
Should the United Nations Security Council leave it to the experts?: The governance and accountability of UN sanctions monitoring

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1. Introduction

The chapters in this collection use the example of United Nations sanctions as a means to explore the questions of accountability and governance that arise when legal norms are applied with cross-boundary effect. The boundaries in question are both physical, in the sense of clearly delineated national borders, as well as conceptual, as with the traditional distinctions that are drawn between the domains of public and private law, and between international and domestic law. Some contributors explore the broad theoretical questions that arise when seeking to enforce global norms across diverse jurisdictions (Danchin, Sampford). Some discuss accountability and governance at the international level, where the decision to apply cross-border norms is made (Chesterman, Hovell, Nasu). Some concentrate on the domestic interpretation, application and regulation of globally articulated norms (Botterill and McNaughton, Fraser, Nolan, Rice, Stewart, Tully). Others examine the way that actors at the domestic or regional level might influence the accountability and governance of actors at the international level, or vice versa (Boreham, Holmes, Mulgan, de Wet).

This chapter focuses on accountability and governance within the UN sanctions system for sanctions monitoring. The task of sanctions monitoring, which was traditionally undertaken by the Security Council's sanctions committees, is increasingly being delegated to independent bodies of experts. Over the past decade the Council has created a range of sanctions monitoring expert bodies. These bodies provide independent analysis of particular sanctions regimes and make recommendations to strengthen sanctions implementation.

The evolution of sanctions expert bodies, as with the UN sanctions system more broadly, has been ad hoc and reactive, rather than systematic and strategic. While this approach has allowed the Security Council to be flexible and inventive at times, it has had the consequence that principles of governance and accountability have developed in an equally ad hoc manner. The Security Council's practice of outsourcing sanctions monitoring to independent actors raises a number of questions. Are there any limits on the Council's ability to delegate its responsibilities for the maintenance of international peace and security? When the Council creates independent bodies to monitor sanctions implementation, how closely should it supervise those bodies? How does the Council regulate governance and accountability within the independent expert bodies?

A familiar criticism of global efforts to regulate transboundary activities is that, while there is no shortage of global norms and doctrines purporting to regulate global behaviour, there are few practical mechanisms to enforce those norms. UN sanctions form one of the most visible examples of a global enforcement mechanism, yet they are often criticised for being ineffective. In the literature it is common to find calls for more frequent and more effective monitoring, evaluation and enforcement of UN sanctions. Surprisingly, there is little written about the expert monitoring bodies that pursue these objectives.¹

This chapter describes how the sanctions expert bodies operate and explores questions of governance and accountability. It concludes that mechanisms for the governance and accountability of sanctions expert bodies, where they exist, have evolved in an ad hoc, reactive manner, just like the UN sanctions system and the expert bodies themselves. The chapter argues that the Security Council should reconsider its approach of leaving it to the experts. Instead, the Council should promote a more strategic, coherent and accountable approach to sanctions monitoring.

The chapter proceeds in four parts. It starts by introducing the UN Charter framework for UN sanctions and describes the traditional approach to sanctions monitoring. It goes on to trace the recent evolution of sanctions expert bodies and describe the governance structure for sanctions monitoring and examines the accountability of the key actors within this structure. Finally, it explores alternatives for improving the governance and accountability of sanctions monitoring.

2. The UN Charter sanctions framework and the traditional model of sanctions monitoring

The UN Charter bestows primary responsibility for the maintenance of international peace and security upon the UN Security Council.² Chapter VII of the UN Charter outlines the steps that the Council may take in order to address a threat to the peace, breach of the peace or act of aggression.³ These steps can include provisional measures,⁴ sanctions short of the use of force⁵ and even the use of force itself.⁶ Article 41, the Charter's sanctions provision, provides that:

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.⁷

During the Cold War, the Council was only twice able to muster the necessary agreement to apply sanctions, doing so against Southern Rhodesia (targeted then comprehensive economic sanctions)⁸ and South Africa (arms embargo).⁹ In stark contrast, since August 1990 the Council has created twenty-three new sanctions regimes.¹⁰ This represents a remarkable increase in sanctions activity. Accompanying this dramatic expansion in the use of sanctions has been a growing sophistication, both in how sanctions are applied and evaded. Sanctions were originally applied against a nation as a whole, but they increasingly target individual policy-makers. Gone are the days of blunt, comprehensive economic sanctions. 'Targeted' or 'smart' sanctions, such as individual assets freezes and travel bans, are the preferred UN sanctions measures of the early twenty-first century.¹¹

Under article 25 of the UN Charter, UN member states have a legal obligation to implement decisions of the Security Council.¹² When the Security Council decides to apply sanctions under Chapter VII, UN member states are therefore legally required to take the necessary steps to ensure that sanctions are implemented within their jurisdiction. Yet in the absence of action by UN member states to take the concrete steps necessary to prohibit the stipulated trade, commercial, financial, diplomatic or travel activities, a decision by the Security Council to apply sanctions will simply amount to strong words on paper rather than robust action in practice. The UN sanctions architecture thus relies upon the good will of UN member states to act upon their legal obligation to implement the Council's sanctions decisions.

The UN Charter sanctions framework recognises that the Security Council may need to create subsidiary bodies to fulfil its responsibility for the maintenance of international peace and security. Article 29 of the Charter provides that '[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions'.¹³ In addition, rule 28 of the Security Council's provisional rules of procedure enables the Council to 'appoint a commission or committee or rapporteur for a specified question'.¹⁴ It is also important to note the role played by the UN Secretariat in servicing and supporting the activities of the Security Council and its subsidiary organs. The UN Charter established the Secretariat, headed by the Secretary-General, as the UN's sixth principal organ.¹⁵ The Secretariat is responsible for supporting the activities of the other principal organs, with the exception of the International Court of Justice (ICJ).¹⁶ Indeed, the Council and its subsidiary organs could not function without Secretariat support.

The Security Council has traditionally delegated responsibility for sanctions administration and monitoring to sanctions committees.¹⁷ The Council usually establishes a sanctions committee when it creates a new sanctions regime.¹⁸ In a number of instances, however, months or years have elapsed between the imposition of sanctions and the creation of a sanctions committee.¹⁹ In fact, the Council did not even create a sanctions committee for the 1054 Sudan sanctions regime, suggesting that it was not particularly interested in monitoring the implementation of these sanctions.²⁰

Sanctions committees operate as Security Council committees of the whole. They thus mirror the membership of the Council at a given point in time. Committees have conducted their business almost entirely in meetings that are closed to the public. Moreover, records of these closed meetings are rarely made public.²¹ In their substantive activities, sanctions committees have tended to conduct their work by receiving and analysing reports from UN member states on steps taken to implement sanctions. The activities of sanctions committees have been conducted almost entirely at UN Headquarters in New York, despite a movement by the Chairs of some sanctions committees to conduct field visits.²² The diplomats representing their nations on sanctions committees do not generally do so on a full-time basis. Indeed, they are usually required to fulfil a range of additional diplomatic responsibilities. The amount of time that a particular sanctions committee member is able to devote to preparing for and attending sanctions committee meetings thus varies considerably.

Some sanctions committees have met more regularly and reported more routinely than others. The 253 Southern Rhodesia Committee held a total of 352 formal meetings during its 12-year existence.²³ The 661 Iraq Committee met formally more than 230 times between its establishment in August 1990 and its dissolution in May 2003.²⁴ By contrast, the 918 Rwanda Committee held just seven formal meetings in its first twelve and a half years.²⁵ Although the task of reporting to the Security Council has been included in the mandate of all sanctions committees, they have not always submitted routine reports. The low-watermark was set by the 841 Haiti Sanctions Committee, which did not submit a single report to the Council during its 16-month tenure.²⁶

Concerns over the irregularity of sanctions committee reporting led to the issuance in early 1995 of a note by the President of the Security Council, calling on sanctions committees to report to the Council on an annual basis.²⁷ On the whole this call has been heeded, but the annual reports by sanctions committees still vary significantly in length, scope and quality. Annual reports sometimes appear to have been written with the aim of inducing the reader to fall asleep lest they detect something interesting! At their worst, as in the case of the 918 Rwanda Sanctions Committee, these reports simply state that nothing much has happened over the preceding year.²⁸ More accomplished examples have surveyed trends in sanctions implementation and identified sanctions violations. Unfortunately, the very best annual reports tend to have been final reports issued by sanctions committees that had just been dissolved.²⁹ Diplomatic politics seem to prevent sanctions committees from engaging in critical analysis until they reach the post-mortem phase.

3. The turn to experts

The impracticability of sanctions committees conducting meaningful monitoring of sanctions implementation from New York, combined with the discomfort of sanctions committees at airing genuinely critical recommendations, eventually prompted the Security Council to explore other avenues for securing effective sanctions monitoring. The first experiment with tasking a body other than a sanctions committee with sanctions monitoring responsibilities occurred in April 1991 when the Council established the UN Special Commission (UNSCOM), which was to monitor Iraq's disarmament activities in accordance with its obligations under the Iraq sanctions regime.³⁰ Since then, the Council has established more than a dozen bodies tasked with monitoring and recommending how to improve sanctions implementation.³¹

The Security Council creates each expert body individually.³² Each body is established by a resolution that outlines the body's mandate, size and duration. Sanctions expert bodies have taken various forms, including disarmament commissions and commissions of inquiry; panels, groups, teams and committees of experts; and monitoring mechanisms, groups and teams. They have been created in different sizes (from two to twelve members) for different periods (from weeks to years) and have been tasked with a variety of different tasks. While there has been a general evolution in sanctions monitoring trends, the ad hoc nature of the process means that each sanctions expert body is unique. The common thread is that expert bodies are nominally independent bodies with short, discrete mandates to monitor the implementation of a specific UN sanctions regime.

3.1 Commissions: Disarmament commissions and commissions of inquiry

Of the various bodies that have played a role in sanctions monitoring and implementation, commissions are the most formal. They are established by the UN Secretary-General at the request of the Security Council and they report to the Council through the Secretary-General. By contrast, the other sanctions expert bodies report to the Security Council through the appropriate sanctions committee.

3.1.1 Disarmament commissions

The Security Council has established two disarmament commissions to monitor Iraq's compliance with its disarmament obligations under the Iraq sanctions regime, including in particular those outlined by Resolution 687 (1991).³³ The UN Special Commission (UNSCOM) was established in April 1991 to carry out on-site inspections based on Iraq's declarations regarding its weapons holdings and programmes; to undertake the destruction, removal or rendering harmless of all nuclear, biological or chemical weapons and anti-ballistic missiles with a range of greater than 150 kilometres; and to develop a plan for the ongoing monitoring and verification of Iraq's compliance with its disarmament obligations under Resolution 687.³⁴ UNSCOM played a constructive role in monitoring Iraq's compliance with its disarmament obligations, but it confronted major difficulties following Iraq's refusal to allow it to resume operations after UNSCOM inspectors had been withdrawn from Iraq in late 1998.³⁵

In December 1999 the Council replaced UNSCOM with another disarmament commission, the UN Monitoring Verification and Inspection Commission (UNMOVIC), which was to establish a reinforced system of ongoing monitoring and verification of Iraq's compliance with its disarmament obligations.³⁶ UNMOVIC did not have an auspicious beginning, as it was unable to establish operations in Iraq for almost three years. It was not until November 2002, when the Council adopted Resolution 1441 (2002), that Iraq finally agreed to UNMOVIC's deployment on its territory. During the subsequent three months, UNMOVIC's role became quite prominent, as the international community scrutinised the extent to which Iraq was complying with its disarmament obligations. However, since the conclusion of the second Gulf War, the Commission's work has effectively been placed on hold, as it has not been authorised by the occupying powers to resume its inspections in Iraq.³⁷

3.1.2 Commissions of inquiry

The Council has established commissions of inquiry in connection with the Rwanda, 1556 Sudan and Hariri sanctions regimes. The International Commission of Inquiry for Rwanda (ICIR) was established in September 1995 to investigate the illegal supply of arms to former Rwandan government forces in the Great Lakes region, in violation of the Rwandan sanctions, and to recommend measures to end the illegal flow of arms in the subregion.³⁸ The Sudan International Commission of Inquiry (SICI) was created in September 2004 to investigate reports of violations of international humanitarian law and human rights in Darfur and to determine whether acts of genocide had occurred.³⁹ The Commission's findings induced the Council to take the unprecedented step of referring the Darfur situation to the International Criminal Court (ICC).⁴⁰ The findings have also wielded considerable influence over the evolution of the 1556 Sudan sanctions regime. The UN International Independent Investigation Commission (UNIIC) was established in April 2005 in order to assist the Lebanese authorities with the investigation into the Hariri bombing and to identify the bombings' perpetrators, sponsors, organisers and accomplices.⁴¹ Its activities prompted the establishment of the Hariri sanctions regime and have also led to the recent creation of the Special Tribunal for Lebanon.⁴²

3.2 *Monitoring mechanisms, groups and teams*

The Security Council has established a range of monitoring mechanisms, groups and teams. These monitoring bodies have tended to conduct their

work from a base at UN Headquarters. They have thus been able to form a closer relationship with their relevant sanctions committee than the other expert bodies described below in Section 3.3, which visit New York only when they begin their mandate and subsequently when they submit their written report to the Security Council via the relevant sanctions committee. In other respects, 'monitoring' and 'expert' bodies have very similar mandates. They generally report to the Council via the relevant sanctions committee, with the Chairman of that sanctions committee forwarding or presenting regular written and oral reports to the Council on their behalf.

3.2.1 Monitoring mechanisms

The Security Council initially floated the idea of a sanctions-related monitoring mechanism in October 1991, when it requested the 661 Iraq Sanctions Committee to develop a mechanism to monitor sales or supplies to Iraq of items that could be used for the production or acquisition of weapons, in contravention of the sanctions against weapons of mass destruction.⁴³ It took almost five years to realise this idea, however, with the Council eventually establishing such a mechanism in March 1996.⁴⁴ The monitoring mechanism consisted of a Joint Export/Import Monitoring Unit established by UNSCOM and the International Atomic Energy Agency (IAEA).⁴⁵ All states were required to notify the mechanism if their nationals planned to export to Iraq any items or technologies that might have 'dual-use' potential.⁴⁶ When the Council established UNMOVIC, it requested the Executive Chairman of UNMOVIC and the Director-General of the IAEA to establish a unit that would assume the monitoring mechanism's responsibilities and update the lists of contraband items and technology.⁴⁷ After the adoption of the Goods Review List (GRL) by the Council in May 2002,⁴⁸ the unit's work increased substantially as it became involved in the process of reviewing applications to export humanitarian supplies to Iraq under the OFFP to ensure that the items or technologies proposed to be supplied to Iraq did not feature on the GRL.⁴⁹

The Security Council has established two other monitoring mechanisms: the UNITA Monitoring Mechanism and the Afghanistan/Taliban/Al-Qaeda Monitoring Mechanism. These monitoring mechanisms have had a less-specific focus than the Iraq monitoring mechanism, with more general mandates to monitor and recommend improvements in sanctions implementation. The UNITA Monitoring Mechanism was established in April 2000 to investigate allegations of violations of the UNITA

sanctions.⁵⁰ The Taliban/Al-Qaeda Monitoring Mechanism was established in July 2001 to monitor sanctions implementation, provide assistance to states bordering the territory of Afghanistan under Taliban control to increase their capacity for sanctions implementation and to gather information on and make recommendations for addressing sanctions violations.⁵¹

3.2.2 Monitoring teams

In January 2004 the Security Council replaced the Taliban/Al-Qaeda Monitoring Mechanism with an Analytical Support and Sanctions Monitoring Team.⁵² The Monitoring Team's initial mandate was not dissimilar to that of the Monitoring Mechanism, but it has grown in complexity.⁵³ Among the Team's additional responsibilities were conducting sanctions implementation case-studies;⁵⁴ reporting on the listing, de-listing and exemptions processes for the Afghanistan/Taliban/Al-Qaeda sanctions, including specific recommendations for improved implementation and possible new sanctions;⁵⁵ cooperating closely with the expert bodies assigned to the UN Counterterrorism Committee (CTC) and the 1540 Weapons of Mass Destruction Committee;⁵⁶ consulting with the intelligence and security services of UN member states in order to share information and strengthen sanctions enforcement;⁵⁷ and enhancing cooperation with Interpol.⁵⁸

3.2.3 Monitoring groups

The Security Council has also established a monitoring group in connection with the Somalia sanctions regime. The Somalia Monitoring Group was established in December 2003, following the final mandate of the Somalia Panel of Experts.⁵⁹ The Monitoring Group's mandate has included investigating violations of the arms embargo;⁶⁰ making recommendations for strengthening the embargo's implementation;⁶¹ reviewing the national customs and border control regimes of states in the region;⁶² compiling a list of embargo violators both in and outside Somalia;⁶³ identifying how to strengthen the capacity of states in the region to facilitate embargo implementation;⁶⁴ and investigating activities generating revenue used to violate the embargo.⁶⁵

3.3 *Panels, groups, committees and teams of experts*

The third and biggest category of sanctions monitoring bodies consists of those with the term 'experts' in their title, including panels, groups,

committees and teams of experts. Expert bodies are generally established to serve for short periods, ranging from a matter of weeks to a number of months. They report to the Council via the relevant sanctions committee.

3.3.1 Committees and teams of experts

There is little material difference between panels and groups of experts. However, the terms 'committee' and 'team' of experts have been used to describe initial bodies of experts established to undertake preparatory monitoring activities prior to the subsequent establishment of a panel or group of experts or another type of monitoring body. In the case of the 1267 Afghanistan/Taliban/Al-Qaeda sanctions regime, the Council initially established a committee of experts,⁶⁶ before later creating a monitoring mechanism and then a monitoring group. In the case of the 733 Somalia sanctions regime the Council established a preparatory team of experts,⁶⁷ before proceeding to create a panel of experts and then a monitoring group.

3.3.2 Panels and groups of experts

The Council's initial experiments with a group and panels of experts each related to the Iraq sanctions regime. These experiments differed from more recent examples of groups and panels of sanctions experts, however, in that they were not mandated to focus explicitly on improving the implementation of sanctions. The Iraq Group of Experts was established in June 1998 with the aim of determining whether Iraq was able to export the amount of petroleum and petroleum products permissible under the Oil-for-Food Programme (OFFP).⁶⁸ In January 1999 the Council established three ad hoc panels connected with the Iraq sanctions regime.⁶⁹ These panels were to make recommendations on: re-establishing an effective disarmament monitoring and verification regime in Iraq; the humanitarian needs of the Iraqi people; and outstanding issues relating to prisoners of war and Kuwaiti property.⁷⁰

The first example of an expert body with a clear mandate to monitor and recommend improvements in sanctions implementation was the UNITA Panel of Experts, which was established in May 1999.⁷¹ The Security Council initially intended to create two panels of experts, but when the experts first convened, they decided that it would be more efficient to act as one panel.⁷² The mandate of the UNITA Panel included: (1) collecting information relating to violations of the arms, petroleum, diamond and financial sanctions; (2) identifying those committing or facilitating the violations of those sanctions; and

(3) recommending measures to end such violations and to improve sanctions implementation.⁷³

Since the establishment of the UNITA Panel, other panels of experts have been created to monitor the 1132 Sierra Leone, 1343 and 1521 Liberia, 733 Somalia and 1556 Sudan sanctions regimes, while Groups of Experts have been formed to monitor the 1493 DRC and 1572 Côte d'Ivoire sanctions regimes.⁷⁴ These subsequent bodies of experts have been endowed with similar mandates to that of the UNITA Panel. Among the more innovative responsibilities assigned to panels have been: investigating the link between the trade in natural resources and the trade in arms that fuel conflict;⁷⁵ conducting an independent audit of a target government's compliance with sanctions;⁷⁶ reporting on the potential economic, humanitarian and social impact of sanctions;⁷⁷ assessing the capacity of states in the region to implement sanctions fully;⁷⁸ reporting on sources of financing for the illicit trade of arms;⁷⁹ recommending how to strengthen the capacity of states in the region to implement sanctions;⁸⁰ and compiling a list of sanctions violators.⁸¹

4. The governance and accountability of UN sanctions expert bodies

As the previous section illustrates, the Security Council has approached sanctions monitoring in an ad hoc, flexible manner, rather than pursuing a general, strategic approach. In December 2006, the Security Council's own Informal Working Group on General Issues of Sanctions ('Sanctions Working Group') made the remarkably frank admission that the working methods of expert groups had 'developed through a system of trial and error'.⁸² The Working Group proceeded to take the extraordinary step of outlining recommendations designed to improve the 'integrity' of the reporting habits of sanctions expert groups.⁸³ This was a clear indication that the independent sanctions expert model was not working in the manner anticipated by the Security Council.

The Sanctions Working Group's confession raises a number of basic questions relating to governance and accountability. In terms of governance, what structures are in place to govern the activities of the expert bodies? Which actors are responsible for overseeing their work? In terms of accountability, what steps do these actors take to meet their responsibilities? If it is indeed true, as the Sanctions Working Group concluded, that the integrity of expert reports is questionable, whose fault is it?

4.1 Governance

Before exploring questions of accountability, it is important to understand the governance structure that theoretically regulates the activities of sanctions monitoring bodies. The key actors involved in the governance of sanctions expert bodies are the Security Council, its sanctions committees, the UN Secretariat and the expert bodies themselves.

4.1.1 The Security Council

As described in Section 2, the UN Charter does not provide explicit guidance on how to conduct sanctions monitoring. Rather, it bestows upon the UN Security Council the primary responsibility to maintain international peace and security, including the power to apply sanctions and create subsidiary bodies to support the Council's work. When the Council decides to establish an expert body to monitor a sanctions regime, it determines what the body's mandate should be. The details are articulated in a Security Council resolution, which provides for the size of the body, its mandate in substantive terms and the duration for which it is created. The Council requires each expert body to report to it, through the appropriate sanctions committee, at the conclusion of its mandate. If the mandate of the body is longer than three months, then the Council would normally require it to provide an interim report at the half-way point of its mandate.

Once an expert body is established, day-to-day oversight falls upon the relevant sanctions committee and the UN Secretariat, as outlined below. Unless something unusual occurs, the Council will not hear from the expert body until it receives its report, which is submitted through and filtered by the appropriate sanctions committee. At that point the Council will consider the body's report, decide which of its recommendations should be acted upon, and determine whether to extend the body's mandate.

4.1.2 Sanctions committees

As outlined above, when the Security Council creates a new sanctions regime it usually establishes a sanctions committee to oversee that regime's administration. If a decision is made to create a sanctions expert body, that body reports to and through the sanctions committee, rather than directly to the Security Council. If the expert body is field-based, it will generally meet with the relevant committee at the beginning of its mandate and then again towards the end of its mandate, when the time

comes for the committee to review the body's report. This process of reviewing expert body reports can be time-consuming, as sanctions committee members scrutinise the draft report for anything that might be considered inaccurate, offensive or impolitic.

Once the expert body's report is approved by the sanctions committee, it is forwarded to the Security Council by the Chairman of the sanctions committee for consideration by the Council. At this point the report becomes a public document. The issuance of the report as a public document usually coincides with the periodic review of the sanctions regime in question by the Council. Thus the Council meets to decide whether to make modifications to the sanctions regime, based on the recommendations of the expert body. The Council will also decide whether to extend the mandate of the expert body and, if so, whether modifications are required to the body's mandate.

4.1.3 The UN Secretariat

The UN Secretariat, and in particular the Security Council Subsidiary Organs Branch of the UN's Department of Political Affairs, plays a role in support of both sanctions committees and sanctions expert bodies. When the Security Council decides to establish a new sanctions expert body, the Secretariat takes the necessary steps to identify suitable candidates and makes arrangements for their appointment. When the body begins functioning, the Secretariat provides it with administrative support.

4.1.4 Expert bodies

The governance structure within sanctions expert bodies is relatively simple. One member of each expert body is appointed Chairman. This member becomes responsible for official contact between the body and other entities. A major responsibility of the Chairman is to coordinate the preparation of and sign off on official correspondence and reports.

4.2 *Accountability*

As the discussion above indicates, the Security Council stands at the apex of a multi-layered governance structure for sanctions monitoring. Below the Security Council are the sanctions committees, through whom the expert bodies report. Within the expert bodies themselves, the Chairman is responsible for overseeing decision-making. At the same time, the UN Secretariat also plays an important role in support of both sanctions committees and expert bodies.

This multi-layered governance structure suggests that there should be a similarly multi-layered system of accountability. Assuming that the powers vested in the sanctions bodies are legitimately delegated by the UN Security Council, primary accountability for the activities of the expert bodies would rest with the expert bodies themselves. Proceeding up the structure, the UN Secretariat, the sanctions committees and the Council itself should each have the opportunity and the responsibility to reinforce accountability by scrutinising the activities of expert bodies to ensure that they are acting in accordance with their mandates.

4.2.1 Accountability of expert bodies

Within the expert bodies themselves, the issue of accountability largely arises with respect to the preparation of reports. A common approach of expert bodies has been to name and shame individuals involved in sanctions-busting, as well as the countries from which sanctions violations have emanated. This approach has sometimes drawn a fierce response from those alleged to have engaged in sanctions violations, some of whom have pursued litigation against sanctions expert bodies.⁸⁴ Bodies of experts are increasingly aware of the need to ensure that they are drawing upon reliable evidence when outlining their findings and making recommendations. Indeed, expert body reports often begin with a disclaimer on standards of verification, outlining the methods they followed in an attempt to ensure that the facts they present are 'irrefutable'.⁸⁵

Nevertheless, at times dubious information does make it into expert body reports. The Panel on the Illegal Exploitation of Natural Resources of the Congo, although not directly concerned with sanctions monitoring, published provocative findings without being able to substantiate the evidence upon which they were based.⁸⁶ Concern about the reliability and quality of evidence gathered by sanctions expert bodies has led the Security Council to request some expert bodies to bring allegations to the attention of states concerned and allow them 'the right of reply'.⁸⁷ The Sanctions Working Group has also outlined a range of proposals for ensuring that expert bodies share common methodological standards⁸⁸ and employ a standard format for written reports.⁸⁹ The Group has also recommended that expert bodies should: identify the sources of their information where possible;⁹⁰ ensure that their information is as transparent and verifiable as possible;⁹¹ and emphasise impartiality and fairness when drafting reports, including by making available to relevant parties evidence of wrongdoing for their comment and response.⁹²

Another dimension of accountability within expert bodies relates to ownership and protection of the information they collate. Although expert bodies are purportedly independent, any documentary information or evidence they collect becomes UN property. Members of expert bodies have a responsibility to ensure that such information and evidence remains confidential and is not tampered with or destroyed. The protection of information became an issue in early 2004, during the transition from the Taliban/Al-Qaeda Monitoring Team, whose mandate had been terminated, to the newly created Taliban/Al-Qaeda Monitoring Group. The outgoing Monitoring Team refused to hand over to either the UN Secretariat or its successor, the Monitoring Group, the information database it had created during its two and a half-year tenure.⁹³

Another interesting question is the relationship between the purported independence of the expert bodies and their accountability. Does this independence enhance or undermine accountability? Arguably, the independence of expert bodies should enable them to engage in robust monitoring and analysis, without fear or favour. It should also encourage creative and innovative thinking, promoting freedom to explore the best possible solutions. Independent expert bodies should not get mired down in second-guessing the politics of the Security Council and sanctions committee decision-making processes. They should be free to focus on making their analysis and recommendations as strong as they can possibly be.

From the viewpoint of the Security Council, independence should also encourage accountability in the sense that experts be vetted for competence and expertise in advance. Moreover, the fact that independent expert bodies are hired for a temporary, fixed period should promote accountability since if individual experts turn out to be less accountable, productive or technically proficient than anticipated, there is no need to maintain or rehire them beyond their existing, short-term mandate. This stands in stark contrast to the often cumbersome hiring procedures of the UN Secretariat, where recruitment can take many months and is subject to both in-house politics and the requirement of equitable geographic representation. Thus, it can be difficult for managers to recruit those whom they consider best qualified for a specific position.

In practice, however, expert bodies are not necessarily as independent as they are purported to be. Their monitoring costs are borne by the UN and travel plans and budgeting requests must be channelled through the appropriate UN avenues. Official correspondence is also routed through

the UN Secretariat. In the field, expert bodies often rely on UN peace operations, programmes and agencies for logistical support, including transport, accommodation and travel. Moreover, expert bodies generally emphasise their link to, rather than their independence from, the UN in order to secure interviews with influential figures and gain access to useful information. The fact that an expert body has been established by the UN Security Council is sometimes highlighted to illustrate the gravity of the body's mission. In Liberia local media referred to the Liberia Panel of Experts as being both a 'UN Panel' and 'from New York'.⁹⁴

The blurring of lines in terms of the appearance of independence would not be problematic if expert bodies remained independent in substance. But in some instances the short-term nature of expert appointments has had the ironic effect of fostering a form of expert *dependence*. Although experts initially accept assignment to an expert body on the understanding that it is on a short-term basis, the longer they undertake expert duties, the less easy it is to maintain another, more permanent position. Many experts thus come to rely on the possibility of gaining a further assignment to an expert body as a means of career security. It is not by chance that one of the most common recommendations by expert bodies is that their mandate be extended.⁹⁵ The longer certain individuals serve on an expert panel, the more likely it will become that they will develop a form of career dependency. With the onset of this dependency, it becomes less likely that experts will engage in genuinely critical analysis, thus undermining one of the key rationales for having independent expert bodies.

4.2.2 Accountability of the UN Secretariat

Questions concerning the accountability of the Secretariat arise largely in respect of the appointment process for experts. In the early days of sanctions expert bodies, there were few ground-rules relating to what experience or expertise was necessary to qualify as an expert. Although appointments to expert bodies were made by the UN Secretary-General, there was nothing to prevent pressure from being brought to bear upon the Secretariat by influential members of the Security Council.⁹⁶ However, over the course of time various checks and balances have evolved. An internal UN handbook stipulates that in order to serve on an expert body an individual should be 'an authority or specialist in an area directly related to the mandate of the expert group on which he or she is recruited to serve'.⁹⁷ The UN Secretariat maintains a roster of individuals fitting required expert profiles to assist in the selection

process of experts when the Security Council establishes a new expert group. The roster contains basic information about rostered experts, including their name, date of birth, nationality, fields of expertise, regions of expertise, languages, degrees and work experience.⁹⁸

The process for selecting experts is initially conducted by the UN Secretariat, through the UN Security Council's Subsidiary Organs Branch.⁹⁹ When the Security Council establishes a new expert body, the Secretariat consults the roster for individuals with the required expertise. In this recruiting process the Secretariat seeks to achieve broad geographical and gender representation. The Secretariat conducts interviews and selects its preferred candidates. A list of those selected is then circulated to the appropriate sanctions committee, via the 48-hour no-objection procedure. If a single committee member objects to a proposed selection, then the individual concerned is struck from the list. However, if there is no objection after 48 hours, then the Secretariat's selections are considered approved. The experts are then appointed to the relevant expert body by the UN Secretary-General.

The UN Secretariat has thus made some effort to ensure that individuals selected to serve as experts meet high standards of technical expertise and professionalism. The maintenance of a roster of qualified experts theoretically helps to avoid the risk that pressure will be brought to bear upon the Secretariat to hire unrostered, potentially unqualified individuals. The involvement of the sanctions committee in vetting proposed experts arguably adds another layer of scrutiny to the recruitment process, although it could also be contended that this reintroduces politics into the selection process.

4.2.3 Accountability of sanctions committees

The main role of the sanctions committees is to serve as the filter between the expert bodies and the Security Council. They do this by reviewing the draft reports of the expert bodies before transmitting them to the Council. This process involves a two-way responsibility. On the one hand, sanctions committees have a duty to ensure that the reports do not contain inaccurate information. On the other hand, they should also ensure that the Council receives all information that is relevant to its own process of reviewing sanctions regimes.

The process of filtration between the expert bodies and the Security Council is somewhat artificial. As sanctions committees are committees of the whole of the Security Council, the very same countries that sit on the sanctions committees also sit on the Council. Hence, the members of

the Council have ample opportunity to review expert body reports before they are transmitted to the Council as formal documents. Unfortunately, the review process is sometimes used by committee members to censor references that might reflect poorly on their own country. For example, in March 2003 the Panel of Experts on Somalia 'named and shamed' a number of African countries, including Yemen and Djibouti, through which arms transited, but it failed to mention the countries in which the arms originated, one of which was Bulgaria.¹⁰⁰ The Chairman of the Somalia Sanctions Committee at the time, whose responsibility it was to forward the report to the Council, happened to be the Ambassador of Bulgaria.

4.2.4 Accountability of the Security Council

Ultimately it is the Security Council that must take responsibility for the performance of expert bodies. The critical moments in terms of ensuring accountability in sanctions expert bodies are at their creation, when mandates are articulated, and at the end of their tenure, when the Council has the opportunity to review performance and decide whether to extend, modify or terminate their mandates. The Council can take the lead in promoting accountability by articulating clear, unambiguous, achievable mandates at the point of establishment, and then during the review process by carefully evaluating the extent to which expert bodies have fulfilled their mandate.

Another important dimension of accountability relates to the way the Security Council responds to the recommendations of its expert bodies. In theory, if the sanctions expert body is tasked with undertaking a set of specified activities and reporting to the Council with recommendations for improving sanctions implementation, it would be reasonable to expect that the Council would respond by implementing not necessarily all but at least some of those recommendations. On occasion the Council has acted decisively and swiftly in response to recommendations by a sanctions expert body. In late 2000, the Sierra Leone Panel of Experts produced a sophisticated report outlining numerous concrete recommendations for action to address violations of the Sierra Leone sanctions and UN sanctions in general.¹⁰¹ The Security Council subsequently acted upon many of these recommendations, including by applying targeted sanctions against Charles Taylor's regime in Liberia.¹⁰² But this level of responsiveness from the Council is rare. More frequently, expert body reports contain dozens of recommendations that are not taken up by the Council.

5. An alternative vision of sanctions monitoring

The Security Council's delegation of sanctions responsibilities to independent expert bodies amounts to outsourcing its peace and security responsibilities. While the UN founders stopped short of prescribing a precise framework for sanctions implementation in order to give the Council maximum flexibility in determining how to exercise its sanctions powers, it is unlikely that they would have envisaged that the Council would choose to outsource such tasks in such an ad hoc manner. The delegation of public responsibilities to independent or private actors should not necessarily undermine governance and accountability.¹⁰³ Indeed, Timothy Mitchell has shown persuasively that a system that provides for a 'rule of experts' can be an efficient, if not necessarily principled, way to promulgate and implement policy.¹⁰⁴ However, as Angus Francis demonstrates in his analysis of the Australian Howard government's policy of intercepting asylum seekers on the high seas and sending them to Nauru, when public responsibilities are bestowed upon private actors, there is a danger that principles of governance and accountability can be diluted, potentially amounting to an abdication of basic public legal obligations.¹⁰⁵ It is thus important to have checks and balances in place to ensure that the delegation of important public responsibilities does not lead to diminished accountability.

Almost a decade has passed since the Security Council first ushered in a new generation of sanctions monitoring by establishing the UNITA Panel of Experts. Although informal checks and balances have gradually evolved in the governance and accountability of sanctions expert bodies, they remain rudimentary and unsophisticated. It is time to reassess the Security Council's ad hoc, reactive approach to sanctions monitoring. This approach has contributed to a proliferation of sanctions expert bodies, which each consume valuable financial and logistical resources and require considerable support from the UN Secretariat, as well as from UN funds, programmes, agencies and peace operations in the field. The prevailing approach undermines efforts to construct a more strategic, accountable approach to sanctions monitoring, based upon building institutional memory, capacity and procedures.

If the UN Security Council genuinely considers sanctions monitoring to be important, it should revisit its current approach of leaving it to the experts. Independent expert bodies are not the only model available to the Security Council to pursue improved sanctions monitoring. One obvious alternative would be to task the UN Secretariat with sanctions monitoring.

The Council could thus create a central monitoring mechanism in the UN Secretariat. Or it could request the UN Secretary-General to appoint a Special Representative for Sanctions, with responsibility for monitoring the implementation and impact of sanctions. Another option would be to create a Sanctions Monitoring Commission, akin to the commissions surveyed in Section 3.

The decision to locate sanctions monitoring outside the UN Secretariat was no doubt motivated by a desire to avoid the bureaucratized, rigid, costly nature of creating new sanctions monitoring machinery within the Secretariat. Yet the attempt to avoid the practical operational frustrations of an existing bureaucracy by outsourcing sanctions monitoring responsibilities to independent, outside actors has created frustrations of its own, as expressed by the Sanctions Working Group in relation to the integrity of expert body reporting.¹⁰⁶ Moreover, by creating a mechanism within the UN Secretariat, the Council would not have had to reinvent the wheel from a governance and accountability perspective. Each of the three alternative options floated above – a central monitoring mechanism, a Special Representative of the Secretary-General on Sanctions or a Sanctions Monitoring Commission – would be subject to the existing UN Secretariat rules and regulations relating to UN staff conduct, thus requiring minimum levels of professionalism, governance and accountability.¹⁰⁷

The Security Council should give serious consideration to establishing a permanent, well-resourced sanctions monitoring body within the UN Secretariat. The staffing model should be flexible, enabling the monitoring body to respond to surges and lulls in sanctions activity. It should contain experts who focus on cross-cutting issues that affect multiple sanctions regimes. Provision should also be made for the mechanism to hire country-specialists on a short-term basis, in order to conduct fact-finding field missions.

6. Conclusion

This chapter has traced the development of sanctions expert bodies and explored their governance and accountability. It has illustrated how the Security Council's approach to sanctions monitoring, as with its approach to sanctions in general, has been ad hoc and reactive. Mechanisms for governance and accountability are thus rudimentary, where they exist at all. The chapter's primary argument is that the Security Council should adopt a more strategic, coherent approach to

sanctions monitoring. One way to do this would be to create permanent sanctions monitoring machinery within the UN Secretariat. The governance and accountability of sanctions monitoring are not well-served by the current approach of leaving it to the experts.

Notes

1. One exception is Alex Vines, 'Monitoring UN Sanctions in Africa: The Role of Panels of Experts' in Trevor Findlay (ed.), *Verification Yearbook 2003* (2003) 247.
2. Charter of the United Nations art. 24.
3. *Ibid.* art. 39–51.
4. *Ibid.* art. 40.
5. *Ibid.* art. 41.
6. *Ibid.* art. 42.
7. *Ibid.* art. 41.
8. SC Res 232 (16 December 1966), [2]; SC Res 253 (29 May 1968), [3]–[6].
9. SC Res 418 (4 November 1977), [2].
10. For a list of all UN sanctions regimes established up until the end of 2006, see Jeremy Farrall, *United Nations Sanctions and the Rule of Law* (2007) 468–9 (Appendix 3, Table B). For a summary of each sanctions regime, see 247–463 (Appendix 2).
11. David Cortright and George Lopez (eds.), *Smart Sanctions: Targeting Economic Statecraft* (2002); Peter Wallensteen, Carina Staibano and Mikael Eriksson (eds.), *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options. Results from the Stockholm Process on the Implementation of Targeted Sanctions* (2003).
12. Charter of the United Nations art. 25.
13. *Ibid.* art. 29.
14. *Provisional Rules of Procedure of the Security Council*, UN SCOR, 2410th mtg, r 28, UN Doc S/96/Rev. 7 (1982).
15. Charter of the United Nations art. 7.
16. *Ibid.* ch XV (arts. 97–101).
17. For general discussion of UN sanctions committees, see Farrall, above n 10, 147–57.
18. This was the case with the 661 Iraq, 748 Libya, 841 Haiti, 864 UNITA, 918 Rwanda, 1132 Sierra Leone, 1160 FRY, 1267 Afghanistan/Taliban/Al Qaida, 1298 Eritrea and Ethiopia, 1343 Liberia, 1521 Liberia, 1572 Côte d'Ivoire, 1636 Hariri, 1718 North Korea and 1737 Iran committees.
19. This was the case with the following committees (relevant sanctions regime listed in brackets): 253 Southern Rhodesia (232 Southern Rhodesia regime), 421 South Africa (418 South Africa regime), 724 former Yugoslavia (713 former Yugoslavia, 757 FRYSM and 820 Bosnian Serb regimes), 751 Somalia (733 Somalia regime), 985 Liberia (788 Liberia regime), 1518 Iraq (661 and 1483 regimes), 1533 DRC (1493 DRC regime) and 1591 Sudan (1556 Sudan regime).
20. Farrall, above n 10, 147, 353–7.
21. Records of the early meetings of the 661 Iraq Sanctions Committee did find their way into the public domain. See: Daniel Bethlehem and Elihu Lauterpacht,

- The Kuwait Crisis: Sanctions and their Economic Consequences* (1991). There has been no subsequent publication of the records of any other sanctions committees.
22. In May 1999, the then Chairman of the 864 UNITA Sanctions Committee, Canadian Ambassador Robert Fowler, led the first field mission by a sanctions committee. See: UN Doc S/1999/644 (4 June 1999).
 23. *Index to Proceedings of the Security Council for 1979* (1980) United Nations, New York, 2 (listing the meetings held by the Committee during the period leading up to its dissolution).
 24. *Ibid.* 273.
 25. *Ibid.* 348.
 26. *Ibid.* 331–2.
 27. UN Doc S/1995/234 (29 March 1995) [1].
 28. See, e.g., UN Doc S/1997/1028 (31 December 1997).
 29. See, e.g., the final report by the 724 Former Yugoslavia Committee: UN Doc S/1996/946 (15 November 1996).
 30. SC Res. 687 (3 April 1991) [9], [13].
 31. For a list of all sanctions expert bodies established up until the end of 2006, see Farrall, above n 10, 487–90 (Appendix 3, Table G).
 32. For general discussion of sanctions expert bodies, see *ibid.* 157–80.
 33. SC Res 687 (3 April 1991) [9], [13].
 34. For UNSCOM's mandate, see: SC Res 687 (3 April 1991) [8]–[13].
 35. For a summary of UNSCOM's activities, see: UN Doc S/1999/356 (30 March 1999) Annex I.
 36. SC Res 1284 (17 December 1999) [1]–[2].
 37. For further information on UNMOVIC's activities, see www.unmovic.org.
 38. SC Res 1013 (7 September 1995) [1]–[2].
 39. SC Res 1564 (18 September 2004) [12].
 40. SC Res 1593 (31 March 2005) [1]. For the SICI's report, see: UN doc S/2005/60 (1 February 2005).
 41. SC Res 1595 (7 April 2005) [1].
 42. SC Res 1757 (30 May 2007) [1] and Annex.
 43. SC Res 715 (11 October 1995) [7].
 44. SC Res 1051 (27 March 1996) [1].
 45. *Ibid.* [5].
 46. *Ibid.*
 47. SC Res 1284 (17 December 1999) [8].
 48. SC Res 1409 (14 May 2002) [2]–[3].
 49. See, e.g., *Ninth Quarterly Report of the Executive-Chairman of UNMOVIC*, UN Doc S/2002/606 (31 May 2002) [20]–[21]; *Tenth Quarterly Report of the Executive-Chairman of UNMOVIC*, UN Doc S/2002/981 (3 September 2002) [28].
 50. SC Res 1295 (18 April 2000) [3].
 51. SC Res 1363 (30 July 2001) [3].
 52. SC Res 1526 (30 January 2004) [6].
 53. For the initial mandate of the Monitoring Team, see: SC Res 1526 (30 January 2004) [7] and Annex.
 54. SC Res 1617 (29 July 2005) Annex I [(a)]; SC Res 1735 (22 December 2006) Annex II [(a)].

55. SC Res 1617 (29 July 2005) Annex I [(c)]; SC Res 1735 (22 December 2006) Annex II [(c)].
56. SC Res 1617 (29 July 2005) Annex I [(e)]; SC Res 1735 (22 December 2006) Annex II [(e)].
57. SC Res 1735 (22 December 2006) Annex II [(l)].
58. *Ibid.* Annex II [(o)].
59. SC Res 1519 (16 December 2003) [2].
60. SC Res 1519 (16 December 2003) [2(a)]; SC Res 1558 (17 August 2004) [3(a)]; SC Res 1587 (15 March 2005) [3(a)].
61. SC Res 1519 (16 December 2003) [2(b)]; SC Res 1587 (15 March 2005) [3(c)].
62. SC Res 1519 (16 December 2003) [2(d)].
63. *Ibid.* [2(e)].
64. SC Res 1587 (15 March 2005) [3(g)]; SC Res 1630 (14 October 2005) [3(g)]; SC Res 1676 (10 May 2006) [3(g)]; SC Res 1724 (29 November 2006) [3(g)].
65. SC Res 1630 (14 October 2005) [3(b)]; SC Res 1676 (10 May 2006) [3(b)]; SC Res 1724 (29 November 2006) [3(b)].
66. SC Res 1333 (19 December 2000) [15].
67. SC Res 1407 (3 May 2002) [1].
68. SC Res 1153 (20 February 1998) [12].
69. See: *Note by the President of the Security Council*, UN Doc S/1999/100 (30 January 1999). For the reports of the panels, see: UN Doc S/1999/356 (30 March 1999).
70. *Ibid.*
71. SC Res 1237 (7 May 1999) [6].
72. *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN Doc S/2000/203 (10 March 2000) [8].
73. *Ibid.*
74. For the resolutions establishing, extending and/or re-establishing these bodies, see Farrall, above n 10, 487–90 (Table G).
75. Sierra Leone Panel of Experts: SC Res 1306 (5 July 2000) [19(a)] 1343 Liberia Panel of Experts: SC Res 1343 (7 March 2001) [19(c)].
76. 1343 Liberia Panel of Experts: SC Res 1395 (27 February 2002) [4].
77. *Ibid.*
78. Somalia preparatory Team of Experts: SC Res 1407 (3 May 2002) [1].
79. 1521 Liberia Panel of Experts: SC Res 1731 (20 December 2006) [4(a)]; Côte d'Ivoire Panel of Experts: SC Res 1584 (1 February 2005) [7(b)].
80. 1521 Liberia Panel of Experts: SC Res 1731 (20 December 2006) [4(f)]; DRC Group of Experts: SC Res 1533 (12 March 2004) [10(c)].
81. Côte d'Ivoire Panel of Experts: SC Res 1584 (1 February 2005) [7(g)].
82. S/2006/997 (22 December 2006) [9]. For the establishment and mandate of the Working Group, see: UN Doc S/2000/319 (17 April 2000).
83. *Ibid.* [8]–[12].
84. Vines, above n 1, 259.
85. See, eg, *Report of the Panel of Experts concerning Liberia*, UN Doc S/2005/360 (13 June 2005) [7].
86. Vines, above n 1, 259.
87. This directive was addressed to the 1343 Liberia Panels of Experts: SC Res 1343 (7 March 2001) [20].
88. UN Doc S/2006/997 (22 December 2006) [17]–[32].

89. Ibid. [33]–[54].
90. Ibid. [21].
91. Ibid.
92. Ibid. [28].
93. Confidential interview conducted with a UN Secretariat staff member, July 2004.
94. See, eg, ‘Liberia’s “Big Fish” In Tax Evasion’, *The Analyst* (Monrovia) 1 July 2005, 1.
95. Vines, above n 1, 258–9.
96. Vines alludes to the political nature of early selections to expert bodies. ‘Over time the appointment of experts has become less politically driven’: Ibid. 258.
97. *Handbook for members of Panels/Groups of Experts and Monitoring Groups/Mechanisms/Teams Established by the Security Council to Monitor Compliance with Sanctions Regimes* (2006) unofficial UN document on file with author, [12].
98. Ibid. [7].
99. Ibid. [9]–[10].
100. UN doc S/2003/223 (25 March 2003) [80]–[85].
101. UN Doc S/2000/1195 (20 December 2000) [1]–[18], [65]–[150].
102. SC Res 1343 (7 March 2001) [5]–[7].
103. See Jody Freeman, ‘Extending Public Accountability Through Privatization: From Public Law to Publicization’ in Michael Dowdle (ed.), *Public Accountability: Designs, Dilemmas and Experiences* (2006) 83–111.
104. Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (2002).
105. See Angus Francis, ‘Removing Barriers to Protection at the Exported Border: Visas, Carrier Sanctions, and International Obligation’ in Jeremy Farrall and Kim Rubenstein (eds.), *Sanctions, Accountability and Governance in a Globalised World* 000.
106. UN Doc S/2006/997 (22 December 2006) [8]–[12].
107. For discussion of these principles and their questionable application in the Oil-for-Food Programme, see Richard Mulgan, ‘AWB and Oil for Food: Some Issues of Accountability’ in Jeremy Farrall and Kim Rubenstein (eds.), *Sanctions, Accountability and Governance in a Globalised World* 000.