

Enforcing Human Rights Through Economic Sanctions



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Abstract and Keywords

This article examines the enforcement of human rights law through economic sanctions. It describes the development of the so-called targeted or smart sanctions and discusses controversies in the applications of these sanctions in the context of the principles of the 'protection of civilians' and the 'responsibility to protect' and the resort to targeted sanctions for counter-terrorism purposes. This article also suggests that the recent successes of sanctions in Libya, Côte d'Ivoire and Liberia can be extended to other areas and argues that the positive results of imposing targeted sanctions as proactive for human rights are counterbalanced by the ongoing rights controversies with counter-terrorism listing in the 1267 regime.

Keywords: human rights law, economic sanctions, smart sanctions, protection of civilians, responsibility to protect, counter-terrorism, Libya, Côte d'Ivoire, Liberia

1. Introduction

SINCE the end of the Cold War, economic sanctions and human rights have each undergone a distinct, but equally remarkable, evolution in their conceptualization, their use by nation-states, and their institutionalization in new global processes involving multilateral agencies. Traditionally, sanctions operated as nation against nation general trade embargoes, often imposed before or during military conflicts. By the end of the 1990s, however, sanctions had become a diverse set of specialized, targeted, coercive measures involving finances, travel, arms, and selective commodities, which multilateral organizations most often imposed to achieve a wide array of goals. In addition to sanctions to protect human rights, these goals included ending international and civil wars, protecting innocents caught in war, extraditing international fugitives, controlling the spread of international terrorism, deterring the proliferation of weapons of mass destruction, and restoring democratically elected governments. Indicative of the expanded resort to sanctions and

Enforcing Human Rights Through Economic Sanctions

their diverse aims, (p. 773) some analysts labeled the 1990s as a ‘sanctions decade’, while others worried the trend had become a ‘sanctions epidemic’.¹

As this volume attests, human rights advocacy and advancement, which blossomed in the 1970s and well before sanctions, also became more globalized and a powerful force against repressive governments in the post-Cold War decade.² It especially became fully operationalized in the work of numerous non-governmental organizations (NGOs), in far-reaching policy principles derived from the expansion of international human rights law, and has ultimately been enforced in new courts engaged in prosecutions of individuals for mass atrocities and genocide. This latter trend has led one prominent scholar to label this evolution as ‘the justice cascade’.³

With both human rights and sanctions in this state of dynamic change, it is unsurprising that employing the latter to improve the former has progressed significantly. Sanctions mechanisms have evolved from a single donor nation withdrawing economic aid and trade to protest human rights violations, to multilateral organizations imposing targeted sanctions against individuals and entities to punish or constrain their specific role in human rights abuses and political killings, then ultimately to leveraging these more precise sanctions measures to protect fragile rights during the first years of democratic governance in post-civil war nations. Transnational human rights NGOs have increasingly advocated this use of multilateral economic sanctions, and their imposition and enforcement has occupied an increasingly prominent place in the coercive tool kit of national policy-makers.⁴

Their operational form has taken shape most pronouncedly in United Nations Security Council Resolutions and has been strengthened, if not also extended in scope and enforcement, by sanctions that the European Union, the British Commonwealth, and ad hoc coalitions of states have adopted. Nothing may underscore the convergence between sanctions and human rights more than their parallel movement to focus increasingly on individuals and entities, and less often governments and states, as the responsible parties to indict for rights violations and target with smart sanctions.

These intersecting developments have not been without controversy and, sometimes, outright contradiction. As revealed in the five decades of US unilateral sanctions on Cuba and various 1980s Soviet sanctions against its satellite states, (p. 774) some economic sanctions that claim to be enforcing human rights norms were actually designed as a means to punish directly ideological foes, with significant negative impact on rights and the quality of life of the general population.⁵ These cases of big power economic coercion, combined with the negative humanitarian consequences of the earliest cases of UN sanctions in the 1990s—Iraq (devastating humanitarian impact), Haiti and the Former Republic of Yugoslavia (varied from serious to minimal humanitarian impact)—led various analysts to question whether sanctions can ever be an ethical tool, or other than harmful, to human rights.⁶

With these trends and concerns in mind, this chapter focuses first on the international community's improvements in sanctions' strategy and the creation of those discrete tools called targeted—or smart—sanctions. These were forged, in part, to make possible improved sanctions design, implementation, and enforcement against those engaged in human rights violations. The second section summarizes some of the cases where smart sanctions were applied, devoting particular attention to the most recent controversies about sanctions and rights in the principles of the 'protection of civilians' (PoC) and 'the responsibility to protect' (R2P), and to the resort to targeted sanctions for counter-terrorism purposes. Third, reflections on the cases lead to several policy guidelines for the use of sanctions to protect and enhance rights and to stifle rights violators.

2. Getting Smarter about Sanctions Tools

Driven by the outcry against sanctions-induced negative humanitarian impact in the early 1990s, the UN Security Council undertook a multi-year sanctions reform process that included a series of research studies, diplomatic seminars, expert processes and conferences, and some trial and error in designing new sanctions instruments, methods for their implementation, and means for systematic monitoring of sanctions impact. The resulting period of sanctions development saw a shift from the use of comprehensive and general trade sanctions toward more targeted and specialized economic instruments that significantly advanced the sophistication of global sanctions.⁷ (p. 775)

In 1995, the UN Department of Humanitarian Affairs commissioned a series of reports on the impact of sanctions on humanitarian assistance efforts. The reports developed a methodology and series of specific indicators for assessing humanitarian impacts. Many of the recommendations in these studies became the basis for an ongoing humanitarian assessment methodology, which the successor agency of the Department of Humanitarian Affairs, the UN Office for the Coordination of Humanitarian Affairs, developed. Efforts to assess the humanitarian impact of particular sanctions cases became a regular feature of UN sanctions policy. Assessment reports and missions that examined the impact of sanctions provided the Security Council with an opportunity to anticipate and prevent potential humanitarian problems and to respond to adverse sanctions impacts in a timely manner.⁸

Also in 1995, the Security Council, anxious to know which individuals and entities were violating the Council's arms embargo for Rwanda, created a team of independent specialists to investigate sanctions violators and to report how these sanctions violators could be stifled and the sanctions better enforced. Subsequently, every new Security Council resolution that imposed sanctions also created such a 'Panel of Experts' for sanctions monitoring. Especially in cases of ongoing internal violence, these Panels have been instrumental in identifying and recommending more refined targeting of perpetrators and in advising a new or extended embargo of particular commodities—like diamonds or timber—that produced large revenues for violent actors.⁹

Enforcing Human Rights Through Economic Sanctions

In the late 1990s, Switzerland, Germany, and Sweden sponsored working group meetings and a series of research conferences, with the aim of increasing the effectiveness of Security Council sanctions, strengthening the prospects for member state implementation and target state compliance, and refining the emerging use of targeted sanctions. The first of these policy initiatives, the Swiss Interlaken Process (1998–99), refined and adapted the methods utilized in combating money laundering to the challenge of implementing targeted financial sanctions. In particular, the Interlaken Seminars examined the extent to which financial sanctions could achieve their goal of cutting off the financial support crucial to sustaining abusive regimes and the decision-making elites who control such regimes.¹⁰ (p. 776)

Building on the Interlaken Process, the German Ministry of Foreign Affairs initiated a parallel effort to refine the implementation of travel bans and arms embargoes. The Bonn International Center for Conversion managed the German initiative, which included meetings in Bonn in 1999 and Berlin in 2000. This Bonn-Berlin Process provided rich detail about travel and arms embargos, with the latter being especially significant to the protection of innocents and human rights.¹¹ In 2001, the government of Sweden launched a further initiative in a series of meetings in Uppsala and Stockholm to develop recommendations for strengthening the monitoring and enforcement of Security Council sanctions. Known as the Stockholm Process on the Implementation of Targeted Sanctions, the Swedish conferences and research added to the work that the Swiss and German governments had already achieved, and helped to advance international understanding of the requirements for effectively implementing targeted sanctions.¹²

The cumulative result of these processes, policy relevant research, and the workings of Panels of Experts was the development and institutionalization of ‘smart sanctions’—that is, an array of economic and other coercive measures that are precisely targeted in two ways. First, they take aim at the specific sub-national and transnational actors (such as companies, asset holding entities, or individuals) that are deemed most responsible for the policies or actions the imposer considers illegal or abhorrent. Rather than punishing general society through trade sanctions or punishing the national government as a catch-all actor, smart sanctions aim to constrain identifiable, culpable perpetrators. Second, smart sanctions isolate the arena of economic coercion to a specific micro-level economic activity that can be identified as contributing to increased human rights violations or, for example, to the development of a nation’s weapons program.¹³

The measures below comprise the sanctions most readily available to constrain or end large-scale rights abuses and killing. They include:

- freezing financial assets that (a) the national government, (b) regime members in their individual capacity, or (c) those persons designated as key supporters or enablers of the regime, hold outside the country;
- suspending the credits, aid, and loans available to the national government, its agencies, and those economic actors in the nation who deal with monies involving international financial institutions; (p. 777)

- denying access to overseas financial markets, often to the target government's National Bank and other governmental entities, as well as to designated private banks, investors, and individual designees;
- restricting the trade of specific goods and commodities that provide power resources and revenue to the norm violating actors, most especially highly-traded and income-producing mineral resources;
- banning aid and trade of weapons, munitions, military replacement parts, and dual-use goods of a military nature, including computers and related communications technologies;
- banning flight and travel of individuals and/or specific air and sea carriers;
- denial of visa, travel, and educational opportunities to those individuals on the designee list; and
- denying the importation of, or other access to, goods labeled as 'luxury items' for the entities and individuals on the designated list.

Clearly smart sanctions make the political action of abusing rights and engaging in atrocities rather personal. The overseas 'rainy-day' funds of dictators become inaccessible, and children of perpetrators lose travel visas and access to tuition monies to attend Western schools. When time is of the essence in responding to unfolding rights violations and mass atrocities, some targeted sanctions are likely to be more appealing and effective than others. Due to economic circumstances, some sanctions imposers are likely to be more versatile in targeting certain measures than others. But in all cases, as will be illustrated below, sanctions' effectiveness in stifling human rights abuses demand a convergence of factors, anchored in the willingness of imposers to comply with the sanctions and to adapt them to patterns of violation by the targets.

3. Cases Involving Sanctions and Human Rights

Prior to imposing sanctions on Iraq for its invasion of Kuwait in August 1990, the UN's Permanent Five powers and a sufficient number of rotating Security Council members had reached agreement on sanctions only twice in the UN's first forty-five-year history. Significantly, each time involved a racial human rights case: Southern Rhodesia (1966) and South Africa (1977). In the fifteen years following the initial Iraq resolution, the majority of UN sanctions cases—Yugoslavia, Haiti, Somalia, Libya, Ethiopia, and Eritrea (which involved primarily governments); and Liberia, [\(p. 778\)](#) Angola, Rwanda, Sudan, Sierra Leone, Afghanistan, the Democratic Republic of the Congo, and Côte d'Ivoire (which involved non-state, and often multiple, violent actors)—had some dimensions of rights concerns reflected in the resolutions.¹⁴

At the same time, sanctions have been fraught with inconsistencies regarding their design and 'clout', thus limiting their human rights impact. Put in its best light, over time

Enforcing Human Rights Through Economic Sanctions

the international community, acting through the UN Security Council, has made progress in some specific rights protection cases and has formulated at least two ongoing guiding themes—some would call them ‘global norms’: the protection of innocent civilians in armed conflict and the responsibility to protect civilians faced with mass atrocities.

The cases of Liberia, Côte d’Ivoire, and Libya (examined below) serve as reasonably positive recent examples of sanctions enforcing and protecting human rights, but they stand in contrast to the more troubling realities and significant historical cases in which UN sanctions activities failed to halt human rights abuses when civilians were under greatest attack—during genocide and in protracted bloody atrocities. In at least four cases—Yugoslavia, Rwanda, Liberia (until 2001), and Sudan/Darfur—UN sanctions resulted in little or no reduction in the killing, because the Council acted late and then imposed a limited and weakly-enforced arms embargo that it did not integrate with other, more powerful financial or other sanctions.¹⁵ Similarly, the limited measures imposed in Afghanistan prior to 2001 also had no discernible impact on the policies of the Taliban regime regarding the treatment of cultural artifacts or women’s rights.

Despite pleas of ‘never again’, the failure of the international community to use sanctions or other means to prevent ethnic cleansing in Bosnia in 1992 or genocide in Rwanda in 1994, was repeated with regard to Darfur a decade later. Without question, the Darfur case serves as a glaring example of too few sanctions imposed too late and without the broad targeting of a substantial number of elites, as would have maximized their effectiveness. Despite near-global condemnation of the Sudanese regime for its and its agents actions against the citizens of the Darfur region from 2003 to 2008, a rather watered-down set of financial asset freezes and travel restrictions were imposed against a small number of Sudanese officials in a series of Security Council resolutions. Most, but not all, of this back-tracking was due to the unwillingness of the Chinese and Russian representatives to support extensive sanctions. A draft Security Council resolution targeting more than thirty individuals responsible for killings and other brutal actions in the region faced serious opposition. Ultimately, the final resolution that the Security Council adopted only (p. 779) designated four individuals. The UN debate over sanctions continued for so long prior to their adoption that whoever was to face financial penalties surely avoided them.¹⁶

More positively, with the passage of resolution 1265 in 1999,¹⁷ the Security Council recognized that civilians comprise the vast majority of casualties in armed conflicts and must be protected. In the context of obligations of the UN and member states under international humanitarian law, the confirmation of norms on PoC sparked a move toward sanctions regimes aimed directly at shielding innocent populations from harm.¹⁸ It also established a pattern of designating as targets of sanctions those militant non-state actors (both groups and their individual leaders), like irregular armed groups, death squads, or paramilitary forces, that preyed on the civilian population, as well as those who bankrolled them.¹⁹

Since the passage of UN Security Council (UNSC) resolution 1265, PoC has emerged as a core directive of all humanitarian and human rights efforts and has been embedded in a

Enforcing Human Rights Through Economic Sanctions

number of Security Council resolutions dealing with armed conflict.²⁰ Complementary issues were acknowledged in Council resolutions on women, peace, and security,²¹ children,²² protection of humanitarian workers,²³ conflict prevention,²⁴ and sexual exploitation.²⁵ A significant factor that gave these sanctions ‘more teeth’ than their predecessors was the priority given the PoC concept in the work of many UN missions, including operations in Afghanistan, the Central African Republic, Côte d’Ivoire, Darfur, the Democratic Republic of the Congo, Haiti, Liberia, and the Sudan.²⁶ (p. 780)

In 2006, the protection-of-civilians agenda advanced considerably at the UN, when the Security Council made its historic first reference to the newly-endorsed construct called Responsibility to Protect.²⁷ As with UNSC Resolution 1265, this resolution acknowledged that civilians make up the majority of casualties in violent conflicts, but highlighted that states have the primary responsibility to protect their people from all acts of violence. The resolutions specifically mention provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome document on R2P, to underscore the responsibility of all states to protect populations from four heinous human rights violations: genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁸

The evolution of PoC to R2P as a guiding theme for Council action reflects both the drive for more sanctions precision and the expanded Council concerns with the abuse of civilians during war. In 2007, this also led to the creation of two new positions of Special Representatives of the Secretary-General, one for the prevention of genocide and one for R2P—offices that would play a significant role in future sanctions cases. It also led to the development of new techniques and rationales for sanctions regimes and of the manner in which their Panels of Experts supported them.²⁹

3.1 Liberia

The sanctions regime imposed on Liberia exemplifies how the Council can move from an ineffective, stand-alone arms embargo, to employing a range of targeted sanctions instruments. More than a decade of diverse sanctions culminated in protective measures that targeted those actors who were responsible for attacking peacekeepers and humanitarian workers, those who were impeding the delivery of humanitarian aid during the war, and those who undermined the peace process and the emergence of democratic institutions as the war ended. Replacing weak, initial sanctions measures, the UN Security Council adopted Resolutions 1521³⁰ and 1532,³¹ thereby establishing a more stringent arms embargo on the forces of former President Charles Taylor, as well as extended financial and travel restrictions on Taylor and those of his supporters that represented a threat to the peace process (p. 781) in Liberia. In addition, certain trade restrictions for timber and diamonds were levied.³²

Based on findings of the Panel of Experts and the work of the UN Mission, some of the sanctions were lifted following the election of Ellen Johnson Sirleaf. Those targeting timber were removed in 2006,³³ followed by those related to diamonds in 2007³⁴—after it was clear that the financial profits from these industries no longer flowed to conflict ac-

Enforcing Human Rights Through Economic Sanctions

tors. The remaining sanctions were meant to target actors that might disrupt the democratic process in the country. Thus, the sanctions were increasingly pre-emptive, protecting the new government and Liberian people from potential violent spoilers, leading some to refer to these protective measures as ‘Sanctions for Peace’, a label which more recently was used to protect the national reconciliation process in Côte d’Ivoire. However, the formula and background to the label is clearly consistent with sanctions for rights protection and enhancement.³⁵

3.2 Côte d’Ivoire

The Security Council’s response to changes in the long-standing civil war in Côte d’Ivoire in 2011 provides an example of how the lessons learned from Liberia and other cases informed subsequent sanctions regimes. Moreover, with the Côte d’Ivoire’s crisis and the UN’s response during the same period as the Council’s Libyan action, the Council’s full application of R2P as a principle guiding sanctions is clear. UN sanctions in Côte d’Ivoire began in 2004 and coincided with the deployment of the United Nations Operation in Côte d’Ivoire (UNOCI). The UN had hoped initially to assist in the preparation of general elections to be held in 2005 and to have a positive impact on the efforts to stabilize the West African sub-region as a whole. However, the protection-of-civilians mandate was very difficult to implement, because the arms embargo was weakly enforced due to the low number of troops and the large geographic area that needed to be covered.³⁶

The opportunity for an explicit application of R2P arose in the bloody aftermath of the 2011 elections dispute between President Alassane Ouattara and former President Laurent Gbagbo. In response to a spike in ethnically-charged hate speech and allegations that the armed forces and militia groups from both sides were arming ethnic groups, the UN Secretary-General’s special advisers on the prevention of genocide (Francis Deng) and on R2P (Edward Luck) released a joint statement (p. 782) to UN Missions expressing grave concern about ‘the possibility of genocide, crimes against humanity, war crimes and ethnic cleansing’, and recommending that the Security Council take ‘urgent steps...in line with the “responsibility to protect”’.³⁷

In response to these concerns, Gbagbo’s continued refusal to step down and the obstruction of UNOCI’s mandate by his supporters, the Council unanimously adopted resolution 1975 in March 2011, reaffirming ‘the primary responsibility of each State to protect civilians’.³⁸ Notably, the resolution authorized UNOCI to ‘use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence’, including the use of force.³⁹ The Council also imposed targeted economic sanctions on Gbagbo and his inner circle, and, significantly, stated its intent to impose similar sanctions ‘against the media actors who fan tensions and incite violence’,⁴⁰ a noteworthy innovation that acknowledges their role in perpetuating hate and violence.

3.3 Libya

Security Council action that authorized multifaceted smart sanctions, as well as North Atlantic Treaty Organization (NATO) bombing to protect Libyan civilians whom their government was about to attack, provides the classic case of R2P. Resolution 1970⁴¹ targeted the Gaddafi regime institutionally, as well as individuals designated for their role in the brutal repression of protestors, also with the aim of sending a message to Gaddafi that he should halt future government attacks. In addition to an arms embargo, Resolution 1970 imposed an extensive assets freeze, other financial restrictions, and a travel and aviation ban. The sanctions also encompassed cargo inspections anywhere in the world, if freight were suspected of being bound for Libya. Significant for human rights advancement, the resolution also called for the International Criminal Court to investigate potential government atrocities and to issue indictments where appropriate.

Despite reservations on the part of some Council members, Resolution 1970 passed with remarkable unanimity and speed. The timely adoption of the resolution came after the defection of Libyan UN ambassador Mohammed Shalgham, (p. 783) who urged Security Council members to impose sanctions in response to the atrocities Gaddafi had committed.⁴² Also influencing Council thinking were two developments that provided the teeth of enforcement just days before the resolution actually passed. The first was the endorsement for sanctions of member states in the region, supported by regional actors like Council of the League of Arab States. The second was that the extensive reach of the national sanctions that the United States and the European Union had imposed had already locked down the bulk of the assets of the Gaddafi regime and family, setting the stage for Security Council action.

Despite the effectiveness of these strong measures, it soon became clear that more stringent actions were needed in order to protect the lives of Libyan civilians—specifically in Benghazi, which Gaddafi had vowed to raze. In March 2011, Resolution 1973 expanded existing sanctions and authorized a no-fly zone and a ban on all Libyan flights.⁴³ The resolution also established a Panel of Experts to evaluate the enforcement of these measures. Arab support, critical to obtaining US consent to a military intervention, was quickly provided, when the Council of the League of Arab States called for a no-fly zone and the League of Arab States, Qatar, and the United Arab Emirates pledged to contribute to the NATO and international efforts in Libya.⁴⁴ Thus, resolution 1973 made clear that ‘all necessary measures’ other than an occupying force could be used to protect civilians.⁴⁵

NATO implementation of the ‘necessary measures’ led to a full-scale bombing campaign to destroy Gaddafi’s air defense units and command facilities. The success of these strikes, and the resulting rebel military victories, prompted the Council to pass resolution 2009, which established a support mission—the United Nations Support Mission in Libya—in the country. In support of its mandate to assist national efforts to extend state authority, strengthen institutions, and protect human rights, among other objectives, the Council also partly lifted the arms embargo previously imposed. It further began the complicated process of ending the asset freeze targeting entities connected to the previous

Enforcing Human Rights Through Economic Sanctions

regime and making these assets available to the opposition for the benefit of the Libyan people. With the capture and death of Gaddafi in October 2011, Security Council Resolution 2016⁴⁶ set a termination date for the provisions of Resolution 1973, which had formed the legal basis for NATO's military intervention. As an ongoing commitment to R2P (p. 784) principles, the Panel of Experts continued to monitor the original arms embargo, assets freezes, and travel bans. In their reports to the Sanctions Committee, the Panel provided recommendations for areas of major concern and called for greater cooperation in repatriating any proceeds that it found from embezzlement and corruption that Gaddafi, other Libyan politicians, and their families had transferred to personal accounts or companies out of the country.⁴⁷

Certainly the fall of the Libyan regime would not have occurred without an armed rebellion and NATO's military support, but the combination of UN, European Union, and US targeted sanctions played a considerable role in degrading both the regime's firepower and its support among Libya's elites. By cutting off nearly half of Gaddafi's usable monies—some USD 36 billion in Libyan funds were locked down in the first week of sanctions—the international community immediately denied the dictator the funds to import heavy weapons, to hire foot soldier mercenaries, or to contract with elite commando units bent on doing the killing Gaddafi would order. Had these sanctions not been successfully imposed and enforced, it is reasonable to assert that the war in Libya would have been longer and considerably more deadly for Libyan citizens. Tripoli, for example, was not destroyed in an all-out battle like that which engulfed and leveled major Syrian cities in 2012–13.⁴⁸

4. Counter-Terrorism Sanctions and Human Rights

Throughout the 1990s, the Security Council extended the application of targeted sanctions explicitly to terrorist groups and to the state actors and agencies that were identified as their surrogate supporters. In UNSC Resolution 748,⁴⁹ the Council condemned Libyan terrorist actions against airlines and isolated the Gaddafi regime with a series of sanctions measures. UNSC Resolution 1054⁵⁰ sanctioned the Sudan for harboring and providing assistance to terrorists, specifically Osama bin Laden, and others implicated in the attempted assassination of Egyptian President (p. 785) Mubarak. In UNSC Resolution 1267,⁵¹ the Council required all member states to freeze the assets of, prevent the entry into or transit through their territories by, and prevent the direct or indirect supply, sale, and transfer of arms and military equipment to, any individual or entity associated with al-Qaida, Osama bin Laden and/or the Taliban.⁵²

Following the al-Qaida attacks on the United States on 11 September 2001, the Council passed the most far reaching resolution in its history: Resolution 1373.⁵³ It mandated that all 191 member states participate in a global campaign to deny assets, safe haven, travel, or any other form of support to al-Qaida and other terrorist organizations, in accordance with what the newly-created Counter-Terrorism Committee (CTC) specified. One of the

Enforcing Human Rights Through Economic Sanctions

central features of this new counter-terrorism regime was the development of a listing procedure to include the names of individuals and entities suspected of engaging in terrorism or associating with terrorists. Until late 2006, any decision concerning listing and de-listing was left solely to the discretion of the '1267 Committee' and required the consent of all Committee members. By the end of 2008, UN member states had placed nearly five hundred individuals and entities on the '1267 Committee' list.⁵⁴

International human rights groups, as well as leading legal scholars and practitioners, criticized this listing—and lack of de-listing—procedure from its inception, calling it 'black-listing'. There was broad consensus that the listing and closed procedures of the '1267 Committee' violated a number of fundamental human rights that the core international and regional human rights instruments guaranteed. These were—rang the clamour—the very legal documents and rights that the UN was meant to defend via resort to sanctions and not to be trampled in the name of security against terrorism.⁵⁵

In particular, rights advocates claimed that the listing/delisting mechanisms of the Committee and Security Council lacked transparency and failed any serious accountability test for the Security Council or member states who had submitted the names of entities or individuals to be listed. Consequently, the due process rights of a listed individual were non-existent. An individual was neither made fully aware of the specific evidence, charges, associations, and behaviours which led the person to be listed, nor informed of the agencies that had submitted such information to (p. 786) the Committee. Those listed had no due process rights to appeal this listing to the Council and thus there was no judicial review of the measures taken against them.⁵⁶

By 2004, the issues of sanction-related listing, de-listing, and due process had become the subject of intense and parallel debate in policy and legal venues. Policy and institutional reforms were pressed in the Security Council, while individuals sought legal redress via national and regional courts, essentially challenging the Security Council's authority. The actions of the Council to address challenges to the 1267 machinery often emerged following new requirements that courts had mandated (although nearly all of these were under appeal), or they were attempts to pre-empt potential negative judgments via limited reform. The following analysis highlights the most significant ongoing case and presents a summary of the institutional and policy changes that the Council, as the sanctioning agent, made within the UN system.⁵⁷

The case of *Kadi and Al Barakaat International Foundation*⁵⁸ has dominated both the discussion of the rights violations by the '1267 Committee' and the litigation through various regional and national court systems throughout the 2000s. By 2008, The European Court of Justice issued a ground-breaking ruling in the *Kadi* case, that the UN Security Council's refusal to abide by certain rights and processes that the EU system of rights guaranteed voided the obligation of European states to implement Security Council targeted sanctions against this individual. Reacting as a political and security forum for the region, the European Union Council later issued a ruling reinstating the restrictive measures placed on *Kadi* as a preventive counter-terrorism action permitted under European law. This see-

Enforcing Human Rights Through Economic Sanctions

saw battle between rights and security in counter-terrorism listing continues through similar cases in the US, Canada, and Europe.⁵⁹

Disturbed by the rights insensitivity of the Council from 2001 to 2005, and convinced that decisions within the European court system raised serious questions about the adequacy of Security Council counter-terrorism sanctions, a group of 'like-minded states' dominated by European and Scandinavian members began to discuss with the Permanent Five Security Council members new resolutions administratively to remedy court adjudications. As a result of these pressures, the (p. 787) Council adopted stronger review mechanisms and enhanced procedures to ensure that listed individuals and entities are notified of the action taken against them. It also mandated that persons listed receive statements and narrative summaries of reasons for their listing. With Resolution 1730,⁶⁰ the Council established an office, 'The Focal Point', staffed by a Secretariat professional designated to facilitate and process the submission of requests for delisting. In a far-reaching action, Resolution 1822⁶¹ directed the 1267 Monitoring Team to undertake a comprehensive review of all listed names in order to produce a clean and current list and to review each entry every three years. Without question, the impending European Court of Justice *Kadi* decision prompted the Security Council to adopt 1822.⁶²

When reviews reported that the Focal Point mechanism did not meet the due process standards that court decisions were affirming, especially in not having the authority to conduct an independent review of petitioners' responses to charges and evidence, reformers pushed for further changes of a quasi-legal sort. These, in part, were realized in Resolution 1904,⁶³ wherein the Council created an independent and impartial Ombudsperson to replace the Focal Point for 1267 listing appeals. The resolution's annexes provided a template for improving the gathering of relevant information pertaining to listings, expanding the flow of information between the sanctions committee and listed persons and entities, and ensuring that the '1267 Committee' more fully considers requests for delisting. Although not a perfect mechanism, both petitioners and member states have been sufficiently satisfied with the procedures and results of the Ombudsperson's decisions. Thus, the office has been reaffirmed via Resolution 1989,⁶⁴ and with Resolution 2083⁶⁵ the Council extended the Ombudsperson's mandate for thirty months.

It is to be assessed fully if, how, where, and why these new mechanisms have contributed to improving the human rights responsiveness of the 1267 listing mechanism. The continuation of litigation attests to ongoing rights dilemmas, as does the critique of Council listing power. A November 2012 report that the Watson Institute released indicates that the UN Security Council measures have resulted in some welcome and effective reform. The 1267 Monitoring Team completed its systematic reevaluation of those placed on the list, taking more than the specified two years to finish. In this first review, 488 designated individuals on the list were re-examined, with thirty-five names of individuals removed/delisted based on the criteria for inclusion, while twenty-six individuals and organizations that were either deceased or defunct were delisted. In addition, the review process led to

member states (p. 788) presenting more evidentiary bases for those remaining on the list, including summary statements that are available on a publicly-accessible website.⁶⁶

As a result of the division of the al-Qaida and Taliban sanctions lists and committees, as mandated in Council Resolution 1988,⁶⁷ and the continued diligence of the Monitoring Team, the completed second list review of November 2012 now includes 295 names of individuals and entities—a significant reduction from the last review. Since its creation, the Focal Point delisted thirty-one petitioners out of eighty-five that were submitted for review; while the more intricate Ombudsperson process examined twenty cases, deciding to delist nineteen individuals and twenty-four entities.⁶⁸

5. Making Sanctions Work

As this chapter has demonstrated, the type of sanctions imposed on rights abusers and the effectiveness of sanctions have varied over time. UN sanctions—despite counter-terrorism listing controversies—have the great advantage of being a foundational source of international law and, as such, impose obligations on all member states to comply with such coercive action. In practice, when powerful member states like the US or regional organization like the EU reinforce Council sanctions with further measures of their own, chances of success often increase. At the same time, however, Council sanctions suffer from taking time to mobilize, legislate, and implement. Experience shows that the very rumor of UN action may spark potential targets to hide their assets and begin to falsify companies, passports, and bank records.

Although practitioners and politicians frequently resort to sanctions to punish wrong-doers, the assessment of sanctions by analysts continues to be quite mixed. Most observers caution that the limited sanctions success rate, which social science researchers assess at about thirty-three percent, make sanctions a poor bet. This debate about the sanctions' effectiveness for punishing rights violators, or enhancing human rights in fragile political environments, has always been intense and diverse in policy circles. At present, the historical evidence about targeted sanctions is cautious at best; neither unilateral sanctions nor multilateral sanctions have (p. 789) ever toppled a targeted, rights-violating government. Nor have they, by themselves, ever forced rights violators to desist in their actions. When dictators change their behaviour, sanctions may be part of the mix of a set of foreign policy measures and domestic pressures that lead to an improved human rights situation. However, sanctions have more dramatic success in safeguarding fragile democracies, which protect the rights—respecting political climate of former non-democratic states. Generally, the most significant factors associated with effectiveness are the severity of the threats to rights, the degree of cooperation among national imposers, domestic politics within imposer and target states, and the diversity of economic entanglements between imposing nations and the target state or entity.⁶⁹

Sanctions policy analysts tend to argue that these poor results arise from half-hearted purpose, weak sanctions design, and/or implementation, especially by the Permanent Five members of the UN Security Council. They suggest that a close scrutiny of the Kosovo,

Enforcing Human Rights Through Economic Sanctions

Sudan/Darfur, Zimbabwe, and especially the Syrian case, reveals that the reluctance of powerful states to enforce a full slate of coercive measures sabotaged what otherwise might have been effective sanctions for improving human rights. Among quantitative international relations scholars, there is a fairly consistent set of findings that economic trade sanctions are more detrimental to human rights than partial and selective sanctions, and generally, these studies find that economic coercion fails to attain its policy goal, even when sanctions are specifically imposed with the goal of improving human rights. Finally—and oddly—multilateral sanctions have a greater overall negative impact on human rights than unilateral sanctions.⁷⁰

Lessons from the past two decades of multilateral cases of primarily targeted sanctions policy and mechanisms can be summarized succinctly regarding how sanctions can prompt, persuade, or force human rights improvements.⁷¹ First, sanctions succeed when decision makers remember that sanctions are only tools—and thus *only one* of the multiple important tools that should be serving a clearly-specified policy goal and broader policy interest. When sanctions become *the* policy, or are maintained for so long that they *de facto* become *the* policy, they are no longer effective. This was the trap into which the US and UN had fallen by the mid-1990s with the sanctions on Iraq and with which they may be flirting with regard to Iran. It has been the dilemma of the US experience with Cuban sanctions for half of a century. (p. 790)

Second, and flowing from the first reality, despite their precision, smart sanctions seldom produce immediate and full compliance from targets. Rather, in a number of cases, sanctions produce partial compliance and generate pressure on targets and imposers to engage in more direct bargaining to achieve the sanctions objectives. Thus, the economic squeeze felt by the target comprises only the first tier of smart sanctions success. The political success of getting the target to change its behaviour results less over time from the economic pain it experiences, but more so from gains to be made at the bargaining table which the sanctions have set for the contending parties. Thus, sanctions work when they not only enrage, but actually engage their targets. Sanctions must provide a framework for continued dialogue between target and imposers.

When Libya was sanctioned for terrorist activities and support, the sanctions' impacts were a central factor in the ongoing negotiations from the mid-1990s until, a decade later, the actions brought suspected terrorists to trial and convinced the regime to reduce its support of international terrorism. In Angola, sanctions were initially ineffective, but became stronger over the years and combined with military and diplomatic pressures to weaken the National Union for Total Independence of Angola (UNITA) rebel movement. In Liberia, sanctions were designed to deny resources to Taylor and his allies. Then, after increased engagement by the imposers with the fighting factions, the sanctions helped to deny legitimacy to the Charles Taylor regime itself.

Third, sanctions as a means of punishment and isolation rarely succeed. In fact, sanctions form only half of the mix of mechanisms needed to alter the behaviour of stubborn targets, such as regimes or non-state groups engaged in human rights violations. Positive in-

Enforcing Human Rights Through Economic Sanctions

ductions—the proverbial carrots of international economic and political relations—are a necessary complement to the sticks of a sanctions strategy. Within this mix, the structure and use of sanctions to achieve the end-game desired from the target must be clear. The more effective sanctions are ones which detail a very clear and limited number of demands, and which are clear and credible. Both imposer and target must be in full agreement about what constitutes compliance. Moreover, the target must be confident that if it changes its human rights behaviour in accord with actions specified in the sanctions, it will result in a timely lifting of the coercive pressure and the extension of the promised benefits. When imposers shift the goal-posts (as has often been done in counter-proliferation sanctions), target compliance fails.

Finally, there is the generalization that many analysts shun, because they consider sanctions most useful as effective alternatives to war, firmly grounded in international law. This maxim states that unless the target understands that without some change in their behaviour, a sequence of stronger enforcement measures will follow—including the use of force—then sanctions become a bet that a bluffing hand supports. Haiti stands out as the exemplar of this maxim. Having overthrown the democratically-elected government, a sanctioned General Cedras did not act on verbal agreements to leave power until he clearly understood that he would be (p. 791) removed by force. The use of R2P in Libya—despite its negative outcome for the prospect of Syrian sanctions—with resulting military action, saved lives.

Two new emerging trends, maximizing commodity sanctions and targeting enablers, may not yet fall into the realm of generalizations about sanctions improving rights, but they should be noted. First, commodity-specific sanctions have increased in frequency and impact in diverse sanctions cases. Highly to moderately successful oil embargoes were imposed as part of the sanctions against Yugoslavia, Haiti, UNITA, and the military junta in Sierra Leone. After aid agencies and human rights NGOs documented the role of diamond smuggling in financing the civil wars in Angola and Sierra Leone, and in the recruitment and retention of child soldiers in other conflicts, the Security Council pushed the US and European states to take action to interdict the trade in so-called 'blood diamonds'. Diamond embargoes were imposed against UNITA in 1998, against the Revolutionary United Front areas of Sierra Leone in 2000, and against Charles Taylor's Liberian government in 2001. A log-export ban also was imposed against the government of Liberia, for its support of the Revolutionary Unified Front. There is increasing evidence that these commodity embargoes stifle the work of the criminal organizations that are often responsible for the rights abuses and murder of civilians in war-torn areas.⁷²

Building from the reality that mass atrocities are organized crimes, reducing to the lowest possible level the means to organize and sustain them—that is, money, communications networks, and other resources—can disrupt their execution. A key element of such crimes, particularly relevant to international responses, is the role of third-parties who carry out the execution or genocidal orders of leaders. While atrocities vary in cause and method, and perpetrators are generally both creative and resourceful, a core set of activities can be identified that clearly *enable* and sustain the violence. By developing ap-

Enforcing Human Rights Through Economic Sanctions

proaches to target the third-parties engaged in those activities, it may be possible to decrease or interrupt the perpetrators' access to necessary means. This may, in turn, alter their calculations regarding the commitment of atrocities against civilians.⁷³

Examples of enablers in regard to the situation in Darfur, Sudan, involve transfers of arms by China, Russia, Chad, and other governments or state-owned entities, to government and rebel forces; these transfers have helped sustain the violence against civilians for six years. In the case of commercial entities, the range of enabling activities is potentially very broad. In Nigeria, multinational oil companies have faced lawsuits after being accused of hiring abusive security forces in the Niger Delta. In Darfur, the supply of Toyota trucks to which rebel groups had access was essential to their capacity to commit widespread attacks on civilians. The UN Panel (p. 792) of Experts on the Sudan reported that Al-Futtaim Motors Company, the official Toyota dealership in the United Arab Emirates, was, along with second-hand dealers in the same country, the source of 'by far the largest number of vehicles that were documented as part of arms embargo violations in Darfur...'.⁷⁴ That dealership 'declined or replied...in a perfunctory manner' to three Panel requests for information about the buyers of the trucks identified in Darfur.⁷⁵

Countries and commercial actors also act as enablers when they are engaged in the exploitation of natural resources that generate revenues for the perpetrators, thereby sustaining their capacity to abuse civilian populations. Examples include eastern Congo, where windfalls from the illicit mineral trade fuel the rebels' pursuit of arms and thus contribute to atrocities against civilians. In Burma, before the recent reforms, the country's military rulers derived massive export earnings from their gem mines, which helped to finance their severe repression of that country's citizens.

Syria stands as a brutal and recent example in which the UN's failure to impose and enforce multilateral sanctions has meant an inability to undercut the steadfast enablers of Mr Assad who work from Iran and Russia and as non-state actors in the regime. The porous nature of the borders surrounding the country has meant that those sanctions that the US and European Union have imposed have failed to pressure sufficiently the targeted Assad regime. Unlike in Libya, the serious, coordinated sanctioning of enablers needed to deny Assad the means to kill his own citizens has not emerged.

6. Conclusions

Short of military force, economic sanctions are the only major tool available to national leaders and multilateral institutions that will produce results essential to ending harsh repression and human rights abuses. By blocking access to financial assets, sanctions—sometimes slowly, but always surely—erode the regime's ability to purchase arms and mercenaries from abroad. Sanctions constrain guarantees that dictators can make to supporters that their government will meet the payroll. Monetary and travel sanctions placed on a growing number of government and military officials run a strong probability of sparking defections among the ruling elite. (p. 793)

Enforcing Human Rights Through Economic Sanctions

The continued fragility of human rights in nations emerging from internal war or economic crisis combines with the horrific mass atrocities of recent decades, to increase the likelihood that national policy-makers will turn to sanctions continually as a tool for coercion and persuasion. The emergence of the principles of protecting civilians and the responsibility to protect bolsters this prospect. Yet, the track record of the UN and the international community in addressing atrocities—as in the different responses to Libya and Syria, which occurred just one year apart—makes clear the complexity related to the problems and the challenges of mounting a fully successful action. It is a bitter irony that the quick success of the combination of coercive measures to protect the lives and rights of Libyans, in which NATO may have overstepped its military mandate, has led to big power disagreements over the application of the same principle and tools in Syria.⁷⁶

The recent successes of sanctions in Libya, Côte d'Ivoire, and Liberia can be extended to other areas, if analysts dig deeper into the workings of repression and discover the revenue that the commodities supporting mass violence and the myriad enablers to human rights violations and mass atrocities generate. Targeting the diversity of these non-state actors early in an internal war, or as early warning signs of atrocities emerge, can increase the effectiveness of sanctions as a tool for human rights protection.

Finally, in many respects, the positive results of imposing targeted sanctions as proactive for human rights are counterbalanced by the ongoing rights controversies with counterterrorism listing in the 1267 regime. While the latter has made some progress, fundamental disagreements remain. The weight of this contradiction has the potential—with other factors, like the push back against sanctions and Security Council reluctance to pass them—to undermine R2P and sanctions at the same time. Thus, the future of the relationship between sanctions and human rights will remain in question for some time to come.

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Notes:

(*) The author thanks Alexandra dos Reis for her research assistance with portions of this chapter.

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- (1) Richard N Haass, 'Sanctioning Madness' (1997) 76(6) *Foreign Aff* 74; David Cortright and George A Lopez, *The Sanctions Decade: Assessing UN Security Council Sanctions in the 1990s* (Lynne Rienner 2000).
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- (3) Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politic* (WW Norton 2011).
- (4) George A Lopez, 'Matching Means with Intentions: Sanctions and Human Rights' in William F Schulz (ed), *The Future of Human Rights: US Policy for a New Era* (U Pennsylvania Press 2008).
- (5) See especially Michael Krinsky and David Golove (eds), *United States Economic Measures Against Cuba: Proceedings in the United Nations and International Law Issues* (Aletheia Press 1993).
- (6) George A Lopez and David Cortright, 'Economic Sanctions and Human Rights: Part of the Solution or Part of the Problem?' (1997) 1(2) *IJHR* 1; Joy Gordon, 'Smart Sanctions Revisited' (2011) 25 *Ethics & International Affairs* 315.
- (7) For an extensive discussion of the studies and UN processes summarized here, see George A Lopez and David Cortright, 'Sanctions as Alternatives to War' in Christopher J Coyne and Rachel L Mathers (eds), *The Handbook on the Political Economy of War* (Edward Elgar 2011).
- (8) A full summary of these reports and application of the case methodologies appeared in Thomas G Weiss, Larry Minear, George A Lopez and David Cortright, eds, *Political Gain and Civilian Pain: Assessing the Humanitarian Impact of Economic Sanctions* (Rowman & Littlefield 1997).
- (9) The definitive study of Panels of Experts is Alix J Boucher and Victoria K Holt, *Targeting Spoilers: The Role of United Nations Panels of Experts* (Stimson 2009).
- (10) As a part of the Swiss initiative, the Watson Institute for International Studies at Brown University developed model legislation for governments to strengthen their capacity to implement targeted financial sanctions. The Watson Institute also produced a handbook on the implementation of targeted financial sanctions, which the UN Secretariat subsequently distributed to member states. See TJ Biersteker, E Eckert, P Romaniuk, A Halegua, and N Reid (eds), *Targeted Financial Sanctions: A Manual for Design and Implementation* (Watson Institute for International Studies 2001).
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(12) Peter Wallensteen, Carina Staibano, and Mikael Eriksson (eds), *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Uppsala 2003).

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(15) Boucher and Holt (n 9).

(16) For an analysis of such patterns of sanctions preparation, see Michael Brzoska and George A Lopez, 'Sanctions Design and Security Council Dynamics' in Thomas Biersteker and Sue Eckert (eds), *UN Targeted Sanctions as Instruments of Global Governance* (2013).

(17) UN Security Council (UNSC), Res 1265 (17 September 1999) UN Doc S/Res/1265.

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(19) 'Cross-Cutting Report on Protection of Civilians in Armed Conflict No 2' (20 July 2011) Security Council Report <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf>> accessed 16 February 2013.

(20) See eg UNSC Res 1296 (19 April 2000) UN Doc S/Res/1296; UNSC Res 1674 (28 April 2006) UN Doc S/Res/1674; UNSC Res 1738 (23 December 2006) UN Doc S/Res/1738; UNSC Res 1894 (11 November 2009) UN Doc S/Res/1894; dos Reis and Lopez (n 18).

(21) UNSC Res 1325 (31 October 2000) UN Doc S/Res/1325; UNSC Res 1960 (16 December 2010) UN Doc S/Res/960.

(22) UNSC Res 1612 (26 July 2005) UN Doc S/Res/1612.

(23) UNSC Res 1502 (26 August 2003) UN Doc S/Res/1502.

(24) UNSC Res 1625 (14 September 2005) UN Doc S/Res/1625.

(25) UNSC Res 1820 (19 June 2008) UN Doc S/Res/1820.

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(26) On the importance of sanctions and other aspects of UN operations in conflict zones being 'in sync', see David Cortright, George A. Lopez, and Linda Gerber-Stellingwerf, with Eliot Fackler and Joshua Weaver, 'Integrating UN Sanctions for Peace and Security: A Report Prepared for the Canadian Office of Foreign Affairs' (October 2010) Sanctions and Security Research Program <<http://www.sanctionsandsecurity.org/wp-content/uploads/Integrating-UN-Sanctions-for-Peace-and-Security.pdf>> accessed 13 February 2013.

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(28) The Global Centre for the Responsibility to Protect, 'The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict' (January 2009) Policy Brief 2 <http://www.ciaonet.org/pbei/gcr2p/0020021/f_0020021_17009.pdf> accessed 16 February 2013.

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(31) UNSC Res 1532 (12 March 2004) UN Doc S/Res/1532.

(32) For a more complete analysis of these sanctions and cases see, dos Reis and Lopez (n 18).

(33) UNSC Res 1689 (20 June 2006) Un Doc S/Res/1689.

(34) UNSC Res 1753 (27 April 2007) UN Doc S/Res/1753.

(35) Boucher and Holt (n 9) 89–108.

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(38) UNSC Res 1975 (30 March 2011) UN Doc S/Res/1975, preamble.

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(40) UNSC, 'Security Council Renews Mandate of Côte d'Ivoire Mission until End of 2010, Aiming to Get Electoral Process on Track, Shore Up Implementation of Political Accord' (30 June 2010) UN Doc SC/9969.

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(47) cf UNSC, 'Final Report of the Panel of Experts Established Pursuant to Security Council Resolution 1973 (2011) Concerning Libya' (20 March 2012) UN Doc S/2012/163.

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(49) UNSC Res 748 (31 March 1992) UN Doc S/Res/748.

(50) UNSC Res 1054 (26 April 1996) UN Doc S/Res/1054.

(51) UNSC Res 1267 (15 October 1999) UN Doc S/Res/1267.

(52) See Cortright and Lopez, *The Sanctions Decade* (n 1) 121-25.

(53) UNSC Res 1373 (28 September 2001) UN Doc S/Res/1373.

(54) In 1994, CTC transferred names in the hundreds to its successor committee, the Counter-Terrorism Executive Directorate. For an analysis of the workings of these UN Committees see, David Cortright et al, 'An Action Agenda for Enhancing the United Nations Program on Counter-Terrorism' (April 2004) Counter-Terrorism Evaluation Project <<http://www.sanctionsandsecurity.org/wp-content/uploads/action-agenda-UN-counterterrorism.pdf>> accessed 17 February 2013.

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(57) A full analysis of this diplomatic-legal dance is beyond the scope of this chapter, as is an assessment of all the cases and legal issues that comprise decided law. For further information on the *Kadi* case, see Erika de Wet's chapter in this *Handbook*.

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(70) An example of such empirical analysis is provided in Dursun Peksen, 'Better or Worse? The Effect of Economic Sanctions on Human Rights' (2009) 46 *J Peace Res* 59.

(71) Here, I am succinctly summarizing generalizations developed in George A Lopez, 'Effective Sanctions: Incentives and UN-US Dynamics' (2007) 29 *Harvard International Re-*

Enforcing Human Rights Through Economic Sanctions

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(74) UNSC, 'Report of the Panel of Experts Established Pursuant to Resolution 1591 (2005) Concerning the Sudan' (29 October 2009) UN Doc S/2009/562, para 158.

(75) UNSC, 'Report of the Panel of Experts Established Pursuant to Resolution 1591' (n 74) para 158.

(76) By the beginning of 2013, the UN had certified that millions of Syrians are internally displaced or cross-border refugees, and more than 60,000 (many of the them innocent civilians) have died.

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