

Terminating Security Council Sanctions

KRISTEN E. BOON



Cover Photo: Security Council delegation visits Liberia. Mohammed Loulichki (right), permanent representative of Morocco to the United Nations, meeting the inspector general of the Liberian National Police in Monrovia, Liberia, May 20, 2012. UN Photo/ Emmanuel Tobey.

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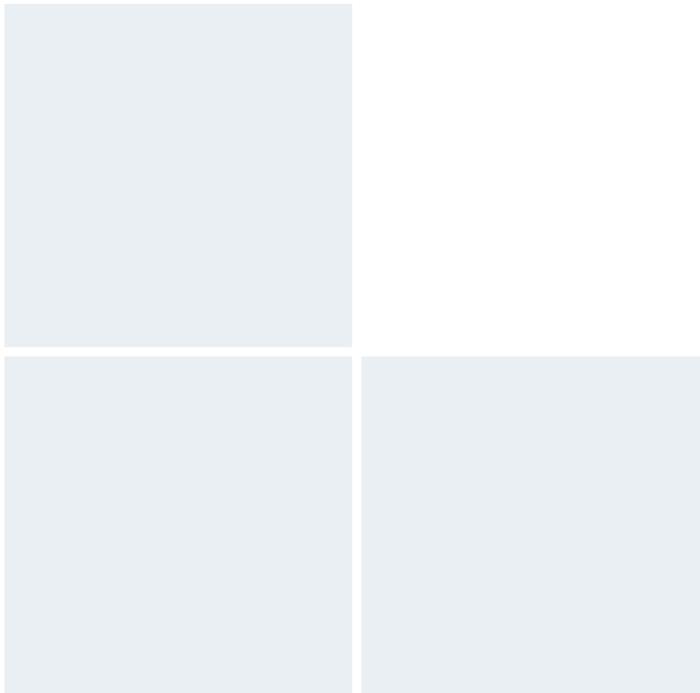
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CONTENTS

Executive Summary.....	1
Introduction.....	1
The Legal Framework of Security Council Sanctions	2
Applying Targeted Sanctions	4
The Termination of Sanctions Regimes	5
The Case of Liberia.....	7
Carrots and Sticks.....	8
Conclusion.....	10

Executive Summary

This report assesses the United Nations Security Council's current approach to drawing down sanctions in intrastate war situations. After examining broader questions surrounding the UN's authority to impose sanctions and the corresponding limits on these powers, this report assesses criteria used by the council to terminate sanctions. It observes that multilateral sanctions under the UN Security Council tend to last substantially longer than sanctions by regional organizations, such as the African Union and the Economic Community of West African States (ECOWAS); and it argues that short sanctions periods are preferable to long sanctions periods.

When the objectives of a sanctions regime are met, sanctions should be amended, repealed, or terminated as soon as possible. In keeping with this goal, the report argues that benchmarks for drawing down sanctions should be concrete and realizable. It also suggests that the practice of applying incentives can be instrumental to the termination of conflict.

The report concludes by posing a series of questions that are intended to move the conversation towards a new set of best practices for the termination of multilateral sanctions in intrastate conflict situations:

- Should twelve-month sunset clauses be the default in multilateral sanctions practice, with departures from this norm (i.e., indefinite sanctions) requiring clear justification on the basis of the exigencies of the situation?
- How can termination language be clearly linked to objective criteria, so it is clear to the target and to the international community what behaviors are required to justify the lifting of sanctions?
- When a situation no longer presents a threat to the peace, should the council terminate a sanctions regime and continue subsequent (non-

sanctions) measures under a new resolution, or under Chapter VI?

- Should the council consider the attitudes of regional organizations in deciding whether to continue or terminate sanctions?

Introduction

The imposition of Security Council sanctions in situations of internal conflict is on an upward swing.¹ Intrastate conflict constitutes approximately 60 percent of the council's output.² Moreover, between 1990 and 2010 the council applied sanctions in approximately 50 percent of active conflicts, with the majority of cases being in Africa.³ All indicators suggest this level of involvement in internal conflicts with cross-border ramifications will continue. The Security Council has ongoing sanctions regimes in at least five countries experiencing internal conflict or civil war, including the Democratic Republic of the Congo (DRC) (pursuant to Resolution 1533 [2004]); Côte d'Ivoire (Resolution 1572 [2004]); Sudan (Resolution 1591 [2005]); Libya (Resolution 1970 [2011]), and the Central African Republic (Resolution 2127 [2013]).⁴ In addition, the Security Council has ongoing sanctions regimes in countries that have emerged from a civil war, such as Liberia (Resolution 1521 [2003]).

Sanctions tend to stick. Once imposed, they often endure because the decision to lift them—just like the decision to impose them—is political. While considerable attention has been dedicated to refining the process of designing and implementing targeted sanctions at the front end, there has been far less movement on considering the process of drawing-down sanctions at the back-end. Policies on terminating sanctions have been the subject of longstanding disagreement: despite a concerted effort to address the issue from 2001 to 2003, differences of views on the interlinked issues of duration and termination of sanctions ultimately

1 For the purposes of this report, a civil war is defined as “a violent conflict within a country fought by organized groups that aim to take power at the center or in a region, or to change government policies.” See James D. Fearon, “Iraq's Civil War,” *Foreign Affairs* 86, No. 2 (March/April 2007): 2–15, p. 4.

2 Chris Perry and Christoph Mikulaschek, “When Do Civil-War Parties Heed the UN? Findings from the IPI Security Council Compliance Database,” New York: International Peace Institute, December 2013.

3 Andrea Charron, *UN Sanctions and Conflicts: Responding to Peace and Security Threats* (Oxford: Routledge 2011), p. 9. See also Alex Vines, “The Effectiveness of UN and EU Sanctions: Lessons for the Twenty-First Century,” *International Affairs* 88, No. 4 (2012): 867–877, p. 871.

4 Prior to this, the council put in place sanctions in seven other civil war contexts, including Rwanda (pursuant to Resolution 918), the Former Yugoslavia (pursuant to Resolution 713), and Sierra Leone (under Resolution 1132). For an overview, see Charron, *UN Sanctions and Conflict*, pp. 43, 91–92.

led to an impasse on a bigger package to improve the working methods of sanctions committees.⁵ And yet just as developing clear criteria for imposing sanctions increases effectiveness, so do clear criteria for lifting sanctions.⁶ It is high time to revisit the termination debate.

This report assesses the Security Council's current approach to drawing down sanctions in intrastate war situations. After examining broader questions surrounding the UN's authority to impose sanctions and the corresponding limits on these powers, this report goes on to assess what criteria the council uses to terminate UN sanctions. It notes that multilateral sanctions under the UN Security Council tend to last substantially longer than sanctions by regional organizations like the African Union and the Economic Community of West African States (ECOWAS). It suggests that short sanctions episodes are preferable to long sanctions episodes, and it starts from the proposition that better targeting will influence actors and cycles of conflict on the ground. It also suggests that the practice of applying incentives can be instrumental to the termination of conflict and related sanctions. The report poses a series of questions that are intended to move the conversation towards a new set of best practices for the termination of multilateral sanctions in intrastate conflict situations.

The Legal Framework of Security Council Sanctions

The Security Council's authority to apply sanctions is derived from Article 41 of the UN Charter, which states the following:

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

Article 41 does not refer to sanctions explicitly. Instead, Article 41 gives the Security Council what has been called a "preventative" power to be used whenever it appears conducive to international peace and security.⁷ When the Security Council acts, it responds to what it perceives to be threats to international peace and security.⁸ The council's power is highly discretionary, demonstrated by the repeated use of the word "may," and it extends to a range of non-military measures. The council has used Article 41 creatively in the past, such as forming the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda

5 In a December 19, 2003, letter from Martin Belinga-Eboutou (Cameroon) to the president of the Security Council, the chairman of the Security Council Informal Working Group on General Issues of Sanctions stated, "Mr. President, I must admit that, despite all efforts by my predecessor Ambassador Chowdhury and members of the Working Group and my personal involvement, it has not yet been possible for the Group to conclude its considerations and to reach agreement on the outcome document because the Group is still unable to approve two interlinked provisions regarding the duration and termination of sanctions. Members believe that sanctions imposed by the Security Council should remain in place until the objectives of the sanctions, namely a desired change in actions or policies of the targeted actor, have been achieved. Many members are also convinced that the Council should always impose sanctions for limited periods of time, taking all factors into account. Mr. President, I view these differences which have been preventing us from reaching a consensus for more than two years as being more of a conceptual rather than of a specific language-oriented nature." See UN Security Council, Letter Dated 19 December 2003 from the Permanent Representative of Cameroon to the United Nations Addressed to the President of the Security Council, UN Doc. S/2003/1197, January 22, 2004, para. 6. The Chairman's Proposed Outcome of the Chowdhury Report of 2001 made the following recommendations on lifting sanctions: (i) sanctions be imposed for limited periods of time taking all factors into account, and renewed by decisions of the Security Council in light of the non-compliance or failure thereof by the targeted State or entity and the continued relevance and effectiveness and impact of the sanctions regime, (ii) sanctions resolutions specify clearly what conditions are required to be fulfilled by the targeted entity in order to have the sanctions lifted; (iii) Security Council consider actions to ease sanctions, short of suspension or lift, in response to partial compliance by targeted entities in order to achieve full compliance, (iv) sanctions be lifted immediately by the Security Council when conditions for lifting set out in relevant resolutions have been met unless there are other reasons for their continuance, or when the Council determines that the targeted entity has complied with the requirements identified in the relevant resolution or that sanctions are no longer needed. Informal Working Group of the Security Council on General Issues of Sanctions, "Chairman's Proposed Outcome," Non-paper/Rev 10, September 26, 2002, available at www.un.org/Docs/sc/committees/sanctions/Prop_out10.pdf.

6 Targeted Sanctions Consortium, "Designing United Nations Targeted Sanctions: Evaluating Impacts and Effectiveness of UN Targeted Sanctions," August 2012, p. 23.

7 Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, Second Edition (New York: Oxford University Press, 2002), p.739.

8 James Crawford, "The Relationship Between Sanctions and Countermeasures," A Contribution to the Colloquium of the Graduate Institute of International Studies (Geneva) on United Nations Sanctions and International Law, June 1999.

(ICTR) under this power, as well as establishing a transitional administration in Kosovo and East Timor, and laying out a post-intervention plan for Iraq.⁹ As a result, the Security Council's Article 41 powers involve enforcement measures rather than sanctions in the strict sense.¹⁰

Sanctions are political tools that are used to overcome the will of recalcitrant state and non-state actors.¹¹ They are imposed through binding Chapter VII resolutions, and are often one of several measures set out in a given resolution to encourage compliance with conditions aimed at restoring international peace and security. Despite the political context in which sanctions operate, they have important legal dimensions as well. Security Council Chapter VII resolutions are binding on all member states under Article 25 of the UN Charter. Under Article 48(2) of the UN Charter, states are also required to carry out council decisions through their membership in international organizations.

Today there is considerable breadth in the scope of the council's objectives in its sanctions practice. For example, Security Council Resolution 1807 on the Democratic Republic of the Congo notes with concern the recruitment and targeting of women and children. Moreover, the resolution uses these practices as criteria for targeting individuals.¹² Resolutions on Libya and Côte d'Ivoire call for observation of human rights and the protection of civilians.¹³ Resolution 2076 on the Democratic Republic of the Congo calls for the observance of human rights and international humanitarian law.¹⁴ Resolution 1975 condemns hate speech in

Côte d'Ivoire, and links it to future targeted sanctions.¹⁵ Some resolutions go one step further and connect sanctions to longer term reform of national institutions such as the police, the security sector, and the justice system.¹⁶ The council uses this power to act as an international norm enforcer, as is apparent by its frequent attempts to highlight humanitarian law violations and influence internal conditions that contribute to conflict.

The council focuses on internal matters only in so far as they have cross-border implications, consistent with the prohibition on intervention contained in Article 2(7) of the UN Charter. This article prohibits intervention in "matters which are essentially within the domestic jurisdiction of any State"—a well established principle of international law.¹⁷ It might be argued that this prohibition restricts the council from intervening in internal matters such as elections or other questions of governance, and certainly some council members have expressed this restriction in the sanctions context.¹⁸ Nonetheless, the Security Council's enforcement measures fall within the exception to Article 2(7), which states that this principle shall not prejudice the application of enforcement measures under Chapter VII.¹⁹ As a result, in implementing economic measures such as sanctions, the council is not restricted to international matters, as long as there is a demonstrable connection between the domestic situation and threats to international peace and security.²⁰

While it is uncontroversial that the Security Council has great discretion to impose sanctions under Chapter VII, the expanded scope of

9 See UN Security Council Resolution 827 (May 25, 1993) UN Doc. S/RES/827 (ICTY); UN Security Council Resolution 977 (February 22, 1995) UN Doc. S/RES/977 (ICTR); UN Security Council Resolution 1244 (June 10, 1999) UN Doc. S/RES/1244 (Kosovo); UN Security Council Resolution 1272 (October 25, 1999) S/RES/1272 (East Timor); and UN Security Council Resolution 1843 (November 20, 2008) UN Doc. S/RES/1843 (Iraq).

10 Simma et al., *The Charter of the United Nations* (2002), p. 739.

11 The Sanctions Consortium, for example, defines sanctions as "political tools employed to address intractable challenges to international peace and security." Targeted Sanctions Consortium, "Designing United Nations Targeted Sanctions," p. 6.

12 UN Security Council Resolution 1807 (March 31, 2008) S/RES/1807, para. 13(d) and (e).

13 See e.g., Security Council Resolution 1970 para. 22(a), 1975 paras. 6 and 12.

14 UN Security Council Resolution 2076 (November 20, 2012) S/RES/2076, paras. 3 and 8.

15 UN Security Council Resolution 1975 (March 30, 2011) S/RES/1975, paras. 9 and 12.

16 See e.g., Security Council Resolutions 2021 and 1952 para. 22.

17 See Daniel Halberstam and Eric Stein, "The United Nations, The European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order," *Common Market Law Review*, No. 13 (2009), p. 18. See also Article 2(1) and 2(4) of the UN Charter.

18 See, for example, the defeat of UN Security Council draft resolution S/2008/447 was based on objections to proposed sanctions against Zimbabwe on the basis that elections are a domestic matter. Discussion in "Repertoire of the Practice of the Security Council," 16th Supplement (2008–9), available at www.un.org/en/sc/repertoire/2008-2009/Part%20VII/08-09_Part%20VII.pdf#page=29.

19 UN Charter, Article 2(7), "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; *but this principle shall not prejudice the application of enforcement measures under Chapter VII.*" [emphasis added]

20 Sarah Cleveland, "Norm Internalization and U.S. Economic Sanctions," *Yale Journal of International Law* 26, No. 1 (2001). The link between internal conditions and international peace and security is often demonstrated by refugee flows or regional instability.

sanctions, particularly where second order objectives such as reform of national institutions is involved, suggests that there are compelling reasons to revisit the termination debate. Security Council sanctions require all states to change their relationship with the targeted state or named individuals, by for example, cutting off trade or freezing assets. Sanctions may consequently have significant implications for third parties, such as neighboring states or trading partners.²¹ Indeed, pursuant to Article 103 of the UN Charter, it has been argued that “member States are justified in implementing sanctions even in violation of treaties in force.”²²

Properly construed, sanctions are temporary measures. They should be understood as instruments of limited duration, consistent with the principle of proportionality. The Security Council is bound by the general principles of the UN Charter, and sanctions must be necessary and proportionate to reverse the underlying threat.²³ As a general matter, it is now customary for the Security Council to integrate humanitarian exemptions into its sanctions regimes.²⁴ This implicit recognition of limits to the Security Council’s powers should inform the termination debate as well: effective sanctions require not only effective implementation but clear sunset policies as well.

Applying Targeted Sanctions

The Security Council imposes sanctions in three substantive areas: non-proliferation, anti-terrorism, and armed conflict (including interstate and intrastate wars, when international peace and security is threatened). In all three cases, the

Security Council has developed increasingly sophisticated methods to censure the architects of conflict rather than general populations. This practice is known as targeting²⁵ whereby the council focuses on specific groups,²⁶ individuals, or corporate entities that fuel the conflict, rather than on the state as such. As Mikael Eriksson writes:

The typical goal of such measures is to influence decision-makers by engaging or isolating them through targeted financial restrictions, and travel bans and other measures . . . targeting involves different tactics, but in principal, pressure is exercised by a combination of punitive measures, incentives and conditionality to entice or coerce designated targets to change their behavior.²⁷

The Security Council’s practice of using targeted sanctions is well developed in all three substantive areas. Nonetheless, there are two additional strategies the council has adopted when applying sanctions in intrastate conflict situations. First, intrastate targeted sanctions often focus on particular geographical regions, commodities, or sectors of the economy.²⁸ Thus characteristically, the sanctions will attempt to starve the targets of their funding or restrict the market for commodities like diamonds, timber, or oil that fuel conflict.²⁹

Second, Security Council sanctions are often imposed after the negotiation of a comprehensive peace agreement. As Andrea Charron writes,

secondary objectives are possible in intrastate conflicts largely because a peace agreement is in place (no matter how shaky), which means contact has been made with the parties to the conflict and outside brokers are available to bring them to the bargaining table. UN sanctions in support of the peace agreement are applied like a stick. Sanctions in

21 See e.g., the work of the Article 50 Charter Committee.

22 Alexander Orakhelashvili, *Collective Security* (Oxford University Press, 2011), p. 189. But see discussion of the European Court of Justice decision in Kadi in this report, p. 7.

23 See *Prosecutor v. Tadic*. See also Orakhelashvili, *Collective Security*, pp. 189–191 (discussing the requirements of necessity and proportionality in Security Council enforcement measures).

24 See e.g., Anna Segall, “Economic Sanctions: Legal and Policy Constraints,” *International Review of the Red Cross*, No. 836 (1999), available at www.icrc.org/eng/resources/documents/misc/57jq73.htm.

25 For an overview of targeting, see the recent and comprehensive report by the Targeted Sanctions Consortium, “Designing United Nations Targeted Sanctions: Evaluating Impacts and Effectiveness of UN Targeted Sanctions,” August 2012, p. 6.

26 This can include non-state (not part of the government) or sub-state actors (a group that has acquired control of the state or represents the state). Charron, *UN Sanctions and Conflict*, p. 96.

27 Mikael Eriksson, “Operational Conflict Prevention and the Use of Targeted Sanctions: Conditions for Effective Implementation by the EU and UN,” New York: Center on International Cooperation, New York University, 2008, p. 3.

28 See e.g., Security Council Resolution 1556 (2004) paras. 7 and 8 which imposes an arms embargo to North, South, and West Sudan. See Security Council Resolutions 1173, 1295, 1306, and 1343, which impose certificate of origin schemes. See Resolutions 1295, 1306, and 1343, which impose measures on air traffic control. See Thomas Biersteker, “The Emergence, Evolution, Effects and Challenges of Targeted Sanctions,” paper prepared for Sanctions Economiques: Vers de Nouvelles Pratiques, Paris, June, 2004, available at www.globalpolicy.org/images/pdfs/Security_Council/Biersteker-Targeted_Sanctions.pdf.

29 Enrico Carisch and Loraine Rickard-Martin, “Sanctions and the Effort to Globalize Natural Resources Governance,” New York: Friedrich Ebert Stiftung, January 2013.

support of secondary objectives are applied like a carrot—the emphasis is on their removal rather than their application.³⁰

Charron also notes that as of 2011, the only intrastate conflicts that did not have a peace agreement in place prior to the imposition of sanctions were Somalia, Haiti, and Kosovo.³¹ The council's resolutions thus signal to the parties that lasting peace is the end goal, and constrain their access to funding, travel, or prescribed goods like arms that would prolong the conflict.³² The threat of sanctions is intended to encourage compliance with such an instrument, while the subsequent imposition and lifting of sanctions focuses on incentivizing compliance.

In intrastate conflicts in Africa, sanctions reinforce the council's general objective of maintaining momentum toward compliance with existing peace agreements. The first set of sanctions are usually applied when a rupture in the peace process occurs. In 80 percent of cases, the goal of Security Council Chapter VII sanctions is to return the parties to an already negotiated peace.³³ At this stage, the council will impose a standard arms embargo and/or other measures like a travel ban and asset freeze on specific individuals.³⁴ For example, in UN Security Council Resolution 1521 (December 22, 2013), the council instituted new arms and travel sanctions in Liberia to backup the ceasefire, and compel compliance with the Comprehensive Peace Agreement. The council also applied sanctions in Côte d'Ivoire to secure implementation of the peace plan under UN Security Council Resolution 1464 (February 4, 2003), and in Sudan, the council imposed sanctions to encourage compliance with the N'djamena Ceasefire Agreement under UN Security Council Resolution 1591 (March 29, 2005).

Subsequent resolutions may refine the scope and application of the sanctions, often based on recommendations by the sanctions committees and

panels of experts, by for example, adding or lifting specific commodity sanctions, adding or removing specific names from the target lists, and adding more detail in references to internal peacebuilding processes.³⁵

The council's use of its sanctions power to backstop peace agreements, enforce international humanitarian law, and encourage changes to national processes of governance marks an important transformation. The council's general goal of coercing recalcitrant individuals and/or states into ceasing behavior that threatens international peace and security has evolved into a large role in post-conflict reconstruction. Sanctions are most successful when they are part of a wider diplomatic package with general references to peace processes and to the principles contained therein.³⁶ In doing so the council may support local actors in the peacebuilding process using its enforcement powers to incentivize compliance. While this is innovative and important and has resulted in the council's new role as author in the post-conflict landscape, it is much harder to assess compliance. How can one evaluate whether warring parties have successfully achieved second order norms such as respect for international humanitarian law, better management of natural resources, and promotion of democratically elected governments?

The Termination of Sanctions Regimes

There has been no consistent practice in regards to drawing down sanctions, but three different approaches are apparent:

- First, the most common approach is that sanctions resolutions are time-bound, usually for a twelve month renewable period. The following resolutions contain a twelve month sunset clause:

30 Charron, *UN Sanctions and Conflict*, p. 96.

31 Ibid.

32 This terminology is taken from Targeted Sanctions Consortium, "Designing United Nations Targeted Sanctions."

33 Charron, *UN Sanctions and Conflict*.

34 See e.g., Security Council Resolution 2127 (December 5, 2013) UN Doc. S/RES/2127, para. 54.

35 This refinement can be illustrated by the council's resolutions on the DRC. As reported on the 1533 Committee's website: "By paragraph 6 of resolution 1952 (2010), the Security Council requested the Group of Experts to focus its activities on areas affected by the presence of illegal armed groups, including North and South Kivu and Orientale, as well as on regional and international networks providing support to illegal armed groups, criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces, operating in the eastern part of the Democratic Republic of the Congo." available at www.un.org/sc/committees/1533.

36 Vines, "The Effectiveness of UN and EU Sanctions," p. 872.

Resolution 829 (Federal Republic of Yugoslavia),³⁷ Resolution 841 (Haiti),³⁸ Resolution 883 (Libya),³⁹ Resolution 1173 (Angola),⁴⁰ and Resolution 1572 (Côte d'Ivoire).⁴¹

- Others, however, are indefinite: for example, the financial sanctions under Resolution 1298 (Eritrea and Ethiopia) had no end date.⁴²
- Moreover, a third model is now emerging with language that states that the council undertakes a “commitment to review.” See, for example, Resolution 1970 (Libya), and Resolution 2048 (Guinea-Bissau), which create a presumption that the sanctions will last until the committee recommends otherwise.⁴³

The choice between time-bound or indefinite sanctions is political. In 2004, David Cortright and George Lopez reported that time limits were a divisive issue for the Chowdhury working group,⁴⁴ where some nations vigorously opposed them and others wanted to maintain indefinite pressure on recalcitrant regimes. Cortright and Lopez write, “The demand for time limits using [a] ‘sunset clause’ was a direct outgrowth of the experience in Iraq, where sanctions continued indefinitely and some permanent members (especially the United States) would not consider easing them.”⁴⁵

The appeal of indefinite sanctions can be attributed to two factors. First, because of the procedural hurdles of getting something on the Security Council’s agenda, it is easier to continue an existing mandate rather than risk losing control over a matter. The fear of a veto also looms large in attempts to renew a mandate.⁴⁶ Second, the US and

the UK have expressed concern that by inserting limits into targeted sanctions regimes, their leverage would be weakened because the object would shift from requiring the target to meet all the obligations of the sanctions resolutions, to an expectation that far less would be required. In response, China, France, and Russia have taken the position that the Security Council can always extend sanctions regimes if the targets fail to comply.⁴⁷

A 2006 report of the informal working group on “General Issues of Sanctions” stated, “the Security Council should ... clearly define the scope of the sanctions, as well as the conditions and criteria for their easing or lifting,” but, with the exception of criteria on what type of evidence is required—i.e., documents should be verified—there was little consensus on objective standards.⁴⁸ For the most part, the presumption against indefiniteness has prevailed, with the most common approach being a twelve month sunset clause. Nonetheless, the text of a sunset clause can vary widely. Resolution 1896 on the DRC, for example, includes a twelve month review period that emphasizes modification of the sanctions on the basis of institutional reform:

when appropriate, and no later than 30 November 2010, it shall review the measures set forth in this resolution, with a view to adjusting them as appropriate, in light of the security situation in the Democratic Republic of the Congo, in particular progress in security sector reform including the integration of the armed forces and the reform of the national police, and in disarming, demobilizing, repatriating, resettling and reintegrating, as appropriate, Congolese and foreign armed groups.⁴⁹

37 UN Security Council Resolution 829 (May 26, 1993), UN Doc. S/RES/829, para. 31.

38 UN Security Council Resolution 841 (June 16, 1993), UN Doc. S/RES/841, para. 16.

39 UN Security Council Resolution 883 (November 11, 1993), UN Doc. S/RES/883, para. 16.

40 UN Security Council Resolution 1173 (June 12, 1998), UN Doc. S/RES/1173, para. 15.

41 UN Security Council Resolution 1572 (November 15, 2004), paras. 7, 9, and 11.

42 UN Security Council Resolution 1298 (2000) UN Doc. S/RES/1298, para. 6.

43 This language originates from sanctions resolutions on the Democratic People’s Republic of Korea.

44 This refers to a Security Council informal working group on general issues of sanctions.

45 See David Cortright and George A. Lopez, “Reforming Sanctions,” in *The UN Security Council: From the Cold War to the 21st Century*, edited by David M. Malone (Boulder, CO: Lynne Rienner, 2004), p. 175.

46 Joanna Weschler, “The Evolution of Security Council Innovations in Sanctions,” *International Journal*, (Winter 2009–2010), p. 41. “The US position has been that sanctions should be directly linked to the desired change in policy and behaviour of their targets. France argued that as a matter of principle, sanctions should always be limited in time. Iraq served as a cautionary tale for both sides of this dispute: it demonstrated that unless you create a framework for renewal of the sanctions, you may end up with a very flawed design and be forced to continue with it for years, to the detriment of many. For the opponents of time limits, the underlying fear was that every time any sanctions regime needed to be renewed, the threat of a veto would loom large.”

47 Suzanne Xiao Yang, *China in the UN Security Council Decision Making on Iraq* (London: Routledge, 2012), p. 150.

48 United Nations, Report of the Informal Working Group of the Security Council on General Issues of Sanctions, UN Doc. S/2006/997, December 22, 2006.

49 UN Security Council Resolution 1896 (November 30, 2009) S/RES/1896, para. 21. Resolution 2079 on Liberia has similar wording, affirming the financial measures stay in force, and renewing, in para. 2 measures on arms and travel, but suggesting that review of all measures “in light of progress achieved in the stabilization throughout the country” might lead to modification or lifting all or part of the sanctions measures (UN Security Council Resolution 2079 [December 12, 2012] S/RES/2079).

Sanctions against Sudan, in contrast, have been subject to a more discretionary sunset clause, perhaps reflecting the political complexity of the situation. For example, in Resolution 1556, the council imposed a ban on all states to supply arms to Sudan, and then linked termination to a demand that the Sudanese government “fulfill its commitment to disarm militias and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations.”⁵⁰ The termination clause provided that it intends to “consider modification or termination of the measures . . . when the Government of Sudan has fulfilled its commitments described in paragraph 6.”⁵¹ In Resolution 1591, passed in 2005, the council elaborated the sanctions regime in much more detail, appointed a sanctions committee, and again “express[ed] its readiness to consider the modification or termination of the measures . . . on the recommendation of the committee or at the end of a period of 12 months.”⁵²

Sanctions with the objective of conflict management or the protection of civilians are often time-bound, and subject to renewal. In contrast, sanctions on issues of international security, such as non-proliferation and terrorism have tended to be indefinite.⁵³ Nonetheless, in the anti-terrorism context, institutional review processes, such as the ombudspersons’ office with jurisdiction over the Al Qaeda list pursuant to Resolution 1989, have refined the application of sanctions to specific individuals and entities by facilitating delisting requests. This process mitigates the lack of a termination clause in the regime itself, because individuals are able to challenge their inclusion on a list. In the context of the 1989 regime, this process has led to the delisting of approximately thirty

individuals to date, resulting in the termination of sanctions against individuals and entities, although not the regime as a whole.⁵⁴

The European Court of Justice’s 2013 decision in *Kadi*, however, suggests that effective judicial protection is key in implementing sanctions in the EU.⁵⁵ If a full judicial process is not made available to individuals and entities that wish to challenge their listing, some courts may not uphold implementation.⁵⁶ Although the *Kadi* decision does not apply directly to other sanctions regimes, such as those with the objective of conflict management and protection of civilians, it may only be a matter of time before new cases invite courts to assess whether the due process protections available to targets of the intrastate regimes are adequate.

The Case of Liberia

Liberia provides a useful example of sticky sanctions. Liberia has been the subject of three different sanctions episodes. The first set of sanctions lasted from 1992-2001, the second set followed from 2001-2003, and the third set of sanctions (Resolution 1521) was applied in support of the Comprehensive Peace Agreement of 2003.⁵⁷

The third set of sanctions have been deemed “sanctions for peace” to assist the new government with postconflict reconstruction and institution building. These sanctions included an arms embargo, a ban on the country’s diamonds and timber exports, timber sanctions, travel bans, and asset freezes. The sanctions also forced the closure of the Liberian Civil Aviation registry, effectively grounding the entire civil aviation fleet in the country for a period of time. The condition for lifting those measures was the restructuring of the government’s administrative approach.⁵⁸ In 2005,

50 UN Security Council Resolution 1556 (July 30, 2004) S/RES/1556, para. 6.

51 *Ibid.*, para. 10.

52 UN Security Council Resolution 1591 (March 29, 2005) S/RES/1591, para. 5.

53 See e.g., Weschler, “The Evolution of Security Council Innovations in Sanctions,” p. 41.

54 See up-to-date information on delisting requests at www.un.org/sc/committees/1267/delisting.shtml.

55 *Yassin Abdullah Kadi v. European Commission*, T-85/09, case C-584/10 P (joined cases C-584/10 P, C-593/10 P and C-595/10 P) of the European Court of Justice (Grand Chamber) of July, 18 2013. See *Kadi II* Decision at <http://curia.europa.eu/juris/document/document.jspx?text=&docid=139745&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1914364>. See also *Nada v. Switzerland* (2012) (No. 10593/08) in which the European Court of Human Rights found a violation of the rights of respect for privacy and family life and an effective remedy.

56 See e.g., Kristen Boon, “The ECJ’s New Appeal Judgment on *Kadi*,” *Opinio Juris*, July 25, 2013, available at <http://opiniojuris.org/2013/07/25/the-ecjs-new-appeal-judgment-on-kadi/>.

57 Under Resolution 1521, the council lifted the previous sanctions and immediately re-imposed them in support of the new objective of peace enforcement. It also specified criteria for lifting.

58 *Ibid.*

the International Contact Group on Liberia (ICGL) implemented the Governance and Economic Management Assistance Program (GEMAP), which also had a huge impact on governance structures and economic management. These sanctions were accompanied by a peacekeeping mission, mediation, international judicial prosecutions, financial aid and micro-management of all vital government functions.⁵⁹

For the most part, the sanctions against Liberia are seen to have worked extraordinarily well. As Alex Vines writes: “Liberia sets an interesting precedent, in that since 2003 it has become a test case of UN sanctions and monitoring in support of postconflict efforts.”⁶⁰ Lopez deems the sanctions in Liberia “very successful.”⁶¹ Enrico Carisch and Loraine Rickard-Martin, however, note that the implementation of these sanctions has been costly.⁶²

Despite the general view that the Liberian sanctions have accomplished what they originally set out to do, they were renewed on December 10, 2013, for another year under Resolution 2128. This most recent resolution signals that the sanctions may be winding down, with a reduced mandate for the panel of experts, and a requirement for the sanctions committee to review current designees and remove those that no longer meet the listing criteria.⁶³ As recently as June 2013 the Security Council Report observed that there remains no great hurry to conclude them.⁶⁴ Charron writes that “the critical issue was not whether the sanctions should be lifted but how the postconflict situation should be managed so that sanctions were no

longer required.”⁶⁵ Since 2008 the council has consistently referred to significant progress made by Liberia, but used its Article 41 powers to maintain the sanctions and comment on matters associated with sustainable government institutions and the rule of law.⁶⁶ The Security Council originally deployed the sanctions against Liberia under its Chapter VII authority; but it has since used its sanctions power for nation building and governance.

Carrots and Sticks

A 2007 report of the Working Group on Sanctions states the following:

Experience has shown that sanctions work best as a means of persuasion, not punishment: sanctions should include carrots along with sticks—not only threats, but inducements to elicit compliance. The target must understand what actions it is expected to take. And partial or full compliance should be met by reciprocal steps from the Council, such as easing or lifting sanctions as appropriate.⁶⁸

Inducements are a standard but under examined aspect of the Security Council’s sanctions policy.⁶⁹ The council regularly uses incentives to encourage compliance with sanctions in exchange for future roles and processes in the country that will be viewed as legitimate by the international community.

The usual “stick” is the imposition of sanctions in the first place. The council uses the threat of sanctions to get parties to the pre-negotiation table or to encourage them to stay at the table once negotiations have begun. It also uses sanctions to

59 Enrico Carisch and Loraine Rickard-Martin, “Implementation of UN Targeted Sanctions,” in *Understanding United Nations Targeted Sanctions*, Thomas Biersteker, Sue Eckert, and Marcos Tourinho, eds. (Cambridge: Cambridge University Press, forthcoming).

60 Vines, “The Effectiveness of UN and EU Sanctions,” p. 872.

61 Cortright and Lopez, “Reforming Sanctions,” 139.

62 Carisch and Rickard-Martin, “Implementation of UN Targeted Sanctions,” p. 17.

63 “Security Council Extends Sanctions on Liberia for Another Year,” *UN News Centre*, Dec. 2, 2012, available at [www.un.org/apps/news/story.asp/html/story.asp?NewsID=43757&Cr=liberia&Cr1=#.Un0LTChOTwy](http://www.un.org/apps/news/story.asp?html/story.asp?NewsID=43757&Cr=liberia&Cr1=#.Un0LTChOTwy).

64 “It appears that Council members are in agreement that the situation in Liberia at present does not warrant significant revisions to the sanctions regime, as the government continues to lack the necessary legal and enforcement capacities to regulate the importation of arms.” June 2012 Forecast, Security Council Report on Liberia, available at: http://www.securitycouncilreport.org/monthly-forecast/2013-06/liberia_3.php.

65 Charron, *UN Sanctions and Conflict*, p. 81.

66 See e.g., resolutions 2008 and 2066.

67 See e.g., UN Security Council Resolution 2116 (September 18, 2013) UN Doc. S/RES/2116 (noting that the situation in Liberia continues to constitute a threat to international peace and security), and UN Security Council Resolution 2079 (December 12, 2012) UN Doc. S/RES/2079 (“determining that despite significant progress, the situation in Liberia continues to constitute a threat to international peace and security in the region.”)

68 UN Security Council, *Letter Dated 12 December 2007 from the Permanent Representative of Greece to the United Nations Addressed to the President of the Security Council* (December 13, 2007) UN Doc. S/2007/734, p. 3.

69 There is a well developed track record of using incentives in bilateral sanctions. See e.g., David Cortright and George A. Lopez, *Sanctions and the Search for Security* (Boulder, CO: Lynne Rienner, 2012), p. 119.

encourage parties to implement pre-existing peace agreements and to pressure groups to sign onto comprehensive peace agreements. Sometimes sanctions are also sequenced to ratchet up pressure on target groups, acting as a disincentive to future non-compliance. For example, in Liberia, the council moved from an arms embargo, to commodity sanctions, to a travel ban, and finally an asset freeze to step up the pressure. Similarly, in Sudan, sanctions against the militias were expanded to “all signatories to the comprehensive peace agreement,” which included the Sudanese government.

The most common type of “carrot” is to provide incentives for compliance with criteria for lifting sanctions.⁷⁰ In the DRC, for example, the council regularly used incentives to tailor the sanctions regime to evolving exigencies. Here, the council first imposed sanctions against the DRC in 2003.⁷¹ A country wide arms embargo was used to force the principal belligerents to join the transitional government as required by the *Global and Inclusive Agreement on Transition* signed in December 2002, the framework that ended the war.⁷² It also served to encourage participation in orderly elections and the formation of a proper government. Sanctions were used here to provide an incentive for compliance. Subsequently, the sanctions were relaxed on supplies to government forces. Here, the incentive was to join the disarmament and reintegration process into the new armed forces (FARDC) and gain exemption from the arms embargo. The next step was linking sanctions with the trade of conflict minerals such as gold.⁷³ Because minerals can serve as powerful funding sources for belligerents, it has been important to cut them off to move forward with a peace process. Moreover, due diligence in

the trade of certain minerals has become part of the assessment as to whether an individual or entity should be sanctioned.⁷⁴ Here, the incentive is global market recognition for those who deal in legitimate minerals, which has led to the gradual normalization.

By way of contrast, regional organizations like the EU, AU, and ECOWAS use suspension of membership as a stick. The AU, for example, can impose sanctions for nonpayment of membership dues and for unconstitutional changes in government.⁷⁵ To date, the AU has temporarily suspended Togo, Guinea, Mauritania, Niger, and Côte d’Ivoire for unconstitutional changes in government, although the duration of these sanctions regimes has for the most part lasted only a few months.⁷⁶ While suspension might appear as little more than a slap on the wrist, it has long been observed that there are multiple obstacles to effective implementation of sanctions in Africa, including porous borders that blunt the impact of sanctions and the difficulty of reaching targeted individuals who operate outside formal financial systems. Exclusion from membership of a respected and powerful regional organization may therefore have a significant impact due to stigmatizing effects and the loss of participation in local political and economic communities. Recent analyses of sanctions by regional organizations indicate that the norm is short (i.e., one to two years) sanctions episodes, in contrast with the practice of the Security Council.⁷⁷

Suspension of membership is also open to the UN Security Council pursuant to Article 5 of the UN charter, which provides the following:

A member of the United Nations against which preventative or enforcement action has been taken by the Security Council may be suspended from the

70 By way of comparison, in the non-proliferation context, Annex IV to UN Security Council Resolution 1929 (June 9, 2010) UN. Doc. S/RES/1929 on Iran explicitly creates “carrots” to entice Iran to the negotiating table, by for example, promising cooperation in fields such as transportation and communications infrastructure.

71 UN Security Council Resolution 1493 (July 28, 2003) UN Doc. S/RES/1493.

72 The text of the agreement is available at <http://reliefweb.int/report/democratic-republic-congo/global-and-inclusive-agreement-transition-dr-congo-inter-congolese>.

73 See e.g., reports on the link between conflict and gold, Southern Africa Resource Watch Project, “Congo Gold,” available at www.gold.sarwatch.org/report2.

74 On due diligence, see Enrico Carisch and Loraine Rickard-Martin, *Sanctions and the Effort to Globalize Natural Resources Governance*, International Policy Analysis, New York: Friedrich Ebert Stiftung (January 2013), p. 6 available at <http://library.fes.de/pdf-files/iez/global/09578.pdf>.

75 *Constitutive Act of the African Union*, Articles 23 and 30. See also Economic Community of West African States Executive Secretariat, *Protocol A/SPI/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*, Dakar, Senegal, December 2001, Article 45, which permits sanctions “in the event that democracy is abruptly brought to an end by any means or where there is massive violation of Human Rights in a Member State.”

76 See generally Mikael Eriksson, “Democracy in Africa, African Union’s Use of Targeted Sanctions to Deal with Unconstitutional Changes in Government,” FOI Swedish Defence Research Agency 2010, available at www.foi.se/en/Search/Abstract/?rNo=FOI-R--3000--SE.

77 See e.g., Konstantinos D. Magliveras, “The Sanctioning System of the African Union: Part Success, Part Failure?” Revised version of a paper presented at an Institute of Security Studies expert roundtable, “The African Union: The First Ten Years,” AddisAbaba, Ethiopia, October 11–13, 2011, available at www.academia.edu/1103678/THE_SANCTIONING_SYSTEM_OF_THE_AFRICAN_UNION_PART_SUCCESS_PART_FAILURE.

exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.”⁷⁸

To date, however, the Security Council has never used this power relying instead on pragmatic means of limiting the privileges of membership.⁷⁹

Conclusion

Criteria for the termination of sanctions regimes are as essential to the effectiveness of sanctions as intelligent sanctions design. As the Watson Institute writes, “well defined goals articulated at the outset help to minimize conflicts within the sanctions committees and Security Council by establishing clear criteria for determining how the measures are to be imposed, their duration, and their effectiveness.”⁸¹ By the same token, well defined goals will help to determine when the sanctions should stop. In the first instance, sanctions effectiveness can be improved by better targeting, which may help to shorten conflict phases. Shorter conflicts, in turn, can lead to quicker meeting of sanctions objectives. A central argument in this paper is that when the objectives of a sanctions regime are met, the sanctions should be amended, repealed, or terminated as soon as possible. Benchmarks for drawing down sanctions should be concrete and realizable, contain specific and detailed objectives, and include examples for how second order norms, such as bringing violators to justice, can be achieved.

Some questions requiring further discussion include the following:

- Should twelve-month sunset clauses be the default in multilateral sanctions practice, with departures from this norm (i.e., indefinite sanctions) requiring clear justification on the basis of the exigencies of the situation?
- How can termination language be clearly linked to objective criteria, so it is clear to the target and to the international community what behaviors are required to justify the lifting of sanctions?
- When a situation no longer presents a threat to the peace, should the council terminate a sanctions regime and continue subsequent (non-sanctions) measures under a new resolution, or under Chapter VI?
- Should the council consider the attitudes of regional organizations in deciding whether to continue or terminate sanctions?

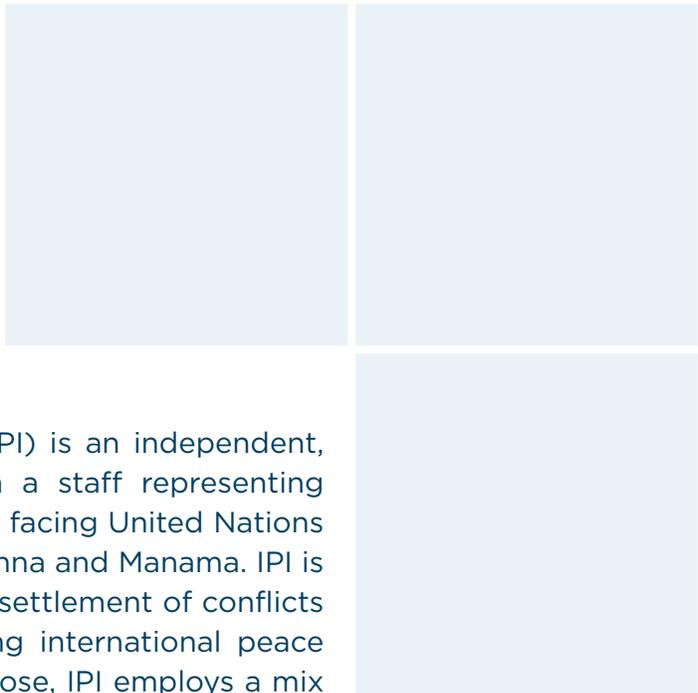
While the Security Council has largely been successful in designing and implementing targeted sanctions in the areas of arms embargoes, travel bans, and commodity sanctions, there has been far less specificity about how to comply with second order norms, particularly those associated with post-conflict development. Here, a study on compliance with recommendations from the African Commission on Human Rights is relevant by analogy. It indicates that states typically find it easier to voice respect for rights than to protect or fulfill rights.⁸¹ Similarly, it will be difficult for targeted states and individuals to fully comply with aspirational goals and thus meet the requirements to “draw down” sanctions. From a legal perspective, there is also a serious question about whether these aspirational goals are properly grouped as enforcement measures under Article 41 of the UN Charter.

78 Christian Tams, “Article 5,” in *The Charter of the United Nations: A Commentary*, Third Edition, edited by Bruno Simma, Daniel-Erasmus Khan, George Nolte, and Andreas Paulus (Oxford: Oxford University, 2012) pp. 363-373.

79 In 1975, Mexico requested that Spain be suspended from membership due to human rights violations by the Spanish dictatorial regime, although no action was taken. See UN repertoire, 1975-1980, “Practices Relevant to the Applicability of Articles 5 and 6 of the Charter,” p. 113, available at www.un.org/en/sc/repertoire/75-80/75-80_07.pdf.

80 The Swiss Confederation, United Nations Secretariat, and the Watson Institute for International Studies at Brown University, *Targeted Financial Sanctions: A Manual for Design and Implementation*, p. 5, available at www.watsoninstitute.org/pub/TFS.pdf.

81 Frans Viljoen and Lorette Louw, “State Compliance with the Recommendations of the African Commission on Human and Peoples’ Rights, 1994–2004,” *American Journal of International Law* 101, No. 1 (January 2007).



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