

UNITED NATIONS AND "SMART" SANCTIONS

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SANDEEP SINGH



**Centre for International Politics, Organisation and Disarmament
School of International Studies
Jawaharlal Nehru University
New Delhi 110067
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CENTRE FOR INTERNATIONAL POLITICS, ORGANISATION & DISARMAMENT
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067

Phone : 6107676, 6167557
Extn. : 2349
Fax : 91-11- 6165886 / 6198234

Date 19th July 2002

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This is to certify that the dissertation entitled, **“United Nations and “Smart” Sanctions”** submitted by **Sandeep Singh** in partial fulfilment of the award of the degree of **Master of Philosophy** is his original work and has not been submitted for the award of any degree of this or any other institution.

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Dr. Varun Sahni

(Chairperson)

Dr. VARUN SAHNI

Chairperson, Centre for International
Politics, Organisation and Disarmament
School of International Studies
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI

Dr C.S.R Murthy

(Supervisor)

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PREFACE

In the post cold war period, non-military sanctions suggested in the Article 41 of the U.N. Charter became a preferred and popular instrument of peace enforcement by the Security Council as it imposed sanctions as many as twelve times against governmental and non-governmental targets in both inter and intra-state conflicts for achieving a variety of objectives. The efficiency and reasonability of U.N mandated sanctions became a subject of debate both in and outside the United Nations in the mid 1990's as the effects of sanctions on the targeted and other states became clearly visible. The prolonged imposition of sanctions against Iraq had exposed the brutal nature of comprehensive sanctions. The unintended and undesired effects of sanctions in forms of severe humanitarian crises and collateral damage on third states raised ethical questions on the credibility of the United Nations. The need for retrospect and reform in the existing sanctions practice became more urgent than ever. The answer to questions raised by the "blunt" sanctions came in form of the development of the concept of *'smart' sanctions*.

'Smart' sanctions are new generation sanctions which are expected to deliver the intended results quickly and more efficiently without causing any harsh negative impact on either the innocent population or any other state. The term 'smart' is borrowed from 'smart bombs' which are designed to destroy the designated target without damaging the surroundings. Similarly 'smart' sanctions are selectively targeted on those who are directly responsible for the wrongdoing rather

the vulnerable population. Since 1997, 'smart' sanctions have been imposed by the United Nations against Sierra Leone, the UNITA faction in Angola, the Taliban regime in Afghanistan. While success or failure of 'smart' sanctions practice was yet to be analyzed, the Security Council imposed a worldwide 'smart' sanctions regime against terrorism in the backdrop of September 11 terrorist attacks on the United States.

There is a great deal of optimism and expectation in the United Nations from 'smart' sanctions to deliver more positive results quickly. As UN is consistently imposing sanctions and now 'smart' sanctions against those who violate the international norms of peace and security, it becomes important to analyze their effectiveness vis-à-vis the earlier sanctions cases.

This study attempts to analyze the development of the concept of 'smart' sanctions in the background of the broader concept of sanctions as an approach to peace in the United Nations. It attempts to perceive the original expectations from sanctions in the United Nations system and how effectively they have performed particularly in post cold war era. Further the study tries to locate the forums that contributed in materializing the concept of a 'smart' sanctions strategy and how U.N has resorted to 'smart' sanctioning against targets in past few years. It

also makes an effort to analyze the effectiveness or smartness of the ‘smart’ sanctions.

The discussion in this dissertation is organized in four chapters. The first chapter makes an assessment of the theoretical concept of sanctions, the idea of sanctions as a mean to maintain international peace and security by the two international organizations of the twentieth century; the League of Nations and the United Nations and the concept of sanctions as incorporated in the Chapter VII of the UN Charter. The second chapter analyzes the United Nation’s experience with sanctions in both pre and post-cold war periods. Here sanctions cases are classified in two groups based on the reasons for imposing sanctions: the legitimacy of the targeted regime and the policies of regime. While discussing the internal and external impacts of sanctions in this chapter, the focus is primarily on the cases of Iraq and former Yugoslavia. In the third chapter, the concept of ‘smart’ sanctions is introduced with reference to various UN and non-UN efforts that contributed to its development. It also examines cases where the United Nations has imposed smart sanctions against variety of targets. The final chapter is the conclusion where an over all assessment of issues and implications of UN sanctions is made.

This study has adopted descriptive analytic research technique. It is based on relevant official documents and reports of United Nations and the Security Council as well as reports of seminars and various governmental and nongovernmental studies on the topic. Secondary sources like books and journals have widely been used.

Chapter One

SANCTIONS IN INTERNATIONAL RELATIONS: THE CONCEPT AND THE NORM

While sanctions imposed by individual states is long in practice, the sanctions imposed by international organization in its concerted, coordinated form has been relatively new, less than a century old. Sanctions have been popular and often effective tool in the hands of states, both individually and collectively. From World War I to 1990, there have been 115 episodes of sanctions,¹ 104 of which were enforced since World War II. Individual states mostly resort to sanctions on other states to achieve their foreign policy goals. The International Organizations have been very cautious in imposing sanctions as an alternative to apply military force to change the target's behavior. The United Nations has only imposed sanctions 15 times since its establishment in 1945. Until 1918, economic sanctions were used to complement military action. It is only after the Second World War that serious attention was given to the idea that sanction could be a substitute for armed activities

The United States, which leads the world as a user of economic sanctions for foreign policy purposes, has imposed sanctions for varying political goals like

¹ See Gary Clyde Hufbauer, Jeffery Schott, and Kimberly Ann Elliot, *Economic Sanctions Reconsidered: History and Current Policy* (Washington, 1990) 2nd edn.

terrorism, human and worker rights, containment of communism, military aggression, transition to democracy, market reform, and so. Sanctions were placed against Castro regime in Cuba in 1960 by the US to overthrow the regime and also contain Cuban intervention in Central and Latin America, against Soviet Union following its intervention into Afghanistan in 1979; against Poland and the Soviet Union between 1981 and 1982 after Poland's imposition of martial law in 1981; India and Pakistan in 1998 following their Nuclear tests. Between 1995 and 1998, the US imposed or threatened economic sanctions 60 times against 35 different countries, affecting 42 percent of the world's population. According to the Institute for International Economics, sanctions exact an annual cost of close to \$ 20 billion in lost exports. To enforce sanctions against Cuba, Iran and Libya, the US congress has passed laws mandating secondary sanctions against foreign companies that do business with these countries.² Even India imposed sanctions against Portuguese occupied Goa from 1954 –60, and against Nepal in 1989.

Sanctions: The Concept

There is a great deal of confusion about the term 'sanctions' used in international context. Part of the difficulty is that international society is decentralized and often anarchical, possessing none of the law-making and law enforcement mechanisms, which are associate with sanctions and sanctioning procedures within the nation,

² Daniel W. Drezner "Serious About Sanctions" *The National Interest*, Fall 1998 p. 66

sate. Analogies between the domestic and international scene can therefore be misleading.³

The Latin origin of the word sanctions is *sanctio*, which is defined as a penalty specified for a transgression of law or decree and particularly for a violation of sacredness. International lawyers, like Hans Kelson, defined sanctions as “any measures taken in support of a social order regulating human behavior and thus international sanctions are those legal policy instruments that are used to enforce international law”.⁴ The purpose of sanction is to bring about a behavior considered to be in conformity with the goals and standards of a (international) society and to prevent that behaviour which is inconsistent with these goals and standards. Thus, taken in this widest sense a sanction can have the objective of suppressing and terminating a particular form of undesirable behavior and the objective of deterring or discouraging such a behavior in the future. Klaus Knorr uses the term in sociological sense “sanctions, whether positive or negative, are simply the means of exercising power”.⁵ Hufbauer and Schott define sanctions as the economic instruments used to achieve “foreign policy goals”. David Baldwin holds a similar view when he equates economic sanctions with the economic statecraft writ large.⁶ Leland Goodrich opines “a sanction can have the objective of

³ Margaret P Doxey, *International Sanctions in Contemporary Perspective* (New York: 1996) 2nd Edn. p. 7.

⁴ Hans Kelsen, *The Law of the United Nations* (New York, 1950) p.706.

⁵ Klaus Knorr, *The Power of Nations: The Political Economy of International Relations* (New York, 1975)

⁶ David A Baldwin, *Economic Statecraft* (Princeton, N.J; 1985) p. 36.

suppressing and terminating a particular form of undesirable behavior and the objective of deterring or discouraging such behavior in future.⁷

In its classical sense, sanctions are retributive in nature; they are a punishment imposed for a wrongdoing. However, a sanction that primarily aims at penalizing a state or government would not serve any purpose. It has to bring about compliance on the part of the erring state with the prevailing value system: It must be restitutive in nature so as to bring about a return to the *status quo ante*.⁸ Therefore, punishment and compliance are two important elements of sanctions. Kim Richard Nossal has strongly argued that Sanctions constitute a form of “international punishment” whose purposes are compulsion, prevention, and retribution and that sanctions are much more than “expressive” symbolism but are “instrumental” means to purposive ends.⁹

The basic rationale behind the use of sanctions is that economic deprivation leads to political change, that there is a direct cause –and consequences relationship between the two, and that a ban on international trade with that country would result in depressed economic conditions, leading to alteration in the political stance of the target state. A state ‘punished ‘ by international sanctions for its wrongdoing

⁷ Leland M. Goodrich, “Sanctions, International”, in *International Encyclopedia of the Social Sciences* vol. 14, p. 5.

⁸ Vojin Dimitrijevic, “The Efficacy of International Sanctions” *Review of International Affairs*, vol. 31, Nos. 726-7, p. 31.

⁹ Kim Richard Nossal “International Sanctions as International Punishment “ in *International Organization*, vol. 43, no. 2, Spring 1989, p 303

will be isolated; the economic and political conditions will compel the regime to correct its behavior in accordance to international norms. This conventional theory is based on expectation that that economic pain creates political gain: the greater the economic hardship caused by sanctions, the higher the probability of political compliance by government authorities in the targeted state. Johan Galtung termed this the "naive theory" of sanctions, because (a) it fails to account for the efforts of the targeted state to adjust to or counteract the impact of sanctions, and (b) it assumes that the often-repressed population of the targeted state will redirect the pain of sanctions onto authoritarian political leaders and force a change in policy.¹⁰

It may be important here to differentiate between 'unilateral' sanctions imposed by a state on another and 'multilateral' sanctions imposed by an international organization on a member state. Sanctions under international organizations are very much the twentieth century concept and began with formation of the League of Nations in 1919 and then under the United Nations in 1945. However, unilateral sanctions are a much older concept and have been used in forms of boycotts, blockades, and embargoes. When an individual state imposes sanctions on another, it attempts to exert its political and economic power on it. The objective of these types of sanctions is to make the target comply with foreign policy goals of the sender state; they are essentially a kind of economic statecraft or instruments of 'coercive diplomacy'. The objective of one 'sender' state can differ from another

¹⁰ See Johan Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia," *World Politics*, April, 1967 pp. 378-416

or objective of a same sender state can differ on different target states. Recourse to 'blockade' or denial of passage of essential goods, by sea or land, by one state to another was an effective strategy during the wars and was taken as part of 'economic warfare' to weaken a state economically. During the course of First World War, it was considered a vital part of the war effort by the Allied powers and Germany's trade with neutral countries was an economic target of prime importance. Britain initiated Germany's blockade in 1915 but with America's entry to the War, the blockade became more effective.¹¹

Blockade, as planned and executed by the British Ministry of Economic Warfare in the Second World War, formed a part of a wider programme of sustained economic warfare which included concentrated bombing of industrial targets in Germany.¹² The Allied blockade of Japan was far more effective than that of Germany.

International organizations have imposed sanctions when a state policy or behaviour is deemed to have threatened international peace and security. These multilateral sanctions are in form of 'punitive action of global nature' as they have the automatic approval of all the member states and it becomes their responsibility to enforce them collectively. The value structure of an international organization at any particular time reflects the thinking of the group dominant at that time. It need

¹¹ Margaret P Doxey *Economic Sanctions as International Enforcement* (London, 1971) p. 18.

¹² *Ibid*, p. 19

not necessarily be universally supported. Even then it makes no great difference to its legitimacy on account of its adoption by an international organization.¹³ By virtue of this legitimacy, multilateral sanctions imposed by bodies like the UN enjoy “universal mandatory enforcement” by all its member states. Unilateral sanctions imposed by individual do not enjoy such universal enforcement. While unilateral sanctions have been liberally imposed by sender states, international organizations have been very cautious in imposing sanctions.

Sanctions under International Organizations

The Wartime experiences very much influenced the founders of the twentieth century international organizations to emerge as collective channel for sanctions against an aggressor country. Sanctions were incorporated in the League of Nations and later in the United Nations as collective ‘non-military enforcement’ action to enforce the collective will of member states on a state that has violated the norms and the principle of the international behaviour. There is totally different approach in the application and objective of sanctions by a state against another and by an international organization against a state. The view propounded by the American League to Enforce Peace and other peace groups during the First World War was that ‘the economic pressure can be substituted for military force as a means of maintaining peace’. This optimistic view was summarized in the

¹³ Neera Chandoke, *Politics of the UN Sanctions*, (New Delhi, 1986), p .8.

following words: “The economic weapon, conceived not as an instrument of war but as a means of peaceful pressure, is the great discovery and the most precious possession of the League”.¹⁴

A League member provided for enforcement under the Covenant of the League in Article 16, which laid down an automatic sequence of events, which would follow a specific form of illegal behaviour. Article 16(1) stated that if any member resorted to war, disregarding the obligations and procedures concerning pacific settlement of disputes laid down in Article 12, 13 and 15, it was ‘*ipso facto*... deemed to have committed an act of war against all Members of the League’. They undertook ‘immediately to subject it to the severance of trade or financial relations, the prohibition of intercourse between their nationals and nationals of the Covenant breaking state; and the prevention of financial, commercial or personal intercourse’ between its national and nationals of third states.¹⁵

But in the League system, the concept of sanctions as a tool of collective action was not very well respected and it is evident from the fact that by the Interpretive resolutions adopted by the League Assembly in 1921, compulsory element was removed and thus leaving it to the individual Members to decide whether to impose sanctions or not. The only economic sanctions episode imposed against Italy in

¹⁴ Ibid, p. 6

¹⁵ Ibid, p. 6

1935-36 was a fiasco. Italy's invasion of Ethiopia in October 1935 led to automatic application of sanctions under Article 16 of the League Covenant. It comprised of an embargo on export to Italy of the implements of war; the restriction of financial dealings; the prohibition of imports from Italy; and a ban on wide range of exports from and re-exports to, Italy. Sanctions on oil, iron, steel and coal imports to Italy were proposed but were abandoned as ineffective because the United States and Germany were not members of the League. These sanctions never crippled the Italian economy or efforts, but caused only limited inconveniences in procurement of these resources. The failure of sanctions was partly due to gaps in the sanctions system and mostly on the pessimist approach of Britain and France to ever apply them effectively. Italy completed its conquest of Ethiopia in May 1936 and sanctions were abandoned in July.¹⁶

The Charter Framework

The League's successor, the United Nations, has also accepted sanctions as important tool of non-military enforcement action to maintain international peace and security. Sanctions were incorporated in the Chapter VIII (Arrangements for the Maintenance of International Peace and Security including Prevention and Suppression of Aggression) of the Dumbarton Oaks proposals, along with other enforcement actions and on the working of the Security Council. At the United

¹⁶ Lord Robert Skidelsky & Edward Mortimer "Economic Sanctions as a Means to International Health" in Kevin M Cahill (edt) "*Preventive Diplomacy: Stopping Wars before they Start*" (New

Nations Conference on International Organization at San Francisco in 1945, the committee 3 of the third commission was charged with the task of redrafting the provisions of Chapter VIII, section B, and the Chapter XII of the Dumbarton Oaks proposals. The Foreign Minister of Ecuador, Camilo Ponce Enriquez was the Chairman of this committee and Joseph Paul Boncour of France was the Rapporteur. While much of the work of the committee III/3 concerned with determination of acts of aggression, breach of the peace and threats to peace and the military enforcement action, a separate sub-committee (Subcommittee III/3/B) discussed the provision of sanctions in the UN system. Several amendments were proposed to the Dumbarton Oaks proposals. The four sponsoring governments had proposed sanctions as interim, preventive measures to be taken by the Security Council. The Chinese delegate opined that sanctions were designed to prevent a 'threat to the peace' from developing into an actual 'breach of the peace'. The Norwegian delegate proposed that any action by the Security Council should not prevent a state from complying with a treaty obligation. The Delegate from Venezuela proposed the insertion of word "financial" into paragraph 3 of section B, Chapter VIII, along with "diplomatic, economic or other measures".¹⁷ However, there were no changes in the final draft article and the text proposed in the Dumabarton Oaks was accepted. Non-military Sanctions found their place in the Article 41 of the Chapter VII of the UN Charter; 'Actions with Respect to Threats to Peace, Breaches of the Peace, and Acts of Aggression.'

York 2000) p.148- 9.

¹⁷ See Documents of United Nations Conference on International Organization, Doc577 (English)

Article 41 of the Charter reads

“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 measures 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.”

It must be noted here that, like the League Covenant, the term sanctions do not appear in the UN Charter. However, the non-military enforcement ‘measures’ have the obvious character of sanctions.

Sanctions as mentioned before are punitive action taken when a particular law or norm is broken. In the last 100 years, the world has emerged an interdependent community of states and it is extremely difficult for a state to remain uninfluenced by any action of another state or an international organization. The global community has its own well-defined rules and law of conduct, and international organizations like the UN have made great contributions not only in making international law, but also enforcing it. Since establishment, the UN has defined

the “Dos” and “Don’ts” for the states. All Members of the UN are equally sovereign to each other and they are always expected to settle their disputes by peaceful means and should not endanger international peace. Use of force against the territorial integrity or political independence of any state is strictly prohibited. It is the duty of all Members to give all possible assistance the UN require in taking preventive and enforcement action. While domestic jurisdiction of a state should always be respected, the UN can take enforcement action (under Chapter VII) against a state if its actions, domestic or external, pose a threat to peace, breach of the peace, or acts of aggression.

The Charter is the constitution of the United Nations. But it is also a treaty that the member states signed and agreed to. Thus every signatory state has to accept and respect the principles of the UN and gives the UN the authority to take action against deviants. War and territorial aggression are considered as violation of international peace and thus any such act will invite not only worldwide condemnation, but also collective action against it. The use of force – so called the enforcement action is allowed by the Charter in principle only as a reaction of the Organization against a threat of the peace or a breach of the peace (Article 39, 41, 42); as action of the Members is only in the exercise of self defense (Article 51).¹⁸

¹⁸ Hans Kelsen, *The Law of the United Nations- A Critical Analysis of its Fundamental Problems* (London, 1951) p. 708.

The Members of the United Nations are legally bound to assist the organization in every way, to refrain from giving assistance to any state being subjected to preventive or enforcement action by the Security Council, and specifically, in terms of Article 25, to carry out decisions of the Security Council.¹⁹ Thus it is mandatory for all the Members of the United Nations to collectively enforce sanctions against a target.

The Security Council enjoys wide powers in determining the existence of any threat to or breach of the peace or act of aggression and in making recommendations or deciding what measures shall be taken to maintain or restore peace (article 39). Given agreement among the permanent Members and the necessary majority vote, there would be no impediment to action.²⁰ The ‘ non-military measures’ in Article 41 of the Charter are only a few examples of sanctions and can be broadly categorized as economic and political/ diplomatic sanctions. These sanctions are not necessarily less effective than military measures; indeed, intent to seal off an aggressor’s or potential aggressor’s sources of supply are one of the most powerful weapons. As the word ‘*may*’ suggest, the Security Council is free to apply military measures without first resorting non-military sanctions.²¹ The words “call upon” are used in this Article in a mandatory sense. All the Members of the UN are under a legal obligation to respond to the Council’s decision under

¹⁹ Doxey, n.11 p. 8.

²⁰ Ibid. p. 9

²¹ Lealand M Goodrich & Edvard Hambro *Charter of the United Nations* (London, 1949) p 94

Article 48 and they are expected to join in affording mutual assistance in carrying out the measures decided upon by the Security Council under Article 49.

Article 48 makes the UN enforcement actions mandatory to be followed by its entire member and at the same time it gives the Security Council flexibility and discretion that to determine whether in a particular case action has to be taken by all the Members of the United Nations or some of them. This Article applies equally to military and non-military enforcement actions. Those Members in close proximity to the violation of the peace may be asked to take direct enforcement action while those further may be required to apply political and economic measures. The article also allows indirect action by member states through the international agencies, mostly the specialized agencies of the UN.

While Articles 25, 43, 45 and 48 obligates all Members to join and assist the Security Council in its enforcement measures, Article 49 instruct the UN Members to assist 'each other' in carrying out the measures decided upon the Security Council. This article establishes a relationship of 'mandatory cooperation' between the UN Members. In order to carry out the enforcement measures, no member is expected to deny assistance to another unreasonably.

In case the Security Council feels that non-military action is not adequate, it can decide to take military action against a state under the provisions of Article 42.

Such action is taken by the Members of the United Nations based on the agreements reached by them on the initiative of the Security Council.

The drafters of the United Nations Charter foresaw the potential problems for countries due to their compliance and enforcement of sanctions imposed by the Security Council under chapter VII. Thus, Article 50 was included in the UN Charter as a safeguard and as a means of redress for those countries. Article 50 states that “ If preventive or enforcement measures against any state are taken by the Security Council, any state, whether a member of the united nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures, shall have a right to consult the Security Council with regard to the solution of those problems”. It is clearly understood that Article 50 is restricted in clear terms to measures taken by the Security Council under Chapter VII.²² Article 50 confers a right to consult the Security Council not only on Member states but also non-members states of the United Nations. The logic for such an extension of right to consult is a manifestation of the reality that non-members must not become innocent victims of United Nations measures, in addition to inducing non-members to voluntary participate in United Nations measures as did Federal Republic of Germany in the case of sanctions imposed against Rhodesia and as did Switzerland and the Republic of Korea in the case of

²² See comments on Art 50 by Prof. Brun-Otto Bryde in B. Simma (ed), *The Charter of the United Nations: A Commentary* (Oxford, 1994), p. 659-61.

sanctions on Iraq.²³ Article 50 consultations were extensively used for the first time by many states during the Kuwait crisis when as many as twenty-one states moved to the Security Council for solution of their economic problems following the comprehensive sanctions imposed against Iraq and Kuwait by resolution 661.²⁴

Early in the Charter, it is provided that the object of preventive or enforcement action may be suspended from exercising the rights and privileges of membership (Article 5), while the penalty of expulsion may follow persistent violation of the principles of the United Nations (Article 6). In addition Article 94 of the Charter gives the Security Council the discretionary power to recommend or decide on measures to give effect to judgments to the International Court of Justice.²⁵

The UN sanctions are not only intended to be repressive or punitive, but rather to dissuade states from a condemned course of conduct which has brought about a situation representing a 'threat to the peace, breach of the peace, or act of aggression'. As soon as the state exposed to such coercion returns to the 'correct path', the sanctions are reversible as, typically it is intended to remedy; in this respect it differs, at least in theory, from reprisal and retorsion, which according to their original character are chiefly means of retaliation for irreversible infractions of international law. Formally, the immediate ground for the imposition of such

²³ Ibid.

²⁴ See Security Council Doc. S/22382, 25 March 1991

coercive measures against member states is a breach of membership obligations; the possibility of imposing sanctions on non-member is open to the United Nations under Article 2 para.6. ²⁶

Process and Procedure

The usual practice concerning sanctions is that the Security Council meets and deliberates an issue and if an agreement were reached that the concerned situation is a threat to peace and security or an act of aggression, it would adopt a resolution instructing the concerned state/s to immediately change its behavior. If the concerned state fails to correct its behaviour, the Security Council can resort to sanctions by adoption of another resolution which determines situation in that state or its policies or behavior is a 'threat to peace or breach of peace or act of aggression' (under provisions of Article 39) and having made such a determination calls upon all Members of the UN to apply nonviolent sanctions according to the specifications of the resolution/s (Article 41). It is now a standard procedure for the Security Council to establish a sanctions committee as a subsidiary organ for each sanctions regime that it imposes under Rule 28 of the Council's Provisional Rules of Procedures. The sanctions committees are 'committees of the whole' of the Council and meet in private. The principal purposes of these sanctions committees are examine reports from states on how they are implementing

²⁵ Doxey, n.11, p. 9

²⁶ Rudiger Wolfrum (edt.) *United Nations: Law, Policies and Practice*, (London, 1995) p.1112

sanctions and, where necessary, to seek further details from them, to consider information about possible violations; and to make recommendations to the Council on ways of increasing the effectiveness sanctions. Every sanctions committee has one president and two vice-presidents, who are elected by the members of the Security Council. Most sanctions resolutions invest the sanctions committees with two major mandates: rigorous enforcement of the sanctions measures (e.g. vigilance against uncooperative states, detection and prosecution of sanctions violations) and making humanitarian exemptions if required.²⁷

²⁷ Paul Conlon "The UN's Questionable Sanctions Practices" *Law and State*,(Tubingen) vol. 53/ 54, 1996, pp. 133-146

Chapter Two

UNITED NATION'S EXPERIENCE WITH SANCTIONS

The non-military forms of sanctions under Article 41 of the UN Charter may be considered to more biting than diplomatic pressure and less devastating than a military action. But in the first 45 years, the United Nations imposed sanctions only twice, against Rhodesia (1966 to 1979) and against South Africa (1977 to 1994), though many more situations might have warranted imposition. It was largely due to cold war politics and veto or threat of veto by one or other permanent member. The end of cold war and the invasion of Kuwait by Iraq in 1990 opened the possibilities for pushing the Chapter VII scheme for enforcement action including imposition of sanctions against warring states. Since then comprehensive or partial sanctions have been imposed against twelve targets: the former Yugoslavia, (1991,1992,1998), Libya (1992), Liberia (1992), Somalia (1992) parts of Cambodia (1992), parts of Angola (1993, 1997 and 1998), Rwanda (1994), Sudan (1996), Sierra Leone (1997), Ethiopia and Eritrea (1999), Afghanistan (1999, 2000)

A notable aspect of post cold war sanctions cases is the diversity in purposes for which sanctions were applied, ranging from reverse territorial aggression,

restoration of democratically elected governments, protection of human rights, deter and punish terrorism, and promote disarmament. More recently, the UN has resorted to sanctions against a country (Liberia) for violation of UN mandated sanctions imposed on neighbouring Sierra Leone ¹, and adopted a far reaching counter-terrorism measure by imposing world-wide sanctions on entities and individuals associated with terrorist acts.² The frequency, promptness and diversity of sanctions imposed by the UN Security Council in the 1990s have led scholars of international relations to call the period as the “Sanctions Decade”

As UN has resorted to sanctions on as many as 14 states for a variety of reasons, it becomes important to find common elements in them and make classification to analyse them. They can be analysed and broadly grouped with reference to the reasons for, or the effects of the UN sanctions. The reasons varied from legitimacy of a regime to certain policies or actions of the target government. United Nations has imposed sanctions against states whose nature and character of the government or regime constituted or were deemed to be a violation of international norms or threat to international peace and security in one form or the other.

¹ S/RES/1343 (2001) of 7 March

² S/RES/1373 (2001) of 21 September

(a) Legitimacy of Regime

In the first category, three cases can be discussed; Rhodesia, South Africa and Haiti. Here, the United Nations and the international community considered that the kind of state system and government and their internal policies posed a threat to international peace and justice. The objective of the sanctions and other international efforts was to end the incumbent regime and establish a regime, which is complimentary to international norms.

The first episode of sanctions imposed by the United Nations was Rhodesia in 1966. The UN involvement in Rhodesia began when its white racist government claimed independence following Unilateral Declaration of Independence (UDI) on 11th November 1965 from Britain. For the United Nations it was a case of decolonization conflict. The General Assembly was quick to condemn the Unilateral Declaration of Independence (GA res. 2024 (XX)). Following the UDI, the British government imposed an escalating set of economic sanctions against Rhodesia, which were soon joined by Commonwealth and a number of nations, including an oil embargo by the United States and France. Initially, the British government predicted the collapse of the rebellion “within matter of weeks rather than months “ but when this collapse failed to occur, the matter was taken to the Security Council in December 1966, which condemned the UDI as a “threat to peace”. Under decisive British participation mandatory but mild economic sanctions were imposed on

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Rhodesia. The Security Council asked the member states to suspend economic relations and in particular, to discontinue the delivery of weapons, equipments, war supplies, vehicles, aircraft and especially petroleum and imports from Rhodesia of key commodities making up to 59 percent of her export trade.³ Further sanctions, including an embargo on capital dealings and severance of all communication, were imposed by resolution 253 (1968) and a sanctions committee was established to monitor implementation of sanctions and co-ordinate with other member states of the UN towards this endeavour. But South Africa and Portugal continued trading and air links and maintained critical economic relations with the Ian Smith regime. Initially Rhodesia sustained its economy by defensive moves but developments in the 1970s posed more difficult problems. The international recession following the oil price shock of 1973-74, the collapse of Portuguese rule in Angola and Mozambique and the escalating level of internal violence had devastating effects on the economy and the ruling white minority's morale. The black population faced much of the burden of sanctions.⁴ The sanctions continued for 14 years till 1979 when after the Lancaster House Conference, the British Government assumed control of the region as a directly-administered colony British colony. Sanctions were terminated by resolution 460 in 1979, much before formation of majority government under Robert Mugabe and subsequent independence in April 1980.

³ S/RES/217 (1965) of 20 November

⁴ Lord Robert Skidelsky & Edward Mortimer "Economic Sanctions as a Means to International Health" in Kevin M Cahill (ed.) "Preventive Diplomacy: Stopping Wars before they Start" (New York 2000) p. 150-151.

The UN sanctions against Rhodesia suffered from several shortcomings during implementation and it is difficult to assess their exact contribution or impact. But it is important to note that the Rhodesian case was first example of sanctions under the UN system and it laid the foundation of international co-operation and supervision of sanctions. The Rhodesian example served as a model for a non-military UN action in similar conflict in South Africa.

The United Nations sanctions against South Africa were a part of a larger international effort to oppose and bring an end to Apartheid and the rule of white minority government. For Decades, South Africa was widely condemned by other states, both in side and outside the UN forums for its practice of racial discrimination by whites against the black majority. The UN had passed several resolutions condemning South African government, supported the resistance movements and the frontline states. An important aspect of sanctions against South Africa was that while UN Security Council imposed arms embargo on South Africa in 1977⁵, at the same time General Assembly also took initiative for other methods to exert economic pressure on South Africa. While the UN Security Council forbade members states to provide South Africa with weapons or military material of any kind, it declined to take any further enforcement action. The arms embargo was considered to have little impact due to well-developed defence industry and illegal arms export. On the other hand, the General Assembly called for a voluntary boycott of South Africa, but it

⁵ S/RES/418 (1977) of 4 November

was too general and vague. The oil and petroleum embargo was quite successful as many oil producing countries and later the European Community took active participation. The General Assembly established monitoring committees and had taken over exactly same instruments used by the Security Council in the Rhodesian case and developed them further. Apartheid and minority rule in South Africa was dismantled in 1994 and was closely monitored by the United Nations. Nelson Mandela formed a government elected by universal adult franchise in 1994 and the Security Council terminated arms embargo and other restrictions.⁶

The third case where the United Nations has resorted to sanctions against a state due to illegitimate seizure of state power is Haiti. The Haitian case is similar to Rhodesian case as in both countries an illegal seizure of power and severe human right abuses were deemed a threat to international peace and security. After years of dictatorship, Fr. Jean-Bertrand Aristide became President February 1991 following a UN observed election. But soon in September, a military coup led by General Cedras overthrew the Government and following diplomatic intervention by the USA, France and Venezuela, Aristide was allowed to go into exile. The coup prompted international condemnation and immediate economic sanctions by the Organization of American States (OAS). Aristide continued to be internationally recognised as the President and the OAS engaged itself in negotiations to reach an agreement leading to return of democracy in Haiti. In April 1993 the UN and OAS proposed economic aid of US \$1000 million as an incentive to restoration to

⁶ S/RES/919 (1994) of 25 May

democracy but these efforts proved futile. In June the UN Security Council imposed a worldwide petroleum and arms embargo on Haiti.⁷ An agreement was reached between Gen. Cedras and Aristide with signing of Governor's Island peace accord under the auspices of UN and OAS in July 1993, which promised Aristide's reinstatement. The Security Council suspended its arms and petroleum sanctions on Haiti in August. Following concentrated campaign of political violence, the Security Council approved of deploying immediately a lightly armed UN Mission in Haiti. With Gen Cedras refusal to accede power to Aristide in violation of Governor's Island agreement, the UN re-imposed limited economic sanctions on Haiti.⁸ Tougher sanctions banning all international trade with Haiti, excluding food and medicine, reducing air links with the country and preventing members of the regime from gaining access to assets held outside were imposed by the Security Council on the initiative of the United States in May 1994.⁹ The sanctions regime against Haiti is the first example where the key decision-makers were subjected to targeted sanctions. By August, the United Nations officially abandoned efforts to affect a peaceful solution to crisis and declared the situation a "threat to peace" in the region. The deadlock was finally broken with military intervention and peaceful occupation of Haiti by US troops in September 1994. The Security Council terminated all sanctions against Haiti promptly.¹⁰ The Haitian case exhibits UN's involvement in process to restore legitimate government and use different types of sanctions as

⁷ S/RES/841(1993) of 16 June

⁸ S/RES/873 (1993) of 13 October

⁹ S/RES/917 (1994) of 6 May

¹⁰ S/RES/944 (1994) of 29 September

coercive tools to pressurise the illegitimate regime to accept agreements. It is also a fine example of United Nations co-operation and co-ordination with a regional organisation, the OAS, in restoration of democracy in a state.

The Policies of the Regime

In most of the 14 sanctions cases till date, the United Nations has resorted to sanctions as it viewed with serious concern the external and internal policies or behaviour of the government in question as a act of aggression or threat to international peace. This category is quite broad, as sanctions have been imposed on states that have committed territorial aggression, supported international terrorism, violated human rights etc. The objective of sanctions in these cases has been to pressurise the targeted state to retract the impugned actions and policies in conformity to international norms.

The classic case of UN sanctions is of Iraq, where a broad sanctions regime was promptly imposed following its invasion on Kuwait in August 1990 by adoption of Resolution 661 by the UN Security Council. This case is a fine example of UN's action in response to territorial aggression on a sovereign member state by another. These sanctions virtually cut Iraq off from the world economy. The sanctions included a ban on all trade, an oil embargo, a freezing of Iraqi government financial assets abroad, an arms embargo, suspension of international flights, and ban on

financial transactions. The Security Council also called upon member states to enforce naval and air blockades against Iraq “halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661”.¹¹ The economy of Iraq was based on export of one commodity, its oil and it accounted nearly 90 to 95 percent of its earnings. Aware of the fact that Iraq imported much of its food stuff from other countries and an import ban can also lead to shortage of food, the Security Council instructed the Sanctions Committee “to keep the situation regarding foodstuffs availability in Iraq and Kuwait under constant review, paying particular attention to the needs of children under 15 years of age, expectant mothers, maternity cases, the sick and the elderly”.¹² The support to UN actions against the aggressor Iraq was universal and member states rigorously enforced the sanctions.

The effectiveness of the blockade was so pronounced that by 5th December 1990, it was reported that the embargo had effectively shut off 90% of Iraq’s import and 97 percent of its exports and produced serious disruptions to the economy and hardships to the people.¹³ But even then the Iraqi government refused to withdraw from Kuwait. A UN mandated military action was authorised and in 1991 Kuwait

¹¹ S/RES/665 (1990) of 25 August

¹² S/RES/666 (1990) of 13 September

¹³ New York Times, 6th December 1990, cited in Abbas Alnasrawi, Iraq: Economic Sanctions and Consequences, 1999-2000, *Third World Quarterly*, (Surrey, UK) vol, 22, no. 2, p.214.

was liberated after a massive air and land campaign against Iraq by a US led multinational force. Though the objective of sanctions, the liberation of Kuwait was achieved by use of force, Iraq was still considered to be a threat to peace in the region. The Security Council in April 1991, adopted the "mother of all resolutions"¹⁴, the Resolution 687, which are described as one of the most complex and far-reaching sets of decisions ever taken by the Council. This resolution laid down the requirements for lifting the sanctions, which were set out in great detail. These requirements included a permanent boundary settlement with Kuwait; deployment of observers, peacekeeping duty; elimination of Iraq's weapons of mass destructions; non-acquiring of nuclear weapons capabilities, establishment of a compensation fund to settle claims against Iraq; Iraqi's obedience to its foreign debt obligations; and repatriations of all Kuwaiti and other nationals. The Council also decided to review Iraq's compliance with the new requirements every 60 days to determine whether to lift or ease the sanctions. The resolution 715 adopted a detailed plan of long term monitoring to prevent the resumption of Iraqi programmes for the production of weapons of mass destruction. Several other measures were taken by the Security Council to enhance the monitoring and enforcement of sanctions. The prolongation of sanctions caused deterioration on economic and social deterioration in Iraq and discomfort of many member states with the existing sanctions regime.

¹⁴ Alan Dowty, "Sanctioning Iraq: The Limits of the New World Order", *The Washington Quarterly*. (Washington) vol. 17, no. 3, p. 180.

The Security Council responded to these concerns with the 'oil for food' programme which allowed Iraq to sell its oil in international market under strict UN supervision and provided the proceeds of the sale to be used to import food, medicine and other humanitarian goods.¹⁵ Initially Iraq resisted the terms of the programme but accepted it in 1996. Most of the sanctions imposed under resolution 687 are still in force, as Iraq has not complied with destruction of its weapons of mass destruction capabilities up to the satisfaction of United Nations. The sanctions against Iraq pose a challenge to United Nations as even after 12 years, the sanctions have not been lifted and on the other hand, sanctions have caused to grave humanitarian crisis and suffering of innocent Iraqi population.

The conflict and subsequent sanctions on former Republic of Yugoslavia (FRY) has risen from the break up of Yugoslavia into many republics. The UN was gravely concerned about state-sponsored genocides and ethnic cleansing by the government in Belgrade and was convinced that they posed a danger to peace and security of the region. In 1991, with collapse of the communism in Yugoslavia, the civil war raged between Slovenia and Serb dominated Yugoslav National Army and then between Croatia and Serbia. The European Community and Conference on Security and Co-operation in Europe tried to end conflict with diplomatic initiatives but the efforts proved futile. In September 1991, at the initiative of France and Austria, the Security Council imposed general and complete arms embargo on all warring factions in all parts of Yugoslavia by its resolution 713

¹⁵ S/RES/986 (1995) of 14 April

in a ministerial level meeting. But this did not deter the different factions from continuing fighting. Rather it had an effect on huge imbalance in favour of the Yugoslav People's Army as most of weapons passed into Serb hands as the country disintegrated. The UN actively engaged in diplomatic measures to end the conflict and a peacekeeping force (UNPROFOR I) was deployed in Croatia in 1992. Following large scale "ethnic cleansing" by the Serbs in Bosnia, the Security Council imposed a wide range of economic, trade, cultural and other sanctions on the federal republic of Yugoslavia (Serbia and Montenegro) in 1992. Soon by resolution 760 and 787, certain essential commodities were allowed to be imported after due permission from the sanctions committee. Reacting to non acceptance of the peace plan by the Bosnian Serb Party, the Security Council adopted resolution 820 in 1993 making sanctions against FRY broader and these measures were further reinforced and tightened by resolution 942 in 1994. With signing of Dayton Peace Agreement (1995) a fragile peace was achieved. Arms embargoes were partially terminated from all factions, and most of sanctions against FRY and Bosnian Serb party were terminated in a phased manner after 1996. However, the fragile peace was broken with campaigns of ethnic cleansing by Serbian government against Muslim population of its Kosovo region in 1998. The international community expressed its outrage and the UN Security Council once again imposed arms embargo against the former Republic of Yugoslavia and also against Kosovo.¹⁶ Later the Security Council requested member states to impose financial sanctions against Yugoslavia

¹⁶ S/RES/1160 (1998) of 31 March

and deny it any financial assistance.¹⁷ Foreign assets of Yugoslav government and President Milosevic and his closest military and political associates were frozen by European Union and United States and a travel ban imposed on them. Kosovo crisis was only solved by intense NATO air campaign against Yugoslavia and subsequent deployment of multinational force “KFOR” in Kosovo after a peace deal. It is necessary to note here that in the Yugoslavian case, the innovative system of Sanctions Assistance Missions (SAMs) organized with OSCE and EU, with a communication centre in Brussels (SAMCOMM) which established a close liaison with UN sanctions committee and its secretariat, played a vital role in effective coordination and implementation of sanctions. Following a report by the Secretary-General in September 2001, the Security Council unanimously voted to terminate the sanctions against the Former Yugoslavia.¹⁸

The sanction cases against Libya (1992) and Sudan (1996) are quite similar as the United Nations considered that both states are supporting international terrorism and by giving shelter to individuals responsible for terrorist acts in other states, they are posing a threat to international peace. In both cases sanctions were imposed not because of internal situation of the countries or aggression against another states, but rather their non-compliance with specific demands of the UN Security Council. In the Libyan Case, the Security Council asked the government of Libya to hand over two of its nationals who are responsible of bombing a PANAM

¹⁷ S/RES/1199 (1998) of 23 September

¹⁸ S/RES/1367(2001) of 10 September

aircraft over Lockerbie, Scotland.¹⁹ The Libyan refusal of surrenders those two suspects for trial was considered to be an act of supporting terrorism and defiance of international community. By resolution 748 (1992), the Security Council imposed mandatory sanctions on Libya consisting of an arms embargo, ban on the sale or supply of aircrafts, reduction and restriction of the activities of staff in diplomatic and consular missions. Further by resolution 883 in 1993, sanctions were expanded and included freezing of some Libyan assets abroad, tightening the aviation embargo and partial oil embargo. For years there was a stand off between Libya and the United Nations. Libya proposed it is ready to handover the two suspects only if they tried by a court in a neutral country, by the International Court of Justice, or by a special tribunal created specifically for this case. In 1998, the Organisation of African Unity (OAU), the Non-Aligned Movement, the League of Arab States, and the Organisation of the Islamic Conference urged the Security Council to lift the sanctions imposed on Libya by accepting one of the three options offered by Libya. Under pressure from these organisations, the United Nations accepted the trial of the suspects in a third country. In 1999, after diplomatic efforts and persuasion by former South African President Nelson Mandela, Libya handed over the two suspects, who were later convicted in a trial in The Netherlands under Scottish Law and with Scottish judges. Sanctions were suspended soon after. In the Sudanese case, the Security Council determined that Sudan has not complied with its Resolution 1044 (1996), which asked it to take immediate action against three suspects involved in assassination attempt on Egyptian President Mubarak in Addis Ababa in 1995 and

¹⁹ S/RES/731 (1992) of 21 January

should cooperate with the Organisation of African Unity in this matter. On the basis of report of the Secretary-General, the Security Council adopted resolution 1054 imposing diplomatic sanctions against Sudan. The Security Council instructed the member states to reduce the number of Sudanese diplomatic personnel and restrict the entry/transit of Sudanese Government officials in their respective countries. In August 1996, the Security Council further decided to impose an international flight ban on Sudan but postponed its enforcement.²⁰ Following preliminary assessment of potential humanitarian impact of the flight ban by UN agencies in Khartoum in December 1996, the Department of Humanitarian Affairs carried out further pre-assessment mission in early 1997. Its report concluded that the international flight ban should have multidimensional impact affecting medical services, agricultural support services, and internal air transport.²¹ These sanctions led to the desired change in the Sudanese government's behaviour. The Sudanese government was successful in improving its relations with many neighbouring countries, OAU, re-established dialogue with UN and the US, and denied support to many terrorist groups. In September 2001, the Security Council acknowledged the positive changes in Sudan's external policies decided to terminate the sanctions regime. The United States, though not very satisfied by Sudanese government changed attitudes, decided to abstain from vote.²²

²⁰ S/RES/1070 (1996) of 16 August

²¹ See Note Concerning the Possible Humanitarian Impact of the International Flight Ban decided in the Security Council Resolution 1070 (1996). Department of Humanitarian Affairs (New York, 1997)

²² S/RES/1372 (2001) of 27 September

Sanctions against African states like Somalia, Rwanda, and Liberia may be discussed together as the UN determined that civil war between different warring factions and rapid deterioration of internal situation in these states leading to grave humanitarian crisis poses a threat to international and regional peace. In all these cases the UN has responded with mostly arms and oil embargoes to control and contain the 'war making capacity' of different war making factions. The primary aim of such sanctions was to minimise the conflict and the suffering of the innocent population. Sanctions in situations of internal conflicts further aim at forcing the opposing groups to seek negotiated settlement and thus they are hardly aimed at punishing the violator of international peace and security.²³ Apart from imposing sanctions, the UN has actively engaged in peace making and peace building efforts like sending humanitarian relief to people, helping the refugees, sending peacekeeping and observer missions and in case of Somalia taking enforcement action, and taking active part in bringing peaceful and stable peace with help of regional agencies and organizations like Organization of African Unity and ECOWAS. An arms embargo was imposed on all warring factions of Somalia in 1992 by resolution 767 but with there was need of enforcement action as situation deteriorated and peacekeeping missions under UNSOM I and UNSOM II were sent. In case of Liberia, Economic Community of West African States (ECOWAS) was involved to bring peaceful resolution to the conflict since 1989 .The United Nations imposed a general and complete arms embargo to all factions in Liberia in 1992 by

²³ Tunguru Huaraka, "Implementation of Sanctions-The Experience of Africa", in Vera Gowlland- Debbas United Nations Sanctions and International Law, (The Hague, 2001) p.350

resolution 788. It was observed that different factions are engaged in illegal mining and export of diamonds which in turn generate funds to finance arms purchases .As a part of strategy to contain the war making capacity, diamond exports were banned that would deny the factions finances to wage war. The UN took a important step towards enforcing the sanctions when it adopted resolution 1343 in 2001 which imposed mandatory diamond embargo, travel sanctions and arms embargo on Monrovia government for deliberate violations of sanctions against Sierra Leone and aiding the Revolutionary United Front. Security Council established the UN Observer Mission in Liberia (UNOMIL) in 1994 to aid any peaceful settlement in co-operation with ECOWAS. In Rwanda, the UN Security Council imposed a complete arms embargo regime by adoption of resolution 918 in 1994. Earlier UN Assistance Mission for Rwanda (UNAMIR) was established in 1994. To enforce the arms embargo, the Security Council adopted resolution 997 in 1995, which imposed restrictions on sale and supply of armaments to its neighbouring states, if those arms were to be used in the ongoing conflict in Rwanda.

In the case of Ethiopia and Eritrea, the Security Council considered tension between the two states and the border dispute as a threat to peace. Among the world's most poor countries, Eritrea and Ethiopia were making huge military expenditure on imports of arms. By a non-binding resolution 1277 (1999), the Security Council 'strongly' urged all states to stop sale of arms to both countries. Later, the Security

Council imposed a mandatory comprehensive arms embargo on both the states and demanded immediate cessation of hostilities between the two states only after a border conflict had begun.²⁴ As part sanctions policy reform initiated by France and Russia, the arms embargo against Eritrea and Ethiopia was imposed only for one year, or until the Secretary-General informs that a peaceful settlement was reached. Following a fragile peace agreement reached by both parties in January 2001, and amidst reports of violations of the embargo, the Security Council allowed the embargo to expire in May 2001.

Nature of the Targets

Like difference between the grounds on which the UN has resorted to sanctions, there is also difference in the nature of targets. In most of the cases the central state authority/government has been subject to sanctions but there have been cases when non-governmental authorities and individuals have also been subjected to sanctions and restrictions.

In case of Haiti, besides a general air and arm embargo, additional sanctions measures, including freezing the funds and financial resources of all officers of the military junta and their family members and those employed by them were imposed by the United Nations Security Council's resolution 917 (1994). Sanctions against Bosnian Serb party were also imposed by resolution 820 (1993) when it declined to

²⁴ S/RES/1298 (2000) of 17 May

accept the peace proposal for conflict in former Yugoslavia initiated by the Security Council. The case of sanctions against Angola is different from other cases as here sanctions imposed by Security Council were targeted only at the National Union for Total Independence of Angola (UNITA), which disputed the results of the UN supervised elections in 1991. United Nations considered this refusal to cooperate with the ongoing peace process between the Government of Angola and the UNITA as a threat to peace and security to the region. A mandatory arms and petroleum embargo was imposed on UNITA in 1993.²⁵ In 1997, following its refusal to disarm and implement the Lusaka Protocol (1994) the Security Council imposed further restrictions like travel ban on UNITA leaders and their families, closure of UNITA offices, ban on supply of aviation material and a air embargo on UNITA territories.²⁶ A year later, the Security Council adopted resolution 1173 on 12 June 1998 and resolution 1176 of 24 June 1998, prohibiting the direct or indirect import from Angola to their territory of all diamonds not controlled through the Certificate of Origin issued by the Government of Angola, as well as imposing financial sanctions on UNITA. Besides a sanctions committee, an independent Panel of Experts was formed to investigate violations of sanctions against UNITA in 2000.²⁷

The Focus of Sanctions

²⁵ S/RES/864 (1993) of 15 September

²⁶ S/RES/1127(1997) of 28 August

²⁷ S/RES/1295(2000) of 18 April

The UN has imposed different kinds of sanctions on different states depending on the nature and gravity of crisis and the conflict. The sanctions imposed on one state have differed from sanctions imposed against another. One may classify the UN sanctions cases on the basis of their focus: broad, general sanctions and selected focused sanctions.

General trade and financial sanctions were imposed against Rhodesia in 1966, Iraq in 1990, and Haiti in 1993 and against former Yugoslavia under resolution 820 (1993). In the Rhodesian case broad trade sanctions were imposed and the resolutions specified the banned items. The sanctions against Iraq have been the most complex and wide till date and are still in force. Trade and economic sanctions against Yugoslavia were short lived and were phased out soon. As sanctions on these states were broad and generalised, the impact of sanctions has also been wide, affecting the general economic, social and political health of the state. In other cases sanctions have been imposed selectively or partially on a particular sector/s of the target state. South Africa was under a mandatory arms embargo from 1977 to 1994. Libya was subject to an arms embargo; aviation sanctions as well as limited oil assets freeze. In Sudan, sanctions were mostly diplomatic and later some aviation restrictions were imposed. The African States facing civil wars, i.e. Somalia, Rwanda, and Liberia, have been subject to mandatory arms and oil embargoes and in last two cases diamond embargoes. Sanctions against UNITA in Angola were in form of arms and oil embargoes and later travel, aviation, financial and diplomatic restrictions were also

imposed. In former Yugoslavia, arms embargo, oil embargo, travel and visa ban, trade and financial ban, aviation ban was imposed in different sanctions regimes. Only an arms embargo was imposed against Ethiopia and Eritrea.

It is difficult to call the any of UN sanctions regimes as outstanding successes or total failures in the field of maintaining international peace and security by use of 'non-military enforcement measures. The outcome of many sanctions regimes have been far from satisfactory and have posed new problems and many times failed to solve a crisis on their own. Many times the target states complied with the demands of the Security Council but only after years of stalemate and resistance. And there are several other factors that too work along with sanctions to compel the target to accept the wishes of international community. It is difficult to assess the exact contribution of sanctions in solving the crisis but often sanctions compel the target state to accept a diplomatically negotiated deal. At the best, UN sanctions can be called "influential " rather "decisive" in bringing the desired change in policy of the target. In almost all the cases sanctions have achieved partial or limited success.

Impact of Sanctions

Mandatory sanctions imposed by an international organization are collectively enforced by all its members against the target and thus they have an impact of global

nature. The target is internationally organized as an 'offender' and individual states can impose unilaterally more sanctions of their choice against the target, widening the scope of sanctions. As sanctions are coercive in nature, the impact on the target would also be negative. The impact of sanctions largely depend on the nature of sanctions, the focus and nature of the targets and also the enforcement and duration of sanctions. Selective and targeted sanctions against the decision-making elite might not have a negative impact on general population, but a comprehensive and general economic sanctions regime has often caused serious hardships on the entire population of the targeted state. The fallout of sanctions can also be on other states that can face economic problems with the enforcement.

(a) Domestic Impact

Sanctions can often lead to social and economic crises and hardships for the innocent civilians, who actually have to do nothing with the wrongdoing of the state and the decision makers. Iraq is a classical example of humanitarian crisis born out of prolonged imposition of a comprehensive sanctions regime. During the period August 1990-March 1991, the Sanctions Committee had refused to recognise the existence of urgent needs in Iraq. Prior to sanctions Iraq used to import 75-80 percent of all its food products. As economic sanctions denied easy availability of food items and medicines there was a sharp increase in food prices ranging from 200 to 1800 percent between August and November. The Iraqi government immediately resorted

to food rationing. It was projected that the Iraqi Gross National Product would decline by 48 percent annually. According to a study it was found that the estimated impact of the sanctions was 20 times greater than the average impact of previous 'successful' sanctions and three times as great as the previous impact case.²⁸ The intense air campaign in February-March 1991 destroyed much of Iraq's military-industrial and economic infrastructures. The first exact humanitarian emergency conditions in Iraq were reported by a UN mission led by UN Under Secretary-General Martti Ahtisaari in March 1991. The mission's report gave a bleak picture of living, social and economic conditions in Iraq with a deep crisis in fields of agriculture and food, water, sanitation and health. An outbreak of famine and epidemic was foreseen. But even then the Security Council decided to continue with the sanctions imposed under resolution 661. The resolution 687 of April 1991 introduced an important modification in the sanctions by allowing Iraq to import foodstuffs by dropping the reference to 'in humanitarian circumstances' that had been a part of resolution 661. But as Iraq was not allowed to sell oil to pay for imported foodstuff, these modifications proved to be of no consequences. The sanctions reaffirmed and imposed by resolution 687 denied Iraq any opportunity to reconstruct its economy and society, which was devastated by earlier sanctions and war. Even after several reports on the humanitarian crisis in Iraq, the Security Council denied the Iraqi people any respite from hardships of the sanctions and thus deepening the crisis.

²⁸ See Gary C. Hufbauer, Jeffery R Schott and Kimberley A Elliot (edt.), Economic Sanctions Reconsidered, (Washington DC, 1990)

The first actual relief to the humanitarian crisis came in the form of the “Oil for Food” programme in April 1995 which allowed Iraq to sell \$ 2 billion worth of oil every six months to provide funding for the Compensation Fund and also for purchasing food and medicines. The Security Council retained for itself all the necessary mechanisms to monitor all sales and purchases. But even this exercise has not allowed any significant improvement in the living and social conditions of Iraq. The humanitarian crisis has only aggravated with continuance of sanctions regime. Estimates of the people who have lost their lives because of sanctions range from 1.5 million people, including some 50000 children. The World Health Organisation had concluded that the health system had been set back by some 50 years.²⁹ The United Nations Children Fund (UNICEF) reported in 1996 that 4,500 children under the age of five were dying every month in Iraq from hunger and diseases.³⁰ This humanitarian crisis born out of UN sanctions has invited severe criticism of the UN. Two UN humanitarian Coordinators, Denis Halliday in July 1998 and Hans Von Sponeck in February 2000 resigned protesting against the effects of sanctions on Iraqi population.³¹ The social and economic consequences of the sanctions can be seen also in the loss of more that two-thirds of the country’s GDP, the persistence of exorbitant prices, collapse of private incomes, soaring unemployment, large scale

²⁹ World Health Organization “The Health Conditions of the Population in Iraq Since the Gulf Crisis” (Geneva, 1996) cited in Abbas Alnasrawi, “Iraq: Economic Sanctions and Consequences, 1999-2000”, *Third World Quarterly*, vol. 22, no. 2 p.214

³⁰ See UNICEF Press release, “Disastrous situation of Children in Iraq (New York, 4th Oct. 1996)

³¹ David Shearer, “Sanctions Straightjacket”, *World Today* (London), May 2000, p. 12

depletion of personal assets, massive school drop- out rates as children were forced to beg or work to add family income and the phenomenal rise in the number of skilled workers and professional leaving the country as economic refugees in search of better economic conditions.³²

In Haiti, trade, oil and air embargos proved calamitous for the innocent population while the ruling elite continued to prosper. When sanctions were imposed in 1993, food, cooking fuel and medicine were exempted but because of increased cost of transportation they were no longer affordable for the general population. In November 1993 under the headline ‘Sanctions kill 1000 children a month ‘ a British newspaper cited a Harvard study which concluded that “the human toll from the silent tragedy of humanitarian neglect has been far greater than either the violence or the human rights abuse’.³³ In Yugoslavia, the sanctions did not result in any notable massive humanitarian crisis, but they did cause economic and social hardships for civilians. While there was general decline in the living standards of the middle class. While the Gross National Product fell by 40 percent in 1993, nearly 50 percent of industrial workforce become unemployed. The average wage in 1993 was \$ 17 per month, which was ‘average daily income’ in 1990.³⁴ One in every seven children were said to be undernourished and there was a serious shortage of drugs because of shortage of foreign exchange. These developments were accompanied by a thriving

³² Abbas Alnasrawi, “Iraq: Economic Sanctions and Consequences, 1999-2000 “, *Third World Quarterly*, vol. 22, no 2 p.214

³³ Margaret P Doxey, *International Sanctions in Contemporary Perspective* (New York: 1996). p. 109

³⁴ *The Economist*, (London) 3 march 1993

black market and the emergence a new 'gangster-political class'.³⁵ At the close of 1993, an estimated 80 percent of the population had fallen below the poverty line, as production dropped and un-employment continued to spread.³⁶

In cases where partial or selective sanctions like air embargo or arms embargo were imposed, any direct negative influence on civilian population is not noted. In most of these cases, sanctions have effected the government or the warring parties directly.

Politically, sanctions can possibly lead to 'rally under the flag' syndrome and strengthen the targeted regime's ideological legitimacy. If the regime projects itself to its population through an ideology built around nationalism, where external powers (especially Western powers) are seen as imperialist crusaders intent on undermining local sovereignty and indigenous interests, then the imposition of Western orchestrated UN sanctions often reinforce the regime's central ideological message.³⁷ It is very true in cases of Iraq and Libya, where Saddam Hussein and Col Ghadafi are still in power. In Yugoslavia, Slobodon Milosevic was re-elected to power to the Serbian Presidency in 1992 continued in the office till 2000. It is also observed that a continued defiance of the regime to sanctions is seen as "strong resistance" against foreign intervention. The population tends to become more

³⁵ Ibid

³⁶ John Stremmlau, "Sharpening International Sanctions: Towards a Stronger role of the United Nations" Report to the Carnegie Commission on Preventing Deadly Conflict, (New York 1996) p.29.

³⁷ Tim Niblock, "The Regional and Domestic Political Consequences of Sanctions Imposed on Iraq, Libya and Sudan" *Arab Studies Quarterly*, (Hawaii) vol.23, no. 4, Autumn 2001 pp. 59-67, p 64.

dependent on the government than before, mainly for provisions of basic rations needed for survival. In Iraq ‘ a strong sense of Iraqi nationalism, a visceral distrust of the west and a culture strong on notions of shame and honour all contribute to the regime’s effort to turn the sting of sanctions back on their executors.’³⁸

(b) External Impact of Sanctions

Imposition of a mandatory sanctions regime against a target can have unintended economic and political implications on a third country, who has to incur ‘cost’ of implementing the sanctions. This cost can be serious in cases of general trade sanctions, which can dislocate established patterns of economic activity. The founders of the United Nations were aware of this fact and through f Article 50, an attempt to provide relief to third parties is made who face ‘special economic problems’ as a result of carrying out preventive or enforcement actions of the United Nations. Article 50 was first invoked in case of Rhodesia by two states, by 21 states in case of Iraq and by 8 states in case of Yugoslavia. Sanctions against Rhodesia had placed a very heavy burden on all neighbouring countries, except South Africa, which was a beneficiary due to blatant violations of sanctions. Botswana, Tanzania, Zambia and post-Independence Mozambique found themselves in the ‘front line’ as a result of sanctions and of their support for guerrilla forces seeking to overthrow the white regime. Zambia attributed the burden of \$100 million to the decision to apply

³⁸ Alan Dowty, n 14 p. 184.

sanctions in the period 1965-68.³⁹ Between 1972 and 1977, this expenditure was estimated to be \$744 million.⁴⁰ For Mozambique, the first year direct cost were put at between \$139 million to \$165 million in 1975-76 and thereafter \$110-135 million per annum.⁴¹ Losses stemmed from earnings of migrant workers, substitutes for Rhodesian facilities and an increased trade deficient.

In the case of Iraq, the impact on world economy was severe as Iraq was leading oil exporter and several countries were trading with Iraq. Many Third World countries including India had to look for alternative oil suppliers. Most of losses were due to rise in oil prices, cancellation of commercial contracts with Iraq, repatriation of migrant workers and balance of payments.⁴² As many 21 states approached the UN Security Council for help under Article 50, who claimed a total estimated loss of \$30 billion.⁴³ The most affected third state was Jordan, which was geographically sandwiched between Iraq and Israel; strategically vulnerable to both; politically torn by its Palestine population's support to Saddam Hussein; and dependent on West for aid and on Iraq for commercial and transport links and now by influx of refugees from Iraq. The total direct financial loss was estimated at \$1.5 billion per annum. Eight states moved the Security Council for consultation on the aftermath of the sanctions against Serbia/Montenegro in 1992-93 ~~eight states~~ and

³⁹ Margaret P Doxey, n. 33, p72

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid p 75

appealed the Yugoslav sanctions Committee for help to solve their economic problems due to imposition of sanctions. Losses ranged from stoppage of road construction contract in Uganda to Romania's claim of \$9 billion. On the request of UN Secretary General, 19 states and 27 international bodies offered technical and financial assistance to the affected states in 1994.⁴⁴

In the case of Haiti, the Dominican Republic, having had close economic relations with Haiti prior to the imposition of the sanctions on that country, claimed particular economic difficulties as a result of the sanctions. The Sanctions Committee never considered the case since it was forwarded to the United Nations after the termination of the sanctions regime on Haiti. Imposition of air embargos and oil embargoes can also lead to financial losses for a third country as it has to cancel current operations and contracts and look of alternative markets.

The effects of sanctions on a third country would be greater when trade sanctions are imposed against a state which plays an active role in worlds economic activity. Both Iraq and Yugoslavia were thriving developing economies before the conflict and had economic relationship with several countries. On the other side, partial and selective sanctions like arms and air embargo might also affect third countries but this effect was less severe.

⁴⁴ Ibid p. 79

Besides unintended humanitarian crisis and negative affects on third parties, comprehensive sanctions imposed by the Security Council pose other problems for the senders. The objectives of the sanctions are often too late and hard to be complied by the target state and the sanctions committees often face the problem of sanctions violations. Defensive moves by the target, poor implementation by sender states and the inevitable operations of sanctions busters pose serious challenges to the effectiveness of sanctions regimes. The ad-hoc nature of UN sanctions design and administration is another problem. Humanitarian crisis stemming from sanctions regimes, as in the case of Iraq, casts a shadow on the United Nations and concern about this is evident from the UN Secretary-General Kofi Annan's statement that

“ Who is responsible for this situation in Iraq- President Saddam Hussein or the United Nations?”⁴⁵

In mid 1990's, problems rising out of sanctions imposed by the United Nations, particularly the case of Iraq has compelled the international community to rethink the United Nations strategy for the use of sanctions in future. While United Nations has accepted the usefulness of sanctions in dealing with problems of international peace and security, it has acknowledged the need of reform in its approach and caution required while resorting to sanctions. Responding to negative impacts of comprehensive sanctions, the United Nations has resorted to

⁴⁵ David Shearer, n 31, p. 12

imposing partial and selective sanctions against the target and the move is towards more a targeted and selective sanctions. Since 1994 all UN sanctions have been targeted or partial. Financial sanctions, travel bans, arms embargoes and commodity bans have replaced trade sanctions are the preferred instruments of policy.⁴⁶ The idea of targeted “smart sanctions” is to achieve the objective quickly and more effectively and to minimize or limit the negative impact on the innocent population. The development of the idea and practice of ‘smart sanctions’ will be discussed in the next chapter.

⁴⁶ George Lopez & David Cortright “Smarting under Sanctions” *The World Today*, March 2002, p. 17.

Chapter Three

SMART SANCTIONS: THE DEVELOPMENT OF IDEA AND PRACTICE

While the preceding chapter has brought out some of the problems associated with imposition of UN sanctions, the present chapter seeks to examine the efforts undertaken to overcome those problems with a view of making the sanctions “smart”. As United Nations resorted to sanctions regularly and extensively in 1990s and particularly against Iraq, new challenges and problems arose. The foremost was the negative impact of sanctions on population of the targeted state and the humanitarian crisis born out of sanctions regime. As evidence of the harsh effects of sanctions was accumulated, particularly in Iraq, it was questioned whether human suffering can be justified by the original purpose. Then there was the problem of “collateral damage” of sanctions, which was widely experienced, in the Iraqi and Yugoslavian cases. Though the Charter advises the UN and member governments to assist the affected third states, the actual assistance was considered to be problematic. Faced by these problems, there was an increasing demand from different quarters in and outside the United Nations to bring reform in the sanctions practice. The need was advocated to make sanctions partial and more targeted for better results. In the second half of the

1990s there was a shift in the direction of selective sanctions, which have often been called “smart sanctions”.

Concept

The need to avoid unintended humanitarian consequences and to focus on those who are responsible for wrongdoing rather than vulnerable populations has led to development of the concept of “smart sanctions”. Smart sanctions are supposed to be more sophisticated, developed and sharper sanctions, which are designed, implemented and precisely targeted against the regimes rather than general population of the target state. These sanctions are designed to focus on groups of persons responsible for the breaches of the peace or the threats to international peace and security, while ideally leaving other parts of the population and international trade relations unaffected. Such sanctions can target financial assets as well as the freedom of movement of the targeted persons through travel and aviation sanctions. They are smart in the sense that they avoid any large-scale humanitarian crisis while inducing hardships on the actual wrong doers. The *raison d'être* of smart sanctions can be found in UN Secretary-General Kofi Annan’s statement “If you have to punish, then punish the guilty”.

The concept of “smart sanctions” contains different connotations and thus it becomes difficult at times to construct a single definition. One of such connotations

is that smart sanctions are “targeted”, i.e. they are designed to hurt the targeted elite but not general population and thus are more “humane” sanctions. Another connotation of smart sanctions is that they are “sharp”. This means that they hurt harder and presumably therefore are more effective. A third connotation is that the smart sanctions are “selective” in the sense that they are not generalised embargoes or bans but are confined to particular area/s. There can be few other connotations and this may seem confusing, but “smart sanctions” have to be viewed and assessed considering all of them. Rather, these connotations are merely essential features of smart sanctions, which may complement each other.

In other words the objective of sanctions is to coerce a particular target, which is actually responsible for the wrongdoing rather than hurting larger entities like the state and the society. Smart sanctions are aimed at the decision-making elite who is violating an international norm and should hurt only them. The sanctioning authority can also identify individuals and non-state organisations and groups as the targets of smart sanctions. Smart sanctions are also focussed in the sense that specific sanctions like a visa or travel restrictions and /or freezing of bank accounts are imposed rather than a general and complete ban on all kinds of international intercourse. They are supposed to be selective sanctions against particular targets. Smart sanctions are also “sharp” as they directly hit hard only on the target potentially becoming more effective than before. There can be other features of smart sanctions like a time period after which sanctions automatically could expire if not renewed by

the sanctioning authority. Smart sanctions are also discriminatory in their approach as they discriminate against their true targets, the policymakers responsible for reprehensible policies and the elites who benefit from and support them rather than general population.

The tools of smart sanctions strategy usually include financial sanctions; travel and visa bans, arms embargoes, and commodity ban. Financial sanctions include a variety of restrictions and bans like freezing of the foreign assets of the targeted country, government and individuals, denial to access to property in other countries, denial of funds and loans by financial institutions, transfer of funds from other countries, The sender can also impose a commodity ban which is aimed to prohibit a import or export of a particular commodity which is helping the target. It can include export of a commodity, which generates funds for the regime, like diamonds in case of Sierra Leone and UNITA, or oil. Arms embargo continues to be an important part of UN sanctions strategy. An impeccable logic makes arms embargoes a potentially powerful instrument in the array of United Nations peace- and security-building mechanisms. By denying aggressors and human rights abusers the implements of war and repression, arms embargoes contribute directly to preventing and reducing the level of armed conflict. Moreover, in constricting only selected weapons and military-related goods and services, and in denying these to ruling elites, their armies, and other violent combatants, arms embargoes constitute the quintessential example of a smart sanction. The Arms embargoes are targeted in

the sense that their purpose is to bend military and political leaders by denying them access to weapons and other military equipment, while sparing the civilian population. Arms embargoes seek to reduce violent conflict by reducing access to weapons. In addition, arms embargoes help identify and stigmatise those who violate international norms.¹ The importance of an arms embargo can also be seen that in only one of the UN mandatory sanctions cases in the 1990s, an arms embargo was not imposed. Travel or aviation bans fall into two categories: restrictions on all air travel to and from a target country, and restrictions on the travel of targeted individuals, groups or entities. In the case of restrictions on air travel to and from a target country, or areas under control of targeted groups (such as UNITA), the assumption is that the flight ban will affect people in power substantially more than the general population. Travel bans and visa restrictions against individuals not only avoid the possible humanitarian impacts of broader travel restrictions, but also are useful in denying legitimacy to political leaders, military officials and their supporters.²

The smart sanctions have several advantages over generalised and comprehensive trade sanctions and embargos. They are morally appropriate as when they are directed against an authoritarian state, it is the regime that feels the pain, not the people. By minimising the humanitarian costs, it makes the UN less vulnerable to

¹ Gary Hufbauer, Reginald Jones & Barbara Oegg, "Targeted Sanctions: A Policy Alternative?" *Georgetown Journal of Law and Policy in International Business* (Washington), vol. 32, no 1, Fall 2002, pp. 11-16.

² Ibid

charges that it subverts its own humanitarian commitments by imposing sanctions regimes, which harm the innocent. Under these circumstances it also makes it more difficult for target regimes to rally foreign and domestic support against sanctions as Iraq has sought with some success to do. Then smart sanctions do not normally disrupt non-military trade and thus they minimise costs to third party states, thus making it easier to sustain sanctions in the long term. By denying the targeted regimes the black market opportunities provided by comprehensive sanctions, smart sanctions reduce perverse incentives for elite members to profit from sanctions. As they reduce the need for humanitarian assistance, smart sanctions deny regimes the opportunities to extend their control over the population through control over the disbursement of aid. The impact on social infrastructures is also minimal and thus long-term damage to educational and health systems, and to the civil society is greatly avoided.³

Conceptualisation Process

(a) Thinking in the United Nations

The recent origins of the thinking on strengthening United Nations sanctions practice could be traced to Secretary-General Boutros Boutros Ghali's reports on the "Agenda for Peace" (1992) and its supplement in 1995. The Agenda while making recommendations to enhance the role of United Nations in maintaining international peace and security in the post cold war era drew attention

³ UN Sanctions: How Effective? How Necessary? A Paper Prepared by the Strategic Planning Unit, Executive Office of the Secretary General, United Nations, for the Second Interlaken Seminar on

to “special economic problems” faced by third states while implementing sanctions it recommended to the Security Council “to devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties”.⁴

More elaborate and concrete proposals regarding maintenance of international peace were made in the “Supplement to An Agenda for Peace” published in 1995. In its Supplement, the issue of sanctions was discussed with greater detail than the original report. The purpose of sanctions was categorically mentioned as to modify the behaviour of the targeted state, which is threatening international peace and security, and **not** to punish in retribution.⁵ Three main problems were highlighted relating to the objectives of sanctions; monitoring and implementation, and their unintended (humanitarian) effects. It was observed that often the objectives of specific sanctions regimes were not clearly defined or sometime they tended to change. It was recommended that at the time of sanctions imposition, the objectives should be clearly stated and so should the necessary requirements to be achieved by the target for their lifting.⁶ The report recognised sanctions as “blunt instruments” which can often lead to unintended and unwanted effects like inflicting suffering to vulnerable groups in the target state; damage to

Targeted Financial Sanctions, Switzerland 1999, p.112

⁴ See Boutros Boutros Ghali “An Agenda for Peace” (A/47/277-S/24111) (New York 1992) para. 41.

⁵ See Boutros Boutros Ghali “Supplement to an Agenda for Peace: position paper of the Secretary-General on the Occasion of the fiftieth anniversary of the United Nations” (A/50/60-S/1995/1) para. 66-76.

⁶ Ibid

humanitarian and development objectives of the UN in the target state; harm the productive capacity of the target; provoke a “patriotic response” against the international community and strengthen the support base of the political elite and leaders. Thus sanctions can often pose ethical and practical problems to United Nations. The Secretary-General proposed that whenever sanctions were imposed, provisions should be made to facilitate the work of humanitarian agencies to help the vulnerable groups in the target state. It was also recommended that the problems of third parties who approach the Security Council under Article 50 should be addressed urgently and the costs of implementing sanctions should be borne by all members equally. In order to address the problems arising from sanctions, the Secretary-General suggested establishment of a mechanism to carry out the following five functions:

- (a) Assessment of potential impact of sanctions on the target country and on third countries before they are imposed
- (b) Monitoring of application of the sanctions;
- (c) Measuring the effects of sanctions in order to enable the Security Council to fine tune them with a view to maximizing their political impact and minimizing collateral damage;
- (d) Ensure the delivery of humanitarian assistance to vulnerable groups;

- (e) Explore different ways of assisting Member States that suffer collateral damage and to evaluate their claims submitted under Article 50.

The report further suggested using the expertise of economic agencies of the UN system and of the member states to make the sanctions more effective.

The UN General Assembly responded to the Secretary-General's reports by establishing an Informal Open-ended Working Group on an Agenda for Peace. The working group met in the 47th, 48th and 50th session of the general Assembly. One of the four sub-groups of the Working Group was on the 'Question of United Nations Imposed Sanctions' and was chaired by the Permanent Representative of the Brazil, Ambassador Celso Luiz Nunes Amorim. The sub-group, popularly called the 'Amorim Group' submitted its recommendation to improve the effectiveness of UN sanctions to the General Assembly in July 1996, which was later, adopted in 1997. The resolution incorporated nearly 39 broad recommendations, which included pre-assessing humanitarian impacts of sanctions, clear warning to the target states before sanctions were imposed, periodic reviews of sanctions, make the working of sanctions committees more transparent and monitoring by expert groups.⁷

Boutros- Boutros Ghali's successor, Kofi Annan, in his annual Reports to

⁷ See U.N. Doc. A/RES/51/242, 15 September 1997

General Assembly on the Work of the Organization and also in reports on Situation in Africa, stressed on use of mandatory sanctions as a valuable tool available to the Security Council to bring pressure upon the target state while avoiding recourse to force. But at the same time he acknowledged the need to make necessary reforms in the current sanctions practice and pleaded the case for making “blunt” sanctions more focussed. It was at this time, the focus began to shift from broad multidimensional sanctions to more targeted and selective ones. The Secretary-General “welcomed the concept of “smart sanctions”, which would seek to pressurise regimes rather than peoples and thus reducing the humanitarian costs”. The United Nations Committee on Economic, Social and Cultural Rights recommended to the Economic and Social Council that considerations like humanitarian exemptions and human rights of vulnerable groups must be taken into account when a sanctions regime is being designed and implemented; that effective monitoring must be undertaken throughout the period of sanctions; and that the party or parties responsible for the imposition, maintenance or implementation of sanctions should take steps to prevent any disproportionate suffering being experienced by vulnerable groups within the targeted country ⁸ Several other UN agencies also presented reports highlighting the negative impact of comprehensive sanctions and the urgent need to make the sanctions regime more specific and targeted ⁹. The term

⁸“The Relationship Between Sanctions and Respect for Economic, Social and Cultural Rights” United Nations Economic and Social Council: E/C.12/1997/8, 12 December 1997

⁹ See L. Minear, et al., *Toward More Humane and Effective Sanctions Management: Enhancement of the Capacity of the United Nations Systems, Executive Summary*. Study prepared at the request of the United Nations Department of Humanitarian Affairs on behalf of the Inter-Agency Standing Committee, 6 October 1997, E Hoskins “ *The Impact of Sanctions: A Study of UNICEF’s Perspective*, (New York, 1998)

“smart sanctions” has since then become a regular feature in many UN documents, especially in the reports of the Secretary-General. In his Millennium Report, the Secretary-General requested the Security Council to benefit from the findings of several reports and recommendations of UN and non-UN forums while designing and applying sanctions in future.

At the instance of the President of the Security Council ¹⁰, the Security Council established an informal working group on temporary basis to develop general recommendations improve the effectiveness of United Nations sanctions. The Working Group on Sanctions is expected to examine and recommend (a) working methods of sanctions committees and inter-committee coordination, (b) capacity of the United Nations Secretariat; (c) coordination within the United Nations system and cooperation with regional and other international organizations; (d) design of sanctions resolutions including the conditions for the maintaining/lifting of sanctions; (e) pre- and post-assessment reports and the ongoing evaluation of sanctions regimes; (f). Monitoring and enforcement of sanctions; (g) unintended impacts of sanctions; (h) humanitarian exemptions; (i) targeted sanctions; and (j) assisting members States in implementing sanctions.¹¹

¹⁰ (S/1999/92) 29 January 1999

¹¹ (S/2000/319) 17 April, 2000

The Office of the Coordinator of Humanitarian Affairs, formerly known as the United Nations Department of Humanitarian Affairs, also undertook studies and published several reports in this context. A report by UNICEF recommended similar reforms and stressed that the sanctions should be designed and implemented with respect for basic human values as expressed in the two International Covenants on Human Rights and the Convention on the Rights of the Child and that the existing humanitarian law should be clarified with the application of sanctions.¹² The studies intended to provide information, analysis and expertise so that sanctions can be designed to maximise their political impact while avoiding negative humanitarian impact. The studies of OCHA sought to develop a methodology to pre assess the potential impact of sanctions and to monitor that impact once they have been imposed. A methodology using social, economic and demographic indicators as applied for the first time to assess impact of sanctions against Sierra Leone, Burundi and Sudan.¹³

(b) Governments Views

The efforts to encourage the incorporation of smart sanctions into UN practice were complemented by the interest and studies by governments, research

¹² See E. Hoskins, “The Impact of Sanctions: A Study of UNICEF’s Perspective” (New York, 1998)

¹³ See OCHA “Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective” (New York 1998) And OCHA Briefing Note “Assessing the Humanitarian Impact of Sanctions: Towards Smarter and Better Managed Sanctions Regime” (New York, 1998)

foundations, institutes, and also individual scholars who documented recent problems related to UN sanctions. The main thrust of these efforts was to focus on the design of better-targeted sanctions, which would have little or no humanitarian impact.

The United Nations Secretariat in collaboration with the Organization for Security and Cooperation in Europe (OSCE) and the European Union convened at Copenhagen a Round Table Conference on United Nations Sanctions, which retrospectively looked at the lessons learned from the Yugoslav sanctions regime. The report of the Round Table, including its recommendations, was submitted to the Security Council (S/1996/776). The report made an assessment of various problems and loopholes in implementation and management of the sanctions regime against Yugoslavia and its main recommendations included closer cooperation and coordination between sanctions imposing and enforcing authorities and the humanitarian agencies and enlargement of the type of agencies who can directly approach for humanitarian exemptions.¹⁴ Individual member states have also expressed the need for reform in the procedures and practices of sanctions by the Security Council. In a joint letter to the President of the Security Council, the permanent members of the Security Council, urged regular assessment of short and long term humanitarian impact of sanctions; fair distribution of humanitarian aid and

¹⁴ See "UNCHR Discussion Paper on Humanitarian Action in a Sanctions Environment: The Impact Of Sanctions imposed on the Federal Republic of Yugoslavia on the delivery of humanitarian Assistance " Presented at the Round Table on the Effectiveness of United Nations Sanctions in the Case of Former Yugoslavia, (Copenhagen 1996)

better coordination between UN and non UN humanitarian agencies.¹⁵ In 1998, Russia submitted a working paper, which called for sanctions to be introduced only in case of a real and objective determination of a violation of international law. It further stressed that sanctions must "pursue clearly defined purposes, have a time-frame, be subject to regular review and provide clearly stipulated conditions for lifting them," and that their imposition must not be politically motivated. The paper suggested six basic criteria and conditions to guide the Security Council in an effort to establish "the concept of 'humanitarian limits' and restrain the "sanctions syndrome" that has characterized its recent actions.¹⁶

Since 1997, the Swiss Government has brought together representatives from national governments, central bank authorities, the United Nations Secretariat, various international organizations, the private banking sector, and academia to examine the instrument of targeted financial sanctions. Known as the "Interlaken process" the aims of the seminars was to explore the potential effectiveness of targeted financial sanctions, which may include freezing the financial assets and blocking the financial transactions of targeted entities or individuals.

The first meeting in 1998 (Interlaken I) focused on the specific technical requirements of financial sanctions and identified a number of preconditions necessary for targeted sanctions to be effective: clear identification of the target,

¹⁵ See U.N. Doc. S/1995/300, 13 April 1995

¹⁶ Working paper submitted by the Russian Federation, document A/AC.182/L.94, January 27, 1997,

ability to identify and control financial flows, and strengthening of the UN sanctions instrument. The second Interlaken seminar (Interlaken II) of 1999, attended by more than seventy participants from twenty-two States on all continents, further developed recommendations on the technical aspects of targeting, but also addressed issues arising from differences in implementation of financial sanctions among States. One Working Group at Interlaken II developed standardized texts or building blocks of language for future UN Security Council resolutions, including prohibitions and exemptions. The Interlaken seminars are few of the most important contributions towards developing a “smarter” sanctions strategy for the United Nations and are often acknowledged by the Secretary-General.¹⁷ The Seminars argued that the technical feasibility of targeted financial sanctions has been established, and they just needed to be tested.¹⁸ Further, a symposium on Targeted Sanctions, sponsored by eight non-governmental organizations was held in New York in December 1998, again with substantive support from the UN Secretariat. The Chairmen of the various Sanctions Committees and other members of the Security Council made presentations to the symposium, and the final report was submitted to the Security Council.

In November 1999, the German Government convened, in Bonn, the first of two seminars on ‘Smart Sanctions, the Next Step: Arms Embargoes and Travel

paras. 1, 8, 9.

¹⁷ See Kofi Annan “ We the People. The Role of the United Nations” A/54/2000 para. 232-233.

¹⁸ Kofi Annan, *Report the Work of the Organization*, General Assembly Official Records Fifty-fourth Session Supplement No. 1 (A/54/1)

Bans', intended to facilitate an in depth consideration of the concept of more effective arms embargoes and travel bans, which aimed to assist the Security Council in maintaining or restoring international peace and security. "Bonn-Berlin Process" continued till December 2000. The recommendations of seminars included making the goals of the arms embargos and travel bans more objectively defined, closer cooperation and coordination with other states for implementation and monitoring of sanctions, deployment of international observers at airfields and ports, establishing a permanent mechanism of coordination at the UN Secretariat and employment of experts to monitor and aid the sanctions committees.¹⁹

More recently the Swedish government has initiated the Stockholm process focuses on how the models targeted sanctions developed by the Interlaken process and Bonn/Berlin process will be implemented and monitored.

(c) Non Governmental Studies

The Carnegie Commission, which prepared a report, suggested that the United Nations need for a complete re-examination of its sanctions practice and it included a broader second Collective Measures committee like the first one of 1952, should be created and mandated " as a means of building political consensus to strengthen the UN's Sanctions infrastructure and its ability to work with the member

¹⁹ See "The Experience of United Nations administering Arms Embargoes and Travel Sanctions ", An Informal Background Paper prepared by Department of Political Affairs for The Second Expert

states who have to implement and enforce Security Council's resolutions".²⁰ Again in December 1998, the Overseas Development Institute organized a seminar in London, with UN participation, which sought to reinforce the current debate on targeted sanctions. Its report suggested the United Nations and other sanctioning authorities to make sanctions more humane by necessarily maintaining minimum humanitarian standards, make sanctions more targeted, make arms embargos more effective, encourage independent monitoring and assessment of sanctions and a flexible, constructive and active political dialogue with the target.²¹

With support from the Canadian Government, the International Peace Academy commissioned a study intended to assess the impact of Security Council applied sanctions and to formulate recommendations for possible improvements. In April 2000, a symposium on sanctions, entitled "Towards Smarter, More Effective UN Sanctions", sponsored by the International Peace Academy, was held in New York.

Complementary to the development of idea of "smart sanctions", the UN Security Council has also concentrated its efforts on developing mechanism to address the problems of third states and improving the working of sanctions

Seminar, Berlin, December 3-5, 2000

²⁰ See J Stremlau "Sharpening International Sanctions: Towards a Stronger role of the United Nations" Report to the Carnegie Commission on Preventing Deadly Conflict, (New York 1996)

²¹ Koenraad Van Brabant "Can Sanctions be Smarter? The Current Debate" Report of a Conference

committees. A multidimensional assistance to third parties affected by sanctions was perceived at different forums, which recommended greater cooperation and coordination among the specialized agencies and the economic and financial institutions of the United Nations. To improve the working of the sanctions committees, it was recommended to improve the channels of communications between different organs and bodies of the UN system as well as NGOs and the member states; regular visit to that target states by the chairpersons of sanctions committees to take a first hand account of the situation; coordinated reporting of violations of sanctions by member states and the UN Secretariat; periodic assessment of humanitarian and social impact of sanctions; greater transparency in the working of sanctions committees and direct coordination with humanitarian organizations over humanitarian exemptions.²²

These efforts by various officials, departments, forums and organisations both inside and outside persuaded the Security Council to develop and incorporate a new and smarter approach while resorting to sanctions against any target.

Smart Sanctions in Practice

As proposals and recommendations to make the UN sanctions more effective, humane and focussed came from different quarters, the United Nations positively

held in London, 16-17 December 1998 (London, 1999) p. 2.

²² Note by the President of the Security Council: Work of the Sanctions Committees, S/1999/92, 29 January, 1999

responded to them by incorporating them into action. The United Nations has also attempted to reform sanctions, which were imposed earlier and tried to make them smart. The Security Council made significant reforms in existing sanctions regimes against Liberia and the UNITA faction in Angola and incorporated a smarter approach in these cases. In Liberia, civil war broke out in 1989. The United Nations supported the efforts of ECOWAS in its efforts to end the conflict. The Security Council imposed an arms embargo against Liberia in 1993²³ but it was only in 1995 that a sanctions committee was established.²⁴ The ECOWAS brokered a peace agreement in Cotonou, Benin in 1993. To support the implementation of ceasefire a United Nations Observer mission in Liberia was established. The ceasefire was implemented only in 1997 and the UNOMIL supervised the elections, which led to formation of the Charles Taylor government. The United Nations discovered the new Liberian government was involved in supporting the RUF in Sierra Leone and was constantly violating the embargos imposed against Sierra Leone. In 2001, the Security Council terminated the sanctions imposed against Liberia in 1993 but adopted measures to compel it to stop violating the sanctions regime against Sierra Leone.²⁵ The Security Council called for Liberia to cease support immediately for the Revolutionary United Front (RUF) of Sierra Leone and other armed groups in the region, by expelling the RUF members from Liberia and the ceasing any financial and military support to the RUF. The Council decided that all States should prevent

²³ S/RES/788, (1992) of 19 November

²⁴ S/RES/985, (1995) of 13 April

²⁵ S/RES/1343, (2001) of 7 March

the sale or supply to Liberia of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts. It also decided that States should prevent the provision to Liberia of any training or technical assistance related to such arms and related materiel. Additional measures included a ban import of all rough diamonds from Liberia, travel ban on senior members of the Government of Liberia or their spouses, as well as on other individuals providing financial and military support to armed rebel groups in countries neighbouring Liberia. To enforce these sanctions effectively, the UN Secretariat is maintaining a list of individuals on whom the travel ban is imposed. The sanctions placed under resolution 1343 are kind of secondary pressure imposed on a state to compel it to enforce a mandatory sanction regime on another country.

In case of sanctions regime against the UNITA faction in Angola, an arms and oil embargo was imposed in 1993 by resolution 864. The United Nations considered UNITA's defiance to participate in the peace process as a threat to peace. The United Nations ~~now~~^{had} initiated the peace process through its four successive peace missions since 1989. As fragile peace established by the Lusaka peace accord 1994 was threatened, the UN Security Council in 1997 imposed additional measures against the UNITA leadership to pressurise them to rejoin the peace process.²⁶ These measures included travel restrictions on the of senior officials of UNITA and their families, the closure of all UNITA offices, the prohibition of flights of aircraft by or

²⁶ S/RES/ 1127, (1997) of 28 August

for UNITA, the supply of aviation material and services. The sanctions committee was asked to consider necessary humanitarian exemptions. But the Security Council postponed the implementation of these measures till 30th September 1997²⁷ and again till 30th October²⁸ to give the UNITA time to comply with the obligations set out in resolution 1127. The measure came in to force on 30th October²⁹ and the Security Council reaffirmed that it is ready to review these measures or to consider the imposition of additional measures on the basis of the report to be submitted by the Secretary-General.³⁰ In 1998, the Council asked all states to freeze all funds, financial assets and property of UNITA and of its senior officials and their families.³¹ It also placed a diamond embargo. Diplomatic, commercial and transport sanctions against the UNITA. The Security Council specified that these sanctions would terminate if the Secretary-General reports that UNITA has fully complied with all its relevant obligations. Following the Secretary-General's report on situation in Angola, an expert panel was established to undertake studies to trace violations in arms trafficking, oil supplies and the diamond trade, as well as the movement of UNITA funds.³² The Expert Panel visited nearly 30 countries in Europe and Africa (including Angola) as well as U.S and Israel, met Government officials and diplomats, non-governmental organizations, police and intelligence sources, industry associations and commercial companies, journalists and others. In

²⁷ Ibid

²⁸ S/RES/ 1130, (1997) 29 September

²⁹ S/RES/1135,(1997)of 29 October

³⁰ S/RES/1149, (1998) of 27 January

³¹ SRES/1173, (1998) of 12 June

³² S/RES/1237, (1999) of 7th May

January 1999, the Chairman of the Security Council Sanctions Committee on Angola, accompanied by two members of the Panel, visited Angola and conducted interviews with former military officers and officials of UNITA. They provided details of UNITA's financial network, its use of diamonds as currency for purchasing weapons, and the role of weapons brokers and of mercenaries used for training soldiers.³³ Based on its report, the Security Council decided to tighten the existing sanctions against UNITA; establish a new monitoring mechanism; and put into place a process, which would allow the Council appropriate action against states, which violate the sanctions against UNITA.³⁴ A relaxation in the sanctions regime against the UNITA was done when travel ban on senior UNITA officials was suspended for a period of 90 days.³⁵

The United Nations used sanctions and threat to impose sanctions against UNITA as a tool to pressurise it to accept and return to the peace process. The sanctions were directly targeted against the leadership and attempted to make the war making capacity of UNITA more costly. The Security Council in its several resolutions showed greater flexibility in its approach than any other sanctions regime, giving favourable opportunities to UNITA to comply with their obligations. To implement the sanctions more rigorously, Expert panels were established to investigate violations and concrete steps were taken on their reports and

³³ See "United Nations and Angola", Report Prepared by the Peace and Security Section, Department of Public Information, United Nations (New York 2000)

³⁴ S/RES 1295, (2000) of 18 April,

³⁵ S/RES/ 1412, (2002) of 17th May

recommendations. These innovative monitoring efforts generated pressure on neighbouring states to comply with sanctions against UNITA. The UNITA was successfully pressurized by the sanctions to rejoin the peace process and the recent developments have indicated brighter prospects for peace in this war-ravaged nation.

The first instance of smart sanctions occurred in 1997 when Council took specific measures against the military junta and the rebel forces in Sierra Leone. The second case of UN resorting to smart sanctions was Afghanistan in 1999, where sanctions were limited in scope and targeted against at specific individuals, organizations, entities and activities.

Sierra Leone.

The UN involvement in Sierra Leone is comparable to what it did in many other cases of intra-state conflicts in sub-Saharan Africa. But it is also quite similar to its involvement in Haiti in 1992-94, as the goal was not only to restore peace, but also to re-establish an ousted elected civilian government.

Sierra Leone plunged into civil war in 1991 when the revolutionary United Front or the RUF launched a war to overthrow the government. With the support of the Military Observer Group (ECOMOG) of the Economic Community of West African States (ECOWAS) Sierra Leone's army tried at first to defend the government but, the following year, the army itself overthrew the government. Since

1995, the United Nations worked in collaboration with the Organization of African Unity (OAU) and ECOWAS to try to negotiate a settlement to the conflict and return the country to civilian rule. A civilian government was formed in 1996 after parliamentary and presidential elections, but it was overthrown in a second military coup in 1997. This time the warring RUF joined the military junta. Outraged with this anti democracy acts of the military and the RUF and deteriorating humanitarian situation the ECOWAS imposed a total trade ban on Sierra Leone.

The United Nations imposed only an oil and arms embargo as well as travel restrictions against the military junta of Sierra Leone in 1997. The sanctions committee was authorised to approve applications, on a case-by-case basis, by the democratically-elected Government of Sierra Leone for the import of petroleum as well as request from any other government or by United Nations agencies, for example; verified humanitarian purposes, or for the needs of the Military Observer Group of ECOWAS (ECOMOG).³⁶ ECOWAS was entrusted to ensure strict implementation of the arms embargo and the supply of petroleum, which involved inspection of incoming ships and it was required to report every 30 days to the sanctions committee on all activities undertaken in this regard. A UN inter –agency mission was sent to Sierra Leone to report on the humanitarian situation. The mission was based in neighbouring state Guinea and it reported an acute shortage of food and medical supplies in Sierra Leone. The mission recommended that humanitarian agencies should operate in an impartial manner and should

maintenance their independence from any armed faction.³⁷ ECOWAS was successful in getting a peace plan signed by the military junta, which was later rejected.

Responding to an attack by rebel/army junta forces in February 1998, ECOMOG launched a military operation that led to the collapse of the junta and its expulsion from the capital, Freetown. The former democratically elected government was restored in March 1998 and the Security Council terminated the oil embargo.³⁸ Further relaxation of sanctions regime was done but the arms embargo against the non-governmental forces remained in force.³⁹ The Security Council instructed the Sierra Leone government and other states to notify to the sanctions committee all arms exports made to the government forces. A transit and travel ban on several leaders of former military junta and the RUF was placed. The Security Council also established the United Nations Observer Mission in Sierra Leone (UNOMSIL) for an initial period of six months.

However the fighting continued and international observers reported atrocities and human rights abuses committed against civilians by the RUF. The RUF ran over the capital in January 1999 but soon the ECOMOG troops retook the control of the capital and again installed the civilian government, The United Nations initiated a series of diplomatic efforts aimed at opening up dialogue with the rebels.

³⁶ S/RES/1132, (1997) of 8 October

³⁷ Interim Report of Inter-agency Mission to Sierra Leone, Security Council Doc. S/1998/155 (1998)

³⁸ S/RES/1156, (1998) of 16 March

Negotiations between the Government and the rebels began in May 1999 and on 7 July all parties to the conflict signed the Lome agreement to end hostilities and form a government of national unity. As a part of the Lome peace agreement, the Security Council authorized the institution of United Nations Assistance Mission in Sierra Leone (UNAMSIL) in October 1999. By March 2001, the military component of the UNAMSIL consisted of 17,500 military personnel, including the 260 military observers.

Alarmed about the fact that funds generated from illegal mining and the warring factions to finance their war efforts used export of diamonds, the Security Council imposed “diamond sanctions” against Sierra Leone.⁴⁰ Direct or indirect import of rough diamonds from any territory of Sierra Leone was banned and the Government of Sierra Leone was instructed to issue Certificate of Origins to all diamonds extracted in Sierra Leone. These measures were imposed for a period of 18 months after which a review of situation in Sierra Leone and the government control of diamond producing areas were to be made.

Afghanistan

The case of sanctions against Afghanistan is quite similar to that of Sudan and Libya in the sense that here also the regime’s support to international terrorism

³⁹ S/RES/1171, 5 June 1998

⁴⁰ S/RES/1306, (2000) of 5 July

and harbouring of terrorists was considered as a threat to peace. Usama Bin laden, and his organisation Al Qaeda was responsible for several acts of terrorism including the bombing of US embassies in east African capitals and of USS Cole in Yemen in 1998. He and many of his associates had taken refuge in the Taliban controlled Afghanistan and were carrying out there activities with there cooperation. The Taliban, which had imposed a very hard line version of Islamic governance in Afghanistan was actively supporting by means of funds, arms and training to separatist groups for waging *jehad*. In 1998, the Security Council warned the Taliban that it would impose sanctions against the regime if it does not stop sheltering and training terrorists.⁴¹ After waiting for positive sign of change in the Taliban support to terrorism for nearly a year, the Security Council adopted a resolution in 1999⁴² and demanded the ruling Taliban regime of Afghanistan turn over Usama bin Laden without further delay to appropriate authorities. Since this demand of the Security Council was not met, the prohibitions contained in paragraph 4 of the resolution entered into effect on 14 November 1999. The resolution was jointly moved by the Russian Federation and the United States and was unanimously adopted. Those sanctions were: a flight ban on any aircraft owned, leased or operated by or on behalf of the Taliban, as well as a freeze on funds directly or indirectly owned or controlled by the Taliban.

⁴¹ S/RES/1214, (1998) of 8 December

⁴² S/RES/1276 (1999) of 15 October

To further pressurise the Taliban, the Security Council tightened the sanctions regime by imposing a year later an embargo on the direct or indirect supply, sale and transfer of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts and preventing sale, supply or transfer of technical advice, assistance or training related to military activities.⁴³ However these measures were not applicable to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training. Security Council also instructed closing of all offices of Taliban in territories of other states as well as of the Ariana Afghan Airline and immediately freeze funds and other financial assets of Usama bin Laden and individuals and entities associated with him. Aircrafts coming from or heading towards Taliban controlled Afghanistan was to be denied permission to land or take off. Restrictions on the entry and transit on all senior Taliban officials were placed. As one of main sources of income of the Taliban came from the opium cultivation, sale of the chemical acetic anhydride to any person in Afghanistan was banned.⁴⁴ These sanctions were designed to be in force for a year.

For effective implementation of these sanctions the Security Council asked the Secretary-General to establish a mechanism within 30 days to monitor their implementation in July 2001. That mechanism is comprised of a Monitoring Group in New York of about five experts, including a Chairman, and a Sanctions

⁴³ S/RES 1333, (1999) of 19 December

⁴⁴ Ibid

Enforcement Support Team of 15 members, was to be located in States bordering the territory of Afghanistan under Taliban control.⁴⁵

The September 11 attacks on American financial and defence establishments in New York and Washington proved to be a major turning point in United Nations efforts to apply smart sanctions. The attack showed that the mightiest of the world power was also vulnerable to terrorism and the threat of terrorism is global. The investigations revealed that Usama bin laden and his organisation Al Qaeda, enjoying safe haven in Taliban controlled Afghanistan were directly responsible for these attacks. The United States forged an international coalition against terrorism and demanded the surrender of Usama bin laden, which was denied by the Taliban regime. A military action, called “Operation Enduring Freedom” was launched by the international forces against Taliban and Al Qaeda. The Taliban regime was deposed from power in Afghanistan and after a UN initiated agreement; a multi ethnic transitional government was formed.

As peace and unity returned to Afghanistan, the Security Council withdrew the ban on the Ariana Afghan Airlines as it was n longer owned or operated by the Taliban.⁴⁶ Other sanctions, which were targeted and imposed only against Taliban, were extended by a period of 12 months.⁴⁷

⁴⁵ S/RES/1363, (2001) of 30 July

⁴⁶ S/RES/1388, (2002) of 15 January

⁴⁷ S/RES/1390, (2002) of 16 January

The sanctions placed against the Taliban regime can be considered to be smart in several aspects. The United Nations identified and singled out that it is the Taliban faction, which is harbouring international terrorism and protecting the indicted Usama Bin Laden and not the entire state of Afghanistan. So it was the Taliban regime, which was directly targeted by the sanctions and not the general public. The United Nations, and the international community, was aware of the fact that Afghanistan was ravaged by decades of internal conflict and natural disasters, and thus it continued to get aid and assistance from several international humanitarian organizations. The Taliban and the non-Taliban territories and entities imposed the sanctions only against the territories of Afghanistan, which were controlled, particularly the Northern Alliance enjoyed international support. The UN established an expert group and placed it in geographical proximity of Afghanistan for effective monitoring. Then several UN agencies like the OCHA were continuously engaged in monitoring the humanitarian impact of sanctions. In his reports, the Secretary-General held the ongoing war and drought as major causes of deterioration of humanitarian situation in Afghanistan. As a part of his efforts to persuade the Taliban regime to comply with the Security Council resolutions, the Secretary-General met Taliban foreign minister on his visit to Pakistan in March 2001. The sanctions that were imposed against Taliban and Usama bin Laden were directed to control their activities. Their offices in other countries were closed, and foreign assets seized, Prohibition of sale of certain chemicals was directed to deny

them funds generated from narcotics trade. Even when Taliban was ousted from power in early 2002, the sanctions are still in force.

Sanctions against Terrorism

As the threats to global peace and security have changed in recent years, the purposes for which sanctions were imposed have also broadened. During the 1990s' sanctions were imposed to reverse territorial aggression, restore democratically elected governments, protect human rights etc. In the wake of terrorist attack on United States on 11th September 2001, the Security Council adopted the most significant anti terrorism instruments in its history.^{(S/RES/1373(2001) of 28 September)} The Security Council acknowledged the menace of terrorism as a threat to international peace and security and urged for global effort to root out terrorism. Earlier in the declaration issued by the first ever summit meeting of the Security Council members (31 Jan 1992) it was clearly pointed at that terrorism was one of the emerging threats to the peace and security. Soon in April 1992, Libya became the first country to be acted in the form of punitive sanctions for refusing to cooperate in apprehending and prosecuting two Libyan national accused of carrying mid air bombing of a PANAM airliner at Lockerbie (Scotland) in 1987. The 11 September terrorist attacks on US were condemned by the Security Council as threat to international peace and it

determined 'to combat terrorism by all means'.⁴⁸ In the most far-reaching sanctions measure ever adopted by the council, effectively mandating that all UN member states impose financial sanctions and travel restrictions against entities and individuals associated with terrorist acts. The resolution, adopted unanimously, demanded that member states should take action within their borders to criminalize the financing of terror, and adopt other law enforcement and intelligence-sharing measures. This was an unprecedented attempt to mandate changes in the internal law enforcement and legal procedures of UN member states. It established worldwide financial sanctions against terrorists and their supporters. The resolution also demanded greater bilateral and multilateral cooperation against states, urged them to become party to relevant international conventions and protocols against terrorism⁴⁹ and deny any kind of active or passive support to terrorists. The resolution has imposed a comprehensive set of sanctions but the text of resolution does not name any particular individual or organisation. A sanctions committee is also established to monitor the imposition of the resolution. Better known as the Security Council's Counter- Terrorism Committee, it is engaged in formulating a global strategy to fight terrorism. Ambassador Jeremy Greenstock of the United Kingdom chairs the committee. The committee is involved in coordinating with quite a lot of other international and regional organisations and specialised bodies like the World Bank, IMF, the UN Terrorism Prevention Branch of UNODCCP at Vienna, Interpol, the

⁴⁸ S/RES/1368, (2001) of 12 September

⁴⁹ Convention against taking of Hostages (1979), International Convention for Suppression of Terrorist Bombings (1997), Declaration on Measures to Eliminate International Terrorism (1994), Convention on the Marking of Plastic Explosives for the Purpose of Detention (1991)

European Union, OSCE, NATO, G8, OAU, OAS etc. In a ministerial level meeting in November 2001, the Security Council adopted a Declaration on the Global efforts to Counter Terrorism in which it highlighted the need to explore ways to assist States with the implementation of the provisions of resolution 1373.⁵⁰ Accordingly, the Counter Terrorism Committee (CTC) invited all States in a position to do so, to contribute to the compilation of a directory of sources of advice and expertise in the areas of legislative and administrative practice.⁵¹ This Directory of Available Assistance shall list experts in the fields of drafting of counter-terrorism legislation, financial law, customs law, immigration law, extradition law, police and law enforcement work and Illegal arms trafficking. The Committee has urged the member states to periodically report the implementation of counter terrorism strategy. It has also urged implementation of nearly 12 UN conventions and protocols related to terrorism. In January 2002, the CTC appointed six experts to assist in developing counter terrorism strategies. The committee was also exploring the possibility of establishing a Trust Fund for financial assistance to member states to combat terrorism. A Financial Action Task Force or FATF was also established to make special recommendations to enforce financial sanctions against terrorist groups. The CTC is also considering the issue of human rights and recommended that states should ensure adherence to human rights and conventions when they implement resolution 1373. The committee has asked specialised bodies like ICAO and International Maritime Organisation to make anti terrorist laws and rules in their

⁵⁰ S/RES/ 1377, (2001) of 12 November

⁵¹ S/2001/986, 19 October 2001

area of operation. By June 2002, the CTC examined reports from 157 member states regarding the steps they have taken to implement the resolution 1373.

CONCLUSION

In the twentieth century, sanctions became a popular instrument of coercive diplomacy of states which by virtue of their economic, political or military might tried to influence other states. Sanctions were developed as economic weapons to enforce foreign policy goals. The basic assumption behind the concept of sanctions has always been that economic hardships caused by sanctions would lead to political compliance by the targeted state. The two most important international organisations of the twentieth century, the League of Nations and later the United Nations gave a new dimension to the concept of sanctions. Before and outside these organizations, sanctions have been tools of economic statecraft, but with the establishment of these international organizations, sanctions became important tools in the hands of member states to restore international norms of peace and security if breached. Non-military sanctions found an important place in the collective security system promoted by both the League and the United Nations. The United Nations non-military sanctions as a part of enforcement action to be taken in collectively in response to acts of aggression, threat to peace and the breach of the peace.

I

The UN scheme for collective security –including sanctions- had become hostage to cold war contentions. As such non-military sanctions in the nature of economic sanctions under the Article 41 of the Charter could not be counted upon

as a dependable safeguard the interest of world peace and stability. Disproportionate to the large number of violations of Charter prohibition of unilateral, aggressive use of force in international relations, the Security Council imposed sanctions only twice during the cold war period, against Rhodesia and South Africa.

The end of Cold war and the collapse of Soviet Union remarkably transformed the international political climate from confrontation towards cooperation between the permanent members; it held the promise of creating conditions conducive to effective action by the United Nations including recourse to sanctions, as envisaged in the Charter decades ago for maintaining international peace and security. Sanctions became popular instruments of peace enforcement in the post cold war period. In the first case of post-cold war sanctions, the United Nations imposed most comprehensive and far-reaching sanctions against Iraq in 1990 and they are still in force. Besides, the Security Council has resorted to sanctions against governmental and non-governmental targets in both inter and intra-state conflicts for achieving a variety of conventional and unconventional objectives, ranging from reversing territorial aggression, promoting disarmament, restoring democratically elected governments, protecting human rights, to deterring and punishing terrorism. It may be pertinent to note that the power realities written into the decisions making procedures cast an inevitable shadow over the sanctions decisions in the Council. Sanctions imposed by Security Council are indeed indicative of the preferences or primarily the permanent members. The veto power

along with permanent seat has given some states critical power in matters of international peace and security. Often the interests of individual member states are influential in determining the target and the nature of sanctions. Sanctions against Rhodesia were imposed only when one of the permanent members, United Kingdom, found itself unable to retake control of the rebellious colony on its own. In South African case, while more wider sanctions were demanded by the Third World countries, the Security Council imposed only an arms embargo as trade and commercial sanctions would have affected economic interests of many of its permanent members. Removal of Saddam Hussein from power in Iraq, as felt necessary by the United States and Britain, has become the unspoken but main objective of continuing with the sanctions against Iraq. Since Chapter VII decisions are binding in nature, member states abide by and implement the sanctions decisions even if they might have a different view to take. Sanctions have been mostly employed by the rich and powerful nations of the west to realise their foreign policy goals.

In many cases the sanctions had become blunt with reference to severity of their impact. The “blunt” sanctions gave rise to undesirable and unintended humanitarian and other problems that have questioned the rationality of the UN mandated sanctions. These problems are painfully evident in Iraq where sanctions are in force for the last 12 years. The general economic and social health of the country has declined so much that continuance of sanctions has become for the UN

increasing difficult to justify. A study noted that shortage of food; medicines and general economic decline brought by sanctions have caused death to more than four thousand four hundred children under the age of five each month from hunger and disease. The negative impact of sanctions on civilians is also visible in the loss of more than two-thirds of the country's GDP, the persistence of exorbitant prices, collapse of private incomes, soaring unemployment, large-scale depletion of personal assets and massive school drop-out rates. There is more to it. Twenty-one states approached the Security Council for help claiming the loss of \$30 billion for their enforcement of sanctions against Iraq. Similar, though less severe was the nature of hardships out of sanctions against Yugoslavia. In short the humanitarian suffering of great magnitude and collateral damage on third states pointed to the need for the UN to reform its existing sanctions outlook. Demand for reform or making sanctions better and less brutal also came from member states, non-Governmental Organisations and humanitarian agencies within the United Nations system.

II

It is this context that development of the concept of "smart" sanction took place. "Smart" sanctions are a step forward in the evolution of concept of sanctions. The basic rationale is that for sanctions to yield the desired/ intended results, they should be specifically, clearly targeted against those who are deemed responsible for the offences rather than the entire population of the country. Thus smart sanctions are sharply focussed in order to have a minimal unwanted negative impact. The

origin of the idea of “smart” sanctions can be traced “An Agenda for Peace “(1992) which highlighted the main problems related with sanctions and urged the member states to refine the sanctions practise. The UN Committee on Economic, Social and Cultural Rights recommended to the Economic and Social Council that humanitarian exemptions and human rights of vulnerable groups in the targeted state should be considered before the sanctions are imposed. The Office of the Coordinator of Humanitarian Affairs also undertook studies and published several reports on sanctions. In a major non-UN initiative, the Swiss government organised two Interlaken Seminars in 1998 and 1999 to develop and examine the instrument of targeted financial sanctions. The Security Council in the recent sanctions cases endorsed many of the Interlaken recommendations. The Germany sponsored “Bonn-Berlin Process” (1999), suggested to make the arms embargos and travel bans more effective. The Canadian, Germany, EU and the International Peace Academy separately took interest and helped develop the concept of smart sanctions.

The various suggestions which emerged from these exercises advocated targeted financial sanctions along with freezing of foreign assets of individuals and entities and blocking of financial transactions, a travel or visa ban on individuals associated with the offence; embargo on arms and military technology, fight ban, ban on import or export of particular commodities which generate funds for the targeted regime, diplomatic and cultural sanctions. The Security Council and the General Assembly took note of these suggestions. It may also be stated that these

spirit of these suggestions had perhaps influencing the sanctions regimes the place brought by the Council subsequently.

As discussed elsewhere in the present study, the United Nations imposed “smart” sanctions against Sierra Leone, Afghanistan, and UNITA rebels in Angola. In Sierra Leone, the UN collaborated with ECOWAS and the Organisation of African Unity to end the civil war and facilitate the return of ousted democratically elected government. While ECOWAS imposed a total trade embargo against Sierra Leone in 1997, the Security Council imposed only an oil and arms embargo and travel restrictions against the military junta. When in 1998, the democratic government was restored with help of ECOMOG, the oil embargo was terminated but a transit and travel ban was imposed on several leaders of the former military junta and the Revolutionary United Front. To deny the funds generated from illegal mining and export of diamonds by the rebel forces to finance their war efforts, the Security Council imposed “diamond sanctions” against Sierra Leone. The United Nations took a flexible position while sanctioning Sierra Leone; it reacted with alterations in the sanctions regime with the changing political situation. The humanitarian conditions the worn torn country were closely monitored by the UN agencies and expert groups.

The selective and targeted sanctions against Taliban regime in Afghanistan were imposed in 1999 when the regime failed to abide by the United Nations

warning to stop sheltering and training terrorists on its territory. The first set of sanctions imposed in 1999 included an aviation ban and freezing of the Taliban-linked funds and finances. The Taliban regime showed no sign of any change in its behaviour and to further tighten the earlier sanctions, another set of sanctions were imposed in December 2000 which were designed to be in force for a year. These included: a comprehensive embargo on arms, military technology and training; diplomatic sanctions which included closing of Taliban offices and also of its national carrier Ariana Afghan Air; flight ban; a travel ban on senior Taliban officials and most importantly the freezing of assets and funds of Usama bin Laden and his associates. But this second set of sanctions too failed to quickly force a change in the Taliban attitude in giving shelter to Usama bin Laden. Following the 11 September terrorist attacks on United States, Taliban was given clear warning that if it failed to handover Usama Bin laden, then a direct military action would be taken against it. The Taliban continued with its stubborn refusal to comply. The United States led international coalition against terrorism launched the “Operation Enduring Freedom” in October 2001, which ousted the Taliban regime from power in Afghanistan. However the objective to ‘kill or capture’ Usama bin Laden is still not achieved. All sanctions against Taliban were renewed but the ban of Ariana Afghan Airlines was lifted in 2002.

While imposing sanctions against Taliban, the UN was aware of the grim humanitarian conditions in Afghanistan. The UN humanitarian agencies continued their activities in the Taliban controlled territories in a hostile environment.

Sanctions were selectively targeted against the Taliban regime and the territories under its control. To effectively enforce sanctions, expert groups were established and a Sanctions Enforcement Support Team was sent to neighbouring countries. The Secretary-General continued with his diplomatic efforts to persuade the Taliban regime to comply with the Security Council's demands.

Sanctions against UNITA faction in Angola were imposed into three packages, for its defiance to participate in a UN initiated peace process. An arms and oil embargo was imposed in 1993. In 1997 additional measures against UNITA and its membership were imposed which included travel restrictions for senior UNITA officials and their families, closure of UNITA offices in other countries, and an aviation ban. However the Security Council adopted a flexible approach and gave UNITA some time to comply after which the sanctions were implemented. Financial sanctions were imposed against UNITA and its senior officials in 1998 along with a diplomatic, commercial, transport and diamond sanctions. An expert panel was formed which visited 30 countries and investigated the violations of sanctions against UNITA. A "name and shame" approach was employed by the investigative panel, by identifying specific countries, companies, and individuals responsible for sanctions violations. Recently the travel ban against its senior leadership has been eased for sometime as UNITA has given clear signals that it wants to end the hostilities with the government.

Suppression of international terrorism has also been a major target of smart sanctions. The summit meeting of Security Council in 1992 identified international terrorism as a major threat to world peace. Sanctions against Libya, Sudan and Afghanistan were imposed as these states were accused of supporting international terrorism through sheltering and aiding terrorists. Following the 11th September attacks on U.S., the Security Council adopted the most significant anti-terrorism measures in U.N history. Acting under the provisions of Chapter VII, the Council unanimously adopted resolution 1373, which is the most far-reaching sanctions measure ever adopted by the Council. The resolution insisted that all states (not just member states) should impose financial sanctions and travel restrictions against entities and individuals associated with terrorist acts. The resolution established worldwide financial sanctions against terrorists and their supporters and demanded that member states must take action within their borders to criminalize the financing of terror, and adopt other law enforcement and intelligence-sharing measures. This is an unprecedented attempt to mandate changes in the internal law enforcement and legal procedures of UN member states. Apart from the mandatory financial, travel and military sanctions, the resolution also desired that states to become party to various international conventions against terrorism; facilitate and intensify sharing of information related to terrorists and to see that people with asylum or refugee status did not indulge in terrorist activities. The Security Council established the Counter Terrorist committee (CTC) to implement the sanctions against terrorism. The CTC is

currently involved in compiling available information about terrorists and also on experts in the fields of drafting of counter-terrorism legislation, financial law, customs law, immigration law, extradition law, police and law enforcement work and Illegal arms trafficking. Several UN bodies and agencies, non-governmental organisations, international and regional organisations are also helping the CTC in its efforts to combat terrorism. By June 2002, 157 member states had submitted reports to the CTC on the efforts they have taken to implement the resolution 1373.

The sanctions against terrorism imposed by resolution 1373 shall have multi dimensional implications on world politics. Earlier, the Security Council was taking case –by-case action against those who were supporting terrorism. But now it has determined to combat global terrorism through a global approach. The resolution 1373 will also hopefully have a deterring effect on those countries that have directly or indirectly supported terrorisms. If effectively implemented and enforced, it will mobilize the entire international community into a sustained effort to combat and eliminate terrorists and terrorist networks.

Since 1997, “smart” sanctions have been preferred course to “blunt” sanctions. But it is still unclear that they have proved to be effective in bringing the targeted regimes or parties to comply with the demands of the Security Council on their own. In Afghanistan, smart sanctions did not compel the Taliban to handover Usama Bin Laden, nor did the United States led military campaign that ousted the

Taliban. Similarly, it is more due to death of UNITA's chief Savembi that the organisation is accepting the peace process in Angola rather than pressures created by the sanctions regime. Even the sanctions against terrorism has not immediately stopped states to end their support to terrorist groups Thus it is too early to say that smart sanctions have been successful in these cases. At best, it can be said that smart sanctions did not cause any major humanitarian crisis or negative impact on the third state, which any comprehensive sanctions regime might have caused.

III

The discussions in various chapters dwelling upon various conceptual and practical aspects of smart sanctions gives rise to a few general observations, which are presented below

Experience has shown sanctions have contributed in creating conditions whereby the target has agreed to comply with the Security Council demands. There are always other factors that have worked to influence any change in behaviour of the target. Sanctions influence the behaviour of the target, but do not work in isolation from other factors. At best they are influential, not decisive. Thus smart sanctions should also be taken as tools of pressurising or influencing the target to accept it a position where a peaceful settlement of the dispute can be made. Sanctions must be understood as instruments of persuasion rather that of punishment. Sanctions

effectiveness should derive not from the severity of economic damage, but from the ability to isolate an erring regime. They should be seen as one set of policy instruments in an overall strategy to bring pressure on the intransigent regime. By themselves they are unlikely to achieve their goals. Thus it is necessary for the United Nations and the Member states to accept the fact that sanctions, smart or not so-smart, could be alternative to use of military force, they can never be an alternative to a negotiated settlement.

Though Security Council is testing technical feasibility of smart sanctions, it is still unclear that they enjoy broad legitimacy among the member states outside the Security Council. Just because Security Council is resorting to smart sanctions, does not mean that they enjoy agreement and legitimacy from all the members of the United Nations. Smart sanctions have been welcomed as a necessary reform; it is still for the United Nations and the Member States to address the issue of legitimacy of smart sanctions.

There is a great deal of optimism from smart sanctions both in and outside the United Nations. To the extent smart sanctions have a direct impact on the actual wrongdoers and avoid any large-scale humanitarian crisis, this optimism is quite justified. But a very cautious approach is needed towards smart sanctions. Any

exuberance towards the capabilities of smart sanctions may possibly lead to unrealistic unproductive situations. It must not be forgotten that sanctions, of any kind, are coercive by nature and will always have a negative impact on the target and even the senders. Sanctions carry destructive powers in themselves. They are themselves a way of using force and their human consequences, can be as bad as those of direct military action. Sanctions should not be thought as a humane alternative to use of force. It is very necessary for the United Nations to adopt a pragmatic and rational approach towards sanctions as an instrument to maintain international peace and security.

As smart sanctions are more complicated and technical in nature than the earlier types of sanctions, they need more expert aid while designing and implementing them. The United Nations will have to ensure a “smart sanctions management “ to make the “smart” sanctions successful.

In sum, in the post cold war years, sanctions have become any easy and frequently used instrument in hands of Security Council to enforce its decisions. But just because they are liberally resorted to do not mean that they are the best instruments. Similarly smart sanctions, which are actually more focussed and selective versions of existing type of sanctions, will not become effective by merely adding the prefix ‘smart’. The word smart used with sanctions can often give an unrealistic impression about their effectiveness.

Mandatory Sanctions Regimes Imposed by the UN Security Council

Target	Relevant Resolution	Period	Types of Sanctions
Southern Rhodesia	S/RES/217 S/RES/232	1966-1979	Comprehensive economic sanctions, financial sanctions, diplomatic sanctions
South Africa	S/RES/418	1977-1994	Arms embargo
Iraq	S/RES/661 S/RES/687	1990—	Comprehensive economic sanctions, suspension of clearing system, arms embargo, ban on air-freight
Former Federal Republic of Yugoslavia	S/RES/713 S/RES/757 S/RES/942 S/RES/1160 S/RES/1199	1991-1996; 1998-2001	Arms embargo (1991-96) Comprehensive economic sanctions, ban on service-sector business, sporting and cultural sanctions, ban on air traffic(against Serbia and Montenegro)(1991-96) Arms embargo (1998-2001)
Somalia	S/RES/733	1992—	Arms embargo
Libya	S/RES/731 S/RES/748 S/RES/883	1992- (Suspended in 1999)	Arms embargo, suspension of air traffic, diplomatic sanctions, freezing of foreign bank-accounts, partial embargo
Haiti	S/RS/841 S/RES/873 S/RS/917	1993-94	Oil and arms embargo, freezing of foreign bank-accounts
Liberia	S/RES/788 S/RES/1343	1992-2001 2001-	Arms embargo (1992-200) Diamonds and Arms embargo , travel ban (2001-)
Angola (UNITA)	S/RES/864 S/RES/1127 S/RES/1173 S/RES/1237	1993—	Oil and arms embargo , travel and diplomatic sanctions , financial sanctions and diamond embargo
Rwanda	S/RES/918	1994- (1995:suspension for Rwandan government)	Arms embargo
Sudan	S/RES/1054 S/RES/1070	1996-2001	Diplomatic sanctions, aviation sanctions threatened but not imposed
Sierra Leone	S/RES/1132 S/RES/1156 S/RES/1171	1997-	Oil and arms embargo, travel ban (1997-1998); arms embargo and travel ban on RUF (1998—); partial diamond embargo
Afghanistan (Taliban regime)	S/RES/1333	1999—	Aviation sanctions (1999-2002); financial sanctions arms embargo, diplomatic sanctions (1999—)
Eritrea and Ethiopia	S/RES1298	2000-2001	Arms embargo

SMART SANCTIONS IMPOSED BY UNITED NATIONS

CASES	TARGET OF SANCTIONS	TYPES OF SANCTIONS				
		Financial	Commodity	Travel/Flight	Arms	Diplomatic
ANGOLA SC Res. 864. (1993) SC Res. 1127. (1997) SC Res. 1173. (1998)	UNITA		x (oil)		x	
				x		
		x	x (diamond)			x
SIERRA LEONE SC Res. 1132 (1997) SC Res. 1306 (2000)	Military junta and the Revolutionary United Front		x (oil)	x	x	
			x (diamond)			
AFGHANISTAN SC Res. 1267 (1999) Sc Res. 1333 (2000)	TALIBAN	x		x		
		x	x	x	x	x

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