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# *A Decade of Sanctions against Iraq: Never Again! The End of Unlimited Sanctions in the Recent Practice of the UN Security Council*

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## **Abstract**

*The inclusion of time limits signals a significant change in the recent sanctions practice of the Security Council. This change ties in with the ongoing debate about the reform of the Council's sanctions policy. The article traces the emergence of time limits by examining the constellation of the 'reverse veto' which triggered a shift in the sanctions policy of France, China and the Russian Federation. After a brief assessment of the legality of time limits, the main focus is placed on their implications for the future sanctions practice of the Council which are evaluated with regard to their contribution to a successful sanctions policy. The author addresses the shift in the internal power dynamics in the Council, the potential for ensuring the legality and for enhancing the legitimacy of the Council's sanctions policy as well as the objections raised against time limits for undermining the effectiveness of sanctions as the three crucial areas in assessing time limits. In conclusion, time limits are viewed as a device, the use of which has not only proved helpful in overcoming a threatening stalemate in the Council's sanctions policy but also has the potential of enhancing the flexibility and the legitimacy of such a policy.*

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## 1 The Emergence of Time Limits: Their Nature and the Rationale for Their Use in the Light of the ‘Reverse Veto’ Constellation

This is not another article on the legality or usefulness of the sanctions imposed against Iraq.<sup>1</sup> Rather, it intends to highlight an important but little noticed change in the recent sanctions practice of the Security Council which resulted from the experience in the case of Iraq: the inclusion of time limits when imposing economic sanctions. First included in Security Council Resolution 1298 (2000),<sup>2</sup> every subsequent resolution of the Council to impose sanctions has up to date contained a time limit.<sup>3</sup> A time limit, sometimes also referred to as time frame, sets a limit, normally for a period of 12 months, for the duration of sanctions.<sup>4</sup> After the expiry of the set period, sanctions discontinue automatically.<sup>5</sup> Thus, a new decision of the Security Council, usually taking the form of a resolution, is required in order to continue, or, to be more precise, renew sanctions, either in its original or in an altered form. In contrast, in the absence of a time limit, the alteration, suspension or lifting of sanctions can only be effectuated on the basis of a decision by the Security Council taken in accordance with Article 27 of the UN Charter.<sup>6</sup>

Sanctions are in theory to be lifted when the sanctioned party has fully complied

<sup>1</sup> There has been a spate of articles on the legality of the sanctions against Iraq recently, see e.g. Lopez and Cortright, ‘Economic Sanctions and Human Rights: Part of the Problem or Part of the Solution?’, 1 *The International Journal of Human Rights* (1997) 1, at 14 *et seq.*; Normand, ‘A Human Rights Assessment of Sanctions: The Case of Iraq, 1990–1997’, in W. J. M. van Genugten and G. A. de Groot (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) 19; Shehabaldin and Laughlin, ‘Economic Sanctions against Iraq: Human and Economic Costs’, 3 *The International Journal of Human Rights* (1999) 1.

<sup>2</sup> Arms embargo against Ethiopia and Eritrea.

<sup>3</sup> SC Res. 1306 (2000) (Sierra Leone, Revolutionary United Front); SC Res. 1333 (2000) (Afghanistan/Taliban); SC Res. 1343 (2001) (Liberia).

<sup>4</sup> See as an example SC Res. 1298 (2000), para. 16: ‘[The Security Council] decides that the measures imposed by paragraph 6 above [arms embargo] are established for twelve months and that, at the end of this period, the Council will decide whether the Governments of Eritrea and Ethiopia have complied with paragraphs 2, 3 and 4 above [to cease military action, withdraw forces and conclude a peace agreement], and, accordingly, whether to extend these measures for a further period with the same conditions.’

<sup>5</sup> The Security Council can also alter or lift sanctions before the end of their duration. A lifting of sanctions before the end of the time limit was contemplated in the case of the weapons embargo imposed against Ethiopia and Eritrea after the end of hostilities. However, as a majority of states considered the lifting of the embargo to be premature, it has remained in force, as of the time of writing.

<sup>6</sup> Although there has been some uncertainty concerning the procedure for suspending or lifting sanctions in the South Rhodesia case (the Security Council imposed a variety of economic sanctions against the minority regime of white settlers from 1966–1980, see V. Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law, United Nations Action in the Question of Rhodesia* (1990)), i.e. whether a state can unilaterally decide that the conditions for lifting sanctions are being met or whether such a decision can be taken by the Security Council only (see Caron, ‘The Legitimacy of the Collective authority of the Security Council’, 87 *EJIL* (1993) 552, at 578 *et seq.*; Suy, ‘Some Legal Questions Concerning the Security Council’, in I. von Münch (ed.), *Staatsrecht-Völkerrecht-Europarecht, Festschrift für Hans-Jürgen Schlochauer* (1981) 677, at 684 *et seq.*), there is now general agreement, confirmed by the Council’s practice, that the latter is the case. See Caron, *supra* note 6, at 582; H. K. Ress, *Das Handelsembargo, Völker- europä- und außenwirtschaftsrechtliche Rahmenbedingungen, Praxis und Entschädigung* (2000), at 85.

with the demands of the Security Council. In practice, the decision about the lifting of sanctions has in a number of cases been beset with difficulties, as the members of the Security Council have repeatedly had differing views as to whether the sanctioned party has complied with the demands or not.<sup>7</sup> If one of the permanent members of the Security Council asserts that the conditions for the lifting of sanctions have not been met by the sanctioned party, it can block any move to suspend or lift sanctions by threatening to cast a veto against any such decision. This constellation has come to be known as the 'reverse veto'.<sup>8</sup> Therefore, in effect, each of the permanent members of the Security Council is in a position to prevent any change in the sanctions policy, even against a clear majority within the Council, and thereby prolong sanctions indefinitely.

The potential for conflict within the Security Council inherent in the reverse veto became apparent in the case of Iraq.<sup>9</sup> The final collapse of the weapons inspection system in Iraq in late 1998 brought in its wake a deepening of the rift within the Security Council over the future course of the sanctions policy towards Iraq. Whereas the two main proponents of sanctions, the United States of America and the United Kingdom, favoured a renewal of a slightly modified weapons inspections scheme in exchange for the suspension and eventual lifting of sanctions,<sup>10</sup> France, the Russian Federation and China called for the easing of sanctions.<sup>11</sup> Somewhat curiously, even though the latter three permanent members had originally voted for the sanctions and were at that time in a position to prevent the imposition of economic measures against Iraq altogether in the first place, they were now unable to ease or lift them since the other two permanent members would most likely have vetoed such a move. It was against this background that France, the Russian Federation and China decided to change their policy in future sanctions cases by demanding, as a matter of principle, the inclusion of time limits. Such a step had for some time already been repeatedly proposed by various actors of the international community as a means of avoiding the

<sup>7</sup> The sanctions against Iraq and Libya have to be singled out as the two cases that have aroused the greatest controversy in this respect, see D. Cortright and G. A. Lopez, *The Sanctions Decade, Assessing UN Strategies in the 1990s* (2000), at 54 *et seq.* and 107 *et seq.*

<sup>8</sup> This term was coined by Caron, *supra* note 6, at 556.

<sup>9</sup> The Security Council imposed comprehensive economic sanctions against Iraq after the invasion of Kuwait, SC Res. 661 (1990). After the end of hostilities and the withdrawal of the Iraqi forces from Kuwait, the Security Council maintained the sanctions with SC Res. 687 (1991) in order to effect the supervised destruction of the Iraqi weapons of mass destruction as well as war reparations and a number of issues related to the consequences of the war. Since then, the sanctions have been revised several times, notably with the introduction of the 'oil-for-food programme', SC Res. 986 (1995) in conjunction with the memorandum of understanding, UN Doc. S/1999/356 (20 May 1996). See Oette, 'Die Entwicklung des Oil for Food-Programms und die gegenwärtige humanitäre Lage im Irak', 59 *ZaöRV* (1999) 839.

<sup>10</sup> See SC Res. 1284 (1999).

<sup>11</sup> France, the Russian Federation and China abstained from voting for SC Res. 1284 (1999). For the position of the three permanent members, see UN Doc. S/PV. 4084 (17 December 1999), at 4, 11 and 15. The United Kingdom and the United States of America have subsequently altered their position in the face of growing opposition to comprehensive sanctions and are currently in favour of refocusing the sanctions by making them 'smart', i.e. easing restrictions on the flow of goods, with the exception of military and certain dual-use goods, while strengthening the enforcement of sanctions. See SC Res. 1352 (2001).

adverse impacts of indefinite sanctions and appears now to enjoy the support of a majority of states.<sup>12</sup> The United States of America, the main proponent of an active sanctions policy of the Security Council, was forced to grudgingly accept the inclusion of time limits as a trade-off for the support of France, the Russian Federation and China for future sanctions which hinged on the inclusion of time limits.<sup>13</sup> In the light of the recent practice of the Security Council and the positions of France, the Russian Federation and China, it can safely be concluded that the shift in the sanctions policy towards the inclusion of time limits will be a permanent one.<sup>14</sup> This is not only in itself another example of the dynamic nature of the sanctions practice of the Security Council at the end of the sanctions decade,<sup>15</sup> but carries with it a number of implications for the future course of the Security Council sanctions policy.

## 2 The Legality of the Inclusion of Time Limits

The question of the legality of the inclusion of time limits is, not surprisingly, the least controversial. The Security Council has broad powers when acting under Chapter VII of the UN Charter. Having determined a threat to the peace, breach of the peace, or act of aggression pursuant to Article 39 of the UN Charter, the Council can impose sanctions in accordance with Article 41 of the UN Charter which contains a non-exhaustive list of non-military measures. Not only the delimitation of the scope of the measures taken, but also of their duration falls entirely within the powers granted to the Security Council under Chapter VII of the UN Charter. Hence, if a resolution on the imposition of sanctions is adopted in accordance with the formal voting requirements laid down in Article 27 of the UN Charter, the members of the Security Council are free to agree on a temporal limitation of its validity.<sup>16</sup> This finding is confirmed not only by the recent sanctions practice of the Security Council but also by its practice in relation to peacekeeping operations where it has frequently set limits for

<sup>12</sup> See GA Res. 51/242 (15 September 1997), Annex 2: 'Questions of sanctions imposed by the United Nations', para. 2; Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Resolution 1997/35, 37th meeting (28 August 1997) and the statements of a large number of government delegates during the general debate on sanctions in the Security Council, UN Doc. S/PV.4128 (17 April 2000).

<sup>13</sup> See discussion in UN Doc. S/PV. 4168 (5 July 2000) (concerning sanctions against the RUF in Sierra Leone) and S/PV.4251 (20 December 2000) (concerning sanctions against the Taliban/Afghanistan).

<sup>14</sup> See the statement of the French delegate during the Security Council debate on the strengthening of sanctions against the Taliban, resulting in the adoption of SC Res. 1333 (2000), UN Doc. S/PV.4251 (20 December 2000), at 6: 'This will be the third time this year that the Council has issued a time-bound sanctions regime. Thus, we see in practice the formation of a new Council doctrine that is conducive to avoiding the perpetuation of sanctions for indefinite time periods.'

<sup>15</sup> For an overview of the sanctions decade, see Cortright and Lopez, *supra* note 7, at 1 *et seq.*

<sup>16</sup> A related, but separate question is whether there is an obligation to impose time limits in cases where prolonged sanctions cause a violation of fundamental rights, see *infra* 3B.

the duration of the said operations.<sup>17</sup> Consequently, there is and can be no doubt as to the legality of the inclusion of time limits.

### **3 Implications of Time Limits for the Future Sanctions Practice of the Security Council**

#### ***A Shifting the Balance of Power within the Security Council***

The most evident consequence of the inclusion of time limits, as a matter of a general sanctions policy, is a shift in power in favour of those permanent members of the Security Council that are opposed to unlimited sanctions. These members employ time limits as a means to safeguard the future exercise of their right of veto when deciding on the imposition of sanctions. In contrast, the proponents of unlimited sanctions lose the power of the reverse veto. Time limits force them to seek and obtain the backing of the required majority for the continuation of sanctions in each single case. This constellation ensures that a sanctions regime enjoys the constant support of the majority in the Security Council. It also opens the way for a more flexible sanctions policy in which the proponents of sanctions have to make concessions by addressing the concerns of other Security Council members in order to win over the majority for a renewal of sanctions. This change within the Security Council is more than a mere reallocation of power between the proponents and opponents of unlimited sanctions among the permanent members. It has at its core the potential to ensure the legality and legitimacy of sanctions imposed by the Security Council.<sup>18</sup>

#### ***B Ensuring the Legality of Sanctions***

The debate over the limits to the power of the Security Council to impose economic sanctions has yielded a wide range of opinions. Whereas some authors hold that there are no discernible limits to the discretion of the Security Council when using its powers under Chapter VII of the Charter,<sup>19</sup> others assert that the Council's powers are not unlimited.<sup>20</sup> The question of the compatibility of economic sanctions with international human rights and humanitarian law might serve to illustrate the divergent views. In this respect, the Security Council has been held to a) be bound to respect the

<sup>17</sup> See as recent examples the missions deployed in Sierra Leone, SC Res. 1270 (1999), East Timor, SC Res. 1272 (1999), the Democratic Republic of Congo, SC Res. 1279 (1999) and in the conflict between Ethiopia and Eritrea, SC Res. 1312 (2000) and 1320 (2000).

<sup>18</sup> See on the interrelation between legality and legitimacy Bennouna, 'L'Embargo dans la pratique des Nations Unies: radioscopie d'un moyen de pression', in E. Yakpo and T. Boumedra (eds), *Liber Amicorum-Mohammed Bedjaoui* (1999) 555, at 559.

<sup>19</sup> See Oosthuizen, 'Playing the Devil's Advocate: The United Nations Security Council is Unbound by Law', 12 *Leiden Journal of International Law* (1999) 549.

<sup>20</sup> M. Bedjaoui, *The New World Order and the Security Council. Testing the Legality of its Acts* (1994), at 29.

whole body of human rights and humanitarian law;<sup>21</sup> b) be bound to balance, as a matter of Charter law, the aim of maintaining peace and security with the aim of promoting human rights;<sup>22</sup> and c) be bound not to violate the rights recognized as having the status of *jus cogens*.<sup>23</sup> There appears to be widespread agreement that the Security Council is at least obliged to respect the norms having the status of *jus cogens*.<sup>24</sup> The Security Council itself has shown in its practice, either through the introduction of humanitarian exemptions or the selection of a limited range of measures (so-called targeted or smart sanctions), that it conceives its powers as not being entirely unlimited and that it has a duty to protect the life of the population of the sanctioned party, a conclusion that is borne out by a number of statements.<sup>25</sup> Nevertheless, doubts have been raised as to whether the Security Council has complied with the right to life in imposing and maintaining sanctions against Iraq.<sup>26</sup> In the light of the high number of civilian casualties, especially among children, which has at least partly to be attributed to the effects of sanctions,<sup>27</sup> it is indeed questionable whether the Security Council has, despite the introduction of the, in many aspects, flawed oil-for-food programme, taken appropriate measures to protect the right of life of the Iraqi citizens.<sup>28</sup>

<sup>21</sup> Bossuyt, 'The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights', UN Doc. E/CN.4/Sub.2/2000/33 (21 June 2000), at para. 30 *et seq*; Gasser, 'Collective Economic Sanctions and International Humanitarian Law: An Enforcement Measure under the United Nations Charter and the Right of Civilians to Immunity: An Unavoidable Clash of Policy Goals?', 56 *ZaöRV* (1996) 871, at 881; H. Koechler, *Ethische Aspekte der Sanktionen im Völkerrecht: Die Praxis der Sanktionspolitik und die Menschenrechte* (1994), at 20 *et seq*; Segall, 'Economic Sanctions: Legal and Policy Constraints', 81 *Review of the Red Cross* (1999) 763, at 765 *et seq*.

<sup>22</sup> Fausey, 'Does the United Nations Use of Collective Sanctions to Protect Human Rights Violate its Own Human Rights Standards?', 10 *Connecticut Journal of International Law* (1994) 193, at 210.

<sup>23</sup> Doebring, 'Unlawful Resolutions of the Security Council and their Legal Consequences', 1 *Max-Planck Yearbook of United Nations Law* (1997) 91, at 98, 99.

<sup>24</sup> Judge Lauterpacht, Separate Opinion, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Reports (1993) 407, at 440, para. 100. See also Gowland-Debbas, 'The Relationship between the International Court of Justice and the Security Council in the Light of the Lockerbie Case', 88 *AJIL* (1994) 643, at 667; and D. Starck, *Die Rechtmäßigkeit von UNO Wirtschaftssanktionen in Anbetracht ihrer Auswirkungen auf die Zivilbevölkerung: Grenzen der Kompetenzen des Sicherheitsrats am Beispiel der Maßnahmen gegen den Irak und die Bundesrepublik Jugoslawien* (2000), at 225.

<sup>25</sup> See e.g. UN Doc. S/PRST/1999/34 (30 November 1999), the statements of the delegates during the debate on sanctions in the Security Council, UN Doc. S/PV. 4128 (17 April 2000) and UN Doc. S/1995/300 (13 April 1995), Letter dated 13 April 1995 from the Permanent Representatives of China, France, The Russian Federation, The United Kingdom of Great Britain and Northern Ireland and the United States of America, Annex: 'Humanitarian Impact of Sanctions': 'While recognizing the need to maintain the effectiveness of sanctions imposed in accordance with the Charter, further collective actions in the Security Council within the context of any future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.'

<sup>26</sup> See Normand, *supra* note 1, and Shehabaldin and Laughlin, *supra* note 1.

<sup>27</sup> See the comprehensive study by R. Garfield, *Morbidity and Mortality among Children from 1990 to 1998: Assessing the Impact of Economic Sanctions*, Occasional Paper Series 16:OP:3, Paper commissioned by the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame and the Fourth Freedom Forum (March 1999). Garfield concludes, on the basis of data drawn from various sources, that there has been an excess death rate of children due to sanctions of at least 227,000 as of 1998.

<sup>28</sup> See Starck, *supra* note 24, at 360 *et seq*.

In a sanctions regime without a time limit such as the Iraqi one, those members of the Security Council that have serious doubts about the compatibility of sanctions with the right to life or other human rights do not have the opportunity to address these concerns as long as one of the permanent members remains opposed to such a step. In contrast, a time limit allows the members of the Security Council not only to assess the legality of the measures taken, especially their proportionality in relation to the effects on the exercise of human rights, but also to redesign future sanctions accordingly. Time limits therefore also serve as a means of self-control, enabling the members to interpret the powers assigned to the Security Council under Chapter VII of the UN Charter, in particular the limits to these powers, when imposing and maintaining sanctions.<sup>29</sup>

### ***C Enhancing the Legitimacy of the Security Council's Sanctions Policy***

The inclusion of time limits is also a means of enhancing the legitimacy of the Security Council in respect of its sanction policy. The notion of legitimacy generally carries the meaning of a recognition of the justness and worthiness of a particular order.<sup>30</sup> Legitimacy exists in the context of international organizations, according to one definition, when the membership values the organization and generally implements collective decisions because they are seen to serve the members' values.<sup>31</sup> Applying this definition to the relationship between the Security Council and the Member States of the United Nations, the latter, which are, according to Article 25 and 48 of the UN Charter, obliged to carry out the decisions of the Security Council, would have to view the Council and its decisions as just and, on that basis, would have to be willing to implement them in recognition of the legitimacy of the Security Council's sanctions policy. This has not always been the case.<sup>32</sup>

It is evident that the legitimacy of the Security Council's sanctions policy has not and will not be seriously undermined in cases where only a small number of states oppose particular sanctions for purely political reasons and refuse to comply with them. A different picture emerges when a considerable number of states question the general sanctions policy of the Security Council, accusing it either of imposing sanctions in a biased and arbitrary manner or of disregarding fundamental values in imposing and maintaining sanctions, and consequently threaten not to, or do actually not, comply with sanctions, as evidenced at least partly in the course of the sanctions against Libya and Iraq. It is such a scenario, in particular in cases where the

<sup>29</sup> In accordance with the legal principle that each organ has, in the first place, the right and duty to determine the scope of its own powers. See the advisory opinion of the ICJ, *Certain Expenses of the United Nations*, ICJ Reports (1962) 151, at 168.

<sup>30</sup> See Caron, *supra* note 6, at 556, 557 for further references.

<sup>31</sup> E. B. Haas, *When Knowledge is Power: Three Models of Change in International Organizations* (1990), at 87, cited in Caron, *supra* note 6, at 557, footnote 21.

<sup>32</sup> In the Libya case, the OAU threatened the Security Council with non-compliance, see Cortright and Lopez, *supra* note 7, at 118. In the Iraq case, a number of states have since mid-2000 openly defied the flight ban imposed under SC Res. 670 (1990).

perception of the illegitimacy of sanctions is grounded in widely shared notions concerning the fundamental nature and objectives of the sanctions system, which might also be called the legitimate expectations of the Member States, that the legitimacy and the very existence of a viable sanctions system becomes endangered. It is no coincidence that opposition to particular sanctions has grown stronger, the more uncompromising the stance of the proponents of sanctions and the more apparent the rift within the Security Council over the sanctions policy has been.

Time limits are in this context a device which ensures that the majority of the Council's members support sanctions in their respective current form. It also enables the Council's members to address concerns of UN Member States within a reasonable time span, to discuss sanctions thoroughly in the light of the experiences in the preceding period and to rectify any deficiencies that have become apparent in the course of the implementation of sanctions. The procedural aspects of time limits, i.e. the requirement of a new decision and the accompanying decision-making process, thus go beyond the result of the decision as such by providing legitimacy by means of procedure. As a consequence, accusations levelled against the Security Council for lacking legitimacy and for not being responsive to the international community would become less and less convincing. Non-compliance would under these circumstances in all likelihood not be perceived as a means of last resort against a Security Council sanctions policy which is widely held to be unjust but as a serious violation of a collective security effort, thereby itself threatening peace.<sup>33</sup> Against this background, it should be obvious that it is also in the interest of the Security Council itself that the legitimacy of sanctions be shored up by means of a time limit.

#### ***D Undermining the Effectiveness of Sanctions?***

The main controversy over the inclusion of time limits centres on their usefulness as part of an effective sanctions strategy. The delegate of the United States of America was, in discussing SC Resolution 1306 (2000),<sup>34</sup> explicit in his rejection of time limits because they would, in his opinion, undermine the effectiveness of the said resolution by linking the removal of sanctions to the arbitrary passage of time.<sup>35</sup> The position of

<sup>33</sup> This scenario raises the question of how to deal with sanctions breakers, a question which has troubled the sanctions policy of the Security Council since its inception in the Southern Rhodesia case in 1966. The sanctions imposed against Liberia with SC Res. 1343 (2001) can be qualified as the first case where the Security Council has used sanctions at least partly in response to Liberia's trading in diamonds in violation of previous Security Council resolutions, namely SC Res. 1306 (2000).

<sup>34</sup> Sanctions against the RUF in Sierra Leone.

<sup>35</sup> UN Doc. S/PV.4168 (5 July 2000), 5: 'We favour the establishment of benchmark criteria to be met before sanctions can be lifted. This draft resolution links the removal of sanctions to the arbitrary passage of time, rather than to fair and reasonable compliance with requirements established by the Council. The use of time limits in this resolution or in any others undermines the incentive for sanctioned States or entities to comply with the demands of the Security Council, unhelpfully encouraging them to believe that if they can simply outlast the patience of the Security Council or somehow divide its members,

the United States was shared by the delegate of the Netherlands.<sup>36</sup> These concerns about the consequences of time limits for the effectiveness of sanctions constitute the main objection to their inclusion. The validity of this argument can be adequately appraised only by clarifying the meaning of the notion of effectiveness when applied to sanctions. Effectiveness of sanctions can denote either the degree of sanctions implementation and the (mainly economic) damage inflicted on the sanctioned party through sanctions or the sanctions-induced compliance of the sanctioned party with the resolutions of the Security Council. Even though these two possible meanings of effectiveness are sometimes confused or equated,<sup>37</sup> the term 'effectiveness' is commonly employed to denote the success of sanctions in making the sanctioned party comply with the demands of the Security Council. The degree of effectiveness of sanctions therefore depends primarily on the degree of compliance by the target, although sanctions might serve some other purposes as well.<sup>38</sup>

Sanctions are in this context a means of putting pressure on the target in order to achieve compliance, thereby causing short-term as well as long-term damage. The limitation of the duration of sanctions might encourage the target to endure the short-term damage and attempt to prevent the renewal of sanctions after the end of the time limit without having complied with the demands of the Security Council. The sanctions target may be tempted by the time limit to win over members of the Security Council not to renew sanctions and thereby weaken the initially present support for sanctions. The inclusion of time limits thus offers the sanctions target an opportunity to undermine the sanctions policy of the Security Council by playing for time, thereby endangering the effectiveness of sanctions. This drawback of time limits, which lead to a discontinuation of sanctions regardless of the behaviour of the sanctioned party, cannot be ignored.

However, in the absence of time limits, members of the Security Council might not be willing to vote for the initial imposition of sanctions at all. Members of the Security

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sanctions will be lifted without compliance or will simply expire. . . . We should target sanctions to protect civilian populations, but not to give rogues and criminals time off for bad behaviour when sanctions run out. By placing time limits on Sierra Leone's sanctions we are undermining the effectiveness of this important resolution and damaging the Council's ability to impose credible sanctions in the future. The only permissible criteria for ending sanctions must be compliance with Security Council resolutions.'

<sup>36</sup> UN Doc. S/PV.41 68, 8: 'The first problem concerned the initial duration and subsequent extension of the measures. Our debate on this matter reflected the general unease about the phenomenon of sanctions that last much longer than originally intended and then stay in place only because there is no effective majority in favour of their abolition. My delegation appreciates this unease and is strongly in favour of periodic review, but we continue to be opposed to time limits that lead to an automatic discontinuation of sanctions in the absence of a resolution leading to their extension.'

<sup>37</sup> This point has been highlighted by Galtung more than 30 years ago when he showed that the amount of economic damage inflicted on Southern Rhodesia did not necessarily translate into the same degree of success of the economic sanctions employed. See Galtung, 'On the Effects of International Economic Sanctions with Examples from the Case of Rhodesia', 19 *World Politics* (1967) 378, at 388.

<sup>38</sup> See for the various objectives of sanctions, United Nations, Strategic Planning Unit, Executive Office of the Secretary General, 'UN Sanctions: How effective? How Necessary?', Paper prepared for the 2nd Interlaken Seminar on Targeting UN Financial Sanctions, Switzerland, 29–31 March 1999.

Council might also be persuaded by a potential sanctions target to object to sanctions not only before the end of a time limit but also before the initial imposition of sanctions so that sanctions are never enacted in the first place. On the other hand, the lapse of a time limit and the automatic discontinuation of sanctions does not in itself create a presumption against the renewal of sanctions. The sanctioned party even risks a sharpening of sanctions by the Security Council in return for flagrant non-compliance and attempts to influence members of the Council.<sup>39</sup> Finally, the effectiveness of sanctions appears, judging by the recent experience with Security Council sanctions episodes, in particular in the Iraq case, to lessen rather than to increase with the passing of time. In the light of these considerations, the disadvantages attributed to time limits seem somewhat overstated. Ultimately, it is the Security Council itself that can, in cases of non-compliance by the target, tilt the balance in favour of the renewal of sanctions by following a coherent and convincing sanctions policy which would raise the political stakes for every member of the Council contemplating to vote against sanctions.

#### 4 Assessment and Outlook

Time limits are a fruit of the first sanctions decade in the 1990s, which began with high hopes for a revival of the collective security mechanism envisaged under Chapter VII of the UN Charter and ended with a rather mixed record of success. It was their adverse impacts on civilians, especially in Iraq, and the appearance of the arbitrary use of sanctions that prompted the international community, including at a rather late stage the members of the Security Council itself, to look into ways of reforming the sanctions practice by addressing the evident shortcomings. In this context, time limits are but one aspect of the overall reform of the sanctions policy of the Security Council.<sup>40</sup>

Against this background, time limits have already played an important role as a safety valve in ensuring the continuation of the sanctions practice of the Security

<sup>39</sup> The sanctions against the RUF in Sierra Leone and the Taliban in Afghanistan are two recent examples where the Security Council has strengthened sanctions in response to the intransigence of the sanctioned parties. See SC Res. 1306 (2000) and SC Res. 1333 (2000).

<sup>40</sup> The main issues in the debate on sanctions have been the targeting of sanctions (so-called smart sanctions), in particular financial sanctions, the scope and administration of humanitarian exemptions and the enforcement of sanctions. See for the mandate of the informal working group established by the Security Council the Note by the President of the Security Council, UN Doc. S/2000/319 (17 April 2000) and the debate in the Security Council on that occasion, UN Doc. S/PV.4128 (17 April 2000). There have also been a number of publications by various bodies on this subject, see for example L. Minear *et al.*, *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System*, Occasional Paper No. 31, Thomas J. Watson Jr. Institute for International Studies, Providence, Rhode Island (1998); Chairman's Report and Papers presented at the 2nd Interlaken Seminar on Targeting United Nations Financial Sanctions, Swiss Federal Office for Foreign Economic Affairs in Cooperation with the United Nations Secretariat (1999), available at <[www.smartsanctions.ch](http://www.smartsanctions.ch)>; Bonn International Center for Conversion, Final Expert Seminar, 'Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions' (3–5 December 2000), available at <[www.bicc.de](http://www.bicc.de)>; Reports of the International Development Committee, House of Commons, UK, Second Report, HC 67: 'The Future of Sanctions' (10 February 2000).

Council since 1999 when the opposition to the sanctions policy of the Council, more and more viewed as being primarily a tool for the United States of America to effect their foreign policy, reached its peak, throwing into question the future of this collective security mechanism. The laments of the United States of America and their objections to time limits are not completely unfounded, but on a political plane they have only themselves to blame for taking an overly uncompromising stance in their sanctions policy towards Iraq for too long, thereby undermining the support for sanctions in that particular case and for comprehensive, unlimited sanctions in general. This left those permanent members of the Security Council which viewed such a policy with growing scepticism little choice but to turn to the use of time limits as a means to safeguard their respective right of veto.

The general conclusion to be drawn at this juncture is that time limits are in all probability here to stay for the foreseeable future. This article is aimed at contributing to the sanctions debate by highlighting the implications of time limits, their use, advantages and drawbacks. In doing so, one major consequence of time limits has become apparent: the sanctions practice will in future be more flexible, possibly making it easier for the Security Council to impose than to maintain sanctions. Even though the potential disadvantage of time limits in opening avenues for the sanctioned party to undermine the effectiveness of sanctions is not to be ignored, time limits carry with them the promise of ensuring a sanctions practice of the Security Council that meets the approval of a majority of Member States, thereby considerably enhancing the currently weakened legitimacy of the Council's sanctions policy. The outlines of the future sanctions practice of the Security Council are still somewhat shadowy but certain clear structures can already be identified, the inclusion of time limits being a rather recent addition to this framework. They are but one part in the fascinating dynamics of the sanctions practice of the Security Council, which, if it overcomes its shortcomings, in particular in terms of its legitimacy, can turn sanctions into a truly effective means of maintaining and restoring collective security.