International law and governance of natural resources in conflict and post-conflict situations

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7 UN Security Council Sanctions Regimes

7.1 INTRODUCTORY REMARKS

Sanctions constitute one of the principal tools of the Security Council to address the links between natural resources and armed conflict. Pursuant to Article 25 of the UN Charter, UN member States are obliged to implement measures taken by the Security Council under Article 41 of the UN Charter. This makes sanctions *prima facie* a particularly effective tool to address instances in which natural resources finance, or even fuel armed conflicts.

Sanctions can involve a variety of measures, ranging from import and export embargoes and the freezing of assets, to travel bans and reducing diplomatic relations. While older sanctions regimes were mainly comprehensive, covering all sorts of measures, most of the modern sanctions regimes apply so-called "smart" sanctions. These consist of specific measures, taking account of the potential impact of sanctions on vulnerable groups.[9]

Smart sanctions comprise "targeted sanctions" designed to target specific persons or organizations, and "selective sanctions" which impose restrictions on the trade in specific products.[10] Obviously this implies that commodity sanctions exclusively against particular organizations are both selective *and* targeted. However, for the purposes of clarity, this chapter refers to commodity sanctions as selective sanctions, while reserving the term "targeted" for measures that involve designating particular individuals or organizations on a sanctions list.

The Security Council has imposed several sanctions regimes to address the contribution of natural resources to armed conflict, including both selective and targeted sanctions. Examples of selective sanctions imposed by the Security Council include diamond sanctions in the cases of Angola, Sierra Leone, Liberia and Côte d'Ivoire and timber sanctions in the cases of Cambodia and Liberia. Examples of targeted sanctions imposed in relation to natural resources include

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9 D. Cortright & G.A. Lopez (ed.), *Smart Sanctions: Targeting Economic Statecraft*, Lanham: Rowman & Littlefield (2002), p. 2.

10 For the distinction between 'targeted' and 'selective' sanctions, see, *e.g.*, D. Cortright & G.A. Lopez (ed.), *Smart Sanctions: Targeting Economic Statecraft*, Lanham: Rowman & Littlefield (2002), p. 172, defining selective sanctions as less-than-comprehensive measures involving restrictions on particular products or financial flows, while targeted sanctions are described as a subset of selective sanctions, specifically aiming for more narrow and precise effects, usually directed at a particular segment of the population in the targeted State.

travel bans and asset freezes in the cases of the DR Congo and Libya. In addition, in the case of the DR Congo, the Security Council developed an innovative approach, consisting of the direct targeting of companies which do not respect due diligence requirements.

In the Presidential Statement of 25 June 2007, the President of the Security Council clarified the objectives of the sanctions regimes adopted by the Security Council in order to address the link between natural resources and armed conflict:

> "[t]he Security Council, through its resolutions, has taken measures on [the issue of natural resources contributing to armed conflict], more specifically to prevent illegal exploitation of natural resources, especially diamonds and timber, from fuelling armed conflicts and to encourage transparent and lawful management of natural resources, including the clarification of the responsibility of management of natural resources".[11]

This chapter aims to explore to what extent the Security Council resolutions have actually gone beyond merely sanctioning the illegal trafficking of natural resources and have addressed issues relating to the governance of natural resources. In particular, the question arises whether these resolutions have set standards for the management of natural resources. If so, is the Security Council the appropriate body to do so or is the Council exceeding its authority here?

In order to answer these questions, this chapter traces the evolution in the Security Council's approach to addressing the role of natural resources in financing armed conflicts. It analyses several sanctions regimes established by the Security Council to address specific conflicts financed by natural resources from the 1960s to the present. The chapter examines the overall structure and objectives of the sanctions regimes, as well as the targets and addressees of the sanctions obligations. In this way, it aims to clarify the Security Council's approach to tackling the trade in natural resources that finance armed conflict.

Section 2 defines the role of sanctions in the particular context of resource-related armed conflicts. Section 3 then takes a closer look at two older sanctions regimes which paved the way for the new generation of smart sanctions. These are the 232 Southern Rhodesia Sanctions Regime and the 661 Iraq Sanctions Regime. Section 4 examines selective commodity sanctions imposed by the Security Council in relation to resource-related armed conflicts. These are the 792 Cambodia Sanctions Regime, the 864 UNITA Sanctions Regime, the 1132 Sierra Leone Sanctions Regime, the 1343 and 1521 Liberia Sanctions Regimes, and the 1572 Côte d'Ivoire Sanctions Regime. Section 5 takes a closer look at

11 Statement by the President of the Security Council of 25 June 2007, *UN Doc. S/PRST/2007/22*, para. 6.

the Security Council's use of targeted sanctions in order to put an end to resource driven conflicts. This section discusses the 1493 DR Congo Sanctions Regime and the 1970 Libya Sanctions Regime. Finally, section 6 discusses the evolution in the Security Council's approach to sanctions in the context of resource-related armed conflicts. It also examines the implications of the approach developed by the Security Council for its contribution to promoting sustainable resource governance in specific conflict situations.

7.2 General remarks concerning sanctions

Georges Abi-Saab provided a generally accepted definition of sanctions as "coercive measures taken against a target State or entity in application of a decision by a socially competent organ".[12] Most of the elements of this definition accurately reflect the sanctions regimes discussed in this chapter, which target States, individuals or non-state entities, such as non-state armed groups and corporations. They are imposed by the Security Council, on the basis of the role assigned it by Article 24 of the UN Charter. In addition, most of the sanctions regimes examined in this chapter are imposed pursuant to decisions of the Security Council taken under Chapter VII of the UN Charter.

On the basis of Chapter VII of the UN Charter, the Security Council may adopt measures pursuant to Article 41 of the UN Charter once it has determined the existence of a threat to the peace, a breach of the peace or an act of aggression under Article 39 of the UN Charter. Furthermore, it may do so only in order to "maintain or restore international peace and security". These requirements have two important implications for the Security Council's ability to act.

First of all, Article 39 defines the purposes and legal basis for Security Council action. As Hans Kelsen had noted already in 1950: "[t]he purpose of the enforcement action under Article 39 is not: to maintain or restore the law, but to maintain, or restore peace, which is not necessarily identical with the law".[13] In other words, the authority of the Security Council to take measures under Chapter VII of the UN Charter is not dependent on determining that

12 G. Abi-Saab, 'The Concept of Sanction in International Law', in V. Gowland-Debbas (ed.), *United Nations Sanctions and International Law*, The Hague/London/Boston: Kluwer Law International (2001), p. 39.

13 H. Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems*, London: Stevens and Sons (1950), p. 294. Also see J. Crawford, 'The Relationship Between Sanctions and Countermeasures', in V. Gowland-Debbas (ed.), *United Nations Sanctions and International Law*, Graduate Institute of International Studies Geneva, The Hague/London/Boston: Kluwer Law International (2001), pp. 58-59; and L.J. van den Herik, 'Individualizing Enforcement in International Law: Progress or Peril?' inaugural lecture Leiden University, 29 June 2012.

there has been a violation of international law, but rather that a particular situation constitutes a threat to international peace and security.

This means that the Security Council can address situations that are perfectly legal – such as the exploitation of natural resources by a State and to use the proceeds to finance an armed conflict – but which pose a threat to international peace and security anyway. For the purposes of the present study, this means that the Security Council may qualify the right of a State to exercise permanent sovereignty over its natural resources if necessary to maintain or restore international peace and security. An internal uprising against the government of a State is another relevant example. International law does not formally oppose waging a civil war. However, such a situation may constitute a threat to peace and security, and the Council can act against that. For example, by imposing sanctions against natural resources used by the rebel forces to finance their armed struggle.

The second implication of Article 39 of the UN Charter regarding the Security Council's ability to act is that it limits the powers of the Security Council. Article 39 provides that the Security Council can only take measures pursuant to Articles 41 and 42 of the UN Charter "in order to maintain or restore international peace and security". For internal armed conflicts, this means that the Security Council can, in principle, impose sanctions only if these armed conflicts pose a threat to *international* peace and security. In practice, the Security Council has adopted a flexible approach in this respect. It has imposed sanctions to address threats arising from internal situations with a potential cross-border impact, as well as to address threats ensuing from purely 'internal' situations, such as the large-scale violation of human rights by governments.[14]

Furthermore, Security Council measures do not necessarily have to target States.[15] The behaviour of non-state entities, such as armed groups, can also trigger Security Council action. Many of the sanctions regimes discussed in this chapter target non-state armed groups. Examples include the sanctions regime imposed against the National Union for the Total Independence of

14 This is linked to the doctrine of the responsibility to protect, as recognized in paragraphs 138 and 139 of the 2005 World Summit Outcome Document, which formulates a responsibility for States to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity as well as a responsibility for the international community to intervene when a State does not respect his responsibilities. See World Summit Outcome Document, *UN Doc. A/60/L.1* of 15 September 2005.

15 See A. Pellet & A. Miron, 'Sanctions', in *Max Planck Encyclopedia of Public International Law*, para. 22, available through www.mpepil.com, (consulted on 3 May 2012) who argue that "the elasticity of the notion of a threat to, or breach of, the peace was accompanied by an enlargement of the category of targeted entities; as a consequence, it is no longer necessary that a violation of international law amounting to a threat to the peace be attributable to a State in order to justify the imposition of sanctions. Individuals or groups can violate international law and be subject to sanctions".

Angola (UNITA) in Angola and against the Revolutionary United Front (RUF) and other rebel groups in Sierra Leone.

This targeting of entities other than States also has implications for the definition of sanctions itself. It highlights an important problem inherent in Abi-Saab's definition, at least for the purposes of the current study. This problem arises from the interpretation of the term "coercive". According to Abi-Saab, "coercive" implies that measures are "taken against the will of the target State at least without its consent" and "to the detriment of the target State".[16] However, this view of sanctions, based on the idea that sanctions are measures that intend to cause harm to a particular State, does not correspond very well with the *rationale* behind many of the sanctions regimes discussed in the present chapter.

Many of the sanctions regimes discussed in this chapter are in fact imposed to assist governments in regaining control over the State's natural resources. Examples include the diamond sanctions imposed against UNITA in Angola and against the RUF and other rebel groups in Sierra Leone. In some cases, sanctions have even been imposed at the request of the government of a target State. The diamond sanctions imposed in relation to the conflicts in Angola, Sierra Leone and Côte d'Ivoire are examples of this.[17] Another example concerns the endorsement by the Security Council of a national ban on timber in Cambodia, imposed to cut off the Khmer Rouge from timber revenues.

Instead of defining sanctions as "coercive measures" like Abi-Saab, sanctions can therefore be regarded in a less intrusive way in this context as economic or diplomatic measures aimed at constraining the actors against which they are imposed, whether these actors are States or non-state actors. More in general, the sanctions imposed by the Security Council in this context could be described as measures aimed at assisting a particular State to address a threat to the peace coming from within its borders.

Some final remarks can be made with regard to the operation of sanctions regimes, in particular with respect to the role of Expert Panels and Sanctions Committees. Most contemporary sanctions regimes discussed in this chapter make use of "smart sanctions" which are tailored to address a specific situation. To make an informed decision about the type of measures to impose, the Security Council has increasingly relied on Expert Panels to provide the information necessary to tailor its sanctions. These Expert Panels are established on the basis of Article 29 of the UN Charter, which permits the Security Council to establish subsidiary bodies to assist it in the performance of its functions.[18]

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16 *Ibid*.

17 These examples are discussed in more detail in section 4 below.

18 For an overview of committees established pursuant to this provision, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 146-181.

Panel reports have extensively documented the role played by natural resources in the conflicts discussed in this chapter. In addition, their findings on sanctions busting in particular conflicts, such as those in Angola, Sierra Leone and the DR Congo, have been instrumental in the Security Council's embracing new approaches to tackle the trade in "conflict resources". These include the Kimberley Process for the Certification of Rough Diamonds and the due diligence requirements formulated by the Group of Experts on the DR Congo, discussed later in this chapter.

In addition to Panels of Experts, the Security Council has established Sanctions Committees, mandated with the monitoring and implementation of sanctions regimes. The composition of the Sanctions Committees is similar to that of the Security Council itself. These committees play an important role in the application of sanctions. They are often entrusted with the task of designating persons or entities to apply targeted sanctions. Furthermore, they provide the Security Council with information on the implementation of the sanctions regime by States. Their regular reports to the Security Council, supplemented with the reports of the Panels of Experts, are vital to the proper functioning of sanctions regimes.

7.3 Early examples of resource-related sanctions regimes

The current section discusses two early sanctions regimes imposed by the Security Council which rely principally on comprehensive sanctions, and which involve natural resources.[19] In the case of Southern Rhodesia, selective sanctions against natural resources were imposed as a first measure, before making the sanctions regime comprehensive. In the case of Iraq, the sanctions regime provided for a conditional exemption from the comprehensive regime for the export of limited quantities of oil.

7.3.1 The 232 Southern Rhodesia Sanctions Regime

Structure and objectives of the sanctions regime

The sanctions regime issued against Southern Rhodesia in 1966 was the first ever imposed by the Security Council.[20] Its aim was to put an end to the white

19 The link with natural resources is what distinguishes these sanctions regimes from other regimes with contain import prohibitions, such as the sanctions regime imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro) through UN Security Council Resolution 757 (1992).

20 For more details regarding this sanctions regime, see P.J. Kuyper, *The Implementation of International Sanctions: The Netherlands and Rhodesia*, Alphen aan den Rijn: Sijthoff & Noordhoff (1978) and J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 247-253.

minority regime established in Southern Rhodesia in 1965 and to enable the population of Southern Rhodesia to exercise their right to self-determination. The first resolution adopted by the Security Council with regard to the situation in Southern Rhodesia called upon all States to break all economic relations with Southern Rhodesia, but the associated measures did not comprise any import prohibitions and were not taken pursuant to Chapter VII of the UN Charter.[21]

It was only a year later, with the adoption of Resolution 232 (1966), that the Security Council imposed mandatory sanctions based on Article 41 of the UN Charter against the illegal authorities in Southern Rhodesia. These sanctions included an import embargo for UN member States on a range of commodities, including several minerals, sugar, tobacco, meat and other animal products, targeting not only the direct import of these commodities, but also all activities undertaken by UN member States within their territory or by their nationals that would promote the export of the banned commodities from Southern Rhodesia.[22] The import embargo was accompanied by export embargos for UN member States with regard to the supply of oil or oil products, arms and military and transport material to Southern Rhodesia.[23]

Resolution 253 (1968) subsequently transformed the selective regime set up by Resolution 232 into a comprehensive regime, extending sanctions to all products and commodities originating from or destined to Southern Rhodesia, with the exception of some products that were very important for the local population,[24] such as medical supplies, educational materials and, under certain conditions, foodstuffs.[25]

The same resolution established a committee to monitor the implementation of the sanctions regime, also known as the "Watchdog Committee".[26] The mandate of this committee, which was to examine reports and seek information from States and specialised agencies regarding the implementation of Resolution 253 (1968), was rather modest compared to modern sanctions com-

21 See UN Security Council Resolution 217 (1965), especially paragraph 8 and J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), p. 248, who labels these sanctions as voluntary in nature. Earlier, the UN General Assembly had already called upon all States to refrain from rendering assistance to the white minority regime and had, subsequently, condemned the unilateral declaration of independence made by the racialist minority regime. See UN General Assembly Resolutions 2022 (XX) of 5 November 1965 and 2024 (XX) on the Question of Southern Rhodesia of 11 November 1965.

22 See UN Security Council Resolution 232 (1966), especially paragraph 2 (a) and (b).

23 *Ibid*., especially paragraph 2 (d), (e) and (f).

24 See UN Security Council Resolution 253 (1968), especially paragraph 3.

25 *Ibid*., especially paragraph 3 (d).

26 *Ibid*., especially paragraph 20. See on this committee, P.J. Kuyper, 'The Limits of Supervision: the Security Council Watchdog Committee on Rhodesian Sanctions', *Netherlands International Law Review,* Vol. 25 (1978), pp. 159-194.

mittees.[27] Nevertheless, the establishment of the Committee provided the Security Council with the opportunity to experiment with the implementation of sanctions by subsidiary bodies.

In subsequent years the Security Council adopted several resolutions building on the sanctions regime established in Resolutions 232 and 253. Unfortunately the sanctions were not particularly effective. Many countries, including Portugal and South Africa, continued to trade with the illegal white minority regime.[28] In 1979, the sanctions were finally lifted after a political solution to the situation had been reached and when Zimbabwe emerged as a newly independent State.[29]

Targets and addressees of the sanctions obligations

The sanctions regime against Southern Rhodesia targeted in particular the *de facto* government in that country, i.e., the illegitimate white minority regime. It was aimed at strengthening the efforts of the United Kingdom to end the illegal situation in its former colony in order to realise the right of the black majority in the country to self-determination pursuant to the UN Charter and the UN General Assembly's Decolonisation Declaration. In this way, the sanctions regime indirectly provided support not only to the United Kingdom, but also to armed groups within the country opposing the political authorities.

The obligation to implement the sanctions was imposed on all States. In the first place, it was imposed on UN member States by Article 25 of the UN Charter. However, the resolutions also urged non-UN member States to implement the measures with a general appeal to the principles stated in Article 2 of the UN Charter.[30]

Appraisal of the sanctions regime

The sanctions regime imposed against Southern Rhodesia was the first time the Security Council adopted sanctions in order to apply economic pressure on an entity as a response to a threat to the peace. It did so in the first instance by imposing selective commodity sanctions. In this respect, it can be seen as a predecessor of later sanctions regimes, targeting particular commodities in order to restore international peace and security.

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27 *Ibid*.; and E. de Wet, A. Nollkaemper and P. Dijkstra (eds.), *Review of The Security Council by Member States*, Utrecht: Intersentia (2003), pp. 50-51.

28 See N.J. Schrijver, 'The Use of Economic Sanctions by the UN Security Council: An International Law Perspective', in Post, H.G.H. (ed.), *International Economic Law and Armed Conflict*, The Hague: Martinus Nijhoff Publishers (1994), p. 130.

29 See UN Security Council Resolution 460 (1979).

30 See UN Security Council Resolution 232 (1966), especially paragraph 7 and Resolution 253 (1968), especially paragraph 14. It must be remembered that Article 2(6) of the UN Charter states that the United Nations "shall ensure that states which are not Members of the United Nations act in accordance with [the] Principles [set out in Article 2 of the UN Charter] so far as may be necessary for the maintenance of international peace and security".

However, there are also important differences with later sanctions regimes. While the sanctions regime started with the imposition of selective sanctions, it soon became comprehensive. Furthermore, even the selective sanctions imposed by the Security Council in relation to Southern Rhodesia were rather blunt compared to later sanctions regimes. The Security Council simply targeted all primary export products from the Southern Rhodesian State, without examining their precise contribution to keeping the illegal minority regime in power.

Therefore the aim of the sanctions was simply to put pressure on the Rhodesian authorities by targeting all their sources of income. It did not take into account the impact of the commodity sanctions on the civilian population. The humanitarian exemptions introduced by the Security Council were not related to the commodity sanctions, as these were introduced only after the sanctions regime had become comprehensive.[31]

The sanctions regime imposed against Southern Rhodesia can therefore be considered as the first experiment of the Security Council with the instrument of economic sanctions. Arguably, the poor compliance of States with observing the sanctions constituted an important lesson for the Security Council. It laid the foundations for a more active role of the Security Council in the enforcement of sanctions applied subsequently in the sanctions regime imposed against Iraq in 1990.

7.3.2 The 661 Iraq Sanctions Regime

Structure and objectives of the sanctions regime

The sanctions regime against Iraq was imposed in 1990 after Iraq's unlawful invasion and occupation of neighbouring Kuwait.[32] Its original purpose was to put pressure on Iraq to withdraw from Kuwait and to restore Kuwait's sovereignty, independence and territorial integrity.[33] The measures imposed by the Security Council included a comprehensive import and export embargo, as well as an assets freeze.[34] Humanitarian exemptions were provided for medicines and health supplies, as well as essential foodstuffs strictly meant

31 See UN Security Council Resolution 253 (1968), especially paragraph 3(d).

32 For more details regarding this sanctions regime, see K. M. Manusama, *The United Nations Security Council in the post-cold war era : applying the principle of legality*, Leiden: Nijhoff (2006), pp. 138-149; J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), p. 261-281 and D. Cortright, G.A. Lopez and L. Gerber-Stellingwerf, 'Sanctions', in T.G. Weiss & S. Daws, *The Oxford Handbook on the United Nations*, Oxford,: Oxford University Press (2007), pp. 350-352. See also the report of the Dutch Commission of Inquiry upon Iraq, *Rapport Commissie van onderzoek besluitvorming Irak* (Commissie Davids), Amsterdam: Boom Publishers, p. 229-236.

33 See UN Security Council Resolution 661 (1990), second paragraph of the preamble.

34 *Ibid*., especially paragraph 3.

for the civilian population.[35] A Sanctions Committee was established to monitor the implementation of the sanctions.[36]

After Operation Desert Storm, the sanctions regime against Iraq was maintained but its purposes were modified to accommodate the new situation. The new objectives included the disarmament of Iraq and the creation of a fund to pay reparation for damage inflicted by Iraq during the Gulf War.[37] In addition, the exemptions from the export embargo were broadened to cover all foodstuffs submitted to a special committee under a "no objections procedure".[38] Furthermore, Resolution 687 (1991) provided specifically for the possibility of lifting the import embargo when Iraq fully complied with the requirements set out in the resolution.[39]

A further relaxation of the sanctions regime was realised with the adoption of the so-called Oil-for-Food programme, which allowed Iraq to export controlled quantities of oil in order to provide the population with the basic means of subsistence.[40] States wishing to import oil from Iraq were to ask the 661 Sanctions Committee to approve each individual purchase,[41] and payment was to be made to an escrow account established by the Secretary-General exclusively to meet the purposes of Resolution 986 (1995).[42]

The responsibility for the distribution of humanitarian goods to the civilian population was left with the government of Iraq, provided that Iraq effectively guaranteed an equitable distribution of goods to every sector of the Iraqi population throughout the country.[43] However, an exception was made for three provinces in northern Iraq, where the UN would resume responsibility for the distribution of humanitarian goods.[44]

The Oil-for-Food programme was revised once more in Resolution 1409 (2002), which introduced a Goods Review List. The new scheme allowed all

35 *Ibid.*, especially paragraph 3 (c).
36 *Ibid.*, especially paragraph 6.
37 See UN Security Council Resolution 686 and 687 (1991). Reference is made in particular to Iraq's liability for environmental damage and the depletion of natural resources as a result of the setting on fire of Kuwaiti oil wells by Iraq during the conflict. See UN Security Council Resolution 687 (1991), especially paragraph 16.
38 See UN Security Council Resolution 687 (1991), especially paragraph 20. The committee is further referred to as "the 661 sanctions committee".
39 These requirements include the destruction, removal or rendering harmless of chemical and biological weapons as well as a prohibition to acquire or develop nuclear weapons. See UN Security Council Resolution 687 (1991), especially paragraphs 7-14 and 22.
40 This was a concession to the government of Iraq, which had not accepted the original proposal for an Oil-for-Food-Programme as envisaged by the Security Council. The original proposal, set out in UN Security Council Resolutions 706 (1991) and 712 (1991), granted full control over the sale of Iraqi oil to the United Nations.
41 See UN Security Council Resolution 986 (1995), especially paragraph 1(a).
42 *Ibid.*, especially paragraphs 1 (b), 7 and 8.
43 *Ibid.*, preamble and especially paragraph 8 (a) (ii).
44 *Ibid.*, especially paragraph 8 (b).

goods to be exported to Iraq, except those listed in the Goods Review List.[45] The programme and the sanctions regime ended shortly after the fall of the Hussein regime in 2003.[46]

Targets and addressees of the sanctions obligations

The sanctions regime against Iraq targeted the government of Iraq. Although it originally also comprised products from Kuwait, it was adjusted as soon as Kuwait was liberated from Iraqi occupation in early 1991. Furthermore, like the regime against Southern Rhodesia, all States, including non-member States of the United Nations, were requested to implement the regime.[47]

However, the most notable feature of the sanctions regime was the role of international organizations in the implementation of the sanctions. Even at an early stage, international organizations were expressly called upon to implement the arms embargo.[48] The role of United Nations organs – in particular of the Sanctions Committee and the Secretary-General – is the most significant with regard to implementing the commodity-related sanctions. The responsibilities of the Sanctions Committee established pursuant to Resolution 661 (1990) to monitor the implementation of the sanctions included monitoring the export of oil from Iraq.[49] The Secretary-General was also requested to open an escrow account for the administration of the oil revenues and to appoint independent and certified public accountants to audit the account.[50]

The account was to be used by the United Nations for several purposes, inter alia, for the provision of humanitarian relief to the Iraqi population, and to ensure reparation for the damage caused by Iraq to Kuwait during the first Gulf War. In this respect it is interesting to note that in addition to damage caused to Kuwaiti assets, Iraq was also held liable for the depletion of natural resources and environmental damage resulting from its unlawful invasion and occupation of Kuwait. For this reason, a special compensation fund was established, supervised by the United Nations Compensation Commission.[51]

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45 See UN Security Council Resolutions 1409 (2002) and 1382 (2001). For the Goods Review List, see *UN Doc. S/2002/515*.

46 See UN Security Council Resolution 1483 (2003), especially paragraphs 10 and 16.

47 See UN Security Council Resolution 661 (1990), para. 5.

48 See *e.g.* UN Security Council Resolution 687 (1991), especially paragraph 25.

49 See UN Security Council Resolutions 986 (1995), especially paragraph 6.

50 *Ibid.*, especially paragraph 7. For more details on the administration of the escrow account, see Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council Resolution 986 (1995), *UN Doc. S/1996/356* of 20 May 1996.

51 For more details, see O. Elias, 'Sustainable Development, War Reparations and Environmental Damage', in M. Fitzmaurice and M. Szuniewicz, *Exploitation of Natural Resources in the 21st Century*, The Hague: Kluwer Law International (2003), pp. 67-90 and N.J. Schrijver, *Development without Destruction: The UN and Global Resource Management*, United Nations Intellectual History Project Series, Bloomington and Indianapolis, Indiana University Press (2010), pp. 179-180.

Appraisal of the sanctions regime

The sanctions regime in Iraq is an example of a comprehensive sanctions regime. However, as in the case of Southern Rhodesia, specific exemptions to the sanctions regime were provided for humanitarian purposes. Interestingly, these exemptions related to the export of oil, a conflict-sustaining commodity. This was done through the Oil-for-Food programme, which was aimed at mitigating the negative effects of the sanctions on the Iraqi population and ensuring that the Iraqi population had the basic means of subsistence at its disposal.

One interesting aspect of the sanctions regime against Iraq as it evolved is that it upheld the sovereignty and territorial integrity of Iraq, as well as the principle of permanent sovereignty over natural resources.[52] The Oil-for-Food programme permitted the Iraqi government to export small quantities of oil in order to provide the Iraqi population with the basic means of subsistence. This was not a deliberate choice, but one dictated by political reality. Saddam Hussein refused to accept the scheme unless he retained a minimum of control over the oil resources.

Another interesting aspect of the sanctions regime against Iraq is that it was the first to envisage an active role for the United Nations in the management of natural resources as part of conflict resolution. Although watered down to accommodate the wishes of Saddam Hussein, the sanctions regime still assigned a significant role to the UN. The UN assumed full responsibility for the administration of the revenues obtained from the export of oil from Iraq. A special fund was created for this purpose, which was maintained even after the sanctions regime was lifted as a result of the removal of the Saddam Hussein regime. It was then renamed "Development Fund for Iraq" and its administration was placed in the hands of the Central Bank of Iraq, monitored by representatives of the UN, the IMF, the Arab Fund for Social and Economic Development and the World Bank.[53]

Arguably, the sanctions regime proved to be instrumental in removing the threat posed by Iraqi weapons of mass destruction.[54] The best proof of this was delivered in 2003 after the US-led invasion of Iraq. Despite the suspicions that Iraq had a vast arsenal of weapons, no such weapons were actually found. However, it remains unclear in what way the sanctions contributed to this result. Were the sanctions successful because they curtailed Saddam Hussein's ability to stockpile weapons of mass destruction or were they successful in compelling Iraq to comply with the conditions set out in Resolution

52 See, *e.g.*, UN Security Council Resolutions 986 (1995), fifth preambular paragraph, which makes a general reference to the sovereignty and territorial integrity of Iraq.

53 See UN Security Council Resolution 1483 (2003), especially paragraph 12.

54 See G. Cortright; G.A. Lopez & L. Gerber-Stellingwerf, 'Sanctions', in T.G. Weiss & S. Daws, *The Oxford Handbook on the United Nations*, Oxford: Oxford University Press (2007), p. 351. For a different view, see the Report of the Dutch Committee of Inquiry on Iraq (Commissie Davids). This report signals the problem of sanctions busting by States.

687 (1991) for the removal of the sanctions, which included the destruction of the existing arsenal of weapons of mass destruction?

The administration of the Oil-for-Food programme by the UN proved problematic. An Independent Inquiry Committee, established to assess the performance of the UN in this respect, issued a very critical report in 2005 regarding the UN's management of Iraqi oil. The Inquiry Committee found gross irregularities in the administration of the oil proceeds. In addition, it concluded that the operational structure of the programme had several deficiencies, including a lack of clarity about the distribution of responsibilities for the implementation of the programme.[55] Other reports highlighted the manipulation of the Oil-for-Food programme by Saddam Hussein and the impact of the programme on the Iraqi population. All in all, the reports did not paint a rosy picture of the Oil-for-Food programme.[56]

Despite its many deficiencies, the Oil-for-Food programme served as an example for subsequent sanctions regimes. It was a precedent for the more active involvement of the United Nations, and especially of the Security Council, in the management of natural resources in the context of conflict resolution.

7.3.3 Comparing the sanctions regimes

The sanctions regime against Iraq, like the regime against Southern Rhodesia, targeted the behaviour of a State rather than non-state actors. However, the objective of the sanctions regime against Iraq differed significantly from that of the sanctions regime imposed against Southern Rhodesia. While the latter was aimed at resolving an essentially internal situation, *i.e.*, to bring the rebellion in Southern Rhodesia to an end,[57] the former was aimed first and foremost at reducing the threat of Iraq for other States.[58]

Another major difference concerns the operation of the sanctions regimes, in particular with respect to the role of commodities. In the case of Southern Rhodesia, the sanctions regime originally targeted selective commodities that supported the Rhodesian economy, but the measures themselves were all

55 See Independent Inquiry Committee into the United Nations Oil-for-Food Programme, The Management of the United Nations Oil-for-Food Programme, Report of the Committee, Vol. I (2005), in particular, pp. 60-62.

56 All reports are available through http://www.iic-offp.org/documents.htm (last consulted on 17 December 2012).

57 See UN Security Council Resolution 232 (1966), second paragraph of the preamble.

58 See UN Security Council Resolution 661 (1990), second paragraph of the preamble and Resolution 687 (1991), paragraph 24 of the preamble. However, it must be noted that Resolution 687 also mentions Iraq's threat to use chemical weapons amongst the reasons for imposing sanctions. This must be read against the background of Saddam Hussein's earlier attacks against the Kurdish population in the North.

inclusive. No exemptions were provided for humanitarian purposes. It was only after the regime became comprehensive that exemptions were provided, but these exemptions concerned the import into Rhodesia of humanitarian goods – including educational materials – and were unrelated to the targeted commodities. In contrast, the sanctions regime was comprehensive from the beginning in Iraq, but it did provide specific exemptions for humanitarian purposes for the export of oil, a conflict-sustaining commodity.

In other words, the sanctions regime in Iraq established a direct link between the sanctions themselves and exemptions to the regime. As shown in this chapter, this direct link between sanctions and exemptions became a characteristic of the approach developed by the Security Council in subsequent sanctions regimes. However, the sanctions regime imposed against Iraq also taught the Security Council some important lessons. The comprehensive regime might have been effective, but it also led to a humanitarian crisis in Iraq. For these reasons, the Security Council further refined its methods as part of its policy of "smart sanctions".[59]

7.4 SELECTIVE COMMODITY SANCTIONS

This section discusses sanctions regimes that have been imposed for specific natural resources which were believed to contribute directly to sustaining armed conflicts. Some of the decisions to impose sanctions against particular commodities were based on reports by investigative bodies, such as Panels of Experts and Monitoring Mechanisms established by the Security Council. However, public concern raised by campaigns by NGOs such as Global Witness and Partnership Africa Canada has also played a significant role in convincing the Security Council to take action in particular cases, notably in Angola and Sierra Leone. Finally, it is striking that in most situations, the Council's action was triggered by the national State itself requesting the Security Council to take measures targeting particular commodities.

59 Mention must be made in this respect to the Interlaken, Bonn and Stockholm processes which delivered the necessary input for the Security Council's policy reforms. On these processes, see the Watson's Institute background paper on targeted sanctions, available through <http://www.watsoninstitute.org/pub/Background_Paper_Targeted_Sanctions.pdf> (last consulted on 22 March 2013) as well as the white paper prepared by this same institute, entitled 'Strengthening Targeted Sanctions Through Fair and Clear Procedures', 30 March 2006, available through <http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf> (last consulted on 22 March 2013).

7.4.1 The 792 Cambodia Sanctions Regime

Structure and objectives of the sanctions regime

The sanctions regime imposed in relation to the conflict in Cambodia differs significantly from all other sanctions regimes discussed in this chapter. The most important difference is to be found in its legal basis. The sanctions regime imposed in relation to the conflict in Cambodia was not imposed by the Security Council itself. Rather, the Security Council expressed support for sanctions imposed by the national authorities of Cambodia. This explains also why the Security Council did not invoke Chapter VII of the UN Charter, which provides the legal basis for imposing sanctions.[60] Furthermore, the Security Council refrains from using hortatory language in relation to the measures regarding natural resources, which suggests that these measures are not legally binding on States. These choices are explained by the political background of the conflict.

The internal armed conflict in Cambodia started in the late 1960s. In 1975, the Khmer Rouge took over control and renamed the country "Democratic Kampuchea". The Khmer Rouge established a regime of terror and committed many international crimes.[61] In response to the brutalities committed by the Khmer Rouge regime against the Cambodian population, Vietnamese troops invaded the country in 1978 to assist Cambodian opposition forces to remove the brutal Khmer Rouge regime from power. In 1979, the opposition forces installed a new government and renamed the country "People's Republic of Kampuchea", while the ousted Khmer Rouge regime – together with two other resistance groups – formed the Coalition Government of Democratic Kampuchea.[62]

Vietnam's intervention in Cambodia created a difficult situation for the UN and the General Assembly was deeply divided on the issue. It finally adopted a resolution greatly regretting the Vietnamese armed intervention

60 It must be noted that the Security Council can only impose sanctions pursuant to Article 41 of the UN Charter, which is part of Chapter VII of the UN Charter. Obviously, the Security Council need not expressly invoke Chapter VII when it imposes sanctions. Moreover, the Security Council can also take binding decisions other than sanctions, either pursuant to Chapter VI or to Chapter VII of the UN Charter. As explained in Chapter 1, section 1.6.4, whether or not measures imposed by the Security Council are legally binding or not has to be determined through a careful analysis of the text of the resolution, its objectives and the context of its adoption.

61 These international crimes, including genocide and crimes against humanity, are currently being investigated by a hybrid criminal tribunal, set up by the UN and the Cambodian government. This tribunal is officially called the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

62 For more details on the situation in Cambodia, see M. Vickery, *Cambodia 1975-82*, Boston, South End Press (1984).

and called for the immediate withdrawal of all foreign forces from Cambodia.[63] However, this resolution was adopted with 91 in favour, while 50 States voted against or abstained.[64] Meanwhile, the UN Security Council was paralysed due to serious tensions between China and the Soviet Union, both supporting their respective allies.[65] China, supported by the West, submitted two draft resolutions addressing the situation in Cambodia, calling on all parties to cease combat and to withdraw all foreign forces from Cambodia. Neither was put to the vote.[66]

This deadlock lasted until the end of the Cold War in 1989, when the five permanent members of the Security Council, together with all the Cambodian factions and the Association of Southeast Asian Nations, participated in a peace conference in Paris in order to resolve the Cambodian conflict.[67] This was the first of several meetings aimed at reaching a political settlement. In an unprecedented move, the five permanent members of the Security Council issued a statement in 1990 introducing the framework for the Cambodian peace process.[68] The framework consisted of five key elements necessary for the restoration of peace in Cambodia. These included transitional arrangements for the administration of Cambodia during the pre-election period, military arrangements during the transitional period, the preparation of elections under the auspices of the United Nations, and special measures to assure the protection of human rights.[69]

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63 UN General Assembly Resolution 34/22 of 14 November 1979, paragraph 2 of the preamble and especially paragraph 7.

64 See E. Benvenisti, *The International Law of Occupation*, Oxford: Oxford University Press (2013), pp. 185-187. In addition, R. Falk, 'The Complexities of Humanitarian Intervention: A New World Order Challenge', *Michigan Journal of International Law,* Vol. 17 (1995-1996), pp. 504-505.

65 China supported the Coalition Government, while the Soviet Union supported the new government. Tensions ran extremely high when China invaded Vietnam on 17 February 1979 as a countermeasure to Vietnam's foreign politics, including its invasion of Cambodia. Chinese troops withdrew a month later. For more details on this conflict and on the difficult relationship between China and Vietnam during these years, see K.C. Chen, *China's War With Vietnam, 1979: Issues, Decisions, and Implications*, Stanford University, Hoover Institution Publication 357 (1987).

66 See *Repertoire of the Practice of the Security Council 1975-1980*, Chapter XI, p. 396.

67 See L. Keller, 'Cambodia Conflicts (Kampuchea)', *Max Planck Encyclopedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press (2012), para. 12.

68 Letter dated 30 August 1990 from the Permanent Representatives of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the Secretary-General, *UN Doc. A/45/472 and S/21689*, 31 August 1990. For more details on the Paris Agreements, see S.R. Ratner, 'The Cambodia Settlement Agreements', *American Journal of International Law,* Vol. 87, No. 1 (Jan., 1993), pp. 1-41.

69 For more details, see the Letter dated 30 August 1990 from the Permanent Representatives of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations

The framework document also outlined two important institutional arrangements. The first was the establishment of a Supreme National Council of Cambodia (SNC), consisting of all the Cambodian factions, as the legitimate representative of Cambodia.[70] The second was the proposal to increase the role of the United Nations in the peace process with the establishment of a United Nations Transitional Authority in Cambodia (UNTAC), comprising a military and civilian component.[71] After being accepted by the Cambodian factions, the Security Council adopted Resolution 668 (1990) in which it endorsed the framework and welcomed the commitment of the Cambodian parties to work together with the participants of the Paris conference to elaborate the framework for a comprehensive political settlement.[72] This led to the signing of the Paris Peace Agreements in 1991.

Despite the progress made in many fields, the peace process proved cumbersome. One of the major factions, the Khmer Rouge, withdrew from the peace process and continued fighting. It financed its activities by issuing timber concessions to Thai logging companies and by smuggling gems.[73] The Security Council repeatedly stressed the need for all the factions to comply with the peace agreements, but it did not take any further action.[74]

It was only after the SNC adopted a moratorium on the export of logs from Cambodia to put pressure on the Khmer Rouge that the Security Council took further action, although, as stated above, without invoking Chapter VII of the UN Charter. In Resolution 792 (1992), the Security Council expressed support for the moratorium. It also requested other States to respect the moratorium by not importing logs from Cambodia and requested UNTAC to take appropriate

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Addressed to the Secretary-General, *UN Doc. A/45/472 and S/21689*, 31 August 1990.

70 See the Letter dated 30 August 1990 from the Permanent Representatives of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the Secretary-General, *UN Doc. A/45/472 and S/21689*, 31 August 1990, Section 1 on transitional arrangements regarding the administration of Cambodia during the pre-election period.

71 See the Letter dated 30 August 1990 from the Permanent Representatives of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the Secretary-General, *UN Doc. A/45/472 and S/21689*, 31 August 1990, Section 2 on military arrangements during the transitional period. For more details on UNTAC's mandate and its role in the peace process, see, *e.g.,* S.R. Ratner, 'The Cambodia Settlement Agreements', *American Journal of International Law* Vol. 87, No. 1 (Jan., 1993), pp. 1-41; C. Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond*, Cambridge Studies in International and Comparative Law, Cambridge [etc.]: Cambridge University Press (2008), pp. 269-279; and J. Dobbins et al, *The UN's Role in Nation-Building : From the Congo to Iraq*, Santa Monica, California [etc.] : RAND Corporation (2005), pp. 69-91.

72 UN Security Council Resolution 668 (1990), especially paragraphs 1 and 3.

73 See P. Le Billon & S. Springer, 'Between War and Peace: Violence and Accommodation in the Cambodian Logging Sector', in W. de Jong, D. Donovan, and K. Abe (eds.), *Extreme Conflict and Tropical Forests*, New York: Springer (2007), p. 24.

74 See *e.g.* UN Security Council Resolution 766 (1992), especially paragraph 2; Resolution 783 (1992), paras. 5 and 6.

measures to ensure the implementation of the moratorium.[75] In addition, the Council requested the SNC to adopt a similar moratorium on the export of minerals and gems – another important source of income for the Khmer rouge rebels – "in order to protect Cambodia's natural resources".[76]

Despite the non-mandatory nature of these measures, a number of countries followed suit by imposing import embargos on logs from Cambodia. In addition, UNTAC took several measures to implement the moratorium, including the deployment of border control teams to monitor violations of the moratorium on the export of logs by land or sea and by raising the number of its checkpoints along the Cambodia-Thailand border.[77] Subsequently the SNC adopted a moratorium on minerals and gems, as requested by the Security Council.

The Security Council commended the decision of the SNC to adopt the moratorium on minerals and gems in its Resolution 810 (1993). It also commended the SNC on its decision to consider limits to the export of sawn timber from Cambodia in order to protect its natural resources.[78] Furthermore, it expressed support for steps taken by the Technical Advisory Committee on Management and Sustainable Exploitation of Natural Resources established by UNTAC to implement these measures.[79]

These were the last references made by the Security Council to natural resources. Subsequent resolutions relating to Cambodia focused on the elections that were organized. After the establishment of a democratically elected government in Cambodia, the Security Council ended the peacekeeping mission with Resolution 880 (1993).

Targets and addressees of the sanctions

The commodity measures clearly targeted the Khmer Rouge because of its failure to cooperate in the peace process. However, in practice the scope of the sanctions was broader. The measures did not distinguish between natural resources traded by the Khmer Rouge and natural resources traded by the government. Instead, the measures banned all round logs, minerals and gems originating from Cambodia. In this respect, they were rather blunt. In subsequent sanctions regimes, including those for Angola, Sierra Leone and Liberia, the Security Council refined its commodity measures in more detail.

The commodity measures were addressed to States. They were to respect the moratorium imposed by the SNC. In addition, the Security Council assigned

75 UN Security Council 792 (1992), especially paragraph 13.
76 *Ibid.*, especially paragraph 14.
77 *Yearbook of the United Nations* 1993, p. 363.
78 UN Security Council Resolution 810 (1993), especially paragraph 16 read in conjunction with the sixth paragraph of the preamble.
79 UN Security Council Resolution 810 (1993), especially paragraph 16. For more details on this Advisory Committee, see J. Dobbins et al., *The UN's Role in Nation-Building: From the Congo to Iraq*, Santa Monica, California [etc.]: RAND Corporation (2005), p. 87.

an important role to UNTAC, the peacekeeping mission operating in Cambodia, to take appropriate measures to secure the implementation of the moratorium.[80] This is the first time that a peacekeeping mission received an express mandate to assist in implementing measures related to natural resources.[81]

Appraisal of the sanctions regime

The Security Council resolutions related to the Cambodian conflict were remarkable in several respects. For the first time the Security Council focused directly on those commodities that were primarily associated with the funding of an armed conflict. Secondly, the resolutions related to Cambodia were the first to target a non-state armed group rather than a State.

Another remarkable aspect concerns the references in the Security Council's resolutions to the protection of Cambodia's natural resources as a reason for the measures.[82] This is the only occasion on which the Security Council has based the adoption of commodity measures on the need to protect natural resources for their intrinsic value.

Furthermore, none of the resolutions adopted by the Security Council to address the situation in Cambodia invoked Chapter VII of the UN Charter. This was not only the case for the resolutions containing commodity measures, but for all the resolutions adopted to further the Paris Peace Agreements. It seems that the legal basis for the measures of the Security Council in relation to Cambodia, which includes binding as well as non-binding measures, was Chapter VI of the UN Charter rather than Chapter VII. The Security Council was enacting its role as facilitator and adjudicator in the pacific settlement of disputes, rather than its role as guardian of collective security.

These facilitating and adjudicating roles characterised the approach of the Security Council throughout the resolution of the Cambodian conflict. During the entire peace process, the Security Council struck a careful balance between collective UN action in the form of a peace support mission and local ownership of the peace process through the establishment of the Supreme National Council of Cambodia. This is reflected in the mandate of UNTAC, which was based on the SNC delegating the UN "all powers necessary to ensure the implementation" of the peace agreement.[83] In other words, the mandate of UNTAC was not based on the exercise of mandatory powers under the UN Charter but on State consent.

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80 UN Security Council 792 (1992), especially paragraph 13.

81 For an excellent overview of peacekeeping missions with a mandate including natural resources, see UNEP, 'Greening the Blue Helmets Environment, Natural Resources and UN Peacekeeping Operations', Part II (2012).

82 UN Security Council 792 (1992), especially paragraph 14; UN Security Council Resolution 810 (1993), especially paragraph 16 read in conjunction with the sixth paragraph of the preamble.

83 Article 6 of the Paris Peace Agreement.

The commodity measures should also be considered in this context. Rather than imposing sanctions itself, the Security Council supported measures taken at the national level; the measures were not imposed from the "outside" but from the "inside". The reason for the Security Council to proceed in this way must be attributed to a large extent to ideological differences between the permanent members regarding the Cambodian conflict. These ideological differences prevented the Security Council from taking firmer action. China, for example, abstained from voting in favour of Resolution 792 (1992) because it feared that the commodity measures laid down in the resolution would destroy the already very fragile peace process by alienating the Khmer Rouge faction from it.[84] These considerations explained the Council's decision not to impose mandatory commodity sanctions in relation to Cambodia.

However, this decision could also explain why the logging embargo was not particularly effective. The non-mandatory nature of the commodity measures did not sufficiently convince neighbouring countries, particularly Thailand, to follow suit. It was until 1995 that Thailand finally closed its borders to logs originating from Cambodia. Once it did, the effects on the military capacity of the Khmer Rouge became immediately clear. The logging embargo considerably weakened them. However, it still took years before their resistance was finally broken down. Although the logging embargo did significantly reduce the Khmer Rouge's military capability, small groups remained active until the early 2000s.[85]

7.4.2 The 864 UNITA Sanctions Regime

The structure and objectives of the sanctions regime

The sanctions regime imposed in relation to the conflict in Angola was intended to put an end to the civil war between the Angolan government and the National Union for the Total Independence of Angola (UNITA) that had devastated the country since its independence in 1975.[86] During most of the conflict, the country had been trapped by the rivalry between the Cold War powers, with the United States financing UNITA and the Soviet Union backing the Angolan government. After the end of the Cold War, with revenues drying

84 Resolution 792 did not only express support for the moratorium on logs, but also contained a call on States to prevent the supply of petroleum products to Khmer Rouge occupied areas (para. 10). China feared that the adoption of such measures "would further increase differences and sharpen contradictions, and thus could lead to new, complicated problems". See *Yearbook of the United Nations* 1992, p. 259.

85 See P. Le Billon & S. Springer, 'Between War and Peace: Violence and Accommodation in the Cambodian Logging Sector', in W. de Jong, D. Donovan, and K. Abe (eds.), *Extreme Conflict and Tropical Forests*, New York, Springer (2007), pp. 17-36.

86 For more details regarding this sanctions regime, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 334-344.

up, the parties found new ways of financing their armed struggle in revenues generated from the extraction of natural resources such as oil and diamonds.[87]

Nevertheless, when the Security Council imposed a sanctions regime in 1993 to compel UNITA to cooperate with the implementation of the peace agreements concluded two years earlier with the Angolan government, the sanctions regime did not cover natural resources.[88] Furthermore, when the Security Council imposed additional measures on UNITA in 1997, it did not address the trade in natural resources to fund the armed conflict.[89]

It was not until 1998 that the Security Council decided, as part of a larger package of financial and representative sanctions, to directly target the trade in natural resources. In Resolution 1173 (1998), the Security Council decided to impose an embargo on "all diamonds that are not controlled through the Certificate of Origin regime of the [Angolan government]", as well as a prohibition against selling or supplying mining equipment to persons or entities in "areas of Angola to which State administration has not been extended".[90] The diamond embargo was the first of its kind in the history of the Security Council.

Following reports on States' violations of the sanctions on arms, petroleum and diamonds, particularly by African and Eastern European countries, the Security Council decided to establish a panel of experts, under the chairmanship of Robert Fowler, to look into the matter.[91] This panel of experts investigated the alleged violations of the sanctions regime in great detail, outlining the involvement of several African and European States in busting the arms and petroleum sanctions. In relation to diamonds, the Panel came to the damning conclusion that the "extremely lax controls and regulations governing the Antwerp market facilitate and perhaps even encourage illegal trading activity".[92]

The Panel also issued several recommendations, including some with regard to diamonds. It considered that possibilities should be explored to devise a

87 See K. Ballentine and J. Sherman (ed.), *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, (2003), Boulder: Lynne Rienner Publishers, pp. 23–24.

88 In Resolution 864 (1993), the Security Council decided under Chapter VII that all States were to prevent the sale or supply to UNITA of weapons and related materiel as well as of petroleum and petroleum products. See UN Security Council Resolution 864 (1993), especially paragraphs 16 and 19.

89 Resolution 1127 (1997) complemented the sanctions regime with travel and aviation sanctions and further provided for additional measures to be taken against UNITA if it failed to implement its obligations under the Lusaka Protocol and relevant Security Council Resolutions.

90 UN Security Council Resolution 1173 (1998), especially para. 12(b) and (c). The diamond embargo was brought in effect through UN Security Council Resolution 1176 (1998).

91 UN Security Council Resolution 1237 (1999), especially paragraph 6. This panel of experts was formally replaced by a monitoring mechanism consisting of a maximum of five experts. See UN Security Council Resolution 1295 (2000).

92 Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, 10 March 2000, *UN Doc. S/2000/203*, paragraph 87.

system of controls "that would allow for increased transparency and accountability in the control of diamonds from the source of origin to the bourses". In addition, the panel recommended that "the diamond industry develop and implement more effective arrangements to ensure that its members worldwide abide by the relevant sanctions against UNITA".[93]

The Fowler Report was an important trigger for further developments to curtail the trade in "conflict diamonds". First of all, the Report's policy of naming and shaming, viz. the explicit identification of particular States and companies as sanctions busters, was an important motivation for these States and companies to stop trading with UNITA, thus depriving UNITA of its funding.[94] Secondly, it inspired the creation of an international certificate system for rough diamonds, the Kimberley Process for the Certification of Rough Diamonds.[95]

In its Resolution 1295 (2000), the Security Council implicitly endorsed the recommendations of the Panel of Experts. It also emphasised that the implementation of the diamond embargo required "an effective Certificate of Origin regime" and welcomed steps towards devising a more comprehensive system of controls, "including arrangements that would allow for increased transparency and accountability in the control of diamonds from their point of origin to the bourses".[96] In this respect the Council explicitly referred to the first meeting that led to the adoption of the Kimberley Process Certification Scheme in 2002, which was scheduled to be held in May 2000 in Kimberley, South Africa.

In the same resolution the Security Council established a "Monitoring Mechanism" to replace the Panel of Experts. This body published a total of six reports, disclosing in great detail the structures for the mining of and trading in diamonds from UNITA-controlled regions.[97] One of the principal contributions of the reports is that they helped to provide an understanding of the methods used by UNITA to circumvent the Security Council sanctions regarding rough diamonds. Together with the report of the Panel of Experts, the reports of the Monitoring Mechanism contributed greatly to the design of more effective Certificate of Origin regimes.

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93 *Ibid*., paragraphs 113 and 114.

94 See I. Winkelmann, 'Angola', in R. Wolfrum (ed.), *Encyclopedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law, Oxford: Oxford University Press (2012), Vol. I, pp. 400-408, para. 26.

95 The Kimberley Process is discussed in more detail in the following chapter. It can be noted here that the Kimberley Process is a voluntary certification regime for rough diamonds, developed by States, civil society and the diamond business in order to address the issue of diamonds used by armed groups to fuel conflicts.

96 UN Security Council Resolution 1295 (2000), especially paragraphs 16-19. For the Kimberley Process Certification Scheme, see the following chapter.

97 For the reports of the Monitoring Mechanism, see Documents Relating to the Committee Established Pursuant to Resolution 864 (1993) Concerning the Situation in Angola.

The sanctions regime finally came to an end in December 2002, when UNITA started to cooperate with the implementation of the peace accords.[98] By then the national certificate of origin had been replaced by membership of Angola to the Kimberley Process Certification Scheme. The introduction of this scheme, backed by relevant Security Council resolutions, together with the Fowler's report policy of naming and shaming, can be regarded as important factors that contributed to weakening UNITA, leading to the solution of the conflict.

Targets and addressees of the sanctions obligations

The sanctions regime was adopted at the request of the Angolan government and consisted entirely of measures imposed against UNITA.[99] It was the first sanctions regime to directly target a non-state actor pursuant to Chapter VII of the UN Charter. The reason for imposing sanctions on UNITA was because it was failing to implement the peace accords concluded between UNITA and the Angolan government. After losing the democratic elections held following the peace accords which were concluded in 1991, UNITA continued to fight the government. A second peace agreement concluded in 1994, the Lusaka Protocol, did not change the situation in any way. The sanctions regime was intended to put pressure on UNITA to cooperate in reaching a political settlement to the conflict in Angola, *inter alia*, by curtailing its ability to pursue its objectives by military means.

The Security Council measures adopted in relation to diamonds addressed a variety of actors. Obviously States were the primary addressees responsible for the implementation of the sanctions and also the only entities that were addressed in mandatory terms. According to Resolution 1173 (1998), States were to take "the necessary measures" to prohibit the "direct or indirect import" of Angolan diamonds to their territory.[100]

In order to make the diamond embargo more effective, the Security Council, called upon States in Resolution 1295 (2000), "to cooperate with the diamond industry to develop and implement more effective arrangements" to ensure that members of the diamond industry worldwide abide by the embargo against UNITA. The Security Council also addressed the diamond industry, though mainly to invite the Belgian High Diamond Council to continue its efforts to work with the Sanctions Committee and States in order to "devise practical measures to limit access by UNITA to the legitimate diamond market".[101]

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98 See UN Security Council Resolution 1448 (2002).

99 *Repertoire of the Practice of the Security Council* (1993-1995), Chapter XI, 'Consideration of the provisions of Chapter VII of the Charter, Part III on Article 41, section B, Case 4', available through <http://www.un.org/en/sc/repertoire/>. See also *UN Doc. S/PV.3277* of 15 September 1993 for the speech of the Angolan government representative at the Security Council on the occasion of the adoption of Resolution 864 (1993).

100 UN Security Council Resolution 1173 (1998), especially paragraph 12(b).

101 UN Security Council Resolution 1295 (2000), especially paragraph 17.

Appraisal of the sanctions regime

The sanctions regime adopted in relation to Angola is special for several reasons. It is the first in a series of sanctions regimes addressing the trade in rough diamonds from conflict regions. It is also the first sanctions regime in which the Security Council experimented with commodity sanctions targeting specific entities, in the sense that the commodity sanctions targeted only the trade in diamonds by rebel groups and not by the Angolan authorities. Such a distinction was made possible by the use of a certificate of origin regime to provide exemptions to the sanctions. This is an innovation compared with the sanctions regime adopted in relation to Cambodia, which had also targeted one particular commodity, but the moratorium on round logs had extended to all logs originating from Cambodia, whether exported by the Khmer Rouge or by the Cambodian authorities.

Furthermore, the sanctions regime against UNITA can be seen as a catalyst for the Security Council's structural approaches to curbing the illicit flow in natural resources. The problem of diamond smuggling in contravention of the Angolan sanctions regime motivated the Security Council to look beyond its own powers and search for alternative solutions to address the problem. The Council's endorsement of the proposal to convene a meeting of experts in Kimberley, South Africa to devise "a system of controls […] including arrangements that would allow for increased transparency and accountability in the control of diamonds from their point of origin to the bourses" should be seen in this light.[102] This was a first – cautious – movement towards what later became the Kimberley Process for the Certification of Rough Diamonds.

The last point of interest is that the Council set explicit requirements for a system of controls for rough diamonds. In this respect, the Security Council mentioned the elements of effectiveness, transparency and accountability.[103] The Kimberley meeting in 2000 explicitly referred to these requirements.[104] Moreover, the Angolan sanctions regime set an example for all subsequent sanctions regimes relating to the trade in particular commodities, which all draw on these requirements of effectiveness, transparency and accountability. The following sections show that the Security Council has continued to develop and refine criteria for the management of natural resources from conflict regions.

102 *Ibid*., especially paragraph 18.

103 *Ibid*., especially paragraphs 16 and 18.

104 See Kimberley Process, Third Year Review, November 2006, p. 12, available through http//www.kimberleyprocess.com (last consulted on 20 December 2012).

7.4.3 The 1132 Sierra Leone Sanctions Regime

Structure and objectives of the sanctions regime

The 1132 sanctions regime imposed in relation to the conflict in Sierra Leone aimed to put pressure on the military junta which had taken over power there following a coup d'état in 1997, to restore the democratically elected government.[105] The military junta was composed of two rebel groups, the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). The AFRC was a rebel group of soldiers of the Sierra Leonean army, set up in 1997 by Johnny Paul Koroma to take over power in Sierra Leone. The RUF was a rebel group sponsored by the Liberian Charles Taylor, which had spread terror throughout Sierra Leone since its establishment in 1991.[106]

The sanctions regime imposed under Resolution 1132 (1997) consisted of a travel ban, an arms embargo and a prohibition against exporting petroleum and petroleum products to Sierra Leone.[107] It did not comprise sanctions related to the import of natural resources from Sierra Leone, despite ample indications that diamonds constituted an important source of income for the rebel groups united in the military junta.[108] It was not until after the military junta had been driven from power by UN peacekeeping forces and the democratically elected government had been reinstated that the Security Council resorted to diamond sanctions, consisting of an import embargo on rough diamonds from Sierra Leone for all States.[109]

The embargo was based on Chapter VII of the UN Charter and was to be supervised by the Sanctions Committee established pursuant to Resolution 1132 (1997).[110] In addition, the Security Council called for an exploratory hearing to assess the role of diamonds in the Sierra Leone conflict and the link between the trade in Sierra Leone diamonds and the trade in arms and related *materiél* in violation of resolution 1171 (1998).[111] The Council also created a Panel of Experts, *inter alia*, to collect information on the link between

105 See UN Security Council Resolution 1132 (1997), paragraph 7 of the preamble and especially paragraph 1.

106 On 18 May 2012, the Trial Chamber of the Special Court for Sierra Leone sentenced Charles Taylor to a prison term of 50 years for its involvement in the armed conflict in Sierra Leone.

107 See UN Security Council Resolution 1132 (1997), especially paragraphs 5 and 6.

108 It was an NGO report, issued in January 2000 by the Canadian NGO Partnership Africa Canada (PAC), entitled *The Heart of the Matter: Sierra Leone, Diamonds, and Human Security*, that spurred the debate on Sierra Leone. A report issued in December 2000 by the Panel of Experts established pursuant to Security Council Resolution 1306 (2000) confirms that, at least from 1995 on, diamonds have been a major source of funding for the RUF. The report also shows that the AFRC, during its short reign, benefitted from the exploitation of natural resources as well. See the Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), paragraph 19, in relation to Sierra Leone of 20 December 2000, *UN Doc. S/2000/1195*, paras. 65-111.

109 See UN Security Council Resolution 1306 (2000), especially paragraph 1.

110 *Ibid*., especially paragraph 7.

111 *Ibid*., especially paragraph 12.

the trade in diamonds and the trade in arms, and to report on strengthening the implementation of the sanctions with observations and recommendations.[112] The Panel issued a report later that year, revealing in great detail the ways in which diamonds funded the activities of the RUF.[113]

The sanctions regime comprised all rough diamonds originating in Sierra Leone, but it exempted from the measures those rough diamonds controlled by the government of Sierra Leone with a certificate of origin regime to be set up by the government in cooperation with other States and relevant organizations.[114] As in the case of Angola, the Security Council required that the regime should be "effective".[115]

The diamond embargo was renewed twice before it was lifted in 2003 "in the light of the Government of Sierra Leone's increased efforts to control and manage its diamond industry and ensure proper control over diamond mining areas, and the Government's full participation in the Kimberley Process".[116] The arms embargo and the travel ban were maintained until 2010, when the Security Council finally terminated the sanctions regime, after the government of Sierra Leone had fully re-established its control over the territory, and when all non-governmental forces had been disarmed and demobilized.

Targets and addressees of the sanctions obligations

The sanctions regime generally prohibited the import of all rough diamonds originating from Sierra Leone, with an exception for diamonds of which the origin could be properly established with a Certificate of Origin. As subsequent reports by both the Sanctions Committee and the Panel of Experts showed,[117] the primary targets of the sanctions regime were non-state armed groups fighting against the government of Sierra Leone, in particular the Revolutionary United Front (RUF).[118]

112 *Ibid.*, especially paragraph 19.

113 See the Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), paragraph 19, in relation to Sierra Leone of 20 December 2000, *UN Doc. S/2000/1195*, paras. 65-111.

114 See UN Security Council Resolution 1306 (2000), especially paragraphs 2-5.

115 *Ibid.*, especially paragraph 2.

116 See Resolutions 1385 (2001) and 1446 (2002) for the extensions of the diamond sanctions and *UN Doc. SC/7778* of 5 June 2003 for the press statement by the president of the Security Council commenting upon the decision not to renew diamond sanctions against Sierra Leone.

117 See, *e.g.*, Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, *UN Doc. S/2000/1195*, December 2000.

118 UN Security Council Resolution 1306 (2000) refers to a report of the Secretary-General recommending the Security Council to strengthen its sanctions regime by including "measures which would prevent RUF commanders from reaping the benefits of their illegal exploitation of mineral resources, in particular diamonds". Fourth Report of the Secretary General on the United Nations Mission in Sierra Leone, *UN Doc. S/2000/455* of 19 May 2000, para. 94.

The obligation to implement the sanctions was imposed on States. They were to take "the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory".[119] Furthermore, one novel feature of the sanctions regime was that other entities, including in particular the diamond industry, were to play an active role in devising structural approaches to solving the problem of conflict diamonds.

The Security Council therefore requested States, international organizations and other bodies, including representatives from the diamond industry, to provide assistance to the government of Sierra Leone to set up an effective Certification of Origin Regime and invited them to "offer assistance to the Government of Sierra Leone to contribute to the further development of a well-structured and well-regulated diamond industry that provides for the identification of the provenance of rough diamonds".[120]

Appraisal of the sanctions regime

The 1132 Sierra Leone sanctions regime resembles the 864 Angola regime in several respects. First, both sanctions regimes used diamond sanctions to stop the flow of revenues to a non-state armed group. In the case of Angola, the targeted group was UNITA; in the case of Sierra Leone, it was principally the RUF. In addition, both regimes exempted diamonds controlled by a Certificate of Origin Regime. Finally, both regimes welcomed the efforts of the diamond industry to devise practical solutions to the issue of conflict diamonds.

The 1132 Sierra Leone sanctions regime went a step further than the 864 Angola sanctions regime. Resolution 1306 explicitly encouraged the diamond industry "to work with the Government of Sierra Leone and the Committee to develop methods and working practices to facilitate the effective implementation of this resolution".[121] As noted by the United Kingdom upon the adoption of the resolution, this direct appeal to the diamond industry was an unusual feature of Resolution 1306.[122] Arguably, it shows the Security Council's growing awareness of the need to involve the business community in the implementation of sanctions.

In addition, the Security Council took the unprecedented step of calling for an exploratory hearing on the issue of diamonds in Sierra Leone, involving representatives of interested States and regional organizations, the diamond industry and other relevant experts. This was the first time the Security Council organized a hearing for the purpose of gaining a better understanding on an issue related to the perpetuation of an armed conflict. Moreover, the aim was not only to gain a better understanding of the causes of the conflict, but also

119 UN Security Council Resolution 1306 (2000), especially paragraph 1.
120 *Ibid*., especially paragraphs 3 and 11.
121 *Ibid*., especially paragraph 10.
122 See *UN Doc. S/PV.4168 (2000)*, p. 4: "The draft resolution is unusual in its direct appeal to the diamond trade."

to find solutions for the problem of diamonds funding it. The topics discussed at the hearing included the ways and means of developing a sustainable and well-regulated diamond industry in Sierra Leone.[123]

Another exceptional feature of the sanctions regime is that the Security Council established a Panel of Experts only after imposing the diamond sanctions. This implies that the decision of the Security Council to impose the diamond sanctions was based on information from third sources, including NGO reports.[124] The Council also acted on the request of the Sierra Leonean government, which had asked it to impose a trade embargo on Sierra Leonean diamonds as early as 1999.[125]

7.4.4 The 1343 Liberia Sanctions Regime

Structure and objectives of the sanctions regimes

The sanctions regime imposed in relation to Liberia by Resolution 1343 was the second sanctions regime to be imposed against Liberia. It immediately followed and replaced the first sanctions regime established in 1992 with the aim of ending the civil war between the government of Liberia and the National Patriotic Front of Liberia (NPFL), an opposition movement led by Charles Taylor.[126] When Charles Taylor took power in the country, this sanctions regime was terminated and replaced by the new 1343 sanctions regime.[127] While the previous sanctions regime had consisted only of an arms embargo, the new sanctions regime included diamond sanctions.

The aim of the 1343 sanctions regime was to address Liberia's support for the Sierra Leonean Revolutionary United Front (RUF) and other rebel groups operating in the West African region.[128] Therefore in Resolution 1343 (2001),

123 See the summary report along with observations from the Chairman on the exploratory hearing on Sierra Leonean diamonds, held on 31 July and 1 August 2000, Annex to *UN Doc. S/2000/1150* of 4 December 2000.

124 See notably the report released by the Partnership Africa Canada, *The Heart of the Matter: Sierra Leone, Diamonds, and Human Security*, January 2000.

125 See the remarks of the representative of Sierra Leone at the Council debate, which preceded the adoption of Resolution 1306 (2000) as well as the letter sent to the Council by the Sierra Leonean government, both identifying diamonds as a root cause of the conflict in Sierra Leone. See *UN Doc. S/PV.4168* of 5 July 2000 and *UN Doc. S/2000/641* of 28 June 2000.

126 See UN Security Council Resolution 788 (1992). For more details regarding this sanctions regime, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 316-319.

127 See UN Security Council Resolution 1343 (2001).

128 See the preceding section of this chapter and the Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, UN Doc. *S/2000/1195* of December 2000. This report concluded that the illicit trade in Sierra Leonean diamonds through Liberia was not possible without the involvement of high Liberian officials. On 18 May 2012, the Trial Chamber of the Special Court for Sierra

the Security Council determined "that the active support provided by the Government of Liberia for armed rebel groups in neighbouring countries, and in particular its support for the RUF in Sierra Leone, constitutes a threat to international peace and security in the region".[129] In pursuance of Chapter VII of the UN Charter, the Security Council demanded that the government of Liberia "cease all direct or indirect import of Sierra Leone rough diamonds which are not controlled through the Certificate of Origin regime of the Government of Sierra Leone" and called upon the government "to establish an effective Certificate of Origin regime for trade in rough diamonds that is transparent and internationally verifiable".[130]

In addition, other States were to "take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia" and were called upon to "take appropriate measures to ensure that individuals and companies in their jurisdiction […] act in conformity with United Nations embargoes […] and, as appropriate, take the necessary judicial and administrative action to end any illegal activities by those individuals and companies".[131] Furthermore, the Security Council urged diamond-exporting countries in West Africa to adopt Certificate of Origin regimes for the trade in rough diamonds with the assistance of other States and of relevant international organizations and bodies.[132]

The supervision of these sanctions was assigned to a sanctions committee established by the same resolution.[133] In addition, the Security Council requested the Secretary-General to establish a Panel of Experts with the mandate to investigate, *inter alia,* violations of the sanctions and "possible links between the exploitation of natural resources and other forms of economic activity in Liberia, and the fuelling of conflict in Sierra Leone and neighbouring countries".[134]

In 2002, following two reports of the Panel of Experts which both concluded that the exploitation of timber provided the government of Liberia with large amounts of money used to provide support to the (former) RUF and other rebel

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Leone sentenced Charles Taylor to a prison term of 50 years for its involvement in the armed conflict in Sierra Leone.

129 UN Security Council Resolution 1343 (2001), paragraph 9 of the preamble.

130 *Ibid*., especially paragraphs 2 (c) and 15. For more information on the sanctions regime imposed in relation to the conflict in Sierra Leone, see the preceding section of this chapter.

131 *Ibid*.,, especially paragraph 6 and 21.

132 *Ibid*., especially paragraph 16.

133 *Ibid*., especially paragraph 14.

134 *Ibid*., especially paragraph 19.

groups,[135] the Security Council decided to extend the 1343 regime to include timber sanctions.

The first resolution adopted by the Security Council in this respect provided that "the active support provided by the Government of Liberia to armed rebel groups in the region, in particular to former Revolutionary United Front (RUF) combatants who continue to destabilize the region, constitutes a threat to international peace and security in the region".[136] In pursuance of Chapter VII of the UN Charter, the Council called upon the government of Liberia to "take urgent steps, including through the establishment of transparent and internationally verifiable audit regimes, to ensure that revenue derived by the Government of Liberia from the […] Liberian timber industry is used for legitimate social, humanitarian and development purposes".[137]

As this resolution had no effect on the Liberian government's practices, the Security Council adopted a second resolution that included the timber sanctions. Resolution 1478 (2003) considered that the government of Liberia had not demonstrated that the revenue derived from the Liberian timber industry "is used for legitimate social, humanitarian and development purposes, and is not used in violation of Resolution 1408 (2002)".[138] Therefore the Security Council decided in pursuance of Chapter VII that "all States shall take the necessary measures to prevent […] the import into their territories of all round logs and timber products originating in Liberia".[139]

In addition, in response to reports indicating that the sanctions targeting the transit of Sierra Leonean diamonds through Liberia had caused a reverse flow of Liberian rough diamonds being smuggled out of the country and into neighbouring certification schemes,[140] the Security Council reiterated its earlier call for the Liberian government to establish a Certificate of Origin regime for Liberian rough diamonds.[141] The Security Council explicitly called upon the Liberian government to bear in mind "the plans for the international certification scheme under the Kimberley Process" and proposed to exempt from the embargo those rough diamonds controlled by a transparent and internationally verifiable Certificate of Origin regime.[142]

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135 Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, concerning Liberia, 17 October 2001, *UN Doc. S/2001/1015*, paras. 309-315 and 319-350; Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1395 (2002), paragraph 4, in relation to Liberia, 11 April 2002, UN Doc. S/2002/470, paras. 138-150.

136 UN Security Council Resolution 1408 (2002), paragraph 11 of the preamble.

137 *Ibid*., especially paragraph 10.

138 UN Security Council Resolution 1478 (2003), especially paragraph 16.

139 *Ibid*., especially paragraph 17 (a).

140 See the Report of the Panel of Experts appointed pursuant to Security Council Resolution 1395 (2002), paragraph 4, in relation to Liberia, UN Doc. *S/2002/470*, para. 136.

141 UN Security Council Resolution 1408 (2002), especially paragraph 7.

142 *Ibid*., especially paragraphs 7 and 8.

In a resolution adopted after the official launch of the Kimberley Process for the Certification of Rough Diamonds, the Security Council reiterated its appeal to the Liberian government to adopt a transparent and internationally verifiable Certificate of Origin Regime and also demanded that the regime be "fully compatible with the Kimberley Process".[143]

The 1343 sanctions regime was terminated later that year in response to political changes in Liberia, in particular the departure of President Taylor and the installation of a new transitional government. Nevertheless, in the light of the fragile situation in the country, the timber and diamond sanctions were brought under a new sanctions regime. As this sanctions regime had a completely different character, it is discussed in the following section.

Targets and addressees of the sanctions obligations

The 1343 sanctions regime was aimed at preventing the Liberian government from financing non-state armed groups, in particular the RUF. The sanctions regime directly addressed the government of Liberia led by Charles Taylor, which was held responsible for financing these rebel factions. Obviously the sanctions regime indirectly targeted the rebel factions sponsored by the Taylor government.

The responsibility for the implementation of the diamond and timber sanctions was placed first and foremost on States. All States were to implement the embargos on rough diamonds and round logs. Furthermore, in order to stop the busting of sanctions on diamonds originating from Liberia when they were smuggled to neighbouring countries, additional appeals were made to diamond-exporting countries in West Africa. These States were requested to adopt Certificate of Origin regimes for the trade in rough diamonds, assisted by other States and relevant international organizations and bodies. Except for providing assistance to States, the resolutions did not impose obligations on international organizations or non-state actors, such as civil society and corporations.

Appraisal of the sanctions regime

The 1343 sanctions regime addressed the role of a State in providing support to non-state armed groups. In this sense, the sanctions regime differs from earlier sanctions regimes imposed against States. The sanctions regimes against Southern Rhodesia and Iraq also targeted States, but primarily as parties to an armed conflict. In the case of Liberia, the link with an armed conflict is indirect. The sanctions regime was aimed at preventing the Liberian State from interfering in other conflicts in the region to which Liberia itself was not a party.

However, subsequent Panel reports concluded that the sanctions barely had any effect on the trade in diamonds and timber. This could partly explain

143 UN Security Council Resolution 1478 (2003), especially paragraph 13.

why the Security Council resorted to other initiatives to strengthen the effectiveness of the sanctions, especially to the Kimberley Process. In fact, it is interesting to note that the Security Council explicitly recognised the Kimberley Process Certification Scheme as the regime of preference for the certification of rough diamonds. This is a new development compared to the sanctions regimes adopted for Angola and Sierra Leone. Furthermore, as in the earlier sanctions regimes, the Security Council linked the adoption of a certification scheme to the lifting of sanctions.

The emphasis placed by the Security Council on the need to ensure that revenue derived by the Government of Liberia from the Liberian timber industry was used for legitimate social, humanitarian and development purposes was another interesting aspect.[144] The Security Council could have confined itself to addressing the link between timber and the fuelling of the armed conflict. However, the Security Council implicitly established a link between the timber sanctions and the obligation of a State to use its natural resources for national development and the well-being of the population, as a corollary to its right to exercise permanent sovereignty over its natural resources, thus going much further than the traditional context of peace and security. This link was confirmed in the subsequent sanctions regime in relation to Liberia, discussed below. Thus the Security Council showed that it is prepared to withhold respect for the principle of permanent sovereignty over natural resources if a State fails to respect the corollary obligation to use the natural resources for national development.

The final interesting aspect is related to the many references made by the Security Council to improvements in governance over natural resources. In relation to diamonds, the Security Council referred to an *effective* Certificate of Origin regime that is *transparent* and *internationally verifiable*. Similarly, in relation to the timber sanctions, the Security Council referred to the establishment of *transparent* and *internationally verifiable* audit regimes. In the latter case, these audit regimes served to introduce more general improvements in governance in the timber sector. In both cases, these improvements in governance were linked to the possibility of lifting sanctions. These references to effective, transparent and internationally verifiable regimes reveal a growing tendency of the Security Council to rely on improvements in governance over natural resources as an effective means to address the link between natural resources and armed conflicts.

144 UN Security Council Resolution 1408 (2002), especially paragraph 10.

7.4.5 The 1521 Liberia Sanctions Regime

Structure and objectives of the sanctions regime

Resolution 1521 (2003) ended the sanctions regime imposed against the government of Liberia for its support to rebel groups in the West African region and imposed a new one aimed at addressing the threat to international peace and security in West Africa posed by the proliferation of illegal arms financed with the illegal exploitation of timber and diamonds.[145] One of the aims of the sanctions regime was to assist the new transitional government of Liberia to regain control over the diamond and timber industries in order to stop these natural resources from fuelling armed conflict in the region.

Resolution 1521 (2003) was adopted under Chapter VII of the UN Charter. It included both diamond and timber sanctions. In relation to diamonds, the Security Council instructed all States "to take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia to their territory, whether or not such diamonds originated in Liberia".[146] Furthermore, the resolution called upon the National Transitional Government of Liberia "to establish an effective Certificate of Origin regime for trade in Liberian rough diamonds that is transparent and internationally verifiable" and encouraged the government "to take steps to join the Kimberley Process as soon as possible".[147]

In relation to timber, Resolution 1521 (2003) stipulated that all States were to take the necessary measures "to prevent the import into their territory of all round logs and timber products originating in Liberia".[148] The Security Council also urged the government "to establish its full authority and control over the timber producing areas, and to take all necessary steps to ensure that government revenues from the Liberian timber industry are not used to fuel conflict or otherwise in violation of the Council's resolutions but are used for legitimate purposes for the benefit of the Liberian people, including development".[149] To this end, the Liberian government was encouraged "to establish oversight mechanisms for the timber industry that will promote responsible business practices, and to establish transparent accounting and auditing mechanisms".[150]

The Security Council called upon States, international organizations and other relevant bodies to offer assistance to the Liberian government to achieve the above-mentioned objectives, including assistance with regard to "the promotion of responsible and environmentally sustainable business practices

145 UN Security Council Resolution 1521 (2003), paragraphs 7 and 8 of the preamble.
146 *Ibid*., paragraph 6 of the preamble.
147 *Ibid*., especially paragraphs 7 and 9.
148 *Ibid*., especially paragraph 10.
149 *Ibid*., especially paragraph 11.
150 *Ibid*., especially paragraph 13.

in the timber industry",[151] in order to ensure that the diamond and timber sanctions could eventually be lifted.

In response to the Security Council's call to assist the Liberian government in achieving the objectives set for the timber industry, the United States, together with the World Bank, the International Monetary Fund, the European Commission, the International Union for the Conservation of Nature, the United Nations Food and Agriculture Organisation and several other international and non-governmental organizations set up the Liberia Forest Initiative (LFI). The aim of the LFI was to assist the Liberian government to adopt the necessary reforms in its forestry sector to allow for the sustainable and transparent management of its forest resources for the benefit of the Liberian population.[152]

The LFI programmes focused on every aspect of sustainable forest management, including the three internationally recognised components of sustainable forest management.[153] The economic component of forestry was addressed with a commercial forestry programme, the social component through a communal forestry programme, and the environmental component through a forest conservation programme. The LFI also addressed several interrelated issues, including governance-related issues. Thus the LFI can be considered to have adopted an integrated approach to forest management.

The Security Council expressed its support for the LFI in its subsequent resolutions. In Resolution 1579 (2004), the Security Council noted with some concern that "despite having initiated important reforms", the Liberian government had made only limited progress towards improving its governance of the timber industry.[154] It therefore encouraged the government to "intensify its efforts to meet these conditions, in particular by implementing the Liberia Forest Initiative and the necessary reforms in the Forestry Development Authority".[155]

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151 *Ibid*., especially paragraph 15.

152 For more information on this initiative, see the website of the UN Food and Agriculture Organization, at http://www.fao.org/forestry/lfi/en/ (last consulted on 16 August 2012). Also see S.L. Altman, S.S. Nichols and J.T. Woods, 'Leveraging High-Value Natural Resources to Restore the Rule of Law: The Role of the Liberia Forest Initiative in Liberia's Transition to Stability', in P. Lujala & S.A. Rustad (eds.), *High-Value Natural Resources and Post-Conflict Peacebuilding*, Oxon/New York: Earthscan (2012), pp. 337-365.

153 The Non-Legally Binding Instrument on All Types of Forests, *UN Doc. A/C.2/62/L.5*, of 22 October 2007 defines sustainable forest management in its Article III(4) as "a dynamic and evolving concept, [which] aims to maintain and enhance the economic, social and environmental values of all types of forests, for the benefit of present and future generations".

154 UN Security Council Resolution 1579 (2004), paragraph 11 of the preamble.

155 *Ibid*., especially paragraph 3. For more details on the Liberia Forest Initiative, see S.L. Altman, S.S. Nichols and J.T. Woods, 'Leveraging High-Value Natural Resources to Restore the Rule of Law: The Role of the Liberia Forest Initiative in Liberia's Transition to Stability', in P. Lujala & S.A. Rustad (eds.), *High-Value Natural Resources and Post-Conflict Peacebuilding*, Oxon/New York: Earthscan (2012), pp. 337-365.

The Security Council reiterated its call to the Liberian government to continue the implementation of the LFI and related reforms in subsequent resolutions. It added that these reforms would "ensure transparency, accountability and sustainable forest management".[156] Furthermore, the Security Council encouraged the Liberian government to implement the Governance and Economic Management Assistance Program (GEMAP) as a means to expedite the lifting of the sanctions.[157] This programme was initiated by the same organizations as the LFI in order to enhance transparency and accountability in Liberia's public administration, also in relation to the granting of natural resources concessions.[158] Reported irregularities in the granting of diamond concessions by the Liberian authorities, preventing Liberia's accession to the Kimberley Process,[159] had been a cause of concern and led to the launch of this programme.

The effective implementation of the proposed reforms by the Liberian government finally led to the lifting of the commodity sanctions. The timber sanctions were lifted in 2006 after extensive reforms of the forestry sector, including the adoption of legislation and the establishment of independent audits.[160] The diamond sanctions were lifted almost a year later, upon Liberia's accession to the Kimberley Process Certification Scheme.[161]

Targets and addressees of the sanctions regime

The 1521 sanctions regime principally targeted non-state armed groups threatening the peace process in Liberia and in the wider West African region. However, these armed groups were also represented in the newly established transitional government of Liberia.[162] This led to a rather paradoxical situation. On the one hand, the sanctions regime was set up to assist the new government to gain control over the timber industry and the diamond fields as part of the peace process, while on the other hand, the sanctions aimed to

156 UN Security Council Resolution 1607 (2005), especially paragraph 4; and Resolution 1647 (2004), especially paragraph 3(a).

157 See UN Security Council Resolution 1647 (2005), especially paragraph 4.

158 For more details on the GEMAP programme, see http://www.gemap-liberia.org (last consulted on 17 August 2012).

159 In this respect, see, *e.g.*, the Preliminary Report of the Panel of Experts on Liberia submitted pursuant to resolution 1579 (2004) (On Diamonds) of 17 March 2005, *UN Doc. S/2005/176*, in particular, paras. 17-24; and Report of the Panel of Experts on Liberia submitted pursuant to resolution 1579 (2004) of 13 June 2005, *UN Doc. S/2005/360*, paras. 97-119.

160 See UN Security Council Resolution 1689 (2006), especially paragraph 1.

161 UN Security Council Resolution 1753 (2007), paragraph 2 of the preamble and especially paragraphs 1-3.

162 The National Transitional Government of Liberia consisted of the former Government of Liberia, Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL). See Resolution 1521 (2003), fourth paragraph of the preamble.

prevent members from that government using Liberian natural resources to fund their war effort.[163]

The burden of implementing the diamond and timber sanctions was placed on States. International organizations and other relevant bodies were assigned an additional role. Their role was not so much related to the implementation of the sanctions as it was to assist the government of Liberia to satisfy the criteria for the lifting of sanctions. Their responsibilities included providing assistance to set up a Certificate of Origin regime for diamonds and to promote responsible and environmentally sustainable business practices in the timber industry. For diamonds, this international action was coordinated mainly through the Kimberley Process for the Certification of Rough Diamonds, while for the timber industry action was coordinated mainly through the LFI programme.

Appraisal of the sanctions regime

The commodity sanctions in the 1521 sanctions regime served two distinct but interrelated purposes. The first was to stop timber and diamonds from fuelling armed conflict in Liberia and the West African Region as part of a strategy to resolve the conflict. The second purpose was to prevent natural resources from contributing to a relapse into armed conflict as part of a strategy for post-conflict reconstruction. This second purpose explains why the sanctions regime aimed to achieve real structural reforms of the diamond and timber industries. Beyond the direct contribution of diamonds and timber to the armed conflict, it also sought to address threats to the peace resulting from underlying problems of governance in the Liberian diamond and timber industries.

Thus the Security Council used sanctions as a means of putting pressure on the Liberian government to bring about important structural reforms in Liberia's key economic sectors as part of a comprehensive peacebuilding process. The Security Council's approach was very innovative in this respect, especially in relation to the proposed reforms for the timber sector. The first innovative feature was that it explicitly adopted the basic principle that "government revenues from the Liberian timber industry are [to be] used for legitimate purposes for the benefit of the Liberian people, including development".[164] In this way it implicitly underlined that States must use their sovereignty over their natural resources for the benefit of their people. In this respect the 1521 sanctions regime went one step further than the 1343 regime, which stated in more general terms that timber revenues should be used for legitimate social, humanitarian and development purposes.

163 See the Report of the Panel of Experts appointed pursuant to paragraph 25 of Security Council Resolution 1478 (2003) concerning Liberia, UN Doc. *S/2003/937* of 28 October 2003.

164 UN Security Council Resolution 1521 (2003), especially paragraph 11.

Another innovative feature of the sanctions regime was its explicit recognition of the need to integrate environmental protection in regulatory mechanisms for the timber sector. The Security Council encouraged the Liberian government "to establish oversight mechanisms for the timber industry that will promote responsible business practices" and called upon States, international organizations and other bodies to offer assistance to the Liberian government to achieve this objective, including assistance with regard to "the promotion of responsible and environmentally sustainable business practices in the timber industry".[165]

These are major improvements in comparison with earlier sanctions regimes, which focused principally on stopping the trade in conflict resources. By placing the emphasis on every aspect of the governance of natural resources, the Liberian sanctions regime contributed to peacebuilding efforts in a more structural way, ensuring that Liberian natural resources were managed in a sustainable way for the purposes of development rather than conflict.

The 1521 sanctions regime is one of the few regimes discussed in this chapter that actually succeeded in achieving the necessary changes. The success of the sanctions regime can largely be attributed to the political will of the newly established Liberian President Ellen Johnson Sirleaf. She has been one of the driving forces behind the reform of the Liberian natural resource sectors, as well as of government administration in general.[166] This demonstrates that a commitment to good governance that is rooted in the political system of a country itself is very important in bringing about change.

7.4.6 The 1572 Côte d'Ivoire Sanctions Regime

Structure and objectives of the sanctions regime

The sanctions adopted by the Security Council in relation to Côte d'Ivoire were imposed in order to end hostilities between government forces under the command of elected president Laurent Gbagbo and the opposition forces (the *Forces Nouvelles*).[167] Two peace agreements between the government and the Forces Nouvelles were signed in 2003 (the Linas-Marcoussis Agreement) and 2004 (the Accra III Agreement) respectively, providing, *inter alia,* for the establishment of a government of national reconciliation and a program of disarmament. These peace agreements were supplemented with a third agree-

165 UN Security Council Resolution 1521 (2003), especially paragraphs 13 and 15.

166 See S.L. Altman, S.S. Nichols and J.T. Woods, 'Leveraging High-Value Natural Resources to Restore the Rule of Law: The Role of the Liberia Forest Initiative in Liberia's Transition to Stability', in P. Lujala & S.A. Rustad (eds.), *High-Value Natural Resources and Post-Conflict Peacebuilding*, Oxon/New York: Earthscan (2012), pp. 353-354.

167 For more details regarding this sanctions regime, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 439-447.

ment (the Pretoria Agreement) in 2005. The aim of the Security Council sanctions was precisely to secure the implementation of these peace agreements.

The sanctions regime was imposed first with Resolution 1572 (2004). The Security Council, determining that the situation in Côte d'Ivoire continued to pose a threat to international peace and security in the region and acting under Chapter VII of the UN Charter, decided to impose an arms embargo as well as a travel ban and an assets freeze on designated individuals and entities.[168] Furthermore, the Security Council established a Sanctions Committee in order to monitor the sanctions, to be assisted by a Group of Experts.[169] A year later, with Resolution 1643 (2005), the Security Council decided to expand the sanctions regime to include diamond sanctions, targeting the whole diamond industry in Côte d'Ivoire.[170]

The diamond sanctions were taken because of the links between the illicit exploitation of and trade in diamonds on the one hand, and the arms trade and use of mercenaries on the other, "as one of the sources of fuelling and exacerbating conflicts in West Africa".[171] However, interestingly, the reports of the Group of Experts revealed that diamonds were not the only natural resources directly linked to the arms trade and the financing of the conflict in general. The Group of Experts also examined the role of other commodities, with a particular emphasis on cocoa and oil, in relation to the funding of the conflict in Côte d'Ivoire.[172]

The Group reported several ways in which these natural resources were used to violate the arms embargo by both parties to the armed conflict, e.g., by diverting tax revenues to finance extra-budgetary military spending by the government.[173] Despite ample indications that natural resources such as cocoa and oil were prolonging the conflict in Côte d'Ivoire in the same way as

168 UN Security Council Resolution 1572 (2004), especially paragraphs 7, 9 and 11.

169 *Ibid.*, especially paragraph 14 and 17. This group of experts was established through Resolution 1584 (2005), para. 7.

170 UN Security Council Resolution 1643 (2005), especially paragraph 6.

171 UN Security Council Resolution 1643 (2005), paragraph 9 of the preamble.

172 See, *e.g.*,. Midterm report of the Group of Experts submitted in accordance with paragraph 11 of Security Council Resolution 1842 (2008), *UN Doc. S/2009/188*, paras. 59-72; Final report of the Group of Experts on Côte d'Ivoire, prepared in accordance with paragraph 14 of Security Council Resolution 1980 (2011), *UN Doc. S/2012/196*, paras. 113.

173 See e.g. Report of the Group of Experts submitted in accordance with paragraph 7 of resolution 1584 (2005), *UN Doc. S/2005/699*, paras. 22-46; Report of the Group of Experts submitted in accordance with paragraph 9 of resolution 1643 (2005), *UN Doc. S/2006/735*, paras. 113-128; Final Report of the Group of Experts on Côte d'Ivoire, prepared in accordance with paragraph 14 of Security Council Resolution 1980 (2011), *UN Doc. S/2012/196*, paras. 92-110. The Group further identified instances in which natural resources were offered directly in exchange for arms and noted the existence of parallel taxation systems as well as practices of racketeering and looting. For all these instances, see the final report of the Group of Experts on Côte d'Ivoire, prepared in accordance with paragraph 14 of Security Council Resolution 1980 (2011), *UN Doc. S/2012/196*, paras. 92-110.

diamonds,[174] the Security Council did not impose sanctions on these natural resources.

This is characteristic of the Security Council's approach which focuses mainly on curtailing the trade in natural resources by or for the benefit of rebel groups. In general the Council does not look into the ways in which the national authorities use the revenues from natural resources. In itself this is understandable from a legal perspective, especially in the light of the principles of State sovereignty and permanent sovereignty over natural resources, but not in the current case, where the national authorities openly used the proceeds from the cocoa and oil sectors to violate the arms embargo. Therefore there was good cause to address the irregularities in the cocoa and oil sectors, either with an embargo or with formal requests for the reform of those sectors.

The Security Council renewed the diamond sanctions several times before it introduced an exemption to the sanctions regime in Resolution 1893 (2009),[175] though only for diamond samples necessary for scientific research, in order to facilitate the implementation of the Kimberley Process. In Resolution 1893 (2009), the Security Council decided to exclude from the embargo diamond imports "that will be used solely for the purposes of scientific research and analysis to facilitate the development of specific technical information concerning Ivorian diamond production".[176] This research was to be coordinated by the Kimberley Process.[177] In addition, a request to exempt from the embargo a particular import of diamonds was to be submitted to the Committee "jointly by the Kimberley Process and the importing Member State".[178]

In November 2010, elections were finally held in Côte d'Ivoire as part of the implementation of the Ouagadougou peace agreement concluded in March 2007. However, when the defeated President Laurent Gbagbo refused to step down, a crisis broke out. It was only after the crisis ended with the help of UNOCI and ECOWAS troops that Alassane Dramane Ouattara could be installed as the newly elected President of Côte d'Ivoire in April 2011. From then on, the sanctions regime entered a new phase. The measures were no longer

174 See in particular the Report of the Group of Experts submitted in accordance with paragraph 7 of Resolution 1584 (2005), *UN Doc. S/2005/699*, paras. 22-46; the Midterm report of the Group of Experts submitted in accordance with paragraph 11 of Security Council Resolution 1842 (2008) of 8 April 2009, *UN Doc. S/2009/188*, paras. 59-64; Final report of the Group of Experts submitted in accordance with paragraph 11 of Security Council Resolution 1842 (2008) of 9 October 2009, *UN Doc. S/2009/521*, paras. 170-188, which establish direct links between the trade in natural resources by the government and the violation of the arms embargo, e.g., through extra-budgetary military spending.

175 The sanctions were renewed through UN Security Council Resolution 1727 (2006); Resolution 1782 (2007); and Resolution 1842 (2008).

176 UN Security Council Resolution 1893 (2009), especially paragraph 16.

177 *Ibid*., especially paragraph 16.

178 *Ibid*., especially paragraph 17.

intended to contribute to ending the conflict in Côte d'Ivoire, but instead, to support the peace process.[179]

In Resolution 1980 (2011), adopted soon after the installation of President Ouattara, the Security Council emphasised the contribution that the diamond sanctions had made to achieving stability in Côte d'Ivoire and encouraged the Ivorian authorities "to work with the Kimberley Process Certification Scheme to conduct a review and assessment of Côte d'Ivoire's internal controls system for trade in rough diamonds and a comprehensive geologic study of Côte d'Ivoire's potential diamond resources and production capacity, with a view to possibly modifying or lifting [the diamond sanctions]".[180] Resolution 2045 (2012) extended the diamond sanctions even further and urged the Ivorian authorities to "create and implement an action plan to enforce the Kimberley Process rules in Côte d'Ivoire".[181]

In response to a recent report by the Group of Experts indicating that diamond smuggling by military-economic networks in Côte d'Ivoire continues to pose a threat to the stability of the country,[182] the UN Security Council decided to extend the diamond sanctions until 30 April 2014.[183] However, the Council did express its "readiness to review measures in light of progress made towards Kimberley Process implementation", thus making the lifting of the diamond sanctions conditional upon effective implementation of the minimum requirements of the Kimberley Process in Côte d'Ivoire.[184] Furthermore, the Council requested the Kimberley Process and national and international agencies to help the Group of Experts with "its enquiries concerning the individuals and networks involved in the production, trading and illicit export of diamonds from Côte d'Ivoire" and to communicate such matters to the Sanctions Committee.[185]

In addition to the diamond measures, the Resolution also addressed the threats to the peace process resulting from the smuggling and illegal taxation of other natural resources by military networks. Although the Resolution did not impose any concrete measures with respect to these natural resources, it is relevant to note that the Security Council did express its concern about the smuggling of cocoa, cashew nuts, cotton, timber and gold, thus paving the way for the adoption of more concrete measures in the future.[186]

Furthermore, in response to a recommendation by the Group of Experts regarding the problems faced by Côte d'Ivoire with regard to artisanal mining

179 UN Security Council Resolution 1980 (2011), paragraph 4 of the preamble.
180 *Ibid.*, especially paragraph 19.
181 UN Security Council Resolution 2045 (2012), especially paragraphs 6 and 21.
182 Final report of the Group of Experts submitted in accordance with paragraph 16 of Security Council Resolution 2045 (2012), *UN Doc. S/2013/228* of 17 April 2013.
183 UN Security Council Resolution 2101 (2013), especially paragraph 6.
184 *Ibid.*
185 *Ibid.*, especially paragraphs 23 and 24.
186 *Ibid.*, paragraph 14 of the preamble.

in its gold and diamond sectors,[187] the Security Council "encourages the Ivorian authorities to participate in the OECD-hosted implementation programme with regard to the due diligence guidelines for responsible supply chains of minerals from conflict-affected and high-risk areas".[188] This recommendation refers to the OECD Due Diligence Guidance that was developed for companies as a tool to mitigate the risk that their mineral procurement policies could contribute to instability and armed conflict in a country. The Security Council's reference to this programme indicates its commitment to the promotion of more structural solutions for the illegal exploitation of natural resources beyond the financing of conflict.[189]

Targets and addressees of the sanctions obligations

The diamond embargo imposed against Côte d'Ivoire targets all diamonds originating from the country. During the armed conflict, this meant that the embargo *de facto* exclusively targeted the *Forces Nouvelles*, since they were in control of the diamond production. In fact, the embargo issued by the Security Council complemented an already existing national ban on the export of diamonds, issued by the Ivorian government in 2002.[190]

The primary addressees of the sanctions regime are States. However, in relation to the diamonds sanctions the Security Council also assigned a prominent role to the Kimberley Process. In order to prevent the introduction of diamonds from Côte d'Ivoire into the legitimate diamond trade, the Security Council expressly referred to measures taken within the framework of the Kimberley Process Certification Scheme.[191] Although Côte d'Ivoire has been a formal participant in the Kimberley Process since its launch in 2003, the country has never exported diamonds under the scheme.[192]

In addition, the Security Council directly addressed the Kimberley Process. The primary role of the Kimberley Process was to provide the Council with information concerning the production and illicit export of diamonds from Côte d'Ivoire, as well as information about possible violations of the arms and diamond embargoes.[193] In addition, the Kimberley Process was assigned the

187 Final report of the Group of Experts submitted in accordance with paragraph 16 of Security Council Resolution 2045 (2012), *UN Doc. S/2013/228* of 17 April 2013.

188 UN Security Council Resolution 2101 (2013), especially paragraph 25.

189 For more details on the OECD Due Diligence Guidance, see the following section and Chapter 8.

190 Report of the Group of Experts submitted in accordance with paragraph 7 of Resolution 1584 (2005), *UN Doc. S/2005/699*, para. 48.

191 UN Security Council Resolution 1893 (2009), especially paragraph 16; Resolution 1980 (2011), para. 19; and Resolution 2045 (2012), para. 21.

192 Report of the Group of Experts submitted in accordance with paragraph 7 of Resolution 1584 (2005), *UN Doc. S/2005/699*, para. 48.

193 See, *e.g.*, UN Security Council Resolution 1727 (2006), especially paragraphs 10-11; Resolution 1782 (2007), paras. 13-14; Resolution 1842 (2008), paras. 14-15; and Resolution 2045 (2012), para. 20.

task of coordinating research on diamonds exempted from the regime "for the purposes of scientific research and analysis to facilitate the development of specific technical information concerning Ivorian diamond production".[194]

Appraisal of the sanctions regime

The sanctions regime imposed in relation to the conflict in Côte d'Ivoire clearly builds upon earlier sanctions regimes addressing the trade in diamonds. There are some differences, but most of these can be based on the particularities of the situation in Côte d'Ivoire. The first difference relates to the scope of the diamond embargo. While earlier sanctions regimes exempted from the ban diamonds controlled by a certificate of origin regime, the 1572 Côte d'Ivoire sanctions regime covered all diamonds originating from that country. The reason for this difference can be traced back to the internal situation in Côte d'Ivoire. The lack of government control over the diamond mining sites necessitated a comprehensive ban on diamonds.

The second difference relates to the role of the Kimberley Process in the sanctions regime. While earlier sanctions regimes made the modification or lifting of sanctions conditional upon the implementation of an effective certificate of origin regime, the 1572 Côte d'Ivoire sanctions regime required the implementation of the Kimberley Process. Again this difference can be understood in the light of Côte d'Ivoire's membership of the Kimberley Process. Côte d'Ivoire had already joined the Kimberley Process in 2003, but has not yet been able to meet the requirements of the process.

Furthermore, it is important to note that throughout the conflict in Côte d'Ivoire the Security Council never addressed the role of other natural resources besides diamonds in fuelling the conflict, despite ample indications that the government used the proceeds from these natural resources to violate the arms embargo. It is only now, in the phase of post-conflict reconstruction, that the Security Council has started to consider the role of natural resources such as cocoa and gold in perpetuating the violence in Côte d'Ivoire. The attention devoted by the Security Council to the role of key economic sectors in hampering the prospects for sustainable peace is encouraging, as reforms in the governance of these sectors would make a significant contribution to the reconstruction of Côte d'Ivoire.

7.4.7 Comparing the sanctions regimes

The sanctions regimes discussed in the current section all applied sanctions targeting selected commodities which were thought to make a direct contri-

194 UN Security Council Resolution 1893 (2009), especially paragraph 16. See also Resolution 1946 (2010), para. 14, which confirms that the export of Ivorian diamonds for scientific research is to be seen as an exemption to the ban.

bution to the financing of the armed conflicts. In all cases, the ultimate objective of the sanctions was to cut off revenues for armed groups. This was even the case for Liberia, the only sanctions regime targeting a State. The objective of the 1343 Liberia sanctions regime was to stop the Liberian authorities from actively providing financial support to armed groups operating in the region, while the 1521 Liberia sanctions regime was aimed at preventing Liberian natural resources beyond the control of the Liberian authorities from being used to finance these armed groups.

Thus the sanctions regimes discussed in this section show that the Security Council is prepared to address the contribution of natural resources to armed conflict, but only insofar as a link can be established between natural resources and the funding of non-state armed groups. There seems to be a general reluctance on the part of the Security Council to address a government's mismanagement of natural resources revenues in the absence of a link with rebel funding. This explains why the Security Council did resort to the use of sanctions on natural resources exploited by the national authorities in the case of Liberia, while it did not in the case of Côte d'Ivoire. The sanctions regarding Côte d'Ivoire exclusively targeted diamonds, the main source of rebel funding. In contrast, the Security Council did not act against the government, which used revenues from the oil and cocoa industry to fund extra-budgetary military expenditure in contravention of the UN arms embargo. These examples show that the Security Council is prepared to uphold the principle of permanent sovereignty over natural resources in most circumstances, even when a State contravenes Security Council Resolutions.

Most of the sanctions regimes discussed in this section targeted diamonds. With the exception of Côte d'Ivoire, the Security Council in each case provided for the possibility of exempting from the sanctions regime diamonds regulated by a certificate of origin regime. The Security Council also set standards for such a regime, viz. it had to be effective, transparent and accountable. In later sanctions regimes, these requirements were complemented with the requirement that the certificate of origin must be fully compatible with the Kimberley Process.

Two of the sanctions regimes discussed in this section also included timber sanctions. It is interesting to note that these are also the only cases – and during quite different periods of time – that have regard for environmental sustainability. In the case of Cambodia, the protection of Cambodia's natural resources was an underlying reason for the adoption of the measures. In the case of Liberia, the measures aimed to enhance sustainable forest management and to promote responsible and environmentally sustainable business practices in the timber sector.

7.5 From commodity sanctions to targeted sanctions

This section discusses sanctions regimes that have addressed the links between natural resources and armed conflict through sanctions targeting individuals and entities rather than commodities.

7.5.1 The 1493 DR Congo Sanctions Regime

Structure and objectives of the sanctions regime

The 1493 DR Congo sanctions regime was adopted in 2003, when the armed conflict in the DRC had entered the phase of a gradual transition to peace.[195] Joseph Kabila had succeeded his father as president of the DR Congo. Under his leadership, agreements had been signed with Rwanda and Uganda, and international troops from neighbouring countries had started to withdraw from Congolese territory.[196] In addition, Kabila Jr. had signed a peace agreement with different Congolese militias, the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo, and had established a Government of National Unity and Transition. In this context, the adoption of the sanctions regime should therefore be seen as an attempt by the Security Council to support the peace process in the DR Congo.

The sanctions regime consisted of an arms embargo targeting particular armed groups.[197] The Council also condemned the illegal exploitation of the natural resources and other sources of wealth of the Democratic Republic of the Congo and expressed its intention to consider possible ways of ending it.[198] However, it did not adopt specific measures in this regard.

In 2004, the Security Council established a Sanctions Commission to oversee the implementation of the arms embargo, as well as a Group of Experts to assist the Commission.[199] It again condemned the continuing illegal exploitation of natural resources in the Democratic Republic of the Congo. Furthermore, it reaffirmed "the importance of bringing an end to these illegal

195 For an overview of the different phases in the armed conflict in the DR Congo between March 1993 and June 2003, see the *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, United Nations Human Rights Office of the High Commissioner, August 2010.

196 The Pretoria Accord with Rwanda was signed on 30 July 2002, while the Luanda Agreement with Uganda was signed on 6 September 2002.

197 UN Security Council Resolution 1493 (2003), especially paragraph 20. For an overview of the sanctions regime, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 411-418. See also N.J. Schrijver, *Development without Destruction: The UN and Global Resource Management*, United Nations Intellectual History Project Series, Bloomington and Indianapolis, Indiana University Press (2010), pp. 184-186.

198 UN Security Council Resolution 1493 (2003), especially paragraph 28.

199 UN Security Council Resolution 1533 (2004), especially paragraphs 8 and 10.

activities, including by applying the necessary pressure on the armed groups, traffickers and all other actors involved" and urged "all States, and especially those in the region, to take the appropriate steps to end these illegal activities, including through judicial means where possible, and, if necessary, to report to the Council'.[200] However, no mandatory measures were introduced.

A year later Resolution 1596 (2005) renewed and broadened the arms embargo to include all recipients on the territory of the DR Congo.[201] In addition, it contained several auxiliary measures to strengthen the embargo, including measures concerning aviation and border controls, as well as travel and financial sanctions against persons suspected of violating the arms embargo.[202] A subsequent resolution extended the travel and financial sanctions to all political and military leaders of armed groups who were preventing the demobilisation of their members.[203]

Moreover, this resolution contained measures relating to the transit of Congolese natural resources through neighbouring countries. In this respect, the Security Council demanded that neighbouring States as well as the Congolese government "impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories".[204] The Security Council reaffirmed its demand in Resolution 1698 (2006).[205] However, neither of these resolutions contained any specific measures that States should take in order to implement the obligation, and they did not specify the types of natural resources that were targeted by the resolutions.

Nevertheless, it seems that from that moment on, the Security Council started to address the illegal exploitation of Congolese natural resources in a more coherent manner, looking for more direct ways to stop the exploitation of natural resources from financing armed groups in the DR Congo. The first step can be found in Resolution 1698 (2006), in which the Council expressed its intention to consider possible measures to stem the flow of financing of armed groups and militias operating in the eastern part of the DR Congo, including commodity sanctions.[206]

The Council requested two reports in order to make an informed decision on the type of measures to impose. The Group of Experts was requested to report on feasible and effective measures that the Council could impose, and the Secretary-General was asked to assess the economic, humanitarian and social impacts of such measures on the Congolese population.[207] On the basis

200 *Ibid*., especially paragraphs 6 and 7.
201 UN Security Council Resolution 1596 (2005), especially paragraph 1.
202 *Ibid*., especially paragraphs 6, 10, 13 and 15.
203 UN Security Council Resolution 1649 (2005), especially paragraph 2.
204 *Ibid*., especially paragraph 16.
205 UN Security Council Resolution 1698 (2006), especially paragraph 1.
206 *Ibid*., especially paragraph 9.
207 *Ibid*., especially paragraphs 6 and 8.

of the recommendations contained in these reports, the Security Council decided to address the illegal exploitation of natural resources principally through the existing financial and travel sanctions.[208]

The Security Council specifically decided to extend these sanctions to "individuals or entities supporting the illegal armed groups [operating] in the eastern part of the Democratic Republic of the Congo through the illicit trade of natural resources".[209] In this way it intended to directly target those responsible for the illicit trade in natural resources from the DR Congo.

This decision has had major consequences for companies operating in or sourcing from the DR Congo, because it set in motion a process leading to the adoption of due diligence guidelines for companies. Where Resolution 1857 (2008) encouraged States to take measures "to ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase",[210] Resolution 1896 (2009) addressed the minerals industry directly. It recommended that importers and processing industries adopt policies and practices to prevent their businesses from providing indirect support to armed groups.[211] More importantly, the Council mandated the Group of Experts to draw up guidelines for the exercise of due diligence by the importers, processing industries and consumers of mineral products from the DR Congo.[212]

In its final report of 2010 the Group of Experts presented two sets of due diligence guidelines. The first focused exclusively on preventing the purchase of minerals from individuals and entities suspected of providing support to illegal armed groups through the illicit trade in natural resources. The other set also addressed purchases from criminal networks and perpetrators of serious human rights abuses within the Congolese army. Both sets of guidelines followed the same five-step risk-based approach to due diligence. These five steps consisted of strengthening company management systems, identifying

208 The Security Council acted here upon a recommendation of the Group of Experts. See the Report of the Group of experts submitted pursuant to resolution 1654 (2006), *UN Doc. S/2006/525*, para. 159; and the Interim report of the Group of Experts submitted pursuant to resolution 1698 (2006), *UN Doc. S/2007/40*, para. 52. The Group of Expert had also recommended the imposition of selective commodity sanctions, but the report of the Secretary-General dissuaded the Security Council from imposing such sanctions. This report concluded that commodity sanctions would have negative impacts on artisanal miners and on the fragile peace process in the DR Congo. See the Report of the Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the Democratic Republic of the Congo, *UN Doc. S/2007/68* of 8 February 2007, paras. 62-63.

209 UN Security Council Resolution 1857 (2008), especially paragraph 4(g).

210 *Ibid*., especially paragraph 15.

211 UN Security Council Resolution 1896 (2009), especially paragraph 16, which reads in full: "*Recommends* that importers and processing industries adopt policies and practices, as well as codes of conduct, to prevent indirect support to armed groups in the Democratic Republic of the Congo through the exploitation and trafficking of natural resources".

212 Ibid., especially paragraph 7.

and assessing supply chain risks, designing and implementing strategies to respond to identified risks, conducting independent audits, and publicly disclosing supply chain due diligence and findings.[213]

The guidelines required companies to adopt appropriate procedures to identify the risk of their purchases of minerals providing any sort of support to armed groups, sanctioned individuals or entities, and criminal networks or perpetrators of serious human rights abuses in the eastern part of the DR Congo. If a risk was identified, the guidelines required that companies suspend their contracts with their suppliers until the risk was removed. Furthermore, independent audits had to be performed in order to verify that the due diligence applied by the company was sufficient to identify and prevent the risk of providing support to an individual or entity identified by the Group as contributing to the violence in the eastern part of the DR Congo. Finally, companies had to publish their due diligence policies as part of their annual sustainability or corporate responsibility reports.[214]

These due diligence guidelines received the express support of the Security Council.[215] In this respect it is interesting to note that the Council opted for the second and most far-reaching set of guidelines, thus targeting not only the trade with armed groups, but also the trade with subversive elements within the Congolese army.[216] In addition, the Council made several decisions regarding the implementation of the guidelines. First, it called upon States "to take appropriate steps to raise awareness of the due diligence guidelines" presented by the Group of Experts, "to urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence by applying the aforementioned guidelines, or equivalent guidelines" and to regularly report to the Sanctions Committee on the actions they were taking to implement these recommendations.[217]

More significantly, the Security Council established an express link between compliance with the due diligence guidelines on the one hand, and the imposition of financial and travel sanctions on the other. In this respect it decided that the failure of an individual or entity to exercise due diligence consistent with the steps set out in the resolution could be a reason for them to be placed

213 See the Final report of the Group of Experts prepared pursuant to paragraph 6 of Security Council Resolution 1896 (2009), *UN Doc. S/2010/596*, para. 318. For more details on this five-step approach, see the following chapter of this study.

214 For more details, see the final report of the Group of Experts prepared pursuant to paragraph 6 of Security Council Resolution 1896 (2009), *UN Doc. S/2010/596*, paras. 328-355 for the first set of guidelines and paras. 356-369 for the second set.

215 The Security Council supported "taking forward the Group of Experts' recommendations on guidelines for due diligence for importers, processing industries and consumers of Congolese mineral products". See UN Security Council Resolution 1952 (2010), especially paragraph 7.

216 *Ibid*.

217 *Ibid*., especially paragraphs 8 and 20.

on the sanctions list.[218] This meant that companies operating in or sourcing from the DR Congo were obliged to adhere to the due diligence guidelines.

So far the Sanctions Committee has only placed two companies involved in the trade in minerals on the sanctions list. These are two gold trading companies, located in neighbouring Uganda. It justified placing these companies on the list because they "bought gold through a regular commercial relationship with traders in the DRC tightly linked to militias [which] constitutes 'provision of assistance' to illegal armed groups in breach of the arms embargo of resolutions 1493 (2003) and 1596 (2005)".[219]

The Security Council's subsequent resolutions focused strongly on ways to implement the due diligence guidelines adopted by the Group of Experts. Two particular measures taken by the Security Council deserve special attention. The first concerns the question of traceability of the minerals supply chain, "a key element of any due diligence exercise" according to the Group of Experts.[220] The Council did not take any specific measures in this regard, but rather expressed its support for the efforts of the Congolese government and the wider region "to address the tracing and certification of minerals".[221] Thus it implicitly referred to instruments adopted under the auspices of the International Conference for the Great Lakes Region and showed its willingness to let the affected countries decide for themselves on the design of an instrument addressing the tracing and certification of minerals.

The second measure concerns the decision of the Security Council to include the inspection of mining sites in the mandate of the UN military operation in the DR Congo, MONUSCO.[222] This measure is not directly related to the implementation of the due diligence guidelines, but is part of a broader package of measures involving MONUSCO – and before that, MONUC – aimed at preventing the provision of support to illegal armed groups.[223] Another measure in this package relating to the measures discussed above was the involvement of MONUSCO in a project of the Congolese government to bring

218 *Ibid*., especially paragraph 9.

219 List of Individuals and Entities Subject to the Measures Imposed by Paragraphs 13 and 15 of Security Council Resolution 1596 (2005) as Renewed by Paragraph 3 of Resolution 2021 (2011), last updated on 12 November 2012, available through http://www.un.org/sc/committees/1533/pdf/1533_list.pdf (last consulted on 29 November 2012).

220 See the Interim Report of the Group of Experts prepared in pursuance of paragraph 5 of Security Council Resolution 1952 (2010), *UN Doc. S/2011/345*, para. 77.

221 UN Security Council Resolution 1991 (2011), especially paragraph 17.

222 See UN Security Council Resolution 2021 (2011), especially paragraph 10. The UN operation in the DR Congo was originally called MONUC but was renamed in 2010 to reflect the new situation in the DR Congo's transition to peace. For more information on the mission, see http://www.un.org/en/peacekeeping/missions/monuc/ and http://www.un.org/en/peacekeeping/missions/monusco/ (consulted on 25 May 2012).

223 See, *e.g.*, UN Security Council Resolution 1756 (2007), especially paragraph 2(l) and Resolution 1856 (2008), para. 3(g).

together all State services in a limited number of trading counters in order to improve the traceability of mineral products.[224]

Targets and addressees of the sanctions

The 1493 DR Congo sanctions regime has consistently targeted individuals and entities impeding the peace process in the DR Congo. All the measures taken by the Security Council, including the due diligence guidelines, should be seen in this light. The Security Council gradually increased the number of individuals against whom the sanctions were imposed. The adoption of the due diligence guidelines had two important implications in this respect. It showed that the sanctions targeted not only members of non-state armed groups, but also subversive elements from within the Congolese army. In addition, the Council clearly indicated that "providing support to armed groups" must be broadly interpreted, including providing indirect support to these groups by irresponsible mineral sourcing practices.

The addressees of the sanctions were primarily States, including the Congolese State. They were to implement the arms embargo, as well as the travel and financial sanctions. Indirectly, companies were also addressees of the sanctions. They were to implement the due diligence guidelines, thus preventing armed groups from obtaining the revenues to violate the arms embargo. The final addressee of the sanctions was the United Nations Organization (Stabilization) Mission in the Democratic Republic of the Congo (MONUC/MONUSCO). The relevant tasks include military action aimed at "preventing the provision of support to illegal armed groups, including support derived from illicit economic activities".[225]

Appraisal of the sanctions regime

In order to break the link between the exploitation of natural resources and the ongoing violence in the DR Congo, the Security Council opted for a new approach, compared with earlier sanctions regimes. Instead of imposing commodity sanctions, the Security Council opted for targeted sanctions against individuals and companies in order to address the link between natural resources and armed conflict. In this way, the Security Council broke away from the trend it had set with its earlier sanctions regimes.

Another striking aspect of the sanctions regime is that it paved the way for imposing sanctions on the business community for conducting irresponsible business practices. Companies that did not respect the due diligence guidelines risked being added to the sanctions list. Although this was not the first sanctions regime to directly target companies, it was the first to target companies further up the supply chain as well. Earlier sanctions regimes imposed sanc-

224 UN Security Council Resolution 1925 (2010), especially paragraph 12.

225 UN Security Council Resolution 1756 (2007), especially paragraph 2(l); and Resolution 1856 (2008), para. 3(g).

tions only on companies that were directly implicated in the busting of sanctions. Examples include asset freezes imposed against aviation companies suspected of transporting arms in violation of the arms embargo imposed in relation to Liberia.[226]

In the 1493 DR Congo sanctions regime the Security Council went a step further. It stretched the causal link between the practices of companies and the violation of sanctions by armed groups. This was an interesting development, especially in the light of the earlier sanctions regimes addressing the trade in rough diamonds, which relied on voluntary measures to engage the diamond industry in the proper implementation of sanctions.

In the case of the DR Congo, the Security Council moved away from a voluntary approach to industry self-regulation as articulated in Resolution 1896 (2009) in favour of sanctions to induce the minerals industry to modify their sourcing practices. However, it is too early to tell whether this move away from voluntary measures to sanctions can be regarded as a response to the particular circumstances in the DR Congo, or whether it indicates a change in the approach of the Security Council which extends beyond the specific case of the DR Congo.

Similarly, it is too early to tell whether this new approach adopted by the Council in relation to the DR Congo will actually lead to a change in the behaviour of companies sourcing from the DR Congo. The 2011 Final Report of the Group of Experts reveals a mixed picture. On the one hand, it concluded that the implementation by the Congolese government of the due diligence guidelines has halted nearly all tin, tantalum and tungsten exports from the eastern Democratic Republic of the Congo. On the other hand, it concluded that these minerals were increasingly being smuggled into neighbouring countries, impairing the objective of the due diligence guidelines.[227] Therefore the success of the due diligence guidelines was impaired by the smuggling practices. This indicates that the due diligence guidelines can only be successfully implemented when improvements are carried out in the transparency of the extractive industry in the DR Congo and in neighbouring countries as well. An effective tracing and certification system for minerals is a first requirement in this respect. However, other factors are important as well, especially combating corruption in the minerals sectors.

226 See the List of Individuals and Entities Subject to the Measures Contained in Paragraph 1 of Security Council Resolution 1532 (2004) Concerning Liberia (The Assets Freeze List), last updated on 20 July 2012, available through http://www.un.org/sc/committees/1521/aflist.shtml (last consulted on 23 August 2012).

227 Final Report of the Group of Experts on the DRC submitted in accordance with paragraph 4 of Security Council Resolution 2021 (2011), *UN Doc. S/2012/843*, 15 November 2012, paras. 159-242.

7.5.2 The 1970 Libya Sanctions Regime

Structure and objectives of the sanctions regime

The sanctions regime imposed by the Security Council against Libya in 2011 was not the first sanctions regime imposed against the Libyan authorities. An earlier sanctions regime had addressed the alleged role of the Libyan government in supporting terrorist groups, as part of the response to the Lockerbie incident.[228] However, the 2011 sanctions regime differed from the earlier one in the sense that it was directly related to a situation of armed conflict.

In February 2011, civil protests against the regime of Colonel Muammar Gaddafi resulted in an internal armed conflict between Gadhafi's forces on the one side, and an insurrectional movement labelling itself the National Transitional Council (NTC) on the other.[229] Reports on gross and systematic violations of human rights committed by the Libyan government, including widespread and systematic attacks against the civilian population, prompted the Security Council to take action.

On 26 February 2011, the Security Council adopted Resolution 1970. This Resolution referred the situation in Libya to the ICC and imposed "biting" sanctions against the Gaddafi government as "a clear warning to the Libyan Government that it must stop the killing".[230] These sanctions included an arms embargo, a travel ban and an asset freeze.[231] The asset freeze applied to all persons "involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses" against the Libyan population.[232] The sanctions list annexed to the resolution targeted exclusively members of Colonel Gaddafi's family. The Security Council further appointed a Sanctions Committee to oversee the implementation of the sanctions and to designate other individuals subject to the sanctions.[233]

A few weeks later, Resolution 1973 was adopted in response to Gaddafi's failure to put an end to the violence and to fulfil the legitimate demands of

228 For more details, see J.M. Farrall, *United Nations Sanctions and the Rule of Law*, Cambridge: Cambridge University Press (2007), pp. 297-305.

229 For a timeline of the conflict in Libya, see *the Economist*, 'The Birth of Free Libya', 25 August 2011; and BBC, 'Libya: The Fall of Gaddafi', available through http://www.bbc.co.uk (consulted on 16 July 2012).

230 See the statement of the representative of the United States in the Security Council Meeting that adopted Resolution 1970, *UN Doc S/PV.6491*: "Tonight, acting under Chapter VII, the Security Council has come together to condemn the violence, pursue accountability and adopt biting sanctions targeting Libya's unrepentant leadership. This is a clear warning to the Libyan Government that it must stop the killing. Those who slaughter civilians will be held personally accountable. The international community will not tolerate violence of any sort against the Libyan people by their Government or security forces".

231 See UN Security Council Resolution 1970 (2011), 26 February 2011, paras. 9-14 (arms embargo); 15-16 (travel ban); and 17-21 (asset freeze).

232 *Ibid*., para. 22.

233 *Ibid*., para. 24.

the population. Resolution 1973 established a Panel of Experts to assist the Sanctions Committee and further strengthened the sanctions, including the asset freeze.[234] From that moment on, the asset freeze applied to all assets belonging to the Libyan authorities, including the assets of high government officials and entities under the control of the Libyan authorities.[235]

Most interesting in this respect is the inclusion in the list of the Libyan National Oil Corporation as a "potential source of funding for [Gaddafi's] regime".[236] In addition, the Security Council decided that States must require all individuals and entities under their jurisdiction doing business with Libya to exercise vigilance if they have reasonable grounds to believe that such business could contribute to violence and use of force against civilians.[237] Since the oil business constituted Libya's principal source of income, these measures first and foremost addressed the responsibility of foreign oil companies operating in Libya.[238]

One of the principal questions that arises in relation to these measures concerns their implications for the trade in Libyan oil. The asset freeze targeted only one of the parties to the conflict, *i.e.,* the Libyan authorities. In other words, the assets freeze did not affect the trade in Libyan oil to the benefit of other actors, such as the National Transitional Council. At the same time, the assets freeze against the Libyan authorities was comprehensive: it applied to all assets of the Libyan authorities that were located abroad and it included a prohibition for foreign individuals and entities to make assets available to the Libyan authorities. This prohibition extended to payments made by foreign

234 UN Security Council Resolution 1973 (2011), 17 March 2011, para. 24.

235 The Security Council decides that the asset freeze "shall apply to all funds, other financial assets and economic resources […] which are owned or controlled, directly or indirectly, by the Libyan authorities […] or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them". See UN Security Council Resolution 1973 (2011), 17 March 2011, para. 19.

236 *Ibid.*, Annex II. On 24 June 2011, the Sanctions Committee extended the assets freeze to a subsidiary of the Libyan National Oil Corporation. See in this regard the following press release: 'Security Council Committee Concerning Libya Adds Names of Individuals and Entities to Its Travel Ban and Assets Freeze List', *UN Doc. SC/10302*, 28 June 2011.

237 The resolution stated that "all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians". See UN Security Council Resolution 1973 (2011), 17 March 2011, para. 21.

238 The Panel of Experts concerning Libya observed that Libya was one of the "less diversified oil-producing economies in the world". It further noted that the oil sector was responsible for 93 per cent of government revenues and 95 per cent of Libya's export earnings. See the Final report of the Panel of Experts established pursuant to Security Council Resolution 1973 (2011) concerning Libya, *UN Doc. S/2012/163*, para. 163.

companies to the Libyan authorities or entities under their control, including payments made to the National Oil Corporation.

The effects of this prohibition should not be underestimated, since the National Oil Corporation was implicated in most oil operations in Libya, mostly through joint ventures with foreign oil companies. In addition, Resolution 1973 (2011) decided that States must require their companies to "exercise vigilance" when doing business in Libya in order to prevent these companies from contributing to "violence and use of force against civilians".[239] This requirement amounts to an obligation of "due care" for companies. Although not watertight, it entails an obligation for companies doing business in Libya to choose their business partners carefully, irrespective of the inclusion of these companies on the sanctions list or not.

The sanctions against the Libyan National Oil Corporation and its subsidiaries were lifted after the National Transitional Council had taken over power in Libya. Resolution 2009, adopted on 16 September 2011, determined that the Libyan National Oil Corporation (LNOC) and Zueitina Oil Company were no longer to be subject to the asset freeze.[240] Sanctions against other entities, including financial institutions, have been lifted subsequently. Some remaining sanctions, notably against Libyan investment companies, are still in place.

Targets and addressees of the sanctions regime

As noted above, the sanctions regime against Libya exclusively targeted the Gadhafi regime. No measures were imposed against the opposition forces. The sanctions regime was to be implemented by all States. Specific obligations relating to the implementation of the asset freeze included the freezing of all assets belonging to the Libyan authorities that were found on their territories and preventing their nationals from making available funds to the Libyan authorities.[241] In addition, States were to require all persons and entities under their jurisdiction to exercise vigilance when doing business with Libyan persons and entities.[242]

Interestingly enough, the resolutions do not directly call upon individuals or companies to exercise vigilance. Instead, the resolutions ask the home States of these companies to enact relevant legislation. This is a departure from other sanctions regimes, discussed in this chapter, which have made direct calls upon individuals and companies to assist in implementing sanctions. Examples include the sanctions regimes imposed against Sierra Leone and Liberia. The sanctions regime against the DR Congo even went a step further through the

239 UN Security Council Resolution 1973 (2011), especially paragraph 21.
240 UN Security Council Resolution 2009, 16 September 2011, para. 14.
241 See UN Security Council Resolution 1973 (2011), especially paragraph 19.
242 *Ibid*., especially paragraph 21.

designation of persons and companies on a sanctions list for not respecting due diligence in the choice of their business partners.

How can this departure from earlier sanctions regimes be explained? A closer look at the objectives and targets of the sanctions regimes may provide a partial answer. Whereas the sanctions regime against Libya was adopted in order to put pressure on the Gaddafi government to end the violence, the sanctions regimes for Sierra Leone, Liberia and the DR Congo were adopted in order to assist these States in addressing a threat to their peace. The due diligence measures in relation to the DR Congo, for example, were adopted at the request of the International Conference for the Great Lakes Region and in support of national legislation. In other words, the sanctions were there to help these States in enforcing national legislation, which was of course not the case in Libya. Nevertheless, the differences in nature between the sanctions regimes only provide a partial explanation. In addition to the adoption of measures addressing the home States of companies doing business with the Gaddafi regime, the Security Council could have addressed companies directly. In this sense, the sanctions regime imposed against Libya can be regarded as a step back in the process of involving individuals and companies in sanctions implementation.

Appraisal of the sanctions regime

In the case of Libya, the Security Council opted for an asset freeze rather than an oil embargo in order to curtail the oil revenues of the Libyan authorities. The reasons for the Security Council to refrain from imposing an oil embargo on Libya may be manifold. Some of these may be politically motivated. It's not a secret that foreign oil companies operating in Libya have conducted a fierce lobby in order to safeguard their business interests. Nevertheless, this would only partially explain the motivation of the Security Council to choose an asset freeze as a lesser means to achieve its objectives.[243]

Another reason may be found in the effects of the sanctions on the Libyan population. In view of the prime significance of oil revenues for the Libyan economy, fully-fledged oil sanctions would have had severe consequences for the Libyan population. A further reason could be related to the objectives of the sanctions regime. The Security Council's main concern was to target the Gaddafi regime in order to stop the violence against the Libyan civilian population. An asset freeze is a more appropriate instrument to target a specific actor than an oil embargo, since such an embargo would have affected both sides to the conflict.

243 This may be exemplified by the position of the European Union as one of the main consumers of Libyan oil. The European Union has extended the asset freeze to include almost the entire Libyan oil industry. See 'Libya: EU imposes additional sanctions following the adoption of UNSCR 1973', Council of the European Union Press Release, 24 March 2011, *Doc. 8110/11 PRESSE 79*.

Even if the Security Council could have solved this problem by exempting oil extracted under authorisation of the NTC from the embargo, it would have encountered both practical and legal problems. The practical problem relates to determining the distinction between "legitimate" and "illegitimate" oil. Certification measures, like those used in the diamond sanctions regimes discussed above, would not have been a viable option in this situation, because these are normally implemented by the government of a State. The legal problem relates to the question of sovereignty. Providing exemptions to an oil embargo for oil traded by an insurrectional movement would have required the Security Council to make a formal statement recognising this movement as the new Libyan government – or at least as the legitimate representative of the Libyan people.[244] The asset freeze avoids these problems while at the same time contributing to the overall objectives of the sanctions regime, i.e., to put an end to the violence in Libya.

A further aspect of interest in relation to the sanctions regime is that the Security Council in both resolutions explicitly expressed its intention to make available at a later stage the frozen assets "to and for the benefit of the people of the Libyan Arab Jamahiriya".[245] This reference arguably constitutes an implicit recognition that the assets belonging to the Libyan authorities belong to and must be used for the benefit of the Libyan people. The reference is reiterated in subsequent resolutions that gradually terminate the asset freeze. In Resolution 2040 (2012), for example, the Security Council decides that the Sanctions Committee must lift the freezing of assets of particular entities "as soon as practical to ensure the assets are made available to and for the benefit of the people of Libya".[246]

It is further interesting to note that the Security Council underscores the importance of making the assets available "in a transparent and responsible manner in conformity with the needs and wishes of the Libyan people".[247] Moreover, the Council requests the International Monetary Fund and the World Bank "to work with the Libyan authorities on an assessment of Libya's public financial management framework, which would recommend steps to be taken by Libya to ensure a system of transparency and accountability with respect to the funds held by Libyan governmental institutions".[248] These statements demonstrate the Security Council's adherence to the principles of transparency and accountability.

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244 For a more detailed analysis of the legal impacts of recognition of the NTC during the Libyan civil war, see Chapter 2 and S. Talmon, 'Recognition of the Libyan National Transitional Council', *ASIL Insights Vol. 15 (16)*, 16 June 2011.

245 UN Security Council Resolution 1970 (2011), especially paragraph 18; and S/RES/1973 (2011), para. 20.

246 See UN Security Resolution 2040 (2012), para. 9. Also see UN Security Council Resolution 2009 (2011), paras. 14-19.

247 See UN Security Council Resolution 2009 (2011), paragraph 14 of the preamble.

248 *Ibid*., especially paragraph 18.

7.5.3 Comparing the sanctions regimes

The sanctions regimes against the DR Congo and Libya use targeted sanctions rather than commodity sanctions to achieve their purposes. In addition, both sanctions regimes cover natural resources. However, the role of natural resources in the sanctions regimes differs significantly. In the case of the DR Congo, individuals and entities are targeted because of their involvement in the illegal trade in natural resources. In the case of Libya, natural resources are targeted because they are owned by individuals placed on the sanctions list.

The regimes also present differences in other respects. One example concerns the targets of the sanctions. In the case of the DR Congo, the sanctions regime targets non-state armed groups and subversive elements of the Congolese army as well as individuals and entities that provide support to these groups. In the case of Libya, the sanctions target the Libyan authorities and those associated with them.

The final difference concerns the role of the private sector in the sanctions regimes. Both regimes target the private sector, but the extent to which and the way in which they do so differs considerably. The 1493 DR Congo sanctions regime targets all companies providing support to armed groups, whether directly or through their mineral procurement policies. If there are grounds for believing that a company is providing support to armed groups and the company has not exercised due diligence, it can be placed on the sanctions list. This implies that the sanctions have a potentially broad reach, targeting companies worldwide that source minerals from the DR Congo. In the case of Libya, the sanctions list includes only those companies that have a direct connection to the Libyan authorities. The guiding principle for placing a company on the list is "ownership" or "control'. The Security Council insists that States require their companies to exercise due care in the choice of their business partners, but the Council does not provide for the possibility of placing these companies on the sanctions list. Thus in this respect the Security Council can be considered to have watered down the 1970 Libya sanctions regime compared to the 1493 DR Congo regime.

7.6 Appraisal of the Security Council's approach to addressing the links between natural resources and armed conflict

This chapter has analysed the sanctions regimes imposed by the Security Council to address the links between natural resources and armed conflict. In most of the cases discussed in this chapter natural resources were at the heart of the conflict. Relevant examples include Angola, Sierra Leone, Liberia and the DR Congo. In other cases, the links between natural resources and

conflict can be considered more remote. The sanctions regime in Southern Rhodesia is an example of a regime targeting natural resources merely because of their general contribution to the Southern Rhodesian economy. The same applies for the situation in Cambodia.

7.6.1 Legal basis

In all cases except Cambodia, the legal basis for imposing sanctions can be found in Chapter VII of the UN Charter. In most cases, the Security Council referred to Chapter VII in a general sense, while in relation to Southern Rhodesia the Council based the sanctions explicitly on Article 41 of the UN Charter. In the case of Cambodia, no reference was made to Chapter VII. Furthermore, the Security Council did not impose sanctions itself, but merely expressed support for a national moratorium. Therefore, the commodity measures imposed in relation to Cambodia do not qualify as sanctions in the sense of Article 41 of the Charter.

In addition, in all cases except Iraq and Cambodia, the Security Council determined the existence of a threat to the peace under Article 39 of the UN Charter before imposing sanctions. In the case of Iraq, the Council referred to "a breach of the peace" because of Iraq's unlawful invasion in Kuwait. In the case of Cambodia, no reference was made to Article 39 of the UN Charter.

7.6.2 Objectives

In its Presidential Statement of 11 February 2011 on the maintenance of international peace and security, the Security Council stated that:

> "The Security Council recalls the role played by the illegal exploitation of natural resources in fuelling some past and current conflicts. In this regard, it recognizes that the United Nations can play a role in helping the States concerned, as appropriate, upon their request and with full respect for their sovereignty over natural resources and under national ownership, to prevent illegal access to those resources and to lay the basis for their legal exploitation with a view to promoting development, in particular through the empowerment of governments in post-conflict situations to better manage their resources".[249]

This Presidential Statement clearly formulates two of the most important objectives of the Security Council sanctions regimes discussed in this chapter. The first is to help States involved in an internal armed conflict to prevent

249 Presidential Statement on Maintenance of international peace and security: the interdependence between security and development, 11 February 2011, *UN Doc. S/PRST/2011/4*.

illegal access by armed groups to the States' natural resources, while the second objective seeks to strengthen the State's governance over natural resources with a view to promoting development.

Curtailing "conflict resources"

The majority of the sanctions regimes discussed in this chapter address the trade in so-called "conflict resources". These are natural resources traded by armed groups in order to finance their armed struggle. Examples of these sanctions regimes include Cambodia, Angola, Sierra Leone, Côte d'Ivoire and the DR Congo. Therefore in many cases sanctions regimes are in fact established to help governments restore the State's sovereignty over its natural resources. The sanctions regimes are often even imposed at the request of the national authorities.

In internal armed conflicts, the Security Council has been hesitant to impose sanctions targeting the national authorities and has done so only in the cases of Southern Rhodesia and Libya. In Southern Rhodesia, sanctions were imposed against a regime that was considered illegal. Similarly, the sanctions imposed in the case of Libya targeted a regime that had lost its legitimacy due to its own actions.

However, in other similar cases, the Security Council refrained from imposing sanctions against the national authorities. In Côte d'Ivoire, it did not take any action against the national authorities during the armed conflict, despite ample evidence of the government violating the arms embargo. Another example concerns the armed conflict in the Darfur region of Sudan between 2003 and 2011, which has not been discussed previously in this chapter.

In the Darfur region, government-supported militias, notably the Janjaweed, were carrying out gross and systematic attacks on the civilian population.[250] In order to put an end to the humanitarian crisis in the Darfur Region, the Security Council imposed an arms embargo against the Janjaweed and provided for the possibility of lifting these sanctions on condition that the government of Sudan fulfilled its commitments to "disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities".[251] In a subsequent resolution, the Security Council expressly contemplated "actions to affect Sudan's petroleum sector" in order to put pressure on the Sudanese government to disarm the militias and stop the atrocities, but the Council never actually imposed such sanc-

250 For more details on the Darfur conflict, see S. Straus, 'Darfur and the Genocide Debate', *Foreign Affairs*, Vol. 84, No. 1 (Jan.-Feb. 2005), pp. 123-133; and A. Abass, 'The United Nations, the African Union and the Darfur Crisis: Of Apology and Utopia', *Netherlands International Law Review* (2007), pp. 415-440.

251 UN Security Council Resolution 1556 (2004).

tions.[252] Instead, it extended the arms embargo to include the Sudanese government.[253]

These examples show that the Security Council is committed to upholding the principle of a State's sovereignty over its natural resources in most circumstances, even in cases where governments use the proceeds from natural resources in ways that threaten international peace and security. However, they also show that political motivations sometimes prevent the Security Council from taking appropriate action. There is no objective reason that explains the difference in the approach used in Libya on the one hand, where the Security Council did impose sanctions against the national oil company, and in Sudan on the other, where the Security Council did not impose such targeted sanctions. In both situations, the government was involved in gross human rights violations. This arbitrary approach undermines the credibility of the Security Council.

Strengthening governance over natural resources

Another relevant issue for the purposes of this chapter is the Security Council's approach to the governance of natural resources. In several cases discussed in this chapter, the Security Council referred to improvements in governance as a reason to exempt natural resources from the sanctions or to lift the sanctions altogether. In the case of diamond sanctions, the Security Council exempted from the sanctions those diamonds that were controlled with an effective, transparent, accountable and internationally verifiable certificate of origin regime. Furthermore, in the case of Liberia, the Security Council made the lifting of the sanctions dependent on the implementation of reform plans for the forestry sector and for public administration in general. Liberia in particular is an example of a sanctions regime where the Security Council used sanctions as a tool to bring about great structural reforms in the governance of natural resources. These reforms also addressed environmental protection as a way of safeguarding the natural resources of Liberia for development.

Another relevant example concerns the DR Congo where the Security Council is engaged in structural reforms of the minerals sector. However, the methods used by the Security Council in relation to the DR Congo differ from the sanctions regimes discussed above. The Council aims to restore the governance of the Congolese State over its mines through a combination of measures, including the introduction of due diligence requirements to companies. Indirectly, the implementation of these due diligence requirements by companies will increase transparency in the Congolese mineral sector.

252 *Ibid*., especially paragraph 14.

253 UN Security Council Resolution 1591 (2005), especially paragraph 7. See also A. Abass, 'The United Nations, the African Union and the Darfur Crisis: Of Apology and Utopia', *Netherlands International Law Review* (2007), p. 429.

The approach of the Security Council in these cases is commendable. Its engagement in structural reforms of natural resources sectors is an essential part of strategies aimed at addressing the links between natural resources and armed conflict. The role of sanctions is important in this respect. They can serve as a catalyst for improvements in the governance of natural resources in States affected by conflicts. The 1521 Liberia sanctions regime serves as an example for future action by the Security Council in this respect. The sanctions against Liberia have prompted important changes in the governance of Liberian resources, mainly by supporting reforms undertaken by other organizations.

7.6.3 Evolution in the approach of the Security Council

The sanctions regimes signal an important evolution in the approach of the Security Council in addressing the links between natural resources and armed conflict. This evolution is linked to the Council's efforts to find ways to address these links effectively, while minimising the negative effects of the sanctions on the civilian population. Thus where the earlier sanctions regimes were mainly comprehensive in nature, the Security Council soon switched to more selective sanctions regimes. These commodity sanctions regimes targeted specific commodities based on their particular contribution to an armed conflict.

The first time the Security Council used such selective commodity sanctions was in the case of Cambodia, where it particularly targeted round logs and gems. In subsequent sanctions regimes, it refined its approach, at least in relation to diamonds. The Council introduced a distinction between diamonds traded by armed groups and by a State's authorities. Diamonds traded by the latter were exempted from the regime. The Security Council introduced an important innovation for this purpose: the Certificate of Origin Regime. This enabled it to directly target those responsible for causing a threat to the peace, while minimising the negative effects of the sanctions on the civilian population.

However, more recent sanctions regimes imposed by the Security Council started to move away from commodity sanctions in favour of sanctions targeting individuals and organizations. In 2008 when the Security Council decided to impose measures to address the illegal exploitation of natural resources in the DR Congo, it opted for an assets freeze and a travel ban targeting individuals and entities supporting illegal armed groups with the illicit trade of natural resources. Similarly, in the case of Libya, the Security Council opted for a freezing of the assets of the national oil company rather than imposing an oil embargo.

One major advantage of targeted sanctions is that individuals and entities responsible for provoking a threat to the peace are targeted directly. This prevents a major problem encountered in the commodity-based sanctions

regimes. In the cases of Liberia and Côte d'Ivoire, for example, the Taylor government and the *Forces Nouvelles* respectively, switched from one natural resource to another in order to escape the sanctions.[254] Sanctions targeting individuals and entities avoid this problem, but also have major disadvantages, such as the risk of the arbitrary application of sanctions. This can be illustrated with reference to the reforms in recent years with regard to appeal procedures regarding the delisting of individuals.[255] Another important disadvantage is the sophisticated level of knowledge required and the administrative burden placed on the Sanctions Committee responsible for the listing and delisting of individuals and entities. In order to apply targeted sanctions effectively, it is necessary to have detailed knowledge of those individuals and entities directly and indirectly involved in the illegal trade of natural resources. From this perspective, commodity sanctions exempting from the embargo those natural resources that are traded with a certificate of origin regime are preferable.[256]

Perhaps the best option for the Security Council would be to apply a combination of the two types of sanctions. Recently, in a resolution relating to the situation in Somalia, the Security Council did resort to imposing both types of sanctions. In Resolution 2036 (2012), the Security Council imposed an embargo on the export of charcoal from Somalia in order to prevent this natural resource from financing armed groups operating in the country.[257] This embargo was intended to strengthen the targeted measures imposed by the Security Council in earlier resolutions, most notably Resolution 1844 (2008).

7.6.4 Sustainability: a missed opportunity

The Security Council has only referred to the protection of natural wealth and resources in a few resolutions. In its resolutions relating to Cambodia, it simply endorsed measures imposed by the national authorities to protect the environment, while in the case of Liberia it referred to the promotion of environmentally sustainable business practices as a reason to lift the timber sanctions. However, in the case of Liberia the Security Council's measures should be

254 See P. Wallensteen, M. Eriksson & D. Strandow, 'Sanctions for Conflict Prevention and Peace Building: Lessons Learned from Côte d'Ivoire and Liberia', Department of Peace and Conflict Research, Uppsala University (2006), p. 31.

255 See, *e.g.*, S. Eckert, T. Biersteker, L.J. van den Herik and A. Cuyvers, 'Due Process and Targeted Sanctions, Update of the Watson Report', Brown University: Watson Institute (2012); and L.J. van den Herik, 'The Security Council's Targeted Sanctions Regimes: In Need of Better Protection of the Individual', *Leiden Journal of International Law*, Vol. 20 (4), pp. 797-807.

256 In the case of the DR Congo, attempts to introduce a regional tracking-and-tracing system for minerals is currently developed under the auspices of the International Conference for the Great Lakes Region.

257 UN Security Council Resolution 2036 (2012), para. 22.

viewed in relation to the Liberian Forest Initiative. In other words, it was not the Security Council that took the initiative to impose measures aimed at environmental protection, but rather the organizations responsible for implementing the LFI.

Thus the Security Council does not actively include environmental protection in its strategies for conflict resolution and post-conflict peacebuilding. A study of relevant reports of UN Panels of Experts does reveal some attention to the issue of environmental protection. For example, some references to this issue can be found in the reports of the Panels of Experts on Liberia and the DR Congo. The main focus of these panels is the issue of (over)exploitation of natural resources and its effect on the environment.

The Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, for example, designates the "illicit exploitation of wildlife, forest and other resources" in national nature reserves and "intensive and unsustainable mining and logging activities" outside these reserves as the causes of the ecological destruction resulting from the armed conflict.[258] It reports "highly organized and systematic exploitation activities at levels never before seen". According to the Panel, these activities include "poaching for ivory, game meat and rare species, logging, and mining for coltan, gold and diamonds".[259] Similarly, the Panel of Experts on Liberia explicitly refers to the problem of over-exploitation of forest resources by the parties to the armed conflict in Liberia.[260]

In addition, both Panels assess the impact of sanctions on the environment. In this respect the Panel of Experts on Liberia assesses the impact of the timber sanctions imposed by the UN Security Council on the long-term viability of the forest and advises the UN Security Council to declare a moratorium on all commercial activities in the extractive industries.[261] In contrast, the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo assesses the desirability of imposing sanctions on particular commodities and concludes that "an embargo or a moratorium banning the export of raw materials originating in the Democratic Republic of the Congo does not seem to be a viable means of helping to improve the situation of the […] natural environment".[262]

258 Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc. *S/2002/565*, para. 50.

259 *Ibid*., para. 52.

260 Report of the Panel of Experts pursuant to paragraph 25 of Security Council Resolution 1478 (2003) concerning Liberia, UN Doc. *S/2003/779*, para. 14 and paras. 66-69.

261 *Ibid*., para. 17.

262 Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc. *S/2002/1146*, para. 155.

In addition to these general references to the environment and to sustainability, the reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo also contain indications that parties to an armed conflict must respect the rules of international environmental law. In two of its reports, the Panel of Experts explicitly refers to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in relation to poaching activities. In its interim report, the panel states that it "has indications that, in most cases, poaching of elephants *in violation of international law* (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) was well organized".[263] It goes on to specify that the violations of CITES were committed by the parties themselves: "[e]ither soldiers hunted directly with the consent of the commander or they provided equipment and protection to local villagers to execute the task with the objective of collecting elephant tusks".[264] In its final report, the panel asks Member States to ensure "that their National Bureaus, established under the [Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora], intensify their investigations into the criminal traffic in endangered species of wild animals and plants as outlined by CITES".[265]

In many cases the Security Council expressly relies on information from reports issued by the Panels of Experts that it established, but it does not show any particular sensitivity with regard to the environmental findings of the Panels of Experts. These findings do not seem to play any role in decisions of the Security Council to either impose or to refrain from imposing sanctions. This is unfortunate, as environmental protection is essential for creating an enduring peace in a country. It is therefore of the utmost importance for the Security Council to start devoting more explicit attention to environmental protection as part of its strategies regarding the economic reconstruction of States that have experienced armed conflict.

7.6.5 The role of the Security Council

With regard to the conflicts discussed in this chapter, the Security Council acts principally in a coordinating capacity. Sanctions serve mainly to prompt reforms that have to be implemented by means of other forms of cooperation. The role of the private sector is of paramount importance in this respect. The

263 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc. *S/2001/357*, para. 62. Author's emphasis added.

264 *Ibid*.

265 Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc. *S/2002/1146*, para. 185.

trade in natural resources that finance armed conflict can only be curbed by engaging the private sector in reforms. The diamond sanctions, as well as the due diligence standards, reveal the Security Council's awareness of the need to engage the private sector in reforms.

The role of governments is of course equally important. Reforms in the natural resources sectors can only be achieved with the full support of the government of a State. Sanctions serve only as a tool to bring about the necessary changes. The Security Council therefore often leaves the initiative to implement changes to the States themselves. Examples include the certificate-of-origin regimes proposed for rough diamonds. The Security Council has left it to the States themselves to choose the appropriate mechanism for this purpose.

In most cases, the Security Council keeps its distance while using sanctions to put pressure on governments to implement the necessary changes. This can even benefit the respective governments when it gives the national authorities the necessary support to push for changes. For example, this was the case in Liberia. The sanctions strengthened the efforts of President Johnson Sirleaf to implement changes in Liberia's administrative system.

The principle of national ownership of strategies for post-conflict peacebuilding is central to the Security Council's efforts in this respect. In a 2009 Presidential Statement on post-conflict peacebuilding, the Security Council explicitly emphasised the importance of this principle for peacebuilding efforts and priorities, while at the same time emphasising "the vital role of the United Nations in supporting national authorities to develop an early strategy, in close consultation with international partners, to address these priorities".[266] The sanctions regimes discussed in this chapter demonstrate the will of the Security Council to respect national ownership as much as possible, even in relation to sanctions regimes.

Finally, it is of paramount importance for the Security Council to continue its efforts to address the role of natural resources in financing armed conflict. In fact, its role should even be strengthened in this respect. The current sanctions regimes focus mainly on preventing the trade in natural resources by armed groups. However, in order to achieve a lasting peace, the underlying governance structures should be addressed as well. The Security Council should use sanctions more often to push for structural changes in the governance of natural resources in countries recovering from armed conflict. These changes should be aimed at introducing transparency, accountability and sustainability in the governance of natural resources as a tool to prevent future conflicts in countries that have suffered from armed conflict. The Security Council has wide discretionary powers to act under Chapter VII of the UN

266 UN Security Council Presidential Statement of 22 July 2009, S/PRST/2009/23. The importance of the principle was confirmed in subsequent presidential statements regarding post-conflict peacebuilding. See S/PRST/2010/7 and S/PRST/2010/20.

Charter, and greater use should be made of these. It is precisely because of its authority to impose mandatory measures that the Security Council is the appropriate body to do so. This approach is in line with the broader acceptance of the Security Council's role beyond immediate crisis management.

Of course, a word of caution is required in this appraisal. Sanctions are an effective tool to address the links between natural resources and armed conflict. In this respect, achieving structural reforms in natural resources sectors can be a legitimate objective of sanctions regimes. However, the role of the Security Council under Chapter VII of the UN Charter is limited to addressing "threats to the peace, breaches of the peace, and acts of aggression" and should therefore not be overestimated. This means that the role that sanctions can play is limited to this context.