
USING TARGETED SANCTIONS TO END VIOLATIONS AGAINST CHILDREN IN ARMED CONFLICT

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ABSTRACT

This article examines how the United Nations Security Council can more effectively utilize the threat and use of sanctions to contribute to ending grave violations against children in situations of armed conflict. The article reviews the Security Council’s efforts to address such violations and observes that the Council has so far made limited use of the possibility of sanctions. Drawing on lessons learned from the Council’s general practice in applying sanctions, this article considers that sanctions can play an effective role in influencing the behavior of potential and actual perpetrators of grave violations against children, but that a number of difficult political, practical, and legal challenges first need to be overcome. Taking these challenges into account, this article offers concrete recommendations for deploying the threat and use of sanctions to help put an end to grave violations against children in situations of armed conflict.

INTRODUCTION

In 2004, the United Nations Security Council for the first time expressed its general intention to consider using targeted measures or sanctions against parties identified by the Secretary-General as being responsible for the recruitment and use of child soldiers. The Security Council has since reiterated this intention to use sanctions at least six times, including each year from 2009 through 2013, and it has expanded the scope of its expressed intention to include perpetrators of other grave violations committed against children in situations of armed conflict. In his 2012 annual report to the Security Council on children in armed conflict, the Secretary-General stated, “The threat of sanctions sends a powerful signal to parties that perpetrate grave violations, and has contributed to greater compliance with the Security Council agenda on children and armed

conflict.”¹ Yet the Security Council has made limited use of this potentially powerful tool. This article examines the Security Council’s threat and use of sanctions in ending and preventing grave violations against children and offers recommendations based on the Council’s general sanctions practice for strengthening the effectiveness of this tool.

Part I of this article reviews the development of the Security Council’s Children and Armed Conflict Agenda and references therein to the use of sanctions against perpetrators of grave violations against children. Part II draws on the Council’s broader sanctions practice to identify possible improvements in using the threat and imposition of targeted measures to end and to prevent grave violations against children. Part III identifies possible long-term institutional actions to strengthen the responsiveness of the Security Council’s sanctions approach to grave violations against children. This article concludes with concrete recommendations for strengthening Security Council sanctions practices in order to better protect children in situations of armed conflict.

I. SANCTIONS AND THE CHILDREN AND ARMED CONFLICT AGENDA

A. *Normative Development of the Children and Armed Conflict Agenda Including the Threat of Sanctions*

The UN Security Council initially took up the issue of children and armed conflict as an agenda item in the late 1990s, following a landmark report on the subject by the Secretary-General’s expert, Ms. Graça Machel.² In 1998, the Council held the first of what would later become annual debates on the subject, during which it adopted a Presidential Statement expressing concern over the harmful impact of armed conflict on children and calling on all parties to comply with their obligations under international law.³ In 1999, the Security Council adopted its first thematic resolution on children and armed conflict, linking the impact of armed conflict on children to peace and security and requesting a report from the Secretary-General, which has since evolved into an annual reporting process.⁴ In 2001, the Security Council asked the Secretary-General to supplement these reports with an annex that listed parties in armed conflict that recruit or use children, both in the situations on the Council’s agenda

¹ U.N. Secretary-General, *Children and Armed Conflict: Rep. of the Secretary-General*, ¶ 220, U.N. Doc. A/66/782-S/2012/261 (Apr. 26, 2012).

² U.N. Expert Graça Machel, *Impact of Armed Conflict on Children, Rep. of U.N. Expert Graça Machel*, GAOR, 51st Sess., Item 108, U.N. Doc. A/51/306 (Aug. 26, 1996).

³ U.N. SCOR, 53d Sess., 3896th mtg., U.N. Doc. S/PV.3896 (June 29, 1998); S.C. Pres. Statement 1998/18, U.N. Doc. S/PRST/1998/18 (June 29, 1998).

⁴ S.C. Res. 1261, ¶ 16, U.N. Doc. S/RES/1261 (Aug. 30, 1999).

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and in other contexts which, in the Secretary-General's opinion, threatened international peace and security.⁵ In subsequent years, the Council extended these so-called "trigger" violations for the listed parties to include killing and maiming, rape and other forms of sexual violence, and attacks on schools and hospitals.⁶

The Secretary-General's reports and the Security Council's consideration thereof are intended to induce parties to comply with their obligations under international law and Security Council resolutions through "naming and shaming." Once named, parties are encouraged by the Security Council to execute concrete, time-bound action plans to bring about an end to ongoing violations and to prevent further violations in the future.⁷ In the action plans, parties commit to a series of specific, concrete steps to reduce and eventually eliminate the violations. If the parties implement these action plans and the United Nations can verify an end to violations, the Secretary-General removes the names of the relevant parties ("delists") from the list of violators included in the annexes to his or her reports.⁸ As of September 2012, twenty such parties had concluded action plans and nine had been delisted from the Secretary-General's reports following full implementation of their action plans.⁹

To support progress in the development, adoption, and implementation of action plans, the Security Council established a Monitoring and Reporting Mechanism ("MRM").¹⁰ Under the MRM, country-level task forces on the ground monitor six grave violations against children—the four "trigger" violations mentioned above—in addition to child abduction and denial of humanitarian access to children.¹¹ The task forces collect and verify information, which is then submitted in a report by the Secretary-General to a new subsidiary body, the Security Council Working Group on Children and Armed Conflict ("Working Group" or "SCWG-CAC").¹² The Working Group considers the Secretary-General's reports on specific countries as well as progress in the development and implementation of action plans,

⁵ S.C. Res. 1379, ¶ 4, U.N. Doc. S/RES/1379 (Nov. 21, 2001).

⁶ S.C. Res. 1998, ¶ 1, U.N. Doc. S/RES/1998 (July 12, 2011) (adding attacks on schools and hospitals); S.C. Res. 1882, ¶ 8(c), U.N. Doc. S/RES/1882 (Aug. 4, 2009) (adding killing and maiming and rape and other forms of sexual violence).

⁷ See, e.g., S.C. Res. 1539, ¶ 5(a), U.N. Doc. S/RES/1539 (Apr. 22, 2004); S.C. Res. 1998, *supra* note 6, ¶ 6.

⁸ S.C. Res. 1998, *supra* note 6, ¶ 6.

⁹ Special Rep. of the Secretary-General, Statement by the Special Rep. for Children and Armed Conflict to the United Nations (Sept. 19, 2012), *available at* <https://childrenandarmedconflict.un.org/statement/19-sept-2012-open-debate-security-council-statement>.

¹⁰ S.C. Res. 1612, ¶ 2, U.N. Doc. S/RES/1612 (July 26, 2005).

¹¹ *Id.* ¶ 16.

¹² *Id.* ¶ 8.

and it may make recommendations on the protection of children both to the Security Council and to other UN bodies.¹³

The action plan process is premised largely on parties agreeing voluntarily to end violations and to take specific steps in that regard. However, the Security Council has always recognized that relying on parties voluntarily to enter into action plans will often be insufficient and that stronger measures may be needed. Among the available tools, the Security Council has focused in particular on sanctions. In 2004, the Security Council introduced the possibility of applying sanctions to those responsible for the recruitment and use of children and proposed linking the use of sanctions to a party's failure to make progress towards developing or implementing action plans.¹⁴ The Council expressed its intention

to consider imposing targeted and graduated measures, through country-specific resolutions, such as, inter alia, a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against [parties responsible for the recruitment and use of children] if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan.¹⁵

A year later, the Security Council reaffirmed its intention to consider imposing such measures on parties "in violation of applicable international law relating to the rights and protection of children" without explicitly limiting its concern to the recruitment and use of children.¹⁶ From 2009 through 2013, in resolutions or Presidential Statements adopted during the annual debates on children and armed conflict, the Security Council routinely reiterated its intention to use targeted measures against parties responsible for violations against children.¹⁷

Beginning with the adoption of Resolution 1882 in 2009, the Security Council described additional steps that could be taken with regard to the imposition of sanctions.¹⁸ In Resolution 1882, the Security Council "request[ed] enhanced communication between the Working Group [on Children and Armed Conflict] and relevant Security Council Sanctions Committees, including through the exchange of pertinent information on

¹³ *Id.*

¹⁴ S.C. Res. 1998, *supra* note 6, ¶ 6.

¹⁵ S.C. Res. 1539, *supra* note 7, ¶ 5(c).

¹⁶ S.C. Res. 1612, *supra* note 10, ¶ 9.

¹⁷ S.C. Pres. Statement 2013/8, U.N. Doc. S/PRST/2013/8 (June 17, 2013); S.C. Res. 2068, ¶ 3, U.N. Doc. S/RES/2068 (Sept. 19, 2012); S.C. Res. 1998, *supra* note 6, ¶ 9; S.C. Pres. Statement 2010/10, U.N. Doc. S/PRST/2010/10 (June 16, 2010); S.C. Res. 1882, *supra* note 6, ¶ 7.

¹⁸ See S.C. Res. 1882, *supra* note 6.

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violations and abuses committed against children in armed conflict.”¹⁹ This resolution also introduced the term “persistent perpetrators,”²⁰ namely parties listed in the annexes to the Secretary-General’s annual reports for five or more consecutive years.²¹ In a Presidential Statement adopted the following year, the Security Council encouraged the sharing of information by the SCWG-CAC and the Special Representative of the Secretary-General for Children and Armed Conflict (“Special Representative”) with the Sanctions Committees and their expert groups. The Security Council also expressed its intention to incorporate relevant children and armed conflict language in the mandates of existing or future Sanctions Committees.²² In 2011, Resolution 1998 gave greater weight to these two objectives by incorporating the provisions of the 2010 Presidential Statement.²³

Concerned with ongoing violations, the Council directed the SCWG-CAC “to consider, within one year, a broad range of options for increasing pressure on persistent perpetrators of violations and abuses committed against children in situations of armed conflict.”²⁴ In 2012, the Security Council passed a resolution echoing the Council’s intention to use sanctions against persistent perpetrators and calling for the SCWG-CAC to consider a range of options for increasing pressure on such perpetrators.²⁵ Resolution 2068 also coupled the threat of sanctions with accountability as a means of inducing compliance with relevant international law.²⁶ In the 2013 Presidential Statement, the Security Council largely reiterated its previous language on sanctions while simultaneously promoting accountability mechanisms as another tool for ending and preventing violations.²⁷

B. Threat and Use of Sanctions by the Security Council for Violations against Children in Specific Armed Conflicts

1. Establishing Sanctions Regimes Applicable to Violations against Children

The Security Council has sparingly deployed targeted measures against perpetrators of grave violations against children, despite its expressed

¹⁹ *Id.* ¶ 7(b).

²⁰ *Id.* ¶¶ 7(c), 16.

²¹ U.N. Secretary-General, *Children and Armed Conflict*, Annex I, U.N. Doc. A/67/845-S/2013/245 (May 15, 2013); S.C. Res. 1998, *supra* note 6, ¶ 9(c).

²² *Id.*

²³ S.C. Res. 1998, *supra* note 6, ¶ 9(c).

²⁴ *Id.* ¶ 21.

²⁵ S.C. Res. 2068, *supra* note 17, ¶¶ 3(b), 5.

²⁶ *Id.* ¶ 3.

²⁷ S.C. Pres. Statement 2013/8, *supra* note 17.

intention to do so. The Secretary-General's 2014 annual report on children and armed conflict mentioned fifteen countries or regions in which perpetrators were committing grave violations against children in the context of armed conflicts.²⁸ Of these fifteen situations, the Security Council has explicitly authorized targeted measures specifically on the basis of grave violations against children in only three: the Democratic Republic of the Congo ("DRC"),²⁹ Somalia,³⁰ and the Central African Republic ("CAR").³¹ Concerning Darfur, Sudan,³² and Côte d'Ivoire (which no longer appears in the annexes to the Secretary-General's reports as all parties have been delisted),³³ individuals and entities may be subject to targeted measures for violations of human rights and humanitarian law, including violations against children. However, violations against children are not specifically mentioned as grounds for imposing sanctions in these two situations. No sanctions regimes for imposing targeted measures for grave violations against children, directly or as violations of human rights or humanitarian law, exist in the remaining eleven countries and in areas of Sudan outside of Darfur. Beyond these fifteen countries listed in the 2014 report, the Security Council has agreed to use targeted measures against individuals or entities associated with Al Qaeda³⁴ or the Taliban.³⁵ Such entities could include parties identified as responsible for grave violations against children in Afghanistan, Iraq, Mali, and Somalia. However, in these cases, targeted measures are imposed on the basis of affiliation with the Taliban or Al Qaeda, not on the basis of particular violations.³⁶

The five sanctions regimes for violations against children or violations of human rights and humanitarian law followed similar patterns. In each case, the Security Council first imposed a general arms embargo, either on an entire country, such as Côte d'Ivoire,³⁷ Somalia,³⁸ and the CAR³⁹ or on a

²⁸ U.N. Secretary-General, *Children and Armed Conflict*, U.N. Doc. A/68/878-S/2014/339 (May 15, 2014).

²⁹ S.C. Res. 1807, ¶¶ 11, 13, U.N. Doc. S/RES/1807 (Mar. 31, 2008).

³⁰ S.C. Res. 2093, U.N. Doc. S/RES/2093 (Mar. 6, 2013); S.C. Res. 2002, U.N. Doc. S/RES/2002 (July 29, 2011).

³¹ S.C. Res. 2134, ¶ 37, U.N. Doc. S/RES/2134 (Jan. 28, 2014).

³² S.C. Res. 1591, ¶ 3(c), U.N. Doc. S/RES/1591 (Mar. 29, 2005).

³³ S.C. Res. 1572, ¶ 9, U.N. Doc. S/RES/1572 (Nov. 15, 2004).

³⁴ S.C. Res. 2083, ¶ 1, U.N. Doc. S/RES/2083 (Dec. 17, 2012) (referencing S.C. Res. 1333, ¶ 8(c), U.N. Doc. S/RES/1333 (Dec. 19, 2000)); S.C. Res. 1989, ¶¶ 1, 4, U.N. Doc. S/RES/1989 (June 17, 2011); S.C. Res. 1390, ¶¶ 1-2, U.N. Doc. S/RES/1390 (Jan. 16, 2002).

³⁵ S.C. Res. 1988, ¶ 1, U.N. Doc. S/RES/1988 (June 17, 2011).

³⁶ *Id.* ¶ 2.

³⁷ S.C. Res. 1572, *supra* note 33, ¶ 9.

³⁸ S.C. Res. 733, ¶ 5, U.N. Doc. S/RES/733 (Jan. 23, 1992).

³⁹ S.C. Res. 2127, ¶ 54, U.N. Doc. S/RES/2127 (Dec. 5, 2013).

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particular geographical region, such as Darfur, Sudan,⁴⁰ or the Kivus and Ituri in the DRC.⁴¹ The Security Council then established a Sanctions Committee, comprised of members that were responsible for monitoring the arms embargo.⁴² The Sanctions Committee could designate individuals for asset freezes or travel bans on the basis of specified criteria. In the cases of Darfur and Côte d'Ivoire, the Sanctions Committee was empowered to designate individuals on the basis of violations of international humanitarian or human rights law.⁴³ In Somalia, the DRC, and the CAR, the Security Council did not initially include violations of international humanitarian law or human rights in the designation criteria, but instead focused on violations of the arms embargo⁴⁴ and, in the case of Somalia, threats to peace and obstruction of humanitarian assistance.⁴⁵ The Security Council subsequently extended asset freezes and travel bans to leaders responsible for the recruitment or use of children and to individuals responsible for a range of serious violations of international law.⁴⁶ Furthermore, it empowered the Sanctions Committees for Somalia, the DRC, and CAR to designate individuals on these bases.⁴⁷

2. Imposing Sanctions against Perpetrators

The Security Council has made the largest use of sanctions against perpetrators of grave violations against children in the DRC. As of April 2013, nineteen individuals and two armed groups were subject to sanctions (asset freezes and travel bans) for violations against children.⁴⁸ The overwhelming majority of the sanctioned individuals were members of two designated armed groups, Mouvement du 23 Mars ("M23") and Les Forces

⁴⁰ S.C. Res. 1556, ¶¶ 7-8, U.N. Doc. S/RES/1556 (July 30, 2004).

⁴¹ S.C. Res. 1493, ¶ 20, U.N. Doc. S/RES/1493 (July 28, 2003).

⁴² S.C. Res. 1591, *supra* note 32, ¶ 3(a)(i); S.C. Res. 1572, *supra* note 33, ¶ 17; S.C. Res. 1533, ¶¶ 3-4, U.N. Doc. S/RES/1533 (Mar. 12, 2004); S.C. Res. 751, ¶ 3, U.N. Doc. S/RES/751 (Apr. 24, 1992).

⁴³ S.C. Res. 1591, *supra* note 32, ¶ 3(c); S.C. Res. 1572, *supra* note 33, ¶ 9.

⁴⁴ S.C. Res. 2127, *supra* note 39, ¶ 57; S.C. Res. 1596, ¶ 18, U.N. Doc. S/RES/1596 (Apr. 18, 2005).

⁴⁵ S.C. Res. 1844, ¶ 8, U.N. Doc. S/RES/1844 (Nov. 20, 2008).

⁴⁶ S.C. Res. 2134, *supra* note 31, ¶ 37; S.C. Res. 2002, ¶ 1, U.N. Doc. S/RES/2002 (July 29, 2011); S.C. Res. 1698, ¶ 13, U.N. Doc. S/RES/1698 (July 31, 2006).

⁴⁷ S.C. Res. 2134, *supra* note 31, ¶ 37; S.C. Res. 2002, *supra* note 30, ¶ 1; S.C. Res. 1698, *supra* note 46, ¶ 13.

⁴⁸ 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 4 of Resolution 2136 (2014) (June 30, 2014), http://www.un.org/sc/committees/1533/pdf/1533_list.pdf.

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Démocratiques pour la Libération du Rwanda (“FDLR”).⁴⁹ These two groups, along with the national armed forces and smaller local “Mai Mai” groups, were the primary combatants in the DRC.⁵⁰ The Secretary-General has listed the FDLR and the M23, as well as the M23’s predecessor, Congrès National pour la Défense Du People (“CNDP”), as perpetrators of grave violations against children in his annual reports each year since 2009.⁵¹ However, the national armed forces, Forces Armées de la République Démocratique du Congo (“FARDC”), have not been subject to sanctions, despite being listed for grave violations against children every year since 2005.⁵²

Despite the Security Council’s 2006 decision to extend the DRC’s sanctions regime and to include those responsible for violations against children, no individuals were designated for having committed these violations for nearly three years. The group of experts established to assist the DRC Sanctions Committee first identified groups that were recruiting and using children in a report submitted on January 23, 2008.⁵³ It subsequently provided additional information on child recruitment and use in reports submitted on July 28, 2008⁵⁴ and on November 21, 2008.⁵⁵ On March 3, 2009, the DRC Sanctions Committee, acting on the reports of the group of experts, added three officers of the Forces Combattantes Abacunguzi (“FOCA”) branch within the FDLR to the list of persons subject to sanctions: Stanislas Nzeyimana, Pacifique Ntawunguka, and Leopold Mujtambere.⁵⁶ Each individual served in a command role within

⁴⁹ *See id.*

⁵⁰ *See Eastern Congo: Armed Groups*, ENOUGH PROJECT, http://www.enoughproject.org/conflicts/eastern_congo/armed-groups (last visited Oct. 20, 2014).

⁵¹ *See Democratic Republic of the Congo*, WATCHLIST ON CHILDREN AND ARMED CONFLICT, <http://watchlist.org/the-countries/d-r-congo> (last visited Oct. 20, 2014).

⁵² *See id.*

⁵³ U.N. Group of Experts on the Dem. Rep. Congo, Rep., transmitted by letter dated Jan. 23, 2008 from Chairman of the Security Council Comm. Established Pursuant to Resolution 1533 (2004) Concerning the Dem. Rep. Congo Addressed to the President of the Security Council, ¶¶ 47-48, 62-63, 88, U.N. Doc. S/2008/43 (Feb. 13, 2008).

⁵⁴ U.N. Group of Experts on the Dem. Rep. Congo, Rep., transmitted by letter dated July 28, 2008 from Chairman of the Security Council Comm. Established Pursuant to Resolution 1533 (2004) Concerning the Dem. Rep. Congo Addressed to the President of the Security Council, ¶¶ 74-79, U.N. Doc. S/2008/772 (Dec. 12, 2008).

⁵⁵ U.N. Group of Experts on the Dem. Rep. Congo, Rep., transmitted by letter dated Nov. 21, 2008 from Chairman of the Security Council Comm. Established Pursuant to Resolution 1533 (2004) concerning the Dem. Rep. of Congo Addressed to the President of the Security Council, ¶¶ 167-86, U.N. Doc. S/2008/773 (Dec. 12, 2008).

⁵⁶ Press Release, Security Council, Sanctions Committee Concerning Democratic Republic of Congo Adds Four Individuals to Assets Freeze, Travel Ban List, U.N. Press Release SC/9068 (Mar. 3, 2009).

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the FOCA branch of the FDLR.⁵⁷ The Sanctions Committee justified these designations on several grounds, including two grounds particularly significant to violations against children. First, the Sanctions Committee stated that FDLR-FOCA was “impeding the disarmament and the voluntary repatriation and settlement of combatants.”⁵⁸ Second, the Sanctions Committee noted that FDLR-FOCA was responsible for recruiting and using child soldiers.⁵⁹ This was the first time that recruiting and using children was included as justification for imposing sanctions upon individuals.

In August 2010, following a briefing by the Special Representative of the Secretary-General for Children and Armed Conflict, the Sanctions Committee updated its justifications for nine individuals already subject to sanctions to reference their responsibility for recruiting and using children.⁶⁰ Five of the sanctioned individuals, Jérôme Kakwavu Bukande, Khawa Panga Mandro, Thomas Lubanga, Germain Katanga, and Mathieu Ngudjolo, were active or former militia leaders allegedly responsible for the recruitment and use of children in the Ituri region and North Kivu regions.⁶¹ Two sanctioned individuals, Laurent Nkunda and Bosco Taganda, were CNDP members responsible for recruiting and using children in the North Kivu region.⁶² Two other sanctioned individuals, Ignace Murwanashyaka and Sylvestre Mudacumura, were leaders of FDLR-FOCA.⁶³ Incorporating these violations into the sanctions justifications did not impose any additional measures on these individuals, but it communicated the Security Council’s disapprobation and had implications for any prospective delisting of these individuals’ groups from the Secretary-General’s annual reports. At the time the justifications were amended, eight of the nine individuals were either under arrest or had been charged with war crimes, and four had been arrested and were on trial or awaiting trial on charges which specifically included the recruitment and use of children.⁶⁴ Three—Lubanga, Katanga and Ngudjolo—were on trial before the International Criminal Court (“ICC”). A fourth, Murwanashyaka, was awaiting trial in Germany.⁶⁵ A fifth, Taganda, was subject to an ICC arrest warrant for the

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ Press Release, Security Council, Security Council Committee Concerning Democratic Republic of Congo Updates List of Individuals and Entities Subject to Travel Ban, Assets Freeze, U.N. Press Release SC/10018 (Aug. 31, 2010).

⁶¹ *See id.*

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *See id.*

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recruitment and use of children but remained at large.⁶⁶ Two others—Kakwavu Bukande and Mandro—were in Congolese custody awaiting trials on charges of war crimes, but it was unclear if these included charges of child recruitment and use.⁶⁷ Another, Nkunda, was under house arrest in Rwanda but had not been formally charged.⁶⁸ The only individual not yet arrested or subject to an arrest warrant, Sylvestre Mudacumura, became the subject of a 2012 ICC warrant issued for multiple counts of war crimes, none of which included the recruitment and use of children.⁶⁹

Between August 2010 and November 2012, and after the Security Council amended the justifications for the nine individuals' sanctions, the Security Council added a number of other individuals to the sanctions list. However, only two of these individuals, CNDP Officer Innocent Zimurinda Imurinda, and Mai Mai leader Ntabo Ntaberi Sheka, were added to the sanctions list for violations involving children.⁷⁰ In November and December 2012, following an increase in attacks by the M23, the Security Council added five M23 leaders to the sanctions list, justifying the sanctions in part on violations against children: Innocent Kaina, Sultani Makenga, Baudoin Ngaruye Wa Myamuro, Eric Badege, and Jean-Marie Lugerero Runiga.⁷¹ On December 31, 2012, the Security Council Sanctions Committee added two armed groups, M23 and the FDLR, to the sanctions list due to a range of violations of international humanitarian law, including recruiting and using child soldiers, killing children, and, in the case of M23, raping children.⁷² This marked the first, and to date only, instance of

⁶⁶ See Situations in Democratic Republic of the Congo, INT'L CRIMINAL COURT, http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/Pages/situation%20index.aspx (last visited Oct. 5, 2014).

⁶⁷ See Press Release, Security Council, *supra* note 60.

⁶⁸ See *id.*

⁶⁹ See Prosecutor v. Sylvestre Mudacumura, Case No. ICC-01/04-01/12, Pre-Trial Chamber II (July 13, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1441410.pdf>.

⁷⁰ Press Release, Sanctions Committee Concerning Democratic Republic of Congo Adds One Individual to Assets Freeze, Travel Ban List, U.N. Press Release SC/10461 (Nov. 28, 2011); Press Release, Security Council, Sanctions Committee Concerning Democratic Republic of Congo Adds Four Individuals to Assets Freeze, Travel Ban List, U.N. Press Release SC/10099 (Dec. 1, 2010).

⁷¹ Press Release, Security Council, Sanctions Committee Concerning Democratic Republic of Congo Adds Two Individuals, Two Entities to Sanctions List, U.N. Press Release SC/10876 (Dec. 31, 2012) (adding Badege and Runiga); Press Release, Security Council, Sanctions Committee Concerning Democratic Republic of Congo Adds Two Individuals to Assets Freeze, Travel Ban List, U.N. Press Release SC/10842 (Nov. 30, 2012) (adding Ngaruye Wa Myamuro and Kaina); Press Release, Security Council, Sanctions Committee Concerning Democratic Republic of Congo Adds One Individual to Assets Freeze, Travel Ban List, U.N. Press Release SC/10812 (Nov. 13, 2012) (adding Makenga).

⁷² Sanctions Committee Concerning Democratic Republic of Congo Adds Two

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Security Council sanctions on an entire armed group on the basis of grave violations of international humanitarian law, specifically against children.

Besides the militia group leaders sanctioned in the DRC, only one other individual has been subjected to targeted measures for committing grave violations against children. In 2006, the Sanctions Committee for Côte d'Ivoire designated militia leader Martin Kouakou Fofie for sanctions for forces under his command recruiting and using children.⁷³ The Sanctions Committees for Darfur, Sudan, and Somalia have not designated any individuals on the basis of grave violations against children. The Sanctions Committee for Somalia mentioned in its designation of Al-Shabaab, a Somali militant group, allegations that Al-Shabaab recruited children.⁷⁴ However, this designation occurred before violations against children were incorporated in the sanctions criteria, and Al-Shabaab was not designated on the basis of child recruitment, but on other grounds.⁷⁵ The Security Council Sanctions Committees applicable to Al Qaeda and the Taliban have also designated Al-Shabaab and several other listed armed groups, such as Al Qaeda in Iraq and the Taliban in Afghanistan for targeted measures.⁷⁶ However, as with the Somalia Committee's designation of Al-Shabaab, these designations were on the basis of their association with blacklisted groups and not for violations against children.⁷⁷

3. Actions of the Security Council Working Group on Children and Armed Conflict

In addition to deploying sanctions against individuals and groups, the SCWG-CAC has used the threat of sanctions to influence perpetrators of grave violations against children. The Working Group's terms of reference provide the Group wide latitude to make recommendations promoting the protection of children affected by armed conflict.⁷⁸ The Working Group

Individuals, Two Entities to Sanctions List, *supra* note 71.

⁷³ Press Release, Security Council, Security Council Committee Concerning Côte d'Ivoire Issues List of Individuals Subject to Measures Imposed by Resolution 1572 (2004), U.N. Press Release SC/8631 (Feb. 7, 2006).

⁷⁴ Press Release, Security Council, Security Council Committee on Somalia and Eritrea Issues List of Individuals Identified Pursuant to Paragraph 8 of Resolution 1844 (2008), U.N. Press Release SC/9904 (Apr. 12, 2010).

⁷⁵ *See id.*

⁷⁶ The List Established and Maintained by the 1267 Committee with Respect to Individuals, Groups, Undertakings and Other Entities Associated with Al-Qaida (Aug. 26, 2014), <http://www.un.org/sc/committees/1267/pdf/AQList.pdf>; The List of Individuals and Entities Established Pursuant to Security Council Resolution 1988 (2011) (Aug. 21, 2014), <http://www.un.org/sc/committees/1988/pdf/1988List.pdf>.

⁷⁷ *See supra* note 76.

⁷⁸ Permanent Rep. of France to the U.N., Letter dated May 2, 2006 from the Permanent

may forward relevant information and its conclusions to existing sanctions committees.⁷⁹ The Working Group has deployed sanctions nine times, again primarily in relation to the DRC. In the very first conclusions adopted (in relation to the situation in the DRC), the Working Group recommended that the Security Council consider and forward to the relevant sanctions committee the Working Group's concern regarding violations committed against children by the Congolese Revolutionary Movement.⁸⁰ In its three subsequent conclusions on the DRC, the Working Group repeatedly recommended that the Security Council express the Working Group's concern at violations against children to the chair of the Sanctions Committee.⁸¹ In its fifth conclusions on the DRC, the Working Group welcomed the designation of individuals and entities described above and encouraged the Sanctions Committee to continue designating individuals and entities responsible for violations against children.⁸² In 2011, the Working Group invited the Security Council to transmit its conclusions to the sanctions committees pertaining to Afghanistan,⁸³ Iraq,⁸⁴ and Somalia.⁸⁵ In its Somalia conclusions, the Working Group also recommended that the Security Council propose that the Special Representative participate in the meeting with the sanctions committee pertaining to Somalia.⁸⁶ In 2013, the Working Group stressed its intention to consider a wide range of options, including the submission of

Representative of France to the United Nations addressed to the President of the Security Council, ¶ VI(d), U.N. Doc. S/AC.51/2007/1 (July 31, 2008).

⁷⁹ Permanent Rep. of France to the U.N., Letter dated Sept. 8, 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, ¶ 5, U.N. Doc. S/AC.51/2007/2 (May 16, 2008).

⁸⁰ *Id.* ¶ 1.

⁸¹ Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in the Democratic Republic of the Congo, ¶ 12, U.N. Doc. S/AC.51/2011/1 (Mar. 1, 2011); Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in the Democratic Republic of the Congo, ¶ 13, U.N. Doc. S/AC.51/2009/3 (July 13, 2009); Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in the Democratic Republic of the Congo, ¶ 11(m), U.N. Doc. S/AC.51/2007/17 (Oct. 25, 2007).

⁸² Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in the Democratic Republic of the Congo, ¶ 9 (c)-(d), U.N. Doc. S/AC.51/2014/3 (Sept. 18, 2014).

⁸³ Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in Afghanistan, ¶ 12, U.N. Doc. S/AC.51/2011/3 (May 3, 2011).

⁸⁴ Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in Iraq, ¶ 14, U.N. Doc. S/AC.51/2011/6 (Oct. 3, 2011).

⁸⁵ Working Group on Children and Armed Conflict, Conclusions on Children and Armed Conflict in Somalia, ¶ 11, U.N. Doc. S/AC.51/2011/2 (Mar. 1, 2011).

⁸⁶ *See id.*

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information to relevant sanctions committees that dealt with the Lord's Resistance Army.⁸⁷

Notwithstanding their limited use to date, Security Council experts and advocates for the protection of children continue to consider the threat and use of targeted measures to be potentially powerful tools for bringing an end to violations against children.⁸⁸ However, many questions remain as to how to use these tools more effectively. There are also concerns about the human rights implications of targeted sanctions, especially with regard to ensuring adequate due process safeguards. The following sections explore how these measures may be better used to increase pressure on and induce compliance by perpetrators of grave violations against children in a manner consistent with internationally recognized human rights.

II. APPLYING LESSONS LEARNED FROM THE SECURITY COUNCIL'S SANCTIONS PRACTICE TO GRAVE VIOLATIONS AGAINST CHILDREN

The logic expressed by the Security Council in Resolution 1539 and repeated thereafter is relatively straightforward: the use and threat of sanctions is intended to induce compliance with specific Security Council demands, namely the signing and implementation of action plans to end grave violations against children.⁸⁹ Parties can avoid sanctions or see them lifted if they achieve satisfactory progress in developing and implementing action plans. However, Resolution 1539 does not indicate which sanctions are most likely to bring about these desired behavioral changes. Any attempt to enhance the effectiveness of the Council's sanctions practice with respect to grave violations against children must consider: (1) the purposes and objectives to be achieved through sanctions; (2) the range of possible measures which can be employed; (3) the likely impact of different measures on the particular party or parties being targeted; (4) the manner in which sanctions will be implemented; and (5) the challenges in imposing and implementing sanctions.

A. Identifying the Purposes and Objectives of Sanctions Regimes

Security Council Resolution 1539 sets out a *quid pro quo* approach to sanctions, holding out the promise of lifting or delaying sanctions in

⁸⁷ Working Group on Children and Armed Conflict, Conclusions on the Situation of Children and Armed Conflict Affected by the Lord's Resistance Army, ¶ 10, U.N. Doc. S/AC.51/2013/1 (Apr. 22, 2013).

⁸⁸ Report of the Workshop, Children and Armed Conflict: How to Deal with Persistent Perpetrators?, in Letter dated Mar. 13, 2013 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, ¶ 10, U.N. Doc. S/2013/158 (Mar. 15, 2013).

⁸⁹ S.C. Res. 1539, *supra* note 7.

exchange for progress in implementing an action plan. This reflects only one way in which sanctions can be used to bring about changes in behavior. The Targeted Sanctions Consortium, a group of scholars and practitioners, has identified three different ways in which sanctions may elicit behavioral changes.⁹⁰

First, as expressed in Resolution 1539, sanctions may be used directly to coerce behavioral changes by offering rewards (lifted or delayed sanctions) or punishment (imposition of sanctions).⁹¹ The Security Council used this approach when it imposed a ban on the export of luxury goods to the Democratic People's Republic of Korea until the country met certain demands related to halting development of its weapons program.⁹²

A recent study by the Targeted Sanctions Consortium found that sanctions that offered rewards or threatened punishment in exchange for behavioral changes were effective in directly coercing behavioral change only thirteen percent of the time with mixed results in twenty-six percent of cases studied.⁹³ This suggests that the threat and use of targeted measures may be less effective in directly coercing parties to enter into dialogue or to sign or implement action plans than in achieving other goals described below. This is not to say that sanctions cannot be effective in directly coercing behavioral changes. Rather, for sanctions to work in this *quid pro quo* manner, the circumstances must be right, and sanctions must be correctly employed. For example, parties that are responsible for a limited number of violations may be more likely to respond to the threat of punishment or possibility of rewards than parties responsible for a wide range of violations. Sanctions are also more likely to succeed in coercing behavioral changes when the expected actions can be clearly and narrowly defined, such that the parties see the benefit of conforming to the Council's expectations.⁹⁴ Where parties are responsible for a wide range of violations and are less responsive to international pressure generally, as is the case with many perpetrators of grave violations against children, the "carrot-and-stick" use of sanctions to provoke specific behavioral changes may be less effective (although sanctions may have other beneficial effects described below).

⁹⁰ See generally THOMAS BIERSTEKER ET AL., DESIGNING UNITED NATIONS TARGETED SANCTIONS: INITIAL FINDINGS OF THE TARGETED SANCTIONS CONSORTIUM – EVALUATING IMPACTS AND EFFECTIVENESS OF UN TARGETED SANCTIONS (2012), available at http://www.watsoninstitute.org/pub/Designing_UN_Targeted_Sanctions_FINAL.pdf.

⁹¹ S.C. Res. 1539, *supra* note 7, ¶ 2.

⁹² S.C. Res. 2094, ¶ 6, U.N. Doc. S/RES/2094 (Mar. 7, 2013); S.C. Res. 1874, ¶ 8, U.N. Doc. S/RES/1874 (June 12, 2009); S.C. Res. 1718, ¶ 8, U.N. Doc. S/RES/1718 (Oct. 14, 2006).

⁹³ BIERSTEKER ET AL., *supra* note 90, at 4, 9-10, 14.

⁹⁴ See *id.* at 17.

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Second, targeted measures can bring about compliance by constraining parties' freedom of action. Classic examples of targeted measures used to constrain action include arms embargoes and sanctions that cut off sources of revenue (for example, limits on financial flows or on the sale of certain valuable resources). The Targeted Sanctions Consortium has found sanctions used for this purpose to be more effective than sanctions offering rewards or threatening punishment, effectively altering the behavior of the targets in forty-two percent of cases with mixed results in another fifteen percent.⁹⁵

Third, the threat or use of targeted measures may also have the purpose of "signaling" international disapprobation for certain actions.⁹⁶ Even where targeted measures have minimal immediate operational impact, the fact or possibility of being sanctioned by the Security Council may create reputational harm that states and other actors may seek to avoid.⁹⁷ The Targeted Sanctions Consortium found that sanctions used to signal international disapprobation have been the most influential, effectively changing behavior forty-three percent of the time with mixed results in thirty-two percent of the cases.⁹⁸

Sanctions are rarely imposed for only one purpose, and the purposes pursued vary over time as the Security Council reacts to developments on the ground. The use of targeted measures in Angola is an excellent illustration of the use of targeted measures for multiple purposes. Security Council Resolution 864 threatened to impose an arms and oil embargo on the National Union for the Total Independence of Angola ("UNITA") after ten days if a cease-fire was not established and an agreement reached on implementing peace accords.⁹⁹ This threat did not achieve the desired results, and the arms and oil embargoes went into effect, constraining the behavior of the parties to the conflict.¹⁰⁰ However, the Council refrained from imposing further measures when direct negotiations began between the parties.¹⁰¹ During the following decade, the Security Council monitored the situation and, where progress was unsatisfactory, took additional measures to further isolate UNITA or cut off resources, imposing a travel

⁹⁵ *See id.* at 14.

⁹⁶ *Id.*

⁹⁷ *See, e.g.,* S. CHESTERMAN, T. FRANCK, AND D. MALONE, *LAW AND PRACTICE OF THE UNITED NATIONS* 346-47 (2008) (discussing the reputational harm incurred by United Nations sanctions on apartheid South Africa).

⁹⁸ BIERSTEKER ET AL., *supra* note 90, at 14.

⁹⁹ S.C. Res. 864, ¶ 19, U.N. Doc. S/RES/864 (Sept. 15, 1993).

¹⁰⁰ *See* Permanent Rep. of Angola to the U.N., Letter dated Sept. 29, 1993 from the Permanent Rep. of Angola to the United Nations addressed to the Secretary-General, U.N. Doc. S/26216 (Sept. 30, 1993).

¹⁰¹ S.C. Res. 890, ¶ 14, U.N. Doc. S/RES/890 (Dec. 15, 1993).

ban on UNITA members in 1997,¹⁰² and an asset freeze, diamond export ban, and other measures in 1998.¹⁰³ Over time, the international isolation of UNITA and the constraints of reduced access to resources resulting from the sanctions contributed significantly to the dissolution of UNITA and to an end to the conflict.¹⁰⁴ Once peace was re-established, these measures were all terminated.¹⁰⁵

This experience suggests that using sanctions should be seen as an ongoing process serving multiple purposes. Even where Security Council action does not immediately provoke material results, these measures can have a stigmatizing effect and may help to ensure that sanctions will not be lifted while violations against children persist, even if there is progress on other fronts. The challenge for the Security Council is to match the right actions to the right perpetrators at the right time.

B. Sanction Measures Available

Sanctions not only serve a range of purposes, but they also come in a range of forms. Chapter VII of the UN Charter authorizes the Security Council to take advantage of a broad scope of enforcement measures, short of the use of force, to maintain or restore international peace and security.¹⁰⁶ Article 41 specifically envisages the use of economic sanctions and the disruption of communications, but the Council may contemplate a wide variety of other options.¹⁰⁷ These may be (and principally are) mandatory measures, which member states are bound to implement in accordance with Article 25 of the UN Charter, or the Security Council may “call upon” states voluntarily to impose these measures. Initially, the Security Council leveraged broad economic sanctions to pressure states coercively without resorting to the use of force.¹⁰⁸ However, overly broad sanctions were not necessarily effective and sometimes brought about significant unintended humanitarian consequences for the people of targeted states.¹⁰⁹ These concerns led the Security Council to refine its approach in favor of so-called “smart” or “targeted” sanctions, which were intended to have more influence on particular actors or policies while minimizing harm

¹⁰² S.C. Res. 1127, ¶ 4, U.N. Doc. S/RES/1127 (Aug. 28, 1997).

¹⁰³ S.C. Res. 1173, ¶¶ 11-12, U.N. Doc. S/RES/1173 (June 12, 1998).

¹⁰⁴ *See generally* ANDERS MÖLLANDER, UN ANGOLA SANCTIONS – A COMMITTEE SUCCESS REVISITED (2009).

¹⁰⁵ S.C. Res. 1448, ¶ 2, U.N. Doc. S/RES/1448 (Dec. 9, 2002).

¹⁰⁶ U.N. Charter arts. 39-40.

¹⁰⁷ *Id.* art. 41.

¹⁰⁸ CHESTERMAN ET AL., *supra* note 97, at 343.

¹⁰⁹ *See id.*

to innocent populations.¹¹⁰ Sanctions are to be selected with consideration of the desired purposes as well as the nature and circumstances of the measures' targets. Targeted measures which can be used to influence parties to end or prevent grave violations against children include arms embargoes, resource or other export and import bans, and individually targeted measures such as asset freezes, financial restrictions, and travel bans.¹¹¹

1. Arms Embargoes

Arms embargoes are part of most UN sanctions regimes. A report by the Stockholm International Peace Research Institute and the Special Program on the Implementation of Targeted Sanctions in the Department of Peace and Conflict Research at Uppsala University identifies three types of arms embargoes.¹¹² The first and largest category of arms embargoes contains those embargoes which seek to cut access to weapons and material used to sustain conflicts.¹¹³ Second, arms embargoes may block the delivery of arms to non-state actors or to those who have illegitimately seized power in order to restore or strengthen legitimate governmental authority.¹¹⁴ Third, embargoes may be authorized to reduce the proliferation of weapons of mass destruction and terrorism worldwide to protect "global security."¹¹⁵

The scope and nature of arms embargoes vary considerably. Some, such as the arms embargo on Côte d'Ivoire¹¹⁶ and the embargoes concerning nuclear proliferation¹¹⁷ may apply to every party in a given territory (with some limited exceptions, such as those made for peacekeepers in the Côte d'Ivoire embargo).¹¹⁸ Other embargoes are employed on a regional basis, as was the case with the sanctions used in the Kivus and Ituri regions of the

¹¹⁰ United Nations Secretary-General Ban Ki-Moon, Keynote Address at the Symposium on Enhancing the Implementation of Security Council Sanctions (Apr. 30, 2007) (transcript available at <http://www.un.org/News/Press/docs/2007/sgsm10968.doc.htm>).

¹¹¹ *See id.*

¹¹² DAMIEN FRUCHART ET AL., UNITED NATIONS ARMS EMBARGOES: THEIR IMPACT ON ARMS FLOWS AND TARGET BEHAVIOUR 7 (2007), available at <http://books.sipri.org/files/misc/UNAE/SIPRI07UNAE.pdf>.

¹¹³ *See id.* at 9.

¹¹⁴ *See id.* at 8-9.

¹¹⁵ *Id.* at 8.

¹¹⁶ S.C. Res. 1572, *supra* note 33, ¶ 7.

¹¹⁷ *See, e.g.*, S.C. Res. 1737, ¶ 3, U.N. Doc. S/RES/1737 (Dec. 27, 2006) (concerning the Islamic Republic of Iran); S.C. Res. 1718, *supra* note 92, ¶ 8 (concerning the Democratic People's Republic of Korea).

¹¹⁸ S.C. Res. 1572, *supra* note 33, ¶ 8.

DRC,¹¹⁹ and in Darfur, Sudan.¹²⁰ Targeted measures may also aim to restore or strengthen legitimate authority or reduce conflict, frequently by singling out one side. In Angola, for example, targeted measures were applied only against UNITA.¹²¹ More recently in Somalia, a blanket arms embargo initially imposed upon the entire territory¹²² was lifted with respect to the government, but was left in force for non-state actors such as Al-Shabaab.¹²³ Although the scope and nature of arms embargoes vary, a model Security Council resolution on arms embargoes was developed as part of the “Bonn-Berlin Process” convened by Germany in conjunction with the UN Secretariat.¹²⁴

While the commonly expressed end goals of arms embargoes do not generally include ending violations against children, there are clear overlaps. Arms embargoes’ constraining role may reduce the operational capacity of those engaged in violations against children, minimizing the impact of conflict on children, and encouraging peaceful dispute resolution.¹²⁵ Once imposed, arms embargoes may help induce changes in behavior, particularly when combined with changes in leadership (and thus of political interests and goals) among the targeted parties.¹²⁶ Two-way arms embargoes may also prevent the export of arms from the target state and the expansion of conflict.

2. Resource and Export/Import Bans

Illegal exploitation of resources frequently plays a considerable role in financing the activities of perpetrators of grave violations against children.¹²⁷ The Security Council may impose bans on the export and import of certain resources when this will negatively affect targeted groups or individuals. For example, when the Revolutionary United Front

¹¹⁹ S.C. Res. 1493, *supra* note 41, ¶ 20.

¹²⁰ S.C. Res. 1556, *supra* note 40, ¶¶ 7-8.

¹²¹ S.C. Res. 864, *supra* note 99, ¶ 19.

¹²² S.C. Res. 733, *supra* note 38, ¶ 5.

¹²³ S.C. Res. 2093, *supra* note 30, ¶¶ 33-35.

¹²⁴ BONN INT’L CTR. FOR CONVERSION, DESIGN AND IMPLEMENTATION OF ARMS EMBARGOES AND TRAVEL AND AVIATION RELATED SANCTIONS: RESULTS OF THE ‘BONN-BERLIN PROCESS’ 25-46 (Michael Brzoska ed., 2001), *available at* http://www.watsoninstitute.org/tfs/CD/booklet_sanctions.pdf.

¹²⁵ *See* DAVID CORTRIGHT ET AL., PROJECT PLOUGHSHARES, SANCTIONS SANS COMMITMENT: AN ASSESSMENT OF UN ARMS EMBARGOES 1 (2002), *available at* https://sanctionsandsecurity.nd.edu/assets/110291/sanctions_sans_commitment.pdf.

¹²⁶ FRUCHART ET AL., *supra* note 112, at 40-41.

¹²⁷ *See* Final Rep. of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, at 17-19, U.N. Doc. S/2002/1146 (Oct. 16, 2002).

(“RUF”), responsible for grave human rights violations in Sierra Leone, was found to be financing its activities through the export of illicit diamonds in Liberia,¹²⁸ the Security Council banned the import of rough diamonds that were not appropriately certified by the government of Sierra Leone,¹²⁹ as well as the direct or indirect import of rough diamonds from Liberia.¹³⁰ As with the imposition of the arms and oil embargoes on UNITA in Angola, the Security Council provided a grace period (in this case, two months) for Liberia to comply with its demands before the embargo went into effect.¹³¹ The Security Council subsequently extended the resource ban to include timber products from Liberia until the country took measures to ensure that timber exports would not be used to fuel conflict or otherwise violate Security Council resolutions.¹³² In combination with an arms embargo, diplomatic pressure, and the threat of force, the Security Council’s use of a resource ban helped to cut off Liberia’s resources and contributed to ousting Charles Taylor.¹³³ The Security Council imposed a similar ban on the direct or indirect import of Somali charcoal, a significant source of revenue for Al-Shabaab.¹³⁴ While these bans were not directly linked to the involvement of children in armed conflicts, taking such measures may help prevent such violations by cutting off financial support to armed groups, reducing their capacity to commit crimes against children.

3. Asset Freezes, Financial Restrictions, and Travel Bans

The most narrowly tailored measures available to the Security Council target specific individuals, groups, or entities by freezing their assets, restricting financial transfers, and placing travel bans. The Security Council (through the sanctions committees) typically identifies the individuals, groups, or entities to subject to such measures, but it also may impose blanket bans on the export of certain goods presenting particular value to the target. For example, the Security Council imposed a ban on the export of luxury goods from the Democratic People’s Republic of Korea.¹³⁵ Asset freezing and travel bans on specific individuals are particularly effective in influencing political elites through personal inconvenience and tarnishing

¹²⁸ S.C. Res. 1343, U.N. Doc. S/RES/1343, at 1 (Mar. 7, 2001).

¹²⁹ S.C. Res. 1306, ¶¶ 1-5, U.N. Doc. S/RES/1306 (July 5, 2000).

¹³⁰ S.C. Res. 1343, *supra* note 128, ¶ 6.

¹³¹ *Id.* ¶ 8.

¹³² S.C. Res. 1521, ¶¶ 10-12, U.N. Doc. S/RES/1521 (Dec. 22, 2003).

¹³³ BIERSTEKER ET AL., *supra* note 90, at 20.

¹³⁴ S.C. Res. 2036, ¶ 22, U.N. Doc. S/RES/2036 (Feb. 22, 2012).

¹³⁵ S.C. Res. 2094, *supra* note 92, ¶¶ 7, 23; S.C. Res. 1874, *supra* note 92, ¶¶ 7, 21; S.C. Res. 1718, *supra* note 92, ¶ 8(a)(iii)-(c).

their reputation in the international community.¹³⁶ Travel bans, when enforceable, may also prove useful where individuals and armed groups operate across borders or receive safe haven in neighboring countries.¹³⁷ Asset freezes and restrictions on financial transfers can likewise be used to cut off outside support from regional actors or diaspora, limiting an armed group's ability to carry out operations during conflict. Variations of these measures include diplomatic sanctions, such as the withdrawal of accreditation or suspension from international or regional organizations.¹³⁸ Model Security Council resolutions on financial transaction sanctions and travel and aviation bans, such as those developed, respectively, as part of Switzerland's "Interlaken Process",¹³⁹ and Germany's "Bonn-Berlin Process,"¹⁴⁰ both convened jointly with the UN Secretariat, provide further guidance on such measures.

These increasingly precise measures may have a significant impact while minimizing harm to innocent populations.¹⁴¹ They can be used both to coerce behavioral changes by offering rewards or directly punishing the leaders of armed forces and to constrain uncooperative groups' behavior by targeting third party supporters who may be eager to avoid Security Council interference in their activities.¹⁴² However, as discussed below, not all armed forces or groups will necessarily react the same way to the threat of individualized measures, and the effective implementation of such complex measures poses significant challenges.

C. Targeting Different Perpetrators

The perpetrators of violations against children in armed conflict situations listed in the annexes to the Secretary-General's annual reports represent a wide array of organizations, possessing a host of diverse motives and interests and operating in vastly different circumstances.¹⁴³ The perpetrators include national armed forces, local police, and rebel

¹³⁶ THOMAS BIERSTEKER ET AL., WATSON INST., TARGETED SANCTIONS PROJECT, BROWN UNIV., STRENGTHENING TARGETED SANCTIONS THROUGH FAIR AND CLEAR PROCEDURES 5, 9 (2006).

¹³⁷ See, e.g., Martin Santa & Luke Barker, *Exclusive: EU Approves Framework for Asset Freezes, Travel Bans on Russia*, REUTERS, Mar. 12, 2014, <http://www.reuters.com/article/2014/03/12/us-ukraine-eu-russia-sanctions-idUSBREA2B0QJ20140312>.

¹³⁸ BIERSTEKER ET AL., *supra* note 136, at 11.

¹³⁹ THOMAS BIERSTEKER ET AL., TARGETED FINANCIAL SANCTIONS: A MANUAL FOR DESIGN AND IMPLEMENTATION – CONTRIBUTIONS FROM THE INTERLAKEN PROCESS 50-61 (2012), available at <http://www.watsoninstitute.org/pub/TFS.pdf>.

¹⁴⁰ BONN INT'L CTR. FOR CONVERSION, *supra* note 124, at 47-90.

¹⁴¹ BIERSTEKER ET AL., *supra* note 90, at 6.

¹⁴² *Id.* at 14, 19.

¹⁴³ See U.N. Secretary-General, *supra* note 21, ¶¶ 23-171.

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groups, many who have been engaged in long-standing traditional internal armed conflicts and may hold *de facto* control over territory, as well as loosely-affiliated global terrorist networks and civilian self-defense militias.¹⁴⁴ The degree of centralization and hierarchical control varies considerably among these groups. Some armed factions have clearly articulated political goals and seek international recognition of legitimacy, while others may have primarily economic or criminal interests.¹⁴⁵ These groups may have religious or secular motivations, and may be highly ideological or quite pragmatic and focused.¹⁴⁶ In some contexts, the state may recognize the belligerent status of non-state actors and engage them in political dialogue.¹⁴⁷ In others, the state may define non-state actors as criminals and forbid any outside interaction with such groups, barring even organizations with purely humanitarian aims.¹⁴⁸

The effectiveness of different types of sanctions depends on both the nature and interests of the targets and the surrounding circumstances. Broad measures such as arms embargoes or import and export bans may, if properly implemented, constrain the behavior of a wide range of diverse actors—even actors whose motivation is highly ideological or purely criminal.¹⁴⁹ However, such measures may also risk reinforcing existing negative power distributions. Arms embargoes and export and import bans, alongside financial and travel restrictions, are more likely to be effective where armed forces or groups are engaged with or receive support from beyond their borders.¹⁵⁰ Tailored sanctions, such as asset freezes and individual travel restrictions, are more likely to succeed where the target groups are centrally and hierarchically organized under leaders who will be influenced by personalized sanctions, particularly where such leaders rely heavily on their wealth, freedom of movement, or global reputation. Parties who recruit and use children under the age of eighteen, in accordance with the beliefs that adulthood is reached earlier or that these children have a duty to protect their communities, may be more receptive to international measures, and be more likely to change their behavior than are parties engaged in the widespread abduction, enslavement, rape, and killing of children. Similarly, the coercive intent of sanctions in stopping violations against children is most likely to be realized where the perpetrators have clearly articulated political goals and can see real benefits, such as increased

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *See* BIERSTEKER ET AL., *supra* note 90, at 20.

¹⁴⁸ *Id.* at 19.

¹⁴⁹ *See id.* at 18-19.

¹⁵⁰ *See id.*

legitimacy, from compliance with international humanitarian law. The Targeted Sanctions Consortium reports that sanctions applied for coercive ends are more effective against government officials than non-state armed groups.¹⁵¹ It does not necessarily follow, however, that any armed group is beyond the reach of coercive sanctions. Even the notorious Lord's Resistance Army has previously made commitments to release children in the context of peace processes.¹⁵² Accordingly, highly tailored sanctions may prove to be an effective tool in combatting violations against children in armed conflict, even where the perpetrators are non-state actors.

D. The Manner of Implementation

The manner in which sanctions are implemented can play a significant role in their ultimate success. In particular, both the threat of sanctions and the intention not to impose or to lift them need to be communicated credibly to the target groups. For example, in Liberia, officials believed that the UN would impose sanctions irrespective of their actions, and, thus, they had no incentive to change their behavior.¹⁵³ Conversely, in Côte d'Ivoire, repeated warnings of impending sanctions that were never implemented sent the message that the Security Council did not intend to follow through with its threats.¹⁵⁴ Timing is particularly crucial, not only to ensure that targets are not able to evade the reach of coercive measures, but also to avoid corroding the strength of the message that the action is intended to communicate. Delays in implementing or tightening sanctions, for example, can undermine their effectiveness.¹⁵⁵ As one commentator explains:

Imposing loose sanctions at first, waiting until they have little effect, and then tightening sanctions in response to the target's lack of compliance creates sanctions that can be seen only as punishment for the target's growing defiance of international demands. Punishment has the psychological effect of challenging the target State to resist, rather than inducing it to seek to comply. Instead, if sanctions are imposed as tightly as possible from the beginning and then loosened with each successive act of compliance, they will create incentives for

¹⁵¹ BIERSTEKER ET AL., *supra* note 90, at 18.

¹⁵² Agreement on Disarmament, Demobilization and Reintegration, Uganda-Lord's Resistance Army/Movement arts. 2.6, 2.11-2.12, Feb. 29, 2008, *available at* <http://peacemaker.un.org/uganda-ddr2008>.

¹⁵³ DANIEL STRANDOW, SANCTIONS AND CIVIL WAR: TARGETED MEASURES FOR CONFLICT RESOLUTION 13 (2006), *available at* http://www.pcr.uu.se/digitalAssets/99/99269_strandow_content060926.pdf.

¹⁵⁴ *Id.*

¹⁵⁵ BIERSTEKER ET AL., *supra* note 90, at 18.

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the target State to comply with the demands of the sanctioners.¹⁵⁶

Sanctions are less effective when generically applied to “all parties to a conflict.”¹⁵⁷ It is crucial that sanctions are refined to target the correct individuals. In Côte d’Ivoire, for example, the sanctions initially applied were considered ineffective because they focused on “insignificant” individuals.¹⁵⁸ In addition to targeting the most salient or powerful perpetrators, effectively tailored measures should also hone in on those who support and sustain the perpetrators. These individuals and entities may be more susceptible to the pressure imposed by such measures generally and, in particular, to their coercive effects. As the leaders and groups directly involved in armed conflict seek to evade the effects of sanctions, it may also be necessary to direct measures at potential intermediaries or front organizations, which could be used to hide assets.¹⁵⁹ Similarly, arms embargoes tend to be more effective when applied without regional limitations within a state and not when specifically targeted at particular parties to the conflict.¹⁶⁰

E. Challenges to Implementation

Any effort to impose sanctions must overcome potential political and practical implementation challenges. The political challenges are particularly daunting. This article focuses on sanctions imposed by the Security Council, which are generally preferable to unilateral sanctions because Security Council sanctions are universally binding on all UN member states,¹⁶¹ where unilateral sanctions are more easily avoided. However, in many cases, the Security Council cannot agree to impose sanctions either because the action lacks Council member support or, more frequently, because one of the permanent members of the Council indicates an intention to veto any proposed measures.¹⁶² Where the Council does agree to impose targeted measures, the decision is sometimes the result of extensive negotiations and compromise. The particular political challenges

¹⁵⁶ Laurie Rosensweig, *United Nations Sanctions: Creating a More Effective Tool for the Enforcement of International Law*, 48 *AUSTRIAN J. PUB. INT’L L.* 161, 178-79 (1995).

¹⁵⁷ BIERSTEKER ET AL., *supra* note 90, at 19.

¹⁵⁸ See STRANDOW, *supra* note 153, at 13-14.

¹⁵⁹ See MAKING TARGETED SANCTIONS EFFECTIVE: GUIDELINES FOR THE IMPLEMENTATION OF UN POLICY OPTIONS 93 (Peter Wallenstein et al. eds., 2003) [hereinafter MAKING TARGETED SANCTIONS EFFECTIVE].

¹⁶⁰ BIERSTEKER ET AL., *supra* note 90, at 19-20.

¹⁶¹ U.N. Charter art. 25.

¹⁶² See, e.g., Felicity Barringer, *French Veto Threat Delays U.N. Vote on Libya Sanctions*, *N.Y. TIMES*, Sept. 9, 2003, <http://www.nytimes.com/2003/09/09/international/middleeast/09CND-NATI.html>.

vary with each situation; systematically addressing these issues is tied to much broader questions concerning the Council's work. Such questions are beyond the scope of this article; however, it is worth noting that these significant political challenges exist.

Practical challenges arise at all steps of the sanction implementation process. First, the right people must be identified in sufficient detail to enable states to impose specific measures, which are often accompanied by stringent requirements in domestic law to safeguard individual rights. To designate particular individuals or entities as the subjects of targeted measures and to implement the measures properly, the Security Council must receive detailed information concerning the name and identity of the targeted individual or entity, information demonstrating that the Security Council's enunciated designation criteria are met, and supporting evidence.¹⁶³ Such information is also crucial for states to implement measures properly.

Second, states must identify and eliminate opportunities for targeted individuals to evade sanctions. Illicit trafficking and sanctions-busting can undermine the effectiveness of arms embargoes or export and import bans.¹⁶⁴ In some cases, the sheer scope of exploited resources may pose considerable obstacles to employing effective export bans without a wide range of other political, economic and military action.¹⁶⁵ Imposing travel bans can be difficult in areas where extended borders are not well-defined, let alone protected, or where border control measures are rudimentary.

Financial measures can likewise be particularly difficult to implement. It is important that asset freezes and financial restrictions be implemented quickly, as any delay or prior notice affords the subject of the sanction an opportunity to move the assets.¹⁶⁶ Successfully tracing and freezing financial assets or impeding financial flows may also require adaptation to

¹⁶³ See, e.g., Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, Guidelines of the Committee for the Conduct of Its Work, ¶ 5(c)-(d) (Aug. 6, 2010), available at [http://www.un.org/sc/committees/1533/pdf/S%20AC.43%202010%20Guidelines%20FINAL%20\(6%20August%202010\).pdf](http://www.un.org/sc/committees/1533/pdf/S%20AC.43%202010%20Guidelines%20FINAL%20(6%20August%202010).pdf); Security Council Committee Established Pursuant to Resolution 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea, Guidelines of the Committee for the Conduct of Its Work, ¶ 6(d)-(f) (Mar. 30, 2010), available at http://www.un.org/sc/committees/751/pdf/751-1907_Committee_Guidelines_English.pdf; Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan, Guidelines of the Committee for the Conduct of Its Work, ¶ 7(b)-(d) (Dec. 27, 2007), available at http://www.un.org/sc/committees/1591/pdf/Sudan_guide_E.pdf.

¹⁶⁴ MAKING TARGETED SANCTIONS EFFECTIVE, *supra* note 159, at 104-06.

¹⁶⁵ See Final Rep. of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, *supra* note 127, at 29.

¹⁶⁶ BIERSTEKER ET AL., *supra* note *supra* note 139, at 9.

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technologically complex financial transfer systems and to low-tech informal monetary movement processes.¹⁶⁷ Detailed information is essential to enabling member states and others to take necessary actions to enforce targeted financial measures.¹⁶⁸ A manual on the “Interlaken Process” of consultations on targeted financial sanctions observes that “[t]argeting is critical to the effectiveness of financial sanctions. Without a precise definition of categories of targets, and/or a specific list of targets, States cannot implement targeted sanctions.”¹⁶⁹ In 2001, the Security Council established a Counter-Terrorism Committee, which is working with member states to enhance border and financial controls, which terrorists can exploit.¹⁷⁰ The work of the Committee should also strengthen the capacity of states to impose Security Council sanctions.

Additionally, legal challenges increasingly present difficulties in imposing sanctions. While a review of the possible legal challenges is beyond the scope of this article and is covered elsewhere,¹⁷¹ it suffices to mention that national and international courts frequently block imposition of Security Council sanctions on the basis of due process and human rights concerns.¹⁷² Security Council sanctions proceed from political negotiations without judicial review and, especially in cases involving counter-terrorism, are often imposed purely on the basis of association with or membership in a prohibited group.¹⁷³ Although the ability to impose sanctions quickly and without notice to the target is crucial to the effectiveness of such measures, there is often little to no opportunity for those subject to sanctions to challenge Security Council designation.¹⁷⁴ The Security Council addressed

¹⁶⁷ BARDO FASSBENDER, TARGETED SANCTIONS AND DUE PROCESS: THE RESPONSIBILITY OF THE UN SECURITY COUNCIL TO ENSURE THAT FAIR AND CLEAR PROCEDURES ARE MADE AVAILABLE TO INDIVIDUALS AND ENTITIES TARGETED WITH SANCTIONS UNDER CHAPTER VII OF THE UN CHARTER 4 (2006).

¹⁶⁸ See U.N. SCOR, 56th Sess., 4394th mtg. at 2-4, U.N. Doc. S/PV.4394 (Oct. 22, 2001).

¹⁶⁹ BIERSTEKER ET AL., *supra* note 139, at 6.

¹⁷⁰ S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001); Security Council Counter-Terrorism Comm., Our Mandate, <http://www.un.org/en/sc/ctc> (last visited Sept. 7, 2014).

¹⁷¹ See Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, 67th Sess., Agenda Item 69(b), at 5-10, U.N. Doc. A/67/396 (Sept. 26, 2012) (by Ben Emmerson); FASSBENDER, *supra* note 167; see also DANIEL CORTRIGHT & ERIKA DE WET, HUMAN RIGHTS STANDARDS FOR TARGETED SANCTIONS (2010); SUE ECKERT & THOMAS BIERSTEKER, DUE PROCESS AND TARGETED SANCTIONS: AN UPDATE OF THE “WATSON REPORT” (2012); MAKING TARGETED SANCTIONS EFFECTIVE, *supra* note 159, at 97.

¹⁷² See, e.g., Case C-402/05, *Kadi v. Council*, 2008 E.C.R. I-06351; *Nada v. Switzerland*, 2012 Eur. Ct. H.R. 1691.

¹⁷³ FASSBENDER, *supra* note 167, at 4.

¹⁷⁴ *Id.* at 4-5.

these concerns by establishing a “focal point” for “delisting” applicable to all sanction committees,¹⁷⁵ followed by an Ombudsperson applicable to the Al Qaeda and Taliban sanctions regimes.¹⁷⁶ Debates over how to reconcile due process and human rights concerns with sanction practices are ongoing. There is an intrinsic value in protecting the human and due process rights of those subject to sanctions, but alarm over potential due process violations has also effectively blocked the imposition of sanctions and inhibited some member states’ willingness to submit names for listing.

Additionally, an effort must be made to monitor and mitigate the harmful humanitarian impacts of sanctions. The devastating effect of broad economic sanctions on Iraq drew international attention to the need to mitigate humanitarian consequences of such measures.¹⁷⁷ In 1999, the Security Council agreed on a set of practical actions to improve the work of its sanctions committees, including the committees’ ability to monitor the implementation of sanctions and assess the resulting humanitarian impact.¹⁷⁸ The Security Council subsequently carved out exemptions of equipment and material, and granted individualized exemptions of assets.¹⁷⁹ The Security Council and the UN system more broadly have continued to work to refine their capacity to monitor and mitigate the possible humanitarian impacts of sanctions.¹⁸⁰

Where sanctions are violated, enforcement becomes crucial. One study concluded that the threat of arms embargoes alone is not effective in inducing compliance due in part to the frequent lack of a unified and clearly expressed commitment of the Security Council, and its permanent members in particular, to carry through with the threats.¹⁸¹ The following section explores ways in which the Security Council’s role in implementing and enforcing sanctions may be strengthened institutionally.

¹⁷⁵ S.C. Res. 1730, Annex, ¶¶ 1-5, U.N. Doc. S/RES/1730 (Dec. 19, 2006).

¹⁷⁶ S.C. Res. 1904, ¶ 20, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

¹⁷⁷ See U.N. Secretary-General, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, ¶¶ 70-75, U.N. Doc. A/50/60-S/1995/1 (Jan. 25, 1995); see also S.C. Res. 1379, *supra* note 5, ¶ 7; S.C. Res. 1314, ¶ 15, U.N. Doc. S/RES/1314 (Aug. 11, 2000).

¹⁷⁸ See *Note by the President of the Security Council: Work of the Sanctions Committees*, U.N. Doc. S/1999/92 (Jan. 29, 1999).

¹⁷⁹ See, e.g., S.C. Res. 1907, ¶ 14, U.N. Doc. S/RES/1907 (Dec. 23, 2009); S.C. Res. 1807, *supra* note 29, ¶¶ 2-3, 10, 12; S.C. Res. 1591, *supra* note 32, ¶ 3(f)-(g); S.C. Res. 1572, *supra* note 33, ¶¶ 8, 10, 12; S.C. Res. 1333, *supra* note 34, ¶¶ 6, 11-12, 16.

¹⁸⁰ See, e.g., MANUEL BESSLER ET AL., *SANCTIONS ASSESSMENT HANDBOOK: ASSESSING THE HUMANITARIAN IMPLICATIONS OF SANCTIONS* (2004), available at <https://ochanet.unocha.org/p/Documents/IASCSanctionsHB2004.pdf>.

¹⁸¹ FRUCHART ET AL., *supra* note 112, at 20.

III. INSTITUTIONAL MEASURES TO STRENGTHEN THE RESPONSIVENESS OF THE SECURITY COUNCIL'S SANCTIONS PRACTICE TO GRAVE VIOLATIONS AGAINST CHILDREN

Typically, a Security Council sanctions regime begins with the passage of a resolution establishing and defining the sanctions regime, the establishment of a sanctions committee empowered to designate individuals or groups for sanctions, and the creation of a group of experts to support the sanctions committee.¹⁸² The Stockholm Process Report on the Implementation of Targeted Sanctions notes that “for targeted sanctions to have the intended effects and to increase the likelihood of compliance by the targeted actor, a chain of measures, stretching from the Security Council to the immediate surroundings of the targeted actor, and varying depending on the situation, must be in place.”¹⁸³ While the previous section explored the decisions that lead to the imposition and implementation of sanctions in particular situations, this segment considers institutional measures, which can be taken to strengthen the entire sanctions process: establishing the sanctions regime, designating entities for sanctions, and monitoring and reporting violations.

A. Establishing Sanctions Regimes: Country-Based or Thematic Approaches

The Security Council generally adopts targeted measures in response to specific national situations on its agenda. Out of fifteen sanctions regimes, fourteen have related to specific countries: Somalia and Eritrea, Iraq, Liberia, DRC, Côte d'Ivoire, Sudan, Lebanon, Democratic People's Republic of Korea, Iran, Libya, Afghanistan, Yemen, CAR, and Guinea-Bissau.¹⁸⁴ The sanctions regime initially established for Somalia¹⁸⁵ was explicitly extended to Eritrea following the Security Council's determination that Eritrea was providing support to armed groups working to destabilize Somalia.¹⁸⁶ Other sanctions regimes have targeted extra-territorial actors within the context of activities related to a particular conflict or actors.¹⁸⁷ The sole exception to the country-based approach is

¹⁸² U.N. Sanctions Secretariat, Dep't of Pol. Aff., *Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions*, at 30-31 (Dec. 3-5, 2000), <http://www.un.org/Docs/sc/committees/sanctions/overview.pdf>.

¹⁸³ MAKING TARGETED SANCTIONS EFFECTIVE, *supra* note 159, at 10.

¹⁸⁴ U.N. Security Council, Security Council Sanctions Committees: An Overview, <http://www.un.org/sc/committees> (last visited Oct. 13, 2014).

¹⁸⁵ S.C. Res. 751, *supra* note 42; S.C. Res. 733, *supra* note 38.

¹⁸⁶ S.C. Res. 1907, *supra* note 179.

¹⁸⁷ See, e.g., S.C. Res. 1952, ¶ 6, U.N. Doc. S/RES/1952 (Nov. 29, 2010) (requesting the Group of Experts for the Democratic Republic of the Congo to investigate “regional and

the global sanctions regime applicable to individuals and entities associated with Al Qaeda anywhere in the world, due to the global nature of that threat.¹⁸⁸

Where country-specific sanction regimes already exist, grave violations against children can be incorporated into the criteria for subjecting individuals or entities to targeted sanction measures. For example, the travel ban, asset freeze, and arms embargo imposed in Somalia in 2008¹⁸⁹ were not initially available sanctions for violations against children. However, the designation criteria were expanded in 2011 to include sanctions for recruiting and using children in armed conflict, targeting civilians, including children, killing and maiming children, sexual and gender-based violence against children, attacks on schools and hospitals, and abduction and forced displacement of children.¹⁹⁰ Going forward, the Security Council should consider including violations against children in all future country-specific sanctions regimes. Even if violations against children are not yet reported, including these violations in sanctions regimes helps to send a strong message of non-tolerance in the international community, and thus acts as a deterrent.

For situations where no sanctions regime exists, the Security Council has the option either to establish a new country-specific regime or to create a thematic sanctions mechanism. Each approach has its relative merits and drawbacks. Country-specific regimes may be limited to one country or may apply to several countries in the region, in the same manner as the Somalia and Eritrea sanctions regime or the address of the Lord's Resistance Army as a regional threat.¹⁹¹ Sanctions regimes are rarely applied in isolation.¹⁹² Country and region-specific regimes allow the Security Council to take a comprehensive approach to conflict resolution. They can also help ensure that all violations of international human rights and humanitarian law, including grave violations against children, are treated in a uniform manner. Additionally, country-specific regimes may be more easily adapted to the complexities of a given situation and can draw on the insight of national

international networks providing support to illegal armed groups, criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses").

¹⁸⁸ S.C. Res. 1889, U.N. Doc. S/RES/1889 (June 17, 2011); S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999).

¹⁸⁹ S.C. Res. 1844, *supra* note 45.

¹⁹⁰ S.C. Res. 2002, *supra* note 30, ¶ 1(d)-(e).

¹⁹¹ See Working Group on Children and Armed Conflict, Conclusions on the Situation of Children and Armed Conflict Affected by the Lord's Resistance Army, U.N. Doc. S/AC.51/2013/1 (Apr. 22, 2013).

¹⁹² BIERSTEKER ET AL., *supra* note 90, at 13; MAKING TARGETED SANCTIONS EFFECTIVE, *supra* note 159, at 15-16.

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task forces responsible for monitoring and reporting grave violations against children. Finally, overseeing the implementation of a narrow country-specific regime may be less intensive than a global regime.¹⁹³

A thematic sanction regime would have the advantage of being readily available to impose targeted measures on those who perpetrate violations against children as soon as conflict breaks out or reports of violations emerge, eliminating the political obstacles for the Security Council of establishing a new regime. A thematic approach may also foster equal and consistent treatment of violations against children in diverse contexts and enable the Council to impose sanctions even where conflicts are not formally on the Council agenda. Precedent for treating violations against children on a global basis already exists in the Council's annual thematic debates, and a thematic sanctions regime would foster consistency with those debates.¹⁹⁴ A uniform, global regime may also be easier to implement, provided that relevant states adopted appropriate implementing legislation.¹⁹⁵ This would avoid the current practice of member states having to adopt *ad hoc* legislation each time a new sanctions regime is established.

Establishing both country-specific and thematic sanctions regimes requires the consent of the Security Council, including the concurrence of all permanent members. At least two of the five permanent members of the Council have expressed opposition to a thematic sanction regime,¹⁹⁶ making such a regime unlikely in the short-term. Country-specific regimes do not face the same principled opposition, but they involve other challenges, as the Council is required to negotiate each regime individually, leading to a potentially drawn-out and piecemeal implementation process. Delayed negotiations also increase the risk that opportunities to impose targeted measures will be lost. In addition, it is less likely that the Council will establish country-specific regimes for conflicts not already on its agenda. As a first step to establishing a precedent for broader utilization,

¹⁹³ See Thirteenth Report of the Analytical Support and Sanctions Implementation Monitoring Team Submitted Pursuant to Resolution 1989 (2011) Concerning Al-Qaida and Associated Individuals and Entities, in letter dated Dec. 31, 2012 from the Chair of the Security Council Committee to the President of the Security Council, ¶ 39, U.N. Doc. S/2012/968 (Dec. 31, 2012).

¹⁹⁴ AMBASSADOR JEAN-MARC DE LA SABLIERE, SECURITY COUNCIL ENGAGEMENT ON THE PROTECTION OF CHILDREN IN ARMED CONFLICT: PROGRESS ACHIEVED AND THE WAY FORWARD 29 (2012).

¹⁹⁵ See Clara Portela, *National Implementation of United Nations Sanctions: Towards Fragmentation*, 65 INT'L J. 13, 18 (2010).

¹⁹⁶ *Review of the 2012 Security Council Open Debate on Children and Armed Conflict*, WATCHLIST ON CHILDREN AND ARMED CONFLICT, <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-review-and-analysis-of-Open-Debate-2012.pdf> (last visited Oct. 5, 2014).

thematic sanctions regimes might be created for countries and conflicts already on the Security Council's agenda and included in Annex 1 to the Secretary-General's Children and Armed Conflict Reports.¹⁹⁷ Situations listed in Annex 2, *i.e.*, situations not on the Security Council's agenda, are more sensitive and could be addressed in a later stage.

Practical challenges are likely to arise if new thematic sanction regimes are implemented where country-specific sanctions regimes already exist. Two separate regimes with different (or even overlapping) designation criteria, potentially applicable to the same individuals and entities, may sow confusion in perpetrators seeking to avoid sanctions or have them lifted. While working toward a global thematic sanctions regime, it may be preferable in the short-term to exclude those situations where country or region-specific sanctions regimes incorporating violations against children or violations of international humanitarian law in their designation criteria already exist, such as the DRC, Somalia, and Darfur. As a starting point, the Security Council could establish a sanctions regime that applies targeted measures to individuals and entities responsible for grave violations against children in all of the situations mentioned in Annex 1 to the Secretary-General's report (*i.e.*, situations on the agenda of the Security Council) where sanctions regimes do not yet have grave violations against children or broad violations of international human rights and humanitarian law as designation criteria.¹⁹⁸

B. Designating Individuals: The Potential Role of the Working Group

The Security Council may simultaneously establish a sanctions regime and designate entities subject to sanctions. However, particularly with respect to violations of human rights or international humanitarian law, the Security Council will typically elaborate the general criteria for imposing sanctions in a given area and delegate to a sanctions committee the task of designating particular individuals or entities for sanctions.¹⁹⁹ Each sanctions regime has its own sanctions committee, which acts as a subsidiary organ of the Security Council.²⁰⁰ These committees play a

¹⁹⁷ DE LA SABLIERE, *supra* note 194; Special Rep. of the Secretary-General, *supra* note 9 (including Afghanistan, Central African Republic, Chad, Cote D'Ivoire, Democratic Republic of Congo, Iraq, Lebanon, Libya, Mali, Myanmar, Occupied Palestine and Israel, Somalia, South Sudan, Sudan, Syrian Arab Republic, and Yemen as of May 2013).

¹⁹⁸ See Special Rep. of the Secretary-General, *supra* note 9.

¹⁹⁹ Provisional Rules of Procedure of the Security Council, Rule 28, U.N. Doc. S/96/Rev.7 (Dec. 21, 1982).

²⁰⁰ See, *e.g.*, U.N. Security Council, U.N. Security Council Committee Established Pursuant to Resolutions 1267 (1999) and 1989 (2011) Concerning Al-Qaida and Associated Individuals and Entities, General Information on the Work of the Committee, <http://www.un.org/sc/committees/1267/information.shtml> (last visited Oct. 5, 2014).

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number of key roles in the sanctioning process. In particular, sanctions committees designate individuals and entities subject to sanctions, update the list of sanctioned individuals and entities to include new subjects and additional justifications for the sanctions,²⁰¹ and delist individuals and entities when the conditions justifying sanctions no longer exist.²⁰² Throughout the sanctions process, the committees monitor implementation, make progress reports to the Security Council, and recommend ways to strengthen the regimes.²⁰³

Sanctions committees make decisions by consensus, and any one of a committee's fifteen members may block an action. The need to obtain consensus among committee members, some of whom may be responsible for violating sanctions, complicates the capacity of sanctions committees to play effective monitoring roles. The committees' decision-making processes are confidential, but once individuals or entities are designated for targeted measures, their identities are made public via the relevant committee website, alongside the reasons that justify their designation. The Secretariat also notifies the Permanent Missions to the United Nations of countries where the individual or entity is believed to be located, the sanctioned individuals' country of nationality, and, potentially, other member states.²⁰⁴ These countries are responsible for enforcing applicable measures; broad publicity and transparency helps to encourage cooperation.²⁰⁵ The committee members themselves are diplomats based in New York who have many other priorities and do not necessarily have technical expertise in all areas of the relevant sanctions regime. One-third of the membership of each committee rotates each year, undermining continuity. Support to the committees is provided by a small number of

²⁰¹ See, e.g., Security Council Committee Established Pursuant to Resolution 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea, *supra* note 163, ¶¶ 6, 8; Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, *supra* note 163, ¶ 8.

²⁰² Security Council Committee Established Pursuant to Resolution 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea, *supra* note 163, ¶ 7; Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, *supra* note 163, ¶ 7; Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan, *supra* note 163, ¶ 9.

²⁰³ S.C. Res. 1591, *supra* note 32, ¶ 3(a); S.C. Res. 1533, *supra* note 42, ¶ 8; S.C. Res. 752, ¶¶ 8-12, U.N. Doc. S/RES/752 (May 5, 1992).

²⁰⁴ See, e.g., Security Council Committee Established Pursuant to Resolution 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea, *supra* note 163, ¶ 12(e); Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, *supra* note 163, ¶ 8; Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan, *supra* note 163, ¶ 5(g).

²⁰⁵ MAKING TARGETED SANCTIONS EFFECTIVE, *supra* note 159, at 16-17.

staff of the Secretariat.

Many of the challenges facing sanctions committees are emblematic of problems with the Council's general operational model and beyond the scope of this article. One idea suggested by Ambassador Jean-Marc de La Sablière, former Permanent Representative of France to the UN and first chair of the Working Group, is for the Working Group to take up the role of a thematic sanctions committee, at least in situations where no country-specific sanctions committee exists.²⁰⁶ The Working Group already considers a wide range of situations involving grave violations against children and makes recommendations to the Security Council for appropriate action, which may include sanctions.²⁰⁷ The power to designate would be a natural extension of the Working Group's role and would streamline procedures. Currently, the Working Group, which is made up of all Council members, provides information to a sanctions committee, also comprised of all Council members, which makes recommendations to the Council itself.²⁰⁸ Entrusting the tasks of listing, delisting, and monitoring implementation to the Working Group would ensure that grave violations against children are considered by individuals specifically tasked with responsibility for this thematic issue. The Working Group could then ensure that sanctions against perpetrators of grave violations against children are calibrated with other actions taken by the Working Group or other actors.

C. Monitoring and Reporting Violations

A sanctions committee's ability to appropriately identify individuals and entities for sanctioning and to monitor the implementation of such measures depends critically on the quality and quantity of the information that it receives. Sanctions committees obtain limited information from member states on steps taken to implement targeted measures and are frequently highly dependent on relevant expert bodies and other sources of information.

Most sanctions committees are supported by a panel of experts or by a monitoring group under the direction of the committee.²⁰⁹ These bodies play critical roles in monitoring and reporting on the implementation of sanctions regimes and in bringing relevant information, such as the identities of designated individuals or entities, to the attention of the sanctions committee. Unlike the committees, the panels and monitoring groups are small bodies of independent, technical experts who have an in-

²⁰⁶ DE LA SABLIERE, *supra* note 194, at 6.

²⁰⁷ *Id.* at 8.

²⁰⁸ S.C. Res. 1612, *supra* note 10, ¶ 8.

²⁰⁹ *See, e.g.*, S.C. Res. 1591, *supra* note 32, ¶ 3(b).

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depth understanding of particular conflicts and the ability to visit the relevant countries and regions to carry out investigations, so long as the countries do not block access.

The expert panels and monitoring groups typically play a significant role in monitoring the implementation and enforcement of targeted measures and in reporting violations. The reports of the panels of experts or similar bodies are public documents, which can draw significant international attention to the targeted measures and to violations of such measures.²¹⁰ However, significant operational challenges, including the expert panels' limited capacity, member states' refusal to permit access or to cooperate with their work, and even their lack of acceptance in the UN system, sometimes hinder the work of such bodies.²¹¹ In carrying out their functions, expert panels may cooperate closely with other UN entities, as exemplified by the cooperation between the Special Representative and the group of experts for the DRC.²¹² Regional organizations and peacekeeping operations may also play roles in reporting on the implementation of targeted measures, particularly arms and resource embargoes.²¹³

Sanctions committees may also receive information from other sources. All UN member states may submit the names of individuals or entities to the relevant sanctions committee for listing, but the committee may also receive information directly or indirectly from other sources.²¹⁴ For example, guidelines established for the DRC explicitly allow the Committee to designate individuals on the basis of information received from the Working Group or the Special Representative as well as from its experts.²¹⁵ Accordingly, the briefings of the Special Representative have led to designations of individuals and groups in the DRC.²¹⁶ The resolution establishing a sanctions committee for Sudan likewise provides that, in deciding on listing, the committee will consider information provided, *inter alia*, by the Secretary-General, the High Commissioner for Human Rights,

²¹⁰ See, e.g., Final report of the Group of Experts on the Democratic Republic of the Congo, in letter dated Oct. 12, 2012 from the Group of Experts on the Democratic Republic of the Congo addressed to the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, Annex, U.N. Doc. S/2012/843 (Nov. 15, 2012).

²¹¹ MÖLLANDER, *supra* note 104, at 13.

²¹² See U.N. Secretary-General, *supra* note 1, ¶ 218.

²¹³ BIERSTEKER ET AL., *supra* note 90, at 17-18.

²¹⁴ See *Note by the President of the Security Council: Work of the Sanctions Committees*, *supra* note 178, ¶ 13.

²¹⁵ See e.g., Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, *supra* note 163, ¶ 5(a).

²¹⁶ U.N. Secretary-General, *Children and Armed Conflict: Rep. of the Secretary-General*, ¶¶ 205-06, U.N. Doc. A/65/280-S/2011/250 (Apr. 23, 2011).

the panel of experts, or “other relevant sources.”²¹⁷ Conversely, the guidelines for the Committee established pursuant to Resolutions 751 and 1907 concerning Somalia²¹⁸ and Eritrea²¹⁹ contain no provision for receiving listing information from any source other than member states.²²⁰ However, the committee may invite members of the UN Secretariat or others to provide it with appropriate information.²²¹

To increase the protection of children, provisions explicitly enabling sanctions committees to receive listing information from both the Working Group and the Special Representative should be included either in the resolution establishing such committees or in the committee guidelines. Where no such explicit provision exists, the Special Representative must still be permitted to submit information directly to the chair of the relevant sanctions committee or to ask the chair to arrange a briefing. Member states, the Special Representative, and other relevant UN actors should actively contribute to identifying possible perpetrators and submitting information and evidence to sanctions committees to support the listing of such individuals and entities that are responsible for grave violations against children. A thematic sanctions committee would also be able to draw on information collected for the MRM to target particular perpetrators.²²² Given the role of the MRM, one of the advantages of establishing a thematic sanction regime and delegating the functions of the sanctions committee to the Working Group is that a new expert body may not be necessary. However, the capacity of the country task forces and of the Special Representative may need to be strengthened if they are also to be given a role in providing information related to sanctions. Furthermore, care should be taken to avoid providing a role for country task forces in sanctions, which may interfere with those task forces’ ability to negotiate the release of children or their efforts to end other violations by armed forces or armed groups.

CONCLUSION

The threat and imposition of targeted measures may play a broad role in influencing perpetrators to end grave violations against children in situations of armed conflict. Specifically, such measures may serve to coerce changes in behavior, constrain perpetrators’ freedom of movement

²¹⁷ S.C. Res. 1591, *supra* note 32, ¶ 3(c).

²¹⁸ S.C. Res. 751, *supra* note 42.

²¹⁹ S.C. Res. 1907, *supra* note 179.

²²⁰ Security Council Committee Established Pursuant to Resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea, *supra* note 163, ¶ 6.

²²¹ *Id.* ¶ 3(b).

²²² DE LA SABLIERE, *supra* note 194, at 29.

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or access to resources, and signal Security Council disapprobation. While ending and preventing such violations will frequently involve a comprehensive resolution of conflict, the Security Council should consider using arms embargoes, export/import bans, asset freezes, and restrictions on travel and financial transfers against all perpetrators of grave violations against children. Particularly where such perpetrators seek international legitimacy, the Security Council may use the threat or imposition of sanctions as leverage to coerce them to execute and implement action plans to prevent grave violations. Sanctions are most likely to be effective when imposed swiftly and comprehensively and when progressively lifted in accordance with clear, well-identified benchmarks.

Where sanctions regimes already exist, grave violations against children should be integrated into the designation criteria. Where parties are listed for grave violations against children but no sanctions regimes currently exist, either the Security Council should establish country-specific or regional sanctions regimes to impose targeted measures against these perpetrators, or it should create a thematic children and armed conflict sanctions regime, at the very least for those situations currently listed in Annex 1 of the Secretary-General's report, where the existing sanctions regimes do not have grave violations against children or broad violations of international human rights and humanitarian law listed as designation criteria. Alternatively, the Security Council could mandate that the Working Group carry out the functions entrusted to a thematic sanctions committee. For both existing and new sanctions regimes, information is critical to the listing and delisting processes and to monitoring the implementation of sanctions. Member states, the Special Representative, the Working Group, the country task forces, and other relevant actors can all contribute actively to the identification of perpetrators and to the transmission of relevant information to sanctions committees. Such measures will strengthen the effective use of sanctions in ending and preventing grave violations against children.