

5. Sanctions applied by the European Union and the United Nations

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I. Introduction

During 2001 sanctions continued to play an important role in the efforts to manage a range of security problems, while the reform of sanctions witnessed towards the end of the 1990s continued. Sanctions are now not only used to target states, but also applied to non-state entities and, increasingly, to individuals. After the terrorist attacks on the United States on 11 September 2001, the United Nations Security Council agreed on extensive measures against groups and individuals that have carried out acts of terrorism.

As part of the wider effort to improve the effectiveness of UN sanctions an informal working group was established in April 2000 to develop general recommendations on how to improve the effectiveness of sanctions. This working group completed a draft report in 2001. In addition, in 2001 the use of sanctions related to particular countries continued to be a focus of attention. In the 1990s very extensive sanctions were applied to Iraq and to the former Yugoslavia. On 29 November 2001 the UN Security Council approved Resolution 1382, which made important modifications to the sanctions regime against Iraq. By November 2001 all of the multilateral sanctions against Yugoslavia had been removed when the European Union (EU) lifted the remaining restrictive measures.¹

The European Union has been in the process of developing a Common Foreign and Security Policy (CFSP). The leaders of the EU have decided that the EU must take a comprehensive approach to crisis management. Sanctions are one instrument available to implement that approach.² The European Union has established sanctions against states although the UN Security Council has not taken a similar decision. In some cases the EU has maintained its sanctions after the Security Council has decided to end UN measures. These decisions reflect the emergence of a political actor with an identity separate from the identity of its member states, since those states would not themselves have taken these decisions outside the EU context.

¹ Certain sanctions remain in place against individuals, principally financial sanctions against former Yugoslav President Slobodan Milosevic and his immediate family.

² The EU High Representative for the CFSP, Javier Solana, has written that 'crucial to success is the ability to provide the full range of instruments—economic and technical assistance, civilian police and institutional-building tools, trade incentives or sanctions, etc., in order to force parties to a conflict into a negotiated settlement and to rebuild the economy and restore the societies of a country or a region after a conflict'. Solana, J., 'Decisions to ensure a more responsible Europe', *International Herald Tribune*, 14 Jan. 2000.

Although the word 'sanctions' is frequently used, it does not have an agreed definition. The UN Charter does not contain the word at all but refers to measures that may be adopted in response to identified threats to the peace, breaches of the peace and acts of aggression.

Within the legal codes of states, sanctions are that part of a law that inflicts a penalty for its violation. In common usage international sanctions can be defined as any restriction or condition established for reasons of foreign policy or national security applied to a foreign country or entity by a group of states using substantially equivalent measures.

The implications of using sanctions against states are similar to a military action as their intent is always to inflict damage on the target.³ For this reason, the legitimacy of sanctions used without a decision by the UN Security Council has been questioned.

Section II of this chapter examines United Nations sanctions and recent efforts to develop a more systematic approach to their use. Section III examines the use of sanctions by the European Union. Subsequent sections examine the use of sanctions in Iraq and Afghanistan and against terrorism.

II. The United Nations sanctions experience

While the use of force by the United Nations is envisaged in the Charter, because no armed forces are under its command sanctions are the only means of coercion available to the UN.⁴

In total, the Security Council has imposed sanctions on 16 countries: Afghanistan, Angola, Eritrea, Ethiopia, Haiti, Iraq, Liberia, Libya, Rwanda, Sierra Leone, Somalia, South Africa, Southern Rhodesia (now Zimbabwe), Sudan, the Federal Republic of Yugoslavia (FRY) and the Socialist Federal Republic of Yugoslavia.⁵ Fourteen of these cases reflect decisions taken after the end of the cold war. The use of sanctions after 1990 stimulated debate about their effectiveness as an instrument for helping to manage security.

Although a decision of the Security Council establishes sanctions, the particular conditions in which sanctions have been used and the specific objectives established for them have differed widely from case to case. From the use of sanctions during the 1990s it is possible to perceive the emergence of some general principles. The sanctions imposed in the 1990s can be sorted into four general categories: (a) cases of cross-border conflict, (b) civil wars likely to have 'spillover' effects that will destabilize the region as a whole, (c) cases

³ Space in this chapter does not permit a general discussion of sanctions and their use. For a recent overview see Brzoska, M. (ed.), *Smart Sanctions: The Next Steps* (Nomos Verlagsgesellschaft: Baden-Baden, 2001). The non-governmental organization The Fourth Freedom Forum maintains a bibliography of literature related to sanctions, available at URL <<http://www.fourthfreedom.org>>.

⁴ Under Article 41 of the UN Charter 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.'

⁵ Several of these sanctions regimes are discussed in chapters 2 and 8 in this volume.

where internal repression by the government of one country is likely to generate conflicts that destabilize the region as a whole, and (d) cases where the target supports international terrorism.

Sanctions have a declaratory element through which a group of states indicates its preferred outcome in a particular crisis situation. Although they are intended to inflict damage on the target, sanctions are not intended to be punitive. Their objective is to bring about a change in the policies and behaviour of the target. Sanctions can be of different kinds.

Given the responsibilities of the UN Security Council, arms embargoes are a sanction that has been used fairly frequently in response to a threat to the peace, a breach of peace or a case of aggression.

The objective of an arms embargo was historically to signal that the particular dispute should be settled by peaceful means and that the international community will not assist either party in seeking a military solution. However, over an extended period an arms embargo could have an impact on the military capacity of warring parties, depending on the effectiveness of its enforcement.

The measures chosen could be economic—for example, the target of sanctions may be prohibited from buying or selling particular goods. They might be financial—for example, refusing to permit bank deposits held in the name of the target to be drawn upon. They might be travel-related—for example, states may deny ships or aircraft registered in the name of the target access to their territory or prohibit ships or aircraft on their national registers from visiting the target state. Diplomatic sanctions could include withdrawing support for, suspending or expelling the target state from international organizations or the drawing down of diplomatic contacts of various kinds.

In the past, sanctions were applied to the territories of states. However, from the mid-1990s they have also been imposed on particular parties to a conflict rather than on all citizens of a state and on parts of the territory of a state rather than on its entire territory.

These changes have reflected a different approach by the UN Security Council towards parties to a conflict. Increasingly, even-handedness and a general call for peaceful resolution have been replaced by a determination of responsibility. Sanctions have been applied only to the party identified as responsible for actions that represent a threat to the peace, a breach of the peace or an act of aggression.

Sanctions have been applied to non-state entities. The first such case was those applied to the União Nacional Para a Independência Total de Angola (UNITA, National Union for the Total Independence of Angola). With the development of targeted sanctions there are cases of sanctions being applied to individuals within a government.

As yet there are no cases of arms embargoes applying to the armed forces under government control while not applying to the armed forces of a non-state entity fighting that government. The UN has stopped short of endorsing military action to overthrow a government, but there are cases where an

embargo has been applied to armed forces in de facto control of the territory of a state. The arms embargoes applied to the Revolutionary United Front (RUF) in Sierra Leone and the Taliban in Afghanistan are two examples where armed forces of the deposed government were exempt from embargoes. The UN may legitimize the use of military means to restore governments that have lost power in a *coup d'état*.

As such measures are mentioned in the UN Charter, relatively few concerns were raised regarding the legitimacy of UN sanctions before the mid-1990s, after which their legitimacy was increasingly questioned for three reasons.

First, the application of sanctions to some but not all parties to a dispute made the use of sanctions more politically sensitive and opened them to the charge that they have become an instrument of political coercion rather than conflict resolution. A second factor that raised questions about legitimacy was evidence that extensive sanctions could have disproportionate effects on the society of the target. A third factor was evidence that limited sanctions were not being implemented and so could not be effective.

Some states began to argue that in these conditions compliance with decisions by the Security Council was not mandatory since those decisions did not accurately reflect the broader will of the UN membership.

The status of the role of sanctions can be summarized in three points.

1. In the 1990s the use of sanctions became progressively more widespread.
2. There has been an attempt to design sanctions that can apply to particular targets (i.e., decision makers held to be responsible for threats to the peace, breaches of the peace or acts of aggression).
3. As a result, sanctions have become more complicated to design and implement.

Although sanctions proved to be complex and controversial the Security Council did not abandon this instrument but tried to improve it in cooperation with the Office of the Secretary-General and other UN organs.⁶ An informal working group was established in April 2000 to develop general recommendations on how to improve the effectiveness of sanctions.⁷

The UN Working Group on the General Issues on Sanctions

The Working Group on the General Issues on Sanctions was established on 17 April 2000 with representatives of all of the states then sitting on the UN Security Council.⁸ The objective of the working group was to institutionalize a

⁶ For a more detailed discussion of how this process of improvement has been approached, see the documents available at URL <<http://www.smartsanctions.ch/>> for information related to financial sanctions and at URL <<http://www.smartsanctions.de>> for information related to travel sanctions and arms embargoes.

⁷ Note by the President of the Security Council, UN document S/2000/319, 17 Apr. 2000, URL <<http://www.un.org/sc/committees/sanctions/s00319.htm>>.

⁸ Although the report has not been published, a text of the Chairman's Proposed Outcome of the Working Group on Sanctions, Feb. 2001, is available at URL <<http://www.cam.ac.uk/societies/casi/info/scwgs140201.html>>. This is believed to be an authentic version of the text.

systematic, general approach to defining and implementing sanctions within the United Nations. The working group could create the basis for a legal regime for sanctions to establish norms based on international consensus.⁹

While the group was intended to complete its work by 30 November 2000, consensus could not be achieved within the group by that date. The chairman of the group (Ambassador Anwarul Karim Chowdhury from Bangladesh) presented a proposed outcome of the group to the members of the Security Council at an informal meeting on 14–15 February 2001 with a view to securing support for a final report. The members decided to defer consideration of the report in the Security Council indefinitely.¹⁰

One reason for seeking changes was the growing view that the procedures for decision making in the UN Security Council could undermine the effectiveness of sanctions once they were agreed. The time taken for discussions of the scope, framing of language and translating the decisions into national laws could be used by a sanctions target to put in place defensive measures. This was particularly the case for financial sanctions, given the relative ease with which a sanctions target could ‘hide’ assets.¹¹

The recommendations contained in the draft report are apparently divided into three sections: sanctions administration, sanctions design and sanctions implementation. While the contents of the sections on sanctions administration and implementation have been agreed, differences remain on two specific points contained in the section on sanctions design.

The section on administration includes measures to improve the effectiveness of the sanctions committees that are established by the Security Council each time a new set of sanctions is introduced. In particular, a system enhancing the role of the chairs of sanctions committees and for improved communication between the committees is recommended. In addition, an enhanced role for the UN Secretariat is proposed.

While making clear that implementation of sanctions is primarily a matter for states, the section on implementation includes measures for enhanced assessment, evaluation, monitoring and enforcement of sanctions. These recommendations would build on experience gained in recent investigations carried out under the auspices of the UN.

⁹ This was the final objective of the Canadian Government, which took the initiative to establish the Working Group during its period as President of the Security Council. ‘Sanctions have little, or only controversial, standing in international law. They fall into a grey zone between humanitarian law and the rules of warfare.’ Remarks of Canadian representative at the 4128th meeting of the UN Security Council, reproduced in ‘General issues related to sanctions’, UN document S/PV.4128, 17 Apr. 2000.

¹⁰ Report of the Secretary-General, Implementation of the provisions of the Charter of the United Nations related to assistance to third states affected by the application of sanctions, UN document A/56/303, 17 Aug. 2001.

¹¹ Albert Cluckers, Senior Manager of the Internal Audit Department, Bank Brussels Lambert, has noted that ‘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’. ‘How can financial assets and financial transactions be controlled? Comments from a banker’s point of view’, Expert Seminar on Targeting UN Financial Sanctions organized by the Swiss Federal Office for Foreign Economic Affairs, Department of Economy, 17–18 Mar. 1998, p. 81, available at URL <<http://www.smartsanctions.ch/interlaken1.htm>>.

An International Commission of Inquiry (known as UNICOI) was established by UN Security Council Resolution 1013 of 7 September 1995 to conduct investigations 'relating to the sale or supply of arms and related matériel to former Rwandan government forces in the Great Lakes region'. Reports by the commission included information that pointed to violations of the UN arms embargo on Rwanda that was in effect between May 1994 and August 1995.¹² UNICOI was reconstituted in 1998 with a new mandate to collect information and investigate reports relating to these violations.¹³

Other panels of experts have investigated violations of sanctions imposed on UNITA, on rebel groups in Sierra Leone and on Liberia. The panels of experts reported on UNITA in March 2000, on Sierra Leone in December 2000 and on Liberia in October 2001.¹⁴ In addition, a UN monitoring mechanism on Angola sanctions was established by UN Security Council Resolution 1295.¹⁵ The reports published by the various panels and the monitoring mechanism are widely recognized as having had a significant effect on the actions of the Security Council and of states. The recommendations of the Chowdhury Report would have made UN monitoring a routine element of sanctions implementation.

Most of the recommendations on sanctions design were supported by all of the states represented in the working group. The recommendations were intended to minimize the risk that sanctions would have a serious negative impact on the humanitarian situation of people living in the target state and to focus pressure on decision makers by tailoring sanctions to the specific conditions of the target state.

It can be argued that sanctions would be most effective if applied to parties before a breach of the peace or an act of aggression has taken place. However, most members of the working group opposed the use of sanctions during the early phases of a crisis.¹⁶ The shortage of relevant capacities both at the United Nations and in the regions where the targets of sanctions are located has been a barrier to effective enforcement. In these conditions the use of sanctions was

¹² The initial UNICOI reports can be found in UN documents S/1996/67, S/1996/195, S/1997/1010 and S/1998/63. The arms embargo was established in UN Security Council Resolution 918, 17 May 1994.

¹³ UN Security Council Resolution 1161, 9 Apr. 1998. UNICOI published its findings in Interim report of the International Commission of Inquiry (Rwanda), UN document S/1998/777, 19 Aug. 1998.

¹⁴ Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, UN document S/2000/203, 10 Mar. 2000 (the Fowler Report); Report of the Panel of Experts appointed pursuant to UN Security Council Resolution 1306 (2000), paragraph 19 in Relation to Sierra Leone, UN document S/2000/1195, 20 Dec. 2000; and Report of the Panel of Experts pursuant to Security Council Resolution 1343 (2001), paragraph 19, concerning Liberia, UN document S/2001/1015, 26 Oct. 2001.

¹⁵ UN Security Council Resolution 1295, 18 Apr. 2000.

¹⁶ 'Application of sanctions is justifiable only when all other peaceful means of dispute settlement or international peace keeping, including temporary measures provided for in Article 40 of the UN Charter, have failed and the UN Security Council determined a threat to peace, violation of peace or an act of aggression.' Zvedre, E. K., 'UN Security Council arms embargoes: implementation of the Security Council resolutions in Russia', Paper delivered at the Seminar on Arms Embargoes and Sanctions, organized jointly by the Ministry of Foreign Affairs, Hungary and the Department of Foreign Affairs and International Trade, Canada, Budapest, 26–27 Apr. 2001.

supported only in exceptional cases, at least until additional capacities were in place.¹⁷

Sanctions are therefore seen as a measure of last resort in two senses: they are to be applied when all possibilities for reconciliation through dialogue have been exhausted and only in cases where a reasonable probability of effective enforcement exists.

The draft report included a recommendation that, before sanctions are imposed, the UN Secretariat should prepare a report indicating the impact sanctions could be expected to have in the specific conditions of the target country, including the impact on states in the immediate vicinity. The establishment of such a general rule was considered by some to dilute the authority of the Security Council to take decisions.

The main disagreement apparently related to the conditions for suspending and lifting sanctions.¹⁸ In particular, the proposal to establish a general rule that the resolution establishing sanctions should always have a 'sunset clause' by which the sanctions were time limited. At the end of the agreed period a new decision would be required to continue sanctions.

Adopting general rules on sanctions would take away the discretion of the Security Council to establish sanctions of indefinite duration. Lifting sanctions then requires agreement by all five permanent members of the Security Council. Moreover, each member of the Security Council determines when the conditions that will lead to the lifting of sanctions have been met according to its own interpretation of the relevant resolutions.¹⁹

The disagreement over the establishment of general rules reflected the influence of the ongoing discussion of sanctions imposed against Iraq during 2001. The proposed rules are intended to contribute to establishing a 'road map' that makes it more clear what a target state needs to do in order to have sanctions lifted. The United States in particular has been reluctant to accept general rules if they could increase the pressure to lift sanctions on Iraq in conditions where Iraq has not complied with all of the conditions established in existing UN Security Council resolutions.

The Security Council has adopted into its practice many of the recommendations of the UN working group, including the establishment of time-limited sanctions. Some of the recommendations of the draft report may be accepted as separate items, rather than as part of a general sanctions reform.²⁰ More-

¹⁷ 'Cases in which the imposition of sanctions is feasible must be strictly interpreted. . . . We should avoid increasing the number of sanctions regimes. The United Nations already has the greatest difficulty in securing compliance with those currently in force.' Unofficial translation of remarks by the representative of France at the 4128th meeting of the UN Security Council, reproduced in General issues related to sanctions, UN document S/PV.4128, 17 Apr. 2000.

¹⁸ Scott, D., 'Improving UN sanctions: Security Council debates time limits for future sanctions', Markland Group Report, reproduced in *Compliance Matters*, issue 10 (2001).

¹⁹ The working group discussed the idea that the Security Council should agree in advance on guidelines for how the target of sanctions could be judged to have met the conditions contained in the sanctions resolution.

²⁰ In 2002 France and the United Kingdom were working to create a permanent sanctions monitoring unit within the United Nations. Proposed elements of an independent expert unit, British-French Non-paper circulated to UN Security Council sanctions experts on 25 Jan. 2002.

over, sanctions reform efforts will continue outside the framework of the UN. Between 1998 and 2001 the governments of Switzerland and Germany organized reform processes that led to the development of sanctions policy handbooks that have subsequently been used extensively by the Security Council when designing and drafting sanctions resolutions.²¹ In October 2001 the Government of Sweden initiated a follow-on process to focus on the implementation and monitoring of targeted sanctions.²²

III. The EU sanctions experience

The European Union has two objectives in using sanctions. First, the EU has acted to implement UN sanctions more effectively. Second, the EU has used sanctions as an instrument of its common foreign policy.

After 1970 the European Community discussed foreign policy as part of its European Political Cooperation (EPC) and sanctions issues reflected the need for collective implementation of UN measures against South Africa and Southern Rhodesia (now Zimbabwe). The common commercial policy of the European Community (which applied to trade in civilian goods and commodities) meant that economic sanctions required implementation by common institutions as well as by the member states.²³

While international law—including decisions of the United Nations—provides legitimacy to EU sanctions, there is not a direct link to a decision by the UN under Article 41 or Chapter 7 of the UN Charter in every case.

In 1982 the European Community adopted sanctions against the Soviet Union in response to political developments in Poland and against Argentina following the invasion of the Falklands Islands.²⁴ Subsequently, the EU adopted sanctions outside the framework of UN decisions against Belarus, China, Indonesia, Kazakhstan, Libya, Myanmar (Burma) and Zimbabwe.²⁵

In cases where the EU has used sanctions outside the framework of UN decisions it has usually been to promote human rights and democratization objectives in external relations. The link between sanctions and human rights has been made explicit in that sanctions are mentioned as one instrument with

²¹ Swiss Federal Office for Foreign Economic Affairs, Department of the Economy, in cooperation with the United Nations Secretariat, *Second Interlaken Seminar on Targeting United Nations Financial Sanctions: Final Report*, 29–31 Mar. 1999, available at URL <http://www.smartsanctions.ch/int2_papers.htm>; and Brzoska, M. (ed.), *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the 'Bonn-Berlin Process'*, Bonn International Center for Conversion in cooperation with the Auswärtiges Amt (German Foreign Ministry) and the United Nations Secretariat, 2001. It is available at URL <<http://www.bicc.de/general/events/unsanc/2000/booklet.html>>.

²² Statement of Mr Hans Dahlgren, Sweden, to the UN Security Council, 22 Oct. 2001, reproduced in UN document S/PV.4394, 22 Oct. 2001.

²³ Bohr, S., 'Sanctions by the United Nations Security Council and the European Community', *European Journal of International Law*, vol. 4, no. 2 (1993).

²⁴ Kuyper, P. J., 'Community sanctions against Argentina: lawfulness under Community and international law', in eds D. O'Keefe and H. G. Schermers, *Essays in European Law and Integration* (Kluwer Law and Taxation Publishers: Boston, Mass., 1982).

²⁵ The case of Zimbabwe is discussed in chapter 2 in this volume.

which the Charter of Fundamental Rights of the European Union (proclaimed at the Nice summit meeting in December 2000) will be implemented.²⁶

The Commission of the European Communities (hereafter referred to as the Commission), which is fully associated with the CFSP, has recommended that the Council of the European Union (hereafter referred to as the Council) debate ways of enabling the EU to devise and implement 'preventive sanctions'. The Commission has recommended establishing a system for monitoring potential conflict areas with a view to identifying parties liable to start a conflict and analysing their existing or potential power base. This information and analysis would allow the Council to introduce sanctions at a time when they could be expected to have the greatest effect.²⁷

The greater use and expanded scope of sanctions in the 1990s took place against the background of continuous institutional change. Changes included the free movement of goods and services within the EC required by the 1987 Single European Act and the creation of the European Union—with a Common Foreign and Security Policy and closer cooperation in the area of justice and home affairs.

The legal basis for EU sanctions depends on the particular measure adopted. In each case the Council, using powers conferred in the 1992 Treaty on European Union (Maastricht Treaty), unanimously adopts a common position or a joint action identifying the objectives of measures to be undertaken.²⁸ From this point there is divergence in the legal form.

A two-stage procedure was established for economic sanctions. The 1957 Treaty Establishing the European Community (Treaty of Rome) provides the authority for implementing economic and financial sanctions through common institutions. Article 60 contains measures related to the movement of capital and payments while Article 301 provides the legal basis for trade sanctions. On this basis the Commission prepares a regulation containing specific measures that give effect to the political decision. The Council adopts this regulation through a qualified majority vote. The regulation, which can be modified only through a unanimous decision of the Council, becomes Community law, binding throughout the EC.

The use of Community law in the form of regulations whose implementation is monitored by the Commission is intended to ensure uniform application of sanctions measures. However, the use of arms embargoes by the EU requires a different legal basis because arms and military goods remain outside the scope

²⁶ The European Union's role in promoting human rights and democratisation in third countries, Communication from the Commission to the Council and the European Parliament, Document COM(2001) 252 final, Brussels, 8 May 2001, p. 6. The charter is part of the Treaty of Nice amending the Treaty on European Union, the treaties establishing the European Communities and certain related acts. *Official Journal of the European Communities*, C 80/1, 10 Mar. 2001, URL <http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf>.

²⁷ Commission of the European Communities, Communication from the Commission on conflict prevention, COM(2001)211 final, 11 Apr. 2001, p. 24.

²⁸ The Council of the European Union is composed of 1 representative at ministerial level from each member state, who is empowered to commit his or her government. Council members are politically accountable to their national parliaments.

of the common commercial policy.²⁹ There has been a need to reduce the risk that uneven implementation of agreed measures will diminish the effectiveness of EU arms embargoes and perhaps undermine the trust between member states.

The member states have sought greater uniformity through a dialogue that has led to political agreement on how arms embargoes should be applied. When an arms embargo is applied to a particular country, the states decide at the same time whether it should be interpreted as a 'full scope' or less than full scope embargo. If the embargo is to be full scope, then it is defined as being on 'arms, munitions and military equipment'. In that case, it will apply to all the goods on a common embargo list. If an embargo is less than full scope, it will be defined as 'an embargo on arms and munitions' and the member states then specify in the common list the categories that it will cover.³⁰

In addition, the EU has a different legal basis for travel and diplomatic sanctions since these also rest on measures that are still within the competence of member states rather than Community institutions. Travel sanctions have included bans on entry visas for specified individuals (usually senior political and military officials) and the suspension of high-level visits by officials. Diplomatic sanctions have included the expulsion of diplomatic and military personnel attached to the diplomatic representations in member states and, conversely, the withdrawal of personnel attached to diplomatic representations of member states in the target country.

Sanctions as an instrument of EU policy: the targeted sanctions against Yugoslavia after 1998

Between 1992 and 1996 the member states of the European Community implemented restrictions on trade and financial relations with the Federal Republic of Yugoslavia as well those parts of Croatia and Bosnia and Herzegovina under the control of Serb forces.³¹ These decisions were taken to implement decisions by the UN Security Council. These comprehensive sanctions were lifted in October 1996 in the context of the political settlement of the conflicts in the former Yugoslavia reached in November 1995.³²

²⁹ Under Article 296 of the Treaty of Rome, member states may take such measures as they consider necessary connected with the production of or trade in arms, munitions and war *matériel*.

³⁰ An unofficial copy of the European Union common embargo list is available at URL <http://projects.sipri.se/expcon/euframe/eu_commonlist.htm>.

³¹ The measures were first introduced by Council Regulations (EEC) no. 1432/92 and (EEC) no. 2656/92. More comprehensive sanctions were imposed by Council Regulation (EEC) no. 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro), *Official Journal of the European Communities*, L 102, 28 Apr. 1993, pp. 14–16.

³² Council Regulation (EC) no. 2382/96 of 9 December 1996 repealing Regulations (EEC) 990/93 and (EC) no. 2471/94 and concerning the termination of restrictions on economic and financial relations with the Federal Republic of Yugoslavia (Serbia and Montenegro), the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, *Official Journal of the European Communities*, L 328, 18 Dec. 1996, pp. 1–2.

When an armed conflict in the Kosovo province of the republic of Serbia of the FRY escalated in early 1998, and in particular after employment of the military against the Kosovar Albanian community, the European Union imposed restrictive measures as part of its response. However, in contrast to the comprehensive sanctions employed after 1992, after 1998 the EU applied what has been called ‘a sophisticated mix of smart sanctions and incentives, regularly adjusted and fine-tuned to changing circumstances’.³³

The EU established a moratorium on government-financed export credit support for trade and investment in the FRY in April 1998.³⁴ The EU had established an arms embargo against the FRY in late 1996. This embargo applied to the direct supply of arms. On 19 March 1998 the EU amended its embargo to include the provision of training as well as equipment that might be used for internal repression or for terrorism.³⁵ The EU decided not to issue visas to any senior representatives of the FRY and the government of the republic of Serbia. The scope of this measure was extended for the first time in December 1998 and was subsequently revised regularly following reviews of the list of individuals subject to the ban.³⁶ For example, in May 1999 the EU extended the visa ban to include President Slobodan Milosevic, his family, all ministers and senior officials of the governments of both the FRY and Serbia, and immediate associates of Milosevic.³⁷

In May 1998 the EU introduced an asset freeze on funds held abroad by the FRY and Serbian governments as well as the assets of individuals associated with Milosevic and companies controlled by or acting on behalf of the Government of the FRY.³⁸ The financial sanctions were extended in May 1999 to cover additional individuals and to prohibit the provision of export finan-

³³ Cortright, D. and Lopez, G., ‘Introduction’, to Cortright, D. and Lopez, G. A., *Assessing Smart Sanctions: Lessons from the 1990s* (Rowman and Littlefield: Lanham, Md., 2002). The EU sanctions are discussed in detail in de Vries, A., ‘European Union sanctions against the Federal Republic of Yugoslavia from 1998 to 2000: a special exercise in targeting’ in the same volume.

³⁴ Council Regulation (EC) 926/98 of 27 April 1998 concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia, *Official Journal of the European Communities*, L 130, 1 May 1998, pp. 1–4.

³⁵ Common Position of 19 March 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union on restrictive measures against the Federal Republic of Yugoslavia, *Official Journal of the European Communities*, L 95, 27 Mar. 1998 pp. 1–3.

³⁶ Council Common Position of 19 March 1998 (note 35); and Council Common Position of 14 December 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union on restrictive measures against the Federal Republic of Yugoslavia (98/725/CFSP), *Official Journal of the European Communities*, L 345, 19 Dec. 1998, pp. 1–2.

³⁷ Council Common Position of 10 May 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union concerning additional restrictive measures against the Federal Republic of Yugoslavia (1999/318/CFSP), *Official Journal of the European Communities*, L 123, 13 May 1999, pp. 1–2; and Council Decision of 10 May 1999 implementing Common Position 1999/318/CFSP concerning additional restrictive measures against the Federal Republic of Yugoslavia (1999/319/CFSP), *Official Journal of the European Communities*, L 123, 13 May 1999, pp. 3–11.

³⁸ Council Common Position of 7 May 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning the freezing of funds held abroad by the Federal Republic of Yugoslavia (FRY) and Serbian Governments (98/326/CFSP), *Official Journal of the European Communities*, L 143, 14 May 1998, pp. 1–2.

cing by the private sector for transactions with the governments of the FRY and Serbia.³⁹

In April 1999 the EU banned the sale and supply of petroleum and petroleum products to the FRY.⁴⁰ In September 1999 the ban was first modified to permit sales and supplies to Kosovo and Montenegro (but not Serbia) and subsequently to permit sales to Serb municipalities that supported the democratic transition in the FRY (the so-called 'energy for democracy' programme).⁴¹

During 2000 the sanctions measures were modified in the light of the changing conditions in the FRY, and in particular following the fall of the Milosevic Government and the election of President Vojislav Kostunica in September 2000. While the arms embargo and the restrictive measures applied to President Milosevic and his immediate associates were maintained, other sanctions were progressively lifted in 2000 and 2001. In October 2001 the EU lifted the arms embargo on the FRY.⁴² In November 2001 the last of the sanctions on the FRY were lifted.⁴³

The policy of targeted sanctions was combined with a series of inducements designed to encourage democracy and respect for human rights in the FRY. Moreover, they were implemented alongside the development of a regional initiative of the EU—the 1999 Stability Pact for South Eastern Europe—in which more than 40 countries undertook to strengthen the efforts of countries in South-Eastern Europe to foster peace, democracy, respect for human rights and economic prosperity.⁴⁴ The EU targeted sanctions were supported by Stability Pact partners, which include the United States and states bordering the FRY. Participation in the Stability Pact, which also promised to be a preparatory phase prior to integration of states into West European institutions, was not possible for the FRY until it undertook a democratic transition. Cortright and Lopez have noted that 'multilateral sanctions and incentives played into the hands of the democratic opposition while isolating the regime, they were a successful example of the application of smart sanctions'.⁴⁵

³⁹ Council Common Position of 10 May 1999 (note 37), pp. 1–2; and Council Decision of 10 May 1999 implementing Common Position 1999/318/CFSP (note 37), pp. 3–11.

⁴⁰ Council Common Position of 23 April 1999 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning a ban on the supply of petroleum and petroleum products to the Federal Republic of Yugoslavia (FRY) (1999/273/CFSP), *Official Journal of the European Communities*, L 108, 27 Apr. 1999, pp. 1–2.

⁴¹ Council Common Position of 3 September 1999 amending Common Position of 23 April 1999 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning a ban on the supply of petroleum and petroleum products to the Federal Republic of Yugoslavia (FRY) (1999/604/CFSP), *Official Journal of the European Communities*, L 236, 7 Sep. 1999, p. 1.

⁴² Council Common Position of 8 October 2001 amending Common Position 96/184/CFSP concerning arms exports to the former Yugoslavia and Common Position 98/240/CFSP on restrictive measures against the Federal Republic of Yugoslavia (2001/719/CFSP), *Official Journal of the European Communities*, L 268, 10 Oct. 2001, p. 49.

⁴³ Council Regulation (EC) no. 2156/2001 of 5 November 2001 repealing Regulation (EC) no. 926/98 concerning the reduction of certain economic relations with the Federal Republic of Yugoslavia, *Official Journal of the European Communities*, L 289, 6 Nov. 2001, p. 5.

⁴⁴ The Stability Pact on South Eastern Europe is reproduced in *SIPRI Yearbook 2000: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2000), pp. 214–20, and is available at URL <<http://www.stabilitypact.org/official%20Texts/PACT.HTM>>. A brief summary of the pact and the partners are listed in the glossary in this volume.

⁴⁵ Cortright and Lopez (note 33).

IV. Sanctions against Iraq

The sanctions imposed on Iraq by the United Nations were path-breaking in their scope and in the central role played by the UN in their implementation.⁴⁶ The immediate response by the UN included full trade and financial sanctions against Iraq (established in UN Security Council Resolution 661), which have been likened in their impact to a full blockade.⁴⁷

The sanctions consist of three elements: an embargo on arms sales to Iraq, an embargo on oil purchases from Iraq and a wider embargo on economic contacts with Iraq (including trade, financial contacts of various kinds and certain kinds of travel). With the exception of the arms embargo (to which no exceptions are permitted) none of the other sanctions is implemented in a rigid and absolute manner.

The Security Council established the 'oil-for-food' programme to permit Iraq to import products for humanitarian purposes. Initially including food and health-care products, after 1995 UN Security Council Resolution 986 authorized further exemptions to provide relief for the Iraqi population. The sanctions regime has been modified to permit the reconstruction of infrastructure for humanitarian reasons—notably, the housing stock and the water, sanitation and electrical power systems. In order to finance these imports UN member states were permitted to buy a certain amount of oil from Iraq and deposit the payment for this oil into an account managed by the United Nations. This account is used to pay for Iraq's imports. In December 1999 UN Security Council Resolution 1284 lifted the ceiling on the value of oil that Iraq may sell and by the start of 2001 Iraq had accumulated \$5 billion in this UN-administered account. The increased oil price and increases in Iraqi oil production meant that Iraq was projected to earn over \$16 billion in 2001, of which 70 per cent would be available for purchases of humanitarian supplies.⁴⁸ As of August 2001 about \$3.5 billion remain unspent in UN oil-for-food accounts while Iraq had not implemented about \$1 billion of the contracts approved by the Sanctions Committee.⁴⁹

In spite of this inbuilt flexibility, in 2001 the continued erosion of the sanctions regime against Iraq was said to be occurring in different ways. First, while civilian air travel to Iraq has never been prohibited, some air traffic to Baghdad in this period did not conform to the UN notification procedures established to reduce the risk that air traffic could undermine the sanctions. Second, Iraq was increasingly able to import non-military items outside the framework of the oil-for-food programme—that is, imports were financed by oil revenues paid directly to Iraq by the buyers rather than using money man-

⁴⁶ Urquhart, B., 'The role of the United Nations in the Iraq–Kuwait conflict in 1990', *SIPRI Yearbook 1991: World Armaments and Disarmament* (Oxford University Press: Oxford, 1991), pp. 617–38.

⁴⁷ Burri, J., 'Introductory paper', Expert Seminar on Targeting United Nations Sanctions, Interlaken, 17–19 Mar. 1998; and UN Security Council Resolution 661, 6 Aug. 1990.

⁴⁸ Hain, P., Minister of State, British Foreign and Commonwealth Office, 'Britain and the Gulf 2000', Speech at the Royal Institute of International Affairs, London, 7 Nov. 2000. It is available at URL <<http://www.fco.gov.uk>>.

⁴⁹ British Foreign and Commonwealth Office, 'Fact sheet: UN controls on Iraq', available at URL <<http://www.fco.gov.uk>>.

aged by the UN. Third, trade delegations visiting Baghdad were alleged to be discussing military–technical cooperation with Iraq in anticipation of the arms embargo that is part of the sanctions regime being lifted.

The approach to the sanctions against Iraq was new in part because of the way in which they were linked with a previously untried approach to arms control. UN Security Council Resolution 687 stated that sanctions would remain in place until Iraq demonstrated in a fully transparent way that its nuclear, biological and chemical (NBC) weapon programmes along with programmes to acquire long-range missile delivery systems had been dismantled permanently. The UN Special Commission on Iraq (UNSCOM) was created with the purpose of helping to verify Iraqi compliance with this obligation.⁵⁰

After UNSCOM withdrew its personnel from Iraq in December 1998 the Iraqi authorities linked the return of a UN presence to monitor disarmament with the lifting of sanctions. Reconciling the need for the Security Council to meet its responsibilities as contained in the various resolutions passed after 1990 and the practical obstacle created by the non-cooperation of Iraq dominated the discussion of how to reform the UN approach to Iraq in 1999. In December 1999 UN Security Council Resolution 1284 disbanded UNSCOM and replaced it with a new body, the UN Monitoring, Verification and Inspection Commission (UNMOVIC), in the hope that this new arrangement would restore the minimal cooperation from Iraq required for the UN to operate inside Iraq.⁵¹

The debate in the Security Council in 2001

In the first half of 2001 issues that were not resolved during the debate on Resolution 1284 were raised again. More than 12 months after the creation of UNMOVIC there was no sign that Iraq had any intention of accepting inspections by the United Nations to verify its compliance with the terms of Resolution 687.⁵² Therefore, it was still necessary to consider the relationship between the sanctions and the implementation of arms control in Iraq. In addition, the issue of the humanitarian impact of sanctions was unresolved. Some members of the Security Council (prompted in part by a study conducted by Norway, then chair of the Iraq Sanctions Committee) believed more firmly that sanctions were not having their intended effect and should be adjusted.⁵³

⁵⁰ Ekéus, R., 'The United Nations Special Commission on Iraq: activities in 1992', *SIPRI Yearbook 1993: World Armaments and Disarmament* (Oxford University Press: Oxford, 1993), pp. 691–704.

⁵¹ This phase of UN involvement in Iraq is described in Wahlberg, M., Leitenberg, M. and Zanders, J. P., 'The future of chemical and biological disarmament in Iraq: from UNSCOM to UNMOVIC', *SIPRI Yearbook 2000* (note 44), pp. 560–75.

⁵² For an overview of the problems confronting UNMOVIC see 'Preventing the further proliferation of weapons of mass destruction: the importance of on-site inspection in Iraq', Lecture by Dr Hans Blix, Executive Chairman of UNMOVIC, at the 3rd training course of UNMOVIC, Vienna, 19 Feb. 2001, URL <<http://www.un.org/Depts/unmovic/ExecChair/BlixVienna.htm>>.

⁵³ For a summary of the findings of the Norwegian study see the speech by Norwegian Foreign Minister Thorbjørn Jagland, 'Norway and the UN Security Council: our experience so far', Oslo, 16 May 2001, URL <<http://www.norway.org.uk/cgi-bin/wbch3.exe?d=4882&p=1790>>.

The United States has always claimed that exemptions made for humanitarian reasons were abused by the Iraqi Government, which diverted materials intended for rebuilding infrastructure for its own use. In 2001 these allegations continued. It was alleged that Iraq had used telecommunications equipment imported from China to improve the command and control system for its air defence network. The USA raised this issue bilaterally with the Chinese Government and, according to US Secretary of State Colin Powell, 'China has now said that they have told the companies that were in the area doing fiber optics work to cease and desist. We are still examining whether or not it was a specific violation of the sanctions policy, and if it was, we will call that to the attention of the sanctions committee so that they can take appropriate action with respect to China'.⁵⁴

In the Security Council meeting of 26 June 2001 draft resolutions that would modify the sanctions regime against Iraq were discussed extensively. In the discussion the Permanent Representative of the United Kingdom stated that there was a need for the UN to reconcile two principles: (a) to ensure that Iraq did not have and could not acquire weapons that would allow it to pose a threat to its region; and (b) 'to alleviate the suffering of the Iraqi people and take whatever steps we can from the outside to ensure that their needs are met. We agree to this extent with the Russian Federation that the status quo is not acceptable'. The second principle was said to be 'as important and more immediate than the first'.⁵⁵

This Security Council meeting took place in the context of UN Security Council Resolution 1352 of 1 June 2001, in which the Security Council expressed its intention 'to consider new arrangements for the sale or supply of commodities and products to Iraq and for the facilitation of civilian trade and economic cooperation with Iraq in civilian sectors'.⁵⁶ After considering the modifications to the sanctions regime put forward, the Security Council adopted Resolution 1382 on 29 November 2001.⁵⁷ The resolution included two technical annexes that were adopted for implementation of the sanctions against Iraq. These annexes made important changes in the procedures for sanctions implementation.

In the United States the incoming administration of President George W. Bush initiated a review of the US policy on Iraq, with a particular focus on UN sanctions, as one of its first foreign policy priorities. The review reflected the understanding in the US administration of the need to restore international cooperation (in particular among the members of the Security Council) without undermining the arms control objectives of the sanctions. Secretary of State Powell underlined that the main purpose of the policy review was 'to

⁵⁴ Secretary of State Colin Powell, *Overview of Foreign Policy Issues and Budget*, S. HRG. 107-41, Hearing before the Committee on Foreign Relations, US Senate (US Government Printing Office: Washington, DC, 8 Mar. 2001), p. 27.

⁵⁵ Statement by the Permanent Representative of the UK to the UN Sir Jeremy Greenstock to the UN Security Council, 26 June 2001, URL <http://www.ukun.org/xq/asp/SarticleType.17/Article_ID.284/qx/articles_show.htm>.

⁵⁶ UN Security Council Resolution 1352, 1 June 2001.

⁵⁷ UN Security Council Resolution 1382 is available at URL <<http://www.un.org/Docs/scres/2001/>>.

rescue the sanctions policy' by bringing the coalition behind the full implementation of UN resolutions back together.⁵⁸

Describing the situation facing the Bush Administration, former US Assistant Secretary of State for Nonproliferation Robert Einhorn noted:

Iraq won the propaganda battle and the result was that there was, in January 2001, widespread support internationally for getting rid of the UN sanctions regime. And it wasn't just Russian, French or Arab governments. We are talking about Western European governments, as well. We're even talking about populations in the West and in the United States, as non-governmental groups were calling for removal of sanctions. Members of the U.S. Congress were writing to the president to ask for relief for the Iraqi people.⁵⁹

The changes proposed in the Security Council in 2001 reinforced the view (held in particular by certain US-based analysts) that in practice the Bush Administration was not reversing the process by which the standard of compliance required from Iraq in exchange for modification of the sanctions had been progressively lowered after 1991.⁶⁰

Revising the sanctions regime

The sanctions against Iraq are administered by a UN Sanctions Committee (established under UN Security Council Resolution 661) that consists of representatives of all 15 members currently sitting on the Security Council. The 5 permanent members of the Security Council are also always represented on the Sanctions Committee while 10 members are replaced in line with changes in Security Council membership.

UN Security Council Resolution 1051 of 27 March 1996 established an export/import monitoring mechanism to evaluate trade with Iraq to ensure that it is consistent with the purposes of the sanctions. Under the mechanism states were required to transmit data from potential exporters on the intended sale or supply from their territories of any items or technologies to a joint unit constituted by UNSCOM (a task later taken over by UNMOVIC) and the International Atomic Energy Agency (IAEA). The items for which notification is required were identified in a technical annexe to the resolution (referred to as the '1051 list').

The items on the 1051 list are not military items. As noted above, Iraq is subject to a complete arms embargo; military items should not be traded to it. Moreover, UN Security Council Resolution 687 not only confirms the general arms embargo but also establishes an embargo on the supply to Iraq of items

⁵⁸ The outcome of the review is described by Powell in *Overview of Foreign Policy Issues and Budget* (note 54), pp. 5–7.

⁵⁹ Einhorn, R., 'The emerging Bush Administration approach to addressing Iraq's WMD and missiles programs', Keynote Address to the conference Understanding the Lessons of Nuclear Inspections and Monitoring in Iraq: A Ten-Year Review, Institute for Science and International Security, Washington, DC, 14–15 June 2001.

⁶⁰ E.g., Perlez, J., 'Capitol hawks seek tougher line on Iraq', *New York Times*, 7 Mar. 2001; and Crossette, B., 'UN sanctions didn't stop Iraq from buying weapons', *New York Times*, 18 June 2001.

and technology used in arms production of all kinds or for the utilization or stockpiling of NBC weapons as well as long-range missile delivery systems for such weapons—so-called ‘dual-use items’. The 1051 list therefore contains civilian items that, in theory, could be applied for end-uses that are not compatible with the sanctions regime. This list is extensive.

The export/import monitoring mechanism was not established as a licensing regime since neither the joint unit nor the Sanctions Committee denies particular transactions. The joint unit assessed the technical aspects of a notified transaction to ensure that it was ‘sanctions compliant’. If the notified trade activity was considered to be contradictory to the sanctions regime, the information and a technical assessment would be passed to the Sanctions Committee (whose members are the same as those of the Security Council) for a decision on how to proceed. The Sanctions Committee would inform national authorities of the state concerned and expect them to take the necessary measures to prevent the transaction from taking place.

Transactions with Iraq are not denied by the UN sanctions implementation system but they are in effect placed on hold while the contract is evaluated. As of August 2001 approximately \$3.3 billion worth of contracts were on hold.⁶¹ Most of these decisions were taken at the request of the United States and, to a lesser extent, the United Kingdom.

There are four sets of reasons why contracts are placed on hold: (a) because the contracts (which may include thousands of items) are too complicated to evaluate quickly; (b) because of a lack of information on which to make an assessment of the end-uses of the goods; (c) because the contract contains items controlled under Resolution 1051 that will only be approved on the condition that the equipment is monitored in Iraq by the UN Office of the Iraq Programme (OIP); and (d) because contracts may include items that are sufficiently sensitive that the contract will only be approved if these items are removed.

As noted above, the regime of inspections was intended to raise the level of confidence that trade with Iraq would not contribute to illegal programmes. With the cooperation of Iraq in allowing inspections, the UN could rapidly assess the end-user and end-use in a given case and reduce the number of contract holds. However, cooperation from Iraq has not been forthcoming.

As a result of the history of Iraqi procurement of NBC weapons prior to 1990 along with the development of long-range missile delivery systems and subsequent efforts to mislead UN inspection teams, there is no trust in the good faith of the Iraqi authorities.

The system created under UN Security Council Resolution 1382

Under the conditions noted above, in particular in the absence of inspections, it was difficult for the joint unit to be certain that a particular item would not

⁶¹ Report of the Security Council Committee established by Resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of Resolution 986 (1995), UN document S/2001/842, 5 Sep. 2001.

be diverted to an unauthorized end-user or for an illegal end-use. There has been a tendency to request additional information to satisfy any residual doubts leading to delays in considering particular transactions—the delays became indefinite when the information requested was not forthcoming or was insufficient. The system established under UN Security Council Resolution 1382 is intended to create procedures that minimize delays in trade with civilian items to Iraq.

Resolution 1382 includes two annexes. Annex 1 is a Goods Review List that contains three schedules of items.⁶² The first schedule is the 1051 list in its entirety. The second schedule is the list of high-technology, dual-use items contained in an annexe to UN Security Council document S/2001/1120. The third is a list of individual items not contained in other lists but with potential military applications. Annex 2 contains procedures for the application of the Goods Review List.

Under the system, applications for each export of commodities and products should in future be submitted to the OIP by the responsible authorities of the exporting states. The application should include the contract, the technical specifications of items to be transferred and information about the end-user in Iraq. Once received, the information is evaluated and treated in one of three ways.

If the OIP experts conclude that the item is subject to the embargo established by Resolution 687 it is returned to the authorities who submitted it, who will be expected to apply a strong presumption of denial in considering the transaction.

If the OIP experts conclude that the application contains any item on the Goods Review List approved by Resolution 1382, this information is forwarded to the Iraq Sanctions Committee along with an assessment of the humanitarian, economic and security implications of approval or denial of the export.

If the OIP experts conclude that the application does not contain any item either subject to the Resolution 687 embargo or on the Goods Review List then both the exporting state and the Government of Iraq are informed that there is no obstacle to completing the transaction. Once verification is received that these items have arrived as contracted in Iraq, payment to the exporter is authorized from UN-managed funds.

The procedures are time constrained. Once a technically complete submission has been received it must be processed within four working days by the OIP. The procedures also include a right of appeal on technical grounds against decisions by the OIP in cases where an export application is referred to the Iraq Sanctions Committee. The responsible authorities of the exporting state may contest a decision by OIP experts that an item is contained on the Goods Review List.

After Resolution 1382 was passed, British Foreign Secretary Jack Straw stated that 'Iraq holds the key to its reintegration into the international com-

⁶² UN Security Council Resolution 1382 (note 57).

munity—compliance with UN Security Council Resolution 1284. There must be independently verified compliance with the international community's insistence that Iraq give up its Weapons of Mass Destruction'. However, Straw also pointed out that 'the UN decision will soon mean no sanctions on ordinary imports into Iraq, only controls on military and weapons-related goods. Iraq will be free to meet all its civilian needs'.⁶³

While calling for end-user delivery verification prior to payment, the procedures do not contain provisions for post-shipment inspection of items on the Goods Review List. To this extent the link between the sanctions and the system of in-country controls envisaged for UNMOVIC has been broken. The implementation of the new system will therefore require a detailed evaluation of requests to export prior to the shipment of goods. Resolution 1382 stresses the strong self-interest for exporters to submit 'technically complete applications' if the system is going to expedite civilian trade.

The changes do not include a timetable for lifting sanctions on Iraq—which will occur after a long period under any conditions—but they do stress the link between suspending most sanctions and the implementation of existing UN resolutions.

V. Sanctions against Afghanistan

The UN has been active in seeking a resolution to the conflicts that have taken place on the territory of Afghanistan for more than 20 years, including maintaining a Special Mission in that country. In October 1996 UN Security Council Resolution 1076 called on states to refrain from military engagement in Afghanistan, including the supply of personnel, arms or ammunition.⁶⁴ This led several states to establish national arms embargoes against Afghanistan or to introduce changes to their export licensing procedures.

In 1996 UN reports made reference to growing evidence that Afghanistan was a location where terrorist groups actively sought refuge. However, resolutions and statements did not identify any particular party to the conflict as blameworthy or subject any particular party to sanctions.

By 1998 the Security Council, on the basis of information provided in reports by the Secretary-General, had identified the Taliban as the party primarily responsible for the escalation of hostilities. In August 1998 UN Security Council Resolution 1193 expressed concern that escalation was 'due to the Taliban forces offensive in the northern parts of the country'.⁶⁵ This resolution,

⁶³ Iraq: Statement by the Foreign Secretary, 30 Nov. 2001, reproduced at URL <<http://www.fco.gov.uk>>.

⁶⁴ UN Security Council Resolution 1076, 22 Oct. 1996, paras 3 and 4. The trigger for this action was the growing evidence that parties to the conflict were not respecting either the status of the UN or the safety of UN personnel in the country: in particular, the forced entry to UN premises by Afghan irregular soldiers in Sep. 1996 to capture former Afghan President Najibullah Khan, who was subsequently executed.

⁶⁵ This resolution was also triggered by a particular event—the forced entry by the Taliban into the Iranian Consulate General in Mazar-e-Sharif and the kidnapping of personnel, 9 of whom were subsequently murdered.

adopted shortly after the bombing of the US embassies in Kenya and Tanzania, also referred to the presence of terrorist groups in Afghanistan. However, the resolution did not make any direct link between the terrorists and these particular bombings.

In December 1998 the Security Council pointed to the ‘failure of the leadership of the Taliban . . . to comply with the demands made in its previous resolutions’ and expressed its readiness to consider mandatory sanctions.⁶⁶

UN sanctions against Afghanistan

The United Nations approved sanctions related to Afghanistan prior to the attacks on the United States on 11 September 2001.

The Security Council introduced mandatory travel and financial sanctions on the Taliban for the first time in UN Security Council Resolution 1267, adopted on 15 October 1999.⁶⁷ Resolution 1267 required states to deny permission for aircraft owned, leased or operated by the Taliban to land or take off in their territory and to freeze funds and other financial resources owned or controlled by the Taliban.⁶⁸ Resolution 1267 made much more explicit links between the Taliban and specific terrorists and acts of terrorism. It made particular reference to the attacks on US embassies in Africa and named Usama bin Laden and ‘others associated with him’ and included a demand that the Taliban hand over bin Laden to the appropriate authorities in the United States, where he was indicted for conspiring to kill US nationals.

In December 2000 the Security Council strengthened the sanctions against the Taliban.⁶⁹ UN Security Council Resolution 1333 introduced a mandatory arms embargo that prohibited not only arms transfers but military assistance of any kind to the Taliban. In addition, states were required to close all Taliban offices on their territories and to reduce their diplomatic presence in Afghanistan. Travel sanctions were extended to include a ban on overflight by aircraft owned or controlled by the Taliban as well as the closure of all offices of Ariana Afghana Airlines. Non-military trade sanctions were also introduced for the first time with a ban on exports of the chemical acetic anhydride (used in the production of narcotics) to any part of Afghanistan under Taliban control. Financial sanctions were extended to include the freezing of funds owned or controlled by Usama bin Laden and the al-Qaeda organization (the first time al-Qaeda was named in a resolution).

Resolution 1333 introduced a set of sanctions that were extremely complex from the point of view of implementation. First, the sanctions applied only to a part of Afghanistan, not the full territory. Second, sanctions applied only to some entities and individuals in Afghanistan, not all of them. Effective implementation required a detailed knowledge of activities and actors inside the country—information that neither the UN nor many member states possess.

⁶⁶ UN Security Council Resolution 1214, 8 Dec. 1998, para. 15.

⁶⁷ UN Security Council Resolution 1267, 15 Oct. 1999.

⁶⁸ UN Security Council Resolution 1267 (note 67), para. 4.

⁶⁹ UN Security Council Resolution 1333, 19 Dec. 2000.

This sanctions design complicated implementation by national authorities. The customs authority plays a key role in sanctions enforcement in most states. This design is difficult to translate into border control procedures used at the point of exit from a customs area. Effective implementation required a system for licensing trade and economic contacts with Afghanistan based on detailed end-user and end-use information.

Resolution 1333 in effect created a requirement for the Sanctions Committee to establish a comprehensive information system for monitoring sanctions-related developments in Afghanistan. This system would be required both to meet the needs of the Security Council and to assist many states with implementation. The basis for such an information system was authorized in July 2001 in UN Security Council Resolution 1363 in the form of a monitoring mechanism.⁷⁰ The mechanism would include an Office for Sanctions Monitoring and Coordination: Afghanistan, in New York, and cooperation with the so-called 'Six-plus-Two' states (China, Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan, plus Russia and the USA) to establish sanctions support teams on the borders of Afghanistan. Support teams (one located in each of the six countries neighbouring Afghanistan) would be tasked with investigating allegations of sanctions busting.⁷¹

The Six-plus-Two states are an informal group formed in 1997 to discuss the conflict in Afghanistan under the leadership of the UN Secretary-General. The group did not play a central role in elaborating practical measures because it included states that supported different Afghan factions and have different interests in Afghanistan. The fact that this group was prepared to cooperate in the implementation of sanctions is one indication of the growing seriousness with which neighbouring states, as well as Russia and the USA, were addressing the risks of terrorism prior to the attacks on the United States.

The immediate tasks for the Office for Sanctions Monitoring and Coordination: Afghanistan included the development of detailed lists of actors (individuals and entities) to which sanctions applied. By December 2001 this list (which is continuously updated) included over 200 individuals and approximately 75 entities.⁷²

European Union sanctions against Afghanistan

In October 1996 the UN called on states to stop providing military assistance to the parties to the conflict in Afghanistan. The European Union implemented

⁷⁰ UN Security Council Resolution 1363, 30 July 2001.

⁷¹ Report of the Committee of Experts on Afghanistan, Statement in the Security Council of Ambassador Alfonso Valdívieso, Permanent Representative of Colombia, Chairman of the Sanctions Committee on Afghanistan, 5 June 2001, available at URL <http://www.un.int/colombia/english/consejo_seguridad/staafghanistanchairmanJune%2005.htm>.

⁷² The consolidated list is published in UN document S/7222, 26 Nov. 2001, and a first addendum was published as UN document S/7252 on 26 Dec. 2001. The mandate of the sanctions monitoring group was extended by 12 months by UN Security Council Resolution 1390, 28 Jan. 2002.

this request through a Common Position requiring all member states to impose an embargo on arms supplies to Afghanistan.⁷³

In November 1999 the EU extended restrictive measures in the form of travel and financial sanctions that were applied specifically to the Taliban.⁷⁴

Although the legal form that established sanctions—a Council Common Position—was the same, the modifications to the sanctions in 1999 made their implementation much more complicated. First, the new measures could not be implemented by EU member states without reference to common institutions. Second, applying the measures to the Taliban rather than to all Afghan citizens required cooperation between different authorities within the EU member states, within and between different EU institutions, and between member states and the EU institutions.

In 2001 the sanctions against Afghanistan were modified five times to reflect decisions taken at the UN Security Council.⁷⁵ In addition, the EU arms embargo was brought into conformity with UN resolutions in November 2001. Whereas previously the UN decisions related to those parts of Afghanistan under the control of the Taliban and the forces of the Taliban, the EU embargo covered the whole territory of Afghanistan. The decisions of November facilitated the participation of British forces in the military operations in Afghanistan by permitting them to receive and supply arms and other equipment inside the country without any risk of violating EU law.⁷⁶

⁷³ Common Position of 17 Dec. 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning the imposition of an embargo on arms, munitions and military equipment on Afghanistan (96/746/CFSP), *Official Journal of the European Communities*, L 342, 31 Dec. 1996, p. 1.

⁷⁴ Council Common Position of 15 Nov. 1999 concerning restrictive measures against the Taliban (1999/727/CFSP), *Official Journal of the European Communities*, L 294, 16 Nov. 1999 pp. 1–2.

⁷⁵ Council Common Position of 26 Feb. 2001 concerning additional restrictive measures against the Taliban and amending Common Position 96/746/CFSP (2001/154/CFSP), *Official Journal of the European Communities*, L 57, 27 Feb. 2001, pp. 1–2; Council Regulation (EC) no. 467/2001 of 6 Mar. 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) no. 337/2000, *Official Journal of the European Communities*, L 67, 9 Mar. 2001, pp. 1–23; Commission Regulation (EC) no. 2062/2001 of 19 Oct. 2001 amending, for the third time, Council Regulation (EC) 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) no. 337/2000, *Official Journal of the European Communities*, L 277, 20 Oct. 2001, pp. 25–26; Commission Regulation (EC) no. 2199/2001 of 12 Nov. 2001 amending, for the fourth time, Council Regulation (EC) 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) no. 337/2000, *Official Journal of the European Communities*, L 295, 13 Nov. 2001, pp. 16–18; and Commission Regulation (EC) no. 2373/2001 of 4 Dec. 2001 amending, for the fifth time, Council Regulation (EC) 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) no. 337/2000, *Official Journal of the European Communities*, L 320, 5 Dec. 2001, p. 11.

⁷⁶ Council Common Position of 5 Nov. 2001 concerning restrictive measures against the Taliban and amending Common Positions 1996/746/CFSP, 2001/56/CFSP and 2001/154/CFSP (2001/771/CFSP), *Official Journal of the European Communities*, L 289, 6 Nov. 2001, p. 36.

VI. Sanctions against terrorism

In September 2001, following the terrorist attacks on the United States, the UN Security Council adopted Resolution 1373.⁷⁷ The resolution included a range of different measures with steps and strategies to combat terrorism. Paragraph 1(c) of the resolution decided that states shall: ‘freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the discretion of such persons and associated persons and entities’.

These measures seek to eliminate, rather than change the behaviour of, terrorists and as such there is a question about whether they are sanctions. However, sanctions have been applied by the Security Council in response to acts of terrorism in the past.

In 1992 UN Security Council Resolution 748 introduced travel and diplomatic sanctions as well as an arms embargo on Libya.⁷⁸ These sanctions were introduced after Libya had not responded to requests by France, the UK and the USA for assistance in establishing responsibility for the bombing of Pan Am flight 103 over the Scottish town of Lockerbie in October 1988. The travel sanctions were subsequently strengthened in 1993 through the addition of financial sanctions and trade sanctions focused on the oil industry.⁷⁹

In 1996 UN Security Council Resolution 1054 introduced diplomatic and travel sanctions against Sudan.⁸⁰ This resolution was intended to bring about Sudanese compliance with a request for the extradition to Ethiopia of three individuals suspected of carrying out an assassination attempt on Egyptian President Hosni Mubarak during a visit to Adis Abeba on 26 June 1995. The travel sanctions were strengthened in August 1996.⁸¹

Like those contained in Resolution 1267 on Afghanistan, these measures were applied to specific targets linked to acts of terrorism designated as such by the Security Council. However, although the measures adopted in September 2001 were a response to the attacks on the United States, they are to be applied globally in an effort to prevent all terrorist acts. This was the first use by the UN of sanctions to address a threat to the peace outside the context of a specific location.

In spite of the recommendations contained in the draft report of the Working Group on the General Issue of Sanctions, the UN resolutions do not provide specific directions about the scope of application of sanctions. No time limit is established for the sanctions. Moreover, there is no UN list of individuals and entities that have carried out terrorist acts.

⁷⁷ UN Security Council Resolution 1373, 28 Sep. 2001.

⁷⁸ UN Security Council Resolution 748, 31 Mar. 1992.

⁷⁹ UN Security Council Resolution 883, 11 Nov. 1993.

⁸⁰ UN Security Council Resolution 1054, 26 Apr. 1996.

⁸¹ UN Security Council Resolution 1070, 16 Aug. 1996.

Recognizing that many states would require assistance in implementing Resolution 1373, the Security Council established a Counter-Terrorism Committee consisting of all the Security Council members. The terms of reference of the committee have been laid down by the Security Council.⁸² The committee is tasked with providing UN member states with the appropriate expertise needed to implement Resolution 1373, including the preparation of model anti-terrorism laws and identifying technical, financial, regulatory and legislative resources that might facilitate implementation.

In practice, states are likely to receive more specific guidance from the information related to terrorism published by states (in particular the United States) and regional organizations (in particular the European Union).

On 23 September President Bush published an executive order that included both a definition of terrorist acts and an annexe that included a list of individuals and designated global terrorist entities.⁸³ Under separate legislation the USA publishes a list of countries that, in the view of the US Government, support international terrorism. The governments of these countries are not necessarily subject to financial sanctions. However, no US legal person (either an individual or a company) may engage in financial transactions with the governments of these countries without authorization by the Secretary of the Treasury, who decides in consultation with the Secretary of State.

EU sanctions related to terrorism

Prior to the 11 September attacks the European Union had used sanctions as part of its effort to combat international terrorism. EU measures were adopted in this regard before similar actions were taken in the United Nations. Member states adopted sanctions against Libya after a series of terrorist attacks in Europe in the mid-1980s.⁸⁴ An EPC declaration was used to underline the importance of a joint response including cases where terrorist acts were assisted by abuses of diplomatic immunity. In April 1986 the member states identified Libya as a country that deliberately encouraged recourse to acts of violence that were a threat to Europe. An arms embargo and diplomatic sanctions were adopted against Libya.⁸⁵ A limited trade embargo and travel sanctions were adopted in 1993 to facilitate the implementation of the sanctions adopted by the UN Security Council referred to above.⁸⁶

⁸² UN Security Council Resolution 1377, 12 Nov. 2001.

⁸³ Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism, The White House, 23 Sep. 2001. Documents on US sanctions against terrorism are available at URL <<http://www.treas.gov/ofac/>>.

⁸⁴ In Dec. 1985 the US and Israeli check-in desks at airports in Rome and Vienna were attacked simultaneously. The attacks killed 20 people, including the 4 perpetrators. In Apr. 1986 a bomb exploded on board a TWA aircraft as it made its descent to Athens airport, killing 4 passengers. A few days later, a bomb blast in a West Berlin discotheque frequented by US service personnel killed two civilians—1 US citizen and 1 German citizen.

⁸⁵ Statement by the Foreign Ministers of the Twelve on International Terrorism and the Crisis in the Mediterranean, The Hague, 14 Apr. 1986, URL <http://projects.sipri.se/expcon/euframe/eu_libya86.htm>.

⁸⁶ Council Decision of 22 Nov. 1993 on the Common Position defined on the basis of Article J.2 of the Treaty on European Union with regard to the reduction of economic relations with Libya, *Official*

Following the attacks on the USA on 11 September 2001 the European Union rapidly adopted a series of diplomatic, economic, financial, political and security-related measures in response. Sanctions are one element in this overall response, although the package includes many other measures. The adopted sanctions have two purposes. The first purpose is to implement elements of UN Security Council Resolution 1373 which, as described above, decided that all states shall freeze funds and other economic assets and financial resources owned or controlled by legal persons who commit, support or plan terrorist attacks.⁸⁷ Second, the sanctions decisions are intended to support the EU programme of action against terrorism.

In December 2001 the Council agreed on key definitions that are essential to implementing sanctions. The member states defined terrorist acts and agreed a specific consolidated list of persons, groups and entities that have committed terrorist acts.⁸⁸ In addition, the Council agreed on the scope of the terms 'funds', 'other financial assets', 'economic resources' and 'financial services' as well as a list of persons, groups and entities whose funds were to be frozen.⁸⁹

These measures were adopted as a part of the CFSP. However, financial sanctions will probably be applied in consultation and cooperation with officials and agencies already engaged in programmes to combat organized crime. In particular, the EU will work closely with the UN Security Council Counter-Terrorism Committee and with the intergovernmental Financial Action Task Force on Money Laundering (FATF) that was established jointly by the Group of Seven (G7) leading industrialized nations and the European Commission in 1989.⁹⁰

VII. Conclusions

During the 1990s the increased use of sanctions in the changed international environment sparked a debate about when and how sanctions could be used in a legitimate and an effective manner. Sanctions have not been effective in bringing about a change in the behaviour of their targets when applied as a 'stand-alone' measure. At the same time, sanctions are recognized as a

Journal of the European Communities, L 295, 30 Nov. 1993, p. 7; and Council Regulation 3274/93 of Nov. 1993 preventing the supply of certain goods and services to Libya, *Official Journal of the European Communities*, L 295, 30 Nov. 1993, pp. 1–3.

⁸⁷ As noted above, the EU had already implemented measures against the assets and resources of specific persons and entities in Afghanistan.

⁸⁸ Council Common Position of 27 Dec. 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), *Official Journal of the European Communities*, L 344, 28 Dec. 2001, pp. 93–96.

⁸⁹ Council Regulation (EC) no. 2580/2001 of 27 Dec. 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, *Official Journal of the European Communities*, L 344, 28 Dec. 2001, pp. 70–75; and Council Decision of 27 Dec. 2001 establishing the list provided for in Article 2(3) of Council Regulation 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, *Official Journal of the European Communities*, L 344, 28 Dec. 2001, pp. 83–84.

⁹⁰ The activities of the FATF are described at URL <<http://www1.oecd.org/fatf/index.htm>>. The members of the G7 are listed in the glossary in this volume.

necessary and an important instrument for conflict resolution and the efforts of states have been directed to improving their design and implementation as well as considering how sanctions might be used as a part of a wider strategy. This discussion has been carried on in different international organizations, intergovernmental discussions, official (but informal and ad hoc) processes and outside government.

Although there have been some calls for the elaboration of an integrated and comprehensive legal framework for sanctions, in practice the elaboration of international law in this area has taken place through an operational approach in reaction to a particular event.

The United Nations has established a working group on sanctions. The results of the work of this group, which seem to have a 'lessons learned' character, may go some way towards providing general rules based on the experiences of the UN and of states during the 'sanctions decade'. However, the main results of the group seem more likely to be aimed at enhancing the capacity of the UN to take and implement decisions.

Those general rules that were proposed in the report of the group were not applied in the decisions taken in late 2001 imposing sanctions against entities engaged in terrorism. The use of sanctions against terrorism—a general and global threat rather than a threat to the peace, breach of the peace or act of aggression in a specific location—is unprecedented. However, it is not currently proposed to apply similar measures to other general threats identified by the Security Council.

The European Union has also elaborated its approach to the use of sanctions as part of its Common Foreign and Security Policy, mainly in response to specific events rather than through a more 'top-down' approach.

The member states have increasingly used the EU to give effective expression to decisions of the United Nations. However, the EU has also developed a distinctive approach to the use of sanctions in foreign policy areas where the UN has not provided direction, notably to support the parts of the CFSP aimed at improving human rights. A recommendation by the Commission in 2001 that the EU should think in a broader manner about how sanctions should be decided and implemented may lead to further development in this area.