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The versatility of
Security Council sanctions

What is the scope of the Security Council's mandate to
decide on sanctions under Article 41 of the UN
Charter?

LAGF03 Essay in Legal Science

Bachelor Thesis, Master of Laws program

15 higher education credits

Supervisor: Ulf Linderfalk

Term: Autumn term 2023

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Summary

This thesis has studied the Security Council mandate under Article 41 of the UN Charter, according to which the Council can decide on non-military sanctions to maintain international peace and security. The article mentions examples of economic and diplomatic sanctions, such as arms embargoes and interruption of economic relations, but the article is not exhaustive.

The method used is a legal dogmatic method. In order to determine the scope of the mandate under Article 41, how sanctions practice has developed, how the article has been interpreted over time and what specific sanctions can be decided on by the Security Council, this thesis has studied all Security Council resolutions that have implemented sanctions.

The thesis has found that the Security Council has the mandate to interpret sanctions broadly within the framework of the UN Charter and Chapter VII. The article gives the Council to decide on several different types of sanctions, with economic embargoes, regulation of trade markets and the establishment of international war tribunals being just a few examples.

The mandate under Article 41 has not broadened, it has always been the same. The sanctions measures under the article, however, has evolved in order to address new threats to international peace and security, with the shift from comprehensive to targeted sanctions being the most prominent one.

Sammanfattning

Denna uppsats har studerat säkerhetsrådets mandat under artikel 41 i FN-stadgan, enligt vilken rådet kan besluta om icke-militära sanktioner för att upprätthålla internationell fred och säkerhet. I artikeln nämns exempel på ekonomiska och diplomatiska sanktioner, så som vapenembargon eller upphörande av ekonomiska förbindelser, men artikeln är inte uttömmande och befogenheterna under artikeln är vidare än så.

För att fastställa mandatets räckvidd, och mer specifikt vilka sanktioner som kan beslutas om, har denna uppsats därför utläst säkerhetsrådets praxis. Uppsatsen har använt sig av en genomgående rättsdogmatisk metod som undersökt alla säkerhetsrådets resolutioner som beslutat om sanktioner under artikel 41, för att kunna fastställa hur säkerhetsrådets praxis under artikeln utvecklats, hur artikeln tolkats över tid samt vilka specifika åtgärder som kan beslutas om.

Uppsatsen har funnit att säkerhetsrådet har befogenhet att tolka artikel 41 brett så länge de håller sig inom ramen för FN-stadgan och kapitel VII. Artikeln ger säkerhetsrådet befogenheten att besluta om flera olika typer av sanktioner. Ekonomiska förbud, reglering av handelsmarknader och upprättandet internationella krigstribunaler är bara några exempel. Säkerhetsrådets mandat under artikel 41 har alltid varit detsamma, men sanktionsåtgärderna under artikeln har utvecklats för att hantera nya hot mot internationell fred och säkerhet. Övergången från omfattande sanktioner till riktade sanktioner är den mest framträdande utvecklingen, vilket var ett svar på negativa humanitära konsekvenser för civila.

Abbreviations

UN	United Nations
UN Charter	Charter of the United Nations
US	United States of America
UK	United Kingdom
ICJ	International Court of Justice
ICJ Statute	Statute of the International Court of Justice
UNITA	União Nacional para a Independência Total de Angola

1 Introduction

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.¹

1.1 Background

In a world of constant geopolitical challenges, the pursuit of international peace and security is an eternal battle. With the goal of ensuring rapid and effective action to maintain international peace and security, the Security Council has a mandate under Article 41 to impose non-military measures called sanctions.

Sanctions may be applied to states, groups or individuals, and the range of sanctions varies from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans, financial and diplomatic restrictions. Apart from this, the mandate under Article 41 gives the Security Council the right to establish other types of sanctions such as creations of international tribunals and the creation of funds to pay compensation for damage as a result of an invasion.² Sanctions can be applied when the Security Council has determined a threat to international peace and security, and they find it necessary to apply such measures.³ Under the umbrella of threats to international peace and security, reasons to apply sanctions can also be threats to stability, violations of human rights and international humanitarian law, and obstruction of humanitarian aid. Sometimes the decision to establish sanctions are a response from the Security Council to a state's unlawful act, whereas other times sanctions are

¹ Article 41 of the UN Charter.

² Security Council Repertoire, *Actions with Respect to Threats to the Peace, Beaches of Peace, and Acts of Aggression*.

³ Article 39 of the UN Charter.

imposed in a preventive way as enforcement measures or on request of states who want help to support their own measures in calming hostilities or overcoming rebel groups.⁴ Established sanctions are frequently enhanced and adapted by the Security Council through new resolutions. Adaptation may include in introducing or removing specific commodity sanctions or adding or removing names from target lists.⁵

The use of sanctions under Article 41 varies, and the mandate under the article is broad. As the legal text does not specify exactly what the Security Council can decide upon, it remains unclear how extensive the mandate under Article 41 actually is.

1.2 Purpose and research question

The purpose of this essay is to determine how far the mandate of the Security Council under Article 41 stretches. For this purpose, this thesis will address the following research question:

What is the scope of the Security Council's mandate to decide on sanctions under Article 41 of the UN Charter?

The following sub-questions will aim to clarify the legal argumentation to answer the main research question:

How has the Security Council's mandate under Article 41 of the UN Charter evolved and been interpreted over time?

What specific measures and sanctions can be decided by the Security Council under Article 41 of the UN Charter?

1.3 Delimitations

Due to the time constraints and limited extent of this thesis, it will be limited to establish what sanction measures can be taken by the Security Council

⁴ Security Council, *Fact sheets Subsidiary Organs of the United Nations Security Council*, (2023).

⁵ UNSC Res 1533 (2004); UNSC Res 2127 (2013).

under Article 41 of the UN Charter. It is essential to note that international organizations and the EU can decide on similar non-military sanctions, but this paper will focus on UN sanctions solely.

This thesis will focus neither on the provisional measures under Article 40, nor the military measures under Article 42, but it is nevertheless relevant to briefly mention them in chapter 2.2 of this thesis, in order to create an understanding of how Article 41 relates to other articles in Chapter VII.

While the purpose of this essay is to determine the mandate of the Security Council under Article 41, it is important to note that an essay of this scope cannot fully define the mandate since the mandate is broad and the Security Council at any time may decide on new methods and procedures.

1.4 Method and materials

1.4.1 Method

The method used for this thesis is a legal dogmatic method.⁶ The legal dogmatic method is a method which is used to determine *de lege lata* (*law as it is*) through studying and analyzing accepted legal sources.⁷ Considering this thesis is of international public law character, it is important to initially establish the recognized sources of public international law, which can be found in Article 38(1) of the ICJ Statute. Recognized and accepted legal sources of international law include international conventions, international customary law, general principles of law and subsidiary means for the determination of rules of law.⁸

This thesis is based on a legal positivist idea of *de lege lata*. Legal positivism aims to explain what *de lege lata* is, and asserts that all law is positive law, meaning that *de lege lata* is determined by legislators and legal authorities.⁹

⁶ Hutchinson, (2015), p. 130-138.

⁷ Sandgren, (2021), p. 51 f.

⁸ Article 38 (1), Statute of the International Court of Justice.

⁹ Spaak, p. 54-55.

The legal dogmatic method is a debated method among authors, and the legal dogmatic approach differs from author to author.¹⁰ It is, however, relatively accepted that the core of the legal dogmatic method is to clarify law as it is. Others consider, however, that the legal dogmatic method also includes a critical analysis of existing law.¹¹ To apply the legal dogmatic method in this thesis is motivated as the purpose of the thesis is to determine *de lege lata* under Article 41 of the UN Charter.

The author of this thesis has studied all sanctions that have been decided on by the Security Council over time under Article 41. The individual sanctions that have been decided on over time have shown great similarities, which is why this thesis will present them in form of categories rather than individual sanctions. The selection of resolutions and decisions made in this thesis has been made to show prominent examples of each category. All the examples of resolutions that are used in this thesis have also been addressed as prominent examples in the legal material reviewed.

Following the research done through a legal dogmatic method, this thesis separates the law itself from political points of view, which is important to note as the legal rules in international public law are often associated with political questions.

1.4.2 Materials

The primary material used in this thesis is the UN Charter, which is a primary source in public international law.¹² Other materials used are Security Council resolutions relating to sanctions under Article 41 and the Oxford Commentary to the UN Charter.¹³

The Oxford Commentary to the UN Charter is not the only commentary to the UN Charter, meaning it does not have official status. While there are several of other commentaries to the UN Charter, the Oxford Commentary is

¹⁰ Westberg, (1992) p. 421-422.

¹¹ Kleineman, in Nääv & M. Zamboni, (2018). p. 21.

¹² Article 103 of the UN Charter.

¹³ Simma, Khan, Nolte, and Paulus, (2012).

chosen for this thesis owing to the fact that the Commentary is written by a team of distinguished scholars and practitioners, who have combined academic research with insights of practice. G. Nolte is a judge in the ICJ, where B. Simma has earlier served. D.E. Khan is a professor of Public International Law and Andreas Paulus is a judge on the Federal Constitutional Court of Justice.

The sources mentioned above are complemented by other relevant sources such as official documents, the UN website and relevant legal doctrine. The legal doctrine of international public law is called sources of *subsidiary means*. Subsidiary means is a topic under consideration in the UN Commission, which can be read out in the Analytical Guide to the Work of the International Law Commission.¹⁴ Consequently, it is important to recognize the important distinction between subsidiary means and other sources of law. Even if subsidiary means is not fully interpreted as a source of law, it is still relevant because it contains arguments for why the existing sources of law should be interpreted in a certain way.

1.5 Research situation

The number of times that the Security Council has issued sanctions under Article 41 is well documented, not least through UN Security Council resolutions. Apart from that, there are several other sources that cover the Security Council practice under Article 41 and that describe the evolution of practice over time, not least the Oxford Commentary to the UN Charter on Article 41.

However, to the authors knowledge, few have compiled Security Council sanctions under Article 41 over time, trying to draw conclusions on the scope of the mandate.

1.6 Structure

¹⁴ International Law Commission, *Topics under consideration*, 1.16.

Following the introduction, this thesis will consist of two main chapters, and a final chapter with a concluding discussion.

Chapter 2 will initially account for the legal framework that will form the basis of this thesis. The Chapter will introduce the UN Charter and Chapter VII of the Charter, as well as introduce relevant articles to create a fundamental understanding of what the thesis will be about.

Chapter 3 will present the Security Council practice under Article 41. The chapter will describe the development of practice under Article 41, and how sanctions measures have evolved over the years. The chapter will present characterizing case studies of sanctions measures in the form of categories, as many sanctions pursue the same objectives and have similar designs.

The final chapter 4 will provide for an analysis and a conclusion.

2 Legal framework

2.1 Charter of the United Nations and Chapter VII

The Security Council is one of the six main organs of the UN, established under the UN Charter, with the primary responsibility of maintaining world peace and security.¹⁵ The Council is a multi-state body consisting of fifteen Members, where each Member has one vote.¹⁶ Five of those members are permanent members in the Council: China, France, Russia, the UK, and the US, while ten non-permanent members are elected for two-year terms by the General Assembly.¹⁷

The Charter of the United Nations is an international treaty and an instrument under international law to which all UN Member States are bound. The UN Charter is the foundation of international peace and security, and it aims to prevent humanity from war, reaffirming human rights and the dignity of individuals, asserting the equal rights of men and women and of nations large and small.¹⁸ By the virtues of Chapter VII of the UN Charter, the Security Council has a mandate to take enforcement action and resort military measures, in order to deal effectively with threats to peace.¹⁹ The chapter consists of provisional, military and non-military measures on which the Security Council can decide on to maintain world peace and security.²⁰

2.1.1 The determination of threat to peace, breach of peace or act of aggression

As stated in the delimitation, this thesis will not focus on neither the provisional measures under Article 40, nor the military measures under

¹⁵ Article 24(1) of the UN Charter.

¹⁶ United Nations Security Council.

¹⁷ Security Council Current Members.

¹⁸ Article 24(1) of the UN Charter; About the UN Charter.

¹⁹ Simma, Khan, Nolte, and Paulus, (2012), 'Drafting History, MN 1'.

²⁰ Articles 41-42 of the UN Charter.

Article 42, but it is nevertheless relevant to briefly mention them in order to create an understanding of how Article 41 relates to other articles in Chapter VII.

In accordance with Article 39 of the UN Charter, The Security Council shall determine any threat to peace, breach of the peace, or act of aggression. After establishing the presence of any of these, the Security Council is competent to make recommendations or decide on measures that shall be taken in accordance with Article 41 and Article 42 to maintain or restore international peace and security.²¹ Accordingly, Article 39 has been termed ‘the single most important provision of the Charter’.²²

2.1.2 The relationship between Article 41, Article 42, and Article 40

Article 41 of the UN Charter authorizes the Security Council to impose non-military measures, such as economic sanctions, diplomatic measures and other measures not involving the use of force, and they may call upon Members of the UN to implement those measures.²³

For the Security Council to authorize military actions through Article 42, they must first consider non-military enforcement measures to be inadequate.²⁴ Despite that, the inadequacy must not be proven, it is enough with a mere prognosis of the ineffectiveness. As regards Article 40, the Security Council is not bound to adopt provisional measures before taking enforcement action under Articles 41 and 42. It is up to the Security Council to decide on what measures under Chapter VII are to be taken, and in some cases, they have decided to supplement sanctions under Article 41 with military enforcement under Article 42 in order to compliance the non-military sanctions.

²¹ Article 39 of the UN Charter.

²² US Secretary of State, *Charter of the United Nation: Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State* 90-91.

²³ Article 41 of the UN Charter.

²⁴ Article 42 of the UN Charter.

Nevertheless, it is not an automatic consequence to adapt military measures after non-military measures.²⁵

²⁵ Simma, Khan, Nolte, and Paulus, (2012), ‘Art. 42, MN 19’.

3 Sanctions and their development over time

3.1 Terminology

The term *sanction* is commonly used in several different situations. Nevertheless, in this thesis, sanctions will be understood as measures taken by the Security Council under Article 41 of the UN Charter. While Article 41 of the UN Charter does mention several examples of economic and diplomatic sanctions such as embargoes on arms or interruption of economic relations, the article is not exhaustive.²⁶ For the purpose of determining how far the mandate stretches, and more specifically what sanctions can be decided on, it is therefore necessary to read out Security Council practice from over the years.

Sanctions regimes are understood to refer to collections of sanctions that are established for different purposes. The purposes can be either relating to a particular issue or relating to a particular country or region. Since 1966 when the first sanctions were established under Article 41, the UN Security Council has established 31 sanctions regimes. These include sanctions regimes in Southern Rhodesia, the Former Yugoslavia, Haiti, Angola, Rwanda, and a regime targeting Da'esh and Al Qaida, all of which will be covered in chapter 3 of this thesis.²⁷ As of today, there are fifteen active sanctions regimes dedicated to supporting political settlement of conflicts, nuclear non-proliferation and counterterrorism. Each sanctions regime is administrated by a sanctions committee chaired by a non-permanent member of the Security Council.²⁸

Sanction committees are subsidiary bodies of the Security Council that are formed on ad hoc basis pursuant to Article 29 of the UN Charter, which says

²⁶Article 41 of the UN Charter.

²⁷ Security Council Information on Sanctions.

²⁸ Ibid.

that the Council may establish a committee, a commission, or a rapporteur for a specific question. Sanctions committees take several decisions on listing or delisting targeted individuals as well as decisions to withdraw sanctions in sanctions regimes. For sanctions regimes that are country-specific, the sanction committee is often assisted by experts, tasked with monitoring the implementation of sanctions.²⁹

Exemptions are, according to Security Council practice, an exception from a sanction imposed under Article 41. Exemptions are most often applied for humanitarian reasons, with humanitarian aid being a standing exemption from sanctions practice.³⁰

3.2 The first decisions under Article 41

The first decision on measures under Article 41 was taken in 1966, over two decades after the establishment of the framework, when the Council decided on mandatory economic sanctions on Southern Rhodesia as a response to the illegal racist minority regime leading the country.³¹ The sanctions embargoed UN member states to import certain Rhodesian products such as chrome, sugar, tobacco and leather, which lead to an economic strangulation for the country. Furthermore, the supply of oil or aid in its transport to Rhodesia was prohibited.³²

There was one more decision of sanctions under Article 41 during the Cold War, but it was not until the period after the Cold War that the utilization of sanctions under Article 41 surged. One particular case was the response to the Iraqi invasion of Kuwait, which was the start of more than twenty cases of economic sanctions against states in the 1990's. The measures taken against Iraq included a ban on all international trade to and from Iraq, except medicine and health supplies that were excepted as an exemption for humanitarian purposes, to reduce the impact on innocent civilians. The

²⁹ Security Council Information on Sanctions.

³⁰ Humanitarian Exemptions in UN Sanctions Regimes.

³¹ UNSC Res 221 (1966); UNSC Res 232 (1966).

³² UNSC Res 232 (1966).

sanctions were established in order to secure the Iraqi compliance with the Council's demand to immediately withdraw the Iraqi forces from Kuwait.

In the same resolution, the council established a sanctions committee charged with the task of monitoring the implementation of the measures.³³ Moreover, a different sanction that gained significant prominence in the resolution was that of dispute settlement and adjudication, whereas the Council mandated such measures as the settlement of compensation claims and the boundary between the two countries.³⁴

3.3 Comprehensive sanctions

The case of Haiti, where sanctions were imposed from 1993 to 1994, serves as a case study illustrating several challenges associated with sanctions.³⁵ In order to respond to the political crisis and the human rights abuses that were occurring in the country, the Security Council decided on measures aiming to return the power to the democratically elected government. Comprehensive economic sanctions such as an arms embargo were applied, and petroleum and financial sanctions were applied on the assets of the government authorities.³⁶ These economic sanctions were backed by military measures under Article 42. The authorities, however, refused to adhere the Council demands. As the human rights situation worsened significantly as time went on, marked by new forms of repression on civilians from the authorities, such as abduction and rape of family members of political activists, the Council decided to increase the pressure on the illegal government. To minimize the harm on civilian population, the Security Council targeted their sanctions on members of the military junta, Haitian military, and their immediate family

³³ UNSC Res 661 (1990).

³⁴ UNSC 687 (1991); UNSC Res 773 (1992); UNSC Res 833 (1993).

³⁵ UNSC Res 841 (1993).

³⁶ UNSC Res 875 (1993); *Repertoire of the Practice of the Security Council, Article 41 – Measures not involving the use of armed force*, 1993-1995, page 1007.

members.³⁷ The sanctions regime in Haiti became first example of sanctions targeted against decision makers who had seized power unconstitutionally.³⁸

The Security Council learned many valuable lessons from the Haitian sanctions regime; the implementation of comprehensive sanctions on one of the world's poorest countries was disproportionate, and the necessity to specify exactly who should be targeted in future sanctions regimes was crucial.³⁹

The UN had faced several challenges with excessive non-intended side effects of embargoes that targeted a country in general and led to the wider population being affected.⁴⁰ This prompted a shift in the usage of sanctions, where economic embargoes were to be used in a more cautious and circumscribed way, targeting those responsible for breaches of peace and leaving innocent civilians unaffected.⁴¹

In 1995, the permanent members of the Security Council highlighted the importance of coping with the severe humanitarian consequences of earlier Security Council practice. They agreed that a humanitarian consequence impact should be implemented before imposing sanctions, and that humanitarian consequences should always be taken in consideration when reviewing sanctions afterwards. Following this decision, sanctions that were supposed to be applied against Sudan were drawn back, as there was high risk for negative humanitarian consequences.⁴²

3.4 The shift from comprehensive to targeted sanctions

³⁷ UNSC Res 917 (1994).

³⁸ Repertoire of the Practice of the Security Council, *Article 41 – Measures not involving the use of armed force*, 1993-1995, page 1115; Simma, Khan, Nolte, and Paulus, (2012), 'Art. 41, MN 5'.

³⁹ Simma, Khan, Nolte, and Paulus, (2012), "Art. 41, MN 5'.

⁴⁰ Cameron, p. 3.

⁴¹ Simma, Khan, Nolte, and Paulus, (2012), 'Art. 41, MN 6'.

⁴² Ibid., 'Art. 41, MN 27'.

In the case of Angola in 1993, the Security Council decided to implement targeted sanctions directed at a nonstate actor, the rebel group UNITA. The case was the first time that the Security Council targeted a non-state group rather than a state. The Security Council initially determined that the military actions of UNITA in Angola constituted a threat to international peace and security. Thereafter, the Council imposed a mandatory arms embargo on Angola and a ban on petroleum and petroleum products to Angola. UNITA, however, still refused to sign peace terms, which led to questions arising on how to target the non-state group solely. The solution was a very specific, targeted sanction, through embargoes on Angolan diamonds. Diamonds were the main source of funding for UNITA, but nevertheless, diamonds were also the main source of funding for Angola as a country. The Council decided to target only diamonds that were not certified by the Angolan government, which led to all the diamonds funding and supplying UNITA being embargoed.⁴³

Following the UNITA case, the Security Council focused on commodities as a way of pressuring responsible conflict groups. This involved customizing the sanctioned commodities to suit the specific needs of the conflicted state. The new way of targeting, however, was prompted by questions on whether these sanctions were proportional, whether they unacceptably affected the general population, and whether the targeted people were able to evade the sanctions. By 2000, the Security Council had made a habit to apply targeted, smart sanctions, designed to hit those responsible for the breach of peace and leave innocent civilians and bystanders unaffected. The new sanctions consisted of embargoes, often limited to weapons and selected goods, to target specific individuals responsible for breaching peace, and to freeze their assets.⁴⁴

With the new targeted sanctions, the Council declared they would make sure to give special attention to the effectiveness of targeted sanctions, and that they would make sure to avoid eventual negative humanitarian consequences

⁴³ J. Weschler, p. 32.

⁴⁴ UNSC Res 864 (1993).

of them.⁴⁵ In a Security Council debate in the 2000's, several members of the Council pointed out that sanctions should only be used if other peaceful measures have already been taken.⁴⁶ The following years of early 2000's, the Council continuously assured through presidential statements that they were ensuring sanctions to be carefully targeted and balanced between effectiveness and possible adverse consequences. The proportional carefulness came to be a general weighting in delect between maintaining peace and the consequences of it.⁴⁷

3.5 Sanctions targeting terrorism

In 2000, the Security Council imposed several sanctions against Taliban authorities in Afghanistan. In the resolution, the Council called for closure of training camps, the end to provision of sanctuary and a ban on military assistance. Furthermore, the Council stated the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences.⁴⁸

The attacks on 11 September in 2001 lead to a significant change in the usage and characteristics of sanctions targeting terrorism, so to as include general rules on financing terrorism and rules on proliferation of weapons of mass destruction.⁴⁹ In resolution 1373 on counter terrorism, the Security Council determined that all Member States would cooperate on suppressing the financing of terrorism as well as cooperating in criminal investigations and exchanging information on possible terrorist acts. It also imposed on states to freeze the funds of terrorists, deny them access into or out of national borders, and prevent them from dealing weapons. The resolution was immediately binding upon all member states, which led to the Security Council taking the role of a legislator.⁵⁰ In resolution 1540 on weapons of mass destruction, the Council once again took the role of a legislator,

⁴⁵ UNSC Presidential Statement 34 (1999)

⁴⁶ UNSC Verbatim Record (2000)

⁴⁷ UNSC Presidential Statement (22 June 2006); UNSC Presidential Statement (29 June 2010).

⁴⁸ UNSC Res 1333 (2000).

⁴⁹ Heupel, (2007).

⁵⁰ UNSC Res 1373 (2001).

imposing a range of obligations on states to prevent non-state actors from gaining access to weapons of mass destruction.⁵¹ The practice through the two resolutions challenged the initial extraordinary mandatory powers under Chapter VII to respond to specific circumstances without legislative powers.⁵²

The targeted sanctions that originally had been meant to target high-level-decision-making positions such as individuals closely connected with military junta or leaders of particularly abusive regimes, extended to hundreds of individuals and entities, in particular through the 1267 al Qaeda and Taliban sanctions list pursuant to UNSC resolutions 1267, 1333 and 1390.⁵³ Through the list, sanctions such as freezing of assets, travel ban and arms embargo targeted the Al-Qaeda organization and the Taliban, as well as individuals associated with them through the list. Because of the diffuse nature and vague describing of targets in the list, the Security Council faced intense challenges in target identification, sanctions management, and potential violations of due process rights for those targeted. The risk of delegitimization by political and judicial bodies prompted successive rounds of procedural reforms within the Security Council.⁵⁴

As mentioned in chapter 3.1.1, Sanctions Committees can decide on listing or delisting a person from a target list. As of today, there are more than 1,000 people listed on a list called the United Nations Security Council Consolidated list.⁵⁵ However, the listing process is differing from one committee to another. A special approach is the one regarding the ISIL and Al-Qaida Sanctions Committee. A listing is done by consensus of the Committee members, after considering requests from member states. Regarding delisting, the committee has an independent Ombudsperson that reviews all delisting requests from individual petitioners, relevant states and organizations. After examining evidence provided by the designating state, the Ombudsperson makes a recommendation to the Sanctions Committee. If

⁵¹ UNSC Res 1540 (2004).

⁵² Powell, (2011), p. 208.

⁵³ UNSC Res 1267 (1999); UNSC Res 1333 (2000); UNSC Res 1390 (2002).

⁵⁴ Weschler, p. 35.

⁵⁵ Security Council Consolidated List.

the Ombudsperson recommends delisting, the petitioner is delisted unless the Committee, by consensus, decides to retain the listing.⁵⁶

In modern days, the Security Council has, in some cases, gone beyond the counter-terrorism framework to cover even commercial activities seen as fueling armed conflict. In the UN Sanctions regime regarding the situation in the Democratic Republic of the Congo, which is still active, sanctions include the forbidding of supporting individuals or entities including armed groups or criminal network involved in destabilizing activities in the Democratic Republic of Congo through illicit exploitation or trade of natural sources.⁵⁷

3.6 Sanctions for criminal justice

The mandate under Article 41, complemented by Article 29 of the UN Charter, gives the Security Council the authority to implement subsidiary organs to support or implement their sanction measures.⁵⁸ Among these organs the most prominent ones are those of criminal justice, holding people responsible for serious crime under international humanitarian law responsible for their actions.⁵⁹

Two prominent examples of this practice are the International Criminal Tribunals that the Security Council established in former Yugoslavia in 1993, and in Rwanda in 1995.⁶⁰ The establishment of the International Tribunal in the Former Yugoslavia (ICTY) was a decision made by the Security Council for the sole purpose of prosecuting people responsible for genocide and other serious crimes against international humanitarian law, committed in the territory of the former Yugoslavia the years of the early 1990's.⁶¹ The Rwandan International Tribunal (ICTR) was based largely on the model of the ICTY and established on the request of the Government of Rwanda, for the sole purpose of prosecuting people responsible for genocide and other

⁵⁶ UNSC Res 1904 (2009); UNSC Res 2368 (2017).

⁵⁷ UNSC Res 2293 (2016).

⁵⁸ Article 29 of the UN Charter.

⁵⁹ Simma, Khan, Nolte, and Paulus, (2012), 'Art. 41, MN 26'.

⁶⁰ UNSC Res 827 (1993); UNSC Res 955 (1994).

⁶¹ UNSC Res 827 (1993).

serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States between 1 January 1994 and 31 December 1994.⁶²

The implementation of the international tribunals met critique, especially on the uncertainty of whether the Security Council had the power to establish such international criminal tribunals. The tribunals have been described as the ‘most far-reaching use of Article 41 ordering measures not listed’, and it was suggested by commentators that it was beyond the Security Council powers to create the international criminal tribunals whereas the creation of tribunals is not explicitly mentioned in the measure outline under Article 41.⁶³ Nevertheless, others asserted that the enumeration of measures under Article 41 should not be considered as exhaustive, and the the power that the Security Council has to implement subsidiary bodies was later acknowledged by the ICJ to be something authorized under Article 28 of the UN Charter.⁶⁴ Furthermore, the international tribunals operate under stringent procedural and substantive guarantees; their statutes reflect international law standards for criminal proceedings and the substantive law that they apply largely follows the customary rules of international criminal law.⁶⁵ On the other hand, the tribunals are not entirely subordinate to the Security Council; the judges are elected by the General Assembly, and the prosecutor is nominated by the Secretary-General. Following the creation of the ICTY and the ICTR, there have been many requests on ad hoc tribunals to the Security Council. Nevertheless, the Security Council has been balking to do so under Article 41.⁶⁶

In several cases, the council has required the surrender of suspects of terrorism or other grave crimes. A prominent such resolution was against Libya after the Lockerbie bombing in 1988. Libya was called upon to

⁶² UNSC Res 955 (1994).

⁶³ Schabas, p. 22.

⁶⁴ Advisory Opinion of 1954, ICJ Reports 47, 21 ILR 310, at p. 321.

⁶⁵ Report of the UNSG (3 May 1993).

⁶⁶ Schabas, p. 22.

surrender two suspects of terror crime, to cooperate fully with the Council and its demands, and to comply with requests for assistance in the investigation.⁶⁷ The Security Council action on Libya was heavily criticized, especially for setting aside a treaty regime that specifies surrender obligations and limits and for violating the due process guarantees in the determination of the suspects responsibility as well as Libya's responsibility in the affair.⁶⁸

3.7 Other sanctions

As of today, there are 15 ongoing UN sanctions regimes in the world, and sanctions remain a frequently used tool.⁶⁹ All sanctions regimes today are targeted, meaning they use one or more measures to signal, constrain or coerce states, entities or individuals to change unlawful behavior, with arms embargoes, asset freezes and travel bans remaining as the most used types of sanctions. Outlined in chapter 3, the most prominent sanctions have been outlined based on categories. Regardless, there are several other important examples of sanctions that have been established over time. Sanctions to integrate women and their perspective on peace and security were established in the 2000's, whereas sanctions to recognize sexual violence as a tactic of war.⁷⁰ Nine resolutions established against North Korea show a pattern of international concern and response to North Korea's nuclear and ballistic activities with the purpose of preventing further proliferation, and resolutions addressing the topic of children in armed conflict has been established since 1999.⁷¹

⁶⁷ UNSC 731 (21 January 1992); UNSC Res 748 (31 March 1992).

⁶⁸ Simma, Khan, Nolte, and Paulus, (2012), 'Art. 41, MN 27'.

⁶⁹ Simma, Khan, Nolte, and Paulus, (2012), 'Art. 41, MN 8'.

⁷⁰ UNSC Res 1325 (2000); UNSC Res 1820 (2008).

⁷¹ UNSC Res 1718 (2006), UNSC Res 2407 (2018); UNSC Res 1261 (1999), UNSC 2427 (2018).

4 Analysis and conclusion

4.1 Analysis

Article 41 gives the Security Council the mandate to decide on sanctions when it appears conducive to international peace and security, with the framework being the UN Charter and more specifically Chapter VII. The evolution of sanctions reflects a dynamic journey shaped by evaluation and development. It is, however, misleading to say that the mandate that the Security Council imposes under Article 41 has broadened from a framework for collective security to a role of state governor, since the provision and the legal structure of Article 41 always have been the same.

Sanctions under Article 41 have an open-ended nature, which has led to characterization of the Article 41 as a general clause in the Council's practice to maintain international peace and security; meaning it is not precisely formulated. As mentioned in chapter 1.1, established sanctions are frequently enhanced and modified through new resolutions. These modifications suggest that sanctions regimes are dynamic systems purposed to adapt as the geopolitical situation in states change.

The Security Council has imposed several improving changes in the sanctions apparatus, where the shift from comprehensive sanctions to targeted sanctions is the most prominent. All active sanctions regimes are now targeted on those responsible for breaches of peace, with the purpose of leaving innocent bystanders unaffected.

By the UN Charter allowing the Council to decide on binding measures under Chapter VII, the Charter has authorized them to legislate to a certain degree. This is evident in the two resolutions on terrorism on weapons of mass destruction mentioned in chapter 3.5 in this thesis. The two resolutions were immediately binding on all member states, even though legislation was not one of the initial purposes of Article 41. The general acceptance of the two resolutions, however, indicates that the Council may implement similar

sanctions on similar future threats. With that being said, the mandate under Article 41 does allow the Council to take certain legislative sanction decisions.

From Chapter VII, the Council is also provided with the ability to engage in a form of state regulation, while being relatively free from legal constraints. From analyzing the case of Angola, outlined in chapter 3.4 of this thesis, it can be read out that the Security Council has the mandate to regulate an entire market, namely the entire Angolan diamond market, through the embargo of certain diamonds in Angola. The Council also has the power to exempt a certain type of goods from embargoes, namely diamonds certified by the Angolan government.

As can be read out from chapter 3.4 of this thesis, the Council must at all times take into account the distinction between maintaining international peace and security, ensuring global stability, and avoiding undesired harming effects on civilians. In order to limit the impact on civilians while maintaining peace, the Council has implemented several measures and policies. For instance, the Council has excepted humanitarian aid and from all embargo sanctions, as outlined in chapter 3.1 and 3.2. The Council has also established the humanitarian consequence impact evaluation, mentioned in chapter 3.3 of this thesis, and several declarations on how sanctions are being carefully targeted and balanced between effectiveness and possible adverse consequences, as mentioned in chapter 3.4.

By analyzing this thesis, one might realize that sanctions applied against one member state, might also affect third party states. The state of Southern Rhodesia, as an example, suffered from economic sanctions meaning that other UN states were called upon not to import certain Southern Rhodesian goods. The sanctions led to third party states having to adapt their international trade commerce, indirectly leading to the sanctions also targeting third party states.

One might argue that sanctions have too much of an impact on those who are not directly targeted. On the other hand, one might argue that sanctions under

Article 41 are of necessary character, meaning that they are fundamental to protect interests of collective nature through keeping international peace and security. From the author's perspective, non-military sanctions under Article 41 can be seen as a political tool, and a response to rapidly deteriorating security and humanitarian situations. The practice under Article 41 has had to be used creatively by the Council in the past, and sanctions have had to evolve, in order to adapt to each individual geopolitical situation. The situation in Rwanda and its aftermath called for a fight against impunity, and the ICTR was the Council given response to restore the peace. Sanctions regimes targeting nuclear weapons is the given response to growing nuclear powers, whereas the ISIL and Al-Qaida Sanctions committee, is the targeted response to terrorism. Sanctions regimes that do not see improvement after sanctions have been applied receive extended or renewed sanctions, while targets that cooperate with the UN in maintaining peace will have their sanctions amended or lifted.

4.2 Conclusion

The range of measures under Article 41 of the UN Charter varies from comprehensive economic and trade sanctions, to the creation of international tribunals. Article 41 has a broad range of possibilities, allowing for a broad interpretation, as long as the Council stays within the framework of the UN Charter and Chapter VII. Today, all sanctions are targeted, meaning they target constrain or coerce states, entities or individuals to change unlawful behavior.

The mandate that the Security Council imposes under Article 41 has not broadened. However, the scope of the Security Council's mandate to decide on sanctions under Article 41 of the UN Charter has developed, as required for humanitarian reasons, and as required by the emergence of new threats to international peace and security.

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