

Targeted Financial Sanctions: A Primer

Background Paper for the Targeted Financial Sanctions Simulation Exercise

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MAY 11–13, 2000

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Introduction

The use of economic sanctions to achieve political ends is not new. [...] Relatively new, however, is the concept of collective sanctions which [...] can be defined as collective measures imposed by organs representing the international community, in response to perceived unlawful or unacceptable conduct by one of its members and meant to uphold standards of behaviour required by international law. This concept of collective sanctions is closely linked to schemes for collective security and measures for the prevention or containment of armed conflicts as well as the enforcement of international law.¹

The list is often recited, and the change often remarked upon: in the forty-five years before 1990, the Security Council imposed sanctions against only two states—Southern Rhodesia, in 1966, and South Africa, in 1977. However, in what a recent book terms the “sanctions decade”—the ten years between 1990 and 1999—the Council imposed partial or comprehensive sanctions in twelve cases, with states imposing unilateral, bilateral or regional sanctions in over three dozen more.² According to a recent report by a committee of the House of Commons of the United Kingdom, for example, “[i]n 1999 alone, sanctions were imposed on Ethiopia, Eritrea, the Federal Republic of Yugoslavia, Afghanistan and Indonesia by international organisations of the which the UK is a member, and existing sanctions were maintained against a further 20 states.”³

The trend of increased recourse to the use of sanctions over the last ten years is clear. For example, the above definition of ‘collective sanctions’ is taken from an edited volume published in 1994. At the time of publication, less than four years after the approval of Resolution 661 imposing comprehensive sanctions against Iraq, there were UN-authorized economic sanctions regimes in effect against the Federal Republic of Yugoslavia (Serbia and Montenegro), the Libyan Arab Jamahiriya, Liberia, Somalia, Haiti, and the União para a Independência Total de Angola (UNITA). By May 1, 2000, three of those regimes had been suspended or lifted, but another four added, this time against Sudan, Sierra Leone, the Federal Republic of Yugoslavia over the issue of Kosovo, and the Taliban in Afghanistan.

The 1990s was an era of increased Security Council activity, with more meetings, more resolutions, and more peacekeeping missions than in the over four decades that preceded it. Yet in the wake of well-publicized events in Somalia and Bosnia, the resort to force by the Security Council “has become constrained by concerns about its efficacy and by the reluctance of member states to risk the lives of their citizens in UN operations where no

perceived vital national interests are at stake.”⁴ There was therefore, in the mid-to-late 1990s, an increased resort to sanctions, sometimes in place of the use of force. In the last few years, however, comprehensive sanctions themselves have come under increasing fire from several fronts, primarily for their negative humanitarian impact upon innocent populations. In this sense, Iraq has become for sanctions regimes what Somalia was for peace-keeping missions.

Despite the current sanctions fatigue in both policy and academic circles, however, there are many who would not discount them completely. Indeed, as recently as mid-April of this year, the overwhelming majority of members of the Security Council agreed that sanctions cannot be shelved as a policy tool.⁵ In this position, they confirm the affirmation made in a paper submitted to the Second Interlaken Seminar on Targeting United Nations Financial Sanctions by the Strategic Planning Unit in the Executive Office of the Secretary-General: “Indeed, there is a widespread consensus that, when confronting major transgressions of international law, the international community needs some instrument of suasion that lies between diplomatic censure, on the one hand, and war, on the other. For this purpose, there is no real alternative to sanctions.”⁶

There is an emerging consensus that targeted sanctions may be the best alternative to ‘blunt,’ comprehensive sanctions, and therefore the best answer to the international community’s need for an effective non-violent response to breaches of international law. And yet, as has been repeated at seminars on ‘smart’ sanctions, in parliamentary hearings, and in the Council itself, “the question whether financial sanctions could be an effective alternative to comprehensive trade sanctions was not conclusively answered. Work is still underway to make financial sanctions more effective. There has never been a clear real world ‘test’.”⁷

This paper is intended as an introduction to the topic of targeted financial sanctions, and is circulated to participants and observers of the Simulation Exercise to provide background for the detailed discussions that will take place in the working sessions. It must be noted, therefore, that this is not a review of sanctions (unilateral or multilateral), of all sanctions regimes since August 1990, nor of the use of financial sanctions in general.⁸ It is neither an exhaustive treatment of the subject, nor an analysis of all the issues surrounding the design and implementation of targeted financial sanctions. Instead, it is an overview of both the debate surrounding this policy tool and a summary of the limited ways in which it has been used in the recent past.

Why Target Sanctions?

There is a growing debate internationally about the continued utility of general economic sanctions. The humanitarian costs are often so high, and their effectiveness is so limited, that a growing number of individuals and organizations have raised questions about the continued desirability of general sanctions as a policy instrument. Comprehensive trade and financial sanctions often entail so much innocent civilian suffering that they overshadow any potential political gains—the conclusion of a recent Watson Institute project on the humanitarian costs of general sanctions.⁹ Moreover, blunt, comprehensive sanctions complicate the work of humanitarian agencies, cause long-term damage to the productive

capacity of target nations, and unfairly penalize their neighbors (who are often their major trading partners).

According to Hans von Sponeck—the UN’s coordinator of the oil-for-food program who resigned in protest in February over the UN sanctions regime in Iraq—the current sanctions policy in that case is threatening to undermine the basic social fabric of a country of more than twenty million people, while so far proving to be largely ineffective at influencing the Baghdad regime: “You try to catch a tiger and wind up killing a nightingale.”¹⁰ Dennis Halliday, von Sponeck’s predecessor, similarly commented in a 1998 interview with the BBC that “4000 to 5000 children [were] dying unnecessarily every month due to the impact of sanctions [against Iraq] because of the breakdown of water and sanitation, inadequate diet, and the bad internal health situation.” He cited other negative effects of the comprehensive regime against Iraq, including increased levels of crime, the departure overseas of millions of Iraqi professionals, and growing resentment against the West and the UN among the young—a resentment that extends throughout the contemporary Middle East.¹¹

This critique of the effectiveness of general sanctions has been joined by traditional skeptics of the utility of sanctions—including many in the U.S. Congress—and also by certain states interested in reasserting the traditional prerogatives of sovereignty. This *de facto* coalition (among humanitarians, members of the U.S. Congress, and several major powers) has created an effective and increasingly influential case against the use of general economic sanctions. The opposition is so strong that there is a risk that the growing resistance to sanctions—one of the few remaining alternatives to the use of force—might make the resort to the use of force, or the option of doing nothing, far more common in the future. This is especially troubling, coming as it does at a time when the asymmetries of power between a few advanced states and the rest of the world are dramatically increasing, a development that has lowered the perceived costs of the use of force by major powers.

The concern with which these problems are viewed within the UN itself has become evident in recent years. A 1997 report by the Economic and Social Council (ECOSOC) noted that “the inhabitants of a country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security.”¹² In a Note by the President of the Security Council in January 1999, the Council affirmed the commitment of its members to conduct a series of reforms to increase the effectiveness of sanctions and decrease their negative impact.¹³

Recently, in part in response to the criticisms of general sanctions, there have been growing calls for the consideration of targeted, or “smart” sanctions, directed against the policymakers responsible for reprehensible policies and the élites who benefit from and support them. These calls were repeated and amplified by the members of the Security Council in April of this year, during the formal debate preceding the establishment of guidelines for a working group to improve the effectiveness of United Nations sanctions.¹⁴

There have been several meetings and conferences convened on the issue of smart or targeted sanctions in the last few years.¹⁵ The consensus of one such conference, arranged by the Overseas Development Institute in December 1998, was that there are many reasons for which targeted financial sanctions are perceived to have advantages over other possible responses by the international community. The conference report enumerated eight reasons,

including greater moral acceptability through the avoidance of significant humanitarian cost, reduced possibility of a ‘rally-round-the-flag’ response from the targeted regime, minimizing costs to close trading partners of the targeted state, and fewer long-term social and economic costs for the targeted country.¹⁶

Targeted sanctions make intuitive sense. Why not direct the sanctions against the architects of the policies opposed by the international community, rather than against innocent civilians? Moreover, targeted sanctions would address the problem of the negative humanitarian effects of general sanctions. If designed and implemented as hoped, only dictators, demagogues and the élites that support them would need to fear the effects of targeted sanctions.

In addition, comparative statistical studies and carefully drawn case studies have concluded that *financial* sanctions are, all other things being equal, relatively more effective than trade sanctions.¹⁷ Restricting sanctions to focus on the assets of the specific persons that are responsible for the breach of international law or the threat to international peace and security would reduce, if not remove, the humanitarian consequences. And since financial sanctions tend to be more effective than trade sanctions, then why not combine *targeted* sanctions with *financial* sanctions to create *targeted financial sanctions*?

The Interlaken Process

Because of the growing interest in the use of targeted sanctions, the Swiss Government convened in March 1998 and again in March 1999, seminars of experts to explore ways of more effectively targeting United Nations financial sanctions. The seminars gathered representatives of governments, the private sector (financial community), the United Nations and other international organizations, as well as academia to discuss the challenges of designing and implementing a targeted financial sanctions regime. The purpose of the sessions was to elaborate on the specific requirements of financial sanctions, and to develop new options to refine the tool for exerting pressure directly on a targeted country’s decision-makers through freezing their assets in the world financial markets. The results of the ‘Interlaken Process’, as it has come to be called, significantly advanced the collective understanding of the promise and feasibility of targeted financial sanctions. Following is a brief summary of the issues addressed by the two Interlaken meetings.¹⁸

The first Interlaken meeting focused on the technical requirements of financial sanctions, and identified the preconditions necessary for targeted sanctions to be effective: clear identification of the target, ability to identify and control financial flows, and strengthening the U.N. sanctions instrument.

The first order challenge concerns the target, and the need for analysis regarding the vulnerability of the targeted governments and elites. The success of targeting depends to a large extent on the characteristics of the targeted country -- the degree of global economic integration and resource self-sufficiency, including diversity of trading partners, and the nature and location of financial assets of leaders and decision-making elites. In addition, a clear delineation of individuals covered by the sanctions, as well as the nature of the

sanctions themselves (comprehensive sanctions on all financial assets, including property or just financial flows) is necessary. Interlaken participants also noted that speed and discretion in determining the targets and the specific sanctions are critical to the success of financial sanctions – which are often difficult to accomplish in international diplomatic circles. Interlaken II further developed recommendations on the technical aspects of targeting, and addressed issues of information-gathering on the targeted country's economic and financial profile, money transfers, and the role of off-shore centers and evasion of sanctions.

In addition to targeting, another issue highlighted concerns differences in implementation of financial sanctions among Member states. From discussion among participants, it became clear that many States have limited legal tools at their disposal and face difficulties implementing Security Council resolutions.¹⁹ Uneven implementation and enforcement of sanctions at the national level undercuts the effectiveness of UN sanctions. As a result, Interlaken II examined the basic elements for a framework of law for the implementation of financial sanctions, and developed a draft model law that States could adopt to enable them to implement fully and consistently targeted financial sanctions adopted by the Security Council.

A related aspect of national implementation of sanctions is the need for the United Nations to provide clear, standardized language with defined terms in Security Council resolutions to encourage consistent implementation among members. To facilitate greater conformity among states, standardized texts or building blocs of language for proposed resolutions, including prohibitions and exemptions, were developed by a working group at Interlaken II. Such language was utilized for the first time by the European Union as part of its implementation of sanctions on Kosovo, and it is hoped that familiarity and consistent use of terminology will promote more harmonized implementation across national borders.

Beyond the language for resolutions, Interlaken participants also addressed the need for the UN to develop greater capabilities for administering, monitoring, and reporting on financial sanctions. Guidelines, technical assistance, and other measures should be developed to help Member states implement sanctions on a consistent basis, and likely will require additional resources to be effective.

Far from endorsing targeted financial sanctions as a panacea, Interlaken participants acknowledged that financial sanctions are unlikely to be effective in isolation or as a stand-alone measure. Rather, the effectiveness will be enhanced if they are integrated as part of an overall strategy to induce change in targeted states and may be part of arms embargoes, travel restrictions or other measures.

Overall, the Interlaken seminars concluded that targeted financial sanctions are technically feasible, but that concrete measures on national and international levels, as well as within the UN Secretariat, are necessary for the instrument to be developed more fully and made effective.

When and how have targeted financial sanctions been applied in the past?

A key theme that emerged from Interlaken and other meetings of experts is recognition of the amount of detailed work that still needs to be done at the level of implementation to create a more effective targeted financial sanctions regime.

[S]anctions against individuals cannot succeed or fail unless they are first attempted, and it is interesting to note in this context that the Security Council has *never* mandated financial sanctions against individual members of a transgressor state.²⁰

At the present stage, the financial assets of the political élite of targeted countries have often been left unaffected by UN sanctions regimes... These assets have been allowed to circulate and fructify almost unhindered on international markets while the civilian population of the target country has had to bear most of the economic burden of comprehensive embargoes on national economic activities.²¹

Targeted financial sanctions, of the type often described in the literature on smart sanctions, have never been attempted by the United Nations. While some comprehensive sanctions regimes have included financial elements, and other regimes have attempted to focus on specific subsets of the population, there has never been a regime that includes a financial sanction against individuals.²²

There are, of course, examples of focused targeting in sanctions imposed by unilateral, bilateral, or regional actors, most notably in the unilateral sanctions maintained by the United States. At the multilateral level, the only attempt at targeting financial sanctions on government and business élites, using names and other identifying information, came in 1999, with the imposition of restrictive financial measures against the Federal Republic of Yugoslavia by the United States, the European Union and Switzerland over the issue of Kosovo. These sanctions, however, came after over six years of sanctions of one kind or another against the Yugoslav successor states, and long after the principal targets of the sanctions had had time to move their assets to secure location.

Therefore, while there has been no ‘clear test’ of targeted financial sanctions we do have some experiential knowledge about how similar regimes have functioned in the recent past.

For the purposes of our discussion in the simulation exercise, what do we mean by targeted financial sanctions? They are targeted in the sense that they are imposed upon only a subset of the population (including but not necessarily limited to individuals); they are financial in that they entail the freezing or blocking of assets held abroad; and they are sanctions in that they are coercive measures applied to effect change.²³

Following this definition, it can be seen that multilateral targeted financial sanctions have been applied in some form in the following cases: against various actors in the Federal Republic of Yugoslavia in 1992, in 1999 and most recently with the tightening of sanctions on Belgrade in February 2000; against UNITA in Angola in 1993, also tightened in April 2000; against Haiti in 1994; and against the Taliban regime in Afghanistan in November 1999. Links to or copies of the relevant authorities—including Security Council Resolutions,

European Union regulations, and U.S. legal authorities—are available on-line, from the web sites of the Security Council, the European Union, and the Office of Foreign Assets Control.²⁴

Federal Republic of Yugoslavia

In the case of Iraq and Serbia-Montenegro, personal accounts of the political élites, e.g. Presidents Hussein and Milosevic, remained untouched.²⁵

Undoubtedly, the Federal Republic of Yugoslavia (FRY) sanctions comprise one of the most complex and most well-known sanctions regimes of the 1990s, surpassed in intricacy and renown only by Iraq. Whereas the Iraqi regime is comprehensive and has been relatively consistent in its application, however, the set of different types of sanctions that have been imposed by different national, regional and international actors against a whole range of targets in all the various incarnations of post-communist Yugoslavia since 1992 is a confusing patchwork. For that reason, and for the purposes of this paper, we will discuss here only the elements of the sanctions regimes that focus on the assets of FRY targets.

Following the eruption of a military conflict in Bosnia and Herzegovina in 1992, the Security Council imposed a wide range of economic, trade, cultural and other sanctions on the Federal Republic of Yugoslavia (Serbia & Montenegro). In paragraph 5 of the resolution, the Council decided

that all States shall not make available to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) or to any commercial, industrial or public utility undertaking in the Federal Republic of Yugoslavia (Serbia and Montenegro), any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to those authorities or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within the Federal Republic of Yugoslavia (Serbia and Montenegro), except payments exclusively for strictly medical or humanitarian purposes and foodstuffs;²⁶

Faced with the refusal of the Bosnian Serbs to accept the proposed territorial settlement, the Council adopted a resolution resolving “to reinforce and extend the measures imposed by its previous resolutions with regard to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces,” including specifically the financial measures.²⁷ The Council reviewed these additional measures, but did not change them, on four subsequent occasions.²⁸

On the same day as it adopted resolution 942, the Council also adopted a resolution temporarily suspending some of the measures against the Federal Republic of Yugoslavia, recognizing the steps taken by that state to comply with the demands contained in previous resolutions.²⁹ In four later resolutions, the Council extended the suspension of these measures, based on reports from the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia that the Federal Republic of Yugoslavia was indeed implementing its decision to close the border between its territory and that of the Republic of Bosnia and Herzegovina.³⁰ In November 1995, the presidents of Serbia, Bosnia

and Croatia signed a US-sponsored peace settlement for Bosnia. The measures against the Federal Republic of Yugoslavia were suspended indefinitely (with certain reservations) in November 1995, and for the Bosnian Serbs in February 1996. In the United States, however, all FRY (S&M) assets frozen prior to December 27, 1995 remain blocked to date.

In February of 1996, the Kosovo Liberation Army claimed responsibility for a series of violent attacks and triggered hostilities with Serbian troops, thereby creating a refugee flow of thousands into neighboring Albania. In light of the significant deterioration in the situation over the next two years, the Council passed resolution 1160 on March 31 1998, instituting an arms embargo against the Federal Republic of Yugoslavia, including Kosovo, and stating that “failure to make constructive progress towards peaceful resolution of the situation in Kosovo will lead to the consideration of additional measures.”³¹ Peaceful resolution of the situation in Kosovo was not reached, despite negotiations between the government of the FRY and elected representatives of the Kosovar Albanians, as well as pressure brought to bear by the Contact Group, the Security Council and the North Atlantic Treaty Organization (NATO). NATO airstrikes began on March 24, 1999 and lasted for eleven weeks. Only three actors eventually imposed financial sanctions against the Federal Republic of Yugoslavia over Kosovo: the United States, the European Union,³² and Switzerland. There was no Security Council resolution authorizing such measures, and therefore member states were under no legal obligation to impose them. The Swiss sanctions are explicitly modeled on those imposed by EC regulations, and therefore are not discussed here.³³

In the United States, the sanctions program was instituted in June 1998 with the issuance of an Executive Order of the President. Executive Order 13088, which entered into force on June 9, included a provision for special consideration to be paid in the granting of exemptions or the issuance of licenses to the circumstance of the Republic of Montenegro. This decision effectively paved the way for excluding Montenegro from the FRYK sanctions, and focused the restrictive measures on the Serbian government and its supporters.³⁴ In May 1999, in response to the “continuing human rights and humanitarian crisis in Kosovo”, President Clinton issued Executive Order 13121, tightening the sanctions and authorizing additional exemptions for humanitarian purposes. In the European Union, financial sanctions were among the first to be imposed, but the last to be targeted. The Common Position of 7 May 1998 froze the funds of the Governments of the FRY and the Republic of Serbia held overseas,³⁵ but it was not until the Council Regulation of 15 June 1999 that a list of targets was produced, apparently based in large part on the list used for the visa ban against government officials, their families, and so-called ‘cronies’ or supporters of the regime.³⁶ However, this list—although it is regularly updated—contains only the names and official positions of targets, and no other information to differentiate them from other possibly innocent persons. Furthermore, it is unclear how many of the assets of the targets identified by both US and EC implementing agencies are in fact frozen in or blocked by the financial institutions or other actors under their jurisdiction.

As difficult as it is to describe the FRY sanctions regimes, therefore, it is even more difficult to evaluate them in terms of their effectiveness. There are several factors that argue against the possible success of the most recent attempt, that of multilateral (but not UN) targeted sanctions aimed at specific individuals within Serbia. Given the length of time that untargeted economic sanctions were in place against different persons and entities in Bosnia,

Serbia, Montenegro, and the Federal Republic of Yugoslavia, it is highly unlikely that the assets that these measures seek to affect still remain in states that are willing to impose or implement financial sanctions. The imposition, suspension, release, re-imposition and tightening of the restrictive financial measures imposed by various senders—while possibly desirable from the perspective of adapting sanctions to suit changing political realities—increase the opportunities for evasion, and complicate both compliance with and monitoring of the sanctions. Last, the lack of precise identifying information, even in the case of the FRYK sanctions, with extensive lists of names and official designations, further confounds efforts at effective implementation.

União Nacional para a Independência Total de Angola (UNITA)

Security Council sanctions against UNITA have not worked well. More than a few people I have encountered in my travels as Committee Chairman have accused me of idealism in suggesting that these sanctions were ever intended to have any real impact. Many regarded their imposition as a political gesture on which the Council had little intention of following through. The result has not only been a culture of impunity regarding the violation of Security Council sanctions, but also a massive failure even to communicate the activities covered by sanctions and an imperfect understanding of what they were intended to achieve.³⁷

In adopting resolution 864 on September 15, 1993, the Security Council imposed a double embargo on the National Union for the Total Independence of Angola, known by its Portuguese acronym, UNITA. Eighteen resolutions later—the last three of which “expresse[d] the readiness of the Security Council to consider the imposition of additional measures” against UNITA³⁸—resolution 1127 imposed *inter alia* a travel ban on senior members of UNITA and the adult members of their immediate families.³⁹

On June 12, 1998, the Council adopted resolution 1173, requiring states to freeze the funds and financial assets of the targets identified in resolution 1127 that were held by persons and entities on their territories. In May 1999, the Council established a Panel of Experts, the first time that a body of this kind had been created.⁴⁰ The Panel, whose mandate was to collect information on UNITA sanctions-busting* and to offer recommendations on how these sanctions could be made effective, presented its report to the Security Council on March 10, 2000.⁴¹

In nine short paragraphs, the Panel described the sources of UNITA’s funding, the nature of its holdings, efforts by the leaders of organization to circumvent the financial sanctions, and drew conclusions.⁴² The Panel concluded that

for practical as well logistical reasons the bulk of UNITA’s assets are retained in the form of rough diamonds which are packaged and sold as needed, with the proceeds sometimes going to UNITA officials or representatives abroad who may deposit the money in banks for short periods of time in order to complete or facilitate particular transactions. [...A] network of banks, financial institutions and money managers continue to be connected with UNITA and its representatives and suppliers, and to be used by them for important though limited purposes.⁴³

* That is, how the sanctions were being violated, and by whom.

In light of this finding, the Panel recommended that “banking procedures be developed to facilitate the identification of individuals covered by sanctions, and the freezing of assets.”⁴⁴

Haiti

On June 16, 1993—two years after the *coup d'état* in Haiti that ousted Jean-Bertrand Aristide—the Security Council adopted Resolution 841, imposing mandatory sanctions against the military regime led by Raoul Cédras.⁴⁵ Although the sanctions regime included a prohibition on the direct or indirect provision of funds to the *de facto* authorities in Haiti, the main focus of the resolution (and the limited actions of the international community) was on the petroleum and arms embargoes.⁴⁶ The sanctions were suspended in August 1993 in reaction to the conclusion of an agreement between President Aristide and the Commander-in-Chief of the Armed Forces, Lieutenant-General Cédras, but were re-imposed in October 1993 after it became clear that the military authorities had no intention of implementing the provisions of that agreement.⁴⁷

It was not until May 6, 1994—almost a year after the initial resolution, and more than three years after the military regime seized power—that the Security Council passed a resolution targeting the funds and financial resources of “all officers of the Haitian military, including the police, and their immediate families; [...] the major participants in the *coup d'état* of 1991 and in the illegal governments since the *coup d'état*, and their immediate families; [and] those employed by or acting on behalf of the Haitian military, and their immediate families”.⁴⁸ There was no list of targets appended to the resolution; instead, the same operative paragraph requested the Haiti Sanctions Committee “to maintain an updated list, based on information provided by States and regional organizations, of the persons falling within this paragraph”. Last, and perhaps most importantly, the Security Council not *request* states to implement the financial sanctions against the designated persons, but *urged* them to do so; the resolution was therefore not legally binding upon member states.

Ambiguity about the targets, and vacillation about the application of targeted sanctions, created a great many opportunities for evasion in the case of Haiti in 1994. Moreover, despite the language of the UN resolutions, the sanctions were applied erratically in most instances: first to the leaders only, then to their families, and still later to elite supporters of the regime. By the time all the targets were publicly identified, they had had ample time to move and protect their financial assets. In contrast to the actions against Iranian assets in 1979, and Iraqi and Kuwaiti assets in 1990,⁴⁹ in the Haitian case the sanctions were applied incrementally and inconsistently, with little evidence of political will and ample notice to potential targets. Haiti is now routinely cited as one of the failures of attempts to target multilateral financial sanctions. Moreover, researchers have asserted that the trade embargo in place from mid-1993 to late 1994 strengthened, rather than undermined, the military regime's hold on power, and therefore contributed to the suffering of the Haitian people.⁵⁰

Taliban (also known as the Taleban, or Islamic Movement of Taliban)

On October 15, 1999, the Security Council adopted Resolution 1267, imposing a flight ban and financial sanctions against “the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan”.⁵¹ The operative paragraph for the financial sanction requests that States shall freeze funds and other financial resources, including

“funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban”.⁵²

The United States had already unilaterally implemented sanctions against the Taliban in July 1999, by Executive Order of the President. In the informative summary produced by the Office of Foreign Assets Control in the United States Treasury, however, there is only one individual named—Mohammed Omar—whose designation is given as *Amir al-Mumineen*, or “Commander of the Faithful”.⁵³ There is no other identifying information, and no Taliban targets are included in their list of Specially Designated Nationals (SDNs) and Blocked Persons.⁵⁴ In the annexes to the European Commission’s (EC) Council Regulation implementing the Resolution, adopted seven months after the US action, there is no information included with regards to the funds and financial resources of the Taliban—information which the regulation states should be provided by the Taliban Sanctions Committee of the Security Council.⁵⁵

It therefore appears that the financial sanction against the Taliban is more expressive than effective. As many experts have cautioned, targeted financial sanctions cannot be used against all countries, and cannot be viable in the absence of timely and accurate information on the targeted states and individuals.⁵⁶ Countries that have traditionally had relatively few economic linkages with the rest of the world are significantly less vulnerable than those that have been extensively integrated into the global economy. This is even more true for states or regimes that continue to show little interest in such integration. Thus countries or controlling authorities like the Taliban regime in Afghanistan would be less appropriate for a potential regime of targeted financial sanctions than countries that have been historically more open to the world economy.

The challenges of designing and implementing effective targeted financial sanctions

Claude Bruderlein, commenting on Interlaken in a review of the process noted, “Such sanctions require blocking not only the movement of assets into and out of the targeted country, but necessitate also the freezing of all assets managed for the benefit of the targeted country all over the world. Given the fungible nature of financial assets, their propensity to be moved around the world in a matter of seconds, and the various possibilities to conceal the true identity of the owner, the imposition of financial sanctions involves a dramatic expansion of the reach and capacity of sanctions regimes.”⁵⁷

Some observers and skeptics have raised questions about the difficulty of developing an *effective* international regime of targeted financial sanctions. As we indicated above, the instrument of multilateral, targeted financial sanctions has never been thoroughly tested. However, it is useful to consider some of the standard objections raised about the instrument and assess the merits of each concern, based on the information available from the limited experience to date.

1. The ease and speed with which funds can be transferred, and identity disguised, makes it impossible to capture the funds of potential targets.

While it is true that the speed of transfer is virtually instantaneous, the computer technology that enables instantaneous transfer also enables new surveillance and monitoring capabilities. Moreover, while identity can be disguised, this raises the costs of transactions for targets and also increases their risk.

2. The use of offshore locations can be used to hide funds and evade sanctions.

There are more funds deposited in accounts in the Cayman Islands than in either France or Germany (and the total amount of money held offshore was estimated by the IMF to be \$4.8 trillion in 1997).⁵⁸ However, offshore holdings cannot be used without coming into the major money center countries for the purchase of valued commodities or for investment purposes. Few offshore locations are entirely outside of the regulatory reach of major money center countries. And targets with funds in offshore locations face increased difficulty in access to and transfer of funds, as well as the higher costs associated with attempts to evade sanctions, particularly if sanctions are coordinated multilaterally.⁵⁹

3. Collective action problems render international cooperation on effective targeted financial sanctions virtually impossible.

Getting countries to cooperate on a multilateral, targeted financial sanctions regime is always going to be difficult, particularly since they need to be able to act quickly and must agree (for the most part, but not entirely) on a single list of targets. This is especially difficult, since the list of targets needs to be generated quickly, in relative secrecy, in order to be most effective.

4. The absence of policy harmonization among the major convertible currency countries creates too many loopholes for potential targets of financial sanctions.

The fact that different countries employ different definitions of “assets” has been a problem historically. It is less significant today, especially since the sanctions imposed by the US and Europe over the issue of Kosovo in 1999. The *de facto* loophole that once existed over differences in asset definition has largely disappeared. The European Commission definition—and in practice, the definition now applied throughout the EU—has become much closer to the US definition of assets. Nevertheless, significant differences in administrative practices regarding implementation remain. If the EU continues to make sanctions policy for Europe, the gap between the practices of major currency countries will likely diminish. The biggest current hurdle is different legal and reporting requirements in the US and the EU.

5. Until targeted financial sanctions have proven to be an effective policy instrument, most countries will be reluctant to invest the administrative resources necessary to make them work.

The United States has the greatest institutional investment in and capacity to apply targeted financial sanctions with its Office of Foreign Asset Control (OFAC) located in the Treasury Department. The US institutional capacity and investment in OFAC has expanded, at least in part, because of domestic politics (and the interest of Cuban Americans in maintaining sanctions on Castro's Cuba). There is some question about whether the European Union (or most individual countries, for that matter) has an interest in investing more administrative resources in a potentially dubious enterprise (targeting financial sanctions). As long as there is so much uncertainty about whether targeted financial sanctions can be made an effective instrument, many might question why scarce administrative resources should be invested in a regime that has not yet proven itself.

6. The international community lacks the political will and administrative capacity to develop and refine the TFS instrument.

Once relatively easy loopholes are closed (differences in asset definition in the US and EU, different administrative practices with regard to implementation), offshore locations will become more appealing for potential targets. Does the international community have the political will to monitor, regulate, and control offshore operations? Does it have the administrative capacity to identify targets and to monitor compliance with international agreements?

Conclusion

Notwithstanding the challenges of designing and implementing an effective targeted financial sanctions regime, the instrument remains one of significant potential that policymakers believe deserving of greater exploration. In short, while the problems and difficulties should not be underestimated, the potential for targeted financial sanctions remains both largely untested, and largely unrealized, to date. It is for this reason that the Watson Institute for International Studies and the U.S. Naval War College have joined together to sponsor the Targeted Financial Sanctions Simulation Exercise.

It is hoped, that by bringing together policymakers, practitioners and experts, a greater understanding of not only the challenges but of various options to overcome these problems will emerge. While there is no "right" answer, we hope the exercise will further illuminate ways to make such sanctions more effective, and to help in the development of multilateral guidelines that may be useful for the international community in considering and applying targeted financial sanctions in the future.



¹ Nico Schrijver, “The Use of Economic Sanctions by the UN Security Council: An International Law Perspective,” in H.H.G. Post (ed.), *International Economic Law and Armed Conflict*, Dordrecht: Martinus Nijhoff, 1994, 123–161.

² David Cortright and George Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, Boulder, London: Lynne Rienner, 2000, 1–2.

³ As of November 4, 1999. Select Committee on International Development, House of Commons, Second Report, para. 1, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmintdev/67/6704.htm>, last accessed on March 1, 2000.

⁴ Andrew Mack and Asif Khan, Strategic Planning Unit, Executive Office of the Secretary-General, United Nations, “UN Sanctions: How Effective? How Necessary?” April 1999, prepared for the Second Interlaken Seminar on Targeting United Nations Financial Sanctions, 103 in the official seminar report.

⁵ UN Doc. SC/6845, Security Council Press Release (17 April 2000).

⁶ Mack and Khan, loc. cit., 104.

⁷ Koenraad Van Brabant, Overseas Development Institute, “Can Sanctions Be Smarter? The Current Debate,” Report of a conference held in London, 16-17 December 1998, May 1999, 19.

⁸ Excellent research and writing on these topics already exist—see, for example, the work of N. Schrijver, M. Doxey, T.G. Weiss, D. Cortright and G. Lopez, as well as the papers submitted to the Interlaken conferences—and such analyses are far beyond the scope of the present paper.

⁹ Thomas G. Weiss, David Cortright, George A Lopez, Larry Minaear (eds.), *Political Gain and Civilian Pain*, Lanham, MD: Rowman & Littlefield, 1997, based in large part on the work of the Humanitarianism and War Project of the Watson Institute for International Studies at Brown University.

¹⁰ *Financial Times* (US edition), February 17, 2000, 8.

¹¹ BBC News Online Wednesday, September 30, 1998. Note that assigning numbers (or even sanctions causality) to the increased levels of child deaths in Iraq since 1991 was and remains controversial. See Weiss et al, op. cit., introduction, fn. 14. Nevertheless, Mack and Khan point out that “some of the most careful and comprehensive recent research has not relied on Iraqi sources,” and cite the study conducted by Richard Garfield of Columbia University in 1998: loc. cit., 109.

¹² UN Committee on Economic, Social and Cultural Rights, ECOSOC, UN Doc. E/C.12/1997/8. General Comment No. 8 (1997). Cited in Mack and Khan, loc. cit., 110.

¹³ UN Doc. S/1999/92, paragraphs 9–11.

¹⁴ Decision taken in its 4128th meeting: UN Doc. S/6845, Security Council Press Release.

¹⁵ Particularly pertinent for our purposes here have been the two Expert Seminars on Targeting U.N. Financial Sanctions organized by the Swiss Government, and referred to as the ‘Interlaken process’, which have focused on the technical aspects of targeted financial sanctions.

¹⁶ Van Brabant, op. cit., p. 18.

¹⁷ This is one of the key findings of Gary C. Hufbauer, J.J. Schott, and Kimberly A. Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, International Institute of Economics, all editions (third edition is forthcoming). The methodology used, arguments made and conclusions drawn in that study are not uncontested, however, and many critics (both within and outside of the United Nations system) question its applicability to multilateral sanctions authorized by the Security Council.

¹⁸ Additional information on the Interlaken conferences, including the papers and recommendations of working groups, can be viewed online at <http://www.smartsanctions.ch/>.

¹⁹ See “Targeted Financial Sanctions: Harmonizing National Legislation and Regulatory Practices” by the Watson Institute Targeted Financial Sanctions Research Project at http://www.brown.edu/Departments/Watson_Institute/tfs/index.html for a detailed discussion of the legal and regulatory differences in implementing targeted financial sanctions.

²⁰ Mack and Khan, loc. cit., 117. Emphasis in original.

²¹ Claude Bruderlein, testimony before the Select Committee on International Development, House of Commons, United Kingdom, cited in the Second Report, paragraph 64, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmintdev/67/6708.htm>, last accessed on March 1, 2000.

²² The closest that the UN has come to targeting, therefore, has been in the two sets of sanctions against UNITA and the Taliban, both groups that have unrecognized claims to sovereignty over established states. See below for details.

²³ As noted in the ODI report, there are two additional types of financial sanctions—the suspension of credit and official development assistance, and the denial or limitation of access to overseas financial markets. In keeping with the direction of both the Interlaken process and other expert seminars, however, we will focus our discussion on the actions described above, i.e. on the freezing or blocking of financial assets of specific targets.

²⁴ <http://www.un.org/Docs/sc.htm>, <http://www.treas.gov/ofac/legal/index.html>, and http://europa.eu.int/eur-lex/en/lif/reg/en_register_18.html respectively.

²⁵ Government of Switzerland, Introductory Statement to the International Experts' Seminar on Targeting United Nations Financial Sanctions, March 17–19, 1998.

²⁶ UN Doc. S/RES/757 (1992).

²⁷ UN Doc. S/RES/942, adopted on September 23, 1994.

²⁸ In January, May, and September 1995, and in January 1996.

²⁹ UN Doc. S/RES/943 (1994).

³⁰ UN Docs. S/RES/970 (1995), S/RES/988 (1995), S/RES/1003 (1995), and S/RES/1015 (1995)

³¹ Paragraph 19.

³² It must be noted that the Council of Ministers adopts a Common Position in the area of foreign and security policy, and that the subsequent regulations produced by the European Commission have force in all the member states of the European Union.

³³ See <http://www.admin.ch/bawi/f/sanktion/> for details on Swiss implementation of sanctions.

³⁴ In light of the special consideration to be paid Montenegro, the Office of Foreign Assets Control issued General License No. 1 on June 18, 1998, which excluded the Republic of Montenegro from the FRYK sanctions program, except with reference to any federal or Serb government entities located there.

³⁵ 98/326/CFSP, OJ L 143, May 14, 1998, 1–2.

³⁶ Council Regulation (EC) No 1294/1999 of 15 June 1999, OJ L 153, June 19, 1999, 63–82.

³⁷ Notes for an address by Ambassador Robert Fowler, Chairman of the Security Council Committee established pursuant to resolution 864 (1993) concerning Angola and Permanent Representative of Canada to the United Nations, to the United Nations Security Council on the Report of the Panel of Experts established by Security Council resolution 1237 (1999), March 15, 2000.

³⁸ UN Docs. S/RES/1075 (1996), S/RES/1098 (1997) and S/RES/1102 (1997).

³⁹ It must be noted that most of the additional measures considered in the three resolutions identified above were in fact contained in resolution 864, but the Council had decided not to impose them in light of the ongoing direct negotiations between the parties concerned.

⁴⁰ UN Doc. S/RES/1237 (1999).

⁴¹ UN Doc. S/2000/203.

⁴² *Ibid.*, paragraphs 117–125, pp. 36–39.

⁴³ *Ibid.*, paragraph 124.

⁴⁴ *Ibid.* paragraph 128.

⁴⁵ UN Doc. S/RES/841 (1993).

⁴⁶ Provision for a financial sanction is included in paragraph 8 of the resolution. The traditional economic / arms embargo focus of the resolution is highlighted in paragraph 3, which states that “the provisions set forth [...] below are consistent with the embargo recommended by the Organization of American States”.

⁴⁷ UN Docs. S/RES/861 (1993) and S/RES/873 (1993) respectively.

⁴⁸ UN Doc. S/RES/917 (1994), paragraph 3.

⁴⁹ In these cases (Iran, Iraq/Kuwait), of course, the financial sanctions were not targeted. The asset freezes were immediate, without advance notice and succeeded in capturing large amounts of assets in US and European financial institutions. Note that for the Iraq/Kuwait case, the United States and the United Kingdom implemented asset freezes within two days of the Iraqi invasion of Kuwait, *prior* to adoption of Resolution 661 (1990), and it is to these swift actions that we refer.

⁵⁰ See, for example, Elizabeth Gibbons, *Sanctions in Haiti: Human Rights and Democracy under Assault*, Westport, CT: Praeger, 1999. Haiti, of course, is not the only case in which the dangers or consequences of trade sanctions—black markets, humanitarian aid diversion—have contributed to the misery of the population of the target state: Van Brabant, 34.

⁵¹ UN Doc. S/RES/1267 (1999), paragraph 1. It is interesting to note that the Islamic Emirate of Afghanistan is actually the name given to the portion of Afghan territory controlled by the Taliban, and not a name the group calls itself. It is unclear whether this is an error in the Resolution, or an example of the enduring tendency of the Security Council to address itself to states and not movements.

⁵² *Ibid.*, paragraph 4(b).

⁵³ Office of Foreign Assets Control, “An Overview of U.S. Sanctions against the Taliban (in Afghanistan),” available online at <http://www.treas.gov/ofac/t11tali.pdf>, last updated on September 1, 1999.

⁵⁴ Office of Foreign Assets Control, available online at <http://www.treas.gov/ofac/t11sdn.pdf>, last updated on February 2, 2000.

⁵⁵ Council Regulation (EC) No. 337/2000, OJ L 43, February 16 2000, 1 and 4. Improving the quality of national reporting to the sanctions committees and increasing the resources devoted to the sanctions work of the UN Secretariat have been recommended by sanctions experts at both Interlaken conferences, the ODI conference, and in testimony before the Select Committee of the UK House of Commons.

⁵⁶ See, for example, the official report from the Experts Seminar on Targeting United Nations Financial Sanctions (Interlaken I); and the report from the ODI-sponsored conference, Van Brabant, *op. cit.*, 19. Quotation from Select Committee on International Development, Second Report, paragraph 77, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmintdev/67/6708.htm>, last accessed on March 1, 2000.

⁵⁷ Second Report of the Select Committee on International Development, paragraph 73, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmintdev/67/6708.htm>, last accessed on March 1, 2000.

⁵⁸ *Washington Post*, October 11 1999, A1.

⁵⁹ On offshore centers and the implications of multilateral efforts against money laundering for targeted financial sanctions, see the report from Working Group 1 at Interlaken II, especially pp. 23–27 in the official seminar report.