

DESIGN AND IMPLEMENTATION OF
ARMS EMBARGOES AND TRAVEL
AND AVIATION RELATED SANCTIONS
RESULTS OF THE
'BONN-BERLIN PROCESS'

Bonn International Center for Conversion
in cooperation with the
Auswärtiges Amt (German Foreign Office)
and the
United Nations Secretariat

Editor: Michael Brzoska, BICC

Published by
© BICC, Bonn 2001
Bonn International Center for Conversion
Director: Dr. Herbert Wulf
Publishing management: Michael Dedek
An der Elisabethkirche 25
D-53113 Bonn
Germany
Phone +49-228-911960
Fax +49-228-241215
E-mail bicc@bicc.de
Internet www.bicc.de

Editing: Lynn Benstead

Printed in Germany
All rights reserved

Contents

PREFACE	6
1. A BRIEF BACKGROUND TO THE ‘BONN-BERLIN PROCESS’	9
<i>1.1. Background</i>	9
<i>1.2. Meetings</i>	10
<i>1.3. Texts</i>	12
<i>1.4. Conclusion</i>	15
<i>Appendix: List of Participants</i>	16
2. MODEL SECURITY COUNCIL RESOLUTION ON ARMS EMBARGOES, WITH COMMENTARY	25
<i>2.1. Introductory remarks</i>	25
<i>2.2. Model text and commentary</i>	25
2.2.1. Causes and objectives of the embargo— preamble paragraphs	25
2.2.2. Scope of the embargo	26
2.2.3. Monitoring	32
2.2.4. Additional provisions	36
<i>Annex: Full text of model Security Council Resolution on arms embargoes</i>	40
3. MODEL SECURITY COUNCIL RESOLUTION ON TRAVEL BANS, WITH COMMENTARY	47
<i>3.1. The Expert Working Group on Travel and Aviation Sanctions</i>	47
<i>3.2. Preamble on Security Council Resolution</i>	49
<i>3.3. Operative paragraphs</i>	49
3.3.1. The travel ban	49
3.3.2. The Sanctions Committee	55
3.3.3. Message to the Secretary-General	60
<i>3.4. Exhortative paragraphs</i>	60
<i>3.5. Periodic review and suspension/ termination</i>	62
<i>Annex: Full text of model Security Council Resolution on travel bans</i>	64
4. MODEL SECURITY COUNCIL RESOLUTION ON AVIATION BANS, WITH COMMENTARY	69
<i>4.1. Introduction to aviation bans</i>	69
4.1.1. Aviation bans as targeted sanctions	69
4.1.2. Effects of an aviation ban	69
4.1.3. International versus national aviation bans	71

4.1.4. Forms of aviation bans	71
4.1.5. Relation to text of travel ban	72
4.1.6. Structure of model Security Council Resolution	72
4.2. <i>Preamble on Security Council resolution</i>	72
4.3. <i>The operative paragraphs</i>	73
4.3.1. The aviation ban	73
4.3.2. The Sanctions Committee	77
4.3.3. Message to the Secretary-General	81
4.4. <i>Exhortative paragraphs</i>	81
4.5. <i>Periodic review and suspension/termination</i>	82
<i>Annex: Full text of model Security Council resolution on aviation bans</i>	85
5. IMPLEMENTING TRAVEL AND AVIATION BANS	91
5.1. <i>Introduction</i>	91
5.2. <i>Framework law</i>	91
5.2.1. Preamble options	93
5.2.2. Draft framework law text	94
5.3. <i>Implementing legislation and administrative provisions</i>	95
<i>Appendix: Text of a European Union COMMON POSITION</i>	97
6. IMPLEMENTATION OF ARMS EMBARGOES	99
6.1. <i>Introduction</i>	99
6.2. <i>Context and background</i>	99
6.3. <i>Issues</i>	100
6.3.1. National requirements to improve the implementation of arms embargoes	100
6.3.1.1. Sharing information and intelligence in public or semi-public environments	101
6.3.1.2. National lists of arms dealers and brokers	102
6.3.1.3. Customs and ports of entry	102
6.3.1.4. Licensing and end-use certification	103
6.3.2. Ways and means of improving national implementation	103
6.3.2.1. Technical and financial assistance	104
6.3.2.2. Legislation	104
6.3.2.3. Arms embargo assistance offices on the ground	105
6.3.2.4. Border control and ports of entry	105
6.3.2.5. Additional measures	106
6.3.3. Role of the UN and other intergovernmental organizations	106

<i>6.4. Recommendations of the Expert Working Group</i>	107
6.4.1. Arms embargoes must be enacted through national legislation	107
6.4.2. Arms embargo assistance missions/offices	108
6.4.3. Technical and financial assistance to assist in embargo implementation	108
6.4.4. Improving information exchange nationally and among States	109
6.4.5. Arms embargo website	109
6.4.6. Facilitating information sharing by the UN	109
7. MONITORING AND ENFORCEMENT OF ARMS EMBARGOES AT THE UNITED NATIONS	111
7.1. <i>Mandate and focus</i>	111
7.2. <i>Context</i>	111
7.3. <i>Organizational and institutional aspects</i>	114
7.3.1. Sanctions Committees	114
7.3.2. The Sanctions Unit in the UN Secretariat	115
7.3.3. Relation to conflict resolution and peacekeeping activities	116
7.3.4. Resources	117
7.3.5. Expertise required	118
7.3.6. Sanctions policy development and public advocacy	120
7.4. <i>Monitoring and reporting on sanctions implementation</i>	120
7.4.1. Initial information on national implementation	122
7.4.2. Regular monitoring	123
7.4.3. Management of confidential information	124
7.4.4. Information management issues	125
7.4.5. Special investigations	126
7.5. <i>Bringing about compliance</i>	127

PREFACE

The UN Charter states in its first article that the primary aim of the United Nations is to maintain peace and security.

It is generally accepted that the use of force remains the ultima ratio to restore peace and security, and indeed we consider all members of the UN to be under an obligation to use sanctions to meet challenges to the maintenance of peace and security.

The German Government, in cooperation with the Bonn International Centre for Conversion and the UN Secretariat, is now in a position to present the results of the Bonn-Berlin process on the design and implementation of arms embargoes and travel and aviation related sanctions.

As with the Interlaken process, which concentrated on financial sanctions, the results presented are intended to secure more targeted sanctions.

A sanction should not be a punishment. Rather the objective of applying a sanction should be to ensure compliance with the UN Charter. Smarter sanctions therefore consider – and regularly reconsider – whether the target nation has moved towards compliance with the Charter. It is also important to ensure that non-target nations are not collaterally adversely affected by coercive measures applied by the international community.

This booklet sets out model Security Council resolutions. It also includes a commentary compiled by government experts, members of the academic community, non-governmental organizations and other independent specialists. Although these model resolutions cannot be mandatory for the Security Council, we nevertheless regard them as valuable points of reference which merit close consideration by the Council when considering sanctions relating to the arms trade and travel and aviation practice.

The discussions in the working groups and at the Bonn-Berlin conferences demonstrated that the Security Council is only one player in our common efforts to improve the effectiveness of sanctions.

Any consideration of reform of the Secretariat should include measures to ensure comprehensive support for the sanctions committee, including the collation of all relevant information from all relevant sources.

Further, careful consideration of the effects of sanctions is essential as we are under an obligation to minimize the impact of sanctions on those not responsible for the threat to peace, be they third countries or the inhabitants of a country whose government is the object of sanctions.



Even the most precise sanction resolutions may fail if some member states lack the political will to implement them. The recommendations set out in this booklet are aimed at achieving a higher level of national implementation and more efficient and uniform monitoring and control of any sanctions imposed.

Germany remains one of the most staunch supporters of the UN system as the only global multilateral organization open to all peace-loving states. Germany is prepared to continue its support for more targeted, more effective sanctions in order to counter threats to or breaches of the peace.

A handwritten signature in black ink, reading "J. Fischer". The signature is written in a cursive, slightly slanted style.

Joschka Fischer, the Federal Minister for Foreign Affairs of Germany

1. A BRIEF BACKGROUND TO THE 'BONN-BERLIN PROCESS'

Michael **Brzoska**, Bonn International Center for Conversion, Bonn

"I ... share the view, emerging as a consensus among Member States, that the design and implementation of Security Council sanctions need to be improved and their administration enhanced, to allow a more prompt and effective response to present and future threats to international peace and security. Future sanctions regimes should be designed so as to maximize the chance of inducing the target to comply with Security Council resolutions, while minimizing the negative effects of the sanctions on the civilian population and neighboring and other affected States."¹

1.1. Background

In mid-2000, the German Foreign Office responded to calls to make UN sanctions 'smarter', and decided to make a major contribution to sanctions reform along the lines of the 'Interlaken Process' on targeted financial sanctions, which had been organized by the Swiss government in 1999/2000². In consultations with the UN Secretariat, it was determined that the focus should be on arms embargoes and travel-related sanctions. The German Foreign Office in turn asked the Bonn International Center for Conversion (BICC)³ to organize the 'Bonn-Berlin Process' which was to include two expert seminars and several meetings of expert working groups. BICC is an international research and consultancy center mandated to support efforts and activities to find alternative uses for resources released through disarmament. Its experts have specific knowledge in the fields of sanctions and arms transfer, as well as experience in creating and maintaining international networks. In organizing the Bonn-Berlin Process, BICC received guidance from the German Foreign Office and support from the UN Secretariat, but remained fully responsible for both the conduct and the outcome of the exercise. We are particularly grateful to Dirk Rotenberg from the German Foreign Office and Joseph Stephanides from the UN Secretariat for their support and advice, but also to Ambassador Günther Altenburg, Philip Ackermann, Kai Hennig, and Wolfgang Trautwein from the German Foreign Office, and to Andy Mack, David Biggs, Tatiana Cosio and Under-Secretary General Jayantha Dhanapala from the UN Secretariat. The results of the Bonn-Berlin Process should not, however, be construed as representing the official view of the German Federal government or of the UN. Special credit should also be given *inter alia* to the following staff members at BICC: Sebastian Esser, Ann Lindström, Mariska Wijt and Herbert Wulf. BICC is also grateful for the support which it received from the Foreign and Commonwealth Office during meetings in London.

¹ Report of the Secretary-General on the work of the Organization, A/55/1, New York, 2000, p. 13.

² Documents, including reports of two expert seminars, can be found at www.smartsanctions.ch.

³ For more information on the Center see www.bicc.de.

While obviously different in many respects, the two types of sanctions discussed in the Bonn-Berlin Process, arms embargoes on the one hand, and travel and aviation sanctions on the other, do also have a few features in common. The most important common denominator is that they are often listed along with financial sanctions as the primary forms of targeted—or ‘smart’—sanctions. There are two reasons for this. First, both types of sanctions are partial. They only ban certain carefully selected transactions and forms of interaction with the outside world. Second, the bans can be further tailored to predominantly affect certain groups of people, or even individuals, namely those who are responsible for the behavior that led to the imposition of the sanctions in the first place, and those who can decide to change this behavior. The humanitarian side-effects on the larger population are generally minor, although this may not always be true of aviation bans.

However, the two types of sanctions have another feature in common: their past record of effectiveness has not been very good.⁴ Implementation and enforcement have been far from perfect. Arms embargoes and travel and aviation sanctions are attractive because they are less blunt than comprehensive economic sanctions, but often they have had little or no discernible effect on the target.

1.2. Meetings

This discrepancy between the potential and the actual record of arms embargoes and travel sanctions provided the challenge for the Bonn-Berlin Process. The objective was to help improve the design and implementation of UN-mandated arms embargoes and travel sanctions in order to make better use of their potential. The main beneficiaries of the efforts within the Bonn-Berlin Process were to be those working on the design and implementation of sanctions, both in New York and in national capitals.

The identification of problems was judged to be the first step towards improvement. Accordingly, the first task tackled in the Bonn-Berlin Process during the *First Expert Seminar* in Bonn in November 1999 was to make a broad-based analysis of the deficits and deficiencies of arms embargoes as well as travel and aviation bans. A number of analytical presentations were made to experts from governments, academia and non-governmental organizations. These were followed by intensive discussions about what had gone right and what had gone wrong in the past.⁵

Arms embargoes have clearly suffered from poor implementation and enforcement on the ground. Neighboring countries in the majority of cases in the 1990s, especially those involving African countries, lacked the capacity to control transit and borders

⁴ The most comprehensive overview of sanctions in the 1990s is: David Cortright and George Lopez. 2000. *The Sanctions Decade*. Boulder, Colorado: Lynne Rienner. The two authors presented a summary of their findings on arms embargoes and travel sanctions at the Final Expert Seminar in Berlin in December 2000.

⁵ Papers produced for the Bonn-Berlin Process can be found under www.smartsanctions.de. Revised versions are published in: Michael Brzoska (ed.). 2001 (forthcoming). *Smart Sanctions. The Next Steps: Arms Embargoes and Travel Sanctions: Proceedings of the 'Bonn-Berlin Process'*. Baden-Baden: Nomos Verlagsgesellschaft,

effectively. Similarly, a number of arms producing and exporting states were unable to control domestic producers and middlemen efficiently. In addition, governments did not always implement arms embargoes uniformly. Problems were compounded as light weapons became the predominant types of weapons used in contemporary armed conflicts. Travel and aviation sanctions also had their share of implementation problems, as documented in presentations at the Bonn seminar. Disputes arose about the scope of such sanctions, about who was targeted, and about exceptions and exemptions. Another comment often heard during the Bonn seminar was that the UN Secretariat was not sufficiently equipped to perform the full gamut of tasks needed to help implement and document—let alone enforce—arms embargoes and travel-related sanctions.

The second task of the Bonn Expert Seminar was to bring forward and discuss a broad range of proposals about what can be done to make arms embargoes, travel and aviation bans more effective. Wide-ranging proposals were made in presentations and discussions in Bonn. These included ideas for new types of travel-related sanctions, for extensive monitoring mechanisms for arms embargoes, for major reform at the United Nations, and for the imposition of secondary measures in cases of proven embargo violations. A number of the proposals that were made, such as proposals for extensive monitoring systems, would require far more resources for embargo implementation than are currently available. Others, such as a major reform of the work of the Sanctions Committees, need to be embedded in wider discussions on the work of the Security Council.

The third task of the Bonn seminar was to identify, from the wider set of proposals, some that would benefit from a more thorough examination by expert working groups. The idea was to focus on ‘technical’ rather than ‘political’ issues, and on proposals that would be directly useful for those working on the implementation of arms embargoes and travel sanctions in New York and in national capitals. For this purpose, mandates were identified for four Expert Working Groups during the Bonn seminar. The first Expert Working Group was to focus on travel and aviation sanctions, specifically on developing model resolutions and suggestions for the national implementation of travel and aviation sanctions. The second Expert Working Group was to concentrate on proposals to make arms embargoes more effective ‘on the ground’. The third Expert Working Group was tasked to develop a model Security Council resolution text on arms embargoes, while the fourth Expert Working Group was to discuss suggestions for improving the monitoring and enforcement of arms embargoes at UN level. The German Foreign Office and BICC were fortunate to find four experienced chairpersons for the Expert Working Groups, three of whom have been their countries’ Permanent Representatives to the United Nations and Chairs of Sanctions Committees, and one an ambassador for disarmament.

All four Expert Working Groups met during 2000 and in addition communicated in writing via BICC in Bonn. Numerous drafts were exchanged and commented upon before and after meetings. We are grateful to a large number of experts, and specifically to the chairs and rapporteurs, who devoted a lot of their valuable time and energy to the Expert Working Groups. All of those who participated in the discussions did so in their private capacities. No single participant should be held

responsible for the texts emerging from the Expert Working Groups. The reports were produced by the rapporteurs in consultation with the members of the Expert Working Groups, with the Chairpersons acting as arbitrators if necessary. In this sense, the reports are Chairperson reports on the work of the four Expert Working Groups, not necessarily consensus reports reflecting the views of all those who participated in the meetings.

Drafts of the reports from the Expert Working Groups were discussed again at the *Final Expert Seminar* in Berlin from 3–5 December 2000. The main purpose of the Berlin seminar was to test and fine-tune the proposals and reports emerging from the Expert Working Groups. An effort was therefore made to ensure wide participation by government experts. Specialists from 28 countries participated in the Berlin seminar, including representatives of all the Security Council members at the time. In addition to reviewing the draft reports of the Expert Working Groups, it was the objective of the Berlin seminar to place the proposals of the Expert Working Groups into the wider context of ‘smart sanctions’ and the sanction debate in general. This way the Bonn-Berlin Process was brought to a full circle, ending with the topic it had started with, the discussion on the potential and the problems of ‘smart sanctions’.

1.3. Texts

This booklet aims to fulfil the primary objective of the Bonn-Berlin Process: to support the work of those charged with the design and implementation of arms embargoes and travel sanctions. It contains those proposals from the Expert Working Groups which were thought to be of most practical relevance for the prime targeted audience, namely model resolutions for UN Security Council work, and ‘checklists’ for the better implementation of travel-related sanctions and arms embargoes. The complete set of Expert Working Group documents, background papers and other written material is available on the Internet and will be printed in a separate volume.

The first three documents in this booklet are model resolutions, with commentaries, on arms embargoes, travel bans and aviation bans. These resolutions are meant to be of use in the design and formulation of Security Council resolutions. The draft model resolutions are understood as such and are designed to be adapted to suit specific cases and circumstances, but, with the support of the commentaries, they can and will hopefully act as benchmarks for future resolutions. The Expert Working Groups examined previous resolutions and tried to consolidate the prior usage of phrases. In addition, they suggested new language where this seemed appropriate, sometimes presenting alternatives where no single option seemed to be optimal. The commentary, which is at least as important as the proposed wording of the resolutions, explains why certain formulations were chosen, but also introduces, explains, and often recommends, alternatives. During the discussions of the Expert Working Groups, the commentaries were sometimes more hotly debated than the wordings of the actual model resolutions. Some sections in the three model resolution texts are identical, but full texts are printed here for the reader’s convenience. In addition to the differences due to the various types of sanctions, there are also some

differences which reflect diverging preferences on the part of the Expert Working Groups, as explained in the commentary.

The *model resolution on arms embargoes* suggests a standardization of language with respect to the scope of arms embargoes. One of the most hotly debated issues was that of common lists of goods and services falling under an arms embargo. Several such lists exist, for instance the munitions list of the Wassenaar Arrangement⁶ and the European Union's Common List of Military Goods under its Code of Conduct on Arms Transfers.⁷ Not all participants in the discussions of the Expert Working Group were comfortable about referring to lists which had been drawn up by limited numbers of member states in a Security Council resolution. A better alternative might be for the Secretary General to suggest a list for common agreement. Other proposals from the Expert Working Group, and contained in the model resolution text, are the inclusion of brokering activities in arms embargoes and the appeal to countries to confiscate income emanating from embargo busting. The model resolution text recommends some language to help improve the monitoring of arms embargoes by calling on Member States and other actors to provide relevant information and through clear mandates for Sanctions Committees and the UN Secretariat. Through the language of its model resolution, the Expert Working Group supported a comprehensive approach to the collection of information from a variety of sources. However, more resources will be needed to improve monitoring (an issue dealt with in the final document in this volume). The Expert Working Group also dealt with some highly contentious general sanction issues, such as that of time limits, giving options for wordings which reflect differing views on this issue. Even if sanctions are not limited in duration, they should be reviewed regularly.

A large number of issues were debated in the discussions on the *model resolution on travel bans*. This is reflected in the commentary. The Expert Working Group opted for a travel, not a visa ban, because this seemed to have wider application. One contentious issue was who the Security Council should and could include in a travel ban in order to limit the harm caused to innocent persons, but still have effect. For instance, family members or children of those responsible for threats to international peace and security may have no part in decision-making, but restrictions on their travel may influence the actions of those who do. In all cases, precision is required in defining the targets. Consideration was given to cases where the target may be in a non-targeted state at the time the sanction enters into force. Another issue was the question of how lists of targeted persons are drawn up, and what means are available to targeted individuals to get off these lists. The role of Sanctions Committees and their proper functioning are crucial in this respect. This is also true of another tricky issue, that of exceptions and exemptions, for which some pertinent suggestions are offered. While travel bans are fairly weak measures that should not be weakened further, certain exceptions may be necessary. The model resolution text seeks to clearly define the tasks of Sanctions Committees, as well as of the UN Secretariat and national governments. Options for different wordings are given with respect to time

⁶ The list can be found i.a. under www.wassenaar.org.

⁷ The list was published in the Official Journal of the European Union, 8 July 2000. It is also available at <http://register.consilium.eu.int/pdf/en/00/st09/09047en0.pdf>.

limits, stressing the importance of a regular review of sanctions in the commentary. It is argued that time limits may make less sense for travel bans, due to their generally weaker side effects, than for other types of sanctions where the potential for such side effects is greater.

There are several forms of aviation bans. The *model resolution on aviation bans* therefore lists and formulates several options, ranging from a ban on specific aircraft to a total ban on international air travel. In addition, it may be useful to ban the supply of services, and to close the offices of targeted airlines. Aviation bans that cover more than just aircraft will, however, have effects on domestic air traffic and on the general air services available in the targeted country. Exemptions and exceptions to an aviation ban can become a contentious issue and therefore need to be worded precisely. One proposal discussed by the Expert Working Group which is contained in the commentary, but not in the model resolution, is a general request for the impounding or detention of aircraft violating the ban, as contained in Security Council Resolution 820 (1993) on the Former Yugoslavia. Instead, the wording of ‘dissuasive, proportional and effective measures’ is recommended, which seems to reflect differing legal systems and the practical problems of enforcing aviation bans more appropriately. In contrast to other sanctions, it may make sense to allow aviation sanctions to enter into force with some delay, in order to let targeted aircraft fly to their home bases before the sanctions come into effect.

The following two documents discuss national implementation measures, first for travel-related sanctions and then for arms embargoes. They are essentially lists of problems and possible measures to deal with these problems, not detailed drafts of legal texts. A detailed discussion of legal and administrative matters, which differ substantially from country to country, was considered beyond the mandate and capacity of the Expert Working Groups.

While looking at the *national implementation of travel and aviation sanctions*, the Expert Working Group did, however, take some time to examine and amend the ‘Framework Law’ suggested in the ‘Interlaken Process’. The group recommends the adoption of a framework law to all countries which have no similar instruments for translating Security Council sanctions directly into national law. A framework law would seem to ensure the speedy implementation of a Security Council Resolution into national law, at least in the case of travel and aviation sanctions, and financial sanctions. The Expert Working group also lists measures needed for proper national implementation following the adoption of travel-related sanctions. It does not go into more detail, as ways and means of national implementation will differ from country to country.

Similarly, the recommendations on the *implementation of arms embargoes ‘on the ground’* also list legal and administrative measures that need to be taken by governments in the case of a UN arms embargo. Due to the specific nature of weapons as instruments of power and violence, almost all countries have specific laws on the production, ownership, transport and export of weapons, or if not, definitely need to have them. Some pertinent suggestions are made on this score. Generally speaking, these regulations have to provide a legal foundation for export and transit restrictions in the case of a UN arms embargo. Still, a framework law might be useful, for instance for

arms and related material not covered by existing national weapons-related laws. However, laws and regulations are one thing and their practical implementation quite another, particularly in the international arms trade. The Expert Working Group makes a number of suggestions on how to improve implementation on the ground. It devotes special attention to the question of outside assistance in those cases where the countries affected have difficulties putting up sufficient resources for effective monitoring and law enforcement. It also recommends better coordination and information-sharing, both among States and with the UN.

The final document comes from the Expert Working Group, which looked at the *monitoring and enforcement of arms embargoes at the UN*. The report reproduced here focuses on the development of a dedicated Sanctions Unit within the UN Secretariat. It outlines functions and objectives for this unit, and describes requirements in terms of resources and expertise. The recommendations require a moderate expansion of capabilities at the UN Secretariat, to be augmented through outside expertise and additional funding for special purposes. The Expert Working Group is optimistic that additional funding can be found for the Sanctions Unit. A major concern in the document are the links between sanctions policy and other areas of conflict management, particularly peace operations. The report also makes pertinent suggestions on both the routine collection of information and special investigative missions. It also discusses the pitfalls of and opportunities for gathering information from confidential sources. Finally, it outlines a process to follow-up allegations of embargo violations and argues that the Security Council needs to act decisively in cases of proven violations.

1.4. Conclusion

The Bonn-Berlin Process has come to an end with the publication of this booklet and the record of the proceedings. Whether and how sanctions can be ‘smart’ will remain a hotly debated issue for some time, with evidence accumulating over the years and with every new sanctions regime. It is our hope that the results of the Bonn-Berlin Process, as reflected in the documents reprinted below, will contribute to improving the design and implementation of UN arms embargoes and travel-related sanctions.

Appendix: List of Participants

Affiliations of participants are given for identification purposes only.

Abbreviations:

Bonn: First Expert Seminar, Bonn, 23–25 November 1999

WG 1: Expert Working Group on Travel and Aviation Sanctions

WG 2: Expert Working Group on Improving the Effectiveness of Arms Embargoes ‘on the Ground’

WG 3: Expert Working Group on a Common Understanding of Arms Embargoes

WG 4: Expert Working Group on the Monitoring and Enforcement of Arms Embargoes

Berlin: Final Expert Seminar, Berlin, 3–5 December 2000

* only attended part of the meetings

Name	Affiliation	Location	Participation in Meetings
Philip Ackermann	Permanent Mission of Germany to the UN	New York, USA	WG4*, Berlin
Cathy Adams	Foreign and Commonwealth Office	London, United Kingdom	WG1*
Günther Altenburg	Ambassador, German Foreign Office	Berlin, Germany	Bonn, Berlin
Ian Anthony	Stockholm International Peace Research Institute	Solna, Sweden	Bonn, WG2, Berlin
Per Augustson	Permanent Mission of Sweden to the UN	New York, USA	WG2
Peter Batchelor	Centre for Conflict Resolution	Cape Town, South Africa	Bonn
Gerd Becher	Federal Ministry of Economics and Technology	Berlin, Germany	Berlin
Jennifer Bergeron	United States Mission to the UN	New York, USA	Bonn
Eric Berman	Private Consultant	Belmont, USA	Bonn

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Daniel Bethlehem	Lauterpacht Research Centre for International Law, Cambridge University	Cambridge, United Kingdom	Bonn
Thomas Biersteker	Watson Institute for International Studies, Brown University	Providence, USA	Berlin
David Biggs	Department for Political Affairs, UN	New York, USA	WG4, Berlin
Christian Boatswain	Department for Political Affairs, UN	New York, USA	WG2
Herbert Boh	UN Regional Centre for Peace & Disarmament in Africa	Lomé, Togo	Bonn
Loretta Bondi	Arms and Conflict Program, Fund for Peace	Washington DC, USA	Bonn, WG2, WG4*, Berlin
Charles-Henri Brosseau	Ministry of Foreign Affairs	Paris, France	Berlin
Michael Brzoska	Bonn International Center for Conversion	Bonn, Germany	Bonn, WG1, WG3, Berlin
Alice Burnett	Foreign and Commonwealth Office	London, United Kingdom	Bonn

Name	Affiliation	Location	Participation in Meetings
Juerg Burri	Federal Department of Foreign Affairs	Bern, Switzerland	Bonn, WG1
Jeremy P. Carver CBE	Clifford Chance	London, United Kingdom	Bonn, Berlin
Kevin Choek	Embassy of the Republic of Singapore	Berlin, Germany	Berlin
Marie-Ann Conins	Delegation of the European Commission to the UN	New York, USA	Bonn
Richard Conroy	Research Consultant	New York, USA	Bonn, WG1*, Berlin
David Cortright	Fourth Freedom Forum	Goshen, USA	Bonn, WG4, Berlin
Tatiana Cosio	Department for Political Affairs, UN	New York, USA	WG1*, Berlin
Hans Dahlgren	State Secretary, Ministry of Foreign Affairs, Former Permanent Representative of Sweden to the UN	Stockholm, Sweden	Bonn, WG2, Berlin
Ian Davis	Arms Trade Programme, Saferworld	London, United Kingdom	Bonn, WG3, Berlin

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Anthonius De Vries	European Commission	Brussels, Belgium	Bonn, WG1, Berlin
Jayantha Dhanapala	Under-Secretary General, Department for Disarmament Affairs	New York, USA	Berlin
Kieran Dowling	Embassy of Ireland	Berlin, Germany	Berlin
P. R. J. Dumoré	Ministry of Foreign Affairs	The Hague, Netherlands	Bonn
Sue Eckert	Watson Institute for International Studies, Brown University	Providence, USA	Berlin
Helen Eduards	Permanent Mission of Sweden to the UN	New York, USA	Berlin
Tono Eitel	Former Permanent Representative of Germany to the UN	Münster, Germany	Bonn, WG1, Berlin
Vergniaud Elyseu-Filho	Embassy of Brazil	Bonn, Germany	Bonn
Carl-Magnus Eriksson	Ministry for Foreign Affairs	Stockholm, Sweden	Berlin
Essa M. Faal	Permanent Mission of the Gambia to the UN	New York, USA	Bonn

Name	Affiliation	Location	Participation in Meetings
Sami Faltas	Bonn International Center for Conversion	Bonn, Germany	Bonn, WG4, Berlin
Catherine Firth	Foreign and Commonwealth Office	London, United Kingdom	Bonn, WG1*, Berlin
Betsy Fitzgerald	Department of State	Washington DC, USA	Berlin
Kiflemariam Gebrewold	G & D Consultants	Freiburg, Germany	Bonn
Robert Gernay	Embassy of Belgium	Berlin, Germany	Berlin
Ksenia Gonchar	EART/BICC	Moscow, Russia	Bonn
Gene Griffiths	International Civil Aviation Organization	Montreal, Canada	Bonn, Berlin
Cong Guang	Ministry of Foreign Affairs	Beijing, China	Berlin
Kai Hennig	German Foreign Office	Berlin, Germany	Bonn, WG1, Berlin
Gerhard Henze	Former Deputy Permanent Representative of Germany to the UN.	Berlin, Germany	Bonn

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Aina Iyambo	Permanent Mission of Namibia to the UN	New York, USA	Berlin
Joseph Jimmy	Ambassador, Ministry of Foreign Affairs	Windhoek, Namibia	Bonn, WG1*
Misran Karmain	Permanent Mission of Malaysia to the UN	New York, USA	Bonn
Hichem Khelil	Embassy of Tunisia	Berlin, Germany	Berlin
Jingree Khemraj	Ministry of Foreign Affairs and Regional Cooperation	Port Louis, Mauritius	Berlin
Kees Kingma	Bonn International Center for Conversion	Bonn, Germany	Bonn
Loes Klappe-Linsen	Ministry of Foreign Affairs	The Hague, Netherlands	Berlin
Till Knorn	German Foreign Office	Berlin, Germany	Berlin
Andreas Körner	Legislative aide	Berlin, Germany	Bonn
Nico Krisch	Max Planck Institute for Comparative Public Law and International Law	Heidelberg, Germany	WG1, Berlin

Name	Affiliation	Location	Participation in Meetings
Manfred Kulesa	German Asia Foundation	Bonn, Germany	Berlin
Loraine B. Lawlor	Department of the Treasury	Washington DC, USA	Berlin
Lene Natasha Lind	Ministry of Foreign Affairs	Oslo, Norway	Berlin
Rae Lindsay	CliffordChance	London, United Kingdom	WG1, WG3, Berlin
George A. Lopez	The Joan B. Kroc Institute of International Peace Studies, University of Notre Dame	Notre Dame, USA	Bonn, Berlin
Maria Loy	Federal Ministry of Economics and Technology	Bonn, Germany	Bonn
Edward C. Luck	Center for the Study of International Organization, New York University School of Law & the Woodrow Wilson School of Princeton University	New York, USA	Bonn, Berlin

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Andrew Mack	Strategic Planning Unit, Executive Office of the UN Secretary General	New York, USA	Bonn, Berlin
Joao Madureira	Permanent Mission of Portugal to the UN	New York, USA	Bonn, WG3, Berlin
Issouf Oumar Maiga	Permanent Mission of Mali to the UN	New York, USA	Berlin
Thilo Marauhn	Max Planck Institute for Comparative Public Law and International Law	Heidelberg, Germany	Bonn
Peggy Mason	Former Ambassador of Disarmament, Advisor to Department of Foreign Affairs and International Trade, Canada	Ontario, Canada	Bonn, WG4, Berlin
Fabrice Mauries	Permanent Mission of France to the UN	New York, USA	WG1*
Anthony McDermott	Foreign and Commonwealth Office	United Kingdom	WG1*
Kevin McGurgan	UK Mission to the UN	New York, USA	WG1*, WG3

Name	Affiliation	Location	Participation in Meetings
Sarah Meek	International Alert	London, United Kingdom	Bonn, WG2, Berlin
Satish C. Mehta	Permanent Mission of India to the UN	New York, USA	Bonn, WG1*, Berlin
Cord Meier-Klodt	German Foreign Office	Bonn, Germany	Bonn
Rainer Mellwig	World Customs Organisation	Brussels, Belgium	Bonn
Alistair Millar	Fourth Freedom Forum	Washington DC, USA	Berlin
Victor Igorevitch Mizin	Ministry of Foreign Affairs of the Russian Federation	Moscow, Russia	Bonn
António Monteiro	Permanent Representative of Portugal to the UN	New York, USA	Bonn, WG3 (Chair), Berlin
Kazuhiro Nakatani	Faculty of Law, University of Tokyo	Tokyo, Japan	Bonn
Laurie Nathan	Centre for Conflict Resolution	Cape Town, South Africa	Bonn, WG2, WG4*
Stephanie Neuman	Columbia University	New York, USA	WG2
Ralf Nitz	German Foreign Office	Berlin, Germany	WG1*, Berlin

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Tobias Nussbaum	Permanent Mission of Canada to the UN	New York, USA	Berlin
Qingjiang Pan	Ministry of Foreign Affairs	Beijing, China	Bonn
Alexander Petri	German Foreign Office	Berlin, Germany	Bonn
Georg Pietsch	Federal Export Office	Eschborn, Germany	Bonn
Steven Pinter	Department of the Treasury	Washington DC, USA	Berlin
Juan José Quintana	Ministry of External Relations	Bogotá, Colombia	Berlin
Larif Radhouane	Embassy of Tunisia	Berlin, Germany	Berlin
Roslan Abdul Rahman	Permanent Mission of Malaysia to the UN	New York, USA	Berlin
Babu Rahman	Foreign and Commonwealth Office	United Kingdom	WG1*
Sebastian Ramspeck	Federal Department for Economic Affairs	Bern, Switzerland	WG2
Charles Reed	The Church of England	London, United Kingdom	Berlin

Name	Affiliation	Location	Participation in Meetings
Serhiy Reva	Ministry of Foreign Affairs	Kiev, Ukraine	Bonn
Chahrazed Rezgut	Embassy of Tunisia	Berlin, Germany	Berlin
Loraine Rickard-Martin	Department for Political Affairs, UN	New York, USA	Bonn, WG3, Bonn
Steffan Rogalski	Legislative aide	Berlin, Germany	Bonn, Berlin
Dirk Rotenberg	German Foreign Office	Berlin, Germany	Bonn, WG1, WG 3, Berlin
Randy Rydell	Department for Disarmament Affairs	New York, USA	Bonn, WG4, Berlin
Philip Ryland-Jones	Department for the Environment, Transport and the Regions	London, United Kingdom	WG1*
Roger Sanbrook	HM Customs and Excise	London, United Kingdom	Bonn, WG2, Berlin
Kurt Schelter	Minister for Justice and European Affairs	Potsdam, Germany	Bonn
Louise Selvadurai	Foreign and Commonwealth Office	London, United Kingdom	WG4

Bonn-Berlin Process: Introduction.

Name	Affiliation	Location	Participation in Meetings
Jean-Marc Séré-Charlet	Ministry of Foreign Affairs	Paris, France	Bonn
Olexandr Shevchenko	Permanent Mission of Ukraine to the UN	New York, USA	Berlin
Ayesha Siddiqa-Agha	Ministry of Defense	Islamabad Pakistan	Bonn
Declan Smyth	Department of Foreign Affairs	Dublin, Ireland	Berlin
Günther Sprögel	Federal Ministry of Economics and Technology	Bonn, Germany	Berlin
Andrew Staunton	Foreign and Commonwealth Office	United Kingdom	WG1*
Joseph Stephanides	Department for Political Affairs, UN	New York, USA	Bonn, WG1, WG3* WG4*, Berlin
Kostyantyn Subbotin	Ministry of Foreign Affairs	Kiev, Ukraine	Berlin
Kristian Thorn	Permanent Mission of Denmark to the UN	New York, USA	WG4
Wolfgang Trautwein	German Foreign Office	Berlin, Germany	Bonn, Berlin

Name	Affiliation	Location	Participation in Meetings
Shin Umezu	Department for Political Affairs, UN	New York, USA	WG1*, WG4
Andras Vamos-Goldman	Permanent Mission of Canada to the UN	New York, USA	Bonn, WG3
Koenraad Van Brabant	Overseas Development Institute	London, United Kingdom	Bonn, WG1, Berlin
Anatoli Viktorov	Ministry of Foreign Affairs of the Russian Federation	Moscow, Russia	Berlin
Johannes Von Ahlefeldt	Legislative aide	Berlin, Germany	Berlin
Claudia Von Braunmühl	Freie Universität Berlin	Berlin, Germany	Bonn, Berlin
Curtis A. Ward	Ambassador, Deputy Permanent Representative of Jamaica to the UN	New York, USA	Berlin
Johanna Weschler	Human Rights Watch	New York, USA	Berlin
Brian Wood	Norwegian Initiative on Small Arms Transfers	Oslo, Norway	Bonn
Herbert Wulf	Bonn International Center for Conversion	Bonn, Germany	Bonn, Berlin

Name	Affiliation	Location	Participation in Meetings
Othmar Wyss	Federal Department of Economic Affairs	Bern, Switzerland	Bonn, Berlin
Wendy Wyver	Foreign and Commonwealth Office	United Kingdom	WG1*
Isamu Yamaguchi	Embassy of Japan	Berlin, Germany	Berlin
Gene Young	United States Mission to the UN	New York, USA	WG1*

2. MODEL SECURITY COUNCIL RESOLUTION ON ARMS EMBARGOES, WITH COMMENTARY

Expert Working Group on a Common Understanding of Arms Embargoes

Chair: Ambassador António Monteiro, *Permanent Mission of Portugal to the United Nations*, New York

Rapporteur: Ian Davis, *Saferworld*, London

2.1. Introductory remarks

The following text and comments should be understood as providing a basic framework and structure for a resolution which will have to be adapted to the circumstances of specific cases. Not all provisions will be relevant in all cases; sometimes choices will have to be made among alternatives. The comments reflect some of the background discussion on the text, and identify choices that will have to be made. A single resolution is proposed here, with the aim of providing standard text that can be used in future resolutions. This draft is closely modeled on the most recent relevant resolutions, specifically resolution 1298 (2000), establishing an arms embargo against Eritrea and Ethiopia, and resolution 1306 (2000), concerning Sierra Leone. At the current stage, it seems more promising to repeat obligations and procedures in each case, instead of establishing standards through a procedural resolution to be made more concrete for the specific case later on. In formulating the text, care has been taken to ensure its effectiveness, its contribution to norm building, its model character, equity and efficiency, as well as its flexibility.

2.2. Model text and commentary

2.2.1. Causes and objectives of the embargo—preambulatory paragraphs

These paragraphs will reflect the view of the Security Council of the behavior poses a threat to international peace and security, and thereby justifies the invocation of measures under Chapter VII, if it so decides.

They should clearly state the objective of the embargo, demonstrate an understanding of the specific measure of an arms embargo to achieve that objective and be consistent with an agreed exit strategy or ‘sunset clause’ (see OP 16 below).

The Security Council,

Recalling ... ,

Reaffirming ...,

Recalling Resolution 1196 of 16 September 1998 ... (COMMENT 1),

...

Determining that the situation between () and () constitutes a threat to international peace and security (**COMMENT 2**),

Acting under Chapter VII of the Charter of the United Nations,

Strongly condemns...; Demands ...; Insists ...; ...

COMMENT 1: A reference to Resolution 1196 of 16 September 1998, where the Security Council declared its position on several points relevant to arms embargoes in Africa might be useful to reinforce continuity in arms embargo implementation.

COMMENT 2: Earlier resolutions have referred to both international and regional peace and security. However, Article 39 of the UN Charter reads: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” Resolutions should conform to this wording.

2.2.2. *Scope of the embargo*

OP 1

Decides that all States shall (**COMMENT 3**) prevent the direct or indirect sale, supply and transfer (**COMMENT 4**), or the promotion or facilitation of such sale, supply or transfer (**COMMENT 5**) to (target states) (**COMMENT 6**), by their nationals or from their territories (**COMMENT 7**), or using their flag vessels or aircraft (**COMMENT 8**) of:

(a) arms and related materiel of all types, including weapons and ammunition; military, paramilitary and police vehicles and equipment; and spare parts and components for the aforementioned and equipment specifically designed for military or paramilitary purposes (**COMMENT 9**), whether or not originating in their territories;

(b) technology, including under licensing or other transfer arrangements, used in the production, utilization or stockpiling of items (**COMMENT 10**);

(c) any provision of personnel or materiel for training or technical support service relating to the design, development, manufacture, use, maintenance or support of the above items (**COMMENT 11**), whether or not such objects, technology or personnel originate in their territories (**COMMENT 12**);

(d) in accordance with a list of goods provided by the Secretary-General (**COMMENT 13**).

COMMENT 3: Unless otherwise specified, implementation of the resolution by Member States should be with immediate effect.

COMMENT 4: There was considerable discussion in the Expert Working Group as to the most appropriate terms to include in this section of the resolution. Although ‘sale, supply and transfer’ were the preferred options (of the Chair and

most participants), a possible alternative formulation, as used in some national legislation, is ‘export or import, transfer, transit or re-transfer’. It was also discussed whether or not to substitute ‘supply and transfer’ with ‘provision’. In the end the most explicit wording prevailed. ‘Sale’ refers to the conclusion of contracts, ‘supply’ to the physical act of transfer. Reference to both sales and supplies makes clear that existing contracts cannot be honored if they lead to supplies after the resolution becomes effective. See also OP 3 and Comment 17.

Only naming ‘sales’ (i.e. not including ‘supplies’) creates enormous difficulties, as supplies to targets will be legitimate if they are linked to sales prior to the date that embargoes become effective. Often the time period between sales and supplies is long; and sometimes sales cover many items to be delivered over many years.

Naming both ‘sales and supplies’ can imply that costs for production, or other related activities, which occur between sale and supply will not be paid for by the target but have to be borne by someone else. Costs may first be created at the level of producers, but legal provisions in many countries will provide government reimbursement of these costs. This might be appropriate if governments licensed the sales, which are later revoked on the basis of a UN arms embargo. Governments will then have to find other customers, or procure the items themselves, which they may not have desired in the first place. However, no provision is warranted to cover possible claims for compensation under the UN Charter, and it will be for each Member State to develop its own national compensation procedures. The nature of the arms trade is highly political, a fact of which all participants are keenly aware. And even if the principle of compensation were to be accepted, it would be highly difficult to implement in practice. Arms sales contracts are often secretive, making it difficult to verify quantities and prices.

COMMENT 5: This text bloc has not been part of standard resolutions in the past. ‘Promotion and facilitation’ refers, among others, to activities of all those involved in transporting, financing, insuring, brokering or otherwise facilitating arms transactions; and economic actors who do not have ownership rights over embargoed items. Not to include these actors in the text may weaken implementation as it allows targets to shift efforts to the weakest element in the control chain while still using economic actors in a larger number of countries. However, the legal instruments to prevent shipping agents, financial institutions and brokers from acting for, or on behalf of, targets are not in place in a good number of countries. Whether this should be required of countries is a matter of debate in various international fora, including the UN (which has established an expert group on these matters whose report was completed in early spring 2001). Currently, unfortunately, few countries have legal instruments in place to control all these actors and their activities effectively.

COMMENT 6: Additional wording may be necessary when the scope of the embargo is required to extend beyond the immediate target states. There are at

least two potential scenarios where the application of such wording might need to be considered.

(a) In regions where conflict has spread across borders it may be necessary to target other groups or states party to the conflict in addition to the primary target (as was the case with Resolutions 918, 997 and 1011, which covered the sale or supply of arms to persons in states neighboring Rwanda). Where a regional strategy of denying weapons and related materiel is necessary, additional wording along the following lines could be considered:

or to any person or body in the States neighboring the target entity if such sale or supply is for the purpose of, or will facilitate, the use of such arms or materiel within or by the target entity;

(b) Weak arms embargo implementation in some countries can sometimes erode the effectiveness of embargo implementation in others. While national legislation should cover cases of proxy sales and supplies as embargo violations, effective end-use controls are often lacking. Thus, although not part of standard resolutions in the past, and while sitting uncomfortably close to the controversial issue of secondary sanctions, if it were considered desirable to seek to block a known diversionary route in advance, additional wording along the following lines could be considered:

or to any person or body for the purposes of any business carried on in or operated from (target entity), the sale, supply and transfer, or facilitation and promotion, of such commodities or products;

COMMENT 7: This text bloc is standard to current embargoes. Similar to Comment 5, the inclusion of both nationals and national territory provides for a large spectrum of implementation, but may not be part of the available legal means of countries which do not foresee jurisdiction over nationals operating in foreign countries. Again it can be debated whether countries should be required to extend their national legislation to cover such cases.

COMMENT 8: This is a standard text of current embargoes. Again similar to Comment 5, denial of the means of transport makes sense from the point of view of better implementation, but may not necessarily be covered in national legislation.

COMMENT 9: The wording chosen here (and corresponding to the accumulation of various resolutions on South Africa in the 1970s and 1980s) is quite exhaustive as it stands. It has become standard language in arms embargo resolutions. Depending on the target and the specific conditions of the embargo, only certain of the items mentioned may be appropriate. Alternatively, a menu of embargo options could be developed (along the lines of the four-level menu of embargo options agreed within the European Union (EU)).

The lack of agreed international definitions of all these terms (although there is a common core of goods in practically all countries) makes actual implementation a matter of national discretion, and hence creates gray areas which may be exploited by targets. However, it should be stressed that the items listed in

OP 1(a), (b) and (c) represent a menu of options; the real clarity about the scope and content of the embargo will be provided by the agreed list of goods—see OP 1(d) and Comment 13.

COMMENT 10: Embargoing licensing arrangements for technology transfer (not retrospectively, of course, but to stop follow-on services) may reinforce embargoes in cases of targets with sizeable domestic arms industries. Implementation problems, however, are large, as not all countries have appropriate legal instruments in place and the list of technologies is not very well defined. Some guidance can be found in the Dual-Use lists of the Wassenaar Arrangement—see Comment 13.

COMMENT 11: Similar to Comment 10. This expansion of embargoed items, which was used in the case of South Africa, may increase embargo effectiveness, especially in cases where outside technical support is important. It would also help to reinforce provisions of international law against the activity of mercenaries, and limit the activities of private security firms. However, it may be difficult to implement in view of gaps in existing national legislation.

COMMENT 12: See Comment 7.

COMMENT 13: One of the principal shortcomings of UN arms embargoes is the lack of internationally agreed upon lists of terms or goods. There was considerable discussion within the Expert Working Group over whether this clause should invoke the authority of the Secretary-General to arrive at a standard list. There is a precedent to the invocation of the Secretary-General to develop guidelines for embargo implementation in paragraph 26 of resolution 687, though it does not make reference to a specific list. There are a few lists that are accepted within the UN, such as the one for the Arms Trade Register or the one on Small Arms; however, these are too limited for an arms embargo.

The most important and comprehensive international lists are the Munitions List and Dual-Use Lists used in the Wassenaar Arrangement, and currently applied by its 33 Member States (which account for more than 90 percent of the international trade in arms according to available statistics). The Expert Working Group considered that using the Wassenaar Lists (especially the Munitions List) would reduce gray areas and provide for a common implementation of arms embargoes. The Wassenaar Munitions List is not exhaustive, however; many Member States actually control more items than are listed. Additional products could be added from other lists as deemed appropriate by the Secretary-General.

However, a number of potential difficulties with this option were identified. First, and most importantly, many countries would be obliged to use a list originating from a group of countries to which they do not belong. As an alternative, a UN arms embargo list could be developed—but this would take considerable time and energy. Second, there were questions about whether it would be realistic to put responsibility for the list in the hands of the Secretary-General. Third, any delay between adoption of the resolution and the preparation of a list by the Secretary-General would be an opportunity for

sanctions-busting. Fourth, members of the Security Council are likely to bargain over the content of the list, thus further delaying the implementation of the embargo.

In the end it was decided that it was important to agree a list of goods prior to the introduction of the resolution, and that the initiators of the resolution should immediately try to establish a list with the assistance of the Secretariat. Where there are divergent views, arbitration should be provided by the Secretary-General. It was also agreed that the list of goods should draw on the latest lists available, such as the Wassenaar Lists or any other relevant lists, and as far as possible, closely mirror such lists in order to facilitate effective implementation. The optimal solution would be to annex the list to the resolution and to task the Sanctions Committee with updating it in cooperation with the Secretariat.

Finally, participants called upon the Security Council Working Group on sanctions to elaborate a model list or menu of lists for use in future resolutions.

OP 2

Requests all states to take the necessary steps to ensure that:

(a) any arms and related material sold, supplied or transferred contrary to OP 1, together with any property used for the purposes of such sale, supply or transfer, shall be seized (**COMMENT 14**); and

(b) the proceeds of transactions contrary to OP 1 shall be frozen (**COMMENT 15**);

COMMENT 14: This paragraph, which has not been used in earlier arms embargo resolutions, is useful in that it encourages states to use appropriate enforcement mechanisms to seize embargoed goods on route to embargoed destinations, and in other circumstances where appropriate, and to provide a real disincentive to arms sales in breach of the embargo.

Comment 15: Again, this paragraph is useful in that it reinforces the norm of preventing individuals from benefiting from criminal activity. If enforced, it would make sanction busting less attractive. It also provides governments with an additional incentive to follow up allegations of wrongdoing. Many states will be able to use provisions in their general criminal legislation to proceed with the freezing (and possible seizure) of assets; others may have to adopt specific legislation for implementation.

OP 3

Calls upon all states and international organizations to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement (**COMMENT 16**) or any contract entered into (**COMMENT 17**) or any license or permit granted (**COMMENT 18**) prior to the date of coming into force of the measures imposed by OP 1 above;

COMMENT 16: This provision reiterates the supreme authority of the Security Council acting under Chapter VII of the Charter. While not strictly necessary if

the wording of operative paragraph 1 is as proposed above, it helps to stress this point.

COMMENT 17: As mentioned in Comment 4, cancellation of sales and supplies under existing contracts may raise questions in domestic law of costs and compensation; but does not allow exceptions from the mandatory requirements of the Security Council. The legal effects of a Security Council Resolution may be different from country to country, depending on whether they are interpreted to render contracts immediately null and void or just suspended, etc. However, states cannot use omissions in national law to excuse themselves from complying with mandatory obligations in Security Council resolutions.

COMMENT 18: This is only necessary if licenses are mentioned in the first operative paragraph.

OP 4

Decides also that the measures imposed by OP 1 above shall not apply to:

(a) supplies of arms and related material intended solely for (name of UN Peacekeeping Force or other UN operations) or UN agencies and organizations, subject to prior notification of the (Sanctions) **(COMMENT 19)** Committee (established by OP 5 below) **(COMMENT 20)**;

(b) supplies of arms and related material intended solely for (name of regional organization), including regional peacekeeping forces, in (target state), as approved in advance by the (Sanctions) Committee **(COMMENT 21)**;

(c) supplies of non-lethal military equipment intended solely for humanitarian use by other organizations, as approved in advance by the (Sanctions) Committee **(COMMENT 22)**;

COMMENT 19: ‘Sanctions Committee’ is a colloquial term used to describe the committee established by the Security Council to monitor the implementation and effectiveness of the resolution. For the purposes of this model resolution it is referred to as the (Sanctions) Committee throughout the text.

Comment 20: This particular category of exemption refers to UN peacekeeping troops authorized by the Security Council, and official UN agencies (such as UNHCR), which may also need to bring in military-related equipment (such as land rovers). There may be a case for waiving prior notification of the Sanctions Committee in the case of such supplies. However, given problems in the past of weapons held by UN peacekeeping forces being lost or stolen, it would be useful for the Sanctions Committee to monitor the flow of all lethal weapons into the target state, especially small arms and light weapons.

Comment 21: This exemption refers to peacekeeping forces organized by a regional organization (OAU, OAS, OSCE, ASEAN, etc.) once authorization has been obtained from the Security Council. There may be a case for lowering the notification requirement from ‘prior approval’ to ‘prior notification’, depending on the position of the Security Council vis-à-vis the regional intervention in the target state.

Comment 22: The Security Council Working Group on sanctions is encouraged to recommend the adoption of a standing list of non-lethal military equipment for humanitarian use, which would include items such as de-mining equipment and land rovers. ‘Other organizations’ includes international non-governmental organizations and private companies. Prior approval from the Sanctions Committee will be necessary in all cases.

2.2.3. Monitoring

OP 5

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council, to undertake with the assistance of the Secretariat (**COMMENT 23**) and to report on its work to the Council with its observations and recommendations:

(a) to seek from all States, and, as appropriate, international organizations, further information regarding the legal, administrative and practical action taken by them with a view to implementing effectively the measures imposed by OP 1 above, and thereafter to request from them whatever further information it may consider necessary (**COMMENT 24**);

(b) to consider information brought to its attention by States, UN bodies and, as appropriate, other organizations and interested parties (**COMMENT 25**) concerning violations of the measures imposed by OP 1 above, and to recommend appropriate measures in response thereto (**COMMENT 26**);

(c) to share such information, as appropriate, with states, UN bodies and other organizations and interested parties in order to assist states to administer and enforce the provisions of OP 1;

(d) to make reports at least every 90 days to the Security Council on information submitted to it regarding alleged violations (**COMMENT 27**) of the measures imposed by OP 1 above, identifying where possible persons or entities, including vessels and aircraft, reported to be engaged in such violations;

(e) to promulgate such guidelines as may be necessary to facilitate the implementation of the measures imposed by OP 1 above;

(f) to give consideration to, and decide upon, requests for the exceptions set out in OP 4 (b) and (c) above;

(g) to examine the reports submitted pursuant to OP 8 below;

COMMENT 23: The role of the Secretariat could be defined differently, for instance as ‘assisting’ the Committee, and in more detail, for instance by explicitly naming it as the receptor and filter of all information. Whatever its role, the Secretariat will almost certainly need to be strengthened. (Further reflection on this point, and others within this clause, was part of the mandate of the Expert Working Group on Monitoring and Enforcement of Arms Embargoes, see section 7).

COMMENT 24: Concern was expressed that it is not the function of the Security Council to micro-manage national administration of embargoes. On the other hand, others felt that this was a constructive way to enable the Security Council to learn lessons from the administration and enforcement of the resolution in order to assist other States.

This formulation reflects current practice in active Sanctions Committees and language of Security Council Resolutions, such as resolutions 1298 and 1306. It includes the possibility of follow-up by the Sanctions Committee of information requested from States and international organizations. It is not very specific about when Sanctions Committees should request information. However, it seems difficult to find formulations (for instance, ‘it deems necessary to verify substantiated allegations’) which, on the one hand do not overburden Committees (and the Secretariat) as well as Member States, and on the other do not tie the hands of Sanctions Committees. Much here depends on the capacity of Sanctions Committees and the Secretariat to prepare, justify and detail a request. This in turn is closely linked to the overall capacity of the Sanctions Committees and the Secretariat to follow up information about possible violations. This capacity is currently very limited. Possibilities for increasing that capacity were discussed in the Expert Working Group on the Monitoring and Enforcement of Arms Embargoes.

COMMENT 25: Recent discussion on the work of Sanctions Committees, and wording of Security Council resolution 1196 (1998), make it clear that they should use, in addition to information from Member States, information from other sources. At the same time, the Secretariat and Sanctions Committee must not be swamped with unverifiable allegations they are required to review. However, it is difficult to establish what ‘reliable’ means in practice. Some of the possible sources are more explicitly named in OP 10 below. In current practice of the Sanctions Committees, reports from certain, well-established media play an important role. But it would seem both impractical and discriminatory to try to define the role of the media further.

The Sanctions Committee should provide feedback to States and other entities about the follow-up to information provided by States and other entities, in order to maintain momentum and motivation to provide information.

COMMENT 26: This rather unspecific text would give the Sanctions Committee the authority to propose fairly general measures to improve embargo implementation, such as expanding the scope of goods covered, recommending special investigations by its chairs or by expert groups (for instance), or suggesting responses to proven violations by Member States. This formulation is proposed instead of more detailed text because it allows Sanctions Committees flexibility in reacting to situations of weak embargo implementation. Specific provisions on how to improve implementation would be required if the Security Council found it necessary to adopt a resolution to implement recommendations from the Sanctions Committee.

COMMENT 27: Concern was expressed that the Security Council might become a focus for frivolous allegations of sanctions violations, while others considered that these would be filtered out by the Sanctions Committee in the process of compiling reports of confirmed violations—see OP 11 below.

OP 6

Requests the Secretary-General to provide for the purposes of effective monitoring all necessary assistance and financial resources to the Committee established by OP 5 above and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 28**);

OP 7

Urges Member States, relevant United Nations bodies and agencies and other international organizations to respond to requests for technical and other assistance by the Sanctions Committee (**COMMENT 28**);

COMMENT 28: Regular and guaranteed budgets and technical resources for the Sanctions Committees are crucial. The Sanctions Committee would then be in a position to decide on the scope and extent of how to use the financial resources on a case-by-case basis (for example, to establish expert panels, to undertake visits by bureaus and/or to establish on-site monitoring teams). Some useful suggestions are contained in the Presidential Note of 29 January 1999 (S/1999/292), as well as in the reports of the special investigations on violations of the arms embargo on Rwanda (S/1998/63) and UNITA (S/2000/203). The Expert Working Group on the Monitoring and Enforcement of Arms Embargoes looked at this issue in greater detail (including the development of procedures for seconding technical experts and other specialists).

OP 8

Requests States to report in detail (**COMMENT 29**) to the Secretary-General within 30 days of the date of adoption of this resolution on the specific actions they have taken to give effect to the measures imposed by OP 1 above;

COMMENT 29: Alternatively, the Secretary-General might first prepare a questionnaire for Member States to answer. Given the poor record of earlier requests for such general information on implementation, it seems more realistic not to request such standard information, which may put heavier administrative burdens on Member States.

OP 9

Requests all States:

(a) to report in detail to the Sanctions Committee any information (**COMMENT 30**) they have with respect to possible violations of this arms embargo, in their own and other countries (**COMMENT 31**) including on prosecutions and punishment of violators (**COMMENT 32**);

(b) to cooperate with the Sanctions Committee and to respond in detail to requests for information (**COMMENT 33**); and

(c) to consider as a means of implementing the obligations referred to in OP 1 above the adoption of legislation or other legal measures making the violation of arms embargoes established by the Council a criminal offence (**COMMENT 34**);

COMMENT 30: This formulation includes information in both the public and national intelligence domains. There was considerable discussion within the Expert Working Group on the extent and type of information pertaining to ongoing criminal investigations to be provided. Some officials with national enforcement responsibilities were concerned that information supplied (even in confidence) to Sanctions Committees could prejudice criminal prosecutions (particularly if the information were to be used to ‘name and shame’, as in the recent Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA). However, other participants regarded such information as vital to the work of the expert panels, and drew a parallel with evidence freely given by official sources to journalists (which is usually used in such a way as to avoid prejudicing criminal cases). Thus, the work of the panels should be seen as complementary to criminal investigations. Even though it is anticipated that conflict between the two roles is not likely to occur frequently, it will be important to ensure good working relations between expert panels and national enforcement agencies (police customs, export licensing and intelligence agencies, etc). A delicate balance will need to be struck between, on the one hand, levels of non-public disclosure that might prejudice criminal investigation, and on the other hand, levels that allow the Sanctions Committee to carry out its preventive role effectively. Some Member States have established an inter-departmental sanctions unit, and this may be an appropriate forum to consider the optimum balance in each case. Questions relating to the provision of non-public information to Sanctions Committees and in what detail, and how information sharing might possibly be improved, were discussed in the Expert Working Group on the Monitoring and Enforcement of Arms Embargoes.

COMMENT 31: This may be obvious but reiterates the request to Member States to be as informative as possible.

COMMENT 32: Again this is just a reminder to Member States to provide Sanctions Committees with better information on whether allegations have actually led to prosecutions and punishments, and to what kinds of sentences.

COMMENT 33: It seems necessary to include this request, at least in a vaguely formulated way, as it is crucial for the Sanctions Committees to fulfil the tasks mentioned above.

COMMENT 34: This formulation is taken directly from paragraph 2 in Resolution 1196 and is a reminder to states of the need to implement their obligations, preferably through the adoption of appropriate legislation.

Another option, for instance in case of less than satisfactory implementation of an earlier resolution, using more affirmative language, is to follow the formulation of paragraph 17 of resolution 1306:

Reminds States of their obligation to implement fully the measures imposed by resolution XX and calls upon them, where they have not already done so, to enforce, strengthen or enact, as appropriate, legislation making it a criminal offence under domestic law for their nationals or other persons operating on their territory to act in violation of the measures imposed by paragraph 2 of that resolution, and to report to the Committee not later than (date) on the implementation of those measures.

OP 10

Requests all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties (**COMMENT 35**) to report information on possible violations of the measures imposed by OP 1 above to the Committee established by OP 5;

COMMENT 35: This provision is useful since it seeks to engage the constructive participation of non-governmental organizations and other groups and organizations. However, such organizations are not well defined. A mechanism to receive and review information may have to be installed. In any case, it would be at the discretion of the Sanctions Committee in co-operation with the Secretariat to screen the information on the basis of the provision for ‘reliable’ information. Also see Comment 25.

OP 11

Requests the Committee established by OP 5 to make information it considers relevant publicly available, including through the improved use of information technology (**COMMENT 36**);

COMMENT 36: The issue of more complete disclosure of discussion within the Sanctions Committees is a fundamental one that needs further debate. There is some discussion on whether Sanction Committees should report more regularly, but rules for disclosure also need to be elaborated. The current practice of summary reports after all meetings to the media and other interested parties, including Member States not members of the Security Council, is criticized by some, including some member countries. The development of an appropriate website for public disclosure is a particular priority.

In general, Sanction Committees should be more transparent about their deliberations and progress. It is recognized that it is not always possible to answer each question and letter, but verbal briefings after Sanction Committee sessions and periodic reports in the public domain are considered feasible.

2.2.4. Additional provisions

OP 12

Encourages all Member States to review existing embargo implementation procedures, including customs and border control and appropriate penalties for embargo violations, taking into account reports on embargo implementation (**COMMENT 37**);

COMMENT 37: This paragraph may not seem necessary in view of earlier established obligations of Member States. Over time, however, it might help to encourage Member States to allow their national embargo implementation, including punishments of violations, to converge and thereby prevent targets from exploiting differences in embargo implementation. The formulation suggested here is weak in that it does not prescribe a method or timetable for such reviews, but it nevertheless goes substantially beyond current practice.

OP 13

Urges **(COMMENT 38)** Member States, relevant United Nations bodies and agencies and other international organizations **(COMMENT 39)** to respond to **(COMMENT 40)** requests for technical and other assistance by affected states **(COMMENT 41)**, to facilitate the implementation of the measures imposed in OP 1 above;

COMMENT 38: External support for implementation has been mentioned in embargo resolutions before, such as resolutions 687 (1990) and 1168 (1998), but has not often been practiced. However, capacity building has emerged as a crucial issue in effective arms embargo implementation. The substance of such support was further discussed in the Expert Working Group on Improving the Effectiveness of Arms Embargoes ‘on the Ground’, see Section 6 below. The wording suggested here is, obviously, vague. It is a question for discussion whether stronger wording would be realistic and would, in fact, be more effective than weak wording.

COMMENT 39: This would encompass diverse international organizations, including political ones, such as the European Union, and development donors, such as the UNDP.

COMMENT 40: Stronger and more detailed language might be useful if there is support from member countries.

COMMENT 41: States neighboring the target state are often the most relevant category of ‘affected states’; however there may be others.

OP 14

Requests the governments of (the target states), and other concerned parties to establish appropriate arrangements for the provision of humanitarian assistance and to endeavor to ensure such assistance responds to local needs and is safely delivered to, and used by, its intended recipients **(COMMENT 42)**;

COMMENT 42: This paragraph is useful in that it reinforces the norm of humanitarian access in conflict zones. It may not be relevant in every case.

OP 15

Requests the Secretary-General to submit an initial report to the Security Council within 15 days of the date of adoption of this resolution on (the target state’s) compliance with paragraphs XX (preambulatory paragraphs) above, and thereafter

every 60 days after the date of adoption of this resolution on its implementation and the humanitarian situation in (the target state) **(COMMENT 43)**;

COMMENT 43: Again, this would be an optional provision, which could be made more or less flexible depending on the circumstances in each case. It does not limit ad hoc submissions by the Secretary-General reflecting more immediate changes. The requirement to report on the humanitarian situation allows room for the Secretariat to express concern over possible side-effects of an arms embargo on the humanitarian situation, as appropriate.

OP 16

Decides that the measures imposed by OP 1 above:

(a) Option 1:

are established for an initial period of xx months **(COMMENT 44)** and that at the end of this period, the Security Council will decide whether to extend these measures for a further period and if appropriate to suspend them, modify them or adopt further measures;

(a) Option 2:

will be reviewed after a period of xx months and that at the end of this period, the Security Council will decide whether (the target government) has complied with paragraphs XX (preambulatory paragraphs) above, and accordingly, whether to terminate these measures **(COMMENT 45)**;

(b)

shall be terminated immediately if the Secretary-General reports that a peaceful definitive settlement of the conflict has been concluded **(COMMENT 46)**;

COMMENT 44: It has been suggested that sanction resolutions have an initial time limit, or the requirement of periodical review. A minimum period of 12 months would normally be appropriate, but each case will need to be considered individually. Variables to consider include the extent of military stockpiles and indigenous production capabilities in the target state and how likely the target is to comply with the terms of the embargo.

Under Option 1, in the absence of a decision to extend it, the embargo would automatically terminate. Under Option 2, the requirement is for a substantial review. Arms embargoes should be periodically reviewed.

COMMENT 45: The resolution should make it clear under which conditions the embargo provisions would be lifted. Thus, this clause will need to be closely linked to the clauses setting out the embargo objectives in the preambulatory paragraphs. As formulated here, the resolution foresees an indefinite continuation in the arms embargo unless a new decision is taken by the Security Council to terminate or amend it. The following alternative formulation (as used in Resolution 1298, for example) would switch the emphasis on the need for a new decision in order to continue with the embargo beyond the initial time limit.

COMMENT 46: The resolution could also foresee a more or less automatic mechanism for the suspension or termination of embargo provisions if the objective is achieved. It may also foresee measures in cases of partial fulfillment of objectives.

OP 17

Expresses its determination to take such steps as it may consider appropriate (**COMMENT 47**) in response to confirmed violations (**COMMENT 48**) of the measures referred to in OP 1 above.

COMMENT 47: Further consideration needs to be given to reinforcing embargoes in cases of proven violations by Member States. In the absence of an established process of investigating and assessing possible violations, reactions by the Security Council will be *ad hoc*. It should be possible to draw up a menu of specific and concrete measures that might be applied to violators, including the application of secondary sanctions.

COMMENT 48: ‘Confirmed violations’ refer only to those violations confirmed by the Sanctions Committee or the Security Council itself, as in the case of paragraph 20 of resolution 1306.

Annex: Full text of model Security Council Resolution on arms embargoes

The Security Council,

Recalling ...,

Reaffirming ...,

Recalling Resolution 1196 of 16 September 1998 ... (COMMENT 1),

...

Determining that the situation between () and () constitutes a threat to international peace and security (COMMENT 2),

Acting under Chapter VII of the Charter of the United Nations,

Strongly condemns...; Demands ...; Insists ...; ...

OP 1

Decides that all States shall (COMMENT 3) prevent the direct or indirect sale, supply and transfer (COMMENT 4), or the promotion or facilitation of such sale, supply or transfer (COMMENT 5) to (target states) (COMMENT 6), by their nationals or from their territories (COMMENT 7), or using their flag vessels or aircraft (COMMENT 8) of:

(a) arms and related materiel of all types, including weapons and ammunition; military, paramilitary and police vehicles and equipment; and spare parts and components for the aforementioned and equipment specifically designed for military or paramilitary purposes (COMMENT 9), whether or not originating in their territories;

(b) technology, including under licensing or other transfer arrangements, used in the production, utilization or stockpiling of items (COMMENT 10);

(c) any provision of personnel or materiel for training or technical support services relating to the design, development, manufacture, use, maintenance or support of the above items (COMMENT 11), whether or not such objects, technology or personnel originate in their territories (COMMENT 12);

(d) in accordance with a list of goods provided by the Secretary-General (COMMENT 13).

Additional options:

or to any person or body in the States neighboring the target entity if such sale or supply is for the purpose of, or will facilitate, the use of such arms or materiel within or by the target entity;

or to any person or body for the purposes of any business carried on in or operated from (target entity), the sale, supply and transfer, or facilitation and promotion, of such commodities or products;

OP 2

Requests all states to take the necessary steps to ensure that:

(a) any arms and related material sold, supplied or transferred contrary to OP 1, together with any property used for the purposes of such sale, supply or transfer, shall be seized (**COMMENT 14**); and

(b) the proceeds of transactions contrary to OP 1 shall be frozen (**COMMENT 15**);

OP 3

Calls upon all states and international organizations to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement (**COMMENT 16**) or any contract entered into (**COMMENT 17**) or any license or permit granted (**COMMENT 18**) prior to the date of coming into force of the measures imposed by OP 1 above;

OP 4

Decides also that the measures imposed by OP 1 above shall not apply to:

(a) supplies of arms and related material intended solely for (name of UN Peacekeeping Force or other UN operations) or UN agencies and organizations, subject to prior notification of the (Sanctions) (**COMMENT 19**) Committee (established by OP 5 below) (**COMMENT 20**);

(b) supplies of arms and related material intended solely for (name of regional organization), including regional peacekeeping forces, in (target state), as approved in advance by the (Sanctions) Committee (**COMMENT 21**);

(c) supplies of non-lethal military equipment intended solely for humanitarian use by other organizations, as approved in advance by the (Sanctions) Committee (**COMMENT 22**);

OP 5

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council, to undertake with the assistance of the Secretariat (**COMMENT 23**) and to report on its work to the Council with its observations and recommendations:

(a) to seek from all States, and, as appropriate, international organizations, further information regarding the legal, administrative and practical action taken by them with a view to implementing effectively the measures imposed by OP 1 above, and thereafter to request from them whatever further information it may consider necessary (**COMMENT 24**);

(b) to consider information brought to its attention by States, UN bodies and, as appropriate, other organizations and interested parties (**COMMENT 25**) concerning violations of the measures imposed by OP 1 above, and to recommend appropriate measures in response thereto (**COMMENT 26**);

(c) to share such information, as appropriate, with states, UN bodies and other organizations and interested parties in order to assist states to administer and enforce the provisions of OP 1;

(d) to make reports at least every 90 days to the Security Council on information submitted to it regarding alleged violations (**COMMENT 27**) of the measures imposed by OP 1 above, identifying where possible persons or entities, including vessels and aircraft, reported to be engaged in such violations;

(e) to promulgate such guidelines as may be necessary to facilitate the implementation of the measures imposed by OP 1 above;

(f) to give consideration to, and decide upon, requests for the exceptions set out in OP 4 (b) and (c) above;

(g) to examine the reports submitted pursuant to OP 8 below;

OP 6

Requests the Secretary-General to provide for the purposes of effective monitoring all necessary assistance and financial resources to the Committee established by OP 5 above and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 28**);

OP 7

Urges Member States, relevant United Nations bodies and agencies and other international organizations to respond to requests for technical and other assistance by the Sanctions Committee (**COMMENT 28**);

OP 8

Requests States to report in detail (**COMMENT 29**) to the Secretary-General within 30 days of the date of adoption of this resolution on the specific actions they have taken to give effect to the measures imposed by OP 1 above;

OP 9

Requests all states:

(a) to report in detail to the Sanctions Committee any information (**COMMENT 30**) they have with respect to possible violations of this arms embargo, in their own and other countries (**COMMENT 31**) including on prosecutions and punishment of violators (**COMMENT 32**);

(b) to cooperate with the Sanctions Committee and to respond in detail to requests for information (**COMMENT 33**); and

(c) to consider as a means of implementing the obligations referred to in OP 1 above the adoption of legislation or other legal measures making the violation of arms embargoes established by the Council a criminal offence (**COMMENT 34**);

Additional option:

Reminds States of their obligation to implement fully the measures imposed by resolution XX and calls upon them, where they have not already done so, to enforce, strengthen or enact, as appropriate, legislation making it a criminal offence under domestic law for their nationals or other persons operating on their territory to act in violation of the measures imposed by paragraph 2 of that resolution, and to report to the Committee not later than (date) on the implementation of those measures.

OP 10

Requests all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties (**COMMENT 35**) to report information on possible violations of the measures imposed by OP 1 above to the Committee established by OP 5;

OP 11

Requests the Committee established by OP 5 to make information it considers relevant publicly available, including through the improved use of information technology (**COMMENT 36**);

OP 12

Encourages all Member States to review existing embargo implementation procedures, including customs and border control and appropriate penalties for embargo violations, taking into account reports on embargo implementation **(COMMENT 37)**;

OP 13

Urges **(COMMENT 38)** Member States, relevant United Nations bodies and agencies and other international organizations **(COMMENT 39)** to respond to **(COMMENT 40)** requests for technical and other assistance by affected states **(COMMENT 41)**, to facilitate the implementation of the measures imposed in OP 1 above;

OP 14

Requests the governments of (the target states), and other concerned parties to establish appropriate arrangements for the provision of humanitarian assistance and to endeavor to ensure such assistance responds to local needs and is safely delivered to, and used by, its intended recipients **(COMMENT 42)**;

OP 15

Requests the Secretary-General to submit an initial report to the Security Council within 15 days of the date of adoption of this resolution on (the target state's) compliance with paragraphs XX (preambulatory paragraphs) above, and thereafter every 60 days after the date of adoption of this resolution on its implementation and the humanitarian situation in (the target state) **(COMMENT 43)**;

OP 16

Decides that the measures imposed by OP 1 above:

(a) *Option 1:* are established for an initial period of xx months **(COMMENT 44)** and that at the end of this period, the Security Council will decide whether to extend these measures for a further period and if appropriate to suspend them, modify them or adopt further measures;

(a) *Option 2:* will be reviewed after a period of xx months and that at the end of this period, the Security Council will decide whether (the target government) has complied with paragraphs XX (preambulatory paragraphs) above, and accordingly, whether to terminate these measures **(COMMENT 45)**;

(b)

shall be terminated immediately if the Secretary-General reports that a peaceful definitive settlement of the conflict has been concluded (**COMMENT 46**);

OP 17

Expresses its determination to take such steps as it may consider appropriate (**COMMENT 47**) in response to confirmed violations (**COMMENT 48**) of the measures referred to in OP 1 above.

3. MODEL SECURITY COUNCIL RESOLUTION ON TRAVEL BANS, WITH COMMENTARY

Expert Working Group on Travel and Aviation Sanctions

Chair: Ambassador Tono Eitel

Rapporteur: Koenraad Van Brabant, *Overseas Development Institute*, London

3.1. The Expert Working Group on Travel and Aviation Sanctions

The objective of the Expert Working Group meetings was to:

1. Clarify what travel and aviation sanctions mean and what possible types of sanctions can be considered;
2. Offer the members of the Security Council building blocks of text, together with a menu of options, clarifying notes and commentary in order to facilitate the formulation of Resolutions;
3. Formulate advice for the Sanctions Committees and the States charged with the implementation of the Security Council Resolution;
4. Identify necessary steps for the national implementation of Security Council Resolutions.

The Expert Working Group recognizes that some of its comments and recommendations do not apply to travel and aviation bans only, but to all types of sanctions, and to the mandate and functioning of all Sanction Committees.

The Expert Working Group recommends that the language of the Security Council Resolution should distinguish between the various types of sanctions which may include a travel ban, even if the measures are imposed because of the same offending behavior/policies. This could enable fine-tuning, i.e. the gradual lifting of some sanctions in recognition of progress in and/or partial compliance with the overall demands of the Security Council.

The Expert Working Group has focused on sanctions related to travel and aviation. Targeted travel-related sanctions are understood to be bans on individuals or on a category of people to travel to, from, through and/or in the territory of a State other than the State of the target. Aviation-related sanctions are understood to be a ban on the movements of all international flights into or from a target country, and/or a ban on specific services facilitating such flights.

Sanctions considered outside the definition and therefore the remit of the Expert Working Group were:

- Travel bans on individuals of the target state related to sports, cultural or scientific activities. These would generally come under another type of sanction, i.e. 'cultural/sports bans'. The intent is to cause hurt to larger national pride by

refusing participation in international events. Those affected by a cultural/sports ban would not be targeted as individuals nor for their perceived direct support of a ruling group, but because of their cultural and sporting activities. A cultural/sports ban would also be reciprocal, and prevent outsiders from participating in cultural or sports events in the target state. It is a further type of sanction, one that can be used to introduce gradation and flexibility in sanctions being imposed or lifted. In some circumstances however, a travel ban on individuals or a category of people can be used to prevent such participation (e.g. a travel ban on scientists from a target state, involved in work connected with weapons of mass destruction; or a travel ban on individuals to prevent their participation in a meeting of war veterans if this is believed to be supportive of the targeted regime). Note also has to be taken of the fact that an aviation ban can—unintentionally—prevent participation in international sports/cultural events.

- General transport bans, including shipping, train, truck and vehicle movements across international borders, which would no longer be ‘targeted’ and which in their impact amount more to a trade ban.

The effectiveness of travel-related sanctions should not be judged in isolation. Often they will be a prelude to, and exist together with, other types of sanctions. Targeted travel-related sanctions can have both a psychological and a practical impact: they stigmatize and are an irritant to those thus targeted, but also hamper the targets in conducting their business as usual. And they can bolster trade and financial sanctions. The Expert Working Group did not discuss the possible linkages between different types of sanctions, such as targeted financial sanctions and a travel ban.

Targeted travel-related sanctions are only meaningful when applied against individuals or categories of people who wish to travel internationally and openly, and/or who benefit from the operations of international commercial flights, be it by national carrier or others. Not all those whose behavior is deemed objectionable by the international community are vulnerable to travel-related sanctions.

The Expert Working Group did not concentrate on the question of so-called ‘secondary sanctions’ against identified violators of sanctions. There is no legal basis for such sanctions in international law. At the same time, there is no doubt about the importance of combating the current level of impunity. It is therefore the responsibility of member states to take measures, including imposing penalties, that are dissuasive, proportional and effective. The extra-territorial and multi-territorial nature of the activities of sanctions busters underlines the need for greater international cooperation in this regard.

Security Council Resolutions have occasionally been criticized for being ambiguous and vague. In cases where this is the result of inevitable political compromise, the results of the Expert Working Group cannot be applied. But where there is political consensus, its work should prove useful and applicable.

The thrust of the work of the Expert Working Group is to develop options and arguments for greater specificity in Security Council Resolutions. At the same time,

there is a risk that excessive specificity and ‘micro-management’ on the part of the Security Council will reduce useful flexibility on the part of the States.

In order to facilitate the use of the proposed draft texts, comments which are relevant for both travel and aviation sanctions are reprinted in both texts.

3.2. Preamble on Security Council Resolution

The Expert Working Group recommends that the members of the Security Council consider in their deliberations:

- what they want to achieve, i.e. what is or are their objective(s);
- what sort of sanction(s) might help to achieve this/these objective(s);
- under what conditions certain types of sanctions are likely to be effective;
- whether or to what degree the specific contextual characteristics of the intended target (its political interests, its vulnerabilities, its possible options for avoiding the sanctions, the practicalities of implementation, etc.) meet these conditions; and
- what the potential impact of the envisaged sanctions might be on both the target country and on other countries (with reference to Article 50 of the Charter).

The Expert Working Group recommends that the preambulatory paragraphs include a clear reference to ‘behavior/practices/policies’ which are considered unacceptable, and that the preambulatory paragraphs mention the objective of the sanctions.

The preamble will end with a statement referring to the source of the Security Council’s authority:

The Security Council,

.....

Determining that (the situation) constitutes a threat to international **(COMMENT 1)** peace and security;

Acting under Chapter VII of the Charter of the United Nations,

COMMENT 1: The Expert Working Group recommends that the reference to ‘international peace and security’ remains as this has been the understanding for more than 50 years. It does not recommend repeating the precedent of ‘regional peace and security’ as in Resolution 1298 on Ethiopia and Eritrea.

3.3. Operative paragraphs

3.3.1. *The travel ban*

OP 1

Decides that all states shall take all measures to:

(a) prevent the entry into or transit through their territories **(COMMENT 2; COMMENT 3)**;

(b) prevent the departure from their territories (for **XX** period) (**COMMENT 4**);

(c) require the departure from their territories (to the target state);

of (named individuals) (**COMMENT 5**) and/or (members of the target category) (**COMMENT 6**) and/or (all those who, through their actions, functions) (or family relationship) (**COMMENT 7**), are acting on behalf of, acting for the benefit of, providing support to or doing business with the (target), as defined by the Committee (**COMMENT 8**) created by OP 5;

Nothing in this paragraph shall oblige a State to refuse entry into or require the departure from its territories of its own nationals (**COMMENT 9**);

COMMENT 2: The Expert Working Group is in favor of a travel ban, not a visa ban for the following reasons:

- Visa requirements do not exist between all countries (e.g. India-Nepal; USA-Canada, within the European Union) and Member States will not introduce a general visa requirement in order to deny it to a smaller group of people.
- A visa ban would still allow the targets to travel to countries that do not require a visa.
- A target may have more than one passport, one of which does not impose a visa requirement (e.g. UNITA officials). A travel ban would still affect such persons, whereas a visa ban would not.
- Even if a target does have a visa, a sovereign government still retains the ultimate right to decide who can enter its territory or not.

COMMENT 3: Certain past resolutions have requested States to ‘limit’ travel rather than ‘ban’ it. This option is deemed undesirable as it is imprecise for the States that are asked to implement it and leads to inconsistent implementation.

COMMENT 4: So far Security Council Resolutions have remained silent about what is expected of States who have a person against whom a travel sanction is applicable on their territory at the time the Resolution comes into effect.

The options considered are:

- **Discretion in the interpretation:** the Resolution remains silent and leaves it to the discretion of the Member States and/or to the choice of the targeted individual(s).
- **Containment:** (see OP 1.b) The Resolution requests the Member States to prevent these people from travelling internationally. This can be formulated as a general ban on international travel e.g. because the international community wants to deny the targets an occasion to re-group, or the formulation can include an exception clause ‘other than to the target state’, which would allow the targets to return to that state.
- **Expulsion:** (see OP 1.c) The Resolution requests the Member States to expel from their territories such persons, AND to ensure their return to the

target state e.g. because the Security Council wants to deny these people opportunities to maintain their international contacts and transactions, and to foster the interests and cause of the targets abroad.

COMMENT 5: A list of specific names will not normally be included in the Resolution itself, as changes to this would require a new Security Council Resolution. If individuals are named, it is recommended to include a reference to 'alias' or 'nom de guerre'. But a Resolution needs to be precise about the categories of those targeted, to set the parameters within which the Sanctions Committee will be responsible for designating individuals and adding or removing them from the list. If the Sanctions Committee were to find that the wording of the Resolution did not adequately cover the intended targets, it could refer back to the Security Council as policy-making body.

COMMENT 6: The Resolution needs to provide precise wording for the target category, e.g. 'the government of' where a state actor is concerned, or an appropriate designation such as 'Junta', 'faction', 'movement', 'front', 'terrorist group' where a non-state actor is targeted.

In their deliberations, the members of the Security Council need to seek clarification on who are to be considered 'members' or 'those who through their functions and actions would support' the targeted group. When the targeted officials are members of a government, a more precise indication is required of to which government actors the travel sanctions apply, as not every government employee would be targeted (this would defeat the 'targeting' intent). Targeted officials may include:

- the Head of Government and Cabinet officials, perhaps also junior officials;
- members of Parliament;
- the heads/senior members of the security forces, intelligence services, military police, paramilitary police;
- the heads/senior members of state-owned/state-controlled enterprises (banks, transport services, industries, utilities, media, insurance agencies, etc.);
- members of the ruling political party or parties; and
- others.

Those to be included may be senior officials or, for example, managers of state-owned enterprises, but may very well also include people of lower rank performing crucial functions, such as certain accountants, buyers, technical experts, etc.

Travel sanctions should be distinguished from diplomatic sanctions. Diplomatic sanctions consist of the reduction or interruption of diplomatic relations between states. The result may be the expulsion of diplomats, etc. Travel sanctions are not intended to affect the status of diplomatic relations between states. They can apply to diplomatic personnel inasmuch as a diplomatic passport or visa is only valid in the country where someone is accredited, or in

transit to/from this country. Diplomatic personnel may be the object of an exemption/exception if, for example, the Security Council wants to maintain a political dialogue with them because they represent an illegally overthrown regime that remains internationally recognized (e.g. Haiti). In order to maintain basic consular services, certain individuals or categories of people, who are formally members of the targeted government, may be exempted or allowed travel as an exception.

The deliberations of the members of the Security Council should also consider the status of senior officials, members of parliament, and others who are considered moderates or opposition figures, and who perhaps should not be denied direct access to international contacts. The Sanctions Committee could manage this by omitting these people from the list of individuals or by granting them permission to travel as an exception. In practice, this may be difficult as it would require very reliable information to confirm their activities. Being singled out positively might also compromise their opposition activities and put them at risk.

When the targeted individuals are non-state actors, the notion of ‘members’ (e.g. of a rebel movement) or of those who through their actions or functions support the targeted category, also needs to be clarified further.

The notions of ‘acting for the benefit of’, ‘providing support to’ or ‘doing business with’ need further clarification: support can be of an economic and financial nature, but also political and ideological. It can involve the gift/sale of material resources or e.g. the recruitment of fighters for the targets (e.g. Taliban). Support can be explicit and declared, but it can also be non-declared (front organizations). ‘Support’ may be a contested issue, with allegations being made that are denied by those referred to (e.g. UNITA offices abroad).

Where various sanctions have been imposed against a target, violators of other sanctions (e.g. trade sanctions or arms embargoes), are obviously ‘supporting’ those who may also be the object of a travel ban. This does not automatically bring them within the category of ‘supporters’ as intended in this Resolution. It does, however, make them liable to legal action by the States, who are responsible for monitoring and enforcing their own citizens’ compliance with sanctions. Imposing a travel ban on those who violate other sanctions appears to be an option for ‘censure’ that has not yet been considered. Its advantage is that it can (and must) be applied by all States, not just the State of which the violator is a national.

COMMENT 7: With regard to family members there are two strands of opinion:

One recommends that they be included in the list of those against whom a travel ban is imposed in order to strengthen the ‘annoyance’ effect on the core target. Although this can be experienced as a severe restriction by those affected, it does not normally violate basic rights—it only deprives them of the liberty to travel internationally. A factor that could be considered in this context is whether international travel for the larger population of the target state is more of a

luxury or of a normal liberty. It may also prevent a targeted individual from conducting his/her business abroad through a family member. In case a family member is in recognized opposition to the core target(s), s/he can be made to benefit from an exception.

The other recommends that including family members on no basis other than their family association may still be part of the targeting because of the annoyance factor, but does not offer the same clear link of being sanctioned because of offending behavior. It holds that family members should only be included if and when by their functions or actions they can be seen to be supporting the core targets.

The implementation of a travel ban involving family members is complicated by the problem of clearly circumscribing 'family'. The following issues need to be clarified:

- which legal concept or whose cultural concept of 'family' should apply;
- whether this concept applies to adults only and if so, what the cut-off age is and how real age can be verified.

The Expert Working Group recommends that the Resolution clearly states whether and which family members are to be targeted or not.

COMMENT 8: The notion of 'doing business with' is very general and its usefulness was debated at the Berlin meeting. It has been retained here because of the importance of having a sufficiently broad category of activities in the Resolution. It is fully recognized, however, that the Sanctions Committee will have to provide a more detailed specification of what type of business is intended here, on the basis of which specific individuals or entities can then be designated.

COMMENT 9: It is not possible to ask all the countries in the world to 'expel' a person, because the person has to be on someone's territory. Expulsion therefore will normally be to the target state. It is possible here to add 'by the quickest and most direct way' to avoid the targeted individual 'transiting' through other countries. An exemption to this rule could be allowed if such transit is inevitable in order for the expelled target to return to the target state. If the Security Council wants to maintain very tight control, it can make this 'exemption' depend on its prior approval.

OP 2

Calls upon international (and regional) organizations, including their subsidiaries and specialized agencies, to act strictly in conformity with this Resolution **(COMMENT 10)**;

COMMENT 10: There are places, such as present day Kosovo or East Timor, which are effectively administered by an international organization, which would then be expected to implement the travel bans.

As per article 48 paragraph b of the Charter, the Security Council can only 'decide' for the States which are bound by its resolutions. Although the Security Council cannot directly 'decide' for other international organizations, these are expected to act in conformity with the Resolution and, within their respective competencies, to take steps to implement it. Alternative wordings could be:

- a. '*Calls upon* all States and international and regional organizations' which has the advantage of giving international and regional organizations a status similar to that of States, but has the drawback of using the weaker wording of 'calls upon' rather than 'decides'. The Expert Working Group recommends the use of 'decides'.
- b. '*Decides* that all States, and *calls upon*organizations', which has the stronger 'decides' but unintentionally may convey the impression that there are different degrees of obligation; and
- c. '*Calls upon* international (and regional) organizations' in a separate paragraph, as shown in this reference text.

References to relevant international or regional organizations, where appropriate, may be made in the preamble prior to the operative paragraphs and in the exhortative paragraphs following them (see Resolution 1298 on Eritrea and Ethiopia).

OP 3

Decides that the (measures in the) present resolution come(s) into force on XX Eastern Standard Time (**COMMENT 11; COMMENT 12**);

COMMENT 11: The Expert Working Group holds that the implicit understanding should be that a Security Council Resolution enters into effect once it is adopted. An immediate entry into force best maintains the political momentum and has most political impact. Establishing a delayed date for the entry into force of the Resolution, allows loopholes, and should only be done under exceptional circumstances. Any remaining ambiguity could be removed by adding a clause to the effect that the 'present resolution shall come into force on XX Eastern Standard Time'.

COMMENT 12: The entities requested to implement the sanctions decided by a Resolution may be uncertain whether they need to wait until a Sanctions Committee has been constituted and a list of targeted persons issued. The Expert Working Group holds that States do not need to await the constitution of the Sanctions Committee and its issuing of a list of targeted categories or individuals to take action. On the basis of their own legislation, they can start collecting the names of people for submission to the Sanctions Committee to be included on its list, and take national measures. Member States cannot implement a Resolution if the Security Council has reserved the definition of the target for a further decision by itself or by the Sanctions Committee. The Resolution can explicitly ask the Sanctions Committee to produce a (first) list of targets within XX days if this appears realistic, i.e. if some names are already

known. This may not be practical if very little is known about the targets, and the Sanctions Committee will have to await information from the States.

OP 4

Decides that travel by a targeted person can be allowed for religious duties, and, exceptionally, for essential humanitarian reasons or to resolve the problem that necessitated the imposition of sanctions, after approval by the Committee established by OP 5 (**COMMENT 13**);

COMMENT 13: The Expert Working group defined as ‘exceptions’ cases that are stated as such in the resolution and therefore do not require prior approval by the Sanctions Committee; while ‘exemptions’ do not require prior Sanctions Committee approval in each case. The Expert Working Group saw the option of including this paragraph, because it signals the awareness of the Security Council that exemptions and exceptions might be needed, and also gives a policy reference to the Sanctions Committee, which is an executive body. The grounds for exemption or exception will then be repeated in the paragraphs referring to the Sanctions Committee. On the other hand, one may decide not to include this paragraph, on the grounds that providing for possible exemptions and exceptions early on in the Resolution might give the wrong signal.

3.3.2. The Sanctions Committee

OP 5

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) to seek and to receive from all States, from international organizations and from other (relevant, reliable) sources (**COMMENT 14**) further information regarding the persons to whom the measures should apply;

(b) to establish, review (**COMMENT 15**), and keep up-to-date (**COMMENT 16**) the list of persons to whom the measures imposed by OP 1 apply;

(c) to publicly disseminate and make available to all States and international organizations information it considers relevant through appropriate media including through the improved use of information technology (**COMMENT 17**);

(d) to recommend to States and international organizations such steps as may be necessary to facilitate the implementation of the measures imposed by OP 1 (**COMMENT 18**);

(e) to decide upon requests for exemptions and exceptions on the grounds of risk of grave violation of human rights, humanitarian need, religious obligations, or political and diplomatic efforts to achieve the objectives set out in paragraph XX and the maintenance of peace and security (**COMMENT 19**);

(f) to seek from all States further information regarding the legal, administrative and practical actions taken by them with a view to effectively implement the measures imposed by OP 1 and thereafter to request from them whatever further information it may consider necessary;

(g) to examine the reports submitted pursuant to OP 7;

(h) to consider information brought to its attention by States and other sources **(COMMENT 20)** concerning possible and actual violations of the measures imposed by OP 1 (and to recommend appropriate measures in response thereto) **(COMMENT 21)**;

(i) to make periodic reports to the Security Council on information submitted to it regarding alleged or actual violations of the measure imposed by OP 1, identifying, where possible, persons or entities, reported to be engaged in such violations;

(j) to keep the States and interested parties periodically updated about its workings, where appropriate and without compromising the effectiveness of its work **(COMMENT 22)**;

COMMENT 14: The Expert Working Group recommends that the Sanctions Committee should be able to receive information from sources other than States and international organizations. The recommended choice of words is ‘other sources’ rather than ‘reliable and relevant sources’. Flexibility here is desirable. In practice there may be an implicit ‘weighting’ of the source, with information from States given most weight, followed by that presented by international organizations, mass media, NGOs, etc. The information should be as detailed as possible. What is ‘relevant’ and ‘reliable’ can be debated within the Sanctions Committee, which screens and vets the submissions. Ideally, the same names should be put forward by different sources to avoid the impression of political bias.

The Expert Working Group discussed whether the Resolution’s wording should be ‘other public sources’ on the grounds that the targeted individual has the right to know the origin of the information that leads him/her to be included on the list. The Expert Working Group did not feel this to be necessary.

COMMENT 15: Acting on behalf of the Security Council, the Sanctions Committee is responsible for establishing and keeping up-to-date the list of those persons to whom the travel ban applies. In most cases, the list issued by a Sanctions Committee will not be presented as final or closed. The possibility of adding new names should be kept open.

COMMENT 16: A key question is whether an individual has the right to contest his or her name being included on the list, and therefore the right to request being taken off the list. There were two strands of opinion within the Expert Working Group:

One position holds that Security Council decisions, and by implication Sanctions Committee decisions, cannot be contested, and that allowing such a possibility

would create a dangerous precedent. It would also open the door to the Sanctions Committee being flooded with requests for names to be taken off the list and thereby becoming bogged down in its functioning. Additional arguments in favor of this position are that a travel ban does not normally violate basic human rights, but only denies people the 'right' to international travel. Moreover, a name is only put on the list if and when there is a consensus among all members of the Sanctions Committee. Further, the Security Council and the Sanctions Committee are not legal or judicial bodies but political bodies, and, as such, have no place for a legal type of 'appeal' process.

The other position holds that, as a matter of principle, if sanctions are presented as 'targeted', anyone should have the right to demonstrate that s/he should not be targeted by them. Moreover, in practical terms, the Security Council and the Sanctions Committee need to allow for the possibility that a genuine mistake has been made—as has been the case with financial sanctions targeted at individuals. Experience shows that such mistakes can have serious negative consequences for the persons concerned. If people have been put on the list after thorough investigation and consideration, then it should not be a cumbersome task for the Sanctions Committee to decide on the validity of a request to be taken off the list.

The implementation of the travel ban against an individual (or his/her expulsion from the territory of a State) would be based on national legislation, against which an appeal procedure is possible. The political decision of the Security Council thus becomes translated into a legal decision. It would be inconsistent if the legal translation could be contested, but not the supra-national political decision from which it directly originates. The Expert Working Group accepts that the absence here of legal procedures requires that individuals be allowed to contest their inclusion on the list in writing. The Expert Working Group recommends that requests for an individual to be removed from the list be directed to the Chair of the Sanctions Committee. The preferred option would be that the request is submitted to the UN Secretariat through the authorities of the State of which the individual holds citizenship. However, this may not be practical in cases where the rulers of the State themselves are the target (e.g. Federal Republic of Yugoslavia) or where the travel bans apply to a non-state entity in conflict with a national government (e.g. UNITA in Angola), which may be reluctant to scrutinize the validity of such requests for political reasons. The Expert Working Group therefore recommends that the option should exist for a request to be submitted directly by the individual concerned.

Another issue is the grounds on which an individual would request to be removed from the list. Two scenarios were discussed: a) an individual argues that there are no grounds whatsoever to be on the list (the case of a genuine mistake cannot be excluded); or b) an individual argues that s/he has changed his/her behavior so that there are no longer any grounds for inclusion on the list. What if an individual argues that s/he has changed behavior and has, for example, joined the opposition? This raises the question of what certifies good behavior

and of the criteria for lifting sanctions. In practice, good behavior is very hard to verify. Often it will ultimately be a political decision.

COMMENT 17: In order to help the States and international organizations implement the travel ban, it is essential that the Sanctions Committee collects and disseminates as much information as possible about the individuals concerned. This should include passport details, place and date of birth, multiple nationalities, alternative spellings of a name, aliases and *noms de guerre*, known addresses of residence, photographs, finger prints, etc. The Expert Working Group recommends increased use of the Internet. All relevant information could be made available on a website.

COMMENT 18: The Sanctions Committee should seek to establish a clear working relationship with the States and other implementing entities. To this effect it can make public its internal rules of procedure; a guideline for States and international organizations on how they can relate to and work with the Sanctions Committee, as well as advice on how to implement the Security Council Resolution. To this latter end, the Sanctions Committee should encourage States and international organizations to make as much relevant and appropriate information as possible available to their officials at diplomatic missions and at every possible point of entry, as well as perhaps to the management of their national airline carriers and similar agencies. The Sanctions Committee should encourage them to do so in the clearest possible manner, for example, by means of posters.

COMMENT 19: Travel bans, unlike aviation bans, are targeted against individuals. In principle, no *a priori* 'exemptions' should be foreseen or granted, only 'exceptions'. 'Exceptions' are cases that require prior approval by the Sanctions Committee; 'exemptions' are stated as such in the Resolution and therefore do not require Sanctions Committee approval. The difficulty of defining what constitutes a religious duty (only what is prescribed by a religious authority or a 'duty' in one's individual consciousness?) may, however, require that this be stated as an 'exemption'.

Targeted individuals can request an 'exception' to the ban for specific occasions. The decision is up to the Sanctions Committee and its Chair, and is ideally to be made within 48 hours. It is recommended that exceptions be considered only:

- for certain political and diplomatic efforts. This would not extend to all types of 'official' or 'political' travel, but only to travel related to the search for a solution to the problem that caused the sanctions to be imposed in the first place, most notably peace talks;
- to avoid the risk of a grave violation of human rights;
- for essential humanitarian needs. This would most commonly apply to urgently needed medical care that is only available abroad. An exception would not necessarily have to be granted e.g. to attend the funeral of a close relative: the travel bans are intended to cause psychological pain. An individual targeted by a travel ban but granted an exception to go abroad, for

example to get medical treatment, would not then be prevented from returning to his/her country unless legal action had been initiated that would warrant detention.

- for legal proceedings. The Expert Working Group discussed whether this should be included in the Security Council Resolution. ‘Legal proceedings’ here would not encompass travel in order to assert one’s legal claims in matters of private (civil or penal law) or state/group interests. The intent is to allow travel in the context of international legal proceedings against the individual concerned. In such cases, the request for the exception will typically come from a State or an international organization. Clarification is further required with regard to the status of legal representatives of the targeted individuals, as these are acting ‘on behalf of’ and ‘for the benefit of’ the target(s). In principle, their right to legal representation cannot be denied. It can be argued that travel sanctions do not necessarily deny them the right of legal representation, but only hamper the work of the legal representatives by impeding their international travel. As this type of case will normally be very obvious, the Expert Working Group does not recommend that it be included in the Security Council Resolution as a specific category of exemption.

One issue is who should submit the request for the exception. The requests would have to come from the country that the individual who is banned from travelling wants to enter, and/or the countries that the individual would have to transit through, as these would otherwise be violating the travel ban. The Expert Working Group felt that requests can come from non-state actors, bearing in mind that it is the decision of the Sanctions Committee and that ultimately a State will have to accept, under its national legislation, that a targeted individual can travel.

COMMENT 20: The Expert Working Group recommends that the Sanctions Committee develops recommendations for the States on what sort of information it wants to receive, highlighting specific categories of legal, administrative and practical measures.

Although they have no duty to report, such recommendations can also be forwarded to international organizations that have been called upon to help implement the sanctions.

The Expert Working Group recommends that the Sanctions Committee prioritizes States whose reports it particularly wants to follow up, such as neighboring countries and countries that maintain close political and economic ties with the target state.

For sanctions in general, the Sanctions Committee is advised to be pro-active. The Chairperson and other members can, for example, carry out field visits to get a first-hand understanding of the measures taken and the constraints encountered, and to search, together with key States, for practical ways to overcome such constraints.

COMMENT 21: The Expert Working Group recommends the use of ‘possible and actual violations’, which implies that States and international organizations are obliged to report on their own known violations.

The recommendation is to accept reports from ‘other’ sources, on the grounds that States may be unwilling to report on their own violations or those of their neighbors with whom they want to maintain good relationships. This does not give undue influence to ‘other sources’ because the Sanctions Committee does not itself judge violations but only forwards information on possible violations to States for verification and possible action. Any violation would be addressed within the context of national legislation, with its own legal requirements and allowances concerning burden of proof and right to defense.

The wording in brackets to the effect that the Sanctions Committee would also make recommendations is given as an option because it could be argued that it should be left to the Sanctions Committee to decide whether or not it wants to make recommendations.

COMMENT 22: The Expert Working Group strongly recommends that the Sanctions Committee provides feedback to States and other entities about the follow-up to information provided by States and other entities, in order to maintain momentum and the motivation to provide information.

The Expert Working Group also recommends that the Sanctions Committee be more transparent about their deliberations and progress, both in general and with respect to travel bans. It is recognized that it is not always possible to answer every question and letter, but verbal briefings after Sanctions Committee sessions and periodic reports in the public domain are considered feasible.

3.3.3. *Message to the Secretary-General*

OP 6

Requests the Secretary-General to provide all necessary assistance to the Committee established by OP 5 and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 23**);

COMMENT 23: This paragraph appears in Resolution 1298. The Expert Working Group recommends that it be regularly included.

3.4. Exhortative paragraphs

OP 7

Calls upon all States and international organizations to implement the provisions of this resolution notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted (**COMMENT 24**) prior to the date of adoption of (the coming into effect of the measures contained in) this resolution (**COMMENT 25**);

Calls upon all States and international organizations to cooperate fully with the Committee established by OP 5, including supplying such information as may be required by the Committee;

Requests (**COMMENT 26**) all States to report in detail to the Secretary General within 30 days of the date of adoption of this resolution on the specific legal, administrative and practical steps (**COMMENT 27**) they have taken to give effect to the measures imposed by OP 1;

Requests States, United Nations bodies and other organizations and interested parties to report information on possible and actual violations of the measures imposed by OP 1 to the Committee established by OP 5;

Requests States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed and to impose dissuasive, proportional and effective measures, including appropriate penalties (**COMMENT 28**);

COMMENT 24: An explicit statement that the Security Council Resolution overrides any existing obligations is recommended to clarify for States and international organizations that the Resolution overrides prior agreements.

COMMENT 25: The Resolution comes into force on the date when it is adopted, unless stated differently in OP 3, but it is conceivable that the target is given a 'grace period', and that the measures proposed come into effect later. In the latter case, prior agreements would be cancelled when the measures come into effect.

COMMENT 26: Ideally a Resolution should be mandatory, using wording such as 'decides'. But because of difficulties with some countries, the terms 'calls upon' or 'requests' are preferable. Furthermore, Security Council Resolutions are not formally binding decisions for international organizations. Native English speakers in the Expert Working Group heard 'calls upon' to be stronger than 'requests', but the opposite was true for the non-native English speakers, who felt 'requests' to be stronger. The Expert Working Group advises against the use of 'urges', which is held to have a connotation that implementation is 'optional'.

COMMENT 27: To get States to provide more specific reports, the Resolution should indicate the major reporting areas. The Sanctions Committee can use a questionnaire to provide States with more guidance on the type of information it seeks. This can include questions about executive orders given, the national legislation invoked, which Minister has responsibility and which senior official oversees implementation, what administrative procedures are established, what problems are encountered with the identification of the targeted individuals, etc.

COMMENT 28: This clause does not refer to secondary sanctions but to national enforcement.

3.5. Periodic review and suspension/termination

OP 8

Decides that the impact of the measures imposed by OP 1 will be reviewed after (determined time span), and then every XX period thereafter (**COMMENT 29**);

Comment 29: The Expert Working Group noted the introduction of a clause with regard to a periodic review in Resolution 1306 (Sierra Leone). It supports this innovation and recommends that such clauses be maintained in future resolutions. The Expert Working Group recommends that the nature of the sanctions and/or their implementation be reconsidered when there is unacceptable or disproportionate damage to the interests of non-targeted persons, but that sanctions as such are only ended if and when the conditions for their implementation have been met. This therefore requires that the Security Council clearly indicates to the parties targeted the reasons why the measures have been imposed, and the steps they need to take to obtain the termination of the sanctions.

The Expert Working Group held that periodic review of the impact of sanctions should not be an option, but standard practice, even if travel bans are less likely to cause collateral damage than, for example, aviation bans.

OP 9

Decides that

Option 1: the measures imposed by OP 1 are established for (determined time span) and that, at the end of this period, the Security Council will decide whether the (targets) have complied with paragraph(s) XX above and, accordingly, whether to suspend/terminate these measures;

Option 2: the measures imposed by OP 1 are established for an initial period of (determined time span), and affirms that, at the end of this period the Security Council will review (the situation) in order to decide whether to suspend/extend these measures for a further period and, if necessary, to modify them or adopt further measures (**COMMENT 30**);

Comment 30: The Expert Working Group advises caution about the mention, in the Security Council Resolution, of identified time limits on the sanctions, the continuation of which then would depend on the outcome of a review. The efficacy of such an approach still needs to be tested. It introduces the risk that the target will not change its behavior, but simply await the review in the hope that the renewed debate among the members of the Security Council will go against a continuation of the sanctions. Its relevance would have to be decided on a case by case basis. The general observation offered by the Expert Working Group was that an automatic termination may be of lesser relevance when sanctions are well targeted against ruling elites, such as in the case of person bans, than for sanctions with significant wider, and undesirable, negative humanitarian, economic and other side-effects. Where a decision is made to

‘suspend’ the sanctions, the continuation of that suspension or re-activation of the sanctions, becomes the object of regular review.

OP 10

Decides that

Option 1: the measures imposed by OP 1 shall be terminated immediately if the Secretary-General reports that (compliance with the demands/fulfillment of the objectives set out) has been reached;

Option 2: the measures imposed by OP 1 shall be terminated immediately if the Secretary-General reports that (compliance) has been reached, and if the Security Council approves the report of the Secretary-General (**COMMENT 31**).

COMMENT 31: The Expert Working Group notes the introduction of a clause with regard to the ending of the sanctions in Resolution 1298 (Ethiopia/Eritrea). The question here is who decides when to end sanctions? Sanctions are a political decision by the Security Council, but also a measure imposed to make the target meet certain conditions. The ending of a sanction remains a political decision, but should also be based on an objective assessment of whether the target has met those conditions. The Expert Working Group recommends that the Secretary-General be tasked with reporting whether the conditions have been met, as the Secretary-General can be perceived to be less ‘politically driven’ than the Security Council. As in option 2, a positive report from the Secretary-General would not automatically lead to the end of the sanctions; the ultimate decision would still remain with the Security Council.

Annex: Full text of model Security Council Resolution on travel bans

The Security Council,

...

Determining that (the situation) constitutes a threat to international **(COMMENT 1)** peace and security;

Acting under Chapter VII of the Charter of the United Nations;

OP 1

Decides that all states shall take all measures to:

- (a) prevent the entry into or transit through their territories **(COMMENT 2; COMMENT 3)**;
- (b) prevent the departure from their territories (for XX period) **(COMMENT 4)**;
- (c) require the departure from their territories (to the target state);

of (named individuals) **(COMMENT 5)** and/or (members of the target category) **(COMMENT 6)** and/or (all those who, through their actions, functions) (or family relationship) **(COMMENT 7)**, are acting on behalf of, acting for the benefit of, providing support to or doing business with the (target), as defined by the Committee **(COMMENT 8)** created by OP 5;

Nothing in this paragraph shall oblige a State to refuse entry into or require the departure from its territories of its own nationals **(COMMENT 9)**;

OP 2

Calls upon international (and regional) organizations, including their subsidiaries and specialized agencies, to act strictly in conformity with this Resolution **(COMMENT 10)**;

OP 3

Decides that the (measures in the) present resolution come(s) into force on XX Eastern Standard Time **(COMMENT 11; COMMENT 12)**;

OP 4

Decides that travel by a targeted person can be allowed for religious duties and, exceptionally, for essential humanitarian reasons or to resolve the problem that necessitated the imposition of sanctions, after approval by the Committee established by OP 5 (**COMMENT 13**);

OP 5

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) to seek and to receive from all States, from international organizations and from other (relevant, reliable) sources (**COMMENT 14**) further information regarding the persons to whom the measures should apply;

(b) to establish, review (**COMMENT 15**), and keep up-to-date (**COMMENT 16**) the list of persons to whom the measures imposed by OP 1 apply;

(c) to publicly disseminate and make available to all States and international organizations information it considers relevant through appropriate media including through the improved use of information technology (**COMMENT 17**);

(d) to recommend to States and international organizations such steps as may be necessary to facilitate the implementation of the measures imposed by OP 1 (**COMMENT 18**);

(e) to decide upon requests for exemptions and exceptions on the grounds of risk of grave violation of human rights, humanitarian need, religious obligations, or political and diplomatic efforts to achieve the objectives set out in paragraph XX and the maintenance of peace and security (**COMMENT 19**);

(f) to seek from all States further information regarding the legal, administrative and practical actions taken by them with a view to effectively implementing the measures imposed by OP 1 and thereafter to request from them whatever further information it may consider necessary;

(g) to examine the reports submitted pursuant to OP 7;

(h) to consider information brought to its attention by States and other sources (**COMMENT 20**) concerning possible and actual violations of the measures imposed by OP 1 (and to recommend appropriate measures in response thereto) (**COMMENT 21**);

(i) to make periodic reports to the Security Council on information submitted to it regarding alleged or actual violations of the measure imposed by OP 1, identifying, where possible, persons or entities, reported to be engaged in such violations;

(j) to keep the States and interested parties periodically updated about its workings, where appropriate and without compromising the effectiveness of its work (**COMMENT 22**);

OP 6

Requests the Secretary-General to provide all necessary assistance to the Committee established by OP 5 and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 23**);

OP 7

Calls upon all States and international organizations to implement the provisions of this resolution notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted (**COMMENT 24**) prior to the date of adoption of (the coming into effect of the measures contained in) this resolution (**COMMENT 25**);

Calls upon all States and international organizations to cooperate fully with the Committee established by OP 5, including supplying such information as may be required by the Committee;

Requests (**COMMENT 26**) all States to report in detail to the Secretary General within 30 days of the date of adoption of this resolution on the specific legal, administrative and practical steps (**COMMENT 27**) they have taken to give effect to the measures imposed by OP 1;

Requests States, United Nations bodies and other organizations and interested parties to report information on possible and actual violations of the measures imposed by OP 1 to the Committee established by OP 5;

Requests States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed and to impose dissuasive, proportional and effective measures, including appropriate penalties (**COMMENT 28**);

OP 8

Decides that the impact of the measures imposed by OP 1 will be reviewed after (determined time span), and then every XX period thereafter (**COMMENT 29**);

OP 9

Decides that

Option 1: the measures imposed by OP 1 are established for (determined time span) and that, at the end of this period, the Security Council will decide whether the (targets) have complied with paragraph(s) XX above and, accordingly, whether to suspend/terminate these measures;

Option 2: the measures imposed by OP 1 are established for an initial period of (determined time span), and affirms that, at the end of this period, the Security Council will review (the situation) in order to decide whether to suspend/extend these measures for a further period and, if necessary, to modify them or adopt further measures **(COMMENT 30)**;

OP 10

Decides that

Option 1: the measures imposed by OP 1 shall be terminated immediately if the Secretary-General reports that (compliance with the demands/fulfillment of the objectives set out) has been reached;

Option 2: the measures imposed by OP 1 shall be terminated immediately if the Secretary-General reports that (compliance) has been reached, and if the Security Council approves the report of the Secretary-General **(COMMENT 31)**.

4. MODEL SECURITY COUNCIL RESOLUTION ON AVIATION BANS, WITH COMMENTARY

Expert Working Group on Travel and Aviation Sanctions

Chair: Ambassador Tono Eitel

Rapporteur: Michael Brzoska, *Bonn International Center for Conversion*, Bonn

4.1. Introduction to aviation bans

4.1.1. Aviation bans as targeted sanctions

Aviation bans are more problematic than travel bans with respect both to targeting and possible design. The Expert Working Group discussed the extent to which aviation bans are targeted sanctions. Differences emerged in the course of this discussion about what makes sanctions ‘targeted’. One view was that use of the term should be reserved for sanctions which directly aim at a targeted elite and avoid ‘pain’ to those not responsible for the sanctioned behavior. Another view favored a broader use of ‘targeted sanctions’. These included bans on select activities (sometimes called ‘partial’ sanctions) as long as their goal was to influence the behavior of decision-makers. The Expert Working Group understood ‘targeted’ in the second, wider sense.

Because of their multiple effects, aviation bans present particular difficulties, but also opportunities with respect to targeting. The imposition of an aviation ban and the decision on the type of aviation ban need to follow an analysis of the full scope of likely effects, as outlined in the introduction to the previous section. It should, for instance, be known how various types of aircraft are used, and by whom, and what alternatives exist. For instance, targeting a national airline can affect travel by non-elites more than elites in cases where the domestic airline offers predominantly inexpensive flights, while the upper classes use foreign airlines.

There has been a steady increase in the practice of aircraft leasing in international air transport—whereby an air carrier rents (rather than purchases) an aircraft from a third party carrier. Aircraft leasing in various forms has spread to all regions of the world. As a result aircraft owners may have little direct control over how the aircraft is used, especially in cases of sub-leasing. This should be taken into account in cases where action is being contemplated and where aircraft which violate sanctions come under the control of Member States.

4.1.2. Effects of an aviation ban

Aviation bans have a primary effect on air transport and secondary effects on assets. Depending on the type of aviation ban, a ban on air transport may predominantly affect air travel or primarily disrupt air cargo transport.

The presumption behind an aviation ban as a travel-related sanction is that elites fly regularly while the average population does not. Where this is not so, as was possibly the case in Sudan in 1996, an aviation ban may not be a targeted sanction. In any case, aviation bans affect a wider section of the population than just the elite. They are therefore less targeted than travel bans against named targets, or small groups of targets. They can have humanitarian side effects in cases where food and medicine are regularly flown into a targeted country. On the other hand, they are generally easier to implement. In some cases they can be an interim measure, or a substitute for sanctions which are more directly targeted against named targets or small groups of targets.

Banning air cargo transport in addition to passenger travel can reduce trade, especially in product categories for which high-speed transport is important. The aviation ban can then effectively assume the character of a trade sanction. Air transport bans can help the implementation of other sanctions, such as arms embargoes, where a significant part of sanction busting is carried out by air.

In addition to these transport-related effects, aviation bans can reduce the value of the assets affected and lower the income of the owners of these assets (airlines in targeted states and those flying to targeted states, governments if they own air assets, and so forth). In some respects, aviation bans can thus have the effect of limited financial sanctions.

Another important aspect is the symbolic value that is often attached to aviation, especially to national 'flag' carriers. Aviation bans can have the political objective of denying a targeted state the possibility of showing its 'flag' on the airfields of other countries.

Aviation bans, like travel bans, are generally not much more than a nuisance for targeted elites. They usually do not have disproportionate side effects for the population at large. Targets are able to lessen the effects of the sanctions by travelling in other ways. The effects on assets can often also be circumvented, for instance, by leasing aircraft to non-targeted, foreign owners. In judging whether aviation bans make sense, it is important to be clear how much of a nuisance the various effects will be to the targeted elites.

A further issue related to aviation bans is that of overflight over targeted countries. Member states generally have an interest in allowing non-targeted airlines to continue to fly over targeted countries. Where popular air routes are affected, this interest will be strong. While the arrangement of payments facilitated the continuation of overflights in the case of the aviation ban against the Taliban, in other cases, such as Iraq and Libya, overflights were no longer possible and airlines had to fly longer routes.

The mixture of travel-related, trade-related, asset-related and political-symbolic effects presents opportunities for shaping an aviation ban but also presents difficulties in assessing the likely effects in advance.

4.1.3. International versus national aviation bans

Aviation bans can be directed against international as well as national air travel. Banning domestic aviation, however, may be less of a targeted measure than banning international air travel, in cases where flying within the country is common while international travel is restricted to elites. In the long term, a domestic air travel ban can have the effect of a no-fly zone. National aviation is also more difficult to restrict than international aviation. While it is directly in the power of states other than the targeted state to implement international air sanctions, it is much more difficult to try to restrict air travel within a target country. (Targeted states are, in theory, obliged to implement sanctions just like any other state, and thus would have to ban internal flights of the type specified by the resolution, but for practical purposes it can be assumed that they will not do so.)

Other measures could be effective if the Security Council nevertheless still wanted to influence national aviation. One such measure would be to deny the target spare parts and servicing facilities for its aircraft, fuel, or even equipment for the operation of airfields and air traffic control. These steps, however, could have undesired implications for air safety, and for humanitarian activities requiring airfields and a minimum of air traffic control. Because of the wider and less predictable effects of a domestic air travel ban, it was generally considered not to be a worthwhile option except in very particular circumstances, for instance, when the targeted state controlled transport aircraft which were significantly involved in sanctions busting.

4.1.4. Forms of aviation bans

Aviation bans can be directed against various types of flights and aircraft. The categories listed here range from very broad to more narrow. Obviously, the effects of bans, including possible unwanted side effects on non-targeted persons and entities, generally become stronger as the ban gets broader. Important categories include bans against:

Option 1: All aircraft. This includes aircraft owned by the target government (or group) and aircraft used for private travel in the targeted state, but also aircraft from non-targeted states. It includes passenger aircraft, transport aircraft, military aircraft and small private planes. This type of aviation ban will have the full range of described effects, including effects on elite and general travel, trade restrictions and asset degradation. In addition, it can be a supportive measure for other forms of sanctions, for instance, for an arms embargo when arms are illegally transported by air.

Option 2: Aircraft owned by, or operated for, or registered by targeted government (or by group). This would include all types of military aircraft (including transport aircraft), VIP aircraft and government airlines. The rationales for a ban on government aircraft are first that elites predominantly travel by VIP or military transport aircraft owned by, or operated for, the targeted state (or group), and second that such a ban would deny income which a government airline may bring the targeted government.

Option 3: Passenger aircraft. This option is a ban on international passenger travel by all airlines and types of aircraft. It lends itself particularly well to cases where elites

regularly travel by air, while the general population does not. This type of sanction could be implemented without drafting lists of designated aircraft.

Option 4: Aircraft of flag carrier of targeted government (or group). Another option is to target government/group-owned or -operated airlines, or a designated carrier of the target government/group. Unlike option 3, this would not affect third country carriers, so their flights could continue, if permitted to do so by the targeted state. This type of sanction will affect revenues of the targeted government/group. In addition, it can affect travel by elites—if they prefer national airlines or if no other airline is operating to and from the targeted territory (as in the case of Security Council Resolution 1267/1999 on Afghanistan). Denying flights by a national flag carrier also has some symbolic effect.

4.1.5. Relation to text on travel ban

Text and comments from the section on travel bans which are also relevant to an aviation ban are reproduced in this section in order to facilitate the use of this text.

4.1.6. Structure of model Security Council Resolution

Security Council Resolutions typically consist of preambulatory paragraphs, operative paragraphs and exhortative paragraphs.

4.2. Preamble on Security Council resolution

The Expert Working Group recommends that the members of the Security Council, in their deliberations, consider:

- what they want to achieve, i.e. what the objective is or the objectives are;
- what sort of sanction(s) might help to achieve this object;
- under what conditions certain types of sanctions are likely to be effective;
- whether or to what degree the specific contextual characteristics of the intended target (its political interests, its vulnerabilities, its possible options for avoiding the sanctions, the practicalities of implementation, etc.) meet these conditions; and
- what the potential impact of the envisaged sanctions on the target country and on other countries might be (with reference to Article 50 of the Charter).

The Expert Working Group recommends that the preambulatory paragraphs include a clear reference to ‘behavior/practices/policies’ that are considered unacceptable and that they mention the objective of the sanctions with reference to what is objectionable.

The preamble will end with a statement referring to the source of the Security Council's authority:

The Security Council,

...

Determining that (the situation) constitutes a threat to international **(COMMENT 1)** peace and security;

Acting under Chapter VII of the Charter of the United Nations,

COMMENT 1: The Expert Working Group recommends that the reference remains to “international peace and security” which has been the understanding for more than 50 years. It does not recommend repeating the precedent of “regional peace and security” as in Resolution 1298 on Ethiopia and Eritrea.

4.3. The operative paragraphs

4.3.1. *The aviation ban*

OP 1

Decides that all States shall take all measures to deny permission to any aircraft **(COMMENT 2)**

Option 1: to take off from, land in, or overfly their territory if it is destined to land in, or has taken off from the territory of (target state);

Option 2: to take off from, land in, or overfly their territory if that aircraft is registered in (target state) or owned, leased, controlled by or operated on behalf of the (target) authorities or airlines registered in (target state) **(COMMENT 3)**;

Option 3: used for passenger transport to take off from, land in, or overfly their territory if it is destined to land in, or has taken off from the territory of (target);

Option 4: to take off from, land in, or overfly their territory if that aircraft is owned, leased, controlled by or operated on behalf of the (target) airline;

COMMENT 2: The options in the text of the resolution correspond to the options discussed under 3.1.4 above.

COMMENT 3: The designation of aircraft (registration numbers, type, etc.) may be delegated to the Sanctions Committee.

OP 2

Decides that all States shall take all measures to **(COMMENT 4)**

Option 1: prohibit the sale or provision, directly and indirectly, of goods and services destined for the operation of aircraft falling under the provisions of paragraph XX to (target state, or name of national airline etc.);

Option 2: (a) prohibit, by their nationals or from their territory, the entering into or renewal of arrangements for:

(i) the making available, for operation within (target state), of any aircraft or aircraft components, or

(ii) the provision of engineering or maintenance servicing of any aircraft or aircraft components within (target state);

(b) prohibit, by their nationals or from their territory, the supply of any materials destined for the construction, improvement or maintenance of (target state) civilian or military airfields and associated facilities and equipment, or of any engineering or other services or components destined for the maintenance of any (target state) civilian or military airfields and associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control;

(c) prohibit, by their nationals or from their territory, any provision of advice, assistance, or training to (target state, airline, etc.) pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within (target state);

(d) prohibit, by their nationals or from their territory, any renewal of any direct insurance for (target state, airline, etc.) airlines;

COMMENT 4: The Expert Working Group weighed up both the benefits and negative effects of adding further measures to strengthen flight bans. Denials of aircraft parts, servicing (in the case of countries without an adequate national servicing base), insurance, and aircraft equipment are examples of additional measures to impair flights. Such measures will predominantly affect national aviation (see also the general discussion under 4.1.3. above). Denial of parts and servicing speeds the process of asset degradation which can be a side effect of aviation bans. Some of these measures, such as denial of insurance, can also be useful if international flight bans are not implemented properly by member states.

In cases where certain aircraft, or types of aircraft, are predominantly used by elites, a case can be made for trying to ground those particular aircraft using a ban on spare parts and services for those aircraft. However, implementation of such restrictions is difficult, and targeted elites may simply shift to other aircraft.

The Expert Working Group discussed two possibilities of formulation. One option is to mention only the major categories, the other to provide a detailed list of such services, as was provided in Security Council Resolution 883, paragraph 6 (Libya). The first option reduces the danger of loopholes and oversights, while the second option is more transparent and instructive. For both options, it would be useful to foresee exceptions to be decided by the Sanctions Committee, such as the need to keep airfields open and air traffic control operational for humanitarian flights.

OP 3

Further decides (**COMMENT 5**) that all States shall take all necessary measures to:

(a) require the immediate and complete closure of all (target state, national airline, etc.) offices within their territories;

(b) prohibit any commercial transactions with (target state, national airline, etc.) by their nationals or from their territory, including the honoring or endorsement of any tickets or other documents issued by (target state, national airline, etc.);

COMMENT 5: The Expert Working Group deemed that an additional operative paragraph may provide additional 'bite' to aviation sanctions under special circumstances. The assumption here is that closures of offices makes operation of airlines in violation of UN sanctions more difficult. The formulation is taken from paragraph 6 of Security Council Resolution 883 on Libya.

OP 4

Calls upon international (and regional) organizations, including their subsidiaries and specialized agencies, to act strictly in conformity with this Resolution (**COMMENT 6**);

COMMENT 6: There are places, such as present day Kosovo or East Timor, which are effectively administered by an international organization, which would then be expected to implement the travel bans.

As per article 48 paragraph b of the Charter, the Security Council can only 'decide' for the States which are bound by its resolutions. Although the Security Council cannot directly 'decide' for other international organizations, these are expected to act in conformity with the Resolution and to take steps to implement it within their respective competencies. Alternative wordings could be:

- a. '*Calls upon* all States and international and regional organizations' which has the advantage of giving international and regional organizations an attention similar to that of States, but has the drawback of using the weaker wording of 'calls upon' rather than 'decides'. The Expert Working Group recommends the use of 'decides'.
- b. '*Decides* that all States, and *calls upon*organizations', which has the stronger 'decides' but unintentionally may convey the impression that there are different degrees of obligation; and
- c. '*Calls upon* international (and regional) organizations' in a separate paragraph, as shown in this reference text.

References to relevant international or regional organizations, where appropriate, may be made in the preamble prior to the operative paragraphs and in the exhortative paragraphs following them (see Resolution 1298 on Eritrea and Ethiopia).

OP 5

Decides that the (measures in the) present resolution come(s) into force on XX Eastern Standard Time (**COMMENT 7; COMMENT 8**)

COMMENT 7: The Expert Working Group holds that the implicit understanding should be that a Security Council Resolution enters into effect once it is adopted. An immediate entry into force best maintains the political momentum and has

most political impact. Putting a delayed date for the entry into force of the Resolution, allows loopholes to be created, and should be done only very exceptionally. Any remaining ambiguity could be removed by adding a clause to the effect that the ‘present resolution shall come into force on XX Eastern Standard Time’.

An additional consideration for a time line in aviation bans is to allow all targeted aircraft to return to the targeted country to avoid issues such as disputes over the payment of costs for grounded aircraft.

COMMENT 8: In the case of options 2 and 4 in OP 1, the entities requested to implement the sanctions decided by a Resolution may be uncertain whether they need to wait until a Sanctions Committee has been constituted and a list of targeted aircraft issued. The Expert Working Group holds that States do not need to await the constitution of the Sanctions Committee and its issuing of a list of targeted aircraft. They can revoke licenses and collect information on aircraft on the basis of their own legislation.

OP 6

Decides that flights falling under the measures imposed by OP 1–3 can exceptionally be approved by the Sanctions Committee for religious duties, essential humanitarian reasons, or to resolve the problem that necessitated the imposition of sanctions (**COMMENT 9**);

COMMENT 9: The Expert Working Group saw the option of including this paragraph because it signals the Security Council’s awareness that exemptions might be needed, and also makes a policy reference to the Sanctions Committee, which is an executive body. The grounds for exemption will then be repeated in the paragraphs referring to the Sanctions Committee. On the other hand, one could decide not to include this paragraph, on the grounds that providing for possible exemptions early on in the Resolution might give the wrong signal. (The Expert Working group defined as ‘exceptions’ cases that require prior approval by the Sanctions Committee; while ‘exemptions’ are stated as such in the Resolution and therefore do not require prior Sanctions Committee approval in each case.)

Aviation bans could foresee further exceptions if additional measures are imposed that will impair the maintenance of aircraft, airfields and air traffic control, as in the text drawn from Security Council Resolution 883 (1993) on Libya. The operation of humanitarian flights, for instance may depend on keeping airfields and air traffic control operational. The exceptions in this paragraph become practically impossible if flights authorized by the Sanctions Committee cannot be undertaken from the territory of the targeted state because of poorly maintained airfields and air traffic control systems. It may also be in the interest of the international aviation community that air traffic control and airfields are intact so that it is safe for international aviation to fly over the targeted state.

Despite these considerations, however, general exemptions for technical equipment for airfields and air traffic control do not seem warranted because much of this equipment could be used to keep targeted aircraft in operation.

The Sanctions Committee is also empowered to deal with situations where aircraft unintentionally land in the targeted state, for instance because of a technical problem, emergency, or navigational error. If such a provision were missing, aircraft that otherwise have no relation to the target country would have to remain in the target country. This would run counter to the intentions of the sanctions to hurt only the targeted state. The Expert Working Group felt that no specific mention of such cases was required in the resolution.

4.3.2. *The Sanctions Committee*

OP 7

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) to seek and to receive from all States, from international organizations and from other (relevant, reliable) sources (**COMMENT 10**) further information regarding the (aircraft or airlines) to which the measures imposed by OP 1–3 should apply;

(b) to establish, review and keep up-to-date the list of (aircraft/airlines/assets) to which the measures imposed by OP 1 apply (**COMMENT 11**);

(c) to publicly disseminate and make available to all States and international organizations information it considers relevant through appropriate media including through the improved use of information technology (**COMMENT 12**);

(d) to recommend to States and international organizations such steps as may be necessary to facilitate the implementation of the measures imposed by OP 1–3 (**COMMENT 13**);

(e) to decide upon requests for exemptions and exceptions on the grounds of risk of grave violation of human rights, humanitarian need, religious obligations, or political and diplomatic efforts to achieve the objectives set out in OP 1–3 and the maintenance of peace and security (**COMMENT 14**);

(f) to seek from all States further information regarding the legal, administrative and practical actions taken (**COMMENT 15**) by them with a view to effectively implementing the measures imposed under OP 1–3 and thereafter to request from them whatever further information it may consider necessary;

(g) to examine the reports submitted pursuant to OP 9;

(h) to consider information brought to its attention by States and other sources concerning possible and actual violations of the measures imposed by OP 1–3 (and to recommend appropriate measures in response thereto) (**COMMENT 16**);

(i) to make periodic reports to the Security Council on information submitted to it regarding alleged or actual violations of the measure imposed by OP 1–3, identifying, where possible, (aircraft, airlines or entities), reported to be engaged in such violations;

(j) to keep the states and interested parties periodically updated about its workings where appropriate and without compromising the effectiveness of its work
(COMMENT 17);

(k) to promote contacts with relevant international organizations and relevant commercial actors and their organizations in order to facilitate the implementation of the measures imposed by OP 1–3;

COMMENT 10: The Expert Working Group recommends that the Sanctions Committee be able to receive information from sources other than States and international organizations. The recommended choice of words is ‘other sources’ rather than ‘reliable and relevant sources’. Flexibility here is desirable. In practice there may be an implicit ‘weighing’ of the source, with information from States given most weight, followed by that presented by international organizations, mass media, NGOs, etc. The information should be as detailed as possible. What is ‘relevant’ and ‘reliable’ can be debated within the Sanctions Committee, which screens and vets the submissions. Ideally, the same names should be put forward by different sources to avoid the impression of political bias.

The Expert Working Group discussed whether the Resolution’s wording should be ‘other public sources’ on the grounds that the targeted individual has the right to know the origin of the information that leads him/her to be included on the list. The Expert Working Group did not feel this to be necessary.

COMMENT 11: The provision to maintain lists of targeted entities may be useful to facilitate the implementation of an aviation sanction, though its necessity may depend on the circumstances. A very straightforward ban, for instance against one state-owned airline, may need less supporting information than one covering a wide range of aircraft.

A related question is whether an entity affected by the list has the right to contest its aircraft/airline/asset being put on the list and therefore the right to request being taken off the list.

COMMENT 12: To help the States and international organizations implement the aviation ban, it is essential that the Sanctions Committee collects and disseminates as much information as possible about the practical consequences of the measures imposed. The Expert Working Group recommends wider use of the Internet. All relevant information could be made available on a website.

COMMENT 13: The Sanctions Committee should seek to establish a clear working relationship with the States and other implementing entities. To this effect it can make public its internal rules of procedure; a guideline for States and international organizations on how they can relate to and work with the Sanctions Committee, as well as advice on how to implement the Security Council Resolution. To this latter end, the Sanctions Committee should

encourage States and international organizations to make as much relevant and appropriate information as possible available to their respective administrations and other bodies charged with the regulation of air traffic, as well as the aviation industry.

COMMENT 14: Unlike travel bans, aviation bans can have effects on non-targeted individuals. Therefore *a priori* ‘exemptions’ might be foreseen or granted in addition to ‘exceptions’. ‘Exceptions’ are cases that require prior approval by the Sanctions Committee; ‘exemptions’ are stated as such in the Resolution and therefore do not require Sanctions Committee approval. The difficulty of defining what constitutes a religious duty (only what is prescribed by religious authority or a ‘duty’ in one’s individual conscience?) may require that this be stated as an ‘exemption’.

Targeted entities may request an ‘exception’ to the ban for specific occasions. The decision is up to the Sanctions Committee and its Chair, ideally to be made within 48 hours. It is recommended that exceptions be considered only:

- for certain political and diplomatic efforts. This would not extend to all types of ‘official’ or ‘political’ travel, but only to travel related to the search for a solution to the problem that caused the sanctions to be imposed in the first place, most notably peace talks;
- to avoid the risk of a grave violation of human rights;
- for essential humanitarian needs, such as urgently needed medical treatment that can only be provided by flying an individual abroad.

One issue is who should submit the request for the exception. The requests would have to come from the targeted country and/or the countries that the banned aircraft will have to take off and land in, as these would otherwise be violating the travel ban. The Expert Working Group felt that requests could come from non-state actors, such as humanitarian organizations, bearing in mind that the Sanctions Committee decides and that ultimately a State will have to accept, under its national legislation, that a targeted aircraft can take off from or land on its territory.

The Expert Working Group discussed issues related to overflights over the territory of targeted states, including the possible retaliatory withdrawal of overflight rights over the territory of targeted states. It noted that the following paragraph (6 (f)) was added to the lists of tasks of the Sanctions Committee in resolution 1267 (1999) on Afghanistan, which imposes an aviation ban and an asset freeze:

To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

COMMENT 15: The Expert Working Group recommends that the Sanctions Committee develops recommendations for the States on what sort of information it wants to receive, highlighting specific categories of legal, administrative and practical measures.

Although they have no duty to report, such recommendations can also be forwarded to international organizations that have been called upon to help implement the sanctions.

The Expert Working Group recommends that the Sanctions Committee prioritizes States whose reports it particularly wants to follow up, such as neighboring countries and countries that maintain close political and economic ties with the target state.

For sanctions in general, the Sanctions Committee is advised to be pro-active. The Chairperson and other members can, for example, carry out field visits to get a first-hand understanding of the measures taken and the constraints encountered, and to search, together with key States, for practical ways to overcome such constraints.

COMMENT 16: The Expert Working Group recommends the use of ‘possible and actual violations’, which implies that States and international organizations are obliged to report on their own known violations.

The recommendation is to accept reports from ‘other’ sources, on the grounds that States may be unwilling to report on their own violations or those of their neighbors with whom they want to maintain good relationships. This does not give undue influence to ‘other sources’ because the Sanctions Committee does not itself judge violations, but only forwards information on possible violations to States for verification and possible action. Any violation would be addressed within the context of national legislation, with a State’s own legal requirements and allowances concerning the burden of proof and right to defense.

The wording in brackets to the effect that the Sanctions Committee would also make recommendations is given as an option because it could be argued that it should be left to the Sanctions Committee to decide whether or not it wants to make recommendations.

COMMENT 17: The Expert Working Group strongly recommends that the Sanctions Committee provides feedback to States and other entities about the follow-up to information provided by States and other entities, in order to maintain momentum and motivation to provide information.

The Expert Working Group also recommends that the Sanctions Committees be more transparent about their deliberations and progress, both in general and with respect to aviation bans. It is recognized that it is not always possible to answer every question and letter, but verbal briefings after Sanctions Committee sessions and periodic reports in the public domain are considered feasible.

4.3.3. Message to the Secretary-General

OP 8

Requests the Secretary-General to provide all necessary assistance to the Committee established by OP 7 and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 18**);

COMMENT 18: This paragraph appears in Resolution 1298. The Expert Working Group recommends that it be regularly included.

4.4. Exhortative paragraphs

OP 9

Calls upon all States and international organizations to implement the provisions of this resolution notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted (**COMMENT 19**) prior to the date of adoption of (the coming into effect of the measures contained in) this resolution (**COMMENT 20**);

Calls upon all States and international organizations to cooperate fully with the Committee established by OP 7, including supplying such information as may be required by the Committee;

Requests (**COMMENT 21**) all States to report in detail to the Secretary General within 30 days of the date of adoption of this resolution on the specific legal, administrative and practical steps (**COMMENT 22**) they have taken to give effect to the measures imposed by OP 1–3;

Requests States, United Nations bodies and other organizations and interested parties to report information on possible and actual violations of the measures imposed by OP 1–3 to the Committee established by OP 7;

Requests States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed and to impose dissuasive, proportional and effective measures (**COMMENT 23**), including appropriate penalties (**COMMENT 24**);

COMMENT 19: An explicit statement that the Security Council Resolution overrides any existing obligations is recommended to clarify for States and international organizations that the Resolution overrides prior agreements.

COMMENT 20: The Resolution comes into force on the date when it is adopted, unless stated differently in OP 5, but it is conceivable that the target is given a ‘period of grace’, and that the measures proposed come into effect later. In the latter case, prior agreements would be cancelled when the measures came into effect.

COMMENT 21: Ideally a Resolution should be mandatory, using wording such as ‘decides’. But because of difficulties with some countries, the terms ‘calls upon’ or ‘requests’ are preferable. Security Council Resolutions are not formally binding decisions for international organizations. Native English speakers in the

Expert Working Group considered ‘calls upon’ to be stronger than ‘requests’, but the opposite was true of the non-native English speakers, who felt ‘requests’ to be stronger. The Expert Working Group advises against the use of ‘urges’, which is held to have a connotation that implementation is ‘optional’.

COMMENT 22: In order to get States to provide more specific reports, the Resolution should indicate the major reporting areas. The Sanctions Committee can use a questionnaire to provide States with more guidance on the type of information it seeks. This can include questions about executive orders, the national legislation invoked, which Minister has responsibility and which senior official oversees implementation, what administrative procedures are established, what problems are encountered with the identification of the targeted aircraft/airlines/assets etc.

COMMENT 23: The Expert Working Group discussed at length what States should do in cases where aircraft falling under the provisions of the ban are, or come, under their control. To strengthen implementation, it makes sense to keep aircraft that have been used in violation of the sanctions, and are likely to be used again, on the ground. It needs to be clear in such cases who is to pay parking and other costs, or how those providing space for the aircraft can have their costs reimbursed. Paragraph 25 of Security Council Resolution 820 (1993) on the Former Yugoslavia, for instance, contains a provision on how to deal with targeted aircraft which come under the control of other States, ranging from detention, to impounding and forfeiture. Paragraph 26 authorizes the recovery of the costs of these measures. Other relevant resolutions authorize detention, but do not mention impounding or forfeiture.

The Expert Working Group felt that there was not sufficient precedent to generally recommend detention, impounding or forfeiture in cases where aircraft which had violated sanctions come under the control of Member States. Such details might better be left to national implementation, as part of the measures to deal with violations.

COMMENT 24: This clause does not refer to secondary sanctions but to national enforcement.

4.5. Periodic review and suspension/termination

OP 10

Decides that the impact of the measures imposed by OP 1–3 will be reviewed after (determined time span), and then every XX period thereafter (**COMMENT 25**);

COMMENT 25: The Expert Working Group noted the introduction of a clause with regard to a periodic review in Resolution 1306 (Sierra Leone). It supports this innovation and recommends that such clauses be maintained in future resolutions. The Expert Working Group recommends that the nature of the sanctions and/or their implementation be reconsidered when there is unacceptable or disproportionate damage to the interests of non-targeted persons and entities, but that sanctions as such are only ended if and when the

conditions for their implementation have been met. This therefore requires that the Security Council clearly indicates to the parties targeted the reasons why the measures have been imposed and the steps they need to take to obtain the termination of the sanctions.

The Expert Working Group held that a periodic review of the impact of sanctions should not be an option, but standard practice.

OP 11

Decides that

Option 1: the measures imposed by OP 1–3 are established for (determined time span) and that, at the end of this period, the Security Council will decide whether the (targets) have complied with paragraph(s) XX above and, accordingly, whether to suspend/terminate these measures;

Option 2: the measures imposed by OP 1–3 are established for an initial period of (determined time span), and affirms that, at the end of this period, the Security Council will review (the situation) in order to decide whether to suspend/extend these measures for a further period and, if necessary, to modify them or adopt further measures (**COMMENT 26**);

COMMENT 26: The Expert Working Group advises caution about the mention in the Security Council Resolution of specific time limits on the sanctions, the continuation of which would then depend on the outcome of a review. The efficacy of such an approach still needs to be tested. It introduces the risk that the target will not change its behavior, but will simply await the review in the hope that the renewed debate among the members of the Security Council will go against a continuation of the sanctions. The general observation offered by the Expert Working Group was that an automatic termination may be more relevant for sanctions with the potential of wider undesired and unintended humanitarian and other effects, such as aviation bans, than when sanctions are well targeted against ruling elites, such as in the case of bans on individuals. Where a decision is made to ‘suspend’ the sanctions, the continuation of that suspension or the re-activation of the sanctions should become the object of regular review.

OP 12

Decides that

Option 1: the measures imposed by OP 1–3 shall be terminated immediately if the Secretary-General reports that (compliance with the demands/fulfillment of the objectives set out) has been reached;

Option 2: the measures imposed by OP 1–3 shall be terminated immediately if the Secretary-General reports that (compliance) has been reached, and if the Security Council approves the report of the Secretary-General (**COMMENT 27**).

COMMENT 27: The Expert Working Group notes the introduction of a clause with regard to the ending of the sanctions in Resolution 1298 (Ethiopia/Eritrea).

The question here is: who decides when to end sanctions? Sanctions are a political decision by the Security Council, but also a measure imposed to make the target meet certain conditions. The ending of a sanction remains a political decision, but should also be based on an objective assessment of whether the target has met those conditions. The Expert Working Group recommends that the Secretary-General be tasked with reporting whether the conditions have been met, as the Secretary-General can be perceived to be less 'politically driven' than the Security Council. As in option 2, a positive report from the Secretary-General would not automatically lead to the end of the sanctions; the ultimate decision would still remain with the Security Council.

Annex: Full text of model Security Council resolution on aviation bans

The Security Council,

...

Determining that (the situation) constitutes a threat to international **(COMMENT 1)** peace and security;

Acting under Chapter VII of the Charter of the United Nations,

OP 1

Decides that all States shall take all measures to deny permission to any aircraft **(COMMENT 2)**

Option 1: to take off from, land in, or overfly their territory if it is destined to land in, or has taken off from the territory of (target state);

Option 2: to take off from, land in, or overfly their territory if that aircraft is registered in (target state) or owned, leased, controlled by or operated on behalf of the (target) authorities or airlines registered in (target state) **(COMMENT 3)**;

Option 3: used for passenger transport to take off from, land in, or overfly their territory if it is destined to land in, or has taken off from the territory of (target);

Option 4: to take off from, land in, or overfly their territory if that aircraft is owned, leased, controlled by or operated on behalf of the (target) airline;

OP 2

Decides that all States shall take all measures to **(COMMENT 4)**

Option 1: prohibit the sale or provision, directly and indirectly, of goods and services destined for the operation of aircraft falling under the provisions of paragraph XX to (target state, or name of national airline etc.);

Option 2: (a) prohibit, by their nationals or from their territory, the entering into or renewal of arrangements for:

(i) the making available, for operation within (target state), of any aircraft or aircraft components, or

(ii) the provision of engineering or maintenance servicing of any aircraft or aircraft components within (target state);

(b) prohibit, by their nationals or from their territory, the supply of any materials destined for the construction, improvement or maintenance of (target state) civilian or military airfields and associated facilities and equipment, or of any engineering or other services or components destined for the maintenance of any (target state) civilian or military airfields and associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control;

(c) prohibit, by their nationals or from their territory, any provision of advice, assistance, or training to (target state, airline, etc.) pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within (target state);

(d) prohibit, by their nationals or from their territory, any renewal of any direct insurance for (target state, airline, etc.) airlines;

OP 3

Further decides (**COMMENT 5**) that all States shall take all necessary measures to:

(a) require the immediate and complete closure of all (target state, national airline, etc.) offices within their territories;

(b) prohibit any commercial transactions with (target state, national airline, etc.) by their nationals or from their territory, including the honoring or endorsement of any tickets or other documents issued by (target state, national airline, etc.);

OP 4

Calls upon international (and regional) organizations, including their subsidiaries and specialized agencies, to act strictly in conformity with this Resolution (**COMMENT 6**);

OP 5

Decides that the (measures in the) present resolution come(s) into force on XX Eastern Standard Time (**COMMENT 7**; **COMMENT 8**)

OP 6

Decides that flights falling under the measures imposed by OP 1–3 can exceptionally be approved by the Sanctions Committee for religious duties, essential humanitarian reasons, or to resolve the problem that necessitated the imposition of sanctions (**COMMENT 9**);

OP 7

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) to seek and to receive from all States, from international organizations and from other (relevant, reliable) sources **(COMMENT 10)** further information regarding the (aircraft or airlines) to which the measures imposed by OP 1–3 should apply;

(b) to establish, review and keep up-to-date the list of (aircraft/airlines/assets) to which the measures imposed by OP 1–3 apply **(COMMENT 11)**;

(c) to publicly disseminate and make available to all States and international organizations information it considers relevant through appropriate media including through the improved use of information technology **(COMMENT 12)**;

(d) to recommend to States and international organizations such steps as may be necessary to facilitate the implementation of the measures imposed by OP 1–3 **(COMMENT 13)**;

(e) to decide upon requests for exemptions and exceptions on the grounds of risk of grave violation of human rights, humanitarian need, religious obligations, or political and diplomatic efforts to achieve the objectives set out in OP 1–3 and the maintenance of peace and security **(COMMENT 14)**;

(f) to seek from all States further information regarding the legal, administrative and practical actions taken **(COMMENT 15)** by them with a view to effectively implementing the measures imposed under OP 1–3 and thereafter to request from them whatever further information it may consider necessary;

(g) to examine the reports submitted pursuant to OP 9;

(h) to consider information brought to its attention by States and other sources concerning possible and actual violations of the measures imposed by OP 1–3 (and to recommend appropriate measures in response thereto) **(COMMENT 16)**;

(i) to make periodic reports to the Security Council on information submitted to it regarding alleged or actual violations of the measure imposed by OP 1–3, identifying, where possible, (aircraft, airlines, or entities), reported to be engaged in such violations;

(j) to keep the States and interested parties periodically updated about its workings where appropriate and without compromising the effectiveness of its work **(COMMENT 17)**;

(k) to promote contacts with relevant international organizations and relevant commercial actors and their organizations in order to facilitate the implementation of the measures imposed by OP 1–3;

OP 8

Requests the Secretary-General to provide all necessary assistance to the Committee established by OP 7 and to make the necessary arrangements in the Secretariat for this purpose (**COMMENT 18**);

OP 9

Calls upon all States and international organizations to implement the provisions of this resolution notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted (**COMMENT 19**) prior to the date of adoption of (the coming into effect of the measures contained in) this resolution (**COMMENT 20**);

Calls upon all States and international organizations to cooperate fully with the Committee established by OP 7, including supplying such information as may be required by the Committee;

Requests (**COMMENT 21**) all States to report in detail to the Secretary General within 30 days of the date of adoption of this resolution on the specific legal, administrative and practical steps (**COMMENT 22**) they have taken to give effect to the measures imposed by OP 1–3;

Requests States, United Nations bodies and other organizations and interested parties to report information on possible and actual violations of the measures imposed by OP 1–3 to the Committee established by OP 7;

Requests States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed and to impose dissuasive, proportional and effective measures (**COMMENT 23**), including appropriate penalties (**COMMENT 24**);

OP 10

Decides that the impact of the measures imposed by OP 1–3 will be reviewed after (determined time span), and then every XX period thereafter (**Comment 25**);

OP 11

Decides that

Option 1: the measures imposed by OP 1–3 are established for (determined time span) and that, at the end of this period, the Security Council will decide whether the (targets) have complied with paragraph(s) XX above and, accordingly, whether to suspend/terminate these measures;

Option 2: the measures imposed by OP 1–3 are established for an initial period of (determined time span), and affirms that, at the end of this period, the Security Council will review (the situation) in order to decide whether to suspend/extend these measures for a further period and, if necessary, to modify them or adopt further measures **(COMMENT 26)**;

OP 12

Decides that

Option 1: the measures imposed by OP 1–3 shall be terminated immediately if the Secretary-General reports that (compliance with the demands/fulfillment of the objectives set out) has been reached;

Option 2: the measures imposed by OP 1–3 shall be terminated immediately if the Secretary-General reports that (compliance) has been reached, and if the Security Council approves the report of the Secretary-General **(COMMENT 27)**.

5. IMPLEMENTING TRAVEL AND AVIATION BANS

Expert Working Group on Travel and Aviation Sanctions

Chair: Ambassador Tono Eitel

Rapporteur: Koenraad Van Brabant, *Overseas Development Institute*, London

5.1. Introduction

Security Council Resolutions, imposing travel and/or aviation bans, typically want States (and international organizations) to

- prevent the entry into, departure from or transit through their territories of specified individuals or members of a specified target group, notwithstanding the existence of any rights or obligations determined prior to the Security Council Resolution;
- deny permission to specified aircraft to take off from, land in, or fly over their territories; and possibly also to prohibit the sale or provision of goods and services destined for the operation of the targeted aircraft, and/or the supply of goods and services for their air operations infrastructure, and/or the provision of advice, assistance or training to any personnel associated with the operation of the targeted aircraft;
- to report to the Secretary General on the specific, legal, administrative and practical steps taken to give effect to the measures, to report on possible or actual violations, and to institute proceedings against persons and entities that violate the measures imposed.

The first part of this section of the report deals with a framework law to facilitate national implementation. It builds on, and slightly expands, the work on a Model or Framework Law, including extensive commentary, drafted during the Interlaken Process (Second Interlaken Seminar Report, March 1999, pp. 59–77, also available at www.smartsanctions.ch). The additions to the text are underlined for easy identification. They set out to extend the scope of the earlier model text, particularly with respect to sanctions other than financial sanctions and to administrative entities other than Member States. The commentary contained in this report should be read as a supplement to the commentary contained in the report on the Interlaken Process mentioned above. The final part lists some points to which attention should be given when formulating more specific legal and administrative provisions in the framework law.

5.2. Framework law

A Security Council Resolution does not have direct applicability. In other words, it does not directly become, or override, existing national legislation. It needs to be

translated into national legislation. A framework law is a legal mechanism to facilitate that process.

The framework law discussed below is intended to be enabling legislation. Having a framework law in place makes it easier to rapidly implement **(COMMENT 1)** obligations **(COMMENT 2)** contained in a Security Council Resolution, without having to go through a parliamentary process for each Resolution. An enabling law therefore is a valid tool for all sanctions decisions, not just travel or aviation bans, or arms embargoes. The key benefit of an enabling framework law is speed. An enabling law by itself does not fill loopholes in existing national legislation, but allows the authorities to act quickly to close them.

One area of discussion remains the question of to what extent an enabling law by itself would give the authorities sufficient ground to override rights and obligations which are protected under existing national legislation. In the legal order of many states, legislation implementing a Security Council Resolution does not override constitutional provisions. There can also be dispute about whether it can override existing agreements, such as contracts, permits, or for example the legal protection of data. It may provide a legal basis for enacting restrictions, but a fuller legislative process may sometimes be required.

Implementing legislation and measures, enacted by government and/or the competent authorities, would spell out more precise administrative measures on how to give effect to the obligations assumed.

The text below is offered as a 'model' or example for states that currently have no such legal instruments. The Appendix contains the text of a Common Position which could function as an enabling law for the European Community on those matters which fall under its competence (mostly trade in goods and services, including air transport and international finance). As most Members of the European Community already have laws in place that provide for penalties in cases of violation of EC law, they would not need an enabling law for the above mentioned matters.)

COMMENT 1: Even where such legislation is in place, the national implementation of a Security Council decision may still take considerable time.

With regard to travel bans, aviation bans, arms embargoes etc., for example, the question of when certain activities become formally forbidden is somewhat ambiguous. Technically, unless stated otherwise, Security Council Resolutions come into force when they are adopted. But it may take an enacting State several days if not weeks to pass national measures to implement them. If a person or plane travels, a financial transaction is concluded, or arms are delivered between time T and time $T + x$, this is technically a violation of the sanction. Before legislation can be enacted, it might be possible to impose a travel or aviation ban as a political decision, but this would be open to legal challenge if no national legislation is in place. With regard to travel or aviation bans, the 'delay' may not be of too much concern as the enacting State may prefer to see the targeted individual or airplane leave its territory. The Expert Working Group considered the issue of the retro-active application of national provisions, but is generally

not in favor of retro-activity. That is an argument then to speedily enact Security Council decisions through national provisions.

COMMENT 2: A State may consider that only those actions are mandatory that are phrased in a Security Council Resolution as ‘decides’. Where it comes to non-mandatory actions, governments may adopt a very different attitude, as they would be held fully liable for the consequences of breaches of existing agreements.

5.2.1. Preamble options

For **civil law** systems, the following preliminary language may be appropriate:

Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations (and other States, regional legislative bodies or an international entity temporarily charged with the administration of a territory) **(COMMENT 3)** to apply such measures;

Whereas such measures may include complete or partial interruption of economic relations, and of rail, sea, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations;

Whereas the Members of the United Nations (the enacting State or administration) have (has) agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations; and

(Whereas (the Member State) is a member of the United Nations);

For **common law** systems, a Short Title might be:

An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations

Where no preamble would be required, the introduction of the law itself could be worded as follows:

Parliament has (with the approval / after consultation of (the Upper House etc.) enacted the following law:

COMMENT 3: Not all States are members of the UN, but a non-member can still choose to enact Security Council Resolutions on a voluntary basis. There are also regional bodies such as the European Union that pass legislation for their member states to implement Security Council Resolutions. The Expert Working Group held that UN administrations, such as the ones currently in existence in Kosovo and East Timor, are under the obligation to implement Security Council Resolutions, but will have to consider what legal provisions may be needed.

5.2.2. Draft framework law text**OP 1**

If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon (the enacting State) (and other regional bodies or international administrations with legislative and executive authority) **(COMMENT 3)** to apply measures to give effect to a decision taken under that Article, then (in accordance with (the State's) obligations under Article 25 of the Charter the (relevant authority) shall (may) **(COMMENT 2)** forthwith adopt such legal and administrative provisions as appear necessary or expedient to implement the Security Council decision effectively.

OP 2

The legal and administrative provisions shall apply notwithstanding rights and obligations conferred or imposed prior to, as well as after **(COMMENT 4)** the provisions coming into force, unless expressly stated otherwise; and compliance with the provisions (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense against any claim based on the above mentioned rights and obligations.

COMMENT 4: This clause is important to avoid liability of the State.

OP 3

The legal and administrative provisions made under paragraph 1 shall apply within the territories of (the State/international administration) and to all nationals of and entities incorporated in or organized under the laws of (the State), wherever located or operating, and on board of vessels or aircraft under (the State's) jurisdiction.

OP 4

Contravention or evasion **(COMMENT 5)** of the legal and administrative provisions shall be an offence, subject to penalties specified in the provisions. Such penalties shall be effective, dissuasive and proportionate **(COMMENT 6)**, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.

COMMENT 5: 'Evasion' refers to the deliberate, intentional circumvention of the law. 'Contravention' by contrast does not automatically imply intent but simply refers to a factual breach of the sanction. There is no UN law applicable to individuals (outside of the UN organization). National legislation is thus required to make evasion and contravention (and being an accomplice thereto) an offence.

COMMENT 6: In some countries a penalty can be specified by simple government order, in others it will require a legislative process. The Expert Working Group recommends that the enacting state (or other entity) in its enabling law define the range, by indicating the minimum and maximum penalty.

OP 5

Any implementing law (COMMENT 7) made in accordance with this law shall have effect notwithstanding the provisions of any other law (COMMENTS 8 AND 9).

COMMENT 7: Implementing laws are the legislation and other measures which need to follow the framework law for effective implementation of a Security Council Resolution.

COMMENT 8: The Expert Working Group debated the relative primacy of such secondary legislation in relation to existing legal rights and provisions. It concluded that an implementing law is unlikely to override provisions in the Constitution. Its primacy over other existing legislation in general is likely only to apply insofar as the rendering invalid of the provisions of any other law is necessary to pursue the objectives of the Security Council Resolution.

COMMENT 9: The enabling law has to make a point allowing governments to request and obtain information, and to direct entities to provide information to the enacting government and/or share this with other governments. This is a sensitive area as it confronts guarantees of data protection.

5.3. Implementing legislation and administrative provisions

National implementation on the basis of the framework law may occur through existing legislation and administrative provisions, or through new ones. Whether an implementing law or administrative order is chosen will vary from country to country.

Key questions to ask at the outset are:

- What do I need to do?
- Do I have the budget and other resources (**COMMENT 10**) to implement this?
- How much can I do with existing legislation and/or administrative provisions, to what extent does current legislation cover this case?

COMMENT 10: The implementation of sanctions will require financial, human and technical resources. It is important to verify whether existing resources are adequate in their quantity and quality. Implementation will also require the existence of, or access to, central databases. Examples are the ICAO register of aircraft, an inventory of nationally registered aircraft, an inventory of major producers and suppliers of spare parts and services to aircraft; the Schengen Information System, a national list of persons to whom no visa will be given etc.

The following are key points for attention if a new implementing law is needed. This does not constitute a full list, and is only meant to provide general ideas about:

- the scope (content) of the law;
- the reach of the law, and who falls under it;
- how it relates to existing law (e.g. with clauses closing remaining gaps, or indicating the conditions for the revocation or withdrawal of existing permissions);

- what penalties apply for violations;
- what exemptions or exceptions apply, and procedures on how to obtain a formal decision on these;
- what appeal procedures exist.

In the case of administrative provisions, it is relevant to include:

- guidelines for their application (**COMMENT 11**);
- details of what to do in case of violations, i.e. how to enforce the measures;
- information about who needs to report, and what sort of reporting is required.

COMMENT 11: Taking a travel ban as an example, this refers to detailed advice on what implementation means in the practice of different possible scenarios (e.g. denying entry where visa requirements do or do not exist; denying entry to someone with or without a visa; what if the individual is a double passport holder; what if an individual has a residence permit; what if an individual has recognized refugee status under the Asylum law, etc.). For an aviation ban, this need not immediately mean the cancellation of bilateral servicing agreements. It is possible, for example, to deny the route license or the operating permit.

It is also important to clearly specify:

- the authority primarily responsible for overseeing and enforcing the implementation, or, if several authorities are involved, the coordinating entity;
- who is empowered to specify the practices to be followed under different scenarios that may occur;
- the entities or subordinate authorities charged with implementation (e.g. the Central Bank, the Civil Aviation Authority, Customs and Excise, airport authorities, registered companies);
- guidelines for referring cases to the Sanctions Committee.

Finally, the legal or administrative provisions for implementation need to be widely circulated. Publication in the official ‘Gazette’ will need to be complemented by wide dissemination to both government officials as well as to private sector actors.

Appendix: Text of a European Union COMMON POSITION

defined by the Council on the basis of Article 12 of the Treaty on European Union concerning the implementation of decisions of the United Nations Security Council on the basis of Chapter VII of the Charter of the United Nations and requiring the interruption or reduction, in part or completely, of economic and/or financial relations with third countries (.../.../CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 12 thereof,

Whereas Articles 60 and 301 of the Treaty establishing the European Community enable the Community to take the necessary urgent measures on the movement of capital and on payments to or the interruption or reduction, in part or completely, of economic relations with one or more third countries, if so provided in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy;

Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be employed to give effect on its decisions, and may call upon the Members of the United Nations to apply such measures;

Whereas such measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations;

Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations;

Whereas all Member States of the European Union are Members of the United Nations;

Whereas the adoption of the present Common Position will enable the urgent and simultaneous implementation of decisions of the United Nations Security Council on the basis of Article 41 of the United Nations Charter by the European Community and its Member States;

HAS DEFINED THIS COMMON POSITION:

Article 1

The European Community and its Member States shall take all the necessary measures to implement the measures decided upon by the United Nations Security Council on the basis of Article 41 of the United Nations Charter.

Article 2

This Common Position shall take effect on

Article 3

This Common Position shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council

The President

Source: *Contributed to the Expert Working Group by Anthonius de Vries*

6. IMPLEMENTATION OF ARMS EMBARGOES

Expert Working Group on Improving the Effectiveness of Arms Embargoes ‘on the Ground’

Chair: State Secretary Hans **Dahlgren**, *Ministry for Foreign Affairs*, Stockholm, Sweden

Rapporteur: Sarah **Meek**, *International Alert*, London, UK

6.1. Introduction

Arms embargoes are one of the few ways the international community can try to prevent the purchase of weapons by parties at war. Their effectiveness relies to a great degree on the willingness and ability of Member States to implement them. This report summarizes the debates and findings of the Expert Working Group which reviewed ways and means of improving the national implementation of arms embargoes during a meeting in New York from 22–23 May 2000. The discussions during this meeting built on the group’s earlier discussions at the Expert Seminar on improving arms embargoes and travel sanctions held in Bonn, Germany from 21–23 November 1999. The draft report was presented at the Final Expert Seminar, held in Berlin from 3–5 December 2000, and its findings and recommendations discussed. The comments collected at that stage have been synthesized into this report.

6.2. Context and background

The imposition of sanctions is one of the primary peace enforcement measures available to the United Nations Security Council that does not rely on the use or threat of military force.¹ For this reason, arms embargoes are used to prevent or resolve violent conflict.² Arms embargoes may be imposed against a state (e.g. Iraq) or a non-state actor within a State (e.g. UNITA in Angola). The UN Security Council has acted most recently against Eritrea and Ethiopia, passing resolution 1298 (2000), which prohibits the sale or supply of military equipment and services to both parties to the conflict, and also against the Revolutionary United Front (RUF) and other non-state actors in Sierra Leone, by reaffirming resolution 1171 (1998) which placed an arms embargo on these organized forces in resolution 1306 (2000), prohibiting the direct or indirect import of all rough diamonds from Sierra Leone.

There has been wide discussion about the effectiveness of sanctions (economic, financial, travel and arms embargoes), and efforts have been made to improve them, making them ‘smarter’ and finding ways of reducing the collateral effects on civilians and neighboring states. Arms embargoes, while less likely to have severe collateral effects, have suffered from uneven (or sometimes almost non-existent)

¹ While regional organizations, such as the European Union, and individual States may impose arms embargoes, the Expert Working Group focussed most of its attention on arms embargoes adopted by the United Nations Security Council.

² The United Nations Charter allows for measures to be taken to restore international peace and security under Chapter VII of the Charter.

implementation, and are seen increasingly as being weak political positions that are not enforced. Improving the way Member States implement arms embargoes was identified as an important step in improving their effectiveness. Another area is the role of the United Nations. This topic is addressed in Chapter 7.

6.3. Issues

The discussions of the Expert Working Group focussed on four areas: national requirements in arms exporting states; requirements in states neighboring or proximate to the target; ways and means of making national implementation more effective; and the role of the UN and regional organizations in supporting these efforts. These discussions are summarized below. The report represents a survey of what needs to be done by states—alone and in co-operation with others—to improve the effectiveness of arms embargoes on the ground. The report identifies both legal and administrative measures that should be taken by states. It also identifies areas that may still be problematic for states or regional organizations to adopt but that are deemed necessary by the Expert Working Group to the achieve comprehensive implementation of arms embargoes. The Expert Working Group agreed that its findings were meant to suggest ways of gaining greater compatibility between types of enforcement regimes and controls, or to provide suggestions to those states which have little practical experience in embargo enforcement. The group's recommendations appear in section 4 of this report.

6.3.1. National requirements to improve the implementation of arms embargoes

States that export weapons, or are common transit destinations for arms shipments, have a special responsibility in implementing arms embargoes. These States, which often have some type of licensing regime for weapons, may not have systems in place for ensuring that weapons shipments to embargoed destinations are detected and stopped. All Member States, however, must take steps to ensure that UN arms embargoes are implemented and enforced.

The Expert Working Group identified a set of requirements that it considered essential for implementing arms embargoes nationally. These are:

1. Legislation, including required administrative guidelines and regulations, making violations of UN arms embargoes a criminal offense;
2. Intra-governmental coordination, which designates a lead department for embargo implementation;
3. Sharing of information and intelligence among government departments and between governments to identify suspect shipments, destinations, transit routes or brokers;
4. Control lists which identify the goods under embargo;
5. Ability to seize shipments that are in apparent contravention of an embargo, rather than returning the goods to their point of origin;
6. Provisions to freeze or seize assets from proceeds of illegal arms deliveries; and

7. Tracing and verification of arms shipments that are at possible risk of being diverted.

The group identified two roles for national legislation. The first is for legislation that systematizes the national implementation of the arms embargo, and the second is to establish legislation which allows for the criminal prosecution of those who breach an arms embargo. These are discussed in more detail in section 6.3.2.2. of this report.

In order to meet the requirements listed above, the group identified other steps that need to be considered by states, some of which pose considerable challenges to improving the national implementation of arms embargoes. Some of the steps identified include:

6.3.1.1. Sharing information and intelligence in public or semi-public environments

The effective enforcement of embargoes relies to a great degree on information. However, the sharing of intelligence within governments is often limited, and even more limited is the sharing of information between governments. The group discussed the inherent difficulties of information sharing. It acknowledged the various limits to full information sharing, resulting, among other factors, from national interests in the protection of sources, commercial confidentiality and the confidentiality requirements of criminal investigations.

The group identified the need for the improved exchange of information within governments, noting the example of the United Kingdom's Sanctions Enforcement Units, which have established a system for circulating embargo information, starting the process of necessary secondary legislation and identifying the relevant lead department. This was seen as a good example of how governments could improve information exchange internally. Other approaches could include the establishment of national commissions or inter-ministerial committees.

A second step identified was improving the sharing of information between governments. The group recognized that high level information is only shared between selected governments. It was suggested that there should be scope for sharing broader information among a wider group of States. The Working Group thought it was important to encourage bilateral exchanges on specific information that could result in preventing a violation, and/or prosecuting a transgressor. A further step would include identifying channels for sharing information more widely, for example through regional offices (see section 6.4.), or the exchange of information between relevant law enforcement authorities. The latter is often based on memoranda of understanding on how the information will be used, which could be expanded to other types of information sharing.

The Expert Working Group also noted that a general lack of public information on the implementation of arms embargoes by states makes it difficult to identify further steps that could be taken to improve implementation. A mechanism that would encourage states to provide information on their embargo implementation policies—and which could extend to identifying 'best practice' in this area—is something the group felt should be considered.

6.3.1.2. National lists of arms dealers and brokers

Discussions were held on the role of national lists of arms dealers and brokers (which may include transportation agents). These lists could either track those who had been convicted of an offense related to violating arms embargoes ("black list") or those who are known to a government ("white list"). Efforts to create an international list under the aegis of the UN or other intergovernmental organization were recognized as challenging, but it was thought that such an international list should exist to help States with less information on embargo violators and/or legitimate arms brokers. Concerns were raised about how such information would be collected (type of conviction, type of offense) and how the information would be accessed and used by Member States if the purpose of the list was not clear.

6.3.1.3. Customs and ports of entry

The group identified the important role of customs officers, who oversee the import and export of goods in a country. Customs agencies work on final destinations, relying on information and monitoring to alert them to possible violations or illegal shipments. Several measures were identified which could improve the effectiveness of the national implementation of arms embargoes if introduced. These included: improving information sharing between customs agencies across states; shifting from on-the-spot surveillance to the use of intelligence to target serious violations (most shipments are stopped on the basis of intelligence or knowledge of suspect destination/routing); joint patrols between neighboring countries; and legislation that allows for stopping suspect goods rather than returning them to their country of origin.

There was a discussion on the feasibility of only moving goods through designated ports of entry (for example certain ports for freight), which already occurs to some degree within the European Union. In the EU, the designation is only for the broad classification (e.g. freight) and not for the type of freight. It was felt that it might be counterproductive to focus on controlled goods, which are generally legal transfers, and would take resources away from detecting suspect shipments. In other regions, however, efforts to limit the number of international airports (which require customs officials to clear goods) were recognized as one way of channeling the movement of goods to airports with more resources and personnel. The example of South Africa, which has undertaken to limit its international airports in recent years, was noted.

It was recognized that customs resources are limited and are designed to focus on the import rather than export of goods. Especially in less developed States, resources for adequately policing borders and ports of entry, including the adequate monitoring of airspace, may be lacking or non-existent. The group identified the need to address these insufficiencies through resources and training (see section 6.4. below). Additionally, some participants noted that efforts to improve border control would only succeed as part of more comprehensive programs to combat illicit arms trafficking, as borders were overall too porous, and circumventing or bribing border police too easy. It was felt that a more holistic perspective was needed, which included looking at ways to improve the accountability of transportation agents, the

role of insurance companies who insure consignments or vehicles/aircraft and ships, and the financial links of companies and arms traffickers.

6.3.1.4. Licensing and end-use certification

The group identified a licensing process and a list of controlled goods as a minimum for the national implementation of arms embargoes. In addition, it was felt that concerted action should be focussed on developing an international list that would be used as a minimum standard by all states. This list should, at the very least, include military equipment; further discussion needs to be held on how to include dual-use goods.

There was discussion on the need to improve end-use certificates to reduce the scope for fraudulent documentation or false information. It was noted that the Wassenaar Arrangement is currently holding discussions on harmonizing end-use certification, but the challenge was that, in some instances, national licensing systems meant that the final user was not known, for example when licenses are issued to commercial arms traders.

The Wassenaar Arrangement could, however, provide a register of dual-use goods derived from the existing list of conventional arms and dual-use goods approved by the Arrangement, and could be adapted on an *ad hoc* and item per item basis.

Giving a greater role to embassies to check end users and possible diversion was identified as one approach for those states which export arms. The United States has a system for doing 'spot checks' on end-users and notifying relevant officials of any breaches through the so-called Operation Blue Lantern. Other states, which may lack the legal authority of the United States to do such checks on the basis of their export laws, could possibly be given such authority in contracts between arms suppliers and recipients.

The group also identified two other steps that could reduce the chances of embargo violations. These were restricting the duration of arms licenses, which may currently run for a period of years, and restricting the granting of open licenses (which allow multiple transfers over a period of time up to a set quantity or value), and replacing these with requirements to license each transaction.

6.3.2. Ways and means of improving national implementation

Discussion about the ways in which the national implementation of arms embargoes could be improved focussed on steps that should be taken nationally, regionally and internationally. The group identified states that neighbor, or are in proximate distance from, the target as having a critical role to play in the successful implementation of arms embargoes. Often these states lack sophisticated detection systems and have insufficient legislation or personnel to adequately monitor their ports of entry or ensure that their territory is not being encroached by those violating the embargo. The group therefore placed special emphasis on the need for measures which would assist these Member States, including financial and technical assistance measures. The ways

and means of improving national implementation are described in detail in the recommendations of the Working Group in section 6.4.

6.3.2.1. Technical and financial assistance

Assistance to Member States which are politically willing to support an arms embargo but lack the necessary resources emerged as one of the most simple and direct steps that could be taken to make arms embargoes more effective. This is especially relevant for those Member States which are proximate to an embargoed destination, or whose territory has been exploited by illegal arms traffickers in the past. The improved monitoring and detection of illicit shipments and better border controls in states close to a target were thought to be capable of immediately increasing the effectiveness of embargoes.

Facilitating access to expert advice and information was also identified as an important step for assisting Member States in improving the implementation of arms embargoes. The UN was suggested as a body which could help in this by maintaining a list of officials in Member States who would be willing to contribute their expertise.

6.3.2.2. Legislation

The group identified the need for all States to have national legislation that is triggered by an arms embargo. Basic elements of this legislation would be lists of goods, catch-all clauses for goods not covered by national lists but exported in violation of arms embargoes, authority to seize shipments, and to freeze assets. This legislation should be supported by administrative systems that ensure the embargo provisions are circulated to all relevant government departments.

Currently there are two basic models of national laws to implement arms embargoes. One builds upon special UN laws. Under such laws, UN sanctions immediately become national law. Few states have such laws: however, a model text for such a law was developed and propagated as the swiftest way to implement UN sanctions during the Interlaken Process on Financial Sanctions sponsored by the Swiss government. The other legal approach builds upon national arms export laws. Under such laws, all exports of weapons and regulated types of dual-use goods need to be licensed. The moment the Security Council decides to implement an arms embargo, Member States can stop issuing licenses to the targeted country and revoke existing licenses, if necessary. Both approaches have their merits and can serve the purpose of properly implementing arms embargoes if the laws include all the necessary provisions. Even where sufficient legislation exists, there have often been difficulties translating the wording of a Security Council resolution into the categories of national lists. In addition, catch-all-clauses will be needed to avoid cases where goods which clearly fall under an embargo are not listed.

The group also raised the possibility that the UN could act as a repository of national legislation on arms embargoes, making such information available to other Member States.

6.3.2.3. Arms embargo assistance offices on the ground

An important step towards improving the effectiveness of arms embargoes would be to ensure that states near the target are in a position to implement the embargo. Often these 'proximate' states are exploited (or are even complicit), and their territory used for the transit of arms to the target. The experiences of western states in the sanctions assistance missions (SAMs) that visited states near the former Yugoslavia to enforce the sanctions against that country are a point of departure for these offices.

Each assistance mission/office would rely on a preliminary assessment, from which a package of assistance and embargo monitoring could be developed. The types of activities of these missions/offices appear in Section 6.4.

6.3.2.4. Border control and ports of entry

The group agreed that the control of ports of entry and border areas was critical to achieving better implementation of arms embargoes. It recognized the challenges faced by many states in policing their national borders. Often these are long, with few official border posts, making illegal crossings easier. The case of South Africa, which has a common border with six states in Southern Africa (Namibia, Botswana, Zimbabwe, Mozambique and Swaziland and Lesotho, which it surrounds) was given as an example. South Africa has taken steps to improve its policing of border entry points, largely in an effort to restrict the movement of illegal goods and people. It has also reduced the number of designated international airports and increased police and customs officials at those airports, which can receive international or regional flights, in an effort to reduce arms and drug smuggling. South Africa has benefited from technical and financial assistance from other states, including seconded customs and police officers from the UK.

Other states face similar, or even greater, challenges in policing borders, and the group noted that measures such as technical and financial assistance, including training by organizations such as the World Customs Organization (see below), as well as greater police and customs resources directed to border areas, would greatly assist in improving the situation. In addition to patrolling land, sea and air ports, the capacity to monitor airspace was also identified as an important element.³

In the absence of a monitoring mechanism to support the work of the Committee, the potential role of regional and sub-regional arrangements to facilitate the implementation of the measures was also explored. Neighboring states could monitor at least all major border crossings and airports in order to prevent illegal movements across the border. In addition, the states in the region could consider additional steps to monitor the ports and airstrips in their territories in order to prevent ships and aircraft engaged in violations of the measures from using them.

³ The final meeting of the Expert Working Group heard a presentation by Richard Conroy on the role of aviation in improving the effectiveness of arms embargo enforcement. Briefly, the paper noted that generally the functions of aviation are not directed towards surveillance or monitoring, a function considered necessary for enforcing embargoes. However a few suggestions, such as increasing information sharing on planes that are grounded or companies that have their insurance revoked, could go some way to reducing the scope for illegal flights to embargoed destinations.

6.3.2.5. Additional measures

In addition to these specific measures, the Expert Working Group also identified other measures, which, with further consideration, could also be effective in promoting the implementation of arms embargoes. These included linking the implementation of arms embargoes to other initiatives aimed at combating illegal activities, including financial sanctions, and using existing treaties and legal instruments, for example Mutual Legal Assistance Treaties, where applicable. The need to look at the role of arms companies and their involvement in embargo violations was also raised, and the suggestion made that these companies could perhaps adopt a code of conduct on responsible behavior, which would include abiding by arms embargoes. Finally, the group identified the important role that individuals could play in providing information on embargo violations, and suggested that further attention be given to looking at how information provided (for example on naming individuals or companies involved in embargo violations, those involved in corruption or bribery, etc.) could be collected, and what incentives could be given to these 'whistleblowers'. The Group recognized that more information was needed on how whistleblowing worked in efforts to combat corruption and other arenas before a recommendation could be put forward on this matter.

6.3.3. Role of the UN and other intergovernmental organizations

The UN was identified as an important actor in improving the national implementation of arms embargoes, as were regional and other intergovernmental organizations. The UN in particular was noted as having a role to play in facilitating the flow of information among Member States, for example through a sanctions website or by maintaining registers of experts. However it was felt that too much energy should not be spent on creating new mechanisms within the UN. A better approach was thought to be to find ways to harness existing resources within the organization. The Expert Working Group on the Monitoring and Enforcement of Arms Embargoes identifies roles for the UN in more detail. Several intergovernmental organizations were discussed by the Expert Working Group, including the International Civilian Aviation Organization (ICAO), the World Customs Organization, the International Criminal Police Organization (INTERPOL) as well as regional organizations, such as the Southern African Development Community (SADC), the Organization of American States (OAS), the Organization of African Unity (OAU), the European Union and the Wassenaar Arrangement.

The degree to which the work of these organizations relates to arms embargoes varies greatly. ICAO, for example, could provide technical assistance to help with the identification of aircraft (based on call signs), the registration of airports, or the provision of information gathered from flight manifests. It has already worked with the UN in investigating sanctions violations in Rwanda, and the need for more interaction between ICAO and the UN was identified.

The World Customs Organization (WCO) does not work specifically on arms issues, but does assist in general capacity building efforts and in improving border controls.

Much of the interaction between customs authorities appears to happen outside the WCO.

Interpol has assisted some Member States, especially in tracing weapons seized in crimes, and maintains the International Weapons and Explosives Tracking System (IWETS) database. It has also provided experts to serve on the United Nations expert panels investigating violations of the sanctions against UNITA and the RUF. Interpol could also set up an informal working group to provide relevant sanctions committees with views and proposals regarding its possible contributions to the development and implementation of technical co-operation to strengthen the ability of Member States to combat illicit trafficking in arms.

Regional organizations such as the EU, the OAS, the OAU and SADC are increasingly viewed as centers for regional cooperation, including on security issues. They therefore have a role to play in assisting countries in the implementation of arms embargoes, although this role may vary across regions. The establishment of embargo assistance offices, noted above, would rely on close collaboration between the UN and the relevant regional organization.

6.4. Recommendations of the Expert Working Group

6.4.1. Arms embargoes must be enacted through national legislation

Few States seem to have all the legal instruments in place to enable the immediate enactment of sanctions measures when a sanctions regime is adopted by the Security Council. Member States should, as a matter of urgency, take steps to review and, when necessary, add the necessary elements to facilitate the process of national implementation of arms embargoes. The legislation, including required administrative guidelines and regulations, should contain provisions that:

1. Criminalize breaches of the embargo;
2. Allow for the seizure of goods and proceeds from illegal deliveries;
3. Develop licensing regimes which can handle arms embargoes against specific parties to a conflict (rather than the entire state); and
4. Form the basis for a list of controlled goods that will fall under the embargo (including, as necessary, both military and dual-use equipment), but also contain a catch-all clause to cover unlisted goods whose delivery would clearly violate the arms embargo.

This same legislation should help develop a preventive capacity that will allow for the seizure and forfeiture of confiscated goods, freezing or seizure of assets, tracing and verification of arms shipments at risk of diversion. Mechanisms should also be identified to reduce the time between an arms embargo resolution being adopted and the process of national implementation being started.

6.4.2. Arms embargo assistance missions/offices

In order to improve the implementation of arms embargoes, consideration should be given to the establishment of regional offices, mandated by the United Nations in conjunction with the relevant regional organization, which can assist in the implementation of the embargo, monitor its implementation, and report any breaches or contraventions to the UN.

These offices should be located in a country proximate to the country/group under embargo and be staffed by UN employees. The funds for these offices should come from the regular UN budget, although initially funds could be raised through a UN trust fund or other voluntary contributions. When adopting the arms embargo resolution, the Security Council should include budgetary allocations to allow for such technical expertise. The offices would operate in conjunction with the relevant UN Security Council sanctions committee (or the proposed dedicated UN Sanctions Unit), to which it would report. The offices should also be given the resources that would enable them to undertake, at the request of the Security Council, or of the respective sanctions committee, a periodic analysis and assessment of the impact and effectiveness of the arms embargo. While responsibility for the implementation of Security Council-imposed arms embargoes rests with the Member States, assistance missions/offices should periodically review the implementation process with a view to assessing the effectiveness of the measures adopted and identifying and possibly eliminating gaps.

It was recognized that these offices would be most successful where there was the cooperation of proximate states, or where the embargo was on a party to the conflict and not on the state. The offices should submit reports on their activities to the relevant sanctions committee on a regular basis. Cases of confirmed violations should be made public by the committee or reported to the Security Council. Inquiries into arms trafficking routes, the follow-up of possible specific violations, and the deployment of sanctions assistance monitors would be an essential requirement for any credible attempt to enhance the effectiveness of the measures.

6.4.3. Technical and financial assistance to assist in embargo implementation

There are many Member States that have the political will to implement an arms embargo but lack the training, personnel, equipment or expertise to be able to do so effectively. When an embargo is adopted, an assessment mission would go to the target state or visit the state in which the non-state actor(s) under embargo is/are active. Assessment missions to identify needs among states proximate to the target, which are most likely to bear the brunt of attempts to circumvent the embargo, or Member States which are known to be the source of weapons sent to targets, would provide recommendations that could be acted upon by the Security Council. Technical assistance could include training of border and customs officers and the devising of lists of controlled goods and inspection techniques.

6.4.4. Improving information exchange nationally and among States

The group identified information and intelligence as a fundamental part of effective embargo implementation. While difficult, it was felt that a concerted effort should be made by Member States to improve the way in which information is shared and to identify appropriate ways in which this could be done.

6.4.5. Arms embargo website

The group suggested that the UN Secretariat, through the cooperation of the Sanctions Unit of the Department of Political Affairs and the Conventional Arms Branch of the Department for Disarmament Affairs, should develop a website that would provide information on each current arms embargo, including details of the resolution, the scope of the embargo and links to other sources of information, including research, and NGO sites with relevant information.

6.4.6. Facilitating information sharing by the UN

In addition to the role of governments in sharing information, it was thought that the UN Secretariat has an important function as a facilitator of information for Member States on arms embargoes. This role could include maintaining lists of national experts who would be available to provide technical assistance to states upon request and the creation of a database of past sanctions violations.

In addition, the continuation of the recent trend for comprehensive, documented reports on sanctions violations (such as those by UNITA) was seen as an important stimulus for improving the national implementation of embargoes.⁴ The group thought that this type of reporting should be sustained and made a permanent requirement of UN sanctions committees. The chairpersons of sanctions committees should be encouraged to take a more active role in this respect. The recent missions by the chairman of the committee established pursuant to Security Council resolution 864 (1993) (Angola) is an example of a more active role by committee chairpersons to assess sanctions implementation and to develop measures for enhancing their effectiveness. Such missions could contribute towards raising the awareness of national authorities, regional organizations, non-governmental organizations and opinion leaders of the need to identify measures to improve the effectiveness of Council-imposed embargoes, and could remind governments of their obligation under the UN Charter to implement Security Council resolutions, and to enact the necessary legislation or regulations to this end.

⁴ The use of panels of experts and exploratory hearings by the UN Security Council (such as those recently conducted in relation to Sierra Leone) to examine the implementation of embargoes and to monitor and verify their effectiveness, could also be considered.

7. MONITORING AND ENFORCEMENT OF ARMS EMBARGOES AT THE UNITED NATIONS

Expert Working Group on the Monitoring and Enforcement of Arms Embargoes

Chair: Ambassador Peggy Mason, *Canadian Council for International Peace and Security*

Rapporteur: Sami Faltas, *BICC*

7.1. Mandate and focus

The purpose of this report is to suggest effective, practical and fiscally responsible ways of strengthening the capacity of the UN Secretariat to assist in the planning, implementation, monitoring and enforcement of sanctions imposed by the UN Security Council, bearing in mind that the primary responsibility for sanctions implementation rests with Member States. Specifically, the group considered in detail the recommendation to create a versatile, operational Sanctions Unit at UN headquarters, operating under the authority of the Secretary-General and supporting the Security Council and Sanctions Committees established by the Security Council.

The task of the Expert Working Group as derived from the First Expert Seminar in Bonn in November 1999 was to suggest ways of making the implementation of UN arms embargoes more effective by looking both at what is being done and what can be done at UN headquarters. Issues were further discussed during a meeting in New York from 21–23 May 2000, and suggestions presented at the Final Expert Seminar in Berlin from 3–5 December. The comments collected at these stages have been synthesized in this report. In light of the limited time available and the pace of new developments in sanctions implementation, the group could not discuss all relevant issues in as much detail as they might have wished. Nonetheless, the New York meeting in particular allowed for a very focused and practical consideration of how an enhanced Sanctions Unit could and should operate.

The mandate of the Working Group was to focus on arms embargoes, but it is our recommendation that the proposed Sanctions Unit should serve all types of targeted UN sanctions. There are two reasons for choosing this approach. First, experience suggests that, in order for them to be effective in preventing or ending deadly conflict, arms embargoes must be linked to the interdiction of other commodities that are vital for waging war (such as fuel) or for funding their procurement (e.g. diamonds and oil exports). Second, a single, versatile unit at the UN Secretariat working on all types of sanctions is probably more cost effective and efficient than several narrowly specialized units.

7.2. Context

The discussions on the core recommendation to create a dedicated Sanctions Unit took place against the backdrop of an increasing focus by the international

community in general, and the Secretary-General and the UN Security Council in particular, on the need to improve the effectiveness of UN sanctions. In January 1999, the Security Council agreed on “practical proposals” to improve the work of sanctions committees (S/1999/92), and in April 2000, it established an informal working group (known as the Chowdhury working group after its chair) to develop general recommendations on how to improve the effectiveness of United Nations sanctions (S/2000/319). Even more important than the review of its working methods was the Security Council’s authorization of ad hoc Expert Panels to investigate sanctions violations.¹ Member States had also launched a series of related initiatives, including the Interlaken Process and the Bonn-Berlin Process, of which this report is a part.

A review by the UN Secretariat of the lessons learned from recent sanctions regimes focused in particular on the need to protect vulnerable communities from the effects of sanctions, while improving the targeting of elites. It also demonstrated the need for credible monitoring mechanisms for sanctions regimes and the importance of having the necessary resources to effectively administer them (UN Press Release SG/SM/7360, 17 April 2000).

These efforts at improving the machinery for sanctions implementation, whether at global, regional or national levels, must be accompanied by certain factors which the Secretary-General has identified as necessary to ensure that sanctions meet their intended purposes, namely:

- There must be a clear and convincing case for the necessity of the sanctions and their ultimate objectives;
- This instrument must be applied with great care and with a clear understanding of its effects, both intended and unintended;
- An assessment must be made of the humanitarian impact of sanctions prior to their imposition²;
- There must be consensus on the precise and specific aims of the sanctions, with the appropriate instruments adjusted as required and the necessary means made available.

In short, the Security Council must not only be willing to tackle “technical, operational questions, but also the broader political questions of how best we ensure the fullest and broadest compliance with the will of the international community on the part of recalcitrant States” (UN Press Release *supra*).

The Secretary-General underlined the central fact that sanctions are not an end in themselves, or even a sufficient means to bring about the desired goal of compliance

¹ The first of these was established by Security Council resolution 1237 (1999) in relation to sanctions against UNITA but its origin can be traced back to the International Commission of Inquiry (ICOI), which investigated violations of the UN embargo against former Rwandan government forces (S/RES/1013 (1995)).

² While it was not within the brief of this working group to consider the humanitarian and third party impacts of sanctions, members wished to emphasize that resolute action to ameliorate these effects would go a long way to building more international support for sanctions.

with the will of the international community. They will only be effective if they are part of a wider strategy to resolve the conflict and promote a peaceful, comprehensive settlement. Too often, however, “sanctions have been a substitute for more resolute action and sustainable solutions” and “getting sanctions right has been a less compelling goal than getting sanctions adopted”.³

Another point to bear in mind is that arms embargoes and other sanctions are only one, albeit often vital, component of the United Nations’ efforts to strengthen international peace and security activities as a whole. The ‘Report of the Panel on United Nations Peace Operations’, often called the ‘Brahimi Report’ after its Chairperson, provides a review of these wider activities (A/55/305-S/2000/809). The comprehensive package of recommendations contained in the Brahimi Report and the deliberations on their implementation⁴ are therefore relevant to the topic of the Expert Working Group.

The Brahimi Report situates peacekeeping within the broader context of preventive diplomacy, peacekeeping and peace-building, and underscores the need for a coherent, integrated approach. Thus the report cites: “[T]he need to build the United Nations capacity to contribute to peace-building, both preventive and post-conflict, in a genuinely integrated manner” (A/55/305-S/2000/809, para 6 (f)). At first blush, this finding would appear to have direct implications for UN sanctions as an integral part of the broader process of international peace and security. In particular, it would appear to provide the basis for the recommendation that a key organizational principle in considering how to improve the UN’s capacity to plan, monitor and enforce sanctions should be to relate the Secretariat’s machinery for dealing with sanctions to the rest of its machinery for dealing with conflict situations, making sanctions planning and implementation integral to these broader peace and security processes. However, and particularly at the Final Expert Meeting, it was clear that many Member States have drawn a sharp dividing line between Chapter VI (consensual) and Chapter VII (coercive) measures to maintain international peace and security. Increasing disunity among the Security Council’s Permanent Five over whether, when and how to end the Iraqi sanctions regime, and widespread concern over the high humanitarian cost involved, suggest that, in the short term, there is little prospect of a change of attitude among those many Member States which would rather restrict the scope of the Brahimi Report’s proposals.

Distinguishing sharply between consensual and non-consensual measures to maintain or restore international peace and security, however, does not obviate the need to consider the relationship of a proposed or established sanctions regime to any UN or regional peace operation that might be mandated. Nowhere is this clearer than in relation to the planning, implementation and monitoring of disarmament,

³ Foreword by then Canadian Foreign Minister Lloyd Axworthy to the IPA study, *The Sanctions Decade*, cited by the Secretary-General in his remarks to the International Peace Academy Seminar of 17 April 2000, UN Press Release SG/SM/7360, 17 April 2000.

⁴ Including the Security Council’s implementation report, S/2000/1081, Security Council Resolution 1327 (2000) and the Secretary-General’s reports to the General Assembly, A/55/502, A/55/507 and Add.1. Available at www.un.org/Docs/sc and www.un.org/peace/reports/peace_operations/.

demobilization and reintegration programs (DD&R), about which the Brahimi Report has several important things to say. Indeed, the need for a comprehensive and integrated approach to DD&R is taken so seriously that an integrated mission budget was recommended (A/55/305-S/2000/809, para 47 (c)) and subsequently endorsed by the Secretary-General ((S/2000/1081-A/55/502, para 26), the Security Council (S/Res/1327, annex para VI) and the Special Peacekeeping Committee (A/C.4/55/6, para 7).

While Brahimi does not mention arms embargoes *per se*, it is now well-recognized that the disarmament aspect of DD&R involves not only removing the weapons currently possessed by ex-combatants and others, but also taking measures to ensure that new weapons are not immediately introduced from the outside.⁵ Thus, weapons management, including a legal framework for possession and use, an export/import control regime, border controls and so on, is a necessary component of a successful DD&R program, just as security sector reform is a necessary component of a sustainable system of public security. This means that in the short term, during the ‘crisis stabilization’ phase of the peace mission, the enforcement of a UN arms embargo will be vitally important to the successful implementation of the DD&R program and, therefore, of the peace settlement as a whole. Conversely, as Sierra Leone so dramatically illustrates, failure to effectively enforce an arms embargo (and related sanctions) can fatally undermine the peace settlement.

Until it is possible to formally integrate an officer from the proposed Sanctions Unit into new structures established for mission-specific, peace-keeping planning and support (such as, for example, the Integrated Mission Task Force recommended by Brahimi) effective liaison and coordination between the two bodies will remain important. Ensuring a high level of coordination, while maintaining the necessary ‘distance’ between Chapter VI and Chapter VII activities, is likely to be one of the key challenges facing the new Sanctions Unit.

7.3. Organizational and institutional aspects

7.3.1. Sanctions Committees

The Security Council committees which are regularly established by sanctions resolutions are central to monitoring and enforcing arms embargoes. The Sanctions Committees act on behalf of the Security Council to oversee implementation of the mandated sanctions regime. Typical tasks stipulated in recent resolutions include:

- seeking information from all States on their measures to implement sanctions;
- considering information concerning violations;
- periodic reporting to the Security Council on alleged violations and the identity of violators;

⁵ See, for example, Section IV, Subsection VII, “Prevention of Illicit Trafficking”, found at pp. 56-58 of the UN Department of Peacekeeping Operation Handbook entitled *Disarmament, Demobilization and Reintegration of Ex-combatants in a Peacekeeping Environment: Principles and Guidelines*.

- considering requests for humanitarian exceptions;
- promulgating guidelines to facilitate sanctions implementation; and
- making relevant information publicly available through the appropriate media.

At the same time, the Secretary-General is generally requested “to provide all necessary assistance to the Committee ... and to make the necessary arrangements in the Secretariat for this purpose” as well as to receive detailed reports from States on the specific steps towards sanctions implementation they have undertaken.

Given the particularities of each sanctions regime, and the enormity of the tasks involved if taken seriously, it is clear that the current practice of establishing committees which are specific to a particular sanctions regime is much preferable to a single, unified Sanctions Committee. On the other hand, the tendency of each of the committees to go its own way has been exacerbated both by wide discrepancies in the amount of attention the Security Council and States pay to the various sanctions regimes and by the limitations of the Secretariat as currently staffed to provide meaningful and timely assistance to all of the committees. It is laudable that certain Sanctions Committees have become very proactive in recent years. Activist Chairpersons and Vice-Chairpersons, with the political and sometimes financial support of their capitals, have played a critical role here. Yet the Sanctions Committees’ necessary recourse to external experts on an *ad hoc* basis underscores the need for a strengthened *in-house* capacity to support their work. The following sections therefore focus on the necessary components of a dedicated Sanctions Unit within the UN Secretariat.

7.3.2. The Sanctions Unit in the UN Secretariat

The function of the proposed dedicated, independent, operational Sanctions Unit within the UN Secretariat is to assist the Secretary-General, the various Sanctions Committees and the Security Council in establishing and overseeing effective targeted sanctions. Its activities need to be geared to improving the effectiveness of UN sanctions, including arms embargoes, through improved planning, monitoring, and assistance in implementation and enforcement. The creation of such a Unit will enhance the institutional capacity for sustained action, including all necessary follow up, and help to promote a coherent, integrated and coordinated approach to sanctions planning, implementation and enforcement at the strategic level. It will facilitate the creation of a ‘culture of sanctions enforcement’ by developing an institutional memory of best practices, data bases, and registries, as well as through the capacity to evaluate and update sanctions policy through a ‘lessons learned’ process. It can also play an important role in the public advocacy of sanctions. A strong dedicated Sanctions Unit in the UN Secretariat can also help to avoid the duplication of monitoring and enforcement efforts, and the waste of resources.

At present, resources in the UN Secretariat are too meager in terms of personnel and funding to permit the adequate fulfillment of any of the outlined functions, or to serve the various actors involved in the implementation, monitoring and enforcement of sanctions. Another closely related question is the very important issue of the degree

of the Unit's independence. To be effective, the UN Sanctions Unit will need considerable freedom of action. It must not only be perceived as objective and politically neutral, its mandate and lines of authority must also be such as to allow it to operate independently in practice. While the Expert Working Group did not have all the information needed to elaborate a detailed recommendation on how best to ensure this independence, it was generally believed that a direct reporting relationship to the Security Council might be one means of accomplishing this goal. Under this arrangement, the Unit would be administered by the Secretary-General and be responsible to him or her for its day-to-day operations, but would have the authority to present observations and recommendations directly to the Security Council without implying the endorsement of the Secretary-General or the relevant Sanctions Committee. This ability to report directly to the Security Council would co-exist with the more usual methods of reporting through the relevant Sanctions Committee and/or through the Secretary-General. In this regard, it is to be emphasized that the optimal situation for an effective Sanctions Unit is one of close co-operation with, and assistance to, a pro-active Sanctions Committee, notwithstanding the possibility of independent reporting where the circumstances warrant—for example, in the case of an inactive Sanctions Committee.

The Unit will have to liaise with other parts of the Department of Political Affairs, as well as with other UN Departments, particularly the Department of Peacekeeping Operations and the Department for Disarmament Affairs (including its regional centers for peace and disarmament), and specialized international organizations such as the International Civil Aviation Organization. Similarly, the Sanctions Unit will need to collaborate wherever possible with regional organizations. The Unit would also have to network with governments and non-state actors—private sector companies, non-governmental organizations, think tanks, reporters, researchers, and so on. Given the sheer number of actors involved and the fact that the primary responsibility for sanctions implementation lies with Member States, the proposed Sanctions Unit could be particularly useful in facilitating the effective interaction of these many players through the development of collaborative relationships, reporting and liaison mechanisms.

7.3.3. Relation to conflict resolution and peacekeeping activities

Detailed reference was made earlier in this report to those recommendations in the Brahimi Report aimed at mandating and equipping peacekeeping operations to carry out comprehensive disarmament, demobilization and reintegration (DD&R) programs. The important—often vital—role of arms embargoes in this process was also underscored. It will therefore be essential for the Sanctions Unit to develop appropriate contacts with those parts of the peacekeeping mission overseeing the DD&R program, at both headquarter and field levels.

The Department of Political Affairs may well be involved in the peace negotiation process well before the mission is established, however. From the onset of UN participation, the Sanctions Unit should be providing expert technical advice regarding the need and means to help to ensure that new weapons are kept out of the

conflict area. Every effort should be made to secure the agreement of the parties and all other relevant actors to arms transfer moratoria, including credible implementation, monitoring and enforcement mechanisms as part of the overall DD&R plan. Ideally, these arrangements could then be incorporated into the mandate of the UN peacekeeping operation or that of a UN-authorized regional peacekeeping force. For example, a UN mission could be assigned monitoring responsibilities while the regional peacekeeping force could be more suitably tasked with enforcing the moratorium.

In the absence of an agreement among all relevant actors (for example, neighboring countries through which weapons are flowing or are likely to flow), a mandatory sanctions regime would be required. Arguably, a sanctions regime may still be required even with a comprehensive agreement if the willingness and/or capacity of certain parties to live up to the agreement are in doubt. It may even be requested by some or all of the parties so that every side knows that the other will not be getting fresh arms.

In the event of a mandatory regime, the Sanctions Unit will need to provide technical inputs to the proposed arms embargo regime, in the same way as the various parts of the UN system provide technical inputs regarding the military, humanitarian, socio-economic and other aspects of disarmament and demobilization. Only with advance planning and appropriate technical expertise on how to keep arms from being brought into the conflict area (and diamonds and other resources used to buy weapons from being taken out) can a comprehensive, practical and enforceable sanctions plan be devised which is capable of supporting the overall DD&R plan.

From the foregoing discussion, it should be clear that arms embargoes and related targeted sanctions are integral parts of the peace and security instruments that the UN may need to deploy to end deadly conflict. The effective and timely utilization of these tools will require the proposed Sanctions Unit to find practical ways to work in partnership with all the relevant parts of the Secretariat through all phases of the conflict resolution process.

7.3.4. Resources

Without adequate funds, expertise and staff, the UN cannot hope to effectively oversee the implementation of its arms embargoes and related sanctions. The Expert Working Group was reasonably optimistic that the international community would be prepared to provide some additional resources to enable the Secretariat to meaningfully assist the Security Council in this regard. However, it is important that these resources should be adequate. This requires two sets of budgetary actions. The first relates to the scope of the regular operating budget of the Sanctions Unit, and the second relates to the financing of additional or extraordinary activities which it may be necessary and desirable for the Unit to undertake—for example, investigative missions requiring very specialized expertise.

In the first case, it will be necessary for Member States, through their representatives on the Fifth Committee of the General Assembly (Administrative and Budgetary Committee), acting on the advice of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), to support the Secretary-General's proposed annual

operating budget for the Unit. There is reason to be optimistic that adequate funding for the Sanctions Unit will be approved, given recent positive developments with respect to the arrears owed by certain Member States, and the approval of the resources necessary for the DPKO to be augmented by 95 members of staff as part of the implementation of the Brahimi Report. If possible, the budget should also include a realistic allocation for the Unit to augment its personnel in relation to specific sanctions regimes that might be mandated.

The approval of the Fifth Committee of the General Assembly will again be required for additional necessary expenses that were not foreseen in the Unit's regular budget. In this regard, it will also be important for the Security Council to support the request for supplementary funds "as an expense of the Organization" (see as an example, paragraph 11 of Security Council Resolution 1237 (1999) establishing the ad hoc Angola Expert Panel).

It is the view of the Working Group that the effective implementation of arms embargoes could significantly impede the ability of recalcitrant parties to continue to wage war, thus shortening deadly conflict and reducing its devastating humanitarian and other costs. Tangible evidence that the Security Council is serious about enforcing its arms embargoes might ultimately have a deterrent effect on crises that have not yet led to outright war. In short, as has been argued so often elsewhere, investing in prevention can save the international community at least part of the extremely large sums it is currently spending to try to restore and consolidate peace in post-conflict societies. This is the basis for the recommendation that adequate funds be made available on a regular basis so that the UN can credibly contribute to effective sanctions implementation.

7.3.5. Expertise required

When considering the expertise that the UN requires to make arms embargoes more effective, Working Group IV distinguished between the know-how that the UN needs to have within the Secretariat and the expertise it can obtain from outside, either by hiring experts on a temporary basis or by relying on the co-operation of governments and other partners. The Sanctions Unit will need full-time or core staff of its own who can fulfil a variety of functions, as well as a mechanism for drawing on outside expertise as the need arises.

The professional expertise available to the Sanctions Unit for its arms embargo monitoring and other support tasks should minimally comprise the following areas:

- customs (e.g. the ability to identify embargoed items);
- transport (especially sea and air);
- police and intelligence (expertise in the collection and assessment of information and investigative techniques);
- finance (e.g. the ability to trace flows of money);
- weapons, weapons flow and military assistance; and

- diamonds, petroleum and other commodities and resources that provide the revenue to sustain fighting.

The Unit should have some basic in-house expertise in each of these areas. This is necessary to allow timely reactions to specific requirements, the development of an 'institutional memory', and for networking with outside experts. Moreover, a broad-based in-house capacity would help in understanding the complex arrangements set up to defeat UN embargoes.

In addition to professional personnel, the Unit would need the necessary administrative staff to support its field operations, both in relation to the ongoing monitoring of implementation and with respect to special investigative missions, as well as to administer its activities at headquarters. One particularly important area of technical expertise required will be in relation to information management, as discussed *infra*.

The professional and support staff of the Sanctions Unit should be appointed by the Secretary-General, in consultation with the Security Council. Sources of such expertise might include international organizations, such as the International Criminal Police Organization (Interpol), the International Air Transportation Association (IATA), the International Civil Aviation Association (ICAO), the World Customs Organization and the Secretariat of the Wassenaar Arrangement. Relevant regional and sub-regional organizations such as the Organization of African Unity (OAU), the Association of South East Asian States (ASEAN), the Organization of American States (OAS), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) should also be utilized. In addition, experts might be drawn from respected non-governmental organizations working in relevant fields.

In order to benefit from the widest possible range of expertise and perspectives, the permanent professional staff of the Sanctions Unit could be systematically supplemented through the short-term secondment of experts drawn from outside. Such an approach would not only enable the Unit to adjust its personnel complement to the workload in hand, but, over time, would also help to build a culture of sanctions enforcement in relevant organizations *outside* the UN.

The Sanctions Unit should also develop close co-operative relations with experts in the listed areas of expertise, as well as regional experts. It should establish a roster of experts who are available at short notice to support UN work on sanctions. Member States should support these activities and provide the names of relevant governmental and other experts willing to serve. The Sanctions Unit should also be free to network with experts from the private sector, non-governmental organizations and the like.

Developing close collaborative relationships on sanctions monitoring with all relevant organizations will be important for identifying potential sources of expertise on which the Sanctions Unit can draw for its permanent or temporary staffing needs. Such networking will be essential if the Unit is to be able to adequately assist the respective Sanctions Committees in effectively overseeing the arms embargo/targeted sanctions

regime in question. Given the multiplicity of actors engaged in the implementation of arms embargoes “on the ground”, the Sanctions Committee, assisted by a Unit with the necessary staff, mandate and expertise, will be in a unique position to provide essential strategic oversight.

7.3.6. Sanctions policy development and public advocacy

Another task of the proposed Sanctions Unit should be to help create a ‘culture of sanctions enforcement’ through the development of an institutional memory of best practices, databases, and registries, as well as through the capacity to evaluate and update sanctions policy through a lessons-learned process.

The Secretary-General wishes to see the United Nations, its Member States and the international community as a whole each play their part in ensuring that there is public support for sanctions. This is to be done, *inter alia*, by making a clear and convincing case for sanctions, their necessity, and their ultimate aim. The website of the United Nations can serve as one of the instruments for informing and educating the public concerning sanctions.⁶ Of course, the public will only want to support *effective* sanctions regimes. Here again, the Sanctions Unit would help, as we have argued. Within the Secretariat, the Sanctions Unit would articulate the reasons for the use of sanctions as an appropriate response to particular crises, as part of the Report of the Secretary-General to the Security Council.

7.4. Monitoring and reporting on sanctions implementation

With the task of *implementing* the arms embargo left to individual Member States, the UN must provide effective strategic *oversight* in order to assess the level of implementation, identify gaps or breaches in the regime and devise ways to close them. Effective oversight begins with monitoring and reporting and this is the main task typically given to the Sanctions Committees (in addition to that of addressing humanitarian exemptions). An essential role of the new Sanctions Unit will be to assist the committees in carrying out these tasks, the main components of which are: (1) information gathering; (2) information collation and analysis; and (3) the transcription and transmission of the results to others for further action.

Until recently, these functions were narrowly interpreted by most Sanctions Committees to mainly constitute the passive receipt of reports from a variety of implementers and other sources on the ground (such as the media) and their transmission to the Security Council. This limited idea of monitoring and reporting can be distinguished from more rigorous efforts to determine and assess the state of compliance with a view to recommending concrete corrective measures. Another way of looking at this is to consider a continuum of activities involving monitoring, investigation, assessment and response, beginning with the monitoring of implementation at one end of the spectrum and finishing with enforcement measures

⁶ Efforts have already been made to publicize sanctions. With the exception of the 661 Committee, there is an English-language homepage for each Committee which includes SC resolutions, annual reports, press releases and special documents.

See www.un.org/Docs/sc/committees/INTRO.htm.

at the other. From this perspective, it is clear that these components are inextricably inter-related and, to achieve maximum effectiveness, ultimately need to be considered as a coherent package. Having said this, however, it remains clear that there is a distinction between monitoring and reporting on implementation on the one hand, and assessing the extent of implementation as the basis for recommendations on how to bring about a higher degree of implementation on the other. The gray or overlap area is the ‘investigative’ function, which amounts to a more aggressive and focused form of monitoring. Passive monitoring and reporting as well as active investigations into the level of compliance (including, in particular, investigations of alleged violations) *all* form the basis for the crucial step of improving implementation through enforcement measures.

In line with current trends (as evidenced by the use of Expert Panels with an investigative mandate under the authority of the relevant Sanctions Committee, its Chair or the Secretary-General), it is proposed that the Sanctions Unit should be in a position to actively assist the Sanctions Committee, the Secretary-General and, ultimately, the Security Council in the functions of information gathering, assessment, investigation and enforcement. The aim is to create a credible capacity for sanctions monitoring and assessment, including an active investigative capacity, so that the sequence of steps is to monitor, assess and react. The monitoring and reporting functions must be seen in this broader context.

The basic activity in monitoring sanctions implementation is information gathering, of which there are two types, both necessary. The first is through the receipt of reports from a variety of sources, beginning with reports from Member States on national implementation efforts, as well as from interested non-governmental organizations, and the print and electronic media (see the model resolution on an arms embargo proposed above, section 2, especially OP 10). The second is through more active fact-finding exercises using monitors on the ground dispatched by the Unit. In both cases, the Sanctions Unit would need to gather and analyze information from persons actually engaged in sanctions implementation and/or monitoring *on the ground*—as well as from a wide variety of other relevant sources. In the second case, the Unit would also require a modest capacity to participate on the ground in gathering information on the state of implementation as well as in assisting national monitors in their monitoring and reporting duties. The proposal of an in-house capacity for the dispatching of sanctions monitors met with considerable support in the Expert Working Group, but was not universally accepted. Some participants at the Final Expert Seminar in Berlin expressed strong reservations, underscoring the need for the Sanctions Committee, not the Sanctions Unit, to be in the ‘driver’s seat’. As a compromise, the formulation chosen here is an attempt to retain the *in situ* monitors while affirming the central role of the Sanctions Committee.

The key to the monitoring function is to make use of as many sources of information as possible, particularly, though possibly not exclusively, unclassified sources (see also Section 7.4.3 on *Management of confidential information*)—and to do so, a capacity for modern information collection/management is essential. Here ‘management’ is meant to include ‘collection, collation, synthesis and analysis’. In this regard, it is to be noted that the Brahimi Report highlighted the importance of information gathering and

analysis as an indispensable aid to effective planning, monitoring and reporting, and indeed all aspects of modern peace and security activities (see also Section 4.3).

It is essential that the Sanctions Unit should have a capacity for sophisticated data collection, collation and analysis. It is recommended that this information management function be a dedicated resource of the Sanctions Unit itself, given the continued reluctance of many UN Member States to see such a capacity centralized in one unit of the Secretariat servicing all peace and security activities. This being said, efficiency and cost considerations suggest that strong links to other relevant information gathering bodies within the UN system will be essential. These would include the Situation Center of the DPKO, the Media Monitoring and Analysis Section of the Department of Public Information (DPI), the Information Analysis Unit of the Office for Humanitarian Assistance (OCHA), the Office of the United Nations Security Coordinator, and the Monitoring, Database and Information Branch of the Department for Disarmament Affairs (DDA).

7.4.1. Initial information on national implementation

The first area in which the UN needs reliable and comprehensive information in this context is the question of how States are implementing the embargo. Security Council resolutions regularly require States to provide such information. (For a detailed discussion of how the resolution might best be worded in this regard see Operative Paragraph 5(a) of the model resolution reprinted above.)

However, reporting by States still tends to be incomplete and in forms that are difficult to compare and collate. A UN Sanctions Unit, as envisaged by the Expert Working Group, could and should develop a standard questionnaire. It should also be in a position to follow up with requests for clarification and amplification. This would be part of its work in assisting the Sanctions Committee in promulgating guidelines to facilitate sanctions implementation, a task routinely assigned to the Committees by the Security Council, and which they have heretofore been ill-equipped to carry out. Drawing on its inventory of best practices and its substantive in-house expertise, the Unit would have the capacity to refine and adjust the guidelines that it initially developed to meet the specific circumstances at hand.

One particularly important aspect of the guidelines will be the promotion of the concept of national focal points responsible for overseeing sanctions implementation in individual States and within regional organizations. Such entities will help States to co-ordinate the diverse range of departments and agencies on the front lines of sanctions implementation (e.g. justice, law enforcement, customs, transportation, export controls and so on). At the same time, national focal points will facilitate timely information sharing beyond the national arena—with other relevant actors at the operational level and with actors at UN headquarters—through liaison with the Sanctions Unit. Viewed from this perspective, the Sanctions Unit becomes the strategic ‘focal point’ for reporting on implementation through standard procedures and mechanisms developed by the Unit and widely published (including on the Internet). This builds upon a recommendation of the Angola Expert Panel’s Report

which called for a ‘Sanctions Information Package’ and a website for each sanctions regime (S/2000/203, recommendation 33, paragraph 175).

7.4.2. Regular monitoring

Beyond initial information on national implementation measures, a second category of information that the Security Council requests States and others to provide to the Sanctions Committees is information concerning violations of the sanctions regime. The model resolution reprinted in this volume calls upon all entities with relevant information to report it to the Sanctions Committee in a timely fashion. As in the case of national reporting on implementation measures, the Sanctions Unit can play an indispensable role in encouraging States to heed this call by developing standard reporting channels and procedures that are straightforward, user-friendly and well-publicized.

Better links should also be established with the network of UN field offices and the UN ‘family’ of specialized agencies, funds and programs as well as with UN-related bodies (such as the World Bank), especially those with offices located in States adjacent to embargoed territory or entities. Personnel in such organizations should be encouraged to report information on possible violations and be actively assisted in doing so. The Sanctions Unit should also actively solicit information on the state of implementation of arms embargoes from a wide range of other sources, including the media (such as the BBC, CNN and newspapers), the Internet, and specialized research institutes such as the Stockholm International Peace Research Institute. Relevant non-governmental organizations, many of which have already been instrumental in exposing some of the most egregious examples of sanctions busting, will also be an important part of the network of information gathering and exchange.

The point of equipping a unit in the Secretariat with an information gathering/investigative capability, however, is to enable it to do more than solicit reports from others. It is to ensure that, from the moment the arms embargo takes effect, the Sanctions Committee which is mandated by the Security Council to oversee implementation will be able to actively engage in tracking down pertinent information. In this regard, the placement of even a small number of Sanctions Unit monitors in strategic locations—for example, in countries from which or through which arms might flow in violation of the embargo—will be extremely useful in providing early warning of possible problems. The aim would be for the UN to have a demonstrable capability for responding immediately to information on possible violations and violators. Initial responses could include:

- alerting all national and other monitoring and implementation bodies *in situ*, including the possible specific tasking of any Sanctions Unit monitors present or near-by;
- active solicitation of further information on the violations from all relevant sources, using the network of UN, national, regional and international focal points, as well as communications at higher levels, for example between the Chair of the Sanctions Committee and appropriate government ministers;

- the possible dispatch of additional Sanctions Unit monitors with specialized investigative skills.

All of these actions would be prior to any consideration of dispatching full-fledged investigative teams (such as the expert panels used to investigate UNITA sanctions busting). The main purpose of these initial steps would be to assist States and others charged with the primary responsibility for implementation to head off violations before they became widespread.

7.4.3. Management of confidential information

Most of the information that reaches the UN will come from open sources, but many States can also provide information that comes from confidential sources. The UN has much to gain from successfully tapping these sources. However, there are considerable difficulties involved in such co-operation. States are generally reluctant to share confidential information and, at a minimum, will require appropriate procedures and safeguards so as not to implicate protected sources. For this same reason, independent verification of the information will be both essential and potentially problematic. That being said, however, the timely provision by Member States of confidential information which allows both the Sanctions Committee and the Sanctions Unit to better *focus* their information-gathering efforts—for example, by directing monitors to particular geographical areas or types of goods—could be of tremendous use.

The UN must also overcome the reluctance of many Member States to allow it to develop any apparent capacity in this regard. UNSCOM and the IAEA made extensive use of intelligence information from UN Member States in the course of their weapons verification and destruction work in Iraq, even developing a sophisticated, independent ‘in-house’ capacity to process and analyze the raw data received. In the process, they clearly demonstrated the ability of the UN and at least one member of its ‘family’ of specialized agencies to effectively handle such information. For reasons noted earlier in this report, however, the Iraqi example is unlikely to be useful in this context. A sobering reminder of the degree of opposition in this area is the failure of the Secretary-General to obtain budgetary approval for one of the centerpiece recommendations of the Brahimi Report—an enhanced information gathering and analysis mechanism (EISAS) to service the entire UN peace and security apparatus—despite the strong support it received from the Security Council and the express statement of the Secretary-General that the proposed new unit was not in any way to be confused with the creation of an “intelligence gathering capacity in the Secretariat”. (See paragraph 45 of A/55/502, Report of the Secretary-General on the implementation of the Report of the Panel on United Nations Peace Operations.)

Nonetheless, the mechanism of Sanctions Committees, assisted by the Secretariat, provides clear authority and some precedent for the UN receiving confidential information from Member States. In Security Council resolutions, references to the information that States are requested to provide on sanctions implementation and possible violations are not qualified by terms such as ‘public’ or ‘unclassified’.

Paragraph 3 of the Security Council Presidential Note of 29 January 1999 states that Member States should provide the sanctions committees with “*all* information available on alleged violations of arms embargoes, and other sanctions regimes” (S/1999/92). The Report of the Angola Expert Panel, in paragraph 8, makes specific reference to information gained from “police and intelligence sources” (S/2000/203).

It was suggested in the course of our work that the establishment of a regular channel or mechanism for the provision of confidential information, in accordance with procedures developed by the Sanctions Committees and approved by the Security Council, could be useful in encouraging a regular and timely response by those Member States with such information. It seems likely that, to be workable, the mechanism would have to limit the number of participants from both the relevant Sanctions Committee and the Secretariat and, in this regard, it is to be noted that the resolution mandating the Angola Expert Panel called upon Member States to provide relevant information “...to the expert panels *or* to the Chairman of the [Sanctions] Committee” (Resolution 1237 (1999), paragraph 9 (b) *emphasis added*). The determination of such sensitive matters would have to be undertaken by the Sanctions Committees themselves. A dedicated Sanctions Unit with specialist police and intelligence expertise, as proposed in this Report, may well be in a position to assist in this regard, as well as in the elaboration of other procedures and safeguards in support of the mechanism. It is to be underscored that the primary purpose for having this expertise in the Unit is to enable it to carry out investigations of sanctions violations. Nonetheless, a corollary benefit would be the understanding that such experts would have of the requirements for effectively utilizing confidential information.

7.4.4. Information management issues

If the net is cast as widely as recommended in this report, the amount of information received by the Sanctions Unit in respect of the various ongoing UN arms embargoes may be large. However, an overload of information can be just as serious a handicap as a lack of it.

Independent filtering of information by the Sanctions Unit—based on criteria such as plausibility, past reliability of sources and multi-source confirmation—will be of considerable assistance to the Sanctions Committees. It will need to be undertaken by the relevant experts in the Unit working in close collaboration with the information management specialists.

There is much to be gained from centralizing and storing in one database information relevant to sanctions implementation (whether it is material which tends to confirm implementation or which indicates possible violations). The database could be structured to allow information from all sources to be compiled and accessed in various ways—according to the names of known black market arms traders and brokers, for example, or to the known routes for illicit trafficking. In addition to facilitating access to the database by the broad network of sanctions monitors and implementers which the proposed Unit would seek to develop and promote, there may also be great merit in making much of the data publicly available. This will require the elaboration of clear rules on the nature and type of information to be

made public, bearing in mind genuine privacy considerations and other legal concerns, as well as the clearest possible indication of the status and source of the information (e.g. unverified allegations reported in the press versus information verified by monitors *in situ*). Such information sharing will enable researchers and others monitoring UN arms embargoes to stay abreast of developments so as to be better able to contribute relevant information to the database themselves. Any confidential information in the database would have to be adequately protected and be accessible only on a limited access basis in accordance with carefully elaborated procedures.⁷

7.4.5. *Special investigations*

The section on routine monitoring *supra* outlined the potential role of the Sanctions Unit in assisting the relevant Sanctions Committee in its initial response to information on possible violations and violators. If evidence of serious sanctions violations persist, then consideration would have to be given to dispatching full-fledged investigative teams. The staffing and budgetary arrangements that are proposed in this Report are designed to enable the Sanctions Unit to provide experts from its core permanent staff and its seconded experts as well as to facilitate the utilization of other outside experts. In other words, the aim is to institutionalize the ‘*ad hoc*’ expert panel concept through the innovative use of in-house and outside expertise. Procedural guidelines will need to be established for these investigative missions, particularly in relation to the evidentiary standards to be employed in assessing information on violations, as well as on such matters as the conduct of the mission, the methodology for systematic investigations, the evaluation of different sources of information and the use of databases and other tools for the effective management of the information collected.

As with the current Expert Panels, the special investigative missions may be established under the auspices of the relevant Sanctions Committee (as in the case of the original Angola Expert Panel (see Security Council Resolution 1237 (1999)) or under the auspices of the Secretary-General, as with the follow on Angola Monitoring Mechanism established in 2000 by Security Council Resolution 1295 (2000). The terminology used to describe the two *ad hoc* panels charged with investigating UNITA sanctions busting are interesting. The first was simply called an expert panel. The second was named the Monitoring Mechanism on Angola Sanctions. Neither of these titles spells out the investigative role, and this may be important for many States on the receiving end of visits. The use of ‘special investigative mission’ in this section is primarily for the purpose of clarity and is not necessarily meant to suggest the mission’s actual title. Solid precedents now exist for the mandate of such missions to include the following key tasks:

- to collect information, including through visits, and investigate reports relating to the violation of specified sanctions (notably, arms and, if applicable, resources exploited to wage and fund war);

⁷ See also the section on Compliance below for a discussion of the method of ‘naming and shaming’ sanctions violators.

- to identify the violators; and
- to recommend measures to end such violations and to improve the implementation of the sanctions regime.

The manifest and active support of the Security Council for the mission will be demonstrated in the detailed provisions in the mandating resolution on cooperation, assistance, freedom of access, provision of security and other necessary actions expected to be provided by all States, relevant United Nations parties, and other concerned parties, including NGOs (see paragraphs 8 and 9 of the Security Council Resolution 1237 (1999) establishing the Angola Expert Panel). Adequate resources will also be essential and, in this regard, regular or supplementary budget funding from the UN may need to be augmented further by voluntary trust funds. When missions of inquiry conclude their work, rigorous procedures should be in place to ensure that all the information collected has been entered into the database, and documentation and other records together with the reports of the mission have been properly filed and are available for further use. Procedures to allow for the proper recording and retaining in a database of the background analyses of members of the mission, including outside experts on temporary contracts, will be particularly important for both the continuity of sanctions monitoring and the development of best practices. Serious consideration should also be given to the development of a systematic written debriefing process for all mission members.

7.5. Bringing about compliance

Member States have a responsibility to enact and enforce national legislation implementing sanctions regimes and, in this regard, the Security Council has asked that they do so by criminalizing sanctions violations. In situations where the State in question either cannot or will not do so, it is up to the Security Council to seek to bring about compliance. The Sanctions Committees, with the assistance of the Sanctions Unit, and in particular, its investigative missions, have an important role to play in helping to encourage States to cease violations, in laying the necessary groundwork for the use of more coercive measures and in helping to identify what those measures might be and when they might best be used.

The special investigations to determine the identity of violators and their means of violation may, in and of themselves, prevent and deter some from further breaches. Or they may provide sufficient evidence to convince States to start a national prosecution. Through their recommendations on how to bring about compliance, they may also open opportunities for the Sanctions Committees to dialogue with representatives of States who are refusing to cooperate, with a view to securing cooperation or moving on to more blunt techniques, such as the public naming and shaming of proven and unrepentant sanctions busters. This type of dialogue may be particularly effective in the period prior to the publication of the Report of a Special Investigative Mission.

One important criterion for decisions by Sanctions Committees on further steps to take or to recommend to the Security Council will be the type of non-compliance

under consideration. Most serious will be the deliberate commission by States of acts that directly violate the embargo. At the other end of the scale will be cases where failure to monitor and enforce the embargo is due to a lack of state capacity (in which case, assistance, not enforcement, is required). The Sanctions Unit can facilitate the provision of technical assistance by other Member States, and may also be in a position to help States develop the legal machinery and administrative apparatus required for sanctions enforcement (see also Expert Working Group II Report on Implementation of Arms Embargoes ‘on the ground’, section 6.). In between the two extremes will be both the willful and the negligent failure to investigate and prosecute sanctions busters and the failure to cooperate with UN investigations.

The Expert Panel Reports offer a range of actions that the Sanctions Committees and, indeed, the Security Council itself, might take under the rubric of ‘name and shame’. They include:

- the publication and wide circulation of the reports of the missions, especially in countries where violations have taken place; and
- the compilation and distribution of a Black List or Watch List of individuals and commercial entities involved in sanctions busting.

Ratcheting up the response a notch would be Security Council action in the following areas, also recommended by the aforementioned Panel Report (S/2000/203, para 179):

- formally declaring the offending countries to be sanctions breakers;
- discouraging Member States from supporting the candidacies of nationals from listed countries for posts within the United Nations system until the listed countries are declared to be complying with the sanctions;
- banning the holding of UN conferences or meetings in the listed countries until they are declared to be complying with the sanctions; and
- encouraging other international organizations to do the same.

If these measures still fail to bring a recalcitrant State into compliance, then the Security Council must consider utilizing the most powerful tool at its disposal—the imposition of appropriate sanctions on the offending State itself—for example, an arms embargo. These so-called ‘secondary sanctions’ are deeply unpopular, and it will be up to the Security Council to make a convincing case for their use and for the fact that their implementation is as essential as that of any other targeted sanctions regime. The Security Council stands at a watershed in this regard. With the establishment of the Angola Monitoring Mechanism, it declared its intention to “consider appropriate action in accordance with the Charter of the United Nations in relation to States it determines to have violated the measures contained in those resolutions” (Security Council Resolution 1295 (2000), para 5). The same phrase was used in the Security Council Resolution establishing the Panel of Experts on the Sierra Leone sanctions (1306 (2000), para 20). The report of the Angola Monitoring Mechanism recommends that “the Security Council should consider applying sanctions against any Government found to be violating” the Angola sanctions (S/2000/1225, para 224).

The Panel of Experts on the Sierra Leone sanctions has found at least one country to be “actively breaking Security Council embargoes regarding weapons imports into its own territory and into Sierra Leone” (S/2000/1195, para 252). The credibility of the sanctions mechanism—and of the Security Council itself—hangs in the balance in the event that these allegations are proven. Only decisive action by the Council will save this important Charter instrument for helping to end—or even prevent—deadly conflict from being reduced to a series of hollow words.