

HOUSE OF LORDS

Select Committee on Economic Affairs

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2nd Report of Session 2006–07

# **The Impact of Economic Sanctions**

## **Volume II: Evidence**

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Ordered to be printed 24 April 2007 and published 9 May 2007

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Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£price

HL Paper 96-II

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### **NOTE:**

The Report of the Committee is published in Volume I, HL Paper No. 96-I  
The Evidence of the Committee is published in Volume II, HL Paper No. 96-II

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# Minutes of Evidence

TAKEN BEFORE THE ECONOMIC AFFAIRS COMMITTEE

MONDAY 27 JUNE 2006

Present	Kingsdown, L	Sheldon, L
	Macdonald of Tradeston, L	Skidelsky, L
	Paul, L	Vallance of Tummel, L
	Powell of Bayswater, L	Wakeham, L (Chairman)
	Oakeshott of Seagrove Bay, L	

## Memorandum by the Foreign and Commonwealth Office

1. *The notion that severe humanitarian costs from effective comprehensive economic sanctions can be avoided by exemptions appears to be fundamentally flawed. First, humanitarian exemptions will be permitted by those imposing them only at the margin so that the aim of severely weakening the economy of the target country in order to achieve political goals is not undermined. The extensive exemptions necessary to avoid severe humanitarian costs would by their very nature mean that the sanctions were not comprehensive. In other words, severely damaging the economy of the target state is not separable from severe humanitarian costs. Second, when an economy is weakened severely, the most vulnerable, especially the poor, suffer the most. Third, the government of the target country will concentrate its remaining resources on prioritising itself and its supporters. Fourth, the government of the target country will have a major incentive to limit its cooperation with humanitarian exemptions in an effort to undermine the sanctions. Fifth, the governments of the sanction countries will have a major incentive to blame the government of the target country for any humanitarian costs in order to avoid modifying the sanctions. How would you respond to this assessment?*

The Government notes that the recent trend in UN sanctions has been towards the use of more targeted measures which are designed specifically to limit any humanitarian impact. There are currently no comprehensive UN sanctions in force. Where targeted sanctions are being used, these include humanitarian exemptions. For example, in the case of the travel bans in place against individuals in relation to Liberia sanctions there are provisions which allow travel for humanitarian purposes such as to receive medical treatment overseas. Such exemptions play an important role in alleviating any unnecessary impact which sanctions could have on a target.

The Government believes that even where sanctions regimes have been extensive, the use of mechanisms to exempt the provision of humanitarian supplies can play a vital role. This was the case with the sanctions in place in relation to Iraq, where the Security Council agreed the operation of the Oil-for-Food Programme. The Programme made substantial progress in alleviating the situation of the Iraqi people, despite ongoing efforts by the regime to frustrate such efforts. The United Nations reported that the Programme helped increase the Iraqi ration and reduce the incidence of tuberculosis. UNICEF reported a reduction in the child mortality rate in northern Iraq. The World Health Organisation reported a reduction in the incidence of chronic malnutrition among children under five.

The Government agrees that the objectives of the target state will often be at variance with the purposes of sanctions. However, the progress made in alleviating humanitarian suffering in the case of Iraq sanctions was achieved despite the Iraqi regime's efforts to frustrate and obstruct progress. This included attempts to block agreement on an Oil-for-Food Programme, failure to adequately distribute medical supplies and attempts to frustrate the work of international NGOs and UN humanitarian workers.

2. *Would a finding of potential or actual severe humanitarian costs—for example by an expert panel advising a UN sanctions committee—trigger British support for the modification of such sanctions to ensure that such costs cease to be inflicted? Would it support their lifting should such modification be impractical?*

With the trend towards more targeted measures, the humanitarian impact of such sanctions has been minimised. However, the Government would take into account information about the humanitarian impact of sanctions, in line with its policy as set out in the 1998 Whitehall Review of Sanctions Policy announced

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to Parliament on 15 March 1999. The Whitehall Review concluded that better targeting of sanctions would minimise the risk of harm to ordinary people and that sanctions regimes should include exemptions to minimise the humanitarian impact on civilians. The precise way in which sanctions might be modified in the event of any humanitarian impact would depend on the specific situation.

3. *In considering whether to impose, continue, modify or lift comprehensive economic sanctions, to what extent are the likely views of the population of the target population or the views of domestic or exiled opposition movements a consideration?*

In considering whether to seek the imposition, continuation, modification or lifting of sanctions, the Government has to weigh a number of factors, including the appropriateness of the measures proposed against the policy objective and, in the case of lifting sanctions, whether that objective has been met. The Government also needs to take into account the level of international support and the impact of the measures on the target's population.

All these can be affected by the views of representatives of the target's population and/or opposition groups. However, in the case of extensive measures, such as those in relation to Iraq, the nature of the regime holding power can make it difficult to get an accurate and consistent picture of the population's views. These views may also vary according to different constituencies within the population.

In the case of South Africa, the Government disagreed with the calls for sanctions from many representatives of South Africa's black population. Whereas the calls for sanctions on Haiti by the deposed President Aristide and his supporters, were an important factor in generating international support for the measures taken in relation to Haiti. But in all cases, the Government's support for humanitarian exemptions—the Oil-for-Food Programme being the most extensive—shows that as a matter of policy it seeks to limit the humanitarian impact of sanctions on the general population.

4. *In the last three years, to what extent have UN panels of experts and sanctions reviews been successful in bringing about modifications of sanctions to improve their effectiveness and limit their humanitarian and other costs?*

The bodies of experts which monitor sanctions implementation play a crucial role in reporting on the effectiveness of sanctions to the Security Council and in making recommendations for further modification.

Only in the case of Liberia sanctions has a body of experts explicitly been mandated to consider the humanitarian impact. However, there are a large number of instances where sanctions have been modified in the light of UN expert reports and reviews of sanctions. These include the greater use of targeted sanctions against individuals in respect of Democratic Republic of Congo (DRC) in 2005, Cote d'Ivoire and Sudan in 2006 and the widening of the scope of the arms embargo in relation to DRC in 2005. In the case of Liberia, the Security Council decided in 2006 to suspend the timber ban for 90 days, while expressing its intention to re-impose the ban if legislation to ensure controls over the illegal timber trade was not passed during this time. This decision was effective in encouraging the Liberian Government to pass the necessary legislation before the 90 days expired.

5. *What has been the humanitarian impact of the suspension of EU aid to the Hamas-led government of the Palestinian Authority? Have the EU's efforts to channel aid to Palestinians in other ways been successful at preventing severe humanitarian costs? Can these aid sanctions be considered smart or targeted?*

The Government is deeply concerned by the humanitarian situation in the Gaza Strip and is following the humanitarian situation closely in cooperation with the UN Office for the Coordination of Humanitarian Affairs, the World Food Programme and others.

EU aid to the Palestinian Authority (PA) was suspended following the formation of the Hamas-led Government. Until there is a Government based on the three Quartet principles (renunciation of violence, recognition of Israel's right to exist, acceptance of previous peace agreements) it will not be possible to resume direct aid to the PA. In the meantime the EU continues to provide assistance for basic needs through the "Temporary International Mechanism" (TIM). This mechanism, initially proposed by the UK Government and now overseen and managed by the European Commission, is a means to deliver aid directly to the Palestinian people.

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The European Community has committed a total of €329 million to support the Palestinians so far this year—more than in any previous year. This includes €105 million through the TIM, €84 million through the European Office for Emergency Humanitarian Aid and €64 million for the United Nations Relief and Works Agency (UNRWA).

At the Stockholm Donor Conference on 1 September the UK pledged £3 million to the TIM for operation, maintenance and repair work to keep water, sanitation and electricity services running. This follows an earlier contribution to the TIM of £3 million to fund essential health supplies. The UK has made up to £12 million available to the TIM and has also made a contribution of £15 million to UNRWA in April. The Government continues to ensure that financial assistance to the Palestinians remains at the same or above previous levels.

Palestinian hardship is not because of decisions taken by the EU or other donors. Even before the Hamas government was elected, the PA was facing a fiscal crisis and restrictions on movement and access that were a severe constraint on the economy. Since the formation of the Hamas government, the PA's fiscal problems have been compounded by the economic downturn and the withholding of clearance revenues by Israel. The EU continues to call on Israel to resume transfers of these revenues which total \$50–55 million per month.

However, donor money will not resolve the severe humanitarian situation in the Palestinian Territories. The only way that life for the majority of Palestinians will improve is through progress towards peace with Israel.

The Government does not view the arrangements in relation to the Palestinian authority as bearing the traditional hallmarks of a sanctions regime. The measures taken are focussed on redirecting development assistance.

6. *What are the goals of EU sanctions on Belarus? To what extent are the goals being achieved? And at what cost and to whom?*

The goal of EU travel bans and asset freezes on specific Belarusian officials is to demonstrate that they are being held personally responsible for the crackdown on democracy and human rights in Belarus. EU sanctions are targeted at members of the regime, not the wider population. Their imposition is consistent with the Government's view that measures against the Belarusian regime should be specifically targeted against those responsible for serious violations of fundamental democratic principles, and that these measures should be accompanied by clear criteria for their removal in order to encourage reforms to bring the country closer to European common values. The Government also hopes that the restrictions will encourage the individuals concerned to adopt a more co-operative and productive approach.

The Government is not able to point to empirical evidence on the extent to which the measures are having an effect. It is clear that there has been no substantive improvement in the democracy, human rights and civil society situation since they were imposed. However, there is anecdotal evidence to suggest that some of those subject to the targeted sanctions are frustrated at not being able to travel freely to the EU which highlights the personal cost involved. The Belarusian authorities continue to speak out against the sanctions, which suggests the measures impact to some extent on the way the regime is able to operate.

With regard to the UK the imposition of an assets freeze has created an administrative burden on the UK's financial sector. This was taken into account when sanctions were proposed and it was concluded that the benefits of the sanctions regime outweighed the cost.

7. *What are the goals of EU sanctions on Zimbabwe? To what extent are the goals being achieved? And at what cost and to whom?*

The EU is seeking to press the Government of Zimbabwe into reform and away from its current ruinous policies (crackdown on civil liberties, suppression of opposition, politicisation of the judiciary, and a brutal land reform policy which has devastated the economy). EU sanctions were first imposed on Zimbabwe in 2002 to send a clear message condemning this misrule and to build pressure for reform, while avoiding further suffering of ordinary Zimbabweans. EU sanctions also send a message of support to human rights defenders, and those pushing for reform within Zimbabwe. These goals are explicitly stated in the EU Common Position imposing sanctions: "The objective of these restrictive measures is to encourage the persons targeted to reject policies that lead to the suppression of human rights, of the freedom of expression and of good governance."

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EU sanctions have helped maintain the international isolation of Zimbabwe's current ruling elite. The US, Australia, New Zealand, and Switzerland have imposed similar sanctions. EU sanctions have also been welcomed by human rights defenders and the democratic community, and have frustrated Mugabe and his regime, particularly in connection with the travel ban. This continued international pressure appears to be impacting on the regime, and may bring forward an end to the crisis. But while the regime currently remains intransigent, Mugabe's successors know clearly those standards they will have to meet to which the EU is firmly committed.

The sanctions are designed to affect targeted individuals who are no longer able to travel to Europe and whose assets, where they have been identified, have been frozen. There are no economic or trade sanctions. Bilateral trade has dropped, and European investment has declined. However these are a result of the policy environment in Zimbabwe: the government's disastrous management of the economy, their failure to respect property rights and the politicisation of the legal system has led to new investment being frozen, and existing business to contract and close.

The amount frozen is approximately £160,000 in the UK. The amounts frozen in other countries are unknown. It is important to note that the amount frozen does not reflect the wider disruptive effect that this has had on targeted individuals or on the regime more widely. All sanctions regimes involve a compliance cost to the UK financial sector and this is taken into consideration when sanctions are being proposed.

8. *Is the UK Government satisfied with the nature and extent of sanctions on Burma/Myanmar?*

The EU Common Position is the core of the Government's policy response. The Government has worked consistently to ensure the sanctions regime includes the strongest possible targeted measures. The Common Position is adopted by unanimity. It ensures the EU speaks with one voice in pressing the Burmese regime to make progress towards democracy and respect for human rights. The EU Common Position is reviewed regularly and adapted to suit the overall political situation in Burma. The Common Position was strengthened in 1998, 2000, 2003 and 2004. It was last renewed on 27 April 2006.

It is hard to measure any coercive effect these sanctions have on the Burmese regime, since any economic impact is far outweighed by the damage done by the SPDC's own economic mismanagement. Countries in the region are unaffected by EU sanctions and remain Burma's key trading partners.

While the Government often favours UN sanctions given that they are broader in scope and impact, there is no prospect of UN sanctions in the near future. The UK continues to work closely with the US and other partners in the UN Security Council to ensure there is a full debate on Burma, which the Government hopes will lead to a Security Council Resolution. The UK fully supported the Security Council decision on 15 September to add Burma to its formal agenda.

9. *Are the regulatory controls for financial sanctions standardised across different sanctions regimes and do they use standardised interpretations of wordings?*

The UN has increasingly made use of standardised wording in its resolutions in relation to financial sanctions, in an effort to achieve greater coherence in the implementation by member states across sanctions regimes. At EU level, in December 2003 the EU agreed a set of guidelines which contain standardised language for use by the EU when drafting Common Positions and the EC in drafting Regulations implementing sanctions.

Where the UK implements financial sanctions, any legislation brought about to reflect UN and EU measures is based on standard wording and mechanisms as far as possible.

The Lebanon and Syria (United Nations Measures) Order 2005 is an example of domestic legislation which embodies the type of standard language used by the EU. At an administrative level, the Bank of England uses standard language and format when publishing details of financial sanctions regimes and targets.

10. *To what extent, if at all, does the UK operate unilateral financial sanctions?*

Where sanctions are appropriate, the Government is committed to achieving such measures through the multilateral route. If a situation poses a threat to international peace and security the Government may consider advocating UN sanctions. Where either the situation does not pose such a threat, or where UN sanctions are not achievable, then the Government may consider the suitability of EU sanctions.

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EU sanctions may be imposed for broader reasons than UN sanctions, including to support efforts to fight terrorism and the proliferation of weapons of mass destruction, and to uphold respect for human rights, democracy and the rule of law.

Multilateral measures have much greater impact than unilateral measures. For instance, a travel ban and assets freeze will be far more effective if imposed at global or regional levels, as it is much harder for individuals and entities to evade the scope of the measures. The UK does not therefore operate any unilateral sanctions regimes.

11. *The EU operates a "Consolidated list of persons, groups and entities subject to EU financial sanctions". This list as of 16 June 2006 was 595 pages long, with about 40 entries per page, making for a total of approximately 20,000 persons, groups and entities. What are the principal sources of entries to this list? To what extent is the EU's list based on the US list? And vice-versa? What are the EU's mechanisms of liaison with the US Treasury Department's Office of Foreign Assets Control?*

The EU Consolidated List draws together all the names of individuals and entities that are subject to financial sanctions within the EU for the purpose of providing this information to financial operators.

Two of the lists which contribute to the Consolidated List cover sanctions for those involved in terrorism and they collectively contain 625 groups and entities. The first, the Al Qaida and Taliban list, is updated and added to as and when the UN sanctions list is amended. The EU exercises no discretion over this list. The second is the list maintained by the EU in support of UNSCR 1373 (2001) of other groups and entities involved in terrorism. Groups and entities may be proposed to this list by either EU Member States or third countries. Any proposals are considered within the EU and additions made where there is agreement that the criteria set out in the relevant Common Position is met.

The Consolidated List also contains all the targets which are identified in country-specific EU and UN sanctions lists. The numbers of targets in each of these cases is comparatively lower than the number of terrorist targets. For example, there are 126 targets in relation to EU sanctions against the regime in Zimbabwe and 16 targets listed flowing from the UN sanctions against DRC.

While there may be some similarities in the choice of targets between US and EU lists, these are not dependent upon each other. Contact with the US Treasury over sanctions targets is usually conducted on a bilateral basis between the US and individual EU Member States. However, cross-cutting issues relating to asset freezing have become a feature of recent successive EU Presidency initiatives, through the organisation of specific EU/US workshops.

12. *What is the extent of assets frozen through EU and UN financial sanctions and whose assets are they?*

The UK has frozen the following funds in respect of EU and UN financial sanctions: Al Qaida and Taliban (£466,000), Burma (£3,500), Liberia (£267,000), Terrorism (£27,000) and Zimbabwe (£160,000). Additionally, £117 million of assets have been frozen in relation to the Iraq regime and have been transferred to the Development Fund for Iraq. A further £70,000 is frozen and due to be transferred, with £165 million frozen and subject to outstanding legal claims. This is in addition to various Iraq liabilities which would have been frozen during the lifetime of extensive Iraq sanctions. At first quarter 2003 these were around US\$646 million and would also have been frozen.

The assets frozen belong to those individuals and entities covered by the criteria in the relevant UN or EU instrument and agreed by member states to be targeted. For example, in the case of Zimbabwe and Burma individuals targeted will be those responsible for the situations in those two countries, including the poor human rights and governance records. In the case of Liberia, individuals with assets frozen will include violators of the arms embargo and those wishing to undermine peace and stability in Liberia and the region, including senior members of former President Charles Taylor's government.



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13. *In oral evidence, Mr Stephen Pattison, Director of International Security at the FCO, reported that a total of \$94 million worth of al-Qaeda and Taliban financial assets had been frozen. Does this figure refer to the UK alone or to other countries as well? Bearing in mind the connections of these organisations to illegal trade in diamonds and heroin and other sources of income, this figure would seem to be tiny in relation to their probable overall financial assets. It suggests that, in the context of the technology and operation of modern banking, those imposing financial sanctions on those entities at least are losing the battle almost completely. Would you agree? And how representative are these two cases?*

The Government remains fully committed to the fight against terrorism and the prevention and disruption of terrorist activity by all means, including through the freezing of assets. The \$93 million worth of assets frozen under the UN sanctions regime against Al Qaida and the Taliban and its associates represents the sum of money frozen in 34 countries, including the US, Switzerland, Pakistan, Saudi Arabia and the United Kingdom. The figure for the United Kingdom alone is nearly \$628,000, with 187 frozen bank accounts.

In addition to the requirement upon all states to freeze such assets there is also a prohibition on making funds available to those listed under the UN sanctions regime. As this is a prohibition, it is not possible to quantify what funds potentially could have been made available through legitimate financial flows which have not been possible as a result of UN sanctions. These prohibitions both domestically and internationally are aimed at disrupting terrorist networks by making the financial market a hostile place in which to operate.

Additional measures in place under the UN sanctions regime include a prohibition on making arms and related equipment available to listed individuals and entities which will also increase the cost to terrorist networks of acquiring weapons.

14. *How do the UK Government and the EU respond to US extraterritoriality with regard to financial and commodity sanctions? Have penalties been imposed or threatened by the US authorities to ensure extraterritorial application of sanctions by British or EU businesses?*

All US legislation with extraterritorial effect poses a threat to British and EU international business interests. Demands made to such businesses by the US contain the threat, both implicit and explicit of the possible application of sanctions against them.

Assertions of extraterritoriality impose unnecessary burdens on businesses by requiring them to comply with possibly conflicting rules. They create added uncertainty for companies operating internationally, and weaken the framework of international trade and investment.

The UK's Protection of Trading Interests Act (PTIA) was enacted in 1980 to counter US assertions of jurisdiction in the late 1970s. The structure and provisions of the PTIA to some extent reflect this background. The primary purpose of the PTIA is to provide protection to British businesses threatened with the application of the laws of a foreign country to conduct occurring outside that country.

The PTIA is designed to provide both direct protection against certain assertions of extraterritorial jurisdiction and a deterrent to parties contemplating bringing proceedings dependent on extraterritorial jurisdiction for their success. It raises the costs and risks of private extraterritorial suits for multiple damages through provisions on non-enforcement of judgments in such cases in UK courts, provisions on recovery of multiple damages, and restrictions on the provision of documents to a foreign court. The Act may also offer defendants the possibility of mounting a foreign sovereign compulsion defence in US court cases.

In November 1996, the EU adopted Council Regulation (EC) 2271/96 which is intended to "protect against and counteract the effects of extraterritorial application of" Helms/Burton and the Iran Libya Sanctions Act (ILSA). There were previous EC Regulations to counteract extraterritorial aspects of various US legislation, but this particular Regulation was designed specifically with these two pieces of US legislation in mind.

The Regulation provides that no judgements made in the US against EU entities under Helms/Burton or ILSA will be recognised or be enforceable in the EC. It also provides that EC entities must not comply with any requirement or prohibition based on, or resulting from, the US legislation in question and that any EC entity engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries shall be entitled to recover damages, including legal costs, caused to them by the application of Helms/Burton or ILSA.

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15. *How does the EU inform financial institutions of their financial sanctions regulations and actions, including the addition or removal of blacklist entries?*

All EC Regulations adopted are published in the EU Official Journal. In light of any such publication, the Bank of England publishes a Bank Notice and News Release drawing attention to the EC Regulation and the names of any financial sanctions targets covered by the Regulation. A copy of the Bank Notice and News Release are published on the Bank of England website. This automatically alerts all firms which subscribe to the Bank's website that a change has been made to the financial sanctions information. This subscription service currently has 2,500 members and is open to the public.

It is a legal requirement for all financial institutions to comply with sanctions and the Financial Services Authority uses its risk-based supervisory capacity to assess the systems and controls that the financial institutions it regulates uses to comply with financial sanctions.

16. *How much confidence is there in the quality and sufficiency of the information on which blacklists for financial sanctions are based? Do simple things such as different spellings of names or similar names cause difficulties for the management of blacklists? Are listings of aliases of value? How does the system cope with names that are very common, as these could generate large numbers of false positives? How easily can blacklisted individuals and organisations evade financial sanctions by acting through third parties and fronts or adopting false names?*

The Government believes that good quality identifiers are crucial to the successful implementation of financial sanctions as this reduces the burden on the financial sector by reducing the number of "false positives". The Government is committed to improving the quality of this information and works with international partners to make the necessary modifications to the international mechanisms.

The Security Council committees which monitor sanctions have increasingly made improvements in setting out clearly what kinds of information are required in support of a request to subject an individual or entity to targeted sanctions. Members of these committees are free to object to any request for listing put forward on the basis that there is insufficient supporting information provided and this right is exercised regularly in the various committees.

Where an individual or entity is put forward for listing as much information as possible about known aliases and subsidiaries is helpful to the financial sector in accurately identifying targets and to help avoid circumvention by the targets. While the Government accepts that attempts to circumvent sanctions through name changes and the use of front companies is likely to continue, the UN and EU lists are living documents and can therefore be updated to reflect any further information about such activities which are discovered.

While the existence of common names can be problematical in identifying targets effectively and accurately, the UN and EU sanctions lists are not restricted to names only. Therefore other supplementary identifying information such as dates of birth, places of birth, gender, nationality, passport numbers, addresses and further information which will aid implementation such as whether the individual is in prison, may be used to help pinpoint the right target where such information is available. Though this does not altogether avoid the discovery of "false positives", this helps minimise their occurrence. Additionally, the use of certain "core" data, eg full name, address and date of birth, will normally identify a unique target.

In 2005, the EU, under the UK Presidency, further developed its sanctions guidelines to include a template of desirable information which would be provided when targets are submitted for listing.

At the UN level, the sanctions committee which monitors the sanctions in relation to Al Qaida and the Taliban has also recently agreed a standard template of information which should be provided in support of a submission for listing. A recent academic study of the use of UN targeted sanctions noted "considerable improvement" in the amount of identifying information provided by sanctions committees.

17. *How effective are the means of challenging EU and UN financial sanctions decisions? How are those who are subject to such sanctions informed of the meanings of challenge or petition? Are those challenging their blacklisting able to review*

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*the factual basis or reasons for financial sanctions? How often have EU and UN financial sanctions been challenged? And with what results and success rate? How much information are financial institutions allowed to give those who are blacklisted?*

The UN makes publicly available the lists of all targets subject to sanctions on its website, together with the relevant identifying information. Where a target is known to be present in the United Kingdom the Government writes to the target to explain that they are subjected to measures, how to find the relevant UN resolutions and the criteria under which they have been listed as set out in the relevant resolution, how to apply in the event that they wish to apply for an exemption on humanitarian grounds and who to contact in the event that they wish to challenge the listing. The EU also publishes lists of those targets subject to financial sanctions, through the Official Journal and on its website. Detailed information about why the target has been listed is often kept confidential by the UN and the EU.

Petitions from targets seeking to be delisted are rare and the Government does not hold data on rates of success of such challenges. Challenges to a UN listing can be made through relevant UN member states—normally the state of residency or nationality—to the appropriate sanctions committee. Challenges to an EU listing can also be made, to the Council Secretariat. A listed individual also has the right to challenge his listing under an EU sanctions regime before the Court of First Instance. There have been several cases that have challenged the specific decision to list an individual as well as the legal basis upon which the EU sanctions measures are based. To date those challenges have been unsuccessful before the Court of First Instance, but those decisions have been appealed to the European Court of Justice and further cases are expected in the future.

18. *How often and in which cases have humanitarian exemptions been granted with respect to EU and UN financial sanctions?*

The Government does not hold data on all the occasions on which humanitarian exemptions have been granted. However, the granting of such exemptions is common and the UN sanctions committee concerned with terrorism sanctions will receive an exemption request on average around every three weeks. The Government does not hold data on success rates of exemption requests across all the sanctions regimes. However, over the past three years more than 90 per cent of exemption requests received by the relevant UN sanctions committee concerned with terrorism sanctions have been approved. Typical requests are for the payment of legal fees on behalf of an individual and to cover basic expenses. Requests for exemptions under the EU sanctions regimes are often in respect of travel to certain international meetings as provided for by the relevant Common Positions.

19. *Is the security reason for refusal to explain EU or UN financial sanctions decisions used in a blanket manner or on a case-by-case basis?*

Agreement by the Security Council or EU on the creation of a new sanctions regime is made public through the publication of the relevant instrument—Security Council Resolution or EU Common Position. The Government also maintains a list of all sanctions implemented by the UK and advises Parliament on an annual basis of those regimes.

Further details about the reasons why targets have been subjected to sanctions are often available. For example, such justifications are publicly available on the UN website for the UN sanctions regimes in relation to Sudan, Liberia, Cote d'Ivoire and DRC. Occasionally, owing to the nature of the information this can not be made publicly available. This has been the case with the UN and EU sanctions regimes against terrorists, where no such justifications are made public.

While the EU does not separately publicise detailed information in relation to targets listed under the its own geographical sanctions regimes, the Common Position normally makes clear what kinds of behaviour and activities are covered by the scope of the sanctions.

20. *How often do individuals and institutions have financial sanctions imposed on them pending investigation as opposed to as the result of an investigation?*

The Government does not hold data on the relationship between the number of investigations held prior to listing and the number of listings which occur pending an investigation. The criteria and standards required for the holding of a formal investigation differ from those required for an individual to be listed for sanctions and there is not therefore a direct and precise correlation between the two mechanisms.

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21. *How do the EU and UN, in imposing financial sanctions, take into account the commercial practicability of their sanctions requirements, especially with the development of online financial activity? In oral evidence it was reported that the Treasury is assessing the administrative burdens to financial institutions in complying with sanctions: what conclusions are being arrived at?*

The EU and UN take decisions collectively based on the views of the member states. So such decisions will reflect the views expressed by those states, including any issues relating to commercial practicability which arise. The commercial viability of any proposal to impose financial sanctions may vary between states. The UK will therefore put forward any practical domestic concerns about the application of sanctions as appropriate and will respect the views of our international partners where they also have legitimate concerns about the practicality of implementing sanctions.

The Government will be publishing a simplification plan, including details of the administrative burdens exercise, in the Autumn. This will contain details of the administrative burdens associated with the regulations which concern financial sanctions. The Government acknowledges that there is an implementation cost to financial institutions which is taken into consideration when sanctions are proposed. In addition, the Government has been working to ensure that unnecessary burden is mitigated through active consultation with international partners to improve the identifiers that are provided to financial institutions.

22. *To what extent do the UK, EU and UN monitor and enforce compliance on financial institutions? Or do they assume the occurrence of voluntary compliance?*

Where the UN Security Council imposes sanctions through a Chapter VII resolution implementation is a matter of international legal obligation. Sanctions committees which are normally provided for in the same resolution monitor implementation by states, often aided by bodies of experts. Resolutions may also formally oblige member states to submit a report to the relevant Sanctions Committee to say what steps have been taken to give effect to the measures. Member states are responsible for ensuring the compliance by the financial institutions within their jurisdictions, for any reporting to the UN and for enforcement nationally of sanctions.

In the case of the EU, the requirements and obligations will be set out in a Common Position and accompanying Regulation. The latter is directly applicable in member states. The EU has also sought on occasion to seek reports from states on what measures they have taken to implement measures nationally. Member states have responsibility for ensuring the compliance of their financial institutions.

At the domestic level, the Financial Services Authority uses its risk-based supervisory function to assess the systems and controls that the financial institutions it regulates uses to comply with financial sanctions. HM Treasury and the Bank of England work closely with the financial sector and report a good standard of compliance. All financial institutions are legally obliged to comply and where failure to comply is a criminal offence, there is potential to bring prosecutions.

23. *Is it the case that inadvertent violations of financial sanctions are unavoidably commonplace? How effectively do the EU and UN communicate information about their enforcement practices, either in relation to formal proceedings or settlements which forestall formal proceedings? What have been the numbers and ratios of compliance inquiries, warnings, investigations, settlements, prosecutions and convictions? To what extent are de minimis, aggravating and mitigating factors criteria in relation to enforcement made clear?*

UN member states exchange information about the measures they have taken nationally through reporting to the Security Council. EU member states exchange information about measures taken through reporting and through regular Working Group meetings in Brussels. As member states are responsible for enforcement by the financial sector, the UN and EU roles tend to be one of monitoring rather than through separate enforcement mechanisms.

Breaches do occasionally occur, and the majority are reported in line with legal requirements, by the persons who have committed the breach. The majority of breaches have been made unwittingly and steps have been taken to rectify the breach immediately once it has come to light. Each breach is dealt with on a case-by-case basis and the Bank of England and HM Treasury use their discretion in deciding what action, if any, is necessary.

The Government's approach is one of partnership with the Financial Services Industry, and seeks to encourage effective compliance before looking to take regulatory enforcement. This is in addition to the recognition of the reputational risk that financial sanctions pose to the industry.

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24. *Are procedures clear for disposal of blocked assets when blocking appears to be effectively forfeiture?*

The freezing of assets does not normally involve the seizure of assets. Freezing leaves the funds in situ until such time as the freeze is lifted. An exception is in relation to the sanctions targeted against members of the former Iraqi regime where frozen funds are required to be transferred to the Development Fund for Iraq for the good of the Iraqi people. There are provisions for a similar process in relation to Liberia.

25. *What EU and UN action is being taken to address the laundering or movement of money through unofficial money networks?*

The Money Services Business (MSB) sector covers a wide range of financial services including Bureaux de Change, Cheque Cashers, and money transmission agents. As with any financial services sector, and particularly those sectors handling large volumes of cash, MSBs are vulnerable to abuse by money launderers. In light of this, through the introduction of the 2001 UK Money Laundering Regulations (MLR), the Government established a regulatory regime for the Money Services Business sector to tackle money laundering. The Government is committed to reviewing its application to ensure that the UK's anti-money laundering and counter-terrorist financing objectives continue to be met.

A review of the implementation and enforcement of the regime is now underway. This is being accompanied by wide consultation with all stakeholders. The consultation outlines a package of proposals to help reduce the harm caused by money laundering and terrorist financing by combating abuse of MSBs and by shifting the burden of supervision onto firms that pose the highest risk. It also outlines new licensing requirements, including measures to police the licensing scheme, so that only licensed MSBs are allowed to operate in the sector—a scheme that will help to ensure that unofficial money networks using the sector are either brought into the formal financial sector or shut down.

26. *In oral evidence, Mr Patrick Guthrie, Head of the Financial Sanctions Unit at the Treasury, reported that an assessment of the costs to the British economy is carried out on a case-by-case basis. Mr Guthrie indicated that he would provide further information on this point: we look forward to receiving that information. In which cases was such an assessment carried out? In each case, what was the calculated cost, who was assessed to be carrying that cost and what compensation if any was provided?*

In line with the recommendations of the 1998 Whitehall Review of Sanctions Policy, economic assessments would be undertaken when there is potential for comprehensive sanctions. They are not undertaken in relation to targeted sanctions measures, which do not raise wider economic issues. To date there have not been any comprehensive financial sanctions introduced since the 1998 Whitehall Review. The Government is not aware of any specific economic assessments that may have been conducted in relation to earlier comprehensive sanctions regimes.

27. *Which individuals, companies, organisations or states or other entities have been prosecuted successfully for violating sanctions on diamonds or timber? Is this assessed to be a low or high proportion of violations of such sanctions? Are the mechanisms for monitoring and enforcing such sanctions adequate?*

The Government does not hold global data on the numbers of prosecutions against individuals or entities involved in violating sanctions on diamonds and timber. There have been no prosecutions against UK individuals or entities. The Government is aware of a prosecution in the Netherlands earlier in 2006 involving the sentencing of an individual to imprisonment for having violated the timber sanctions in relation to Liberia.

The system of UN sanctions committees and expert bodies which monitor sanctions where these are in place against diamonds and timber play an important role in deterring violators and for bringing any known violators to account through the use of targeted sanctions to help constrain their activities.

The UN system of monitoring the diamond trade is enhanced further by The Kimberley Process Certification Scheme. This Scheme has been in place since January 2003 and was set up to stop the spread of illicit "conflict" diamonds from entering the legitimate rough diamond trade. The Scheme comprises 46 participants, including the EU, and incorporates all of the major producers and traders in rough diamonds. It encompasses certification requirements for the shipment of rough diamonds between participants, and internal controls on diamond producing countries to ensure the veracity of the diamonds that are mined. The UN diamond sanctions relating to Liberia and Cote d'Ivoire are enforced in the UK through existing controls under the Scheme.

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28. *What actions have the UK, EU or UN taken to act against al-Qaeda and Hezbollah involvement in the diamond trade?*

The UK, EU and UN are all aware of allegations of Al Qaida and Hezbollah involvement in the diamond trade. The UK does not have sufficient substantive evidence that there is a link and the EU is not in a position to comment on the validity of such allegations. The UN third report of the Monitoring Team on Al Qaida and the Taliban Sanctions found no examples of Al Qaida using precious commodities to circumvent the assets freeze.

The implementation of the Kimberley Process and tighter European anti-money laundering and terrorist financing legislation has rendered any such involvement more difficult, including by requiring identification of all buyers and sellers in international trades and introducing transparency and monitoring provisions into the international diamond trade.

#### ADDITIONAL ISSUES

During the oral evidence session which officials attended on 27 June, there were three areas where either the Committee indicated it would welcome further information or where officials undertook to provide more detail.

#### **The Committee expressed an interest in the reasons for the exclusion of an oil embargo in the case of sanctions in relation to Libya.**

In January 1992 the UN Security Council, in its Resolution 731 (1992), called on Libya to cooperate with the UK, US and France over the investigation of the bombing of Pan Am flight 103 over Lockerbie, and UTA flight 772. The Libyans did not cooperate. In March 1992, at British, American and French behest, the Council therefore imposed a limited range of sanctions on Libya, through Resolution 748 (1992). The Council banned flights to and from Libya, imposed an arms embargo, placed travel bans on those Libyans involved in terrorism, and required States to impose restrictions on the number and activities of Libyan diplomats, and to prevent the operation of Libyan Arab Airlines offices. Resolution 748 (1992) was adopted by 10 votes in favour, none against and with five abstentions (the African Security Council members, India and China).

Following further Libyan non-cooperation, the Council strengthened the sanctions in November 1993. Resolution 883 (1993) tightened the aviation measures further, banned the export to Libya of oil transportation and refining equipment, and imposed a limited assets freeze. Funds derived from the sale of Libyan oil, gas, agriculture or commodities were not frozen. The Resolution also decided to review all the sanctions with a view to suspending them immediately, should the UN Secretary-General report that the Lockerbie and UTA suspects had been surrendered for trial, and lifting them when Libya had complied fully with resolution 731 (1992). Resolution 883 (1993) was adopted by 11 votes in favour, none against and with four abstentions (China, Djibouti, Morocco, Pakistan).

The question of imposing an oil embargo on Libya arose at various times during the negotiations and discussions surrounding Resolutions 748 (1992) and 883 (1993). But there was insufficient support for the idea within the Security Council and more widely. Many States, particularly in Africa and the Arab world, considered an oil embargo a disproportionate response. There was also a general concern to limit the problems over the humanitarian impact of sanctions that had arisen in the case of Iraq.

The UK's aim was to pressure the Libyan regime, through sanctions and the offer of their suspension, into surrendering the Lockerbie suspects. It had no wish to punish the Libyan people, nor to cause widespread economic damage to the country. So the measures taken against the Libyan oil industry were not designed to prevent it pumping oil, but rather to limit progressively its ability to export that oil.

#### **The Committee was also interested in cases where the potential threat of sanctions has acted as a deterrent.**

It might be useful for the Committee to have an expanded answer in relation to Syria and Lebanon. On 31 October 2005 the Security Council adopted Resolution 1636 (2005) which, inter alia, provides for the use of sanctions to assist the United Nations International Independent Investigation Commission (UNIIC) investigation into the assassination of the former Lebanese Prime Minister Rafiq Hariri. The measures provided for include a travel ban and assets freeze which can be imposed against individuals designated by the UNIIC or Government of Lebanon as being suspected of involvement in the planning, sponsoring, organising or perpetrating of the assassination. The aim of the measures is to leverage the necessary cooperation of Lebanese and Syrian officials in the investigation.

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While it has been open to the UNIIIC since 31 October 2005 to propose individuals to be subjected to these measures where cooperation has been insufficient, this has not yet been the case. While the Government can not explicitly say that the threat of such measures being imposed has in itself encouraged greater cooperation to some extent, the threat of such measures being used remains a possibility.

As highlighted in the Government's answer to question four above, in the case of Liberia the Security Council decided in 2006 to suspend the timber ban for 90 days. At the same time the Council expressing its intention to re-impose the ban if legislation to ensure controls over the illegal timber trade was not passed during this time. The threat of sanctions being re-imposed was effective in encouraging the Liberian Government to pass the necessary legislation before the 90 days expired.

**The Committee was also interested in the costs to the UK economy of sanctions and has addressed this point in its question 26 above, to which the Government has provided a response.**

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### Examination of Witnesses

Witnesses: MR STEPHEN PATTISON, Director, International Security, MR CHRISTOPHER YVON, Head of Sanctions Team, International Organisations Department, and MR PAUL BENTALL, Head of International Security and Global Issues Research Group, Foreign and Commonwealth Office, MR PATRICK GUTHRIE, Head of the Financial Sanctions Unit, HM Treasury, and MR TOM DAWLINGS, Manager of Financial Sanctions Unit, Bank of England, gave evidence.

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**Q1 Chairman:** Good afternoon. Thank you very much for coming to give evidence. I am bidden to say to you at the beginning of the session, if you speak up and speak relatively slowly, we stand a better chance of understanding what you are saying and getting an accurate record; and that applies as much to us as it does to you. I do not know whether you want to introduce yourselves and your role, but I think that we ought to have on the record who has come and why. You can sort out amongst yourselves who is going to answer the questions. We will be very happy to hear from whoever wants to tell us anything. Perhaps, Mr Pattison, you might introduce yourselves in whatever way you would like to deal with it.

*Mr Pattison:* Thank you very much, My Lord Chairman, for giving us this opportunity. I am Stephen Pattison, the Director in charge of international security at the Foreign Office where, among other things, I oversee the sanctions unit in the Foreign Office, which is headed by Christopher Yvon, to my right. I will leave it to each member of the panel to say briefly what their role in sanctions is.

*Mr Guthrie:* I am head of the Financial Sanctions Unit in the Treasury. We are responsible for implementing financial sanctions.

*Mr Dawlings:* Tom Dawlings, Financial Sanctions Unit in the Bank of England. We have a very small role as agent for the Treasury in the administration of financial sanctions.

*Mr Pattison:* Chris, as I mentioned, is head of our unit at the Foreign Office that deals with sanctions.

*Mr Bentall:* Paul Bentall from the Foreign Office research group. I provide expert advice to Chris and his team.

**Q2 Chairman:** Do you want to say something to start with?

*Mr Pattison:* I am happy to do so if you wish, but what I would want to say is probably covered by the questions, which you have given us in advance.

**Q3 Chairman:** How has the pattern of UK economic sanctions changed over time? Could you explain the rationale behind the apparent move from general to more targeted sanctions?

*Mr Pattison:* I think you have to remember that prior to 1990 the UN in particular had experience of only two sanctions regimes. The expansion of the use of sanctions regimes that we have seen in the international community has been primarily since 1990. That expansion has been a process of learning and adapting. There is no doubt that the trend over the 1990s, as you say, has been to focus on targeted sanctions. What drove that trend was a perception that comprehensive economic sanctions, however defined, ended up having an impact on the humanitarian welfare of civilians which was not intended and which militated against the impact of the sanctions themselves. The trend has been to devise sanctions, which we call "smart" in that they are focused on particular entities. It can be members of a regime or members of another group; it can be governments or entities outside government; it can be commodities or arms; it could be focused on a ban on travel or assets freeze, and so on. The trend towards smarter sanctions, I think it is true to say, has continued to develop. For example, there have been additional refinements in the area of arms embargoes. Instead now of talking of an embargo on

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hardware, the trend is increasingly to talk about embargoes in addition on the provision of military services. When you look at assets, we are looking at ways in which we can act against assets of targeted figures as quickly and effectively as possible. Commodity sanctions have become part of this trend, in particular the sanctions on diamonds, particularly the illegal import of diamonds or the export of diamonds in circumstances where we believe they will fuel conflict. This has been a major step forward. We have had timber sanctions and so on. There has been this refinement of sanctions since 1990, over the last 15 or 16 years. That does not mean, I think, that comprehensive sanctions can be completely ruled out. In the British Government review of sanctions policy conducted in 1998 and reported to Parliament in 1999, we were very careful not to rule it out, but the fact remains, as I say, that over the period in question the trend has been in a different direction.

**Q4 Lord Sheldon:** How far have economic sanctions been used in a way that has been combined with other methods of influencing change—diplomacy and the use of force? If the sanctions are used as an alternative to force, it has got to be used as a means of persuading the public that that is the last, ultimate possibility that they have in mind—but it is always something that is a threat at the very end if other methods are used before that.

*Mr Pattison:* I do not see sanctions as a substitute or alternative to the use of force. I see them as a quite distinct tool. They are recognised as a distinct tool under the UN Charter, which has separate articles on sanctions from the article on enforcement measures. I do not think we should assume that sanctions are a substitute for force, nor do I think we should always assume that sanctions are a stepping-stone towards the use of force. In fact, the history of sanctions regimes that the international community has imposed do not suggest that at all; they suggest quite the opposite. As to the effectiveness of what you describe as economic sanctions, in a sense it applies to all sanctions. It is true to say that sanctions are most effective where they are not imposed in isolation, and what we are usually looking for is a policy which underlines that sanctions are not an end in themselves; sanctions are a way of achieving an objective. Usually, to achieve that objective a number of things will be required. In some cases we will need to make sure that we have a diplomatic process that is open to have the target entity in the sort of negotiations or resolution of the problem that we want to achieve. In other cases, economic sanctions, whatever they are, may be combined with other sorts of sanctions, so that one would look at an arms embargo and a travel ban and an assets freeze, and

maybe a commodity ban on a particular entity, in order to achieve the desired effect. The two points that I would emphasise are that sanctions are not an alternative to the use of force; they are a separate tool in their own right. Second, sanctions have to be seen as part, usually, of a wider picture of levers that the international community can use to attain its objectives.

**Q5 Lord Sheldon:** Are there not occasions when force is there in the background as a possible threat if sanctions are not going to work?

*Mr Pattison:* There have of course been occasions where the threat of enforcement is there in the background. In almost every case those have been preceded by sanctions or the threat of sanctions in order to achieve the objective, but if you look at the range of sanctions regimes, those cases are in a pretty small minority.

**Q6 Lord Skidelsky:** Do I understand you to then reject the theory of graduated sanctions?

*Mr Pattison:* No, not at all.

**Q7 Lord Skidelsky:** When you said it was a distinct tool, you almost implied that it was a discrete thing and then used in combination, whereas the traditional view would be that you had an escalating set of sanctions, the ultimate step of which was war if you did not achieve the objectives that you had set out to do. That was one quite popular view of it in the past.

*Mr Pattison:* I have no problem with the idea of graduated sanctions; on the contrary. Quite often, in designing sanctions regimes one is looking first at moving on to other measures, if necessary and if attainable, within the international community. My only point was that the logical end of that process does not always have to be force, nor would we start that process thinking that the use of force is going to be the logical end of it.

**Q8 Chairman:** When you are considering sanctions, do you consider the effect of them not working when you bring them in and what you will do subsequently, for example the use of the sunset clause?

*Mr Pattison:* There are several questions wrapped up in that, if I may say so. We always consider the effectiveness, and that boils down to whether they can be effectively enforced and policed. We also consider the impact that those sanctions are likely to have on the target regime. We certainly consider that if we cannot get the particular sanction we are going for and it is not effective, are there any other options that we could go for. We would consider that on every occasion. Once the sanctions are implemented we



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would look very carefully at the humanitarian impact of sanctions. As I say, that has changed a bit over the last 15 years. During the 1990s the UN would conduct studies before the imposition of sanctions of any measures under contemplation. Increasingly, as we have moved to smarter sanctions, where the humanitarian side-effects are, by definition, less, the humanitarian assessment usually happens after the sanctions are in place. On sunset clauses, there is a slightly different range of issues. Our view has always been that it does not make enough sense to set an explicit time limit for sanctions, because that only creates an incentive on the part of the target to sit it out and wait. One of the lessons of sanctions is that they do not have the impact that you might wish they would have overnight; it is usually a longer-term arrangement. We have therefore been traditionally reluctant to consider setting clear end dates for sanctions. We prefer to talk about an end state, i.e., looking at the objectives which we hope the sanctions regime will bring about in terms of changing the target entity's behaviour. That said, as part of the growing concern about minimising the secondary impact of sanctions, as a matter of practice these days all sanctions regimes are subject to careful periodic review at the Security Council, drawing on information provided by monitors both within and outside the UN, to make sure that the sanctions are not causing adverse humanitarian or other unintended impacts.

**Q9 Lord Vallance of Tummel:** You have answered my question in part when you were talking about graduated sanctions, but can we focus a little more on the purposes and objectives of sanctions themselves? At times they seem to be very modest and no more than registering disapproval of some action with no great expectation of change in behaviour; but at other times they are seeking a major objective, and maybe a major change in policy or perhaps even a regime change. Can you comment on the range of different objectives and their relevance to different situations; and can you comment on how far you consider objectives have been made explicit in specific cases in the past?

*Mr Pattison:* Sanctions, obviously, have a range of different objectives, and they also have a range of different scopes. There are sanctions that range from a travel ban on members of a regime, right through to some of the other things we have talked about such as arms embargoes, commodity embargoes or other commodity control measures. The objective of sanctions varies, depending on each situation. We have had sanctions in the past that were designed to effect regime change. We have had sanctions in respect of Rhodesia and in respect of illegitimate governments that were in power temporarily in Sierra

Leone and Haiti. Generally speaking, the aim of sanctions has been to change behaviour of a regime or of a targeted entity—because now we have sanctions on Al-Qaeda and terrorist groups. The primary objective of sanctions at the UN, almost by definition, has to be to address the threats to international peace and security. This is a crucial bit of UN Security Council theology. The UN Security Council, under the Charter, is mandated to deal with threats to international peace and security. As a rule of thumb, in order to get sanctions adopted by the UN Security Council, you will have to make a case that international peace and security are under threat. This is a rule of thumb that we are trying to stretch, if you can stretch a rule of thumb! Sanctions imposed by the European Union under common foreign security policy are not limited to threats to international peace and security. Under the guidelines that the European Union has agreed, the European Union can impose sanctions for a variety of other objectives, which include, broadly, human rights, good governance and rule of law issues. For example, we have EU sanctions on Belarus and Zimbabwe, where our judgment is that it would be quite difficult to obtain sanctions at the Security Council against those entities. That is not to say we do not try. There are a number of cases where we will try hard, particularly in respect of Zimbabwe, and we would want to look quite carefully at pushing, in the case of, say, Burma, to get the Security Council to take more of an interest in the situations in those countries. The objectives of sanctions clearly differ. The tools differ. I do not think there is any hard and fast correlation. Obviously there are links that you can look at, looking at the history of sanctions, but I would not want to say that if we are after regime change we must do this range of sanctions, and if we are not we do not need to do that range of sanctions. We will calibrate the sanctions we use, taking into account a variety of concerns—the seriousness of the situation, the attainability of the sanctions and the prospects of other developments.

**Q10 Lord Vallance of Tummel:** The second part of my question is that the objectives are always clearly stated in advance, so you can judge whether—

*Mr Pattison:* Very much. We do not insist on this, but sanctions—again, I will say now, because it was not always thus, but following the announcement of our policy in favour of smart sanctions, we are very keen to ensure that the objectives are as clear as possible for a variety of reasons, which are obvious. The first is so that the target entity knows exactly what it is the target entity has to do. We can then look at sanctions lift as and when our objectives are met, so we have a clear idea of what it is we are setting out to achieve.

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**Q11 Lord Powell of Bayswater:** In these very complex calculations that you make about what sort of sanctions to impose and what the effect might be, how explicitly do you weigh in the balance the possible contrary effects of sanctions that is that they may actually strengthen support for a regime—it has been known to happen? Secondly, how explicitly do you recognise that it may be politic to impose sanctions, but basically you are doing it because you cannot think of anything else to do and it is better than nothing, and salves the consciences of the people who are applying the sanctions. One might point perhaps to the European Union sanctions against South Africa in the 1980s. I seem to remember a particular gesture that was described as being very minimal.

*Mr Pattison:* There are two big questions there. First, let me say that we never apply sanctions for the sake of doing something. Whenever we design and apply sanctions, our hope is that those sanctions will effect a change in behaviour. The question of considering the negative impact of sanctions—yes, of course we consider it. There is a debate to be had about the extent to which sanctions increase support for a regime. It is a tricky debate, this, and my own view is that there is an argument that sanctions will increase a regime's natural support. If a regime is isolated, its natural supporters in that particular country might rally around it and fall for the rhetoric of the government portraying itself in an adversarial relationship with the rest of the world. I am not sure that that is the same as increasing the fundamental levels of support for a regime, and on that particular question the jury is still out. The answer to your point about whether we consider if sanctions are likely to have a detrimental effect in achieving change, yes, of course we do.

**Q12 Lord Macdonald of Tradeston:** I would like to try to separate out a little further the different types of sanctions. Do sanctions such as arms embargoes, travel bans and asset freezes and non-military trade restrictions have different success rates? How far does each category require different monitoring and enforcement mechanisms? Are the various types of sanctions actually so different that they need to be analysed separately? Perhaps you can bear in mind that final part, bearing in mind that we are an Economic Affairs Committee, and should we be concentrating on one particular aspect and leaving perhaps arms embargoes aside?

*Mr Pattison:* Yes. Let me take that last point first. Again, the international community has got much better at monitoring sanctions. There is a very interesting history of this through the 1990s where the UN started by appointing *ad hoc* panels to look at the effectiveness of sanctions against Angola in

particular but also other countries in the 1990s. As a result of those experiences, one of the innovations has been that whenever the Security Council agrees sanctions, almost always it establishes a panel of experts to monitor and advise on various aspects of the sanctions. This would include effectiveness, enforcement, the capacity of key countries to implement them, and so on. Those panels will almost always include experts in the particular area of sanctions that are under consideration; so we would want, if we are looking at a diamond ban, somebody who knows about trade in diamonds or commodities. If we are looking at financial sanctions, we will want someone who knows about the genuine difficulties of implementing financial sanctions. The international community is getting better at that whole area of monitoring and adjusting the way in which sanctions are implemented and the way in which they operate. As I said, the fact that most of these sanctions come up for regular review, gives us an opportunity to step back to see how they are working. Are some forms of sanctions more effective than others? I think it is impossible to answer this question. It is very difficult to assess the effectiveness of sanctions. There is academic work that has been done in this area. It is certainly true that sanctions can have an effect in changing behaviour, which is the fundamental thing we want to do; but I think there are other important reasons for adopting sanctions. One is to register the international community's disapproval of what is being done, to send as strong as possible a signal that the international community will not tolerate a certain kind of behaviour. The other is to increase the costs to the regime or the entity of continuing to do whatever it is that we do not like, and to demonstrate to them that this is not just "business as usual" but that there is a cost. In certain specific situations, sanctions have other objectives. If you are looking at a conflict situation, sanctions may have the objective of trying to minimise the flow of arms into the conflict, and trying to bring one party to the negotiating table. They can have in that sense different objectives. It is very hard to assess with any precision the impact of sanctions, and therefore particularly hard to rank them and to say that certain sanctions are likely to have a quicker impact than others.

**Q13 Lord Sheldon:** Where have sanctions been most successful?

*Mr Pattison:* We would certainly point to the sanctions on Libya in the run-up to Libya's decision to hand over the Lockerbie suspects as a good example of sanctions bringing about the desired outcome. The sanctions on Serbia in the run-up to Dayton, which sought to detach Serbia from the Bosnian Serbs, I think proved to be successful, not

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least because there was a huge economic problem in Serbia at the time that the sanctions exacerbated. I think one can point to examples where sanctions have been successful, and there are other examples where sanctions may have played a part, but other circumstances were also a factor, and in those circumstances you cannot sometimes disaggregate the impact of sanctions from everything else.

**Q14 Chairman:** I wonder whether I could ask you the flipside to that question: if those were the good ones, what were the bad ones? Where have sanctions simply not been effective?

*Mr Pattison:* I come back to the point I just tried to make: it rather depends what you are trying to achieve. Let me talk hypothetically. Has a regime changed its behaviour as a result of a travel ban, so that leading members of the regime are unable to travel to Western Europe—or certainly has a rebel group in Africa ever changed its behaviour because of a travel ban? It is very hard to say they have, but there my point is that the sanctions register the disapproval of the international community, and they bring home to the regime that there is a price to be paid. In terms of changing behaviour, we can debate it, but I am not sure that is the only criterion by which to judge.

**Q15 Lord Skidelsky:** A cynic might say that you have broadened the objectives of sanctions to cover their ineffectiveness in most situations. If a legitimate objective of sanctions is to express disapproval, by definition, if you have sanctions they must always be successful! Let us go on to another question. How do you distinguish between sanctions aimed at states and those aimed at groups, the non-state groups; and what are the problems that apply in that category? Are there differences in problems—differences in sanctions?

*Mr Pattison:* It is not a straightforward question. Quite often now, sanctions against states include sanctions against individuals associated with the regime, so there is a grey area where the two are the same. I am not sure that there are substantive differences in principle, to be honest. Of course we could apply an arms embargo against a country. We would be unlikely to apply an arms embargo against an individual, but we might apply an arms embargo against other parties to a conflict—non-state actors, rebel groups, terrorist organisations and so on. I do not think there is a clear distinction between the fundamental approach of applying sanctions against a regime, a country, and against an individual. Of course there are huge and different challenges in enforcing sanctions, depending on what the sanction is. A travel ban against a relatively small number of individuals ought to be fairly straightforward, one would have thought. But a diamond ban against an

African country, where diamonds are illegally smuggled and where the diamond trade is fairly informally organised, is a different kettle of fish altogether. There, we learnt from the lessons of trying to control the trade in conflict diamonds in the late 1990s, and we have now introduced something called the Kimberley Process, which provides for the certification of legitimate diamonds and a sanction really against those who trade in diamonds that are not certificated. Depending on what sanction you are using, there will be different questions of enforcement, and some undoubtedly easier than others. Financial sanctions pose particular problems in a number of areas. First, like others, it is best if you impose them quickly so that people do not have a chance to switch their assets somewhere else. Second, there are all sorts of problems of tracing the beneficial owners of particular accounts that we need to be fairly confident we have cracked before we start to apply financial sanctions in a less precise way.

**Q16 Lord Skidelsky:** I get the feeling—and perhaps this is just a feeling of irritation—that Europeans particularly have got terribly interested in smart sanctions, but actually lack the will to do anything else, and they talk about avoiding costs on the sanctioned population because they actually do not want to bear any costs themselves; and that these are covers and that the whole thing is a smokescreen. In a way it has its reference in international relations literature when they talk about the difference in soft power and hard power; and Europe's role is to exert soft power, but that action means—well, all right, President Mugabe and fifty people are not allowed to travel in some capitals. In what sense has that altered their behaviour? However, at the same time the European Union can say, "Oh, yes, we have hardened our sanctions; we will move from 12 to 50 or 60, and we are graduating them, and you can see that this is clearly having an effect on his behaviour, is it not?" The answer is, "No, zero, but we feel a little better from doing it". Is that not what it is all about? Are we really talking about anything that is an instrument of power rather than an instrument of disapproval?

*Mr Pattison:* There are several things. On the question of Zimbabwe, the sanctions we have in Zimbabwe clearly demonstrate our support for those forces working for change and democracy. The wider point about smart sanctions versus tougher sanctions is that I think you have to see the emerging approach to sanctions against the background of the lessons learned from the sanctions regimes that the UN has imposed in the past. Most recently, of course, you have to see it against the background of the Iraq sanctions, where there were many views expressed in the 1990s about the adverse humanitarian effect of

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sanctions. We were fairly sensitive to those early on and we tried to negotiate different sanctions regimes at the UN to address the humanitarian impact, and we were frustrated first by Saddam's unwillingness to negotiate. And then eventually the Oil for Food Programme, although the Volcker Commission conceded that it did very well in assisting people in dire circumstances that programme itself has subsequently been discredited because of the latitude given to Saddam to smuggle and obtain resources outside the programme, and the corruption that has been identified within the programme itself. The Iraq experience, I think, has coloured the way in which the international community now thinks about sanctions. Smart sanctions were designed not as a cop-out but designed to see if we could identify a more intelligent approach to sanctions which would really focus on those entities whose behaviour we wanted to influence, and to focus on those entities in a way which might change their behaviour. Again, looking back, the effort we put into the diamond ban in respect of Angola and Sierra Leone was one element but an important element in bringing an earlier end to some of those conflicts, and it was an imaginative response to a particular situation where it was in no-one's interests to impose comprehensive sanctions on countries that were already poor and made even more desperate by a history of civil war. We are trying to be clever and to achieve real objectives.

**Q17 Lord Paul:** On the Oil for Food Programme, one cannot blame Saddam alone because there were racketeers all over the world who were very much hand-in-glove with him. It could not have happened if it had just been Saddam. The cynics say that it does create racketeers, and they are mostly from the countries which started the sanctions. Sanctions create racketeers because the Oil for Food Programme would not have been abused if there were people not in collusion with Saddam Hussein from some of the countries that imposed the sanctions.

*Mr Pattison:* The record of Saddam's efforts to smuggle oil out of the country so that he could have access to revenue that was completely outside the programme demonstrates the lengths to which he was prepared to go to frustrate the objectives of sanctions. I would not personally have much confidence in a line which said he would have implemented them had it not been for the rest of the world wanting to make money out of it. It seems to me odd.

**Q18 Lord Kingsdown:** Would you like to enlarge a bit on what you have already said about monitoring and enforcement? Are the existing arrangements, both in this country and the multilateral ones—are

these mechanisms sufficient, and which of the international organisations are of most value? I do not know whether you would care to comment on the role of the effectiveness of the EU, the UN or even regional organisations. Could anything be done, should it be done, to improve their capacity in relation to sanctions? Also, I believe there are organisations called "sanctions assistance missions". How valuable are they?

*Mr Pattison:* I think the monitoring of sanctions has got much better. By and large we, the international community, devised a number of mechanisms, some of which I have already spoken about, which I think have given us much more confidence in monitoring how sanctions are implemented, their effectiveness and their unintended consequences. The key to this is that a committee of the Security Council oversees the sanctions, and they are informed by these expert panels. The expert panels draw on material from a very wide range of resources, and this is an area where, again, civil society in the years has played an increasingly important role. The role of those sanctions committees and their expert groups is to do a number of things. First, they ensure that sanctions are properly implemented, so as to help states implement them and to develop the capacity for implementing them. We spent a lot of time after the imposition of Resolution 1373 on terrorism, in the wake of 9/11, on something called the Counter-Terrorism Committee, going through every country at the UN and talking to them about the way in which they were approaching these sanctions, and the problems they had with implementation.

**Q19 Lord Kingsdown:** Who would go to talk to them?

*Mr Pattison:* The Security Council committee, which sounds rather bureaucratic—but it is basically the members of the Security Council. As I say, now those people are supported by expert panels. We are building capacity. We are checking to make sure that countries do what they are supposed to do in implementing sanctions, and we are collecting data from a variety of sources about the impact of sanctions so that we can adjust accordingly, if necessary. The mechanisms are pretty good. That is not to say they are perfect; there is always scope for improvement. One of the things we are looking at is whether it would be desirable to give the UN Secretariat more capacity—not necessarily more resources, but perhaps from re-prioritising resources—to try to support these sanctions committees in a more coherent way. In the European Union the machinery is not quite so elaborate. We rely very heavily on EU missions in targeted countries to report back on the impact of sanctions. However, we have agreed principles in the European

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Union on the application of sanctions, which helps to streamline our approach quite considerably. Sanctions assistance missions were developed really for the Balkans during the early 1990s, when we were more interested in comprehensive sanctions than we have been since, and they were an attempt to strengthen the capacity of Balkans countries to implement and monitor sanctions in circumstances where border crossings were relatively easy. They have not been used since. I would not exclude their use again, but, as I say, the trend since then has been to focus more on the monitoring by the groups in New York, rather than sending assistance missions to the countries themselves. You mentioned regional sanctions. As a general principle they have a role to play and we should not exclude regional sanctions. The West African ECOWAS sanctions against Sierra Leone in the 1990s were not regarded as a good model for sanctions, and certainly we would like to see regions where they impose sanctions adopt the best-practice standards we have been discussing, i.e., awareness of the humanitarian impact, the importance of monitoring and the importance of careful design and clear objectives. I would not rule out regional sanctions in themselves. There may be cases where they can have a very important role to play. It is certainly true that in the case of a lot of sanctions, unless you have the support of neighbouring countries, regional countries, it will be much harder to achieve your objectives.

**Q20 Lord Oakeshott of Seagrove Bay:** On humanitarian assessment and avoiding undesired and unintended costs, you have talked already about smart sanctions, but how smart can they be and can they get smarter? How far can we monitor the effect on civilian populations, and how far, even if it is not intended, is it right to target civilian populations? You mentioned Iraq under Saddam Hussein. They may not have been targeted, but knowing what sort of man Saddam was, and how he behaved, obviously was to impact the civilian population. I am sure you will not take this the wrong way, and it has been very interesting listening to you, but as you have got four colleagues who have come along I am sure the Committee would be interested to hear a certain amount from them at some stage as well!

*Mr Pattison:* First of all, targeting civilians: I mentioned the Iraq experience, which has coloured the approach to sanctions. I think we have to remember that the main focus of sanctions is changing behaviour, and so far as the sanctions are directed against the state it is to change the behaviour of the government of that state. If, as a side effect if you like, it turned out that the citizens of that country became more critical of their government, that is obviously a good thing. In terms of monitoring the

current smart sanctions, I have described in general terms the arrangements. The point about smart sanctions is that they are designed so as to minimise the unintended consequences. In that sense, the monitoring of them is not on the same scale as the monitoring of certain sanctions regimes of the UN in the 1990s before we had smart sanctions. It is best to look at the question the other way round. Certainly I am not aware of any criticism of the current regimes on the grounds that they are having adverse humanitarian consequences that were unforeseen. We are very careful, for example, to make arrangements so that people or entities whose assets are frozen by sanctions can petition the Security Council to have their case looked at again. We have been clear in developing a range of standard humanitarian exemptions from asset freezes, to allow people access in some cases to basic livelihoods, or not to close down factories—or the recent example of a hotel where it would have had an adverse impact on a wide range of other people. We are quite sensitive now. You ask if smart sanctions could be smarter. I have no doubt they could. This is perhaps a good way of bringing in others. People on this table spend quite a lot of time wondering whether sanctions could be smarter. There are all sorts of things. In the academic literature I was reading recently, there is a suggestion that perhaps one could work with insurance companies to make it harder to insure aircraft or vehicles that one suspects have been involved in illicit activity. It is slightly a 1990s issue again, where we were very worried about the activities of one or two private individuals who were allegedly sanctions-busting in Africa using a handful of aircraft. I mention it not to say that we are seriously looking at it, but there are ideas out there, and I suspect one could always get smarter. We will continue, Chairman, to make our sanctions as smart as possible. I do not know whether my colleagues would like to join in.

*Mr Dawlings:* I can join in, but I am afraid the Bank has a narrow focus. The financial sanctions for which we are responsible of course are those naming targets based in the United Kingdom. There may be issues where it is desirable that if one were looking to target the assets of a particular country, we would obviously need to look at what operations they had in the UK to consider whether there were likely to be any consequences that were unintended. The other thing I want to say on accounts that have been frozen in the UK is that these tend to be the accounts of suspected terrorists. There are still in place procedures to make benefit and other payments to their households, so the consequences are considered both ways.

*Mr Guthrie:* There are two things. We want as good-quality financial intelligence as possible, so that we can target sanctions at those assets that we want to

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capture and not other assets, and also appropriate use of the exemptions procedures to provide humanitarian and other exemptions where necessary.

**Q21 Chairman:** What about exemptions in these sorts of circumstances, where the United Kingdom is imposing sanctions as a result of a United Nations agreement of some sort, and a significant UK company has an important subsidiary in the country where sanctions are being imposed? There are rules for exemptions. Is that the sort of thing you could have an exemption for? Would you get it, and who would get it? Does that arise at all?

*Mr Pattison:* I am trying to think of a case where that sort of thing has arisen. You mean where the UN—

**Q22 Chairman:** Take, for example, Zimbabwe or somewhere like that. I can imagine there are many UK companies that at one time or another had subsidiaries in Zimbabwe, and some of those might have been very adversely affected by a sanction regime—I just do not know.

*Mr Pattison:* I think as a matter of practical politics it would be hugely difficult to negotiate a sanctions regime against a country and lock into it exemptions for entities that were doing precisely the things the sanctions were designed to frustrate. The exemptions we usually talk about are those for humanitarian activities of various kinds. It might be possible to negotiate exemptions for NGOs, for medical supplies or foodstuffs. Indeed, from the very beginning in Iraq, when we were talking about comprehensive sanctions on Iraq they did not apply to medical supplies and essential foodstuffs. The activities of NGOs and their exemptions, like in travel bans—there are humanitarian exemptions to allow people to get medical treatment, but also to allow key figures to leave their country to attend peace negotiations—that sort of thing. That is the exemption that is usually addressed, rather than, if you like, specific interests.

*Mr Dawlings:* I was just going to identify the sanctions against Libya in the 1990s, which were not targeted sanctions in the way we now talk about targeted sanctions, but these exempted the sale of Libyan oil. They focused on a range of Libyan entities but specifically excluded the sale of oil, and the sale proceeds of that oil were available to the Libyan Government.

**Q23 Lord Skidelsky:** Why? Why were they excluded—oil?

*Mr Bentall:* It was what was agreed in the Security Council.

**Q24 Lord Skidelsky:** I know it is what was agreed but that is not answering the question.

*Mr Bentall:* I think at the time, politically it would have been very difficult to have got open agreement to put a total ban on the whole of the Libyan oil industry if one wished for it.

**Chairman:** Presumably the question must arise whether the oil industry in Libya had substantial overseas owners! That is the point of my original question.

**Q25 Lord Oakeshott of Seagrove Bay:** It would probably have hit some Western countries quite hard!

*Mr Pattison:* We will have to look at the history, if the Committee is interested. The point about Libyan sanctions is that although they allowed Libya to continue to sell oil, they did make it much harder for Libya to upgrade its oil infrastructure, which in the end, some say, became a concern.

**Q26 Lord Oakeshott of Seagrove Bay:** I wanted to ask you a supplementary question because I was intrigued by your reference to insurance, and my mind started working there. Obviously, given the international insurance industry, effectively it is a way that you could immediately take a country's airline out of the sky. It may be that with other sanctions anyway you could effectively ban them from landing, but insurance has a lot of possibilities, it seems to me. I do not know how far that is something you do look at.

*Mr Pattison:* As you say, if you want to take a country's airline out of the sky there are other ways of doing it and it is a huge step to take, denying landing rights to a national airline. That would be one thing, but insurance—

**Q27 Lord Oakeshott of Seagrove Bay:** They did that in Serbia; it has been done.

*Mr Pattison:* It has been done. The insurance proposal arose in connection with trying to catch, not national airlines, which by and large are fairly conspicuous, but some of these other slightly shadier operators.

**Q28 Lord Powell of Bayswater:** I suspect the answer on Libyan oil is actually that oil is highly fungible; once it is in the tank it is very difficult to tell where it has come from, and almost impossible to effectively impose sanctions on oil. I want to jump over the questions about UK foreign policy priorities because you have already answered those, and come on to the question of use and rejection of sanctions. You have made it sound slightly like aspirin, applicable to all situations—when down, have sanctions! Can you point us to cases where sanctions have been considered as an option but rejected and, if so, why were they rejected?

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*Mr Pattison:* Sometimes the threat of sanctions can have an effect; you do not need necessarily to move to the sanctions themselves. We have racked our brains and there was a recent example in Ethiopia. Of course, I could not comment on some of the speculative thinking that has been done on possible sanctions regimes, but there is an example I can share. Ethiopia, Eritrea: as you know, towards the end of last year there was very considerable concern that Ethiopia and Eritrea were sliding towards conflict. At the time the Security Council thought about sanctions and decided not to impose them but said in a resolution that sanctions were a threat that the Security Council would want to look at in the near future. We, the international community, did not in the end take that up, in part because, as it turned out, the United States subsequently managed to get a process going, which looked as though it was going to push Ethiopia and Eritrea beyond the crisis and into some sort of peace agreement, and we wanted to allow the United States and the parties the space for that to happen. I think that is a very important general rule. Sometimes sanctions may sound like an aspirin, but I do not think anybody actually wants to be forced to take the aspirin, if I can put it that way; no country really that wants to be tied to sanctions. There have been examples where the prospect or actual threat of sanctions has brought about a change in behaviour, or, as I described, in Ethiopia and Eritrea a change of circumstances that means it is no longer necessary to pursue the sanctions option.

**Q29 Lord Powell of Bayswater:** Do you think there is a deterrent effect to the very discussion of sanctions; that that in itself, as it were, is an optional policy, just to talk about sanctions in the hope that the target country will be scared into backing down before you have to apply them?

*Mr Pattison:* That is always our hope when we start to put sanctions on the agenda: we hope that the behaviour of the target regime will change.

**Q30 Lord Powell of Bayswater:** Can you think of any examples apart from Ethiopia?

*Mr Pattison:* I am trying to think. I am not sure I can think of any. There are various factors in this, but you could argue that Syria has calibrated its co-operation with the inquiry into the Hariri assassination against the background of its appreciation of growing international concern, and that therefore sanctions cannot be ruled out.

**Lord Powell of Bayswater:** Sanctions or worse, perhaps.

**Q31 Lord Paul:** To what extent is sanctions policy based on the principles and practice of international law? What are the relevant elements of international law? To what extent is sanctions policy grounded in international humanitarian law or the laws of war?

*Mr Pattison:* The legal basis for sanctions at the United Nations derive from the provisions of the UN Charter, which envisages sanctions under Article 41; and then there is Article 103, which makes clear that in the event of a conflict between any state's obligations under the Charter and under any other agreement, its obligations under the Charter take precedence. That is the legal basis for that. The European Union's basis for acting together to implement sanctions comes from the relevant legislation in the treaty on the European Union and the treaty establishing the European Community. That is the legal basis. The reference to international humanitarian law is slightly odd. International humanitarian law regulates the conduct of armed conflict, and therefore has no direct bearing on the legal basis for sanctions, so I am not sure that that has a direct relevance. There has been a debate started recently about sanctions, particularly sanctions on individuals, and human rights law. That is an area that is still an area of debate, both in the academic community and elsewhere. Clearly, the position of sanctions against individuals at the Security Council—or anywhere—is not a judicial process, and we would not claim that it was. I said earlier that we had built in a system that would allow those who feel they are being unfairly treated to petition the Council, and we have built in humanitarian exemptions to look at situations where people's livelihoods are completely undermined. Otherwise, the legal basis for the sanctions remains with the Charter, and in our case the treaties of the European Union and the Community.

**Q32 Lord Paul:** Is there any international agreement on how sanctions should be used? The UK adopted a code of conduct on the arms trade and successfully promoted its adoption by the EU. Would it be helpful to develop and promote a code of conduct with respect to sanctions, or does such a code already exist?

*Mr Pattison:* The EU does not have a code of conduct as such on sanctions, but it does have agreed principles and guidelines; and those guidelines look at various elements involved in sanctions regimes. The UN does not have the same sort of agreed guidelines, but a common approach to sanctions has developed through practice and case history. There is a common understanding of how sanctions would be used. Whether it would be right to draw up a more formal code of conduct at the UN or the EU—I think it is tricky for two reasons. One is because, as I hope

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I have shown, sanctions practice and expertise is constantly evolving. The trouble with codes of conduct is that they tend to freeze your experience and wisdom at one moment in time. Secondly, the implementation and adoption of sanctions at the UN is never straightforward. It requires a pretty complicated negotiation, taking into account the interests of various members of the Security Council. I suspect it would be very difficult to reach agreement there on anything as wide-ranging and general as a code of conduct to cover what every sanction eventuality would need to be.

**Q33 Chairman:** You have given us a very interesting account of how sanctions have developed in recent years, but can I ask you this question, which applies not particularly to you but to all the people around the world conducting themselves in the sanctions business? What about the history of sanctions going right back—is that as well understood in the councils of the foreign offices of the world as perhaps it should be? We had someone the other day telling us that the original sanctions that were going to be imposed against the German merchant fleet before the first world war in the end had to be aborted because they discovered that 75 per cent of the German merchant fleet was insured by Lloyd's in London for war risks. What I am really interested in is whether the historical nature of sanctions, going back a long time, as well understood today as perhaps it should be?

**Mr Pattison:** I would hope certainly, even if we do not know the precise examples, we have learned the general lessons from some of the problems of the past. Certainly in the Foreign Office we have leaned quite heavily on our research department when trying to design a sanctions regime to tell us about past experience of similar regimes and the lessons learned, and how we can avoid repeating the mistakes of the past. We certainly try therefore. Although certain general issues are applicable, particularly the one that you have described, namely the risk of unintended consequences—which we do have in mind—I think that the fact is that history would show that sanctions thinking has moved quite quickly over the last 15 or so years, and it is that period which is probably crucial to our designing effective modern sanctions regimes now.

**Mr Dawlings:** The world has changed a bit since 1939, of course, when the Defence of Finance Regulations came in, which preceded exchange controls. I remember exchange controls because I was in the exchange control department in my first job in the Bank in the late 1970s. It was under the Exchange Control Act that the original sanctions against Rhodesia were imposed, and it was also used to impose some financial sanctions in 1982 at the time of the Falklands War. The principle then, of course, was

you do not want to fund the opposition. Since the abolition of exchange controls, I think the whole approach to international issues on financing has probably changed quite significantly.

**Chairman:** You could not impose sanctions of that sort even if you wanted to today. I was in the Treasury when we abolished exchange controls in 1979. I remember it very well. But the fact of the matter, is having abolished it, you cannot then bring it back very easily.

**Q34 Lord Macdonald of Tradeston:** Can I ask, perhaps related to that, looking forward on the monitoring and enforcement mechanisms, with new technology, on balance, is it a help or a hindrance if you are trying to freeze assets? Presumably you can track more carefully what is going on, but given the complexities of their financial instruments particularly are people able to outwit you more regularly? Where in the balance of this battle does it sit at the moment?

**Mr Dawlings:** For UK enforcement—and the names tend to come from the United Nations or the European Union—what we, in the Bank of England, do for financial sanctions is pull these names all together in one list and identify to financial institutions the changes in the list of financial sanctions targets. Largely, the enforcement business is going to be done by banks and financial institutions. We assist by the provision of information on the financial sanctions targets. Of course, there is a raft of legislation supporting each of these regimes but, from a financial institution's perspective, largely they are looking to see whether they have any dealings with a named target, they are looking to ensure that they put filters on their payment systems to prevent any payment to an identified target, and they are reporting on any funds which they hold, or any relationships that they may have, with any of the identified targets. It makes very little difference which financial sanctions regime we are talking about. In all 13 financial sanctions regimes, the check, freeze and report process is what is going to happen in each case.

**Q35 Lord Oakeshott of Seagrove Bay:** Can I ask one question which I think as an Economic Affairs Committee we would be interested to know about. It would be very interesting and obviously we make it clear that we have been quite active in the sanctions business over the last few years. What assessment do you make either in the Treasury or the FCO or both, of the costs to the British economy of these sanctions, and how do you do it?

**Mr Guthrie:** We do that on a case by case basis. Obviously if we are talking about targeted sanctions against named individuals and countries, then they



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are very limited in what they cost. If you are doing a full country sanctions regime against an entire country, which has happened in the past, then obviously you would do a thorough economic assessment of what impact that would have on UK interests and also on the wider global economy, if appropriate. That would obviously depend on the country concerned and how integrated it was into the global financial and economic system.

**Q36 Lord Oakeshott of Seagrove Bay:** Have they done that at the FCO over a period looking at what it adds up to? Obviously you can look at each one, but it is quite interesting if you are having a policy of active sanction engagement what it costs over a period? Are there some statistics or figures there that we can see?

*Mr Guthrie:* We are looking at admin burdens on financial institutions in complying with sanctions, which is not quite the same thing as economic assessments.

**Q37 Lord Oakeshott of Seagrove Bay:** It will be wider, will it not? You are definitely going to be affecting British trade and investment and so on, if you are running quite a serious long-term policy with Serbia or Libya or wherever? It could be quite a significant cost.

*Mr Guthrie:* I think you can do that on a regime by regime basis. It would be very hard to add up all the regimes over time because you cannot tell what the situation will be in the future.

**Q38 Chairman:** Has anything been published? Are you able to give us any information about this, not here and now?

*Mr Guthrie:* On particular regimes?

**Q39 Chairman:** Generally, over particular times. For example, we would like to get some information on the effect of economic sanctions on the British economy.

*Mr Guthrie:* Let me take that point back to the Treasury and get some information on it.

**Q40 Chairman:** Can I ask a supplementary on what Lord Paul asked. I thought you quite rightly gave us some very good reasons why codes of conduct had their limitations but, as I understand it, both the United Nations and the European Union have produced guidelines for sanctions, and I wondered how you squared the fact that codes of conduct were not a good idea but were these useful or of only limited use?

*Mr Pattison:* Certainly the EU has agreed guidelines. It rather depends on what you mean by code of conduct, of course. If you look at the EU code of

conduct on arms sales, essentially what it says is, "EU states should not be selling arms to countries where there are these specific concerns, diversion, repression, human rights, concerns and so on". If you wanted to do something like that for sanctions, what would you be looking at? Would you be looking at something which said, "We think sanctions are the right tool when a country is doing this, this, and this, and we think that the travel ban is right when a country is doing this and then maybe an arms embargo is right when a country is doing this and this"? My fear is that would be very difficult to negotiate at the UN and, secondly, it would not be flexible enough to move with the times. The principles which the EU has agreed look at things like standard language, so that if you want to have an arms embargo this is the sort of language you should use, and if you want an humanitarian exemption for your travel ban, this is the sort of language you should use. We have had terrible ambiguities in the past about whether journalists can take flak jackets into a country where there is an arms embargo, that sort of thing. You agree a standard language which makes this as clear as possible. I think that is very useful. It depends really on what you mean by code of conduct.

**Q41 Lord Sheldon:** There are two last questions I want to ask. First, how do you assess the effectiveness of sanctions? Secondly, how far does this assessment modify policy?

*Mr Pattison:* As I think I said earlier, assessing the effectiveness of sanctions is not an exact science, it is a difficult thing to do. I have tried to suggest that I believe sanctions have a number of roles, including a role in changing the behaviour of the targeted entity. How you quantify all of that, I do not know. For example, the Taliban and al-Qaeda financial sanctions have so far resulted in the freezing of \$94 million worth of assets. I have no doubt that has hampered the operations of al-Qaeda and its affiliates, but to what extent? It is not an exact science. We are constantly looking at whether the sanctions are having any impact. We monitor if someone is travelling despite the ban—are diamonds getting out despite the controls? And we are doing that all the time. We do that, as I say, through the periodic reviews of sanctions to make sure that they are properly enforced. In that context, we will continue to ask ourselves, is this a measure which is still worth having? But quantifying the effectiveness of it is going to be a very difficult process.

**Q42 Lord Skidelsky:** The intellectual case for sanctions is heavily challenged by an intellectual case against, and I wonder what your view is on the weight of those things? The intellectual case against is that,

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on the whole, the more you multiply contacts between different countries, the more chance you will have of modifying the behaviour which you do not approve of, whereas sanctions is cutting off those contacts in various ways at some point. It may be appropriate when people are travelling. Do you have that sort of argument? I am sure you do, and how do you weigh up those two positions?

*Mr Pattison:* It is a key point, and we have that argument all the time. In many foreign policy problems there is always debate about the balance between engagement and disengagement or containment or call it what you will. I said earlier that I felt sanctions worked best when they were accompanied by other processes, and I think that is probably true. Where there is a clear objective for the sanctions, that the target regime knows it has to attain to get out of sanctions, they can work more effectively and where we, the international community, are clear about what it is we want to achieve. The debate about engagement versus sanctions is one that we have to look at in each

individual case. It is hard to make hard and fast rules. One element to it is an element which, again, crops up in the academic literature and it is that sanctions themselves can create pressure on an incentive for engagement. Here the Libya case, which I alluded to earlier, is an example where, as we got towards a situation where Libya was willing to handover the Lockerbie suspects, we were able to calibrate down the sanctions we had. I cannot recall the exact details now but, things like, once an agreement was signed in principle to hand them over, certain sanctions would be lifted, and then once they were eventually handed over, and so on and so forth. There is another intellectual dimension to them, and that is that sanctions can create that added dimension of negotiating leverage over an entity which, as I say, when the other circumstances are right, can help you move stage by stage towards a conclusion.

**Chairman:** Thank you very much indeed. You have answered our questions with enormous patience and a lot of knowledge, and we are grateful to you for that. We are at the beginning of our inquiry and we are very much appreciative of your help.

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TUESDAY 4 JULY 2006

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Present	Lamont of Lerwick, L Layard, L Macdonald of Tradeston, L Oakeshott of Seagrove Bay, L Paul, L	Powell of Bayswater, L Sheldon, L Skidelsky, L Vallance of Tummel, L Wakeham, L (Chairman)
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**Memorandum by Dr Kern Alexander, The Judge Business School, University of Cambridge**

**ECONOMIC SANCTIONS GENERALLY**

The purpose of this note is to discuss the development of economic sanctions laws and regulations in recent years and to highlight some of the main challenges confronting policymakers. My comments will address some of the legal and regulatory issues in the economic sanctions debate by focusing on the UN, EU, UK and US sanctions regimes. I will mention some of the weaknesses in these regimes and suggest ways for the UK government to develop a more effective sanctions regime. I will also discuss some of the problems with unilateral and extraterritorial US economic sanctions and how this can potentially disrupt the development of an effective international sanctions regime.

The use of economic sanctions to accomplish foreign policy objectives has throughout history been an integral component of the foreign policy of most nation-states. Nations have relied on economic sanctions not only to influence foreign policy objectives but also to respond to domestic political needs and economic pressures. In antiquity and in medieval times, economic sanctions were most often used as part of a nation's arsenal during times of war.<sup>1</sup> Indeed, Athens imposed economic sanctions in 432 BC when Pericles issued the Megarian import embargo against the Greek city-states which had refused to join the Athenian-led Delian League during the Peloponnesian War.<sup>2</sup> Until the 20th century, nation-states had relied principally on economic sanctions as a subordinate part of a larger military strategy to impose blockades and prevent the export of strategic supplies to targeted countries.<sup>3</sup>

The use of economic sanctions as an independent tool of foreign policy was not generally adopted by major states until the 1920s following the enactment of the League of Nations Charter.<sup>4</sup> During this period, various member states of the League and the United States adopted economic controls on various exports to certain targeted countries, such as Japan, Italy and Yugoslavia.<sup>5</sup> Later, during World War II, Great Britain, the United States and other belligerent nations adopted comprehensive export controls and financial asset controls against enemy states and their nationals. The US maintained and extended most of its export and foreign asset controls against communist countries and other states of concern during the Cold War.<sup>6</sup> In recent years, many studies have documented the extensive use of economic sanctions by most developed states to promote foreign policy and national security objectives.<sup>7</sup> Beginning in the 1990s, many states led by the US began to expand the focus of their economic sanctions programmes to include non-state actors, such as international terrorists and drug traffickers. The growth of economic sanctions as an instrument of foreign policy has been enormous and has attracted considerable commentary in both academic and policy circles.

In assessing the effectiveness or utility of a sanctions policy, it is necessary to define its objectives and to have effective criteria for determining whether the objectives have been met. Economic sanctions can have any combination of the following objectives: *behaviour modification* of the target, *retribution* or *punishment*, or as a *signal* to the target or to other secondary states. Moreover, the rationale of economic sanctions may involve promoting military objectives on the one hand, and maintaining peace on the other. Or it may involve the use of sanctions as a means of *containment* and/or *dialogue*. The basic purpose of economic sanctions, however, throughout history has essentially remained the same, namely, restricting foreign trade or withholding

<sup>1</sup> Indeed, the Roman Government imposed a virtual trade embargo on the Gauls between 232–225 BC which forbade anyone (including non-Roman citizens in third countries) from buying or selling gold or silver with the Gauls. W V Harris, *War and Imperialism in Republican Rome 327–70 BC* (1975) 198, n 3.

<sup>2</sup> Pericles, *History of the Peloponnesian War* (transl by Rex Warner) (Penguin Books, 1973) pp 360–362.

<sup>3</sup> W N Medlicott, *The Economic Blockade*, vol I (1952) 9 [hereinafter Medlicott].

<sup>4</sup> See D W Bowett, *The Law of International Institutions*, (4th ed) (1982) 18–25.

<sup>5</sup> These sanctions policies proved to be ineffective in convincing these countries to cease their aggression. See Renwick, *Economic Sanctions*, p 18.

<sup>6</sup> See M Domke, *The Control of Alien Property* (1947) 39–46.

<sup>7</sup> G Hufbauer & J J Schott, *Economic Sanctions Reconsidered—Case Histories* (2d ed) (1998) 4–14, 163–283.

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economic benefits from targeted states to accomplish broader strategic or foreign policy objectives. In recent years, targeted financial sanctions have become the instrument of choice to put pressure on certain states and to make it difficult for terrorists and drug traffickers to move money across borders.

#### UNITED NATIONS SANCTIONS

The United Nations Charter authorises the Security Council to adopt and impose multilateral economic sanctions. Article 39 of the UN Charter provides that if the Security Council determines a breach or threat to the peace, or act of aggression, it can authorise the use of economic sanctions by its members on a multilateral basis with coordination provided by the Security Council. The language in Article 39 is broad and has been interpreted as providing authority to the Security Council to determine what is a threat to the peace.<sup>8</sup> During the Cold War, the Security Council approved multilateral sanctions in only two cases against Southern Rhodesia and South Africa. Following the collapse of the Soviet Union, the Security Council has adopted sanctions to a far greater extent by imposing them against Iraq/Kuwait in the Kuwait War and later against Libya, the Federal Republic of Yugoslavia and Montenegro, Afghanistan/Taliban, and against international terrorists and terrorist organisations such as Al Qaeda.

Following the US government's unilateral imposition of extraterritorial sanctions against Iraq and Kuwait after the Iraqi invasion, the UN Security Council adopted Resolution 661<sup>9</sup> on 6 August 1990 which called on all states to freeze the assets of Iraq and Kuwait "located within their territory." Resolution 661 called upon all states to "take appropriate measures to protect assets of the legitimate government of Kuwait and its agencies".<sup>10</sup> The resolution also called for the imposition of trade sanctions against both Kuwait and Iraq, and provided an international legal basis for the freezing of Iraqi and Kuwaiti assets. The adoption of Resolution 661 was followed by the imposition of freeze orders and trade sanctions against Iraq and Kuwait by most European countries, the US, Japan, and Canada.

The international sanctions imposed against Iraq and Kuwait during the Kuwait war were generally viewed as successful because the countries adopting the sanctions had the political resolve to ensure effective implementation and the objectives of the sanctions policy was defined clearly for policymakers. The UN sanctions against Iraq had three clearly defined objectives: (1) to protect Kuwait assets from the invaders in order to "prevent the misappropriation of the assets". This made it impossible for the Iraqi government to have access to over \$200 million of blocked Kuwaiti assets abroad; (2) to keep leverage over the Kuwaiti royal family against coming to an agreement with Saddam Hussein that would be contrary to US policy; and (3) to apply the frozen assets toward financing the war against Iraq.

However, following the Kuwait war, the Security Council had difficulty in maintaining effective international sanctions against Iraq to ensure that the terms of UN Security Council resolutions were met. The Volcker Commission Report on the Iraq oil-for-food programme demonstrated the weaknesses of the Security Council sanctions programme against Iraq and efforts to distribute oil proceeds to Iraqi civilians for humanitarian reasons. Moreover, the Security Council sanctions committees that were established to adopt and oversee implementation of international financial sanctions against international terrorists and their supporters have also been woefully inadequate in achieving their objective of restricting and cutting off financial support for terrorists.

#### EU ECONOMIC SANCTIONS

The European Community<sup>11</sup> (EC) has express authority to impose economic sanctions unilaterally against targeted states and entities.<sup>12</sup> Before the Maastricht Treaty took effect in November of 1993, however, there was no express authority in the Treaty of Rome providing for a Community competence in economic sanctions. The absence of such express authority, however, did not prevent the Council of Ministers from issuing regulations implementing

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<sup>8</sup> See McDougal and Reisman, "Rhodesia and the United Nations: The Lawfulness of International Concern," (1968) 62 *Am J Intl' L.* 1.

<sup>9</sup> SC Res 661 (6 August 1990), 29 *ILM* 1325-1327 (1990).

<sup>10</sup> 29 *ILM* 1326.

<sup>11</sup> The EC is technically three communities, established by separate treaties: the European Economic Community (EEC), the European Coal and Steel Community (ECSC), and the European Atomic Energy Community (Euratom). Present members of the EU include: Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom. Since the treaty of Rome was signed in 1958, there has been increasing integration of the three Communities. For example, in 1965, a single Council and Commission were established. Treaty Establishing a Single Council and a Single Commission of the European Communities (Merger Treaty). In 1986, the Conference of the Representatives of the Governments of the Member States adopted a Single European Act, which included treaty modifications concerning foreign policy coordination as well as community institutions, monetary cooperation, research and technology, environmental protection, and social policy. 25 *ILM* 503 (May 1986). It became effective in July of 1987, after being approved by the twelve member states.

<sup>12</sup> See Articles 301 (ex-Article 228A) and 60 (ex-Article 73G), Treaty Establishing the European Community, as Amended by Subsequent Treaties (25 March, 1957) ("Treaty of Rome"), reproduced in B Rudden & D Wyatt, *Basic Community Laws* (6th ed) (1996).

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UN embargo resolutions.<sup>13</sup> The legal basis for such authority was Article 133 (ex-Article 113) of the Treaty of Rome which provides for “implementing a common commercial policy”<sup>14</sup> and gives the Community competence to preempt member state measures in the same area.<sup>15</sup> Hence, import and export restrictions and non-financial services have been held to come within the ambit of Article 133.<sup>16</sup> But the Commission did not interpret Article 133 as authorising financial sanctions. EU member states were thus free to adopt financial sanctions if they did not conflict with EC policy or if they were pursuant to UN embargo resolutions.

In addition, the EC has relied on Article 80 (ex-Article 84), in conjunction with Article 133, to adopt transport sanctions against Iraq, Libya, and Serbia-Montenegro<sup>17</sup> pursuant to UN Security Council resolutions. The EC also utilises Article 308 (ex-Article 235) as a residual basis for action—allowing the Council to take “appropriate measures” if action by the Community is necessary to attain one of the Community’s objectives and the EEC Treaty has not provided the necessary powers.<sup>18</sup> In fact, the EC relied on the implied powers clause of Article 308 to implement paragraph 29 of Security Council Resolution 687 (1991), by which the Security Council calls upon all states to prohibit the satisfaction of claims based on the non-performance of contractual obligations whose execution has been affected by the UN embargo against Iraq.<sup>19</sup>

Articles 223 and 297 (ex-Article 224) provide further authority for sanctions to be imposed at different levels of the Community. Article 223 provides a specific basis for EC sanctions involving “trade in arms, munitions and war material.” In contrast, Article 297 (ex-Article 224) unequivocally grants EU member states competence to adopt national laws unilaterally without EC regulatory authority in order to implement Security Council sanctions. It states:

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Member States are required, however, to consult with one another in deciding whether to implement Security Council sanctions on an individual basis.

#### *Unilateral Economic Sanctions Within The European Community*

Article 133 (ex-Article 113) was cited as authority for adopting unilateral national sanctions against Argentina, Iran, and the Soviet Union.<sup>20</sup> Indeed, after the British government adopted comprehensive sanctions against Argentina, including a freeze on Argentinian assets located within British territory or under the control of British nationals, the Council of Ministers voted unanimously in April 1982 to impose a temporary import ban through a regulation based on Article 133 (ex-Article 113).<sup>21</sup> Although there were major loopholes in the ban which diminished its effectiveness, the EC decision and the basis for it were correctly viewed as an important precedent for future crises.

The EC has the power to limit the ability of its members to impose unilateral economic sanctions against both member and non-member countries. Indeed, the Treaty of Rome prohibits export or import controls between the Member States, as well as restrictions on private credit flows for foreign policy reasons.<sup>22</sup> Some experts have argued

<sup>13</sup> See SC Res. 661 (1990) (Iraq & Kuwait), implemented by EC Regs 2340/90 (1990) *OJ* L213/1 & 3155/90 (1990) *OJ* L304/1. See also, SC Res 748 (1992), implemented by EC Reg 945/92 (1992) *OJ* L101/53 (Libyan embargo on aircraft and component parts and services); SC Res(s) 757 (1992) & 820 (1993), implemented by EC Regs 1432/92 (1992) *OJ* L151/4 & 990/93, (1993) *OJ* L102/14 (imposing comprehensive commercial and financial sanctions against Serbia and Montenegro (Federal Republic of Yugoslavia) and Bosnian Serb territory).

<sup>14</sup> Article 113(1) states that “the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping and subsidies”. The full scope of the EEC’s broad powers under article 113 remains “undetermined and controversial”. because the term “common commercial policy” is not defined in the Treaty of Rome.

<sup>15</sup> See R Pavoni, “UN Sanctions in EU and National Law: The *Centro-Com* Case”, (1999) 48 *ICLQ* no 3, 582, 588.

<sup>16</sup> The European Court of Justice gave Article 113 (now Art 133) a broad interpretation in *Opinion 1/78* [1979] ECR 2871, para 45; see also, *Opinion 1/94* [1994] ECR I-5267, paras 31, 39.

<sup>17</sup> EC Reg 3155/90, (1990) *OJ* L304/1 (Iraq); EC Reg 945/92, (1992) *OJ* L101/53 (Libya); EC Reg 1432/92, (1992) *OJ* L151/4.

<sup>18</sup> Article 308 provides:

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.

<sup>19</sup> EC Reg 3541/92, (1992) *OJ* L361/1.

<sup>20</sup> P Kuyper, “Community Sanctions against Argentina: Lawfulness Under Community and International Law,” in *Essays in European Integration* in D O’Keeffe & H G Schermers, eds, *Essays in European law and Integration* (1982) 141; 29 *OJ Eur Comm* (No L 268) I (1986); 29 *OJ Eur Comm* (No L 305) 11, 45 (1986).

<sup>21</sup> See 25 *OJ Eur Comm* (No L 102) I (1982).

<sup>22</sup> Treaty of Rome, arts 9, 10 (free movement of goods—customs duties), 30–36 (elimination of quantitative restrictions), and 67–73 (movement of capital).

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that the language in Articles 9 and 10 not only confers powers on the European Community to control imports but also restricts the discretion of Member States in imposing economic sanctions against non-EU states.<sup>23</sup> According to this argument, a Member State may only impose import controls in certain circumstances where the EC has not enacted directives or regulations preempting a specific area. For example, the United Kingdom's ban on the import of diamonds from South Africa in the 1980s was not preempted because there were no EC regulations or directives which had been enacted against South Africa thereby permitting EU member states to enact their own sanctions. However, the effectiveness of the UK prohibition was undermined by the fact that the United Kingdom could not prohibit the importation of diamonds from South Africa by way of another EC state.

The Treaty of Rome's prohibition on import controls against another Community member state applies both to products originating in that country and to products coming from third countries that have cleared customs in a Member State.<sup>24</sup> The possibilities of indirect trade thus make any unilateral import control relatively ineffective, depending on the costs of transshipment (which, in the case of diamonds, would be small). Similarly, though there have been no EU cases decided on point, EU law probably does not prohibit unilateral controls over exports to a third country or over private credit transactions with third country entities. Some questions, however, might be raised under Articles 133 (ex-Article 113) concerning a "common commercial policy" and under Article 297 (ex-Article 224) requiring consultation amongst Member states.<sup>25</sup>

In describing EC authority, it is important to appreciate how the Community usually proceeds in determining whether to impose economic sanctions. The initial discussions amongst the Foreign Ministers usually focus on the steps to be taken and also on choosing "between a true Community approach or a perhaps coordinated but separate implementation" of measures.<sup>26</sup> When these measures are adopted, the Community documents are sometimes vague about the specific legal authority imposing such measures. One of the reasons for this is that the European Commission and Council of Europe can choose among the legal vehicles through which to implement sanctions measures. The decision to implement a regulation or directive has a substantive impact on the way a measure is implemented in the Member States.<sup>27</sup> For example, in the case of South Africa, the foreign ministers of EU Member States agreed to proceed on the basis of Article 133 (ex-Article 113) by adopting a ban on imports of gold coins, iron, and steel as part of a sanctions policy to protest South Africa's apartheid system.<sup>28</sup> Later, the EC Council later decided to ban South African imports of iron and steel pursuant to its authority under the European Coal and Steel Community (ECSC) Treaty, rather than under Article 133 (ex-Article 113) of the EEC Treaty, because it is the ECSC Treaty that governs competence over such products.<sup>29</sup>

#### *The Treaty on European Union ("Maastricht Treaty")*

The Maastricht Treaty added two new articles to the Treaty of Rome regarding Community powers in the area of economic sanctions. These provisions are Articles 301 (ex-Article 228A) and 60 (ex-Article 73G). Article 301 states:

Where it is provided, in a common position or in a joint action of the Treaty on European Union relating to the Common Foreign and Security Policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or another third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

Article 60 extends the authority granted in Article 301 to include "measures on the movement of capital and on payments." These Articles have strengthened the legal basis supporting EC competence to impose economic and financial sanctions. Although some states continue to contest the EC's authority to impose financial sanctions

<sup>23</sup> B E Carter, *International Economic Sanctions* (1987) 224–5.

<sup>24</sup> Treaty of Rome, art 9(2). Article 10(1) provides, "Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State. . . ."

<sup>25</sup> See Treaty of Rome, arts 110–16 (common commercial policy) and art 224 (consultation), *discussed below*. See also Title III (cooperation in foreign policy) of the Single European Act. See Stein, Hay & Waelbroeck, *European Community Law and Institutions in Perspective*, 200–08 (Supplement).

<sup>26</sup> Kuyper, p 144. See, for example, the coordinated but separate measures taken by the Member States against Syria in 1986–87.

<sup>27</sup> Article 189 provides for regulations, directives, decisions, recommendations, and opinions. It reads: A regulation shall have general application. It shall be binding in its entirety and directly applicable to all Member States. Further, it states:

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. . . . A decision shall be binding in its entirety upon those to whom it is addressed.

<sup>28</sup> Council Reg (EEC) No 3302/86 27 October 1986 in *OJ Eur Comm* (No L 305) II (1986). The regulation exempted "imported documents issued and contracts concluded before the entry into force of this Regulation."

<sup>29</sup> Article 71 of the ECSC Treaty reserves to Member States the authority to determine much of their own commercial policy for coal and steel products. Article 113 of the EEC Treaty has not absorbed this reservation. See also, Council Decision 86/459/ECSC is at *OJ Eur Comm* (No L 268) I (1986).

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under Article 60, the EC relied on Article 60 to adopt Regulation 2471/94 to impose sanctions freezing Bosnian-Serb assets in European financial institutions in the 1990s, which was required under Security Council Resolution 942 (1993).

Moreover, the Maastricht Treaty does not prohibit member states from continuing to enact their own national laws that give effect to decisions taken pursuant to Chapter VII of the UN Charter. Member States are also free to adopt their own national sanctions laws against non-EU states insofar as such sanctions do not conflict with express EC policy. In this regard, EU law should not constrain UK policymakers in adopting effective economic sanctions policies and regulations.

#### UK ECONOMIC SANCTIONS

The British cabinet has very broad power to impose economic sanctions for foreign policy purposes subject to certain restrictions under EC law. The UK system is characterised by so-called enabling legislation, that is, Acts of Parliament authorising in advance the exercise of the necessary powers to fulfil specific obligations. Several statutes authorise the Crown to adopt Orders in Council that impose economic sanctions.

In the area of export controls, the Export Control Act 2002 provides the most comprehensive coverage of UK export controls. It consolidates and incorporates previous UK export control legislation, including the Import, Export and Customs Powers (Defence) Act of 1939.<sup>30</sup> The Export Control Act was adopted in response to the recommendations of the Scott Report of 1996. Parliament implemented the Act through secondary legislation which became effective in May 2004. The Act imports a licensing regime for the export of military and dual-use goods and instruments, and requires licences for software and technology products and services. The Act focuses mainly on export controls and establishes a government objective to promote global security by restricting exports to UN-targeted states and international terrorists.

The Exchange Control Law of 1947 provides broad power to the Secretary of the Treasury to restrict or prohibit transactions in foreign exchange.<sup>31</sup> The British government used the law against Southern Rhodesia, Iraq, and the Federal Republic of Yugoslavia.<sup>32</sup> The Emergency Laws Act also imposes payment controls by authorising the Secretary of Treasury to restrict and freeze financial transactions deemed to be a “detriment of the economic position of the United Kingdom”.<sup>33</sup> Moreover, under the 1939 Trading With the Enemy Act, the Secretary of State may label any country an “enemy”, thereby rendering trade illegal with that country.<sup>34</sup>

In addition, the United Nations Act 1946 authorises the Government to exercise the necessary powers to implement Security Council Resolutions.<sup>35</sup> Section 1(I) of the Act enables the Crown to adopt Orders in Council in order to give effect to UN sanctions measures.<sup>36</sup> This provision has provided the legal authority for all British statutory instruments that implement UN sanctions resolutions that impose international sanctions against targeted states and international terrorists. For instance, the UK Treasury has issued statutory orders that authorise the Bank of England to impose financial orders against individuals designated by the Security Council as international terrorists. Similarly, the Cabinet has the power to implement European Community legislation.

Although these laws provide broad statutory authority for the Cabinet to impose far-reaching controls over exports, imports and financial transactions, the British Cabinet will often seek specific approval from Parliament when responding to a particular crisis, as when the government successfully sought Parliament’s support for specific laws imposing sanctions against Southern Rhodesia in 1965 and Iran in 1980. One of the reasons that parliamentary support is necessary is that most British economic sanctions laws are broad in nature and have textual ambiguities which are not clarified in regulations. Therefore, in a particular crisis, it is necessary for Parliament to enact country-specific legislation imposing direct prohibitions on certain transactions and commercial dealings with a targeted state.<sup>37</sup>

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<sup>30</sup> The Import, Export and Customs Powers (Defence) Act 1939, 2 & 3 Geo VI, c 69. See also, C Schmitthoff, *The Export Trade: A Manual of Law and Practice* 305 (1950).

<sup>31</sup> Exchange Control Act 1947, 10 & 11 Geo VI, c 14.

<sup>32</sup> Exchange controls remain in effect against both Iraq (pursuant to UN Resolution 687) and Yugoslavia (Resolution 757). The government lifted the Southern Rhodesian controls by issuing a general exemption in December of 1979. The Exchange Control (General Exemption) Order, SI No 1660 (1979).

<sup>33</sup> See The Control of Gold and Treasury Bills (Southern Rhodesia) (Revocation) Directions, SI No 1661 (1979). See also, Emergency Laws (Re-Enactment and Repeals) Act 1964, c 60 [hereinafter Emergency Laws].

<sup>34</sup> Trading with the Enemy Act 1939, 2 & 3 Geo VI, c 89. The law could be used to terminate all commercial transactions with a particular country.

<sup>35</sup> United Nations Act, § I, contained in Control of Gold and Treasury Bills (Southern Rhodesia) Directions, SI No 1939 (1965).

<sup>36</sup> United Nations Act 1946, s 1(I).

<sup>37</sup> See discussion of Exchange Act 1947 and Strategic Goods (Control) Order 1959 in 9 *ICLQ* (1962) 453–56.

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#### UNILATERALISM AND US ECONOMIC SANCTIONS

The United States has the most comprehensive system of economic and financial sanctions. Traditionally, US economic and financial sanctions programmes have been important instruments of foreign policy. In comparing the number of times that sanctions were imposed by the leading states in the international system, the US government has imposed economic sanctions on more occasions than the combined number of times sanctions were imposed by all other nations.<sup>38</sup> Since 1991, the US government has resorted to economic sanctions on over sixty occasions, specifically targeting countries which, *inter alia*, support international terrorism, the manufacture of weapons of mass destruction, the abuse of political and civil rights, and confiscation of US-owned property.<sup>39</sup>

Generally, the US government has applied economic sanctions against foreign governments, but since the 1990s sanctions have been directed increasingly against international terrorist organisations and other non-state entities such as drug traffickers. Following 11 September 2001, President Bush signed Executive Order 13224 that significantly increased the scope of US financial sanctions against international terrorists and terrorist organisations. Today, US financial sanctions are targeted against an array of alleged international terrorists and terrorist-supporting governments. Moreover, US economic sanctions apply to states such as Iran and North Korea mainly on the grounds these states are engaged in nuclear weapons research that US alleges to violate the Nuclear non-proliferation treaty and other multilateral conventions prohibiting the use of weapons of mass destruction.

US economic sanctions have specifically targeted countries which, *inter alia*, support international terrorism, the manufacture of weapons of mass destruction, the abuse of political and civil rights, and confiscation of US-owned property.<sup>40</sup> Under the USA Patriot Act, the US has adopted financial sanctions to target foreign jurisdictions, foreign financial institutions, and foreign transactions and accounts that are allegedly involved in money laundering or supporting international terrorism or states that support the development of weapons of mass destruction. Although the US has attempted to coordinate these financial sanctions measures through multilateral bodies (eg, the Financial action task Force and Security Council Sanctions Committees), US financial sanctions are often taken on a unilateral basis without approval or support from other governments. Recent examples include the unilateral economic sanctions against Iran, Cuba, Syria, and North Korea.<sup>41</sup> Moreover, the US often maintains unilateral financial sanctions against alleged terrorists in other countries, even when the relevant UN Security Council Sanctions Committee has not approved their application. This raises serious legal and regulatory problems for European jurisdictions that do significant amounts of business with the United States.

#### CONCLUSION

As globalisation facilitates the integration of international economic activity, states are increasingly relying on economic sanctions to accomplish an array of foreign policy objectives. The use of economic sanctions raises a number of important policy and legal issues regarding their application and enforcement. Even where there is an international consensus that sanctions should be imposed against certain pariah states, the experience of the United Nations has shown that multilateral sanctions are likely to fail if states lack the political will to enforce them and have inadequate legal and regulatory frameworks to implement them, while providing procedural safeguards. Policymakers and legislators should ensure that economic sanctions laws have clearly stated objectives and are implemented in a way that allows for effective cross-border coordination between national authorities.

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<sup>38</sup> G Hufbauer & J J Schott, *Economic Sanctions Reconsidered, History and Current Policy*, (1998).

<sup>39</sup> See US sanctions against Cuba for economic confiscation, support of terrorism and failure to adopt political reforms; Libya's support for international terrorism; Iran support for manufacture of weapons of mass destruction, support of international terrorism; sanctions (no sale of strategic parts and equipment to China and technology and economic aid restrictions for India and Pakistan because of their detonation of nuclear devices. Pakistani and Indian sanctions imposed pursuant to the Nuclear Proliferation Prevention Act of 1994 (NPPA), 22 USC § 3201 (1994) (amending the Arms Export Control Act by adding language that states, *inter alia*, mandating a menu of sanctions against any "non-nuclear" state that "detonated a nuclear explosive device on May 11, 1998". See 22 USC §§ 2751–2796d (1995).

<sup>40</sup> G Hufbauer & J J Schott, *Economic Sanctions Reconsidered, History and Current Policy*, (1998).

<sup>41</sup> See US sanctions against Cuba for economic confiscation, support of terrorism and failure to adopt political reforms; Libya's support for international terrorism; Iran support for manufacture of weapons of mass destruction, support of international terrorism; sanctions (no sale of strategic parts and equipment to China and technology and economic aid restrictions for India and Pakistan because of their detonation of nuclear devices. Pakistani and Indian sanctions imposed pursuant to the Nuclear Proliferation Prevention Act of 1994 (NPPA), 22 USC § 3201 (1994) (amending the Arms Export Control Act by adding language that states, *inter alia*, mandating a menu of sanctions against any "non-nuclear" state that "detonated a nuclear explosive device on May 11, 1998". See 22 USC §§ 2751–2796d (1995).



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### Examination of Witness

Witness: DR KERN ALEXANDER, The Judge Business School, University of Cambridge, examined.

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**Q43 Chairman:** Welcome. We are delighted you were able to come and talk to us. Thank you very much for your written evidence, which we have and which we have all read. We will ask you some questions and you have some idea what we are going to ask you. There may be questions that have arisen from your written evidence that others would like to ask. Although you have sent us written evidence, do you want to add anything to that as an opening statement or are you happy just taking questions?

*Dr Alexander:* I feel that the written evidence summarises my position and what I would say, so I am happy to go right to questions.

**Q44 Chairman:** My opening question therefore is: does the UK Government have a clear and coherent approach to economic sanctions, in your view? In particular, are the policy objectives of sanctions regimes usually clearly stated?

*Dr Alexander:* I believe that in the last 10 years the UK economic sanctions policy has become much more clear and the Export Control Act of 2002, for instance, really does provide policy objectives. It provides specific definitions over what UK export controls can cover: military goods, dual-use items, technology and software that is related to military products. In that respect, the Export Control Act, I think, is very clear and it is a step in the right direction, of course embodying the recommendations of the Scott Report. The other area of economic sanctions is financial sanctions, where UK policy is pretty clearly stated that Parliament can adopt enabling legislation and direct the Treasury to implement statutory orders to enforce and to devise financial sanctions. Therefore, in that regard, the Bank of England has been delegated authority to impose financial freeze orders on designated terrorists, on alleged drug traffickers, and also to freeze the bank accounts of certain heads of state and government representatives of states that the UK is party to financial sanctions against, such as Zimbabwe. In that regard, the UK legislation, and I think the regulatory framework, is pretty clear regarding what the purposes of sanctions are. I think the one gap that someone might say exists has to do with the area of general economic sanctions, broader trade embargoes that deal with non-military goods, non-strategic items, and then non-financial sanctions type of economic controls. I think there is a bit of a gap in UK policy now. The US of course has a very comprehensive set of economic and financial sanctions for military goods as well as for general economic sanctions, and then they have more specific financial sanctions that are targeted. The UK Government has statutory authority to adopt

economic sanctions more generally, but they simply have not stated the policy rationale behind the adoption of broader economic sanctions. Maybe they are not needed. Maybe it is the determination of the Government that they do not need to have broader economic sanctions for civilian-type goods, but they certainly have, I think, a very comprehensive regime regarding export controls on military items, dual-use items, technology software and on financial sanctions.

**Q45 Lord Powell of Bayswater:** When it comes to the actual implementation of the sanctions, do we have all the necessary machinery we need and how is performance in practice?

*Dr Alexander:* I believe that the legal and regulatory framework is fairly robust in the UK regarding the implementation of sanctions.

**Q46 Lord Powell of Bayswater:** Is it applied effectively?

*Dr Alexander:* It is applied effectively. I think in the area of financial sanctions it certainly is. We see the Bank of England now issues orders and notices to the financial services community to block assets of designated terrorists that are on the international sanctions list as well as the lists that are devised by the European Union. So the Bank of England and the Treasury have been sending the notices out regarding financial sanctions. I think the Export Control Act, on the other hand, is going through a birth phase. It has just recently been adopted. The enabling legislation was adopted in May 2004, and the effective implementation of that remains to be seen. The DTI publishes reports on compliance.

**Q47 Lord Powell of Bayswater:** But clever people can always find ways round regulations and ways of dodging and evading them and so on. Do you think a lot of that actually goes on? Is our legislation sufficiently far-reaching to stop that sort of activity?

*Dr Alexander:* I think there are some gaps in the UK financial sanctions regime. For instance, if the Bank of England issues a notice for the banks to block the assets of a named individual, it only applies to the banking operations in the United Kingdom; it does not apply for instance to the overseas branches of Barclays or HSBC. They might have a branch operating in Spain; it would not apply to the branch in Spain. The branch is part of the bank in London; it is just a branch office. So the financial sanctions regulations, I think, have a gap in that regard. They do not want to be too extra-territorial, I do not think, but they need to be sufficiently extra-territorial to

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Dr Kern Alexander

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cover the overseas and branch operations of UK businesses.

**Q48 Lord Powell of Bayswater:** What about the machinery for monitoring the effectiveness of sanctions? Do we really have the capability to see and understand whether they are proving effective or whether they are being circumvented?

*Dr Alexander:* I think the Treasury and the Home Office publish an annual report on financial sanctions and terrorist controls that appears to state the amount of money that is in blocked bank accounts, and so we see some measures of what have been going on through that. However, I do not think that there is any relationship between what has been done and how the sanctions are being applied and whether or not sanctions are achieving their objectives. That is one gap, I think, it is very difficult for policy makers to measure anyway. Certainly it is not clear right now whether or not the blocking orders that the banks have been applying in the UK are actually having an effect, that they are enabling the UK policy-makers to achieve their objectives.

**Q49 Lord Powell of Bayswater:** My point is that the monitoring of reports will tell you what is being done; it will not tell you what is not being done. There is probably quite a large area of things that are actually slipping through the net. Do you agree?

*Dr Alexander:* Yes.

**Q50 Lord Paul:** Where do you think, out of 10 countries, in terms of our objective on sanctions, we have achieved the highest success?

*Dr Alexander:* Historically, I think in the case of Southern Rhodesia the objectives were eventually met through the UN Security Council sanctions regime that led to the transition of the government. In South Africa, for instance, the UK participated in the UN Security Council resolutions with regard to South Africa. I think that the effectiveness of UK sanctions in each of those cases depended on the level of international support Britain gets. So you have to have effective enforcement and monitoring of enforcement at international level in the Security Council. In that case, Southern Rhodesia and South Africa, I think, are examples where you could argue, although it took a while to take effect, that actually it achieved the objective.

**Q51 Lord Paul:** In Southern Rhodesia and South Africa, the belief was that sanctions achieved a better purpose eventually because those governments were depending upon those very countries for their existence to back them regularly. They got a lot of support from those same countries. It was achieved because they lost that support, but that is not the case in a lot of other countries.

*Dr Alexander:* Another case where sanctions were successful, I would say, is Libya. In the Libyan case, you had a fairly intransigent regime that was involved in alleged state-sponsored terrorism in the 1980s, and they were the object of unilateral US sanctions, and the UN Security Council after the Lockerbie bombing and the UTA flight bombing went into action and imposed multilateral sanctions against Libya, which eventually brought the Libyans to heel. That does not mean that they work all the time, and so I think there are certain soft points in every government regime that you are trying to impose sanctions against. Whether or not sanctions are effective is very much a case-by-case analysis.

**Q52 Lord Skidelsky:** Basically you have covered the ground of the question that I was going to ask, but I will persist anyway because there are one or two other points that can be brought out. As for the question “how can we assess the effectiveness of UK policy on economic sanctions?” may I suggest that the answer is we cannot. The fact that B followed A does not mean that A caused B.

*Dr Alexander:* I think that is a very good point. I should have prefaced my remark by saying that generally there are four objectives of sanctions: behavioural modification; retribution; punishment; and signalling. So it depends what objective you are trying to measure your success by. Certainly, if you measure it by behavioural modification, sanctions could be seen to fail quite often, as in your suggestion, but in other areas where the goal of sanctions is simply to say, “We are good international citizens; we are participating in international multilateral institutions and we are going to go along with the US, with Japan or whatever they are doing”, then the effectiveness of sanctions might be viewed in a different light.

**Q53 Lord Skidelsky:** That is interesting. I was going to go on to that, and quite rightly in your written evidence you do give the three possible objectives: behaviour modification; retribution or punishment; or as a signal. The first one obviously is designed to affect behaviour. The second one is designed to punish behaviours to such a degree possibly that the behaviour might be changed. But the third one is purely symbolic. In that sense, sanctions can never fail. Obviously, if the object of sanctions is simply to express the disapproval of the world community and the world community or enough of it expresses disapproval, then sanctions succeed; they are effective. Therefore, is that any reasonable test of the effectiveness of sanctions to say that in their symbolic form they undoubtedly do what they are supposed to do?

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*Dr Alexander:* I think there is a case to be made. I do not think it is sufficient to say that sanctions are symbols, or that they just signal, but at least they voice disapproval in the world community of nations. Even though, for instance, I think it is legitimate for a small country to adopt economic sanctions against a targeted state that might be approved for sanctions by the Security Council, even though that small state's adoption of sanctions will have very little effect on the behavioural modification of the target, it is important that the small state be able to signal to the rest of the world that they are part of an alliance of countries that are denouncing the behaviour that is taking place.

**Q54 Lord Skidelsky:** Why?

*Dr Alexander:* Because of political communication; just because we cannot change a country's behaviour does not mean that we should not express our disapproval. If we do it simply verbally through diplomatic means, that is one way. If we do it through economic measures that impose economic cost, that is another way of doing it. Economic sanctions can be a political instrument for a number of different objectives. Just because it does not change the target's behaviour does not mean that voicing your displeasure is necessarily a bad policy.

**Q55 Lord Skidelsky:** My difficulty is that it makes the test of the success of sanctions too easy.

*Dr Alexander:* Yes, exactly, and I would think that is one of the problems, of course, that signalling itself is not sufficient. Ideally needs to be linked to some other objective.

**Q56 Lord Lamont of Lerwick:** Following on from that, if we take sanctions as expressing disapproval, and sanctions as punishment, who is punished? Who bears the price? That is surely the question one has to ask. If one thinks of the sanctions that were in existence against Iraq before the invasion of Iraq, those were criticised by many people as causing shortages of medical supplies and suffering by ordinary Iraqi people, but the defenders of sanctions said that was because of action that was taken by the Iraqi regime pre-empting resources that might have gone to ordinary people, though that defence rather indicates that sanctions were not working as they were intended to work, and that would in itself appear to be a criticism of the sanctions.

*Dr Alexander:* I agree that the Iraqi sanctions had collateral damage in the economic and social sense on the broader civilian population in that the economic and social damage it did to the civilian population may not have been effective in persuading the leadership to comply with Security Council resolutions or persuade the leadership not to be involved in developing weapons of mass destruction.

*The Committee suspended from 4.12 pm to 4.20 pm for a division in the House*

**Q57 Lord Lamont of Lerwick:** Following on what Lord Skidelsky was saying about retribution or punishment, surely one has to ask oneself who is punished, who bears the cost of the sanctions? If one looked at the sanctions that were in existence before the invasion of Iraq, there was a lot of criticism of those sanctions that they hit ordinary people, that they hit hospitals, there was a shortage of medicines, of incubators for babies and so on. On the other hand, the defenders of sanctions said: "Ah, this is not because of the sanctions but because of the regime that is pre-empting resources that would have been available to ordinary people." Even that defence of sanctions seems in itself to acknowledge the ineffectiveness and the harm that sanctions do to ordinary people.

*Dr Alexander:* I would certainly agree that economic sanctions, general economic embargoes and trade embargoes do enormous harm to ordinary people, the civilian population. For instance, the US embargo of Cuba has imposed tremendous economic cost and social suffering on the Cuban people. Whether it is achieving the objective of removing Castro from power is another question entirely. In the case of Iraq, I agree entirely with what you have said, that the UN Security Council economic embargo of Iraq was one that was overreaching because it was too broadly based. It imposed a lot of suffering on the civilian population. There was a debate in 1999 and 2000 that the Iraqi sanctions should become more targeted, more focused, on military items, on dual-use equipment, on financial sanctions, and also on monitoring the borders of Iraq to ensure that imports were not coming in from Jordan or from other neighbouring Arab states. There was a move to shift the sanctions to become more targeted. Of course, the role of the oil for Food Programme was to allow Iraq to sell oil and to use the proceeds for humanitarian purposes, but that turned out to be an unsuccessful programme, as the recent Volcker Commission report shows. I agree entirely that one of the main problems with sanctions was that they were too broad and too general. That is why in the 1990s we see a number of countries begin to adopt more targeted financial sanctions. I suggest that those might be more effective in achieving some objectives rather than broad-based embargo type sanctions.

**Q58 Lord Lamont of Lerwick:** Do you think it is a coincidence that three of the longest lasting dictatorships—North Korea, Cuba and Iraq until the war—were countries that had long-lasting general US sanctions against them?

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*Dr Alexander:* I think that is a fair comment on the failure of US policy to achieve change, to achieve the stated political objective, which is to bring democratic government to Cuba and to reimburse confiscated assets, and also, in the case of North Korea, to induce them to stop development of weapons of mass destruction and try to bring about economic and political reforms there. US policy has not been successful in that regard, certainly, yes.

**Q59 Lord Macdonald of Tradeston:** Can I ask how you might distinguish in Iraq between the received wisdom that the sanctions were very ineffective and the fact that we have subsequently discovered that Saddam had abandoned his weapons of mass destruction and we could therefore argue that it had been highly effective in whatever form? How would you distinguish between the different elements of that sanctions policy?

*Dr Alexander:* I think that is assuming that there were no weapons of mass destruction, and I am not privy to any intelligence reports. I think the stated positions of the US and UK Governments were that Saddam was developing the capability to develop weapons of mass destruction. Whether or not he had them is another question. A lot of doubt has been raised regarding that. Certainly his intent to develop WMD capability was a breach of Security Council Resolution 687, and the US therefore tried to justify that and some of the Security Council members were for maintaining sanctions. Certainly you might say that Saddam did not have the economic means to get the programme off the ground. In that case, you could arguably say that the sanctions were successful.

**Lord Lamont of Lerwick:** On the other hand, one justification for war was that it was better than the sanctions.

**Q60 Lord Macdonald of Tradeston:** This then raises the question of how effective the signalling is. Clearly it is a very crude system because people do not seem to understand what is going on inside the opposing countries.

*Dr Alexander:* It is certainly very difficult to measure what the political leadership is thinking and doing, especially in authoritarian regimes, and whether or not the sanctions are having an actual effect, other than to make guesses on the economic growth and output and whatever the World Bank can tell you.

**Q61 Lord Macdonald of Tradeston:** Does this not therefore strengthen the idea that sanctions, albeit often ineffective, are a very important diplomatic tool because they put other options into play, which allow elements inside the targeted country or indeed the targeting country to marshal arguments which might change the diplomatic realities and effect settlements?

*Dr Alexander:* Certainly, I think it has been the case that broad-based economic sanctions have had a tremendous impact on certain countries and regimes. We look at Libya as an example. Gadaffi was finally brought to the table to negotiate. In every country I think it is different; they have different vulnerabilities economically. I do not think we should just say that economic sanctions do not work and that we should not use them. I think we can strategically apply them to a country's vulnerable target, and every country will be different.

**Q62 Lord Powell of Bayswater:** I wanted to come back on that point and your four objectives of sanctions and suggest to you that there is at least a fifth, which is self-indulgence on the part of those employing the sanctions, in the sense that they do it in order to demonstrate that they are doing something rather than nothing, and that this helps appease angry populations, other countries, international organisations and so on. I am not suggesting that is a worthless motive. I think it is actually quite a good motive, but it should be added shortly to your objectives that one applies them simply because something has to be done.

*Dr Alexander:* I think that is a very good point. You might even expand the definition of signalling to include signalling to your domestic constituents that the government is doing something. Certainly that is the case with the US trade embargo with Cuba, that the Cuban-American lobby is very strong in Washington and they are very well organised. So US foreign policy is not just simply trying to bring about regime change in Cuba but also signalling to their own domestic constituents that they are doing something regarding Fidel Castro.

**Q63 Lord Powell of Bayswater:** I might add that when we have made this suggestion to the Foreign Office that self-indulgence might be a motive, they gathered up their skirts in great distaste and said it was a most improper suggestion!

*Dr Alexander:* I understand.

**Q64 Lord Oakeshott of Seagrove Bay:** You have talked particularly about the UK and the US sanctions policies. Can we come on to the European Union? How far does the common commercial and foreign policy either undermine or reinforce our own British sanctions policy and can we effectively do a separate sanctions policy, or is it going to be worthless without the EU?

*Dr Alexander:* As a practical policy matter, it is very good to have the EU on board because that way you get full effect throughout the 25 Member States, and that is very useful. So it is a very useful exercise to engage in the political negotiation process. I think that has happened in Zimbabwe. The UK was very

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effective in getting the EU to adopt financial sanctions and freeze assets against the Zimbabwean regime. As a legal matter, the UK is not prohibited from using financial sanctions unilaterally, unless there is an EU directive or regulation that specifically proscribes the UK from using such financial sanctions.

**Q65 Lord Oakeshott of Seagrove Bay:** A negative power?

*Dr Alexander:* Exactly, and so if the EU has not expressed a policy position on this or has not adopted a binding legal instrument like a regulation or a directive, then the UK can apply unilateral economic or financial sanctions, but I think the UK policy is much better to engage in diplomacy with EU Member States and say, "Let us try to have the whole EU adopting sanctions". It has been pretty effective in that regard. If you look at all the UK economic and financial sanctions that have been adopted in the last four or five years, they have been recognised throughout the European Union, at least since 1999, and so you have got all the various sanctions regimes that are either coming from the international level at the UN, or, if they are not internationally inspired, like the Zimbabwean sanctions, there has been at least political recognition by other EU Member States.

**Q66 Lord Oakeshott of Seagrove Bay:** Has the EU ever passed a directive like that banning a Member State from using a form of sanctions, or is that theoretical?

*Dr Alexander:* It is possible, but in my research I have not found a case where that has occurred.

**Q67 Lord Macdonald of Tradeston:** On EU sanctions policy, do you see any significant weaknesses and measures that might be taken to correct these?

*Dr Alexander:* I think the UK has been fairly robust in implementing economic sanctions in Britain, and Britain expects other EU Member States to do the same. If we look at the other regulatory regimes across Europe, we see a lack of uniformity in the implementation of economic sanctions, and some governments do it more successfully than others. Some of them do not succeed because they do not have the capacity, the technical skills. Others do not succeed because they do not have the political resolve to do it. I think that is a major problem because you have certain countries in the EU where it has been stated that they are not really correctly implementing the financial sanctions orders that have been adopted. I think this poses a problem because Britain wants to ensure, obviously, that the rest of Europe is on board. There could be some reforms of this. I mentioned earlier that economic sanctions in Britain

do not apply extra-territorially. So a British bank is not compelled to require its branch bank in Spain to apply the sanctions. I think that there should be a change to the EU regime that allows EU Member States to apply the principle of home country control for financial sanctions. If you have a British business or British bank or British firm that is operating throughout the EU, the home country of that firm ought to monitor and supervise its implementation of sanctions throughout the EU and not rely on the host state where that firm is operating. This is done in banking regulations. It is done in many other areas of financial regulation in Europe today, in insurance regulation, securities and banking. We see that in banking and securities regulation the EU has established committees of regulators to oversee implementation of EU directives, like the Committee of European Banking Supervisors, the Committee of European Securities Regulators. One suggestion might be that we should have something for sanctions on that. There is nothing like that for sanctions in which you have the regulators of all the countries coming together, sharing notes, monitoring each other and performing surveillance to see whether or not sanctions are being effectively implemented, because right now they are not across the EU. We should have an equivalent type of committee set up in the UK.

**Q68 Lord Paul:** Does it not follow, because unfortunately we end up playing cricket and the others play football in Europe, that businessmen in this country end up losing? Sometimes I wish we had played better football last week! It does make difficulties for British business to be taking part when the others do not carry out the same sanctions.

*Dr Alexander:* Economic sanctions impose a cost, certainly. There are criticisms in the financial sector that the anti-terrorist financing sanctions are imposing a disproportionate compliance cost on British banks, on British financial service firms, and that the cost involved is disproportionate, that it is not adequately offset by the benefit of freezing these several hundred terrorist accounts and that the due diligence, the suspicious activity reports that have to be filed by British financial service firms, is an onerous cost of regulatory compliance, and this is the case in money laundering as well. I would say it also applies with economic sanctions. Therefore, there needs to be an assessment of the cost involved, the cost of compliance. That is why it is important to be able to assess whether or not the benefits and the objectives are being met.

**Q69 Lord Paul:** I can just ask the contrary question. Has the Export Control Act 2002 improved effectiveness and are there any weaknesses in the

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Export Control Act which need to be corrected, in your view?

*Dr Alexander:* I think the Export Control Act is a tremendous improvement in the regulatory regime for controlling exports certainly, as it applies to military items, dual-use items, technology, and software programmes. However, I think the enabling legislation was enacted in May 2004, so it is probably too soon to make a judgment on whether or not it has actually been effective in achieving objectives. Certainly in the statute there are clearly stated statutory objectives: to promote global security, to comply with international law, to promote Britain's national security objectives. I think the statutory framework and the regulatory framework looks very clear. It has been designed and implemented, I think, correctly. Whether or not it is achieving its objectives, I think time will tell.

**Q70 Lord Vallance of Tummel:** Can I bring you back to the financial institutions and the banks for a moment? Leaving aside compliance costs, which are probably quite high, the point that you made about extra-territoriality and how useful it would be if subsidiaries in other countries could be at the back end of blocking all this, what are the other practical problems for UK banks and financial institutions in successfully applying targeted financial sanctions and what could be done to overcome them? Do the policy makers, when they decide to pursue targeted financial sanctions, take these practical problems into account?

*Dr Alexander:* I think that when the policy makers adopt sanctions regulations or when they enact statutes to regulate the financial sector, the policy makers often do not take into account the regulatory costs that are involved. It is left to the regulator really, who is on the front line dealing with the bank, to deal with the bank and try to work out a workable solution. Generally, the policy makers basically ship the compliance off to the banks. They say, "Here is a list of designated terrorists. Freeze their bank accounts" and you have to show the regulator that you are doing due diligence and that you are reporting suspicious transactions. It is up to the bank to work with the regulator to come up with a method to do this. I think that the policy makers do not take into account the substantial costs that are involved in that regard.

**Q71 Lord Vallance of Tummel:** To push it slightly further beyond cost, are you aware of any studies that have gone into examining what precisely the practical problems for the banks and financial institutions are?

*Dr Alexander:* The British Bankers' Association has done some studies on anti-money laundering compliance in the UK. I do not know of any regarding British banks complying with UK

sanctions legislation, but there are studies done regarding US banks', compliance with US Treasury sanctions.

**Q72 Lord Vallance of Tummel:** Has anything been done on a global level, given that we are talking about global financial markets and there is always a danger that things move from one country to another or elsewhere? Have any studies been done about the practicalities of making binding financial sanctions at a global level?

*Dr Alexander:* No, not that I know of on financial sanctions. On money laundering, the Financial Action Taskforce engages in peer review. They do studies of different jurisdictions implementing anti-money laundering and anti-terrorist sanctions. So there are some FATF reports and studies, and some work the OECD has done regarding the cost that developing countries incur when they have to implement terrorist financing sanctions and money laundering controls, but I do not know of any studies regarding financial sanctions and trade embargoes.

**Q73 Lord Layard:** Could I ask you about the effect of sanctions imposed by the UN or other countries on UK individuals and businesses? Does the UK provide effective procedural safeguards for individuals and businesses in the UK who may be targeted by sanctions imposed by other countries or the UN?

*Dr Alexander:* I think that is a real problem. That is a gap in the regulation now. One of the problems is that the US has identified tens of thousands of alleged terrorists and tens of thousands of supporters of terrorists that supposedly are providing commercial and financial services to terrorists. The US is very assertive in trying to get other countries to recognise the US terrorist designations. I think that the regulators, when implementing the UK financial sanctions, have not implemented sufficient regulatory safeguards or they have not made them clear enough for the financial services community to know what to do when someone comes to the bank and says, "I am not a terrorist. I am not involved in this activity that the Treasury says I am or that the US says that I am". There have been some concerns raised throughout Europe that the application of financial sanctions in the European Union is in violation of the European Convention on Human Rights because it does not provide sufficient safeguards for those whose assets are frozen to contest that in a court of law. There is certainly no judicial review under US law. I do not think there has been a case in the UK on this yet, but my understanding would be that someone could probably contest it under the Human Rights Act, under Article 6. I do not think it is clear. Banks and financial service compliance officers will tell you that

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they get a list of names whose accounts they are supposed to block but what if they come to them and say, "I am not a terrorist. What do I do?" So the bank does not really have a clear procedure to follow. In fact, they cannot say anything at all in some cases because they will be guilty of a tipping-off offence, as in money laundering or terrorist financing. So they cannot tell the person anything. They can just say, "No, your account is blocked. That is all we can tell you". I think there needs to be more adequate regulatory procedures put in place to give people a chance to contest asset freezes and other types of economic controls.

**Q74 Chairman:** Is it not even worse than that, that they leak it to the police, there is a raid in the middle of the night, and it is in all the newspapers and then, several months later, it is proved it is a total and complete utter nonsense. There are examples of that happening.

*Dr Alexander:* Exactly, there are.

**Q75 Lord Skidelsky:** I have not quite worked it out in my mind but what problems are you creating when you move from sanctioning a state to sanctioning individuals? In a way, you are really saying that you are sanctioning a whole lot of people who are potentially guilty or actually guilty of criminal activity, including heads of state. In other words, you are bringing the whole issue of relations between states, which start with high-minded principles about breach of peace and threat to international security, under a criminal law, which is actually completely undeveloped. Is that legitimate? In the end, you end up thinking of Cuba or Libya as a criminal state or run by criminals who are money laundering or are guilty of money laundering in the same way as people are producing drugs in Bolivia. I do not know what concept of international relations arises from that view of things. I have not thought this through clearly but I wonder if you have any views.

*Dr Alexander:* It is an excellent point. The US would argue that they are not imposing criminal sanctions; they are imposing civil sanctions—blocking accounts and freeze orders are civil measures—and that they are not actually confiscating the bank account; they are merely telling the bank to block it so that the person cannot have access to it indefinitely.

**Q76 Lord Oakeshott of Seagrove Bay:** What is the difference if the money is frozen?

*Dr Alexander:* Exactly. That is US policy and US courts have held that that is not a deprivation of property because the bank still has the money and you are still a creditor of the bank but you just cannot have access to the money until the US regulator lifts the control. So the US has always said

that these are civil sanctions, not criminal; that this is part of national security; it is different. Also, of course, under the Antiterrorism and Effective Death Penalty Act of 1996, the State Department in the US can designate state sponsors of terrorism, and about eight of these have been designated. These states lose their sovereign immunity in a US court and can be sued for civil damages for terrorist acts. If they are implicated in supporting a group that causes a terrorist attack and damages are involved, anyone, not just US citizens but foreign nationals, can come to the US court and sue that state. Syria, Cuba, North Korea, Iran, and recently Belarus are designated state sponsors of terrorism and they are on the State Department list. The US will say that is not criminal, it is civil damages, civil sanctions. The US has a very comprehensive system of civil sanctions, which I think calls into question the very meaning of inter-state relations and international relations. It raises a number of important international legal issues.

**Q77 Lord Sheldon:** Do the extra-territorial United States economic sanctions affect United Kingdom or European Union business? Do any of these problems affect UK and European Union policy, and, if they do, what are they?

*Dr Alexander:* I think there are a number of US economic sanctions laws that potentially affect Britain. One that has been law since 1996 is the Helms-Burton Act. It is not being effectively used at the moment but more directly the Terrorist Sanctions Regulations that the Treasury Department has adopted involve designation of thousands and thousands of alleged terrorists or supporters of terrorists. Businesses, company directors, and heads of charity organisations are designated under these Treasury Sanctions Regulations and their accounts can be blocked. Most of them do not live in the United States; they live abroad, they live in Europe, they live in the United Kingdom. So they have accounts with US banks and their accounts can be blocked. In addition to that, the US, through the Security Council Resolutions 1373 and 1267, can get the names of these individual terrorists recognised at the international level, so that they are then implemented domestically in other jurisdictions. The UK, of course, has designated certain terrorist individuals who were the subject of extra-territorial US financial sanctions. The UK has implemented those regulations in Britain. I think there is a real problem because to some extent there are two sets of UN sanction regimes. There is the Security Council Resolution 1267 that has a counter-terrorism committee; they provide an international list of terrorists. Then there is the 1373 Sanctions Committee, which basically does not have an

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international list, but countries domestically designate terrorists that are then mutually recognised by other countries. The problem with the British regime is that they are giving mutual recognition to the terrorist designations of the US without having possibly done a thorough background check of the intelligence involved that relates to its designations. This could be a big problem. A recent problem of extra-territoriality we have read about in the papers involves the NatWest Three, the Extradition Act 2003 and the Extradition Treaty of 2003. One of the requirements of extradition is that you have dual criminality in both jurisdictions. The Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act of 2001 in Britain criminalises support of terrorists. It criminalises the financial support of terrorists. US law also criminalises third party support of terrorists. You could have a third party businessman or a company that is involved in providing support to a terrorist organisation in Britain; the British may not think that it is worth prosecuting, but under the Extradition Treaty, the US could possibly extradite him to the US to stand trial.

**Q78 Lord Skidelsky:** On criminal charges?

*Dr Alexander:* On criminal charges, exactly, if they decide to lay criminal charges. Most of the US sanctions are civil sanctions, but if a prosecutor gets enough evidence that they think they can bring a criminal case, they will do so. The financing of terrorism is a criminal offence in both the UK and the US. It is subject to civil sanctions and criminal sanctions. If a US prosecutor decides to prosecute a British business for providing support to a home-grown terrorist in the UK, and the UK authorities have decided not to do so, they can be extradited under the 2003 Extradition Act.

**Q79 Lord Powell of Bayswater:** I want to return to the question of actual damage to British and other interests by extra-territorial application of American sanctions and go back, for instance, to when the United States imposed sanctions against the Soviet Union at the time of Soviet intervention in Poland and proposed sanctions against the pipeline of the Soviet Union to Europe. That led to an almighty diplomatic row, particularly about whether existing contracts could be affected. The British Government put up a strong defence of allowing existing contracts to be repeated. I think I am right in saying that a fast notification gave immunity to the company John Brown against prosecution by the US in order to complete a contract. There have been, surely, some pretty specific cases where British business at least has been badly affected by the extra-territorial pretensions of the United States.

*Dr Alexander:* Certainly in the 1980s in the case of anti-trust law enforcement, competition law enforcement, and Parliament enacted the Protection of Trading Interests Act of 1980, which is a blocking statute which tries to neutralise the extra-territorial application of US economic sanctions in the area of anti-trust law as well as the Cuban embargo. However, it does not apply to anti-terrorism legislation. My understanding would be that the Secretary of State for Trade and Industry could probably issue an order to try to add some of the US sanctions legislation regarding terrorism to that list. That would be a big move politically. They have certainly done it in the case of the Cuban trade embargo and the Iran and Libya Sanctions Act. There are legal measures that Britain can take to repel the application of US economic sanctions if Britain wants to do it. In terrorism it is a very difficult issue because there is a war on terrorism, of course, and everyone has signed up to it. If you are not going to implement extra-territorial US measures against alleged terrorists, then it makes the UK seem as though they are not being a good partner in the war on terrorism. That would be a very difficult political movement. They could do it legally, however.

**Q80 Lord Oakeshott of Seagrove Bay:** This is all very interesting. Can I understand how it works? I think you are saying that US sanctions do apply extra-territorially but British or EU ones would not. If you are Goldman Sacks in London, you can either be told what to do by the Americans or you can be told what to do by the British here, but if you are Barclays Bank in New York, you cannot be told what to do by the British Government. Is that correct? It is completely unbalanced.

*Dr Alexander:* Exactly. All US economic sanctions are not equally extra-territorial. Some are more so than others for instance, the Dutch bank ABN Amro was fined \$80 million by the US Federal Reserve Board last December for facilitating payments to Iranian banks in the Netherlands, not in New York.

**Q81 Lord Oakeshott of Seagrove Bay:** Did they pay?

*Dr Alexander:* They paid the fine. They have a big operation in New York, of course. They do not want to jeopardise their business in the US. This applies to money laundering as well. You have the Patriot Act that allows the Treasury Secretary to impose so-called special measures on foreign jurisdictions, foreign banks, foreign transactions and foreign accounts if they are deemed by the US to be a special money laundering concern, and so very similar to the economic sanctions legislation, but the ABN Amro case was the case of a Dutch bank involved in



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facilitating transactions for Iranian banks in violation of extra-territorial US financial sanctions.

**Q82 Lord Oakeshott of Seagrove Bay:** Is this whole question being discussed at an EU level? The significance of it is that if the Americans do that, they are basically saying, "We know better than you in the EU what is terrorism and what is not, and we are going to arrogate to ourselves the right to decide and you are not going to". It does seem a very strange way to conduct international affairs, to me. That is what they are saying, is it not? That is the logic of it.

*Dr Alexander:* That is the result of it, yes.

**Q83 Lord Oakeshott of Seagrove Bay:** Is this being seen by the EU? It is outrageous.

*Dr Alexander:* I do not know. I do know that after the Helms-Burton Act was adopted in 1996 the EU adopted a blocking regulation, similar to Britain's Protection of Trading Interests Act. It was a regulation that prohibited any EU business or person from complying with the Cuban Trade Embargo and with the Iran Sanctions Act. It had to be implemented throughout the EU. That has not been done with respect to these particular sets of sanctions or regulations. The EU could do that. They could say, "We are going to issue an order to prohibit a European bank from complying with these United States sanction requirements," but if they did the bank would probably lose its licence in the US and the bank would probably say, "Look we'll just pay the fine."

**Q84 Lord Oakeshott of Seagrove Bay:** That is why the bank cannot stand up to it, so it has to be a political decision.

*Dr Alexander:* Exactly, it has to be political.

**Q85 Lord Macdonald of Tradeston:** On the other hand, a determined United States policy has proved to be more effective in the fight against terrorism than the rather disorganised and ineffective European response that we have seen in the past. Might not this be one of the catalysts for a more effective united front against terrorism?

*Dr Alexander:* It could certainly bring together the EU Member States to try to co-ordinate their policies either in response to the problem of terrorism or in response to the US. In fact, I think a policy suggestion might be for the EU to engage in negotiations with the US and say let us enter into an agreement so that we can allocate jurisdiction over these global transactions. This is what happened in competition law. After the US was unilaterally applying anti-trust law in the 1980s, upsetting European countries, the Justice Department and the EU Competition Commission came together and entered into a series

of bilateral agreements that said if we both are going to prosecute firms that are doing business in each other's jurisdictions for things they did in the other jurisdiction, we should have an agreement on how to co-ordinate the investigation, co-ordinate the enforcement action and basically to allocate on a jurisdictional basis what is going on. This should be done with sanctions but it is not and so you get the US acting unilaterally. The US would say that they are engaging in multilateral negotiations trying to get the European partners to come on board, but if they do not get full support, they are going to do what they are going to do anyway.

**Lord Oakeshott of Seagrove Bay:** We do not call that partnership.

**Q86 Lord Layard:** On money laundering, I just wanted to check there is the asymmetry that has been suggested. Supposing the EU decided somebody was a terrorist who America did not think was a terrorist and some American bank was handling their account, could the Europeans prosecute that American bank in a European court?

*Dr Alexander:* The answer to your question for criminal prosecutions is no. My reading of the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 is that the third party liability provisions for financing terrorism are not extra-territorial under UK law, and that is correctly so. It is probably too difficult to try to go after bankers in the Middle East. You want to try and focus on people in the UK and co-ordinate through EU Member States. The UK could amend the legislation and make it more extra-territorial regarding people abroad who are facilitating financial transactions with so-called terrorist groups, but they would want to co-ordinate that with other countries and do it in a multilateral fashion. The US has not really done that. The US did give British pressure to designate the Real IRA and some of the other Irish terrorist groups as terrorists under US law, but there was some political resistance towards that.

**Q87 Lord Oakeshott of Seagrove Bay:** That is why they will not ratify the current treaty in the Senate, which is the whole NatWest case. That is why it is so outrageous. There is no suggestion there of terrorism, as far as we know. It is extraordinary.

*Dr Alexander:* Exactly.

**Q88 Chairman:** Has everybody finished? Sir, it has been a fascinating exposition and I am very grateful to you for coming along and talking to us and helping us at this relatively early stage in our inquiry. We are very grateful indeed to you, thank you very much.

*Dr Alexander:* Thank you very much, my Lord Chairman.

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TUESDAY 11 JULY 2006

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Present	Kingsdown, L Lawson of Blaby, L Layard, L Oakeshott of Seagrove Bay, L Paul, L	Sheldon, L Sheppard of Didgemere, L Skidelsky, L Vallance of Tummel, L Wakeham, L (Chairman)
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**Examination of Witness**

Witness: MR ALEX SINGLETON, Director-General, Globalisation Institute, examined.

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**Q89 Chairman:** Good afternoon and welcome to our Select Committee. It is kind of you to come and answer some of our questions and to give us the benefit of your wisdom. I am very happy to get on with the questions. Is there anything you want to say at the beginning?

*Mr Singleton:* No. I am happy for you to fire away.

**Q90 Chairman:** If I can start with a question on whether you think the UK policy on sanctions generally is clear and coherent. Is there the appropriate degree of policy co-ordination with the EU and the US? Are there any changes that could be made to make our policy more effective? And if you can give us any examples to back up what you are saying, so much the better.

*Mr Singleton:* I think the British approach, the UK approach, to sanctions does seem to be coherent, but I think there is a more fundamental issue and it is whether sanctions in general have been effective over the last century, or whether actually they have failed to achieve what they have tried to do. In fact, between 1914 and 1990, economic sanctions were imposed 116 times by the world as a whole, by individual countries. In 66 per cent of those cases, they totally failed to achieve their stated objectives and of those that remained outside that 66 per cent, the sanctions were only partly successful in most of the rest. Since 1973, the success ratio for economic sanctions, in fact, has dropped even further; it has fallen to 24 per cent of all cases. I think the most remarkable case of sanctions is, of course, the 1962 case of sanctions against Cuba; 43 years later, Fidel Castro is still in power, freedom of expression and association is still restricted. But the result is that Castro gets to blame the economic disaster of his rule on the Americans. American sanctions indeed have reduced investment in Cuba, hindering living standards, but of course it must be borne in mind, that actually Cuba has trading relationships with the rest of the world. It seems to me that those sanctions that the US has imposed, in fact, are rather weak. Even when you look at multilateral UN sanctions, from the UN level, they do not fare significantly better. In fact, sanctions, for example, against Iraq were widely said to have caused hundreds of thousands of deaths.

Were they worth it? Well, I think, when you look at the effects of sanctions, they did not actually bring down Saddam Hussein, they did not get his co-operation with UN weapons inspectors, they did not, in fact, cause Saddam Hussein personally any suffering. In effect, they were sanctions on ordinary people. I would say, when you look at sanctions policy, you can run a very effective sanctions policy on one level, but actually unless it actually achieves anything there is no point in doing it. In fact, you have got to use sanctions in very limited cases, for example, when you are actually at war with someone, in which case you are squeezing that country. But if you are not going to combine it with other tools, like going to war, I do not think they are going to be very successful.

**Chairman:** That is certainly a clear start anyway. There are a lot of supplementaries that arise but I think probably it is easier if we just take the questioning around and then see what comes out of it.

**Q91 Lord Sheldon:** How do we estimate the success of economic sanctions? What is the basis of success? Should we have a stated objective and say, if you meet that objective you are successful and there is nothing more to it than that? Or are there some other aspects which we need to consider?

*Mr Singleton:* I think you do have to state the objective. For example, in the case of Rhodesia, the sanctions were imposed in order to get rid of the Smith rule, I presume. In fact, of course, the sanctions lasted for a long period of time, from 1965 to 1979. You cannot go back and say, have the sanctions worked or not, if you do not set a coherent aim, a coherent objective. So, yes, there does need to be an objective.

**Q92 Lord Sheldon:** Are there no other factors to consider, besides the objective that you have in mind, to see how the economy may be going?

*Mr Singleton:* Of course, if you impose sanctions, you are going to get some level of economic contraction. I think you made a fair point. In sanctions against the Soviet Union after their invasion of Afghanistan, Ronald Reagan eventually ended the sanctions

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because he felt that the contraction of their economy was too little. In fact, the sanctions on grain, which America imposed, led to only a one per cent decrease in the amount of grain the Soviet Union imported, and the reason was that other countries bought the American grain and they used that grain themselves, but the grain that they were buying previously they then sold off to the Soviets. Yes, there is some relevance to having other measures.

**Q93 Lord Vallance of Tummel:** In your answer to the first question, you mentioned the proportions of successes and failures, but what does the evidence say about the circumstances under which success or failure may come about, and would the answer to that question differ according to whether the sanctions were general sanctions or targeted?

*Mr Singleton:* I think that sanctions which are part of a whole range of policies are more successful. I think the idea that you can just impose sanctions and expect everything to work out your way is a mistake; it has to be part of a co-ordinated policy. You have 10 things that you do and one thing is sanctions. That puts some pressure, but by itself, I think, it does not tend to make a difference.

**Q94 Lord Vallance of Tummel:** The second half of the question: is there a difference between general sanctions and targeted sanctions within that context?

*Mr Singleton:* I do not know the answer to that. I cannot say something with confidence on that.

**Q95 Lord Oakeshott of Seagrove Bay:** I think you have covered some of this point already, from your commendably clear, opening statement, so I will miss the first bit of it. But outside wartime should the Government ever ban trade with countries controlled by oppressive regimes, or should decisions whether or not to trade with such countries be left to individuals? Secondly, to what extent should Government policy on the limitation of trade with an oppressive regime be influenced by the views of movements opposed to that regime, whether inside or outside the country?

*Mr Singleton:* My preference would be that you should allow trade with oppressive regimes. The reason is that, on the whole, as oppressive countries become more connected with the global economy, as they get richer, as they build up a middle class, actually they liberate socially and politically. I am very much an optimist on China, for example. I think that the worst thing we could do was to impose sanctions against them. I think it would have been a bad thing had we stopped them being able to bid for the Olympics, for example. The fact that there are tens of thousands of Chinese students at British universities, engaging with the British way of life, I think is a positive measure. I think it is positive that

we are creating jobs in China by buying products from China, and over time a middle class will emerge in China which will push and argue for greater freedoms. I think the tragedy of many well-meaning campaigns, such as people who are concerned about Burma and arguing for no trade with Burma, is that actually that might well make matters worse, by stopping those interconnections, by putting people out of jobs. South Africa is an example of where sanctions have fared rather better than most examples, but even then there are examples of terrible hardship that have been caused by withdrawal of businesses and trade in South Africa. A company like Johnson & Johnson, for example, stayed in, and their argument was, "Well, okay, there might be discrimination generally in South Africa, but when people come onto our campus, when they come and work at our company, for the only time in their life, when they are at work, they get treated equally; we don't discriminate with our workers, we encourage toleration and, at the end of the day, they have well-paid jobs and they're able to make a better life for themselves." They asked themselves, "Morally, should we pull out?" and they made the decision, and I think this was the right decision for them, that they were going to stay in.

**Q96 Lord Oakeshott of Seagrove Bay:** It seems to me, and I am relatively new to all this, it is very important whether realistically those sanctions and the campaign that is going on have any chance of changing the government. I think probably I would disagree with you on South Africa, because that was an example where it did change the government, and I think then some people were not playing along. What has worried me so far, in the evidence we have heard, particularly from the Foreign Office here, is you have sanctions and, even if they have no visible effect, somehow they are a success because you have made a statement. That seems to be an absolute argument. I wonder what you think about that?

*Mr Singleton:* I think often these things are statements. Also, I think, you have got to set a timeframe, when you impose sanctions, you have to say "For how many years are we going to do this?" After ten, 15 or 20 years, if you have still got the sanctions, it seems to me that probably it is the wrong approach.

**Q97 Lord Kingsdown:** Are there any UK sanctions in place currently which you think should be lifted? For instance, what about our ban on the import of diamonds and timber products from Liberia? Conversely, do you think there are any cases in which the UK Government has not imposed sanctions but it should?

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*Mr Singleton:* I think that is a very tricky question. I would not really like to express an opinion on those cases. I think you have got to look and ask if actually they are achieving what you want them to achieve. But I think it is for someone else to answer that question, I am afraid. I might avoid it.

**Q98 Lord Sheppard of Didgemere:** One of the things which seems to be used increasingly, over recent years and decades, is the freezing of assets, or even the banning of travel of individuals or organisations suspected of having a connection with terrorism. Have you got any comments on that?

*Mr Singleton:* I think, in those cases, you are targeting specific people, and I think that is fine. The general overriding view that open trade and economic integration are good and help promote prosperity, help promote good behaviour, in fact, I do not think is weakened by the belief that certain individuals who are engaged in terrorism should be excluded from travel. I think that is perfectly fine. I would be very happy to support that.

**Q99 Lord Lawson of Blaby:** When you were making your answer to, I think it was, the first question, you pointed out, I am sure correctly, that in the great majority of cases sanctions have failed. Of course, that implies, and certainly this would, that there are a number of cases where sanctions were successful. What conclusions do you draw from the successful cases?

*Mr Singleton:* I think it is tricky, I think it is very tricky. I have not been able to find a very clear correlation. Often it seems to come down to luck, really, which is not terribly helpful. If it does involve something, it involves sanctions being part of a range of instruments, and that would suggest that if you are going to war with a country the sanctions can help cut the time that you are at war because it puts the squeeze on. I think also you do need pressure inside. I think there is some evidence that you need pressure inside a country. Matthew Parris takes the view, in one of his books, that sanctions against Rhodesia actually strengthened support for the government, from liberal, white people in Rhodesia, simply because, although they opposed what their government was doing, at the end of the day they were suffering as a result of what the British were doing and so they became more sympathetic to the leadership. I think you have got to be very careful with the internal pressures and analyse what exactly will happen to public opinion inside countries when you impose sanctions.

**Q100 Lord Lawson of Blaby:** Would you not think also that it depends on what the objective is, or how small it is? If I draw an analogy, a bombardment to capture a small village might be successful, but the

same bombardment designed to win a war might not be. For example, in the sanctions field, if you had sanctions against Libya in order to get them to surrender a couple of agents, thought, rightly or wrongly, to have been responsible for the Lockerbie air disaster, that might succeed, but if you had done it to bring down Gaddafi, probably it would not have succeeded. In other words, sanctions might be useful for almost trivial ends, but at least you achieve something and show that you are doing something, whereas anything ambitious, they are highly unlikely to be successful?

*Mr Singleton:* I think that is a very fair point, yes.

**Q101 Lord Skidelsky:** Can I just go back to your reply to the question from Lord Vallance, when the question was the difference between general or targeted sanctions; how do targeted sanctions work? I am just interested in your view of the mechanism by which conceivably they might work. If the sanctions are designed only to harm those that support the regime, or leaders of the regime, by, say, freezing their assets, where is the incentive for any other actors to bring pressure on the regime? Surely, harm to others than the regime themselves is an essential feature of any effectiveness of sanctions, other than just as demonstration. A concrete example, how do sanctions against Mugabe and his bank accounts actually produce any pressure inside the economy, inside the society, for getting rid of him, or getting him to change his behaviour?

*Mr Singleton:* It depends what you are trying to achieve. By imposing sanctions, if you make it more difficult for a dictator to govern, then you may well end up helping someone wanting to overthrow or replace that government. For example, if the dictator cannot afford to buy weapons and pay for the military, as a result of very targeted economic sanctions, that might lead to an overthrow. If all you are doing, however, is providing a little bit of inconvenience, then I think you are right, you are not going to achieve very much.

**Q102 Lord Skidelsky:** Let me go on then. Can you give us any concrete examples of cases in which sanctions have had an adverse impact on businesses that were not intended to be targeted by the sanctions measures?

*Mr Singleton:* In terms of general sanctions, when you impose general sanctions against a country, inevitably you hurt businesses in general, anyone who is trying to run a business. In Rhodesia, every small-business person was hurt by the sanctions.

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**Q103 Lord Skidelsky:** That was intended?

*Mr Singleton:* Yes, but it was not effective, I think.

**Q104 Lord Skidelsky:** Because they were not hurt enough?

*Mr Singleton:* Because, although they were hurt, it changed their views of the outside world and it changed their views of Ian Smith. It made them more supportive of Ian Smith, because they felt that, okay, what he was doing was wrong, but “at least he is on our side,” in effect.

**Q105 Lord Skidelsky:** Would that view have persisted had they been hurt more?

*Mr Singleton:* I am not sure necessarily that hurting people is a good way of promoting democracy and human rights around the world.

**Q106 Lord Skidelsky:** With respect, why not? You are saying, if they hurt a little, that is fine, because they strengthen support for the regime; and then, logically, one would assume that if they hurt more, and the more they hurt, in a sense, they would have to change the regime, would they not?

*Mr Singleton:* I have not seen any statistical analysis of that, but I think it is very difficult, because, I think, any country which imposes sanctions which do create excessive misery in another country is going to find it difficult politically to impose those sanctions.

**Q107 Lord Skidelsky:** Just logically, a population will revolt before it starves to death completely?

*Mr Singleton:* Yes, I think you are right.

**Q108 Chairman:** The argument that general economic sanctions lead to significant humanitarian costs for the citizens of the targeted country, are there significant humanitarian costs associated with targeted sanctions, in your view?

*Mr Singleton:* No, not in the same way as with general sanctions.

**Q109 Lord Sheldon:** Can you give any instances where a regime has been removed, or attitudes have been changed, as a result of economic engagement, rather than sanctions, so that economic engagement might be an alternative to sanctions?

*Mr Singleton:* That is a difficult one. I think what tends to happen is that when you do have economic engagement, because you create a counterbalance—a middle class becomes a counterbalance to the political elite—it changes the behaviour of the political elite in such a way that they do not feel able to rig elections, and so, in a sense, you do not really know what would have happened had there not been the economic engagement. I think it is difficult. I cannot think of an example where people have said, “Let’s do economic engagement,” as a tool, but there

are plenty of examples where economic engagement has been allowed to happen and then you have had good government as a result.

**Q110 Lord Sheldon:** You are not thinking of this as an alternative, in certain cases?

*Mr Singleton:* Certainly, I would favour engagements. If you take an example of Zimbabwe, economic engagement probably is not going to make a great deal of difference, nor are sanctions; you have got to look at a different instrument. There are plenty of examples where, in a sense, neither provides the right instrument for dealing with the problem.

**Q111 Lord Layard:** That is interesting. What other instruments do you have in mind?

*Mr Singleton:* I think, in the case of Zimbabwe, it needs to be an African solution. It requires, I think, long-term work to encourage leadership, for example, on the part of South Africa, and through the African Union. It is something that I do not think will be solved through either sanctions or economic engagement really.

**Q112 Lord Paul:** How important is it for us to understand the conventions of the regime before you start considering sanctions. How important is it to understand the compulsions of the local regimes and the extent you want to go to for sanctions, because sometimes they have some local problems which are not easily understood by outsiders?

*Mr Singleton:* I think that is very important.

**Q113 Lord Vallance of Tummel:** This is not exactly sanctions, but increased economic engagement, it seems to me, clearly has a very important role, say, on the Balkans, say, in Bulgaria, say, in Rumania; these were pretty repressive regimes, Turkey even. Certainly, the possible sanction—not being allowed in the EU—on increased economic engagement is obviously very important, is it not? I think I may be stretching it too far, but you can see the pressures in those sorts of countries, can you not?

*Mr Singleton:* Yes. I was in Turkey a few months ago and it was interesting talking to economists there of their view of the EU. Certainly there was an overwhelming feeling that they wanted to be part of it. They felt also that their government’s behaviour was changing as a result of the desperation to get in. I think, when you look at the Balkans as well, having economic engagement with Europe has been hugely beneficial there. I think we will not worry, 20 years from now, about human rights abuses in Turkey, through economic engagement.

**Q114 Lord Layard:** Can I ask about Cuba? Have the nature and intensity of American sanctions changed over time, or how far do other countries comply with

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the sanctions that the US proposes, and what do you think has been the overall impact of sanctions against Cuba?

*Mr Singleton:* Periodically, Americans tighten up, particularly because they have significant ex-Cuban residents in Florida and often they are the strongest supporters of tightening sanctions. I do not think that the effect of sanctions has been all that significant economically, because they do have trading relationships with the rest of the world they do have exports, for example, cigars, which are very successful globally. The tragedy, I think, is that Cuba is able to blame the bad bits of their economy, which is the central planning and also the human rights abuses, on the Americans, in effect. Castro is able to cling onto power because whenever people have hardship he is able to say, "Well, it's the Americans," when, in fact, it is his own leadership.

**Q115 Lord Vallance of Tummel:** On Iraq, how would you judge the balance of success and failure of sanctions across the board, and, more specifically, how far do you think those sanctions met the objectives behind the relevant UN Security Council Resolutions?

*Mr Singleton:* I think the sanctions between the two wars, between the Gulf War and the Iraq War, were a failure, by any measure. I do not see that actually they achieved anything useful. Probably they helped Saddam Hussein win support from his population, because, again, like in Cuba, he was able to blame foreigners for problems in his country. Whether economic engagement would have been the solution, I would not say necessarily that would be the solution, in that particular case, but thinking that somehow sanctions would help, I think it would have been better just to allow trade with Iraq and leave it at that, for those intervening years.

**Q116 Lord Vallance of Tummel:** You do not think then that those sanctions achieved at least a halt to the proliferation of weapons of mass destruction?

*Mr Singleton:* The belief that you should allow trade on most things is not the same as you should allow trade in arms, necessarily. Obviously, where you have rogue states you have got to stop certain products from being traded, but we should not stop trading everything just because of that.

**Q117 Lord Vallance of Tummel:** It is not just trade, it could have been the development of WMD rather than trade in WMD, and is not there an argument that at least very strong economic sanctions across the board so crippled the economy that they could not develop that weapon?

*Mr Singleton:* Perhaps. I think you have got to look at other policy instruments as well. The tragedy is, with Iraq, that clearly, if you were going to remove Saddam Hussein, it would have been better to do it significantly earlier rather than later.

**Q118 Lord Paul:** Even goods like arms and weapons, etc., those states which want to buy them will have no shortage of suppliers, so how will sanctions on anything help with that?

*Mr Singleton:* I think that is a good point. In most cases where there are sanctions imposed you will have a black market happening. Actually, the sorts of people that you buy weapons from are the sorts of people who will break embargoes, so I think that is a very important point.

**Q119 Chairman:** There is one question which slipped by, which I hoped was going to be asked when we were talking about frozen assets. I do not know whether you can help us on that, but are there, in your view, any official mechanisms or other means available in the United Kingdom for innocent people or organisations to challenge asset freezes, and do such means as there are give adequate protection to individuals?

*Mr Singleton:* That I do not know. I would be happy to find out and send a note to the Committee.

**Chairman:** Thank you very much; that would be very helpful. Otherwise I think we have asked all the questions we wanted to, and we are really very grateful to you for coming along and helping us with our inquiry. Thank you very much indeed.

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### Memorandum by Mr Carne Ross, Independent Diplomat<sup>42</sup> and former British diplomat

#### INTRODUCTION

1. This evidence derives from my work on sanctions, in particular on Iraq, as a British diplomat. I was a member of the Foreign Office from 1989 until my resignation in 2004. From late 1997 until June 2002, I was First Secretary (Political) at the UK Mission to the United Nations in New York. I was head of the Middle East section in the political section of the Mission, where I supervised two other diplomats. My primary responsibility was policy on Iraq, where I was responsible for reporting on and participating in discussions

<sup>42</sup> Independent Diplomat is a non-profit diplomatic advisory group founded in 2004; it provides advice and assistance to those countries or political groups which may lack experience or resources in diplomacy.

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and negotiations at the UN Security Council (UNSC) (I was also responsible for other issues including Israel/Palestine, Libya/Lockerbie, the Western Sahara and Afghanistan). Inter alia, I helped prepare and negotiate many resolutions on Iraq concerning sanctions and weapons inspections, including resolution 1284 (1999) which established UNMOVIC, the UN weapons-inspection agency. As part of this work, I was closely involved in the internal British government review which led to the concept of “smart sanctions” on Iraq, a new design of the sanctions regime which was eventually implemented in 2002.<sup>43</sup> I resigned from the Foreign Office in 2004 after giving testimony to the official inquiry into the uses of intelligence on Iraq’s WMD (the “Butler Review”).

#### LESSONS FROM IRAQ SANCTIONS

2. There has yet to be an authoritative history of sanctions on Iraq. The Volcker inquiry provides some well-researched, careful and balanced analysis of the oil-for-food programme, and thus some crucial aspects of the Iraq sanctions experience, in particular the UN management of the programme, but—despite its length—the report is by no means comprehensive. Nevertheless, from the considerable evidence so far available, it is possible to draw some important lessons for the future:

3. First, and most important, the humanitarian impact of sanctions should be carefully considered in the design of any sanctions regime. The combination of sanctions and Saddam’s manipulations of the OFF programme together contributed to considerable suffering and distress among ordinary Iraqis during the sanctions years. During the years I worked on sanctions, I met innumerable international humanitarian groups and ordinary Iraqis who testified to the deleterious effects of sanctions. The OFF programme was designed to ameliorate this suffering but by the time it was implemented (in 1996) enormous damage had already been done. Thanks to the unreliability of Iraqi statistics in this period, we will never know the true effects. But the consensus is clear among NGOs and Iraqis. The weight of evidence clearly indicates that sanctions caused massive human suffering among ordinary Iraqis, in particular children, and equally massive damage to Iraq’s economy and civilian infrastructure, damage for which Iraq is still paying today. We—the US and UK governments who were the primary engineers and defenders of sanctions—were well-aware of this evidence at the time, but we largely ignored it or blamed all these effects on the Saddam government. While the Iraqi government did deliberately impede the full implementation of the OFF programme (initially by failing to agree the programme, and later for instance by interfering with distribution of goods or cutting off oil supplies to deny funds to the programme), these manipulations account only for part of the damage done by sanctions. Sanctions effectively destroyed the Iraqi civilian economy, denying the entire population the means to live, and forcing them into dependence on UN and government-supplied rations. The effect of the import ban was primarily felt by the civilian population and not the government elites, who were insulated by illegal oil revenues and sanctions-busting imports. In other words, the sanctions affected precisely the wrong people. Not only was this a grave moral failing, but this also undermined the political support necessary to maintain sanctions (see below).

4. Related to this, the second important lesson is that *any sanctions regime should be carefully targeted* on those whose behaviour sanctions are trying to affect. Sanctions on Iraq were successful in many significant ways. They prevented Iraq from significantly rearming with either conventional or unconventional weapons. During the period I worked on the subject (until mid-2002), it was the private and considered view of both the UK and US governments that Iraq had no substantial WMD stocks or the means to deliver them. We believed that sanctions had prevented any substantial rearmament by Iraq. And in these terms, sanctions were a success in effecting the US/UK strategy of “containment”. But in terms of their stated goals (as elaborated in the Security Council resolutions, and in particular resolution 687), sanctions were only sporadically effective in forcing the Saddam government to comply with Iraq’s obligations to cooperate fully with weapons inspections and fully verify its disarmament of WMD. In other ways, sanctions had perverse effects. The Saddam government used sanctions to portray Iraq as a “victim” of unfair US policies, and to portray Saddam Hussein himself as an heroic rebel against western hegemony. Moreover, the design of the OFF programme reinforced the government’s control over its population. It did this in two ways: firstly, as sanctions had largely destroyed the non-government civilian economy, ordinary people were denied the means to support themselves, making them dependent on UN and government-distributed rations; secondly, the UN itself was obliged to rely on the government to distribute OFF goods to civilians. This delivered an enormous power to the government,

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<sup>43</sup> In general terms, from 1990 onwards all imports and exports were prohibited to and from Iraq except those goods which were explicitly authorised by the 661 Committee. The smart sanctions concept, which was developed—tardily—in response to concern at the humanitarian effects of sanctions, reversed this system to allow Iraq to import all goods except those explicitly prohibited on a list agreed by the Security Council. This new system took many months, if not years, to agree in the UNSC and was only implemented in 2002.

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courtesy of the UN Security Council. In the UK and US governments, we were fully aware of this deficiency but did nothing to amend it.

5. Third, to be effective, *sanctions regimes must be properly supervised and policed*. Modern economies are complex. There are innumerable ways in which governments or officials can evade sanctions. The Volcker Report and the Iraq Survey Group's report both describe in detail the many ways that the Saddam regime illegally imported prohibited goods and illegally exported oil, outside of the UN escrow account. The principal source of illegal revenue for the Saddam regime was not, as is commonly believed, abuse of the OFF programme (eg through false pricing or "kickback" bribes from suppliers). Instead, the major source of illegal revenue was oil exports outside of the programme, in particular to Turkey, Jordan, Syria and through the Gulf to other recipients. These illegal exports amounted to an estimated<sup>44</sup> \$12 billion, far exceeding the approximately \$1.75 billion the regime gained from abuse of the OFF programme. The Saddam government was assisted in this source of illegal revenue by its neighbours, above all Jordan, Turkey and Syria, who allowed and in some cases (particularly Syria) facilitated the exports and sometimes themselves purchased the illegally-exported oil.

6. Again, both the US and UK governments were aware of this activity (though we underestimated its true scale), but turned a blind eye to it, since both Turkey and Jordan were regarded as "allies". Officials in both governments on several occasions tried to persuade our governments to take more robust action to stop these illegal exports. But we were not successful. Both the US and UK governments will now argue that they tried to take action against this smuggling but were blocked by French and Russian obstruction in the Security Council. This was true, but it was not the whole truth. In reality, the US turned a very deliberate blind eye to smuggling by Turkey and Jordan in particular, but also the Gulf states. The Iraq Survey Group estimated that most of approx \$12 billion in illegal revenues came through the so-called trade protocols with Jordan and Turkey. It would not have required Security Council agreement to persuade the Turks or others of Iraq's neighbours (who at the end of the day were dependent on the US for their security) to stop the smuggling. It would have required a sustained and energetic diplomatic campaign, supported by technical expertise in border monitoring, work to control goods going into and out of Iraq and the tough and complicated work to target Saddam's illegal overseas financial holdings. This was never done. Not only would such a campaign have increased the funds available to the humanitarian programme, but it would also have removed the means on which the Saddam regime relied to pay his troops, build his palaces and, to the limited extent that he did, rearm. Without this illegal income, the regime would have been severely weakened and perhaps would have collapsed. This can now never be proved, but such a policy could have provided an alternative to war.

7. Fourth, and following the point above, any sanctions regime, but particularly massive and complex regimes of the kind imposed on Iraq require *an enormous amount of official work to monitor, amend and supervise*. Although the UK and US devoted more staff to Iraq sanctions than most countries, it is now clear that our resources were inadequate to the enormous and complicated task before us. Volcker took 18 months, spent around \$35 million and employed approximately 100 experienced investigators to perform his investigation. In both the US and UK governments, the number of officials working directly on sanctions/OFF issues was no more than a handful. Maintaining any sanctions regime requires a constant and detailed effort, involving many different arms of government, as many strands of policy must be brought together, including intelligence, diplomacy, and technical assessment (eg of the complicated technology of so-called "dual-use" goods). We should have established a multi-disciplinary unit of this kind. Instead, both governments relied on a scattered group of officials, who worked hard but whose efforts could have been much more effectively coordinated. Moreover, the "churn" of officials through the desks in London in particular meant that many lessons were repeatedly relearned.

8. Connected to this point is the role of the UN. The Volcker Report has comprehensively described the many failings of the Office of the Iraq Programme (OIP), the UN body which ran the OFF programme. Significantly, Volcker said that the failings of the OIP were typical of broader problems within the UN. The UN itself must bear considerable blame for those failings. There is much to do to remedy and improve management culture and oversight in that body. Reform is underway. The world needs an effective and respected UN: we should all therefore hope and ensure that these reforms are implemented and are successful in producing a transparent, incorrupt and efficient UN. But there are lessons for our own governments too, in this case the US and UK. In retrospect, the member states should have done much more to supervise the OIP and OFF programmes. While we were at the time aware of some of the problems in the programme, for instance kickback payments by suppliers, we did little about them. One clear lesson from the OFF debacle is that those states which care

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<sup>44</sup> Estimates taken from the US government Iraq Survey Group, whose figures are roughly consistent with the Volcker report.



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most about such things (in this case the US and UK) must intrude into and interrogate more aggressively the UN bodies charged with implementing such programmes.

9. The Volcker inquiry revealed that some 2,200 companies internationally were involved in illegal dealings with Iraq both under and separately from the OFF programme. Some of these companies were American, others were British. The responsibility to investigate and supervise the activities of these companies fell and falls to national governments, not the UN. In most cases, our governments approved and authorised these companies to do business under the OFF programme. Clearly, in retrospect, our governments should have done more in way of supervision of the companies involved (for instance, by examining their accounts, interviewing company officials etc) to prevent and investigate any illegal activity. It is not clear that even today, after the Volcker inquiry, all wrongdoing by these companies will be investigated and, where necessary, punished.

10. Fifth, to be effective *any international sanctions regime must enjoy broad political support*. By the time I worked on Iraq in the UN Security Council in the late 1990's, sanctions were widely seen in the international community as unfair and cruel punishment on the Iraqi people. The evidence of humanitarian distress was mounting. US and UK arguments to sustain sanctions, on the grounds that Iraq had not fully complied with its obligations to disarm, were seen as poorly-founded and were undermined by statements, for instance by then-President Clinton, that sanctions would be maintained as long as Saddam remained in power ie by implication that sanctions would remain even if Iraq fully complied with its disarmament obligations. Weapons inspections were seen as increasingly nugatory: after the mid-1990's the inspectors found no substantial stocks of illegal weapons, but were instead engaged in a confrontational and aggressive cat-and-mouse game with the Iraqi government. We maintained (correctly) that Iraq had failed fully to account for its past WMD holdings or to provide full access to its WMD sites or personnel. But by many this was seen as insufficient grounds to maintain comprehensive economic sanctions. As a result, we had more and more difficulty passing resolutions in the Security Council to maintain the pressure on Iraq. Although there was little chance of sanctions being lifted (which would have required a resolution of the UNSC which we could veto), there was dwindling enthusiasm for their maintenance. France, Russia, China and others (many of whom had significant economic interests in Iraq) became more and more vociferous in attacking sanctions and urging that Iraq be "rewarded" for its progress in disarmament so far (for example, in the nuclear "file", where Iraq had by 1999 substantially cooperated with the IAEA). Sanctions-busting, such as allowing flights to Iraq, became more egregious. Any pressure we put on Iraq's neighbours to comply with sanctions (which was in any case sporadic and inconsistent) was often ignored. The Saddam government began to claim that sanctions were crumbling and it was the US and UK, not Iraq, which faced diplomatic isolation. It took the threat of invasion in 2003 for Iraq finally to accept UNMOVIC, the UN weapons inspection agency, and at last cooperate in the Security Council's demands.

11. In relation to this point, sixthly, it can be seen from the above that *support for sanctions*, and thus their effectiveness, in any particular case, *is related to whether they are seen internationally as legitimate*. When agreed in 1990, comprehensive sanctions were widely regarded as a proportionate response to Iraq's illegal invasion of Kuwait. But as time went by, and the humanitarian damage wrought by sanctions became clearer (and as Iraq complied to some extent, but never fully, with its disarmament obligations), international support waned. By contrast, in the case of sanctions on Libya (imposed after the indictment of two Libyan agents for the Lockerbie bombing), which I also worked on in the UN Security Council, sanctions were much more narrowly targeted (an arms embargo, and bans on flights and associated aviation activities). Although Libya complained loudly at the "injustice" of sanctions, and attempted to claim that they were causing humanitarian damage, the Security Council maintained the sanctions with fewer breaches and greater political pressure on Libya to comply (though even here it took a major change in the terms of compliance for Libya eventually to comply).

12. This point leads on to an important conclusion about *the objectives of sanctions*. With Libya, the aim of sanctions was clear and easily-stated: the handover of those indicted for Lockerbie to the courts concerned (first a Scottish court, but later amended to a Scottish court convened in The Hague). In theory, Security Council resolution (SCR) 687 clearly stated the requirements for Iraq to fulfil in order for sanctions to be lifted: the verifiable disarmament of its WMD and missiles, and Iraq's continuing cooperation with the weapons inspectors and ongoing monitoring. But in practice these conditions proved highly disputable: what comprised full cooperation? If the weapons inspectors could find no weapons surely Iraq had verifiably disarmed? If not, what comprised verifiable disarmament? These debates occupied us in the Security Council for years, and led to highly-complex elaborations of these conditions in SCR 1284, which restated the conditions for sanctions "lift". The lesson is clear: to be widely-supported and therefore effective, sanctions need conditions which can

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be stated as clearly and unambiguously as possible, and ideally conditions which can be fulfilled in a binary (yes or no) fashion.

13. Finally, there is a broader argument about the political credibility and consistency of those who propose and defend UN sanctions. The UN Security Council, where UN sanctions regimes must be agreed, is not a court of law. It is a deeply political body where decisions are made only partly on the basis of what is right, but more on the basis of who has most power and influence. No one issue, whether Iraq, Iran or Sudan, is seen in isolation but as part of a complex power-play of how the world should be arbitrated. In the Council, you have to cajole, persuade and sometimes (if necessary) bully in order to get your way. Perceptions of any country's standing and integrity form part of that power to influence.<sup>45</sup> During my spell on the Council, and to this day, British (and American) standing and influence in the Security Council has been consistently undermined by what many see as western "double standards" over the Middle East, and in particular Israel/Palestine. Many countries, and not only Arab countries, felt that the US and UK demanded compliance with the resolutions to the letter by Iraq, while punishing its civilian population. Meanwhile, it was felt, the US allowed Israel to ignore Security Council resolutions (SCRs 242 and 338 in particular) which demanded that it relinquish the Occupied Territories. This perception continues to weaken American and British arguments today, over Iran or Sudan, that the Council must stand up for international law and right. In the Security Council, it is naïve, in the case of Iran, Sudan or elsewhere, to pretend that American or British wishes or arguments will be seen in isolation.

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<sup>45</sup> US academic Joseph Nye has termed this power of moral suasion and reputation, "soft power".

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### Examination of Witness

Witness: MR CARNE ROSS, Director, Independent Diplomat, examined.

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**Q120 Chairman:** Good afternoon and thank you very much for coming along to answer some of our questions, and also, if I may say so, for giving us some written evidence, which is valuable, and we are grateful to you. Is there anything you want to say at the beginning, or are you happy to go straight into the questions?

*Mr Ross:* I am happy to straight into the questions. Thanks for having me. I would like to say that.

**Q121 Chairman:** If I can start the questions, do you think the UK Government now has a clear and coherent policy on the use of economic sanctions and are the objectives of sanctions usually clearly stated, and is there the appropriate co-ordination with the EU and the US? I thought of paraphrasing that question by saying to you, with all you said in the written evidence, what is it you would really like us to take out of what you said, what do you think is the really important issue on the subject of sanctions?

*Mr Ross:* The first thing to say, My Lord Chairman, is that I do not know a lot about current UK policy or EU or UN policy. I have not worked inside the British Government since mid—2002, when I left the UK Mission, so I am not particularly well acquainted with current sanctions policy. I know little bits about it but I am not an authority on it. I can speak much more authoritatively about the experience of sanctions on Iraq, in particular, but also on Libya,

and the lessons that experience might have for a more general sanctions policy.

**Q122 Chairman:** You tell us what you want to, in answer to the question. From your time when you did have detailed experience of it, was the policy coherent?

*Mr Ross:* Was the policy coherent on sanctions against Iraq? That is a big question and there is a lot to be said about it. I hope that the written evidence I have given gives some indicators of the interpretation that I put on it. I think there are many things to be learned about it. Perhaps the biggest lesson about it is that sanctions, particularly generalised economic sanctions, of the kind that were placed on Iraq, are extremely difficult to administer and they are a very, very complicated piece of policy and they require a great deal of attention from the countries and the international agencies charged with their administration. I do not think we gave it that attention ourselves, when we took on that responsibility, during the Iraq sanctions years.

**Q123 Chairman:** That is a very good summary of what you put in your written evidence, but the question was, in my mind, at the end of it: is that an argument for saying this was an exercise which, almost certainly, was going to fail, or is this an

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exercise which, with more care and consideration, reasonably could have been made to be successful?

*Mr Ross:* It depends what your objectives were, and the trouble was the objectives, of those sanctions against Iraq, were very mixed. There were differing agendas in different governments and different organs, and I think, in some ways, for the UK and US Governments, sanctions against Iraq were effective in that they stopped Iraq rearming; that was our view inside the British and American Governments until I finished in mid-2002. It was emphatically our view, and that was based on very careful consideration of the intelligence evidence and the evidence that was gained from inspectors in UNSCOM and later UNMOVIC, that Iraq was not in any substantial way rearming with its weapons of mass destruction nor was it rearming in any substantial way, conventionally, with its conventional forces. In the four and a half years that I dealt with the subject, we would frequently sit down with the US Government, in the State Department or in the Foreign Office, in the quarterly bilateral exchanges we had with them on Iraq, and the beginning of that discussion was always—is containment working?—that was the framework of our policy, and the conclusion always was, until mid-2002,—I stress that date for a reason—that containment was working, that Iraq was not rearming to any significant extent. For our purposes, sanctions were effective, comprehensive economic sanctions were effective, and certainly in Washington I think they felt that they were an effective policy instrument for their purposes, which was the containment of the Saddam regime.

**Q124 Lord Skidelsky:** What was it that was working? Was it the sanctions or was it the obtrusive inspections? If they were connected, how were they connected?

*Mr Ross:* That is a very good question. There is no hard empirical evidence of this and no authoritative history has yet been written, but we felt that it was the sanctions, above all, that had denied Iraq the funds to rearm. As you all know, Iraq is an oil economy, the regime was dependent upon oil revenues for paying its army, for buying weapons, for supporting the regime, and sanctions effectively denied a very large proportion of that oil income,—not all of it, because Saddam was able to import and export some illegally—but a very large proportion of their oil revenues. Perhaps \$60 billion, or more, was denied to them. We felt that money would have been enough to enable them to circumvent the weapons embargo that was also in place on Iraq; in other words, that they could bribe their way round it.

**Q125 Lord Skidelsky:** Circumvent the inspections as well?

*Mr Ross:* Inspections were sporadic during the 1990s, as you know. There was a period of intensive inspections which lasted until the mid-nineties, when UNSCOM was given fairly wide-ranging access in Iraq and they destroyed almost all, if not all, of Iraq's existing stocks of weapons of mass destruction and missiles. There were periods of non-co-operation by Iraq up until 1998. From 1998 until 2002 there were no inspections at all. UNMOVIC was not permitted into the country by Iraq, and yet that was the period during which the UK and US Governments claimed later Iraq substantially had rearmed. This was not the case, in fact, and this was not our private view either. I want to stress that.

**Q126 Lord Paul:** I have read your written evidence with great interest and a lot of your views I have heard from foreign countries' diplomats who have served in the Middle East, and we see agreement there with what you have to say. You do not have to answer this question if you do not want to, or part of it. Did you decide to resign from the Foreign Service because you disagreed with what was happening, in your view, or did you decide to resign anyway?

*Mr Ross:* I decided to resign because of the Iraq War. I gave secret testimony to the inquiry led by Lord Butler, and after I had submitted my testimony I realised I could no longer go and work for the Government with a glad heart, so I quit.

**Q127 Lord Lawson of Blaby:** Like Lord Paul, I would like to congratulate you on your cogent written evidence, which is extremely helpful, and I found myself in agreement with the vast bulk of it. There are one or two things I do not understand quite and I would like to ask, if I may, about those. The first is that—it is in your written evidence and you said it a moment ago—sanctions were effective to the extent, which is a very important extent, that they denied the resources to enable Saddam to rearm. Of course, in a totalitarian state, it is the regime which allocates the resources, and therefore there is no way you can deny them the resources to rearm without denying them also the resources for the hospitals and all the other humanitarian things, so you have to accept that these go together. You have to accept too that a totalitarian regime's first priority is likely to be the army and the secret police, and so on. So it seems to me that, at one and the same time, you can commend the use of sanctions, in order to deny them the resources to rearm, and yet deplore the consequences for the hospitals, the other social services and the general living standards of the ordinary people. There is no way, realistically, you can do that?

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*Mr Ross:* I think that is absolutely correct.

**Q128 Lord Lawson of Blaby:** Which side of the fence are you on?

*Mr Ross:* I have to say, my conclusion, after many years of working on it, is that one does not need to set up a choice of that nature. Personally, I do not think that comprehensive economic sanctions should ever be imposed, on any country, ever again, because of what they did to the Iraqi people.

**Q129 Lord Lawson of Blaby:** Even though they did stop Saddam rearming?

*Mr Ross:* I think there are other methods of doing that, and I think there are other methods to contain Iraq, without starving their people to death, basically, and I think we and the bulk of the Iraqi people will be paying the price for that policy for a very long time. We were very conscious of it, we designed the Oil for Food programme in an attempt to ameliorate it, but we did not design it well enough for that itself to avoid manipulation by the Saddam regime. The peculiarity of Iraq was that its massive dependence on oil, the fact that it was an oil economy, meant that, on the one hand, sanctions could be incredibly effective in denying resources to the Government, but also they were incredibly effective in causing vast humanitarian damage to the economy, because as soon as we got hold of the oil they could not import or export anything. Basically there was no economy left. There was very little economy in Iraq pre-sanctions. Sanctions destroyed what there was. There was no importing or exporting, actually that was forbidden by the terms of the embargo. The comprehensive embargo that we had on them was incredibly effective in destroying the economy very quickly, and that was, I think, something that we should have foreseen and guarded against.

**Q130 Lord Sheldon:** Can I follow the question that Lord Lawson put forward, because I am asking you if you consider that the humanitarian aspect of sanctions should be carefully considered, that this is an essential part of sanctions, and the humanitarian cost of sanctions was largely ignored, in the instance, as you have mentioned, of Iraq, of course. Is the Government giving sufficient attention to the potential humanitarian cost of sanctions, in your view?

*Mr Ross:* Today, I am afraid, Your Lordship, I do not know, because I do not know about policy-making inside the Foreign Office.

**Q131 Lord Sheldon:** In the recent past then?

*Mr Ross:* It is certainly my view that we did not, on Iraq, and, frankly, on Libya too it was very low down the list of considerations. There is a way of thinking

in the Foreign Office, and I dare say in most foreign offices, including in the State Department, with which we worked very closely, that security is the primary concern of foreign policy, that is the priority from which everything else follows. I think there was a slight cultural sense, in policy-making, certainly on Iraq, that those who cared about the humanitarian consequences of sanctions, or indeed of any policy, were somehow to be taken slightly less seriously. It was a slightly softer end of the policy spectrum than the hard considerations of security, and suchlike. I think that was a mistake, not only in terms of the pure moral effect of sanctions but also in terms of sustaining support for a necessary policy to contain a dangerous regime. The fact that sanctions caused such humanitarian damage from an early stage undermined the political legitimacy of those who supported sanctions. We were seen in the Security Council very much, by the time I worked in it, as being on a moral par with Saddam Hussein, which, in many ways, of course, is absurd, but the evidence of humanitarian suffering in Iraq was so great by that time and our indifference to it was so evident that I think many otherwise impartial members of the Security Council, or indeed of the UN membership, felt that we had dug ourselves into the same pit that he was in.

**Q132 Lord Sheldon:** How do you think the two aspects could have been reconciled?

*Mr Ross:* The easy catch-phrase, of course, which trips off everybody's lips in sanctions policy-making these days, is targeted or smart sanctions. This is obviously the answer, but that is not an easy option, it is highly complicated. In the case of Iraq, I think that would have been the right way to go, somehow to target the revenues and finances of the regime itself rather than the civilian economy of the country. We put a lot of effort into thinking about this, in the British Government. But I have to say it was not something that was ever taken seriously by senior officials or ministers, and the reason for that was that it is a very complicated chunk of cheese, if I can put it like that. Designing measures that affect individuals or members of a government, or the behaviour of a government, which actually harms them and causes them discomfort in a way which will change their behaviour, is very difficult, it requires a lot of technical work. I think those technical resources were available to us, in the US and British Governments, but we failed to use them at the time.

**Q133 Lord Lawson of Blaby:** May I put it to you that really this is pie in the sky? Secondly, if you have targeted sanctions, it may look better, it may be that you do not incur the odium of the rest of the world, or a large section of the rest of the world, as we did in the case of Iraq, and that may be something which is

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a worthwhile consideration. In fact, again, in a totalitarian regime, and on the whole we are more likely to be thinking of sanctions on a totalitarian regime or a dictatorship, rather than a democracy, in those cases they have the resources of the country at their disposal. If you manage to target Saddam's private accounts in London, if they are in London (I have no idea), certainly you will make sure that dubious characters will never bank in London again, but it will not stop Saddam enriching himself at the expense of the Iraqi people. What have you achieved, except a cosmetic? It will have done less harm, but what have you actually achieved?

*Mr Ross:* Surely, the first principle of policy should be, first, do no harm, rather than think about what harm you can do. Personally, I think it is very difficult to generalise about these things. I wish you luck in your deliberations in this Committee because I think it is very difficult to come up with general principles. I think each case is different. I do not think comprehensive sanctions on Iraq were particularly successful, in political terms. I do not think they secured us a great political objective. They may have contained the Iraqi threat for 10 years, but that objective could have been delivered by other means, perhaps by military containment. There was no evidence that Iraq was actually intending to use its weapons on its neighbours or to invade other countries. What exactly was it we were trying to achieve? And, in fact, the real policy objective was a secret one, which was regime change of the Saddam regime, and, to that extent, that was not successful either, and that took an invasion, at enormous cost, both in blood and treasure, to be successful. I do not think comprehensive sanctions, in any event, are a particularly effective tool, whatever your objectives. In terms of stopping totalitarian dictators abusing or robbing their people, I do not think you can stop that through sanctions. I agree with you, it is pie in the sky; targeted sanctions, freezing their assets, in London or anywhere else, will not achieve that. Sanctions, it must be remembered, are not primarily tools of regime change; regime change, in international law, is not a legitimate objective. What is a legitimate objective is trying to stop a state which has breached international law from continuing to breach it, or breaching it once more, punishing them in some way for a past egregious breach, like invading a country or murdering large numbers of people, like the Lockerbie case, or something like that. It is not regarded in the Security Council, or more generally, in any part of international law, that regime change is legitimate. I do not think you are ever going to get international support for sanctions where that is the objective. You have to be very clear about your objective; you have to state that objective as unambiguously and politically neutrally as possible, if it is going to be supported in any way by

others in the international community. It has to be legitimate, if you are going to have the support of others. The reason I stress that point is that, with any country, whether it is Iraq or North Korea or Zimbabwe or Libya or Sudan, you have to get the support, above all, of the neighbours of that country and of the broader international community if you are going to have any chance of success with whatever measure you agree.

**Q134 Lord Layard:** Eventually, the UN moved towards targeted sanctions. Why did it take so long to do that?

*Mr Ross:* That is a very uncomfortable question to answer. The reason it took so long was because the British and the American Governments did not, and quite deliberately, pay attention to the humanitarian consequences of sanctions. We raised it frequently as a topic in the bilateral exchanges we had with the US. There was growing pressure in this country, in the late nineties, over the humanitarian consequences of sanctions, caused by television documentaries and press articles. I remember us saying to the State Department, "Look, we are very uncomfortable about the amount of pressure we are under on the humanitarian consequences of sanctions," and I remember the American head of delegation literally putting up his hands, like that, and saying "Doesn't bother us; we hear nothing about it here in Washington." That was the pattern for several years, until the bombing at the end of 1998, Desert Fox, that really turned everything over. The consensus that we had in the Security Council up until then was destroyed by what many felt was the illegitimate military action on our part, and the pressure for change to the sanctions regime became overwhelming; so we sat back and began to develop a policy response. This was mainly because we felt that we were going to lose the necessary votes in the Security Council to maintain any sanctions on Iraq. We thought that the French or Russians or Chinese were going to push for a sanctions suspension or lift resolution in the Council and that we could not guarantee that they would not get the votes to force such a measure, thus forcing us to veto it, and we realised that the moment that happened sanctions would be seen as illegitimate, if we had to veto a sanction, lift resolution. Just to explain, sanctions were imposed by Resolution 661 back in 1990, when Iraq invaded Kuwait, and it would have required a positive resolution of the Security Council to lift those sanctions; in other words, they would have to have nine positive votes, with no vetoes from any of the permanent five. Technically, we could have stopped a lift resolution with a veto, but we needed to maintain the political capital of having nine positive votes in our favour, not in favour of lift, and we realised that this vote count was in danger if

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sanctions continued the way they were, in the late nineties. That was what triggered us to invent the smart sanctions concept.

**Q135 Lord Vallance of Tummel:** You mentioned earlier on that there was a multiplicity of objectives behind the sanctions against Iraq; obviously, different countries had different agenda. I wonder if you could flesh that out a bit and let us know a little bit about what those different agenda might be? Also, would it not be fair to say that it is almost inevitable, if we are talking about UN sanctions, that there would be a multiplicity of objectives, and, if I am right, are there any general conclusions we can draw from that?

*Mr Ross:* The first part of the question, the different agendas on Iraq sanctions, the objectives were stated in Resolution 687, the resolution which followed the Gulf War: “the mother of all resolutions.” This resolution stated, that Iraq had to verifiably disarm all of its weapons of mass destruction, and that meant chemical, biological and nuclear weapons and missiles, of up to 150 kilometres range, and agree to accept ongoing monitoring, measurement and verification, OMV, i.e., continual and perpetual inspection of its potential weapon sites, and those conditions, we felt, were relatively clear. In practice, however, they turned out to be not clear, because after many years of work the inspectors were turning up less and less, in terms of hard evidence of actual holdings of weapons. By the mid nineties, and certainly by the late nineties, they were not finding any significant material of any kind, bombs, evidence of development of weapons, dismantled missiles, anything. That begged the question, at what point had Iraq verifiably disarmed? And UNSCOM became rather inventive, under the leadership of Richard Butler, coming up with ever more things that Iraq had to do in order to fulfil that condition, thus provoking some in the Security Council to claim that UNSCOM, at the behest of the Americans and the British, was constantly moving the goalposts. There was that whole debate going on, in a sense, the changing nature of the conditions of 687, over the decade of the 1990s, but also there was a private discourse inside the British and American Governments of what we thought sanctions were really about, and that was containment. Containment is a word which is bandied around a lot in the Iraq debate. We did not use it that often, but it was very much the thrust of our policy, which was to stop Saddam rearming and to stop him threatening his neighbours or otherwise being difficult in the Middle East, and to that extent we felt sanctions were successful. The Americans had a third agenda, which was regime change, which was rather weakly held under the Democratic Administration: it was imposed upon them by a Congressional vote that

they should have a regime change policy, and that objective thus was grafted onto the containment objective in a rather uncomfortable way. We did not have a regime change objective; in fact, we were emphatically against regime change for all the years that I worked on the subject, until mid 2002, because we felt, and this will come out, no doubt, in the telegrams when they are released in 30 years’ time, that if Saddam was overthrown and Iraq was invaded there would be chaos as a consequence, and that was the view that we put in our talks with the Americans on many occasions. For the others in the Security Council, the objective of sanctions, I think, was rather complicated, and I think you would have to ask them really what their objectives were. We always claimed that the Russians and French just wanted lift as quickly as possible, in order to resume their fruitful commercial links with Iraq. I am not sure that was so clearly the case, certainly in France. As you can see, there was a big *mêlée*, a big kind of smorgasbord of differing objectives, which served to complicate the debate a lot. All of that led me to the conclusion in my written evidence that it would help if we had very clear objectives, stated unambiguously where possible, for any future sanctions regime. I think this is very difficult, and these resolutions in the Security Council are put together at very short notice, in situations of great political pressure. Resolution 687 was written in a great hurry and it was never envisaged that sanctions would last as long as they did. I talked to the person who drafted 687 and he told me that they thought sanctions would last 18 months when 687 was drafted, and they thought that Iraq would comply with the conditions of 687 within a year, because they were so straightforward; it was so straightforward for them to disarm and allow inspectors in, why would they not do that, and then get lift, and it would all be over. I do not think it was ever realised that the ambiguities inherent in 687 would become so problematic, as they did, over the decade that followed. I do not think it is easy to draft these conditions when you are working under the pressures that diplomats on the Security Council are working under, but I hope that one of the instructive things emerging from your examinations will be clear guidance to Government that they should take the greatest of care, at that particular moment, to craft and draft those objectives as clearly as possible.

**Q136 Lord Vallance of Tummel:** Just coming back to my general point, if I may, for a moment, you do not think, therefore, that it is almost inevitable, with UN sanctions, that there is going to be a multiplicity of different objectives from the different clients?

*Mr Ross:* I do not think necessarily it is going to be a multiplicity of different objectives. Of course, the whole problem with the Security Council is you are trying to bring together 15, and in reality five, different

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views of the world and agree on one piece of law, and that is always going to be very difficult and it is a great challenge of diplomacy to do that. I think it has become much more difficult to do it now than it was in my day, when I was on the Security Council. I think the degree of consensus we had then, in the late nineties and early part of this century, has now fragmented, perhaps for ever, and that is evident in the work on Darfur, North Korea and elsewhere, that Western Wishes, western desiderata, to punish the Khartoum regime, or Pyongyang, or whoever, are not shared in the rest of the P5, particularly by China and Russia, and they are quite firm in saying so. In my day, the Russians were much weaker and the Chinese were much more willing to go along with the P4 consensus, where it existed. They were not very active. That seems to have changed. I do not think, in any way, that undermines the requirement for the objectives of sanctions to be unambiguous; in fact, I think it makes it all the stronger. If you do not craft that correctly at the beginning, you will hit that problem sooner rather than later in any case and you will fail in your objective of achieving the political end from sanctions. I think it is very important to get sanctions right. I am very troubled by the seeming dichotomy in many people's minds between sanctions or military force, that either we have sanctions or we have military force, and in the US, in particular, sanctions have been very much discredited by the Oil for Food experience and the Volcker Report, and all the rest of it. The UN is just routinely decried as a kind of useless and ineffective organ. I think it is terribly important that Governments like Britain, which is amongst the most influential on the Security Council, should be at the forefront of those trying to develop sophisticated sanctions responses to egregious international problems, be it weapons proliferating countries, or terrorism, or whatever. I think it requires a great deal of technical resources. I am not at all convinced that the British or any other Government has taken that challenge as seriously as they should have done. I think also it requires the international institutions concerned, like the UN or the EU, to develop bodies of international expertise that can be drawn on when necessary. I do not see why that work cannot be done in preparation for those dramatic moments when we need to turn to them.

**Q137 Lord Oakeshott of Seagrove Bay:** You have told us already how heavily Saddam relied on illegal oil exports, so why did the American and British Governments turn a blind eye to them?

*Mr Ross:* I will try to make it short; it is a long answer though. It is all in the written evidence that I have given, so if you turn particularly to the article.

**Chairman:** If it is in the written evidence, we can find it from there.

**Q138 Lord Oakeshott of Seagrove Bay:** Have you anything to add to your written evidence on this topic? It has been very interesting hearing you so far.

*Mr Ross:* Basically, it is two things. The first was that many of the countries doing the smuggling were "allies" of the West in the containment of Iraq: Turkey and the Gulf countries, in particular, Jordan was the other particular example. We had a lot of difficulty in bringing ourselves to put pressure on them, Turkey in particular, which was one of the most egregious sanctions busters; there were always other things higher on the agenda. In the way that foreign policy works, the immediate priority always pushed the important but less immediate priority down the list, so Cyprus, NATO enlargement, you name it, whatever our problem was with Turkey, we had great difficulty getting our Embassy in Turkey ever to raise the subject. I am sure the then Ambassadors in Turkey would complain vociferously that I have made that claim, but we felt that, in New York. The second problem I have alluded to already, which was that the policy was really complicated. It required a lot of boning-up of complicated statistics, a complicated and long history of measures, law, exchanges. It required a comprehensive policy that was consistent for all the neighbours and yet took account of all their different circumstances. That is quite a complicated thing to do and I think that modern foreign policy institutions have been swamped by the complexity of foreign policy and they are not able to develop comprehensive, sophisticated policy solutions in situations like that. Certainly they were not able to when I was working on it.

**Q139 Lord Paul:** My question is equally difficult, where a lot of companies and individuals have been involved in illegal dealings, etc., and the Volcker Report has spent a lot of money and a lot of time. Has any action been taken, is there any desire for action to be taken, and if action has been taken it is to what extent?

*Mr Ross:* It varies. Some countries have taken a lot of action, the Australian Government, for example, have vigorously prosecuted and pursued various companies and individuals involved. Volcker shared the evidence that he collected with Member States that wished to have it, and I understand that the British Government has taken evidence from Volcker concerning British individuals and companies which may have breached sanctions. I understand that the bits of the Government concerned are conducting preliminary investigations as to whether they will actually enact prosecutions for those people.

**Q140 Lord Kingsdown:** Do you think that either the UK or the European Union or the United Nations has the institutions and procedures and the staffing needed to make targeted sanctions effective?

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*Mr Ross:* I have not done a recent comprehensive survey so I cannot claim to be an authority, but my sense is that they have not.

**Q141 Lord Kingsdown:** If they do not have, what explains the failure to put the required arrangements in place in the past, and what are the priorities for action now? What is the prospect for targeted sanctions in these circumstances?

*Mr Ross:* My own view is that the UN should be told to build up a special unit, or part of the Secretariat, devoted solely to this question. The Security Council Secretariat at present is responsible for sanctions administration through the various committees that are set up by the Security Council and I think they should be instructed by the Security Council to develop a body of expertise on financial sanctions, travel sanctions, all the different aspects of targeted sanctions. That expertise is out there and it can be accessed and they should be encouraged to do that. I think also that the British Government should be encouraged to set up a similar cross-ministerial body in Britain. At the moment, I think it is the United Nations department, or what used to be called the United Nations department of the Foreign Office, that still co-ordinates sanctions policy across Whitehall. I am sure they do that very well, but it might be better, given the experience of Iraq, to set up some kind of cross-ministerial unit which has a more permanent nature to it. One of the problems I have found is a very simple problem, that desk officers in the foreign ministries, certainly in the Foreign Office, rotate through desks every 18 months or two years and so the expertise is constantly forgotten and relearned, and I do not think this is right for a subject of this complexity.

**Q142 Lord Sheppard of Didgemere:** You have touched on a lot of this, on various subjects, with examples from Iraq, and so on, but, dealing with the generalisation, are there any particular problems associated with monitoring of targeted as opposed to general economic sanctions?

*Mr Ross:* Absolutely. There are manifold problems with all kinds of sanctions; none of them is easy. Targeted sanctions are but a subset of comprehensive economic sanctions. One of the curiosities of comprehensive economic sanctions was that we actually neglected those subsets. Things like asset freezes and targeted financial measures against the regime were actually very low on our list, in terms of the policing of comprehensive economic sanctions. So, paradoxically, we gave it much less attention than perhaps we could have done if it had been just a targeted sanctions policy against the regime. As I say, I think the expertise in these things is quite hard to find. There are forensic accountants, people who are skilled in tracking hidden assets, that kind of thing; those are

the people you need for this kind of work and they should be identified.

**Q143 Lord Lawson of Blaby:** I am puzzled slightly still, because everything you have said, from your own experience, suggests that economic sanctions not only do not work in achieving their objectives but probably they are counterproductive, unless, of course, the objective is a very, very trivial one, like the surrender of the two Libyans who were implicated in the Lockerbie bombing. We are usually more ambitious than that, what we are talking about here, in the case of Iraq, possibly even in Iran, indeed, and North Korea, would be much more ambitious than that, and yet you seem to cling on to the idea that there is some Holy Grail of sanctions that work. For example, you actually go so far as to say in your written evidence that if the thing had been done efficiently, technically, properly, and so on, with asset freeze, and so on, then the regime would have been severely weakened and perhaps would have collapsed. Do you really believe that?

*Mr Ross:* Yes, really I do.

**Q144 Lord Lawson of Blaby:** With what evidence? Where has this happened?

*Mr Ross:* There is no similar example to Iraq, where you had a regime that was so wholly dependent upon one particular commodity for its survival, and that commodity was oil. We knew that Iraq was illegally exporting oil and thus garnering income for the regime, and I and other officials in the British and American Governments frequently argued that if we made an attempt to stop those flows that would severely undermine the regime from within. I do not think anybody disputed the logic of that argument in our Governments, but the practical measures to implement that were not taken, for the reasons I have explained to Lord Oakeshott.

**Q145 Lord Lawson of Blaby:** You say there is nothing else like Iraq, but countries have other sources of income always. If you take Cuba, for example, in Cuba, Castro has been in power for well over 40 years, despite American sanctions designed to bring him down, and almost certainly would not have been in power for that length of time had sanctions not been there. This was not through smuggled oil revenues. He got a certain amount of money from the sugar which was sold in the Soviet Union, but that was not what kept him afloat. What kept him afloat was that he could always blame the Americans for any economic hardships or humanitarian difficulties which they suffered, and even to this day, and I was there not so long ago. Just an example of how totalitarian regimes work, which it seems to me was simply not grasped by the Foreign Office, if I may say so. In Cuba there are great hardships, a shortage of medicines. *Médecins*



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*Sans Frontières* and a number of other do-gooding agencies sent all sorts of drugs into Cuba. It is not happening now; those drugs never reached the people, because the Government control everything. If you are a tourist it is very convenient; if you are a tourist you can get the most wonderful medical care immediately in Cuba because Castro needs the foreign exchange, he needs a good tourist trade, and the poor Cubans, and you can talk to poor Cubans in the street, will say how their children are dying because they cannot get the drugs which you, as a tourist, can get. These are from *Médecins Sans Frontières*, and some people blame Castro for that, most of them blame the sanctions for all the hardships they suffer. The idea that somehow there is some Holy Grail, as I say, of sanctions that will work is not, I think, supported by the evidence in the real world. It is a nice little fairy tale which you and your former colleagues used to like to tell yourselves, that if only the British and the Americans were sensible they could do it properly and it would work. I do not think there is any evidence to support that, is there; if so, tell me?

*Mr Ross:* I hold no brief to defend the Foreign Office these days.

**Q146 Lord Lawson of Blaby:** We may have gathered that.

*Mr Ross:* I dare say that I think the two examples are very different, and I think for important and significant reasons, which actually support my thesis rather than yours. Iraq was guilty of an egregious act, which was to invade Kuwait, and it was also found to be developing nasty weapons, and that was felt, by the international community, and not just America and the West, to be a very bad thing and that something should be done to stop them behaving in that way. At the outset there was enormous international support for control measures on Iraq, through the UN Security Council. Sanctions on Cuba, by contrast, are not supported by anybody except the US, and Cuba trades openly and widely with lots of other countries, so the pressure on Cuba is not very likely to succeed in overthrowing the regime or securing any other form of change in Cuba. I think that rather reinforces the thesis that I put in my evidence, that if you are ever going to be successful with sanctions you have got to have a wider international legitimacy for it. The case for Iraq, I think, does show that actually it was possible for a time—there was a period in the 1990s, and I think that period lasted quite long, into the late 1990s—where we could have secured wide international support for measures which targeted just the regime. I do not think Saddam, despite the claims of French and Russian allegiance to him, had any real allies in the world, and none that would have stood up and supported him in the Security Council. If we could have designed a package of measures which targeted the regime effectively and backed that up with very

tough, coercive diplomacy with Saddam's neighbours, I think that had a chance of being successful, and I do not think that was a naïve view. I think, personally, that should have been given a try before sending 150,000 men in to invade. I think at least that would have been a reasonable thing to have attempted before going to war. It was never attempted, even though it was frequently suggested by the officials concerned.

**Q147 Lord Lawson of Blaby:** Incidentally, you were aware that during that time *Total*, the great French international oil company, was busy getting all sorts of concessions in Iraq. I know this because at that time I was a member of the International Advisory Board of *Total*, and indeed my American opposite number was Paul Wolfowitz who resigned on that very issue because they were doing that. I think that the French definitely had a very different perspective right throughout?

*Mr Ross:* They did, but they still voted for the sanctions measures in the Security Council; they did not feel justified in voting those things down, *Total* or no *Total*. There were particular clauses of the resolutions we called the *Total* Clause, because we were so aware of the French commercial interest in having particular measures passed. I think we allowed the political capital, which undoubtedly we had, to be wasted in the 1990s through a very crude and blunt instrument, namely comprehensive economic sanctions, which did not have as precise an effect as perhaps it could have done if we had taken a little bit more care with the engineering and enforcement of it. I do not think it is just about clever design and idealistic thinking about targeted sanctions. I do think it is also about a very consistent and muscular approach to diplomacy, where, as I argued in my evidence, sanctions enforcement over the years slowly dropped down the list. Even though our ministers claimed that containing Iraq was a primary security concern, very rarely did they raise the issue of sanctions enforcement with the countries concerned, particularly those countries breaching sanctions. I think that we should have developed a much more comprehensive and co-ordinated approach diplomatically to do that, and I do not think that is naïvety, I think it is pure pragmatism, and it could have been done.

**Q148 Lord Skidelsky:** I feel that you do have a tendency in your evidence to suggest that better design and better technique could actually solve political problems. You say that sanctions should have pure objectives against which you can judge success and failure, but if you look at the sanctions imposed on Iraq, technically there was SCR 687, which required complete disarmament and it laid down what Iraq should do and would judge its behaviour according to those. That was the explicit objective, but the substantive objective was simply to disarm him,

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whether or not he complied with every dot of the resolution, every i and t. Then there was another objective, which was to get rid of him, so there was never any possibility, I would have thought, of getting a clear set of objectives out of the conflicting aims of the powers. On the first criterion the sanctions failed, on the second they succeeded, on the third they failed, because he was still there, so which was it that was important? I am not talking about the technical requirements that were imposed on him, but the substantive requirement was surely that he should never be a threat again, and in that respect they have succeeded. They were not recognised as having succeeded, because essentially there was a secret agenda.

*Mr Ross:* I suppose that is true, but also, in terms of the stated objective, 687 actually succeeded as well. Iraq was disarmed of its weapons of mass destruction and medium-range missiles, as we discovered after the war, and, in fact, we believed before the war, though the Government said the contrary at the time.

**Q149 Lord Skidelsky:** What I am suggesting is, so the failure had nothing to do with lack of muscular diplomacy. The failure and what led to the war was that there was a secret objective, which could not have been secured really—or I do not see evidence for it—by the type of diplomacy you are talking about, that is, actually to destroy the regime?

*Mr Ross:* I beg to disagree. I think it was achievable. It is a rather complicated, technical argument.

**Q150 Lord Skidelsky:** Technical?

*Mr Ross:* Yes, in the sense that the regime was dependent upon \$1½ billion to \$2 billion worth of illegal oil imports. We knew exactly where these things were going out. They were going through a pipeline in Syria, they were going through trucks to Turkey, they were going through another pipeline to Jordan and they were going in ships, through the Gulf. We knew exactly where it was, we had satellite evidence of it, we talked to the oil traders who were buying it, we knew which companies were purchasing it, we knew which countries were supporting it, Turkey, Jordan, some of the Gulf countries, etc., etc. Yet when my Foreign Minister, or my Prime Minister, went to visit those countries he did not raise it. Tony Blair went to Syria, I think, in early 2002. He did not raise the pipeline, the illegal smuggling by Syria. Why did he not? Surely that was a possibility to shut down Saddam's source of illegal revenue; this surely was something that could have been done. I do not think it was naïve or impossible, far from it; we felt it was eminently possible. I felt, in the build-up to the war, that the Governments concerned were very dismissive of sanctions. I remember George Bush talking about sanctions being as full of holes as Swiss cheese. That was not our private view at all, in the State

Department and in the Foreign Office. We felt that sanctions had been very effective in stopping Iraq from rearming, but they could be made even more effective in terms of denying funds to the Iraqi regime. And yet the hard technical work to make that a reality and the consistent and organised diplomatic work to enforce the embargo and finally get the neighbours to stop the illegal smuggling was never done. I do not see why it was so hard to persuade Turkey, for instance, to stop the smuggling over its border, especially if you offered them the binary alternative of a war. Which do you think Turkey would have preferred, the same for Jordan, or for the Gulf?

**Q151 Chairman:** We have reached the point where perhaps it is not a good idea for you to be asking us the questions, rather than the other way round.

*Mr Ross:* My question was purely rhetorical.

**Q152 Lord Lawson of Blaby:** You were just saying that Saddam required export markets to get his funds, and therefore if you had stopped these markets somehow that would have had an effect, but your actual proposition in your written evidence is a two-part thing, that the funds then which had accrued overseas could have been seized and used to help the humanitarian effort in Iraq. Surely that is not suspect because there is no reason why Saddam would hold his funds in countries where he thought those assets would be seized, and if he thought they were going to be seized everywhere he would make sure that they were in banks in Iraq. You have this humanitarian problem, to which you alluded right at the beginning, whatever happened, the idea that you could not really have stopped the exports, which is difficult enough, because of the Syrian pipeline, and all of that. But you could actually have seized funds. That it would alleviate the humanitarian suffering really does beggar belief, because why would he allow his funds to be seized?

*Mr Ross:* Because he would not have any choice. You would identify where they were, then you would go to the government concerned and say—

**Q153 Lord Lawson of Blaby:** It would be repatriated before that? While you are discussing that with the countries, he knows you are discussing it, he will repatriate it?

*Mr Ross:* This is one of the problems. You have to do it in secret and you have to do it stealthily and seize quickly. But it can be done. It was done with Milosevic quite successfully. The EU set up a unit that targeted his funds and found his assets and seized them. It can be done. You are slightly confusing the argument, if I may say so. The whole thing about denying him oil revenues was to stop him getting funds in the first place; if you had stopped him selling that illegal oil, that oil would have had to go into the UN escrow

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account and that would have increased the funds for the humanitarian programme.

**Q154 Lord Lawson of Blaby:** It would have stayed in the ground?

*Mr Ross:* Actually, it would not have; we looked into that. Once you have set up a certain pumping capacity, actually you have to keep pumping. You cannot just stop, you cannot just leave it in the ground. Otherwise

you cause massive damage to your future capacity and we knew the Iraqis were concerned about that.

**Chairman:** I think we are getting into more broad detail than our study. Really I think perhaps we ought to bring this to an end. You have given us a fascinating account of the world of which you have got a great deal of experience and we are very grateful to you for that, and thank you very much indeed for coming along.

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TUESDAY 18 JULY 2006

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Present	Kingsdown, L Lawson of Blaby, L Layard, L	Macdonald of Tradeston, L Paul, L Sheldon, L (Chairman) Lord Vallance of Tummel
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**Examination of Witness**

Witness: MR ALEX YEARSLEY, Campaign Co-ordinator, Global Witness, examined.

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**Q155 Chairman:** Welcome to the Committee, Mr Yearsley. We are pleased to welcome you here. We will be asking you questions and asking you if you would speak up because some of us are not quite as good at hearing as we used to be. Is there anything you want to say before we start the questioning?

*Mr Yearsley:* No, actually. Some very good questions were sent through; someone has obviously done their research.

**Q156 Chairman:** I am going to start off by asking you if you consider the current United Kingdom policy on sanctions is clear and coherent, and is there the right degree of co-ordination with international partners, particularly the European Union and the United States?

*Mr Yearsley:* I would say over the last few years, on the specific sanctions that our organisation and I have experience of, there has been a great deal of co-ordination, particularly between the US and the EU and the Foreign Office, which have really been leading the charge on the commodity sanctions. With regard to some of the arms sanctions, I would say there are definitely some issues and problems on that. On diamonds, which is what we have done the majority of our research and campaigning and lobbying on at the UN and at the Foreign Office, there has been a great deal of work that the Foreign Office have done on that with the EU in particular and with the Security Council. So we would say yes, there is good co-ordination on that, and it is quite coherent. With regard to the Security Council, the diamonds sanction in particular on the various countries that impose diamonds sanctions has been well-coordinated. There have been problems within the Security Council mechanism in how sanctions are monitored. There are problems in relation to the violation, obviously, of sanctions and the enforcement of the sanctions, and that is where I would say the majority of the problems lie, in how sanctions are actually enforced and monitored, and there is quite some way to go on that. We have a number of recommendations that we have been lobbying the Security Council and the Foreign Office and the European Union on on how to make those regimes more effective and to make them actually work better. One of our first recommendations is

actually to have a universal definition of a conflict resource. We think this would make sanctions far more effective. It would take away a lot of the time-wasting that occurs and a lot of the politics involved in the Security Council. The definition we propose—I am not sure whether you would like me to read it out to you, whether it would be of interest—is a relatively simple definition, and we think it encompasses the majority of the commodities that are fuelling conflict. It is “Natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law”. We took this to the Security Council and to the State Department a few months ago. The State Department’s main concern was whether it concerned Iraq or whether it would apply to Iraq and we are waiting for their response, but we will be pushing that further.

**Q157 Chairman:** Our specialist adviser has very usefully given us a current list that exists of some 20,000 persons, groups and entities under financial sanctions. Twenty thousand is a lot of people to get hold of. How do you deal with this?

*Mr Yearsley:* If you are looking at individuals that have been placed on either travel sanctions or financial sanctions, it is very hard to implement. Often people change their names; they are in a position to be able to change their names, and obtain duplicate passports. A lot of these people come from regimes that offer that assistance; a lot of these people are from the criminal underworld. But I would also say there is a fair amount of inactivity within national enforcement agencies, within customs agencies. I know of a number of cases within the United Kingdom where people on travel sanctions lists have been able to enter. They may have been followed by what was NCIS and their activities reported upon but no action has been taken against them. We have been in regular contact with the Bank of England, who have to enforce the financial sanctions, and there has been some success in that, but I would say the investigative power or enforcement is weak. If one were to look at the sanctions on Angola and the rebel

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movement Unita several years ago, they were only able to find several thousand pounds in various bank accounts. It would only have taken slightly more investigation to have found out, either the different holding companies or the people that were representative of their offices here in London and elsewhere, to have really tracked down their assets. We are not saying it is not a very, very difficult job. The problem is really resources, having enough resources devoted to tracking those individuals and the actual accounts and the companies that these people use to move their assets or the companies used to traffic the weapons that are often taken to the conflict zones. We would definitely call for more resources to be put into the police and the security services specifically to look at this. We were relatively pleased when we saw that the Government had actually announced 15 dedicated officers to work on overseas corruption, and we think that should be repeated specifically for sanctions violations within Europe and within the UK.

**Q158 Lord Lawson of Blaby:** You are a great expert on the diamond sanctions in particular, which certainly some of us know very little about at this stage of our inquiry. I think it would be very helpful if you could say first of all, as simply as you can, precisely what the Kimberley process is, what conflict diamonds are and how successful in achieving its objectives this whole arrangement has been in your judgment.

*Mr Yearsley:* Conflict diamonds are rough diamonds; they are not polished diamonds. They are the rough diamonds that are the mined by rebel groups to fund arms purchases to try and overthrow legitimate governments. There is actually a United Nations Security Council definition of what that constitutes. It is a rather convoluted definition and we would not really entirely agree with it but it is the only one we have at the moment. As a result of the various conflicts, the main ones being in Angola, Sierra Leone, Liberia and Congo, that were financed by this trade in diamonds, the United Nations Security Council were authorised by a number of governments to negotiate what became known as the Kimberley process. It is called the Kimberley process because it started in Kimberley in South Africa under the leadership of the South African government. It took three years to negotiate and effectively it is a trade mechanism, an import and export control system for the trade in rough diamonds. Every single country that produces, trades, or manufactures diamonds is involved in the process. That is now approximately 73 countries. With regard to whether it has been effective, I would say it has been quite effective. It did not stop the wars. The wars stopped mainly due to political and military successes, but it has certainly helped cut out a lot of the money that

was going to these rebel forces. I met one of the former rebel leaders of Unita, and they were complaining bitterly that the campaign against conflict diamonds and the Kimberley process significantly cut the amount of money that they were able to get hold of on the international market. I would not say that is a definite success. The benchmark I would apply is if a rebel group in Angola or Sierra Leone were to retake diamond fields and try and mine those diamonds and sell them in exchange for arms, would they be able to achieve the same levels of success as a few years ago? I would definitely say they would not be able to do that. Currently, the percentage of what are known as or were conflict diamonds is very small as a percentage of the overall diamond trade, but at its height it represented nearly 20 per cent by value. This was obviously a significant amount of money. We were looking at billions of dollars flowing into these rebel movements.

**Q159 Lord Lawson of Blaby:** If I may ask one supplementary, this is a case where there is a natural resource and, if that can be captured by the insurgents, by exploiting that natural resource, they have an important source of finance for their insurgency?

*Mr Yearsley:* Yes.

**Q160 Lord Lawson of Blaby:** Would you agree that is a rather special case and that in most cases where economic sanctions are contemplated, this set of circumstances does not arise? In a sense, this is something which may be very effective in particular limited cases, but they are a limited number of cases.

*Mr Yearsley:* They are relatively limited, yes, but the impact of those natural resources on the various conflicts is significant. If one were to look at the Congo and how the conflict was financed there, really, the most devastating civil wars of the last 30 years that we can name were principally financed through either gold, diamonds, timber, or in some cases oil. So they are very specific and obviously quite targeted sanctions, but that is partly commodity sanctions. If we are looking at a broad range of economic sanctions on governments that are committing human rights abuses or in some way need reform, or indeed the rebel movements, there are a wide range of other economic sanctions that should be in place, but not just economic sanctions. The travel sanctions do also have a significant effect.

**Q161 Lord Kingsdown:** One of the sanctions, we understand, is the threat of expulsion for non-compliance, so that those who are expelled are banned from trading in diamonds with other members. Has that ever been carried out or used, and

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are there also alternative approaches that would or could work better?

*Mr Yearsley:* The Kimberley process tries to be as inclusive as possible. It has been used a total, I think, of three times: once on the Central African Republic when they had a coup and it was decided that obviously the new government could not be decreed to be either democratic or to have got in by fair means, so they were expelled temporarily. The main country has been Congo Brazzaville, and they were expelled for repeated violations of the Kimberley process. They were formerly smuggling diamonds from Angola and the Democratic Republic of Congo and taking many hundreds of millions of dollars worth of diamonds out of those countries. Finally, Lebanon was briefly not expelled but not allowed into the Kimberley process, due to their lack of legislation in the country, but they are now in the Kimberley process. We are currently trying to get Liberia into the Kimberley process. They are a few months away yet, but it does remain a deterrent. If you do not comply with any of the procedures in the Kimberley process, you will obviously initially be given several warnings but the final sanction is expulsion. However, it does not mean you cannot trade with non-participants of the Kimberley process. Under WTO rules and regulations, that would be illegal.

**Q162 Lord Kingsdown:** So you can trade with non-members?

*Mr Yearsley:* Yes, but you will not have access to the most important markets.

**Q163 Lord Kingsdown:** How do the non-members get their diamonds?

*Mr Yearsley:* They will get them through the various networks that exist. There are hundreds of traders that will move diamonds around but obviously you have a number of insurance risks. Obviously, insurance companies will not insure you if you are not a member of the Kimberley process. It is now a requirement for the major insurance companies to have the Kimberley process documentation. So there are a number of risks associated with not being a member. Most countries want to be a member of the Kimberley process.

**Q164 Lord Paul:** In an effort to stop illegal diamond sales or reducing funds for the insurgency cause, looking at the economic sanctions and the Kimberley process, what kind of success have we had so far?

*Mr Yearsley:* Again, it is quite hard to quantify because the main conflicts in Angola, Liberia and Sierra Leone ended more due to political and military successes. With Unita in Angola, who earned the largest amount of revenue from diamonds, \$3.7 billion of diamonds passed through their hands over

a seven-year period. They did not earn \$3.7 billion—probably approximately half of that—but their ability to buy political support, to buy military hardware, was significantly impacted. We have spoken to members of Unita who were in charge of that side of things. It had a definite success there. With Sierra Leone, I would say it has had a definite success post-conflict in that probably now about 60-70 per cent of the diamond production goes through the Kimberley process. Prior to that it was probably about five to 10 per cent. So there is an economic benefit for the country as a whole. How that money is then used is now slightly a problem. There are problems of corruption within Sierra Leone. In the Democratic Republic of Congo, again, the amount of money officially going through the government coffers has increased significantly with the Kimberley process. It did not have an impact in stopping the war because the war had more or less ended by the time the Kimberley process became operational, so really, it is too early to judge at the moment. The Kimberley process is up for a three-year review at the moment and a number of recommendations have been made to improve and strengthen it.

**Q165 Lord Paul:** One of the things we find bad here is that a lot of evasion takes place. Can you say something about that?

*Mr Yearsley:* Most definitely, and it is one of the major problems, especially with regard to Dubai. There is a gaping whole of \$1 billion of diamonds that come into Dubai and exit Dubai, and within the European Union it is a major problem as well. It was one of the main fears the industry had in relation to taxation and transfer pricing. One has to look at Switzerland, Belgium and Dubai to really get to the bottom of that. It is a major problem.

**Q166 Lord Paul:** Has any country, company or individual actually been punished?

*Mr Yearsley:* There have been a few individuals that have been detained, arrested and fined. Belgium had a relatively high-profile case involving two Lebanese diamond traders who were involved in smuggling diamonds from Congo, Sierra Leone and Liberia. They received sentences of about five and six years and large fines. However, they are obviously not in Europe; they are in Lebanon. So they will not be coming back to the European Union for a while. In America there have been a number of seizures. In the UK there have been one or two cases. But no major international company has been charged with a violation of the Kimberley process. It is mainly on a small scale at the moment.

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**Q167 Lord Paul:** Do you have any view why not?

*Mr Yearsley:* Again, I think there is a lack of enforcement capacity. One of the main problems is that there are very few tariffs on diamonds, so there is a lack of any interest by customs and I think that would be one of the main problems. If there is no revenue collection for customs, they are not generally interested. However, the Kimberley process hopefully will give some incentive for customs and law enforcement to apprehend individuals that are breaking the Kimberley process.

**Q168 Lord Macdonald of Tradeston:** Is it the case that those who would want to trade legally do not need to be threatened with sanctions, whereas those who do want to trade illegally can do that with very little fear of detection? If the detections rates are so good, could it be that the Kimberley process might actually be providing a route for what you could call diamond laundering?

*Mr Yearsley:* There is definitely a problem with that. That was recognised when the process was being negotiated, and there are definitely some instances where illegitimate diamonds, if you want, are put through the Kimberley process and we are looking for countries to tighten up their own internal regulations. The problem is it often occurs with government collusion. I am particularly thinking of Angola and the Democratic Republic of Congo and countries such as Namibia, where, say, a general or a senior politician will have his own diamond concession. He does not wish to pay the government taxes, he will push them through the system and he will give a \$50,000 bribe to the official who is evaluating the diamonds and he will not pay any taxes. Are they conflict diamonds? No. Is it being used to launder diamonds? Yes. Can that system be abused by people who have got hold of conflict diamonds in other countries? Yes, it certainly can.

**Q169 Lord Macdonald of Tradeston:** Have such cases been identified and exposed?

*Mr Yearsley:* Not as yet, but they are known about and the problem is getting the international co-operation to be able to deal with it effectively.

**Q170 Lord Vallance of Tummel:** Is there any evidence of al-Qaeda involvement in the diamond trade and, if there is, have economic sanctions played any role in combating that?

*Mr Yearsley:* There was quite considerable evidence of al-Qaeda and Hezbollah's involvement. I spent about three years researching that and we produced a very detailed report on the involvement of al-Qaeda. It started in the early Nineties in Kenya and Tanzania. We produced documents that the FBI had actually taken from a gentleman called Wadi al Hajj, who was Osama bin Laden's personal secretary,

which gave details of how to buy diamonds. It had diamond dealers' business cards, it had notes in it on various diamond transactions, yet the CIA and the FBI told us there was no evidence, even though it came from their own files. They then moved into West Africa in the late nineties. This was largely not as a fund-raising mechanism but as a way of laundering their assets and putting them into a commodity that is untraceable and very easy to move. We spent quite a lot of time detailing that, got hold of some very clear information and evidence, and presented it to a number of agencies. I have been told the SIS knew about the connection very early in 1996, yet the CIA and FBI have complete denial on the process. The Department of Defense agreed with us and there seems to be some friction between the three agencies there in the United States on how far al-Qaeda were involved in the diamond trade. The 9/11 Commission report flatly and very cleverly stated that the 9/11 attacks were not funded in any way by diamonds, so they managed to get out of the fact that al-Qaeda had traded or been involved in diamonds. I would say this matter deserves further attention. It is a very easy commodity to become involved in; trade networks are well established. There is extensive involvement of Hezbollah in the diamond trade. That is well known and accepted. The cross-over is very fluid, and the ease of access to diamonds, particularly in West Africa, should be a considerable cause of concern.

**Q171 Lord Vallance of Tummel:** By implication, what you are saying is that economic sanctions have not played a role.

*Mr Yearsley:* They have not played a role in stopping the involvement of al-Qaeda or Hezbollah, although in the previous case I mentioned of the two diamond dealers in Antwerp, they were very involved in facilitating those diamonds to al-Qaeda. They were temporarily stopped, but that was not through the Kimberley process. That was through basically public pressure that was put on the agencies within Belgium to actually act, because it was first exposed in the *Washington Post* and they were forced to take action.

**Q172 Lord Vallance of Tummel:** Have you any views on why the CIA and the FBI might be in denial?

*Mr Yearsley:* With regard to the FBI, I have met their investigating team several times. They have three agents on the case, two of which have never even left America. From people who have met them in Sierra Leone, who were asking them questions, they went with pictures of Osama Bin Laden to Lebanese diamond traders and with some of the accused and asked them had they seen these people in their diamond-buying areas. Now, if you are a Lebanese diamond trader with possible connections to

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Hezbollah or al-Qaeda, I do not think you are really going to be admitting that, yes, these gentlemen were in your shop trading diamonds. So the level of the investigation failed quite dramatically. One of the main reasons—and this may sound a bit conspiratorial—is that Charles Taylor, the ex-President of Liberia, may have actually done some work for the Defense Intelligence Agency and the CIA during his tenure and there are some embarrassing incidents that Americans might not want to come out during that process. The ex-station chief of the CIA in Liberia confirmed that al-Qaeda were there and they were involved in diamonds. The head of the Department of Defense's Africa Intelligence Unit based in Germany called EUSCOM confirmed that al-Qaeda were there and so there appears to be some form of conspiracy of silence for certain members of the CIA over the role of al-Qaeda and diamonds in Liberia and Sierra Leone.

**Q173 Lord Layard:** What do you see as having been the objectives of UN sanctions on Liberia? How effective have they been? What have been the political, economic and humanitarian costs of those sanctions?

*Mr Yearsley:* I think there are four types of sanctions on Liberia. The first were the arms sanctions. The second were the sanctions on diamonds. The third were the sanctions on timber. Then there were also the travel sanctions. With regard to the arms sanctions, they were not particularly effective. Arms would regularly come into Liberia via neighbouring countries—Burkina Faso, Mali—and weapons were coming in from China in particular. There has been some recent success with a Dutch timber arms dealer, Gus Kouwenhoven, who we were very involved in having investigated and finally arrested and who was sentenced to eight years in jail three weeks ago. He was charged with war crimes and breaking the UN arms embargo. He was getting his weapons from China, would bring them in on logging boats, take out the logs and bring in the arms. That is the only real success. The UN established various sanctions monitoring expert panels. They were able to detail a number of the arms shipments coming in from the Ukraine and other eastern European countries, and very little was ever done about it. There is a very large international network of arms dealers who have worked for a number of intelligence agencies in the past, the most prominent one being Victor Boot. He is currently ensconced in Moscow. Yesterday the G8 put out a statement about how they must deal with the weapons traffickers and I would suggest they could start by arresting Victor Boot, who was not too far away from where they were all sitting. He is really the main arms dealer within Africa. The timber sanctions were quite effective. The main reason for having the timber sanctions was to cut off the revenue

to Charles Taylor. That was how he was able to break the UN arms embargo by bringing in the weapons. We calculated that the volume of timber going out was worth approximately \$156 million a year, \$56 million of which went into the national treasury, \$100 million of which was unaccounted for. That was used entirely to pay for weapons. There are bank proceeds, there are transactions that confirm all of this. The humanitarian aspect of that was brought up, particularly by, surprisingly enough, the timber companies, mainly the French timber companies which were importing the majority of the Liberian timber, but also the Liberian government. OCHA did a study to see what would be the humanitarian impact of imposing timber sanctions. They came up with a rather extraordinary figure of 10,000 employees involved in the timber trade in Liberia. This figure was contested. DFID actually sent a consultant, an expert, out to Liberia and they came out with a figure of 5,000 people employed in the timber trade, 1,000 of which were expatriates, mainly from Malaysia and Indonesia. So the humanitarian impact, yes, certain people would obviously not be working in the timber trade, but when you consider they had no contract, there was no health and safety cover and the pay was absolutely minimal, the economic and humanitarian impact upon them was minimal. You were not cutting off money to a fully functioning government that was involved in building hospitals or roads or had significant health care problems. So we would say there was very little humanitarian impact. In fact, it was a major humanitarian impact in that they cut off some of the flow of weapons to the country. With regard to the diamond sanctions in Liberia, they were relatively effective. Liberia itself does not actually produce many diamonds—approximately \$10 million a year. The problem was the diamonds from Sierra Leone that were coming into Liberia that were being mined by the rebels who were being paid for by Charles Taylor, so it was important to cut those diamonds off. Liberia was also being used as a tax dodge, so you would have figures in Antwerp of approximately \$1 billion worth of diamonds coming into Antwerp from Liberia, when in fact they only produced \$10 million worth a year. So it cut that loophole as well, which was very effective.

**Q174 Chairman:** The Security Council decided not to renew sanctions on the Liberian timber industry, but they are going to review the decision within 90 days. What do you think about this decision?

*Mr Yearsley:* Initially, and I think we would still hold to this view, that it was too early to lift the sanctions. We want to see both the diamond and the timber sanctions lifted. The government still does not have effective control over the entire country. There are still disbanded groups of rebels operating under their



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former command structures that are operating illegally in the diamond areas and in the areas that produce the majority of the timber, and they are cutting that timber and mining the diamonds. So we would have said wait another six months. It was very much a political decision that was made to give some formal recognition to the successes, if you like, of the new government in Liberia, and I believe to some extent that did need to be done. However, the optimism of the Liberian government that suddenly millions of dollars were going to flow into the treasury from a rejuvenated timber industry is non-existent. It is not going to happen for several years yet. They need proper management structures in place, they need effective government, they need transparent accounting mechanisms, they need major reforms within the government before you will see any economic benefit from the revival of those two industries. The United States Government and the British Government are working quite hard in trying to bring reforms into both the forestry and diamond sectors, but it really is several months off yet. Hopefully, it will not go as badly as we predict and they will get some legitimate timber companies in there and we will not see, as previously, basically mafia companies operating with no regard for the long-term interests of the Liberian economy; they had no sustainable logging management plans; it was totally clear cut. We are not against logging. We are for effective logging, credible logging, that will bring the maximum revenue to the country.

**Q175 Lord Lawson of Blaby:** May I follow up an earlier question? You spoke quite a lot about the al-Qaeda connection. You mentioned the Hezbollah connection but you did not say much about it. I find that particularly puzzling because, whereas al-Qaeda does need all sorts of funds, Hezbollah is funded basically by the Iranian Government, which has, as a result of oil, huge amounts of money. So why do they go in for this rather more difficult source of funding? What is happening? Do they have some other motivation for being in it and where is this Hezbollah diamond operation happening?

*Mr Yearsley:* The Hezbollah diamond financing, the majority of it happened in the Eighties during the civil war in Lebanon, and the reason they were involved in diamonds is due to the Lebanese diaspora into West Africa in the late 1900s, particularly in Sierra Leone, in Liberia, in Ivory Coast and the Democratic Republic of Congo. There were mainly three ways in which they would get the money. Part of it was through extortion, so the Hezbollah operatives in southern Lebanon would basically come over to Sierra Leone or Liberia or Ivory Coast, and they would go and see the diamond trading families and say—and I have spoken to many people this has happened to—“You give us 30 per cent of

your earnings or your cousin won't be around much longer.” A lot of it was forced out of them. However, quite a lot of it was voluntarily given. You had both Amal and Hezbollah doing this. The President of Amal, Nahib Berry, was born in Sierra Leone and was very involved with the President of Sierra Leone. Indeed, the PLO also got involved. Yasser Arafat tried to negotiate to buy an island off Sierra Leone to train the PLO there. That really went on for 10–15 years. In terms of the current context of how Hezbollah are involved, I do not have any specific information on that. It would really only be related to the historical context, but I would definitely say it still goes on. A colleague of mine was recently in southern Lebanon doing a review mission of the Kimberley process and was speaking with Lebanese government officials, and they were absolutely confirming that probably 60–70 per cent of the diamonds coming into Lebanon are controlled by Hezbollah. They have polishing factories there; they smuggle the diamonds in from West Africa. With regard to the amount of finance they get from Iran, I have no idea. They take what they can get.

**Q176 Lord Lawson of Blaby:** I understand that and it is fascinating, but what I had in mind is that it would seem, *prima facie* anyhow—and I know much less about this than you do—that since Hezbollah can get all the arms and weaponry they want from Iran, and there is considerable evidence that this is happening, that maybe this is just a way in which individual Hezbollah commanders are lining their bank accounts and it has nothing to do with arms.

*Mr Yearsley:* We are talking several hundreds of millions of dollars here. From the people I have spoken to, it is definitely part of a concerted fundraising campaign and effort. Whether it is arms procurement or whether it is the part of Hezbollah that builds mosques, schools and hospitals, you are never going to be able to separate it out, and that is one of the main problems of dealing with Hezbollah. Are you dealing with the armed wing of Hezbollah or are you talking about the wing that does the job of government in southern Lebanon? It is very hard to differentiate.

**Q177 Lord Macdonald of Tradeston:** Related to that, the people who would be likely to know most about that activity would perhaps be the Israeli Government and Mossad. Have they said much publicly about this?

*Mr Yearsley:* They have said small bits, but they are quite involved in Africa. There were attempts during the Eighties to bring in a number of Israeli dealers to out-buy the Lebanese dealers. They are constantly following a number of dealers in Africa. I have come across quite a few of the Mossad agents who are looking at some of these characters. They know very

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well it goes on. The main problem is, if you speak to some of the Israeli traders in Africa, they know perfectly well what is going on and you can have situations where you have Israeli diamond dealers who are employing Lebanese diamond traders and they know that part of the money is going back to Hezbollah. They basically say business is business; they leave the politics at home at that stage.

**Q178 Lord Paul:** One of the things which you mentioned about the diamonds from Liberia that they only produced \$10 million and there was trade in \$1 billion, but the same is true of Britain; it has a very big trade in diamonds but does not produce any. Is this the only reason to say that illegal trading is going on in Liberia or is there more?

*Mr Yearsley:* In terms of proof? There is extensive proof in relation to dealing and trade of diamonds in Liberia. Documentation that came out of the President's office, intercepts that were taken by the British military when they were in Sierra Leone, thousands of hours of personal confessions of people actively involved in it. The evidence is not lacking. It was well documented and well known.

**Q179 Lord Kingsdown:** Can I ask a question which is not on the sheet here? You have described an enormous market in diamonds, legal and illegal, widely spread, but is there somewhere, some ultimate demand or market, that consequently keeps this dealing in diamonds going and the price of diamonds up? What is it that creates this demand for diamonds all the time?

*Mr Yearsley:* One company and its very successful advertising campaign. De Beers have been remarkable at that. They are now trying to push the responsibility to the rest of the diamond market. They spend \$200 million a year on advertising. I would say that is the driver for the diamond market. It is the eternal lust for diamonds.

**Q180 Lord Kingsdown:** By the world at large? By the public at large?

*Mr Yearsley:* Absolutely. They run highly successful advertising campaigns. In Japan they did not even have a word for diamond until De Beers invented it for them.

**Q181 Lord Kingsdown:** So ultimately, it is a genuine demand by people who want this commodity?

*Mr Yearsley:* Yes. Even Nicky Oppenheimer says diamonds are intrinsically worthless. There is no practical use for diamonds, apart from the medical and engineering applications. It is a worthless piece of carbon.

**Q182 Lord Macdonald of Tradeston:** It is not just about demand. It is about control of supply, is it not?

*Mr Yearsley:* Absolutely.

**Q183 Lord Macdonald of Tradeston:** The fact is that you could destroy the diamond market quite quickly if you just opened up the supply.

*Mr Yearsley:* Indeed. That was one of the main problems with conflict diamonds, that there were so many diamonds flooding on to the market out of Angola that De Beers had to buy them up to maintain the price. That is one of the main reasons we took up with them, to get them to stop buying those diamonds, because in effect, they were fuelling the conflict. They were sending dealers out to Angola to go and buy \$20 million worth of diamonds a week from Unita to stop them coming on to the market where all the other dealers would have access to them, and it was that control of the market that really maintained the price and it really is how they effectively maintain the high price of demands.

**Q184 Lord Paul:** Who is responsible for that? The dealers or the people living in Angola?

*Mr Yearsley:* In terms of the diamonds flooding out or maintaining the price?

**Q185 Lord Paul:** The illegal trade of diamonds, because if there is no market, if the market is created by the dealers, who is at fault?

*Mr Yearsley:* A combination of all of them, I would say. We do not want to get rid of diamonds. They do provide some economic benefit, particularly to India and Botswana. We are not going to suddenly say we should get rid of all diamonds. The question is whether the market and the industry can behave responsibly, and the problem is there is a lust so much for the money, the greed, that it is going to be very hard to control.

**Q186 Lord Paul:** Can more general conclusions be drawn about the success and failure of sanctions on commodities?

*Mr Yearsley:* In relation to the successes, I would say the most general conclusion to be drawn is that we need a definition, that there can be successes if it is effectively monitored and implemented. The majority of the commodities sanctions were never really effectively implemented or monitored, especially with regard to the diamonds. It took a significant amount of public pressure for governments to actually take notice and really try and implement them effectively. In terms of what the failures were, again, the core thing we would say to really make them a success is getting this definition. We need an internationally legally binding definition that stops six months of negotiations of the Security Council needed to implement the sanctions or to come up with a sanctions regime. After several years of looking at this, that is the only way it is really going

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to be able to deal with it effectively. You need to fund the enforcement mechanisms effectively. There need to be dedicated people on this full time. The Foreign Office have a proposal for a delegated team within the United Nations that will permanently look at the various sanctions regimes and the trade in conflict resources. At the moment this is still being debated, but every time you appoint a new expert panel, you are repeating the work. It takes another six months to get them an office, to get their pay structures in place, and you waste a considerable amount of time.

**Q187 Lord Macdonald of Tradeston:** What are your views on the Extractive Industries Transparency Initiative and its relevance to sanctions?

*Mr Yearsley:* It does not really have much relevance to sanctions except that within the EITI there is a sort of sanctioning mechanism that, again, if you are not compliant with the mechanism, you will be dropped from the mechanism. But because it is a voluntary mechanism, it does not really have teeth, as opposed to the Kimberley process, where you will be thrown out from trading with the main global trading partners.

**Q188 Lord Vallance of Tummel:** Do those who fashion the sanctions policies take sufficient account of the expertise of NGOs like Global Witness?

*Mr Yearsley:* I would say that for the last three years we have actually been relatively well listened to, and that is definitely a major improvement. The Security Council is very open. The majority of the governments that have an interest in sanctions are very open and willing to take recommendations and listen to our views. Obviously, they do not always accept them or take them, but they do definitely take our views on board.

**Q189 Lord Macdonald of Tradeston:** Who funds Global Witness?

*Mr Yearsley:* There are a number of different funders. It is all on our website. From the philanthropic trusts, we have the Open Society Institute, which is George Soros's outfit; the Rausing Trust; NGOs such as Oxfam, Novib in Holland; and some government money from various development agencies, so DFID, USAID used to give us money, but also the Dutch Foreign Ministry, and the Norwegian Foreign ministry, I think. No corporate funding.

**Q190 Lord Layard:** Can I take you back to Liberia and ask, is it better to try and influence the policies of a new government with economic incentives rather than economic sanctions?

*Mr Yearsley:* For the new government, I would definitely say so. Ellen Johnson-Sirleaf has an incredibly hard job to try and bring around the government. She still has a number of Charles Taylor's supporters within the government—not her government; within the legislature—and that is going to be a significant problem. I would definitely say she needs encouragement with economic incentives as opposed to any further sanctions on her attempts at government reform.

**Q191 Lord Lawson of Blaby:** May I just ask one very quick question? You said a key thing in making sanctions effective in your judgment—and you have shown that you know an extraordinary amount—is a more effective monitoring of the enforcement and implementation of sanctions. The United Nations has a very large budget. Is there anything to stop the Secretary General moving some funds from something which is perhaps slightly less important among the many things that the United Nations do and deciding on his own initiative to build up a much greater capacity within the United Nations to perform this monitoring?

*Mr Yearsley:* I think that would be a brilliant idea. If we can encourage the various members of the United Nations to encourage the Secretary General to do so, it would be wonderful.

**Q192 Lord Lawson of Blaby:** He could do that on his own initiative, could he not?

*Mr Yearsley:* He could, but whether he would be allowed to, I do not know. Within what is known as the DPKO, the Department of Peace-Keeping Operations, they are considering having a permanent panel with permanent experts from law enforcement on it, and that would definitely be one way of ensuring effective compliance. I will give you an example of one of the problems in Holland, with a British/Zimbabwean/Dutch arms dealer, who is bringing weapons into the Congo, which is that they have failed to enact the law, which was a UN arms embargo, and literally for a year they have forgotten to implement that legislation within Holland. As a result, they could not take action against him for the illegal activities he carried out during that year. So you have problems of that nature, and then you just have general problems of there not being enough time, capacity or money to be able to monitor these individuals. We will propose it to him.

**Chairman:** Thank you very much, Mr Yearsley, for coming along and answering our questions and giving us a very considerable insight into the problems you have dealt with.

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### Examination of Witness

Witness: MR JOHN HILARY, Director of Campaigns and Policy, War on Want, examined.

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**Q193 Chairman:** Thank you, Mr Hilary, for coming along to answer our questions today. We would appreciate if you would not speak too softly. I believe you have an opening statement, which we are happy to listen to.

**Mr Hilary:** Thank you very much, and can I start by thanking the Committee for inviting me here to give evidence in this way. I thought it would be useful for me just to say a few words at the outset of the context in which I am here to give evidence, because it is a very different context from the witness you have just heard and in fact from other witnesses which I read have appeared before this Committee already. The context of the sanctions and the policy which I would like to address here are in respect of UK aid policy and UK aid conditionality, and it was in that context that last year, in March 2005, the British Government issued a new policy document on the conditions which they attach to British aid overseas and indeed the conditions which lead to the withdrawal or the withholding of that aid, i.e. the sanctions on particularly the poorest countries. I hope this might be of interest to the Committee because it represents perhaps one of the most effective and most biting instances of where sanctions put on a particular government can very much concentrate the minds of the recipient country. I do not know whether now or in response to the first question I could talk through how that policy was developed and the role which War on Want played in working together with the Government on that, but that is very much the context in which my expertise here is.

**Q194 Chairman:** If you can bring that out during the course of questions we would appreciate it. The first question I would like to ask you is about the current United Kingdom policies on sanctions. Are they clear and coherent and is there a proper degree of co-ordination with other international partners, particularly the European Union and the United States?

**Mr Hilary:** Certainly in respect of the policy of aid conditionality, that is, the sanctions which are imposed on developing countries which are recipients of UK government aid, I think we could say that the current government policy is a very good example of joined-up thinking across Whitehall. The policy paper which was issued in March 2005 encapsulating the new policy was jointly sponsored by DFID, the Treasury and the Foreign Office, so it had cross-Whitehall buy-in in that respect. It is articulating three particular types of conditionality, three particular triggers which would lead to sanctions, the first of which was in respect of fiduciary guarantees,

to ensure that the recipients of aid are indeed going to spend that aid money for the purposes for which it was intended, i.e. that the money would not be spirited away into foreign bank accounts or used on military expenditure, *et cetera*, and we fully agreed with that in the NGO community; we agreed that that was absolutely correct. It provides accountability both to the taxpayer in this country and indeed to the citizens of the recipient country. The second type of trigger which would trigger sanctions, the economic policy conditions, was seen to be very harmful by the NGO community. These are conditions which in the past had been attached to British aid, for example, that recipient countries only receive the aid if they signed up to a programme of privatisation of their public services or indeed of trade liberalisation, opening of markets to foreign imports. By and large we saw these to be very damaging conditions, and indeed, to its credit, the Government changed its policy altogether on this and so now the Government has a stated policy that would no longer apply sanctions on developing countries as a result of those countries not following these particular economic policy conditions. The third set of conditions which could act as triggers is much more complex, because these are conditions which are linked to desirable outcomes, for example, the promotion of human rights or democracy. It is fair to say that there was a difference of opinion within the NGO community in this respect. From our side at War on Want, we saw that this was problematical. Though obviously we shared the same aspirations as to the outcomes, to wit, respect for human rights, labour rights and democratic process, we were very concerned with the humanitarian impact of those sanctions on the poor. Put simply, if you are a worker in Bangladesh and you have had your right to freedom of association curtailed by your government, it is actually adding insult to injury to be told that the British Government is going to withhold aid which would otherwise be useful for your wider family. But more problematic, I think, for us is the issue of who is going to be the gatekeeper and the decision-maker as to which countries actually fall into the group which qualify for having sanctions taken out against them, and this comes from when we were discussing this with government officials in respect of this new government policy. They openly conceded that it was geo-political strategic considerations which really led them to choose one country rather than another in terms of the object of sanctions. In that respect, the UK Government, like many other governments, will not be able to act as an honest broker in the imposition of sanctions. Some other NGOs felt quite strongly that the prize of

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enshrining human rights within these conditions was such that, with a sufficient amount of transparency and accountability, it would be possible to move in that direction, but the great majority agreed with War on Want, I think, in saying that that particular element within conditionality was too problematic to allow through.

**Q195 Chairman:** But is there a proper degree of co-ordination?

*Mr Hilary:* I was just about to come on to that. I am sorry that these first responses are a little long but the subsequent ones will be shorter. In terms of co-ordination, the particular co-ordination which is the most important in this respect is with the conditionality used by the World Bank and the IMF. In that respect the British Government took forward its policy to the autumn meetings of the World Bank and the IMF last year in order to set in train a similar process of review. At the moment it is not fully co-ordinated because the World Bank and the IMF still impose a full range of economic policy conditions on developing countries as a condition of receipt of concessional loans or grants. In terms of the EU, similarly the EU continues to impose economic policy conditions and they need to be linked in much more closely with the World Bank and the IMF. In terms of co-ordination on this particular point, no, there is not a great co-ordination. However, what is more problematic for us is where there is co-ordination it is usually a more negative one, for example with many donor countries taking a steer from the IMF as to whether or not recipient countries are on track with IMF programmes and, as a result of being linked in in that way, may make decisions as to whether or not sanctions should be applied against them.

**Q196 Lord Lawson of Blaby:** Can I follow up one thing you said. You seem to support the idea of—this is getting a little bit away from sanctions—sanctions about removal of aid, that is the way that aid will be removed if the aid is being used for weapons rather than, for example, hospitals, roads or whatever. Surely this is slightly bizarre because money is fungible and unless you assume that the country is not going to build a single road or a single hospital or whatever, then, if you provide it with aid, if it is minded to have weapons it will just use the aid for the roads and hospitals and the money that would otherwise be used for that will go on the weapons. I do not quite see how you can make sense of this particular stipulation.

*Mr Hilary:* Definitely. The issue of fungibility was certainly discussed in respect of the policy formation. There are different ways in which aid can be delivered to the individual countries, whether it be through direct general budgetary support, which means the

fungibility is at its maximum potential because it can be lost in any number of budgets, or whether you can have specific sectorally targeted budgeted support or whether, indeed, you remove the aid from government channels and re-channel it through the United Nations or NGOs on the ground. In each particular case the donor community makes its decisions as to whether or not they feel that the substitute effects of your giving aid are just allowing more money to be shifted to the ministry of defence of a particular country, but clearly the issue is a live one.

**Q197 Lord Lawson of Blaby:** On the mainstream of economic sanctions, could you give us some evidence, or do you think there is no evidence, that economic sanctions have been of any value in any country in promoting human rights?

*Mr Hilary:* One of the most recent cases in which the UK suspended direct budgetary support to a country was in respect of Ethiopia last year over the human rights problems around the election when over 40 people were killed by government forces. In June last year the UK suspended £20 million of direct budgetary support which was seen very much as the imposition of economic sanctions. From what we understood from the UN inspectors in that country later on during the year that does seem to have had some effect. Moving, if I may, more generally away from whether the economic sanctions have been of any value in promoting human rights to a more general issue of whether they have an effect, I think in this respect aid conditionality and the economic sanctions which can be applied on some of the poorest countries have been shown to be very effective because many of these countries rely on foreign aid for up to 40 or 50 per cent of their government revenue, the budget requires that level of aid to sustain it. Certainly in the discussions we have had with developing country representatives, they make it very clear that threats even to curtail the aid or, indeed, the trading preferences which they receive are taken very, very seriously in the capitals of those countries concerned.

**Q198 Lord Lawson of Blaby:** What do you think has been the effect of the withdrawal of aid from the Hamas Government in Palestine?

*Mr Hilary:* I think this is one of the issues where War on Want is more specifically focused, so I am very pleased you have asked that. It is quite clear that the suspension of aid to the Palestinian Authority has caused a tremendous humanitarian crisis. The United Nations has spoken of over 70 per cent of the Palestinian population of the Occupied Palestinian Territories as now facing poverty at under \$2 a day. The GDP of the Palestine Occupied Territories is expected to fall by 27 per cent during this year alone

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and the World Bank is saying this is going to be a crisis year of incredible proportions even against the rather grim economic history in that region. I think the example of Palestine also highlights another complex issue in respect of the channels of disbursement of aid, how you apply sanctions, because even though the European Union, including the UK, has said it wishes now to channel some aid through non-governmental or UN channels it still remains that one million of the three and a half million Palestinians within the Palestinian Authority territory rely on government support, whether through their fees as government officials, their pay as government officials, or through other sources. The calculations are that one million of the three and a half million Palestinians are being directly hit as a result of these sanctions. In one own way we were meant to be moving towards smart and more targeted sanctions but this seems to be very much at the other extreme. It also reflects the earlier point that it is very difficult to see how a government like the UK should be in a position to be the gatekeeper of those sanctions. One of the things we have campaigned on very hard is to see sanctions against Israel in respect of the EU-Israel Association Agreement under which Israeli exports to the EU are granted preferential access into the markets of the EU. Article 2 of that agreement stipulates very clearly that respect for human rights is an essential component of the agreement and the UN has called for the agreement to be suspended because of the breach of human rights by Israel. Instead, Israel has been rewarded with a continued set of preferences for its exports while the Palestinian Authority has had sanctions levelled against it. We certainly see that as blatant double-standards.

**Q199 Lord Kingsdown:** You have probably gone a long way to answering this but we talked earlier about economic sanctions as being valuable in promoting human rights. Conversely, is there evidence that economic sanctions of themselves have violated human rights by hurting innocent people? How far has the move towards targeted sanctions in recent years reduced this concern about prejudicing innocent people?

*Mr Hilary:* In addition to the previous response in respect of the Palestinian Authority, I used to work at Save the Children during the years when the economic sanctions regime was in place against Iraq and it was quite clear that there were tens of thousands of innocent children who were being very severely harmed as a result of those sanctions. I think the evidence is quite clear, innocent people can very often find themselves adversely affected by economic sanctions, and that is one of the reasons why in general terms NGOs traditionally have been quite cautious about calling for sanctions. The move

towards targeted sanctions is clearly a move in the right direction in that respect, whether it be the freezing of assets of government leaders or the sanctions regarding their travel, but it seems clear that the targeted sanctions which were brought in in respect of Iraq did not actually lead to a structural change which enabled the problems to be dealt with properly and, as I said, in respect of the Palestinian Authority we have seen what non-targeted sanctions can do there too.

**Q200 Lord Macdonald of Tradeston:** Would you then have been against the sanctions on South Africa?

*Mr Hilary:* No.

**Q201 Lord Macdonald of Tradeston:** And the boycott of South African goods?

*Mr Hilary:* No. What is interesting is that one of the other questions here relates to whether or not there should be recognition of a boycott call coming out from within the liberation movements in the case of the country concerned. I think that does play a key role.

**Q202 Lord Macdonald of Tradeston:** But the liberation movement might not necessarily represent the views of the majority of the people, so how do you make that judgment?

*Mr Hilary:* On a case-by-case basis. As I say, traditionally NGOs have been cautious in respect of calling for sanctions precisely because of this concern about the wider humanitarian impact. There are situations, and the previous witness referred to the case of Liberia, where you might consider that the impact is going to be much less in terms of agreeing with sanctions than actually the impact you would get from not having sanctions. I think that has to be done on a case-by-case basis.

**Q203 Lord Paul:** Do you know of any case, or cases, where you think if sanctions were exercised that would be helpful?

*Mr Hilary:* Certainly we believe that in respect of Israel the time has come for the international community to impose sanctions there. That is specifically in respect of its continued violation of UN resolutions, of international humanitarian law and, indeed, human rights law.

**Q204 Lord Paul:** Do you genuinely believe anybody is moving to that?

*Mr Hilary:* Certainly there has been a growing chorus of voices across the world saying that should be the case. The Non-Aligned Movement, for example, made very clear that it believes the time has come, the UN special rapporteurs on human rights in the Palestinian Occupied Territories have made their

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voice clear, but you do not need me to tell you the resistance and the pockets of resistance which still stop that from being the case.

**Q205 Lord Macdonald of Tradeston:** Is economic engagement through trade and through markets more effective than economic sanctions in promoting human rights?

*Mr Hilary:* I think it can be, particularly if you are looking at some of the poorest countries for which these economic opportunities and preferences which they can gain through the trade preferences to the markets of the West, for example, will be very commanding and important considerations for them. Again, you need to focus on what type of state you will be applying the sanctions to and in that respect it will give a sense of whether or not they are going to be effective. Clearly in respect of Israel, as with South Africa perhaps, the immediate economic effect of sanctions might be less than the moral or symbolic effect, but in each case there will be a different impact.

**Q206 Lord Vallance of Tummel:** Should governments ever ban trade with countries controlled by oppressive regimes, or should decisions about whether or not to trade with countries of that kind be left to individuals or companies?

*Mr Hilary:* I think there are situations in which governments should take that decision. Interestingly, I think the business community has called for that quite strongly itself, certainly in respect of situations like Burma, Myanmar. We have heard from a lot of businesses that they would prefer there to be a strong steer from government rather than it being left up to business on a case-by-case basis. In that respect we would have common cause with the business community.

**Q207 Lord Layard:** To what extent do you think that government decisions on whether to impose trade sanctions on oppressive regimes should be influenced by the views of opposition movements within those countries or in exile?

*Mr Hilary:* I am sorry to make this sound rather relativistic the whole way through but it will be done on a case-by-case basis. If you have three people who call themselves an opposition movement in exile who are calling for it that will obviously have different weight from, for example, Archbishop Tutu calling for sanctions against South Africa when he was living in South Africa, which clearly had much more moral weight to it. I do think that the view of people within the country is extremely important. Certainly for War on Want a lot of our contacts within the trade union movements of individual countries are very important to us as a steer as to whether or not these economic sanctions would be most desirable. In respect of Israel and Palestine, certainly the Palestine

General Federation of Trade Unions has spoken out very clearly to say that even though there may be Palestinians within Israel who would be harmed by economic sanctions it is absolutely right for those sanctions to be imposed now. On the other side there are groups like Gush Shalom, the Israeli peace group, who have also called for specific sanctions to be levied against, for example, exports from the settlements.

**Q208 Lord Macdonald of Tradeston:** What about an oppressive regime like Cuba? Are there any internal groups in Cuba that you would support in sanctions against Cuba?

*Mr Hilary:* Personally not in respect of Cuba. I do not think that the level of international human rights abuse is such as to warrant it.

**Q209 Lord Lawson of Blaby:** Do you know Cuba well?

*Mr Hilary:* I do not know Cuba well in terms of our work as an organisation, though I have been to Cuba. I have some connection with it but I would not say I know it as well as I do other countries. However, that is a decision to be made for individual organisations. Also, at War on Want we do not have a programme in Cuba or partners in Cuba and, therefore, we do not have the same steer as we do in other countries.

**Q210 Chairman:** How far should businesses be involved in sanctions policy and if they suffer financially or otherwise can they be compensated?

*Mr Hilary:* I certainly think that businesses have had a say within the UK Government's newly created policy on economic conditionality and the sanctions through that, and I think that is correct, they should have done. As to whether or not they are compensated where they are damaged by sanctions, I do not feel competent to answer that. I am sure you would get very strong representations from the business community on that. What I do feel is in respect of the Government's policy in this country what we have particularly welcomed is the degree to which they have actually consulted with a broad spectrum of stakeholders. As a result of the new policy brought in in March last year there are guidelines for implementation which were brought in at the beginning of this year and the Government is now finalising its consultation on those. In that respect it is a good example of how open government on these issues can underscore confidence in the whole process.

**Q211 Lord Lawson of Blaby:** The reason I asked you whether you knew Cuba, and you said very frankly that you did not, was because there is a very high level of oppression of human rights in Cuba, very high indeed. You indicated that very often you feel that sanctions are important because of the moral

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statement that is being made. You said this particularly, although you said it in other cases too, in the case of sanctions against Israel, so let us take that as an example. How long do you continue this for? Is there not a danger that since—I do not know but let us say—it is unlikely the government of Israel will change its policy as a result of these sanctions, you have made your moral statement and you have made your signal but the policy does not change. So eventually when everybody gets weary and the sanctions are lifted you are giving them precisely the reverse signal which may not be something that you wish to do. In other words, do you think very carefully about the exit before you advocate imposing it?

*Mr Hilary:* Absolutely. Let me just clarify, when I suggested that it has a moral valence, I was not suggesting that it has symbolic valence only, that one is only hoping to register a note of disapproval. It is very much in respect of trying to build a global movement against a particular country which would start from specifics. We have chosen the EU-Israel Association Agreement because it is a very low level of sanction, all it is actually doing is trying to claw back the preferences which Israeli exports currently

enjoy. It would then move logically from that not to being dropped when it is maybe seen to have no immediate effect but actually to be escalated, as in the case of South Africa where the development of the sanctions went from an arms embargo through to divestment, the cultural boycott and to more general trade sanctions. That is certainly the direction in which we would see it being taken rather than being a level of discontent for a short while and then dropping off. As a more general point, I noticed that one of the key ways in which the academic community has tried to address the issue of effectiveness of sanctions against South Africa has been in respect of how you can measure them. I am not sure myself that all of the impacts of sanctions are necessarily going to be captured by the type of econometric analysis which certainly some of the academic think-tanks see. I suppose that is one of the reasons for throwing out that there are other reasons for which one might advocate a policy of sanctions against a country rather than necessarily seeing those sanctions having an immediate economic effect which leads to immediate behaviour change.

**Chairman:** Thank you very much for coming along this afternoon and helping us with our investigation, we are grateful to you. Thank you.

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TUESDAY 10 OCTOBER 2006

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Present	Kingsdown, L Macdonald of Tradeston, L Oakeshott of Seagrove Bay, L Paul, L	Sheldon, L Sheppard of Didgemere, L Vallance of Tummel, L Wakeham, L (Chairman)
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### Memorandum by the CBI

#### OVERVIEW

1. The Confederation of British Industry (CBI) is the premier voice of UK business, speaking for around 240,000 companies and 150 trade associations. Our membership stretches across the UK, with businesses from all sectors and of all sizes. Through their worldwide trading activities, UK businesses contribute 25 per cent of UK GDP. They are the world's second largest source of foreign direct investment (FDI) and the UK is the second largest recipient of global FDI. We welcome the opportunity to provide evidence to the House of Lords Inquiry on the Impact of Economic Sanctions.

2. The private sector has a critical role to play in society, namely that of wealth creation. By generating jobs and fuelling growth, businesses help to ensure economic prosperity and social stability. In order to maximise their ability to do this, it is essential that governments uphold the rule of law effectively and consistently. However, CBI recognises that there can be occasions when leaders and governments fail to meet their responsibilities and, in extreme cases, even misuse their power against their own people and those of another state. Moreover, instances of global terrorism appear to be on the rise, with risks posed both by individuals and co-ordinated organisations. Terrorism represents a serious threat to global peace and stability, the rule of law and growth and prosperity.

3. Given these dynamics, CBI acknowledges that, in certain circumstances, economic sanctions may be part of appropriate ways of attempting to restore human rights in cases of egregious violations, the rule of law and global peace and security. We note, however, that economic sanctions should never be the first resort. Diplomatic solutions are always preferable and the important role of negotiation should never be underestimated.

4. Where governments deem it necessary to impose sanctions, we believe it is essential to take certain considerations into account:

- Firstly, governments alone must decide if and when to implement sanctions and, where they decide to do so, the aim of these sanctions must be made clear.
- Secondly, sanctions should be applied multilaterally wherever possible.
- Thirdly, where sanctions are instigated, these should be upheld with the full force of the law and properly maintained.
- Finally, CBI calls for the use of targeted or smart sanctions in preference to general economic sanctions. However, we note that whichever form of sanction is adopted, there will inevitably be costs to business and, often, to economic growth potential in targeted countries.

#### SANCTIONS AGAINST STATES

##### *Economic sanctions*

5. Economic sanctions applied by states against other states are probably the most prevalent form of sanctions. States may impose sanctions unilaterally, in conjunction with a group of other states or through a joint policy framework (such as when European Union member states act in concert through the Common Foreign and Security Policy) or multilaterally through the United Nations (through the UN Security Council). In each case, the implementation of sanctions will require ratification according to national legislative procedures. The UK's United Nations Act of 1946 provides an effective method of transposing UNSC decisions into domestic law. This Act has provided a model that other countries have adopted.

6. The UK currently has sanctions in force against several states, including among others, Burma/Myanmar, Iraq, Sierra Leone, Nepal and Zimbabwe. In most cases the rationale for these sanctions appears to be the violation of human rights by governments or governments' failure properly to prevent non-state actors from committing such violations within their territory. A second significant reason is support for or direct or

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indirect sponsoring of terrorists or terrorist organisations. However, there are other motivations for imposing sanctions, including the illegal confiscation of private property, proliferation of nuclear weapons and failure to abide by the terms of international agreements.

7. Governments have an obligation to protect human rights. They are the duty bearers under international law. There needs to be a clear and well-understood principled differentiation between, on the one hand, the objectives and responsibilities of governments and, on the other, those of non-state actors, including business. Business can never be, nor should it be expected to become, a surrogate government. Responsible corporate behaviour has legal compliance as its foundation, but it may also include voluntary corporate responsibility (CR) initiatives over and above the legal requirements and rooted in the principles and objectives of the company. There is a wide range of such initiatives, some of which are global, others are regional or sectoral, or they may be specific to the individual company. Efforts by companies to promote and support human rights should not divert attention from the urgent need for national governments to create the underlying legal framework for protecting human rights and to take action when those rights are denied.

8. We believe the international community needs to help governments to apply national human rights law in a manner that is consistent with their international obligations. This includes effective government-to-government dialogue, international co-ordination and collaboration, and, when necessary, pressure from the international community. Effective action will also require working relationships between governments, business, and other non-state actors to produce as far as possible a co-ordinated approach to rogue regimes or to failed states. CBI supports the current mandate of the UN Secretary-General's Special Representative for Business and Human Rights, which seeks to take forward work on the evolution of modern international law and governance.

9. These issues are particularly pressing in weak governance zones. Characteristics of such zones are likely to include areas of conflict and areas where serious violations of international human rights occur, often in the absence of accountability and with a broad failure of the rule of law. This is very much in keeping with the OECD's definition of weak governance zones and it is one we support.

10. Weak governance zones are not easily corrected by any outside party, including the United Nations and its peace-keeping forces, and normally require the full commitment and participation of all relevant national actors. In most instances where weak governance zones have been improved, it has taken many years of national negotiations and consistent international support. It is likely that different problems in these zones will require specific and different solutions. One size does not fit all and a clear assessment and recognition of the specific nature and dynamics of any issue is vital if progress is to be made towards its resolution. Economic sanctions may not always be an appropriate method of fostering positive reform in weak governance zones.

11. The scope and nature of economic sanctions varies. However, arms embargoes appear to be a very common element in most instances where measures are taken. It is essential that sanctions are applied effectively and their scope very clearly defined. Governments must ensure that restrictions are properly maintained and enforced. Failure to uphold the terms of an arms embargo risks the proliferation of trafficking in small arms and other military equipment and strategic foods. The civil war in Angola has been cited as an example of where this has happened.<sup>46</sup>

12. Comprehensive economic sanctions appear to be rarely used nowadays. This is partly due to a growing consensus that sanctions of this type rarely achieve their desired goals and partly because of the rapidly evolving dynamics of the global economy. UK business believes it is essential that humanitarian considerations be given prominence.

13. Sanctions should never restrict imports of vital humanitarian supplies, such as food, medicine, clothes and other essential equipment. Some commentators have claimed that general economic sanctions may also be counterproductive to the original aim of the sanctions. Since sanctions limit inflows of trade and investment, they can harm growth potential in targeted countries and thereby increase poverty and deprivation. Similarly, there can be considerable challenges in ensuring that, for example, food aid is not misappropriated by governments and militias and diverted from those in need to supplying the army. Moreover, as authoritarian regimes often control the media, propaganda is used to turn a people's anger towards the sanctioning state rather than against the transgressing government.<sup>47</sup> Sanctions can therefore shore up the power base of a targeted government and may actually make change less likely.

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<sup>46</sup> Gary Hufbauer and Barbara Oegg, "Targeted Sanctions: a policy alternative?", February 2000.

<sup>47</sup> Jacob Weisberg and Hal Weitzman, "Sanctions help to sustain rogue states", *Financial Times*, 3 August 2006.

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14. We also have concerns that economic sanctions can have unintended negative effects on third countries due to global supply chains that can be highly complex. The imposition of sanctions, even if concentrated on only one country, can have knock-on effects on other countries and companies which are not directly targeted by these measures. Such countries lose income due to a sharp drop in, or outright cessation of, bilateral trade and investment with targeted countries. This tends to involve countries neighbouring targeted states. Examples include Bulgaria and Romania when sanctions were imposed on Yugoslavia in the 1990s and Egypt and Turkey when Iraq was the target of sanctions. In the past, the international community has provided aid to compensate for this loss.<sup>48</sup> While these concerns may not override an imperative to instigate sanctions, they do reinforce the need for care to be taken when applying economic sanctions.

15. A major concern for business relates to the extraterritorial application of sanctions legislation. This occurs when the sanctioning state claims jurisdiction over the activities of individuals or organisations in another state. Examples include the US Patriot Act of 2001, which permits US authorities to seize funds held by a non-US bank, or the US Iran-Libya Sanctions Act of 1996, which seeks to create US jurisdiction over any company that invests in the oil industry in either of those countries. Legislation of this type clearly causes real problems and raises compliance costs for businesses.<sup>49</sup> The extraterritorial question is, however, not an issue where measures are applied multilaterally (see below).

16. An important question revolves around the degree to which sanctions are effective. To achieve their aims sanctions must have some form of negative economic impact on the targeted country and this impact will have to be substantial in order to lead to change. However, it is impossible to cause such an impact if there were little or no pre-existing economic ties between the sanctioning and the targeted states. For sanctions to be effective, governments with influence over the targeted state should adhere to the sanctions as well. For example, the failure of South Africa and other regional governments to implement sanctions against Zimbabwe has been cited as contributing to their limited effectiveness.<sup>50</sup>

#### *Retaliatory Trade Sanctions*

17. Often neglected from the debate on sanctions are measures that are imposed by states as the result of trade disputes. Most often these are legally authorised through the WTO dispute settlement system as a result of non-compliance with WTO rules. These tend to take the form of raised tariffs rather than outright embargoes. Nevertheless, such sanctions have the same negative effects as other forms of sanctions and, again, should be implemented only as a measure of last resort. These types of sanctions frequently hit domestic companies relying on industrial inputs imported from overseas.

18. CBI notes that trade sanctions can often have a disproportionate effect on certain sectors. For example, the agriculture sector is frequently the subject of sanctions as the effects are felt across the population and food is viewed as a political and strategic interest. This further highlights the need for the impact of sanctions to be carefully considered in advance.

19. There is an extremely high probability that all sanctions will create innocent victims and therefore all other methods of resolving problems should be exhausted before recourse is made to sanctions. Ultimately, trade sanctions run contrary to the spirit of free and fair global trade that underpins global economic prosperity. While sanctions may ultimately be necessary, they should always be complemented by further efforts to resolve problems, particularly through negotiated solutions.

#### SANCTIONS AGAINST INDIVIDUALS AND ORGANISATIONS

20. Targeted sanctions are designed in principle to focus their effects on individuals, political groups or other bodies and thus limit or eliminate the exposure to them of the poorest and most vulnerable sections of the population. The number of targeted sanctions has grown with the recent increase in terrorism. Two forms of targeted sanctions are most commonly deployed bans on travel and restrictions on visas, and freezing of monies and other financial assets.

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<sup>48</sup> Secretary of State for Foreign and Commonwealth Affairs, "Memorandum to the House of Commons Select Committee on International Development", May 1999.

<sup>49</sup> See International Chamber of Commerce, "Extraterritoriality and business", 13 July 2006.

<sup>50</sup> "South Africa will not support Zimbabwe sanctions", *Financial Times*, 4 November 2001.

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#### *Travel restrictions*

21. Even limited travel restrictions or bans to or from a country may still have a humanitarian impact. This is perhaps illustrated by the decision of the UN Security Council not to impose a flight ban on the Sudanese government, which it originally voted in 1996 on the grounds that it could have caused difficulties for relief operations into Sudan. However, restrictions on individuals and organisations have been used in other cases from ex-Serbian President Milosevic to current Zimbabwean President Mugabe and their supporters. Often the greatest impact derives from the symbolic loss of face or legitimacy brought by the sanction. But there is also a degree to which such action can cut off individuals from access to their contacts or business interests.

22. That said, a major challenge is that false passports and visas may easily allow the targeted individuals to bypass the sanction. Furthermore, in some cases such as terrorist organisations, it can be very difficult to identify exactly who to target. Analysis shows that travel bans have very limited success.<sup>51</sup> They are therefore rarely used in isolation but rather as a complementary instrument within a broader set of economic measures.

#### *Financial sanctions*

23. The freezing of financial assets or limiting of access to financial markets appear to have a more limited impact on the general population than travel bans and thus they may contribute more readily to achieving changes in policy. However, there remain two considerable challenges even before implementation. The first is the identification of the funds themselves; the second is that even the shortest time lag after announcing the intention to impose sanctions may be enough for individuals to switch accounts, disguise assets under a different name or deploy other measures to evade the net. Moreover, secrecy does not fit well with the need to build consensus on agreeing sanctions in the first instance. The long-term effectiveness of financial sanctions is thus unclear.

#### *Effects on business of implementing financial sanctions*

24. There are currently approximately 6,000 individual and entity names specified by United States, European Union and United Nations financial sanctions. For business, given the sheer scale of screening involved, applying such sanctions can be a daunting task. The banking sector alone has to search the sanctioned names against a customer base of many millions and an even larger number of customer contacts which result in a transaction. Most major financial institutions operate multiple computer systems, which may require multiple searches and specific technical solutions. Screening usually produces potential matches with sanctioned names, most of which will turn out to be so-called false positives. The investigation of potential matches is both time-consuming and costly. There is also the issue of wrongly freezing assets owned by an individual or entity, which has a co-incidentally matching or similar name. Business will of course comply with sanctions and is ready to play its part in implementing them. As sanctioned names and the sophistication of the financial system increase, we are concerned that the costs falling on business are likely to grow.

25. CBI therefore believes that it is important that the use of targeted sanctions is proportionate and considered, and that governments endeavour to assist financial sector businesses to minimise the room for error by provision of as much detail about the sanctioned individuals or entities as possible.

#### *Businesses in dilemma situations*

26. Responsible business will comply with all sanctions that carry the full force of law, from cessation of trade to monitoring and freezing of financial assets. Dilemmas arise, however, where a business finds itself operating in a country which either has become the subject of economic sanctions or harbours sanctioned individuals or entities. In such cases, there can be calls for a company to disinvest from the sanctioned state or stop paying the taxes which some argue contribute to the maintenance of the sanctioned regime. A number of considerations need to be taken into account in such situations.

27. Firstly, since business is frequently contributing to the welfare of ordinary people—to its employees through jobs, incomes, training and pensions and to its customers through competitive products, services and prices—pulling out of a sanctioned country may well have an adverse impact on the wider population. Secondly, the nature of the business may mean that rapid disinvestment is particularly impractical. This would be the case for the extractives sector, for instance. Thirdly, the extent to which a business is linked to sanctioned

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<sup>51</sup> See note 1 *supra*.

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individuals or entities can be difficult to ascertain. Supply chains can be complex, and individuals can hide their involvement in business activity in order to continue reaping the benefits of their activities.

28. CBI would like to note that it is unhelpful to label as irresponsible a company which finds itself in such a situation, since there may be substantial practical reasons why it remains in the sanctioned country. Moreover, the continued presence of responsible companies in such countries can have a positive effect in terms of supporting parts of the population as stated above, by contributing to influencing attitudes, or by incorporating voluntary initiatives to support and uphold international instruments and standards in human and labour rights. One further consideration is linked to what takes the place of a disinvestment. We would have real concerns that in circumstances where a responsible company is forced to leave a country, a less responsible one—over which sanctioning governments may have no say—will be ready to fill the gap.

29. There needs to be greater recognition of the fact that responsible business can have positive impacts by continuing to operate in such dilemma situations.

#### THE IMPLEMENTATION OF SANCTIONS: A BUSINESS PERSPECTIVE

30. As already stated, CBI acknowledges that sanctions may, at times, be necessary in cases of egregious human rights violations or where there is a real threat to peace and security. However, sanctions inevitably lead to some unfortunate consequences. From a business perspective, therefore, we suggest that sanctions policy be framed within the following parameters in order to minimise such outcomes:

- Sanctions must remain the last resort after all other options to resolve the problem have been exhausted. As governments have the sole responsibility for sanctions, it is important that they make policy decisions only on the basis of the facts available and not for unrelated political motivations. Governments should give effect to their decision by using the full force of law. They should not engage in campaigns against companies urging them to disinvest or use pressure motivated by subjective considerations. The reasons for sanctions must be clearly stated, as well as what is expected of the targeted entity to permit sanctions to be lifted. Thorough impact assessments should be undertaken to ascertain the consequences of sanctions on all parties, particularly the humanitarian costs and compliance costs for companies.
- As the key body responsible for decisions on implementing multilateral economic sanctions, the United Nations Security Council has a critical role. From a business point of view, the multilateral application of sanctions is always preferable, as it will avoid distortions of competitive advantages. This happens when companies based in non-sanctioning states are able to continue trading with countries targeted by sanctions, whereas those in sanctioning states are prohibited. The multilateral application of sanctions also makes them more effective by limiting trade diversion, which is where trade flows shift away from sanctioning states to states that have not implemented sanctions. Unilateral sanctions can have a serious impact on business in the sanctioning country.
- Sanctions legislation must be applied in a comprehensive manner that does not discriminate against particular companies. Politicians must not single out individual companies that have trade and investment ties with targeted countries. Trading and investing in targeted countries does not imply that such companies support the transgressing regime. Indeed, UK companies often maintain higher employment and other standards than companies from countries that are not OECD members. If the former are obliged to disinvest, it is likely that they will be replaced by non-OECD companies, thereby lowering standards.
- The costs involved in complying with sanctions policies can often be quite high for companies. Such regulatory burdens on business should be kept to the minimum necessary to ensure the effectiveness of sanctions. If companies are forced to disinvest, jobs will be lost and growth potential will be limited. Businesses also have obligations to their employees and to fulfil any contractual requirements they have already entered into. Moreover, it can often be very difficult, if not impossible, for companies to disinvest due to logistical difficulties involved in switching sites. These issues should be carefully considered before the imposition of sanctions. Responsible businesses will, however, fully comply with the letter and the spirit of all the legal obligations that pertain to them, including those related to sanctions.
- CBI supports the use of targeted or smart sanctions, as these are specifically designed to target the transgressing entity or individual involved and thereby reduce the humanitarian impacts. They also reduce the costs for business in complying with sanctions. However, even targeted sanctions can cause practical and implementation difficulties for companies. For example, it can be difficult to

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identify individuals targeted by sanctions, as the spelling of names can vary or technical solutions may throw up false positives from large databases. Finally, even with smart sanctions there may be lower degrees of effectiveness than anticipated due to attempts to circumvent them.

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### Examination of Witnesses

Witnesses: MR JOHN CRIDLAND, Deputy Director-General, and MR GARY CAMPKIN, Head of International Group, CBI, examined.

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**Q212 Chairman:** First of all, welcome. Thank you for coming. This is, as you gather, our first meeting since the summer so, whilst I do not expect many of us will be rusty, we might be a little bit. We have two sessions this afternoon so we want to keep going at a reasonable pace. If that in any way inconveniences you and you feel that you have not given us an adequate answer and want to supplement afterwards, we will take the blame for it and we would be delighted to receive it. I do not know whether you want to introduce yourselves or say anything before we start with the questioning?

*Mr Cridland:* I am quite happy, in the interests of time, to proceed.

**Q213 Chairman:** I wondered whether you had any lessons, either general or specific, from the experience of the comprehensive sanctions on Iraq under Saddam Hussein's regime.

*Mr Cridland:* This evidence is probably going to be a bit like Sherlock Holmes's dog that did not bark in the night because the major comment I would wish to make is that we have consulted companies in the CBI membership very carefully to prepare our written and oral evidence and we have not had many examples or many inputs that I think would be tremendously helpful to you. The message from most of our member companies is that the overall sanctions policy is perceived to be working well. The UK government's implementation of it is seen to be effective and it is not causing significant problems for CBI member companies at this time.

**Q214 Chairman:** Do the CBI members feel it is causing or did cause any great inconvenience to the regime in Iraq in the early days, or did it not bother them either?

*Mr Cridland:* The business community scratches its head a little as to the effectiveness of sanctions as an element of public policy. We have some observations on that which you may wish to come on to about the fact, that in the business community's view, targeted sanctions are more likely to be effective and the track record of broad based, general economic sanctions is less effective. The business community in a sense keeps to its natural area of competence which is: is this detrimental to the business interest? Is government failing in the duty of care it should offer

anybody caught up in the consequences of public policy? In those areas in our consultations which we did precisely for this evidence, I can only say that the CBI member companies did not wish to place any major concerns in front of you.

**Q215 Lord Sheldon:** Does British business meet the European Union and the United Nations economic sanctions and, if there are any particular problems, what are they?

*Mr Cridland:* The view of responsible business is that when governments make decisions of high policy it is the job of business to comply with those responsibilities and those international obligations without question. From the CBI point of view, our member companies are keen to ensure that they are in full observance of any legal obligations. I would not claim that was true of every single business in every single situation but I think businesses that may act irresponsibly are very unlikely to want to join a representative business organisation. So, within our membership there is absolutely a commitment to observance with those sorts of obligations. As to the problems that result, I have already mentioned that we feel that targeted, smart sanctions are more attractive than general economic sanctions or sanctions applied too broadly. Just as it is likely that broad brush sanctions may miss their target in public policy terms, so they can have unfortunate, perverse implications for business. If particular companies are caught up in sanctions in a disproportionate way to their competitors here or in other countries, that can occasionally be a problem. Of course you would expect a CBI representative to say that there are always costs related to sanctions. Often those costs are legitimate and appropriate but every time companies are asked to take actions which are economically irrational but are a requirement of state policy then there is a lost business opportunity. There may be consequences for the indigenous population of a country when sanctions are being applied in terms of lost employment opportunities or lost income. There is certainly opportunity cost to business in complying with regulations related to sanctions. One thinks particularly of the increased use of financial sanctions, people appearing on lists with whom businesses are not allowed to have financial dealings. That is quite difficult for

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businesses to police, themselves given identity fraud and other factors of that kind. The predominant message was: we recognise that there will be costs and lost business. If governments make up their minds that sanctions are necessary, it is the job of business to comply.

**Q216 Lord Macdonald of Tradeston:** I wanted to ask about the mechanisms that are currently used by the Government to try and ensure compliance with the regulations for British firms. Are these mechanisms unambiguous and practical? Could they be improved in any way?

*Mr Cridland:* We asked our member organisations quite systematically and carefully about this question, and the offices of state responsible for implementation of sanctions and particularly provision of data, advice and information to businesses came out quite well, both in terms of the Foreign and Commonwealth Office and the Department of Trade and Industry and their various databases and information sources. Business gave those a vote of confidence. Sometimes, of course, other countries party to multilateral sanctions may not always implement their sanctions as fully and effectively as British business perceives the British Government to do. If you are, as British companies increasingly are, a multinational company operating in a number of Member States we do get comments about the effectiveness of other governments but in relation to our own government, for once, the CBI did not have complaints.

**Q217 Lord Paul:** In view of your answer that British companies comply with sanctions, my question might be superfluous, but let me ask it anyway. Are there any instances in which British businesses have had action taken against them for non-compliance with EU or UN sanctions? If so, what has been the nature of such action?

*Mr Cridland:* I think there are no examples that I am aware of in relation to CBI member companies. Clearly, we consult those companies that are members of our confederation. Thinking that this question could well come up, I checked quite carefully as to whether I needed to declare that there had been CBI member companies who had fallen foul of non-compliance. I am not aware of that. I know from official lists, UN lists, that there are sometimes British companies that are on those lists but they are not companies with which I am familiar or are part of my confederation.

**Q218 Lord Vallance of Tummel:** From what you said the UK is probably fairly rigorous in terms of its enforcement of sanctions. Is that true for other countries? If it is not, does that mean that UK business can be disadvantaged? Secondly, do you

think the Government gives sufficient attention to impact assessments which are mentioned in your written report and to the potential unintended consequences for business when sanctions are considered?

*Mr Cridland:* On the first of those questions, I fear we are into that rather grey area of perception and anecdote. It is often the perception of British business that other countries are not as rigorous in the implementation of sanctions and that maybe certain other countries seek to make use of opportunities to promote their own businesses if they know that UK businesses will be asked to disinvest or remove operations. It is therefore a concern of business that, just as we would prefer to see multilateral use of sanctions rather than unilateral use of sanctions, there should be equally rigorous implementation by those who adhere to sanctions. I cannot bring you hard evidence of that, which is why I put it in the basket of perception rather than necessarily fact. In relation to unforeseen consequences, I think this is quite a rich area of debate. It is very difficult. Just as we are unclear and a lot of the academic evidence we have looked at is unclear as to how effective economic sanctions are in achieving their policy intent, to argue that governments know what the impact will be on their own supply chain businesses, is not clear. The impact can be unintended and occasionally quite perverse. The area that we are most familiar with, frankly, is trade dispute related sanctions under WTO procedures, which I appreciate is a specialist area and not your prime area of concern. But I think it illustrates the point, which is that it is quite frequent to find, when there is a trade dispute between nations under the WTO context, a company that has no part in that dispute gets caught up in it. This can be very unfortunate for one part of the United Kingdom because it happens to be on a list of retaliatory measures. For example, at the time of the dispute with the United States over steel, we had pen manufacturers in Birmingham who suddenly found themselves caught up. That sort of unfortunate intent I think government cannot have predicted, but I am not sure it would have been easy for them to have predicted. There is a second aspect which is more intangible but I think in a world of global citizenship and corporate responsibility in some ways even more important and that is the reputation of business. Given that some of these sanction issues are highly politically charged and business is, as ever, desperately keen to keep out of politics and get on with its area of competence, it is quite frustrating for business when it gets caught up in the media spotlight and the reputational damage sometimes is quite unfair. For example, the issue of disinvestment is quite challenging. If we have a perceived rogue state against whom the international community is making sanctions, you may have quite a significant

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household-named British company that has a long held and historic investment in that country. There may well then be a media perception—even, may I suggest, some informal pressure from government—for that company to remove itself from that country. It is not always easy to do that for business leaders in terms of investment, in terms of them being replaced if they go into some sort of asset swap or otherwise by another company—it is not honouring the spirit of these obligations—and its duty of care to its indigenous workforce. What is going to happen to them if it shuts down an operation? Those are the sorts of areas where business can find itself in difficult territory as a result of sanctions but they are again relatively modest effects in the greater scheme of things.

**Q219 Chairman:** There was reference to this in your written evidence, if I remember rightly. You said that the Government should give greater recognition to these sorts of problems. I just wondered whether you could elaborate. What sort of thing would you mean governments might be able to do to give greater recognition?

*Mr Campkin:* What we were thinking of there is to look at some sort of enhanced impact assessment process. In the same way that business takes into account weak government zones or dilemma situations and enhanced managerial care about how it manages its operations, the Government should look at the sorts of issues that Mr Cridland was referring to as part of its impact assessment. We are not clear whether that is done with any real rigour at this moment in time. This is an area which is perhaps rich to look at and explore to ensure the full impact of such measures is recognised as well as the opportunity costs of imposing them.

**Q220 Lord Sheppard of Didgemere:** I am talking as an erstwhile CBI member rather than as a member of the Committee, so if I am being too personal the Chairman will interrupt. I wonder if, in attempting to prove how compliant the CBI are with sensible government policies, you are giving the impression that there are no cost penalties for business, particularly of wrong sanction policy, and whether there is any form of compensation or whether there should be any form of compensation. If this is your deliberate aim, no problem, but you seem to be very relaxed that it works okay and does not affect your members too much.

*Mr Cridland:* It is probably unusual for a CBI spokesman not to be claiming that there are significant regulatory cost burdens and I do not mean that point flippantly because clearly it is an area we look at with great care. I think there is an aspect of this which is about the moment in time. If you look at the list of countries where British business is

apparently honouring multilateral sanctions, there is a list of countries predominantly where we have relatively modest trade contacts. There have been times in the past where that pattern would have been very different. If we had had this discussion and we had done this consultation at some times in the past, there would have been a much greater level of business concern about sanctions issues. If one went back 20 years, for example, when Mr Campkin and I were both still involved in this element of policy, clearly the debate about South Africa was a debate in which the business community had very strong views on appropriate matters that you relate to. We were consulting on the immediate, the situation as it is. I checked with my own officers very carefully on this. I do not come to you with specific examples of cost pressures which businesses believe are disproportionate. I do not think my membership would have wanted me coming forward with examples. The nearest I have to an example is the one I have already mentioned: that there are parts of the financial services community who highlight, without criticising, the opportunity cost and the administrative burden of dealing with identity tracking in relation to individuals who are on sanctions lists to do with their own financial circumstances. I think there are something like 6,000 individuals internationally that, as a result of sanctions related to antiterrorism or human rights abuse, are on UN related lists. Our member companies in the financial sector do find it difficult and costly to do their own element of policing of that, but that was a single example in this consultation. The tone Mr Campkin and I have taken is the one that our members mandated us to take, but we did not necessarily get the response to this consultation that we might have expected going into it.

**Q221 Lord Sheppard of Didgemere:** Specifically on the question of what the financial cost is, it would not be very much from what you have said?

*Mr Cridland:* It is certainly not something we could record and, to the extent that it exists, business concentrated on the intangible cost, the opportunity cost. That is always difficult to model, the cost of lost business opportunity, the cost of diversion of management time. That was the area that received some comment rather than direct costs.

**Q222 Lord Sheppard of Didgemere:** Compensation therefore does not arise?

*Mr Cridland:* Compensation did not arise in our consultation.

**Q223 Lord Kingsdown:** How do the sanctioning authorities inform British businesses of their regulations and their actions? Are these notification



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procedures adequate? Do the regulators themselves follow their own procedures?

*Mr Campkin:* The most comprehensive list of sanctions is available from the Foreign and Commonwealth Office and they maintain a comprehensive website. There are also lists, when they are applicable, related to trade sanctions and export controls available from the DTI or the DTI website. As you will know, the Bank of England maintains its website and records on sanctions related to its area of competence. Our companies therefore believe that they have all the information available to them. In addition, the Foreign Office has a subscription service which alerts companies that wish to subscribe—it is just a question of notification of a name—to new sanctions and new measures that are put in place. Our view is that authorities do as much as possible to communicate with business requirements under the law in terms of their responsibilities to sanctions legislation.

**Q224 Lord Oakeshott of Seagrove Bay:** How much of a problem are American extraterritorial sanctions for British businesses? Have penalties been imposed or threatened by the American authorities to ensure this extraterritorial application? What have our responses been and can you give us some examples? We have had evidence, for instance, that surprised me and maybe other Members of the Committee at a previous meeting that the American authorities imposed an \$80 million fine on ABN-Amro for doing business in Iran, but that did seem quite indirect. Could you say how you see this problem?

*Mr Cridland:* Having given answers which have suggested that business is broadly comfortable with the sanctions regime, if you want to get leaders of British business quite passionate about this debate, you mention extra territoriality and the operations of the US Government. It is a particularly timely concern, I think, related to other matters. I am thinking of the extradition question and how the two issues potentially overlap. Here, there is a concern that is based on principle. There are indeed practical implications and those are significant but it is the principle that business in Britain finds offensive; that the US administration should seek to apply congressional law requirements on non-US companies operating in third countries outside the US. In our evidence we mention two particular examples: the US Patriot Act 2001 and what that has done in relation to banking and, slightly older but I think still topical, the Iran-Libyan Sanctions Act 1996 in relation to the oil sector. In practice, both of those pieces of US legislation have been policed by the US authorities in quite a sensitive way. We often find—and this is a reflection of the US political system—that, with the division of responsibilities between the legislature and the executive, we have

these significant pieces of statute which reflect the strength of political view on the Hill and then the US Administration seeks to ameliorate the effects, particularly when they are working with friendly countries. It is a point of principle that business is concerned about and it is a strong concern. As to the practical implications and real life examples, can I turn to my colleague?

*Mr Campkin:* You did mention the Iran-Libyan Sanctions Act and it is an issue that I know a fair bit about. We were very heavily involved when Congress was putting the Act together. Together with our American business counterparts we lobbied very hard against the extraterritorial elements of it. As you can imagine, US business would not want to see extraterritorial outreach replicated and faced against it. In principle, there is no difference between us and, as Mr Cridland said, what we have found is a situation where Congress mandates a law to be implemented and the Administration has used a certain amount of discretion under the law to ensure that it does not negatively impact on its international relations. Extraterritoriality, we believe, is back on the increase and this is a grave concern for a business community, like ours which is so international. We will continue to resist and point out that extraterritoriality is bad policy-making.

**Q225 Lord Oakeshott of Seagrove Bay:** What should we do about it? If it is a wrong law, it is a wrong law. If it happens to be being sensitively applied at the moment but governments change, people are uncomfortable. I speak here as one of the people who signed the original Nat West three advertisement. It raised very serious questions. It is interesting that you say that American businesses are equally concerned. On a European-wide basis perhaps we should start a bit of extraterritoriality too. It is all very well to moan but how would you see you practically doing something about it? It is an American attitude, is it not, that basically other people's laws do not count and only American ones do? That is essentially what underpins all that.

*Mr Campkin:* Yes. It is a principle that we should continue to resist whether it is in the United States or elsewhere. The Protection of Trading Interests Act here in the United Kingdom was a piece of legislation brought in specifically to deal with pieces of foreign legislation which were difficult for British companies and individuals to comply with. It is an offence in UK law to comply with another country's piece of legislation in this area. There are ways of dealing with this which avoid a spiralling tit-for-tat of extraterritoriality.

*Mr Cridland:* The whole tenor of our comments on government policy in relation to sanctions is that sanctions should be a last resort; that disputes of this kind should seek to resolution through diplomacy

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because sanctions often do not have the results and consequences that were intended for them. Business always seeks to de-escalate rather than escalate differences. There is a head of steam and a significant concern about extraterritoriality. There are aspects of US policy in relation to the British business community which British business is deeply uncomfortable with. We have made and will continue to make representations to our own government but, in the spirit of this submission and in the analogous way, we would want those matters dealt with without recourse to tit-for-tat policies because business loses.

**Q226 Chairman:** Is it possible that you could let us have sight of any representations you made to the Government on this if you think they are relevant to our inquiry, because that would be helpful to us. I can see why you want to do it the way you want to do it, but we would be very interested in knowing what you think the Government ought to be doing to help you.  
*Mr Cridland:* We will do.

**Q227 Lord Sheppard of Didgemere:** A complicated aspect of that is many multinationals would want to make representations in America to the American Government, as well as to the British Government, on some of these subjects. Do you find yourselves caught in the middle sometimes?

*Mr Cridland:* We operate a Washington office so we make representations to the American Government directly.

**Q228 Chairman:** In the written evidence that the British Exporters' Association gave to us, they referred to the significant negative effect on British

exporters if the country subject to the sanctions is allowed to call bank guarantees provided by British exporters in support of their sales contracts with that country. That does sound a problem. Have the CBI had any experiences of that? Are there any examples that you could give amongst your members that you know of?

*Mr Campkin:* I cannot. I am aware of BEXA and its particular concerns in relation to the way in which export finance is conducted, but I am afraid that is a level of technicality beyond my expertise. We can certainly look into that further and provide you with follow-up if you wish.

**Q229 Chairman:** There could be some serious implications and it would be interesting to know if there are examples that we could pursue in that area.  
*Mr Campkin:* We will look into that.

**Lord Kingsdown:** I may be wrong but I have at the back of my mind somewhere that we have had somebody saying the sanction can include forbidding the calling of bonds in these circumstances, or guarantees, because after all it undermines the sanction to a great extent if, as a result of doing it, there is potential financial compensation to the sanctionee.

**Q230 Chairman:** Are there any specific or general changes you would like to see made to the management and operation of UK sanctions policy?  
*Mr Cridland:* No, my Lord.

**Chairman:** The quality of your answers improved as you went along. If all the witnesses who came to us were as clear and precise in their answers as you were, we would find our task a lot easier. We are extremely grateful to you for coming along. Thank you.

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### Supplementary memorandum by the CBI

1. CBI has consulted its members over a specific point raised during oral evidence before the House of Lords Select Committee on Economic Affairs on 10 October 2006. This relates to the effect of sanctions on bank guarantees or bonds.
2. The issue was considered to be a potential problem in connection with the UN sanctions related to Iraq. This arose because bonds were not originally included in the UN list of frozen assets. In effect, the situation could have led to those guarantees or bonds being called in by the sanctioned country and there could therefore be concomitant losses on the exporter, the banks, the insurance industry or all three. We understood that these circumstances did not lead to actual loss as the UN list was amended by an Addendum in short order.
3. CBI therefore believes that it is important to ensure that guarantees and bonds should automatically be included on such lists if similar circumstances arise in future. This will provide a safeguard against the sanctioned country or sanctionee benefitting from sanctions by being able to call in bonds.

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### Examination of Witness

Witness: MR JOAKIM KREUTZ, University of Uppsala, examined.

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**Chairman:** Mr Kreutz, you are extremely welcome to the Committee and you probably were listening to the CBI witnesses earlier on. You are probably experienced in dealing with these things but even if you are not you will realise exactly what we are about. We will try to be brief in our questions and perhaps you could give us answers that are as brief as is reasonable. Obviously what you have to say is of great particular interest to us.

**Q231 Lord Sheldon:** When the European Union does freeze assets, it affects very small sums of money in total, but the numbers of people and organisations that deal with them are very large, up to 20,000 I understand. Are these asset freezes really successful?

*Mr Kreutz:* It depends on how you look at success in this case. Most of the effect of these small freezes is not so much that they manage to freeze a lot of assets but that they stop people from investing in Europe, from adding assets into the European market or the world market. That is probably a more useful way of doing it. Also, the fact that these persons and organisations are publicly named is a very important symbolic signal for them, that they are sanctioned. The reason why so few assets are frozen is because it is difficult to impose without these persons or organisations at least suspecting that it is about to happen. Quite often they have acted. The first time this measure was used in the late 1990s when the UN froze assets, for example, against the Charles Taylor government in Liberia; it was very effective because it was unexpected. Now they know that this is an instrument that is being used so they usually remove their assets. It is more preventing them from returning to the markets than freezing the money they have.

**Q232 Lord Sheldon:** The threat of a freeze is an effective way of doing this, is it?

*Mr Kreutz:* It has shown that it has a lot of impact. The people who have their assets frozen are very aware of it. They are very annoyed by having their assets frozen. A recent study by some colleagues of mine shows that in Liberia and on the Ivory Coast these people changed their behaviour after they had their assets frozen, after they had these procedures taken against them, so it seems to have an impact, even though it is not a lot of money.

**Q233 Lord Macdonald of Tradeston:** What are the EU's mechanisms to decide which persons and groups should be on the list of those subject to financial sanctions? Are there adequate processes of review and appeal? Are there any examples of appeals, successful or otherwise?

*Mr Kreutz:* This is one of the issues that have started to become a problem recently. Most of these people are listed by the UN rather than the EU. Then the decision is made by the UN Security Council and the EU simply implements it. There has been some criticism of the UN handling of this because what they do is that one of the members of the Security Council puts forward a name and says, "This person or organisation should be placed on a terrorist list, on a sanctions list", and the rest on the Security Council have two days to appeal or argue otherwise. Most of the information used for making the case is also classified information, so it is very difficult to know exactly why these people are on the list. For the cases where the EU has imposed specific measures, it is one of the things that I think you should ask the Commission when they come here because it is very unclear. The decision is made by the Council and the Council's decisions are prepared by the Commission and the specific sanctions group in the Council permanent administration. Exactly how those decisions are made, how those lists are drawn up, is unclear. They have no public minutes of their meetings. With regard to appeals, there is a number of cases against the UN measures in Europe. There are two Swedish citizens, for example, who are still fighting a court case and I think there are around 15 different cases that so far have not been settled. The only case I am aware of where a specific EU measure has been appealed against is when in 2001 the UN Security Council imposed sanctions and obliged Member States to implement anti-terrorism measures, but they did not provide a list of against what groups. That was up to countries to come up with themselves. One of the groups that the EU listed was a Basque youth organisation called SEGI. They appealed against being listed and appealed to the European Court of Human Rights, who threw out the case because, by being on the list, they had not made a violation of any European human rights. No actual measures had targeted them at the time. They also appealed to the European Court of First Instance, who found that there were no courts where this should be fought, either at national or European level, so the question about the appeal procedures, both for the UN system and for the EU system, is something that needs to be improved.

**Q234 Chairman:** Is that because there seem to be people being put on the list for which there appears not to be evidence, or is it that there are a lot of people who are not on the list who ought to be on the list?

*Mr Kreutz:* I think it is that it seems like people are on the list without any clear evidence.

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**Q235 Lord Paul:** The EU suspended its aid to the Palestinian Authority when the Hamas-led government was formed. Do you think that there is any hope or prospect of influencing the formation of a Palestinian Authority which renounces violence, recognises Israel and accepts previous peace agreements, or does it make the position of the hardliners stronger?

*Mr Kreutz:* In this case unfortunately the suspension of aid to the Palestinian Authority was not the best solution at the time because, even though the Hamas Party should have been targeted for sanctions, going through the Palestinian Authority meant that the EU signalled disapproval of what seemed to have been a free and fair election and decreased the credibility of the EU both as a promoter of democracy and as someone willing to play an important part in solving this complicated situation. I think, unfortunately, so far it has probably led to more success for the hard-line elements in the Palestinian Authority rather than the other way around.

**Q236 Lord Vallance of Tummel:** The EU has tried to compensate for withdrawing its aid to the Palestinian Authority by providing aid directly to the Palestinian people. From a practical point of view, do you think that has worked in minimising the humanitarian effects?

*Mr Kreutz:* It has definitely worked to help minimise the humanitarian effects. I do not know if it has minimised it but from my point of view it seemed like the EU, realising the effect of the freezing of aid, realised that they could not just take back the sanctions they had just imposed or, in this case, frozen aid to the Palestinian Authority. A way of trying to channel aid through other organisations is a good step, it is better than nothing, even though I think it came about as a result of that poor first decision. It would have been better if, for example, they targeted the Hamas leadership rather than the Palestinian Authority, because then the sanctions would have been on Hamas and it is Hamas that is the problem that should be targeted. The Palestinian Authority should have been allowed to work. It is difficult to know what will happen in the future with this. There is a risk by building up other structures for channelling aid from Europe into Palestine that means that it could decrease the ability for the Palestinian Authority to become a more stable part because now you get different power centres of people getting resources, or groups getting resources. That is just speculation, it is difficult to know.

**Q237 Lord Vallance of Tummel:** Do you think that there should be targeted sanctions anyway against Hamas?

*Mr Kreutz:* I think so.

**Q238 Lord Vallance of Tummel:** The two are not mutually exclusive.

*Mr Kreutz:* No. It would be better to keep supporting the Palestinian Authority in the same way that it was being supported before because the elections were free and fair and the Palestinian Authority, as an organisation, has not done anything wrong. The Palestinian people have voted but, of course, Hamas has this policy against Israel and a more useful way would have been to target Hamas leaders and force them. We do not know what would have happened when they came into power, maybe they would have been forced to moderate their policies to be able to govern. From what I have heard, the Palestinian people did not vote, at least not exclusively, on the basis of the policy vis-à-vis Israel; it was more a case of Fatah being corrupt and they wanted someone else that could provide better social welfare in the territories.

**Q239 Lord Sheppard of Didgemere:** Can I take you to a different part of the world and talk about Burma and the EU sanctions. The view seems to be very strongly that the sanctions are ineffective and that they should be stepped up and intensified in some way. Alternatively, they are not achieving their basic objective and are doing harm to the ordinary man in the street, or the man wherever, in Burma and there are other ways of achieving regime change or reform of some type. Can we have your views on that part of the world?

*Mr Kreutz:* Unfortunately, on the sanctions on Burma, both the UN and the EU and American view is that they only take into account the democracy movement and the imprisonment of Aung San Suu Kyi and the repressive government, but there are a number of conflicts in the country that are not yet solved, some are hardly active and some are active still. It is probable that to find a solution there is a need to incorporate everything that needs to be solved at the same time. Unfortunately the government in Burma, when the sanctions were imposed, and at least during most of the 1990s, sought to isolate themselves from the world and the sanctions made that easier. Now there seem to be at least parts of the government that are trying to make contact. They have lots of contacts with China, India and Thailand and so forth. I do not think that the EU sanctions are bad, they make sense because they are very specific and they are targeting a specific part of Burma. Unfortunately they are not being effective because China, India and Thailand especially are very interested in interacting with Burma. I think that the key for those sanctions to become more efficient is to provide some sort of incitement list where the government will know, "if we do this, this sanction

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will be lifted". Maybe it would be possible to de-list some of the companies if they choose to work with local partners or if they choose to have some sort of sustainable development in natural resource extraction. As it is now, the problem is that not only does Burma not seem to care too much about having been sanctioned by the EU, it is also very hard to get any information out of Burma about what is going on. The sanctions regime makes sense as it is but there is also a need to specify what steps can be taken by the Burmese government to ease the sanctions. I do think that, for example, the arms embargo should not be lifted in the foreseeable future, but maybe some of the economic sanctions may be partially lifted on a project-by-project or company-by-company basis.

**Q240 Lord Sheppard of Didgemere:** So what would be your solution? Should there be more discussion and should it be shifted up the agenda?

*Mr Kreutz:* Two parts of the sanctions are very efficient. One is the fact that the EU is constantly complaining about the Burmese government in all its relations with ASEAN which is very good because that brings them a lot of political cost; they think that is really annoying. That is one version that works but the problem is if I was a General in Burma I would not know what to do to have the sanctions lifted even slightly. I think removing them and pretending, now 15 years has gone, we do not care about the issue of not accepting an election result would be a very bad decision indeed. I think the sanctions should continue, there should be some sort of communication saying, "This is what we want to be able to start lifting it". One of the things should be that they finish writing the constitution which back then was a precondition for them to hand over power to the democratic government and see what can be done step-by-step.

**Q241 Lord Kingsdown:** The EU travel ban and asset freeze on leading officials from Belarus and Zimbabwe—on government officials from those two countries—appear to be examples of sanctions designed to symbolise disapproval, impose costs on those officials and almost to advertise the EU's commitment to democratic values. Do you see these sanctions as being worth anything more than nothing?

*Mr Kreutz:* Definitely. One of the important aspects of sanctions is the use of sanctions as a signal, as a symbolic value, as a public list of people, countries, governments, groups that are disapproved of because of certain policies or certain actions. It works in many cases to such an extent especially if the people, like in these two cases, are government officials because they want to be able to visit Europe and gain political credibility from having these kinds of contacts, they want to be able to travel to Europe for shopping trips

or whatnot. Vice versa, China is extremely disappointed and disapprove of the fact that they are still on the EU sanctions list with an arms embargo because they feel they should not be treated the same as the Sudan and all of these rough states. The symbolic value is very high. One of the more interesting research findings in the last couple of years with regard to sanctions is that it seems the threat of sanctions is more effective than the actual imposition of sanctions. The argument goes that if you threaten sanctions and the target complies then you have achieved something. If the target decides that they are not threatened by this then the imposition of sanctions is less likely to succeed because they have already decided that they do not care so much about it.

**Q242 Lord Kingsdown:** Can you point to any cases where the imposition of sanctions on individuals like this has actually resulted in a change of policy or a change of attitude by them?

*Mr Kreutz:* The Libyan sanctions are a case in point. That definitely was an important part of why they changed their policy.

**Lord Kingsdown:** There are not many, quite honestly?

**Lord Sheppard of Didgemere:** There was South Africa on a much wider scale when the way they were governing became unacceptable.

**Chairman:** I think we ought to make it into a question.

**Q243 Lord Oakeshott of Seagrove Bay:** Commodity sanctions: the EU has been involved in things like diamonds and timber with the aim of conflict prevention. What do you make of that and of the EU's new Action Plan for Forest Law Enforcement, Government and Trade on illegal logging?

*Mr Kreutz:* It is difficult because commodity sanctions are very efficient if they are a UN sanction, so it manages to close the entire world market and it manages to be implemented through monitoring close to the actual target country. If the EU used commodity sanctions unilaterally, it would have to pick commodities where the European market is very important for it to have an effect, otherwise the target country could just sell to someone else. It is important to get very wide backing for these types of sanctions. If they do get that backing they will be very efficient, especially -going back to Liberia and Sierra Leone- on things like timber, because it is a lot harder to smuggle timber out of a country than it is diamonds, for example. In the case of diamonds, it had another side effect and that was the diamond industry started to propose a certification scheme to avoid selling diamonds from conflict countries. It made it more difficult for the parties to use these commodities to finance their struggles. It is difficult

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for just the EU to act on the basis that the EU can only police its own borders, it cannot go and implement sanctions on the border of Liberia unless they get invited to. I think the EU timber sanctions are similar to the Kimberley process on diamonds. It is a good step and is something that could be useful and it will make it easier in the future to implement these types of sanctions because there will be procedures for marking where the timber comes from, so it will be easier to implement EU sanctions as well as UN sanctions. Otherwise that is more of a general plan that is a good development but will not necessarily have a lot of impact on the sanctions agenda.

**Q244 Chairman:** How well co-ordinated are the EU and the United States in relation to sanctions? How effectively does the EU deal with the questions that we were discussing with the CBI, the US extraterritorial sanctions?

*Mr Kreutz:* I should start by saying I am not very well read on this issue. I looked into it when I was reviewing the EU sanctions on the US and that has worked as a deterrent. Generally there have been a few cases where there have been arguments about whether EU companies should be subjected to the US sanctions, but otherwise both parties seem to have come to a general agreement that we do not really take up the issue. To avoid counter-sanctions they avoid it and European companies are allowed to conduct trade with Cuba and a bunch of places under US sanctions.

**Q245 Chairman:** Another way of avoiding it presumably is if the sanctions policy of the US and the EU were pretty well the same. Are they well co-ordinated, do you think?

*Mr Kreutz:* Sometimes. Both parties have constantly tried to co-ordinate and impose similar sanctions but when there is disagreement that has not stopped the US from imposing sanctions unilaterally and it has not stopped the EU from doing it, and the EU has refused at times. It is part of the discussion but historically it has not been very close co-operation. Maybe it is different now that they have the standing group for sanctions in the Council Secretariat.

**Q246 Lord Paul:** You mentioned in an earlier answer to a question that the threat of sanctions is more effective than the sanctions themselves, but if you carry that out once or twice that is the end of the threat also. Do you not think it would be better to start thinking all over again whether sanctions are a subject to be talked about or we should find some other solution?

*Mr Kreutz:* Sanctions are a useful measure to have as a possibility and, of course, to be able to make a credible threat you need to have some sanctions in

place, otherwise no-one will believe you. It is a fairly immediate response. Especially the more symbolic measures usually can be implemented fairly quickly. It can have an impact and it does have an impact often even though the impact may not be the one that was originally envisaged. It is definitely the way to go to be moving towards more targeted sanctions and the fact that there is more detail in the decisions made by the UN and the EU: "This is what the sanctions are for. When you stop doing this we will lift the sanctions". Usually the fact that they are under a time constraint and it can be lengthened from time to time is a better use of it than previously.

**Q247 Chairman:** You made the same sort of argument about the freezing of money, did you not? You said in answer to Lord Sheldon that the fact is that the effectiveness of freezing money- which was not too much other than it being frozen- was that people realised that if they had sent their money it would be frozen, so they were not able to send it, so they were stuck wherever they are with money they would like to invest. It is very hard to make it perhaps but that is part of the argument that you were presenting?

*Mr Kreutz:* Yes.

**Q248 Lord Macdonald of Tradeston:** Related to that, you talked about the potential potency of the threat as against the removal of incentives once the implementation is in place. Does that argue for trying to create a process of a phased increase in the threat of sanctions, in the intensity of the sanctions, through negotiation, so that you can start with forms of mild sanctions and then threaten more severe ones? Is this a process that is used in discussions with states so that you can get it to a level where they decide "Yes, that will hurt" and they will comply?

*Mr Kreutz:* Yes, definitely. The EU was one of the first actors to have this kind of approach during the Kosovo war in 1998-99 where new measures were added and measures were removed almost on a weekly basis as the attempts to negotiate were going back and forth.

**Q249 Lord Macdonald of Tradeston:** I just thought that in your answer there was a certain implication that this should be institutionalised as a kind of escalating process in each dispute.

*Mr Kreutz:* Possibly. It is difficult to institutionalise because different measures have different impacts in different circumstances against different actors and different targets. The importance of what has become very much the focus during the last five years is that it has shown the important thing is to look at how well the sanctions are implemented, so there is a lot of work and resources pooled into improving how to report breaches of sanctions, how to monitor and so

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forth. It is important that this process, which of course is very important, should exist side-by-side with a process of looking at what happens with the policies, because quite often so much of the discussion on sanctions has become technical: "This is what happens if we implement it here. How can we better implement it?" A lot of it has to do with assessing whether the sanctions are having an effect. Quite often sanctions cannot be used as a means where we add sanctions and then expect the other

government to resign from power voluntarily. It is not a magic cure like that, it needs to be built up in steps that are apparent from the start.

**Q250 Chairman:** Thank you very much indeed, you have been very helpful to us. We have appreciated you coming and giving us evidence, thank you very much.

*Mr Kreutz:* Thank you for having me here.

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TUESDAY 17 OCTOBER 2006

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Present	Kingsdown, L Lamont of Lerwick, L Lawson of Blaby, L Layard, L Paul, L Powell of Bayswater, L	Sheldon, L Sheppard of Didgemere, L Skidelsky, L Vallance of Tummel, L Wakeham, L (Chairman)
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### Memorandum by the European Commission

#### OVERVIEW: THE ROLE OF THE EU IN SANCTIONS

1. Since 1993 the Treaty on European Union (TEU), one of the basic texts of the European Union (EU), has provided for an EU Common Foreign and Security Policy (CFSP). The Council of the European Union (hereinafter the Council), consisting of representatives of the 25 Member States of the EU, defines this policy. Proposals may be initiated by a Member State, the European Commission or the High Representative for CFSP.
2. Restrictive measures or sanctions are a very high-profile instrument of the CFSP. Under the TEU, the Council can decide by unanimity to impose a new sanctions regime. This typically involves a Common Position.
3. Some restrictive measures, notably those relating to trade in goods and services, and financial sanctions (ie sanctions which affect the movement of capital and payments) are consistently implemented by means of legislation under the Treaty establishing the European Community (TEC). In accordance with Article 301 TEC, the Commission therefore makes proposals for Council Regulations which will be directly applicable in all Member States; these proposals are approved by a qualified majority of Member States.<sup>52</sup> Only in very limited circumstances (“... as long as the Council has not taken measures for serious political reasons and on grounds of urgency”)<sup>53</sup> may a Member State take unilateral measures as regards financial sanctions. There is therefore a very significant EU legislative component to the great majority of sanctions regimes in force in the UK (or indeed any Member State).
4. Some aspects of sanctions regimes must however be implemented by national legislation in the 25 EU Member States. This applies in particular to arms embargoes (prohibitions to export arms and military equipment) and restrictions on admission. Moreover, each Member State is required under Community law to lay down the rules on penalties applicable to infringements of the provisions of Regulations adopted in accordance with the TEC.

#### EU SANCTIONS POLICY AND PRACTICE

5. The EU collectively implements all binding UN sanctions, through a CFSP Common Position and a Council Regulation for aspects which fall under Community competence, with national legislation required to implement the other aspects. In some cases, the EU has chosen to go beyond the UN requirements and has taken further action to strengthen the sanctions, eg by supplementing an arms embargo by a ban on financing and financial assistance related to arms and military equipment.
6. If there is no binding UN decision to apply sanctions, the Council may decide to apply autonomous sanctions, in particular in support of efforts to fight terrorism and the proliferation of weapons of mass destruction, or in order to promote democracy, the rule of law, good governance and respect for human rights in third countries.
7. In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the Common Position. The specific objective of the sanctions should be stated in the Common Position, but in any event the sanctions should not have an economic motivation. Sanctions targeting international terrorism are of a preventative nature, with the intention of helping to prevent the financing of terrorism.

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<sup>52</sup> In certain cases, the so-called triple legal base (Articles 60, 301 and 308 TEC) is used for sanctions Regulations, which requires that the Council consults the European Parliament, and adopts its decision on a unanimous basis, acting on a proposal from the European Commission. There is as yet no case-law of the European Court of Justice on the exact scope of Article 301 TEC and the need to use the triple legal base.

<sup>53</sup> Article 60(2) TEC.



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8. There are currently some nine EU sanctions regimes implementing UN Security Council Resolutions adopted under Chapter VII of the UN Charter, and some 12 autonomous EU regimes. An indicative summary of measures found in current Common Positions and Regulations as of mid-September 2006 is annexed at Annex 1.

9. Of these 21 regimes, 16 have implementing Community legislation, ie Council Regulations. That is, these 16 sanctions regimes include measures affect trade in goods and services and/or the free movement of capital.

#### THE ROLE OF THE EUROPEAN COMMISSION

10. The European Commission is the executive body of the European Community and is fully associated with the work carried out in the CFSP field (Article 27 TEU). The Commission attends all relevant Council working groups and committees. The External Relations Directorate-General of the European Commission is responsible for:

- (a) co-ordinating the Commission's input in the CFSP,
- (b) preparing the necessary legislative proposals of the European Commission in accordance with the TEC,
- (c) initiating the European Commission's legislative implementation of Council Regulations on sanctions, and
- (d) initiating procedures against Member States in case of consistently incorrect application of such Regulations.

11. The European Commission's website provides:

- (a) a general presentation of sanctions as a CFSP instrument:  
<http://ec.europa.eu/comm/external-relations/cfsp/sanctions/index.htm> and
- (b) an overview of sanctions legislation (Common Positions and Regulations) in force:  
<http://ec.europa.eu/comm/external-relations/cfsp/sanctions/measures.htm>.

The European Commission also provides, as a service to EU citizens and businesses required to apply EU financial sanctions, an electronic consolidated list of all of the targets of such Regulations, which can be consulted at and downloaded at:

<http://ec.europa.eu/comm/external-relations/cfsp/sanctions/list/consol-list.htm>.

#### GENERAL EU SANCTIONS DOCUMENTATION

12. The EU has in recent years undertaken considerable work to increase the consistency of its sanctions regimes, to develop standard language and standard exemptions to measures, and thus to increase the speed of adoption of new regimes, to reduce the costs of implementation borne by economic operators, and to provide guidance for those implementing sanctions (ie officials and economic operators) and those affected by sanctions alike.

13. The European Commission draws the Committee's attention in particular to the following three documents:

- *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*

In 2003, the Council embarked upon an exercise of examination of its sanctions practice and policy, which resulted in agreement on guidelines on sanctions on 8 December 2003.<sup>54</sup> Council agreed an update on 2 December 2005.<sup>55</sup> These guidelines (a living document) provide technical guidance for the drafting, implementation and monitoring of CFSP-related restrictive measures as well as standard wording for the drafting of CFSP legal instruments.

- *EU Best Practices for the Effective Implementation of Restrictive Measures*<sup>56</sup>

The Council first agreed a technical paper on specific issues arising in respect of financial sanctions targeting terrorist groups, in December 2004.<sup>57</sup> This was updated in December 2005 resulting in a broader best practices paper addressing both the listing process and application of financial

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<sup>54</sup> Council document 15579/03 available at <http://register.consilium.europa.eu/pdf/en/03/st15/st15579.en03.pdf>

<sup>55</sup> Council doc 15114/05 available at <http://register.consilium.europa.eu/pdf/en/05/st15/st15114.en05.pdf>

<sup>56</sup> Council document 10533/06 available at <http://register.consilium.europa.eu/pdf/en/06/st10/st10533.en06.pdf> and corrigendum <http://register.consilium.europa.eu/pdf/en/06/st10/st10533-co01.en06.pdf>

<sup>57</sup> Council document 13851/4/04 REV 4 available at <http://register.consilium.europa.eu/pdf/en/04/st13/st13851-re04.en04.pdf>

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sanctions.<sup>58</sup> On 14 June 2006, the Council agreed a further update. This paper is a living document and it is envisaged that it will continue to be developed as the Council examines other recommendations and best practices in all aspects of implementation of sanctions.

— *Basic Principles on the Use of Restrictive Measures*<sup>59</sup>

When agreeing the 2003 sanctions guidelines, the Council also requested the High Representative for the CFSP, in association with the Commission, to develop a policy framework for more effective use of sanctions. This resulted in the Council's adoption on 7 June 2004 of the Basic Principles document setting out the Council's view of sanctions, and how and when it would use them.

14. It is the Commission's assessment that these public documents have been effective in improving EU decision-making in sanctions and in increasing consistency of the use and wording of sanctions instruments. They have also been influential beyond the EU, given that they address issues at a considerable level of detail and represent the consensus view of the 25 Member States. Many states either choose to associate themselves with EU sanctions, or at least follow developments in EU sanctions.

15. Clearly, there are still many outstanding issues, including procedures for de-listing of sanctions targets, the vexed question of incomplete or very common identifiers of those listed as targets, and further guidance for EU persons (beyond simply financial institutions) on how to comply with sanctions Regulations.

#### MONITORING OF AND IMPACT OF SANCTIONS

16. There is a special sanctions group in the Council, the Sanctions Formation of the Foreign Relations Counsellors working party, which meets on average three times per Presidency (ie every six months) tasked with examining cross-cutting ("horizontal") issues<sup>60</sup> Unlike most UN sanctions regimes, there are, however, no specific monitoring panels in respect of EU regimes.

17. In terms of assessing the impact of sanctions, it is clear that each regime has a separate context, is part of a distinct policy towards the country or persons concerned, consists of different measures, and has been in place for a different length of time, so a comparative study is not easy. Where the measures are autonomous EU measures, clearly the effectiveness will depend in large part upon the importance of the EU (and any other countries associating themselves with, or copying, the EU measures) to the country or persons concerned. All EU sanctions have either a review or an expiry clause, so that the measures can be tightened, maintained, eased, suspended or lifted, as appropriate, in response to developments.

18. The European Commission notes that concerns about negative humanitarian impact of sanctions on civilian populations are much reduced compared to the early 1990s since currently all financial and economic sanctions are targeted at specific individuals and entities or apply to well-defined commodities and services (arms and related materiel, related services, internal repression equipment, timber, diamonds). There are exemptions to all such sanctions. It is also standing policy that sanctions should not preclude humanitarian aid being delivered to people in need. However, although the EU does not target innocent civilian populations and third parties, negative consequences to such groups cannot be entirely excluded.

19. In line with the sanctions guidelines document referred to above and "smart sanctions" thinking, the objectives and consequently the lift criteria are all clearer than in the past, thus reducing the risk of innocent third parties being adversely affected. The European Commission notes that sanctions entail implementation costs, not only for public authorities in the EU, but also for the private sector.

20. The European Commission would like to draw the Committee's attention to the achievements of one instrument, the Kimberley Process Certification Scheme (KPCS) for the trade in rough diamonds. Although the UN had imposed a number of sanctions on trade in rough diamonds from countries affected by conflict diamonds in the early 1990s (Angola, Liberia, Sierra Leone), the KPCS has enabled such embargoes (currently in respect of diamonds from Liberia and Cote d'Ivoire) to be far more effective, and perhaps had some deterrent effect. Its membership covers all major diamond producing and trading countries. Participants are required to impose internal controls, and exports of rough diamonds require a certificate guaranteeing that the stones are conflict free. Participants can only import rough diamonds from other Participants, and only

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<sup>58</sup> Council document 15115/05 available at <http://register.consilium.eu.int/pdf/en/05/st15/st15115.en05.pdf> and correction at <http://register.consilium.eu.int/pdf/en/05/st15/st15115-co01.en05.pdf>

<sup>59</sup> Council document 10198/1/04 REV 1 available at <http://register.consilium.europa.eu-pd-en-04-st10-st10198-re01.en04.pdf>

<sup>60</sup> See paragraph 79 of the Sanctions Guidelines *supra* and Council document 5603/04 for its mandate.

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when the KP certificate is included.<sup>61</sup> A peer review mechanism examines controls in place in Participants and recommends improvements, and there are reporting requirements. The KPCS has proved its worth as a conflict prevention tool, and countries previously affected by the phenomenon of “conflict diamonds”, including the Democratic Republic of Congo, report that they are very satisfied with the KPCS which has contributed to massive increases in legal exports of diamonds. In the EU, the KPCS, as a trade instrument, is implemented by a Council Regulation based on the TEC (Article 133 on commercial policy) with some tasks carried out by national authorities.

21. The European Commission would support further examination of the potential for and proportionality of other tailored commodity-specific regimes as conflict-prevention tools. For example, illegal logging is being addressed through a new approach in the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT),<sup>62</sup> which involves a partnership approach between the EU and wood-producing countries, and a licensing scheme.

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## Annex 1

### INDICATIVE SUMMARY OF MEASURES FOUND IN CURRENT COMMON POSITIONS AND REGULATIONS AS OF MID-SEPTEMBER 2006<sup>i</sup>

#### I. UN REGIMES IMPLEMENTED BY THE EU

<i>Country Concerned/Theme</i>	<i>Summary of Measures and Targets</i>
Terrorism: Al Qaeda, Usama bin Laden and Taliban	<ul style="list-style-type: none"> <li>— embargo on arms and related materiel</li> <li>— ban on certain services</li> <li>— freezing of funds and economic resources</li> </ul>
DR Congo	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel, with exemptions</li> <li>— ban on certain services, with exemptions</li> <li>— freezing of funds and economic resources (with exemptions) of:               <ul style="list-style-type: none"> <li>(a) persons who act in violation of the arms embargo;</li> <li>(b) political and military leaders of foreign armed groups operating in the DRC who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups;</li> <li>(c) political and military leaders of Congolese militias receiving support from outside the DRC who impede disarmament, demobilization and reintegration;</li> <li>(d) political and military leaders recruiting or using children in armed conflict in violation of applicable international law;</li> <li>(e) individuals committing serious violations of international law involving the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement.</li> </ul> </li> <li>— restrictions on admission of the above</li> </ul>

<sup>61</sup> The WTO has granted the KPCS a waiver (WT/L/518, 27 May 2003).

<sup>62</sup> Council Regulation (EC) No 2173/2005 (OJ L 347, 30.12.2005, p 1).

<sup>i</sup> Further details are given on the Commission's webpage—<http://ec.europa.eu/comm/external—relations/cfsp/sanctions/measures.htm>. This list contains measures in force adopted by Common Positions under the Common Foreign and Security Policy (CFSP) and related EC implementing measures (Regulations). National implementing measures (eg arms embargoes) or other national measures in response to UN Resolutions are not included. With a few exceptions, this list does not include:

- measures adopted prior to November 1993,
- restrictions not enacted by a CFSP Common Position or EC Regulation,
- suspension or termination of bilateral agreements and
- suspension or termination of cooperation with third countries.

The table omits also the pre-CFSP arms embargo against China and continuing prohibitions against satisfaction of claims arising in respect of transactions prohibited by earlier UN sanctions regimes (Haiti, Iraq, Libya and Former Republic of Yugoslavia), details of which are available on the Commission's webpage referred to above.

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Côte d'Ivoire	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel, with exemptions</li> <li>— ban on exports of equipment for internal repression</li> <li>— ban on certain services</li> <li>— restrictions on admission (with exemptions)</li> <li>— freezing of funds and economic resources (with exemptions) of certain persons who constitute a threat to the peace and national reconciliation process in Côte d'Ivoire</li> <li>— import ban on diamonds</li> </ul>
Iraq	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel (with exemptions)</li> <li>— restrictions on trade in cultural goods</li> <li>— freezing of funds and economic resources</li> <li>— transfer of such funds and economic resources to Development Fund for Iraq</li> <li>— restrictions concerning payment for petroleum and gas exported by Iraq</li> <li>— immunities (with exemptions)</li> </ul>
Rafiq Hariri assassination suspects	<ul style="list-style-type: none"> <li>— restrictions on admission of persons suspected of involvement in the planning, sponsoring, organising or perpetrating of the murder of former Prime Minister of the Lebanon, Rafiq Hariri on 14 February 2005</li> <li>— freezing of funds and economic resources of those persons</li> <li>— commitment to cooperate with international investigation into that murder</li> </ul>
Liberia	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel with exemptions</li> <li>— ban on certain services with exemptions</li> <li>— restrictions on admission</li> <li>— import ban on diamonds</li> <li>— import ban on round logs and timber products (suspended)</li> <li>— freezing of funds and economic resources (persons and entities associated with former President Taylor), with exemptions</li> </ul>
Sierra Leone	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel, with exemptions</li> <li>— restrictions on admission of leading members of the former military junta</li> </ul>
Somalia	<ul style="list-style-type: none"> <li>— embargo on arms and related matériel, with exemptions</li> <li>— ban on certain services, with exemptions</li> </ul>
Sudan	<ul style="list-style-type: none"> <li>— restrictions on admission of persons who infringe UN arms embargo or human rights, with exemptions</li> <li>— freezing of funds and economic resources of persons who infringe UN arms embargo or human rights, with exemptions</li> <li>— embargo on arms and related matériel, with exemptions</li> <li>— ban on certain services, with exemptions</li> </ul>

## II. EU AUTONOMOUS REGIMES IN FORCE

*Country/Theme**Summary of Measures and Targets*

Belarus	<ul style="list-style-type: none"> <li>— restrictions on admission of: <ul style="list-style-type: none"> <li>(a) persons that failed to initiate independent investigation and prosecution concerning the disappearances of four well-known persons in Belarus in 1999–2000;</li> <li>(b) persons responsible for the fraudulent elections and referendum in Belarus on 17 October 2004 and those who are responsible for severe human rights violations in the repression of peaceful demonstrators in the aftermath of the elections and referendum in Belarus;</li> </ul> </li> </ul>
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- (c) persons responsible for the violations of international electoral standards in the presidential elections in Belarus on 19 March 2006, and the crackdown on civil society and democratic opposition.
- freezing of funds and economic resources (with exemptions) of:
  - (a) persons who are responsible for the violations of international electoral standards in the Presidential elections in Belarus on 19 March 2006 and the crackdown on civil society and democratic opposition; and
  - (b) those natural or legal persons, entities or bodies associated with them.
- Bosnia
  - restrictions on admission of persons who committed certain acts of violence at Mostar
- Burma (Myanmar)
  - arms embargo
  - ban on exports of equipment for internal repression
  - ban on certain services
  - freezing of funds and economic resources, with exemptions
  - restrictions on admission
  - ban on financing of Burmese state
  - owned companies
  - suspension of certain aid and development programmes
  - suspension of high level bilateral governmental visits
  - reduction of diplomatic relations
- ICTY indictees (1)
  - freezing of funds and economic resources (with exemptions) of certain persons indicted by International Criminal Tribunal for the former Yugoslavia
- ICTY indictees (2)
  - restrictions on admission of persons who help persons indicted by the ICTY (International Criminal Tribunal for the former Yugoslavia) to evade justice
- Lebanon
  - arms embargo
  - ban on certain services
- Milosevic and associates
  - restrictions on admission of former President Milosevic and natural persons associated with him
  - freezing of funds of these persons
- FYROM
  - restrictions on admission of violent extremists challenging the Ohrid Framework Agreement's principles and undermining the implementation of that agreement
- Moldova
  - restrictions on admission of leadership of Transnistrian region
  - restrictions on admission of persons responsible for campaign against Latin-script schools
- Terrorism in general
  - freezing of funds and economic resources of certain persons, groups and entities with a view to combating terrorism
  - ban on financial services
- Uzbekistan
  - arms embargo
  - ban on exports of equipment for internal repression
  - ban on certain services
  - restrictions on admission
  - cancelling of technical meetings under the Partnership and Cooperation Agreement

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Zimbabwe	— arms embargo
	— ban on exports of equipment for internal repression
	— ban on certain services
	— restrictions on admission
	— freezing of funds and economic resources, with exemptions

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### Examination of Witnesses

Witnesses: MR KAREL KOVANDA, Deputy Director-General, and MR ALBERT STRAVER, Administrator, External Relations Directorate-General, European Commission, examined.

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**Q251 Chairman:** Good afternoon. You are very welcome to our Select Committee and we are grateful to you for coming over to help us with our inquiry into economic sanctions. I am bidden to say to everybody who gives evidence, and to us as well, please speak up clearly and speak rather slowly, so we make sure we get as accurate a picture as possible. As you know, we have got a number of questions to ask you. Is there anything you wanted to say, by way of a preliminary statement, at the beginning?

*Mr Kovanda:* Perhaps just a few words, My Lord Chairman.

**Q252 Chairman:** As part of it, if you were to introduce yourselves, so that is in the record as well?

*Mr Kovanda:* Thank you very much, My Lord Chairman. My name is Karel Kovanda and I am Deputy Director-General of the External Relations Directorate of the European Commission. If I may say, I would like to thank the members of the Economic Affairs Committee for the opportunity to give evidence in your inquiry into the impact of economic sanctions. Since 1993, the United Kingdom and the other Members of the European Union have worked together with the High Representative, Dr Solana, and the Commission to conduct a Common Foreign and Security Policy and the imposition of economic sanctions is an integral part of this Policy. An inquiry into the impact of sanctions therefore, very appropriately, would include those imposed by the European Union. The European Commission is fully associated with the work carried out in Common Foreign and Security Policy. In that field, initiatives can be taken by any of the Member States or by the High Representative, as well as by the European Commission. My Lord Chairman, may I assume that the written submission that the Commission provided last month would have been distributed to the members? If this is the case, my colleague, Albert Straver, and I will be happy to answer questions.

**Q253 Chairman:** I am very grateful to you. Then we can begin with the questions, and if I may start. The EU list of targets for asset freezes runs to some 20,000 persons and groups. I wonder, what is the magnitude of the assets that have been frozen by means of EU

sanctions? How should one assess the effectiveness of these financial sanctions, and has the EU undertaken any assessment of the associated compliance costs incurred by businesses, particularly banks and other financial institutions?

*Mr Kovanda:* Thank you, My Lord Chairman. First, the size of the list that you quoted, 20,000 persons and groups; we have not quite managed to identify where that number would have come from. To our knowledge, a calculation based on EU and United Nations lists suggests that the number of individuals amounts to something like 1,050, roughly, and the number of entities, groups or companies, to some 430. Roughly half of the total are found on the United Nations lists which are implemented by the European Union. As for the volume of resources which is affected by financial sanctions, which you were asking about, this is something, My Lord Chairman, which even as we speak we have Member States reviewing that number. The reporting is based on data provided by the private sector and so I am afraid I cannot give you a good enough number today, but as soon as we have a number that we feel is as close to the reality as possible we will be happy to furnish it. I think the third part of your question had to do with effectiveness of sanctions. This is a very complex issue, to state the obvious. There are two important aspects which I would consider here. Number one, sanctions vary from situation to situation and, as you will have noted in our submission, about nine, with North Korea probably ten, sanction regimes are imposed by the United Nations Security Council and 12 regimes are imposed autonomously by the European Union, so there will be diversity among the individual sanction regimes. The second point is that sanction regimes usually are just a part of the overall balance of policy instruments which are implemented with respect to this or that country, this or that group or regime, and so the overall effectiveness is hard to characterise globally, if I may say so, My Lord Chairman. Nevertheless, the important point, I think, is that we have had historically a certain number of sanction regimes which, in the end, in co-operation with other foreign policy instruments, have proven effective; we all recall South Africa, we all recall Libya and we all recall the former Yugoslavia as some instances.

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**Q254 Chairman:** The number, the 20,000, I have got the breakdown of how we arrived at that, but I do not think actually it is going to be useful for us to debate the numbers now. We will let you know why we think the figure is 20,000 and perhaps we could look at it afterwards. Do you want to say anything about any study you have done of any compliance costs to the businesses that undertake it?

*Mr Kovanda:* Thank you for reminding me of that component of your query, My Lord Chairman. Actually we do not have, I think, an estimate of the costs to the entities in our countries which are imposing sanctions. A list of targets was set up by the European credit sector federations and the Commission and the credit sector federations occasionally complain about the high cost of verifying the large number of hits resulting from incomplete entries on the list of targets that we have, but, to the best of our knowledge, they do not complain about the cost of compliance, as such. I would note, in this regard, that compliance efforts of the banks, with respect to financial sanctions, are part of their statutory obligations, which include compliance with anti-money-laundering legislation and other applicable legislation as well.

**Q255 Lord Lawson of Blaby:** Can you perhaps give us an idea of in what circumstances, if any, you think it would be appropriate for the European Union to adopt what I believe you call autonomous sanctions, that is to say European sanctions which do not have the approval of the Security Council of the United Nations?

*Mr Kovanda:* My Lord Chairman, as Lord Lawson points out, the European Union does adopt, from time to time, autonomous sanctions. I think I mentioned that we have 12 on the books as we speak. Decisions to impose such sanctions are made by the Council of the European Union, which proceeds on the basis of a proposal, and proposals come from a Member State, from the High Representative, Dr Solana, or from the Commission. Needless to say, the UK Government is an active participant in this framework. Two years ago, the Council made a general statement on the use of sanctions. This general statement, which I believe may have been referred to in our written submission, says the following, and with your permission, My Lord Chairman, I would quote now a little. The general statement says: "If necessary, the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction—" I think really it should be all—"and, as a restrictive measure, to uphold respect for human rights, democracy, the rule of law and good governance. We will do this in accordance with our Common Foreign and Security Policy, as set out in Article 11 of the Treaty, and in full conformity with

our obligations under international law." This is a general statement. It does not exclude autonomous sanctions to promote or preserve the European Union or international security, for example, in instances where the UN Security Council, for political reasons which are well known to all of us, might not be able to reach a decision.

**Q256 Lord Lawson of Blaby:** Thank you. You are aware, presumably, of the paper by Professor Joakim Kreutz, of the Bonn International Centre for Conversion, who has done a magisterial 42-page paper on the *Sanctions Policy of the European Union*. I would like just to read out his conclusion, the very last sentence of his paper, and ask you whether you agree with it. I will leave out a few words but they do not alter the sense: the EU sanctions policy is less part of economic warfare and more an important symbol signalling EU punishment for or approval of certain policies. I am not quite sure how sanctions can be approval of certain policies. In any event, assuming that what he means is that they are essentially a symbol of disagreement, which seems to me the sense of what he is saying, in what way, in your opinion, is that more useful than a statement, say, from the European Council expressing disapproval of a particular policy that it was plainly symbolic? Why not a formal statement by the European Council expressing disapproval? What is gained by using the sanctions in a purely symbolic way, if that is what these sanctions are? According to Dr Kreutz, that is what they are.

*Mr Kovanda:* My Lord Chairman, I must confess my ignorance. I am not familiar with the article to which Lord Lawson was referring. I will fix that deficiency, or gap in my education.

**Q257 Chairman:** The point is a clear one, I think?

*Mr Kovanda:* The point is a clear one; definitely. My argument would be this, My Lord Chairman. The effectiveness of sanctions varies from case to case. The fact that a regime against which sanctions are invoked has not changed its policy over time does not mean, in and of itself, that the sanctions are symbolic only. There is no question in my mind that sanctions do have, among others, a symbolic function, and here I would certainly not disagree with Dr Kreutz. The international community has precious few sticks at its disposal and, short of military action, actually sanctions are one of the very, very few sticks that are at the international community's disposal. Well-measured sanctions, I think, end up having more than just a symbolic value, although I would be the first to argue that they do not achieve the objective terribly fast in just about any case.

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**Q258 Lord Lawson of Blaby:** When you say they do not achieve it terribly fast, they do not achieve it at all, do they?

*Mr Kovanda:* My Lord Chairman, I have mentioned, just earlier, a couple of instances where I think sanctions have achieved their objective, together with other instruments of international policy, without any question. I think that the instances of South Africa, Libya and the former Yugoslavia are cases of sanctions, in the last analysis, in some cases after many years, actually working out.

**Q259 Lord Skidelsky:** If I may follow up this question of effectiveness. I was slightly surprised when you said then the international community has very few sticks. One would have thought, in a globalising economy, the sticks would be increasing, actually, because obviously if all states were autarkic there would be no sticks of that kind, but in a more interdependent world there are. Is it not that the lack of sticks is connected partly with concerns about negative humanitarian impact of sanctions on civilian populations, which explains the move to much more targeted sanctions, and that if one was prepared for more harm to the civilian population the stick would be bigger? Therefore, is it not the case that there is a trade-off between effectiveness and humanitarianism?

*Mr Kovanda:* My Lord Chairman, I think the point that Lord Skidelsky is making is a very noteworthy point. If I may make a personal remark, in the mid nineties I served on the UN Security Council and in that capacity I was also Chairman of the UN Sanction Committee on Libya. It was at that time, in the mid nineties, when the impact of broader-based sanctions on the population at large became a great worry of the international community, and it was just about at that time when the concept of targeted sanctions, smart sanctions, was being developed, and I think, over the last ten, 12 years, this concept is now pretty much universally applied. I think, seldom do we have blanket sanctions against this or that country, precisely because of the concern over the humanitarian situation of the people there. Whether there is a correlation between how narrowly cast sanctions are and how effective or non-effective they are, I would need to reflect upon more, and off the top of my head I think I would be doubtful about that correlation.

**Chairman:** We are going to move on: Lord Powell.

**Q260 Lord Powell of Bayswater:** Leaving Professor Kreutz to that special place reserved for German professors and coming back down to earth, can you tell us a bit about the mechanisms which are used by the European Union to decide which individuals and institutions should be put on the list for bilateral sanctions; and once they are on it, how do they get off

it? Is there an appeal process, is there a review process, has it been used, does it work?

*Mr Kovanda:* My Lord Chairman, the EU makes its own list. The list is adopted formally by the Council, as I mentioned, in accordance with the CFSP, and in developing these lists all appropriate branches of national governments are being employed. Heads of missions or ambassadors of our Member countries, in a given place, for example, last year, in Tashkent, in Uzbekistan, provided their collection of suggestions as to which personalities, which institutions, ought to get on the list of sanction targets. Proposals that are developed in this way are discussed in the Working Group of the Council, then approved by your Permanent Representative and his 24 colleagues, then subsequently by ministers. The lists, My Lord Chairman, are approved by unanimity. If we have lists from the UN Security Council committees, these are enforced without prior review, provided the UN lists are based on Chapter VII of the Charter. The difficulty, indeed, as Lord Powell hinted at, is how to get people off the list; there is the review and delisting process. Appeals, in fact, have been rather rare, but the Council and the Commission nowadays- I do not want to say 'even as we speak' but currently- are involved in a process of developing ways by which personalities can appeal their listing and by which we could make a review and, if necessary, delist people that may find themselves on the list by virtue of insufficient data, leading to same-name confusion, and so forth.

**Q261 Lord Kingsdown:** What are your views about the application of extra-territorial sanctions by the United States? To what extent has the US been successful in ensuring the compliance of EU citizens and businesses with US extra-territorial sanctions?

*Mr Kovanda:* As I am sure you know, My Lord Chairman, as a matter of law and as a matter of principle, we cannot accept the extra-territorial application of such domestic legislation as Lord Kingsdown mentioned. The EU has systematically tried to resist the extra-territorial application of this legislation, and in this respect an important regulation was passed in 1996, called the Blocking Statute, which is directed exactly against that. If one were to estimate the effectiveness of these US extra-territorial sanctions, it would be very difficult for us. We, the Commission, have only access to instances where European Union residents and companies would notify us, and we have received, I think, about 20 such notifications, and none of those have led to the imposition of sanctions. There has been, My Lord Chairman, no assessment of the overall impact of extra-territorial sanctions attempted by the US.



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**Q262 Lord Sheppard of Didgemere:** I think actually you have answered the question I was going to ask, about the comprehensive assessment—we were just talking about the numbers that you estimated of the impact of US extra-territorial sanctions. What effect have such sanctions had in Europe and have European members suffered as a result, and what is the reaction of the EU to that?

*Mr Kovanda:* My Lord Chairman, I think that the only way we would know was if European persons or European companies complained, and perhaps it is noteworthy that complaints have been very few, so one would surmise that, unless there is a vast pool of companies that have felt the effect of the US extra-territorial sanctions and have not complained, in fact the effect of these sanctions has been quite minimal.

**Q263 Lord Skidelsky:** To follow up that line of questioning, is it the case that the US authorities have been covertly obtaining payment details from the SWIFT banking consortium based in Belgium, and, if so, what has been the EU response? Would such an action by the United States authorities contravene European Union banking regulations, or any other European Union laws?

*Mr Kovanda:* My Lord Chairman, the primary responsibility for the proper application of data protection rules lies not so much, I think, with the European Commission as with competent national authorities. Nevertheless, to answer Lord Skidelsky's question with respect to the Commission, we follow the developments actively and if necessary would make full use of the powers that we have under the EC Treaty. The Commission, My Lord Chairman, is in contact with the Belgian Government and is following closely all the information on the facts on which the transfer of personal data, processed by SWIFT, to the authorities of the United States has been taking place.

**Q264 Lord Skidelsky:** So it has been taking place?

*Mr Kovanda:* The transfer of SWIFT data— we believe that it has, yes, My Lord.

*Mr Straver:* If I may add to that, the information we have is that SWIFT has a mirroring facility, so it has a database in The Netherlands and one in the US and all the data that concern the transactions in Europe are mirrored in the US. That is done for technical reasons, no doubt, but it has the disadvantage that the US authorities can ask for the data to be submitted to them.

**Chairman:** That is helpful.

**Q265 Lord Lamont of Lerwick:** The EU has suspended aid to the Palestinian Authority following the election of Hamas. Is not that a rather odd response to a situation in which they had been urging Hamas to participate in democratic elections? It has

led to violence and fighting between different groups within Palestine. Within the territory of the Palestinian Authority, are there really any grounds for rationally believing that this is going to alter the Government from its present political stance, on which it was elected in the democratic elections?

*Mr Kovanda:* My Lord Chairman, the questions of Lord Lamont invite a discussion of Palestinian politics, and I think I would try to avoid the political part of it. Nevertheless, what remains as an important fact is that payments to the Palestinian Authority, once the Palestinian Authority consisted of Hamas leadership, indeed have been stopped, as Lord Lamont points out. Bear in mind that it was decided by the European Union, back in 2001, to list Hamas on its list of terrorist groups, and it is terrorist groups that are targets of financial sanctions, and in September 2003 the Council made the decision to include Hamas on the EU terrorism list. This happened, obviously, a long time before the elections and the handwriting was on the wall, so to speak. EU heads of state and government decided in July, as you know, that the Hamas Government needs to meet the three principles that were put down by the Quartet, the principles of non-violence, a recognition of Israel's right to exist and acceptance of existing agreements and obligations. Already, in April, the Council had turned these three principles into conditions for continued assistance. Whether cutting assistance to the Palestinian Authority, led by Hamas, would lead to Hamas' change of policy is questionable. We hope that it might, that it might shift the Hamas policy, make it budge, perhaps. There was great effort, as you know, supported by various international actors, for Palestinian politics to develop in the direction of a government of national unity, and the moment that we would see that any Palestinian Authority would be prepared to adhere to the three principles of the Quartet, I have no doubt but that the question of suspending support would have been reviewed. As to our support for Palestinian people, however, that is a different matter.

**Q266 Lord Lamont of Lerwick:** Can I ask a question about the difference between general sanctions and smart sanctions, going back to the point which Lord Skidelsky touched on. One can see how general sanctions work, albeit at a price, which is felt by the general population, and it may or may not cause the government to move its position, and that is why, because it causes suffering, we move away from general sanctions; but they can work. Is not the problem with smart sanctions that in these non-transparent countries, whether you are talking about Saddam's Iraq or Iran or Libya, there are many corporate entities, many banks, many ways in which an individual can just move his assets around, and,

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actually, effectively to target an individual citizen in countries like that is well nigh impossible?

*Mr Kovanda:* One of the principles of effective sanction application, My Lord Chairman, is the strictness and the universality with which the sanctions are applied. Therefore, everything else being equal, United Nations sanctions, which are obligatory upon all Members, are going to have a greater chance of success than sanctions on the other extreme which would be imposed by a single country. From this point of view, whether it is easier to bust general sanctions or bust targeted sanctions I think is a question of debate. At any rate, if we have, for example, EU sanctions directed at the financial activities of a certain personality, at the very least what it might do is deprive that personality of the possibility of making his, or her, investments in some of the best places that the world has. In such cases, it is very likely that other countries of the developed world would be joining such sanctions and further diminishing the flexibility that the targeted personality would have at his, or her, disposal. It is not going to be a panacea, under the best of circumstances, I will grant you that without any problem at all.

**Q267 Lord Paul:** Mr Kovanda, you mentioned that giving the aid to the people is a different matter, but these are the very people who have voted Hamas in, and, in any case, do you think that this direct aid has been effective at sorting out the humanitarian cause?

*Mr Kovanda:* My Lord Chairman, when it comes to Palestine, the European Commission and much of the international community have been very careful in distinguishing between the Palestinian Authority, with the predominant influence, if not the complete influence, of Hamas, and, underlined, listed as a terrorist organisation since 2003, on the one hand, and the Palestinian people, on the other hand. It is in view of this concern that the Commission last June set up something called the Temporary International Mechanism (TIM) at the request of the Quartet and at the request of the European Council. The TIM was devised in order to funnel into Palestine, by mechanisms which avoided the Palestinian Authority, by mechanisms which bypassed Hamas, funds to support the neediest of the needy in Palestine; some might call it a palliative, but I will say that a palliative is always better than nothing at all. Let me point out that the European Community contributed to TIM to the amount of €105 million. The TIM was set up originally for three months, to be ended, I believe, in September, and, all told, the TIM supported electricity generation in hospitals and health centres and water and waste water infrastructure for the benefit of the 1.3 million people in Gaza. In addition, TIM provided social allowances- we were very careful not to describe them

as salaries- to vulnerable Palestinians. The Commission has paid €38 million for such allowances to over 100,000 people, including 12,000 healthcare service providers, 50,000 low-income cases and pensioners, and 35,000 social hardship cases. In September, the Council and the Middle East Quartet agreed to expand the TIM to include other strata of the population and extend it by three months into the phase two. Commissioner Benita Ferrero-Waldner, from External Relations, personally was very involved in setting up the TIM. I know this is a mechanism which is very close to her heart and I think that she was successful in persuading others and in getting TIM to work, as I say, to help the neediest of the needy.

**Q268 Lord Vallance of Tummel:** Can we move on to Burma? I think most commentators on Burma seem to suggest that the current EU sanctions are ineffective in achieving reforms, let alone a change in regime, but they draw very different conclusions from this. On the one hand, there are those who say that this argues for intensification of the sanctions so that they really bite. On the other hand, there are those who say that, as the current sanctions are bearing upon the population at large- the point that Lord Skidelsky made- perhaps a policy of economic engagement might be preferable. Where do you stand as between those two points of view?

*Mr Kovanda:* My Lord Chairman, this is a constant dilemma, is it not? When sanctions are being applied for a long time and nothing happens, what do you do next? Do you lift them or do you harden them, or do you find something else? The sanctions actually do seem rather extensive, the sanctions against Burma that are in effect today. They include financial sanctions targeting members of the military regime, and restrictions on admissions of those members- in this sense, very clearly-targeted sanctions; also an arms embargo, which I do not think would affect the population at large, and restrictions on investment in certain state-owned companies and suspension of co-operation programmes. Even this indicative list of how sanctions are targeted today suggests that this is by no means a comprehensive ban on trade with Burma or on investment in that country. Most of the sanctions, as I suggested, are directed against members of the military regime and against their personal assets. There may be some unintended and incidental—I hate to use the word—collateral impact on ordinary people, particularly if their names happen to be identical with those of regime members, but, frankly, we are not aware of this being a significant problem.

**Q269 Lord Lamont of Lerwick:** Are not those sanctions just a subsidy to Japanese industry?

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*Mr Kovanda:* May I take that as a rhetorical question, My Lord Chairman?

**Lord Lawson of Blaby:** It may or may not be rhetorical but it is a good point, and is it not clear; people who have studied Burma very carefully have come to the conclusion it is clear to everybody because the sanctions have had absolutely no positive effect. The regime in Burma has not been weakened and its policies have not changed. Those who have studied it very carefully have come to the conclusion that actually it is counterproductive, and indeed the motivation has been one of domestic politics in the sanctioning countries. Does not that experience cause you concern?

**Chairman:** I think that, before you move into that, the witness ought to be allowed to answer the question he was asked already. I think we will go back to Lord Vallance, whose question it was.

**Q270 Lord Vallance of Tummel:** Just to go back to the latter half of the question, which was, do you think that, as commentators have suggested, that there should be more economic engagement with Burma now, as the previous regime of sanctions has not been effective, that is the way we should go?

*Mr Kovanda:* I do not think, My Lord Chairman, that increased economic engagement at this moment would be impossible. In fact, I would point out that the composition of the Council does provide for projects and programmes to support health, education, poverty alleviation, and there is any number of economic sectors where co-operation with Burmese entities is possible, I think.

**Lord Lamont of Lerwick:** If there are no Asian sanctions, how can EU sanctions work?

**Chairman:** We have got to make progress. We are running rather a lot over time, and I cannot say it is entirely the witnesses' fault we are running over time, if I may say so. Lord Layard.

**Q271 Lord Layard:** I want to ask about Belarus and Zimbabwe. We have the EU travel bans and asset freezes on leading officials, which appear to be examples of sanctions designed to symbolise disapproval, to impose costs on relevant officials and underline EU commitment to democracy. Do you see these as being effective, or ineffective but better than nothing?

*Mr Kovanda:* You know, in a world where sanctions are one of the few things that you have at your disposal, My Lord Chairman, I think the travel bans and the asset freezes that have been imposed on the leaders of the two countries which Lord Layard has mentioned are, to my mind, the very minimum that pretty much we had to do. Trade and economic sanctions would have given rise to concerns about the negative impact. We talked about that. It is the targeted sanctions which are the most appropriate

way to affect leaders of countries which adopt policies which to us are deplorable. I would add Uzbekistan, to that list, for example. Whether and when these sanctions will be effective is the question which has been permeating our entire discussion here this afternoon, is it not?

**Q272 Lord Sheldon:** On North Korea, it has been suggested that economic sanctions should be increased to show the disapproval of the nuclear weapons test and to deter development of the nuclear weapons programme. What sanctions would be suitable in these circumstances? Other than sanctions, do you think that negotiations, security guarantees and economic engagement would be more likely to achieve an objective we want to see?

*Mr Kovanda:* My Lord Chairman, I think Lord Sheldon is raising a question which is as topical as can be, is he not? Today, I would suggest, the question has been superseded by the UN Security Council Resolution 1718, which has taken the decision-making out of the Commission's hand. Just yesterday, at a management meeting, when we were reviewing the positions of the European Commission, the point was made that for the first few days we were not exactly sure how we should react in the wake of a rather differentiated response from various important countries of the world. Now that we have UNSCR 1718 on the books, it is up to the Council and the Commission, with all deliberate speed, to implement into European legislation the provisions of that legislation, which, as you know, concerns military imports, cargo with military and non-proliferation matter. It includes luxury goods for the North Korean leadership, which I think is an imaginative extension of targeted smart sanctions, most recently, and other provisions.

**Q273 Chairman:** What about Iran? To what extent do you think that there is a feasibility, desirability, of using economic sanctions against Iran as a means of influencing its nuclear programme?

*Mr Kovanda:* My feeling is, My Lord Chairman, that the international community, most recently Dr Solana but certainly, leading up to him, the EU 'three', including the United Kingdom, have gone every step of the way to reach a negotiated arrangement with Iran to achieve the objectives of the international community. We are actually very proud of the work that our colleagues have been doing and, just as a footnote, with your permission, we are particularly proud that the United States subscribed to the European approach to diplomacy with Iran. I believe, now, we have gone to the end of the road of negotiations; there is nothing left to negotiate, no glimmer of hope that negotiations might lead anywhere. Today, My Lord Chairman, as you know perfectly well, the matter is in front of the Security

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Council again, following 1696 of last July. Another Resolution is under preparation, a Resolution which may be under Chapter VII, but a Resolution which, in all likelihood, will include sanctions; what kinds of sanctions I would say it is not really appropriate to discuss, even if we would all have our best guesses. We will cross that bridge when we come to it.

**Q274 Chairman:** Thank you very much. Both Lord Lamont and Lord Lawson asked you questions which implied a suggestion of a change in policy, I would have thought, and I stopped you answering, if you wanted to. I do not know that you particularly wanted to go down that road, but if you do please say so?

*Mr Kovanda:* I would say this. I would say that the questions of Lord Lamont and Lord Lawson concerning Burma, in the context of how European-imposed sanctions fit into the broader international attitude toward Burma, are questions which provide me with food for thought. I will take those questions back to the Commission with me and consult on them with my colleagues who focus on Burma as much as do your Lordships.

**Chairman:** A very tactful answer, if I may say so. Can I say that we are very grateful to you and your colleague for coming along and helping us with our inquiry. There are one or two things to follow up but they are absolutely straightforward. We are very grateful to you. Thank you very much indeed.

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### Examination of Witness

Witness: THE LORD RENWICK OF CLIFTON, a Member of the House of Lords, examined.

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**Q275 Chairman:** We welcome somebody from the home team, if you like. We are delighted that you are able to come along and help us with the inquiry. In fact, some of us read I will not say every word you wrote all those years ago but certainly we read parts of it, right at the very beginning of this inquiry, and we are very grateful to you for coming along. You are an old hand at this, but I am told I have to say to everybody, please speak up clearly so we get a proper record. We have got a number of questions which you know about. Is there anything you want to say right at the beginning?

*Lord Renwick of Clifton:* No. Thank you very much for the opportunity to participate in this; it is a fascinating subject.

**Q276 Chairman:** If I may start off, I just wondered what you saw as the most important developments in sanctions policy and its implementation since the publication of your book in 1981 on the subject. Has policy-making in this area improved generally, have we learned the appropriate lessons from the past, or is there perhaps a tendency to repeat the old mistakes?

*Lord Renwick of Clifton:* I would like to talk for a few moments about South Africa, which is the sort of experience where I had a very direct line of sight. I think the main lesson is a rather unpalatable one, that sanctions are most successful when they are applied against a rational adversary, so they were largely ineffective in changing the behaviour of the South African regime under P W Botha. When F W de Klerk took over, he made a sustained effort to reverse South Africa's isolation; ironically, the demands for the continuance, and even intensification, of sanctions continued even when he had set out on that course. One or two quick observations on which sanctions "worked best" against South Africa and which did not, at least, in

my estimation. One of the most effective sanctions was the arms embargo. As the South Africans found themselves confronting Cuban and Russian forces in Angola, with sophisticated military aircraft, missiles and more capable tanks than theirs, their inability to access state of the art western military equipment had a potentially serious effect for them. With a very limited number of suppliers, this kind of embargo is easier to enforce than most others, despite some leakages. The other most effective measures were sanctions imposed by the financial markets, following the decision by Chase and other banks not to roll over South Africa's loans in 1995 and thereafter. This caused the Governor of the Reserve Bank and some other influential figures to point out that South Africa could not hope to create the employment opportunities needed to meet the needs of a rapidly-growing population on the basis of a continuing capital outflow. That message was received and understood by de Klerk but not by his predecessors. Another relatively effective sanction was the sports boycott; even though, I must confess, I did not like it myself, being a sports lover, because it was targeted directly at the white population and it did bring home to them the extent of their isolation. I recall persuading Nelson Mandela that, to help de Klerk win the white referendum in support of the movement towards majority rule, he, Mandela, needed to advocate lifting the sports boycott, which he did. The most undesirable sanctions were those which targeted, for instance, South Africa's agricultural exports, a measure ardently supported by their southern hemisphere competitors and which succeeded in putting out of work a considerable number of black farm workers. I noted with interest, the other day, Mr Cameron's assertion that we were wrong not to support sanctions against South Africa, as we did participate, in fact, in a lot of sanctions. What is true

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is that at the Kuala Lumpur Commonwealth Conference, as I recall and Lord Powell will recall even better, Margaret Thatcher was alone in opposing further sanctions against South Africa at a time when de Klerk had already released most of the ANC leaders, was getting ready to release Mandela and to terminate South Africa's nuclear programme. I am trying to make the point that a serious sanctions policy has to be able to be graduated, to be intensified or relaxed according to the target country's behaviour. In the case of Rhodesia, for instance, we found it quite difficult to get sanctions lifted even when we had taken over responsibility for the running of the country. I have to say that I think South Africa and de Klerk were an exceptional case. We were very fortunate with him, because, in relation to sanctions generally, there is plenty of other evidence to show that a sufficiently ruthless regime can pass on the economic effects of sanctions to the civilian population while largely immunising itself from them and blaming foreign adversaries for their misery. That certainly was the case in Iraq under Saddam Hussein and it has been the case in Zimbabwe under Mugabe. The relatively feeble sanctions against that regime, in Zimbabwe, and their obvious lack of effect have been demoralising for the opposition there and we are not sending a clear enough signal to Mugabe's potential successors. Those sanctions, despite the best efforts of colleagues behind me in the European Commission, have been honoured more in the breach than in the observance; a travel ban, for instance, was followed by the egregious example of President Chirac inviting Mugabe to attend the Summit of African Leaders in Paris, and so on. It is a case of what not to do. Except in that case, I do feel that policy-making in this area has improved in two important respects. Firstly, and most important, we no longer make such ambitious claims for sanctions policies. We no longer claim that, of themselves, they are likely to solve or cure the problem. We are no longer likely to say, as Harold Wilson did, that the Rhodesian problem will be solved in weeks rather than months. Secondly, we are paying more attention to the target country, and Lord Lamont is absolutely right to say that targeted sanctions are difficult to enforce and quite often are relatively ineffective. There is a case, nevertheless, for targeting sanctions on nuclear programmes and arms embargoes and the regimes, to the extent we can, rather than going in for catch-all sanction solutions. There is a continuing problem; these measures often are and sometimes have to be accompanied by aid programmes to the very same countries, and those aid programmes typically have the unintended effect of reinforcing the regime. That certainly was the catastrophic effect of the 'oil for food' programme in Iraq, which

was administered horrendously; also, it has been the effect of aid programmes in Zimbabwe, where the disbursement of aid is controlled, to a large extent, by the regime. I am not arguing that we should not do it but we should understand that it has the practical effect of assisting the regime.

**Q277 Lord Lawson of Blaby:** There are so many questions arising from that. First, however, may I bring you back to the specific question of your book and ask whether there are any other ways in which you would modify it, the conclusions you reached in your book? For example, your book did not say very much, as I recall it, about targeted sanctions, which were not very involved at that time. You did say, however, for example, minor or petty sanctions are virtually certain to produce a reverse political effect without exerting any real pressure. Would you say that, very often, targeted sanctions can come into that category?

*Lord Renwick of Clifton:* Yes, they can, in some cases.

**Q278 Lord Lawson of Blaby:** As I understand it, what you were advocating in what you have just said to us was that sanctions which deny military material are really much more what we should be thinking about rather than economic sanctions. I will leave out sporting sanctions. You were absolutely right about sporting sanctions in South Africa but I do not think sporting sanctions against Iran are going to have much effect. But tell me if I am wrong. Could you reply to that perhaps, and also to the original question which I asked a moment ago?

*Lord Renwick of Clifton:* Certainly. Being summoned before this Committee, I reread at least the Conclusions of the book. I would not actually change them but certainly, I think, one should try to refine them. On targeted sanctions, you are absolutely right that I think 'slap on the wrist' sanctions do more harm than good. If sanctions are to be imposed at all they need to be made to hurt, in some measure, and that can be done with asset freezes if they are really enforced, it can be done with regime travel bans if they are really enforced, otherwise they appear just derisory to both the recipients and to those who are trying to oppose the people we are trying to penalise. I think targeted sanctions, as I have said, for sure, arms embargoes properly enforced, especially if the recipient country, the target country, has relatively sophisticated military means. It is very difficult to stop the supply of rifles or mines or hand-grenades, but certainly you can stop the supply of very sophisticated strike aircraft, and so forth, missiles, etc. Sanctions targeted on nuclear materials and nuclear equipment, again, we have seen lots and lots of leakages; nevertheless, it can be made more

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difficult for countries to acquire more of that sort of material, which is very much the issue with North Korea and Iran. At the end of the day, I would start from my initial point, which was why are sanctions imposed; typically, they are not imposed because we think that they are such a blindingly good idea, they are imposed because we cannot think of anything else to do. The alternatives are to do nothing, other than rhetorical admonition, or to take military action.

**Q279 Lord Lawson of Blaby:** Is that absolutely right? I realise it cannot be avowed but there is something in-between doing nothing and going to war, and that is subversion, which will be well known to you, in many contexts. I will not embarrass you by talking about the United Kingdom, but it is well known, for example, that the United States, in the past, with varying degrees of success, has employed that in Latin America and there are many other examples that are known to all of us, and obviously, in particular, to you. Indeed, there would be some people who would think that this is perhaps the most appropriate course of action in the case of Iran. As I say, I think it is very difficult, and this is not something that could be avowed, but it is an important part of the real world, is it not?

*Lord Renwick of Clifton:* I am not against subversion, in the sense that I have been declared an 'enemy of the state' in Zimbabwe and I regard that as a rather honourable category to be in, but I do not think the Committee's discussion is mainly about subversion. Could I make just one other point; sanctions typically are addressed to different audiences. Audience number one, very often, is your own domestic constituency. Audience number two is the regime you are trying to hurt. Audience number three sometimes may be members of that regime who are less intransigent than others. Another audience is people in that country who may be opponents of the regime. But, and this is very relevant to Iran and North Korea, you are also trying to send a clear signal to other countries about, the consequences of going down that course, there will be consequences, there are not no consequences.

**Q280 Lord Powell of Bayswater:** Lord Renwick is quite right, of course, in remembering that Margaret Thatcher was completely isolated and in the right in opposing sanctions in Kuala Lumpur in 1989, isolated not only from all the other Commonwealth Governments but from her own Foreign Secretary and the Foreign Office, who were in favour of them. His remarks bring two questions to mind. One is, drawing on what he said about South Africa, would he agree that sanctions are more likely to be effective

against sophisticated governments than 'ordinary' governments; i.e., actually would it be easier to make sanctions work against Belgium than Burma? It seems to me that his argument for South Africa was that a government with sophisticated structures is more vulnerable than a simple government, for instance the Burmese Government, or something of that sort. Secondly, would he say that, for most governments, the only way that sanctions will be effective, if indeed they ever are, and I have doubts about that, is if they do impose a very substantial economic cost on the population as a whole? They may not work in those circumstances, but probably those are the only circumstances in which they do; targeted sanctions are just a diversion?

*Lord Renwick of Clifton:* On targeted sanctions, and I have said that I think some targeted sanctions can be reasonably effective, witness the arms embargo, you are absolutely right, and Lord Powell is absolutely right, I think that a more sophisticated country with a sophisticated economy and relatively sophisticated military can be attacked harder, because, clearly, in the case of Zimbabwe, it is a subsistence economy now and, the penalties you can impose can simply lead a lot more people to starve, which is not a very attractive option. I think the basic premise is correct.

**Q281 Lord Kingsdown:** To a certain extent, I think you have answered this, but nevertheless may I ask this, in case more detail can come out? Can you say that there are circumstances in which economic sanctions can be an effective instrument of coercion without imposing severe economic costs?

*Lord Renwick of Clifton:* Frankly, I think it is doubtful. When we impose sanctions against a regime like North Korea or Iran, are we seriously expecting fundamentally to change the behaviour of an intransigent regime? If we are, I think we are whistling in the dark, actually. What we should be trying to address are elements within the system, or indeed outside it, which may decide that this is not the right way to go, and that certainly was the hope within Iran. I think the situation we are in now with Iran is that, if they continue the enrichment programme, it would send a very bad signal indeed to the more moderate elements within that regime if we did not respond. At the moment, the most intransigent leaders in Iran are convinced that they are winning, and there has not been a response from the international community. They believe that China and Russia will block such a response. I am not sure that is true, and if it is proven that China and Russia will not block a response, that would send a useful signal. In the case of North Korea, that has sent a useful signal, I think, because, although they modified the Resolution, the Chinese and Russians did support the Resolution. The Resolution vis-à-vis North Korea does have some

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teeth in it; the implementation remains to be seen, but it does have some teeth in it and it is a targeted response.

**Q282 Lord Sheppard of Didgemere:** Building on the same thing, is there sometimes confusion between the politicians, between the interested parties, maybe throughout the world, in various institutions, as regards whether sanctions are meant to be a tool of economic warfare aimed at complete regime collapse or whether they are just trying to get the person to adapt and modify their policy and practice?

*Lord Renwick of Clifton:* When sanctions are imposed, quite often there is a degree of confusion as to what they are intended to do, but in the cases of Iran and North Korea there is not that confusion. What we are trying to get them to do is halt their military nuclear programmes, so there is not much ambiguity there. The problem which several members of the Committee have raised, effectively, is that when you impose sanctions against a regime it may feel its survival to be at stake, and its survival is more important to it than economic penalties so it tends to pass on the economic penalties. It may define its survival differently from us. To a North Korean leader, his military nuclear capability equals, in his head, apparently, his survival; some of the Iranian leaders may think the same way. It is very difficult, if a regime feels its survival to be threatened, to change its behaviour by any means short of military, or, at any rate, blockades, which is a military action.

**Lord Skidelsky:** The next question is specific to North Korea, but I think you have dealt with that in a number of your replies. I will go back to it, but I would like to ask a slightly broader one, because, in a way, in the South African case, or southern Africa—

**Q283 Chairman:** There is a division. Frankly, we are very near to the end and you know the questions that have been set. Is there anything you have not said that really you wanted to say, because I do not think we can draw everybody back for two or three sentences afterwards?

*Lord Renwick of Clifton:* No.

**Chairman:** You have said everything? Well, now we have got time for Lord Skidelsky's question, if it is not on the agenda.

**Q284 Lord Skidelsky:** Very quickly. Is not one of the objects of an effective sanctions policy to encourage internal opposition to the regime? That is compatible with not making anyone suffer, except members of the regime?

*Lord Renwick of Clifton:* I think one of the real deficiencies of the policy towards Zimbabwe, as I have said, is that it does not lead the internal opposition to feel that they are getting any real support from the outside, and that support can take various forms, including grants for non-governmental organisations and attempts to support them actively by all sorts of means. I do not think, necessarily, you have to put a large number of farm workers out of work in order to achieve that result, is the short answer.

**Chairman:** I am sorry about the rush, but it seemed to me sensible not to drag everybody back in 15 minutes for a few more sentences. Can I say how grateful we are to you, because your time has been relatively short, compared with that of some of our other contributors, but I think you have managed to give us more useful information in the time that you have talked to us than on other occasions, and so we are extremely grateful to you for coming but also for the clarity of what you had to say to us. Thank you very much.

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TUESDAY 24 OCTOBER 2006

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Present	Layard, L MacDonald of Tradeston, L Oakeshott of Seagrove Bay, L Paul, L	Sheppard of Didgemere, L Vallance of Tummel, L Wakeham, L (Chairman)
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#### Examination of Witnesses

Witnesses: DR KIM HOWELLS, a Member of the House of Commons, Minister of State; MR STEPHEN PATTISON, Director, International Security; MR CHRISTOPHER YVON, Head of Sanctions Team; MR PAUL BENTALL, Head of International Security and Global Issues Research Group, Foreign and Commonwealth Office; and MR PATRICK GUTHRIE, Head of Finance Sanctions Unit, HM Treasury, examined.

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**Q285 Chairman:** Good afternoon. You are extremely welcome to this Committee. We, as you know, are going to ask you a lot of questions. We have quite an agenda to get through, so I am encouraging my Committee to keep the questions relatively short, and we will not get upset if you keep your answers relatively short but, of course, we want adequate answers. If there is anything you feel you want to send to us in writing afterwards, of course, that might be helpful. First of all, I should say thank you for your written evidence, which we have received. I do not know whether you would like to start off by saying anything by way of a preliminary statement before the questions or not. Minister, would you like to say anything before we start the questions?

*Dr Howells:* Thank you very much, Lord Wakeham. It is very good to be here. Thank you very much for inviting me to give evidence today on this very important and topical issue. Before I respond to the questions which you have, I did want to make a few very brief contextual remarks on the sanctions environment, as it is now called, and the way that the scenery has shifted in recent years, and also some comments on the Government's overall approach towards the use of sanctions. The first thing that has to be pointed out is that there were only two UN sanctions regimes prior to 1990, but there have been 21 UN sanctions regimes since 1990, which when I read this I did not believe at first, but it seems to be true. So a real recent growth in the use of sanctions by the international community appears to be a trend. If we look at the history of sanctions in relation to one particular country, to Iraq, and in particular concerns relating to the levels of humanitarian suffering amongst the Iraqi population, it seems to have led to quite a vigorous international debate about the merits of one kind of sanction, which is usually referred to as "comprehensive sanctions". The international community's conclusion was that sanctions should generally become more targeted and smarter, and one conclusion of the 1998 Whitehall review of sanctions was precisely that. Our policy is to pursue such smart, targeted sanctions

wherever possible, in the interests of minimising any humanitarian suffering. There are currently no comprehensive sanctions regimes in place—none that I know of anyway—and the UN has only imposed them four times in the past in relation to Rhodesia, Haiti, the Federal Republic of Yugoslavia and Iraq. So the use of extensive sanctions is quite rare. We believe that our policy, built on the 1998 Whitehall review, is still relevant today and there is clear evidence, including with sanctions regimes created only in recent weeks, that our international partners appear to take a similar approach to us. I will not go any further, Lord Wakeham, because I know that the Committee has a number of questions it wants to ask me, but I thought it would be useful if I outlined that approach.

**Q286 Chairman:** That is very helpful and much appreciated, and my first question really flows from that. I just wondered what were the best examples of cases in which economic sanctions have, in your view, played a key role in achieving desired political objectives?

*Dr Howells:* Certainly, I think a good example would have been the sanctions applied to the Federal Republic of Yugoslavia between 1992 and 1996. Those, of course, were comprehensive economic sanctions, and I think Yugoslavia felt the force to accept the proposed Bosnian settlement and to split from the Bosnian Serbs. I remember going there in 1992–93 and actually, it did feel as if the sanctions were having a real effect. We were certainly lobbied hard enough by both sides in that Bosnian dispute particularly—three sides—to see if there would be any movement on sanctions, if we could be persuaded to take a message back that it was having an effect. I think the military action and sanctions against the Bosnian Serbs certainly paved the way for the Dayton negotiations. The sanctions seemed to lever concessions from Milosevic at Dayton. Also, I think the economic, diplomatic and travel sanctions on Libya forced it to agree to the Lockerbie trial, and the suspension of sanctions in turn was useful in creating bargaining leverage in the negotiations on Lockerbie.



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Sanctions against South Africa undoubtedly highlighted South Africa's isolation, and I think that that sense of isolation is a very important feature of this. The idea of being a pariah state somehow tends to focus the mind; at least, it has in some governments. The sanctions increased the cost to South Africa of borrowing money internationally, which was, of course, a factor in their eventual decision to reform, and the gradual lifting of sanctions from 1991 helped to ensure white support for reforms. The other one I think is probably less convincing, but it is very important. I am someone who, because my brief includes counter-terrorism and counter-narcotics, I am very interested in the processes of money laundering and the use of funds by these organisations, and also of course by governments. The \$94 million of assets belonging to al-Qaeda and the Taliban and associated terrorist groups across 34 countries have been frozen and are therefore not available for terrorist purposes. The assets freezing regime has made the financial markets a hostile environment for terrorists to operate in and it has increased the cost and the risk to terrorists of moving resources. So while I think we could find lots of countries where sanctions do not seem to have had an immediate and direct effect, and I want to give one example of that, the conflict in Liberia, for example, they have nevertheless levered important post-conflict domestic reforms, including most recently the passing of crucial legislation in Liberia in the timber regulation sector so that the government increasingly can control the timber trade there. What I am saying, Lord Wakeham, is that it can have perhaps very often not an immediate effect but consequential effects.

**Q287 Lord Layard:** Would you say the Government pays enough attention to the likely cost and benefits of sanctions before imposing them, or is it mainly thought about afterwards? Could you just give us some examples of cases where there was a serious evaluation of cost and benefits before?

*Dr Howells:* Yes indeed. We consult other Departments very carefully. I served my time in DTI for three years and I remember that, because of the special position of DTI as a sponsoring Department for British industry, the Department looks very carefully at proposals for sanctions and demands from us a cost-effective evaluation of whether or not it is going to be an irritation and one which could affect British industry without any real benefit to the people of the country against which the sanctions are being imposed or whether it really is going to have an effect. I think we consult very closely on these matters. I will ask Stephen Pattison to answer. He has been doing this job for a while now and I am sure he

can give you particular examples of countries where this has happened.

*Mr Pattison:* We certainly do look quite carefully at the implications of imposing any sanction regime before we would support imposing one, and we look at a number of aspects. One, of course, is the enforceability of sanctions here in the UK and also elsewhere. Another is the impact that sanctions would have, and there are two aspects of that. One is a humanitarian impact. The whole point of our policy of targeted sanctions is to minimise the unintended consequences, the unintended humanitarian damage that sanctions can sometimes do, and we would look quite carefully at that. The third element we would look at, of course, is the broad impact of the sanction, whether it is likely to achieve the effect we are after. In the past there have been numerous examples of how we have co-ordinated throughout Whitehall on this, but the UN has got much better at doing this too. The UN is now quite concerned to make sure that its sanctions are smart. One example, for instance, was the effort put into looking at the impact that a timber embargo would have on Liberia before the UN moved to introduce one. We did work here in Whitehall and the UN did work themselves, and we looked quite carefully at what the adverse humanitarian impact might be before we moved in that direction.

*Dr Howells:* On the specific question about examples of countries, I think we have a very good record actually. One thinks of Libya, for example, but of other countries where we could be seen to be damaging our own interests in terms of being able to purchase cheap oil, for example. This has not always been the case, and certainly has not been the case with some of our EU partners, I fear, when it has come to maintaining sanctions against some of these countries. I think it was used very wisely in the case of Libya, and now indeed, I think we have got to a position where Libya is looking for our help. We have to be very constructive in the way in which we look not just at sanctions but at what happens when those sanctions are lifted. That often demands a very big change in psychology, I think. I have been to Libya very recently and seen that there are great strides being made. Libya feels a bit aggrieved about the fact that, in response, amongst other things, to sanctions, it gave up its programme of weapons of mass destruction, and it sees us offering countries who have not done that very large carrots, and they say, "Hang on, you haven't offered us anything. We have been through the sanctions regime and we want your help and your advice." It has been, for me anyway, a fascinating consequence of the imposition of what was quite a strict sanctions regime.

**Q288 Lord Vallance of Tummel:** Can we turn to Iran? Is there any reason to believe that economic sanctions would persuade Iran to modify its nuclear

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programme, or would positive engagement, perhaps economic incentives, prove more effective, or is it just the case that Iran is impervious to any external pressure?

*Dr Howells:* We have certainly been very flexible with Iran, offered very generous proposals and, to use the cliché, we have gone the extra mile with Iran. I remember coming into this job a year last May and we all assumed that there would be some kind of deal or an arrangement done by certainly July or August 2005, and we are as far away from it, it seems to me, at the moment as we have been. That is very worrying. I do not know what these sanctions could look like for Iran. I can only give you a very honest answer, which is that the messages that come back to me, not so much from Iran itself because it is very difficult to get messages from Iran which are comprehensive in any way, but speaking to people like the former foreign minister of Afghanistan, who seems to be one of the few people who knows President Ahmadinejad very well, he says, "Look, there is inside Iran a very complex society. It isn't just the theocracy and President Ahmadinejad who make the decisions. They are the main decision makers but what the Iranians are very good at is trading and making money, and there are a lot of people in there who would feel very, very wary about a regime which continues to issue this kind of bombastic rhetoric, who might be harming their ability to make money in trade." So I think we have to look at Iran and say Iran is not North Korea; there is not a simple way of doing this; it has a unique culture and it is a country which we have to understand the complexities of and we have to be very sensitive to those complexities. But they have managed to stall the international community for a very long time now, and I think probably they have made some pretty significant progress, certainly in the construction of centrifugal systems and processes, and that is very worrying. I think the international community is right to feel a great sense of impatience and a sense, I suppose, of saying nothing has worked so far, so maybe we had better come up with sanctions. I suspect that is the way the UN tends to feel at the moment.

**Q289 Lord Oakeshott of Seagrove Bay:** I listened with interest to that. You told us that Iran is not North Korea and obviously my question is going to be about North Korea. What I heard you say on Iran is that they have pulled the wool over the international community's eyes pretty effectively for quite a long time. Iran is not North Korea. How are you going to stop North Korea doing that, and what are you actually going to do about North Korea? There is a lot of interesting discussion here, but I would like to hear a little bit more about how you are actually focusing policy, please.

*Dr Howells:* The Security Council's, I think, very quick, decisive and unanimous adoption of Resolution 1718 underlined very powerfully the international community's condemnation of North Korea's behaviour. The resolution of course obliges the North Koreans to refrain from any nuclear or missile tests, to abandon its nuclear and ballistic missile weapons programmes and to comply with various international obligations and processes. Will those sanctions work? Obviously, I sincerely hope so. We will need, of course, to see how the North Koreans respond. They will be shocked, I think, and have been shocked by the quick and unanimous adoption of the resolution. It remains to be seen, however, what key players are going to do about this. We are not entirely sure about what the Chinese are likely to do. They are the big players in the area. The South Koreans and the Japanese also have a take on North Korea which is certainly different from ours. They are very worried, or so the reports tell us, about severe sanctions reducing the regime to a kind of economic basket-case which then becomes a great burden, a very unstable country in the area. Whether that is a worse option than a regime which is pursuing or has built a nuclear bomb, you have to take your pick, I suppose. I know which one I would come out on the side of. I think that the construction of a nuclear bomb is an infinitely more dangerous option. Will the change in the sanctions policy hurt the North Korean people? That is something we certainly have to be sensitive to, I think. We know that they are already very dependent upon the world food programme and food imports in general from China and from South Korea, and I think the aims of the sanctions that are spelled out in 1718 are quite clearly not about hurting the people of North Korea. The sanctions are targeted certainly with those ends in sight, and to highlight the personal cost to the regime, the head of the regime, of their policy through freezes on assets and a travel ban. We are hoping there will be no impact on ordinary North Koreans. Whether or not it will persuade that regime, which is a very peculiar one, I think, to change tack, is another matter altogether.

**Q290 Lord Oakeshott of Seagrove Bay:** Does it not all depend on China? With great respect, we do know that China is a serious player in that region. Does it not critically depend on what they are actually going to do, and how do you read it?

*Dr Howells:* I think China is very worried about North Korea. That is one thing. It has not necessarily been very worried in the past, but I suspect that anybody with a regime as unstable as this one, testing nuclear weapons on its doorstep, is going to be worried. I think Russia is very worried about it; it is not very far to Vladivostok from the nuclear test

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sites, and we know very well that the Japanese are extremely worried about it. The Chinese have through various ways and means propped that regime up for a very long time and what they do is going to be crucial in this; there is no doubt about it at all. I think however that China itself of course wants to be seen as a very serious international player. It has had a very material effect upon commodity prices and almost everything else that we care to trade in the world at the moment, and I think they want to be seen also as serious diplomats. We know they are thinking very hard about this, about just how far to go. They are making gestures, certainly, about examining cargoes, for example. How far that will become a serious operation as opposed to one which is just a gesture is anybody's guess of course. But you are quite right; it is China that is going to make or break this sanction, I suspect.

**Q291 Lord Sheppard of Didgemere:** You mentioned the position, Minister, on food but people have mentioned food trading or food aid as a way of very rapidly getting their attention, including from the direction of China. Do you have any comments on that? Is that going too far towards the humanitarian problems?

*Dr Howells:* No, I think it is a very good question. The sanctions as set out in 1718 are targeted on specific areas such as the North Koreans' nuclear and ballistic missile programmes. They are not targeted at the country's food supplies, and we do not favour reducing or suspending food aid to North Korea. Our policy is to pursue targeted sanctions that aim to minimise humanitarian impact on ordinary people. We know from experience in Iraq, of course, that regimes can use those good intentions by withholding food from certain areas. We know Saddam played this absolutely brilliantly. He had people from the Houses of Parliament who went over there and came back with tales, very honest ones, of populations going through desperate suffering as a consequence of sanctions. I have no doubt that the North Korean regime is as ruthless and could try to turn these things around so that they appear to be hurting the people and not hurting their own resolution to pursue a nuclear weapons programme.

**Q292 Lord MacDonald of Tradeston:** Could I ask you, Minister, about Burma, where the sanctions so far have been ineffective in achieving reform or regime change and therefore some commentators have suggested that the sanctions should be intensified. But of course, you have the counter argument that, because they are not only ineffective but are harming the ordinary Burmese people, economic engagement would be a better way of

bringing about reform or regime change in Burma. What is your response to those two options?

*Dr Howells:* I was in New Delhi recently and there they have a policy of engagement; they think that is the way to change the attitude of the Burmese regime. There are others, of course, some of our European partners, who do not want to intensify any sanctions because they have very lucrative oil and gas contracts with the Burmese, and other commodities as well, precious stones and so on. I think the sanctions that have been imposed on Burma so far have not produced a political breakthrough. That is obvious. Nonetheless, this Government supports a policy of targeted sanctions which are aimed at those who implement and benefit from the Burmese government's policy, and we accept that our leverage over the regime is very limited. EU sanctions alone are unlikely to bring about change, but sanctions perhaps form part of a wider strategy of bringing pressure to bear on the regime, which, in co-operation with the UN international and regional partners, we hope will bring political, economic and social transformation to Burma's long-suffering people. I mentioned in response to Lord Wakeham's earlier question that this notion of a pariah state, of a regime being isolated, does have some effect. In the case of Burma I have yet to be convinced that it will have an effect. I feel deeply uneasy about the present arrangements *vis-à-vis* Burma and there are some very powerful countries that do not wish to see sanctions intensified in any shape or form on Burma because they perceive that they need Burmese commodities and natural resources. So I suspect that really, the present regime is not working very well. I do not think we should walk away from it but we should certainly have a much more vigorous international debate about how we can make it more effective.

**Q293 Lord Paul:** Minister, is it acceptable to continue with economic sanctions when humanitarian exemptions or other measures fail to prevent severe humanitarian costs in the targeted country? If so, on what grounds?

*Dr Howells:* That is a very good question. To preface my answer, I would say that many of these regimes are not naïve and they are not fools when it comes to using the whole image and business of sanctions being applied against those countries. Saddam Hussein used it brilliantly. He portrayed a country that, through no fault of its own, was besieged and its people were starving and its children were dying. I heard passionate denunciations of sanctions regimes in the House of Commons on many occasions by Members of Parliament who had been over there as guests of Saddam Hussein to listen to this and to see for themselves, but I think in recent years, because

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there has been a much stronger trend towards the use of more targeted sanctions, severe humanitarian costs in reality are much less likely than they were previously. If situations where those kinds of severe reactions were to be evidenced in the future, we would want to take a very hard look at that particular humanitarian situation and at that impact, but our overall policy is to avoid that situation arising in the first place. I do not know if that is a convincing answer to your question, but I would simply reinforce the point that we are very, very sensitive to this issue of humanitarian effects and they can be very complex, and sometimes unforeseen. I know of very large communities which I have travelled through and visited where they have been smuggling, for example, for hundreds of years; that is how they have made their living. One has only to look at Basra—Basra is famous for it and always has been—or the Afghanistan/Pakistan border. Trying to impose sanctions on those areas means in effect trying to stop smuggling across borders, and that is very difficult, and if you are effective in doing it you can induce a great deal of local hardship, and that is something which governments themselves do not mind too much about.

**Chairman:** I think we had better ponder that last answer while we vote.

*The Committee suspended from 4.06 pm to 4.14 pm  
for a division in the House*

**Q294 Chairman:** I wonder if I could ask the Minister a question about targeted financial sanctions. It has been suggested to us that targeted financial sanctions are not much more than a minor inconvenience to their targets, and I just wondered whether you could tell us of any successes that you think targeted financial sanctions have actually achieved.

**Dr Howells:** The first thing to say is that increasingly we are seeing the Americans, especially, develop a kind of black list for companies who seem to be involved in one form or another in illegal activities, some of which are associated with sanctions. I was in Colombia last week, in South America, for example, and easily the most effective weapon that anybody has is the threat of being sent to the United States or of having their companies put on the American black list. So I think this does matter, and the idea that you can be extradited to America seems to put the fear of God into some of these cartel bosses in Colombia and Venezuela. It is important. The second thing to say is the level of inconvenience, if you like, is not very easy to measure. I doubt if anyone wants their funds frozen, and even where there is change in leader, for example, where political and military leaders of illegal armed groups in the Democratic Republic of Congo turned themselves in while under the threat of

sanctions, there are many factors at play; it is not just to do perhaps with the influence which it might have on the financial arrangements. So we cannot necessarily say that it is down only to a particular sanction but nevertheless, I would argue that it is an important one. We certainly would agree that, in terms of the scope of their impact, they appear more modest when compared with, say, more comprehensive measures but nevertheless there are benefits to targeted financial sanctions. They can be fairly precise so as to ensure that the target is hit, not the wider population, and they can be disruptive, and in individuals they highlight the personal cost that is involved. So I think that we do not want to be too dismissive about trying to freeze or otherwise influence the finances of individuals.

**Q295 Lord Layard:** Sanctions which have little chance of changing the behaviour of the targeted regime are often defended as being valuable in symbolic terms. What is your response to the view that such sanctions actually symbolise weakness and may have the effect of increasing the resolve of the regime as well as demoralising any opposition within the country?

**Dr Howells:** I certainly agree that sanctions can have a very strong symbolic component, and the global reach of UN sanctions in particular. It puts a regime or a group or a set of individuals clearly outside of the international mainstream, and I think that the impact of this pariah status, if you will, will vary between targets and over time. I agree that often the target's immediate response is to seek to evade sanctions, not to alter their behaviour immediately. I think we have seen that time and again, but over time it can change, and it is clear that Libya, Sudan, in the earlier days, Yugoslavia, they got to the point where they felt that they needed to reduce their international or regional isolation. But it is clear that pariah status is less of a concern to other targets: al-Qaeda, for example, is not particularly concerned with notions of international respectability; indeed, probably if they had the support even of Arab governments they would feel offended since they want to destroy those governments. They probably almost certainly revel in their pariah status, but in this case the symbolic importance of sanctions is about reinforcing norms of behaviour, and that is something we ought to be about, I think, as diplomats. The impact of sanctions on opposition groups is difficult to generalise. Often they have been the ones who have been calling for sanctions, and again, they can vary over time and it is not clear whether there is one single opposition or voice, and in some states the opposition is so repressed by regimes that those voices may struggle to be expressed, so sanctions can have an important symbolic significance.

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**Q296 Lord Vallance of Tummel:** Following on from that answer, if I may, in designing sanctions regimes in the first place, is there a formal assessment that is made of the extent to which sanctions are likely to encourage or discourage moderates within the targeted regime or otherwise affect the opposition to the regime? Can you give us some examples of such an assessment taking place in advance of the imposition of sanctions?

*Dr Howells:* The views of groups within a target state are assessed where these are nominal where they are relevant, but they are certainly one part of a long equation in this sanctions mathematics. It can also be difficult to think in terms of moderates and opposition in many cases, and I will give you some examples. Iran and North Korea I think are particularly good cases in point. In Liberia, Sierra Leone, the Democratic Republic of Congo, the sanctions in effect target those who are opposed to peace processes. With Burma and Zimbabwe opposition groups largely support EU measures. The notion of bolstering opposition or moderate support to a regime does not really reflect the outcomes of sanctions. In the past some sanctions have included an element of regime change. Sanctions against Rhodesia, Haiti and Sierra Leone were in response to regimes that were deemed to be illegitimate, but recent sanctions have not been focused on regime change. It is the policies and actions of the target which we are trying to change.

**Q297 Lord Vallance of Tummel:** In your answers to earlier questions, Minister, you made a clear distinction between Iran and North Korea, but in the answer to this one you seem to put them in the same basket.

*Dr Howells:* No. It is a very good question. What I am trying to say is that the theocracy in Iran and President Ahmadinejad seem actually to revel in the idea of being a completely isolated example of a steel-backed resolution not to succumb to the diplomatic efforts of the rest of the international community. That is true as well with North Korea. They do not seem to be particularly concerned about what other people think about them. I am trying to point out that below that level they are very different countries. In the case of Iran there is actually a very sophisticated opposition. There are very clearly discernible and definable classes of people, and they include a merchant class which has a very long history and wants to make money, and it knows that if it is going to make money, it needs to be able to trade freely with the richest countries in the world as well as its neighbours around it. I think that is a very different situation from the one in North Korea.

**Q298 Chairman:** If I may just go back, when you were talking about South Africa, you actually made the point there that sanctions were to some extent designed to make sure that the white community in South Africa went along with the changes, and so there is a history, as I see it, of sanctions being geared to the internal situation within it. At the end of your answer you rather indicated that probably that is still relevant today.

*Dr Howells:* I think it is very relevant today, and we have to be very careful that the imposition of sanctions does not strengthen the very individuals or the regime leadership that presumably those sanctions are either trying to weaken or influence in such a way that they change policy. That means that we certainly have to understand the nature of those societies and of the political tensions within those societies and use them in order to make those sanctions more effective.

**Q299 Lord Oakeshott of Seagrove Bay:** My question, if I can summarise it, is about the use of sanctions as a statement. We have heard a certain amount about reinforcing norms of behaviour and so on, but if the Government does disapprove of a policy or a regime and wants to make that clear, there are ways to do that publicly, UN resolutions or whatever. Should you not separate that from sanctions, which surely are actually designed to achieve a particular end? The danger with mixing the two up, it seems to me, and I wonder if you would agree, is that in a sense, sanctions cannot be seen to have failed if you can fall back on saying they have expressed our disapproval. Surely we should be rather more specific and more clear on what each thing is meant to do.

*Dr Howells:* I think you have put your finger on really the most difficult question of all: should we set out on a sanctions regime if we fear that there is a good chance that it will fail? Does that not do more damage than it does good, because we are seen then to be retreating from a position which we have taken, whether it is a UN or an EU or even on a bilateral relationship? There are, of course, cases where that can be justifiable, and I have tried to point out one in the case of Libya, for example, and I am sure that there have been others. In South Africa, Lord Wakeham just described a process which was a very long one and, I think, an intelligent one in the way in which it was applied. I certainly agree that sanctions should not be a kind of measure of first resort. They should not simply be about gestures. They should not be embarked upon unless they have a hope, a real hope, of succeeding. That is why I am quite interested in the much more targeted or smart sanctions than in those more comprehensive sanctions although, having said that, I do not think we can abandon the

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Dr Kim Howells MP, Mr Stephen Pattison, Mr Christopher Yvon,  
Mr Paul Bentall and Mr Patrick Guthrie

weapon of comprehensive sanctions because there will be situations in the future, as I suspect there may even be at the moment, where comprehensive sanctions probably could do more good than damage.

**Q300 Lord Oakeshott of Seagrove Bay:** Do you think they have a realistic hope of succeeding in Zimbabwe?

*Dr Howells:* One of the problems with the imposition of any sanctions is that you have to have regional neighbours who are prepared to . . .

**Q301 Lord Oakeshott of Seagrove Bay:** We can all see that South Africa worked. That is why I am asking the question. You are very good at restating my question. I would like some answers.

*Dr Howells:* That is my answer. I do not think they can be successful if the neighbouring countries are determined to break them.

**Q302 Lord Oakeshott of Seagrove Bay:** So why not face up to it and face facts?

*Dr Howells:* And do what?

**Q303 Lord Oakeshott of Seagrove Bay:** Do not go down a route like that, which has no prospect of success. It was quite clear when Tony Blair was laughed at at that conference a few years ago that there was no regional support. So you face facts and cut your losses.

*Dr Howells:* When you say face facts, I think that there is always a case for trying to persuade South Africa and other countries to change their own position on this. I do not think their foreign policy is any more writ in stone than anybody else's. I may be an optimist but I think you have to keep making the case, otherwise what is it? It is surrender to a tyrant like Mugabe.

**Q304 Lord Sheppard of Didgemere:** We mentioned earlier on, in response to a question, the fact that before imposing sanctions you should attempt to measure the likely impact and so on. Presumably, that applies after the sanctions are commenced and right the way through the period, so one knows whether to discontinue them, and even after the event. For any future policy you have to apply criteria to decide whether or not sanctions have done

anything, who has suffered, whether it is the regime or the people—some of the questions we have asked.

*Dr Howells:* It follows on very much from that question about Zimbabwe now, of course. I think if we look at the Whitehall review which was held in 1998, if you remember, the main conclusions were the need for sanctions to have clear objectives, that they should be targeted to hit the regime rather than the people, that they should include exemptions to minimise humanitarian impact, and that there should be a clear exit strategy. There is a need for effective arrangements for implementation—that is very important—and they should avoid an unnecessary and adverse impact on UK economic interests, which is also extremely important. I would add that we often pursue measures which are calibrated, and the most recent Security Council resolution imposing sanctions concerning North Korea makes it clear that the Council stands ready with a number of responses dependent upon North Korea's behaviour, and that includes strengthening the measures but also modifying them or suspending them or lifting them altogether. So yes, I think we have to be ready to change and modify when events dictate.

**Q305 Lord MacDonald of Tradeston:** Minister, the EU has taken measures to counter the extra-territorial application of sanctions by the United States. How is that working out?

*Dr Howells:* The EC's regulation 2271/96 of 1996 sent a very important signal to the US that the EC intended to protect its companies from the effects of US extra-territorial legislation. This paved the way for the EU-US understanding which was reached in 1998 that the terms of the Helms-Burton Act, the Cuba sanctions in other words, and the Iran-Libya Sanctions Act would not apply to European companies. Although these agreements are limited in scope to the two Acts that are referred to, we find that the vast majority of other cases can be resolved through co-operation and dialogue with the US authorities. This is conducted in the case of our Government by the DTI with the help of the Foreign and Commonwealth office and especially through our embassy in Washington.

**Chairman:** Thank you very much indeed for coming along and giving us such full answers to the questions, which has greatly helped us with our consideration of these very important matters.

### Memorandum by Mr Alex Vines, Royal Institute of International Affairs

#### *The Effectiveness of UN Financial Sanctions*

In 2006 we enter a period where there has been a swing back in favour of using sanctions as an alternative to direct military engagement, such as in Iraq and Afghanistan. There is also a worrying inflationary trend to seek

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sanctions—such as on Iran—without assessing what the impact would really be or whether the UN system can deliver. This submission argues for reflection and caution and the need to deconstruct what sanctions achieve—especially financial sanctions.

Since the early 1990s there has been a dramatic increase in sanctions imposed on countries by the United Nations Security Council. Until then sanctions had only been imposed on two countries: Rhodesia in 1966 and South Africa in 1977. During the 1990s and up to 2004 the Council imposed sanctions on Iraq in 1990; the former Yugoslavia in 1991, 1992 and 1998; Libya in 1992; Liberia in 1992 and 2001; Somalia in 1992; Haiti in 1993; Angola's UNITA in 1993, 1997 and 1998; Rwanda in 1994; Sudan in 1996; Sierra Leone in 1997; Afghanistan in 1999; Ethiopia and Eritrea in 2000; the Democratic Republic of Congo (DRC) from July 2003; Côte d'Ivoire from November 2004; Sudan from March 2005 and in October 2005 suspects in the 14 February 2005 terrorist bombing in Beirut.

Instruments vested in the Council as part of the peace and security mechanisms envisioned in Chapter VII of the UN Charter provide the basis for the imposition of sanctions by the Council. Such sanctions have been the cause of significant debate and controversy, not least because of the humanitarian crisis in Iraq during the 1990s, which was related to, if not directly caused by, the imposition of UN sanctions.

#### *What type of sanctions?*

The most widespread type of UN sanction used is the arms embargo, such as those imposed on Angola, Ethiopia/Eritrea, Iraq, Liberia, Rwanda, Sierra Leone and Somalia, DRC, Côte d'Ivoire and Sudan. There have also been commodity embargoes, such as on diamond exports from Angola, Sierra Leone, Liberia and Côte d'Ivoire, or on timber from Liberia. Travel bans and assets freezes have been imposed on groups like Al-Qeda and The Taliban, as well as individuals in Angola, Sierra Leone, Liberia, DRC, Côte d'Ivoire, Sudan and those involved in the Beirut bombing. An arms embargo and financial sanctions were placed on the Angola rebel movement UNITA along with a ban on the sale of petroleum products to them.

#### *What is the impact?*

Generally until the late 1990s UN sanctions had little impact. This changed due to greater efforts in monitoring compliance of them but despite the new enthusiasm, the record remains variable.

Sanctions are more successful if assessed as part of a wider diplomatic package. The UN diamond embargoes on Liberia and Sierra Leone and the timber embargo on Liberia are fairly successful. In contrast arms embargoes have failed across Africa. Travel bans and assets freezes also have a variable record.

The UN system relies on support of member states and increasingly on monitoring by a small number of independent consultants in panels, groups or monitoring mechanisms. Their role is to produce reports to the Security Council Committees that then deliberate over what can be a violation and what to do. Mostly Committees write letters and manage the lists of targeted individuals and entities. The quality of the reports from the consultants is improving, but the effectiveness of the Sanctions Committees is variable. The choice of which country chairs these committees is important—and can determine their effectiveness. Greater scrutiny and feedback on what Expert Groups produce is also needed.

The key to a successful embargo is political will by the Security Council to implement and monitor the sanctions. It is telling that the two countries where Western political will for effective UN sanctions was at its greatest in the 1990s were Iraq and Libya. Sanctions probably stymied Saddam Hussein's efforts to procure weapons of mass destruction and in Libya they encouraged Tripoli's rapprochement with the West. Sanctions on Liberia itself were not successful, but they worked as secondary sanctions to loosen Charles Taylor's grip on the Revolutionary United Front rebels of Sierra Leone.

There have been few independent studies of the effectiveness of sanctions in Africa and this is urgently needed. Funded by the Canadian Government (with some additional support from Denmark and the UK's Foreign and Commonwealth Office) Chatham House has in 2006 conducted for the first independent appraisal of the effectiveness of UN sanctions—with fieldwork recently completed in Angola, Sierra Leone and Somalia.

#### *What needs to be done?*

Chatham House is in its final stages of completing the study but the results show a number of things:

- Arms embargoes are ineffective but tracking the funding can be more effective in stopping deliveries.

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- Diamond embargoes also have had limited impact—and it is important that better controls are introduced in producing countries that issue Kimberley certificates. This is likely to be a key agenda item at the Kimberley Plenary summit in Botswana in November 2006.
- Travel bans and asset freezes can be effective—especially if the lists produced by the UN include quality indicators on who these individuals are and also clear cut and accurate criteria on why they have been listed. There also needs to be an emphasis on small numbers of individuals as this assists tracking. In early 2006 in Côte d’Ivoire the imposition of targeted sanctions on three individuals had a calming effect on others and there was a noticeable decline in hate speech for some six months.
- The threat of sanctions can be a more effective tool than imposition of the sanctions themselves.
- The effectiveness of sanctions deteriorates over time as the targets find ways around them. Indeed sanctions can encourage the deepening of corruption, money laundering and criminal networks—and the longer they run, the more likely this will be.
- There are cases, such as Somalia, where the sanctions become an international fig leaf for symbolic action and maybe should be scrapped as they undermine the credibility of the UN system.
- There needs to be more systematic independent appraisal of the work of UN expert Groups but also greater transparency and accountability of Sanctions Committees.
- UN and regional peacekeeping operations can play a constructive role in monitoring sanctions and there is the need for better training and the development of standard operating procedures. UN peacekeeping operations prefer to monitor arms and commodity sanctions—the monitoring of individuals and their financial assets often clashes with their peacekeeping and mediation mandate. There are examples where peacekeeping operations deliberately distance themselves from such sanctions.

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### Examination of Witness

Witness: MR ALEX VINES, Royal Institute for International Affairs, examined.

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**Q306 Chairman:** Mr Vines, I suspect you were somewhere in the background, listening to what went on, so I do not need to go through the preliminaries, other than to say first of all that you are extremely welcome to come and help us with our inquiry. You have very kindly sent us in some written evidence for which we are very grateful to you. Do you want to add anything to that or say anything at the beginning before we get cracking on the questions?

*Mr Vines:* No, Lord Wakeham. I am fine. The presentation that I submitted to you is the summary of what I wanted to say.

**Q307 Chairman:** That is very kind. If I may start, would you agree that economic sanctions tend to be imposed without any proper prior assessment of their likely effectiveness and costs? Can you point to circumstances in which sanctions are normally imposed in a more considered way, with a full prior assessment of effectiveness and costs?

*Mr Vines:* My experience is based on working on UN sanctions. I am currently Chair of the UN expert group on Côte d’Ivoire, Ivory Coast, and so have had some five years of working in this field as a sanctions inspector. The reality is that sanctions of this type are often imposed in an *ad hoc* fashion in a rush. Certainly from the UN aspect, one does not see a proper needs assessment analysis of the actual impact

of a sanction, especially an economic sanction. There has in the last few years been some movement towards humanitarian impact, but this is patchy at best, and certainly there is not any ongoing monitoring throughout the sanctions regime of the effectiveness. Indeed, the sorts of reports that sanctions monitors like myself produce, including commenting on the financial field, have no independent appraisal. The only appraisal or assessment of our work that takes place is the politics within the Security Council committees, the sanctions committees, and those are determined from home capitals, be that London, Moscow, Washington or wherever, not necessarily analytically accurate in their assessment. So you are right to ask the question. This is an area where there is a tremendous need for a more systematic monitoring. It has not yet been effectively imposed.

**Q308 Lord Layard:** Are there recent cases in which sanctions have played a key role in resolving a dispute? What are the circumstances where economic sanctions are most likely to be effective in achieving the desired objective? Is there a wider package combining sanctions with positive incentives which would be more likely to succeed? By contrast, when are sanctions least effective?



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*Mr Vines:* Many of these issues were already discussed by the Minister. Where are sanctions least effective? Certainly when there is not international consensus within the Security Council if you are talking about UN sanctions, or within European Union partners if it is an EU package. You need a consensus and political will, and this can be very patchy and *ad hoc* at best. The issue of neighbours to a sanctions regime is absolutely critical. In every case that I have seen, you need the support of the neighbouring states. If you do not have that, it is extremely difficult to implement sanctions. Where we do see some greater success is where there is greater consensus and political will or back-up. "For example, let's take Iran. We have heard already about Libya. It was a bit more successful, especially related to weapons of mass destruction equipment being supplied and finding whether they were, because of proactivity of intelligence agencies and, more important, enforcement agencies". So the monitoring of those sanctions was less tokenistic than what we might see elsewhere. The proliferation of sanctions that you heard about, especially in the sub-Saharan African area- the reality is a lot of them are very tokenistic. You may have four or five individuals like myself but there is no back-up other than that. So the symbol might be important but the actual effectiveness of monitoring compliance is certainly more patchy. Related to the circumstances in which economic sanctions are most likely to be effective, my experience is that the targeting of individuals can be extremely effective, especially if you have very clear-cut indicators, meaning dates of birth, good passport intelligence and proper dissemination of that information. The problem at the moment, again, is that within the UN system, when you do target an individual for these sorts of targeted economic and travel sanctions, the information that is then distributed from the UN Security Council relies on the good will of permanent missions in New York. If those permanent missions forget to fax to their home capitals, or even if they do fax or email, it gets to the foreign ministry. After that, it is a very unpredictable process whether it will go anywhere else. The majority of experiences that I have are frustrating ones at border posts in Africa, for example, where local authorities have no clue what we are talking about on a targeted measure on an individual. So this is a very imperfect science, to say the least, at the moment.

**Q309 Lord Vallance of Tummel:** Can I bring you back to North Korea and ask you whether you believe that economic sanctions are likely to change the North Korean mind on nuclear weapons or whether you think some form of positive engagement and economic incentives would be preferable, or are

they just a law unto themselves and impervious to what goes on elsewhere?

*Mr Vines:* A pariah state like North Korea is very challenging, and again, the fundamental issue here is, as we already heard in the previous session, the enthusiasm of the People's Republic of China relating to assisting compliance. I would, as a sanctions professional, think that maybe trying to target some of the luxury goods, since the elite in North Korea revolves around luxury goods and the patronage of distribution of some of these goods might be a good area to target and may have some effect. I have seen this elsewhere, where these sorts of systems that rely on patronage and redistribution of commodities that others cannot get can at least inject a sense of some isolation. That could at least encourage some thoughtfulness, and indeed, it may engender some divisiveness within the regime itself. In the case of Angola, targeting a non-state actor, when the UN targeted sanctions on individuals and named and shamed them, business people providing various commodities, including bottled beer, for example, to Unita rebels of Jonas Savimbi, that created great divisiveness within the rebel movement and, as the commodities became less available, so that weakened the resolve of the rebels and was a contributing factor to the decline of the military effectiveness of the rebels towards the end of the Nineties/beginning of this Millennium.

**Q310 Lord Oakeshott of Seagrove Bay:** Yes, with my experience of a few years in Africa, I would not want to try and run an army or a police force without beer, I must say. The same question on Iran. You have touched on it a bit. That is my question.

*Mr Vines:* Iran is a different case, and what I do say reflects Lord Wakeham's first question to me, which is that we actually should study in great depth the impact of US sanctions on Iran and how the Iranians have avoided them, because unless we draw lessons from that and really understand how the Iranians have got around those, we cannot really construct a United Nations sanctions regime on Iran that would be effective, I believe. Iranian networks are extremely adept. I have looked at them myself, from the point of view that the Iranians play a very prominent role from time to time in sanction-busting activities in Africa, which is where I work. I found, for example, when working on Liberia, that Iranian networks were involved in providing arms and ammunition to both the Taylor regime but also to the rebels that were trying to overthrow the Taylor regime. They were in a very commercially advantageous position at that moment in time. But how to penetrate and have effect on these networks is tremendously challenging, time-consuming and difficult, and I have seen no government or independent think-tank or academic study on this, and it just tends to worry me, this

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inflationary use of UN sanctions without thinking what they actually will achieve and drawing proper lessons from the past, and this is the one that I draw from Iran at the moment.

**Q311 Lord MacDonald of Tradeston:** Coming back to the question of sanctions in general rather than particular countries, in the written evidence you say that the threat of sanctions can sometimes be more effective than the actual. Do you want to elaborate?

*Mr Vines:* Once you have imposed a sanction, you are there for scrutiny of sanctions regimes and individuals. Over time sanctions also do deteriorate in effectiveness. Complacency draws in, people get fatigued, members of the Security Council get tired, and so they find ways to penetrate the sanctions. But as a diplomatic tool, the threat of sanctions can be very useful, especially if they are known in the first stage of threatening and imposition of them. For example, in my work at the moment with my colleagues on Côte d'Ivoire, we have found the threat of targeted sanctions on individuals had a calming effect early this year, in February, on a number of individuals. There was a decline in hate speech, there was a change of behaviour in the short term, for six months. It deteriorated after that but we did see a direct effect. This should be considered as a tool. It is not one that can be used too often, but sometimes can focus minds, especially if you are dealing with a regime or an entity that does believe that there is a disadvantage in being targeted financially, not being able to travel or obtaining a pariah status. Some societies do not want that. The Côte d'Ivoire context is one where this is a premium. Charles Taylor's Liberia, I would argue, was one where that was less successful, though even there for the first six to nine months we found some effectiveness when the sanctions had just been imposed, but then they deteriorated dramatically.

**Q312 Lord MacDonald of Tradeston:** From your experience of Africa, have you seen any distinctive patterns of use or success rates of sanctions in Africa? Are there any particular lessons that you would draw from that experience of the sanctions?

*Mr Vines:* There are a number of successes and lessons to be drawn, and lessons more widely for sanctions in general. One I have already mentioned to you, which is that you need the compliance of neighbours. You need neighbours to support the sanctions, otherwise you are in trouble. That is certainly the case that we saw in Liberia, to a degree in Angola, and in the Democratic Republic of Congo. You can tick off most of the regimes. Where I think there is a good success is the use of secondary sanctions on Liberia. In itself it did not change Charles Taylor's behaviour pattern, but it did get him to get his ugly grip off Sierra Leone and allow a

democratic process then to take place and have elections in Sierra Leone. So in terms of loosening Charles Taylor's grip on Sierra Leone and weakening the revolutionary Unita rebels, it was successful, but in terms of sanctions on Liberia itself, they did not have an effect. In fact, it was more the support of the rebels in Guinea through various other players and a regime change agenda that probably changed the dynamics in Liberia more than UN sanctions did. Where do we have wider lessons other than the ones I have brought to you of neighbours? One is where you have increasing peace-keeping operation presence. This is a growing trend, where you have UN peace-keeping operations on the ground who may also have a mandate to monitor UN sanctions or, in the case of Darfur, you have an African Union force that also has a part of a mandate that relates to sanctions. These are potentially much more effective than just having two or three, or five individuals at the most, travelling around the world looking to monitor compliance. When you have 7,000 blue berets on the ground, they can be quite helpful in assisting implementation of sanctions.

**Q313 Lord Paul:** In 2000 the House of Commons International Development Committee was critical of the regional sanctions on Burundi and Sierra Leone for their humanitarian costs. The Committee was also critical of the UN for not intervening politically to ensure that those costs were reduced. Have regional and UN sanctions policies improved since then?

*Mr Vines:* The sanctions on Sierra Leone at the time actually were not United Nations ones. On Sierra Leone we were dealing with Economic Community of West African States' sanctions on Sierra Leone-economic sanctions- and certainly there was a humanitarian impact to the country related to aid disbursement, partly also because the overseas development agency, DFID, was reluctant to provide certain types of aid in that period. But it was not a UN sanction. I think we do need to draw lessons from what happened in that time and to ensure that the mistakes there are not repeated if there are regional sanctions again. The case of Economic Community of West African States' sanctions is that they are very loosely implemented and very weakly policed. It was more the main aid provider to Sierra Leone, which was the United Kingdom's development arm, in fact, that had the most humanitarian impact rather than anything else. What we need to see is, I believe, greater humanitarian impact assessment when sanctions are considered on economic issues and, unlike what the Honourable Minister said, this is done in a very arbitrary, *ad hoc* fashion at the moment within the UN system. There is now a handbook created by the Office for the Co-ordination of Humanitarian Affairs, OCHA, but the

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actual requests for humanitarian impact assessments are on an arbitrary basis still when UN sanctions are considered. There is still a strong lobby within the UN system that is very hostile to first consideration of economic sanctions, but also a counter-lobby that is very strong against proper assessment of humanitarian impact. I have found myself from time to time in the difficult situation of being made to be both the aggressive sanctions investigator at the same time as having to write a report on humanitarian impact. That is like mixing apples and oranges; it does not work very well. They should be separate and they should be reports that challenge each other if we are to get a good conclusion of what the true humanitarian impact is.

**Q314 Chairman:** I wonder if you could give us your views on symbolic sanctions, sanctions where there is little chance of achieving desired change in behaviour but may have an advantage in underlining the United Nations and international commitments to values such as human rights, or it may undermine the UN's credibility as an effective force for change. I wondered where you would strike a balance there.

*Mr Vines:* My Lord Chairman, I do not like symbolic sanctions very much. They are very popular in the United States and used widely without any real desire necessarily for real effectiveness; it makes Congress feel good. I do believe the United Nations is an important brand that needs defending. When you have had situations like UN sanctions on Somalia since 1992 that have been highly ineffective, one has to ask the question: are they any use at all or would it be better not to undermine the sanctions brand by having them? This is where we are in such worrying times and where this Committee's hearing is so important. There is an inflationary use of sanctions now, they are a growth industry. That is nice for me as an investigator but there is not clear thought about how they are being used and how they should be designed. We need to cut away from this emotionalism and look coolly at where they are effective, what are the successes and failures, and that has not been done as assiduously as I believe it should be.

**Q315 Lord Layard:** Could I ask about sanctions on diamonds and timber. Can they contribute significantly to conflict reduction or are they just an inconvenience?

*Mr Vines:* The wars in Africa, especially the civil war in Angola and the one in Sierra Leone, created the process that set up the Kimberley certification scheme for diamonds which on balance is a good process. There are all sorts of problems within it but if you look at the statistics it has provided more quality gemstones going through the official diamond network in Sierra Leone, so the government,

although it taxes diamonds at a very low rate, is earning some revenue, so there is less on the informal markets. The logic of it is that such a process will deny rebel groups and others access to revenue and legitimate governments will benefit from it. We are now at a second stage. The recent work of the group that I am chairing at the moment, the Côte d'Ivoire Expert Group, just produced a report published last Wednesday on the UN website, which showed how the Kimberley Process is being contaminated by conflict diamonds from the Ivory Coast through Ghana's certification scheme. Basically blood diamonds are entering the international process by being issued Ghanaian certificates of origin and ending up in Dubai, Antwerp and other markets. This is very dangerous for the industry. The brand is an emotive one based on imagery of love, affection and other images, and associating these diamonds with conflict is certainly dangerous when this is a commodity that could be threatened. I believe that what needs to happen now is that the Kimberley Process should look at how to strengthen its internal controls, meaning look at the points where certificates of origin are issued and find a more scientific way of assessing what the provenance, the origin of those diamonds is. I believe the Kimberley Process is holding a plenary meeting in Gaborone at the beginning of November and I will be there with my colleagues and we are hoping to see what progress is going to be made. The sad part of the story at the moment is that Ghana is in a state of denial, saying that we have not got quality information, that we cannot prove what we have stated in our report to the Security Council. I believe we have accurate information and, indeed, we have additional information on this that a law enforcement investigation in Belgium, in Antwerp, at the moment is being undertaken and within about a year I hope that we will see prosecutions relating to this case. On the question of timber, we have only had one sanction on timber so far which is that in Liberia. The Liberia case is slightly different in context from the one the minister described earlier. Timber sanctions were imposed late in the day on Liberia after Charles Taylor was already just about to leave for forcible retirement to Calabar in Nigeria and they were very much more a regime change issue at the time, a statement, rather than about reforming the timber industry. What we do have in Liberia, and I think it is important for this Committee to look at it, is where you have sanctions that are now in place related to trying to reform the management of the economic assets of Liberia. The logic of this is that if you reform those you may deny future conflict. The challenge of this is whether this is possible and one question I would ask the Committee to consider is, is this the right format for UN sanctions to be looking at post-conflict transformation of an economy or is that

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something that the financial institutions and others should be focusing on? It is very experimental in Liberia but I believe it is very important that a committee like this one looks at it because, if it is successful, it is a precedent for elsewhere; but if it is not successful, then it needs to be considered whether this was one step too far for a sanctions regime imposed by the UN.

**Q316 Lord Vallance of Tummel:** Can we turn now to targeted financial sanctions imposed on individuals. It seems that their application is something of a burden on the financial services industry and there are substantial numbers of individuals targeted but the sums of money involved are quite small. Do you think these sanctions are effective and, if so, are there any other factors at work here beyond the relatively insignificant amounts of assets frozen?

**Mr Vines:** It is true that the figures involved are very insignificant. If you look at the Liberia seizures they are only a few million dollars at the most. UNITA was even less. Part of the reason is that as soon as a sanction is considered these assets move very fast or they are moved in cash or commodities, so it is very difficult to track them. I believe that targeted sanctions on individuals, as I have already said, are important. But I believe that small numbers of targeted individuals are much more effective than large numbers as are quality indicators (as is the jargon in the trade). You need to have quality information; the passport details, date of birth, where the passport was issued, how many passports an individual might have, all need to be clearly

indicated, if we are to have a chance of success at tracking those individuals. It is the same with bank accounts. Also, the justification: one of the areas of progress in the UN is, after a number of mishaps, there is now at least justification as to why someone is sanctioned and why an account is frozen. That is on the UN website, so the individuals or the entities that are targeted will actually know what the criteria are. A few years ago it was a terrible situation, one would sit in a sanctions committee meeting—I am not breaking any secrets here to you—a country would have proposed a name and when asked they would say, “That is our intelligence, we cannot tell you”; and there was no due process, there was no accountability. We are improving on this now and it is very important, including that the individuals who are targeted know why they are there. I recently had an argument with a targeted individual who said, “No, some of the criteria are correct but, in fact, they have missed the most important things that I have done. I was in charge of a military operation in X and I did that”. He was rather proud of some of the dark side of his activities and disappointed that it was not up on the UN website.

**Chairman:** That is a good way in which to end. We have had a number of evidence sessions over the last few weeks on this subject and this is officially our last session of oral evidence, but I have to say I do not think the Committee would have been as well informed if we had not had your evidence today. We are extremely grateful to you for coming along and answering our questions. Thank you very much indeed.

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# Written Evidence

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## Memorandum by the British Bankers Association

### INTRODUCTION

1. As good corporate companies, banks wish to fulfil their legal obligations as expressed in legislation adopted by Parliament and the regulatory obligations decided by the FSA. In particular they are under an absolute obligation to comply with the terms of the various sanctions notices circulated by the Bank of England. In so doing, they will be assisted by legislation and regulations which take fully into account the objective operational environment in which financial institutions carry out their business. Both the Chancellor of the Exchequer and the National Financial Intelligence Unit have recognized the critical importance information provided by the banks to the investigation of terrorist activity. The names of those arrested on August 2006 to prevent terrorist attacks against aircraft were circulated by the Bank of England under their sanctions procedures.

2. Banks have a duty to their law-abiding customers, wherever resident, to carry out their lawful instructions, unless the names of such customers appear on lists circulated by the Bank of England or the banks are prohibited from so doing by country-specific sanctions—this obligation is of course overridden in those circumstances defined by the 2002 Proceeds of Crime Act and subsequent legislation.

3. Banks have an obligation to their shareholders to maximize the return on capital, subject to the above and in conformity with their medium and longer term business planning.

4. They face difficult choices in respect of sanctions adopted unilaterally by other countries, primarily but not exclusively the US, which are not legal obligations enforceable in the UK on activities originating in this country. If US pressure in respect of such transactions is ignored, this could have an adverse effect on the commercial activities of British-based banks in that country or even lead to the risk of their employees being detained when transiting the US. An additional consideration is that Office of Foreign Asset Control (OFAC) obligations are applicable to US nationals and US-owned interests located in the UK. This can lead to difficulties where US citizens are employed (especially in senior positions) within UK incorporated banks.

5. Banks have a more general interest in the free international flow of goods, services and the accompanying financial payments as well as the undistorted movement of investment capital and dividend payments. The Committee might like to be aware of a Communication from the Group of 77 developing nations and China to the Eleventh Session of the UN Conference on Trade and Development in 2004 expressing “deep concern at the increased application of coercive measures and unilateral sanctions against developing countries including the new attempts aimed at extraterritorial application of domestic law.”

6. Many of the questions circulated by the Committee concern the justification for and effectiveness of sanctions. The banks have focussed on the unwieldy nature of sanctions lists, the consequent difficulties of compliance and what is perceived by some to be a drive by the US authorities to expand the reach of unilateral US measures. Nevertheless the banks consider that a view on the cost benefit analysis of the current sanctions regime could usefully form part of the Committee’s conclusions.

### ANSWER TO QUESTION 5

7. Apart from the US, country-wide sanctions are mainly used in time of war. In dealing with sanctions against named individuals on UN, EU, or sometimes on US lists, UK financial institutions face specific technical problems which are not capable of easy resolution. There are at least 34 different sanctions lists with varying degrees of consistency in respect of both content and format (eg the same sanctioned individual on both Bank of England and OFAC lists can be shown with different spellings). UK banks are required to check against over 6,000 names. The names entered on such lists often come without a “single unique identifier” such as a date of birth, which helps narrow down the focus of transaction monitoring search. The inclusion of names without unique identifiers places a disproportionate burden on the banks, which are legally obliged to search their customer base and isolate their intended target from others with similar names—but without adequate information. The names are often aliases, transliterations from the Arabic are not standardised, and there is a fairly small range of given names. An exact match search would be unlikely to produce any target matches. Using a fuzzy logic search throws up partial matches including variations in spelling and will produce a high number of “false positives”—ie customers who match the search criteria but who are highly unlikely to have any connections with terrorism. A bank then has to use expensive human manpower to whittle down the list. This can lead to customer complaints and delays. If an innocent party has been incorrectly identified

as a sanctioned individual, it can take a considerable time to unblock their accounts. The extent of the problem is determined partly by how much extra resource a bank devotes to further screening.

8. An additional point is that there is no acknowledged standard for matching software or criteria across the industry for either payment or customer screening. Firms are dependent largely upon vendors for decisions in this area, which is not appropriate. Another issue is how long firms should take to narrow down potential matches as the authorities expect funds to be blocked immediately. The targets will themselves be aware that their names are listed on a sanctions list and take measures to disguise their true identity, work through proxies or disburse the funds.

9. The experience of “blanket sanctions” against a country, as happened with Iraq, caused significant problems for financial institutions. The sanctions were aimed at any “Iraqi nationals” but banks did not historically record nationality. It was therefore very difficult to identify all such customers and freeze their accounts. Furthermore, once frozen, there was a long and very labour intensive process of appeal by the customer to the Bank of England, which could authorise certain sums for certain reasons (eg medical expenses) which caused further uncertainty and operational difficulties for the banks concerned. It was also questionable whether restricting access to funds for ordinary Iraqis in this way actually made any difference to the Iraqi regime. Banks commented to the UK Government that blanket sanctions were costly and ineffective and asked that, in future, such a technique not be used. Rather, specific targeted measures similar to the FATF countermeasures should be used—this seemed to stand a better chance of affecting the targeted government.

10. A further issue is that compliance tolerance for economic sanctions is regarded as zero- failure when in practice a risk-based approach has to be applied. There is no guidance on whether firms should be able to rely upon the due diligence undertaken by their (similarly regulated) correspondent banks’ payment screening mechanisms (eg domestic UK bank to bank payments).

11. In general the banks have cordial relations with the Bank of England’s Sanctions Unit. The Bank tries hard to ensure the consolidated lists it circulates are as easy to use as possible and corrects errors where it can but severe uncertainties remain. The banks recognize and accept that the Bank of England is not in a position to provide guidance on matching criteria. They would welcome the opportunity to obtain from SOCA or another source, extra information not provided in the original sanctions list, in order to help them decide in difficult cases whether a suspected positive hit was indeed a match. If a bank takes action in good faith to block an account, it would not be afforded the same protection against legal action by a dissatisfied customer as would be the case in, for example, the US. UK firms are obliged to report any breaches to the Bank of England. The perception by the industry is that the regulatory authorities do monitor sanctions performance and would be prepared to enforce compliance. Sanctions compliance is an integral part of senior management responsibility under the FSA’s Senior Management Arrangements, Systems and Controls. In general, a UK banking group will seek to apply sanctions across the whole geographical spectrum of its branch operations, not just to those in the UK.

12. The UN Coordinator on Sanctions to combat terrorist financing is well aware of the problem with sanctions lists. At a June 2006 meeting on sanctions between EU Member States and the US, the private sector put forward the following wish-list:

- A solution to the problem of transliterating Arabic names.
- Standard guidance from governments on the treatment of non-Latin alphabet.
- Changes in data protection laws to improve information sharing between individual banks on terrorist suspects.
- Agreed procedure between banks to indicate that a particular customer had been screened effectively.
- A solution to the problem of innocent people repeatedly being identified as terrorist through sharing a name or being a close match with terrorist subjects. A government maintained register of such cases would help.
- Indemnity for banks from civil suits by customers for taking part in a sanctions programme.
- Speedy communication with government departments to resolve “pending” transactions.

13. Banks understand that information is not always complete. But they question the utility of searches with overly vague criteria. They also wonder about the utility of the exercise when individual sanctions were made public and often threatened in advance, one month in the case of the notice for the Taliban, which allows potential targets to shift funds to non-compliant jurisdictions and to use nominees. The technical problems were reduced in the case of searches instituted after the name list for UK terrorist suspects was published on 10 August, possibly because the suspects were well-documented, including date of birth, in the normal course of long-term residence in the UK.

14. As the number of sanction lists increases and the name lists lengthen, more questions are being asked about the practical utility of such measures, except in a small number of special cases such as Serbia and, in the more distant past Southern Rhodesia as it was, when set against the costs of compliance. One of the major clearers estimated its direct staff costs associated with sanctions work as nearly £300,000 in 2004 but total systems costs exceeded £8 million. The time of counter staff dealing with actual/potential customers affected by sanctions was not costed. In general terms, the large retail banks will be spending £10's of millions per institution on systems and millions per year in running/staff costs.

15. Unlike other G8 members, the US operates a series of country sanctions regimes against individual countries such as Cuba, North Korea, Iran and Syria. It has also adopted unilateral measures against a number of designated entities and individuals. In the case of Cuba, the US measures seek explicitly to block trade and financial transactions between Cuba and Third Countries. In respect of US persons, OFAC measures apply to Cuban nationals described as "Blocked Persons" irrespective of where they reside. In other cases, there is a degree of moral suasion linked closely to the wish of foreign institutions with exposure to US markets to avoid conflict with the several US regulatory bodies, even in respect of those transactions which fall outside their formal jurisdiction.

16. A further complication is that the majority of international transactions between banks in US Dollars involve clearance through a US correspondent bank. There is an exemption allowed by the US authorities for transactions with Iran to continue, provided for example no US bank or directly owned subsidiary is involved in directly crediting or debiting an Iranian account. OFAC operate general licences for most of their country sanctions. These are complex procedures for UK institutions to implement if they wish to protect their US franchises from US regulatory exposure which often require substantial additional transactional and customer information to make an informed decision. Subsequent delays can have an adverse impact on good customer service.

17. Recent cases in which foreign banks operating in the US have been fined \$80 million and \$100 million respectively have led some banks to question whether the US has in fact embarked on a campaign of informal pressure to squeeze out foreign financial contacts with regimes on its black-list for terrorism, WMD proliferation or other reasons. There is also a suspicion, shared by some US observers that the penalties for breaches levied against foreign banks are heavier than those applied to domestic banks. OFAC would maintain that it has improved its dialogue with the financial sector and become less autocratic in its operations. So far, even major US banks remain to be convinced and there is a real fear that OFAC's perceived hard line is beginning to affect the way in which US regulators treat the US branches or subsidiaries of foreign banks. In effect British banks end up becoming an arm of US foreign policy, in the case of Iran at variance with the UK Government's policy of legitimate commercial engagement. In other cases there may be a clash between US requirements and third country jurisdiction's approach.

18. Some years ago, the EU adopted blocking measures to prevent firms in Member States from complying with the Cuban Trade embargo and the Iran Sanctions Act. In practice the EU and the US have in recent years worked out a modus vivendi which reduces friction in this area for well-known cases such as Cuba. The Commission is wary of opening another difficult area in the EU-US dialogue without specific evidence of difficulties from financial institutions in member states. They in turn are wary of providing it for fear of poisoning their relationships with the US regulators. Restrictions on financial contacts with North Korea and Syria are fairly easily absorbed. A ratcheting up of unilateral US pressure on those facilitating business with Iran or Iranians living abroad would be a different question.

#### ANSWER TO QUESTION 10

19. The banking sector considers that policy makers do not take sufficiently into account the practical and regulatory costs of applying new measures. Given the political imperative behind sanctions resolutions and the inability to produce better targeted data on individuals, this view may have more than the usual merit when applied to sanctions.

*September 2006*

#### **Memorandum by the British Exporters Association**

1. BExA would like to draw the attention of the House of Lords Select Committee on Economic Affairs in their enquiry on the Impact of Economic Sanctions to the significant negative impact on British exporters if the country subject to the sanctions is allowed to "call" bank guarantees provided by British exporters in support of their sales contracts with that country.

2. Bank guarantees are normally required prior to, during and after a sales contract to give the buyer assurances that the British party will perform his obligations:

- A **bid bond** is provided with a tender to ensure that the winning bidder concludes a contract.
- An **advanced payment guarantee** ensures that if the exporter does not perform, the buyer can get back any down payments or progress payments he has made.
- A **performance bond** guarantees that the exporter will complete the contract.
- Warranty bonds and **retention money bonds** secure the exporter's obligations post-shipment or post-commissioning.
- **Offset bonds** guarantee that the exporter will perform his obligations to perform any offset required under the contract.

3. Such guarantees are usually payable on first demand, ie they are unconditional and no evidence of non-performance is required. The issuing bank is therefore forced to pay any calls unless subject to an injunction or similar court restraint. If the guarantee is indirect (ie issued by a bank in the buyer's country and secured by a counter-guarantee from a bank in the UK), the local bank is even more likely to pay a call.

4. Bid bonds are likely to be for 2 per cent–4 per cent of contract value, but advanced payment guarantees are typically 10 per cent–30 per cent and performance bonds 10 per cent–15 per cent. The advance payment guarantee and performance bonds should not be cumulative but often are, so an amount equivalent to at least 25 per cent of the contract value may be at risk of unfair calling. If UK exports to the country subject to sanctions were running at £2 billion pa with an average performance time of 18 months, then bond liabilities could easily be as high as £750 million.

5. If sanctions mean that UK exporters are unable to deliver equipment, or they (and/or their local contractors) are unable to perform work on site, there is a real danger of some or all of these bonds being called. Moreover, there is also an increased risk that the government of a sanctioned country will issue a decree that all bonds are to be called (possibly as retaliation against those nations that have imposed sanctions).

6. In some cases, bonds will have been issued by a UK-registered bank; in other cases they will have been issued by a local bank in the sanctioned country under the indemnity of a UK-registered bank. In either case, the calling of a bond would automatically result in the UK bank taking recourse to the UK exporter under the terms of the counter-indemnity that it will have been required to provide to the bank. Thus, UK exporters could immediately suffer a very significant financial loss in addition to any other loss that the company might suffer as a result of the imposition of economic sanctions. Some exporters elect to insure against the risk of bonds being called unfairly, but that insurance is not always effective in protecting against all circumstances, and—more importantly—is sometimes not available (at an affordable price) for bonds issued in difficult countries.

7. When the UN imposed economic sanctions against Iraq, following its invasion of Kuwait in 1990, those sanctions contained provisions that effectively prevented banks from paying any bond calls. This is an important measure that should be considered whenever economic sanctions are applied, so that banks registered in the UK cannot pay against calls made under:

- any indemnities they have issued to banks in the sanctioned country, or
- any bonds or guarantees that they have issued directly to beneficiaries in the sanctioned country.

This will also protect any underwriters who may have insured the exporter against unfair calling of the bonds.

*September 2006*

### **Memorandum by Ms Rachel Barnes, Chamber of Clive Nicholls, QC**

#### **TARGETED FINANCIAL SANCTIONS**

##### **A. INTRODUCTION**

1. This submission is intended to assist the Committee by addressing particular issues relating to the legal framework of targeted financial sanctions programmes established by international organisations. Substantive economic issues, such as the effectiveness of targeted financial sanctions, or indeed, more general economic or trade embargos, are not addressed in this paper since these are beyond the author's expertise.

2. While the primary focus of the Committee's inquiry falls upon questions of economics, it is respectfully suggested that the legal implications of sanctions programmes should also be included in any consideration of these issues. While traditionally thought of as tools of economic policy, sanctions have significant effects upon the legal rights and interests of interests and other entities. This is so not only in respect of those entities



against whom sanctions are directly applied, but also upon the rights and interests of non-targeted third parties, be they members of civilian populations or dependent relations or business partners of targeted individuals and entities.

3. The substantive discussion contained within this paper begins in Section B with a short description of the development of targeted sanctions, otherwise known as “smart sanctions”. Section C then highlights some of the problems associated with establishing clear objectives in targeted sanctions programmes and the failure to address these issues adequately. The effects of targeted sanctions upon the legal rights and issues of the individuals and other entities against whom such sanctions are applied are briefly described in Section D. Section E considers the potential adverse consequences for non-targeted third parties whose rights and interests are affected by the operation of targeted sanctions programmes. Since the submission of evidence on the effects of targeted sanctions upon third parties was specifically invited by the Committee, discussion of this issue is more substantial than that contained in the preceding sections.<sup>1</sup>

4. Unless otherwise stated, the discussion herein concerns targeted financial sanctions programmes established by inter-governmental organisations, such as the United Nations and the European Union. The UK government generally plays an important role in programmes established through these organisations, both in terms of its input into their establishment and development, and in implementing the particular measures contained within the programmes. As a permanent member of the UN Security Council, the UK has a particularly important role with respect to UN sanctions programmes.

5. This paper aims only to introduce and provide a broad overview of certain legal issues arising from the operation of targeted financial sanctions. Should the Committee feel that it would be assisted by further submissions focused on particular areas of concern, the author would be happy to address those areas in greater detail at a later stage.

6. The evidence presented in this paper is based primarily upon doctoral research conducted between 2002 and 2005 at Cambridge University’s Faculty of Law. This research examined in detail one particular international targeted sanctions programme, namely the UN Security Council’s programme of targeted sanctions against persons identified as being associated with either Al-Qaida or the Taliban. Many of the issues that arise in relation to that specific sanctions programme are, however, also applicable to targeted sanctions more generally.

## B. TARGETED FINANCIAL SANCTIONS—AN OVERVIEW

7. As the Committee is no doubt aware, the use of targeted sanctions by intergovernmental bodies (such as the UN) grew out of substantial disquiet throughout the 1990s with the effects of broad economic embargos upon the civilian populations of targeted States.<sup>2</sup> This led both to a greater public emphasis by, amongst others, the UN Security Council on managing the negative humanitarian effects of general economic sanctions against States,<sup>3</sup> and also to the development of so-called “smart sanctions”. These are sanctions that were

<sup>1</sup> This section of the paper responds to Question 5 in the Committee’s Call for Evidence, which concerns the potential adverse consequences of sanctions programmes.

<sup>2</sup> During the 1990s, the UN Security Council had established more than 10 sanctions programmes to address a variety of situations it deemed to constitute threats to international peace and security in Iraq, Somalia, Libya, the Federal Republic of Yugoslavia (Serbia and Montenegro), Liberia, Angola, Rwanda, Sudan, Sierra Leone, the Federal Republic of Yugoslavia (relating to Kosovo), and Afghanistan. See UN Docs. S/RES/661 (1990); S/RES/733 (1992); S/RES/748 (1992); S/RES/757 (1992); S/RES/788 (1992); S/RES/864 (1993); S/RES/918 (1994); S/RES/1054 (1996); S/RES/1070 (1996); S/RES/1132 (1997); S/RES/1160 (1998); S/RES/1267 (1999), respectively. (Note that not all of these programmes involved the imposition of economic sanctions.)

During this period, the criticism of economic sanctions against States on the grounds of their negative humanitarian consequences also grew, especially as the level of civilian suffering in Iraq became recognised. See, eg, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General*, UN Doc A/50/60—S/1995/1 (1995); Doxey, M. *International Sanctions in Contemporary Perspective*, 2nd ed (1996); World Health Organisation, *The Health Conditions of the Population in Iraq since the Gulf Crisis*, (1996); Garfield, R. *Morbidity and Mortality Among Iraqi Children from 1990 through 1998—Assessing the Impact of the Gulf War and Economic Sanctions* (1999); Normand, R., “A Human Rights Assessment of Sanctions: The Case of Iraq, 1990–1997” in van Genugten and der Groot (eds) *United Nations Sanctions* (1999) pp 19–33; Simons, G., *The Scourging of Iraq: Sanctions, Law and Natural Justice*, 2nd ed (1998); OHCHR, *The Human Rights Impact of Economic Sanctions on Iraq—Background paper prepared by the Office of the High Commissioner for Human Rights for the meeting of the Executive Committee on Humanitarian Affairs*, 5 September 2000; Bossuyt, M. *The adverse consequences of economic sanctions on the enjoyment of human rights*, working paper prepared for UN ESCOR Sub-Comm. Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2000/33 (2000); Reinisch, A., *Developing Human Rights and Humanitarian Law Accountability of the Security Council on the Imposition of Economic Sanction* (2001) 95 Am J Int’l L. 851; Sassoli, M. “Sanctions and International Humanitarian Law—Commentary” in Gowlland-Debbas (ed) *United Nations Sanctions and International Law* (2001) pp 241–48; Gordon, J., *When Intent Makes All the Difference in the World: Economic Sanctions on Iraq and the Accusation of Genocide* (2002) 5 Yale H R. & Dev L J 57.

<sup>3</sup> See, eg, “Humanitarian impact of sanctions” non-paper by the permanent representatives of the UN Security Council, 13 April 1995, UN Doc S/1995/300 (1995); *Note by the President of the Security Council on the Work of the Sanctions Committees*, UN Doc S/1999/92 (1999); *Note by the President of the Security Council on the establishment of an informal working group on improving the effectiveness of UN sanctions*, UN Doc S/2000/319 (2000). Perhaps the best known of Council initiatives to manage the humanitarian effects of general economic sanctions is the Oil-for-food programme developed within the UN sanctions programme against Iraq, established pursuant to Security Council resolution 986 (1995).

intended to target either (i) specific persons or entities linked to the governing regime or (ii) specific economic sectors of the State or geographic area in question.<sup>4</sup> Latterly, targeted or smart sanctions have been applied against individuals and entities with no necessary connection to a particular State or to a de facto governmental regime within a geographic area. Examples of this more recent application of smart sanctions to non-State actors are the various counter-terrorism targeted sanctions programmes.<sup>5</sup>

8. Sanctions programmes that are targeted against specific persons generally operate according to a list system. In other words, the body responsible for administering the sanctions programme maintains a list of individuals and entities against which the restrictive measures within the programme must be applied. At the UN level, examples of such programmes include the Security Council's programmes relating to Al-Qaida and the Taliban, Liberia, Sierra Leone, and the former regime in Iraq. In each of these cases, the Security Council's sub-committee responsible for administering the relevant programme maintains a list of individuals and entities against whom all UN Member States are required to apply the sanctions imposed through the programme. In addition to financial sanctions, these programmes generally also impose travel bans against the individuals designated on their respective lists, and may also include other measures such as weapons controls.

9. Individuals and entities designated on a sanctions list can typically be thought of as being either primary or secondary targets. The primary targets are those directly involved in committing the bad conduct that is being targeted under the particular sanctions programme. For example, Osama bin Laden and individuals directly responsible for committing acts of terrorism linked to Al-Qaida are some of the primary targets of the UN's Al-Qaida/Taliban sanctions programme. Secondary targets of this programme include individuals and entities who, while they may not be directly involved in commissioning or committing acts of terrorism, are deemed to be "associated with" those previously identified as primary targets. In very simple terms, the primary rationale behind the application of restrictive financial measures against these secondary targets is, generally speaking, to reduce or block the flow of economic resources to the primary targets in an attempt to prevent their commission of the bad conduct in question.

10. At the EU level, there are a number of targeted sanctions programmes, some of which represent the implementation of the UN Security Council sanctions programmes within the EU, while others are independent EU programmes.<sup>6</sup> In the case of the former, while the EU publishes lists of persons against whom sanctions must be applied, these are simply reproductions of the lists managed by the UN Security Council sub-committees and the EU has no direct control over the addition or removal of persons to or from those lists.

### C. THE NEED FOR CLEAR AND COHERENT POLICY OBJECTIVES

11. A frequent complaint of sanctions programmes organised through international bodies such as the UN is the lack of clear and transparent objectives. Over at least the past decade, writers have been urging the Security Council to set clear objectives when establishing sanctions programmes, for both effectiveness and equitable reasons.<sup>7</sup> One of the difficulties with achieving this seems to be that during the diplomatic negotiations of a UN Security Council resolution there is often pressure for a certain measure of ambiguity and lack of specificity to enable a consensus to be reached amongst Council members. This should, however, be resisted when establishing sanctions programmes and, as one of the permanent members of the Council, the UK government has particular responsibilities in this regard. In the context of membership of the EU, this political pressure within the UN Security Council is particularly significant since the European Community's courts have been reluctant to consider in any meaningful detail the objectives of EC regulations implementing UN sanctions programmes. Instead, the EC Court of First Instance and the European Court of Justice have focussed upon the broad objective of implementing the relevant UN Security Council resolutions and thereby contributing to coordinated international action to maintain international peace and security, in lieu of any detailed

<sup>4</sup> Early examples of the use of "smart sanctions" by the Security Council include the restrictive measures applied against members of UNITA in Angola and against members of the military junta in Sierra Leone and, more recently, the trade in so-called "blood diamonds" in that area. See, *inter alia*, UN Docs S/RES/1173 (1998); S/RES/1132 (1997); S/RES/1306 (2000). The development of international smart sanctions is an on-going process centred largely upon three co-ordinated initiatives sponsored by the Swiss, German and Swedish governments, namely the Interlaken, Bonn-Berlin, and Stockholm Processes, which are inter-governmental symposia established in the late 1990s to promote research and understandings of international targeted sanctions programmes.

<sup>5</sup> Examples of such programmes include the UN's Al-Qaida/Taliban programme and the EU's programme of "specific restrictive measures directed against certain persons and entities with a view to combating terrorism" pursuant to, *inter alia*, Common Position 2001/931/CFSP and Council Regulation (EC) 2580/2001.

<sup>6</sup> For details of all EU sanctions programmes, see the European Commission's webpage on EU sanctions, available at [http://ec.europa.eu/external\\_relations/cfsp/sanctions/measures.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm)

<sup>7</sup> See eg, Doxey (1996) pp 119–120; Cortright and Lopez, *The Sanctions Decade, Assessing UN Strategies in the 1990s*, (2000) pp 223, 232; Cortright and Lopez, *Sanctions and the Search for Security: Challenges to UN Action* (2002) p 15; *Making Targeted Sanctions Effective—Guidelines for the Implementation of UN Policy Options*, The Stockholm Process Report, 14 February 2003 (hereinafter, the "Stockholm Guidelines") p 24, § 41; Biersteker *et al*, *Targeted Financial Sanctions: A Manual for Design and Implementation (Contributions from the Interlaken Process)*, Watson Institute for International Studies, Brown University, USA (2001) p 5.

consideration of the professed objectives of the particular sanctions programmes and how the restrictive measures in question will contribute to those objectives.<sup>8</sup>

12. The need for clear and transparent objectives is especially important in the context of targeted sanctions. Not only are well-defined goals necessary to establish “clear criteria for determining how the measures are to be imposed, their duration, and their effectiveness”,<sup>9</sup> in the context of targeted sanctions against individuals and other non-State entities, natural justice and fairness would seem to require it. These targeted sanctions programmes are particularly draconian administrative measures which aim to restrict designated persons’ access to any financial or economic resources for an indeterminate—possibly permanent—basis. Other issues of human rights aside, a basic concept of fairness would seem to require that it be clearly communicated to these individuals and other non-State entities why they are being targeted and what the inter-governmental organisation in question aims to achieve by taking this action against them.

13. Sanctions programmes that form part of an international response to terrorism seem to attract particular difficulties formulating clear and coherent programme objectives, save from the highly abstracted objective of preventing and suppressing terrorism. These difficulties may spring at least in part from the problems inherent in defining terrorism but they also seem to arise because of the differences between the individuals, groups and other entities being targeted. Unless objectives can be specified in relation to these different targeted persons, there will not be adequate guides of when the measures can be lifted (for example, identifying what the targeted persons must do to “rehabilitate” themselves in order to be de-listed, if indeed, one of the programme’s objectives is to provide incentives for behavioural change) and criteria by which to assess the effectiveness of the programme.

14. When considering the policy objectives of sanctions programmes, the Committee may find it helpful to conceptualise them in terms of first-order and second-order objectives. First-order objectives are programme-specific and relate to the question of why the inter-governmental organisation has established the particular programme in question and what it is seeking to achieve through it. Second-order objectives are common to a number of sanctions programmes and relate to broader aspects of international sanctions practice, such as adopting a more rule-oriented approach, applying principles of humanitarian law, and avoiding or minimising unintended harm to third parties incurred as a direct result of the operation of a sanctions programme.

15. To use the example of the UN Security Council’s Al-Qaida/Taliban programme, the Security Council has not clearly articulated either the first-order or second-order objectives of this sanctions programme. First, whilst the Council may be in the process of clarifying the primary targets of the Al-Qaida/Taliban programme and the bad conduct allegedly committed by them, it has still not clearly articulated its objectives in relation to these groups (ie, its first-order objectives). Although it presumably aims to stop the bad conduct that it has identified (acts of terrorism and other political violence), the Council has not specified how it intends to do this through the application of financial sanctions under the Al-Qaida/Taliban programme. For example, it has not specified whether the objectives of the programme are simply to contain the activities of the targeted groups by cutting the flow of economic resources necessary to commit acts of violence; or whether these objectives may also include, under certain circumstances, promoting a change in strategies by some groups by rewarding those that renounce violence as a means of achieving political goals through the lifting of the sanctions against them. In short, the Council has not identified its own “end-goals” and, specifically, the circumstances under which the sanctions under the Al-Qaida/Taliban programme might be ended—either in their entirety or in relation to particular targets only.

16. The lack of clear first-order objectives can also cause immediate problems in the operation of the sanctions programme, and in the case of the UN Al-Qaida/Taliban programme this is already causing problems in relation to the national peace and reconciliation process promoted by the Afghan government.<sup>10</sup> A number of individuals participating in the Afghan reconciliation process are still designated under the UN’s sanctions programme. The Security Council’s sanctions committee has stated that, from its perspective, participation in this national reconciliation process can only follow after de-listing by the Security Council’s sub-committee.<sup>11</sup> Yet, as described below in Section D, de-listing in this sanctions programme is subject to the

<sup>8</sup> See, eg, Case C-84/95 *Bosphorus Hava Yollari Turizm ve Ticaret AS v Minister for Transport, Energy and Communications, Ireland and the Attorney General* [1996] ECR I-3953, especially paras 17, 23–27; Case T-315/01, *Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities*, Judgment of 21 September 2005 (CFI); Case T-253/02 *Chafiq Ayadi v Council of the European Union*, Judgment of 12 July 2006 (CFI), paras 124–125 (CFI).

<sup>9</sup> Biersteker *et al* (2001) p 5.

<sup>10</sup> It is also possible that in the future, this could cause problems in achieving peaceful settlements in other regions. For example, in September 2005, peace negotiations between India and some Kashmiri separatist groups were announced. While these negotiations did not at that time include the Kashmiri group listed on the UN Consolidated List, Lashkar-e-Tayyiba, it may be that sometime in the future members of this group could be included in negotiations designed to resolve the conflict in that region. (See UN Consolidated List entry No 85, available at <http://www.un.org/Docs/sc/committees/1267Template.htm>) Similarly, there may come a time when the government of the Russian Federation elects to negotiate with the armed groups fighting for an independent Chechen state.

<sup>11</sup> See UN Doc S/PV.5375 p 5 (statement by Ambassador Mayoral, Chair of the Al-Qaida/Taliban Committee at Security Council meeting on 21 February 2006).

vagaries of international politics and can effectively be vetoed by any member of the Security Council. Thus, there is the possibility that the UN's sanctions programme could operate as a block to a process of national reconciliation, potentially damaging the prospects of peace in that region, which the Security Council has classified as a matter of international peace and security.

17. In relation to second-order objectives, some measures designed to achieve these more general objectives have been incorporated into the Al-Qaida/Taliban programme. These, however, have been introduced on an ad hoc basis in response to specific political pressures rather than as part of a clear and coherent strategy. For example, thus far, little public consideration has been given to the way in which this targeted sanctions programme may affect members of civilian populations and other non-targeted third parties and what measures could be introduced to ameliorate any unintended negative consequences.

#### D. EFFECTS UPON INDIVIDUALS AND ENTITIES DESIGNATED UNDER TARGETED SANCTIONS PROGRAMMES

18. When targeted financial sanctions are applied against individuals and other non-State entities (such as corporations or charities), the economic rights and interests of those targets are significantly restricted, since the aim is to block the use, control and receipt of any economic assets by the targeted entities.<sup>12</sup> These restrictions are draconian in their nature and are designed to be, and are often formulated as temporary emergency measures. Nonetheless, where the sanctions programme is not clearly defined and there is no clear end-point to the programme itself (such as programmes relating to terrorism), these substantial restrictions could, in practice, be applied against targets on a long-term if not permanent basis.<sup>13</sup>

19. Even though there it is now recognised that humanitarian exceptions should be built into targeted sanctions programmes to allow designated individuals the bare means of living,<sup>14</sup> there must also be a mechanism to ensure that these exceptions are accessible as a practical matter. This problem has arisen in the UN's Al-Qaida/Taliban programme where a designated person makes a request to the relevant Member State for the release of funds under the humanitarian exception provisions and that Member State is not inclined, for whatever reason, to release any funds and to forward the application to the UN administration. This issue has been under review within the UN for some time and it has previously been suggested that Member States be required to notify the sanctions committee of all applications whether or not they are minded to grant them. In the EU, the Court of First Instance has tried to ameliorate this situation by interpreting the obligations of EU Member States to include the good faith consideration of all applications for humanitarian exceptions and, as part of that, examining the needs of the applicant.<sup>15</sup>

20. The most significant legal issues arising from the use of targeted sanctions programmes concern the ability of persons to challenge their designation on the target lists and to petition for de-listing. This is especially important where the sanctions programmes use broad standards for designation purposes such as being "associated with" the programme's primary targets.<sup>16</sup> Where such broad designation criteria are employed, rather than requiring a showing that a designated individual or entity has, directly or indirectly, contributed to the bad conduct that is being targeted through the establishment of a sanctions programme, the restrictive measures may be applied against some secondary targets that make no effective contribution to that bad conduct. In these circumstances, it is arguable that applying sanctions will not further the programme's objectives of suppressing and preventing that bad conduct. If these individuals and entities are unable to challenge in a meaningful way the appropriateness of their designation under the programme, calls for due process within the programme will not be based simply on normative arguments or issues of international credibility and encouraging States' participation in the programme (although these are important considerations in their own right). Under these circumstances, the provision of procedural protections is not an end in itself but rather a means by which the potentially overbroad application of sanctions under a sanctions programme can be ameliorated.

<sup>12</sup> In some targeted financial programmes, humanitarian exceptions have now been introduced to allow persons access to some minimal funds to enable a basic standard of living. This development is described in greater detail below.

<sup>13</sup> The Court of First Instance of the EC has, however, rejected this contention and has held that if a sanctions programme has a provision requiring the periodic review of the programme as a whole, then the restrictive measures upon designated individuals and entities are temporary in nature. The Court reached this conclusion in a case in which the applicant had been subject to restrictive financial measures for five years. Case T-253/02 *Ayadi*, paras 134–136.

<sup>14</sup> Two years after the Security Council imposed financial sanctions upon individuals under the Al-Qaida/Taliban programme, exceptions were introduced on application to the relevant Member State where . . . necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources. (UN Doc S/RES/1452 (2002) para 1(a).) Security Council resolution 1452 (2002) also allows for extraordinary exceptions to the sanctions but these must be positively approved by the Al-Qaida/Taliban sanctions committee before funds can be released.

<sup>15</sup> Case T-253/02 *Ayadi*, para 132.

<sup>16</sup> This is the designation standard employed in the UN Al-Qaida/Taliban sanctions programme. See UN Doc S/RES/1617 (2005).

21. In short, certainly with respect to targeted sanctions programmes established by the UN Security Council, designated persons have no right to a fair hearing before the body responsible for their inclusion on the sanctions lists, namely the relevant sanctions committee of the Security Council. Although the need to incorporate sufficient due process protections for designated individuals and other non-State entities has been recognised as a basic principle by the EU Member States,<sup>17</sup> in relation to UN Security Council sanctions there has not been any adequate resolution of these issues. Moreover, the EC Court of First Instance has held that precluding designated persons from effectively challenging their inclusion on sanctions lists established by the UN Security Council before either the relevant UN sanctions committee or any judicial or quasi-judicial body is not incompatible with the EC law.<sup>18</sup>

22. Thus, designated persons against whom sanctions are applied under, for example, the UN's Al-Qaida/Taliban programme, are left in a position in which they may be unable to have their claims for de-listing heard with due process in any forum. First, they cannot obtain due process before the Security Council sanctions committee, as the programme does not provide any right to be heard by the committee or to know the evidence used to support the designation. Secondly, they cannot obtain relief from the restrictive measures against them in the States which implement the sanctions (implementing States) as these States are formally bound under international law by the Security Council resolutions in question. Implementing States are, therefore, unable to determine unilaterally whether persons on the UN Consolidated List were properly designated. Thirdly, the Security Council does not require Member States to afford designated persons any due process should they seek relief in the jurisdiction of the designating State.

23. Under these circumstances, it seems now that the following sentiment of Professor Elihu Lauterpacht (although expressed in a different context) seems to be especially pertinent:

It would be a strange reversal of positions if the fundamental right to due process of law and fair trial, at long last internationally recognised as belonging to the individual, should now come to be denied by the Security Council to [those] affected by its decisions!<sup>19</sup>

#### E. ADVERSE CONSEQUENCES OF TARGETED SANCTIONS FOR NON-TARGETED THIRD PARTIES

##### (i) Summary

24. The Committee has indicated that it wishes to receive submissions relating to the question of whether targeted sanctions cause adverse consequences for third parties that are not the intended targets of the sanctions.<sup>20</sup> This is an important question that has not yet received adequate consideration within the commentary surrounding targeted sanctions. A more extensive discussion, with particular examples from the UN's Al-Qaida/Taliban programme, therefore follows this summary.

25. Since targeted sanctions were developed to reduce the humanitarian consequences of general sanctions or embargos, and because they are a relatively recent development with a corresponding lack of easily accessible empirical data concerning their implementation and effects, there has been a slowness in recognising that targeted sanctions programmes may themselves also cause unintended humanitarian consequences for non-targeted third parties. Although this situation does now appear to be improving, there is still a need for those concerned with developing and managing sanctions programmes to appreciate the potential consequences for non-targeted third parties. There is also a need to ensure that mechanisms exist within the programme (i) to analyse the (potential) impact on non-targeted third parties; and (ii) to take action to prevent and reduce those unintended adverse consequences. Furthermore, there should be mechanisms in place—as in some general economic sanctions programmes—to ensure that if the application of targeted sanctions against a particular entity would necessarily cause disproportionate negative consequences for non-targeted third parties, then the sanctions should not be applied against that targeted entity.<sup>21</sup> For such an evaluation based upon a principle of proportionality to be conducted, clear programme objectives need to be established against which the likely harm to third parties can be considered (see section C above).

<sup>17</sup> Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, 2 December 2005, Doc No 15114/05 PESC 1084 Fin 475, para 9.

<sup>18</sup> Case T-315/01 *Kadi*, paras 288–290; Case T-253/02 *Ayadi*, paras 141–149.

<sup>19</sup> Lauterpacht, E, *Aspects of the Administration of International Justice* (1991) p 48.

<sup>20</sup> Call for Evidence, Question 5.

<sup>21</sup> For example, in the cases of Sudan in 1996 and Afghanistan in 1999, the UN Security Council decided not to establish strong economic embargos when the regimes of the respective countries defied Council mandates to extradite individuals accused of involvement in acts of terrorism. In part at least, this was because the Council had determined, on the basis of 'humanitarian pre-assessments' conducted on behalf of the Secretary-General, that general economic sanctions would have a disproportionately harmful effect on the Sudanese and Afghan populations, both of which were suffering extreme poverty and hardship after years of conflict, in comparison with their likely efficacy in securing the extradition of the wanted individuals. See, Cortright and Lopez (2000) pp 123–125, 129.

(ii) *Historical examples of effects of economic sanctions upon third parties*

26. The fact that general economic sanctions against States may cause unintended adverse consequences for third parties, such as trade partners, has long been recognised and, indeed, is recognised in the UN Charter itself. Article 50 of the UN Charter enables the Security Council to make some provision for third States adversely affected by enforcement measures taken against another State. It provides as follows:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

27. As is clear from the words of Article 50, this is limited to enforcement actions taken against States—and so would be inapplicable in relation to Security Council sanctions programmes against non-State targets, such as the Al-Qaida/Taliban programme.<sup>22</sup> Also, in accordance with the inter-State paradigm of the United Nations, Article 50 only allows State actors to present their cases before the Council. Individuals and entities affected by Council enforcement action against States can only seek relief through the usual rules of diplomatic protection. This means that they would have to petition the governments of their States of citizenship, residence or incorporation for relief, which would, in turn, request assistance from the Security Council under Article 50.

28. Attempts by non-State third parties to seek relief directly from a subsidiary body of the Security Council to compensate for the negative consequences of a UN sanctions programme have been unsuccessful, as the example of the German company, Dorsch Consult Ingenieurgesellschaft GmbH, demonstrates. This company sought relief from the United Nations Compensation Commission (the “UNCC”) in relation to negative consequences it suffered as a result, it claimed, of the UN sanctions against Iraq. The UNCC was established by the Security Council to determine compensation for individuals and entities who suffered losses as a result of Iraq’s invasion of Kuwait in 1990, and early in its existence the UNCC clarified that compensation would not be payable for losses resulting solely from the economic embargo against Iraq and related measures adopted by the Security Council.<sup>23</sup> The company’s application was therefore dismissed.<sup>24</sup>

29. This company also brought an unsuccessful claim for compensation against the EC (which had implemented the UN sanctions) for a loss of almost DM 3 million, equivalent then to approximately US\$ 1.5 million. In its claim, the company asserted that its loss was the amount of a debt unpaid by Iraq in retaliation for the economic sanctions imposed upon the country by the Security Council after the invasion of Kuwait in 1990.<sup>25</sup> In this case, the EC Court of First Instance held, *inter alia*, “that the importance of the objectives of the sanctions programme was such as to justify negative consequences, even of a substantial nature, for some operators and could not therefore render the Community liable.”<sup>26</sup> The CFI’s judgment was upheld by the European Court of Justice.

30. Another example of adverse consequences being suffered by third parties is that of Bosphorus Airways in the context of the UN sanctions against the Former Republic of Yugoslavia (Serbia and Montenegro) (“FRY”).<sup>27</sup> The UN sanctions were implemented by the EC through a number of Community regulations,<sup>28</sup> and pursuant to these measures, the Irish Government impounded an aircraft stationed at Dublin airport. This aircraft was operated by a Turkish company, Bosphorus Airways, under a four-year lease from a Yugoslav Airlines, a FRY undertaking, pursuant to which Bosphorus had full day-to-day operational control and direction of the aircraft.<sup>29</sup> Payments under the lease agreement had been made into an account held at the

<sup>22</sup> For discussions of Article 50 of the Charter and its invocation in the context of economic sanctions against Southern Rhodesia, Iraq, and the former Yugoslavia, see eg, Gowlland-Debbas, V, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (1990) pp 633–739; Al-Khasawneh, B, “Consultation under Article 50 of the United Nations Charter: The Experience of the Middle East” in Gowlland-Debbas (ed) (2001); Doxey, M, “United Nations Economic Sanctions: Minimizing Adverse Effects on Nontarget States” in Cortright and Lopez (eds) *Smart Sanctions: Targeting Economic Statecraft*, (2002) pp 183–200 at pp 187–191.

<sup>23</sup> See *Propositions and Conclusions on Compensation for Business Losses: Types of Damages and their Valuation*, Decision of the Governing Council of the UNCC, 6 March 1992, UN Doc S/AC.26/1992/9 (1992) para 6; *Compensation for Business Losses Resulting from Iraq’s Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a Cause*, Decision of the Governing Council of the UNCC, 18 December 1992, UN Doc S/AC.26/1992/15 (1992) para 9; UNCC Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of “E3” Claims, Governing Council of the UNCC 18 March 1999, UN Doc S/AC.26/1999/1 (1999) paras 130–134.

<sup>24</sup> UN Doc S/AC.26/1999/1 (1999) paras 10(e), 130.

<sup>25</sup> Case T-184/95, *Dorsch Consult Ingenieurgesellschaft GmbH v Council of the European Union and Commission of the European Communities* [1998] ECR II-667 (CFI); Case C-237/98 P, *Dorsch Consult Ingenieurgesellschaft mbH v Council of the European Union and Commission of the European Communities* [2000] ECR I-4549 (ECJ).

<sup>26</sup> Case T-184/95, *Dorsch*, [1998] ECR II-667, para 88.

<sup>27</sup> See UN Doc S/RES/820 (1993).

<sup>28</sup> The Council Regulation at issue in this case was Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro). See, OJ L 102 (28.4.1993) p 14.

<sup>29</sup> *Bosphorus* [1996] ECR I-3953, Opinion of Advocate-General Jacobs para 20; Judgment para 2.

Turkish Central Bank which had been blocked in accordance with the Security Council sanctions resolutions so that no funds were reaching Yugoslav Airlines.<sup>30</sup> As noted by the ECJ, there was no suggestion that Bosphorus was in any way attempting to break the UN sanctions.<sup>31</sup> The ECJ employed a broad interpretation of the relevant Community regulation and UN Security Council resolution and upheld the impounding of the aircraft despite the substantial negative consequences for Bosphorus Airways, the non-targeted third party. The Court justified its position in the following way:

Any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions.

Moreover, the importance of the aims pursued by the regulation at issue is such as to justify negative consequences, even of a substantial nature, for some operators.<sup>32</sup>

(iii) *Targeted sanctions programmes*

31. As stated above, there is a lack of awareness (or acknowledgement) of the potential for “smart sanctions” that are targeted against specifically designated individuals and entities to have negative consequences for non-targeted third parties. Although this is gradually changing, targeted sanctions programmes generally have not incorporated formal measures to analyse and respond to situations of adverse consequences for non-targeted third parties should they arise or be identified as likely to arise. Instead, there are a few isolated examples of *ad hoc* measures taken independently by a small number of States in their implementation of the sanctions. The following discussion of the potential negative consequences of targeted sanctions for third parties distinguishes between those with specific and individual connections with the targets, for example, dependants and creditors, and those with more general links, such as beneficiaries of charitable services provided or funded by a targeted entity.

(a) *Dependants, Heirs and Creditors*

32. The dependants, heirs and creditors of persons designated under a targeted sanctions programme will have an expectation of receiving funds from that designated person and their interests will be prejudiced if those funds are not forthcoming as a result of a targeted sanctions programme. In general, targeted financial sanctions programmes require States to block all assets and other economic resources belonging to or controlled by a designated individual or entity, notwithstanding that these resources may be used for the benefit of or owed to another.

33. An obvious example is the position of the spouse and dependant children of a designated individual whose assets have been frozen and to whom it is unlawful to transfer any further economic resources. Such a situation was considered by the English High Court in 2001 in a case in which social security payments, including income support and housing benefit, to the designated person had been stopped.<sup>33</sup> Although the Court found that this matter was not yet ripe for determination,<sup>34</sup> it did observe that while the sanctions against Mr Othman were not aimed at Mrs Othman and their children, their application would result in hardship for them and could even result in the family being evicted from their home for non-payment of rent.<sup>35</sup> While the European Court of First Instance has recently held that EU Member States must consider the needs of targeted individuals when considering their applications for certain exceptions from restrictive financial measures under targeted sanctions programmes on humanitarian grounds, it did not address the question of the humanitarian needs of dependants.<sup>36</sup>

(b) *Beneficiaries of Civilian Services*

34. When restrictive financial measures are applied under a targeted sanctions programme against entities that either provide or fund services for members of civilian populations, it is logical to assume that those civilian beneficiaries will suffer when the targeted sanctions bite and the designated entities cannot continue to provide or fund the services they rely upon. Thus, notwithstanding that by their very nature targeted sanctions

<sup>30</sup> *Ibid*, AG Jacobs para 27; Judgment para 3.

<sup>31</sup> *Ibid*, AG Jacobs para 22; Judgment para 3.

<sup>32</sup> *Ibid*, Judgment paras 22–23.

<sup>33</sup> *R (on the application of Othman) v Secretary of State for Work and Pensions* [2001] EWHC (Admin) 1022 (Transcript, 28 November 2001).

<sup>34</sup> *Ibid*, para 65. Thus, Mr Othman’s challenge to the application of these measures failed.

<sup>35</sup> *Ibid*, para 58.

<sup>36</sup> Case T-253/02 *Ayadi*, para 132.

programmes are not general embargos applied against a wide range of civilian targets, they may still have significant negative consequences for civilian populations when sanctions are applied against charitable organisations and other entities that provide services to those populations.

35. Although a substantial body of data confirming this contention is still lacking, such effects have been documented in one study of the application of counter-terrorism sanctions against service entities operating in the Occupied Palestinian Territories.<sup>37</sup> This paucity of rigorous empirical evidence can be seen as both a cause and an effect of the lack of awareness of the issue of negative consequences for third parties within the commentary surrounding targeted sanctions. Although this situation is improving slowly, it has not yet translated into concerted action by inter-governmental organisations to develop strategies to prevent or at least minimise the potential impact upon civilian populations.<sup>38</sup> As described above, targeted financial sanctions programmes do now have humanitarian exception provisions to prevent, in theory, targeted individuals being left without any means of survival. These humanitarian exceptions provisions have not yet, however, been specifically extended to consider the situation of non-targeted third parties. While there has recently been some limited acknowledgement that the application of sanctions against a legal entity does not necessarily require that its operations cease in their entirety,<sup>39</sup> there is little guidance to assist states in establishing humanitarian licensing systems or other practical methods of minimising the humanitarian effects of targeted sanctions. Instead, the growing body of literature and international guidance concerning targeted sanctions tends to focus—understandably—upon the need for due process and fairness for the targeted individuals and entities.<sup>40</sup>

36. UN targeted sanctions programmes against non-State individuals and entities do not generally contain civilian humanitarian assessment provisions. In contrast, UN sanctions programmes against States or *de facto* government regimes do, generally speaking, require periodic humanitarian assessments to analyse the extent to which the sanctions are negatively affecting the civilian populations in the State or geographic area in question.<sup>41</sup> (So, for example, such provisions were initially included the UN sanctions programme against the Taliban when it was first established in 1999 since, at that time, the Taliban effectively comprised the governmental regime in Afghanistan.<sup>42</sup>)

#### Examples from the UN's Al-Qaida/Taliban Sanctions Programme

37. The UN Consolidated List managed by the Security Council's Al-Qaida/Taliban Committee includes a number of entities that provided a variety of services to civilian populations, including humanitarian or charitable services. These service entities have been placed on the UN Consolidated List on the basis of accusations of providing support to members of the Al-Qaida network and of using their charitable or corporate structure to channel resources to those linked to Osama bin Laden and Al-Qaida.<sup>43</sup> Whatever the veracity of the claims against these organisations, it has not generally been contested that they also engaged in genuine service activities.

<sup>37</sup> International Crisis Group, *Islamic Social Welfare Activism in the Occupied Palestinian Territories: A Legitimate Target?* ICG Middle East Report No 13, Amman/Brussels, 2 April 2003.

<sup>38</sup> The possibility that targeted sanctions may still cause unintended harm to substantial numbers of non-targeted civilians has been raised within general sanctions discourse, although this has not been specifically discussed in relation to the application of sanctions against service entities. See, eg, Stockholm Guidelines (2003) p. 20, § 32.

<sup>39</sup> See, Fourth report of the Al-Qaida/Taliban Analytical Support and Sanctions Monitoring Team, UN Doc S/2006/154, para 59; Council of the European Union, *Restrictive Measures: EU Best Practices for the effective implementation of restrictive measures*, June 2006, Doc No 10533/06 PESC 592 FIN 257, para 52–3.

<sup>40</sup> See, Council of the European Union, *Basic Principles on the Use of Restrictive Measures (Sanctions)*, 7 June 2004, Doc No 10198/1/04 PESC 450 REV 1; Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, 2 December 2005, Doc No 15114/05 PESC 1084 Fin 475; T Biersteker *et al.* (2001); Biersteker *et al.*, *Strengthening Targeted Sanctions Through Fair and Clear Procedures* (March 2006); B Fassbender, *Targeted Sanctions and Due Process*, Study commissioned by the United Nations Office of Legal Affairs (20 March 2006); I Cameron, *The European Convention on Human Rights, Due Process and United Nations Security Council Counter-Terrorism Sanctions*, commissioned by the Council of Europe (February 2006).

<sup>41</sup> This practice of humanitarian assessments has developed since 1999 when the UN Security Council undertook to improve the work of its sanctions committees by, *inter alia*, assessing the humanitarian consequences of the sanctions regimes on the populations of the target States and the economic consequences on third party States, and, as a corollary, including humanitarian exceptions in order to ameliorate the worst effects of general economic sanctions that are suffered by civilian populations of the States against whom sanctions are applied. See, UN Doc S/1999/92 (1999).

<sup>42</sup> See, Report of the Secretary General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan, UN Doc S/2001/695 (2001); Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan, 17 January 2002, UN Doc S/2002/101 (2002) paras 28–31; Report of the Security Council Committee established pursuant to resolution 1267 (1999), 20 December 2002 UN Doc S/2002/1423 (2002) para 41.

<sup>43</sup> As of 31 December 2005, no service entities were designated on the UN Consolidated List solely on the basis of alleged links with the Taliban.



38. According to one member of the Security Council's Al-Qaida/Taliban sanctions committee, when a charitable organisation is designated and placed upon the UN Consolidated List, its charitable status is noted by the sanctions committee.<sup>44</sup> There is, however, no formal process of assessing whether applying financial sanctions against the organisation will have any humanitarian impact upon the beneficiaries of its charitable services (as there generally is in UN sanctions/embargo programmes against States) and, if so, whether any additional measures could be taken to ameliorate those unintended adverse consequences.

39. While the UN Security Council's Al-Qaida/Taliban sanctions committee has this year approved, for the first time, exceptions to the programme's restrictive financial measures to enable a business owned by a designated person to continue to operate, the Al-Qaida/Taliban Monitoring Team (which supports the sanctions committee in managing the programme) has suggested that such measures would not be appropriate for charities involved in international transfers of funds.<sup>45</sup> This could mean that the potential effects of the sanctions upon a very substantial number of non-targeted third parties will not be addressed in any meaningful way. To provide a flavour of the potential effects for non-targeted civilian beneficiaries, a brief background to some of the service entities designated under the Al-Qaida/Taliban sanctions programme and the services they previously provided is given below.

- (a) The Al-Rashid Trust, based in Pakistan, was listed by the Al-Qaida/Taliban Committee on 6 October 2001.<sup>46</sup> Then, on 24 April 2002, the Committee listed the Aid Organization of the Ulema, Pakistan<sup>47</sup> which, according to the US Treasury, was simply the Al-Rashid Trust operating under a new name.<sup>48</sup> Along with the allegations of financing acts of violence, the charitable activities of the Al-Rashid Trust have been widely reported and there have been no suggestions that the Trust was not engaged in at least some genuine humanitarian projects, including operating bakeries and providing shelter for a significant number of internally displaced families in Afghanistan.<sup>49</sup>
- (b) In 2004, the Al-Qaida/Taliban Committee designated the Al-Haramain Foundation and included 14 Al-Haramain entities on the UN Consolidated List. Described as one of Saudi Arabia's leading charities,<sup>50</sup> the Al-Haramain Foundation had offices around the world and has provided aid and welfare services in, for example, Afghanistan, Albania, Bangladesh, Bosnia-Herzegovina, Ethiopia, Indonesia, Kenya, Pakistan and Tanzania. It has been reported that the Al-Haramain Foundation's annual revenue from donations was between \$40 and \$50 million and that the charity has spent \$300 million on providing international humanitarian aid.<sup>51</sup> The US Treasury describes the Foundation as "represent[ing] itself as a private, charitable, and educational organization dedicated to promoting Islamic teaching throughout the world" and as being "one of the principal Islamic non-governmental organizations active throughout the world".<sup>52</sup> Originally only the Al-Haramain branches in Somalia and Bosnia-Herzegovina were accused of being linked to Al-Qaida and, in March 2002, the US and the Saudi governments had made a joint designation proposal which was accepted by the Security Council's Al-Qaida/Taliban Committee.<sup>53</sup> In 2004, the US then accused other Al-Haramain branches of involvement in terrorist financing and with Saudi Arabia proposed their listing by the Al-Qaida/Taliban

<sup>44</sup> Confidential interview with Al-Qaida/Taliban Committee member on 4 March 2005, NY.

<sup>45</sup> See, UN, Fourth report of the Al-Qaida/Taliban Analytical Support and Sanctions Monitoring Team, UN Doc S/2006/154, para 59.

<sup>46</sup> UN Consolidated List, p 30 (entry no 37).

<sup>47</sup> *Ibid*, p 28 (entry no 3).

<sup>48</sup> *Designation of 10 Terrorist Financiers Factsheet*, US Treasury Office of Public Affairs (Doc PO-3014) 19 April 2002. The Al-Rashid Trust brought an action in Sindh High Court challenging the order of the State Bank of Pakistan to apply financial sanctions against it. (Report of Pakistan to the 1267 Committee on implementation of United Nations Security Council resolution 1455 (2003), 17 April 2003, UN Doc S/AC.37/2003/(1455)/35 (2003) p 3.) The current status of this case is unknown.

<sup>49</sup> Escobar, P, "Anatomy of a 'terrorist' NGO", *Asia Times Online*, 26 October 2001 (available at <http://atimes.com/c-asia/C126AgOl.html>, accessed 31 July 2005); UNHCR, *Afghanistan Humanitarian Update No 56*, 5 March 2002 (available at <http://www.unhcr.ch/cgi-bin/texis/vtx/afghan?page=news&id=3c84f2444>, accessed 19 September 2005). See also, Daniszewski, J and Watson, P, "Age-Old Way of Moving Cash Leaves Little Trail", *Los Angeles Times*, 26 September 2001; Whitaker, B and Pallister, D, "First battle: a tangled web of terrorist cash", *The Guardian*, 25 September 2001, (available at <http://www.guardian.co.uk/international/story/0,,557703,00.html>).

<sup>50</sup> BBC, "New Saudi body to oversee charity", *BBC News Online*, 28 February 2004, (available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/3496734.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3496734.stm), accessed 31 July 2005).

<sup>51</sup> "Saudis shut down charity", *Aljazeera.net*, 6 October 2004, available at <http://english.aljazeera.net/NR/exeres/E358AE91-FAEC-407C-BDE9-31E8000BA37B.htm> (accessed 31 July 2005); Wechsler, W F and Wolosky, L S, *Update on the Global Campaign Against Terrorist Financing. Second Report of an Independent Task Force on Terrorist Financing*, Council on Foreign Relations, 15 June 2004, p 5.

<sup>52</sup> US, *Additional Background Information on Charities Designated Under Executive Order 13224: Al Haramain Islamic Foundation*, US Treasury Office of Terrorism and Financial Intelligence, at [http://www.treas.gov/offices/enforcement/key-issues/protecting/charities\\_execorder\\_13224-a.shtml#ahif](http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-a.shtml#ahif) (accessed 31 July 2005).

<sup>53</sup> UN Consolidated List, 30 (entries nos 28, 29). See US, 11 March 2002.

Committee.<sup>54</sup> The Saudi headquarters of the charity has not been listed but the former head of the organisation was apparently removed from his post by the Saudi authorities at the request of the US<sup>55</sup> and subsequently the Foundation was dissolved. Its operations and assets are now controlled by the recently established Saudi National Commission for Charitable Work Abroad.<sup>56</sup>

- (c) The Benevolence International Foundation (“BIF”) had offices in Afghanistan, Azerbaijan, Bangladesh, Bosnia-Herzegovina, Canada, Chechnya, China, Croatia, Daghestan, Gaza in the Occupied Palestinian Territories, Georgia, Ingushetia, the Netherlands, Pakistan, Russia, Sudan, Saudi Arabia, Tajikistan, the UK, the US, and Yemen. Following a submission by the US, it was placed on the UN Consolidated List in November 2002.<sup>57</sup> The BIF and Enaam Amaout, its former chief executive officer in the US, have been the subject of several civil and criminal actions in that jurisdiction.<sup>58</sup> Nonetheless, as noted by the US court before which Amaout was prosecuted, “[t]here can be no serious dispute that BIF provided significant humanitarian aid to Chechen refugees, widows and orphans during 1999–2001”.<sup>59</sup> According to the Al-Qaida/Taliban Committee’s Monitoring Team, since it began in 1992 the BIF has provided “tens of millions of dollars of ‘humanitarian aid’ to regions around the world” and of this amount, it has been determined by a US court that in the region of \$300,000 had been diverted to support persons engaged in military activities.<sup>60</sup>
- (d) In December 2001, the US temporarily designated the Global Relief Foundation (“GRF”) under its domestic counter-terrorism sanctions for alleged links with Al-Qaida and Hamas,<sup>61</sup> and listed it permanently on 18 October 2002.<sup>62</sup> The organisation was designated by the UN Security Council’s Al-Qaida/Taliban Committee on 22 October 2002.<sup>63</sup> GRF was apparently one of the largest Muslim charities in the US and funded humanitarian operations in approximately 25 locations, including Afghanistan, Albania, Bosnia, Kosovo, Iraq, the Lebanon, Pakistan, the West Bank and Gaza in the Occupied Palestinian Territories, Chechnya, Ingushetia, Somalia and Syria.<sup>64</sup> The US claims that GRF has links with members of Al-Qaida and the Taliban but it does not specifically allege that it has transferred funds or other resources to individuals or entities engaged in terrorist activities, although it does claim that money was received from “a suspected financier of al-Qaida”.<sup>65</sup> GRF and its founder, Rabih Sami Haddad, became something of a cause celebre in the US following the US government’s actions and their supporters were reported to include a member of the US Congress.<sup>66</sup> Mr Haddad, a Lebanese citizen, was removed from the US in 2003 for immigration offences<sup>67</sup> and the assets of GRF remain frozen following unsuccessful legal challenges to the government’s action.<sup>68</sup>

<sup>54</sup> UN Consolidated List, 29–30 (entries nos 19–27, 30–32). See, UN Security Council press releases, UN Docs SC/7991 (2004), SC/8139 (2004), SC/8143 (2004), SC/8200 (2004); US, Treasury Announces Joint Action with Saudi Arabia Against Four Branches of Al-Haramain In The Fight Against Terrorist Financing, US Treasury Office of Public Affairs, 22 January 2004 (JS-1108); US, *Treasury Designates Bosnian Charities Funneling Dollars to Al Qaida*, US Treasury Office of Public Affairs, 6 May 2004 (JS-1527); US, *Additional Al-Haramain Branches Former Leader Designated by Treasury as Al Qaida Supporters. Treasury Marks Latest Action in Joint Designation with Saudi Arabi*, US Treasury Office of Public Affairs, Washington, DC, 2 June 2004 (JS-1703); US, *US-Based Branch of Al Haramain Foundation Linked to Terror. Treasury Designates US Branch and Director*, US Treasury Office of Public Affairs, 9 September 2004 (JS-1895). See also, BBC, “New Saudi body to oversee charity”, *BBC News Online*, 28 February 2004 (available at [http://news.bbc.co.uk/1/hi/world/middle\\_cast/3496734.stm](http://news.bbc.co.uk/1/hi/world/middle_cast/3496734.stm), accessed 31 July 2005) For a critical analysis of measures by Saudi Arabia to combat the financing of terrorism, see Wechsler and Wolosky (2004).

<sup>55</sup> BBC, “New Saudi body to oversee charity”, *BBC News Online*, 28 February 2004

<sup>56</sup> “Saudis shut down charity”, *Aljazeera.net*, 6 October 2004; Wechsler and Wolosky (2004) p 5.

<sup>57</sup> UN Consolidated List, 32 (entry no 65); US, 19 November 2002.

<sup>58</sup> See *Benevolence International Foundation, Inc v Ashcroft*, Case No 02-C-763 (ND Ill, filed 30 January 2002); *US v Benevolence International Foundation, Inc & Enaam M Arnaout*, 2002 US Dist LEXIS 17223 (ND Ill 2002); *US v Arnaout*, 282 F Supp 2d 838 (ND Ill 2003)

<sup>59</sup> *Arnaout*, 282 F Supp 2d at 842.

<sup>60</sup> Second Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities, UN Doc S/2005/83 (2005) Annex 8–9.

<sup>61</sup> *Global Relief Foundation, Inc v P O’Neill*, 315 F. 3d 748 at 750 (7th Cir 2002).

<sup>62</sup> *Treasury Statement Regarding the Designation of the Global Relief Foundation*, US Department of the Treasury Office of Public Affairs, US, 18 October 2002 (PO-3553).

<sup>63</sup> UN Consolidated List, 32–33 (entry no 70); UN Doc SC/7543 (2002).

<sup>64</sup> *Global Relief Foundation, Inc*, 315 F 3d 748 at 750 (2002).

<sup>65</sup> (JS, *Additional Background Information on Charities Designated Under Executive Order 13224: Global Relief Foundation*, US Department of the Treasury Office of Terrorism and Financial Intelligence, at [http://www.treas.gov/offices/enforcement/key-issues/protecting/charities\\_execorder\\_13224-e.shtml#g](http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-e.shtml#g) (accessed 6 September 2005); *Treasury Department Statement Regarding the Designation of the Global Relief Foundation*, US Department of the Treasury Office of Public Affairs, US, 18 October 2002 (PO-3553).

<sup>66</sup> Eggen, D and Lydersen, K, “In Michigan, Anti-Terrorism Effort Goes Public: Haddad Case Forces Rare Glimpse of Secret US Campaign”, *Washington Post*, 6 May 2002, available at <http://www.washingtonpost.com/act/wp-dyn?pagename=article&node=&contentId=A37210-2002May5&notFound=true> (accessed 6 September 2005).

<sup>67</sup> US, *Former President of Global Relief Foundation Loses Immigration Appeal and is Removed from the United States*, US Immigration and Customs Enforcement, Department of Homeland Security, 11 July 2003, available at <http://www.ice.gov/graphics/news/newsreleases/articles/removal071503.htm> (accessed 6 September 2005).

<sup>68</sup> See *Global Relief Foundation, Inc v P O’Neill*, 207 F Supp. 2d 779 (N D Ill. 2002); *Global Relief Foundation, Inc*, 315 F 3d 748 (2002).

- (e) The Al-Barakaat group is another example of an entity designated under the UN's Al-Qaida/Taliban sanctions programme that provided necessary civilian services. Not a charitable institution but a group of commercial enterprises, the Al-Barakaat group nonetheless provided vital non-violent services to large numbers, predominantly in Somalia. Shortly after Al-Barakaat's inclusion in the UN Consolidated List in 2001,<sup>69</sup> the BBC reported that an estimated 60 per cent of Somalia's population relied on its financial services and that, in addition to the tens of thousands of Somalis who lost their income from funds remitted by their relatives abroad through Al-Barakaat's money transfer network, many Somalis were unable to access the money they had placed in accounts in the banking arm of Al-Barakaat and the 40,000 subscribers of Al-Barakaat's telecom business were left without services as a consequence of the sanctions.<sup>70</sup>

#### “Rally around the flag” Effect

40. Shutting down the operation of particular service entities by designating them under targeted sanctions programmes may well contribute to the aims of the those programmes by, for example, restricting the flow of funds to those who commit the particular bad conduct that is being targeted, and it is not the purpose of this paper to challenge the efficacy of that strategy.<sup>71</sup> It should, however, be noted that the application of financial sanctions against service entities may also frustrate the aim of suppressing and preventing the bad conduct linked to sanctions programmes' targets if those targets can successfully characterise the adverse consequences felt by civilians as being part of a deliberate policy of those States or inter-governmental organisations responsible for administering the sanctions programmes in question. This would not be dissimilar to a phenomenon identified in the literature of general economic sanctions called the “rally around the flag effect”.<sup>72</sup> In the situations in which this effect has been identified, the targeted States' ruling elites managed to make political capital from harm suffered by their constituents, the ordinary members of the population, by successfully characterising this harm as resulting from the sanctions imposed by the international community.<sup>73</sup> It is possible that a similar effect might occur in the context of current counter-terrorism sanctions, whereby negative effects upon civilian beneficiaries of targeted Muslim charities could play into the hands of those promoting the notion of the Muslim world being under attack by the “West”. In this situation, these effects could be used as an example of how the “West”, exemplified by the UN Security Council, is taking food and shelter from widows and orphans by trying to shut down well-known Islamic charitable organisations.<sup>74</sup> Sentiments that could contribute to such an effect have been expressed in at least one newspaper article which explored the effect of counter terrorist-financing measures on the Muslim charitable sector. The article ended with the following quotation from someone who works within that sector, who said “[c]haritable giving is [a] pillar of Muslim beliefs, when someone attacks it, it is like attacking those beliefs.”<sup>75</sup>

#### Examples of Attempts to Ameliorate Unintended Adverse Consequences of Targeted Sanctions

41. Despite the lack of a systematic international approach to these issues, there are some isolated examples of individual States attempting, on an ad hoc basis, to meet their international sanctions obligations in a way that takes account of, and tries to ameliorate, unintended adverse consequences for non-targeted third parties.

<sup>69</sup> For a full list of designated Al-Barakaat entities see UN Consolidated List, 28–29, 31–32 (entry nos 6–16, 45–62).

<sup>70</sup> BBC, “US shuts down Somalia internet”, *BBC News Online*, 23 November 2001, available at <http://news.bbc.co.uk/1/hi/world/africa/1672220.stm> (accessed 14 September 2005); Barise, H, “Somali economy hit”, *BBC World News*, 27 August 2002, [http://news.bbc.co.uk/1/hi/in\\_depth/world/2002/september\\_11\\_one\\_year\\_on/2219680.stm](http://news.bbc.co.uk/1/hi/in_depth/world/2002/september_11_one_year_on/2219680.stm) (accessed 26 August 2003); BBC, “Somalia gets new telecoms firm”, *BBC News Online*, 30 April 2002, at <http://news.bbc.co.uk/1/hi/business/1959540.stm> (accessed 14 September 2005). See also, Pallister, D, “Attack on Afghanistan: Assets: Somalis count cost of hunt for terror cash: FBI cuts off cash lifeline for community.” *The Guardian*, 9 November 2001, p 6.

<sup>71</sup> Although there is an increasing body of opinion that does question the efficacy of targeted financial sanctions, see eg, Alvarez, J, “The Security Council's War on Terrorism: Problems and Policy Options” in E d Wet and A Nollkaemper (eds), *Review of the Security Council by Member States*, (2003), pp 119–145, at pp 144–145; Cuellar, M -F, “The Mismatch between State Power and State Capacity in Transnational Law Enforcement” (2003) Stanford Public Law and Legal Theory Working Paper Series, Research Paper No 70; Gouvin, E, “Bringing Out the Big Guns: The USA Patriot Act, Money Laundering, and the War on Terrorism” (2003) 55 *Baylor L Rev* 955, at 975–981; Kiser, S, *Financing Terror. An Analysis and Simulation to Affect Al Qaeda's Financial Infrastructures*, PhD Thesis, Pardee RAND Graduate School (2004), pp 202–204.

<sup>72</sup> See, Eland, I, “Economic Sanctions as Tools of Foreign Policy” in D Cortright and G A Lopez (eds), *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?*, (1995), pp 29–42, at pp 32–34; Cortright and Lopez (2000) p 214.

<sup>73</sup> The sanctions programme against the former Yugoslavia (Serbia and Montenegro) provides a good example of this phenomenon. Cortright and Lopez (2000) p 76.

<sup>74</sup> See, Ghandour, A-R, *Humanitarianism, Islam and the West. contest or cooperation?*, HPN, “Humanitarian Exchange”, No 25, December 2003 at 14, available at [www.odihpn.org/report.asp?ID=2582](http://www.odihpn.org/report.asp?ID=2582) (accessed 11 August 2005).

<sup>75</sup> Burrows, G, “Under suspicion”, *The Guardian*, 28 November 2002, available at <http://society.guardian.co.uk> (accessed 11 August 2005). This article also noted the concerns of some Muslims that there is a concerted attack on the Islamic charitable sector through the imposition of CFT measures and that “there is a conspiracy to weaken Muslim civil society by whipping up suspicion against Islamic charities”.

In relation to the UN's Al-Qaida/Taliban programme, the sanctions committee's approval earlier this year of exceptions to enable a designated Italian company to continue its hotel business under the control and effective receivership of the Italian Government is one such example. The action of Saudi Arabia with regards to the Al-Haramain Foundation, which was described above, could also be seen as another example,<sup>76</sup> as could the approach of the Charity Commission of England and Wales towards the British branch of the Benevolence International Foundation.<sup>77</sup> According to the statement of inquiry published by Charity Commission, after finding no evidence of impropriety or direct links with the US entity which was subject to proceedings in the US, the trustees of Benevolence International (UK) were allowed to distribute the assets of the charity (which amounted to a little over k2,000) in accordance with its object, namely the relief of poverty in sub-Saharan Africa.<sup>78</sup>

42. Another example comes from one of the UN Security Council's other sanctions programmes. In the UN sanctions programme against the UNITA regime in Angola, sanctions were imposed upon a Portuguese company that operated an educational institution. Rather than simply freezing the assets, which would mean that the school would have been unable to operate, the sanctions were apparently structured by the national authorities in such a way as to enable the continued operation of the school and all the company's income was placed in a frozen account, thereby ensuring that these funds could not be made available to the individuals and groups targeted by the sanctions programme.<sup>79</sup>

#### F. CONCLUDING REMARKS

43. It is hoped that this paper has provided an overview of some of the issues that may arise in the context of targeted sanctions programmes. Whilst targeted sanctions are still a relatively new development and there is a lack of empirical economic data to assist those responsible for developing and administering targeted sanctions programmes, it is possible to identify a number of issues which require careful consideration by policy makers and those responsible for administering and developing targeted sanctions programmes. While recognition of the issues identified in this paper is growing, particularly within the European Union, there is still a need for this to be translated into a practical, systematic approach designed to address these issues in concerted and meaningful ways. Moreover, States with permanent membership of the UN Security Council, such as the UK, have particular responsibilities in this regard given the increasing number of international sanctions programmes established through the UN and, importantly, the deference of municipal and regional judicial systems to resolutions of the Security Council adopted under Chapter VII of the UN Charter notwithstanding their incompatibility with local laws and legal principles.

25 October 2006

#### Memorandum by Mr Jeremy P Carver, CBE,<sup>80</sup> International Lawyer

1. The Committee is concentrating its attention on *economic* sanctions; but it seems important to clarify what are meant by "sanctions", not least because the field is already fundamentally confused by misunderstanding of the measures that have been taken, and may be taken, under this rubric.
2. There are two very different measures available to States:
  - (a) Measures taken pursuant to a resolution of the UN Security Council under article 41 of the UN Charter. These are measures of a potentially wide range in nature and effect, with the sole aim "to maintain or restore international peace and security"<sup>81</sup>—ie measures in support of peace. Although the authority of such measures derives from the Security Council, the measures must be imposed by States and enforced through their respective national authorities.
  - (b) Measures taken by individual States, or regional groups, which have as their object support of national interests. International law requires that the scope of such measures be confined territorially, or at least no further than the nationals of the enacting State. However, the origin of such measures, which are essentially *acts of war*, has been overlooked for many years. Thus,

<sup>76</sup> See above, paragraph 39(b).

<sup>77</sup> Confidential email correspondence with UN employee dated 13 March 2005.

<sup>78</sup> UK, *Charity Commission Statement of Inquiry: Benevolence International (UK)*, Charity Commission of England and Wales, London, 16 June 2005, para 8.

<sup>79</sup> Confidential interview with UN employee on 4th March 2005, NY.

<sup>80</sup> Although based on years of professional practice as an international lawyer, mainly as Head of Clifford Chance's Public International Law Group, Jeremy Carver makes these submissions personally, and not on behalf of any law firm, client or other organisation with which he has been associated.

<sup>81</sup> UN Charter, article 39.

measures in support of war have been adopted and enforced alongside UN-derived measures without any realisation of the inconsistencies involved.

3. Ignorance of this has contributed significantly to the ineffectiveness of almost all sanctions adopted by States, at least over the past 50 years. There is an historic reason for the confusion;<sup>82</sup> but the significance lies in the fact that national authorities, failing to understand that they are using different measures for different objectives, are simply failing to achieve the stated aims of the measures. This breeds both ineffectiveness in resolving the threat to international peace and security, and disillusion in the UN as a distinct actor. Because so many sanctions measures have failed in their stated aims, it has become much harder to reach consensus on the best means to deal with threats to security; which in turn has encouraged certain States to suppose that the use of force is the only available means—not under article 42 of the UN Charter; but by unilateral “coalition” intervention. It may be optimistic to suppose that the costly insecurity resulting from armed intervention in Afghanistan and Iraq will discourage similar adventures for the foreseeable future. Nevertheless, there is widespread concern over developments in Iran (risk of nuclear proliferation) and Sudan (humanitarian atrocities in Darfur), which has led to calls for the imposition of sanctions against the respective governments.

4. It is my firm opinion that sanctions, as currently conceived and employed, will be wholly ineffective to help resolve either of these issues. This is neither to belittle the importance of the issues, nor to advocate a policy of “do nothing”. If we assume that the use of force against either State will not happen, all States who are concerned must re-double their efforts—individually and regionally—to find solutions. There is much to suggest that such efforts, if genuinely pursued, would succeed. This would be helped by a realisation that sanctions—at least those of the kind often mentioned<sup>83</sup>—are not an option. Thus removed, all sides (including a Western public that is half-convinced that sanctions *might* work) might appreciate the need to engage in responsible dialogue.

5. Sanctions could become an effective instrument to achieve the objectives set out in Chapter VII of the UN Charter. A long succession of failed or ineffective attempts to resolve threats to peace and security point to many weaknesses in the ways that sanctions are designed, implemented, administered and enforced. Moreover, analysis carried out during inter-governmental initiatives in the 1990s<sup>84</sup> was tested, to a limited extent, in the counter-terrorism measures that followed “9/11”; and offers States and the UN the means whereby the use of sanctions can be reformed.

6. Meanwhile, sanctions as currently deployed continue to have multiple negative impacts. On a long term basis, it can be argued—perhaps outside the USA—that the comprehensive US economic embargo against Cuba has achieved the opposite result to that intended, namely the entrenchment in power of the Castro regime. A similar result can be observed in the impact of UN sanctions against Iraq in 1990, which helped to perpetuate Saddam Hussain’s hold on power after the severe weakening caused by the “Desert Storm” operation which liberated Kuwait. The imposition of sanctions has, over the years, all too often led to unintended consequences. Even where sanctions have been cited as quite successful in relation to Libya, the UN-imposed mandatory flight ban led to a high profile flouting of the ban by African leaders.

7. The main impact of sanctions, however, has seldom been felt within the targeted territory. The persons most directly affected are traders and business people operating within the countries imposing the sanctions. This is inevitable, given the limited jurisdictional reach of national laws. Both kinds of sanctions—multi-lateral and unilateral—penalise those who deal with the targeted State, many of whom are not deliberate law-breakers.

8. The complexities of modern banking and ancillary business services are such that much of commercial traffic involves no or minimal human intervention, eg cheque clearing systems and block insurance/reinsurance arrangements. Thus, banks and other business service providers have been compelled to install ever more elaborate compliance programmes in order to isolate transactions that may be prohibited or controlled by national regulation in a number of jurisdictions.

<sup>82</sup> Great Britain’s Trading with the Enemy Act 1915 was enacted after elaborate research and careful deliberation over a number of years, and was repealed as a strictly wartime measures after WWI ended. It was reinstated in 1939, and again repealed after 1945, retaining minimal powers, which were used against Argentina in April 1982. The United States had no such legislation when they entered WWI, and simply adopted the British Act in 1917, without appreciating its essentially wartime character. Instead of repealing it, successive US Presidents started to use it in the post WWII era, eg against Cuba in 1959. Indeed, they built upon it with the International Emergency Economic Powers Act in 1977, of a very similar character, which has provided the basis of most US sanctions since that time.

<sup>83</sup> It is said that the Sudanese government places great value on its participation in the African Union (AU) and the League of Islamic States, which would suggest that the AU and the League could play an influential role by proposing to suspend Sudan’s membership unless certain conditions are met. The Commonwealth has achieved positive results by such means in the past.

<sup>84</sup> The “Interlaken Process”, initiated by the Swiss government, addressed the concept of “targeted financial sanctions”; followed by the “Bonn-Berlin” process, hosted by the German government, addressed travel and flight bans and arms embargoes; followed by the “Uppsala-Stockholm” process, hosted by the Swedish government, developed design of targeted financial sanctions. A number of complementary workshops and seminars were held, not least by the Watson Institute at Brown University, RI. The Security Council itself has convened committees to consider improvements to the efficacy of sanctions.

9. Sanctions were conceived at a time when people had to create commerce and it could be assumed that they were conscious of the laws controlling their activities. Information technology has marginalized human involvement in much modern business, certainly of a routine nature. Yet transactions that breach a specific national sanctions regulation can be identified using the same technology, and the readiness of law enforcers to penalise their nationals who discover that they have facilitated a prohibited trade has caused businesses to establish complex and very expensive systems to prevent breaches. Given that much of the sanctions regulation has been drafted in earlier days, and has uncertain effect in contemporary commerce, these systems err on the side of caution and “overkill”, preventing business that may not be illegal at all.<sup>85</sup> The integration of global business by means of mergers and acquisitions now involves extensive research to discover which parts of a subsidiary’s business can be undertaken (or not stopped) by a new parent governed by a different set of sanctions regulations.

10. There are thus three “losers” from such sanctions, only one of which was the intended target: first, the State or persons unable to trade and their counterparts; secondly, traders and businesspeople not strictly caught by the sanctions but prevented by the wider effect of compliance systems; and, thirdly, the customers of the service provider and general public bearing the extra costs of running of these systems.

11. The situation worsened significantly in the wake of “9/11”. At US urging, the UN Security Council had tried to introduce sanctions targeting specific suspected terrorists or terrorist groups in 1999 and 2000.<sup>86</sup> The 2001 attacks on New York and Washington DC provoked united action across the globe. The Security Council adopted unanimously resolution 1323 of 28 September 2001, setting out a comprehensive agenda to combat terrorism and creating the Counter-Terrorism Committee of the Council (CTC), with a mandate to monitor and assist States’ compliance. The United Kingdom’s Permanent Representative to the UN in New York became Chair of the CTC.

12. The early promise of the CTC to overcome some of the problems of worldwide enforcement of mandatory UN sanctions was not sustained. States were required to report, successively, on their achievements, and technical assistance was offered to solve problems. Patience, resources and, above all, confidence of the major States members were needed; and all soon ran out. Thus, although the CTC and its experts have done much useful preliminary work, little will be achieved unless and until responsible members of the Security Council so urge; and are willing to back such encouragement with the necessary resources.

13. Even before the CTC was established, the main focus of the US Administration was to reorganise and reinforce its agencies in Washington DC in support of combating terrorism. From reports published subsequently, it emerges that intelligence that might have identified the threat was not followed up. At the time, US officials were caught “blind”; and the first clues as to what *had* happened came from tracking credit card transfers made by some of those who had hijacked the four planes. A greater significance was thus placed on the ability of financial markets to combat terrorism than could be justified. Whereas analysis of electronic fund transfers can reveal past events, it will do very little to identify future activity; and prohibition of such transfers to named individuals will barely impede an actual terrorist from pursuing his criminal ambition. Nevertheless, the role of the Office of Foreign Assets Control (OFAC) was boosted, and seen in Washington as the vanguard of the “Global War on Terror”.<sup>87</sup>

14. OFAC had been created to administer the various sanctions programmes introduced under the US Trading with the Enemy Act (TWEA).<sup>88</sup> These programmes were primarily protective: to *conserve* assets of the targeted State on behalf of US claimants. OFAC continued to do the same tasks under the International Economic Emergency Powers Act (IEEPA), which enabled like controls to be introduced and enforced whenever the President identified an economic threat to US interests. There was a small, but important, jurisdictional difference between the two statutes: whereas IEEPA gave powers to regulate all US persons (ie US residents, nationals and corporations), TWEA extended this to all persons subject to US jurisdiction, which was applied so as to include foreign subsidiaries of US corporations outside the USA.

15. The extra-territorial effects of this were soon felt in relation to Cuba, when the Cuban Democracy Act of 1992 was countered in the United Kingdom by an Order under the Protection of Trading Interests Act 1982 prohibiting UK companies and nationals from complying with the US extra-territorial measures. The risk of

<sup>85</sup> US banks discovered some years ago that many Cuban immigrants to the USA gave their daughters the name “Havana”, causing considerable difficulties for them when they grew up and tried to open bank accounts, because the interdiction software required to identify prohibited payments invariably had “Havana” as a “stop-word”. This phenomenon became even more acute when measures were taken against individual Muslims by reason of the relatively few Islamic names and the variability of transliteration from a differently scripted language.

<sup>86</sup> UNSCR 1267 (1999) and UNSCR 1333 (2000).

<sup>87</sup> Successive OFAC Annual Reports disclose minimal impact in tracking and freezing “terrorist funds”, despite the considerable resources now devoted to this task. The bulk of the funds stopped are those of Muslim welfare or remittance organisations designated as “terrorist” on the apparent basis that some of their transfers have involved supposed terrorists.

<sup>88</sup> See note 2 above.

transatlantic tension grew after the “Helms-Burton Act” was passed in 1996. In response, the EU Council introduced blocking regulations prohibiting European nationals and companies from complying with both Helms-Burton and the Iran-Libya Sanctions Act 1996. Eventually, an uneasy *modus vivendi* was arrived at, which has discouraged both EU and US authorities from penalising companies caught in a “damned if I do; damned if I don’t” situation. Again, this has an inhibiting impact on legitimate business, causing unnecessary losses.

16. This is compounded by the increasing tendency to identify individuals as the target of specific measures. This derived from OFAC practice, where individuals were identified as “Specially Designated Nationals” (SDNs) of a sanctioned State. This had little impact outside the USA until January 1991, when OFAC published a long list of Iraqi SDNs, which included the University of Liverpool and other bodies and institutions unaware of any Iraqi involvement. Notoriously, OFAC had simply adopted a list presented to them by a private security company on the basis of the most superficial research. It took many months to resolve even the most blatant errors.

17. International suspicion of sanctions deepened as Iraqi sanctions were maintained long after they had been expected to end; and the widespread dislike of “comprehensive”<sup>89</sup> sanctions led to the adoption of “targeted” measures. The targets tended to be individuals;<sup>90</sup> but no basis was ever given for the naming of such individuals. Such designations of persons outside the US could create difficulties for the SDN; but the measures adopted became increasingly penal in character. Only when, after “9/11”, the United States designated a large number of Muslim individuals and bodies as “Global Terrorists”, without offering any proof, and insisted that the Security Council target them specifically, was it appreciated that no due process had been followed, and that the UN had effectively condemned these individuals to starvation.<sup>91</sup> The Security Council has sought to introduce a mechanism whereby a designated individual can complain; but the burden rests on the “target” to counter information of which he may remain unaware.

18. Latterly, OFAC has aggressively extended the reach of its attempts to regulate non-US banks. OFAC requires all banks in the US to maintain interdiction software to control payments to bodies or persons designated under its various sanctions regimes. In December 2005, OFAC levied very large civil penalties against ABN AMRO, a leading European bank, for the involvement of its Dubai Branch in effecting payment instructions on behalf of Iranian bank customers. Although the relevant US sanctions do not apply to non-US banks outside the USA, the penalties were imposed on the basis that the currency of the payments was USD, which thereby had to be cleared through New York. In many jurisdictions, such a penalty would be challenged as beyond the powers of the enforcement agency; but the “political” dimensions of such a challenge in Washington DC operate so as to discourage responsible companies (whether US or non-US) from doing so.

19. By such means, US regulators are extending the reach of OFAC sanctions extra-territorially. Whereas, specific legislation such as Helms-Burton and ILSA has invoked specific legislative reaction from the EU, Canada and Mexico to deny effect to such sanctions within their own territories, an unchecked policy of interpreting and applying domestic regulation to operate externally can have similar results.<sup>92</sup>

20. The Global War on Terror is being cited as justification for many extra-legal practices, on both sides of the Atlantic. In relation to international sanctions, such practices are clearly counter-productive. Sanctions, or at least the measures available to the Security Council under article 41 of the UN Charter, are surely too important to be so abused.

21. As I have sought to demonstrate, there exists profound confusion over what these instruments are, and how they should be deployed to achieve the limited objectives set for them. They will do so only if all member States act consistently and cooperatively. The lack of real effort to complete the ambitious programme commenced by the CTC under UNSCR 1373 is particularly regrettable.

<sup>89</sup> UN sanctions against Iraq were never “comprehensive” in that exceptions to allow medical and humanitarian supplies existed from the start.

<sup>90</sup> In many cases, it would be more effective to “target” particular activities or economic resources on which a regime critically depends: the aim in all cases being to distinguish the leaders from the general public and undermine their popular support. Thus, the “Gleneagles Agreement”, made in 1977 without legal force among Commonwealth nations to exclude South Africa from international sporting events, was arguably the most effective measure to herald the end of apartheid there.

<sup>91</sup> For example, a former Iraqi official identified by the US as one of the “pack of cards”, and designated by the UNSC, was captured by US forces in Iraq in 2003. When after detention and interrogation he was released without restraint two years later, he found it was impossible to change his international designation which prohibited all persons from according to him or his family any goods or services.

<sup>92</sup> Very recently, it seems that OFAC, without subpoena or other legal right, has been obtaining extensive payment details from SWIFT, the consortium based in Belgium operated by leading banks whereby the bulk of international payment transfers are effected. The US Administration has claimed that this was a key and covert means whereby the Global War on Terror was being waged, and has strongly criticised the Editor of *The New York Times*, that disclosed the practice. EU and national EU member officials have expressed grave concern at such widespread and systematic violation of privacy and data protection laws.

22. If sanctions are to become effective, those States—in particular the USA<sup>93</sup>—must rein in responsibly the unilateral measures employed by OFAC to achieve US foreign policy objectives. Within certain humanitarian limits, international law has nothing to say about a State's domestic legislation, however misguided and ineffective. When that legislation is deployed extra-territorially and applied to non-US persons, international law is broken, and the utility of sanctions is undermined.

23. In summary, based on this short account of current issues relevant to the Committee's enquiry, the following recommendations are offered:

- (a) Renewed attempts should be made to bridge the gulf of misunderstanding and confusion over the scope and purpose of measures taken under article 41 of the UN Charter, in order to reconcile such measures with domestic regulation taken unilaterally for national policy purposes.
- (b) The government should encourage, if necessary by providing necessary resources, acceleration of the work of the CTC to complete the mandatory aims set out in UNSCR 1373. Sanctions will never work unless the bulk of States apply them consistently and cooperatively.
- (c) The government should spearhead a renewed attempt to create within the Security Council secretariat a means of pooling relevant and reliable intelligence which can help (i) design sanctions specific to each threat to peace and security presented and (ii) facilitate enforcement of the sanctions adopted.
- (d) The Bank of England and the Financial Services Authority should as a priority consult with international banks operating in London and with other EU bank regulators in order to determine the extent of extra-territorial controls being asserted by OFAC. Representations based on such consultations must be made so as to eliminate extra-territorial effect of US (and any other) regulation, and to remedy the adverse consequences of past abuse.
- (e) Pending such changes, the government should, in the light of the above findings on extra-territoriality, coordinate with the European Commission and member States to protect undertakings in Europe by neutralising the extra-territorial effects.
- (f) Above all, the government should seek to ensure that sanctions are adopted only where the circumstances fall within Chapter VII of the UN Charter, and the specific measures adopted can realistically expect to resolve the threat to international peace and security.

*September 2006*

### **Memorandum by the Council for Arab-British Understanding**

#### **INTRODUCTION**

The Council warmly welcomes the inquiry into the use of economic sanctions. We believe that this crucial debate has sadly died down since the end of sanctions on Iraq in 2003. During the Iraq sanctions there was a huge dynamic debate about the efficacy of sanctions and the desirability of alternative sanctions models, including so-called "smart sanctions" and "targeted sanctions".

Although there has been only a limited public or media debate since then, sanctions have continued to be used, and their use has also been threatened. We are not in the position to audit the entirety of the sanctions regimes programmes imposed but would like to refer to several specific areas.

#### **GENERAL ISSUES WITH SANCTIONS REGIMES**

##### *Time limited sanctions*

Often various sanctions regimes have been used to mask an unwillingness to tackle difficult political issues. The sanctions, as was the case in Iraq, essentially maintained the crisis in formaldehyde rather than leading to a resolution of the dispute. The likely outcomes were either the sanctions regime would erode thereby undermining international law or a conflict was likely to break out. In the end both happened. Therefore, there should be serious consideration given to sanction regimes with limited time duration. Therefore, if the UN Security Council wishes to extend the sanctions, it should require an entirely new resolution.

Frequently on the issue of Iraq there was a majority of UN Security Council members who wanted to see sanctions on Iraq lifted. However, any permanent member could always veto the lifting of sanctions, thereby making it extremely difficult to get them removed. A similar situation occurred with Libya, where the US also

<sup>93</sup> The USA is not alone in increasing its adoption of unilateral sanction measures where Security Council action is not attempted. Since the EU found that declarations of common foreign policy issues could be converted by Council Regulation so as to have binding effect in the legal systems of its member States, the EU has taken a number of "sanctions" initiatives without seeking Security Council adoption.



threatened to veto any resolution lifting sanctions. This created a view in the targeted state that it was pointless trying to get the sanctions lifted through the legal route, and consequently encouraged sanctions -busting as the escape route.

#### *International consensus*

Another problem facing UN sanctions regimes is that increasingly the international community is divided with leading states opting to act on their own. Subsequently, it has become much tougher to achieve the international consensus necessary to make the sanctions effective.

The EU has often preferred constructive or critical dialogue to sanctions unlike the US that has a tendency to isolate and punish. This is most notable over Iran. Nevertheless sanctions as a tool of diplomacy are important as an alternative to words and war.

#### *Who do sanctions affect?*

Many sanctions regimes are designed to pressure a civilian population to force their government to adopt certain measures. Time and time again these have proved unsuccessful, and typically are counterproductive. Indeed they frequently hurt the very people the international community want to protect. This is the case currently in Gaza where the sanctions effectively imposed on the elected Palestinian authority have not decreased their popularity nor have they compelled the new authority to adhere to the demands of the Quartet. In fact, it appears to have hardened the position of Hamas leaders. In the case of undemocratic regimes like Iraq, there was simply no way in which ordinary Iraqis could have put pressure on the Saddam Hussein regime even if they had wanted to. What is clear is that the less the civilian population is impacted by sanctions the more likely they are to succeed.

Not only that but any form of sanctions regime that targets the whole civilian population is illegal and immoral.

Sanctions can also serve as an extremely useful scapegoat for a targeted regime especially if they are in control of the media. All the ills of a particular state can be blamed upon the embargo rather than their own policy failings.

#### *Impact on third-party states*

It is clear that UN sanctions regimes have a huge impact on neighbouring states. In the case of Iraq some 21 states complained of losses as a result of the sanctions.

These states should be permitted to attend discussions on such sanctions and consideration given to offset any losses that they might suffer as a result. It has also been argued that more targeted sanctions could limit the impact on third-party states.

Unilateral sanctions have also had a huge impact on third-party states. The United States in particular needs to consider carefully how to offset this, if sanctions are to be effective and not harm relations with other states.

If third-party states continue to lose heavily as a result of sanctions regimes then they will have less motivation in enforcing them.

#### *Review of sanctions*

There is an obligation for any UN-mandated sanctions regime under Article 41 to ensure that they are “in conformity with the principles of justice and international law”.

### CASE STUDIES: SANCTIONS ON STATES

#### *Sanctions on Iraq*

This should be a main focus of any inquiry as they were by far the most comprehensive sanctions regime but also underwent numerous changes over a period of almost 13 years.

The sanctions did have a huge effect upon Iraq because of their scale but also because Iraq was, and remains, hugely dependent on hydrocarbon income. This meant that any sanctions that did not target oil exports would be ineffective but also if there was no oil income the Iraqi people would be the first to suffer. It should be

stressed that sanctions were one of, but not the sole cause, of suffering of the Iraqi people and that the former government of Iraq must bear a huge responsibility as well.

However, it is clear that the sanctions regime lost its coercive force and influence on the regime only two to three years after they were imposed. In the first year alone the Iraqi economy shrunk by 75 per cent. Instead the breaking of sanctions and flouting of international law became something the regime wished to encourage as an act of defiance.

In short, the Iraqi people were hit by sanctions whilst the regime was able to protect its own interests. It was also clear that it was not the regime that was largely blamed but the parties involved in enforcing the sanctions. This was one reason why American and British forces were not universally welcomed as they had hoped when they invaded Iraq in 2003.

The regime was able to use the sanctions regime for its own benefit. By September 1990 it had introduced a widespread rationing system. As with other regimes, it withdrew ration cards as a form of political pressure and suppression. It was an anomaly of the whole sanctions regime that it depended upon a brutal dictatorial regime to provide for the humanitarian needs of the Iraqi people.

In future, sanctions programmes should take into consideration all those items necessary for the proper running and maintenance of core public utilities such as electricity, water and sewage treatment. During the 1991 conflict these had been severely damaged and Iraq found it difficult to bring them back to pre-war levels. Consequently raw sewage was flowing into Iraq's rivers in massive quantities.

In common with many sanctions regimes, the middle classes tried to leave Iraq to find opportunities left elsewhere. This brain drain is particularly damaging in many of these countries.

There was also significant criticism that UN Security Council members, including Britain and the United States, turned a blind eye to sanctions busting. The accusation was made by the UN Secretary-General Kofi Annan, but also by Calne Ross, then a senior official in the Foreign Office: "We did not turn a deliberate blind eye, but there was no serious attempt to stop the smuggling. We never put serious pressure on Jordan or Turkey or the Gulf states. There was a lot of talk, but not much action."<sup>94</sup>

#### *The oil-for-food programme*

This needs a complete reassessment. There was scope at every stage of the process for the politicisation of what was supposedly a humanitarian process.

There was no proper impact assessment of the sanctions on the Iraqi people. Moreover as the sanctions and the programme persisted, it was insufficient to deal with the developmental need of the Iraqi people as well. This was particularly the case as the programme was run in six months stages with only limited means to undertake long term planning.

The oil-for-food programme also had a huge impact on the domestic economy as there was no cash component. For example, there was no motivation for Iraqi farmers to produce foodstuffs when they had to compete with imported foodstuffs paid for out of the programme. Without a cash component water pumps and other machinery would arrive but there were no funds to pay for the operators. The cash component was recognized in UNSCR 1284 but was never implemented in the centre and the south.

Sanctions-supporting governments pointed out that Northern Iraq, which was not under the control of the then Government of Iraq, was in a far healthier situation. However, the north received 22 per more capita in funds, had a cash component, and also had a significant number of international aid agencies operating there, whereas there were hardly any in the rest of the country.

The whole sanctions regime also allowed the Iraqi government to play havoc with the oil markets. It was able to increase or decrease its production free from any quotas that it was party to under OPEC. On several occasions Iraq halted oil production which sent shockwaves through the energy markets.

<sup>94</sup> Quoted by Phillip Sherwell, in the *Daily Telegraph*, 17 April 2005.

*Sanctions on Libya*

The UN sanctions could be argued to have had some impact on the government of Libya. There was clearly a desire to get the sanctions lifted, and hence after a long time, the Libyans agreed to a third-party trial at the Hague. Much later, this was also accepted by the British and American governments.

However, there was also clear evidence of a large segment of the Libyan elite who did not see lifting sanctions as essential. There was also a huge degree of smuggling across the borders and therefore people who had vested interests in maintaining the sanctions regime. African governments in particular began to defy the travel ban yet again undermining international law.

*The sanctioning of Palestinian authority areas*

There has been an embargo by the international community on the Palestinian Authority since the elections of Hamas in January 2006. This has not been authorised by the United Nations Security Council but by the Quartet—United Nations, the EU, United States and Russia. This comes on top of the existing Israeli closures and checkpoints regime that has decimated the Palestinian economy as a form of collective punishment.

This has had a massive impact not on the elected government of Hamas that the Quartet objected to, but the Palestinian people already suffering from an occupation that has lasted almost 40 years.

The embargo has hit every section of the Palestinian economy. The Palestinian Authority's monthly income dropped from \$150 million to \$20 million or less, according to the United Nations. This is one of the principal causes of a huge rise in the numbers of Palestinians living in poverty which according to the UN is in excess of 70 per cent.

In Gaza, its impact was worsened by the Israeli shelling and especially the destruction of the power station in June. Currently, most of Gaza's 1.4 million inhabitants only have a few hours of electricity a day. There is also a lack of fuel to operate the water wells and the lack of clean water has become a serious health problem. In addition, there are shortages of key drugs in most major Palestinian hospitals.

Basic foodstuffs are in short supply according to the World Food Programme. The sugar price in Gaza has risen by one third since January. The United Nations reported for example in June that 43.1 per cent of pregnant women had anaemia. The World Food Programme is increasing the number of people it feeds in Gaza to 220,000.

As part of the blockade the Israeli forces have prevented fishing in Gaza since 25 June 2006. Yet again there appears to be no reasonable security reason for doing this. Israeli patrol boats have for years effectively controlled the Gaza seashore.

Access is also an issue on the West Bank. Increasing aid agencies have been finding it harder to enter through Israeli checkpoints. The United Nations even reported that in June and July, 22 water tankers were denied entry into the West Bank.

It has also undermined credibility in US-UK ambitions to spread democracy throughout the region. It has also as the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, John Dugard, has stated, reduced the credibility of the United Nations as well.

*Sanctions on Syria*

The US imposed additional trade sanctions on Syria in May 2004 through the Syrian Accountability Act. This included a freeze on overseas Syrian assets and a ban on all exports except those of a humanitarian nature. Air parts are allowed for safety reasons. However, at present Syrian Arab Airlines has to apply to Boeing or Airbus (a large portion of Airbus parts come from the US) for parts, in what is a long approvals process. When planes are abroad they usually have to be re-supplied from spare parts in Syria as they cannot be supplied for example at Heathrow. This means that supplies have to be flown specially to Heathrow from Damascus, wasting time and energy.

Syria remains the only country that the US considers a state sponsor of terrorism, with whom it still has diplomatic relations. However, the existing sanctions have restricted the US's ability to engage the Syrian government over key issues such as Lebanon and Iraq. It is left to the EU to do this.

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## SPECIFIC TYPES OF SANCTIONS

### *Extra-territorial sanctions*

We feel that the Helms Burton Act and Iran-Libya sanctions Act were a dangerous precedent. Whilst the United States should have the sovereign right to decide who it trades with, to be able to sanction foreign companies is a clear violation of other states' sovereignty.

### *Sanctions on parts for civilian aircraft*

We believe that there is a strong case for outlawing this type of sanction. It is not targeted against any regime or individual and there may come a time when a civilian airliner's safety is put at serious risk.

Under the sanctions regime imposed against Libya in UN Security Council Resolution 883, spare parts for civilian airliners were included. We cannot detect that this ever put the regime under any pressure to comply whatsoever.

### *Arms trade sanctions*

We believe that these are one type of smart sanction that is worthwhile using. They have been increasingly imposed on both states and non-state actors. The United Nations Security Council set a precedent by setting up a sanctions regime against UNITA in 1993, the first non-state actor to be so targeted.

We believe that there is a strong case for a complete arms trade ban with Israel, thereby ensuring that Britain is not involved in the arming of any side in the Arab-Israeli conflict. Licensed arms sales to Israel over the past year has reached a value of £23 million, almost double the figure for 2004. The behaviour of the Israeli military in both Lebanon and Gaza are both more than justifiable reasons for imposing such a comprehensive ban which should be EU wide. In particular there should be a serious review of the use and sale of cluster bombs and similar munitions. It is estimated that Israel fired 1.2 million bomblets in the last three days of the war alone carpeting the civilian areas of southern Lebanon. Finally, the British government should be compelled to explain their collaboration in the supply of US weaponry to Israel that could have been used in Lebanon.

There are however difficulties with arms sanctions. The main arms exporting states are permanent members of the UN Security Council, and therefore are not keen to stem what is a lucrative trade. For this reason there is a tendency to impose arms embargoes on poorer countries, where the market is not attractive, rather than richer ones.

There needs to be greater work carried out to monitor the efficacy of such embargoes. Any successful arms embargo needs to have a monitoring mechanism incorporated into it. It was noticeable that this weakened the arms embargo imposed on the South African apartheid regime, which found endless loopholes to ensure it maintained its military forces.

Many UN member states lack the ability to enforce and monitor such sanctions. This has been seen in Africa but also in the Middle East. Stemming the flow of weapons has been extremely difficult also for those countries with long land and sea borders. For example, Yemen had to seek assistance from the United States to establish a proper coast guard.

### *Sanctions on Al Qa'ida and associates*

After having imposed sanctions on the former Taliban regime in 2001, the UN Security Council extended this embargo, which included arms and travel bans as well as an assets freeze, to those associated with al Qa'ida.

There is a sanctions list of names and organisations that are embargoed. However, the process of altering and updating that list has proved very cumbersome. There have been dead people who have appeared on this list even. There have also been cases where names have been misspelled.

We are concerned that there is no proper and effective means for a person who has been named on this list to appeal or seek review.

*The blockade of Lebanon by Israeli forces*

During the conflict between Israel and Lebanon in July/August 2006, Israeli forces blockaded Lebanese ports, having also attacked Beirut airport. The blockade was finally lifted on 7 September some 24 days after the ceasefire came into being. The impact on the Lebanese economy was huge, and the sea blockade continued well after the fighting had ended. The land blockade had been lifted on 14 August. So far it has been difficult to establish the precise costs to the Lebanese economy of the blockade but the conflict is predicted to cost as much as \$4 billion.<sup>95</sup>

This was a clear violation of international law. The 1977 Protocols to the Geneva Conventions on the laws of war are explicit that economic sieges against civilian populations are banned.

*The Israeli wall: requirement for actions against those companies participating in construction of the wall*

The Advisory Opinion from the International Court of Justice on the Israeli wall in 2004 made it clear that the wall and its regime was illegal and should be dismantled. Nothing has been done in the two years since. According to the opinion and the subsequent UN General Assembly Resolution, states are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. Moreover there should be a register of damages that arise from the construction of the wall that threatens to annex around 10 per cent of the West Bank. We have yet to see any evidence that the British government has made any attempt to ensure compliance with this resolution or attempted to dissuade any British companies from working on the wall.

CAABU believes that there is a clear case for the government to impose punitive measures against any companies or individuals who participate in the construction of this illegal wall which has strangled Palestinian life, imprisoning over one million people, dividing families from families, people from their land, schools and medical facilities.

## SUMMARY OF RECOMMENDATIONS

1. There should be a continued and careful review of all sanctions regimes including those imposed by the UN, regional groupings and individual states.
2. All sanctions regimes should be time limited.
3. There should be very clear criteria as to how and under what circumstances sanctions would be lifted.
4. The lifting of UN sanctions should not require a new Security Council Resolution that could be vetoed by a substantial majority of Security Council Members.
5. From the start, there should be inbuilt monitoring of the impact of any sanctions regime to assess its impact especially on the civilian population.
6. Sanctions regimes should be better targeted at the regimes or parties in question. Above all such sanctions regimes must ensure that civilian populations are not unduly harmed.
7. All sanctions regimes should give careful consideration to the impact on third-party states.
8. There should be greater emphasis on arms trade embargoes particularly in conflict areas. This should include Israel as a consequence of its disproportionate assaults on the Lebanese and Gaza civilian populations. The embargo on the Palestinian civilian population should be lifted immediately.

*September 2006*

**Memorandum by Professor Margaret Doxey, Emeritus Professor, Trent University, Ontario**

## INTRODUCTORY

1. Economic sanctions, as stated in the committee's "Call for Evidence", constitute an important instrument of statecraft which governments alone or in concert can employ to meet threats to national and international interests. They reinforce political pressure and offer a non-lethal alternative to the use of force. Although they have been used extensively during the past 40 years their efficacy remains a subject of debate.

2. Beginning in the mid-1960s, white minority rule in Southern Africa raised important issues for Britain and the Commonwealth and wide-ranging political and economic sanctions were imposed by governments and international bodies against Rhodesia (now Zimbabwe) and South Africa. In the Rhodesian case sanctions

<sup>95</sup> [http://news.bbc.co.uk/2/hi/middle\\_east/5257128.stm](http://news.bbc.co.uk/2/hi/middle_east/5257128.stm)

were mandatory, following a United Nations Security Council (UNSC) resolution; in the South African case the UN General Assembly recommended sanctions, but lack of agreement in the Security Council restricted mandatory measures to an arms embargo. Sanctions obviously contributed to the end of white minority rule in both countries but different analysts ascribe different weights to sanctions and to the other factors which influenced outcomes. In 1979 the Iran hostage crisis erupted and following a Soviet veto in the Security Council, the United States and generally unenthusiastic Western governments imposed sanctions. In this case the freeze of Iran's foreign assets was important in bringing the hostages' release early in 1981. Soviet intervention in Afghanistan (1979) and presumed implication in the declaration of martial law in Poland (1981) brought short-lived US-sponsored sanctions distinguished more by inter-Allied discord than by successful impact but the sanctions imposed on Libya following the Lockerbie disaster in 1988 and reinforced by a UNSC resolution in 1992 were more coherent and effective. They were suspended in 1999 when the Lockerbie suspects were surrendered for trial at The Hague and lifted in 2003. By the 1990s however, the end of the Cold War had ushered in a new phase of cooperation between the permanent members of the Security Council. Comprehensive economic sanctions were imposed on Haiti, Iraq and Serbia-Montenegro as well as selective measures, particularly arms embargoes, on Afghanistan under the Taliban and a number of African regimes and rebel groups. This unprecedented spate of UN sanctions, mandated under Chapter VII of the Charter, encompassed a wide variety of objectives, provided further insights into efficacy and brought ethical issues to the fore. It also prompted much scholarly writing and numerous studies of international sanctions by governments, international organizations and research bodies, whose findings will be available to the Committee.

3. International sanctions have been my main scholarly interest for many years and I participated in a number of these studies, including the Interlaken process, sponsored by the Swiss government between 1997 and 1999, which focused on technical and administrative problems associated with financial measures. In August 2000 I was among those who gave oral evidence to a Working Group on Sanctions set up by the Security Council. Unfortunately, but perhaps predictably, the Chairman's Draft Outcome' was not approved and no report was published. In recent years sanctions cases have been less high-profile but, as the Committee will be aware, some old and some new arms embargoes, assets freezes and travel bans are in force, particularly in response to internal conflicts and to acts of international terrorism which have become of paramount concern. At the time of writing Iran has been warned of UN sanctions if it persists with its uranium enrichment programme.

4. An overall re-assessment is timely and I appreciate the invitation to submit written evidence. In line with the questions raised by the Committee I propose to discuss briefly four important and inter-related clusters of issues: goals, costs, scope and implementation. Detailed analysis of cases and types of economic sanctions is not attempted.

## GOALS

5. Over the years the goals of those imposing sanctions have expanded to cover a wide spectrum of target behaviour including cross-border aggression, internal conflicts, gross abuse of human rights, subversion of democratic regimes and support for terrorism. Given nine affirmative votes and no veto by a permanent member, the Security Council can declare any situation a threat to international peace and security under Chapter VII of the Charter and order sanctions against offending parties. As economic measures interrupt normal business transactions, and are not necessarily cost-free for those imposing them (see below), one assumes that more than "signalling" is intended: deprivation is designed to induce the target to forego or abandon internally or externally oriented policies found unacceptable. Goals may be limited, for instance the requirement that Libya should hand over the Lockerbie suspects for trial or that Iran should forego uranium enrichment; or more far-reaching, such as an end to apartheid in South Africa or the restoration of legitimate government in Haiti. But they need to be realistic and clearly spelled out. A diffuse set of goals aimed at both external and internal policies, such as those listed in UNSC resolution 687 (1991) on Iraq, is impossible to modify and hard to achieve. And "reformist" goals, particularly those which require support from within the target, are likely to mean a "long haul". It is, of course, easier for one government to impose economic sanctions and keep them in place (US sanctions on Cuba since 1960 come to mind); multilateral sanctions, particularly those mandated by the UN, are harder to orchestrate and sustain. Security Council resolutions are the result of political compromise and need not be unanimous while among UN members at large some governments may be indifferent or even sympathetic to the target. When goals are not fully shared, efficacy is impaired.

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## COSTS

6. Economic sanctions entail costs for those resorting to them and this will influence their decision-making. Permanent members of the Security Council can use their veto power to block sanctions for economic as well as political reasons and it will be recalled that although opposed to apartheid in South Africa, successive British governments did not support UN mandatory measures partly on grounds of cost to the domestic economy. Applying UN sanctions can also inflict a disproportionate burden of cost on the target's neighbours and major trading partners. In the 1990s special arrangements were made for Jordan to receive oil from Iraq, while states bordering the former Yugoslavia suffered major disruption of trade and communication from sanctions on Serbia-Montenegro. This was partly alleviated by practical help from the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE) in the form of Sanctions Assistance Missions (SAMS). At the UN level, states experiencing "special economic problems" as a result of mandatory sanctions can consult the Security Council (Article 50 of the Charter) but there is no entitlement to assistance. In both the Iraqi and Serbian cases, there were many requests for help. The lack of response from the Security Council was resented, and may have contributed to a disinclination to apply sanctions whole-heartedly. Burden-sharing, where appropriate, needs to be a feature of future sanctions cases and the SAMS model is worth attention in this context.

7. Economic costs for targets—the main object of the exercise—are intended to reduce significantly its ability to adopt or pursue an offending policy. But there are also political dimensions which may make defiance less "costly" than compliance. It is also well-documented that target regimes pursue defensive economic strategies: alternative suppliers and markets; self-sufficiency; counter-measures; making use of smuggling and the black market. Middlemen assist these endeavours at great profit to themselves. Before imposing sanctions governments need to be fully cognisant of these political and economic factors and weigh them as carefully as they do their own costs.

## SCOPE

8. Traditionally, food and medicines have been exempt from embargo and other civilian goods may also be classified as "essential". Exemptions require administrative procedures at the national and possibly the international level. In the mid-1990s comprehensive sanctions fell out of favour as aid organizations and the media publicized their harmful effects on impoverished and politically impotent sectors of the target's population first in Haiti and then in Iraq (where the regime exploited this publicity to its own advantage). There is a further problem when embargoes on its exports deprive the target of the foreign exchange earnings needed to pay for food imports. This was the case in Iraq where oil accounted for 90 per cent of the value of exports. International concern for the plight of the Iraqi population led to the ambitious UN "oil for food" programme which was eventually accepted by Saddam Hussein in 1996. Predictably, it not only proved unsatisfactory—managing the external trade of a country the size of Iraq was beyond the capacity of an *ad hoc* UN unit—but also opened up avenues of graft and corruption which were exposed in the Volcker Report and in the UN's internal investigations. This experiment harmed the UN's reputation and is unlikely to be repeated.

9. Equity and efficacy may suggest the choice of sanctions which impact directly on the target regime (or group) as well as on its ability to pursue offending policies. In this context financial sanctions have become the focus of particular attention. Assets can be frozen, transfer payments prohibited and financial assistance blocked. A further refinement involves "targeting" the people who actually control policy: members of the government, the military, elites, rebel leaders: financial measures, travel bans and diplomatic sanctions deprive them of resources, mobility and international standing.

10. The detailed study of financial sanctions undertaken in the Interlaken process, with considerable input from the United States which has elaborate machinery for foreign assets control, brought practical proposals for improved use. Standardized terms, model UNSC resolutions and a draft Framework Law which would enable governments to act quickly and decisively were annexed to the Final Report which emphasized that the sanctions "net" needs to be cast as widely as possible, that detailed information about the target and its elites and their accurate designation is essential, and that the full cooperation of private financial institutions must be forthcoming. On the positive side, the Report noted that electronic transfers of funds assist speedy implementation and that the scope for banks in less sophisticated parts of the world to conceal substantial assets is probably limited. Useful lessons have been learned from anti-money laundering programmes. That said, while identification of government assets may not be a problem, identification of bank accounts and other assets of individual miscreants, particularly members of rebel and terrorist groups, can be problematic. False names and shell companies offer cover and there are alternative methods of moving funds, for instance

by trading in diamonds and by the system of “hawala”, which undermine “conventional” financial sanctions. Nor do terrorist acts, which can have appalling consequences, necessarily require huge financial resources.

11. In the repertory of targeted measures arms embargoes are, in theory, an obvious means of limiting conflict and they have been used in numerous cases, particularly against governments and rebel groups in Africa. Sadly, they have proved largely ineffective. Arms smuggling is hugely profitable, there are vast quantities of weapons available and borders can be porous. Arms embargoes and “targeted” travel bans were the subject of the Bonn-Berlin study sponsored by the German government in 1999–2000. Like the Interlaken study, the German report stressed the need to close legislative and executive gaps in the national implementation capabilities of many UN members.

#### IMPLEMENTATION

12. While maximum participation in a sanctions programme closes potential loopholes, it also makes it more difficult to ensure effective implementation and the best-designed set of sanctions will fail when implementation, which is a national responsibility, suffers from lack of political will and/or administrative capability. Typically both exist especially where UN sanctions are concerned.

13. Direct “international” enforcement is limited to naval interdiction in international waters and possible aerial surveillance; these are additional costs for the sanctioning group. There is no central agency for managing UN sanctions. Individual Sanctions Committees, on which all members of the Security Council are represented, have been charged not only with monitoring implementation by member states but with a variety of other tasks including handling communications under Article 50, and approving exports of goods for essential civilian needs. The Iraq Committee was also required to receive reports on the sale of petroleum and petroleum products under the “oil for food” programme. In meeting what can be a heavy work-load, especially for their Chairmen, these committees are assisted by a small group of personnel in the UN Secretariat.

14. Monitoring depends on reports from governments which are not always enlightening (or submitted) and there are few resources for effective follow-up although some on-the spot investigations of sanctions-busting in several African countries—notably Angola where diamonds were financing UNITA’s operations—did succeed in publicizing violations and collusion with neighbouring regimes. The Interlaken and Bonn-Berlin reports, in common with many other studies, recommend strengthening the UN’s monitoring and enforcement capabilities. In common with most proposals for UN reform this is unlikely, especially in the wake of the “oil for food” scandal. The United States is hostile to the UN; nor do other powers favour the delegation of national responsibilities. The idea of a permanent sanctions unit in the Secretariat has not found favour which means that improved procedures are the most that can be hoped for and in recent years there has been some useful progress on this front.

15. There is no doubt that economic sanctions will continue to commend themselves as non-violent instruments of pressure, although political measures may also be relevant, or preferable. Ideally, the threat of sanctions would be sufficient to bring results but, if it is not, action must follow. Given the costs involved it is reasonable to expect economic measures to contribute significantly to the desired outcome, but they also run the risk of provoking defiance and introduce rigidities which can make the resolution of differences more difficult. Lessons of past experience in respect of goal-setting, burden-sharing and target responses, complemented by expert studies which identify particular vulnerabilities, should suggest an appropriate set of measures, tailored to suit the particular case. A plan for graduated pressure may also be useful. Obviously humanitarian concerns must be taken into account but economic sanctions cannot be made painless and over-reliance on sanctions “targeted” against individuals could be a mistake: they send a message reinforcing rhetorical condemnation, but do not exert strong coercive pressure.

16. Two final comments in this very brief presentation may be relevant. The first is that incentives may usefully complement a sanctions programme. They can be offered by individual governments or by a like-minded and influential group (such as the EU), possibly alongside UN action. The second is to stress the need for legitimacy as a basis for sanctions: they carry more weight when they are perceived not as furthering the interests of the governments imposing them but as measures defending important international norms of law and morality.



### Letter by the European Banking Federation

The European Banking Federation (FBE) welcomes the launch of an inquiry on the impact of economic and financial sanctions by the House of Lords Economic Affairs Committee.

The European Banking Federation (FBE) is the voice of the European banking sector. It represents the interests of over 4,500 European banks, large and small, from 29 national Banking Associations, with assets of more than €20,000 billion and over 2.3 million employees.

We would like to take the opportunity of the inquiry of the House of Lords Economic Affairs Committee to forward you our recommendations regarding the functioning of the Consolidated Electronic List of Persons, Groups and Entities subject to EU financial sanctions and the drafting, implementation and interpretation of EU financial sanctions regulations.

The European Banking Federation is first confident that the Consolidated Electronic List of Persons, Groups and Entities subject to Financial Sanctions is a major contribution in the fight against terrorist financing. However, some remaining problems hinder the use of the list with complete confidence. The remaining problems are listed in the attached letter<sup>96</sup> as sent to the European Commission in December 2005.

The FBE has always been willing to co-operate fully and to ensure a swift and efficient implementation of financial sanctions. However, our member banks have sometimes encountered difficulties in the implementation of financial sanctions. Drawing on its members' experience in implementing sanctions, the FBE has made some recommendations to the European Commission to improve the drafting, implementation and interpretation of EU financial sanctions regulations, especially in light of the Council "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy"<sup>97</sup>.

### Memorandum by Mr Mikael Eriksson, European University Institute

Targeted sanctions are currently in a dynamic phase where much learning is taking place. Not only has there been a shift nowadays from comprehensive sanctions to targeted sanctions, but also to more *mature* stages of sanctions use. Several international processes such as the Stockholm process, the Interlaken process and the Bonn-Berlin process have been the latest efforts in shaping this foreign policy instrument.

The shift to targeted sanctions came as direct response to the high humanitarian costs following the comprehensive UN sanctions on Iraq. Targeted sanctions is based on a simple logic, that is: to target, by using political and economic means, those individuals who are in the vanguard of local armed conflicts, terrorism and political violence, while at the same time avoiding hurting civilians who do not carry any political responsibility on behalf of the government. By targeting specific individuals it is though, multifaceted conflicts may be dissolved and prevented. The aim of the measures furthermore, has been to influence internal political dynamics within a regime so that a reduction of power of decision-making elites can take place. Over the last few years, targeted sanctions have also been applied to bring perpetrators and former war criminals to international justice, as has been the case for the International Criminal Tribunal for former Yugoslavia, and Sierra Leone. Some high profile targets which have been listed are *inter alia*: Slobodan Milosevic (Former Yugoslavia), Saddam Hussein (Iraq), and Charles Taylor (Liberia). Besides being oriented on leaders, targeted sanctions has also been applied on particular conflict resources such as rough diamonds, conflict timber and arms.

But targeted sanctions have not been the obvious instrument to deal with threats to peace and security. Several governments have also turned to more violent options such as target assassination. The logic of targeted assassinations suggests that a government could approve the killing of a political leader of another government or non-state organisations in as a "preventive measure". The killing aims are eliminating a leader that poses a strategic threat, and who is believed to be able to cause harm to a great number of people. This strategy has been used in the combat against international terrorism. Today there exist many examples where this option has been carried out: by Israel of the former Hamas' leader Sheik Ahmed Yassin, or by Russia of the former leader of the Chechen movement, Alsan Maschadow, etc. The legitimacy of this strategy is questioned and it has been heavily criticised by the human rights community.

Going back to the importance of targeted sanctions, one can note that in the post Cold-war etc, states in the international state system are currently being challenged by three immediate security threats: civil-wars, terrorism and organised crime. Behind many of these threats stand rough charismatic leaders and decision-makers. Now, by sanctioning the leadership of these entities, as vanguards, the international community could have a decisive impact on the development of peace and security. By focusing on individual targets, ie by

<sup>96</sup> Letter dated 19 December 2005, from the FBE to the Directorate General External Regulations, European Commission (not attached).

<sup>97</sup> (Council Document 15579/03 of 3 December 2003—hereinafter "the Council Guidelines") (not attached).

restricting their private, economic and political manoeuvre room, entire conflict complexes could be dissolved. In fact, the centrality of key personalities could be illustrated by looking into three areas of the contemporary security environment. According to the Uppsala Conflict Data Project there were about 30 armed conflicts ongoing in the world in 2005. Of these a majority were of intra-state character. Many times these local armed conflicts have been led and operated by a number of key leaders such as Jonas Savimbi (Angola), John Garang (Sudan), Joseph Kony (Uganda), and numerous others.

The shift from comprehensive sanctions to targeted sanctions is here to stay. Confronting and battling “new” types of threats, calls for neater strategies that are better fit to deal with issues like money laundering, smuggling, trafficking, human right abuses, terrorism, etc rather than employing strategies of collateral damage such as the comprehensive sanctions imposed on Cuba under Castro targeted sanctions fits better to targeting those particular entities that are guilty or considered guilty. The application of targeted sanctions should therefore, I believe, be weighted against its alternative, for instance as an option to war.

### SANCTIONS PARAMETERS

The central question to which this testimony tries to answer is what makes targeted sanctions work. Instead of focusing on *success or failure* of sanctions which is commonly made, I would like to emphasise the importance of sanctions **parameters** that may benefit our understanding of targeted sanctions and sanctions impact. Depending on which of the different parameters that are combined, different understandings and experiences of sanctions can be made.

The following parameters will be discussed here:

1. Type of imposer.
2. Conflict history.
3. Type of conflict.
4. Type of target.
5. Conflict Phase.
6. Sanctions objectives.
7. Type of sanctions.
8. Symbolic vs direct sanctions.
9. Context of implementation.
10. Side Effects of Targeted Sanctions.

To begin with, all sanctions regimes are unique. This implies that all sanctions regimes (ie covering countries, companies or individuals) also have its particular internal dynamic, established for different means and diverse set of purposes. As such it is unreasonable to carve out a grand sanctions model for all sanctions situations. In fact one of the more classical research pieces made on sanctions (studying about 116 sanctions cases around the world since 1914 until today) received much criticism for mixing different sanctions types with each other and then carving out some general conclusions based on this pattern, Hence the first recommendation is to consider each sanctions regime in its own milieu.

Moreover, departing from the view that sanctions reviews could be understood in terms of “best” and “worst” cases do not help us much in shaping better sanctions tools. Times change and so do objectives, learning and implementation (both instrumentally but also “cognitively” among policymakers and implementers). It does not help, in my view at least, to conclude that there has been an “effective” sanctions regime applied on Ian Smith’s regime in Rhodesia, when trying to foster a better sanctions regime on Mugabe, as the conditions are so different. For instance, in the later case Europe was in a completely different political and economic shape of enforcing its principles and for instance the idea of targeted sanctions was not around at that time. Besides, what does a good and a bad case really mean? Just because one has succeeded in bringing down a government which the international community had a great deal of problem with, does not mean that the sanctions have been effective. I believe a good case is a case that is consideration of the parameters stated below. Instead of discussing good or bad cases, hence I would like to thrash out some parameters that need to be kept in mind and not overlooked when considering sanctions. They may look rather simple—which they also are—but they are many times ignored by politicians involved in shaping a sanctions regime.

### 1. *Type of imposer*

When considering sanctions one needs to be clear with the type of effect one wants to achieve: should the effect be local or international; symbolic or instrumentally effective. Based on the attempt and the goal of the policy, the sender (ie the decision maker) needs to plan or decide between unilateral sanctions, regional sanctions or multilateral sanctions as each type is likely to affect the outcome of the stated goal in a different way. For instance, while the UN is generally implementing sanctions due to threat to international peace and security, EU is generally implementing sanctions which relate to human rights issues and democratic failures (eg elections). In fact depending at what level sanctions is enforced, different tolls and hence difference dynamics will be established. However, the type of actor is not always distinct. There are instances in which unilateral, regional and multilateral measures are in place at the same time (in addition, one type of imposer such as the EU may also decided to support sanctions efforts introduced by another regional factor such as the OSCE, or African Union). Despite different configurations, this does not necessarily suggest that a better “effect” of sanctions will be made.

### 2. *Conflict history*

Sanctions are usually established to deal with complex political emergencies. Depending on how far these emergencies have developed in time and how intricate these have become, sanctions are likely to play different roles despite the original attempt to enforce the same type of measures. This needs to be kept in mind. Furthermore, stakeholders (ie targets) may be immune to international measures, as they may have learnt that international efforts to modify their behaviour have failed.

### 3. *Type of conflict*

Type of conflict many times determines the nature of the sanctions game, and hence the impact. A conflict that is interstate may play on different conditions than a conflict that is of intrastate nature. When implementing targeted sanctions then, this needs to be given consideration, Furthermore, from time to time, the imposer (UK; EU or the UN) may be party to the conflict to which sanctions are to be implemented, while at other time be distinct aside of it. This is likely to affect a targets perception of the sanctions (in terms of credibility of the sender). Hence, a sender needs to be clear with what its own interest to the conflict is and what direct impact it may have on sanctions efficacy.

Also, depending on the *raison d'être* for the conflict, the international community today considers a strategy to either target one, both, or all parties to the conflict. Sometimes sanction is also placed on two parties just to avoid taking a political stance on one or the other side. To sum up, the type of conflict in which the sanctions are introduced may thus get very different effects as the conditions and dynamics may look different depending on the type of conflict and the interest of the stakeholders.

### 4. *Type of target*

Looking at the last 15 years of targeted sanctions experiences, many creative measures have been taken, all for the better purpose of trying to effect rough entities in a direct way. Perhaps most interesting are attempts to play around with different types of targets (included in so-called sanctions lists). In terms of individual sanctions, the international community may consider hawks (spoilers) and doves in a sanctions strategy (ie implement travel bans or frozen assets on individuals that are hawks and leave out sanctions on those that are “do-gooders”, despite being members of the same government. In other cases though, sanctions may be introduced to put pressure on both parties to a conflict. Most of the time however, sanctions are implemented to put pressure only on one factor at a time, for instance a particular spoiler to a peace agreement, an obstructive government, or a particular individual with capacity to fuel a conflict, etc. Sometimes family members to a key entity are targeted with sanctions, while sometimes low key bureaucrats are placed on a sanctions list. Depending on the last decade’s problems and advantages of targeting specific types learning will take place. Hence states need to pay attention to lessons learned when consolidating future sanctions regimes. In fact several questions about strategic targeting need to be dealt with. For instance: is targeting family members which are basically only at “guilt by association” good targets? (for instance the children of Charles Taylor of Liberia); or is it a good strategy to target an organisation but not the individual leaders of the organisation? (eg Hamas); or is it any point in listing low level bureaucrats of a government, that does not have any direct or indirect responsibility to the conflict? (eg Zimbabwe), etc. In any case, knowing your target and the dynamics on ground is utterly important. Therefore regional representatives (embassies, EU delegations, or UN offices) play a crucial role. Not only do they know the political and economic reality on the ground, but they are also up-dated and well informed, thus making the targeting more accurate.

### 5. *Conflict Phase*

A sanction is likely to play a different role depending on what phase of an emergency it is entering. A conflict may have been ongoing for decades or simply for a few weeks. For instance, sanctions may be applied as an instrument for *conflict prevention* (as was the case with introducing targeted sanctions on the al-Qaeda); *conflict management* (as was the case with conflicts in Liberia, Ivory Coast and Sierra Leone); *conflict hampering* (as when an arms embargo was introduced on the fighting in Eritrea and Ethiopia); or *conflict signalling* (as when sanctions were introduced on Burma/Myanmar). Most of the time however, these instruments are not so clear cut. For instance sanctions were placed on al-Qaeda members for the purpose of preventing potential terrorists to act, but at the same time to strangle the flow of money to entities already engaged in terrorism (ie is prevention, management and signalling). Hence, senders need to know how targeted sanctions fit into the broader conflict development.

### 6. *Sanctions objectives*

Sanctions may be imposed by a sender during the time of an emergency in either a speedy shape or as well calculated and rational strategy. What should be noted though is that the objective for which a sanction is introduced may easily change during weeks and months of emergency. This requires that the objective of the sanctions are flexible enough or fit to be “re-invented” on short notice so as to fit reality on ground. Many time, sanctions objectives are to static rather than being dynamic (ie political and economic developments on ground develop but the original position reflects a previous situation or a context).

Another factor that needs to be considered is if the targeted sanctions are based on a self interest or a common good (sometimes falling into the same category). Engaging in a political emergency is not always a good strategy as it may well be politically self-destructive on behalf of the sender; the target may cry out that the sender is impartial and self-interested. The target may in fact try to complicate the senders involvement in the conflict as far as it can (for instance, France’s self interest in Ivory Coast may have complicated its role and armed its role of being impartial, leading to a specific counter targeting by armed groups against France).

Furthermore, when assessing sanctions—and targeted sanctions in particular—one important parameter is to consider which strategy that is accompanying it. Sanctions, as have been pointed out in earlier witness statements, could deal with behavioural modification, retribution, punishment, signalling, self-indulgence. It may also come in the form of a threat, as a gradual political and economic build-up, to temporarily stop but not hinder, or as a negotiation tool. Depending on the type of underlying strategy in combination to some of the other parameters mentioned above, different political payoffs will take place. Some strategies are good in some settings, while not in other. The more they are tried at different levels, the likelier it is that sanctions mechanism will work. An interesting although very sophisticated development of targeted sanctions practise (practised by the EU during the War in the Balkans) is the use of a positive and negative sanctions strategy. Instead of only considering sanctions as a tool for punishment, this strategy rewards good behaviour. By engaging the target in a dialogue and winning other those targets that are more dovish, this type of targeting may have a considerable greater impact than through pure isolation. Being clear with what type of objectives one wants to achieve is therefore necessary. However, unless the other parameters are taken into account, also this strategy may fail.

### 7. *Type of sanctions*

One important parameters of sanctions impact is decided by the actual type of restrictive measure that is being implemented. In a majority of cases there are arms-embargoes in place. During the last decade many innovative measures have been tried both by the UN and the EU, to which frozen assets and travel bans have been effective, not to forget targeted sanctions on conflict resources. It is likely that the international community will abolish or add new types of measures, until it has reached enough tools for an effective sanctions formula. Unfortunately each type of restrictive measure brings with it a whole new set of factors which deals with implementation, diplomatic procedures, monitoring mechanisms, and cooperation between different institutions. It is very different to implement an assets freeze than to implement timber sanctions. Although it may sound simple, it involves a number of important considerations. We are at a stage now, where both the EU and the UN is implementing restrictive measures as a routine, which may be good if they are effectively enforced. A routine methodology implies speedy enforcement and unity, However, if not seriously and flexibly done, it may well play out as a disastrous strategy as it wont’s signify anything either for the sender or the target.

### 8. *Symbolic vs direct sanctions*

The purpose of economic sanctions is to affect the behaviour of a target in a particular way. Today the international community seems divided over—unconsciously though—whether or not this effect should be purely effective or purely symbolic. In some sanctions regimes much resources (in terms of political attention, technical enforcement etc) make it look like that certain entities should be directly effected. For instance, assets are frozen, individuals are forbidden to travel etc. In other cases however, entities are placed on sanctions lists without being targeted directly (although the same measures are in place). These measures it seems, are only symbolic as they “name and shame” those that are being targeted. The question is whether one type is better than the other. This is most likely determined by many of the other parameters such as the type of conflict, or the type of imposer. For instance, although the leadership in Burma/Myanmar has travel bans placed on them, they may not want to travel to Europe in the first place. Therefore one could say that sanctions in a sense are pointless or ineffective (although being blacklisted publicly may not be the ideal wish for an official representative). In a sense targeted sanctions is fruitful in both ways, although more or less efficient (perhaps). Important to stress though is that targeted sanctions on individuals, for instance through financial sanctions, over time has a large psychological impact. This type of impact should not be disregarded.

### 9. *Context of implementation*

In order to discuss the efficiency of sanctions one needs to consider the context of implementation. Generally one could state that a multilateral sanction is better to enforce than regional sanctions. If targets are excluded from operating within Europe’s borders or its legal territories, it may easily transfer its assets to Asian markets. Furthermore, it is easier to target individuals that are being integrated in formal economies (as was Serbia) than are those that live in economies far away from western economies (such as Burma/Myanmar) are in transition phase (such as Liberia). The reason is simply that there are far more mechanisms and financial controls that can trace or stop certain financial activities. For instance the Swedish finance inspection have the capacity to inform more or less all financial operators to impose sanctions on designated individuals and companies. Despite this effective monitoring and implementing mechanism there may well be problems every now and then.

### 10. *Side Effects of Targeted Sanctions*

The shift from comprehensive sanctions to targeted sanctions was mainly due to the large humanitarian impact during the former. The question is if the new form of targeted sanctions has similar negative impacts? Until now few experiences of negative impact has been collected. There may be different reasons for this. First of all it seems that there are not many cases which have created a negative humanitarian impact. Secondly, a direct structural hardship as the Iraqi population experienced during Saddam Hussein’s regime are more likely to receive more international attention that indirect hardships such as infringements of legal safeguards on behalf of specific targets. Thirdly, although there may be negative humanitarian consequences, these hardships may well be accepted as those that are enjoying them are targets for a particular reason, and therefore deserves it. Finally, targeted sanctions have not yet been enforced for such a long time that international evaluation has not been made yet.

However, most of the side effects known nowadays are infringements on human rights. This is also a typical concern raised by targeted individuals themselves. For instance, claims are made by targets that the deprivation of personal assets or the right to travel hinder them for instance to reach crucial medical facilities, to meet with children, to represent their countries, etc. A concern raised by different targets is also that they are not judged or “listed” by courts, but only arbitrarily for political means on behalf of the sender. Besides the question of evidence of guilt of those being targeted is the entire question of designation and de-listing. In many cases, individual targets do not have a place to turn to, to which they can appeal their listing (for instance to get rid of their financial ban, or to get access to their frozen assets). However, these legalistic problems are currently being addresses at an international level (mainly with the Security Council) and improvements have been made, although much still needs to be done.

In terms of targeted sanctions applied on specific economic sectors, targeted sanctions have sometimes forced people out of work despite the employees themselves not having been politically connected to any company policies. For instance a textile sector sanction on Burma has been applied by the U.S. which is said to have forced women out of their work in textile factories into street prostitution. While the aim has been to target a leadership with interest in specific companies (many times state-companies) the effect has been the employees, which was probably not the original intention.

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## Memorandum by HSBC Holdings Plc

### 1. INTRODUCTION—GENERAL REMARKS

1.1 HSBC is pleased to be of help to the Committee with its enquiry into the impact of economic sanctions. Headquarters in London, HSBC is one of the largest banking and financial services organisations in the world. Our international network comprises more than 9,500 offices in 76 countries and territories in Europe, the Asia-Pacific region, the Americas, the Middle East and Africa. We have circa 125 million customers and employ about 285,000 staff.

1.2 The HSBC Group, through its Compliance policy, is committed to complying with the spirit and letter of all laws and regulations applicable to its operations, wherever it operates. Accordingly, HSBC has in place procedures designed to ensure that all relevant sanctions are identified, distributed and complied with in each applicable jurisdiction. In the case of sanctions imposed by the UK government (normally via the Bank of England) and by the European Union, all HSBC Group offices operating within the UK and those falling within the definition of a “UK or EU person” are required to adhere to relevant sanctions.

1.3 Globally, HSBC Group members are required to comply with a significant number of sanctions targeted at individuals, entities and organisations as well as at specific countries and all nationals of a specified country.

1.4 While HSBC adheres to all types of sanction, targeted, specific or “smart” sanctions are preferable to unspecific or country sanctions, although even smart sanctions raise operational challenges, as detailed below. HSBC supports fully the use of smart sanctions in relation to the counter-terrorist financing (CTF) initiatives. However, even here a number of operational difficulties arise and the value of the sanctions may be reduced for the reasons set out below.

1.5 In the following paragraphs we set out the approach and procedures adopted by HSBC Group companies bound by UK sanctions to ensure compliance; the practical difficulties experienced; some commentary on the costs associated with compliance and on adverse or unintended consequences.

### 2. PROCEDURES TO ENSURE COMPLIANCE

2.1 A list of all current and past sanctions, including those implemented by UK and EU authorities, is maintained by HSBC and is available to all Group offices. New sanctions are circulated to all relevant Group Offices who are required to:

- search against their existing customer base for possible matches;
- properly investigate possible matches and report any confirmed matches both to the HSBC Compliance function and to the relevant regulatory body. In the UK this will normally be the Sanctions Unit at the Bank of England;
- where required by the sanctions, block or freeze any monies or assets held and act upon any instructions from the appropriate body;
- add the details of any individual, body or country to databases maintained to facilitate client and transaction screening;
- screen all transactions on an ongoing basis for possible matches with sanctioned individuals, bodies or countries.

### 3. OPERATIONAL AND PRACTICAL CHALLENGES

3.1 The main challenges presented by the need to comply with sanctions are set out below, with a particular focus upon smart sanctions:

- There are approximately 6,000 individual and entity names specified by US, EU and UN sanctions. These consist of circa 470 names relating to Al Qaeda and the Taliban; circa 122 names relating to suspected terrorist activity with the remaining names relating to individuals and bodies linked to regimes or governments, eg Zimbabwe, Yugoslavia and Liberia. These names, and any new names covered by sanctions, have to be searched against a customer base of 16.6 million and some 30 million annual customer contacts which result in a transaction. These figures are for the UK bank alone.
- Most major financial institutions will operate multiple compute systems which may require multiple searches and technical solutions.

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- Any search or screening using the names of individuals or entities produces potential matches with sanctioned names, most of which, on further investigation, turn out to be “false positives”. The investigation of these potential matches is both time-consuming and costly, and can lead to delays in processing transactions while any required investigation is completed. Those delays can lead to customer complaints and claims although, by applying appropriate resources to checking potential matches, these risks can be mitigated. The number of “false positives” is reduced if as many additional details as possible are added to sanctions, for example—full names, date of birth or passport number. The Wolfsberg Group, of which HSBC is a founder member and currently acts as co-chairman, has produced guidance on the role of financial institutions in CTF and a paper setting out standards for monitoring, screening and searching. (not included.)
  - The increased use of sanctions, particularly as part of CTF, clearly carries the risk that the practical issues and difficulties posed in their application will increase in scale and in terms of the cost to business. It is important that the use of sanctions, even smart sanctions, is proportionate and considered.
  - There is the potential for accounts or transactions held or mandated in a name which appears to match a sanctioned individual or entity to be wrongly blocked and inhibited. While every effort is made to avoid this, the lack of additional identifiers increases the risk of “false positives”.
  - Often the same individuals or entities are covered by sanctions issued by a number of countries or international bodies. The relevant names may be shown in a variety of ways, eg

John A Brown  
Brown John A  
J A Brown, etc.

- Dependent upon the systems and software involved, searching the same database against these differing representations of the same name can produce different results. It is for this reason that the guidance issued by the Wolfsberg Group encourages co-operations between governments and agencies.
- The effectiveness of smart sanctions appears questionable in the long-term. While the use of smart sanctions may be a helpful and effective measure to seize or block funds or assets that have already been identified or are already held, it is likely that any sanctioned individual or entity will ensure that any accounts or transactions are conducted in a different name once they become aware of the existence of a sanction on them.

#### 4. COST OF COMPLIANCE

4.1 We are not able to separately identify the costs of complying with sanctions as distinct from the general cost of regulation and compliance. The current costs of complying with the sanctions regime in the UK are, so far, manageable in HSBC Group terms. However, any substantial increase in the use of sanctions will increase the cost of compliance and increase the risk of customer claims or complaints where accounts or transactions are wrongfully blocked or delayed.

4.2 The focus on CTF has undoubtedly increased the focus upon ensuring effective compliance with sanctions. Given the sheer scale of the customer and transaction numbers involved, this will necessitate the increased use of systems-based monitoring and screening. The cost of implementing analogous systems for transaction monitoring for suspicious transactions, in relation to anti-money laundering, has been substantial.

#### 5. UNINTENDED CONSEQUENCES

5.1 HSBC has not to date experienced significant adverse unintended consequences in applying UK and EU sanctions. Nevertheless, any significantly expanded use of sanctions, even smart sanctions, and particularly country sanctions, would increase the chances of these materialising.

*August 2006*

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**Memorandum by Professor Peter Fitzgerald, Stetson University College of Law****PREFACE: USING FOREIGN POLICY TOOLS TO ADDRESS CRIMINALITY AFFECTS COMPLIANCE**

Short of the actual use of force, economic sanctions are among the most powerful tools available to governments to directly or indirectly influence the behavior of other states, entities, or individuals. Sanctions can greatly augment governmental resources and efforts by enlisting the assistance of private financial and trading communities in identifying and blocking access to assets and limiting transactions associated with the targets of the sanctions programs. Maximizing the effectiveness of these programs therefore requires close cooperation between regulators and those outside of government who need to implement the actual controls in their daily operations. If the sanctions are not properly crafted and administered, governmental objectives may be undermined or frustrated and the burdens imposed upon those who seek to comply in good faith with the those controls may be unnecessarily increased, resulting in reduced compliance.

The governmental blacklisting of particular entities and individuals—what we now call targeted or smart sanctions—was historically used as a secondary tool to augment a primary economic embargo directed at particular geographic enemy, often as an adjunct to actual hostilities.<sup>98</sup> Over the past several decades blacklisting shifted from being a secondary tool incidental to actual or economic warfare against another state, to become a primary tool whereby governments sought to lead or alternatively coerce other nations into different actions as a foreign policy matter.<sup>99</sup> At the same time, sanctions became an end in themselves. They became useful political demonstrations to both domestic and international constituencies that policy makers were “taking action” to address a wide range of difficult international issues, whether or not the sanctions actually achieved their stated aims. This now includes sanctions that are completely disassociated with any particular target nation or geography, and aimed at intractable problems such as global terrorism and international narco-trafficking. As a consequence of this evolution, although the anti-terrorist and narco-trafficking sanctions are aimed at offenses committed by particular individuals and entities, instead of states, they are often regarded as involving “foreign policy” decisions rather than questions of criminal law. Thus, traditional foreign policy based blacklisting sanctions now overlap with tools more typically associated with domestic criminal laws against money laundering and other related economic or financial offenses, and civil or criminal property forfeiture.

Freezing or blocking assets, for example, was traditionally used not only to induce a foreign government to resolve the issues at hand, but also as a bargaining chip in a mutual foreign claims settlement process as the belligerents resumed normal diplomatic relations. Accordingly, economic sanctions were often regarded as only involving a “temporary” deprivation of property. This characterization significantly influenced the nature of the processes associated with the act of freezing or blocking the assets, and the asset owner’s legal rights—and this view of sanctions still persists. However, the blocking or freezing of assets under the anti-terrorist and narco-trafficking sanctions will never result in an intergovernmental claims settlement process and is much more akin to a civil or criminal forfeiture, but without the processes and protections ordinarily applied in those procedures. Moreover, courts and administrative review bodies typically show a much greater degree of deference to executive action when a government is exercising its foreign policy powers than in an ordinary criminal proceeding. Significantly, however, these differences in perspective affect not only the legal position of the “guilty parties” who are actually targeted by the sanctions, but also the position of those who are endeavoring to comply in good faith with the governmental controls—the civilian “stakeholders” in the compliance process to use the jargon of the corporate world.

The challenge for governmental regulators posed by these targeted sanctions programs is to recognize that the political statement made by merely adding names to a blacklist is insufficient to address the threats posed by global terrorism. Rather governments need to ensure that the blacklisting sanctions are as effective as possible in preventing or prosecuting terrorist acts. This means that, irrespective of whether they are considered an exercise of a government’s foreign policy or of its criminal law, the actual sanctions imposed must be commercially practicable and administered and enforced in a way that helps ensure the widest possible compliance with the controls. Moving beyond mere political statements to an effective control system crucially requires that the regulators and the regulated community work together to a greater extent than has occurred to date.

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<sup>98</sup> The blacklisting of front companies for the Axis powers operating in neutral countries during World War II is an example of such a secondary boycott or embargo. See, Fitzgerald, *Managing “Smart Sanctions Against Terrorism Wisely”*, 36 New England L R, 957 (2002) at 980, available at <http://www.law.stetson.edu/fitz/fitzstuff/NEW%20ENGLAND%20LAW%20REVIEW.PDF>

<sup>99</sup> Another traditional function of sanctions is simply to distance a country and its nationals from other states engaged in undesirable behavior. See, Fitzgerald, *“If Property Rights Were Treated Like Human Rights, They Could Never Get Away With This: Blacklisting and Due Process in US Economic Sanctions Programs”*, 51 Hast L J, 73 (1999) at 89–90, available at <http://www.law.stetson.edu/fitz/fitzstuff/HASTINGS%20LAW%20JOURNAL.PDF>



### PARTICULAR COMPLIANCE ISSUES POSED BY TARGETED SANCTIONS

Economic and financial sanctions, not unlike the tax laws, are an example of the type of regulatory program where the devil is in the details and where success depends more upon voluntary compliance than upon governmental enforcement. Uncertainty regarding the details of the controls, the obligations they impose, and the manner of their enforcement, is the single greatest impediment to the types of commercially practicable sanctions that lead to widespread voluntary compliance.

There are five principal problems with the sanctions as currently formulated and administered, which will be discussed below primarily as they pertain to the anti-terrorist sanctions programs.

#### 1. *Uncertainty as to who comprises the “regulated community” that must comply with the sanctions*

Greater clarity is required in identifying which controls are generally applicable to all, and which are only directed at members of the financial community. Additionally, irrespective of who must comply, consideration should be given to differentiating the types of compliance obligations imposed based upon the relative risk posed by each type of business or industry.

At their core, economic sanctions are controls which are directed primarily at, and implemented by, banks and financial institutions.<sup>100</sup> However, reflecting their origins as foreign policy tools, sanctions programs are often written quite broadly, in terms that impose compliance obligations on those both within and without the financial community, and for all transactions with blacklisted parties involving even the smallest amount or account.

From a governmental perspective, this approach was acceptable when sanctions were a secondary tool directed at a foreign state; the predominant value of the sanctions program was as a political statement; and a practical inability to enforce the controls as broadly as written was tolerable as a policy matter. From the perspective of those who must comply with the controls, however, it creates uncertainty as to the scope of one’s compliance obligations. In the United States this was sometimes called the “McDonald’s problem”. Is a fast-food retailer obligated to establish a compliance or customer screening process for its cash hamburger sales to ensure that it does not engage in a transaction with Fidel Castro, Osama bin Laden, or the thousands of other individuals or entities found on government blacklists? Put differently, is it appropriate policy to require those outside the financial community to have to choose between establishing expensive internal compliance processes for all of their operations or, alternatively, relying upon prosecutorial discretion in the event a prohibited transaction does occur?

Ironically, the result of broadly written controls is not wider compliance. Rather, those outside of the financial institutions at the core of the controls, recognizing that governmental enforcement resources are limited, may not engage in a high degree of “voluntary” compliance with what they perceive to be commercially impractical requirements. The government then loses the “leverage” that broader compliance would offer in achieving governmental policy objectives.<sup>101</sup>

Given the importance of the objectives behind targeted sanctions, governments need to move beyond the mere political statement made by adding names to a blacklist and create a system where the controls triggered by the act of blacklisting are more effective. To use a Cold War era analogy, the difference is one of distinguishing between simply broadly condemning a foreign state’s militarization and the COCOM network of controls that were carefully crafted in conjunction with the regulated community to maximize their practical effectiveness

<sup>100</sup> As stated by the general counsel of the US Treasury Department in his testimony before the Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security, with particular regard to the anti-terrorist sanctions:

This is a profoundly uncommon war . . . It is shadow warfare. The primary source of the stealth and mobility necessary to wage it is money. It is the fuel for the enterprise of terror . . . If we stop the money, we stop the killing.

Written Testimony of David D Aufhauser General Counsel, Department of the Treasury before the judiciary Subcommittee on Terrorism, Technology and Homeland Security, 26 June 2003, available at <http://www.treasury.gov/press/release/reports/js5071.pdf>

<sup>101</sup> Achieving broader compliance that reaches outside of the financial industry that typically comprised the regulated community for economic sanctions programs is particularly important in the anti-terrorist sanctions. As the US Treasury Department counsel Aufhauser also noted:

Terrorist financing is a unique form of financial crime. Unlike money laundering, which is finding dirty money that is trying to hide; terrorist financing is often clean money being used for lethal purposes . . . Terrorist have also used informal value transfer systems such as hawala as a means of terrorist financing. The word “hawala” (meaning “trust”) refers to a fast and cost-effective method for the worldwide remittance of money or value, particularly for persons who may be outside the reach of the traditional financial sector. . . The PATRIOT Act requires money remitters (informal or otherwise) to register as “money services businesses” or “MSBs”, thereby subjecting them to existing money laundering and terrorist financing regulations, including customer identification, record keeping and suspicious transaction reporting requirements. Well over 14,000 money service businesses have registered with the federal government and are now required to report suspicious activities. In order to increase awareness within the diverse MSB community nationwide about their obligations under the MSB rules, FinCEN plans to conduct an outreach campaign to include advertising, community outreach and the distribution of educational materials.

Written Testimony of David D Aufhauser General Counsel, Department of the Treasury before the Judiciary Subcommittee on Terrorism, Technology and Homeland Security, 26 June 2003, <http://www.treasury.gov/press/release/reports/js5071.pdf>

in denying important commodities and technologies to potential adversaries. The general counsel for the US Treasury Department has noted that “both terrorist financing and traditional financial crimes have one thing in common—they leave a financial footprint that allows us to trace financial flows, unravel terrorist financing networks, and uncover terrorist sleeper cells.”<sup>102</sup> Unlike much of the other evidence gathered relating to terrorism, which can be “suspect, the product of interrogation, rewards, betrayals, deceits . . . a financial record doesn’t lie.”<sup>103</sup>

The “leakage” from economic sanction programs that was tolerable when the controls were only a secondary foreign policy tool directed against a foreign state should no longer be tolerable when the objective is preventing actual acts of terrorism or gathering the information necessary to prosecute those who commit such acts. Governments need to identify more precisely who should comply with their controls, using a risk based analysis, and then collaborate with that “regulated community” in creating economic sanctions that are commercially practical and enforceable. Risk based compliance is also a hallmark of many other financial regulatory programs. This is an approach that adjusts compliance obligations based upon the size and nature of the institution involved, its market, products and services, and the likelihood of encountering those parties targeted by the sanctions program.

## 2. *Uncertainty as to the Targets of Targeted Sanctions*

Regulators need to provide more, and more pertinent, information regarding the parties targeted by sanctions blacklist entries. Most importantly, however, there is a need for official, prompt, and reliable mechanisms for resolving questions regarding possible blacklist matches.

Providing accurate information precisely identifying a particular party or entity as a sanctions target is often difficult, but crucial for an efficient screening system for any commercial business seeking to determine which transactions should be controlled or assets blocked or frozen. Blacklists are inherently both under- and over-inclusive. For example, while “Usama Bin Ladin” was blacklisted in the United States as early as 22 August 22 1998, “Osama bin Laden” did not appear on the list until after the 9/11 attacks.<sup>104</sup> If a precise match with a government blacklist is required, targeted individuals and entities might escape the controls due to minor variations in the names. Conversely, if not enough rigor is applied in the matching process, the blacklisting system can easily be overwhelmed by the number of false matches. A similar issue arises when common names appear on the blacklist, generating a large number of unintended matches. At one time under the old Yugoslav sanctions programs the common but indefinite name “Global” was found on the blacklist.<sup>105</sup> In the recent past, press reports have indicated that prominent figures such Senator Ted Kennedy or even several infants were erroneously stopped at airports because of the similarity of their names to those appearing on US terrorist “no fly” blacklist. These types of problems are further exacerbated when the names of those individuals and entities targeted by the blacklist have multiple spellings or are being transliterated (eg “Muhammad” or “Hussein” as well as many other common Arabic or foreign names that appear among the current sanctions blacklist entries).<sup>106</sup>

While government authorities have tried to address these problems in many of the newer blacklist entries by providing more specific information regarding the targeted parties, many of the old entries (eg the original UN Taliban lists) remain without any unique identifiers. As there are thousands of names found on the various governmental blacklists, all of which must be incorporated into a company’s internal compliance and screening programs, matching accounts and customers to the blacklist entries poses significant problems.

<sup>102</sup> Id.

<sup>103</sup> The Treasury Department General Counsel continued to state that financial records are: enormously useful—helping to identify, locate and capture bad guys, mapping out a network of connections that tie an anonymous banker to a suicide bomber, helping to evaluate the credibility and immediacy of a threat, and preventing a calamity by starving the enterprise of terror of its fuel . . . I [once beleived] that a dollar well deployed could enhance opportunity and thereby diminish antipathy to our values. But I now know that preventing a dollar from being misapplied can be of equal service and is, perhaps, the surest weapon we have to make the homeland secure and to let our kids go to schools that teach tolerance and respect for people of all faiths.

Oral Testimony of David D Aufhauser General Counsel, Department of the Treasury before the Judiciary Subcommittee on Terrorism, Technology and Homeland Security, 26 June 2003, <http://www.treasury.gov/press/release/reports/js5071.pdf>

<sup>104</sup> See, *Managing Smart Sanctions Against Terrorism Wisely*, *supra* note 1, at 968–969. In 2001, the UN, EU and the Bank of England added Osama bin Laden to their blacklists under a number of allies and variations. However, neither the UN Consolidated List nor the Bank of England’s list show the alternate spelling of “bin Ladiin”. See UN Consolidated List of Individuals And Entities Belong to or associated with the Taliban and Al-Qaida Organisation as Established and Maintained by the 1267 Committee, available at <http://www.un.org/Docs/sc/committees/1267/tablelist.htm>; Bank of England Consolidated List of Financial Sanctions Targets (Full List), available at <http://www.bankofengland.co.uk/publications/financialsanctions/sanctionsonlist.htm>

<sup>105</sup> See, “*If Property Rights Were Treated Like Human Rights, They Could Never Get Away With This*” . . . , *supra* note 2, at 123.

<sup>106</sup> For example the Arabic ?????????? is also transliterated as Muhammad, Mohammad, Mohammed, Mohamed, Muhammed, Mahommed, Mehmed, Mehmet, and Mahomet. See <http://en.wikipedia.org/wiki/Muhammad—%28disambiguation%29>

What should be done with a transaction in London involving “Mohammed Salah,” for example? Shortly after the attacks in 2001 the United Nations blacklisted “Muhammad Salah (individual) (*aka* Nasr Fahmi Nasr Hasanayn)” as part of its Al Qaida and Taliban sanctions,<sup>107</sup> and the EU added the same entry in 2002.<sup>108</sup> In 2004, the UN and the EU both updated their blacklist information to indicate that “Muhammad Salah” was in fact an alias for “Nasr Fahmi Nasr Hassannein” or perhaps “Naser Fahmi Naser Hussein,” and added that the target was born on October 30, 1962, in Cairo.<sup>109</sup> All of this is reflected on the Bank of England’s Consolidated List,<sup>110</sup> but the blacklist maintained by the US Treasury Department’s Office of Foreign Asset Control only shows the more limited original information from 2001.<sup>111</sup> However, the US does have another entry, not found on these other lists, which reads:

SALAH, Mohammad Abd El-Hamid Khalil (*aka* AHMAD, Abu; *aka* AHMED, Abu; *aka* SALAH, Mohammad Abdel Hamid Halil; *aka* SALAH, Muhammad A), 9229 South Thomas, Bridgeview, IL 60455; PO Box 2578, Bridgeview, IL 60455; PO Box 2616, Bridgeview, IL 60455-661; Israel; DOB 5/30/53; Passport 024296248 (United States); SSN 342-52-7612 (individual) [SDT].<sup>112</sup>

The name “Mohammed Salah” does not precisely match any of these entries, irrespective of the varying amounts of detail provided by the blacklisting authorities. A business struggling with complying with the controls may have more information which would help it determine if a match with one of the blacklist entries has occurred, depending upon the nature of the transaction and the degree to which a particular type of business really “knows its customers”. But if not, how much additional information must it demand from its customer in order to meet its compliance obligations before it can proceed? Clearly if the individual subsequently turned out to be either the 43 year old Egyptian-born Al Qaida supporter or the 53 year old American national targeted by the US sanctions, the minor difference in the spelling would be an indefensible distinction in the political realm or the marketplace of public opinion. Transactions involving the true targets of the sanctions need to be identified and addressed, while minimizing the impact on dealings with those who are not the actual targets of the sanctions programs.

Thus, in addition to structuring the detailed sanctions controls to impose the greatest compliance obligations on a risk-based model, there also needs to be some avenue for those who do have a compliance burden to definitively determine whether the party with whom they are dealing is or is not a sanctions target, and also to resolve conflicts or differences among the various governmental blacklists. Moreover, in order to be commercially practicable, this needs to be both an expeditious and reliable process. The absence of such a communication process between regulators and the regulated community is perhaps the single most significant compliance issue affecting the current sanctions programs.

### 3. *Uncertainty regarding liability*

Standards are needed for what constitutes an acceptable level of compliance by members of the regulated community. Safe harbors based upon such standards should be created protecting the regulated community from liability to the government under the sanctions programs and also from liability to their account holders/customers for complying with the controls.

In a risk based controls system, as opposed to one which focuses solely upon individual transactions, businesses should not expect to face an enforcement action for every failure to identify or block a transaction with a blacklisted party. Rather, government regulators should focus on whether the policies, procedures, and controls appropriate to the risk posed by that business operation were in place, and whether there was a systemic breakdown or a knowing and intentional disregard of those procedures and controls. Otherwise the regulated community is subjected to a disproportionate burden that undermines compliance, and accordingly reduces the benefits the government receives with widespread voluntary compliance.

<sup>107</sup> See, UN Press Release AFG/150 SC/7166, Security Council Committee Concerning Afghanistan Issues List Pursuant To Paragraph 8 (C) Of Resolution 1333 (2000), 8 Oct 2001. <http://www.un.org/News/Press/docs/2001/afg150.doc.htm>

<sup>108</sup> See, Council Regulation (EC) No 881/2002 of 27 May 2002, <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l-139/l-13920020529en00090022.pdf>

<sup>109</sup> See, UN Press Release SC/8259, Security Council Committee Approves Correction Of Identifying Information Of Fifty-Three Individuals, Ten Entites On Consolidated List, 12 December 2004. <http://www.un.org/News/Press/docs/2004/sc8259.doc.htm>; Commission Regulation (EC) No 2145/2004 of 15 December 2004. <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l-370/l-37020041217en00060016.pdf>

<sup>110</sup> See, Consolidated List Of Financial Sanctions Targets In The UK, <http://www.bankofengland.co.uk/publications/financialsanctions/sanctionsconlist.htm>

<sup>111</sup> See, Office of Foreign Assets Controls, Specially Designated and Blocked Nationals List, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

<sup>112</sup> See id This Specially Designated Terrorist list dates to the 1995 blacklisting of those who threatened the Middle East peace process. See, <http://www.treasury.gov/offices/enforcement/ofac/sdn/sdn95.txt>

Standards for what constitutes an acceptable level of compliance are needed, adjusted for the industry involved and the risks presented.<sup>113</sup> For example while a customer or account based screening system may be appropriate for banking institutions, non-bank money transmitters typically may not have customer accounts. Money orders are often issued for a low face value by a convenience store to a retail customer who does not provide a name. Similarly, while non-bank funds transmitters, such as Western Union or American Express, may request the names of a sender and a recipient, these types of businesses may not engage in extensive verification of their customers' identity. On the other hand, banking institutions will have account based systems and a relatively uniform approach to compliance because of being subject to a number of banking regulatory regimes in various jurisdictions. While all these different businesses may belong to the core regulated community for sanctions purposes, the risks posed and the standards of what constitutes an acceptable level of compliance for each might well vary. Alternatively, if governments are unwilling or unable to promulgate such compliance standards themselves, regulators should be prepared to recognize "best practices" for compliance developed by the various private industries comprising the regulated community. Arriving at standards for an acceptable level of compliance, either established by the regulators or by industry, is particularly critical with regard to the "interdiction software" many companies use to automatically screen their operations against blacklist entries. For example, to what degree should the software employ fuzzy logic, or a variable level of matching, to address whether a name like "Mohammed Salah" or "Global" matches the blacklist entries?

Irrespective of how the interdiction software is designed, even with the best automated programs some transactions will slip through the screening process. The Bank of America noted that "[l]arge banking institutions handle millions of transactions each day and, despite state of the art interdiction systems, frequent staff training and the institutions best efforts, it is statistically inevitable that a large bank will have inadvertent violations of [the] sanctions. Inadvertent violations that do not evidence a systemic weakness in an institution's . . . compliance program should not result in penalty proceedings, nor should inadvertent violations in the past be used to classify a large banking institution as a "repeat offender".<sup>114</sup> Conversely, small institutions, who lack the resources and in-house expertise of a Bank of America to handle their own screening operations, should be permitted to outsource their compliance systems to these larger institutions or specialized firms, and rely upon the expertise of those running these outsourced systems rather than being held to the current strict liability standard.

Lastly, in some cases, standards for acceptable levels of compliance should encompass situations where "after the fact" blacklist screening may be more commercially practicable or appropriate than the real time screening often urged by regulators. Real time screening may not be practical for a McDonalds-like or low value automated transaction conducted at "internet speed", particularly if questions regarding whether a match actually occurred need to be resolved.<sup>115</sup> Many industries assert that, in some circumstances, "after the fact" blacklist screening can be effective. Accepting a deposit to open a new account, for example, and then screening that account customer against the blacklist as part of an overnight batch process results in the target's funds being blocked rather than being turned away, and also serves governmental, identification, tracking, and evidentiary objectives.<sup>116</sup>

Once these standards for acceptable compliance are established, they should be accompanied by "safe harbors" from liability for those who comply with the standards, even where an innocent or technical violation of the sanctions has occurred. This is consistent with a variety of other banking laws.<sup>117</sup> A different sort of "safe harbor" which clearly and expressly insulates the regulated community from liability to its customers or account holders for freezing their accounts or disrupting their transactions would also be a useful addition to many sanctions laws or regulations.

<sup>113</sup> For a number of suggestions as to how such an approach could be implemented across different elements of the financial community see the various industry responses submitted to the US Treasury Department, Office of Foreign Assets Controls in response to change in its Economic Sanctions Enforcement Procedures, <http://www.ustreas.gov/offices/enforcement/ofac/interim/enf—guide/enf—comments.pdf>

<sup>114</sup> Bank of America Legal Department letter to the US Treasury Department, Office of Foreign Assets Controls, 7 February 2006, available at <http://www.ustreas.gov/offices/enforcement/ofac/interim/enf—guide/enf—comments.pdf>

<sup>115</sup> For a general discussion of the controls imposing screening obligations on online businesses see P L Fitzgerald, *Hidden Dangers in the E-Commerce Data Mine: Governmental Customer and Trading Partner Screening Requirements*, 35 Intl Law. 47 (2001).

<sup>116</sup> There is also an argument that real time screening against the blacklist might place a teller in harm's way if it requires telling the person attempting to open the account why the transaction is being refused.

<sup>117</sup> See, eg Sections 313 and 319 of the USA PATRIOT ACT; 31 CFR 103.177(b). US law and regulations requires financial institutions to gather a variety of information from their correspondent accounts, and prohibit maintaining correspondent accounts with "shell banks". However, a "safe harbor" was provided to those institutions who obtain certain "certifications" from their foreign correspondents, in recognition of the difficulty of the burden in gathering this information from a large number of institutions, and the difficulty in determining whether a foreign bank is a "shell bank".

#### 4. *Uncertainty regarding how to handle mistakes or challenges to targeted sanctions*

Better mechanisms to challenge governmental blacklist designations and correct mistakes should be established. Moreover, these mechanisms need to be available not only to the blacklisted party themselves, but also to those in the regulated community who may be obligated to take action with regard to one of their customers or accounts.

Mistakes are inevitably made in any blacklisting process, but often there is no express right for an affected party to know the basis of the blacklisting decision or to have an independent review of the government's actions. Even in the absence of a mistake, circumstances may change over time such that a blacklisted party may wish to challenge the basis for its designation. A meaningful right of review of these blacklisting decisions is especially important as the number of blacklisted parties grows, along with the number of governments promulgating these lists.

Entirely apart from situations where the match between an account or customer with a blacklist entry is questionable, there will be cases where the propriety of the blacklisting of a properly identified party is at issue. Many of these sanctions programs, including those in the US, fail to provide an express right for the affected party to know the basis for a blacklisting decision. While certainly protecting sensitive information, this nevertheless creates huge practical hurdles for any affected party seeking to correct mistakes or otherwise challenge the government's actions.<sup>118</sup>

One notable example involves the Bank of America's blocking \$24 million of assets that belonged to the Saudi Arabian businessman, Salah Idris, in 1998. This action followed the US bombing of Idris' pharmaceutical plant in Sudan along with two of Osama bin Laden's camps in Afghanistan in retaliation for the terrorist attacks on the US Embassies in Kenya and Tanzania. Idris denied any links to bin Laden, and sued the US government for defamation and compensation. Rather than defend the lawsuit the assets were voluntarily "unblocked".<sup>119</sup> Although the US government asserted concerns over exposing intelligence sources if it answered the lawsuit, much of the public basis for the government's actions regarding Idris and his El Shifa pharmaceutical plant was subsequently discredited.<sup>120</sup>

In comparison to the substantive and procedural safeguards commonly found surrounding the imposition of penalties and the deprivation of property in civil or criminal proceedings, there is very little oversight or judicial review exercised when these same sorts of governmental actions are styled as "foreign policy" measures as part of a sanctions program. Even when cases get to court—despite the broad scope of judicial review in the US—doctrines regarding standing to file a lawsuit, the scope of judicial review and deference to executive authority, along with the traditional notion that blocking or freezing actions are "temporary" foreign policy measures, effectively precludes a substantive challenge to most governmental blacklisting actions.<sup>121</sup> An extensive review of these issues prompted the congressionally created Judicial Review Commission on Foreign Assets Control to focus seven of its 12 recommendations to the US House and Senate Intelligence Committees on the need for more due process protections in the administration of the various US economic sanctions programs.<sup>122</sup>

<sup>118</sup> As initially promulgated in 1998 OFAC's Reporting and Procedures Regulations (RPR) provided that those seeking administrative reconsideration of their blacklisting could review the factual basis for the agency's actions, although sensitive material could be redacted. 31 CFR 501.807 (1998). However, less than a year later, OFAC withdrew the ability to obtain this material without explanation. See *Reporting and Procedures Regulation: Procedure for Requests for Removal from List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, Specifically Designated Narcotics Traffickers, and Blocked Vessels*, 64 Fed Reg 5, 614 (4 February 1999). Parties may still request that a blacklisting decision be administratively reconsidered, but they no longer have a regulatory right to review the basis for the agency's actions. See 31 CFR 501.807 (2005).

<sup>119</sup> See, *Managing "Smart Sanctions" Against Terrorism Wisely*, supra note 1, at 976–978.

<sup>120</sup> See, Doug Bandow, *Making it Right in Sudan US Owes Damages For Pharmaceutical Bombing*, WASHINGTON TIMES, 10 August 2001. However, Idris has yet to receive any compensation.

<sup>121</sup> See generally, Fitzgerald, *Drug Kingpins and Blacklisting: Compliance Issues with US Economic Sanctions*, (Part 1), 4 J. MONEY LAUNDERING CONTROL 360 (2001), available at <http://www.law.stetson.edu/fitz/fitzstuff/JMLC-Pt1.pdf>; (Part 2), 5 J. MONEY LAUNDERING CONTROL 66 (2001), available at <http://www.law.stetson.edu/fitz/fitzstuff/JMLC-Pt2.pdf>; (Part 3), 5 J. MONEY LAUNDERING CONTROL 162 (2001), available at <http://www.law.stetson.edu/fitz/fitzstuff/JMLC-Pt3.pdf>

<sup>122</sup> The Judicial Review Commission on Foreign Asset Control conducted the most comprehensive review of US economic sanctions programs since the 1947 review of the WWII era controls. The Commission was established by Congress as part of a legislative compromise when it passed the Foreign Narcotics Kingpin Designation Act, because of concerns over the due process issues associated with the blacklisting mechanisms in the various US economic sanctions programs. Chaired by Larry D Thompson, prior to his becoming Deputy Attorney General in the Bush Administration, the Commission conducted a year long \$1 million study of the sanctions programs administered by the Treasury Department's Office of Foreign Assets Control. The Commission's Final Report to Congress was submitted to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence on January 23, 2001. The House Committee on International Relations, House Committee on the Judiciary, Senate Committee on Foreign Relations and Senate Committee on the Judiciary also received copies. The Report, and its accompanying appendices, totals approximately 1900 pages. While only a few hard copies were printed, the Report is available in microfiche at selected Federal Depository Libraries under SuDoc. Y 3.2:F 76/F 49; Y 3.2:F 76/F 49/V.1-2; GPO Item No 1089 (MF) and it is also available online at <http://www.law.stetson.edu/JudicialReviewCommission/>

The situation in Europe is not significantly different. Sanctions continue to be regarded as foreign policy measures largely exempt from judicial or administrative review. For example, three Somali-born Swedish nationals Abdi Abdulaziz, Abdirisak Aden, and Ahmed Ali Yusuf, all employees of the Al Barakaat International Foundation branch in Stockholm, were blacklisted and their assets frozen pursuant to Regulation (EC) 2199/2001 on 12 November 2001.<sup>123</sup> Their names were included on the European blacklist because they had been added to the UN Security Council blacklist on 9 November 2001, after first appearing on the US blacklist two days earlier as part of the Taliban and Al Qaida sanctions.<sup>124</sup> Although it froze the assets, Sweden also vigorously questioned the blacklisting through diplomatic channels, arguing that without knowing the actual basis for the US blacklisting decision that triggered these controls the Swedish government and courts had no way of determining if their nationals were in fact guilty of terrorist involvements, and therefore had no real way of appealing their inclusion on the list.<sup>125</sup>

Although the diplomatic issue was quieted by the US asking for the removal of two of the Swedes from the UN blacklist in August of 2002, Ahmen Ali Yusuf remained on the list.<sup>126</sup> He sued in the European Court of First Instance alleging numerous procedural flaws and a denial of various guarantees under the European Convention on Human Rights. The Swedish Institute of International Law also issued a Report to the Swedish Foreign Office on Legal Safeguards and Targeted Sanctions strongly suggesting that there were due process issues under the ECHR with the sanctions as formulated and administered.<sup>127</sup> However, the European Court of First Instance broadly rejected Yusuf's claims, and similar subsequent challenges by others, essentially by holding that while the EU was empowered to impose restrictive measures like economic sanctions on individuals, it was also legally obligated to defer to the UN's blacklisting actions. Moreover it held that any challenges to those UN actions should be directed to the Security Council, as they are outside the Court's scope of review.<sup>128</sup> The UN's intergovernmental process for challenging a blacklist decision under the "Guidelines of the [Sanctions] Committees for the Conduct of Its Work" authorize a government to petition for de-listing on behalf of one of its residents or citizens, but do not expressly provide a blacklisted party with the right to know the basis for that action.<sup>129</sup> If an affected party's government refuses to espouse their claim to the UN Sanctions Committee the remedy for that refusal, if any is available, must be determined under domestic national law and procedures.<sup>130</sup>

The European Court's opinions also contain language evidencing an approach that, like the US cases, regards asset blocking/freezing as a foreign policy matter rather than a forfeiture proceeding. The Court states:

It is clear that the applicants have not been arbitrarily deprived of [their right to property]. In fact, in the first place, the freezing of their funds constitutes an aspect of the sanctions decided by the Security Council against Usama bin Laden, members of the Al-Qaeda network and the Taliban and other associated individuals, groups, undertakings, and entities. In that regard it is appropriate to stress the importance of the fight against international terrorism and the legitimacy of the protection of the United Nations against the actions of terrorist organizations. . . . The measures in question pursue therefore a legitimate objective of fundamental public interest for the international community. In the second place, freezing of funds is a precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof.<sup>131</sup>

<sup>123</sup> See, Judgment of the Court of First Instance of 21 September 2005—*Yusuf and Al Barakaat International Foundation v Council and Commission* (Case T-306/01).

<sup>124</sup> See, Office of Foreign Assets Control; Changes to List of Specially Designated Nationals and Blocked Persons Since 1 January 2001, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/sdnew01.pdf>

<sup>125</sup> Serge Schjmemann, *A Nation Challenged: Sanctions and Fallout: Swedes Take Up the Cause of 3 on US Terror List*, *The New York Times*, 26 January 2002.

<sup>126</sup> See, Office of Foreign Assets Control; Changes to List of Specially Designated Nationals and Blocked Persons Since 1 January 2001, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/sdnew01.pdf>

<sup>127</sup> Report to the Swedish Foreign Office on Legal Safeguards and Targeted Sanctions, October 2002, <http://www-hotel.uu.se/juri/arkiv/sanctions.pdf>

<sup>128</sup> See, Judgment of the Court of First Instance of 21 September 2005—*Yusuf and Al Barakaat International Foundation v Council and Commission* (Case T-306/01); Judgment of the Court of First Instance of 21 September 2005—*Kadi v Council and Commission* (Case T-315/01); Judgment of the Court of First Instance of 12 July 2006—*Ayadi v Council and Commission* (Case T-253/021).

<sup>129</sup> The Guidelines were adopted in November 2002, and subsequently refined in part due to the concerns raised in the Al Barakaat case. See Security Council committee Established Pursuant to Resolution 1267 (1999) Concerning Al-Qaida and The Taliban And Associated Individuals And Entities, Guidelines Of The Committee For The Conduct Of Its Work, [http://www.un.org/Docs/sc/committees/1267\\_guidelines.pdf](http://www.un.org/Docs/sc/committees/1267_guidelines.pdf)

<sup>130</sup> The Court noted in the *Kahdi* case: the United Kingdom has quite rightly pointed out at the hearing, it is open to the persons involved to bring an action for judicial review based on domestic law, indeed even directly on the contested regulation and the relevant resolutions of the Security Council which it puts into effect, against any wrongful refusal by the competent national authority to submit their cases to the Sanctions Committee for re-examination . . .

Judgment of the Court of First Instance of 21 September 2005—*Kadi v Council and Commission* (Case T-315/01) at paragraph 293.

<sup>131</sup> Judge of the Court of First Instance of 21 September 2005—*Yusuf and Al Barakaat International Foundation v Council and Commission* (Case T-306/01); Judge of the Court of First Instance of 21 September 2005 at paragraphs 293–299.

Thus, even if the practical and procedural hurdles to judicial review are overcome, as was seen in the US, the deference given to the exercise of executive authority in the area of foreign policy combined with the traditional regard for sanctions as temporary measures is likely to preclude a reexamination of the blacklisting action. As a result, unless the sanctions programs themselves provide for a review mechanism, these programs are effectively devoid of the procedural and substantive due process protections that would be associated with the similar actions if they were taken pursuant to civil or criminal law.<sup>132</sup> Nevertheless, even if sanctions programs must be regarded as something different from similar measures taken pursuant to civil or criminal law, that does not mean that the entire panoply of substantive and procedural protections built into those laws should be abandoned. Post-blacklisting administrative review procedures could afford the affected parties the ability to correct mistakes or address changed circumstances—and provide basic due process of law—without seriously affecting the government's control objectives. However, those mechanisms will need to be built into the sanctions programs themselves, rather than created by the courts. Doing so will provide added credibility to the sanctions programs, which also helps enhance compliance.

Moreover, these examples also show the layered interconnections among the various sanctions programs with which the regulated community must comply, highlighting the importance of having a reliable official source for information regarding the obligations they impose and for resolving conflicts among the various requirements—entirely separate from establishing review mechanisms for blacklisted parties.

##### *5. Uncertainty as to how the sanctions are applied and enforced*

Government regulators should design their blacklisting, compliance, and enforcement mechanisms to promote the cooperative sharing of information with the regulated community as partners, rather than regarding the regulated community as potential adversaries seeking to evade the sanctions. Additionally, attempting to impose “strict liability” for non-compliance with sanctions controls is counterproductive.

It is not possible to enforce the obligations imposed by the current sanctions programs as broadly as they are written. As a consequence these programs can suffer from selective and erratic enforcement that undermines broad voluntary compliance.

Banking institutions and other members of the financial community tend to have the greatest awareness of the obligations imposed by sanctions and make the greatest efforts to comply with the controls, but they are also the most likely to be the focus of governmental enforcement efforts. To the degree that governments also desire to promote compliance and cooperation by smaller institutions, non-traditional funds transmitters, and others outside the large institutions at the center of the financial community, the failure to promulgate commercially practicable tailored controls undercuts the credibility of the sanctions and reduces compliance among these businesses. This is only reinforced when governments then fail to devote the resources required to enforce the sanctions as written, or only selectively enforce them for political ends.<sup>133</sup>

Employing multiple blacklisting categories which trigger different levels of restrictive measures might be one way of better tailoring both the controls and the regulated community's compliance obligations. For example, the sanctions applied against the direct target of a sanctions program, such as an Osama bin Laden, could be distinguished from controls applied against a party who only incidentally dealt with or supported the real target of the program. Under the current programs there is no differentiation between these parties—a secondary or tertiary entity is subject to the same blacklisting and the same controls as the primary target, bin Laden. Moreover the most serious governmental threat against those in the regulated community who fail to comply with the controls is not really a civil or even a criminal penalty, but rather that they themselves may be blacklisted.

The US Judicial Review Commission recommended addressing this lack of refinement in the blacklisting mechanisms and controls by distinguishing between what it called Tier I designees, the primary targets of the sanctions, and Tier II designees, those who indirectly deal with the targeted parties. It then suggested that different restrictions, compliance obligations, and opportunities for review might be appropriate for these

<sup>132</sup> Despite all his efforts, Ahmen Ali Yusuf remained sanctioned until the US government announced the removal of his name from the blacklist on 24 August 2006. See Office of Foreign Assets Control; SDGT Designation Removal, <http://www.ustreas.gov/offices/enforcement/ofac/actions/20060824.shtml>

<sup>133</sup> The US Treasury Department's Office of Foreign Assets Control, for example, is a relatively small office with limited resources. What resources they do have are often focused—perhaps largely for domestic political reasons—on the Cuban sanctions, rather than on the anti-terrorist programs. In the last five years, OFAC issued more than a score of regulatory amendments, rulings, or interpretations regarding its Cuban sanctions. This constant tinkering with the Cuban sanctions contrasts with only five or six announcements dealing with the substance of its anti-terrorist sanctions programs since the 2001 attacks (apart from adjusting its blacklist entries) and a roughly equal number of modifications to those programs following the elections last January which placed HAMAS in control of the Palestinian Authority. Moreover, despite initial successes in blocking/freezing significant funds, ensuring that the regulated community complies with these controls does not appear to be a priority. Since OFAC began posting summaries of civil enforcement actions on its website in April 2003, by far the largest single category, approximately 300 cases, involve the Cuban sanctions. This compares with only one case under the Terrorism Sanctions Regulations, which resulted in a \$2,925 penalty.

second tier blacklist designees.<sup>134</sup> Given that it's highly unlikely that one of the core terrorists will walk into a bank, identify themselves, and attempt to transact business—and that very few commercial entities in the regulated community would seek to transact business with such an individual—the vast majority of compliance issues relate to these secondary or tertiary parties. The burdens on both government regulators and the regulated community would be reduced and the credibility of these programs enhanced if more refined controls were established distinguishing between the primary and secondary targets of the sanctions.

Related to this is the need to establish better communications with the regulated community, a dialogue that promotes sharing information. If governments regard identifying and tracking questionable funds flows and gathering evidence to prosecute the core targets of the sanctions as important objectives, then there needs to be a way to encourage the voluntary disclosure of information from the regulated community without automatically regarding each disclosure as a noncompliance matter to be handled as a civil penalty case or worse. Rather than laws and regulations imposing strict liability on the regulated community, a combination of establishing *de minimis* levels for compliance violations, recognizing the value of after-the-fact batch blacklist screening in appropriate circumstances, and establishing safe-harbors—or at least an intentional standard for liability—would encourage more disclosures and information sharing between regulators and the regulated community. The current system chills or limits this sort of communication exchange, and therefore undermines the government's ability to use the sanctions as a way to help track questionable money flows.

Large multinational institutions at the core of the financial community are faced with especially complex disclosure issues. Sanctions and enforcement policies for these companies need to be tailored to the risks presented and the nature of their operations. Multinational financial institutions, and separate complex large value transfer systems, such as the SWIFT network that links different banking institutions via the US Fedwire or the UK CHAPS systems for example, conduct credit transfers which involve multiple transactions. There are many steps involved in moving funds from bank to bank before making a debit transfer to a specific customer. Thus, there may be a series of largely automated transfers and messages related to these inter-bank transactions that are devoid of sufficient individual account/customer identification information to screen against the various sanctions blacklists. It may only be at the very last stage, when a bank is being directed to debit/pay a particular party that the transaction may be matched to the blacklist entries. In such a complex multinational system, under the strict liability standard, it is unclear where the liability for a violation stops—where the institutional involvement becomes so remote from the improper action that liability for non-compliance ceases. Moreover, this can be a particularly difficult problem for a multinational commercial entity facing a need to comply with sanctions promulgated by multiple governmental authorities around the world.

In December, 2005, for example, without admitting any culpability, the Dutch bank ABN AMRO NV<sup>135</sup> entered into a consent settlement with US authorities for an \$80 million civil penalty for alleged violations of the US sanctions on dealings with Iran and Libya. The basis for the penalty was that ABN's branches in New York and Chicago cleared checks and processed wire transfers and letters of credit based upon instructions and documents that originated in ABN's branches in Dubai and India. The Indian and Dubai ABN branches had altered the documents to specifically disguise their involvement with sanctioned parties in Iran and Libya, and also to avoid the transactions being caught by ABN's own internal compliance program. The result is that the overseas Dutch bank paid a significant civil penalty, and incidentally agreed to outside audits and to provide a number of special reports to the US authorities over the next three years, because some employees in its branches in Dubai and India consciously sought to evade ABN's corporate internal compliance program and thus made it impossible for its US branches to maintain strict compliance with the sanctions.<sup>136</sup> Perhaps, most notably, this all occurred as a result of ABN AMRO's voluntary disclosure to the US authorities.<sup>137</sup>

This example illustrates some of the difficulties inherent in crafting appropriate internal compliance programs for large enterprises with complex processes, and especially for the network of large value transfer systems, where the full import of the transaction may only become apparent after many innocent steps have been taken. Along with cases such as those involving the Swedish employees of Al Barakaat, it further highlights the need for an official mechanism at the national governmental level that can provide reliable information concerning

<sup>134</sup> See, Recommendations 1–3, Judicial Review Commission Report, *supra* note 24, at 125–137.

<sup>135</sup> ABN AMRO Bank NV is headquartered in Amsterdam, the Netherlands. The bank has over \$500 billion in assets, approximately 111,000 employees and roughly 3,500 offices in over 60 countries. It also maintains several branches, agencies, and offices in the United States. See Letter from RJ Stammer, Vice President and Compliance Officer of ABN AMRO North America to OFAC, July 18, 2002, commenting upon proposed revisions to the publication of civil penalty information, available at <http://www.ustreas.gov/offices/enforcement/ofac/interim/civpen/amro.pdf>

<sup>136</sup> See, Order of Assessment of a Civil Monetary Penalty and Monetary Payment and Order to File Reports Issued Upon Consent involving ABN AMRO Bank NV 19 December 2005, <http://www.ustreas.gov/offices/enforcement/ofac/civpen/penalties/amrocmp.pdf>

<sup>137</sup> ABN AMRO did have a pre-existing agreement, dated 23 July 2004, with the Federal Reserve Bank and state authorities in New York and Illinois designed to correct deficiencies at the New York Branch relating to other anti-money laundering policies, procedures, and practices and had taken substantial steps to rectify the deficiencies addressed in that agreement, when it discovered and disclosed the facts relating to the additional transactions that were the subject of this settlement agreement. See *id.*



the requirements of the various sanctions regimes, and which will help resolve possible conflicts among these laws. As a consequence of the absence of such a mechanism in this case—albeit along with wrongdoing by its local branches in India and Dubai—the Dutch banking enterprise agreed to base the internal compliance programs it creates for its worldwide operations on the obligations imposed by the US controls, even when those controls may differ from UN or European requirements.<sup>138</sup>

## CONCLUSION

Targeted economic sanctions are powerful tools to augment governmental efforts to address global terrorism and similar intractable international problems. Whether sanctions are regarded as foreign policy measures or as tools addressing international criminality, a number of steps can be taken to enhance their credibility and commercial practicability, and thereby promote more effective and widespread compliance in support of governmental objectives.

These steps include:

- formulating sanctions controls on a risk-based model;
  - that distinguishes among the obligations imposed on the various types of businesses or industries comprising the regulated community;
  - and also distinguishes between the primary targets of the sanctions (eg Tier I designees); and secondary or tertiary targets (eg Tier II designees); and
  - provides an official mechanism to resolve questionable blacklist matches (on national, international, or foreign blacklists) whose advice may be relied upon by the regulated community;
- aligning enforcement practices and resources with those risk-based controls;
  - by establishing governmental standards for liability for non-compliance, or which alternatively recognizes industry developed “best practices” for compliance;
  - providing a “safe harbor” where internal compliance programs are in place which meet such standards or practices; and
  - establishing *de minimis* exemptions for trivial violations, and an intentional or “knowing” standard for liability, that seek to achieve realistic levels of compliance rather than strict compliance for enforcement actions;
- and creating an official mechanism to correct blacklisting mistakes, permit challenges to blacklisting decisions based upon changed circumstances, or to mediate or resolve conflicts among national, international, or foreign sanctions regimes;
  - which seeks to encourage communication flows and cooperation between the government and the regulated community as partners in addressing these new global threats.

Global terrorism will not be stopped solely by military action or the use of force. Targeted economic sanctions specifically aimed at those who conduct or enable terrorist acts are an integral part of the effort. These sanctions, however, must be designed to have a practical and substantial impact in the marketplace, and cannot simply be broad policy statements focused more on domestic politics than on achieving their stated aims. Doing so means that government regulators and the regulated community must become partners in the effort to a much greater degree than has been the case in the past.

September 2006

### Memorandum by Professor Michael P Malloy, University of the Pacific McGeorge School of Law

1. I thank the Select Committee on Economic Affairs for the opportunity to share my views on the impact of international economic sanctions. This is a subject that has been a central concern throughout my professional life, both as a practitioner and an academic. Much of what I have to submit to the Committee is derived from major studies of economic sanctions that I undertook in 1990,<sup>139</sup> 2001,<sup>140</sup> and 2006.<sup>141</sup>

<sup>138</sup> Following the ABN AMRO settlement, other banks, including the London based HSBC along with Credit Suisse and UBS in Switzerland, reportedly limited their dealings in Iran earlier this year to avoid issues under the US controls, even in the absence of UN or European requirements to do so. See Steven R Weisman and Nazila Fathi, *Pressed By US, European Banks Limit Iran Deals*, NEW YORK TIMES, 22 May 2006. Other significant fines paid by foreign banks include the \$100 million assessed against UBS in 2004 for currency transfers to Cuba, Iran, Libya and the former Yugoslavia, contrary to US sanctions after various employees doctored records to hide the transactions; and the \$200 million fine imposed on the Bank of Credit and Commerce International in 1991 for violating American banking laws on fraud and money laundering. See Timothy L O'Brien, *Lockboxes, Iraqi Loot And a Trail To the Fed*, New York Times, 6 June 2004.

<sup>139</sup> Michael P Malloy, *Economic Sanctions and US Trade* (Little, Brown and Company: 1990).

<sup>140</sup> Michael P Malloy, *United States Economic Sanctions: Theory and Practice* (Kluwer Law International: 2001).

<sup>141</sup> Michael P Malloy, *Study of New US Unilateral Sanctions, 1997–2006* (National Foreign Trade Council: forthcoming).

## 2. THE PURPOSES OF ECONOMIC SANCTIONS

2.1 The Committee has raised a series of questions about the purposes of economic sanctions. What are these purposes—to effect regime change, to effect policy changes by an existing regime, or to neutralise the threat posed by an existing regime, group or individual? Whatever the purposes, have they been clearly stated in the past?

2.2 It has been said that economic sanctions “are an instrument of economic policy designed to serve several, not necessarily mutually exclusive, foreign policy, military or strategic objectives.”<sup>142</sup> However, the historical objective of most of the economic sanctions imposed by Western countries has been *directive*, “to induce change in another country’s behaviour by inflicting economic damage.”<sup>143</sup> Professor Barry Carter of Georgetown University has identified several specific objectives that one could place under the rubric of this directive policy objective: influencing target country policies in relatively limited ways,<sup>144</sup> destabilizing target country government,<sup>145</sup> seeking other major changes in target state policies,<sup>146</sup> and disrupting military adventures.<sup>147</sup>

2.3 Another generic policy objective may be termed *defensive*: in the trade embargo context, for example, this might be expressed as an objective “to reduce or slow development of an adversary’s military or strategic capabilities by raising the economic cost of acquiring imports or import substitutes.”<sup>148</sup>

2.4 These policy goals are susceptible to objective measurement—economic damage does or does not alter target state behavior; economic costs do or do not impede the target’s capabilities. Other objectives may be more impressionistic and hence less susceptible to measurement. One such generic category may be termed *communicative*. Sanctions may be imposed “to send a symbolic message of displeasure with another country’s behaviour (which may also be for internal political purposes or directed at allies).”<sup>149</sup> This is a particularly problematic category for several reasons.

2.5 First, virtually any sanction, even one appropriately categorized as directive or defensive, is to some extent communicative as well, at least implicitly. Attempting to direct the target to make a modest or major change in policy will naturally communicate displeasure with the behavior of the target state arising from that objectionable policy. In this sense, the communicative policy objective has no life of its own; analytically, it is indistinguishable from the directive or defensive objective that it accompanies.

2.6 Second, to the extent that a communicative objective is pursued independently and in isolation from any other generic category—that is, to the extent that sending a “symbolic message” of displeasure is in fact the *only* significant policy motivation behind the imposition of a sanction—the sanction program is likely to be trivial or disproportionate in its effects. Pounding the table or speaking rudely to the target state’s representatives would serve this isolated communicative objective just as well, and with considerably less cost to third parties who may be caught between the sanctioning state and the target.

2.7 One further problem follows from these two. Where a communicative objective is explicitly stated as the *raison d’être* of an economic sanctions program, one might suspect that imposition of the sanction is in fact motivated by domestic political considerations, rather than the needs of foreign policy. Hufbauer, Schott and

<sup>142</sup> Bayard, Pelzman & Perez-Lopez, *Stakes and Risks in Economic Sanctions*, 6 *The World Economy* 73, 74 (1983). My sanctions studies have focused on the foreign policy objectives, as opposed to those related “military or strategic objectives.”

<sup>143</sup> Bayard, Pelzman & Perez-Lopez, *Stakes and Risks*, at 74. Recent studies have further articulated the species of objectives that might be grouped under this generic policy objective. In this regard, Hufbauer, Schott and Elliott identify such policy goals as “modest changes in the policies of target countries” (Hufbauer, Schott & Elliott, *supra* at 41), destabilization of a target country government (*id* at 43–44), and a variety of major changes in the policies of target countries, such as opposition to apartheid and South African control of Namibia. *Id* at 46–47. The authors also identify a category that, in the view of the present study, is a mixed category, namely, “disrupting military adventures.” *Id* at 44–45. Some of the examples given in that category have a directive function (eg, encouraging an end to the Suez crisis (*id* at 45, 275–279)). Other examples, such as sanctions against the People’s Republic of China (*id* at 45, 221–230), exhibit a mix of objectives, including a directive policy objective, but also including a national security dimension that would generally be excluded from the scope of the present study.

<sup>144</sup> Barry Carter, *International Economic Sanctions: Improving the Haphazard US Legal System* 14–18 (Cambridge Univ Press: 1988).

<sup>145</sup> *Id* at 18–19.

<sup>146</sup> *Id* at 22–23.

<sup>147</sup> *Id* at 19.

<sup>148</sup> Bayard, Pelzman & Perez-Lopez, *Stakes and Risks*, *supra* at 74. Recent studies have also articulated the specific types of objectives that might be grouped under the generic category of the defensive policy objective. Hufbauer, Schott and Elliott identify such policy goals as “impairing military potential.” G C Hufbauer, J J Schott & K A Elliott, *Economic Sanctions Reconsidered* 45–46 (1985). The goals of destabilization of a target country government (*id* at 43–44), and of “disrupting military adventures” (*id* at 44–45) may also share this defensive policy objective. Likewise, Carter’s objectives of “[i]mpairing the military potential of the target country” (Carter, *supra* at 19–22), among others, could be included under the rubric of the defensive policy objective.

<sup>149</sup> Bayard, Pelzman & Perez-Lopez, *Stakes and Risks*, *supra* at 74.

Elliott capture something of this suspicion—that sanctions may occasionally arise for the purpose of domestic consumption—when they observed:

The desire to be seen acting forcefully, but not to precipitate bloodshed, can easily overshadow specific foreign policy goals. Indeed, one suspects that in some cases domestic political goals were the motivating force behind the imposition of sanctions.<sup>150</sup>

2.8 Such suspicions are unlikely to receive explicit confirmation from the public record. However, to the extent that actions still speak louder than words, one may expect that a program of economic sanctions that seems so poorly constructed or administered as to accomplish little more than public display is a likely candidate for suspicion. Hence, the “communicative” objective is of questionable appropriateness as a policy justification for economic sanctions.

2.9 Articulation of policy objectives is rarely clear-cut; in fact, policy objectives often shift over time while the interaction between sanctioning state and target evolves. For example, Vietnam was the target of US sanctions from 1964 to 1995, with the former South Vietnam added to the sanctions in 1975. Clearly, imposition of these broad trade and financial sanctions began as an incident to the involvement of US armed forces in the Vietnam conflict, but were later counterpoised against continuing foreign policy differences between the United States and Vietnam, which were eventually eased in the normalization of relations between the two nations in 1994–95. Sanctions did not in and of themselves resolve the wide range of foreign policy difficulties that existed between the two states. Yet we do know that Vietnam experienced severe economic difficulties that could not have been eased by continuing US sanctions.<sup>151</sup> Furthermore, sanctions did provide necessary “bargaining chips” for normalization of relations<sup>152</sup> and for settlement of outstanding claims of US nationals against Vietnam.<sup>153</sup> The fact remains that the movement of events is not embargoed by sanctions,<sup>154</sup> and critics as well as policymakers must be sensitive to the fact that sanctions may become more—or less—effective over time.<sup>155</sup>

### 3. IMPACT OF PREVIOUS SANCTIONS

3.1 The Committee has also raised questions about the impact of previously applied trade sanctions. How did they affect the sanctioned economy? Did they mainly impact on the poorer or the richer groups? How did they affect the country or countries imposing the sanctions?

3.2. The case of US limited trade sanctions against Nicaragua, imposed in May 1985,<sup>156</sup> presents a useful illustration. These specialized economic sanctions were imposed on direct US-Nicaraguan trade only. My 2001 study therefore looked primarily at export and import data, with 1985 as the base year. For whatever credible data is readily available, there is a gradual downward trend in the export performance, but they do not offer any strong indication of an impact of sanctions centered around the base year. A similar pattern can be seen in the import data. Performance of gross domestic product is erratic, with a relative increase in the post-base-year data. Examining this data on an indexed basis, relative to the 1985 base year, and comparing it to aggregate indexed data for the Western Hemisphere region, the performance of the Nicaraguan data seems, if anything, even less suggestive of a significant effect of limited economic sanctions.

3.3 The observable effects of the 1979–81 Iran hostage sanctions, applied relatively swiftly against a former ally and then quickly lifted, appears to be considerably less ambiguous than any effects that could be observed in the case of the Peoples Republic of China, at the end of 20 or 30 years of broad trade and financial sanctions. Yet despite the magnitude of the Iran blocking program (affecting \$12 billion worth of Iranian Government assets) and the impact of the trade embargo, the broader foreign policy crisis between the United States and Iran continued, with Iran steadfastly refusing to release the hostages.

<sup>150</sup> Hufbauer, Schott & Elliott, *supra* at 3 See also *id* at 9 (discussing “demonstration of resolve” as sanctioning state’s motive).

<sup>151</sup> See Weinraub, *Hanoi, in Economic Straits, Seeks to Move Toward Ties With US*, NY Times, Dec 28, 1981, at A1, col 4. This situation persisted. See Greenberger, *Isolated Hanoi, Its Economy in Shambles, Trying to Win US Hearts, Minds, Bucks*, Wall St J, Feb 8, 1988, at 20, col 5; Crossette, *Currency Crisis Is Ravaging Vietnam’s Fragile Economy*, NY Times, Apr 10, 1988, § 1, at 1, col 4. Yet we were often told by those fresh from trips to the area that US policy had led to isolation of the United States, not Vietnam. See Pressler, *We Can’t Isolate Vietnam Forever*, NY Times, May 23, 1988, A19, at col 3.

<sup>152</sup> See Malloy, *US Economic Sanctions* at 86–89 (discussing easing of trade sanctions in normalization of international relations).

<sup>153</sup> See *id* at 89 (discussing role of blocked assets in settlement of international claims).

<sup>154</sup> See, eg, Wain, *Vietnam Luring Hardy Foreign Investors*, Wall St J, July 12, 1989, at A14, col 1.

<sup>155</sup> In the case of Vietnam, for example, the economic effects of the continuing embargo apparently moved the Vietnamese Government to consider liberalization of the climate for direct foreign investment. See *id* at col 2. In contrast, North Korea—subject to identical US sanctions—went into default in August 1987. See Kristof, *North Korea Is Told of Loan Default*, NY Times, Aug 23, 1987, at 3, col 1.

<sup>156</sup> 50 Fed Reg 19,890 (1985).

3.4 The Iran hostage crisis created a set of circumstances that brought into play a diverse range of international dispute settlement devices.<sup>157</sup> Even in hindsight, it is impractical to separate out the significance of any one of these devices for the eventual resolution of the crisis. Nevertheless, the actions taken by the United States during the crisis, particularly such unilateral responses as the sanctions, would appear to have been at least necessary if not sufficient conditions to resolution of the crisis. Any assessment of these actions unavoidably involves a large degree of speculation. Yet to the extent that the crisis is properly characterized as concerning not only the hostages but also the claims of US nationals, the unilateral actions, and especially the blocking of Iranian assets, were a necessary and effective step towards eventual resolution of the crisis. Without the pool of blocked assets as a “bargaining chip,” one can only wonder what leverage the United States would have had in the face of continuing Iranian Government intransigence. Certainly other traditional dispute resolution devices (such as resort to the Security Council, mediation and conciliation by the Secretary-General, and consideration by the International Court of Justice) do not appear to have had any appreciable effect on the behavior of Iran at the time.

#### 4. GENERAL V TARGETED SANCTIONS

4.1 The Committee has asked whether there is any role for general economic sanctions in today’s environment, or should sanctions normally be imposed in a targeted manner, against specific individuals or groups?

4.2 Compared to the increased use of US unilateral sanctions in the period from 1979 to 1996, there has been a decline in the imposition of new unilateral sanctions against target countries in recent years. The decline in new sanctions probably results at least in part from the continuing public debate about the appropriate role of unilateral US economic sanctions<sup>158</sup> and about the cost effectiveness of such sanctions.<sup>159</sup>

4.3 On the other hand, the period from 2001 to 2006 has seen a growing use of sanctions against *individuals* and *non-governmental organizations*, often as a response to heightened concerns about the threat of international terrorism in the aftermath of the attacks on US territory on September 11, 2001. A great number of new sanctions have been and will likely continue to be imposed against individuals and groups.

4.4 Nevertheless, “smart sanctions,” *ie*, narrowly targeted economic sanctions designed to have minimal impact on collateral states, institutions, and persons,<sup>160</sup> have still not demonstrated their effectiveness or their comparative efficacy as contrasted with broad-based sanctions. This issue is particularly underscored by the oil-for-food scandal that emerged from the 1990 unilateral and multilateral Iraq sanctions.<sup>161</sup>

4.5 One suggestive case study is offered by sanctions against Zimbabwe/Southern Rhodesia during the 1960s and 1970s. This situation essentially involved multilateral, rather than unilateral action—the UN economic sanctions against Southern Rhodesia, in which the United States participated. US sanctions were lifted in 1979. Performance of the economic data over an 11-year assessment period (1974–84) is erratic. In particular, foreign exchange holdings are relatively poor both in the pre-1979 period of the Southern Rhodesian regime and in the post-1979 period of the emerging state of Zimbabwe. Export data evince a characteristic upward turn following the lifting of sanctions in 1979, but performance flattens out relatively quickly. The upward turn in import data is somewhat more pronounced, but it also begins to fall off relatively soon after the 1979 base year. It may be noteworthy that, unlike other cases that I have examined in my studies, for Zimbabwe the broader indicator of gross domestic product *does* roughly echo the trending found in the export and import data.

<sup>157</sup> For a discussion of some of these devices, see Michael P Malloy, *The Iran Crisis: Law Under Pressure*, 1984 Wisconsin Int’l LJ 15, 59–68, 84–92 (1984).

<sup>158</sup> See, eg, *Sanctions Revisited: Hearing Before Subcomm on Int’l Econ Policy and Trade of the Comm on Int’l Relations*, House of Representatives, 105th Cong 44 (1998) (testimony of Frank Kittredge, Vice Chairman, USA\*Engage) (questioning cost and effectiveness of economic sanctions).

<sup>159</sup> For an interesting review and critical analysis of this public debate, see Richard W Parker, *The Cost Effectiveness of Economic Sanctions*, 32 Law & Pol’y Int’l Bus 21 (2000).

<sup>160</sup> See, eg, David T Duncan, Note, “Of Course This Will Hurt Business”: *Foreign Standing under the Foreign Narcotics Kingpin Designation Act of 1999 and America’s War on Drugs*, 37 Geo Wash Int’l L Rev 969 (2005) (“What makes these economic sanctions ‘smart’ is their precision. Smart sanctions ‘narrowly target’ individuals and entities by identifying (*ie*, ‘blacklisting’) and blocking (*ie*, ‘freezing’) access. . . .”)

<sup>161</sup> Cf US Government Accountability Office, *Lessons Learned from Oil for Food Program Indicate the Need to Strengthen UN Internal Controls and Oversight Activities* (GAO-06-330, April 25, 2006), available at 2006 WL 1126318 (appearing to suggest that Iraq sanctions policy allowing sales of oil primarily for humanitarian purposes was out-smarted); US General Accounting Office, *Observations on the Oil for Food Program and Areas for Further Investigation* (GAO 04-953T, July 08, 2004), available at 2004 WL 1570976 (earlier report by since-renamed office). See generally Intelligence Authorization Act for Fiscal Year 2005, Pub L 108–487, § 306 118 Stat 3939 (2004) (expressing sense of Congress on availability of information on UN oil-for-food program).

4.6 Does this suggest that targeted trade and financial sanctions are less of a distinct factor in the behavior of the trade data? Examining the data indexed relative to the 1979 base year, and comparing the data with the corresponding indexed aggregate data for the developing African region, it would appear that the performance of the Zimbabwe data is not significantly out of line with regional performance over the 11-year assessment period. At the very least, the comparison suggests that the pre-1979 sanctions did *not* exert any unique or significant pressures on Southern Rhodesian performance (pre-base-year) or of the removal of such pressures on Zimbabwe performance (post-base-year).

4.7 The Iran hostage crisis offers another example of targeted sanctions. The President's unilateral actions in the hostage crisis exhibited a consciously selective approach, with a gradual intensification of the restrictions imposed by the President. The selectivity of the restrictions, most pronounced in the early stages of the crisis,<sup>162</sup> seems reminiscent of the 1956 Egyptian Assets Control Regulations,<sup>163</sup> insofar as the restrictions were intended to affect directly only the Government of Iran and its owned and controlled entities, and not Iranian nationals or wholly private transactions.<sup>164</sup>

4.8 The Iran hostage sanctions experienced a graduated intensification over a very short span of time, with the upward spiral of the restrictions exhibiting a relatively deliberate process. In any event, direct *ad hoc* negotiations on Iran's terms were necessary before the crisis precipitated by the taking of the hostages could be resolved. The unilateral responses of the President to the hostage crisis were no more sufficient for a resolution of that crisis than was resort by the United States to the dispute resolution mechanisms afforded by the UN Security Council and the International Court of Justice.<sup>165</sup>

4.9 The regulatory technique, however, was quite clear and traditional: to impose a prohibition on *any* transaction involving *any* property in which the Government of Iran, its agencies, instrumentalities, or controlled entities might have *any* conceivable interest of *any* nature whatsoever. It may be argued that the broad and sweeping nature of this prohibition, which is the essence of a "blocking" of assets, is central to an effective use of blocking as a weapon of economic warfare. In its initial stages, when the blocking most disrupts the normal expectations of international commercial and financial transactions, it is at its most patently effective, and in some significant sense the Iranian sanctions played a role in effectuated the resolution of the hostage crisis.<sup>166</sup>

## 5. OPTIMAL CIRCUMSTANCES FOR EFFECTIVE SANCTIONS

5.1 The Committee also asks whether the available evidence points to circumstances in which sanctions are most likely to be effective. What does the evidence suggest about the impact of unilateral sanctions?

5.2 Based on available empirical data, the relatively most successful sanctions programs appear to be those that apply a wide range of sanctions, rigorously and in coordination with a range of other seriously initiated foreign policy measures. The case of the Iran hostage sanctions may be examples of such sanctions. The relatively least effective sanctions programs may be those that apply a constricted range of sanctions diffidently or with little serious coordination. The cases of the Southern Rhodesian multilateral sanctions and unilateral US trade sanctions against Nicaragua may be examples.

5.3 Curiously, a multilateral dimension to the application of sanctions does not appear to have had any significantly positive impact on the effectiveness of sanctions programs. The Southern Rhodesian sanctions are a clear example of this, while the available economic data with respect to South African sanctions remain at best ambiguous in this regard.

## 6. LIKELIHOOD OF SUCCESS OF SANCTIONS

6.1 The Committee has asked whether there is any evidence to suggest that economic or financial sanctions have been successful in achieving their stated objective. If they don't achieve their objective, what should be the next step? Is this something which is normally considered when sanctions are formulated?

<sup>162</sup> See Malloy, *The Iran Crisis: Law Under Pressure*, 1984 *Wisconsin Int'l LJ* 15, 28–30, 34–35 (discussing graduated intensification of sanctions).

<sup>163</sup> 21 *Fed Reg* 5777 (1956).

<sup>164</sup> *But see* Malloy, *Embargo Programs of the United States Treasury Department*, 20 *Colum J Transnat'l L* 485, 512–513 (1981) (suggesting that Iran sanctions were not so narrow in practical effect).

<sup>165</sup> See Malloy, *The Iran Crisis*, *supra* at 59–68, 96–97 (discussing resort to UN).

<sup>166</sup> *Cf* Andreas Lowenfeld, *Trade Control for Political Ends* § 3.41, at 591 (1983) (suggesting that Iranian sanctions "may have played a part" in resolving hostage crisis).

6.2 Economic sanctions themselves are purely instrumental, but they are not themselves the embodiment of policy. Sanctions will have whatever instrumental “effect” the circumstances of their use will allow, but it is overarching policy—foreign and/or domestic—that should be judged in terms of its effectiveness, not sanctions. Selecting a particular sanction or group of sanctions is a matter of selecting a means to an end. The critical policy question involves determining the objective (against which the effectiveness of the instrument will then be measured). Certain commentators have explained the issue as follows:

A reasoned approach to policy making requires consideration of three important questions. (i) Under what circumstances, if any, is it possible to use sanctions to impose significant economic costs on the targeted country or countries? (ii) What are the economic costs borne by the country or countries imposing sanctions? (iii) Even if it is possible to impose significant costs on targeted countries, are sanctions effective in achieving their ultimate foreign policy, military or strategic objectives?<sup>167</sup>

6.3 Whatever policy one adopts with respect to a particular state or a specific international crisis, economic sanctions remain one available instrument to further the policy, along with diplomatic efforts, resort to formal and informal dispute resolution devices, treaty remedies, and—where appropriate and legal—the threat or use of armed force. Sanctions may be relatively more or less appropriate as an instrument depending upon practical circumstances, and depending upon how important realization of a particular policy goal may be (as compared with the cost of attaining it).

6.4 A review of past sanctions episodes does offer two important caveats. First, in the most successful episodes, sanctions are not applied sequentially, with other responses to be triggered only after sanctions have failed to achieve the policy objective. Rather, sanctions are best applied *en suite*, along with all other appropriate available responses. Second, it is a fundamental mistake, both in terms of cost and effectiveness, to initiate sanctions as a rhetorical response to a crisis, in an effort to appear to be proactive. Sanctions undertaken for domestic political effect subverts the appropriate role of sanctions as instruments of foreign policy.<sup>168</sup>

#### Memorandum by Dr Colin Rowat, Department of Economics, University of Birmingham

This submission comments on three issues related to economic sanctions: their effectiveness at achieving their stated aims; the effects of targeted and financial sanctions; and impediments to better targeting. It addresses these topics largely by appeal to the economics and political science literatures. Relative to other areas of economic policy debate it is immediately obvious that the economics literature is almost silent. Consequently, while considerable sanctions experience has been gained since 1990, spurring both a descriptive literature and institutional developments, policy is largely formed without the benefit of a rich analytical literature. This, in turn, reduces their ability to be precisely wielded.

#### 1. ARE SANCTIONS “EFFECTIVE”?

The modern analytical literature on sanctions’ effectiveness dates to Hufbauer *et al* (1990). Published just after Iraq’s invasion of Kuwait, and therefore on the verge of the “sanctions decade” (Cortright and Lopez, 2000), the authors identified 166 “major” sanctions episodes spanning the UK’s imposition of sanctions on Germany in 1914 to the United Nations’ on Iraq in 1990.<sup>169</sup>

The authors are interested in the effectiveness of economic sanctions as a policy instrument. Thus, to each episode they assign: a set of officially stated aims<sup>170</sup>; a measure of success (on a discrete scale from 1 to 4) in those aims; and a measure of the extent to which the sanctions themselves contributed to meeting those aims (again, on a discrete four point scale). An overall measure of sanctions’ effectiveness is formed by multiplying their two four point scales, yielding a 16 point scale. An episode scoring nine or higher is judged a success.

<sup>167</sup> Bayard, Pelzman & Perez-Lopez, *Stakes and Risks in Economic Sanctions*, 6 *The World Economy* 73, 75 (1983). For a quantitative model for evaluating costs, see Bayard, Pelzman & Perez-Lopez, *An Economic Model of US and Western Sanctions against the Soviet Union and Eastern Europe*, reprinted in, *The Soviet Economy in the 1980’s: Problems and Prospects*, pt 2, J Comm Print, 97th Cong, 2d Sess 507 (1983).

<sup>168</sup> This fact is well illustrated by Churchill’s remarks concerning the 1935 League of Nations sanctions against Italy: [The British Government’s] policy had for a long time been designed to give satisfaction to powerful elements of opinion at home rather than to seek the realities of the European situation. By estranging Italy they had upset the whole balance of Europe and gained nothing for Abyssinia. They had led the League of Nations into an utter fiasco, most damaging if not fatally injurious to its effective life as an institution.

1 Winston S. Churchill, *The Second World War: The Gathering Storm* 175 (1948).

<sup>169</sup> This last episode is omitted from the authors’ analysis as its outcome was not known at the time. An updated third edition has been forthcoming for some years, but has yet to emerge.

<sup>170</sup> This authors are aware of a weakness of this approach, nothing that “Sender countries do not always announce their goals with clarity. Indeed, obfuscation is the rule in destabilisation cases”. [Hufbauer *et al*, 1990, p 39]

The analysis are summarised in Table 1. The most widely cited figure from their analysis is the claim that sanctions have only worked in 34 per cent of cases.<sup>171</sup>

**Table 1**

**SUCCESS BY TYPE OF POLICY GOAL**

<i>Policy goal</i>	<i>Success cases</i>	<i>Failure cases</i>	<i>Success ratio (%)</i>
Modest policy change	17	34	33
Destabilisation	11	10	52
Disruption of military adventures	6	12	33
Military impairment	2	8	20
Other major policy changes	5	15	25
All cases <sup>172</sup>	41	79	34

*Source:* Hufbauer *et al* (1990, Table 5.1)

The authors also condition outcomes on various political and economic factors on episodes' success, one factor at a time. From these bivariate analyses, they derive seven<sup>173</sup> lessons for sanctions use:

1. the transmission mechanism between economic harm and political will to change is often weak.<sup>174</sup> Thus, do not expect major policy changes as a result of sanctions alone.
2. "in most instances, multilateral sanctions are not associated with success". This follows directly from the limitations of their bivariate analysis: senders are more likely to build multilateral coalitions when their policy aims are ambitious.
3. politically or economically weak countries are more vulnerable to economic sanctions.
4. "Economic sanctions seem most effective when aimed against erstwhile friends and close trading partners." Greater success against allies may<sup>175</sup> reflect the greater cost of losing close trade partners as well as the reduced likelihood that allies will be able to draw on third parties antagonistic to the sender for support.
5. there is "a clear association . . . between the duration of sanctions and the waning prospects of success", reflecting: a lost of appetite in the sender countries; mobilisation of resources in the target country; and the tendency of sanctions episodes between "allies" to be quickly and successfully resolved.
6. "sanctions that bite are sanctions that work", unless they attract a "black knight", a powerful third party who stands to gain from their failure.
7. "The more it costs a sender country to impose sanctions, the less likely it is that the sanctions will succeed." In most "instances, the cost to the sender country in successful episodes is insignificant, and often the short-term result is a net gain (usually where the sanction is in the form of a cutoff of aid)."

While foundational, the Hufbauer *et al* (1990) conclusions may be best seen as suggestive due to a number of basic methodological weaknesses. Three that seem particularly significant are:

1. there is little formal discussion of their coding formulae, and no mention made of attempts to ensure inter-coder consistency. Thus, other researchers may reach different results.
2. "bivariate" analysis suffers from omitted variable bias and disallows that partialing out of multiple causal factors.
3. there is no theoretical framework; specifically, sanctions episodes are regarded as simply occurring, rather than resulting from the behaviour of agents with preferences.

The subsequent literature has tried to address some of these concerns.<sup>176</sup>

<sup>171</sup> Two of the three authoris presented preliminary extensions of the results above to the 1990s [Elliott and Hufbauer, 1999], when 50 new cases were launched. Sanctions in the 1990s seemed "about as successful . . . as the crop dating from the 1970's and 1980's".

<sup>172</sup> Five cases are classified under two different policy goals . . . Since all but one of these cases are failures, double-counting them adds a small negative bias to the success ratio."

<sup>173</sup> We omit the rather obvious "lessons" that: military policies are more apt to be used alongside sanctions when military aims are pursued; a sanctions policy should be carefully designed before being deployed.

<sup>174</sup> This is especially likely to be the case in dictatorships.

<sup>175</sup> Statistical significance is not considered.

<sup>176</sup> See Hovi *et al* [2005], which refers to Hufbauer *et al* [1990] as giving a "somewhat more positive" view of sanctions' efficacy, for mention of some of this literature.

Pape (1997), for example, re-codes the Hufbauer *et al* (1990) episodes, concluding that:

An examination of the 40 cases in which HSE claim economic sanctions were successful reveals only five clear successes. The remainder are accounted for by 4 classes of errors: 18 were determined by force, not economic sanctions; 8 are failures, in which the target state never conceded to the coercer's demands; 6 are trade disputes, not instances of economic sanctions; and 3 are indeterminate. . . . sanctions have been successful less than 5 per cent of the time.

Of the five "clear successes", "[t]hree of these were over trivial issues", such as embassy locations and the release of small numbers of prisoners. Even making favourable assumptions, Pape finds "no statistically significant relationship between target state GNP loss and sanctions success" in what appears to be a bivariate OLS regression.

In a subsequent exchange (Baldwin and Pape, 1998), Baldwin criticises Pape (1997) for using a binary standard of success, a coarser measure than the original four point scale; and for neglecting the costs of using economic sanctions.

Theoretically, Eaton and Engers (1999) claim that, when sanctions are the result of rational behaviour,

episodes in which senders actually take measures against targets provide a narrow window on the role of sanctions. In a world of perfect information, senders never actually resort to punishing. If the measure works, the target shapes up in anticipation. If not, the sender never threatens it initially. Hence, the very imposition of measures means that something went awry . . . [I]ncomplete information (about senders or targets) can generate episodes in which measures are actually imposed, but these episodes constitute a very unrepresentative tip of an iceberg.

More specifically, if the target's resilience is not known to a sender, sanctions may only be imposed on targets which, deeming themselves insensitive to sanctions, refuse to comply when threatened. In these cases, simply observing actual episodes might lead one to "conclude that sanctions are futile".

On the other hand, if the sender's resolve is unknown but mutable over time, imposing sanctions may signal the sender's toughness, ushering in "an era of hegemony", and lead one to "conclude that punishment is extremely effective."

with more than one period of interaction, "[a] variety of outcomes can emerge" in which "[s]uccess is usually uncertain".<sup>177</sup>

Dresner (2003) explores the possibility of downward bias. Noting that information on sanctions threatened as well as those actually imposed can be hard to find (only five of the 116 Hufbauer *et al* (1990) cases end at the threat stage), he works with US datasets on trade policy, core labour standards and environmental regulations.

Table 2 displays the results. Rows display the number of episodes in which sanctions were merely threatened, as well as those in which they were actually imposed. In all three policy areas, sanctions merely threatened are more successful than those actually imposed. In the first area, this just fails to be significant at the 10 per cent level, while the difference is significant at the one per cent level in the remaining two areas.

**Table 2**

**THREATS AND SANCTIONS IN US POLICY**

	<i>Nominal concessions</i>	<i>Significant concessions</i>	<i>Total</i>	<i>Success rate %</i>
<i>Trade policy</i>				
Sanctions threatened	31	40	71	56.34
Sanctions imposed	10	5	15	33.33
<i>Core labour standards</i>				
Sanctions threatened	11	15	26	57.69
Sanctions imposed	7	0	7	0
<i>Environmental regulation</i>				
Sanctions threatened	3	35	38	92.11
Sanctions imposed	18	20	38	52.63

<sup>177</sup> Eaton and Engers [1992] address the repeated environment in greater depth, albeit under complete information.



## 2. TARGETED AND FINANCIAL SANCTIONS

Interest in targeted, rather than comprehensive, sanctions was given impetus in the 1990s by concern at the human cost of the comprehensive sanctions on Iraq.<sup>178</sup> Interest in targeted financial sanctions, in turn, has been given particular impetus after the 11 September attacks.

This recent interest means that the already small analytical literature on economic sanctions has even less to say about targeted and financial sanctions. Cortright and Lopez [2002a] apply a “back of the envelope” version of the Hufbauer *et al.* [1990] approach to 14 cases of UN sanctions applied over 1990–2001. They classify four as general or comprehensive, three of which they score as at least partially successful. Of the remaining 10 targeted or selective cases, they score two as successes, and all five of the pure arms embargoes as failures. They conclude that “the effectiveness of UN financial sanctions is uncertain. To date there is no case in which assets freezes and financial restrictions have been imposed on their own.”<sup>179</sup>

Insight from the EU sanctions against the Federal Republic of Yugoslavia from 1998–2000, the US sanctions against Iran and the UN sanctions against Iraq are now presented. The FRY sanctions represent an example of careful efforts at targeting; the Iran sanctions have yielded a variety of cost estimates; the Iraq sanctions saw very slow reform of comprehensive sanctions in the direction of targeting.

The EU’s sanctions’ coordinator during the late 1990s FRY sanctions is cautious in his assessment of their success [de Vries, 2002]. His remarks recognise a lack of evidence about very basic aspects of the targeted sanctions:

A basic requirement for judging the effectiveness of sanctions is whether such measures deny targets the fulfillment of what they may consider an important or essential need. Evidence to that effect in this case is not available. Also unknown is the extent to which the targeted individuals were able to and actually did use false passports . . . . The freezing of funds may have been more effective in pressuring the regime although here again one should guard against strong conclusions. . . . It was claimed that the financial sanctions had a major impact on trade between EU member states and the Federal Republic of Yugoslavia, but the evidence in support of this claim is ambiguous.

de Vries also describes Yugoslav authorities’ frequent use of their power to redirect measures targeted at them onto the population more broadly: the oil embargo created rents which the elite were in the best position to capture; Yugoslav authorities threatened retaliation against EU airlines in response to the initial targeted flight bans; “white” companies exempted by the EU from asset freezes were “hit by retaliatory measures by the FRY regime”; these firms were also indirectly harmed through their economic links to targeted firms; cities receiving EU fuel under the “Energy for Democracy” initiative lost their regular state supplies; foreign currency could not practically be transferred to non-regime individuals given the regime’s control of the banking system.

Table 3 shows annual costs of US sanctions to Iran around the year 2000 as estimated by four different analysts. That presented in Torbat [2005] crudely estimates trade losses based on pre-sanctions bilateral trade between Iran and the US, and financial losses based on the political risk premium paid by Iran. It and the Askari *et al.* [2001] study both find the financial sanctions to be more damaging than the trade sanctions; Preeg [1999] is ambivalent, and an Institute for International Economics case study finds the trade sanctions more harmful (in part by considering fewer aspects of the financial sanctions).

That financial sanctions may be more harmful than trade sanctions is consistent with Iraqi evidence. While the sanctions imposed on Iraq following the invasion of Kuwait, are frequently billed as the most comprehensive in the modern era they seem to impose very few barriers to trade, even as early as 1991.

Based on research conducted in Iraq in the autumn of 1991, Dréze and Gazdar [1992] noted that:

the present price of wheat flour is in fact close to the price that prevails in Jordan, which is Iraq’s main trading partner. This “arbitrage” suggests that quantity constraints on import (and hence supply) are no longer binding. Comparing market prices of other staple goods between Jordan and Iraq, we also find almost complete arbitrage at the unofficial exchange rate.

In spite of various reform proposals over the years,<sup>180</sup> Iraq’s borders remained under the control of it and its neighbours.

<sup>178</sup> Unicef’s 1999 child mortality study was particularly influential, estimating on the basis of a 40,000 household survey that “if the substantial reduction in child mortality throughout Iraq during the 1980s had continued through the 1990s, there would have been half a million fewer deaths of children under five in the country as a whole during the eight year period 1991–1998.”

<sup>179</sup> The subsequent chapter in Cortright and Lopez [2002b] notes that the 116 cases in Hufbauer *et al.* [1990] only contain 13 cases of assets freezes. Elliott begins her own chapter in the same volume by claiming that: “With the exception of Libya, the results of UN targeted sanctions have been disappointing.”

<sup>180</sup> A UK-Dutch draft of Security Council Resolution 1284 (December 1999) would have brought Iraq’s trade with Turkey under Security Council control.

In both the Iranian and Iraqi cases, denial of capital market access may have been particularly harmful given their previous war damage.

After the passage of Security Council Resolution 1409 (May 2002), the Iraqi sanctions were advertised by American and British authorities as “smart” sanctions. However the careful thought about how to target individual regime members, and how to increase or relax pressure in response to regime behaviour that typified the EU approach to FRY was absent in the Iraqi case: SCR 1409 may largely have served to streamline administrative procedures for exporting goods to Iraq [Rowat, 2002]; it did nothing to help finance them, thus failing to ease one of the sanctions; most harmful constraints [Rowat, 2001]. Finally, the ambiguity dating back to April 1991 regarding what steps Iraqi authorities should take to lift the sanctions remained unaddressed.

**Table 3**  
COSTS OF US SANCTIONS ON IRAN (ANNUAL US\$ MILLION)

	<i>Preeg [1999]</i> ( <i>judgment</i> )	<i>Askari et al.</i> [2001] ( <i>gravity</i> <i>model,</i> <i>judgement</i> )	<i>Institute for</i> <i>International</i> <i>Economics</i> ( <i>welfare loss</i> )	<i>Torbat</i> [2005] ( <i>welfare loss;</i> <i>price</i> <i>leadership;</i> <i>judgment</i> )
Trade sanctions' costs	700–1,300	27	500	140
Financial sanctions' costs	800–1,300	1,160–1,321	250	637
Total sanctions' costs	1,500–2,600	1,187–1,348	750	777

### 3. IMPEDIMENTS TO IMPROVEMNT

Crafting well targeted sanctions policies requires both the existence of the institutional capacity to do so, and the political will to use those institutions.

In minor disputes between “erstwhile friends and close trading partners”, these conditions are likely to be satisfied. When disputes are large relative to the perceived benefits of a relationship, less emphasis will be place on minimising harm to third parties in a target country. This section mentions two resulting political impediments to reducing harm to civilians.

First, the Security Council is unusually free of legal constrains, not explicitly accountable by the UN Charter either to other organs or to treaty law.<sup>181</sup> Perhaps its most important attempt to professionalise its sanctions administration, design, and implementation, under the Chowdhury working group (2000–01) failed even to issue a final report in the face of disagreements among the Permanent Five.<sup>182</sup>

Second, tailoring sanctions to reduce civilian harm requires the target government’s cooperation. The effects of any significant sanctions are difficult to assess without access to good data collected in the target country. The target government may have strong incentives to hide these data. Further, it has an incentive only to release data, or allow international organisations to release their own research, when it is in its interests; this, in turn, gives opponents grounds for dismissing any reports as politicised.

Additionally, many measures must be agreed by both the sender countries and the target country. The conflict evidenced by the imposition of sanctions reduces the set of feasible measures: sender governments may resist proposing measures that they expect to benefit the target government; the latter, in turn, may reject those felt not to benefit it.<sup>183</sup>

*September 2006*

<sup>181</sup> This view was succinctly expressed by a former US Secretary of State: “The Security Council is not a body that merely enforces agreed law. It is a law unto itself.”

<sup>182</sup> See <http://www.casi.irg.uk/info/scwgs140201.html> for the last draft of its reprot and further background.

<sup>183</sup> The Iraqi “oil for food” debates and recriminates from 1991 to the present day illustrate this with brutal clarity.

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**Memorandum by Mr H C von Sponeck, UN Humanitarian Coordinator for Iraq (1998–2000).****PART I: SANCTIONS EXPERIENCE**

Experience in Haiti, Iraq, Liberia, Yugoslavia and elsewhere has shown that humanitarian exemptions for countries against which comprehensive multilateral economic sanctions are levied invariably face a wide range of intricate and serious constraints.

After decades of sanctions of various degrees of comprehensiveness and severity, a broad array of issues has become known to be important in managing sanctions and implementing humanitarian exemptions. Major ones are identified below:

At the time of imposing comprehensive sanctions, the UN Security Council has the dual task of (i) passing a resolution which contains *measurable objectives* for managing economic sanctions and implementing a humanitarian exemption and (ii) carrying out *pre-sanctions assessments* of the socio-economic conditions of the countries involved in order to define the parameters of the humanitarian exemption.

From the beginning of comprehensive sanctions, an *implementation strategy* has to exist. Such a strategy has to be based on a *definition of purposes, targets and roles* as well as an *action plan* for all UN entities charged with the implementation of comprehensive sanctions and humanitarian exemptions. Part of this strategy has to be a *sanctions time frame* with provisions of the terms for termination or renewal.

A key responsibility of the UN Security Council is to safe-guard the welfare of the civilian population. This implies *oversight*, ie, on-going monitoring and evaluation of the *impact of sanctions* and of the *effectiveness of the humanitarian exemption*.

As sanctions continue, the UN Security Council has a particular responsibility to assess the impact of sanctions on *vulnerable groups* (the young, the infirm and sick, the old, pregnant women, etc) and to take special humanitarian exemption measures to protect them. This includes the provision of *dedicated (extra) funding*.

In accordance with the UN Charter, there should be *regular reviews* between the *UN Security Council* and the *targeted party* with the ultimate objective of conflict resolution and the end of comprehensive sanctions.

Not only governments but also parliaments and civil society have a right to be kept informed, by the UN Security Council, of developments as they relate to sanctions and the state of welfare of the civilian population living under sanctions. This includes *comprehensive, regular and public reporting on sanctions measures*, the *humanitarian exemption* and the state of the *human condition*.

Once sanctions have come to an end in a country, the UN Security Council must carry out *final assessments* of sanctions and the humanitarian exemption programmes. Part of these assessments has to be the identification of *lessons learnt* in order to avoid in future the constraints which may have hampered the political dialogue, sanctions management and the protection of the civilian population.

**PART II: IRAQ**

Comprehensive economic and military sanctions imposed on Iraq in August 1990 lasted for 13 years. The analysis of the handling of this period by the UN Security Council therefore provides an important insight into whether a *humanitarian exemption, as it was carried out in Iraq could limit the severity of the human costs of comprehensive economic sanctions sufficiently to make its use legitimate*.

First of all it must be remembered that there has not been a case of similar multilateral comprehensive economic sanctions in recent decades.

Following UN resolution 661 of 6 August 1990 introducing sanctions, a humanitarian exemption was established, initially financed by voluntary international contributions.<sup>184</sup> The UN humanitarian appeals resulted in less than half of the \$1.2 billion the UN wanted to have to finance “emergency needs” for Iraq under sanctions during 1991–95.

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<sup>184</sup> There is a range of professional publications providing information on the reasons for the five-year delay in reaching agreement between the United Nations and the Government of Iraq on the “oil-for-food” programme as a humanitarian exemption.

*Observation No 1*

*UN Security Council resolutions 661 (1990) and 687 (1991) pronouncing and defining sanctions were vague and did not define objectives in any detail.*

*Having introduced comprehensive economic sanctions (including the freezing of Iraqi accounts, both official and personal), the UN Security Council had an obligation to ensure that (i) the socio-economic conditions of the population at the time were assessed to allow a realistic definition of a humanitarian exemption programme, (ii) sanctions and humanitarian exemption would proceed on the basis of a strategy, (iii) the shortfall between the voluntary funds collected and the funds needed for a survival programme would be made up with the help of the UN Security Council and (iv) a plan of action for the various UN entities playing a role (disarmament, humanitarian assistance, human rights reporting, compensation, etc) would be identified and implemented.*

*In the case of Iraq none of this happened. There was no pre-sanctions assessment, no additional funding, no strategy, no action plan. As a result, living conditions of the civilian population deteriorated quickly and significantly.<sup>185</sup>*

*In 1995, the UN and the Government of Iraq signed a memorandum of understanding which broadly defined the humanitarian exemption that became known as the “oil-for-food programme”.<sup>186</sup> The UN Security Council agreed to a net amount of \$1.32 billion per six months phase of oil sales to provide the means of survival for some 22 million people living in Iraq in the mid-1990s.<sup>187</sup>*

*Observation No 2*

*The UN Security Council had decided on this amount using UN projections of the early 1990s to support an “emergency” humanitarian exemption at that time. An allocation of \$1.32 billion was equal to 32 cents per day per person. This amount had to cover seven sectors: food, health, water, sanitation, electricity, agriculture and education.*

*The UN periodically reminded critics of this severely inadequate amount that the humanitarian exemption was meant to be “supplementary” only. The question to what resources this amount was to be a supplement remained unanswered.<sup>188</sup> Serious deterioration of living conditions, increase in child mortality and malnourishment forced the UN Security Council to allow additional oil sales. These, however, did not fundamentally improve the human condition.*

The inadequacy of finance allowed by the UN Security Council was compounded by a wide range of other factors. Among these were micro-management of the humanitarian exemption by the UN Iraq Sanctions Committee, large temporary or permanent blocking of humanitarian supplies, complicated UN procurement rules, absence of cash components,<sup>189</sup> diversion of funds to the UN Compensation Commission,<sup>190</sup> fragmented and inconsistent management of sanctions by individual UN entities and management incapacity of the Iraqi administrative system. The overall impact on the performance of the humanitarian exemption was significant.

*Observation No 3*

*During the 6½ years of the oil-for-food programme, a total of \$43.1 billion was available to finance the humanitarian exemption. This resulted in the totally inadequate amount of \$284 per person/year. As a result of the factors identified above, the utilization rate of the available funds came to only to 65 per cent or \$28.1 billion corresponding to \$185 per person/year.<sup>191</sup> Even if the entire amount of “extra” income from smuggling of oil, surcharges and over pricing estimated as between \$1–2 billion per year had become available to the humanitarian*

<sup>185</sup> A review of socio-economic indicators, especially those for mortality, morbidity, nutrition, health, education and employment bear this out.

<sup>186</sup> The Memorandum of Understanding was based on UN Resolution 986 (1995) concerning the sale of petroleum and petroleum products.

<sup>187</sup> The gross allocation was \$2 billion per phase, 34 per cent were deducted for compensation payments to victims of Iraq's invasion into Kuwait (30 per cent) and overheads for UN administrative costs plus a contingency reserve (4 per cent).

<sup>188</sup> There were no taxpayers in Iraq in the mid-1990s. The limited amount of allowable oil production was practically the only source of licit national income. Illicit income from smuggling of oil, surcharges and overpricing was in large part consumed by the costs of running the nation (civil service salaries, maintenance of the infrastructure, health and education systems, foreign service, etc).

<sup>189</sup> UN sanctions rules did not permit the disbursement to Iraq of any cash. Not infrequently the humanitarian exemption was hampered by this as there were no funds for transport of goods, repair and maintenance of public installations, training for new equipment, etc. This only changed in early 2000 when the UN Security Council agreed to small allocations for such purposes.

<sup>190</sup> In the course of the oil-for-food programme period some \$17 billion of oil revenue were deducted from the humanitarian exemption to make payments to claimants. This happened at a time when the human conditions in Iraq were characterized by exceptionally high child mortality and nutritional deficiency levels.

<sup>191</sup> This calculation is based on a mean population size of 23 million during the period 1996–2003.

*exemption, ie, a maximum of \$13 billion in additional funding, the then total amount of \$56.1 billion (\$43.1 billion plus \$13 billion) would have resulted in \$374 per person/year only. According to the World Bank definition of poverty, a person living on less than \$2 per day is a person living in poverty.*

#### *Observation No 4*

*The UN Security Council failed to carry out its oversight mandate in a continuous and comprehensive manner. The humanitarian exemption was reviewed by the UN Security Council, often, however, without a debate and rarely with the political will and sense of urgency to implement improvements to lessen the human misery in Iraq. With one single exception,<sup>192</sup> there were no visits to Iraq by members of the UN Security Council during the 13 year sanctions period. Briefings of the UN Security Council by UN officials serving in Baghdad were rare, often blocked and generally discouraged by the representatives of the US and the UK in the Security Council. Reviews between the UN Security Council and the Government of Iraq were exceedingly rare and unconstructive. Standard UN reporting focused on sector details of the humanitarian exemption and largely ignored an assessment of the adequacy of this exemption for the survival of the civilian population.<sup>193</sup>*

### PART III: CONCLUSIONS

The humanitarian exemption for Iraq constituted an important yet severely inadequate intervention for the people of Iraq. It clearly failed to reduce the severity of the human cost of comprehensive sanctions and crossed the border between bearable inconvenience of sanctions for an innocent population and violation of international law including humanitarian and human rights law.

The UN Security Council, it must be stressed, had a wide range of options to stay within the boundary of legitimacy. Instead it chose a hard-line and punitive approach preferred by two of its permanent members. It was within the purview of the UN Security Council to raise the level of finance, to de-bureaucratize the procurement of humanitarian goods, to promote dialogue and conflict resolution and to ensure integrated UN System management.

The fact that all of this did not happen is an indication that the chances are slim that under conditions of political conflict, the welfare of an innocent population remains more than of secondary concern on the agenda of the UN Security Council. Comprehensive economic sanctions should therefore no longer be seen as an option consistent with article 41 of the UN Charter.<sup>194</sup> The danger that the United Nations becomes responsible for death, destitution and injustice including an “undue future burden” impact on youth is simply too compelling.

*26 September 2006*

#### **Memorandum by Mr Derek Tonkin CMG**

This evidence is submitted by me as an individual. It reflects my experience in the Diplomatic Service in South Africa and South East Asia, and also as the former Chairman of Ockenden International, a refugee charity, and as the former Chairman of Beta Mekong Fund Ltd, a South East Asian venture-capital investment fund. The country highlighted is Burma (Myanmar).<sup>195</sup>

#### SUMMARY

The military regime in Burma is responsible for serious human rights abuses and the imposition of EU and US sanctions designed to induce reform has been generally accepted in Europe and the US. There is however no evidence that these sanctions have had any measurable effect in persuading the regime to mend its ways. The main reason is that the sanctions are not supported by any of Burma’s neighbours, including those dynamic and rapidly industrialising powers, China and India. In the absence of any international consensus, the impact of the sanctions imposed has been the opposite of what was intended. The regime has become more

<sup>192</sup> Ambassador Antonio Monteiro, Permanent Representative of Portugal to the United Nations and Chairman of the Iraq Sanction Committee visited Iraq briefly in 1998.

<sup>193</sup> The one significant exception is the special report on the humanitarian condition presented by Ambassador Celso N Amorim, Permanent Representative of Brazil to the United Nations. The recommendations of his courageous review were either ignored or taken into account by the UN Security Council with much delay.

<sup>194</sup> What should remain are targeted (focused) sanctions applied in conjunction with continuous political dialogue between the UN and the targeted party. The UK House of Commons in its 27 January 2000 report on sanctions, the Interlaken process parties (1998–2003), the UN High Level Panel on the Role of Sanctions (2005) as well as the UN Sanctions Assessment Handbook (2004) come to the same conclusion.

<sup>195</sup> Myanmar is the official name of the country and is used in all formal communications.

hard-line, more recalcitrant, more self-reliant and more indebted to its Asian neighbours. The people have suffered as resources are taken away from health and education to meet to what the regime sees as the Western threat. The justification for sanctions in these circumstances is almost entirely political—they are designed to respond to EU and US domestic political pressures for something to be done, to send a strong message, to express our moral outrage at continuing human rights abuses and to support Daw Aung San Suu Kyi, who is now in her tenth year of house arrest. These political calculations are likely to continue to outweigh the damage which sanctions cause to the local population.

#### CURRENT POLICY

1. In 1999 the British Government completed a wide-ranging review of its use of sanctions and concluded that it would launch a new policy of better targeted, “smarter” sanctions. The review confirmed that sanctions remain an important tool of British foreign policy as coercive measures to respond to challenges to international peace and security. A number of broad principles<sup>196</sup> should however normally be followed. Sanctions should:

- (a) be targeted to hit the regime, rather than the ordinary people;
- (b) include exemptions to minimise the humanitarian impact on innocent civilians;
- (c) have clear objectives, including well-defined and realistic demands against which compliance can be judged, and a clear exit strategy;
- (d) have effective arrangements for implementation and enforcement by all states, especially by neighbouring countries;
- (e) avoid unnecessary adverse impact on UK economic and commercial interests.

2. These principles are reasonable, but in certain circumstances it may well prove difficult, if not impossible to apply effectively what is in essence a policy of punishment and isolation. Burma is a case in point. The application of existing policy to Burma fails almost totally on counts (a) and (d), and significantly on counts (c) and (e). Only on (b) has the impact on innocent civilians been minimised by a generous programme of humanitarian aid. In a situation where four of the five basic criteria have not been met, a policy of economic sanctions against an impoverished nation is difficult to justify, especially when the sanctions have if anything helped to entrench the regime in power.

#### HISTORICAL BACKGROUND

3. Britain, the former colonial power, maintained until the 1980s a close interest in Burmese affairs, despite its repressive internal policies, notably through our Royal Family. Lord Mountbatten of Burma was a frequent visitor. Princess Anne and Princess Alexandra also paid visits. Her Majesty offered tea to the military ruler, General Ne Win, who was also welcome at number 10 Downing Street. Since the uprising of 8 August 1988, however, when several thousand pro-democracy protesters were killed in bloody street battles with the military regime in Rangoon and other cities, Britain has led the European Union in action designed to compel the regime to grant civil and political liberties to the Burmese people, to release political prisoners and to put an end to continuing and serious abuses of human rights, not least against non-Burman nationalities in Burma including the Karen, Shan, Karenni, Mon, Arakanese, Chin and Kachin peoples.

4. To this end, Britain and the EU have since 1988 introduced a number of economic, financial and political sanctions against Burma. By 1996, the EU had adopted a Common Position which implemented a range of restrictive measures which it was hoped would target those obstructing reform and progress, but would ensure that the ordinary people of Burma suffered as little as possible. According to the FCO web-site: “The Common Position includes: an arms embargo, bans on defence links, high-level bilateral government visits, the supply of equipment that might be used for internal repression or terrorism and an asset freeze and visa ban on regime members, their families, the military and security forces and others who actively frustrate the process of national reconciliation.” This is—see paragraph 9 below—an understatement of the Common Position.

5. The US has introduced even tougher measures, which include a formal ban on trade and investment and a range of financial sanctions. US actions are designed to punish Burma for its repressive internal policies and the measures introduced need only to be supplemented by an economic blockade for full economic warfare to be in place against Burma. The US has forced the closure of many garment factories, and there is evidence<sup>197</sup> that some of the female workers have resorted to prostitution in order to survive. Britain and the EU have

<sup>196</sup> Written Answer House of Commons 15 March 1999—FCO Minister of State Mr Tony Lloyd.

<sup>197</sup> David I Steinberg “Burma/Myanmar: The Triumph of the Hard-Liners”, *South China Morning Post*, 15 August 2003.

been generous with their HIV/Aids programme, notably in the wake of the withdrawal of the Global Fund for HIV/Aids, Malaria and Tuberculosis on the grounds of regime obstructionism in project implementation, though withdrawal may well have been due in some measure to pressure from the US Congress.

#### BRITAIN A LEADING ADVOCATE OF SANCTIONS IN THE EU AGAINST BURMA

6. Britain has supplemented measures under the Common Position with additional actions held to be consistent with this Position, and together with Denmark, The Netherlands and the Czech Republic is closer to the US than most other EU countries. These actions include strong discouragement of trade, tourism and investment. Some other countries in the EU, however, including France, Germany, Spain, Austria and Italy, are unwilling to go further than the letter of the agreed Position. While Britain discourages trade and has withdrawn ECGD facilities, France provides COFACE credit guarantees at high risk premiums and maintains a web-site<sup>198</sup> devoted to Franco-Burmese trade relations. While Britain also maintains a high-level profile in discouraging travel to Burma, which has made the British traveller to Burma almost an endangered species,<sup>199</sup> more than twice as many French and German tourists visit the country without inhibition, while the Austrian Institute for Integrative Tourism and Development, which is financed by the Austrian Foreign Ministry, issued a report in 2003 which concluded that, on balance, tourism to Burma had more positive than negative implications. EU sanctions policy is at root necessarily a Lowest Common Denominator.

7. The restrictive measures applied by Britain and the EU since 1988 have had no perceptible effect in persuading the military junta in Burma to moderate its repressive policies. As a result of the steady ratcheting up of sanctions, the regime has become progressively more hard-line and the prospects of an early end to the misfortunes of the Burmese people have slowly receded. Burma, aware of attempts to inflict punishment and isolation, has over the last two years strengthened its relations not only with China, but also with Russia now resurgent on the international scene, as well as with India. That sanctions would be counterproductive was widely predicted by international scholars<sup>200</sup> who warned that the military regime was bound to respond to such challenges by tightening the screws. Neither the EU nor the British Government have published any analysis of the effectiveness of sanctions applied against Burma over the last 10 years. I would suspect that this is because the results are so marginal.

8. I recognize that Ministers face particular difficulties in formulating policy on Burma. They assure Parliament that “our policy of sanctions is deliberately targeted on the Burma regime and its cronies. We do not believe that economic sanctions that would harm the Burmese people are appropriate. They are already suffering enough as a result of that despicable regime and sanctions that affected their livelihood would be inappropriate.”<sup>201</sup> But if Ministers were to conduct an objective analysis of the sanctions imposed by Britain and the EU, this would show that our targeting of the regime is regrettably ineffective, despite the best of intentions, and that it is the people who are suffering. An asset freeze against members of the junta and their families netted only some €87 in the first 12 months, and the latest accounting from all 25 EU countries records a grand total of some €5,000 in only a handful of accounts. More recent EU measures which impose a ban on investment and on the provision of any financial facilities to named State and military controlled enterprises have likewise failed to make any impact. The enterprises concerned were either 100 per cent controlled by the military, who have traditionally secured their facilities from SE Asian banks, or were Joint Ventures with Asian partners who have no commercial interest in allowing European companies to invest in their enterprises or provide facilities which they themselves can provide.

#### SANCTIONS SUPPOSEDLY TARGETED TO HIT THE REGIME, BUT IT IS THE PEOPLE WHO SUFFER

9. It is regrettable that most of the measures which have been applied against Burma have affected the economy generally rather than the junta and its cronies. They include the withdrawal of the EU General System of Preferences accorded to all other 49 developing countries, as well as a denial of the “Everything but Arms” extension in 2001. In addition, the EU does not support the provision of IMF or Asian Development Bank facilities as these would necessarily be channelled through the military regime. So while Ministers say that their measures are “targeted”, in point of fact it is the broad economy which is suffering. The counter-argument is that as the “formal” economy is controlled by the generals and their cronies, the Burmese people at large are unlikely to be affected. To the extent that this concerns high value exports like natural gas, timber and precious stones which are under military control, this may well be true. But Burma is still primarily a

<sup>198</sup> <http://www.missioneco.org/birmanie/>

<sup>199</sup> In 2005, the total number of private British visitors to Burma was in the region of 5,500.

<sup>200</sup> See for example “Essays on US relations with Burma”, National Bureau of Asian Research, March 2004. Text at <http://www.nbr.org/publications/analysis/pdf/vol15no1.pdf>

<sup>201</sup> FCO Minister of State Mr Ian Pearson 7 February 2006, Column 722, *Hansard* House of Commons.

labour-intensive agricultural country producing for export rice, fish products, beans and pulses which account<sup>202</sup> for some 35 per cent in value of the country's annual exports of around US\$ 3.5 billion. According to Burmese official statistics, about 91 per cent of GDP is generated in the private sector. Any assault on the formal economy is therefore bound to have its effect on the ordinary people, who at the very least will continue to suffer stagnation in their living standards and more probably a deterioration.

#### FAILURE TO MEET THE 1999 CRITERIA

10. EU sanctions against Burma thus fail to meet **the first criterion (a)** set out in the 1999 sanctions policy of being targeted to hit the regime. It is however extraordinarily difficult, if not impossible, to identify any "smart" sanctions which might have an impact on a regime whose impoverished population is in such dire straits. The problem facing Ministers is that the junta has such an unsavoury reputation that the political pressures to apply sanctions of some kind are almost irresistible. In these circumstances, the effectiveness of sanctions applied against Burma has become a secondary consideration. Even the US Administration has acknowledged that: "Of course, we don't think that sanctions—just from economics alone—are going to change the Burmese leadership, but politically it is an important signal . . . sanctions have a symbolic meaning."<sup>203</sup> Nonetheless Eric John was constrained to acknowledge in the same interview: "I mean, we kind of set aside the sanctions discussion because in the next couple of years we are not going to get China to sanction Burma, that's not a realistic goal. . . ." More generally, Ministers might at times favour tougher sanctions, even if their effect is marginal or even counterproductive, rather than face domestic criticism for seeking to follow a possibly more effective "carrot and stick" strategy which critics in favour of a sanctions-only policy would be likely to assail.

11. So it has proved impossible for Britain to give effect to **the fourth criterion (d)** set out in 1999, that there should be "effective arrangements for implementation and enforcement by all states, especially by neighbouring countries". In point of fact, all of Burma's neighbours and all the principal regional powers, irritated and frustrated as some are by Burma's recalcitrance and intransigence, have pointedly declined to impose economic sanctions, partly for commercial reasons, but primarily because in their view sanctions would be counterproductive, and they have to deal with Burma on a day-to-day basis. When it is appreciated that these neighbours include the dynamic economies of China and India as well as all other countries of the Association of South East Asia, Russia, Japan, Pakistan, Bangladesh, Israel, South Korea and even Australia, it can be seen that any hope of our sanctions policy being effective in the case of Burma is a forlorn hope.

#### MINISTERS NOT WELL ADVISED ON BURMA

12. Possibly because Burma is not held to be important to British interests, the quality of advice to Ministers on Burma has not been of a high standard. In 1998 the late Derek Fatchett, FCO Minister of State, wrote to the Chairman of the Association of British Travel Agents (ABTA), Mr Keith Betton, asserting that: "Tourism is an important source of income for the Burmese regime. Last year official Burmese figures suggested over 260,000 tourists visited the country, contributing over £50 million of much needed hard currency in revenue. Since most large hotels and the internal airlines are owned partially or wholly by the government, a great deal of that money goes directly into central government revenues". The facts are however that most of the 260,000 tourists who visited Burma in 1997 were not genuinely international visitors, but Thais and Chinese crossing on short 1–3 day cross-border trips into Burma, mostly to gamble at casinos. The £50 million of revenue was gross operating revenue, and after the deduction of operating costs, depreciation, interest on loans and taxation, the net profit for most hotel, restaurant and tourist outlets was marginal. The notion that this £50 million gross "goes directly into central government coffers" is simply not true. Nor is it true that most large hotels in Burma are owned partially or wholly by the government, for they are mainly owned by overseas hotel groups.<sup>204</sup>

13. In pursuit of their sanctions on travel to Burma, Ministers have at times given misleading information even to Parliament. Derek Fatchett's successor, John Battle, told the House of Commons on 22 November 2000 that "every tourist who enters Burma must pay an entry fee of US\$ 200" when the facts at the time were that only independent travellers, about one third of the total, were required to make an obligatory exchange of US\$ 200 into Foreign Exchange Certificates (FECs) to be spent in hotels and hard currency outlets, which

<sup>202</sup> IMF 2003 statistics: See <http://www.state.gov/r/pa/ei/bgn/35910.htm>

<sup>203</sup> US Deputy Assistant Secretary for East Asia and the Pacific Eric John—Interview in *The Irrawaddy* June 2006.

<sup>204</sup> As Chairman of the Beta Mekong Fund Ltd 1994–2000 which in 1998 had investments in six major hotels in Burma, none of them had until my retirement in 2000 succeeded in recording a net profit in any year of its existence, let alone in declaring any dividend. That was why when I met Daw Aung San Suu Kyi in December 1999, I told her that we were liquidating all our investments in her country: they were simply not profitable. She approved.



is less than US\$ 30 per day over a seven-day visit.<sup>205</sup> John Battle's successor Mike O'Brien repeated the factual error that "each tourist is required to buy US\$ 200 of FECs" in another letter to ABTA on 14 July 2003. Mike O'Brien also found it unacceptable that: "Some people go to Burma for their own reasons, and we want to discourage them from doing so."<sup>206</sup> Mr O'Brien announced his intention to target "all travel organisations with any links with tourism in Burma." He was clearly not constrained by the inevitable adverse impact on British commercial interests, which is **the fifth (e) of the 1999 criteria**.

14. In a moment of self-doubt in 2004, Mike O'Brien told Parliament that: "If I may be critical of the UK, I should say that in the early part of last year we could have been more encouraging of the process of reform undertaken before 30 May [when Daw Aung San Suu Kyi was taken into custody after an assault on her motorcade]. We could have said that we welcomed that reform and been more positive. However, I have no idea whether that would have made a difference to events on 30 May." Clearly, **the third criterion (c)** about "realistic demands from which compliance can be judged" was allowed to slide.

15. Professor Jeff Sachs, who is the Special Adviser to the UN Secretary-General on the UN's Millennium Development Goals, has pointed<sup>207</sup> to "the long saga of failed sanction regimes against Cuba, Haiti and Iraq". He describes US sanctions against Burma as misguided, enabling the regime "to blame foreign meddling for policy mistakes". Daw Aung San Suu Kyi, on the other hand, has mesmerised most British politicians through her call for sanctions, though there is little anecdotal evidence that on this particular issue she has the support of the Burmese people. Her support for sanctions has however deepened the regime's hostility to her and the pro-democracy opposition. Another dissident, Dr Khin Zaw Win, who was imprisoned for 11 years at Myikyina Prison in northern Burma in much harsher conditions than Daw Aung San Suu Kyi's house arrest, has commented ruefully<sup>208</sup> that "the country is being subjected to more punitive measures from the world's economic powers. The mood—and perhaps the likely consequences—hark back to the Treaty of Versailles and the US involvement in Iraq and Vietnam, all of which have few parallels as engines of instability." Dr Khin Zaw Win, who now works for the EC in Burma on HIV/Aids issues,<sup>209</sup> is in my judgement more representative of broad Burmese thinking on this issue than Daw Aung San Suu Kyi. The EU in general, and the UK in particular, may however feel that the imposition of sanctions, ineffective as they are, might and indeed should be seen as a gesture of solidarity with Daw Aung San Suu Kyi and other political prisoners. This makes it politically very difficult to change UK sanctions policy, however manifestly counterproductive.

## CONCLUSIONS

16. What conclusions may be drawn about British and EU policy on sanctions against Burma?
- (a) In the absence of an international consensus on sanctions, they have not been effective. There was little hope from the start that there would be such a consensus.
  - (b) The imposition of sanctions may have some value as a symbolic gesture and serve a domestic political imperative, but if the message is ignored by the junta and the situation deteriorates, it is a high price to pay when the population suffers as a consequence.
  - (c) It is politically difficult to remove sanctions once imposed, even when there is an apparent improvement in the situation, because then sanctions might appear to be working and this could lead to pressure for them to be applied more rigorously.
  - (d) Fortunately EU sanctions are not too serious, so that through a generous policy of humanitarian-development aid, something can be done to remedy the deleterious effects due primarily to US sanctions.
  - (e) There is little evidence that the sanctions applied, notably by Britain against tourism and by the EU on investment, were properly analysed and assessed before implementation and subsequently monitored by experienced analysts.
  - (f) Political expediency has dominated all consideration of UK sanctions policy towards Burma, and is likely to continue to do so.
17. It is not reasonable to expect unpopular regimes to commit political suicide. The dynasty of Generals currently ruling Burma and their families, as in all military dictatorships, will never go hungry. There are better, more productive ways (outside the scope of this paper, but they do exist) of dealing with impoverished,

<sup>205</sup> The compulsory exchange was abolished in August 2003 after the introduction of new US sanctions.

<sup>206</sup> *Hansard* 2 July 2003 Column 95 WH.

<sup>207</sup> Letter to the *Financial Times* published 28 July 2004.

<sup>208</sup> A paper in circulation on certain Internet groups. A copy is in my possession.

<sup>209</sup> Dr Khin Zaw Win will be a speaker at the Wilton Park Conference 2–4 November 2006: "How should the international community respond to Burma's needs?"

recalcitrant dictatorships than trying to impose isolation, punishment and sanctions. US and EU policy has only served to entrench the military junta in power and delayed the deliverance of the Burmese people from their oppression. But, to be realistic, there is no likelihood that the US will change their sanctions-only policy towards Burma in the foreseeable future, and little likelihood of any change to the “more stick than carrot” policy of the UK, despite pressures from certain EU members for a more enlightened approach.

1 September 2006

#### **Memorandum by the United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA)**

1. Sanction regimes pose an increasingly difficult dilemma for the United Nations’ dual mandate of preserving peace and protecting human needs. As the UN Secretary-General noted: “*Humanitarian and human rights policy goals cannot easily be reconciled with those of sanction regimes*”.<sup>210</sup> Economic sanctions are “*too often a blunt instrument*” and may impose hardships on civilians that are disproportionate to likely political gains.<sup>211</sup>
2. Becoming aware of this quandary a general consciousness evolved also within the United Nations Security Council that “*further collective actions in the Security Council within the context of any further sanction regime should be directed to minimize unintended adverse side effects of sanctions on the most vulnerable segments of targeted countries.*”<sup>212</sup>
3. This led to the realization that comprehensive economic sanctions or broad trade embargoes are coercive measures of the past and that in today’s sanction policies strategies for mitigating adverse humanitarian impacts on vulnerable populations have imperatively to be incorporated from the very beginning.
4. The UN Security Council and the UN Secretariat have responded positively to this challenge for more humane sanction regimes and have increasingly used more targeted sanctions (eg financial, arms, travel, diplomatic and/or sanctions on specific commodities like oil, diamonds, timber, etc). Also the request of the Security Council for monitoring and reporting mechanisms to assess possible unintended side effects of sanction regimes is a clear proof of the Council’s increased awareness of the potential harm sanctions can inflict on the humanitarian, social and economic situation of a targeted country. (eg Security Council resolution 1267 (1999) and 1333 (2000) on Afghanistan, resolution 1343 (2001) and 1478 (2003) on Liberia and the most recent resolution 1698 (2006) on the Democratic Republic of the Congo). This development has helped to address some of the concerns about the UN’s culpability for sanction-related suffering.
5. Today it is an accepted standard that sanction authorities like the UN Security Council or regional organizations bear the fundamental responsibility for mitigating unintended consequences of sanctions they impose and for ensuring that the coercive measures enacted to uphold international norms do not cause suffering disproportionate to the ends served.
6. Political gain and civilian pain of sanction regimes cannot be separated anymore from one another or analyzed in isolation. The art of sanction statecraft lies in applying sanction measures that are sufficiently forceful to persuade targeted leaders to move toward political compliance, while avoiding unintended humanitarian and/or socio-economic side effects that undermine the viability of the policy and of the instrument itself.
7. Within the UN Secretariat, the Policy Branch of the Office for the Coordination of Humanitarian Affairs (OCHA) has been at the forefront of efforts to ensure that UN sanctions do not negatively impact on the living conditions of civilian populations in targeted states. At the core of these efforts was the development of a sanction assessment methodology, with the goal to make sanctions more effective by assessing possible humanitarian implications in advance of-, during- and following sanctions. Recognizing the increased concern and seeing an opportunity to move away from the previous ad hoc approach of assessing the impact of sanctions on living conditions, OCHA initiated a project in September 2002 to develop a standardized methodology for assessing whether and how sanction regimes can cause unintentional harm. So far OCHA has undertaken assessments of the humanitarian implications of UN sanctions on Afghanistan, Liberia and the former Yugoslavia. For the beginning of 2007, there is another sanction assessment planned: Based on Security Council resolution 1698 (2006), OCHA will have to evaluate possible sanction measures on the illegal exploitation of natural resources in the Democratic Republic of the Congo.

<sup>210</sup> Kofi Annan, *Annual Report of the Secretary-General on the Work of the Organisation (1998)*, A/53/1, United Nations, New York, 27 August 1998, 64.

<sup>211</sup> Kofi Annan, *The Cause of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, Secretary-General’s Report to the United Nations Security Council* (New York: United Nations, 16 April 1998), 25.

<sup>212</sup> United Nations Security Council, *Letter Dated 13 April 1995, Addressed to the President of the Security Council*, S/1995/300, Annex 1.

8. The assessment methodology that OCHA developed aims to address two important challenges that present themselves when assessing the impact of sanctions on humanitarian conditions:

- (i) accurate evaluation of the current status of humanitarian conditions, and
- (ii) separation of the effects of sanctions on health and well-being from those due to other causes. Identifying possible humanitarian consequences of sanctions early on can reduce confusion about humanitarian conditions and their causes, and can help mitigate any unintended consequences of the coercive measures.

9. The project funded by the Governments of Canada and Switzerland—was undertaken in collaboration with humanitarian agencies within the UN system and beyond. OCHA's project team also engaged in consultations with UN Member States as the methodology was being formulated and refined.

10. The project has culminated with the publication of two documents, which I co-authored together with Dr. Richard Garfield and Gerard McHugh: a Sanctions Assessment Handbook and a complementary set of Field Guidelines. Jan Egeland, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, strongly urged "*those engaged in considering and designing sanction regimes to employ this methodology to minimize their unintended humanitarian consequences.*" OCHA envisions that this important new approach will make a significant contribution to the protection of civilians in sanctioned countries, and will enhance the capacity of UN agencies and Member States alike to anticipate and prevent deteriorations in humanitarian conditions that may result from sanctions.

24 September 2006

### Memorandum by Voices for Burma

#### 1. THE AUTHORS

1.1 This evidence is supplied by Voices For Burma (VFB). VFB is a British-founded and web-based not-for-profit International Non-Governmental Organisation (INGO) Since 2003, VFB has been campaigning on two fronts: The first, to explore the formerly black and white nature of the tourist boycott debate hitherto seen until VFB's inception; and the second, to educate visitors to Burma about the need to travel ethically and to ameliorate the negative impact of those who were visiting Burma with only scant information on ethical travel.

1.2 VFB's archive of policies and ethical travel tips is available on its website [www.voicesforburma.org](http://www.voicesforburma.org). VFB is contactable through Andrew Gray at [voicesforburma@hotmail.com](mailto:voicesforburma@hotmail.com).

#### 2. SUMMARY

2.1 In this paper, VFB examines the UK Government's policy on tourism to Burma as an essential component of its economic sanctions regime under the EU Common Position. It is VFB's stance that the UK Government's policy on tourism to Burma is at best confused and at worst irreconcilable with its commitment under the Common Position to assist the poorest sections of Burmese society.

2.2 It is not VFB's argument that the Travel Boycott is fundamentally flawed, as VFB discourages some tourists to Burma, however the boycott policy has not been evaluated and has not engendered any positive societal shifts.

#### 3. BACKGROUND

3.1 Burma has been run—under one guise or another—by a military Junta since 1962. The current incarnation is the State Peace and Development Council (SPDC) led by General Than Shwe. Burma is a former colony of Britain, which was "given" its independence in 1948.

3.2 The Junta is one of the most pernicious regimes in the world, committing human rights abuses on a truly grand scale. Following an uprising in 1988, which was brutally suppressed by the army, elections were held in 1990, which led to the National League for Democracy (NLD) winning 82 per cent of the votes, even though its iconic leader, Aung San Suu Kyi, was forbidden from standing. The army has not relinquished control.

3.3 Today, the regime stands accused—some would say guilty of—the following, but in no way exhaustive list of human infringements and state crimes:

- Over 1,100 political prisoners languish in jail convicted of spurious “crimes”. The most famous is Aung San Suu Kyi, who has spent 10 of the last 16 years living under house arrest.
- Continued use of anti-personnel landmines.<sup>213</sup>
- Use of child soldiers.<sup>214</sup>
- Gross economic mismanagement.
- Forced labour.
- Bloating the numbers of the army to between 400,000 and 500,000 in a state of 50 million people, which has no discernable external enemies.
- Conducting military offences against ethnic minority groups, in particular the Karen. Such offensives have forced thousands of people to flee their villages through the malarial-infested jungle to the relative safety of the overflowing refugee camps on the Thai side of the Thai-Burma border.
- Burma is the second largest producer of opium in the world.

#### 4. THE SANCTIONS AND CONCOMITANT TOURIST BOYCOTT POLICY

4.1 Burma finds itself under the imposition of sanctions by the US and EU. Following considerable pressure from many sources, most notably the US Government, Burma was formally entered onto the UN Security Council Agenda on 15 September 2006 with a 10–4 vote. The British Government backed the proposal, which could in theory pave the way for a resolution imposing, amongst other punishments, UN economic sanctions.

4.2 The UK Government’s policy stance on tourism can be traced back to before the election of the present Government in 1997. The late Derek Fatchett MP, in his position as Shadow Foreign Affairs Minister, stated in 1996: “The development of the tourist industry has been at a price to the local community which every decent person would regard as unacceptable. I would strongly urge tourists to think carefully before booking a holiday in Burma. The price of an exotic holiday could be someone else’s life.”<sup>215</sup> When in power, he wrote to travel associations in 1998 in relation to the Government’s concerns about the encouragement of tourism in Burma. In 2003, the Foreign Office Minister, Mike O’Brien continued in Mr Fatchett’s footsteps by stating: “I propose to write to all travel organisations with any links with tourism in Burma. There are very few of them, but if any are involved, we shall target them and ask them not to allow, encourage or participate in tourism in Burma. Some people go to Burma for their own reasons, and we want to discourage them from doing so.”<sup>216</sup> In the same debate the Minister stated: “We must ensure that sanctions do not hurt the Burmese people whom we are trying to help.”<sup>217</sup>

4.3 The UK Government’s stance is mostly outlined in the EU’s Common Position, which was first implemented in 1996. The Position has a number of restrictive measures in its armoury. The policy is detailed on the FCO website as follows:

“Target those obstructing reform and progress, but ensuring that the ordinary people of Burma suffer as little as possible. The Common Position includes: an arms embargo; bans on defence links, high-level bilateral government visits, the supply of equipment that might be used for internal repression or terrorism and an asset freeze and visa ban on regime members, their families, the military and security forces and others who actively frustrate the process of national reconciliation. Most development aid is suspended.”<sup>218</sup>

4.4 This Common Position was last reviewed on 27 April 2006.

<sup>213</sup> International Campaign to Ban Landmines dated

<sup>214</sup> Burma Campaign UK

<sup>215</sup> <http://www.burmalibrary.org/reg.burma/archives/199603/msg00319.html>

<sup>216</sup> <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030702/halltext/30702h01.htm>

<sup>217</sup> <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030702/halltext/30702h01.htm>

<sup>218</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018965307901#Bur>

4.5 Former Foreign Office Minister, Ian Pearson MP, explained that this was a “twin track policy”<sup>219</sup> with “targeted measures aimed at members of the military government who are responsible for the current situation in Burma, and members of their families, cronies and others who benefit from the regime’s corruption; and assistance to the poorest sections of society who suffer most from the Burmese government’s failed policies.”

4.6 It is VFB’s contention that this position is reasonable, in particular the notion that assistance should be provided to those who suffer most at the hands of the Junta.

4.7 The UK Government’s position is then muddled by their policy on tourism as espoused on the FCO website “The UK does not encourage trade, investment or tourism with Burma.”<sup>220</sup> The position does not become clearer as the FCO website states:

“We have drawn attention to the views of Burma’s democratic leaders, including ASSK, that tourism to Burma is inappropriate at present due to the poor political and human rights situation and the economic benefits it brings to the regime. Burmese tourism officials are included in the EU travel ban imposed on Burma. We would urge anyone who may be thinking of visiting Burma on holiday to consider carefully whether by their actions they are helping to support the regime.”<sup>221</sup>

4.8 Furthermore, the Prime Minister, Tony Blair MP, offered his insight into whether tourists should go to Burma: “I would urge anyone who may be thinking of visiting Burma on holiday to consider carefully whether by their actions they are helping to support the regime and prolong such dreadful abuses.”<sup>222</sup> The Prime Minister’s statement was supported by the then leaders of the Conservative and the Liberal Democrat Party, Michael Howard MP and Charles Kennedy MP, as they pledged in February 2005 that they would not holiday in Burma either.<sup>223</sup>

## 5. THE OBJECTIVES OF THE ECONOMIC SANCTIONS AND CONCOMITANT TOURIST BOYCOTT POLICY

5.1 The tourist policy was forged in response to pressure from lobbyists who wanted the Junta’s “Visit Myanmar Year” of 1996 to be a resounding failure. Aung San Suu Kyi has made many pronouncements on tourism, most of which can be construed as being anti-tourism. The UK Government has heeded her insistence –(and that of the lobbyists who represent her) that the time is not right for tourism. The lobbyist’s best argument is that forced labour has been used in the tourist industry; there has been no analysis as to whether the link between tourist infrastructure and forced labour has continued. Put simply, the UK Government policy on tourism is indistinguishable from that of the lobbyists. The objective of this policy is to pacify the lobbyists. Further, as this stance has only a miniscule impact on UK businesses it is an easy policy to have.

5.2 The UK Government’s objective of economic sanctions and the tourist boycott is to pressurise the Junta into relinquishing power by targeting the Junta and its cronies whilst not further impoverishing the Burmese people. Democracy is seen through the prism of elections solely, whereas democracy is a process with elections as its zenith. The UK Government has given little thought as to how positive change is best delivered for the Burmese people.

5.3 VFB is concerned that although the Government states that its policies are not designed to have a deleterious impact on the poorest members of Burmese society, the tourist boycott—which is undoubtedly a major component of its economic sanctions—affects those who work in the tourist industry, or could work in the tourist industry. This includes those who work in the following industries and their families: private guesthouse employees; private taxi drivers; tea shop owners; souvenir sellers; guides etc; and those who would benefit indirectly from the positive multiplier effect. The Former Foreign Secretary, Jack Straw MP, did not mention these people in the tourist sector—a sector very much overlooked—when he stated recently: “The UK Government will continue to support the poorest and most vulnerable people in Burma.”<sup>224</sup>

5.4 Further, in this age of digital cameras, email and internet, the possibilities of visitors to Burma acting as pseudo-journalists is a prospect not even countenanced by the Government. The joint Chairman of the All Party Parliamentary Group on Burma, John Bercow MP, concurs about the need for information from

<sup>219</sup> House of Commons debate 16 June 2005.

<sup>220</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018965307901#Bur>

<sup>221</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018965307901#Bur>

<sup>222</sup> <http://www.burmacampaign.org.uk/tonyblair.htm>

<sup>223</sup> <http://www.burmacampaign.org.uk/pm/weblog.php?id=P150>

<sup>224</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1115147721902%20&year=2005&month=2005-06-01&2005-06-16>

Burma. He stated in a House of Commons debate, as part of his answer to a question about the Junta's longevity: "It is only the absence of television cameras that has prevented the true horror of what is taking place from being known."<sup>225</sup> It is VFB's position that visitors to Burma are pseudo-journalists who can, in John Bercow's words, "Help open up to public and international view the reality of the violation of human rights that is taking place and would give the opportunity for independent testimony to the scale of the savagery."<sup>226</sup> VFB would urge the Government to contemplate this notion.

5.5 Burma was effectively isolated and insulated from the forces of tourism from 1962 to the mid 1990s. Today, the tourist industry in Burma is growing slowly, largely due to cross-border tourism from neighbouring China. Although tourism statistics are not reliable, 5,000–7,000 British tourists travelled to Burma in 2005 according to Junta statistics. Tourism revenue in 2005 was \$153 million from 666,000 visitors of which it is estimated that 60 per cent are day-trippers.<sup>227</sup> This pales into insignificance when compared with the number of British tourists visiting neighbouring Thailand.

5.6 The UK Government does not appear to have a yardstick with which to measure the impact of its tourism policy on the least privileged members of Burma's society who eek out a living in the tourist industry; it is time that this was rectified.

## 6. FINDINGS

6.1 The UK Government has had an eminently difficult task in dealing with the recalcitrant Junta. Unfortunately, the UK lacks clout in Burma and its stance, under the Common Position, has had no impact in bringing about positive change in Burma. As Ian Pearson MP laments: "We should not overestimate the effectiveness of western sanctions on the Burmese regime; they have not had any significant impact that we can see to date."<sup>228</sup>

6.2 Burma continues to be the only country in which the UK Government actively dissuades travellers from visiting.<sup>229</sup> It is VFB's contention that the impact of this policy demands thorough evaluation and analysis. Furthermore, this policy is irreconcilable with that of the second strand of the Common Position, as it damages the livelihoods of those who work in the tourist sector or who could work in the tourist industry. It is a policy entered into with little thought, and born out of pandering to the lobbyists who have a stranglehold over UK Burma policy. Gesture politics does not assist the Burmese man trying to feed his family.

6.3 Tourism is the world's largest service industry according to the FCO's associated Travel Foundation. The face of tourism is changing rapidly. The different types of tourists include: eco-holidaymakers, backpackers, cheap-flight holidaymakers, package travellers, TEFL teachers, war veterans, gap-yearers and pilgrims. It is VFB's experience that travellers to Burma respond well to being supplied with information about ethical travel. It is also VFB's experience that travellers to Burma are interested in leaving the country in a better state than when they found it. VFB have had countless requests from travellers who want to know where they can teach in Burma or what items, such as newspapers, they can take in to satisfy the cravings of the information-starved people of Burma. It therefore flies in the face of intellectual reason for the Government to bracket all forms of tourism together in this regard.

6.4 The Burma tourism question is highly complex and emotive. The UK Government has a duty to those living through the Burmese nightmare to formulate sound policies based on thorough analysis and constant evaluation. Ian Pearson MP, is right to say that "there is no simple answer"<sup>230</sup> to the Burmese quagmire, so it is regrettable that the Government's tourism policy is so black and white.

<sup>225</sup> [http://www.publications.parliament.uk/cgi-bin/newhtml\\_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st\\_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st\\_23](http://www.publications.parliament.uk/cgi-bin/newhtml_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st_23)

<sup>226</sup> [http://www.publications.parliament.uk/cgi-bin/newhtml\\_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st\\_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st\\_23](http://www.publications.parliament.uk/cgi-bin/newhtml_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st_23)

<sup>227</sup> Burma Briefing by ALSEAN July 2006

<sup>228</sup> [http://www.publications.parliament.uk/cgi-bin/newhtml\\_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st\\_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st\\_23](http://www.publications.parliament.uk/cgi-bin/newhtml_hl?DB=semukparl&STEMMER=en&WORDS=burma&ALL=&ANY=burma&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=&COLOUR=red&STYLE=s&ANCHOR=st_23&URL=/pa/cm200506/cmhansrd/cm050615/halltext/50615h03.htm#st_23) 15 June 2006.

<sup>229</sup> 117 To the best of VFB's knowledge. We await clarification that this is the case.

<sup>230</sup> [http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=100702939\\_16\\_29&a=KArticle&aid=1115147681142%20&year=2005&month=2005-06-01&date=2005-06-16](http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=100702939_16_29&a=KArticle&aid=1115147681142%20&year=2005&month=2005-06-01&date=2005-06-16)

6.5 VFB would like it to be noted for the record that economic sanctions will not have the desired effect of punishing the Junta, as long as the twin emerging giants of India and China battle it out for supremacy over Burma's natural assets, and Burma's other neighbours, notably Thailand, also continue to trade with her. VFB questions whether if all countries adhered to multilateral sanctions on Burma and a total tourist boycott was followed stringently, whether this would precipitate the change that we all hope to see.

6.6 This year is the 10th anniversary of the Junta's "Visit Myanmar Year" when the Junta encouraged tourists to Burma. Ten years ago, in order to counter this state promotion, lobbyists demanding a tourist boycott swiftly began the tourist boycott campaign, and to this day, its legacy lives on. VFB doubts whether Burma is any closer to realising a better future after 10 years of this tourist boycott.

*26 September 2006*

ISBN 978-0-10-401059-4



9 780104 010594

Printed in the United Kingdom by The Stationery Office Limited  
5/2007 357697 19585