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Review Article

ARE SMART SANCTIONS FEASIBLE?

By ARNE TOSTENSEN and BEATE BULL*

INTRODUCTION

DURING the 1990s the UN dramatically increased its imposition of sanctions regimes, leading some to label this period the “sanctions decade.”¹ Between 1945 and 1990 the UN Security Council had imposed multilateral sanctions only twice: a 1966 trade embargo against Southern Rhodesia’s white minority government and a 1977 arms embargo against the South African apartheid regime. In the 1990s, however, sanctions were applied in sixteen cases, which can be attributed to the end of the cold war changing the political configuration of the Security Council and enabling a more united front on international action because the erstwhile ideological divisions had disappeared.

By the latter half of the decade, however, there was widespread dissatisfaction with the meager results achieved by this policy instrument, inspiring a search for an alternative approach. Think tanks, research institutions, UN agencies, and nongovernmental organizations (NGOs) alike were induced to engage in a policy process that eventually led to the creation of so-called smart sanctions, which are considered to be a refinement of the conventional sanctions tool.

Smart sanctions, in theory, differ from conventional sanctions in two major ways. First, they more effectively target and penalize—via arms embargoes, financial sanctions, and travel restrictions—the political elites espousing policies and committing actions deemed reprehensible by the international community. Second, smart sanctions protect vulnerable social groups (for example, children, women, and the elderly) from so-called collateral damage by exempting specified commodities

*The authors would like to thank colleagues at the Chr. Michelsen Institute and two anonymous referees for helpful comments on an earlier version.

¹ David Cortright and George A. Lopez (with Richard W. Conroy, Jaleh Dashti-Gibson, and Julia Wagler), eds., *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, Colo.: Lynne Rienner, 2000).

(such as food and medical supplies) from the embargo. This suggested two-pronged sanctions approach was thus designed to hit the real perpetrators harder and to spare potential innocent victims, leading to speedier change of sanctionee behavior.

This article will review and critique key literature on smart sanctions. Although smart sanctions may seem logically compelling and politically attractive, such regimes are difficult to establish and enforce because of numerous inherent operational problems and the intricacies of the Security Council's political processes. This article will review the experiences with conventional sanctions and introduce the concept of smart sanctions. Next, it will review the two-pronged approach of smart sanctions by examining humanitarian exemptions and discussing targeting issues (that is, detailing proposals related to arms embargoes, financial sanctions, and travel restrictions). We will then highlight the costs and political intricacies of establishing and enforcing a smart sanctions regime. In concluding, we will emphasize the main purpose of our review—to scale down the undue expectations that are attached to smart sanctions.

BACKGROUND ON CONVENTIONAL SANCTIONS

This section will review the underpinnings of conventional sanctions theory and highlight its shortcomings. International sanctions, in general, may be defined as the temporary abrogation of normal state-to-state relations to pressure target states into changing specified policies or modifying behavior in suggested directions.² Sanctions subsume an array of measures, ranging from oral condemnation (for example, “shaming”) to military intervention. Sanctions are normally touted as peaceful alternatives to armed intervention, but during the 1990s, there was an increase in the use of military measures in *conjunction* with economic sanctions, as in the cases of Iraq, Yugoslavia, Kosovo, and Sierra Leone.

Sanctions may be *comprehensive*, comprising the full gamut of means (trade boycotts and embargoes across the board), or *selective*, covering only certain areas. Furthermore, they also may be *mandatory* by decision of the UN Security Council, or *voluntary*, leaving their implementation to the respective sanctioning states. Moreover, sanctions may be imposed *unilaterally*, by one state against another, or *multilaterally*, by a

² The targets are normally states. Only rarely have sanctions been imposed on nonstate actors, such as UNITA (in Angola in 1997) and the Taliban (in Afghanistan in 1999).

broad front of states against a target state. In this article we will discuss only mandatory sanctions imposed by decision of the UN Security Council, although unilateral sanctions have been imposed by a number of states, most notably, the United States.³

The legal basis of UN sanctions can be found in the UN Charter, Chapter VII, Articles 39–42, which empowers the UN to maintain or restore international peace and security through various enforcement measures, including sanctions and the use of military force. This mandate has gradually been broadened to permit the institution of measures to deal with massive human rights violations, breaches of international humanitarian law, transgressions of democratic rule, and acts of aggression where military forces have crossed national borders.⁴

The fundamental flaw in conventional sanctions theory is its assumption that hardships inflicted on the civilian population of a targeted state will lead to grassroots political pressure on that state's leaders to change their behavior.⁵ In other words, a transmission mechanism—often referred to as the “pain-gain” formula (the greater the pain inflicted on the target state, the greater and quicker the gain by the sanctioning states)—is presumed to be operative.

The theoretical underpinnings for the pain-gain formula lie in a cost-benefit analysis calculated by the parties in financial terms, as well as in terms of the costs of casualties, political gains and losses, and trade-offs between future human rights gains and immediate violations. However, the transmission assumption and cost-benefit rationale are questionable on theoretical, empirical, and ethical grounds.⁶ Each party weighs costs and benefits differently; for instance, targeted authoritarian regimes may not accord the same value to the sanctity and quality of human life as do the sanctioning states.

While a transmission mechanism is operative in some cases, particularly if there is reasonably strong internal opposition to the targeted

³ For a critique of U.S. sanctions practices, see Richard N. Haass, “Sanctioning Madness,” *Foreign Affairs* 76 (November–December 1997).

⁴ See, for example, Frederik Grünfeld, “Human Rights Violations: A Threat to International Peace and Security,” in M. Castermans-Holleman, F. van Hoof, and J. Smith, eds., *The Role of the Nation-State in the Twenty-first Century: Human Rights, International Organisations and Foreign Policy: Essays in Honour of Peter Baehr* (The Hague: Kluwer Law International, 1998).

⁵ The position of the South African liberation movement in favor of sanctions, regardless of the hardship inflicted, no doubt lent credence to this assumption. The saying that “sanctions hurt, but *apartheid* kills” captures this attitude very well. For a broader discussion of this issue, see Thomas G. Weiss, David Cortright, George A. Lopez, and Larry Minear, eds., *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham, Md.: Rowman and Littlefield, 1997).

⁶ For a discussion of ethical issues, see Hadewych Hazelzet, “Assessing the Suffering from ‘Successful’ Sanctions: An Ethical Approach,” in Willem J. M. van Genugten and Gerard A. de Groot, eds., *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights—A Multidisciplinary Approach* (Antwerp: Intersentia, 1999).

government, it cannot be assumed that it holds universally. In fact, the consequences of some sanctions regimes make their imposition counterproductive. Damage inflicted on civilian populations may easily be exploited by the targeted government to argue that the sanctions regime is inhumane; in turn, this may lead to sympathy for the targeted state and criticism against the management of the sanctions regime. The Iraqi government, for instance, has argued that

the people of Iraq are today facing veritable destruction by a weapon that is just as dangerous as weapons of mass destruction; this has so far led to the death of 1 million persons, half of whom were children. This destruction, which is a form of genocide inflicted on the Iraqi people, is a crime punishable under international law regardless of whether it is committed in time of war or peace. [The embargo] constitutes a flagrant violation of human rights in Iraq and is totally incompatible with the provisions of article 1 of the International Covenants of Human Rights . . . [which states that] in no case may a people be deprived of its own means of subsistence.⁷

With respect to the transmission mechanism, it is therefore exceedingly difficult to predict what internal political dynamics a sanctions regime will create in the targeted state. Furthermore, those trying to design effective smart sanctions have little research at their disposal on the effects of sanctions on targeted states' decision-making processes. The developments in Iraq, where the influence of sanctions on such processes remains unclear, have been counterproductive for the sanctioning states. The sanctions, by persuading the average Iraqi that their demonized external enemies—the U.S. and the UN—are just as bad as Saddam Hussein's regime and thereby drawing attention away from his own abuses, have given him a window of opportunity to further repress internal opposition. Furthermore, the international community's concern over the continued bombing by the U.S. and U.K. has diverted *its* attention from his abuses.

In the Iraqi case, the presumption that the sanctions would enable opposition forces to exert sufficient pressure on the incumbent regime to bring it into compliance clearly has been proven wrong. Whereas this has been an effective approach in some cases—most notably, in South Africa—in others it quite simply is not. We have seen that sanctions may produce unexpected changes in the internal political constel-

⁷ Note verbale dated January 29, 1996, from the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights (E/CN.4/1996/140), Impact of the Economic Embargo on the Economic, Social and Cultural Situation in Iraq, paras. 19 and 20. In a letter dated December 28, 2001, to the UN secretary-general, Iraq has adjusted its estimated death toll upward to 1.6 million.

lations; the resulting realignments may alter the balance of power in favor of the very hardliners sanctions aim to weaken. In authoritarian states in which the government can manipulate information flows for propaganda purposes, this effect tends to be reinforced.

These problems in the application of conventional sanctions theory have not gone unnoticed in the scholarly literature. While most writers on sanctions favor the theory, a few have enumerated its faults. In an early article Johan Galtung criticized the pain-gain notion as "naïve," suggesting that no "transmission mechanism" exists to convert civilian pain into political gain.⁸ Thirty years later, Robert A. Pape also argued convincingly against what he considered unfounded optimism about the efficacy of sanctions.⁹ We argue along the same lines, extending the objection beyond conventional sanctions to include smart sanctions. If civilian "pain" cannot be translated into votes at the ballot box, the transmission mechanism is ultimately unlikely to work. This calls into question the usefulness of economic sanctions against nondemocratic states. As one recognized sanctions expert, Peter van Bergeijk, asserts: "The empirical findings suggest that the less democratic a country the more likely it is that economic sanctions will fail to change policies."¹⁰

Although most sanctions regimes have sought to induce the sanctionee to modify its behavior, the sanctions are also designed to weaken the capability of sanctioned states to inflict further damage, short of behavior modification. In the "economic statecraft" tradition of Klaus Knorr and David A. Baldwin, this second aspect features prominently.¹¹ Most of the literature on success rates, however, has focused on other criteria.

Comprehensive, conventional sanctions also have been subjected to much criticism on grounds of political ineffectiveness and humanitarian bluntness. The voluminous literature that has accumulated over the years tends to conclude that sanctions are rarely effective, even though exceptions have been documented.¹² In a widely publicized, detailed study of more than one hundred cases of economic sanctions, Hufbauer et al. conclude that success was achieved in about one-third of the

⁸ Johan Galtung, "On the Effects of International Economic Sanctions, With Examples from the Case of Rhodesia," *World Politics* 19 (April 1967).

⁹ Robert A. Pape, "Why Economic Sanctions Do Not Work," *International Security* 22 (Fall 1997).

¹⁰ Peter A. G. van Bergeijk, "Economic Sanctions: Why Do They Succeed; Why Do They Fail?" in van Genugten and de Groot (fn. 6), 106.

¹¹ See Klaus Knorr, *The Power of Nations: The Political Economy of International Relations* (New York: Basic Books, 1975), esp. chap. 6; and David A. Baldwin, *Economic Statecraft* (Princeton: N.J.: Princeton University Press, 1985).

¹² See the extensive bibliography in Weiss et al. (fn. 5), 247–68. A recent collection of critical articles can be found in van Genugten and de Groot (fn. 6).

cases.¹³ Based on a much more limited number of sanctions episodes, Cortright and Lopez arrive at a similar conclusion.¹⁴ There is thus broad agreement that due to their complexity, sanctions are problematic and have often produced paradoxical and contradictory effects.

UN sanctions are the result of a political bargaining process among the very diverse and conflicting power interests represented in the Security Council. Resolutions setting the conditions of a sanctions regime are often vague about the success criteria, that is, the minimum requirements that a sanctionee needs to fulfill for the sanctions to be lifted or relaxed. Furthermore, the resolutions are subject to political compromise between, on the one hand, states wanting to be tough on violators of international norms of good behavior and, on the other hand, states wanting only symbolic—and ultimately ineffective—acts; thus, the texts of the resolutions tend to become watered down. Moreover, the spillover effects of sanctions on neighboring states or transit states often lead to de facto unwillingness on the part of affected third states to implement sanctions measures. The higher the costs to the neighbors, the greater the likelihood of “leakage” in sanctions implementation. This creates an environment in which the target state has ample opportunities for circumvention, ultimately weakening the pressure brought to bear by the sanctioners.

Given the flaws in conventional sanctions theory and practice, what are the policy implications of the lessons learned from sanctions experiences to date? It certainly cannot be that sanctions should be directed only at democracies in order for the transmission mechanism to work. Most sanctionees find themselves as targets of sanctions precisely because their authoritarian style of governance is considered a threat to international peace. Since a simple transmission mechanism does not work in scenarios in which internal opposition is weak and elections are fraudulent or nonexistent, deeper knowledge of the internal dynamics of the target state is required for sanctions to be effective. Such knowledge would come from mapping the internal military, economic, and political constituencies that form the power base of the sanctioned regime, including personal patron-client relationships among the political elite. Only on the basis of such a detailed understanding of the tar-

¹³ Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy*, 2d ed. (Washington, D.C.: Institute of International Economics, 1990). This relatively positive conclusion has been severely criticized on the grounds that the success criterion was “too generous,” and that the distinction was not properly drawn between the effects attributable to economic sanctions and those attributable to the threat or use of military force.

¹⁴ Cortright and Lopez (fn. 1), chap. 11.

geted states could a set of smart sanctions instruments be designed to fit the specific circumstances of a given case.

The coffee boycott of Idi Amin's abhorrent dictatorship in Uganda by the U.S. in the late-1970s may be considered as an early example of smart sanctions—albeit on a unilateral basis. It sought to bring down Amin's rule by targeting the principal export upon which his regime depended, but without jeopardizing the ability of the smallholders to recede into subsistence food production and survive despite the sanctions impact.¹⁵

TOWARD SMART SANCTIONS

The ineffectiveness of conventional sanctions—along with the need to breach human rights conventions to enforce them—has driven the search for smart sanctions.¹⁶ Decision makers and experts held a series of conferences and seminars in the late 1990s to address the challenges involved in their development. Two conferences, sponsored by the Swiss Federal Office for Foreign Economic Affairs and held in 1998 and 1999 at Interlaken, Switzerland—referred to as the “Interlaken Process”—examined targeted financial sanctions.¹⁷ Another 1998 conference—sponsored by the U.K. Department for International Development (DFID) and hosted by the Overseas Development Institute (ODI) in London—also sought to refine the sanctions instrument.¹⁸ Yet another two conferences sponsored by the Foreign Office of the Federal Republic of Germany and organized in late 1999 and late 2000, in Bonn and Berlin, respectively—by the Bonn International Centre for Conversion (BICC)—placed a special emphasis on targeted arms embargoes and travel sanctions.¹⁹ Most recently, the Watson Institute for International Studies at Brown University organized a workshop in

¹⁵ See Richard H. Ullman, “Human Rights and Economic Power: The United States versus Idi Amin,” *Foreign Affairs* 56 (April 1978).

¹⁶ United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 8* (E/C.12/1997/8), *The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, December 12, 1997.

¹⁷ The reports are available on the Internet at <http://www.smartsanctions.ch>; this website also contains useful links to other sources of information.

¹⁸ Koenraad Van Brabant, “Can Sanctions Be Smarter? The Current Debate” (Report of a conference held in London, December 16–17, 1998, May 1999); also available at <http://www.smartsanctions.ch>.

¹⁹ The full report with submitted papers is available on the Internet at <http://www.bicc.de>, including a number of links to additional sources of information. The contributions to these conferences and the reports of the intervening working group sessions have since been published in Michael Brzoska, ed., *Smart Sanctions: The Next Steps—The Debate on Arms Embargoes and Travel Sanctions within the “Bonn–Berlin Process”* (Baden-Baden: Nomos Verlagsgesellschaft, 2001).

New York on July 23, 2001, to deliberate on targeted financial sanctions, and it has since produced a manual for their design and implementation.²⁰ The deliberations and findings of these conferences, plus other recent publications, represent the state of the art in the search for new ways and means of making sanctions “smarter,” and include a series of policy recommendations.²¹

From these conferences we can deduce that the UN has heeded the criticisms leveled against its sanctions policies and practices. To address such criticisms, it has considered new institutional arrangements for elaborating and implementing sanctions regimes.²² The suggested smart sanctions approach developed at these conferences, by policymakers, and in the literature, comprises two strands: (1) improving the procedures for humanitarian exemptions in sanctions regimes by establishing better criteria for exemption and monitoring humanitarian impacts; and (2) targeting sanctions measures at the elites in power (and their supportive constituencies) who violate accepted international standards of behavior. These two strands have a common goal: to enhance the effectiveness of sanctions regimes by applying maximum pressure on the culpable actors while at the same time minimizing the adverse humanitarian impacts (euphemistically referred to as “collateral damage”) on innocent internal groups as well as on neighboring states. This is the quintessence of “smart” or “designer” sanctions—they are tailored to the situation at hand.

HUMANITARIAN EXEMPTIONS

The adverse humanitarian consequences of sanctions against Iraq and other nations have compelled the UN and states participating in sanctions fronts to search for alternative arrangements that will not exacerbate civilian pain.

Most sanctions regimes have been designed in crisis situations in which the potential adverse humanitarian impacts have been disregarded because of the urgency of imposition. To date, no technical review mechanisms to monitor humanitarian repercussions have been

²⁰ Thomas J. Biersteker, Sue E. Eckert, Peter Romaniuk, Aaron Halegua, and Natalie Reid, *Targeted Financial Sanctions: A Manual for Design and Implementation—Contributions from the Interlaken Process* (Providence, R.I.: Watson Institute for International Studies, 2001).

²¹ See Haass (fn. 3); van Genugten and de Groot (fn. 6), chap. 8; and Cortright and Lopez (fn. 1), chap. 12.

²² United Nations, Office for the Coordination of Humanitarian Affairs (OCHA), *Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective* (New York: OCHA, 1998). See also John Strem-lau, *Sharpening International Sanctions: Toward a Stronger Role for the United Nations* (New York: Carnegie Corporation of New York, 1996).

included in a sanctions package. There is no existing generic exemptions terminology that is routinely incorporated into sanctions resolutions; nor is there a generally accepted—let alone authoritative—definition of what is understood as “humanitarian” that could guide sanctions committees when granting exemptions. This propensity for sanctions without adequate checks lends itself to international politicking.

Unfortunately, there is no satisfactory methodology available for authoritatively and accurately documenting the humanitarian costs of sanctions scenarios.²³ The lack of baseline data prior to the imposition of sanctions is the most common problem in this endeavor. Another intractable problem is separating the hardships caused by sanctions from those stemming from other deprivation factors such as social upheaval, mass migration, and general poverty. Nevertheless, despite faulty methodology, there is still enough anecdotal and other evidence—however patchy and flawed—to conclude that the adverse humanitarian effects of sanctions are unacceptably high; accordingly, humanitarian exemptions are considered necessary. A distinction is generally drawn between the various approaches to humanitarian exemptions, namely: (1) institution-specific exemptions; (2) item-specific exemptions; and (3) country-specific exemptions.

Institution-specific exemptions allow recognized international humanitarian organizations—NGOs like Oxfam, the Red Cross and Red Crescent Societies, and Médecins sans Frontières, or intergovernmental organizations like the UNHCR—blanket exemptions to import items to support their activities on the ground. These organizations then mobilize to undertake logistical operations to furnish the civilian population and vulnerable groups with necessary food and medical supplies and to provide health and educational services.

By contrast, the item-specific approach automatically exempts designated items such as foodstuffs (particularly those consumed by children and other vulnerable groups); water purification materials; and medical supplies (including essential drugs and vaccines) without review. Politically sensitive dual-use items, however, are subject to continuous review. Although attempts have been made to generate universally accepted lists of items to be exempted, there is still no broad consensus on an authoritative list.

Country-specific exemptions follow from the premise that each sanctions scenario is unique. Exemptions lists are developed for each

²³ Larry Minear, Thomas G. Weiss (and associates), *Towards More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* (New York: UN Department of Humanitarian Affairs, 1997), chap. 2; available on the Internet at <http://www.reliefweb.int>.

particular sanctions episode, taking into account the specificity of each situation. For instance, high import dependence on food staples might designate food exemptions from the very start of a sanctions regime.

A combination of the institution-specific and country-specific approaches is normally recommended because they eliminate the time-consuming processing of applications for item-specific exemptions that results in huge backlogs.²⁴ The various types of exemptions and their associated advantages and disadvantages are enumerated in a thorough study commissioned by the UN Department of Humanitarian Affairs (predecessor to OCHA, the UN Office for the Coordination of Humanitarian Affairs).²⁵

When considering humanitarian exemptions, one cannot overlook that they are a form of sanctions “leakage” and thus undermine the effectiveness of a sanctions regime; implementing a humanitarian program in a sanctions environment represents a fundamental paradox. The near unanimous claim that humanitarian exemptions do not undermine the effectiveness of sanctions regimes is questionable—and ultimately a matter that can be ascertained only through empirical investigation. It may be the reflection of wishful thinking or the desire to maintain the legitimacy of sanctions as an instrument of peaceful coercion in international relations that leads advocates to view the reduction of damage resulting from humanitarian exemptions as not weakening what is a punitive instrument. Even so, most observers assert that the weakening of sanctions regimes originates not in humanitarian concerns and activities, but rather in the political and commercial realm—the main sources of “leakage” are government noncooperation, black marketeering, and corruption.

TARGETING ELITES

Targeting political elites complements the humanitarian exemptions element of a smart sanctions regime. Three categories of targeting instruments have been established: arms embargoes, financial sanctions, and travel sanctions. They are all considered to have the potential to enhance the effectiveness of sanctions without incurring unnecessary humanitarian costs. While efforts to develop humanitarian exemptions lists are extant, the ongoing debate with respect to smart sanctions is centered on the feasibility of elite targeting efforts.

²⁴ Cortright and Lopez (fn. 1), 228.

²⁵ Minear et al. (fn. 23).

ARMS EMBARGOES

Arms embargoes are selective by definition in that they cover only military equipment, rather than an entire range of goods affecting the livelihood of civilians. As such, they are widely considered to be morally justifiable, particularly in manifestly conflictual situations; arms embargoes are directed against groups associated with violent action whose main victims are often civilians. Notwithstanding the legitimate right to use arms for defensive purposes—depending on circumstances—this concern is generally considered secondary to the resolution of conflict by peaceful means. While arms embargoes are listed as one of the instruments in the “new” debate on smart sanctions, they are by no means a novel idea, having been employed for thousands of years.²⁶ Arms embargoes may take the form of a total ban, restrictions on production and supply, and/or interdictions or quarantines of arms and/or arms-related material or activities, such as hardware, military advice, and training.²⁷

The efficiency, effectiveness, and consequences of arms embargoes remain a subject of vigorous debate. Cortright and Lopez conclude that in most cases arms embargoes have completely failed since they are frequently imposed yet rarely enforced.²⁸ The five critical factors hindering the effectiveness of Security Council-imposed arms embargoes are that they (1) are imposed too late; (2) effectively exempt permanent Security Council members; (3) reinforce or worsen skewed power relationships; (4) are often too easy to circumvent; and (5) cannot be adequately enforced by the UN.

Arms embargoes tend to be imposed too late, only after the targeted conflict area is already overflowing with weapons and other military matériel, as was the case with the embargoes imposed against Yugoslavia in 1991–92 and against Ethiopia and Eritrea during their war in 2000. In the case of Rwanda, the arms embargo had no impact whatsoever because it was imposed too late to stop the 1994 genocide and furthermore was resoundingly ignored. Still, arms embargoes may shorten an armed conflict, since the supply of new weapons is throttled.

²⁶ R. D. Burns, ed., *Encyclopedia of Arms Control and Disarmament*, vol. 3 (New York: Charles Scribner's Sons, 1993), 1409–10. For historical background on arms embargoes, see W. A. Knight, *The United Nations and Arms Embargoes Verification* (Lewiston, N.Y.: Edwin Mellen Press, 1998).

²⁷ Randy Rydell, “Monitoring United Nations Arms Embargoes” (Paper presented at the First Expert Seminar: Smart Sanctions—The Next Step, Bonn, November 21–23, 1999), 3; also available at <http://www.bicc.de>.

²⁸ Cortright and Lopez (fn. 1), 242.

Part of the problem lies in defining what types of conflict, in terms of intensity and nature, should “qualify” for an arms embargo.²⁹

The permanent Security Council members and their clients are, in effect, immune from action. Since the five permanent members enjoy veto rights, no sanctions will ever be imposed on these states.³⁰ Furthermore, the Security Council is a highly politicized body that deliberates and makes decisions more often for political reasons than to uphold norms of international peace and security. Thus, a selective response to situations in which governments fail to observe international standards is unavoidable; voting patterns are dictated by the prevailing interests of each nation.

When arms embargoes are rigidly applied to all parties in a conflict, they reinforce preexisting power relationships. Many armed conflicts are characterized by asymmetrical power relationships between the parties. Since arms embargoes by the Security Council are normally imposed on *all* parties to a conflict, an unintended consequence is often the reinforcement or exacerbation of an already skewed power relationship, thus inadvertently and inherently favoring one of the parties rather than taking a neutral stand.

The monitoring of arms embargoes is costly and time-consuming, as much so as trade embargoes, because borders are long and the targeted regimes have external accomplices willing to take great risks at a premium. Over the long history of arms trafficking much experience in circumvention has accumulated. There will *always* be sanctions busters—states or nonstate actors willing to produce arms or act as intermediaries for a sanctionee for a price or for some political purpose.³¹

Another problem with arms embargoes, attributable to the political nature of the Security Council, is that Security Council resolutions often leave loopholes for arms traffickers to exploit. An effective arms embargo must specify precisely what types of weapons and military services are prohibited. The small arms and light weapons that kill most people in most wars should automatically be included in any arms embargo.³² Furthermore, the UN’s institutional weaknesses in enforcing

²⁹ Rydell (fn. 27), 11.

³⁰ Margaret Doxey, “United Nations Sanctions: Lessons of Experience” (Paper presented at the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, March 29–31, 1999); also available at <http://www.smartsanctions.ch>.

³¹ The illicit supply of arms was amply documented by the UN sanctions committee in the case of sanctions against UNITA. Cortright and Lopez (fn. 1) refer to the UN International Commission of Inquiry in Rwanda (UNICOI), which was created in September 1995 to investigate the violations of the arms embargo on the Hutu rebels responsible for the Rwandan genocide (p. 243). UNICOI produced several useful reports documenting embargo violations and recommending improved enforcement.

³² Kofi Annan, “Freedom from Fear,” in *Millennium Report 2000* (New York, 2000) 50–51; also available at www.un.org/millennium/sg/report.

arms embargoes allow some member states to blatantly disregard Security Council arms embargoes—the UN has been powerless to stem the tide of weapons flowing into zones of conflict, especially those in Africa.³³ Therefore, in 1998, the UN recommended a series of measures to improve the effectiveness of arms embargoes, such as strengthening the technical capacities of the Security Council and the UN Secretariat.³⁴ It is uncertain, however, whether this has produced the desired results.

One specific suggestion made by scholars to render arms embargoes more effective involves the greater use of incentives for states, organizations, and individuals to identify those undermining the embargoes. Heavy penalties levied on sanctions violators could be used to reward informants—the so-called citizen verification of weapons control agreements—an arrangement gaining support among those working for arms control and in organizations reporting human rights violations.³⁵

FINANCIAL SANCTIONS

Financial sanctions are often implemented because state leaders are thought to be vulnerable to pressure created when reduced inflow of foreign capital causes persistent economic problems and budget deficits.³⁶ The most common forms of financial sanctions are (1) suspension or discontinuation of loans and aid from national governments and multilateral organizations such as the UN, the World Bank, and the International Monetary Fund; (2) restriction or denial of access to international financial markets; and (3) bans on capital investment inflows into the targeted state.

Financial sanctions are intended to diminish the financial capacity of the sanctionee and key business interests to withstand external pressure. Reduced inflows of capital are believed to lead to persistent economic problems afflicting society as a whole and to induce the general population as well as broader economic and business interests to exert pressure on their leaders to comply with the demands of the sanctions regime. There is general agreement that in the case of South Africa, the apartheid regime did feel the pressure of financial sanctions and the

³³ Cortright and Lopez (fn. 1), 242.

³⁴ United Nations, Security Council, Resolution S/RES/1196, September 16, 1998.

³⁵ United Nations, Executive Office of the Secretary-General, Strategic Planning Unit, "UN Sanctions: How Effective? How Necessary?" (Paper presented at the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, March 29–31, 1999), 113; also available at <http://www.smartsanctions.ch>.

³⁶ Between 1914 and 1998 there were 170 cases of sanctions in one form or another, 132 of which included financial sanctions, and in more than 40 percent of these cases they were applied alone.

attendant economic crisis contributed to its downfall.³⁷ However, the assumption has not always held true that pressures from certain constituencies such as debt crises within the elite, have influenced key decision makers. Economies have experienced long periods of serious difficulty without leaders exhibiting any willingness to budge. This may be because, notwithstanding sanctions, the leaders of some sanctioned countries and their support groups continue to enjoy opulent lifestyles and sometimes even manage to increase their personal wealth under a sanctions regime, as was the case in Iraq and Yugoslavia, where the accounts of the political elites, namely, Presidents Hussein and Milosevic, remained untouched.³⁸

By hurting political and economic elites directly through measures directed at their private economies, such as freezing or seizing their private assets, more precise targeting of financial sanctions is thought to be a more effective tool. The underlying rationale is that leaders will be more inclined to comply once their personal economic positions are hit. Relying on constituencies to apply pressure on their leaders has had very limited success as long as the leaders have not felt the pinch personally.³⁹ The targeted financial measures for members of the regime, their families, and their support groups typically involve the freezing of foreign bank accounts, seizure of assets and properties, and denial of private bank loans.

The nongranteeing of private loans, the tightening of conditions relating to the servicing of loans, and the freezing of foreign bank deposits of the political and business elites are all sanctions instruments that have barely been used to date. They appear to be promising and are considered to have "the greatest potential impact."⁴⁰ Targeted financial sanctions, however, are difficult to implement efficiently—tracing assets, private accounts, and money transfers of an unknown number of individuals and their families presents many unanticipated problems. The four critical problems in enforcing effective targeted financial sanctions are that (1) the UN is inexperienced in their imposition; (2) they may be easily circumvented; (3) the time lag between decision

³⁷ Xavier Carim, Audie Klotz, and Olivier Lebreu, "The Political Economy of Financial Sanctions," in Neta C. Crawford and Audie Klotz, eds., *How Sanctions Work: Lessons from South Africa* (London: Macmillan, 1999).

³⁸ Swiss Government, "Introductory Statement," in *Report of the Second Interlaken Seminar on Targeting United Nations Financial Sanctions*, March 29–31, 1999; available at <http://www.smartsanctions.ch>.

³⁹ Kimberley A. Elliot, "Analysing the Effects of Targeted Financial Sanctions" (Paper presented at the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, March 29–31, 1999), 189; also available at <http://www.smartsanctions.ch>.

⁴⁰ Strategic Planning Unit (fn. 35), 113.

and implementation allows the targets to take ample precautions; and (4) certain regimes are simply not good targets for such measures.

While broad financial sanctions have previously been imposed by the Security Council, targeted financial sanctions—binding on all member states—against individual members of a specific government have never been instituted (although targeted financial sanctions have been adopted against the Angolan rebel movement UNITA).⁴¹ Admittedly, the resolution against the Haitian regime in 1994 did include targeted financial sanctions, but the text only *urged* member states to launch sanctions against the target and was therefore not binding.⁴²

Such measures, once implemented, may be circumvented with ease. Financial assets can be hidden from national and international regulatory activities, notably with discreet banks at so-called offshore centers such as the Cayman Islands and Bermuda. National legislation in many countries limits investigations into the ownership of assets, and many banks are reluctant to abandon their confidentiality policies for fear of losing customers, including some of their more dubious ones. The use of false names and fronting by middlemen further compound the problem, making the determination of the true ownership of bank accounts and other assets a complicated and resource-demanding task. Efforts made to prevent the circumvention of financial sanctions include the establishment in 1989 of an intergovernmental body, the Financial Action Task Force on Money Laundering (FATF), whose purpose is to develop and promote policies—at both national and international levels—to combat money laundering.⁴³ Recently, the FATF published a review naming countries that have been “noncooperative” in investigations of money-laundering activities, including many offshore centers.⁴⁴ This “naming and shaming” strategy might, given time and political pressure, induce embarrassed countries to cooperate in efforts to combat money laundering. However, this seems to be a political issue that has been given little priority. Having said this, the offshore financial centers do not necessarily seek to provide the targeted individuals with safe havens.⁴⁵ If the relevant Security Council resolutions were formulated in unambiguous language, it would be easier for offshore centers

⁴¹ United Nations, Security Council, Resolution S/RES/1173, June 12, 1998, operative para. 11.

⁴² United Nations, Security Council, Resolution S/RES/917, May 6, 1994, para. 4.

⁴³ See <http://www.oecd.org/fatf>.

⁴⁴ Financial Action Task Force on Money Laundering, *Review to Identify Noncooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*, Paris, June 22, 2001; also available at http://www.oecd.org/fatf/FATDocs_en.htm#Non-Cooperative.

⁴⁵ “Working Group 1: The Targeting of Financial Sanctions, Annex 2: Offshore Centres” (Findings presented at the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, Switzerland, March 29–31, 1999), 23; also available at <http://www.smartsanctions.ch>.

to enforce sanctions, because their customers could not escape sanctions by claiming ignorance. In addition, financial institutions must be under obligation to notify the authorities about assets belonging to targeted persons and companies.

Furthermore, the time lag between decision and implementation allows targeted individuals to take preemptive actions. A Security Council debate can give targeted individuals ample time to make diversionary moves to evade the sanctions—assets could be moved elsewhere, and the ownership of properties could be transferred to relatives or accomplices. Several UN member states claim they have a right, as a matter of principle, to be forewarned about impending sanctions. By contrast, when acting unilaterally, states such as the U.S. can move quickly and strike without prior public discussion. In order to improve the enforcement of sanctions, the UN Secretariat must provide a set of definitions and operationalize the terminology, phrasing, and concepts used in the resolution texts and member states should incorporate a corresponding set of definitions and procedures to enhance the quick and unambiguous enforcement of sanctions into their national administrative and legal frameworks.

Not all regimes, however, can be effectively targeted by financial sanctions. Elliott, stressing that targeted financial sanctions are not appropriate in all scenarios, argues that a set of preconditions must be in place for targeted financial sanctions to take hold.⁴⁶ They are likely to work against corrupt dictators only in countries with few resources or limited opportunities for the accumulation of resources; in such cases, the regime is probably more interested in amassing private wealth than in protecting the collective good. Whether or not economic elites choose to encourage the regime to comply with the sanctions demands depends on their ability to accumulate new wealth and their assessment of expected losses were a less amenable regime to take over. Moreover, it is argued that targeted financial sanctions are most appropriate when the target state is poor and without a developed banking system or stable currency, which is often coupled with corruption or the stocking of assets abroad. If the target state has access to alternative sources of income such as oil or other natural resources, the effectiveness of targeted financial sanctions would be lowered correspondingly.

According to the findings of the second Interlaken Seminar on targeted UN sanctions, there are several basic conditions that must be fulfilled for the freezing of accounts and the seizure of assets to be an

⁴⁶ Elliott (fn. 39).

effective sanctions tool.⁴⁷ Elites and members of the targeted regime must have assets abroad of a magnitude that their freezing or seizure would cause them serious problems. Also, there must be a profile of the target and its weaknesses—requiring knowledge of the regime’s traditional trading partners, principal bank relationships, and the names of members of the elite. This requires expertise and solid analysis of the structure of both the political regime and the politicoeconomic elite of the target state. Finally, a list of entities and individuals to be targeted must be compiled.

With respect to this last condition—a so-called entities list to be circulated among the sanctioning states and on the Internet—two critical issues are being discussed. First, do individual UN member states have the legal authority to create such a list?⁴⁸ Second, if not, does the UN have such authority? Many countries do not have the legal authority to create such a list—in the EU, it has now been recommended that a governing authority that would allow member states to do so be created.⁴⁹ Determining the members of a targeted regime and its core support groups, however, is highly problematic, because too broad an entities list might include and thereby estrange social groups whose support is necessary for mobilizing support against the key targets. Problems arise in blacklisting some (business) segments in a society presumed close to the regime while whitelisting others that are considered “innocent.” The latter may trigger reprisals by the sanctioned regime. The recently published manual by the Watson Institute for International Studies goes a long way toward addressing some of the concerns just noted. It is helpful when designing sanctions regimes to draft mock resolutions to enhance the clarity, consistency, and uniformity of language to preclude loopholes. Similarly, with respect to enforcement, the many detailed suggestions for keeping updated target lists could be a considerable improvement over current practice. Likewise, the recommendations on “best practices” might be helpful as guidelines for implementation.⁵⁰ Notwithstanding the merits of these recommendations, the likelihood of their implementation depends on the political will of the Security Council members in the design phase and on individual UN member states during the enforcement stage.

⁴⁷ This is based on the work of the “Working Group I: The Targeting of Financial Sanctions” (Findings presented at the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, Switzerland, March 29–31, 1999), 17–28; also available at <http://www.smartsanctions.ch>.

⁴⁸ *Ibid.*, 17.

⁴⁹ *Ibid.*

⁵⁰ Cf. Biersteker et al. (fn. 20).

TRAVEL RESTRICTIONS

Travel sanctions fit well into the smart sanctions concept because they specifically target designated individuals and/or companies, and accordingly meet the criterion of minimizing unintended humanitarian consequences. Combined with targeted financial sanctions and arms embargoes, they are designed to hit the culpable elites' key sources of wealth and power. The desired political outcomes, however, depend ultimately on the operational effectiveness of their application.

The rationale behind targeted travel sanctions is to place the burden of noncompliance where it belongs—on the elites. Individual travel restrictions and bans on commercial passenger flights are intended to make it more difficult for sanctioned elites to maintain commercial relations, make foreign contacts, and enlist the support or sympathy of foreigners. Visa restrictions and similar measures, applicable to the immediate families of the regime, are expected to have a demoralizing effect not only on the inner circle of regime members but also for the wider entourage. Prohibition of air cargo flights is designed to thwart importation of military matériel and other commodities necessary for the continuation of objectionable policies and to reduce revenue-generating exports.

Apart from being targeted and making noncompliance more costly to sustain for the sanctionee, travel sanctions carry symbolic meaning and send strong signals of disapproval. They single out the offenders and embarrass them by widely publicizing their identity. Thus, travel sanctions contribute to the isolation of the target from normal international interaction and to the delegitimization of the target's behavior. There are three types of travel sanctions.

—*Travel bans* impede international social and commercial travel by designated groups and individuals who either are part of the targeted regime or supporting it. This may not cause dramatic negative economic damage to the sanctioned regime—it perhaps acts only as an irritant—but is considered to have great symbolic and psychological significance.

—*Aviation sanctions* restrict or ban international air flights in and out of a designated target country and/or prevent violations of embargoes—especially on arms supplies. They may include all flights or only those of specific airlines, and can cover passenger traffic and/or cargo.

—*General transport* sanctions are intended to restrict or ban all cross-border traffic regardless of the means of transportation (aircraft, ship, train, and lorry).

Travel bans and restrictions normally involve suspension or cancellation of travel documents, denial of visas or residence permits, and re-

fusal of entry into or transit through the territory of the sanctioning states—for whatever purpose—with the possible exception of allowing travel for medical treatment.

The implementation of such measures, however, has encountered numerous difficulties. The first concerns the identification and delimitation of the groups of individuals to be targeted. Typically, Security Council resolutions merely state that travel sanctions are to be directed against leading members or a senior official of designated groups (military juntas or nonstate actors), or against government officials and adult members of their immediate families.⁵¹ Whereas it may be comparatively easy to identify ministers, assistant ministers, and senior officials, it would be much more difficult to compile lists with the names of their family members to be circulated to the relevant enforcement agencies. Are only nuclear family members to be included? How wide should the net be cast?

Furthermore, the mere names are often inadequate for identification purposes, partly because systems of naming and name usage vary. Richard Conroy, for example, mentions the problems experienced with the noms de guerre of the junta members in Sierra Leone.⁵² Several individuals may have the same name, and in the absence of corroborating information such as photographs or fingerprints, the true identity may be hard to ascertain. Although photographs of high-profile personalities may be obtainable, those of lesser-known family figures may not be as easily available. Innocent people could inadvertently be affected, thus jeopardizing the credibility of the entire exercise. Even if reliable lists were possible to compile, circulating them to the appropriate enforcement agencies (customs services and immigration authorities) would remain difficult because the border posts around the world would be numerous and the relevant authorities often inefficient.

Notwithstanding the initial identification problems and circulation of the relevant information, targeted individuals are likely to take a wide range of countermeasures—the issuance of multiple passports for the same individuals; the use of disguises and assumed names; the forgery of passports and visas; the evasion of immigration checkpoints; and the use of proxies to act on behalf of targeted individuals. The

⁵¹ See United Nations Security Council Resolutions S/RES/1127, August 28, 1997 (Angola/UNITA); S/RES/1132, October 8, 1997 (Sierra Leone); S/RES/1137, November 12, 1997 (Iraq); S/RES/1171, June 5, 1998 (Sierra Leone); and S/RES/1267, October 15, 1999 (Afghanistan/Taliban).

⁵² Richard Conroy, "Implementation Problems of Travel Bans: Practical and Legal Aspects" (Paper presented at the First Expert Seminar: Smart Sanctions—The Next Step, Bonn, November 21–23, 1999). 11; also available on the Internet at <http://www.bicc.de>.

sanctions committees apparently have little information about the whereabouts of targeted individuals and where they might have been able to travel.⁵³

Aviation sanctions cover both passenger and cargo flights to and from the target state. Passenger travel by air is relatively easy to monitor because of the high level of regulation of the industry, its overriding preoccupation with the safety of the passengers, and the need to regulate competition without compromising safety precautions. There is a high degree of intraindustry professionalization and self-regulation, in addition to the extensive regulations imposed by national civil aviation authorities and international agreements—through the International Air Transport Association (IATA) and the International Civil Aviation Organisation (ICAO), for example. Although the volume of air passenger traffic is large, the departure and arrival points tend to be concentrated in hubs, mainly due to safety and customs regulations. Also, the monitoring of commercial passenger aviation is easier than for other transport industries because the number of operating companies is smaller and because many airlines are state owned, despite recent trends toward privatization. Commercial passenger aviation, for safety reasons mainly, is not amenable to sanctions busting because the profits to be reaped are meager.

Air cargo transport is entirely different. Compared to commercial passenger aviation, the professional, legal, and regulatory regimes of air cargo transport are far more lenient and the concerns for human safety are far less salient. There are more small companies specializing in cargo than in passenger travel because the barriers to entry are lower in terms of capital and staff. Furthermore, there is a multitude of small airstrips in remote areas, making monitoring difficult. ICAO states that “nonscheduled cargo operations tend to be largely of an *ad hoc* nature and little information is available as to their volume.”⁵⁴

Common methods of violating air cargo sanctions include filing false flight plans, bills of landing, and end-user certificates; painting false identification numbers on aircraft; mixing legitimate cargo with contraband; conducting clandestine night flights; using flight routes and patterns that exploit gaps in radar and air traffic control; and using clandestine or nonregulated airstrips.⁵⁵

⁵³ *Ibid.*, 12. The difficulty in identifying individuals may be illustrated by the efforts of national immigration authorities to establish familial relationships of asylees in family reunion cases, involving even DNA testing.

⁵⁴ Conroy (fn. 52), 2.

⁵⁵ *Ibid.*, 3.

Evasion or violation of air cargo sanctions is fairly easy because of weaknesses in the sanctioning states' customs and air traffic control procedures, which include shortages of trained monitoring personnel and the lack of suitable detection and communications equipment. Furthermore, legal and jurisdictional loopholes undermine the monitoring and enforcement efforts. These problems are aggravated by the disproportionate placement of the monitoring and enforcement burden of sanctions on Third World countries whose technical capabilities and institutional frameworks for monitoring are generally poor. In addition, political factors, such as the sympathy of certain regional governments, can make the sanctions front penetrable. Moreover, in corruption-ridden countries, bribery is widely used to get around existing monitoring devices.

If designated airlines are targeted, rather than instituting a general ban, identification problems arise. For instance, the travel sanctions imposed on the Taliban in Afghanistan simply refer to the target as any aircraft "owned, leased, or operated by or on behalf of the Taliban."⁵⁶ Who are the Taliban? Are they an unambiguous entity? The majority of those who could arguably be included among the Taliban have never been photographed and their identity is not known internationally.⁵⁷ In view of these difficulties it is somewhat surprising, therefore, that a background paper prepared by the UN Sanctions Secretariat of the Department of Political Affairs states that "the language of resolution 1267 (1999) is much clearer and better focused than that of previous resolutions imposing similar measures."⁵⁸

General transport sanctions are broader in scope than aviation sanctions because they cover all means of transportation. Because they are more comprehensive, the problems listed above would be aggravated. The number of entry and exit points would be multiplied, as would be the number of operators. Similarly, the length of land and sea borders to be monitored would be extended dramatically.

To date, travel sanctions have had mixed success, although they have not been used that much.⁵⁹ It may be premature, therefore, to pass a definitive judgment as to their effectiveness. Assessment is further made

⁵⁶ United Nations, Security Council, Resolution S/RES/1267, October 15, 1999, para. 4.

⁵⁷ In fact, taking photographs was officially forbidden.

⁵⁸ United Nations, Sanctions Secretariat, Department of Political Affairs, "The Experience of the United Nations in Administering Arms Embargoes and Travel Sanctions" Paper presented at the First Expert Seminar: Smart Sanctions—The Next Step, Bonn, November 21–23, 1999), 25; also available on the Internet at <http://www.bicc.de>.

⁵⁹ Richard Conroy, "UN Travel Sanctions: An Evaluation with Policy Recommendations" (Paper presented to the UN Symposium on Targeted Sanctions, New York, December 7, 1998).

difficult by the fact that travel sanctions are often imposed in tandem with other forms of sanctions. Hence, it is hard to distinguish effects attributable to travel sanctions from those of other sanctions, or from factors unrelated to sanctions. Nonetheless, the travel sanctions against Libya appear to have been successful in changing its behavior. Other cases, however, have ended in outright failure. Sometimes, the target has even been able to improve its bargaining position or worsened its behavior.

COSTS AND POLITICAL INTRICACIES OF SMART SANCTIONS

As previously discussed, many technical difficulties are involved in the implementation of smart sanctions. There is no technical review mechanism or methodology for documenting human costs and no standardized list of what should qualify as humanitarian exemptions. Arms embargoes frequently are imposed too late, are subject to the whims of the Security Council, exacerbate existing unbalanced power relationships, and are difficult to monitor. Financial sanctions are handicapped by UN inexperience, can be easily circumvented, do not work against sophisticated banking systems or those with natural resources, and are hard to target against specific people. Finally, travel restrictions are easy to circumvent and hard to target.

Yet, the most intractable problem stems not from the technical difficulties of establishing and enforcing a smart sanctions regime, but from the politics of doing so. Despite discouraging experiences with conventional sanctions, the UN and its member states to some extent may have overcome their inexperience as sanctions episodes have unfolded. There is reason to believe, however, that many member states upon which effective implementation depends still lack experience in monitoring and enforcement, not to mention the necessary technical, legal, and institutional capabilities. To a lesser degree, the UN itself continues to suffer from some of the same weaknesses.⁶⁰ While some lessons have been learned over the years, it is our argument that already existing problems persist and are aggravated under smart sanctions regimes. In addition, further difficulties are likely to emerge.

To date, we have learned six lessons about the political difficulties involved in establishing and enforcing a sanctions regime: (1) the effectiveness of sanctions regimes are determined by inadequate research methods; (2) the goals of the Security Council and member states often

⁶⁰ See United Nations, Security Council, *Note by the President of the Security Council: Work of the Sanctions Committees*, January 1999.

diverge; (3) the economic success of sanctions does not guarantee their political success; (4) sanctions can and generally do have serious unintended consequences; (5) the UN system is not well equipped to administer sanctions; and (6) sanctions are often used as a prelude to war.

Despite the formidable methodological challenges, some academics claim that having analyzed a large number of sanctions episodes *ex post facto*, fairly robust generalizations can be made about the circumstances under which sanctions are likely to be effective. In turn, it is argued, these insights can be used prescriptively when new sanctions regimes are to be launched. We doubt whether this optimism is well founded. Such generalizations as have been made, tend to be at such a high level of generality that they are virtually useless as guidelines for action in specific scenarios.

Even if analysts *were* able to arrive at robust generalizations, it does not follow that the decision makers would necessarily take their cues from such analyses. As we have already asserted, establishing sanctions regimes is not a technical exercise but rather is a political one; at the international level, the process is infused with high politics. The Security Council, as the most powerful organ of the UN, is also the most politically charged—tensions often exist between the goals of the Security Council and those of member states. The political agendas of all Security Council members rarely converge; the agenda is even less uniform for all states throughout the rest of that organization. Divergences are great in some cases, leading some members to vote against a resolution or to abstain; in other cases, however, the nuances of positions can be ironed out in negotiation. Permanent council members tend to prefer unanimity to solidify and add legitimacy to the sanctions front and would thus be prone to accommodate the reservations of ordinary members to bring them on board. In such a negotiation process, compromises are invariably made and texts of resolutions tend to get watered down. The resulting resolutions might, in turn, give rise to ambiguities in the enforcement phase. Without such compromises, decisions might be more likely to be blocked altogether because any of the permanent members could exercise their veto rights.

A further complication of the political dimension is that the UN member states are not unitary actors as assumed by the classical realist strand of international relations analysis. It is more appropriate to view the unfolding decision-making processes as two-level games. When advancing a particular position at the level of the Security Council, any government representing a member state must consider, at the same time, the repercussions of its actions on various constituencies and

cleavages at the national level. Robert Putnam puts the problem in the following terms:

At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximise their own ability to satisfy domestic pressures, while minimising the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign. The unusual complexity of this two-level game is that moves that are rational for a player at one board . . . may be impolitic for that same player at the other board.⁶¹

In anticipating the responses of domestic constituencies, government representatives in the Security Council may be guided more by shifting popular sentiments at home than by the merits of the case itself. Thus, some form of international populism may result whenever it becomes politically more expedient to only *appear* to take effective action; the temptation can be great—particularly in an election year—to go along with an ill-conceived sanctions regime, knowing full well that it would not have much chance of being effectively enforced. The distinction between “feeling good” and “doing good” with sanctions captures this reality well.⁶²

The ambiguities arising from political compromises may be exploited by the member states. Equivocal formulations may be used as a pretext for inaction if the level of commitment to the overriding goal of the sanctions regime is low. Similarly, more powerful states, especially the permanent members of the Security Council, may on occasion seek to hijack the sanctions exercise to satisfy their own foreign policy objectives, which may or may not be at variance with the broader goals of the UN. This is most likely to occur when the resolution text is open to interpretation, and especially when the immediate goals of a sanctions regime have not been achieved after a considerable amount of time has lapsed.

Another key difficulty is that the means of enforcement have become increasingly refined to the effect that the economic hardship inflicted on the targeted states has become more burdensome. Cortright and Lopez note that “to the dismay of decision-makers, economic strangulation did not automatically or consistently lead to political compliance.”⁶³ This discrepancy is rooted in the failure of the presumed

⁶¹ Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization* 42 (Summer 1988), 434.

⁶² Ernest H. Preeg, *Feeling Good or Doing Good with Sanctions: Unilateral Economic Sanctions and the U.S. National Interest* (Washington D.C.: Center for Strategic and International Studies, 1999).

⁶³ Cortright and Lopez (fn. 1), 3.

transmission mechanism of civilian pain into political gain. If there indeed exists such a mechanism, it works in convoluted ways that the sanctioners only partially understand. Deeper insight into the internal dynamics of the target state requires profound country-specific knowledge that the sanctioners rarely possess or are disinclined to acquire. Moreover, the generally authoritarian nature of target states means that “normal” political processes have in effect been suspended, thereby making these processes more idiosyncratic and less predictable and rendering the prescriptive value of analysis close to nil.

The fourth lesson learned—that the impacts of sanctions regimes adversely affect civilian populations—is well documented. It should not be forgotten, however, that these unintended consequences include not only the exacerbation of humanitarian suffering but also the altering of internal political conditions. The “rally around the flag” effect has been observed in some cases, although little is known about the circumstances under which it is likely to materialize. More importantly, the internal opposition may be weakened or strengthened by sanctions. Detailed prior analysis is required to make credible inferences as to how the internal opposition might be affected and how it might respond—will there be increased factionalism or unification?⁶⁴ Ironically, sanctions might sometimes strengthen the repressive capability of the targeted government and thus disempower the opposition.

A smart sanctions regime requires more than the administrative capability to monitor the effects of its imposition; it also requires management skills and capacity to implement and enforce its various elements. In this regard, smart sanctions are, in principle, similar to any sanctions regime. The management skills required, however, are arguably more demanding because the “smartness” of sanctions heightens the level of sophistication needed in management and enforcement. For instance, intimate knowledge of international banking practices and sophisticated computer skills is required to enforce financial sanctions. National law enforcement agencies have long had difficulty recruiting and keeping highly qualified staff to combat economic crime. There is no reason to believe that the UN would be more successful in that respect.

Whereas the enforcement of financial sanctions is hampered by the lack of *sophisticated* staff, the enforcement of arms embargoes and travel sanctions is limited by the costs of maintaining a *sufficient amount* of personnel. The international arms trade is notorious for shady operators prone to disregard any legal impediment in their pursuit of profit.

⁶⁴ The two-level, game-theoretical approach could be applied at the sanctionee end as well, although the nature of the games would probably be different.

For years, sanctions regimes and national authorities have been powerless in the face of arms traffickers. In a similar vein, although the verification problems associated with air passenger traffic should not be underestimated, once travel sanctions move beyond air passenger flights to cover air cargo transport, the enforcement problems mount and the costs of attendant personnel and other resources soar. Consider, for example, the costs of satellite and radar surveillance, including Airborne Warning and Control System (AWACS) aircraft; computerized intelligence databases; wider use of Sanctions Assistance Missions; border patrolling by air, land, and sea; and deployment of monitoring personnel at minor airstrips.

Although most experts realize that smart sanctions are no less costly to enforce than conventional sanctions, policymakers and the general public do not. It is a fallacy to think that the smart sanctions concept will necessarily alleviate the cost problem of enforcement. Smart sanctions may *appear* less expensive to maintain because they are narrower in scope and presumably easier to handle in terms of resource demands. While there may be some merit to that argument, it should be recalled that the UN is in a quasi-permanent financial crisis that seriously hampers its ability to act decisively and effectively. Major member states, notably the United States, have been in arrears for years on their payment of regular dues; only very recently did the U.S. pay most of what it owed. Member states are generally reluctant to commit additional monies for specific purposes and operations. In short, the UN system is financially overstretched already. Any suggestions that would increase its financial burden are either naïve or misguided.

As we have noted, the financial burdens of maintaining a sanctions regime are carried by the individual member states. Many Third World countries are in worse financial condition than the UN and therefore would not be better equipped to take on additional costs, particularly in terms of supplying and financing personnel with sophisticated skills that are in short supply. Accordingly, it would be impractical to propose measures of greater complexity that expect even more of Third World member states.

Among the strongest moral arguments in favor of sanctions as a policy instrument—and a fortiori, smart sanctions—is that they constitute an alternative to armed force.⁶⁵ Experiences show, however, that this assumption does not always hold. While smart sanctions—if well de-

⁶⁵ In some cases, arms embargoes are imposed on already warring parties in an attempt to reduce their capability to continue military operations.

signed and scrupulously implemented—stand a good chance of success short of military coercion, in the cases of Iraq, Haiti, and Yugoslavia the failure of sanctions regimes led into the use of armed force, presumably because sanctions did not seem to achieve their stipulated goals. These cases demonstrate that sanctions can represent a prelude to war. It would be more correct to say, therefore, that sanctions “comprise a middle ground between doing nothing and authorizing the use of military force.”⁶⁶ Sanctions are extreme measures of coercion—smart sanctions less so—that in some situations can have consequences just as devastating as those of war. As such, they may be seen as but one policy instrument on a continuum of options ranging from gentle persuasion to war. Many observers have stated that sanctions are likely to be most effective only when the targeted state is made to understand that noncompliance will leave the sanctioners with no option other than military action.

Acting upon the insights derived from these six lessons is no straightforward matter—there are constraints. The recommendations made by some academics to improve the design of sanctions regimes vary from inconsequential exhortations to operational suggestions. Recent sets of recommendations have been advanced by Cortright and Lopez and by van Genugten et al.⁶⁷ In certain respects they overlap; in others they diverge. Most of the recommendations make perfect sense and fit squarely into the basic smart sanctions rationale.

Some recommendations, unfortunately, are apparently made with total disregard for the realities of global politics and cost implications, both of which have seriously undermined the effectiveness of sanctions regimes to date. For example, Cortright and Lopez state in their concluding chapter that their recommendations “will require a substantial commitment of political and financial capital. Implementing effective sanctions is a highly complex and expensive proposition.”⁶⁸ While we certainly agree with this statement, we find it puzzling that Cortright and Lopez—after having enumerated the shortcomings of the international community in a book-length text—make recommendations that are impractical by the standards of their previous arguments.

The greatest flaw in these recommendations is that they appear devoid of political realism. Cortright and Lopez say that “one of the highest priorities is developing greater clarity and uniformity in Security

⁶⁶ Cortright and Lopez (fn. 1), 6.

⁶⁷ *Ibid.*, chap. 12; Willem van Genugten, Gerard de Groot, and Saskia Lavrijssen, “Guidelines on the Future Use of Sanctions: An Evaluation,” in van Genugten and de Groot (fn. 6).

⁶⁸ Cortright and Lopez (fn. 1), 222.

Council resolutions.” In the next sentence, they go on to say that “the language of Council resolutions is the result of political jockeying and compromise and may leave ambiguities and loopholes that greatly complicate the task of implementation.”⁶⁹ Indeed! While Cortright and Lopez define correctly a major component of the problem, it is hard to imagine that they seriously expect the Security Council to cease being a political organ in order to find a solution.

The difficulty in reaching agreement in the Security Council was amply illustrated in early July 2001 when the U.S. and the U.K. tabled a joint resolution to modify the sanctions regime against Iraq toward a “smarter” design. As a permanent member, however, Russia did not find the proposal acceptable and vetoed it,⁷⁰ despite extensive previous debate over the existing Iraq sanctions regime.⁷¹ The council could agree only to an extension of the oil-for-food program.⁷² Currently, negotiations are in progress—to be completed by the end of May 2002—on a “goods review list” to streamline exemptions procedures by agreeing on which commodities are routinely to be exempted and by sorting out the problem of “dual purpose” items.

Most of the operational recommendations for strengthening the UN Secretariat do not take into account their cost implications and the political commitment needed to buttress them. It may be possible to establish a new Office of Sanctions Affairs within the Secretariat, but given the pecuniary and personnel costs involved, its capacity to monitor and enforce sanctions regimes would not necessarily be enhanced. Even if “staff inadequacies have become ‘glaringly apparent’ within the United Nations and among member governments,” it does not follow that the same member governments are committed enough to respond adequately to the numerous “calls for an upgrading of the UN’s technical and administrative capabilities for sanctions implementation.”⁷³

The limited capacity of states to monitor the humanitarian impacts and breaches of sanctions regimes could partly be offset by greater NGO involvement. So-called citizen verification, used to monitor arms embargoes, could be extended to cover all types of violations and impacts. For instance, under the voluntary oil embargo against South Africa,

⁶⁹ *Ibid.*, 231–32.

⁷⁰ Barbara Crossette, “Effort to Recast Iraq Oil Sanctions is Halted for Now,” *New York Times*, July 3, 2001.

⁷¹ The main elements of a new sanctions regime are spelled out in David Cortright, Alistair Millar, and George A. Lopez, *Smart Sanctions: Restructuring UN Policy in Iraq* (Goshen, Ind.: Fourth Freedom Forum, 2001); see also Roula Khalaf, “Struggling with Sanctions,” *Financial Times*, May 28, 2001.

⁷² United Nations, Security Council, Resolution S/RES/1360, July 3, 2001.

⁷³ Cortright and Lopez (fn. 1), 237.

NGOs set up a special outfit in Amsterdam—the Shipping Research Bureau—to monitor oil tankers involved in supplying this cargo and to publicize the results widely as part of a “shaming” strategy.⁷⁴ However, while the UN may consider the economy of NGO involvement to be advantageous, the NGO community may have its own objectives to pursue, which may or may not coincide with those of the UN. The risk of bias might undermine the UN’s confidence in the information provided by NGOs.

With respect to arguably the most potent smart sanctions measure—the freezing and seizing of foreign assets of designated individuals and companies—Cortright and Lopez concede that

the greater problem for the Security Council is the reluctance of member states to approve a mandatory system for targeting the assets of designated individuals and companies. Major political and jurisdictional questions have been raised about the UN’s ability to target specific individuals and entities. The Security Council’s legal authority to seize property and block financial transactions is uncertain.⁷⁵

Similar concessions are made in regard to arms embargoes—also a key element in the smart sanctions concept:

In nearly every case the effectiveness of arms embargoes was impeded by the economic self-interest of arms traffickers, the complicity of the arms trade of ruling elites and neighbouring governments, and the major legal and institutional weaknesses that exist at the United Nations and among many member states.⁷⁶

These quotations raise a series of questions. What indications are there to suggest that the UN member states will be less reluctant in the future to institute a mandatory system for targeting the assets of designated individuals and companies? Is there any reason at all to believe that the profit hunger of arms traffickers will abate in the future? What incentive structures would discourage ruling elites and neighboring governments from becoming accomplices in sanctions busting? Finally, what is the basis for expecting that the legal and institutional weaknesses of the UN and the majority of its member states will be overcome in the near future?

While van Genugten et al. make no explicit qualifications on their recommendations, à la those of Cortright and Lopez, they do make

⁷⁴ Richard Hengeveld and Jaap Rodenburg, eds., *Embargo: Apartheid’s Oil Secrets Revealed* (Amsterdam: Amsterdam University Press, 1995).

⁷⁵ Cortright and Lopez (fn. 1), 241.

⁷⁶ *Ibid.*, 242.

similar suggestions of questionable feasibility. In addition to echoing the plea by Cortright and Lopez for better precision of instruments and objectives as laid down in Security Council resolutions, they call for limitations on the duration of sanctions regimes.⁷⁷ Their point is well taken that the achievement of multiple objectives should be distinguished, phased, and well defined in terms of milestones rather than being lumped together. However, signaling a priori to the sanctionee that the imposed sanctions will be limited to a specific period might be tantamount to inviting noncompliance, even if the intention was simply to allow the culprit state ample time and opportunity to comply before other, more drastic measures were introduced. Of course, the political nature of the target state in question would determine how it reacts to a sanctions regime of limited duration.

CONCLUSION

This article, in reviewing the literature, has argued that sanctions experiences generally have been disappointing. Against this backdrop, the international community has been searching for an improved tool for achieving the objectives of conventional sanctions regimes and appears to have found it in so-called smart sanctions. Smart sanctions seek to remedy the shortcomings of older sanctions tools by granting humanitarian exemptions to alleviate the pain of vulnerable groups and targeting sanctions measures against the culpable elites. Their objective is to reduce humanitarian damage without relieving political pressure on targeted governments. While we do not doubt the theoretical merits of this approach, we believe it involves serious operational challenges.

The potential to improve the design of sanctions regimes has increased due to the experience garnered by the UN and its member states and the lessons learned from sanctions episodes over the years. This has been enhanced by a number of valuable proposals emanating from conferences dedicated to smart sanctions. Yet, the optimism expressed in some academic circles and among decision makers at national and international levels appears largely unjustified. While smart sanctions may seem logically compelling and conceptually attractive at face value, they are no panacea. The operational problems—due to persistent technical inadequacies, legal loopholes, institutional weaknesses, budgetary and staff scarcities, and political constraints—are daunting.

⁷⁷ van Genugten et al. (fn. 67), 148–49.

This article has sought to scale down the undue expectations being attached to smart sanctions—whether in regard to enhancing sanctions’ effectiveness or reducing their adverse humanitarian impacts. In trying to lower the most optimistic expectations, we have pointed to the inherently political nature of sanctions regimes as their key flaw, while discounting technical “solutions” that ignore the reality of global politics. Ultimately, smart sanctions may simply not be “smart enough” to achieve their stated objectives and will therefore remain an instrument that only causes further violations of economic and social rights on a large scale (as well as integrity rights in extreme cases).