral investment protection agreements also include some useful definitions of investment. While specific model country agreements differ quite considerably in their exact formulation (see Annex 5 for extracts from selected country agreements) all are

“This curious inclusion was an answer to the specific problems posed by the Belgian dual “ [exchange rate] “market cross-border payments for services had to be executed in the free financial market ...other member states did not want to accept this and explicitly sanction Belgium’s dual market. As a pragmatic solution it was decided to include these payments for services in the capital directive.”

⁵³ A fact highlighted in a recent European Court Judgement of 16/3/99 in Case C-222/97.

⁵⁴ For example EU definitions include the category “II - Investments in real estate” covering “purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights”. The purchase of a property by an individual for investment purposes would be classified here. In IMF bop definitions it would be regarded, in principle, as direct investment (p.89 Balance of Payments Manual). Purchases of real estate for business purposes are covered under the heading “I – Direct Investments”.

asset based and are explicitly stated, even with fairly all-embracing coverage, to be non-exhaustive.⁵⁵

General Financial Sanctions as a Last Resort

Financial sanctions have tended to form the last line of action in terms of measures taken to disapprove of developments in a target country. To some extent one could even suggest that this is institutionalised in certain systems. For instance, in the EU while general economic sanctions imposed on the basis of Article 228a of the Treaty, after a Common Foreign and Security Policy Position has been arrived at under Article J.2, financial sanctions have a different legal base – Article 73g. Even here a Declaration to the Treaty, No. 3, provides that for the application of measures the usual practice, according to which the Council meets in the composition of Economic and Finance Ministers, shall be continued. Even to the casual reader of the Treaty, if such readers exist, it would seem that Finance Ministers might be quite concerned that barriers to capital movements with third countries might be erected, against their better judgement, and want a say in the process. Generally financial sanctions have come at the end of a long line of other progressive measures. An exception to this rule were measures on Serbia in 1998 where an investment ban was decided, but not the usual prior trade ban. While obviously possible, this has resulted in the case discussed above whereby capital goods could lawfully be sent to Serbia, but the act of investing there by firms in sanctions imposing countries was unlawful. It could be suggested that the dissuasive impact of an investment measure might be less than the trade measure, while a combination of both, say trade in capital goods first, investment later, might be the more usual progression to complete isolation.

Penal Effects of Certain Measures on Target Countries

In the area of financial sanctions, a question always comes to the fore on the punitive nature of sanctions or otherwise. While most representatives present in this seminar have, to a large extent, the concerns of important financial sectors in mind, a question that might be considered is the dissuasive effect of financial asset freezes, as well as proportionality with other measures. Effectively the traditional treatment in such measures has been that although deposits and other holdings of target countries are frozen, they can possibly, in the interim, be some of the best managed assets in the world.⁵⁶ Yes our financial institutions benefit, in terms of fees, from their efforts in this

⁵⁵ The Canadian BITs, in contrast to those of other countries looked at, explicitly exclude property not acquired in the expectation or used for the purpose of economic benefit or other business purposes. Thus the purchase of a second home would not seem to be regarded as an “investment”.

⁵⁶ Some attention was devoted to this topic at last year’s seminar. Ambassador Jeker “Lessons learned and definitions” treated asset management and stressed that financial asset sanctions are not intended to be confiscatory. Others highlighted the fact that ultimately claims on these assets may exceed the assets in total.



regard, but ultimately so also do the targets when they have reformed their ways. Here, expropriation, even if legally possible, is not suggested, but perhaps some recognition that in certain circumstances an asset freeze, with efficient managers of those assets, may not always be so excessively constraining. On proportionality, a personal view is that the treatment of financial assets may be considerably less onerous than the treatment of companies in our countries which may happen to be “directly or indirectly owned or controlled” by the target. While removed from the administration of controls on these companies, it could be argued that the procedures needed to ensure that the target country did not benefit while sanctions were in place, could be sufficient to close these firms down, with the inevitable employment consequences for our economies, and something akin to expropriation for the target country. But perhaps others closer to the implementation of measures could correct any misconceptions on this seemingly differential treatment of financial and real assets?

Annex 1

OECD Code Definitions' Basis

Annex D

General List of International Capital Movements and Certain Related Operations⁵⁷

Introduction

1. The General List is an attempt to establish a comprehensive catalogue of non-governmental operations involving the transfer of capital from one country to another. It also contains certain sections concerning, for example, non-resident-owned blocked funds under which no such transfers take place but which are nevertheless closely related to the subject matter of international capital movements for private account.
2. The general list serves as the basis for the Liberalisation Lists of Capital Movements set out in Annex A to the Code of Liberalisation of Capital Movements, but it does not deal with liberalisation as such. Member countries assume liberalisation obligations only with regard to the operations listed in Annex A to the Code.
3. The General List enumerates operations which comprise transactions between residents of different countries as well as any capital transfers resulting directly therefrom and envisaged thereunder by the parties concerned. For example, the sections dealing with the granting of credits or loans cover not only the initial transfer of the capital amounts in question but also their subsequent retransfer; they do not, however, cover transfers, such as interest, which are considered to be current payments and therefore are dealt with in the Code of Liberalisation of Current Invisible Operations. The purchase or sale of foreign exchange in order to complete an operation included in the General List is covered by the section dealing with that operation. Foreign exchange transactions that are necessary to complete an operation included in the Code of Liberalisation of Current Invisible Operations are covered by the provisions of that Code.
4. All international capital movements have two distinct aspects: the capital export from one country and the corresponding capital import into another.

⁵⁷ Annex I Nomenclature Of The Capital Movements Referred To In Article 1 Of The Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty. Official Journal L 178 , 08/07/1988 p. 0008 - 0012. Celex: 388L0361.

Moreover, an operation between residents and non residents may take place in the country of the resident, in the country of the non resident, or in a third country. The attitude to any particular operation of the authorities of the countries concerned may thus differ, and the sections in the General List have been designed to take this into account.

5. Certain international capital operations might be for the account of one and the same person in which case they need not entail transactions between residents and non residents, e.g. transfers of emigrants' assets, physical movements of capital assets, transfers of blocked funds.
6. The operations enumerated in the General List may be denominated or settled in any currency, including a composite currency such as the ECU or the SDR.

I. Direct Investment

Investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof:

A. In the country concerned by non residents by means of:

1. Creation or extension of a wholly owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;
2. Participation in a new or existing enterprise;
3. A loan of five years or longer.

B. Abroad by residents by means of:

1. Creation or extension of a wholly owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;
2. Participation in a new or existing enterprise;
3. A loan of five years or longer.

II. Liquidation of Direct Investment

A. Abroad by residents.

B. In the country concerned by non residents.

III. Operations in Real Estate

A. Operations in the country concerned by non residents:

1. Building or purchase.
2. Sale.

B. Operations abroad by residents:

1. Building or purchase.
2. Sale.

IV. Operations in Securities on Capital Markets

A. Admission of domestic securities on a foreign capital market:

1. Issue through placing or public sale of shares or other securities of a participating nature;
2. Introduction on a re- cognised foreign security market of bonds or other debt securities (original maturity of one year or more).

B. Admission of foreign securities on the domestic capital market:

1. Issue through placing or public sale of shares or other securities of a participating nature;
2. Introduction on a re-cognised foreign security market of bonds or other debt securities (original maturity of one year or more).

C. Operations in the country concerned by non residents:

1. Purchase of shares or other securities of a participating nature;
2. Sale of bonds and other debt securities (original maturity of one year or more).

D. Operations abroad by residents:

1. Purchase of shares or other securities of a participating nature;
2. Sale of bonds and other debt securities (original maturity of one year or more).

V. Operations on Money Markets

A. Admission of domestic securities and other instruments on a foreign money market:

1. Issue through placing or public sale.
2. Introduction on a recognised foreign money market.

B. Admission of foreign securities and other instruments on the domestic money market:

1. Issue through placing or public sale.
2. Introduction on a recognised domestic money market.

C. Operations in the country concerned by non residents:

1. Purchase of money market securities.
2. Sale of money market securities.
3. Lending through other money market instruments.
4. Borrowing through other money market instruments.

D. Operations abroad by residents:



1. Purchase of money market securities.
2. Sale of money market securities.
3. Lending through other money market instruments.
4. Borrowing through other money market instruments.

VI. Other Operations in Negotiable Instruments and Non-Securitized Claims

A. Admission of domestic instruments and claims on a foreign financial market:

1. Issue through placing or public sale.
2. Introduction on a recognised foreign financial market.

B. Admission of foreign instruments and claims on a domestic financial market:

1. Issue through placing or public sale.
2. Introduction on a recognised domestic financial market.

C. Operations in the country concerned by non residents.

1. Purchase.
2. Sale.
3. Exchange for other assets.

D. Operations abroad by residents:

1. Purchase.
2. Sale.
3. Exchange for other assets.

VII. Operations in Collective Investment Securities

A. Admission of domestic collective investment securities on a foreign securities market:

1. Issue through placing or public sale.
2. Introduction on a recognised foreign securities market.

B. Admission of foreign collective investment securities on the domestic securities market:

1. Issue through placing or public sale.
2. Introduction on a recognised domestic securities market.

C. Operations in the country concerned by non residents:

1. Purchase.
2. Sale.

D. Operations abroad by residents:

1. Purchase.
2. Sale.

VIII. Credits Directly Linked with International Commercial Transactions or with the Rendering of International Services

- i) In cases where a resident participates in the underlying commercial or service transaction;

ii) In cases where no resident participates in the underlying commercial or service transaction.

A. Credits granted by non residents to residents.

B. Credits granted by residents to non residents.

IX. Financial Credits and Loans

A. Credits and loans granted by non residents to residents.

B. Credits and loans granted by residents to non residents.

X. Sureties, Guarantees and Financial Back-Up Facilities

i) In cases directly related to international trade or international current invisible operations, or in cases related to international capital movement operations in which a resident participates;

ii) In cases not directly related to international trade, international current invisible operations or international capital movement operations, or where no resident participates in the underlying international operation concerned.

A. Sureties and guarantees:

1. By non residents in favour of residents.

2. By residents in favour of non residents.

B. Financial back up facilities:

1. By non residents in favour of residents.

2. By residents in favour of non residents.

XI. Operation of Deposit Accounts

A. Operation by non residents of accounts with resident institutions:

1. In domestic currency.

2. In foreign currency.

B. Operation by residents of accounts with non resident institutions:

1. In domestic currency.

2. In foreign currency.

XII. Operations in Foreign Exchange

A. In the country concerned by non residents:

1. Purchase of domestic currency with foreign currency.

2. Sale of domestic currency for foreign currency.

3. Exchange of foreign currencies.

B. Abroad by residents:

1. Purchase of foreign currency with domestic currency.

2. Sale of foreign currency for domestic currency.

3. Exchange of foreign currencies.



XIII. Life Assurance

Capital transfers arising under life assurance contracts:

- A. Transfers of capital and annuities certain due to resident beneficiaries from non resident insurers.
- B. Transfers of capital and annuities certain due to non resident beneficiaries from resident insurers.

XIV. Personal Capital Movements

- A. Loans.
- B. Gifts and endowments.
- C. Dowries.
- D. Inheritances and legacies.
- E. Settlement of debts in their country of origin by immigrants.
- F. Emigrants' assets.
- G. Gaming.
- H. Savings of non resident workers.

XV. Physical Movement of Capital Assets

- A. Securities and other documents of title to capital assets:
 1. Import.
 2. Export.
- B. Means of payment:
 1. Import.
 2. Export.

XVI. Disposal of Non Resident Owned Blocked Funds

- A. Transfer of blocked funds.
- B. Use of blocked funds in the country concerned:
 1. For operations of a capital nature.
 2. For current operations.
- C. Cession of blocked funds between non residents.

Notes to Annex 1

1. All items on this General List of International Capital Movements and Certain Related Operations appear also on Liberalisation List A or B in Annex A to the Code.
2. Other than operations falling under Sections I or II of the General List.
3. Other than operations falling under Section IV of the General List.
4. Other than operations falling under Sections IV, V or VII of the General List.
5. Other than credits and loans falling under Sections I, II, VIII or XIV of the General List.



6. Other than operations falling under Section V of the General List.
7. Other than operations falling under any other Section of the General List.
8. Transfers of premiums and pensions and annuities, other than annuities certain, in connection with life assurance contracts are governed by the Code of Liberalisation of Current Invisible Operations (Item D/3). Transfers of whatever kind or size under other than life assurance contracts are always considered to be of a current nature and are consequently governed by the Current Invisibles Code.

Annex 2

EU: Nomenclature of Council Directive 88/361/EEC of 24 June 1988

Annex I

Nomenclature of the Capital Movements Referred to in Article 1 of the Directive

In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

- all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),
- operations carried out by any natural or legal person, including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68 (3) of the Treaty,
- access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,
- operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof or immediate use of such proceeds within the limits of Community obligations,
- operations to repay credits or loans.

This Nomenclature is not an exhaustive list for the notion of capital movements - whence a heading XIII - F. Other capital movements - Miscellaneous. It should not

therefore be interpreted as restricting the scope of the principle of full liberalisation of capital movements as referred to in Article 1 of the Directive.

I - Direct Investments

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.
2. Participation in new or existing undertaking with a view to establishing or maintaining lasting economic links.
3. Long-term loans with a view to establishing or maintaining lasting economic links.
4. Reinvestment of profits with a view to maintaining lasting economic links.

A - Direct investments on national territory by non-residents

B - Direct investments abroad by residents

II - Investments in Real Estate (Not Included Under I)

A - Investments in real estate on national territory by non-residents

B - Investments in real estate abroad by residents

III - Operations in Securities Normally Dealt in on the Capital Market (not included under I, IV and V)

(a) Shares and other securities of a participating nature.

(b) Bonds.

A - Transactions in securities on the capital market

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange.
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange.
4. Acquisition by residents of foreign securities not dealt in on a stock exchange.

B - Admission of securities to the capital market

(i) Introduction on a stock exchange.

(ii) Issue and placing on a capital market.

1. Admission of domestic securities to a foreign capital market.

2. Administration of foreign securities to the domestic capital market.

IV - Operations in Units of Collective Investment Undertakings

(a) Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).

(b) Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.

(c) Units of undertakings for collective investment in other assets.

A - Transactions in units of collective investment undertakings



1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

B - Administration of units of collective investment undertakings to the capital market

(i) Introduction on a stock exchange.

(ii) Issue and placing on a capital market.

1. Admission of units of national collective investment undertakings to a foreign capital market.
2. Admission of units of foreign collective investment undertakings to the domestic capital market.

V - Operations in Securities and Other Instruments Normally Dealt in on the Money Market

A - Transactions in securities and other instruments on the money market

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

B - Admission of securities and other instruments to the money market

(i) Introduction on a recognised money market.

(ii) Issue and placing on a recognised money market.

1. Admission of domestic securities and instruments to a foreign money market.
2. Admission of foreign securities and instruments to the domestic money market.

VI - Operations in Current and Deposit Accounts with Financial Institutions

A - Operations carried out by non-residents with domestic financial institutions

B - Operations carried out by residents with foreign financial institutions

VII - Credits Related to Commercial Transactions or to the Provision of Services in which a Resident is Participating

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A - Credits granted by non-residents to residents

B - Credits granted by residents to non-residents

VIII - Financial Loans and Credits

(not included under I, VII and XI)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A - Loans and credits granted by non-residents to residents

B - Loans and credits granted by residents to non-residents

IX - Sureties, Other Guarantees and Rights of Pledge

A - Granted by non-residents to residents

B - Granted by residents to non-residents

X - Transfers in Performance of Insurance Contracts

A - Premiums and payments in respect of life assurance

1. Contracts concluded between domestic life assurance companies and non-residents.

2. Contracts concluded between foreign life assurance companies and residents.

B - Premiums and payments in respect of credit insurance

1. Contracts concluded between domestic credit insurance companies and non-residents.

2. Contracts concluded between foreign credit insurance companies and residents.

C - Other transfers of capital in respect of insurance contracts

XI - Personal Capital Movements

A - Loans

B - Gifts and endowments

C - Dowries

D - Inheritances and legacies

E - Settlement of debts by immigrants in their previous country of residence

F - Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad

G - Transfers, during their period of stay, of immigrants' savings to their previous country of residence

XII - Physical Import and Export of Financial Assets

A - Securities

B - Means of payment of every kind

XIII - Other Capital Movements

A - Death duties

B - Damages (where these can be considered as capital)



C - Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)

D - Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)

E - Transfers of the monies required for the provision of services (not included under VI)

F – Miscellaneous

Explanatory Notes

For the purposes of this Nomenclature and the Directive only, the following expressions have the meanings assigned to them respectively:

Direct Investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under I-1 of the Nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person of another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long-term loans of a participating nature, mentioned under I-3 of the Nomenclature, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

Investments in Real Estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

Introduction on a Stock Exchange or on a Recognised Money Market

Access - in accordance with a specified procedure - for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on

an officially recognised stock exchange or in an officially recognised segment of the money market.

Securities Dealt in on a Stock Exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange - e.g. committees of banks (unquoted securities).

Issue of Securities and Other Negotiable Instruments

Sale by way of an offer to the public.

Placing of Securities and Other Negotiable Instruments

The direct sale of securities by the issuer or by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

Domestic or Foreign Securities and Other Instruments

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

Shares and Other Securities of a Participating Nature

Including rights to subscribe to new issues of shares.

Bonds

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue.

Collective Investment Undertakings

Undertakings:

- the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.



Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of the Directive, common funds shall also include

- Unit trusts;
- Securities and other instruments normally dealt in on the money market;
- Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments;
- Credits related to commercial transactions or to the provision of services;
- Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations;
- Financial loans and credits;
- Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating;
- This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

Residents or non-residents

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.



Proceeds of liquidation (of investments, securities, etc.)

Proceeds of sale including any capital appreciation, amount of repayments, proceeds of execution of judgements, etc.

Natural or legal persons as defined by the national rules.

Financial institutions

Banks, savings banks and institutions specialising in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

Credit institutions

Banks, savings banks and institutions specialising in the provision of short-term, medium-term and long-term credit.

Annex 3

Investment in the Energy Charter Treaty (Article 1(6))

“Investment” means every kind of asset, owned or controlled directly or indirectly by an investor and includes:

- a) tangible and intangible and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- b) a company or business enterprise, or shares, stock, or other form of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- c) claims to money and claims to performance pursuant to a contract having economic value and associated with an investment;
- d) intellectual property;
- e) returns;
- f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any economic activity in the Energy sector.

A change in the form in which assets are invested does not affect their character as investments and the term “investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.

“Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investment or classes of investments designed by the Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

Annex 4

NAFTA Definition of Investment (extracts from Article 1139)

For purposes of this Chapter:

investment means:

- a) an enterprise;
- b) an equity security of an enterprise;
- c) a debt security of an enterprise
 - i) where the enterprise is an affiliate of the investor, or
 - ii) where the original maturity of the debt security is at least 3 years,but does not include a debt security, regardless of original maturity, of a state enterprise;
- d) a loan to an enterprise
 - i) where the enterprise is an affiliate of the investor, or
 - ii) where the original maturity of the loan is at least 3 years,but does not include a loan, regardless of original maturity, to a state enterprise;
- e) an interest in an enterprise that entitles the owner to share in income and profits of the enterprise;
- f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- h) interests arising from the commitment of capital or other resources in the territory of the Party, to economic activity in such territory, such as under
 - i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
 - ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;



but investment does not mean:

- i) claims to money that arise solely from
- i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or
- ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs a) through (h).

Annex 5

Investment Definitions in Some Bilateral Investment Protection Agreements

CDN, Canada

“Investment” means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter’s laws and, in particular, though not exclusively, includes:

- i) movable and immovable property and any related property rights, such as mortgages, liens or pledges;
- ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;
- iii) money, claims to money, and claims to performance under contract having a financial value;
- iv) goodwill;
- v) intellectual property rights;
- vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

Any change in the form of an investment does not affect its character as an investment.

CH, Switzerland

The term “investments” shall include every kind of assets and particularly:

- a) movable and immovable property as well as any other rights in them, such as servitudes, mortgages, liens, pledges;
- b) shares, parts or any other kinds of participations in companies;
- c) claims to money or to any performance having an economic value;
- d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
- e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

D, Germany

The term "investments" comprises every kind of asset, in particular:

- a) movable and immovable property as well as any other rights in them, such as mortgages, liens and pledges;
 - b) shares of companies and other kinds of interest in companies;
 - c) claims to money which has been used to create an economic value or claims to any performance having an economic value;
 - d) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and good will;
 - e) business concessions under public law, including concessions to search for, extract and exploit natural resources;
- any alteration of the form in which assets are invested shall not affect their classification as investment.

F, France

The term "investment" covers all assets, such as goods, rights and interests of all nature and, more particularly, but not exclusively:

- a) movable and immovable goods, as well as all other real rights such as mortgages, privileges, rights of usufruct, sureties, and all similar rights;
- b) shares, premiums on shares and other forms of participation, even minority or indirect in firms established on the territory of one of the contracting parties;
- c) bonds, debts and rights to all performance having an economic value;
- d) intellectual commercial and industrial property rights such as authors' royalties, patents, licences, copyright, industrial models, technical processes, know-how, registered names and clientele;
- e) concessions granted in accordance with the law or by virtue of a contract, notably concessions relating to search for, cultivate, extract or exploit natural resources, including those situated in the maritime zone of Contracting Parties.

It is understood that such assets must be or must have been invested in conformity with the legislation of the Contracting Party on the territory or in the maritime zone in which the investment is made, before or after the entry into force of the present agreement.

Any modification in the form of the investment in assets does not affect its qualification as an investment on condition that this modification is not contrary to the legislation of the Contracting Party on the territory or maritime zone of which the investment is made.

NL, Netherlands

The term "investments" means every kind of asset and more particularly, though not exclusively:

- i) movable and immovable property as well as any other rights in them in respect of every kind of asset;
- ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
- iii) claims to money, to other assets or to any performance having an economic value;
- iv) rights in the field of intellectual property, technical processes, goodwill and know-how;
- v) rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

UK, United Kingdom

"investment" means every kind of asset and in particular, though not exclusively, includes:

- i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- ii) shares in and stock and debentures of a company and any other form of participation in a company;
- iii) claims to money or to any performance under contract having a financial value;
- iv) intellectual property rights, goodwill, technical processes and know-how;
- v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement;

US, United States

"investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

- i) a company;
- ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;
- iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;
- iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;
- v) intellectual property, including: copyrights and related rights, patents, rights in plant varieties, industrial designs,



rights in semiconductor layout designs,
trade secrets, including know-how and confidential business information,
trade and service marks, and
trade names; and
vi) rights conferred pursuant to law, such as licenses and permits.

Analysing the Effects of Targeted Financial Sanctions

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Introduction

Driven by dissatisfaction with the costs to both innocent civilians and front-line states of broad trade embargoes, policymakers in recent years turned their attention to targeted financial sanctions as a possible alternative. The objective is to find a tool that is both more effective than trade sanctions in achieving foreign policy goals and less blunt in its economic effects. Much of the debate has focused on methods for more carefully targeting sanctions so that more of the costs are borne by those whose behaviour the international community seeks to change and less by civilians who have little or no control over policy. Another goal of proposed reforms is to reduce the costs to members of the coalition imposing sanctions, especially neighbours and close trading partners of the target state who bear a disproportionate share of the burden and who often lack the resources to easily adjust.

One reason financial sanctions have attracted attention in this context is that there is evidence to suggest they may be relatively more effective than trade sanctions. In the most comprehensive empirical analysis of economic sanctions to date, financial sanctions were relatively more likely to contribute to the achievement of foreign policy goals than either financial sanctions imposed in conjunction with trade controls or trade sanctions imposed alone.⁵⁸ Many types of financial sanctions might also be expected to minimise the costs of enforcement for hard-hit front-line states, but broad financial sanctions can also cause significant economic disruption in the target country and are not necessarily more humane than trade embargoes. Narrowly targeted financial sanctions, such as freezing the overseas assets of political and military leaders and their supporters, would have the fewest collateral effects, but are often difficult to implement effectively and may not inflict much pain if the targeted individuals have access to substantial new sources of income on a continuing basis.

In this paper, I will analyse the reasons that one might logically expect financial sanctions in general to be more effective than trade sanctions. I will then examine

⁵⁸ Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 2nd ed., revised, Washington: Institute for International Economics, 1990. The third edition is currently in preparation and should be published sometime in late 1999.

analyse in detail the potential utility of financial sanctions that target individual regime leaders or supporters by freezing their assets held abroad. The paper also looks at other types of financial sanctions in terms of their relative „targetability,“ the ease with which they can be evaded by the targeted government, and the costs they are likely to have for members of the sanctioning coalition. The paper then illustrates the potential opportunities and pitfalls of targeted financial sanctions with a brief discussion of three recent cases: Haiti, Yugoslavia, and Iraq.

To simplify references, the country or coalition of countries imposing sanctions will be called the „sender.“ The country or group against whom sanctions are imposed will be called the „target.“ Close neighbours and trading partners of the target will be called „front-line states.“ Finally, a clear distinction must also be made between *targeted* sanctions and *selective* sanctions. Selective sanctions are less than comprehensive sanctions involving restrictions on particular products or financial flows. Targeted sanctions are a subset of selective sanctions that specifically aim for narrow or targeted effects.

What Are Financial Sanctions and How Have They Been Used?

The most commonly-used financial sanctions affect financial *flows*, such as transfers of economic aid, official trade credits or guarantees, or, occasionally, private bank loans. But sanctions can also target financial *stocks*, such as bank accounts or other assets held abroad by either the target country government or particular individuals. Table 1 lists various types of financial sanctions, divided by whether the finance originates with the public or private sector. Governments can directly manipulate aid or official loans to the target country, or they can order the private sector to restrict new loans or place conditions on rescheduling existing ones. Foreign investment can be banned, made less attractive by placing conditions on the treatment of investment income, or firms can be required to completely divest their holdings in a targeted country.⁵⁹ The target's access to funds can also be lowered by restricting the transfer of worker remittances or gifts by emigrants to family members and friends still in the target country, or assets held abroad can be blocked.

According to preliminary data collected by my colleagues and I for the third edition of *Economic Sanctions Reconsidered*, financial sanctions are quite common. Between 1914 and 1998, 170 sanctions cases were identified, 132 of them involving financial sanctions. In more than 40 percent (56 cases), financial sanctions— usually restrictions on economic aid or military assistance— were used alone (see table 2). Only 22 cases involved

⁵⁹ One of the sanctions used against South Africa was denial of foreign tax credits for investments there, thus subjecting income from those investments to taxation by both the American and South African governments.

comprehensive trade and financial sanctions, while 10 involved financial sanctions in conjunction with import sanctions and 24 cases involved financial sanctions combined with restrictions on exports to the target. Restrictions on government programs, including economic and military aid, trade credits, and political risk insurance, are by far the most common financial sanction, occurring in 99 of the 132 cases. Military assistance was restricted in 31 cases, often in conjunction with limits on economic aid.

Outside of comprehensive sanctions regimes, restrictions on private financial flows are relatively rare. Only four cases involved restrictions on bank lending and only three affected foreign direct investment. Interestingly, assets freezes, though traditionally viewed as an extremely serious step and often employed in situations involving military conflict, are relatively more common. There have been eight cases involving a freeze of the target country's state-owned financial assets. Assets freezes targeting individual government officials or their supporters, while much discussed in recent years, are rarer. The United States has the most advanced technology and legal apparatus in this area and, in addition to freezing individual assets in a few cases with the goal of changing government behaviour, the United States has also frozen the assets of individual drug dealers and terrorists in an effort to impede their activities.⁶⁰

Table 2 also summarises the experience of the United Nations with economic sanctions. To date, there have been 12 cases, 4 involving comprehensive trade and financial sanctions, 4 involving arms embargoes only, and 4 involving a mix of selective sanctions. These selective sanctions usually involve restrictions on arms sales but also restrictions on travel, ranging from the complete ban on air transportation links with Libya to the more targeted restrictions on travel by the coup leaders in Sierra Leone. Only one of these cases involves a targeted financial sanction: the freeze of assets of UNITA leaders.⁶¹

⁶⁰ For a comparison of legal and regulatory frameworks in six key countries, see Natalie Reid, et al., „Targeted Financial Sanctions: Harmonizing National Legislation and Regulatory Practices,“ Thomas J. Watson, Jr. Institute for International Studies, Brown University, processed. For a description of the US targeted financial sanctions against terrorists and drug cartels, see Richard Newcomb, „Targeting Financial Sanctions,“ pp. 117-18, in *Expert Seminar on Targeting UN Financial Sanctions*, Department of Economy, Swiss Federal Office for Foreign Economic Affairs, Interlaken, March 17-19, 1998. The full proceedings of the seminar are available on the „smart sanctions“ website at <http://www.smartsanctions.ch>.

⁶¹ The Haitian case included sanctions targeting the foreign-held assets of the coup leaders and their supporters but these were in the context of a package of broader trade and financial sanctions. In addition, the UN resolution „urges“ but does not require member states to freeze individual assets. Other UN cases have involved freezing the public assets of target countries but have left the personal assets of the leadership untouched.

Comparing Trade and Financial Sanctions

Of the 115 economic sanctions cases between 1914 and 1990 that were analysed in the second edition of *Economic Sanctions Reconsidered* (1990), financial sanctions were used alone in about 30 percent, trade sanctions in about 20 percent, and some combination of trade and financial sanctions were used in the other half of the cases studied. Financial sanctions alone contributed to at least partial achievement of foreign policy goals in 41 percent of the cases where they were used versus 24 percent for trade sanctions used alone. Sanctions combining trade and financial sanctions were successful in just over 30 percent of the cases examined.

There are a number of reasons that financial sanctions might be expected to be more effective than trade sanctions:

- they are relatively easier for the sanctioner to enforce,
- but harder for the target to evade;
- market reactions are more likely to reinforce than to undermine them; and
- they can have broad trade and economic effects that are also more difficult to avoid than under trade sanctions.

Financial sanctions could be relatively easier than trade sanctions to enforce for two main reasons. First, governments and international financial institutions may be important providers or guarantors of financial flows, especially with respect to poorer developing countries. At least in principle, it should be easier to control the activities of government agencies than those of private actors. Second, even when the private sector is involved, financial activities may be easier to police than trade activities. Under normal circumstances, financial services, especially banking, are more heavily regulated than merchandise trade, at least in most developed countries. There are also likely to be a smaller number of larger players involved in international finance than in international trade. That means that their activities are more easily monitored and penalties for violations of government policy more readily levied.

Complementing stronger enforcement on the sanctioner's side, defensive strategies aimed at evading financial sanctions may be more difficult and more expensive than smuggling or stockpiling to evade trade sanctions. Development assistance or military aid, for example, may be irreplaceable unless a „black knight“ is ready and willing to provide offsetting assistance. This was a significant factor in undermining US sanctions in a number of cases during the Cold War, most notably Cuba, but it is less likely to be a factor today and should be even less a factor in UN-mandated sanctions cases.⁶²

⁶² Hufbauer, Schott, and Elliott (1990), pp. 96-97. Smuggling and other violations have been alleged as frustrations have increased with long-standing sanctions against Iraq and Libya but it still seems unlikely that a UN member would blatantly violate UN-mandated sanctions by providing large amounts of financial assistance to a target.

Defensive strategies for dealing with private-sector financial sanctions may also be difficult or expensive to invoke. For example, a moratorium on debt servicing or, more seriously, debt repudiation could impede the target's access to international credit for years to come, long after sanctions are lifted. It is also likely to be more difficult for the regime or elites close to it to reap illicit gains from evading financial sanctions such as often occurs with smuggling under trade sanctions.

Market forces may also reinforce rather than undermine the effects of financial sanctions, as usually happens with trade sanctions. Under a sanction that bars exports to the target, for example, the induced scarcity leads to price increases that, in turn, encourage smugglers to try to evade the sanctions. In this case, there is a risk of being caught and punished, but that risk is often small. By contrast, bankers or investors, not only risk legal redress, they also risk losing their capital. Financiers, who typically are repaid or reap their gains over time, thus tend to be more risk averse than goods traders who can demand payment up front. This also raises the possibility of „privately-enforced“ financial sanctions if political instability or the effects of other sanctions raise the perception of risk so that lenders and investors shun the target even in the absence of formal government sanctions, as happened in South Africa in the mid-1980s.

Finally, in modern market economies, most trade and other economic activity depend on access to finance. Though barter is still used to some degree in and among cash-poor countries, significant restrictions on financial flows are likely to impede trade flows while avoiding the difficulties involved in enforcing trade sanctions. Similarly, a ban on imports from the target country may be thought of as a form of financial sanction since it deprives the target of hard currency and thus may have follow-on effects on the target's ability to import even in the absence of formal export sanctions. For example, in the Iraq case, it would matter little if sanctions on exports to Iraq were lifted as long as the oil boycott was maintained because Iraq has few other resources with which to buy goods. Similarly, the UN-mandated boycott of Angolan diamonds not certified by the government of that country is intended to deny financial resources to the UNITA rebels.

Thus, financial sanctions offer the potential for greater effectiveness as a foreign policy tool because they are relatively easier to enforce, harder to evade, and may spur market-reinforcing effects. But this analysis does not suggest financial sanctions will necessarily be more humane or more likely to affect elites. The question, then, is whether financial sanctions can be targeted in a way that both retains their relative utility and reduces the collateral damage.

The Effects of Targeted Financial Sanctions

The keys to making economic sanctions more effective but also less blunt are the ability, on the one hand, to restrict evasion opportunities available to the target country

and, on the other, to target the effects as much as possible on the political, military, or economic elites who have the power to change the policy or behaviour that provoked an international response. The ability to evade sanctions, in turn, depends on what alternatives sources of finance or income exist and the ability of the sender state to monitor and enforce restrictions on financial flows or assets.

The most frequently discussed targeted financial sanction is a freeze of the overseas assets of key individuals in the target country. The rationale behind the assets freeze idea is two-fold: to hit those responsible for undesirable behaviour and spare those who have no power to change it. Under broad trade sanctions, the burden falls most heavily on the poor and the middle class, who have no little or no cushion when bad times hit. Politicians and their wealthy supporters are often able to avoid the worst effects of comprehensive sanctions and, thus, have little incentive to comply with the sanctioner's demands unless discontent becomes so great as to threaten the regime's hold on power, either in an election or through an extra-constitutional coup.

This section looks, first, at the conditions under which an assets freeze might be effective in achieving the international community's goals and then examines the evasion and targeting possibilities with respect to financial flows to and from the target state. Although there are numerous challenges to be overcome in finding and identifying the assets to be targeted, the analysis further suggests that, even if successfully carried out, the economic and political effects of an asset freezes would be limited in many cases without complementary controls on flows.

Assets Freezes: The Ideal Financial Sanction?

By targeting pain on the country's leadership, it is hoped that the regime will have more of an incentive to change its behaviour while at the same time sparing innocent civilians. It may also be hoped that punishing leaders by depriving them of their wealth, often illicitly gained, will serve to support international norms and perhaps deter others from following the same path. The question, of course, is whether assets freezes can inflict sufficient pain to cause regime leaders to comply with the international community's demands or even to send a strong signal of disapproval. To have any chance of success:

- regime leaders must hold assets abroad;
- the assets must be identifiable;

and, in cases where compliance is the goal, the assets must be a large enough proportion of the targeted individuals' total assets that the costs of defiance— the value of the blocked assets— must be perceived as being larger than the political, economic, or other costs of complying with the sender's demands.

The proportion of assets held abroad is likely to vary with the level of development of the target country's economy and the level of corruption in that economy. The more economically developed a country is, the more sophisticated its financial markets are likely to be and the greater the proportion of an individual's assets that are likely to be held at home. Less developed countries are relatively more likely to be characterised by poor macroeconomic performance, relatively higher risk, and fewer investment opportunities, making it likely that a higher proportion of assets will be held or invested abroad. The most corrupt countries also tend to be less developed economically and less liberal politically.⁶³ This has implications not just for the size of assets likely to be held abroad, but, more importantly, for the transparency of those assets since corrupt political leaders will want to shield ill-gotten gains from scrutiny even in the absence of economic sanctions.

The corruption issue, then, links to the second question: assuming that regime leaders have some level of assets held abroad, can they be identified before they are moved? In addition to the fact that the assets of corrupt leaders are rarely easily found under the best of circumstances, UN Security Council decisions are usually extensively debated before a decision to impose sanctions is approved. In the case of liquid financial assets, such delay could be fatal as it gives the targets an opportunity to move their assets to safer locations and to hide them using false names, front companies, and other subterfuges. Moreover, with the increased discussion and use of targeted assets freezes in a number of recent cases, it seems likely that potential targets are already taking steps to protect themselves from any future sanctions.⁶⁴

Assuming that, against these odds, a large proportion of targeted assets can be identified and frozen, what are the conditions under which they are likely to have the desired political result? The first problem is that, as long as targeted individuals retain access to *new* income and financial *flows*, the cost of the sanctions inevitably erodes over time. This is likely to be a particular problem vis-à-vis countries with corrupt dictators and substantial valuable natural resources, such as oil, diamonds, timber, etc. In those cases, if there are no restrictions on the export of valuable commodities, targeted individuals are likely to be able to replenish their wealth rather quickly. They may not be able to deposit or invest that wealth abroad, or may be able to do so only at higher cost due to the need for secrecy, but that cost may not be very high relative to the costs of complying with the demands of the international community.

⁶³ See Kimberly Ann Elliott, „Corruption as an International Policy Problem: Overview and Recommendations,“ in *Corruption and the Global Economy*, edited by Kimberly Ann Elliott (Washington: Institute for International Economics, 1997).

⁶⁴ See the discussion by Ambassador Rolf M. Jeker in „Lessons Learned and Definitions,“ in *Expert Seminar on Targeting UN Financial Sanctions*, Department of Economy, Swiss Federal Office for Foreign Economic Affairs, Interlaken, March 17-19, 1998.

Second, in cases where the sanctioner's demands threaten the regime's hold on power, the targeted individuals would have to be more interested in wealth than in power. This would more likely be the case for corrupt than for honest government officials and politicians, but in the case of corrupt officials, future flows of wealth may be inextricably linked to remaining in power. In that case, the decision whether to comply with the sanctioner's demands will depend on the expected value of future flows of wealth compared to the value of the individual's existing stock of wealth that has been frozen.

Economic elites would also be expected to value wealth over the direct exercise of power. In cases where their support is crucial to keep a regime in power, sanctioners will also want to consider targeting their assets even though they are not directly responsible for government policy or behaviour. Whether these individuals choose to encourage the regime to comply with the sanctioner's demands will depend: (i) on their ability to accumulate new wealth; and (ii) on their expected losses— for example due to increased taxation or expropriation— if compliance results in a less friendly government coming to power.

All of this suggests that targeted assets freezes, assuming that such assets can be found, will have the most utility

- against corrupt dictators in poor countries with few resources or options for accumulating new wealth;
- or when the goal is punitive or symbolic;
- or when the sender seeks only modest changes in policy or behaviour that do not threaten the regime's ability to hold power.

More ambitious goals relating to conflict prevention or abatement, or the restoration of democracy following a coup would appear to be out of reach unless financial *flows* are also disrupted and even that may not be enough.

Evasion and Targeting under Sanctions on Financial Flows

From the sender's perspective, evasion will be relatively more difficult for official financial flows than for private flows and more difficult for bankers, who are extensively regulated in most developed economies, than for foreign investors, who are closer to relatively unregulated goods traders. From the target's perspective, the calculations are similar. Flows to the government, whether from public or private sources, will be relatively harder to hide than flows to the target's private sector. (Similarly, public accounts held overseas should be relatively easier to identify and freeze than private accounts.) In general, however, the problem with trying to extend the targeted approach to financial flows is that the more targeted the sanctions are, the easier they will be to evade.

An obvious constraint on targeting sanctions on official financial flows is that those flows typically are to governments, not to individuals (though they may be, and often are, diverted to private accounts). Another obvious constraint is that development assistance is relevant only to that set of potential targets that depend on it and the value of those flows has been declining for years, thus reducing the potential leverage deriving from them.

Nevertheless, bilateral aid sanctions are the most commonly used and there is almost always an effort to target them in that humanitarian assistance, especially food aid, is usually exempted. Concessional multilateral lending is also usually exempted from sanctions because it is aimed at projects to help the poorest members of the recipient economy. In general, project-lending by the multilateral development banks will be relatively more targeted in its effects than lending by the International Monetary Fund (IMF), which usually is for balance of payments support and which has more immediate effects on economic activity than large infrastructure projects funded by MDB loans. The effects of restrictions on IMF lending are likely to be even broader than this implies since private lenders are often unwilling to lend to countries unless they have an agreement with the Fund.

A key element in determining the likely impact of aid sanctions is the level of corruption in the target country. Restrictions on development assistance, even if nominally broad in coverage, may have relatively small effects on the target country's population if the target government is pervasively corrupt. In some cases, the primary impact of aid sanctions may be to deprive members of the target government with opportunities for corruption. Moreover, recent research suggests that economic assistance contributes to growth and development only when the recipient government is committed to following „good“ economic policies. In the absence of that commitment, aid has little effect, either on promoting growth or in encouraging the adoption of good policies, thus cutting it off may not have significant effects on the public at large.⁶⁵

Unlike public flows, private flows can, at least in theory, be targeted against members of the target regime or their political supporters. But it would be relatively easy for targeted individuals to use false names or front companies to maintain access to financial markets. In higher income countries with relatively more developed financial markets, targeted individuals might turn to the domestic market for finance. If non-targeted borrowers can turn to international markets, there will be little or no effect on the overall price of credit available in the target economy. A general ban on international lending to the target country would be harder to evade but would have severe effects on economic activity, as was seen when multinational banks declined to roll over loans to South African borrowers in the mid-1980s.

⁶⁵ See Craig Burnside and David Dollar, „Aid, Policies and Growth,“ Macroeconomics and Growth Division, Policy Research Department, World Bank, Washington, processed.

Foreign direct investors are typically less regulated in the home country than bankers and restrictions on FDI should therefore be relatively easier to evade. Foreign investment in such cases would carry additional cost and risk, however, and would likely only be attempted if it involved non-renewable resources, such as oil or diamonds, where first-mover advantages exist that create incentives to find a way around sanctions. To the extent that restrictions on FDI are effective, however, the effects on the target economy could be broad if FDI accounts for a large share of total investment in the economy. As with bank loans, it is possible to target the restrictions to sectors or projects in which the government or its leaders have a particular political or financial interest. But again, unless these restrictions increase the perceived relative risk of investing in the economy, the net effect may be small.

Costs of Financial Sanctions to Senders

One of the advantages of financial sanctions in general, and assets freezes in particular, is that the countries most heavily affected from imposing them— primarily financial centres and aid donors— will be both smaller in number and frequently richer than front-line states affected by trade sanctions. Therefore, the issue of collateral damage to front-line states is less likely to be a problem with financial than with trade sanctions. But the costs of financial sanctions can still be substantial, particularly when the target is a large debtor country, and, thus, the potential costs to senders are still an important factor in determining whether support for sanctions exists and whether it can be sustained.

Overall, the costs to senders of imposing sanctions will vary depending on the size and wealth of the target country and the extent of the trade and financial linkages between sender and target. The larger the sender is relative to the target, the smaller the cost of imposing sanctions will tend to be. Similarly, the weaker the links between the two countries, the smaller the costs. The costs of financial sanctions, compared to trade sanctions, are more likely to fall on relatively richer and more developed economies because they are the countries most likely to be donor and creditor countries.

The primary direct effect of suspending concessional economic assistance for sender countries, especially grants, will be budgetary savings. Even for these countries, however, the costs of restrictions on public or private lending can be large if the target country is a large debtor. In that case, there are two principal sources of concern for sender countries. One is the effect of the sanctions on the ability of the target to repay its debt. The second is the effect on the target's willingness to repay, that is the possibility that the target will retaliate.

Restrictions on new loans to the target obviously represent lost business for financial institutions in the sender countries. More importantly, such restrictions may also threaten the servicing or repayment of earlier loans. The target country may be forced

to default if new sources of credit dry up or the target government may declare a moratorium on servicing foreign debt so as to conserve resources and cushion the impact of sanctions. In extreme cases, the target may choose to retaliate by repudiating its debt. Such instances are relatively rare, however, because repudiation would be likely to undermine the target's creditworthiness and ability to borrow for years to come, even after sanctions are lifted.

With respect to foreign direct investment, senders can restrict new flows, including reinvestment of retained earnings; they can affect profitability, and thus the decision to invest, by manipulating tax policy; or they can require firms to withdraw from the target economy. Such restrictions could result in lower profits, capital losses if divestment is required, or a total loss if the target retaliates by expropriating foreign-owned property.

Blocking the assets of a target government or individuals has fewer direct costs to the sender unless sender financial institutions have assets in the target that can be seized in retaliation. An assets freeze is likely to deter future business with the target, however, and may affect the competitiveness of sender-country financial institutions more broadly if other *potential* sanctions targets turn to financial havens or other alternatives to avoid the possibility of being sanctioned in the future. Before sanctions are imposed, sender-country institutions may also lose business if the target anticipates that it is about to be sanctioned and withdraws its assets. Given the experience to date, this would appear to be the likeliest cost to senders of assets freezes.

Case Studies of Financial Sanctions: Haiti, Yugoslavia, and Iraq

Haiti, Yugoslavia, and Iraq have all been the subject of comprehensive UN economic sanctions in the last decade, including broad restrictions on financial flows and the blocking of public assets held abroad. Haiti is one of the poorest countries in the world, while Yugoslavia and Iraq, prior to the imposition of sanctions, were both upper-middle income countries, though Yugoslavia's economy is more diversified than Iraq's, which is heavily dependent on a single commodity. This section summarises the experience with sanctions in these cases, focusing on the role of financial sanctions, and examines whether more targeted financial sanctions might have been a useful alternative to comprehensive sanctions in any or all of them.

Haiti

Shortly after a September 1991 military coup against the democratically-elected President of Haiti, Jean Bertrand Aristide, the United States suspended economic aid to Haiti, blocked exports to the Haitian police and military, froze Haitian Government assets in the United States and prohibited financial transfers from US citizens, including corporations, to the Haitian government. Other countries quickly followed in



suspending aid flows and, in November, the Organisation of American States voted to impose a total trade embargo on Haiti until Aristide was restored to office.⁶⁶

After nearly two years with no discernible progress, the US ratcheted up sanctions, freezing the assets of a number of individuals and institutions (either in the regime or accused of supporting it) and revoking the visas of regime supporters and their families. Around the same time, the UN Security Council approved an oil and arms embargo on Haiti, to take effect June 23. The resolution also called for the freezing of overseas bank accounts and other financial assets of more than 100 people involved in or supportive of the coup, but did not mandate it.

The sanctions were suspended, however, after the military regime and President Aristide signed the Governor's Island accord providing for his return to power. They were reimposed in October when the military regime did not fulfil its commitments. Both the US and the UN ratcheted up sanctions in subsequent months and, in May 1994, the UN voted unanimously to ban private flights to and from Haiti, deny visas to Haiti's military leaders and others behind the coup, and impose a broad embargo on shipments of everything except food, medicine and cooking gas. The UN resolution also strongly urged member states to freeze targeted Haitians' assets but, again, did not mandate it.

Despite the extensive impact of the sanctions and attempts to target responsible individuals, the threat of military force was eventually needed to force the regime to give away. For one thing, the implementation and enforcement of the sanctions was a lesson in how not to impose effective sanctions. Another important reason for the failure of sanctions, however, was that the broad economic impact of the sanctions, combined with predation and economic policy incompetence on the part of the military junta, led to large numbers of refugees fleeing to the United States. Pressures to stem the refugee flow contributed to pressures to do something to end the stalemate in Haiti and thus contributed to the decision to send in the military.

An obvious question in the Haitian case is whether targeted financial sanctions more skilfully employed might have avoided some of these problems while forcing the military regime to comply. Haiti would seem to be an ideal case. It is a small, poor country with few indigenous resources and a highly skewed distribution of income with no middle class and a small predatory elite class. Combined with travel sanctions, an

⁶⁶ In an attempt to narrow the effects of the sanctions, the United States later granted an exemption for Haitian assembly operations to continue to import US inputs and to re-export the final assembled product to the United States. The Bush administration argued that sanctions on the assembly sector hurt mainly „innocent Haitians“ holding jobs in those operations. But, in order to deny revenues to the regime, American-owned assembly operations were banned from making payments, such as phone or utility bills, to the Haitian government. When it became clear they would not be allowed to operate under those conditions, they were permitted to make payments to an escrow account in a US bank in Haiti.

early effective freeze of the overseas assets of this economic elite might have led them to pressure the coup leaders to step aside. Given the lack of alternative sources of support, the military might have been forced to acquiesce.

But this case also underscores the difficulties in using targeted assets freezes as a tool of foreign policy. In terms of implementation, there was initially only one country involved, not the entire UN Security Council, and yet the process of identifying and freezing Haitian assets was slow, halting, and ultimately not very effective. By the time the economic supporters of the regime began to feel some pressure from the sanctions, the military regime had developed alternative resources— from the black market and smuggling, which could have been avoided by relying on financial sanctions, but also from allowing traffickers to use Haiti as a transshipment point for illegal drugs. Thus, they were no longer as susceptible to pressure from the economic elite. Even if the implementation of the asset freeze had been ideal, however, this case still underscores the limited utility of this tool. Although even one is too many, there are relatively few countries as destitute and devoid of natural resources as Haiti.

Yugoslavia

In response to allegations of „ethnic cleansing,“ the indiscriminate shelling of the Bosnian capital of Sarajevo, and other human rights abuses by Bosnian Serb forces against Muslim and Croat communities in Bosnia, comprehensive trade and financial sanctions were imposed against the rump state of Yugoslavia (the republics of Serbia and Montenegro) in May 1992. Enforcement of the sanctions was tightened in November and, again, in April 1993 to reduce the exploitation of exemptions for transshipments through Serbia on the Danube River, a major transportation route through the heart of Europe. UN-authorized monitors were also placed along key land borders and naval forces were tasked with enforcement along Montenegro’s Adriatic coast.

In September 1994, the UN eased some minor sanctions, including the ban on air travel, in response to Yugoslavia’s decision to withdraw material support for the Bosnian Serbs and halt oil and arms shipments to Serb-controlled areas of Bosnia. While differences of opinion remain, many scholars and observers believe that the remaining economic sanctions were an important incentive bringing Serbian President Slobodan Milosevic to the negotiating table in Dayton, which resulted in an agreement to end the fighting in Bosnia. At the same time, most observers also believe that NATO air strikes and military reverses in Croatia were essential in gaining Bosnian Serb acquiescence, without which the Dayton agreement would have been meaningless.

Overall, comprehensive economic sanctions appear to have played a useful if not decisive role in this case.⁶⁷ Could more targeted sanctions have done as well at lower cost? Slobodan Milosevic and the Yugoslav leadership do not appear to be ideal candidates for a targeted assets freeze. Yugoslavia prior to the break-up of the federation was a middle-income country with a substantial middle class, a more diversified economy, and a variety of natural and economic resources. Milosevic also appears to be driven more by a desire for power than for wealth and, having played the nationalism card, it would have been difficult for him to back down solely in order to protect any personal wealth that might be located abroad.

What might have been useful in this case is greater reliance on broad financial sanctions with fewer restrictions on trade flows. Because of Yugoslavia's geographic location and the role of the Danube River in European transportation networks, the trade sanctions were quite difficult and expensive to monitor and enforce. They also had substantial impact on Yugoslavia's neighbours. Broad restrictions on financial flows to Yugoslavia would have been harder to evade than targeted financial sanctions. They would also have reduced trade but with less disruption than the comprehensive ban and without having to place monitors on Serbia's borders and along the river. Such sanctions would also have had severe effects on the Yugoslav economy but might have been as effective as the comprehensive embargo at lower cost for the senders.

Iraq

Comprehensive UN trade and financial sanctions were imposed against Iraq within days of its invasion of Kuwait in August 1990. The US and other key financial centres had moved even earlier to impose sanctions and freeze, not just Iraqi, but also Kuwaiti public assets held abroad in order to deny them to Saddam Hussein's government in Iraq. From the beginning, denying access to both the existing stock of Iraqi financial assets and new, unrestricted income flows has been an important intermediate goal of the sanctions regime because of fears that funds would be used to procure weapons of mass destruction and missiles to deliver them.

Though they were stringently enforced and quite effective in economic terms, the sanctions failed to force Iraq's retreat from Kuwait, at least in a timeframe that was acceptable to the US and other coalition members. Since the end of the military conflict that dislodged Iraqi forces, sanctions have had some success, along with periodic military threats and actual air strikes, in gaining grudging compliance with the UN resolutions requiring Iraqi disarmament. The inspection system recently broke down in the face of Iraqi intransigence, however, and disputes within the Security Council over the utility of continuing sanctions have intensified.

⁶⁷ For an analysis of this case, see Stephen John Stedman, „The Former Yugoslavia,“ in *Economic Sanctions and American Diplomacy*, edited by Richard N. Haass, New York: Council on Foreign Relations, 1998.

This case raises two distinct and important issues with respect to the potential utility of targeted financial sanctions as a foreign policy tool. The first is whether it would have been adequate or appropriate to impose only narrowly targeted sanctions in response to such a major and blatant violation of international law as Iraq's invasion of Kuwait. The second is how a freeze of the personal assets of Saddam Hussein and his key supporters, even if supplemented by a freeze of all Iraqi public assets held abroad, could have had significant impact on decision making in the absence of restrictions on oil exports and the large flows of dollars exports would have continued to produce. Thus, this case underscores the difficulty in achieving more than the most limited goals with restrictions on current stocks of wealth if the targeted individuals have access to substantial resources that produce a continuing income stream.

Summary

Freezing assets of individuals in the target country has few collateral effects but under a variety of conditions will be relatively easy to evade, especially with political constraints impeding the ability of sender governments to act quickly and with discretion. Even if those obstacles are overcome, the effects will diminish markedly over time if the targeted individuals have unrestrained access to economic resources within their country or new flows from abroad.

Restrictions on *economic aid*, other than humanitarian aid, will have limited effects on the population of target countries that have corrupt governments. But the utility of this tool is declining as aid flows decline and is limited to poorer, less developed countries that have little access to private financial markets. These sanctions have the advantage, however, of being relatively low-cost for sending countries.

Broad restrictions on *international lending and foreign investment* tend to have broad effects on the target economy and potentially significant costs for the sender countries as well. The impact on the target economy will be harder to evade and but also more substantial if perceptions about the riskiness of doing business in the target increase following the imposition of sanctions. Making them more targeted is also likely to make them easier to evade. The ability to evade targeted sanctions is also likely to increase with income in the target and the degree of sophistication of its financial markets.

**Table 1. Types of Financial Sanctions****Restrictions on
Public Finance***Bilateral*

Economic aid

Military aid

Investment insurance

Trade credits, guarantees

Agricultural

Other

Other loans

*Multilateral*Structural adjustment or
stabilisation lending

Project lending

**Restrictions on
Private Finance***Lending*

New loans

Debt service conditions

Investment

New portfolio flows

New direct investment

Investment income

Divestment of stocks of
investment*Unilateral transfers*

Worker remittances

Gifts

Asset stocks

Government assets

Individual assets

Table 2. Use of Financial Sanctions, 1914-98

All Cases of Financial Sanctions

132 cases involve some form of financial sanction

56 cases involve financial sanctions only

* 54 of those involve the reduction, suspension, or termination of economic or military aid or other public assistance, such as export finance

* 2 involve the expulsion of guest workers leading to sharp reductions in remittances to the target

22 cases involve comprehensive trade and financial sanctions

10 cases involve financial sanctions, usually economic or military aid, in conjunction with restrictions on imports from the target country

24 cases involve financial sanctions in conjunction with restrictions on exports to the target

* 17 involve restrictions on aid or other public assistance

* 4 involve assets freezes

* 3 involve currency manipulation

20 cases involve a less than comprehensive combination of financial, import, and export sanctions

UN Experience with Economic Sanctions

12 total cases:

4 comprehensive: Rhodesia, Iraq, Former Yugoslavia, Haiti

4 arms embargoes: South Africa, Somalia, Liberia, Rwanda

4 with mixed, targeted sanctions:

Libya (air transportation ban; selected export sanctions, including arms; partial assets freeze)

Angola/UNITA (travel restrictions, arms and oil embargo, diamond boycott)

Sudan (travel restrictions; air transport restrictions, approved but not implemented)

Sierra Leone (arms and oil embargo; travel restrictions)





United Nations Sanctions: Lessons of Experience

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Introduction

Almost a decade of resort to enforcement measures by the United Nations Security Council against a variety of international offenders prompts an assessment of the merits and defects of the various sanctioning programs which have been adapted. What kinds of sanctions have proved effective and/or appropriate to meet different situations? Have they contributed to a greater degree of international peace and security? And what lessons have been learned, or should have been learned, about UN sanctioning policies?

In addressing these questions, this paper seeks to shed some light on the merits of UN sanctions, used alone or in combination with other instruments, to resolve crises and uphold international norms. Despite their apparent virtues in terms of legitimacy and universality, attention in recent years, both inside and outside the walls of the UN, has focused increasingly on the questionable achievements and adverse consequences of economic sanctions imposed by the Security Council. Among numerous areas of controversy, two are pre-eminent. In the first place, experience has shown that the cost of imposing such measures is not evenly spread and can be particularly onerous for states bordering on the target or having close economic relations with it. Secondly, and with greater media and public resonance, comprehensive economic sanctions are seen to exert their main economic impact on the civilian population in the target who are unable to protect themselves and often have little or no influence on the policies which sanctions are intended to change. Sharpening the sanctions instrument appears to be one option to meet these concerns: the other is to devise far-reaching programmes of humanitarian exemptions of which the Iraq 'oil for food' scheme is the prime example. The



practicalities and implications of both possibilities as well as alternatives to economic sanctions are now receiving serious attention from scholars and practitioners.¹

As is well known, Chapter VII of the UN Charter gives the 15-member Security Council the power to determine the existence of a 'threat to the peace, breach of the peace or act of aggression' (Article 39) and having made such a determination, to call on all members of the UN to apply non-violent sanctions according to the specifications of the resolution(s) (Article 41). Substantive decisions must receive nine affirmative votes with no veto from a permanent member (China, France, Russia, the United Kingdom, the United States). In contrast the General Assembly, by a two-thirds majority, can only recommend that such measures should be imposed. Of course, other organisations and groups, both governmental and non-governmental can adopt sanctions and individual governments can act unilaterally, but universal mandatory sanctions are a Security Council prerogative.

The watershed for studies of Security Council sanctions policy is undoubtedly the Gulf crisis of 1990. Before that there were only two cases on the record: 13 years of mandatory sanctions against Rhodesia (now Zimbabwe) from 1966-79² and a mandatory arms embargo against South Africa from 1977.³ In the latter case there were also recommendations for more comprehensive sanctions from the General Assembly and (eventually) the Security Council⁴ but until 1990 the main body of international sanctions experience was provided by programmes sponsored by regional bodies and less formal groupings such as the Organisation of American States (OAS) and the Commonwealth, and by measures adapted on a unilateral basis particularly by the United States.⁵ The Cold War effectively 'froze' the Security Council for thirty years and it was not until the 'new look' policies of Mikhail Gorbachev brought a rapprochement between the Soviet Union and the United States and its allies that a meeting of minds on approaches to international crises allowed the Security Council to exercise a security function along the lines set out in Chapter VII of the Charter. From 1988 informal consultations between the five permanent members (P5)

¹ See for instance David Cortright ed., *The Price of Peace* (Lanham, Md.: Rowman & Littlefield, 1997); Margaret Doxey, *United Nations Sanctions: Current Policy Issues* (Halifax, NS.: Dalhousie University Centre for Foreign Policy Studies, 1997); Larry Minear et al., *Enhancing the Capacity of the United Nations System* (New York: UN Dept. of Humanitarian Affairs, 1997); John Stremlau, *Sharpening Sanctions: Towards a Stronger Role for the United Nations*. A Report to the Carnegie Commission on Preventing Deadly Conflict. (New York: Carnegie Corporation, 1996); Thomas G. Weiss et al., eds. *Political Gain and Civilian Pain* (Lanham, Md.: Rowman & Littlefield, 1997).

² SC resolutions 232(1966) and 253(1968).

³ SC resolution 418(1977).

⁴ Sanctions were first recommended by the General Assembly in 1962 (resolution 1761/XVII); the Security Council recommended voluntary measures in resolution 569(1985).

⁵ See Margaret Doxey, *Economic Sanctions and International Enforcement*, 2nd ed. (Macmillan, 1980); and *International Sanctions in Contemporary Perspective*, 2nd ed. (Macmillan/St. Martin's Press, 1996); Gary C. Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed. (Washington DC.: Institute for International Economics, 1990).



became the order of the day and contributed to common policies over Angola/Namibia and the Iran/Iraq war.⁶

This laid the groundwork for the Council's extraordinarily prompt response to the invasion of Kuwait by Iraqi forces on 2 August 1990. Iraq's act of external aggression, followed by purported annexation, offered the classic elements of an Article 39 situation. A 'breach of the peace' was identified and a comprehensive set of economic sanctions was imposed on Iraq (and occupied Kuwait) on 6 August by Resolution 661. Sanctions against Kuwait were lifted after its liberation early in 1991, but sanctions against Iraq have remained in force pending the fulfilment of conditions set out in the 'mother of all resolutions' 687 (1991), particularly the elimination of Iraq's weapons of mass destruction capability which has not yet been accomplished to the satisfaction of the United States and Britain. The basis for this prolongation of sanctions was a continuing "threat to the peace". This was also the rationale for a succession of sanctions regimes put in place by the Security Council to meet a variety of situations: internal conflict in former Yugoslavia and successor states⁷ and in Somalia⁸, Liberia⁹, Angola¹⁰ and Rwanda¹¹; the overthrow of legitimate regimes in Haiti¹² and Sierra Leone¹³; alleged support for international terrorism in Libya¹⁴ and Sudan¹⁵. Comprehensive trade, financial and transportation restrictions were imposed on Iraq, Haiti, and Serbia-Montenegro (the rump of the former Yugoslavia); in other cases selective sanctions were adopted. Libya was subjected to an embargo on the export of arms, aircraft and components as well as a limited assets freeze and a ban on air links. Sudan was subjected to diplomatic sanctions. Arms embargoes were imposed on Somalia, Liberia, the UNITA movement in Angola, Rwanda and Sierra Leone, supplemented in the case of Sierra Leone by an oil embargo and travel restrictions. In respect of UNITA since 1997 there have also been travel restrictions and a freeze of funds affecting senior officials and their families, as well as limited import and export bans affecting territory under its control. At the time of writing, sanctions have been lifted against Kuwait, Haiti and the government of Sierra Leone while selective measures were re-imposed on Yugoslavia following conflict in Kosovo in 1998. All other restrictions remain in force.

The prevalence of intra-state conflict in the past decade has been accompanied by a notable increase in willingness on the part of multilateral bodies to intervene in what would formerly have been characterised as matters falling within domestic jurisdiction. Concomitantly, the concept of 'security' has been widened to include personal freedoms and socio-economic factors. This might

⁶ See Cameron R. Hume, *The United Nations: Iran and Iraq* (Bloomington, IN: Indiana University Press, 1994).

⁷ SC resolutions 713 and 757(1992), 820(1993), 942(1994), 1160(1998).

⁸ SC resolution 733(1992).

⁹ SC resolution 788(1992).

¹⁰ SC resolutions 864(1993), 1127(1997), 1173(1998).

¹¹ SC resolution 918(1994).

¹² SC resolutions 841(1993), 917(1996).

¹³ SC resolution 1132(1997).

¹⁴ SC resolutions 748(1992), 883(1993).

¹⁵ SC resolution 1054(1996).



appear to reinforce the authority of the Security Council to resort to sanctions in defence of 'peace and security' defined expansively to embrace not only the control of conflict but also the protection of democracy and human rights. Economic and other non-violent sanctions also appear attractive as an alternative to military force, which western powers are increasingly reluctant to use, and as a response to media-driven pressure from public opinion to 'do something' in response to tyranny and strife.

U.N. Sanctions in Review

There are, however, grounds for scaled-down expectations in respect of future Security Council sanctioning as a contribution to enhanced international peace and security. Not only are there inherent limitations on the likely scope of Council action, but there is also marked and growing resentment of Security Council dominance among UN members at large. Moreover the experience of recent sanctioning episodes has shown that there are limits to the effectiveness of economic measures as well as obviously inequitable consequences flowing from their imposition. It has become clear too that there are serious flaws in the mechanics of UN sanctions implementation. Each of these factors bears closer examination.

Inherent Limitations on the Likelihood of Council Action.

Although the wording of Article 39 at the UN Charter allows the Council to be 'creative' in defining 'threats to the peace' and ordering sanctions to meet all kinds of situations, it is well understood that there are inherent limitations to its role as a guarantor of international peace and security. These derive not only from its limited and unbalanced membership (which does not seem about to change) and from the veto power enjoyed by the P5, but also from the fact that it is and will remain even if reformed, a political body which takes decisions on political grounds. The veto means that permanent members and their clients are permanently exempt from formal censure. Thus a selective response to situations in which governments (or would-be governments) fail to observe international standards of behaviour is unavoidable. This 'double standard' which was all too obvious in the paralysis of the Council during the Cold War continues to operate today. Moreover, voting patterns are not necessarily dictated by support for norms of international peace and security but rather by 'national interest', relations with allies, and domestic considerations affecting the governments of consequential states, particularly the United States. One can therefore expect a continuing lack of consistency in the identification of threats to peace and security. Some which appear obvious will be ignored while in other cases the decision to apply sanctions may be a reflection of the political interests of permanent members and trade-offs among them rather than a response to serious international crises.

Further problems with the process of Security Council sanctioning stem from the political bargaining which is needed to secure passage of a resolution. This affects and

usually dilutes its content. The veto also introduces rigidities by operating to obstruct easing or lifting sanctions when this would be the appropriate response to changed circumstances.

In the past few years the new-found harmony between the P5 has been strained by the prolongation of sanctions against Iraq and agreement on future cases may now prove harder to achieve. Both China and Russia have expressed concern over intrusions into domestic Jurisdiction and criticism of the United States reached a new peak at the end of 1998 when US and British planes bombed Iraq in response to Its non-cooperation with UN Special Commission (UNSCOM) weapons inspectors.¹⁶ Doubts and reservations about the merits of sanctions as a tool of statecraft, which are discussed further below, may also reduce the likelihood of future imposition.

Attitudes of Other UN Members

The attitudes of UN members at large also affects the Security Council's role as a sanctioning authority. There is a rather unsatisfactory 'regional' allocation of ten non-permanent seats on a rotating two-year basis; the remaining 170 members of the organisation have no representation. Neither Germany nor Japan has a permanent Council seat and middle-rank powers have to take their chance in the lottery of biennial elections.

It is hardly surprising that there is resentment of the Security Council's assumption of the powers of a 'World Directorate', dominated by the United States and operating largely in closed sessions. Informal, private consultations between the P5 and within the Council as a whole are now the norm, and public meetings where other states can make representations are infrequent. Resentment of the Council's exclusionary behaviour carries over to the workings of its sanctions committees which replicate Council membership and monitor specific regimes. Sanctions committees, which operate by consensus and *in camera*, are responsible for granting (or denying) exemptions from sanctions. Moves to increase the transparency of their procedures have been helpful, but there is no doubt that problems remain.¹⁷

Dissatisfaction among the general membership is reinforced by the Council's failure to address the issue of burden-sharing to mitigate the adverse effects of sanctions on non-target states, particularly those in the neighbourhood of the target. Article 49 of the Charter pledges members to join in affording mutual assistance in carrying out measures ordered by the Security Council, while Article 50 offers the right of consultation over 'special economic problems' encountered in this context. But the Charter does not provide any definition of 'special economic problems' or offer any guarantee of redress.

¹⁶ UN Press Release SC/6613, 18 December 1998.

¹⁷ Doxey, UN Sanctions Policy, pp.34-39.



Nor does it set up machinery to handle requests for assistance and in practice individual sanctions committees can do no more than receive requests and pass them on to international organisations and individual member states with recommendations for action. The harsh consequences of sanctions-induced disruption of trade, transportation and migrant labour in the Iraq and Yugoslavia cases brought calls from the Secretary-General and the General Assembly for more equitable arrangements but with little practical effect.¹⁸ Help for the 'front-line' states of Egypt, Jordan and Turkey in the Iraq crisis was organised by the United States outside the UN and, in the Yugoslavia case, affected states in the region were assisted with implementation and other sanctions-related problems by the Organisation for Security and Cooperation in Europe (OSCE) and the European Union (EU).

All this raises questions about the continuing legitimacy of Security Council action - especially in the light of its own inconsistencies - and could impact on the future implementation of sanctions. Until 1997 there was a general willingness to accept the mandatory-nature of Security Council resolutions and although there was uneven implementation there was little overt non-compliance comparable to that exhibited by South Africa in the Rhodesia case.¹⁹ But dissatisfaction with the prolongation of sanctions against Iraq has become manifest and enforcement of the air travel restrictions in effect against Libya since 1992 has sprung obvious leaks, with African leaders ceasing to observe them.²⁰ These are warning signs.

Flaws in Sanctions Programmes

As noted in the Introduction, weaknesses in efficacy and equity have combined to produce harsh criticism of sanctions regimes as they have been applied over the last ten years, particularly when the objectives of these regimes are unclear or are modified over time.

The problems likely to be encountered in maximising economic impact are now well-known: defensive moves by the target, poor implementation by sender states and the inevitable operations of sanctions-busters for whom sanctions offer scope for very profitable activities. But in addition to the difficulties of instituting a leakproof system of

¹⁸ *Ibid.*, pp. 4-12. Collateral damage has been discussed in the General Assembly and various UN committees and working groups. In 1998 the General Assembly mandated an ad hoc expert group to consider possible methodologies and practical measures at assistance for non-target states. See 'Implementation of provisions of the Charter related to assistance to third States ...' Report of the Secretary-General, UN Document A/53/312.

¹⁹ South Africa did not make any effort to restrict trade with Rhodesia until 1976. The United States imported chrome from Rhodesia in violation of the sanctions order from 1971-1977.

²⁰ Decision at the OAU summit in Burkina Faso, June 1998. Report in the Guardian Weekly, 12 July 1998.

restrictions on trade in goods and services and the movement of capital which will have a significant economic impact on the target, there has always been doubt about the effective transmission of this impact to the political level which would fulfil the objective of maintaining or restoring peace and security. Achieving political compliance faces formidable obstacles, particularly when the target government does not face strong domestic opposition and can manipulate nationalist, religious, ethnic, or other emotional sentiments to bolster its cause and can also point to the inconsistency of Security Council responses in comparable situations. For leaders of 'rogue' states, defying the will of the 'international community' as expressed through Security Council resolutions is likely to be preferable to compliance which would entail loss of face and even loss of power.

The record of sanctions achievement is mixed at best and experience suggests that sanctions are more likely to be influential than decisive in bringing the desired change in policy on the part of the target.²¹ This was certainly the case in respect of Rhodesia/Zimbabwe and South Africa and it has also been demonstrated in recent sanctioning episodes as discussed further in the final section of this essay. It is clear too that economic sanctions do not work quickly. But sanctioning in the 1990s has also raised new issues of equity. In a recent report on the situation in Africa, UN Secretary-General Kofi Annan noted that an arms embargo 'can help to diminish the availability of arms with which to pursue a conflict by making the acquisition of weapons more difficult and more expensive.'²² But are arms embargoes 'fair' if they disadvantage one side more than the other? This question was raised in the inter-war period with regard to Italy and Ethiopia when the arms embargo applied to both operated to the clear disadvantage of the latter. Recently, in the case of former Yugoslavia, the arms embargo covering the whole country was carried over to include Croatia and Bosnia once they had been recognised as Independent states and this hindered Bosnia's efforts to defend itself against its better-armed adversaries. Even more inappropriately, the arms embargo imposed on Sierra Leone in 1997 treated the legitimate government and the rebels equally and it appears that the restoration of the former was achieved partly as a result of the British head of post in Sierra Leone being unaware of the scope of the Security Council order.²³

More generally, questions have been raised about the value of sanctions which do not have any personally unpleasant consequences for the rulers, or ruling elite of the target. How can it be justifiable and/or contribute to international peace and security to bring about - or even add to - the impoverishment of innocent civilians, with particularly damaging and irreversible effects on children and the elderly, when the goal of sanctions

²¹ See Hufbauer *et al.* Economic Sanctions Reconsidered, Richard Pape, 'Why Economic Sanctions Do Not Work', International Security-I, Vol.22,2,1997, pp.90-136.

²² Kofi Annan, Report on the Situation in Africa, 31 April 1998, UN Document A/52/871-S/198/318, para.25.

²³ See for instance reports in the Financial Times, 28 and 29 July, 1998.



is a policy change by the target government? Moreover, wider social and economic effects produced in both Iraq and Yugoslavia (Serbia-Montenegro) have included the erosion of the middle class, the criminalisation of society and long-term economic damage - all of which bring increased insecurity and instability and undermine goals of economic development.

By imposing sanctions, the Security Council assumes some responsibility for the situation within the target state and in 1995 the P5 formally acknowledged the need to consider humanitarian consequences in adapting sanctions²⁴ but the fact remains that each case requires detailed assessment of needs, clear exemption procedures either for aid organisations such as UNICEF and the International Committee of the Red Cross (ICRC) or for specific items, and the availability of funds to purchase the necessary goods.²⁵ The unique Iraq 'oil for food' programme resisted by Saddam Hussein for several years then accepted in 1995 and in operation by the end of 1996 - allows for the controlled export of oil up to a specified dollar value, the deposit of the proceeds in a UN-controlled escrow account and their use for a number of purposes.²⁶ The program is renewed every six months and in June 1998 the amount of oil permitted to be exported over each 180-day period was increased from \$2 billion to \$5.25 billion. But only 53 per cent of the proceeds of oil sales is designated for purchase of humanitarian goods, plus 13 per cent for assistance to the Kurds in the northern Governorates; the rest is applied to claims against Iraq resulting from the occupation of Kuwait, the costs at the UN Special Commission (UNSCOM) investigating Iraq's deadly weapons capability and the costs of administering the 'oil for food' scheme itself. Imports by Iraq of humanitarian goods are approved by the Iraq sanctions committee on an individual contract basis and their delivery and distribution to Iraqi consumers are internationally supervised.

Overall the oil for food program constitutes an unprecedented system of intrusive control and is made possible by circumstances which are not easily replicable. In particular, Iraq's foreign exchange earnings derive almost entirely from oil exports which are in universal demand and not hard to monitor while the distribution of humanitarian goods was grafted on to the efficient rationing system for Iraqi citizens already in place.

In the hope of avoiding the adverse humanitarian consequences of comprehensive trade and financial sanctions and at the same time making the leadership of the target feel some pain, there is growing interest in the scope for personally-targeted measures, particularly travel restrictions, representational and membership penalties and assets freezes which bear directly on the regime and its supporters.²⁷ But travel restrictions and

²⁴ UN Document S/1995/300, 13 April 1995.

²⁵ See Minear, *Enhancing the Capacity of the United Nations System*.

²⁶ SC resolution 986, 14 April 1995 is the basis for the 'oil for food' programme.

²⁷ See in particular *Report of the Expert Seminar on Targeting UN Financial Sanctions* (Bern: Swiss Federal Office for Foreign Economic Affairs, 1998); *Report of the*

membership penalties belong to the mild end of the sanctions spectrum and it is unlikely that such measures in themselves will be effective in bringing compliance. Decision-makers in the target will suffer inconvenience and loss of prestige from bans on travel either for personal reasons or to attend international meetings, but will not necessarily mend their ways.

There are also serious difficulties in implementing financial sanctions, particularly those targeted against individuals persons and firms. It is true that the United States has developed a superbly efficient system of tracking and immobilising the assets of designated persons but other jurisdictions lack comparable resources and skills and the problems encountered in co-operative international anti-money laundering operations as well as the reluctance of European financial centres to embark on extensive programs of financial sanctions suggest that there are limits to efficacy in this regard.²⁸

Flaws in the Administration of Sanctions Regimes

The first problem under this heading has already been noted. Security Council sanctions have built-in rigidity⁵ and once a resolution is adopted, any modification of the regime - which includes lifting the sanctions in whole or in part as well as strengthening them - requires PS agreement, or at least acquiescence.

The ad hoc nature of UN sanctions design and administration is another problem. Each case is dealt with separately: there is no permanent sanctions machinery nor have the P5 shown any interest in its creation, despite recommendations from former Secretary-General Boutros-Ghali.²⁹ In adopting new programs of sanctions, phrases from previous sanctions resolutions are often repeated without regard for their clarity or suitability and no standardised terminology has been developed to deal with the restriction and interdiction of what are highly technical and complex international commercial and financial transactions.

For purposes of administration, the resources at the sanctions branch of the Secretariat, as of the UN as a whole, are limited, while individual sanctions committees lack technical expertise and can be overwhelmed with the tasks of exemption and permit-granting.

Further problems have become apparent in respect at enforcement. The **UN** lacks any independent enforcement capability and at the international level the forceful back-up of trade embargoes or no-fly-zones by naval and air surveillance must be provided by bodies

Symposium on Targeted Sanctions sponsored by a number of non-governmental bodies, NY, 1998.

²⁸ Ibid.

²⁹ Boutros Boutros-Ghali, Supplement to An Agenda for Peace, UN Document A/50/60(1995), pp.17-18. For an imaginative proposal see Donald G. Boudreau "On Creating A United Nations Sanctions Agency", International Peacekeeping, Vol.4,2, 1997, pp.115-37.

such as NATO which, in turn, depend on the willingness of member states to make appropriate contributions of human and material resources.

At the national level, which is crucial for the efficient enforcement of sanctions resolutions, governments rely on their own legislative and executive procedures. Some like the United States, the United Kingdom and Canada have legislation in place which allow orders to be issued restricting trade, finance and transportation links in accordance with Security Council resolutions; others like Japan act on a case by case basis.³⁰ There are wide variations in enabling procedures and to date no progress has been made in developing a standardised 'model law'.

In drawing attention to the need for much better enforcement of sanctions, UN Secretary-General Annan has noted particularly in respect of arms embargoes that it is necessary for countries not only to refrain from official transactions but also to... discourage their nationals and corporations from violating such sanctions', suggesting that individual governments should make the violation of a Security Council imposed arms embargo a criminal offence under their national laws.³¹

Given the disparate levels of development among UN members, it is not surprising that standards of enforcement 'in the field, also differ widely. Even relatively advanced states can face difficulties in controlling illegal traffic as was well documented in the Yugoslavia case where the innovative system of Sanctions Assistance Missions (SAMS) organised by the OSCE and EU made a significant contribution to the effective enforcement of sanctions. Customs officers and equipment were sent from donor states to Albania, Bulgaria, Croatia, Hungary, Macedonia, Romania and Ukraine to help with local enforcement. This ensured tighter control of smuggling and also facilitated legitimate trade. A communications centre in Brussels (SAMCOMM) which established close liaison with the UN sanctions committee and its secretariat played a vital role in coordination.' But the SAM system depended on the consent of the seven states in the region who accepted the seconded officers and on the sophisticated structures and considerable resources of the OSCE and EU.³² Such a system is probably not replicable outside Europe.

There is also a very poor standard of reporting on national implementation to sanctions committees, but it is hard to see what can be done to improve it, particularly in view of the increasing dissatisfaction with Council mandates noted above. These committees have no enforcement powers and it is unlikely that the Security Council would impose secondary penalties.

³⁰ See for instance Moshida Yoshikawa, "Implementation of Sanctions Imposed by the UN Security Council - Japan's Experience" in the Report at the Bern seminar cited in n. 27 above, pp. 105-111; Jeremy Carver, "Making Financial Sanctions Work: Preconditions for Successful Implementation of Sanctions by the Implementing State", *ibid.*, pp.87-104.

³¹ Annan, cited in n. 20 above, para.26.

³² See the Report of the OSCE Round Table on Sanctions against the former Yugoslavia held in Copenhagen 24-25 June, 1996 and issued as UN Document S/776/199G, 24 September 1996.

Lessons Learned

This rather discouraging litany at problems exhibited by recent and current UN sanctions regimes prompts serious consideration of two strategies for the future which are by no means mutually exclusive. One is to employ other forms of pressure; the other is to improve UN sanctioning methods. This paper cannot explore these alternatives in depth, but it may be useful to set out some guiding principles.

Alternatives to Economic Sanctions

For obvious reasons economic and other non-violent sanctions have been seen as preferable to the use of force which inevitably has lethal consequences. However, the record of sanctions in the 1990s reveals that where desired political change was achieved, it was usually the product of the threat or use of force as well as the application of economic sanctions. The restoration of elected governments in Haiti and Sierra Leone, the liberation of Kuwait and the conclusion of the Dayton agreements which brought an uneasy peace to former Yugoslavia are cases in point. Sanctions against Libya and Sudan which addressed alleged support for terrorist acts and sought the extradition of suspects have not yet succeeded in bringing the desired results and, as discussed above, arms embargoes can be of questionable utility.

This may suggest that in cases of aggression or genocide the threat or use of force is a more realistic option than economic sanctions for achieving quick results. But military operations must either be handled by bodies such as NATO or other regional groupings or organised on an ad hoc coalition basis. Security Council authority for the use of force enhances legitimacy and many governments would regard it as an essential prerequisite. It should also be obvious that force is appropriate only when diplomatic methods have failed and where issues of crucial international importance are at stake. Moreover, the prospects of success need to be carefully assessed. The liberation of Kuwait was a relatively straightforward goal compared with intervention in situations of internal strife, complicated by efforts by the protagonists in the target to destroy civilian populations and entire ethnic groups. The examples of Somalia and Rwanda offer clear warnings that clear mandates and the provision of adequate resources are essential.

In less threatening situations, however, comprehensive economic sanctions may be too sweeping and too damaging for both sender states and target populations. As already noted, concern for humanitarian effects has become a major consideration and it is noteworthy that in 1997 an assessment of the damaging effects of a planned flight embargo on Sudan precluded its imposition by the Security Council.³³ More attention should be paid to political and diplomatic sanctions as well as cultural and sports boycotts which in appropriate contexts can have a considerable impact on the target. And the use

³³ Note from the UN's Department of Humanitarian Affairs concerning the possible humanitarian impact of the international flight ban on Sudan, 4 June 1998.



of targeted measures, as discussed above, offers prospects of more finely-tuned forms of pressure.

Governments opposed to negative measures often advocate constructive or 'critical engagement' as preferable strategies. Britain's attitude to the apartheid regime in south Africa in the 1970s and 1980s and the Association of South-East Asian Nations, (ASEAN) current attitude to the military junta in Burma are cases in point. Certainly diplomacy and compromise should never be neglected but 'appeasing' dictators has limited appeal and constructive engagement carries no guarantee of success. More specifically, there is the possibility of using positive rather than negative measures to influence governments who are challenging international norms.³⁴ Incentives were given credibility by the arrangements made with North Korea over its nuclear programme.³⁵ But 'carrots, generally involve direct costs for sender states and are hard to operate collectively at the Security Council level. The Council would also find it difficult to adopt a policy which combined the use of carrots and sticks.

Unilateral sanctions are not to be recommended but are regional sanctions preferable to Security Council measures? Experience shows that sanctions imposed by regional bodies bring their own problems: lack of universality, lack of impartiality, lack of expertise. The subjection of Burundi to a commercial embargo by its neighbours in 1997 is not an encouraging example.³⁶ A possible solution is for regional sanctions to have Security Council endorsement, with some oversight, although this introduces many of the flaws already discussed.

Reform of Existing Procedures

Realistically, the limits of possible reform must be accepted. Nevertheless, it is in the interests of all members of the Security Council, including the P5, that its status and role as the supreme sanctioning authority should retain credibility and that sanctions, when imposed, should work better. A number of possibilities exist.

In the first place, at the policy level, it is important that members of the Council should consider carefully the exact nature of the problem. Are peace and/or security really 'threatened' and if so, what are the best means to remove, or at least manage the threat? In certain circumstances, as already noted, direct intervention may be more appropriate than costly economic measures which seriously disrupt normal relationships and cannot

³⁴ See Cortright ed., The Prize of Peace.

³⁵ See A Walter Dorn and Andrew Fulton, 'Securing Compliance with Disarmament Treaties: Carrots, Sticks and the Case of North Korea', Global Governance, 3, no.1 (1997) pp. 17-40.

³⁶ See Eric Haskins and Samantha Nutt, The Humanitarian Impacts of Economic Sanctions on Burundi, (Providence, RI: Thomas Watson Jr. Institute for International Studies, Brown University, Occasional Paper #29, 1997).

be lifted without appearing to reward bad behaviour. On the other hand, if gestures of disapproval are sufficient, or are all that members of the Security Council are prepared to make, then diplomatic, political and cultural measures are certainly preferable to stringent economic measures which bring hardship for senders and for innocent civilians in the target as well as undesirable socio-economic effects which persist into the post-sanctions period.

In cases where economic sanctions are deemed necessary experience should be the guide. Wherever possible, prior consultation should be undertaken concerning likely adverse effects on senders and the package should be carefully crafted to ensure the precise wording of resolutions for maximum clarity as well as a realistic exit strategy. There should also be prior consideration of target impact both in the context at likely compliance and of avoiding harmful humanitarian effects on vulnerable groups in the population. Targeting the individuals and groups responsible for the violation of international norms should be a major objective.

When sanctions are adopted there should be provision for assistance to non-target states both in preparing statements of damage and help in alleviating it, and for a satisfactory system of humanitarian exemptions to protect target populations. Basic procedures for ensuring the delivery of adequate humanitarian relief in cases of comprehensive economic sanctions could include the establishment of a working group representing aid agencies to monitor the impact of sanctions and determine needs, coordinated by the UN's Office for the Coordination of Humanitarian Affairs (OCHA); the preparation of lists of foodstuffs, medicine and other essential goods, using internationally recognised tariff code numbers to facilitate identification; close liaison with UN sanctions committees; and arrangements for the target to draw on its own funds to pay for supplies if donations are insufficient.

Given political will, there is also room for improved standards of enforcement efficiency both by internationally authorised operations and by individual UN member states and for better management and monitoring by Security Council sanctions committees.

Economic sanctions are serious business. They are not a certain cure for problems of peace and security, nor can they be expected to bring immediate results. But where there are compelling reasons for their adoption to meet a serious challenge to international norms and values it makes sense for the Security Council to accept the 'primary responsibility' with which it is endowed by the UN Charter while making every effort to ensure that efficacy is maximised and adverse effects are kept to a minimum. Recent experience suggests the urgent need for reappraisal of all aspects of UN sanctioning policy.





The Program & List of Participants





Program

March 29, 1999

15.00-16.00 *Registration*

16.00-17.00 **Welcoming Address**

L'Orangerie

Welcoming Address by the Chair

*Ambassador Rolf Jeker, Director a.i., Swiss Federal Office for Foreign
Economic Affairs*

Introductory Statement by the UN Secretariat

Assistant Secretary-General John Ruggie

Introductory Statement by the Chair

*Ambassador Rolf Jeker, Director a.i., Swiss Federal Office for Foreign
Economic Affairs*

17.00-19.00 **General Deliberations on the Working Groups**

L'Orangerie

Presentation by the Chairs of the Preparatory Working Groups
and general deliberations.

Moderator: Secretary of State (ret.) Dr. Kurt Schelter (Germany)

*Chairs: Richard Newcomb (United States), WG1; Jeremy Carver
(United Kingdom), WG2; Tono Eitel (Germany), WG3*

19.30 *Dinner*



March 30, 1998

09.30-12.30

Working Group 1: The Targeting of Financial Sanctions

L'Orangerie

- ◆ Presentation of a case study on how states may implement targeted financial sanctions and how target might attempt to evade them
- ◆ Presentation of a paper on lessons to be learned from the combat against money laundering
- ◆ The role of off-shore centres in UN financial sanctions regimes

Chair: Secretary of State Dr. Kurt Schelker (ret.) (Germany)

Working Group 2: Main Elements of an Enabling Law for Sanctions Implementation

Le Salon Rotary

- ◆ The main elements of an enabling law
- ◆ Presentation of a "model" law

Chair: Jeremy Carver (United Kingdom)

Working Group 3: Building Blocks and Definitions for Financial Sanctions Resolutions

Le Salon Napoléon III

- ◆ Presentation of the main elements to be included in a financial sanctions resolution
- ◆ Proposal for definitions of core terms and building blocks to be used in financial sanctions resolutions

Chair: Ambassador Tono Eitel (ret.) (Germany)

12.30-14.00 **Lunch**



14.00-17.00 **Continuation of Working Group Sessions**

19.30 *Dinner*

March 31, 1998

09.30-11.30 **Presentations by Working Group Chairs**

L'Orangerie *Chair: Amb. Rolf Jeker*

11.30-13.00 **Chair's Conclusions and Follow-Up**

L'Orangerie *Ambassador Rolf Jeker*





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