

Sanctions and Weapons of Mass Destruction in International Relations

International Group on Global Security IGGS

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Executive Summary

How best to prevent or respond without force to unacceptable political behaviour in international relations has long been a difficult problem, and especially as regards violations of agreements and norms related to international security.

Since the end of the Cold War and with the lessening of military approaches to problem-solving, sanctions of various types, especially economic sanctions, have become a common tool of international relations. Sanctions or, more appropriately, various types of coercive or corrective measures, have been imposed in a number of situations to convince an incriminated state to return to compliance.

The focus of this study is on sanctions related to the proliferation of weapons of mass destruction (WMD). In this domain, a number of countries have engaged in activities that have undermined both the letter and the spirit of arms control, non-proliferation and disarmament agreements, in particular over the last two decades. Some of these activities were of a more technical nature, others were deliberate and may have serious consequences, threatening peace and security. Some of these activities have been largely ignored, others have resulted in sanctions and some have led to armed conflict. A few are still ongoing. This study

investigates whether sanctions can help to solve these and similar future problems. Its main objective is to draw lessons from past and present crises of non-compliance, with a view to implementing a more complete and appropriate approach to the issues involved, to better understand the role that sanctions might and should play, to make recommendations for their use and to arrive at a better decision-making process concerning the imposition or management of sanctions.

This report is constructed as follows: in Chapter II we begin with an analysis of the strategic and geopolitical context of WMD proliferation, by showing how to investigate the motivations of the leadership of proliferating countries and the policy it might adopt. In Chapter III, we propose a technical inventory of all existing categories of sanctions against state entities, underscoring in particular the difference between traditional, comprehensive measures and targeted “smart” sanctions, and also considering the use of other means of influence. Chapter IV contains a review of the different international approaches to sanctions depending on whether they are decided and implemented by the United Nations Security Council (UNSC), other United Nations (UN) bodies, regional authorities such as the European Union (EU), or by a country taking unilateral measures. Chapter V presents a number of case studies dealing with some countries whose past or present WMD policies may be an issue for the international non-proliferation norms and instruments, or may constitute a violation of their international legal commitments. In most cases, these policies constituted a threat to global or regional peace and stability. Chapter VI offers some general conclusions drawn from our analysis of existing WMD sanctions regimes, in terms of decision-making, implementation, assessment, termination, and effectiveness of comprehensive versus targeted sanctions. Also provided are a number of recommendations for policy makers, including the creation of a standing WMD entity under the UN Security Council. In Annex 1, we describe the functioning of the UN Security Council insofar as it

relates to international sanctions. Annex 2 summarises the findings of the seminar on the topic “Are International Sanctions an Effective Instrument for the Non-proliferation of Weapons of Mass Destruction?” co-organised by CESIM and the Geneva Centre for Security Policy (GCSP), held in Geneva on 1 July 2008.

List of Abbreviations

BCW	Biological and Chemical Weapons
BWC	Biological Weapons Convention
CESIM	Centre d'études de sécurité internationale et de maîtrise des armements
CTBT	Comprehensive Nuclear Test-Ban Treaty
CWC	Chemical Weapons Convention
DPRK	Democratic People's Republic of Korea
EOV	Explanation of Vote
EU	European Union
FMCT	Fissile Material Cut-off Treaty
FRY	Federal Republic of Yugoslavia
GCSPP	Geneva Centre for Security Policy
GICNT	Global Initiative to Combat Nuclear Terrorism
GNP	Gross National Product
GSPP	Geo-Socio-Psycho-Politics of Proliferating Leadership
IAEA	International Atomic Energy Agency
IGGS	International Group on Global Security
LWR	Light Water Reactors
MTCR	Missile Technology Control Regime
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NPT	Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty)
NSG	Nuclear Suppliers Group
OAS	Organization of American States
OPCW	Organization for the Prohibition of Chemical Weapons
PNE	Peaceful Nuclear Explosion
PSI	Proliferation Security Initiative
SC	Security Council (see UNSC)
UK	United Kingdom
UN	United Nations
UNMOVIC	UN Monitoring, Verification and Inspection Commission
UNSC	United Nations Security Council
UNSCOM	UN Special Commission on Iraq
UNSCR	Resolution of the UNSC
UNSG	United Nations Secretary-General
URENCO	Uranium Enrichment Consortium
US	United States of America
USSR	Union of Soviet Socialist Republics
WEOG	Western European and Others Group (in the UN)
WMD	Weapons of Mass Destruction

Introduction

The problem of how best to prevent or respond to unacceptable political behaviour in international relations without resorting to force has long been a difficult one, and especially with regards to those violations of agreements and norms related to international security.¹ A general statement of the issue is how to induce a state to move from position A (of non-compliance with a treaty or agreement) to position B (compliance), or perhaps to prevent it from moving to position A in the first place.² The response of choice in many cases has been different forms of sanctions, which also have a long history in international relations. Sanctions can be viewed as restraints on activities that would otherwise be legal. For example, they may be used to bring states back into compliance with international law, punish states, individuals or organisations for transgressions, compel policy changes or deny states or other entities

1 See for instance D.A. Baldwin, *Economic Statecraft* (Princeton, NJ: Princeton University Press, 1985); D.A. Baldwin, "The Power of Positive Sanctions", in *World Politics*, vol. 24, no. 1 (1971); Galtung, Johan, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia", in *World Politics*, vol. 19, no. 3 (1967).

2 M. Weber (1947). Weber for instance understands power as the "...probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests". M. Weber, *The Theory of Social and Economic Organization*. 1st American edition (New York, Oxford University Press, 1947).

certain capabilities. Sanctions are popular because they are virtually the only option for exerting influence on non-cooperative states between merely declaratory responses and military action, or threat of action. They seem to be almost alone in the broad range between “speeches and soldiers,” in the sense that they may allow states to change behaviour without the use of force. This is a crucial point.

Since the end of the Cold War and with the lessening of military approaches to problem-solving, sanctions have become a preferred tool of international relations, and especially economic sanctions. The 1990s have even been labelled by some scholars as the “sanctions decade”.³ Sanctions or, more appropriately, various types of coercive or corrective measures, have been used in a number of situations to convince an incriminated state to return to compliance. These include all sanctions programmes imposed by the United Nations and regional organisations such as the European Union (EU). The United States (US), with its great economic power and a rather muscled approach to international relations, has increasingly resorted to unilateral sanctions to influence the behaviour of other states. By some measures, over half the world’s population has been under some form of US sanctions.⁴ This is seen by some to have a deterrent effect on other countries. Moreover, most countries sanctioned have subsequently become recipients of US aid.⁵ Nevertheless, sanctions are not seen to win the hearts and minds of the populations concerned.

In grave situations or where the fundamental rights or interests of a state as a whole are jeopardised, coercive measures are justified under Chapter VII, Articles 39, 40 and 41 of the UN Charter (i.e. non-military

3 D. Cortright, and G. Lopez, with J. Wagler, R.W. Conroy, and J. Dashti-Gibson, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO, Lynne Rienner Publishers, 2000).

4 See for instance the Office of Foreign Assets Control under the Department of US Treasury.

5 See for instance Amb James Dobbins, Hearing of the US House Oversight and Government Reform Subcommittee on National Security and Foreign Affairs, Hearing on “Iran Sanctions: Options, Opportunities and Consequences,” 15 Dec. 2009.

measures). Although the UN Charter does not contain the word “sanctions,” its authority to impose them is clear from reference to measures that may be taken in response to threats to peace, to breaches of the peace or acts of aggression. As the supreme enforcer of international law, the United Nations Security Council (UNSC) has come to place some reliance on sanctions. Although sanctions have seldom resulted in improved behaviour (e.g. Iraq, Yugoslavia, Afghanistan, Iran), they may have contributed to the fall of certain governments. They also have served as a prelude to military intervention. Before 1990, the UNSC had implemented obligatory measures in only two cases (Rhodesia and South Africa). Since then, many states have been the object of UN sanctions regimes.⁶ In addition to Chapter VII measures, the UN also resorts to a number of non-binding measures under Chapter VI.

There is naturally a great reluctance to resort to force in resolving international disputes. Yet the wars in the Balkans, Afghanistan and Iraq have reminded us that military conflict has unfortunately not disappeared altogether.⁷ Outside interventions in these wars were preceded by sanctions. Consequently, to some extent the military interventions could be viewed as a result of the failure, or perceived failure, of sanctions. Armed violence is obviously not a desirable solution to problems. The disastrous consequences of the ‘second’ Iraq War, in particular, should lead to greater efforts to understand how sanctions operate and how they can be made more appropriate and effective.

The record of sanctions effectiveness is mixed at best.⁸ A recent analysis has concluded that, in the period from 1914 to 2000, roughly 34 per cent of imposed sanctions were partially or fully effective in achieving

6 See for example the work of A. Charron, *UN Targeted Sanctions: Changing the Lens from Sanctions to the Crisis Context*, paper presented to the International Studies Association Conference (ISA), New York, US (2009).

7 L. Harbom, E. Melander and P. Wallensteen, “Dyadic Dimensions of Armed Conflict 1946–2007”, in *Journal of Peace Research*, vol. 45, no. 5 (2008).

8 F. Giumelli, *Coercing, Constraining and Signaling. Explaining UN and EU Sanctions after the Cold War*, dissertation (Florence Institute of Humanistic Sciences, 2009)

their goals.⁹ It could be said that practice has preceded theory in this area, in the sense that there have been rather few attempts to develop a conceptual approach.¹⁰ Thus sanctions have frequently been imposed without a clearly agreed understanding of how they would work or of how their effectiveness would be determined. Part of the reason for this is that sanctions do not occur in isolation, and involve dynamic and complex circumstances.¹¹ This means that determining cause and effect in this area is very difficult. The problem of determining sanctions effectiveness is further exacerbated by the multitude of variables in a sanctions regime that affects and constantly changes the dynamic within it. For example, different episodes of success and failures took place during the course of a sanctions regime. Determining success and failure is thus not an easy task. The intricate system of dependencies, actions and reactions by senders and actors engaged in a sanctions programme is problematic, since these are almost inseparable and must be broken into discrete parts to be properly studied.

It is also clear that sanctions may have unintended consequences. These can include damage to the “innocent” sectors of the targeted state, damage to the targeting state and even reinforcement of the behaviour one is trying to change. Sanctions imposed on a dictatorial regime – such as Saddam Hussein’s Iraq – may be ineffective in that medicine and food which are needed for humanitarian purposes are never affected by sanctions, but the regime will often keep the food, etc., for its supporters, not the ordinary people. In an effort to mitigate these problems, recent efforts have been made to refine and focus sanctions into “smart

9 G. C. Hufbauer, J.J. Schott, K.A. Elliott, B. Oegg, *Economic Sanctions Reconsidered*, 3rd ed., Peterson Institute for International Economics, 2007, 233 pp.

10 See for example P. Rudolf, *Sanctions in International Relations: On the Current State of Research*, SWP Research Paper 6, June 2007 (http://www.swp-berlin.org/en/common/get_document.php?asset_id=4079).

11 A good example is the decision by Libya to give up its pursuit of WMD. A number of factors may have influenced this decision, including economic and other sanctions, loss of prestige, the Second Gulf War, the US bombing of Tripoli, the Lockerbie case, lack of progress in WMD programmes, and a personal change of heart by President Qaddafi.

sanctions” so as to target their impact more effectively.¹² For example, smart sanctions may focus on specific individuals or organisations and attempt to minimize adverse consequences for the general population. However, lately there have also been a number of unintended effects of targeted sanctions (affecting innocent individuals, groups, companies and even sectors of society).¹³

In addition to considering the role of sanctions, it is important also to recognise the role played by positive inducements or rewards in changing behaviour, so-called positive sanctions. Considering sanctions solely as a form of punishment is likely to undermine the potential for target interactions (i.e. dialogue), thereby losing a number of opportunities to resolve the crisis for which the measures were initially imposed. To solve this, however, is to consider alternative targeting strategies, such as at times offering positive inducements as opposed to punishment only. In this sense, sanctions become more give-and-take than necessarily just taking/depriving. The sending body can use its power to spawn positive incentives to seek a negotiated resolution to the conflict or crisis. To date however, a lively debate has been ongoing among practitioners as to whether it is wise to ‘reward bad behaviour’, but there is no doubt that carrots as well as sticks need to be in the arsenal. Examples abound of the power of incentives in the form of humanitarian and military aid, technical assistance, compensation for lost economic benefits, security guarantees, diplomatic recognition and status, and so on. One salient approach is the case of North Korea, which has

12 P. Wallensteen, C. Staibano (eds.), *International Sanctions: Between Words and Wars in the Global System*. London, Routledge/Frank Cass (2005).

13 See M. Eriksson, in C. Daase and C. Friesendorf, (eds.) *Rethinking Security Governance: the Problems of Unintended Consequences* (Routledge, forthcoming 2010). See also T. Biersteker and S. Eckert, “The Human Rights Challenge to Targeted Sanctions and Its Implications: An Update of the ‘Watson Report’ (2009).

been offered nuclear reactors, oil, security assurances, and so on, in exchange for modifying its nuclear activities.¹⁴

Objectives of Sanctions

The imposition of sanctions can have a number of objectives, which are not mutually exclusive. Reflecting earlier views on sanctions, Barber (1979) has suggested that their use has many different goals:

1. Primary goals: to encourage democracy, stop human rights violations and suppression of internal opposition; enforce peace agreements; assist in the pursuit of individuals for prosecution before international courts; ensure compliance with treaty obligations;
2. Secondary goals: to promote the sanctioned state's reputation domestically and internationally;
3. Tertiary goal: to maintain international structures and norms.¹⁵

Put differently and more recently, some of these objectives include: preventing armed conflicts; reversing conflict among parties; preventing or reversing military aggression; restoring democratically elected governments; settling of civil wars; limiting the spread of weapons, especially WMD; constraining international spoilers; bringing suspected terrorists

14 For instance, Ambassador Jan Eliasson, former Special Envoy of the UN Secretary-General for Darfur (Sudan) since December 2006 has said that "Sanctions and conditionality should be based on the principle of rewards for moderation and cooperation. For instance, if a final Darfur accord is signed, the donor community needs to be involved in the following development work. But carrots cannot be the only principle. A price has to be paid as well if cooperation does not take place. But too many times I have seen cooperation without reward, in which case the situation may get worse. For instance in Iran, President Khatami started a dialogue with the West, but his actions were not fully recognised. He was followed by President Ahmadinejad and his hawkish policies. If targets or concerned actors do not receive proper rewards, they lose confidence and internal standing and the sender loses credibility." (Accord, Issue no. 19, "Incentives, Sanctions and Conditionality - Conciliation Resources: A review of International Peace Initiatives", London, 2008, available at: http://www.c-r.org/our-work/accord/incentives/darfur_2.php).

15 See I. Cameron (2008), "Respecting Human Rights and Fundamental Freedoms and EU/UN Sanctions: State of Play", report commissioned by the European Parliament, Policy Department External Policies, Directorate-General for External Policies of the Union.

to justice; countering the threat of terrorism, etc. One primary characteristic of almost all sanctions is to demonstrate disapproval of the actions of the targeted state/entity. Such a course of action clearly goes beyond a mere rhetorical statement or resolution expressing disapproval. Such an approach may satisfy a need to make a moral judgment or please a domestic constituency, with little expectation of an actual substantive change in the behaviour of the targeted state or organisation. Some current sanctions goals are policy change, punishment, containment of a state or of a conflict, and deterrence.

Policy change is an important objective for actions that are reversible. This may be the most obvious goal for sanctions. An extreme form of policy change is regime change. In the latter case, a state or a group of states (or even an important part of the international community) might consider the leadership of another state so unacceptable that only its replacement could rectify a situation. Short of military or covert action, this could generally only occur if conditions were to become so intolerable in the targeted state that the regime is changed from within. Because in a democracy there is some balance of power, regime change would be far more likely than in a dictatorship or an authoritarian government. In the latter case, control of the media and other levers of power may actually enable the leadership to strengthen its hold on the state with an effective “rally round the flag” effect.

Punishment makes more sense if an act has already occurred. Like disapproval, punishment can have a feel-good benefit for the imposer of sanctions. A guilty verdict rendered by an international criminal tribunal could also be an effective form of punishment. One attractive aspect of punishments, for acts that are reversible, is that they can frequently be finely calibrated and steadily increased in severity if the desired effect is not achieved initially.

To **contain a conflict** appears to be a worthy goal for sanctions. In addition to the usual exhortations to settle a dispute by peaceful means,

opposing sides could be burdened with various sanctions, most notably an arms embargo to make an armed conflict more difficult to pursue. Depending upon how effective the embargo is and what stockpiles are already on hand, such embargoes may have the unintended impact of favouring one side over the other.

Containment of a state has also been a goal of sanctions. The intended effect is to limit the influence of a country through restrictions on imports and exports.

Deterrence is presumably a goal of all forms of sanctions. Targeted states and entities, together with others tempted to engage in similar behaviour, should ideally be deterred by effective sanctions. Failed sanctions, on the other hand, could have the opposite effect. A combination of punishment and deterrence might be obtained by some form of ‘naming and shaming.’ The threat of sanctions, international criminal tribunals or military actions is also a factor that could be applied under a deterrence rationale, though its effectiveness in any given case may be difficult to measure.¹⁶

In general, countries subject to sanctions consider them to be unfair, and attempt to circumvent them.¹⁷

Scope of the Study: Consideration of WMD-related Sanctions

This study is focussed on those sanctions related to the proliferation of weapons of mass destruction (WMD). However, we do note some cases not related to WMD from which useful lessons can be drawn. According to widely accepted understanding, WMD refers to nuclear, biological,

¹⁶ For example, publishing the names of offending companies in the US Federal Register, the EU Journal Officiel, the French Journal Officiel, and similar publications, could be an effective and low-risk measure.

¹⁷ See for instance Reuters News (<http://www.reuters.com/article/newsMaps/idUSTRE5AH-5NQ20091118>) about North Korea.

and chemical (NBC) weapons.¹⁸ We do not address terrorism per se but, of course, recognise the threat represented by its relationship to WMD.

Initially, the concept of WMD was introduced by the United Nations between 1946 and 1948, and non-proliferation and disarmament progressively became a quasi-universal principle, both legal and political, especially after the end of the Cold War.

Indeed, a strong legal basis for the prohibition of possession, proliferation (transfer) or use of WMD was built progressively. The principal relevant multilateral treaties and resolutions include:

1. The Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925),
2. The Antarctic Treaty (1959),
3. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water or Partial Test Ban Treaty (1963),
4. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, or Outer Space Treaty (1967),
5. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT, 1968),
6. The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, or Seabed Treaty (1971),
7. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, or Biological Weapons Convention (BWC, 1972),

¹⁸ WMD is sometimes understood to include their means of delivery i.e. ballistic and cruise missiles. For the purpose of this study, and in conformity with the Missile Technology Control Regime (MTCR) guidelines (see Section III.2.1), delivery vehicles are understood to be complete rocket systems (ballistic missiles, space launch vehicles and sounding rockets) or unmanned air vehicle systems (including cruise missiles, target drones and reconnaissance drones) intended to deliver nuclear, biological or chemical weapons.

8. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, or Chemical Weapons Convention (CWC, 1993),
9. The Comprehensive Nuclear Test Ban Treaty (CTBT, 1996, not in force),
10. United Nations Security Council Resolution 1540 (2004),
11. United Nations Security Council Resolution 1887 (2009).

In addition, there are a number of relevant bilateral agreements, in particular between the United States and the Soviet Union/Russia (such as START), as well as several regional agreements establishing nuclear weapon-free zones.

Although these treaties and resolutions are mostly of a preventive nature, they are mainly or partly aimed at arms control, non-proliferation and disarmament. Violations by a state party may lead to sanctions when diplomatic action does not provide sufficient leverage to solve a proliferation issue or crisis. The sanctions discussed in this paper are intended to support all of these agreements.

A number of countries have engaged in activities that have undermined both the letter and the spirit of arms control, non-proliferation and disarmament treaties over the decades after World War II. Among these some were of a more technical nature, others were deliberate and may have serious consequences, threatening peace and security. Prominent examples of such violations include the Soviet Union (BWC), Iraq (Geneva Protocol, BWC, NPT), Iran (NPT), North Korea (NPT), South Africa (NPT), Libya (NPT, CWC). The fact that Israel is not party to the NPT, the BWC and the BWC is a source of concern.¹⁹ Some of these activities have been largely ignored, others have resulted in sanctions and some have led to armed conflict. A few of these activities are still

19 See the IGGS paper "Generic Aspects of Arms Control Treaties: Does One Size Fit All? Lessons for Future Agreements on Global Security", European Commission, Joint Research Centre, Non-Proliferation and Nuclear Safeguards Unit, Ispra, Italy, Report EUR 21077 EN, 2004

ongoing. This study investigates whether sanctions can help to solve these and similar future problems.

A serious additional complication regarding sanctions related to WMD is the fact that many of the technologies related to WMD also have other legitimate applications (e.g. dual use), which makes their control difficult. As far as the NPT and nuclear activities involving fissile material are concerned, the International Atomic Energy Agency (IAEA) plays the central role.

The main objectives of this study are: to draw lessons from past and present crises of non-compliance, with a view to implementing a more complete and appropriate approach to the issues involved; to better understand the role that sanctions might and should play; to make recommendations on their use; and to arrive at a better decision-making process for the imposition or the management of sanctions.

For this purpose, a number of questions have to be addressed:

1. What is the policy objective of an international initiative dealing with a non-compliant situation and possibly leading to sanctions? What international authority or organisation should decide on sanctions? How should international sanctions be managed?
2. Who or what entities are targeted by the sanctions; what are their vulnerabilities; and can these be exploited?
3. What is the nature of sanctions under consideration: political, diplomatic, economic and financial, military, targeted/smart?
4. What may be the relevance of sanctions applied by regional actors?
5. How do we measure the effectiveness of sanctions in terms of the battle against WMD proliferation?
6. What may be the reaction of the targeted state?
7. What may be the deterrence effect of sanctions?
8. What are the collateral effects to be minimized (e.g. effects on populations, etc.)?

This report is organised as follows: in Chapter II the strategic and geopolitical context of WMD proliferation is analysed, by showing how to investigate the motivations of the leadership of proliferating countries and the policy it might adopt. In Chapter III, a technical inventory is proposed of all existing categories of sanctions against state entities, in particular underscoring the difference between traditional, comprehensive measures and targeted or “smart” sanctions, and also considering the use of other means of influence. Chapter IV reviews the different international approaches to sanctions depending on whether they are decided and implemented by the UNSC, or by other UN bodies, or by regional authorities such as the EU, or by a country taking unilateral measures. In Chapter V, we then present a number of case studies dealing with some countries whose past or present WMD policies may be an issue for international non-proliferation norms and instruments. In most cases, these policies represented a violation of their international legal commitments and may constitute a threat to global or regional peace and stability. Finally, Chapter VI ends with some general conclusions drawn from our analysis of existing WMD sanctions regimes, in terms of decision-making, implementation, assessment, termination, and effectiveness of comprehensive versus targeted sanctions. A number of recommendations are made for policy makers, including the creation of a standing WMD entity under the UN Security Council.

WMD Proliferation: Strategic Context

Any decision on possible sanctions to be taken against a state or other entity should rest on the acquisition of adequate knowledge of its specific geopolitical history and context, its political regime and internal situation. In particular, a reliable assessment and a clear understanding are required of: the targeted actor's security policy objectives; their actual motivations to proliferate and acquire WMD, most likely nuclear weapons; and the means that may be used to implement these objectives.

Indeed, the proliferation of weapons of mass destruction and their means of delivery has become a crucial strategic topic over the last decades. Many studies have pointed to the dangers stemming from nuclear proliferation. Indeed, the choice of a state to proliferate in the nuclear field is an act of transgression of international regulations that brings about high strategic risks in a regional context and beyond. It is therefore essential to analyse this act in all its complexity, to understand it and where possible, to anticipate it.

Previous work on the motivations of proliferating countries, whether subjected to or potential targets of sanctions, most often amounted to technical analyses. The approach tended to ignore political and psychological factors, and contrasted with more subtle analytical methods used

in other domains of foreign policy or public policy in general. Indeed, there is no lack of theoretical research devoted to a detailed analysis of complex governmental policies involving security. But existing work on the particular phenomenon of WMD proliferation manifested until recently a virtually complete absence of similar conceptual approaches. In particular, one issue that had hardly been addressed in the literature deals with the dynamics of the decision (or non-decision)-making process, whereby the political leadership in a state is led to decide on or against proliferation (or on “de-proliferation”).²⁰

As an example of this perspective, a new approach to nuclear proliferation was proposed by the GSPP Group²¹ in 2002.²² Its analysis led to the identification of seven “determinants” which are likely to influence and structure political decision-making, in the sense that they play in an interactive way in the dynamics of the decision-making of the (potentially or actually) proliferating leadership.²³ These determinants are:

- a) National resources
- b) History and strategic context
- c) Type of political regime
- d) Type of leader and his/her personal history and typology
- e) International dependencies and alliances
- f) Elites and domestic power mediators
- g) Public opinion

²⁰ De-proliferation is the action of renouncing existing WMD or related programmes (e.g. South Africa, Libya).

²¹ The GSPP Group (Geo-Socio-Psycho-Politics of Proliferating Leadership) is a CESIM working group that developed, between 1999 and 2006, an interdisciplinary method of understanding the proliferation phenomenon.

²² J.C. Archambault, C. Grand, X. Pasco, B. Sitt, « Dynamique des pouvoirs proliférants – Pour une nouvelle approche interdisciplinaire », *Annuaire français des Relations internationales*, Ed. Bruylant, Vol. 3 (2002), p. 591-613.

²³ Because of essential differences in nature between nuclear weapons on the one hand and biological and chemical weapons on the other, the GSPP analysis deals primarily with nuclear weapons.

These seven determinants constitute a rational and exhaustive approach designed to fully take into account the various factors of proliferating behaviour, international (“exogenous”) or internal (“endogenous”) constraints of all types that condition it and possible decision-making, and all national capabilities, whether developed internally or imported, on which the leadership will rely to decide to proliferate and implement it. It is worth emphasising that a new dimension in the analysis of motivations opens here, taking into account the psycho-sociological features of leaders, not a frequent practice in international relations theories.²⁴

Part of the GSPP work²⁵ was devoted to the systematic analysis of a number of countries.²⁶ Based on the distinction between exogenous determinants (“History and strategic context”, “International dependencies and alliances”) and endogenous determinants (“Type of political regime”, “Type of leader and personal history and typology”, “Elites and domestic power mediators”), this work also led to the establishment of a new typology of nuclear proliferation models. These two categories of determining factors come into play in an alternate and combined dynamic, providing the rationale for the definition of new typology of pro-

24 See J. Hymans, *The Psychology of Nuclear Proliferation: Identity, Emotions, and Foreign Policy* (Cambridge University Press, 2006).

25 J.C. Archambault, J.F. Daguzan, X. Pasco, B. Sitt, *Les motivations des pays proliférants*, CESIM Report, May 2006, available at: [http://www.cesim.fr/fichiers/Rapport_fin_MPP_\(V_Internet\).pdf](http://www.cesim.fr/fichiers/Rapport_fin_MPP_(V_Internet).pdf).

26 Application of the determinants to a specific country is based on the establishment of a table which exhibits all the elements that are likely to condition the decision dynamics regarding proliferation at the moment of history for which the analysis is carried out or possibly to detect a present proliferating trend. The list of selected countries considered as “exemplary” for the GSPP study included five from the Middle East and North Africa (Algeria, Iran, Iraq, Israel, Libya), nine from Asia (Australia, China, India, Indonesia, Japan, North Korea, Pakistan, South Korea, Taiwan) and South Africa. Each type of political regime (democratic, authoritarian, religious and dictatorial) is therefore represented. Using this framework, ten countries chosen among the list of fifteen considered in this study were analysed in greater detail. For example, in the case of Iran, it seems that an alternating trend can be identified between an exogenous/offensive-defensive type and an endogenous/religious type. Conflicting factors within Iranian society give rise to ambiguity about the ultimate objective of its nuclear activities. Whether or not intentional, the result is to create an option for a nuclear-weapons capability, hence uncertainty in the rest of the world regarding Iran’s intentions regarding nuclear proliferation.

liferating states and comprising four exogenous and four endogenous models. This approach allows both to integrate and to go beyond the three classical Sagan models.²⁷

Although the present study does not include a rigorous application of the GSPP approach, it does draw upon some of its concepts to help understand the motivations of the leadership of targeted countries and related decision-making processes.

27 See S.C. Sagan, "Why Do states Build Nuclear Weapons? – Three Models in Search of a Bomb", *International Security*, Vol. 21, n° 3 (Winter 1996/97), p. 54-86: "...the security model, according to which states build nuclear weapons to increase national security against foreign threats,...the domestic politics model, which envisions nuclear weapons as political tools used to advance parochial domestic and bureaucratic interests; and the norms model, under which nuclear weapons decisions are made because weapons acquisition...provides an important normative symbol of a state's modernity and identity."

Categories of Sanctions

Within the context of sanctions, there are various means to influence the behaviour of a state or other entities. This section discusses three common forms of constraining measures: traditional sanctions, targeted sanctions and other means of influence.

Traditional Sanctions

Over the years a number of traditional measures have been developed: broader economic sanctions, industrial and scientific, political and diplomatic sanctions, and fewer social and cultural exchanges.

Traditional sanctions involve a number of measures imposed by a sender to compel a target to comply. Usually such measures do not differentiate between the state (i.e. the ruling elite) and broader society. On the contrary, traditional forms of comprehensive sanctions usually count on the fact that isolation will cause civilians to rebel against their leaders, thereby compelling them to change the politics that prompted the sanctions in the first place. Thus, traditional sanctions typically come at the expense of harming civilians or at least ignoring the interests of the broader citizenry.

Economic Sanctions

Financial sanctions involve three types of categories: (1) suspension of loans or aid withdrawal by the sender; (2) denial of access to international financial markets; and (3) bans on capital investment in the targeted state.²⁸ They often involve a sector-specific ban such as an oil ban, textile ban, a ban on using a particular currency or engaging with particular financial operators (such as banks).

Intended to impose constraints on the economic activities of the targeted state, economic sanctions aim to prevent a state from importing certain goods or services. They may also prevent a state from exporting its natural resources, or agricultural or manufactured products. Another form of economic sanctions specifically target banking and financial sectors. For example, overseas assets can be frozen or transactions blocked. Foreign aid may also be withheld. Economic sanctions are the ones most likely to have a negative impact on a country. Refusal to import goods or services from a country can act as protectionist measures for the targeting country. This can produce a constituency for such measures and make them difficult to remove. Conversely, a ban on exporting certain goods and services to a country, such as agricultural products for example, can damage influential sectors of the targeting country and make it difficult to impose or sustain such measures.

Trade Embargoes

Trade embargoes are one common form of economic sanctions, often limited to a prohibition on supplying arms (e.g. UNSC Resolution 713(1991) on Yugoslavia). This will be discussed further in the section on arms embargoes. A “full” trade embargo will prohibit the export to, and import from, the embargoed state of all goods, but to date has never included medical supplies, food justified by humanitarian need, and

28 A. Tostensen and B. Bull, “Are Smart Sanctions Feasible?” in *World Politics*, Vol. 54, April 2002.

sometimes other humanitarian goods. A trade embargo may be partial. For example, Libya was limited to a prohibition on the supply of arms, aircraft and aircraft equipment, and oil pipeline and refinery equipment (Resolutions 748(1992) and 883(1993)). However, in this instance, oil imports – Libya’s main export product – were never prohibited; nor were the financial proceeds of such exports. Services would include helping to set up and service equipment; consultancies; legal, accountancy and surveying; banking, etc. As such, they are not usually subject to a general prohibition, but financial sanctions normally make it difficult for the providers of services to get paid lawfully.

Whether full or partial, a trade embargo usually has a serious impact on existing contracts and licences with the embargoed state or entity and its nationals, since most can no longer be performed lawfully. Yet, each UN member state must do what is necessary within the framework of its national laws to implement and enforce the embargo – as it may have to do for other sanctions. Some states may have to introduce secondary legislation. For others the resolution may be superior law, though there may still be need for legislation, for example to make violations of sanctions a criminal offence and to prescribe penalties.

Financial Sanctions

Financial sanctions are usually closely linked to a trade embargo to prevent the embargoed state from paying for smuggled goods. They may impose a comprehensive freeze on all existing funds held abroad by the entity under sanctions, and a prohibition on making new funds available to the embargoed state. Exceptions however, are made for payments for medical supplies or food needed for humanitarian purposes (see for example UNSCR 757(1992) for the Federal Republic of Yugoslavia). But the sanctions may be more limited; for instance, the financial proceeds of future Libyan oil sales were not affected (Resolution 883(1993)). The sanctions may apply to the state and its agencies, companies and nation-

als (Resolution 661(1990)) or be limited to the state and state entities only (Resolution 883(1993)), which naturally makes sanctions easier to evade.

Arms Embargoes

This is one of the more common forms of targeted sanctions. According to United Nations Arms Embargoes: *Their Impact on Arms Flows and Target Behaviour (2007)*, arms embargoes are indeed one of the more frequently-used sanctions measures.²⁹ Throughout 1990-2005, 74 arms embargoes were introduced and arms embargoes continue to be a preferred measure in dealing with conflicts.³⁰ One of the main purposes of an arms embargo is to deny or to reduce access of weapons to warring parties. Yet implementation of arms embargoes is very difficult as it entails a complex process. Not only is the arms trade a lucrative market which attracts many actors (legitimate as well as illegitimate), but the monitoring and implementation of an arms embargo requires considerable resources and political will to be fully effective. The following recommendations have been made to strengthen the impact of embargoes: ensure clarity of coverage, scope and demands in UN arms embargo resolutions; conduct regular reviews to assess compliance with UN arms embargo demands; increase the authority and expertise of UN sanctions committees, panels of experts and monitoring teams; establish a 'clearing house' for UN sanctions committees, panels of experts and monitoring teams; assess and strengthen the capacity of member states to implement arms embargoes; target governmental and non-governmental actors that assist in the violation of a UN arms embargo; promote the adoption of national legislation criminalizing UN arms embargo viola-

29 D. Fruchart, P. Holtom, P. Wallensteen, S.T. Wezeman, and D. Strandow, United Nations Arms Embargoes. *Their Impact on Arms Flows and Target Behaviour*, Stockholm International Peace Research Institute (SIPRI) and the Department of Peace and Conflict Research, Uppsala University (2007).

30 M. Brzoska, "Measuring the Effectiveness of Arms Embargoes" in *Peace Economics, Peace Science and Public Policy*, article 2, vol. 14, no. 2 (2008).

tions; clearly define 'conflict goods' and measures for embargo of their export in combination with UN arms embargos.³¹

In the EU context, arms embargoes are typically imposed in a Common Position. Most of the time the operative provision refers to the EU Code of Conduct, which sets the common standards for arms transfers by an EU member state.³² Whenever an arms embargo is implemented, *the Common Military List of the European Union* is likely to be consulted,³³ as is often *the Council Common Position on the Control of Arms Brokering and the List of Dual-use Items and Technology*,³⁴ since they serve to define the minimal scope of the arms embargo.

Sequester of Assets and Impounding of Merchant Vessels

UNSCR Resolution 778 (1992) broke new ground in requiring the taking possession of Iraqi funds (sequester not confiscation) representing the proceeds of oil sales and transferring them to the United Nations for the Compensation Commission. The remaining funds will eventually be returned once all compensation has been paid. Resolution 820(1993), paragraph 24, required the impounding of ships controlled by Federal Republic of Yugoslavia (FRY) interests and their forfeiture if they were found to be violating sanctions.

Flight Restrictions

Resolution 670(1990) imposed the first aviation sanctions ever, requiring flights to Iraq to be searched for any embargoed goods on board. The

31 See footnote 43.

32 European Union Code of Conduct on Arms Exports, Council of the European Union, 8675/2/98, Brussels, 5 June 1998.

33 Common Military List of the European Union (Equipment Covered by the European Union Code of Conduct on Arms Exports), in the Official Journal of the European Union 2006/17/3, 2006/C66: 01.

34 See the last Council Regulation 2006/394 of 27 February 2006 amending the Community Regime for the Control of Exports of dual-use items and technology, or at the website: http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/index_en.htm.

first comprehensive prohibition on all flights to and from an embargoed state was made against Libya (Resolution 748(1992)), the only exceptions being for significant humanitarian need, subject to the approval of the Libya Sanctions Committee.³⁵

Industrial and Scientific Sanctions

The UN and organisations such as the EU may impose sanctions on private operators. For example, the UN can impose sanctions on companies closely linked to specific governments or to sustain government actions. In Iran for instance, the UN has targeted companies engaged in developing centrifuge technologies. Similarly, regional organisations such as the EU may impose sanctions on industries that provide economic (or political) weight to a regime. One example of this are the EU sanctions against the Myanmar jade industries, which generate a lot of revenue directly reinvested in sustaining the regime.

Sanctions are imposed on the scientific community in exceptional cases only, relating to science that could be applied to develop sensitive material for military use (e.g. nuclear, biological, chemical, and radioactive warfare). In 2006/2007 the UN and the EU imposed sanctions on Iran for its nuclear activities restricting the training of Iranian students in the relevant nuclear sciences. Consequently, member states had to require their national universities to be cautious about giving Iranians access to training and education on certain subjects. In western countries this sanction was interpreted in various ways, in general with great reluctance from the scientific community, which considers the free flow of information as an essential part of scientific progress. The International Council of Scientific Unions (ICSU) also rejected such sanctions.

³⁵ The Resolution also required the closure of all offices of Libyan Arab Airlines. Later, Resolutions 757(1992) (FRY), and 1070(1995) (Sudan) included comprehensive prohibitions on flights.

Political and Diplomatic Sanctions

Political and diplomatic sanctions are generally directed against individuals – typically leadership or elites. They may involve withdrawal or expulsion of diplomatic personnel or, in extreme cases, a severance of diplomatic relations. Denial of landing or transit rights to a national airline could constitute both a significant political measure and an economic penalty. Restrictions on academic, cultural and scientific exchanges and competition in sports events have also been applied. Such measures tend to be somewhat symbolic, but can also be highly visible. They can be calibrated or reversed relatively easily.

Severance of diplomatic relations and expulsion of diplomats have long and frequently been used as a “political weapon,” to express strong protest against the policies pursued by a particular government or as a sanction against breaches of prescriptions or abuse of diplomatic functions.

There are three levels in diplomatic sanctions. The first is the expulsion of a diplomat, and the second is the severance of diplomatic relations as a whole. The third and intermediate category of diplomatic sanctions between the previous two consists of reducing the number of diplomatic staff in the mission of the sending state. Generally speaking, the expulsion of a diplomat would be carried out when a diplomat has personally offended the receiving government. If the displeasure were with the policies of the sending state, a normal course of action would be to break off diplomatic relations or, in a less serious case, to recall the ambassador or scale down the level of diplomatic relations.

The first category, expulsion of a diplomat, is significantly institutionalised in the Vienna Convention on Diplomatic Relations, which provides for designating the diplomat *persona non grata*. According to Article 9 of the Convention, “[t]he receiving state may at any time and without having to explain its decision, notify the sending state that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata*... In any such case, the sending state shall,

as appropriate, either recall the person concerned or terminate his functions with the mission.” Thus, this system entitles a state to expel a diplomat at short notice. While there is no need for the expelling state to explain the reasons for the expulsion, such motives include suspicion of espionage (in the early years of the Convention) and conspiracy against the receiving state (in recent years). Such expulsions continue even today. In practice, it is usually unnecessary to declare a person *persona non grata*. It is normally enough to say that his or her presence is not wanted.

One of the largest instances of expulsion of diplomats took place in 1971 when, following repeated warnings to the Soviet Union to reduce the number of KGB agents in diplomatic and trade establishments in London, the UK Government requested the withdrawal of 105 Soviet officials for reasons of excessive intelligence gathering by Soviet officials.³⁶

In parallel to the practice of expelling a diplomat, an associated practice has been to recall a diplomat, typically the head of the mission, by the sending state. This is usually an indication of a protest against the policies pursued by the receiving state. Such a recall does not necessarily lead to the severance of diplomatic relations.

A more drastic way of expressing displeasure about the policies of the sending state is the severance of diplomatic relations. Every state has the discretionary right to end its relations with other states. It is true that the establishment of diplomatic relations is a matter of mutual consent; but their severance is a unilateral act. Since diplomatic relations are based on mutual agreement of the two states concerned, loss of agreement would lead to their severance.

There are a number of instances of the breaking off of diplomatic relations. Iran broke off relations with the United Kingdom during the

³⁶ E. Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 3rd ed., Oxford University Press, 2008, pp. 77-78.

1951 crisis; Saudi Arabia did so with Britain and France in 1956 in relation to the Suez crisis; six Arab countries broke off diplomatic relations with the United States at the time of the Six-Day War in 1967; the United Kingdom severed its relations with Argentina immediately after the Argentine forces landed on the Falkland/Malvinas Islands in 1982; the UK ended diplomatic relations with Libya following the incident of shooting from the Libyan Embassy in London in 1984. These examples show that the severance of diplomatic relations often occurs immediately before an outbreak of war or otherwise in relation to a war between the states concerned.

The severance of diplomatic relations with a particular state may also be enacted collectively through a resolution of an international organisation. Among examples are the resolutions of: the Arab League against the Federal Republic of Germany in 1965; the Organization of American States (OAS) against Cuba in 1962; the United Nations General Assembly against Spain in 1946 and against South Africa in 1962.³⁷ These resolutions were not binding on the members but merely recommended that members sever their diplomatic relations with a particular state.

By contrast, the Security Council may adopt a binding resolution under Chapter VII of the UN Charter. Such resolutions affecting diplomatic relations include Resolution 748(1992) against Libya, and Resolution 757(1992) against the FRY. For instance, Resolution 748(1992) of 31 March 1992 decided that “all states shall significantly reduce the number and the level of the staff at Libyan diplomatic missions and consular posts.” This was a “measure not involving the use of armed force” under Article 41 of the UN Charter, taken in response to Libya’s refusal to renounce terrorism and to respond fully and effectively to the call of the Council to extradite suspected bombers to the United Kingdom or the

³⁷ H. Blomeyer-Bartenstein, “Diplomatic Relations, Establishment and Severance” in *Encyclopedia of Public International Law*, Vol. 9, p. 101.

United States. This measure was confirmed by the Council in its Resolution 883(1993).

Resolutions 748(1992) and 883(1993) (Libya), and Resolution 757(1992) (FRY), required the scaling-down of diplomatic relations. Resolution 757(1992) also called for non-participation by FRY sportsmen in international events, and suspension of government-sponsored scientific and cultural exchanges. Some sanctions regimes have called for visa refusal to certain high-level officials.

It is no less difficult to predict or assess the effects of these measures compared to other forms of sanctions. But they could hardly be described as an effective deterrent in that there would normally be no assurance that they would achieve the intended effect or have any significant effect at all.³⁸ Particularly in the case of a unilateral breaking off of diplomatic relations, it is often the case that an indirect means of communication between the states concerned will be maintained through a third state. For instance, following the breaking off of relations between the UK and Libya in 1984, Libyan interests in the UK were looked after by Saudi Arabia.³⁹ Moreover, their relations could, in a sense, continue through their respective representation at the United Nations or other international organisations. This does not apply, however, in the case of severance or scaling down of diplomatic relations imposed as a collective sanction taken by the UN Security Council. To conclude, it may be said that measures in the field of diplomatic relations have considerable flexibility in response to a variety of situations.

Social Exchanges and Civilian Actions

Sanctions need not be restricted to the types of measures mentioned above. In particular, with respect to a state having a strong and influ-

³⁸ Lord Gore-Booth and D. Pakenham (eds.), *Satow's Guide to Diplomatic Practice*, Longman, 1979, p. 188.

³⁹ E. Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 3rd ed., *op.cit.*, p.80.

ential civil society, different types of approaches/sanctions may have a correcting influence on the behaviour of the authorities of that country. By 'punishing' sectors of the civil society, preferably via similar organisations in other countries with close contacts were maintained earlier, effective signals may be given. Consequently, such approaches/sanctions could originate with non-state actors, and not necessarily governments. Alternatively, when countries are isolated, contacts at non-state level may break the ice for more official relations.⁴⁰

In countries where international sports games are very popular, banning participation in international competitions may have a shock effect. Since sportsmen are rarely interested in the activities of their political leadership, depriving them of such popular activities as a regional or world championship may be considered unfair. The sportsmen may lose their careers over an event unrelated to their profession, due to circumstances beyond their control. In South Africa under apartheid, increasing isolation in the field of international sports events was probably instrumental in convincing the white population to change course. Interestingly enough, increasing informal contacts in the cultural field may have had a similar effect.

Other initiatives may also be taken in civil society, such as consumer boycotts of products from particular countries, or of companies which trade with such countries or invest therein.⁴¹ One sometimes effective civilian action consists of disinvestments by stockholders in companies involved in weapons production or weapons trade with unruly regimes: wealthy foundations, non-governmental organisations (NGOs) and

40 An example is the 'ping-pong diplomacy' in the 1970s, leading to formal government contacts between the People's Republic of China and the USA.

41 During South Africa's apartheid regime, actions were taken in the Netherlands against shops selling South African oranges. Under pressure, some large retail companies removed the product from sale. In Europe, discussions take place on boycotting products from Israeli settlements in occupied Palestinian territory.

churches have often taken the initiative, followed by individual citizens and some 'green' banks.

Targeted Sanctions

General Concepts and Practices

Since the end of the Cold War, the UN Security Council has dramatically increased its practice of using sanctions to address peace and security issues. Previously locked in superpower rivalry, the end of the Cold War opened to worldwide engagements. In contrast to the Cold War period – during which the UN imposed sanctions programmes only twice, i.e. against Rhodesia and South Africa – the 1990s saw an explosion of sanctions practice. The period following the Cold War also witnessed a process, mainly at the Security Council, whereby the traditional sanctions tool came to be reconsidered. Rather than being adopted bluntly to pressure states and societies, a process began to develop new forms of policy measures that would retain the power of influence, but limit measures only to carefully targeted actors and commodities. The aim was to avoid causing negative consequences for larger populations and to increase the pressure on regimes and entities whose behaviour was considered undesirable. This new attitude led to the development of targeted sanctions. This is not to say that comprehensive sanctions have entirely left the scene of international politics, but as a strategic instrument targeted sanctions have come to complement this traditional sanctions measure.

The strategic underpinnings of targeted sanctions are to put political and economic pressure on selected individuals (and entities) holding political decision-making power in governments and groups engaged in local armed conflicts, terrorism and political violence. Targeted sanctions are meant to avoid inflicting harm on the broader civilian population. Rather than isolating a society as a whole, the distinct goal of such

measures is to influence decision-makers by engaging or isolating them, for example by subjecting them to targeted financial and travel bans and other measures. Aside from targeting individuals, groups, and entities, targeted sanctions are also imposed against organisations, companies and commodities (to prevent or ban the import or export of certain conflict resources, such as timber or diamonds, from identified conflict zones). Arms embargoes are another common form of targeted sanctions.

Targeting thus involves a variety of political and economic tactics, but in principle pressure is exercised by a combination of punitive measures, incentives and conditionality to entice or coerce designated targets to a change in behaviour. Usually, such tactics involve inscribing targeted sanctions into a larger strategic context involving other security governance tools as well. Targeted sanctions may also be tailored for use throughout different conflict phases. International sender bodies, for example, can deter and prevent specific local actors from engaging in undesirable behaviour by placing them on a sanctions list, imposing a travel ban and targeting their assets before a conflict becomes violent. Such personal accountability can also be applied during ongoing armed conflicts or violence in order to encourage conflict resolution, and in post-conflict situations as a means to contain and deter spoilers. To use targeted sanctions effectively, senders must consider not only the particular context of the issue addressed, but also the practicalities of implementation. As noted, targeted sanctions may involve different types of restrictive measures: financial sanctions, a freeze on assets, travel ban, rough diamond bans, timber sanctions, arms embargoes and luxury goods ban, among others.

Financial Sanctions and Assets Freeze

Unlike traditional forms of economic sanctions, financial sanctions and assets freeze under the “smart sanctions” philosophy aims to restrict

harm to a limited set of actors. For example, an assets freeze may seek to deny or deprive a particular entity— be it an individual, a group, a company, or an institution – of its assets or other property. Such actions are taken either to undermine the activities of the target or to irritate it by naming and shaming. An assets freeze measure is often temporary in nature and is usually meant to have a surprise effect (this also makes sanctions effective at the beginning). An assets freeze is typically applied and enforced until it has been deemed that the targeted actors have changed their political behaviour in a satisfactory manner, and are no longer considered a threat to international peace and security. Such behavioural change allows for asset release. Sometimes such sanctions are removed not because the desired change of behaviour has occurred but because conditions have changed (for example, sanctions against Pakistan were lifted because the United States needed the cooperation of the Pakistani Government to support its war in Afghanistan). Frequently, an assets freeze measure also includes humanitarian exemptions, so that the entity may perform day-to-day activities (paying utility bills, receive welfare, etc).

Travel Ban

Travel bans are one of the most common forms of targeted sanctions. A list is established with names of individuals who are not allowed to travel as they are considered to constitute a threat to international peace and security or to pursue a policy that runs contrary to the will of bodies such as the UN Security Council.

Travel restrictions commonly resort to two types of measures. Firstly, a travel ban can be placed on individuals or groups that are either part of or independent from a regime, but involved in activities unwanted by the sender. A travel ban may prevent an individual from getting a visa (also referred to as a visa ban) or from entering the country of the sender (or those groups of senders enforcing the sanctions regime).

Usually such measures do not cause striking negative economic damage to the target, but are mainly irritant and of symbolic effect. Secondly, travel restrictions may also include aviation sanctions, restricting or banning international air flights in and out of a designated target country. They may include all flights or specific airlines, covering both passenger traffic and/or cargo. Travel sanctions could be a very effective way in preventing WMD proliferators to travel and pursue shadow businesses.

Rough Diamond Bans

Another effective sanctions instrument used to undermine the work of individuals, groups and companies that operate in informal economic markets through trade in high-value natural resources like diamonds is to implement restrictions in rough diamond trading. In order to cut the link between armed conflicts and the trade in illicit high-value resources, the UN Security Council and the EU have on several occasions introduced targeted sanctions on rough (uncut or unpolished) diamonds. For example, this has been done to stop a common source of financing of rebel movements, insurgents, criminal networks and warring parties engaged in local armed conflicts. So far the UN Security Council and the EU have adopted targeted sanctions on rough diamonds in Angola, Sierra Leone, Liberia and the Ivory Coast. In many civil wars, local warlords are dependent on securing financing so as to be able to sustain their military machinery (paying for arms, soldiers/militia salaries, etc.). Dealing with money flows is often uncertain and difficult in logistical terms. It is not excluded that trade in illegal diamonds might also be used as a means among WMD proliferators. Although there is no direct link between WMD and rough diamonds, such commodities could be used by proliferators wishing to hide from formal economic markets where ambiguous transactions may be screened, detected and questioned.

Timber Sanctions

In addition to targeted sanctions on rough diamond trading, the international community has also adopted measures to target trade in high-value timber. Like rough diamonds, timber provides funds for local armed conflicts and therefore needs to be controlled. To date, the UN has introduced targeted sanctions on timber against Liberia. In the case of the most recent civil war in Liberia, the UN Security Council imposed sanctions on the timber industry in order to stop export revenues from going into the pockets of Charles Taylor (now under arrest in The Hague), who could use them to buy weapons. As with rough diamond sales funding rebel groups and terrorist networks, timber could also be a source to generate money for the purpose of engaging in WMD-related activities, or to fund rebel groups and terrorist networks. To date however, there is no known example of such relationship.

Luxury Goods Ban

In recent years, bodies like the UN and the EU have been imposing luxury goods sanctions against the North Korean regime. Such sanctions target particular luxury commodities, intended primarily to cause annoyance and irritation to the leadership, hence are of symbolic value. Yet, such measures should not be underestimated for psychological impact can be as valuable as direct impact.

National Level

Traditional forms of sanctions have been state-based. They make little distinction between the government and society, and make the general population vulnerable to external measures. For instance, a complete oil ban would have catastrophic consequences for the wider population. It is considered that often only a marginalized impact on the decision-making power may be obtained through applying comprehensive sanctions nationwide.

Individual and Leadership Level

Following the 1990s and the introduction of the Sanctions Decade,⁴² targeted sanctions have shifted to make a clearer distinction between the ruling elite and society as a whole. Nowadays, targeted measures are applied against individuals as well as regime officials (government at large). Sometimes targeted sanctions such as travel bans and an assets freeze are also applied on associates and family members. The idea is that such measures should help prevent evasion (for example, if a dictator or a warlord is threatened with an assets freeze, he or she could easily evade such a measure by having the assets turned over the wife/husband/daughter/son).

Organisations, Economic Sectors, Specific Goods

Often front companies (shell-companies) and organisations act as legitimate actors for more subversive activities. For instance, cultural organisations or local bank associations could be involved in collecting money intended for rebel groups or terrorist organisations. Such operators could now be targeted with sanctions.

Moreover, targeted sanctions can be imposed on private operators. For example, a hotel included on the UN's al-Qaeda/Taliban sanctions list was forced to close down because of its alleged connection with terrorism. In another case, the UN Angola Sanctions Committee placed a Portuguese company operating a school on a sanctions list for allegedly supporting the insurgent movement UNITA.

Non-State Actors

In a number of cases the UN, states (see for instance the US Office of Foreign Assets Control), and collective security bodies impose lists of especially designated individuals and non-state-actors to be targeted

42 D. Cortright and G. Lopez, with J. Wagler, R.W. Conroy and J. Dashti-Gibson, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, Boulder, CO: Lynne Rienner Publishers, 2000.

with sanctions. Such lists are not necessarily country specific but function more as broader “wanted lists” for a variety of purposes (terrorism, drug trade, smuggling, money laundering, etc.). In addition, the US and the EU have established “black lists” specifically aimed at terrorist organisations.

Other Means of Influence

Export Control Regimes

Although the use of export-control regimes in the field of WMD cannot be seen as a sanction against a particular country in the strict sense, their operation is directly connected to efforts to halt the spread of sensitive technologies, materials and equipment.⁴³ Members of the different regimes – mainly industrialised countries – have mutually promised to impose export controls on items relevant to the production of WMD, including so-called dual-use items. Hence, such goods may be exported only with an export licence, which gives governments the possibility to stop such exports or to put specific conditions on the export (such as a demand for IAEA safeguards, end-use certificates or no re-export without permission of the original exporting state).

The detailed ‘trigger’ lists of controlled items are regularly reviewed by the regimes and included in the export control laws of the member states. The members also exchange information about countries trying to acquire specific items for possible WMD purposes. The members of the regimes normally meet annually to develop further guidelines and exchange relevant information. Any export denial is communicated to the other members of the regime to prevent a country seeking particular goods from ‘shopping around’. All regimes have the advantage of

43 With the onset of the Cold War, the NATO alliance, led by the US, sought to deny the members of the Warsaw Pact and China the benefits of the more advanced technological base of the West by imposing export controls on specified items through the Coordinating Committee for Multilateral Export Controls (COCOM).

providing a forum for multilateral or bilateral discussions on the export behaviour of member States, stimulating exporters to ‘follow the rules’.

There are three regimes⁴⁴ relevant to WMD:

1. The Nuclear Suppliers Group (NSG),⁴⁵ whose members restrict the transfer of sensitive nuclear technologies, in particular in the field of uranium enrichment and the reprocessing of spent nuclear fuel to produce plutonium;⁴⁶
2. The Australia Group (AG), which coordinates export controls with respect to materials and equipment relevant to the production of chemical and biological weapons;
3. The Missile Technology Control Regime (MTCR), which does the same for equipment and technologies relevant to the development and production of ballistic and cruise missiles capable of delivering WMD, i.e. missiles with a payload of at least 500 kg and a range of more than 300 km.

UNSC Resolution 1540

On 28 April 2004, under Chapter VII, the United Nations Security Council unanimously adopted Resolution 1540 (2004), which obliges all states to refrain from supporting, by any means, non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems. It imposes on all states legally binding obligations to establish domestic controls to prevent the proliferation of nuclear, chemical and

44 A fourth regime is the Wassenaar Arrangement for conventional arms and dual-use goods not covered by the other regimes.

45 A related – and in several aspects overlapping – group is the Zangger Committee based on art.III.2 of the NPT, i.e. which exports trigger IAEA safeguards. The fundamental difference with the NSG is that, under the right safeguards conditions, an export cannot be denied under the Zangger rules.

46 The NSG decided in 1992 to export items on the trigger list only to those non-nuclear weapons states (as defined in the NPT) which have full-scope IAEA safeguards covering all their nuclear materials. The agreement between the USA and India is not in line with this decision, which means that the NSG had to agree to make an exception for India, and did so.

biological weapons, and their means of delivery, including by establishing appropriate controls over related materials. It also encourages enhanced international cooperation on such efforts, in accordance with, and promoting universal adherence to, existing international non-proliferation treaties. The 1540 Committee released its first report to the United Nations Security Council on the implementation of the resolution in April 2006. On 27 April 2006, the Security Council extended the mandate of the Committee for a further two years with the adoption of Resolution 1673(2006), which reiterated the objectives of Resolution 1540(2004), expressed the interest of the Security Council in intensifying its efforts to promote full implementation of the resolution, and obliged the 1540 Committee to report again by April 2008, since extended to 25 April 2011. On 6 May 2008, the chairman of the 1540 Committee briefed the UNSC on the work of the Committee. As required by the two resolutions, he reported that some 40 states had yet to report to the Committee on how they are implementing the first resolution.

Proliferation Security Initiative (PSI)

As a response to the threat of WMD proliferation, in March 2003 certain states agreed under US leadership to participate in the Proliferation Security Initiative (PSI). There are now nearly 100 participating states, including Russia, but not China. PSI is not a treaty-based scheme, though it builds upon the Statement of the President of the UN Security Council of 31 January 1992 (S/23500) that “WMD proliferation is a threat to international peace and security.” The aim is to impede and stop trafficking of WMD, their delivery systems and related materiel by states or non-state actors engaged in or supporting WMD proliferation programmes.

The principal means of action is the stopping and searching by a participant state or states of merchant shipping suspected of carrying WMD cargo. This threat is particularly focussed on the millions of ship-

ping containers currently in circulation.⁴⁷ Such action is possible only in accordance with international law, e.g. stopping only own flag vessels anywhere and foreign flag vessels in the participants' ports, territorial sea or contiguous zone (if any), or otherwise with the consent of the foreign flag state. To date, nine ship-boarding agreements have been signed by the United States with Bahamas, Belize, Croatia, Cyprus, Liberia, Malta, the Marshall Islands, Mongolia (which though land-locked has a large fleet) and Panama.⁴⁸ Indeed Liberia and Panama have numerous flags of convenience and ships registered with them. The Agreements, which are modelled on similar arrangements in the counter-narcotics arena, are tangible examples of non-proliferation cooperation, providing authority on a bilateral basis to board vessels suspected of carrying illicit shipments of WMD, their delivery systems or related materials. The Agreements facilitate bilateral cooperation to prevent such shipments by establishing procedures to board and search such vessels on the high seas. Under the Agreements, if a vessel registered in the United States or the partner country is suspected of carrying proliferation-related cargo, any one of the parties to this Agreement may request of any other party to confirm the nationality of the ship in question and, if needed, authorise the boarding, search, and the possible detention of the vessel and its cargo. The Agreements are important steps in furthering PSI and strengthening the mechanisms that prohibit suspect WMD cargo.

The PSI does not publicise its work, though it claims several successes. A famous example of a successful operation took place in October 2003 and involved Germany, Italy, the United Kingdom and the United States, of the German merchant ship "BBC China". The ship was carrying components for centrifuges supplied by the controversial Pakistani

47 See the IGG5 Report "Container Security, a Proposal for a Comprehensive Code of Conduct", Defense and Technology Paper No. 9, Centre for Technology and National Security Policy, National Defense University, Washington, January 2005; this report can also be found on the CESIM website: http://www.cesim.fr/fichiers/Container_Security_NDU_Report.pdf.

48 See <http://www.state.gov/t/isn/c27733.htm>.

nuclear scientist A.Q. Khan and destined for Libya. The operation was an important factor leading to Libya's abandonment of its WMD and long-range missile programmes and to the dismantling of the A.Q. Khan proliferation network.

Global Initiative to Combat Nuclear Terrorism (GICNT)

This American and Russian initiative, launched in 2006 and now supported by more than 75 countries, is directed towards denying sensitive nuclear materials to sub-national groups which could use them for nuclear explosive devices or radiological weapons, and preventing attacks on nuclear installations. International organisations such as Interpol, the IAEA and the UN Office on Drugs and Crime (UNODC) also participate. Participants have agreed to take specific measures such as improving the accountancy of nuclear materials as well as the physical protection of sensitive nuclear materials and facilities. It has also stimulated to improve methods for detection of illegal transport of nuclear materials and to strengthen frameworks for prosecution of related criminals. Information sharing on these matters will also be improved.

The structure of the GICNT is similar to that of the Proliferation Security Initiative (PSI): voluntary cooperation among interested states, having regular plenary meetings as well as training exercises.

Sanctions-Imposing Bodies

UN Security Council Sanctions⁴⁹

To understand how the UN Security Council (UNSC) adopts sanctions (or does not), and why sanctions were drafted as they were, it is necessary to know how the UNSC works in practice. The (two) essential points are that, first, the Council is a highly political body and, in addition to the problem of the veto by one of the five permanent members (P5), the other ten members of the Council are usually crucial. The second point is that for about 95 percent of the time the members of the Council meet informally to discuss everything before the issue is formally put on the agenda, and, most importantly, to negotiate all draft resolutions which the Council may, or may not, vote on. Also there is no agreed, published record of such discussions nor what is 'decided' in the informal consultations.

Voting

The adoption of a UNSC resolution requires nine positive votes, and no negative vote by a Permanent Member (veto). A Presidential Statement

⁴⁹ Annex I provides more detail on how the UNSC works in practice.

(made by the rotating President of the UNSC) requires the consent of all 15 UNSC members.

Powers of the UNSC

Resolutions of the UNSC which are adopted under Chapter VII of the UN Charter (and this includes all sanctions resolutions) are legally binding, not only on the 15 members of the UNSC, but on all 192 UN member states. But most resolutions are adopted under Chapter VI and are not legally binding. The famous Resolution 242(1967) on the territories occupied by Israel is just one example.

Before the UNSC can adopt a resolution under Chapter VII, it must make a finding, under Article 39 of the UN Charter, that the situation confronting the Council is a threat to international peace and security. Perhaps the best example is Resolution 660(1990) which defined the invasion of Kuwait by Iraq as a threat to international peace and security.

Sanctions require states to stop what would otherwise be lawful or prevent their nationals from acting in such a way. Article 41 contains examples: interruption of economic relations and means of communication, and severance of diplomatic relations. Until 1990 the prohibition of imports and exports, and associated financial measures, were the only sanctions imposed. Beginning with Iraq, the Council developed a much wider range of application.

The word 'sanctions' is not mentioned in the UN Charter, but 'sanctions resolution' is a useful term to describe a UNSC resolution which, in order to bring pressure on a state whose behaviour is a threat to international peace and security, requires all UN member states and their nationals to stop doing what they would otherwise be entitled to do in relations to the state at fault. UNSC resolutions can be roughly divided into resolutions which demand, prohibit or authorise countries to take certain actions. Examples would be Resolution 660(1990) which

demanded that Iraq leave Kuwait; and, because Iraq ignored that demand, 661(1990) which comprehensively prohibited trade with Iraq; and 678(1990) which authorised the use of force to liberate Kuwait and restore peace and security in the area. But some trade embargoes are only partial, such as those against Libya in the 1990s.

Sanctions Committees

For each sanctions regime, the Council sets up a committee on which each of the 15 members of the Council seat.⁵⁰ However, unlike the Council itself, where the chairmanship of the committees rotates each month, the post is held for a year. Also, all decisions are taken by consensus. A committee's functions are to monitor compliance with the relevant sanctions regime and carry out such tasks as the Council attributes to it. These will depend on the terms of each regime, but can include authorising, expressly or tacitly, humanitarian supplies or flights. Although only the Council itself can interpret the resolutions, in practice the committees do so as well, though difficult cases may be referred to the Council when a committee cannot agree.

Termination of Sanctions

Sanctions are usually terminated, wholly or partly, by another Chapter VII resolution. Those against Libya were 'suspended' automatically upon the UN Secretary-General reporting to the Council that the two people accused of the Lockerbie bombing had arrived in the Netherlands for trial before the Scottish Court.⁵¹ There could be a similar provision for automatic termination. Since 2000 there has been a tendency for the Council to provide that some measures will be in force for a fixed period unless the Council decides later to extend it (see Resolution 1306(2000))

⁵⁰ The mandate and description of all sanctions committees can be found on the UN official website: <http://www.un.org/sc/committees/>.

⁵¹ See UNSCR 1192 (1998), para. 8. Libya having finally accepted responsibility for the crimes and payment of compensation, sanctions were terminated by UNSCR 1506 (2003).

(Sierra Leone), para. 6, and Resolution 1330(2000) (Iraq), para. 1 and 4. However, such provisions are seen to defeat the purpose of sanctions, since they may encourage the sanctioned state to wait in the hope that the members of the Council will not agree to extend the sanctions.

Other UN-Related Activities

Compensation Commission

Another innovation in Resolution 687(1991) was the establishment of the UN Compensation Commission with the task of compensating those foreign states, corporations and individuals which suffered loss or damage as a result of Iraq's invasion of Kuwait. The funds to do this are produced by a levy (initially 30 percent, later reduced to 25 percent, and now 5 percent) on the proceeds of the sale of oil by Iraq.⁵²

International Criminal Tribunals

Having jurisdiction over war crimes and crimes against humanity, the international tribunals for the former Yugoslavia (Resolution 827(1993)) and for Rwanda (Resolution 955(1994)) are not typical sanctions. The establishment of the tribunals was a necessary consequential measure to help maintain international peace and security in the region and elsewhere, as well as a warning that others who commit such crimes in future may not escape justice. UN member states are required to cooperate with the tribunals by handing over to them people suspected of such crimes, as well as evidence.

Sanctions Dealing Specifically with WMD

Resolution 687(1991) is unique in many ways, not least for its indefinite prohibition on Iraq to possess weapons of mass destruction, long-range missiles, and the means to manufacture them. A Special Commission

⁵² See UNSCR 833(1993).

(UNSCOM, later replaced by UNMOVIC) and the IAEA were given the immensely intrusive task of finding any such weapons, destroying them and seeing that Iraq did not acquire or manufacture them again.

In the case of Iran, owing to the Council's concern with Iran's non-cooperation with the IAEA in its uranium enrichment programme, the Council has so far adopted four sanctions resolutions: 1696(2006), 1737(2006), 1747(2007), and 1803(2008). These are aimed at preventing other states from helping Iran to acquire the necessary items and know-how to enrich uranium as well as ballistic missile technology. They also include the freezing of assets of certain bodies and individuals in Iran, and the right to inspect the cargo of vessels going to Iran.

Regional Sanctions

EU Sanctions

Following the European Political Co-operation framework introduced in the 1970s, a number of sanctions regimes against countries posing a threat to European interests have been imposed (e.g. the partial trade embargo against the Soviet Union in 1982, the arms and trade embargoes on Argentina in 1982, the arms embargo on Iran in 1985, the partial trade embargo against South Africa in 1985, the restriction of diplomatic relations with Libya in 1986, and the arms embargo on Syria in 1986). Yet, the European Union (EU) policy practice of the kind we know today changed with the establishment of the Common Foreign and Security Policy of the European Union (CFSP) (i.e. with the signing of the Maastricht Treaty in 1992). In April 2009, there were as many as 30 ongoing EU and UN sanctions regimes altogether (taking into account both EU and UN sanctions – as the EU apart from its autonomous sanctions regimes also needs to implement UN Security Council decisions).⁵³

53 M. Eriksson, *Rethinking Targeted Sanctions* (The European University Institute, Florence 2009), p. 204.

For a number of years, the EU has been applying sanctions, understood as restrictive measures, to 29 states and also to al-Qaeda and other terrorist organisations. It does so in the framework of its CFSP and the specific objectives set out in the Treaty on European Union⁵⁴ (see particularly Article 11), namely to:

1. Safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
2. Strengthen the security of the Union in all ways;
3. Preserve peace and international security;
4. Promote international cooperation;
5. Develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.⁵⁵

The principles underlying the use of EU-targeted sanctions are laid out in the Basic Principles on the Use of Restrictive Measures,⁵⁶ specifically to tackle issues like terrorism, the proliferation of WMD, and to uphold respect for human rights, democracy, and the rule of law (i.e. good governance). Targeted sanctions are to be deployed in a flexible manner and on a case-by-case basis, and should be the subject of regular review to achieve maximum impact. Moreover, the Basic Principles document also states that the EU is engaged in a constant learning process aimed at improving its implementation capacity.

Another key EU document providing for the use of targeted sanctions is *the Guidelines on Implementation and Evaluation of Restrictive Measures (sanctions) in the Framework of the EU Common Foreign and Security Policy*.⁵⁷ This document not only lays out strategic principles as

54 Full text available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:EN:HTML> .

55 Further information can be found on the EU Commission official website: http://ec.europa.eu/index_en.htm.

56 Council of the European Union (June 2007).

57 Council of the European Union (December 2005). Check the EU Commission website for the most updated version.

envisioned above but also indicates when and how sanctions may be considered. Further to this, the EU Council has also distributed a best practices chapter approved by the RELEX (External Relations)/Sanctions Formation: *EU Best Practices for the Effective Implementation of Restrictive Measures*.⁵⁸ The aim of the recommendations included herein has been to provide EU member states with a roster of best practices, including suggestions on how to improve the process of designation, the identification of targeted entities (legal and natural persons), and freezing measures (assets).

The main documents referred to above thus formulate the basis for the daily design of EU sanctions policies. These guidelines are usually referred to by the EU member states in an effort to create harmony across the various sanctions regimes. In this sense, the institutional features (i.e. documents and agreed upon definitions) shape the design of the EU's sanctions programmes. One could even argue that they determine forthcoming impact, since they define the contour of the targeted sanctions policy.

EU sanctions are mainly economic and diplomatic (e.g. travel bans for certain government officials of the sanctioned state). Since all EU members are also members of the United Nations, any EU sanctions are subject to the UN obligations of EU member States. This was demonstrated dramatically in June 2008 when the EU ban on Robert Mugabe visiting any EU member state could not prevent him from attending the UN Food Conference in Rome since EU sanctions are subject to any contrary UN obligations which apply: in this case, the freedom of each UN member state to decide who should represent it at UN meetings.

Moreover, EU sanctions are less effective than those imposed by the United Nations since EU sanctions are binding for its 27 members only. Even assuming that all EU states were to fully enforce EU sanctions, that

⁵⁸ *Ibid.*

would not necessarily prevent an EU firm from exporting goods to a firm in a non-EU state. Even if that firm legally agreed not to re-export to a state subject to the EU sanctions regime, the scope for evasion is quite large. This is particularly so for goods (especially arms) which may go through various hands before they reach their final destination. UN sanctions suffer from the same problem.

Therefore, although EU sanctions should be taken seriously, their main impact is often more political or symbolic.

Other Regional Sanctions

Several regional organisations have or have had their own sanctions in place. For example, the League of Arab States started a boycott of Israel already in 1948. One of the measures was that foreign companies doing business with Israel were not allowed to operate in Arab states. The USA considered such sanctions as illegal according to American law. For convenience sake, the sanction is often violated by Arab states. Scientific cooperation with Israel was also banned by the League. The Organization for African Unity (OAU) implemented sanctions against South Africa under the apartheid regime while the Organization of American States (OAS) supported some American sanctions against Cuba in the past. In addition, regional organisations, such as the OAS, play a role in implementing sanctions called for by the Security Council, increasing their effectiveness.

Unilateral Sanctions

An Overview

Unilateral sanctions have been applied by individual states against others over the centuries. Athens imposed trade sanctions against Megara for attempted expropriation of territory and kidnapping.⁵⁹ Such meas-

59 B. Bartlett, "What's Wrong with Trade Sanctions", Policy Analysis No. 64, The Cato Institute, 1985.

ures have involved blockades, embargoes, etc. From the beginning of the 20th century to the end of World War II, the total number of cases of unilateral sanctions was eleven, of which three were imposed by the UK, and the remaining eight by the US. As with the case of the Athenian sanctions against Megara, the sanctions were precipitated, typically, by bilateral disputes.

Historically, unilateral sanctions have been imposed primarily in reaction to and as penalty for specific events or activities. For example, the imposition of sanctions by the UK against the USSR for the arrest of British citizens (1933) and by the US against the UK and France for invading and occupying Suez (1956) are indicative of the category of sanctions that are reactive; the objective is either to punish or to restore a situation to the status quo ante. Other representative examples of this category of sanctions are: the US on USSR (1975-1994) to compel it to allow increased Jewish emigration, Canada on Pakistan (1974-1976) to apply stricter safeguards to nuclear power plants, the US on Panama to destabilise the government, etc. A recent notable example in this category of unilateral sanctions is the set of sanctions imposed by the US on the states it has designated as the “state sponsors of international terrorism”, such as Iran, Syria, and Sudan, and until recently Libya and North Korea. After World War II, the number of unilateral sanctions increased to a total of 155 cases, of which 73 percent were imposed by the US, 9 percent by the USSR and the remaining 18 percent distributed among 13 other states.⁶⁰ The number of cases of unilateral sanctions increased substantially during the latter part of the 20th century when the US began making increasing use of unilateral sanctions as a foreign policy tool.

60 G.C. Hufbauer, J.J. Schott, K.A. Elliott, B. Oegg, *Economic Sanctions Reconsidered*, 3rd Edition, Peterson Institute for International Economics, 2007.

There has also been a long history of unilateral sanctions imposed in reaction to specific military conflicts. During World War I, the UK imposed economic sanctions on Germany in order to weaken it and facilitate victory. In the latter part of the 20th century, the range of activities that had become subject to sanctions was expanded to cover not only military conflict, but also preparations for conflicts – be they actual, alleged or perceived. Although this expansion has taken place under within the framework of WMD, it has cast a wide net that covers a broad range of technological developments. Nevertheless, of approximately 150 cases of unilateral sanctions applied between the end of World War I and the end of the 20th century, fewer than 15 percent have been related to WMD, with the US being the principal initiator, accounting for more than two thirds of those. Even though the total number of cases of sanctions is small, this number becomes even smaller if a distinction is made between reactive sanctions applied in response to a direct threat of acquisition or use of WMD, and those related to activities that potentially could lead to the development of WMD.

In recent years, unilateral sanctions with respect to WMD have been imposed by Australia, Canada and the US. For instance, Australia has imposed them twice against France in reaction to nuclear testing in the Pacific, while Canada imposed them against the European Community, Japan, India, and Pakistan to compel the first two to improve nuclear safeguards and, for the latter two, to apply them. On the other hand, the number of states against which the US has been applying sanctions is more than ten, using a more complex rationale (see the country studies in Chapter V in this report). Neither the Canadian nor the US sanctions had any obvious effect on the nuclear programmes of India and Pakistan and some were eventually abandoned.

Disarmament treaties may also include explicit provisions for unilateral sanctions. For instance, a unilateral obligation is imposed by the CWC. Article VII requires each state party to enact domestic legislation

to ensure the carrying out of its obligations under the treaty. These obligations involve controls on a broad range of activities involving chemicals that could contribute to the development of chemical weapons. Chemicals on Schedules 1 and 2 can only be transferred to other states parties, while chemicals on Schedule 3 can also be transferred to non-states parties under specified safeguards. Thus, each state party is obligated to impose unilaterally complete trade sanctions on non-states parties with respect to chemicals on Schedules 1 and 2 and conditional sanctions for those on Schedule 3.

US Sanctions and WMD

Under the Bush administration, the United States frequently resorted to unilateral sanctions as a major weapon against the proliferation of WMD and missiles. Sanctions were imposed over 270 times against some 200 entities and individuals – an average of about 35 times per year, which is over four times the rate in the preceding Clinton administration. Some foreign entities were sanctioned multiple times.

The State Department traditionally has imposed most United States sanctions. However, Executive Order 13382, issued in June 2005, authorised the Treasury Department to block the US assets of entities judged to be engaged in or assisting proliferation, as well as the US assets of foreign banks that fail to follow the US lead. Since then, Treasury has surpassed State and now imposes most US sanctions related to WMD. One advantage of financial sanctions is that government action is frequently followed by voluntary action by private financial firms, thereby amplifying the effect. Another trend has seen Iran replacing China as the chief target of US sanctions. These changes could reflect changes in US government personnel, “improved” Chinese behaviour or greater weight being given to other foreign policy objectives, such as the need for Chinese assistance in dealing with North Korea and Iran.

The effectiveness of these US unilateral sanctions is difficult to measure, since it is hard to separate these from other factors, such as UN Security Council Resolutions and parallel actions by European banks. In a December 2007 report on sanctions on Iran, the US General Accounting Office concluded that “the overall impact of sanctions is unclear.”⁶¹

A famous recent case of US financial sanctions was the 2007 action against Banco Delta Asia in response to counterfeiting by North Korea. Although the amount in question was only 25 million dollars, the effect was dramatic. The action was considered a success, although the money was eventually returned without any obvious correction of the original crimes. Another interesting aspect of the Banco Delta Asia affair was that it caused North Korea to delay the very important nuclear agreement which had resulted from the Six-Party talks in February 2007. This is a useful illustration of how sanctions can have unintended negative consequences.

61 W. Boese, “Type, Targets of Sanctions Shift in Bush Administration,” in *Arms Control Today*, October 2008, pp. 50-53. See also speech by John C. Rood, Acting US Under-Secretary of State, at the 25th International Workshop on Global Security, Rome, Italy, 21 June 2008.

Case Studies

South Africa⁶²

Background

The South African Government officially (but secretly) decided to launch a nuclear deterrent and a chemical and biological weapons (CBW) programme at the end of the 1970s, although the two options had been discussed since the beginning of the decade.

As far as nuclear weapons were concerned, the Atomic Energy Board, established in 1948 to conduct general nuclear research and development activities, was implemented in Pelindaba (near Pretoria) in 1961. The first quantity of highly enriched uranium (HEU) was withdrawn in January 1978. In April of that year, the head of Government approved the formulation of a deterrent strategy. A first device was completed in December 1982 (at an ARMSCOR facility) and by 1985, he confirmed that the programme would be limited to seven fission gun-type devices. Eventually, six of seven were completed. In 1987, President Botha announced that South Africa was considering acceding to the NPT and it seems that President de Klerk started to think about dismantling the

62 This chapter has been written by Benjamin Hautecouverture, Research Fellow, CESIM.

nuclear capabilities shortly after his accession to office in September 1989. The dismantling of the first device started in July 1990 and the whole deterrent was dismantled eventually before South Africa's accession to the NPT on 10 July 1991. On 24 March 1993, President de Klerk acknowledged before the South African Parliament that South Africa had embarked on the development of a limited deterrent between the 1970s and the 1980s.

The South African chemical and biological weapons (CBW) programme was established from the mid-1970s to the end of the 1980s. Two official reasons were given afterwards (in the 1990s): the threat of chemical weapons being used by the Cubans against South African troops during the conflict in Angola; the decision to produce crowd control agents in order to improve internal security. At the end of 1981, the South African Minister of Defence officially approved the establishment of a CBW programme, code-named *Projet Coast*, and funds were made available for it, under the direction of Dr Wouter Basson, a military doctor sent abroad secretly to collect information about CBW programmes of Western countries. At that time, South Africa had ratified the Biological Weapons Convention for six years, on 3 November 1975. Project *Coast* included the development and production of weapons that could be used in offensive operations. In March 1993, President de Klerk ordered that no lethal chemical agents be produced by the project and the destruction of chemical products presumably took place in January 1993.⁶³ South Africa signed the Chemical Weapons Convention on 14 January 1993.

Sanctions

Neither unilateral nor multilateral sanctions were specifically imposed on the WMD programmes of South Africa in the course of the years

⁶³ Against that official position, documents later disclosed indicate that some parts of the programme were pursued after 1993.

during which the country conducted them. All of the sanctions adopted were directed against the political nature of the regime, in order to combat the policies of apartheid. Nevertheless, among the provisions of several texts, some measures were intended to delay the implementation of the nuclear programme. Besides, the financial and commercial constraints exerted on the whole economy may have had an impact on the WMD ambitions of the country.

At the multilateral level, three main sets of sanctions were imposed from the 1960s to the 1980s, increasingly restrictive and mandatory:

1. 1960s. UNSCR 181 (7 August 1963) “calls upon all states to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa”. The same year, UNSCR 182 (4 December 1963) again “calls upon all states to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa.”

2. 1970s. 14 years later, UNSCR 418 (4 November 1977) “decides that all states shall cease forthwith any provision to South Africa of arms and related materials of all types” (art. 2), and “further decides that all states shall refrain from any cooperation with South Africa in the manufacture and development of nuclear weapons” (art. 4).

3. 1980s. Finally, UNSCR 569 (26 July 1985) reinforced UNSCR 418. In particular, it “urges Member States to adopt measures (...) such as the following: “prohibition of all new contracts in the nuclear field; prohibition of all sales of computer equipment that may be used by the South African army and police” (art.6).

Besides, packages of sanctions were imposed by different regional organisations. OPEC nations applied an oil embargo starting in 1973. In September 1985, the then-12 member states of the European Community imposed a set of limited sanctions, including tighter enforcement of arms embargo, and a ban on all nuclear, military cooperation with

South Africa. The Commonwealth countries adopted similar measures in October 1985.

At the unilateral level, several countries had passed economic sanctions in the mid 1980s (Japan for instance), although the United States had already begun to do so under the Carter administration: in 1976, the US cut off its contractual supplies of fuel to both SAFARI-1 and Koeberg nuclear reactors. In 1978, several American regulations denied export or re-export of any item to South Africa if the exporter “[knew] or [had] reason to know” that the item would be “sold or used by or for” the military or police of South Africa. Under the first Reagan administration, the decision was taken to ease the regime of unilateral sanctions in the hope of bringing South Africa to cooperate. Despite a first presidential veto, on 2 October 1986, Congress passed the Comprehensive Anti-Apartheid Act (CAAA), which restricted lending to South Africa and imposed bans on iron, uranium, coal, steel, textiles and agricultural goods.

From 1989-1990, negotiations were conducted with the Government of South Africa on the lifting of sanctions on a bilateral basis. In July 1991, President Bush lifted US sanctions although the ban on nuclear trade and the arms embargo remained in effect. Japan lifted its economic sanctions in October 1991. In September 1993, Nelson Mandela asked the United Nations to end economic sanctions. UNSCR 919 (25 May 1994) ended the arms trade embargo as well as all other measures imposed to South Africa. On 27 February 1998, the US lifted its 35-year old arms embargo.

Effect of Sanctions

Insofar as the main objective of international sanctions against South Africa during the 1970s and the 1980s was the collapse of the apartheid regime, it is widely assumed that the overall effect was negligible. Indeed, very few recent analyses on the subject plead in favour of real effectiveness. Besides, it must be noted that the economic cost of sanc-

tions seems difficult to assess accurately. According to Philip I. Levy for instance, “one estimate of the marginal cost to South Africa of the mid 1980’s trade sanctions was 354 million dollars annually, or 0.5 percent of GNP”.⁶⁴ According to former President de Klerk, the cost was 1.5 percent of GNP each year, which was not enough, as a single factor, to lead the government to change the regime.⁶⁵ In particular, South African arms transfers and coal exports between 1985 and 1990 suggest the limited impact of international embargoes on those goods:

Coal exports (millions of tons)		Arms imports (millions of US dollars)	
1985	44,9	1985	20
1986	45,5	1986	20
1987	42,4	1987	220
1988	42,6	1988	200
1989	47	1989	350
1990	49,4	1990	260

Source: ILO 1992

Source: US Arms Control and Disarmament Agency

In October 1989, President Bush sent to Congress an annual report on the CAAA in which he concluded that sanctions “ha[d] not to date been successful”. At least, economic sanctions may have had some psychological effects on the South African elite and thus accelerated the reforms.⁶⁶ According to former Assistant Secretary of State for African Affairs Herman J. Cohen, “sanctions have played a role in stimulating new thinking within the white power structure of South Africa.”

The limited effects of international sanctions against apartheid can be attributed to several cumulative factors:

64 Philip I. Levy, “Sanctions on South Africa: What did they do?”, Centre Discussion Paper N°796, Economic Growth Centre, Yale University, February 1999.

65 Frederik Willem de Klerk, “Les effets des sanctions sur les changements constitutionnels en Afrique du Sud”, *Géoéconomie*, N°30, summer 2004, pp. 43–58.

66 “It is impossible to argue conclusively that trade sanctions failed in the South African case. Given the small economic effects of trade sanctions, an argument for their effectiveness ends up hinging on their psychological impact on the governing party.” Philip I. Levy, *op. cit.*

1. A lack of consensus between states (for instance, the oil embargo imposed by the Arab members of OPEC was undercut by Iran's willingness to sell oil to South Africa until 1979);
2. A lack of political will within states (for instance, neither the Reagan nor the Bush administration really decided to reinforce sanctions passed by Congress in 1986);
3. Many flaws in the global system (for instance, gold and strategic minerals were untouched by sanctions);
4. Black market operations; and
5. The capacity of the country to adapt its economy, weakening the impact of embargoes over the years.

Eventually, three main factors can explain the demise of apartheid:

1. The collapse of the USSR and the fading of the Communist threat in Southern Africa;
2. The economic cost of the bureaucratic system;
3. The increasing internal opposition of the majority of South Africa's population in the 1980s.

The demise of apartheid was also a result of the pressure exerted by the whole international community over three decades, although this influence is not easy to quantify.

It must be added that the economic deterioration of the country was partly due to disinvestments by US and other foreign firms operating in South Africa, and was much more a business reaction to increased risks in the country market than the result of state-mandated sanctions.

The link between the WMD programmes of South Africa and the topic of sanctions is twofold. First, one can wonder whether international sanctions helped to deter the regime from developing its programmes. The answer here, obviously, is no, as chronology suggests. With regard to Project Coast (CBW programme), a large part of the work was done by front companies able to deal on the international market. South Africa would have certainly been unable to build a programme without

some international support. On the contrary, it can be argued that the international isolation campaign pushed the regime towards full proliferation by giving arguments to those, in the government, who thought the country had to develop a nuclear deterrent and a defensive CBW programme to counter what they perceived as external threats in the Southern region. And indeed, the international embargo on the supply of sophisticated conventional weapons systems (aircrafts, tanks, etc.) affected African effectiveness military at the time.

Second, the factors that led South Africa to dismantle its nuclear, biological and chemical arsenal are still debated.⁶⁷ Among them is the cost of the nuclear programme, which can be linked, indirectly, to the long-term cost of unilateral and multilateral sanctions. Three other complementary factors must be added:

1. The end of Soviet support to the neighbouring states of Southern Africa;
2. The will to come back to the international community;
3. The pressure exerted by the United States on President de Klerk to dismantle the South African WMD arsenal (especially the nuclear deterrent) before the election of any African National Congress-led government.

Iran

Brief History

Throughout history Persia was overrun by foreign powers. The Arab conquest in the middle of the 7th century established Islam as the religion of the country. The Safavids, one of the Turkish dynasties, took control of Persia in the 16th century and made Shiite Islam the official religion. In 18th-19th centuries, Iran attracted western nations, mainly the Russian Empire and the United Kingdom. The Anglo-Iranian oil

⁶⁷ See for instance the debate around the publication of "The Rise and Fall of the South African Bomb", by Peter Liberman, *International Security*, vol.26, N°2 (Fall 2001), pp. 45-86.

Company (later British Petroleum) was founded in 1909. Following a coup in 1921, Reza Khan declared himself Shah. On the domestic front, his government transformed Iran in many positive ways; however, in the international arena, he failed to keep Iran independent vis-à-vis the Soviet Union and the UK. His son succeeded him in 1941 but a rivalry to control the government began with a nationalist, Mohammad Mossadeq. At that time, the UK and the Soviet Union signed an agreement with Iran to respect Iran's independence, but which was not respected by either.

After World War II, when Soviet troops occupied part of Iran, one of the first UNSC actions was a series of resolutions in 1946 demanding the withdrawal of the Soviet troops. The Soviets complied, making this the first and only UNSC action in support of Iran. In subsequent parliamentary elections, Dr Mossadeq was elected Prime Minister and in 1951 the Parliament passed an act nationalising the oil industry. The UK, with the agreements of the oil companies, imposed an oil boycott. When the boycott failed to reverse the nationalization of the oil assets, the UK, supported by the US, organised a coup in 1953 that overthrew Mossadeq and concentrated all state powers in the Shah. This marked the beginning of Anglo-American interference in Iranian domestic affairs in the post-World War II period. In the context of the Cold War, the Shah became an indispensable ally to the West, and Mossadeq became a hero of Iranian nationalism. Domestically the Shah instituted reforms such as voting rights for women and reduction of illiteracy. However, actions such as styling himself as "King of Kings" (1971) or changing from the Islamic calendar to a western calendar (1976) exacerbated by the brutality of the secret police (SAVAK), generated opposition by both the traditionalist Muslim camp and the secular liberal forces.

The opposition rallied around Ayatollah Khomeini and in 1979 waves of uprisings across Iran forced the Shah to flee the country, giving way to the Islamic Republic of Iran. Khomeini served as leader of the revolution from 1979 to his death in 1989. In November 1979, Iranian students

supported by the Government, angered by the continuing US support of the exiled Shah and by rumours that the US was attempting to re-install the Shah, illegally seized the US embassy personnel in Tehran triggering the 444-day Iran hostage crisis. Iran ignored the decision of the International Court of Justice of 24 May 1980 (given only 6 months after the invasion on 4 November 1979), in a case brought against Iran by the United States. The decision declared that the invasion of the US Embassy, and the hostage-taking of US diplomats were “illegal and must end forthwith.” But the hostages were not released until 20 January 1981, nearly 8 months later.

Iraqi leader Saddam Hussein initiated a war against Iran that lasted from 1980 to 1988 and is estimated to have caused over one million casualties, military and civilian. In the course of the war, and in spite of the fact that Iraq was party to the 1925 Geneva Protocol, Iraq used chemical weapons against Iran. Iran repeatedly protested the lack of action by the UNSC on these matters.⁶⁸ The inability or unwillingness of the UNSC to condemn Iraq’s attack on Iran and to investigate Iran’s allegations of use of chemical weapons by Iraq has been a major reason for Iran’s mistrust of subsequent UNSC actions. It may also have led to the belief that Iran cannot rely on outside assistance and must provide for its own security.

Similarly, after Iraqi forces attacked Kurdish civilian population centres within Iraq, the UN Security Council imposed trade sanctions against both Iraq and Iran because there was no consensus within the Security Council as to which one was guilty. From Iran’s perspective, these actions may have been viewed as reflecting bias against it. Iran may have considered acquiring nuclear weapons as a deterrent against a potential invasion by the United States similar to that of Iraq or even a coordi-

68 The UNSC only adopted resolution 582 (1986) *inter alia* “deploring” the use of chemical weapons.

nated attack by the United States and Israel. One could also argue that the existence of a nuclear weapons programme in Iran would increase its influence in the broader Middle East, particularly among the various organisations it supports in the region.

The Nuclear Issue

Iran ratified the NPT on 2 February 1970 during the reign of the Shah, and still remains bound by the NPT. The present leadership officially supports the NPT. The IAEA has applied safeguards to Iran's declared facilities since May 1974 on the basis of the INFCIRC/153 model. Iran has not yet concluded an agreement with the IAEA to accept application of the provisions of the Additional Protocol (INFCIRC/540). Although Iran signed the Additional Protocol in December 2003, the Parliament has not yet ratified it, despite Iranian commitment to do so. The Iranians claimed this was in response to a series of UNSC resolutions.

The nuclear weapons option was not acceptable during the leadership of Ayatollah Khomeini, who considered it to be not in keeping with the principles of the Muslim religion. He even put an end to the contracts signed by the Shah concerning peaceful nuclear applications. But after three years of heavy war against Iraq, the Iranian regime changed its mind. Pakistan turned out to be a convenient partner (with the active cooperation of A.Q. Kahn).⁶⁹ Preliminary discussions between Iran and Pakistan started around 1984 and a formal cooperation agreement between Pakistan and Iran was signed in 1987. It probably led to the Iranian choice of uranium enrichment by centrifuge process. IAEA inspections were allowed to visit the Natanz site under a safeguards agreement only in February 2003 and discovered centrifuges which were copies of URENCO centrifuges.

69 B. Tertrais, *Le marché noir de la bombe*, Buchet Chastel, Paris, 2009.

In 2002, an Iranian resistance group (National Council of Iranian Resistance) revealed that Iran was engaged in undeclared nuclear activities and identified where such activities were taking place (Natanz and Arak). In September 2002, Iran submitted additional information, and in June 2003 (GOV2003/40) the IAEA found that Iran “had failed to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material and the declaration of facilities where the material was stored and processed.” These failures were in reference to 1.8 ton of natural uranium imported in 1991. The IAEA requested additional information, which Iran provided. Since then the IAEA has been attempting to verify the information contained in the Iranian declarations. In addition, the IAEA requested that, as a confidence-building measure, Iran not introduce nuclear material into the pilot enrichment cascade at Natanz.

In 2005, the IAEA Board of Governors requested (GOV2005/67) that Iran provide “full transparency” in order to clarify outstanding issues. Following UNSC Resolutions 1737(2006), 1747(2007) and 1803(2008), the IAEA repeatedly requested Iran to clarify some important issues relating to its nuclear programme, such as credible assurances regarding the absence of undeclared nuclear materials and activities. On 15 September 2008, the IAEA reported (GOV/2008/38) that a number of issues remained outstanding:

1. Credible assurances regarding the absence of undeclared nuclear material and activities;
2. The need for more information on the circumstances of acquisition of the uranium “laptop” document;
3. The need for clarification on procurement and Research and Development activity of military-related institutes and companies that could be nuclear-related;
4. A need for clarification on the production of nuclear equipment and components by companies belonging to defence industries.

On 16 November 2009, the IAEA reported (GOV/2009/74) the following:

1. The Agency continues to verify the non-diversion of declared nuclear material in Iran. While Iran recently submitted preliminary design information on the Darkhovin reactor, it continues to assert that it is not bound by the revised Code 3.1 of the Subsidiary Arrangements General Part to which it agreed in 2003, and which it ceased to implement in March 2007.
2. Iran has informed the Agency about the construction of a new pilot enrichment plant at Qom with delay inconsistent with its obligations (Subsidiary Arrangements to its Safeguards Agreement).
3. Iran has not suspended its enrichment-related activities nor its work on heavy water-related projects as required by the Security Council.
4. Unless Iran implements the Additional Protocol and clarifies the outstanding issues, the Agency will not provide assurance about the absence of undeclared nuclear material and activities in Iran.

The request by the IAEA of such transparency in addition to the implementation of the Additional Protocol by Iran is the key condition for credible assurance of the absence of undeclared nuclear material and activities in Iran. In addition, Iran has not suspended its enrichment-related activities, including the installation of new centrifuges, although these remain under IAEA safeguards.

While the IAEA is capable of investigating allegations and has been assessing their validity, there is no credible mechanism for evaluating various conjectures about Iran's intentions to develop nuclear weapons. The most contentious issue has been the enrichment facility in Natanz. Iran has always maintained that the construction and operation of the facility is legitimate under the terms of the NPT and has put the facility under IAEA safeguards. Although the IAEA has not disputed Iran's position, it has nevertheless requested Iran not to proceed with enrichment and, after Iran had started it, to suspend it. The IAEA has made this

request as a confidence-building measure until questions about Iran's undeclared activities in the past have been resolved.

The concern of those demanding the suspension of the enrichment activities arises from the suspicion that Iran, having acquired proficiency in enriching uranium at low levels (less than 5 percent), would be able to produce highly enriched uranium (HEU) (80 percent and higher) for use in nuclear weapons. Such a capability is currently available in other non-nuclear weapon states such as Brazil, Germany, Japan, Netherlands, etc., that operate or plan to operate enrichment facilities. Technically, all states operating enrichment facilities have such a capability. The special concern about Iran is that it might have a hidden intention to do so.

In September 2009, anticipating the statement by three western heads of state about the existence of a clandestine facility at Qom, Iran notified the IAEA that it was constructing another enrichment facility there. The IAEA inspected it in November 2009 and found it in an advanced state of construction built deep into a mountainside in a military compound 20 km north of Qom. The facility does not contain yet any centrifuges, but according to IAEA inspectors, some 3,000 cells have already been prepared where centrifuges could be installed. It has been claimed that western intelligence agencies had been aware of the construction activities for more than one year prior to the notification of the IAEA by Iran. The existence of an underground enrichment facility has fuelled speculation that Iran had a covert nuclear weapons programme and that other such facilities may also exist. However, Iran has stated that it is constructing the underground facility as a defensive measure against the threats, primarily by Israel and, implicitly, by the United States, of possible attacks on its exposed nuclear installations. Nevertheless, Iran was required to notify the IAEA about the Qom facility under the modified text of the Subsidiary Arrangements General Part, Code 3.1 on the early

provision of design information. In late 2009, Iran declared that it would construct ten additional enrichment sites. It is clear that Iran needs also to provide IAEA with substantive information to support its statements and to provide access to relevant documentation.

In a related development, the IAEA recently requested explanations from Iran regarding multi-synchronised explosions tests it has conducted and which could lead to the development of nuclear warheads that could be used by Iran on its missiles.⁷⁰

The climate of suspicion concerning Iran's motives has raised concerns about the existence of about 1,200 kg of LEU produced so far at the enrichment facility at Natanz. In an effort to remove the material from Iranian control, on 21 October 2009 France, Russia and the United States proposed a quid pro quo for the request by Iran to obtain enriched material for its Teheran research reactor to produce medical isotopes. The material produced at Natanz would be put under the custody of the IAEA by the end of 2009. The IAEA in turn would ship it to Russia by mid-January 2010 for further enrichment and then send it to France for fabrication into fuel rods that would be sent back to Iran in December 2010 to keep the Tehran reactor. Iran later refused the agreement, but the discussions are still open.

History and Purpose of Sanctions

In the post-World War II period, sanctions against Iran have been applied by the US, the UN and the EU.

US Sanctions

The US first imposed sanctions on Iran in 1979 following the taking of hostages at the US Embassy in Tehran.^{71/72} In 1984, after the bombing of the US

70 The Guardian, 6 November 2009.

71 H. Franssen, E. Morton, "A Review of US Unilateral Sanctions Against Iran", *The Middle East Economic Survey*, Vol. XLV, No 34, 26 August 2002.

72 "An overview of O.F.A.C. Regulations involving Sanctions against Iran", US Department of

Embassy and the marine barracks in Beirut, the US imposed additional sanctions labelling Iran a “sponsor of international terrorism”. Against countries designated as “sponsors of international terrorism,” the US bans direct financial assistance and arms sales, restricts sales of dual-use items, and votes to oppose multilateral lending. The “Iran-Iraq Arms Non-Proliferation Act of 1992” imposed sanctions on Iran and Iraq covering “goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country’s acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons”.⁷³ Further sanctions were applied by the US in March 1995, alleging “active pursuit of weapons of mass destruction” by Iran.

The “Iran and Libya Sanctions Act of 1996” imposed additional sanctions on Iran alleging efforts by Iran “to acquire weapons of mass destruction and the means to deliver them” and “acts of international terrorism”.⁷⁴ The “Iran Nonproliferation Act of 2000” expanded the scope of sanctions to apply to any foreign person supplying Iran with goods, services or technology that could be used in the development of nuclear, biological or chemical weapons, or missile technology.⁷⁵ The “Iran and Libya Sanctions Act of 1996,” set to expire in 2006, has been amended and expanded to include a wider range of activities and entities. The new act is known as the “Iran Sanctions Act of 2007” and is under consideration in the US Congress.⁷⁶

The imposition of sanctions against Iran by the US Government has assumed a life of its own and has become an annual political ritual in Washington inextricably tied to Middle Eastern politics. US Senators and Congressmen routinely pass resolutions ratcheting up the sanctions on Iran for its alleged nuclear weapons programme being a threat to Israel

the Treasury, Office of Foreign Asset Control, 9 August 2006.

73 H.R.5006; Public Law 102-484; (10/23/92).

74 H.R. 3107; Public Law 104-172; (6/18/1996).

75 H.R. 1883; Public Law 106-178; (1/24/2000).

76 H.R. 957; Pending in Congress.

and its support of “terrorist” organisations such as Hamas and Hezbollah. The creation of a “terrorism list” by the US Government has made the imposition of new sanctions a routine operation. Countries are sanctioned if they are deemed to have provided “repeated support” for “acts of international terrorism”.⁷⁷ Following the bombing of the US Marine barracks in Lebanon in 1983, Iran was added to the “terrorism list” in 1984, because it was alleged that the bombing was perpetrated by Hezbollah which is considered to be supported by Iran.⁷⁸

In addition to the sanctions against Iran imposed by legislation or Executive Orders,^{79 /80} the US Department of the Treasury has been imposing “targeted financial measures” against individuals and commercial entities.

UN Sanctions

In July 2006, the UNSC, citing, *inter alia*, Iran’s refusal to suspend its enrichment activities and the inability of the IAEA to verify the absence of undeclared material and activities, demanded that Iran suspend all enrichment and reprocessing activities, and abide by the IAEA requests. The UNSC also called upon all states to exercise vigilance and prevent transfer of materials that could be used in the enrichment, reprocessing and missile development activities, but it stopped short of imposing sanctions. In December 2006, citing Iran’s refusal to suspend its activities as demanded in July 2006, the UNSC reiterated the previous demands and imposed sanctions on materials and technologies that could be used in the enrichment and reprocessing activities and nuclear weapon delivery systems. The UNSC also demanded the freezing of financial assets of specified entities and persons involved in these activities in Iran.

77 Export Administration Act of 1979, Section 6(j).

78 K. Katzman, “Iran Sanctions”, Congressional Research Service Report to Congress RS20871, 9 July 2009.

79 Executive Order 13382 (June 28, 2005).

80 K. Katzman, *op. cit.*

In March 2007, the UNSC, citing Iran's continuing refusal to suspend its activities as demanded by the UNSC, expanded the scope of sanctions to cover additional items, entities and persons including restrictions on nuclear trade.⁸¹ It also placed restrictions on the export of military items from Iran and called upon all states and international financial institutions not to grant any new loans or other financial assistance to the Government of Iran. These sanctions were expanded further in March 2008 to include, inter alia, travel restrictions for individuals involved in Iran's nuclear and missile programmes, inspection of cargo of Iranian flag vessels and airlines, and monitoring of financial transactions of Iranian banks.⁸²

EU Actions

Following the IAEA's findings in 2003 that Iran had failed to meet its obligations under the NPT, the EU started to prepare a new non-proliferation policy and, in December 2003, developed a Non-Proliferation initiative. In October 2003, the Ministers of Foreign Affairs of the EU-3 (France, Germany, and the UK) signed an agreement with Iran committing Iran to suspend enrichment and sign the Additional Protocol. Subsequently, as early as the beginning of 2004, Iran refused to abide by that agreement. In October 2004, the EU-3 made new proposals to Iran and in November 2004 a new agreement was signed that included economic benefits and the delivery of light water reactors in exchange of the suspension of the enrichment programme. At the insistence of Russia and China, the IAEA Board of Governors agreed that Iran's suspension was voluntary. After President Ahmadinejad was elected, Iran rejected the European proposal and started to convert uranium.

81 UNSC 1747, 24 March 2007.

82 UNSC 1803, 3 March 2008.

Subsequent to the decision of the UN Security Council to apply sanctions against Iran, the EU adopted a series of measures to ensure implementation of the sanctions imposed by the UNSC.^{83 /84}

Effectiveness of Sanctions

Assessment of the impact of sanctions, whether present or future,^{85/86} on the policies of Iran regarding WMD is difficult at best, because there are multiple objectives of the sanction regimes applied to Iran, which are not uniquely related to WMD. The UN and EU sanctions regime has been imposed because Iran has refused to suspend enrichment, while Iran claims that it has a right to enrich and it does not intend to acquire nuclear weapons.

There is a much longer history of sanctions applied unilaterally by the US under the broad umbrella of Iran being a “sponsor of international terrorism” and its “active pursuit of weapons of mass destruction.” The evidence so far indicates that Iran has not changed any of its policies as a result of these sanctions up to now. Implementation of economic sanctions has always been problematic. Although sanctions applied in 1995-1996 by the United States were circumvented by both foreign and US companies, the application of sanctions has become more efficient following the Iran Proliferation Act of 2000 particularly with respect to the banking sector. It is possible that if these sanctions are in effect long enough or strengthened still further Iran might be forced to yield even-

83 All UN member states are required to implement and enforce sanctions imposed by the UNSC. Today, the 27 members of the European Union do not implement UNSC sanctions individually but by means of an EU regulation which is applicable to all EU members. Thus such sanctions are not imposed by the EU, but merely implemented by the EU.

84 2007/140/CFSP, 28 February 2007.

85 J. Walsh, T. Pickering, W. Luers, “Iran and the Problem of Tactical Myopia,” *Arms Control Today*, December 2009, http://www.armscontrol.org/act/2009_12/WalshPickeringLuers#bio ; O. F. Kittrie, “Using Stronger Sanctions to Increase Negotiating Leverage with Iran,” same issue, http://www.armscontrol.org/act/2009_12/Kittrie#bio.

86 S. Maloney, “Sanctioning Iran: If Only It Were So Simple,” *The Washington Quarterly*, Vol. 33, n°1, January 2010, <http://www.twq.com/10january/index.cfm?id=380>.

tually. In view of the high risks present in the current state of suspicion and confrontation, there is a strong need to assess the effectiveness of sanctions continuously, including credibility, legitimacy and utility relative to other measures.

Assessment

The IAEA has been monitoring that no diversion takes place from the declared nuclear fuel cycle, but the Agency has not been in a position to provide credible assurance about the absence of undeclared nuclear material and activities.⁸⁷ Iran has been providing satisfactory answers on some issues raised by the IAEA, but not so on all matters. Iran has also been challenging some of the information provided to the Agency. The IAEA is not in a position to verify the absence of a nuclear weapons programme, in part because Iran still refuses to ratify the Additional Protocol. Enrichment for peaceful purposes is not prohibited under the NPT. Nevertheless, Iran was asked by the IAEA to suspend enrichment as a “confidence-building measure”. In addition, the UNSC has demanded that Iran suspend enrichment⁸⁸ and has imposed sanctions following Iran’s refusal to do so.⁸⁹ That decision is legally binding⁹⁰ and it overrides obligations under any other international agreement.⁹¹ Thus, under international law Iran is obligated to suspend enrichment notwithstanding its right under the NPT to enrich uranium for peaceful purposes.

What Do We Want to Achieve Now?

1. The international community recognises that Iran has the right to develop nuclear power and other peaceful nuclear activities, including uranium enrichment for peaceful purposes.

87 Report by the IAEA DG to the Board of Governors GOV/2009/74, 16 November 2009.

88 UNSCR 1696(2006), (para. 2) and 1737(2006), (para. 2).

89 UNSCR 1737(2006) and 1747(2007).

90 UN Charter, Article 25.

91 UN Charter, Article 103.

2. Iran should present confidence-building measures, such as a pause in the expansion of its ongoing enrichment activities. This should be accompanied by negotiations to solve the nuclear issue. There is obviously a need to develop a spirit of confidence between Iran and the international community, represented by the six negotiating states. It is desirable also to have negotiations on broader issues, such as regional security, the lifting of sanctions, normalisation of diplomatic relations, etc. This should include direct US-Iran discussions, possibly in a multi-lateral framework involving the EU3+3.
3. Ratification of the Additional Protocol by Iran and compliance with all UNSC Resolutions would increase confidence that its nuclear programme is in compliance with its obligations under the NPT.
4. It is important that Iran provide satisfactory answers to all pending IAEA questions concerning its nuclear activities.

Iraq

Known colloquially as the 'Ceasefire Resolution' (or, following Saddam's term for the coming big battles against the coalition – all of which he lost – the 'Mother of all Resolutions'), UNSC Resolution 687(1991) of 3 April 1991 set out the terms according to which the coalition would cease military action against Iraq. They were initially accepted by Iraq but were then breached by it in several ways and over several years. This led to limited military action by the coalition against Iraq, and ultimately to further full-scale military intervention by the coalition, arguably under resolution 1441(2002). But, for this paper the main interest is in the WMD provisions in Resolution 687(1991) and in later resolutions, and how they failed.

As with all the other resolutions on Iraq, Resolution 687(1991) was reached under Chapter VII of the Charter. And: (1) Invited Iraq to reaffirm its obligations under the Geneva Protocol 1925 and the NPT 1968 and to ratify the

Biological Weapons Convention 1972 (which it did that year);

(2) Decided that Iraq destroy (a) all its chemical and biological weapons and their manufacturing systems, and (b) all its ballistic missiles with a range greater than 150 kilometres, and their manufacturing systems;

(3) Decided that Iraq unequivocally undertake not to use, develop, construct or acquire any chemical, biological or nuclear weapons;

(4) Decided that to implement these provisions, a Special Commission (UNSCOM, replaced by UNMOVIC from 1999 to 2007), assisted by the IAEA, would supervise the whole operation.

Although Iraq formally agreed to all the requirements of Resolution 687(1991), only four months later Resolution 707(1991) recorded Iraq's failure to comply with any of its WMD obligations. The resolution categorised the failure as a 'material breach' of the ceasefire resolution and repeated the UNSC's demands. For a time UNSCOM was able to do its work of finding and supervising the destruction of Iraq's WMD, longer-range missiles and the means of production. The most famous incident occurred when the inspectors were held up by Iraqi police for two days in a car park. Some statements on behalf of all members of the UNSC (Presidential Statements) up to about 1997 categorised obstruction of the inspectors' work as being a 'material breach' of the relevant resolutions, which would lead to 'serious consequences'. This was understood by all members of the UNSC to mean that UK and US aircraft would then attack strategic sites in Iraq to induce Iraq to assist the inspectors. Such attacks then occurred, and so, at least for a time, Iraq cooperated with the inspectors. Between 1996 and 1998, several UNSC resolutions condemned Iraq for its 'clear', 'serious', 'flagrant' or 'gross' 'violations', and according to Resolution 1154(1998), any violation would have 'serious consequences'. But the will to use force to compel Iraq to facilitate the work of the inspectors faded during the second term of the Clinton administration (1997-2001).

After the second armed intervention against Iraq in 2003, no WMD

were found. Resolution 1546(2004), para. 22 repeated that supplies of chemical and biological weapons, ballistic missiles with a range of over 150 kilometres, as well as nuclear weapons or materiel, remained prohibited.

Resolution 1762(2007) acknowledged that a democratically-elected and constitutionally-based Government of Iraq was now in place, and thus terminated the mandates of UNMOVIC and the IAEA relating to Iraqi WMD. But, it also reaffirmed Iraq's disarmament obligations under relevant resolutions (such as Resolution 687(1991)), and acknowledged Iraq's constitutional commitment to the non-proliferation, non-development, non-production and non-use of nuclear, chemical, and biological weapons and associated equipment, material, and technologies for use in the development, manufacture, production and use of such weapons, as well as delivery systems, and urged Iraq to continue to implement this commitment and to adhere to all applicable disarmament and non-proliferation treaties and related international agreements.

The no-fly zones over Iraqi airspace were not authorised by the UNSC. They were first established by the United Kingdom and the United States in 1991 to help protect the Kurds from more attacks by the Iraqi Republican Guard. The original basis for this action dates back to 5 April 1991 when the UNSC condemned the repression of Iraqi Kurds, in particular in the north, in Resolution 688(1991). However, due to Chinese and Russian concerns, the resolution was not made under Chapter VII, and was thus not legally binding. So, the no-fly zones had as their basis humanitarian intervention as justified by Resolution 688 (1991).

Humanitarian intervention as a legal basis for military action is contentious, and has so far not been justified in legal terms by the UK Government. But a legal case can be made for humanitarian intervention in that it is recognised by the UN Charter. The sole purpose of humanitarian intervention is to help defend people against a threat to their life. Provided there are good grounds for it, limited use of force for the sole

purpose of relieving extreme human distress, stopping genocide or ethnic cleansing, or other serious violations of international law, is not a violation of Article 2(4) of the UN Charter, which requires member states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state 'or in any other manner inconsistent with the Purposes of the United Nations'. Those Purposes include the promotion of human rights and the solving of humanitarian problems (Article 1(3)). When upholding the Purposes comes into acute conflict with the sovereignty of a state which is the very obstacle to achieving them, respect for its territorial integrity or political independence has to give way to the overriding needs of humanity or, as the International Court of Justice put it in 1949, 'elementary considerations of humanity, even more exacting in peace than in war'.⁹² The situation is not affected by a failure to get the Security Council's authorisation for intervention, since such use of force would not violate the Charter. Just as the liberation of Kuwait did not require Security Council authorisation – self-defence would have been an adequate legal basis – NATO's intervention in Kosovo in 1999 was neither authorised, nor condemned by the Security Council.⁹³

India

Background

India has had a continuous civilisation since 2500 BC and is the world's largest democracy. With a population of about 1.12 billion, it accounts for 15 percent of the world's total inhabitants. It owes its recent linguistic and many of its cultural attributes to longstanding British influence,

92 85 Corfu Channel (Merits) ICJ Reports (1949), p. 4, at p. 22; 16 ILR 155. And see C. Greenwood (now an ICJ judge), 'Humanitarian Intervention: The Case of Kosovo' (1999) 10 Finnish Yearbook of International Law 141–75.

93 86 UNSC Res 1244(1999) did not authorise NATO's military campaign against Serbia. On 26 March 1999, a draft resolution (S/RES/1999/328) condemning the NATO bombing was overwhelmingly defeated 3-12-0: see S/PV.3989. Only China, Namibia and Russia voted in favour.

from the first outpost of the English East India Company in 1619 through to independence in 1947. Upon independence, the country experienced a traumatic division with a Hindu majority in India, and a Moslem majority in Pakistan (now Pakistan and Bangladesh).

India has a federal government, with a strong centre and a British-style parliamentary system. In keeping with a long tradition, in India the armed forces are non-political and under the control of the civilian authorities. Throughout the Cold War, India was a leader of the non-aligned movement and wielded considerable moral authority, drawing upon the worldwide respect for leaders such as Gandhi and Nehru. Traditionally, it has been a strong advocate for arms control and disarmament, but its acquisition of nuclear weapons has called that reputation somewhat into question. India's principal adversaries have been China (1962 border conflict) and Pakistan. Tension with the latter has been continuous since 1947, largely centred on the disputed territory of Kashmir. Relations with China have improved recently, however.

India is a state party in good standing of both the Chemical Weapons Convention and the Biological Weapons Convention. It has never joined the NPT, nor signed the CTBT.

Sanctions

Restrictions on trade with India related to WMD began with its failure to join the NPT in the late 1960s and were expanded following its "peaceful nuclear explosion" (PNE) in 1974. Because India had used facilities supplied by Canada in conducting its explosion, Canada acted to prevent India from reprocessing spent fuel and stopped nuclear cooperation altogether in 1976. Furthermore, Canada recalled its ambassador to India, cancelled non-humanitarian aid – about half of the \$29 million per year allocation – and banned military trade.⁹⁴ The Indian PNE also led

⁹⁴ D. Mutimer (2001), *Canadian Annual Review of Politics and Public Affairs*, Toronto, University of Toronto Press.

the UN General Assembly to pass a resolution⁹⁵ in which it noted that it had not yet proved possible to differentiate between the technology for nuclear weapons and that for PNEs. It further noted the possible danger of PNEs leading to the proliferation of nuclear weapons, suggesting that the question of PNEs should be a subject for international consideration. However, it was India's nuclear tests on 11 and 13 May 1998 (which led Pakistan to conduct its own tests on 28 and 30 May), which resulted in widespread condemnation and extensive US sanctions. In UNSC Resolution 1172(1998), not reached under Chapter VII, the Security Council said that it "condemns" the nuclear tests by both India and Pakistan and "demands" that they refrain from further nuclear tests. The motivations for India's tests seem straightforward. The purpose of the first test was described as "to establish that India has a proven capability for a weaponized nuclear programme." As far as the perceived need for nuclear weapons is concerned, Indian officials have pointed to the unresolved border problems with a nuclear-armed China and continuing hostility from Pakistan, especially its alleged support for terrorism in Kashmir.

US Sanctions on India, imposed by President Clinton, were basically automatic and required by Section 102 of the Arms Export Act and the Nuclear Proliferation Prevention Act (Glenn Amendment), which requires the president to cut off financial assistance and restrict exports to countries that conduct nuclear tests. This was the first time this law had been invoked. These sanctions resulted in:

1. Termination of assistance under the Foreign Assistance Act of 1961, except for humanitarian assistance for food or other agricultural commodities;
2. Termination of sales of defence articles, defence services, or design and construction services under the Arms Control Export Act, and termination of licences for the export of any item on the United States munitions list;

95 Resolution A/3261(XXIX)D.

3. Termination of all foreign military financing under the Arms Export Control Act;
4. Denial of any credit, credit guarantees, or other financial assistance by any department, agency or instrumentality of the United States Government;
5. Prohibition of United States banks from making any loan or providing any credit to the Government of India, except for the purpose of purchasing food or other agricultural commodities;
6. Prohibition of export of specific goods and technology subject to export licensing by the Commerce Department.

In addition, under Section 2(b)(4) of the Export-Import Bank Act of 1945, the Board of Directors of the Export-Import Bank were prohibited from giving approval to guarantee, issue, or extend credit, or participate in the extension of credit, in support of United States exports to India.⁹⁶ However, the sanctions began to be weakened very quickly, starting with the exemption of food exports. Within six months, most sanctions were gone. On 22 September 2001, following the 9/11 terrorist attacks, President Bush lifted all remaining sanctions, except those on entities that had engaged in commerce related to proliferation. This was presumably in recognition of the contributions of India to the “War on Terror”, its good record on nuclear non-proliferation to other countries, and a desire for a closer relationship in general, perhaps partly as a counterweight to China. This case was somewhat unusual in that the US was not alone in imposing sanctions. Fourteen countries, including Japan, Germany, Australia, Canada, Denmark and Sweden, suspended bilateral aid programmes to both India and Pakistan. In addition, all of the G-7 countries opposed new non-humanitarian lending by the IMF, World Bank and Asian Development Bank.⁹⁷

⁹⁶ Karl Inderfurth, Assistant Secretary of State for South Asian Affairs, testimony before the Subcommittee on Near Eastern and South Asian Affairs of the Senate Foreign Relations Committee, 13 May 1998.

⁹⁷ D. Morrow and M. Carrière, “The Economic Impacts of the 1998 Sanctions on India and

Effect of Sanctions

It is difficult to measure the effect sanctions had on the Indian economy, but it appears that the effect was marginal, with the indirect effects on capital flow of greater importance than the direct effects of other government interactions.⁹⁸ The negative effects of the sanctions on Indian GNP are estimated to have been less than 0.1 percent.⁹⁹ The effects undoubtedly would have been much greater had the sanctions remained in effect for several years. Two thirds of the population depends on agriculture and poverty is widespread. However, real GDP growth is currently about 9 percent, with the computer software industry growing rapidly.¹⁰⁰ Sanctions appear to have had little effect on moderating the Indian nuclear weapons programme and certainly did not roll it back. They also did not deter Pakistan or North Korea from going down a similar path. Interactions with the US and others may have persuaded India to maintain its nuclear forces in a relatively safe, low-alert status.

Current Situation

In spite of the fact that India has never joined the NPT, President Bush and Prime Minister Vajpayee sought to transform the bilateral relationship, including cooperation in the civilian nuclear field. In January 2004, the two sides launched the Next Steps in Strategic Partnership (NSSP). In July, 2005, President Bush and Prime Minister Singh announced further progress and in December, 2006, the US Congress passed the Henry Hyde United States-India Peaceful Atomic Cooperation Act, which allows direct civilian nuclear commerce for the first time in 30 years, clearing the way for India to purchase US nuclear reactors and fuel for civilian use. For this to happen, however, the Act had to be approved by the

Pakistan," *The Nonproliferation Review*, Fall, 1999, p. 5.

98 D. Morrow and M. Carrière, *op. cit.*

99 G.C. Hufbauer, J.J. Schott, K.A. Elliott and B. Oegg (2008), *Economic Sanctions Reconsidered*, 3rd edition, Peterson Institute for International Economics, pp. 113-122.

100 US Department of State Background Note: India, 2007.

US Congress, the Indian Parliament and the Nuclear Suppliers Group, and safeguards on civilian nuclear facilities concluded with the IAEA. Although these steps proved to be controversial, all were completed by October 2008. In particular, the US House of Representatives approved the agreement by a vote of 298-117 and the US Senate by 86-13. The NSG approval was required to be unanimous, and was. Prime Minister Singh had to overcome serious opposition by those who believed that India had made too many concessions. It was clear that there were serious misgivings on all sides. In particular, there was much discussion of the consequences of a resumption of nuclear testing by India. India called attention to the fact that this was not addressed in the formal text, while several Senators emphasized that it is US policy to terminate nuclear trade with India if this should occur, and several NSG members made clear that they have similar expectations.¹⁰¹

The case of India illustrates the difficulty of maintaining sanctions over a long period of time, particularly against a friendly, democratic country. It also shows that long-term concerns about non-proliferation may be secondary to other urgent geopolitical factors, especially terrorism in the case of the United States. India does appear to have acted responsibly as a nuclear power, but it would be difficult to claim that this has been due to sanctions.

What Do We Want to Achieve Now?

Having accepted the reality that India has developed and possesses nuclear weapons, key WMD-related goals now appear to be to maintain India's informal moratorium on nuclear testing, obtain its accession to the CTBT and achieve a constructive attitude towards the Fissile Material Cut-off Treaty (FMCT) negotiations in Geneva. Another important

101 W. Boese, "NSG, Congress Approve Nuclear Trade with India," *Arms Control Today*, October, 2008, pp. 27-28. For a discussion of the US-India dialogue following the 1998 Tests, see M. Krepon, "The 1998 Indian and Pakistani Tests," *Arms Control Today*, May, 2008, pp. 51-55.

long-term objective is gaining India's accession to the NPT, although this does not appear to be a realistic goal at present. A more readily accessible goal might be to achieve a closer relationship between India and the IAEA, in particular regarding additional safeguards on Indian nuclear facilities. As progress toward nuclear disarmament is made by the US and Russia, it will be important for India to join in the process at an appropriate stage, along with all other states with nuclear weapons.

Pakistan

Urban civilisation in Pakistan dates back 4,500 years. The empire of Alexander the Great extended to the Indus Valley in 326 BC, and in later centuries, the city of Taxila, west of Islamabad, became the fulcrum of Buddhist culture of Afghanistan and Pakistan. Muslim traders arrived in Pakistan in the 8th Century. The English East India Company dominated a great part of the subcontinent in the 18th century and the British ruled in the first half of the 19th century. In 1906, the All-India Muslim League tried to establish self-government for Pakistan, but they could not agree on how to protect Muslim rights.

In 1947, the British created two successor States, India and Pakistan, the latter with a Muslim majority. East Pakistan became Bangladesh in 1971, while Kashmir remains a disputed territory until the present day.

Pakistan suffered growing pains and political instability from the start. With military support, President Iskander Mirza suspended the 1956 constitution, cancelled upcoming elections and imposed martial law in 1958. Soon thereafter, General Mohammad Ayub Khan took over in a military dictatorship, but after Pakistan lost the war against India in 1965 he lost power and the commander-in-chief of the army became President and Chief Martial Law Administrator. Following the separation of Bangladesh, Zulfikar Ali Bhutto became the President and first civilian Chief Martial Law Administrator in 1971. This did not last long, as the military

removed him, declared martial law and suspended the constitution of 1973. Chief of army staff General Muhammad Zia ul-Haq became Chief Martial Law Administrator, promulgated harsh punishments for violations of Shari'a Islamic law, and had Bhutto hanged. Zia was killed in a plane crash in 1988 and was succeeded by a coalition government headed by Benazir Bhutto, followed by President Khan and then Nawaz Sharif.

In October 1999, chief of Army Staff General Pervez Musharraf suspended the constitution and was declared Chief Executive. He became President in June 2001, and sided with the US following the terrorist attacks of September 11, closing down terrorist training camps and withdrawing support for the Taliban in Afghanistan. Musharraf resigned in 2008 and was replaced by Asif Ali Zardari, husband of the assassinated leader Benazir Bhutto.

Since 1990 Pakistan has been the subject of sanctions that were mandated by US law regarding US foreign assistance. The US had blocked the sale in 1990 of 28 F-16 fighter jets that Pakistan had paid for because of Pakistan's nuclear weapons programme. The Pressler amendment (added in 1985 to the Foreign Assistance Act of 1961) required the President to determine that Pakistan did not possess a nuclear explosive device and that proposed US assistance would reduce the risk of obtaining such a device. This changed in 1995, when the requirement applied to military assistance only, enabling Pakistan to be eligible for other foreign assistance.

The nuclear explosion tests in May 1998 by India and Pakistan triggered US economic sanctions as per the Arms Export Control Act¹⁰² and the Export-Import Bank Act (see also India). These included termination of US foreign assistance except for humanitarian or food assistance;

102 Sec. 102 of the Arms Export Control Act (Public Law 90-629; 22 USC. 2799aa-1), referred to as the Glenn Amendment; and sec. 2(b)(4) of the Export-Import Bank Act of 1945 (P.L. 79-173; 12 USC. 635 (b)(4)).

termination of US Government sales of defence articles and services, design and construction services, licences for exporting US Munitions List (USML) items; termination of foreign military financing; refusal of most US Government-backed credit or financial assistance; US opposition to loans or assistance from any international financial institution; prohibition of most loans or credits backed by US banks; prohibition on licensing exports of “specific goods and technology;” and denial of credit or other Export-Import Bank support for exports to either country.

With regard to the sanctions, Stuart Eizenstat, Under Secretary for Economic, Business and Agricultural Affairs, said that they were not intended only to punish, but to influence. “The sanctions threatened under the Glenn Amendment were intended to serve as an additional and powerful incentive to others not to pursue nuclear arms,” he said. “That both countries chose to go forward with their decisions to test, knowing full well the monumental consequences, underscores that ultimately sanctions may not deter nations from actions that they view – however incorrectly – as fundamental to their national security concerns.” Mr. Eizenstat also called on Pakistan and India to immediately sign and ratify the Comprehensive Test Ban Treaty, halt the production of fissile material, not to deploy nuclear missile systems, and not to share technology and equipment with others.¹⁰³

Pakistan had endured a decade of economic mismanagement that left it highly dependent on the IMF. When the US-led coalition withheld IMF support following the Pakistani tests, the collapse of confidence created a balance of payments crisis and a notable decline in economic activity. When the Karachi Stock Exchange (KSE) opened on the first day after the tests, the market crashed about 15 percent, its worst performance

103 See: http://www.state.gov/www/policy_remarks/1998/980603_eizen_sanctions.html.

ever.¹⁰⁴ Following the US announcement of sanctions on June 18, the KSE fell another 13 percent in five days. The sanctions resulted in 34 billion dollars in external debt and brought on an era of sectarian strife and Islamic militancy.¹⁰⁵

In addition, the democratically elected government of Nawaz Sharif was overthrown in October 1999, which resulted in the imposition of more sanctions under section 508 of the Foreign Appropriations Act, including restrictions on foreign military financing and economic assistance. US assistance to Pakistan was then restricted to cover refugees and counter-narcotics.¹⁰⁶ These acts were amended later to allow sales of US wheat. Then certain economic and military assistance sanctions were waived on a yearly basis.

Following the US Defense Appropriations Act, FY 2000, the economic sanctions against India and Pakistan imposed by the Arms Export Control Act and the Export-Import Bank Act of 1945 and the Pressler Amendment in the Foreign Assistance Act of 1961 were waived by the President (with two exceptions for Pakistan). Pakistan's agreement to support the US following the attacks of 11 September 2001 led to a waiver of the sanctions, and spare parts and equipment were provided to enable Pakistan to monitor its border with Afghanistan.¹⁰⁷ On 22 September 2001, the President finally lifted all economic sanctions related to the nuclear tests against the two countries, stating that it was not in the national security interests of the United States to deny export licences and assistance.¹⁰⁸ By the end of 2001, foreign assistance increased and the Pakistani economy picked up substantially.

104 Daniel Morrow and Michael Carrière, "The Economic Impacts of the 1998 Sanctions on India and Pakistan," *The Nonproliferation Review*, Fall 1999, p. 12.

105 Mansoor Ijaz, R. James Woolsey and James A. Abrahamson, "Pakistan: Leaving US Sanctions in Place Would be Grave," *International Herald Tribune*, September 7, 2001.

106 "Background Note: Pakistan," US Department of State, Bureau of South and Central Asian Affairs, May 2007, p.13, <http://www.state.gov/r/pa/ei/bgn/3453.htm>.

107 "Background Note: Pakistan," US Department of State, Bureau of South and Central Asian Affairs, March 2009, <http://www.state.gov/r/paa/ei/bgn/3453.htm>.

108 Presidential Determination No. 2001-28, 22 September 2001, <http://usinfo.state.gov>.

When Pakistan agreed to support the US campaign against the Taliban in Afghanistan and the “global war on terror”, President Bush announced in 2003 that the US would increase its economic assistance to Pakistan by providing 3 billion dollars in economic and military aid over five years, beginning in 2005. In 2004, the US designated Pakistan as a Major Non-NATO Ally. In 2005, the US Government approved the sale of F-16 fighter jets to Pakistan. Bush administration officials said that “[The F-16s] are vital to Pakistan’s security as President Musharraf prosecutes the war on terror.” The official referred to President Musharraf’s “strategic decision on 14 September 2001, to stand with the United States,” following the attacks in New York and Washington. Lawmakers expressed concerns that F-16 technology could fall into the wrong hands. They were also concerned that the sale would alienate India, which believed it would shift the balance of power in South Asia.

Pakistan is the home of A.Q. Khan, who stole enrichment technology from the Netherlands, played an important role in developing the nuclear bomb for Pakistan and who is also responsible for a nuclear proliferation network involving a number of countries (Iran, Libya, possibly North Korea).

President Bush and President Musharraf agreed in 2006 to continue their cooperation on the “war on terror”, security in the region, trade and investment, education and earthquake relief and reconstruction, and the sale of F-16 aircraft. The US-Pakistan strategic partnership is “based on the shared interests of the United States and Pakistan in building stable and sustainable democracy and in promoting peace and security, stability, prosperity and democracy in South Asia and across the globe”.¹⁰⁹

Some have posited that economic sanctions are not effective on the behaviour of targeted nations because globalisation has allowed the targeted countries to find other sources for sanctioned trade. However,

109 “Background Note: Pakistan,” op cit, p. 13.

a study found that sanctions had sizable adverse effects on the economy of Pakistan. It found that automatic sanctions such as the Glenn Amendment requires can result in sufficient economic impact to be a disincentive to future proliferators, though that disincentive may not be sufficient to change policy in all cases.¹¹⁰

More recently, with the incursions by the Taliban in Pakistan, the US is concerned that the country's nuclear arsenal could fall into the hands of Taliban militants or terrorists. For their part, the Pakistanis are very suspicious of the US, believing that they will attempt to "decapitate" its nuclear weapons. They believe that covert US personnel and military contractors are entering the country to carry out such a mission. Pakistan also views with some disdain the enhanced relations of the US with their traditional enemy, India. In addition, CIA drone aircraft frequently target militants in isolated Pakistani villages.¹¹¹

North Korea (Democratic People's Republic of Korea- DPRK)

Background

After various periods of Chinese occupation, a unified Korea emerged in 668, developing its own language and culture, but borrowing Chinese governmental institutions and Confucianism. Japan occupied Korea from 1910-1945, exploiting its resources and people while trying to eliminate Korean culture. In 1945 the peninsula was de facto divided at the 38th parallel, the northern part occupied by the Soviet Union and the southern by the USA. Kim Il Sung, a war-hero through fighting the Japanese, installed a Stalinist regime in the north and started a surprise reunification war in 1950 with devastating results. A UN force led by US General MacArthur intervened just in time to push the North Korean troops back and then occupied the north to the border with China, leading

110 See footnote 76.

111 "Pakistanis Worry about US Nuclear Intentions," The New York Times, 12 November 2009.

to a large-scale Chinese counter-attack. During the war, the USA massively bombed the north while on several occasions it considered the use of nuclear weapons.¹¹² When an armistice was reached in 1953, an estimated 3-4 million Koreans and 1 million Chinese were dead, as well as 57,000 US and other UN troops. The most heavily guarded border in the world was established near the old dividing line, still in existence 56 years later without a peace agreement. American troops are stationed in South Korea to this day. US nuclear weapons were withdrawn from South Korea in 1991.

The Nuclear Programme

Owing to the highly insular nature of the regime, one can merely speculate about the logic governing the nuclear programme of North Korea. The stationing of US nuclear weapons in South Korea together with large-scale military exercises with South Korean forces (including the mock use of nuclear weapons) may be a logical explanation behind the start of the programme as a deterrent. It may well be that the main goal of the programme changed to obtain concessions on other issues, in particular from the US. It is unclear why the regime is so obsessed with the US.

Already in the sixties the DPRK received a small Soviet research reactor, which operated under IAEA safeguards.¹¹³ Around 1980 it started to build its own (graphite moderated) 5-MW research reactor as well as a reprocessing facility (in several agreements called 'related facilities'), allowing the production of plutonium for weapons purposes. The construction of two much larger graphite reactors also began, but these were not finished in view of later agreements. The DPRK ratified the NPT in 1985, apparently under Soviet pressure. However, it was not un-

112 Bruce Cumings: *North Korea, Another Country*; The New Press, New York NY 2004, ISBN 1-56584-873-X.

113 Inspectors were allegedly not allowed to see where the reactor was situated and were brought there in blinded cars.

til April 1992 that the related safeguards agreement with the IAEA could enter into force, i.e. more than five years beyond the date provided for by the NPT, allowing plutonium production in the meantime. On 20 January 1992, a Joint Declaration on the Denuclearisation of the Korean Peninsula was signed between North and South Korea, inter alia prohibiting uranium enrichment and reprocessing, and providing for joint nuclear inspections (but which never took place).

When IAEA inspectors began their work in 1992, they wanted to know more about the history of the operation of the reactor and the reprocessing facility, to assess how much plutonium had been produced in the past.¹¹⁴ The DPRK refused – thus violating the safeguards agreement – and a crisis erupted. North Korea announced that it was going to withdraw from the NPT and a scramble of negotiations took place with the US (involving former President Carter, who played a crucial role), leading to the so-called Agreed Framework of 21 October 1994. The important points of this non-legal agreement include that: the US will provide formal assurances to the DPRK against the threat or use of nuclear weapons; the two sides will move toward the normalisation of political and economic relations (including reducing barriers to trade and investment); and North Korea will ‘remain’ party to the NPT. Also it was agreed that: the DPRK would stop the operation of the graphite reactor and the reprocessing facility; the US would provide 500,000 tons of heavy oil annually; and the US would assist in building two 1,000-MW light water reactors (LWRs). From August 2003 onwards, discussions took place intermittently in the so-called Six-Party Talks in Beijing with Russia, North and South Korea, Japan and the US under the chairmanship of China. A Joint Statement was finally reached on 19 September 2005, in which North Korea promised to dismantle its nuclear weapons programme and return to the NPT, under conditions inter alia of respect

114 It is doubtful whether enough plutonium was produced for a bomb, so one may wonder why such noise was made about it.

for the sovereignty of the DPRK. Under instructions from Washington, the US negotiator, Christopher Hill, had to deliver a statement undermining the new agreement while the next day the US Treasury forced Banco Delta Asia to freeze 25 million dollars of North Korean money which it held in Macao. North Korea distanced itself immediately from the Joint Statement.

The DPRK launched several ballistic missiles in the course of 2006. A first nuclear explosive device was tested on 9 October. The Security Council strongly condemned the test and adopted Resolution 1718 with moderate sanctions. On 18 December the Six Parties reaffirmed the Statement of 19 September 2005. On 13 February 2007, a new agreement on “Initial Actions for the Implementation of the Joint Statement” was reached, with many elements of the Agreed Framework of 1994,¹¹⁵ including the DPRK shutting down and sealing of the Yongbyon nuclear facility with a view to eventual abandonment. After the US arranged for the 25 million dollars frozen at the Banco Delta Asia (BDA) to be transferred back to the DPRK, the reactor was shut down. Progress was made right through to the end of 2008: IAEA inspectors were visiting; the cooling tower of the reactor was destroyed, and much information was obtained about the history of the nuclear programme.

On 5 April 2009, the DPRK launched a long-range missile. A UN Security Council (UNSC) resolution condemned the test, after which North Korea announced it would never again take part in the Six-Party Talks and would not be bound by any agreements reached in that context. On 25 May a second nuclear device was tested.¹¹⁶ This time China also seemed shocked and agreed to the tough UNSC Resolution 1874, including complex sanctions.

Recently, US President Obama appointed a special envoy to the DPRK to try to make progress in the Six-Party Talks, which as of February 2010, remain in a stalemate.

115 See www.armscontrol.org/act/2007_03/NKPact.

116 No radioactive debris was found, contrary to the first test. Experts believe nevertheless that this was a nuclear explosion. See www.ctbto.org.

Sanctions¹¹⁷

Stringent worldwide sanctions by the Security Council were decided upon only after the two nuclear explosions in 2006 and 2009, with Resolutions S/RES/1718 and 1874, respectively. These resolutions specified a number of measures the purpose of which was to persuade the DPRK to abandon its nuclear weapons, existing nuclear programmes, and all other programmes related to the development of WMD and ballistic missiles. They include:

1. An arms embargo, including all arms and related materiel, as well as a ban on financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms;
2. A nuclear, ballistic missile and other WMD-related embargo, which includes items, materials, equipment, goods and technology, specifically listed as contributing thereto, as well as a ban on related technical training, advice, services or assistance;
3. A ban on the supply, sale or transfer of luxury goods; and
4. A travel ban and funds and other financial assets targeted against those persons and entities specifically designated by the sanctions committee established by Resolution 1718.

UN member states are also asked not to enter into any new commitments for grants, financial assistance or concessional loans to the DPRK except for humanitarian and developmental purposes, nor to provide public financial support for trade with the DPRK if such financial support might contribute to the DPRK's nuclear-related, ballistic missile-related or other WMD-related programmes or activities.

UNSC Resolution 1874 also calls upon all states to inspect cargo on their territory to and from the DPRK, as well as to inspect vessels on

117 See also: *Economic Sanctions Against a Nuclear North Korea*, edited by Suk Hi Kim and Semoon Chang, Mc Farland & Company, Jefferson NC 2007, ISBN 978-0-7864-3231-8.

the high seas with the consent of the flag state. If the flag state does not consent to inspection on the high seas, the flag state is obliged to direct the vessel to proceed to an appropriate and convenient port for the required inspection by local authorities. In this way, the Proliferation Security Initiative (PSI) receives the blessing of the UNSC. Member states are also directed by Resolution 1874 to deny bunkering and other services to DPRK vessels when there are reasonable grounds to believe that they are carrying prohibited items. Upon inspection, any discovered proscribed cargo is to be seized and disposed of.

Assessment

As is clear from the above, relations of the DPRK with the outside world, and in particular with the US, improved at times but deteriorated at others, intermittently. There is no doubt that the DPRK regime intends to stay in power whatever the cost, and it wants the rest of the world to accept this. It wants respect and security guarantees, and where possible, economic assistance. Sanctions and threats had but a limited influence on its behaviour, and often may have had the opposite effect of causing the DPRK to become more recalcitrant. In any case, today the DPRK now possesses a small number of nuclear explosive devices, although probably still primitive and too heavy to be put on their missiles. The regime still exports missile technology, and perhaps nuclear knowledge to Syria.

Although the North Korean regime was and certainly is a difficult negotiating partner, the situation worsened considerably during the George W. Bush administration, culminating in the first nuclear explosion and several ballistic missile tests. Certainly in the early years of that administration, the US wielded barely veiled threats – including nuclear. In 2007 and 2008 considerable progress was made, however, which makes it difficult to explain the serious deterioration of the situation in 2009 following Barack Obama's accession to office.

What Do We Want to Achieve Now?

The overriding goal is to induce the DPRK permanently back into the NPT as a Non-Nuclear Weapon State. Complex negotiations are called for to reach that objective, probably with give-and-take on various issues, including nuclear security guarantees by the US, full diplomatic relations with the US, a formal end to the Korean War, economic assistance by the US and by neighbouring states, and so on. An additional important goal would be the signing and ratification by North Korea of the CTBT, followed by the implementation of the 1982 agreement between North and South Korea on the denuclearisation of the Korean peninsula, inter alia prohibiting enrichment and reprocessing activities while providing for bilateral inspections between the two countries. Ratification of the BWC and CWC would be equally important.¹¹⁸

Israel

Background

After World War I, Palestine became a British Mandate. In 1917, the Balfour Declaration asserted British support for the creation of a Jewish homeland in Palestine. Subsequently, more and more Jewish settlements were established in Palestine, leading sometimes to serious riots by local Arabs. Following World War II and the Holocaust, the state of Israel was proclaimed in 1948, leading to an invasion by neighbouring Arab States, which rejected the UN partition plan and acceptance of the new state. Massive Jewish immigration to Israel and Palestinian expulsions into neighbouring Arab States completely changed the demographic fabric of the area, remaining a source of tension and hostility to this day. Several subsequent armed conflicts, most notably in 1957, 1967, 1969, 1973 and 1982, have changed the scope of the territory controlled by Israel. East

¹¹⁸ It should be noted that South Korea destroyed its relatively small stock of chemical weapons under the CWC.

Jerusalem, the West Bank and the Gaza strip were taken from Jordan and Egypt and many Jewish settlements were – and are being – established there contrary to UN resolutions. A wall was recently built along and on the territory of the West Bank, to separate the Palestinians from Israel and to prevent terrorist attacks, yet leaving substantial Israeli settlements on Palestinian territory. Nonetheless, Peace Treaties with Egypt in 1979 and Jordan in 1994 have brought some stability to the region.

A Middle East Peace Process, largely led by the US, has for years attempted to reconcile differences between Israel and its neighbours. It is generally agreed that a lasting solution will involve separate Israeli and Palestinian states, but negotiations have been stymied by numerous unsettled issues including disputes over borders, the status of Jerusalem, the right of return of refugees, the future of the Jewish settlements, among others. Terrorist acts and reprisals continue to create unfavourable conditions and inflict suffering on all sides. Non-binding UN resolutions have been unable to solve the problems, but UN peacekeeping and observer missions in the Sinai, Lebanon and Syria have managed to stabilise certain areas.

Israel is a parliamentary democracy, with a unicameral parliament (Knesset). It receives large amounts of military and other aid from the US and has a strong military. It is widely believed to have nuclear weapons, with a stockpile estimated to be up to 200 nuclear warheads.¹¹⁹ Israel itself has never acknowledged possession of such weapons, but does speak of its “nuclear potential.” Some believe that the 1979 “South Atlantic Flash” was caused by an Israeli nuclear test, but this has never been proven. Israel has never joined the NPT nor the BWC. It has signed, but not ratified, the CWC and the CTBT.

119 The Military Balance 2009, International Institute for Strategic Studies, Routledge (London), p. 249.

Possible Motivations

Israel's motivations for having nuclear weapons seem quite clear, given that several of its neighbours do not even recognise its right to exist. It has fought several wars and was threatened by Iraq and from Lebanon. It also is subject to frequent rocket attacks and suicide bombings from the Palestinian Territories, along with occasional kidnappings. These experiences, together with their memories of the Holocaust, cause Israelis to view a strong defence as an essential element for their very survival. Israel's Arab neighbours and other Moslem states frequently call for the Middle East to be a nuclear weapon-free zone. For its part, Israel has made clear that this (or more likely a WMD-free zone) is contingent upon a comprehensive peace settlement.

Sanctions

Israel has been the subject of sanctions from the Arab League since 1948 and has no diplomatic relations with a number of Islamic States. The present Government of Iran is particularly hostile to Israel. Israel destroyed a nuclear reactor (Osirak) under construction in Iraq in 1981 and another (Al Kibar) in Syria in 2008. It has also at times been under various temporary US sanctions (implementation of UNSC Resolution 242; withdrawal from Sinai). Israel itself imposes sanctions periodically on the Palestinians – e.g., closing of borders, interruptions in utilities – in response to what it considers to be terrorist attacks.

Some states consider that Israel illustrates a double standard with respect to WMD, in that it has “got away” with acquiring nuclear weapons and refusing to join the NPT and other major arms control agreements, while other countries (India, Pakistan, North Korea) have been punished for similar actions. Israel and its defenders counter that the unrelenting hostility of many of its neighbours creates an existential threat that makes Israel a special case. It seems clear that these problems will not be definitively solved until a comprehensive Middle East peace settlement can be achieved.

Effect of Sanctions

Israel's unique geopolitical situation makes it highly vulnerable to economic sanctions. Nevertheless, Israel has a strong, diversified and technologically advanced economy. Given that Arab sanctions have been in effect against Israel from its very inception, Israel has long grown accustomed to its singular situation and has learned to adjust its economic and political life accordingly. Although this context is far from natural or ideal, with the benefit of strong outside support, Israel can continue to thrive in spite of the sanctions imposed by its neighbours.

What Do We Want to Achieve Now?

It is clear that a stable, prosperous and peaceful Middle East continues to be one of the world's most important goals. Failure to achieve this has contributed substantially to the world's inability to deal with WMD and terrorism more effectively. As far as Israel itself is concerned, denuclearisation cannot be expected soon, but speedy ratification of the CTBT, CWC and BWC would bring significant advances in confidence-building.

Assessment, Recommendations and Perspectives

General Conclusions

This review of the recent history of WMD-related sanctions has attempted to shed some light on the successes and shortcomings of this approach to influence behaviour. It is difficult to demonstrate a strict cause-and-effect relationship between sanctions and behaviour in the cases examined, since circumstances evolve over time and are subject to multiple factors. In some cases (South Africa, Libya), sanctions seem to have had a positive effect. In others (India, Pakistan, North Korea), sanctions or the threat of sanctions seem to have had little impact. In the ongoing case of Iran, sanctions, negotiations and geopolitical and historical factors are so intertwined that predictions are risky and simply understanding past actions is challenging at best. While on the whole, the Iranian population supports their country's pursuit of a nuclear energy programme, sanctions could be better tailored to focus on specific national influences e.g. the Revolutionary Guard, the leadership and others involved in the nuclear capabilities of the country. This is indeed a case worthy of attentive scrutiny, to see whether new incentives can be applied to remove sanctions that affect the population in a negative manner.

Several general conclusions may be drawn from our analysis:

1. Sanctions can be a powerful tool, if carefully focussed, clearly explained, and broadly supported and implemented.
2. There have been a number of attempts to improve the sanctions system, such as the Interlaken Process (focussing on financial sanctions), the Bonn-Berlin Process (arms embargoes) and the Stockholm Process (on implementation issues),¹²⁰ but the focus has not been on WMD-related sanctions and thus lessons have not been drawn in this particularly critical field.
3. Each new proliferation crisis is rather unique in character and develops in a specific geopolitical context. No general lessons having been drawn from past experience, a new political approach was designed in response to each individual case.
4. In the field of sanctions, it is by far easier to demonstrate disapproval and inflict punishment than to achieve genuine behavioural change on the part of the state subject to sanctions.
5. Behavioural change through the imposition of sanctions has been limited at best, particularly when global, comprehensive¹²¹ sanctions have been imposed.
6. The use of targeted sanctions, where adequately designed and implemented, is likely to be more effective.
7. The UN sanctions committees set up to deal with each case have done significant work, but the accumulated experience and lessons learned may be lost because these have not been sufficiently analysed and documented.

120 See also www.smartsanctions.se.

121 Comprehensive sanctions include a prohibition of all exports and imports, except humanitarian supplies, e.g. essential food and medicine.

Recommendations

1. A conceptual approach is needed to ensure a better understanding of the key issues, to design a well-structured policy, to improve geopolitical knowledge of the targeted state's motivations and concerns, to contribute to fruitful preparation of political decisions and to yield more efficient practices.
2. Sanctions should target those decision-makers¹²² who have the power to successfully alter behaviour.
3. Sanctions should only be imposed where comprehensive attempts to avoid or terminate undesirable behaviour have failed.
4. The sending side should communicate clearly to the receiving side the reasons for imposing sanctions and the conditions under which they will be terminated.
5. Prior to the imposition of sanctions, advance attempts should be made to anticipate any possible unintended consequences.
6. Sanctions should be eased or removed when the offending behaviour is corrected.
7. States should avoid building a constituency for sanctions independent of the reasons for imposing sanctions in the first place, since this can make removing sanctions difficult.
8. Criteria should be developed for assessing the effectiveness of specific sanctions in specific circumstances.
9. Sanctions should be calibrated and ratcheted up or down as conditions change.
10. Where possible, positive inducements and face-saving routes away from confrontation should be made available.
11. States should be prepared to introduce alternative policies if sanctions do not produce the desired results within a reasonable period of time.

¹²² In this context, "decision-makers" would include political leaders, or major military, industrial or scientific authorities, in more than one country.

12. States should clearly distinguish between sanctions which have a realistic prospect of altering behaviour in the desired direction and those which merely demonstrate disapproval or satisfy a domestic audience.

13. A new UN WMD entity should be established under the UNSC (see below).

Establishment of a Standing WMD Entity¹²³

We propose to establish a standing WMD entity, which would be a subsidiary body of the UNSC. The entity would collect and analyse relevant information from the different sanction committees involved in WMD,¹²⁴ from the IAEA, the CTBTO Preparatory Commission, the OPCW and other relevant sources within the UN family, from the secretariats of the various Nuclear Weapon-Free Zones as well as from states participating in the different export control regimes (like the NSG, MTCR and Australia Group) and the Proliferation Security Initiative (PSI). The entity would consist of experts in the field and would report to the relevant sanctions committees or directly to the UNSC if so requested by it.

The purpose would be to integrate existing WMD information, available in different places and organisations, with the view to assist the sanctions committees involved as well as the UNSC with optimal information. The entity could also assess the efficacy of particular sanctions, including their possible negative consequences for civilian populations.

On the request of a state and/or of the UNSC, the entity would inves-

123 The idea of a permanent body under the UNSC has been advanced earlier in a particular context by T. Findlay, who proposed a successor body to UNMOVIC, as a kind of informal standing working group on WMD non-compliance issues. See: T. Findlay, "Preserving UNMOVIC: The Institutional Possibilities", *Disarmament Diplomacy*, no. 76, March/April, 2004, and "A Standing United Nations WMD Verification Body: Necessary and Feasible," *Compliance Chronicles No. 1*, Canadian Centre for Treaty Compliance, December 2005.

124 At this particular time, the sanctions committees for North Korea and Iran.

tigate matters of concern related to WMD which do not fall within the responsibilities of existing organisations (such as the IAEA or OPCW). For such an investigation (possibly on-site), the UN may wish to call upon outside expertise. The results of the investigation should be reported to the UNSG and the UNSC.

Annex 1

The Functioning of the UN Security Council

This annex gives a detailed description of how the UNSC works in practice, in order to help understand how it deals with international sanctions issues.

Membership

The Security Council has 15 members,¹²⁵ five of them permanent: China, France, Russia, the United Kingdom and the United States (the 'P-5'). The ten non-permanent members serve for two years, five being elected each year by the General Assembly, and cannot serve consecutive terms. In practice the composition of the non-permanent membership is informally distributed on regional lines, the 10 seats being allocated as follows: African (3), Asian (2), East European (1), Latin American and Caribbean (2) and the Western and Others Group (WEOG) (2). In practice, each regional group nominates a clean slate of candidates for election, though there are sometimes contested elections for WEOG seats. To ensure that there is always an Arab state on the Council, things are so arranged that each year an

¹²⁵ A Charter amendment in 1963, coming into force in 1965, increased the membership from 11 to 15.

Arab state is elected to fill, alternately, an Asian or an African seat (unless a North African state is elected). Each month the presidency of the Council rotates in alphabetical order.

Working Methods¹²⁶

Most UNSC resolutions are adopted by unanimity or without a vote. A glance at the verbatim records of Council meetings, at least in the last 17 years, shows that most of the meetings at which resolutions were adopted lasted only a few minutes, unless members made statements explaining (diplomatically) their vote (explanations of vote - EOVs). Unlike the early days of the United Nations, and for most of the Cold War, there is now little or no discussion at meetings of the Council of draft resolutions or procedural points. Indeed, even before the end of the Cold War members of the Council increasingly discussed Council business informally, often, as is customary among diplomats, in the corridors. Sometime in the 1970s, a small room was arranged near the Council Chamber in which the members of the Council could meet together informally, but with simultaneous interpretation into all six UN languages, and (albeit very limited) seating. Apart from the Secretary-General, some of his officials and the interpreters, no one else is allowed in the room without the agreement of the members. States that are the object of the consultations are not allowed in, though sometimes a UN expert, such as a Special Representative of the Secretary-General, is invited to address the members.

At these informal 'consultations of the whole' the members: discuss all matters which are, or may be, put on the Council's agenda; consider drafts of proposed resolutions and statements; discuss procedural questions; and, most importantly, assess whether a proposal is likely be

¹²⁶ See (1) A. Aust, 'The Procedure and Practice of the Security Council Today', in R-J. Dupuy (ed.), *The Development of the Role of the Security Council*, Hague Academy of International Law Publications (1992) 365-374; and (2) M. Wood, "Security Council Working Methods and Procedure: Recent Developments", (1996) ICLQ 150-161.

adopted if put to the vote. A ‘decision’ taken in these informal consultations has no legal status at all, and no official record is kept of the discussions. But it is only by these means – which are altogether normal in diplomacy, or indeed in business and other fields – that the members of the Council can work effectively. This daily and private contact makes their deliberations much more profitable than if they were conducted in public. Views can be expressed more freely than in the Council Chamber, where they have to be given in front of the other UN members, the public, and the world media.

Lack of an official record of the informal consultations sometimes makes it difficult to interpret the terms of a resolution. A good recent example is the so-called first resolution (1441(2002)) that preceded the 2003 Iraq war, especially paragraphs 12 and 13. The only authoritative indication of the intention of members are any EOV that they make in the Council (not later to the media), though they are often worded in obscure diplomatic language.¹²⁷

In addition to these and other informal contacts, certain groups of Council members meet frequently and regularly. These are principally the P-3 (France, United Kingdom and United States); P-5 (P-3 plus China and Russia)¹²⁸; the five to seven members belonging to the Non-Aligned Movement (NAM); and the rest, the so-called non-non-aligned members. Other groups are formed ad hoc. Naturally, within a group the members can speak even more freely than in the consultations of the whole. The P-5 in particular can better assess whether there might be a veto if a draft resolution were to be put to the vote. When a draft resolution is threatened with a veto, and is consequently either not pursued or re-drafted, the threat is referred to as the ‘virtual veto’.

127 See S/PV.4644 on the adoption of UNSCR 1441(2002).

128 See F. Delon, ‘Le rôle joué par les membres permanents dans l’action du Conseil de sécurité’, in R.-J. Dupuy (ed.), *The Development of the Role of the Security Council*. op. cit., 349-364.

Presidential Statements

In addition to resolutions, increasingly the Council makes pronouncements in the form of ‘Presidential statements’. These are not voted on and therefore require agreement by consensus. They are not provided for in the Charter or the Council’s Provisional Rules of Procedure.¹²⁹ Some of them may have certain legal effects.¹³⁰

Voting

Each member of the Council has one vote but, unlike the General Assembly, procedural matters are decided not by a percentage of votes cast, but by the affirmative vote of nine or more members (Article 27(2)). No veto can be cast. But, whether a matter is procedural or substantive is a substantive question. Thus, a permanent member may cast a veto both on the proposition that a matter is procedural and on the substantive issue (the so-called double veto). Under Article 2(3), decisions on all other (i.e. substantive) matters are also made by the affirmative vote of nine or more members, provided no permanent member has cast a negative vote (veto). But the abstention, or even absence, of a permanent member does not count as a veto. This rule is contrary to the plain words of Article 27(3) that require ‘the concurring votes’ of the permanent members. Although this clearly envisaged each permanent member having to cast an affirmative vote, the practice of the Council from 1946 has been to interpret ‘concurring’ as meaning only ‘not objecting’. Thus during the early stages of the Korean war in 1950, by its absence from meetings of the Council, the Soviet Union was not able to prevent the Council from taking action.¹³¹ The

129 Presidential statements from 1994 can be accessed on line at www.un.org/documents/pstataesc.htm. For a rare reference to them in a resolution, see the first preambular paragraph of UNSCR 1441(2002). Even ‘resolutions’ are not mentioned as such in the Charter, merely ‘decisions’ and ‘measures’.

130 See S. Talmon, “The Statements by the Presidents of the Security Council”, (2003) Chinese Yearbook of International Law 419-465.

131 Bailey and Daws, p. 257.

practice was upheld by the International Court of Justice in the Namibia case,¹³² even though it seems from the travaux préparatoires (preparatory work) of the Charter that it was not what had been originally intended by the future permanent members.¹³³

There were 270 vetoes between 1946 and the end of the Cold War in 1990. Since then there have been only a handful. One of the reasons is that when it appears from informal consultations and P-5 meetings that a permanent member is likely to cast a veto, a draft resolution is usually either modified to make it acceptable to the permanent member(s) or the matter is not put to the vote (virtual veto). Furthermore, abstention by any seven members will prevent any decision from being adopted ($15 - 7 = 8$), and is known as the 'collective veto'.¹³⁴

Although Article 27(3) prohibits a member from voting on a question relating to a 'dispute' to which it is a party, this does not apply to Chapter VII action (see below). And in most cases that involve a dispute, the issue before the Council is not the dispute itself but the 'situation' arising from it,¹³⁵ for example the occupation of Kuwait by Iraq in 1990, even though Iraq claimed that there was a dispute with Kuwait over sovereignty.

Powers of the Security Council

Article 24 confers on the Security Council primary responsibility for the maintenance of international peace and security. Although a highly political body, the Council has the power to impose legally binding measures on all UN members. Most Council resolutions contain only exhortations or recommendations, and are informally referred to as 'Chapter VI resolutions', since under that chapter the Council cannot impose legally binding measures. That can be done only under Chapter VII, or Chapter VIII when

132 ICJ Reports (1971), p. 6, at paras. 20-22; 49 ILR 2.

133 See Goodrich and Hambro, p. 229.

134 In June 2004 the United States was unable to gather nine votes for the renewal of its annual draft resolution about the International Criminal Court.

135 See Articles 34-36 on disputes and situations.

the Council authorises enforcement action by 'regional' bodies, such as NATO. The combined effect of Articles 25 and 48 is to place a legal obligation on all UN Members to carry out the measures. A 'Chapter VII resolution' has therefore come to be known as shorthand for a legally binding measure. Ironically, since the main value of a Chapter VI resolution is political, it must be adopted unanimously if it is to carry any real weight. In contrast, a Chapter VII resolution needs only nine votes in favour, and no veto, for it to be legally binding on all UN members.

Before the Council can decide to impose a measure, Article 39 requires that it first determine the existence of a threat to the peace, breach of the peace or act of aggression. This is usually expressed in a less specific statement in a preambular paragraph of a resolution according to which the Council determines that there is 'a threat to international peace and security'. The Council does not categorise further the nature of the threat, such as aggression. Although UNSCR 660(1990) condemned Iraq's invasion of Kuwait, it did not categorise it as aggression. Even though objectively there was no doubt that Iraq's action would fall squarely within any definition of aggression, there is no satisfactory international definition of aggression. Nor is Article 39, or the other articles of Chapter VII, usually mentioned specifically in the resolution. If the whole of the resolution is intended to be legally binding, the final preambular paragraph will state that the Council is 'acting under Chapter VII'. If only part, or parts, of the resolution are intended to be binding, the reference to Chapter VII will precede only that part or parts.

Unfortunately, the Council is not always consistent in the drafting of its resolutions. Sometimes there is no express Article 39 determination or even reference to Chapter VII. Nevertheless, it can usually be inferred from the rest of the resolution, by a statement by the President of the Council, or from the circumstances, that the determination has been made and that the Council is acting under Chapter VII. When the resolution is one of a series of resolutions on the same subject, and it is clear that the Council consid-

ers that the threat to international peace and security remains, if a new resolution is only modifying, elaborating or adding to existing measures, there may be no reference either to the determination or to Chapter VII.

An Article 39 determination is a political act. In considering whether to make the determination, the governments of Council members in practice ask themselves essentially political questions: does something really have to be done? If so, what? Could it really be effective? Even if it were not effective, do we still have to be seen to be doing something? The best example of a futile gesture was UNSCR 836(1993) establishing the 'safe areas' around certain Bosnian towns, including the previously unknown town of Srebrenica. But if the members believe that something has to be done, they do not indulge in painstaking legal analysis.

The Council has taken action in what would have been seen in 1945 as essentially internal matters. Although Article 2(7) prohibits the United Nations from intervening in matters that are 'essentially within the domestic jurisdiction' of a state, this does not apply to enforcement measures under Chapter VII. Furthermore, human rights have long been regarded in the United Nations as not 'essentially' an internal matter, but of international concern, as evidenced by the action taken by the Council against the white, rebel regime in Southern Rhodesia and the apartheid government of South Africa. In the 1990s, when the Council was considering whether to intervene in situations which could well have been seen as essentially internal, a threat to international peace and security was discerned in factors such as the destabilizing effect of civil wars on neighbouring states or other internal disturbances (see Resolutions 713(1991) Yugoslavia; 794(1992) Somalia; and 841(1993) and 917(1994) (Haiti)). This is reflected in the wording of the preambles to these resolutions. But, given the precedents, some of the resolutions emphasise the 'unique character' of the situation requiring 'an immediate and exceptional response' (Somalia) or the 'unique and exceptional circumstances' (Haiti). More recently, the Council has recognised the global threat posed by international terrorism to international peace and security.

Obligations of Members under the Charter (which includes the obligation to carry out Chapter VII resolutions) prevail over their obligations under any other treaty (Article 103). Sometimes sanctions resolutions will therefore have the effect of overriding or suspending treaty obligations.¹³⁶ The trade embargo imposed on the Federal Republic of Yugoslavia (FRY) required goods traffic on the Danube to or from the FRY to cease, despite the freedom of navigation obligations of the riparian states under the Danube Convention.¹³⁷

In the forty-four years before the invasion of Kuwait there had been only a handful of Chapter VII resolutions: (84(1950) on Korea; 221 (1966), 232(1966), 253(1968), 399(1976) and 409(1977) on Southern Rhodesia; 277(1970) and 418(1977) on South Africa. The end of the Cold War has meant that since 2 August 1990 there have been numerous Chapter VII resolutions.

Human Rights

One has to be cautious of any argument claiming that the Security Council, when adopting Chapter VII measures, cannot suspend human rights expressly or by implication.¹³⁸ There is no reason in principle why a measure should not suspend certain human rights, though in practice the members of the Council would not agree to this unless they considered such a suspension to be absolutely necessary. The members do not act unthinkingly, and within the Council there are checks and balances. It may well be necessary for the Council to suspend certain human rights in emergency situations. Most human rights are not absolute and require a balancing of competing interests. Clearly the Council cannot validly adopt, even by use

136 Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom) (Provisional Measures) ICJ Reports (1992), p. 3, para. 39; ILM (1992) 662; 94 ILR 478.

137 UNSCRs 787(1992), para. 13, 820(1993), paras. 15-17.

138 See for example, E. de Wet, *The Chapter VII Powers of the United Nations Security Council*, Hart, Oxford, 2004.

of express words, a measure contrary to *jus cogens*, such as authorising the torture of suspected terrorists. But due process is not *jus cogens* and human rights treaties permit derogations to most articles.¹³⁹

At first sight, Resolution 1373 may seem remarkable as the first Security Council measure under Chapter VII to address a global and unspecific threat to international peace and security, all previous resolutions having been directed at a particular state, regime or group. The need for a measure with the broad and general scope of Resolution 1373 is explained by the particular nature of international terrorism. Unlike a state that has an aggressive intent toward a neighbour, detectable by observing troop movements, terrorists work in small units and in great secrecy. In most cases there will be no warning of an attack. Terrorist attacks being so difficult to detect, states have to take such preventive measures as they can. This means that, in addition to measures ensuring physical security, the focus has to be on catching terrorists (and if necessary, even killing them) before they can perpetrate attacks, or starving them of the means, physical and financial, to commit them.

Those were the reasons behind Resolution 1373. There is no danger that the Council will be encouraged to use its Chapter VII powers to pronounce on international law in the way done by diplomatic conferences or by the General Assembly when it adopts a so-called law-making convention.¹⁴⁰ If anything, the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are closer to law-making in that their Statutes confirm or assert what the Council, acting on behalf of the whole UN Membership,

139 Article 4 (derogation) of the International Covenant on Civil and Political Rights 1966 applies to Article 14 (due process), and Article 15 (derogation) of the European Convention on Human Rights (ECHR) applies to Article 6 (due process).

140 Paul Szasz, in "The Security Council Starts Legislating" (2002) *AJIL* 901-905, was not concerned at this development, pointing out that earlier UNSCRs, such as 1265(1999), 1291(2000), 1296(2000), 1314(2000), 1325(2000) dealt in general terms with matters such as the protection of women and children during armed conflicts, albeit only UNSCR 1291(2000) was made under Chapter VII.

considers to be international crimes. But it does so only for the purpose of restoring international peace and security in a region, as well as to send a signal to any who might be tempted to commit such crimes in the future. The adoption of the Rome Statute of the International Criminal Court in 1998 shows that international lawmaking will continue to be conducted by normal means.

Annex 2

Seminar “Are International Sanctions an Effective Instrument for the Non-proliferation of Weapons of Mass Destruction?” (Geneva, 1 July 2008)

On 1 July 2008, the Geneva Centre for Security Policy (GCSP) hosted an international research seminar on the topic: “Are International Sanctions an Effective Instrument for the Non-Proliferation of Weapons of Mass Destruction?” This event was organised jointly with the French Centre for International Security and Arms Control Studies (CESIM) and supported by the Policy Planning Staff (Centre d’Analyse et de Prévision, now Direction de la Prospective) of the French Ministry of Foreign and European Affairs. Also, the seminar was convened on the occasion of a meeting of the International Expert Group on Global Security (IGGS) which was conducting a study on international sanctions and non-proliferation. The IGGS had already met at the GCSP in April 2007 and the GCSP subsequently published its study on “Assessing Compliance with Arms Control Treaties” jointly with CESIM.¹⁴¹ The seminar addressed various topics including legal aspects, case studies, models of sanctions, and lessons learned for the future.

On legal aspects, the focus was on the entire range of measures at the disposal of the UN Security Council, from limited restrictions on travel or cultural cooperation up to the authorisation of the use of force (as in

141 See: http://www.gcsp.ch/e/publications/Security_Challenges/WMD/gcsp-cesim-report.pdf 3.

the case of Iraq after the invasion of Kuwait). Another noteworthy aspect was discussed: the secondary effects of sanctions on civilian populations, neighbouring states and the individual rights of the targeted persons, taking into consideration the restrictions contained in Article 50 of the UN Charter, as well as the remedies available such as exemptions and exceptions. In the discussion, the issue of the legitimacy of sanctions was raised.

Sanctions imposed by the international community on Iraq and Iran were examined as case studies. In the case of Iraq, the effectiveness of measures regarding disarmament after the liberation of Kuwait was considered high thanks to the work accomplished by UNSCOM and UNMOVIC. In the case of Iran, there was a debate about the appropriateness of the very purpose of the UN Security Council resolutions, i.e. to force Iran to suspend its enrichment of uranium: for some, such sanctions could be explained by the mistrust caused by Iran's behaviour, while others considered that the sanctions did not address the motivations of proliferation or appeared as discriminatory.

Regarding models of economic and financial sanctions, some attention was devoted to the "Manual on Targeted Financial Sanctions" that came out of the Interlaken Process, and it was agreed that targeted sanctions generally reduced collateral damage to civilian populations, could be applied gradually and were more effective if decided multilaterally. However, implementing institutions needed more accurate information on targets, coherence in definitions and criteria, model legislation, human resources and certainty in jurisdiction. With respect to "military sanctions", although there was no agreed definition of this concept, they included arms embargoes or restrictive measures targeting military personnel as well as persons engaged in trade of dual-use goods. Their effectiveness was affected by the difficulties in locating targets, counter-measures taken by targets (such as transfer of assets), uncertainties regarding dual-use goods and the capacity of customs

services to implement restrictive measures. The dilemma of applying targeted sanctions was raised: they are more acceptable but they can be evaded more easily.

In terms of lessons learned about the effectiveness of international sanctions, several points were made:

1. First, a paradox was signalled, according to which targeted sanctions were more effective among economically integrated – but like-minded – countries, but they were more likely to be applied among adversaries who are less integrated and therefore more likely to fail.

2. Assessing the effectiveness of sanctions depends very much on their objectives and evaluation criteria (change in behaviour, obstacles to policy) and they must be measured against all alternatives. As research in this field has shown, sanctions are more likely to be effective the higher the costs they entail, and their chances of success rise if the targeted country is already in a difficult political or socio-economic situation. Repeatedly, comprehensive sanctions against autocratic regimes appeared counter-productive.

3. Finally, it was considered that: the threat of sanctions could prove to be as effective as actual sanctions; sanctions could bring policy change more readily than regime change; and sanctions were more effective if they were accompanied by incentives.

In conclusion, it was felt that sanctions were a means to reach an end rather than an end in itself. Consequently, sanctions are usually tailored to a situation and are subject to political considerations. Some areas need further research, including: the metrics to evaluate the efficacy of sanctions (capacity, time horizons, relative utility, etc.); the issue of intentions (is it possible to change the behaviour of leaders intent on acquiring weapons of mass destruction?); the export control perspective and the difficulties of controlling dual-use goods; the instrumentalisation of sanctions to the advantage of the targeted leaders or states.

Programme

Tuesday 1 July 2008

Venue: GCSP, Vieira de Mello Auditorium

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|---------------|---|
| 09h00 – 09h30 | Welcome Address

Ambassador Fred TANNER, Director, GCSP
Introduction: The Study of the IGGS on International Sanctions and Non-Proliferation
Professor Bernard SITT, Director, CESIM |
| 09h30 – 11h00 | Session 1: Legal Aspects |
| 09h30 – 10h00 | Sanctions in International Law: Potential and Restrictions |
| 10h00 – 10h30 | Secondary Effects of International Sanctions: Assistance to Victims and Legal Remedies |
| 10h30 – 11h00 | Discussion |
| 11h00 – 11h15 | Break |
| 11h15 – 12h45 | Session 2: Case Studies on Sanctions and Proliferation |
| 11h15 – 11h45 | Iran |
| 11h15 – 11h45 | Iraq |

12h15 – 12h45	Discussion
12h45 – 14h00	Lunch Break
14h00 – 15h30	Session 3: Models of Sanctions
14h00 – 14h30	Economic and Financial Sanctions
14h30 – 15h00	Military Sanctions
15h00 – 15h30	Discussion
15h30 – 15h45	Break
15h30 – 15h45	Break
15h45 – 17h15	Session 4: Lessons Learnt for the Future
15h45 – 16h15	Assessing the Effectiveness of Targeted Sanctions
16h15 – 16h45	The Current State of Research on International Sanctions
16h45 – 17h15	Discussion
17h15 – 17h45	Conclusions
18h00 – 19h30	Reception

List of Participants

Mr Patrick Allard, Adviser, Policy Planning Staff, French Ministry of Foreign and European Affairs.

Prof Anthony Aust, Consultant on International Law, Member of the International Expert Group on Global Security (IGGS).

Prof Thomas Bersteker, Associate Fellow, GCSP.

Ms Emma Broughton, Research Assistant, (IFRI), France.

Ms Stephanie Dornschneider, Assistant to the Director of Studies, GCSP.

Amb Rolf Ekéus, Chairman, Governing Board, Stockholm International Peace Research Institute (SIPRI), former Chairman of UNSCOM.

Mr Mikael Eriksson, Project Member, The Stockholm Process on the Implementation of Targeted Sanctions, Uppsala University.

Mr Marc Finaud, Director of Short Courses, GCSP.

Ms Thérèse Gastaut, former Spokesperson for the UN Secretary-General.

Mr Edward Ifft, Faculty, Georgetown University, USA; Member of the International Expert Group on Global Security (IGGS).

Prof István Gyarmati, Ambassador, President & CEO, International Centre for Democratic Transition (ICDT), Budapest.

Dr Nicholas Kyriakopoulos, Professor of Engineering, Department of Electrical and Computer Engineering, The George Washington University, USA; Member of the International Expert Group on Global Security (IGGS).

Mr Antoine Laham, Senior Adviser and Head of Lebanon Project, Centre for the Democratic Control of Armed Forces (DCAF), Geneva.

Dr Gustav Lindström, Co-Director, European Training Course (ETC), GCSP.

Dr Bernard Massinon, Member of the International Expert Group on Global Security (IGGS).

Amb Arend Meerburg, Member of the International Expert Group on Global Security (IGGS).

Mr Benoît Pélopidas, Assistant de philosophie du droit, Département

d'histoire des doctrines politiques et juridiques, University of Geneva.

Ms Alexandra Reidon, Assistant Project Officer, Security Needs Assessment Protocol (SNAP), UNIDIR.

Prof Dr Adam Daniel Rotfeld, Former Minister of Foreign Affairs of Poland; Member of the Advisory Board, GCSP.

Dr Peter Rudolf, Head of Research Division, German Institute for International and Security Affairs (SWP).

Ms Katya Shadrina, Coordinator, Short Courses, GCSP..

Dr Pal W. Sidhu, Director, New Issues in Security Course, GCSP.

Prof Bernard Sitt, Director, CESIM; Member of the International Expert Group on Global Security (IGGS).

Amb Dr Fred Tanner, Director, GCSP.

Dr Djacoba Tehindrazanarivelo, Lecturer, Boston University Geneva Programme.

Amb Patrick Villemur, Special Advisor to the Director, GCSP.

Amb(ret) Hendrik Wagenmakers, Former Representative of the Netherlands to the Conference on Disarmament.

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