

## **Sanctions through Legal Means**

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In "Profiting Peace, Managing the Resources. Dimension of Civil War" edited by Karen Ballentine and Heiko Nitzschke, Rienner London, 2004 pp 377-374

**The use of economic sanctions as a tool of international policy has had varied objectives. Unilateral sanctions, such as the comprehensive trade embargos imposed by the United States against Cuba are typically undertaken to further the goals of American foreign policy. While multilateral sanctions, such as those undertaken by the United Nations Security Council, often share broader political ends, such as punishing a country for its behavior (Iraq, Libya), they are often initiated in order to hasten a political solution to armed intra-state conflict, as in Liberia, Angola, and Sierra Leone. Among the many instances of targeted sanctions undertaken by the Security Council in the last decade, a primary objective is to cut the flow of **material and economic** resources that are deemed to be feeding an internal conflict. The objective is, thus, not **only** to obtain a political solution but to limit the capacity of the belligerents to do harm by depriving them of the resources necessary to purchase weapons, or by prohibiting their importation.**

The end of the Cold War means that many civil wars can more easily erupt, since the contexts they arise out of are no longer controlled by superpower politics. Moreover, according to Collier and Sambanis (2002) these civil wars tend to be prolonged due to the lack of the kinds of decisive external interventions that could tip the balance in favor of one or the other camps. But Le

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Billon (2003) shows that there is many other determinants of the length of a civil war. Finally, the capacity of the actors (States or non-States) to start a conflict and to continue it depends, partly, on their capacity to procure the resources to purchase the necessary armaments, **a capacity that has increased due to the wider trade opportunities created by globalization.** Thus, the capacity of actors to engage in conflict depends on their access to a combination of licit and illicit economic activities, in particular weapons trafficking, money laundering, corruption, collecting and diverting international aid, the illicit exploitation of natural resources, and narcotics trafficking.

Some of these economic activities are clearly proscribed by international law as well as the law of the majority of states. However, some lie at the border between legal and illegal activities. It is often difficult to determine on which side of the law they fall. In the same way, it is often a delicate question as to whether by limiting the intensity of a conflict one is not increasing its duration, and thereby heightening the suffering of the population. For the purposes of this paper, we place ourselves within a framework in which the need for intervention has been established and discuss only the means of improving its effectiveness, measured in terms of minimizing the sufferings of the populations, **while maximizing the intended deprivation of resources and opportunities by those whom the sanctions are intended to target.** The methodology is largely inspired by 'law and economics', i.e. examining the impact of laws and their methods of application on the behavior of the actors considered. For the most part, the economic literature has focused on the effects of embargo-type sanctions on the economy of the target country. Few studies have been

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undertaken on the possibility of effective sanctions against non-state armed groups, companies and criminal networks that organize the circumvention of UN sanctions. The present contribution intends to bridge this gap.

This chapter is divided into four parts. The first section lays out the logic of sanctions busting. The second is devoted to a discussion of what the contours of an effective law to control sanction busting should be. The third part provides an examination of the difficulties of enforcing sanctions. And, finally, the chapter concludes by offering a few leads for strengthening the fight against sanction busting.

### **Violations and Sanctions Busting**

Ultimately, the effectiveness of the sanctions depends on the sanctioned target's ability to circumvent them. (Hufbauer G.C.; Schott J.J. And Elliot K.A. 1985 ; Lindsay, 1986 ; Van Bergeux, 1989). When economic sanctions are imposed on a country by the United Nations, it immediately gives rise to lucrative economic activities engaged in bypassing the embargo. In most cases, this involves illicitly supplying belligerents with arms and other essential products. Conversely, traffickers also clandestinely smuggle every valuable resource out the country. In addition, all of these transactions require the establishment of large-scale financial enterprises designed to keep them undetected. UN sanctions are violated all the more given the fact that such violations are highly profitable. It is possible to identify three types of actors that circumvent UN sanctions:

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- The first type consists of criminal organizations—arms and narcotics traffickers and smugglers of natural resources. In violating sanctions, this group does not depart from its usual practices. Since illegal actions constitute its *raison d'être*, these actors can simply proceed to circumvent UN sanctions.
- Second, while designed to target combatant groups, **the sanctions imposed by the UN may implicate the business practices of certain companies, who may find themselves in real or potential violation.** This constitutes a unique case since all of the actors involved come out of the official economy. In response to this situation, these companies typically employ a number of intermediaries in order to not directly violate the sanctions. The middlemen are generally too elusive to constitute targets for effective enforcement. Smith (1986) points out that the activities of foreign subsidiaries often cannot be controlled by a multinational's home government. This provides an important channel through which the effectiveness of sanctions can be decreased. Therefore, sanctions seem unlikely to succeed in cases where technology and production capabilities are diffused through the actions of multinational firms in response to perceived embargo threats. The enforcement objective, then, consists in **holding accountable** companies that benefit in the end from the illicit activities of their intermediaries. However, any attempt by the international community at preventing this type of activity confronts the myriad problems associated with national sovereignty. Foreign companies are always regulated by a national set of laws which makes almost impossible any direct action at the companies level on the place of conflict. Laws are also protective for those who circumvented them. Either the state lacks the will to press charges, or, as is often the case, national

legislation does not allow (or facilitate) legal pursuits for crimes committed in a foreign country.<sup>1</sup>

- Third, certain governments may facilitate, as well as benefit from, sanction busting. These cases raise even more complex problems than do cases of the second type. Here, it is impossible to use national law to prosecute the violators, as the state itself either **participates in or tacitly condones** the violations. The only possible **legal** recourse, then, is to press charges against members of these governments before an international criminal court. However, as this paper demonstrates, international law does not yet have this capacity, and the emergence of a universal criminal justice system is a process whose outcome remains uncertain.

### {A} The Design of the Law

The majority of the resource flows that supply conflicts are valuable only if they can reach international markets. As a result, the international community should aim to suppress the profit-seeking activities of civil war combatants and their support networks. Minimizing the profitability of wartime economic transactions holds some promise as a means of shifting incentive structures in favor of pursuing peace rather than conflict (IPA, 2002).

Obviously, the fact that such transactions may be prohibited under UN Sanctions is not sufficient to prevent them. Thus, the question arises not only of the exact delimitation of the transactions to be proscribed, but also that of the implementation of an effective mode of prohibition. The latter problem consists

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<sup>1</sup> Recently, an encouraging example was provided by France, where a judicial case was

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in finding ways to deprive the combatants of the resource flows that fuel the conflict. In so doing, one must engage official governments, rebel leaders, corporate decisions-makers, criminals and traffickers whose economic behavior promotes and profits from civil war.

### **{B} Towards a Universal Law?**

Security Council decisions adopted under Chapter VII are binding upon the member states of the United Nation. But it is not easy to determine the precise scope of the obligations that Security Council decisions impose on the UN Members. Compliance is the obligation of states, but most lack legal machinery and/ or political will. Especially where the problematic activities implicate strategic resources or otherwise legitimate economic activities, home governments will be loathe restrict their own companies, when they cannot be certain that others will do the same. Because Existing Security Council decisions do not criminalize the behavior of individuals acting inn violation of the coercive measures they establish. Applying strictly UN sanctions would require recourse to a universal law. Unfortunately such a law does not presently exist. The international criminal system is currently attempting to emerge from this vacuum, but the process faces numerous difficulties, such as the reluctance of many states to renounce to some part of their unshared power. Indeed, the idea of an international criminal system combines two branches of law that are *a priori* incompatible. In classical law doctrine, international law and criminal law are mutually exclusive. They do not function at the same level: the one deals

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opened against TotalFinaElf on allegations of using forced labor in Burma.

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with states, the other with individuals. The former is a law of coordination of independent sovereignty, the latter an attribute that lies at the basis of independent sovereignty. The power to promulgate repressive laws and to enforce them on a given territory is the privilege of the state. As long as this doctrine dominated international relations, an international criminal system was not possible, for lack of a common criminal law, third parties to judge, and persons to be convicted. In such a model, the distinctions between violations of international law and other violations were clear. The former sanctioned actions undertaken in contact zones between sovereign actors—that is to say, chronologically: piracy on the high seas, the slave trade, drug trafficking, airplane high-jacking, terrorism, and environmental protection. In other words, international law only held jurisdiction over crimes committed in international spaces, or in those where no internal sovereignty existed (Garapon, 2002).

However, the new international criminal jurisdictions are competent to judge certain types of infractions, beyond the classical international law violations just enumerated, based on a new hybrid category involving both the national and the international sphere. The violation of United Nations sanctions and sanctions-busting precisely fall into this category because they mix decisions taken on an international basis and national based prosecution.

Ideally, a comprehensive universal legal regime would be the best means of enhancing both the authority and the capacity of the international community to penalize those whose economic activities serve to support and exploit armed conflict. However, the likelihood that such a regime could be developed is very low. Because international law is primarily concerned with defining state

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responsibilities, its enforcement is also a problem of state capacity and will. In addition, the application of international law to non-state actors is very problematic. It is likely that universal jurisdictions like that of the International Criminal Court (I.C.C.) will apply only to a narrow range of human rights violations.(Garapon 2003)

Moreover, international law only addresses illegal activities whereas **managing the resource dimensions of conflict** is also concerned with controlling transactions that, in other circumstances, are perfectly legal (, for example, the sale of diamonds, gold, or natural resources). In the absence of a universal legal regime, the question thus becomes: “what is the ‘second best’ legal framework within which to tackle these problems”? In other words, forced to approach the problem on the basis of multiple national jurisdictions, how can the effectiveness of Security Council decisions to ban **certain?** economic transactions with territories engaged in civil war be enhanced?

### **{B} Hard or Soft Law?**

In considering the proscription or regulation of certain economic activities by actors subject to economic sanctions, it is first essential to understand the exact parameters of the activities in question. This is complicated by the fact that there are differences of opinion between those who think that a global legal regime should confine itself only to behavior that is clearly criminal and those who would include all **economic** transactions that promote conflict. Given that the purpose of this legal framework is to promote sustainable conflict resolution, rather than crime reduction, **logically** the remedies should not be limited to

illegal activities, *per se*, but should also address the harmful consequences of highly unregulated, if legal, international financial and commodity transactions.

Both the interdiction of illicit trade and the regulation of legal trade require legal structures for setting standards and sanctioning violators. Two solutions are offered: 'hard law' and 'soft law'. The term 'hard law' refers to legally binding obligations that are precise (or can be made precise through adjudication or detailed regulation) and that delegate authority for interpreting and implementing the law. (ABBOT Kenneth W. and SNIDAL Duncan (2000)). By using hard law to order their relations, international actors reduce transaction costs, strengthen the credibility of their commitments, expand their available political strategies, and resolve problems of incomplete contracting. Doing so, however, also entails significant costs: hard law places considerable restrictions on actors' behavior as well as on sovereignty.

On the other hand, 'soft law' begins once legal arrangements are attenuated along one or more of the dimensions of obligation, precision, and delegation. This softening can occur in varying degrees along each dimension and in different combinations across dimensions. We use the shorthand term "soft law" to distinguish this broad class of deviations from "hard law"- and at the other extreme, from purely political arrangements in which legalization is largely absent. Distinguishing legal activities from illegal activities provides a grid for determining which type of legalization would be more efficient (i.e. to minimize transaction costs). Typically, when trying to ban or regulate otherwise legal transactions from a certain area of the world, interdictions cannot be made legally precise and the delegation of authority to enforce the law is almost

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impossible, precisely because the transactions themselves are legal. For these reasons, 'hard law' is not the best solution.

Soft forms of legalization provide an alternative, and often more desirable, means to manage many types of interactions by providing some of the benefits of hard law at lower cost. According to Abbot and Snidal (2000), a major advantage of softer forms of legalization is their lower contracting costs (Any agreements entails some negotiating costs-coming together, learning about the issue, bargaining and so forth). Softer forms of legalization will become more attractive to states, then, as contracting costs increase. International law implies a loss of sovereignty, incurring sovereignty costs for states that comply with the law. The most highly institutionalized arrangements occur where there is a strong commitment to reduce sovereignty. It is unsurprising that even with NATO, one of the most institutionalized alliances, delegation is moderate (Abbot and Snidal, 2000). When sovereignty costs are low (international transportation or food standards), one sees a significant level of delegation, even with organizations in which private actors play a major role (like ISO).

These remarks demonstrate that the regulation of legal (but vital for the belligerents) transactions (such as the exploitation of natural resources) should be the province of 'soft law'. However, prohibiting transactions that are commonly considered to be illegal ( the trade in drugs, the sale of weapons in the absence of certain conditions, etc.) within certain countries does not generate high sovereignty costs and should thus be controlled by 'hard law'. The soft law approach generally requires mobilizing private actors in order to obtain their cooperation. It is then a question of building incentive schemes that are cost-

beneficial **to encourage these private sector actors to participate in** the promotion of Security Council policies (as relayed by the national states).

### **{B} Mobilizing Private Sector Actors**

Another good reason to prefer ‘soft law’ in regulating legal transactions is that they are difficult to trace. Especially in cases involving the global financial system, given the fact of bank secrecy, delegation to private actors can be an efficient solution. In these cases, private actors (brokers, traders, multinationals) are the least costly enforcers. However, this leaves the problem of finding an appropriate incentive system to impel these actors to cooperate. Firms have little incentive for self-regulation, if they perceive that defection is high and that compliance hampers their relative competitiveness, especially against less scrupulous players. Nonetheless, **public advocacy campaigns to expose problematic activities that may negatively affect a company’s reputation** and modest state intervention (blaming and shaming) can provide the basis for a favorable outcome.

We can adapt, for our purposes here, the proposition initially advanced by Olson (1966) and retained by Cooter (1995), which illustrates the existence of conditions permitting an escape **from collective action problems**, in certain cases. In this model, developed around the case of collective actions such as strikes, the cost of entry into collective action diminishes with the number of participants, each of which has a different cost threshold that determines the decision to participate. We then observe a type of chain reaction where an increase in the number of participants in collective actions decreases the cost of

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adhesion and encourages further participation. In the case of private actors in a democratic country where the public authority expects them to comply with the decision to stop transactions within a certain war area, each time one of them adopts the new standard of good conduct, it contributes to lowering the cost of future adhesion for those who have not yet done so.

Self-regulation is attractive since it does not require complicated state intervention and requires only a little information in order to play its role. The risk of proliferation of more and more complex rules and liabilities, as well as counter measures designed to compensate for the perverse effects, is eliminated. On the other hand, the system is fairly lax, since it does not foresee meaningful sanctions for those who do not conform to the policymaker's desired goals. This mechanism is also fairly easy to manipulate, given that the handling of the threat to ruin a company or another private actor's reputation is political. The filing of a legal procedure and its follow-up provide all sorts of opportunities for ruining an establishment's reputation, which can easily be oriented to politics. Medias plays also a determinant role in the way they emphasis a prosecution and some details of the procedure.

To sum up, it is clear that violations of UN sanctions cannot lead to criminal prosecutions under a universal law that is only starting to emerge with the creation of the international criminal system. National legal systems are very heterogeneous and do not equally facilitate the prosecution of sanctions violators and international law generally. For example, Belgium represents a kind of champion in the area of universal competence. Belgian law gives the national legal system universal competence to pursue and punish persons presumed

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responsible for war crimes or crimes against humanity committed abroad, whatever their own nationality or that of their victims. **( has this not been abridged under U. S. Pressure in the last year to exclude citizens of democracies?) NO, it does not succeed but it is still in the Bel. law**

On the other hand, the majority of states refuse to move in this direction, **not only does this hinder the legal actions they might take against non-nationalin their jurisdiction, but also those taken against their nationals in other jurisdictions.** The international legal system under which criminals could be prosecuted thus remains imperfect, as will be demonstrated below in a survey of the concrete problems encountered during this process.

### **{A} Implementation Problems**

UN Security Council resolutions to impose targeted economic sanctions on actors in a conflict setting in order to prohibit the illicit import of weapons to belligerents or the illicit exploitation of natural resources have been proven generally incapable of achieving these ends.(Le Billon 2003)

There are several reasons for this ineffectiveness: first, the legal status of the sanctions decided by the Security Council does not necessarily result in a commitment by the Member States to put them into practice, by lack of will or means.; second, the economic sanctions against countries which trade with those state or non-state actors under embargo does not necessarily criminalize the acts of individuals and companies engaged in such trade; third, the experiment shows that collecting the evidence necessary for legal action against arms brokers or

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smugglers of illicit commodities such as diamonds or timber is extremely complicated and expensive.

### **{B} The Embargo Model**

Over the last decade, economic sanctions have become an increasingly important means of enforcing international law and policies, in particular with respect to the maintenance of international peace and security. The UN Security Council has repeatedly adopted economic sanctions, and more generally non-coercive measures, against states and other entities such as UNITA in Angola, The RUF in Sierra Leone, and the Bosnian Serbs.<sup>2</sup>

According to Angelet (1999), it is nonetheless difficult to determine the precise scope of the obligations that Security Council resolutions impose on UN member states. In the first place, UN member states sometimes reserve their right not to comply with Security Council resolutions that they regard as incompatible with the UN Charter. The second question is whether it is sufficient for states to adopt only those measures explicitly provided for in the relevant Security Council resolution, or whether circumstances allow or require them to take additional measures (efficient monitoring, prosecution, etc.). Certainly, the degree to which Security Council sanctions are enforced depends in large part on the will of individual states to see them applied or not.

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<sup>2</sup> In accordance with article 25 of the Charter, Security Council resolutions adopted under Chapter VII offer the possibility of enacting sanctions at a quasi-universal level. Security Council measures must be applied by UN members notwithstanding, for example, treaties guaranteeing free trade with the target of the sanctions. Security Council decisions concern imports from and exports to the target and even a broader scope.

### **{B} From Sanctions to Criminalization**

In the dark nexus of the illicit arms trade private brokers are essential in moving weapons and commodities to regimes under international embargoes or to insurgents or terrorists who have no legal means of purchasing arms. Brokers cover their tracks with complex financial transactions to make it almost impossible to follow the money, bribes to ensure that customs inspectors and other officials avert their gaze from illicit cargo, and bogus documents, including “end user certificates” that show a false destination for the arms. Once shipped, the goods are re-routed to their true destination.(Anderton C.H, 1995).

The difficulty in effectively prosecuting these brokers lies in the fact that existing Security Council resolutions do not themselves criminalize the behavior of individuals acting in violation of the measures they establish. **Doing so requires that states** prosecute these individuals under existing **domestic?** laws, which poses the delicate problem of gathering the necessary elements for a legal action likely to meet with success. Recent efforts to prosecute two high-level weapons traffickers—Leonid Minin and Victor Bout—with international law enforcement illustrate these difficulties.

Leonid Minin was born in Odessa in 1947 and emigrated to Israel in the 1970’s, where he established a global web of companies, many of them discreetly incorporated off shore Minin’s primary business was a Monaco-based company, Limad AG, which also has offices in Switzerland, China, and Russia. In addition to arms, his business interests included timber, chemicals, food, clothing, scrap metal, and oil. By the late 1990’s, Minin had become a major

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broker of arms to Liberia, where Charles Taylor took power in 1997 following a seven-year civil war. (Los Angeles Times, 1/20/02].

Initially, Minin was arrested in Italy, by chance, for drug possession, a charge that kept him in jail for six months. (New York Time, august 17, 2003) According to the arrest report, a prostitute led police to his disheveled hotel room after not being paid for her services. A shopping list of guns and stacks of weapons manuals lay amidst scattered evidence of a wild party. He was released in June 2001 for the first charge and re-arrested immediately based on the evidence found in the room and, if convicted, he faced 12 years in prison for international arms trafficking but was not found guilty.

Victor Bout, a Russian citizen, began his career after the fall of the Soviet Union. A former soldier in the Soviet Army, he set up a network of planes, initially in Angola, enabling him to sell the surpluses of the ex-Soviet army on the African continent, in particular to Sierra Leone. Reports of the United Nations Panel of Experts found him to be in violation of the embargo on Liberia, Sierra Leone and Angola.<sup>3</sup> He then developed networks in Afghanistan where he supplied both the Taliban and the Northern Alliance with weapons. In late summer 2000, Richard Clarke, the NSC's counter-terrorism director asked his team to get a warrant for Bout's arrest (Los Angeles Times, 1/20/02]. Enforcing the decision seemed difficult. Knowing the international options were limited the U.S turned to a campaign to disrupt Bout and his assets. The strategy was to urge nations where Bout had operations to file charges against him and shut him

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<sup>3</sup> <http://www.globalpolicy.org/security/sanction/angola/angola34.htm>

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down. In return, the U.S promised to back them up with the full force of its intelligence and diplomatic machinery. (Los Angeles Time 5/17/02).

First the Americans focused on South Africa, trying to target him under anti-mercenary laws, but it quickly became clear that they would not be able to make a case. The Emirates seemed more promising. The British wanted help with their own strategy: an attempt to publicly shame Bout and drive him from the Emirates. But western diplomats discovered how difficult it was to stir the Emirates to action when their direct interest are not threatened. Bout had an influential partner in Shararjah and the royal aid did not respond to attempts to interview him. Finally, after September 11, Bout and his partners moved out of the Emirates without being prosecuted.

Bout's American pursuers then explored whether a warrant could be procured in the United States. Federal law enforcement agencies uncovered evidence that Bout had interests in several U.S cities. But proving a criminal case would be difficult. In theory, the U.S had stronger laws than most: the 1996 Arms Export Control Act mandated that all weapons brokers with U.S. operations register with the State Department. Under the act, munitions sales were allowed only to national governments or others specifically approved by the U.S. government<sup>4</sup>. American dealers who violate the law anywhere in the world can be prosecuted, as can foreign nationals who break the law while conducting business within the U.S. However, in order to charge Bout, the authorities would have to prove that he had operations in the US, and then find clear evidence of crimes.

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4 :[http://resource.lawlinks.com/Content/Legal\\_Research/US\\_code/Title\\_22/title\\_22\\_39.htm](http://resource.lawlinks.com/Content/Legal_Research/US_code/Title_22/title_22_39.htm)

In 2000, San Air General Trading was established in Plano, Texas, a Dallas suburb. Bout's name does not appear on the corporate papers, but two of his Russian associates based in the Emirates were listed as directors. Federal agents poured over the company's phone records, discovering that callers from Plano were in frequent communication with Bout's enterprises abroad. But there was no evidence of wrongdoing. Bout applied for a visa in the summer of 2000 at the U.S Embassy in Abu Dhabi listing the Plano corporation address as his destination. Unfortunately, Bout was on the Embassy's 'watch list' and the visa was refused.<sup>5</sup> **Ironically, a potential** opportunity to catch him committing crimes in the US, such as violating anti-brokering laws, was missed.

After September 11, under U.S pressure, the Belgians moved against Bout. A federal prosecutor issued an arrest warrant, alleging that Bout headed a complex scheme to launder African weapons profits. Interpol followed with a worldwide alert. According to Belgian law enforcement officials, the police investigation into Bout led to the discovery of massive flows of money coursing through two Bout-controlled firms. Several hundred million Belgian francs moved into bank accounts across Europe. The funds, a U.S official said, allegedly came from Angolan weapons profits. The U.S had assumed that Bout would be in the Emirates if a warrant came down. Instead, he was in Moscow, where authorities would not arrest him on the basis of an Interpol alert. On March 4, the Russian Federal Security Service issued a short correction: "There is no reason to believe that this Russian citizen has committed any illegal actions."(Los Angeles Time, 1/02/2002) Lake of evidence and political

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<sup>5</sup> <http://www.pbs.org/frontlineworld/stories/sierraleone/bout.html>

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protection kept Bout free. His name appeared recently as an arm carrier for Al Qaeda (Los Angeles Time 26/02/2002)..... In the end, these two cases demonstrate the difficulties of successfully mounting international criminal prosecutions of this sort. In the case of Minin, there are excesses characteristic of his personality that drove him behind bars for a short period. Both Minin and Bout continue to elude prosecution thanks to a lack of cooperation within and between states. These cases demonstrate that weapons traffickers at this level can only be successfully prosecuted if States or a groups of States can effectively cooperate.

### **{B} Improving Sanctions Regime**

This brief discussion demonstrates the possibility of modifying the mode of sanctions in order to make them more effective. When a repressive mechanism proves to be ineffective, there are generally four solutions: to decriminalize; to harden the criminal policy; to transfer to private agents the task of supervising behavior by subjecting them to criminal liability; or to rely on a voluntary raising of the moral standard by agents who do not wish to have their reputations sullied and are thus ready to adhere to different standards of behavior.

The first solution consists in ceasing to repress the behavior in question, as, for example, in the case of the decriminalization of homosexuality in France, in 1981, or in the case of the legalization of certain drugs elsewhere. The application of this solution to economic sanctions would consist in adopting a position of non-interference, an analysis of which exceeds the framework of the present discussion.

The second solution consists in hardening the criminal policy. This entails, on the one hand, a modification of the law to address the existence of any ‘loopholes’, and, on the other hand, to enhance the penalties for the crimes as well as the means devoted to their detection. From this point of view, the legal mode of Security Council sanctions should be able to be clearly improved. Since it has proven difficult to pursue arms traffickers and other sanctions busters by applying national laws, a consistent alternative means to criminalize the violation of sanctions **should be considered**. Currently, although nothing precludes the applicability of Security Council decisions. The Security Council could require that these decisions be implemented by national legislation.

In other words, the UN lacks the means to make criminal liability effective in domestic legal orders. It is therefore hardly surprising that not a single Security Council resolution expressly obliges the Member States to provide for such an offence in their internal legal order (Angelet, 1999). In fact, the Council cannot decide whether the states will prevent or prohibit the activities concerned. It is the Council itself that prohibits them. The formula does not expressly provide for territorial and personal jurisdiction. In principle, this might be construed to mean that Security Council’s jurisdiction in the area of sanctions is universal in kind, which means that states must enforce the prohibition, whether or not it has been violated on their territory or by their nationals (Angelet, 1999). Unfortunately, this is not the current interpretation of the Security Council Resolutions.

Third, the solution consists in delegating to private actors the responsibility of transforming their behavior. The operative principle here is well

known. It rests on a relation of agency, where an incentive system is put in place which forces the agent to adopt certain objectives. The extension of criminal liability to companies, in common law countries, in order to fight against white-collar delinquency constitutes an excellent example. The principle is simple: since the state is not in a position to detect white collar criminality, it is cost effective to delegate this task to companies by threatening them with criminal liability for the crimes committed in their name, even without their being informed of it by their employees. In the field of economic sanctions, this tack would consist in making the companies that produce, sell or transport arms or other commodities in violation of UN sanctions) criminally liable when the rules which govern these exchanges are contravened, even when it is done without their knowledge. Given that many companies who supply the weapons markets in countries subjected to sanctions turn a blind eye to the final destinations of their goods, it is likely that if they were to incur criminal liability for doing so they would reorient their attitude.

However, this solution encounters two problems. First, as was underlined by Arlen (1994), establishing criminal liability for companies often has a perverse effect. Do the companies have an interest in better supervising their working procedures if, each time that they observe a violation of the law, they must declare it to the authorities and be condemned? Indeed, mitigated liability does not exist in law.<sup>6</sup> Second, it is doubtful that individual states would have the political will to introduce in their national law provisions that would come

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<sup>6</sup> According to Arlen 1994, Mitigated liability is a formula where the liability of a companies can be diminished if the internal monitoring system is at the origin of the prosecution of an employee.

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against the corporate veil and weaken the operation of an export industry that is often economically vital to the country concerned.

There remains the final option, usually retained by the civil (but not common law) law countries that generally hesitate to resort to the criminal liability of third parties (companies or persons) when intentionality is not established (Kopp 2004). The example of the fight against drug money laundering provides some lessons that are applicable to the repression of violations of economic sanctions. Financial Action Task Force (FATF) on Money Laundering, an assembly of member states, checks that its member states translate its recommendations into their national legal codes. When a country refuses, it can be publicly censured by FATF, as was Austria (FATF, 2002). The annual publication of a blacklist encourages the countries to remain in conformity.

The UN Security Council, noting that the sanctions issued between 1992 and 1998 were violated with impunity, admitted that enforcing sanctions would require some form of monitoring to identify sanctions-busters. In the case of UNITA in Angola, in May of 1999, the UN Security Council, through its Sanctions Committee, established a Panel of Experts with a six-month mandate to collect relevant information. On March 10, 2000, the panel produced the pioneering “Final Report of the UN Panel of Experts on Violation of Security Council Sanctions Against UNITA” that explicitly ‘named and shamed’ particular governments, companies, and individuals believed to be involved in the violation of sanctions. The practice of ‘naming and shaming’ **by this and subsequent Panels** increased pressure on some member states to uphold their

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legal obligation to implement UN sanctions. **However, the overall impact of this mechanism in reducing the incidence of evasion of Security Council sanctions has been modest at best.**

In conclusion, it seems that obviously, each of the solutions suggested here places the burden of responsibility for enforcing Security Council sanctions on different actors. To give Security Council resolutions the character of universal law supposes that the latter is capable of imposing a collective will over that of the range of member states. To count on the transformation of the national law of individual countries transfers the burden of improvement of the mechanism to the various states. Surely, sanctions-busters will not fail to capitalize on the heterogeneity of these efforts, to exploit the advantages offered by the weak links in the chain **of enforcement over various national jurisdictions**. Finally, to rely on the fear of public reprobation by UN Panels of Experts, delegating responsibility to an independent group of experts, even though mandated by the Security Council, deprives this mechanism of the full force of a authoritative and official judgment.

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