Getting Smarter About Sanctions?
Has Security Council Learning
Occurred in Targeted Sanctions, 1993-2013?

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Faced with a global outcry against the cost in human suffering caused by comprehensive sanctions in the early 1990s, the UN Security Council began discussion of the potential of 'targeted' or 'smart' sanctions in 1993. After 1994, every case of Security Council sanctions fit this new format, aimed at applying pressure directly to decision-makers and political leaders while minimizing their impact on the general population.[i] These sanctions were largely coercive in nature, and were perceived by a number of states as being cumbersome and punitive.

In 1999, the Council reached a turning point with the adoption of Resolution 1265, which recognized that civilians represent the vast majority of casualties in situations of armed conflict, and therefore must be protected. The strengthening of the protection of civilians agenda sparked a move toward sanctions regimes aimed directly at shielding innocent populations from harm. More recently, the growing norm of the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity, abbreviated as R2P, has become an important component of Council sanctions.

This paper examines the pattern of reforms and refinements that have marked the smart sanctions era, with special emphasis on the manner in which each subsequent case of sanctions has built on – or 'learned' from previous cases; and, how targeted sanctions moved from coercive measures aimed at national leaders to mechanisms for protecting civilians from serious human rights violations.

The first section will provide an overview of the early smart sanctions era, and notable adaptations and improvements to Council sanctions' measures. Next, the evolution of sanctions from coercive to protective tools will be discussed in the context of the protection of civilians and R2P agendas. Three case studies will provide an in-depth discussion of the practical application of protective sanctions, beginning with Liberia, Libya, and ending with the recent conflict in Côte d'Ivoire. The fourth section examines the most recent refinements in targeted sanctions for the purpose of protecting civilians, while the fifth section provides an assessment of the effectiveness of this new breed of sanctions. This paper will conclude with thoughts on how the future of protective sanctions has unexpectedly been tied with the R2P agenda. Due to the backlash of

NATO's intervention in Libya, this will likely result in fewer Security Council resolutions on both targeted sanctions and R2P in the short and medium term.

I – LESSONS FROM THE EARLY SMART SANCTIONS ERA

When pushed on the issue, most member state missions to the United Nations and high level personnel within the organization recognize that economic sanctions are one of the few Charter-based peace enforcement tools available to the Security Council. Over the past two decades, sanctions have provided a means of applying pressure in response to problems of armed conflict, weapons proliferation, and other threats to peace and security, including egregious human rights abuses.

Over the past decade, however, the imposition of economic sanctions has generated systemic and structural tensions within the UN and is manifest in diverse ways. An increasing number of nations now view sanctions as cumbersome and punitive, with the strongest criticism being a P5 double-standard regarding which targets get sanctioned, or that sanctions are a 'trap door for war', which is a 1990s claim now recycled after NATO actions in enforcing SCR 1973 (2011) in Libya. Other nations emphasize that sanctions must be persuasive instruments to be combined with incentives-based diplomacy – which of course falls outside the purview of the Security Council *per se*. Wide differences of opinion exist among member states about the effectiveness and legitimacy of sanctions. Moreover, many member state diplomats are unaware of the refinements that have evolved since the late 1990s in the design and implementation of more narrowly targeted measures.[ii]

As a result of these combined factors, a general air of cynicism and skepticism pervades almost any discussion of sanctions at the UN. This is now manifest in the emergence in 2011 of the coalition of member states called the BRICS [Brazil, Russia, India, China and South Africa] who voice continued concern about – if not outright disagreement with – what they perceive to be the increased resort to sanctions by the Council. This opposition culminates in 2012 with the Russian – Chinese opposition to any Security Council sanctions on Syrian leadership for its repressive crackdown on dissidents from March 2011 to the present.

In many ways the criticism of UN sanctions and related cynicism is understandable as the record of Security Council sanctions since 1990 is one of striking contrasts, if not contradictions. As the Council moved forcefully to use sanctions as a means for advancing the UN mandate to preserve peace and security, most particularly in Iraq, it found that the outcomes of these measures were undermining other dimensions of the UN agenda, especially the goal of improving the human condition. While sanctions provided the major powers with a powerful tool for collective action within the Council, the wide-ranging social impacts of these measures resulted in declining consensus on Iraq and disagreements on sanctions reform. Much of this 1990s-overhang has colored in a negative way more positive changes that have occurred in sanctions, especially since the mid-1990s.[iii]

After 1994, the Council had learned numerous lessons from these detrimental sanctions episodes, adapting its measures to mitigate unanticipated consequences and exploring prospects for improved sanctions implementation. UN practice experienced a sea change that significantly advanced the sophistication of the sanctions instrument. An era of sanctions reform ensued as the Council shifted its focus from comprehensive to more selective measures and virtually abandoned the use of general trade sanctions and relied instead on targeted measures: financial assets freezes, travel bans, aviation sanctions, commodity boycotts, and arms embargoes.

In parallel with the emergence of the monitoring mechanisms for sanctions, like the creation of Panels of Experts, are a series of reform initiatives by individual member states to improve Security Council sanctions policy making. The governments of Switzerland, Germany, and Sweden sponsored working group meetings and a series of research studies to increase the effectiveness of Security Council sanctions and strengthen the prospects for member state implementation and target state compliance. The first of these policy initiatives was the so-called Interlaken Process in 1998-99 sponsored by the government of Switzerland. The focus of the Swiss initiative was to enhance the effectiveness of targeted financial sanctions. The Interlaken process attempted to apply the methods utilized in combating money laundering to the challenge of implementing targeted financial sanctions. Participants in the Interlaken seminars examined the extent to which financial sanctions could achieve their goal of cutting off

the financial support that is crucial to sustaining abusive regimes and the decision-making elites who control such regimes. As a part of the Swiss initiative, the Watson Institute for International Studies at Brown University developed model legislation for governments to strengthen their capacity to implement targeted financial sanctions. The Watson Institute also produced a handbook on the implementation of targeted financial sanctions that was subsequently distributed to member states through the UN Secretariat.[iv]

Building on the Interlaken Process, the German Ministry of Foreign Affairs initiated a parallel effort to refine the implementation of travel bans and arms embargoes. Managed by the Bonn International Center for Conversion, the German initiative included meetings in Bonn in 1999 and Berlin in 2000. The so-called Bonn-Berlin Process considered ways of improving travel bans and arms embargoes. In the area of arms embargoes, the Bonn-Berlin process recommended the use of standardized lists of dual-use items drawn from the Wassenaar Arrangement, to assure common definitions of military-related technologies subject to restrictions. The recommendations emanating from the German initiative helped to advance the capacity of the Security Council to implement travel bans and arms embargoes. The final report of the German initiative provided rich detail of the monitoring and enforcement of future travel and arms sanctions.[v]

In 2001 the government of Sweden launched a further initiative to improve sanctions policy making at the United Nations. The Swedish program brought together the world's leading sanctions scholars, UN policy makers, and international legal experts for a series of meetings in Uppsala and Stockholm to develop recommendations for strengthening the monitoring and enforcement of Security Council sanctions. Known as the Stockholm Process on the Implementation of Targeted Sanctions, the Swedish initiative added to the work already achieved by the Swiss and German governments and helped to advance international understanding of the requirements for effectively implementing targeted sanctions.[vi]

The International Peace Academy (IPA) in New York played an important role in documenting the evolution of sanctions policy and highlighting the most significant sanctions reform issues. IPA hosted a number of luncheon seminars over the years at which Security Council ambassadors and UN officials heard briefings from sanctions

researchers and engaged in off-the-record discussions of the most pressing sanctions policy issues. In February 2003 IPA hosted a briefing for the Stockholm Process at which Swedish officials presented their final report and discussed the findings and recommendations of their study with senior UN officials.[vii]

II - FROM COERCIVE TO PROTECTIVE SANCTIONS

In this section we briefly review the impact of the imperative to protect civilians as an agenda that paralleled and then became interwoven with the evolution of smart sanctions regimes imposed by the Security Council. We also discuss the trends in reforms and refinements in targeted sanctions, and the circumstances surrounding these. Next, we consider case studies of sanctions used for civilian protection, and their contribution to challenging the perception of many states that sanctions are always punitive in nature.

The Security Council and the Protection of Civilians

The move from coercive sanctions targeting national leaders to those aimed directly at protecting civilians occurred in the context of the strengthening of the protection of civilians agenda, which is rooted in obligations under international humanitarian law. The protection of civilians in armed conflict (PoC) is also a thematic subject of Security Council deliberations and can be seen as a direct extension of the Council's use of sanctions to stymie the progress of internal war. According to the Global Center for the Responsibility to Protect, PoC compels states and institutions undertaking protection operations to provide due care for civilians endangered by armed conflict.

This item has been considered by the Council since 1999, when it passed Resolution 1265 which recognized that civilians represent the vast majority of casualties in situations of armed conflict and must be protected.[viii] An important factor in the Security Council's emphasis on the protection of civilians was the shift from interstate conflicts, to the current situation in which the majority of conflicts occur within a state. A further factor in the second half of the twentieth century was an increase in the involvement of non-state actors: These conflicts involved irregular armed groups such as

guerrilla movements or paramilitary forces, which preyed on the civilian population and sought protection by living among civilians.[ix]

Since the passing of this resolution, PoC has emerged as a core directive of all humanitarian efforts and has been endorsed in a number of Security Council resolutions on the protection of civilians in armed conflict, (1265, 1296, 1674, 1738, 1894).[x] Additional complementary issues were acknowledged in Council resolutions on women (1325), children (1612), the protection of humanitarian workers (1502), conflict prevention (1625) and sexual exploitation (1820). Furthermore, numerous country-specific Council resolutions include measures aimed to protect civilians, which will be discussed in further detail in upcoming sections.

PoC has also been placed at the center of many UN missions, including operations in Afghanistan (UNAMA), Central African Republic (MINURCAT), Côte d'Ivoire (UNOCI), Darfur (UNAMID), Democratic Republic of Congo (MONUC), Haiti (MINUSTAH), Liberia (UNMIL) and Sudan (UNMIS).[xi]

In 2006, the protection of civilians agenda was complemented by the newly endorsed Responsibility to Protect (R2P) norm in its historic first reference by the Security Council in Resolution 1674. As with SCR 1265, this resolution acknowledged that civilians make up the majority of casualties in violent conflicts, and highlighted that states have the primary responsibility to protect their people from all acts of violence. The provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome document are specifically mentioned in the resolution to underscore the responsibility of all states to protect populations from the four serious human rights violations: genocide, war crimes, ethnic cleansing and crimes against humanity.

The period that followed included a series of semi-annual open debates on the topic. This has provided a valuable forum for discussing and for incorporating these principles into the Council's work. In short, the moving agenda of PoC to R2P fits both the drive for more sanctions precision and the expanded Council concerns with the wide variety of civilian abuses during war. This made for the development of new innovations from Special Representatives of the Secretary-General to conflict zones to the development of new techniques and rationale for sanctions regimes.

Reforms and Refinements in the Smart Sanctions Era

Several innovations and improvements have taken place since the sanctions reform effort that took place in the late 1990s and early 2000s that led to targeted sanctions. In response to widespread criticism of stand-alone arms embargoes placed on Liberia, Somalia and Rwanda in the early 1990s, the design, implementation and enforcement of arms embargoes has improved dramatically. More specifically, such sanctions are now accompanied by financial and other restrictions, and are aimed at a national government.[xii] Further, in the Democratic Republic of Congo (DRC) and Liberia, for instance, UN arms embargoes have been revamped to allow support for emerging and effective national armed forces as each of those nations moved closer to peace and democratization.[xiii]

Moreover, it has become standard practice for some years for the Council to establish a sanctions monitoring body whenever it imposes sanctions. The first such body was established in 1995 (the UN International Commission of Inquiry, UNICOI) to investigate and report on violations of the sanctions on the rebel Hutu groups in eastern Zaire (following the suspension of the arms embargo on the Rwandan government). UNICOI acted in a capacity very similar to that of today's Panels of Experts.[xiv]

According to Carisch and Rickard-Martin, the language of resolutions has become clearer. They also have become more specific and intentional regarding the scope of sanctions and benchmarks for easing or lifting.[xv] These refinements were the result of the aforementioned Interlaken, Bonn-Berlin and Stocholm processes which encouraged the use of standard language for targeted measures.[xvi] More recently, these refinements were applied to resolution language on travel bans, assets freezes and arms embargoes, exemplified by the latest resolution on the DPRK, UNSCR 1985 (2011), which mirrored the resolution on Iran adopted exactly a year before, UNSCR 1929 (2010). Resolutions have also become more precise in stipulating the tasks for the Sanctions Committee and the Panel of Experts, and for peace support operations in cases where they are mandated to monitor an arms embargo.[xvii]

Regarding PoC, the Council has also continued to systematically include protection language in most of its relevant country-specific decisions. According to the Security Council Report, the Council also demonstrated a greater willingness to use

targeted sanctions against perpetrators of violations of international human rights or humanitarian law.[xviii] It made additional listings based on criteria related to such violations under existing sanctions regimes. In 2011 the Council established a new sanctions regime for Libya that includes among its listing criteria attacks against civilians. Five of the Council's 12 sanctions regimes now include listing criteria related to violations of international human rights or humanitarian law.[xix]

In a parallel effort, the Council also moved sexual violence into the realm of sanctionable acts when it adopted resolutions UNSCR 1888 (2009) and UNSCR 1960 (2010). In both resolutions, the Council stated its intention to include designation criteria for acts of rape and other forms of sexual violence in its renewal of targeted sanctions in conflict situations. The Secretary General's Special Representative on Sexual Violence in Conflict, Margot Wallstrom, also has a mandate to report regularly to all Sanctions Committees. As part of the implementation of these resolutions, all peacekeeping and other relevant United Nations missions and entities are requested to brief the relevant Sanctions Committee about their findings on abuses of children's rights and sexual violence in conflict.

More recently, a particularly noteworthy sanctions innovation influenced by the PoC agenda is a progressive reform of assets freezes. UNSCR 1970 and 1973 targeting the Gaddafi regime in the recent conflict in Libya included not only the traditional mix of an arms embargo, an assets freeze, and a travel and aviation ban; they also encompassed cargo inspections anywhere in the world, referral to the International Criminal Court, and possibly the most progressive reform: the possibility of converting the assets freeze into an assets seizure. More specifically, paragraph 20 of UNSCR 1973 highlighted the Council "determination to ensure" that frozen assets are made available to the Libyan people "at a later stage, as soon as possible". Although the prospect of seizing frozen assets was not a new one - it had been used in previous resolutions imposing an assets freeze on repressive leaders such as Charles Taylor in UNSCR 1532 - the key difference is that the language used in UNSCR 1532 expressed the Council's "intention to consider *whether* and how to make available the funds" (emphasis added). UNSCR 1973 was much more forceful in its language, reflecting the humanitarian concerns that also prompted its rapid passing and implementation.

III. Country Cases of 'Sanctions for Civilian Protection'

Liberia – Sanctions for Peace

The case of the sanctions regime imposed on Liberia exemplifies the progression from an ineffective, stand-alone arms embargo, to a menu of targeted sanctions instruments. These culminated in protective measures that targeted those actors who were responsible for undermining peace and democratic institutions, for attacking peacekeepers and humanitarian workers, and impeding the delivery of humanitarian aid.

Between 1989 and 2003, Liberia was plagued by civil war and ethnic-based violence. During this period, the UN introduced a variety of sanctions against the country, beginning with a limited arms embargo. Resolution 788 (1992) was passed to provide symbolic support to ECOWAS, which had imposed its own sanctions regime against Charles Taylor's NPFL insurgency. The Security Council did little to monitor and enforce these sanctions, waiting approximately two years before establishing a sanctions committee with Resolution 985 (1995).

Despite the peace agreement reached in August 2003, compliance with the sanctions in place remained poor. Among other things, the United Nations pointed to the fact that the trade in diamonds and timber was fuelling the conflicts in Liberia and West Africa as a whole. The RUF of Sierra Leone and Charles Taylor used the proceeds from diamond sales to purchase drugs, arms and ammunitions, and maintain strategic alliances both at home and abroad. Furthermore, although initially little attention was placed on timber, there was overwhelming evidence that warring factions were using it to help fund their campaigns.[xx]

Global Witness was at the forefront of the campaign to raise awareness about 'conflict timber', reporting that France and China were the major importers of Liberian Timber. The ban on Liberian timber exports was only agreed after years of lobbying by NGOs and civil society groups in 2003, with the passing of Resolution 1478.

Table 1: Selection of Security Council sanctions on Liberia[xxi]

SCR	Sanctions Actions
788	Imposed an arms embargo on Liberia
985	Established a Sanctions Committee
1343	Re-established the arms embargo and imposed an embargo on diamonds and a travel ban.
1478	Further imposed an embargo on timber
1521	Renewed sanctions and established a new Committee of the Security Council
1532	Imposed an assets freeze against former President Charles Taylor and associates
1689	Lifted sanctions on timber, and renewed other sanctions
1753	Lifted the diamonds embargo

Following UNSCR 1478, the UN Security Council adopted Resolutions 1521 (2003) and 1532 (2004), which established more stringent sanctions against Liberia. Apart from the arms embargo, the sanctions involved the freezing of assets and travel restrictions for former President Charles Taylor and his entourage, who represented a threat to the peace process in Liberia. In addition, certain trade restrictions for timber and diamonds were introduced.

Following the election of Ellen Johnson Sirleaf, parts of these sanctions were lifted. The previous sanctions on the trade in timber were removed in 2006 (UNSCR 1689) and diamonds in 2007 (UNSCR 1753) since the financial profits from these industries no longer financed further conflict in Liberia. The restrictions existing today target factors and actors that can disrupt peaceful development in the country, thus protecting the incumbent government and Liberian people from spoilers. This has led some to refer to these protective measures as "Sanctions for Peace", which have more recently been used to protect the national reconciliation process in Côte d'Ivoire.[xxii]

Libya – First Full Case of R2P

The international community's recent intervention in Libya exemplifies the Security Council's move toward protective sanctions regimes, strengthening the protection of civilians agenda as well as the R2P principle. Most significantly, this case

also demonstrates that when preventive efforts such as sanctions and diplomacy fail, the use of force remains an option for the purpose of protecting civilians. The recent conflict in Libya stemmed from Muammar Gaddafi's refusal to cede power in the face of popular demands for democratic reform, and his subsequent attack of civilian protesters. In response to the gross and systematic violation of human rights committed by Gaddafi and his regime, the Security Council unanimously adopted resolution 1970 (2011) in February 2011. The Council imposed 1) a referral of the situation to the International Criminal Court for further investigation regarding severe human rights violations, 2) an arms embargo on the entire country and 3) the imposition of a travel ban and assets freeze on leading regime members and state companies.

UNSCR 1970 is particularly relevant in that the justification used for its coercive measures was for the purpose of protecting civilians, using R2P language. More specifically, the Council highlighted "the Libyan authorities' responsibility to protect its population". Many members were hopeful that the resolution was a strong step in affirming R2P, in addition to the legitimacy of the Council to step in when states failed to meet that responsibility.[xxiii] Moreover, the use of targeted sanctions to protect civilians assisted in challenging the perception of many states that sanctions are always punitive in nature.

Despite reservations on the part of certain Council members, the unanimity and speed with which the resolution was passed were remarkable. In addition, the referral of the Libyan situation to the ICC exemplifies its importance as an essential tool for implementing the responsibility to protect, and reinforcing efforts at dissuasion and deterrence of the actions of tyrants.[xxiv] The timely adoption of the resolution can partially be explained by the defection of Libyan UN ambassador Mohammed Shalgham who had urged Security Council members to adopt sanctions in response to the atrocities committed by Gaddafi.[xxv] UNSCR 1970 was also unique in that the United States supported the referral of the situation in Libya to the ICC, of which it is not a party.

Less than a month later the Council's use of sanctions for protection of the innocent was further demonstrated, as concern for the welfare of Libyan civilians and lack of change in behavior on the part of the Libyan regime led to UNSCR 1973 (2011). The same R2P language was used in this resolution as its predecessor, and was also passed in

a timely manner, due in large part to the imminent threat facing the Libyan rebel stronghold of Benghazi.[xxvi] In the days preceding the resolution, Gaddafi had warned that his forces would invade Benghazi and show no mercy to fighters who resisted them.[xxvii] In response, a more forceful UNSCR 1973 was adopted with abstentions from the same countries that had withheld their votes for UNSCR 1970. Among other measures, a no-fly zone, a ban on flights and expansion of designated sanctions were imposed. It is notable that the Council of the League of Arab States called for a no-fly zone prior to the passing of the resolution; support that contributed to its swift adoption since the US was opposed to a military intervention without Arab support.[xxviii] In addition to the League of Arab States, Qatar and the UAE also contributed to the international effort in Libya.[xxix] Arab support was vital in avoiding the perception that this intervention was another attack on an Arab state by the West. For this reason, the Resolution 1973 made clear that "all necessary measures" could be used to protect civilians, apart from an occupying force.

Table 2: Selection of Security Council sanctions on Libya

SCR	Sanctions Actions
1970	Referred the situation in Libya to the ICC, imposed an arms embargo and targeted sanctions (assets freeze and travel ban).
1973	Authorized all necessary measures—excluding an occupation force—to protect civilians in Libya and enforce the arms embargo, imposed a no-fly zone, strengthened the sanctions regime, and established a panel of experts.
2009	Authorized the deployment of UNSMIL and partially lifted sanctions.
2016	Lifted the no-fly zone and the provisions for the use of force for the protection of civilians.

Following a NATO-led bombing campaign to destroy Gaddafi's air defense units and command facilities, the Council passed Resolution 2009 which established a support mission (UNSMIL) in the country. In support of its mandate to assist national efforts to extend state authority, strengthen institutions, protect human rights, among other

objectives, the Council also partly lifted the arms embargo imposed on Libya and the asset freeze targeting entities connected to the previous regime.

Soon after, following the capture and death of Gaddafi in October 2011 by the opposition, Resolution 2016 (2011) set a date of termination for the provisions of Security Council Resolution 1973 which allowed states to undertake "all necessary measures" to protect civilians and which formed the legal basis for military intervention by a number of foreign states. The Panel of Experts established by SCR 1970 turned in its final report to the Security Council in early March, 2011, thus closing the Libyan sanctions episode.

Although the sanctions regime in Libya was founded as the PoC agenda was being played out and buttressed by the R2P principle in Côte d'Ivoire, the employing of R2P in full was clear in the Libyan case. Initially this did much to change perceptions regarding the punitive nature of sanctions, but then the manner in which the sanctions were implemented – and extended in scope and meaning by NATO - led to significant backlash, especially from Russia, with moderate support from China. Ultimately, because of this intervention, the future of sanctions and R2P were tied together.

Côte d'Ivoire – Second Use of R2P as Justification for Sanctions

The Security Council's response to the long-standing civil war in Côte d'Ivoire is an illustrative example of how the lessons learned from previous cases informed future sanctions regimes. And it is clear that with Côte d'Ivoire's crisis and UN action unfolding at virtually the same time as the Council's Libyan action, that these most recent conflicts involve the first applications of R2P by the Council as a justification for sanctions.

Following the disputed outcome of the November 2010 presidential elections, political tensions and violence heightened once again between supporters of the internationally-backed winner Alassane Ouattara, and former President Laurent Gbagbo. Gbagbo refused to cede office despite the international community's recognition of Ouattarra, questioning the neutrality of the UN presence in the country.[xxx] Gbagbo supporters had committed hostile acts against United Nations Operation in Côte d'Ivoire (UNOCI), whose troops provided protection for Ouattara, but attacks from both sides resulted in over 1,500 civilian deaths.[xxxi] In addition, over one million civilians were

displaced, creating significant concern for the stability of the region. These developments built momentum on the part of Council members to act for the protection of Ivorian civilians by strengthening UNOCI's protection mandate with R2P language.

Through the deployment of UNOCI in 2004, the UN had initially hoped to assist in the preparation of general elections to be held in 2005, and to have a positive impact on the efforts to stabilize the West African subregion as a whole. However, due to the relatively low number of troops, and the large geographic area that needed to be covered, the protection of civilians mandate was very difficult to implement.[xxxii]

Unfortunately, the ceasefire agreement was also not being adhered to, which resulted in firmer action on the part of the Council in response to flagrant violations. Resolution 1572 (2004) was adopted, which imposed an arms embargo, travel ban and assets freeze for a period of 13 months. Although the Council authorized these targeted sanctions, they did not come into effect for specific individuals because of differences within the sanctions committee and because African Union representatives believed that they may be counterproductive.[xxxiii] It was only a year later, with the passing of UNSCR 1643 (2005), that the Council imposed individual sanctions against two followers of President Gbagbo and one commander of the rebel New Forces (*Forces nouvelles*).[xxxiv] This resolution not only renewed the sanctions regime of UNSCR 1572, but also added a diamond embargo; mirroring similar measures imposed in Liberia. These changes also reflected the Council's move to "Sanctions for Peace", aimed at protecting the national reconciliation process as well as civilians and humanitarian actors from violence.

As regards the most recent elections dispute between Ouattara and Gbagbo, the opportunity for an explicit application of R2P appeared following the release of a joint statement by the UN Secretary-General's special advisers on the prevention of genocide, Francis Deng and Edward Luck. Both advisors expressed grave concern about "the possibility of genocide, crimes against humanity, war crimes and ethnic cleansing", and recommended the Council take "urgent steps in line with the responsibility to protect."[xxxv] These concerns stemmed from a spike in ethnically charged hate speech and from allegations that the armed forces and militia groups from both sides were arming ethnic groups.[xxxvi] In response to these concerns, Gbagbo's continued refusal to step down, and the obstruction of UNOCI's mandate by his supporters, the Council

unanimously adopted Resolution 1975 (2011) in March 2011.[xxxvii] As with the recent resolutions passed on the Libyan conflict, UNSCR 1975 contained R2P language, reaffirming "the primary responsibility of each State to protect civilians."

Furthermore, the resolution notably authorizes UNOCI to "use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence", including the use of force. The resolution also mentions the possibility of the ICC having jurisdiction over the situation in Côte d'Ivoire, if it is determined that crimes against humanity have been committed. Finally, the Council imposed targeted economic sanctions on Gbagbo and his inner circle, and stated its intent to impose similar sanctions "against the media actors who fan tensions and incite violence."[xxxviii]

Table 3: Selection of Security Council sanctions on Côte d'Ivoire

SCR	Sanctions Actions
1572	Established an arms embargo and called for sanctions against individuals
1643	Renewed until 15 December 2006 the sanctions regime of resolution 1572 and established a diamonds embargo.
1975	Imposed sanctions on Gbagbo and his circle.
1980	Extended the sanctions regime and the mandate of the group of experts monitoring it for one year.

Once again, this resolution exemplifies the use of targeted sanctions for the purpose of protecting innocent civilians, while notably using the R2P norm as justification for the use of force if sanctions did not sufficiently protect. Moreover, this case also provides examples of refining sanctions to suit the unique context of the conflict in question. The Council's intent to sanction media actors is a noteworthy innovation that acknowledges their role in perpetuating violence.

Since Gbagbo's arrest in April 2011 by pro-Ouattara forces, President Ouattara has expressed his commitment to national reconciliation through his decision to establish a Truth and Reconciliation Committee to investigate alleged human right abuses and to hold violators from both sides responsible.[xxxix] In order to protect this reconciliation process, Resolution 1980 was passed in April 2011, renewing the arms embargo,

diamond trade ban and financial and travel sanctions against selected Ivorian officials until April 2012. Upcoming Section 5 will include an in-depth discussion on the effectiveness of this new breed of smart sanctions versus more traditional punitive measures.

IV - EFFECTIVENESS OF SMART SANCTIONS

Although the Security Council has demonstrated a willingness to learn from past failures and has instituted innovative reforms for various types of targeted sanctions, the skepticism about their effectiveness and ethical dimensions persists. With the recent trend toward protective sanctions regimes, these tools are now under even closer scrutiny. Nevertheless, the success of smart sanctions appears to be rather high – in particular in the core areas of peace and security and human rights – thus maintaining their status as tools of choice for the Council.[xl]

Of all the targeted sanctions implemented thus far, the greatest criticism continues to be leveled at arms embargoes, whether or not they are imposed with the admirable goal of protecting peace and democratic institutions. As seen in the Liberia case, this tool faces much the same challenges as an arms embargo with more coercive aims, which may even undermine its humanitarian goal. As argued by Michael Brzoska, arms embargoes continue to impose significant costs on a target state's population due to ''a major shift in government spending priorities and a consequent reduction in the economic well-being of the general population in the targeted state''. However, critiques such as these do not acknowledge the adaptations and improvements in arms sanctions design, which were discussed in the previous section. In fact, according to Cortwright, recent trends have moved in the direction of increased efficacy of arms embargoes, especially when they are integrated within a wider framework of the creation of peace and stability for a country and region.[xli]

In terms of financial sanctions, they also have potential negative implications for the protection of innocent individuals. More specifically, UNSCR 1267 (2001) has given rise to human rights concerns due to the fact that individuals can be placed on the list of those sanctioned simply for preventative purposes, and subsequently cannot challenge

their listing.[xlii] This has resulted in legal proceedings being brought against the national governments and the European Community that implemented the measure.

In response to the legal actions, the Security Council has developed some limited forms of recourse, undergoing a remarkable evolution to a more rights-sensitive system that is consistent with the concerns and claims of the "like-minded states" that championed the due process challenge.[xliii] As Lopez underscores, these actions demonstrate a fundamental distinction made by a number of Security Council members that placing an entity or individual on the sanctions list is an act of preventive security, not a judicial decision subject to judicial review.[xliv]

Sanctions regimes for the purpose of protecting civilians, under an R2P mandate for example, have added a higher level of difficulty in measuring their success, given that they must at the most basic level achieve two goals: Protect the target group of innocents, and avoid others from indirectly coming to harm while protecting the first group.

In the case of Sanctions for Peace, member states must ensure, in protecting a state's population from actors that threaten the country's stability, that legitimate initiatives are not blocked by the sanctions regime.

The Security Council has already proven that it can respond to this challenge by, among other measures, delisting sanctioned entities. In February 2012, for instance, members of the Libya Panel of Experts informally delisted subsidiaries of Libya's sovereign wealth fund from an assets freeze.[xlv] According to the Panel, this was done so that Libyans were not directly or indirectly punished by preventing them from conducting legitimate income-generating activities such as trade. This also supports the transitional government in establishing lasting legitimacy by making these funds accessible for "sovereign national Libyan usage".[xlvi]

Regarding the use of sanctions to protect civilians from human rights atrocities committed or enabled by their own governments, this further complicates the task of measuring success. The military enforcement of a no-fly zone in Libya, legitimized by invoking R2P, triggered a backlash that will likely result in fewer sanctions and R2P cases in the future. NATO and its allies were accused of using R2P as a smokescreen for regime change, and, as a Russian representative argued, "the noble goal of protecting civilians should not be compromised by attempts to resolve in parallel any unrelated

issues".[xlvii] This highlights the recurring challenge of improving the effectiveness of sanctions by achieving consensus on their *specific aims*. Otherwise, according to some sanctions scholars, this leaves room for misunderstanding or manipulation due to senders having different goals.[xlviii] As argued by Gordon, "to the extent that targeted sanctions are imposed to achieve conflicting or ambiguous goals, they will be no more effective than traditional sanctions."

On the other hand, it is realistic to accept that there will always be many interests involved in any sanctions regime or policy. At its core, the Security Council is a political animal that will continue to be at the mercy of its most powerful five members. Rather, the measure of success lies in the empirical impact of the sanctions on constraining its targets in the manner specified in the Security Council resolution.[xlix] Thus, a perfect policy outcome would be one in which the change in behavior of the target perfectly conforms to the resolution imposing the sanctions.

Even in light of these challenges, the intervention in Libya represents a watershed moment in the future of smart sanctions, as they are now conceptually linked to R2P in the eyes of Security Council members. The backlash from member states that were originally skeptical of the R2P norm has blocked the imposition of further smart sanctions regimes in other human rights violations cases, an issue that will be discussed in the final section of this paper.

V - THE FUTURE OF SANCTIONS FOR PROTECTION

For better or worse, the controversial implementation of the Libya resolutions has tied the future of sanctions and R2P together. The inability of the Council to pass a resolution condemning the Al-Assad government's violence against its own people, which has killed over 8,000 according to UN figures[l], reflects this impasse. Russia and China have twice vetoed resolutions condemning these human rights abuses, with Russia arguing that the resolutions promoted regime change in Syria, alluding to the outcome of the Libyan intervention and the supposed misuse of R2P.[li]

As the Global Center for the Responsibility to Protect notes, however, it was Russia that first misused the nascent R2P norm when misapplying it to its attempted

invasion of Georgia in 2008. At the time, Foreign Minister Lavrov invoked R2P in order to justify a dubious Russian military intervention. In response, leading members of the ICISS including Gareth Evans, former Australian Foreign Minister, denounced the hijacking of the norm.[lii]

Regarding the situation in Syria, Mr. Lavrov stressed the reassertion of national sovereignty issues, and claims that despite how brutal the situation is within the country, this is not a threat to international peace and security. These Russian tactics and vetos against the Assad regime point to even more worrisome implications for the use of sanctions by the Security Council: These actions demonstrate a rejection of the proactive, norm-enforcing Council that has emerged in the past decade.[liii] In fact, they seek to roll back advances the Council has made in employing various methods, especially economic sanctions, that have been especially successful in achieving the UN Charter's dual mandate to sustain peace and security and to protect human rights, as emphasized in the previous section.

As for the future of the R2P agenda, despite the modest gains won during the early days of the Libya intervention, the norm has been victimized by its own success: Following the adoption of UNSCR 1973, certain experts argued that the international community's swift response to protect Libyan civilians demonstrated a progressive acceptance of R2P.[liv] In addition, the imposition of a no-fly zone was considered as further evidence that a greater normative consensus had been reached around the legitimate use of force, as a last resort, to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing.[lv]

However, supporters of R2P now consider this norm to be at risk because those already hesitant to support it, primarily the BRICS countries, will condemn R2P as being a pretext for undermining state sovereignty. Russia and China were particularly vocal in their criticism of NATO's actions, accusing it of overreaching with its air strikes "despite human rights and humanity concerns which the civilized world is believed to advocate."[lvi]

This supposed overreach can partially be explained by the challenge in complying with a protection mandate, reflecting the inherent flaws in the operationalization of R2P as it now stands. More specifically, R2P has no threshold criteria or response trigger, although these were included in the original proposal for R2P authored by the ICISS.[lvii]

The ICISS proposed the use of *jus ad bellum* principles as threshold criteria, but heads of state attending the 2005 World Summit were unable to reach consensus, opting for the politically safe 'case-by-case' consideration. This contributed to a significantly watered-down version of the norm, which has in practice facilitated its misuse.

In an attempt to encourage compromise among Council members, Brazil recently proposed supplementing R2P with a new set of principles and procedures on the theme of "responsibility while protecting", or RWP.[lviii] Its two key proposals are a set of criteria which include last resort, proportionality, and balance of consequences – essentially, the criteria proposed by the ICISS – to be taken into account before the Security Council mandates any use of military force, and a monitoring-and-review mechanism to ensure that such mandates' implementation is seriously debated. Whether or not this new concept will mark the return of R2P resolutions in conjunction with protective sanctions remains to be seen.

Moving forward, the obstruction of protective sanctions is likely to continue as long as states reduce the R2P norm to a doctrine of military intervention. Although the military aspect of R2P has gained the most attention of late, this is but one small part of the ICISS' vision. When considering other ways R2P has been applied, such as the prevention of further violence in Kenya in 2008 and the peaceful transition of an independent southern Sudan through the significant investment of the international community, the true purpose of R2P becomes clear. In order to emphasis this true purpose, Secretary-General Ban Ki-moon has called 2012 the "Year of Prevention", highlighting the prevention of large-scale violence prior to its incitement as the primary role of R2P.[lix] The Security Council must lead the way in ensuring that one of their most effective tools are not misused, and that they continue to work towards the common goal of creating a world free of egregious human rights violations.

NOTES

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[xv] Ibid., pp. 4.

[xvi] Eckert, Sue E.,Biersteker, Thomas (2005): Consensus from the Bottom Up? Assessing the Influence of the Sanctions Reform Processes, in: International Sanctions: Between Words and Wars in the Global System.

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[xviii] Security Council Report, Cross-Cutting Report on Protection of Civilians in Armed Conflict No. 2, July 2011.

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[xxi] Wenzel, Mareike and Sami Faltas, Tightening the Screws in West African Arms Embargoes, pp. 7.

[xxii] Carisch, Enrico and Loraine Rickard-Martin, pp. 6.

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